

135 FERC ¶ 61,052
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

18 CFR Part 366

(Docket No. RM11-12-000)

Availability of E-Tag Information to Commission Staff

(April 21, 2011)

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Federal Energy Regulatory Commission (Commission) proposes to revise its regulations to require the Commission-certified Electric Reliability Organization to make available to Commission staff, on an ongoing basis, access to complete electronic tagging data used to schedule the transmission of electric power in wholesale markets. This information will aid the Commission in market monitoring and preventing market manipulation, help assure just and reasonable rates, and aid in monitoring compliance with certain business practice standards adopted by the North American Energy Standards Board and incorporated by reference into its regulations and public utility tariffs by the Commission. The Commission is also considering making this information available to entities involved in market monitoring functions and invites comments on this option.

DATES: Comments on the proposed rule are due [insert date 60 days after publication in the **FEDERAL REGISTER**].

ADDRESSES: You may submit comments identified by Docket No. RM11-12-000, by one of the following methods:

- Agency Web Site: <http://ferc.gov>. Follow the instructions for submitting comments via the eFiling link found in the Comment Procedures Section of the preamble.
- Mail: Commenters unable to file comments electronically must mail or hand deliver an original of their comments to the Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street, NE, Washington, DC 20426. Please refer to the Comment Procedures Section of the preamble for additional information on how to file paper comments.

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SUPPLEMENTARY INFORMATION:

135 FERC ¶ 61,052
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Availability of E-Tag Information
to Commission Staff

Docket No. RM11-12-000

NOTICE OF PROPOSED RULEMAKING

(April 21, 2011)

1. In this Notice of Proposed Rulemaking (NOPR), the Federal Energy Regulatory Commission (Commission) proposes, pursuant to § 307(a) and § 309 of the Federal Power Act (FPA),¹ to amend its regulations to require the Electric Reliability Organization (ERO) certified by the Commission under § 39.3 of the Commission's regulations² to make available to Commission staff, on an ongoing basis, access to the complete electronic tags (e-Tags) used to schedule the transmission of electric power interchange transactions in wholesale markets.³ The Commission proposes to require the ERO to provide access to e-Tags, rather than requiring individual market participants to provide such access, so as to avoid

¹ 16 U.S.C. 791a, *et seq.*

² 18 C.F.R. § 39.3 (2010).

³ For purposes of this NOPR, "complete e-Tags" refers to (1) e-Tags for interchange transactions scheduled to flow into, out of or within the United States' portion of the Eastern or Western Interconnections, or into or out of the Electric Reliability Council of Texas and into or out of the United States' portion of the Eastern or Western Interconnections, and (2) information on every aspect of the e-Tag, including all applicable e-Tag-IDs, transaction types, market segments, physical segments, profile sets, transmission reservations, and energy schedules.

imposing this burden on market participants of submitting e-Tags with both the ERO and the Commission.

I. Background

2. The North American Electric Reliability Corporation (NERC), formerly known as the North American Electric Reliability Council, was established in 1968, in response to the 1965 electricity blackout in the northeast. At that time, the industry-created council included nine regional reliability groups, began regional planning coordination, and developed voluntary operations criteria and guides. Over the years, NERC modified its membership rules and governing structure and, in 2006, the Commission approved NERC's application to become the ERO for the United States.⁴

3. The North American Energy Standards Board (NAESB) is a non-profit standards development organization established in January 2002 that serves as an industry forum for the development of business practice standards. NAESB has developed a number of business practice standards that the Commission has incorporated by reference into its regulations, thus making compliance with these standards a mandatory Commission requirement.⁵

⁴ *North American Electric Reliability Corporation*, 116 FERC ¶ 61,062 (2006), *order on reh'g*, 117 FERC ¶ 61,126 (2006), *order on compliance*, 118 FERC ¶ 61,030 (2007).

⁵ *See, e.g., Standards for Business Practices and Communication Protocols for Public Utilities*, Order No. 676, FERC Stats. & Regs., Regulations Preambles ¶ 31,216 (2006), *reh'g denied*, Order No. 676-A, 116 FERC ¶ 61,255 (2006).

4. NERC and NAESB coordinate the development of business practices and reliability standards for the wholesale electric industry. The members and staff of NERC and NAESB actively participate in both organizations, and NERC is a member of the NAESB Wholesale Electric Quadrant. NAESB representatives participate in NERC technical committees and regularly attend meetings of the Member Representatives Committee and Board of Trustees.

5. NERC and NAESB use a joint coordination procedure to ensure tight integration of their respective standards development processes where reliability and commercial needs are closely related. Some examples where such coordination has been required are electronic tagging, transmission loading relief (TLR) procedures, and determination of available transfer capability. This coordination includes joint meetings, inter-organizational reviews of standards and comments, and often jointly developed filings.

6. E-Tags, also known as Requests for Interchange, are used to schedule interchange transactions⁶ in wholesale markets.⁷ NERC and/or Regional Entities (such as WECC) collect all e-Tag data in near real-time to assist Reliability

⁶ NERC's *Glossary of Terms Used in Reliability Standards* (updated April 20, 2009) defines an interchange transaction as "[a]n agreement to transfer energy from a seller to a buyer that crosses one or more Balancing Authority Area boundaries." See http://www.nerc.com/files/Glossary_2009April20.pdf (page 10 of 21) (last visited on March 23, 2011).

⁷ E-Tag Transaction Tags are part of the Interchange Distribution Calculator and Websas that are used in the TLR procedure IRO-006-4.1 and WECC Unscheduled Flow Standard IRO-STD-006-0 for the Eastern and Western Interconnection, respectively.

Coordinators in identifying transactions that need to be curtailed for relieving overload when transmission constraints occur. E-Tags are included in the business practice standards adopted by NAESB and incorporated by reference into its regulations and public utility tariffs by the Commission.⁸

7. Currently, the Commission and its staff do not have access to the complete e-Tags used for interchange transactions. We believe that access to this information would enhance the Commission staff's efforts to monitor market developments and prevent market manipulation, assure just and reasonable rates, and in monitoring compliance with certain NAESB business practice standards.⁹

8. Accordingly, in this NOPR, the Commission proposes to require the Commission-certified ERO to make available to Commission staff on an ongoing, non-public basis the complete e-Tags used to schedule the transmission of electric power in wholesale markets. In addition, while not specifically proposed in this NOPR, the Commission is inviting comments on whether the Commission should

⁸ NAESB Wholesale Electric Quadrant (WEQ) Business Practice Requirement 004-2 states that the "primary method of submitting the Request for Interchange (RFI) to the Interchange Authority shall be an e-Tag using protocols in compliance with the *Electronic Tagging Functional Specification, Version 1.8*." See *NAESB Wholesale Electric Quadrant (WEQ) Business Practice Standards (Version 002.1)*, published March 11, 2009. More recently, NERC has updated its tagging specifications, see *infra* n.12, but this update is not reflected in the WEQ Version 002.1 business practice standards incorporated by reference by the Commission.

⁹ Having access to e-Tags would allow Commission staff to electronically download, receive and store data, as necessary and appropriate. Under the NOPR proposal, Commission staff would gain access to the e-Tag data that is currently being collected and stored in databases by private vendors under contract with NERC.

require that complete e-Tags be made available to entities involved in market monitoring of RTOs and ISOs. Commenters should consider this broader availability option as within the scope of options being considered in this rulemaking.

II. Discussion

9. In this NOPR, the Commission proposes to require the ERO to provide Commission staff with access to the e-Tags used to schedule interchange transactions in wholesale markets on a non-public basis. Under the FPA, the Commission has authority over public utilities that make wholesale power sales or that provide wholesale transmission service to report the details of their transactions, including complete e-Tag data. Additionally, under § 307(a) of the FPA, the Commission has, among its powers, authority to investigate any facts, conditions, practices, or matters it may deem necessary or proper to determine whether any person, electric utility, transmitting utility or other entity may have violated or might violate the FPA or the Commission's regulations, or to aid in the enforcement of the FPA or the Commission regulations, or to obtain information about wholesale power sales or the transmission of power in interstate commerce.

10. The Commission proposes to require the ERO (NERC) rather than individual market participants to provide access to the e-Tag data to avoid burdening market participants with a requirement to file the same data with both NERC and the Commission. In addition, obtaining access from one entity (i.e., NERC) will avoid burdening the Commission with developing and maintaining a new system to capture such data from individual market participants.

11. E-Tagging was first implemented by NERC on September 22, 1999, as a process to improve the speed and efficiency of the tagging process, which had previously been accomplished by e-mail, facsimile, and telephone exchanges.¹⁰ E-Tags require that, prior to scheduling transactions, one of the market participants involved in a transaction must submit certain transaction-specific information, such as the source and sink control areas (now referred to as Balancing Authority Areas) and control areas along the contract path, as well as the transaction's level of priority and transmission reservation Open Access Same-Time Information System reference numbers, to control area operators and transmission operators on the contract path.¹¹
12. Communication, submission, assessment, and approval of an e-Tag must be completed before the interchange transaction is implemented.¹² The Interchange Scheduling and Coordination (INT) group of Reliability Standards sets forth requirements for implementing interchange transactions through e-Tags. E-Tags are submitted pursuant to the business practices set forth by NAESB. Those business practices set forth the requirements for a proper e-Tag to permit an Interchange

¹⁰ *Open-Access Same-Time Information System and Standards of Conduct*, 90 FERC ¶ 61,070, at 61,258-59 (2000) (Order Denying Cease and Desist Order).

¹¹ *Id.*

¹² *See Mandatory Reliability Standards*, Order No. 693, FERC Stats. & Regs. ¶ 31,242 at P 795, *order on reh'g*, Order No. 693-A, 120 FERC 61,053 (2007); *see also Revised Mandatory Reliability Standards for Interchange Scheduling, Coordination*, Order No. 730 at P 7 & n.19. E-Tags are implemented through the requirements set forth in the *NAESB Electronic Tagging Functional Specifications*, Version 1.8.1 (Oct. 27, 2009).

Authority to accept and process the e-Tag. NERC collects all e-Tags in near real-time that are used in the congestion management tools to identify which transaction tags must be curtailed to mitigate the overload when transmission constraints occur.

13. Two early cases addressed the issue of whether public utilities would need to comply with NERC's e-Tag requirements as a precondition to making wholesale power sales.¹³ In *Coalition Against Private Tariffs*, 83 FERC ¶ 61,015, *reh'g denied*, 84 FERC ¶ 61,050 (1998), the Commission dismissed a motion requesting it to order public utilities to cease and desist from requiring compliance with NERC's tagging plan as a condition to scheduling transactions.¹⁴ In addition, the Commission found that "the information required to be submitted by the NERC tagging plan is consistent with the information already required to be submitted under a Transmission Provider's compliance tariff,"¹⁵ so that the tagging plan did not require a change to terms and conditions of OATTs on file with the Commission.

14. In another early order involving e-Tags,¹⁶ the Commission denied a motion for a cease and desist order and found that the e-Tag system has generally improved the reliability and efficiency of the transmission system and facilitates the access of

¹³ We note, however, that the use of e-Tags is not limited to transactions involving public utilities.

¹⁴ 83 FERC at 61,039.

¹⁵ 84 FERC at 61,235.

¹⁶ *Open Access Same-Time Information Systems and Standards of Conduct*, 90 FERC ¶ 61,070, at 61,260-62 (2000) (Order Denying Cease and Desist Order).

system transmission operators to critical information that can be used to analyze "the way in which a particular transaction may impact transmission system stability."¹⁷

Moreover, the Commission found that the e-Tag system is an important element of Next Hour Market Service.¹⁸

15. We believe that obtaining access to complete e-Tag data will help the Commission to detect anti-competitive or manipulative behavior or ineffective market rules, monitor the efficiency of the markets, and better inform Commission policies and decision-making. Thus, the Commission proposes to require the ERO to provide access to complete e-Tag data on a non-public basis to Commission staff. For example, by using e-Tag data, in coordination with other resources,¹⁹ the Commission will be able to better identify interchange schedules that appear anomalous or inconsistent with rational economic behavior. In this regard, access to e-Tag data would allow the Commission's staff to examine more effectively situations where interchange schedules are absent even when transmission capacity is available and pricing differences between the two locations ought to be sufficient to encourage transactions between those locations. Such a circumstance could signal a

¹⁷ *Id.*, 90 FERC at 61,262.

¹⁸ *Id.*

¹⁹ For instance, in Docket No. RM10-12-000, the Commission is issuing a NOPR concurrently with this NOPR, whereby the Commission proposes that e-Tag IDs be included in the transaction details reported in Electric Quarterly Reports.

market issue or other problem. In addition, Commission access to e-Tags would help facilitate Commission audits or investigations in cases where e-Tags are relevant.

16. In light of the various Commission uses for e-Tag data, we propose to locate this requirement within § 366.2 of our regulations, which governs Commission access to books and records. Thus, we propose to revise § 366.2 of our regulations to redesignate the current paragraph (d) as paragraph (e), and to add a new paragraph (d) establishing a formal requirement for the ERO to make this information available on an ongoing basis to the Commission's Staff. By establishing this requirement as part of § 366.2, it is clear that, under the newly designated paragraph (e), the information would be kept confidential and would not be made publicly available, except as directed by the Commission, or a court with appropriate jurisdiction.²⁰

²⁰ In a NOPR on *Electricity Market Transparency Provisions of Section 220 of the Federal Power Act*, in Docket No. RM10-12-000, being issued concurrently with this NOPR, the Commission proposes to require individual market participants to file, if applicable, e-Tag IDs as part of their publicly-available Electric Quarterly Report (EQR). An e-Tag ID is a subset of the information in a complete e-Tag that contains information about the source Balancing Authority in which the generation is located; a unique transaction identifier assigned by the e-Tag system when transmission service to accommodate the transaction is reserved; and the sink Balancing Authority in which the load is located. The Commission believes that the information contained in e-Tag IDs is not privileged or confidential.

Unlike the public availability of e-Tag "ID" information proposed in Docket No RM10-12-000, in the instant proceeding in Docket No. RM11-12-000, the Commission is proposing to keep all other ("non-ID") e-Tag data non-public. We note that persons could file a request to obtain such data through a request under the Freedom of Information Act (FOIA). The Commission, however, is of the view that these data would be covered by exemption 4 of FOIA, which protects "trade secrets and commercial or financial information obtained from a person [that is] privileged or confidential." 5 U.S.C. § 552(b)(4) (2006), *amended by* OPEN Government Act of

(continued)

17. Currently, the access of market monitoring units (MMUs) for RTOs and ISOs to e-Tag data is often limited to schedules with contract paths in the market that the MMU is tasked with monitoring.²¹ Allowing MMUs access to complete e-Tag data may improve their ability to monitor loop flows and their corresponding market impacts.

18. Accordingly, the Commission invites comment on whether this information should be made available to MMUs. If so, should the data be provided to MMUs on a real-time basis? The Commission also invites comment on whether making the data available to MMUs would raise confidentiality issues or require specific confidentiality provisions. For example, should such entities sign a confidentiality agreement in order to access the information? In addition, the Commission invites comment on what would be the benefit(s) or drawback(s) to the Commission obtaining this information from individual market participants rather than NERC.

III. Information Collection Statement

19. The following collection of information contained in this proposed rule is being submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507(d). The Commission solicits comments on the Commission's need for this information,

2007, Pub. L. No. 110-175, 121 Stat. 2524. Accordingly, these data would not be obtainable under the FOIA in that circumstance.

²¹ See *Electronic Tagging Functional Specifications, Version 1.8.1* (Oct. 27, 2009), Joint Electric Scheduling Subcommittee, North American Energy Standards Board – Wholesale Electric Quadrant, at 9, 23, and 64.

whether the information will have practical utility, the accuracy of the provided burden estimate, ways to enhance the quality, utility, and clarity of the information to be collected, and any suggested methods for minimizing respondents' burden, including the use of automated information techniques. Respondents subject to the filing requirements of this rule will not be penalized for failing to respond to this collection of information unless the collections of information display a valid OMB Control number.

20. The proposed rule makes information available to Commission staff, but does not require, as part of the proposals in this NOPR, that NERC collect any new information, repackage the information into any kind of report, or make any computations or adjustments to the raw information. This being the case, the Commission estimates that the reporting burden associated with compliance with this proposed rule is *de minimis*, and is limited to reviewing the Commission ruling and providing permission for staff to access the information.

Data Collection FERC-740	No. of Respondents Annually (1)	No. of Responses Per Respondent (2)	Hours Per Response (3)	Total Annual Burden Hours (1)X(2)X(3)
NERC	1	1	7	7

Total Annual Hours for Collection

Reporting = 7 hours

Information Collection Costs: The Commission seeks comments on the costs to comply with these requirements. It has projected the average annualized cost to be the following:

Total Annualized Cost = \$840 (7 hours @ \$120/hr²²)

21. OMB regulations²³ require OMB to approve certain information collection requirements imposed by agency rule. The Commission is submitting notification of this proposed rule to OMB. These information collections are mandatory requirements.

Title: (Proposed) FERC-740, Availability of e-Tag Information to Commission Staff.

Action: Proposed collection.

OMB Control No.: To be determined

Respondent: NERC

Frequency of Responses: On occasion

Necessity of the Information: This proposed rule, if implemented would aid the Commission in market monitoring and preventing market manipulation, in assuring just and reasonable rates, and in monitoring compliance with certain business practice standards adopted by NAESB and incorporated by reference by the Commission.

²² This is a composite figure taking into account legal (\$200/hr) and technical (\$40/hr) staff.

²³ 5 C.F.R. 1320.11.

22. The information collection requirements of this proposed rule are based on NERC reviewing the documents in this proceeding and providing permission for Commission staff to access to the complete e-Tag data reported to NERC.

23. Internal Review: The Commission has made a preliminary determination that the proposed revisions are necessary to assure compliance with Commission-incorporated business practice standards, to monitor market transactions to determine if entities are engaged in market manipulation, and to assure just and reasonable rates. The Commission has assured itself, by means of its internal review, that there is specific, objective support for the burden estimate associated with the information requirements.

24. Interested persons may obtain information on the reporting requirements by contacting the following:

Federal Energy Regulatory Commission,
Attn: Ellen Brown, Information Collection Officer
888 First Street, NE
Washington, DC 20426
Email: DataClearance@ferc.gov.
Phone: (202) 502-8663, fax: (202) 273-0873

25. Comments concerning the information collections proposed in this NOPR and the associated burden estimates, should be sent to the Commission in this docket and may also be sent to the Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503 [Attention: Desk Officer for the Federal Energy Regulatory Commission]. For security reasons, comments should be sent by e-mail to OMB at the following e-mail address: oir_submission@omb.eop.gov.

Please reference FERC-740 and Docket No. RM11-12-000 in your submission.

IV. Environmental Analysis

26. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.²⁴ The Commission has categorically excluded certain actions from these requirements as not having a significant effect on the human environment.²⁵ The actions proposed here fall within categorical exclusions in the Commission's regulations for rules that are clarifying, corrective, or procedural, for information gathering, analysis, and dissemination, and for sales, exchange, and transportation of electric power that requires no construction of facilities.²⁶ Therefore, an environmental assessment is unnecessary and has not been prepared in this NOPR.

V. Regulatory Flexibility Act Certification

27. The Regulatory Flexibility Act of 1980 (RFA)²⁷ generally requires a description and analysis of final rules that will have significant economic impact on a substantial number of small entities. Section 601(3) of the RFA defines a "small business" as having the same meaning as "small business concern" under section 3 of

²⁴ *Regulations Implementing the National Environmental Policy Act*, Order No. 486, 52 FR 47,897 (Dec. 17, 1987), FERC Stats. & Regs., Regulations Preambles ¶ 30,783 (1987).

²⁵ 18 C.F.R. 380.4.

²⁶ *See* 18 CFR 380.4(a)(2)(ii), 380.4(a)(5), 380.4(a)(27).

²⁷ 5 U.S.C. 601-612.

the Small Business Act. This term includes any firm that is “independently owned and operated” and is “not dominant in its field of operation.” The regulations proposed here impose requirements only on NERC,²⁸ which, as the single ERO for the United States, is not a small business.²⁹

28. The Commission has followed the provisions of the RFA concerning potential impact on small business and other small entities. As this rulemaking, if implemented, would impose no burden on small entities, the Commission hereby certifies, pursuant to section 605(b) of the RFA,³⁰ that the regulations proposed

²⁸ According to the NERC website, www.nerc.com (under fast facts), (last visited on March 23, 2011), NERC is “an international, independent, not-for-profit organization, whose mission is to ensure the reliability of the bulk power system in North America.” The website also states that “NERC oversees reliability for a bulk power system that:

- Provides electricity to 334 million people
- Has a total electricity demand of 830 gigawatts (830,000 megawatts)
- Has 211,000 miles or 340,000 km of high-voltage transmission line (230,000 volts and greater)
- Represents more than \$1 trillion (US) worth of assets.”

We also note that, in *North American Electric Reliability Corporation*, 133 FERC ¶ 61,062, at P 15, 19 (2010), the Commission conditionally approved NERC’s 2011 budget, which exceeds \$53 million.

²⁹ 15 U.S.C. 632. The Small Business Administration has developed size standards to carry out the purposes of the Small Business Act and those size standards can be found in 13 C.F.R., section 121.201. A firm is small if, including its affiliates, it is primarily engaged in the generation, transmission, and/or distribution of electric energy for sale and its total electric output for the preceding fiscal year did not exceed 4 million megawatt hours.

³⁰ 5 U.S.C. 605(b).

herein will not have a significant economic impact on a substantial number of small entities.

VI. Comment Procedures

29. The Commission invites interested persons to submit comments on the matters and issues proposed in this notice to be adopted, including any related matters or alternative proposals that commenters may wish to discuss. Comments are due [insert date 60 days from publication in the **FEDERAL REGISTER**]. Comments must refer to Docket No. RM11-12-000, and must include the commenter's name, the organization they represent, if applicable, and their address.

30. The Commission encourages commenters to file electronically via the eFiling link on the Commission's web site at <http://www.ferc.gov>. The Commission accepts most standard word processing formats and commenters may attach additional files with supporting information in certain other file formats. Commenters filing electronically do not need to make a paper filing.

31. Commenters unable to file comments electronically must mail or hand deliver an original copy of their comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE, Washington, DC, 20426. These requirements can be found on the Commission's website, *see, e.g.*, the "Quick Reference Guide for Paper Submissions," available at <http://www.ferc.gov/docs-filing/efiling.asp> or via phone from FERC Online Support at (202) 502-6652 or toll-free at 1-866-208-3676.

32. All comments will be placed in the Commission's public files and may be viewed, printed, or downloaded remotely as described in the Document Availability section below. Commenters on this proposal are not required to serve copies of their comments on other commenters.

VII. Document Availability

33. In addition to publishing the full text of this document in the *Federal Register*, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through FERC's Home Page (<http://www.ferc.gov>) and in FERC's Public Reference Room during normal business hours (8:30 a.m. to 5:00 p.m. Eastern time) at 888 First Street, NE, Room 2A, Washington, DC 20426.

34. From FERC's Home Page on the Internet, this information is available in the eLibrary. The full text of this document is available in the eLibrary both in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

35. User assistance is available for eLibrary and the FERC's web site during our normal business hours. For assistance contact FERC Online Support at FERCOnlineSupport@ferc.gov or toll-free at (866) 208-3676, or for TTY, contact (202) 502-8659.

List of subjects in 18 C.F.R. Part 366

Electric power, and reporting and recordkeeping requirements.

By direction of the Commission.

Kimberly D. Bose,
Secretary.

In consideration of the foregoing, the Commission proposes to revise Chapter I, Title 18, part 366 of the Code of Federal Regulations, as follows:

PART 366 – BOOKS AND RECORDS

1. The authority citation for part 366 continues to read as follows:

Authority: 15 U.S.C. 717 et seq., 16 U.S.C. 791a et seq., and 42 U.S.C. 16451–16463.

2. Amend § 366.2 to redesignate paragraph (d) as paragraph (e) and to add paragraph (d) to read as follows:

§ 366.2 Commission access to books and records.

* * * * *

(d) *Electric Reliability Organization.* The Electric Reliability Organization certified by the Commission under § 39.3 of this chapter will make available to Commission staff, on an ongoing basis, access to the complete electronic tags (e-Tags), or any successor to e-Tags, used to schedule the transmission of electric power in wholesale markets. The complete e-Tag data to be made available under this section shall consist of e-Tags for interchange transactions scheduled to flow into, out of or within the United States’ portion of the Eastern or Western Interconnections, or into or out of the Electric Reliability Council of Texas and into or out of the United States’ portion of the Eastern or Western Interconnections.

(e) *Confidentiality.* No member, officer, or employee of the Commission shall divulge any fact or information that may come to his or her knowledge during the course of examination of books, accounts, memoranda, or other records as provided

in this section, except as may be directed by the Commission or by a court of competent jurisdiction.