FERC-717 (1902-0173) and FERC-516 (1902-0096)
Final Rule in RM05-5-017 (issued 4/15/2010)

SUPPORTING STATEMENT FOR FERC-717 (Standards for Business Practices and Communication Protocols for Public Utilities), and FERC-516 (Electric Rate Schedule and Tariff Filings)

in Final Rule (issued 4/15/2010) in Docket No. RM05-05-017

The Federal Energy Regulatory Commission (Commission or FERC) requests the Office of Management and Budget (OMB) to review and extend its approval of FERC-717 (Standards for Business Practices and Communication Protocols for Public Utilities) and FERC-516 (Electric Rate Schedule and Tariff Filings).[1] Both are existing information collections, regarding revisions to requirements contained in 18CFR Parts 35 and 38 of the Commission's regulations. FERC-516 is approved through 1/31/2013.[2] FERC-717 is currently approved through 3/31/2013.

In the Final Rule in Docket RM05-5-017, FERC is amending its regulations at 18 CFR 38.2 to incorporate by reference business practice standards adopted by the Wholesale Electric Quadrant of the North American Energy Standards Board (NAESB) to categorize various demand response products and services and to support the measurement and verification of these products and services in wholesale electric energy markets. This rule ensures that participants in wholesale energy markets where demand response products are administered receive standardized access to information that will enable them to participate in those markets and addresses performance evaluation methods appropriate to use for demand response products. This rule facilitates the ability of demand response providers to participate in electricity markets, reducing transaction costs and providing an opportunity for more customers to participate in these programs, especially customers that operate in more than one organized market. It also provides a foundation for further business practice standardization efforts, and participants in the NAESB process can use these standards to identify those elements for which standardization would be beneficial. Further, adoption of measurement and verification standards will improve the methods and procedures for measuring accurately the performance of demand response resources and assist in monitoring demand response services for potential manipulation.

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1 The Notice of Proposed Rulemaking (NOPR) for FERC Docket No. RM05-5-017 is also included in OMB's ROCIS system as supplemental information. The burden estimate related to the Final Rule is the same as the estimate that was included in the NOPR.

2 As of 4/13/2010, FERC-516 is currently the subject of another submission (ICR 201004-1902-004) pending review and approval at OMB. Because OMB's ROCIS document management system cannot accept two submissions containing the same control number simultaneously, the submission for this NOPR will be submitted under FERC-717 and will be subsequently submitted under FERC-516.

FERC-717 (1902-0173) and FERC-516 (1902-0096)
Final Rule in RM05-5-017 (issued 4/15/2010)

We estimate that the one-time annual reporting burden related to the subject Final RuleError: Reference source not found will be 108 total hours (an average per respondent of 6 hours under FERC-516, and 12 hours under FERC-717) for adopting the changes. The hours attributable to FERC-516 are for the preparation and filing of a tariff by Regional RTOs and ISOs to show implementation of standards; the hours attributable to FERC-717 are for implementing the standards to categorize the measurement and verification (M & V) of demand response products and services. After the affected parties have instituted these changes to reflect compliance with the standards, the total burdens under FERC-516 and 717 will be reduced by the 108 hours.

Background

In general, NAESB's standards include business practices that streamline the transactional processes of the natural gas and electric industries, as well as communication protocols and related standards designed to improve the efficiency of communication within each industry. NAESB supports all four quadrants of the gas and electric industries (wholesale gas, wholesale electric, retail gas, and retail electric). All participants in the gas and electric industries are eligible to join NAESB and/or participate in standards development.

On April 11, 2007, representatives of NAESB's Wholesale Electric Quadrant (WEQ), the US Department of Energy, US Environmental Protection Agency, the Commission and other industry experts met at the Department of Energy in Washington, D.C., to begin a series of meetings to discuss the NAESB effort to draft business practices for Demand Side Management and Energy Efficiency. From that meeting, it was decided that NAESB should begin its standards development by focusing on measurement and verification of energy savings and peak demand reduction from both a wholesale and retail electric market perspective.

Measurement and Verification (M&V) standards are intended to facilitate Demand Response in wholesale electricity markets by providing a common framework for:

- Transparency: accessible and understandable M&V requirements for Demand Response products
- Accountability: criteria that will enable the System Operator to accurately measure performance of Demand Response resources
- Consistency: standards applicable across wholesale electricity markets

Wholesale electric industry business practice standards are developed by the WEQ (Wholesale Electric Quadrant) of NAESB. To become a WEQ standard, a consensus of

seven industry segments (End Users, Distributers, Transmission, Generation, Marketers, Independent Grid Operators/Planners and Technology/Services) must approve the standard. Under the WEQ process, for a standard to be approved, it must receive a super-majority vote of 67 percent of the members of the WEQ's Executive Committee with support from at least 40 percent of each of the seven industry segments.[3] For final approval, 67 percent of the WEQ's general membership must ratify the standards.[4] NAESB's standards are voluntary. However, the Commission has made compliance with these standards mandatory in those instances where it has incorporated such standards by reference into its regulations.

Incorporating these standards by reference into the Commission's regulations is intended to benefit wholesale electric customers by streamlining utility business practices, transactional processes, and Open Access Same-Time Information System (OASIS) procedures, and by adopting a formal ongoing process for reviewing and upgrading the Commission's OASIS standards and other electric industry business practices.

The standards (FERC-717) support the measurement and verfication characteristics of Demand Response progams administered for application in the wholesale market and will be the subject of individual tariffs (FERC-516) filed with and approved by the Commission.

The Commission believes that adoption of the consensus standards is appropriate because the consensus process assists the Commission in determining the reasonableness of the standards by requiring that the standards draw support from a broad spectrum of the industry. The Commission's regulations should reflect those standards that have the widest possible support.

Docket RM05-5-017

This rulemaking is in response to NAESB's report to the Commission on 4/17/2009, citing that after two years of development, NAESB had, on 3/16/2009, adopted an initial set of business practice standards for the measurement and verification of demand response products and services (NAESB Phase I M&V Standards).[5] However,

3 Under NAESB's procedures, interested persons may attend and participate in NAESB committee meetings, and phone conferences, even if they are not NAESB members.
4 See Standards for Business Practices and Communication Protocols for Public Utilities, Order No. 676, FERC Stats. & Regs. ¶ 31,216, n.5 (2006), reh'g denied, Order No. 676-A, 116 FERC ¶ 61,255 (2006).
5 When NAESB adopts a business practice standard as a Final Action, the standard is considered complete from NAESB's perspective, but, from the Commission's perspective, compliance with such a standard is not mandatory until such time as the Commission takes formal action to incorporate such a standard by reference into its regulations. NAESB's Phase I M&V Standards were adopted in the WEQ's 2009 Annual Plan 5(a) Final Action. NAESB's 4/17/2009 submittal is available through FERC's eLibrary at

NAESB indicated that the initial standards need to be followed by more detailed technical standards for the measurement and verification of demand response products and services in ISO/RTO's operating areas.

The standards reflect business practices and establish criteria applicable to measurement and verification of wholesale market Demand Response services. They do not establish requirements related to the compensation, design, operation, or use of Demand Response services. The standards address how to measure and verify demand response products for the wholesale electricity market.

On 9/17/2009, FERC issued a Notice of Proposed Rulemaking (NOPR) proposing to adopt the NAESB Phase I measurement and verification (Phase I M&V) standards. This Final Rule addresses the comments received from the NOPR.

The Final Rule incorporates standards by reference that identify operational information about demand response products that system operators need to make available to participants in markets where such products are offered and address performance evaluation methods appropriate to use for demand response products. The standards also facilitate the ability of demand response providers to participate in electricity markets, reducing transaction costs and providing an opportunity for more customers to participate in these programs, especially customers that operate in more than one organized market. In addition, these standards provide a foundation for further business practice standardization efforts, which participants in NAESB's WEQ process can use to identify those elements for which standardization would be beneficial.

A. JUSTIFICATION

1. CIRCUMSTANCES THAT MAKE THE COLLECTION OF INFORMATION NECESSARY

On August 8 2005, Congress enacted the Energy Policy Act of 2005 (EPAct 2005). Section 1252 (e) (3) of EPAct 2005 states that "[n]ot later than 1 year after the date of enactment of the Energy Policy Act of 2005, the Commission shall prepare and publish an annual report, by appropriate region, that assesses demand response resources, including those available from all consumer classes...." Specifically, EPAct 2005 requires that the Commission identify and review:

- saturation and penetration rates of advanced meters and communications;

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http://elibrary.ferc.gov/idmws/search/intermediate.asp?link_file=yes&doclist=13708313.

- technologies, devices and systems; existing demand response programs and time-based rate programs;
- the annual resource contribution of demand resources;
- the potential for demand resource as a quantifiable, reliable resource for regional planning purposes;
- steps taken to ensure that, in regional transmission planning and operations, demand resources are provided equitable treatment as a quantifiable, reliable resource relative to the resource obligations of any load-serving entity, transmission provider, or transmitting party; and
- regulatory barriers to improved customer participation in demand response, peak reduction and critical period pricing programs.

Section 1252(f) of EPAct directs utilities and state utility commissions to study and evaluate methods for implementing demand response. Demand response can take several forms including:

- remote-control load management devices that allow utilities to adjust consumers' thermostats, pool pumps, and other energy-consuming devices.
- Meters can be built or retrofitted to automatically gather interval data, and include the ability to transmit their data over radio frequencies, telephone lines, Internet-based networks, cellular data networks, power lines and other forms of transmission. The network reading technology enables energy consumption to be monitored at a much more detailed level to support time-sensitive pricing and to evaluate the effectiveness of demand response programs. The consumption data can also be presented to consumers through the Internet to help them manage their energy use through such programs as critical peak pricing and real-time pricing.
- Interval meter data also enables consumption curtailment programs, whereby large customers restrict energy use during peak demand times in exchange for rebates, lower rates, or other incentives.

Section 1252(a) (14) requires utilities to offer their customers (upon customer request) and customer classes, time–based rates within 18 months of enactment of EPAct 2005. These rates along with the metering technology to support them provide energy users with the option and incentive to switch their consumption to cheaper, off-peak time periods. Section 1252(e)(3) as noted above, requires the Commission to conduct annual regional assessments on demand resources and the penetration of advanced metering and other technologies and to identify any barriers to adoption.

Section 529 of the Energy Independence and Security Act (EISA) requires FERC to complete a National Assessment of Demand Response.

FERC-717 (1902-0173) and FERC-516 (1902-0096)
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Demand response refers to the reduction of customer energy usage at times of peak usage in order to help address system reliability, reflect market conditions and pricing and support infrastructure optimization or deferral. In essence, demand response is a change in electric use by demand-side resources from their normal consumption patterns, in response to: (1) changes in the price of electricity, or (2)incentive payments designed to induce lower electricity use at times of high wholesale market prices, or when system reliability is jeopardized. Demand response programs may include dynamic pricing/tariffs, price responsive demand bidding, contractually obligated and voluntary curtailment and direct load control/cycling. Demand Resource refers to Load or aggregation of Loads capable of being measured and verified to provide Demand Response.

As demand response participation increases, and as states consider additional means of increasing demand response, issues concerning consumer choice, compensation, and measurement and verification have received more attention.

FERC's Strategic Plan for FY 2009-2014[6] describes the agency's mission as: "Reliable, Efficient and Sustainable Energy For Consumers
Assist consumers in obtaining reliable, efficient and sustainable energy services at a reasonable cost through appropriate regulatory and market means....[with primary goals being to] [e]nsure that rates, terms and conditions are just, reasonable and not unduly discriminatory or preferential" and to "[p]romote the development of safe, reliable and efficient energy infrastructure that serves the public interest."

The Commission also has a statutory obligation under sections 205 and 206 of the FPA to prevent unduly discriminatory practices in transmission access. To accomplish this, FERC added section 35.28 to its regulations concerning the standards a public utility must satisfy regarding non-discriminatory open access transmission services on the utility's facilities that transmit electric energy in interstate commerce. The regulations require that all public utilities owning or controlling facilities for the transmission of electric energy in interstate commerce to file tariffs of general applicability that offer transmission services, including ancillary services, on a network and point-to-point basis. The regulations require the public utility to take transmission service for itself under the rates, terms and conditions of these tariffs.

On April 24, 1996, the Commission issued Order No. 888: "Promoting Wholesale Competition Through Open Access Nondiscriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities"

6 Available at http://www.ferc.gov/about/strat-docs/FY-09-14-strat-plan-print.pdf

(Docket No. RM95-8/RM94-7). The Commission intended to remedy undue discrimination in the provision of interstate transmission services by public utilities and to address the stranded costs that may result from the transition to more competitive electricity markets.

Order No. 888 has two central components. The first required that all public utilities that own, operate or control interstate transmission facilities to offer network and point-to-point transmission services (and ancillary services) to all eligible buyers and sellers in wholesale bulk power markets, and to take transmission services for their own uses under the same rates, terms and conditions offered to others. In essence, it requires non-discriminatory (comparable) treatment for all eligible users of the transmission facilities. The non-discriminatory services required by Order No. 888, known as open access services, are reflected in a *pro forma* tariff contained in the rule. The rule also required functional separation of the utilities' transmission and power marketing functions (also referred to functional unbundling) and the adoption of an electric transmission system information network.

The second central component of Order No. 888 was to address whether and how utilities will be able to recover costs that could be stranded when wholesale customers use the open-access tariffs, or FPA section 211 tariffs to leave their utilities' power supply systems and shop for power elsewhere.

FERC-717

As noted above, in Order No. 888, the Commission required that all public utilities that own, control or operate facilities used for transmitting electric energy in interstate commerce to have on file open access, nondiscriminatory transmission tariffs that contain minimum terms and conditions of nondiscriminatory service.

In addition, the Commission required public utilities to establish OASIS sites to provide transmission customers with equal and timely access to information about transmission and ancillary services provided in the tariffs. The Commission does not believe that open-access nondiscriminatory transmission services can be completely realized until it removes real-world obstacles that prevent transmission customers from competing effectively with the Transmission Provider. One of the obstacles is unequal access to transmission information. The Commission believes that transmission customers must have simultaneous access to the same information available to the Transmission Provider if truly nondiscriminatory transmission services are to be a reality.

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By its Final Rule issued April 24, 1996, in Docket No. RM95-9-000, the Commission adopted certain standards/information requirements for OASIS to be maintained by Public Utilities. More specifically, the Commission added Part 37 of Title 18, Code of Federal regulations (CFR). The Standards of Conduct were designed to prevent employees of a public utility (or any of its affiliates) engaged in marketing functions from preferential access to OASIS-related information or from engaging in unduly discriminatory business practices. Companies were required to separate their transmission operations/reliability functions from their marketing/merchant functions and prevent system operators from providing merchant employees and employees of affiliates with transmission-related information not available to all customers at the same time through public posting on the OASIS.

When the Commission developed its OASIS program (regulations, Standards and Communication Protocols, Data Dictionary, and Business Practice Standards), it relied heavily on the assistance provided by all segments of the wholesale electric power industry and its customers in the ad hoc working groups that came together and offered consensus proposals for FERC's consideration. This process was very successful, however, it became apparent to FERC that issues remained that would be better addressed by an ongoing industry group (rather than by continued reliance on an ad hoc approach). The industry group would be dedicated to drafting consensus industry standards to implement the FERC's OASIS-related policies, and policies for other industry business practices, that would benefit from the implementation of generic industry standards.

On December 19, 2001, the Commission issued an order[7] asking the wholesale electric power industry to develop business practice standards and communication protocols by establishing a single consensus, industry-wide standards organization for the wholesale electric industry, to complement the market design principles the Commission was developing.

In response to FERC's request, NAESB and the North American Electric Reliability Council (NERC) filed a joint letter (on December 16, 2002) explaining that both organizations had signed a memorandum of understanding (MOU) "designed to ensure that the development of wholesale electric business practices and reliability standards are harmonized and that every practicable effort is made to eliminate overlap and duplication of efforts between the two organizations." The MOU describes, among other things, coordination procedures, the establishment of a Joint Interface Committee that will review all standards development proposals received by either organization and determine which organization should be assigned to draft the relevant standards.

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7 See Electricity Market Design and Structure, 97 FERC ¶ 61,289 (2001) (December 2001 Order), 99 FERC ¶ 61,171 (May 2002 Order), reh'g denied, 101 FERC ¶ 61,297 (2002) (December 2002 Order).

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On 1/18/2005, NAESB filed a report with FERC detailing the WEQ's activities over the past two years since the group's inception. This filing represented NAESB's first filing with FERC to report on wholesale electric business practices. NAESB reported that the WEQ adopted business practices standards and communication protocols for the wholesale electric industry. These standards included the following OASIS-related business practice standards and communications protocols: (1) OASIS Business Practice Standards; (2) OASIS Standards and Communication Protocols; and (3) an OASIS Data Dictionary.

These standards established a set of business practice standards and communication protocols for the electric industry to enable industry members to achieve efficiencies by streamlining utility business and transactional processes and communication procedures. The standards replaced, with modifications, the Commission's existing Business Practice Standards for Open Access Same-Time Information Systems (OASIS) Transactions and OASIS Standards and Communication Protocols and Data Dictionary requirements. Adopting these standards established a formal ongoing process for reviewing and upgrading the Commission's OASIS standards as well as adopting other electric industry business practice standards.

The FERC-717 data and communications standards on OASIS are required to carry out the Commission's policies in accordance with the general authority in Sections 309 and 311, of the Federal Power Act of 1935 (FPA) (16 U.S.C. 825h) and 16 U.S.C. 825j)

The collection of information for FERC-516 is required to implement Sections 15, 19, 20, 205, 206 and 207 of the Federal Power Act as amended by the Energy Policy Act of 1992 (EPAct) and section 402(a) of the Department of Energy Organization Act (DOE Act).

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

At the wholesale level, FERC recognizes the important role that demand response plays in ensuring the competitiveness of wholesale markets and the reliability of grid operations. FERC continues to assess and monitor the wholesale markets under its jurisdiction, to ensure that demand response resources, that are technically capable of providing a service, are treated comparably to supply resources offering that service.

FERC-717 (1902-0173) and FERC-516 (1902-0096)
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FERC regulates six independent system operators (ISOs) and regional transmission organizations (RTOs):[8] ISO New England, Inc. (ISO-NE), New York Independent System Operator, Inc. (NYISO), PJM Interconnection, Inc. (PJM), Midwest Independent Transmission System Operator, Inc. (Midwest ISO), SPP, and the California ISO. Since the 2007 FERC Demand Response Report[9], FERC has taken several actions concerning the participation of demand response in the wholesale markets operated by these ISOs and RTOs.

FERC-516. The information from FERC-516 enables FERC to exercise its wholesale electric rate and electric power transmission oversight and enforcement responsibilities in accordance with the Federal Power Act and the DOE Act as referenced above. Sufficient detail must be obtained for FERC to make an informed and equitable decision concerning the appropriate level of rates, and to aid customers and other parties who may wish to challenge the rate proposed by the utility. Other more abbreviated data requirements are required where utility filings involve: (1) non-rate increase applications, such as changes in the points where electricity is delivered to a customer; (2) formula rates; (3) settlement rates; and (4) qualifying small power producer rates.

FERC-717. These requirements apply to all Public Utilities owning and/or controlling facilities used for the transmission of electricity in interstate commerce. These procedures enable the Commission to ensure compliance with the functional unbundling established in the Commission's Open Access rulemaking.

FERC uses the information in rate and tariff proceedings to review rate and tariff changes by public utilities, for general industry oversight, and to supplement the documentation used during the Commission's audit process. The collection of this information is necessary to meet the legal requirements, namely the statutory obligations under sections 205 and 206 of the FPA, to prevent unduly discriminatory practices.

This information assists FERC in being able to meet its statutory obligations and to prevent discrimination in interstate transmission services provided by the public utilities. FERC believes the implementation of these data requirements will help the Commission

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8 Independent System Operators grew out of Orders Nos. 888/889 where the Commission suggested the concept of an Independent System Operator as one way for existing tight power pools to satisfy the requirement of providing nondiscriminatory access to transmission. Subsequently, in Order No. 2000, the Commission encouraged the voluntary formation of Regional Transmission Organizations to administer the transmission grid on a regional basis throughout North America (including Canada). Order No. 2000 delineated twelve characteristics and functions that an entity must satisfy in order to become a Regional Transmission Organization.

9 Reports and other information on FERC's Demand Response program are available at http://www.ferc.gov/industries/electric/indus-act/demand-response.asp.

carry out its responsibilities under the Federal Power Act of promoting the efficiency of the electric industry's operations.

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

In both FERC-516 and FERC-717, the Commission has shown a commitment to the use of information technology.

In Order No. 714 (RM01-5-000, 73 FR 57515)[10], the Commission revised its regulations to require that all tariffs and tariff revisions and rate change applications for public utilities, natural gas pipelines, oil pipelines and power administrations are to be filed electronically according to a set of standards developed in conjunction with NAESB. Electronic filing:

- reduces the physical storage space needs and document processing times
- reduces mailing and courier fees
- allows access to the tariff filing by multiple parties
- provides the ability to download and print tariff filings
- provides automatic e-mail notification to an applicant of receipt of the filing and whether or not it has been accepted
- improves the efficiency and overall management of the tariff and tariff change filing process
- reduces the burden and expense associated with paper tariffs and tariff changes
- improves access and research capabilities with and among applicant's tariffs (facilitating FERC's monitoring of the energy markets, and enhancing competition within industries by providing the customers with an electronic means of comparing the rates, terms and conditions, and other provisions applicable to the regulated entities).

Further, the Commission's requirement for the use of OASIS to provide transmission service information to the public, further demonstrates the use of information technology to reduce the burden. Through http://www.ferc.gov, transmission customers are able to access information from any utility.

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10 The Commission required that all tariffs, tariff revisions and rate change applications be filed electronically once the companies file their baseline tariff, by 9/2010. Until that time, they can continue to file tariffs, etc., on paper. The affected regulated entities for eTariff are: Public utilities and Power Marketing Administrations under Parts 35 and 300; Natural gas pipelines under Parts 154 and 284; Intrastate gas pipelines under Part 284; and Oil pipelines under Part 341. For more information on the FERC's eTariff program, see http://www.ferc.gov/docs-filing/etariff.asp.

4. DESCRIBE EFFORTS TO IDENTIFY DUPLICATON 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.

Commission filings and data requirements are periodically reviewed in conjunction with OMB clearance expiration dates. This includes a review of the Commission's regulations and data requirements to identify any duplication. This information is not available from other sources.

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

No small businesses are affected by the FERC-516 or FERC-717 reporting requirements related to this final rule.

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

ISO's and RTO's are required to comply with the Commission's requirements in this final rule in RM05-5-017. The required information will impose the least possible burden while collecting the information that will be used for promoting the efficiency of the electric industry's operations. By adopting and incorporating these standards into the Commission's regulations, it permits industry to use the NAESB consensus process, and to suggest further modifications and enhancements to business practices and the standards as industry considers necessary (including for Phase II M & V), subject to the FERC's approval. If the data were not filed, the Commission and Industry would be placed at a disadvantage by not having the most current data available for competitive and regulatory purposes.

7. EXPLAIN ANY SPECIAL CIRCUMSTANCES RELATING TO THE INFORMATION

For a short, interim period, the collection of information is being conducted in a manner inconsistent with the guidelines in 5 CFR 1320.5(d), that limit the collection of data to an original and two copies of any document.

FERC-516 calls for the submission of six copies of all tariffs, rate schedules, contracts and material related to these filings. The current distribution of multiple hard

copies of a filing has been essential, so that the required technical reviews and analyses can proceed simultaneously and efficiently.

As noted in Question no. 3 of this submittal, the Commission issued Order No. 714 (RM01-5-000, 73 FR 57515) to implement electronic filing of all tariff filings, tariff revisions and rate change applications for public utilities, natural gas pipelines, oil pipelines and power administrations.Error: Reference source not found With the eTariff rulemaking, the Commission will eliminate the submittal of paper filings and copies of rates and tariffs.

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTT&AA), requires federal agencies to use technical standards developed by voluntary consensus standards organizations, like NAESB's WEQ, as a means to carry out policy objectives or activities. The Commission believes that incorporation by reference is appropriate, and indeed the required, method for adopting copyrighted standards material.[11]

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

The NAESB Phase I M&V Standards were approved by the WEQ and ratified by the NAESB membership under NAESB's consensus procedures. [As detailed above under 'Background', this process first requires a super-majority vote of 17 out of 25 members of the WEQ's Executive Committee with support from at least two members from each of the seven industry segments. For final approval, 67 percent of the WEQ's general membership voting must ratify the standards.]

As the Commission found in Order No. 587, adoption of consensus standards is appropriate because the consensus process helps ensure the reasonableness of the standards by requiring that the standards draw support from a broad spectrum of industry participants representing all segments of the industry. Moreover, since the industry itself has to conduct business under these standards, the Commission's regulations should

11 See 5 U.S.C. 552 (a)(1)(2000); 1 C.F.R. 51.7(4) (requirements established for incorporation by reference); Federal Participation in the Development and Use of Voluntary Standards, OMB Circular A-119, at 6 (a)(1) (Feb. 10, 1998), http://www.whitehouse.gov/omb/circulars/a119/a119.html (incorporation by reference appropriate means of adopting private sector standards under the National Technology Transfer and Advancement Act). The Commission cannot reproduce the WEQ standards in violation of the NAESB copyright, therefore the standards are not included in the Final Rule or in this OMB clearance package. See 28 U.S.C. 1498 (government not exempt from patent and copyright infringement).
Also, see the Federal Register's guidance on incorporation by reference at http://www.archives.gov/federal-register/cfr/ibr-locations.html.

reflect those standards that have the widest possible support. In section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTT&AA), Congress affirmatively requires federal agencies to use technical standards developed by voluntary consensus standards organizations, like NAESB, as a means to carry out policy objectives or activities determined by the agencies unless use of such standards would be inconsistent with applicable law or otherwise impractical.

In addition, Commission procedures require that rulemaking notices be published in the Federal Register, thereby allowing all interested parties an opportunity to submit views, comments or suggestions concerning the proposal. The Notice of Proposed Rulemaking was published in the Federal Register (74FR 48173, 9/22/2009) for comment. In response to the Phase I M&V NOPR, comments were filed by 19 entities (identified in Appendix A of the Final Rule). Links to those comments in FERC's eLibrary system are included in the Attachment to this clearance package (in 'Supplemental Documents' in OMB's ROCIS system). A summary of the comments and FERC's responses are found in the "Discussion" section of the Final Rule, starting at paragraph 9.

9. EXPLAIN ANY PAYMENT OR GIFTS TO RESPONDENTS

There are no payments or gifts to respondents under any circumstance.

10. DESCRIBE ANY ASSURANCE OF CONFIDENTIALITY PROVIDED TO RESPONDENTS

All data filed are public information and, therefore, not confidential. However, a company may request confidential treatment of some or all parts of the information requirement under the FERC regulations at 18 CFR 388.112. Each request for confidential treatment will be reviewed by the Commission on a case-by-case basis.

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

There are no questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs and other matters that are commonly considered private in the reporting requirements.

12. ESTIMATED BURDEN COLLECTION OF INFORMATION

FERC-717 (1902-0173) and FERC-516 (1902-0096)
Final Rule in RM05-5-017 (issued 4/15/2010)

The information collection requirements (Phase I M&V standards) of this final rule will only be applicable to the 6 RTOs/ISOs. The burden estimate includes the time required to implement the standards proposed in this rule, review the standards, search existing data sources, gather and maintain the data needed, and complete and review the information and make a tariff filing with the Commission.

Appendices 1 (for FERC-717) and 2 (for FERC-516) include details on their Information Collections (ICs). [In each case, an additional IC is added for the one-time collections related to the final rule. The spreadsheets are posted in 'Supplementary Documents' in OMB's ROCIS system.

The burden estimates associated with the requirements in the final rule in Docket RM05-5-017 follow.

Data Collection	No. of Respondents	No. of Responses Per Respondent	Hours Per Response	Total No. of Hours
FERC-516	6	1	6	36
FERC-717	6	1	12	72
Total				108

The current approved annual estimate, figures related to this final rule, and new estimated totals for FERC-516 follow.

FERC-516 (OMB Control No. 1902-0096)	Current Inventory, as of 4/13/2010	Related to Final Rule in RM05-5-017	New Inventory Requested
Estimated Number of Respondents	1,230	6 respondents related to this rule are already included in total universe of respondents	1,230
Estimated number of annual responses/respondent	3.5205	1	3.5252
Estimated annual number of responses	4,330	6	4336
Estimated annual hours per response	106.11755	6	105.979
Total estimated annual burden hours	459,489	36	459,525

FERC-717 (1902-0173) and FERC-516 (1902-0096)
Final Rule in RM05-5-017 (issued 4/15/2010)
Estimated annual increase/decrease in FERC-516 burden hours (related to the final Rule in RM05-5-017) in OMB inventory: +36
Program Change: +36
Adjustment: 0

The current approved annual estimate, figures related to this final rule, and new estimated totals for FERC-717 follow.

FERC-717 (OMB Control No. 1902-0173)	Current Inventory, as of 4/13/2010	Related to Final Rule in RM05-5-017	New Inventory Requested
Estimated Number of Respondents	220	6 respondents related to this rule are already included in total universe of respondents	220
Estimated number of annual responses/respondent	1	1	1
Estimated annual number of responses	528	6	534
Estimated annual hours per response		12	
Total estimated annual burden hours	183,644	72	183,716

Estimated annual increase/decrease in FERC-717 burden hours (related to the final Rule in RM05-5-017) in OMB inventory: +72
Program Change: +72
Adjustment: 0

13. ESTIMATE OF TOTAL ANNUAL COST OF BURDEN TO RESPONDENTS

Annualized Capital/Startup Costs

The Commission's estimate for costs to comply with the Rule is based on a one-time implementation of the standards. The estimated hours needed to comply include: the filing of tariff to address standards that are incorporated by reference and are now mandatory; and implementing the Phase I M&V standards.

FERC-717 (1902-0173) and FERC-516 (1902-0096)
Final Rule in RM05-5-017 (issued 4/15/2010)

The following burden estimate is based on the projected costs for the industry to implement the new standards that FERC incorporates by reference and makes mandatory. The Commission has projected the following total annualized cost (related to implementation of the Final Rule in RM05-5-017) for all respondents.[12] *Appendices 1 (for FERC-717) and 2 (for FERC-516) include details on their Information Collections (ICs). The spreadsheets are posted in 'Supplementary Documents' in OMB's ROCIS system.*

Related to implementation of the Final Rule in RM05-5-017	**FERC-516**	**FERC-717**
Estimated Annualized Capital/Startup Costs	$13,320.	$26,640.

14. ESTIMATED ANNUALIZED COST TO FEDERAL GOVERNMENT:

The estimated annualized cost to the Federal Government,[13] for FERC-516 and FERC-717, as relates to the requirements in the Final Rule in RM05-5-017 follows:

Data Collection	**Processing and Analysis of Data (FTE's) (1)**	**Estimated Cost Per Year (2)**	**FERC Data Clearance Cost (3)**	**Total Cost [(1)X(2)]+(3)**
FERC-516	.25	$137,874	$1,528	$35,996.50
FERC-717	.50	$137,874	$1,528	$70,465.00
Total				$106,461.50

The average cost per staff year reflects direct human resources costs (direct labor and fringe benefit costs). The direct labor cost is that portion of staff salary that is charged to a collection of information activity. The fringe benefits cost consists of allowances and services provided to Government employees in addition to employee salaries. It is expressed as a percentage of the salary costs.

Overall, Annual Costs Estimates to the Federal GovernmentError: Reference source not found are:

Data Collection	**Current Overall Costs**	**Costs Related to Final Rule in**	**Total**

12 This number is reached by multiplying the additional hours to prepare responses (36 hrs. for FERC-516, and 72 hrs. for FERC-717) by an hourly cost of $370 (a composite estimate that includes legal, technical and support staff rates, $250+$95+$25=$370). [A workyear consists of 2,080 hours.]

13 For Fiscal Year 2010, the annual estimated cost figures for one staff member (FTE) are $137,874 per year, with one year being 2,080 work hours. The annual estimated cost of processing one OMB clearance is $1,528.

FERC-717 (1902-0173) and FERC-516 (1902-0096)
Final Rule in RM05-5-017 (issued 4/15/2010)

		RM05-5-017	
FERC-516	$1,112,524.10	$35,996.50	$1,148,520.60
FERC-717	$620,812.88	$70,465.00	$691,277.88

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

As indicated in the response to Question #12, there is a one-time increase in the reporting burden. The Commission's initial estimate for the annual reporting burden in this Final Rule (and the preceding NOPR) is anticipated to be a total of 108 hours. This increase is attributable to having the RTOs/ISOs implement the mandatory standards in Phase I M & V and to indicate that in their tariff filings.

16. TIME SCHEDULE FOR PUBLICATION OF DATA

This is not a collection of information for which results will be published.

17. DISPLAY OF EXPIRATION DATE

It is not appropriate to display the expiration date for OMB approval of the information collected pursuant to this rulemaking affecting FERC-516 and FERC-717. The substance of the requirements is incorporated by reference into FERC's regulations at 18CFR (making the standards mandatory). However the standards themselves are copyrighted by NAESB, so the OMB Control Numbers and expiration dates are not displayed in the standards.

In Order No. 676-E,[14] FERC concluded "that the NAESB process is the most efficient and cost-effective method of developing these standards, incorporation by reference is the appropriate method for the Commission to adopt the regulations, and the Commission must respect NAESB's copyright.[15]"

Order 676-E also states:

"118. In choosing to take advantage of the efficiency of the NAESB process, we followed the government regulations that require the use of incorporation by reference. These rules appropriately balance the interest of the standards organization and the expediency of governmental use of privately developed standards. ...

14 Order No. 676-E (in Docket No. RM05-5-013, issued 11/24/2009, posted at http://elibrary.ferc.gov/idmws/common/opennat.asp?fileID=12205059), FERC Stats. & Regs. ¶ 31,299 at P 115-121.

15 Id.

> 120. Indeed, OMB Circular A-119[16] requires government agencies incorporating privately developed standards to "observe and protect the rights of the copyright holder and any other similar obligations." In addition to copyright, the Commission also is barred contractually from reproducing the standards for distribution to third parties.
>
> ...As to commenters' argument that the Commission has misinterpreted section 12d of the NTT&AA, we find that the Act and the accompanying regulations ...include adoption of standards "as a means to carry out policy objectives or activities" In any event, as discussed above, we see benefits to the continued role of NAESB in developing electronic communication and business practice standards for public utilities, whether required by NTT&AA or not."[17, 18,] Error: Reference source not found

Due to the standards being copyrighted, the OMB Control numbers and expiration dates will not be included in the NAESB standards.

B. Collections of Information Employing Statistical Methods

These are not collections of information employing statistical methods.

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16 OMB Circular No. A-119 (Revised February 10, 1998), at 6J, http://www.whitehouse.gov/omb/rewrite/circulars/a119/a119.html. See 28 U.S.C.§1498 (federal government may be liable for copyright infringement). Other government agencies similarly have denied requests to publish copies of privately developed standards. See Updating OSHA Standards Based on National Consensus Standards, 74 FR 46350-46361 (September 9, 2009)("OSHA notes that copyright laws protect national consensus standards"); Airworthiness Directives; Airbus Model A300 Airplanes, 72 FR 6923 (Feb. 14, 2007) (finding that incorporated by reference materials "do not lose their copyright protection"). ...

17 In section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTT&AA), Congress affirmatively requires federal agencies to use technical standards developed by voluntary consensus standards organizations, like NAESB, as a means to carry out policy objectives or activities determined by the agencies unless use of such standards would be inconsistent with applicable law or otherwise impractical.

18 As stated in revised OMB Circular A-119 (dated 2/10/1998, and available at http://www.whitehouse.gov/omb/circulars_a119/#17), "[i]f a voluntary standard is used and published in an agency document, your agency must observe and protect the rights of the copyright holder and any other similar obligations."