

Supporting Statement for
FERC-539¹ Gas Pipeline Certificates: Import & Export Related Applications

The Federal Energy Regulatory Commission (Commission or FERC) requests that the Office of Management and Budget (OMB) review and approve **FERC-539, Gas Pipeline Certificates: Import & Export Related Applications** (OMB Control No. 1902-0062), for a three-year period. FERC-539 is an existing data collection with reporting requirement in 18 Code of Federal Regulations (CFR) Section 153.

1. CIRCUMSTANCES THAT MAKE THE COLLECTION OF INFORMATION NECESSARY

Section 3 of the Natural Gas Act (NGA)² provides, in part, that “...no person shall export any natural gas from the United States to a foreign country or import any natural gas from a foreign country without first having secured an order from the Commission authorizing it to do so.”

The 1992 amendments to Section 3 of the NGA concern importation or exportation from/to a nation which has a free trade agreement with the United States and requires that such importation or exportation:

- (1) shall be deemed to be a “first sale” (i.e. not a sale for a resale)
- (2) shall be deemed to be consistent with the public interest, and applications for such importation or exportation shall be granted without modification or delay

The regulatory functions of Section 3 are shared by the Commission and the Secretary of Energy, Department of Energy (DOE). The Commission has the authority to approve or disapprove the construction and operation of particular facilities, the site at which such facilities will be located, and, with respect to natural gas that involves the construction of new domestic facilities, the place of entry for imports or exit for exports. The DOE approves the importation or exportation of the natural gas commodity.³

Additionally, pursuant to the DOE Delegation Order and Executive Order Nos. 10485 and 12038, the Commission has the authority to issue Presidential Permits for natural gas facilities which cross an international border of the United States. Persons seeking

¹ On 10/29/2019, FERC submitted a request to OMB for an emergency extension. On 10/31/2019, OMB granted a 2-month extension for FERC-539.

² 15 U.S.C. 717-717w

³ The Secretary of DOE’s current delegation of authority to the Commission relating to import and export facilities was renewed by the Secretary’s Delegation Order No. 00-004.00A, effective May 16, 2006.

Section 3 authorizations or Presidential Permits from the Commission file applications for such requests pursuant to Part 153 of the Commission's Regulations (Part 153, Subpart B Application Under Section 3 and Part 153 Subpart C Application for a Presidential Permit).

FERC-539 addresses FERC's implementing regulations in 18 CFR Part 153.

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

The natural gas companies file the necessary information required in FERC's implementing regulations in 18 CFR Part 153. This application must include:

- Applicant information;
- Proposal summary;
- Statements demonstrating that the proposal is in the public interest and that the services rendered will be in accordance with existing Commission regulations;
- Nine required exhibits:
 - Exhibit A – articles of incorporation;
 - Exhibit B – statement of the relationship between the applicant and any other corporation or person;
 - Exhibit C – affidavit stating that the project will be constructed and operated in accordance with the laws of the state within which they are located;
 - Exhibit D – copy of any construction or operation agreement between the applicant and the operator of the border facilities;
 - Exhibit E – statement affirming that a qualified entity will receive or deliver liquefied natural gas (LNG) and engineering and design information (if an LNG import or export facility is proposed);
 - Exhibit E-1- report on earthquake hazards and engineering, as appropriate;
 - Exhibit F – environmental report;
 - Exhibit G – map of appropriate scale and detail; and
 - Exhibit H – statement identifying each Federal authorization that the proposal will require.

For applicants proposing to construct, operate, maintain or connect facilities at the borders of the United States and Canada or Mexico for importing or exporting natural gas, a request for issuance of a Presidential Permit is also required. Once issued by the Commission, an acceptance of the Presidential Permit must be filed.

If the data from FERC-539 were not collected, the Commission would not be able to

meet its statutory responsibilities.

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

FERC encourages companies to use its eFiling system. Natural gas companies can submit the FERC-539 using FERC's eFiling system. (See <http://www.ferc.gov/docs-filing/efiling.asp>.)

3. 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.

FERC periodically reviews filing requirements as OMB review dates arise or as it may deem necessary in carrying out its regulatory responsibilities under the NGA. All Commission information collections are subject to analysis by Commission staff and are examined for redundancy. FERC has found no other source of this information.

DOE and FERC share the regulatory functions described in the NGA Section 3. As stated in response to Question #1 above, the Commission has the authority to approve or disapprove the construction and operation of facilities related to the importation or exportation of natural gas. DOE approves the importation or exportation of the natural gas commodity. Any number of importers and exporters can use any of the facilities or points of import/export the Commission approves. Also, the applicants to FERC and DOE tend to be completely different corporate segments of the industry. FERC deals with pipeline and LNG terminal builders while DOE works with gas marketers and producers.

In summary, FERC collects information about a particular facility used for import/export in order to approve/disapprove construction and operation. DOE collects information about the imported/exported natural gas. The information collected by each agency is distinct and necessary to meet the purposes of the NGA.

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

The information requirements under FERC-539 apply to jurisdictional pipelines or companies. Many of these pipelines do not fall within the Regulatory Flexibility Act's (RFA) definition of a small entity.

5. CONSEQUENCE TO FEDERAL PROGRAM IF COLLECTION WERE

CONDUCTED LESS FREQUENTLY

The Commission requires the FERC-539 information for statutory purposes as described in Question #1 above and the collection cannot be discontinued or collected less frequently. The information that must be submitted to the Commission is event driven. Without such information, the Commission would be unable to fulfill its statutory responsibilities.

6. EXPLAIN ANY SPECIAL CIRCUMSTANCES RELATING TO THE INFORMATION

FERC-539 meets all of OMB's Section 1320.5 requirements, except 1320.5(d) (2) (iii). The application may be eFiled through FERC's eFiling system. For applications that are eFiled, two additional paper copies are required for use by the Office of Energy Projects. The copies are distributed to FERC staff involved in the review process and are necessary to ensure a timely review of the submitted materials.

7. 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 notice⁴ and a 30-day notice⁵ to the public regarding this information collection on 9/03/2019 and 11/15/2019, 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. The Commission received no comments on the 60-day Notice.

Comments on the 30-day Notice are due 12/16/2019.

8. EXPLAIN ANY PAYMENT OR GIFTS TO RESPONDENTS

There are no payments or gifts to respondents of this collection.

9. 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.

⁴ 84 FR 46005

⁵ 84 FR 62529

10. 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 associated with FERC-539.

11. ESTIMATED BURDEN COLLECTION OF INFORMATION

The Commission estimates the annual public reporting burden and cost⁶ for the information collection as:

FERC-539: Gas Pipeline Certificates: Import & Export Related Applications					
Number of Respondents (1)	Annual Number of Responses per Respondent (2)	Total Number of Responses (1)*(2)=(3)	Average Burden & Cost (\$) Per Response (4)	Total Annual Burden Hours & Total Annual Cost (\$) (3)*(4)=(5)	Cost per Respondent (\$) (5)÷(1)
6	2	12	15 hrs.; \$1,200	180 hrs.; \$14,400	\$2,400

12. 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.

13. ESTIMATED ANNUALIZED COST TO FEDERAL GOVERNMENT

The estimate of the cost for ‘analysis and processing of filings’ 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 collections.

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

⁶ The Commission staff estimates that industry is similarly situated in terms of hourly cost (for wages plus benefits). Based on the Commission’s FY (Fiscal Year) 2019 average cost (for wages plus benefits), \$80.00/hour is used.

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.

	Number of Employees (FTE)	Estimated Annual Federal Cost
Analysis and Processing of Filings ⁷	3.5	\$584,818.50
PRA Administrative Cost		\$4,832
FERC Total		\$589,650.50

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

The annual burden hours and annual number of respondents has decreased. Based on recent collection activity, Commission staff adjusted the number of respondents from 12 respondents to 6 respondents annually. The reason for the change (adjustment in estimate) is industry reacting to change in natural gas markets. This results in an estimate that is representative of actual filings received over the last three years. The decrease is due mostly to typical fluctuation in industry activity.

The format, labels, and definitions of the table follow the ROCIS submission system’s “Information Collection Request Summary of Burden” for the metadata.

FERC-539	Total Request	Previously Approved	Change due to Adjustment in Estimate	Change Due to Agency Discretion
Annual Number of Responses	12	24	-12	0
Annual Time Burden (Hours)	180	288	-108	0
Annual Cost Burden (\$)	\$0	\$0	\$0	\$0

15. TIME SCHEDULE FOR PUBLICATION OF DATA

There is no publication of data associated with FERC-539 information.

16. DISPLAY OF EXPIRATION DATE

⁷ Based upon 2019 FERC FTE average annual salary plus benefits (\$167,091).

FERC-539 (OMB Control No. 1902-0062)

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

17. EXCEPTIONS TO THE CERTIFICATION STATEMENT

There are no exceptions.