

**SUPPORTING STATEMENT FOR FERC-505, APPLICATION FOR  
LICENSE FOR WATER PROJECTS 5MW OR LESS CAPACITY**  
(Three-year Extension Requested through June 30, 2009)

The Federal Energy Regulatory Commission (FERC) requests that the Office of Management and Budget (OMB) review and extend its approval of **FERC-505, APPLICATION FOR LICENSE FOR WATER PROJECTS WITH 5MW OR LESS CAPACITY**, through June 30, 2009. The FERC is requesting a three year term.

FERC-505 (OMB Control No. 1902-0115) is an existing data collection (filing application) whose filing requirements are contained in Title 18 C.F.R., Sections 4.32, 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.

The estimated reporting burden for FERC-505 is expected to average 38,900 hours per year over the next three years -- down some 118,305 hours from the previous estimate of 153,100 hours. The average burden per filing is estimated to be 7,780 hours.

**A. Justification**

1. Under Part I of the Federal Power Act, it is

unlawful for any person, ... for the purpose of developing electric power, to construct, operate, or maintain any dam, water conduit, reservoir, power house, or other works incidental thereto across, along, or in any of the navigable waters of the United States, ... except under and in accordance with the terms of ... a license granted pursuant to this Act.<sup>1</sup>

Authority for the application and license process is made pursuant to the FERC's defined role, as mandated under Sections 4(e), 9, 10(a), 10(c), 14 and 15 of the Federal Power Act (Act) and Section 408 of the Energy Security Act of 1980.

Submission of the data is necessary to fulfill the requirements of Sections 9 and 10(a) of the Act in order for the FERC to make the required finding that the proposal is economically, technically, and environmentally sound, and is best adapted to the comprehensive plan of development of the water resources of the region. Further, Congress has authorized the FERC to exempt certain small hydroelectric projects

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<sup>1</sup> 16 U.S.C. Sections 791a et seq. (1982 and Supp. IV 1986).

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from the licensing requirements imposed by this provision. Under Section 405(d) of the Public Utilities Regulatory Policies Act of 1978, the FERC may in its discretion (by rule or order) grant an exemption in whole or in part from the requirement (including the licensing requirements) of Part I of the Federal Power Act to small hydroelectric power projects having a proposed installed capacity of 5,000 kilowatts or less ...<sup>2</sup>).

18 C.F.R. Section 4.30(b)(29) defines a "small hydroelectric power project" as:

any project in which capacity will be installed or increased after the date of notice of exemption or application under subpart K of this chapter, which will have a total installed capacity of not more than 5 MW ...

The FERC's regulations were modified to provide that applicants may seek an exemption to avoid having to file a complete application since the generating capacity of their project is below a certain threshold. Such sites are generally on a stream other than those defined as U.S. navigation waters, and over which Congress has jurisdiction under its authority to regulate foreign and interstate commerce.

Likewise, the FERC modified its procedural regulations to offer an alternative administrative process to provide under appropriate circumstances, that the pre-filing consultative process and the environmental review process can be conducted simultaneously. In Order No. 596<sup>3</sup> the FERC issued a final rule that provides an alternative process designed to improve communication among affected entities and to be flexible and tailored to the facts and circumstances of the particular proceeding.

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

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2       <sup>?</sup> 16 U.S.C. Section 2705.

3       <sup>?</sup> Order No. 596(1997), 62FR23103 (November 7, 1997)

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Order No. 2002 on average would be 7,000 hours as opposed to 10,000 hours per respondent in the traditional licensing process or 8,600 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 notices to all participants. *(See Policy Statement in Docket No. PL03-4-000. The policy is applicable to the Commission's hydroelectric, gas and electric programs.)*

Relicensing of hydropower projects is of particular significance because it involves projects that originally were licensed anywhere from 30 to 50 years ago. In the intervening years, enactment of numerous environmental, land use and other laws have begun to affect the FERC's ability to control the timing or relicensing and the conditions of the relicensing process.

In determining whether and how long to relicense a project after expiration of its original license, the FERC 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 must now adjust to a competitive electric market and heightened environmental scrutiny, as well as to a decision making process characterized by shared authorities. Projects coming up for relicense in the next several decades were originally licensed before the enactment of the Electric Consumers Protection Act (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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There are three phases of relicensing under the standard approach: pre-filing consultation, initial processing at FERC, and environmental review. Specific points in the processes are designated for Federal and State agencies to provide mandatory or suggested conditions and for the public to provide comments. Pre-filing consultation generally begins 3 years before the filing of the 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 and to request additional scientific studies. The FERC's environmental review culminates in either an environmental assessment or environmental impact statement and after finalization of all documents, the FERC issues an order acting on the relicense application.

The FERC issued in Order Nos. 596 and 2002, as noted above, final rules that provide for alternative procedures. These procedures allow for the consideration of portions of the relicensing process, thus shortening the post-filing process. However, it should be noted that some applicants may choose to use the traditional licensing process because of their familiarity of that process.

Each relicensing case leads to an additional, ongoing monitoring effort throughout the life of the license. Issues arising after licensing can be very contentious and decisions difficult. The Commission is conditioning licenses to ensure that water resource development and sensitive resources are protected for the life of the license, which can be up to 50 years. In addition, the FERC must determine which mitigation measures work best so that it can apply those that are most effective for protecting resources. In addition, the aging population of hydropower dams poses a challenge in terms of dam safety and public safety, requiring innovative approaches and a shift in program emphasis to monitoring and instrumentation.

2. The information collected is in the form of a written application for a license or exemption and is used by FERC staff to determine the broad impact of the license or exemption application. FERC staff conducts a systematic review 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 notices and open meetings. These reviews ensure that the Federal Power Act, as amended by the other statutory provisions, is formally administered to ensure compliance by the licensees.

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The FERC ensures that the dams under its jurisdiction are properly constructed, operated and maintained. The FERC's licensing and post licensing processes have the multiple intents of enhancing and protecting the environment, and enhancing recreational assets for water resources while maintaining power generation. Integral to these processes is the participation of a myriad of stakeholders, including local citizen groups, power users, Native American tribes, environmental organizations, fish and wildlife agencies, and the hydropower companies. Through this participation, the FERC's authorizations address the needs of the stakeholders affected by the hydropower facilities.

Over the next 10 years, more than 220 project licenses will expire. Many of these projects significantly affect regionally important environmental resources. In the relicensing process, the FERC will facilitate participation by the many stakeholders to ensure the outcome protects and enhances the environment while maintaining project generating capacity. To meet these challenges, the FERC will use the alternative and integrated licensing processes and monitor benefits to environmental and recreational resources.

3. There is currently an ongoing effort to determine the potential and value of improved information technology to reduce the burden. However, it should be noted that because of the large variance in the type of material submitted as technical data to the FERC, it is neither practical nor cost effective to adapt improved information technology to all facets of the licensing process. But steps have been taken to implement information technology in hydropower procedures. FERC staff developed procedures to submit dam safety inspection (D2SI) reports electronically. The reports, including digitized photographs, are now available to all parties faster, more efficiently and at less cost. Through the D2SI Report submission process, regional staff can retrieve source documents to be used as templates for other reports or use the same reports for annual updates. D2SI also provides a mechanism to review and approve documents prior to release to the public via a simple one-step workflow.

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.

The reporting requirements associated with FERC-505 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 **FERC-505 APPLICATION FOR LICENSE FOR WATER PROJECTS WITH 5MW OR LESS CAPACITY**

information collected is unique to the applicant and the site for which the filing is made.

While collecting information required to process the application, the data required imposed the least possible burden on applicants.

5. The data required impose the least possible burden on applicants, while collecting the information required for processing the application. The minimization of impact on small businesses would not be applicable. The burden will vary between respondents, since the application should be specific for all respondents.

6. Nonfederal hydropower projects must obtain FERC authorization under the Federal Power Act if they are on lands or waters subject to Congressional authority. The FERC issues licenses for terms up to 50 years for projects "best adapted to a comprehensive plan" for improving a waterway for beneficial public purposes. Benefits include power generation, irrigation, flood control, navigation, fish and wildlife, municipal water supply and recreation. Because of the inherent benefits to the licensee and the length of term of the license, the actual filing of a license is the culmination of several procedures to ensure that the project will be beneficial to the public. As a result, the filing of the application for a license or relicense is a limited occurrence. To ensure that the project meets the specifics of the comprehensive plan it is necessary that information be filed in accordance with FERC's regulations. If this data were conducted less frequently than prescribed in the regulations, then FERC would be unable to perform its mandated review in a timely and accurate manner.

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 (OEP).

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

The distribution of multiple copies of an application to OEP staff is essential so that the required technical, engineering, and environmental reviews and analyses can 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 of OEP who are responsible 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, OEP staff in Headquarters and the appropriate regional office need copies of the application.

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8. Prior to adopting regulations that require the collection of data, the Commission's procedures require that 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-505 were noticed in the Federal Register on March 28, 2006. (71FR 15399-15401). No comments were filed. Additionally, a second notice (ICO6-505-001) will be published in the Federal Register providing the public with an additional opportunity to comment when FERC requests OMB approval of FERC-505 for an additional three years.

Under the provisions of Order No. 596 (Alternative Licensing Process), an applicant can request to use the alternative procedures for pre-filing consultation and the filing of an application. By combining the re-filing and environmental review processes, issues can be identified, analyzed, and resolved earlier in the overall licensing/relicensing process. Communication and settlement of issues is encouraged to improve the decision-making process between all interested agencies, groups, and the applicant. Therefore, although FERC cannot "require" all agencies to identify their concerns early in the process, through the use of the provisions of Order No. 596 all participants have added incentives to working more closely together in the environmental review process.

Under the provisions of Order No. 2002 (Integrated Licensing process) a potential licensee's pre-filing consultation has been integrated with the Commission's scoping procedures in accordance with the National Environmental Policy Act (NEPA) to create efficiencies. The benefits of using this licensing process include the following:

- ! Increased assistance by Commission staff to the potential applicant and stakeholders during the development of a license application;
- ! Increased public participation in pre-filing consultation;
- ! Development by the potential applicant of a Commission-approved study plan;
- ! Better coordination between the Commission's processes, including NEPA document preparation, and those of Federal and state agencies and Indian tribes with authority to require conditions for Commission-issued licenses;

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- ! Encouragement of informal resolution of study disagreements, followed by mandatory, binding study dispute resolution;
- ! Elimination of the need for post-application study requests; and
- ! Issuance of public schedules and enforcement of deadlines.

In addition, the FERC continues to work to foster interagency cooperation. It has in place a number of Memoranda of Understanding with other agencies that set forth procedures for addressing specific issue areas. These include joint NEPA review and coordinated application processing by FERC and the U.S. Forest Service or Interior's Bureau of Reclamation. FERC has also negotiated agreements with the Federal Emergency Management Agency, the Corps of Engineers, the Department of Energy, the Nuclear Regulatory Commission and Washington State. The FERC will continue to hold informal conferences to discuss with other Federal and state agencies the ways in which parties can cooperate more efficiently, while preserving the quality and integrity of the decision-making process.

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 permitted by law will be entertained pursuant to 18 C.F.R. Section 388.112.
11. No data of a sensitive nature is requested.
12. The annual burden estimate for information collection under FERC-505 is based on the Commission's recent experience with license and exemption applications. Under FERC-505, it is estimated that the annual average burden for each application will be 6,959 hours. The number of respondents is expected to average 5 per year. This is a decrease of 17 respondents from the 22 respondents previously reported to OMB. (The reasons for this decrease are explained in item number 15 below.)

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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-505					
Traditional	5	1	10,000	10%	5,000
Alternative	5	1	8,600	30%	12,900
Integrated	5	1	7,000	60%	21,000
					38,900

Average number of hours per respondent = 7,780

Estimated number of respondents	:	5
Estimated number of responses	:	1
Estimated number of responses per year	:	5
Estimated number of hours per response	:	7,780
Total estimated burden (hours per year)	:	38,900
FERC-505 burden hours		
Currently in OMB's inventory	:	153,100
Program change in industry burden hours	:	(45,930)*
Adjustment change in industry burden hours	:	( 68,270) #

\*Due to implementation of the Integrated Licensing Process resulting in a 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-505, Application for License for Water Projects With 5MW Or Less Capacity** is as follows:

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:

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Data Collection	Type of Process	Cost Per Process
FERC-505	Traditional	\$ 500,000
	Alternative	\$ 425,000
	Integrated	\$ 350,000

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	.5	\$ 500,000	\$ 250,,000
Alternative	1.5	\$ 425,000	\$ 637,500
Integrated	3.0	\$ 350,000	\$ 1,050,000
Totals	5.0		\$ 1,937,500

The average cost per project is \$ 387,500.

14. The estimated annualized cost to the Federal Government for **FERC-505, Application for License for Water Projects with Less Than 5MW Capacity** is shown below:

<u>Operation</u>	<u>FERC-505</u>	
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. The FERC-505 burden estimate reflects a net decrease of 114,200 hours from the current OMB inventory of 153,100 hours per year. The decrease in the burden is due in part to (1) applicants now being able to use the Integrated Licensing Process resulting in a 30% decrease in the reporting burden as opposed to using the traditional licensing process; (2) reduction in the number of applicants who are applying for licensing of their sites. Recent economic conditions across the country have placed economic hardships on applicants seeking to enter into the hydroelectric industry. Additionally, recent legislation has placed curbs on several projects to be considered as hydroelectric facilities.

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

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17. and 18.

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 hydropower licenses and exemptions prepare and submit information that reflects the unique or specified circumstances related to the jurisdictional transaction. 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 publishes in its regulations at 18 C.F.R. Part 389 both the regulatory citation and corresponding OMB control number for public viewing, and identifies these sections and control numbers with the issuance of each proposed and final rulemaking. In addition, this information is not collected for statistical purposes.

- B. COLLECTION OF INFORMATION EMPLOYING STATISTICAL METHODS  
Not applicable.

