

127 FERC 61, 157  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

18 CFR Part 33

[Docket No. RM07-21-002; Order No. 708-B]

Blanket Authorization Under FPA Section 203

(Issued May 21, 2009)

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final Rule; Order on Reporting Requirements for Blanket Authorization Under FPA Section 203.

SUMMARY: The Federal Energy Regulatory Commission (Commission) adopts 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.

EFFECTIVE DATE: These regulations are effective [insert date 60 days after publication in the **FEDERAL REGISTER**].

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Docket No. RM07-21-002

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SUPPLEMENTARY INFORMATION:

127 FERC ¶ 61,157  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Blanket Authorization Under FPA Section 203

Docket No. RM07-21-002

ORDER ON REPORTING REQUIREMENTS FOR BLANKET  
AUTHORIZATION UNDER FPA SECTION 203

ORDER NO. 708-B

(Issued May 21, 2009)

1. In this order, the Federal Energy Regulatory Commission (Commission) adopts reporting requirements that apply to the expanded blanket authorization under § 33.1(c)(12) of the Commission's regulations,<sup>1</sup> adopted in Order No. 708-A.<sup>2</sup>

**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).<sup>3</sup> The Commission found that the blanket authorizations would

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<sup>1</sup> 18 CFR 33.1(c)(12) (2008).

<sup>2</sup> Blanket Authorization Under FPA Section 203, Order No. 708, 73 FR 11003 (Feb. 29, 2008), FERC Stats. & Regs. ¶ 31,265 (2008), order on reh'g, Order No. 708-A, 73 FR 43066 (July 24, 2008), FERC Stats. & Regs. ¶ 31,273 (2008).

<sup>3</sup> 16 U.S.C. 824b(a)(1) (2006).

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 § 33.1 of the Commission's regulations, 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 § 33.1(c)(12) of the Commission's regulations, the Commission rejected requests to extend the blanket authorization to "any person," on the grounds that without increased reporting requirements, any such extension would best be made on a case-by-case basis.<sup>4</sup> The Commission also rejected requests to expand the reporting requirements applicable to the Commission's blanket authorizations under § 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 § 33.1(c)(12) of the Commission's regulations 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

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

such public utility. The Commission stated that it would also adopt a reporting requirement for entities transacting under that blanket authorization. In order to properly tailor the 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 § 33.1(c)(12) of the Commission's regulations.

4. In its request for rehearing, the Financial Institutions Energy Group<sup>5</sup> (Financial Group) proposed several conditions for the reporting requirement. Financial Group proposed that within a specified time following consummation of the transaction, 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)

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<sup>5</sup> Financial Group consisted at the time of its comments on September 22, 2008 of the following members: Bank of America, N.A., Barclays Bank PLC, CitiGroup Energy Inc., Credit Suisse Energy LLC (a subsidiary of Credit Suisse), Deutsche Bank AG, J. Aron & Co. (a subsidiary of The Goldman Sachs Group), JPMorgan Chase & Co., Lehman Brothers Commodity Services Inc. (a subsidiary of Lehman Brothers Holding Inc.), Merrill Lynch Commodities, Inc., Morgan Stanley Capital Group Inc., Société Générale, and UBS Energy LLC (a subsidiary of UBS AG).

the same type of statement currently required under § 33.2(j)(1) of the Commission's regulations,<sup>6</sup> which describes Exhibit M to an FPA section 203 filing.

5. On July 17, 2008, the Commission issued an order seeking supplemental comments on the narrow issue of the scope and form of the reporting requirements under the expanded blanket authorization. The Commission sought comment on whether Financial Group's proposed reporting requirement should be adopted, as proposed or modified. The Commission requested that commenters who disagreed with the proposed reporting requirement should explain why and propose alternative reporting requirements. The Commission also sought comment as to whether reports should be filed with the Commission on a quarterly basis or on some other basis.

## **II. Comments**

6. The Commission received one comment on the proposed reporting requirements, from Financial Group. Financial Group states that the Commission should adopt the reporting requirements it proposed earlier. Financial Group argues that for transactions involving non-holding companies, these requirements would give the Commission at least as much comfort (if not greater comfort) with respect to possible changes in control as the preexisting reporting requirements applicable to holding companies. The information required in the reports, Financial Group argues, will allow the Commission

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<sup>6</sup> 18 CFR 33.2(j)(1).

to determine whether there is a change in control – the purpose for monitoring these types of transactions.

7. With respect to the proposed requirement to include information regarding cross-subsidization, Financial Group states that it does not believe that this condition is necessary, but it does not object to the inclusion of this condition if the Commission deems it necessary. Financial Group notes that the transactions at issue presumptively do not convey an ability to exercise control, so there should be no concern about cross-subsidization for the Commission to consider. If the Commission does require a statement regarding cross-subsidization, Financial Group argues that this statement should not be required where neither party to the transaction has captive customers.

8. Financial Group recommends that the Commission require the reporting information on transactions covered by the blanket authorization in § 33(c)(12) of the Commission's regulations to be provided within 30 days after the end of the calendar quarter in which the transactions occurred. This timeline would allow companies who have made multiple transactions to make a combined filing that would cover each of their transactions in the prior quarter. Such a filing would be more efficient both for the filing party and for the Commission's review. Financial Group requests that the Commission affirm that the reporting requirement is not intended to be ongoing; once a transaction has been reported there are no further reporting requirements with respect to that transaction.

9. Accordingly, Financial Group suggests that a new § 33(c)(17) be added with respect to the reporting requirement for transactions under the blanket authorization, to state as follows:

A public utility granted blanket authorization under section 33.1(c)(12)(ii) to transfer its outstanding voting securities, and the acquirer of such voting securities, shall within 30 days after the end of the calendar quarter in which such transfer has occurred, file with the Commission a report containing the following information:

- (i) the names of all parties to the transaction;
- (ii) identification of the pre- and post-transaction voting security holdings (and percentage ownership) in the public utility held by the acquirer and its associate or affiliate companies;
- (iii) the date the transaction was consummated; and
- (iv) identification of any public utility or holding company affiliates of the parties to the transaction.

### **III. Discussion**

10. As the Commission stated in Order No. 708-A, the expansion of the blanket authorization under 18 CFR 33.1(c)(12) to include “any person” requires additional reporting so that the Commission and the public may monitor the purchase and sale of securities under the blanket authorization. We find that the reporting requirements proposed by Financial Group provide adequate disclosure of trades made under the blanket authorization, and we adopt them here. The information required in these reports will allow the Commission to review the purchases of both holding and non-holding



companies to determine whether any further action is required under Commission regulations.

11. With respect to the proposed disclosure requirement involving cross-subsidization,<sup>7</sup> we find that such a statement would be useful for the Commission in reviewing trades. Accordingly, we will require the disclosure report to include a statement either indicating that neither party to the transaction has any captive customers, or providing the information required in § 33.2(j)(1) of the Commission's regulations.<sup>8</sup>

12. Specifically, we will require that public utilities engaging in transactions under the blanket authorization under 18 CFR 33.1(c)(12) submit a report to the Commission within 30 days of the end of the calendar quarter in which the transactions occurred. At this time, we will not require continuing reporting requirements with respect to the blanket authorization for a transaction once that transaction has been reported. The following information, which will be codified under § 33.1(c)(17) of the Commission's regulations, must be included in the report:

- names of all parties to the transaction;
- 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 associate or affiliate companies;

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<sup>7</sup> Financial Group proposed that parties include in their disclosure the same type of statement currently required under § 33.2(j)(1), which describes Exhibit M to an FPA section 203 filing.

<sup>8</sup> 18 CFR § 33.2(j)(1).

- the date the transaction was consummated;
- identification of any public utility or holding company affiliates of the parties to the transaction;
- a statement on cross-subsidization of the same type as currently required under § 33.2(j)(1) of the Commission’s regulations,<sup>9</sup> which describes Exhibit M to an FPA section 203 filing.

13. The required reports for this fiscal year should be filed electronically under Docket HC09-8-000.

**IV. Information Collection Statement**

14. The Office of Management and Budget (OMB) regulations require that OMB approve certain reporting and record keeping (information collections) requirements imposed by agency rules.<sup>10</sup> Therefore, the Commission is submitting the information collection to OMB for review and approval in accordance with section 3507(d) of the Paperwork Reduction Act of 1995.<sup>11</sup>

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

Data Collection	Number of Respondents	Number of Responses	Hours Per Response	Total
FERC-519				

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<sup>9</sup> 18 CFR 33.2(j)(1).

<sup>10</sup> 5 CFR 1320.12.

<sup>11</sup> 44 U.S.C. 3507(d).

Reporting	20	1	1	20
Totals	20	1	1	20

Information Collection Costs: The Commission 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(b), “Blanket Authorization Transaction Report under Section 203 FPA”

Action: New Collection

OMB Control No: To Be Determined

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 codifies 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.

15. 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].

#### **V. Environmental Analysis**

16. 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.<sup>12</sup> No environmental consideration is necessary for Commission action that involves information gathering, analysis, and dissemination.<sup>13</sup> Consequently, neither an environmental impact statement nor an environmental assessment is required.

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<sup>12</sup> Regulations Implementing National Environmental Policy Act, Order No. 486, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs. ¶ 30,783 (1987).

<sup>13</sup> 18 CFR 380.4(a)(5).

**VI. Regulatory Flexibility Act**

17. The Regulatory Flexibility Act of 1980 (RFA)<sup>14</sup> 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.<sup>15</sup> Consequently, the Commission certifies that this reporting requirement will not have a significant economic impact on a substantial number of small entities.

**VII. Document Availability**

18. 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.

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<sup>14</sup> 5 U.S.C. 601-12.

<sup>15</sup> 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.

19. 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.

20. 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](mailto: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](mailto:public.referenceroom@ferc.gov).

### **VIII. Effective Date and Congressional Notification**

21. These regulations are effective [insert date 60 days after publication in the **FEDERAL REGISTER**]. The Commission has determined, with the concurrence of the administrator of the Office of Information and Regulatory Affairs of OMB, that this rule is not a "major rule" as defined in section 351 of the Small Business Regulatory Enforcement Fairness Act of 1996. The Commission will submit this rule to both houses of Congress and the Government Accountability Office.

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.

In consideration of the foregoing, the Commission amends part 33, Chapter I, Title 18 of the Code of Federal Regulations, as follows:

**PART 33 – APPLICATIONS UNDER FEDERAL POWER ACT SECTION 203**

1. The authority citation for part 33 continues to read as follows:

**Authority:** 16 U.S.C. 791a-825r, 2601-2645; 31 U.S.C. 9701; 42 U.S.C. 7101-7352; Pub. L. 209-58, 119 Stat. 594.

2. In § 33.1, paragraph (c)(12) is revised and paragraph (c)(17) is added to read as follows:

**§ 33.1 Applicability, definitions, and blanket authorizations.**

\* \* \* \* \*  
(c) \* \* \*.

(12) A public utility is granted a blanket authorization under section 203(a)(1) of the Federal Power Act to transfer its outstanding voting securities to:

(i) Any holding company granted blanket authorizations in paragraph (c)(2)(ii) of this section if, after the transfer, the holding company and any of its associate or affiliate companies in aggregate will own less than 10 percent of the outstanding voting interests of such public utility; or

(ii) Any person other than a holding company if, after the transfer, such person and any of its associate or affiliate companies in aggregate will own less than 10 percent of the outstanding voting interests of such public utility, and within 30 days after the end of the calendar quarter in which such transfer has occurred the public utility notifies the



Commission in accordance with paragraph (c)(17) of this section.

\* \* \* \* \*

(17) A public utility granted blanket authorization under paragraph (c)(12)(ii) of this section to transfer its outstanding voting securities shall, within 30 days after the end of the calendar quarter in which such transfer has occurred, file with the Commission a report containing the following information:

- (a) The names of all parties to the transaction;
- (b) Identification of the pre- and post-transaction voting security holdings (and percentage ownership) in the public utility held by the acquirer and its associate or affiliate companies;
- (c) The date the transaction was consummated;
- (d) Identification of any public utility or holding company affiliates of the parties to the transaction; and
- (e) A statement indicating that the proposed transaction will not result in, at the time of the transaction or in the future, cross-subsidization of a non-utility associate company or pledge or encumbrance of utility assets for the benefit of an associate company as required in § 33.2(j)(1).