

Supporting Statement for
**FERC-600, Rules of Practice and Procedures: Complaint Procedures
Regarding Complaint Procedures**

The Federal Energy Regulatory Commission (Commission) requests Office of Management and Budget (OMB) review and approval of an existing information collection requirement, FERC-600, **Rules of Practice and Procedures: Complaint Procedures**. The Commission is specifically requesting that OMB approve the proposed data collection under FERC-600 over the next three years -- through August 31, 2011. We estimate that the annual reporting burden under FERC-600 data totals 1,134 hours or an average of 14 hours per respondent. This is an adjustment change from the 1,064 hours currently reported on OMB's inventory.

Background

The natural gas and electric industries have undergone and will continue to undergo significant transformations as a result of changes to the Commission's regulatory policies. These industries are now operating in an environment which is increasingly driven by competitive market forces. Because of the short-term transactional nature of the electric and gas markets, and the fact that competitive changes happen quickly, timely and effective resolution of complaints has become more crucial. If the Commission is to use lighter-handed forms of regulation, to maintain balance and equity it must have an organized and fair complaint process to ensure that complainants will receive adequate protection and redress under the statutes administered and enforced by the Commission. An effective complaint process enables the Commission to monitor activities in the marketplace and provides an early warning system for identifying potential problems. It is in this context that the Commission made changes to its complaint procedures. Revised complaint procedures were necessary to provide assurance to the public that complaints will receive appropriate consideration and expedited consideration as appropriate.

On March 30, 1998, in Docket No. PL98-4-000, the Commission held a symposium on the Commission's complaint procedures to determine (1) how well the Commission's current complaint procedures were working, (2) whether changes to the current complaint procedures were appropriate, and (3) what type of change should be made. While the Pipeline Customer Coalition's ¹ (Coalition) and The Interstate Natural Gas Association of America's ² (INGAA) proposals were restricted to complaints against pipelines, the purpose of the symposium was to discuss the Commission's complaint procedures on a generic basis. The Commission obtained a

1 ?/ The Pipeline Customer Coalition consists of the American Iron and Steel Institute, the LDC Caucus of the American Gas Association, American Public Gas Association, Associated Gas Distributors, Georgia Industrial Group, Independent Petroleum Association of America, Natural Gas Supply Association, Process Gas Consumers, and United Distribution Companies.

2 ?/ Comments and Petition of the Interstate Natural Gas Association of America filed on April 10, 1997, in Regulation of Negotiated Transportation Services of Natural Gas Pipelines, *et al.*, Docket Nos. RM96-7-000, RM96-12-000, and RM97-4-000.

cross section of views from all segments of the gas, electric, and oil pipeline industries, as well as state regulatory agencies and members of the energy bar. The Commission received a number of comments following the symposium representing a broad range of interests from the natural gas pipeline, electric, and oil pipeline industries.

As a result of a commitment made by representatives of various segments of the electric industry at the March 30, 1998-symposium, the Electric Industry Dispute Resolution Working Group (Electric Working Group) ³ filed, in Docket No. PL98-4-000, recommendations and proposed procedures for dispute resolution. ⁴

In addition, Commission staff recommended an initiative that focused on revising internal procedures for a more timely resolution of contested matters and complaints. That proposal was to accomplish this goal in two ways: (1) significantly expand use of consensual decision-making by greater emphasis on ADR techniques; and (2) use of aggressive time limits for the issuance of decisions on matters that are not resolved in a consensual manner. The initiative also proposed new complaint processes for all types of issues and complaints.

Final Rule (Docket No. RM98-13-000)

On March 31, 1999, the Commission issued a final rule in Docket No. RM98-13 and instituted the following:

- revised its Rules of Practice and Procedure;
- required that complaints meet certain informational requirements;
- provided for various paths for resolution of complaints, including a Fast Track processing for complaints that are highly time sensitive;
- required responses (answers) be filed in a 20-day time frame;
- added a new rule that provides for simplified procedures for complaints where the amount in controversy is less than \$100,000 and the impact on other entities is *di minimis*.

The revised regulations encouraged and supported the resolution of disputes by the parties themselves prior to the filing of a formal complaint with the Commission. If the potential complaint can be resolved or the number of issues in a potential complaint can be reduced informally, the Commission will then be able to focus on the significant remaining issues raised in the formal complaints ultimately filed with the Commission.

3 [?]/ The Electric Working Group includes representatives from American Public Power Association, Coalition for a Competitive Electric Market, Edison Electric Institute, Electric Power Supply Association, Illinois Municipal Electric Agency, National Rural Electric Cooperative Association and Transmission Access Policy Study Group, working with the assistance and support of the American Arbitration Association.

4 [?]/ Electric Industry Dispute Resolution Working Group Recommendations and Proposed Procedures for Dispute Resolution filed on June 23, 1998, in Symposium on Process and Reform: Commission Complaint Procedures, Docket No. PL98-4-000.

In addition, the revised regulations organized the complaint procedures so that all complaints are handled in a timely, fair manner based upon an appropriate record. The regulations assure that complaints deserving of expeditious review, receive it by recognizing the appropriate process to be used for a particular complaint. This determination depends on many factors including the harm alleged and the facts and circumstances surrounding the complaint. The final rule was necessary to provide assurance to the public that complaints will receive appropriate consideration and that complaints that require expedited consideration will receive it.

A. Justification

1. CIRCUMSTANCES THAT MAKE THE COLLECTION OF INFORMATION NECESSARY

Pursuant to sections 4, 5, 7, 14, 15, and 16 of the Natural Gas Act (NGA), (15 USC 717c - 717o, P.L. 75-688, 52 Stat. 822 and 830), and Title III (Sections 311, 501, 504) of the Natural Gas Policy Act (NGPA), (15 U.S.C. 3301-3432, P.L. 95-621), a natural gas company must obtain Commission authorization for all jurisdictional facility construction (and abandonment of such facilities), services, rates and charges made, demanded, or received in connection with the transportation and/or sale of natural gas in interstate commerce. The Commission is authorized to investigate any proposed construction, abandonment, service, and the rates charged by natural gas pipeline companies subject to its jurisdiction to determine whether any person has violated, or is about to violate, any provision of the NGA or any rule, regulation, or order there under or the enforcement thereof.

Section 14(a) of the NGA provides:

The Commission may permit any person to file with it a statement in writing, under oath or otherwise, as it shall determine, as to any or all facts and circumstances concerning a matter which may be the subject of an investigation.

The Commission regulations currently provide in section 385.206:

Any person may file a complaint seeking Commission action against any other person alleged to be in contravention or violation of any statute, rule, order, or other law administered by the Commission or for any other alleged wrong over which the Commission may have jurisdiction.

The NGA also provides the Commission with a means for considering such alleged wrongs or violations through settlement conferences or hearings.

Pursuant to Sections 4, 15, 19, 20, 205, 206 and 207 of the Federal Power Act (FPA) (16 U.S.C. 791a-825r) as amended by the Energy Policy Act of 1992 (P.L.102-486), a public utility must obtain authorization for all rates and charges made, related contracts and service conditions, for wholesale sales and transmission of energy in interstate commerce. The Commission is authorized to investigate the rates and services charged by the public utilities subject to its jurisdiction. If after investigation, the Commission determines that the rates, terms or conditions of service are "unjust and unreasonable or unjustly discriminatory or unduly preferential," it is authorized to determine and prescribe the just and reasonable rates, terms or conditions.

Section 205(e) of the FPA provides:

Whenever any such new schedule is filed with the Commission shall have authority, either upon complaint or upon its own initiative without complaint at once, and if it so orders, without answer or formal pleading by the public utility, but upon reasonable notice to enter upon a hearing concerning the lawfulness of such rate, charge, classification, or service; and pending such hearing and the decision thereon the Commission, upon filing with such schedules and delivering to the public utility affected thereby a statement in writing of its reasons for such suspension, may suspend the operation of such schedule and defer the use of such rate, charge, classification or service, but not for longer period than five months beyond the time when it would otherwise go into effect; and after full hearings, either completed before or after the rate, charge, classification, or service goes into effect, the Commission may make such orders with reference thereto as would be proper in a proceeding initiated after it had become effective . . .

Also under the authority of Part I of the FPA, 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 (P.L. 99-495, 100 Stat. 1243) provides the Commission with the responsibility of issuing licenses for non federal hydroelectric plants. The passage of ECPA also revised the language of the FPA concerning environmental issues.

Section 19 of the FPA provides:

That is the condition of the license, every licensee hereunder which is a public-service corporation, or a person, association or corporation owning or operating any project and developing, transmitting, or distributing power for sale or use in public, shall abide by such reasonable regulation of the service to be rendered to customers or consumers of power, and of rates and charges of payment therefore, as may from time to time be prescribed by any duly constituted agency of the State in which the service is rendered or the rate charged. That in the case of the development, transmission or distribution, or use in public service of power by any licensee hereunder or by its customer engaged in public service within a State which has not

authorized and empowered a commission or other agency or agencies within said State to regulate and control the services to be rendered by such licensee or by its customer engaged in public service, or the rates and charges of payment therefore, or the amount or character of securities to be issued by said parties, it is agreed as a condition of such license that jurisdiction is hereby conferred upon the commission, upon complaint of any person aggrieved or upon its own initiative, to exercise such regulation and control until such time as the State shall have provided a commission or other authority for such regulation and control . . .

Section 210(h) (2) (B) of Public Utilities Regulatory Policies Act of 1978 (16 U.S.C. 2601 et. al.) provides:

Any electric utility, qualifying cogenerator, or qualifying small power producer may petition the Commission to enforce the requirements of subsection (f) as provided in subparagraph (A) of this paragraph. If the Commission does not initiate an enforcement action under subparagraph (A) against a State regulatory authority or nonregulated electric utility within 60 days following the date on which a petition is filed under this subparagraph with respect to such authority, the petitioner may bring an action in the appropriate United States district court to require such State regulatory authority or nonregulated electric utility to comply with such requirements, and such court may issue injunctive or other relief as may be appropriate. ...

Pursuant to Part I, Sections 1, 6, 13 and 15 of the Interstate Commerce Act (ICA) the Commission is authorized to investigate the rates charged by oil pipeline companies subject to its jurisdiction. If, after investigation, the Commission is of the opinion that the rates are "unjust or unreasonable or unjustly discriminatory or unduly preferential or prejudicial," the Commission is authorized to determine and prescribe just and reasonable rates. In 1978, the ICA was partially repealed and recodified. However, Public Law No. 95-473, §4(c); 92 Stat. 1466-1470 1978) provides those old portions of the old ICA that were repealed and recodified in 1978, nevertheless remain in effect as they existed on October 1, 1977, to the extent that these laws relate to the movement of oil by pipeline and the rates and charges related thereto. Thus, the ICA relating to oil pipeline regulation is found as an appendix to Title 49 of the United State Code.

If a proposed rate has been filed and allowed by the Commission to go into effect without suspension and hearing, the Commission can investigate the effective rate on its own motion or by complaint filed with the Commission.

Section 13 of 49 App. U.S.C. provides:

Any person, firm, corporation, company, or association, or any mercantile, agricultural, or manufacturing society or other organization, or anybody politic or municipal organization, or any common carrier complaining of anything done or omitted to be done by any common carrier subject to the provisions of this chapter in contravention of the provisions thereof, may apply to said Commission by

petition, which shall briefly state the facts; whereupon a statement of the complaint thus made, shall be forwarded by the Commission to such common carrier, who shall be called upon to satisfy the complaint, or to answer the same in writing, within a reasonable time, to be specified by the Commission. If such common carrier within the time specified shall make reparation for the injury alleged to have been done, the common carrier shall be relieved of liability to the complainant only of the particular violation of law thus complained of. If such carrier or carriers shall not satisfy the complaint within the time specified, or there shall appear to be any reasonable ground for investigating said complaint, it shall be the duty of the Commission to investigate matters complained of in such manner and by such means as it shall deem proper.

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

The data in complaints filed by interested/affected parties regarding oil pipeline, electric, hydroelectric, and natural gas pipeline operations, applications for rate changes, service, and/or facilities and/or licensing is used by the Commission in establishing a basis for various investigations and to make an initial determination regarding the merits of the complaint. Investigations may range from whether there is undue discrimination in rates or service to questions regarding the market power of regulated natural gas companies and environmental concerns. In other words, it is important to know the specifics of any oil, electric, hydroelectric, or gas complaint "up front" in a timely manner and in sufficient detail to allow the Commission to act swiftly. In addition, such complaint data helps the Commission and the public to monitor the market for exercises of monopoly power or undue discrimination. If the information, as proposed herein, were not required, the Commission would be unable to efficiently evaluate and react to a variety of public/industry concerns under Commission jurisdiction.

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

In order to increase the efficiency with which it carries out its program responsibilities, the Commission has been implementing measures to use information technology. The reporting requirements for persons filing complaints were created to reflect the Commission's commitment to using information technology to both reduce the burden on reporting entities and to increase the usefulness of the data reported. In Order No. 619, the Commission established an electronic filing initiative to meet the goals of the Government Paperwork Elimination Act, which directs agencies to provide for optimal use and acceptance of electronic documents and signatures and electronic recordkeeping. Complainants have the ability to file their complaints electronically. (See section 385.2011 of the Commission's regulations). A respondent to a complaint or show cause order may submit documents electronically in lieu of paper.

On November 15, 2007, the Commission issued a Final Rule, RM07-16-000, Order No. 703, "Filing via the Internet" 73 Fed. Reg. 65659 (November 23, 2007) revising its regulations for implementing the next version of its system for filing documents via the Internet, eFiling 7.0. The Final Rule allows the option of filing all documents in Commission proceedings through the eFiling interface except for specified exceptions, and of utilizing online forms to allow "documentless" interventions in all filings and quick comments in P (Hydropower Project), PF (Pre-Filing NEPA activities for proposed gas pipelines), and CP (Certificates for Interstate Natural Gas Pipelines) proceedings.

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

Commission filings and data requirements are periodically reviewed in conjunction with OMB clearance expiration dates. This includes a review of the Commission's regulations and data requirements to identify any duplication. To date, no duplication of the proposed data requirements has been found. The Commission staff is continuously reviewing its various filings in an effort to alleviate duplication. There are no similar sources of information available that can be used or modified for use for the purpose described in Item A (1.).

FERC-600 was created because existing FERC data collections did not specify the type of information/requirements that are covered by Order No. 602. These requirements organized and formalized the Commission's complaint procedures.

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

Large businesses -- as well as some small businesses and individuals -- are impacted under the FERC-600 reporting/data requirements. These filing requirements pertain to all complaint filings as indicated in Item A (1.). The Commission's regulations impact the day-to-day operations of shippers, the general public, major and non-major oil and natural gas pipelines, electric and hydroelectric companies. Specific efforts have been made by the Commission to minimize the burden imposed on the general public, shippers, and jurisdictional companies. These data requirements were designed to further the goals of promoting early resolution of contested matters and complaints by focusing on consensual decision making, administrative dispute resolution and expeditious decision making. In addition, the Commission instituted procedures for resolving complaints involving small claims where the amount in controversy is less than \$100,000 and the impact to other parties is minimal to reduce where possible the burden imposed on small businesses.

6. CONSEQUENCE TO FEDERAL PROGRAM IF COLLECTIONS WERE CONDUCTED LESS FREQUENTLY

The Commission receives complaint information under FERC-600 on an ongoing basis. The Commission has not prescribed the frequency for filing complaints. They are received as events occur and at times where disputes cannot be resolved among the parties. These filings are made to the Commission to resolve these differences.

7. EXPLAIN ANY SPECIAL CIRCUMSTANCES RELATING TO THE INFORMATION COLLECTION

The proposed complaint procedure meets all of OMB's section 1320.5 requirements. Effective December 9, 2002 additional qualified documents became eligible to be filed electronically in lieu of paper as part of FERC's electronic filing initiative. The additional qualified documents included Complaints for Electric, Gas and Natural Gas, Oil and Hydropower proceedings.

The electronic filing goes to the eLibrary system for public viewing over the Commission's web site. Copies of the filing are then distributed to the following: Public Reference Room and Files Maintenance Branch for public inspection in the Commission's Public Reference Room; the Office of the General Counsel for legal review; the Office of Energy Market Regulation or the Office of Energy Projects for technical review by analysts in rate filings, rate investigations, financial analysis, hydro power projects or gas pipeline certificate projects. The distribution of a filing is essential so that the required technical reviews and analyses can proceed simultaneously and efficiently and also that Commission staff can meet time constraints.

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

The Commission's procedures require that the rulemaking notice be published in the Federal Register, thereby allowing all pipeline companies, 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.

The request for renewal of FERC-600 was noticed in the Federal Register on January 30, 2008, 5⁵ with comments due by March 31, 2008. No comments were received in response to this notice.

9. EXPLAIN ANY PAYMENT OR GIFTS TO RESPONDENTS

There are no payments or gifts to respondents/complainants in the proposed information collection.

10. DESCRIBE ANY ASSURANCE OF CONFIDENTIALITY PROVIDED TO RESPONDENTS

The Commission generally does not consider the data filed in complaint filings to be confidential. The Commission adopted procedures in Order No. 602 after its oil pipeline regulations, where interested persons must execute an applicant's proposed protective agreement to receive the complete application. A complainant files its completed complaint with a request for privileged treatment. The respondent and other parties receive a redacted version of the complaint along with a complaint proposed protective agreement. The respondent and other participating parties would receive the privileged version of the complaint by executing the protective agreement and returning it to the complainant. Such a procedure has the advantage of enabling parties to resolve disclosure dispute through consensual agreement among them without the need for Commission involvement in every instance involving privileged information. A complainant may still request privileged treatment of document and information contained in a complaint to the extent permitted by law and pursuant to 18 C.F.R. Section 388.112 of the Commission's regulations.

11. PROVIDE ADDITIONAL JUSTIFICATION FOR ANY QUESTIONS OF A SENSITIVE NATURE THAT ARE CONSIDERED PRIVATE

There are no questions of a sensitive nature.

12. ESTIMATED BURDEN OF COLLECTION OF INFORMATION

The annual reporting burden estimate of 1,134 hours (an average of 14.0 hours per complaint filing) for information requirements/collections under FERC-600, as proposed in this request for renewal, is based on the Commission's recent experience with complaint filings. A detailed summary of proposed FERC-600 burden estimates for operation is shown below:

DATA COLLECTION (FERC-600)	CURRENT OMB INVENTORY	NEW OMB
Estimated number of respondents :	76	81
Estimated number of responses per respondent:	1	1
Estimated number of responses per year :	76	81
Estimated number of hours per response :	14.0	14.0
Total estimated burden (hours per year) :	1,064	1,134
 Program change in industry burden hours :		
Adjustment change in industry burden hours:	-0-	-70-

13. ESTIMATE OF TOTAL ANNUAL COST BURDEN TO RESPONDENTS

The estimated annualized ongoing operation and maintenance (filing/information collection) costs to respondents are as follows:

Data Collection Total	Employee Hours	Estimated Salary	Estimated Start-Up
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<u>Number</u>	<u>Burden Hours</u>	<u>Per Year</u>	x	<u>Per Year</u>	=	<u>Costs</u>
FERC-600	1,134	2080		\$126,384		\$ 68,904

14. The total annualized costs to the Federal government -- as related only to the data collection/requirements -- are estimated below:

<u>Data Collection Number</u>	<u>Analysis of Data (FTEs)⁶</u>	<u>Estimated Salary Per Year</u>	<u>FERC Forms Clearance (FY '08)</u>	<u>Total Cost One Year's Operation</u>
FERC-600	3.0	\$126,384	\$ 976	\$380,128

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

There are no program changes to FERC-600. There is an adjustment to the reporting burden as more fully explained in the Background section above and in item no. 12.

16. TIME SCHEDULE FOR PUBLICATION OF DATA

The time schedule for reporting complaint information under FERC-600 and related activities is shown in the following table.

Schedule for Data Collection and Analysis

<u>Activity</u>	<u>Estimated Completion Time</u>
Complaint Filed	On Occasion
Commission Action ⁷	60 to 90 Days + (This period could extend beyond 90 days depending on the type and complexity of the complaint.)

17. DISPLAY OF EXPIRATION DATE

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- 6 ?/ An FTE is a full-time-equivalent employee.
 - 7 ?/ The Commission endeavors to issue an order on the complaint within 60-90 days after the answer is filed. The length of time in which an order could be issued would depend on the complexity of the complaint. A complaint concerning a straightforward interpretation of a tariff or contract should be resolved in 60 days or less, while a complaint concerning policy issues closely intertwined with difficult interpretation issues might take longer.

Not applicable. The reporting requirements under FERC-600 are based on regulations and electronic filing requirements and are not filed on formatted/printed forms. Thus, the subject data requirements do not have an appropriate format to display an OMB expiration date.

18. EXCEPTIONS TO THE CERTIFICATION STATEMENT

For exceptions to the Certification Statement, see item no. 17 above and item no. B below.

B. COLLECTION OF INFORMATION EMPLOYING STATISTICAL METHODS

This is not a collection of information employing statistical methods.

