

Supporting Statement for
FERC-915, Public Utility Market-Based Rate Authorization Holders – Records Retention Requirement

The Federal Energy Regulatory Commission (Commission or FERC) requests that the Office of Management and Budget (OMB) review and approve **FERC- 915, Public Utility Market-Based Rate Authorization Holders – Records Retention Requirement**, for a three year period. FERC-915 (OMB Control No. 1902-0250) is an existing Commission data collection (filing requirements) as stated in 18 Code of Federal Regulation (CFR) 35.41(d).

A. Justification

1. CIRCUMSTANCES THAT MAKE THE COLLECTION OF INFORMATION NECESSARY

In accordance with the Federal Power Act (FPA), the Department of Energy Organization Act (DOE Act), and the Energy Policy Act of 2005 (EPAct 2005), the Commission regulates the transmission and wholesale sales of electricity in interstate commerce, monitors and investigates energy markets, uses civil penalties and other means against energy organizations and individuals who violate Commission rules in the energy markets, and administers accounting and financial reporting regulations and oversees conduct of regulated companies.

In order to carry this out, the Commission, in 18 CFR 35.41(d), imposes record-retention requirements on all sellers to retain, for a period of five years, all information upon which they bill their prices charged for electric energy or electric energy products sold pursuant to their market-based rate tariff and the prices reported for use in price indices.

The requirement is necessary to ensure consistency with the Commission rule prohibiting market manipulation (regulations adopted in Order No. 697, implementing the EPAct 2005 anti-manipulation provisions¹) and the generally applicable five-year statute of limitations where the Commission seeks civil penalties for violations of the anti-manipulation rules or other rules, regulations, or orders to which the price information may be relevant.

¹ 18 CFR 1c.1 and 1c.2, 71 FR 4,244 (2006).

FERC-915 (OMB Control No. 1902-0250)
(updated 4/6/2016)

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

Information retained under FERC-915 is used to monitor and enforce civil penalties in wholesale jurisdictional markets, thus maintaining the integrity of the market.

The Commission would be unable to accomplish its mission per the requirements in 18 CFR 35.41(d).

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

The Commission continually reevaluates the potential and value of improved information technology to reduce burden.

Entities are encouraged to retain records in an electronic format thereby reducing the burden of storage costs.

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.

There is no requirement to prepare documents. The only requirement is of retention of documents generated by and through the sale of wholesale power.

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

The Commission encourages both large and small entities to store records in electronic format thereby reducing physical space needed for storage. Any benefit of reduced necessary space is experienced by both large and small entities.

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

If entities did not retain these records, the Commission would not be able to fulfill its enforcement duties set out under EAct 2005.

7. EXPLAIN ANY SPECIAL CIRCUMSTANCES RELATING TO THE INFORMATION COLLECTION

There is one special circumstance related to this information collection. OMB's guidelines at 5 CFR 1320.5(d)(2)(iv) direct that agencies should not require respondents to retain records, other than health, medical, government contract, grant-in-aid, or tax records for more than three years. The Commission is requiring that respondents retain records for a period of five years. This is necessary as noted above to ensure consistency with the Commission's rule prohibiting market manipulation that implements the EAct 2005 anti-manipulation provisions and the generally applicable five-year statute of limitations where the Commission seeks civil penalties for violations of the anti-manipulation rules or other rules, regulations, or orders to which the price information may be relevant. (There is no explicit statute of limitations set forth in Natural Gas Act (NGA) section 4A or in Federal Power Act (FPA) section 222, and no statute of limitations of general applicability appears in the NGA or FPA. The Commission declined in Order No. 670 to designate a statute of limitations or otherwise adopt an arbitrary time limitation on complaints or enforcement actions that may arise under NGA section 4A and FPA section 222. The Commission noted, however, 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.² 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."³)

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

² See, e.g., *United States v. Godbout-Bandal*, 232 F.3d 637, 639 (8th Cir. 2000).

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

FERC-915 (OMB Control No. 1902-0250)
(updated 4/6/2016)

In accordance with OMB requirements⁴, the Commission published a 60-day notice⁵ and a 30-day notice⁶ to the public regarding this information collection on 5/18/2015 and 8/28/2015 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.

Subsequently it was found that burden in these notices was incorrectly presented. Specifically, staff time cost associated with electronic record retention/storage cost (\$27,370) burden hours was not included in the burden table (but was presented elsewhere in these notices) and electronic record storage cost was incorrectly stated as \$13,191 (this figure was corrected to \$29,814 in Question #13 of this supporting statement). Please see Question #12 and #13 for a corrected representation of the burden. A 10-day public notice was published in the Federal Register on 3/15/2016⁷ to alert the public to these changes. No comments were received on the errata notice.

9. EXPLAIN ANY PAYMENT OR GIFTS TO RESPONDENTS

There are no payments or gifts to record holders.

10. DESCRIBE ANY ASSURANCE OF CONFIDENTIALITY PROVIDED TO RESPONDENTS

Not applicable. There is no information filed at the Commission under the FERC-915.

11. PROVIDE ADDITIONAL JUSTIFICATION FOR ANY QUESTIONS OF A SENSITIVE NATURE, SUCH AS SEXUAL BEHAVIOR AND ATTITUDES, RELIGIOUS BELIEFS, AND OTHER MATTERS THAT ARE COMMONLY CONSIDERED PRIVATE.

There are no sensitive questions in the FERC-915.

12. ESTIMATED BURDEN OF COLLECTION OF INFORMATION

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

4 5 CFR 1320.8(d)
5 80 FR 28264
6 80 FR 52469
7 81 FR 13782

FERC-915: Public Utility Market-Based Rate Authorization Holders—Record Retention Requirements

	Number of Respondents (1)	Annual Number of Responses per Respondent (2)	Total Number of Responses (1)*(2)=(3)	Average Burden & Cost Per Response (4)	Total Annual Burden Hours & Total Annual Cost (3)*(4)=(5)	Cost per Respondent (\$) (5)÷(1)
Electric Utilities with Market-Based Rate Authority (paper storage) ⁸	1,955 ⁹	1	1,955	1 hr.; \$30.66	1,955 hrs.; \$59,940	\$30.66
Electric Utilities with Market-Based Rate Authority (electronic storage) ¹⁰	1,955Error: Reference source not found	1 ¹¹	1,955	0.5 hr.; \$14 ¹²	977.5 hrs.; \$27,370	\$14

8 The estimates for cost per response are derived using the following formula: Average Burden Hours per Response * \$30.66 per Hour = Average Cost per Response. The hourly cost figure comes from the Bureau of Labor Statistics website (http://www.bls.gov/oes/current/naics2_22.htm). The occupation title is “file clerk” and the occupation code is 43-4071. 69.4 percent of this cost is hourly wages. The rest of the cost is benefits (<http://www.bls.gov/news.release/ecec.nr0.htm>).

9 Each of these entities’ records consist of 50% paper and 50% electronic storage.

10 Upon further research, Commission staff discovered that both the 60-day notice (80 FR 28264, 5/18/2015) and 30-day notice (80 FR 52469, 8/28/2015) had accounted for electronic storage cost incorrectly. The burden table has been corrected to include labor related to electronic storage in this row. The number of responses and related

TOTAL		1,955		2,932.5 hrs; \$87,310	
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13. ESTIMATE OF THE TOTAL ANNUAL COST BURDEN TO RESPONDENTS

- Record retention/storage cost for paper records (using an estimate of 48,891 cubic feet): \$315,792¹³
- Electronic record storage cost: 1,955 respondents * \$15.25/year¹⁴ = \$29,814

Total non-labor costs: \$345,606 (\$315,792 + \$29,814 = \$345,606)

All of the costs associated with burden hours are described in Questions #12 and #15 in this supporting statement.

14. ESTIMATED ANNUALIZED COST TO FEDERAL GOVERNMENT

	Federal Employee Hours	Estimated Annual Federal Cost
FERC-915 Analysis and Processing of filings ¹⁵	0	0
PRA ¹⁶ Administrative Cost		\$5,193
Total		\$5,193

burden/cost has been adjusted.

11 Only 50% of records for each entity are stored in electronic format.

12 The Commission bases the \$28/hour figure on a FERC staff study that included estimating public utility recordkeeping costs.

13 The Commission bases this figure on industry archival storage costs.

14 The Commission bases the estimated \$15.25/year for each entity on the estimated cost to service and to store 1 GB of data (based on the aggregated cost of an IBM advanced data protection server).

15 The federal cost of analysis and processing of filings is based upon FERC's 2015 FTE (full time equivalent) average salary plus benefits of \$149,489 (or \$72 per hour).

16 The PRA Administrative Cost is a Federal Cost associated with preparing, issuing, and submitting materials necessary to comply with the Paperwork Reduction Act (PRA) for rulemakings, orders, or any other vehicle used to create, modify, extend, or discontinue an information collection. This average annual cost includes requests for extensions, all associated rulemakings (not just this proposed rule), and other changes to the collection.

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

The number of respondents will increase based on the number of companies that apply to and are approved by the Commission to sell under market based rates. The number of companies is based on a bi-monthly list of approved market-based rate holders. The number of companies that apply are driven by industry and does not change due to agency discretion.

In addition, the bulk of the burden adjustment is due to FERC staff correcting the accounting for labor hours related to electronic storage.

FERC-915	Total Request	Previously Approved	Change due to Adjustment in Estimate	Change Due to Agency Discretion
Annual Number of Responses	1,955	1,730	225	0
Annual Time Burden (Hr)	2,933	1,730	1,203	0
Annual Cost Burden (\$)	432,916	328,983	103,933	0

16. TIME SCHEDULE FOR PUBLICATION OF DATA

There are no publications of the information.

17. DISPLAY OF EXPIRATION DATE

The expiration dates are displayed on ferc.gov with links to the updated table from <http://www.ferc.gov/docs-filing/info-collections.asp> .

18. EXCEPTIONS TO THE CERTIFICATION STATEMENT

There are no exceptions to this collection.