

Supporting Statement for
Proposed FERC-740
Availability of E-Tag Information to Commission Staff

The Federal Energy Regulatory Commission (Commission or FERC) requests that the Office of Management and Budget (OMB) review and approve, for a three-year period, the proposed FERC-740 in the Final Rule in Docket No. RM11-12.¹

In the Final Rule, the Commission is amending its regulations, pursuant to sections 222 and 307(a) of the Federal Power Act (FPA),² to grant the Commission access, on a non-public and ongoing basis, to the complete electronic tags (e-Tags)³ used to schedule the transmission of electric power interchange transactions in wholesale markets. This Final Rule will require e-Tag Authors⁴ (through their Agent Service⁵) and Balancing Authorities⁶ (through their Authority Service⁷) to take appropriate steps to ensure Commission access to the e-Tags covered by the Final Rule by designating the

1 In an appendix to the Final Rule, FERC identifies all the commenters along with the abbreviations used in this document, including the footnotes. All documents and submissions related to the Final Rule are in FERC's eLibrary system at <http://www.ferc.gov/docs-filing/elibrary.asp> and can be found by searching under Docket No. RM11-12-000.

2 16 U.S.C. 824v, 825f.

3 For purposes of the rule and this document, "complete e-Tags" refers to: (1) e-Tags for interchange transactions scheduled to flow into, out of or within the United States' portion of the Eastern or Western Interconnection, or into the Electric Reliability Council of Texas and from the United States' portion of the Eastern or Western Interconnection, or from the Electric Reliability Council of Texas into the United States' portion of the Eastern or Western Interconnection; and (2) information on every aspect of each such e-Tag, including all applicable e-Tag-IDs, transaction types, market segments, physical segments, profile sets, transmission reservations, and energy schedules.

4 E-Tag Authors are typically Purchasing-Selling Entities. A Purchasing-Selling Entity is the entity that purchases or sells, and takes title to, energy, capacity, and Interconnected Operations Services. Purchasing-Selling Entities may be affiliated or unaffiliated merchants and may or may not own generating facilities. See NAESB Electronic Tagging Functional Specifications, Version 1.8.1.1, at 15.

5 The Agent Service provides the ability for initial creation of an e-Tag and the electronic transfer of that information to the appropriate Authority Service. E-Tag Authors are responsible for providing this service directly or by arranging with a third party to provide this service as their agent. See NAESB Electronic Tagging Functional Specifications, Version 1.8.1.1, at 24.

6 A Balancing Authority is responsible for integrating resource plans ahead of time, maintaining load-interchange-generation balance within a Balancing Authority Area and supporting Interconnection frequency in real-time. See NAESB Electronic Tagging Functional Specifications, Version 1.8.1.1, at 10. Sink Balancing Authorities, defined as the Balancing Authority in which the load (sink) is located for an Interchange Transaction, use an Authority Service to electronically validate e-Tags and distribute them for approval by other entities. See NAESB Electronic Tagging Functional Specifications, Version 1.8.1.1, at 17, 24.

Commission as an addressee on the e-Tags. After the Commission is designated as an addressee, the Commission will access the e-Tags by contracting with a commercial vendor. The commercial vendor will provide data management services and receive e-Tags addressed to the Commission. E-Tag Authors and Balancing Authorities will be required to ensure Commission access to e-Tag data under this Final Rule by no later than March 15, 2013.

In addition, this Final Rule requires that Regional Transmission Organizations (RTOs), Independent System Operators (ISOs) and their Market Monitoring Units (MMUs) shall be afforded access to complete e-Tags, upon request to e-Tag Authors and Authority Services, subject to their entering into appropriate confidentiality agreements.

Background

E-Tags, also known as Requests for Interchange, are used to schedule interchange transactions⁸ in wholesale markets. E-Tags document the movement of energy across an interchange over prescribed physical paths, for a given duration, and for a given energy profile(s), and include information about those entities with financial responsibilities for the receipt and delivery of the energy. E-Tags may contain information about the different types of entities involved in moving power across interchanges, including generators, transmission system operators, energy traders, and Load Serving Entities. Currently, the North American Electric Reliability Corporation (NERC) and the Western Electricity Coordinating Council (WECC) receive all e-Tag data in the Eastern and Western Interconnections, respectively, in near real-time, to assist Reliability Coordinators in identifying transactions that may need to be curtailed to relieve overloads when transmission constraints occur. At present, NERC and WECC contract with OATI, a commercial vendor, for data management services related e-Tags. E-Tags are also included in the business practice standards adopted by the North American Energy

⁷ The Authority Service validates and distributes e-Tags for approval on behalf of the Sink Balancing Authority. See NAESB Electronic Tagging Functional Specifications, Version 1.8.1.1, at 24.

⁸ NERC's *Glossary of Terms Used in Reliability Standards* (updated November 15, 2012) defines an interchange transaction as "[a]n agreement to transfer energy from a seller to a buyer that crosses one or more Balancing Authority Area boundaries." See http://www.nerc.com/files/Glossary_of_Terms.pdf.

Standards Board (NAESB)⁹ and incorporated by reference into the Commission's regulations and public utility tariffs.

For more information on the information on a typical E-Tag and what it looks like, see the supplemental documents submitted as part of this clearance package.

E-Tagging was first implemented by NERC on September 22, 1999, as a process to improve the speed and efficiency of the tagging process, which had previously been accomplished by e-mail, facsimile, and telephone exchanges.¹⁰ E-Tags require that, prior to scheduling transactions, one of the market participants involved in a transaction must submit certain transaction-specific information, such as the source and sink control areas (now referred to as Balancing Authority Areas) and control areas along the contract path, as well as the transaction's level of priority and transmission reservation Open Access Same-Time Information System (OASIS) reference numbers, to control area operators and transmission operators on the contract path.¹¹

Communication, submission, assessment, and approval of an e-Tag must be completed before the interchange transaction is implemented.¹² The Interchange Scheduling and Coordination (INT) group of NERC Reliability Standards sets forth requirements for implementing interchange transactions through e-Tags. E-Tags are submitted pursuant to the business practices set forth by NAESB. Those business practices incorporate the protocols enumerated in the NAESB Electronic Tagging Functional Specifications for communicating and processing e-Tags. NAESB business practice standards for the wholesale electric industry are mandatory when they have been incorporated by reference

⁹ See, e.g., NAESB Wholesale Electric Quadrant (WEQ) Business Practice Standards (Coordinate Interchange) requirement 004-1 ("All requests to implement bilateral Interchange (excluding Interchange for emergency energy) between a Source BA and a Sink BA, where one or both BAs are located in either the Eastern Interconnection or Western Interconnection, shall be accomplished by the submission of a completed and accurate RFI to the Sink BA's registered e-Tag Authority Service") and requirement 004-2 ("Until other means are adopted by NAESB, the primary method of submitting the RFI [Request for Interchange] shall be an e-Tag communicated to and managed by the Sink BA's registered e-Tag authority service using protocols compliant with the Version 1.8.1 Electronic Tagging Functional Specification.") NAESB Wholesale Electric Quadrant (WEQ) Business Practice Standards (Version 003), published July 31, 2012.

¹⁰ *Open-Access Same-Time Information System and Standards of Conduct*, 90 FERC ¶ 61,070 at 61,258-59 (2000).

¹¹ *Id.*

¹² See *Mandatory Reliability Standards*, Order No. 693, FERC Stats. & Regs. ¶ 31,242 at P 795, *order on reh'g*, Order No. 693-A, 120 FERC ¶ 61,053 (2007).

by the Commission into its regulations.¹³ Several of the incorporated business practice standards require processing e-Tags in accordance with these specifications.¹⁴

A. JUSTIFICATION

1. CIRCUMSTANCES THAT MAKE THE COLLECTION OF INFORMATION NECESSARY

In reviewing the data that currently are available to the Commission and its staff and necessary for conducting effective market surveillance and analysis, the Commission has determined that gaining access to the complete e-Tags used for interchange transactions will enhance the Commission's efforts to detect and prevent market manipulation and monitor market developments.

The Commission relies on its anti-manipulation authority under FPA section 222, along with its investigative authority under FPA section 307(a), as a basis for accessing e-Tag information related to wholesale electricity market transactions.

As part of the Energy Policy Act of 2005 (EPAAct 2005),¹⁵ Congress granted the Commission authority over the prohibition of market manipulation in connection with the purchase or sale of electric energy and transmission subject to the Commission's jurisdiction in FPA section 222. In addition, FPA section 222 prohibits energy market manipulation by "any entity," including entities exempted from the Commission's rate-related jurisdiction by FPA section 201(f).¹⁶ The application of this provision to "any entity" and not solely to public utilities is further evidenced by section 201(b)(2) of the FPA, which explicitly states that certain provisions, including section 222, shall apply to entities that fall within the scope of FPA section 201(f).¹⁷

¹³ See *Standards for Business Practices and Communication Protocols for Public Utilities*, Order No. 676, FERC Stats. & Regs. ¶ 31,216, (2006), *reh'g denied*, Order No. 676-A, *final rule*, 116 FERC ¶ 61,255 (2006), Order No. 676-B, FERC Stats. & Regs. ¶ 31,246 (2007), *final rule*, Order No. 676-C, FERC Stats. & Regs. ¶ 31,274 (2008), *order granting clarification and denying reh'g*, Order No. 676-D, 124 FERC ¶ 61,317 (2008), *final rule*, Order No. 676-E, FERC Stats. & Regs. ¶ 31,299 (2009), *final rule*, Order No. 676-F, FERC Stats. & Regs. ¶ 31,309 (2010).

¹⁴ See *supra* note 9.

¹⁵ EPAAct 2005, Pub. L. No. 109-58, 119 Stat. 594 (2005).

¹⁶ 16 U.S.C. 824(f).

¹⁷ In particular, FPA section 201(b)(2) provides: "Notwithstanding section 201(f), the provisions of section[] . . . 222 shall apply to the entities described in such provisions, and such entities shall be subject to the jurisdiction of the Commission for purposes of carrying out such provisions and for purposes of applying the enforcement authorities of this Act with respect to such provisions." 16 U.S.C. 824(b)(2).

Commission access to the information contained in e-Tags will help the Commission determine whether market manipulation is taking place and, absent these data, the Commission will be more limited in its ability to perform this function.

In addition to FPA section 222, FPA section 307(a) grants the Commission authority to “obtain[] information about the sale of electric energy at wholesale in interstate commerce and the transmission of electric energy in interstate commerce.” E-Tag data unquestionably provides “information about the sale of electric energy at wholesale in interstate commerce and the transmission of electric energy in interstate commerce.” Moreover, as discussed below with regard to the Commission’s need for e-Tag data, this information will help the Commission ascertain whether “any person, electric utility, transmitting utility, or other entity has violated or is about to violate any provisions of this Act or any rule, regulation, or order thereunder.” Thus, we conclude that obtaining e-Tag data from market participants or other entities is within the Commission’s authority under FPA section 307(a). And the Commission’s surveillance efforts are encompassed within its broad investigative authority as they are precisely what section 307 is designed to permit – *i.e.*, “to determine whether any person [or entity]. . . has violated or is about to violate any provisions of the [FPA] . . . or in obtaining information about the sale of electric energy at wholesale in interstate commerce and the transmission of electric energy in interstate commerce.”

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

Access to e-Tag data will help the Commission in its efforts to detect market manipulation and anti-competitive behavior, monitor the efficiency of markets, and better inform Commission policies and decision-making. The Commission needs e-Tag data covering all the transactions involving the interconnected entities listed on the e-Tag because the information is necessary to understand the use of the interconnected electricity grid, and particularly those transactions occurring at interchanges. Due to the nature of the electricity grid, an individual transaction’s impact on an interchange cannot be assessed adequately in all cases without information from all connected systems, which is included in the e-Tags. Having available the details of the physical path of a transaction included in the e-Tags will help the Commission monitor, in particular, interchange transactions effectively, prevent price manipulation over interchanges, and ensure the efficient and orderly use of the transmission grid. At this time, no entity, including NERC, is monitoring all interchange transactions.

Regular access to e-Tags for power flows across interchanges will make it possible for the Commission to identify or analyze various behaviors by market participants to determine if they are part of a potentially manipulative scheme(s). For example, e-Tag

information can enable the Commission to investigate whether entities may be engaging in manipulative schemes involving the circular scheduling of imports and exports into a market to benefit other positions held by these entities, as demonstrated by recent investigations by the Commission's Office of Enforcement.¹⁸ Without access to the e-Tags, it is more difficult, and, at times, the Commission may even be unable to assess whether manipulative schemes are taking place.

In addition, e-Tag access will help the Commission to understand, identify and address instances where interchange pricing methodologies or scheduling rules result in inefficiencies and increased costs to market participants collectively. As an example, Staff identified one cause of increased Lake Erie loop flows to be changes made by the New York Independent System Operator (NYISO) in 2007 in its pricing methodology for the proxy bus between NYISO and PJM.¹⁹ Following these pricing changes, market participants modified their transmission service scheduling practices and thus increased loop flows, and transmission service schedules and loop flows that do not follow pricing signals increase costs to markets and decrease efficiencies. Using e-Tag data, the Commission would be in a better position to identify and understand, and when necessary, to address, instances when market pricing methodologies and rules become unjust and unreasonable as a result of inefficient transmission service scheduling. Moreover, access to e-Tag information will allow the Commission to determine whether the requirements of the mandatory business practice standards related to e-Tags have been met.

Without the e-Tag data it will be more difficult for the Commission to fulfill its mission to assure just and reasonable rates.

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

The Commission intends to obtain the e-Tag data in an electronic format. Further, the Commission believes that the burden estimates provided overstate the total burden associated with this rule. Rather than relying on a process in which e-Tag Authors manually select the Commission as an addressee, we anticipate the limited number of e-

¹⁸ See, e.g., *Gila River Power, LLC*, 141 FERC ¶ 61,136 (2012) (where the Commission approved a settlement with Gila River Power related to its violations of the Commission's Anti-Manipulation Rule, the Commission's regulation prohibiting submission of inaccurate information, and similar provisions in the CAISO tariff by submitting transactions designated as wheel-through transactions).

¹⁹ See *New York Indep. Sys. Operator, Inc.*, 128 FERC ¶ 61,049 (2009) and attached Office of Enforcement Staff Report on the Non-Public Investigation into Allegations of Market Manipulation in Connection with Lake Erie Loop Flows at 4-7.

Tag service providers will in practice opt to incorporate a one-time change to existing e-Tag software, enabling the Commission, to be included automatically.

FERC will consider whether to modify the burden estimates to reflect automation when the information collection is reviewed again to extend OMB approval.

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

In the E-Tag NOPR, the Commission proposed to require NERC rather than individual market participants to provide access to e-Tag data to avoid burdening market participants with submitting the same data to both NERC and the Commission.²⁰ The E-Tag NOPR also noted that this proposal would avoid burdening the Commission with developing and maintaining a new system to capture such data from individual market participants.²¹

NERC states that it has not owned or operated an e-Tag system, but instead has facilitated the creation of the e-Tag specifications and schema used by software vendors to develop e-Tagging tools.²² NERC adds that it transferred responsibility for the e-Tag specifications and schema to NAESB effective October 27, 2009.²³ Further, NERC states that it gave OATI formal notice on April 29, 2011 that it will no longer be a party to the IDC Extension Agreement after March 2013.²⁴ According to NERC and Trade Associations, the e-Tag data provided to the IDC is jointly owned by NERC and the Operating Reliability Entities (*i.e.*, Balancing Authorities, Reliability Coordinators and Transmission Service Providers), so NERC alone cannot grant rights to the data without prior authorization from the Operating Reliability Entities.²⁵ Therefore, argues NERC, the Commission must seek approval from the Operating Reliability Entities to have

²⁰ E-Tag NOPR P 10. Under the proposal, the Commission's staff would gain access to the e-Tag data that is currently being collected and stored in databases by private vendors under contract with NERC. E-Tag NOPR P 7, note 10.

²¹ *Id.*

²² NERC at 4.

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.* at 5, Trade Associations at 8.

access to the e-Tag data and then work directly with OATI to determine how to access the data and pay any related costs.²⁶

NERC asserts that it does not have access to e-Tag data in the Western Interconnection, except to the extent it can request e-Tag information as it performs its compliance-related duties as to Reliability Standards, or to the extent that data is shared with the Eastern Interconnection, as may be the case for transactions scheduled between Interconnections.²⁷ NERC comments that WECC contracts directly with OATI for its WECC Interchange Tool as the Tagging Authority Service for the Western Interconnection.²⁸ WECC recommends that the Commission seek e-Tag data from individual market participants under statutory authorities other than FPA section 215.²⁹

Based on NERC's statement that it is not extending its IDC Extension Agreement beyond March 2013,³⁰ the Final Rule is modifying the E-Tag proposal, as suggested in comments outlining an alternative method for the Commission to obtain e-Tag information,³¹ to adopt a means for the Commission to access complete e-Tag data that does not entail any involvement by NERC or WECC.³² This Final Rule will require that e-Tag Authors, through their Agent Service, and Balancing Authorities, through their Authority Service, take appropriate steps to ensure that the Commission is included as an addressee on the e-Tags covered by this Final Rule.³³

²⁶ NERC at 5.

²⁷ *Id.* at 6.

²⁸ *Id.* at 5.

²⁹ WECC at 3.

³⁰ *See* NERC at 5.

³¹ *See* Market Monitors at 10 (“An additional method for FERC and market monitors to obtain tag information is to require that all tags contain the registered FERC and MMUs within the market path of all tags. By doing so, all tags would automatically be forwarded to the FERC and the MMUs, but would not grant the Commission or the MMUs approval rights.”).

³² The Commission provided public notice and an opportunity to comment on this alternative method for the Commission to obtain access to e-Tags when we invited reply comments. 77 FR 12760 (Mar. 2, 2012).

³³ As noted above, these e-Tags are e-Tags for interchange transactions scheduled to flow into, out of, or within the United States' portion of the Eastern or Western Interconnection, or into the Electric Reliability Council of Texas from the United States' portion of the Eastern or Western Interconnection; or from the Electric Reliability Council of Texas into the United States' portion of the Eastern or Western Interconnection.

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

The Commission anticipates that existing procedures for processing and communicating e-Tags, which are largely automated, will be used to facilitate Commission access to e-Tags. The Commission will require that the Agent Service used by e-Tag Authors include the Commission on the CC list of entities with view-only rights to the e-Tags covered by the Final Rule.³⁴ Because existing procedures can allow for Commission access to e-Tags, the Commission expects that any burden on e-Tag Authors and Balancing Authorities (including any small entities) associated with this Final Rule will be minimal.

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

Less frequent access to the e-Tag data means an increased chance of unchecked anti-competitive or manipulative behavior among market participants.

7. EXPLAIN ANY SPECIAL CIRCUMSTANCES RELATING TO THE INFORMATION COLLECTION

The basic requirement for respondents in this rule is that FERC be included as an addressee on the e-Tags covered by the Final Rule. Because respondents will likely be generating e-Tags more often than quarterly, the provision in 5 CFR 1320.5(d)(2)(i) is not followed. As already noted, the Commission expects the burden to be minimal and the actual work to be automated. Access to e-Tag data will help the Commission in its efforts to detect market manipulation and anti-competitive behavior, monitor the efficiency of markets, and better inform Commission policies and decision-making. The Commission needs e-Tag data covering all the transactions involving the interconnected entities listed on the e-Tag because the information is necessary to understand the use of the interconnected electricity grid, and particularly those transactions occurring at interchanges.

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

Each FERC rulemaking (both proposed and final rules) is published in the Federal Register, thereby providing public utilities and licensees, state commissions, Federal

³⁴ Following issuance of the Final Rule and the Commission's registration in the OATI webRegistry, the Commission will issue a notice specifying which entity code should be used to ensure that the Commission is an addressee on the e-Tags.

agencies, and other interested parties an opportunity to submit data, views, comments or suggestions concerning the proposed collection of data. The Notice of Proposed Rulemaking in Docket RM11-12 was published in the Federal Register on April 27, 2011 (76 FR 23516), and requested public comments. The Final Rule was published in the Federal Register on 12/28/12 (77 FR 76367).

In response to the E-Tag NOPR, comments were filed by 14 commenters.³⁵ The comments expressed a variety of views, some supporting the Commission's proposal to require Commission access to complete e-Tag information used to schedule interchange transactions for market monitoring purposes,³⁶ and others opposing the Commission's proposal.³⁷ Some comments focused on whether NERC is the appropriate entity to provide access to the E-Tags and whether their data would serve market monitoring or reliability purposes. The Pa Commission points out that "any regulatory provision, adopted by the [Commission], that allows it to better perform its statutory function of preventing anti-competitive and/or market manipulative behavior at the wholesale level may have beneficial effects for state commissions, tasked with protecting their residents from such practices, at the retail level."³⁸ NERC commented that it has not owned or operated an e-Tag system and that it will not extend its contract with OATI for IDC operation services (which includes e-Tag information) after the current term expires in March 2013.³⁹ The commenters were split as to whether they supported allowing MMUs for RTOs and ISOs to have access to complete e-Tag information, including access to e-Tags for transactions outside of the markets the MMUs monitor and whether such access would raise confidentiality issues.⁴⁰ Other commenters urged the Commission to grant access to e-Tags to the staffs of ISOs and RTOs.⁴¹ Some commenters emphasized that market monitoring via e-Tags will be a complex and challenging enterprise.⁴² In

35 In an appendix to the Final Rule, FERC identifies all the commenters along with the abbreviations used in this comment summary and in the footnotes for these commenters. All documents and submission related to the Final Rule are in FERC's eLibrary system at <http://www.ferc.gov/docs-filing/elibrary.asp> and can be find by searching under Docket No. RM11-12-000.

36 CAISO/DMM, DC Energy, Market Monitors, Pa Commission, PJM/SPP, Powerex, and SoCal Edison.

37 EPSA, MID, NERC, Southern, Trade Associations, and WECC.

38 Pa Commission at 4.

39 NERC at 4.

40 MMU access to E-Tags was supported by CAISO/DMM, DC Energy, Market Monitors, and PJM/SPP and was opposed by MID, Powerex, Southern.

41 CAISO/DMM and PJM/SPP.

42 SoCal Edison.

addition, some comments stated that, if the Commission proceeds with the proposal in the E-Tag NOPR, it would need to enlist the services of an outside contractor to provide database services to accomplish the creation and collection of e-Tag data as market participants usually only have access to data related to their own transactions.⁴³ Trade Associations disagreed with the burden estimate included in the E-Tag NOPR, arguing that it is understated.⁴⁴ Finally, several commenters argued that it would be helpful for the Commission to convene a technical conference or notice of inquiry before taking final action.⁴⁵

The Commission also invited reply comments, so that interested persons would have an opportunity to comment on the ideas and proposals expressed in the comments that may not have been included as part of the proposals in the E-Tag NOPR.⁴⁶ Reply comments were filed by Trade Associations and NAESB. Trade Associations reiterated many of the arguments it raised in its initial comments. In its reply comments, NAESB stated that it does not take a position on the E-Tag NOPR, but notes that existing e-Tag mechanisms with some modification can support the distribution of e-Tag information to the Commission.

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 recognizes that some of the information contained in the e-Tags is likely commercially sensitive.⁴⁷ Disclosure of such data as directed in this Final Rule could result in competitive harm to market participants and the market as a whole if disclosed without reasonable confidentiality restrictions.⁴⁸ Accordingly, the Commission

⁴³ EPSA at 3.

⁴⁴ Trade Associations at 8-9.

⁴⁵ NERC at 7; EPSA at 6.

⁴⁶ 77 FR 12760 (Mar. 2, 2012).

⁴⁷ Market participants currently treat e-Tags as confidential because they contain potentially commercially sensitive information. See NAESB Electronic Tagging Functional Specifications, section 1.4.2.1, Version 1.8.1.1, at 26.

⁴⁸ The Commission has granted requests for privileged or confidential treatment of similar non-public data. See, e.g., *N.Y. Indep. Sys. Operator, Inc.*, 131 FERC ¶ 61,169, at P 15 (2010) (granting such treatment for data relating to specific generator or other equipment details, transmission system information, bidding strategies, generator reference levels, generator costs, guarantee payments, and the

will not make complete e-Tags publicly available, as suggested by certain commenters. Furthermore, to the extent persons file requests to obtain data from the Commission under the Freedom of Information Act (FOIA), we expect that any commercially-sensitive data would be protected from disclosure if it satisfies the requirements of exemption 4 of the Freedom of Information Act (FOIA).⁴⁹ In response to EPSA, we note that, after the E-Tag Authors and Balancing Authorities designate the Commission as an addressee, the Commission will access the e-Tags by contract with a commercial vendor, subject to confidentiality restrictions.

While the Commission finds that e-Tag data should be made available to RTOs, ISOs, and MMUs, this should be done subject to appropriate confidentiality restrictions. Furthermore, the Commission notes that such information may be shared among RTOs, ISOs and MMUs as part of an investigation of possible market violations or market design flaws as long as reasonable measures are taken to ensure that the information remains non-public.⁵⁰

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 Commission solicited comments in the E-Tag NOPR on the need for and purposes of the information and the corresponding burden on the public. Several commenters filed comments related to the need for and purposes of the information. These comments are addressed in the body of this rule. Trade Associations filed the sole comment challenging the burden estimate in the E-Tag NOPR, arguing that the burden estimate was understated.

The Commission has modified burden estimates in this Final Rule, relative to the E-Tag NOPR, to reflect that now e-Tag Authors and Balancing Authorities, rather than NERC, will provide Commission access to e-Tags.

associated relevant time periods); *see also* *S. Cal. Edison Co.*, 135 FERC ¶ 61,201, at P 20 (2011); *Hydrogen Energy Cal. LLC*, 135 FERC ¶ 61,068, at P 25 (2011); *N.Y. Indep. Sys. Operator, Inc.*, 130 FERC ¶ 61,029, at P 3 (2010).

⁴⁹ FOIA exemption 4 protects “trade secrets and commercial or financial information obtained from a person [that is] privileged or confidential.” 5 U.S.C. 552(b)(4) (2006), *amended by* Open Government Act of 2007, Pub. L. No. 110-175, 121 Sta. 2524 (2007); *accord* 18 CFR 338.107(d).

⁵⁰ *See* *Southwest Power Pool, Inc.*, 129 FERC ¶ 61,163 (2009), *order on reh’g*, 137 FERC ¶ 61,046 (2011); *N. Y. Indep. Sys. Operator, Inc.*, 136 FERC ¶ 61,116 (2011).

The Commission expects that e-Tag Authors and Balancing Authorities will use existing, largely automated procedures⁵¹ to provide Commission access to e-Tags. Commission access to e-Tag data can be accomplished by the Agent Service simply including the Commission on the list of entities with view-only rights to the e-Tags and the Authority Service validating the inclusion of the Commission on the e-Tags before they are delivered to a Commission-designated address. Thus, existing procedures can allow for ready Commission access to e-Tags.

We have provided burden estimate calculations that assume a manual process for the e-Tag Author to list the Commission as an addressee on applicable e-Tags. These burden estimate calculations consider how long it would take for each e-Tag Author to manually select the Commission, as an addressee and the Balancing Authority to similarly validate the inclusion of the Commission, as an addressee. We have estimated these tasks would take four seconds and one second for each new e-Tag request, respectively.

But we believe the burden estimates we have provided, in fact, overstate the total burden associated with this rule. Rather than relying on a process in which e-Tag Authors manually select the Commission as an addressee, we anticipate the limited number of e-Tag service providers will in practice opt to incorporate a one-time change to existing e-Tag software, enabling the Commission, to be included automatically. However, we will use the estimates provided below in our submittal to OMB for approval. We will consider whether to modify the burden estimates to reflect automation when the information collection is reviewed again to extend OMB approval.

Our estimate below regarding the number of respondents is based on data from the NERC TSIN registry.⁵² The TSIN registry was used to list entities eligible to be listed on an e-Tag as well as specify a delivery address for these possible addressees. Using the TSIN registry, Commission staff identified 1,540 possible e-Tag Authors and 163 Balancing Authorities. The Commission estimates the number of new e-Tag submission requests to be around six million per year.

51 Existing e-Tag procedures are designed to be largely automated. For example, the specifications state that the Authority Service “is primarily an automated manager of data that should require little manual intervention.” See NAESB Electronic Tagging Functional Specifications, Version 1.8.1, section 3.3, at 62.

52 The NERC TSIN Registry was recently replaced by the OATI webRegistry.

Final Rule in RM11-12	Number of Respondents (1)	Average Number of Responses Per Respondent (2)	Average Burden Hours Per Response (3)	Total Annual Burden Hours (1)X(2)X(3)= (4)	Average Cost Per Hour (5)	Total Annual Cost (4)X(5)
Purchasing-Selling Entities (e-Tag Authors)	1,540	3,896	4 seconds (1/900 hour)	6,667	\$ 59.76	\$ 398,400
Balancing Authorities	163	36,810	1 second (1/3600 hour)	1,667	\$ 59.76	\$ 99,600
Total	1,703			8,333		\$ 498,000

In the above table, the “Total Annual Burden Hours” column for Purchasing-Selling Entities and Balancing Authorities contains rounded figures. OMB’s online submittal system (ROCIS) rounds the figures differently than the table, hence the difference of 1 burden hour between what is shown above and what is in ROCIS.

Total Net Annual Cost: The Commission has assumed that e-Tag Authors and Balancing Authorities rely on a mix of operations managers, computer information systems managers, compliance officers, and other operations specialists who are involved in creating and validating e-Tags.⁵³ Based on this personnel assumption, we used data from the U.S. Bureau of Labor Statistics and calculated a weighted hourly compliance cost for this Final Rule. The hourly figure we arrived at was \$59.76/hour, placing total annual compliance around \$498,000 per year for all e-Tag Authors and Balancing Authorities.⁵⁴

13. ESTIMATE OF TOTAL ANNUAL COST BURDEN TO RESPONDENTS

There are no costs associated with this rule that are not associated with labor hours. To the extent information technology is used, the Commission expects entities to use existing systems.

14. ESTIMATED ANNUALIZED COST TO FEDERAL GOVERNMENT

53 Only occupation data from May 2011 under NAICS code 221100 (Electric Power Generation, Transmission and Distribution) was relied upon. We looked at the following occupations, which are followed, in parentheses, by their Standard Occupational Classification code, hourly mean wage, and our assigned weighting: General and Operations Managers (111021, \$59.15, 1/6); Computer and Information Systems Managers (113021, \$54.18, 1/6), Compliance Officers (131041, \$35.76, 1/3); and, Business Operations Specialist All Other (131199, \$33.79, 1/3).

54 We also adjust hourly wage information to reflect employer costs not related to wages and salaries. That adjustment is based on BLS data, citing that wages represent 70.4 percent of employer costs for the private industry, see <http://www.bls.gov/news.release/ecec.nr0.htm>.

The estimate of the cost to the Federal Government is based on salaries for professional and clerical support. Costs include all costs directly attributable to providing this information, such as administrative costs and the cost for information technology.

FERC estimates that it will utilize 2.5 Full-Time Equivalents (FTEs) to analyze and process the information collection data. Each FTE is estimated at a cost of \$143,540 yielding a total of \$358,850 (2.5 FTE * \$143,540 = \$358,850). Further, FERC intends to contract with a 3rd party to obtain access to the data, as explained in the final rule. FERC estimates this latter cost at \$350k in year one, \$150k in year 2, and \$160k in year three. In this submittal to OMB FERC is averaging this cost over three years at \$220k per year (\$350k+\$150k+\$160k=\$660k; \$660k/3 years = \$220k per year). Finally, FERC estimates a yearly Paperwork Reduction Act Administration Cost of \$1,588. The total annual cost is as follows:

Paperwork Reduction Act Administration Cost: \$1,588
Cost for Processing and Analyzing the data: \$358,850
Cost for obtaining the data from 3rd party: \$220,000
TOTAL: \$580,438

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

There is an estimated program increase of 8,333 hours. The Commission considers the burden increase necessary in order to obtain access to e-Tag data. The Commission believes the benefit to be obtained from the data more than outweighs the minimal cost imposed on respondents.

16. TIME SCHEDULE FOR PUBLICATION OF DATA

There is no publication of the data.

17. DISPLAY OF THE EXPIRATION DATE

It is not appropriate to display the expiration date for OMB approval of the information collected. The information will not be collected on a standard, preprinted form which would avail itself to that display.

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 agency certification, "effective and efficient statistical survey methodology."