

**FERC-516 (OMB Control No. 1902-0096) and FERC-920 (OMB Control No. 1902-0255),
as modified in the Final Rule (issued 11/20/2015) in Docket No. RM15-2
RIN: 1902-AE96
(updated 2/18/2016)**

Supporting Statement for
**FERC-516, Electric Rate Schedules and Tariff Filings and
FERC-920, Electric Quarterly Report (EQR),**
as modified by the Final Rule (issued on 11/20/2015) in Docket No. RM15-2

The Federal Energy Regulatory Commission (Commission or FERC) requests that the Office of Management and Budget (OMB) review FERC-516 (Electric Rate Schedule and Tariff Filings) and FERC-920¹ (Electric Quarterly Report). This is a consolidated supporting statement (related to the Final Rule (Order 819) in Docket No. RM15-2²); it will be submitted to OMB under the two different Information Collection Requests (one each for FERC-516 and FERC-920).

In this Final Rule in RM15-2, FERC is revising its regulations to foster competition in the sale of primary frequency response service. Specifically, the Commission amends its regulations to revise Subpart H to Part 35 of Title 18 of the Code of Federal Regulations governing market-based rates for public utilities pursuant to the Federal Power Act (FPA) to permit the sale of primary frequency response service at market-based rates by sellers with market-based rate authority for sales of energy and capacity.

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

FERC-516. The Federal Power Act Section 205³ requires the Federal Energy Regulatory Commission to ensure that the rates and charges for the wholesale sale of electric energy are just and reasonable. Section 205 also requires that the rules and regulations affecting or pertaining to the rates and charges for the wholesale sale of electric energy be just and reasonable.

FERC-920. FERC set forth the EQR filing requirements in Order No. 2001⁴ which 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. FERC established the EQR reporting requirements to obtain data needed to perform its regulatory functions over transmission service and wholesale 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

1 Prior to FERC's Final Rules in Docket Nos. RM10-12 and RM12-3 and the related OMB Notices of Action, the EQR (now FERC-920) had been included in FERC-516 (for years).

2 The NOPR is posted at <http://elibrary.ferc.gov/idmws/common/opennat.asp?fileID=13775964>; the news release is posted at <http://elibrary.ferc.gov/idmws/common/opennat.asp?fileID=13776953>.

The Final Rule is posted at <http://elibrary.ferc.gov/idmws/common/OpenNat.asp?fileID=14050319>; the News Release is posted at <http://elibrary.ferc.gov/idmws/common/OpenNat.asp?fileID=14049702>.

3 16 U.S.C. 824d(a)

4 Order No. 2001 (in Docket RM01-8-000) issued 4/25/2002 and posted at http://elibrary-backup.ferc.gov/idmws/File_list.asp?document_id=2270047.

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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.”

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

FERC-516. The Final Rule permits the sale of primary frequency response service at market-based rates by sellers with market-based rate authority for sales of energy and capacity. As one condition applicable to such sales, and consistent with FPA section 205, sellers must amend their market-based rate tariffs to include primary frequency response service as a product they are authorized to sell, and this minor tariff filing constitutes the one-time FERC-516 burden resulting from this Final Rule.

FERC-920. 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.” The EQR constitutes the strict reporting requirements that helps differentiate the Commission’s market based rate program from impermissible market deregulation. As relevant to this Final Rule, any sales of primary frequency response service at wholesale must be reported in the EQR for the same reasons discussed above.

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

FERC-516. FERC implemented its eTariff system (fully implemented in 2010) for the electronic filing of tariffs.

FERC-920. EQR is also filed electronically.

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

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FERC rules and data requirements are periodically reviewed in conjunction with OMB clearance expiration dates. This includes a review of FERC's regulations and data requirements to identify duplication. The information to be submitted, generated, kept, or posted, pursuant to this Final Rule is not readily available from other sources.

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

The Small Business Administration's (SBA) Office of Size Standards develops the numerical definition of a small business.⁵ The SBA revised its size standard for electric utilities (effective January 22, 2014) from a standard based on megawatt hours to a standard based on the number of employees, including affiliates.⁶ Under SBA's current size standards, the entities with market-based rates which are affected by this Final Rule likely come under the following SBA categories with the indicated thresholds (in terms of number of employees):

- Hydroelectric Power Generation, 500 employees
- Fossil Fuel Electric Power Generation, 750 employees
- Nuclear Electric Power Generation, 750 employees
- Solar Electric Power Generation, 250 employees
- Wind Electric Power Generation, 250 employees
- Geothermal Electric Power Generation, 250 employees
- Biomass Electric Power Generation, 250 employees
- Other Electric Power Generation, 250 employees.

The categories for the applicable entities have a size threshold ranging from 250 employees to 750 employees. For the analysis in this rule, we are using the threshold of 750 employees for all categories. We anticipate that a maximum of 82 percent of the entities potentially affected by this Final Rule are small. In addition, we expect that not all of those entities will be able to or will choose to offer primary frequency response service.

We expect a one-time burden cost of \$576 (including the burden cost related to filing both the FERC-516 and FERC-920) for each entity that decides to offer primary frequency response service.

The Commission does consider waivers for small entities, which serves as an option for small entities to reduce their burden. The Commission grants these waivers on a case-by-case basis.

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

FERC-516. FERC requires this information (much of which is unaffected by this Final Rule) in order to perform its mandated oversight and review responsibilities with respect to electric

⁵ 13 CFR 121.101 (2014).

⁶ SBA Final Rule on "Small Business Size Standards: Utilities," 78 FR 77,343 (Dec. 23, 2013).

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market-based rates being just and reasonable. Without this information, the Commission would be unable to meet its statutory responsibility under Section 205 of the FPA to ensure electric utility rates and tariffs are just and reasonable. Failing to meet this responsibility could result in public utilities charging rates that are not just and reasonable.

FERC-920. 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 data.” 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

FERC-516 and FERC-920 are consistent with the guidelines in 5 CFR 1320.5(d).

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

The NOPR in RM15-2 requested public comment and was published in the Federal Register.⁷ No comments were submitted regarding the burden estimate or other PRA-related issues in the NOPR. Comments regarding the proposed rule changes in the NOPR are addressed in the Final Rule.

The Final Rule will also be published in the Federal Register.

9. EXPLAIN ANY PAYMENT OR GIFTS TO RESPONDENTS

There are no payments or gifts to respondents associated with these collections.

10. DESCRIBE ANY ASSURANCE OF CONFIDENTIALITY PROVIDED TO RESPONDENTS

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. 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,

⁷ 80 FR 10426, 2/26/2015

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**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

While, to the Commission's knowledge, no entity currently sells primary frequency response service on an unbundled basis,⁸ there is no reason why primary frequency response service could not be sold today under cost-based rates. Such cost-based sales, if they occurred, would face all of the burdens associated with cost-of-service regulation, including a variety of requirements from which market-based rate sellers frequently seek and are granted waiver.⁹ Furthermore, just like market-based rate sellers, cost-based rate sellers must report all transactions in the Electric Quarterly Report. Accordingly, the Commission views this Final Rule as providing potential market-based rate sellers of primary frequency response service with the opportunity to avoid cost-of-service regulation for such sales and the associated substantial reporting burdens.

Below, we detail the expected increases in burden as a result of this Final Rule. The Commission expects the additional burden to be greatly outweighed by the reduction in burden from avoiding cost-of-service regulation. The additional estimated annual public reporting burdens and costs for the requirements in this final rule are as follows.

⁸ It is likely that some customers purchase primary frequency response service along with other services on a bundled basis, such as through full requirements contracts, but this Final Rule is focused on unbundled sales of primary frequency response service.

⁹ For example, the need to maintain Open Access Transmission Tariffs and Open Access Same-Time Information Systems related to any jurisdictional transmission facilities owned by the entity, the need to adhere to the Commission's standards of conduct, the need to adhere to the detailed cost-of-service related requirements of subparts B and C of Part 35 of the Commission's regulations, the need to adhere to the accounting and reporting requirements of Parts 41, 101, and 141 of the Commission's regulations, and the need to seek separate authorizations for issuances of securities and assumptions of liabilities under FPA section 204 and Part 34 of the Commission's regulations.

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| Changes made in Final Rule in RM15-2¹⁰ | | | | | |
|--|--|--|---|--|----------------------------------|
| Number of Respondents (a) | Annual Number of Responses per Respondent (b) | Total Number of Responses (a)X(b)=(c) | Average Burden & Cost Per Response (d) | Total Annual Burden Hours & Total Annual Cost (c)X(d)=(e) | Cost per Response (e)/(c) |
| FERC-516 (Electric Rate Schedules and Tariff Filings) (one time, phased in) | | | | | |
| 1,585 ¹¹ | 0.163 ¹² | 259 | 6 hrs.; \$432 | 1,554 hrs.; \$111,888 | \$432 |
| FERC-920 (Electric Quarterly Report) (one-time, phased in) | | | | | |
| 1,585 | 0.163 ¹³ | 259 | 2 hrs.; \$144 | 518 hrs.; \$37,296 | \$144 |

10 We think that industry staff members are similarly situated to FERC, in terms of hourly cost per full time employee. Therefore, the estimated average hourly cost (salary plus benefits) is \$72.00.

11 The 1,585 respondent universe includes existing sellers (1,999 total market-based rate sellers - 697 Category 1 sellers + 70 Category 1 sellers = 1,372 sellers estimated to sell primary frequency response services) plus 213 new market-based rate applicants (as estimated in Docket No. RM14-14). (We estimate that ten percent (or 70, as indicated above) of the Category 1 sellers may choose to sell primary frequency response services.)

12 We expect respondents to enter the primary frequency response market gradually. For each of the next three years, we expect all 213 new market-based rate applicants per year (or 639 total during Years 1-3), to include the primary frequency response language in their tariffs. Additionally, during the three-year period, we expect a total of ten percent of the existing 1,372 respondents (or 137 respondents), to decide to sell primary frequency response services and to make the corresponding FERC-516 rate filing. The corresponding annual estimate is 46 of the existing respondents (an average of 3.4% annually). Therefore, the annual estimate, including both new respondents and existing respondents, is an average of 259 (213 + 46) respondents and responses per year.

Each respondent only makes one FERC-516 filing due to this Final Rule, and the total pool of respondents is 1,585 respondents with 259 of them expected to file each year. The average number of responses per respondent per year is a calculated value as follows: 259 responses per year/1,585 respondents=0.163 responses per respondent per year.

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13. ESTIMATE OF THE TOTAL ANNUAL COST BURDEN TO RESPONDENTS

There are no non-labor costs associated with the Final Rule in RM15-2. All of the costs in the Final Rule are associated with labor (burden hours), are addressed in Questions 12 and 15, and are not shown in ROCIS metadata.

14. ESTIMATED ANNUALIZED COST TO FEDERAL GOVERNMENT

The estimated annualized cost to the Federal Government for the Final Rule in RM15-2 follows:

| | Federal Employee Hours | Estimated Annual Federal Cost |
|-----------------|-------------------------------|--------------------------------------|
| FERC-516 | | |

13 As respondents decide to sell primary frequency response services, they would report the new offering in their Electric Quarterly Report (FERC-920), and would continue to report in subsequent EQRs. When a filer adds the new service, we estimate the one-time burden to be two hours. We expect any additional burden associated with reporting the new service in the EQR to be negligible after the first implementation as it would become part of the respondent's normal reporting practice in the EQR and would only involve selecting the 'primary frequency response' option from a list of product names. On average, we expect filers of the new primary frequency response service to phase in:

- Year 1, 259 respondents or 16.3 percent of EQR filers.
- Year 2, 259 respondents or 16.3 percent of EQR filers.
- Year 3, 259 respondents or 16.3 percent of EQR filers.

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| | | |
|--|-------------------|----------|
| FERC-516 Analysis and Processing of filings ¹⁴ | 402 ¹⁵ | \$28,944 |
| PRA ¹⁶ Administrative Cost (for FERC-516) | | \$5,193 |
| <i>Sub-Total for FERC-516</i> | | \$34,137 |
| FERC-920 | | |
| Addition of new EQR category label in product picklist | | \$1,000 |
| PRA Administrative Cost (for FERC-920) | | \$5,193 |
| <i>Sub-Total for FERC-920</i> | | \$6,193 |
| FERC Total for FERC-516 and FERC-920, modifications implemented in the Final Rule in RM15-2 | | \$40,330 |

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

15 As discussed under Question 15, our burden estimate assumes 213 new market-based rate applicants and 134 existing market-based rate sellers per year will opt to begin selling primary frequency response service as a result of this Final Rule. For purposes of Question 14, we project no incremental burden (related to the Final Rule) on FERC staff associated with the 213 new market-based rate applications because the Final Rule requires no support different from a standard market-based rate application, and thus no change in the FERC staff review of such an application from what it would have been absent the Final Rule.

With respect to the 134 existing market-based rate sellers assumed to begin offering primary frequency response service each year, we assume 50% will wait to include the tariff filing related to the Final Rule with other market-based rate tariff filings they would have otherwise made anyway, and we project no incremental burden (related to the Final Rule) on FERC staff from this type of filing either. We anticipate that the only incremental burden related to the Final Rule on FERC staff will be associated with those existing market-based rate sellers who make a tariff filing only to add the primary frequency response language required by the Final Rule. We project that processing such a basic tariff filing will require at most 6 hours to analyze the filing and prepare and review a delegated order accepting or rejecting the filing. Accordingly, our estimate of burden related to the Final Rule on FERC staff related to FERC-516 is 402 hours/year, based on 6 hours per filing for 67 (i.e., 50% of 134) filings per year.

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

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These additional costs for the Final Rule in RM15-2 will be added to the existing Federal costs for

- FERC-516, of \$2,808,964¹⁷, giving a new total of \$2,843,101
- FERC-920, of \$518,940, giving a new total of \$525,133

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 collections.

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

Current OMB-Approved Inventory. The current total estimated OMB-approved burden (mostly not affected by this Final Rule in RM15-2) is:

- FERC-516, 498,250 hours, and
- FERC-920, 246,312 hrs.

With respect to both FERC-516 and FERC-920, FERC requires this information (much of which is unaffected by this Final Rule) in order to perform its mandated oversight and review responsibilities with respect to electric market-based rates being just and reasonable.

Final Rule in RM15-2.

In Order No. 697, the Commission provided standard tariff provisions that sellers must include in their market-based rate tariffs to the extent they are applicable based on the services provided by the seller, including a provision for sales of ancillary services as a third-party provider. The Commission hereby revises the “Third Party Provider” ancillary services provision to change the reference to “Regulation and Frequency Response Service” to “Regulation Service” and to add a reference to “Primary Frequency Response Service.” The new language is as follows:

Third-party ancillary services: Seller offers [include all of the following that the seller is offering: Regulation Service, Reactive Supply and Voltage Control Service, Energy and Generator Imbalance Service, Operating Reserve-Spinning, Operating Reserve-Supplemental, and Primary Frequency Response Service]. Sales will not include the following: (1) sales to an RTO or an ISO, i.e., where that entity has no ability to self-supply ancillary services but instead depends on third parties; and (2) sales to a traditional, franchised public utility affiliated with the third-party supplier, or sales where

¹⁷ The supporting statement for ICR 201409-1902-005 (for the final rule in Docket No. RM05-5-022) says in part that “... the total additional Federal Cost for the FERC-516 is \$371,570 These additional costs will be added to the existing Federal costs for a total of \$2,437,394 for the FERC-516”

However, it appears that the additional \$371,570 for the final rule in RM05-5-022 was inadvertently not added to the meta-data field for federal cost in reginfo.gov and ROCIS because that figure is \$2,437,394. Therefore the federal cost field for FERC-516 should be \$2,437,394 + \$371,570 + \$34,137, or \$2,843,101 after implementation of this Final Rule in RM15-2.

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the underlying transmission service is on the system of the public utility affiliated with the third-party supplier. Sales of Operating Reserve-Spinning and Operating Reserve-Supplemental will not include sales to a public utility that is purchasing ancillary services to satisfy its own open access transmission tariff requirements to offer ancillary services to its own customers, except where the Commission has granted authorization. Sales of Regulation Service and Reactive Supply and Voltage Control Service will not include sales to a public utility that is purchasing ancillary services to satisfy its own open access transmission tariff requirements to offer ancillary services to its own customers, except at rates not to exceed the buying public utility transmission provider's OATT rate for the same service or where the Commission has granted authorization.

The Commission finds that a seller that already has market-based rate authority as of the effective date of this Final Rule would be authorized as of that date to make sales of primary frequency response service at market-based rates. Such a seller would be required to revise the third-party provider ancillary services provision of its market-based rate tariff to reflect that it wishes to make sales of primary frequency response service at market-based rates. However, while this authorization is effective for sellers with existing market-based rate authority as of the effective date of this Final Rule, in order to reduce their burden the Commission permits such sellers to wait to file this tariff revision until the next time they make a market-based rate filing [FERC-516], such as a notice of change in status filing or a triennial update.

Consistent with the existing requirements of Order No. 2001, any entity selling primary frequency response service will need to report such sales in the Electric Quarterly Report [FERC-920],¹⁸ and the Commission will update its Electric Quarterly Report system to include a specific product name option for primary frequency response service.

As a result of the Final Rule in RM15-2, there is a one-time (phased-in) increase in the burden for both the FERC-516 and FERC-920 information collections. The following burden estimates are based on the projected burden for the industry to implement the new requirements in this Final Rule, and the gradual phase-in that we expect of filers choosing to provide new primary frequency response service.

Below, we discuss the expected increases in burden as a result of this Final Rule. The Commission expects the additional burden to be greatly outweighed by the reduction in burden from avoiding cost-of-service regulation. The additional estimated annual public reporting burdens and costs for the requirements in this final rule are as follows.

¹⁸ See *Revised Public Utility Filing Requirements*, Order No. 2001, FERC Stats. & Regs. ¶ 31,127, *reh'g denied*, Order No. 2001-A, 100 FERC ¶ 61,074, *reh'g denied*, Order No. 2001-B, 100 FERC ¶ 61,342, *order directing filing*, Order No. 2001-C, 101 FERC ¶ 61,314 (2002), *order directing filing*, Order No. 2001-D, 102 FERC ¶ 61,334, *order refining filing requirements*, Order No. 2001-E, 105 FERC ¶ 61,352 (2003), *order on clarification*, Order No. 2001-F, 106 FERC ¶ 61,060 (2004), *order revising filing requirements*, Order No. 2001-G, 120 FERC ¶ 61,270, *order on reh'g and clarification*, Order No. 2001-H, 121 FERC ¶ 61,289 (2007), *order revising filing requirements*, Order No. 2001-I, FERC Stats. & Regs. ¶ 31,282 (2008).

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Summary. The following two tables show the current OMB-approved inventory, as well as the estimated annual impact of the changes discussed in this Final Rule and supporting statement.

| FERC-516 | Total Request | Previously Approved | Change due to Adjustment in Estimate | Change Due to Agency Discretion |
|----------------------------|----------------------|----------------------------|---|--|
| Annual Number of Responses | 5,806 | 5,547 | 0 | +259 |
| Annual Time Burden (Hr.) | 499,804 | 498,250 | 0 | +1,554 |
| Annual Cost Burden (\$) | 0 | 0 | 0 | 0 |

| FERC-920 | Total Request | Previously Approved | Change due to Adjustment in Estimate | Change Due to Agency Discretion |
|----------------------------|----------------------|----------------------------|---|--|
| Annual Number of Responses | 11,275 | 11,016 | 0 | +259 |
| Annual Time Burden (Hr.) | 246,830 | 246,312 | 0 | +518 |
| Annual Cost Burden (\$) | 0 | 0 | 0 | 0 |

16. TIME SCHEDULE FOR PUBLICATION OF DATA

Unless confidential treatment is sought, the FERC-516 tariff filing related to the Final Rule in RM15-2 is publicly posted in our eTariff and eLibrary web-based systems when filed. Similarly, the FERC-920 data, including any primary frequency response EQR data due to the Final Rule in RM15-2, is filed on a quarterly basis and made publicly available on the Commission’s website. However, FERC does not publish any other data associated with either of these collections.

17. DISPLAY OF EXPIRATION DATE

The clearance information and expiration dates are available at <http://www.ferc.gov/docs-filing/info-collections.asp>.

18. EXCEPTIONS TO THE CERTIFICATION STATEMENT

There are no exceptions.