

**SUPPORTING STATEMENT FOR
FERC-515, DECLARATION OF INTENTION**
(Three year Extension requested through December 31, 2010)

The Federal Energy Regulatory Commission (Commission) requests that the Office of Management and Budget (OMB) review and extend its approval of **FERC-515, DECLARATION OF INTENTION (DI)**, through December 31, 2010. FERC-515 (OMB Control No. 1902-0079) is an existing data collection (DI filing) who's filing requirements are contained in Title 18 C.F.R, Section 24.1 and Section 23(b) of the Federal Power Act.

The estimated reporting burden for FERC-515 is expected to average 800 hours per year over the next three years, no change from the current estimate. The average burden per filing is estimated to be 80 hours.

A. Justification

1. Part I of the Federal Power Act, under the authority of the Federal Power Act¹ (FPA) gives the Commission authority to issue licenses for hydroelectric projects on the waters over which Congress has jurisdiction.

Any person, state, or municipality planning to develop hydroelectric power must have a license or exemption from the Commission to construct, operate, or maintain any dam, water conduit, reservoir, or power house along or in any navigable waters of the United States, upon any part of the public lands or reservations of the United States, or which will affect interstate commerce.

Section 23(b)² of the FPA provides that any person intending to construct project works on a non navigable commerce clause water must file a declaration of their intention to do so (a "DI") with the Commission. Section 23(b) further provides that upon the filing of a DI, the Commission will investigate the proposed project, and, if it finds that the "interests of interstate or foreign commerce would be affected" by the proposed

116 U.S.C. Sections 791a et seq. (2000).

216 U.S.C. Section 617. (2000)

project, then the person intending to construct the project must obtain a Commission license before starting construction. Submission of the data is necessary for the Commission to make a required determination as to jurisdiction over the proposed project.

The respondent universe that would submit a declaration of intention can be defined and is limited to potential developers of hydropower projects at sites where the Commission's jurisdiction may be in question. Such sites are generally on streams other than those defined as U.S. navigation waters, and over which Congress has jurisdiction under its authority to regulate foreign and interstate commerce.

Declaration of Intention

Under section 23(b)(1), an entity intending to construct a project on non-navigable Commerce Clause waters must file a declaration of intention to do so, whereupon the Commission must investigate the proposed project and, if it finds that interstate or foreign commerce would be affected, no construction may take place until a license is issued.

The owner of a project constructed before 1935 that is not subject to the Commission's mandatory licensing jurisdiction need not file a declaration of intent to repair, maintain, or rehabilitate the project as long as there has been no post-1935 abandonment. *Puget Sound Hydro LLC, 109 FERC ¶61,039 at P 56 (2004) (JR02, Nooksack Falls)*.

A proposed project does not require licensing merely because of the possibility that, after issuance of an order finding licensing not required, the developer may alter the project's design or operation from that described in its declaration of intention. Should the project be constructed or operated differently than described, interested parties may petition the Commission to assess de novo whether the project requires a license. *Alaska Power Co., 82 FERC ¶61,331 (1998) (change in underlying facts can mean that project affects commerce and so requires a license)*.

2. The information collected by FERC is in the format of a declaration of the applicant's intent filed with the Commission. It is used by the Commission's staff to research the jurisdictional aspects of the proposed project. Commission staff conducts a systematic review of the declaration with supplemental documentation provided in the filing. The research includes examining maps and land ownership records to establish

whether or not there is Federal jurisdiction over the lands and waters affected by the project. The submitted requirement documents allow for a full and complete analysis of a proposed project, and provide sufficient data to make a jurisdictional decision. A finding of non-jurisdiction by the Commission can result in the elimination of a substantial paperwork burden for an applicant who might otherwise have to file a license or exemption application.

3. There is currently an ongoing effort to determine the potential value of improved information technology to reduce the burden. On September 21, 2000, the Commission issued Order No. 619, which implemented the use of the Internet for submission of documents to the Commission for filing.³ Such submissions were limited to categories of documents specified by the Secretary of the Commission, with the intention of gradually expanding the range of eligible documents.⁴

The eFiling system plays an important role in the Commission's efforts to comply with the Government Paperwork Elimination Act, which requires that agencies provide the option to submit information electronically, when practicable, as a substitute for paper.⁵ The Commission also has established a system of electronic registration, or eRegistration, which is required for users of its eFiling system and other specified activities.⁶ Filing via the Internet is optional for eligible documents.⁷ The eFiling system now is receiving approximately one third of all documents filed at the Commission. The system is accessible through the Commission's web site at <http://www.ferc.gov/docs-filing/efiling.asp>.

3 Electronic Filing of Documents, Order No. 619, 65 Fed. Reg. 57088 (Sept. 21, 2000), FERC Stats. & Regs. ¶ 31,107 (2000).

4 See Rule 2003(c) of the Commission's Rules of Practice and Procedure, 18 CFR 385.2003(c).

5 Pub. L. No. 105-277, Sec. 1702-1704 (1998); see OMB Circular A-130 Para 8.a.1(k).

6 18 CFR 390.1 & 390.2.

7 Rule 2001(a) of the Commission's Rules of Practice and Procedure, 18 CFR 385.2001(a).

The Commission is proposing to implement, in late 2007, eFiling 7.0, which will significantly expand the capabilities of the system. As part of this implementation, the Commission proposes to expand the range of documents that may be filed via the Internet to include all filings, with specified exceptions. Most notably, it will be possible for regulated entities to make complex filings in their entireties in electronic format.⁸ The Commission also proposes to implement other changes and technical enhancements, and has sought comments on the advisability of these changes and the best methods of implementing them.

Under the Commission's regulations, only "qualified documents" may be filed via the Internet, and the Secretary is authorized to specify which documents are qualified.⁹ A list of qualified documents is published on the Commission's web site. Currently, there are over forty categories of qualified documents.¹⁰ The Secretary also is authorized to issue filing instructions.¹¹

To implement eFiling 7.0, the Commission has proposed to revise its regulations to permit users to submit via the Internet all documents filed in Commission proceedings pursuant to Chapter I of Title 18 of the Code of Federal Regulations, with specified exceptions. As before, the Secretary will specify the documents that may be submitted to the eFiling system, but now the Secretary would list exceptions rather than eligible documents. The Secretary would continue to issue filing instructions for allowable file formats, electronic document formats and electronic filings having multiple components. However, where specific regulations require that a filing include particular content, those regulations will continue to apply. Similarly, where specific regulations or other instructions contain requirements applicable to electronic documents, such as allowable

⁸ The process for making tariff filings by the electric, gas, and oil industries is being addressed in Electronic Tariff Filings, Docket No. RM01-5-000. See Electronic Tariff Filings, Notice of Proposed Rulemaking, 69 FR 43929 (July 23, 2004), FERC Stats. & Regs. ¶ 32,575 (July 8, 2004); Notice of Additional Proposals and Procedures, 70 FR 40941 (July 15, 2005), FERC Stats. & Regs. ¶ 35,551 (July 6, 2005). The Commission allows Open Access Transmission Tariffs (OATTs) and revisions to be eFiled as described at <http://www.ferc.gov/help/filing-guide/file-OATT.asp>.

⁹ Rule 2003(c), 18 CFR 385.2003(c).

¹⁰ See <http://www.ferc.gov/docs-filing/efiling/docs-efiled.asp>.

¹¹ Rule 2003(c)(1)(ii), 18 CFR 385.2003(c)(1)(ii); see <http://www.ferc.gov/docs-filing/efiling/user-guide.asp>.

file formats,¹² those instructions also will continue to apply. The Commission has invited comments on the proposals on which documents should be accepted through the eFiling system.

In some cases, the Commission will require paper copies of filings although it will also be possible to submit the documents through eFiling 7.0. This paper back-up will apply most notably to oversized documents such as maps, diagrams and drawings. Due to the size of standard monitors and other hardware and software limitations, it is impractical at this time for Commission staff to review such documents in electronic form. The Commission therefore anticipates that it will continue to need paper copies of most documents that are larger than 8.5 x 11 inches. As the Commission upgrades its resources, it expects to be able to reduce or eliminate the requirement for paper copies. The Commission also is considering whether to require paper copies of long documents, such as those exceeding 500 pages. The instructions posted by the Secretary will include directions specifying whether, and how many, paper copies of electronically filed documents are required.

With respect to the documents submitted under FERC-515 there is a large variance in the type of material submitted as technical data to the Commission, and the required drawings, blueprints and quad sheets compounds the problems associated with the automation of materials and for the reasons notes above, paper copies will still be required. Currently, improved information technology cannot be adapted to all facets of the declaration process.

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-515 are the basic filing requirements pertaining to all DIs. 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.

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

12 E.g., <http://www.ferc.gov/industries/electric/gen-info/qual-fac/completing.asp> (Form 556 for Qualifying Facilities).

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

Director	1	
Division of Hydropower Administration and Compliance		1
Division of Hydropower Licensing	1	
Division of Dam Safety and Inspections	1	
Regional Offices	1	

The Offices of General Counsel and the Office of External Affairs each receive one copy.

The distribution of multiple copies of a DI to OEP staff is essential so that the required technical reviews and analyses proceed simultaneously and efficiently. A project coordinator must have a copy of any DI for review and coordination purposes; additional copies must be available for staff members in various parts for assessing the adequacy. 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 DI were provided for staff use. In addition, once an application has been determined to be adequate for processing, OEP staff in Headquarters and the appropriate regional office need copies of the DI.

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-515 were noticed in the Federal Register on June 6, 2007 (72 FR.31305). 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 515 is based on the Commission's recent experience with applications for Declaration of Intention. Under FERC 515, it is estimated that the annual average annual burden for each DI will be 80 hours. The number of respondents is expected to average 10 per year.

Estimated number of respondents	: 10
Estimated number of responses	: 1
Estimated number of responses per year	: 10
Estimated number of hours per response	: 80
Total estimated burden (hours per year)	: 800
FERC 515 burden hours currently in OMB's inventory	: 800
Program change in industry burden hours	: 0
Adjustment change in industry burden hours	: 0

13. The estimated annualized cost to the respondents for **FERC-515 Declaration of Intention** averaged over the next three years is as follows:

Total Hours

Estimated Respondent	Person	Average	Total	
<u>Burden</u>	□ <u>Hours/Year</u>	x	<u>Salary/Year</u> ¹³	= <u>Cost</u>
800	2080	x	\$122,137	= \$46,975.

The average cost per respondent is \$ 4,698.

Included in the cost for preparation of a Commission response "Declaration of Intention" is the review and analysis of the following information:

- brief description of the proposed project-maximum height of the dam, storage capacity of the curve of the reservoir(s); maximum, average and minimum operating pool levels; initial and ultimate installed capacity of the project; rated horsepower and head on the turbines plus curve of turbine discharge versus output at average and operating heads.

¹³The estimated annual cost per staff/employee (\$122,137) based on the number of employees or Full Time Equivalents (FTEs) in the Office of Energy Projects (OEP) and the FY 2007 appropriation for that Office as reported in the Commission's FY 2007 OMB Budget Request. The \$122,137 cost consists of \$98,876 in salary and benefits and \$23,261 for support functions. The estimated "salary" per employee with industries regulated by the Commission is assumed to be the same as that per Commission staff members, including related overhead and contracted services.

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- general map showing stream(s) to be utilized and approximate location and general plans of the project.
- detailed map with all Federal and State lands if any occupied by the project.
- profile of the river showing proposed location of the project and any existing improvements in the river.
- duration curve and hydrograph for the natural and proposed regulated flows at the dam site.

These costs include both engineering studies and support staff to prepare the documentation.

14. The estimated annualized cost to the Federal Government for **FERC-515 Declaration of Intention** is shown below:

<u>Operation</u>	<u>FERC-515</u>
a) Data clearance (FERC FY 2007)	\$ 941
b) Analysis of data (FTE 1.5)	\$ <u>183,205.00</u>

Total costs in one year of operation \$ 184,141

15. The FERC-515 burden estimate reflects no change from what is currently reported on the OMB inventory.

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.

(b) Collections of Information Employing Statistical Methods: Not applicable.

17. And 18.

It is not appropriate to display the expiration date for OMB approval of the information collected pursuant to Section 23 of the Federal Power Act and Part 24 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 declaring their intention prepare and submit information that reflects the unique or specified circumstances related to 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. In addition, the Commission identifies these sections and control numbers with the issuance of each proposed and final rulemaking.

B. COLLECTION OF INFORMATION EMPLOYING STATISTICAL METHODS

Not applicable.