

Supporting Statement  
**FERC-577 Gas Pipeline Certificates: Environmental Impact Statement**  
Final rule in Docket Number RM12-11-000

This supporting statement related to the final rule in RM12-11 is being re-submitted for administrative purposes only. The FERC-577 components in the final rule in RM12-11 (and the remaining part of this supporting statement) have not changed.

The Federal Energy Regulatory Commission (Commission or FERC) requests that the Office of Management and Budget (OMB) review and approve the changes to the FERC-577 contained in the final rule in Docket Number RM12-11.

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

Section 102(2) (c) of the National Environmental Policy Act of 1969 (NEPA) (Pub.L 91-190) (42 U.S.C. 4321) requires that all Federal agencies must include in every recommendation or report on proposals for legislation and other major federal actions significantly affecting the quality of human environment, a detailed statement on: the environmental impact on the proposed actions; any adverse environmental effects which cannot be avoided should the proposal be implemented; alternatives to the proposed action; the relationship between local short-term uses of man's environment, and the maintenance and enhancement of resources which would be involved in the proposed action should it be implemented.

FERC-577 identifies the Commission's information collections relating to Parts 2, 157, 284, and 380 of its regulations implementing NEPA and includes the environmental compliance conditions of Parts 2, 157, 284, and 380.

One part of the FERC-577 pertains to land owner notification. Commission staff has received numerous requests from landowners asking that FERC require companies to notify landowners in advance of any activity that will take place on their land. In response to these requests, the Commission is adding landowner notification requirements for both auxiliary installations and replacement facilities under 18 CFR section 2.55 and for siting and maintenance activities under section 380.15. The Commission also modifying its regulations under 18 CFR section 157.203, to conform with the landowner notification changes to section 2.55.

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

Environmental concerns play a significant role in the review of certificate construction applications. Pipelines are facing increased opposition from landowners as new projects are proposed, especially in more heavily populated areas. FERC has to balance the benefits of alternative supplies of natural gas with the environmental impact of a project. Critical to the

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Based on 2013 cost per FTE of \$145,818

The Commission bases the PRA administration cost on staff time and Federal Register publication costs.

Commission's efforts to balance benefits and environmental impacts are the general and project-specific environmental conditions the Commission applies to jurisdictional facilities.<sup>2</sup>

Applicants have to conduct appropriate studies which are necessary to evaluate the impact of the construction and/or operation of the proposed jurisdictional facilities on human and natural resources and the measures which may be necessary to protect the values of the affected area.

In the rulemaking, FERC adds new sections in its regulations (18 CFR) under Sections 2.55(c) and 380.15(b)(1) whereby a natural gas company must notify affected landowners at least five days prior to coming onto their property. The notification should include: (1) a brief description of the activity to be conducted or facilities to be constructed/replaced and the effects that the activities are expected to have on the landowner's property; (2) the name and phone number of the company representative that is knowledgeable about the project; and (3) a description of the Commission's Dispute Resolution Service Helpline, as explained in Section 1b.21(g) of the Commission's regulations, and the Dispute Resolution Service Helpline number.<sup>3</sup>

FERC defines "affected landowners" as owners of property interests, as noted in the most recent tax notice, whose property is directly affected (i.e. crossed or used) by the proposed activity, including all rights-of-way, facility sites, access roads, pipe and contractor yards, and temporary workspace.

The Commission collects the bulk of the information under the FERC-577 in order to comply with applicable environmental statutes. The Commission needs to know about the consequences of companies' activities to be able to ensure that FERC is complying with NEPA requirements. In particular, FERC wants to ensure that construction and operation activities are done in a manner that does not violate FERC's findings that there are no significant adverse impacts. The FERC-577 cannot be discontinued or conducted less frequently. The Commission adopts a new landowner notification requirement in response to requests from landowners.

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

There is an ongoing effort to increase the use of improved information technology in order to reduce the compliance burden. The FERC-577 materials may be eFiled through FERC's eFiling system. [See <http://www.ferc.gov/docs-filing/efiling/filing.pdf> for more information.]

For the existing FERC-577 requirements, the majority of the application filings made in accordance with sections 7(a) and 7(c) are filed electronically. However, due to the complexity of the exhibits, maps, and projects, for some of the filings, up to three additional paper copies

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<sup>2</sup> The 18 CFR section 2.55(a) projects at issue in this proceeding are not certificated projects, but they do fall under the Commission's jurisdiction.

<sup>3</sup> This provides landowners a phone number they can use if a problem arises related to the work the pipeline is doing.

may be required for staff review, processing, and collaboration. As additional uses of information technology (including geospatial information systems) are implemented, FERC may be able to reduce or eliminate the need for the additional paper copies.

For the new requirements in the final rule, FERC only prescribes written notification to the landowners, and not any particular medium.

**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**

Filing requirements are periodically reviewed as information collection expiration dates arise or as the Commission may deem necessary in carrying out its regulatory responsibilities under the NGA in an effort to alleviate duplication. All Commission information collections are subject to analysis by Commission staff and are examined for redundancy. There is no other source of this information.

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

There are no special provisions or methods for reducing burden on any small entities. FERC proposes that all applicable entities be required to notify landowners as described in the proposed rule. Less than 10% of the gas pipelines subject to this final rule are small according to the SBA definition.

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

FERC-577 data collections are required for statutory purposes and cannot be discontinued or collected less frequently. Generally, the information submitted to the Commission for FERC-577 is event driven. The information to be submitted in accordance with Commission regulations includes draft environmental material in accordance with the provisions of Part 380 of FERC's regulations in order to implement the Commission's procedures under NEPA.

Without such information, the Commission would be unable to fulfill its statutory responsibilities under the NGA, NGPA, NEPA, and the Energy Policy Act of 2005. Specifically, the rule is to ensure company activities remain consistent with the public interest, which is specified in the NGA and inherent in the other statutes.

The new landowner notification requirement is event driven and cannot be done less frequently.

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

In general, FERC-577 meets all of the requirements in OMB's regulations. Because the proposed landowner notification requirement is event driven, some respondents may have to notify landowners more often than quarterly. The Commission considers this necessary in order to provide landowners with notification when work is being done on their property.<sup>4</sup>

For the existing requirements related to this collection (requirements **not** changed by the final rule) up to three paper copies may be required, depending on the item filed, for staff review, processing, and collaboration.

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

Each FERC 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 in Docket RM12-11 was published in the Federal Register on January 4, 2013 (78 FR 679), and requests public comments.

The principle reason for this submission is because many landowners requested that FERC require companies to notify landowners in advance of any activity that will take place on their land.

In response to the NOPR the Commission received multiple comments regarding the new landowner notification requirement. In the final rule (paragraphs 51 – 79) the Commission summarizes and responds to the comments. A document including only these paragraphs is included as a supplementary document in this information collection request.

In response to commenters' concerns, we revised the proposed notification obligation to (1) specify the types of maintenance activities that merit individual notice; (2) limit notice to landowners whose property is crossed or used for section 2.55 and section 380.15 activities; and (3) reduce the prior notice period from 10 days to five days. These modifications should significantly diminish the burden of complying with the new requirements for prior notice to landowners.

Instead of mandating notice to landowners for all 18 CFR section 380.15 maintenance activities, as proposed in the NOPR, we will only require prior notice of those more substantial activities that will result in ground disturbance. In addition, we are reducing the scope of notification proposed in the NOPR, which would have required that notice be provided not only to directly affected landowners, but also to adjacent landowners and to landowners with a residence within 50 feet of a proposed work area.<sup>5</sup> Commentors assert this is overly broad and request that we

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<sup>4</sup> We don't want to shift the burden to landowners to keep up with company proceedings electronically. Not all landowners are proactive, and they do not all have Internet access. Emergency provisions permit a company to act immediately and inform landowners and the Commission after the fact.

<sup>5</sup> The NOPR defined "affected landowners" for purposes of companies' activities under sections 2.55 and 380.15 as "owners of property interests, as noted in the most recent tax notice, whose property (1) is directly affected (i.e., crossed or used) by the proposed activity, including all rights-of-way, facility sites, access roads, pipe

remove abutting landowners and landowners with a residence within 50 feet of the proposed work area from the definition of “affected landowners.” Although the NOPR would have required the same scope of notice that companies are required to provide for projects under the Part 157 blanket certificate regulations, the commentors have convinced us that more limited landowner notification requirements are appropriate for companies’ activities under section 2.55 and 380.15, since such projects are likely to be smaller, take a shorter period of time to accomplish, and be less disruptive than blanket certificate projects.

Finally, while the NOPR stipulated a 10-day prior notice, we accept commentors’ claim that some activities, particularly unanticipated maintenance, are not scheduled far enough in advance to allow for a 10-day prior notice.<sup>6</sup> In view of this, we will only require that landowners receive notice five days in advance of initiating certain activity under section 2.55 or 380.15, which we anticipate will still allow time for landowners and a company to discuss any concerns landowners may have regarding companies’ planned activities.

## **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 to be confidential. However, the Commission has encouraged applicants to indicate information which may be Critical Energy Infrastructure Information (CEII), or privileged. CEII as defined in Section 388.113 of the Commission’s regulations includes information about proposed or existing natural gas facilities that could be used by a person planning an attack on critical energy infrastructure. More information about CEII and privileged security levels of information are posted at <http://www.ferc.gov/legal/ceii-foia/ceii.asp> and <http://www.ferc.gov/legal/ceii-foia/ceii/classes.asp>. The Commission’s procedures in Part 388 are designed to ensure that CEII and privileged material is not placed in the Commission’s public records.

## **11. PROVIDE ADDITIONAL JUSTIFICATION FOR ANY QUESTIONS OF A SENSITIVE NATURE**

There are no questions of sensitive nature that are considered private.

## **12. ESTIMATED BURDEN OF COLLECTION OF INFORMATION**

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and contractor yards, and temporary work space; or (2) abuts either side of an existing right-of-way or facility site, or abuts the edge of a proposed right-of-way or facility site which runs along a property line in the area in which the facilities would be constructed, or contains a residence within 50 feet of the proposed construction work area.” 78 FR at 683, 141 FERC ¶ 61,228 at P 30.

<sup>6</sup> Additionally, commentors state that the 10-day prior notice period prevents companies from adjusting maintenance schedules due to weather, equipment availability, permitting processes, etc.

The current burden for the FERC-577 is shown in the following table.

<b>Number of Respondents (1)</b>	<b>Number of Responses per Respondent (2)</b>	<b>Total Number of Responses (1)*(2)=(3)</b>	<b>Average Burden Hours and Cost Per Response (4)</b>	<b>Total Annual Burden Hours and Cost (3)*(4)</b>
92	16	1,472	193.518 \$13,546 <sup>7</sup>	284,858 \$19,940,060

Because this final rule adds landowner notification requirements in Sections 2.55, 157 and 380 for activities undertaken pursuant to sections contained under FERC-577, the overall burden on the industry will increase. However, because natural gas companies subject to our jurisdiction must already notify (by mail and/or public notice) landowners in conjunction with Section 3 projects, Section 7 applications, and when conducting activities under Part 157 of our regulations, no new technology would be needed and no start-up costs would be incurred. Further, even without the new notification requirement herein, many companies already routinely inform landowners prior to coming onto their property, both as a courtesy and to avoid conflicts in landowner and company activities. Thus, the notification requirement is expected to be consistent with some companies' current practices and, consequently, impose little additional obligation on such companies.

In 1999, in estimating the landowner notification burden in Order No. 609, the Commission found that companies would need four hours to identify affected landowners and prepare and distribute information describing the proposed project. Given advances in computer technology (processor speed, data available on the internet, and better programs and applications) since then and the fact that Section 2.55 and Section 380.15 activities generally involve activities that are smaller than those that go forward under blanket certificate authority, we anticipate companies will need two hours to meet the proposed landowner notification requirement.

While companies are required to file annual reports of replacement facilities under 2.55(b), no such reports are required for ancillary installations under 2.55(a). Thus, we have no data upon which to base an estimate of activities under 2.55(a). In view of this, Commission staff asked for information on activities under 2.55(a) from a small representative sample (less than 10) of jurisdictional companies and we have extrapolated our estimate based on company responses. We estimate that on average, approximately 7,600 auxiliary installation projects are undertaken annually for the whole industry. We estimate 165 regulated entities. Therefore, 7,600 projects divided by 165 entities is approximately 46 projects per entity.

Companies file an annual retrospective report itemizing all Section 2.55(b) replacement activities. Our review of the more recent annual reports indicates that companies undertake approximately 500 section 2.55(b) projects per year total. Therefore, 500 projects divided by 165 is approximately three projects per entity.

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<sup>7</sup> Based on \$70/hour average cost (salary + benefits) derived by assuming that the average worker completing the tasks associated with this collection earns a similar amount as the average FERC employee.

Since the issuance of the proposed rule, staff found that section 157.203(d)(3)(i) of the regulations provided an exemption for projects that would have been done under section 2.55(b), but for the fact that the replacement projects are not of the same capacity. To provide consistency with the section 2.55 landowner notification requirements the Commission is amending section 157.203 to require landowner notification when the project involves ground disturbance. Similar to section 2.55(b), we estimate that companies undertake approximately 500 section 157.203(d)(3)(i) projects per year total. Therefore, 500 projects divided by 165 is approximately three projects per entity.

Section 380.15 siting and maintenance activities, like activities under 2.55(a), do not require companies to submit an annual report. These activities are generally minor and planned for well in advance and cover a wide variety of efforts (e.g. physical up-keep of above-ground facilities and right-of-way vegetation maintenance). [Further, any particular company's activities on its right-of-way can depend upon changing conditions such as maintenance initiatives, population density, and even weather. Because of this variety of possible activities and their minor nature we have estimated that, for all companies nationwide, there will be a total of approximately two times as many activities as take place under Section 2.55(a) which would require a landowner notification (i.e., in the aggregate, 15,180 siting and maintenance activities that could require a landowner notification).

The Commission estimates the proposed additional notification burden that the proposal would impose in the table below.

<b>Regulation Section for New Landowner Notification Requirements</b>	<b>Annual Number of Respondents (A)</b>	<b>Annual Number of Filings Per Respondent<sup>1</sup> (B)</b>	<b>Number of Hours per Filing (C)</b>	<b>Total Annual Hours (A)*(B)*(C)</b>
18 CFR 2.55(a)	165	46	2	15,180
18 CFR 2.55(b)	165	3	2	990
18 CFR 157.203(d)(3)	165	3	2	990
18 CFR 380.15	165	92	2	30,360
<b>TOTAL</b>	165			47,520

As discussed above, natural gas companies already conduct landowner notifications for larger projects, and some companies also routinely inform affected landowners in advance of undertaking activities on their property as it is considered a “best practice” for facility and right-of-way management. Given that some companies currently comply with the notification

<sup>1</sup> This column reflects a rounded estimate for each jurisdictional natural gas company, averaged over all 165 such companies.

requirements proposed herein, we believe that the actual industry-wide increase in burden will be substantially less than what we have estimated here.

**Information Collection Costs for the changes in the Final Rule:** The Commission projects the average cost for all respondents to be as follows:<sup>8</sup>

- \$2,898,720 per year for all regulated entities;
- \$17,568 per year for each regulated entity.

### 13. ESTIMATE OF THE TOTAL ANNUAL COST BURDEN TO RESPONDENTS

There are no non-labor costs associated with the existing or landowner notification requirements.

### 14. ESTIMATED ANNUALIZED COST TO FEDERAL GOVERNMENT

Below is the Federal Cost estimate for the existing requirements under FERC-577. The final rule does not change the existing Federal Cost estimate because the Commission will not be receiving or reviewing the landowner notifications.

Type of Cost	Number of Employees (FTEs)	Estimated Annual Federal Cost <sup>9</sup>
PRA Administration Cost <sup>10</sup>		\$2,250
FTE	34	\$4,957,812
<b>FERC Total</b>		<b>\$4,960,062</b>

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

The Commission does not make any modifications to any existing FERC-577 information collection requirements. The following table summarizes the existing burden and how it will change based on the final rule.

FERC-577	Total Request	Previously Approved	Change due to Adjustment in Estimate	Change Due to Agency Discretion
Annual Number of Responses	25,532	1,472	-	23,760
Annual Time Burden (Hr)	332,378	284,858	-	47,520

<sup>8</sup> This column reflects a rounded estimate for each jurisdictional natural gas company, averaged over all 165 such companies.

<sup>9</sup> The figures in this column are also rounded.

<sup>10</sup> The cost figures are derived by multiplying the total hours to prepare a response by an hourly wage estimate of \$61 (based on average civil engineer wages and benefit information obtained from the Bureau of Labor Statistics' data at [http://bls.gov/oes/current/naics4\\_221200.htm#17-0000](http://bls.gov/oes/current/naics4_221200.htm#17-0000) and <http://www.bls.gov/news.release/ecec.nr0.htm>).

Annual Cost Burden (\$)	-	-	-	-
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The increase in burden is due to the new landowner notification requirement. As noted in item 12 above, the Commission estimates a total increase of 47,520 hours (approximately 288 hours per entity per year). As noted previously, this new information collection requirement comes out of requests from the landowners for better notification when work is being done on their land.

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

FERC does not publish any data as part of this collection.

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

The information collected as part of the FERC-577 is not collected on formatted/printed forms. Thus, the subject data requirements do not have an appropriate format to display an OMB expiration date.

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

This collection does not use statistical survey methodology as stated in the certification as part of this submission. Further, as stated in item 17 above, the information collection requirements do not have an appropriate format to display the OMB expiration date. The collection does not reduce burden for small entities. The small entities will be required to follow the landowner notification requirements as will others.