

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 filings 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. In most cases, these filings are self-certifications that become effective by operation of the Commission's regulations upon the conclusion of a 60-day period that begins on the date that a complete self-certification is filed with the Commission. Alternatively, a company may file a petition seeking a declaratory order in which the Commission determines whether the company qualifies for the relevant exemption. Title VII of the Energy Policy Act of 1992 (EPAct 1992)¹ 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). Subtitle F of Title XII of the Energy Policy Act of 2005 (EPAct 2005) repealed the Public Utility Holding Company Act of 1935 (PUHCA 1935) and enacted the Public Utility Holding Company Act of 2005 (PUHCA 2005).²

Section 1264 of PUHCA 2005 (codified at 42 U.S.C. 16452) provides as follows:

Each holding company and each associate company thereof shall maintain, and shall make available to the Commission, such books, accounts, memoranda, and other records as the Commission determines are relevant to costs incurred by a public utility or natural gas company that is an associate company of such holding company and necessary or appropriate for the protection of utility customers with respect to jurisdictional rates.

Section 1266 of PUHCA 2005 (codified at 42 U.S.C. 16454) requires the Commission to issue regulations exempting from its books-and-records requirements, specifically, "any person that is a holding company, solely with respect to one or more— (1) qualifying facilities under the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 2601 et

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

² Pub. L. No. 109-58, 119 Stat. 594 (Aug. 8, 2005).

seq.); (2) exempt wholesale generators; or (3) foreign utility companies.” FERC-598 pertains to EWGs and foreign utility companies (FUCOs), but not to qualifying facilities. 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.
- 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 general³ 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

³ 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.

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.⁴

Under 18 CFR 366.7(a), any person may file with the Commission a notice of self-certification⁵ demonstrating that it satisfies the definition of EWG or FUCO, 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 the Commission 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.

The significance of EWG or FUCO status is limited to matters pertaining to PUHCA 2005. Any person that is a holding company solely with respect to one or more EWGs or FUCOs is exempt from the regulations requiring Commission access to holding company books and records and is exempt from various accounting and recordkeeping requirements. However, domestic EWGs are public utilities under section 201(e) of the

⁴ 42 U.S.C. 16452; *see* 18 CFR 366.2.

⁵ The Commission has provided a sample self-certification filing for EWGs at [certification.doc \(live.com\)](#). In addition, the Commission has provided “Model EWG Representations With Explanatory Notes” at [representations.doc \(live.com\)](#).

Federal Power Act and thus are subject to all the requirements that apply to public utilities.

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:⁶

- (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 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

⁶ 18 CFR 366.7(c).

If the Commission collected this information less frequently, it would not be able to determine on a timely basis whether an entity is an EWG or FUCO and accordingly is exempt from the regulation under PUHCA 2005. 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,⁷ 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 January 18, 2024, and published it in the Federal Register on January 25, 2024 (89 FR 4934). The Commission received no comments in response.

On April 10, 2024 the Commission issued a 30-day notice inviting public comments to be submitted to OMB, and published it in the Federal Register on April 16, 2024 (89 FR 26873).

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.

⁷ 5 CFR 1320.8(d).

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 cost⁸ for the FERC-598 information collection follows.

⁸ The Commission staff thinks that the average respondent for this collection is similarly situated to the Commission, in terms of salary plus benefits. The hourly cost in the table at Item # 12 is based on FERC's Fiscal Year 2024 average cost per Full- Time Equivalent (salary plus benefits) of \$207,786 per year (for 2,080 work hours), rounded to \$100 per hour.

FERC-598 (Self-Certification for Entities Seeking Exempt Wholesale Generator Status or Foreign Utility Company Status)					
A. Number of Respondents (EWGs and FUCOs)	B. Annual Number of Responses per Respondent	C. Total Number of Responses (Column A x Column B)	D. Average Burden Hrs. & Cost (\$) Per Response	E. Total Annual Burden Hours & Total Annual Cost (Column C x Column D)	F. Average Cost per Respondent (\$) (Column E ÷ Column A)
300	1	300	6 hrs.; \$600	1,800 hrs.; \$180,000	\$600

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 calculated based on salaries for professional and clerical support.

The PRA Administration Cost of \$8,396.00 in the following table includes the federal costs of preparing supporting statements, notices, and the cost of publishing notices in the Federal Register. The Data Processing and Analysis Cost in the following table is calculated based on FERC’s Fiscal Year 2024 average cost per Full-Time Equivalent (salary plus benefits) of \$207,786.00 per year (for 2,080 work hours).

The estimated average annual cost to FERC follows:

	Number of Employees	Estimated Annual
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	(FTE)	Federal Cost
FERC-598 Analysis and Processing of Filings	0.75	\$155,839.50
PRA Administrative Cost		\$8,396.00
FERC Total		\$164,235.50

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 250 to 300, and by increasing the number of hours from 1,500 to 1,800. 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	300	250	+ 50	0
Annual Time Burden (Hr.)	1,800	1,500	+ 300	0
Annual Cost Burden (\$)	0	0	0	0

16. TIME SCHEDULE FOR THE PUBLICATION OF DATA

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>.

18. EXCEPTIONS TO THE CERTIFICATION STATEMENT

There are no exceptions.