

§ 33.1

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SOURCE: Order 642, 65 FR 71014, Nov. 28, 2000, unless otherwise noted.

§ 33.1 Applicability.

(a) The requirements of this part will apply to any public utility seeking authority under section 203 of the Federal Power Act to:

(1) Dispose by sale, lease or otherwise of the whole of its facilities subject to Commission jurisdiction or any part thereof of a value in excess of \$50,000;

(2) Merge or consolidate, directly or indirectly, facilities subject to Commission jurisdiction with those of any other person, if such facilities are of a value in excess of \$50,000, including the acquisition of electric facilities used for the transmission or sale at wholesale of electric energy in interstate commerce which, except for ownership, would be subject to the Commission's jurisdiction; or

(3) Purchase, acquire or take any security of any other public utility.

(b) Value in excess of \$50,000 as used in section 203 of the Federal Power Act (16 U.S.C. 824b) will be the original cost undepreciated as defined in the Commission's Uniform System of Accounts prescribed for public utilities and licensees in part 101 of this chapter.

§ 33.2 Contents of application—general information requirements.

Each applicant must include in its application, in the manner and form and in the order indicated, the following general information with respect to the applicant and each entity whose jurisdictional facilities or securities are involved:

(a) The exact name of the applicant and its principal business address.

(b) The name and address of the person authorized to receive notices and

communications regarding the application, including phone and fax numbers, and E-mail addresses.

(c) A description of the applicant, including:

(1) All business activities of the applicant, including authorizations by charter or regulatory approval (to be identified as Exhibit A to the application);

(2) A list of all energy subsidiaries and energy affiliates, percentage ownership interest in such subsidiaries and affiliates, and a description of the primary business in which each energy subsidiary and affiliate is engaged (to be identified as Exhibit B to the application);

(3) Organizational charts depicting the applicant's current and proposed post-transaction corporate structures (including any pending authorized but not implemented changes) indicating all parent companies, energy subsidiaries and energy affiliates unless the applicant demonstrates that the proposed transaction does not affect the corporate structure of any party to the transaction (to be identified as Exhibit C to the application);

(4) A description of all joint ventures, strategic alliances, tolling arrangements or other business arrangements, including transfers of operational control of transmission facilities to Commission approved Regional Transmission Organizations, both current, and planned to occur within a year from the date of filing, to which the applicant or its parent companies, energy subsidiaries, and energy affiliates is a party, unless the applicant demonstrates that the proposed transaction does not affect any of its business interests (to be identified as Exhibit D to the application);

(5) The identity of common officers or directors of parties to the proposed transaction (to be identified as Exhibit E to the application); and

(6) A description and location of wholesale power sales customers and unbundled transmission services customers served by the applicant or its parent companies, subsidiaries, affiliates and associate companies (to be identified as Exhibit F to the application).

(d) A description of jurisdictional facilities owned, operated, or controlled by the applicant or its parent companies, subsidiaries, affiliates, and associate companies (to be identified as Exhibit G to the application).

(e) A narrative description of the proposed transaction for which Commission authorization is requested, including:

(1) The identity of all parties involved in the transaction;

(2) All jurisdictional facilities and securities associated with or affected by the transaction (to be identified as Exhibit H to the application);

(3) The consideration for the transaction; and

(4) The effect of the transaction on such jurisdictional facilities and securities.

(f) All contracts related to the proposed transaction together with copies of all other written instruments entered into or proposed to be entered into by the parties to the transaction (to be identified as Exhibit I to the application).

(g) A statement explaining the facts relied upon to demonstrate that the proposed transaction is consistent with the public interest. The applicant must include a general explanation of the effect of the transaction on competition, rates and regulation of the applicant by the Commission and state commissions with jurisdiction over any party to the transaction. The applicant should also file any other information it believes relevant to the Commission's consideration of the transaction. The applicant must supplement its application promptly to reflect in its analysis material changes that occur after the date a filing is made with the Commission, but before final Commission action. Such changes must be described and their effect on the analysis explained (to be identified as Exhibit J to the application).

(h) If the proposed transaction involves physical property of any party, the applicant must provide a general or key map showing in different colors the properties of each party to the transaction (to be identified as Exhibit K to the application).

(i) If the applicant is required to obtain licenses, orders, or other approvals

from other regulatory bodies in connection with the proposed transaction, the applicant must identify the regulatory bodies and indicate the status of other regulatory actions, and provide a copy of each order of those regulatory bodies that relates to the proposed transaction (to be identified as Exhibit L to the application). If the regulatory bodies issue orders pertaining to the proposed transaction after the date of filing with the Commission, and before the date of final Commission action, the applicant must supplement its Commission application promptly with a copy of these orders.

§ 33.3 Additional information requirements for applications involving horizontal competitive impacts.

(a)(1) The applicant must file the horizontal Competitive Analysis Screen described in paragraphs (b) through (f) of this section if, as a result of the proposed transaction, a single corporate entity obtains ownership or control over the generating facilities of previously unaffiliated merging entities (for purposes of this section, merging entities means any party to the proposed transaction or its parent companies, energy subsidiaries or energy affiliates).

(2) A horizontal Competitive Analysis Screen need not be filed if the applicant:

(i) Affirmatively demonstrates that the merging entities do not currently conduct business in the same geographic markets or that the extent of the business transactions in the same geographic markets is *de minimis*; and

(ii) No intervenor has alleged that one of the merging entities is a perceived potential competitor in the same geographic market as the other.

(b) All data, assumptions, techniques and conclusions in the horizontal Competitive Analysis Screen must be accompanied by appropriate documentation and support.

(1) If the applicant is unable to provide any specific data required in this section, it must identify and explain how the data requirement was satisfied and the suitability of the substitute data.

(2) The applicant may provide other analyses for defining relevant markets