

Supporting Statement

**FERC-519, Application under Federal Power Act Section 203
Three-year approval for extension requested**

The Federal Energy Regulatory Commission (FERC or Commission) requests that the Office of Management and Budget (OMB) review and approve the FERC-519 (Application under Federal Power Act Section 203) information collection for a three-year period under OMB Control No. 1902-0082. These requirements are part of the Commission's regulations in 18 Code of Federal Regulations (CFR) 33.

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

According to Section 203 of the Federal Power Act (FPA), FERC approval is required for transactions¹ 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.

On September 28, 2018, the President signed into law an amendment to section 203 of the Federal Power Act (FPA)² implementing the following two changes that:

- Revise section 203(a)(1)(B)³ to establish a \$10 million threshold for transactions requiring Commission approval under that section [which consequently reduces filings and burden]; 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.

The structure of the electric power industry has changed considerably with the advent of electric power generation deregulation and the enactment of the Energy Policy Act of 2005 (EPA 2005). The Commission has issued numerous rulemakings during this time in order to collect the information needed to guard against the exercise of market power, to avoid adverse effects

1 Prior approval of transactions by FERC is required if the value of the facilities or securities exceeds \$10 million.

2 Pub. L. No. 115-247, 132 Stat. 3152 “An Act to amend section 203 of the Federal Power Act” (Act)

3 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.

on public utility rates and regulatory effectiveness and to prevent cross-subsidization of non-utility associate companies by public utilities. Most of the information collected is necessary for the examination of potential market power and in determining any mitigation measures if it is found. 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.

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. Without this information, FERC would be unable to meet these responsibilities.

The required information includes descriptions of corporate attributes of the party or parties to the proposed transaction (e.g. 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 about effect of the transaction, and the applicant's proof that the transaction will be consistent with the public interest.

This information collection is the minimum necessary to comply with the statutes. The consequence of a failure to collect the specified data is that the Commission would be prevented from determining, within the time period required under the statute, whether the proposed transaction was consistent with the public interest. If this information were not collected, there would be no data available to determine whether violations of the law had occurred.

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 encourages electronic filing of FERC-519 information through its web-based eFiling system. Currently, all parts of this collection can be filed electronically.

4. DESCRIBE EFFORTS TO IDENTIFY DUPLICATION AND SHOW SPECIFICALLY WHY ANY SIMILAR INFORMATION ALREADY AVAILABLE

**CANNOT BE USED OR MODIFIED FOR USE FOR THE PURPOSE(S)
DESCRIBED IN INSTRUCTION NO. 2**

Filing requirements are periodically reviewed as the OMB expiration dates for information collections occur or as the Commission deems necessary in carrying out its regulatory responsibilities under the FPA. All Commission information collections are subject to analysis by Commission staff and are examined for redundancies and duplication. There is no other source of this information.

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

The Commission collects this information from large and small public utilities. The Commission 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 and it is granted given sufficient support. For example, an applicant can seek waiver of the requirement in 18 CFR 33.2(c)(3) to provide organizational charts if the applicant is successful in demonstrating that the proposed transaction does not affect the corporate structure of any party to the transaction.

**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.

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

This collection does not have any special circumstances.

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

In accordance with OMB requirements, the Commission published a 60-day notice⁴ on 11/15/2021 and a 30-day notice⁵ on 2/7/2022 published in the federal register. Within the public notices, the Commission noted that it would be requesting a three-year extension of the public reporting burden. The Commission received no comments from the public regarding this information collection.

9. EXPLAIN ANY PAYMENT OR GIFTS TO RESPONDENTS

There are no payments or gifts to respondents in the FERC-519 requirements.

10. DESCRIBE ANY ASSURANCE OF CONFIDENTIALITY PROVIDED TO RESPONDENTS

Most data is public information and, therefore, not confidential. Frequently, however, some of the information is proprietary or commercially or competitively sensitive. A filer may request (as allowed under the Commission's regulations at 18 CFR 388.112) confidential treatment of some or all of the FERC-519 filing. Each request for confidential treatment will be reviewed 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 such sensitive nature associated with the FERC-519 reporting requirements.

12. ESTIMATED BURDEN OF COLLECTION OF INFORMATION

The Commission estimates the Public Reporting burden for the FERC-519 information collection as follows:

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⁴ 86 FR 63010

⁵ 87 FR 6860

	Number of Respondents (1)	Annual Number of Responses per Respondent (2)	Total Number of Responses (1)*(2)=(3)	Average Burden & Cost Per Response (4)	Total Annual Burden Hours (Total Annual Cost) (3)*(4)=(5)	Cost per Respondent (\$) (5)÷(1)
FERC-519 (FPA Section 203 Filings) ⁶	134	1	134	324.43 hr. ⁷ ; \$28,225.41	43,473.62 hrs.; \$3,782,204.94	\$28,225.41

13. ESTIMATE OF THE TOTAL ANNUAL COST BURDEN TO RESPONDENTS

There are no capital or start-up costs associated with this collection. All of the costs are associated with the burden hours and accounted for in Question #12.

14. ESTIMATED ANNUALIZED COST TO FEDERAL GOVERNMENT

	Approximate Number of Employees (FTEs)	Estimated Annual Federal Cost
Analysis and Processing of filings ⁸	8.058	\$1,456,104.77
PRA ⁹ Administrative Cost ¹⁰		\$8,279
FERC Total		\$1,464,383.77

⁶ 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. This represents a significant reduction in burden hours.

⁷ With this amendment each of the 26 affected entities and their related filings (i.e., the entities that now only have to file the section 203 notification filings) is reduced to 1 hour

⁸ Based upon 2021 FTE average salary plus benefits (\$180,703) and approximately 8.058 FTEs per year

⁹ Paperwork Reduction Act of 1995

¹⁰ The Commission bases the cost of Paperwork Reduction Act administration on staff time, and other costs related to compliance with the Paperwork Reduction Act of 1995.

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

The annual number of responses changes from year to year depending on industry merger, acquisition and disposition activity. The reduction in responses are based on industry activity and submittals to FERC; the reporting requirements have not changed. The number of responses reduced from 141 to 134.

FERC-519	Total Request	Previously Approved	Change due to Adjustment in Estimate	Change Due to Agency Discretion
Annual Number of Responses	134	141	-7	0
Annual Time Burden (Hr)	43,474	45,744	-2,270	0
Annual Cost Burden (\$)	\$ 0	\$ 0	\$ 0	\$ 0

16. TIME SCHEDULE FOR PUBLICATION OF DATA

There are no tabulations, statistical analysis, or publications of information planned for the FERC-519 information collection. The Commission intends to use the data for regulatory purposes only.

17. DISPLAY OF EXPIRATION DATE

The expiration date is displayed in a table posted on ferc.gov at <https://www.ferc.gov/information-collections>.

18. EXCEPTIONS TO THE CERTIFICATION STATEMENT

The Commission will not be using statistical survey methodology for this information collection.