

**SUPPORTING STATEMENT FOR
FERC-603, Critical Energy/Electric Infrastructure Information Data Request**

The Federal Energy Regulatory Commission (FERC or Commission) requests that the Office of Management and Budget (OMB) review and extend its approval of the FERC-603, *Critical Energy/Electric Infrastructure Information (CEII) Request Form*, for an additional three years. The filing requirements of this existing information collection are set forth in 18 CFR 388.113.

1. CIRCUMSTANCES THAT MAKE THE COLLECTION OF INFORMATION NECESSARY

In accordance with section 215A(d) of the Federal Power Act¹ and 18 CFR 388.113, this collection of information provides that persons may seek access to CEII.² Energy infrastructure includes facilities used for generation, transmission, and distribution of electricity; physical networks of oil and natural gas pipelines, oil refineries; and other transportation elements such as marine and rail transportation.

To receive CEII, requesters 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

¹ 16 U.S.C. 824o-1(d).

² As defined at 18 CFR 388.113(c)(1), CEII means data about proposed or existing critical infrastructure that (i) relates to the production, generation, transportation, transmission, or distribution of energy, (ii) could be useful to persons in planning an attack on critical infrastructure, (iii) is exempt from mandatory disclosure under the Freedom of Information Act, 5 U.S.C. 552, and (iv) does not simply give the location of the critical infrastructure.

³ 5 U.S.C. 552 (2018).

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justifies withholding of the requested information. In the case of CEII, two FOIA exemptions are likely to apply to CEII,⁴ and frequently result 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.

Under 18 CFR 388.113(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 388.113(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:

- 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

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

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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.

History of the FERC-603 Collection:

Shortly after the attacks on September 11, 2001, the Commission began its efforts with respect to Critical Energy Infrastructure Information.⁷ As a preliminary step, the Commission removed from its public files documents that were likely to contain detailed specifications of facilities and their vulnerabilities, and directed the public to use the FOIA request process to obtain such information.⁸ The Commission was not alone in its reaction to protecting sensitive information. The Associated Press reported on October 12, 2001, that “Federal agencies are scrutinizing their Web sites and removing any information they believe terrorists might use to plot attacks against the nation.” The report referred to action by the Nuclear Regulatory Commission, the Environmental Protection Agency, the Centers for Disease Control and Prevention, and the United States Department of Transportation Office of Pipeline Safety. Concerns about threats to the energy infrastructure over which the Commission has regulatory responsibilities still exist.

Given that such information would typically be exempt from mandatory disclosure pursuant to the FOIA, the Commission determined that it was important to have a process for individuals with a valid and legitimate need to access certain energy infrastructure information. Information provided to the Commission in FERC-603 is necessary to that

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.

⁷ See Statement of Policy on Treatment of Previously Public Documents, 66 Fed. Reg. 52,917 (Oct. 18, 2001).

⁸ The FOIA process is specified in 5 U.S.C. 552 and the Commission’s regulations at 18 CFR 388.108 through 388.110.

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verification process and essential to keeping critical energy infrastructure information out of the hands of individuals that may do harm to this nation.

Specifically, in 2005, the Commission established CEII procedures by issuing 18 CFR 388.113 in Order No. 630.⁹ Since that time, the Commission has issued several orders refining and simplifying the CEII process. In 2013, the online CEII request form was redesigned (with no substantive changes) to allow requestors to add additional users more easily. For example, in Order No. 833,¹⁰ the Commission adopted a Final Rule amending its regulations that pertain to the designation, protection, and sharing of CEII. That Final Rule became effective on February 21, 2017¹¹ and the FERC-603 title was changed to be consistent with Order No. 833.

FERC-603, titled “CEII Request Form” is unchanged. A person seeking access to CEII must file a request for that information by providing information about their identity and reason the individual needs the information. With that information, the Commission can assess the requester’s need for the information against the sensitivity of the information. There are no changes to the current reporting and recordkeeping requirements, other than requiring a signed statement from the requester attesting to the accuracy of the information provided in the request, which was inadvertently omitted from the previous form.

Compliance with these requirements is mandatory for any person seeking access to CEII.

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

The FERC-603 is submitted through the CEII Request Form by a person or organization that wants to request CEII treatment. It

includes a statement of need for the CEII information with details on:

- the extent to which a particular function is dependent upon access to the information;
- why the function cannot be achieved or performed without access to the information;

⁹ 68 FR 9857 (March 3, 2003)

¹⁰ 81 FR 93732 (December 21, 2016)

¹¹The sample CEII Request Form was posted with the issued 30-day Notice in Docket No. IC23-10 in eLibrary at [eLibrary | File List \(ferc.gov\)](#).

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- an explanation of whether other information is available to the requester that could facilitate the same objective;
- how long the information will be needed;
- whether or not the information is needed to participate in a specific proceeding (with that proceeding identified); and
- an explanation of whether the information is needed expeditiously.

The CEII Coordinator (currently the Director of the Office of External Affairs) is authorized by 18 CFR 375.313 to process requests for CEII and make determinations on such requests. 18 CFR 388.113 (g)(5) sets forth a process where requesters provide the CEII Coordinator information about themselves and their need for the information. The CEII coordinator uses the information to decide as to whether to release the information. If the requester is determined to be eligible to receive the information requested, the CEII Coordinator will determine what conditions, if any, to place on release of the information. Filers requesting CEII must also sign the appropriate non-disclosure agreement. Examples of the non-disclosure agreements are available at: <https://www.ferc.gov/enforcement-legal/ceii/overview>.

Through this data collection process, the Commission can provide CEII to individuals who need it to participate in the Commission's proceedings, but who might not otherwise have access to the information under FOIA. Without this information, the Commission would not have the ability to provide information in an efficient manner to those with a specific and legitimate need for it. Failure to institute these procedures would mean that FERC is unable to discharge its responsibilities to protect CEII.

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

Requests for access to CEII may be filed electronically or in hard copy. The vast majority of the requests are submitted electronically with the remaining requests submitted via fax or hard copy.

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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 information collected under FERC-603 cannot be obtained from other sources because the information is specific to each requester and the CEII they want. However, it should be noted that all Commission information collections are subject to analysis and review by Commission staff and are examined for redundancy.

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

The Commission believes that the information to be provided by requesters seeking CEII will not impose an undue burden on small entities.

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

It is not possible to collect this data with less frequency. The Commission has no control over when a requester submits a CEII data request. The Commission believes the required information will impose the least possible burden for the public and other entities to comply with the Commission's statutory obligation to protect CEII.

7. EXPLAIN ANY SPECIAL CIRCUMSTANCES RELATING TO THE INFORMATION COLLECTION

There are no special circumstances related to this collection of information.

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

The Commission published a 60-day notice in the Federal Register on March 30, 2023 (88 FR 19128) and provided an opportunity for public comments. No comments were received.

The Commission published the 30-day notice in the Federal Register on August 30, 2023 (88 FR 59895) and again provided an opportunity for public comments.

9. EXPLAIN ANY PAYMENT OR GIFTS TO RESPONDENTS

There are no gifts or payments given to respondents.

10. DESCRIBE ANY ASSURANCE OF CONFIDENTIALITY PROVIDED TO RESPONDENTS

Respondents to this collection are those individuals and/or entities requesting access to CEII. The information gathered in this collection is used to determine eligibility to obtain access to CEII and is not considered public information.

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 estimated burden and cost¹² of FERC-603 (including the request form and non-disclosure agreement) follow.

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Number of Respondents (1)	Annual Number of Responses per Respondent (2)	Total Number of Responses (1)*(2)=(3)	Average Burden Hrs. & Cost (\$) Per Response (4)	Total Annual Burden Hrs. & Total Annual Cost (\$) (3)*(4)=(5)	Cost (\$) per Respondent (5)÷(1)
50	1	50	0.3 hrs.; \$27.30	15 hrs.; \$1,365	\$27.30

¹² The Commission staff expects 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.

13. ESTIMATED OF THE TOTAL COST BURDEN TO RESPONDENTS

There are no estimated non-labor costs. All costs are covered in #12 and #15.

14. ESTIMATED ANNUALIZED COST TO THE FEDERAL GOVERNMENT

The estimate of the cost for “analysis and processing of filings” is based on wages 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 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.

	Number of FERC Employees (FTE)	Estimated Annual Federal Cost
Analysis and Processing of filings ¹³	1	\$188,922
PRA ¹⁴ Administrative Cost		\$7,694
FERC Total		\$196,616

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

The reporting requirements and burden have not changed. Since the implementation of Order No. 833 in early 2017, CEII requests have steadily decreased. As a result, we have adjusted the number of estimated responses from 100 per year to 50 per year and we have adjusted the estimated number of burden hours have been adjusted from 30 hours per year to 15 per year.

¹³ The FY2022 average Commission cost (for wages plus benefits) per Full-Time Equivalent is \$188,922 annually (or \$91/hour).

¹⁴ Paperwork Reduction Act of 1995 (PRA).

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The following table shows the estimated total annual burden. The format, labels, and definitions of the table follow the ROCIS (and reginfo.gov) metadata.

FERC-603	Total Request	Previously Approved	Change due to Adjustment in Estimate	Change Due to Agency Discretion
Annual Number of Responses	50	100	-50	0
Annual Time Burden (Hours)	15	30	-15	0
Annual Cost Burden (\$)	\$0	\$0	\$0	\$0

16. TIME SCHEDULE FOR THE PUBLICATION OF DATA

There is no publication of the FERC-603 data.

17. DISPLAY OF EXPIRATION DATE

The OMB control number and expiration date are displayed on the form (electronic and hard-copy) used to request access to CEII.

The expiration date is also displayed in a table posted on ferc.gov at [Information-Collections-8-3-2023.xlsx \(live.com\)](#).

18. EXCEPTION TO THE CERTIFICATION STATEMENT

There are no exceptions.