

Supporting Statement for
FERC-729, Electric Transmission Facilities: Modifications in Final Rule; Order Addressing Arguments Raised on Rehearing and Setting Aside Prior Order, in Part (Docket No. RM22-7-001)

The Federal Energy Regulatory Commission (Commission or FERC) previously requested that the Office of Management and Budget (OMB) review and renew FERC-729 (Electric Transmission Facilities, OMB Control No. 1902-0238), including the modifications as provided in the Final Rule issued on May 13, 2024, in Docket No. RM22-7-000. On October 17, 2024, in Docket No. RM22-7-001, the Commission issued an order addressing arguments raised on rehearing, and setting aside prior order, in part that further revised information collection activities covered by FERC-729, as discussed further below.

FERC-729 is an existing information collection under 18 CFR Parts 50 and 380.

1. CIRCUMSTANCES THAT MAKE THE COLLECTION OF INFORMATION NECESSARY

FERC-729 consists of information collection activities for entities seeking to construct electric transmission facilities pursuant to the Commission's authority under section 216 of the Federal Power Act (FPA).¹ Specifically, section 216(b) of the FPA authorizes the Commission, under certain circumstances, to issue permits for the construction of electric transmission facilities within national interest electric transmission corridors designated by the Secretary of Energy.²

Pursuant to this statutory authority, on November 16, 2006, the Commission issued Order No. 689,³ which implemented new regulations for FPA section 216 permit applications by adding part 50 to the Commission's regulations.⁴ In addition, Order No. 689 adopted certain modifications to the Commission's part 380 regulations implementing section

¹ 16 U.S.C. 824p.

² Under 16 U.S.C. 824p(a), the Secretary of Energy may designate any geographic area as a national interest electric transmission corridor upon determining that the area is experiencing electric energy transmission capacity restraints or congestion that adversely affects consumers. Under 16 U.S.C. 824p(b), the Commission may issue permits for the construction or modification of electric transmission facilities in a national interest electric transmission corridor. The Commission's authority is limited by 16 U.S.C. 824p(i), which pertains to regional transmission siting agencies established by three or more contiguous States.

³ *Regulations for Filing Applications for Permits to Site Interstate Elec. Transmission Facilities*, Order No. 689, 117 FERC ¶ 61,202 (2006), *reh'g denied*, 119 FERC ¶ 61,154 (2007).

⁴ 18 CFR pt. 50.

102(2)(C) of the National Environmental Policy Act of 1969 (NEPA)⁵ to ensure that the Commission is provided sufficient information to conduct an environmental analysis of a proposed electric transmission project.⁶ In 2009, the U.S. Court of Appeals for the Fourth Circuit (Fourth Circuit), among other things, vacated the Commission’s transmission-related amendments to its part 380 regulations implementing NEPA.⁷ Notwithstanding the Fourth Circuit’s vacatur, the NEPA procedures set forth in Order No. 689 are still reflected in part 380 of the Commission’s regulations.

In the Infrastructure Investment and Jobs Act of 2021 (IIJA), Congress amended section 216 of the FPA to modify the circumstances under which the Secretary of Energy may designate national interest electric transmission corridors and to clarify the circumstances giving rise to the Commission’s jurisdiction.⁸ With respect to the Commission’s siting authority, the IIJA clarified that the Commission may issue a permit if a State has denied a siting application. The IIJA also amended section 216(e) to require the Commission to determine, as a precondition to a permit holder exercising eminent domain authority, that the permit holder has made “good faith efforts to engage with landowners and other stakeholders early in the applicable permitting process.”

To align the Commission’s regulations with the IIJA and to update certain regulatory requirements, the Commission issued a Notice of Proposed Rulemaking (NOPR) on December 15, 2022, proposing revisions to its regulations in parts 50 and 380.⁹ On May 13, 2024, the Commission issued the Final Rule amending the Commission’s parts 50 and 380 regulations to ensure consistency with the IIJA, to modernize certain regulatory requirements, and to incorporate other updates and clarifications to provide for the efficient and timely review of permit applications.¹⁰ The Final Rule, among other things, requires applicants to:

- maintain an affected landowner contact log, provide certain information to affected landowners, file an affirmative statement with the Commission indicating the applicant’s intent to comply with the Applicant Code of Conduct, and include compliance updates as part of monthly status reports during the pre-filing and

⁵ 42 U.S.C. 4332(2)(C).

⁶ 18 CFR pt. 380.

⁷ *Piedmont Env'tl. Council v. FERC*, 558 F.3d 304 (4th Cir. 2009). The court found that the Commission had failed to consult with the Council on Environmental Quality before adopting the revisions. *Id.* at 319, 320.

⁸ See Pub. L. No. 117–58, div. D, title I, §40105, Nov. 15, 2021, 135 Stat. 933.

⁹ *Applications for Permits to Site Interstate Electric Transmission Facilities*, 181 FERC ¶ 61,205 (2022), *errata notice*, 182 FERC ¶ 61,020 (2023). The Commission’s errata notice, issued on January 17, 2023, reflected certain stylistic revisions requested by the *Federal Register* as well as minor, non-substantive editorial revisions.

¹⁰ *Applications for Permits to Site Interstate Electric Transmission Facilities*, Order No. 1977, 89 Fed. Reg. 46,682 (May 29, 2024), 187 FERC ¶ 61,069 (2024).

- application review processes;¹¹
- provide additional congestion and system analysis information during the pre-filing process and as part of the application;
 - develop and file, as part of the Project Participation Plan, an Environmental Justice Public Engagement Plan describing completed and planned targeted outreach to environmental justice communities;
 - develop and file, as part of the Project Participation Plan, a Tribal Engagement Plan describing completed and planned targeted outreach to identified Indian Tribes;
 - include written translations in mailed notifications to landowners under certain circumstances, publish project notifications in online or hard copy periodicals and submit the same to available county and municipal government online bulletin boards, and provide the Commission with proof of publication;
 - develop and file a new resource report describing the proposed project's impacts on Tribal resources;
 - develop and file a new resource report describing the proposed project's impacts on environmental justice communities;
 - develop and file a new resource report describing the proposed project's impact on air quality and environmental noise;
 - provide additional information describing the proposed project's visual impacts; and
 - provide additional information as part of the following existing resource reports: *General project description*; *Water use and quality*; *Fish, wildlife, and vegetation*; *Soils*; *Land use, recreation, and aesthetics*; and *Reliability and safety*.

The Commission received four requests for rehearing of the Final Rule.¹² On October 17, 2024, the Commission issued an order addressing arguments raised on rehearing and setting aside the prior order, in part (Order on Rehearing).¹³ Previously, the Commission submitted to OMB the information collection requirements arising from Order No. 1977 and OMB approved those requirements. In the Order on Rehearing, the Commission made one substantive change to the information collection requirements previously submitted to and approved by OMB following the May 13, 2024 Final Rule. The Order on Rehearing revises § 50.4(a)(5) to require applicants, under certain circumstances, to provide additional information describing efforts to engage with Tribes. Specifically, if a right-of-way on Tribal lands must be obtained for a proposed project, the Tribal Engagement Plan must describe how the applicant will engage with the relevant Indian

¹¹ These requirements only apply to applicants who elect to comply with the Applicant Code of Conduct set forth in 18 CFR 50.12.

¹² Earthjustice, Environmental Defense Fund, Natural Resources Defense Council, Sierra Club, Sustainable FERC Project, Union of Concerned Scientists, WE ACT for Environmental Justice, and the Yurok Tribe (together, Public Interest Organizations); Louisiana Public Service Commission; New York State Public Service Commission; and Pennsylvania Public Utility Commission filed timely requests for rehearing.

¹³ *Applications for Permits to Site Interstate Electric Transmission Facilities*, Order No. 1977-A, 89 Fed. Reg. 84,465 (Oct. 23, 2024), 189 FERC ¶ 61,033 (2024).

Tribe or individual Indian landowners to obtain the necessary permissions, including consent to access Tribal land to prepare information required by the application (e.g., to survey), if applicable. In addition, the Tribal Engagement Plan must describe how the applicant will ensure communications with Indian Tribes are honest, factually accurate, and respectful of Tribal sovereignty. Accordingly, there is a slight increase in the reporting requirements and burden for FERC-729.

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

The purpose of the Commission's regulations is to provide for efficient and timely review of requests for permits for the siting of proposed electric transmission facilities under section 216 of the FPA, as amended by the IIJA. As described above, the Final Rule amends the Commission's existing regulatory requirements in 18 CFR Parts 50 and 380.

This information collection cannot be discontinued or collected less frequently because of statutory requirements. Without this information, the Commission would be unable to fulfill its statutory obligations under the FPA and NEPA in evaluating proposals to site electric transmission facilities.

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

There is an ongoing effort to determine the potential for improved information technology to reduce burden, and the Commission encourages the use of electronic filing. As posted at: <https://www.ferc.gov/sites/default/files/2020-05/filing.pdf>, the FERC-729 information may be electronically filed through the Commission's eFiling system.

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

To identify duplication, Commission staff periodically review filing requirements before the expiration of the information collection and as the Commission may deem necessary in carrying out its statutory responsibilities. There is no other source of this information.

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

The Commission expects entities seeking to construct electric transmission facilities pursuant to the Commission's authority under section 216 of the FPA to be major developers capable of financing complex and expensive projects. To date, only one

entity has participated in the Commission's mandatory pre-filing process in 18 CFR Part 50, and that was a major electric utility company. Therefore, the Commission does not anticipate that these information collection requirements would impose a burden on small entities. Additionally, as noted above, any applicants may reduce the burdens by filing information electronically through the Commission's eFiling system.

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

This information collection is triggered by an applicant filing a request to commence the Commission's pre-filing process. Compliance with the pre-filing procedures is a prerequisite to filing an application for a permit to construct electric transmission facilities under section 216 of the FPA. Without the information submitted by an applicant during the pre-filing and application review processes, the Commission would be unable to fulfill its statutory obligations under the FPA and NEPA.

7. EXPLAIN ANY SPECIAL CIRCUMSTANCES RELATING TO THE INFORMATION

FERC-729 meets OMB's section 1320.5 requirements with the exception of 1320.5(d)(2)(iii), which provides that agencies not require respondents to submit more than an original and two copies of any document.¹⁴ Specifically, section 50.3(b)¹⁵ of the Commission's regulations requires an original and seven conformed copies of the information to be submitted for the Commission to conduct its review. The Final Rule revises section 50.3(b) to only require applicants to make submissions in electronic format, which is consistent with section 1320.5(d)(2)(iii).

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

On December 15, 2022, the Commission issued its NOPR proposing to revise its regulations in parts 50 and 380.¹⁶ The NOPR was published in the *Federal Register* on January 17, 2023, with a 90-day comment period.¹⁷ Because some of the information collection activities proposed in the NOPR are novel, the Commission solicited

¹⁴ 5 CFR 1320.5(d)(2)(iii) (.

¹⁵ 18 CFR 50.3(b).

¹⁶ *Applications for Permits to Site Interstate Electric Transmission Facilities*, 181 FERC ¶ 61,205 (2022), *errata notice*, 182 FERC ¶ 61,020 (2023). The Commission's errata notice, issued on January 17, 2023, reflected certain stylistic revisions requested by the *Federal Register* as well as minor, non-substantive editorial revisions.

¹⁷ Comments on the NOPR were due by April 17, 2023. In response to a motion filed by the National Association of Regulatory Utility Commissioners, the Commission extended the NOPR comment deadline to May 17, 2023.

comments on the burden hour and cost estimates in the NOPR. The Commission did not receive comments on the burden hour and cost estimates specifically but did receive comments on other aspects of the NOPR, which the Commission addresses in the Final Rule issued in Docket No. RM22-7-000. As described in the NOPR and Final Rule, the Commission also consulted with the Council on Environmental Quality on its NEPA implementing regulations in 18 CFR Part 380.

Many of the public comments on the information collection activities in the Final Rule focused on the proposed engagement plan for outreach to environmental justice communities. In the Final Rule, the Commission adopted the NOPR proposal to require an Environmental Justice Public Engagement Plan under 18 CFR 50.4(a)(4) as a component of the Project Participation Plan, with a modification clarifying that applicants must describe efforts to identify, engage, and accommodate “individuals with limited English proficiency.” Some commenters urged the Commission to add a requirement for an engagement plan describing an applicant’s outreach to Indian Tribes. The Commission adopted in the Final Rule, and revised in the Order on Rehearing, new 18 CFR 50.4(a)(5), which requires an applicant to include a Tribal Engagement Plan as a component of the Project Participation Plan. The Final Rule explained that requiring applicants to prepare engagement plans facilitates the development of the record that the Commission needs to assess impacts on environmental justice communities and Indian Tribes by detailing the steps applicants will take to identify and engage with these communities.

Other public comments on the information collection activities generally focused on the Applicant Code of Conduct, project notification requirements, the three new environmental resource reports (covering potential impacts on environmental justice communities, Tribal resources, and air quality and environmental noise), visual impact assessment, and various updates to the existing environmental resource reports. The Final Rule made a number of clarifying changes in response to comments.

Though unrelated to information collection activities, many public comments addressed the Commission’s proposal to allow simultaneous processing of State and FERC siting applications. In the Final Rule, the Commission declined to adopt the proposal, and instead stated that it would continue the existing policy of a one-year delay between the filing of the relevant State siting applications and the commencement of the Commission’s pre-filing process. The Final Rule explained that this determination was based on a review of the record and, in particular, the feedback received from States in their filed comments and at the February 28, 2024, meeting of the Joint Federal-State Task Force on Electric Transmission.

9. EXPLAIN ANY PAYMENT OR GIFTS TO RESPONDENTS

There are no payments or gifts to FERC-729 respondents.

10. DESCRIBE ANY ASSURANCE OF CONFIDENTIALITY PROVIDED TO RESPONDENTS

The Commission does not consider the information collected in FERC-729 filings to be confidential. Filers may request privileged or Critical Energy Infrastructure Information treatment of a filing that may contain information the applicant deems harmful if released to the general public.¹⁸

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 in this information collection.

12. ESTIMATED BURDEN OF COLLECTION OF INFORMATION

The Commission estimates the annual public reporting burden for the Final Rule requirements revised in the Order on Rehearing in Docket No. RM22-7-001, as:

¹⁸ 18 CFR 388.112; *Id.* 388.113.

Revisions in Order on Rehearing in Docket No. RM22-7-001					
	No. of Respondents (1)	No. of Responses ¹⁹ per Respondent (2)	Total No. of Responses (1)X(2)=(3)	Avg. Burden Hrs. & Cost Per Response ²⁰ (4)	Total Annual Burden Hours & Total Annual Cost (3)X(4)=5
Tribal Engagement Plan	1	1	1	27 hrs.; ²¹ \$2,700	27 hrs.; \$2,700

13. ESTIMATE OF TOTAL ANNUAL COST OF BURDEN TO RESPONDENTS

All of the costs are associated with burden hours (labor) and addressed in questions #12 and #15.

14. ESTIMATED ANNUALIZED COST TO FEDERAL GOVERNMENT

The Commission estimates the annualized cost to the federal government for this information collection as:

	Number of Employees (FTEs)	Estimated Annual Federal Cost
PRA ²² Administration Cost ²³	-	\$8,396
Analysis and Processing of	9 ²⁵	\$1,870,074

¹⁹ We consider the filing of an application, including the mandatory pre-filing information, to be a “response.”

²⁰ The estimates for cost per response are derived using the following formula: Average Burden Hours per Response * \$100 per Hour = Average Cost per Response. The hourly cost figure is the FY2024 FERC average annual salary plus benefits (\$207,786/year or \$100/hour). Commission staff estimates that industry costs for salary plus benefits are similar to Commission costs. We note that the NOPR provided cost estimates in 2022 dollars.

²¹ Previously, the final rule estimated the burden and cost for the Tribal Engagement Plan to be 24 hours and \$2,400. The Order on Rehearing requires applicants to provide additional information in the Tribal Engagement Plan if the proposed transmission facilities will cross Tribal lands, which the Commission estimates will result in an increase of three burden hours. Therefore, the estimated total burden and cost for the Tribal Engagement Plan, as revised in the Order on Rehearing, is 27 hours and \$2,700.

²² The Paperwork Reduction Act of 1995, 44 U.S.C. 3501-3521 (PRA).

Filings ²⁴		
FERC Total		\$1,878,470

The Commission bases its estimate of the “Analysis and Processing of Filings” cost to the federal government on salaries and benefits for professional and clerical support. This estimated cost represents staff analysis, decision making, and review of any actual filings made in response to the information collection.

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

The increase in estimated burden is due to the adopted changes in the Order on Rehearing, as described above. The total increase in burden represents 0 responses and three hours.

The following table shows the total burden for the collection of information. The format, labels, and definitions of the table follow the ROCIS submission system’s “Information Collection Request Summary of Burden” for the metadata.

FERC-729	Total Request	Previously Approved	Change Due to Adjustment in Estimate	Change Due to Agency Discretion
Annual Number of Responses	12	12	0	0
Annual Time Burden (Hours)	10,845	10,842	0	3
Annual Cost Burden (\$)	0	0	0	0

16. TIME SCHEDULE FOR PUBLICATION OF DATA

The Commission does not publish any data associated with this information collection.

17. DISPLAY OF EXPIRATION DATE

The expiration date is posted at: <https://www.ferc.gov/information-collections>.

²³ The PRA Administration Cost includes preparing supporting statements, notices, and other activities associated with PRA compliance.

²⁴ The cost figure is the FY2024 FERC average annual salary plus benefits (\$207,786/year or \$100/hour).

²⁵ Because of the expected size and complexity of proposed projects, additional staff will be necessary to review and process pre-filing requests and application filings.

FERC-729 (OMB Control No. 1902-0238)
RIN: 1902-AG08
Final Rule: RM22-7-001

18. EXCEPTIONS TO THE CERTIFICATION STATEMENT

There are no exceptions.