

SUPPORTING STATEMENT
FERC-583, Annual Kilowatt Generating Report (Annual Charges)
(Three-Year Extension and Revision)

The Federal Energy Regulatory Commission (FERC or Commission) requests that the Office of Management and Budget (OMB) extend its approval of FERC-583, Annual Kilowatt Generating Report (Annual Charges), for an additional three years. In addition, the Commission requests revision of FERC-583 to include two information collection (IC) activities that have been in use without a control number: (1) Application of a State or Municipal Licensee or Exemptee for Total or Partial Exemption from the Assessment of Annual Charges; and (2) Appeals and Requests for Rehearing of Billing for Annual Charges.

FERC-583 is an existing information collection (OMB Control No. 1902-0136) in accordance with section 10(e)(1) of the Federal Power Act (FPA),¹ section 3401 of the Omnibus Budget Reconciliation Act of 1986 (OBRA 1986),² and 18 CFR Part 11.³

JUSTIFICATION

**1. CIRCUMSTANCES THAT MAKE THE COLLECTION OF
INFORMATION NECESSARY**

Overview

This IC enables the Commission to assess annual charges in compliance with two distinct statutes. Section 10(e)(1) of the FPA provides that holders of hydropower projects licensed under the FPA must “pay to the United States reasonable annual charges in an amount to be fixed by the Commission.” Section 3401 of OBRA 1986 requires the Commission to collect annual charges “in amounts equal to all of the costs incurred by the Commission in that fiscal year.” In the context of this information collection, section

¹ 16 U.S.C. 803(e)(1).

² Pub. L. No. 99-5089, Title III, § 3401 (Octo. 21, 1986), 100 Stat. 1890 (codified at 42 U.S.C. 7178).

³ As discussed in 18 CFR Part 11, selected federal agencies (such as the United States Fish and Wildlife Service and the National Marine Fisheries Service) submit annual reports to the Commission on their federal costs in administering Part I of the Federal Power Act. The filing requirements imposed on those federal agencies are not a “collection of information” as defined by 5 CFR 1320.3(c)(3), and are not discussed further here.

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3401 of OBRA 1986 applies to annual charges involving hydropower projects that are exempt from FPA licensing requirements.

Annual charges that the Commission assesses under FPA section 10(e)(1) reimburse the United States for:

- The costs of administering Part I of the FPA;⁴ and
- The use, for electric power generation, of Government dams or other structures owned by the United States; and
- The use, for electric power generation, of tribal lands within Indian reservations.

Annual charges under section 3401 of OBRA 1986 reimburse the United States for the costs of administering the Commission's hydropower regulatory program, as it applies to projects that are exempt from licensing under the FPA.

Information Collection Activities

A. Annual Kilowatt Generating Report

Annual kilowatt generating reports enable the Commission to determine the amount of annual charges, where such determinations are necessary under the relevant regulations.

1. Annual charges for the costs of administering Part I of the FPA

Pursuant to 18 CFR 11.1(b), the following types of entities are subject to annual charges for costs of administering Part I of the FPA:

- All hydropower licensees of projects of more than 1.5 megawatts of installed capacity; and
- All holders of exemptions from hydropower licensing under FPA section 30⁵ or sections 405(d)⁶ and 408(a)(1)⁷ of the Public Utility Regulatory Policies Act, but

⁴ 16 U.S.C. 791 through 823d.

⁵ 16 U.S.C. 823a (exempting “qualifying conduit hydropower facilities” from licensing under Part I of the FPA, and defining “conduit” as any tunnel, canal, pipeline, aqueduct, flume, ditch, or similar manmade water conveyance that is operated for the distribution of water for agricultural, municipal, or industrial consumption and not primarily for the generation of electricity).

only if the exemption was issued subsequent to April 21, 1995 and is for a project of more than 1.5 megawatts of installed capacity.

The purpose of this IC activity is to enable the Commission to determine the amount of annual charges for the costs of administering Part I of the FPA.

The details of this IC activity, as applied to holders of hydropower licenses and exemptions, other than State governments and municipalities, are spelled out at 18 CFR 11.1(c). Such respondents must file, on or before November 1 of each year, a statement under oath showing the gross amount of power generated (or produced by nonelectrical equipment) and the amount of power used for pumped storage pumping by the project during the preceding fiscal year, expressed in kilowatt hours.

The details of this IC activity, as applied to State and municipal licensees and exemptees, are spelled out in 18 CFR 11.1(d). Each such licensee or exemptee must file with the Commission, on or before November 1 of each year, a statement under oath showing the following information with respect to the power generated by the project and the disposition thereof during the preceding fiscal year, expressed in kilowatt-hours:

- Gross amount of power generated by the project;
- Amount of power used for station purposes and lost in transmission, etc.;
- Net amount of power available for sale or use by licensee or exemptee, classified as follows:
 - Used by licensee or exemptee; and
 - Sold by licensee or exemptee.

2. *Annual Charges for the Use of a Government Dam or Other Government Structure, or for the Use of Tribal Lands within Indian Reservations*

These annual charges apply only to holders of hydropower licensees. The Commission implements this aspect of annual charges under 18 CFR 11.3 (use of Government dams,

⁶ 16 U.S.C. 2705(d) (authorizing the Commission to exempt, in whole or in part, "small hydroelectric power projects" from part I of the Federal Power Act).

⁷ 16 U.S.C. 2708(a)(1) (defining "small hydroelectric power project" as any hydroelectric power project which is located at the site of any existing dam, which uses the water power potential of such dam, and which has not more than 30,000 kilowatts of installed capacity).

except by pumped storage projects) and 11.4 (use of Government dams for pumped storage projects, and use of tribal lands).⁸

The regulation at 18 CFR 11.3(c) spells out the details of the IC activity for licensees that must pay an annual charge, where the pertinent project that is not a pumped storage project uses a Government dam or other Government-owned structure for electric power generation. The regulation at 18 CFR 11.3(c)(1) provides that, if the pertinent license does not already specify in final form the amount of annual charges, the licensee (with some exceptions specified in 18 CFR 11.3(c)(2)), must file with the Commission, on or before November 1 of each year, a sworn statement showing the gross amount of energy generated during the preceding fiscal year and the amount of energy provided free of charge to the Government. The determination of the annual charge will be based on the gross energy production less the energy provided free of charge to the Government.

The regulation at 11.3(c)(2) provides that a licensee who has filed these data under another section of part 11 or who has submitted identical data with FERC or the Energy Information Administration for the same fiscal year is not required to file the information described in 18 CFR 11.3(c)(1). Referenced filings should be identified by company name, date filed, docket or project number, and form number.

The regulation at 18 CFR 11.4(a) provides that the Commission will determine on a case-by-case basis under section 10(e) of the Federal Power Act the annual charges for any pumped storage project using a Government dam or other structure and for any project using tribal lands within Indian reservations. Under 18 CFR 11.4(b), a licensee whose project includes pumped storage facilities must file with the Commission, on or before November 1 of each year, a sworn statement showing the gross amount of energy generated during the preceding fiscal year, the amount of energy provided free of charge to the Government, and the amount of energy used for pumped storage.

B. Application of a State or Municipal Licensee or Exemptee for Total or Partial Exemption from the Assessment of Annual Charges

⁸ The Commission also collects annual charges for the use of Government land, but no information collection activity is associated with those charges. Instead, pursuant to 18 CFR 11.2, the Commission publishes an annual schedule of per-acre rental fees, and then assesses annual charges for the use of Government land in accordance with the number of acres in each project. The most recent schedule is at 85 FR 6760 (February 6, 2020).

The Commission requests that OMB revise FERC-583 by adding this IC activity that has been in use without a control number. Under FPA section 10(e)(1) and 18 CFR 11.6(a), a State or municipal licensee of exemptee may claim total or partial exemption for the assessment of annual charges on one or more of the following grounds:

- (1) The project was primarily designed to provide or improve navigation;
- (2) To the extent that power generated, transmitted, or distributed by the project was sold directly or indirectly to the public (ultimate consumer) without profit; or
- (3) To the extent that power generated, transmitted, or distributed by the project was used by the licensee for State or municipal purposes.

Under 18 CFR 11.6(b), an applicant claiming a navigation-based exemption must support such claim by showing the actual conditions under which the project was constructed and was operated during the calendar year for which the charge is made.

Regulations at 18 CFR 11.6(c) through 11.6(h) address the requirements for other types of applications for exemption by a State or municipal licensee or exemptee.

Under section 11.6(c), the applicant must show “the extent that power generated, transmitted, or distributed by the project is used by the licensee itself for State or municipal purposes, such as lighting streets, highways, parks, public buildings, etc., for operating licensee's water or sewerage system, or in performing other public functions of the licensee.”

Section 11.6(d) requires that an application for exemption on the ground that power generated, transmitted, or distributed by the project is sold to the public without profit, must show that:

- The applicant maintains an accounting system which segregates the operations of the licensed project and reflects with reasonable accuracy the revenues and expenses of the project; and
- An income statement, prepared in accordance with the Commission's Uniform System of Accounts, shows that the revenues from the sale of project power do not exceed the total amount of operating expenses, maintenance, depreciation, amortization, taxes, and interest on indebtedness, applicable to the project property.

Section 11.6(d) also provides that periodic accruals or payments for redemption of the principal of bonds or other indebtedness may not be deducted in determining the net profit of the project.

Section 11.6(e) provides that, notwithstanding an applicant's compliance with section 11.6(d), an applicant must pay annual charges "to the extent that electric power generated, transmitted, or distributed by the project is sold to another State, municipality, person, or corporation for resale," unless the applicant shows that the power was sold to the ultimate consumer without profit.

Section 11.6(f) provides that, notwithstanding an applicant's compliance with section 11.6(d), and applicant must pay annual charges "to the extent that power generated, transmitted, or distributed by the project was supplied under an interchange agreement to a State, municipality, person, or corporation for sale at a profit (which power was not offset by an equivalent amount of power received under such interchange agreement) unless the licensee shall show that the power was sold to ultimate consumers without profit."

Section 11.6(g) provides that during the period when a licensed project is under construction and is not generating power, it will be considered as operating without profit within the meaning of 18 CFR 11.6, and the licensee will be entitled to total exemption from the payment of annual charges, except as to those charges relating to the use of a Government dam or other structure owned by the United States, or tribal lands within Indian reservations.

Section 11.6(h) provides that when the power from a licensed project enters into the electric power system of the State or municipal licensee, making it impracticable to meet the requirements set forth in this section with respect to the operations of the project only, such licensee may, in lieu thereof, furnish the same information with respect to the operations of said electric power system as a whole.

The regulation at 18 CFR 11.6(i) requires that an application for an exemption be filed with the Secretary of the Commission in accordance with filing procedures posted on the Commission's Web site at <http://www.ferc.gov> within the time allowed (by 18 CFR 11.20) for the payment of annual charges. The application must be signed by an authorized executive officer or chief accounting officer of the licensee or exemptee, and the signature must be verified under oath. If the licensee or exemptee, within the time allowed for the payment of the annual charges, files notice that it intends to file an

application for exemption, an additional period of 30 days is allowed within which to complete and file the application for exemption. The filing of an application for exemption does not by itself alleviate the requirement to pay the annual charges, nor does it exonerate the licensee or exemptee from the assessment of penalties under 18 CFR 11.21. If a bill for annual charges becomes payable after an application for an exemption has been filed and while the application is still pending for decision, the bill may be paid under protest and subject to refund.

C. Appeals and Requests for Rehearing of Billing for Annual Charges

The Commission requests that OMB revise FERC-583 by adding this IC activity that has been in use without a control number. Under 18 CFR 11.20, annual charges must be paid no later than 45 days after rendition of a bill by the Commission. If the licensee or exemptee believes that the bill is incorrect, no later than 45 days after its rendition the licensee or exemptee may file an appeal of the bill with the Chief Financial Officer. No later than 30 days after the date of issuance of the Chief Financial Officer's decision on the appeal, the licensee or exemptee may file a request for rehearing of that decision pursuant to 18 CFR 385.713. In the event that a timely appeal to the Chief Financial Officer or a timely request to the Commission for rehearing is filed, the payment of the bill may be made under protest, and subject to refund pending the outcome of the appeal or rehearing.

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

The Commission uses information collected under FERC-583 to ensure compliance with section 10(e)(1) of the FPA and section 3401 of OBRA 1986. Specifically, Commission staff uses the information to:

- Determine the amount of annual charges to be assessed;
- Reach decisions on exemptions from annual charges sought by State and municipal licensees and exemptees; and
- Reach decisions on appeals and requests for rehearing of billing for annual charges.

If the Commission failed to collect the information, or collected it less frequently, the Commission would be unable to have an accurate basis for making the determinations

and decisions listed above, and would not be able to carry out its responsibilities under section 10(e)(1) of the FPA and section 3401 of OBRA 1986.

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

The information may be filed electronically through eFiling.⁹ Hard copy filings are also accepted.

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 IC activities as OMB review dates approach or as the Commission may see fit in carrying out its responsibilities in accordance with section 10(e)(1) of the FPA and section 3401 of OBRA 1986. This IC is the Commission's only source of data on gross generation. Gross generation data, as opposed to net generation data, are necessary for accurate assessment of annual charges.

The regulation at 18 CFR 11.4(b) provides that a licensee whose project includes pumped storage facilities is not required to provide information that is relevant to annual charges under that section if the licensee provides the same information to the Commission under another section of 18 CFR part 11 or to the Energy Information Administration for the same fiscal year. In such cases, the licensee should identify the referenced filings by company name, date filed, docket or project number, and form number.

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

Various regulations may have the effect of minimizing burdens to small entities. For example:

⁹ Additional information on eFiling is posted at <https://www.ferc.gov/docs-filing/efiling.asp>.

1. The regulations at 18 CFR 11.1(b)(1) and (b)(2) limit the scope of “cost of administration” annual charges to projects that have more than 1.5 megawatts of installed capacity.
2. If a project involves transmission lines only, the administrative charge will be stated in the license in accordance with 18 CFR 11.1(e). While a licensee or exemptee that meets that description must pay an annual charge, no Annual Kilowatt Generating Report is required.
3. Under 18 CFR 11.3, any licensees whose annual charges for the use of Government dams (excluding pumped storage projects) are already specified in final form in the license are not required to file an Annual Kilowatt Generating Report.
4. Under 18 CFR 11.5, licenses for “minor projects” may exempt the licensees from annual charges (and thus from the requirement to file an Annual Kilowatt Generating Report) for the use of Government dams or other structures owned by the United States, or tribal lands within Indian reservations. As defined at 18 CFR 4.30(b)(17), a minor project has a total installed generation capacity of 2,000 horsepower (1.5 MW), or less.

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

The information collection cannot be discontinued nor collected less frequently due to statutory requirements. The information is required only once per year in order to compute annual charges that will be assessed to applicable regulated entities. These reports are required to support each assessment of annual charges.

7. EXPLAIN ANY SPECIAL CIRCUMSTANCES RELATING TO THE INFORMATION COLLECTION

There are no special circumstances.

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

In accordance with OMB requirements in 5 C.F.R. 1320.8(d), FERC issued a 60-day Notice requesting comments on the reporting requirements of FERC-583 in Docket No.

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IC20-21-000 on June 16, 2020.¹⁰ Public comments were due on August 17, 2020. No comments were filed in response to this Notice.

A 30-day notice requesting that public comment be submitted to OMB was published in the Federal Register on October 16, 2020.¹¹

9. EXPLAIN ANY PAYMENT OR GIFTS TO RESPONDENTS

No gifts or payments are made to respondents.

10. DESCRIBE ANY ASSURANCE OF CONFIDENTIALITY PROVIDED TO RESPONDENTS

The Commission's existing regulations at 18 C.F.R. § 388.112 provide a process for filers to submit documents with a request for privileged or CEII treatment. The Commission does not consider FERC-583 information to be confidential.

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.

This collection does not contain any questions of a sensitive nature.

12. ESTIMATED BURDEN ON COLLECTION OF INFORMATION

The following table shows the estimated annual burdens.¹²

¹⁰ 85 FR 36396.

¹¹ 85 FR 65799.

¹² “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 CFR 1320.3.

Table 12 — Estimated Annual Burdens

| A. Type of Response | B. Number of Respondents | C. Annual Number of Responses per Respondent | D. Total Number of Responses (Col. B x Col. C) | E. Average Hours and Cost¹³ | F. Total Annual Burden Hours and Total Annual Cost (Col. D x Col. E) | G. Cost per Respondent (Col. F ÷ Col. B) |
|--|---|---|---|---|---|---|
| Annual Kilowatt Generating Report | 520 | 1 | 520 | 2 hrs.; \$166 | 1,040 hrs.; \$86,320 | \$166 |
| Application of a State or Municipal Licensee or Exemptee for Total or Partial Exemption from the Assessment of Annual Charges | 48 | 1 | 48 | 2 hrs.; \$166 | 96 hrs.; \$7,968 | \$166 |
| Appeals and Requests for Rehearing of Billing for Annual Charges | 3 | 1 | 3 | 40 hrs.; \$3,320 | 120 hrs.; \$9,960 | \$3,320 |
| Totals | 571 | | 571 | | 1,256 hrs.; \$104,248 | |

¹³ Commission staff believes that industry is similarly situated to FERC in terms of cost for wages and benefits. Therefore, we are using, as a proxy for respondents' costs, the FERC 2020 average cost for wages plus benefits for one FERC full-time equivalent, i.e., \$172,329 per year and \$83.00 per hour.

13. ESTIMATE OF THE TOTAL COST BURDEN TO RESPONDENTS

There is no capital or start-up cost associated with FERC-583. All costs are related to burden hours and are described further in #12 and 15.

14. ESTIMATED ANNUALIZED COST TO THE FEDERAL GOVERNMENT

The estimated Federal costs are itemized below in Table 14.

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 Paperwork Reduction Act (PRA) Administrative Cost 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.

Table 14 — Estimated Federal Costs

| | Number of Employees (FTE) | Estimated Annual Federal Cost |
|--|----------------------------------|--------------------------------------|
| Analysis and Processing of filings ¹⁴ | 5 | \$861,645 |
| PRA ¹⁵ Administrative Cost | | \$6,475 |
| Total | | \$868,120 |

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

¹⁴ Based upon the current annual average FERC full-time equivalent salary plus benefits (\$172,329).

¹⁵ Paperwork Reduction Act of 1995 (PRA).

There are no adjustments or program changes for the Annual Kilowatt Generating Report. The following net increases in burdens are program changes due to the addition of two IC activities that have been in use without a control number:

- Responses increase from 520 to 571 (a net increase of 51 responses); and
- Burden hours increase from 1,040 hours to 1,256 hours (a net increase of 216 hours).

The program changes are itemized in Table 15, below.

Table 15 — Program Changes Due to Addition of IC Activities

| A. Type of Response | B. Net Change in Number of Responses | C. Net Change in Number of Hours |
|---|---|---|
| Application of a State or Municipal Licensee or Exemptee for Total or Partial Exemption from the Assessment of Annual Charges | +48 | +96 hours |
| Appeals and Requests for Rehearing of Billing for Annual Charges | +3 | +120 hours |
| Totals | +51 | + 216 hours |

16. TIME SCHEDULE FOR THE PUBLICATION OF DATA

The data are used for regulatory purposes in connection with processing annual charges for jurisdictional companies. The Commission does not publish the data.

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. EXCEPTION TO THE CERTIFICATION STATEMENT

The data collected for this reporting requirement is not used for statistical purposes.