Supporting Statement for

FERC-519, "Application for Sale, Lease or Disposition, Merger or Consolidation of Facilities or for Purchase or Acquisition of Securities of a Public Utility"
With regard to Blanket Authorization Under Federal Power Act Section 203

As proposed in Docket No. RM07-21-000
(Final Rule Issued February 21, 2008)

The Federal Energy Regulatory Commission (Commission) (FERC) is submitting for informational purposes only a Final Rule that modifies the requirements contained under the following collection of information: **FERC-519 "Application for Sale, Lease or Disposition, Merger or Consolidation of Facilities or for Purchase or Acquisition of Securities of a Public Utility"** *(Note: There will be no change to the reporting burden for FERC-519.)* **FERC-519** (1902-0082) is an existing information collection requirement approved by OMB through March 31, 2009. We estimate that the annual reporting-burden related to the subject Final Rule will have a minimal impact on the reporting burden. The regulations proposed by the Commission do not substantially change the filing requirements with which section 203 applicants must currently apply.

In addition, in separate orders, the Commission is concurrently issuing a section 203 Supplemental Policy Statement[1] and a Final Rule proposing to codify restrictions on affiliate transactions between franchised public utilities with captive customers and their market-regulated power sales affiliates or non-utility affiliates.[2] *(Note: We are submitting copies of these separate orders as part of this submission for informational purposes only. The proceedings in each of these documents will not have an impact on the burden for FERC-519.)*

Background

On August 8, 2005, the Energy Policy Act of 2005, Pub. L. No. 109-58, 119 Stat. 594 (2005) was signed in to law. Section 1289 (Merger Review Reform) of Title XII, Subtitle G (Market Transparency, Enforcement and Consumer Protection) of EPAct 2005 amended section 203 of the Federal Power Act and directed FERC to adopt, by rule, procedures for the expeditious consideration of applications for the approval of dispositions, consolidations, or acquisitions under section 203 of the FPA. Amended section 203 also:

- increased the value threshold for certain transactions subject to section 203 from $50, 000 to $10 million;
- extends the scope of section 203 to include transactions involving certain transfers of generation facilities and certain holding companies' acquisitions with a value in excess $10 million;

1 FPA Section 203 Supplemental Policy Statement, 119 FERC ¶ 61,060 (2007) (issued in Docket No. PL07-1-000).

2 Cross-Subsidization Restrictions on Affiliate Transactions, 119 FERC ¶ 61,061 (2007) (issued in Docket No. RM07-15-000).

- limits FERC's review of a public utility's acquisition of securities of another public utility to actions greater than $10 million; and
- requires that FERC when reviewing a proposed section 203 transaction, examine cross-subsidization and pledges or encumbrances of utility assets.

Section 203 of the FPA currently provides that Commission authorization is required for various types of dispositions and acquisitions of jurisdictional facilities, such as public utility mergers and consolidations. In 1996, the Commission issued the Merger Policy Statement, updating and clarifying the Commission's procedures, criteria, and policies concerning public utility mergers in light of continuing changes in the electric power industry and the regulation of that industry. The purpose of the Merger Policy Statement was to ensure that mergers are consistent with the public interest and to provide greater certainty and expedition in the Commission's analysis of merger applications.

In the year 2000, the Commission issued the Filing Requirements Rule,[3] a final rule updating the filing requirements under 18 CFR Part 33 of the Commission's regulations for section 203 applications. The Filing Requirements Rule implemented the Merger Policy Statement and provides detailed guidance to applicants for preparing applications. The revised filing requirements were also designed to assist the Commission in determining whether section 203 transactions are consistent with the public interest, to provide more certainty, and to expedite the Commission's handling of such applications.

The Energy Policy Act of 2005 (EPAct 2005) revised section 203(a) by amending section 203(a)(1) and directed that no public utility can sell, lease or otherwise dispose of all of its facilities subject to FERC jurisdiction or any part that has a value in excess of $10 million without FERC issuing an order authorizing such activity. In addition public utilities cannot merge or consolidate, directly or indirectly, these facilities with those of another entity without FERC authorization for purchasing, acquiring, taking any security with a value in excess of $10 million of any other public utility. Lastly, public utilities cannot purchase, lease or otherwise acquire an existing generation facility if it has a (a) a value in excess of $10 million; and (b) is used for interstate wholesale sales over which FERC has jurisdiction for ratemaking purposes with FERC authorization.

Section 203(a)(2) added a new requirement that no holding company in a holding company system that includes a transmitting utility or an electric utility is to purchase, acquire, or take any security with a value in excess of $10 million, or to merge or consolidate with another transmitting utility, electric utility, or a holding company in a holding company system that includes a transmitting utility, or an electric utility company with a value in excess of $10

3 "Revised Filing Requirements under Part 33 of the Commission's Regulations" Order No. 642, 65 FR 70,983 (November 28, 2000).

million without FERC authorization.

Section 203(a)(3) directs that upon receipt of an application for approval, FERC is to give reasonable notice in writing to the Governor and state commission of each of the states to be impacted by the application including where the physical property that will be affected is located and any other persons as may be necessary.

Section 203(a)(4) provides that after notice and an opportunity for hearing, FERC is to approve the proposed disposition, consolidation, acquisition, or change in control if FERC finds that the transaction will be consistent with the public interest. However, a new requirement was imposed on the Commission, namely that it must find that the transaction will not result in cross-subsidization of a non-utility associate company or pledge or encumbrance of utility assets for the benefit of an associate company, unless the cross-subsidization, pledge, or encumbrance is consistent with the public interest.

Section 203(a) (5) is a new requirement that directed FERC by rulemaking to adopt procedures for expeditious application of dispositions, consolidations, or acquisitions. FERC issued Order No. 669 to identify all types of transactions, or specify the criteria for transactions that meet the criteria establish in paragraph 4 of section 1289. FERC must provide expedited review of all transactions and grant or deny approval of the application 180 days after the application is filed. If the Commission cannot make a determination within 180 days, the application is considered to be approved unless FERC can find, based on good cause, that further consideration of is required to determine if the application meets the standards of paragraph (4). If such a situation exists, then FERC is to issue a tolling order which is to last no longer than 180 days, and at the end of the additional period, FERC is to grant or deny the application.[4]

Section 203(a)(6) was also a new section that provides for the terms “associate company”, “holding company” and “holding company system” as defined in the Public Utility Holding Company Act of 2005.[5].

Section 1289(b) provided that the requirements of this section are to take effect six months after the date of enactment of EPAct 2005 or February 7, 2006.

Section 1289(c) provides that the requirements of subsection (a) of section 1289 will not apply to any section 203 application that was filed on or before the date of enactment of EPAct 2005.

4 See Paragraph no. 4, EPAct 2005 §1289, Pub. L. No. 109-58, 119 Stat. 594 (2005).
5 EPAct 2005 § 1261 et. seq.

Section 203(b) of the FPA remained unchanged.

NOPR (Docket No. RM07-21-000)

On July 20, 2007, the Commission issued in Docket No. RM07-21-000, a Notice of Proposed Rulemaking (NOPR) that proposed to amend the Commission's regulations in accordance with section 203 of the Federal Power Act (FPA) to provide for a limited blanket authorization under FPA section 203(a)(1). The Commission proposed to amend 18 CFR Part 33 (Application for Acquisition, Sale, Lease, or Other Disposition, Merger or Consolidation of Facilities, or for Purchase or Acquisition of Securities of a Public Utility) to implement section 203(a)(1) of the FPA

As noted above, EPAct 2005 expanded the scope of the corporate transactions subject to the Commission's review under section 203 of the FPA. Among other things, amended section 203: (1) expands the Commission's review authority to include authority over certain holding company mergers and acquisitions, as well as certain public utility acquisitions of generating facilities; (2) requires that, prior to approving a disposition under section 203, the Commission must determine that the transaction would not result in inappropriate cross-subsidization of non-utility affiliates or the pledge or encumbrance of utility assets;[6] and (3) imposes statutory deadlines for acting on mergers and other jurisdictional transactions.

Docket No. RM07-15-000 Cross-Subsidization Restriction on Affiliate Transactions -

In RM07-15-000 a NOPR issued simultaneously with RM07-21-000, the Commission proposed to amend its regulations to revise Part 35 of Title 18 of the Code of Federal Regulations (CFR) and in accordance with sections 205 and 206 of the Federal Power Act (FPA),[7] to codify affiliate restrictions that would be applicable to all power and non-power goods and services transactions between franchised public utilities with captive customers and their market-regulated power sales and non-utility affiliates.[8] The Commission's goal in

6 Section 203(a)(4) is not an absolute prohibition on the cross-subsidization of a non-utility associate company or the pledge or encumbrance of utility assets for the benefit of an associate company. If the Commission determines that the cross-subsidization, pledge or encumbrance will be consistent with the public interest, such action may be permitted.

7 16 U.S.C. 824d, 824e.

8 For purposes of this NOPR, a "market-regulated" power sales affiliate means any power sales affiliate, other than a franchised public utility, whose power sales are regulated in whole or in part on a market basis. This would include, e.g., a power marketer, exempt wholesale generator, qualifying facility or other power seller affiliate permitted to make some or all of its power sales at market-based rates. A "non-utility" affiliate would include an affiliate that is not in the power sales or transmission business, e.g., a coal mining company, construction company, real estate company, energy-related technology company, communications systems company, among others. While the Commission, in previous documents, has referred to both categories of affiliates as "non-regulated," consistent with the discussion on cross-subsidization issues

proposing these preventive restrictions is to protect against inappropriate cross-subsidization of market-regulated and unregulated activities by the captive customers of public utilities. The proposed restrictions are based upon those already imposed by the Commission in the context of certain FPA section 203-[9] and 205 approvals, but expand the transactions and entities to which they apply.

Docket No. PL07-1-000 FPA Section 203 Supplemental Policy Statement

The Commission also issued PL07-1-000, a Policy Statement as a supplement to the Commission's rulemakings issued in 2006 to implement provisions of the Energy Policy Act of 2005 and also as a supplement to its 1996 Merger Policy Statement. The 2006 rulemakings addressed amendments to the Commission's corporate review authority under section 203 of the Federal Power Act (FPA),[10] the repeal of the Public Utility Holding Company Act of 1935[11] and the enactment of the Public Utility Holding Company Act of 2005.[12] Based on the Commission's experience in implementing the new laws thus far, and on the two technical conferences in which industry participants and state commissioners provided input on key issues, including the protection of captive customers against inappropriate cross-subsidization and the need to provide sufficient flexibility to encourage industry investment that benefits customers, the Commission found that it was appropriate to provide guidance in this Policy Statement regarding future implementation of section 203. The Commission clarified that the Policy Statement supplements, and does not replace, any part of the Commission's 1996 Merger Policy Statement.

Final Rule (Docket No. RM07-21-000)

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in our recent Market-Based Rate Final Rule, the Commission believes the term "market-regulated" more accurately describes power sellers with market-based rates since they remain subject to regulation. Market-Based Rates For Wholesale Sales Of Electric Energy, Capacity And Ancillary Services By Public Utilities, Order No. 697, 72 FR 39903 (July 20, 2007), FERC Stats. & Regs. ¶ 31,252, at P 490 (2007) (Market-Based Rate Final Rule). Accordingly, the Commission has modified its terminology in the Notice of Proposed Rulemaking.

9 16 U.S.C. 824b, amended by Energy Policy Act of 2005, Pub. L. No. 109-58, 1289, 119 Stat. 594, 982-83 (2005) (EPAct 2005).

10 16 U.S.C. 824b (2000), amended by EPAct 2005, Pub. L. No. 109-58, 1289, 119 Stat. 594, 982-83 (2005). See also Transactions Subject to FPA section 203, Order No. 669, 71 FR 1348 (Jan. 6, 2006), FERC Stats. & Regs. ¶ 31,200 (2005), order on reh'g, Order No. 669-A, 71 FR 28422 (May 16, 2006), FERC Stats. & Regs. ¶ 31,214, order on reh'g, Order No. 669-B, 71 FR 42579 (July 27, 2006), FERC Stats. & Regs. ¶ 31,225 (2006).

11 16 U.S.C. 79a et seq. (PUHCA 1935).

12 EPAct 2005, Pub. L. No. 109-58, 1261, et seq., 119 Stat. 594, 972-78 (PUHCA 2005). See also Repeal of the Public Utility Holding Company Act of 1935 and Enactment of the Public Utility Holding Company Act of 2005, Order No. 667, 70 FR 75592 (Dec. 20, 2005), FERC Stats. & Regs. ¶ 31,197 (2005), order on reh'g, Order No. 667-A, 71 FR 28446 (May 16, 2006), FERC Stats. & Regs. ¶ 31,213, order on reh'g, Order No. 667-B, 71 FR 42750 (July 28, 2006), FERC Stats. & Regs. ¶ 31,224 (2006), order on reh'g, Order No. 667-C, 72 FR 8277 (Feb. 26, 2007), 118 FERC ¶ 61,133 (2007).

On February 21, 2008, the Commission issued in Docket No. RM07-21-000, a Final Rule in accordance with section 203 of the Federal Power Act (FPA) that amends Part 33 of its regulations to add five blanket authorizations under section 203(a)(1).

The Final Rule adopts the proposal in the Blanket Authorization NOPR to pre-authorize a public utility to dispose of less than 10 percent of its voting securities to a public utility holding company if, after the disposition, the holding company and any associate or affiliate companies in aggregate will own less than 10 percent of the outstanding voting interests of that public utility. Based on comments to the Blanket Authorization NOPR (see item no. 8), the Final Rule also provides four additional blanket authorizations under section 203(a)(1).

- First, a public utility is granted a blanket authorization under section 203(a)(1) to transfer its outstanding voting securities to any holding company granted blanket authorization in § 33.1(c)(8) 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.

- Second, a public utility is granted a blanket authorization under section 203(a)(1) to transfer its outstanding voting securities to any holding company granted blanket authorization in § 33.1(c)(9).

- Third, a public utility is granted a blanket authorization under section 203(a)(1) to transfer its outstanding voting securities to any holding company granted blanket authorization in § 33.1(c)(10).

- Fourth, a public utility is granted a blanket authorization under section 203(a)(1) for the acquisition or disposition of a jurisdictional contract where neither the acquirer nor transferor has captive customers or owns or provides transmission service over jurisdictional transmission facilities, the contract does not convey control over the operation of a generation or transmission facility, the parties to the transaction are neither affiliates nor associate companies, and the acquirer is a public utility.

In addition, the Final Rule provides certain clarifications regarding the existing blanket authorizations under section 203. Finally, this Final Rule clarifies the definitions of the terms “affiliate” and “captive customers.”

Docket No. RM07-15-000 Cross-Subsidization Restriction on Affiliate Transactions (Final Rule) -

On February 21, 2008 the Commission issued a Final Rule simultaneously with Blanket Authorization Final Rule (RM07-21-00). In RM07-15-000, in accordance with the provisions of sections 205 and 206 of the Federal Power Act, the Commission is amending its regulations to codify restrictions on affiliate transactions between franchised public utilities that have captive customers or that own or provide transmission service over jurisdictional transmission facilities, and their market-regulated power sales affiliates or non-utility affiliates. These restrictions will supplement other restrictions the Commission has in place to protect captive customers of franchised public utilities or transmission customers of franchised public utilities that own or provide transmission service over jurisdictional transmission facilities from inappropriate cross-subsidization of affiliates. This Final Rule does not impose any additional information collection requirements.

Docket No. PL07-1-001 FPA Section 203 Supplemental Policy Statement on Rehearing

On July 20, 2007, the Commission issued a Supplemental Policy Statement[13] as a supplement to the Commission's rulemakings issued in 2006 to implement provisions of the Energy Policy Act of 2005 (EPAct 2005) and also as a supplement to its 1996 Merger Policy Statement. Motions for clarification and/or additional comments were filed by Entegra Power Group LLC (Entegra) and the American Antitrust Institute (AAI). On February 21, 2008, the Commission issued an order denying these requests for clarification and reconsideration of the Supplemental Policy Statement.

In the Supplemental Policy Statement the Commission clarified that under certain circumstances neither public utilities nor public utility holding companies have an obligation to seek approval under section 203(a)(1)(A) for a "disposition" of public utility jurisdictional facilities in transactions for the purchase or sale of the securities of a public utility or its upstream holding company that are made by third parties (secondary market transactions).[14] Entegra requests that the Commission clarify that secondary market transactions include "circumstances where: (1) the securities are regularly traded but are not necessarily traded at a volume of thousands of shares per day on a public exchange and (2) the public utility or its holding company may review proposed transactions in advance and play a ministerial role in approving the transactions but is not a party to them."[15] The Commission is denying Entegra's request as unsupported at this time.

In the Supplemental Policy Statement, the Commission reviewed concerns about whether the Commission's Appendix A analysis is sufficient to identify market power concerns. The Supplemental Policy Statement explained that the Commission will continue to use the

13 *FPA Section 203 Supplemental Policy Statement*, 72 Fed. Reg. 42,277 (Aug. 2, 2007), FERC Stats. & Regs. ¶ 31,253 (2007) (Supplemental Policy Statement).
14 Supplemental Policy Statement, FERC Stats. & Regs. ¶ 31,253 at P 36.
15 Entegra Comments at 1.

analytical screens adopted by the Commission in the 1996 Merger Policy Statement to help identify mergers that have the potential to harm competition, but that the Commission's review goes beyond those screens and looks at all relevant factors regarding the effect on competition. The Commission stated that it will continue to analyze both horizontal and vertical mergers by focusing on the merger's effect on a company's ability and incentive to exercise market power.

AAI argued that the Supplemental Policy Statement rejects, without adequate justification, concerns raised at the March 8, 2007 technical conference regarding the Commission's Appendix A analysis. AAI files commented on two specific areas in which it believes the Supplemental Policy Statement falls short of providing a justification for maintaining the status quo approach.

The Commission finds that AAI has not provided any additional information that would warrant reconsideration of the findings in the Supplemental Policy Statement. AAI essentially repeated its argument that the Commission is overly concerned with the Herfindahl-Hirschman Index (HHI)[16] and should instead focus on the potential competitive harm resulting from a merger. The Commission addressed this argument in the Supplemental Policy Statement: "the Commission does look beyond the change in HHI in its analysis of the effect on competition in both horizontal and vertical mergers. The change in HHI serves as a screen to identify those transactions that could potentially harm competition."[17] The Commission also explained that it typically considers a case-specific theory of competitive harm, which includes, but is not limited to, an analysis of the merged firm's ability and incentive to withhold output in order to drive up prices.

A. Justification

1. CIRCUMSTANCES THAT MAKE THE COLLECTION OF INFORMATION NECESSARY

The Commission is obligated by statute to regulate key economic aspects of the electric, natural gas and oil industries. The law requires the Commission's economic regulatory activity because the transmission of electricity, natural gas, and oil has often been a natural monopoly. In enacting Part II of the Federal Power Act (FPA) in 1935, one of the primary Congressional goals was to protect electric ratepayers from abuses of market power. To accomplish this goal,

16 As part of the screen analysis, applicants must define the relevant products sold by the merging entities, identify the customers and potential suppliers in the geographic markets that are likely to be affected by the proposed transaction, and measure the concentration in those markets. Using the Delivered Price Test to identify alternative competing suppliers, the concentration of potential suppliers included in the defined market is then measured by the HHI and used as a screen to determine which transactions clearly do not raise market power concerns. 1996 Merger Policy Statement, FERC Stats. & Regs. ¶ 31,044 at 30,119-20.

17 Supplemental Policy Statement, FERC Stats. & Regs. ¶ 31,253 at P 65.

Congress directed the FERC to oversee sales for resale and transmission service provided by public utilities in interstate commerce. Under Section 203 of the FPA, the FERC must review proposed mergers, acquisitions and dispositions of jurisdictional facilities by public utilities, if the value of facilities exceeded $50,000, *(now $10 million for certain transactions due to EPACT 2005, see above)* and must approve such transactions if they are consistent with the public interest. Today, one of FERC's overarching goals is to promote competition in wholesale power markets, having determined that effective competition, as opposed to traditional forms of price regulation, can best protect the interests of ratepayers. Market power, however, can be exercised to the detriment of effective competition and exercise of market power in bulk power markets.

Market power can be created or enhanced by mergers. Mergers can eliminate a competitor from the market and concentrate control of generating assets. Mergers can also enhance vertical market power, by giving the merged company a new or increased ability or incentive to restrict inputs to power production. The Commission considers market power issues in reviewing applications for mergers or other jurisdictional acquisitions or dispositions of assets. If a merger will create market power or enhance the applicant's market power significantly, mitigation of these effects is required in order to ensure that the merger is consistent with the public interest.

As noted above, Section 203 of the FPA provides that FERC approval is required for transactions in which a public utility disposes of jurisdictional facilities, merges such facilities with facilities owned by another person, or acquires the securities of another public utility. Under the statute, FERC must find that the proposed transaction will be consistent with the public interest. The filing requirements under review define the terms of information necessary to investigate the possible impact of the proposed transaction on public interest.

The basis for current practices with respect to Section 203 applications is Federal Power Commission Opinion No. 507 issued in the 1966 Commonwealth Edison Company, proceeding, 36 FPC 907. In that proceeding FERC set forth the criteria to be applied when determining whether the proposed transaction is consistent with the public interest.

The Final Rule implements a codification of a limited blanket authorization under FPA section 203(a)(1), providing for a category of jurisdictional transactions under section 203(a)(1) for which the Commission would not require applications seeking before-the-fact approval.

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

Since 1935, the Commission has regulated certain electric utility activities under the Federal Power Act (FPA). Under FPA sections 205 and 206, FERC oversees the rates, terms and conditions of sales for resale of electric energy and transmission service in interstate commerce by public utilities. The Commission must ensure that those rates, terms and conditions are just and reasonable, and not unduly discriminatory or preferential. Under FPA section 203, the Commission reviews mergers and other asset transfers involving public utilities.

The information from FERC-519 enables the FERC to exercise its authority for public utility disposition, merger, consolidation of facilities, purchase or acquisition oversight and enforcement responsibilities in accordance with the FPA as referenced above. Without this information, FERC would be unable to employ examine and approve or modify these actions. The FERC may employ enforcement proceedings when violations occur.

The requisite information includes descriptions of corporate attributes of the party or parties to the proposed transaction (a sale, lease, or other disposition, merger, or consolidation of facilities, or purchase of other acquisition of the securities of a public utility and the facilities or other property involved in the transaction), statements as to the effect of the transaction or current contracts, and the applicant's showing that the transaction will be consistent with the public interest.

FERC in response to rapid development of new market institutions is looking at ways to promote competition in regional power markets. It must also ensure that competitive market structures continue to deliver just and reasonable rates. By law, FERC reviews changes in ownership or control of electric power facilities. These reviews become even more important in a more competitive environment. Companies are finding it necessary to repackage their assets by building on their strengths and reducing their vulnerabilities and FERC must ensure that changes in ownerships patterns do not create market power problems.

Competition led to significant merger activity in many industries, but mergers can create or enhance market power by reducing the number of energy providers. The FERC's challenge is first to decide whether particular mergers are in the public interest and then to monitor them for overly concentrated markets and exercises of market power by those companies. Many parties have bought and sold electric generating plants-asset acquisition can raise important market power issues. Convergence between the gas and electric industries has also led to mergers and alliances across two industries.

However, in light of scandals that have plagued the energy industry, the number of merger applications has declined dramatically. Many energy companies are shedding assets on a massive scale. This sell-off is predominately driven by an industry-wide "back to basics" strategy and the need for some companies to regain liquidity as they struggle with industry

overcapacity and illiquid trading markets

This information collection is the minimum necessary to comply with the statutes. The consequences of any failure to collect the specified data would prevent Commission determination of these jurisdictional corporate activities which is adverse to public interest. If this information were not collected, there would be no data available to determine whether violations of the law had occurred and the Commission would not have all of the regulatory mechanisms necessary to ensure customer protection.

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 and the value of improved information technology to reduce the burden. Specifically, in order to increase the efficiency with which it carries out its program responsibilities, the Commission has been implementing measures to use information technology to reduce the amount of paperwork required in its proceedings. In Order No. 619, FERC established an electronic filing initiative to meet the goals of the Government Paperwork Elimination Act, which directed agencies to provide for optimal use and acceptance of electronic documents and signatures and electronic recordkeeping, where practical, by October 2003. Among the qualified documents that can now be filed electronically are comments on a filing. "Comments on a Filing" is a document filed in response to a FERC public notice or order in a specific FERC docketed proceeding. It includes comments on applications, comments filed with environmental documents, protests or statements of positions.

In Order No. 617, July 27, 2000, FERC amended its records' retention regulations to reduce the burden of maintaining records for regulated companies. The Commission did not establish specific media type in order to give the regulated entities the flexibility in the selection of media in order to adapt quickly to changes in technology without the necessity of obtaining FERC approval on the use of media not provided for in the regulations.

In Final Rule RM98-4-000, Order No. 642, the Commission required in 18 CFR 33.6 that applicants submit a form of notice for publication in the Federal Register announcing the submission of the application to FERC and providing a notice in electronic format. Likewise in 18 CFR 33.8 applicants are required to provide copies of the competitive screen analysis in both hard copy and electronic versions. The FERC must have the ability to perform within a reasonable amount of time, an independent verification of the horizontal or competitive analysis presented by the application. To do so, both the Commission and the intervenors to its proceedings must have the data underlying the analysis in a useful format. Both of these measures were instituted to expedite review and processing of the application and to disseminate

the information to the public as soon as possible. Further, as the Commission increases its use of electronic media for filing, storage, retrieval, and tracking of information and documents, greater uniformity in filing procedures, where practical, will greatly expedite and simplify the conversion to electronic media. The issuance of the final rule streamlined filing requirements and reduced the information burden for mergers and other dispositions of jurisdictional facilities that raised no competitive concerns and eliminated filing requirements that were outdated or longer useful to the Commission.

On November 15, 2007, the Commission issued a Final Rule, RM07-16-000, Order No. 703, "Filing via the Internet" 73 Fed. Reg. 65659 (November 23, 2007) revising its regulations for implementing the next version of its system for filing documents via the Internet, eFiling 7.0. The Final Rule allows the option of filing all documents in Commission proceedings through the eFiling interface except for specified exceptions, and of utilizing online forms to allow "documentless" interventions in all filings and quick comments in P (Hydropower Project), PF (Pre-Filing NEPA activities for proposed gas pipelines), and CP (Certificates for Interstate Natural Gas Pipelines) proceedings.

This Final Rule amended the Commission's regulations[18] to provide that all documents filed with the Commission may be submitted through the eFiling interface except for documents specified by the Secretary. The changes implemented in the Final Rule means that categories such as oversized documents and most confidential documents will be accepted via eFiling. However, at this time, there are principal exceptions, and they are tariffs, tariff revisions and rate change applications; some forms;[19] and documents that are subject to protective orders.

The Final Rulemaking became effective 30 days after publication in the Federal Register or December 24, 20007. However, implementation of eFiling 7.0 is anticipated to occur on March 3, 2008. The Secretary of the Commission will announce the implementation of the upgrade in advance and will also at that time post filing instructions.

The Commission has already issued instructions specifying acceptable file formats for filings submitted on CD-ROM, DVD and other electronic media. These can be found at http://www.ferc.gov/help/submission-guide/electronic-media.asp. In addition, in some cases Commission staff has issued instructions applying to specific types of filings. Where there are no specifications for a particular type of filing, users must follow the Secretary's instructions. At this time, the eFiling system will accept documents in their native formats. This will include

18 Rule 2003(c) of the Commission's Rules of Practice and Procedure, 18 CFR 385.2003(c).
19 The following continue to be submitted through eForms: FERC Form No.1, FERC Form No. 2, FERC Form No. 2-A, FERC Form No. 3-Q, FERC Form No. 6, FERC Form No. 6-Q, Form 60, Form 714, and Electric Quarterly Reports. FERC Form 1-F is currently not included in eForms, so it may be efiled. Open Access Transmission Tariff (OATT) filings may also be efiled.

both text or word processing documents, and other more specialized documents such as spreadsheets and maps. It will also accept text documents in searchable formats, including scanned documents that have been saved in searchable form. This same list will serve as the list of acceptable formats for eFiling 7.0. Submitters will be able to choose a suitable format from that list unless they are instructed otherwise in specific instances by regulation or by direction from Commission staff. Audio and video files will be accepted only in waveform audio format (.wav) for audio content and either audio-video interleave (.avi) or quicktime (.mov) files for video content, except where submitters are specifically instructed otherwise.

The Commission intends, as far as practicable, to continue decreasing its reliance on paper documents and to continue to upgrade eFiling capabilities in furtherance of the Commission's responsibilities under the Government Paperwork Elimination Act.[20] At this time, however, the Commission will not accept tariff filings through the eFiling system.

4. DESCRIBE EFFORTS TO IDENTIFY DUPLICATON 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 filings and data requirements are periodically reviewed in conjunction with OMB clearance expiration dates. This includes a review of the Commission's regulations and data requirements to identify any duplication. In certain cases, some of the required data in 18 CFR 33.3 is available from other FERC information collections. In these cases, the applicant may request a waiver of the filing requirements which is typically granted.

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

The information requirements under FERC-519 apply to all jurisdictional entities. The FERC realizes that not all applications require the same amount of information (e.g., regarding an applicant's organizational structure and business arrangement activities) to allow the Commission to evaluate whether the transaction is consistent with the public interest. Applicants may request a waiver of specific sections accompanied by support for why they believe that FERC does not need such information. For example, as to the requirement of 18 CFR 33.2(c)(3) to provide organizational charts, an applicant can seek waiver of this requirement based on a demonstration that the proposed transaction does not affect the corporate structure of any party to the transaction.

20 Pub. L. No. 105-277, § 1704, 112 Stat. 2681, 2681-750 (1998).

Most public utilities to which the requirements in this Final Rule apply do not fall within the Regulatory Flexibility Act's definition of a small entity.[21] In particular, the rule implements codification of a limited blanket authorization under FPA section 203(a)(1), providing for a category of jurisdictional transactions under section 203(a)(1) for which the Commission would not require before-the-fact approval. Thus, filing requirements are reduced by the rule. In addition, the Final Rule does not substantially change the current requirements and regulations that applicants must comply with for transactions subject to FPA Section 203.

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

Section 203 of the FPA requires a filing every time a public utility disposes of jurisdictional facilities, merges such facilities, or acquires the securities of another public utility. If the collection were conducted less frequently, the Commission would be unable to perform its mandated oversight and review responsibilities with respect to facilities, mergers and securities transactions under Section 203 of the FPA.

7. EXPLAIN ANY SPECIAL CIRCUMSTANCES RELATING TO THE INFORMATION

There are no special circumstances requiring the collection of information to be conducted in a manner inconsistent with the guidelines in 5 CFR 1320.5, except as provided below:

a) There is no time schedule for the information collection. Public utilities make corporate application filings when they seek to:
   - Dispose of or acquire jurisdictional facilities;
   - Merge such facilities with another person or
   - Acquire securities of another public utility.

b) Section 1320.5(d) limits the collection of data to an original and two copies of any document. The data currently provided under FERC-519 includes an original and eight copies. The original is routed to *e*- Library for public dissemination over FERC's web site. One copy is distributed to the Office of the Executive Director for public inspection in the Commission's Public Reference Room. An additional copy is distributed to the Office of the General Counsel for legal review. Three copies are distributed to the Office of Markets, tariffs and Rates for technical review and an additional copy is forwarded for review of accounting transactions. Order No. 642 increased the number of copies from five to eight because of the increasing complexity of Section 203 applications being filed.

21 5 U.S.C. § 601(3) (2000).

In order for the Commission to be able to process Section 203 applications as expeditiously as practicable, with a stated goal of issuing an initial order for most merger applications within 150 days of a completed application, it could only be achieved by distributing copies simultaneously to the respective staff within the Office of Energy Market Regulation. With the further development of the Commission's electronic filing system (see above), staff will be able to conduct these review functions with fewer hard copies in a timely manner.

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

The Commission's procedures require that the rulemaking notice be published in the Federal Register, thereby allowing all public utilities, state commissions, federal agencies, and other interested parties an opportunity to submit comments, or suggestions concerning the proposal. The rulemaking procedures also allow for public conferences to be held as required. Comments are due 30 days from publication in the Federal Register.

As noted in the NOPR submission, the Commission held on December 7, 2006, a technical conference (December 7 Technical Conference) to discuss several of the issues that arose in the Order Nos. 667 and 669 rulemaking proceedings. The December 7th Technical Conference discussed a range of topics. This was followed by a technical conference on March 8, 2007 to discuss whether the Commission's section 203 policy should be revised and, in particular, whether the Commission's Appendix A merger analysis is sufficient to identify market power concerns in today's electric industry market environment.

On July 20, 2007 in response to the technical conferences, the Commission took three actions based on the Commission's experience implementing amended FPA section 203 and PUHCA 2005. In the NOPR, the Commission proposed an additional blanket authorization for certain dispositions of jurisdictional facilities under FPA section 203(a)(1) and sought comments on additional blanket authorizations under section 203. In addition, in separate proceedings, the Commission issued a policy statement providing additional guidance regarding the Commission's section 203 authority[22] and a notice of proposed rulemaking proposing to codify restrictions on affiliate transactions between franchised public utilities with captive customers and their market-regulated power sales affiliates or non-utility affiliates.[23]

22 FPA Section 203 Supplemental Policy Statement, 72 FR 42277 (Aug. 2, 2007), FERC Stats. & Regs. ¶ 31,253 (2007) (Supplemental Policy Statement), order on clarification and reconsideration, 122 FERC ¶ 61,157 (2008).
23 Cross-Subsidization Restrictions on Affiliate Transactions, 72 FR 41644 (July 31, 2007), FERC Stats. & Regs. ¶ 32,618

Comments on the Blanket Authorization NOPR were filed by: American Public Power Association and National Rural Electric Cooperative Association (APPA/NRECA); Edison Electric Institute (EEI); Electric Power Supply Association (EPSA); Entergy Services, Inc. (Entergy); Financial Institutions Energy Group (the Financial Group); Mirant Corporation (Mirant); Modesto Irrigation District (Modesto); and Oklahoma Corporation Commission (Oklahoma Commission);.

APPA/NRECA, Mirant and the Oklahoma Commission support the limited blanket authorization as proposed by the Commission. The Oklahoma Commission stated that the rule would allow utilities to expedite business ventures, but warned that the Commission should use terms in their plain and ordinary meanings to reduce any potential ambiguity. It also recommended that the Commission consider language that would allow state commissions to continue to receive notices of any investigations of regulated public utility companies.

In the Blanket Authorization NOPR, the Commission asked for comments on the "in aggregate" limitation. APPA/NRECA support the proposed aggregate ownership limitation, and stated that it is needed to help prevent the transfer of control of public utilities. They argued that omitting the "in aggregate" limitation would allow a public utility to sell less than 10 percent of its voting securities in successive transfers to each of several affiliates or associate companies (or even the same entity). APPA/NRECA further argued that omitting the "in aggregate" limitation is not in the public interest because, absent a case-by-case review, the Commission has no basis for a finding that an indirect transfer of control of a public utility's generation or transmission facilities to a single entity or to several affiliated entities will not harm competition, captive customers, or transmission customers.

Mirant also supported the limited blanket authorization with the "in aggregate" limitation. It stated that while this does not completely parallel the blanket authorization granted in Order No. 669, it is comparable enough to remedy the problem that exists when one party must seek Commission review of the transaction.

EEI and the Financial Group support the blanket authorization with certain clarifications and recommendations. Specifically, the Financial Group argued that the proposed less than 10 percent blanket authorization under section 203(a)(1) should be expanded to include all acquirers, not just holding companies. It asserted that if a disposition of less than 10 percent of a public utility's voting securities to a holding company raises no concerns with respect to control, markets, or captive customers, then a disposition of less than 10 percent of a public utility's voting securities to an entity that is not a holding company should also raise no concerns. The Financial Group stated that, in the case of a disposition of less than 10 percent of

(2007) (Affiliate Transactions NOPR); see Cross-Subsidization Restrictions on Affiliate Transactions, Order No. 707 122 FERC ¶ 61,155 (2008) (Affiliate Transactions Final Rule).

the voting securities of a public utility, the interest being disposed of does not convey control and cannot harm markets or captive customers, so the status of the acquirer – as a holding company, public utility, or an entity that is neither – should be irrelevant. It argues that requiring a public utility to seek approval under section 203(a)(1) when disposing of less than 10 percent of its voting securities to a non-holding company would not serve any regulatory purpose, and adds needless costs and delays to transactions that do not raise section 203 concerns.

Similarly, EEI argued that the Commission should not limit its proposed section 203(a)(1) blanket authorization to the entities described in 18 CFR 33.1(c)(2)(ii). EEI stated that § 33.1(c)(2)(ii) only covers acquisitions by holding companies of securities of a transmitting utility, electric utility company, or holding company in a holding company system with such utilities. This, EEI argued, excludes a broader class of public utilities as well as non-holding company acquirers. It contends that the Commission would reduce the regulatory burden and encourage investment without causing harm "by extending the new blanket authorization to cover jurisdictional transfers of securities from the broader class of 'public utilities' to 'any person' without the constraints contained in [§] 33.1(c)(2)(ii)."[24]

As an additional matter, the Financial Group recommended that the Commission clarify that the aggregate limitation only applies to companies in a holding company system that are 10 percent or more owned by the holding company or its subsidiaries. It argued that this should be clarified by eliminating the reference to "affiliate" altogether in the proposed definition. In the alternative, the Financial Group argued that the Commission clarify that the term does not refer to the PUHCA 2005 definition of affiliate, but rather to an entity that controls, is controlled by, or is under common control with, another entity (where control is rebuttably presumed to mean a voting interest of 10 percent or more).

Commission Response

The Commission is adopting the proposed blanket authorization without modification. The Commission will retain the "in aggregate" limitation so that, after a disposition of a public utility's securities under the proposed blanket authorization, the acquiring holding company and any associate or affiliate companies "in aggregate" would own less than 10 percent of the outstanding voting interests of that the public utility. As commenters pointed out, the limitation helps to prevent a public utility from transferring less than 10 percent of its voting securities in successive transfers to each of several affiliate or associate companies (or even the same entity), and thereby transferring control.

The Commission denies the Financial Group's and EEI's requests to expand the blanket authorization to cover not only public utility dispositions of securities to holding companies but

24 EEI Comments at 8.

also public utility dispositions of securities to "any persons." This request would expand the blanket authorization proposed in the existing NOPR beyond its original intent, which was to ensure that transactions qualifying under the section 203(a)(2) blanket authorization would not have to seek approval under section 203(a)(1).[25] In addition, limiting the blanket authorization to holding companies allows the Commission to monitor these dispositions for possible changes of control even when they fall under the 10 percent threshold because of holding companies' preexisting reporting requirements.[26] If the Commission were to expand the blanket authorization to "any person," it would need to establish appropriate reporting requirements so that it could monitor transfers to non-holding companies. This is important because, as the Commission explained in the Supplemental Policy Statement, 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.[27] Accordingly, at this time the Commission declines to expand the proposed generic blanket authorization as requested EEI and the Financial Group. However, the Commission recognizes 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 will not harm competition or customers as long as there is sufficient ability to monitor possible changes in control of public utilities. Therefore, the Commission is willing to consider such blanket authorizations on a case-by-case basis if applicants can propose sufficient reporting requirements to allow adequate monitoring of possible changes in control and assure it that captive customers are adequately protected.

The Commission is also denying the Financial Group's suggestion to eliminate the term "affiliate" from the proposed blanket authorization. However, the Commission is clarifying that the term affiliate for purposes of the blanket authorization does not refer to the PUHCA 2005 definition of affiliate, but rather, to the definition the Commission adopted in the Affiliate Transactions Final Rule issued concurrently with this Final Rule. As discussed in the Affiliate Transactions Final Rule, the Commission finds it appropriate to explicitly incorporate the PUHCA 1935 definition of affiliate for EWGs.[28] The Commission also adopted the PUHCA 1935 definition of affiliate for non-EWGs, but with adjustments to reflect its previously-used 10 percent voting interest threshold for non-EWGs and to eliminate certain language not applicable or necessary in the context of the FPA.[29] Accordingly, this definition applies for purposes of the blanket authorizations adopted under section 203.

25 See Blanket Authorization NOPR, FERC Stats. & Regs. ¶ 32,619 at P 9-11.
26 See, e.g., 18 CFR 366.4; 18 CFR 366.23; 18 CFR parts 367-68.
27 See Supplemental Policy Statement, FERC Stats. & Regs. ¶ 31,253 at n.48.
28 16 U.S.C. 824m.
29 See, e.g., Morgan Stanley Capital Group, Inc., 72 FERC ¶ 61,082, at 61,436-37 (1995).

Finally, with regard to the Oklahoma Commission's request for language that would allow state commissions to continue to receive notices of investigations of regulated public utilities, the Commission notes that it previously has not been the practice of the Office of Enforcement to inform state commissions of investigations that it is conducting. Section 1b.9 of the Commission's regulations requires that all investigative proceedings shall be treated as non-public by the Commission and its staff except to the extent that the Commission authorizes public disclosure, the matter is made a matter of public record during an adjudicatory proceeding, or disclosure is required under the Freedom of Information Act.[30] The Commission concludes that the disclosure of such information could impede the willingness of market participants to self-report and otherwise cooperate in investigations. As such, the Commission declines to grant the Oklahoma Commission's request.[31]

Reconciling the Proposed Blanket Authorization with the Presumption Provided in the Supplemental Policy Statement

Both the Financial Group and EEI questioned whether the blanket authorization is necessary in light of the Supplemental Policy Statement that creates a presumption of no transfer of control for security transfers of under 10 percent of a company's securities. They stated that absent such a change in control, the Commission has indicated that a sale of securities is not a transaction subject to section 203(a)(1) jurisdiction. If that is the case, EEI questioned why there should be a blanket authorization covering security transfers of up to 10 percent from utility companies to holding companies.

EEI also stated that it assumes that the proposed blanket authorization is meant to supplement and not modify other blanket authorizations and clarifications so, for example, the new authorization would apply as to securities transfers only in excess of $10 million.

Mirant contends that, absent the Blanket Authorization NOPR, no pre-approval would be required from the Commission for a public utility to transfer up to 10 percent of voting securities, though it recognizes the "possibility" that there is a presumption that control could be exercised over the management or policies of the public utility. Accordingly, it stated that the Commission should adopt the proposed blanket authorization to remove the presumption that exists in the Supplemental Policy Statement with respect to transfers of voting securities from a public utility to a public utility holding company. It further contends that the proposed blanket authorization will remove the inconsistency in the filing requirements between holding companies and public utilities.

30 18 CFR 1b.9.

31 The Commission's determination on this issue is also stated in the concurrently-issued Notice of Proposed Rulemaking in Docket Nos. AD07-7-000 and RM07-19-000 (Wholesale Competition in Regions with Organized Electric Markets) with regard to releasing information to state commissions on referrals by market monitoring units to the Commission for investigation.

Commission Response

The Commission provided guidance in the Supplemental Policy Statement that a transfer of less than 10 percent would be rebuttably presumed not to be a transfer of control in order to assist applicants in determining the need for prior authorization under section 203, not to define the scope or limit of our jurisdiction. The agrees with commenters that if there is no change in control of a public utility as a result of the transfer of a public utility's securities, then the public utility has not "otherwise disposed" of its jurisdictional facilities under section 203(a)(1)(A) and no Commission authorization is required. However, as the Commission stressed in the Supplemental Policy Statement, it cannot make an ex ante determination regarding what is control for purposes of the Commission's section 203 analysis absent facts of a specific case. The circumstances that convey control vary depending on a variety of factors, including the transaction structure, the nature of voting rights and/or contractual rights and obligations conveyed in the transaction. Because of the possibility that transfers of up to 10 percent could result in a change in control, the rebuttable presumption in the Supplemental Policy Statement and the blanket authorization should help eliminate uncertainties. Moreover, the Commission views the "in aggregate" limitation in the blanket authorization as important to ensure that companies do not circumvent section 203(a)(1)(A) through multiple dispositions of less than 10 percent.

In response to EEI, the Commission clarifies that the new blanket authorization in this Final Rule is meant to supplement and not modify other blanket authorizations and clarifications in the Order No. 669 series. The Commission also clarifies that, consistent with the statute, it applies only to section 203(a)(1)(A) transfers of securities of a value in excess of $10 million.

Reporting Requirement

In the Blanket Authorization NOPR, the Commission sought comment on whether, in association with the proposed blanket authorization, additional reporting by the public utility should be required.

Most commenters, including EEI, the Financial Group, Mirant, and the Oklahoma Commission argue that the Commission should not impose a reporting requirement associated with the proposed blanket authorization. These commenters contend that no additional reporting obligation is required because the relevant information will be submitted by the holding company that is acquiring the securities.

EEI argued that if the Commission expands the proposed blanket authorization to cover jurisdictional transfer of securities by public utilities to other entities, the Commission may wish to impose a counterpart to the 18 CFR 33.1(c)(4) holding company reporting requirement on the public utility, but should do so only for those transactions not already covered by § 33.1(c)(4).

The Oklahoma Commission also argued that additional reporting is not needed. However, the Oklahoma Commission proposed that the relevant state commission be notified of additional reviews or requests about individual public utilities' current acquisition information. The Oklahoma Commission also urged the Commission to add language that states that section 203 does not preempt applicable state law concerning reporting requirements, which would further protect the interest and authority of state commissions.

In contrast, APPA/NRECA argued that the Commission should require a public utility to report on all dispositions of its securities undertaken pursuant to the blanket authorization. APPA/NRECA argued that the reporting burden is minimal and that the Commission should not have to (and, in fact, may not be able to) piece together this information from existing reports.

Commission Response

We will not require additional reporting requirements at this time. In the Blanket Authorization NOPR, the Commission proposed not to impose additional reporting requirements because existing regulations require the submission of schedules and forms that are also provided to the SEC.[32] While we agree with APPA/NRECA that additional reporting requirements might provide greater efficiency to the Commission, at this time we believe the potential reporting burden on public utilities outweighs the possible efficiency gains.

The Commission clarifies, as requested by the Oklahoma Commission, that section 203 does not preempt applicable state law concerning reporting requirements. With regard to the Oklahoma Commission's request that state commissions be notified of additional reviews or requests about individual public utilities' current acquisition information, to the extent that such reviews or requests relate to an investigation, they are subject to the Commission's rules governing investigations as described supra. However, if the reviews or requests are made as the result of a public inquiry, such notification may be made. For example, the Commission's Division of Audits in the Office of Enforcement has provided notice of public final audit reports of jurisdictional companies to affected states. The Commission continues to encourage its audits staff to continue this practice.

32 For example, the Commission already requires the holding company to provide to the Commission copies of any Schedule 13D, Schedule 13G and Form 13F, at the same time and on the same basis, as filed with the SEC in connection with securities purchased, acquired or taken pursuant to the blanket authorization under section 203(a)(2) provided in § 33.1(c)(2) of the Commission's regulations. 18 CFR 33.1(c)(4).

9. EXPLAIN ANY PAYMENT OR GIFTS TO RESPONDENTS

There are no payments or gifts to respondents in the requirements contained in the proposed rule.

10. DESCRIBE ANY ASSURANCE OF CONFIDENTIALITY PROVIDED TO RESPONDENTS

The Commission generally does not consider the data filed in Section 203 filings to be confidential. However, the Commission realizes the commercial sensitivity of specific information (e.g. with regard to products that applicants plan to sell) and the harm that may come to applicants by the potential disclosures to competitors. Applicants are free to claim confidentiality for this information under the Commission's regulations. (18 CFR 388.112) Recognizing the sensitivity of particular information, the Commission will presume that the information falls within exemption from public disclosure under the Freedom of Information Act for "trade secrets and commercial or financial information obtained from a person and privileged or confidential." (18 CFR 388.107(d)) If parties seek access to the information, and the Commission determines that limited disclosure is necessary to satisfy the due process rights of intervenors to challenge relevant evidence relied upon by applicants, then the Commission will allow access to parties' attorneys and experts only under the terms of appropriate protective order.

11. PROVIDE ADDITIONAL JUSTIFICAITON FOR ANY QUESTIONS OF A SENSITIVE NATURE

There are no questions of a sensitive nature associated with the reporting and recordkeeping requirements proposed in the subject Final Rule.

12. ESTIMATED BURDEN COLLECTION OF INFORMATION

Filings vary in length and complexity depending on the nature of the transaction, the financial arrangements, the number of parties involved and whether a facility's disposition includes leaseback arrangements. Because of the vast variability of the filings, the inclusion of a typical filing here as an attachment is not provided. Instead, the reviewer is referred to FERC's web site at http://www.ferc.gov.elibrary and proceed to either "General Search" or "Advanced Search" and choose a docket number on the menu for one of the following:

Docket Number
EC04-5-000 Calpine Eastern Corp. and Bethpage Energy Center
(Disposition of Facilities)

For a merger application, the following is a representative example:

EC03-53-000 Ameren Corporation, Dynegy Inc., Illinova Corporation and Illinova Generating Company.

Data Requirement (FERC-519)	**Current OMB Inventory**	**Proposed in NOPR Rule**	**Proposed in Final**
Estimated number of respondents:	134	134	134
Estimated number of responses (per respondent)	1	1	1
Estimated number of responses per year:	134	134	134
Estimated number of hours per response:	395	395	395
Total estimated burden hours:	52,930*	52,930	52,930

*OMB inventory as of 2/26/2008

With respect to the Final Rule, the Commission is amending its regulations to provide for a limited blanket authorization under FPA section 203(a)(1). The regulations as proposed by the Commission should have a minimal impact on the current reporting burden associated with an individual application, as they do not substantially change the filing requirements with which section 203 applicants must currently comply. Further, the Commission does not expect the total number of section 203 applications under amended section 203 to increase, but rather expects the total number of section 203 applications to eventually decrease. This is due to the Final Rule providing for a category of jurisdictional transactions for which the Commission would not require applications seeking before-the-fact approval. This should reduce the burden on the electric industry because it will reduce the number of applications that need to be made with the Commission.

13. ESTIMATE OF TOTAL ANNUAL COST OF BURDEN TO RESPONDENTS

Current costs:

Data Collection	Number of Respondents	Annualized ongoing costs (operations. & maintenance)	Total Annualized Costs

FERC-519			
a)w/o analysis	132	$ 37,200	$ 4,910,400.00
b)simple merger	2	$615,528	$ 1,231, 056.00
c)complex merger	0	$5,123,400	$ 0.00
Totals	134		$ 6,141,456.00

As noted in item 12 of this submission, the Final Rule will not substantially change the filing requirements with which section 203 applicants must currently comply. Therefore, the Commission does not anticipate a substantial change to the costs for performing the different activities identified above.

14. ESTIMATED ANNUALIZED COST TO FEDERAL GOVERNMENT:

(a) Forms Clearance Review $ 2,562
(b) Analysis of Data (8 FTE) $1,011,072

Year of Operation $1,013,634

The estimate of the cost to the Federal Government is based on salaries for professional and clerical support, as well as direct and indirect overhead costs. An "FTE" is a "Full Time Equivalent" employee that works the equivalent of 2,080 hours per year.

Salary represents the allocated cost per electric program employee at the Commission based on its appropriated budget for fiscal year 2007. The $126,384 "salary" represents the average annual salary of staff responsible for processing Section 203 filings.

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

While the Commission is implementing the amended provisions of section 203 (See reasons for change in Background section above), the changes do not substantially change the filing requirements, and also will result in minimal changes to the reporting burden.

16. TIME SCHEDULE FOR PUBLICATION OF DATA

Schedule for Data Collection and Analysis

Application Filed On Occasion
Initial Commission Order 60 days (w/o analysis and or simple merger)

150 days (complex merger)

17. DISPLAY OF EXPIRATION DATE

It is not appropriate to display the expiration date for OMB control of the information collection. The information is not collected on a standard, preprinted form which would avail itself to this display. Rather, public utilities and licensees prepare and submit filings that reflect the unique or specific circumstances related to mergers or for the disposition of facilities or the acquisition of securities. In addition, the information contains a mixture of narrative descriptions and empirical support that caries depending on the nature of the application.

18. EXCEPTIONS TO THE CERTIFICATION STATEMENT

There is an exception to the Paperwork Reduction Act statement. The Commission will not be using statistical survey methodology for these information collections.

B. COLLECTION OF INFORMATION EMPLOYING STATISTICAL METHODS

Not Applicable. Statistical methods are not employed for these data collections.