

**SUPPORTING STATEMENT FOR
FERC-582, Electric Fees; Annual Charges; Waivers; and Exemptions
(Three year Extension requested)**

The Federal Energy Regulatory Commission (Commission) requests that the Office of Management and Budget (OMB) review and extend its approval of **FERC-582, Electric Fees; Annual Charges; Waivers; and Exemptions** (OMB Control No. 1902-0132) for three years. [The current OMB expiration date is 11/30/2010.]

FERC-582 is an existing information collection contained in Title 18 Code of Federal Regulations (CFR), Sections 381.105, 381.106, 381.108, 381.302, 381.305, 382.102, 382.103, 382.105, 382.106, and 382.201. The requirements implement the statutory provisions of the Independent Offices Appropriation Act of 1952 (“IOAA”) (31 U.S.C. 9701) and the Omnibus Budget Reconciliation Act of 1986 (“OBRA” or “Budget Act”) (42 U.S.C. 7178).

A. Justification

1. CIRCUMSTANCES THAT MAKE THE COLLECTION OF INFORMATION NECESSARY

The Independent Offices Appropriation Act of 1952¹ authorizes the Commission to establish fees “for a service or thing of value provided by the agency”. The principal interpretation of the IOAA is the Bureau of the Budget [now known as the Office of Management and Budget] Circular A-25², which states that a fee should be assessed for each measurable unit. FERC Order 360³ was the first of a series of rules which FERC issued on fees authorized by the IOAA for the services and benefits FERC provides.

Later, through the Omnibus Budget Reconciliation Act of 1986, Congress directed the Commission to “assess and collect all fees and annual charges in any fiscal year in an

1 Act of Aug. 31, 1951, Ch. 376, Title V, Section 501, 65 Stat. 290, as codified, 31 U.S.C. Section 483(a) (1970).

2 The current version of OMB Circular A-25 (User Charges (07/08/1993)) is available on OMB’s website at http://www.whitehouse.gov/omb/circulars_a025/#4 . It states that:

“the objective of the United States Government [is] to:

- a. ensure that each service, sale, or use of Government goods or resources provided by an agency to specific recipients be self-sustaining;
- b. promote efficient allocation of the Nation's resources by establishing charges for special benefits provided to the recipient that are at least as great as costs to the Government of providing the special benefits; and
- c. allow the private sector to compete with the Government without disadvantage in supplying comparable services, resources, or goods where appropriate.”

3 Docket No. RM82-25-000, issued 2/6/1984.

amount equal to all of the costs incurred by the Commission in that fiscal year.” As stated in FERC’s Order 472 (issued 5/29/1987), “[t]he Budget Act’s billing authority is more comprehensive than the existing billing authority under either the IOAA or the FPA [Federal Power Act].... the Budget Act *requires* the Commission to recover *all* of its costs.”

To implement this provision of the Budget Act, the Commission issued Order 472 (in Docket No. RM87-3, issued 5/29/1987; 52 FR 21263 [6/5/1987]) et. al. and 52 FR 24153 [6/29/1987]) to establish a cost recovery program of annual charges. The new annual charges program complemented the existing fees program by adding 18 CFR Part 382 for annual charges that it assessed against interstate natural gas and oil pipelines, electric utilities, electric cooperatives, power marketers and power marketing agencies.

As necessary, various updates have subsequently been made to the fees and annual charges programs. In Docket No. RM92-17-000, the Commission amended its regulations to eliminate certain filing fees and also revised its current methodology for annual adjustments to its filing fees and direct billing. In the Notice of Proposed Rulemaking (NOPR), the Commission proposed to eliminate most filing fees, with the exception of six, and to recover the costs associated with filings for which it eliminated fees in the annual charges assessed in accordance with 18 CFR Part 382. The Commission reserved the option of ordering direct billing for filings that may be unusually extensive in scope and/or present complex factual, legal or policy issues requiring an extraordinary amount of time and effort to process them. In the final rule, issued January 7, 1993, the Commission amended its regulations in 18 CFR Parts 346 and 381 to eliminate certain filing fees and retained the requirements for filing fees for: (a) petition for issuance of a declaratory order, (b) fees for blanket certificate applications made by Hinshaw pipelines and local distribution companies, (c) petitions for rate approval, (d) extension reports for Title III transactions, plus (d) the six filing fees identified in the NOPR.

As stated in Order 641 (issued on October 26, 2000, posted at <http://elibrary.ferc.gov/idmws/common/opennat.asp?fileID=8032799>, in Docket No. RM00-7)

“[I]n an effort to reflect changes in the electric industry and in the way the Federal Energy Regulatory Commission (Commission) regulates the electric industry, the Commission is amending its regulations to establish a new methodology for the assessment of annual charges to public utilities. The regulation provides that annual charges will be assessed to public utilities that provide transmission service based on the volume of electricity transmitted by those public utilities. The regulation thus will result in the Commission's now assessing annual charges on transmission rather than, as previously, assessing annual charges on both power sales and transmission.”

The Commission's regulatory efforts are now predominately focused on ensuring nondiscriminatory, open access transmission services as opposed to power sales and power exchanges. With open-access transmission, functional unbundling and the movement to market-based power sales rates brought about by the FERC's Order No. 888, state retail unbundling efforts, the creation of Regional Transmission Organizations in Order No. 2000, the Commission's efforts are increasingly devoted to assuring open and equal access to public utilities' transmission systems. Wholesale power sales rates have been increasingly disciplined by competitive market forces and less by the Commission directly. For these reasons, the Commission felt that it should assess its regulatory program costs solely on the MWh of electric service transmitted in interstate commerce by public utilities providing transmission service, rather than, as in the past on both jurisdictional power sales and transmission volumes.

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 Commission on FERC-582 is used by Commission Staff for distinct purposes: One, to calculate annual charges; and two, to provide interpretations by the Office of the General Counsel, and decide on petitions for declaratory orders, waivers, and exemptions. To determine annual charges, the Commission Staff uses data submitted under FERC-582 to establish the total megawatt-hours of transmission of electric energy in interstate commerce.⁴ All parties involved in the generation and sale of electric energy rely on the transmission system to move their product. Power sellers will be contributing to the Commission's recovery of electric regulatory program costs in that, they will be using the transmission system and, in any cost-based rates that they pay for transmission service that they may take, they will pay, albeit indirectly, their share of the Commission's costs.

As noted above, Congress has directed the Commission to collect fees and annual charges equal to its annual appropriation. The Commission deposits the fees and annual charges it collects into the Department of Treasury's general fund.

The Commission's electric regulatory program includes: administering the provisions of Parts II and III of the Federal Power Act (FPA)⁵ as they apply to the activities of public utilities (traditionally, principally investor-owned utilities);⁶

⁴ For purposes of computing the annual charges, this total is measured by the sum of the megawatt-hours (MWh) of all unbundled transmission (including MWh delivered in wheeling transactions and MWh delivered in exchange transactions) and the MWh of all bundled wholesale power sales (to the extent these later MWh were not separately reported as unbundled transmission).

⁵ 16 U.S.C. 824-825r.

⁶ Under sections 211, 212 and 213 of the FPA, 16 U.S.C. 824j-l, the Commission also has authority

discharging its responsibilities under various statutes involving Power Marketing Agencies (PMAs); and implementing various provisions of the Public Utility Regulatory Policies Act of 1978 (PURPA)⁷ involving qualifying cogenerators and small power producers (QFs).

Electric Regulatory Program: Public Utilities

Pursuant to section 205 of the FPA,⁸ the Commission regulates the rates, terms and conditions of service of public utilities making sales for resale or transmitting electric energy in interstate commerce. All jurisdictional rates, terms and conditions must be on file with the Commission, and may be approved by the Commission only if they are just and reasonable and not unduly discriminatory or preferential. Under section 206 of the FPA,⁹ the Commission may change any rates, terms or conditions that it finds to be unjust, unreasonable, or unduly discriminatory or preferential.

The Commission also regulates certain accounting and corporate activities of public utilities pursuant to the FPA. Examples include the following:

- The Commission reviews applications filed by public utilities seeking to merge or to dispose of jurisdictional facilities.¹⁰
- The Commission reviews the proposed securities issuances of public utilities whose securities issuances are not regulated by a state commission within the meaning of section 204(f).¹¹
- The Commission has authority over a public utility's accounting and depreciation.¹²
- The Commission has authority to direct public utilities (and also licensees) to report information, including information on transmission of electric energy, to the Commission.¹³

Electric Regulatory Program: Federal Power Marketing Agencies

The Commission reviews the rates established by the Department of Energy for the PMAs: Bonneville Power Administration (BPA), Southeastern Power Administration, Southwestern Power Administration, and Western Area Power Administration. While

over transmitting utilities that are not public utilities. Compare 16 U.S.C. 796(23) with 16 U.S.C. 824(b), (e).

7 16 U.S.C. 2601-2645.

8 16 U.S.C. 824d.

9 16 U.S.C. 824e.

10 Under section 203, 16 U.S.C. 824b.

11 Under section 204, 16 U.S.C. 824c.

12 Under sections 301 and 302, 16 U.S.C. 825, 825a.

13 Under section 304, 16 U.S.C. 825c.

regulation of public utility rates is guided by the FPA, regulation of the PMA's rates is subject to the standards enumerated in a number of other statutes.¹⁴ Essentially, the statutes require that the rates established by the PMAs must be devised with regard for the recovery of the cost of generation and transmission of electric energy, the encouragement of the most widespread use of the power, the provision of the lowest possible rates to customers consistent with sound business principles, and the protection of the interests of the United States in amortizing its investment in the projects within a reasonable period of time. The Commission is also authorized, pursuant to the Northwest Power Act, to review the Average System Cost methodology used to determine rates for exchange sales by utilities to BPA.

Electric Regulatory Program: Qualifying Facilities

Section 210 of PURPA¹⁵ requires the Commission to prescribe rules to encourage cogeneration and small power production of electricity. In particular, the section directs the Commission to adopt rules requiring utilities to purchase power from and sell power to qualifying cogeneration and small power production facilities. The Commission reviews applications filed by cogenerators and small power producers requesting QF certification and either grants or rejects such applications based on criteria set forth in the Commission's regulations.¹⁶

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

The Commission has converted the information filed under 18 CFR 382.201(b) to an automated file for computation of annual charges for electric utilities. Further, applicants seeking an order for a waiver may make their request electronically over the Commission's web site. Finally, payments for all annual charges and most fees can be received electronically, eliminating mail/courier/paper costs associated with making payments.

4. DESCRIBE EFFORTS TO IDENTIFY DUPLICATION AND SHOW SPECIFICALLY WHY ANY SIMILAR INFORMATION ALREADY

¹⁴ Flood Control Act of 1944, 16 U.S.C. 825s; Federal Columbia River Transmission System Act, 16 U.S.C. 838g; Pacific Northwest Power Preference Act, 16 U.S.C. 837; Pacific Northwest Electric Power Planning and Conservation Act of 1980, 16 U.S.C. 839; Bonneville Project Act, 16 U.S.C. 832f (Northwest Power Act); Reclamation Act of 1939, 43 U.S.C. 485h; Department of Energy Organization Act, 42 U.S.C. 7101; see also DOE Delegation Order No. 0204-108, 48 FR 55664 (Dec. 14, 1983); 18 CFR Parts 300 and 301.

¹⁵ 16 U.S.C. 824a-3.

¹⁶ 18 CFR Part 292.

AVAILABLE CANNOT BE USED OR MODIFIED FOR USE FOR THE PURPOSE(S) DESCRIBED IN INSTRUCTION NO. 2.

The Commission periodically reviews notice requirements as OMB review dates arise or as the Commission may see fit in carrying out responsibilities under OBRA in order to eliminate duplication and minimize the filing burden. There is no duplication that has been found. To avoid duplication, the Commission proposed in RM87-3-000 to use existing data annually submitted on FERC Form 1, "Annual Report of Major Public Utilities, Licensees and Others," (1902-0021) and FERC Form 1-F, "Annual Report of - Nonmajor Public Utilities and Licensees," (1902-0029) for the computing of annual charges. But because the two forms had data elements that required redefinition in computing annual charges, the Commission concluded that the FERC Forms 1 and 1-F would not be appropriate and added filing requirements at 18 CFR 382.201(c) instead to the final rule.

In addition, the Commission had proposed the use of natural gas sales and transportation volumes reported on FERC Form 2 "Annual Report of Major Natural Gas Companies" (1902-0028) and FERC Form 2-A "Annual Report of Nonmajor Natural Gas Companies" (1902-0030) for computation of annual charges. However, comments to the proposed rule persuaded the Commission that the data it proposed to use was not appropriate.

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

FERC-582 is mainly a regulatory filing requirement pertaining to the filing of fees for use by the Commission in its computation of annual charges.¹⁷ The data required imposes the least possible burden for small and large entities while collecting the information required to carry out the responsibilities under OBRA. The Commission provides as noted, waiver provisions (18 CFR 381.106 and 382.105(a)) and requests for exemption (18 CFR 381.108) from fees and annual charges, respectively, on the basis of financial hardship.

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

FERC-582 includes an annual filing as well as filings for petitions of declaratory orders, waivers, exemptions, and Office of the General Counsel opinions. The information required in 18 CFR 382.201(c) is required only once a year and is necessary to compute annual charges the Commission will assess later to the applicable regulated

¹⁷ There are also filing requirements for requesting waivers, exemptions, declaratory orders, and Office of General Council Opinions, which consist of a petition or request.

entities. The information cannot be discontinued nor collected less frequently due to statutory requirements.

Without the information required to petition for issuances under FERC-582 the Commission staff would be unable to adequately process such petitions.

7. EXPLAIN ANY SPECIAL CIRCUMSTANCES RELATING TO THE INFORMATION COLLECTION

The guidelines of 5 C.F.R. 1320.5(d) are not being exceeded in the number of copies forwarded to the Commission. Because FERC-582 data is now submitted electronically, there is no longer a need for paper submission of this information.

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 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-582 were noticed in the Federal Register on July 29, 2010 (75 FR 44781). The Commission received one general comment in response to its notice. A summary of the comment and the Commission's response follow.

General Comment Regarding Annual Fees and Charges: The commenter believes that the annual fees and charges levied on jurisdictional companies do not fully reflect the level of service provided to such companies. The commenter further indicates that the taxpayers are bearing the costs that corporate executives should be paying.

FERC's Response: Congress has directed the Commission to collect fees and annual charges equal to its expenses, and the Commission, in fact, collects fees and annual charges equal to its expenses (the Commission deposits the fees and annual charges that it collects with the Treasury). Therefore, the Commission is carrying out its statutory mandate, that is, the Commission is collecting the amount that Congress has directed that it collect.

9. EXPLAIN AND 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.

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

Based on the Commission's recent experience with the burden of FERC-582, it is estimated that the average burden will be as follows:

Information Collection	No. of Respondents (1)	Average No. of Responses per Respondent (2)	Average Burden Hours per Response (3)	Total Burden Hours (1)x(2)x(3)
FERC-582 (except 381.302, below)	73	1	3	219
Exemption/waiver of fee for declaratory order (under 381.302)	6	1	2	12
Total				231

Total estimated burden (hours per year) : 231
 FERC-582 Burden hours currently in OMB’s inventory : 500
 Program change in industry burden hours : 0
 Adjustment change in industry burden hours : -269

The change in burden hours is due to a decrease in the number of respondents from 125 to 79, as well as a more accurate estimate of the reporting requirements.¹⁸ The decrease in respondents can be attributed to consolidation within the industry through mergers, acquisitions or for instance in the number of entities, primarily power marketers who have gone out of business. In addition, many entities have the Regional

¹⁸ The previous estimate combined reporting requirements into one figure while this estimate is broken down into two pieces: exemption/waiver of fee for declaratory order; and all other FERC-582 requirements.

Transmission Organization prepare and submit the filing on their behalf thereby reducing the number of entities filing with the Commission.

13. ESTIMATE OF TOTAL ANNUAL COST BURDEN TO RESPONDENTS

The total estimated annual cost burden to respondents is \$15,312 (231 hours/2080 hours¹⁹ per year, times \$137,874²⁰). This is a reduction of \$14,948 from the FERC-582 cost OMB previously approved and is driven by a reduction in the number of respondents.

14. ESTIMATED ANNUALIZED COST TO THE FEDERAL GOVERNMENT

The estimated annualized cost to the Federal Government for FERC-582 is shown below:

<u>Operation</u>	<u>FERC-582</u>
a) Data clearance (FERC FY 2010)	\$ 1,528.00
b) Analysis of data (1.25 FTE)	\$ 172,343.00 —
Total cost in one year of operation	\$ 173,871.00

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

The change in burden hours is due to a decrease in the number of respondents from 125 to 79, as well as a more accurate estimate of the reporting requirements.²¹ The decrease in respondents can be attributed to consolidation within the industry through mergers, acquisitions or for instance in the number of entities, primarily power marketers who have gone out of business. In addition, many entities have the Regional Transmission Organization prepare and submit the filing on their behalf thereby reducing the number of entities filing with the Commission.

16. TIME SCHEDULE FOR THE PUBLICATION OF DATA

19 An employee works an estimated 2,080 hours per year.

20 The estimated annual cost per staff/employee (\$137,874) based on the number of employees or Full Time Equivalents (FTEs) in the Office of Executive Director and the FY 2010 appropriation for that Office as reported in the Commission's FY 2009 OMB Budget Request. The estimated "cost" 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.

21 The previous estimate combined reporting requirements into one figure while this estimate is broken down into two pieces: exemption/waiver of fee for declaratory order; and all other FERC-582 requirements.

There are no tabulations, statistical analyses 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. The information is not collected on a standard printed form. Applicants prepare and submit a format that is filed electronically.

18. EXCEPTIONS TO THE CERTIFICATION STATEMENT

There is an exception to the Paperwork Reduction Act Submission Certification. Because the information collected for this reporting requirement is not used for statistical purposes, the Commission does not use as stated in item 19(i) "effective and efficient statistical survey methodology." The information collected is case specific to each respondent.

B. COLLECTION OF INFORMATION EMPLOYING STATISTICAL METHODS

The FERC-582 is designed for regulatory purposes and therefore, does not employ statistical methods for analysis or publication.