

Supporting Statement for
**FERC-511, Application for Transfer of License and
FERC-515, Declaration of Intention**

The Federal Energy Regulatory Commission (FERC or Commission) requests the Office of Management and Budget (OMB) extend its approval of FERC-511 (Application for Transfer of License) and FERC-515 (Declaration of Intention) for three years. FERC-511 is an existing data collection whose filing requirements are contained in Title 18 C.F.R. Part 9, and sections 4(e) and 8 of the Federal Power Act (16 U.S.C. 797 and 16 U.S.C. 801). FERC-515 is an existing data collection whose filing requirements are contained in Title 18 C.F.R. Section 24.1 and Section 23(b) of the Federal Power Act (16 U.S.C. 817).

A. Justification

1. CIRCUMSTANCES THAT MAKE THE COLLECTION OF INFORMATION NECESSARY

Part 1 of the Federal Power Act, under the authority of the Federal Power Act¹ (FPA) gives the Commission authority to issue licenses for hydroelectric projects on the waters over which Congress has jurisdiction.

FERC-511

Section 4(e)² of the FPA authorizes the Commission to issue licenses for the construction, operation and maintenance of dams, water conduits, reservoirs, power houses and transmission lines or other facilities necessary for development and improvement of navigation and for the development, transmission, and utilization of power from bodies of water Congress has jurisdiction over.

Section 8 of the Federal Power Act (16 U.S.C. 801) provides that the voluntary transfer of any licensee can only be made with the written approval of the Commission. Any successor to the licensee may assign the rights of the original licensee but is not subject to all the conditions of the license.

The FPA requires FERC approval of the transfer of a hydroelectric license. Among other things, the Commission ensures that the transferee qualifies under the FPA to be a licensee, e.g., foreign citizens or corporations cannot hold a license. Licenses may be issued to citizens of the United States, or to any association of such citizens, or to any corporation organized under the laws of the United States or any individual state, or to any state or municipality.

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

² 16 U.S.C. 797. (2000)

FERC-515

Section 23(b)³ of the FPA provides that any person intending to construct project works on a non-navigable commerce clause water must file a declaration of their intention to do so with the Commission. Section 23(b) further provides that upon the filing of a Declaration of Intent, the Commission will investigate the proposed project, and, if it finds that the “interests of interstate or foreign commerce would be affected” by the proposed project, then the person intending to construct the project must obtain a Commission license before starting construction. Submission of the data is necessary for the Commission to make a required determination as to jurisdiction over the proposed project.

The respondent universe that would submit a declaration of intention can be defined and is limited to potential developers of hydropower projects as sites where the Commission’s jurisdiction may be in question. Such sites are generally on streams other than those defined as U.S. navigation waters, and over such Congress has jurisdiction under its authority to regulate foreign and interstate commerce.

Declaration of Intention

Under section 23(b)(1), an entity intending to construct a project on non-navigable Commerce Clause waters must file a declaration of intention to do so, whereupon the Commission must investigate the proposed project and, if it finds that interstate or foreign commerce would be affected, no construction may take place until a license is issued.

The owner of a project constructed before 1935 that is not subject to the Commission’s mandatory licensing jurisdiction need not file a declaration of intent to repair, maintain, or rehabilitate the project as long as there has been no post-1935 abandonment. *Puget Sound Hydro LLC, 109 FERC 61,039 at P 56 (2004) (JR02, Noosack Falls)*

A proposed project does not require licensing merely because of the possibility that, after issuance of an order finding licensing not required, the developer may alter the project’s design or operation from that described in its declaration of intention. Should the project be constructed or operated differently than described, interested parties may petition the Commission to assess de novo whether the project requires a license. *Alaska Power Co., 82 FERC 61,331 (1998) (change in underlying facts can mean that project affects commerce and so requires a license)*

³ 16 U.S.C. Section 617. (2000)

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

FERC-511

The information collected by FERC is in the format of a written application for transfer of a license, executed jointly by the parties to the proposed transfer. The transfer of a license may be occasioned by the sale or merger of a licensed hydropower electric project. It is used by FERC staff to determine the qualifications of the proposed transferee to hold the license, and to prepare the transfer of the license order.

Commission staff conducts a systematic review of the prepared application with supplemental documentation provided in the filing. The research includes examining maps and land ownership records of the lands and waters affected by the project. Such sites are generally on streams other than those defined as U.S. navigation waters, and over which Congress has jurisdiction under its authority to regulate foreign and interstate commerce. Before approving a transfer, the Commission reviews the proposed transferee's compliance history and scrutinizes marginal projects for potential compliance problems. In particular Commission staff review the license document for any significant anticipated expenses to ensure that the purpose of the transfer is not to shift the financial burden of compliance to an entity that is unlikely to satisfy these obligations. Commission staff consults in-house with the Office of General Counsel and the Office of Energy Projects dam safety inspectors for their review and comment.

Notice of transfer applications are published in the Federal Register and in a local newspaper near the project site. FERC seeks to ensure that states, other federal agencies, local communities, and other interested groups are provided the opportunity to address any issues related to the project transfer.

The approval process requires the Commission to determine that the transfer is in the public interest. Commission approval is made contingent on transfer of the title to properties under the license. If the information contained in FERC-511 were not collected, the Commission would be unable to establish facts and pertinent information as to why a licensee desires to transfer the license and if the proposed transferee can operate and maintain the project under the terms and conditions of the license. Without the establishment of these facts there would be no basis for accepting the application for a transfer of a license.

FERC-515

The information collected by FERC is in the format of a declaration of the applicant's intent filed with the Commission. It is used by the Commission's staff to research the jurisdictional aspects of the proposed project. Commission staff conducts a systematic review of the declaration with supplemental documentation provided in the filing. The

research includes examining maps and land ownership records to establish whether or not there is Federal jurisdiction over the lands and waters affected by the project. The submitted requirement documents allow for a full and complete analysis if a proposed project, and provide sufficient data to make a jurisdictional decision. A finding of non-jurisdiction by the Commission can result in the elimination of a substantial paperwork burden for an applicant who might otherwise have to file a license or exemption application.

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

There is an ongoing effort to determine the potential and value of improved information technology to reduce the burden. The FERC-511 and FERC-515 application may be eFiled through FERC's eFiling system. [See <http://www.ferc.gov/docs-filing/efiling.asp> for more information.]

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 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 or declaration data has been found. The information is case specific to the applicant..

The reporting requirements associated with FERC-511 and FERC-515 are the basic filing requirements pertaining to all applications for transfer of a license and requirements pertaining to all Declarations of Intent. 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.

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

The data required impose the least possible burden on applicants, while collecting the information required in processing the application for transfer and Declaration of Intent. The minimization of impact on small business would not be applicable. The burden will vary among applicants, since the application should be specific to each applicant.

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

The data required are necessary to process the application for transfer and Declaration of Intent and are collected only when an application for transfer or Declaration of Intent is needed. The information cannot be collected less frequently.

7. EXPLAIN ANY SPECIAL CIRCUMSTANCES RELATING TO THE INFORMATION COLLECTION

There are no special circumstances related to these information collections.

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

In accordance with OMB requirements in 5 C.F.R. 1320.8(d), FERC issued a 60-day request soliciting public comment on both information collections.⁴

In conjunction with the submittal of this package, FERC is also issuing a 30-day notice allowing for more public comment on both information collections.⁵

9. EXPLAIN ANY PAYMENT OR GIFTS TO RESPONDENTS

No gifts or payments have been made to respondents.

10. DESCRIBE ANY ASSURANCE OF CONFIDENTIALITY PROVIDED TO THE 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 RAE CONSIDERED PRIVATE

There are no questions of a sensitive nature that are considered private.

12. ESTIMATED BURDEN OF COLLECTION OF INFORMATION

The annual burden estimate for information collected under FERC-511 and FERC-515 is based on the Commission's experience with applications for transfer of license and applications for Declaration of Intention.

⁴ FERC issued a combined 60-day notice for FERC-511 and FERC-515 on 08/09/2010 (posted at: <http://elibrary.ferc.gov/idmws/common/OpenNat.asp?fileID=12410385>) and published in the Federal Register 08/16/2010 (75 FR 49914).

⁵ The 30-day notice is also combined for both collections and was issued on 11/10/2010 (posted at: <http://elibrary.ferc.gov/idmws/common/OpenNat.asp?fileID=12483728>) and published in the Federal Register 11/18/2010 (75 FR 70726).

FERC Data Collection	No. of Respondents Annually (1)	Average No. of Responses per Respondent (2)	Average Burden Hours per Response (3)	Total Annual Burden Hours (1) x (2) x (3)
FERC-511	23	1	40	920
FERC-515	10	1	80	800

13. ESTIMATE OF THE TOTAL ANNUAL COST BURDEN TO RESPONDENTS

	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)
FERC-511	920	2080	\$137,874 ⁶	\$60,983
FERC-515	800	2080	\$137,874 ⁶	\$53,028

14. ESTIMATED ANNUALIZED COST TO THE FEDERAL GOVERNMENT

FERC-511	No. of FTEs	Estimated Annualized Cost
Analysis of Data	1.5	206,811 ⁷
Data Clearance Processing		\$1,528
Total		\$208,339

FERC-515	No. of FTEs	Estimated Annualized Cost
Analysis of Data	1.5	\$206,811 ⁷
Data Clearance Processing		\$1,528
Total		\$208,339

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

There is no change in burden.

16. TIME SCHEDULE FOR THE PUBLICATION OF DATA

⁶ Estimated average annual cost per employee

⁷ Based on a fully loaded annual cost per FTE of \$137,874.

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

17. DISPLAY OF EXPIRATION DATE

It is not appropriate to display the expiration data for OMB approval of the information collected under FERC-511 and FERC-515. The information is not collected on a standard, preprinted form which would avail itself to this display.

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 noticed in no. 17, this information does not fully meet the standard set in 19 (g)(vi).

B. COLLECTION METHODS OF INFORMATION EMPLOYING STATISTICAL METHODS

FERC-511 and FERC-515 are not collections of information employing statistical methods.