

**Supporting Statement for FERC Form No. 556,  
as affected by the Final Rule in Docket Nos. RM21-2 and RM20-20**

The Federal Energy Regulatory Commission (Commission or FERC) requests that the Office of Management and Budget (OMB) review and approve FERC-556 (Certification of Qualifying Facility (QF) Status for a Small Power Production or Cogeneration Facility as affected by the final rule (Order No. 874) in Docket Nos. RM21-2 and RM20-20.<sup>1</sup>

The final rule in Docket Nos. RM21-2 and RM20-20 affects the FERC Form No. 556 (OMB Control No. 1902-0075), as described in the final rule. (FERC Form No. 556 is prescribed in 18 CFR Part 292 and 18 CFR 131.80 and has an OMB expiration date of 11/30/2022.) We are requesting that the current OMB expiration date (11/30/2022) continue for the collection.

NOTE: At the time of submittal of the Notice of Proposed Rulemaking (NOPR) in Docket Nos. RM21-2 and RM20-20, packages for the unrelated final rule in Docket Nos. RM19-15 and AD16-16 affecting FERC Form No. 556 (ICR 202006-1902-004) [and FERC-912 (ICR 202006-1902-003)] were still pending OMB review. Because OMB can only have one item per OMB Control No. pending review at a time, we submitted the NOPR in Docket Nos. RM21-2 and RM20-20 under interim information collection no. FERC-556A (OMB Control No. 1902-0316, ICR 202011-1902-005) in order to submit it to OMB timely.<sup>2</sup>

OMB issued its decision (on 12/15/2020 for ICR 202006-1902-004) on the FERC Form No. 556 in Docket Nos. RM19-15 and AD16-16, so FERC Form No. 556 is no longer pending review at OMB. Therefore, we are submitting the final rule in Docket Nos. RM21-2 and RM20-20 to OMB under FERC Form No. 556. (Due to the item that had been pending at OMB, the final rule discusses FERC-556A. That information is included here under FERC Form No. 556.)

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

The Public Utility Regulatory Policies Act of 1978 (PURPA)<sup>3</sup> was enacted in 1978 as part of a package of legislative proposals intended to reduce the country's dependence on oil and natural gas, which at the time were in short supply and subject to dramatic price

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<sup>1</sup> The final rule is posted in FERC's eLibrary at <https://elibrary.ferc.gov/eLibrary/filedownload?fileid=15681891>. The final rule published in the Federal Register on 2/4/2021 (86FR8133).

<sup>2</sup> OMB issued its decision on ICR 202011-1902-005 for FERC-556A on 1/5/2021.

<sup>3</sup> 16 U.S.C. 796(17)-(22), 824a-3.

increases. PURPA sets forth a framework to encourage the development of alternative generation resources that do not rely on traditional fossil fuels (i.e., oil, natural gas and coal) and cogeneration facilities that make more efficient use of the heat produced from the fossil fuels that were then commonly used in the production of electricity.

To accomplish this goal, PURPA section 210(a) directs that the Commission “prescribe, and from time to time thereafter revise, such rules as [the Commission] determines necessary to encourage cogeneration and small power production,” including rules requiring electric utilities to offer to sell electricity to, and purchase electricity from, QFs. PURPA section 210(f) requires each state regulatory authority and nonregulated electric utility (together, states) to implement the Commission’s rules.

In 1980, the Commission issued Order Nos. 69 and 70, which promulgated the required rules (PURPA Regulations) that, with limited exceptions, remain in effect today. In 2020, the Commission issued Order Nos. 872 and 872-A, which amended the Commission’s PURPA Regulations, principally with regard to three provisions in PURPA: (1) the avoided cost cap on rates electric utilities pay for purchases of electric energy from qualifying small power production facilities and cogeneration facilities (QFs); (2) the 80 MW limitation applicable to the combined capacity of affiliated small power production QFs using the same energy resource located at the same site; and (3) the termination of the mandatory purchase obligation for certain QFs.

**Docket Nos. RM21-2 and RM20-20.** In the NOPR in Docket Nos. RM21-2 and RM20-20, the Commission proposed to amend section 292.202(h) of its PURPA Regulations by adding a new paragraph providing that useful thermal energy output for a topping cycle cogeneration facility include the thermal energy that is used by a solid oxide fuel cell system with an integrated steam hydrocarbon reformation process for production of fuel for electricity generation.

In the final rule in Docket Nos. RM21-2 and RM20-20, the Commission amends section 292.202(h) of the PURPA Regulations by adding a new paragraph to provide that “useful thermal energy output” for a topping cycle cogeneration facility includes the thermal energy that is used by a fuel cell system with an integrated steam hydrocarbon reformation process for production of hydrogen to be used, ultimately, as fuel for electricity generation.

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

The information collected in FERC Form No. 556 under 18 CFR Part 292 and 18 CFR 131.80 is used by the Commission to determine whether a proposed certification for QF

status meets the criteria for a qualifying small power production facility or a qualifying cogeneration facility under the Commission's PURPA Regulations and is eligible to receive the benefits available to a QF under PURPA.

In order to obtain QF status and obtain PURPA benefits, an applicant (sized above 1 MW) for QF status must file FERC Form No. 556 and select, at its option, either the procedure set forth in 18 CFR 292.207(a), which requires the submission to FERC of a self-certification or self-recertification, or the procedure set forth in 18 CFR 292.207(b), which requires the submission to FERC of an application for Commission certification or recertification.<sup>4</sup> If FERC did not collect the FERC Form No. 556 information, there would be no basis for the Commission to determine whether a facility satisfies the requirements of QF status.

The reporting requirements of the FERC Form No. 556 are not revised by the final rule. However, the Commission believes that some respondents may file multiple Form No. 556s in order to avail themselves of the revision in the regulations adopted by the final rule, and therefore the Commission updates the information collection statement. Specifically, respondents with a fuel cell system with an integrated steam hydrocarbon reformation process for production of hydrogen to be used, ultimately, as fuel for electricity generation who are self-certifying or applying for Commission certification as a cogenerator will use the FERC Form No. 556; on page 8, item 6a of the FERC Form No. 556, those respondents should indicate "Fossil fuel, natural gas (not waste)."

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

In Order No. 619,<sup>5</sup> FERC established an electronic filing initiative to meet the goals of the Government Paperwork Elimination Act, which directed agencies to provide for optimal use and acceptance of electronic documents and signatures and electronic recordkeeping, where practical, by October 2003.

FERC has attempted to facilitate the process of seeking QF status by electronically

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<sup>4</sup> Since FERC may revoke the QF status of a small power production or cogeneration facility if the facility fails to comply with any of the 18 CFR Part 292 criteria, private financial lenders to small power production and cogeneration power facilities occasionally require small power producers and cogenerators to follow 18 CFR 292.207(b) procedures (certification by FERC as opposed to self-certification) in order to reduce the risk of status revocation.

<sup>5</sup> *Electronic Filing of Documents*, Order No. 619, 65 FR 57088 (Sept. 21, 2000), FERC Stats. & Regs. ¶ 31,107 (2000).

providing materials to potential small power producers and cogenerators to assist in their preparation of notices of self-certification and applications for Commission certification. FERC Form No. 556 can be downloaded from FERC's website at:  
<https://www.ferc.gov/industries-data/electric/general-information/electric-industry-forms>.

In Order No. 732, FERC required that applicants submit their QF applications (whether initial certifications or recertifications, and whether self-certifications or applications for Commission certification) electronically via the FERC website. The electronic filing process is faster, easier, less costly, and less resource-intensive than hard-copy filing. An applicant filing electronically receives an acknowledgement that the Commission has received the application and a docket number for the submittal much more quickly than if filing in hard-copy format. Electronic filing has allowed the Commission to electronically process QF applications, reduced required staff resources and human error, and allowed the Commission to identify patterns of reporting errors and noncompliance that would be difficult to detect through manual processing. Finally, electronic filing of QF applications has facilitated the compilation of QF data. Requiring applicants to file electronically has made it possible to make better use of this data.

**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.**

FERC Form No. 556 is a necessary information collection for the Commission to remain in compliance with FPA and PURPA mandates. No similar information is, in fact, publicly available. There are no other Federal agencies collecting this data, as there are no other Federal agencies responsible for certifying an electric generating facility as a QF and/or allowing a cogenerator or small power producer to determine whether it qualifies for the benefits bestowed by PURPA, including the exemptions from certain provisions of federal and state law.

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

FERC Form No. 556 and the accompanying instructions have made it easier for applicants to file for QF status because the form leads applicants step-by-step through the compliance determinations. Without this step-by-step process, applicants (particularly small applicants) must independently research the requirements and determine compliance with PURPA and the Commission's regulations.

The Commission's website has a list of frequently asked questions to help filers.<sup>6</sup> It also provides the names and phone numbers of legal and technical staff at the Commission that filers can call directly to get answers to questions and to receive general guidance and information about the Commission's QF program and policies. The Commission's website also provides email addresses that can be used to submit written questions to Commission technical and legal staff.

Finally, the Commission has exempted applicants for facilities with net power production capacities of 1 MW and smaller from any filing requirement; thus, the electronic filing requirement does not apply to these small QFs. The Commission believes that any applicant for a facility larger than 1 MW would have access to the resources needed to develop and make an electronic filing.

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

Applicants submit an initial FERC Form No. 556 and additional forms for any changes in QF status criteria. If the information were not collected and kept up-to-date, or if any changes that affect the QF status occur, the Commission would be unable to certify the facility as a QF, and the cogenerator or small power producer would be unable to determine whether it qualifies for the benefits bestowed by PURPA, including the exemptions from certain provisions of Federal and state law.

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

There are no special circumstances.

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

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 collection of data. The NOPR (issued 10/15/2020) was published in the Federal Register on 10/26/2020 (85 FR 67699).

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<sup>6</sup> The frequently asked questions are posted at <https://www.ferc.gov/about/what-ferc/frequently-asked-questions-faqs/qualifying-facilities-qf-faq>.

The Commission received 0 comments on the NOPR related to PRA issues.  
The final rule published in the Federal Register on 2/4/2021 (86FR8133).

The Commission notes that, while no changes are being made to the FERC Form No. 556 itself, and the Commission is not requiring any entity to make additional filings, the Commission believes that some respondents may file multiple FERC Form No. 556s in order to avail themselves of the revision in the PURPA regulations adopted by the final rule, and therefore the Commission updates its information collection statement accordingly.

**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 FERC Form No. 556 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. 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 FOR COLLECTION OF INFORMATION**

The estimated changes due to the final rule in Docket Nos. RM21-2 and RM20-20 follow. Note that the additional burden and cost described are for potential additional respondents and the associated filings [responses]. There are no changes to the FERC Form No. 556 reporting requirements. The average estimated burden per response shown in Column (4) is unchanged from the final rule in Dockets RM19-15 and AD16-16-000 and -001 (for FERC-556, last approved by OMB on 12/15/2020 in ICR 202006-1902-004).

Facility Type	Filing Type	Number of Respondents (1)	Annual Number of Responses per Respondent (2)	Total Number of Responses (1)*(2)=(3)	Increased Average Burden Hours & Cost Per Response (4)	Increased Total Annual Burden Hours & Total Annual Cost (3)*(4)=(5)	Increased Annual Cost per Respondent (\$) (5)÷(1)
Cogeneration Facility ≤ 1 MW <sup>9</sup>	Self-certification	5	600 <sup>10</sup>	3,000	no change (1.5 hrs.); no change (\$124.50)	4,500 hrs.; \$373,500	\$74,700
Cogeneration Facility > 1 MW	Self-certification	5	20	100	no change (1.5 hrs.); no change (\$124.50)	1,500 hrs.; \$12,450	\$2,490
Cogeneration Facility > 1 MW	Application for FERC certification	5	1	5	no change (50 hrs.); no change (\$4,150)	250 hrs.; \$20,750	\$4,150

<sup>7</sup> The estimates in this table are for the FERC Form No.556 (listed under FERC-556A for the NOPR in RM21-2 and RM20-20). This table only reflects cogeneration facilities because small power production facilities will not be affected by the changes in the final rule. Commission staff believes that the industry is similarly situated to the Commission in terms of wages and benefits. Therefore, cost estimates are based on FERC’s 2020 average hourly wage (and benefits) of \$83.00/hour. (The Form No. 556 submittal to and approval of OMB in 2019 was based on FERC’s 2018 average annual wage hourly rate of \$79.00/hour. Because the change from the \$79.00 hourly rate to the current \$83.00 hourly rate was not due to the final rule, this chart does not depict this increase.)

<sup>8</sup> The most recent supplemental statement for Form No. 556 prior to Order 872 was dated 5-6-19 and listed 1.5 hours for self-certs for cogens, as did the 2016 supplemental statement. 1.5 hours was also used in Order No. 872 and its rehearing.

<sup>9</sup> Such facilities are not required to file but have the choice whether to do so.

<sup>10</sup> Bloom Energy has stated they have 600 facilities, with an average size of 0.6 MW, *see* Bloom Energy Petition at 14, which, if they all were in fact to file, would result in as many as 600 self-certifications of below 1 MW facilities. The Commission accordingly has adopted a conservative approach and estimated 600 such responses over the course of a year, which is especially conservative given that the Commission’s regulations do not require facilities less than 1 MW to submit self-certifications.

<b>ADDITIONAL BURDEN AND COST DUE TO FINAL RULE IN RM21-2 AND RM20-20</b>		15		3,105		6,250 hrs.; \$406,700	
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**13. 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.

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

The estimate of the cost for “analysis and processing of filings”<sup>11</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 PRA Administrative Cost<sup>12</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.

FERC-556	Number of Federal Employees (FTE)	Estimated Annual Federal Cost
Analysis and Processing of Filings	4 <sup>13</sup>	\$689,316
PRA Administrative Cost		\$6,475

<sup>11</sup> FERC’s 2020 average salary plus benefits for one FTE (full-time equivalent) is \$172,329 per year (\$83.00/hour).

<sup>12</sup> This estimate is based upon FERC’s 2020 estimated average annual PRA Administrative Cost of \$6,475 for each collection.

<sup>13</sup> The existing FERC-556 has an annual estimate of three (3) FERC FTEs (one of which was added due to the final rule in Docket Nos. RM19-15 and AD16-16). The changes here due to the final rule in Docket Nos. RM21-2 and RM20-20 would add one (1) more FERC FTE, giving a new total of four (4) FERC FTEs annually to analyze and process the filings.



<b>Total for FERC-556</b>		\$695,791
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(In Year 1, there was IT Development Cost [estimated at \$37,071] associated with Docket Nos. RM19-15 and AD16-16 and described in the ICR 202006-1902-004 for that Final Rule and Rehearing Order. That IT cost is not affected by the Final Rule in Docket Nos. RM21-2 & RM20-20 and this supporting statement.)

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

As stated in Order No. 874 (beginning with paragraph 32, without footnotes),

“[t]he technological advances in fuel cells that have occurred since 1980 were neither known nor anticipated when the Commission adopted its original definitions for useful thermal energy, but that fact should not stand in the way of the Commission now recognizing such advances and responding accordingly.

In sum, recognizing technological advancements over the past 40 years and Congress’s commitment to “continuing progress in the development of efficient electric energy generating technology,” and in light of the development and commercialization of fuel cell systems with integrated hydrocarbon reformation equipment since the original adoption of the PURPA Regulations, we amend section 292.202(h) of the PURPA Regulations by adding a new paragraph to provide that “useful thermal energy output” includes the thermal energy that is used by a fuel cell system with an integrated steam hydrocarbon reformation process for production of hydrogen to be used, ultimately, as fuel for electricity generation.

We also note that the thermal energy output, i.e., the waste heat, from the fuel cell that is used to reform natural gas into hydrogen fuel is used in a sequential process to create additional electricity and is more efficient and uses less fuel than fuel cells without integrated fuel reforming systems. This technology did not exist when the Commission established the regulations in Order No. 70. In this final rule, we now update our cogeneration regulations to include fuel cells with an integrated steam hydrocarbon reformation process. Combined-cycle electric generation, while admittedly a more efficient form of electric generation than, for example, a combustion turbine, is still not the same thing as a fuel cell system with an integrated steam hydrocarbon reformation process and does not warrant being identified as a qualifying facility.

...Here, ...the focus should be on the integrated use of waste heat for reforming hydrocarbons to produce hydrogen to fuel a fuel cell, instead of the specific fuel cell technology utilized to accomplish that goal (i.e., solid oxide or carbonate). As such, we modify the proposed definition in the NOPR to state that useful thermal energy output includes the thermal energy that is used by a fuel cell system with an integrated steam hydrocarbon reformation process for production of fuel for electricity generation.

Finally, as we have noted above, we reiterate that “new” cogeneration facilities seeking to sell electric energy pursuant to PURPA section 210 must meet the additional requirements imposed by PURPA section 210 and the implementing regulations, that the “thermal energy output . . . is used in a productive and beneficial manner” and that “[t]he electrical, thermal, chemical and mechanical output of the cogeneration facility is used fundamentally for industrial, commercial, residential or institutional purposes and is not intended fundamentally for sale to an electric utility.” These requirements apply to fuel cell systems subject to the revised regulations adopted in this final rule.”

In the final rule in Docket Nos. RM21-2 and RM20-20, the Commission makes no changes to the reporting requirements in FERC Form No. 556, but the Commission revises its PURPA Regulations to allow more entities to use the FERC Form No. 556. As a result, the changes in burden totals are due to potential additional respondents and their associated responses.

The related estimates are provided below for this submittal under FERC-556.

<b>FERC-556</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	7,423	4,318	0	3,105
Annual Time Burden (Hours)	26,282	20,032	0	6,250
Annual Cost Burden (\$)	0	0	0	0

## **16. TIME SCHEDULE FOR PUBLICATION OF DATA**

There are no plans for publication. The data is used for regulatory purposes only.

## **17. DISPLAY OF EXPIRATION DATE**

FERC Form No. 556 (OMB Control No. 1902-0075)  
Final Rule (issued 12/17/2020) in Docket Nos. RM21-2 and RM20-20  
RIN: 1902-AF74

FERC Form No. 556 is available from the Commission's website (<https://www.ferc.gov/industries-data/electric/general-information/electric-industry-forms>) as a standard form that can be downloaded; the expiration date for OMB approval is on the form/instructions.

The OMB expiration dates are also posted on <http://www.ferc.gov>.

## **18. EXCEPTIONS TO THE CERTIFICATION STATEMENT**

There are no exceptions.