SUPPORTING STATEMENT FOR FERC-500, APPLICATION FOR LICENSE/RELICENSE FOR WATER PROJECTS WITH MORE THAN 5MW CAPACITY

(Three-year Extension requested through June 30, 2009)

The Federal Energy Regulatory Commission (Commission) requests that the Office of Management and Budget (OMB) review and extend its approval of **FERC-500, APPLICATION FOR LICENSE/RELICENSE FOR WATER PROJECTS WITH MORE THAN 5MW CAPACITY,** through June 30, 2009.

The Commission is requesting a three year term. FERC-500 (OMB Control No. 1902-0058) is an existing data collection (filing application) whose filing requirements are contained in Title 18 C.F.R., Sections 4.32, 4.38, 4.40-.41, 4.50-.51, 4.61, 4.71, 4.93, 4.107, 4.108, 4.201, 4.202, 16.1, 16.10, 16.20, 292.203 and 292.208 and Sections 4(e), 9, 10, 14 and 15 of the Federal Power Act.

The Commission is projecting a total burden of 463,060 total hours. This is based on annual filings at an average rate of 13 respondents and 35,620 hours per response. This is a significant decrease from the 1,211,080 hours currently reported on OMB's inventory. Over the past several years the Commission has provided licensees with the option of using alternative licensing processes, the most recent being the Integrated Licensing Process(ILP), as issued in Order No. 2002 (see discussion below). The use of these alternative processes and specifically the ILP the Commission projected when issuing Order No. 2002 would result in a reduction of 30% from the traditional Licensing process. The reporting-burden related to an applicant using the ILP could result in an average of 32,200 hours per respondent as opposed to the traditional licensing process of an average of 46,000 hours per respondent. However, it should be noted that some applicants may prefer to use the traditional licensing process as opposed to the ILP due to their familiarity with the traditional process. It has been three years since Order No. 2002 was issued and this submission reflects the Commission's first assessment of the use of all three processes and their regulatory impact. Therefore, this submission reflects an average of the number of hours per respondent using the three licensing processes.

A. Justification

1. Under the Authority of Part 1 of the Federal Power Act[1] the Commission has the authority to issue licenses for hydroelectric projects on the waters over which Congress has jurisdiction. The FPA as amended by the Electric Consumers Protection Act (ECPA) **FERC-500 Application for License/Relicense for Water Projects 5 MW or greater capacity**

1?/ 16 U.S.C. Sections 791a et seq. (2000)

provides the Commission with the responsibility of issuing licenses for nonfederal hydroelectric plants. The passage of ECPA in 1986 also revised the language of the FPA concerning environmental issues.[2]

Section 3 of ECPA amended Section 4(e) of the FPA to require the Commission, when making a licensing decision, that in addition to power purposes, give equal consideration to preserving environmental quality. ECPA also amended section 10(a) of the FPA, which stipulates, the conditions on which hydroelectric licenses are issued, to direct that the project best be adapted to a comprehensive plan that improves the waterways for interstate/foreign commerce and for the protection and the enhancement of fish and wildlife, flood control, water supply and other purposes.

Particular emphasis is placed on the ECPA, Section 10(j) to the FPA, which is devoted exclusively to the protection, mitigation of damages and enhancement of fish and wildlife. ECPA requires the Commission to consult with fish and wildlife agencies in accordance with the Fish and Wildlife Coordination Act[3]and to base fish and wildlife conditions in licenses on agencies' recommendations unless they are found to be inconsistent with the Federal Power Act or other provisions of law.

The Commission's overarching responsibility under the Federal Power Act is to strike a balance among many competing power and non-power interests, and various statutory requirements give other Federal agencies with mandatory conditioning authority a powerful role in licensing/relicensing cases. These requirements include:

! Section 4(c) of the FPA authorizes the Departments of Agriculture and Interior to impose mandatory conditions on projects located on Federal reservations they supervise.

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2 This Act was the first significant amendment to the hydro licensing provisions of the FPA since 1935. "The amendments have made four principal changes to Part I of the FPA. First, the municipal preference on relicensing has been eliminated. Second, the importance of environmental considerations in the licensing process has been greatly increased and the role of the State and Federal fish and wildlife agencies is expanded. Third, PURPA benefits for hydroelectric projects at new dams and diversions were eliminated unless the projects satisfy stringent environmental conditions. Finally, the FERC's enforcement powers have been increased substantially."

3?/ 16 U.S.C. Sections 661 et seq. (2000)

! Section 18 of the FPA authorizes the Departments of Commerce and the Interior to impose mandatory fishway prescriptions.

! Section 401 of the Clean Water Act authorizes States to impose mandatory conditions as part of the State water quality certification process.

! The Coastal Zone Management Act authorizes States to impose conditions on projects affecting their coastal resources.

! The Endangered Species Act directs resource agencies to propose measures to protect threatened and endangered species.

! The National Historic Preservation Act requires Commission consultation with Federal and State authorities to protect historic sites.

The Clean Water Act precludes the Commission from licensing a hydroelectric project unless the project has first obtained State water quality certification. State water quality certifications impose a wide array of requirements on projects, without any obligation to take into account the benefits of hydroelectric or other competing interests or to concern themselves with whether their requirements duplicate or conflict with those imposed by the Commission or other federal agencies.

Licenses thus contain many environmental requirements that are developed by a variety of other agencies and are often imposed through these agencies' mandatory conditioning authority. The Commission has often lacked the ability to control the timetable for license issuance and has often found itself in a substantially diminished ability to exercise its own judgment in determining the appropriate balance of economic efficiencies, environmental protection, and all the other public purposes the FPA identifies. In addition, these requirements were not created with the competitive market environment in mind. Increasing competition in the electricity market has resulted in increased pressure on all sellers of power to keep costs to a minimum, which is in tension with the increased environmental requirements on hydroelectric projects. As noted above, the amendments to the Commission's regulations created an integrated licensing process were designed to create efficiencies and certainty by creating specific deadlines and binding study dispute resolution.

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In addition, there was widespread agreement that additional improvements were needed to further the goal of achieving a more efficient and timely licensing process without sacrificing environmental protection. The President's National Energy Policy report

included recommendations in this regard,[4] and the Commission, the Federal agencies, and many hydroelectric program stakeholders have been engaged in a variety of activities toward the same end.

Traditional Approach

There are three phases of licensing/relicensing under the standard approach: prefiling consultation, initial processing at the Commission and environmental review, Specific points in the process are designated for Federal and State agencies to provide mandatory or suggested conditions and for the public to provide comments. Prefiling consultation begins as early as three to five years before the filing of an application and involves early consideration of the project proposal and studies of the project's impacts. This is followed by opportunities for the public to participate, to request additional scientific studies, the Commission's environmental review culminating in either an environmental assessment or environmental impact statement and after finalization of all documents, the Commission issues an order acting of the license/relicense application.

Under the existing "traditional" process, prior to filing an application, applicants must consult with Federal and State resource agencies land managing agencies, Indian tribes, state water quality agencies and, to some extent, the public, and must provide the consulted entities with the information describing the proposed project. The applicant must also conduct studies necessary for Commission staff to make an informed decision on the application. Under the Commission's detailed regulations concerning prefiling consultation and processing of filed applications, the formal proceeding before the Commission does not begin until the license application is filed.

Alternative Licensing Process (ALP)

The Commission has modified its procedural regulations to offer an alternative administrative process to provide under appropriate circumstances that the prefiling consultative process and the environmental review process can be conducted

simultaneously. In Order No. 596[5] the Commission instituted this alternative process that was designed to improve communication among effected entities and to be flexible and tailored to the facts and circumstances of the particular proceeding.

4?/ Report of the National Energy Policy Group, May 2001.

5?/ Order No. 596 (1997), 62 FR 23103 (November 7, 1997)

Briefly, under ALP an applicant can request to use the alternative procedures for pre-filing consultation and the filing of an application. By combining the prefiling and environmental review process, issues should be identified, analyzed and resolved earlier in the licensing/relicensing process. Communication and settlement of issues are encouraged to improve the decision-making process among all interested parties, groups and the applicant. Therefore, relicensing of hydroelectric projects is of particular significance because it involves projects that originally were licensed from 30 to 50 years ago. In the intervening years, enactment of numerous environmental, land use and other laws have begun to affect the Commission's ability to control the timing of relicensing and the conditions of the relicensing process.

ALP informs participants to set reasonable deadlines requiring all resource agencies, tribes, groups and interested persons to submit requests to conduct scientific studies during the prefiling consultation process. Any requests submitted after the application is filed must show good cause. The participants in ALP must make a "reasonable effort" to resolve any study disputes. The Commission will resolve disputes, but only after the earlier efforts have been documented. In other words, participants must first attempt to resolve disputes regarding "reasonable bounds" before submitting them to the Commission for resolution. Also under ALP, the Commission may require the filing of preliminary fish and wildlife recommendations, prescriptions, mandatory conditions, comments and the filing of these in final form after the application is filed. The alternative approach relies on cooperative efforts of the parties to design their own relicensing process. If the parties can agree on what information must be developed for the record and on deadlines for such things as preparation of studies and the filing of comments and proposed conditions, the prefiling consultation and environmental review processes can be integrated sharply reducing the length of the licensing process. The parties must agree to waive some of the procedural protections of the standard approach. Thus while the Commission supports the use of ALP, it is purely voluntary and to the parties to determine whether the approach can succeed in any given proceeding.

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Integrated Licensing Process

In Order No. 2002 (68 FR 51070, August 25, 2003; *FERC Statutes and Regulations* ¶31,150 at p. 30,688) the Commission revised its regulations to create a new licensing process in which a potential license applicant’s pre-filing consultation and the Commission’s scoping process pursuant to the National Environmental Policy Act (42 U.S.C. §4321) are conducted concurrently rather than sequentially. The Commission estimated that if an applicant chooses to use the new licensing process, this could result

in a reduction of 30% from the traditional licensing process. The reporting burden related to Order No. 2002 would be on average 32,200 hours as opposed to 46,000 hours per respondent in the traditional licensing process or 39,000 hours for the alternative licensing process. It has been nearly three years since Order No. 2002 was issued and applicants have experienced the opportunity to gain the benefits from the revised licensing process. In particular, applicants have benefited from:
(a) increased public participation in pre-filing consultation;
(b) increased assistance from Commission staff to the potential applicant and stakeholders during the development of a license application;
(c) development by the potential applicant of a Commission-approved study plan;
(d) elimination of the need for post-application study requests;
(e) issuance of public schedules and enforcement of deadlines;
(f) better coordination between the Commission's processes, including the NEPA document preparation, and those of Federal and state agencies and Indian tribes with authority to require conditions for Commission-issued licenses.

To improve consultation with Indian Tribes, the Commission established the position of tribal liaison, providing in the regulations for a meeting between the Commission and interested Indian tribes at the beginning of the licensing process, and issuing all participants. *(See Policy Statement in Docket No. PL03-4-000. The policy is applicable to the Commission's hydroelectric, gas and electric programs.)*

The revised rules have provided for increased public participation in pre-filing consultation; assistance in the development by a potential applicant of a Commission-approved study plan; allowance for a potential applicant's pre-filing consultation and the Commission's scoping activities in accordance with NEPA to be conducted concurrently rather than sequentially; providing for better coordination between the Commission's processes, including NEPA document preparation and those of Federal and State agencies with authority to require conditions for Commission-issued licenses; and encouragement

of informal resolution of study disagreements, followed by dispute resolution, and schedules. In Order No. 2002, the traditional licensing process was retained, and modified by increased public participation and additional time before an application for water quality certification is filed. There were no changes made to the Alternative Licensing Process.

Each major type of hydroelectric application for license or exemption is governed by a separate subpart of the Commission's regulations. All hydroelectric applications are required to address environmental issues and to provide the facts necessary to understand

and resolve them in the public interest. For example, subpart E of Part 4 applies to applications and major modified projects. These applications may raise significant environmental issues. Each application must contain an Exhibit E, which is the environmental report. The filing requirements for applications subject to this subpart are more detailed and extensive than for applications subject to other subparts.

In deciding whether to issue a license, the Commission gives equal consideration to a full range of licensing purposes related to the potential value of a stream or river. Among these purposes are:

- Hydroelectric development
- Energy conservation
- Fish and wildlife resources, including their spawning grounds and habitat
- irrigation
- flood control
- water supply
- other aspects of environmental quality
- Cultural resources
- Recreational opportunities.

The Commission must be satisfied that a project to be licensed is adapted as well as possible to a comprehensive plan for developing the waterway. In making this judgment the Commission considers comprehensive plans prepared by federal and state entities and the recommendations of federal and state resource agencies, the public and Indian tribes affected by the proposed project.

To adequately protect, mitigate for damage, and enhance fish and wildlife, along with their habitats, each license (or exemption from licensing) includes terms and conditions. The Commission's independent analysis of federal and state and fish wildlife

agency recommendations and comments from the applicant, affected Indian tribes, and the public determine the fish and wildlife conditions, as well as conditions relating to other environmental resource and engineering issues.

In determining whether and how to relicense a project after its expiration of its original license, the Commission must strike a balance among many legitimate, but sometimes competing interests. While hydropower remains an essential renewable resource within the nation's energy mix, development and utilization of this energy

source has to adjust to a competitive electric market and heightened environmental scrutiny, as well as to a decision making process characterized by shared authorities.

The information collected is needed to evaluate license application pursuant to the comprehensive development standard of FPA sections 4(e) and 10(a)(1), to consider the comprehensive development analysis of certain factors with respect to the new license set forth in section 15, and to comply with NEPA, Endangered Species Act (16 U.S.C. section 1531 et seq.) and the National Historic Preservation Act (16 U.S.C. section 470 et seq.)

2. The information collected by FERC is in the format of a written application for a license or exemption and is used by the Commission staff to determine the broad impact of the license application. Commission staff conducts systematic reviews of the prepared application with supplemental documentation provided by the solicitation of comments from other agencies and the public. These comments are received through the issuance of
public notice and open meetings. These reviews ensure that the Federal Power Act, as amended by other statutory provisions, is formally administered to ensure compliance by the licensees. Greater environmental scrutiny, as well as to a decision making process characterized by shared authorities has assisted the development and utilization of hydropower as an essential renewable resource within the nation's energy mix. Projects coming up for relicense in the next several decades were originally licensed before the enactment of ECPA, the National Environmental Policy Act (NEPA), the Endangered Species Act, the Federal Water Pollution Control Amendments of 1972 (the Clean Water Act), and the Coastal Zone Management Act.

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After an application is filed, the Federal agencies with responsibilities under the FPA and other statutes, the states, Indian tribes, and other participants have opportunities to request additional studies and provide comments and recommendations. Federal agencies with mandatory conditioning authority also provide their conditions. The Commission staff may ask for additional information that it needs for its environmental analysis. All of the information is incorporated into the Commission staff's environmental review under NEPA.

When deciding whether to issue a license, the Commission gives equal consideration to a full range of licensing purposes related to the potential value of a stream or river. Among these purposes are: hydroelectric development; energy

conservation; fish and wildlife resources, including their spawning grounds and habitat; visual resources; cultural resources; recreational opportunities; other aspects of environmental quality; irrigation; flood control and water supply. After a license is issued, the Commission monitor's the licensee's compliance with the license conditions throughout the term of the license.

Submission of the data is necessary to fulfill the requirements of the FPA in order for the Commission to make the required finding that the proposal is economically, technically, and environmentally sound, and is best adapted to a comprehensive plan for improving/developing a waterway or waterways.

3. There is an aggressive effort to bring about the receipt of the application for license electronically. The Commission is now able to receive a limited number and type of electronic filings. Presently, the Field Inspection Report, concerned with matters of dam safety is filed electronically. And there are concerted efforts to move quickly into the arena of providing the option to submit many other paper driven activities electronically.

The Commission also issued Order No. 604 to allow for electronic service of documents in certain circumstances. This order streamlined procedures and makes information available more quickly to both Commission staff and interested parties. The order gave participants more flexibility in meeting the service requirements and the

opportunity to gain experience with electronic service, and was an important step in the Commission's plan to convert to electronic filing. The public also has access to documents filed with the Commission as they are stored on FERC's central records repository, e-Library. These documents are normally posted and made available to the public two days after they have been received by the Commission. Access to e-Library is available through the Commission's web site at http://www@ferc.gov.

4. Filings are periodically reviewed in conjunction with OMB clearance expiration dates. This includes a review of the Commission's reporting requirements to identify duplication of data requirements. To date, no duplication of application data has been found. The information is case specific to the applicant.

5. The reporting requirements associated with FERC-500 are the basic filing requirements pertaining to all applications for a hydropower license or exemption. There are no similar sources of information available that can be used or modified for use as the information collected is unique to the applicant and the site for which the filing is made.

The Commission makes a distinction between major and small hydro projects by providing a threshold of 5 MW. Entities that fall below that threshold have streamlined filing requirements.

6. The data required imposed the least possible burden on applicants, while collecting the information required to process the application. The minimization of impact on small businesses would not be applicable. The burden will vary among applicants, since the application should be specific for all applicants.

7. The guidelines of 5 C.F.R. 1320.5(d) are being exceeded in the number of copies forwarded to the Commission. The following is the distribution of application for review within the Office of Energy Projects (Division of Hydropower Licensing).

Director	1
Division of Licensing and Compliance	3
Division of Dam Safety and Inspections	2
Regional Office	1
Office of General Counsel	1

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The distribution of multiple copies of an application to OEP staff is essential so that the required technical, engineering, and environmental reviews and analysis proceed simultaneously and efficiently. A project manager must have a copy of any application for review and coordination purposes; additional copies must be available for staff members in various parts for assessing the adequacy of diverse exhibits. It would not be feasible to conduct these review functions in a timely manner, and within the current processing schedule, if fewer copies of the application were provided for staff use. In addition, once an application has been determined adequate for processing, OHL staff in Headquarters and the appropriate regional office need copies of the application.

8. Prior to adopting regulations that require the collection of data, the Commission's procedures require the rulemaking notices be published in the Federal Register, thereby allowing all applicants, state commissions, federal agencies, and other interested parties an opportunity to submit comments, or suggestions concerning the proposal. The rulemaking procedures also allow for public conferences to be held as required. In accordance with OMB requirements in 5 C.F.R. 1320.8(d), the reporting requirements for FERC-500 was noticed in the Federal Register on March 30, 2006 (71 FR 16132, March 30, 2006) (a copy is included in this submission) No comments were received in response to this notice.

9. No payments or gifts have been made to respondents.

10. The information submitted to the Commission is public information and therefore is not considered confidential. Specific requests for confidential treatment to the extent submitted by law will be entertained pursuant to 18 C.F.R. Section 388.110.

11. No data of a sensitive nature is requested.

12. The annual burden estimate for information collection under FERC 500 is based on the Commission's recent experience with license and exemption applications. Under FERC 500, it is estimated that the annual average annual burden for each application will be 463,040 hours. The number of respondents is expected to average 13 per year.

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In Order No. 2002, RM02-16-000, July 23, 2003, the Commission estimated that with the implementation of the Integrated Licensing process, 10% of the respondents would use the Traditional Licensing Process, 30% of the Alternative Licensing Process and 60% would use the Integrated Licensing Process.

Data Collection	No. of Respondents	No. of Responses	Hours Per Response	Percentage of Use	Total Annual Hours
FERC-500					
Traditional	13	1	46,000	10%	59,800
Alternative	13	1	39,000	30%	152,100
Integrated	13	1	32,200	60%	251,160
Totals					463,060

The average burden hours per response = 35,620 hours.

Estimated number of respondents : 13
Estimated number of responses : 1
Estimated number of responses per year : 13
Estimated number of hours per response : 35,620
Total estimated burden (hours per year) : 463,060

FERC 500 burden hours currently
in OMB's inventory :1,211,080
Program change in industry burden hours - : 363,324*
Adjustment change in industry burden hours - : 384,696#

*Due to implementation of the Integrated Licensing Process resulting in 30% reduction from the traditional licensing process;

#Reduction due the number of applications submitted to the Commission for review.

13. The estimated annualized cost to the respondents for **FERC-500 Application for License for Water Projects With More Than 5MW Capacity** averaged over the next three years is as follows:

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As noted above, in Order No. 2002 (RM02-16-000) the Commission estimated that with the implementation of the Integrated Licensing process, 10% of the respondents would use the Traditional Licensing Process, 30% of the Alternative Licensing Process and 60% would use the Integrated Licensing Process. The Cost per Process was stated in as follows:

Data Collection	Type of Process	Cost Per Process
FERC-500	Traditional	$2,300,000
	Alternative	$2,200,000
	Integrated	$1,610,000

Using the proportions identified in item no. 12 above, the following costs can be attributed to the following processes:

Data Collection	No. of Respondents	Cost Per Process	Total Costs
Traditional	1.3	$2,300,000	$2,990,000
Alternative	3.9	$2,200,000	$8,580,000
Integrated	7.8	$1,610,000	$12,558,000
Totals	13	$6,110,000	$24,128,000

The average cost per project is $1,856,000.
Estimated cost burden to respondents is **$24,128,000.**

By comparison, in its report to Congress "Report on Hydroelectric Licensing Policies, Procedures, and Regulations Comprehensive Review and Recommendations pursuant to Section 603 of the Energy Act of 2001" (May 2001) the Commission noted:

> "The cost of preparing a license application, as used here, means all costs required to produce an acceptable application, including the costs of studies. License applicants are not required to provide the Commission with data concerning these costs. Some applicants have however voluntarily provided such information. …

In terms of total cost per application, the average application cost is about $2.3 million for traditional and ALP applications combined, and $2.2 and $2.6 million for traditional and for ALPs, respectively. The higher costs for ALPs may be attributable to the fact that ALP proceedings typically involve much larger projects,[6] that the desire to obtain consensus may make applicants more willing to agree to study requests, or to additional administrative costs related to multiple stakeholder meetings and facilitation.[7]

14. The estimated annualized cost to the Federal Government for **FERC-500 Application for License for Water Projects with 5 MW or Less Capacity** is shown below:

Operation	FERC-500
a) Data clearance (FERC FY 2006)	$6,289.00
b) Analysis of data (FERC hydropower licensing program is reimbursed by licensees pursuant to Section 10(e) of the Federal Power Act	$__ 0.00
Total cost in one year of operation	$6,289.00

15. Changes to the Reporting Burden -- As noted above and more fully described in item no. 1 of this submission, the issuance of Order Nos. 596 and 2002 provided licensees with alternatives to the traditional licensing process. These alternative

6 The average project size for the traditional process applications is 20.5 MW. The average for ALPs is 67.6 MW.

7 One of the ALPs had unusually high costs. If the cost of that proceeding were excluded, the average cost per application would be about the same for traditional processes and for ALPs.

processes have helped to significantly reduce the regulatory impact coupled with a reduction in the number of applications submitted to the Commission in part due to consolidation within the industry and the costs for environmental studies to ensure environmental compliance.

16. TIME SCHEDULE FOR INFORMATION COLLECTION AND PUBLICATION

(a) There are no tabulations, statistical analysis or publication plans for the information collection. The data are used for regulatory purposes.

17. And 18.

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It is not appropriate to display the expiration date for OMB approval of the information collected pursuant to Sections 4, 9, 14 and 15 of the Federal Power Act and Parts 4 and 292 of the Commission's regulations. The information submitted to the Commission is not collected on a standard preprinted form which would avail itself to this display. Rather, applicants for declaring their intention prepare and submit information that reflects the unique or specified circumstances related to their application. In addition, the information contains a mixture of narrative descriptions and empirical support that varies depending on the nature of the filing requirement. The Commission does publish in its regulations at 18 C.F.R. Part 389 both the regulatory citation and corresponding OMB control number for public viewing, and identifying these sections and control numbers with the issuance of each proposed and final rulemaking. In addition, the information collected from these reporting requirements is not used for statistical purposes.

B. COLLECTION OF INFORMATION EMPLOYING STATISTICAL METHODS

Not applicable.