

Supporting Statement for
FERC-539, Gas Pipeline Certificates: Import/Export Related¹
(OMB Control No. 1902-0062)
Three-year extension requested

The Federal Energy Regulatory Commission (FERC or Commission) requests the Office of Management and Budget (OMB) extend its approval of FERC-539 (Gas Pipeline Certificates: Import/Export Related¹) for three years. OMB approval of FERC-539 expires 5/31/2010.

Background

Under the Commission's current guidelines, when a prospective applicant elects to undertake the Commission's pre-filing process, the prospective applicant submits a written request to the Director of the Office of Energy Projects (OEP) for staff assistance with the pre-filing process seven to eight months prior to filing an application. The request provides the following information:

- (1) explains why the prospective applicant wants to use the pre-filing process, including time considerations;
- (2) lists the federal and state agencies in the project area with relevant permitting requirements, documents that those agencies are aware of the prospective applicant's intention to use FERC's pre-filing process, provides the Commission with contact names and phone numbers, and verifies that the federal agencies agree to participate in the process;
- (3) identifies other interested persons and organizations who have been contacted about the project;
- (4) details what work has been done already, *i.e.*, contacting landowners, agency consultants, project engineering, and route planning;
- (5) states that the prospective applicant will provide a list of potential third-party contractors who can prepare the requisite National Environmental Policy Act (NEPA) document, from which Commission staff will make a selection;
- (6) acknowledges that a complete application is still required at the time of filing; and
- (7) details a Public Participation Plan which identifies specific tools and actions to facilitate stakeholder communications and public information, including establishing a single point of contact. Prospective applicants are strongly encouraged to establish a project web-site where interested persons

¹ FERC-539 covers the pre-filing aspects of the Import/Export certification process (under 18CFR 153). FERC -537 (OMB Control No. 1902-0060) covers the full application reporting requirements (after the pre-filing process is complete) for the proposed facility; FERC-537 is cleared separately and is not addressed here.

can go for further information such as copies of applications to other agencies.

In recent years, FERC staff has encouraged the use of the pre-filing process by prospective applicants for all major natural gas projects, including LNG projects. If the guidelines for requesting the pre-filing process are satisfied by a prospective applicant, then a written acceptance notice is issued by the Director of the Office of Energy Projects (OEP), and a Pre-Filing (PF) docket number is assigned.

To date, it has been FERC's policy to encourage early involvement by the public and governmental agencies, as contemplated by NEPA and the Council on Environmental Quality (CEQ) regulations, by promoting an optional pre-filing process for interstate gas pipelines and LNG terminal projects. Specifically, in the case of LNG project proposals, pre-filing activity is one of the three distinct phases of activity that FERC undertakes in fulfilling its goal of assuring the safe operation and system reliability of proposed and operational jurisdictional LNG facilities throughout the United States. The other two phases of a project timeline for any LNG proposal are pre-decision and post-decision construction, operation, inspection, and monitoring.

Because it is desirable to maximize early public involvement, to promote the widespread dissemination of information about proposed projects and to reduce the amount of time required to issue an Environmental Impact Statement (EIS) or an Environmental Assessment (EA) once an application is filed, FERC's OEP developed guidelines for going beyond informal discussion into a more formal pre-filing process. In order to respond to the mandate of Section 311(d) of EPAct of 2005, the Commission implemented mandatory procedures.

Final Rule in RM05-31-000

The Energy Policy Act of 2005 (EPAct 2005) was enacted on August 8, 2005. Under the Act, Congress authorized the Commission to implement mandatory procedures requiring prospective applicants to begin FERC's pre-filing review process at least six months prior to filing an application for authorization to site and construct a liquefied natural gas (LNG) terminal. The mandatory procedures require that the prospective applicant submit information necessary for pre-filing review of the LNG terminal, as defined in EPAct 2005, as well as any pipeline and other natural gas facilities necessary to transport regassified LNG from an LNG terminal to existing natural gas pipeline infrastructure.

Final Rule in Docket No. RM06-1-000

On October 19, 2006 in RM06-1-000, the Commission issued a final rule establishing regulations that govern its exercise of Section 313 of the Energy

Policy Act of 2005 (EPAAct 2005) as it amends section 15 of the Natural Gas Act (NGA). Section 313 provides the Commission with additional authority to coordinate the processing of authorizations required under federal law for proposed natural gas projects subject to NGA sections 3 and 7 and to maintain a complete consolidated record of decisions with respect to such federal authorizations. This authority also directed the Commission to establish a schedule for the completion of reviews of requests for authorizations necessary for a proposed project and to compile a consolidated record to be used in the event of review of actions by the Commission and other agencies in responding to requests for authorizations necessary for a proposed project.

A. Justification

1. CIRCUMSTANCES THAT MAKE THE COLLECTION OF INFORMATION NECESSARY Error: Reference source not found

Section 3 of the Natural Gas Act (NGA) (Public Law 75-688) (15 U.S.C. 717-717w) provides, in part, that "...no person shall export any natural gas from the United States to a foreign country or import any natural gas from a foreign country without first having secured and order from the Commission authorizing it to do so."

Under section 3 of the NGA, the Commission reviews the siting, construction, and operation of facilities to import and export natural gas, including LNG terminals².

The 1992 amendments to Section 3 of the NGA concern importation or exportation from/to a nation which has a free trade agreement with the United States, and requires that such importation or exportation:

- Shall be deemed to be a "first sale", i.e., not a sale for a resale, and
- Shall be deemed to be consistent with the public interest, and applications for such importation or exportation shall be granted without modification or delay.

With the ratification of the North American Free Trade Agreement and the Canadian Free Trade Agreement, the Federal regulatory focus on construction, operation, and siting of import or export facilities has become much greater.

² LNG projects are subject to various laws and regulations that are administered by FERC, the US Coast Guard/Maritime Administration, the US Army Corps of Engineers and the States. The Energy Policy Act of 2005 affirmed FERC's authority to site LNG terminals. Even if FERC approves a project, the Applicant may construct and operate it, only after obtaining Clean Water Act, Coastal Zone Management Act, and Clean Air Act permits from the States. The States still retain rights to stop or modify a proposed project through the denial or issuance of Clean Water Act and Clean Air Act permits and Coastal Zone Management Act. [More information on FERC's LNG program is available at <http://www.ferc.gov/industries/lng.asp> .]

FERC-539 addresses the pre-filing part of the application process. FERC's implementing regulations in 18CFR Part 153 and the statutory language are included at Attachment A.

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

The natural gas companies file the necessary pre-filing information with FERC, so that the Commission can determine whether the requested pre-filing certificate process should be approved. The data required to be submitted in the pre-filing process consists of: description of the schedule desired; zoning and availability of site; detailed description of the project; federal and state permitting agencies with permitting requirements; environmental report; and map of facilities.

Environmental concerns play a significant role in the review of import/export-related applications. Pipelines face opposition as new projects are proposed. FERC has to balance the benefits of alternative supplies of energy with the impacts of a new project. Critical to the Commission's efforts to balance benefits and environmental and other impacts are the conditions that the Commission builds into certificates.

If the collection of data for FERC-539 was not conducted, the Commission would not be able to meet its statutory responsibilities (such as to implement mandatory procedures requiring prospective applicants to begin FERC's pre-filing review process at least six months prior to filing an application for authorization to site and construct a liquefied natural gas (LNG) terminal, as well as any pipeline and other natural gas facilities necessary to transport regassified LNG from an LNG terminal to existing natural gas pipeline infrastructure).

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

There is an ongoing effort to increase the use of improved information technology and to reduce the burden. The FERC-539 application may be eFiled through FERC's eFiling system. [See <http://www.ferc.gov/docs-filing/efiling/filing.pdf> for more information.]

At present, the majority of the application filings made in accordance with sections 7(a) and 7(c) are filed electronically. However, due to the complexity of the exhibits, maps, and projects, depending on the type of filing, three additional paper copies of the eFiled applications may be required for staff review, processing, and

collaboration. As additional uses of information technology (including geospatial information systems) are implemented, FERC may be able to reduce or eliminate the need for the additional paper copies.

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

Filing requirements are periodically reviewed as OMB review dates arise or as the Commission may deem necessary in carrying out its regulatory responsibilities under the NGA in an effort to alleviate duplication. All Commission information collections are subject to analysis by Commission staff and are examined for redundancy. There is no other source of this information.

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

The information requirements under FERC-539 apply to jurisdictional pipelines. Most of the companies regulated by the Commission do not fall within the Regulatory Flexibility Act's (RFA) definition of a small entity. Based on FERC's experience using the proposed pre-filing procedures, they will only be used for major construction projects. Because of the scale and nature of projects most likely to be reviewed, the Commission doubts that any existing or new company using the pre-filing procedures will be a small entity under the RFA's standards.

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

FERC-539 data collections are required for statutory purposes and cannot be discontinued nor collected less frequently. The information that must be submitted to the Commission is event driven. Without such information, the Commission would be unable to fulfill its statutory responsibilities.

7. EXPLAIN ANY SPECIAL CIRCUMSTANCES RELATING TO THE INFORMATION COLLECTION

FERC-539 meets all of OMB's section 1320.5 requirements, except 1320.5(d) (2) (iii). The application may be eFiled through FERC's eFiling system. For applications that are eFiled, as posted at <http://www.ferc.gov/docs-filing/efiling/filing.pdf>, an additional 3 paper copies may be required for use by the Office of Energy Projects and Office of General Counsel.

Section 153.20 of the Commission's regulations requires original and 7 conformed copies for the Commission to conduct the regulatory review. The original is routed to the eLibrary System for public viewing over the Commission's web site.

One copy is distributed for public inspection in the Commission's Public Reference Room. The remaining copies are distributed within the Office of Energy Projects to ensure that each Division(s)/Office(s) involved in processing the case can review, analyze and respond in a timely fashion. Fewer copies would result in delay and reproduction requirements. As noted above, the majority of filings under sections 7(a) and 7(c) of the Natural Gas Act are filed electronically.

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. Additionally, as part of the renewal process of its information collections, a notice seeking public comment on the continued use of the information was published in the Federal Register.

FERC issued a 60-day request for public comment on 1/7/2010 (posted at <http://elibrary.ferc.gov/idmws/common/opennat.asp?fileID=12237068>; 75FR 2124, 1/14/2010). No comments were received. FERC then issued a 30-day request for public comment on 3/21/2010 (posted at <http://elibrary.ferc.gov/idmws/common/opennat.asp?fileID=12296731>), with the comment period ending 30 days after publication in the Federal Register.

9. EXPLAIN ANY PAYMENT OR GIFTS TO RESPONDENTS

There are no payments or gifts to respondents in the proposed rule.

10 and 11. DESCRIBE ANY ASSURANCE OF CONFIDENTIALITY PROVIDED TO RESPONDENTS; and PROVIDE ADDITIONAL JUSTIFICATION FOR ANY QUESTIONS OF A SENSITIVE NATURE THAT ARE CONSIDERED PRIVATE.

The Commission does not consider the information to be confidential. However, the Commission has encouraged prospective applicants to submit preliminary corridor or route information maps which may contain Critical Energy Infrastructure Information (CEII). CEII as defined in section 388.113 of the Commission's regulations includes information about proposed or existing natural gas facilities that could be used by a person planning an attack on critical energy infrastructure. The Commission's procedures in section 388.112 are designated to ensure that CEII is not placed in the Commission's public records.

12. ESTIMATED BURDEN OF COLLECTION OF INFORMATION

FERC-539 (1902-0062)

The estimated average annual public reporting burden and cost for FERC-539 follow.

FERC Data Collection FERC-539	Number of Respondents Annually (1)	Number of Responses Per Respondent (2)	Average Burden Hours Per Response (3)	Total Annual Burden Hours (1)x(2)x(3)
	6.00657895	25.333333	12	1826

Based on the number of actual filings, we estimate 6 respondents per year (rather than the current figure of 12), giving an adjustment decrease of 1,826 hrs. [6.00657895 respondents X 25.33333 responses per respondent X 12 hrs.]. [The figures may not be exact due to rounding.]

Burden hours currently in OMB’s inventory:	3,652
Program change ³ in industry burden hours:	0
Adjustment change ⁴ in industry burden hours:	-1,826

13. ESTIMATE OF TOTAL ANNUAL COST BURDEN TO RESPONDENTS

The estimated, annual cost to the respondents, averaged over the next three years follows.

Total Annual Burden Hours for Respondents (1)	Person Hours Per Year (2)	Estimated Annual Cost Per Person (3)	Total Annual Cost to Respondents [(1)/(2)]x(3)
1826	2,080	\$137,874	\$121,037.46

14. ESTIMATED ANNUALIZED COST TO FEDERAL GOVERNMENT

The estimated annualized cost to the Federal government for FERC-539, Gas Pipeline Certificate: Import/Export Related, is as follows:

FERC-539	No. of Employees (FTE’s)	Estimated Annual Federal Cost in (\$) [\$137,874/year/person]
Total FERC costs	14	\$1,930,236
Forms Clearance		\$1,528

³ 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.

⁴ 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.

FERC Total		\$1,931,764
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15. REASONS FOR CHANGES IN BURDEN INCLUDING THE NEED FOR ANY INCREASE

There is an adjustment decrease to 6 respondents (from 12) based on actual filings. Correspondingly, the total burden decreases by -1,826.

16. TIME SCHEDULE FOR PUBLICATION OF DATA

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

17. DISPLAY OF THE EXPIRATION DATE

Not applicable. The data requirements for FERC-539 are based on regulations and not filed on formatted/printed forms. Thus, the subject data requirements do not have an appropriate format to display an OMB expiration date. An applicant is to follow these procedures prior to filing an application with the Commission.

18. EXCEPTIONS TO THE CERTIFICATION STATEMENT

There are exceptions to the Paperwork Reduction Act Submission certification. Because the data collected for these reporting and recordkeeping requirements are not used for statistical purposes, the Commission does not use as stated in item 19(I) “effective and efficient statistical survey methodology.” In addition, as noted in no. 17, this information collection does not fully meet the standard set in 19 (g) (vi.).

B. COLLECTION OF INFORMATION EMPLOYING STATISTICAL METHODS

FERC-539 does not use statistical methods. Rather it is a specific filing requirement related to an individual project.