

TO AMEND SECTION 203 OF THE FEDERAL POWER ACT

JUNE 12, 2017.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. WALDEN, from the Committee on Energy and Commerce,
submitted the following

R E P O R T

[To accompany H.R. 1109]

The Committee on Energy and Commerce, to whom was referred the bill (H.R. 1109) to amend section 203 of the Federal Power Act, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

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PURPOSE AND SUMMARY

Under current law, public utilities are prohibited from merging or consolidating facilities with those of any other person without first having secured an order of the Federal Energy Regulatory Commission (FERC) authorizing them to do so. H.R. 1109 would amend the Federal Power Act to exempt facilities of a value of \$10,000,000 or less from this prohibition. The bill also directs the

FERC to issue a rule requiring certain public utilities seeking to merge or consolidate to notify FERC of the transaction within 30 days of the completion of the merger or consolidation.

COMMITTEE ACTION

The Committee on Energy and Commerce has not held hearings on the legislation.

On June 7, 2017, the full Committee on Energy and Commerce met in open markup session and ordered H.R. 1109, without amendment, favorably reported to the House by unanimous consent.

COMMITTEE VOTES

Clause 3(b) of rule XIII requires the Committee to list the record votes on the motion to report legislation and amendments thereto. There were no record votes taken in connection with ordering H.R. 1109 reported.

OVERSIGHT FINDINGS AND RECOMMENDATIONS

Pursuant to clause 2(b)(1) of rule X and clause 3(c)(1) of rule XIII, the Committee has not held hearings on this legislation.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

Pursuant to clause 3(c)(2) of rule XIII, the Committee finds that H.R. 1109 would result in no new or increased budget authority, entitlement authority, or tax expenditures or revenues.

CONGRESSIONAL BUDGET OFFICE ESTIMATE

Pursuant to clause 3(c)(3) of rule XIII, at the time this report was filed, the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974 was not available.

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

Pursuant to clause 3(c)(4) of rule XIII, the general performance goal or objective of this legislation is to exempt public utility mergers and consolidations of facilities valued at \$10,000,000 or less from first having to secure an order from the FERC authorizing it to do so; and to direct the FERC to promulgate a rule requiring a public utility to notify the FERC of a merger or consolidation of facilities valued in excess of \$1,000,000 and not required to secure an order of the Commission within 30 days after the transaction is completed.

DUPLICATION OF FEDERAL PROGRAMS

Pursuant to clause 3(c)(5) of rule XIII, no provision of H.R. 1109 is known to be duplicative of another Federal program, including any program that was included in a report to Congress pursuant to section 21 of Public Law 111–139 or the most recent Catalog of Federal Domestic Assistance.

COMMITTEE COST ESTIMATE

Pursuant to clause 3(d)(1) of rule XIII, the Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974. At the time this report was filed, the estimate was not available.

EARMARK, LIMITED TAX BENEFITS, AND LIMITED TARIFF BENEFITS

Pursuant to clause 9(e), 9(f), and 9(g) of rule XXI, the Committee finds that H.R. 1109 contains no earmarks, limited tax benefits, or limited tariff benefits.

DISCLOSURE OF DIRECTED RULE MAKINGS

Pursuant to section 3(i) of H.Res. 5, the following directed rule making is contained in H.R. 1109:

(7)(A) Not later than 180 days after the date of enactment of this paragraph, 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 transaction not later than 30 days after the date on which the transaction is consummated if—(i) such facilities, or any part thereof, are of a value in excess of \$1,000,000; and (ii) such public utility is not required to secure an order of the Commission under paragraph (1)(B). (B) In establishing any notification requirement under subparagraph (A), the Commission shall, to the maximum extent practicable, minimize the paperwork burden resulting from the collection of information. (Section 2. Notification for Certain Transactions.)

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Clarification of facility merger authorization

Section 1 would amend the Federal Power Act to exempt facilities, or any part thereof, of a value of \$10,000,000 or less from the Federal Power Act requirement that no public utility shall, without first having secured an order of the FERC authorizing it to do so, merge or consolidate, directly or indirectly, such facilities or any part thereof with those of any other person, by any means whatsoever.

Section 2. Notification for certain transactions

Section 2 would direct the FERC to promulgate within 180 days of enactment of the Act a rule requiring public utilities seeking to merge or consolidate to notify FERC of the transaction within 30 days after the completion of the merger or consolidation. The notification requirement would only apply if such facilities, or any part thereof, are of a value in excess of \$1,000,000 and such public utility is not required to secure a pre-merger or pre-consolidation order from the Commission. In establishing a notification requirement under this section, FERC shall, to the maximum extent practicable, minimize the paperwork burden resulting from the collection of information.

Section 3. Effective date

Section 3 provides that the amendment made by section 1 shall take effect 180 days after the date of enactment of this Act.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, and existing law in which no change is proposed is shown in roman):

FEDERAL POWER ACT

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PART II—REGULATION OF ELECTRIC UTILITY COMPANIES
ENGAGED IN INTERSTATE COMMERCE

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DISPOSITION OF PROPERTY; CONSOLIDATION; PURCHASE OF
SECURITIES

SEC. 203. (a)(1) No public utility shall, without first having secured an order of the Commission authorizing it to do so—

(A) sell, lease, or otherwise dispose of the whole of its facilities subject to the jurisdiction of the Commission, or any part thereof of a value in excess of \$10,000,000;

(B) merge or consolidate, directly or indirectly, [such facilities or any part thereof] *such facilities, or any part*

thereof, of a value in excess of \$10,000,000 with those of any other person, by any means whatsoever;

(C) purchase, acquire, or take any security with a value in excess of \$10,000,000 of any other public utility; or

(D) purchase, lease, or otherwise acquire an existing generation facility—

(i) that has a value in excess of \$10,000,000; and

(ii) that is used for interstate wholesale sales and over which the Commission has jurisdiction for rate-making purposes.

(2) No holding company in a holding company system that includes a transmitting utility or an electric utility shall purchase, acquire, or take any security with a value in excess of \$10,000,000 of, or, by any means whatsoever, directly or indirectly, merge or consolidate with, a transmitting utility, an electric utility company, or a holding company in a holding company system that includes a transmitting utility, or an electric utility company, with a value in excess of \$10,000,000 without first having secured an order of the Commission authorizing it to do so.

(3) Upon receipt of an application for such approval the Commission shall give reasonable notice in writing to the Governor and State commission of each of the States in which the physical property affected, or any part thereof, is situated, and to such other persons as it may deem advisable.

(4) After notice and opportunity for hearing, the Commission shall approve the proposed disposition, consolidation, acquisition, or change in control, if it finds that the proposed transaction will be consistent with the public interest, and will not result in cross-subsidization of a non-utility associate company or the pledge or encumbrance of utility assets for the benefit of an associate company, unless the Commission determines that the cross-subsidization, pledge, or encumbrance will be consistent with the public interest.

(5) The Commission shall, by rule, adopt procedures for the expeditious consideration of applications for the approval of dispositions, consolidations, or acquisitions, under this section. Such rules shall identify classes of transactions, or specify criteria for transactions, that normally meet the standards established in paragraph (4). The Commission shall provide expedited review for such transactions. The Commission shall grant or deny any other application for approval of a transaction not later than 180 days after the application is filed. If the Commission does not act within 180 days, such application shall be deemed granted unless the Commission finds, based on good cause, that further consideration is required to determine whether the proposed transaction meets the standards of paragraph (4) and issues an order tolling the time for acting on the application for not more than 180 days, at the end of which additional period the Commission shall grant or deny the application.

(6) For purposes of this subsection, the terms “associate company”, “holding company”, and “holding company system” have the meaning given those terms in the Public Utility Holding Company Act of 2005.

(7)(A) Not later than 180 days after the date of enactment of this paragraph, 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 transaction not later than 30 days after the date on which the transaction is consummated if—

(i) such facilities, or any part thereof, are of a value in excess of \$1,000,000; and

(ii) such public utility is not required to secure an order of the Commission under paragraph (1)(B).

(B) In establishing any notification requirement under subparagraph (A), the Commission shall, to the maximum extent practicable, minimize the paperwork burden resulting from the collection of information.

(b) The Commission may grant any application for an order under this section in whole or in part and upon such terms and conditions as it finds necessary or appropriate to secure the maintenance of adequate service and the coordination in the public interest of facilities subject to the jurisdiction of the Commission. The Commission may from time to time for good cause shown make such orders supplemental to any order made under this section as it may find necessary or appropriate.

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