

Supporting Statement for
**FERC-519 (Application under Federal Power Act Section 203)
as revised by the Notice of Proposed Rulemaking (NOPR)
in Docket No. RM19-4-000**

The Federal Energy Regulatory Commission (Commission or FERC) requests that the Office of Management and Budget (OMB) review and approve the FERC-519 (Application under Federal Power Act Section 203), as proposed for revision in the Notice of Proposed Rulemaking (NOPR) in Docket No. RM19-4-000.

On September 28, 2018, the President signed into law an amendment to section 203 of the Federal Power Act (FPA) implementing the following two changes that:

- Revise Section 203(a)(1)(B)¹ to establish a \$10 million threshold for transactions requiring Commission approval under that section; and
- Require the Commission to promulgate a rule, “[n]ot later than 180 days after the date of enactment of this paragraph,” that establishes a notification requirement for transactions valued between \$1 million and \$10 million that would have been subject to the Commission’s jurisdiction under Section 203(a)(1)(B) absent the newly implemented \$10 million threshold.

1. CIRCUMSTANCES THAT MAKE THE COLLECTION OF INFORMATION NECESSARY

The Commission issued this NOPR in Docket No. RM19-4-000 to revise part 33 of its regulations relating to mergers or consolidations by a public utility. Specifically, the Commission proposes to revise section 33.1 of its regulations to establish that only mergers or consolidations by a public utility of facilities subject to the jurisdiction of the Commission and have a value in excess of \$10 million are now subject to Commission authorization under amended FPA Section 203. In addition, the Commission proposes to add Section 33.12 to its regulations to establish a notification requirement for mergers or consolidations by a public utility if the facilities to be acquired have a value in excess of \$1 million and such public utility is not required to secure Commission authorization under amended Section 203.

¹ Section 203(a)(1)(B) grants the Commission’s jurisdiction over mergers and consolidations (i.e. acquisitions), as opposed to other forms of corporate dispositions. Prior to the new legislation, there was no dollar limit associated with mergers or consolidations that would come under the Commission’s jurisdiction, and the new legislation addressed that by adding a \$10 million threshold.

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

The information collected under the FERC-519 enables the Commission to meet its statutory responsibilities regarding public utility disposition, merger, consolidation of facilities, purchase, or acquisition oversight and enforcement in accordance with the FPA as referenced above.

The required information includes descriptions of corporate attributes of the party or parties to the transaction.

In general, FERC's regulations require jurisdictional companies to maintain the following types of records:

- Corporate
- Information Technology Management
- General Accounting
- Personnel and Payroll
- Transportation
- Tariffs and Rates
- Insurance
- Operations and Maintenance
- Plant and Depreciation
- Purchase and Stores
- Revenue Accounting and Collection
- Tax
- Treasury
- Miscellaneous

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

The Commission implemented the capability and requirement for filing FERC-519 in various formats including the capability of electronic filing via [eFiling](#) on FERC's webpage.

4. DESCRIBE EFFORTS TO IDENTIFY DUPLICATION AND SHOW SPECIFICALLY WHY ANY SIMILAR INFORMATION ALREADY AVAILABLE CANNOT BE USED OR MODIFIED FOR USE FOR THE PURPOSE(S) DESCRIBED IN INSTRUCTION NO. 2

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 duplication. No duplication of the information collection requirements has been found.

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

The Small Business Administration (SBA) Office of Size Standards develops the numerical definition of a small entity. These standards are provided in the SBA regulations at 13 CFR 121.201². The SBA has established a small entity as having 500 employees or less.

Small entities will typically not be affected by this rulemaking. Small entities are generally not in a position to file a FERC-519. However, the Commission does consider waivers for small entities, which serves as an option for small entities to reduce their burden. The Commission grants these waivers on a case-by-case basis.

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

FPA Section 203 requires a filing on the occasion that a public utility proposes to dispose of jurisdictional facilities, merge such facilities, or acquire the securities of another public utility. If the collection was not conducted before the proposed transaction was consummated, the Commission would be unable to perform its mandated oversight and review responsibilities with respect to facilities, mergers and securities transactions.

The information collection changes proposed by the Commission in the NOPR apply to transactions that *were* jurisdictional, but (after the statutory changes) are now not. These transactions are, thus, not subject to FERC-519.

7. EXPLAIN ANY SPECIAL CIRCUMSTANCES RELATING TO THE INFORMATION COLLECTION

The FERC-519 information collection presents no special circumstances.

² 13 CFR 121.201. *See also* U.S. Small Business Administration, *Table of Small Business Size Standards Matched to North American Industry Classification System Codes* (effective Feb. 26, 2016), https://www.sba.gov/sites/default/files/files/Size_Standards_Table.pdf.

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

Outside consultation by the Commission was in the form of the NOPR that included the Commission's best estimate of the burden imposed by compliance with the proposed requirements as well as the availability of waivers where requested and appropriate. Interested persons were notified through publication in the Federal Register³ that they could file comments on the proposals in the NOPR, including the burden estimate. In addition, potential commenters were specifically informed that they could file comments on the proposed collections of information and associated burden directly with OMB.

9. EXPLAIN ANY PAYMENT OR GIFTS TO RESPONDENTS

There are no payments or gifts to respondents associated with the FERC-519 information collection.

10. DESCRIBE ANY ASSURANCE OF CONFIDENTIALITY PROVIDED TO RESPONDENTS

In general, for all submittals to the Commission, filers may submit specific requests for confidential treatment to the extent permitted by law; details are available in 18 CFR Section 388.112. The Commission will review each request for confidential treatment on a case-by-case basis.

11. PROVIDE ADDITIONAL JUSTIFICATION FOR ANY QUESTIONS OF A SENSITIVE NATURE, SUCH AS SEXUAL BEHAVIOR AND ATTITUDES, RELIGIOUS BELIEFS, AND OTHER MATTERS THAT ARE COMMONLY CONSIDERED PRIVATE.

There are no questions of a sensitive nature in the reporting or recordkeeping requirements of the FERC-519 information collection.

12. ESTIMATED BURDEN OF COLLECTION OF INFORMATION

³ 83 FR 61338 (11/29/2018)

	Number of Respondents (1)	Annual Number of Responses per Respondent (2)	Total Number of Responses (1)*(2)=(3)	Average Burden & Cost Per Response⁴ (4)	Total Annual Burden Hours (Total Annual Cost) (3)*(4)=(5)	Cost per Respondent (\$) (5)÷(1)
FERC-519 (FPA Section 203 Filings) ⁵	26	1	26	1 hr. ⁶ ; \$79.00	26 hrs.; \$2,054	\$79.00

13. ESTIMATE OF THE TOTAL ANNUAL COST BURDEN TO RESPONDENTS

The NOPR proposes no capital or start-up costs for the proposed requirements in RM19-4-000 that are not associated with the burden hours.

All of the costs are related to burden hours and are detailed in Questions #12 and #15.

14. ESTIMATED ANNUALIZED COST TO FEDERAL GOVERNMENT

⁴ The Commission staff thinks that the average respondent for this collection is similarly situated to the Commission, in terms of salary plus benefits. Based upon FERC’s 2018 annual average (for salary plus benefits) of \$164,820, the average hourly cost is \$79/hour.
⁵ Commission staff estimates that approximately 26 Section 203 filings will change from full Section 203 filings to the notification filing described above, and will take one burden hour to complete. The number of respondents and responses is based on Commission staff’s estimate that 13 percent of the approximately 200 section 203 filings received will be affected by the NOPR, which represents a significant reduction in burden hours.

⁶ Prior to this proposal there were 141 responses filed annually and 56,055 burden hours, each filing was ~397 hours per respondent. With this amendment each filing is reduced to 1 hour per respondent for the 26 affected entities (i.e. the entities that now only have to file the Section 203 notification filings).

The following federal costs relate only to the proposed revisions in the RM19-4-000 NOPR.

	Federal Employee Hours	Estimated Annual Federal Cost⁷
FERC-519		
Analysis and Processing of filings	0	0
PRA ⁸ Administrative Cost (for FERC-519) ⁹		\$4,193
<i>Sub-Total for FERC-519</i>		\$4,193

The estimate of the cost for analysis and processing of filings is based on salaries and benefits for professional and clerical support. This estimated cost represents staff analysis, decision-making, and review of any actual filings submitted in response to the information collection.

The Paperwork Reduction Act (PRA) Administrative Cost is the average annual FERC cost associated with preparing, issuing, and submitting materials necessary to comply with the PRA for rulemakings, orders, or any other vehicle used to create, modify, extend, or discontinue an information collection. It also includes the cost of publishing the necessary notices in the Federal Register.

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

Prior to the revisions in the RM19-4-000 NOPR, the Commission estimated that 141 respondents would file “full” applications under the requirements in FPA Section 203. Due the revisions in the NOPR, an estimated 26 respondents who could file full applications would instead file notification filings. Each of those filers would have a drastically reduced burden per filing (from approximately 397 hours/response to 1 hour/response).

	Total Request (rounded)	Previously Approved	Change due to Adjustment	Change Due to Agency Discretion

⁷ Based on FERC’s Fiscal Year 2018 average cost per FTE (salary plus benefits) of \$164,820 per year (or 2,080 work hours), rounded to \$79.00 per hour.

⁸ Paperwork Reduction Act of 1995 (PRA).

⁹ The PRA Administration Cost is \$4,193, and includes preparing supporting statements, notices, and other activities associated with PRA compliance.

			in Estimate	(rounded)
Annual Number of Responses	141	141	0	0
Annual Time Burden (Hr.)	45,744	56,055	0	-10,311
Annual Cost Burden (\$)	0	0	0	0

16. TIME SCHEDULE FOR PUBLICATION OF DATA

There are no publications of the information.

17. DISPLAY OF EXPIRATION DATE

The clearance information and expiration dates are available at <http://www.ferc.gov/docs-filing/info-collections.asp>.

18. EXCEPTIONS TO THE CERTIFICATION STATEMENT

There are no exceptions.