

Supporting Statement for
FERC-500 and FERC-505,¹
Modifications Due to Final Rule in Docket No. RM18-14

The Federal Energy Regulatory Commission (Commission or FERC) requests the Office of Management and Budget (OMB) approve for three years the modifications due to the Final Rule (Commission Order No. 852, issued 12/20/2018) in Docket No. RM18-14.²

The Final Rule implements changes to the:

- FERC-500, Application for License/Relicense for Water Projects with More than 5 Megawatt Capacity
- FERC-505, Small Hydropower Projects and Conduit Facilities including License/Relicense, Exemption, and Qualifying Conduit Facility Determination.

This consolidated supporting statement addresses the changes to FERC-500 and FERC-505.

In addition, the Notice of Proposed Rulemaking (NOPR) in Docket RM18-14 proposed, and the Final Rule implements, the deletion of the FERC Form 80³, Licensed Hydropower Development Recreation Report (OMB Control No. 1902-0106). The Form 80 was included in a consolidated supporting statement (and separate ICR 201805-1902-004) related to the NOPR with placeholders of 1 response and 1 burden hour to ensure the Form 80 was not inadvertently deleted before the Commission decided whether and when to issue a Final Rule. For this Final Rule, a separate request to discontinue the Form 80 will be submitted to OMB through the ROCIS system [reginfo.gov], and the Form 80 will not be addressed further in this supporting statement.

1. CIRCUMSTANCES THAT MAKE THE COLLECTION OF INFORMATION NECESSARY

The Commission regulates non-federal hydropower projects on navigable waters and federal lands pursuant to the Federal Power Act (FPA).⁴

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

1 Information collection requirements for FERC-500 and FERC-505 are listed in Attachment A.

2 The Final Rule is posted on FERC's eLibrary at <https://elibrary.ferc.gov/idmws/common/opennat.asp?fileID=15124503> and published in the Federal Register on 12/28/2018 at 83 FR 67060.

The NOPR is posted in FERC's eLibrary at <https://elibrary.ferc.gov/idmws/common/OpenNat.asp?fileID=14921712>.

3 Also called "Form 80" and "FERC-80"

4 16 U.S.C. §§791a-825r (2012).

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)⁵ 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.⁶

The Commission requires all hydroelectric license applications to address a variety of environmental concerns. Many of these concerns address environmental requirements developed by federal and state resource agencies, including the U.S. Fish and Wildlife Service and the National Marine Fisheries Service, federal land management agencies (such as the U.S. Forest Service, Bureau of Land Management, and National Park Service), U.S. Army Corps of Engineers (depending on location of dam), Indian Tribes, State Departments of Natural Resources, and State Historic Preservation Officers. The applicants must provide information in order for the Commission to understand and resolve potential environmental problems associated with the application in the interests of the United States public.

Pursuant to the FPA, the Commission is authorized to issue licenses and exemptions 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.

FERC-500. FERC-500 is an application for a hydropower project license/relicense or exemption for water power projects with more than 5 megawatts (MW) of installed capacity. FERC-500 information also includes related filing and reporting requirements, such as the filing of annual conveyance reports by licensees under section 141.15 of the Commission’s

⁵ Pub. L. No. 99-495, 100 Stat. 1243 (1986).

⁶ 16 USC 797(e) (2012).

regulations,⁷ and the filing of comprehensive plans in accordance with section 2.19.⁸ FERC-500 includes the reporting requirements in 18 CFR listed in Attachment A.

The FERC-500 filing requirements for a major hydropower license/relicense include project description, schedule, resource allocation, project operation, construction schedule, cost, and financing; and an environmental report. Applicants can choose to seek FERC hydropower licenses using three different options: the traditional license process, alternative license process, or integrated license process (ILP). The ILP is the default process and enables potential licenses to conduct pre-filing consultation and the Commission's scoping process concurrently rather than sequentially.⁹ After an application for a major license is filed, the Federal agencies with responsibilities under the FPA and other statutes, the 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.

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

Small Hydropower Project License. Small hydropower projects are minor water power projects and major water power projects that have an installed capacity of 5 MW or less.¹⁰ Small hydropower projects have distinct filing requirements as outlined in section 4.61 of the Commission's regulations.¹¹

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 whether a project is consistent 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.

⁷ 18 C.F.R. § 141.15 (2018). Annual conveyance reports are filed for both major and minor licenses. 80% of the reports are related to major licenses.

⁸ 18 C.F.R. § 2.19 (2018).

⁹ More information on the licensing process is available at <http://www.ferc.gov/industries/hydropower/gen-info/licensing.asp>.

¹⁰ Minor water power projects are those that have a total installed capacity of 1.5 MW or less. Major water power projects have a total installed capacity of greater than 1.5 MW.

¹¹ 18 C.F.R. § 4.61 (2018).

A small conduit exemption, as defined in section 30 of the FPA,¹² 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),¹³ 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:

- (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.

Final Rule in Docket RM18-14. The Commission is eliminating Form 80 and updating sections 8.1 and 8.2 of its regulations (affecting FERC-500 and FERC-505) related to recreational use and development at licensed projects in order to modernize licensee public notice practices, clarify recreational signage requirements, and provide flexibility to assist licensees’ compliance with these requirements.

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

FERC-500 and FERC-505. Pursuant to the FPA, the Commission is authorized to issue licenses and exemptions 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,

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

¹³ 16 U.S.C. 2708 (2012).

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.

License and exemption applications are used by Commission staff to determine the broad impact of the license/relicense or exemption or conduit 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. 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.

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.

The Commission is clarifying and updating the requirements in FERC-500 and FERC-505 related to recreation signage and licensee public notice practices contained in sections 8.1 and 8.2 of the Commission's regulations.¹⁴

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

FERC-500 and FERC-505. FERC continually considers the use of improved information technology to reduce burden in the filing requirements for submission of information. This Final Rule is updating requirements related to recreation signage and licensee public notice practices.

With regard to modernized public notice practices, the revisions would require licensees that have a project website to (1) publish notice on its website of license conditions related to recreation; and (2) maintain on its website copies of any approved recreation plan, recreation-related reports, and the license instrument. If a licensee does not have a project website, the website publication requirements would not apply. These modernized public notice requirements would complement existing requirements that direct licensees to publish notice in a local newspaper of recreation-related license conditions and to make available for inspection at a local office the approved recreation plan and entire license instrument.

¹⁴ 18 C.F.R. §§ 8.1, 8.2 (2018).

In addition, the Commission allows eFiling for the FERC-500 and FERC-505 applications.

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. The proposal to eliminate the Form 80 is the result of the Commission's periodic reviews.

No similar information is available for the FERC-500 and FERC-505; 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

FERC-500. To reduce the burden on entities for certain smaller capacity, "major" projects, the Commission sets the reporting requirements for major projects with an installed capacity of five MW or less to be the same as for minor licenses (i.e. projects with an installed capacity of 1.5 MW or less). The Commission requires any license for a project that generates or proposes to generate more than five MW of electricity to be covered by FERC-500 reporting requirements.

FERC-505. 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:

- waiver of some pre-filing consultation requirements (with resource agency cooperation);
- concurrent environmental scoping and pre-filing consultation;
- streamlined public notice requirements;
- shortened comment periods;
- coordination with resource agencies to obtain their final terms and conditions before Commission staff issues 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
- issuance of 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.

Final Rule in RM18-14 and effect on FERC-500 and FERC-505. This rulemaking updates and clarifies recreation signage and licensee public notice requirements. The changes streamline the information that licensees are required to include on recreational signs at each public access point, providing more flexibility to licensees to design effective signage strategies for their individual projects. The changes would also require licensees that have project websites to post recreational use information on their websites in addition to existing requirements to publish this information in local newspapers and to have it available for inspection in their local offices.

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

FERC-500 and FERC-505. 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

Each FERC rulemaking (both proposed and final rules) is published in the Federal Register thereby providing public utilities and licensees, state commissions, Federal agencies, and other interested parties an opportunity to submit data, views, comments or suggestions concerning the proposed collections of data. The NOPR (issued 5/17/2018) was published in the Federal Register on 5/23/2018.¹⁵ The Commission received no public comments related to PRA issues. All other comments are summarized and addressed in the Final Rule, which was published in the Federal Register (83 FR 67060, 12/28/2018).

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

¹⁵ 83 FR 23848

Energy/Electric Infrastructure Information [CEII] or non-public) to the extent permitted by law.¹⁶
 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

The estimated changes to the burden and cost of the information collections affected by this Final rule follow.

Annual Changes Implemented by Final Rule in Docket No. RM18-14-000¹⁷						
	No. of Respondents (1)	No. of Responses per Respondent (2)	Total No. of Responses (1)X(2)= (3)	Avg. Burden Hrs. & Cost Per Response (4)	Total Annual Burden Hours & Total Annual Cost (3)X(4)=5	Cost per Respondent (\$) (5)/(1)
FERC-500	432 ¹⁸	1	432	0.5 hr.; \$26.77 (rounded)	216 hrs.; \$11,565 (rounded)	\$26.77 (rounded)
FERC-505	287 ¹⁹	1	287	0.5 hr.; \$26.77 (rounded)	144 hrs.; \$7,683 (rounded)	\$26.77 (rounded)

¹⁶ 18 C.F.R. § 388.112. More information on the CEII definition, program and requirements is posted at <http://www.ferc.gov/legal/ceii-foia/ceii.asp>.

¹⁷ Hourly costs are based on Bureau of Labor Statistics (BLS) figures (for May 2017 wages in Sector 22, Utilities (posted at https://www.bls.gov/oes/current/naics2_22.htm) and December 2017 benefits (updated on March 20, 2018 and posted at <https://www.bls.gov/news.release/pdf/ecec.pdf>). For web developers (code 15-1134), the estimated average hourly cost (salary plus benefits) is \$53.53.

¹⁸ We assume approximately 90 percent of the 480 licenses for projects with an installed capacity of more than 5 MW licenses (i.e. an estimated 432 licenses) have project websites.

¹⁹ We assume approximately 50 percent of the 573 licenses for projects 5 MW or less (i.e. an estimated 287 licenses) have project websites.

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 collections are associated with burden hours (labor) and discussed in Questions #12 and #15.

14. ESTIMATED ANNUALIZED COST TO FEDERAL GOVERNMENT

FERC-500 and FERC-505. The estimate of the cost for ‘analysis and processing of filings’²⁰ is based 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. The estimates for the ‘analysis and processing of filings’ are for the entire FERC-500 and FERC-505, not simply for the areas affected by, or additions due to, the Final Rule in RM18-14.

The Paperwork Reduction Act (PRA) Administrative Cost²¹ is the average annual FERC cost associated with preparing, issuing, and submitting materials necessary to comply with the PRA for rulemakings, orders, or any other vehicle used to create, modify, extend, or discontinue an information collection. It also includes the cost of publishing the necessary notices in the Federal Register.

The estimated annualized cost to the Federal Government follows.

FERC-500	Number of Employees, Full-Time Equivalents (FTEs)	Estimated Annual Federal Cost (rounded)
Analysis and Processing of Filings	18	\$2,966,760
PRA Administrative Cost		\$4,931
Total for FERC-500		\$2,971,691

FERC-505	Number of Employees (FTEs)	Estimated Annual Federal Cost (rounded)
Analysis and Processing of filings	8.5	\$1,400,970
PRA Administrative Cost		\$4,931
Total for FERC-505		\$1,405,901

²⁰ The estimate uses the FERC’s FY 2018 average annual salary plus benefits of one FERC FTE

²¹ This estimate was updated May 2018.

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

The Commission is revising its regulations (affecting FERC-500 and FERC-505) to modernize licensee public notice practices, clarify recreational signage requirements, and provide flexibility to assist licensees’ compliance efforts.

The following tables show the changes and are based on ROCIS (and reginfo.gov) metadata.

FERC-500.

FERC-500	Total Request	Previously Approved	Change due to Adjustment in Estimate	Change Due to Agency Discretion
Annual Number of Responses	515	83		+432 ²²
Annual Time Burden (Hr.)	321,722	321,506		+216
Annual Cost Burden (\$)	\$ 0	\$ 0	\$ 0	\$ 0

FERC-505.

FERC-505	Total Request	Previously Approved	Change due to Adjustment in Estimate	Change Due to Agency Discretion
Annual Number of Responses	320	33		+287 ²³
Annual Time Burden (Hr.)	24,465	24,321		+144
Annual Cost Burden (\$)	\$ 0	\$ 0	\$ 0	\$ 0

16. TIME SCHEDULE FOR PUBLICATION OF DATA

There is no publication of data.

17. DISPLAY OF EXPIRATION DATE

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

²² For FERC-500, we assume approximately 90 percent of the 480 projects with an installed capacity of more than 5 MW licenses (i.e. an estimated 432 licenses) have project websites.

²³ For FERC-505, we assume approximately 50 percent of the 573 licenses for projects 5 MW or less (i.e. an estimated 287 licenses) have project websites.

18. EXCEPTIONS TO THE CERTIFICATION STATEMENT

There are no exceptions.

Attachment A

Note that some of the following references cover both major (FERC-500) and minor (FERC-505) hydro project applications and reporting requirements.

FERC-500 has information collection requirements described in the following sections in 18 C.F.R.:

- 2.19
- 4.201
- 4.202
- 4.301
- 4.303
- 4.35
- 4.38
- 4.40
- 4.41
- 4.50
- 4.51
- 5.11
- 5.13
- 5.16
- 5.17
- 5.18
- 5.2
- 5.20
- 5.21
- 5.27
- 5.4
- 5.5
- 5.6
- 8.1
- 8.2
- 16.10
- 16.11
- 16.12
- 16.14
- 16.19
- 16.20
- 16.26
- 16.4
- 16.6
- 16.7
- 16.8
- 16.9

FERC-500 and FERC-505 (OMB Control Nos.: 1902-0058 and 1902-0115)
Final Rule (issued 12/20/2018) in Docket No. RM18-14; RIN 1902-AF51

- 141.15
- 4.36(b)
- 4.36(c)
- 5.15(b)
- 5.15(c)
- 5.15(d)
- 5.15(e)
- 5.15(f)
- 5.18(d)
- 5.23(b)
- 5.3(c)(1)
- 5.3(c)(2)
- 5.3(d)(1)
- 292.208

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

FERC-500 and FERC-505 (OMB Control Nos.: 1902-0058 and 1902-0115)
Final Rule (issued 12/20/2018) in Docket No. RM18-14; RIN 1902-AF51

- 16.22
- 292.203
- 292.208