

Supporting Statement

FERC-505¹ (Small Hydropower Projects and Conduit Facilities including License/Relicense, Exemption, and Qualifying Conduit Facility Determination)
(Three-year approval for extension requested)

The Federal Energy Regulatory Commission (FERC or Commission) requests the Office of Management and Budget (OMB) extend its approval of the **FERC-505, Small Hydropower Projects and Conduit Facilities including License/Relicense, Exemption, and Qualifying Conduit Facility Determination**, for an additional three years. The reporting requirements have not changed for this information collection.

1. CIRCUMSTANCES THAT MAKE THE COLLECTION OF INFORMATION NECESSARY

The Commission regulates nonfederal hydropower projects on navigable waters and federal lands pursuant to the Federal Power Act (FPA).²

16 U.S.C. 797(e) authorizes the Commission to issue licenses to citizens of the United States, or to any corporation organized under the laws of United States or any State thereof, or to any State or municipality for the purpose of constructing, operating, and maintaining dams, water conduits, reservoirs, power houses, transmission lines, or other project works necessary or convenient for the development and improvement of navigation and for the development, transmission, and utilization of power across, along, from, or in any of the streams or other bodies of water over which Congress has jurisdiction under its authority to regulate commerce with foreign nations and among the several States, or upon any part of the public lands and reservations of the United States. The Electric Consumers Protection Act (ECPA)³ amended and expanded the FPA by adding the following at the end thereof: “In deciding whether to issue any license under this Part, for any project, the Commission, in addition to the power and development purposes for which licenses are issued, shall give equal consideration to the purposes of energy conservation, the protection, mitigation of damage to, and enhancement of, fish and wildlife (including related spawning grounds and habitat), the protection of recreational opportunities, and the preservation of other aspects of environmental quality.”

Section 4(e) of the FPA requires the Commission to give equal consideration to preserving energy conservation, the protection, mitigation of damage to, and enhancement of, fish and wildlife, the protection of recreational opportunities, and the preservation of other aspects of environmental quality when approving licenses. Also, section 10(a) of the FPA stipulates conditions upon which hydroelectric licenses are issued.⁴

The FERC-505 is an application for a small hydropower project license or relicense, exemption, or determination of a qualifying conduit hydropower facility.

¹ Information collection requirements for FERC-505 are listed in Attachment A.

² 16 U.S.C. §§791a-825r (2012).

³ Public Law 99-495, 100 Stat. 1243 (10/16/1986)

⁴ 16 USC 797(e)

Small Hydropower Project License

Small hydropower projects are minor water power projects and major water power projects that have an installed capacity of 5 megawatts (MW) or less.⁵ Small hydropower projects have distinct filing requirements as outlined in 18 C.F.R. 4.61.

The Commission issues licenses for hydropower projects for up to 50 years. Pursuant to section 4(e) of the FPA, when making licensing decisions the Commission must give equal consideration to preserving energy conservation; the protection, mitigation of damage to, and enhancement of fish and wildlife; the protection of recreational opportunities; and the preservation of other aspects of environmental quality when approving licenses. In addition, under the comprehensive development standard of section 10(a) of the FPA, the Commission must consider all aspects of the public interest in using a waterway and consider a project's consistency with federal and state comprehensive plans for improving or developing waterways.

Exemptions from Licensing

A small hydroelectric project may be eligible for an exemption. An exemption is not a form of deregulation; it is a statutory provision that allows an applicant to be exempt from some or all of Part I of the FPA, including the comprehensive development standard of FPA Section 10(a)(1). There are two types of FERC exemptions: (1) small conduit exemptions; and (2) small hydroelectric power project exemptions.

A small conduit exemption, as defined in section 30 of the FPA,⁶ is an existing or proposed hydroelectric facility that utilizes for electric power generation the hydroelectric potential of a conduit, or any tunnel, canal, pipeline, aqueduct, flume, ditch, or similar manmade water conveyance that is not primarily used for the generation of electricity.

A 10-MW exemption, as defined in the Public Utilities Regulatory Policies Act of 1978 (PURPA),⁷ is a project that utilizes for electric generation the water potential of either an existing non-federal dam or a natural water feature (e.g., natural lake, water fall, gradient of a stream, etc.) without the need for a dam or man-made impoundment. For both types of exemptions, the applicant must possess all real property rights at the time of filing unless the project is located on federal land.

Qualifying Conduit Hydropower Facilities

The Hydropower Efficiency Act created a subset of small conduit exemptions, called “qualifying conduit hydropower facilities,” which are not required to be licensed under Part I of the FPA. A qualifying conduit hydropower facility is a facility that meets the following qualifying criteria:

⁵ Minor water power projects are those that have a total installed capacity of 1.5 megawatts (MW) or less. Major water power projects have a total installed capacity of greater than 1.5 MW.

⁶ 16 U.S.C. 823a (2012), amended by, Hydropower Regulatory Efficiency Act of 2013, Pub. L. No. 113-23, 4, 127 Stat. 493 (2013).

⁷ 16 U.S.C. 2708 (2012).

- (1) the facility would be constructed, operated, or maintained for the generation of electric power using only the hydroelectric potential of a non-federally owned conduit, without the need for a dam or impoundment;
- (2) the facility would have a total installed capacity that does not exceed 5 MW; and
- (3) the facility is not licensed under, or exempted from, the license requirements in Part I of the FPA on or before the date of enactment of the Hydropower Efficiency Act (i.e., August 9, 2013).

To obtain a determination that a project is a qualifying conduit hydropower facility, an entity must file with the Commission a notice of its intent to construct the facility that demonstrates the facility meets the qualifying criteria.

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

FERC-505 applications are used by Commission staff to determine the broad impact of the license/relicense or exemption proposal or determine whether a qualifying conduit hydropower facility meets the qualifying criteria. An application must include certain information so stakeholders and the Commission can understand the proposed project, identify any environmental issues, identify any information needs or studies, and provide meaningful comments and recommendations on the proposed project.

Federal agencies with responsibilities under the FPA and other statutes, 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 the National Energy Policy Act (NEPA).

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

Small Hydropower Project Licenses and Exemptions from Licensing

Applicants can apply for licenses using one of three different options:

- (1) the traditional license process,
- (2) alternative license process,
- (3) or integrated license process (ILP). The ILP is the default process and enables potential licensees to conduct pre-filing consultation and the Commission's scoping process concurrently rather than sequentially.

- The application for a small hydropower license, per 18 C.F.R. 4.61(b), includes the following information:
 - An initial statement
 - Exhibit A: a description of the proposed hydroelectric facilities and the proposed mode of operation
 - Exhibit E: an environmental report
 - Exhibit F: drawings of the hydroelectric structures and equipment
 - Exhibit G: a map of the project and boundary
 - Explanation of how and why the project would, or would not, or should not comply with any relevant comprehensive plan, as defined in 18 C.F.R. 2.19
 - A verification statement
- An application for a 10-MW exemption, per 18 C.F.R. 4.107(b), includes the following information:
 - An introductory statement
 - Exhibit A: a description of the 10-MW hydroelectric facilities and the proposed mode of operation
 - Exhibit E: an environmental report
 - Exhibit F: drawings of the hydroelectric structures and equipment
 - Exhibit G: a map of the project and boundary
 - A verification statement
- An application for a small conduit exemption,⁸ per 18 C.F.R. 4.92, includes the following information:
 - An introductory statement
 - Exhibit A: a description of the small conduit hydroelectric facilities and the proposed mode of operation
 - Exhibit E: an environmental report
 - Exhibit F: drawings of the hydroelectric structures and equipment
 - Exhibit G: a map of the project and boundary
 - Documentary evidence showing that the applicant has the real property interests
 - A verification statement

Qualifying Conduit Hydropower Facilities

A notice of intent to construct a qualifying conduit hydropower facility, per 18 C.F.R. 4.401, includes the following information:⁹

- An introductory statement
- A statement that the proposed facility will use the hydroelectric potential of a non-federally owned conduit

⁸ Conduit exemptions are categorically exempt from NEPA.

⁹ The Commission does not perform environmental reviews of qualifying conduits.

- A statement that the proposed facility has not been licensed or exempted from the licensing requirements of Part I of the FPA on or before August 9, 2013
- A description of the proposed facility
- Drawings of the proposed facility
- If applicable, the preliminary permit project number
- A verification statement

Commission staff uses the information to determine if the proposed facility meets the qualifying criteria discussed above.

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

FERC continually considers the use of improved information technology to reduce burden in the filing requirements for submission of information.

The Commission allows eFiling for the FERC-505 application.

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

The Commission periodically reviews filing requirements concurrent with OMB review or as the Commission deems necessary to eliminate duplicative filing and to minimize the filing burden. No similar information is available; these are case-specific applications for a benefit (e.g., license or permit) and are unique to the applicant and the site for which the filing is made.

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

The FERC-505 reporting requirements are the basic filing requirements pertaining to all applications for a small hydropower project license/relicense, exemption, or determination of a qualifying conduit hydropower facility. The Commission sets forth distinct filing requirements for small hydropower projects. Small entities have streamlined filing requirements. The Commission is able to expedite the process for small, low-impact hydropower projects in the following ways:

- waive some pre-filing consultation requirements (with resource agency cooperation);
- combine environmental scoping with pre-filing consultation;
- combine public noticing requirements;
- shorten comment periods;
- coordinate with resource agencies to obtain their final terms and conditions before we issue an environmental assessment, instead of the customary preliminary and final versions;

- use a single environmental document (as opposed to using draft and final documents); and
- issue the order on the same day as the environmental assessment.

In addition, the Commission reduces the reporting requirements for the duration of small, low-impact hydropower projects. Exemptions are granted in perpetuity, and qualifying conduit hydropower facilities may operate without Commission oversight.

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

If the information were not collected, the Commission would not be able to fulfill the requirements of the FPA in ensuring that a project proposal is economically and technically sound (to include requirements to improve and develop waterways). Additionally, the Commission would be unable to ensure environmental concerns were being properly documented and mitigated during approval of any application.

7. EXPLAIN ANY SPECIAL CIRCUMSTANCES RELATING TO THE INFORMATION COLLECTION

There are no special circumstances related to this information collection.

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

In accordance with OMB requirements, the Commission published a 60-day notice¹⁰ and a 30-day notice¹¹ to the public regarding this information collection on October 4, 2017 and December 26, 2017, respectively. Within the public notices, the Commission noted that it would be requesting a three-year extension of the public reporting burden.

The Commission received no comments in response to either of these notices.

9. EXPLAIN ANY PAYMENT OR GIFTS TO RESPONDENTS

There are no payments or gifts to respondents.

10. DESCRIBE ANY ASSURANCE OF CONFIDENTIALITY PROVIDED TO RESPONDENTS

The Commission does not consider the information collected in filings to be confidential. However, the Commission will consider specific requests for confidential treatment (e.g., Critical Energy/Electric Infrastructure Information [CEII] or non-public) to the extent permitted

¹⁰ 82 FR 46231, 10/4/2017

¹¹ 82 FR 60978, 12/26/2017

by law.¹² The Commission will review each request for confidential treatment on a case-by-case basis.

11. PROVIDE ADDITIONAL JUSTIFICATION FOR ANY QUESTIONS OF A SENSITIVE NATURE, SUCH AS SEXUAL BEHAVIOR AND ATTITUDES, RELIGIOUS BELIEFS, AND OTHER MATTERS THAT ARE COMMONLY CONSIDERED PRIVATE.

There are no questions of a sensitive nature.

12. ESTIMATED BURDEN OF COLLECTION OF INFORMATION

FERC-505 (Small Hydropower Projects and Conduit Facilities including License/Relicense, Exemption, and Qualifying Conduit Facility Determination)						
	Number of Respondents (1)	Annual Number of Responses per Respondent (2)	Total Number of Responses (1)*(2)=(3)	Average Burden¹³ & Cost Per Response (4)	Total Annual Burden & Total Annual Cost (3)*(4)=(5)	Cost per Respondent (\$) (5)÷(1)
FERC-505	33	1	33	737 hours, \$56,381	24,321 hours, \$1,860,573	\$56,381

13. ESTIMATE OF THE TOTAL ANNUAL COST BURDEN TO RESPONDENTS

There are no start-up or other non-labor costs.

Total Capital and Start-up cost: \$0

Total Operation, Maintenance, and Purchase of Services: \$0

All of the costs in the information collection are associated with burden hours (labor) and accounted for in Questions #12 and #15.

14. ESTIMATED ANNUALIZED COST TO FEDERAL GOVERNMENT

The estimated annualized cost to the Federal Government for FERC-505 is:

12 18 C.F.R. 388.112

13 Burden is the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. For further explanation of what is included in the information collection burden, refer to 5 Code of Federal Regulations 1320.3

FERC-505	Number of Employees (FTEs)	Estimated Annual Federal Cost (rounded)
Analysis and Processing of filings ¹⁴	8.5	\$1,349,408
PRA ¹⁵ Administrative Cost ¹⁶		\$5,723
FERC-505 Total		\$1,355,132

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

The total annual burden for FERC-505 information collection increased by 5 responses but decreased by 35,018 hours from previously approved burden. The increase in the number of responses and the decrease in total hours is related to Congress' enactment of the Hydropower Regulatory Efficiency Act in August 2013, which in part, authorized the Commission to issue qualifying conduit exemptions. The 28 previous responses that were requested and approved did not include qualifying conduit exemption applications, which at the time, did not exist.

Qualifying conduit exemption applications are much less burdensome to prepare than the other applications reported. Upon reviewing the report over the last few months, we calculated the amount of burden per response to be 2,120 hours. That amount of time sounds reasonable to FERC – our regulations show that it takes 2-3 years for a developer to navigate the pre-filing consultation process and prepare a standard license or exemption application.

In 2013, it appears to me that the reported “response” was either preparation of license application, preparation of small hydro exemption application, or preparation of a conduit exemption application. It looks like we estimated 28 “responses” in 2013 based on the number of applications we were receiving per year at that time. When you multiply 28 responses times 2,120 hours per response, you get 59,339 hours of burden reported in 2013.

In 2018, a “response” is all the small hydropower application types covered in 2013, plus something new - preparation of a “qualifying conduit exemption application.” Congress authorized us to approve such an application in August 2013. What appears to be happening today is that more respondents are pursuing a “qualifying conduit exemption” than the other

¹⁴ The “Estimated Annual Federal Cost” uses the FERC’s 2017 average annual salary plus benefits of one FERC FTE (full-time equivalent) is \$158,754 (or \$76.50 per hour). Salary is approximately 76.3% of the \$158,754; benefits comprise approximately 23.7%.

¹⁵ Paperwork Reduction Act of 1995, 44 U.S.C. 3501-3520 (2012).

¹⁶ The Paperwork Reduction Act 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.

small hydropower authorizations that were available prior to August 2013, that again, can take 2-3 years to complete. This is no surprise to us, because Congress precisely authorized the “qualifying conduit exemption” to reduce the burden on hydropower developers. It takes nowhere near 2,120 hours for a person to prepare a “qualifying conduit exemption” application. Rather, we estimate it only takes about 46 hours of a developer’s time. In other words, FERC estimated that a developer can essentially prepare the application in 1 week. Therefore, it makes no sense to FERC to apply the 2,120-hour burden representing 2-3 years of work to the qualifying conduit exemption applications which can be prepared in a week or two (i.e., 46 hours).

Our solution to properly portray the burden that exists today for our small hydropower applications was to come up with a weighted average burden to account for the drastically reduced burden of preparing a “qualifying conduit exemption” application. We did it like this. We estimate going forward in 2018 that there will be 11 small hydropower license, small hydropower exemption, and conduit exemption applications combined – this is based on the number of filings of such applications over the last 3-5 years. We estimated 22 qualifying conduit exemption applications again, based on what developers have actually filed over the last 3-5 years. $11+22=33$ total responses to report in 2018. It’s just a best estimate. It could be more, or it could be less. The weighted average burden for the 33 responses is as follows: $[(11/33) \times 2,120 \text{ hours}] + [(22/33) \times 46 \text{ hours}] = 737.33 \text{ hours}$. 737 hours times 33 responses = 24,321 hours of burden to report in 2018. This is precisely why we reported a “59 percent” less burden this time around. The “market” conditions didn’t change the burden – the August 2013 law did. FERC concludes, of the 33 responses currently requested, 22 are attributed to the much less burdensome qualifying exemption applications. Therefore, although the number of responses slightly increased, the total burden decreased.

The reporting requirements are not changing for FERC-505 information collection. There is no change in the average burden per response for FERC-505 information collection.

FERC-505	Total Request	Previously Approved	Change due to Adjustment in Estimate	Change Due to Agency Discretion
Annual Number of Responses	33	28	+5	0
Annual Time Burden (Hr.)	24,321	59,339	-35,018	0
Annual Cost Burden (\$)	\$ 0	\$ 0	\$ 0	\$ 0

16. TIME SCHEDULE FOR PUBLICATION OF DATA

There is no publication of data associated with FERC-505 collection of information.

17. DISPLAY OF EXPIRATION DATE

The expiration dates are posted on ferc.gov at <http://www.ferc.gov/docs-filing/info-collections.asp>

18. EXCEPTIONS TO THE CERTIFICATION STATEMENT

There are no exception for FERC-505.

Attachment A

FERC-505 has information collection requirements described in the following sections in 18 C.F.R.:

- 2.19
- 4.32
- 4.35
- 4.36 (b) and (c)
- 4.61
- 4.71
- 4.93
- 4.107
- 4.108
- 4.201
- 4.202
- 4.400
- 4.401
- Part 5
- 8.1
- 8.2
- 16.1
- 16.6
- 16.7
- 16.8
- 16.9
- 16.10
- 16.11
- 16.12
- 16.14
- 16.19
- 16.20
- 16.22
- 292.203
- 292.208