(4) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

2019–03–08 Airbus SAS: Amendment 39–19560; Docket No. FAA–2018–0962; Product Identifier 2018–NM–125–AD.

(a) Effective Date

This AD is effective April 2, 2019.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Airbus SAS Model A350–941 airplanes, certificated in any category, all serial numbers.

(d) Subject

Air Transport Association (ATA) of America Code 29, Hydraulic power.

(e) Reason

This AD was prompted by reports of an overheat failure mode of the hydraulic engine-driven pump (EDP), and a determination that the affected EDP needs to be replaced with an improved EDP. We are issuing this AD to address the overheat failure mode of the hydraulic EDP, which may cause a fast temperature rise of the hydraulic fluid, and, if combined with an inoperative fuel tank inerting system, could lead to an uncontrolled overheat of the hydraulic fluid, possibly resulting in ignition of the fuel-air mixture of the affected fuel tank.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

(g) Required Action

Before February 6, 2020, replace each EDP having part number (P/N) 53098–04 with an improved EDP, having P/N 53098–06, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A350–29–P013, dated March 12, 2018.

(h) Parts Installation Prohibition

At the applicable time specified in paragraph (h)(1) or (h)(2) of this AD: No person may install an EDP having P/N 53098–04 on any airplane.

(1) For airplanes that, as of the effective date of this AD, have any EDP having P/N 53098–04 installed: After modification of the airplane as specified by paragraph (g) of this AD.

(2) For airplanes that, as of the effective date of this AD, are post-Modification 112192 and do not have any EDP having P/N 53098–04 installed: As of the effective date of this AD.

(i) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Section, Transport Standards Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Section, send it to the attention of the person identified in paragraph (j)(2) of this AD. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov*. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, International Section, Transport Standards Branch, FAA; or the European Aviation Safety Agency (EASA); or Airbus SAS's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(3) *Required for Compliance (RC):* If any service information contains procedures or tests that are identified as RC, those procedures and tests must be done to comply with this AD; any procedures or tests that are not identified as RC are recommended. Those procedures and tests that are not identified as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the procedures and tests identified as RC can be done and the airplane can be put back in an airworthy condition. Any substitutions or changes to procedures or tests identified as RC require approval of an AMOC.

(j) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA AD 2018–0178, dated August 23, 2018, for related information. This MCAI may be found in the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0962.

(2) For more information about this AD, contact Kathleen Arrigotti, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3218.

(k) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless this AD specifies otherwise.

(i) Airbus Service Bulletin A350–29–P013, dated March 12, 2018.

(ii) [Reserved]

(3) For service information identified in this AD, contact Airbus SAS, Airworthiness Office—EAL, Rond-Point Emile Dewoitine No: 2, 31700 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 45 80; email *continued-airworthiness.a350@airbus.com;* internet *http://www.airbus.com.*

(4) You may view this service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

(5) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Des Moines, Washington, on February 8, 2019.

Michael Kaszycki,

Acting Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2019–03125 Filed 2–25–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 33

[Docket No. RM19–4–000; Order No. 855]

Mergers or Consolidations by a Public Utility

AGENCY: Federal Energy Regulatory Commission, Department of Energy.

ACTION: Final rule.

SUMMARY: Pursuant to ''An Act to amend section 203 of the Federal Power Act'' (Act), the Federal Energy Regulatory Commission (Commission) revises its regulations relating to mergers or consolidations by a public utility.

DATES: This rule will become effective March 27, 2019.

FOR FURTHER INFORMATION CONTACT: Eric Olesh (Technical Information), Office of Energy Market Regulation, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, (202) 502–6524, *Eric.Olesh@ferc.gov.*

Regine Baus (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, (202) 502–8757, *Regine.Baus@ferc.gov.*

SUPPLEMENTARY INFORMATION: In this final rule, the Commission amends its regulations to establish that a public utility must seek authorization under amended section 203(a)(1)(B) of the Federal Power Act (FPA) 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. In addition, as required by the Act, the Commission establishes a requirement to submit a notification filing for mergers or consolidations by a public utility if the facilities to be acquired have a value in excess of $1 million and such public utility is not required to secure Commission authorization under amended section 203(a)(1)(B).

I. Background

1. On November 15, 2018, the Commission issued a notice of proposed rulemaking (NOPR) [1] implementing ''An Act to amend section 203 of the Federal Power Act'' (Act), Public Law 115–247, 132 Stat. 3152. Section 1 of the Act amended section 203(a)(1)(B) 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 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 provides that the amendment to section 203(a)(1)(B) shall take effect 180 days after the date of enactment of the Act. The primary effect of this amendment is to establish a $10 million threshold on transactions that will be subject to the Commission's review and authorization under section 203(a)(1)(B).

2. 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).

3. The Act also specifies that, not later than two years after the date of enactment of this 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 also requires that the Commission provide for public notice and comment with respect to the report.

II. Discussion

4. As discussed below, commenters generally support the proposals in the NOPR, including the proposed changes to implement amended section 203(a)(1)(B) and to establish a notification filing requirement pursuant to section 203(a)(7). Certain commenters request clarification of the procedures associated with the notification filing while others recommend that the Commission require additional information about the transactions subject to the notification filing. In light of amended section 203(a)(1)(B), commenters also request clarification on the Commission's jurisdiction over acquisitions of facilities from non-public utilities. Lastly, commenters request that the Commission continue to consider and act on other pending Commission rulemakings. We address these issues below.

A. Section 203(a)(1)(B) Dollar Threshold

1. NOPR

5. In the NOPR, the Commission proposed two changes to part 33 of its regulations to bring them into conformance with the Act. First, the Commission proposed to revise § 33.1(a)(1)(ii) to provide that part 33 will apply 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.[2]

2. Comments

6. American Public Power Association (APPA), Edison Electric Institute (EEI), Idaho Power Company (Idaho Power), International Transmission Company (ITC),[3] National Rural Electric Cooperative Association (NRECA), and Transmission Access Policy Study Group (TAPS) support the proposed changes to part 33 of the Commission's regulations to implement the $10 million dollar threshold in amended section 203(a)(1)(B). APPA, EEI, Idaho Power, NRECA, and TAPS add that the change appropriately reflects the amended language of section 203, and Idaho Power states that it will ensure the Commission focuses its time and effort on larger, potentially more impactful transactions.[4] EEI and ITC explain that it will also reduce administrative burdens on regulated entities and the Commission.[5]

3. Commission Determination

7. We will revise the language in § 33.1(a)(1)(ii) of the Commission's regulations as proposed in the NOPR.

B. Notification Filing

1. NOPR

8. The Commission also proposed to add § 33.12 to its regulations to require public utilities whose transactions are subject to section 203(a)(7) to file notification of such transactions with the Commission. In particular, the Commission proposed that 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 must

[1] *Implementation of Amended Section 203(a)(1)(B) of the Federal Power Act,* Notice of Proposed Rulemaking, 83 FR 61338 (Nov. 29, 2018), 165 FERC ¶ 61,091 (2018).

[2] *Id.* P 3. In the NOPR, the Commission stated that public utilities required to maintain their books of account in accordance with the Commission's Uniform System of Accounts under 18 CFR part 101 must continue to file with the Commission proposed journal entries for the purchase or sale of electric plant, consistent with the instructions to Account 102, Electric Plant Purchased and Sold. The Commission explained that the dollar threshold proposed in the NOPR does not apply to this accounting filing requirement. *Id.* at n.1.

[3] ITC filed comments on behalf of itself, Michigan Electric Transmission Company, LLC, ITC Midwest LLC, and ITC Great Plains, LLC.

[4] *See* APPA Comments at 3; EEI Comments at 5; Idaho Power Comments at 1; NRECA Comments at 3; TAPS Comments at 3.

[5] *See* ITC Comments at 1; EEI Comments at 6.

notify the Commission of such transaction 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 an order of the Commission under section 203(a)(1)(B).[6]

9. The Commission proposed that public utilities subject to section 203(a)(7) file the following information in this 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 involved in the transaction, 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.[7]

10. The Commission proposed that the notification filings be filed in the first docket for section 203 filings for the fiscal year (FY). For example, all notification filings made in FY2019 would be filed in Docket No. EC19–1–000; all notification filings made in FY2020 would be filed in Docket No. EC20–1–000, etc.[8]

2. Comments

11. Most commenters support the proposed notification filing.[9] NRECA explains that proposed § 33.12(a) implementing the notification requirement tracks the statutory language.[10] EEI supports the Commission's proposal regarding the notification requirement for transactions valued between $1 million but at or below $10 million, which it states is consistent with the legislative goals of reducing regulatory burden and paperwork burdens while still providing transparency.[11] Idaho Power also supports the proposal that there be no filing requirement for transactions involving facilities with a value of less than $1 million, which it states will streamline the process for utilities and reduce the oversight burden on the Commission.[12]

12. Some commenters request clarification on associated process and service requirements and notice procedures. EEI requests clarification on whether the notification filings can be filed in standard word-document formats via eFiling. EEI and ITC also ask whether these filings are purely informational. Specifically, they ask that the Commission clarify that: (1) It will not notice these proceedings for public comment; (2) other persons are not entitled to file responsive comments; and (3) the Commission will not take any action on the filings. EEI and ITC request clarification that persons are not obligated to serve copies of these notification filings under 18 CFR 385.2010 (Rule 2010 of the Commission's Rules of Practice and Procedure).[13] In contrast, Public Citizen, Inc. requests that the Commission clarify whether the proposed notification filing will be subject to public notice so that the public can track transactions valued between $1 million but at or below $10 million.[14]

13. Others contend that the information proposed to be collected in the notification filing is insufficient. American Antitrust Institute (AAI) suggests that more information should be included in the notification filing to account for (1) small, successive horizontal or vertical acquisitions that can result in accretion of market power over time (serial transactions); (2) acquisitions of partial ownership shares in strategic assets that can raise competitive concerns due to common and cross-ownership issues; and (3) strategic acquisitions. AAI explains that, through serial transactions, a utility may enhance its ability and incentive to engage in unilateral economic withholding of physical capacity or to strategically operate its transmission or fuel transportation assets to frustrate rivals' access to or foreclose them from wholesale markets.[15] In addition, AAI states that cross-ownership can facilitate the anticompetitive exchange of information and common ownership can dampen incentives to compete because more vigorous competition is less profitable than ''cooperation'' for investors with partial shares in each of those rivals. AAI explains that, for example, private equity firms, which are numerous and active in electricity markets, can control or influence managerial decision-making even with a partial or minority ownership share in an asset, and such influence may be obtained with an investment of less than $10 million.[16] Further, AAI states that, because electricity markets are susceptible to the exercise of market power due to the inelasticity of demand and supply during times when capacity is constrained. AAI also states that even small, strategic acquisitions can incentivize capacity withholding.[17]

14. AAI therefore recommends that the notification filing include: (1) The wholesale markets in which the jurisdictional facilities associated with or affected by the transaction participate; (2) a current, 10-year history of ownership changes involving the jurisdictional facilities associated with the transaction; and (3) the identity of all energy affiliates and energy subsidiaries owned by the acquirer of the jurisdictional facilities that are the subject of the transaction. AAI also encourages the Commission to undertake a technical conference to review how the Commission will analyze these transactions to monitor market changes, given that the Commission is required to submit a report to Congress within two years regarding the effects of amended section 203(a)(1)(B).[18]

15. APPA, NRECA, and TAPS also request that the notification filing include a requirement to identify energy affiliates and energy subsidiaries and to include pre- and post-transaction organizational charts.[19] APPA explains that the affiliate information is important because it will allow the Commission and other stakeholders to monitor whether a market participant is engaged in multiple accretive transactions valued at less than $10 million, which APPA notes was a concern of the Commission in a 2016 notice of inquiry on requirements for section 203 transactions and section 205 market-based rate applications.[20] NRECA and TAPS explain that the information will be useful because ownership structures and affiliate relationships are growing more complex.[21] APPA states that the affiliate information and organizational charts will result in only an incremental burden to paperwork, but that the

[6] NOPR, 165 FERC ¶ 61,091 at P 4.

[7] *Id.* P 5.

[8] *Id.* P 8.

[9] Idaho Power, EEI, APPA, ITC, and NRECA support the proposed notification filing.

[10] NRECA Comments at 4.

[11] EEI Comments at 7.

[12] Idaho Power Comments at 2.

[13] *See* EEI Comments at 7–8; ITC Comments at 3–4. Rule 2010 requires, among other things, that participants in a proceeding must serve copies of their documents according to specified guidelines. 18 CFR 385.2010.

[14] Public Citizen, Inc. Comments at 1–2.

[15] AAI Comments at 3–4.

[16] *Id.* at 5–7.

[17] *Id.* at 7–8.

[18] *Id.* at 9.

[19] *See* APPA Comments at 3–4; NRECA Comments at 5–6; TAPS Comments at 4.

[20] APPA Comments at 4–5 (citing *Modifications to Commission Requirements for Review of Transactions under Section 203 of the Federal Power Act and Market-Based Rate Applications under Section 205 of the Federal Power Act,* Notice of Inquiry, 81 FR 66649 (Sept. 28, 2016), 156 FERC ¶ 61,214 (2016) (Market Power NOI)).

[21] *See* NRECA Comments at 5–6; TAPS Comments at 5.

information will be useful to include in the Commission's report to Congress.[22] NRECA also requests that the Commission require information on the wholesale and transmission tariffs on file with the Commission that are related to the jurisdictional facilities involved in the transaction, which it claims will be useful to monitor the rates associated with those facilities.[23] TAPS maintains that the proposed notification filing includes little information compared to full section 203 applications and, because Congress required these filings, the information the Commission receives must be sufficient for consumer protection purposes and to produce a meaningful report for Congress.[24]

3. Commission Determination

16. We will add § 33.12 to the Commission's regulations as proposed in the NOPR to require that public utilities submit a notification filing for transactions subject to section 203(a)(7). In response to the comments, we first clarify filing requirements associated with the notification filings. Each notification filing should be filed in the first docket for section 203 filings of the FY. For example, all notification filings made in FY2019 would be filed in the Docket No. EC19–1–000; all notification filings for FY2020 would be filed in Docket No. EC20–1–000, etc. The notification filings may be filed in any format accepted in eLibrary as listed on the Commission's website.[25] In addition, we clarify that the notification filings are intended to be informational. The Commission will not notice the notification filings submitted into the placeholder docket (*i.e.,* Docket No. EC19–1–000, etc.) and will not accept responsive comments from any persons on the notification filings. The Commission will not act on the notification filings that it receives. Because the notification filings are informational in nature, there is no requirement to serve copies of the notification filings under Rule 2010 of the Commission's Rules of Practice and Procedure.

17. With one exception, we decline to require additional information as requested by certain commenters. Section 203(a)(7) provides the Commission with limited authority to collect information in the notification filings about transactions for which prior Commission authorization under section 203(a)(1) is no longer required. Because the Commission has limited authority to review these transactions under section 203, we will not hold a technical conference on how the Commission will analyze these transactions. Interested persons may track these transactions as they are filed in the placeholder dockets described above which provide a readily searchable format for doing so.

18. However, AAI, APPA, NRECA, and TAPS raise a compelling argument regarding the transparency of information as to energy affiliates. Therefore, in addition to the information that the NOPR proposed to be collected, we will require notification filings to contain a statement regarding whether the parties to the transaction are affiliates. This will allow additional 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. We will add a requirement for such a statement in the description of the transaction in § 33.12(b)(2)(i).

19. As to the Commission's report to Congress that assesses the effects of amended section 203(a)(1)(B), the Commission will provide for public notice and comments on the report prior to submitting it to Congress.

C. Clarification on Jurisdiction of the Commission Under Section 203(a)(1)(B)

1. NOPR

20. In the NOPR, the Commission clarified that, except for mergers or consolidations that are valued at $10 million or less, the Commission will not change its interpretation of the transactions that are subject to the jurisdiction of the Commission under the ''merge or consolidate'' clause of section 203(a)(1)(B). The Commission further explained that it interprets the amendment by Congress to section 203(a)(1)(B) as establishing a $10 million threshold, but not removing the Commission's jurisdiction to review transactions with a higher value that involve a public utility's acquisition of facilities from non-public utilities[26] if those facilities will be subject to the Commission's jurisdiction after the transaction is consummated.[27]

2. Comments

21. Two commenters, EEI and ITC, take issue with the Commission's clarification on its jurisdiction. Specifically, EEI claims that the amended language of section 203(a)(1)(B) states that Commission approval is required only if the facilities being acquired by the public utility are subject to the Commission's jurisdiction, which is ''plainly read to mean that the facilities are jurisdictional before consummation of the proposed transaction.'' [28] EEI states that the Commission should recognize that, as amended, the language of section 203(a)(1)(B) has materially changed from the language that preceded the amendment. As a result, EEI explains that the *Duke Power Co.* v. *FPC* case cited by the Commission does not squarely address the question raised by the amendment. EEI requests that, for regulatory certainty, the Commission reconsider and clarify its interpretation of the types of facilities to which amended section 203(a)(1)(B) will apply.[29]

22. Similarly, ITC argues that the plain language of amended section 203(a)(1)(B) does not grant the Commission authority to review transactions that involve a public utility's acquisition of facilities from non-public utilities. ITC asserts that, under amended section 203(a)(1)(B), a public utility must obtain Commission authorization only when proposing to merge or consolidate its own Commission-jurisdictional facilities with another person's Commission-jurisdictional facilities. ITC contends that if the facilities would be Commission-jurisdictional if owned by a jurisdictional entity, or will become so after the transaction is approved by the Commission and consummated, is immaterial because the statutory language requires that the facilities ''are'' within the jurisdiction of the Commission, not that they will be at some future time.[30] ITC also maintains that the Commission's reliance on *Duke Power Co.* is unavailing because the case involved the interpretation of older, no-longer effective section 203(a)(1)(B) language, which conferred upon the Commission authority to review a public utility's proposed merger or consolidation of its own facilities with the facilities of ''any other person.'' [31] In addition, ITC claims that the court's observation about the Commission's

[22] APPA Comments at 5–6.

[23] NRECA Comments at 6–7.

[24] TAPS Comments at 4.

[25] FERC, *Acceptable File Formats, http://www.ferc.gov/docs-filing/elibrary/accept-file-formats.asp* (last updated Nov. 16, 2015).

[26] Non-public utilities refers to entities described in section 201(f) of the FPA. 16 U.S.C. 824(f).

[27] *See Duke Power Co.* v. *FPC,* 401 F.2d 930, 941 (DC Cir. 1968) (*Duke Power Co.*) (''We have no doubt that any acquisition from [a non-public utility] by a public utility of what would normally be a jurisdictional facility, such as a transmission line conducting interstate energy, would fall within the purview of the clause under consideration.'').

[28] EEI Comments at 9.

[29] *Id.* at 8–9.

[30] ITC Comments at 2–3.

[31] *Id.* at 3 (citing *Duke Power Co.*, 401 F.2d at 933).

jurisdiction in that case is dicta because the case concerned whether a public utility's acquisition of unambiguously non-jurisdictional distribution assets was within section 203(a)(1)(B)'s ambit.[32]

3. Commission Determination

23. We disagree with EEI's and ITC's interpretation of the language of amended section 203(a)(1)(B). Rather, we interpret the new statutory language as codifying the D.C. Circuit's holding in *Duke Power Co.* that the Commission has no jurisdiction over the acquisition of distribution or other facilities that are non-jurisdictional even when owned by a public utility. In amended section 203(a)(1)(B), the phrase ''subject to the jurisdiction of the Commission'' was used twice.[33] First, the phrase was used to describe the facilities of a ''public utility'' that must be involved in a transaction in order for the Commission to have jurisdiction. By adding ''subject to the jurisdiction of the Commission'' to describe the facilities of a ''public utility,'' we conclude that Congress intended to exclude facilities, such as distribution facilities, that are not otherwise subject to the jurisdiction of the Commission when owned by a public utility. When Congress again uses the phrase ''subject to the jurisdiction of the Commission'' to modify the facilities of a ''person,'' we interpret the phrase as having the same meaning, rather than removing the Commission's jurisdiction over a public utility's acquisition of transmission facilities previously owned by a non-public utility.

24. That Congress did not intend to limit the Commission's jurisdiction to the acquisition of transmission facilities subject to the Commission's jurisdiction prior to the transaction is further supported by the fact that Congress retained the language requiring that the facilities being acquired be owned by a ''person,'' instead of changing the language to require that the facilities be owned by a ''public utility.'' Under section 201(e), a ''public utility'' is ''any person who owns or operates facilities subject to the jurisdiction of the Commission under this part,'' [34] which means that, if facilities being acquired are subject to the Commission's jurisdiction prior to the transaction, their owner by definition is a public utility. The use of the word ''person,'' and not ''public utility,'' when describing the facilities to be acquired suggests that Congress intended the Commission to have jurisdiction over the acquisition of facilities owned both by public utilities and non-public utilities, provided that those facilities are subject to the Commission's jurisdiction after their acquisition by the public utility.

25. Our interpretation is reinforced by the legislative history of the Act, which indicates that Congress intended amended section 203(a)(1)(B) only to establish a $10 million threshold for transactions subject to the Commission's jurisdiction and not to alter any other aspect of the Commission's jurisdiction over transactions. The House Report described the purpose of the amendment as ''amend[ing] the Federal Power Act to exempt facilities of a value of $10,000,000 or less from this prohibition.'' [35] The Senate Report similarly describes the purpose of the amendment as to: ''reduce the compliance burden of certain transactions valued under $10 million, including significant legal and regulatory costs which are collected from customers.'' [36] Notably, as part of its background discussion, the Senate Report also includes a discussion of the *Duke Power Co.* decision and its holding regarding the Commission's jurisdiction to approve transactions, but that report does not assert that the decision was erroneous or otherwise suggest that the amendment was intended to reverse the Commission's longstanding reliance on *Duke Power Co.* to assert jurisdiction over a public utility's acquisition of transmission facilities from a non-public utility.[37] That neither the House Report nor the Senate Report suggests that the amendment was intended to remove the Commission's jurisdiction over the acquisition of facilities from non-public utilities also supports the conclusion that the amendment should not be read to have such an effect.

D. Other Pending Proceedings

1. Comments

26. AAI requests that the Commission carefully consider whether the revised regulations for small transactions will have an effect on the questions posed in outstanding rulemakings. AAI argues, among other things, that if small transactions are excluded from Commission review under section 203(a)(1)(B), the Commission should maintain close oversight over the workings of regional transmission organization markets and not relieve sellers with market-based rate authority from filing a competitive analysis with the Commission, as was proposed in the Notice of Proposed Rulemaking in *Refinements to Horizontal Market Power Analysis for Sellers in Certain Regional Transmission Organization and Independent System Operator Markets*.[38] AAI further notes that the Commission has not acted on two critical rulemakings and requests that the Commission make these a high priority: *Data Collection for Analytics and Surveillance and Market-Based Rate Purposes* in Docket No. RM16–17–000 (Data Collection NOPR) [39] and *Modifications to Commission Requirements for Review of Transactions under Section 203 of the Federal Power Act and Market-Based Rate Applications under Section 205 of the Federal Power Act* in RM16–21–000.[40]

27. APPA and TAPS request that, if the Commission does not expand the information to be collected in the notification filing, it should act on the Data Collection NOPR and proceed with the relational database proposed therein.[41]

2. Commission Determination

28. We acknowledge commenters' support and requests for action on other pending rulemaking proceedings. However, we emphasize that this proceeding is limited in scope and only implements the changes specified in amended section 203. We will not address the status of other proceedings here. In addition, as explained above, we find that the information we will collect under § 33.12 is sufficient to satisfy the directive in the Act that the Commission establish a notification requirement.

III. Information Collection Statement

29. The Paperwork Reduction Act (PRA) [42] requires each federal agency to

[32] *Id.*

[33] Amended section 203(a)(1)(B) provides 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 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.'' 16 U.S.C. 824b(a)(1)(B), *amended by* ''An Act to amend section 203 of the Federal Power Act,'' Public Law 115–247, 132 Stat. 3152 (2018) (emphasis added).

[34] 16 U.S.C. 824(e).

[35] H.R. Rep. No. 115–167, at 1 (2018).

[36] S. Rep. No. 115–253, at 2 (2018).

[37] *Id.* at 3.

[38] AAI Comments at 9–10 (citing *Refinements to Horizontal Market Power Analysis for Sellers in Certain Regional Transmission Organization and Independent System Operator Markets,* Notice of Proposed Rulemaking, 165 FERC ¶ 61,268 (2018)).

[39] *Id.* at 10.

[40] *Id.* (citing Market Power NOI, 81 FR 66649, 156 FERC ¶ 61,214).

[41] *See* APPA Comments at 6–7; TAPS Comments at 5–6.

[42] 44 U.S.C. 3501–3520.

seek and obtain Office of Management and Budget (OMB) approval before undertaking a collection of information directed to 10 or more persons or contained in a rule of general applicability. OMB's regulations [43] require approval of certain information collection requirements imposed by agency rules. Upon approval of a collection of information, OMB will assign an OMB control number and an expiration date. Respondents subject to the filing requirements of an agency rule will not be penalized for failing to respond to the collection of information unless the collection of information displays a valid OMB control number.

30. The revisions to the Commission's regulations required in this final rule will bring the regulations in conformance with the amendments to section 203 enacted by Congress. The first revision would implement Congress' amendment to section 203(a)(1)(B), which provides that a public utility must seek authorization 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. In addition, this final rule adds § 33.12 to the Commission's regulations to implement the directive in new section 203(a)(7) that the Commission require a notification filing for mergers or consolidations by a public utility if the facilities to be acquired have a value in excess of $1 million and such public utility is not required to secure Commission authorization under amended section 203(a)(1)(B). We anticipate that the revisions to the Commission's regulations, once effective, would reduce regulatory burdens. The Commission will submit the proposed reporting requirements to OMB for its review and approval under section 3507(d) of the PRA.[44]

31. In the NOPR, the Commission solicited comments on the Commission's need for this information, whether the information will have practical utility, the accuracy of the burden estimates, ways to enhance the quality, utility, and clarity of the information to be collected or retained, and any suggested methods for minimizing respondents' burden, including the use of automated information techniques. Nonetheless, while we expect that the regulatory revisions discussed herein will reduce the burdens on affected entities, we solicit public comment regarding the accuracy of the burden and cost estimates below.

32. *Internal Review:* The Commission has reviewed the changes and has determined that such changes are necessary.

33. *Burden Estimate* [45]: The estimated burden and cost for the requirements contained in this final rule follow.

FERC–519, AS MODIFIED BY THIS FINAL RULE IN DOCKET NO. RM19–4–000

Requirements	Number and type of respondents	Number of responses per respondent	Total number of responses	Average burden hours & cost per response	Total burden hours & total cost
	(1)	(2)	(1) * (2) = (3)	(4)	(3) * (4)
FERC–519 (FPA Section 203 Filings) [46].	26	1	26	1 hr.; $79.00	26 hrs.; $2,054.00.

Title: FERC–519, Application under Federal Power Act Section 203.

OMB Control No.: 1902–0082.

Action: Amendment to 18 CFR part 33.

Respondents: Public utilities subject to Federal Power Act.

Abstract: Pursuant to ''An Act to amend section 203 of the Federal Power Act'', the Commission will revise part 33 of its regulations to establish that mergers or consolidations by a public utility of facilities subject to the jurisdiction of the Commission that have a value in excess of $10 million are subject to Commission authorization. In addition, the Commission will add § 33.12 to its regulations to establish a notification requirement for mergers or consolidations by a public utility if the facilities to be acquired have a value in excess of $1 million and such public utility is not required to secure Commission authorization under amended section 203(a)(1)(B).

Overview of the Data Collection: The FERC–519, ''Application under Federal Power Act section 203,'' is necessary to enable the Commission to carry out its responsibilities in implementing the statutory provisions of section 203. Section 203 requires a public utility to seek Commission authorization of transactions in which a public utility disposes of jurisdictional facilities, merges such facilities with the facilities owned by another person, or acquires the securities of another public utility. The Commission must authorize these transactions if it finds that they will be consistent with the public interest.

34. By entering into a certain transaction, a public utility may gain an increased incentive and ability to exercise market power that can be to the detriment of effective competition and customers. As a result, the Commission must review all jurisdictional dispositions, mergers, and acquisitions to evaluate that transaction's effect on competition. The Commission also evaluates whether such transactions have an effect on rates and regulation and whether they result in cross-subsidization. The Commission implements the filing requirements associated with this review in the *Code of Federal Regulations* (CFR) under 18 CFR part 33.

35. This final rule is limited to implementing amended FPA section 203(a)(1)(B) and proposing a notification requirement for certain transactions, both of which together represent a reduction in the filing requirements for public utilities under section 203. The Commission implements these changes by mandate of Congress.

[43] 5 CFR part 1320.

[44] 44 U.S.C. 3507(d).

[45] ''Burden'' is the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. For further explanation of what is included in the information collection burden, refer to 5 CFR 1320.3.

[46] 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 respondents 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 by the changes herein, which represents a significant reduction in burden hours.

36. Interested persons may obtain information on the reporting requirements by contacting the following: Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426 [Attention: Ellen Brown, Office of the Executive Director] Email: *DataClearance@ferc.gov,* Phone: (202) 502–8663; fax: (202) 273–0873.

37. Comments concerning the collection of information and the associated burden estimate(s) may also be sent to: Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503 [Attention: Desk Officer for the Federal Energy Regulatory Commission]. Due to security concerns, comments should be sent electronically to the following email address: *oira_submission@omb.eop.gov.* Please refer to FERC–519, OMB Control No. 1902–0082 in your submission.

IV. Environmental Analysis

38. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.[47] We conclude that neither an Environmental Assessment nor an Environmental Impact Statement is required for this final rule under § 380.4(a) of the Commission's regulations, which provides a categorical exemption for ''approval of actions under section[] . . . 203 . . . of the Federal Power Act relating to . . . acquisition or disposition of property . . . .'' [48]

V. Regulatory Flexibility Act

39. The Regulatory Flexibility Act of 1980 (RFA) [49] generally requires a description and analysis of final rules that will have significant economic impact on a substantial number of small entities. The Small Business Administration's (SBA) Office of Size Standards develops the numerical definition of a small entity. These standards are provided in the SBA regulations at 13 CFR 121.201.[50] The RFA does not mandate any particular outcome in a rulemaking. It only requires consideration of alternatives that are less burdensome to small entities and an agency explanation of why alternatives were rejected.

40. The SBA size standards for electric utilities is based on the number of employees, including affiliates. Under SBA's standards, some transmission owners will fall under the following category and associated size threshold: Electric bulk power transmission and control, at 500 employees.[51]

41. The Commission estimates that 26 respondents could file notification filings over the course of a year, with an estimated burden of 1 hour per response, at an estimated cost of $79.00 per respondent. The Commission believes that none of the filers will be small entities. Therefore, the Commission certifies that this final rule will not have a significant economic impact on small entities.

VI. Document Availability

42. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through FERC's Home Page (*http://www.ferc.gov*) and in FERC's Public Reference Room during normal business hours (8:30 a.m. to 5:00 p.m. Eastern time) at 888 First Street NE, Room 2A, Washington DC 20426.

43. From FERC's Home Page on the internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

44. User assistance is available for eLibrary and the FERC's website during normal business hours from FERC Online Support at 202–502–6652 (toll free at 1–866–208–3676) or email at *ferconlinesupport@ferc.gov,* or the Public Reference Room at (202) 502–8371, TTY (202) 502–8659. Email the Public Reference Room at *public.referenceroom@ferc.gov.*

VII. Effective Date and Congressional Notification

45. These regulations are effective March 27, 2019. The Commission has determined that this rule is not a ''major rule'' as defined in section 351 of the Small Business Regulatory Enforcement Fairness Act of 1996.

[47] *Regulations Implementing the National Environmental Policy Act,* Order No. 486, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs. ¶ 30,783 (1987).

[48] 18 CFR 380.4(a)(16).

[49] 5 U.S.C. 601–612.

[50] 13 CFR 121.201. *See also* U.S. Small Business Administration, *Table of Small Business Size Standards Matched to North American Industry Classification System Codes* (effective Feb. 26, 2016), *https://www.sba.gov/sites/default/files/files/Size_Standards_Table.pdf.*

[51] 13 CFR 121.201, Sector 22 (Utilities), NAICS code 221121 (Electric Bulk Power Transmission and Control).

List of Subjects in 18 CFR Part 33

Electric utilities, Reporting and recordkeeping requirements, Securities.

By the Commission.

Issued: February 21, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

In consideration of the foregoing, the Commission amends part 33, chapter I, title 18, *Code of Federal Regulations,* as follows:

PART 33—APPLICATIONS UNDER FEDERAL POWER ACT SECTION 203

■ 1. The authority citation for part 33 continues to read as follows:

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

■ 2. Amend § 33.1 by revising paragraph (a)(1)(ii) to read as follows:

§ 33.1 Applicability, definitions, and blanket authorizations.

(a) * * *

(1) * * *

(ii) 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;

* * * * *

■ 3. Add § 33.12 to read as follows:

§ 33.12 Notification requirement for certain transactions.

(a) 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, shall notify the Commission of such transaction 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 an order of the Commission under section 203(a)(1)(B) of the Federal Power Act.

(b) Such notification shall consist of the following information:

(1) The exact name of the public utility and its principal business address; and

(2) A narrative description of the transaction, including:

(i) The identity of all parties involved in the transaction, whether such parties are affiliates, and all jurisdictional facilities associated with or affected by the transaction;

(ii) The location of such jurisdictional facilities involved in the transaction;

(iii) The date on which the transaction was consummated;

(iv) The consideration for the transaction; and

(v) The effect of the transaction on the ownership and control of such jurisdictional facilities.

[FR Doc. 2019–03326 Filed 2–25–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9848]

RIN 1545–BL39

Amendments to the Low-Income Housing Credit Compliance-Monitoring Regulations

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations and removal of temporary regulations.

SUMMARY: This document contains final regulations that amend the compliance monitoring regulations concerning the low-income housing credit under section 42 of the Internal Revenue Code (Code). These final regulations revise and clarify the requirement to conduct physical inspections and review low-income certifications and other documentation. The final regulations will affect owners of low-income housing projects that claim the credit, the tenants in those low-income housing projects, and the State and local housing credit agencies that administer the credit.

DATES: *Effective date:* These regulations are effective on February 26, 2019.

Applicability Dates: For dates of applicability see § 1.42–5(h)(2).

FOR FURTHER INFORMATION CONTACT: Barbara Campbell or YoungNa Lee, (202) 317–4137 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document amends 26 CFR part 1 to finalize rules relating to section 42 of the Code. On February 25, 2016, the Department of the Treasury (Treasury Department) and the IRS published temporary regulations (T.D. 9753) in the **Federal Register** (81 FR 9333), which amended § 1.42–5 of the Income Tax Regulations.

Section 42(m)(1) provides that the owners of an otherwise-qualifying building are not entitled to the housing credit dollar amount that is allocated to the building unless, among other requirements, the allocation is pursuant to a qualified allocation plan (QAP). A QAP provides standards by which a State or local housing credit agency or its Authorized Delegate within the meaning of § 1.42–5(f)(1) (Agency) is to make these allocations. A QAP also provides a procedure that an Agency must follow in monitoring for compliance with the provisions of section 42. A plan fails to be a QAP unless, in addition to other requirements, it provides a procedure that the agency (or an agent or other private contractor of such agency) will follow in monitoring for noncompliance with the provisions of section 42 and in notifying the Internal Revenue Service of such noncompliance which such agency becomes aware of and in monitoring for noncompliance with habitability standards through regular site visits. (Section 42(m)(1)(B)(iii)).

Section 1.42–5 (the compliance-monitoring regulations) describes some of the provisions that must be part of any QAP. As part of its compliance-monitoring responsibilities, an Agency must perform physical inspections and low-income certification review.

The compliance-monitoring regulations specifically provide that, for each low-income housing project, an Agency must conduct on-site inspections of all buildings within its jurisdiction by the end of the second calendar year following the year the last building in the project is placed in service (the all-buildings requirement). Prior to the issuance of the temporary regulations, the regulations also provided that, for at least 20 percent of the project's low-income units (the 20-percent rule), the Agency must both inspect the units and review the low-income certifications, the documentation supporting the certifications, and the rent records for the tenants in those same units (the same-units requirement).

Under the temporary regulations, guidance published in the Internal Revenue Bulletin may provide exceptions from, or alternative means of satisfying, the inspection provisions of § 1.42–5(d). Rev. Proc. 2016–15 (2016–11 I.R.B. 435) was published concurrently with the temporary regulations and provides that the U.S. Housing and Urban Development (HUD) Real Estate Assessment Center Protocol (the REAC protocol) satisfies both § 1.42–5(d) and the physical inspection requirements of § 1.42–5T(c)(2)(ii) and (iii). The revenue procedure provides that, in a low-income housing project, the minimum number of low-income units that must undergo physical inspection is the lesser of 20 percent of the low-income units in the project, rounded up to the nearest whole number of units, or the number of low-income units set forth in the Low-Income Housing Credit Minimum Unit Sample Size Reference Chart in the revenue procedure (the REAC numbers). The revenue procedure also applies the same rule to determine the minimum number of units that must undergo low-income certification review.

The temporary regulations also required that Agencies continue to comply with the all-buildings requirement unless guidance published in the Internal Revenue Bulletin pursuant to § 1.42–5T(a)(iii) provides otherwise. Rev. Proc. 2016–15 provides for such an exception. Under Rev. Proc. 2016–15, the all-buildings requirement does not apply to an Agency that uses the REAC protocol to satisfy the physical inspection requirement, because the Treasury Department and the IRS have determined that the REAC protocol is an acceptable method for satisfying both § 1.42–5(d) and the physical inspection requirement of § 1.42–5T(c)(2)(ii) and (iii).

Finally, the temporary regulations decoupled the physical inspection and low-income certification review and ended the same-units requirement. Accordingly, an Agency is no longer required to conduct a physical inspection and low-income certification review of the same unit. Because the units no longer needed to be the same, an Agency may choose a different number of units for physical inspection and for low-income certification review provided the Agency chooses at least the minimum number of low-income units. Further, an Agency may choose to conduct a physical inspection and low-income certification review at different times.

On the same day the temporary regulations were published, the Treasury Department and the IRS also published a notice of proposed rulemaking (REG–150349–12, 81 FR 9379) (the proposed regulations). The text of the proposed regulations incorporated by cross-reference the text of the temporary regulations. The Treasury Department and the IRS received written comments on the proposed regulations. No requests for a public hearing were made, and no public hearing was held.

The Treasury Department and the IRS considered the written comments in light of the questions presented in the preamble of the temporary regulations. The Treasury Department and the IRS