

Currently FERC-516 (OMB No. 1902-0096) and to be FERC-920, Electric Quarterly Report (EQR) [OMB Control No: 1902-0255] (NOPR (EQR Refresh), in RM12-3-000, Issued 6/21/2012; RIN 1902-AD52) updated 10/31/2012

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Supporting Statement for
FERC-920, Electric Quarterly Report (EQR)
(In Notice of Proposed Rulemaking [EQR System Refresh]
in Docket No. RM12-3-000, Issued 6/21/2012

The Federal Energy Regulatory Commission (Commission or FERC) requests Office of Management and Budget (OMB) review and approval of FERC-920, Electric Quarterly Report (EQR; an existing data requirement that is currently a part of the FERC-516), as revised in the Notice of Proposed Rulemaking (NOPR) in Docket No. RM12-3 (EQR System Refresh).

In the NOPR in Docket RM12-3 (available at <http://elibrary.ferc.gov/idmws/common/opennat.asp?fileID=13012192>), FERC stated the EQR collection is part of the FERC-516 (Electric Rate Schedules and Tariff Filings; OMB Control No. 1902-0096). A clearance package for FERC-516 (related to a rulemaking in another FERC docket that does not affect the EQR) is currently under review at OMB. Only one package per OMB Control No. can be submitted to OMB for review at a time. Therefore, FERC is submitting this clearance package with the new “FERC-920” collection number, to be used for this submittal related to the EQR. In footnote 19, the NOPR mentions that the Commission plans to separate the EQR requirements from the remaining reporting requirements under FERC-516. At the final rule stage, we plan to use “FERC-920” for the EQR (rather than continuing to include the EQR as a part of the FERC-516). Correspondingly, EQR would then be removed from the FERC-516.

Also, the Commission has pending two separate proposed rulemakings that relate to the EQR. They are separate from Docket No. RM12-3 and are not addressed here: Docket RM10-12 (NOPR issued 4/21/2011, at <http://elibrary.ferc.gov/idmws/common/opennat.asp?fileID=12630477>) and Docket RM01-8-012 (NOPR issued 3/15/2012, at <http://elibrary.ferc.gov/idmws/common/opennat.asp?fileID=12915556>).

Additional information on the EQR is available on the FERC website at <http://www.ferc.gov/docs-filing/eqr.asp>.

BACKGROUND

In this NOPR for Docket RM12-3, FERC proposes to amend Rule 35.10b of its Regulations (18 CFR Part 35, which governs the filing of EQRs) to change the process for filing EQRs. Currently, EQRs are filed by downloading EQR software from FERC’s website, installing it on the filer’s Microsoft Windows-based computer, entering the EQR data into the software, and then submitting the EQR data to FERC. The EQR software is designed in Microsoft Visual FoxPro. Due to technological changes and limitations, the current software

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and filing process are ineffective and unsustainable. Therefore, FERC proposes a new filing system that will provide EQR filers with two new options for filing EQRs.

One option would allow an EQR filer to use a web interface on the Commission's website to file its EQR. This web interface would look and operate like the current EQR software. However, an EQR filer would not need to download and install software from FERC's website; rather the data would be filed directly with FERC through the web interface. The other option would allow an EQR filer to file its EQR in an Extensible Mark-Up Language (XML) format via the Commission's website. By proposing a process with two options for filing EQRs, the Commission seeks to provide the flexibility needed to accommodate EQR filers' technical preferences. Under both options, the Commission proposes to require EQR filers to use the company identification number (Company Identifier) assigned through the Commission's Company Registration System, which was developed for FERC's eTariff system. The Company Identifier would replace the personal identification numbers that are currently used. FERC also proposes that implementation of any changes to the process for filing EQRs will apply to EQR filings beginning with the third quarter 2013 EQR, providing data for July through September 2013.

The Commission's regulations at 18 CFR 35.10b require public utilities to file Electric Quarterly Reports.

A. Justification

1. CIRCUMSTANCES THAT MAKE THE COLLECTION OF INFORMATION NECESSARY

The Commission set forth the EQR filing requirements in Order No. 2001 (issued 4/25/2002, at http://elibrary-backup.ferc.gov/idmws/File_list.asp?document_id=2270047) in Docket RM01-8-000). Order 2001 requires public utilities to electronically file EQRs summarizing transaction information for short-term and long-term cost-based sales and market-based rate sales and the contractual terms and conditions in their agreements for all jurisdictional services. The Commission established the EQR reporting requirements to help ensure the collection of information needed to perform its regulatory functions over transmission and sales while making data more useful to the public and allowing public utilities to better fulfill their responsibility under FPA section 205(c) to have rates on file in a convenient form and place. As noted in Order No. 2001, the EQR data is designed to "provide greater price transparency, promote competition, enhance confidence in the fairness of the markets, and provide a better means to detect and discourage discriminatory practices."

Since issuing Order No. 2001, the Commission has provided guidance and refined the reporting requirements, as necessary, to simplify the filing requirements and to reflect changes in the Commission's rules and regulations. For instance, in 2007 the Commission adopted an Electric Quarterly Report Data Dictionary, which provides in one document the definitions of

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certain terms and values used in filing EQR data. Moreover, in 2007, the Commission required transmission capacity reassignment to be reported in the EQR.

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

The data filed in the EQR strengthens the Commission’s ability to exercise its wholesale electric rate and electric power transmission oversight and enforcement responsibilities in accordance with the Federal Power Act. The Ninth Circuit Court of Appeals has held that the ability to perform an *ex post* analysis of whether a seller with market-based rate authority has obtained excessive market share since it was granted authorization to transact at market-based rates is a necessary element in determining whether the Commission’s market-based regulatory regime fulfills the requirement for the Federal Power Act. The Court upheld the Commission’s market-based rate regulatory scheme because it relies on a “system [that] consists of a finding that the applicant lacks market power (or has taken sufficient steps to mitigate market power), coupled with strict reporting requirements to ensure that the rate is ‘just and reasonable’ and that markets are not subject to manipulation.” *State of California, ex rel. Bill Lockyer v. FERC*, 383 F.3d 1006, 1013 (9th Cir. 2004), *cert. denied* (S. Ct. Nos. 06-888 and 06-1100, June 18, 2007). The EQR constitutes the strict reporting requirements that helps differentiate the Commission’s market based rate program from impermissible market deregulation.

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

One option would allow an EQR filer to use a web interface on the Commission’s website to file its EQR. This web interface would look and operate like the current EQR software. However, an EQR filer would not need to download and install software from FERC’s website. Rather, the data would be filed directly with FERC through the web interface. The other option would allow an EQR filer to file its EQR in an Extensible Mark-Up Language (XML) format via the Commission’s website. By proposing a process with two options for filing EQRs, the Commission seeks to provide the flexibility needed to accommodate EQR filers’ technical preferences and to minimize the additional implementation burden.

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 exercises its FPA section 205(c) responsibility to have rates on file in a convenient form and place through the EQR. This requirement is unique to FERC in its scope

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and character, so no other entity can or does collect or distribute the information required to comply with the FPA. Some of the data collected in the EQR are available in the market prior to submission in the EQR (market prices, for instance, are published in the trade press or issued by Independent System Operators), but those data are not provided at the level of detail required in FPA section 205(c) because much of the information in the EQR may be considered proprietary until it is submitted to the Commission. Due to this key distinction, market information can be used to confirm, but not replace, the EQR collection.

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

The Regulatory Flexibility Act (RFA)¹ generally requires a description and analysis of rules that will have significant economic impact on a substantial number of small entities. The RFA mandates consideration of regulatory alternatives that accomplish the stated objectives of a proposed rule and that minimize any significant economic impact on a substantial number of small entities. The SBA's Office of Size Standards develops the numerical definition of a small business.² The SBA has established a size standard for electric utilities stating that a firm is small if, including its affiliates, it is primarily engaged in the transmission, generation and/or distribution of electric energy for sale and its total electric output for the preceding twelve months did not exceed four million MWh.³

Of the 1,783 filers⁴, approximately 1,194 filers had total electric output for the preceding twelve months that did not exceed four million MWh. However, when combined with their affiliates, 414 of those 1,194 filers no longer meet the definition of "small." The Commission estimates that the remaining 780 filers are "small."

To ease the burden of implementation for all filers, the Commission is minimizing the changes which respondents will experience and giving two options for filing (using either comma-separated values or XML). The estimated one-time implementation cost per respondent is \$1,434.50.

The Commission anticipates no change or a slight reduction in the burden for the recurring quarterly filings. In addition, small entities generally have few or no transactions and corresponding minimal recurring burden. Furthermore, we note that public utilities may request, on an individual basis, waiver from the EQR reporting requirements.

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

¹ 5 U.S.C. 601-612.

² 13 CFR 121.101.

³ 13 CFR 121.201, Sector 22, Utilities & n.1.

⁴ Of the 1,783 respondents, approximately 695 submit filings showing they had no transactions. The burden for these filings is minimal.

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This proposal does not affect the frequency of the current collection. The Commission created the quarterly filing requirement to balance concerns about the potential business sensitivity of the data with the FPA section 205(c) requirement to have rates on file in a convenient form and place. Instead of requiring daily or weekly filings of EQR transaction data, the Commission determined (in Order No. 2001) that a lag of 30 to 120 days would be sufficient to reduce “any potential harm to competitors that could result from the disclosure of price data⁵.” A less frequent collection would extend the time under which charged electric rates would not be on file at the Commission, affecting the Commission and the public’s ability to perform oversight and review as anticipated in FPA section 205(c).

7. EXPLAIN ANY SPECIAL CIRCUMSTANCES RELATING TO THE INFORMATION COLLECTION

The EQR meets OMB's section 1320.5 requirements.

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

The Commission's procedures require that the rulemaking notice be published in the Federal Register, thereby allowing all public utilities, natural gas and oil pipeline companies, state commissions, federal agencies, and other interested parties an opportunity to submit comments, or suggestions concerning the proposal. This proposed rule is requesting public comments.

In addition, FERC announced (in the NOPR and at <http://elibrary.ferc.gov/idmws/common/opennat.asp?fileID=13021744>) that staff would hold a technical conference on 7/11/12 to discuss the system changes and filing options. The technical conference is being webcast and transcribed.

9. EXPLAIN ANY PAYMENT OR GIFTS TO RESPONDENTS

The Commission does not provide compensation or remuneration to entities subject to its jurisdiction.

10. DESCRIBE ANY ASSURANCE OF CONFIDENTIALITY PROVIDED TO RESPONDENTS

Generally, the Commission does not consider the EQR to be confidential. An entity seeking confidential treatment of any submittal to FERC may submit a request under 18 CFR 388.112 of the Commission’s regulations (“Requests for special treatment of documents submitted to the Commission”).

⁵ Order No. 2001, at P. 122.

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11. PROVIDE ADDITIONAL JUSTIFICATION FOR ANY QUESTIONS OF A SENSITIVE NATURE THAT ARE CONSIDERED PRIVATE.

There are no questions of a sensitive nature that are considered private.

12. ESTIMATED BURDEN ON COLLECTION OF INFORMATION and

13. ESTIMATED OF THE TOTAL COST BURDEN TO RESPONDENTS

The Commission’s estimate of the average annual⁶ burden and industry cost related to the proposed rule in Docket RM12-3-000 follow:

NOPR in RM12-3-000 (EQR Refresh) on Electric Quarterly Report								
	No. of Respondents	No. of Responses per Respondent per Year	Implementing (One-time) Burden per Respondent		Recurring Operating Burden per Respondent per Response ⁷		Average Annual Burden Per Respondent (implementation averaged over Years 1-3)	
			Burden Hours	Cost (\$)	Burden Hours ⁸	Cost (\$)	Burden Hours	Cost (\$)
Companies within non-California RTO, and large cos. within Cal. RTO	405	4	20	\$1,434.50	32 ⁹	\$1,658.56 Error: Reference source not found	134.6667	\$7,112.41
Medium/small companies within Cal. RTO	20	4	20	\$1,434.50	80 Error: Reference source not found	\$4,146.40 Error: Reference source not found	326.6667	\$17,063.77
Companies not within RTO	663	4	20	\$1,434.50	3 Error: Reference source not found	\$155.49 Error: Reference source not found	18.6667	\$1,100.13

6 For purposes of calculating the annual averages, the one-time implementation burden and cost have been averaged over the 3-year period and added to the annual recurring burden and cost..

7 The Commission expects no change or a slight decrease in the Recurring Operating Burden per Respondent per Response under the new filing system (when compared to quarterly filings under the existing system).

8 For the existing EQR system, the Commission estimates the average burden per respondent per quarterly filing to be: 32 hours for Companies within non-California RTO, and large companies within the California RTO; 80 hours for medium/small Companies within the California RTO; 3 hours for Companies not within an RTO; and 0.083 hours [5 minutes] for Companies with no transactions.

9 These figures represent recurring burdens per respondent for each quarterly EQR filing. These hours are currently included in FERC-516. Under Docket RM12-3, these recurring burden estimates are not changed from the current estimates for the recurring burden of the current EQR system. The recurring burdens represent the estimate of the ‘to be’ FERC-920 recurring burden and will be removed from FERC-516 upon issuance of a final rule and approval by OMB of the FERC-920.

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Companies with no transactions	695	4	20	\$1,434.50	.083Error: Reference source not found	\$4.30Error: Reference source not found	6.9987	\$495.37
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An Excel spreadsheet which includes the totals is available in ROCIS under Supplementary Documents. [Please note that some of the figures may differ by a few cents, due to rounding and/or truncating.]

The one-time implementation burden and cost for all 1,783 respondents are 35,660 hours (1,783 respondents * 20 hours), and \$2,557,713.50 (1,783 respondents * \$1,434.50). The total average annual cost (for all 1,783 respondents) is \$4,295,469.10; this figure averages the one-time implementation cost over the 3 years and includes the quarterly recurring operating costs.

The Commission recognizes that there will be an initial implementation burden associated with reviewing the instructions, revising the filing process, adding the agent to the respondent’s eRegistration data, obtaining a Company Identifier, and filing EQR data through the new system. The Commission estimates a burden of 20 hours per filer for the one-time implementation.

For the recurring effort involved in electronically submitting EQR data on a quarterly basis to the Commission, the Commission anticipates that there will be either no change or a slight burden reduction when compared to the burden of making quarterly filings under the current system. The Commission seeks comments on the burden estimates related to the recurring quarterly filings.

Information Collection Costs: The Commission has estimated the cost of compliance per respondent to be \$1,434.50, for the one-time implementation of the changes proposed in this NOPR. The Commission has estimated the implementation cost as follows¹⁰:

- legal staff (at \$250/hour), for 2 hours, costing \$500
- senior accountant (at \$51.38/hr.), financial analyst (at \$68.12/hr.), and/or support staff (at \$35.99/hr.), averaged at \$51.83/hr., for a total of 2 hours, costing \$103.66
- information technology analyst (at \$57.24/hour), for 12 hours, costing \$686.88
- support staff (at \$35.99/hr), for 4 hours, costing \$143.96.

14. ESTIMATED ANNUALIZED COST TO THE FEDERAL GOVERNMENT

The estimated annual cost to the Federal Government related only to the data collection requirements as proposed in the Notice of Proposed Rulemaking in RM12-3 follows:

¹⁰ Hourly average wage is an average and was calculated using Bureau of Labor Statistics (BLS), Occupational Employment Statistics data for May 2011 (for NAICS 221100 - Electric Power Generation, Transmission and Distribution, at http://bls.gov/oes/current/naics4_221100.htm#00-0000) for the senior accountant, financial analyst, information technology analyst, and support staff. The average hourly figure for legal staff is a composite from BLS and other resources.

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	No. of FTE's	Estimated Annual Cost (averaged over years 1-3) (\$)
Annual Figure for Analysis and Processing of all submitted data [average cost for 1 FTE(including salary and benefits) is \$143,540/year for 2012]	3.6153 FTEs [includes 0.1153 FTEs (user support function) + 3.5 FTEs (analysis/processing)]	\$518,940.16
Data Clearance Cost ¹¹		\$1,588
Estimated Hardware/Software Costs (including development, testing, implementation, operation, maintenance, and related human resources).		\$198,526.67 ¹²
Total Estimated Annualized Federal Cost		\$719,054.83

Annual Analysis and Processing of Filings

- Due to the proposed rule in RM12-3, we anticipate an incremental reduction in the staffing level associated with the current recurring EQR filing requirements.¹³ With the changed filing process in RM12-3, the support function, during the week before each quarterly filing is due, should be halved, at least [to 1.5 staff members for 1 week each, 4 times per year, giving a total of 6 weeks of effort]. The associated cost is \$16,562.31 per year ((6 weeks/52weeks) * \$143,540/FTE = \$16,562.31).¹⁴
- Costs to analyze and process EQR filings year-round should remain steady at between three and four FTEs. The associated yearly cost (using an average of 3.5 FTE/year * \$143,540/FTE) = \$502,390.

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

Currently, EQRs are filed by downloading EQR software from the Commission's website, installing it on the filer's Microsoft Windows-based computer, entering the EQR data into the software, and then submitting the EQR data to the Commission. Technological changes and limitations will render the current software unsustainable. Therefore, the Commission proposes a new filing system that will provide EQR filers with two new options (filing through the provided web interface or using XML format) and will result in an improved method of identifying the filer (the Company Identifier). These changes will result in a one-time

11 The estimate is based on the assumption that it takes 24 hours of work time to perform the activities related to compliance with the Paperwork Reduction Act and OMB's implementing regulations .

12 The Commission estimates the hardware, software, and related human IT resource costs to be:

- Year 1: Implementation costs (\$533,580) + operating/maintenance costs (\$8,000) = \$541,580
- Year 2 & Year 3: Operating/maintenance costs = \$27,000/year

13 Using the current filing system, the Commission requires staff expertise to support the outmoded filing software. This effort to respond to filers who are experiencing some problem with the software, making it impossible to file, is usually performed by two to three subject matter experts over the course of the week before each quarterly filing [3 staff members for 1 week each, 4 times per year, giving a total of 12 weeks of effort].

14 FTE is the full time equivalent of one staff member.

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implementation burden increase (as highlighted in the table for question #12). Conversely, the recurring operating burden imposed by the EQR filing system will remain unchanged.

16. TIME SCHEDULE FOR THE PUBLICATION OF DATA

The data are being collected for regulatory purposes and not for the purposes of publication.

17. DISPLAY OF EXPIRATION DATE

The OMB Control No. and expiration date are posted on www.ferc.gov at <http://www.ferc.gov/docs-filing/forms.asp#516>.

18. EXCEPTION TO THE CERTIFICATION STATEMENT

The data collected for these reporting and recordkeeping requirements are not used for statistical purposes.