

**SUPPORTING STATEMENT FOR FERC-512, APPLICATION FOR  
PRELIMINARY PERMIT**

(Three year Extension requested through August 31, 2011)

The Federal Energy Regulatory Commission (Commission) requests that the Office of Management and Budget (OMB) review and extend its approval of **FERC-512, APPLICATION FOR PRELIMINARY PERMIT** through August 31, 2011. FERC-512 (OMB Control No. 1902-0073) is an existing data collection (filing application) whose filing requirements are contained in Title 18 C.F.R., Sections 4.31-.33 and 4.81 and .83 and Sections 4(f), 5 and 7 of the Federal Power Act.

The estimated reporting burden for FERC-512 is expected to average 7,400 hours per year over the next three years. This is an adjustment to the burden hours currently reported in OMB's inventory. The average burden per filing is estimated to be 37 hours and reflects a staff reassessment based on its experience with the Preliminary Permit process.

**A. Justification**

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

The Commission is responsible for licensing nonfederal hydropower projects if they are on lands or waters subject to Congressional authority. Part I of the Federal Power Act<sup>1</sup> (FPA) gives the Commission the authority to issue licenses for hydroelectric projects on these waters. The Commission 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. Preliminary permits, issued for three years, reserve rights to study the feasibility of hydropower development at a specific site, but do not authorize construction of any hydropower facilities. The application for preliminary permit process is pursuant to the Commission's defined role, as mandated under Sections 4(f), 5 and 7 of the Federal Power Act.

The purpose of obtaining a preliminary permit as noted above, is to maintain a priority status for an application for a license, while the applicant conducts site examinations and surveys to prepare maps, plans, specifications and estimates. This

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<sup>1</sup>116 U.S.C. Sections 797, 798 and 800. (2000).

period of time also provides the applicant with the opportunity to conduct engineering, economic and environmental feasibility studies; plus make the financial arrangements for funding the construction of the site. The conditions under which the priority will be maintained are set forth in each permit. During the term of the permit, no other application for a preliminary permit or application for license submitted by another party can be accepted.

The Commission has seen increasing interest in new hydroelectric technologies that would utilize ocean waves, tides, and currents from free-flowing rivers, as evidenced by a surge in applications for preliminary permits to study such projects. Commission staff has issued 11 preliminary permits for projects of this type; three are for proposed tidal energy projects (in New York, Washington, and California), and eight are for proposed ocean current energy projects (off the coast of Florida). Over 40 preliminary permit applications for ocean projects are currently pending before the Commission, all of which have been filed since March 2006.

These hydroelectric technologies in various stages of development are to produce electric power instead of the traditional hydropower model involving hydraulic head developed by use of a dam or other diversion structure. These new technologies have significant potential: it has been estimated that the potential for wave and current power could be over 350-terawatt hours per year, which would more than double current hydropower production.<sup>2</sup> The Commission anticipates further exploration of how these technologies can fit within the national energy infrastructure in terms of the amount of potential energy that can be developed, its reliability, environmental and safety implications, and its commercial viability. The Commission wants to reduce regulatory barriers to the development of new technologies, where possible, and has exhibited the maximum flexibility permitted by law in regulating these projects.<sup>3</sup>

In the last two years, the Commission has granted permits to study projects off the coast of Florida,<sup>4</sup> in San Francisco Bay,<sup>5</sup> in the East River of New York,<sup>6</sup> and in Puget

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<sup>2</sup> See Hydroelectric Infrastructure Technical Conference, Docket No. AD06-13-000 (December 6, 2006), transcript at 12; 22 (testimony of George Hagerman).

<sup>3</sup> For example, in Verdant Power, LLC, 111 FERC ¶ 61,024, on reh'g, 112 FERC ¶ 61, 143 (2005), the Commission concluded that, under specified circumstances, the short-term testing of new hydropower technology would not require a Commission license.

<sup>4</sup> Red Circle Systems Corporation, 110 FERC ¶ 62,113 (2005); Red Circle Systems Corporation, 110 FERC ¶ 62,114 (2005); Red Circle Systems Corporation, 110 FERC ¶ 62,115 (2005); Red Circle Systems Corporation, 110 FERC ¶ 62,116 (2005); Red Circle Systems Corporation, 110 FERC ¶ 62,117 (2005); Florida Hydro, Inc., 110 FERC ¶ 62,270 (2005); Red Circle Systems Corporation, 110 FERC ¶ 62,271 (2005); Red Circle Systems Corporation, 110 FERC ¶ 62,272 (2005).

<sup>5</sup> Golden Gate Energy Company, 113 FERC ¶ 62,028 (2005).

<sup>6</sup> Verdant Power, LLC, 113 FERC ¶ 62,193 (2005).

Sound, Washington.<sup>7</sup> Approximately 45 additional applications of this type are pending.

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

The information collected by the FERC is in the format of a written application for a preliminary permit, this is used by the Commission's staff to research the jurisdictional aspects of the project. Commission staff conducts a systematic review of the prepared application with supplemental documentation provided in the filing. The research includes a determination of the applicant's qualifications to hold a preliminary permit, a review of the proposed hydro development for feasibility and to issue a public notice of the application to solicit public and agency comments.

An application for a preliminary permit includes an initial statement and four numbered exhibits. The initial statement includes information on the applicant, the project, the requested term of the permit, affected political jurisdictions, and a verification of the facts presented.

**Exhibit One** is a description of the proposed project and includes a characterization of the project structures, transmission facilities and reservoir; estimates of energy and capacity; identification of affected United States lands; and information on how the proposed development of the water resource would be in the public interest.

**Exhibit Two** is a description of project studies, either completed or planned, for the purpose of assessing project feasibility, determining environmental impacts, and preparing an application for license including a proposed schedule for completing each study.

**Exhibit Three** is a statement of costs and financing that includes an estimate of the costs of doing the project studies described in Exhibit Two above, the source of funding these studies, and a description of the anticipated market for the power to be generated by the proposed project including a proposed schedule for completing each study.

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**Exhibit Four** includes a map or series maps that clearly show the location of the project, the location and relationship of the principal project features, a proposed boundary for the project, and areas with special protected statutes under the National Wild and Scenic River System or Wilderness Act.

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<sup>7</sup> Tacoma Power, 114 FERC ¶ 62,174 (2006).

A permit holder is not required to file a license application. Likewise, a developer may study a project without holding a preliminary permit. However, the holding of a permit does give a developer first-in-time preference over any competitors who file applications for projects at the same site, during the permit term. As noted above, it is only if and when a project license is issued that the licensee can, under the conditions imposed in the license, engage in ground-disturbing activities, and if necessary use eminent domain to acquire lands for the project.

In contrast, a license issued by the Commission gives the licensee the authority to construct and operate a project. Standard license Article 5 require licensees to acquire title in fee or the right to use in perpetuity all lands, other than lands of the United States, necessary or appropriate for the construction, maintenance, and operation of a project. Where licensees cannot obtain such rights through contract, they may use eminent domain to do so.<sup>8</sup> In consequence, before issuing any license, the Commission conducts a full, searching public interest inquiry, and the licensing process is completely distinct from the permit process.

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

There is currently an ongoing effort to determine the potential and value of improved information technology to reduce the burden. Exhibit drawings are filed in a variety of formats for review by the Commission. When filing drawings for review, applicants are generally not limited to the format of the drawing. Acceptable formats include paper, mylar, or electronic files of various formats such as PDF, JPG, color or black and white drawings. All drawings must conform to the regulatory requirements specific to the type of application filed. Exhibit drawings that deviate substantially from this format may cause added effort for revisions.

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**4. DESCRIBE EFFORTS TO IDENTIFY DUPLICATION AND SHOW SPECIFICALLY WHY ANY SIMILAR INFORMATION ALREADY AVAILABLE CANNOT BE USED OR MODIFIED FOR USE FOR THE PURPOSE(S) DESCRIBED IN INSTRUCTION NO. 2.**

Filings are periodically reviewed in conjunction with OMB clearance expiration dates. This includes a review of the Commission's reporting requirements to identify

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<sup>8</sup> See FPA section 21, 16 U.S.C. § 814 (2000).

duplication of data requirements. To date, no duplication of application data has been found. This is a specific use of information to make an application for a preliminary permit as required under Part 1 of the Federal Power Act and not a general collection of information.

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

The reporting requirements associated with FERC-512 are the basic filing requirements pertaining to all applications for a preliminary permit. 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 data required impose the least possible burden on applicants, while collecting information required to process the information.

The minimization of impact on small businesses would not be applicable. The burden will not vary between respondents, because the required information is identical for each preliminary permit applicant.

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

If the information contained in the FERC-512 were not collected, the potential license applicant(s) would have no means to establish priority for future development of the site (i.e., hold the site while studies are conducted to determine the feasibility of hydropower development). The lack of priority would place potential license applicants at greater financial risk in pursuing hydropower, and would cause many developers not to pursue hydropower. The collection could not be made less frequently since it is made

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only once upon the filing of the permit application. The Commission cannot limit the applicants who apply for projects and cannot limit the number of such applications which fall under the FERC's authority.

**7. EXPLAIN ANY SPECIAL CIRCUMSTANCES RELATING TO THE INFORMATION COLLECTION**

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 Administration and Compliance		2
Division of Dam Safety and Inspections	1	
Regional Offices	1	

The Offices of General Counsel and External Affairs also receive one copy.

The distribution of multiple copies of an application to OEP staff is essential so that the required technical, engineering, and environmental reviews and analysis proceeds 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 to be adequate for processing, OEP staff in Headquarters and the appropriate regional office need copies of the application.

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

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

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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-512 was noticed in the Federal Register on March 13, 2008 (73 FR 13536). The Commission did not receive any comments in response to this notice.

On February 15, 2007 in RM07-8-000<sup>9</sup>, the Commission issued a Notice of

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<sup>9</sup> 72 FR 9281 (March 1, 2007).

Inquiry seeking public comment on how to process preliminary permit applications for wave, current, and instream hydropower technologies in light of an increasing interest in these new technologies to develop hydropower.<sup>1</sup> The Commission also sought comments on how it should oversee any such permits during their terms. Specifically, the Commission sought comment on the following alternatives for reviewing preliminary permit applications:

- o Maintain the standard preliminary permit review process currently in use. This process involves moderate scrutiny of applications and generally does not include specific requirements for project progress reports.
- o Provide stricter scrutiny of permit applications and limit the boundaries of the permits to prevent site-banking and promote competition. Additional scrutiny could include public outreach and agency consultations, development of study plans, and deadlines for filing a notice of intent to file a license application and a preliminary licensing document. This would also require that progress reports demonstrate compliance with specific milestones.
- o Decline to issue preliminary permits for these new technologies altogether.

In response to the NOI the Commission received comments from over 40 entities. Further, the Commission held a technical conference in October 2007 to discuss the issues raised by the commenters. Currently, the Commission is still reviewing both the comments raised in response to the NOI and comments to the technical conference.

## **9. EXPLAIN ANY PAYMENT OR GIFTS TO RESPONDENTS**

No payments or gifts have been made to respondents.

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## **10. DESCRIBE ANY ASSURANCE OF CONFIDENTIALITY PROVIDED TO RESPONDENTS**

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. PROVIDE ADDITIONAL JUSTIFICATION FOR ANY QUESTIONS OF A SENSITIVE NATURE**

No data of a sensitive nature is requested.

**12. ESTIMATED BURDEN OF THE COLLECTION OF INFORMATION**

The annual burden estimate for information collection under FERC-512 is based on the Commission's most recent experience with applications for a Preliminary Permit. Under FERC 512, it is estimated that the annual average annual burden for each application will be 37 hours. The number of respondents is expected to average 200 per year.

Estimated number of respondents	:	200	
Estimated number of responses	:	1	
Estimated number of responses per year	:		200
Estimated number of hours per response	:		37
Total estimated burden (hours per year)	:		
		7,400	
FERC 512 burden hours currently in OMB's inventory	:	3,102	
Program change in industry burden hours	:	0	
Adjustment change in industry burden hours	:	4,298	

**13. ESTIMATE OF TOTAL ANNUAL COST OF BURDEN TO RESPONDENTS**

The estimated annualized cost to the respondents for **FERC-512 Application for Preliminary Permit** averaged over the next three years is as follows:

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$$\frac{\text{Total Hours Respondent Burden}}{\text{Person}} \times \frac{\text{Estimated Average Hours/Year}}{\text{Salary/Year}^{10}} = \text{Cost}$$

<sup>10</sup>The estimated annual cost per staff/employee (\$126,384) 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



$$7,400 \quad 2080 \quad x \quad \$126,384 \quad = \quad \$449,635.$$

The cost per respondent is estimated to be \$2,248. ( $\$449,635 \div 200$ )

14. The estimated annualized cost to the Federal Government for **FERC-512 Application for Preliminary Permit** is shown below:

<u>Operation</u>	<u>FERC-512</u>
a) Data clearance (FERC FY 2008)	\$1,458
b) Analysis of data (FERC hydropower licensing program is reimbursed by licensees pursuant to Section 10(e) of the Federal Power Act)	\$ <u>0.00</u>
Total cost in one year of operation	\$1,458.00

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

There is an adjustment in the burden from the Commission's last submission to OMB. Because of the high cost of traditional fossil fuels, many potential participants are looking to renewables to provide alternative energy sources. In addition and as noted in item no. 1 above, the Commission has seen a significant increase in preliminary permit applications because of the interest in hydrokinetic energy. It should also be noted that a DOE study<sup>11</sup> identified more than 30 million kilowatts of untapped hydroelectric capacity

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reported in the Commission's FY 2008 OMB Budget Request. The \$126,384 cost consists of salary and benefits for overhead. 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.

11 United States Department of Energy—Idaho Operations Office. *Hydropower: Partnership with the Environment*. 01-GA50627. Idaho Falls, June 2001.

that could be constructed with minimal environmental effects at existing dams that presently have no hydroelectric generating facilities, at existing hydroelectric projects with unused potential, and even at a number of sites without dams. Follow-up studies have assessed the economic issues associated with this untapped hydroelectric resource. In addition, studies to estimate the hydroelectric potential of undeveloped, small capacity, dispersed sites that could supply electricity to adjacent areas without connecting to a regional electric transmission distribution system are proceeding and provoked a renewed interest. Preliminary results from these efforts have improved the visibility of hydroelectric power and provided indications that the hydroelectric power industry will be vibrant and important to the country throughout the next century.

**16. TIME SCHEDULE FOR INFORMATION COLLECTION AND PUBLICATION**

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

**17. DISPLAY OF EXPIRATION DATE**

It is not appropriate to display the expiration date for OMB approval of the information collected pursuant to Sections 4(f) 5, and 7 of the Federal Power Act and Part 4 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,

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applicants for 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. 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 identifies these sections and control numbers with the issuance of each proposed and final rulemaking.

**18. EXCEPTIONS TO THE CERTIFICATION STATEMENT**

The data collected for this reporting requirement is not used for statistical purposes. Therefore, the Commission does not use as noted below, “effective and efficient statistical survey methodology”. The information collected is case specific to each respondent.

**B. COLLECTION OF INFORMATION EMPLOYING STATISTICAL METHODS**

Not applicable. This collection of information does not employ statistical methodology.