

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

18 CFR Parts 34 and 131

(Docket No. RM05-11-000; Order No. 657)

Electronic Filing of the Application for Authorization for the Issuance of
Securities or the Assumption of Liabilities

(Issued May 27, 2005)

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final Rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is amending its regulations to provide for electronic filing of Applications for Authorization for the Issuance of Securities or the Assumption of Liabilities. The Commission is making these changes as part of its effort to modernize its reporting and filing requirements and to eliminate unnecessary filing burdens for those entities that file applications or reports with the Commission pursuant to 18 CFR Part 34. The proposed revisions will reduce the Commission's and the respondent's costs by allowing the submission of financial information in electronic format in lieu of the present hard copy format; the type of financial data that jurisdictional entities submit in this application is already routinely stored in electronic format, making hard copy filing of such information burdensome. In this Final Rule the Commission continues to move toward electronic filing, as the Government Paperwork Elimination Act, 44 U.S.C. 3501 *et seq.*, mandates.

The modifications in this Final Rule are the result of a review conducted by the Commission's Information Assessment Team (FIAT), identifying the Commission's current information collections, evaluating their original purposes and current uses, and proposing ways to reduce the reporting burden on industry through the elimination, reduction, streamlining or reformatting of current collections.

EFFECTIVE DATE: The rule will become effective at the time of the next e-filing release during the Commission's next fiscal year, i.e., no earlier than October 1, 2005.

FOR FURTHER INFORMATION CONTACT:

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UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, Joseph T. Kelliher,
and Suedeem G. Kelly.

Electronic Filing of the Application for
Authorization for the Issuance of Securities
or the Assumption of Liabilities

Docket No. RM05-11-000

ORDER NO. 657

FINAL RULE

(Issued May 27, 2005)

I. Introduction

1. This Final Rule revises the Commission's regulations found in 18 CFR Part 34 and Part 131 to require the electronic filing of Applications for Authorization for the Issuance of Securities or the Assumption of Liabilities (FERC-523). The filing is now made entirely in paper format. Commencing with the Commission's next e-filing release, which is presently slated to occur in the Commission's next fiscal year, i.e., no earlier than October 1, 2005, there will be no further requirement for paper filings. Instead, jurisdictional entities will submit their filings in electronic format.

2. This rulemaking yields significant benefits to the respondents and the Commission. These benefits include a reduction in filers' printing and handling costs and a reduction in the Commission's processing and maintenance costs. The move to

electronic filing also helps achieve the Commission's goal of vigilant oversight by providing the Commission with more timely and usable information.

II. Background

3. Under Federal Power Act (FPA) section 204, 16 U.S.C. 824c, no public utility or licensee shall issue any security, or assume any obligation or liability as guarantor, endorser, surety, or otherwise in respect of any security of another person, unless and until, upon application by the public utility, the Commission by order authorizes the issuance of the securities or the assumption of the liability. The Commission implements this statute through its regulations, which are found at 18 CFR Part 34; sections 131.43 and 131.50 of 18 CFR Part 131 prescribe the required format for the filings.

4. FERC-523 collects the following: a description of the securities that the company proposes to issue, the purpose of the securities, whether or not the company will file any part of the application with any state, a detailed statement of the facts upon which the applicant relies, a statement of the bond indentures or other limitations on interest and dividend coverage, the effects of such limitations on the issuance of additional debt or equity securities, and a brief statement of any rate changes made effective during the subject period. The Commission uses this information to determine whether to approve an application for authorization to issue securities or to assume an obligation or liability by the public utilities and their licensees who make these applications. The Commission receives about sixty applications annually.

III. Discussion

5. In this Final Rule, the Commission is eliminating the requirement to make paper submissions of FERC-523, and to substitute a requirement to file FERC-523 electronically.

6. Current filing regulations for FERC-523 require the respondents to make paper submissions, which the Commission then scans into its document management system (the Commission's Electronic Library (eLibrary)). The scanned filing is converted to PDF format. Those wishing to view the filed information can access and view it through eLibrary; all publicly-available documents are viewable in eLibrary. Currently, most of the FERC-523 submissions, while filed as hardcopy, are originally created by electronic means and are thus already in an electronic format. Allowing submitters to "eFile" reduces the burden of converting an electronic document into a paper submission which the Commission then converts back to an electronic document; and eliminates the cost of sending paper submissions, the Commission's elimination of the FERC-523 paper submissions should benefit those making such filings and should not have an adverse impact on information users.

7. This Final Rule is part of the Commission's efforts to revise and streamline its existing reporting requirements, reduce the filing burden on reporting companies, and meet the requirements of the Government Paperwork Elimination Act of 1998, 44 U.S.C. 35.

VI. Information Collection Statement

8. The Office of Management and Budget’s (OMB) regulations require OMB to approve certain information collection requirements imposed by agency rule.¹

Comments are solicited on the Commission’s need for this information, whether the information will have practical utility, the accuracy of the provided burden estimates, ways to enhance the quality, utility and clarity of the information to be collected, and any suggested methods for minimizing respondents’ burden, including the use of automated information techniques.

Estimated Annual Burden

9. The current reporting burden for this information collection is as follows:

Data Collection	Number of Respondents	Number of Responses	Number of Hours Per Response	Total Annual Hours
FERC-523	60	1	110	6,600
Totals				6,600

The Commission expects a burden reduction of 22 hours per response as a result of the electronic filing implementation. This reduces total annual hours to 5,280, a reduction of 1320 hours annually.

Title: Application for Authorization of the Issuance of Securities or the Assumption of

¹ 5 CFR 1320.11.

Liabilities (FERC-523)

Action: Electronic Filing of Information

OMB Control No. 1902-0043

Respondents: Businesses or other for profit

Frequency of Responses: Occasional.

Necessity of the information: This Final Rule will revise the filing requirements for applications for Commission authorization to issue securities or to assume liabilities, to require the electronic filing of this information and thus reducing the burden on respondents and allowing more expeditious analysis by the Commission (and others).

The information filed with the Commission is used to make a determination to grant or deny authorization to issue securities or to assume a liability. By assessing this information, the Commission can evaluate the financial health of the company and the potential impact on current and future ratepayers.

Internal Review: The Commission has reviewed the proposed amendments to its regulations to modify the filing method and standardize the format. The revisions to the regulations will provide more effective and efficient information by providing current data by electronic submission. This method of filing will reduce data errors and thus preserve the integrity of the data. The Commission will be able to conduct further analysis of filed data in a more timely fashion and provide a more timely response. The Commission has assured itself, by means of internal review, that there is specific,

objective support for the burden estimates associated with the information collection requirements.

9. Interested persons may obtain information on the information requirements by contacting the following: The Federal Energy Regulatory Commission, 888 First Street, NE, Washington, D.C. 20426 [Attention: Michael Miller, Office of the Executive Director, ED-33, Phone (202)502-8415, Fax: (202)273-0873, e-mail: michael.miller@ferc.gov.]

10. To submit comments concerning the collection of information(s) and the associated burden estimate(s), please send your comments to the contact listed above and to the Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, D.C. 20503, [Attention: Desk Officer for the Federal Energy Regulatory Commission, phone: (202)395-4650, fax: (202)395-7285].

IV. Regulatory Flexibility Act Certification

11. The Regulatory Flexibility Act (RFA) requires rulemakings to contain either a description and analysis of the effect that the rule will have on small entities or to contain a certification that the rule will not have a significant economic impact on a substantial number of small entities.²

12. The Commission concludes that this rule would not have such an impact on small entities. Most public utilities to which the Final Rule would apply do not fall within the

² 5 U.S.C. 601-12.

RFA's definition of a small entity.³ Further, electronic filing would not be a significant burden since the filing is typically prepared in an electronic format in the first place. Consequently, the Commission certifies that this Final Rule will not have “a significant economic impact on a substantial number of small entities.”

V. Environmental Analysis

13. 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.⁴ The Commission has categorically excluded certain actions from these requirements as not having a significant effect on the human environment.⁵ The actions proposed to be taken here fall within the categorical exclusions in the Commission’s regulations for rules that involve information gathering, analysis, and

³ 5 U.S.C. 601(3), citing to section 3 of the Small Business Act, 15 U.S.C. 632. Section 3 of the Small Business Act defines a "small-business concern" as a business which is independently owned and operated and which is not dominant in its field of operation. In addition, the RFA definition of “small entity” refers to the definition provided in the Small Business Act, which defines a “small business concern” as a business that is independently owned and operated and that is not dominant in its field of operation. 15 U.S.C. 632. The Small Business Size Standards component of the North American Industry Classification System defines a small electric utility as one that, including its affiliates, is primarily engaged in the generation, transmission, and/or distribution of electric energy for sale and whose total electric output for the preceding fiscal year did not exceed 4 million MWh. 13 CFR 121.201.

⁴ *Regulations Implementing the National Environmental Policy Act*, Order No. 486, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs. ¶30,783 (1987).

⁵ 18 CFR 380.4(a)(2)(ii).

dissemination⁶ and that involve issuances of securities and assumptions of liabilities.

Therefore, an environmental assessment is unnecessary and has not been prepared for this rulemaking.

IX. Document Availability

14. 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 the Commission's Home Page (<http://www.ferc.gov>) and in the Commission's Public Reference Room during normal business hours (8:30 a.m. to 5:00 p.m. Eastern time) at 888 First Street, N.E., Room 2A, Washington D.C. 20426.

15. From the Commission's Home Page on the Internet, this information is available in eLibrary. The full text of this document is available in the eLibrary both 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.

16. User assistance is available for eLibrary and the Commission's website during normal business hours. For assistance contact FERC Online Support at FERCOnlineSupport@ferc.gov or toll-free at (866)208-3676, or for TTY, contact (202)502-8659. E-Mail the Public Reference Room at public.referenceroom@ferc.gov or 202-502-8371.

⁶ 18 CFR 380.4(a)(5)

X. Effective Date And Congressional Notification

17. This Final Rule will take effect commencing with the Commission's next e-filing release, which is presently slated to occur in the Commission's next fiscal year, i.e., no earlier than October 1, 2005. The Commission has determined, with the concurrence of the Administrator of the Office of Information and Regulatory Affairs of the Office of the Management and Budget that this rule is not a major rule within the meaning of section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996.⁷ The Commission will submit the Final Rule to both Houses of Congress and the General Accountability Office.⁸

List of subjects in 18 CFR Part 34

Statements, reporting and recordkeeping requirements

List of subjects in 18 CFR Part 131

Forms, reporting and recordkeeping requirements

By the Commission.

(S E A L)

Linda Mitry,
Deputy Secretary.

⁷ See 5 U.S.C. 804(2).

⁸ See 5 U.S.C. 801(a)(1)(A).

In consideration of the foregoing, the Commission proposes to amend Parts 34 and 131, Chapter I, Title 18 of the Code of Federal Regulations, as follows:

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

1. The authority citation for Part 34 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. Section 34.7 is revised to read as follows:

§ 34.7 – **Filing requirements.**

Each applicant shall submit to this Commission an electronic version of each application pursuant to this part 34. The electronic version shall be considered a "qualified document" in accordance with § 385.2003(c)(1) and (2). As a qualified document, no paper copy version of the filing is required unless there is a request for privileged or protected treatment or the document is combined with another document as provided in § 385.2003(c)(3) or (4). Submit each application in electronic format in accordance with § 385.2003.

3. Section 34.8 is revised to read as follows:

§ 34.8 – **Verification.**

An application verification shall be signed under oath by an authorized representative of the applicant, who has knowledge of the matters set forth therein and as provided in § 385.2005 of this chapter, and retained at the applicant's business location

until the relevant proceeding has been concluded.

4. Section 34.9 is revised to read as follows:

§ 34.9 – **Filing fee.**

Each application shall be accompanied by the submission of a filing fee if one is prescribed in part 381 of this chapter.

PART 131- FORMS

5. The authority citation for Part 131 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.

6. Section 131.43 is revised to read as follows:

§ 131.43 – **Report of securities issued.**

(See § 34.10 of this chapter)

(Submit in electronic format in accordance with § 385.2003.)

* * * * *

7. Section 131.50 is revised to read as follows:

§ 131.50 – **Report of proposals received.**

(a) No later than 30 days after the sale or placement of long-term debt or equity securities or the entry into guarantees or assumptions of liabilities (collectively referred to as “placement”) pursuant to authority granted under Part 34 of this chapter, the applicant

must file, in electronic format, a summary of each proposal or proposals received for the placement. The proposal or proposals accepted must be indicated. The information to be filed must include:

- (1) Par or stated value of securities;
- (2) Number of units (shares of stock, number of bonds) issued;
- (3) Total dollar value of the issue;
- (4) Life of the securities, including maximum life and average life of sinking fund issue;
- (5) Dividend or interest rate;
- (6) Call provisions;
- (7) Sinking fund provisions;
- (8) Offering price;
- (9) Discount or premium;
- (10) Commission or underwriter's spread;
- (11) Net proceeds to company for each unit of security and for the total issue;
- (12) Net cost to the company for securities with a stated interest or dividend rate.

(b) This report must be filed with the Commission as prescribed in § 385.2003 of this chapter and as indicated in the instructions set out in this report. This report is an electronic file that is classified as a "qualified document" in accordance with § 385.2003(c)(1) and (2). As a qualified document, no paper copy version of the filing is

required unless there is a request for privileged or protected treatment or the document is combined with another document as provided in § 385.2003(c)(3) or (4).

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