

Supporting Statement for  
**FERC-505**  
**As Modified by the Final Rule in Docket No. RM19-13-000**

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. 857, issued 2/22/2019) in Docket No. RM19-13-000.<sup>1</sup>

The Final Rule implements changes to the FERC-505 information collection (Small Hydropower Projects and Conduit Facilities including License/Relicense, Exemption, and Qualifying Conduit Facility Determination).

## **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).<sup>2</sup>

Section 4(e) of the FPA authorizes the Commission to issue licenses to construct, operate, and maintain dams, water conduits, reservoirs, power houses, transmission lines, or other project works for the development, transmission, and utilization of power under the Commission's jurisdiction.<sup>3</sup> Section 30 of the FPA allows qualifying conduit hydropower facilities to be exempted from the licensing requirements of the FPA.<sup>4</sup>

The America's Water Infrastructure Act of 2018 (Water Infrastructure Act or Act) increased the maximum installed capacity of qualifying conduit hydropower facilities from five megawatts (MW) to 40 MW,<sup>5</sup> and the Commission is updating its regulations in RM19-13-000<sup>6</sup> to conform them to the Act. FERC-505 includes qualifying conduit hydropower facility applications; thus, the change to the Commission's regulations regarding these facilities necessitates a new collection of information pertaining to qualifying conduit hydropower facilities between five MW and 40 MW.

### **FERC-505 (overview)**

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

### **Qualifying Conduit Hydropower Facilities**

The Hydropower Regulatory Efficiency Act of 2013 amended section 30 of the FPA, which created a subset of conduit exemptions, called "qualifying conduit hydropower facilities," which

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1 The Final Rule is posted on FERC's eLibrary [here](#) and published in the Federal Register on 2/22/2019 at 84 FR 7988.

2 16 U.S.C. §§ 791a-825r (2012).

3 *Id.* § 797(e).

4 *Id.* § 823a.

5 Pub. L. No. 115-270, § 3001, 132 Stat. 3765, 3862 (2018).

6 *Final Rule*, Order No. 857, 84 FR 7988, 166 FERC ¶ 61,143 (2019).

are not required to be licensed under Part I of the FPA.<sup>7</sup> Section 30 includes the following criteria to determine whether a facility qualifies as a qualifying conduit hydropower facility:

- 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;
- the facility would have a total installed capacity that does not exceed five megawatts (MW);<sup>8</sup> and
- 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).

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

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.<sup>9</sup> The notice of intent is used by the Commission to determine whether an entity meets the criteria of a qualifying conduit hydropower facility. If the Commission did not collect the data from the notice, then there would not be a qualifying conduit hydropower facility program, as the Commission would have no way of determining whether an entity meets the relevant criteria. Therefore, an entity that may be eligible as a qualifying conduit hydropower facility, and thus eligible to operate without Commission regulation, would have to obtain a license or exemption from the Commission in order to operate.

A separate entity may contest whether a facility meets the qualifying criteria by filing with the Commission a comment, within the comment period, contesting the facility's qualifying status.<sup>10</sup> A comment in opposition to the notice of intent provides the public with an opportunity to contest whether a facility meets the statutory requirements.

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

The Commission continually considers the use of improved information technology to reduce burden in the filing requirements for submission of information. This Final Rule is increasing the maximum installed capacity for qualifying conduit hydroelectric facilities. The Commission allows eFiling for the FERC-505 applications, including notices of intent for qualifying conduit hydropower facilities.

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

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<sup>7</sup> Pub. L. No. 113 23, § 4, 127 Stat. 493, 494 (2013).

<sup>8</sup> Although the Hydropower Efficiency Act of 2013 established a maximum installed capacity of five MW for qualifying conduit hydropower facilities, the Water Infrastructure Act increased the installed capacity to 40 MW for such facilities.

<sup>9</sup> 16 U.S.C. § 823a(a)(2)(C).

<sup>10</sup> *Id.*

FERC-505 (OMB Control No. 1902-0115)  
Final Rule (issued 2/22/2019) in Docket No. RM19-13-000  
RIN: 1902-AF62

**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 for the FERC-505. The FERC-505 is a case-specific application for a benefit (e.g., license or exemption) and is 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/relicenses, exemptions, or determinations 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 of 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.

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

If the information were collected less frequently, the Commission would not be able to fulfill the requirements of the FPA in determining whether facilities meet the qualifying conduit hydropower criteria, and thus facilities that may be eligible to operate without Commission oversight would have to obtain a license or an exemption from the Commission in order to operate.

**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 Commission 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 Final Rule (issued 2/22/2019) was published in the Federal Register on 3/6/2019.<sup>11</sup>

**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 by law.<sup>12</sup> 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 Proposed by the Final Rule in Docket No. RM19-13-000**

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<sup>11</sup> 84 FR 7988

<sup>12</sup> 18 C.F.R. § 388.112 (2018). More information on the CEII definition, program and requirements is posted at <http://www.ferc.gov/legal/ceii-foia/ceii.asp>.

	<b>Number of Respondents (1)</b>	<b>Annual Number of Responses per Respondent (2)</b>	<b>Total Number of Responses (1)*(2)=(3)</b>	<b>Average Burden &amp; Cost Per Response<sup>13</sup> (4)</b>	<b>Total Annual Burden Hours &amp; Total Annual Cost (3)*(4)=(5)</b>	<b>Cost per Respondent (\$) (5)÷(1)</b>
FERC-505 (reduction)	1 <sup>14</sup>	1	1	30 hrs.; \$2,370 (reduction)	30 hrs.; \$2,370 (reduction)	\$2,370 (reduction)

### 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

The estimate of the cost for “analysis and processing of filings”<sup>15</sup> 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-505, not simply for the areas affected by, or additions due to, the Final Rule in RM19-13-000.

The Paperwork Reduction Act (PRA) Administrative Cost<sup>16</sup> 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.

<sup>13</sup>The estimates for cost per response are derived using the following formula: Average Burden Hours per Response \* \$79.00/hour = Average cost/response. The figure is the 2018 FERC average hourly cost (for wages and benefits) of \$79.00 (and an average annual salary and benefits of \$164,820/year). Commission staff is using the FERC average salary and benefits cost, because we consider any reporting requirements completed in response to the FERC-505 to be compensated at rates similar to the work of FERC employees.

<sup>14</sup>Based on applications we have received since 2013 for conduit hydropower facilities with an installed capacity between five and 40 MW that would now meet the qualifying conduit hydropower facilities criteria, we anticipate one respondent per year.

<sup>15</sup>The estimate uses the FERC’s FY 2018 average annual salary plus benefits of one FERC FTE (full-time equivalent [\$164,820 per year or \$79.00 per hour]). (These estimates were updated in May 2018.)

<sup>16</sup>This estimate was updated May 2018.

The estimated annualized cost to the Federal Government follows.

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

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

The Commission is conforming its regulations to the Water Infrastructure Act. The revision increasing the installed capacity for qualifying conduit hydropower facilities will cause entities with qualifying conduit applications to incur less burden than before the Act, because more facilities may be considered qualifying and thus eligible to operate without a license or an exemption. Overall, Commission staff estimates a reduction of one response and 30 hours of burden annually.

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

<b>FERC-505</b>	<b>Total Request</b>	<b>Previously Approved</b>	<b>Change due to Adjustment in Estimate</b>	<b>Change Due to Agency Discretion</b>
Annual Number of Responses	319	320		-1
Annual Time Burden (Hr.)	24,435	24,465		-30
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>

## 18. EXCEPTIONS TO THE CERTIFICATION STATEMENT

FERC-505 (OMB Control No. 1902-0115)  
Final Rule (issued 2/22/2019) in Docket No. RM19-13-000  
RIN: 1902-AF62

There are no exceptions.

**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