

124 FERC ¶ 61,049
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

18 CFR Part 33

[Docket No. RM07-21-002]

Order Requesting Supplemental Comments

(Issued July 17, 2008)

AGENCY: Federal Energy Regulatory Commission.

ACTION: Order Requesting Supplemental Comments.

SUMMARY: The Federal Energy Regulatory Commission (Commission) requests supplemental comments on the scope and form of the reporting requirements under the expanded blanket authorization established in Order No. 708-A, which amends section 33.1(c)(12) of the Commission's regulations.

DATES: Comments are due [insert 60 days after publication in the FEDERAL REGISTER].

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SUPPLEMENTARY INFORMATION:

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Sudeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

Blanket Authorization Under FPA Section 203

Docket No. RM07-21-002

ORDER REQUESTING SUPPLEMENTAL COMMENTS

(Issued July 17, 2008)

1. In this order, the Federal Energy Regulatory Commission (Commission) seeks supplemental comments on the narrow issue of the scope and form of reporting requirements that would apply to the expanded blanket authorization under section 33.1(c)(12) of the Commission's regulations,¹ adopted in Order No. 708-A² issued concurrently with this order and as discussed below.

I. Background

2. In Order No. 708, the Commission amended its regulations under section 203 of the Federal Power Act (FPA) to provide for five additional blanket authorizations under FPA section 203(a)(1).³ The Commission found that the blanket authorizations would

¹ 18 CFR 33.1(c)(12).

² Blanket Authorizations Under FPA Section 203, Order No. 708, 73 FR 11003 (Feb. 29, 2008), FERC Stats. & Regs. ¶ 31,265 (2008), 124 FERC ¶ 61,048.

³ 16 U.S.C. 824b(a)(1).

facilitate investment in the electric utility industry and, at the same time, ensure that public utility customers are adequately protected from any adverse effects of such transactions. One of the additional blanket authorizations provided that a public utility could transfer its outstanding voting securities to any holding company granted blanket authorizations in paragraph (c)(2)(ii) of FPA section 203, if after the transfer, the holding company and any of its associate or affiliate companies in aggregate would own less than 10 percent of the outstanding voting interests of such public utility. In adopting proposed regulation section 33.1(c)(12), the Commission rejected requests to extend the blanket authorization to “any person,” on the grounds that without increased reporting requirements, any such extension under section 33.1(c)(12) would best be made on a case-by-case basis.⁴ The Commission also rejected requests to expand the reporting requirements applicable to the Commission’s blanket authorizations under section 33.1 of the Commission’s regulations.

3. In Order No. 708-A, the Commission granted, in part, and denied, in part, the requests for rehearing of Order No. 708. Among other things, the Commission expanded the blanket authorization under section 33.1(c)(12) to authorize a public utility to transfer its outstanding voting securities to “any person” other than a holding company if, after the transfer, such person and any of its associate or affiliate companies will own less than 10 percent of the outstanding voting interests of such public utility. The Commission

⁴ Order No. 708, FERC Stats. & Regs. ¶ 31,265 at P 20.

stated that it would also adopt a reporting requirement for entities transacting under that blanket authorization. In order to properly tailor additional reporting requirement, the Commission also stated that it would issue a request for supplemental comments on the narrow issue of the scope and form of the reporting requirements under the expanded blanket authorizations under section 33.1(c)(12).

II. Discussion

4. As the Commission stated in Order No. 708, in order to extend the blanket authorization under section 33.1(c)(12) to include “any person,” the Commission would need to establish appropriate reporting requirements so that we could monitor transfers to non-holding companies. The Commission explained that, although there is a *presumption* that less than 10 percent of a utility’s shares will not result in a change of control, this presumption is rebuttable. In some instances, the transfer of less than 10 percent of voting shares may constitute a transfer of control.⁵ The Commission stated that it recognized that it could reduce regulatory burdens and encourage investment to allow transfers of securities not only to holding companies but to other “persons,” and that such transfers would not harm competition or customers as long as there was a sufficient ability to monitor possible changes in control of public utilities.

⁵ See Order No. 708, FERC Stats. & Regs. ¶ 31,265 at P 20; FPA Section 203 Supplemental Policy Statement, 72 FR 42277 (Aug. 2, 2007), FERC Stats. & Regs. ¶ 31,253, at P 58, n.48 (2007).

5. In Order No. 708-A, the Commission granted Financial Institutions Energy Group's (Financial Group) request to extend the blanket authorization under section 33.1(c)(12) to cover public utility dispositions to non-holding companies, subject to the same "in aggregate" limitations imposed on transfers to holding companies. The Commission denied American Public Power Association's and the National Rural Electric Cooperative Association's (APPA/NRECA) general request for additional reporting requirements. Nevertheless, the Commission explained that, in order to properly tailor additional reporting requirements for the expanded blanket authorization under section 33.1(c)(12), it would issue a concurrent request for supplemental comments that would seek comments on the narrow issue of the scope and form of the reporting requirements under the expanded blanket authorization.

6. In support of its argument that the Commission should have extended the blanket authorization under section 33.1(c)(12) to cover public utility dispositions to non-holding companies, Financial Group proposed reporting requirements for transactions involving non-holding companies that it argues should be at least as helpful to the Commission as the preexisting reporting requirements applicable to holding companies. Because commenters did not have the opportunity to comment on the specific reporting requirements proposed by Financial Group, we are requesting supplemental comments on this narrow reporting issue.

7. Financial Group proposes that within a specified time following consummation of the transaction (e.g., 30 days), the following information be reported: (1) names of all

parties to the transaction; (2) identification of both the pre-transaction and post-transaction voting security holdings (and the percentage ownership) in the public utility held by the acquirer and its associates or affiliate companies; (3) the date the transaction was consummated; (4) identification of any public utility or holding company affiliates of the parties to the transaction; and (5) the same type of statement currently required under section 33.2(j)(1),⁶ which describes Exhibit M to an FPA section 203 filing.

8. As we have granted the blanket authorization under section 33.1(c)(12) to include “any person,” we seek supplemental comments on the narrow issue of the scope and form of the reporting requirements under the expanded blanket authorization. For example, we seek comment on whether Financial Group’s proposed reporting requirement should be adopted, as proposed or modified. If commenters do not believe that Financial Group’s proposal as to reporting requirements is appropriate, they should explain why and propose alternative reporting requirements. We also seek comment as to whether reports should be filed with the Commission on a quarterly basis or on some other basis. We note that the expanded blanket authorization will not become effective until the Commission’s order on reporting requirements becomes effective.

III. Information Collection Statement

9. The Office of Management and Budget (OMB) regulations require that OMB approve certain reporting and record keeping (information collections) imposed by

⁶ 18 CFR 33.2(j)(1).

agency rules.⁷ Therefore, the Commission is submitting a proposed information collection to OMB for review and approval in accordance with section 3507(d) of the Paperwork Reduction Act of 1995.⁸ Here, the Commission has expanded a blanket authorization to additional entities under section 33.1(c)(12), and now requests supplemental comments on the scope and form of the reporting requirements for entities that transact under the expanded blanket authorization.

10. Comments are solicited on the Commission’s need for this information, whether the information will have practical utility, the accuracy of provided burden estimates, ways to enhance the quality, utility, and clarity of the information to be collected, and any suggested methods for minimizing respondents’ burden, including the use of automated information techniques.

Burden Estimate: The public reporting burden for the proposed reporting requirements and the records retention requirement is as follows.

| Data Collection | Number of Respondents | Number of Responses | Hours Per Response | Total |
|--------------------|-----------------------|---------------------|--------------------|-------|
| FERC-519 Reporting | 20 | 1 | 1 | 20 |
| Totals | 20 | 1 | 1 | 20 |

⁷ 5 CFR 1320.12.

⁸ 44 U.S.C. 3507(d).

Information Collection Costs: The Commission seeks comments on the cost to provide this information to the Commission. It has projected the average annualized cost of all respondents to be the following: 20 hours (reporting) @ \$66 per hour = \$1,320 for respondents. No capital costs are estimated to be incurred by respondents.

Title: FERC-519, “Application Under the Federal Power Act, Section 203”

Action: Revised Collection

OMB Control No: 1902-0082

The applicant will not be penalized for failure to respond to this information collection unless the information collection displays a valid OMB control number or the Commission has provided justification as to why the control number should not be displayed.

Respondents: Businesses or other for profit.

Frequency of Responses: On Occasion

Necessity of the Information: This order requesting supplemental comments proposes codification of a limited reporting requirement for entities taking advantage of a blanket authorization under FPA section 203(a)(1), which in turn provides for a category of jurisdictional transactions under section 203(a)(1) for which the Commission would not require applications seeking before-the-fact approval. The information will enable the Commission and the public to monitor transactions that occur under the 18 CFR 33.1(c)(12) blanket authorization, as extended in Order No. 708-A.

Internal Review: The Commission has conducted an internal review of the public reporting burden associated with the collection of information and assured itself, by means of internal review, that there is specific, objective support for its information burden estimate.

11. Interested persons may obtain information on the reporting requirements by contacting: Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C., 20426 [Attention: Michael Miller, Office of the Executive Director, Phone (202) 502-8415, fax (202) 273-0873, e-mail: michael.miller@ferc.gov]. Comments on the requirements of the order requesting supplemental comment may also be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503 [Attention: Desk Officer for the Federal Energy Regulatory Commission, fax (202) 395-7285, e-mail oira_submission@omb.eop.gov].

IV. Environmental Analysis

12. Commission regulations require that an environmental assessment or an environmental impact statement be prepared for any Commission action that may have a significant adverse effect on the human environment.⁹ No environmental consideration is necessary for Commission action that involves information gathering, analysis, and

⁹ Regulations Implementing National Environmental Policy Act, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs. ¶ 30,783 (1987).

dissemination.¹⁰ This request for supplemental comments seeks comments on the scope and form of the reporting requirements under the expanded blanket authorization under section 33.1(c)(12). Consequently, neither an environmental impact statement nor an environmental assessment is required.

V. Regulatory Flexibility Act

13. The Regulatory Flexibility Act of 1980 (RFA)¹¹ generally requires either a description and analysis of a rule that will have a significant economic impact on a substantial number of small entities or a certification that the rule will not have a significant economic impact on a substantial number of small entities. Most utilities to which this reporting requirement applies would not fall within the RFA's definition of small entity.¹² Consequently, the Commission certifies that this reporting requirement will not have a significant economic impact on a substantial number of small entities.

¹⁰ 18 CFR 380.4(a)(5).

¹¹ 5 U.S.C. 601-12.

¹² 5 U.S.C. 601(3), citing to section 3 of the Small Business Act, 15 U.S.C. 632. Section 3 of the Small Business Act defines a "small business concern" as a business that is independently owned and operated and that is not dominant in its field of operation. The Small Business Size Standards component of the North American Industry Classification System (NAICS) defines a small electric utility as one that, including its affiliates, is primarily engaged in the generation, transmission, and/or distribution of electric energy for sale and whose total electric output for the preceding fiscal year did not exceed four million MWh. 13 CFR 121.201.

VI. Document Availability

14. In addition to publishing the full text of this document in the Federal Register, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through FERC's Home Page

(<http://www.ferc.gov>) and in FERC's Public Reference Room during normal business hours (8:30 a.m. to 5:00 p.m. Eastern time) at 888 First Street, N.E., Room 2A, Washington D.C. 20426.

15. From FERC's Home Page on the Internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

16. User assistance is available for eLibrary and the FERC's website during normal business hours from FERC Online Support at 202-502-6652 (toll free at 1-866-208-3676) or email at ferconlinesupport@ferc.gov, or the Public Reference Room at (202) 502-8371, TTY (202)502-8659. E-mail the Public Reference Room at public.referenceroom@ferc.gov.

List of subjects in 18 CFR Part 33

Electric utilities, Reporting and recordkeeping requirements

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.