

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

[Docket No. IC23-10-000]

COMMISSION INFORMATION COLLECTION ACTIVITIES (FERC-603);
COMMENT REQUEST; EXTENSION

(August 24, 2023)

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of information collection and request for comments.

SUMMARY: In compliance with the requirements of the Paperwork Reduction Act of 1995, the Federal Energy Regulatory Commission (Commission or FERC) is soliciting public comment on the currently approved information collection, FERC-603 (Critical Energy/Electric Infrastructure Information Data Request), which will be submitted to the Office of Management and Budget (OMB) for a review of the information collection requirements.

DATES: Comments on the collection of information are due **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: Send written comments on FERC-603 to OMB through

www.reginfo.gov/public/do/PRAMain, Attention: Federal Energy Regulatory

Commission Desk Officer. Please identify the OMB control number (1902-0197) in the subject line. Your comments should be sent within 30 days of publication of this notice in the Federal Register.

Please submit copies of your comments (identified by Docket No. IC23-10-000) to the Commission as noted below. Electronic filing through <https://www.ferc.gov> is preferred.

- Electronic Filing: Documents must be filed in acceptable native applications and print-to-PDF, but not in scanned or picture format.
- For those unable to file electronically, comments may be filed by USPS mail or by hand (including courier) delivery.
 - Mail via U.S. Postal Service Only: Addressed to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street, N.E., Washington, DC 20426.
 - Hand (including courier) delivery: Deliver to: Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, MD 20852.

Instructions:

OMB submissions must be formatted and filed in accordance with submission guidelines at www.reginfo.gov/public/do/PRAMain. Using the search function under the “Currently Under Review field,” select Federal Energy Regulatory Commission; click “submit” and select “comment” to the right of the subject collection.

FERC submissions must be formatted and filed in accordance with submission guidelines at: <https://www.ferc.gov>. For user assistance, contact FERC Online Support by e-mail at ferconlinesupport@ferc.gov, or by phone at: (866) 208-3676 (toll-free).

Docket: Users interested in receiving automatic notification of activity in this docket or in viewing/downloading comments and issuances in this docket may do so at <https://www.ferc.gov>.

FOR FURTHER INFORMATION: Ellen Brown may be reached by e-mail at DataClearance@FERC.gov and telephone at (202) 502-8663.

SUPPLEMENTARY INFORMATION:

Title: FERC-603, Critical Energy/Electric Infrastructure Information Data Request.

OMB Control No.: 1902-0197.

Type of Request: Three-year extension of the FERC-603 information collection requirements with no changes to the current reporting and recordkeeping requirements.¹

Abstract: In accordance with section 215A(d) of the Federal Power Act² and 18 CFR 388.113, this collection of information provides that persons may seek Critical Energy/Electric Infrastructure Information (CEII). To receive CEII, they must show they have a legitimate need for such information, and they must submit a non-disclosure agreement that decreases the likelihood that such information could be used to plan or execute terrorist attacks.

This collection of information provides an alternative to seeking CEII in accordance with the Freedom of Information Act (FOIA).³ That statute requires federal agencies to disclose the requested information unless one or more of several FOIA exemptions justifies withholding of the requested information. In the case of CEII, two FOIA

¹ The CEII request form and five versions of the non-disclosure agreement (General Non-Disclosure Agreement, Media Non-Disclosure Agreement, Federal Agency Acknowledgement and Agreement, State Agency Employee Non-Disclosure Agreement, and Consultant Non-Disclosure Agreement) are posted at <https://www.ferc.gov/legal/ceii-foia/ceii.asp>.

² 16 U.S.C. 824o-1(d).

³ 5 U.S.C. 552 (2018).

exemptions are likely to apply to CEII,⁴ and applying one of them frequently results in a decision to withhold the information from the FOIA requester. The Commission realizes that this process could prevent persons with a legitimate need for CEII from obtaining such information. For example, market participants seeking to develop new or expanded energy resources may have such a need.

In the aftermath of the September 11, 2001 terrorist attacks, the Commission determined that it was important to improve the appropriate treatment of CEII, both to assist requesters with a legitimate need for CEII, and to restrict access to the sensitive information due to the ongoing terrorism threat. The Commission promulgated 18 CFR 388.113 to achieve those goals.

Under 18 CFR 388.13(g)(5), a request for CEII must contain:

- The requester's name, title, address, and telephone number;
- The name, address, and telephone number of the person or entity on whose behalf the information is requested;
- A detailed Statement of Need; and
- An executed non-disclosure agreement.

Under 18 CFR 388.133(h)(2), the non-disclosure agreement indicates the individual's willingness to adhere to limitations on the use and disclosure of the information requested, and stipulates at minimum that the CEII:

⁴ The relevant FOIA exemptions are Exemption 3, which allows the withholding of information prohibited from disclosure by another statute and Exemption 7, which protects from disclosure certain law enforcement information, including information the disclosure of which might jeopardize a person's life or safety.

- Will only be used for the purpose for which it was requested;
- May only be discussed with authorized recipients;
- Must be kept in a secure place in a manner that would prevent unauthorized access;
- Must be destroyed or returned to the Commission upon request; and
- Is not subject to release under either FOIA or Sunshine Laws.

In addition, the non-disclosure agreement provides that the Commission may audit the recipient's compliance with the non-disclosure agreement; that a recipient is obligated to protect the CEII even after a designation has lapsed⁵ until the CEII Coordinator⁶ determines the information should no longer be designated as CEII; and the recipient is required to promptly report all unauthorized disclosures of CEII to the Commission.

Type of Respondents: Persons seeking access to CEII.

⁵ The Commission's regulation at 18 CFR 388.113 provides criteria and procedures to designate information as CEII. A designation may last for up to five years, unless it is re-designated. A designation may be removed at any time, in whole in part, if the Commission determines that the unauthorized disclosure of CEII can no longer be used to impair the security or reliability of the bulk-power system or distribution facilities or any other form of energy infrastructure.

⁶ The regulation at 18 CFR 375.313 delegates authority to a CEII Coordinator to receive and review all requests for CEII, make determinations regarding such requests, establish reasonable conditions on the release of CEII, and release CEII to requesters who agree in writing to abide by the conditions set forth by the Coordinator.

Estimate of Annual Burden: The Commission estimates the total annual burden⁷ and cost⁸ for this information collection as follows.

(1) Number of Respondent s	(2) Annual Number of Responses per Respondent	(3) Total Number of Responses (Column 1 x Column 2)	(4) Average Burden & Cost Per Response	(5) Total Annual Burden Hours & Total Annual Cost (Column 3 x Column 4)	(6) Cost per Respondent (\$) (Column 5 ÷ Column 1)
50	1	50	0.3 hrs.; \$27.30	15 hrs.; \$1,365	\$27.30

The Request Form⁹ is attached to this notice but will not be published in the Federal Register. It will be posted in the Commission’s eLibrary system with this Notice.

Comments are invited on: (1) whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of

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“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.

⁸ 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 the FERC’s 2022 average cost for salary plus benefits, the average hourly cost is \$91/hour.

⁹ The Request Form (and sample non-disclosure agreements) and additional information about the CEII program are posted at: <https://www.ferc.gov/enforcement-legal/ceii/overview>.

the information collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Kimberly D. Bose,
Secretary.