

Supporting Statement

**FERC-716, Good Faith Requests for Transmission Services under Section 213(a) of the Federal Power Act (FPA) and Applications for Interconnection or Transmission Orders under Sections 211(a) and 212 of the FPA**

(Three-year extension requested)

The Federal Energy Regulatory Commission (FERC or Commission) requests that the Office of Management and Budget (OMB) review and renew the information collection requirements in FERC-716 under OMB Control No. 1902-0170. The reporting requirements in the FERC-716 are contained in FERC's regulations in 18 CFR 2.20 and 36.1.

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

FERC-716 pertains to transmission of electricity generated and sold at the wholesale level, i.e., sold to a utility or other entity reselling that energy to residential, business, or industrial customers. The Federal Power Act (FPA) and the relevant Commission regulations provide for two procedures that a generator of electricity may use to seek transmission services from an entity that does not own or directly use the power it is transmitting.

One procedure involves the exchange of information between generators and transmitting utilities, and does not require submission of information to the Commission. The other procedure, which is applicable only if the exchange of information is unsuccessful, involves an application for a Commission order requiring a transmitting utility to provide transmission services.

***Exchange of Information between Generators and Transmitting Utilities***

Section 213(a) of the FPA<sup>1</sup> provides that whenever a person generating wholesale electric energy makes a good faith request to a transmitting utility to provide wholesale transmission services, and includes in that request specific rates and charges and other terms and conditions, the transmitting utility must either:

- Agree to provide such services at rates, charges, terms and conditions acceptable to the generator-requester; or
- Within 60 days or other mutually agreed upon period, provide the generator-requester with a detailed written explanation, with specific reference to the facts and circumstances of the request, stating (1) the transmitting utility's basis for the proposed rates, charges, terms, and conditions for such services, and (2) its analysis of any physical or other constraints affecting the provision of such services.

Twelve components of a good faith request are identified in 18 CFR 2.20. In developing the regulation, the Commission sought to encourage an open exchange of information with a reasonable degree of specificity and completeness between the party requesting transmission

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<sup>1</sup> 16 U.S.C. 824l.

services and the transmitting utility. The regulation at 18 CFR 2.20 also identifies five minimum components of a reply to a good faith request for transmission services under section 213(a).

### ***Application submitted to FERC if parties' negotiations are unsuccessful***

Section 211(a) of the Federal Power Act (FPA)<sup>2</sup> provides that any person generating wholesale electric energy may apply to the Commission for an order requiring a transmitting utility to provide wholesale transmission services to the applicant. The Commission's regulation at 18 CFR 2.20(a)(2) provides that the Commission may issue an FPA section 211 order only if the applicant has made a request for transmission services to the transmitting utility at least 60 days prior to the filing of an application for such order. The requirement in section 211(a) that an applicant make such a request will be met if such an applicant has, pursuant to section 213(a) of the FPA, made a good faith request to a transmitting utility to provide wholesale transmission services and requests specific rates and charges, and other terms and conditions.

The Commission may issue a section 211 order if it finds that such order meets the requirements of FPA section 212,<sup>3</sup> and would otherwise be in the public interest. FPA section 212 requires that any order issued under FPA section 211 authorize the transmitting utility to recover all the costs incurred in connection with the transmission services and necessary associated services. In addition, FPA section 212 requires that the Commission:

- Issue a proposed order; and
- Set a reasonable time for the parties to the proposed interconnection or transmission order to agree to terms and conditions under which such order is to be carried out, including the apportionment of costs between them and the compensation or reimbursement reasonably due to any of them.

Any terms and conditions agreed to by the parties are subject to the approval of the Commission. If the parties fail to reach an agreement within the time set by the Commission, the Commission will prescribe such terms and conditions in the final order. Alternatively, the Commission may issue an order denying the application and state the reasons for such denial.

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

### ***Implementing the Exchange of Information between Generators and Transmitting Utilities***

The Commission sponsors but does not conduct a collection of information involving the exchange of information between generators and transmitting utilities. If the Commission did not sponsor the collection as provided at 18 CFR 2.20(b) and (c), access to the electric transmission system for the purposes of wholesale transactions would be less widely available.

The Commission's regulation at 18 CFR 2.20(b) lists the following minimum components of a good faith request for transmission services:

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<sup>2</sup> 16 U.S.C. 824j(a).

<sup>3</sup> 16 U.S.C. 824k.

- (1) The identity, address, telephone number, and facsimile number of the party requesting transmission services, and the same information, if different, for the party's contact person or persons.
- (2) A statement that the party requesting transmission services is, or will be upon commencement of service, an entity eligible to request transmission under sections 211(a) and 213(a) of the FPA.
- (3) A statement that the request for transmission services is intended to satisfy the "request for transmission services" requirement under sections 211(a) and 213(a) of the FPA, and that the request is not a request for mandatory retail wheeling prohibited under section 212(h) of the FPA.
- (4) The party requesting transmission services should specify the character and nature of the services requested. Some types of service may require more detailed information than others. Where point-to-point service is requested, the party requesting transmission services should specify the anticipated point(s) of receipt to the transmitting utility's grid and the anticipated point(s) of delivery from the transmitting utility's grid. Where a party requesting transmission services requests additional flexibility to schedule multiple resources to meet its needs (*e.g.*, network service), the request for services should contain a description of the requested services in sufficient detail to permit the transmitting utility to model the additional services on its transmission system.
- (5) The names of any other parties likely to provide transmission service to deliver electric energy to, and receive electric energy from, the transmitting utility's grid in connection with the requested transmission services.
- (6) The proposed dates for initiating and terminating the requested transmission services.
- (7) The total amount of transmission capacity being requested.
- (8) To the extent it is known or can be estimated, a description of the "expected transaction profile" including load factor data describing the hourly quantities of power and energy the party requesting transmission services would expect to deliver to the transmitting utility's grid at relevant points of interconnection. In the event delivery is to multiple points within the transmitting utility's electric control area, the requestor should describe, to the extent it is known or can be estimated, the expected load (over a given duration of time) at each such delivery point.
- (9) Whether firm or non-firm service is being requested. Where a party requests non-firm service, it should specify the priority of service it is willing to accept, or the conditions under which it is willing to accept interruption or curtailment, if known.
- (10) A statement as to whether the request is being made in response to a solicitation and a copy of the solicitation if publicly available. This will help the transmitting utility determine whether requests for transmission service are duplicative or mutually exclusive of requests filed by other parties.
- (11) The proposed rates, terms and conditions for the requested transmission services as required by section 213(a). It is not necessary for the requestor to propose a specific numerical rate. Rather, a party requesting transmission services can fulfill the rates, terms and conditions requirement by specifying a rate methodology (*e.g.*, embedded or incremental cost) or by referencing an existing formula rate, transmission tariff, or transmission contract. The validity of the good faith request will not depend on the rates proposed by the party requesting transmission services. This requirement is not intended to allow utilities to delay responses to requests for

transmission services, or to deny requests for transmission services on the basis of an overly rigid or technical approach to the “rates, terms and conditions” element of the request.

(12) Any other information to facilitate the expeditious processing of its request. Such information will improve the negotiation process, reduce costs, and will improve chances to arrange the requested transmission without resorting to section 211 application procedures before the Commission.

The regulation at 18 CFR 2.20(c) lists the following minimum components of a reply to a good faith request for transmission services:

(1) Unless the parties agree to a different time frame, the transmitting utility must acknowledge the request within 10 days of receipt. The acknowledgement must include a date by which a response will be sent to the party requesting transmission services and a statement of any fees associated with responding to the request (e.g., initial studies).

(2) The transmitting utility may ask the applicant to provide clarification of only the information needed to evaluate and process a “good faith” request. If the person requesting transmission services believes the transmitting utility is attempting to frustrate the process by making excessive requests for clarification, it may raise this issue if, and when, it files a request for a section 211 order with the Commission.

(3) The transmitting utility must respond to a request within 60 days of receipt or some other mutually agreed upon response date. If both parties agree to an alternative schedule, the agreement must be in writing and signed by both parties.

(4) If the transmitting utility determines that it can provide all the requested services from existing capacity, it should respond by offering the party requesting transmission services an executable service agreement that at a minimum contains the following information:

(i) A description of the proposed transmission rate and any other costs. It is not necessary for the proposed service agreement to contain a fully developed cost-of-service. However, the agreement should explain the basis for the charges for each component of service, including the unbundled components of any transmission rate as well as any other charges.

(ii) The proposed service agreement should explicitly describe all of the applicable terms and conditions of the transmission services provided under the agreement.

(iii) The transmitting utility should accompany the proposed service agreement with a clear statement of the time during which the offer to provide the transmission services will remain open. An open agreement offer may obligate the seller while imposing no countervailing obligation on the purchaser, and an unexecuted contract potentially ties up transmission facilities, thus jeopardizing the availability and price for subsequent requests that would use the same facilities. However, at a minimum, a transmitting utility should permit the party requesting transmission services sufficient time to review service agreements and coordinate multiple stages of joint transactions.

(5) If the transmitting utility determines that it must construct additional facilities or modify existing facilities to provide all or part of the requested services, it must:

(i) Identify the specific constraints and their duration that prevent it from providing all the requested services and explain how these constraints prevent it from providing all the requested services or the desired level of firmness.

(ii) Provide to the applicant all studies, computer input and output data, planning, operating and other documents, work papers, assumptions and any other material that forms the basis for determining the constraints.

(iii) Offer to the applicant an executable agreement under which the applicant agrees to reimburse the transmitting utility for all costs of performing any studies necessary to determine what changes to the transmitting utility's grid are needed to overcome the constraint and provide the requested services, their cost, and the estimated time to complete them. At a minimum, the proposed agreement should contain the following:

(A) An estimate of the cost of the study and the time required to complete it, and

(B) A commitment to supply to the party requesting transmission services all computer input and output data, planning, operating and other documents, work papers, assumptions and any other material used to perform the study.

(iv) If a transmitting utility determines that it can provide part but not all of the requested services without building new facilities, it should inform the applicant of any portion of the requested services that can be performed without constructing additional facilities or modifying existing facilities. In effect, the transmitting utility may be able to treat such a request as two separate transactions—one for service on existing facilities and the other as a request involving expansion decisions. Furthermore, where there are alternative, less expensive means of satisfying all or a portion of a transmission request, the Commission expects the transmitting utility to explore such alternatives (e.g., redispatching certain generating units to alleviate a constraint). 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 a section 211 proceeding.

### ***Implementing Collection of Applications for Order Requiring a Transmitting Utility to Provide Transmission Services***

As discussed above, the Commission conducts this information collection activity in conformance with FPA sections 211 and 212 and 18 CR 36.1. Without the 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.

The regulation at 18 CFR 36.1 lists the following requirements for an application for transmission services:

(1) A form of notice of the application suitable for publication in the Federal Register in accordance with the specifications in 18 CFR 385.203(d). The notice shall be on electronic media as specified by the Secretary.

(2) A sworn statement that actual notice, including the applicant's name, the date of the application, the names of the affected parties, and a brief description of the transmission services sought (including the proposed dates for initiating and terminating the requested transmission services, the total amount of transmission capacity requested, a brief description of the character and nature of the transmission services being requested, and whether the transmission services requested are firm or non-firm) has been served, pursuant to Rule 2010 of the Commission's

Rules of Practice and Procedure at 18 CFR 385.2010, on each affected party. Such statement shall enumerate each person so served.

(c) All other filing requirements of the Commission's Rules of Practice and Procedure remain in effect for applications under this section.

**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 allows eFiling for the FERC-716 information collection.

**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.

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

The FERC-716 information collection does not affect small entities.

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

The Commission sponsors but does not conduct the collection of information under FPA section 213. The Commission conducts the collection of information under FPA sections 211 and 212 only if the parties cannot come to an agreement via an exchange of information. If the Commission were to conduct the latter collection of information less frequently, electric generators' access to the electric transmission system for the purposes of wholesale transactions would be less widely available.

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

There are no special circumstances (as described in 5 CFR 1320.5(d)(2)) related to the FERC-716 information collection.

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

In accordance with OMB requirements, the Commission published a 60-day notice on March 11, 2024 (89 FR 17460) and published a 30-day notice on June 12, 2024 (89 FR 49871). Within the public notices, the Commission noted that it would be requesting a three-year extension of the public reporting burden. The Commission received no comments on the 60-day notice from the public regarding this information collection.

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

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

## **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, SUCH AS SEXUAL BEHAVIOR AND ATTITUDES, RELIGIOUS BELIEFS, AND OTHER MATTERS THAT ARE COMMONLY CONSIDERED PRIVATE.**

There are no questions of a sensitive nature in the reporting requirements.

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

	<b>Number of Respondents (1)</b>	<b>Annual Number of Responses per Respondent (2)</b>	<b>Total Number of Responses (1)*(2)=(3)</b>	<b>Average Burden &amp; Cost Per Response<sup>4</sup> (4)</b>	<b>Total Annual Burden Hours &amp; Total Annual Cost (3)*(4)=(5)</b>	<b>Cost per Respondent (5)÷(1)</b>
Information exchange between parties	6	1	6	100 hrs.; \$10,000	600 hrs.; \$60,000	\$10,000

<sup>4</sup> The Commission staff estimates that the average respondent for FERC-567 is similarly situated to the Commission in terms of salary plus benefits. Based on FERC's 2024 annual average of \$207,786 (for salary plus benefits), the average hourly cost is \$100/hour.

Application submitted to FERC if parties' negotiations are unsuccessful	6	1	6	2.5 hrs.; \$250	15 hrs.; \$1,500	\$250
<b>TOTAL</b>			12		615 hrs.; \$61,500	\$10,250

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

There are no non-labor costs currently associated with the FERC-716.

All of the costs are associated with burden hours (labor) and described in #12 and #15.

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

The estimated annualized cost to the Federal Government for FERC-716 follows:

	<b>Number of Employees (FTE)</b>	<b>Estimated Annual Federal Cost</b>
FERC-716 Analysis and Processing of filings <sup>5</sup>	0.5	\$103,893
PRA <sup>6</sup> Administrative Cost		\$8,396
<b>FERC Total</b>		<b>\$112,289</b>

The Commission bases its estimate of the 'Analysis and Processing of filings' cost to the Federal Government on salaries and benefits for professional and clerical support. This estimated cost represents staff analysis, decision making, and review of any actual filings made in response to the information collection.

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, any changes to the collection, and publication of required notices in the Federal Register.

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

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<sup>5</sup> Based on FERC's 2024 annual average of \$207,786 (for salary plus benefits).

<sup>6</sup> Paperwork Reduction Act of 1995 (PRA)

There are program changes to increase the accuracy of this information collection request. As previously approved, FERC-716 included a single collection activity for good-faith requests, thus erroneously omitting the possibility of a Commission order. That single activity has been removed, resulting in a decrease of 12 responses and 615 hours.

This request includes burden estimates for two activities: (1) Information exchange between parties, and (2) Application submitted to FERC if parties' negotiations are unsuccessful. This program change increases the accuracy of the disclosure of burdens. The total burdens that were previously approved for one activity (i.e., 12 responses and 615 hours) are now divided between the two activities presented in this request, in proportion to the separate burdens for each activity: 6 response for each activity; 600 hours and 15 hours annually for the information exchange and application activity, respectively. As a result, there is no net change in the total burdens for FERC-716.

FERC-716	Total Request	Previously Approved	Change due to Adjustment in Estimate	Change Due to Agency Discretion
Annual Number of Responses	12	12	0	0
Annual Time Burden (Hr.)	615	615	0	0
Annual Cost Burden (\$)	0	0	0	0

## 16. TIME SCHEDULE FOR PUBLICATION OF DATA

FERC does not publish any data associated with this collection.

## 17. DISPLAY OF EXPIRATION DATE

The expiration date is displayed at <https://www.ferc.gov/enforcement-legal/legal/information-collections>

## 18. EXCEPTIONS TO THE CERTIFICATION STATEMENT

There are no exceptions.