

§ 33.11 Commission procedures for the consideration of applications under section 203 of the FPA.

(a) The Commission will act on a completed application for approval of a transaction (*i.e.*, one that is consistent with the requirements of this part) not later than 180 days after the completed application is filed. If the Commission does not act within 180 days, such application shall be deemed granted unless the Commission finds, based on good cause, that further consideration is required to determine whether the proposed transaction meets the standards of section 203(a)(4) of the FPA and issues, by the 180th day, an order tolling the time for acting on the application for not more than 180 days, at the end of which additional period the Commission shall grant or deny the application.

(b) The Commission will provide for the expeditious consideration of completed applications for the approval of transactions that are not contested, do not involve mergers, and are consistent with Commission precedent.

(c) Transactions, provided that they are not contested, do not involve mergers and are consistent with Commission precedent, that will generally be subject to expedited review include:

(1) A disposition of only transmission facilities, including, but not limited to, those that both before and after the transaction remain under the functional control of a Commission-approved regional transmission organization or independent system operator; and

(2) Transactions that do not require an Appendix A analysis;¹ and

(3) Internal corporate reorganizations that result in the reorganization of a traditional public utility that has captive customers or owns or provides transmission service over jurisdictional transmission facilities, but do not present cross-subsidization issues.

[Order 669-A, 71 FR 28446, May 16, 2006]

¹*Inquiry Concerning the Commission's Merger Policy Under the Federal Power Act; Policy Statement*, Order No. 592, 61 FR 68,595 (Dec. 30, 1996), FERC Stats. & Regs. ¶31,044 (1996), *reconsideration denied*, Order No. 592-A, 62 FR 33,340 (June 19, 1997), 79 FERC ¶61,321 (1997) (Merger Policy Statement).

PART 34—APPLICATION FOR AUTHORIZATION OF THE ISSUANCE OF SECURITIES OR THE ASSUMPTION OF LIABILITIES

Sec.

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AUTHORITY: 16 U.S.C. 791a-825r, 2601-2645; 31 U.S.C. 9701; 42 U.S.C. 7101-7352.

SOURCE: Order 182, 46 FR 50514, Oct. 14, 1981, unless otherwise noted.

CROSS REFERENCES: For rules of practice and procedure, see part 385 of this chapter. For Approved Forms, Federal Power Act, see part 131 of this chapter.

OMB REFERENCE: "FERC Filing No. 523" is the identification number used by the Commission and the Office of Management and Budget to reference the filing requirements in part 34.

§ 34.1 Applicability; definitions; exemptions in case of certain State regulation, certain short-term issuances and certain qualifying facilities.

(a) *Applicability*. This part applies to applications for authorization from the Commission to issue securities or assume an obligation or liability which are filed by:

(1) Licensees and other entities pursuant to sections 19 and 20 of the Federal Power Act (41 Stat. 1073, 16 U.S.C. 812, 813) and part 20 of the Commission's regulations; and

(2) Public utilities pursuant to section 204 of the Federal Power Act (49 Stat. 850, 16 U.S.C. 824c).

(b) *Definitions*. For the purpose of this part:

(1) The term *utility* means a licensee, public utility or other entity seeking authorization under sections 19, 20 or 204 of the Federal Power Act;

(2) The term *securities* includes any note, stock, treasury stock, bond, or

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debenture or other evidence of interest in or indebtedness of a utility;

(3) The term *issuance or placement of securities* means issuance or placement of securities, or assumption of obligation or liability; and

(4) The term *State* means a State admitted to the Union, the District of Columbia, and any organized Territory of the United States.

(c) *Exemptions.* (1) If an agency of the State in which the utility is organized and operating approves or authorizes, in writing, the issuance of securities prior to their issuance, the utility is exempt from the provisions of sections 19, 20 and 204 of the Federal Power Act and the regulations under this part, with respect to such securities.

(2) This part does not apply to the issue or renewal of, or assumption of liability on, a note or draft maturing one year or less after the date of such issue, renewal, or assumption of liability, if the aggregate of such note or draft and all other then-outstanding notes and drafts of a maturity of one year or less on which the utility is primarily or secondarily liable, is not more than 5 percent of the par value of the other then-outstanding securities of the utility as of the date of issue or renewal of, or assumption of liability on, the note or draft. In the case of securities having no par value, the par value for the purpose of this part is the fair market value, as of the date of issue or renewal of, or assumption of liability on, the note or draft.

(3) *For certain qualifying facilities.* Any cogeneration or small power production facility which is exempt from sections 19, 20 and 204 of the Federal Power Act pursuant to §292.601 of this chapter shall be exempt from the provisions of this part.

[Order 182, 46 FR 50514, Oct. 14, 1981, as amended at 48 FR 9851, Mar. 9, 1983; Order 575, 60 FR 4852, Jan. 25, 1995]

§ 34.2 Placement of securities.

(a) *Method of issuance.* Upon obtaining authorization from the Commission, utilities may issue securities by either a competitive bid or negotiated placement, provided that:

(1) Competitive bids are obtained from at least two prospective dealers, purchasers or underwriters; or

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(2) Negotiated offers are obtained from at least three prospective dealers, purchasers or underwriters; and

(3) The utility:

(i) Accepts the bid or offer that provides the utility with the lowest cost of money for securities with fixed or variable interest or dividend rates, or

(ii) Accepts the bid or offer that provides the utility with the greatest net proceeds for securities with no specified interest or dividend rates, or

(iii) The utility has filed for and obtained authorization from the Commission to accept bids or offers other than those specified in paragraphs (a)(3)(i) or (a)(3)(ii) of this section.

(b) *Exemptions.* The provisions of paragraph (a) of this section do not apply where:

(1) The securities are to be issued to existing holders of securities on a pro rata basis;

(2) The utility receives an unsolicited offer to purchase the securities;

(3) The securities have a maturity of one year or less; or

(4) The securities are to be issued in support of or to guarantee securities issued by governmental or quasi-governmental bodies for the benefit of the utility.

(c) *Prohibitions.* No securities will be placed with any person who:

(1) Has performed any service or accepted any fee or compensation with respect to the proposed issuance of securities prior to submission of bids or entry into negotiations for placement of such securities; or

(2) Would be in violation of section 305(a) of the Federal Power Act with respect to the issuance.

[Order 575, 60 FR 4853, Jan. 25, 1995]

§ 34.3 Contents of application for issuance of securities.

Each application to the Commission for authority to issue securities shall contain the information specified in this section. In lieu of filing the information required in paragraphs (e), (i) and (j) of this section, a specific reference may be made to the portion of the registration statement filed under §34.4(f), which includes the information required in these paragraphs.