

FERC Proposes Notice Requirement For Public Utility Mergers and Acquisitions Under New Monetary Threshold

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A recent amendment to the Federal Power Act (FPA) that will become effective March 27, 2019 sets a \$10 million threshold for requiring Federal Energy Regulatory Commission (FERC) prior approval of public utility mergers and consolidations. That amendment also calls for FERC to adopt a rule requiring public utilities to simply notify FERC of mergers and consolidations with a value over \$1 million but less than \$10 million. At its recent public meeting, FERC approved a [Notice of Proposed Rulemaking \(NOPR\)](#) regarding that notice requirement. These provisions, when in effect, will place mergers and consolidations under the same value threshold as other types of transactions and eliminate the need for low-value mergers and consolidations to secure FERC approval. These legislative and regulatory changes will be of interest to entities that anticipate merging or consolidating facilities that are subject to the jurisdiction of FERC.

Statutory Background

The currently applicable section 203(a)(1) of the FPA requires prior FERC approval of the following types of transactions by public utilities: (a) sale, lease or other disposition of jurisdictional facilities; (b) merger or consolidation of facilities; (c) purchase or acquisition of securities; and (d) purchase, lease or acquisition of existing generation facilities. With the exception of mergers and consolidations, the FPA now sets a minimum value threshold of \$10 million to trigger the FERC prior approval requirement; no threshold is specified for mergers and consolidations. Accordingly, FERC has required prior approval of all mergers and consolidations, no matter how low the value of the facilities to be acquired in the transaction.

[Public Law No. 115-247](#) rectifies this by amending FPA section 203(a)(1)(B) to require FERC prior approval of mergers and consolidations only when the facilities to be acquired have a value of over \$10 million. Where the facilities to be acquired have a value of less than \$10 million but over \$1 million, the transaction would be subject to a simple notification requirement after consummation. In Congressional testimony, FERC's General Counsel said transactions below the \$10 million threshold are unlikely to impose a significant negative impact on competition or customer rates.

The amended FPA requires FERC to adopt a rule regarding the notification requirement and to submit a report to Congress in two years assessing the effects of the revisions to the FPA. The notification requirement is the subject of FERC's action discussed below.

The Proposed Notification Requirement

FERC's proposal requires a public utility to notify the Commission of any merger or consolidation with a value of less than \$10 million but more than \$1 million not later than 30 days after the transaction is consummated. The notice must provide 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,

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Article By [Covington & Burling LLP](#)
[Wilbur C. Earley](#)
[Inside Energy & Environment](#)

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- 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.

In the NOPR, FERC says this information is a substantial reduction in paperwork from the full filing requirements for acquisitions and will allow the Commission to monitor the merger or consolidation of facilities subject to its jurisdiction.

Comments on FERC's proposal (Docket No. RM19-4) are due 30 days after publication in the Federal Register.

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