

IV. Environmental Analysis

107. 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.⁴³ The Commission concludes that promulgating the proposed rule would not present a major federal action having a significant adverse impact on the human environment under the Commission's regulations implementing the National Environmental Policy Act.⁴⁴ The proposed rule falls within the categorical exemption provided in the Commission's regulations for approval of actions under section 205 of the Federal Power Act relating to the filing of schedules containing all rates and charges for any transmission or sale for resale subject to the Commission's jurisdiction, plus the classification, practices, contracts and regulations that affect rates, charges, classifications and services.⁴⁵ Consequently, neither an environmental assessment nor an environmental impact statement is required.

V. Regulatory Flexibility Act Certification

108. The Regulatory Flexibility Act of 1980 (RFA)⁴⁶ generally requires a description and analysis of proposed rules that will have significant economic impact on a substantial number of small entities. This rule applies to public utilities that own, control or operate interstate transmission facilities, not to electric utilities per se. The total number of public utilities that, absent waiver, would have to modify their current open access transmission tariffs by filing the Interim Tariff is 176.⁴⁷ Of these only 6 public utilities, or less than two percent, dispose of 4 million MWh or less per year.⁴⁸ The Commission does not consider this a substantial number, and in any event, these small entities may seek waiver of these requirements.⁴⁹

⁴³ Order No. 486, Regulations Implementing the National Environmental Policy Act, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs. Preambles 1986–1990 ¶ 30,783 (1987).

⁴⁴ 18 CFR part 380 (2003).

⁴⁵ 18 CFR 380.4(a)(15)(16) (2003).

⁴⁶ 5 U.S.C. 601–612 (2000).

⁴⁷ The sources for this figure are FERC Form No. 1 and FERC Form No. 1–F data.

⁴⁸ *Id.*

⁴⁹ The Regulatory Flexibility Act defines a “small entity” as “one which is independently owned and operated and which is not dominant in its field of operation.” See 5 U.S.C. 601(3) and 601(6) (2000); 15 U.S.C. 632(a)(1) (2000). In *Mid-Tex Elec. Coop. v. FERC*, 773 F.2d 327, 340–343 (DC Cir. 1985), the court accepted the Commission's conclusion that,

VI. Comment Procedures

109. The Commission invites interested persons to submit comments on the matters and issues proposed in this notice to be adopted, including any related matters or alternative proposals that commenters may wish to discuss.

110. Comments are due October 3, 2003. Comments must refer to Docket No. RM02–12–000, and must include the commenter's name, the organization they represent, if applicable, and their address. Comments may be filed either in electronic or paper format. Comments should be double spaced and include an executive summary.

111. To facilitate the Commission's review of the comments, commenters are requested to identify each specific issue posed by the NOPR that their discussion addresses and to use headings that clearly identify the relevant Proposed SGIA article and Proposed SGIP section. Additional issues that commenters wish to raise should be identified separately. The Commission also invites commenters to explain the rationale for their support for any proposal in this NOPR.

112. Comments may be filed electronically via the eFiling link on the Commission's Web site at <http://www.ferc.gov>. The Commission accepts most standard word processing formats, and commenters may attach additional files with supporting information in certain other file formats. Commenters filing electronically do not need to make a paper filing. Commenters that are not able to file comments electronically must send an original and 14 copies of their comments to: Federal Energy Regulatory Commission, Office of the Secretary, 888 First Street NE., Washington, DC 20426.

113. All comments will be placed in the Commission's public files and may be viewed, printed, or downloaded remotely as described in the Document Availability section below. Commenters on this proposal are not required to serve copies of their comments on other commenters.

since virtually all of the public utilities that it regulates do not fall within the meaning of the term “small entities” as defined in the Regulatory Flexibility Act, the Commission did not need to prepare a regulatory flexibility analysis in connection with its proposed rule governing the allocation of costs for construction work in progress (CWIP). The CWIP rules applied to all public utilities. The Small Generator interconnection rules will apply only to those public utilities that own, control or operate interstate transmission facilities. These entities are a subset of the group of public utilities found not to require preparation of a regulatory flexibility analysis for the CWIP rule.

VII. Document Availability

114. 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 p.m. Eastern time) at 888 First Street, NE., Room 2A, Washington, DC 20426.

115. From FERC's Home page on the Internet, this information is available in the Federal Energy Regulatory Records Information System (FERRIS). The full text of this document is available on FERRIS in PDF and WordPerfect format for viewing, printing, and/or downloading. To access this document in FERRIS, type the docket number excluding the last three digits of this document in the docket number field.

116. User assistance is available for FERRIS and the FERC's Web site during normal business hours from our Help line at (202) 502–8222 or the Public Reference Room at (202) 502–8371 Press 0, TTY (202) 502–8659. E-Mail the Public Reference Room at public.referenceroom@ferc.gov.

List of Subjects in 18 CFR Part 35

Electric power rates, Electric utilities, Reporting and recordkeeping requirements.

By direction of the Commission.

Magalie R. Salas,
Secretary.

In consideration of the foregoing, the Commission proposes to amend Part 35, Chapter I, Title 18, *Code of Federal Regulations*, as follows:

PART 35—FILING OF RATE SCHEDULES

1. The authority citation for part 35 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. In § 35.28, paragraph (g) is added to read as follows:

§ 35.28 Non-discriminatory open access transmission tariff.

* * * * *

(g) Standard interconnection procedures and agreement for small generators.

(1) Every public utility that is required to have on file a non-discriminatory open access transmission tariff under this section must amend such tariff by adding the standard small generator interconnection procedures and agreement contained in Order