

Supporting Statement for  
**FERC-598, Self-Certification for Entities Seeking Exempt Wholesale  
Generator Status or Foreign Utility Company Status**

The Federal Energy Regulatory Commission (Commission or FERC) requests that the Office of Management and Budget (OMB) review and approve FERC-598 (Self-Certification for Entities Seeking Exempt Wholesale Generator Status or Foreign Utility Company Status; OMB Control Number 1902-0166) for a three-year period. FERC-598 is an existing Commission information collection. No program changes are requested.

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

This information collection consists of a self-certification by holding companies, their associate companies, and their affiliates that they are exempt from certain statutory requirements to provide the Commission access to their books and records.

Title VII of the Energy Policy Act of 1992 (EPAct 1992)<sup>1</sup> created a category of power producers called “exempt wholesale generators” (EWGs) that, pursuant to a Commission determination, were exempt from regulation under the Public Utility Holding Company Act of 1935 (PUHCA 1935). After the repeal of PUHCA 1935, and as a result of the enactment of the Public Utility Holding Company Act of 2005 (PUHCA 2005),<sup>2</sup> the Commission obtained authority to determine if “foreign utility companies” (FUCOs) are qualified for exemptions from regulation under PUHCA 2005.<sup>3</sup> PUHCA 2005 also continued the Commission’s authority to determine applicants’ status as EWGs.

PUHCA 2005 is codified at 42 U.S.C. 16451 to 16463. The Commission implements the statutory provisions involving EWGs and FUCOs in accordance with 18 CFR 366.7, 385.203, and 385.2005. Regulations that help explain the context of FERC-598 include 18 CFR 366.1 (“Definitions”) and 18 CFR 366.2 (“Commission Access to Books and Records”).

As defined at 18 CFR 366.1:

- The term “exempt wholesale generator” means any person engaged directly, or indirectly through one or more affiliates, and exclusively in the business of owning or operating, or both owning and operating, all or part of one or more eligible facilities and selling electric energy at wholesale.

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<sup>1</sup> Pub. L. No. 102-486, Title VII, 106 Stat. 2905 (Oct. 24, 1992).

<sup>2</sup> Pub. L. No. 109-58, Title XII, Subtitle F, 119 Stat. 972 (August 8, 2005).

<sup>3</sup> PUHCA 1935, as amended by EPACT 1992, provided that the Securities and Exchange Commission had authority to monitor FUCOs.

- The term “foreign utility company” means any company that owns or operates facilities that are not located in any state and that are used for the generation, transmission, or distribution of electric energy for sale or the distribution at retail of natural or manufactured gas for heat, light, or power, if such company:
  - (1) Derives no part of its income, directly or indirectly, from the generation, transmission, or distribution of electric energy for sale or the distribution at retail of natural or manufactured gas for heat, light, or power, within the United States; and
  - (2) Neither the company nor any of its subsidiary companies is a public-utility company operating in the United States.
  
- The term “holding company” in general<sup>4</sup> means:
  - (1) Any company that directly or indirectly owns, controls, or holds, with power to vote, 10 percent or more of the outstanding voting securities of a public-utility company or of a holding company of any public-utility company; and
  - (2) Any person, determined by the Commission, after notice and opportunity for hearing, to exercise directly or indirectly (either alone or pursuant to an arrangement or understanding with one or more persons) such a controlling influence over the management or policies of any public-utility company or holding company as to make it necessary or appropriate for the rate protection of utility customers with respect to rates that such person be subject to the obligations, duties, and liabilities imposed by PUHCA 2005 upon holding companies.

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

Under PUHCA 2005, holding companies, their associated companies, and their affiliates must maintain books, accounts, memoranda, and other records (collectively “books and records”) that the Commission determines are relevant to the costs incurred with respect to jurisdictional rates. PUHCA 2005 also authorizes the Commission to examine such books and records, and prohibits any member, officer, or employee of the Commission from divulging such information except as directed by a court or the Commission.<sup>5</sup>

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<sup>4</sup> The definition of “holding company” at 18 CFR 366.1 exempts some entities from that definition (e.g., banks that hold public-utility holding company securities as collateral for a loan). Commission staff believe that those exemptions are irrelevant to this collection of information.

<sup>5</sup> 42 U.S.C. 16452; *see* 18 CFR 366.2.

Under 18 CFR 366.7(a), any person may file with the Commission a notice of self-certification demonstrating that it satisfies the definition of exempt wholesale generator or foreign utility company, and therefore is exempt from the “books-and-records” requirements described above. Such notices of self-certification must be subscribed, consistent with 18 CFR 385.2005(a), but need not be verified. In the case of exempt wholesale generators, the person filing a notice of self-certification must also file a copy of the notice of self-certification with the state regulatory authority of the state in which the facility is located, and that person must also represent to FERC that it has filed a copy of the notice of self-certification with the appropriate state regulatory authority.

The Commission will publish a notice of the filing in the Federal Register. Persons that file a notice of self-certification must include a form of notice suitable for publication in the Federal Register in accordance with the specifications in 18 CFR 385.203(d). A person filing a notice of self-certification in good faith will be deemed to have temporary EWG or FUCO status. If the Commission takes no action within 60 days from the date of filing of the notice of self-certification, the self-certification shall be deemed to have been granted.

If there is any subsequent material change in facts that may affect an EWG’s or FUCO’s status as an EWG or a FUCO, the EWG or FUCO is directed to, within 30 days of the material change in facts:<sup>6</sup>

- (1) Submit a new notice of self-certification or a new petition seeking Commission certification;
- (2) File a written explanation why the material change in facts does not affect its status; or
- (3) Notify the Commission that it no longer seeks to maintain its status.

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

The Commission encourages electronic filing of documents. Several years ago with the advent of eFiling 7.0, the Commission expanded its ability to receive electronic filings through its eFiling and eLibrary systems and included these self-certification filings. As part of the self-certification filing, forms of notice suitable for publication in the Federal Register are submitted via eFiling. All respondents to the FERC-598 use eFiling to submit their responses to this information collection.

**4. DESCRIBE EFFORTS TO IDENTIFY DUPLICATION AND SHOW SPECIFICALLY WHY ANY SIMILAR INFORMATION ALREADY AVAILABLE CANNOT BE USED OR MODIFIED FOR USE FOR THE**

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<sup>6</sup> 18 CFR 366.7(c).

**PURPOSE(S) DESCRIBED IN INSTRUCTION NO. 2**

Commission staff has determined that there is no duplication of information. The information submitted with each filing for EWG or FUCO status is specific to this regulatory requirement and specific to each filing.

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

The Commission provides the option of electronic filing – rather than paper submittals hand-delivered to the Commission or mailed – as a means of reducing the burden for respondents, including small entities.

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

If the Commission did not collect this information at all, it would not be able determine whether an entity is an EWG or FUCO and accordingly is exempt from the regulation under the Public Utility Holding Company Act.

For most entities, this is a one-time filing. Unless circumstances related to an entity's status as an EWG or FUCO change later, applicants need only file once in order to obtain the benefits of EWG and FUCO status. The Commission's requirements for submittal are thus the minimum that the Commission can impose while still complying with 42 U.S.C. 16454.

**7. EXPLAIN ANY SPECIAL CIRCUMSTANCES RELATING TO THE INFORMATION COLLECTION**

The requirements meet all of OMB's section 1320.5 requirements. However, if an applicant opts to not file electronically, they would have to submit an original and two copies which satisfy the requirements in section 1320.5(d)(2)(iii). While the Commission encourages applicants to submit their filings electronically, this is the applicant's option.

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

In accordance with OMB requirements,<sup>7</sup> the Commission issued and published a 60-day notice and a 30-day notice inviting public comment. The Commission issued the 60-day notice on November 19, 2020, and published it in the Federal Register on November 25, 2020.<sup>8</sup> The Commission received no comments in response.

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<sup>7</sup> 5 CFR 1320.8(d).

<sup>8</sup> 85 FR 75317.

On March 23, 2021, the Commission issued a 30-day notice inviting public comments to be submitted to OMB, and published it in the Federal Register on April 7, 2021.<sup>9</sup>

**9. EXPLAIN ANY PAYMENT OR GIFTS TO RESPONDENTS**

No payments or gifts are made to respondents.

**10. DESCRIBE ANY ASSURANCE OF CONFIDENTIALITY PROVIDED TO RESPONDENTS**

As required by 18 CFR 366.7(a) and 385.203(d), self-certifications must be submitted in a format suitable for publication in the Federal Register, and the Commission regularly publishes notices of self-certifications. In these circumstances, Commission staff does not generally anticipate a need for any assurance of confidentiality.

However, the Commission will consider specific requests for confidential treatment to the extent permitted by law. The Commission will review each request for confidential treatment (which must be made pursuant to 18 CFR 388.112(a)(1)) on a case-by-case basis.

PUHCA 2005 (at 42 U.S.C. 16452) prohibits any member, officer, or employee of the Commission from divulging information obtained via review of books and records, except as directed by a court or the Commission, but this provision does not apply to the self-certifications that are the subject of this information collection.

**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 OF COLLECTION OF INFORMATION**

The estimated annual burden and cost<sup>10</sup> for the FERC-598 information collection follows:

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<sup>9</sup> 86 FR 18049.

<sup>10</sup> The Commission staff thinks that the average respondent for this collection is similarly situated to the Commission, in terms of salary plus benefits. Based upon FERC's FY 2021 annual full-time equivalent average of \$172,329 (for salary plus benefits), the average hourly cost used in the calculations is \$83 per hour.

<b>FERC-598 (Self-Certification for Entities Seeking Exempt Wholesale Generator Status or Foreign Utility Company Status)</b>					
<b>A. Number of Respondents (EWGs and FUCOs)</b>	<b>B. Annual Number of Responses per Respondent</b>	<b>C. Total Number of Responses (Column A x Column B)</b>	<b>D. Average Burden Hrs. &amp; Cost (\$) Per Response</b>	<b>E. Total Annual Burden Hours &amp; Total Annual Cost (Column C x Column D)</b>	<b>F. Average Cost per Respondent (\$) (Column E ÷ Column A)</b>
250	1	250	6 hrs.; \$498	1,500 hrs.; \$124,500	\$498

**13. ESTIMATE OF THE TOTAL ANNUAL COST BURDEN TO RESPONDENTS**

There are no non-labor costs currently associated with the FERC-598 information collection.

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

**14. ESTIMATED ANNUALIZED COST TO FEDERAL GOVERNMENT**

The estimate of the cost for analysis and processing of filings is based on salaries for professional and clerical support.

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.

The estimated average annual cost to FERC follows:

	<b>Number of Employees</b>	<b>Estimated Annual</b>
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	(FTE)	Federal Cost
FERC-598 Analysis and Processing of filings <sup>11</sup>	0.75	\$129,247 (rounded)
PRA Administrative Cost		\$6,475
<b>FERC Total</b>		<b>\$135,722</b>

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

There are no program changes.

Based on the average number of actual filings received recently, we are adjusting the FERC-598 burdens by increasing the number of responses from 147 to 250, and by increasing the number of hours from 882 to 1,500. The revised estimates are due to normal industry fluctuations (e.g., companies entering or leaving the field) in the average number of annual EWG and FUCO filings.

A. FERC-598	B. Total Request	C. Previously Approved	Change due to Adjustment in Agency Estimate (Column B – Column C)	Program Change Due to Agency Discretion
Annual Number of Responses	250	147	+ 103	0
Annual Time Burden (Hr.)	1,500	882	+ 618	0
Annual Cost Burden (\$)	0	0	0	0

**16. TIME SCHEDULE FOR THE PUBLICATION OF DATA<sup>146</sup>**

The data are not collected for publication.

**17. DISPLAY OF THE EXPIRATION DATE**

The expiration date is displayed at <https://www.reginfo.gov/public/do/PRAMain>.

<sup>11</sup> Based upon FERC’s 2021 average annual salary plus benefits per FTE (full-time equivalent) of \$172,329.

**18. EXCEPTIONS TO THE CERTIFICATION STATEMENT**

There are no exceptions.