

**SUPPORTING STATEMENT FOR FERC-500,
APPLICATION FOR LICENSE/RELICENSE FOR WATER PROJECTS
WITH MORE THAN 5MW CAPACITY**
(OMB Control No. 1902-0058)
Approval Request through 10/31/2012

The Federal Energy Regulatory Commission (Commission) requests that the Office of Management and Budget (OMB) review and extend its approval of **FERC-500, APPLICATION FOR LICENSE/RELICENSE FOR WATER PROJECTS WITH MORE THAN 5MW CAPACITY** through 10/31/2012.

FERC-500 (OMB Control No. 1902-0058) is an existing data collection (filing application) whose filing requirements are contained in Title 18 C.F.R., Sections 4.32, 4.38, 4.40-.41, 4.50-.51, 4.61, 4.71, 4.93, 4.107, 4.108, 4.201, 4.202, 16.1, 16.10, 16.20, 292.203 and 292.208, Part 5 (Attachment A), and Sections 4(e), 9, 10, 14 and 15 of the Federal Power Act (Attachment B).

The Commission is projecting a total annual burden of 635,037 hours. This is based on annual filings at a rate of 6 respondents per year and 105,839.5 hours per response. This is an increase of 171,977 annual burden hours than is currently reported on OMB's inventory. In previous years, the Commission used estimated industry figures when projecting its burden calculations; however, for this cycle the Commission used actual costs as reported by respondents themselves. It is important to note that there is a great range in the types of hydroelectric projects that fall under this data collection (project size, location and technology being the largest factors).

The Commission has three licensing processes: the Integrated Licensing Process (ILP), the Alternative Licensing Process (ALP), and the Traditional Licensing Process (TLP); the default process is the ILP. There are three phases of the licensing process under the ILP 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 recommended conditions and for the public to provide comments. Pre-filing consultation generally begins three 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. FERC's environmental review culminates in either an environmental assessment or environmental impact statement and after finalization of all documents, FERC issues an order acting on the relicense application.

A. Justification

1. CIRCUMSTANCES THAT MAKE THE COLLECTION OF INFORMATION NECESSARY

Under the Authority of Part 1 of the Federal Power Act (FPA)¹ the Commission has the authority to issue licenses for hydroelectric projects on the waters over which Congress has jurisdiction. The FPA, as amended by the Electric Consumers Protection Act (ECPA), provides the Commission with the responsibility of issuing licenses for non-federal hydroelectric plants. The passage of ECPA in 1986 also revised the language of the FPA concerning environmental issues.²

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

Particular emphasis is placed on the ECPA, Section 10(j) to the FPA which is devoted exclusively to the protection, mitigation of damages and enhancement of fish and wildlife. ECPA requires the Commission to consult with fish and wildlife agencies in accordance with the Fish and Wildlife Coordination Act.¹ The Commission is to base fish and wildlife conditions in licenses on agencies' recommendations unless they are found to be inconsistent with the Federal Power Act or other provisions of law.

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

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

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

- Section 4(c) of the FPA authorizes the Departments of Agriculture and Interior to impose mandatory conditions on projects located on Federal reservations they supervise.
- Section 18 of the FPA authorizes the Departments of Commerce and the Interior to impose mandatory fishway prescriptions.
- Section 401 of the Clean Water Act authorizes States to impose mandatory conditions as part of the State water quality certification process³.
- The Coastal Zone Management Act authorizes States to impose conditions on projects affecting their coastal zone resources.
- The Endangered Species Act directs resource agencies to propose measures to protect threatened and endangered species.
- The National Historic Preservation Act requires Commission consultation with Federal and State authorities to protect historic sites.

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

In Order No. 2002 (68 FR 51070, August 25, 2003; *FERC Statutes and Regulations* ¶131,150 at p. 30,688) the Commission revised its regulations to create a new licensing process in which a potential license applicant's pre-filing

³³ The Clean Water Act precludes the Commission from licensing a hydroelectric project unless the project has first obtained State water quality certification. State water quality certifications impose a wide array of requirements on projects, without any obligation to take into account the benefits of hydroelectric or other competing interests or to concern themselves with whether their requirements duplicate or conflict with those imposed by the Commission or other federal agencies.

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 ILP has been the default licensing process for four years. In that time, 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) encouragement of informal resolution of study disagreements;
- g) better coordination between the Commission's processes, including the NEPA document preparation, and those of Federal and state agencies and Indian tribes⁴ with authority to require conditions for Commission-issued licenses.

Applicants are also permitted to request approval to use either the TLP or ALP. The TLP is distinguishable from the later developed ALP in that the TLP essentially leaves the project proponent to consult with resource agencies during their application development without FERC involvement. Consequently, license applications almost always lacked the information necessary for FERC to undertake an analysis or make a timely licensing decision. The ALP allows for, and even encourages, the project proponent to involve FERC during application development resulting in better license applications.

Each major type of hydroelectric application for license or exemption is governed by a separate subpart of the Commission's regulations. All hydroelectric applications are required to address environmental issues and to provide the facts necessary to understand and resolve them in the public interest. For example, subpart E of Part 4 applies to applications and major modified projects. These applications may raise significant environmental issues. Each application must contain an Exhibit E, which is the environmental report. The filing requirements for applications subject to this subpart are more detailed and extensive than for applications subject to other subparts.

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

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

- o Hydroelectric development
- o Energy conservation
- o Fish and wildlife resources, including their spawning grounds and habitat
- o Irrigation
- o Flood control
- o Water supply
- o Other aspects of environmental quality
- o Cultural resources
- o Recreational opportunities.

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

To adequately protect, mitigate for damage, and enhance fish and wildlife, along with their habitats, each license (or exemption from licensing) includes terms and conditions. The Commission's independent analysis, comments and requirements of federal and state agencies, recommendations and comments from the applicant, affected Indian tribes, and the public determine the fish and wildlife conditions, as well as conditions relating to other environmental resource and engineering issues.

In determining whether and how to relicense a project after the expiration of its original license, the Commission must strike a balance among many legitimate, but sometimes competing interests. While hydropower remains an essential renewable resource within the nation's energy mix, development and utilization of this energy source has to adjust to a competitive electric market and heightened environmental scrutiny, as well as to a decision making process characterized by shared authorities.

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

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

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

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

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

In general, the Commission continues to expand the list of filing types that may be submitted electronically (as described at <http://www.ferc.gov/docs-filing/efiling.asp>). As of June 4, 2009, the related FERC-500 reporting requirements in 18CFR Parts 4, 5, and 16 may be eFiled. For some of those eFilings, two additional paper/CD copies also need to be submitted

for use by the program office, due to the enormous size and complexity of the application. (See also Question 7, below.) The eFiling option saves the filer time and money and enables the application to be delivered and input to the FERC's eLibrary system for access by staff and the public within hours. eFiling is preferred but is not mandatory at this time.

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 duplication of data requirements. To date, no duplication of application data has been found. The information is case specific to the applicant and proposed project.

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

The reporting requirements associated with FERC-500 are the basic filing requirements pertaining to all applications for a major hydropower license or exemption. There are no similar sources of information available that can be used or modified for use as the information collected is unique to the applicant and the site for which the filing is made. The Commission makes a distinction between major and small hydro projects by providing a threshold of five megawatts. Entities that fall below that threshold have streamlined filing requirements.

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

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

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. Each application is usually voluminous and may include hundreds and, in some cases, thousands of pages and/or files, and numerous oversized, engineering drawings and blueprints.

As a result, at this time we need 2 additional paper copies of applications that are electronically filed. If a filer prefers to submit paper copies, one original and seven copies should be forwarded to the Commission secretary. The distribution of multiple copies of an application to Commission staff is essential so

that the required technical, engineering, and environmental reviews and analysis proceed simultaneously and efficiently. 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. As FERC improves its equipment and software for reviewing, accessing, and sharing these technical/engineering and voluminous materials, we will reconsider whether the paper copies are needed for those eFilings and whether the number of copies of paper filings can be reduced.

**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 the rulemaking notices be published in the Federal Register, thereby allowing all applicants, state commissions, federal agencies, and other interested parties an opportunity to submit comments, or suggestions concerning the proposal. The rulemaking procedures also allow for public conferences to be held as required. In accordance with OMB requirements in 5 C.F.R. 1320.8(d), the reporting requirements for FERC-500 was noticed in the Federal Register on 4/10/09 (74 FR 16377). No comments were received in response to this notice.

9. EXPLAIN ANY PAYMENT OR GIFTS TO RESPONDENTS

No payments or gifts have been made to respondents.

**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 THAT ARE CONSIDERED PRIVATE.**

No data of a sensitive nature is requested.

12. ESTIMATED BURDEN OF COLLECTION OF INFORMATION

The annual burden estimate for information collection under FERC-500 is based on the Commission's recent experience with license and exemption applications and information provided to FERC by applicants who have recently undergone the relicensing process. Under FERC 500, it is estimated that the average annual burden for each application will be 105,839.5 hours. The number of respondents is expected to average 6 per year. The Commission is projecting a total annual burden of 635,037 hours.

Data Collection⁵	No. of Respondents	No. of Responses	Hours Per Response	Total Annual Burden Hours⁶
FERC-500	6	1	105,839.5	635,037

FERC-500 burden hours currently in OMB's inventory: 463,060
 Program change⁷ in industry burden hours: 0
 Adjustment change⁸ in industry burden hours: +171,977

(Links to sample FERC-500 applications in FERC's eLibrary are included at Attachment D.)

13. ESTIMATE OF THE TOTAL ANNUAL COST BURDEN TO RESPONDENTS

The estimated annualized cost⁹ to the respondents over the next three years is as follows:

Data Collection (1)	Projected Total Annual Burden Hours (2)	Average Cost (\$) Per Hour (3) [(4)/(2)]	Projected Total Annual Cost of Collection (\$) (4)	Projected Average Annual Cost Per Respondent (\$) (5)
FERC-500	635,037	\$60.764242	\$38,587,542	\$6,431,257

The Average Cost per Hour is estimated by taking the Projected Total Annual Cost of Collection and dividing it by the Projected Total Annual Burden Hours.

⁵ Per sections 4.41 (e) (9), 4.51 (e) (7) and 4.61 (c) (3), applicants are now required to submit their total cost of collection; these figures were used in determining the average burden hours. The information presented here is based on actual Fiscal Years (FYs) 2007 and 2008 filings. Seventeen filers of FERC-500 provided cost data; their total annual cost for the collection was \$109,331,372 (giving an average of \$6,431,257 per response).

⁶ The figures may not be exact, due to rounding. Also, see Attachment C.

⁷ Program changes are caused by FERC taking action to increase, decrease, or modify factors, such as: the number of filers; the threshold or frequency of filing; the data that are collected, filed, posted, retained, or provided to third parties; and/or the record retention period.

⁸ Adjustments are not caused by a Commission action. They include changes such as: the number of entities subject to FERC jurisdiction (e.g., an entity that enters or leaves that business area), and improved estimates of the burden hours per filing.

⁹ The average employee works 2,080 hours per year. The estimated annual cost per employee is \$128,297.

14. ESTIMATED ANNUALIZED COST TO FEDERAL GOVERNMENT.

The estimated annualized cost to the Federal Government for FERC-500 is shown below:

FERC-500	Est. No. of Employees	Estimated, Annual, Federal Resources
FERC Program Office Costs	22 ¹⁰	\$2,822,534
Forms Clearance Review		\$1,480
Total FERC Costs		\$2,824,014

Please note the analysis of data for the FERC hydropower licensing program is reimbursed by licensees pursuant to the Federal Power Act.

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

Per sections 4.41 (e) (9), 4.51 (e) (7) and 4.61 (c) (3) of the FPA, applicants are now required to submit their total cost of collection. These figures were used in determining the average burden hours. The information presented here is based on actual FYs 2007 and 2008 filings and the filers' costs. As a result, these figures are more accurate estimates than the numbers included in the current OMB inventory. Attachment C compares the figures in the existing OMB inventory with this request for extension.

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. And 18. DISPLAY OF THE EXPIRATION DATE; and EXCEPTIONS TO THE CERTIFICATION STATEMENT

It is not appropriate to display the expiration date for OMB approval of the information collected pursuant to Sections 4, 9, 14 and 15 of the Federal Power Act and Parts 4 and 292 of the Commission's regulations. The information submitted to the Commission is not collected on a standard preprinted form which would avail itself to this display. Rather, applicants for declaring their intention prepare and submit information that reflects the unique or specified circumstances

¹⁰ The average employee works 2,080 hours per year. The estimated annual cost per employee is \$128,297.

related to their application. In addition, the information contains a mixture of narrative descriptions and empirical support that varies depending on the nature of the filing requirement.

The information collected from these reporting requirements is not used for statistical purposes. It is used for regulatory purposes

B. COLLECTION OF INFORMATION EMPLOYING STATISTICAL METHODS

Not applicable.