

§ 33.9 Protective order.

If the applicant seeks to protect any portion of the application, or any attachment thereto, from public disclosure pursuant to § 388.112 of this chapter, the applicant must include with its request for privileged treatment a proposed protective order under which the parties to the proceeding will be able to review any of the data, information, analysis or other documentation relied upon by the applicant for which privileged treatment is sought.

§ 33.10 Additional information.

The Director of the Office of Markets, Tariffs and Rates, or his designee, may, by letter, require the applicant to submit additional information as is needed for analysis of an application filed under this part.

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 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

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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

(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.

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(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.

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

(b) The State in which the utility is incorporated, the date of incorporation, and each State in which it operates.

(c) The name, address and telephone number of a person within the utility authorized to receive notices and communications with respect to the application.

(d) The date by which Commission action is requested.

(e) A full description of the securities proposed to be issued, including:

(1) Type and nature of securities;

(2) Amount of securities (par or stated value and number of units);

(3) Interest or dividend rate, if any;

(4) Dates of issuance and maturity;

(5) Institutional rating of the securities—or if the securities are not rated, an explanation as to why they are not rated, and if the securities will be rated, an estimate of the rating; and

(6) Any stock exchange on which the securities will be listed.

(f) The purpose for which the securities for which application is made are to be issued: