

Supporting Statement for
FERC-511 (Application for Transfer of Hydropower License)
and
FERC-515 (Declaration of Intention)

The Federal Energy Regulatory Commission (Commission or FERC) requests that the Office of Management and Budget (OMB) review and approve FERC- 511 (Application for Transfer of Hydropower License; OMB Control No. 1902-0069) and FERC-515 (Declaration of Intention; OMB Control No. 1902-0079), for a three-year period. FERC-511 is an existing data collection with reporting requirement in 18 Code of Federal Regulations (CFR) Parts 4(e), 8, and 9. The FERC-515 is an existing data collection whose filing requirements are contained in 18 CFR Parts 9 and 24.1.

1. CIRCUMSTANCES THAT MAKE THE COLLECTION OF INFORMATION NECESSARY

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

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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 over which Congress has jurisdiction.

Section 8 of the Federal Power Act (16 U.S.C. 801) provides that the voluntary transfer of any license 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 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.

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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

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

2 16 U.S.C. 797. (2000)

3 16 U.S.C. Section 817. (2000)

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 at sites where the Commission's jurisdiction may be in question. Such sites are generally on streams other than those defined as U.S. navigable waters (for which Congress has jurisdiction under its authority to regulate foreign and interstate commerce).

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.⁴

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.⁵

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

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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. navigable 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

⁴ See *Puget Sound Hydro LLC*, 109 FERC 61,039 at P 56 (2004)(JR02, Noosack Falls.)

⁵ See *Alaska Power Co.*, 82 FERC 61,331 (1998) (change in underlying facts can mean that project affects commerce and so requires a license).

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 review process requires the Commission to determine whether 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.

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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 documents allow for a full and complete analysis of 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 THE 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 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 the data has been found. The information is case specific to the applicant.

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 TO 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

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, the Commission published a 60-day notice⁶ and a 30-day notice⁷ to the public regarding this information collection on 7/12/2016 and 11/18/2016, respectively. Within the public notice, the Commission noted that it would be requesting a three-year extension of the public reporting burden with no change to the existing requirements concerning the collections of data. The Commission received no comments.

9. EXPLAIN ANY PAYMENT OR GIFTS TO RESPONDENTS

There are no payments or gifts to respondents of the collections.

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 may be made pursuant to 18 C.F.R. Section 388.112.

11. PROVIDE ADDITIONAL JUSTIFICATION FOR ANY QUESTIONS OF A SENSITIVE NATURE, SUCH AS SEXUAL BEHAVIOR AND ATTITUDES,

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781 FR 81759

RELIGIOUS BELIEFS, AND OTHER MATTERS THAT ARE COMMONLY CONSIDERED PRIVATE

There are no questions of a sensitive nature associated with the reporting requirements.

12. ESTIMATED BURDEN COLLECTION OF INFORMATION

FERC-511 (Application for Transfer of Hydropower License) & FERC-515 (Declaration of Intention)						
	Number of Respondents (1)	Annual Number of Responses per Respondent (2)	Total Number of Responses (1)*(2)=(3)	Average Burden & Cost Per Response⁸ (4)	Total Annual Burden Hours & Total Annual Cost (3)*(4)=(5)	Cost per Respondent (\$) (5)÷(1)
FERC-511	46	1	46	40 hrs.; \$2,980	1,840 hrs.; \$137,080	\$2,980
FERC-515	6	1	6	80 hrs.; \$5,960	480 hrs.; \$35,760	\$5,960

13. ESTIMATE OF THE TOTAL ANNUAL COST BURDEN TO RESPONDENTS

There are no non-labor start-up costs. All costs are related to burden hours and are addressed in Questions #12 and #15.

14. ESTIMATED ANNUALIZED COST TO FEDERAL GOVERNMENT

FERC-511	Number of Employees (FTE)	Estimated Annual Federal Cost
Analysis and Processing of Filings ⁹	1.5	\$231,971
PRA ¹⁰ Administrative Cost ¹¹		\$5,481
FERC Total		\$237,452

FERC-515	Number of Employees	Estimated Annual Federal
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⁸The estimates for cost per response are derived using the following formula: Average Burden Hours per Response * \$74.50 per Hour = Average Cost per Response. The Commission staff believes that the industry's level and skill set is comparable to FERC's with an average hourly cost (wages plus benefits) of \$74.50.

⁹ Based upon 2016 FTE average annual salary plus benefits (\$154,647).

¹⁰ Paperwork Reduction Act of 1995 (PRA).

¹¹ The PRA Administrative Cost is a Federal Cost associated with preparing, issuing, and submitting materials necessary to comply with the Paperwork Reduction Act (PRA) for rulemakings, orders, or any other vehicle used to create, modify, extend, or discontinue an information collection. This average annual cost includes requests for extensions, all associated rulemakings, and other changes to the collection.

	(FTE)	Cost
Analysis and Processing of Filings ¹²	1.5	\$231,971
PRA ¹³ Administrative Cost ¹⁴		\$5,481
FERC Total		\$237,452

The Commission bases its estimate of the “Analysis and Processing of Filings” cost to the Federal Government on salaries and benefits for professional and clerical support. This estimated cost represents staff analysis, decision-making, and review of any actual filings submitted in response to the information collection.

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

FERC-511:

The Commission is making no changes to reporting requirements or the resultant burden estimate. However, there has been an increase in applications submitted due to increase activity in hydroelectric projects.

FERC-515:

There are no changes to reporting requirements. The change in burden is due entirely to normal fluctuation in the number of respondents (i.e. potential developers of hydroelectric projects).

The following table shows the annual total burden of the collections of information. The format, labels, and definitions of the table follow the ROCIS submission system’s “Information Collection Request Summary of Burden” for the metadata.

	Total Request	Previously Approved	Change due to Adjustment in Estimate	Change Due to Agency Discretion
FERC-511				
Annual Number of Responses	46	23	23	0
Annual Time Burden (Hours)	1,840	920	920	0
Annual Cost Burden (\$)	\$0	\$0	\$0	\$0

	Total Request	Previously Approved	Change due to Adjustment in Estimate	Change Due to Agency Discretion
FERC-515				

¹² Based upon 2016 FTE average annual salary plus benefits (\$154,647).

¹³ Paperwork Reduction Act of 1995 (PRA).

¹⁴ The PRA Administrative Cost is a Federal Cost associated with preparing, issuing, and submitting materials necessary to comply with the Paperwork Reduction Act (PRA) for rulemakings, orders, or any other vehicle used to create, modify, extend, or discontinue an information collection. This average annual cost includes requests for extensions, all associated rulemakings, and other changes to the collection.

Annual Number of Responses	6	10	-4	0
Annual Time Burden (Hours)	480	800	-320	0
Annual Cost Burden (\$)	\$0	\$0	\$0	\$0

16. TIME SCHEDULE FOR PUBLICATION OF DATA

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

17. DISPLAY OF EXPIRATION DATE

The expiration date is displayed in a table posted on ferc.gov at <http://www.ferc.gov/docs-filing/info-collections.asp>.

18. EXCEPTIONS TO THE CERTIFICATION STATEMENT

There are no exceptions.