



BILLING CODE 6717-01-P
DEPARTMENT OF ENERGY
Federal Energy Regulatory Commission

[Docket No. RM19-4-000]

Implementation of Amended Section of the Federal Power Act

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of Availability of Report; Request for Public Comment.

SUMMARY: Pursuant to “An Act to amend section 203 of the Federal Power Act”

(Act), the Commission issues an initial report on the effects of the amendment on mergers or consolidations by a public utility as well as the information collected since this amendment and the Commission’s final rule implementing this amendment became effective.

DATES: Comments are due on or before **June 29, 2020**.

ADDRESSES: Comments, identified by docket number, may be filed electronically at <http://www.ferc.gov> in acceptable native applications and print-to-PDF, but not in scanned or picture format. For those unable to file electronically, comments may be filed by mail or hand-delivery to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street, NE, Washington, DC 20426. The Comment Procedures Section of this document contains more detailed filing procedures.

FOR FURTHER INFORMATION CONTACT:

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UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Implementation of Amended Section 203(a)(1)(B)
of the Federal Power Act

Docket No. RM19-4-000

NOTICE OF AVAILABILITY OF REPORT; REQUEST FOR PUBLIC COMMENT

(May 22, 2020)

I. Introduction

1. On September 28, 2018, Congress passed “An Act to amend section 203 of the Federal Power Act” (Act) in Public Law No. 115-247. As discussed in further detail below, the Act resulted in two changes to section 203 of the Federal Power Act (FPA).¹ The Act also directed the Commission to issue a report, subject to notice and comment, on the changes to FPA section 203 and to submit that report to Congress. As discussed below, interested persons may submit comments on this report by June 29, 2020.

II. Background

A. Public Law No. 115-247

2. Section 1 of the Act amended section 203(a)(1)(B)² to provide that no public utility shall, without first having secured an order of the Commission authorizing it to do so, merge or consolidate, directly or indirectly, its facilities subject to the jurisdiction of

¹ 16 U.S.C. 824b (2018).

² *Id.* 824b(a)(1)(B).

the Commission, or any part thereof, with the facilities of any other person, or any part thereof, that are subject to the jurisdiction of the Commission and have a value in excess of \$10 million, by any means whatsoever. Section 3 of the Act provided that the amendment to section 203(a)(1)(B) shall take effect 180 days after the date of the enactment of the Act, i.e., March 28, 2019. The primary effect of this amendment was to establish a \$10 million threshold for transactions that are subject to the Commission's review and authorization under section 203(a)(1)(B).

3. In section 2 of the Act, Congress amended section 203(a) to add section 203(a)(7) to require notification for certain transactions. Section 203(a)(7) provides that, not later than 180 days after the date of the enactment of section 203(a)(7), the Commission shall promulgate a rule requiring any public utility that is seeking to merge or consolidate, directly or indirectly, its facilities subject to the jurisdiction of the Commission, or any part thereof, with those of any other person, to notify the Commission of such transactions not later than 30 days after the date on which the transaction is consummated if: (1) the facilities, or any part thereof, to be acquired are of a value in excess of \$1 million; and (2) such public utility is not required to secure a Commission order under amended section 203(a)(1)(B).

4. The Act also specified that, not later than two years after the date of the enactment of the Act, the Commission shall submit to Congress a report that assesses the effects of the amendment made by section 1 and that such report shall take into account any information collected under section 203(a)(7). The Act required that the Commission provide for notice and comment with respect to the report.

B. Order No. 855

5. The Commission issued Order No. 855 on February 21, 2019,³ to revise its regulations to implement the amendments in the Act. Specifically, the Commission revised section 33.1(a)(1)(ii) to provide that part 33 applies to any public utility seeking authorization under section 203 to merge or consolidate, directly or indirectly, its facilities subject to the jurisdiction of the Commission, or any part thereof, with the facilities of any other person, or any part thereof, that are subject to the jurisdiction of the Commission and have a value in excess of \$10 million, by any means whatsoever.⁴

6. In addition, the Commission added section 33.12 to its regulations to require that public utilities submit a notification filing for transactions subject to section 203(a)(7). The Commission required that such public utilities include the following information in the notification filing: (1) the exact name of the public utility and its principal business address; and (2) a narrative description of the transaction, including the identity of all parties involved in the transaction and all jurisdictional facilities associated with or affected by the transaction, the location of such jurisdictional facilities, the date on which the transaction was consummated, the consideration for the transaction, and the effect of the transaction on the ownership and control of such jurisdictional facilities. The Commission also required that the notification filing contain a statement regarding

³ *Implementation of Amended Section 203(a)(1)(B) of the Federal Power Act*, Order No. 855, 166 FERC ¶ 61,120 (2019); *see also Mergers or Consolidations by a Public Utility*, 84 FR 6069 (Feb. 26, 2019).

⁴ 18 CFR 33.1(a)(1)(ii) (2019).

whether the parties to the transaction are affiliates to provide transparency as to whether these transactions are negotiated at arm's length and whether these transactions could have an effect on a public utility's rates.⁵

7. The Commission directed public utilities to file the notification filings within a dedicated docket number associated with section 203 filings. Filings for each fiscal year (FY) are submitted into the designated docket number and made accessible through the Commission's eLibrary system.⁶

III. Review of Section 203 Filings Following Amendment to Section 203(a)(1)(B)

8. As to the effects of the amendment adding the \$10 million threshold to section 203(a)(1)(B), the Act has resulted in two notable changes with respect to transactions that were previously and remain subject to section 203(a)(1)(B). The first such change is that, in general, since the Act took effect on September 28, 2018, the Commission has seen a reduction in the overall number of section 203 filings from previous years. For example, in FY 2018 and FY 2019, respectively, the Commission received 164 and 142 filings under section 203. However, to date in FY 2020, the Commission has received 66 filings.

9. In addition, since the Act took effect, the Commission has seen fewer filings requesting authorization for transactions under section 203(a)(1)(B). Generally, these transactions involve acquisitions by a public utility of Commission-jurisdictional

⁵ *Id.* 33.12 (2019).

⁶ Filings for the FY are included in a separate docket denoted as EC19-1 for FY 2019, EC20-1 for FY 2020, etc.

facilities, usually transmission facilities. Before the Act took effect, the Commission would receive a significant number of filings requesting authorization for transactions where the facilities at issue were valued at less than \$10 million, many less than \$1 million. Since the Act took effect, only a few filings requesting authorization under section 203(a)(1)(B) have been submitted. For example, in FY 2018, the Commission received 30 filings requesting authorization under section 203(a)(1)(B). In contrast, in FY 2020, to date, the Commission has received only 17 filings requesting authorization for transactions under section 203(a)(1)(B). The Commission expects to continue to see fewer section 203 filings as a result of the Act's addition of the \$10 million threshold to this section of the FPA.

IV. Information Collected in Notification Filings

10. Since the Act took effect, the Commission has received 14 notification filings pursuant to section 203(a)(7) of the FPA and section 33.12 of the Commission's regulations. Below is a brief description of those filings. Interested persons may view the notification filings in Docket Nos. EC19-1-000 (for FY2019 transaction) and EC20-1-000 (for FY2020 transactions) for more detailed information.

11. Specifically, in Docket No. EC19-1-000, the Commission received notification filings for eight transactions submitted by the following entities: Virginia Electric and Power Company, Monongahela Power Company, and The Potomac Edison Company; NSTAR Electric Company; Entergy Louisiana, LLC (Entergy Louisiana); FPL Energy Wyman IV LLC (FPL Energy); ITC Midwest LLC, Westar Energy, Inc., and American Transmission Systems, Inc. For example, Entergy Louisiana submitted a filing indicating

that it had acquired from a non-affiliated customer certain limited transmission facilities that were subject to the Commission's jurisdiction with a total value in excess of \$1 million, but less than \$10 million. Entergy Louisiana stated that the total cost of the transmission facilities and equipment was \$6,043,750.

12. Thus far for FY 2020, in Docket No. EC20-1-000 the Commission has received six notification filings, including notices filed by Michigan Electric Transmission Company, LLC; Paulding Wind Farm IV, LLC (Paulding IV); International Transmission Company; Little Bear Solar 1, LLC; and American Electric Power Service Corporation. For example, Paulding IV submitted a filing in connection with its acquisition of an undivided interest in certain Commission-jurisdictional shared interconnection facilities from Paulding Wind Farm III LLC (Paulding III). According to Paulding IV, both parties were indirectly owned by EDP Renewables North America LLC and are affiliated. Paulding IV acquired the undivided ownership interests from Paulding III for \$4,694,270, which the parties stated was net book value.

13. Given the Commission's more limited oversight over transactions subject to section 203(a)(7), we believe that the information collected in these notification filings was adequate to ensure compliance with the statute and the Commission's regulations. That is, the information collected is far less than the information required for full section 203 applications pursuant to part 33 of the Commission's regulations, but more than a brief notice establishing that the underlying transaction was consummated. Thus, the Commission continues to be able to track who controls the Commission-jurisdictional

facilities at issue in these transactions as well as whether these transactions are executed at arm's length or could affect a public utility's rates.

V. Request for Comment

14. As discussed above, the Act specified that, not later than two years after the date of enactment of the Act, the Commission shall submit to Congress a report that assesses the effects of the amendment made by section 1 and takes into account any information collected under section 203(a)(7). The Act also required that the Commission provide for notice and comment with respect to this report.

15. Consistent with this directive from Congress, we request comment on this report. Comments are due June 29, 2020. The Commission will review the comments prior to submitting the report to Congress by September 28, 2020.

VI. Comment Procedures

16. The Commission invites interested persons to submit comments on the matters and issues proposed in the report, including any related matters that commenters may wish to discuss. Comments are due on or before **June 29, 2020**. Comments must refer to Docket No. RM19-4-000 and must include the commenter's name, the organization they represent, if applicable, and their address.

17. The Commission encourages comments to be filed electronically via the eFiling link on the Commission's web site at <http://www.ferc.gov>. The Commission accepts most standard word processing formats. Documents created electronically using word processing software should be filed in native applications or print-to-PDF format and not

in a scanned format. Commenters filing electronically do not need to make a paper filing.

18. Commenters that are not able to file comments electronically must send an original of their comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE, Washington, DC, 20426.

19. All comments will be placed in the Commission's public files and may be viewed, printed, or downloaded remotely. Commenters on this report are not required to serve copies of their comments on other commenters.

Dated: May 27, 2020.

Kimberly D. Bose,
Secretary.

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