

Supporting Statement for
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, FERC-740 (Availability of E-Tag Information to Commission Staff). FERC-740 is an existing information collection. No changes are being made to the reporting or recordkeeping requirements.

A. JUSTIFICATION

1. CIRCUMSTANCES THAT MAKE THE COLLECTION OF INFORMATION NECESSARY

This collection of information assists the Commission in implementing sections 222 and 307(a) of the Federal Power Act (FPA).¹ Section 222 prohibits manipulation of wholesale electric energy markets. Section 307(a) authorizes the Commission to conduct investigations to determine whether any entity has violated any portion of the FPA, to aid in the enforcement of any regulation pertaining to the FPA, or in obtaining information to serve as the basis for recommended legislation.

Consistent with sections 222 and 307(a), the Commission's regulation at 18 CFR 366.2(d) requires Commission access, on a non-public and view-only basis, to information that is located on electronic tags, also known as E-Tags.

E-Tags document the movement of energy across an interchange over prescribed physical paths, for a given duration, and for a given energy profile. They also 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, and energy traders.

¹ 16 U.S.C. 824v, 825f(a).

The regulation at 18 CFR 366.2(d) requires E-Tag Authors² and Balancing Authorities³ to list the Commission on the "cc" list of addressees so that the Commission can receive a copy of the E-Tags. Information on E-Tags helps 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.

For more information on the information on a typical E-Tag and what it looks like, see the Supplementary Documents (sample E-Tag, and explanation of data fields) in ROCIS and reginfo.gov submitted as part of this clearance package.

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

The Commission established the FERC-740 information collection in Order 771,⁴ in order to provide the Commission with information that it needs for efficient market surveillance and analysis. The details of the physical path of a transaction that are included in E-Tags help the Commission monitor interchange transactions effectively, detect and prevent price manipulation over interchanges, and ensure the efficient and orderly use of the transmission grid.

Before the issuance of Order No. 771, the Commission relied on data requests to subjects of investigations to detect violation prohibitions of energy market manipulation. Now, the information collected under FERC-740 data enables the Commission to obtain this data without the burden of preparing and responding to a data request. In addition, the Commission has been incorporating FERC-740 data into its routine screening processes to detect potential market manipulation in the wholesale electric markets. By incorporating E-Tag data into surveillance processes, the Commission is able to monitor the market, as a whole, for prohibited activities on an ongoing basis rather than as a response to a complaint. Further, the FERC-740 data has been used by the Commission to better understand certain aspects of market design.

² 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.

³ 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.

⁴ 77 FR 76367 (December 28, 2012).

If the Commission lacked access to the information contained in E-Tags, the Commission's efforts to monitor wholesale electric energy markets would be less efficient, and the Commission's ability to enforce the prohibition against market manipulation would be limited. Without the E-Tag data, it would 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 obtains the E-Tag data in an electronic format. E-Tag Authors and Balancing Authorities use existing, automated procedures to create and validate the E-Tags in a way that provides the Commission with access to them. In the rare event that a new Balancing Authority would need to alert E-Tag administrators that certain tags it generates qualify for exemption under the Commission's regulations, this administrative function would be expected to require less than an hour of effort total from both the BA and an E-Tag administrator to include the BA on the exemption list. New exempt BAs occur less frequently than every year, but for the purpose of estimation we will conservatively assume one response each year creating an additional burden associated with the Commission's FERC-740.

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

The Commission periodically reviews filing requirements as OMB review dates arise or as the Commission may deem necessary in carrying out its regulatory responsibilities. In order to eliminate duplication of effort or data, the Commission deliberately relied on existing industry processes and procedures to facilitate the collection of this information. The minimal change in the E-Tag specification required by the Commission, the addition of "FERC" as an entity with "cc list" access to the reservation, was necessary to allow access to the data across the industry for the first time. The E-Tag information is unique to each transaction and needed and used by industry to conduct normal business; FERC is accessing that existing information. To date, the Commission has found no duplication of application data elsewhere.

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

E-Tags are made automatically available to the Commission. While the Commission does not maintain records as to how many small entities are subject to the requirements

of 18 CFR 366.2(d), it seems reasonable to assume that the burdens of this collection of information are minimal for both small entities and other entities.

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

The data collection is fully automated and automatic. Less frequent collection of the data would require burdensome reprogramming to little end. 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 is that FERC be included as an addressee on the E-Tags. This is done automatically by the system.

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

The 60-day Notice was published in the Federal Register on July 14, 2022 (87 FR 58786), providing 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. FERC received no comments.

The 30-day Notice was published in the Federal Register on September 28, 2022 (87 FR 58786).

9. EXPLAIN ANY PAYMENT OR GIFTS TO RESPONDENTS

No payments or gifts are 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.⁵ Disclosure of such data could result in competitive harm to market participants and the market as a whole if disclosed without reasonable

⁵ 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.

confidentiality restrictions.⁶ Accordingly, the Commission has not made complete E-Tags publicly available. Furthermore, to the extent persons file requests to obtain data from the Commission under the Freedom of Information Act (FOIA), any commercially-sensitive data would be protected from disclosure if it satisfies the requirements of exemption 4 of the Freedom of Information Act (FOIA).⁷ After the E-Tag Authors and Balancing Authorities designate the Commission as an addressee, the Commission has been accessing 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.⁸

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

This collection does not contain any questions of a sensitive nature.

12. ESTIMATED BURDEN OF COLLECTION OF INFORMATION

Commission access to data on E-Tags is completely automatic and is a normal business requirement. Thus, the time, effort, and financial resources necessary to comply with this collection of information are “usual and customary” within the meaning of the OMB

⁶ 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 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).

⁷ 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).

⁸ *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).

regulation at 5 CFR 1320.3(b)(2) (excluding such activities from the definition of “burden”). In view of these circumstances, FERC is including in this information collection request only a “placeholder” burden of one hour to account for the rare event where a new BA qualifies for exemption under the Commission’s regulations (e.g., transmissions from a new non-U.S. BA into another non-U.S. BA using a path that does not go through a U.S. BA). In that case, this administrative function would be expected to require at most an hour of effort total from both the BA and E-Tag administrator to include the BA on the exemption list. New exempt BAs are not common—years may pass between them—but for the purpose of estimation, we will conservatively assume one appears each year.

The Commission estimates the burden⁹ and cost¹⁰ for FERC-740 as follows based on the distinct E-Tags made available to the Commission in 2021 (the most recent full year available).

⁹ “Burden” is the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. For further explanation of what is included in the information collection burden, refer to 5 CFR Part 1320.

¹⁰ The estimated hourly cost (wages plus benefits) provided in this section is based on the figures for June 2022 posted by the Bureau of Labor Statistics for the Utilities sector (available at https://www.bls.gov/oes/current/naics2_22.htm), assuming:

- 15 minutes legal (code 23-0000), at \$73.09/hour median hourly wage.
- 45 minutes information and record clerk (code 43-4199), at \$24.84/hour median hourly wage.
- \$36.90 = (15 minutes / 60 minutes) * \$73.09/hour median hourly wage for legal + (45 minutes / 60 minutes) * \$24.84/hour median hourly wage for information and record clerk.

A. Number of Respondents	B. Annual Number of Responses (E-Tags) per Respondent	C. Total Number of Responses (Column A x Column B)	D. Average Burden & Cost Per Response¹¹	E. Total Annual Burden Hours & Total Annual Cost (Column C x Column D)	F. Cost per Respondent (\$) (Column E ÷ Column A)
435 PSE/BAs	3,403 E-Tags	1,480,305 E- Tags	Automatic, so 0 burden and cost	Automatic, so 0 burden and cost	Automatic, so 0 burden and cost
1 E-Tag administrator	1 response to add new non- jurisdictional Balancing Authority	1 response to add new non- jurisdictional Balancing Authority	1 hr.; \$36.90	1 hr.; \$36.90	\$36.90
Totals	3,404	1,480,306	1 hr.; \$36.90	1 hr.; \$36.90	\$36.90

13. ESTIMATE OF TOTAL ANNUAL COST BURDEN TO RESPONDENTS

There are no costs that are not associated with labor hours. Burden hour costs are detailed in #12 and #15.

14. ESTIMATED ANNUALIZED COST TO FEDERAL GOVERNMENT

The estimate of the cost for ‘analysis and processing of filings’ is based on salaries and benefits for professional and clerical support. This estimated cost represents staff analysis, decision-making, and review of the data.

¹¹ The estimated hourly cost (wages plus benefits) provided in this section is based on the figures for June 2022 posted by the Bureau of Labor Statistics for the Utilities sector (available at https://www.bls.gov/oes/current/naics2_22.htm), assuming:

- 15 minutes legal (code 23-0000), at \$73.09/hour median hourly wage.
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- \$36.90 = (15 minutes / 60 minutes) * \$73.09/hour median hourly wage for legal + (45 minutes / 60 minutes) * \$24.84/hour median hourly wage for information and record clerk.

The Paperwork Reduction Act (PRA) Administrative Cost is the average annual FERC cost associated with preparing, issuing, and submitting materials necessary to comply with the PRA for rulemakings, orders, or any other vehicle used to create, modify, extend, or discontinue an information collection. It also includes the cost of publishing the necessary notices in the Federal Register.

The estimate of the cost to the Federal Government is based on salaries for professional and clerical support.

	Number of Employees (FTE)	Estimated Annual Federal Cost (\$)
Analysis and Processing of filings ¹²	1.5	\$283,488
Cost for obtaining the data from 3 rd party ¹³		\$60,000
PRA ¹⁴ Administrative Cost		\$7,694
FERC Total		\$351,182

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

There are no program changes and there are no adjustments.

16. TIME SCHEDULE FOR PUBLICATION OF DATA

There is no publication of the data.

17. DISPLAY OF THE EXPIRATION DATE

The expiration date is displayed in a table posted on ferc.gov at [Information-Collections-8-31-2022.xlsx](#).

18. EXCEPTIONS TO THE CERTIFICATION STATEMENT

There are no exceptions.

¹² The estimate uses the FERC’s FY 2022 average annual salary plus benefits of one FERC FTE (full-time equivalent), i.e., \$188,992.

¹³ This estimate accounts for the Commission’s use of a contract with a commercial vendor to access the E-Tags.

¹⁴ Paperwork Reduction Act of 1995 (PRA)