

SUBCHAPTER O—REGULATIONS UNDER THE OUTER CONTINENTAL SHELF LANDS ACT (OCSLA)

PART 330—CONDITIONS OF SERVICE REPORTING REQUIREMENTS

Sec.

330.1 Definitions.

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AUTHORITY: 43 U.S.C. 1301–1356.

SOURCE: Order 639, 65 FR 20370, Apr. 17, 2000, unless otherwise noted.

§ 330.1 Definitions.

Affiliate has the same meaning as found in §161.2(a) of this chapter.

Control has the same meaning as found in §161.2(b) of this chapter.

Gas Service Provider means any entity that operates a facility located on the OCS that is used to move natural gas on or across the OCS.

Outer Continental Shelf (OCS) has the same meaning as found in section 1331(a) of the Outer Continental Shelf Lands Act (OCSLA);

§ 330.2 Reporting requirements.

(a) Gas Service Providers must file with the Commission an OCSLA Reporting Form consisting of the:

- (1) Date of the filing;
- (2) Full legal name and address of the Gas Service Provider;
- (3) Name and address of a contact person;
- (4) The title, name, and address of the Gas Service Provider's officers if a corporation or general partners if a partnership;
- (5) A description and map of the facilities operated by the Gas Service Provider, denoting the facilities' location, length, and size, the points at which service is rendered, with the boundaries of any rate zones or rate areas identified; and
- (6) For all entities affiliated with the Gas Service Provider and engaged in the exploration, development, production, processing, gathering, transportation, marketing, or sale of natural gas within the boundaries of the United States and the water bodies immediately adjacent thereto: the names

and state of incorporation of all corporations, partnerships, business trusts, and similar organizations that directly or indirectly hold control over the Gas Service Provider, and, the names and state of incorporation of all corporations, partnerships, business trusts, and similar organizations directly or indirectly controlled by the Gas Service Provider (where the Gas Service Provider holds control jointly with other interest holders, so state and name the other interest holders).

(b) A Gas Service Provider must file with the Commission its conditions of service, consisting of the information specified in this paragraph (b), or alternatively, the information specified in paragraph (c) of this section. Under this paragraph (b), a Gas Service Provider must submit, for each shipper served:

- (1) The full legal name of the shipper receiving service;
- (2) A notation of shipper affiliation, if any;
- (3) The contract number under which the shipper receives service;
- (4) The type of service provided;
- (5) Primary receipt point(s);
- (6) Primary delivery point(s);
- (7) Rates between each pair of primary receipt and delivery points and each pair of any other points served, and;
- (8) Other conditions of service deemed relevant by the Gas Service Provider.

(c) As an alternative to the requirements in paragraph (b) of this section, a Gas Service Provider may file a statement of its rules, regulations, and conditions of service that includes:

- (1) The rate between each pair of receipt and delivery points, if point-to-point rates are charged;
- (2) The rate per unit per mile, if mileage-based rates are charged;
- (3) Any other rate employed by the Gas Service Provider, with a detailed description of how such rate is derived, identifying customers and the rate charged to each customer;
- (4) Any adjustments made by the Gas Service Provider to the rates charged

based on gas volumes shipped, the conditions of service, or other criteria, identifying customers and the rate adjustment applicable to each customer.

[Order 639, 65 FR 20370, Apr. 17, 2000, as amended by Order 639-A, 65 FR 47304, Aug. 2, 2000]

§ 330.3 Applicability of reporting requirements.

(a) The § 330.2(a) and (b) reporting requirements do not apply with respect to:

(1) A Gas Service Provider that serves exclusively a single entity (either itself or one other party), until such time as the Gas Service Provider commences service to serve a second shipper, or the Commission determines that the Gas Service Provider's denial of a request for service is unjustified;

(2) A Gas Service Provider that serves exclusively shippers with ownership interests in both the pipeline operated by the Gas Service Provider and the gas produced from a field or fields connected to that single pipeline or pipelines, until such time as the Gas Service Provider commences service to a non-owner shipper, or the Commission determines that the Gas Service Provider's denial of a request for service is unjustified;

(3) Any pipeline or class of pipelines which feeds into a facility where gas is first collected or a facility where gas is first separated, dehydrated, or otherwise processed; and

(4) Gas Service Providers' facilities and services regulated by the Commission under the Natural Gas Act.

(b) A Gas Service Provider that makes no filing pursuant to §§ 330.3(a)(1) or (a)(2) becomes subject to the § 330.2 reporting requirements at any time that it no longer meets the §§ 330.3(a)(1) or (a)(2) criteria. A Gas Service Provider that becomes subject to reporting during any calendar quarter must submit a § 330.2 report on the 15th day of the following quarter. Gas Service Providers must comply with the § 330.2 reporting requirements as directed by the Commission.

(c) When a Gas Service Provider subject to the § 330.2 reporting requirements alters its affiliates, customers, rates, conditions of service, or facilities during any calendar quarter, it must then file with the Commission, on the 15th day of the following quarter, a revised report describing all alterations occurring during the previous quarter.

[Order 639, 65 FR 20370, Apr. 17, 2000, as amended by Order 639-A, 65 FR 47304, Aug. 2, 2000]

SUBCHAPTER P—REGULATIONS UNDER THE INTERSTATE COMMERCE ACT

PART 340—RATE SCHEDULES AND TARIFFS

AUTHORITY: Department of Energy Organization Act, 42 U.S.C. 7101-7352; E.O. 12009, 43 CFR 142; Interstate Commerce Act, 49 U.S.C. 1, *et seq.*; Natural Gas Act, 15 U.S.C. 717-717w.

§ 340.1 Suspended rate schedules; procedure; refund requirement; administered by the Federal Energy Regulatory Commission.

(a) *Effectiveness of suspended rate schedules.* If a rate suspension proceeding initiated under section 15(7) of the Interstate Commerce Act has not been concluded and an order has not been issued by the Commission at the expiration of the suspension period, the proposed rate, charge, classification, or service shall go into effect so long as the pipeline company complies with all of the requirements of this section.

(b) *Recordkeeping.* Any pipeline company whose proposed rates or charges were suspended and have gone into effect pending final order of the Commission pursuant to section 15(7) of the Interstate Commerce Act shall keep accurate accounts in detail of all amounts received by reason of the rates or charges made effective as provided in the Commission's order, for each billing period, including the following information by billing period, and by shipper:

(1) The monthly billing determinants of petroleum or petroleum by-products transported to each consignee under the suspended tariffs;

(2) The revenues which would result from such transportation services if they were computed under the rates in effect immediately prior to the date the proposed change became effective, if applicable;

(3) The revenues resulting from such transportation services as computed under the proposed increased rates or charges that became effective after the suspension period; and

(4) The difference between the revenues computed in paragraphs (b)(2) and (3) of this section, if applicable.

(c) *Refunds.* (1) Any pipeline company that collects charges pursuant to this section shall refund at such time, in such amounts, and in such manner as may be required by final order of the Commission, the portion of any rates and charges found by the Commission in that proceeding not to be justified, together with interest as required in paragraph (c)(2) of this section.

(2) Interest shall be computed from the date of collection until the date refunds are made as follows:

(i) At an average prime rate for each calendar quarter on amounts held on or after February 11, 1983. The applicable average prime rate for each calendar quarter shall be the arithmetic mean, to the nearest one-hundredth of one percent, of the prime rate values published in the *Federal Reserve Bulletin*, or in the Federal Reserve's "Selected Interest Rates" (Statistical Release G. 13) for the most recent three months preceding the beginning of the calendar quarter; and

(ii) The interest required to be paid under paragraph (c)(2)(i) of this section shall be compounded quarterly.

(3) Any pipeline company required to make refunds pursuant to this section shall bear all costs of such refunding.

(4) If any rate or charge described in paragraph (a) of this section that is found not to be justified by the Commission is shared between two or more pipeline companies, each pipeline company which shared in the unjustified rates or charges is required to refund to the pipeline company that published the tariff, not less than five days prior to the refund date ordered by the Commission under paragraph (c)(1) of this section,

(i) That portion of the unjustified rates or charges shared, and

(ii) The appropriate interest as required in paragraph (c)(2) of this section for the period during which the refundable amounts were held.

The pipeline company that published the tariff shall, on the date set by the Commission in its final order, make refunds with interest to the appropriate

shipper for the full period during which the refundable amounts were held.

[Order 273, 48 FR 1289; Jan. 12, 1983]

**PART 341—OIL PIPELINE TARIFFS:
OIL PIPELINE COMPANIES SUB-
JECT TO SECTION 6 OF THE
INTERSTATE COMMERCE ACT**

Sec.

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AUTHORITY: 42 U.S.C. 7101-7352; 49 U.S.C. 1-27.

SOURCE: 58 FR 58773, Nov. 4, 1993, unless otherwise noted.

§ 341.0 Definitions; application.

(a) *Definitions.* (1) *Carrier* means an oil pipeline subject to the Commission's jurisdiction under the Interstate Commerce Act.

(2) *Concurrence* means the agreement of a carrier to participate in the joint rates or regulations published by another carrier.

(3) *Local rate* means a rate for service over the lines or routes of only one carrier.

(4) *Local tariffs* means tariffs which contain only local rates.

(5) *Joint rate* means a rate that applies for service over the lines or routes of two or more carriers made by an agreement between the carriers, effected by a concurrence or power of attorney.

(6) *Joint tariffs* means tariffs which contain only joint rates.

(7) *Posting or post* means making a copy of a carrier's tariff available dur-

ing regular business hours for public inspection in a convenient form and place at the carrier's principal office and other offices of the carrier where business is conducted with affected shippers, or placing a copy on the Internet in a form accessible by the public.

(8) *Proportional rates* means rates published to apply only to traffic having a prior transportation movement, a subsequent transportation movement, or both.

(9) *Rule* means any regulation or condition of service stated in the tariff which affects any rate or service provided by the carrier.

(10) *Subscriber* means a shipper or a person who regularly is furnished a copy of a particular tariff publication (including reissues and amendments) by the publishing carrier or agent.

(11) *Tariff publication* means all parts of a filed tariff, including revised pages and supplements.

(12) *Through rates* means the total rates from point of origin to destination. They may be local rates, joint rates, or a combination of separately established rates.

(b) *General application.* (1) Each carrier must publish, post, and file with the Commission tariff publications which contain in clear, complete, and specific form all the rules and regulations governing the rates and charges for services performed in accordance with the tariff. Tariffs must be published in a format that ensures the tariffs are readable and that their terms and conditions are easy to understand and apply.

(2) The Commission may reject, or may require modification, correction, or reissuance of, any tariff publication or other document not in compliance with the law.

(3) All tariffs filed on or after December 6, 1993 must conform to the regulations of this part. Tariffs which are on file as of that date will not have to be reissued solely to conform to this part.

(4) Each carrier must post and maintain a complete and current set of all proposed, current, and suspended tariff publications which it has issued or to which it is a party. The carrier must identify in its posted tariff files any tariff publication under suspension and

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investigation. Each carrier must afford inquirers reasonable opportunity to examine its posted tariff files.

[58 FR 58773, Nov. 4, 1993, as amended by Order 606, 64 FR 44404, Aug. 16, 1999]

§ 341.1 Means of filing.

Filings of tariff publications and related materials must be made with the Secretary of the Commission. Filings made by mail must be addressed to the Federal Energy Regulatory Commission, with the envelope clearly marked as containing "Oil Pipeline Tariffs."

§ 341.2 Filing requirements.

(a) *Number of copies.* (1) Carriers must file three copies of each tariff publication and a letter of transmittal.

(2) Carriers must provide a copy of the tariff publication and any tariff justification to each shipper and subscriber. Carriers must provide these copies by first-class mail or by other means of transmission agreed upon in writing, on or before the same day the tariff publication is transmitted to the Commission for filing.

(b) *Notice period.* All tariff publications (except for suspension supplements, adoption notices, adoption supplements, and tariff indexes) must be filed with the Commission and posted not less than 30, nor more than 60, days prior to the proposed effective date, unless a different notice period is authorized by the Commission. The notice period shall begin the first full day after the tariff publication is filed with the Commission and shall end on the last day prior to the tariff publication effective date.

(c) *Transmittal letter*—(1) *Contents.* Letters of transmittal must describe the filing and explain any changes to the carrier's rates, rules, terms or conditions of service; state if a waiver is being requested, and specify the statute, section, regulation, policy or order requested to be waived; and identify the tariffs or supplement numbers and the proposed effective date of the tariff publication. Carriers must provide to the Commission, in the letter of transmittal accompanying the filing of a tariff publication containing a joint carrier, the address, phone number, and a contact for each joint carrier listed in the tariff publication.

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(2) *Certification.* Letters of transmittal must certify that the filing has been sent to each subscriber of the tariff publication by first-class mail or other agreed-upon means. If there are no subscribers, letters of transmittal must so certify.

(3) *Acknowledgement.* Carriers requesting acknowledgement of the receipt of a filing must submit a duplicate copy of the letter of transmittal marked "Receipt requested." The request must include a postage paid, self-addressed return envelope. The Commission will return one copy of the letter of transmittal showing the date of receipt.

[58 FR 58773, Nov. 4, 1993, as amended by Order 606, 64 FR 44404, Aug. 16, 1999]

§ 341.3 Form of tariff.

(a) *Form, size, and type.* (1) All tariff publications must be in book, pamphlet, or loose-leaf form, 8½ by 11 inches in size, and plainly printed and legible. Erasures or alterations in writing will not be permitted in tariff publications filed with the Commission or posted by the carrier.

(2) All tariff publications must have a margin of ⅝ of an inch on the binding edge.

(b) *Contents of tariff.* All tariff publications must contain the following information in the following order:

(1) *Title page.* The title page of each tariff must contain the following information:

(i) The FERC tariff number designation, in the upper right hand corner, numbered consecutively, and the FERC tariff number designation of the tariff that is canceled, if any, under it;

(ii) The corporate name of the carrier;

(iii) The type of rates, *e.g.*, local, joint, or proportional, and the commodity to which the tariff applies, *e.g.*, crude, petroleum product, or jet fuel;

(iv) Governing tariffs, *e.g.*, separate "rules and regulations" tariffs, if any;

(v) The specific Commission order pursuant to which the tariff is issued;

(vi) The issue date, which must be shown on the lower left side, and the effective date, which must be shown on the lower right side;

(vii) The expiration date, if applicable;

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(viii) The name of the issuing officer or duly appointed official issuing the tariff, the complete street and mailing address of the carrier, and the name and phone number of the individual responsible for compiling the tariff publication.

(2) *Table of contents.* Tariffs of more than nine pages in length must contain a table of contents. A table of contents is optional for tariffs which are less than 10 pages in length.

(3) *A list of carriers participating in joint tariffs.*

(4) *Index of Commodities.*

(5) *Explanatory statements.* These statements must explain the proper application of rates and rules.

(6) *Rules governing tariff publications.*

(i) All rules affecting the rates or the services provided for in the tariff publication must be included. A special rule affecting a particular item or rate must be referred to specifically in that item or in connection with that rate.

(ii) Each rule must be given a separate item number, (e.g., Item No. 1), and the title of each rule must be shown in distinctive type.

(iii) Except as provided in §341.10, tariffs may not include any rules that substitute for any rates named in the tariff or found in any other tariff. Rules may not provide that traffic of any nature will be “transported only by special agreement” or any other provision of similar meaning.

(iv) Rules may be separately published in a general rules tariff when it is not desirable or practicable to include the governing rules in the rate tariff. Rate tariffs that do not contain rules must make specific reference, by FERC Tariff number, to the governing general rules tariff.

(v) When joint rate tariffs refer to a separate governing rules tariff, such separate tariff must be concurred in by all joint carriers.

(7) *Statement of rates.* Rates must be stated explicitly in cents, or in dollars and cents, per barrel or other specified unit. The names or designations of the places from and to which the rates apply must be arranged in a simple and systematic manner. Any related services performed by the carrier in connection with the rates must be clearly identified and explained. Duplicative or

conflicting rates for the same service are prohibited.

(8) *Routing.* Routing over which the rates apply must be stated so that the actual routes may be ascertained. This may be accomplished by stating that the rates apply via all routes of the carrier except as otherwise specifically stated in the tariff.

(9) *Explanation of abbreviations and reference marks.* Reference marks, abbreviations, and note references must be explained at the end of each tariff publication. U.S. Postal Service state abbreviations and other commonly used abbreviations need not be explained.

(10) *Changes to be indicated in tariff or supplement.* (i) All tariff publications must identify where changes have been made in existing rates or charges, rules, regulations or practices, or classifications. One of the following letter designations or uniform symbols must be used to designate the change:

Description	Option 1	Option 2
Increase	↑	[I]
Decrease	↓	[D]
Change in wording only	▲	[W]
Cancel	■	[C]
Reissued item	□	[R]
Unchanged rate	●	[U]
New	∇	[N]

(ii) Reissued items must include in the square or brackets the number of the tariff supplement where the item was first issued or amended. If the letter designation is used, the number of the supplement must be shown together with the letter. The references must be explained at the end of the tariff. For example: “[R2] Reissued from Supplement No. 2, effective [specify date].”

(iii) The symbols and letter designations contained in paragraph (b)(10)(i) of this section must not be used for any other purpose.

(iv) When the same change is made in all or in substantially all rates in a tariff, a tariff supplement, or a tariff or tariff supplement page, that fact and the nature of the change must be indicated in distinctive type at the top of the title page of the issue, or at the top of each page, as appropriate. For example: “All rates in this issue are increased,” or “All rates on this page are reduced unless otherwise indicated.”

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(v) When a tariff publication that cancels a previous tariff publication does not include points of origin or destination, or rates, rules, or routes that were contained in the prior tariff publication, the new tariff publication must indicate the cancellation. If such omissions effect changes in charges or services, that fact must be indicated by the use of the symbols prescribed in paragraph (b)(10)(i) of this section.

(11) Tariff publications must be consecutively numbered.

(c) *Loose-leaf tariffs.* (1) Pages of loose-leaf tariffs must be consecutively numbered. Each page must show at the top of the page the name of the issuing carrier, the page number, and the FERC tariff number. Each page must show at the bottom of the page the issue date, the effective date, the name of the issuing officer or duly appointed official issuing the tariff, the complete street and mailing address of the carrier, and the name and phone number of the individual responsible for compiling the tariff publication.

(2) Changes and additions to loose-leaf tariffs must be made by reprinting the page upon which the change or addition is made, and designating the changed page as a revised page. For example: "First revised page 1 cancels Original page 1," or "Second revised page 2 cancels First revised page 2." When a revised title page is issued, the following notation must be shown:

Original tariff effective [*specify date*].

(3) When changes and additions require additional pages, the additional pages must be given the same number with a letter suffix. For example: "Original page 4-A," or "Original page 4-B." When, for example, "Original page 4-A" is changed, it must be done by issuing "First revised page 4-A," which must cancel "Original page 4-A."

(4) When a revised page is issued which omits rates or rules published on the page which it cancels, and such rates or rules are published on another page, the revised page must refer to the page on which the rates or rules will be found. Subsequently revised pages of the same number must omit the reference insofar as that particular matter is concerned.

(5) Additional pages to a loose-leaf tariff must be numbered beginning with the next successive page number after the last page and must be designated as "Original page —."

(6) The loose-leaf tariff page that follows the title page is known as a "check sheet" and must be designated as "Original page 1." When the original tariff is filed, the check sheet must show the number of pages contained in the tariff. For example: "Pages 1 to 150, inclusive, of this tariff are effective as of the date shown." When pages are revised or added to the tariff, or when supplements are issued, the check sheet must be revised to list all currently effective revised pages and supplements. The list in numerical order of all added original and revised pages must follow the statement: "Original and revised pages and supplements as named below contain all changes from the original tariff that are in effect on the date hereof." For example:

Page	Number of revision except as indicated.
3	5th.
5A	Original.
10	8th.
151	Original.

(7) The only loose-leaf tariff supplements that may be issued are adoption supplements, suspension supplements, and cancellation supplements.

§ 341.4 Filing requirements for amendments to tariffs.

(a) *Supplements to tariffs.* (1) Supplements are limited to one effective supplement per tariff, except for cancellation, postponement, adoption, correction, and suspension supplements.

(2) Item numbers that are canceled or amended must be identified and brought forward with the item title in the current supplement. Reissued items from prior supplements must be brought forward in the current supplement and referenced with the symbols in § 341.3(b)(10)(i). Cancellation of an item by supplement must be made by bringing forward the item number with an added capital letter suffix in alphabetical sequence. For example: "Item 445-A cancels Item 445." If a canceled,

withdrawn, or expired item is subsequently reissued, it must be republished under the same item number with the next letter suffix.

(b) *Cancellation supplements.* Cancellation supplements must be filed when tariffs are canceled without reissue.

(c) *Postponement supplements.* Supplements postponing the effective date of pending tariff filings must be filed prior to the proposed effective date of the filing. A postponement supplement may not postpone the effective date for more than 30 days.

(d) *Adoption supplements.* A supplement adopting the tariff of another carrier must be filed to provide the notice required in §341.6.

(e) *Correction supplements.* Correction supplements must be filed to correct typographical or clerical errors. Three correction supplements are permitted per tariff.

(f) *Suspension supplements.* A suspension supplement must be filed for each suspended tariff or suspended part of a tariff within 30 days of the issuance of a suspension order. The suspension supplement must be served on all subscribers. The supplement must include the date it is issued, a reproduction of the ordering paragraphs of the suspension order, a statement that the tariff or portion of the tariff was suspended until the date stated in the suspension order, a reference to the docket number under which the suspension order was issued, and a statement that the previous tariff publication remains in effect.

[58 FR 58773, Nov. 4, 1993, as amended by Order 561-A, 59 FR 40256, Aug. 8, 1994]

§ 341.5 Cancellation of tariffs.

Carriers must cancel prior tariffs when the tariffs are reissued. When a tariff is canceled in whole or in part by a supplement, the supplement must show where the rates will be found thereafter or what rates will thereafter apply. If the service in connection with the tariff is no longer in interstate commerce, the tariff publication must so state.

§ 341.6 Adoption rule.

(a) *Change in name of carrier or ownership of property.* The carrier must notify the Commission when there is:

(1) A change in the legal name of the carrier;

(2) A transfer of all of the carrier's properties; or

(3) A change in ownership of only a portion of the carrier's property.

(b) *Notification.* The carrier must provide notice of these occurrences by tariff publication, filed as soon as possible but no later than 30 days following such occurrence. The filing of adoption notices and adoption supplements requires no notice period.

(c) *Complete adoption.* (1) When a carrier changes its legal name, or when ownership of all a carrier's properties is transferred, the adopting carrier must file and post an adoption notice, numbered in its own FERC Tariff series, reading as follows:

The [legal name of adopting carrier] hereby adopts and makes its own all tariff publications of [name of adopted carrier], effective [date].

(2) The adopting carrier must concurrently file a consecutively numbered supplement to each of the adopted carrier's tariffs covered by the adoption notice, reading as follows:

Effective [date shown on adoption notice] this tariff publication became the tariff of the [legal name of adopting carrier] as per its adoption notice FERC No. [number].

(3) The supplements issued under this section may contain no other matter, and must refer to §341.6.

(4) The adopting carrier must transfer into its FERC Tariff series the rates applying locally on the adopted lines. The transfer must be made within 30 days of the filing of the adoption notices and supplements. The adopting carrier must give 30 days notice as provided for in §341.2(b).

(d) *Partial adoption.* (1) When the ownership of a portion of a carrier's properties is transferred to another carrier the adopting carrier must file and post an adoption notice, numbered in its own FERC Tariff series, containing the statement as follows:

The [legal name of adopting carrier] hereby adopts and makes its own, the tariffs of [legal name of former owner] for transportation movements [describe by FERC tariff number, origin, and destination points], effective [date of adoption].

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(2) When a point on the transferred portion of a carrier's properties will continue to remain a point on the former owner's line, a reference must be provided in connection with the name of that point, explaining the common junction point.

(3) The former owner must immediately file a consecutively numbered supplement to each of its tariffs covered by the adoption notice, reading as follows:

Effective [date of adoption notice] this tariff became the tariff of [legal name of adopting carrier] for transportation movements [identify origin and destination points], as per its adoption notice FERC No. [number].

(4) The adoption supplements issued under this section may contain no other matter, and must refer to § 341.6.

(5) Rates applying locally on the transferred portion must be transferred into the FERC Tariff series of the adopting carrier within 30 days of the filing of the adoption notices and supplements. The adopting carrier must file and post its tariff publication as provided for in § 341.2(b). Where rates are transferred from tariffs of the former owner to tariffs of the adopting carrier, the adopting carrier must establish the rates in its tariffs and the former owner must cancel the corresponding rates in its tariffs effective on the same date. The former owner must reference the FERC Tariff number of the adopting carrier for rates applying thereafter.

[58 FR 58773, Nov. 4, 1993, as amended by Order 606, 64 FR 44404, Aug. 16, 1999]

§ 341.7 Concurrences.

Concurrences must be maintained at carriers' offices and produced upon request. Cancellations or changes to concurrences affecting FERC tariffs must be shown in those tariffs.

§ 341.8 Terminal and other services.

Carriers must publish in their tariffs rules governing such matters as prorationing of capacity, demurrage, odorization, carrier liability, quality bank, reconsignment, in-transit transfers, storage, loading and unloading, gathering, terminalling, batching, blending, commingling, and connection policy, and all other charges, services,

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allowances, absorptions and rules which in any way increase or decrease the amount to be paid on any shipment or which increase or decrease the value of service to the shipper.

§ 341.9 Index of tariffs.

(a) *In general.* Each carrier must publish as a separate tariff publication under its FERC Tariff numbering system, a complete index of all effective tariffs to which it is a party, either as initial, intermediate, or delivering carrier. The index must be arranged in sections as indicated in paragraphs (b), (c), and (d) of this section and must show as to each tariff:

- (1) The FERC Tariff number;
- (2) The full name of the issuing carrier or agent;
- (3) The type of tariff or description of the traffic to which it applies, including origin and destination points; and
- (4) Whether the tariff contains rates for transportation by mode other than pipeline.

(b) *The first section.* The first section of a tariff index must contain a list of all tariffs in which the carrier is an initial carrier. The list must be arranged alphabetically and organized within the following categories, in order:

- (1) Specific commodity tariffs;
- (2) General commodity tariffs; and
- (3) Miscellaneous tariffs, such as rules and services.

(c) *The second section.* The second section of a tariff index must contain a list of all tariffs in which the carrier is a delivering carrier, arranged in the manner described in the first section of the tariff index. This section must also include those tariffs in which the carrier is an intermediate carrier.

(d) *The third section.* The third section of a tariff index must contain a complete list of the FERC Tariff numbers of the carrier's own effective tariffs arranged in numerical order.

(e) *Supplements.* The index must be kept current by supplements numbered consecutively. The supplements may be issued quarterly. At a minimum, the index must be reissued every four years.

(f) *Title page.* The title page of each index and supplement must contain the issue date.

§ 341.10 Application of rates to intermediate points.

(a) *Applicability.* (1) A carrier may provide in its tariff that existing rates between points named in the tariff will be applied to transportation movements from intermediate origin points not named in the tariff to named destination points, and from named origin points to intermediate destination points not named in the tariff.

(2) A carrier must file a tariff publication applicable to the transportation movements within 30 days of the start of the service if the intermediate point is to be used on a continuous basis for more than 30 days.

(b) *Intermediate point commodity rate regulations—*(1) *Intermediate origin points.* The rate for service provided to a published destination point from an origin point not specifically named in the tariff, but located intermediate to published origin and destination points, must be the same as the published rate from the next more distant origin point. Application of this provision is subject to the following:

(i) If branch or diverging lines create two or more “next more distant” points, the carrier must apply the rate which results in the lowest charge.

(ii) If the intermediate point is located between two published origin points, the carrier must apply the rate which results in the higher charge.

(iii) If the intermediate point is between more than two published origin points due to branch or diverging lines, the carrier must eliminate all such points except that from which the lowest charge is applicable.

(iv) If there is in any other tariff a commodity rate from the proposed intermediate origin point that is applicable to the same movement, the carrier should not apply this rule from such intermediate point.

(2) *Intermediate destination points.* The rate for service provided from a published origin point to a destination point not specifically named in the tariff, but located intermediate to published origin and destination points, must be the same as the published rate to the next more distant destination point. Application of this provision is subject to the following:

(i) If branch or diverging lines create two or more “next more distant” points, the carrier must apply the rate which results in the lowest charge.

(ii) If the intermediate point is located between two published destination points, the carrier must apply the rate which results in the higher charge.

(iii) If the intermediate point is between more than two published destination points due to branch or diverging lines, the carrier must eliminate all such points except that from which the lowest charge is applicable.

(iv) If there is in any other tariff a commodity rate to the proposed intermediate destination point that is applicable to the same movement, the carrier should not apply the provisions of this rule to such intermediate point.

(3) *Intermediate origin and destination points.* Both paragraphs (b)(1) and (b)(2) of this section may apply in connection with the same rate. In this instance, both regulations should be used to establish rates from intermediate points of origin to intermediate points of destination.

§ 341.11 Rejection of tariff publications and other filed materials.

(a) *Basis for rejection.* The Commission may reject tariff publications or any other material submitted for filing that fail to comply with the requirements set forth in this part or violate any statute, or any regulation, policy or order of the Commission.

(b) *Numbering and notating tariff publications.* The FERC Tariff number assigned to a tariff publication that has been rejected may not be used again. The tariff publication filed in its place must bear the following notation:

Issued in lieu of [identify the rejected tariff publication], rejected by the Commission.

§ 341.12 Informal submissions.

Carriers may informally submit tariff publications or related material for suggestions of Staff prior to the filing of the tariff publications with the Commission.

§ 341.13 Withdrawal of proposed tariff publications.

(a) *Proposed tariff publications.* A proposed tariff publication which is not

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yet effective may be withdrawn at any time by notice to the Commission, made by a letter addressed to the Secretary of the Commission with a certification that all subscribers have been notified by copy of such withdrawal.

(b) *Tariff publications that are subject to investigation.* A tariff publication that has been permitted to become effective subject to investigation may be withdrawn at any time by notice to the Commission, made by a letter addressed to the Secretary. Such letter must include a copy of the previous tariff publication to be reinstated upon withdrawal of the tariff publication under investigation. The letter must also include a certification that all subscribers have been notified by copy of such notice of withdrawal. Such withdrawal shall be effective immediately upon the submission of the notice, unless a specific effective date is set forth in the notice, and must have the following effects:

(1) Any proceeding with respect to such tariff publication shall be terminated;

(2) The previous tariff rate shall be reinstated; and

(3) Any amounts collected under the withdrawn tariff publication which are in excess of the previous tariff rate shall be refunded within 30 days of the withdrawal with interest as calculated by §340.1 of this chapter.

(c) *Numbering and notating tariff publications.* The FERC Tariff number assigned to a tariff publication which has been withdrawn may not be used again. The tariff publication filed in its place must bear the following notation:

Issued in lieu of [*identify the withdrawn tariff publication*] which was withdrawn.

§ 341.14 Special permission.

(a) *Procedure.* Applications for waiver of the notice and tariff requirements of section 6(3) of the interstate Commerce Act must be filed by the carrier concurrently with the tariff publication being proposed. The letter of transmittal must identify the filing as requesting a waiver under section 6(3) of the Interstate Commerce Act. The application must state in detail any unusual circumstance or emergency situ-

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ation that supports the requested waiver. If the application requests permission to make changes in joint tariffs, it must state that it is made on behalf of all carriers party to the proposed change. Tariff publications issued on short notice must contain the following statement on the Title Pages:

Issued on [*insert number*] days notice under authority of 18 CFR 341.14. This tariff publication is conditionally accepted subject to refund pending a 30 day review period.

(b) *Conditional acceptance subject to refund.* To permit short-notice filings to become effective as requested, the tariff publications filed concurrently with special permission requests for short (less than 30 days) notice will be deemed conditionally accepted for filing, subject to refund, until the Commission has had a full 30-day review period in which to process the filing. Refunds will be collected with interest as calculated according to §340.1 of this chapter. The refund obligation will automatically terminate with no refunds due at the end of the full 30-day notice period absent an order to the contrary issued by the Commission.

(c) *Granting automatic permission.* The special permission requested will be deemed automatically granted at the end of the full 30-day notice period absent an order denying such request.

§ 341.15 Long and short haul or aggregate of intermediate rates.

(a) *Requests for relief from section 4.* Carriers may file requests for relief from the provisions of section 4 of the Interstate Commerce Act in order to charge a greater amount for a shorter distance over the same line or route in the same direction, or to charge greater compensation as a through rate than the aggregate of the intermediate rates. Such request will be deemed granted unless the Commission denies the request within 30 days of the filing.

(b) *Information required to be filed.* A request for section 4 relief must contain the following information:

(1) The names of the carriers for which the relief is being requested.

(2) The FERC tariff numbers which contain the rates or charges referred to in the application, and identification of all the particular and related rates in

question delineating origin and destination points.

(3) An accurate and complete statement giving the basis and reasoning why section 4 relief is necessary.

(4) A statement that the lower rates for longer than for shorter hauls over the same line or route are reasonably compensatory.

(5) A map showing the pipelines and origin and destination points in question and other pertinent information.

(c) *Filing tariff publications concurrent with application.* Applications for section 4 relief must be filed concurrently with the tariff publication filing establishing those rates. The transmittal letter must identify the filing as requesting section 4 relief.

(d) *Tariff statement.* Tariff publications filed containing such rates shall plainly state on the title page of the tariff publication that the rates contained therein contravene section 4 of the Interstate Commerce Act.

(e) *Rounding through rates.* When a carrier aggregates intermediate rates to make up through rates, it may round the resulting through rate to the nearest 0.5 whole cent.

PART 342—OIL PIPELINE RATE METHODOLOGIES AND PROCEDURES

Sec.	
342.0	Applicability.
342.1	General rule.
342.2	Establishing initial rates.
342.3	Indexing.
342.4	Other rate changing methodologies.

AUTHORITY: 5 U.S.C. 571-83; 42 U.S.C. 7101-7532; 49 U.S.C. 60502; 49 App. U.S.C. 1-85.

SOURCE: Order 561, 58 FR 58779, Nov. 4, 1993, unless otherwise noted.

§ 342.0 Applicability.

(a) Except as provided in paragraph (b) of this section, rate changes by oil pipelines shall be governed by this part.

(b) *Exception for the Trans-Alaska Pipeline.* This part shall not apply to the Trans-Alaska Pipeline authorized by the Trans-Alaska Pipeline Authorization Act (43 U.S.C. 1651, *et seq.*) or to any pipeline delivering oil directly or indirectly to the Trans-Alaska Pipeline.

§ 342.1 General rule.

Each carrier subject to the jurisdiction of the Commission under the Interstate Commerce Act:

(a) Must establish its initial rates subject to such Act pursuant to § 342.2; and

(b) Must make any change in existing rates pursuant to § 342.3 or § 342.4, whichever is applicable, unless directed otherwise by the Commission.

§ 342.2 Establishing initial rates.

A carrier must justify an initial rate for new service by:

(a) Filing cost, revenue, and throughput data supporting such rate as required by part 346 of this chapter; or

(b) Filing a sworn affidavit that the rate is agreed to by at least one non-affiliated person who intends to use the service in question, *provided* that if a protest to the initial rate is filed, the carrier must comply with paragraph (a) of this section.

[Order 561, 58 FR 58779, Nov. 4, 1993, as amended at 59 FR 59146, Nov. 16, 1994]

§ 342.3 Indexing.

(a) *Rate changes.* A rate charged by a carrier may be changed, at any time, to a level which does not exceed the ceiling level established by paragraph (d) of this section, upon compliance with the applicable filing and notice requirements and with paragraph (b) of this section. A filing under this section proposing to change a rate that is under investigation and subject to refund, must take effect subject to refund.

(b) *Information required to be filed with rate changes.* The carrier must comply with Part 341 of this title. Carriers must specify in their letters of transmittal required in § 341.2(c) of this chapter the rate schedule to be changed, the proposed new rate, the prior rate, the prior ceiling level, and the applicable ceiling level for the movement. No other rate information is required to accompany the proposed rate change.

(c) *Index year.* The index year is the period from July 1 to June 30.

(d) *Derivation of the ceiling level.* (1) A carrier must compute the ceiling level for each index year by multiplying the

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previous index year's ceiling level by the most recent index published by the Commission. The index will be published by the Commission prior to June 1 of each year.

(2) The index published by the Commission will be based on the change in the final Producer Price Index for Finished Goods (PPI-FG), seasonally adjusted, as published by the U.S. Department of Labor, Bureau of Labor Statistics, for the two calendar years immediately preceding the index year. The index will be calculated by dividing the PPI-FG for the calendar year immediately preceding the index year, by the previous calendar year's PPI-FG, and then subtracting 0.01.

(3) A carrier must compute the ceiling level each index year without regard to the actual rates filed pursuant to this section. All carriers must round their ceiling levels each index year to the nearest hundredth of a cent.

(4) For purposes of computing the ceiling level for the period January 1, 1995 through June 30, 1995, a carrier must use the rate in effect on December 31, 1994 as the previous index year's ceiling level in the computation in paragraph (d)(1) of this section. If the rate in effect on December 31, 1994 is subsequently lowered by Commission order pursuant to the Interstate Commerce Act, the ceiling level based on such rate must be recomputed, in accordance with paragraph (d)(1) of this section, using the rate established by such Commission order in lieu of the rate in effect on December 31, 1994.

(5) When an initial rate, or rate changed by a method other than indexing, takes effect during the index year, such rate will constitute the applicable ceiling level for that index year. If such rate is subsequently lowered by Commission order pursuant to the Interstate Commerce Act, the ceiling level based on such rate must be recomputed, in accordance with paragraph (d)(1) of this section, using the rate established by such Commission order as the ceiling level for the index year which includes the effective date of the rate established by such Commission order.

(e) *Rate decreases.* If the ceiling level computed pursuant to § 342.3(d) is below the filed rate of a carrier, that rate

must be reduced to bring it into compliance with the new ceiling level; provided, however, that a carrier is not required to reduce a rate below the level deemed just and reasonable under section 1803(a) of the Energy Policy Act of 1992, if such section applies to such rate or to any prior rate. The rate decrease must be accomplished by filing a revised tariff publication with the Commission to be effective July 1 of the index year to which the reduced ceiling level applies.

[Order 561, 58 FR 58779, Nov. 4, 1993, as amended by Order 561-A, 59 FR 40256, Aug. 8, 1994; 59 FR 59146, Nov. 16, 1994; Order 606, 64 FR 44405, Aug. 16, 1999]

§ 342.4 Other rate changing methodologies.

(a) *Cost-of-service rates.* A carrier may change a rate pursuant to this section if it shows that there is a substantial divergence between the actual costs experienced by the carrier and the rate resulting from application of the index such that the rate at the ceiling level would preclude the carrier from being able to charge a just and reasonable rate within the meaning of the Interstate Commerce Act. A carrier must substantiate the costs incurred by filing the data required by part 346 of this chapter. A carrier that makes such a showing may change the rate in question, based upon the cost of providing the service covered by the rate, without regard to the applicable ceiling level under § 342.3.

(b) *Market-based rates.* A carrier may attempt to show that it lacks significant market power in the market in which it proposes to charge market-based rates. Until the carrier establishes that it lacks market power, these rates will be subject to the applicable ceiling level under § 342.3.

(c) *Settlement rates.* A carrier may change a rate without regard to the ceiling level under § 342.3 if the proposed change has been agreed to, in writing, by each person who, on the day of the filing of the proposed rate change, is using the service covered by the rate. A filing pursuant to this section must contain a verified statement by the carrier that the proposed rate

change has been agreed to by all current shippers.

[Order 561, 58 FR 58779, Nov. 4, 1993, as amended at 59 FR 59146, Nov. 16, 1994]

PART 343—PROCEDURAL RULES APPLICABLE TO OIL PIPELINE PROCEEDINGS

Sec.

343.0 Applicability.

343.1 Definitions.

343.2 Requirements for filing interventions, protests and complaints.

343.3 Filing of protests and responses.

343.4 Procedure on complaints.

343.5 Required negotiations.

AUTHORITY: 5 U.S.C. 571–583; 42 U.S.C. 7101–7352; 49 U.S.C. 60502; 49 App. U.S.C. 1–85.

SOURCE: Order 561, 58 FR 58780, Nov. 4, 1993, unless otherwise noted.

§ 343.0 Applicability.

(a) *General rule.* The Commission's Rules of Practice and Procedure in part 385 of this chapter will govern procedural matters in oil pipeline proceedings under part 342 of this chapter and under the Interstate Commerce Act, except to the extent specified in this part.

§ 343.1 Definitions.

For purposes of this part, the following definitions apply:

(a) *Complaint* means a filing challenging an existing rate or practice under section 13(1) of the Interstate Commerce Act.

(b) *Protest* means a filing, under section 15(7) of the Interstate Commerce Act, challenging a tariff publication.

[Order 561, 58 FR 58780, Nov. 4, 1993, as amended by Order 578, 60 FR 19505, Apr. 19, 1995]

§ 343.2 Requirements for filing interventions, protests and complaints.

(a) *Interventions.* Section 385.214 of this chapter applies to oil pipeline proceedings.

(b) *Standing to file protest.* Only persons with a substantial economic interest in the tariff filing may file a protest to a tariff filing pursuant to the Interstate Commerce Act. Along with the protest, a verified statement that

the protestor has a substantial economic interest in the tariff filing in question must be filed.

(c) *Other requirements for filing protests or complaints*—(1) *Rates established under § 342.3 of this chapter.* A protest or complaint filed against a rate proposed or established pursuant to § 342.3 of this chapter must allege reasonable grounds for asserting that the rate violates the applicable ceiling level, or that the rate increase is so substantially in excess of the actual cost increases incurred by the carrier that the rate is unjust and unreasonable, or that the rate decrease is so substantially less than the actual cost decrease incurred by the carrier that the rate is unjust and unreasonable. In addition to meeting the requirements of the section, a complaint must also comply with all the requirements of § 385.206, except § 385.206(b)(1) and (2).

(2) *Rates established under § 342.4(c) of this chapter.* A protest or complaint filed against a rate proposed or established under § 342.4(c) of this chapter must allege reasonable grounds for asserting that the rate is so substantially in excess of the actual cost increases incurred by the carrier that the rate is unjust and unreasonable. In addition to meeting the requirements of the section, a complaint must also comply with all the requirements of § 385.206, except § 385.206(b)(1) and (2).

(3) *Non-rate matters.* A protest or complaint filed against a carrier's operations or practices, other than rates, must allege reasonable grounds for asserting that the operations or practices violate a provision of the Interstate Commerce Act, or of the Commission's regulations. In addition to meeting the requirements of this section, a complaint must also comply with the requirements of § 385.206.

(4) A protest or complaint that does not meet the requirements of paragraphs (c)(1), (c)(2), or (c)(3) of this section, whichever is applicable, will be dismissed.

[Order 561, 58 FR 58780, Nov. 4, 1993, as amended by Order 602, 64 FR 17097, Apr. 8, 1999; Order 606, 64 FR 44405, Aug. 16, 1999]

§ 343.3

§ 343.3 Filing of protests and responses.

(a) *Protests.* Any protest pursuant to section 15(7) of the Interstate Commerce Act must be filed not later than 15 days after the filing of a tariff publication. If the carrier submits a separate letter with the filing, providing a telefax number and contact person, and requesting all protests to be telefaxed to the carrier by a protestant, any protest must be so telefaxed to the pipeline at the time the protest is filed with the Commission. Only persons with a substantial economic interest in the tariff filing may file a protest to a tariff filing pursuant to the Interstate Commerce Act. Along with the protest, the protestant must file a verified statement which must contain a reasonably detailed description of the nature and substance of the protestant's substantial economic interest in the tariff filing.

(b) *Responses.* The carrier may file a response to a protest no later than 5 days from the filing of the protest.

(c) *Commission action.* Commission action, including any hearings or other proceedings, on a protest will be limited to the issues raised in such protest. If a filing is protested, before the effective date of the tariff publication or within 30 days of the tariff filing, whichever is later, the Commission will determine whether to suspend the tariff and initiate a formal investigation.

(d) *Termination of investigation.* Withdrawal of the protest, or protests, that caused the initiation of an investigation automatically terminates the investigation.

[Order 561, 58 FR 58780, Nov. 4, 1993, as amended by Order 561-A, 59 FR 40256, Aug. 8, 1994]

§ 343.4 Procedure on complaints.

(a) *Responses.* The carrier must file an answer to a complaint filed pursuant to section 13(1) of the Interstate Commerce Act within 20 days after the filing of the complaint in accordance with Rule 206.

(b) *Commission action.* Commission action, including any hearings or other proceedings, on a complaint will be

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limited to the issues raised in the complaint.

[Order 561, 58 FR 58780, Nov. 4, 1993, as amended by Order 602, 64 FR 17097, Apr. 8, 1999]

§ 343.5 Required negotiations.

The Commission or other decisional authority may require parties to enter into good faith negotiations to settle oil pipeline rate matters. The Commission will refer all protested rate filings to a settlement judge pursuant to § 385.603 of this chapter for recommended resolution. Failure to participate in such negotiations in good faith is a ground for decision against the party so failing to participate on any issue that is the subject of negotiation by other parties.

[Order 578, 60 FR 19505, Apr. 19, 1995]

PART 344—FILING QUOTATIONS FOR U.S. GOVERNMENT SHIPMENTS AT REDUCED RATES

Sec.

344.1 Applicability.

344.2 Manner of submitting quotations.

AUTHORITY: 42 U.S. 7101-7352; 49 U.S.C. 1-27.

§ 344.1 Applicability.

The provisions of this part will apply to quotations or tenders made by all pipeline common carriers to the United States Government, or any agency or department thereof, for the transportation, storage, or handling of petroleum and petroleum products at reduced rates as permitted by section 22 of the Interstate Commerce Act. Excepted are filings which involve information, the disclosure of which would endanger the national security.

[Order 561, 58 FR 58778, Nov. 4, 1993]

§ 344.2 Manner of submitting quotations.

(a) *Copies.* Exact copies of the quotation or tender must be submitted to the Commission concurrently with the submittal of the quotation or tender to the Federal department or agency for whose account the quotation or tender is offered or the proposed services are to be rendered.

(b) *Filing in duplicate.* All quotations or tenders must be filed in duplicate. One of these copies must be signed and both copies must clearly indicate the name and official title of the officer executing the document.

(c) *Filing procedure.* Both copies must be filed with a letter of transmittal which prominently indicates that the filing is in accordance with section 22 of the Interstate Commerce Act. The filing must be filed with the Secretary of the Commission. The envelope must be marked as containing "Oil Pipeline Tariffs—Section 22 Quotations." A carrier which requests a receipt for the accompanying documentation must submit the letter of transmittal in duplicate and include a postage-paid, self-addressed envelope. One copy showing date of receipt by the Commission will be returned.

(d) *Numbering.* The copies of quotations or tenders which are filed with the Commission by each carrier must be numbered consecutively.

(e) *Supersession of a quotation or tender.* A quotation or tender which supersedes a prior quotation or tender must, by a statement shown immediately under the number of the new document, cancel the prior document number.

[Order 561, 58 FR 58778, Nov. 4, 1993]

PART 346—OIL PIPELINE COST-OF-SERVICE FILING REQUIREMENTS

Sec.

346.1 Content of filing for cost-of-service rates.

346.2 Material in support of initial rates or change in rates.

AUTHORITY: 42 U.S.C. 7101-7352; 49 U.S.C. 60502; 49 App. U.S.C. 1-85.

§ 346.1 Content of filing for cost-of-service rates.

A carrier that seeks to establish rates pursuant to § 342.2(a) of this chapter, or a carrier that seeks to change rates pursuant to § 342.4(a) of this chapter, or a carrier described in § 342.0(b) that seeks to establish or change rates by filing cost, revenue, and throughput data supporting such rates, other than pursuant to a Commission-approved settlement, must file:

(a) A letter of transmittal which conforms to §§ 341.2(c) and 342.4(a) of this chapter;

(b) The proposed tariff; and

(c) The statements and supporting workpapers set forth in § 346.2.

[59 FR 59146, Nov. 16, 1994, as amended by Order 588, 61 FR 38569, July 25, 1996]

§ 346.2 Material in support of initial rates or change in rates.

A carrier that files for rates pursuant to § 342.2(a) or § 342.4(a) of this chapter, or a carrier described in § 342.0(b) that files to establish or change rates by filing cost, revenue, and throughput data supporting such rates, other than pursuant to a Commission-approved settlement, must file the following statements, schedules, and supporting workpapers. The statement, schedules, and workpapers must be based upon an appropriate test period.

(a) *Base and test periods defined.* (1) For a carrier which has been in operation for at least 12 months:

(i) A base period must consist of 12 consecutive months of actual experience. The 12 months of experience must be adjusted to eliminate nonrecurring items (except minor accounts). The filing carrier may include appropriate normalizing adjustments in lieu of non-recurring items.

(ii) A test period must consist of a base period adjusted for changes in revenues and costs which are known and are measurable with reasonable accuracy at the time of filing and which will become effective within nine months after the last month of available actual experience utilized in the filing. For good cause shown, the Commission may allow reasonable deviation from the prescribed test period.

(2) For a carrier which has less than 12 months' experience, the test period may consist of 12 consecutive months ending not more than one year from the filing date. For good cause shown, the Commission may allow reasonable deviation from the prescribed test period.

(3) For a carrier which is establishing rates for new service, the test period will be based on a 12-month projection of costs and revenues.

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(b) *Cost-of-service summary schedule.* This schedule must contain the following information:

(1) Total carrier cost of service for the test period.

(2) Throughput for the test period in both barrels and barrel-miles.

(3) For filings pursuant to § 342.4(a) of this chapter, the schedule must include the proposed rates, the rates which would be permitted under § 342.3 of this chapter, and the revenues to be realized from both sets of rates.

(c) *Content of statements.* Any cost-of-service rate filing must include supporting statements containing the following information for the test period.

(1) *Statement A—total cost of service.* This statement must summarize the total cost of service for a carrier (operating and maintenance expense, depreciation and amortization, return, and taxes) developed from Statements B through G described in paragraphs (c) (2) through (7) of this section.

(2) *Statement B—operation and maintenance expense.* This statement must set forth the operation, maintenance, administration and general, and depreciation expenses for the test period. Items used in the computations or derived on this statement must consist of operations, including salaries and wages, supplies and expenses, outside services, operating fuel and power, and oil losses and shortages; maintenance, including salaries and wages, supplies and expenses, outside services, and maintenance and materials; administrative and general, including salaries and wages, supplies and expenses, outside services, rentals, pensions and benefits, insurance, casualty and other losses, and pipeline taxes; and depreciation and amortization.

(3) *Statement C—overall return on rate base.* This statement must set forth the rate base for return purposes from Statement E in paragraph (c)(5) of this section and must also state the claimed rate of return and the application of the claimed rate of return to the overall rate base. The claimed rate of return must consist of a weighted cost of capital, combining the rate of return on debt capital and the real rate of return on equity capital. Items used in the computations or derived on this statement must include deferred earn-

ings, equity ratio, debt ratio, weighted cost of capital, and costs of debt and equity.

(4) *Statement D—income taxes.* This statement must set forth the income tax computation. Items used in the computations or derived on this statement must show: return allowance, interest expense, equity return, annual amortization of deferred earnings, depreciation on equity AFUDC, underfunded or overfunded ADIT amortization amount, taxable income, tax factor, and income tax allowance.

(5) *Statement E—rate base.* This statement must set forth the return rate base. Items used in the computations or derived on this statement must include beginning balances of the rate base at December 31, 1983, working capital (including materials and supplies, prepayments, and oil inventory), accrued depreciation on carrier plant, accrued depreciation on rights of way, and accumulated deferred income taxes; and adjustments and end balances for original cost of retirements, interest during construction, AFUDC adjustments, original cost of net additions and retirements from land, original cost of net additions and retirements from rights of way, original cost of plant additions, original cost accruals for depreciation, AFUDC accrued depreciation adjustment, original cost depreciation accruals added to rights of way, net charge for retirements from accrued depreciation, accumulated deferred income taxes, changes in working capital (including materials and supplies, prepayments, and oil inventory), accrued deferred earnings, annual amortization of accrued deferred earnings, and amortization of starting rate base write-up.

(6) *Statement F—allowance for funds used during construction.* This statement must set forth the computation of allowances for funds used during construction (AFUDC) including the AFUDC for each year commencing in 1984 and a summary of AFUDC and AFUDC depreciation for the years 1984 through the test year.

(7) *Statement G—revenues.* This statement must set forth the gross revenues for the actual 12 months of experience as computed under both the presently effective rates and the proposed rates.

If the presently effective rates are not at the maximum ceiling rate established under §342.3 of this chapter, then gross revenues must also be computed and set forth as if the ceiling rates were effective for the 12 month period.

[59 FR 59146, Nov. 16, 1994, as amended by Order 588, 61 FR 38569, July 25, 1996; Order 606, 64 FR 44405, Aug. 16, 1999]

PART 347—OIL PIPELINE DEPRECIATION STUDIES

AUTHORITY: 42 U.S.C. 7101-7352; 49 U.S.C. 60502; 49 App. U.S.C. 1-85.

§ 347.1 Material to support request for newly established or changed property account depreciation studies.

(a) *Means of filing.* Filing of a request for new or changed property account depreciation rates must be made with the Secretary of the Commission. Filings made by mail must be addressed to the Federal Energy Regulatory Commission with the envelope clearly marked as containing "Oil Pipeline Depreciation Rates."

(b) *Number of copies.* Carriers must file three paper copies of each request with attendant information identified in paragraphs (c) through (e) of this section.

(c) *Transmittal letter.* Letters of transmittal must give a general description of the change in depreciation rates being proposed in the filing. Letters of transmittal must also certify that the letter of transmittal (not including the information to be provided, as identified in paragraphs (d) and (e) of this section) has been sent to each shipper and to each subscriber. If there are no subscribers, letters of transmittal must so state. Carriers requesting acknowledgement of the receipt of a filing by mail must submit a duplicate copy of the letter of transmittal marked "Receipt requested." The request must include a postage paid, self-addressed return envelope.

(d) *Effectiveness of property account depreciation rates.* (1) The proposed depreciation rates being established in the first instance must be used until they are either accepted or modified by the Commission. Rates in effect at the time of the proposed revision must con-

tinue to be used until the proposed revised rates are approved or modified by the Commission.

(2) When filing for approval of either new or changed property account depreciation rates, a carrier must provide information in sufficient detail to fully explain and justify its proposed rates.

(e) *Information to be provided.* The information in paragraphs (e)(1) through (5) of this section must be provided as justification for depreciation changes. Modifications, additions, and deletions to these data elements should be made to reflect the individual circumstances of the carrier's properties and operations. Any information in paragraphs (e)(1) through (5) of this section, the release of which would violate section 15(13) of the Interstate Commerce Act, must be provided in a format that will protect individual shippers.

(1) A brief summary relating to the general principles on which the proposed depreciation rates are based (*e.g.*, why the economic life of the pipeline section is less than the physical life).

(2) An explanation of the organization, ownership, and operation of the pipeline.

(3) A table of the proposed depreciation rates by account.

(4) An explanation of the average remaining life on a physical basis and on an economic basis.

(5) The following specific background data must be submitted at the time of and concurrently with any request for the establishment of, or modification to, depreciation rates for carriers. If the information listed is not applicable, it may be omitted from the filing:

(i) Up-to-date engineering maps of the pipeline including the location of all gathering facilities, trunkline facilities, terminals, interconnections with other pipeline systems, and interconnections with refineries/plants. Maps must indicate the direction of flow.

(ii) A brief description of the carrier's operations and an estimate of any major near-term additions or retirements including the estimated costs, location, reason, and probable year of transaction.

(iii) The present depreciation rates being used by account.

(iv) For the most current year available and for the two prior years, a breakdown of the throughput (by type of product, if applicable) received with source (e.g. name of well, pipeline company) at each receipt point and throughput delivered at each delivery point.

(v) The daily average capacity (in barrels per day) and the actual average capacity (in barrels per day) for the most current year, by line section.

(vi) A list of shipments and their associated receipt points, delivery points, and volumes (in barrels) by type of product (where applicable) for the most current year.

(vii) For each primary carrier account, the latest month's book balances for gross plant and for accumulated reserve for depreciation.

(viii) An estimate of the remaining life of the system (both gathering and trunk lines) including the basis for the estimate.

(ix) For crude oil, a list of the fields or areas from which crude oil is obtained.

(x) If the proposed depreciation rate adjustment is based on the remaining physical life of the properties, a complete, or updated, if applicable, Service Life Data Form (FERC Form No. 73) through the most current year.

(xi) Estimated salvage value of properties by account.

[59 FR 59147, Nov. 16, 1994, as amended at 60 FR 358, Jan. 4, 1995]

PART 348—OIL PIPELINE APPLICATIONS FOR MARKET POWER DETERMINATIONS

Sec.

348.1 Content of application for a market power determination.

348.2 Procedures.

AUTHORITY: 42 U.S.C. 7101-7352; 49 U.S.C. 60502; 49 App. U.S.C. 1-85.

§ 348.1 Content of application for a market power determination.

(a) If, under § 342.4(b) of this chapter, a carrier seeks to establish that it lacks significant market power in the market in which it proposes to charge market-based rates, it must file and provide an application for such a determination. An application must include

a statement of position and the information required by paragraph (c) of this section.

(b) The carrier's statement of position required by paragraph (a) of this section must include an executive summary of its statement of position and a statement of material facts in addition to its complete statement of position. The statement of material facts must include citation to the supporting statements, exhibits, affidavits, and prepared testimony.

(c) The carrier must include with its application the following information:

(1) *Statement A—geographic market.* This statement must describe the geographic markets in which the carrier seeks to establish that it lacks significant market power. The carrier must include the origin market and the destination market related to the service for which it proposes to charge market-based rates. The statement must explain why the carrier's method for selecting the geographic markets is appropriate.

(2) *Statement B—product market.* This statement must identify the product market or markets for which the carrier seeks to establish that it lacks significant market power. The statement must explain why the particular product definition is appropriate.

(3) *Statement C—the carrier's facilities and services.* This statement must describe the carrier's own facilities and services in the relevant markets identified in statements A and B in paragraphs (c) (1) and (2) of this section. The statement must include all pertinent data about the pipeline's facilities and services.

(4) *Statement D—competitive alternatives.* This statement must describe available transportation alternatives in competition with the carrier in the relevant markets and other competition constraining the carrier's rates in those markets. To the extent available, the statement must include all pertinent data about transportation alternatives and other constraining competition.

(5) *Statement E—potential competition.* This statement must describe potential competition in the relevant markets. To the extent available, the statement must include data about the potential

competitors, including their costs, and their distance in miles from the carrier's terminals and major consuming markets.

(6) *Statement F—maps.* This statement must consist of maps showing the carrier's principal transportation facilities, the points at which service is rendered under its tariff, the direction of flow of each line, the location of each of its terminals, the location of each of its major consuming markets, and the location of the alternatives to the carrier, including their distance in miles from the carrier's terminals and major consuming markets. The statement must include a general system map and maps by geographic markets. The information required by this statement may be on separate pages.

(7) *Statement G—market power measures.* This statement must set forth the calculation of the market concentration of the relevant markets using the Herfindahl-Hirschman Index. The statement must also set forth the carrier's market share based on receipts in its origin markets and deliveries in its destination markets, if the Herfindahl-Hirschman Index is not based on those factors. The statement must also set forth the calculation of other market power measures relied on by the carrier. The statement must include complete particulars about the carrier's calculations.

(8) *Statement H—other factors.* This statement must describe any other factors that bear on the issue of whether the carrier lacks significant market power in the relevant markets. The description must explain why those other factors are pertinent.

(9) *Statement I—prepared testimony.* This statement must include the proposed testimony in support of the application and will serve as the carrier's case-in-chief, if the Commission sets the application for hearing. The proposed witness must subscribe to the testimony and swear that all statements of fact contained in the proposed testimony are true and correct to the best of his or her knowledge, information, and belief.

[59 FR 59160, Nov. 16, 1994]

§ 348.2 Procedures.

(a) A carrier must file, as provided in § 341.1 of this chapter, an original plus fourteen copies of its application, including its statement of position, statements, and related material, and a letter of transmittal and must submit its application on an electronic medium. The formats for the electronic filing and the paper copy can be obtained at the Federal Energy Regulatory Commission, Division of Public Information, 825 North Capitol Street, NE., Washington, DC 20426. A carrier must submit with its application any request for privileged treatment of documents and information under § 388.112 of this chapter and a proposed form of protective agreement. In the event the carrier requests privileged treatment under § 388.112 of this chapter, it must file the original and three copies of its application with the information for which privileged treatment is sought and 11 copies of the application without the information for which privileged treatment is sought.

(b) A carrier must provide a copy of its letter of transmittal and its proposed form of protective agreement to each shipper and subscriber on or before the day the material is transmitted to the Commission for filing.

(c) A letter of transmittal must describe the market-based rate filing, including an identification of each rate that would be market-based, and the pertinent tariffs or supplement numbers, state if a waiver is being requested and specify the statute, section, subsection, regulation, policy or order requested to be waived. Letters of transmittal must be certified pursuant to § 341.2(c)(2) of this chapter and acknowledgement must be requested pursuant to § 341.2(c)(3) of this chapter.

(d) An interested person must make a written request to the carrier for a copy of the carrier's complete application within 20 days after the filing of the application. The request must include an executed copy of the protective agreement. Any objection to the proposed form of protective agreement must be filed under § 385.212 of this chapter.

(e) A carrier must provide a copy of the complete application to the requesting person within seven days after

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receipt of the written request and an executed copy of the protective agreement.

(f) A carrier must provide copies as required by paragraphs (b) and (e) of this section by first-class mail or by other means of transmission agreed upon in writing.

(g) Any intervention or protest to the application must be filed within 60 days after the filing of the application and must be filed pursuant to §§343.2 (a) and (b) of this chapter. A protest must also be telefaxed if required by §343.3(a) of this chapter.

(h) A protest filed against an application for a market power determination must set forth in detail the grounds for opposing the carrier's application, including responding to its position and information and, if desired, presenting information pursuant to §348.1(c).

(i) After expiration of the date for filing protests, the Commission will issue an order in which it will summarily rule on the application or, if appropriate, establish additional procedures and the scope of the investigation.

[59 FR 59160, Nov. 16, 1994]

SUBCHAPTER Q—ACCOUNTS UNDER THE INTERSTATE COMMERCE ACT

PART 351—FINANCIAL STATEMENTS RELEASED BY CARRIERS

AUTHORITY: Department of Energy Organization Act, (42 U.S.C. 7101 *et seq.*) E.O. 12009, 42 FR 46267, Interstate Commerce Act, as amended, (49 U.S.C. 1 *et seq.*)

§ 351.1 Financial statements released by carriers.

Carriers desiring to do so may prepare and publish financial statements in reports to stockholders and others, except in reports to this Commission, based on generally accepted accounting principles for which there is authoritative support, provided that any variance from this Commission's prescribed accounting rules contained in such statements is clearly disclosed in footnotes to the statements.

[Order 119, 46 FR 9044, Jan. 28, 1981]

PART 352—UNIFORM SYSTEMS OF ACCOUNTS PRESCRIBED FOR OIL PIPELINE COMPANIES SUBJECT TO THE PROVISIONS OF THE INTERSTATE COMMERCE ACT

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- 330 Operating fuel and power.
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AUTHORITY: 49 U.S.C. 60502; 49 App. U.S.C. 1-85 (1988).

SOURCE: 32 FR 20241, Dec. 20, 1967, unless otherwise noted. Redesignated by Order 119, 46 FR 9044, Jan. 28, 1981.

LIST OF INSTRUCTIONS AND ACCOUNTS

Definitions. Definitions of terms used in this system of accounts:

1. *Accounts* means the accounts prescribed in this system of accounts.

2. *Actually issued*, as applied to securities issued or assumed by the carrier, means those which have been sold to bona fide purchasers or holders for a valuable consideration, those issued in exchange for other securities or other property, and those issued as dividends on stock; and the purchasers or holders secured them free from control by the carrier.

3. *Actually outstanding*, as applied to securities issued or assumed by the carrier, means those which have been actually issued and are neither retired nor held by or for the carrier.

4. *Additions* means facilities, equipment, and structures added to existing property exclusive of replacements.

5. *Affiliated companies* means companies or persons that directly, or indirectly through one or more intermediaries, control, or are controlled by, or are under common control with, the accounting carrier.

6. *Amortization* means the gradual extinguishment of an amount in an account by distributing such amount over a fixed period, over the life of the asset or liability to which it applies, or over the period during which it is anticipated the benefit will be realized.

7. *Book cost* means the amount at which assets are recorded in the accounts without deduction of related

provisions for accrued depreciation, amortization, or for other purposes.

8. *Carrier* means a common carrier by pipeline subject to the Interstate Commerce Act.

9. *Commission* means the Federal Energy Regulatory Commission.

10. *Control* (including the terms *controlling*, *controlled by*, and *under common control with*) means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a company, whether such power is exercised through one or more intermediary companies, or alone, or in conjunction with, or pursuant to an agreement, and whether such power is established through a majority or minority ownership or voting of securities, common directors, officers or stockholders, voting trusts, holding trusts, associated companies, contract or any other direct or indirect means. When there is doubt about an existence of control in any particular situation, the carrier shall report all pertinent facts to the Commission for determination.

11. *Cost* means the amount of money actually paid for property or services or the current cash value of the consideration given when it is other than money.

12. *Cost of removal* means cost of demolishing, dismantling, tearing down, or otherwise removing property including costs of handling and transportation.

13. *Date of retirement* means the date that property is withdrawn from service.

14. *Debt expense* means all expense in connection with the issuance and sale of evidences of debt, such as fees for drafting mortgages and trusts; fees and taxes for issuing or recording evidences of debt; cost of engraving and printing bonds, certificates of indebtedness, and other evidences of debt; fees paid to trustees; specific costs of obtaining governmental authority; fees for legal services; fees and commissions paid underwriters, brokers, and salesmen for marketing evidences of debt; fees and expenses of listing on exchanges; and other like costs.

15. *Depreciation* means the loss in service value not restored by current

maintenance and incurred in connection with the consumption or prospective retirement of property in the course of service from causes against which the carrier is not protected by insurance, and the effect of which can be forecast with a reasonable approach to accuracy.

16. *Discount*, as applied to securities issued or assumed by the carrier, means the excess of the par or face value of the securities plus interest or dividends accrued at the date of the sale over the cash value of the consideration received from their sale.

17. *Group plan* means the plan under which depreciation charges are computed on the book cost of all property included in each depreciable account by application of a composite rate of depreciation based on the weighted average service lives of such property.

18. *Improvements* means alterations or changes in structural design of property which result in increased service life or efficiency.

19. *Minor items of property* means the associated parts or items of which units of property are composed.

20. *Net salvage value* means salvage value of property retired less the cost of removal.

21. *Nominally issued*, as applied to securities issued or assumed by the carrier, means those which have been signed, certified, or otherwise executed, and placed with the proper officer for sale and delivery, or pledged, or otherwise placed in some special fund of the accounting company.

22. *Nominally outstanding*, as applied to securities issued or assumed by the carrier, means those which, after being actually issued, have been reacquired by or for the accounting company under such circumstances which require them to be considered as held alive and not retired and canceled.

23. *Premium*, as applied to securities issued or assumed by the carrier, means the excess of the cash value of the consideration received from their sale over the sum of their par (stated value of no-par stocks) or face value and interest or dividends accrued at the date of sale.

24. *Property retired* means units of property which have been removed, sold, abandoned, destroyed, or which

for any cause have been withdrawn from service; also, minor items of property not replaced.

25. *Replacement* means the substitution of a part or of a complete unit of property with a new part or unit.

26. *Salvage value* means the amount received or estimated to be received for property retired less any expenses incurred in connection with the sale or preparing the property for sale; or, if retained, the value at which the recovered material is chargeable to the material and supplies account or other appropriate account.

27. *Service life* means the period between the date that property is placed in service and the date of its retirement.

28. *Service value* means the book cost less the actual or estimated net salvage value of property.

29. *Straight-line method*, as applied to depreciation and amortization accounting, means the plan under which the service value of property is charged to expense and credited to the related accrued depreciation or amortization account through equal monthly charges during the service life of the property.

30. (a) *Income taxes* means taxes based on income determined under provisions of the United States Internal Revenue Code and foreign, state and other taxes (including franchise taxes) based on income.

(b) *Income tax expense* means the amount of income taxes (whether or not currently payable or refundable) allocable to a period in the determination of net income.

(c) *Pretax accounting income* means income or loss for a period, exclusive of related income tax expense.

(d) *Taxable income* means the excess of revenues over deductions or the excess of deductions over revenues to be reported for income tax purposes for a period.

(e) "Temporary difference" means a difference between the tax basis of an asset or liability and its reported amount in the financial statements that will result in taxable or deductible amounts in future years when the reported amount of the asset or liability is recovered or settled, respectively. Some events recognized in financial

statements do not have tax consequences. Certain revenues are exempt from taxation and certain expenses are not deductible. Events that do not have tax consequences do not give rise to temporary differences.

(f) “Deductible temporary difference” means temporary differences that result in deductible amounts in future years when the related asset or liability is recovered or settled, respectively.

(g) “Deferred tax asset” means the deferred tax consequences attributable to deductible temporary differences and carryforwards. A deferred tax asset is measured using the applicable enacted tax rate and provisions of the enacted tax law. A valuation allowance should be recognized if it is more likely than not (a likelihood of more than 50 percent) that some portion or all of the deferred tax asset will not be realized.

(h) “Deferred tax liability” means the deferred tax consequences attributable to taxable temporary differences. A deferred tax liability is measured using the applicable enacted tax rate and provisions of the enacted tax law.

(i) *Interperiod tax allocation* means the process of apportioning income taxes among periods.

(j) “Tax allocation within a period” means the process of allocating income tax expense applicable to a given period among continuing operations, discontinued operations, extraordinary items, and items charged or credited directly to shareholders’ equity.

31. (a) *Investor* means a business entity that holds an investment in voting stock of another company.

(b) *Investee* means a corporation that issued voting stock held by an investor.

(c) *Corporate joint venture* is a company owned and operated by a small group of businesses as a separate and specific business or project for the mutual benefit of the members of the group.

(d) *Dividends*, unless otherwise specified, means dividends paid or payable in cash, other assets, or another class of stock and does not include stock dividends or stock splits.

(e) *Earnings or losses of an investee* and *financial position of an investee* refer to

net income (or net loss) and financial position of an investee determined in accordance with generally accepted accounting principles.

(f) *Undistributed earnings of an investee* means net income less dividends declared whether received or not.

(g) *Date of acquisition* is the date on which the investor assumes the rights of ownership. Ordinarily this is the date assets are received and other assets are given or securities issued.

32. (a) *Segment of a business* refers to a component of an entity whose activities represent a separate major line of business or class of customer. A segment may be in the form of a subsidiary, a division, or a department, and in some cases a joint venture or other nonsubsidiary investee, provided that its assets, results of operations, and activities can be clearly distinguished, physically and operationally and for financial reporting purposes, from the other assets, results of operations, and activities of the entity. The fact that the results of operations of the segment being sold or abandoned cannot be separately identified strongly suggests that the transaction should not be classified as a segment of business.

(b) *Measurement date* means the date on which the management having authority to approve the action commits itself to a formal plan to dispose of a segment of the business, whether by abandonment or sale. The measurement date for disposals requiring Commission approval shall be the service date of the Order authorizing the disposal.

(c) *Disposal date* refers to the date of closing the sale if the disposal is by sale or the date that operations cease if the disposal is by abandonment.

33. *Compensating balance* means the portion of any demand deposit (or any time deposit or certificate of deposit) maintained by a carrier (or by any person on behalf of the carrier) which constitutes support for existing borrowing arrangements of the carrier (or any person) with a lending institution. Such arrangements include both outstanding borrowings and the assurance of future credit availability. (The compensating balance requirement should

be adjusted by the amount of float unless such adjustment would cause the compensating balance to be greater than the cash balance per carrier's books. The float adjustment is made by subtracting the float from the compensating balance requirement if the collected bank ledger balance exceeds the cash balance per carrier's books or by adding the float to the compensating balance requirement if the collected bank ledger balance is less than the cash balance per carrier's books.)

34. *Float* means deposits and withdrawals in transit which constitute a difference between the collected bank ledger balance and the cash balance per carrier's books.

35. (a) *Equity security* encompasses any instrument representing ownership shares (e.g., common, preferred, and other capital stock), or the right to acquire (e.g., warrants, rights, and call options) or dispose of (e.g., put options) ownership shares in an enterprise at fixed or determinable prices. The term does not encompass preferred stock that by its terms either must be redeemed by the issuing enterprise or is redeemable at the option of the investor, nor does it include treasury stock or convertible bonds.

(b) *Marketable*, as applied to an equity security, means an equity security as to which sales prices or bid and ask prices are currently available on a national securities exchange (i.e., those registered with the Securities and Exchange Commission) or in the over-the-counter market. In the over-the-counter market, an equity security shall be considered marketable when a quotation is publicly reported by the National Association of Securities Dealers Automatic Quotations System or by the National Quotations Bureau, Inc. (*Provided*, in the later case, That quotations are available from at least three dealers.) Equity securities traded in foreign markets shall be considered marketable when such markets are of a breadth and scope comparable to those referred to above. This definition is not met by restricted stock (securities for which sale is restricted by a governmental or contractual requirement except where such requirement terminates within one year or where the holder has the power to cause the re-

quirement to be met within one year). Any portion of the stock which can reasonably be expected to qualify for sale within one year, such as may be the case under Rule 144 or similar rules of the Securities and Exchange Commission, is not considered restricted.

(c) *Market value* refers to the aggregate of the market price of a single share or unit times the number of shares or units of each marketable equity security in the portfolio. When an entity has taken positions involving short sales, sales of calls, and purchases of puts for marketable equity securities and the same securities are included in the portfolio, those contracts shall be taken into consideration in the determination of market value of the marketable equity securities.

(d) *Cost*, as applied to a marketable equity security, refers to the original cost unless a new cost basis has been assigned based on recognition of an impairment of value that was deemed other than temporary or as the result of a transfer between current and non-current classifications. In such cases, the new cost basis assigned shall be considered cost.

[32 FR 20241, Dec. 20, 1967, as amended at 37 FR 17713, Aug. 31, 1972; 39 FR 33343, Sept. 17, 1974; 39 FR 34043, Sept. 23, 1974; 40 FR 53247, Nov. 17, 1975; 41 FR 9158, Mar. 3, 1976; 42 FR 33297, June 30, 1977. Redesignated and amended by Order 119, 46 FR 9044, Jan. 28, 1981; Order 620, 65 FR 81342, Dec. 26, 2000]

General Instructions

1-1 *Classification of accounts.* Accounts are prescribed to record the cost of property used in transportation and related operations and for revenues, expenses, taxes, rents, and other items of income for such operations. Separate accounts are prescribed for cost of property not used in transportation operations and for income and expenses pertaining thereto; for other investments and related income; for extraordinary and prior period items, including applicable income taxes; and for assets and liabilities.

In addition, stockholders' equity accounts, designed to segregate directly contributed capital from appropriated and unappropriated retained income,

are provided. Retained income accounts form the connecting link between the income account and the equity section of the balance sheet. They are provided to record the transfer of net income or loss for the year; certain capital transactions; and, when authorized by the Commission, other items.

1-2 *Records.* (a) Carriers shall keep their accounts and records in accordance with the prescribed accounts. In addition, clearing accounts, temporary accounts, and subdivisions of any account may be kept provided the integrity of the prescribed accounts is not impaired. Each carrier shall keep its books of account, and all other books, records and memoranda which support the entries in such books of account, so as to be able to furnish readily full information as to any item included in any account. Each entry shall be supported by such detailed information as will permit ready identification, analysis, and verification of all facts relevant thereto.

(b) The books and records referred to herein include not only accounting records in a limited technical sense, but all records, such as minute books, stock books, reports, correspondence, memorandums, etc., which may be useful in developing the history of or facts regarding any transaction.

(c) No carrier shall destroy any books, records, memoranda, etc., which support entries to its accounts unless destruction is permitted by the regulations governing preservation of records, Part 356 of this chapter.

(49 U.S.C. 5b, 304, 320, 904, 913, 917, 1003, 1012)

[32 FR 20241, Dec. 20, 1967, as amended at 40 FR 50384, Oct. 29, 1975. Redesignated and amended by Order 119, 46 FR 9044, Jan. 28, 1981]

1-3 *Accounting period.* (a) Each carrier shall keep its books on a monthly basis so that all transactions, as nearly as may be ascertained, shall be entered in the accounts not later than 60 days after the last day of the period for which the accounts are stated, except that the time within which the final entries for the year ending December 31 shall be made may be extended to such date in the following March as shall not interfere with the preparation and filing of the annual report.

(b) Changes shall not be made in the accounts for periods covered by reports that have been filed with the Commission unless the changes have first been authorized by the Commission.

1-4 *Accounting method.* (a) This system of accounts shall be kept by the accrual method of accounting. The basis used for accruing income and expense items each month shall be consistently applied and any change in such basis or any unusual accruals involving material amounts shall be promptly reported to the Commission.

(b) When the amount of any transaction cannot be accurately determined in time for inclusion in the applicable month's accounts, an estimated amount shall be entered in the proper accounts. Appropriate adjustments shall be made as soon as the actual amounts become known or at the time a substantial change is indicated. Carriers are not required to anticipate minor items which do not appreciably affect the accounts.

1-5 *Delayed items.* Ordinary delayed items and adjustments arising during the current year which are applicable to prior years shall be included in the same account which would have been charged or credited if the item had been taken up or the adjustments made in the year to which it pertained. When the amount of a delayed item or adjustment is relatively so large that its inclusion in net income for a single month would seriously distort the accounts for the month (but not for the year), such amount may be distributed in equal monthly charges or credits, as the case may be, to the remaining months of the calendar year. See instruction 1-6 for instructions covering extraordinary and prior period items of a nonrecurring nature.

1-6 *Extraordinary, unusual or infrequent items, prior period adjustments, discontinued operations and accounting changes.* (a) *Extraordinary Items.* All items of profit and loss recognized during the year are includible in ordinary income unless evidence clearly supports their classification as extraordinary items. Extraordinary items are characterized by both their unusual nature and infrequent occurrence taking into account the environment in which

the firm operates; they must also meet the materiality standard.

Unusual means the event or transaction must possess a high degree of abnormality and be of a type clearly unrelated to, or only incidentally related to the ordinary and typical activities of the entity.

Infrequent occurrence means the event or transaction shall be of a type not reasonably expected to recur in the foreseeable future.

(b) *Unusual or Infrequent Items.* Material events unusual in nature or infrequent in occurrence but not both, thus not meeting both criteria for classification as extraordinary, shall be includible in the accounts provided as separate components of income/expense from continuing operations. Such items are not to be reported net of income taxes.

(c) *Discontinued Operations.* The results of continuing operations shall be reported separately from discontinued operations and any gain or loss resulting from disposal of a segment of a business (see definition 32(a)) shall be reported in conjunction with the related results of discontinued operations and not as an extraordinary item. The disposal of a segment of a business shall be distinguished from other disposals of assets incident to the evolution of the entity's business, such as the disposal of part of a line of business, the shifting of production or marketing activities for a particular line of business from one location to another, the phasing out of a product line or class of service, and other changes occasioned by technological improvements. If a loss is expected from the proposed sale or abandonment of a segment, the estimated loss shall be provided for at the measurement date (see definition 32(b)). If a gain is expected, it shall be recognized when realized, which ordinarily is the disposal date (see definition 32(c)).

(d) *Prior Period Adjustments.* The correction of an error in the financial statements of a prior period and adjustments that result from realization of income tax benefits of preacquisition loss carryforwards of purchased subsidiaries shall be accounted for as prior period adjustments and excluded from the determination

of net income from the current year. All other revenues, expenses, gains, and losses recognized during a period shall be included in the net income of that period.

(e) *Accounting Changes.* A change in accounting principle or accounting entity should be referred to this Commission for approval. The cumulative effect of a change in accounting principle should ordinarily be reflected in the account provided for in determining net income; in certain cases accounting changes may be reflected as prior period adjustments. Changes in accounting estimates should ordinarily be reflected prospectively.

(f) *Materiality.* As a general standard an item shall be considered material when it exceeds 10 percent of annual income (loss) before extraordinary items. An item may also be considered in relation to the trend of annual earnings before extraordinary items or other appropriate criteria. Items shall be considered individually and not in the aggregate in determining materiality. However, the effects of a series of related transactions arising from a single specific and identifiable event or plan of action shall be aggregated to determine materiality.

(g) *Commission Approval and accountant's letter.* Items shall be included in the accounts provided for extraordinary items, unusual or infrequent items, discontinued operations, prior period adjustments and cumulative effect of changes in accounting principles only upon approval of the Commission. If the carrier retains the service of an independent accountant, a request for using these accounts shall be accompanied by a letter from the independent accountant approving or otherwise commenting on the request.

NOTE: The carrier may refer to generally accepted accounting principles for further guidance in applying instruction 1-6.

[40 FR 53248, Nov. 17, 1975. Redesignated by Order 119, 46 FR 9044, Jan. 28, 1981; Order 620, 65 FR 81342, Dec. 26, 2000]

1-7 *Items in texts of accounts.* Items appearing in instructions and in the texts of various accounts are merely representative and are not intended to cover all of the items includible therein.

1-8 *Depreciation accounting—Carrier property.*

(a) *Method.* Monthly depreciation charges shall be made by the straight-line method to operating expenses in conformity with the group plan of accounting applicable to all carrier property except property included in accounts 101, 151, 171, Land, and 187, Construction Work in Progress.

(b) *Rates.* (1) Separate composite annual percentage rates will be prescribed for each depreciable account except that the Commission may authorize the use of component rates upon specific request from a carrier. Carriers becoming subject to this system of accounts and carriers acquiring property for which no rates have been previously prescribed shall file, within six months, composite annual percentage rates applicable to the book cost of each class of depreciable carrier property as will distribute the service value, by the straight-line method, in equal annual charges to operating expenses during the service life of the property. These rates shall be used by the carrier until the rates prescribed by the Commission become effective. Such rates shall, for each primary account comprised of more than one class of property, produce a depreciation charge equal to the sum of the amounts that would otherwise be chargeable for each of the various classes of property included in the account. Carriers shall base these percentage rates on estimated service values and service lives developed from engineering and other studies. The rates filed shall be accompanied by a statement showing the bases and the methods employed in the rate determination.

(2) Carriers shall be prepared at any time upon the direction of the Commission to compute and submit revised percentage rate studies. When a carrier believes that any rate prescribed by the Commission is no longer applicable, it shall submit the rate which it believes should be established supported by full particulars for consideration by the Commission.

(3) A carrier shall keep records of property and property retirements that will reflect the service life of property which has been retired, or will permit

the determination of service life indications by mortality, turnover, or other appropriate methods; and also such records as will reflect the percentage of net salvage value for property retired from each class of depreciable carrier property.

(c) *Charges.* In computing monthly charges, the annual percentage rates shall be applied to the depreciation base as of the first of each month and the result divided by twelve.

(d) *Retirements.* Except as provided in paragraph (e) of this section, upon the retirement of depreciable property the service value shall be charged in its entirety to account 31, Accrued Depreciation—Carrier Property. Any amounts of insurance recovered from casualty losses involving depreciable property retired shall be credited thereto.

(e) *Special accounting authority.* (1) When circumstances indicate that newly acquired property should be subject to amortization, or that the prescribed depreciation rates based on the service lives of certain property are no longer applicable, because the source of traffic will be exhausted before the end of the physical service life, the carrier shall submit to the Commission for approval amortization or depreciation rates based on the estimated remaining service life of the property accompanied by full information justifying the request.

(2) A carrier may request, or the Commission may direct, that special accounting be applied in situations causing undue inflation or deflation of depreciation reserves, such as premature or unusual retirements or sales of depreciable property, or related insurance recoveries. A carrier's request for special accounting shall contain full particulars concerning the situation, including the basis for its proposal. Alternative accounting techniques shall be applied to the extent approved or directed by the Commission.

1-9 *Depreciation accounting—Noncarrier property.* Monthly depreciation charges for all depreciable property recorded in account 34, Noncarrier Property, shall be made to account 620, Income from Noncarrier Property, with

concurrent credits to account 35, Accrued Depreciation—Noncarrier Property. The depreciation charges shall be such as to distribute the service values equitably over the service life of the property.

1-10 *Amortization of intangibles.* Monthly charges shall be made to account 540, Depreciation and Amortization, to amortize the cost of fixed life intangibles such as permits, patents and franchises which are directly related to pipeline operations. Monthly charges shall be made to account 660, Miscellaneous Income Charges, to amortize the cost of intangibles such as goodwill which are not directly associated with pipeline operations. The amortization charges shall be such as to distribute the cost by the straight-line method in equal annual charges over the life or expected period of benefit.

1-11 *Interpretation of rules.* To maintain uniformity of accounting, carriers shall submit questions of doubtful interpretation to the Commission for consideration and decision.

1-12 *Accounting for income taxes.* (a) The interperiod tax allocation method of accounting shall be applied to all material temporary differences (see definition 30(e)) between the tax basis of an asset or liability and its reported amount in the financial statements that will result in taxable or deductible amounts in future years. Carriers may elect, as provided by the Revenue Act of 1971, to account for the investment tax credit by either the flow through method or the deferred method of accounting. See paragraphs (d) and (e) below. All income taxes (Federal, State, and other) currently accruable for income tax return purposes shall be charged to account 670, Income taxes on income from continuing operations, and account 695, Income taxes on extraordinary items, as applicable.

(b) Under the interperiod tax allocation method of accounting a deferred tax liability or asset is to be recognized for all temporary differences (see definition 30(e)) that result in taxable amounts in future years when the related asset or liability is recovered or settled. Deferred taxes are classified as current or noncurrent based on the classification of the related asset or liability. A carrier shall apply the appli-

cable enacted tax rate in determining the amount of deferred taxes. The carrier shall adjust its deferred tax liabilities and assets for the effect of the change in tax law or rates in the period that the change is enacted. The adjustment shall be recorded in the proper deferred tax balance sheet accounts based on the nature of the temporary difference and the related classification requirements of the account.

(c) An entity shall record the income tax effects of a net operating loss carryforward or a tax credit carryforward as a deferred tax asset in the year the loss occurs. In the event that it is more likely than not (a likelihood of more than 50 percent) that some portion of its deferred tax assets will not be realized, a carrier shall reduce the asset by a valuation allowance. The valuation allowance should be recorded in a separate subaccount of the deferred tax asset account. The carrier shall disclose full particulars as to the nature and amount of each type of operating loss and tax credit carryforward in the notes to its financial statements.

(d) Carriers electing to account for the investment tax credit by the flow through method shall credit account 670, Income taxes on income from continuing operations, or account 695, Income taxes on extraordinary items, as applicable, and charge to account 56, Taxes payable, with the amount of investment tax credit utilized in the current accounting period. When the flow through method is followed for the investment tax credit, account 671, Provision for deferred taxes, shall reflect the difference between the tax payable (after recognition of allowable investment tax credit) based on taxable income and tax expense (with full recognition of investment tax credit that would be allowable based on accounting income) based on accounting income.

(e) Carriers electing to account for the investment tax credit by the deferred method shall concurrently with making the entries prescribed in (d) above charge account 671, "Provision for deferred taxes" or account 696, "Provision for deferred taxes—extraordinary items," as applicable, and shall

credit account 64, Accumulated Deferred Income Tax Liabilities with the investment tax credit utilized as a reduction of the current year's tax liability but deferred for accounting purposes. The investment tax credit so deferred shall be amortized by credits to account 671, "Provision for deferred taxes".

NOTE A: Any change in practice of accounting for the investment tax credit shall be reported promptly to the Commission. Carriers desiring to clear deferred investment tax credits because of a change from the deferral method to the flow through method shall submit the proposed journal entry to the Commission for consideration and advice.

NOTE B: The carrier shall follow generally accepted accounting principles where an interpretation of the accounting rules for income taxes is needed or obtain an interpretation from its public accountant or the Commission.

(Interstate Commerce Act, 49 U.S.C. 20 (1976), Department of Energy Organization Act, 42 U.S.C. 7155, 7172(b), 7295(a) (Supp. I 1977); E. O. 12009, 42 FR 46267 (1977); Federal Energy Regulatory Commission, Order No. 1, 42 FR 55450 (1977))

[39 FR 33344, Sept. 17, 1974, as amended at 40 FR 53247, Nov. 17, 1975; 44 FR 72161, Dec. 13, 1979. Redesignated by Order 119, 46 FR 9044, Jan. 28, 1981, as amended by Order 620, 65 FR 81342, Dec. 26, 2000]

1-13 *Transactions with affiliated companies.* (a) The records and supporting data of all transactions with affiliated companies shall be maintained in a separate file. The types of transactions referred to in this paragraph are for management services or any other type of services rendered, sale or use of facilities or any other type of assets or property. The file shall be maintained so as to enable the carrier, to furnish accurate information with supporting documentation about particular transactions within 15 days of the request. We do not intend the file to include data relating to ordinary carrier operations (e.g. lawful tariff charges).

(b) Each bill rendered by an affiliated company shall state specifically the basis used for determining charges, unless the file contains other information to support the specific basis for charges.

(c) Punched cards, magnetic tapes, discs, or other machine-sensible device used for recording, consolidating, and

summarizing accounting transactions and records with a carrier's electronic or automatic data processing system may constitute a file within the meaning of this instruction.

(d) The carrier shall record, as the cost of assets or services received from an affiliated supplier, the invoice price (plus any incidental costs related to those transactions) in those cases where the invoice price can be determined from a prevailing price list of the affiliated supplier available to the general public in the normal course of business. If no such price list exists, the charges shall be recorded at the lower of their cost to the originating affiliated supplier (less all applicable valuation reserves in case of asset sales), or their estimated fair market value determined on the basis of a representative study of similar competitive and arm's-length or bargained transactions.

Any difference between actual transaction price and the above, as well as charges that are not transportation related, shall be considered of a financing nature and shall be recorded, accordingly, as nonoperating charges or credits. (See Instruction 1-14).

(e) Nothing contained herein shall be construed as restraining the carrier from subdividing accounts (see Instruction 1-2(a)) for the purpose of recording separately transactions with affiliated companies.

[40 FR 44562, Sept. 29, 1975. Redesignated by Order 119, 46 FR 9044, Jan. 28, 1981]

1-14 *Charges to be just and reasonable.* All charges to the accounts prescribed in this system of accounts for carrier property, operating revenues, operating and maintenance expenses, and other carrier expenses, shall be just, reasonable and not exceed amounts necessary to the honest and efficient operations and management of carrier business. Payments shall not exceed the fair market value of goods and services acquired in an arm's-length transaction. Any payments in excess of such just and reasonable charges shall be included in account 660, Miscellaneous Income Charges.

[40 FR 44562, Sept. 29, 1975. Redesignated by Order 119, 46 FR 9044, Jan. 28, 1981]

1-15 *Accounting for marketable equity securities owned.* (a) Accounts 11 "Temporary investments," 20 "Investments in affiliated companies," and 21 "Other investments" shall be maintained in such a manner as to reflect the marketable equity securities' portion (see definition 35) and other securities or investments.

(b) For the purpose of determining net ledger value, the marketable equity securities in account 11 shall be considered the current portfolio and the marketable equity securities in accounts 20 and 21 (combined) shall be considered the noncurrent portfolio. The net ledger value of each portfolio shall be the lower of its aggregate cost or market value. (See definition 35.) The amount by which aggregate cost exceeds market value shall be accounted for as the valuation allowance. Account 11 "Temporary investments" shall be subdivided to include the valuation allowance for the marketable equity securities included therein. Account 24 "Allowance for net unrealized loss on noncurrent marketable equity securities—Credit" is the valuation allowance for the marketable equity securities included in accounts 20 "Investments in affiliated companies" and 21 "Other investments." Marketable equity securities accounted for by the equity method shall not be combined with other marketable equity securities when determining aggregate cost and market value.

(c) Realized gains and losses (the difference between net proceeds from sale and cost) shall be included in income of the period in which they occur. Changes in the valuation allowance for marketable equity securities included in account 11 shall be charged to account 660 "Miscellaneous income charges" or credited to account 640 "Miscellaneous income" as appropriate, with a contra entry to the valuation allowance contained within account 11. Changes in the valuation allowance for marketable equity securities included in accounts 20 and 21 shall be recorded in equity account 75.5 "Net unrealized loss on noncurrent marketable equity securities" with a contra entry to valuation account 24.

(d) If there is a change in the classification of a marketable equity secu-

rity between current and noncurrent, the security shall be transferred at the lower of its cost or market value at date of transfer. If market value is less than cost, the market value shall become the new cost basis, and the difference shall be accounted for as if it were a realized loss and included in the determination of net income.

(e) For long investments in marketable equity securities, when the decline in market value below cost is judged to be other than temporary, the cost basis of the individual security shall be written down to a new cost basis. The amount of the write-down shall be accounted for as a realized loss by a charge to account 660 "Miscellaneous income charges" and a credit to account 23, "Reduction in security values—Credit." The new cost basis shall not be changed for subsequent recoveries in value.

[42 FR 33297, June 30, 1977. Redesignated by Order 119, 46 FR 9044, Jan. 28, 1981]

1-16 *Accounting for inaccurate reporting of income taxes on income from continuing operations which occurred prior to reporting year 1979.* To the extent that any oil pipeline company, required to file annual reports with the Commission, did not correctly report State or other income taxes on continuing operations for the 1976, 1977, and 1978 reporting years, such company is ordered to disclose the amount of the accounting change in the space for notes and remarks provided in its 1979 Annual Report Form P, Schedule 300-A, of the Commission.

(Interstate Commerce Act, 49 U.S.C. 20 (1976), Department of Energy Organization Act, 42 U.S.C. 7155, 7172(b), 7295(a) (Supp. I 1977); E. O. 12009, 42 FR 46267 (1977); Federal Energy Regulatory Commission, Order No. 1, 42 FR 55450 (1977))

[44 FR 72161, Dec. 13, 1979. Redesignated by Order 119, 46 FR 9044, Jan. 28, 1981]

Instructions for Balance Sheet Accounts

2-1 *Current assets.* In the group of accounts designated as current assets shall be included cash and other assets or resources commonly identified as those which are reasonably expected to be realized in cash or sold or consumed

within a one-year period. There shall not be included any amount the collection of which is not reasonably assured by the known financial condition of the debtor or otherwise. Items of current character but of doubtful value shall be written down or written off to account 510, Supplies and Expenses, or to account 660, Miscellaneous Income Charges, as appropriate.

2-2 *Investments and special funds.* (a) This group of accounts shall include the cost of long-term investments in securities other than those of the accounting carrier, investment advances, sinking and other funds, cash value of life insurance policies, and other items of similar nature.

(b) Investment in securities shall be recorded at cost at time of acquisition excluding amounts paid for accrued interest and dividends. When securities with a fixed maturity date are purchased at a discount or premium, such discount or premium shall be amortized over the remaining life of the securities by periodical debits or credits to the account in which the cost of the securities is recorded with corresponding credits or debits to interest income. If the amount of the discount or premium is minor, the investment may be maintained at actual cost without adjustment, and the amount of discount or premium recorded in the interest income account at the time the securities mature.

(c)(1) *For financial statement purposes* the carrier shall follow the principles of equity accounting for (1) all investments in corporate joint ventures (see definition 31(c)), and (2) all investments in voting stock of affiliated companies giving the carrier the ability to significantly influence the operating and financial policies of an investee (see definition 31(b)). For purposes of this instruction an investment of 20 percent or more of the outstanding voting stock of an investee will indicate the ability to exercise significant influence over an investee in the absence of evidence to the contrary.

(2) Since the equity method is not to be effected by entries in the books of accounts but is to apply only in financial reports to the Commission, the carrier shall establish worksheet or

memorandum accounts. Three basic worksheet or memorandum accounts are needed:

(a) An investment account to include (1) equity in the undistributed earnings or losses of the investee since the date of acquisition (see definition 31(g)); (2) accumulated amortization of the difference between cost and net assets at date of acquisition (see (c)(3) below); and other adjustments for disposition or writedown of investments.

(b) An income account to include (1) the investor's share of the investee's undistributed profits or losses for each reporting period subsequent to acquisition of the investment except that in the year of acquisition such amount shall be determined from the date of acquisition; (2) amortization for the reporting period of the difference between cost and net assets at date of acquisition. This account shall be closed at year-end to the retained income memorandum account discussed in paragraph (c) below.

(c) A retained income account to include (1) equity in the undistributed earnings or losses of the investee since the date of acquisition; (2) accumulated amortization of the difference between cost and net assets acquired at date of acquisition (see (c)(3) below).

(d) Other memorandum accounts will be needed for such adjustments as gains and losses on disposition of investments, recognition of impairments in value, the investor's share of extraordinary and prior period items reported in the investee's financial statements (see instruction 1-6), and provision for deferred taxes where it is reasonable to assume that undistributed earnings of an investee will be transferred to the investor in a taxable distribution. These memorandum accounts shall be closed at year-end to the retained income memorandum account discussed in paragraph (c) above.

(3) The carrier shall retain the following information for each investee in support of the worksheet or memorandum accounts:

(a) Original cost of investment.

(b) Equity in net assets of investee at date of acquisition.

(c) Allocation of difference between cost and equity in net assets, namely,

to specific assets of investee or to goodwill.

(d) Accumulated amortization of difference between cost and equity in net assets.

(e) Unamortized balance of difference between cost and equity in net assets.

(f) Equity in undistributed earnings/losses for each year since date of acquisition.

(g) Dividends received since date of acquisition if determinable.

(h) Proceeds from sale of investments.

(4) Any difference between the investor's cost and its share of the net assets of the investee at date of acquisition shall be allocated to specific assets of the investee to the extent the difference is attributable to them. When the difference is allocated to depreciable or amortizable assets, depreciation and amortization (through the investment and income memorandum accounts) should absorb the difference over the remaining life of the related assets. If the difference is not related to specific accounts, it should be considered goodwill and amortized over a reasonable period not to exceed 40 years. For investments made prior to November 1, 1970, amortization of goodwill is not required in the absence of evidence that the goodwill has a limited term of existence.

(5) The financial statements of the investee that are used for equity accounting should be timely. If the accounting year of the investee differs from that of the investor then the most recent available financial statements may be used. The lag in reporting should be consistent from period to period.

(6) Material profits or losses on transactions between the investor and investee shall be eliminated until realized by either company as if the two were consolidated.

(7) A transaction of the investee of a capital nature that affects the investor's share of the investee's stockholder's equity should be reported in the financial statements as if the two were consolidated.

(8) The investor shall deduct any dividends applicable to outstanding cumulative preferred stock whether or not declared, and any other dividends

declared when computing its share of undistributed earnings or losses.

(9) The investor shall suspend application of the equity method when the investment (including the investment memorandum account) together with any net advances made to the investee is reduced to zero. Additional losses shall not be provided for unless the investor has guaranteed obligations of the investee or is otherwise committed to provide further financial support for the investee. If the investee subsequently reports net income the investor shall resume applying the equity method at such time as its share of that net income equals the share of net losses not recognized during the period of suspension.

(10) When the investor's voting stock interest falls below the level of ownership described in paragraph (c)(1) of this instruction, the investment no longer qualifies for the equity method. Should dividends received on the investment in subsequent periods exceed the investor's share of earnings for such periods, the investment memorandum and income memorandum accounts shall be reduced by the excess amount.

(11) When the level of ownership of an investment increases to that described in paragraph (c)(1) of this instruction, the equity method shall be applied. The memorandum accounts for the investment, income (for current year's equity in undistributed earnings less amortization), and retained income (for prior years' equity in undistributed earnings less amortization) shall be adjusted retroactively on a step-by-step basis determining the equity in net assets at date of acquisition, amortization adjustment, and equity in undistributed earnings or losses at each level of ownership. Where small purchases are made over a period of time and then a purchase is made which qualifies the investment for the equity method, the date of latest purchase may be used as date of acquisition. In those situations where the information needed to apply the equity method is not determinable, the date of acquisition may be considered as January 1, 1974.

(12) Information having significance with respect to the investor's ownership in investees shall be disclosed in

notes to financial statements of annual reports filed with the Commission in accordance with generally accepted accounting principles.

NOTE A: The carrier shall follow generally accepted accounting principles where an interpretation of the rules for equity accounting is needed or obtain an interpretation from its public accountant or the Commission.

[32 FR 20241, Dec. 20, 1967, as amended at 39 FR 34043, Sept. 23, 1974. Redesignated by Order 119, 46 FR 9044, Jan. 28, 1981]

2-3 *Tangible property.* The cost of property owned that is devoted to transportation service shall be recorded in account 30, Carrier Property, and in account 33, Operating Oil Supply. This includes carrier's investment in jointly-owned transportation property in which it has an undivided ownership interest. The cost of other property not directly associated with pipeline operations shall be included in account 34, Noncarrier Property. Property used in both carrier and noncarrier services shall be classified in account 30 or account 34 according to its dominant use.

2-4 *Other assets and deferred charges.* Account 40, Organization Costs and Other Intangibles, is prescribed for organization costs and other intangible assets, such as patents and franchises. These intangible assets shall be recorded at cost. Accounts are also prescribed for assets not otherwise provided for and for charges applicable to future periods.

2-5 *Current liabilities.* In this group of accounts shall be included obligations which are payable on demand or mature or become due within one year from the date of the balance sheet.

2-6 *Noncurrent liabilities.* Includible under this category of account are those obligations which are not due to be liquidated within one year from the date of the balance sheet. Estimates of future fire losses or other contingencies shall not be accounted for as current expenses or recorded as liabilities. Such contingencies may be provided for by appropriations of retained income, the losses to be recognized in income when sustained.

2-7 *Contingent assets and liabilities.*

(a) A contingency is an existing condition, situation, or set of circumstances involving uncertainty as to

possible gain or loss to a carrier that will ultimately be resolved when one or more future events occur or fail to occur. Resolution of the uncertainty may confirm the acquisition of an asset or the reduction of a liability or the loss or impairment of an asset or the incurrence of a liability.

(b) An estimated loss from a contingent liability shall be charged to income if it is probable that an asset had been impaired or a liability had been incurred and the amount of the loss can be reasonably estimated. The carrier shall disclose in a footnote in its annual report any accrued contingent liabilities, along with any contingent liabilities not meeting both conditions for accrual if there is a reasonable possibility that a liability may have been incurred.

(c) Contingent assets should not be reflected in the accounts. The carrier shall disclose in a footnote in its annual report any contingencies that might result in an asset.

[32 FR 20241, Dec. 20, 1967. Redesignated by Order 119, 46 FR 9044, Jan. 28, 1981, as amended by Order 620, 65 FR 81342, Dec. 26, 2000]

Instructions for Carrier Property Accounts

3-1 *Property acquired.* (a) In general the carrier property accounts shall be charged with the cost of property purchased or constructed and with the cost of additions and improvements. However, the acquisition of properties comprising a distinct operating system, or an integral portion thereof, when the purchase price exceeds \$250,000, shall be accounted for in accordance with the provisions set forth in instruction 3-11.

(b) The cost of purchased property is the net price paid on a cash basis, or if other than money is given, the current value of that consideration. Cost includes the purchase price; sales, use, and excise taxes, and ad valorem taxes during periods of construction; transportation charges; insurance in transit; installation charges; and expenditures for testing and final preparation for use.

(c) Property acquired from an affiliated company through purchase or transfer shall be recorded together

with the related accrued depreciation and liabilities assumed, if any, in the appropriate property accounts at the same amount that it was recorded on the books of the affiliate. When the purchase price exceeds the net book value of the property acquired, the difference shall be charged to retained income. When the purchase price is less than the net book value, the difference shall be credited to account 73, Additional Paid-in Capital. This does not apply to small miscellaneous purchases or transfers.

(d) The purchase of a proportionate share of a pipeline system or facility owned in undivided interests shall be recorded at the amount that the percentage of interest acquired bears to the whole. Any excess of deficiency of purchase price over the amount so recorded shall be debited to account 44, Other Deferred Charges, or credited to account 63, Other Noncurrent Liabilities, as appropriate, and amortized in equal periodic amounts over the remaining service life of the system or facility through income.

3-2 [Reserved]

3-3 *Cost of property constructed.* The cost of constructing property chargeable to the carrier property accounts shall include direct and other costs as described hereunder:

(1) Cost of labor includes the amount paid for labor performed by the carrier's own employees and officers. This includes payroll taxes, vacation pay, pensions, holiday pay and traveling and other incidental expenses of employees. No charge shall be made to these accounts for pay and expenses of officers and employees who merely render services incidentally in connection with extensions, additions or replacements.

(2) Cost of material and supplies includes the purchase price (less purchase and trade discounts) of material and supplies, including small tools, at the point of free delivery; costs of inspection and loading borne by the carrier; transportation charges; sales, use and excise taxes; and when applicable a proportionate share of stores expenses. In calculating the cost of material and supplies used, proper allowance shall be made for the value of unused portions and other salvage, for the value of the

material recovered from temporary scaffolding, cofferdams and other temporary structures used in construction; and for the value of small tools recovered and used for other purposes.

(3)(i) Cost of special machine service includes the cost of labor expended and of materials and supplies consumed in maintaining and operating vehicles, equipment, and other machines used in construction work; and rents paid for the use of such machines.

(ii) When machines are purchased primarily for a construction project, their cost shall be charged to account 187, Construction Work in Progress. Upon completion of the construction project, account 187 shall be credited with amounts received for machines sold or the book cost (less a fair allowance for depreciation during the construction period) of machines retained for use in carrier service. The net book cost shall be included in the appropriate carrier property accounts.

(iii) The cost of repairs to vehicles and other work equipment and of machine tools and machinery which are used both in construction and maintenance work shall be apportioned equitably to the work in connection with which the equipment is used.

(4) Cost of transportation includes the amounts paid to other companies or individuals for the transportation of employees, material and supplies, special machine outfits, appliances, and tools in connection with construction and also the cost of hauling performed by the carrier's own forces and facilities. The cost of the transportation of construction material to the point where material is received by the carrier shall be included, so far as practicable, as a part of the cost of such material.

(5) Cost of contract work includes amounts paid for construction work performed under contract by other companies, firms, or individuals, and cost incident to the award of the contract.

(6) Cost of protection includes expenditures for protection in connection with construction. This includes the cost of protection against fires, cost of detecting and prosecuting incendiaries, amounts paid to municipal corporations and others for fire protection,

cost of protecting property of others from damages, and analogous items.

(7) Cost of injuries and damages includes expenditures for injuries to persons or damage to property when incident to construction projects, and shall be included in the cost of the related construction work. It also includes that portion of premiums paid for insuring property prior to the completion or coming into service of the property insured. Insurance recovered for compensation paid for injuries to persons incident to construction shall be credited to the accounts to which such compensation is charged. Any insurance recovered for damages to property incident to construction shall be credited to the accounts chargeable with the expenditures necessary for restoring the damaged property. The cost of injuries and damages in connection with the removal of old structures which are encumbrances on newly acquired lands shall be included in the cost of land, or rights of way.

(8) Cost of privileges and permits includes compensation for temporary privileges, such as the use of private or public property or of streets, in connection with construction work.

(9) Taxes include taxes on property during construction and before the facilities are completed and ready for service. This includes taxes on land held under a definite plan for its use in pipeline service for the period prior to the completion of pipeline facilities thereon and other taxes separately assessed on property during construction, or assessed under conditions which permit separate identification or allocation of the amount chargeable to construction.

(10) Rent includes payments for use of facilities, such as motor vehicles, special tools or machines, and quarters used for construction work.

(11)(i) Interest during construction includes interest expense on bonds, notes and other interest bearing debt incurred in the construction of carrier property (less interest, if any, earned on funds temporarily invested) after such funds become available for use and before the receipt or the completion or coming into service of the property. The interest shall be included in

the accounts charged with the cost of the property to which related.

(ii) There shall be deducted from such interest charges a proportion of premium on securities sold. There shall be added a proportion of discount and expense on funded debt issued for the acquisition or construction of carrier property. The amount of premium and discount and expense thus related shall be determined by the ratio which the period between the date the proceeds from the securities issued become available and the receipt, completion, or coming into service of the property bears to the entire life of the securities issued.

(12) Cost of disposing of excavated material shall be included in the cost of construction except that when such material is used for filling, the cost of loading, hauling, and dumping shall be equitably apportioned between the work for which removal is made and the work for which the material is used.

3-4 *Additions*. Each carrier shall maintain a written property units listing for use in accounting for additions and retirements of carrier plant and apply the listing consistently. When property units are added to Carrier plant, the cost thereof shall be added to the appropriate carrier plant account as set forth in the policy.

3-5 *Improvements*. Costs of improvements, shall be accounted for as follows:

(a) The cost of items replaced shall be retired and the cost of the improvement shall be charged to the appropriate property account.

(b) If the improvement does not involve a replacement, the cost of the improvement shall be charged to the appropriate property account.

[32 FR 20241, Dec. 20, 1967. Redesignated by Order 119, 46 FR 9044, Jan. 28, 1981, as amended by Order 620, 65 FR 81343, Dec. 26, 2000]

3-6 *Replacements*. Replacements are substitutions of a part or of a complete unit of property with a new part or unit. Costs of replacements shall be accounted for as follows:

(a) In replacing a complete unit of property, the old unit shall be retired and the cost of the replacement recorded in the appropriate primary property account.

(b) In replacing a minor item without improvement, the cost of such replacement shall be charged to the maintenance expense account.

3-7 *Retirements.* When property units are retired from carrier plant, with or without replacement, the cost thereof and the cost of minor items of property retired and not replaced shall be credited to the carrier plant account in which it is included. The retirement of carrier property shall be accounted for as follows:

(a) *Land.* The book cost of land retired shall be removed from the property accounts. Gain or loss on the sale of land shall be recorded in account 640, Miscellaneous Income, or account 660, Miscellaneous Income Charges.

(b) *Property.* (1) The book cost, as set forth in paragraph c below, of units of property retired and of minor items of property retired and not replaced shall be written out of the property account as of date of retirement, and the service value shall be charged to account 31, Accrued Depreciation—Carrier Property.

(2) In case of casualty loss, insurance proceeds recovered shall be credited to account 31, Accrued Depreciation—Carrier Property, in an amount not to exceed the book cost of the property involved. Any excess amount shall be credited to account 640, Miscellaneous Income.

(3) Carrier property no longer used nor held for carrier operations but used or intended for use in noncarrier operations shall be transferred, along with the amount of past accrued depreciation, estimated if necessary, to noncarrier property.

(c) The book cost of carrier property retired shall be determined from the carrier's records and if this cannot be done it shall be estimated. When it is impracticable to determine the book cost of each unit, due to the relatively large number or small cost thereof, an appropriate average book cost of the units, with due allowance for any differences in size and character, shall be used as the book cost of the units retired. Oil pipelines must furnish the

particulars of such estimates to the Commission, if requested.

[32 FR 20241, Dec. 20, 1967, as amended at 40 FR 53248, Nov. 17, 1975. Redesignated by Order 119, 46 FR 9044, Jan. 28, 1981; Order 598, 63 FR 6852, Feb. 11, 1998]

3-8 *Salvage.* (a) When retired property is salvaged for material or parts which are to be reused by the carrier, the salvage shall be priced at current second-hand value, not to exceed original cost, and charged to account 17, Material and Supplies, or other appropriate account.

(b) When retired property is held without being dismantled, the estimated value of the salvage less the estimated cost of salvaging shall be included in account 19, Other Current Assets, if to be recovered within a year, otherwise, in account 43, Miscellaneous Other Assets.

3-9 *Relocation of line.* (a) If a line is relocated in the same gathering field serving the same lease or purpose, all of the relocating expenses whether or not a unit of property is involved shall be charged to maintenance expense, provided that the same size pipe is used in such relocation. Resulting increases or decreases in the length of the line shall be accounted for as additions or retirements of property.

(b) In accounting for relocation of trunk lines involving units of property, the replaced property shall be retired and the cost of the new property included in the appropriate primary property accounts. When public improvement projects are involved, the cost of the new property shall be (1) the book cost less depreciation or amortization of the replaced property, less the net salvage value recovered, plus (2) costs incurred by the carrier, less any amounts contributed by governmental agencies or others.

3-10 *Property contributed.* (a) The value of contributions or property received from others including governmental agencies shall not be recorded in the property accounts; however, memorandum entries should be made in the records of the carrier describing the property received, the value thereof, and all other pertinent information related thereto.

(b) Property contributed by an affiliate shall be recorded in the property accounts together with the related accrued depreciation at the same amounts that were recorded on the books of the affiliate provided, however, that the amount of contribution made by non-carrier affiliates shall not exceed the fair value of the property received.

3-11 *Acquisition by merger, consolidation or purchase.* Accounting for property acquired by business combination of two or more corporations, or the acquisition of properties comprising a distinct operating system, or integral portion thereof as specified in section 3-1, shall depend on whether there has been (1) a merger or consolidation in a "pooling of interests" or (2) a "purchase." A "pooling of interests" may exist when holders of all or substantially all of the ownership interests, usually common stock, in the constituent corporations or entities become the owners of a surviving corporation or a new corporation which owns the assets and business of the constituent corporations or entities directly or through one or more subsidiaries. However, when the stockholders of one of the constituent corporations obtain 90 percent or more of the voting interest in the combined enterprise; or when there is a plan or firm intention and understanding to retire a substantial part of the capital stock issued to the owners of one or more of the constituent corporations or substantial changes in ownership which occurred shortly before or planned to occur shortly after the combination, the combination may be considered a "purchase."

(a) *Accounting under a "pooling in interest."* (1) In accounting for a "pooling of interests," no new basis of accountability arises. The assets and liabilities of the constituent companies or entities and the related accrued depreciation and amortization accounts along with the retained income or deficit accounts shall be carried forward, adjusted, if necessary, to conform with the accounting rules of the Commission.

(2) When the total par value or stated value of no-par capital stock of the succeeding corporation is greater than

that of the constituent corporations, the excess shall be charged first to the amount in account 73, Additional Paid-in Capital, that is not otherwise restricted, and the Balance to account 75, Unappropriated Retained Income.

(3) When the par value or stated value of no-par capital stock of the succeeding corporation is less than that of the constituent corporations, the difference shall be credited to account 73, Additional Paid-in Capital.

(b) *Accounting under a "purchase."* In accounting for a "purchase," the assets shall be recorded on the books of the acquiring carrier at cost as of the date of acquisition or, if other than money is given, at the fair value of such consideration. Liabilities assumed shall be recorded in the appropriate accounts according to the accounting rules of the Commission.

(c) *Approval of accounting.* (1) Tentative journal entries recording the acquisition of pipeline properties shall be submitted to the Commission for consideration and approval. The entries shall give a complete description of the property purchased and the basis upon which the amounts of the entries have been determined. Any portion of the purchase price attributable to intangible property shall be separately recorded as hereinafter provided in account 40, Organization Costs and Other Intangibles.

(2) When the costs of individual or groups of transportation property are not specified in the agreement or in supporting documents, or when separate costs are not provided for the physical property and the intangible property, the total purchase price shall be equitably apportioned among the appropriate property or other accounts, based on the percentage relationship between the purchase price and the original cost of property shown in the valuation records of the Commission or the fair market value of the properties. The portion of the total price assignable to the physical property shall be supported by independent appraisal or such other information as the Commission may consider appropriate. In no event shall amounts recorded for physical properties and other assets acquired exceed the total purchase price.

(3)(a) Where the purchase price is in excess of amounts recorded for the net assets acquired, such excess shall be included in account 40, Organization Costs and Other Intangibles.

(b) The excess of the purchase price over amounts includable in the primary carrier property accounts shall be amortized through account 660, "Miscellaneous income charges," or otherwise disposed of, as the Commission may approve or direct.

[32 FR 20241, Dec. 20, 1967, as amended by 35 FR 13992, Sept. 3, 1970; 37 FR 17713, Aug. 31, 1972. Redesignated by Order 119, 46 FR 9044, Jan. 28, 1981]

3-12 *Reorganizations.* When a carrier is involved in receivership or bankruptcy so as to effect a reorganization, all accounting relating to the plan of reorganization shall be submitted to this Commission for consideration and approval.

3-13 *Disposition of former Account 193, Acquisition Adjustment.* Amounts included in former account 193, Acquisition Adjustment, attributable to mergers, consolidations, reorganizations, and purchases of property shall be cleared from that account as the Commission may authorize or direct upon submission of proposal for distribution of the amounts therein.

[32 FR 20241, Dec. 20, 1967. Redesignated by Order 119, 46 FR 9044, Jan. 28, 1981 and amended by Order 598, 63 FR 6852, Feb. 11, 1998]

Instructions for Operating Revenues and Operating Expenses

4-1 *Detail of accounts.* The carrier shall keep the prescribed accounts with sufficient particularity to permit the reporting of operating revenues and expenses for crude oil lines and for product lines separately, and to permit the allocation of operating expenses by service functions (see 4-3 Operating Expenses).

4-2 *Operating revenues.* The operating revenue accounts are designed to show the amount of money which the carrier becomes entitled to receive or which accrues to its benefit for transportation and services incidental thereto.

4-3 *Operating expenses.* The operating expense accounts are designed to show the costs of pipeline operations by service functions. The expenses of pipeline operations are to be allocated to the following functions:

(a) *Gathering.* This includes the gathering and collection of oil, oil products and other commodities from oil field, refinery, or other source (other than carrier's own terminal and delivery facilities), and transmission to point of connection to meters, working or storage tanks, or intake side of the manifold at the trunk line receiving site or station, or at a terminal.

(b) *Trunk.* This includes the trunk line transportation of crude oil, oil products and other commodities from origin or receiving station to point of connection with other carriers, consignee facilities at destination, or to the discharge side of the manifold or connection to working or storage tanks at the destination station.

(c) *Delivery.* This includes the receiving, storage, and delivering at terminal and delivery facilities of crude oil, oil products and other commodities from or to railroads, motor carriers, water carriers, and others prior or subsequent to movement by pipeline.

4-4 *Expense classification.* The primary expense accounts are to be reported under the following classifications:

(a) *Operations and maintenance expense.* This group of accounts includes all costs directly associated with the operation, repairs and maintenance of property devoted to pipeline operations including scheduling, dispatching, movement, and delivery of crude oil, oil products and other commodities.

(b) *General expense.* This group of accounts includes general and administrative expense and all other expenses not directly allocable to operations and maintenance expenses.

4-5 *Expense distribution.* The several classes of expenses shall be directly allocated to applicable service functions to the fullest possible extent. Expenses common to two or more functions and system expenses shall be equitably apportioned to the service functions. The basis for apportionment and the underlying records in support thereof shall

be readily available for inspection by the Commission's examiners.

[32 FR 20241, Dec. 20, 1967. Redesignated by Order 119, 46 FR 9044, Jan. 28, 1981, as amended by Order 620, 65 FR 81343, Dec. 26, 2000]

Balance Sheet Accounts

10 Cash.

This account shall include money, checks, sight drafts and sight bills of exchange, money in banks or in other depositories subject to withdrawal on demand, and other similar items. The amount of checks and sight drafts transmitted to payees which are unpaid at the close of the accounting period shall be credited to this account.

NOTE: Compensating balances (see Definition 33) under an agreement which legally restricts the use of such funds shall not be included in this account. Such balances shall be included in account 10-5 "Special deposits" or account 22 "Sinking and other funds."

(49 U.S.C. 304, 913, 1012)

[32 FR 20241, Dec. 20, 1967, as amended at 41 FR 9158, Mar. 3, 1976. Redesignated by Order 119, 46 FR 9044, Jan. 28, 1981]

10-5 Special deposits.

This account shall include cash deposits, either placed in hands of trustees or under the direct control of the reporting company, which are restricted for specific purposes. Examples are those deposits made for the payment of dividends and interest due within one year, the liquidation of other current liabilities, to guarantee fulfillment of current contract obligations, to meet specific operating requirements, or compensating balances (see Definition 33) under an agreement which legally restricts the use of such funds and which constitute support for short-term borrowing arrangements. Sub-accounts may be set up, if necessary to account for special deposits for specific purposes.

NOTE: Deposits available for general company purposes shall be included in account 10 "Cash."

(49 U.S.C. 304, 913, 1012)

[41 FR 9158, Mar. 3, 1976. Redesignated by Order 119, 46 FR 9044, Jan. 28, 1981]

11 Temporary investments.

This account shall include the cost of securities and other collectible obligations acquired for the purpose of temporarily investing cash, such as United States Treasury certificates, marketable securities, time drafts receivable, demand loans, time loans, time deposits with banks and trust companies, and other similar investments of a temporary character.

This account shall be subdivided to reflect the marketable equity securities' portion (and its corresponding valuation allowance) and other temporary investments (See Instruction 1-15).

[32 FR 20241, Dec. 20, 1967, as amended at 42 FR 33298, June 30, 1977. Redesignated by Order 119, 46 FR 9044, Jan. 28, 1981]

12 Notes receivable.

This account shall include the book cost, not includible elsewhere, of all collectible obligations in the form of notes receivable, contracts receivable, and similar evidences (except interest coupons) of money receivable on demand or within a time not exceeding one year from date of the balance sheet. Notes receivable from affiliates shall be included in account 13, Receivables from Affiliated Companies.

13 Receivables from affiliated companies.

This account shall include amounts receivable due and accrued from affiliated companies subject to settlement within one year from date of the balance sheet. This includes receivables for items such as revenue for services rendered, material furnished, rent, interest and dividends, advances and notes.

14 Accounts receivable.

This account shall include amounts receivable due and accrued from other than affiliates which are subject to settlement within one year from date of the balance sheet. This includes items such as revenue for services rendered, material furnished, rent, accounts of officers and employees, miscellaneous accounts with others.

14-5 Accumulated provision for uncollectible accounts.

This account shall be credited with amounts provided for losses on notes and accounts receivable which may become uncollectible, and also with collections on accounts previously charged hereto. This account shall be charged with any amounts which have been found to be impractical of collection.

[Order 620, 65 FR 81343, Dec. 26, 2000]

15 Interest and dividends receivable.

(a) This account shall include the amount of interest due and accrued as of the date of the balance sheet on all interest-bearing obligations held by the carrier. This account shall also include the amount of dividends declared on stocks owned.

(b) Interest and dividends receivable from affiliated companies or on the carrier's own securities shall not be included in this account.

16 Oil inventory.

(a) This account shall include the cost of oil purchased and the value of oil acquired through tariff allowances and operating gains. Amounts paid preceding carriers for transportation, customs duties, or similar charges shall be charged to account 230, Allowance Oil Revenue. Additions to inventory from tariff allowances shall be credited to revenue at current value. Additions resulting from operating gains shall be credited against operating oil losses and shortages.

(b) The cost or value of oil owned by the carrier and used to maintain lines and working tanks in condition for transportation operations shall be included in account 33, Operating Oil Supply.

17 Material and supplies.

(a) This account shall include the cost, including sales, use and excise taxes and transportation costs to point of delivery, less purchase and trade discounts, of all unapplied material and supplies, such as line pipe, line pipe fittings, fuel, tools, and other pipeline supplies. The value of items being manufactured by the carrier and the fair

value of salvaged material shall also be included herein.

(b) Carriers shall take annual inventories of material and supplies and shall make the adjustments necessary to reconcile the books to the inventory figures. To the extent practicable, adjustments shall be made directly to the same accounts to which such material and supplies were charged during the period. Differences that cannot be directly allocated shall be equitably apportioned among the accounts to which material was charged since the last inventory.

18 Prepayments.

This account shall include the amount of expenses paid in advance of accrual such as insurance, rent, and taxes, the benefits of which are to be realized in subsequent periods. Monthly transfers shall be made to the appropriate expense or other accounts for the expired portion of the prepayments applicable to that month.

19 Other current assets.

This account shall include such items as estimated tax refunds receivable, legally enforceable, balances due on subscriptions to capital stock, temporary guaranty and other deposits, and all other current assets due within one year which are not includible in the other current asset accounts.

19-5 Deferred income tax assets.

(a) This account shall include the portion of deferred income tax assets and liabilities relating to current assets and liabilities, when the balance is a net debit.

(b) A net credit balance shall be included in Account 59, Deferred income tax liabilities.

[Order 620, 65 FR 81343, Dec. 26, 2000]

20 Investments in affiliated companies.

This account shall include the cost of investments in securities (other than securities held in special funds) and investment advances made to affiliated companies. Separate records shall be maintained to show the securities pledged and the following classes of investments in each affiliated company:

- (a) Stocks.
- (b) Bonds.
- (c) Other secured obligations.
- (d) Unsecured notes.
- (e) Investment advances.

21 Other investments.

This account shall include the cost of investments in securities of (other than securities held in special funds) and advances made to other than affiliated companies. Separate records shall be maintained to show the securities pledged and the following classes of investments in each nonaffiliated company:

- (a) Stocks.
- (b) Bonds.
- (c) Other secured obligations.
- (d) Unsecured notes.
- (e) Investment advances.

22 Sinking and other funds.

(a) This account shall include cash and cost of investment in securities and other assets, trustee or otherwise restricted, that have been segregated in distinct funds for purposes of redeeming outstanding obligations; purchasing or replacing assets; paying pensions, relief, hospitalization, and other similar items. This account shall also include the cash value of life insurance policies on the lives of employees and officers to the extent that the carrier is the beneficiary of such policies. Separate subsidiary records shall be maintained for each distinct fund.

(b) Securities issued or assumed by the accounting company shall be recorded at par or stated value.

(c) This account shall include compensating balances (see Definition 34) under an agreement which legally restricts the use of such funds and which constitute support for long-term borrowing arrangements.

(49 U.S.C. 304, 913, 1012)

[32 FR 20241, Dec. 20, 1967, as amended at 41 FR 9158, Mar. 3, 1976. Redesignated by Order 119, 46 FR 9044, Jan. 28, 1981]

23 Reductions in security values—Credit.

This account shall include provisions for losses in value of securities held as investments in affiliated or other companies, and including securities in

funds. Concurrent charges shall be made to account 660, Miscellaneous Income Charges.

[32 FR 20241, Dec. 20, 1967, as amended at 40 FR 53248, Nov. 17, 1975. Redesignated by Order 119, 46 FR 9044, Jan. 28, 1981]

24 Allowance for net unrealized loss on noncurrent marketable equity securities—Credit.

This account shall reflect the amount by which aggregate cost exceeds market value for the noncurrent marketable equity securities found in accounts 20 and 21. This account shall be debited or credited so that the balance at the balance sheet date shall reflect such difference. (Refer to Instruction 1-15.)

This account shall not include amounts by which aggregate cost exceeds market value if such differences are judged to be other than temporary. (Such differences should be charged to account 23.)

[42 FR 33298, June 30, 1977. Redesignated by Order 119, 46 FR 9044, Jan. 28, 1981]

30 Carrier property.

This account shall include the cost of tangible property used in carrier service, or held for such use within a reasonable time under a definite plan for pipeline operations. Separate primary accounts are prescribed for each class of carrier property.

31 Accrued depreciation—Carrier property.

This account shall be credited with amounts charged to operating expenses or other accounts representing the loss in service value of depreciable carrier property. The service value of depreciable property retired shall be charged to this account. It shall also include other entries as may be authorized by the Commission. Detail of this account shall be maintained by primary property accounts.

32 Accrued amortization—Carrier property.

This account shall be credited with amounts charged to operating expenses or other accounts representing the loss

in service value of carrier property subject to amortization accounting as authorized by the Commission. Upon the retirement of property subject to amortization this account shall be charged with the amount included herein applicable to the specific property at the time the property is retired. Subsidiary records shall be maintained for each group of property items under a separate amortization authorization.

33 Operating oil supply.

This account shall include the cost of oil purchased and the value of oil added through tariff allowances and operating gains which is used to maintain lines and tanks in working condition. Additions to operating supply from tariff allowances shall be credited to revenue at current value. Additions resulting from operating gains shall be credited against operating oil losses and shortages.

34 Noncarrier property.

This account shall include the cost of tangible property not used in carrier pipeline operations.

35 Accrued depreciation—Noncarrier property.

This account shall be credited with amounts charged to income, representing the loss in service value of depreciable noncarrier property.

40 Organization costs and other intangibles.

This account shall include the cost of intangible assets such as organizing the carrier, patents, permits, franchises, and goodwill. Organization costs include the legal expense, taxes, fees, stationery and printing, original capital stock expense and costs of economic feasibility studies made prior to initial operation of the carrier. Separate subsidiary records shall be maintained for each class of intangible asset.

41 Accrued amortization of intangibles.

This account shall be credited with the amounts charged to operating expenses or income representing the expired cost of intangible property. When

the period of benefit of intangible property is fully expired, or assets are retired to which the intangible relates, this account shall be charged with the amount herein applicable to the specific property.

43 Miscellaneous other assets.

This account shall include such items as accounts receivable, utility deposits, guaranty deposits and other similar assets which are not expected to be realized or returned to the carrier within one year from date of the balance sheet. The estimated net salvage value of retired carrier property held without being dismantled shall be included in this account.

44 Other deferred charges.

This account shall include items that cannot be disposed of until further information is received and items of a deferred nature, not provided for elsewhere, to be amortized to expense or other accounts in future periods. This includes such items as engineering surveys and studies and debt expense.

45 Accumulated deferred income tax assets.

This account shall include the amount of deferred taxes determined in accordance with instruction 1-12 and the text of Account 64, Accumulated deferred income tax liabilities, when the balance is a net debit.

[Order 620, 65 FR 81343, Dec. 26, 2000]

50 Notes payable.

This account shall include outstanding obligations in the form of notes, and other similar evidences of indebtedness payable on demand or within one year from the date of issue except those payable to affiliated companies.

NOTE: This account shall not include obligations due within one year which are intended to be refinanced on a long-term basis. Long-term refinancing of short-term obligations means; (1) replacement with long-term obligations or equity securities, or (2) renewal, extension, or replacement with short-term obligations for an uninterrupted period extending beyond one year from the balance sheet date.

The intention to refinance on a long-term basis shall be supported by the ability to refinance. Evidence of this ability includes either; (1) the actual issuance of a long-term obligation or equity securities for the purpose of refinancing the short-term obligation, after the balance sheet date but before the balance sheet is issued, or (2) before the balance sheet is issued, the existence of a financing agreement which is long-term and based on terms readily determinable with no existing violations of its provisions, and with a lender which is financially capable of honoring the agreement.

(49 U.S.C. 304, 913, 1012)

[32 FR 20241, Dec. 20, 1967, as amended at 41 FR 9163, Mar. 3, 1976. Redesignated by Order 119, 46 FR 9044, Jan. 28, 1981]

51 Payables to affiliated companies.

This account shall include amounts payable due and accrued to affiliated companies (except interest and dividends) subject to settlement within one year from date of the balance sheet, and for which arrangements for long-term refinancing have not been made (See Note following account 50, "Notes Payable"). This includes payables for items such as services and material received, rent, advances and notes.

(49 U.S.C. 304, 913, 1012)

[41 FR 9163, Mar. 3, 1976. Redesignated by Order 119, 46 FR 9044, Jan. 28, 1981]

52 Accounts payable.

This account shall include amounts payable due and accrued (except those to affiliated companies) subject to settlement within one year from the date of the balance sheet. This includes payables for items such as joint revenue, material and supplies, services received, rents, claims, taxes collected from employees and others for account of taxing entities, and other similar items.

53 Salaries and wages payable.

This account shall include salaries and wages payable due and accrued including vacation pay and unclaimed salaries and wages as of the balance sheet date. Unclaimed salaries and wages outstanding for more than one year may be written off to income unless the amount unclaimed escheats to the state.

54 Interest payable.

This account shall include interest accrued or payable on all obligations.

55 Dividends payable.

This account shall include the amount of dividends (other than stock dividends) declared but unpaid as of the date of the balance sheet.

56 Taxes payable.

This account shall include all Federal, state, and local taxes (except taxes withheld from employees) accrued and payable, estimated if necessary, as of the balance sheet date. Prepaid taxes shall be shown as current assets in account 18, Prepayments. Subsidiary records shall be maintained to allow analyses of this account by matured and unmatured taxes and by type of tax and taxing entity.

57 Long-term debt payable within one year.

This account shall include the amount of long-term debt which will mature and become payable within one year from date of the balance sheet for which arrangements for long-term refinancing have not been made (See note following account 50, "Notes Payable").

(49 U.S.C. 304, 913, 1012)

[41 FR 9163, Mar. 3, 1976. Redesignated by Order 119, 46 FR 9044, Jan. 28, 1981]

58 Other current liabilities.

This account shall include all other current liabilities not provided for elsewhere that are payable within one year from date of balance sheet.

59 Deferred income tax liabilities.

(a) This account shall include the portion of deferred income tax assets and liabilities relating to current assets and liabilities, when the balance is a net credit.

(b) A net debit balance shall be included in Account 19-5, Deferred income tax assets.

[Order 620, 65 FR 81343, Dec. 26, 2000]

60 Long-term debt payable after one year.

This account shall include the total par value of the carrier's outstanding obligations maturing more than one year from the date of the balance sheet, including obligations due within one year which are expected to be refinanced on a long-term basis (See note following account 52, "Accounts payable"). This account shall be divided to show the face value of (1) debt issued and actually outstanding, and (2) debt "nominally issued" and "nominally outstanding". These accounts shall be further divided by the following classes of debt: mortgage bonds, collateral trusts, income bonds, miscellaneous obligations and nonnegotiable debt to affiliated companies.

(49 U.S.C. 304, 913, 1012)

[41 FR 9163, Mar. 3, 1976. Redesignated by Order 119, 46 FR 9044, Jan. 28, 1981]

61 Unamortized premium on long-term debt.

This account shall include the premium received and not yet amortized on the issuance of long-term debt. The amount of premium received on each issue of bonds, mortgages, notes, and other long-term debt shall be amortized over the life of the debt by credit to interest expense.

NOTE: Issue costs related to long-term debt (debt expense) shall be included in account 44, Other deferred charges, and amortized over the life of the debt by charge to account 660, Miscellaneous income charges.

[32 FR 20241, Dec. 20, 1967, as amended at 41 FR 52467, Nov. 30, 1976. Redesignated by Order 119, 46 FR 9044, Jan. 28, 1981]

62 Unamortized discount and interest on long-term debt.

This account shall include the amount of discount on long-term debt, and the amount of interest expressly provided for and included in the face amount of obligations issued or assumed and not amortized as of the balance sheet date. The amount of discount or interest applicable to each issue of debt obligation shall be amortized over the life of the respective debt by charge to interest expense.

NOTE: Issue costs related to long-term debt (debt expense) shall be included in account

44, Other deferred charges, and amortized over the life of the debt by charge to account 660, Miscellaneous income charges.

[41 FR 52467, Nov. 30, 1976. Redesignated by Order 119, 46 FR 9044, Jan. 28, 1981]

63 Other noncurrent liabilities.

(a) This account shall include such items as deferred revenue from rents or leases that will not be realizable as income within one year, and the liability for amounts contributed by employees or others for pensions, savings, and similar items. This account shall also include the amount accrued for pensions in which the employees have a vested right and which are administered by the carrier.

[32 FR 20241, Dec. 20, 1967, as amended at 39 FR 33344, Sept. 17, 1974. Redesignated by Order 119, 46 FR 9044, Jan. 28, 1981]

64 Accumulated deferred income tax liabilities.

(a) This account shall be credited (charged) with amounts concurrently charged (credited) to account 671, Provision for deferred taxes and account 696, Provision for deferred taxes—extraordinary items, representing the net tax effect of changes in material temporary differences (see definition 30(e)) during the current accounting period.

(b) This account shall be credited with the amount of investment tax credit utilized in the current year for income tax purposes but deferred for accounting purposes (see instruction 1-12).

(c) This account shall be concurrently debited with amounts credited to account 671, Provision for deferred taxes representing amortization of amounts for investment tax credits deferred in prior accounting periods.

(d) This account shall be maintained in such a manner as to show separately: (1) The balance of deferred income taxes and deferred investment tax credit separately as of the beginning and as of the end of each year entries are made affecting the account balance, (2) the current years net credit or charges applicable to temporary differences and deferred investment tax credits.

NOTE A: The portion of deferred assets and liabilities relating to current assets and liabilities should likewise be classified as current and included in Account 19-5, Deferred Income Tax Assets, or Account 59, Deferred Income Tax Liabilities, as appropriate.

NOTE B: This account shall include a net credit balance only. A net debit balance shall be recorded in Account 45, Accumulated deferred income tax assets.

[39 FR 33344, Sept. 17, 1974, as amended at 40 FR 53248, Nov. 17, 1975. Redesignated by Order 119, 46 FR 9044, Jan. 28, 1981, as amended by Order 620, 65 FR 81343, Dec. 26, 2000]

70 Capital stock.

(a) This account shall include the par value of par value stock, stated value of no-par stock, and the amount received for no-par stock without stated value, which have been issued to bona fide purchasers and have not been reacquired and cancelled, also shares of stock nominally issued. When other than cash is received for no-par value stock, the fair market value of the consideration shall be entered in this account.

(b) This account shall be divided so as to show separately each class of stock issued, subdivided between (1) issued and outstanding, and (2) nominally issued and nominally outstanding.

(c) When an issue of capital stock or any part thereof is reacquired, either by purchase or donation, and is retired or cancelled, the par value shall be charged to this account. Any excess of reacquisition cost over par value shall be allocated between account 73, Additional Paid-in-Capital and 720, Other Debits to Retained Income. Any excess of par value over reacquisition cost shall be credited to account 73, Additional Paid-in-Capital.

(d) When an issue of capital stock or any part thereof is reacquired, either by purchase or donation, and is not retired or cancelled, nor properly includible in sinking or other funds, the reacquisition cost shall be charged to account 76, Treasury Stock.

(e) When treasury stock is resold, account 76, Treasury Stock, shall be credited with the cost paid for it. Gains shall be credited to account 73, Additional Paid-in-Capital. Losses shall be charged to account 73, Additional Paid-in-Capital to the extent that previous net gains from sales or retirements of

the same class of stock are included therein; otherwise, to account 720, Other Debits to Retained Income.

[40 FR 44562, Sept. 29, 1975. Redesignated by Order 119, 46 FR 9044, Jan. 28, 1981]

71 Premiums on capital stock.

This account shall include the excess of the actual cash value of the consideration received at the time of the original sale over the par or stated value of the stock issued.

72 Capital stock subscriptions.

This account shall include the full amount of the par value, stated value, or price agreed upon for no-par stock which has been subscribed under a legally binding purchase agreement. The difference between the par value or stated value, plus any premiums or the amount agreed upon for no-par stock, and the down payment or installments received, shall be recorded as a current asset in account 19, Other Current Assets. Appropriate subaccounts shall be kept to record separately the transactions for each class and series of stock involved.

73 Additional paid-in capital.

This account shall include gains from purchase and resale of reacquired stock. Credits attributable to reductions in the par or stated value of capital stock may be included in this account only when approved by the Commission. Separate subaccounts shall be maintained for each class and series of stock. Also include herein contributions to capital made by stockholders and others.

74 Appropriated retained income.

This account shall include retained income which has been appropriated and set aside under contractual or legal requirements and for other specific purposes, such as the retirement of bonded indebtedness, contingencies, redemption of preferred capital stock; fire losses; plant replacement and additions; miscellaneous employee benefits; and similar items. Appropriations shall be released when their respective purposes have been served. Separate subaccounts shall be maintained for each

specific purpose for which retained income is appropriated.

75 Unappropriated retained income.

(a) This account shall include retained income which has not been appropriated or set aside for specific purposes. There shall be no transfers to or from account 73, Additional Paid-in Capital, to this account unless so authorized by the Commission.

(b) The balance of accounts 700 to 750, inclusive, shall be closed to this account at the end of each calendar year.

[32 FR 20241, Dec. 20, 1967, as amended at 34 FR 15483, Oct. 4, 1969; 37 FR 17714, Aug. 31, 1972. Redesignated by Order 119, 46 FR 9044, Jan. 28, 1981]

75.5 Net unrealized loss on noncurrent marketable equity securities.

This account shall include the accumulated changes in account 24 to the extent that these changes represent a net unrealized loss (aggregate cost exceeds market value).

[42 FR 33298, June 30, 1977. Redesignated by Order 119, 46 FR 9044, Jan. 28, 1981]

76 Treasury stock.

(a) This account shall include in subdivisions for each class the reacquisition cost of capital stock which has been actually issued or assumed by the carrier, then reacquired, and is neither retired nor cancelled, nor properly includible in sinking or other funds.

(b) This account shall be maintained to reflect separately securities pledged or unpledged.

(c) This account shall be shown on the Balance Sheet as a deduction in arriving at Stockholders' Equity.

NOTE A: The accounting for the reacquisition of capital stock and resale thereof shall be in accordance with balance sheet account 70, paragraphs (c) through (e).

[40 FR 44562, Sept. 29, 1975. Redesignated by Order 119, 46 FR 9044, Jan. 28, 1981]

Carrier Property Accounts

The following table lists the prescribed primary property accounts and indicates those accounts which contain similar items of property for which a single text is provided. The accounts

are to be kept separately for crude oil lines and for product lines.

Account number			Account Title
Gathering Lines	Trunk Lines	General	
101	151	171	Land.
102	152	.....	Right of Way.
103	153	.....	Line Pipe.
104	154	.....	Line Pipe Fittings.
105	155	.....	Pipeline Construction.
106	156	176	Buildings.
107	157	.....	Boilers.
108	158	.....	Pumping Equipment.
109	159	179	Machine Tools and Machinery.
110	160	.....	Other Station Equipment.
111	161	.....	Oil Tanks.
112	162	.....	Delivery Facilities.
113	163	183	Communication Systems.
114	164	184	Office Furniture and Equipment.
115	165	185	Vehicles and Other Work Equipment.
116	166	186	Other Property.
	.....	187	Construction Work in Progress.

101, 151, 171 Land.

(a) This account shall include the cost of land held in fee and used in pipeline operations. Land not used in carrier service shall be recorded in account 34, Noncarrier Property. Irregular parcels of land without commercial value acquired with rights of way shall not be transferred to account 34 solely to make right of way boundaries regular.

(b) The cost of land and buildings acquired together shall be equitably separated and recorded. When land is acquired with buildings, structures, or other encumbrances that must be removed before the land is usable, demolition cost, less salvage, shall be added to the book cost of the land. Net proceeds from the sale of timber, minerals and improvements which were part of the land cost when purchased by the carrier, shall be credited to this account up to the amount of the purchase price allocated as their cost. Any excess shall be credited to account 640, Miscellaneous Income.

(c) Costs of filing, clearing, grading or leveling land, when such work is not directly associated with construction or a definite plan for construction, shall be charged to this account.

(d) All direct or incidental costs associated with the acquisition of the land and any taxes and public assessments assumed at the time of purchase, shall be included in this account.

(e) Special assessments for public improvements and also costs borne by the carrier for public improvements constructed by it shall be included in this account.

[32 FR 20241, Dec. 20, 1967, as amended at 40 FR 53248, Nov. 17, 1975. Redesignated by Order 119, 46 FR 9044, Jan. 28, 1981]

102, 152 Right of way.

This account shall include the cost of obtaining rights of way used in pipeline operations. Periodic rents paid for the use of a right of way shall be charged to operating rents. Costs of filling, clearing, grading or leveling of a right of way when such work is not directly associated with construction or a definite plan for construction, shall be charged to this account.

103, 153 Line pipe.

This account shall include the cost of all line pipe actually laid in pipe lines devoted to transportation service.

104, 154 Line pipe fittings.

This account shall include the cost of the line pipe fittings, including manifolds, used in pipe lines devoted to transportation service.

105, 155 Pipeline construction.

(a) This account shall include all the costs of constructing pipe lines except the cost of line pipe and fittings provided for in accounts 103, 153, Line Pipe, and 104, 154, Line Pipe Fittings.

(b) Includible shall be the cost of labor and materials such as casing and vent pipe, pipe coatings of all kinds, river weights, support structures, sand bags, valve boxes, cathodic protection devices, mile posts, right-of-way markers, excavating and backfilling, pipeline pits, and the cost of damages paid for the destruction of crops, timber, and other property during construction. The cost of reopening the trenches for repairs, or installation of casing, coating or cathodic protection, and the necessary backfilling shall be charged to maintenance expense.

106, 156, 176 Buildings.

This account shall include the cost of all buildings including the foundations, fixtures, and appurtenances thereto.

This includes such items as architects' fees, sidewalks, driveways, fences, permanent water rights, grading and preparing grounds before and after construction, utility lines and other service piping. Cost of restoring grounds after repair work shall be charged to maintenance expense.

107, 157 Boilers.

This account shall include the cost of boilers, including accessories and attachments such as injectors, water gages, steam gages and fittings, and the cost of special boiler foundations and installations.

108, 158 Pumping equipment.

This account shall include the cost of engines, motors, pumps, and all other pumping equipment, and the cost of special foundations and installation.

109, 159, 179 Machine tools and machinery.

This account shall include the cost of machine tools and machinery, including the cost of their special foundations and installation.

110, 160 Other station equipment.

This account shall include the cost of all station equipment not provided for elsewhere, such as electric light, gas, and refrigeration equipment, manifolds, and miscellaneous equipment and fittings. It shall also include the carrier's investment in tracks if located at and used in connection with a station.

111, 161 Oil tanks.

This account shall include the cost of oil tanks, including grades, roofs, fire banks, steam coils, swing pipes, inlet valves, and outlet valves.

112, 162 Delivery facilities.

This account shall include the cost of facilities for receiving or delivering oil and oil products from or to water carriers, railroads, motor carriers, and others, such as delivery racks, wharves (including buildings thereon), docks, and slips, including piling, pile protection, cribs, cofferdams, walls, and other necessary devices and apparatus for the operation or protection of such property. It shall also include the cost of

engines, pumps, and boilers at loading racks and on wharves, the construction of oil-pipe lines between oil tanks and delivery facilities, and the carrier's investment in tracks if located at and used in connection with delivery facilities.

113, 163, 183 Communication systems.

This account shall include the cost of telegraph, wireless, telephone, and radio equipment.

114, 164, 184 Office furniture and equipment.

This account shall include the cost of all office furniture, equipment and fixtures, including such items as safes, desks, chairs, typewriters, accounting machines, cabinets, file cabinets, floor coverings, portable air conditioners, drinking fountains, and other similar items that are not an integral part of a building.

115, 165, 185 Vehicles and other work equipment.

This account shall include the cost of motor and other vehicles, motor and other portable work equipment, garage equipment, and portable tools and machines such as drills, hoists, jacks, power mowers, stocks and dies, laying tongs, vises, air compressors, welding machines, valve reseating machines, pipe-cleaning machines, and concrete mixers, not specifically provided for in other accounts.

116, 166, 186 Other property.

This account shall include the cost of property used in pipeline operations not provided for elsewhere.

187 Construction work in progress.

This account shall include the cost of carrier property under construction and the cost of land acquired for such construction as of the date of the balance sheet. It includes interest and taxes during construction, material and supplies delivered to the construction site, and other expenditures that will eventually be part of the cost of the completed property. When construction work is completed, the cost included in this account shall be transferred to the appropriate primary property accounts. Subsidiary records shall

be maintained for each construction project. When part of a project under construction is completed and put into service, the costs applicable to that portion shall be transferred to the appropriate property account.

Operating Revenues

200 Gathering revenues.

This account shall include revenues on the basis of tariff charges for the gathering or collection of crude oil, oil products and other commodities.

210 Trunk revenues.

This account shall include revenues on the basis of tariff charges for trunk line transportation of crude oil, oil products or other commodities.

220 Delivery revenues.

This account shall include revenues on the basis of tariff charges for receiving, delivering, unloading and loading fees at carrier terminal and delivery facilities.

230 Allowance oil revenue.

(a) This account shall include the current value of oil acquired through tariff allowances taken into inventory or retained in the line for operating oil supply, and the selling price of such oil sold not previously recorded in inventory or operating oil supply.

(b) Profits and losses on sales of allowance oil from inventory or operating supply shall be included in this account.

240 Storage and demurrage revenue.

This account shall include revenues on the basis of tariff charges for the storage of oil; also demurrage charges incident to failure of consignees to receive shipments promptly.

250 Rental revenue.

This account shall include the revenues from renting or subrenting property, the cost of which is included in the accounts for investment in carrier property.

260 Incidental revenue.

This account shall include revenues incidental to carrier operations and

not includible in other revenue accounts.

Operating Expenses

Operations and Maintenance

300 Salaries and wages.

This account shall include the salaries and wages (including pay for holidays, vacations, sick leave and similar payroll disbursements) of supervisory and other personnel directly engaged in transportation operations and the maintenance and repair of transportation property.

[Order 620, 65 FR 81343, Dec. 26, 2000]

310 Materials and supplies.

This account shall include the cost of materials applied in the repair and maintenance of transportation property. The salvage value of materials recovered in maintenance work shall be credited to this account. This account shall also include the cost of supplies consumed and expended in operations and in support of the maintenance activity.

[Order 620, 65 FR 81343, Dec. 26, 2000]

320 Outside services.

This account shall include the cost of operating and maintenance services provided by other than company forces under contract, agreement, and other arrangement. The cost of service performed by affiliated companies shall be segregated within the account.

[Order 620, 65 FR 81343, Dec. 26, 2000]

330 Operating fuel and power.

This account shall include the cost of fuel and power consumed and expended in operations. The cost of normal utilities services shall be included herein when such costs are directly allocable to operations.

340 Oil losses and shortages.

(a) This account shall include the cost of settlements with shippers for oil lost or undelivered due to operating causes during the course of transportation.

(b) The value of oil gains from operations shall be credited to this account

at current value at time of determination of gain and charged to oil inventory or operating supply.

350 Rentals.

This account shall include the cost of renting property used in the operations and maintenance of carrier transportation service, such as complete pipeline or segment thereof, office space, land and buildings, and other equipment and facilities.

[Order 620, 65 FR 81343, Dec. 26, 2000]

390 Other expenses.

This account shall include the expenses of aircraft, vehicles, and work equipment used in support of operations and maintenance activities; travel, lodging, meals, memberships, and other expenses of operating and maintenance employees; and other related operating and maintenance expenses that are not defined or classified in other accounts.

[Order 620, 65 FR 81343, Dec. 26, 2000]

General

500 Salaries and wages.

This account shall include the salaries and wages (including pay for holidays, vacations, sick leave, and similar payroll disbursements) of executives and general officers, general office personnel, and of other employees whose wages cannot be directly allocated to operations or maintenance.

510 Materials and supplies.

This account shall include the cost of materials and supplies consumed and expended for administration and general services.

[Order 620, 65 FR 81343, Dec. 26, 2000]

520 Outside services.

This account shall include the cost of management and general and administrative services provided by other than company forces under contract, agreement or other arrangement. The cost of services performed by affiliated companies shall be segregated within the account.

530 Rentals.

This account shall include the cost of renting property used in the administration and general operations of carrier transportation service, such as complete pipeline or segment thereof, office space, land and buildings, and other equipment and facilities.

[Order 620, 65 FR 81343, Dec. 26, 2000]

540 Depreciation and amortization.

This account shall include charges for the depreciation and amortization of transportation property. Charges for the amortization of fixed term intangibles relating to common carrier operations shall also be included herein.

550 Employee benefits.

This account shall include the cost to the carrier of annuities, pensions, and benefits for active or retired employees, their beneficiaries or designees. Contributions to health or welfare funds or payment for similar benefits to or on behalf of employees shall be included herein. Premiums, to the extent borne by the carrier, for group life, health, accident and other beneficial insurance for employees shall also be included in this account.

[Order 620, 65 FR 81343, Dec. 26, 2000]

560 Insurance.

(a) This account shall include the cost of commercial insurance to protect the carrier against losses and damages in its pipeline operations such as injuries to or deaths of employees and other persons, damages to or destruction of carrier property or the property of others, and other business risks and hazards pertaining to transportation operations.

(b) The carrier shall not accrue amounts for the purpose of estimating risk of loss or damage to its property from fire, theft, or similar loss contingencies not covered by commercial insurance.

NOTE: Insurance or other reimbursement for loss or damage shall be credited to the

same account charged with the loss or expense.

(49 U.S.C. 304, 913, 1012)

[32 FR 20241, Dec. 20, 1967, as amended at 41 FR 32597, Aug. 4, 1976. Redesignated by Order 119, 46 FR 9044, Jan. 28, 1981]

570 Casualty and other losses.

(a) This account shall include the amount of expense sustained by the carrier on account of loss or damage to oil or other commodity entrusted to it for transportation or storage resulting from fire, flood, or other casualty.

(b) Expenses on account of damage and destruction to property of others from all causes; and the expense of repairing damages to transportation property caused by casualty shall also be included herein.

(c) This account shall also include expenses incurred on account of injury to or death of employees or other persons including related medical, hospital and funeral expenses.

NOTE: The cost of oil lost or undelivered through operating causes shall be charged to account 340, Oil Losses and Shortages.

580 Pipeline taxes.

(a) This account shall include accruals for taxes of all kinds, excepting income taxes (see definition 30(a)), relating to carrier property, operations, privileges and licenses.

(b) The detail of this account shall show separately the amounts levied by the Federal government and by each state.

[32 FR 20241, Dec. 20, 1967, as amended at 39 FR 33345, Sept. 17, 1974. Redesignated by Order 119, 46 FR 9044, Jan. 28, 1981]

590 Other expenses.

This account shall include the cost of expenses expended for administrative and general services including, the expenses of aircraft, vehicles, and work equipment used for general purposes; travel, lodging, meals, memberships, and other expenses of general employees and officers; utilities services; and all other incidental general expenses

not defined or classified in other accounts.

[Order 620, 65 FR 81344, Dec. 26, 2000]

Income Accounts

Ordinary Items

CREDIT

600 Operating revenues.

This account shall include the total revenues included in the operating revenue accounts for the calendar year.

620 Income (net) from noncarrier property.

(a) This account shall include all noncarrier revenues and expenses from property carried in account 34, Noncarrier Property.

(b) All expenses related to noncarrier property, such as operation and maintenance expenses, depreciation, taxes (except Federal income taxes) and similar expenses, are includible herein.

630 Interest and dividend income.

(a) This account shall include interest accruing to the carrier on securities of others, loans, notes and advances, deposits, and all other interest bearing assets. Also include the amount of amortized premium or discount related to such assets.

(b) This account shall also include the amount of dividends declared on stocks of others owned by the carrier.

(c) Income shall not be included in this account unless receipt thereof is reasonably assured.

640 Miscellaneous income.

(a) This account shall include income not provided for elsewhere creditable to income accounts for the current year, such as unclaimed wages written off, profit on sales of land and noncarrier, property, profit on sales of investment securities, profit from company bonds reacquired, and decreases in the valuation allowance (contained within account 11) for the marketable equity securities included in current assets.

(b) Gains from extinguishment of debt shall be aggregated and, if material, credited to account 680, Extraor-

dinary Items, upon approval by the Commission.

[32 FR 20241, Dec. 20, 1967, as amended at 40 FR 53248, Nov. 17, 1975; 42 FR 33298, June 30, 1977. Redesignated by Order 119, 46 FR 9044, Jan. 28, 1981]

645 Unusual or infrequent items (credit).

Included in this account shall be material items unusual in nature or infrequent in occurrence, but not both, accounted for in the current year in accordance with the text of instruction 1-6, upon approval by the Commission.

[40 FR 53248, Nov. 17, 1975. Redesignated by Order 119, 46 FR 9044, Jan. 28, 1981]

DEBIT

610 Operating expenses.

This account shall include the total expenses included in the operating expense accounts for the calendar year.

650 Interest expense.

This account shall include interest expense on all classes of debt except interest pertaining to construction of property. This account shall also include the amortization of long-term debt premium and discount. Charges for interest on carrier debt obligations previously issued and now held by or for the carrier shall not be recorded in this account.

660 Miscellaneous income charges.

(a) This account shall include income charges not provided for elsewhere chargeable to income accounts for the current year, such as amortization of debt expense, losses on sale or disposition of land and noncarrier property, losses on sales or reductions in value of investment securities (including increases in the valuation allowance within account 11 for the marketable equity securities included in current assets), bad debts, losses on company bonds reacquired, taxes (other than Federal income taxes) on investment securities, trust management expenses, amortization of intangibles which are not restricted to a fixed term, and the difference between the premium and the added cash surrender value of life insurance on officers and employees when the carrier is beneficiary.

(b) Losses from extinguishment of debt shall be aggregated and, if material, charged to account 680, Extraordinary Items, upon approval by the Commission.

[32 FR 20241, Dec. 20, 1967, as amended at 37 FR 17714, Aug. 31, 1972; 40 FR 53248, Nov. 17, 1975; 42 FR 33298, June 30, 1977. Redesignated by Order 119, 46 FR 9044, Jan. 28, 1981]

665 Unusual or infrequent items (debit).

Included in this account shall be material items unusual in nature or infrequent in occurrence, but not both, accounted for in the current year in accordance with the text of instruction 1-6, upon approval by the Commission.

[40 FR 53248, Nov. 17, 1975. Redesignated by Order 119, 46 FR 9044, Jan. 28, 1981]

670 Income taxes on income from continuing operations.

(a) This account shall be debited with the monthly accruals for all income taxes which are estimated to be payable and which are applicable to ordinary income (see instruction 1-12). See the texts of account 695, Income Taxes on Extraordinary Items, account 710, Other Credits to Retained Income, and account 720, Other Debits to Retained Income, for recording other income tax consequences.

(b) Details pertaining to the tax consequences of other unusual and significant items, and also cases where tax consequences are disproportionate to related amounts included in income accounts, shall be submitted to the Commission for consideration and decision as to proper accounting.

(Interstate Commerce Act, 49 U.S.C. 20 (1976), Department of Energy Organization Act, 42 U.S.C. 7155, 7172(b), 7295(a) (Supp. I 1977); E. O. 12009, 42 FR 46267 (1977); Federal Energy Regulatory Commission, Order No. 1, 42 FR 55450 (1977))

[32 FR 20241, Dec. 20, 1967, as amended at 39 FR 33345, Sept. 17, 1974; 40 FR 53248, Nov. 17, 1975; 44 FR 72161, Dec. 13, 1979. Redesignated by Order 119, 46 FR 9044, Jan. 28, 1981]

671 Provision for deferred taxes.

(a) This account shall include the net tax effect of changes in material temporary timing differences (see definition 30(e)) during the current accounting period, and the future tax benefits

of loss carryforwards recognized in accordance with instruction 1-12(c).

(b) This account shall include credits for the amortization of the investment tax credit if the carrier elected to use the deferred method of accounting for the investment tax credit. (See instruction 1-12(d)).

[39 FR 33345, Sept. 17, 1974. Redesignated by Order 119, 46 FR 9044, Jan. 28, 1981, as amended by Order 620, 65 FR 81344, Dec. 26, 2000]

DISCONTINUED OPERATIONS

675 Income (loss) from operations of discontinued segments.

This account shall include the results of operations of a segment of a business (see definition 32(a)), after giving effect to income tax consequences that has been or will be discontinued in accordance with the text of instruction 1-6, upon approval by the Commission.

[40 FR 53249, Nov. 17, 1975. Redesignated by Order 119, 46 FR 9044, Jan. 28, 1981]

676 Gain (loss) on disposal of discontinued segments.

This account shall include the gain or loss from the disposal of a segment of a business, after giving effect to income tax consequences, in accordance with the text of instruction 1-6, upon approval by the Commission.

[40 FR 53249, Nov. 17, 1975. Redesignated by Order 119, 46 FR 9044, Jan. 28, 1981]

EXTRAORDINARY ITEMS AND ACCOUNTING CHANGES

680 Extraordinary items (net).

(a) This account shall include extraordinary items accounted for during the current accounting year in accordance with the text of instruction 1-6, upon submission of a letter from the carrier's independent accountants, approving or otherwise commenting on the item and upon approval by the Commission.

(b) This account shall be maintained in a manner sufficient to identify the nature and gross amount of each debit and credit.

(c) Federal income tax consequences of charges and credits to this account shall be recorded in account 695, Income Taxes on Extraordinary Items, or

account 696. Provision for Deferred Taxes—Extraordinary Items, as applicable.

[40 FR 53249, Nov. 17, 1975. Redesignated by Order 119, 46 FR 9044, Jan. 28, 1981]

695 Income taxes on extraordinary items.

This account shall include the estimated income tax consequences (debit or credit) assignable to the aggregate of items of both taxable income and deductions from taxable income which for accounting purposes are classified extraordinary, and are recorded in account 680, Extraordinary Items (Net). The tax effect of any temporary differences caused by recognizing an item in the account provided for extraordinary items shall be included in account 696, Provision for Deferred Taxes—Extraordinary Items.

[40 FR 53249, Nov. 17, 1975. Redesignated by Order 119, 46 FR 9044, Jan. 28, 1981, as amended by Order 620, 65 FR 81344, Dec. 26, 2000]

696 Provision for deferred taxes—extraordinary items.

This account shall include the deferred tax expense or benefit related to temporary differences applicable to items of revenue or expense included in account 680, Extraordinary Items (Net) (See instruction 1–12).

[40 FR 53249, Nov. 17, 1975. Redesignated by Order 119, 46 FR 9044, Jan. 28, 1981, as amended by Order 620, 65 FR 81344, Dec. 26, 2000]

697 Cumulative effect of changes in accounting principles.

This account shall include the cumulative effect of changing to a new accounting principle, after giving effect to income tax consequences, in accordance with instruction 1–6, upon approval by the Commission.

[40 FR 53249, Nov. 17, 1975. Redesignated by Order 119, 46 FR 9044, Jan. 28, 1981]

Retained Income Accounts

700 Net balance transferred from income.

This account shall include net income (or deficit) for the calendar year.

705 Prior period adjustments to beginning retained income account.

This account shall include adjustments after giving income tax effect, in accordance with the text of instruction 1–6, to the balance in the retained income account at the beginning of the calendar year, upon approval by the Commission.

[40 FR 53249, Nov. 17, 1975. Redesignated by Order 119, 46 FR 9044, Jan. 28, 1981]

710 Other credits to retained income.

This account shall include other credit adjustments, net of assigned Federal income taxes, not provided for elsewhere in this system but only after such inclusion has been authorized by the Commission.

720 Other debits to retained income.

This account shall include losses from resale of reacquired capital stock, and charges which reduce or write off discount on capital stock issued by the company, but only to the extent that such charges exceed credit balances in account 73, Additional Paid-In Capital, for shares reacquired. This account shall also include other debit adjustments, net of assigned Federal income taxes, not provided for elsewhere in this system of accounts, but only after such inclusion has been authorized by the Commission.

740 Appropriations of retained income.

This account shall include appropriations made from retained income during the calendar year. Appropriations charged to this account shall be credited to account 74, Appropriated Retained Income.

750 Dividend appropriations of retained income.

This account shall include the amount of dividends declared during the calendar year on all classes of outstanding capital stock. Stock reacquired and owned by the carrier shall not be subject to dividends. Subsidiary records shall be kept to show separately the dividends declared on each type and class of capital stock. When dividends are paid in other than

money, complete detail of each transaction shall be maintained.

797 Form of Balance Sheet Statement

ASSETS

CURRENT ASSETS

10 Cash.
 10.5 Special deposits.
 11 Temporary Investments.
 12 Notes Receivable.
 13 Receivables from Affiliated Companies.
 14 Accounts Receivable.
 15 Interest and Dividends Receivable.
 16 Oil Inventory.
 17 Material and Supplies.
 18 Prepayments.
 19 Other Current Assets.
 19-5 Deferred Income Tax Charges.
 Total current assets.

INVESTMENTS AND SPECIAL FUNDS

20 Investments in Affiliated Companies.
 21 Other Investments.
 22 Sinking and Other Funds.
 23 Reductions in Security Values—Credit.
 24 Allowance for Net Unrealized Loss on Noncurrent Marketable Equity Securities—Credit.
 Total investments and special funds.

TANGIBLE PROPERTY

30 Carrier Property.
 31 Accrued Depreciation—Carrier Property.
 32 Accrued Amortization—Carrier Property.
 33 Operating Oil Supply.
 34 Noncarrier Property.
 35 Accrued Depreciation—Noncarrier Property.
 Total tangible property.

OTHER ASSETS AND DEFERRED CHARGES

40 Organization Costs and Other Intangibles.
 41 Accrued Amortization of Intangibles.
 43 Miscellaneous Other Assets.
 44 Other Deferred Charges.
 45 Accumulated deferred income tax charges.
 Total other assets and deferred charges.

 Total Assets.

Liabilities and Stockholders' Equity

LIABILITIES

CURRENT LIABILITIES

50 Notes Payable.
 51 Payables to Affiliated Companies.
 52 Accounts Payable.
 53 Salaries and Wages Payable.
 54 Interest Payable.
 55 Dividends Payable.

56 Taxes Payable.
 57 Long-Term Debt Payable Within One Year.
 58 Other Current Liabilities.
 59 Deferred income tax credits.
 Total current liabilities.

NONCURRENT LIABILITIES

60 Long-Term Debt Payable After One Year.
 61 Unamortized Premium on Long-Term Debt.
 62 Unamortized Discount and Interest on Long-term Debt.
 63 Other Noncurrent Liabilities.
 64 Accumulated deferred income tax credits.
 Total noncurrent liabilities.
 Total Liabilities.

STOCKHOLDERS' EQUITY

70 Capital Stock.
 71 Premiums on Capital Stock.
 72 Capital Stock Subscriptions.
 73 Additional Paid-In Capital.
 74 Appropriated Retained Income.
 75 Unappropriated Retained Income.
 75-5 Unrealized Loss on Noncarrier Marketable Equity Securities.
 Total Stockholders' Equity.
 Total Liabilities and Stockholders' Equity.
 76 Treasury stock.
 Total Stockholders' Equity.

798 Form of Income Statement

INCOME STATEMENT

ORDINARY ITEMS

Carrier Operating Income

600 Operating Revenues.
 610 Operating Expenses.
 Net carrier operating income.

Other Income and Deductions

620 Income (Net) from Noncarrier Property.
 630 Interest and Dividend Income (dividends from other than affiliates).
 640 Miscellaneous Income.
 645 Unusual or Infrequent Items (Credit).
 650 Interest Expense.
 660 Miscellaneous Income Charges.
 Income from affiliated companies.
 Dividends.
 Equity in undistributed earnings. (losses)
 Total other income and deductions.
 665 Unusual or Infrequent Items (Debit).
 670 Federal Income Taxes on Income from Continuing Operations.
 671 Provision for deferred taxes.

DISCONTINUED OPERATIONS

675 Income (Loss) from Operations of Discontinued Segments. (Less Applicable Income Taxes of \$—).

676 Gain (Loss) from Disposition of Discontinued Segments (Less Applicable Income Taxes of \$—).

Income (Loss) before Extraordinary Items.

EXTRAORDINARY ITEMS AND ACCOUNTING CHANGES

680 Extraordinary items (net).

695 Income Taxes on Extraordinary Items.

696 Provision for Deferred Taxes—Extraordinary Items.

TOTAL EXTRAORDINARY ITEMS

697 Cumulative Effect of Changes in Accounting Principles (Less Applicable Income Taxes of \$—).

Net Income (Loss).

799 Form of Unappropriated Retained Income Statement*Unappropriated Retained Income Statement*

75 Unappropriated retained income (beginning of year).

700 Net balance transferred from income.

705 Prior Period Adjustments to Beginning Retained Income Account.

710 Other credits to retained income.

720 Other debits to retained income.

740 Appropriations of retained income.

750 Dividend appropriations of retained income.

75 Unappropriated retained income (end of year).

[32 FR 20241, Dec. 20, 1967, as amended at 37 FR 17714, Aug. 31, 1972; 39 FR 33345, Sept. 17, 1974; 39 FR 34044, Sept. 23, 1974; 40 FR 53249, Nov. 17, 1975; 41 FR 52467, Nov. 30, 1976; 42 FR 33298, June 30, 1977. Redesignated by Order 119, 46 FR 9044, Jan. 28, 1981]

SUBCHAPTER R—APPROVED FORMS, INTERSTATE COMMERCE ACT

PART 356—PRESERVATION OF RECORDS FOR OIL PIPELINE COMPANIES

Sec.

356.1 Promulgation.

356.2 General instructions.

356.3 Preservation of records for oil pipeline companies.

AUTHORITY: 42 U.S.C. 7101-7352; 49 U.S.C. 1-27; E.O. 12009, 3 CFR 1978 Comp. p. 142.

SOURCE: Order 617, 65 FR 48166, Aug. 7, 2000, unless otherwise noted.

§ 356.1 Promulgation.

This part is prescribed and promulgated as the regulations governing the preservation of records by oil pipeline companies subject to the jurisdiction of the Commission, to the extent and in the manner set forth therein. This part is enforceable as of the date the oil pipeline company becomes subject to the jurisdiction of the Commission.

§ 356.2 General instructions.

(a) *Scope of this part.* (1) The regulations in this part apply to all books of account and other records prepared by or on behalf of the oil pipeline companies.

(2) The regulations in this part must not be construed as excusing compliance with other lawful requirements of any other governmental body, Federal or State, prescribing other record keeping requirements or for preservation of records longer than those prescribed in this part.

(3) To the extent that any Commission regulations may provide for a different retention period, the records should be retained for the longer of the retention periods.

(4) Unless otherwise specified in the schedule in §356.3, duplicate copies of records may be destroyed at any time. Provided, however, that such duplicate copies must not contain significant information not shown on the originals.

(5) Records other than those listed in the schedule may be destroyed at the option of the oil pipeline company. Provided, however, that records which

are used in lieu of those listed must be preserved for the periods prescribed for the records used for substantially similar purposes and that retention of records pertaining to added services, functions, plant, etc., the establishment of which cannot be presently foreseen, must conform to the principles embodied herein.

(6) Notwithstanding the provision of the records retention schedule, the Commission may, upon request of the oil pipeline company, authorize shorter retention periods for any records listed in §356.3. The oil pipeline companies must show that the longer retention periods are no longer necessary or appropriate to protect the public interest, investors, or consumers. A waiver from any provision of these regulations may be made by the Commission upon its own initiative or upon submission of a written request by the company. Each request for waiver must demonstrate that unusual circumstances warrant a departure from prescribed retention periods, procedures, or techniques, or that compliance with such prescribed requirements would impose an unreasonable burden on the company.

(b) *Designation of supervisory official.* Each oil pipeline company subject to the provision of this part must designate one or more persons to supervise the oil pipeline company's program for preservation and authorized destruction of records.

(c) *Protection and storage of records.* Each oil pipeline company subject to these regulations must provide reasonable protection for records. The records must have protections from fire, floods, and other hazards. Storage spaces, will also prevent unnecessary exposure to deterioration from excessive humidity, dryness, or lack of proper ventilation.

(d) *Record storage media.* (1) Each oil pipeline company has the flexibility to select its own storage media.

(2) The storage media must have a life expectancy at least equal to the applicable record retention period provided in §356.3 unless there is a quality

transfer from one media to another with no loss of data.

(3) Each oil pipeline company is required to implement internal control procedures that assure the reliability of and ready access to data stored on machine readable media. Internal control procedures must be documented by a responsible supervisory official.

(e) *Destruction of records.* Oil pipeline companies may use any appropriate method to destroy permitted records.

(f) *Premature destruction or loss of records.* When records are destroyed or lost before the expiration of the prescribed period of retention, a certified statement listing, as far as may be determined, the records destroyed, and describing the circumstances of accidental or other premature destruction or loss must be filed with the Commission within ninety (90) days from the date of discovery of such destruction.

(g) *Retention periods designated "Destroy at option".* "Destroy at option" constitutes authorization for destruction of records at managements' discretion if it does not conflict with other legal retention requirements or usefulness of such records in satisfying pending regulatory action or directives.

(h) *Records of services performed by associated companies.* Oil pipeline companies must assure the availability of records of services performed by associated companies for the periods indicated in § 356.3 as necessary to be able to readily furnish detailed information as to the nature of transaction, the involved, and the accounts used to record the transactions.

(i) *Index of records.* Oil pipeline companies must arrange, file, and index records so they may be readily identified and made available to Commission representatives.

(j) *Rate case.* The schedule of records in § 356.3 shows the periods of time that designated records must be preserved. However, notwithstanding the minimum retention periods provided in this regulation, if an oil pipeline company intends to reflect costs in a current, pending, or future rate case, or if an oil pipeline company has abandoned or retired plant subsequent to the test period of its last rate case, it must retain the appropriate records to support

the costs, and adjustments proposed in the next or current rate case.

(k) *Pending complaint litigation or governmental proceeding.* Notwithstanding the minimum requirements, if an oil pipeline company is involved in pending litigation, complaint proceedings, proceedings remanded by the court, or governmental proceedings, it must retain all relevant records.

(l) *Companies going out of business.* The records referred to in these regulations may be destroyed after business is discontinued and the company is completely liquidated. The records may not be destroyed until dissolution is final and all transactions are completed. When a company is merged with another company under jurisdiction of the Commission, the successor company must preserve records of the merged company in accordance with these regulations.

(m) *Life or mortality study data.* Life or mortality study data for depreciation purposes must be retained for 25 years or for 10 years after plant is retired.

§ 356.3 Preservation of records for oil pipeline companies.

TABLE OF CONTENTS

Corporate and General

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3. Titles, franchises, and authorities.
4. Contracts and agreements.
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16. Information returns, and reports to taxing authorities.

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17. Material ledger.
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21. Authorities and supporting papers for transportation.

22. Copies of concurrences and powers of attorney.

23. Correspondence and working papers in connection with the making of rates.

Reports and Statistics

24. Reports to Federal Energy Regulatory Commission and other regulatory bodies.

SCHEDULE OF RECORDS AND PERIODS OF RETENTION

Item No. and description	Retention period
Corporate and General	
1. Incorporation and reorganization:	
(a) Charter of certificate of incorporation and amendments	Permanently or at termination of the corporation's existence.
(b) Legal documents related to mergers, consolidations, reorganizations, receiverships, and similar actions which affect the identity or organization of the company.	Permanently or at termination of the corporation's existence.
2. Minutes to Directors', Executive Committees', Stockholders', and other corporate meetings.	5 years.
3. Titles, franchises, and authorities:	
(a) Certificates of public convenience and necessity issued by regulating bodies.	Until expiration or cancellation.
(b) Operating authorizations and exemptions to operate issued by regulating bodies.	Until expiration or cancellation.
(c) Copies of formal orders of regulatory bodies served upon the company.	1 year after expiration or cancellation.
(d) Deeds, charters, and other title papers	3 years after disposition of property.
4. Contracts and agreements:	
(a) Contracts and related papers for transactions which are subject to the provisions of the Clayton Antitrust Act (15 U.S.C. 20).	4 years after expiration, provided there is no pending litigation or governmental inquiry or proceeding involved.
(b) Service contracts, such as for operational management, accounting, financial or legal service, and agreements with agents.	3 years after expiration or termination.
(c) Contracts and other agreements relating to the construction, acquisition or sale of real property and equipment except as otherwise provided in paragraph (a) of this item.	3 years after expiration or termination.
5. Accountant's, auditor's, and inspector's reports:	
(a) Certifications and reports of examinations and audits conducted by public and certified public accountants.	3 years.
(b) Reports of examinations and audits conducted by internal auditors, time inspectors, weight inspectors, and others.	3 years.
Treasury	
6. Long-term debt records:	
(a) Bond indentures, underwriting, mortgage, and other long-term credit agreements.	6 years after redemption.
Financial Accounting	
7. Ledgers:	
(a) General and subsidiary ledgers with indexes thereto	3 years.
(b) Balance sheets and trial balance sheets of general and subsidiary ledgers.	3 years.
8. Journals:	
(a) General journals	3 years.
(b) Subsidiary journals and any supporting data, except as otherwise provided for, necessary to explain journal entries.	3 years.
(c) Schedules of recurring or standard journal entries with entry identifications.	Until superseded.
9. Vouchers:	
(a) Voucher registers or equivalent	5 years.
(b) Paid and canceled vouchers, expenditure authorizations, detailed distribution sheets, and other supporting data including original bills and invoices, except as otherwise provided herein.	5 years.

SCHEDULE OF RECORDS AND PERIODS OF RETENTION—Continued

Item No. and description	Retention period
10. Accounts receivable, record, or register of accounts receivable.	3 years after settlement.
11. Records of accounting codes and instructions	3 years after discontinuance.
Property and Equipment	
12. Property records:	
(a) Records which maintain complete information on cost or other value of all real property or equipment.	3 years after disposition of property.
(b) Records and additions and betterments made to property and equipment.	3 years after disposition of property.
(c) Records pertaining to retirements and replacements of property and equipment.	3 years after disposition of property.
(d) Records pertaining to depreciation:	
(1) When group method and depreciation rates are prescribed by the Commission.	3 years after disposition of property.
(2) Other	3 years after disposition of property.
(e) Records of equipment number changes	3 years after disposition of property.
(f) Records of motor and engine changes	Destroy at option.
(g) Files of detailed authorizations for expenditures, work or job orders showing estimated costs of additions and betterments, extensions, replacements, major repairs and dismantlements, approved by proper officials, together with supporting data.	3 years after disposition of property.
(h) Periodical inventories of property and equipment	3 years after prior inventory.
13. Engineering records:	
(a) Plans and specifications	3 years after the disposition of the property.
(b) Estimates of work, engineering studies, construction bids, and similar data pertaining to property changes actually made.	15 years.
Personnel and Payroll	
14. Payroll records:	
(a) Registers, abstracts, or summaries showing earnings, deductions, and amounts paid to each employee by pay periods.	3 years.
(b) Records showing the detailed distribution of salaries and wages to various accounts.	3 years.
Taxes	
15. Copies of tax returns and supporting schedules filed with taxing authorities, supporting working papers, records of appeals of tax bills, and receipts for payment. See Subsection 9(b) for vouchers evidencing disbursements:	
(a) Income tax returns	3 years after final tax liability is determined.
(b) Property tax returns	3 years after final tax liability is determined.
(c) Sales and other use taxes	3 years final tax liability is determined.
(d) Other taxes	3 years after final tax liability is determined.
(e) Agreements between associate companies as to allocation of consolidated income taxes.	3 years after final tax liability is determined.
(f) Schedule of allocation of consolidated Federal income taxes among associate companies.	3 years after final tax liability is determined.
16. Information returns and reports to taxing authorities	3 years, or for the period of any extensions granted for audits.
Purchase and Stores	
17. Material ledger, records of material and supplies on hand at all locations.	2 years.
18. Inventories: General Inventories of material and supplies on hand, with record of adjustments between accounts required to bring stores records into agreement with physical inventories.	2 years.
Transportation	
19. Oil and other products stocks and movement pipelines only:	
(a) Records and receipts, deliveries, pumpings, stocks, and over and short.	3 years.
(b) Run tickets showing quantities by tank measurement of meter reading of oil and other products received into the delivered from company's lines.	3 years.
(c) Statements of oil and oil products consumed as fuel including quantity value, and where consumed.	3 years.

SCHEDULE OF RECORDS AND PERIODS OF RETENTION—Continued

Item No. and description	Retention period
(d) Statement of oil and other products lost by line breaks and leaks including quantity, value, and location of breaks and leaks.	3 years.
(e) Reports of power furnished by producers: monthly reports of the quantity of oil run in connection with which power was furnished by producers, and records of payment for such power.	3 years.
(f) Records of producers' property identifying ownership and location for producers' tanks or wells to which carrier's lines are connected.	3 years after disconnection.
(g) Division or other periodical inventory reports of oil and other products on hand.	3 years.
(h) Division orders: Directions received by carrier as to the division of interest and to whose account transported oil should be credited.	3 years after discontinuance.
(i) Directions received by the carrier for the transfer of division order interests from one interest owner to another.	3 years after discontinuance.
(j) Transfer orders for the transfer of ownership of oil or other products in carrier's custody.	3 years.
Tariffs and Rates	
20. Official file copies of tariffs, classifications, division sheets, and circulars relative to the transportation of property.	3 years after expiration or cancellation.
21. Authorities and supporting papers for transportation of property for free or at reduced rates.	3 years.
22. Copies of concurrences and powers of attorney	2 years after expiration or cancellation.
23. Correspondence and working papers in connection with the making of rates and compliance of tariffs, classifications, division sheets, and circulars affecting the transportation of property.	2 years after cancellation of tariff.
Reports and Statistics	
24. Reports to Federal Energy Regulatory Commission and other regulatory bodies, annual financial, operating and statistical reports, file copies, and supporting data.	5 years.

PART 357—ANNUAL SPECIAL OR PERIODIC REPORTS: CARRIERS SUBJECT TO PART I OF THE INTERSTATE COMMERCE ACT

Sec.

357.1 Common carriers.

357.2 FERC Form No. 6, Annual Report of Oil Pipeline Companies.

357.3 FERC Form No. 73, Oil Pipeline Data for Depreciation Analysis.

AUTHORITY: 42 U.S.C. 7101-7352; 49 U.S.C. 60502; 49 App. U.S.C. 1-85 (1988).

§ 357.1 Common carriers.

All common carriers by pipeline subject to the provisions of Part I of Interstate Commerce Act, as amended, are hereby required hereinafter to file in the office of the Commission on or before the 31st day of March in each year, reports covering the period of 12 months ending with the 31st day of December preceding said date, giving the particulars heretofore called for in the

annual reports required by the Commission of said carriers.

[Order 119, 46 FR 9051, Jan. 28, 1981]

§ 357.2 FERC Form No. 6, Annual Report of Oil Pipeline Companies.

(a) *Who must file.* (1) Each pipeline carrier subject to the provisions of section 20 of the Interstate Commerce Act whose annual jurisdictional operating revenues has been \$500,000 or more for each of the three previous calendar years must prepare and file with the Commission copies of FERC Form No. 6, "Annual Report of Oil Pipeline Companies," pursuant to the General Instructions set out in that form. Newly established entities must use projected data to determine whether FERC Form No. 6 must be filed.

(2) Oil pipeline carriers exempt from filing Form No. 6 whose annual jurisdictional operating revenues have been more than \$350,000 but less than \$500,000 for each of the three previous calendar years must prepare and file pages 301,

“Operating Revenue Accounts (Account 600),” and 700, “Annual Cost of Service Based Analysis Schedule,” of FERC Form No. 6. When submitting pages 301 and 700, each exempt oil pipeline carrier must include page 1 of Form No. 6, the Identification and Attestation schedules.

(3) Oil pipeline carriers exempt from filing Form No. 6 and pages 301 and whose annual jurisdictional operating revenues were \$350,000 or less for each of the three previous calendar years must prepare and file page 700, “Annual Cost of Service Based Analysis Schedule,” of FERC Form No. 6. When submitting page 700, each exempt oil pipeline carrier must include page 1 of Form No. 6, the Identification and Attestation schedules.

(b) *When to file.* This report must be filed on or before March 31st of each year for the previous calendar year.

(c) *What to submit.* (1) This report form must be filed as prescribed in §385.2011 of this chapter and as indicated in the General Instructions set out in the report form, and must be properly completed and verified.

(2) A copy of the report must be retained by the pipeline carrier in its files. The conformed copies may be produced by any legible means of reproduction.

(3) Filing on electronic media pursuant to §385.2011 of this chapter will be required with report year 2000, due on or before March 31, 2001.

[Order 620, 65 FR 81344, Dec. 26, 2000]

§ 357.3 FERC Form No. 73, Oil Pipeline Data for Depreciation Analysis.

(a) *Who must file.* Any oil pipeline company requesting new or changed depreciation rates pursuant to part 347 of this title if the proposed depreciation rates are based on the remaining physical life of the properties or if directed by the Commission to file service life data during an investigation of its book depreciation rates.

(b) *When to submit.* Service life data is reported to the Commission by an oil pipeline company, as necessary, concurrently with a filing made pursuant to part 347 of this title or as directed during a depreciation rate investigation.

(c) *What to submit.* The format and data which must be submitted are prescribed in FERC Form No. 73, Oil Pipeline Data for Depreciation Analysis, available for review at the Commission’s Public Reference Section, Room 2A, 888 First Street, NE., Washington, DC 20426.

[Order 606, 64 FR 44405, Aug. 16, 1999]

SUBCHAPTER S [RESERVED]
SUBCHAPTER T—REGULATIONS UNDER SECTION 32 OF THE
PUBLIC UTILITY HOLDING COMPANY ACT OF 1935

PART 365—FILING REQUIREMENTS
AND MINISTERIAL PROCEDURES
FOR PERSONS SEEKING EXEMPT
WHOLESALE GENERATOR STATUS

Sec.

365.1 Purpose.

365.2 Definitions.

365.3 Contents of application and procedure for filing.

365.4 Effect of filing.

365.5 Amendment of applications.

365.6 Commission action.

365.7 Notification of Commission action to the Securities and Exchange Commission.

365.8 Procedure for notifying Commission of material change in facts.

AUTHORITY: 15 U.S.C. 79.

SOURCE: Order 550, 58 FR 8906, Feb. 18, 1993, unless otherwise noted.

§365.1 Purpose.

The purpose of part 365 is to implement section 32 of the Public Utility Holding Company Act of 1935, as added by section 711 of the Energy Policy Act of 1992.

§365.2 Definitions.

(a) For the purpose of this part terms will have the same meaning as defined in the Public Utility Holding Company Act of 1935, as amended by the Energy Policy Act of 1992, except as provided in paragraph (b) of this section.

(b) For the purpose of this part:

(1) *Commission* means the Federal Energy Regulatory Commission; and

(2) *Receipt of an application* means the date on which the Commission receives the application or an amendment allowed for good cause shown and the applicable filing fee, if any; and

(3) *Affected State commission* means the State commission of each state in which a generating facility owned and/or operated by the applicant is located; each State commission regulating the retail rates of an electric utility that will purchase power from the applicant, if known at the time of application; and, each State commission regu-

lating a retail utility that is affiliated with the applicant.

[Order 550, 58 FR 8906, Feb. 18, 1993, as amended by Order 591, 61 FR 57327, Nov. 6, 1996]

§365.3 Contents of application and procedure for filing.

(a) A person seeking status as an exempt wholesale generator (applicant) must file with the Commission, and serve on the Securities and Exchange Commission and any affected State commission, the following:

(1) A sworn statement, by a representative legally authorized to bind the applicant, attesting to any facts or representations presented to demonstrate eligibility for EWG status, including:

(i) A representation that the applicant is engaged directly, or indirectly through one or more affiliates as defined in section 2(a)(11)(B) of the Public Utility Holding Company Act of 1935, and exclusively in the business of owning or operating, or both owning and operating, all or part of one or more eligible facilities and selling electric energy at wholesale;

(ii) Any exceptions for foreign sales of power at retail; and

(iii) If the applicant intends to satisfy the “and selling electric energy at wholesale” requirement of paragraph (a)(1)(i) as a person engaged exclusively in operating all or part of one or more eligible facilities, a representation that the operator has an agency relationship with the person (or persons) who sells electric energy at wholesale from the eligible facility (or facilities).

(2) A brief description of the facility or facilities which are or will be eligible facilities owned and/or operated by the applicant including:

(i) The related transmission interconnection components;

(ii) Any lease arrangements involving the facilities, including leases to one or more public utility companies; and

(iii) Any electric utility company that is an affiliate company or associate company of the applicant.

(b) If a rate or charge for, or in connection with, the construction of a facility described in paragraph (a)(2) of this section, or for electric energy produced by a facility described in paragraph (a)(2) of this section (other than any portion of a rate or charge which represents recovery of the cost of a wholesale rate or charge), was in effect under the laws of any State on October 24, 1992, or if any portion of a facility described in paragraph (a)(2) of this section is owned or operated by an electric utility company that is an affiliate or associate company of the applicant, the applicant must also file a copy of a specific determination from every State commission having jurisdiction over any such rate or charge, or if the rate or charge is a rate or charge of an affiliate of a registered holding company, a specific determination from every State commission having jurisdiction over the retail rates and charges of the affiliates of the registered holding company, that allowing the facility to be an eligible facility:

- (1) Will benefit consumers,
- (2) Is in the public interest, and
- (3) Does not violate State law.

(c) Applications for exempt wholesale generator status must also include a copy of a notice of the application suitable for publication in the FEDERAL REGISTER. The notice must state the applicant's name, the date of the application, and a brief description of the applicant and the facility or facilities which are or will be eligible facilities owned and/or operated by the applicant. The applicant must also submit a copy of its notice on a 3½' diskette in ASCII format. Each diskette must be clearly marked with the name of the applicant and the words "notice of filing." The notice must be in the following form:

(Name of Applicant)
Docket No. EG-

Notice of Application for Commission Determination of Exempt Wholesale Generator Status

On (date application was filed), (name and address of applicant) filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale

generator status pursuant to part 365 of the Commission's regulations.

[Brief description of the applicant and the facility or facilities which are or will be eligible facilities owned and/or operated by the applicant, including reference and citation to any applicable State commission determinations.]

Any person desiring to be heard concerning the application for exempt wholesale generator status should file a motion to intervene or comments with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application. All such motions and comments should be filed on or before _____ and must be served on the applicant. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

[Order 550, 58 FR 8906, Feb. 18, 1993, as amended by Order 550-A, 58 FR 21255, Apr. 20, 1993]

§ 365.4 Effect of filing.

A person applying in good faith for a Commission determination of exempt wholesale generator status will be deemed to be an exempt wholesale generator from the date of receipt of the application until the date of Commission action pursuant to § 365.5.

§ 365.5 Amendment of applications.

The Commission will allow amendments of applications for good cause shown without payment of additional filing fees. If the amendment is accepted, notice of the amended application will be published in the FEDERAL REGISTER, with further opportunity for comments.

[Order 591, 61 FR 57328, Nov. 6, 1996]

§ 365.6 Commission action.

If the Commission has not issued an order granting or denying an application within 60 days of receipt of the application, the application will be deemed to have been granted.

[Order 550, 58 FR 8906, Feb. 18, 1993. Redesignated by Order 591, 61 FR 57327, Nov. 6, 1996]

§ 365.7

§ 365.7 Notification of Commission action to the Securities and Exchange Commission.

The Secretary of the Commission will notify the Securities and Exchange Commission whenever a person is determined to be an exempt wholesale generator.

[Order 550, 58 FR 8906, Feb. 18, 1993. Redesignated by Order 591, 61 FR 57327, Nov. 6, 1996]

§ 365.8 Procedure for notifying Commission of material change in facts.

If there is any material change in facts that may effect an EWG's eligi-

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bility for EWG status under section 32 of the Public Utility Holding Company Act of 1935, the EWG must within 60 days: apply for a new determination of EWG status; file a written explanation of why the material change in facts does not affect the EWG's status; or notify the Commission that it no longer seeks to maintain EWG status.

[Order 550, 58 FR 8906, Feb. 18, 1993. Redesignated by Order 591, 61 FR 57327, Nov. 6, 1996]

SUBCHAPTER W—REVISED GENERAL RULES

PART 375—THE COMMISSION

Subpart A—General Provisions

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- 375.307 Delegations to the Director of the Office of Markets, Tariffs and Rates.
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AUTHORITY: 5 U.S.C. 551-557; 15 U.S.C. 717-717w, 3301-3432; 16 U.S.C. 791-825r, 2601-2645; 42 U.S.C. 7101-7352.

SOURCE: 45 FR 21217, Apr. 1, 1980, unless otherwise noted.

Subpart A—General Provisions

§ 375.101 The Commission.

(a) *Establishment.* The Federal Energy Regulatory Commission is an independent regulatory commission within the Department of Energy established by section 401 of the DOE Act.

(b) *Offices.* The principal office of the Commission is at 825 North Capitol Street, NE., Washington, D.C. 20426. Regional offices are maintained at Atlanta, Ga., Chicago, Ill., Fort Worth, Texas, New York, N.Y., and San Francisco, Calif.

(c) *Hours.* Unless the Chairman otherwise directs, the offices of the Commission are open each day, except Saturdays, Sundays, and Holidays, from 8:30 a.m. to 5:00 p.m.

(d) *Sessions.* The Commission may meet and exercise its powers at any place in the United States. The time and place of meetings of the Commission are announced in advance as provided in § 375.204.

(e) *Quorum.* A quorum for the transaction of business consists of at least three members present.

(f) *Action by Commissioners or representatives.* The Commission may, by one or more of its members or by such agents as it may designate, conduct any hearing, or other inquiry necessary or appropriate to its functions, except that nothing in this paragraph supercedes the provisions of section 556, of Title 5, United States Code relating to Administrative Law Judges.

§ 375.102 Custody and authentication of Commission records.

(a) *Custody of official records.* (1) The Secretary shall have custody of the Commission's seal, the minutes of all action taken by the Commission, the transcripts, electronic recordings, or minutes of meetings closed to public observation, its rules and regulations, and its administrative orders.

(2) The Executive Director shall have custody of records of the Commission except records designated in paragraph (a)(1) of this section.

(b) *Authentication of Commission action.* All orders and other actions of the Commission shall be authenticated or signed by the Secretary or the Secretary's designee.

§ 375.103 Official seal.

The Commission hereby prescribes as its official seal, judicial notice of

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which shall be taken pursuant to section 401(e) of the DOE Act, the imprint illustrated below and described as follows:

A circle, the outside border of which shall consist of two concentric circles enclosing the words "Department of Energy" and "Federal Energy Regulatory Commission." Within the inner circle shall appear a stylized eagle with head facing to its right. Its body shall be in the shape of a tapered shield, widest at the top, consisting of nine vertical stripes. The top of the shield contains five equally-spaced light color stars representing the five members of the Commission appointed by the President under Title IV of the DOE Act. Identical stylized wings appear on either side of the shield, each incorporating twenty stylized feathers protruding from a solid color wing-like shape. Below the eagle shall appear five squares, arranged in a horizontal line. Each of these squares shall contain a circle representing an area of the Commission's responsibility. The first square at the left of the line shall include a stylized representation of a pipeline; the second square shall represent a hydroelectric power facility; the third, and center square, shall represent a natural gas flame; the fourth square shall represent a drilling rig; the fifth square shall represent a stylized lightning bolt.



§ 375.104 Transfer of proceedings from other agencies to the Commission.

(a) *Transfer of pending proceedings.* Pursuant to the authorization provided in section 705(b)(2), and the provisions of section 705(b)(1) of the DOE Act, all proceedings and applications pending at the time such Act took effect, before any department, agency, commission, or component thereof, the functions of

which have been transferred to the Commission by the Act, have been transferred in accordance with the joint regulations issued by the Commission and the Secretary of Energy on October 1, 1977. Those joint regulations appear as an appendix to this section.

(b) *Substitution of Commission for other agencies in court proceedings.* Pursuant to section 705(e) of the DOE Act, the Commission authorizes the Solicitor of the Commission to file the appropriate pleadings to substitute the Commission for the Interstate Commerce Commission or the Federal Power Commission as necessary in any pending court litigation, responsibility for which is transferred to the Commission.

APPENDIX TO § 375.104

PART 1000—TRANSFER OF PROCEEDINGS TO THE SECRETARY OF ENERGY AND THE FEDERAL ENERGY REGULATORY COMMISSION

§ 1000.1 Transfer of proceedings.

(a) *Scope.* This part establishes the transfer of proceedings pending with regard to those functions of various agencies which have been consolidated in the Department of Energy and identifies those proceedings which are transferred into the jurisdiction of the Secretary and those which are transferred into the jurisdiction of the Federal Energy Regulatory Commission.

(b) *Proceedings transferred to the Secretary.* The following proceedings are transferred to the Secretary:

- (1) All Notices of Proposed Rulemaking, pending and outstanding, which have been proposed by the Department of Energy;
- (2) All Notices of Inquiry which have been issued by the Department of Energy;
- (3) All Requests for Interpretations which have been filed pursuant to 10 CFR part 205, subpart F, and on which no interpretation has been issued, with the Office of General Counsel of the Department of Energy;
- (4) All Applications for Exception Relief which have been filed pursuant to 10 CFR part 205, subpart D, and on which no final decision and order has been issued, with the Office of Exceptions and Appeals of the Department of Energy;
- (5) All petitions for special redress, relief or other extraordinary assistance which have been filed pursuant to 10 CFR part 205, subpart R, and on which no order has been issued, with the Office of Private Grievances and Redress of the Department of Energy;
- (6) All appeals from Remedial Orders, Exception Decisions and Orders, Interpretations issued by the Office of General Counsel, and other agency orders which have been filed pursuant to 10 CFR part 205, subpart H,

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and on which no order has been issued prior to October 1, 1977, with the Office of Exceptions and Appeals of the Department of Energy;

(7) All applications for modification or rescission of any DOE order or interpretation which have been filed pursuant to 10 CFR part 205, subpart J, and on which no order has been issued prior to October 1, 1977, with the Office of Exceptions and Appeals of the Federal Energy Administration;

NOTE: For a document relating to procedures for natural gas import and export proceedings see 42 FR 61856, Dec. 7, 1977.

(8) All applications for temporary stays and stays which have been filed pursuant to 10 CFR part 205, subpart I, and on which no order has been issued, with the Office of Exceptions and Appeals of the Department of Energy;

(9) All applications which have been filed with the Office of Regulatory Programs of the Department of Energy and on which no final order has been issued;

(10) All investigations which have been instituted and have not been resolved by the Office of Compliance of the Department of Energy;

(11) All Notices of Probable Violation which have been issued prior to October 1, 1977, by the Office of Compliance of Department of Energy;

(12) All Notices of Proposed Disallowance which have been issued prior to October 1, 1977, by the Office of Compliance of Department of Energy;

(13) All Prohibition Orders which have been issued pursuant to 10 CFR part 303 and as to which no Notice of Effectiveness has been issued;

(14) From the Department of the Interior:
(i) The tentative power rate adjustments for the Central Valley Project, California, proposed on September 12, 1977 (42 FR 46619, September 16, 1977).

(15) From the Interstate Commerce Commission:

(i) Ex Parte No. 308 (Sub-No. 1)—Investigation of Common Carrier Pipelines.

(16) From the Federal Power Commission:

(i) Cases:

(A) Northwest Pipeline Corporation, Docket No. CP75-340.

(B) Midwestern Gas Transmission Co., Docket No. CP77-458, *et al.*

(C) St. Lawrence Gas Company, Docket No. G-17500.

(D) U.S.D.I. Bonneville Power Administration, Docket No. E-9563.

(E) U.S.D.I. Southwestern Power Administration, Docket No. E-7201.

(F) U.S.D.I. Southeastern Power Administration, Docket No. E-6957.

(G) Tenneco InterAmerica, Inc., Docket No. CP77-561.

(ii) Applications:

(A) Maine Public Service Co., Docket No. E-6751, (ERA Docket No. IE-78-1).

(B) Northern States Power Co., Docket No. E-9589, (ERA Docket No. IE-78-2).

(C) Arizona Public Service Co., Docket No. IT-5331, (ERA Docket No. IE-78-3).

(D) Niagara Mohawk Power Corp., Docket No. E-7022, (ERA Docket No. IE-77-6).

(E) Maine Public Service Co., Docket No. IT-6027, (ERA Docket No. PP-12).

(F) Boise Cascade, Docket No. E-7765, (ERA Docket No. PP-52).

(G) Bonneville Power Administration, Docket No. IT-5959, (ERA Docket No. PP-10).

(H) EPR—Oregon (Geothermal Steam Leases).

(I) EPR—Utah (Geothermal Steam Leases).

(J) EPR—Idaho (Geothermal Steam Leases).

(K) EPR—Oregon (Geothermal Steam Leases).

(L) EPR—Idaho (Geothermal Steam Leases).

(iii) Rulemakings:

(A) Implementation of sections 382(b) and 382(c) of the Energy Policy and Conservation Act of 1971. Docket No. RM77-3.

(B) New Form Nos:

151, Docket No. RM76-19.

153, Docket No. RM76-27.

154, Docket No. RM36-33.

156, Docket No. RM76-32.

157, Docket No. RM76-21.

158, Docket No. RM76-31.

159, Docket No. RM76-23.

160, Docket No. RM76-20.

161, Docket No. RM76-26.

162, Docket No. RM76-34.

155, Docket No. RM76-28.

163, Docket No. RM76-30.

164, Docket No. RM76-25.

(C) Procedures for the Filing of Federal Rate Schedules Docket No. RM77-9.

(iv) Project withdrawals and power site revocations:

(A) Project 1021, 1226, 1606, and 1772—(Wyoming)—U.S. Forest Service (Applicant).

(B) Project Nos. 1021, 1226, 1606, and 1772—(Wyoming)—U.S. Forest Service (Applicant).

(C) Project Nos. 220 and 691—(Wyoming)—Cliff Gold Mining Co. (Applicant for P-691) The Colowyo Gold Mining Co. (Applicant for P-220).

(D) Project No. 1203—(Wyoming)—F. D. Foster (Applicant).

(E) Project No. 1241—(Wyoming)—F. B. Hommel (Applicant).

(F) Project No. 847—(Oregon)—H. L. Vorse (Applicant).

(G) Project No. 907—(Colorado)—S. B. Collins (Applicant).

(H) Project No. 941—(Colorado)—Marian Mining Company (Applicant).

(I) Project Nos. 347 and 418—(Colorado)—Jones Brothers (Applicant for P-347) Frank Gay *et al.* (Applicant for P-418).

(J) Project Nos. 373, 521, 937, 1024, 1415, 1546, 1547, and 1025—()—U.S. Forest (Applicant).

(K) Project No. 163—(Colorado)—James F. Meyser and Edward E. Drach (Applicants).

(L) Project Nos. 385, 445, 506, 519, 1220, 1296, 1418, 1519, 1576, 1615, 1616, 1618, 1678, 1682, and 1750—(Colorado)—U.S. Forest Service (Applicant).

(M) DA-117—(Alaska)—Bureau of Land Management (Applicant).

(N) Project No. 114—(Alaska)—Elizabeth H. Graff et al. (Applicant).

(O) DA-222—(Washington)—Bureau of Land Management (Applicant).

(P) DA-562—(Oregon)—U.S. Geological Survey (Applicant).

(Q) DA-601—(Idaho)—Bureau of Land Management (Applicant).

(R) DA-509—(Colorado)—Fed. Highway Admin. (Applicant).

(S) DA-616—(Idaho)—U.S. Forest Service (Applicant).

(T) DA-1—(South Carolina)—U.S. Forest Service (Applicant).

(U) DA-1116—(California)—U.S. Geological Survey (Applicant).

(V) DA-154—(Arizona)—U.S. Geological Survey (Applicant).

(W) DA-1098—(California)—Merced Irrigation District (Applicant).

(c) *Proceedings transferred to the Commission.* There are hereby transferred to the jurisdiction of the Federal Energy Regulatory Commission the following proceedings:

(1) From the Interstate Commerce Commission:

(i) Ex Parte No. 308—Valuation of Common Carrier Pipelines.

(ii) I&S 9164—Trans Alaska Pipeline System—Rate Filings (including I&S 9164 (Sub-No. 1), NOR 36611, NOR 36611 (Sub-No. 1), NOR 36611 (Sub-No. 2), NOR 36611 (Sub-No. 3), NOR 36611 (Sub-No. 4)).

(iii) I&S 9089—General Increase, December 1975, Williams Pipeline Company.

(iv) I&S 9128—Anhydrous Ammonia, Gulf Central Pipeline Company.

(v) NOR 35533 (Sub-No. 3)—Petroleum Products, Southwest & Midwest Williams Pipeline.

(vi) NOR 35794—Northville Dock Pipeline Corp. et al.

(vii) NOR 35895—Inexco Oil Company v. Belle Fourche Pipeline Co. et al.

(viii) NOR 36217—Department of Defense v. Interstate Storage & Pipeline Corp.

(ix) NOR 36423—Petroleum Products Southwest to Midwest Points.

(x) NOR 36520—Williams Pipeline Company—Petroleum Products Midwest.

(xi) NOR 36553—Kerr-McGee Refining Corporation v. Texoma Pipeline Co.

(xii) Suspension Docket 67124—Williams Pipeline Co.—General Increase.

(xiii) Valuation Docket 1423—Williams Pipeline Company (1971-1974 inclusive).

(2) To remain with the Commission until forwarding to the Secretary:

The following proceedings will continue in effect under the jurisdiction of the Commission until the timely filing of all briefs on and opposing exceptions to the initial decision of the presiding Administrative Law Judge, at which time the Commission shall forward the record of the proceeding to the Secretary for decision on those matters within his jurisdiction:

(i) *El Paso Eastern Co., et al.*, Docket No. CP 77-330, *et al.*

(ii) *Tenneco Atlantic Pipeline Co., et al.*, Docket No. CP 77-100, *et al.*

(iii) *Distrigas of Massachusetts Corp., et al.*, Docket No. CP 70-196, *et al.*

(iv) *Distrigas of Massachusetts Corp., et al.*, Docket No. CP 77-216, *et al.*

(v) *Eascogas LNG, Inc., et al.*, Docket No. CP 73-47, *et al.*

(vi) *Pacific Indonesia LNG Co., et al.*, Docket No. CP74-160, *et al.*, (except as provided in paragraph (c)(3) of this section).

(3) The Amendment to Application of Western LNG Terminal Associates, filed on November 11, 1977, in *Pacific Indonesia LNG Co., et al.*, FPC Docket No. CP74-160, *et al.*, ERA Docket No. 77-001-LNG, is transferred to the jurisdiction of the Commission until timely filing of all briefs on and opposing exceptions to the Initial Decision of the presiding Administrative Law Judge on that Amendment, at which time the Commission shall forward a copy of the record of that proceeding to the Secretary of Energy for decision on those matters within his jurisdiction. (If the Commission waives the preparation of an initial decision, the Commission will forward a copy of the record after completion of the hearing, or after the timely filing of any briefs submitted to the Commission, whichever occurs later.)

(d) *Residual clause.* All proceedings (other than proceedings described in paragraphs (b) and (c) of this section) pending with regard to any function of the Department of Energy, the Department of Energy, Department of the Interior, the Department of Commerce, the Department of Housing and Urban Development, the Department of Navy, and the Naval Reactor and Military Applications Programs which is transferred to the Department of Energy (DOE) by the DOE Organization Act, will be conducted by the Secretary. All proceedings (other than proceedings described in paragraphs (b) and (c) of this section) before the Federal Power Commission or Interstate Commerce Commission will be conducted by the Federal Energy Regulatory Commission.

(Department of Energy Organization Act, Pub. L. 95-91; EO 12009, 42 FR 46267)

[42 FR 55534, Oct. 17, 1977, as amended at 43 FR 21434, May 18, 1978; 43 FR 21658, May 19, 1978]

§ 375.105 Filings.

(a) *Filings in pending proceedings.* All filings in proceedings referred to in § 375.104 shall be made with the Secretary.

(b) *Filings in connection with functions transferred to the Commission.* All persons required to file periodic or other reports with any agency or commission whose functions are transferred under such Act to the Commission shall file such reports which relate to those transferred functions with the Secretary. The Commission hereby continues in effect all previously-approved forms for making periodic or other reports.

(c) *Where to make filings.* All filings of documents with the Commission shall be made with the Secretary. The address for filings to be made with the Secretary is: Secretary, Federal Energy Regulatory Commission, 825 N. Capitol St., NE., Washington, DC 20426. Where a document to be filed with the Secretary is hand-delivered, it shall be submitted to room 3110, 825 North Capitol Street, NE., Washington, DC 20426. Documents received after regular business hours are deemed to have been filed on the next regular business day.

Subpart B—Procedures Under the Government in the Sunshine Act**§ 375.201 Purpose.**

The purpose of this subpart is to set forth the Commission procedures for conduct of its official business in accordance with the provisions of 5 U.S.C. 552b. The Commission may waive the provisions set forth in this subpart to the extent authorized by law.

§ 375.202 Definitions and limitations on definitions.

(a) *Definitions.* For purposes of this subpart:

(1) *Meeting* means the deliberations of at least a quorum of the Commission where such deliberations determine or result in the joint conduct of official Commission business, except that such term does not include deliberations to determine whether to conduct a closed meeting.

(2) *Portion of a meeting* means the consideration during a meeting of a particular topic or item separately identified in the notice of Commission meeting described in § 375.204.

(3) *Open* when used in the context of a Commission meeting or a portion thereof, means the public may attend and observe the deliberations of the Commission during such meeting or portion of a meeting consistent with the provisions of § 375.203.

(4) *Closed* when used in the context of a Commission meeting or a portion thereof, means that the public may not attend or observe the deliberations of the Commission during such meeting or portion of such meeting.

(b) *Limitations on other definitions in this chapter.* For purposes of this subpart:

(1) Transcripts, minutes and electronic recordings of Commission meetings (whether or not prepared at the direction of the Commission) are not part of the “formal record” as defined in § 388.101(c) of this chapter; and

(2) Transcripts, minutes and electronic recordings of Commission meetings (whether or not prepared at the direction of the Commission) are not part of the “public record” of the Commission as defined in § 388.105(b) of this chapter.

[45 FR 21217, Apr. 1, 1980, as amended by Order 225, 47 FR 19058, May 3, 1982]

§ 375.203 Open meetings.

(a) *General rule.* Except as provided in § 375.206, meetings of the Commission will be open meetings.

(b) *Public participation in open meetings.* (1) Members of the public are invited to listen and observe at open meetings.

(2)(i) Subject to the provisions of paragraphs (b)(2) (ii), (iii), and (iv) of this section, members of the public may record discussions at Commission meetings by means of electronic or other devices (including tape recorders, stenotype, stenomask, or shorthand). The photographing of Commission meetings by still or movie camera, or by video taping without lighting aids, is permitted.

(ii) Due to the limited space of the Commission meeting room, use of recording or photographic equipment

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which would require the user to move about the room during the meeting is not allowed. Recording and photographic equipment may be set up and used only in the public areas of the Commission meeting room as designated by the Commission.

(iii) Except for portable equipment which is used at an individual's seat in the audience, equipment must be in place and ready to use prior to the start of the meeting or set up during a recess of the meeting. Such equipment may be removed only at the conclusion of the meeting or during a recess. A pre-arranged recess for the set up or removal of equipment may be requested through the Commission's Director of the Division of Public Information.

(iv) No microphones may be placed on the tables used by the Commissioners and Staff.

(c) *Physical arrangements.* The Secretary shall be responsible for seeing that ample space, sufficient visibility, and adequate acoustics are provided for public observation of open meetings.

§ 375.204 Notice of meetings.

(a) *Public announcements of meetings—*
(1) *General rule.* Except to the extent that information described in § 375.205(a) (involving closed meetings) is exempt from disclosure, the Secretary shall announce at least one week before each Commission meeting, the time, place, and subject matter of the meeting, whether it is an open meeting or closed meeting, and the name and telephone number of the official designated by the Commission to respond to requests for information about the meeting.

(2) *Abbreviated notice.* If the Commission determines by a majority of its members by a recorded vote that Commission business requires that a Commission meeting be called with less than one week's notice as prescribed in paragraph (a)(1) of this section, the Secretary shall make public announcements of the time, place, and subject matter of such meeting and whether open or closed to the public, at the earliest practicable time.

(3) *Change in the time or place.* If there is a change in time or place of a meeting following the public announcement prescribed in paragraph (a)(1) or (2) of

this section the Secretary shall publicly announce such change at the earliest practicable time.

(4) *Change in the subject matter or the determination to open or close a meeting.* The subject matter of a meeting, or the determination of the Commission to open or close a meeting or a portion of a meeting, may be changed following the public announcement prescribed in paragraph (a) (1) or (2) of this section only if:

(i) The Commission determines by a recorded vote by a majority of the membership that Commission business so requires and that no earlier announcement of the change is possible; and

(ii) The Secretary publicly announces such change and the vote of each member upon such change at the earliest practicable time.

(b) *Stricken items.* Notwithstanding the provisions of paragraph (a) of this section, individual items that have been announced for consideration at Commission meetings may be deleted without vote or notice.

(c) *Definitions.* For the purpose of this section, *earliest practicable time*, means as soon as practicable, which should in few, if any, instances be later than the commencement of the meeting or portion of the meeting in question.

(d) *Informing public of meeting announcements.* (1) The Secretary shall use reasonable means to assure that the public is fully informed of the public announcements required by this section. For example, such announcements may be posted on the Commission's public notice boards, published in official Commission publications, or sent to the persons on a mailing list maintained for those who want to receive such material.

(2) Immediately following each public announcement required by this section, notice of the time, place, and subject matter of a meeting, whether the meeting is open or closed, any change in a preceding announcement, and the name and telephone number of the official designated by the Commission to respond to requests for information about the meeting shall also be submitted by the Secretary for publication in the FEDERAL REGISTER.

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(e) *Issuance of list of Commission actions.* Following each Commission meeting, the Secretary shall issue a list of Commission actions taken which shall become effective as of the date of issuance of the related order (or date designated therein) or other document, which the Secretary shall issue in due course, in the manner prescribed by the Commission.

§ 375.205 Closed meetings.

(a) Meetings will be closed to public observation where the Commission properly determines, according to the procedures set forth in § 375.206, that such meeting or portion of the meeting or disclosure of information to be considered at the meeting is likely to:

(1) Disclose matters that are (i) specifically authorized under criteria established by an Executive order to be kept secret in the interests of national defense or foreign policy and are (ii) in fact properly classified pursuant to such Executive order;

(2) Relate solely to the internal personnel rules and practices of the Commission;

(3) Disclose matters specifically exempted from disclosure by statute (other than 5 U.S.C. 552): *Provided*, That such statute:

(i) Requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or

(ii) Establishes particular criteria for withholding or refers to particular types of matters to be withheld;

(4) Disclose the trade secrets and commercial or financial information obtained from a person and privileged or confidential, which may include geological or geophysical information and data, including maps, concerning wells;

(5) Involve accusing any person of a crime, or formally censuring any person;

(6) Disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy, including personnel and medical files and similar files;

(7) Disclose investigatory records compiled for law enforcement purposes, or information which if written would be contained in such records, but only

to the extent that the production of such records or information would:

(i) Interfere with enforcement proceedings;

(ii) Deprive a person of a right to a fair trial or an impartial adjudication;

(iii) Constitute an unwarranted invasion of personal privacy;

(iv) Disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source;

(v) Disclose investigative techniques and procedures, or;

(vi) Endanger the life or physical safety of law enforcement personnel.

(8) Disclose information contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions;

(9) Disclose information the premature disclosure of which would be:

(i) In the case of an agency which regulates currencies, securities, commodities, or financial institutions, likely to:

(A) Lead to significant financial speculation in currencies, securities, or commodities, or

(B) Significantly endanger the stability of any financial institution; or

(ii) Likely to frustrate significantly implementation of a proposed Commission action, except that paragraph (a)(9)(i) of this section shall not apply where the Commission has already disclosed to the public the content or nature of such proposed action, or where the Commission is required by law to make such disclosure on its own initiative prior to taking final agency action on such proposal; or

(10) Specifically concern the Commission's issuance of a subpoena, or the Commission's participation in a civil action or proceeding, an action in a foreign court or international tribunal, or an arbitration, or the initiation, conduct, or disposition by the Commission of a particular case:

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(i) Of formal Commission adjudication pursuant to the procedures in 5 U.S.C. 554; or

(ii) Otherwise involving a determination on the record after opportunity for a hearing.

(b) Commission meetings shall not be closed pursuant to paragraph (a) of this section when the Commission finds that the public interest requires that they be open.

§ 375.206 Procedures to close meetings.

(a) *General rule.* A meeting or a portion of a meeting may be closed only when the Commission votes by a majority of the membership to close the meeting. A separate vote shall be taken with respect to each Commission meeting or portion of a meeting which is proposed to be closed to the public or with respect to any information which is proposed to be withheld. A single vote may be taken with respect to a series of meetings, a portion or portions of which are proposed to be closed to the public, or with respect to any information concerning such series of meetings, so long as each meeting in such series involves the same particular matters and is scheduled to be held no more than thirty days after the initial meeting in such series. The vote of each Commission member participating in such vote shall be recorded and no proxies shall be allowed.

(b) *Request for closed meeting.* Whenever any person whose interests may be directly affected by a meeting or a portion of a meeting requests that the Commission close such portion to the public for any of the reasons referred to in paragraph (a) (5), (6), or (7) of § 375.205, the Commission, upon request of any one of its members, shall vote by recorded vote whether to close such meeting.

(c) *Release of vote.* Within one day of any vote taken pursuant to paragraph (a) or (b) of this section, the Secretary of the Commission shall make publicly available a written copy of such vote reflecting the vote of each member. If a portion of a meeting is to be closed to the public, the Secretary shall, within one day of the vote taken pursuant to paragraph (a) or (b) of this section, make publicly available a full written explanation of the Commission's action

closing the portion together with a list of all persons expected to attend the meeting and their affiliation. The information required by this paragraph shall be disclosed except to the extent that it is exempt from disclosure under the provisions of § 375.205(a).

(d) *Certification.* Prior to a determination that a meeting should be closed pursuant to paragraph (a) or (b) of this section, the General Counsel of the Commission shall publicly certify that, in his opinion, the meeting may be closed to the public and shall state each relevant exemptive provision. A copy of such certification, together with a statement from the presiding officer of the meeting setting forth the time and place of the meeting, and the persons present, shall be retained by the Secretary of the Commission as part of the transcript, recording, or minutes required by paragraph (e) of this section.

(e) *Transcripts, recordings, minutes.* (1) The Secretary shall maintain a complete transcript or electronic recording adequate to record fully the proceedings of each meeting, or portion of a meeting, closed to the public, except that in the case of a meeting, or portion of a meeting, closed to the public pursuant to § 375.205(a)(8), (9)(i), or (10), the Secretary shall maintain either a transcript or recording, or a set of minutes. Any such minutes shall fully and clearly describe all matters discussed and shall provide a full and accurate summary of any actions taken, and the reasons therefor, including a description of each of the views expressed on any item and the record of any rollcall vote (reflecting the vote of each member on the question). All agenda documents considered in connection with any Commission action shall be identified in such minutes.

(2) The Secretary shall maintain a complete verbatim copy of the transcript, a complete copy of the minutes, or a complete electronic recording of each meeting, or portion of a meeting, closed to the public, for a period of at least two years after such meeting, or until one year after the conclusion of any Commission proceeding with respect to which the meeting or portion was held, whichever occurs later.

(f) *Public availability of transcripts, records, minutes.* (1) Within a reasonable time after the adjournment of a meeting closed to the public, the Commission shall make available to the public, in the Division of Public Information of the Commission, Washington, DC, the transcript, electronic recording, or minutes of the discussion of any item on the agenda, or of any item of the testimony of any witness received at the meeting, except for such item or items of such discussion or testimony as the Director of Public Information determines may be withheld under §375.204. Copies of such transcript, or minutes, or a transcription of such recording shall be furnished to any person at the actual cost of duplication or transcription.

(2) The determination of the Director of the Division of Public Information to withhold information pursuant to paragraph (f)(1) of this section may be appealed to the General Counsel or the General Counsel's designee, in accordance with §388.107 of this chapter.

[45 FR 21217, Apr. 1, 1980, as amended at 52 FR 7825, Mar. 13, 1987]

Subpart C—Delegations

§ 375.301 Purpose and subdelegations.

(a) The purpose of this subpart is to set forth the authorities that the Commission has delegated to staff officials. Any action by a staff official under the authority of this subpart may be appealed to the Commission in accordance with §385.1902 of this chapter.

(b) Where the Commission, in delegating functions to specified Commission officials, permits an official to further delegate those functions to a designee of such official, *designee* shall mean the deputy of such official, the head of a division, or a comparable official as designated by the official to whom the direct delegation is made.

(c) For purposes of Subpart C, *uncontested* and *in uncontested cases* mean that no motion to intervene, or notice of intervention, in opposition to the pending matter made under §385.214

(intervention) has been received by the Commission.

[Order 112, 45 FR 79025, Nov. 28, 1980, as amended by Order 225, 47 FR 19058, May 3, 1982; Order 492, 53 FR 16062, May 5, 1988]

§ 375.302 Delegations to the Secretary.

The Commission authorizes the Secretary, or the Secretary's designee to:

(a) Sign official general correspondence on behalf of the Commission, except as otherwise provided in this section.

(b) Except as provided in §385.213 of this chapter, prescribe, for good cause, a different time than that required by the Commission's Rules of Practice and Procedure for filing by public utilities, licensees, natural gas companies, and other persons of answers to complaints, petitions, motions, and other documents. Absent a waiver, no answers will be required to be filed by a party within less than ten days after the date of service of the document.

(c) Schedule hearings and issue notices thereof.

(d) Accept for filing notices of intervention and petitions to intervene by commissions and agencies of the States and the Federal government.

(e) Pass upon motions to intervene before a presiding administrative law judge is designated. If a presiding administrative law judge has been designated, the provisions of §385.504(b)(12) of this chapter are controlling.

(f) Deny motions for extensions of time (other than motions made while a proceeding is pending before a presiding officer as defined in §385.102(e)), except that such motions may be granted in accordance with §385.2008 of this chapter.

(g) Reject any documents filed later than the time prescribed by an order or rule of the Commission, except that such documents may be accepted in accordance with §385.2008 of this chapter.

(h) Reject any documents filed that do not meet the requirements of the Commission's rules which govern matters of form, except that such documents may be accepted in accordance with §385.2001 of this chapter for good cause shown.

(i) Waive requirements of the Commission's rules which govern matters of form, when consistent with the public interest in a particular case.

(j) Pass upon, in contested proceedings, questions of extending time for electric public utilities, licensees, natural gas companies, and other persons to file required reports, data, and information and to do other acts required to be done at or within a specific time by any rule, regulation, license, permit, certificate, or order of the Commission.

(k) Accept service of process on behalf of the Commission.

(l) Accept for filing bonds or agreements and undertakings submitted in rate suspension proceedings.

(m) Issue notices or orders instituting procedures to be followed concerning contested audit issues under part 41 or 158 of this chapter either when the utility:

(1) Initially notifies the Commission that it requests disposition of a contested issue pursuant to § 41.7 or 158.7 of this chapter; or

(2) Requests disposition of a contested issue pursuant to the shortened procedures provided in § 41.3 or 158.3 of this chapter.

(n) Publish notice of land withdrawals under section 24 of the Federal Power Act.

(o) Issue notices of applications filed under the Federal Power Act and the Natural Gas Act, fixing the time for filing comments, protests or petitions to intervene and schedule hearings on such applications when appropriate or required by law.

(p) Accept for filing amendments to agreements and contracts or rate schedules submitted in compliance with Commission orders accepting offers of rate settlements if such filings are in satisfactory compliance with such orders.

(q) Grant authorizations, pursuant to the provisions of § 35.1(a) of this chapter for a designated representative to post and file rate schedules of public utilities which are parties to the same rate schedule.

(r) Redesignate proceedings, licenses, certificates, rate schedules, and other authorizations and filing to reflect changes in the names of persons and

municipalities subject to or invoking Commission jurisdiction under the Federal Power Act or the Natural Gas Act, where no substantive changes in ownership, corporate structure or domicile, or jurisdictional operation are involved.

(s) Change the appropriate hydroelectric project license article upon application by the licensee to reflect the specified reasonable rate of return as provided in § 2.15 of this chapter.

(t) Reject without prejudice all requests for rehearing and requests for modification of a proposed order issued in a proceeding under section 210 or section 211 of the Federal Power Act, 16 U.S.C. 824i, 824j.

(u) Reject without prejudice all motions for clarification that are combined with requests for rehearing and/or requests for modification of a proposed order issued in a proceeding under section 210 or section 211 of the Federal Power Act, 16 U.S.C. 824i, 824j.

(v) Toll the time for action on requests for rehearing.

(w) Issue notices in compliance with section 206(b) of the Federal Power Act.

[43 FR 36435, Aug. 17, 1978. Redesignated and amended at 45 FR 21224, 21225, Apr. 1, 1980; Order 112, 45 FR 79025, Nov. 28, 1980; Order 147, 46 FR 29702, June 3, 1981; Order 224, 47 FR 17809, Apr. 26, 1982; Order 225, 47 FR 19058, May 3, 1982; Order 492, 53 FR 16062, May 5, 1988; Order 570, 59 FR 53351, Oct. 24, 1994; Order 585, 60 FR 62328, Dec. 6, 1995]

§ 375.303 Delegations to the Chief Accountant.

(a) The Commission authorizes the Chief Accountant or the Chief Accountant's designee to issue interpretations of the Uniform System of Accounts for public utilities, licensees, natural gas companies and oil pipeline companies.

(b) Pass upon any proposed accounting matters submitted by or on behalf of public utilities, licensees, natural gas companies, and oil pipeline companies, that require Commission approval under the Uniform System of Accounts, except that if the proposed accounting matters involve unusually large transactions or unique or controversial features, the Director must present the matters to the Commission for consideration.

(c) Pass upon applications to increase the size or combine property units of

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public utilities, licensees, natural gas companies and oil pipeline companies.

[Order 613, 64 FR 73404, Dec. 30, 1999]

§ 375.304 Delegations to the Chief Administrative Law Judge.

(a) The Commission authorizes the Chief Administrative Law Judge and the Administrative Law Judge designated by the Chief Administrative Law Judge to exercise the power granted to a Presiding Officer by part 385, particularly § 385.504 of this chapter.

(b) The Commission authorizes the Chief Administrative Law Judge to

(1) For those proceedings pending under subpart E of part 385 of this chapter:

(i) Consolidate for hearing two or more proceedings on any or all issues,

(ii) Sever two or more proceedings or issues in a proceeding,

(iii) Designate and substitute presiding officers, and

(iv) Extend any close or record date ordered by the Commission in a proceeding for good cause.

(2) For proceedings under subparts I and J of part 385 of this chapter, designate presiding officers who will have all the authorities and duties vested in presiding officers by those rules and other applicable rules in conducting proceedings pursuant to sections 503(c) and 504(b)(1) of the Department of Energy Organization Act, 42 U.S.C. 7193(c) and 7194(b)(1) (1982).

(3) Deny or grant, in whole or in part, petitions for waivers of fees prescribed in §§ 381.303 and 381.304 of this chapter in accordance with § 381.106 of this chapter.

[Order 492, 53 FR 16063, May 5, 1988]

§ 375.305 Delegations to the Solicitor.

The Commission authorizes the Solicitor, or the Solicitor's designee to:

(a) File with the appropriate court of the United States a certified list of the materials comprising the record of any proceeding which involves the Commission;

(b) Retain appropriate materials; and

(c) Deliver such materials to the court as required.

[43 FR 36435, Aug. 17, 1978. Redesignated and amended at 45 FR 21224, 21225, Apr. 1, 1980; Order 112, 45 FR 79025, Nov. 28, 1980]

§ 375.307 Delegations to the Director of the Office of Markets, Tariffs and Rates.

The Commission authorizes the Director or the Director's designee to:

(a) Sign all correspondence on behalf of the Commission with state regulatory commissions and agencies in connection with non-financial auditing matters.

(b) Pass upon any uncontested application for authorization to issue securities or to assume obligations and liabilities, filed by public utilities and licensees pursuant to part 34 of this chapter.

(c) Sign non-financial audit reports of jurisdictional companies.

(d) In connection with non-financial audits, pass upon and review requests by state and federal agencies to review staff audit working papers if the company agrees to the release of the audit working papers provided:

(1) The papers are examined at the Commission; and

(2) The requester

(i) Only makes general notes concerning the contents of the audit working papers,

(ii) Does not make copies of the audit working papers, and

(iii) Does not remove the audit working papers from the area designated by the Director.

(e) Take appropriate action on the following types of uncontested applications for authorizations and uncontested amendments to applications and authorizations and impose appropriate conditions:

(1) Applications by a pipeline for the deletion of delivery points but not facilities;

(2) Applications to abandon pipeline services, but not facilities, involving a specific customer or customers, if such customer or customers have agreed to the abandonment;

(3) Applications for temporary or permanent certificates (and for amendments thereto) for services, but not facilities, in connection with the transportation, exchange or storage of natural gas, provided that the cost of construction of the certificate applicant's related facility is less than the limits specified in column 2 of table I in § 157.208(d) of this chapter;

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(4) Blanket certificate applications by interstate pipelines and local distribution companies served by interstate pipelines filed pursuant to §§ 284.221 and 284.224 of this chapter;

(5) Applications for temporary certificates involving transportation service or sales, but not facilities, pursuant to § 157.17 of this chapter;

(6) Dismiss any protest to prior notice filings involving existing service, made pursuant to § 157.205 of this chapter, that does not raise a substantive issue and fails to provide any specific detailed reason or rationale for the objection;

(7) Applications pertaining to approval of changes in customer names where there is no change in rate schedule, rate, or other incident of service;

(8) Applications for approval of customer rate schedule shifts;

(9) Applications filed under section 1(c) of the Natural Gas Act and part 152 of this chapter, for declaration of exemption from the provisions of the Natural Gas Act and certificates held by the applicant; and

(10) Applications and amendments requesting authorizations filed pursuant to section 7(c) of the Natural Gas Act for new or additional service to right-of-way grantors either directly or through a distributor, where partial consideration for the granting of the right-of-way was the receipt of gas service pursuant to section 7(c) of the Natural Gas Act.

(f) Act upon filings for all initial rate schedules, rate schedule changes and notices of changes in rates submitted by gas companies and impose conditions to the following extent, in uncontested cases:

(1) Accept a tariff or rate schedule filing, except a major pipeline rate increase under section 4(e) of the Natural Gas Act and under subpart D of part 154 of this chapter, if it complies with all applicable statutory requirements, and with all applicable Commission rules, regulations and orders for which a waiver has not been granted, or if a waiver has been granted by the Commission, if it complies with the terms of the waiver;

(2) Reject a tariff or rate schedule filing, if it patently fails to comply with applicable statutory requirements and

with all applicable Commission rules, regulations and orders for which a waiver has not been granted; and

(3) Advise the filing party of any actions taken under paragraph (b)(1) or (b)(2) of this section and designate rate schedules, rate schedule changes, and notices of changes in rates, and the effective date thereof.

(g) Take appropriate action on the following:

(1) Any notice of intervention or petition to intervene, filed in an uncontested application for pipeline service and not facilities, or an uncontested rate schedule proceeding;

(2) An uncontested request from one holding an authorization, granted pursuant to the Director's delegated authority, to vacate all or part of such authorization;

(3) Petitions to permit after an initial 60-day period one additional 60-day period of exemption pursuant to § 284.264(b) of this chapter where the application or extension arrives at the Commission later than 45 days after the commencement of the initial period of exemption and where only services are involved; and

(4) Applications for extensions of time to file required reports, data and information and to perform other acts required at or within a specific time by any rule, regulation, license, permit, certificate, or order by the Commission.

(h) Undertake the following actions:

(1) Issue reports for public information purposes. Any report issued without Commission approval must:

(i) Be of a noncontroversial nature, and

(ii) Contain the statement, "This report does not necessarily reflect the view of the Commission," in bold face type on the cover;

(2) Issue and sign deficiency letters regarding natural gas applications; and

(3) Accept for filing, data and reports (including Forms 1, 1F, 2, 2A, and 6) required by Commission orders, or presiding officers' initial decisions upon which the Commission has taken no further action, if such filings are in compliance with such orders or decisions and, when appropriate, notify the filing party of such acceptance.

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(i) Take appropriate action on requests or petitions for waivers of:

(1) Any action incidental to the exercise of delegated authority, including waiver of notice as provided in section 4(d) of the Natural Gas Act, provided the request conforms to the requirements of §385.2001 of this chapter;

(2) Filing requirements for statements and reports under Parts 260, 261 and 357 of this chapter;

(3) Fees prescribed in §§381.207, 381.403, and 381.505 of this chapter in accordance with §381.106(b) of this chapter;

(4) Annual charges prescribed in §382.202 of this chapter in accordance with the standard set forth in §382.105 of this chapter;

(5) Section 154.403 of this chapter, as necessary, in order to rule on out-of-cycle purchased gas adjustment filings;

(6) The requirements of subpart C of part 292 of this chapter governing cogeneration and small power production facilities made by any state regulatory authority or nonregulated electric utility pursuant to §292.402 of this chapter;

(7) Annual charges prescribed in §382.201 of this chapter in accordance with the standard set forth in §382.105 of this chapter; and

(8) Deny or grant, in whole or in part, requests for waiver of the requirements for statements or reports under §141.1 of this chapter (FERC Form No. 1, Annual Report of Major Electric Utilities, Licensees and Others) and §141.2 of this chapter (FERC Form No. 1-F, Annual Report for Nonmajor Public Utilities and Licensees), and of the filing of FERC Form No. 1 on electronic media (§385.2011 of this chapter, Procedures for filing on electronic media, paragraphs (a)(6), (c), and (e)).

(j) Take the following actions relating to the regulation of oil pipelines under the Interstate Commerce Act:

(1) Accept any uncontested item which has been filed consistent with Commission regulations and policy;

(2) Reject any filing which patently fails to comply with applicable statutory requirements and with all applicable Commission rules, regulations and orders for which a waiver has not been granted;

(3) Prescribe for carriers the classes of property for which depreciation

charges may be properly included under operating expenses, review the fully documented depreciation studies filed by the carriers, and authorize or revise the depreciation rates reflected in the depreciation study with respect to each of the designated classes of property; and

(4) Refer any matter to the Commission which the Director believes should be acted upon by the Commission.

(k) Take the following actions with respect to rates, rate schedules, and rate filings:

(1) Accept for filing all uncontested initial rate schedules and uncontested rate schedule changes submitted by public utilities, including changes which would result in rate increases; waive the requirement of statutory notice for good cause shown; advise the filing party of such acceptances; and designate rate schedules and the effective dates thereof;

(2) Approve uncontested rates and rate schedules filed by the Secretary of Energy or his designee, for power developed at projects owned and operated by the federal government and for services provided by federal power marketing agencies;

(3) Reject a rate filing, unless accompanied by a request for waiver in conformity with §385.2001 of this chapter, if it fails patently to comply with applicable statutory requirements or Commission rules, regulations and orders; and

(4) Assign to an Administrative Law Judge (ALJ), with the ALJ's concurrence, uncontested interim electric rate motions that would result in lower rates, pending Commission action on settlement agreements.

(l) Take appropriate action on uncontested applications for:

(1) The sale or lease or other disposition of facilities, consolidation of facilities, and acquisition of securities of public utilities under section 203 of the Federal Power Act;

(2) Interlocking positions under section 305(b) of the Federal Power Act;

(3) Certification of the qualifying status for small power production and cogeneration facilities under §292.207 of this chapter; and

(4) The extension of time for public utilities to file required reports, data,

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and information and to do other acts required to be done within a specific time period by any rule, regulation or order of the Commission.

(m) Take appropriate action on:

(1) Notices of intervention or petitions to intervene in an uncontested rate schedule proceeding;

(2) Requests for authorization for a designated representative to post and file rate schedules of public utilities which are parties to the same rate schedule; and

(3) Filings related to uncontested nonexempt qualifying small power production facilities, including action on requests for waivers of the Commission's regulations under the Federal Power Act and related authorizations consistent with Massachusetts Refusetech, Inc., 31 FERC ¶61,048 (1985), and the orders cited therein without limitation as to whether qualifying status is by Commission certification or notice of qualifying status, provided that in the case of a notice of qualifying status, any waiver is granted on condition that the filing party has correctly noticed the facility as a qualifying facility.

(n) Undertake the following actions:

(1) Redesignate proceedings, rate schedules, and other authorizations and filings to reflect changes in the names of persons and municipalities subject to invoking Commission jurisdiction under the Federal Power Act, where no substantive changes in ownership, corporate structure or domicile, or jurisdictional operation are involved;

(2) Issue deficiency letters regarding electric rate schedule filings, refund reports, corporate applications for the sale, lease or disposition of property, consolidation of facilities, acquisition of securities of public utilities and applications to hold interlocking positions;

(3) With respect to amendments to agreements, contracts, and rate schedules (including approved rate settlements), and data and reports submitted by public utilities pursuant to Commission opinions, orders, decisions, or other actions or presiding officers' initial decisions:

(i) Accept for filing any amendment, contract, rate schedule, data and re-

ports which are in compliance and, when appropriate, notify the filing party of such acceptance; or

(ii) Reject for filing any amendment, contract, rate schedule, data, and reports which are not in compliance or not required and, when appropriate, notify the filing party of such rejection; and

(4) Adopt final allocations of costs for federal multiple-purpose reservoir projects for which the Commission has statutory responsibility, and review and comment on cost allocations prepared by others.

(o) In connection with the regulation of oil pipelines under the Interstate Commerce Act, refer any matter to the Commission which the Director believes should be acted upon by the Commission.

(p) Take the following actions under the Natural Gas Policy Act of 1978:

(1) Notify jurisdictional agencies within 45 days after the date on which the Commission receives notice of a determination pursuant to §270.502(b) of this chapter that the notice is incomplete under §270.204 of this chapter.

(2) Issue preliminary findings under §270.502(a)(1) of this chapter.

[Order 613, 64 FR 73404, Dec. 30, 1999, as amended by Order 616, 65 FR 45872, July 26, 2000]

§375.308 Delegations to the Director of the Office of Energy Projects.

The Commission authorizes the Director or the Director's designee to:

(a) Take appropriate action on uncontested applications and on applications for which the only motion or notice of intervention is filed by a competing preliminary permit or exemption applicant that does not propose and substantiate materially different plans to develop, conserve, and utilize the water resources of the region for the following:

(1) Licenses (including original, new, and transmission line licenses) under part I of the Federal Power Act;

(2) Exemptions from all or part of the licensing requirements of part I of the Federal Power Act; and

(3) Preliminary permits for proposed projects.

(b) Take appropriate action on uncontested applications for:

(1) Amendments (including changes in the use or disposal of water power project lands or waters or in the boundaries of water power projects) to licenses (including original, new, and transmission line licenses) under part I of the Federal Power Act, exemptions from all or part of the requirements of part I of the Federal Power Act, and preliminary permits; and

(2) Surrenders of licenses (including original and new), exemptions, and preliminary permits.

(c) Take appropriate action on the following:

(1) Determinations or vacations with respect to lands of the United States reserved from entry, location, or other disposal under section 24 of the Federal Power Act;

(2) Transfer of a license under section 8 of the Federal Power Act;

(3) Applications for the surrender of transmission line licenses pursuant to part 6 of this chapter;

(4) Motions filed by licensees, permittees, exemptees, applicants, and others requesting an extension of time to file required submittals, reports, data, and information and to do other acts required to be done at or within a specific time period by any rule, regulation, license, exemption, permit, notice, letter, or order of the Commission in accordance with §385.2008 of this chapter;

(5) Declarations of intent and petitions for declaratory orders concerning the Commission's jurisdiction over a hydropower project under the Federal Power Act;

(6) New or revised exhibits, studies, plans, reports, maps, drawings, or specifications, or other such filings made voluntarily or in response to a term or condition in a preliminary permit, license, or exemption issued for a hydropower project, or in response to the requirements of an order of the Commission or presiding officer's initial decision concerning a hydropower project;

(7) Requests by applicants to withdraw, pursuant to §385.216 of this chapter, any pleadings under part I of the Federal Power Act and any pleadings related to exemptions from all or part of part I of the Federal Power Act;

(8) Requests by licensees for exemption from:

(i) The requirement of filing FERC Form No. 80, Licensed Projects Recreation, under §8.11 of this chapter; and

(ii) The fees prescribed in §381.302(a) of this chapter in accordance with §381.302(c) of this chapter and the fees in §381.601 of this chapter, in accordance with §381.106 of this chapter;

(9) Requests for waivers incidental to the exercise of delegated authority provided the request conforms to the requirements of §385.2001 of this chapter;

(10) Proposals for the development of water resources projects submitted by other agencies of the Federal government for Commission review or comment. The Director shall direct comments, when necessary, to the sponsoring agency on matters including, but not limited to, the need for, and appropriate size of, any hydroelectric power installation proposed by any other agency of the Federal government;

(11) The reasonableness of disputed agency cost statements pursuant to §4.303(d) of this chapter.

(d) Issue an order pursuant to section 5 of the Federal Power Act to cancel a preliminary permit if the permittee fails to comply with the specific terms and conditions of the permit; provided:

(1) The Director gives notice to the permittee of probable cancellation no less than 30 days prior to the issuance of the cancellation order, and

(2) The permittee does not oppose the issuance of the cancellation order.

(e) Issue an order to revoke an exemption of a small conduit hydroelectric facility from the licensing provisions of part I of the Federal Power Act granted pursuant to §4.93 of this chapter, or an exemption of a small hydroelectric power project from the licensing provisions of part I of the Federal Power Act granted pursuant to §4.105 of this chapter if the exemption holder fails to begin or complete actual construction of the exempted facility or project within the time specified in the order granting the exemption or in Commission regulations at §4.94(c) or §4.106(c) of this chapter, provided:

(1) The Director gives notice to the exemption holder by certified mail of probable revocation no less than 30 days prior to the issuance of the revocation order, and

(2) The holder of the exemption does not oppose the issuance of the revocation order.

(f) Issue an order pursuant to section 13 of the Federal Power Act to terminate a license granted under part I of the Federal Power Act if the licensee fails to commence actual construction of the project works within the time prescribed in the license, provided:

(1) The Director gives notice by certified mail to the licensee of probable termination no less than 30 days prior to the issuance of the termination order, and

(2) The licensee does not oppose the issuance of the termination order.

(g) Require licensees and applicants for water power projects to make repairs to project works, take any related actions for the purpose of maintaining the safety and adequacy of such works, make or modify emergency action plans, have inspections by independent consultants, and perform other actions necessary to comply with part 12 of this chapter or otherwise protect human life, health, property, or the environment.

(h) For any unlicensed or unexempted hydropower project, take the following actions:

(1) Conduct investigations to ascertain the Commission's jurisdiction,

(2) Make preliminary jurisdictional determinations, and

(3) If a project has been preliminarily determined to require a license, issue notification of the Commission's jurisdiction; require the filing of a license application; and require that actions necessary to comply with part 12 of this chapter or otherwise protect human life, health, property, or the environment are taken.

(i) Take appropriate action on uncontested settlements among non-Federal parties involving headwater benefits.

(j) Dismiss applications for licenses and approve the withdrawal of applications for hydropower project licenses, in instances where no petition for or notice of intervention contending that licensing is required under part I of the Federal Power Act has been filed and the Director determines that licensing is not required by such Part I.

(k) Reject or dismiss an application filed under Part I of the Federal Power Act or an application for an exemption from some or all of the requirements of Part I of the Federal Power Act if:

(1) An application is patently deficient under § 4.32(d)(2)(i);

(2) A revised application

(i) Does not conform to the requirements of §§ 4.32(a), 4.32(b), or 4.38, under § 4.32(d)(1) or

(ii) If revisions to an application are not timely submitted under § 4.32(d)(1); or

(3) The applicant fails to provide timely additional information, documents, or copies of submitted materials under § 4.32(f).

(l) Redesignate proceedings, licenses, and other authorizations and filings to reflect changes in the names of persons and municipalities subject to or invoking Commission jurisdiction under the Federal Power Act, where no substantive changes in ownership, corporate structure or domicile, or jurisdictional operation are involved.

(m) Determine payments for headwater benefits from the operation of Federal reservoir projects.

(n) Determine whether to allow a credit against annual charges for the use of government dams or other structures billed to licensees each year for contractual payments for the construction, operation, and maintenance of a Federal dam.

(o) Prepare and issue comments on general water policy and planning issues for the use of the Director of the Water Resources Council or the Assistant Secretaries of the Department of Energy.

(p) Prepare and transmit letters concerning power site lands to the Bureau of Land Management and the U.S. Geological Survey; respond to routine requests for information and any non-docketed correspondence; prepare and transmit letters requesting comments or additional information on applications for hydropower project licenses, preliminary permits, exemptions, amendments of licenses, permits, or exemptions, and other similar matters from Federal, state, and local agencies,

from applicants, and from other appropriate persons; and prepare and transmit letters regarding whether transmission lines are works of a hydro-power project and are required to be licensed.

(q) Reject an application or other filing under Section 405 of the Public Utility Regulatory Policies Act of 1978, unless accompanied by a request for waiver in conformity with §385.2001 of this chapter, if it fails patently to comply with applicable statutory requirements or Commission rules, regulations, and orders.

(r) Pass upon petitions filed under §§292.210 and 292.211 of this chapter.

(s) Make any preliminary determination of inconsistency between a fish and wildlife agency's fish and wildlife recommendation and applicable law, and conduct through staff whatever consultation with the agency that is necessary or appropriate in order to attempt to resolve any inconsistency, under section 10(j) of the Federal Power Act, and to take such related actions as are required under that section.

(t) Waive the pre-filing consultation requirements in §§4.38 and 16.8 of this title whenever the Director, in his discretion, determines that an emergency so requires, or that the potential benefit of expeditiously considering a proposed improvement in safety, environmental protection, efficiency, or capacity outweighs the potential benefit of requiring completion of the consultation process prior to the filing of an application.

(u) Approve, on a case-specific basis, and issue such orders as may be necessary in connection with the use of alternative procedures, under §4.34(i) of this chapter, for the development of an application for an original, new or subsequent license, exemption, or license amendment subject to the pre-filing consultation process, and assist in the pre-filing consultation and related processes.

(v) Take appropriate action on the following types of uncontested applications for authorizations and uncontested amendments to applications and authorizations and impose appropriate conditions:

(1) Applications or amendments requesting authorization for the construction or acquisition and operation of facilities that have a construction or acquisition cost less than the limits specified in column 2 of table I in §157.208(d) of this chapter;

(2) Applications by a pipeline for the abandonment of pipeline facilities;

(3) Applications for temporary certificates for facilities pursuant to §157.17 of this chapter;

(4) Petitions to amend certificates to conform to actual construction;

(5) Applications for temporary certificates for facilities pursuant to §157.17 of this chapter;

(6) Dismiss any protest to prior notice filings made pursuant to §157.205 of this chapter and involving pipeline facilities that does not raise a substantive issue and fails to provide any specific detailed reason or rationale for the objection;

(7) Applications for temporary or permanent certificates (and for amendments thereto) for the transportation, exchange or storage of natural gas, provided that the cost of construction of the applicant's related facility is less than the limits specified in column 2 of table 1 in §157.208(d) of this chapter; and

(8) Applications for blanket certificates of public convenience and necessity pursuant to subpart F of part 157 of this chapter, including waiver of project cost limitations in §§157.208 and 157.215 of this chapter, and the convening of informal conferences during the 30-day reconciliation period pursuant to the procedures in §157.205(f).

(w) Take appropriate action on the following:

(1) Any notice of intervention or petition to intervene, filed in an uncontested application for pipeline facilities;

(2) An uncontested request from one holding an authorization, granted pursuant to the Director's delegated authority, to vacate all or part of such authorization;

(3) Petitions to permit after an initial 60-day period one additional 60-day period of exemption pursuant to §284.264(b) of this chapter where the application or extension arrives at the Commission later than 45 days after

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the commencement of the initial period of exemption when the emergency requires installation of facilities; and

(4) Applications for extensions of time to file required reports, data, and information and to perform other acts required at or within a specific time by any rule, regulation, license, permit, certificate, or order by the Commission.

(x) Undertake the following actions:

(1) Compute, for each calendar year, the project limits specified in table I of § 157.208 and table II of § 157.215(a) of this chapter, adjusted for inflation, and publish such limits as soon as possible thereafter in the FEDERAL REGISTER;

(2) Issue reports for public information purposes. Any report issued without Commission approval must:

(i) Be of a noncontroversial nature, and

(ii) Contain the statement, "This report does not necessarily reflect the view of the Commission," in bold face type on the cover;

(3) Issue and sign deficiency letters regarding natural gas applications;

(4) Accept for filing, data and reports required by Commission orders, or presiding officers' initial decisions upon which the Commission has taken no further action, if such filings are in compliance with such orders or decisions and, when appropriate, notify the filing party of such acceptance;

(5) Reject requests which patently fail to comply with the provisions of 157.205(b) of this chapter; and

(6) Take appropriate action on requests or petitions for waivers of any action incidental to the exercise of delegated authority, including waiver of notice as provided in section 4(d) of the Natural Gas Act, provided the request conforms to the requirements of § 385.2001 of this chapter.

(y) Take appropriate action on the following:

(1) Any action incidental to the exercise of delegated authority, including waiver of notice as provided in section 4(d) of the Natural Gas Act, provided the request conforms to the requirements of § 385.2001 of this chapter; and

(2) Requests or petitions for waivers of filing requirements for statements and reports under §§ 260.8 and 260.9 of this chapter.

(z) Approve, on a case-specific basis, and make such decisions as may be necessary in connection with the use of pre-filing collaborative procedures, for the development of an application or certificate or abandonment authorization under Section 7 of the Natural Gas Act, or the development of an application for facilities under Section 3 of the Natural Gas Act, and assist in the pre-filing collaborative and related processes.

[Order 492, 53 FR 16065, May 5, 1988; 53 FR 21992, June 13, 1988, as amended by Order 499, 53 FR 27005, July 18, 1988; Order 533, 56 FR 23154, May 20, 1991; Order 556, 58 FR 51223, Oct. 1, 1993; Order 596, 62 FR 59812, Nov. 5, 1997. Redesignated and amended by Order 613, 64 FR 73406, Dec. 30, 1999]

§ 375.309 Delegations to the General Counsel.

The Commission authorizes the General Counsel or the General Counsel's designee to:

(a) Designate officers empowered to administer oaths and affirmations, subpoena witnesses, compel their attendance and testimony, take evidence, compel the filing of special reports and interrogatories, gather information, and require the production of any books, papers, correspondence, memoranda, contracts, agreements, or other records, in the course of formal investigations conducted by the Office of the General Counsel to the extent the Commission's order of investigation expressly provides for the exercise of such investigative powers.

(b) Grant or deny requests of persons pursuant to § 1b.12 of this chapter to procure copies of the transcripts of their testimony taken during non-public investigations conducted by the Office of the General Counsel.

(c) Terminate any informal non-public investigation conducted by the Office of the General Counsel.

(d) Terminate the authority of officers to administer oaths and affirmations, subpoena witnesses, compel their attendance and testimony, take evidence, compel the filing of special reports and interrogatories, gather information, and require the production of any books, papers, correspondence, memoranda, contracts, agreements or other records in the course of formal

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investigations conducted by the Office of the General Counsel.

(e) Designate presiding officers for proceedings under § 385.1110, who will have all the authorities and duties vested in presiding officers by that section and other applicable rules in conducting proceedings pursuant to section 502(c) of the Natural Gas Policy Act of 1978, 15 U.S.C. 3301–3432 (1982).

(f) Deny or grant, in whole or in part, petitions for waivers of fees prescribed in § 381.305 of this chapter in accordance with § 381.106 of this chapter.

(g) Grant uncontested applications for exempt wholesale generator status that do not involve unusual or interpretation issues; to act on uncontested motions to withdraw such applications; and to act on uncontested amendments to applications for EWG status that do not present unusual or interpretation issues.

[Order No. 38, 44 FR 46453, Aug. 8, 1979. Redesignated and amended at 45 FR 21224, 21225, Apr. 1, 1980; Order 112, 45 FR 79025, Nov. 28, 1980; Order 224, 47 FR 17810, Apr. 24, 1982; Order 225, 47 FR 19058, May 3, 1982; Order 396, 49 FR 36829, Sept. 20, 1984; Order 417, 50 FR 15731, Apr. 22, 1985; Order 421, 50 FR 21427, May 24, 1985; 50 FR 47532, Nov. 19, 1985; Order 494, 53 FR 15382, Apr. 29, 1988; Order 585, 60 FR 62329, Dec. 6, 1995; Order 591, 61 FR 57328, Nov. 6, 1996]

§ 375.310 Delegations during emergency conditions.

For delegations of Commission authority during emergency conditions, see subpart B of part 376 of this chapter.

[45 FR 21217, Apr. 1, 1980. Redesignated by Order 613, 64 FR 73407, Dec. 30, 1999]

§ 375.311 Delegations to the Director, Office of External Affairs.

The Commission authorizes the Director, Office of External Affairs to waive or reduce fees in accordance with §§ 388.108 through 388.110 of this chapter.

[Order 562, 58 FR 62521, Nov. 29, 1993. Redesignated by Order 613, 64 FR 73407, Dec. 30, 1999]

§ 375.312 Delegations to the Director of the Office of Finance, Accounting and Operations.

The Commission authorizes the Director or the Director's designee to:

(a) Sign all correspondence with respect to financial accounting and reporting matters on behalf of the Commission.

(b) Pass upon actual legitimate original cost and depreciation thereon and the net investment in jurisdictional companies and revisions thereof, and sign audit reports resulting from the examination of the books and records of jurisdictional companies,

(1) If the company agrees with the audit report, or

(2) If, in the case of a financial audit, the company does not agree with the audit report, provided that notification of the opportunity for a hearing under Section 301(a) of the Federal Power Act or Section 8(a) of the Natural Gas Act accompanies the audit report.

(c) Pass upon and approve requests by state and federal agencies to review staff working papers from financial audits if the company agrees to the release of the audit working papers provided:

(1) The papers are examined at the Commission, and

(2) The requester—

(i) Only makes general notes concerning the contents of the audit working papers,

(ii) Does not make copies of the audit working papers, and

(iii) Does not remove the audit working papers from the area designated by the Director.

(d) With regard to billing errors noted as a result of the Commission staff's examination of automatic adjustment tariffs approved by the Commission, approve corrective measures, including recomputation of billing and refunds, to the extent the company agrees.

(e) Deny or grant, in whole or in part, requests for waiver of the requirements of parts 352 and 356 of this chapter, except if the matters involve unusually large transactions or unique or controversial features, the Director must present the matters to the Commission for consideration.

(f) Prescribe the updated fees for part 381 of this chapter in accordance with § 381.104 of this chapter.

(g) Prescribe the updated fees for part 381 of this chapter in accordance with § 388.109(b)(2) of this chapter.

(h) Deny or grant, in whole or in part, petitions for waiver of fees prescribed in §381.302 of this chapter in accordance with §381.106(b) of this chapter.

(i) Deny or grant, in whole or in part, petitions for exemption from fees prescribed in part 381 of this chapter in accordance with §381.108 of this chapter.

(j) Determine the annual charges for administrative costs, for use of United States lands, and for use of government dams or other structures.

(k) Grant or deny waiver of penalty charges for late payment of annual charges.

(l) Give credit for overpayment of annual charges.

(m) Deny or grant, in whole or in part, petitions for exemption from annual charges under §11.6 of this chapter for state and municipal licensees.

(n) Grant or deny petitions for waiver of annual charges for oil pipelines.

[Order 613, 64 FR 73407, Dec. 30, 1999]

PART 376—ORGANIZATION, MISSION, AND FUNCTIONS; OPERATIONS DURING EMERGENCY CONDITIONS

Subpart A—Organization, Mission, and Functions

Sec.

- 376.101 Purpose.
- 376.102 Organization.
- 376.103 Mission.
- 376.104 Functions.
- 376.105 Chairman.

Subpart B—Commission Operation During Emergency Conditions

- 376.201 Emergency condition defined.
- 376.202 Authority to move Commission offices.
- 376.203 Mailing address of Commission during emergency conditions.
- 376.204 Delegation of Commission's authority during emergency conditions.
- 376.205 Delegation of Chairman's authority during emergency conditions.
- 376.206 Delegation of functions of certain Commission staff members.
- 376.207 Personnel and fiscal functions.
- 376.208 Effect upon existing Commission requirements.

AUTHORITY: 5 U.S.C. 553; 42 U.S.C. 7101-7352; E.O. 12009, 3 CFR 1978 Comp., p. 142.

SOURCE: 45 FR 21222, Apr. 1, 1980, unless otherwise noted.

Subpart A—Organization, Mission, and Functions

§ 376.101 Purpose.

This subpart sets forth the organization, mission and functions of the Commission, and its offices and divisions.

§ 376.102 Organization.

The Commission is established as an independent regulatory Commission within the DOE by the DOE Act. The Commission is composed of five members appointed by the President, by and with the advice and consent of the Senate. One of the members is designated by the President as the Chairman. To carry out its mission and functions, the Chairman has organized the Commission into a number of major offices, some of which are further organized into divisions and lower units. The organization of the Commission staff structure may be obtained from the Division of Public Information.

§ 376.103 Mission.

The Commission is responsible for developing, managing, and directing energy regulatory programs and activities assigned to it by statute, executive orders, or by the Secretary, DOE. The Chairman serves as the chief executive officer of the Commission and is responsible for the conduct of all Commission executive and administrative functions. In carrying out its mission, the Commission and its employees are not subject to the supervision or direction of any other official of DOE.

§ 376.104 Functions.

The functions of the Commission include:

- (a) All functions vested in the Commission under the DOE Act;
- (b) All functions delegated to the Commission by the Secretary of Energy in accordance with the DOE Act; and
- (c) All functions vested in the Commission by statute.

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§ 376.105 Chairman.

(a) *Administrative head of agency.* The Chairman is the administrative head of the Commission.

(b) *Administrative responsibilities.* The Chairman is responsible on behalf of the Commission for the executive and administrative operation of the Commission, including functions of the Commission with respect to—

(1) The appointment and employment of Administrative Law Judges in accordance with the provisions of Title 5, United States Code.

(2) The selection, appointment, and fixing of the compensation of such personnel as he deems necessary.

(3) The supervision of personnel employed by or assigned to the Commission, except that each Commissioner may select and supervise personnel for his personal staff.

(4) The distribution of business among personnel and among administrative units of the Commission.

(5) The procurement of services of experts and consultants in accordance with section 3109 of Title 5, United States Code.

[45 FR 21222, Apr. 1, 1980, as amended by Order 613, 64 FR 73407, Dec. 30, 1999]

Subpart B—Commission Operation During Emergency Conditions

§ 376.201 Emergency condition defined.

For purposes of this subpart, emergency conditions:

(a) Shall commence:

(1) At the time of an armed attack upon the United States, or its territories or possessions;

(2) At the time the Commission is officially notified of the likelihood or imminence of such an attack; or

(3) At a time specified by the authority of the President; and

(b) Shall continue until the Commission is officially notified of the end of such conditions.

§ 376.202 Authority to move Commission offices.

The Commission may provide for removal of its headquarters to any location in the United States for the duration of emergency conditions. Con-

sistent with directives of the Chairman, the Commission officer or employee in charge of a regional office of the Commission may move such office to a new location in the United States for the duration of emergency conditions.

§ 376.203 Mailing address of Commission during emergency conditions.

The Chairman may direct that during the continuance of emergency conditions, communications, filings, reports, or other submittals to the Commission shall be addressed to the Federal Energy Regulatory Commission, Official Mail and Messenger Service, United States Postal Service to such or other address as the Commission may designate.

§ 376.204 Delegation of Commission's authority during emergency conditions.

(a) *Delegation of authority to one or two Commissioners.* During emergency conditions, the Commission shall function as usual, if a quorum of the Commission is available and capable of acting. If by reason of such conditions a quorum of the Commission is not available and capable of acting, all functions of the Commission are delegated to the Commissioner or Commissioners who are available and capable of acting.

(b) *Delegation of authority to Commission staff.* (1) When, by reason of emergency conditions, there is no Commissioner available and capable of acting, the functions of the Commission are delegated to the first five members of the Commission staff on the list set forth in paragraph (b)(2) of this section who are available and capable of acting.

(2) The list referred to in paragraph (b)(1) of this section is:

(i) Director of the Office of Finance, Accounting and Operations;

(ii) Director of the Office of Markets, Tariffs and Rates;

(iii) Director of the Office of Energy Projects;

(iv) General Counsel;

(v) Executive Assistant to the Chairman;

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(vi) Deputy Directors, Office of Markets, Tariffs and Rates, in order of seniority;

(vii) Deputy Directors, Office of Energy Projects, in order of seniority;

(viii) Deputy General Counsel;

(ix) Associate General Counsels, Assistant General Counsels and Solicitor, in order of seniority;

(x) Assistant Directors and Division heads, Office of Markets, Tariffs and Rates; Assistant Directors and Division heads, Office of Energy Projects; and Assistant General Counsels; in order of seniority.

(3) For purposes of paragraph (b)(2) of this section order of seniority shall be based on the highest grade and longest period of service in that grade but without regard to the particular office or Division to which assigned.

(c) *Reconsideration of staff action taken under delegations.* Action taken pursuant to the delegations provided for in this section shall be subject to reconsideration by the Commission, acting with a quorum, within thirty days after the date upon which public notice is given that a quorum of the Commission has been reconstituted and is functioning.

[45 FR 21222, Apr. 1, 1980, as amended by Order 613, 64 FR 73407, Dec. 30, 1999]

§ 376.205 Delegation of Chairman's authority during emergency conditions.

When, by reason of emergency conditions, the Chairman is not available and capable of acting, his functions are delegated to the Commissioner available and capable of acting and who is designated by the President. Until such time as the President designates, or if no such Commissioner is designated, such functions are delegated to the Commissioner designated by the Chairman as Acting Chairman, but if such Acting Chairman is not available and capable of acting such functions are delegated to the Commissioner who is available and capable of acting and who has the longest tenure as a member of the Commission. If there is no Commissioner available and capable of acting, such functions are delegated to the person on the Commission staff

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who is available and capable of acting and who is highest on the list set forth in § 376.204(b)(2).

§ 376.206 Delegation of functions of certain Commission staff members.

When, by reason of emergency conditions, the Secretary; Director of the Office of Finance, Accounting and Operations; Director of any Office or Division, or officer in charge of a regional office, is not available and capable of carrying out his functions, such functions are delegated to staff members designated by the Chairman to perform such functions. If no staff member so designated is available and capable of carrying out his functions, such functions are delegated to the next subordinate employee in the Office or Division of the highest grade and longest period of service in that grade.

[Order 613, 64 FR 73408, Dec. 30, 1999]

§ 376.207 Personnel and fiscal functions.

Subject to modifications or revocation by authority of the Director of the Office of Finance, Accounting and Operations, during the continuation of emergency conditions authority to effect temporary appointments of such additional officers and employees, to classify and allocate positions to their proper grades, to issue travel orders, and to effect emergency purchases of supplies, equipment and services shall be exercised by the respective Directors of Offices and officials in charge of regional offices, their deputies, or staff in line of succession, as may be required for the discharge of the lawful duties of such organization.

[Order 613, 64 FR 73408, Dec. 30, 1999]

§ 376.208 Effect upon existing Commission requirements.

All outstanding Commission orders, rules and regulations shall remain in force and effect during the continuance of emergency conditions, except to the extent modified in accordance with authority exercised under this subpart.

PART 380—REGULATIONS IMPLEMENTING THE NATIONAL ENVIRONMENTAL POLICY ACT

Sec.

- 380.1 Purpose.
- 380.2 Definitions and terminology.
- 380.3 Environmental information to be supplied by an applicant.
- 380.4 Projects or actions categorically excluded.
- 380.5 Actions that require an environmental assessment.
- 380.6 Actions that require an environmental impact statement.
- 380.7 Format of an environmental impact statement.
- 380.8 Preparation of environmental documents.
- 380.9 Public availability of NEPA documents and public notice of NEPA related hearings and public meetings.
- 380.10 Participation in Commission proceedings.
- 380.11 Environmental decisionmaking.
- 380.12 Environmental reports for Natural Gas Act applications.
- 380.13 Compliance with the Endangered Species Act.
- 380.14 Compliance with the National Historic Preservation Act.
- 380.15 Siting and maintenance requirements.

APPENDIX A TO PART 380—MINIMUM FILING REQUIREMENTS FOR ENVIRONMENTAL REPORTS UNDER THE NATURAL GAS ACT

AUTHORITY: 42 U.S.C. 4321-4370a, 7101-7352; E.O. 12009, 3 CFR 1978 Comp., p. 142.

SOURCE: Order 486, 52 FR 47910, Dec. 17, 1987, unless otherwise noted.

§ 380.1 Purpose.

The regulations in this part implement the Federal Energy Regulatory Commission's procedures under the National Environmental Policy Act of 1969. These regulations supplement the regulations of the Council on Environmental Quality, 40 CFR parts 1500 through 1508 (1986). The Commission will comply with the regulations of the Council on Environmental Quality except where those regulations are inconsistent with the statutory requirements of the Commission.

§ 380.2 Definitions and terminology.

For purposes of this part—

(a) *Categorical exclusion* means a category of actions described in §380.4, which do not individually or cumulatively have a significant effect on the

human environment and which the Commission has found to have no such effect and for which, therefore, neither an environmental assessment nor an environmental impact statement is required. The Commission may decide to prepare environmental assessments for the reasons stated in §380.4(b).

(b) *Commission* means the Federal Energy Regulatory Commission.

(c) *Council* means the Council on Environmental Quality.

(d) *Environmental assessment* means a concise public document for which the Commission is responsible that serves to:

(1) Briefly provide sufficient evidence and analysis for determining whether to prepare an environmental impact statement or a finding of no significant impact.

(2) Aid the Commission's compliance with NEPA when no environmental impact statement is necessary.

(3) Facilitate preparation of a statement when one is necessary. Environmental assessments must include brief discussions of the need for the proposal, of alternatives as required by section 102(2)(E) of NEPA, of the environmental impacts of the proposed action and alternatives, and a listing of agencies and persons consulted.

(e) *Environmental impact statement* (EIS) means a detailed written statement as required by section 102(2)(C) of NEPA. DEIS means a draft EIS and FEIS means a final EIS.

(f) *Environmental report* or ER means that part of an application submitted to the Commission by an applicant for authorization of a proposed action which includes information concerning the environment, the applicant's analysis of the environmental impact of the action, or alternatives to the action required by this or other applicable statutes or regulations.

(g) *Finding of no significant impact* (FONSI) means a document by the Commission briefly presenting the reason why an action, not otherwise excluded by §380.4, will not have a significant effect on the human environment and for which an environmental impact statement therefore will not be prepared. It must include the environmental assessment or a summary of it and must note other environmental

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documents related to it. If the assessment is included, the FONSI need not repeat any of the discussion in the assessment but may incorporate it by reference.

§ 380.3 Environmental information to be supplied by an applicant.

(a) An applicant must submit information as follows:

(1) For any proposed action identified in §§ 380.5 and 380.6, and environmental report with the proposal as prescribed in paragraph (c) of this section.

(2) For any proposal not identified in paragraph (a)(1) of this section, any environmental information that the Commission may determine is necessary for compliance with these regulations, the regulations of the Council, NEPA and other Federal laws such as the Endangered Species Act, the National Historic Preservation Act or the Coastal Zone Management Act.

(b) An applicant must also:

(1) Provide all necessary or relevant information to the Commission;

(2) Conduct any studies that the Commission staff considers necessary or relevant to determine the impact of the proposal on the human environment and natural resources;

(3) Consult with appropriate Federal, regional, State, and local agencies during the planning stages of the proposed action to ensure that all potential environmental impacts are identified. (The specific requirements for consultation on hydropower projects are contained in § 4.38 and § 16.8 of this chapter and in section 4(a) of the Electric Consumers Protection Act, Pub. L. No. 99-495, 100 Stat. 1243, 1246 (1986));

(4) Submit applications for all Federal and State approvals as early as possible in the planning process; and

(5) Notify the Commission staff of all other Federal actions required for completion of the proposed action so that the staff may coordinate with other interested Federal agencies.

(c) *Content of an applicant's environmental report for specific proposals*—(1) *Hydropower projects.* The information required for specific project applications under part 4 or 16 of this chapter.

(2) *Natural gas projects.* (i) For any application filed under the Natural Gas Act for any proposed action identified

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in §§ 380.5 or 380.6, except for prior notice filings under § 157.208, as described in § 380.5(b), the information identified in § 380.12 and Appendix A of this part.

(ii) For prior notice filings under § 157.208, the report described by § 157.208(c)(11) of this chapter.

[Order 486, 52 FR 47910, Dec. 17, 1987, as amended by Order 533, 56 FR 23155, May 20, 1991; Order 603, 64 FR 26611, May 14, 1999]

§ 380.4 Projects or actions categorically excluded.

(a) *General rule.* Except as stated in paragraph (b) of this section, neither an environmental assessment nor an environmental impact statement will be prepared for the following projects or actions:

(1) Procedural, ministerial, or internal administrative and management actions, programs, or decisions, including procurement, contracting, personnel actions, correction or clarification of filings or orders, and acceptance, rejection and dismissal of filings;

(2)(i) Reports or recommendations on legislation not initiated by the Commission, and

(ii) Proposals for legislation and promulgation of rules that are clarifying, corrective, or procedural, or that do not substantially change the effect of legislation or regulations being amended;

(3) Compliance and review actions, including investigations (jurisdictional or otherwise), conferences, hearings, notices of probable violation, show cause orders, and adjustments under section 502(c) of the Natural Gas Policy Act of 1978 (NGPA);

(4) Review of grants or denials by the Department of Energy (DOE) of any adjustment request, and review of contested remedial orders issued by DOE;

(5) Information gathering, analysis, and dissemination;

(6) Conceptual or feasibility studies;

(7) Actions concerning the reservation and classification of United States lands as water power sites and other actions under section 24 of the Federal Power Act;

(8) Transfers of water power project licenses and transfers of exemptions under Part I of the Federal Power Act and Part 9 of this chapter;

(9) Issuance of preliminary permits for water power projects under Part I of the Federal Power Act and Part 4 of this chapter;

(10) Withdrawals of applications for certificates under the Natural Gas Act, or for water power project preliminary permits, exemptions, or licenses under Part I of the Federal Power Act and Part 4 of this chapter;

(11) Actions concerning annual charges or headwater benefits, charges for water power projects under Parts 11 and 13 of this chapter and establishment of fees to be paid by an applicant for a license or exemption required to meet the terms and conditions of section 30(c) of the Federal Power Act;

(12) Approval for water power projects under Part I of the Federal Power Act, of "as built" or revised drawings or exhibits that propose no changes to project works or operations or that reflect changes that have previously been approved or required by the Commission;

(13) Surrender and amendment of preliminary permits, and surrender of water power licenses and exemptions where no project works exist or ground disturbing activity has occurred and amendments to water power licenses and exemptions that do not require ground disturbing activity or changes to project works or operation;

(14) Exemptions for small conduit hydroelectric facilities as defined in §4.30(b)(26) of this chapter under Part I of the Federal Power Act and Part 4 of this chapter;

(15) Electric rate filings submitted by public utilities under sections 205 and 206 of the Federal Power Act, the establishment of just and reasonable rates, and confirmation, approval, and disapproval of rate filings submitted by Federal power marketing agencies under the Pacific Northwest Electric Power Planning and Conservation Act, the Department of Energy Organization Act, and DOE Delegation Order No. 0204-108.

(16) Approval of actions under sections 4(b), 203, 204, 301, 304, and 305 of the Federal Power Act relating to issuance and purchase of securities, acquisition or disposition of property, merger, interlocking directorates, ju-

risisdictional determinations and accounting orders;

(17) Approval of electrical interconnections and wheeling under sections 202(b), 210, 211, and 212 of the Federal Power Act, that would not entail:

(i) Construction of a new substation or expansion of the boundaries of an existing substation;

(ii) Construction of any transmission line that operates at more than 115 kilovolts (KV) and occupies more than ten miles of an existing right-of-way; or

(iii) Construction of any transmission line more than one mile long if located on a new right-of-way;

(18) Approval of changes in land rights for water power projects under Part I of the Federal Power Act and Part 4 of this chapter, if no construction or change in land use is either proposed or known by the Commission to be contemplated for the land affected;

(19) Approval of proposals under Part I of the Federal Power Act and Part 4 of this chapter to authorize use of water power project lands or waters for gas or electric utility distribution lines, radial (sub-transmission) lines, communications lines and cables, storm drains, sewer lines not discharging into project waters, water mains, piers, landings, boat docks, or similar structures and facilities, landscaping or embankments, bulkheads, retaining walls, or similar shoreline erosion control structures;

(20) Action on applications for exemption under section 1(c) of the Natural Gas Act;

(21) Approvals of blanket certificate applications and prior notice filings under §157.204 and §§157.209 through 157.218 of this chapter;

(22) Approvals of blanket certificate applications under §§284.221 through 284.224 of this chapter;

(23) Producers' applications for the sale of gas filed under §§157.23 through 157.29 of this chapter;

(24) Approval under section 7 of the Natural Gas Act of taps, meters, and regulating facilities located completely within an existing natural gas pipeline right-of-way or compressor station if company records show the land use of the vicinity has not changed since the original facilities were installed, and

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no significant nonjurisdictional facilities would be constructed in association with construction of the inter-connection facilities;

(25) Review of natural gas rate filings, including any curtailment plans other than those specified in § 380.5(b)(5), and establishment of rates for transportation and sale of natural gas under sections 4 and 5 of the Natural Gas Act and sections 311 and 401 through 404 of the Natural Gas Policy Act of 1978;

(26) Review of approval of oil pipeline rate filings under Parts 340 and 341 of this chapter;

(27) Sale, exchange, and transportation of natural gas under sections 4, 5 and 7 of the Natural Gas Act that requires no construction of facilities;

(28) Abandonment in place of a minor natural gas pipeline (short segments of buried pipe of 6-inch inside diameter or less), or abandonment by removal of minor surface facilities such as metering stations, valves, and taps under section 7 of the Natural Gas Act so long as appropriate erosion control and site restoration takes place;

(29) Abandonment of service under any gas supply contract pursuant to section 7 of the Natural Gas Act;

(30) Approval of filing made in compliance with the requirements of a certificate for a natural gas project under section 7 of the Natural Gas Act or a preliminary permit, exemption, license, or license amendment order for a water power project under Part I of the Federal Power Act;

(31) Abandonment of facilities by sale that involves only minor or no ground disturbance to disconnect the facilities from the system;

(32) Conversion of facilities from use under the NGPA to use under the NGA;

(33) Construction or abandonment of facilities constructed entirely in Federal offshore waters that has been approved by the Minerals Management Service and the Corps of Engineers, as necessary;

(34) Abandonment or construction of facilities on an existing offshore platform;

(35) Abandonment, construction or replacement of a facility (other than compression) solely within an existing building within a natural gas facility

(other than LNG facilities), if it does not increase the noise or air emissions from the facility, as a whole; and

(36) Conversion of compression to standby use if the compressor is not moved, or abandonment of compression if the compressor station remains in operation.

(b) *Exceptions to categorical exclusions.*

(1) In accordance with 40 CFR 1508.4, the Commission and its staff will independently evaluate environmental information supplied in an application and in comments by the public. Where circumstances indicate that an action may be a major Federal action significantly affecting the quality of the human environment, the Commission:

(i) May require an environmental report or other additional environmental information, and

(ii) Will prepare an environmental assessment or an environmental impact statement.

(2) Such circumstances may exist when the action may have an effect on one of the following:

(i) Indian lands;

(ii) Wilderness areas;

(iii) Wild and scenic rivers;

(iv) Wetlands;

(v) Units of the National Park System, National Refuges, or National Fish Hatcheries;

(vi) Anadromous fish or endangered species; or

(vii) Where the environmental effects are uncertain.

However, the existence of one or more of the above will not automatically require the submission of an environmental report or the preparation of an environmental assessment or an environmental impact statement.

[Order 486, 52 FR 47910, Dec. 17, 1987, as amended at 53 FR 8177, Mar. 14, 1988; Order 486-B, 53 FR 26437, July 13, 1988; 54 FR 48740, Nov. 27, 1989; Order 603, 64 FR 26611, May 14, 1999; Order 609, 64 FR 57392, Oct. 25, 1999]

§ 380.5 Actions that require an environmental assessment.

(a) An environmental assessment will normally be prepared first for the actions identified in this section. Depending on the outcome of the environmental assessment, the Commission

may or may not prepare an environmental impact statement. However, depending on the location or scope of the proposed action, or the resources affected, the Commission may in specific circumstances proceed directly to prepare an environmental impact statement.

(b) The projects subject to an environmental assessment are as follows:

(1) Except as identified in §§380.4, 380.6 and 2.55 of this chapter, authorization for the site of new gas import/export facilities under DOE Delegation No. 0204-112 and authorization under section 7 of the Natural Gas Act for the construction, replacement, or abandonment of compression, processing, or interconnecting facilities, onshore and offshore pipelines, metering facilities, LNG peak-shaving facilities, or other facilities necessary for the sale, exchange, storage, or transportation of natural gas;

(2) Prior notice filings under §157.208 of this chapter for the rearrangement of any facility specified in §§157.202 (b)(3) and (6) of this chapter or the acquisition, construction, or operation of any eligible facility as specified in §§157.202 (b)(2) and (3) of this chapter;

(3) Abandonment or reduction of natural gas service under section 7 of the Natural Gas Act unless excluded under §380.4 (a)(21), (28) or (29);

(4) Except as identified in §380.6, conversion of existing depleted oil or natural gas fields to underground storage fields under section 7 of the Natural Gas Act.

(5) New natural gas curtailment plans, or any amendment to an existing curtailment plan under section 4 of the Natural Gas Act and sections 401 through 404 of the Natural Gas Policy Act of 1978 that has a major effect on an entire pipeline system;

(6) Licenses under Part I of the Federal Power Act and part 4 of this chapter for construction of any water power project—existing dam;

(7) Exemptions under section 405 of the Public Utility Regulatory Policies Act of 1978, as amended, and §§4.30(b)(27) and 4.101-4.106 of this chapter for small hydroelectric power projects of 5 MW or less;

(8) Licenses for additional project works at licensed projects under Part I

of the Federal Power Act whether or not these are styled license amendments or original licenses;

(9) Licenses under Part I of the Federal Power Act and part 4 of this chapter for transmission lines only;

(10) Applications for new licenses under section 15 of the Federal Power Act;

(11) Approval of electric interconnections and wheeling under sections 202(b), 210, 211, and 212 of the Federal Power Act, unless excluded under §380.4(a)(17); and

(12) Regulations or proposals for legislation not excluded under §380.4(a)(2).

(13) Surrender of water power licenses and exemptions where project works exist or ground disturbing activity has occurred and amendments to water power licenses and exemptions that require ground disturbing activity or changes to project works or operations.

[Order 486, 52 FR 47910, Dec. 17, 1987; Order 486, 53 FR 4817, Feb. 17, 1988, as amended by 53 FR 8177, Mar. 14, 1988; Order 486-B, 53 FR 26437, July 13, 1988]

§ 380.6 Actions that require an environmental impact statement.

(a) Except as provided in paragraph (b) of this section, an environmental impact statement will normally be prepared first for the following projects:

(1) Authorization under sections 3 or 7 of the Natural Gas Act and DOE Delegation Order No. 0204-112 for the siting, construction, and operation of jurisdictional liquefied natural gas import/export facilities used wholly or in part to liquefy, store, or regasify liquefied natural gas transported by water;

(2) Certificate applications under section 7 of the Natural Gas Act to develop an underground natural gas storage facility except where depleted oil or natural gas producing fields are used;

(3) Major pipeline construction projects under section 7 of the Natural Gas Act using right-of-way in which there is no existing natural gas pipeline; and

(4) Licenses under Part I of the Federal Power Act and Part 4 of this chapter for construction of any unconstructed water power project.

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(b) If the Commission believes that a proposed action identified in paragraph (a) of this section may not be a major Federal action significantly affecting the quality of the human environment, an environmental assessment, rather than an environmental impact statement, will be prepared first. Depending on the outcome of the environmental assessment, an environmental impact statement may or may not be prepared.

(c) An environmental impact statement will not be required if an environmental assessment indicates that a proposal has adverse environmental effects and the proposal is not approved.

[Order 486, 52 FR 47910, Dec. 17, 1987, as amended at 53 FR 8177, Mar. 14, 1988; Order 486-B, 53 FR 26437, July 13, 1988]

§ 380.7 Format of an environmental impact statement.

In addition to the requirements for an environmental impact statement prescribed in 40 CFR 1502.10 of the regulations of the Council, an environmental impact statement prepared by the Commission will include a section on the literature cited in the environmental impact statement and a staff conclusion section. The staff conclusion section will include summaries of:

(a) The significant environmental impacts of the proposed action;

(b) Any alternative to the proposed action that would have a less severe environmental impact or impacts and the action preferred by the staff;

(c) Any mitigation measures proposed by the applicant, as well as additional mitigation measures that might be more effective;

(d) Any significant environmental impacts of the proposed action that cannot be mitigated; and

(e) References to any pending, completed, or recommended studies that might provide baseline data or additional data on the proposed action.

§ 380.8 Preparation of environmental documents.

The preparation of environmental documents, as defined in § 1508.10 of the regulations of the Council, on hydroelectric projects, is the responsibility of the Commission's Office of Hydro-power Licensing, 888 First Street NE., Washington, DC 20426, (202) 219-2700.

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The preparation of environmental documents on natural gas projects is the responsibility of the Commission's Office of Pipeline Regulation, (202) 208-0700, 888 First Street NE., Washington, DC 20426. Persons interested in status reports or information on environmental impact statements or other elements of the NEPA process, including the studies or other information the Commission may require on these projects, can contact these sections.

[Order 486, 52 FR 47910, Dec. 17, 1987, as amended by Order 603-A, 64 FR 54537, Oct. 7, 1999]

§ 380.9 Public availability of NEPA documents and public notice of NEPA related hearings and public meetings.

(a)(1) The Commission will comply with the requirements of 40 CFR 1506.6 of the regulations of the Council for public involvement in NEPA.

(2) If an action has effects of primarily local concern, the Commission may give additional notice in a Commission order.

(b) The Commission will make environmental impact statements, environmental assessments, the comments received, and any underlying documents available to the public pursuant to the provisions of the Freedom of Information Act (5 U.S.C. 552 (1982)). The exclusion in the Freedom of Information Act for interagency memoranda is not applicable where such memoranda transmit comments of Federal agencies on the environmental impact of the proposed action. Such materials will be made available to the public at the Commission's Public Reference Room at 888 First Street NE., Room 2A, Washington, DC 20426 at a fee and in the manner described in Part 388 of this chapter. A copy of an environmental impact statement or environmental assessment for hydroelectric projects may also be made available for inspection at the Commission's regional office for the region where the proposed action is located.

[Order 486, 52 FR 47910, Dec. 17, 1987, as amended by Order 603-A, 64 FR 54537, Oct. 7, 1999]

§ 380.10 Participation in Commission proceedings.

(a) *Intervention proceedings involving a party or parties*—(1) *Motion to intervene.*

(i) In addition to submitting comments on the NEPA process and NEPA related documents, any person may file a motion to intervene in a Commission proceeding dealing with environmental issues under the terms of §385.214 of this chapter. Any person who files a motion to intervene on the basis of a draft environmental impact statement will be deemed to have filed a timely motion, in accordance with §385.214, as long as the motion is filed within the comment period for the draft environmental impact statement.

(ii) Any person that is granted intervention after petitioning becomes a party to the proceeding and accepts the record as developed by the parties as of the time that intervention is granted.

(2)(i) *Issues not set for trial-type hearing.* An intervenor who takes a position on any environmental issue that has not yet been set for hearing must file a timely motion with the Secretary containing an analysis of its position on such issue and specifying any differences with the position of Commission staff or an applicant upon which the intervenor wishes to be heard at a hearing.

(ii) *Issues set for trial-type hearing.* (A) Any intervenor that takes a position on an environmental issue set for hearing may offer evidence for the record in support of such position and otherwise participate in accordance with the Commission's Rules of Practice and Procedure. Any intervenor must specify any differences from the staff's and the applicant's positions.

(B) To be considered, any facts or opinions on an environmental issue set for hearing must be admitted into evidence and made part of the record of the proceeding.

(b) *Rulemaking proceedings.* Any person may file comments on any environmental issue in a rulemaking proceeding.

§ 380.11 Environmental decision-making.

(a) *Decision points.* For the actions which require an environmental assessment or environmental impact state-

ment, environmental considerations will be addressed at appropriate major decision points.

(1) In proceedings involving a party or parties and not set for trial-type hearing, major decision points are the approval or denial of proposals by the Commission or its designees.

(2) In matters set for trial-type hearing, the major decision points are the initial decision of an administrative law judge or the decision of the Commission.

(3) In a rulemaking proceeding, the major decision points are the Notice of Proposed Rulemaking and the Final Rule.

(b) *Environmental documents as part of the record.* The Commission will include environmental assessments, findings of no significant impact, or environmental impact statements, and any supplements in the record of the proceeding.

(c) *Application denials.* Notwithstanding any provision in this part, the Commission may dismiss or deny an application without performing an environmental impact statement or without undertaking environmental analysis.

§ 380.12 Environmental reports for Natural Gas Act applications.

(a) *Introduction.* (1) The applicant must submit an environmental report with any application that proposes the construction, operation, or abandonment of any facility identified in §380.3(c)(2)(i). The environmental report shall consist of the thirteen resource reports and related material described in this section.

(2) The detail of each resource report must be commensurate with the complexity of the proposal and its potential for environmental impact. Each topic in each resource report shall be addressed or its omission justified, unless the resource report description indicates that the data is not required for that type of proposal. If material required for one resource report is provided in another resource report or in another exhibit, it may be incorporated by reference. If any resource report topic is required for a particular project but is not provided at the time

the application is filed, the environmental report shall explain why it is missing and when the applicant anticipates it will be filed.

(3) The appendix to this part contains a checklist of the minimum filing requirements for an environmental report. Failure to provide at least the applicable checklist items will result in rejection of the application unless the Director of OPR determines that the applicant has provided an acceptable reason for the item's absence and an acceptable schedule for filing it. Failure to file within the accepted schedule will result in rejection of the application.

(b) *General requirements.* As appropriate, each resource report shall:

(1) Address conditions or resources that might be directly or indirectly affected by the project.

(2) Identify significant environmental effects expected to occur as a result of the project;

(3) Identify the effects of construction, operation (including maintenance and malfunctions), and termination of the project, as well as cumulative effects resulting from existing or reasonably foreseeable projects;

(4) Identify measures proposed to enhance the environment or to avoid, mitigate, or compensate for adverse effects of the project;

(5) Provide a list of publications, reports, and other literature or communications, including agency contacts, that were cited or relied upon to prepare each report. This list should include the name and title of the person contacted, their affiliations, and telephone number.

(6) Whenever this section refers to "mileposts" the applicant may substitute "survey centerline stationing" if so desired. However, whatever method is chosen should be used consistently throughout the resource reports.

(c) *Resource Report 1—General project description.* This report is required for all applications. It will describe facilities associated with the project, special construction and operation procedures, construction timetables, future plans for related construction, compliance with regulations and codes, and permits that must be obtained. Resource Report 1 must:

(1) Describe and provide location maps of all jurisdictional facilities, including all aboveground facilities associated with the project (such as: meter stations, pig launchers/receivers, valves), to be constructed, modified, abandoned, replaced, or removed, including related construction and operational support activities and areas such as maintenance bases, staging areas, communications towers, power lines, and new access roads (roads to be built or modified). As relevant, the report must describe the length and diameter of the pipeline, the types of aboveground facilities that would be installed, and associated land requirements. It must also identify other companies that must construct jurisdictional facilities related to the project, where the facilities would be located, and where they are in the Commission's approval process.

(2) Identify and describe all nonjurisdictional facilities, including auxiliary facilities, that will be built in association with the project, including facilities to be built by other companies.

(i) Provide the following information:

(A) A brief description of each facility, including as appropriate: Ownership, land requirements, gas consumption, megawatt size, construction status, and an update of the latest status of Federal, state, and local permits/approvals;

(B) The length and diameter of any interconnecting pipeline;

(C) Current 1:24,000/1:25,000 scale topographic maps showing the location of the facilities;

(D) Correspondence with the appropriate State Historic Preservation Officer (SHPO) or duly authorized Tribal Historic Preservation Officer (THPO) for tribal lands regarding whether properties eligible for listing on the National Register of Historic Places (NRHP) would be affected;

(E) Correspondence with the U.S. Fish and Wildlife Service (and National Marine Fisheries Service, if appropriate) regarding potential impacts of the proposed facility on federally listed threatened and endangered species; and

(F) For facilities within a designated coastal zone management area, a consistency determination or evidence

that the owner has requested a consistency determination from the state's coastal zone management program.

(ii) Address each of the following factors and indicate which ones, if any, appear to indicate the need for the Commission to do an environmental review of project-related nonjurisdictional facilities.

(A) Whether or not the regulated activity comprises "merely a link" in a corridor type project (e.g., a transportation or utility transmission project).

(B) Whether there are aspects of the nonjurisdictional facility in the immediate vicinity of the regulated activity which uniquely determine the location and configuration of the regulated activity.

(C) The extent to which the entire project will be within the Commission's jurisdiction.

(D) The extent of cumulative Federal control and responsibility.

(3) Provide the following maps and photos:

(i) Current, original United States Geological Survey (USGS) 7.5-minute series topographic maps or maps of equivalent detail, covering at least a 0.5-mile-wide corridor centered on the pipeline, with integer mileposts identified, showing the location of rights-of-way, new access roads, other linear construction areas, compressor stations, and pipe storage areas. Show nonlinear construction areas on maps at a scale of 1:3,600 or larger keyed graphically and by milepost to the right-of-way maps.

(ii) Original aerial images or photographs or photo-based alignment sheets based on these sources, not more than 1 year old (unless older ones accurately depict current land use and development) and with a scale of 1:6,000 or larger, showing the proposed pipeline route and location of major above-ground facilities, covering at least a 0.5 mile-wide corridor, and including mileposts. Older images/photographs/alignment sheets should be modified to show any residences not depicted in the original. Alternative formats (e.g., blue-line prints of acceptable resolution) need prior approval by the environmental staff of the Office of Pipeline Regulation.

(iii) In addition to the copy required under § 157.6(a)(2) of this chapter, applicant should send two additional copies of topographic maps and aerial images/photographs directly to the environmental staff of the Office of Pipeline Regulation.

(4) When new or additional compression is proposed, include large scale (1:3,600 or greater) plot plans of each compressor station. The plot plan should reference a readily identifiable point(s) on the USGS maps required in paragraph (c)(3) of this section. The maps and plot plans must identify the location of the nearest noise-sensitive areas (schools, hospitals, or residences) within 1 mile of the compressor station, existing and proposed compressor and auxiliary buildings, access roads, and the limits of areas that would be permanently disturbed.

(5)(i) Identify facilities to be abandoned, and state how they would be abandoned, how the site would be restored, who would own the site or right-of-way after abandonment, and who would be responsible for any facilities abandoned in place.

(ii) When the right-of-way or the easement would be abandoned, identify whether landowners were given the opportunity to request that the facilities on their property, including foundations and below ground components, be removed. Identify any landowners whose preferences the company does not intend to honor, and the reasons therefore.

(6) Describe and identify by milepost, proposed construction and restoration methods to be used in areas of rugged topography, residential areas, active croplands, sites where the pipeline would be located parallel to and under roads, and sites where explosives are likely to be used.

(7) Unless provided in response to Resource Report 5, describe estimated workforce requirements, including the number of pipeline construction spreads, average workforce requirements for each construction spread and meter or compressor station, estimated duration of construction from initial clearing to final restoration, and number of personnel to be hired to operate the proposed project.

(8) Describe reasonably foreseeable plans for future expansion of facilities, including additional land requirements and the compatibility of those plans with the current proposal.

(9) Describe all authorizations required to complete the proposed action and the status of applications for such authorizations. Identify environmental mitigation requirements specified in any permit or proposed in any permit application to the extent not specified elsewhere in this section.

(10) Provide the names and mailing addresses of all affected landowners specified in §157.6(d) and certify that all affected landowners will be notified as required in §157.6(d).

(d) *Resource Report 2—Water use and quality.* This report is required for all applications, except those which involve only facilities within the areas of an existing compressor, meter, or regulator station that were disturbed by construction of the existing facilities, no wetlands or waterbodies are on the site and there would not be a significant increase in water use. The report must describe water quality and provide data sufficient to determine the expected impact of the project and the effectiveness of mitigative, enhancement, or protective measures. Resource Report 2 must:

(1) Identify and describe by milepost perennial waterbodies and municipal water supply or watershed areas, specially designated surface water protection areas and sensitive waterbodies, and wetlands that would be crossed. For each waterbody crossing, identify the approximate width, state water quality classifications, any known potential pollutants present in the water or sediments, and any potable water intake sources within 3 miles downstream.

(2) Compare proposed mitigation measures with the staff's current "*Wetland and Waterbody Construction and Mitigation Procedures*," which are available from the Commission Internet home page or the Commission staff, describe what proposed alternative mitigation would provide equivalent or greater protection to the environment, and provide a description of site-specific construction techniques that

would be used at each major waterbody crossing.

(3) Describe typical staging area requirements at waterbody and wetland crossings. Also, identify and describe waterbodies and wetlands where staging areas are likely to be more extensive.

(4) Include National Wetland Inventory (NWI) maps. If NWI maps are not available, provide the appropriate state wetland maps. Identify for each crossing, the milepost, the wetland classification specified by the U.S. Fish and Wildlife Service, and the length of the crossing. Include two copies of the NWI maps (or the substitutes, if NWI maps are not available) clearly showing the proposed route and mileposts directed to the environmental staff. Describe by milepost, wetland crossings as determined by field delineations using the current Federal methodology.

(5) Identify aquifers within excavation depth in the project area, including the depth of the aquifer, current and projected use, water quality and average yield, and known or suspected contamination problems.

(6) Describe specific locations, the quantity required, and the method and rate of withdrawal and discharge of hydrostatic test water. Describe suspended or dissolved material likely to be present in the water as a result of contact with the pipeline, particularly if an existing pipeline is being retested. Describe chemical or physical treatment of the pipeline or hydrostatic test water. Discuss waste products generated and disposal methods.

(7) If underground storage of natural gas is proposed:

(i) Identify how water produced from the storage field will be disposed of, and

(ii) For salt caverns, identify the source locations, the quantity required, and the method and rate of withdrawal of water for creating salt cavern(s), as well as the means of disposal of brine resulting from cavern leaching.

(8) Discuss proposed mitigation measures to reduce the potential for adverse impacts to surface water, wetlands, or groundwater quality to the extent they are not described in response to paragraph (d)(2) of this section. Discuss the

potential for blasting to affect water wells, springs, and wetlands, and measures to be taken to detect and remedy such effects.

(9) Identify the location of known public and private groundwater supply wells or springs within 150 feet of proposed construction areas. Identify locations of EPA or state-designated sole-source aquifers and wellhead protection areas crossed by the proposed pipeline facilities.

(e) *Resource Report 3—Fish, wildlife, and vegetation.* This report is required for all applications, except those involving only facilities within the improved area of an existing compressor, meter, or regulator station. It must describe aquatic life, wildlife, and vegetation in the vicinity of the proposed project; expected impacts on these resources including potential effects on biodiversity; and proposed mitigation, enhancement or protection measures. Resource Report 3 must:

(1) Describe commercial and recreational warmwater, coldwater, and saltwater fisheries in the affected area and associated significant habitats such as spawning or rearing areas and estuaries.

(2) Describe terrestrial habitats, including wetlands, typical wildlife habitats, and rare, unique, or otherwise significant habitats that might be affected by the proposed action. Describe typical species that have commercial, recreational, or aesthetic value.

(3) Describe and provide the affected acreage of vegetation cover types that would be affected, including unique ecosystems or communities such as remnant prairie or old-growth forest, or significant individual plants, such as old-growth specimen trees.

(4) Describe the impact of construction and operation on aquatic and terrestrial species and their habitats, including the possibility of a major alteration to ecosystems or biodiversity, and any potential impact on state-listed endangered or threatened species. Describe the impact of maintenance, clearing and treatment of the project area on fish, wildlife, and vegetation. Surveys may be required to determine specific areas of significant habitats or communities of species of special concern to state or local agencies.

(5) Identify all federally listed or proposed endangered or threatened species and critical habitat that potentially occur in the vicinity of the project. Discuss the results of the consultation requirements listed in §380.13(b) at least through §380.13(b)(5)(i) and include any written correspondence that resulted from the consultation. The initial application must include the results of any required surveys unless seasonal considerations make this impractical. If species surveys are impractical, there must be field surveys to determine the presence of suitable habitat unless the entire project area is suitable habitat.

(6) Identify all federally listed essential fish habitat (EFH) that potentially occurs in the vicinity of the project. Provide information on all EFH, as identified by the pertinent Federal fishery management plans, that may be adversely affected by the project and the results of abbreviated consultations with NMFS, and any resulting EFH assessments.

(7) Describe site-specific mitigation measures to minimize impacts on fisheries, wildlife, and vegetation.

(8) Include copies of correspondence not provided pursuant to paragraph (e)(5) of this section, containing recommendations from appropriate Federal and state fish and wildlife agencies to avoid or limit impact on wildlife, fisheries, and vegetation, and the applicant's response to the recommendations.

(f) *Resource Report 4—Cultural resources.* This report is required for all applications. In order to prepare this report, the applicant must follow the principles in §380.14 of this part. Guidance on the content and the format for the documentation listed below, as well as professional qualifications of preparers, is detailed in "OPR's Guidelines for Reporting on Cultural Resources Investigations," which is available from the Commission Internet home page or from the Commission staff.

(1) Resource Report 4 must contain:

(i) Documentation of the applicant's initial cultural resources consultation, including consultations with Native Americans and other interested persons (if appropriate);

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(ii) Overview and Survey Reports, as appropriate;

(iii) Evaluation Report, as appropriate;

(iv) Treatment Plan, as appropriate; and

(v) Written comments from State Historic Preservation Officer(s) (SHPO), Tribal Historic Preservation Officers (THPO), as appropriate, and applicable land-managing agencies on the reports in paragraphs (f)(1)(i)–(iv) of this section.

(2) *Initial filing requirements.* The initial application must include the Documentation of initial cultural resource consultation, the Overview and Survey Reports, if required, and written comments from SHPOs, THPOs and land-managing agencies, if available. The initial cultural resources consultations should establish the need for surveys. If surveys are deemed necessary by the consultation with the SHPO/THPO, the survey report must be filed with the application.

(i) If the comments of the SHPOs, THPOs, or land-management agencies are not available at the time the application is filed, they may be filed separately, but they must be filed before a final certificate is issued.

(ii) If landowners deny access to private property and certain areas are not surveyed, the unsurveyed area must be identified by mileposts, and supplemental surveys or evaluations shall be conducted after access is granted. In such circumstances, reports, and treatment plans, if necessary, for those inaccessible lands may be filed after a certificate is issued.

(3) The Evaluation Report and Treatment Plan, if required, for the entire project must be filed before a final certificate is issued.

(i) The Evaluation Report may be combined in a single synthetic report with the Overview and Survey Reports if the SHPOs, THPOs, and land-management agencies allow and if it is available at the time the application is filed.

(ii) In preparing the Treatment Plan, the applicant must consult with the Commission staff, the SHPO, and any applicable THPO and land-management agencies.

(iii) Authorization to implement the Treatment Plan will occur only after the final certificate is issued.

(4) Applicant must request privileged treatment for all material filed with the Commission containing location, character, and ownership information about cultural resources in accordance with § 388.112 of this chapter. The cover and relevant pages or portions of the report should be clearly labeled in bold lettering: “CONTAINS PRIVILEGED INFORMATION—DO NOT RELEASE.”

(5) Except as specified in a final Commission order, or by the Director of the Office of Pipeline Regulation, construction may not begin until all cultural resource reports and plans have been approved.

(g) *Resource Report 5—Socioeconomics.* This report is required only for applications involving significant above-ground facilities, including, among others, conditioning or liquefied natural gas (LNG) plants. It must identify and quantify the impacts of constructing and operating the proposed project on factors affecting towns and counties in the vicinity of the project. Resource Report 5 must:

(1) Describe the socioeconomic impact area.

(2) Evaluate the impact of any substantial immigration of people on governmental facilities and services and plans to reduce the impact on the local infrastructure.

(3) Describe on-site manpower requirements and payroll during construction and operation, including the number of construction personnel who currently reside within the impact area, would commute daily to the site from outside the impact area, or would relocate temporarily within the impact area.

(4) Determine whether existing housing within the impact area is sufficient to meet the needs of the additional population.

(5) Describe the number and types of residences and businesses that would be displaced by the project, procedures to be used to acquire these properties, and types and amounts of relocation assistance payments.

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(6) Conduct a fiscal impact analysis evaluating incremental local government expenditures in relation to incremental local government revenues that would result from construction of the project. Incremental expenditures include, but are not limited to, school operating costs, road maintenance and repair, public safety, and public utility costs.

(h) *Resource Report 6—Geological resources.* This report is required for applications involving LNG facilities and all other applications, except those involving only facilities within the boundaries of existing aboveground facilities, such as a compressor, meter, or regulator station. It must describe geological resources and hazards in the project area that might be directly or indirectly affected by the proposed action or that could place the proposed facilities at risk, the potential effects of those hazards on the facility, and methods proposed to reduce the effects or risks. Resource Report 6 must:

(1) Describe, by milepost, mineral resources that are currently or potentially exploitable;

(2) Describe, by milepost, existing and potential geological hazards and areas of nonroutine geotechnical concern, such as high seismicity areas, active faults, and areas susceptible to soil liquefaction; planned, active, and abandoned mines; karst terrain; and areas of potential ground failure, such as subsidence, slumping, and landsliding. Discuss the hazards posed to the facility from each one.

(3) Describe how the project would be located or designed to avoid or minimize adverse effects to the resources or risk to itself, including geotechnical investigations and monitoring that would be conducted before, during, and after construction. Discuss also the potential for blasting to affect structures, and the measures to be taken to remedy such effects.

(4) Specify methods to be used to prevent project-induced contamination from surface mines or from mine tailings along the right-of-way and whether the project would hinder mine reclamation or expansion efforts.

(5) If the application involves an LNG facility located in zones 2, 3, or 4 of the Uniform Building Code's Seismic Risk

Map, or where there is potential for surface faulting or liquefaction, prepare a report on earthquake hazards and engineering in conformance with "*Data Requirements for the Seismic Review of LNG Facilities*," NBSIR 84-2833. This document may be obtained from the Commission staff.

(6) If the application is for underground storage facilities:

(i) Describe how the applicant would control and monitor the drilling activity of others within the field and buffer zone;

(ii) Describe how the applicant would monitor potential effects of the operation of adjacent storage or production facilities on the proposed facility, and vice versa;

(iii) Describe measures taken to locate and determine the condition of old wells within the field and buffer zone and how the applicant would reduce risk from failure of known and undiscovered wells; and

(iv) Identify and discuss safety and environmental safeguards required by state and Federal drilling regulations.

(i) *Resource Report 7—Soils.* This report is required for all applications except those not involving soil disturbance. It must describe the soils that would be affected by the proposed project, the effect on those soils, and measures proposed to minimize or avoid impact. Resource Report 7 must:

(1) List, by milepost, the soil associations that would be crossed and describe the erosion potential, fertility, and drainage characteristics of each association.

(2) If an aboveground facility site is greater than 5 acres:

(i) List the soil series within the property and the percentage of the property comprised of each series;

(ii) List the percentage of each series which would be permanently disturbed;

(iii) Describe the characteristics of each soil series; and

(iv) Indicate which are classified as prime or unique farmland by the U.S. Department of Agriculture, Natural Resources Conservation Service.

(3) Identify, by milepost, potential impact from: Soil erosion due to water, wind, or loss of vegetation; soil compaction and damage to soil structure

resulting from movement of construction vehicles; wet soils and soils with poor drainage that are especially prone to structural damage; damage to drainage tile systems due to movement of construction vehicles and trenching activities; and interference with the operation of agricultural equipment due to the probability of large stones or blasted rock occurring on or near the surface as a result of construction.

(4) Identify, by milepost, cropland and residential areas where loss of soil fertility due to trenching and back-filling could occur.

(5) Describe proposed mitigation measures to reduce the potential for adverse impact to soils or agricultural productivity. Compare proposed mitigation measures with the staff's current "*Upland Erosion Control, Revegetation and Maintenance Plan*", which is available from the Commission Internet home page or from the Commission staff, and explain how proposed mitigation measures provide equivalent or greater protections to the environment.

(j) *Resource Report 8—Land use, recreation and aesthetics*. This report is required for all applications except those involving only facilities which are of comparable use at existing compressor, meter, and regulator stations. It must describe the existing uses of land on, and (where specified) within 0.25 mile of, the proposed project and changes to those land uses that would occur if the project is approved. The report shall discuss proposed mitigation measures, including protection and enhancement of existing land use. Resource Report 8 must:

(1) Describe the width and acreage requirements of all construction and permanent rights-of-way and the acreage required for each proposed plant and operational site, including injection or withdrawal wells.

(i) List, by milepost, locations where the proposed right-of-way would be adjacent to existing rights-of-way of any kind.

(ii) Identify, preferably by diagrams, existing rights-of-way that would be used for a portion of the construction or operational right-of-way, the overlap and how much additional width would be required.

(iii) Identify the total amount of land to be purchased or leased for each aboveground facility, the amount of land that would be disturbed for construction and operation of the facility, and the use of the remaining land not required for project operation.

(iv) Identify the size of typical staging areas and expanded work areas, such as those at railroad, road, and waterbody crossings, and the size and location of all pipe storage yards and access roads.

(2) Identify, by milepost, the existing use of lands crossed by the proposed pipeline, or on or adjacent to each proposed plant and operational site.

(3) Describe planned development on land crossed or within 0.25 mile of proposed facilities, the time frame (if available) for such development, and proposed coordination to minimize impacts on land use. Planned development means development which is included in a master plan or is on file with the local planning board or the county.

(4) Identify, by milepost and length of crossing, the area of direct effect of each proposed facility and operational site on sugar maple stands, orchards and nurseries, landfills, operating mines, hazardous waste sites, state wild and scenic rivers, state or local designated trails, nature preserves, game management areas, remnant prairie, old-growth forest, national or state forests, parks, golf courses, designated natural, recreational or scenic areas, or registered natural landmarks, Native American religious sites and traditional cultural properties to the extent they are known to the public at large, and reservations, lands identified under the Special Area Management Plan of the Office of Coastal Zone Management, National Oceanic and Atmospheric Administration, and lands owned or controlled by Federal or state agencies or private preservation groups. Also identify if any of those areas are located within 0.25 mile of any proposed facility.

(5) Identify, by milepost, all residences and buildings within 50 feet of the proposed pipeline construction right-of-way and the distance of the residence or building from the right-of-

way. Provide survey drawings or alignment sheets to illustrate the location of the facilities in relation to the buildings.

(6) Describe any areas crossed by or within 0.25 mile of the proposed pipeline or plant and operational sites which are included in, or are designated for study for inclusion in: The National Wild and Scenic Rivers System (16 U.S.C. 1271); The National Trails System (16 U.S.C. 1241); or a wilderness area designated under the Wilderness Act (16 U.S.C. 1132).

(7) For facilities within a designated coastal zone management area, provide a consistency determination or evidence that the applicant has requested a consistency determination from the state's coastal zone management program.

(8) Describe the impact the project will have on present uses of the affected area as identified above, including commercial uses, mineral resources, recreational areas, public health and safety, and the aesthetic value of the land and its features. Describe any temporary or permanent restrictions on land use resulting from the project.

(9) Describe mitigation measures intended for all special use areas identified under paragraphs (j)(2) through (6) of this section.

(10) Describe proposed typical mitigation measures for each residence that is within 50 feet of the edge of the pipeline construction right-of-way, as well as any proposed residence-specific mitigation. Describe how residential property, including for example, fences, driveways, stone walls, sidewalks, water supply, and septic systems, would be restored. Describe compensation plans for temporary and permanent rights-of-way and the eminent domain process for the affected areas.

(11) Describe measures proposed to mitigate the aesthetic impact of the facilities especially for aboveground facilities such as compressor or meter stations.

(12) Demonstrate that applications for rights-of-way or other proposed land use have been or soon will be filed with Federal land-management agencies with jurisdiction over land that would be affected by the project.

(k) *Resource Report 9—Air and noise quality.* This report is required for applications involving compressor facilities at new or existing stations, and for all new LNG facilities. It must identify the effects of the project on the existing air quality and noise environment and describe proposed measures to mitigate the effects. Resource Report 9 must:

(1) Describe the existing air quality, including background levels of nitrogen dioxide and other criteria pollutants which may be emitted above EPA-identified significance levels.

(2) Quantitatively describe existing noise levels at noise-sensitive areas, such as schools, hospitals, or residences and include any areas covered by relevant state or local noise ordinances.

(i) Report existing noise levels as the L_{eq} (day), L_{eq} (night), and L_{dn} and include the basis for the data or estimates.

(ii) For existing compressor stations, include the results of a sound level survey at the site property line and nearby noise-sensitive areas while the compressors are operated at full load.

(iii) For proposed new compressor station sites, measure or estimate the existing ambient sound environment based on current land uses and activities.

(iv) Include a plot plan that identifies the locations and duration of noise measurements, the time of day, weather conditions, wind speed and direction, engine load, and other noise sources present during each measurement.

(3) Estimate the impact of the project on air quality, including how existing regulatory standards would be met.

(i) Provide the emission rate of nitrogen oxides from existing and proposed facilities, expressed in pounds per hour and tons per year for maximum operating conditions, include supporting calculations, emission factors, fuel consumption rates, and annual hours of operation.

(ii) For major sources of air emissions (as defined by the Environmental Protection Agency), provide copies of applications for permits to construct

(and operate, if applicable) or for applicability determinations under regulations for the prevention of significant air quality deterioration and subsequent determinations.

(4) Provide a quantitative estimate of the impact of the project on noise levels at noise-sensitive areas, such as schools, hospitals, or residences.

(i) Include step-by-step supporting calculations or identify the computer program used to model the noise levels, the input and raw output data and all assumptions made when running the model, far-field sound level data for maximum facility operation, and the source of the data.

(ii) Include sound pressure levels for unmuffled engine inlets and exhausts, engine casings, and cooling equipment; dynamic insertion loss for all mufflers; sound transmission loss for all compressor building components, including walls, roof, doors, windows and ventilation openings; sound attenuation from the station to nearby noise-sensitive areas; the manufacturer's name, the model number, the performance rating; and a description of each noise source and noise control component to be employed at the proposed compressor station. For proposed compressors the initial filing must include at least the proposed horsepower, type of compression, and energy source for the compressor.

(iii) Far-field sound level data measured from similar units in service elsewhere, when available, may be substituted for manufacturer's far-field sound level data.

(iv) If specific noise control equipment has not been chosen, include a schedule for submitting the data prior to certification.

(v) The estimate must demonstrate that the project will comply with applicable noise regulations and show how the facility will meet the following requirements:

(A) The noise attributable to any new compressor station, compression added to an existing station, or any modification, upgrade or update of an existing station, must not exceed a day-night sound level (L_{dn}) of 55 dBA at any pre-existing noise-sensitive area (such as schools, hospitals, or residences).

(B) New compressor stations or modifications of existing stations shall not result in a perceptible increase in vibration at any noise-sensitive area.

(5) Describe measures and manufacturer's specifications for equipment proposed to mitigate impact to air and noise quality, including emission control systems, installation of filters, mufflers, or insulation of piping and buildings, and orientation of equipment away from noise-sensitive areas.

(1) *Resource Report 10—Alternatives.* This report is required for all applications. It must describe alternatives to the project and compare the environmental impacts of such alternatives to those of the proposal. The discussion must demonstrate how environmental benefits and costs were weighed against economic benefits and costs, and technological and procedural constraints. The potential for each alternative to meet project deadlines and the environmental consequences of each alternative shall be discussed. Resource Report 10 must:

(1) Discuss the "no action" alternative and the potential for accomplishing the proposed objectives through the use of other systems and/or energy conservation. Provide an analysis of the relative environmental benefits and costs for each alternative.

(2) Describe alternative routes or locations considered for each facility during the initial screening for the project.

(i) For alternative routes considered in the initial screening for the project but eliminated, describe the environmental characteristics of each route or site, and the reasons for rejecting it. Identify the location of such alternatives on maps of sufficient scale to depict their location and relationship to the proposed action, and the relationship of the pipeline to existing rights-of-way.

(ii) For alternative routes or locations considered for more in-depth consideration, describe the environmental characteristics of each route or site and the reasons for rejecting it. Provide comparative tables showing the

differences in environmental characteristics for the alternative and proposed action. The location of any alternatives in this paragraph shall be provided on maps equivalent to those required in paragraph (c)(2) of this section.

(m) *Resource Report 11—Reliability and safety.* This report is required for applications involving new or recommissioned LNG facilities. Information previously filed with the Commission need not be refiled if the applicant verifies its continued validity. This report shall address the potential hazard to the public from failure of facility components resulting from accidents or natural catastrophes, how these events would affect reliability, and what procedures and design features have been used to reduce potential hazards. Resource Report 11 must:

(1) Describe measures proposed to protect the public from failure of the proposed facilities (including coordination with local agencies).

(2) Discuss hazards, the environmental impact, and service interruptions which could reasonably ensue from failure of the proposed facilities.

(3) Discuss design and operational measures to avoid or reduce risk.

(4) Discuss contingency plans for maintaining service or reducing downtime.

(5) Describe measures used to exclude the public from hazardous areas. Discuss measures used to minimize problems arising from malfunctions and accidents (with estimates of probability of occurrence) and identify standard procedures for protecting services and public safety during maintenance and breakdowns.

(n) *Resource Report 12—PCB contamination.* This report is required for applications involving the replacement, abandonment by removal, or abandonment in place of pipeline facilities determined to have polychlorinated biphenyls (PCBs) in excess of 50 ppm in pipeline liquids. Resource Report 12 must:

(1) Provide a statement that activities would comply with an approved EPA disposal permit, with the dates of issuance and expiration specified, or with the requirements of the Toxic Substances Control Act.

(2) For compressor station modifications on sites that have been determined to have soils contaminated with PCBs, describe the status of remediation efforts completed to date.

(o) *Resource Report 13—Engineering and design material.* This report is required for construction of new liquefied natural gas (LNG) facilities, or the recommissioning of existing LNG facilities. If the recommissioned facility is existing and is not being replaced, relocated, or significantly altered, resubmittal of information already on file with the Commission is unnecessary. Resource Report 13 must:

(1) Provide a detailed plot plan showing the location of all major components to be installed, including compression, pretreatment, liquefaction, storage, transfer piping, vaporization, truck loading/unloading, vent stacks, pumps, and auxiliary or appurtenant service facilities.

(2) Provide a detailed layout of the fire protection system showing the location of fire water pumps, piping, hydrants, hose reels, dry chemical systems, high expansion foam systems, and auxiliary or appurtenant service facilities.

(3) Provide a layout of the hazard detection system showing the location of combustible-gas detectors, fire detectors, heat detectors, smoke or combustion product detectors, and low temperature detectors. Identify those detectors that activate automatic shutdowns and the equipment that would shut down. Include all safety provisions incorporated in the plant design, including automatic and manually activated emergency shutdown systems.

(4) Provide a detailed layout of the spill containment system showing the location of impoundments, sumps, subdikes, channels, and water removal systems.

(5) Provide manufacturer's specifications, drawings, and literature on the fail-safe shut-off valve for each loading area at a marine terminal (if applicable).

(6) Provide a detailed layout of the fuel gas system showing all taps with process components.

(7) Provide copies of company, engineering firm, or consultant studies of a

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conceptual nature that show the engineering planning or design approach to the construction of new facilities or plants.

(8) Provide engineering information on major process components related to the first six items above, which include (as applicable) function, capacity, type, manufacturer, drive system (horsepower, voltage), operating pressure, and temperature.

(9) Provide manuals and construction drawings for LNG storage tank(s).

(10) Provide up-to-date piping and instrumentation diagrams. Include a description of the instrumentation and control philosophy, type of instrumentation (pneumatic, electronic), use of computer technology, and control room display and operation. Also, provide an overall schematic diagram of the entire process flow system, including maps, materials, and energy balances.

(11) Provide engineering information on the plant's electrical power generation system, distribution system, emergency power system, uninterruptible power system, and battery backup system.

(12) Identify of all codes and standards under which the plant (and marine terminal, if applicable) will be designed, and any special considerations or safety provisions that were applied to the design of plant components.

(13) Provide a list of all permits or approvals from local, state, Federal, or Native American groups or Indian agencies required prior to and during construction of the plant, and the status of each, including the date filed, the date issued, and any known obstacles to approval. Include a description of data records required for submission to such agencies and transcripts of any public hearings by such agencies. Also provide copies of any correspondence relating to the actions by all, or any, of these agencies regarding all required approvals.

(14) Identify how each applicable requirement will comply with 49 CFR part 193 and the National Fire Protection Association 59A LNG Standards. For new facilities, the siting requirements of 49 CFR part 193, subpart B, must be given special attention. If applicable, vapor dispersion calculations

from LNG spills over water should also be presented to ensure compliance with the U.S. Coast Guard's LNG regulations in 33 CFR part 127.

(15) Provide seismic information specified in Data Requirements for the Seismic Review of LNG facilities (NBSIR 84-2833, available from FERC staff) for facilities that would be located in zone 2, 3, or 4 of the Uniform Building Code Seismic Map of the United States.

[Order 603, 64 FR 26611, May 14, 1999, as amended by Order 603-A, 64 FR 54537, Oct. 7, 1999; Order 609, 64 FR 57392, Oct. 25, 1999]

§ 380.13 Compliance with the Endangered Species Act.

(a) *Definitions.* For purposes of this section:

(1) *Listed species* and *critical habitat* have the same meaning as provided in 50 CFR 402.02.

(2) *Project area* means any area subject to construction activities (for example, material storage sites, temporary work areas, and new access roads) necessary to install or abandon the facilities.

(b) *Procedures for informal consultation*—(1) *Designation of non-Federal representative.* The project sponsor is designated as the Commission's non-Federal representative for purposes of informal consultations with the U.S. Fish and Wildlife Service (FWS) and the National Marine Fisheries Service (NMFS) under the Endangered Species Act of 1973, as amended (ESA).

(2) *Consultation requirement.* (i) Prior to the filing of the environmental report specified in § 380.12, the project sponsor must contact the appropriate regional or field office of the FWS or the NMFS, or both if appropriate, to initiate informal consultations, unless it is proceeding pursuant to a blanket clearance issued by the FWS and/or NMFS which is less than 1 year old and the clearance does not specify more frequent consultation.

(ii) If a blanket clearance is more than 1 year old or less than 1 year old and specifies more frequent consultations, or if the project sponsor is not proceeding pursuant to a blanket clearance, the project sponsor must request a list of federally listed or proposed

species and designated or proposed critical habitat that may be present in the project area, or provide the consulted agency with such a list for its concurrence.

(iii) The consulted agency will provide a species and critical habitat list or concur with the species list provided within 30 days of its receipt of the initial request. In the event that the consulted agency does not provide this information within this time period, the project sponsor may notify the Director of the Office of Pipeline Regulation and continue with the remaining procedures of this section.

(3) *End of informal consultation.* (i) At any time during the informal consultations, the consulted agency may determine or confirm:

(A) That no listed or proposed species, or designated or proposed critical habitat, occurs in the project area; or

(B) That the project is not likely to adversely affect a listed species or critical habitat;

(ii) If the consulted agency provides the determination or confirmation described in paragraph (b)(3)(i) of this section, no further consultation is required.

(4) *Potential impact to proposed species.*

(i) If the consulted agency, pursuant to informal consultations, initially determines that any species proposed to be listed, or proposed critical habitat, occurs in the project area, the project sponsor must confer with the consulted agency on methods to avoid or reduce the potential impact.

(ii) The project sponsor shall include in its proposal, a discussion of any mitigating measures recommended through the consultation process.

(5) *Continued informal consultations for listed species.* (i) If the consulted agency initially determines, pursuant to the informal consultations, that a listed species or designated critical habitat may occur in the project area, the project sponsor must continue informal consultations with the consulted agency to determine if the proposed project may affect the species or designated critical habitat. These consultations may include discussions with experts (including experts provided by the consulted agency), habitat identification, field surveys, biological analyses, and

the formulation of mitigation measures. If the provided information indicates that the project is not likely to adversely affect a listed species or critical habitat, the consulting agency will provide a letter of concurrence which completes informal consultation.

(ii) The project sponsor must prepare a Biological Assessment unless the consulted agency indicates that the proposed project is not likely to adversely affect a specific listed species or its designated critical habitat. The Biological Assessment must contain the following information for each species contained in the consulted agency's species list:

(A) Life history and habitat requirements;

(B) Results of detailed surveys to determine if individuals, populations, or suitable, unoccupied habitat exists in the proposed project's area of effect;

(C) Potential impacts, both beneficial and negative, that could result from the construction and operation of the proposed project, or disturbance associated with the abandonment, if applicable; and

(D) Proposed mitigation that would eliminate or minimize these potential impacts.

(iii) All surveys must be conducted by qualified biologists and must use FWS and/or NMFS approved survey methodology. In addition, the Biological Assessment must include the following information:

(A) Name(s) and qualifications of person(s) conducting the survey;

(B) Survey methodology;

(C) Date of survey(s); and

(D) Detailed and site-specific identification of size and location of all areas surveyed.

(iv) The project sponsor must provide a draft Biological Assessment directly to the environmental staff of the Office of Pipeline Regulation for review and comment and/or submission to the consulted agency. If the consulted agency fails to provide formal comments on the Biological Assessment to the project sponsor within 30 days of its receipt, as specified in 50 CFR 402.120, the project sponsor may notify the Director, OPR, and follow the procedures in paragraph (c) of this section.

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(v) The consulted agency's comments on the Biological Assessment's determination must be filed with the Commission.

(c) *Notification to Director.* In the event that the consulted agency fails to respond to requests by the project sponsor under paragraph (b) of this section, the project sponsor must notify the Director of the Office of Pipeline Regulation. The notification must include all information, reports, letters, and other correspondence prepared pursuant to this section. The Director will determine whether:

(1) Additional informal consultation is required;

(2) Formal consultation must be initiated under paragraph (d) of this section; or

(3) Construction may proceed.

(d) *Procedures for formal consultation.*

(1) In the event that formal consultation is required pursuant to paragraphs (b)(5)(v) or (c)(2) of this section, the Commission staff will initiate formal consultation with the FWS and/or NMFS, as appropriate, and will request that the consulted agency designate a lead Regional Office, lead Field/District Office, and Project Manager, as necessary, to facilitate the formal consultation process. In addition, the Commission will designate a contact for formal consultation purposes.

(2) During formal consultation, the consulted agency, the Commission, and the project sponsor will coordinate and consult to determine potential impacts and mitigation which can be implemented to minimize impacts. The Commission and the consulted agency will schedule coordination meetings and/or field visits as necessary.

(3) The formal consultation period will last no longer than 90 days, unless the consulted agency, the Commission, and project sponsor mutually agree to an extension of this time period.

(4) The consulted agency will provide the Commission with a Biological Opinion on the proposed project, as specified in 50 CFR 402.14(e), within 45 days of the completion of formal consultation.

[Order 603, 64 FR 26617, May 14, 1999]

§ 380.14 Compliance with the National Historic Preservation Act.

(a) Section 106 of the National Historic Preservation Act, as amended (16 U.S.C. 470(f)) (NHPA), requires the Commission take into account the effect of a proposed project on any historic property and to afford the Advisory Council on Historic Preservation (Council) an opportunity to comment on projects if required under 36 CFR 800. The project sponsor, as a non-Federal party, assists the Commission in meeting its obligations under NHPA section 106 and the implementing regulations at 36 CFR part 800 by following the procedures at § 380.12(f). The project sponsor may contact the Commission at any time for assistance. The Commission will review the resultant filings.

(1) The Commission's NHPA section 106 responsibilities apply to public and private lands, unless subject to the provisions of paragraph (a)(2) of this section. The project sponsor will assist the Commission in taking into account the views of interested parties, Native Americans, and tribal leaders.

(2) If Federal or Tribal land is affected by a proposed project, the project sponsor shall adhere to any requirements for cultural resources studies of the applicable Federal land-managing agencies on Federal lands and any tribal requirements on Tribal lands. The project sponsor must identify, in Resource Report 4 filed with the application, the status of cultural resources studies on Federal or Tribal lands, as applicable.

(3) The project sponsor must consult with the SHPO(s) and THPOs, if appropriate. If the SHPO or THPO declines to consult with the project sponsor, the project sponsor shall not continue with consultations, except as instructed by the Director of the Office of Pipeline Regulation.

(4) If the project is covered by an agreement document among the Commission, Council, SHPO(s), THPO(s), land-managing agencies, project sponsors, and interested persons, as appropriate, then that agreement will provide for compliance with NHPA section 106, as applicable.

(b) [Reserved]

[Order 603, 64 FR 26618, May 14, 1999]

§ 380.15 Siting and maintenance requirements.

(a) *Avoidance or minimization of effects.* The siting, construction, and maintenance of facilities shall be undertaken in a way that avoids or minimizes effects on scenic, historic, wildlife, and recreational values.

(b) *Landowner consideration.* The desires of landowners should be taken into account in the planning, locating, clearing, and maintenance of rights-of-way and the construction of facilities on their property, so long as the result is consistent with applicable requirements of law, including laws relating to land-use and any requirements imposed by the Commission.

(c) *Safety regulations.* The requirements of this paragraph do not affect a project sponsor's obligation to comply with safety regulations of the U.S. Department of Transportation and recognized safe engineering practices.

(d) *Pipeline construction.* (1) The use, widening, or extension of existing rights-of-way must be considered in locating proposed facilities.

(2) In locating proposed facilities, the project sponsor shall, to the extent practicable, avoid places listed on, or eligible for listing on, the National Register of Historic Places; natural landmarks listed on the National Register of Natural Landmarks; officially designated parks; wetlands; and scenic, recreational, and wildlife lands. If rights-of-way must be routed near or through such places, attempts should be made to minimize visibility from areas of public view and to preserve the character and existing environment of the area.

(3) Rights-of-way should avoid forested areas and steep slopes where practical.

(4) Rights-of-way clearing should be kept to the minimum width necessary.

(5) In selecting a method to clear rights-of-way, soil stability and protection of natural vegetation and adjacent resources should be taken into account.

(6) Trees and vegetation cleared from rights-of-way in areas of public view

should be disposed of without undue delay.

(7) Remaining trees and shrubs should not be unnecessarily damaged.

(8) Long foreground views of cleared rights-of-way through wooded areas that are visible from areas of public view should be avoided.

(9) Where practical, rights-of-way should avoid crossing hills and other high points at their crests where the crossing is in a forested area and the resulting notch is clearly visible in the foreground from areas of public view.

(10) Screen plantings should be employed where rights-of-way enter forested areas from a clearing and where the clearing is plainly visible in the foreground from areas of public view.

(11) Temporary roads should be designed for proper drainage and built to minimize soil erosion. Upon abandonment, the road area should be restored and stabilized without undue delay.

(e) *Right-of-way maintenance.* (1) Vegetation covers established on a right-of-way should be properly maintained.

(2) Access and service roads should be maintained with proper cover, water bars, and the proper slope to minimize soil erosion. They should be jointly used with other utilities and land-management agencies where practical.

(3) Chemical control of vegetation should not be used unless authorized by the landowner or land-managing agency. When chemicals are used for control of vegetation, they should be approved by EPA for such use and used in conformance with all applicable regulations.

(f) *Construction of aboveground facilities.* (1) Unobtrusive sites should be selected for the location of aboveground facilities.

(2) Aboveground facilities should cover the minimum area practicable.

(3) Noise potential should be considered in locating compressor stations, or other aboveground facilities.

(4) The exterior of aboveground facilities should be harmonious with the surroundings and other buildings in the area.

(5) The site of aboveground facilities which are visible from nearby residences or public areas, should be planted in trees and shrubs, or other appropriate landscaping and should be installed to enhance the appearance of the facilities, consistent with operating needs.

[Order 603, 64 FR 26619, May 14, 1999]

APPENDIX A TO PART 380—MINIMUM FILING REQUIREMENTS FOR ENVIRONMENTAL REPORTS UNDER THE NATURAL GAS ACT

ENVIRONMENTAL REPORTS UNDER THE NATURAL GAS ACT.

Resource Report 1—General Project Description

1. Provide a detailed description and location map of the project facilities. (§380.12(c)(1)).
2. Describe any nonjurisdictional facilities that would be built in association with the project. (§380.12(c)(2)).
3. Provide current original U.S. Geological Survey (USGS) 7.5-minute-series topographic maps with mileposts showing the project facilities; (§380.12(c)(3)).
4. Provide aerial images or photographs or alignment sheets based on these sources with mileposts showing the project facilities; (§380.12(c)(3)).
5. Provide plot/site plans of compressor stations showing the location of the nearest noise-sensitive areas (NSA) within 1 mile. (§380.12(c)(3,4)).
6. Describe construction and restoration methods. (§380.12(c)(6)).
7. Identify the permits required for construction across surface waters. (§380.12(c)(9)).
8. Provide the names and address of all affected landowners and certify that all affected landowners will be notified as required in §157.6(d). (§§380.12(c)(10))

Resource Report 2—Water Use and Quality

1. Identify all perennial surface waterbodies crossed by the proposed project and their water quality classification. (§380.12(d)(1)).
2. Identify all waterbody crossings that may have contaminated waters or sediments. (§380.12(d)(1)).
3. Identify watershed areas, designated surface water protection areas, and sensitive waterbodies crossed by the proposed project. (§380.12(d)(1)).
4. Provide a table (based on NWI maps if delineations have not been done) identifying all wetlands, by milepost and length, crossed by the project (including abandoned pipeline), and the total acreage and acreage of

each wetland type that would be affected by construction. (§380.12(d)(1 & 4)).

5. Discuss construction and restoration methods proposed for crossing wetlands, and compare them to staff's Wetland and Waterbody Construction and Mitigation Procedures; (§380.12(d)(2)).

6. Describe the proposed waterbody construction, impact mitigation, and restoration methods to be used to cross surface waters and compare to the staff's Wetland and Waterbody Construction and Mitigation Procedures. (§380.12(d)(2)).

7. Provide original National Wetlands Inventory (NWI) maps or the appropriate state wetland maps, if NWI maps are not available, that show all proposed facilities and include milepost locations for proposed pipeline routes. (§380.12(d)(4)).

8. Identify all U.S. Environmental Protection Agency (EPA)- or state- designated aquifers crossed. (§380.12(d)(9)).

Resource Report 3—Vegetation and Wildlife

1. Classify the fishery type of each surface waterbody that would be crossed, including fisheries of special concern. (§380.12(e)(1)).
2. Describe terrestrial and wetland wildlife and habitats that would be affected by the project. (§380.12(e)(2)).
3. Describe the major vegetative cover types that would be crossed and provide the acreage of each vegetative cover type that would be affected by construction. (§380.12(e)(3)).
4. Describe the effects of construction and operation procedures on the fishery resources and proposed mitigation measures. (§380.12(e)(4)).
5. Evaluate the potential for short-term, long-term, and permanent impact on the wildlife resources and state-listed endangered or threatened species caused by construction and operation of the project and proposed mitigation measures. (§380.12(e)(4)).
6. Identify all federally listed or proposed endangered or threatened species that potentially occur in the vicinity of the project and discuss the results of the consultations with other agencies. Include survey reports as specified in §380.12(e)(5).
7. Identify all federally listed essential fish habitat (EFH) that potentially occurs in the vicinity of the project and the results of abbreviated consultations with NMFS, and any resulting EFH assessments. (§380.12(e)(6))
8. Describe any significant biological resources that would be affected. Describe impact and any mitigation proposed to avoid or minimize that impact. (§§380.12(e)(4 & 7))

Resource Report 4—Cultural Resources

See §380.14 and "OPR's Guidelines for Reporting on Cultural Resources Investigations" for further guidance.

1. Initial cultural resources consultation and documentation, and documentation of consultation with Native Americans. (§380.12(f)(1)(i) & (2)).

2. Overview/Survey Report(s). (§380.12(f)(1)(ii) & (2)).

Resource Report 5—Socioeconomics

1. For major aboveground facilities and major pipeline projects that require an EIS, describe existing socioeconomic conditions within the project area. (§380.12(g)(1)).

2. For major aboveground facilities, quantify impact on employment, housing, local government services, local tax revenues, transportation, and other relevant factors within the project area. (§380.12(g)(2–6)).

Resource Report 6—Geological Resources

1. Identify the location (by milepost) of mineral resources and any planned or active surface mines crossed by the proposed facilities. (§380.12(h)(1) & (2)).

2. Identify any geologic hazards to the proposed facilities. (§380.12(h)(2))

3. Discuss the need for and locations where blasting may be necessary in order to construct the proposed facilities. (§380.12(h)(3))

4. For LNG projects in seismic areas, the materials required by “Data Requirements for the Seismic Review of LNG Facilities,” NBSIR84-2833. (§380.12(h)(5))

5. For underground storage facilities, how drilling activity by others within or adjacent to the facilities would be monitored, and how old wells would be located and monitored within the facility boundaries. (§380.12(h)(6))

Resource Report 7—Soils

1. Identify, describe, and group by milepost the soils affected by the proposed pipeline and aboveground facilities. (§380.12(i)(1))

2. For aboveground facilities that would occupy sites over 5 acres, determine the acreage of prime farmland soils that would be affected by construction and operation. (§380.12(i)(2))

3. Describe, by milepost, potential impacts on soils. (§380.12(i)(3,4))

4. Identify proposed mitigation to minimize impact on soils, and compare with the staff’s Upland Erosion Control, Revegetation, and Maintenance Plan. (§380.12(i)(5))

Resource Report 8—Land Use, Recreation and Aesthetics

1. Classify and quantify land use affected by: (§380.12(j)(1))

a. Pipeline construction and permanent rights-of-way (§380.12(j)(1));

b. Extra work/staging areas (§380.12(j)(1));

c. Access roads (§380.12(j)(1));

d. Pipe and contractor yards (§380.12(j)(1)); and

e. Aboveground facilities (§380.12(j)(1)).

2. Identify by milepost all locations where the pipeline right-of-way would at least partially coincide with existing right-of-way, where it would be adjacent to existing rights-of-way, and where it would be outside of existing right-of-way. (§380.12(j)(1))

3. Provide detailed typical construction right-of-way cross-section diagrams showing information such as widths and relative locations of existing rights-of-way, new permanent right-of-way, and temporary construction right-of-way. (§380.12(j)(1))

4. Summarize the total acreage of land affected by construction and operation of the project. (§380.12(j)(1))

5. Identify by milepost all planned residential or commercial/business development and the time frame for construction. (§380.12(j)(3))

6. Identify by milepost special land uses (e.g., sugar maple stands, specialty crops, natural areas, national and state forests, conservation land, etc.). (§380.12(j)(4))

7. Identify by beginning milepost and length of crossing all land administered by Federal, state, or local agencies, or private conservation organizations. (§380.12(j)(4))

8. Identify by milepost all natural, recreational, or scenic areas, and all registered natural landmarks crossed by the project. (§380.12(j)(4 & 6))

9. Identify all facilities that would be within designated coastal zone management areas. Provide a consistency determination or evidence that a request for a consistency determination has been filed with the appropriate state agency. (§380.12(j)(4 & 7))

10. Identify by milepost all residences that would be within 50 feet of the construction right-of-way or extra work area. (§380.12(j)(5))

11. Identify all designated or proposed candidate National or State Wild and Scenic Rivers crossed by the project. (§380.12(j)(6))

12. Describe any measures to visually screen aboveground facilities, such as compressor stations. (§380.12(j)(11))

13. Demonstrate that applications for rights-of-way or other proposed land use have been or soon will be filed with Federal land-managing agencies with jurisdiction over land that would be affected by the project. (§380.12(j)(12))

Resource Report 9—Air and Noise Quality

1. Describe existing air quality in the vicinity of the project. (§380.12(k)(1))

2. Quantify the existing noise levels (day-night sound level (L_{dn}) and other applicable noise parameters) at noise-sensitive areas and at other areas covered by relevant state and local noise ordinances. (§380.12(k)(2))

3. Quantify existing and proposed emissions of compressor equipment, plus construction emissions, including nitrogen oxides (NO_x) and carbon monoxide (CO), and the basis for these calculations. Summarize

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anticipated air quality impacts for the project. (§380.12(k)(3))

4. Describe the existing compressor units at each station where new, additional, or modified compressor units are proposed, including the manufacturer, model number, and horsepower of the compressor units. For proposed new, additional, or modified compressor units include the horsepower, type, and energy source. (§380.12(k)(4)).

5. Identify any nearby noise-sensitive area by distance and direction from the proposed compressor unit building/enclosure. (§380.12(k)(4))

6. Identify any applicable state or local noise regulations. (§380.12(k)(4))

7. Calculate the noise impact at noise-sensitive areas of the proposed compressor unit modifications or additions, specifying how the impact was calculated, including manufacturer's data and proposed noise control equipment. (§380.12(k)(4))

Resource Report 10—Alternatives

1. Address the "no action" alternative. (§380.12(l)(1))

2. For large projects, address the effect of energy conservation or energy alternatives to the project. (§380.12(l)(1))

3. Identify system alternatives considered during the identification of the project and provide the rationale for rejecting each alternative. (§380.12(l)(1))

4. Identify major and minor route alternatives considered to avoid impact on sensitive environmental areas (e.g., wetlands, parks, or residences) and provide sufficient comparative data to justify the selection of the proposed route. (§380.12(l)(2)(ii))

5. Identify alternative sites considered for the location of major new aboveground facilities and provide sufficient comparative data to justify the selection of the proposed site. (§380.12(l)(2)(ii))

Resource Report 11—Reliability and Safety

Describe how the project facilities would be designed, constructed, operated, and maintained to minimize potential hazard to the public from the failure of project components as a result of accidents or natural catastrophes. (§380.12(m))

Resource Report 12—PCB Contamination

1. For projects involving the replacement or abandonment of facilities determined to have PCBs, provide a statement that activities would comply with an approved EPA disposal permit or with the requirements of the TSCA. (§380.12(n)(1))

2. For compressor station modifications on sites that have been determined to have soils contaminated with PCBs, describe the status of remediation efforts completed to date. (§380.12(n)(2))

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Provide all the listed detailed engineering materials. (§380.12(o))

[Order 603, 64 FR 26619, May 14, 1999, as amended by Order 603–A, 64 FR 54537, Oct. 7, 1999; Order 609, 64 FR 57392, Oct. 25, 1999; Order 609–A, 65 FR 15238, Mar. 22, 2000]

PART 381—FEES

Subpart A—General Provisions

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Subpart G—Fees Applicable to the Interstate Commerce Act and Related Authorities [Reserved]

Subpart H—Fees Applicable to the Public Utility Holding Company Act of 1935

381.801 Applications for exempt wholesale generator status.

AUTHORITY: 15 U.S.C. 717-717w; 16 U.S.C. 791-828c, 2601-2645; 31 U.S.C. 9701; 42 U.S.C. 7101-7352; 49 U.S.C. 60502; 49 App. U.S.C. 1-85.

SOURCE: Order 360, 49 FR 5081, Feb. 10, 1984, unless otherwise noted.

Subpart A—General Provisions

§ 381.101 Purpose.

The purpose of this part is to set forth the fees charged by the Commission for services and benefits provided by the Commission.

§ 381.102 Definitions.

For purposes of this part, the following definitions apply.

(a) *Person* means any person, group, association, organization, partnership, corporation, or business, except those authorized to engage in the transaction of official business for the United States Government.

(b) *Work year cost* means the ratio of the Commission's budgeted expenses during any given fiscal year to the authorized staff level for that fiscal year.

(c) *Work-month* means the amount of work represented by one employee's devotion of 100 percent of his or her time for one month.

(d) *Filing* means any application, tariff or rate filing, intervention, complaint, petition, request, or motion submitted to the Commission in connection with any of the services or benefits for which a fee is established in this part.

§ 381.103 Filings.

(a) *Submittal of fees.* Except as provided in §§ 274.201(e) and 381.106, a fee in the amount set forth in this part shall accompany each filing for which a fee has been established.

(b) *Deficiencies.* (1) Any filing that is not accompanied by either the fee established for that filing or a petition for waiver in accordance with § 381.106(b) is deficient.

(2) The Secretary will inform any person submitting a deficient filing that:

(i) Such filing will be rejected unless the appropriate fee is submitted within a time specified by the Secretary;

(ii) The Commission will not process any filing that is deficient under this paragraph; and

(iii) The date of filing is the date on which the Commission receives the appropriate fee.

(3) This provision does not preclude a determination that a filing is deficient for any other reason.

(c) *Choice of two or more fees.* If a filing for one service or benefit may be considered as falling within two or more categories or services for which a fee is established, that filing must be accompanied by the higher or highest of the applicable fees.

[Order 360, 49 FR 5081, Feb. 10, 1984, as amended by Order 394, 49 FR 35365, Sept. 7, 1984]

§ 381.104 Annual adjustment of fees.

(a) *Update and publication.* The Commission, by its designee the Executive Director, will update its fees each fiscal year according to the formula in paragraph (c) of this section. The Executive Director will publish the fees in the FEDERAL REGISTER.

(b) *Payment of updated fees.* Any person who submits a filing for which a fee is established in this part must pay the currently effective fee unless a waiver is granted.

(c) *Formula.* (1) Except as provided in paragraph (c)(2) of this section, the formula for determining each fee is the workmonths dedicated to the given fee category for the six fiscal years 1987 through 1992 or all years prior to FY 93 for which data are available divided by the number of actual completions in the six fiscal years 1987 through 1992 or all years prior to FY 93 for which data are available multiplied by the average monthly employee cost in the most recent fiscal year for which data are available.

(2) With respect to the fees charged to pipelines filing pursuant to § 381.207(a), the fee for the first year will be \$1,000. The formula for the fee in future years will be the workmonths

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from the immediately prior year divided by the number of actual completions in that year multiplied by the average monthly employee cost in the most recent fiscal year for which data are available. With the addition of future years, the formula for § 381.207(a) fees will be updated to include that year as part of the base period.

(d) *Effective date of fee.* Any fee updated under this section is effective on the thirtieth day after publication in the FEDERAL REGISTER of the revised sections in this part, unless otherwise specified in the FEDERAL REGISTER notice.

[Order 360, 49 FR 5081, Feb. 10, 1984, as amended by Order 494, 53 FR 15382, Apr. 29, 1988; Order 521, 55 FR 12171, Apr. 2, 1990; 58 FR 2975, Jan. 7, 1993]

§ 381.105 Method of payment.

Fee payment shall be made by check or money order payable to the Treasurer of the United States. The check should state the nature of the filing and the docket number where applicable so that the fee category for which the check is being submitted is clearly identifiable.

§ 381.106 Waivers.

(a) *Filing of petition.* If an applicant is suffering from severe economic hardship at the time of filing an application which makes the applicant economically unable to pay the appropriate fee for the application, rate change, tariff, petition, request or other filing requiring a fee, the applicant may submit an original and two copies of a petition for waiver with the application in lieu of the applicable fee. The petition for waiver must include evidence, such as a financial statement, clearly showing either that the applicant does not have the money to pay all or part of the fee, or that if the applicant does pay the fee, the applicant will be placed in financial distress or emergency.

(b) *Decision on petition.* The Commission or its designee will analyze each petition to determine whether the applicant has met the standards for waiver and then will notify the applicant of its grant or denial, in whole or in part. If the petition is denied, the applicant will have 30 days from the date of noti-

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fication of the denial to submit the appropriate fee to the Commission.

[Order 360, 49 FR 5081, Feb. 10, 1984, as amended by Order 395, 49 FR 35356, Sept. 7, 1984]

§ 381.107 Direct billing.

(a) *Applicability.* If a filing presents an issue of fact, law, policy, procedural difficulty, or technical complexity that requires an extraordinary amount of expense to process, the Commission may institute a direct billing procedure for the direct and indirect costs of processing that filing. The Commission will make a direct billing determination under this paragraph not later than one year after receiving a complete filing from an applicant.

(b) *Procedures.* (1) Direct billing will not be instituted with respect to any filing until the person who submitted the filing is notified that direct billing will be applied to the filing in lieu of the fees established under this part.

(2) Any fee submitted with the filing will be applied, as a credit, to the amount billed directly for processing costs. The Secretary will thereafter periodically bill the person who submitted the filing for the actual direct and indirect costs of processing the filing.

(3) If the Commission institutes a direct billing for the costs of a hearing and reduces the fee to the applicant to less than full cost recovery due to the presence of intervenors, the Commission will consider, on a case-by-case basis, direct billing the intervenors for all or part of the reduced portion.

[Order 360, 49 FR 5081, Feb. 10, 1984, as amended by Order 433, 50 FR 40346, Oct. 3, 1985; 58 FR 2975, Jan. 7, 1993]

§ 381.108 Exemptions.

(a) *Filing of petition.* States, municipalities and anyone who is engaged in the official business of the Federal Government are exempt from the fees required by this part and may file a petition for exemption in lieu of the applicable fee.

(b) *Decision on petition.* A petitioner may claim this exemption by filing an original and two copies of a petition for exemption that includes evidence that the petitioner is a State or municipality, or is engaged in the official

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business of the Federal Government. The Commission or its designee will analyze each petition to determine whether the petition has met the standards for exemption and will notify the petitioner whether it is granted or denied. If the petition is denied, the person will have thirty days from the date of notification of the denial to submit the appropriate fee to the Commission.

[Order 395, 49 FR 35356, Sept. 7, 1984]

§ 381.109 Refunds.

Fees established under this part may be refunded only if the related filing is withdrawn within fifteen (15) days of the date of filing or, if applicable, before the filing is noticed in the FEDERAL REGISTER or, if the fee is inappropriately paid for a filing for which no fee is established. Fees paid in excess of the fees established under this part may be refunded to the extent of the amount paid in excess. To obtain a refund, the applicant must file a motion requesting refund with the Commission.

[Order 433, 50 FR 40346, Oct. 3, 1985, as amended by Order 433-A, 51 FR 43607, Dec. 3, 1986]

§ 381.110 Fees for substantial amendments.

Fees established under this part for any filing will also be charged, as appropriate, for any substantial amendment to a pending filing. An amendment is considered substantial if it changes the character, nature, or the magnitude of the proposed activity or rate in the pending filing. For purposes of this section, an application for a temporary certificate is not considered to be an amendment to a pending certificate application.

[Order 433-A, 51 FR 43607, Dec. 3, 1986]

Subpart B—Fees Applicable to the Natural Gas Act and Related Authorities

§ 381.207 Pipeline certificate applications.

(a) *Definition.* For purposes of this section, “pipeline certificate application” means any application for authorization or exemption, any substan-

tial amendment to such an application, and any application, other than an application for a temporary certificate, for authorization to amend an outstanding authorization or exemption, by any person, made pursuant to section 7(c) of the Natural Gas Act filed in accordance with § 284.224 of this chapter.

(b) *Fee.* Unless the Commission orders direct billing under § 381.107 or otherwise, the fee established for a blanket certificate application is \$1,000. The fee filed under this paragraph must be submitted in accordance with § 284.224 of this chapter.

(c) *Effective date.* Any pipeline certificate application filed with the Commission prior to November 4, 1985, is subject to the fees established by part 159 of this chapter to the extent that part 159 applies to such an application.

[Order 433, 50 FR 40346, Oct. 3, 1985, as amended by Order 433-A, 51 FR 43607, Dec. 3, 1986; 52 FR 10367, Apr. 1, 1987; 53 FR 15384, Apr. 29, 1988; 54 FR 12901, Mar. 29, 1989; 55 FR 13901, Apr. 13, 1990; 56 FR 15497, Apr. 17, 1991; 58 FR 2975, Jan. 7, 1993]

Subpart C—Fees Applicable to General Activities

§ 381.302 Petition for issuance of a declaratory order (except under Part I of the Federal Power Act.)

(a) Except as provided in paragraph (b) of this section, the fee established for filing a petition for issuance of a declaratory order under § 385.207 of this chapter is \$15,760. The fee must be submitted in accordance with subpart A of this part.

(b) No fee is necessary to file a petition for issuance of a declaratory order that solely concerns the investigation, issuance, transfer, renewal, revocation, and enforcement of licenses and permits for the construction, operation, and maintenance of dams, water conduits, reservoirs, powerhouses, transmission lines, or other works for the development and improvement of navigation and for the development and utilization of power across, along, from, or in navigable waters under Part I of the Federal Power Act.

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(c) A person claiming the exemption provided in paragraph (b) of this section must file an original and two copies of a petition for exemption in lieu of a fee along with its petition for issuance of a declaratory order. The petition for exemption should summarize the issues raised in the petition for issuance of a declaratory order and explain why the exemption is applicable. The Commission or its designee will analyze each petition to determine whether the petition has met the standards for exemption and will notify the applicant whether it is granted or denied. If the petition is denied, the petitioner will have thirty days from the date of notification of the denial to submit the appropriate fee to the Commission.

[Order 395, 49 FR 35356, Sept. 7, 1984, as amended at 52 FR 10367, Apr. 1, 1987; 53 FR 15382, Apr. 29, 1988; 54 FR 12901, Mar. 29, 1989; 55 FR 13901, Apr. 13, 1990; 56 FR 15497, Apr. 17, 1991; 57 FR 15225, Apr. 27, 1992; 58 FR 26523, May 4, 1993; 59 FR 25563, May 17, 1994; 60 FR 31390, June 15, 1995; 61 FR 40723, Aug. 6, 1996; 62 FR 36982, July 10, 1997; 63 FR 44995, Aug. 24, 1998; 64 FR 44653, Aug. 17, 1999; 66 FR 3452, Jan. 16, 2001]

§ 381.303 Review of a Department of Energy remedial order.

(a) Except as provided in § 381.303(b), the fee established for an answer to a Department of Energy remedial order under subpart I of the Commission's Rules of Practice and Procedure, 18 CFR part 385, subpart I (1983), is \$23,010. The fee must be submitted in accordance with subpart A of this part.

(b) If the amount in controversy is below \$30,000, then the fee to file a petition for review of a DOE remedial order is reduced as follows:

	Fee
Amount in controversy:	
\$0 to \$9,999	\$100
\$10,000 to \$29,999	600

(c) In order to qualify for the fees in paragraph (b) of this section, the check must be accompanied by an affidavit

by the petitioner that states the amount in controversy.

[Order 395, 49 FR 35356, Sept. 7, 1984, as amended at 49 FR 44275, Nov. 6, 1984; 52 FR 10367, Apr. 1, 1987; 53 FR 15384, Apr. 29, 1988; 54 FR 12901, Mar. 29, 1989; 55 FR 13901, Apr. 13, 1990; 56 FR 15497, Apr. 17, 1991; 57 FR 15225, Apr. 27, 1992; 58 FR 26523, May 4, 1993; 59 FR 25563, May 17, 1994; 60 FR 31390, June 15, 1995; 61 FR 40723, Aug. 6, 1996; 62 FR 36982, July 10, 1997; 63 FR 44995, Aug. 24, 1998; 64 FR 44653, Aug. 17, 1999; 66 FR 3452, Jan. 16, 2001]

§ 381.304 Review of Department of Energy denial of adjustment.

(a) Except as provided in § 381.304(b), the fee established for filing a petition for review of a Department of Energy denial of an adjustment request under subpart J of the Commission's Rules of Practice and Procedure, 18 CFR part 385, subpart J (1983), is \$12,060. The fee must be submitted in accordance with subpart A of this part.

(b) If the amount in controversy is below \$30,000, then the fee to file a petition for review of a DOE denial of an adjustment is reduced as follows:

	Fee
Amount in controversy:	
\$0 to \$9,999	\$100
\$10,000 to \$29,999	600

(c) In order to qualify for the fees in paragraph (b) of this section, the check must be accompanied by an affidavit by the petitioner that states the amount in controversy.

[Order 395, 49 FR 35356, Sept. 7, 1984, as amended at 49 FR 44275, Nov. 6, 1984; 52 FR 10367, Apr. 1, 1987; 53 FR 15384, Apr. 29, 1988; 54 FR 12901, Mar. 29, 1989; 55 FR 13901, Apr. 13, 1990; 58 FR 26523, May 4, 1993; 59 FR 25563, May 17, 1994; 60 FR 31390, June 15, 1995; 61 FR 40723, Aug. 6, 1996; 62 FR 36982, July 10, 1997; 63 FR 44996, Aug. 24, 1998; 64 FR 44653, Aug. 17, 1999; 66 FR 3452, Jan. 16, 2001]

§ 381.305 Interpretations by the Office of the General Counsel.

(a) Except as provided in paragraph (b) of this section, the fee established for a written interpretation by the Office of the General Counsel of any statute or implementing regulation under the jurisdiction of the Commission is

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\$4,520. The fee must be submitted in accordance with subpart A of this part and § 385.1901 or § 388.104 of this chapter.

(b) No fee is necessary to file a request for a written interpretation by the Office of the General Counsel that solely concerns matters under Part I of the Federal Power Act.

(c) A person claiming the exemption provided in paragraph (b) of this section must file an original and two copies of a petition for exemption in lieu of a fee along with the request for a written interpretation. The petition for exemption should summarize the issues raised in the request for a legal opinion and explain why the exemption is applicable. The Commission or its designee will analyze each petition to determine whether the petition has met the standards for exemption and will notify the applicant whether it is granted or denied. If the petition is denied, the applicant will have 30 days from the date of notification of the denial to submit the appropriate fee to the Commission.

[Order 494, 53 FR 15382, Apr. 29, 1988, as amended at 54 FR 12901, Mar. 29, 1989; 55 FR 13901, Apr. 13, 1990; 56 FR 15497, Apr. 17, 1991; 57 FR 15226, Apr. 27, 1992; 58 FR 26523, May 4, 1993; 59 FR 25563, May 17, 1994; 60 FR 31390, June 15, 1995; 61 FR 40723, Aug. 6, 1996; 62 FR 36982, July 10, 1997; 63 FR 44996, Aug. 24, 1998; 64 FR 44653, Aug. 17, 1999; 66 FR 3452, Jan. 16, 2001]

Subpart D—Fees Applicable to the Natural Gas Policy Act of 1978

§ 381.401 Review of jurisdictional agency determinations.

The fee established for review of a jurisdictional agency determination is \$115. The fee must be submitted in accordance with subpart A of this part and § 270.301(c) of this chapter.

[Order 616, 65 FR 45872, July 26, 2000]

§ 381.403 Petitions for rate approval pursuant to § 284.123(b)(2).

The fee established for a petition for rate approval pursuant to § 284.123(b)(2) is \$7,840. Such fee must be submitted in

accordance with subpart A of this part and § 284.123(b)(2).

[Order 394, 49 FR 35365, Sept. 7, 1984, as amended at 52 FR 10367, Apr. 1, 1987; 53 FR 15384, Apr. 29, 1988; 54 FR 12901, Mar. 29, 1989; 55 FR 13901, Apr. 13, 1990; 56 FR 15497, Apr. 17, 1991; 57 FR 15226, Apr. 27, 1992; 58 FR 26523, May 4, 1993; 59 FR 25563, May 17, 1994; 60 FR 31391, June 15, 1995; 61 FR 40723, Aug. 6, 1996; 62 FR 36982, July 10, 1997; 63 FR 44996, Aug. 24, 1998; 64 FR 44653, Aug. 17, 1999; 66 FR 3452, Jan. 16, 2001]

§ 381.404 [Reserved]

Subpart E—Fees Applicable to Certain Matters Under Parts II and III of the Federal Power Act and the Public Utility Regulatory Policies Act

§ 381.501 Applicability.

The fees set forth in this subpart apply to filings submitted on or after November 4, 1985.

[Order 435, 50 FR 40358, Oct. 3, 1985]

§ 381.505 Certification of qualifying status as a small power production facility or cogeneration facility.

(a) Unless the Commission orders direct billing under § 381.107 of this chapter or otherwise, the fee established for an application for Commission certification as a qualifying small power production facility, as defined in section 3(17) of the Federal Power Act, is \$13,550 and the fee established for an application for Commission certification as a qualifying cogeneration facility, as defined in section 3(18) of the Federal Power Act, is \$15,340.

(b) The fee filed under this section must be submitted in accordance with subpart A of this part and § 292.207(b)(2) of this chapter.

[Order 494, 53 FR 15382, Apr. 29, 1988, as amended at 54 FR 12901, Mar. 29, 1989; 55 FR 13901, Apr. 13, 1990; 56 FR 15497, Apr. 17, 1991; 57 FR 15226, Apr. 27, 1992; 58 FR 26523, May 4, 1993; 59 FR 25563, May 17, 1994; 60 FR 31391, June 15, 1995; 61 FR 40723, Aug. 6, 1996; 62 FR 36982, July 10, 1997; 63 FR 44996, Aug. 24, 1998; 64 FR 44653, Aug. 17, 1999; 66 FR 3452, Jan. 16, 2001]

Subpart F [Reserved]

Subpart G—Fees Applicable to the Interstate Commerce Act and Related Authorities [Reserved]

Subpart H—Fees Applicable to the Public Utility Holding Company Act of 1935

§ 381.801 Applications for exempt wholesale generator status.

The fee established for applications for exempt wholesale generator status under section 32 of the Public Utility Holding Company Act of 1935 and subchapter T, part 365 of this chapter, applicable to applicants who will not become public utilities as defined in section 201(e) of the Federal Power Act upon the sale of electric energy at wholesale, is \$1,310. The fee must be submitted in accordance with subpart A of this part.

[Order 550, 58 FR 8907, Feb. 18, 1993, as amended at 59 FR 25563, May 17, 1994; 60 FR 31391, June 15, 1995; 61 FR 40723, Aug. 6, 1996; 62 FR 36982, July 10, 1997; 63 FR 44996, Aug. 24, 1998; 64 FR 44653, Aug. 17, 1999; 64 FR 47107, Aug. 30, 1999; 66 FR 3452, Jan. 16, 2001]

PART 382—ANNUAL CHARGES

Subpart A—General Provisions

- Sec.
- 382.101 Purpose.
- 382.102 Definitions.
- 382.103 Payment.
- 382.104 Enforcement.
- 382.105 Waiver.
- 382.106 Accounting for annual charges paid under part 382.

Subpart B—Annual Charges

- 382.201 Annual charges under Parts II and III of the Federal Power Act and related statutes.
- 382.202 Annual charges under the Natural Gas Act and Natural Gas Policy Act of 1978 and related statutes.
- 382.203 Annual charges under the Interstate Commerce Act.

AUTHORITY: 5 U.S.C 551-557; 15 U.S.C 717-717w, 3301-3432; 16 U.S.C. 791a-825r, 2601-2645; 42 U.S.C. 7101-7352; 49 U.S.C. 60502; 49 App. U.S.C. 1-85.

SOURCE: Order 472, 52 FR 21292, June 5, 1987, unless otherwise noted.

Subpart A—General Provisions

§ 382.101 Purpose.

The purpose of this part is to establish procedures for calculating and assessing annual charges to reimburse the United States for all of the costs incurred by the Commission, other than costs incurred in administering Part I of the Federal Power Act and costs recovered through the Commission's filing fees.

§ 382.102 Definitions.

For the purpose of this part:

(a) *Natural gas pipeline company* means any person:

(1) Engaged in natural gas sales for resale or natural gas transportation subject to the jurisdiction of the Commission under the Natural Gas Act whose sales for resale and transportation exceed 200,000 Mcf at 14.73 psi (60°F) in any of the three calendar years immediately preceding the fiscal year for which the Commission is assessing annual charges; and

(2) Not engaged solely in "first sales" of natural gas as that term is defined in section 2(21) of the Natural Gas Policy Act of 1978; and

(3) To whom the Commission has not issued a Natural Gas Act Section 7(f) declaration; and

(4) Not holding a limited jurisdiction certificate.

(b) *Public utility* means any person who owns or operates facilities subject to the jurisdiction of the Commission under Parts II and III of the Federal Power Act, and who has rate schedule(s) on file with the Commission and who is not a "qualifying small power producer" or a "qualifying cogenerator", as those terms are defined in section 3 of the Federal Power Act, or the United States or a state, or any political subdivision of the United States or a state, or any agency, authority, or instrumentality of the United States, a state, political subdivision of the United States, or political subdivision of a state.

(c) *Oil pipeline company* means any person engaged in the transportation of

crude oil and petroleum products subject to the Commission's jurisdiction under the Interstate Commerce Act with annual operating revenues greater than \$350,000 in any of the three calendar years immediately preceding the fiscal year for which the Commission is assessing annual charges.

(d) *Natural gas regulatory program* is the Commission's regulation of the natural gas industry under the Natural Gas Act; Natural Gas Policy Act of 1978; Alaska Natural Gas Transportation Act; Public Utility Regulatory Policies Act; Department of Energy Organization Act; Outer Continental Shelf Lands Act; Energy Security Act; Regulatory Flexibility Act; Crude Oil Windfall Profit Tax Act; National Environmental Policy Act; National Historic Preservation Act.

(e) *Electric regulatory program* is the Commission's regulation of the electric industry under Parts II and III of the Federal Power Act; Public Utility Regulatory Policies Act; Powerplant and Industrial Fuel Use Act; Department of Energy Organization Act; Energy Security Act; Regulatory Flexibility Act; Pacific Northwest Electric Power Planning and Conservation Act; Flood Control and River and Harbor Acts; Bonneville Project Act; Federal Columbia River Transmission Act; Reclamation Project Act; Nuclear Waste Policy Act; National Environmental Policy Act; and the Public Utility Holding Company Act.

(f) *Oil regulatory program* is the Commission's regulation of the oil pipeline industry under the Interstate Commerce Act; Department of Energy Organization Act; Regulatory Flexibility Act; Outer Continental Shelf Lands Act; and the Crude Oil Windfall Profit Tax Act.

(g) *Person* means an individual, partnership, corporation, association, joint stock company, public trust, or organized group of persons, whether incorporated or not.

(h) *Operating revenues* means the monies:

(1) Received by an oil pipeline company for providing interstate common carrier services regulated by the Commission, and

(2) Included in FERC Account No. 200, 210, or 220 in FERC Annual Report

Form No. 6, page 301, lines 1, 2 and 3, column d, under part 352 of the Commission's regulations.

(i) *Fiscal year* means the twelve-month period that begins on the first day of October and ends on the last day of September.

(j) *Preceding calendar year* means the twelve-month period that begins on the first day of January and ends the last day of December and immediately precedes the end of the fiscal year for which the Commission is assessing annual charges.

(k) *Adjusted costs of administration* means the difference between the estimated costs of administering a regulatory program for each fiscal year adjusted to reflect any overcollection or undercollection of cost attributable to that regulatory program in the annual charge assessment for the preceding fiscal year, and the estimated amount of filing fees collected during that fiscal year under the provisions of parts 346 and 381 of the Commission's regulations for activities that relate to that regulatory program.

(l) *Power Marketing Agencies* means the Bonneville Power Administration, the Alaska Power Administration, the Southeastern Power Administration, the Southwestern Power Administration, and the Western Area Power Administration.

[Order 472, 52 FR 21292, June 5, 1987, as amended by Order 472-B, 52 FR 36022, Sept. 25, 1987; Order 529, 55 FR 47321, Nov. 13, 1990; Order 575, 60 FR 4859, Jan. 25, 1995; Order 583, 60 FR 53117, Oct. 12, 1995; Order 641, 65 FR 65768, Nov. 2, 2000]

§ 382.103 Payment.

(a) Annual charges assessed under this part must be paid within 45 days of the issuance of the bill by the Commission, unless a petition for waiver has been filed under § 382.105 of this part.

(b) Payment must be made by check, draft, or money order, payable to the United States Treasury.

(c) If payment is not made within 45 days of issuance of a bill, interest will be assessed. Interest will be computed in accordance with § 154.501(d) of this chapter, from the date on which the bill becomes delinquent.

[Order 472, 52 FR 21292, June 5, 1987, as amended at 61 FR 13421, Mar. 27, 1996]

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§ 382.104 Enforcement.

The Commission may refuse to process any petition, application, or other filing submitted by or on the behalf of any person that does not pay the annual charge assessed when due, or may take any other appropriate action permitted by law.

§ 382.105 Waiver.

(a) *Filing of petition.* Any annual charges bill recipient may submit a petition for waiver of the regulations in this part. An original and two copies of a petition for waiver must include evidence, such as a financial statement, clearly showing either that the petitioner does not have the money to pay all or part of the annual charge, or, if the petitioner does pay the annual charge, that the petitioner will be placed in financial distress or emergency. Petitions for waiver must be filed with the Office of the Secretary of the Commission within 15 days of issuance of the bill.

(b) *Decision on petition.* The Commission or its designee will review the petition for waiver and then will notify the applicant of its grant or denial, in whole or in part. If the petition is denied in whole or in part, the annual charge becomes due 30 days from the date of notification of the denial.

§ 382.106 Accounting for annual charges paid under part 382.

(a) Any natural gas pipeline company subject to the provisions of this part must account for annual charges paid by charging the account to Account No. 928, Regulatory Commission Expenses, of the Commission's Uniform System of Accounts.

(b) Any public utility subject to the provisions of this part must account for annual charges paid by charging the amount to Account No. 928, Regulatory Commission Expenses, of the Commission's Uniform System Accounts.

(c) Any oil pipeline company subject to the provisions of this part must account for annual charges paid by charging the amount to Account No.

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510, Supplies and Expenses, of the Commission's Uniform System of Accounts.

[Order 472, 52 FR 21292, June 5, 1987, as amended by Order 472-B, 52 FR 36022, Sept. 25, 1987]

Subpart B—Annual Charges

§ 382.201 Annual charges under Parts II and III of the Federal Power Act and related statutes.

(a) *Determination of costs to be assessed to public utilities.* The adjusted costs of administration of the electric regulatory program, excluding the costs of regulating the Power Marketing Agencies, will be assessed to public utilities that provide transmission service (measured, as discussed in paragraph (c) of this section, by the sum of the megawatt-hours of all unbundled transmission and the megawatt-hours of all bundled wholesale power sales (to the extent these latter megawatt-hours were not separately reported as unbundled transmission)).

(b) *Determination of annual charges to be assessed to public utilities.* The costs determined under paragraph (a) of this section will be assessed as annual charges to each public utility providing transmission service based on the proportion of the megawatt-hours of transmission of electric energy in interstate commerce of each such public utility in the immediately preceding reporting year (either a calendar year or fiscal year, depending on which accounting convention is used by the public utility to be charged) to the sum of the megawatt-hours of transmission of electric energy in interstate commerce in the immediately preceding reporting year of all such public utilities.

(c) *Reporting requirement.* (1) For purposes of computing annual charges, as of January 1, 2002, a public utility, as defined in § 382.102(b), that provides transmission service must submit under oath to the Office of the Secretary by April 30 of each year an original and conformed copies of the following information (designated as FERC Reporting Requirement No. 582 (FERC-582)): The total megawatt-hours of transmission of electric energy in interstate commerce, which for purposes of computing the annual charges

and for purposes of this reporting requirement, will be measured by the sum of the megawatt-hours of all unbundled transmission (including MWh delivered in wheeling transactions and MWh delivered in exchange transactions) and the megawatt-hours of all bundled wholesale power sales (to the extent these latter megawatt-hours were not separately reported as unbundled transmission). This information must be reported to 3 decimal places; *e.g.*, 3,105 KWh will be reported as 3.105 MWh.

(2) Corrections to the information reported on FERC-582, as of January 1, 2002, must be submitted under oath to the Office of the Secretary on or before the end of each calendar year in which the information was originally reported (*i.e.*, on or before the last day of the year that the Commission is open to accept such filings).

(d) *Determination of annual charges to be assessed to power marketing agencies.* The adjusted costs of administration of the electric regulatory program as it applies to Power Marketing Agencies will be assessed against each power marketing agency based on the proportion of the megawatt-hours of sales of each power marketing agency in the immediately preceding reporting year (either a calendar year or fiscal year, depending on which accounting convention is used by the power marketing agency to be charged) to the sum of the megawatt-hours of sales in the immediately preceding reporting year of all power marketing agencies being assessed annual charges.

[Order 641, 65 FR 65768, Nov. 2, 2000]

§ 382.202 Annual charges under the Natural Gas Act and Natural Gas Policy Act of 1978 and related statutes.

The adjusted costs of administration of the natural gas regulatory program

will be assessed against each natural gas pipeline company based on the proportion of the total gas subject to Commission regulation which was sold and transported by each company in the immediately preceding calendar year to the sum of the gas subject to the Commission regulation which was sold and transported in the immediately preceding calendar year by all natural gas pipeline companies being assessed annual charges.

[Order 472-B, 52 FR 36022, Sept. 25, 1987]

§ 382.203 Annual charges under the Interstate Commerce Act.

(a) The adjusted costs of administration of the oil regulatory program will be assessed against each oil pipeline company based on the proportion of the total operation revenues of each oil pipeline company for the immediately preceding calendar year to the sum of the operating revenues for the immediately preceding calendar year of all oil pipeline companies being assessed annual charges.

(b) No oil pipeline company's annual charge may exceed a maximum charge established each year by the Commission to equal 6.339 percent of the adjusted costs of administration of the oil regulatory program. The maximum charge will be rounded to the nearest \$1000. For every company with an annual charge determined to be above the maximum charge, that company's annual charge will be set at the maximum charge, and any amount above the maximum charge will be reapportioned to the remaining companies. The reapportionment will be computed using the method outlined in paragraph (a) of this section (but excluding any company whose annual charge is already set at the maximum amount). This procedure will be repeated until no company's annual charge exceeds the maximum charge.

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PART 385—RULES OF PRACTICE AND PROCEDURE

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AUTHORITY: 5 U.S.C. 551–557; 15 U.S.C. 717–717z, 3301–3432; 16 U.S.C. 791a–825r, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7101–7352; 49 U.S.C. 60502; 49 App. U.S.C. 1–85 (1988).

SOURCE: Order 225, 47 FR 19022, May 3, 1982, unless otherwise noted.

Subpart A—Applicability and Definitions

§ 385.101 Applicability (Rule 101).

(a) *General rules.* Except as provided in paragraph (b) of this section, this part applies to:

- (1) Any filing or proceeding under this chapter; and
- (2) Any oil pipeline filing or proceeding under this chapter or 49 CFR Chapter X and replaces the Interstate Commerce Commission General Rules of Practice (49 CFR part 1100) with respect to any oil pipeline filing or proceeding.

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(b) *Exceptions.* (1) This part does not apply to investigations under part 1b of this chapter.

(2) If any provision of this part is inconsistent with any provision of another part of this chapter, the provision of this part is inapplicable and the provision of the other part governs to the extent of the inconsistency.

(3) If any provision of this part is inconsistent with any provision of 49 CFR Chapter X that is not otherwise replaced by this part or Commission rule or order, the provision of this part is inapplicable and the provision of 49 CFR Chapter X governs to the extent of the inconsistency.

(c) *Transitional provisions.* (1) This part applies to any filing submitted on or after and to any proceeding pending on or initiated after, August 26, 1982.

(2) A decisional authority may, in the interest of justice:

(i) Apply the appropriate provisions of the prior Rules of Practice and Procedure (18 CFR part 1) to any filing submitted after, or to any proceeding or part of a proceeding pending on August 26, 1982;

(ii) Apply the provisions of this part to any filing submitted, or any proceeding or part of a proceeding initiated, after April 28, 1982 but before August 26, 1982.

(d) [Reserved]

(e) *Waiver.* To the extent permitted by law, the Commission may, for good cause, waive any provision of this part or prescribe any alternative procedures that it determines to be appropriate.

[Order 225, 47 FR 19022, May 3, 1982, as amended by Order 376, 49 FR 21705, May 23, 1984; Order 607, 65 FR 51234, Sept. 22, 1999]

§ 385.102 Definitions (Rule 102).

For purposes of this part—

(a) *Decisional authority* means the Commission or Commission employee that, at the time for decision on a question, has authority or responsibility under this chapter to decide that particular question.

(b) *Participant* means:

- (1) Any party; or
- (2) Any employee of the Commission assigned to present the position of the Commission staff in a proceeding before the Commission.

(c) *Party* means, with respect to a proceeding:

(1) A person filing any application, petition, tariff or rate filing, complaint, or any protest under section 19a(i) of the Interstate Commerce Act (49 U.S.C. 19a(i));

(2) Any respondent to a proceeding; or

(3) Any person whose intervention in a proceeding is effective under Rule 214.

(d) *Person* means an individual, partnership, corporation, association, joint stock company, public trust, an organized group of persons, whether incorporated or not, a receiver or trustee of the foregoing, a municipality, including a city, county, or any other political subdivision of a State, a State, the District of Columbia, any territory of the United States or any agency of any of the foregoing, any agency, authority, or instrumentality of the United States (other than the Commission), or any corporation which is owned directly or indirectly by the United States, or any officer, agent, or employee of any of the foregoing acting as such in the course of his or her official duty. The term also includes a foreign government or any agency, authority, or instrumentality thereof.

(e) *Presiding officer* means:

(1) With respect to any proceeding set for hearing under subpart E of this part, one or more Members of the Commission, or any administrative law judge, designated to preside at such hearing, or, if no Commissioner or administrative law judge is designated, the Chief Administrative Law Judge; or

(2) With respect to any proceeding not set for hearing under subpart E, any employee designated by rule or order to conduct the proceeding.

(f) *Respondent* means any person:

(1) To whom an order to show cause or notice of tariff or rate examination is issued by the Commission;

(2) Against whom a complaint is directed; or

(3) Designated as a respondent by the Commission or by the terms of this chapter.

[Order 225, 47 FR 19022, May 3, 1982, as amended by Order 606, 64 FR 44405, Aug. 16, 1999]

§ 385.103 References to rules (Rule 103).

This part cross-references its sections according to rule number, as indicated by the section titles. Any filing with the Commission may refer to any section of this part by rule number; for example, "Rule 103."

§ 385.104 Rule of construction (Rule 104).

To the extent that the text of a rule is inconsistent with its caption, the text of the rule controls.

[Order 376, 49 FR 21705, May 23, 1984]

Subpart B—Pleadings, Tariff and Rate Filings, Notices of Tariff or Rate Examination, Orders to Show Cause, Intervention, and Summary Disposition

§ 385.201 Applicability (Rule 201).

This subpart applies to any pleading, tariff or rate filing, notice of tariff or rate examination, order to show cause, intervention, or summary disposition.

§ 385.202 Types of pleadings (Rule 202).

Pleadings include any application, complaint, petition, protest, notice of protest, answer, motion, and any amendment or withdrawal of a pleading. Pleadings do not include comments on rulemakings or comments on offers of settlement.

§ 385.203 Content of pleadings and tariff or rate filings (Rule 203).

(a) *Requirements for a pleading or a tariff or rate filing.* Each pleading and each tariff or rate filing must include, as appropriate:

(1) If known, the reference numbers, docket numbers, or other identifying symbols of any relevant tariff, rate, schedule, contract, application, rule, or similar matter or material;

(2) The name of each participant for whom the filing is made or, if the filing is made for a group of participants, the name of the group, provided that the name of each member of the group is set forth in a previously filed document which is identified in the filing being made;

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(3) The specific authorization or relief sought;

(4) The tariff or rate sheets;

(5) The name and address of each person against whom the complaint is directed;

(6) The relevant facts, if not set forth in a previously filed document which is identified in the filing being made;

(7) The position taken by the participant filing any pleading, to the extent known when the pleading is filed, and the basis in fact and law for such position;

(8) Subscription or verification, if required;

(9) A certificate of service under Rule 2010(h), if service is required;

(10) The name, address, and telephone number of an individual who, with respect to any matter contained in the filing, represents the person for whom filing is made; and

(11) Any additional information required to be included by statute, rule, or order.

(b) *Requirement for any initial pleading or tariff or rate filing.* The initial pleading or tariff or rate filing submitted by a participant or a person seeking to become a party must conform to the requirements of paragraph (a) of this section and must include:

(1) The exact name of the person for whom the filing is made;

(2) The location of that person's principal place of business; and

(3) The name, address, and telephone number of at least one, but not more than two, persons upon whom service is to be made and to whom communications are to be addressed in the proceeding.

(c) *Combined filings.* If two or more pleadings, or one or more pleadings and a tariff or rate filing are included as items in a single filing each such item must be separately designated and must conform to the requirements which would be applicable to it if filed separately.

§ 385.204 Applications (Rule 204).

Any person seeking a license, permit, certification, or similar authorization or permission, must file an application to obtain that authorization or permission.

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§ 385.205 Tariff or rate filings (Rule 205).

A person must make a tariff or rate filing in order to establish or change any specific rate, rate schedule, tariff, tariff schedule, fare, charge, or term or condition of service, or any classification, contract, practice, or any related regulation established by and for the applicant.

§ 385.206 Complaints (Rule 206).

(a) *General rule.* Any person may file a complaint seeking Commission action against any other person alleged to be in contravention or violation of any statute, rule, order, or other law administered by the Commission, or for any other alleged wrong over which the Commission may have jurisdiction.

(b) *Contents.* A complaint must:

(1) Clearly identify the action or inaction which is alleged to violate applicable statutory standards or regulatory requirements;

(2) Explain how the action or inaction violates applicable statutory standards or regulatory requirements;

(3) Set forth the business, commercial, economic or other issues presented by the action or inaction as such relate to or affect the complainant;

(4) Make a good faith effort to quantify the financial impact or burden (if any) created for the complainant as a result of the action or inaction;

(5) Indicate the practical, operational, or other nonfinancial impacts imposed as a result of the action or inaction, including, where applicable, the environmental, safety or reliability impacts of the action or inaction;

(6) State whether the issues presented are pending in an existing Commission proceeding or a proceeding in any other forum in which the complainant is a party, and if so, provide an explanation why timely resolution cannot be achieved in that forum;

(7) State the specific relief or remedy requested, including any request for stay or extension of time, and the basis for that relief;

(8) Include all documents that support the facts in the complaint in possession of, or otherwise attainable by, the complainant, including, but not limited to, contracts and affidavits;

(9) State

(i) Whether the Enforcement Hotline, Dispute Resolution Service, tariff-based dispute resolution mechanisms, or other informal dispute resolution procedures were used, or why these procedures were not used;

(ii) Whether the complainant believes that alternative dispute resolution (ADR) under the Commission's supervision could successfully resolve the complaint;

(iii) What types of ADR procedures could be used; and

(iv) Any process that has been agreed on for resolving the complaint.

(10) Include a form of notice suitable for publication in the FEDERAL REGISTER and submit a copy of the notice on a separate 3½ inch diskette in ASCII format;

(11) Explain with respect to requests for Fast Track processing pursuant to section 385.206(h), why the standard processes will not be adequate for expeditiously resolving the complaint.

(c) *Service.* Any person filing a complaint must serve a copy of the complaint on the respondent, affected regulatory agencies, and others the complainant reasonably knows may be expected to be affected by the complaint. Service must be simultaneous with filing at the Commission for respondents. Simultaneous or overnight service is permissible for other affected entities. Simultaneous service can be accomplished by electronic mail in accordance with §385.2010(f)(3), facsimile, express delivery, or messenger.

(d) *Notice.* Public notice of the complaint will be issued by the Commission.

(e) *Privileged treatment.* (1) If a complainant seeks privileged treatment for any documents submitted with the complaint, the complainant must submit, with its complaint, a request for privileged treatment of documents and information under section 388.112 of this chapter and a proposed form of protective agreement. In the event the complainant requests privileged treatment under section 388.112 of this chapter, it must file the original and three copies of its complaint with the information for which privileged treatment is sought and 11 copies of the pleading without the information for which

privileged treatment is sought. The original and three copies must be clearly identified as containing information for which privileged treatment is sought.

(2) A complainant must provide a copy of its complaint without the privileged information and its proposed form of protective agreement to each entity that is to be served pursuant to section 385.206(c).

(3) The respondent and any interested person who has filed a motion to intervene in the complaint proceeding may make a written request to the complainant for a copy of the complete complaint. The request must include an executed copy of the protective agreement and, for persons other than the respondent, a copy of the motion to intervene. Any person may file an objection to the proposed form of protective agreement.

(4) A complainant must provide a copy of the complete complaint to the requesting person within 5 days after receipt of the written request that is accompanied by an executed copy of the protective agreement.

(f) *Answers, interventions and comments.* Unless otherwise ordered by the Commission, answers, interventions, and comments to a complaint must be filed within 20 days after the complaint is filed. In cases where the complainant requests privileged treatment for information in its complaint, answers, interventions, and comments are due within 30 days after the complaint is filed. In the event there is an objection to the protective agreement, the Commission will establish when answers will be due.

(g) *Complaint resolution paths.* One of the following procedures may be used to resolve complaints:

(1) The Commission may assign a case to be resolved through alternative dispute resolution procedures in accordance with §§385.604-385.606, in cases where the affected parties consent, or the Commission may order the appointment of a settlement judge in accordance with §385.603;

(2) The Commission may issue an order on the merits based upon the pleadings;

(3) The Commission may establish a hearing before an ALJ;

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(h) *Fast Track processing.* (1) The Commission may resolve complaints using Fast Track procedures if the complaint requires expeditious resolution. Fast Track procedures may include expedited action on the pleadings by the Commission, expedited hearing before an ALJ, or expedited action on requests for stay, extension of time, or other relief by the Commission or an ALJ.

(2) A complainant may request Fast Track processing of a complaint by including such a request in its complaint, captioning the complaint in bold type face “COMPLAINT REQUESTING FAST TRACK PROCESSING,” and explaining why expedition is necessary as required by section 385.206(b)(11).

(3) Based on an assessment of the need for expedition, the period for filing answers, interventions and comments to a complaint requesting Fast Track processing may be shortened by the Commission from the time provided in section 385.206(f).

(4) After the answer is filed, the Commission will issue promptly an order specifying the procedure and any schedule to be followed.

(i) *Simplified procedure for small controversies.* A simplified procedure for complaints involving small controversies is found in section 385.218 of this subpart.

(j) *Satisfaction.* (1) If the respondent to a complaint satisfies such complaint, in whole or in part, either before or after an answer is filed, the complainant and the respondent must sign and file:

(i) A statement setting forth when and how the complaint was satisfied; and

(ii) A motion for dismissal of, or an amendment to, the complaint based on the satisfaction.

(2) The decisional authority may order the submission of additional information before acting on a motion for dismissal or an amendment under paragraph (c)(1)(ii) of this section.

[Order 225, 47 FR 19022, May 3, 1982, as amended by Order 602, 64 FR 17097, Apr. 8, 1999; Order 602-A, 64 FR 43608, Aug. 11, 1999]

§ 385.207 Petitions (Rule 207).

(a) *General rule.* A person must file a petition when seeking:

(1) Relief under subpart I, J, or K of this part;

(2) A declaratory order or rule to terminate a controversy or remove uncertainty;

(3) Action on appeal from a staff action, other than a decision or ruling of a presiding officer, under Rule 1902;

(4) A rule of general applicability; or

(5) Any other action which is in the discretion of the Commission and for which this chapter prescribes no other form of pleading.

(b) *Declarations of intent under the Federal Power Act.* For purposes of this part, a declaration of intent under section 23(b) of the Federal Power Act is treated as a petition for a declaratory order.

(c) Except as provided in §381.302(b), each petition for issuance of a declaratory order must be accompanied by the fee prescribed in §381.302(a).

[Order 225, 47 FR 19022, May 3, 1982, as amended by Order 395, 49 FR 35357, Sept. 7, 1984]

§ 385.208 [Reserved]

§ 385.209 Notices of tariff or rate examination and orders to show cause (Rule 209).

(a) *Issuance.* (1) If the Commission seeks to determine the validity of any rate, rate schedule, tariff, tariff schedule, fare, charge, or term or condition of service, or any classification, contract, practice, or any related regulation established by and for the applicant which is demanded, observed, charged, or collected, the Commission will initiate a proceeding by issuing a notice of tariff or rate examination.

(2) The Commission may initiate a proceeding against a person by issuing an order to show cause.

(b) *Contents.* A notice of examination or an order to show cause will contain a statement of the matters about which the Commission is inquiring, and a statement of the authority under which the Commission is acting. The statement is tentative and sets forth issues to be considered by the Commission.

(c) *Answers.* A person who is ordered to show cause must answer in accordance with Rule 213.

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§ 385.210 Method of notice; dates established in notice (Rule 210).

(a) *Method.* When the Secretary gives notice of tariff or rate filings, applications, petitions, notices of tariff or rate examinations, and orders to show cause, the Secretary will give such notice in accordance with Rule 2009.

(b) *Dates for filing interventions and protests.* A notice given under this section will establish the dates for filing interventions and protests. Only those filings made within the time prescribed in the notice will be considered timely.

§ 385.211 Protests other than under Rule 208 (Rule 211).

(a) *General rule.* (1) Any person may file a protest to object to any application, complaint, petition, order to show cause, notice of tariff or rate examination, or tariff or rate filing.

(2) The filing of a protest does not make the protestant a party to the proceeding. The protestant must intervene under Rule 214 to become a party.

(3) Subject to paragraph (a)(4) of this section, the Commission will consider protests in determining further appropriate action. Protests will be placed in the public file associated with the proceeding.

(4) If a proceeding is set for hearing under subpart E of this part, the protest is not part of the record upon which the decision is made.

(b) *Service.* (1) Any protest directed against a person in a proceeding must be served by the protestant on the person against whom the protest is directed.

(2) The Secretary may waive any procedural requirement of this subpart applicable to protests. If the requirement of service under this paragraph is waived, the Secretary will place the protest in the public file and may send a copy thereof to any person against whom the protest is directed.

§ 385.212 Motions (Rule 212).

(a) *General rule.* A motion may be filed:

(1) At any time, unless otherwise provided;

(2) By a participant or a person who has filed a timely motion to intervene which has not been denied;

(3) In any proceeding except an informal rulemaking proceeding.

(b) *Written and oral motions.* Any motion must be filed in writing, except that the presiding officer may permit an oral motion to be made on the record during a hearing or conference.

(c) *Contents.* A motion must contain a clear and concise statement of:

(1) The facts and law which support the motion; and

(2) The specific relief or ruling requested.

[Order 225, 47 FR 19022, May 3, 1982, as amended by Order 225-A, 47 FR 35956, Aug. 18, 1982; Order 376, 49 FR 21705, May 23, 1984]

§ 385.213 Answers (Rule 213).

(a) *Required or permitted.* (1) Any respondent to a complaint or order to show cause must make an answer, unless the Commission orders otherwise.

(2) An answer may not be made to a protest, an answer, a motion for oral argument, or a request for rehearing, unless otherwise ordered by the decisional authority. A presiding officer may prohibit an answer to a motion for interlocutory appeal. If an answer is not otherwise permitted under this paragraph, no responsive pleading may be made.

(3) An answer may be made to any pleading, if not prohibited under paragraph (a)(2) of this section.

(4) An answer to a notice of tariff or rate examination must be made in accordance with the provisions of such notice.

(b) *Written or oral answers.* Any answer must be in writing, except that the presiding officer may permit an oral answer to a motion made on the record during a hearing conducted under subpart E or during a conference.

(c) *Contents.* (1) An answer must contain a clear and concise statement of:

(i) Any disputed factual allegations; and

(ii) Any law upon which the answer relies.

(2) When an answer is made in response to a complaint, an order to show cause, or an amendment to such pleading, the answerer must, to the extent practicable:

(i) Admit or deny, specifically and in detail, each material allegation of the pleading answered; and

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(ii) Set forth every defense relied on.

(3) General denials of facts referred to in any order to show cause, unsupported by the specific facts upon which the respondent relies, do not comply with paragraph (a)(1) of this section and may be a basis for summary disposition under Rule 217, unless otherwise required by statute.

(4) An answer to a complaint must include documents that support the facts in the answer in possession of, or otherwise attainable by, the respondent, including, but not limited to, contracts and affidavits. An answer is also required to describe the formal or consensual process it proposes for resolving the complaint.

(5)(i) A respondent must submit with its answer any request for privileged treatment of documents and information under §388.112 of this chapter and a proposed form of protective agreement. In the event the respondent requests privileged treatment under §388.112 of this chapter, it must file the original and three copies of its answer with the information for which privileged treatment is sought and 11 copies of the pleading without the information for which privileged treatment is sought. The original and three copies must be clearly identified as containing information for which privileged treatment is sought.

(ii) A respondent must provide a copy of its answer without the privileged information and its proposed form of protective agreement to each entity that has either been served pursuant to §385.206 (c) or whose name is on the official service list for the proceeding compiled by the Secretary.

(iii) The complainant and any interested person who has filed a motion to intervene may make a written request to the respondent for a copy of the complete answer. The request must include an executed copy of the protective agreement and, for persons other than the complainant, a copy of the motion to intervene. Any person may file an objection to the proposed form of protective agreement.

(iv) A respondent must provide a copy of the complete answer to the requesting person within 5 days after receipt of the written request and an exe-

cuted copy of the protective agreement.

(d) *Time limitations.* (1) Any answer to a motion or to an amendment to a motion must be made within 15 days after the motion or amendment is filed, unless otherwise ordered.

(2) Any answer to a pleading or amendment to a pleading, other than a complaint or an answer to a motion under paragraph (d)(1) of this section, must be made:

(i) If notice of the pleading or amendment is published in the FEDERAL REGISTER, not later than 30 days after such publication, unless otherwise ordered; or

(ii) If notice of the pleading or amendment is not published in the FEDERAL REGISTER, not later than 30 days after the filing of the pleading or amendment, unless otherwise ordered.

(e) *Failure to answer.* (1) Any person failing to answer a complaint may be considered in default, and all relevant facts stated in such complaint may be deemed admitted.

(2) Failure to answer an order to show cause will be treated as a general denial to which paragraph (c)(3) of this section applies.

[Order 225, 47 FR 19022, May 3, 1982; 48 FR 786, Jan. 7, 1983, as amended by Order 376, 49 FR 21705, May 23, 1984; Order 602, 64 FR 17099, Apr. 8, 1999; Order 602-A, 64 FR 43608, Aug. 11, 1999]

§ 385.214 Intervention (Rule 214).

(a) *Filing.* (1) The Secretary of Energy is a party to any proceeding upon filing a notice of intervention in that proceeding. If the Secretary's notice is not filed within the period prescribed under Rule 210(b), the notice must state the position of the Secretary on the issues in the proceeding.

(2) Any State Commission is a party to any proceeding upon filing a notice of intervention in that proceeding, if the notice is filed within the period established under Rule 210(b). If the period for filing notice has expired, a State Commission must comply with the rules for motions to intervene applicable to any person under paragraph (a)(3) of this section including the content requirements of paragraph (b) of this section.

(3) Any person, other than the Secretary of Energy or a State Commission, seeking to become a party must file a motion to intervene.

(b) *Contents of motion.* (1) Any motion to intervene must state, to the extent known, the position taken by the movant and the basis in fact and law for that position.

(2) A motion to intervene must also state the movant's interest in sufficient factual detail to demonstrate that:

(i) The movant has a right to participate which is expressly conferred by statute or by Commission rule, order, or other action;

(ii) The movant has or represents an interest which may be directly affected by the outcome of the proceeding, including any interest as a:

- (A) Consumer,
- (B) Customer,
- (C) Competitor, or
- (D) Security holder of a party; or

(iii) The movant's participation is in the public interest.

(3) If a motion to intervene is filed after the end of any time period established under Rule 210, such a motion must, in addition to complying with paragraph (b)(1) of this section, show good cause why the time limitation should be waived.

(c) *Grant of party status.* (1) If no answer in opposition to a timely motion to intervene is filed within 15 days after the motion to intervene is filed, the movant becomes a party at the end of the 15 day period.

(2) If an answer in opposition to a timely motion to intervene is filed not later than 15 days after the motion to intervene is filed or, if the motion is not timely, the movant becomes a party only when the motion is expressly granted.

(d) *Grant of late intervention.* (1) In acting on any motion to intervene filed after the period prescribed under Rule 210, the decisional authority may consider whether:

(i) The movant had good cause for failing to file the motion within the time prescribed;

(ii) Any disruption of the proceeding might result from permitting intervention;

(iii) The movant's interest is not adequately represented by other parties in the proceeding;

(iv) Any prejudice to, or additional burdens upon, the existing parties might result from permitting the intervention; and

(v) The motion conforms to the requirements of paragraph (b) of this section.

(2) Except as otherwise ordered, a grant of an untimely motion to intervene must not be a basis for delaying or deferring any procedural schedule established prior to the grant of that motion.

(3)(i) The decisional authority may impose limitations on the participation of a late intervener to avoid delay and prejudice to the other participants.

(ii) Except as otherwise ordered, a late intervener must accept the record of the proceeding as the record was developed prior to the late intervention.

(4) If the presiding officer orally grants a motion for late intervention, the officer will promptly issue a written order confirming the oral order.

[Order 225, 47 FR 19022, May 3, 1982; 48 FR 786, Jan. 7, 1983, as amended by Order 376, 49 FR 21705, May 23, 1984]

§ 385.215 Amendment of pleadings and tariff or rate filings (Rule 215).

(a) *General rules.* (1) Any participant, or any person who has filed a timely motion to intervene which has not been denied, may seek to modify its pleading by filing an amendment which conforms to the requirements applicable to the pleading to be amended.

(2) A tariff or rate filing may not be amended, except as allowed by statute. The procedures provided in this section do not apply to amendment of tariff or rate filings.

(3)(i) If a written amendment is filed in a proceeding, or part of a proceeding, that is not set for hearing under subpart E, the amendment becomes effective as an amendment on the date filed.

(ii) If a written amendment is filed in a proceeding, or part of a proceeding, which is set for hearing under subpart E, that amendment is effective on the date filed only if the amendment is filed more than five days before the earlier of either the first prehearing

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conference or the first day of evidentiary hearings.

(iii) If, in a proceeding, or part of a proceeding, that is set for hearing under subpart E, a written amendment is filed after the time for filing provided under paragraph (a)(3)(ii) of this section, or if an oral amendment is made to a presiding officer during a hearing or conference, the amendment becomes effective as an amendment only as provided under paragraph (d) of this section.

(b) *Answers.* Any participant, or any person who has filed a timely motion to intervene which has not been denied, may answer a written or oral amendment in accordance with Rule 213.

(c) *Motion opposing an amendment.* Any participant, or any person who has filed a timely motion to intervene which has not been denied, may file a motion opposing the acceptance of any amendment, other than an amendment under paragraph (a)(3)(i) of this section, not later than 15 days after the filing of the amendment.

(d) *Acceptance of amendments.* (1) An amendment becomes effective as an amendment at the end of 15 days from the date of filing, if no motion in opposition to the acceptance of an amendment under paragraph (a)(3)(iii) of this section is filed within the 15 day period.

(2) If a motion in opposition to the acceptance of an amendment is filed within 15 days after the filing of the amendment, the amendment becomes effective as an amendment on the twentieth day after the filing of the amendment, except to the extent that the decisional authority, before such date, issues an order rejecting the amendment, wholly or in part, for good cause.

(e) *Directed amendments.* A decisional authority, on motion or otherwise, may direct any participant, or any person seeking to be a party, to file a written amendment to amplify, clarify, or technically correct a pleading.

§ 385.216 Withdrawal of pleadings (Rule 216).

(a) *Filing.* Any participant, or any person who has filed a timely motion to intervene which has not been denied,

may seek to withdraw a pleading by filing a notice of withdrawal.

(b) *Action on withdrawals.* (1) The withdrawal of any pleading is effective at the end of 15 days from the date of filing of a notice of withdrawal, if no motion in opposition to the notice of withdrawal is filed within that period and the decisional authority does not issue an order disallowing the withdrawal within that period. The decisional authority may disallow, for a good cause, all or part of a withdrawal.

(2) If a motion in opposition to a notice of withdrawal is filed within the 15 day period, the withdrawal is not effective until the decisional authority issues an order accepting the withdrawal.

(c) *Conditional withdrawal.* In order to prevent prejudice to other participants, a decisional authority may, on motion or otherwise, condition the withdrawal of any pleading upon a requirement that the withdrawing party leave material in the record or otherwise make material available to other participants.

§ 385.217 Summary disposition (Rule 217).

(a) *Applicability.* This section applies to:

(1) Any proceeding, or any part of a proceeding, while the Commission is the decisional authority; and

(2) Any proceeding, or part of a proceeding, which is set for hearing under subpart E.

(b) *General rule.* If the decisional authority determines that there is no genuine issue of fact material to the decision of a proceeding or part of a proceeding, the decisional authority may summarily dispose of all or part of the proceeding.

(c) *Procedures.* (1) Any participant may make a motion for summary disposition of all or part of a proceeding.

(2) If a decisional authority, other than the Commission, is considering summary disposition of a proceeding, or part of a proceeding, in the absence of a motion for summary disposition by a participant, the decisional authority

will grant the participants an opportunity to comment on the proposed disposition prior to any summary disposition, unless, for good cause shown, the decisional authority provides otherwise.

(3) If, prior to setting a matter for hearing, the Commission is considering summary disposition of a proceeding or part of a proceeding in the absence of a motion for summary disposition by any participant and the Commission determines that notice and comment on summary disposition are practicable and necessary, the Commission may notify the participants and afford them an opportunity to comment on any proposed summary disposition.

(d) *Disposition.* (1)(i) If a decisional authority, other than the Commission, summarily disposes of an entire proceeding, the decisional authority will issue an initial decision for the entire proceeding.

(ii) Except as provided under paragraph (d)(1)(iii) of this section, a decisional authority, other than the Commission, which summarily disposes of part of a proceeding may:

(A) Issue a partial initial decision; or

(B) Postpone issuing an initial decision on the summarily disposed part and combine it with the initial decision on the entire proceeding or other appropriate part of the proceeding.

(iii) If the decisional authority, other than the Commission, summarily disposes of part of a proceeding and such disposition requires the filing of new tariff or rate schedule sheets, the decisional authority will issue an initial decision on that part of the proceeding.

(2) Any initial decision issued under paragraph (d)(1) of this section is considered an initial decision issued under subpart G of this part, except that the following rules do not apply: Rule 704 (rights of participants before initial decision), Rule 705 (discretion of presiding officer before initial decision), Rule 706 (initial and reply briefs before initial decision), Rule 707 (oral argument before initial decision), and Rule 709 (other types of decisions).

[Order 225, 47 FR 19022, May 3, 1982; Order 225-A, 47 FR 35956, Aug. 18, 1982]

§ 385.218 Simplified procedure for complaints involving small controversies (Rule 218).

(a) *Eligibility.* The procedures under this section are available to complainants if the amount in controversy is less than \$100,000 and the impact on other entities is *de minimis*.

(b) *Contents.* A complaint filed under this section must contain:

(1) The name of the complainant;

(2) The name of the respondent;

(3) A description of the relationship to the respondent;

(4) The amount in controversy;

(5) A statement why the complaint will have a *de minimis* impact on other entities;

(6) The facts and circumstances surrounding the complaint, including the legal or regulatory obligation breached by the respondent; and

(7) The requested relief.

(c) *Service.* The complainant is required to simultaneously serve the complaint on the respondent and any other entity referenced in the complaint.

(d) *Notice.* Public notice of the complaint will be issued by the Commission.

(e) *Answers, interventions and comments.* (1) An answer to a complaint is required to conform to the requirements of § 385.213(c)(1), (2), and (3).

(2) Answers, interventions and comments must be filed within 10 days after the complaint is filed. In cases where the complainant requests privileged treatment for information in its complaint, answers, interventions, and comments must be filed within 20 days after the complaint is filed. In the event there is an objection to the protective agreement, the Commission will establish when answers, interventions, and comments are due.

(f) *Privileged treatment.* If a complainant seeks privileged treatment for any documents submitted with the complaint, a complainant must use the procedures described in section 385.206(e). If a respondent seeks privileged treatment for any documents submitted with the answer, a respondent must use the procedures described in section 385.213(c)(5).

[Order 602, 64 FR 17099, Apr. 8, 1999]

Subpart C [Reserved]

Subpart D—Discovery Procedures
for Matters Set for Hearing
Under Subpart E

SOURCE: 52 FR 6966, Mar. 6, 1987, unless otherwise noted.

§ 385.401 Applicability (Rule 401).

(a) *General rule.* Except as provided in paragraph (b) of this section, this subpart applies to discovery in proceedings set for hearing under subpart E of this part, and to such other proceedings as the Commission may order.

(b) *Exceptions.* Unless otherwise ordered by the Commission, this subpart does not apply to:

(1) Requests for information under the Freedom of Information Act, 5 U.S.C. 552, governed by Part 388 of this chapter; or,

(2) Requests by the Commission or its staff who are not participants in a proceeding set for hearing under subpart E of this part to obtain information, reports, or data from persons subject to the Commission's regulatory jurisdiction; or

(3) Investigations conducted pursuant to Part 1b of this chapter.

§ 385.402 Scope of discovery (Rule 402).

(a) *General.* Unless otherwise provided under paragraphs (b) and (c) of this section or ordered by the presiding officer under Rule 410(c), participants may obtain discovery of any matter, not privileged, that is relevant to the subject matter of the pending proceeding, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things, and the identity and location of persons having any knowledge of any discoverable matter. It is not ground for objection that the information sought will be inadmissible in the Commission proceeding if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

(b) *Material prepared for litigation.* A participant may not obtain discovery of material prepared in anticipation of litigation by another participant, un-

less that participant demonstrates a substantial need for the material and that substantially equivalent material cannot be obtained by other means without undue hardship. In ordering any such discovery, the presiding officer will prevent disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney.

(c) *Expert testimony.* Unless otherwise restricted by the presiding officer under Rule 410(c), a participant may discover any facts known or opinions held by an expert concerning any relevant matters, not privileged. Such discovery will be permitted only if:

(1) The expert is expected to be a witness at hearing; or

(2) The expert is relied on by another expert who is expected to be a witness at hearing, and the participant seeking discovery shows a compelling need for the information and it cannot practicably be obtained by other means.

[Order 225, 47 FR 19022, May 3, 1982, as amended by Order 466-A, 52 FR 35909, Sept. 24, 1987]

§ 385.403 Methods of discovery; general provisions (Rule 403).

(a) *Discovery methods.* Participants may obtain discovery by data requests, written interrogatories, and requests for production of documents or things (Rule 406), depositions by oral examination (Rule 404), requests for inspection of documents and other property (Rule 407), and requests for admission (Rule 408).

(b) *Discovery conferences.* (1) The presiding officer may direct the participants in a proceeding or their representatives to appear for one or more conferences, either separately or as part of any other prehearing conference in the proceeding under Rule 601(a), for the purpose of scheduling discovery, identifying discovery issues, and resolving discovery disputes. Except as provided in paragraph (b)(2) of this section, the presiding officer, upon the conclusion of a conference, will issue an order stating any and all decisions made and agreements reached during the conference.

(2) The Chief Administrative Law Judge may, upon a showing of extraordinary circumstances, waive the requirement to issue an order under paragraph (b)(1) of this section.

(c) *Identification and certification of preparer.* Each response to discovery under this subpart must:

(1) Identify the preparer or person under whose direct supervision the response was prepared; and

(2) Be under oath or, for representatives of a public or private corporation or a partnership or association or a governmental agency, be accompanied by a signed certification of the preparer or person supervising the preparation of the response on behalf of the entity that the response is true and accurate to the best of that person's knowledge, information, and belief formed after a reasonable inquiry.

(d) *Supplementation of responses.* (1) Except as otherwise provided by this paragraph, a participant that has responded to a request for discovery with a response that was complete when made is not under a continuing duty to supplement that response to include information later acquired.

(2) A participant must make timely amendment to any prior response if the participant obtains information upon the basis of which the participant knows that the response was incorrect when made, or though correct when made is now incorrect in any material respect.

(3) A participant may be required to supplement a response by order of the presiding officer or by agreement of all participants.

(4) A participant may request supplementation of prior responses, if such request is permitted under the procedural schedule.

[Order 225, 47 FR 19022, May 3, 1982, as amended by Order 466-A, 52 FR 35909, Sept. 24, 1987]

§ 385.404 Depositions during proceedings (Rule 404).

(a) *In general.* (1) A participant may obtain the attendance for a deposition by oral examination of any other participant, an employee or agent of that participant, or a person retained by that participant as a potential witness,

by providing a notice of intent to depose.

(2) Any participant may obtain the attendance of a nonparticipant for a deposition by oral examination by obtaining a subpoena, in accordance with Rule 409. For purposes of this rule, a Commission decisional employee, as defined in Rule 2201(a), is a nonparticipant.

(b) *Notice.* (1) A participant seeking to take a deposition under this section must provide to all other participants written notice reasonably in advance of the deposition. The notice must be filed with the Commission and served on all participants. An original must be served on each person whose deposition is sought.

(2) A notice of intent under this section must:

(i) State the time and place at which the deposition will be taken, the name and address of each person to be examined, and the subject matter of the deposition; and

(ii) If known at the time that the deposition is noticed that its purpose is to preserve testimony, state that the deponent will be unable to testify at the hearing.

(3)(i) A notice of intent under this section or a subpoena under Rule 409 may name as the deponent a public or private corporation or a partnership or association or a governmental agency, and describe with reasonable particularity the matters on which examination is requested. Such organization must, in response, designate one or more officers, directors, or managing agents, or other persons to testify on its behalf, and set forth, for each person designated, the matters on which that person will testify.

(ii) A subpoena must advise any organization that is named as a deponent but is not a participant that it has a duty to designate a person to testify. Any person designated under this section must testify on matters known by, or reasonably available to, the organization.

(c) *Taking of deposition.* (1) Each deponent must swear to or affirm the truth of the testimony given before any testimony is taken.

(2) Any participant may examine and cross-examine a deponent.

(3) Any objection made during the examination must be noted by the officer taking the deposition. After the objection is noted, the deponent must answer the question, unless a claim of privilege is asserted or the presiding officer rules otherwise.

(4) The deposition must be transcribed verbatim.

(d) *Nonstenographic means of recording; telephonic depositions.* Testimony at a deposition may be recorded by means other than stenography if all participants so stipulate or if the presiding officer, upon motion, so orders. Such stipulation or order shall designate the person before whom the deposition will be taken, and the manner in which the deposition will be preserved, filed, and certified. Depositions may also be taken by telephone, if all participants so stipulate or the presiding officer, upon motion, orders.

(e) *Officer taking deposition.* Depositions must be taken before an officer authorized to administer oaths or affirmations by the laws of the United States or of the place where the deposition is held. A deposition may not be taken before an officer who is a relative or employee or attorney of any of the participants, or is financially or in any other way interested in the action.

(f) *Submission to deponent.* (1) Unless examination is waived by the deponent, the transcription of the deposition must be submitted to the deponent for examination.

(2) If the deponent requests any changes in form or substance, the officer must enter the changes on the deposition transcript with a statement of the witness' reasons for the changes. The deponent must sign the deposition within 30 days after submittal to the deponent, unless the participants by stipulation waive the signing or the deponent cannot or will not sign. By signing the deposition the deponent certifies that the transcript is a true record of the testimony given.

(3) The officer who took the deposition must sign any deposition not signed by the deponent in accordance with this section and must state on the record that the signature is waived or that the deponent cannot or will not sign, accompanied by any reason given for a deponent's refusal to sign. If the

officer complies with this paragraph, a deposition that is unsigned by the deponent may be used as though signed, unless the presiding officer rules otherwise.

(g) *Certification and copies.* (1) The officer must certify on the transcript of the deposition that the deponent swore to or affirmed the truth of the testimony given and the deposition transcript is a true record of the testimony given by the deponent. The officer must provide the participant conducting the deposition with a copy of the transcription.

(2) Documents and things produced for inspection during the examination of the witness will, upon the request of a participant, be marked for identification and annexed to the deposition and the officer will certify the document or thing as the original offered during the deposition, or as a true and correct copy of the original offered.

(3) Copies of the transcript of a deposition may be purchased from the reporting service that made the transcription, subject to protections established by the presiding officer.

§ 385.405 Use of depositions (Rule 405).

(a) *In general.* During a hearing, the hearing of a motion, or an interlocutory proceeding under Rule 715, any part or all of a deposition taken pursuant to Rule 404, so far as admissible as though the witness were then present and testifying, may be used against any participant who was present or represented at the taking of the deposition or who had reasonable notice thereof, in accordance with any of the provisions of this section.

(1) If the deponent is a witness at a hearing, any participant may use the deposition of that witness at the time of the witness' examination to contradict, impeach, or complete the testimony of that witness.

(2) The deposition of a participant or of any person who, at the time of taking the deposition, was an officer, director, or managing agent of a participant, or a person designated under Rule 404(b)(3) to testify on behalf of a participant may be used by another participant for any purpose.

(3) The deposition of any witness, whether or not a participant, may be

used by a participant for any purpose, if the presiding officer finds that:

- (i) The witness is dead;
- (ii) The witness is unable to attend or testify because of age, illness, infirmity or imprisonment;
- (iii) The participant offering the deposition is unable after the exercise of due diligence to procure the attendance of the witness by subpoena; or
- (iv) Exceptional circumstances make it necessary in the interest of fairness with due regard to the importance of presenting the witness in open hearing, to allow use of the deposition.

(4) If only part of a deposition is offered in evidence by a participant, a participant may require the introduction of any other part which ought, in fairness, to be considered with the part introduced, and any adverse participant may introduce any other part.

(b) *Objections to admissibility.* No part of a deposition will constitute a part of the record in the proceeding, unless received in evidence by the Commission or presiding officer. Subject to paragraph (c) of this section, a participant may object to receiving into evidence all or part of any deposition for any reason that the evidence would be excluded if the deponent were present and testifying.

(c) *Effect of errors and irregularities in depositions.* (1) Any objection to the taking of a deposition based on errors or irregularities in notice of the deposition is waived, unless written objection is promptly served on the participant giving the notice.

(2) Any objection to the taking of a deposition based on the disqualification of the officer before whom it is to be taken is waived, unless the objection is made before the deposition begins or as soon thereafter as the disqualification becomes known or could be discovered with reasonable diligence.

(3) Any objection to the competency of the witness or the competency, relevancy, or materiality of testimony is not waived by failure to make the objection before or during the taking of the deposition, unless the basis for the objection might have been removed if the objection had been presented at the taking of the deposition.

(4) Any objection to errors and irregularities occurring at the oral examination in the manner of taking the deposition, in the form of the questions and answers, in the oath or affirmation, or in the conduct of participants, and errors of any kind that might be obviated, removed or cured if presented at the deposition, is waived unless objection is made at the taking of the deposition.

(5) Any objection based on errors or irregularities in the manner in which the testimony is transcribed or the deposition is prepared, signed, certified, endorsed, or otherwise dealt with by the officer is waived, unless the objection is made with reasonable promptness after the defect is, or with due diligence should have been, ascertained.

§ 385.406 Data requests, interrogatories, and requests for production of documents or things (Rule 406).

(a) *Availability.* Any participant may serve upon any other participant a written request to supply information, such as responses to data requests and interrogatories, or copies of documents.

(b) *Procedures.* (1) A request under this section must identify with specificity the information or material sought and will specify a reasonable time within which the matter sought must be furnished.

(2) Unless provided otherwise by the presiding officer, copies of any discovery request must be served upon the presiding officer and on all participants to the proceeding.

(3) Each discovery request must be answered separately and fully in writing.

(4) Responses to discovery requests are required to be served only on the participant requesting the information, Commission trial staff, and any other participant that specifically requests service. The presiding officer may direct that a copy of any responses be furnished to the presiding officer. Responses must be served within the time limit specified in the request or otherwise provided by the presiding officer.

(5) If the matter sought is not furnished, the responding participant must provide, in accordance with Rule

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410, written explanation of the specific grounds for the failure to furnish it.

§ 385.407 Inspection of documents and other property (Rule 407).

(a) *Availability.* On request, the presiding officer may order any other participant to:

(1) Permit inspection and copying of any designated documents (including writings, drawings, graphs, charts, photographs, sound recordings, computer tapes or other compilations of data from which information can be obtained) that are not privileged and that are in the possession, custody, or control of the participant to whom the order is directed;

(2) Permit inspection, copying or photographing, testing, or sampling of any tangible thing that is not privileged and that is in the possession, custody, or control of the participant to whom the order is directed; and

(3) Permit entry upon or into designated land, buildings, or other property in the possession, custody, or control of the participant to whom the order is directed for the purpose of inspecting, measuring, surveying, or photographing the property or any activity or operation that is not privileged and that is conducted in or upon the property.

(b) *Procedures.* A request for inspection of documents or property under this section must describe with reasonable particularity the documents or other property to which access is sought. The request must also specify a reasonable time, place, and manner of making the inspection.

§ 385.408 Admissions (Rule 408).

(a) *General rule.* A participant may serve upon any other participant a written request for admission of the genuineness of any document or the truth of any matter of fact. The request must be served upon all participants.

(b) *Procedures.* (1) Any request for admission of the genuineness of a document must be accompanied by a legible copy of the document, unless it was previously furnished, is in the possession of the recipient of the request, or is readily available for inspection and copying.

(2) The truth of specified matters of fact or the genuineness of the documents described in a request are deemed admitted unless, within 20 days after service of the request or any longer period designated in the request, the participant that receives the request serves upon the requesting participant a written answer or objection addressed to the matters in the request.

(3) An answer must specifically admit or deny the truth of the matters in the request or set forth in detail the reasons why the answering participant cannot admit or deny the truth of each matter. A denial of the truthfulness of the requested admission must fairly discuss the substance of the requested admission and, when good faith requires that a participant qualify the answer or deny only a part of the matter of which an admission is requested, the participant must specify that which is true and qualify or deny the remainder. The answer must be served on all participants.

(c) *Effect of admission.* Any admission made by a participant under this section is for the purpose of the pending proceeding only, is not an admission for any other purpose, and may not be used against the participant in any other proceeding. Any matter admitted under this rule is conclusively established unless the presiding officer, on motion, permits withdrawal or amendment of the admission. The presiding officer may permit withdrawal or amendment of an admission, if the presiding officer finds that the presentation of the merits of the proceeding will be promoted and the participant who obtained the admission has failed to satisfy the presiding officer that withdrawal or amendment of the admission will prejudice that participant in maintaining his position in the proceeding.

[Order 225, 47 FR 19022, May 3, 1982, as amended by Order 466-A, 52 FR 35909, Sept. 24, 1987]

§ 385.409 Subpoenas (Rule 409).

(a) *Issuance.* On request, the presiding officer may issue a subpoena for the attendance of a witness at a deposition or

hearing or for the production of documents. A request for a subpoena must be served on all participants.

(b) *Service and return.* A subpoena issued under this section must be served by personal service, substituted service, registered mail, or certified mail. A subpoena may be served by the marshal, by his deputy, or by any other person who is not a party or an employee of a party and is at least 18 years of age. If personal service is made by any person other than a United States marshal or deputy marshal, return of service must be accompanied by an affidavit to the Secretary or the presiding officer and must state the time and manner of service of the subpoena.

(c) *Fees.* Fees paid to subpoenaed persons will be in accordance with Rule 510(e).

(d) *Objections.* Objections to subpoenas must be made in accordance with Rule 410.

§ 385.410 Objections to discovery, motions to quash or to compel, and protective orders (Rule 410).

(a) *Objection to discovery—(1) Notice of objections or motion to quash.* A participant, or a recipient of a subpoena, who does not intend to comply with a discovery request must notify in writing the participant seeking discovery within a reasonable time in advance of the date on which a response or other action in conformance with the discovery request is due. A recipient of a subpoena may either provide a notice of objection or file a motion to quash.

(2) *Objections to production of documents.* (i) Unless an objection to discovery under this section is based on the ground that production would impose an undue burden, the objecting participant must provide the participant seeking discovery with a schedule of items withheld and a statement of:

(A) The character and specific subject matter of each item; and

(B) The specific objection asserted for each item.

(ii) If an objection under this section is based on the ground that production of the requested material would impose an undue burden, the objecting participant must provide the participant seeking discovery with a description of

the approximate number of documents that would have to be produced and a summary of the information contained in such documents.

(3) *Objections to other discovery requests.* If the discovery to which objection is made is not a request for documents, the objection must clearly state the grounds on which the participant bases its objection.

(4) *Objections to compile or process information.* The fact that information has not been compiled or processed in the form requested is not a basis for objection unless the objection presents grounds for limiting discovery under paragraph (c) of this section.

(b) *Motions to compel.* Any participant seeking discovery may file a motion to compel discovery, if:

(1) A participant to whom a data request is made or upon whom an interrogatory is served under Rule 406 fails or refuses to make a full, complete, and accurate response;

(2) A person named in a notice of intent to take a deposition or a subpoena fails or refuses to appear for the deposition;

(3) An organization named in a notice of intent to take a deposition fails or refuses to designate one or more persons to testify on its behalf under Rule 404(b)(3);

(4) A deponent fails or refuses to answer fully, completely, and accurately a question propounded or to sign the transcript of the testimony as required by Rule 404(f)(2);

(5) A participant upon whom a request for admissions is served fails or refuses to respond to the request in accordance with Rule 408(b); or

(6) A participant upon whom an order to produce or to permit inspection or entry is served under Rule 407 fails or refuses to comply with that order.

(c) *Orders limiting discovery.* A presiding officer may, by order, deny or limit discovery or restrict public disclosure of discoverable matter in order to:

(1) Protect a participant or other person from undue annoyance, burden, harassment or oppression;

(2) Prevent undue delay in the proceeding;

(3) Preserve a privilege of a participant, person, or governmental agency;

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(4) Prevent a participant from requiring another participant to provide information which is readily available to the requesting participant from other sources with a reasonable expenditure of effort given the requesting participant's position and resources;

(5) Prevent unreasonably cumulative or duplicative discovery requests; or

(6) Provide a means by which confidential matters may be made available to participants so as to prevent public disclosure. Material submitted under a protective order may nevertheless be subject to Freedom of Information Act requests and review.

(d) *Privilege*—(1) *In general.* (i) In the absence of controlling Commission precedent, privileges will be determined in accordance with decisions of the Federal courts with due consideration to the Commission's need to obtain information necessary to discharge its regulatory responsibilities.

(ii) A presiding officer may not quash a subpoena or otherwise deny or limit discovery on the ground of privilege unless the presiding officer expressly finds that the privilege claimed is applicable. If a presiding officer finds that a qualified privilege has been established, the participant seeking discovery must make a showing sufficient to warrant discovery despite the qualified privilege.

(iii) A presiding officer may issue a protective order under Rule 410(c) to deny or limit discovery in order to preserve a privilege of a participant, person, or governmental agency.

(2) *Of the Commission.* (i) If discovery under this subpart would require the production of Commission information, documents, or other matter that might fall within a privilege, the Commission trial staff must identify in writing the applicable privilege along with the matters claimed to be privileged or the individuals from whom privileged information is sought, to the presiding officer and the parties.

(ii) If the presiding officer determines that the privilege claimed for the Commission information, documents, or other matter may not be produced. If the presiding officer determines that no privilege is applicable, that a privilege is waived, or that a qualified privilege is

overcome, the presiding officer will certify the matter to the Commission in accordance with Rule 714. Certification to the Commission under this paragraph must describe the material to be disclosed and the reasons which, in the presiding officer's view, justify disclosure. The information will not be disclosed unless the Commission affirmatively orders the material disclosed.

[Order 225, 47 FR 19022, May 3, 1982, as amended by Order 466-A, 52 FR 35910, Sept. 24, 1987]

§ 385.411 Sanctions (Rule 411).

(a) *Disobedience of order compelling discovery.* If a participant or any other person fails to obey an order compelling discovery, the presiding officer may, after notice to the participant or person and an opportunity to be heard, take one or more of the following actions, but may not dismiss or otherwise terminate the proceeding:

(1) Certify the matter to the Commission with a recommendation for dismissal or termination of the proceeding, termination of that participant's right to participate in the proceeding, institution of civil action, or any other sanction available to the Commission by law;

(2) Order that the matters to which the order compelling discovery relates are taken as established for the purposes of the proceeding in accordance with the position of the participant obtaining the order;

(3) Order that a participant be precluded from supporting or opposing such positions or introducing such matters in evidence as the presiding officer designates;

(4) Order that all or part of any pleading by a participant be struck or that the proceeding or a phase of the proceeding be stayed until the order compelling discovery is obeyed; and

(5) Recommend to the Commission that it take action under Rule 2102 against a representative of the participant if the presiding officer believes that the representative has engaged in unethical or improper professional conduct.

(b) *Against representative of a participant.* If the person disobeying an order

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compelling discovery is an agent, officer, employee, attorney, partner, or director of a participant, the presiding officer may take any of the actions described in paragraph (a) against that participant.

Subpart E—Hearings

§ 385.501 Applicability (Rule 501).

This subpart applies to any proceeding, or part of a proceeding, that the Commission or the Secretary under delegated authority sets for a hearing to be conducted in accordance with this subpart.

[Order 492, 53 FR 16067, May 5, 1988]

§ 385.502 Initiation of hearing (Rule 502).

(a) *Notice or order initiating hearing.* A hearing under this subpart will be initiated by:

(1) Order of the Commission; or

(2) Notice by the Secretary at the direction of the Commission or under delegated authority.

(b) *Contents of notice or order initiating hearing.* Any order or notice under paragraph (a) of this section will set forth:

(1) The authority and jurisdiction under which the hearing is to be held;

(2) The nature of the proceeding;

(3) The final date for the filing of interventions, if the dates were not fixed by an earlier notice;

(4) The presiding officer, if designated at that time; and

(5) The date, time, and location of the hearing or prehearing conference, if known; and

(6) Any other appropriate matter.

(c) *Consolidation, severance, and phasing.* Any notice or order under this section may direct consolidation of proceedings, phasing of a proceeding, or severance of proceedings or issues in a proceeding.

[Order 225, 47 FR 19022, May 3, 1982, as amended at Order 492, 53 FR 16067, May 5, 1988; Order 606, 64 FR 44405, Aug. 16, 1999]

§ 385.503 Consolidation, severance and extension of close-of-record date by Chief Administrative Law Judge (Rule 503).

(a) The Chief Administrative Law Judge may, on motion or otherwise,

order proceedings pending under this subpart consolidated for hearing on, or settlement of, any or all matters in issue in the proceedings, or order the severance of proceedings or issues in a proceeding. The order may be appealed to the Commission pursuant to Rule 715.

(b) If the Commission orders that the presiding officer close the record in any proceeding by a specific date, the Chief Administrative Law Judge may, upon motion or otherwise, extend the close-of-record date for good cause. This staff action may be appealed to the Commission only under Rule 1902.

[Order 225, 47 FR 19022, May 3, 1982, as amended by Order 376, 49 FR 21705, May 23, 1984; Order 437, 50 FR 48183, Nov. 22, 1985; Order 578, 60 FR 19505, Apr. 19, 1995]

§ 385.504 Duties and powers of presiding officers (Rule 504).

(a) *Duties.* (1) It shall be the duty of the presiding officer to conduct a fair and impartial hearing and to determine the matter justly under the law.

(2) The presiding officer will cause all appearances during a hearing to be entered on the record with a notation in whose behalf each appearance is made.

(3) The presiding officer will establish the order of presentation of the cases of all participants in the hearing.

(4) The presiding officer will assure that the taking of evidence and subsequent matters proceed with all reasonable diligence and with the least delay practicable.

(5) The presiding officer will prepare and certify an initial decision or a revised initial decision, whichever is appropriate, to the Commission as provided in Subpart G of this part.

(b) *Powers.* Except as otherwise ordered by the Commission or provided by law, the presiding officer may:

(1) Schedule and otherwise regulate the course of the hearing;

(2) Recess, reconvene, postpone, or adjourn the hearing;

(3) Administer oaths;

(4) Rule on and receive evidence;

(5) Cause Discovery to be conducted;

(6) Exercise powers granted a presiding officer under Subpart D;

(7) Hold conferences of the participants, as provided in Subpart F of this

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part, including for the purpose of considering the use of alternative dispute resolution procedures;

(8) Rule on, and dispose of, procedural matters, including oral or written motions;

(9) Summarily dispose of a proceeding or part of a proceeding, as provided in Rule 217;

(10) Certify a question to the Commission, as provided in Rule 714;

(11) Permit or deny appeal of an interlocutory ruling, as provided in Rule 715;

(12) Rule on motions to intervene, as provided in Rule 214;

(13) Separate any issue or group of issues from other issues in a proceeding and treat such issue or group of issues as a separate phase of the proceeding;

(14) Maintain order, as follows:

(i) Ensure that any disregard by any person of rulings on matters of order and procedure is noted on the record or, if appropriate, is made the subject of a special written report to the Commission;

(ii) In the event any person engages in disrespectful, disorderly, or contemptuous language or conduct in connection with the hearing, recess the hearing for such time as necessary to regain order;

(iii) Request that the Commission take appropriate action, including removal from the proceeding, against a participant or counsel, if necessary to maintain order.

(15) Modify any time period, if such modification is in the interest of justice and will result in no undue prejudice to any participant;

(16) Limit the number of expert witnesses who may testify on any issue, consistent with the rule against repetitious testimony in Rule 509(a);

(17) Limit the number of persons, other than staff, representing a similar interest who may examine witnesses or make or argue motions or objections;

(18) Require; or authorize the admission of, further evidence upon any issue at any time before the close of the evidentiary record;

(19) Rule on motions for reconsideration of an initial decision as provided in Rule 717;

(20) Take any other action necessary or appropriate to the discharge of the

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duties of a presiding officer, consistent with applicable law and policy.

(c) *Disqualification.* (1) A presiding officer may withdraw from a proceeding, if that officer believes himself or herself disqualified.

(2) The Commission may, for good cause, order the removal of any presiding officer from a proceeding, on motion filed with the Commission or otherwise.

[Order 225, 47 FR 19022, May 3, 1982; 48 FR 786, Jan. 7, 1983, as amended by Order 375, 49 FR 21315, May 21, 1984; Order 466, 52 FR 6970, Mar. 6, 1987; Order 578, 60 FR 19505, Apr. 19, 1995]

§ 385.505 Right of participants to present evidence (Rule 505).

Consistent with the provisions of this part, a participant has the right to present such evidence, including rebuttal evidence, to make such objections and arguments, and to conduct such cross-examination, as may be necessary to assure true and full disclosure of the facts.

§ 385.506 Examination of witnesses during hearing (Rule 506).

(a) *Prepared written direct and rebuttal testimony.* Unless the presiding officer orders such testimony to be presented orally, direct and rebuttal testimony of a witness in a hearing must be prepared and submitted in written form, as required by Rule 507. Any witness submitting written testimony must be available for cross-examination, as provided in this subpart.

(b) *Oral testimony during hearing.* Oral examination of a witness in a hearing must be conducted under oath and in the presence of the presiding officer, with opportunity for all participants to question the witness to the extent consistent with Rules 504(b)(17), 505, and 509(a).

§ 385.507 Prepared written testimony (Rule 507).

(a) *Offered as an exhibit.* The prepared written testimony of any witness must be offered as an exhibit. The presiding officer will allow a reasonable period of time for the preparation of such written testimony.

(b) *Time for filing.* Any prepared written testimony must be filed and served

within the time provided by the presiding officer, in no case later than 10 days before the session of the hearing at which such exhibit is offered, unless a shorter period is permitted under paragraph (c) of this section.

(c) *Late-filed testimony.* (1) If all participants in attendance at the hearing agree, the 10-day requirement for filing any written testimony under paragraph (b) of this section is waived.

(2) The presiding officer may permit the introduction of any prepared written testimony without compliance with paragraph (b) of this section, if the presiding officer determines that the introduction of the testimony:

(i) Is necessary for a full disclosure of the facts or is warranted by any other showing of good cause; and

(ii) Would not be unduly prejudicial to any participant.

(3) If any written testimony is served and filed within the 10 day period provided in paragraph (b) of this section, the presiding officer will provide the participants in attendance with a reasonable opportunity to inspect the testimony.

(d) *Form; authentication.* Prepared written testimony must have line numbers inserted in the left-hand margin of each page and must be authenticated by an affidavit of the witness.

§ 385.508 Exhibits (Rule 508).

(a) *General rules.* (1) Except as provided in paragraphs (b) through (e) of this section, any material offered in evidence, other than oral testimony, must be offered in the form of an exhibit.

(2) Any participant who seeks to have an exhibit admitted into evidence must provide one copy of the exhibit to the presiding officer and two copies to the reporter, not later than the time that the exhibit is marked for identification.

(3) The presiding officer will cause each exhibit offered by a participant to be marked for identification.

(b) *Designation and treatment of matter sought to be admitted.* (1) If a document offered as an exhibit contains material not offered as evidence, the participant offering the exhibit must:

(i) Plainly designate the matter offered as evidence; and

(ii) Segregate and exclude the material not offered in evidence, to the extent practicable.

(2) If, in a document offered as an exhibit, material not offered in evidence is so extensive as to unnecessarily encumber the record, the material offered in evidence will be marked for identification. The remainder of the document will be considered not to have been offered in evidence.

(3) Copies of any document offered as an exhibit under paragraph (b)(2) of this section must be delivered to the other participants appearing at the hearing by the participant offering the exhibit in evidence. The participants will be offered an opportunity to inspect the entire document and to offer as an exhibit in evidence, in like manner, any other portions of the document.

(c) *Public document items by reference.* If all or part of a public document is offered in evidence and the participant offering the document shows that all or the pertinent part of the document, is reasonably available to the public, the document need not be produced or marked for identification but may be offered in evidence as a public document by identifying all or the relevant part of the document to be offered.

(d) *Official notice of facts.* (1) A presiding officer may take official notice of any matter that may be judicially noticed by the courts of the United States, or of any matter about which the Commission, by reason of its functions, is expert.

(2) The presiding officer must afford any participant, making a timely request, an opportunity to show the contrary of an officially noticed fact.

(3) Any participant requesting official notice of facts after the conclusion of the hearing must set forth reasons to justify the failure to request official notice prior to the close of the hearing.

(e) *Stipulations.* (1) Participants in a proceeding may stipulate to any relevant matters of fact or the authenticity of any relevant documents.

(2) A stipulation may be received in evidence at the hearing and, if received in evidence, the stipulation is binding on the stipulating participants with respect to any matter stipulated.

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(3) A stipulation may be written or made orally at the hearing.

§ 385.509 Admissibility of evidence (Rule 509).

(a) *General standard.* The presiding officer should exclude from evidence any irrelevant, immaterial, or unduly repetitious material. The presiding officer may also exclude from evidence any other material which the presiding officer determines is not of the kind which would affect reasonable and fair-minded persons in the conduct of their daily affairs.

(b) *Ruling on evidence.* (1) The presiding officer will rule on the admissibility of any evidence offered.

(2) If any participant objects to the admission or exclusion of evidence, the participant must state briefly the grounds for the objection.

(3) The presiding officer will not permit formal exceptions to any ruling on evidence. This prohibition against formal exceptions does not preclude a participant from raising, as an issue, the validity of any ruling on evidence later in the proceeding, consistent with Rule 711.

[Order 225, 47 FR 19022, May 3, 1982, as amended by Order 225-A, 47 FR 35956, Aug. 18, 1982]

§ 385.510 Miscellaneous provisions (Rule 510).

(a) *Transcript.* (1) Any statement made at a hearing session will be transcribed in a verbatim report, with nothing omitted except as directed by the presiding officer on the record. A statement at a hearing may not occur off-the-record, except as otherwise directed by the presiding officer.

(2) After the closing of a record, changes in the transcript are not permitted, except as provided in paragraph (b) of this section.

(b) *Transcript corrections.* (1) Any correction in the transcript of a hearing may be made only if the correction conforms the transcript to the evidence presented at the hearing and to the truth.

(2) A transcript correction may be incorporated in the record, in accordance with a ruling of the presiding officer, if:

(i) Agreed to by all participants and approved by the presiding officer; or

(ii) The presiding officer requests submittal of transcript corrections and rules on the corrections submitted.

(3) Transcript corrections may be made at any time during the hearing or after the close of evidence, as the presiding officer determines appropriate, but only if the correction is made not less than 10 days before the time for filing final briefs.

(c) *Close of evidentiary record.* The presiding officer will designate the time at which the evidentiary record is closed. Evidence may not be added to the evidentiary record after the record is closed, unless the record is reopened under Rule 716.

(d) *Copies of exhibits and motions to participants.* Except as otherwise provided in this subpart, copies of exhibits and motions will be provided at the hearing to any participants who have not been provided copies.

(e) *Fees of subpoenaed witnesses.* (1) Any witnesses subpoenaed by the Commission must be paid the same fees and mileage provided for similar services in the district courts of the United States.

(2) Any fees and mileage paid to a subpoenaed witness under paragraph (e)(1) of this section will be paid by the Commission, unless the witness is subpoenaed at the instance of a party.

(3) If the witness is subpoenaed at the instance of a party, any fees and mileage paid to the witness under paragraph (e)(1) of this section must be paid by the party. The Commission, before issuing any subpoena at the instance of the party, may require the party to deposit an amount adequate to cover the witness probable fees and mileage under paragraph (e)(1) of this section. The deposit will be refunded when the party pays the witness in full.

(f) *Offers of proof.* (1) Any offer of proof made in connection with a ruling of the presiding officer rejecting or excluding proffered oral testimony must consist of a statement of the substance of the evidence which the participant claims would be adduced by the testimony.

(2) If any excluded evidence is in the form of an exhibit or is a public document, a copy of such exhibit will constitute the offer of proof or the public document will be specified for identification.

Subpart F—Conferences, Settlements, and Stipulations

§ 385.601 Conferences (Rule 601).

(a) *Convening.* The Commission or other decisional authority, upon motion or otherwise, may convene a conference of the participants in a proceeding at any time for any purpose related to the conduct or disposition of the proceeding, including submission and consideration of offers of settlement or the use of alternative dispute resolution procedures.

(b) *General requirements.* (1) The participants in a proceeding must be given due notice of the time and place of a conference under paragraph (a) of this section and of the matters to be addressed at the conference. Participants attending the conference must be prepared to discuss the matters to be addressed at the conference, unless there is good cause for a failure to be prepared.

(2) Any person appearing at the conference in a representative capacity must be authorized to act on behalf of that person's principal with respect to matters to be addressed at the conference.

(3) If any party fails to attend the conference such failure will constitute a waiver of all objections to any order or ruling arising out of, or any agreement reached at, the conference.

(c) *Powers of decisional authority at conference.* (1) The decisional authority, before which the conference is held or to which the conference reports, may dispose, during a conference, of any procedural matter on which the decisional authority is authorized to rule and which may appropriately and usefully be disposed of at that time.

(2) If, in a proceeding set for hearing under subpart E, the presiding officer determines that the proceeding would be substantially expedited by distribution of proposed exhibits, including written prepared testimony and other documents, reasonably in advance of

the hearing session, the presiding officer may, with due regard for the convenience of the participants, direct advance distribution of the exhibits by a prescribed date. The presiding officer may also direct the preparation and distribution of any briefs and other documents which the presiding officer determines will substantially expedite the proceeding.

[Order 225, 47 FR 19022, May 3, 1982, as amended by Order 578, 60 FR 19505, Apr. 19, 1995]

§ 385.602 Submission of settlement offers (Rule 602).

(a) *Applicability.* This section applies to written offers of settlement filed in any proceeding pending before the Commission or set for hearing under subpart E. For purposes of this section, the term "offer of settlement" includes any written proposal to modify an offer of settlement.

(b) *Submission of offer.* (1) Any participant in a proceeding may submit an offer of settlement at any time.

(2) An offer of settlement must be filed with the Secretary. The Secretary will transmit the offer to:

(i) The presiding officer, if the offer is filed after a hearing has been ordered under subpart E of this part and before the presiding officer certifies the record to the Commission; or

(ii) The Commission.

(3) If an offer of settlement pertains to multiple proceedings that are in part pending before the Commission and in part set for hearing, any participant may by motion request the Commission to consolidate the multiple proceedings and to provide any other appropriate procedural relief for purposes of disposition of the settlement.

(c) *Contents of offer.* (1) An offer of settlement must include:

(i) The settlement offer;

(ii) A separate explanatory statement;

(iii) Copies of, or references to, any document, testimony, or exhibit, including record citations if there is a record, and any other matters that the offerer considers relevant to the offer of settlement; and

(2) If an offer of settlement pertains to a tariff or rate filing, the offer must include any proposed change in a form

suitable for inclusion in the filed rate schedules or tariffs, and a number of copies sufficient to satisfy the filing requirements applicable to tariff or rate filings of the type at issue in the proceeding.

(d) *Service.* (1) A participant offering settlement under this section must serve a copy of the offer of settlement:

(i) On every participant in accordance with Rule 2010;

(ii) On any person required by the Commission's rules to be served with the pleading or tariff or rate schedule filing, with respect to which the proceeding was initiated.

(2) The participant serving the offer of settlement must notify any person or participant served under paragraph (d)(1) of this section of the date on which comments on the settlement are due under paragraph (f) of this section.

(e) *Use of non-approved offers of settlement as evidence.* (1) An offer of settlement that is not approved by the Commission, and any comment on that offer, is not admissible in evidence against any participant who objects to its admission.

(2) Any discussion of the parties with respect to an offer of settlement that is not approved by the Commission is not subject to discovery or admissible in evidence.

(f) *Comments.* (1) A comment on an offer of settlement must be filed with the Secretary who will transmit the comment to the Commission, if the offer of settlement was transmitted to the Commission, or to the presiding officer in any other case.

(2) A comment on an offer of settlement may be filed not later than 20 days after the filing of the offer of settlement and reply comments may be filed not later than 30 days after the filing of the offer, unless otherwise provided by the Commission or the presiding officer.

(3) Any failure to file a comment constitutes a waiver of all objections to the offer of settlement.

(4) Any comment that contests an offer of settlement by alleging a dispute as to a genuine issue of material fact must include an affidavit detailing any genuine issue of material fact by specific reference to documents, testimony, or other items included in the

offer of settlement, or items not included in the settlement, that are relevant to support the claim. Reply comments may include responding affidavits.

(g) *Uncontested offers of settlement.* (1) If comments on an offer are transmitted to the presiding officer and the presiding officer finds that the offer is not contested by any participant, the presiding officer will certify to the Commission the offer of settlement, a statement that the offer of settlement is uncontested, and any hearing record or pleadings which relate to the offer of settlement.

(2) If comments on an offer of settlement are transmitted to the Commission, the Commission will determine whether the offer is uncontested.

(3) An uncontested offer of settlement may be approved by the Commission upon a finding that the settlement appears to be fair and reasonable and in the public interest.

(h) *Contested offers of settlement.* (1)(i) If the Commission determines that any offer of settlement is contested in whole or in part, by any party, the Commission may decide the merits of the contested settlement issues, if the record contains substantial evidence upon which to base a reasoned decision or the Commission determines there is no genuine issue of material fact.

(ii) If the Commission finds that the record lacks substantial evidence or that the contesting parties or contested issues can not be severed from the offer of settlement, the Commission will:

(A) Establish procedures for the purpose of receiving additional evidence before a presiding officer upon which a decision on the contested issues may reasonably be based; or

(B) Take other action which the Commission determines to be appropriate.

(iii) If contesting parties or contested issues are severable, the contesting parties or uncontested portions may be severed. The uncontested portions will be decided in accordance with paragraph (g) of this section.

(2)(i) If any comment on an offer of settlement is transmitted to the presiding officer and the presiding officer determines that the offer is contested,

whole or in part, by any participant, the presiding officer may certify all or part of the offer to the Commission. If any offer or part of an offer is contested by a party, the offer may be certified to the Commission only if paragraph (h)(2)(ii) or (iii) of this section applies.

(ii) Any offer of settlement or part of any offer may be certified to the Commission if the presiding officer determines that there is no genuine issue of material fact. Any certification by the presiding officer must contain the determination that there is no genuine issue of material fact and any hearing record or pleadings which relate to the offer or part of the offer being certified.

(iii) Any offer of settlement or part of any offer may be certified to the Commission, if:

(A) The parties concur on a motion for omission of the initial decision as provided in Rule 710, or, if all parties do not concur in the motion, the presiding officer determines that omission of the initial decision is appropriate under Rule 710(d), and

(B) The presiding officer determines that the record contains substantial evidence from which the Commission may reach a reasoned decision on the merits of the contested issues.

(iv) If any contesting parties or contested issues are severable, the uncontested portions of the settlement may be certified immediately by the presiding officer to the Commission for decision, as provided in paragraph (g) of this section.

(i) *Reservation of rights.* Any procedural right that a participant has in the absence of an offer of settlement is not affected by Commission disapproval, or approval subject to condition, of the uncontested portion of the offer of settlement.

[Order 225, 47 FR 19022, May 3, 1982, as amended by Order 541, 57 FR 21734, May 22, 1992; Order 578, 60 FR 19505, Apr. 19, 1995]

§ 385.603 Settlement of negotiations before a settlement judge (Rule 603).

(a) *Applicability.* This section applies to any proceeding set for hearing under subpart E of this part and to any other proceeding in which the Commission

has ordered the appointment of a settlement judge.

(b) *Definition.* For purposes of this section, *settlement judge* means the administrative law judge appointed by the Chief Administrative Law Judge to conduct settlement negotiations under this section.

(c) *Requests for appointment of settlement judges.* (1) Any participant may file a motion requesting the appointment of a settlement judge with the presiding officer, or, if there is no presiding officer for the proceeding, with the Commission.

(2) A presiding officer may request the Chief Administrative Law Judge to appoint a settlement judge.

(3) A motion under paragraph (c)(1) of this section may be acted upon at any time, and the time limitations on answers in Rule 213(d) do not apply.

(4) Any answer or objection filed after a motion has been acted upon will not be considered.

(d) *Commission order directing appointment of settlement judge.* The Commission may, on motion or otherwise, order the Chief Administrative Law Judge to appoint a settlement judge.

(e) *Appointment of settlement judge by Chief Administrative Law Judge.* The Chief Administrative Law Judge may appoint a settlement judge for any proceeding, if requested by the presiding officer under paragraph (c)(2) of this section or if the presiding officer concurs in a motion made under paragraph (c)(1) of this section.

(f) *Order appointing settlement judge.* The Chief Administrative Law Judge will appoint a settlement judge by an order, which specifies whether, and to what extent, the proceeding is suspended pending termination of settlement negotiations conducted in accordance with this section. The order may confine the scope of any settlement negotiations to specified issues.

(g) *Powers and duties of settlement judge.* (1) A settlement judge will convene and preside over conferences and settlement negotiations between the participants and assess the practicalities of a potential settlement.

(2)(i) A settlement judge will report to the Chief Administrative Law Judge

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or the Commission, as appropriate, describing the status of the settlement negotiations and evaluating settlement prospects.

(ii) In any such report, the settlement judge may recommend the termination or continuation of settlement negotiations conducted under this section.

(iii) The first report by the settlement judge will be made not later than 30 days after the appointment of the settlement judge. The Commission or the Chief Administrative Law Judge may order additional reports at any time.

(h) *Termination of settlement negotiations before a settlement judge.* Unless an order of the Commission directing the appointment of a settlement judge provides otherwise, settlement negotiations conducted under this section will terminate upon the order of the Chief Administrative Law Judge issued after consultation with the settlement judge.

(i) *Non-reviewability.* Any decision concerning the appointment of a settlement judge or the termination of any settlement negotiations is not subject to review by, appeal to, or rehearing by the presiding officer, Chief Administrative Law Judge, or the Commission.

(j) *Multiple settlement negotiations.* If settlement negotiations are terminated under paragraph (h) of this section, the Chief Administrative Law Judge may subsequently appoint a settlement judge in the same proceeding to conduct settlement negotiations in accordance with this section.

§ 385.604 Alternative means of dispute resolution (Rule 604).

(a) *Applicability.* (1) Participants may, subject to the limitations of paragraph (a)(2) of this section, use alternative means of dispute resolution to resolve all or part of any pending matter if the participants agree. The alternative means of dispute resolution authorized under subpart F of this part will be voluntary procedures that supplement rather than limit other available dispute resolution techniques.

(2) Except as provided in paragraph (a)(3) of this section, the decisional authority will not consent to use of an al-

ternative dispute resolution proceeding if:

(i) A definitive or authoritative resolution of the matter is required for precedential value;

(ii) The matter involves or may bear upon significant questions of policy that require additional procedures before a final resolution may be made, and the proceeding would not likely serve to develop a recommended policy;

(iii) Maintaining established policies is of special importance;

(iv) The matter significantly affects persons or organizations who are not parties to the proceeding;

(v) A full public record of the proceeding is important, and a dispute resolution proceeding cannot provide a record; or

(vi) The Commission must maintain continuing jurisdiction over the matter with authority to alter the disposition of the matter in the light of changed circumstances, and a dispute resolution proceeding would interfere with the Commission's fulfilling that requirement.

(3) If one or more of the factors outlined in paragraph (a)(2) of this section is present, alternative dispute resolution may nevertheless be used if the alternative dispute resolution proceeding can be structured to avoid the identified factor or if other concerns significantly outweigh the identified factor.

(4) A determination to use or not to use a dispute resolution proceeding under subpart F of this part is not subject to judicial review.

(5) Settlement agreements reached through the use of alternative dispute resolution pursuant to subpart F of this part will be subject to the provisions of Rule 602, unless the decisional authority, upon motion or otherwise, orders a different procedure.

(b) *Definitions.* For the purposes of subpart F of this part:

(1) *Alternative means of dispute resolution* means any procedure that is used, in lieu of an adjudication, to resolve issues in controversy, including but not limited to, settlement negotiations, conciliation, facilitation, mediation, factfinding, minitrials, and arbitration, or any combination thereof;

(2) *Award* means any decision by an arbitrator resolving the issues in controversy;

(3) *Dispute resolution communication* means any oral or written communication prepared for the purposes of a dispute resolution proceeding, including any memoranda, notes or work product of the neutral, parties or non-party participant. A written agreement to enter into a dispute resolution proceeding, or a final written agreement or arbitral award reached as a result of a dispute resolution proceeding, is not a dispute resolution communication;

(4) *Dispute resolution proceeding* means any alternative means of dispute resolution that is used to resolve an issue in controversy in which a neutral may be appointed and specified parties participate;

(5) *In confidence* means information is provided:

(i) With the expressed intent of the source that it not be disclosed, or

(ii) Under circumstances that create a reasonable expectation on behalf of the source that the information will not be disclosed;

(6) *Issue in controversy* means an issue which is or is anticipated to be material to a decision in a proceeding before the Commission and which is the subject of disagreement between participants who would be substantially affected by the decision or between the Commission and any such participants;

(7) *Neutral* means an individual who, with respect to an issue in controversy, functions specifically to aid the parties in resolving the controversy;

(8) *Participants* in a dispute resolution proceeding that is used to resolve an issue in controversy in a proceeding involving an application for a license or exemption to construct, operate, and maintain a hydroelectric project pursuant to the Federal Power Act or the Public Utility Regulatory Policies Act shall include such state and federal agencies and Indian tribes as have statutory roles or a direct interest in such hydroelectric proceedings.

(c) *Neutrals*. (1) A neutral may be a permanent or temporary officer or employee of the Federal Government (including an administrative law judge), or any other individual who is acceptable to the participants to a dispute

resolution proceeding. A neutral must have no official, financial, or personal conflict of interest with respect to the issues in controversy, except that a neutral who is not a government employee may serve if the interest is fully disclosed in writing to all participants and all participants agree.

(2) A neutral serves at the will of the participants, unless otherwise provided.

(3) Neutrals may be selected from among the Commission's administrative law judges or other employees, from rosters kept by the Federal Mediation and Conciliation Service, the Administrative Conference of the United States, the American Arbitration Association, or from any other source.

(d) *Submission of proposal to use alternative means of dispute resolution*. (1) The participants may at any time submit a written proposal to use alternative means of dispute resolution to resolve all or part of any matter in controversy or anticipated to be in controversy before the Commission.

(2) For matters set for hearing under subpart E of this part, a proposal to use alternative means of dispute resolution must be filed with the presiding administrative law judge.

(3) For all other matters, a proposal to use alternative means of dispute resolution may be filed with the Secretary for consideration by the appropriate decisional authority.

(4) The appropriate decisional authority will issue an order, approving or denying, under the guidelines in Rule 604(a) (2) and (3), a proposal to use alternative means of dispute resolution. Denial of a proposal to use alternative dispute resolution will be in the form of an order and will identify the specific reasons for the denial. A proposal to use alternative dispute resolution is deemed approved unless an order denying approval is issued within 30 days after the proposal is filed.

(5) Any request to modify a previously-approved ADR proposal must follow the same procedure used for the initial approval.

(e) *Contents of proposal*. A proposal to use alternative means of dispute resolution must be in writing and include:

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(1) A general identification of the issues in controversy intended to be resolved by the proposed alternative dispute resolution method,

(2) A description of the alternative dispute resolution method(s) to be used,

(3) The signatures of all participants or evidence otherwise indicating the consent of all participants; and

(4) A certificate of service pursuant to Rule 2010(h).

(f) *Monitoring the alternative dispute resolution proceeding.* The decisional authority may order reports on the status of the alternative dispute resolution proceeding at any time.

[Order 578, 60 FR 19506, Apr. 19, 1995, as amended by Order 602, 64 FR 17099, Apr. 8, 1999]

§ 385.605 Arbitration (Rule 605).

(a) *Authorization of arbitration.* (1) The participants may at any time submit a written proposal to use binding arbitration under the provisions of Rule 605 to resolve all or part of any matter in controversy, or anticipated to be in controversy, before the Commission.

(2) The proposal must be submitted as provided in Rule 604(d).

(3) The proposal must be in writing and contain the information required in Rule 604(e).

(4) An arbitration proceeding under this rule may be monitored as provided in Rule 604(f).

(5) No person may be required to consent to arbitration as a condition of entering into a contract or obtaining a benefit. All interested parties must expressly consent before arbitration may be used.

(b) *Arbitrators.* (1) The participants to an arbitration proceeding are entitled to select the arbitrator.

(2) The arbitrator must be a neutral who meets the criteria of a neutral under Rule 604(c).

(c) *Authority of arbitrator.* An arbitrator to whom a dispute is referred under this section may:

(1) Regulate the course of and conduct arbitral hearings;

(2) Administer oaths and affirmations;

(3) Compel the attendance of witnesses and the production of evidence

to the extent the Commission is authorized by law to do so; and

(4) Make awards.

(d) *Arbitration proceedings.* (1) The arbitrator will set a time and place for the hearing on the dispute and must notify the participants not less than 5 days before the hearing.

(2) Any participant wishing that there be a record of the hearing must:

(i) Prepare the record;

(ii) Notify the other participants and the arbitrator of the preparation of the record;

(iii) Furnish copies to all identified participants and the arbitrator; and

(iv) Pay all costs for the record, unless the participants agree otherwise or the arbitrator determines that the costs should be apportioned.

(3)(i) Participants to the arbitration are entitled to be heard, to present evidence material to the controversy, and to cross-examine witnesses appearing at the hearing to the same extent as in a proceeding under Subpart E of this part;

(ii) The arbitrator may, with the consent of the participants, conduct all or part of the hearing by telephone, television, computer, or other electronic means, if each participant has an opportunity to participate.

(iii) The hearing must be conducted expeditiously and in an informal manner.

(iv) The arbitrator may receive any oral or documentary evidence, except that irrelevant, immaterial, unduly repetitious, or privileged evidence may be excluded by the arbitrator.

(v) The arbitrator will interpret and apply relevant statutory and regulatory requirements, legal precedents, and policy directives.

(4) No interested person will make or knowingly cause to be made to the arbitrator an unauthorized *ex parte* communication relevant to the merits of the proceeding, unless the participants agree otherwise. If a communication is made in violation of this prohibition, the arbitrator will ensure that a memorandum of the communication is prepared and made a part of the record, and that an opportunity for rebuttal is allowed. Upon receipt of such communication, the arbitrator may require the offending participant to show cause

why the claim of the participant should not be resolved against the participant as a result of the improper conduct.

(5) The arbitrator will make the award within 30 days after the close of the hearing or the date of the filing of any briefs authorized by the arbitrator, whichever date is later, unless the participants and the arbitrator agree to some other time limit.

(e) *Arbitration awards.* (1)(i) The award in an arbitration proceeding under Subpart F of this chapter will include a brief, informal discussion of the factual and legal basis for the award.

(ii) The prevailing participants must file the award with the Commission, along with proof of service on all participants.

(2) The award in an arbitration proceeding will become final 30 days after it is served on all parties.

(3) A final award is binding on the participants to the arbitration proceeding.

(4) An award may not serve as an estoppel in any other proceeding for any issue that was resolved in the proceeding. The award also may not be used as precedent or otherwise be considered in any factually unrelated proceeding or in any other arbitration proceeding.

[Order 578, 60 FR 19507, Apr. 19, 1995, as amended by Order 602, 64 FR 17099, Apr. 8, 1999]

§ 385.606 Confidentiality in dispute resolution proceedings (Rule 606).

(a) Except as provided in paragraphs (d) and (e) of this section, a neutral in a dispute resolution proceeding shall not voluntarily disclose, or through discovery or compulsory process be required to disclose, any information concerning any dispute resolution communication or any communication provided in confidence to the neutral, unless:

(1) All participants in the dispute resolution proceeding and the neutral consent in writing;

(2) The dispute resolution communication has otherwise already been made public;

(3) The dispute resolution communication is required by statute to be made public, but a neutral should

make the communication public only if no other person is reasonably available to disclose the communication; or

(4) A court determines that the testimony or disclosure is necessary to:

(i) Prevent a manifest injustice;

(ii) Help establish a violation of law; or

(iii) Prevent harm to the public health or safety of sufficient magnitude in the particular case to outweigh the integrity of dispute resolution proceedings in general by reducing the confidence of participants in future cases that their communications will remain confidential.

(b) A participant in a dispute resolution proceeding shall not voluntarily disclose, or through discovery or compulsory process be required to disclose, any information concerning any dispute resolution communication, unless:

(1) All participants to the dispute resolution proceeding consent in writing;

(2) The dispute resolution communication has otherwise already been made public;

(3) The dispute resolution communication is required by statute to be made public;

(4) A court determines that the testimony or disclosure is necessary to:

(i) Prevent a manifest injustice;

(ii) Help establish a violation of law; or

(iii) Prevent harm to the public health and safety of sufficient magnitude in the particular case to outweigh the integrity of dispute resolution proceedings in general by reducing the confidence of participants in future cases that their communications will remain confidential; or

(5) The dispute resolution communication is relevant to determining the existence or meaning of an agreement or award that resulted from the dispute resolution proceeding or to the enforcement of the agreement or award.

(c) Any dispute resolution communication that is disclosed in violation of paragraphs (a) or (b) of this section shall not be admissible in any proceeding.

(d)(1) The participants may agree to alternative confidential procedures for disclosures by a neutral. The participants must inform the neutral before

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the commencement of the dispute resolution proceeding of any modifications to the provisions of paragraph (a) of this section that will govern the confidentiality of the dispute resolution proceeding. If the participants do not so inform the neutral, paragraph (a) of this section shall apply.

(2) To qualify for the exemption established under paragraph (1) of this section, an alternative confidential procedure under this paragraph may not provide for less disclosure than confidential procedures otherwise provided under this rule.

(e) If a demand for disclosure, by way of discovery request or other legal process, is made upon a participant regarding a dispute resolution communication, the participant will make reasonable efforts to notify the neutral and the other participants of the demand. Any participant who receives the notice and within 15 calendar days does not offer to defend a refusal of the neutral to disclose the requested information waives any objection to the disclosure.

(f) Nothing in Rule 606 prevents the discovery or admissibility of any evidence that is otherwise discoverable, merely because the evidence was presented in the course of a dispute resolution proceeding. See sections 385.410 and 388.112 of this chapter.

(g) Paragraphs (a) and (b) of this section do not preclude disclosure of information and data that are necessary to document an agreement reached or order issued pursuant to a dispute resolution proceeding.

(h) Paragraphs (a) and (b) of this section do not prevent the gathering of information for research and educational purposes, in cooperation with other agencies, governmental entities, or dispute resolution programs, so long as the participants and the specific issues in controversy are not identifiable.

(i) Paragraphs (a) and (b) of this section do not prevent use of a dispute resolution communication to resolve a dispute between the neutral in a dispute resolution proceeding and a participant in the proceeding, so long as the communication is disclosed only to the extent necessary to resolve the dispute.

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(j) Nothing in this section precludes parties from seeking privileged treatment for documents under section 388.112 of this chapter.

(k) Where disclosure is authorized by this section, nothing in this section precludes use of a protective agreement or protective orders.

(1) A dispute resolution communication that may not be disclosed under this rule shall also be exempt from disclosure under 5 U.S.C. 552(b)(3).

[Order 578, 60 FR 19508, Apr. 19, 1995, as amended by Order 602, 64 FR 17099, Apr. 8, 1999]

Subpart G—Decisions

§ 385.701 Applicability (Rule 701).

This subpart applies to decisions in proceedings set for hearing under subpart E of this part, including any decision on a certified question, interlocutory appeal, or reopening, and to any decision on rehearing, except that:

(a) The provisions of this subpart, other than those relating to rehearing or reopening, do not apply to consideration of an offer of settlement; and

(b) This subpart applies to summary disposition only to the extent provided in Rule 217.

§ 385.702 Definitions (Rule 702).

For purposes of this subpart:

(a) *Initial decision* means any decision rendered by a presiding officer in accordance with Rule 708;

(b) *Final decision* means any decision referred to in Rule 713.

[Order 225, 47 FR 19022, May 3, 1982, as amended by Order 375, 49 FR 21315, May 21, 1984; Order 575, 60 FR 4860, Jan. 25, 1995]

§ 385.703 Contents of decisions (Rule 703).

Any decision in a proceeding is part of the record of that proceeding and will contain:

(a) A ruling on each exception presented and any finding or conclusion, with supporting reasons, on any material issue of fact, law, or discretion presented on the record; and

(b) The appropriate rule, order, sanction, relief, or a denial of any rule, order, motion, or relief.

§ 385.704 Rights of participants before initial decision (Rule 704).

After testimony is taken in a proceeding, or phase of a proceeding, the presiding officer will afford every participant an opportunity to:

(a) Submit written initial briefs in accordance with Rule 706, except that the presiding officer may provide an opportunity for oral argument in lieu of, or in addition to, initial briefs; and

(b) Submit written reply briefs in accordance with Rule 706, except that the presiding officer may:

(1) Provide an opportunity for oral reply argument in lieu of, or in addition to, reply briefs; or

(2) For good cause, deny opportunity for reply or limit the issues which may be addressed in any reply.

§ 385.705 Additional powers of presiding officer with respect to briefs (Rule 705).

(a) *Limitations on briefs.* A presiding officer, with due regard to the nature of the proceeding, may limit the length of any brief to be filed under Rule 706.

(b) *Additional briefs and other filings.* If appropriate, the presiding officer may permit or require briefs or other filings in addition to those provided for in Rule 706.

§ 385.706 Initial and reply briefs before initial decision (Rule 706).

(a) *When filed.* The presiding officer will prescribe a time for filing initial or reply briefs and for service of such briefs, giving due regard to the nature of the proceeding, the extent of the record, and the number and complexity of the issues. Unless the presiding officer otherwise orders, the time prescribed in a proceeding for filing briefs will be the same for all initial briefs and the same for all reply briefs.

(b) *Contents.* (1) An initial brief filed with the presiding officer must include:

(i) A concise statement of the case;

(ii) A separate section containing proposed findings and conclusions, unless waived by the presiding officer;

(iii) Arguments in support of the participant's position; and

(iv) Any other matter required by the presiding officer.

(2)(i) A reply brief filed with the presiding officer must be limited to a re-

sponse to any arguments and issues raised in the initial briefs.

(ii) The presiding officer may impose limits on the reply brief in addition to any prescribed under paragraph (b)(2)(i) of this section.

(c) *Form.* (1) An exhibit admitted in evidence or marked for identification in the record may not be reproduced in the brief, but may be reproduced, within reasonable limits, in an appendix to the brief. Any pertinent analysis of an exhibit may be included in a brief.

(2) If a brief exceeds 20 pages, the brief must be accompanied by a table of contents and of points made, including page references, and an alphabetical list of citations, with page references.

(d) *Record.* All initial and reply briefs will accompany the record and be available to the Commission and the presiding officer for consideration in deciding the case.

§ 385.707 Oral argument before initial decision (Rule 707).

(a) *Procedure.* The presiding officer will designate the order of any oral argument to be held, set a time limit on each argument, and make any other procedural rulings.

(b) *Scope.* (1) If oral argument is held without an initial brief, each participant must be given the opportunity to present orally the information required or permitted to be included in initial briefs under Rule 706(b).

(2) If oral argument is held in addition to an initial or reply brief, oral argument may be limited to issues considered by the presiding officer to be appropriate issues for oral argument.

(c) *Inclusion of transcript of oral argument.* All oral arguments will be transcribed and included in the record and will be available to the Commission and the presiding officer in deciding the case.

§ 385.708 Initial decisions by presiding officer (Rule 708).

(a) *Applicability.* This section applies to any proceeding in which a presiding officer, other than the Commission, presided over the reception of the evidence.

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(b) *General rule.* (1) Except as otherwise ordered by the Commission or provided in paragraph (b)(2) of this section, the presiding officer will prepare a written initial decision.

(2)(i) If time and circumstances require, the presiding officer may issue an order stating that an oral initial decision will be issued.

(ii) An oral decision is considered served upon all participants when the decision is issued orally on the record. Promptly after service of the oral decision, the presiding officer will prepare the oral initial decision contained in the transcript in the format of a written initial decision.

(3) Any initial decision prepared under paragraph (b)(1) or (b)(2) of this section will be certified to the Commission by the presiding officer with a copy of the record in the proceeding.

(4) Not later than 35 days after the certification of an initial decision, under paragraph (b)(3) of this section, the presiding officer, after notifying the participants and receiving no objection from them, may make technical corrections to the initial decision.

(c) *Initial decision prepared and certified by presiding officer.* (1) The presiding officer who presides over the reception of evidence will prepare and certify the initial decision, if any, unless the officer is unavailable or the Commission provides otherwise in accordance with 5 U.S.C. 557(b).

(2) If the presiding officer who presided over the reception of evidence becomes unavailable, the Chief Administrative Law Judge may issue an order designating another qualified presiding officer to prepare and certify the initial decision.

(d) *Finality of initial decision.* For purposes of requests for rehearing under Rule 713, an initial decision becomes a final Commission decision 10 days after exceptions are due under Rule 711 unless:

(1) Exceptions are timely filed under Rule 711; or

(2) The Commission issues an order staying the effectiveness of the decision pending review under Rule 712.

[Order 225, 47 FR 19022, May 3, 1982, as amended by Order 375, 49 FR 21315, May 21, 1984; Order 575, 60 FR 4860, Jan. 25, 1995]

§ 385.709 Other types of decisions (Rule 709).

In lieu of an initial decision under Rule 708, the Commission may order any type of decision as provided by 5 U.S.C. 557(b), or permit waiver of the initial decision as provided by Rule 710.

§ 385.710 Waiver of the initial decision (Rule 710).

(a) *General rule.* Any participant may file a motion requesting the Commission to issue a final decision without any initial decision. If all participants join in the motion, the motion is granted, unless the Commission denies the motion within 10 days after the date of filing of the motion or, in the case of an oral motion under paragraph (c)(2) of this section, within 10 days after the motion is transmitted to the Commission. If all participants do not join in the motion, the motion is denied unless the Commission grants the motion within 30 days of filing of the motion or, in the case of an oral motion under paragraph (c)(2) of this section, within 30 days after the motion is transmitted to the Commission.

(b) *Content.* Any motion to waive the initial decision filed with the Commission must specify:

(1) Whether any participant waives any procedural right;

(2) Whether all participants concur in the request to waive the initial decision;

(3) The reasons that waiver of the initial decision is in the interest of parties and the public interest;

(4) Whether any participant desires an opportunity for filing briefs; and

(5) Whether any participant desires an opportunity for oral argument before the presiding officer, the Commission, or an individual Commissioner.

(c) *How and when made.* (1) Any written motion under this section may be filed at any time, but not later than the fifth day following the close of the hearing conducted under subpart E of this part.

(2) An oral motion under this section may be made during a hearing session, in which case the presiding officer will transmit to the Commission the relevant portions of the transcript of the hearing in which the motion was made.

(d) *Waiver by presiding officer.* A motion for waiver of the initial decision, requested for the purpose of certification of a contested settlement pursuant to Rule 602(h)(2)(iii)(A), may be filed with, and decided by, the presiding officer. If all parties join in the motion, the presiding officer will grant the motion. If not all parties join in the motion, the motion is denied unless the presiding officer grants the motion within 30 days of filing the written motion or presenting an oral motion. The contents of any motion filed under paragraph (d) of this section must comply with the requirements in paragraph (b) of this section. A motion may be oral or written, and may be made whenever appropriate for the consideration of the presiding officer.

[Order 225, 47 FR 19022, May 3, 1982, as amended by Order 376, 49 FR 21705, May 23, 1984; Order 578, 60 FR 19508, Apr. 19, 1995]

§ 385.711 Exceptions and briefs on and opposing exceptions after initial decision (Rule 711).

(a) *Exceptions.* (1)(i) Any participant may file with the Commission exceptions to the initial decision in a brief on exceptions not later than 30 days after service of the initial decision.

(ii) Not later than 20 days after the latest date for filing a brief on exceptions, any participant may file a brief opposing exceptions in response to a brief on exceptions.

(iii) A participant may file, within the time set for filing briefs opposing exceptions, a brief on exceptions solely for the purpose of incorporating by reference one or more numbered exceptions contained in the brief of another participant. A brief filed under this clause need not comply with the requirements set forth in paragraph (b) of this section.

(2) A brief on exceptions or a brief opposing exceptions may not exceed 100 pages, unless the Chief Administrative Law Judge, upon motion, changes the page limitation.

(3) The Secretary may extend, on motion or upon direction of the Commission, the time limits for any brief on or opposing exceptions. No additional briefs are permitted, unless specifically ordered by the Commission.

(4) A participant may not attach to, or incorporate by reference in, any brief on exceptions or brief opposing exceptions any portion of an initial or reply brief filed in the proceeding.

(b) *Nature of briefs on exceptions and of briefs opposing exceptions.* (1) Any brief on exceptions and any brief opposing exceptions must include:

(i) If the brief exceeds 10 pages in length, a separate summary of the brief not longer than five pages; and

(ii) A presentation of the participant's position and arguments in support of that position, including references to the pages of the record or exhibits containing evidence and arguments in support of that position.

(2) Any brief on exceptions must include, in addition to matters required by paragraph (b)(1) of this section:

(i) A short statement of the case;

(ii) A list of numbered exceptions, including a specification of each error of fact or law asserted; and

(iii) A concise discussion of the policy considerations that may warrant full Commission review and opinion.

(3) A brief opposing exceptions must include, in addition to matters required by paragraph (b)(1) of this section:

(i) A list of exceptions opposed, by number; and

(ii) A rebuttal of policy considerations claimed to warrant Commission review.

(c) *Oral argument.* (1) Any participant filing a brief on exceptions or brief opposing exceptions may request, by written motion, oral argument before the Commission or an individual Commissioner.

(2) A motion under paragraph (c)(1) of this section must be filed within the time limit for filing briefs opposing exceptions.

(3) No answer may be made to a motion under paragraph (c)(1) and, to that extent, Rule 213(a)(3) is inapplicable to a motion for oral argument.

(4) A motion under paragraph (c)(1) of this section may be granted at the discretion of the Commission. If the motion is granted, any oral argument will be limited, unless otherwise specified, to matters properly raised by the briefs.

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(d) *Failure to take exceptions results in waiver*—(1) *Complete waiver*. If a participant does not file a brief on exceptions within the time permitted under this section, any objection to the initial decision by the participant is waived.

(2) *Partial waiver*. If a participant does not object to a part of an initial decision in a brief on exceptions, any objections by the participant to that part of the initial decision are waived.

(3) *Effect of waiver*. Unless otherwise ordered by the Commission for good cause shown, a participant who has waived objections under paragraph (d)(1) or (d)(2) of this section to all or part of an initial decision may not raise such objections before the Commission in oral argument or on rehearing.

[Order 225, 47 FR 19022, May 3, 1982, as amended by Order 375, 49 FR 21316, May 21, 1984; Order 575, 60 FR 4860, Jan. 25, 1995]

§ 385.712 Commission review of initial decisions in the absence of exceptions (Rule 712).

(a) *General rule*. If no briefs on exceptions to an initial decision are filed within the time established by rule or order under Rule 711, the Commission may, within 10 days after the expiration of such time, issue an order staying the effectiveness of the decision pending Commission review.

(b) *Briefs and argument*. When the Commission reviews a decision under this section, the Commission may require that participants file briefs or present oral arguments on any issue.

(c) *Effect of review*. After completing review under this section, the Commission will issue a decision which is final for purposes of rehearing under Rule 713.

[Order 225, 47 FR 19022, May 3, 1982, as amended by Order 375, 49 FR 21316, May 21, 1984; Order 575, 60 FR 4860, Jan. 25, 1995]

§ 385.713 Request for rehearing (Rule 713).

(a) *Applicability*. (1) This section applies to any request for rehearing of a final Commission decision or other final order, if rehearing is provided for by statute, rule, or order.

(2) For the purposes of rehearing under this section, a final decision in any proceeding set for hearing under

subpart E of this part includes any Commission decision:

(i) On exceptions taken by participants to an initial decision;

(ii) When the Commission presides at the reception of the evidence;

(iii) If the initial decision procedure has been waived by consent of the participants in accordance with Rule 710;

(iv) On review of an initial decision without exceptions under Rule 712; and

(v) On any other action designated as a final decision by the Commission for purposes of rehearing.

(3) For the purposes of rehearing under this section, any initial decision under Rule 709 is a final Commission decision after the time provided for Commission review under Rule 712, if there are no exceptions filed to the decision and no review of the decision is initiated under Rule 712.

(b) *Time for filing; who may file*. A request for rehearing by a party must be filed not later than 30 days after issuance of any final decision or other final order in a proceeding.

(c) *Content of request*. Any request for rehearing must:

(1) State concisely the alleged error in the final decision or final order;

(2) Conform to the requirements in Rule 203(a) which are applicable to pleadings; and

(3) Set forth the matters relied upon by the party requesting rehearing, if rehearing is sought based on matters not available for consideration by the Commission at the time of the final decision or final order.

(d) *Answers*. (1) The Commission will not permit answers to requests for rehearing.

(2) The Commission may afford parties an opportunity to file briefs or present oral argument on one or more issues presented by a request for rehearing.

(e) *Request is not a stay*. Unless otherwise ordered by the Commission, the filing of a request for rehearing does not stay the Commission decision or order.

(f) *Commission action on rehearing*. Unless the Commission acts upon a request for rehearing within 30 days after

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the request is filed, the request is denied.

[Order 225, 47 FR 19022, May 3, 1982, as amended by Order 375, 49 FR 21316, May 21, 1984; Order 575, 60 FR 4860, Jan. 25, 1995; 60 FR 16567, Mar. 31, 1995]

§ 385.714 Certified questions (Rule 714).

(a) *General rule.* During any proceeding, a presiding officer may certify or, if the Commission so directs, will certify, to the Commission for consideration and disposition any question arising in the proceeding, including any question of law, policy, or procedure.

(b) *Notice.* A presiding officer will notify the participants of the certification of any question to the Commission and of the date of any certification. Any such notification may be given orally during the hearing session or by order.

(c) *Presiding officer's memorandum; views of the participants.* (1) A presiding officer should solicit, to the extent practicable, the oral or written views of the participants on any question certified under this section.

(2) The presiding officer must prepare a memorandum which sets forth the relevant issues, discusses all the views of participants, and recommends a disposition of the issues.

(3) The presiding officer must append to any question certified under this section the written views submitted by the participants, the transcript pages containing oral views, and the memorandum of the presiding officer.

(d) *Return of certified question to presiding officer.* If the Commission does not act on any certified question within 30 days after receipt of the certification under paragraph (a) of this section, the question is deemed returned to the presiding officer for decision in accordance with the other provisions of this subpart.

(e) *Certification not suspension.* Unless otherwise directed by the Commission or the presiding officer, certification under this section does not suspend the proceeding.

§ 385.715 Interlocutory appeals to the Commission from rulings of presiding officers (Rule 715).

(a) *General rule.* A participant may not appeal to the Commission any ruling of a presiding officer during a proceeding, unless the presiding officer under paragraph (b) of this section, or the motions Commissioner, under paragraph (c) of this section, finds extraordinary circumstances which make prompt Commission review of the contested ruling necessary to prevent detriment to the public interest or irreparable harm to any person.

(b) *Motion to the presiding officer to permit appeal.* (1) Any participant in a proceeding may, during the proceeding, move that the presiding officer permit appeal to the Commission from a ruling of the presiding officer. The motion must be made within 15 days of the ruling of the presiding officer and must state why prompt Commission review is necessary under the standards of paragraph (a) of this section

(2) Upon receipt of a motion to permit appeal under subparagraph (a)(1) of this section, the presiding officer will determine, according to the standards of paragraph (a) of this section, whether to permit appeal of the ruling to the Commission. The presiding officer need not consider any answer to this motion.

(3) Any motion to permit appeal to the Commission of an order issued under Rule 604, or appeal of a ruling under paragraph (a) or (b) of Rule 905, must be granted by the presiding officer.

(4) A presiding officer must issue an order, orally or in writing, containing the determination made under paragraph (b)(2) of this section, including the date of the action taken.

(5) If the presiding officer permits appeal, the presiding officer will transmit to the Commission:

(i) A memorandum which sets forth the relevant issues and an explanation of the rulings on the issues; and

(ii) the participant's motion under paragraph (b)(1) of this section and any answer permitted to the motion.

(6) If the presiding officer does not issue an order under paragraph (b)(1) of this section within 15 days after the

motion is filed under paragraph (b)(1) of this section, the motion is denied.

(c) *Appeal of a presiding officer's denial of motion to permit appeal.* (1) If a motion to permit appeal is denied by the presiding officer, the participant who made the motion may appeal the denial to the Commissioner who is designated Motions Commissioner, in accordance with this paragraph. For purposes of this section, "Motions Commissioner" means the Chairman or a member of the Commission designated by the Chairman to rule on motions to permit interlocutory appeal. Any person filing an appeal under this paragraph must serve a separate copy of the appeal on the Motions Commissioner by Express Mail or by hand delivery.

(2) A participant must submit an appeal under this paragraph not later than 7 days after the motion to permit appeal under paragraph (b) of this section is denied. The appeal must state why prompt Commission review is necessary under the standards set forth in paragraph (c)(5) of this section. The appeal must be labeled in accordance with § 385.2002(b) of this chapter.

(3) A participant who appeals under this paragraph must file with the appeal a copy of the written order denying the motion or, if the denial was issued orally, the relevant portions of the transcript.

(4) The Motions Commissioner may, in considering an appeal under this paragraph, order the presiding officer or any participant in the proceeding to provide additional information.

(5) The Motions Commissioner will permit an appeal to the Commission under this paragraph only if the Motions Commissioner finds extraordinary circumstances which make prompt Commission review of the contested ruling necessary to prevent detriment to the public interest or to prevent irreparable harm to a person. If the Motions Commissioner makes no determination within 7 days after filing the appeal under this paragraph or within the time the Motions Commissioner otherwise provides to receive and consider information under this paragraph, the appeal to the Commission under paragraph (b) of this section will not be permitted.

(6) If appeal under paragraph (b) of this section is not permitted, the contested ruling of the presiding officer will be reviewed in the ordinary course of the proceeding as if the appeal had not been made.

(7) If the Motions Commissioner permits an appeal to the Commission, the Secretary will issue an order containing that decision.

(d) *Commission action.* Unless the Commission acts upon an appeal permitted by a presiding officer under paragraph (b) of this section, or by the Motions Commissioner under paragraph (c) of this section, within 15 days after the date on which the presiding officer or Motions Commissioner permits appeal, the ruling of the presiding officer will be reviewed in the ordinary course of the proceeding as if the appeal had not been made.

(e) *Appeal not to suspend proceeding.* Any decision by a presiding officer to permit appeal under paragraph (b) of this section or by the Motions Commissioner to permit an appeal under paragraph (c) of this section will not suspend the proceeding, unless otherwise ordered by the presiding officer or the Motions Commissioner.

[Order 225, 47 FR 19022, May 3, 1982, as amended by Order 376, 49 FR 21705, May 23, 1984; Order 402, 49 FR 39539, Oct. 9, 1984]

§ 385.716 Reopening (Rule 716).

(a) *General rule.* To the extent permitted by law, the presiding officer or the Commission may, for good cause under paragraph (c) of this section, reopen the evidentiary record in a proceeding for the purpose of taking additional evidence.

(b) *By motion.* (1) Any participant may file a motion to reopen the record.

(2) Any motion to reopen must set forth clearly the facts sought to be proven and the reasons claimed to constitute grounds for reopening.

(3) A participant who does not file an answer to any motion to reopen will be deemed to have waived any objection to the motion provided that no other participant has raised the same objection.

(c) *By action of the presiding officer or the Commission.* If the presiding officer or the Commission, as appropriate, has reason to believe that reopening of a

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proceeding is warranted by any changes in conditions of fact or of law or by the public interest, the record in the proceeding may be reopened by the presiding officer before the initial or revised initial decision is served or by the Commission after the initial decision or, if appropriate, the revised initial decision is served.

[Order 225, 47 FR 19022, May 3, 1982, as amended by Order 375, 49 FR 21316, May 21, 1984]

Subpart H—Shortened Procedures

§ 385.801 Waiver of hearing (Rule 801).

In any proceeding in which the Commission is authorized to act after opportunity for hearing, if the parties waive hearing, such opportunity will be deemed to have been afforded by service or publication in the FEDERAL REGISTER of notice of the application or other initial pleading, request, or other filing, such notice fixing a reasonable period of time within which any person desiring to be heard may file a protest or petition. Upon the expiration of such period of time, in the absence of a request for hearing, the Commission may forthwith dispose of the matter upon the basis of the pleadings and other submittals and the studies and recommendations of the staff. A party not requesting oral hearing in its pleadings will be deemed to have waived a hearing for the purpose of such disposition, but will not be bound by such a waiver for the purposes of any request for rehearing with respect to an order so entered.

§ 385.802 Noncontested proceedings (Rule 802).

Noncontested proceedings. In any proceeding required by statute to be set for hearing, the Commission, when it appears to be in the public interest and to be in the interest of the parties to grant the relief or authority requested in the initial pleading, and to omit the intermediate decision procedure, may, after a hearing during which no opposition or contest develops, forthwith dispose of the proceedings upon consideration of the pleadings and other evidence filed and incorporated in the record: *Provided*, (a) The applicant or other initial pleader requests that the

intermediate decision procedure be omitted and waives oral hearing and opportunity for filing exceptions to the decision of the Commission; and (b) no issue of substance is raised by any request to be heard, protest or petition filed subsequent to publication in the FEDERAL REGISTER of the notice of the filing of an initial pleading and notice or order fixing of hearing, which notice or order will state that the Commission considers the proceeding a proper one for disposition under the provisions of this subpart. Requests for the procedure provided by this subpart may be contained in the initial pleading or subsequent request in writing to the Commission. The decision of the Commission in such proceeding after non-contested hearing, will be final, subject to reconsideration by the Commission upon request for rehearing as provided by statute.

Subpart I—Commission Review of Remedial Orders

§ 385.901 Scope (Rule 901).

(a) *Proceedings to which applicable.* The provisions of this subpart apply to proceedings of the Commission held in accordance with section 503(c) of the Department of Energy Organization Act (42 U.S.C. 7193(c)) to review orders issued by the Secretary of Energy pursuant to section 503(a) of the Department of Energy Organization Act (42 U.S.C. 7193(c)), and initiated by notices of probable violation, proposed remedial orders, or other formal administrative initiating documents issued on or after October 1, 1977, which are contested by the recipient.

(b) *Relationship to other rules.* (1) Where a provision of this subpart is inconsistent with a provision in any other subpart of this part, the provision in this subpart controls.

(2) Subpart F of this part, except Rule 601, does not apply to proceedings under this subpart.

§ 385.902 Definitions (Rule 902).

For purposes of this subpart:

(a) *Contested order* means the remedial order, interim remedial order for immediate compliance or order of disallowance being contested in proceeding pursuant to this subpart;

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(b) *Interim remedial order for immediate compliance* means an interim remedial order for immediate compliance issued pursuant to 10 CFR 205.199D (interim remedial order of immediate compliance);

(c) *Order of disallowance* means an order of disallowance issued pursuant to 10 CFR 205.199E (disallowance);

(d) *Participant* means, as appropriate, the Secretary, the petitioner, and intervenors;

(e) *Petitioner* means a person who has received a remedial order, interim remedial order for immediate compliance, or order of disallowance who notifies the Secretary that he intends to contest the order;

(f) *Remedial order* means a remedial order issued pursuant to 10 CFR 205.199B (remedial orders);

(g) *Secretary* means the Secretary of Energy or his delegate.

§ 385.903 Request for nondisclosure of information (Rule 903).

(a) For purposes of this section, nondisclosure means nondisclosure except as to the participants in the proceeding under conditions provided in paragraphs (d) and (e) of this section.

(b) If any person filing under this subpart claims that some or all of the information contained in a document is exempt from the mandatory public disclosure requirements of the Freedom of Information Act (5 U.S.C. 552), is information referred to in section 1905 of title 18 of the United States Code (18 U.S.C. 1905) (disclosure of confidential information), or is otherwise exempt by law from public disclosure, the person:

(1) Must request the presiding officer not to disclose such information, except to the participants in the proceeding under the conditions provided in paragraphs (d) and (e) of this section, which request the person must serve upon the participants in the proceeding;

(2) Must file, together with the document, a second copy of the document from which has been deleted the information for which the person requests nondisclosure and must indicate in the original document that the original document is exempt, or contains infor-

mation which is exempt, from disclosure;

(3) Must include a statement specifying why the information is privileged or confidential, if the information for which nondisclosure is requested is claimed to come within the exception in 5 U.S.C. 552(b)(4) for trade secrets and commercial or financial information;

(4) Must include a statement specifying the justification for nondisclosure, if the information for which nondisclosure is requested is not within the exception in 5 U.S.C. 552(b)(4).

(c) If the person filing a document does not submit a second copy of the document from which the appropriate information has been deleted, the presiding officer may assume that there is no objection to public disclosure of the document in its entirety.

(d) If information is submitted in accordance with paragraph (b) of this section, the information will not be disclosed except as provided in the Freedom of Information Act, in accordance with part 388 of this subchapter and upon request in accordance with paragraph (e) of this section, to participants in the proceeding under the restrictions that the participants may not use or disclose the information except in the context of the proceeding conducted pursuant to this subpart and that the participants must return all copies of the information at the conclusion of the proceeding to the person who submitted the information under paragraph (b) of this section.

(e) At any time, a participant may request the presiding officer to direct a person submitting information under paragraph (b) of this section to provide that information to the participant requesting the information under this paragraph. The presiding officer will so direct if the participant requesting the information agrees:

(1) Not to use or disclose the information except in the context of the proceeding conducted pursuant to this subpart; and

(2) To return all copies of the information, at the conclusion of the proceeding, to the person submitting the information under paragraph (b) of this section.

(f) At any time, a participant may request the presiding officer to direct that the complete record of prior proceedings, including information determined by the Secretary to be exempt from disclosure, be made available to that participant by the Secretary. The presiding officer will so direct if the participant requesting the complete record agrees:

(1) Not to use or disclose the information determined to be exempt except in the context of the proceeding conducted pursuant to this subpart, and

(2) To return all copies of the information determined to be exempt to the presiding officer at the conclusion of the proceeding.

[Order 225, 47 FR 19022, May 3, 1982, as amended by Order 416, 50 FR 15733, Apr. 22, 1985]

§ 385.904 Commencement of proceeding (Rule 904).

(a) Except as provided in paragraph (b) of this section, the proceeding pursuant to this subpart will be commenced by filing with the Secretary of the Commission either an answer by a petitioner pursuant to Rule 906(b)(1), or a written notice by the Secretary that a petitioner has filed a notice of intent to contest an order reviewable under this subpart, whichever is filed first. The Secretary must file written notice that a petitioner has filed a notice of intent to contest an order reviewable under this subpart within 15 days of the Secretary's receipt of such notice of intent. When the Secretary files the written notice, the Secretary must serve a copy of the contested order upon other participants in the prior proceedings and upon persons denied intervention in the prior proceedings, and must certify to the Commission that such service has been made, stating the names and addresses of persons served.

(b) The proceeding pursuant to this subpart with respect to an interim remedial order for immediate compliance will be commenced by a petitioner's filing with the Secretary of the Commission, and serving on other participants in the prior proceedings, if any, a notice of petition for review of an interim remedial order for immediate compliance pursuant to 10 CFR 205.199D(i)(1) (interim remedial

order of immediate compliance). The Commission will defer consideration of the merits of the order until a final remedial order is issued by the Secretary.

(c) Upon commencement of a proceeding, the Commission or its designee will designate a presiding officer for the proceeding, and the Commission or its designee will notify participants in the prior proceedings and persons denied intervention in the prior proceedings of such designation.

[Order 225, 47 FR 19022, May 3, 1982, as amended by Order 416-A, 50 FR 36053, Sept. 5, 1985]

§ 385.905 Stay of contested order (Rule 905).

(a) Upon commencement of a proceeding, the contested order will be automatically stayed pending review pursuant to this subpart unless and until, upon request of the Secretary or other participant, the presiding officer finds that the public interest requires immediate compliance with the contested order.

(b) The Secretary or other participants may at any time prior to the hearing under Rule 909 (Hearing), if requested; or, if there is no hearing, within 30 days of the commencement of the proceeding under Rule 904 (Commencement of proceeding); file a petition requesting that the contested order not be stayed, or that the stay be lifted, and setting forth the legal and factual basis for the request.

(c) The presiding officer may request a written statement of the views of participants regarding whether the contested order should be stayed or continue to be stayed and may convene an expedited hearing or conference on a petition under paragraph (b) of this section.

(d) The presiding officer may grant the petition requesting immediate compliance where he finds that the public interest so requires and will notify the participants of the determination.

(e) If the presiding officer does not grant the petition under paragraph (b) of this section within 10 days after it is filed, the petition is denied. Prior to the expiration of the 10-day period the presiding officer may extend the period

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for decision for up to 7 days. At the end of the extension, the petition, if not granted, is denied.

(f) If the petition under paragraph (b) of this section is denied, the presiding officer will notify the participants of such denial.

(g) A grant or denial of petition under paragraphs (b) or (c) of this section may be appealed, within 10 days after the grant or denial, to the Commission in accordance with Rule 715 (relating to interlocutory appeals). The contested order will remain stayed pending the Commission's disposition of the appeal.

[Order 225, 47 FR 19022, May 3, 1982, as amended by Order 416, 50 FR 15733, Apr. 22, 1985; Order 416-A, 50 FR 36054, Sept. 5, 1985]

§ 385.906 Pleadings (Rule 906).

(a) *By the Secretary.* (1) Within 20 days after the commencement of a proceeding, the Secretary:

(i) Will file with the Secretary for the presiding officer a copy of the contested order; and

(ii) May, in addition, elect to file a statement setting forth the factual elements of the alleged violation, which statement the Secretary will serve on all participants in the proceeding.

(2) If the petitioner requests permission to raise new facts or issues pursuant to Rule 907(a) (new facts and issues), the Secretary may file, within 10 days after the filing of the petitioner's answer, a reply responding to the petitioner's request to raise new facts or issues. In the reply, the Secretary may also request the permission of the presiding officer to raise new facts or issues under the criteria set forth in Rule 907(b) (new facts and issues) and to conduct discovery relating to the new facts or issues he may raise pursuant to Rule 907(b) (new facts and issues). Failure by the Secretary to request permission to raise new facts or issues or to conduct discovery in this reply constitutes a waiver of the opportunity to do so at a later time in the proceeding.

(3) The Secretary will file with the Secretary of the Commission, for the presiding officer, and serve upon other participants in the proceedings, a brief in support of the affirmative case, which will set forth:

(i) The elements of the alleged violation, including references to the authorities upon which the Secretary relies, including but not limited to regulations, rulings, interpretations and decisions on appeals and exceptions issued by the Department or its predecessor agencies and precedents established by the Commission; and

(ii) A complete statement of the factual and legal basis of the contested order.

(4) The Secretary's brief will be filed according to the following time period appropriate to the particular proceeding:

(i) If no participant (including persons requesting intervention) has requested permission to raise new facts or issues or to conduct discovery pursuant to paragraphs (a)(2), (b)(2), (c)(7), and (c)(8) of this section, within 20 days after the filing of the petitioner's answer under paragraph (b)(1) of this section;

(ii) If the presiding officer has determined, under Rule 908(d) (discovery) that no discovery shall be permitted, within 20 days after the presiding officer's determination under such rule;

(iii) If discovery is permitted under Rule 908(d) (discovery) within 20 days after the conclusion of the time period set for discovery under such rule;

(b) *By the petitioner.* (1) Within 15 days after petitioner gives written notice to the Office of Hearings and Appeals of the Department of Energy pursuant to 10 CFR 205.199C(b) that petitioner wishes to appeal the remedial order, the petitioner must file with the Secretary of the Commission, for the presiding officer, and serve upon the Secretary and other participants in the proceedings, an answer to the contested order admitting or denying each of the Secretary's findings in the contested order and setting forth affirmative defenses, if any. Each answer filed with the Secretary of the Commission by the petitioner, in accordance with this paragraph, must be accompanied by the fee prescribed by § 381.303 of this chapter.

(2) In the answer, the petitioner may:

(i) Contest any part of the record;

(ii) Request permission to raise new facts or issues not raised in the prior proceedings if the new facts or issues

meet the criteria set forth in Rule 907(a) (new facts and issues); and

(iii) Request permission to conduct discovery, subject to criteria provided in Rule 908(a) (discovery). Failure by the petitioner to contest the record or to request permission to raise new facts or issues or to conduct discovery in this answer constitutes a waiver of the opportunity to do so at a later time in the proceeding.

(3) Within 15 days after filing of the Secretary's brief under paragraph (a)(3) of this section, the petitioner shall file with the Secretary of the Commission, for the presiding officer, and serve upon other participants in the proceeding, a brief stating fully the objections to the contested order, including references to the authorities upon which the petitioner relies, including but not limited to regulations, rulings, interpretations, and decisions on appeals and exceptions issued by the Department or its predecessor agencies and precedents established by the Commission.

(c) *By interveners.* (1) A person qualifying under paragraph (c)(2) of this section, may request the presiding officer to permit intervention in the proceeding under this subpart in accordance with the procedures described in this paragraph.

(2) A motion to intervene may be filed by any person claiming:

(i) An interest which may be directly affected and which is not adequately protected by existing parties and as to which the persons requesting intervention may be bound by the Commission's action in the proceeding; or

(ii) Any other interest of such nature that participation by the person requesting intervention may be in the public interest.

(3) A motion to intervene must set forth clearly and concisely the facts from which the nature of the requester's alleged right or interest can be determined, the grounds of the proposed intervention, and the position of the intervener in the proceeding, so as fully and completely to advise the participants and the presiding officer as to the specific issues of fact or law to be raised or controverted, by admitting, denying, or otherwise answering, specifically and in detail, each material

allegation of fact or law raised or controverted, including references to the authorities upon which the requester relies, including, but not limited to, regulations, rulings, interpretations, and decisions on appeals and exceptions issued by the Department or its predecessor agencies and precedents established by the Commission.

(4) Motions to intervene may be filed with the Secretary of the Commission, for the presiding officer, within 20 days after the commencement of the proceeding under Rule 904 (commencement of proceedings) unless, in extraordinary circumstances and for good cause shown, the presiding officer authorizes a late filing. A person requesting intervention must serve the motion to intervene on the participants in the proceeding at the same time the request is filed with the Secretary of the Commission.

(5) A participant in the proceedings may file an answer to a motion to intervene. Failure to object constitutes a waiver of any objection to the granting of such request. If made, answers must be filed within 15 days after the filing of the request to intervene.

(6) After expiration of the time for filing answers to requests to intervene or default thereof, as provided in paragraph (c)(5) of this section, the presiding officer will grant or deny such request, in whole or in part, or may, if found to be appropriate, authorize limited participation. The presiding officer will serve the determination on a motion to intervene upon the participants in the proceeding and upon the person requesting intervention. A person wholly or partially denied intervention may take an interlocutory appeal of the order denying intervention, under Rule 715 (interlocutory appeals to the Commission from rulings of presiding officers), and will be considered a "participant" (as that term is defined in Rule 102(b) (definitions)) for the limited purpose of permitting that person to file an interlocutory appeal under Rule 715 (interlocutory appeals to the Commission from rulings of presiding officers) contesting denial, in whole or in part, of that person's motion to intervene.

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(7) A person filing a motion to intervene, may request therein the permission of the presiding officer to raise new facts or issues not raised in the prior proceedings on the contested order, if the new facts or issues meet the criteria set forth in Rule 903(c) (request for nondisclosure of information). Failure by the person requesting permission to intervene to request permission to raise new facts or issues in the motion to intervene constitutes a waiver of the opportunity to do so at a later time in the proceeding.

(8) A person filing a motion to intervene may request the permission of the presiding officer to conduct discovery, subject to the conditions set forth in Rule 908(c) (discovery). Failure by the person requesting permission to intervene to request permission to conduct discovery in the motion to intervene constitutes a waiver of the opportunity to do so at a later time in the proceeding.

(d) *Attachments of pleadings.* (1) Each party will file, as an appendix to each pleading which cites documents in the record developed in the prior proceedings on the remedial order, one copy of each such document in its entirety and, if any such document contains information exempt from public disclosure pursuant to Rule 903, a second copy of such document with such information deleted. The top of the first page of each such document will contain the word "PUBLIC" or "NON-PUBLIC," to indicate whether it contains such exempt information.

(2) One copy of each version shall be served on counsel for the petitioner and/or the Secretary, and one copy of the PUBLIC version shall be served on counsel for each other participant separately represented unless the conditions of Rule 903 are met, in which situation such counsel shall be served with copies of both versions.

(3) In compiling their appendices, the parties will include only documents specifically cited and relied upon in their pleadings. They will have regard for the fact that the Secretary's entire administrative record is always available to the Commission and will not in-

clude irrelevant or duplicative documents in the appendices.

[Order 225, 47 FR 19022, May 3, 1982, as amended by Order 395, 49 FR 35357, Sept. 7, 1984; Order 416, 50 FR 15733, Apr. 22, 1985; Order 416-A, 50 FR 36054, Sept. 5, 1985]

§ 385.907 New facts and issues (Rule 907).

(a) *Raised by the petitioner.* In the answer, as provided in Rule 906(b)(2)(ii) (new facts and issues) the petitioner may request permission of the presiding officer to raise new facts or issues not raised in prior proceedings on the contested order that:

(1)(i) Are facts or issues that were not known and could not, with the exercise of due care, have been known to the petitioner at the time they would otherwise have been raised during the prior proceedings;

(ii) Are facts or issues that the petitioner was unable to raise at the time they could have been raised during the prior proceedings because of unduly restrictive time limits imposed by the Secretary; or

(iii) Are facts or issues that the petitioner was not permitted to raise in the prior proceedings due to erroneous adverse procedural rulings; and

(2) Are necessary for a full and true disclosure of the facts.

(b) *Raised by the Secretary.* In the reply under Rule 906(a)(2) (pleadings), the Secretary may request permission of the presiding officer to raise new facts or issues not raised in prior proceedings on the contested order that:

(1) Are necessary to support the Secretary's case as a result of new facts or issues raised by the petitioner under Rule 906(b)(2)(ii) (pleadings) and this section; and

(2) Are necessary for a full and true disclosure of the facts.

(c) *Raised by interveners.* In the motion to intervene under Rule 906(c)(3) (pleadings) and this section, an intervener may request permission of the presiding officer to raise new facts or issues not raised in prior proceedings on the contested order that:

(1) If the intervener did not participate in the prior proceeding, meet the criteria of paragraphs (a)(1) and (a)(2) of this section; or

(2) If the intervenor participated in the prior proceedings, are:

(i)(A) Facts or issues that were not known and could not, with the exercise of due care, have been known to the intervenor at the time they would otherwise have been raised during the prior proceedings;

(B) Facts or issues that the intervenor was unable to raise at the time they could have been raised during the prior proceedings because of unduly restrictive time limits imposed by the Secretary; or

(C) Facts or issues that the intervenor was not permitted to raise in the prior proceedings due to erroneous adverse procedural rulings; and

(ii) Are necessary for a full and true disclosure of the facts.

(d) *Determination by the presiding officer.* The presiding officer will determine whether to grant or deny, in whole or in part, the requests of the participants to raise new facts or issues and will serve those determinations on the participants in the proceeding.

§ 385.908 Discovery (Rule 908).

(a) *By petitioner.* In the answer under Rule 906(b)(2) (pleadings), the petitioner may request permission of the presiding officer to conduct discovery, where such discovery:

(1) Relates to new facts or issues raised in accordance with Rule 907(a) (new facts and issues); or

(2)(i) Was not permitted in the prior proceedings on the contested order due to erroneous adverse procedural rulings; and

(ii) Is necessary for a full and true disclosure of the facts.

(b) *By the Secretary.* In the reply under Rule 906(a)(2) (pleadings), the Secretary may request permission of the presiding officer to conduct discovery where such discovery relates to new facts or issues raised in accordance with Rule 907(b) (new facts and issues).

(c) *By intervenors.* In a motion to intervene under Rule 906(c)(8) (pleadings) an intervenor may request permission of the presiding officer to conduct discovery where such discovery:

(1) Relates to new facts or issues raised in accordance with Rule 907(c) (new facts and issues); or

(2) If the intervenor participated in the prior proceedings,

(i) Such discovery was not permitted in prior proceedings on the contested order due to erroneous adverse procedural rulings; and

(ii) Such discovery is necessary for a full and true disclosure of the facts.

(d) *Determinations by the presiding officer.* The presiding officer will determine whether to grant or deny, in whole or in part, the requests of the participants for discovery and will set a time limit within which discovery must be conducted.

(e) *Interrogatories.* In addition to discovery devices applicable to this subpart under other subparts of this part, participants may conduct discovery by means of written interrogatories under conditions determined by the presiding officer.

§ 385.909 Hearing (Rule 909).

(a) Participant may file, within 20 days after the commencement of the proceeding under Rule 904 (Commencement of proceeding), a request for a hearing or a motion for the opportunity for cross-examination including the reasons why cross-examination is necessary for a full and true disclosure of the facts.

(b) If a participant has filed a request for a hearing, the presiding officer will grant the request for a hearing. The hearing will include an opportunity for the submission of oral or documentary evidence and oral arguments.

(c) The presiding officer may at any time, convene a hearing.

(d) As soon as practicable after receiving a request for hearing under paragraph (a) of this section or after determination that a hearing will be held under paragraph (c) of this section, the presiding officer will give notice to the participants of the time and place of the hearing.

(e) The presiding officer will determine the issues to be resolved in the proceeding, may specify the time available for oral argument, and will give notice thereof to the participants. The presiding officer may require additional information from the participants, and may convene a prehearing

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conference for the purpose of determining the issues or the nature of the proceeding to be held.

(f) If at any time prior to the certification of the record by the presiding officer under Rule 913 (Certification of the record), with or without a motion of a participant, the presiding officer determines that it is necessary for a full and true disclosure of the facts, the presiding officer may order that the participants be afforded the opportunity for cross-examination on any facts or issues raised in the proceeding.

[Order 225, 47 FR 19022, May 3, 1982, as amended by Order 416, 50 FR 15733, Apr. 22, 1985; Order 416-A, 50 FR 36054, Sept. 5, 1985]

§ 385.910 Conduct of the hearing (Rule 910).

The presiding officer is responsible for conduct of the hearing, including the order of procedure.

§ 385.911 Burden of proof (Rule 911).

(a) The Secretary has the burden of going forward and must sustain the burden of proof with respect to disputed elements of affirmative case of the Secretary.

(b) The Commission order will be based on a preponderance of the evidence.

[Order 225, 47 FR 19022, May 3, 1982, as amended by Order 416, 50 FR 15733, Apr. 22, 1985]

§ 385.912 Proposed findings of fact, conclusions of law, and comments (Rule 912).

(a) Within 10 days after the conclusion of the hearing, or, if no hearing is held, within 20 days after the filing of the petitioner's brief under Rule 906(b)(3) (pleadings), a participant may file with the Secretary of the Commission for the presiding officer, and serve upon the other participants proposed findings of fact and conclusions of law, comments in support thereof and any objections with respect to procedural rulings of the presiding officer.

(b) Within 10 days after the filing of proposed findings of fact and conclusions of law under paragraph (a) of this section, a participant may file, and

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must serve on other participants, a reply thereto.

§ 385.913 Proposed order (Rule 913).

(a) After the conclusion of the hearing and after the filings under Rule 912 (a) and (b), (proposed findings of fact, conclusions of law, and comments) the presiding officer will issue a decision and proposed order based on findings of fact affirming, modifying, or vacating the contested order or directing other appropriate relief. The proposed order will be based on the entire record before the presiding officer, including the record of prior proceedings certified by the Secretary.

(b) Participants may file with the Secretary of the Commission, within 15 days of issuance of the proposed order of the presiding officer, written comments on the presiding officer's decision and proposed order.

(c) Participants may file with the Secretary of the Commission, within seven days of the end of comment period prescribed in paragraph (b) of this section, reply comments limited to a response to any arguments and issues raised in the written comment.

(d) The presiding officer will certify and file with the Secretary of the Commission a copy of the record in the proceedings and copies of the written and reply comments filed pursuant to paragraphs (b) and (c) of this section.

(e) Unless otherwise ordered by the Chief Administrative Law Judge, written comments and reply comments must be limited to 15 pages, double-spaced.

[Order 495, 53 FR 16408, May 9, 1988, as amended at 58 FR 1629, Jan. 12, 1994]

§ 385.914 Commission action (Rule 914).

The Commission will upon consideration of the entire record, issue a final order affirming, modifying, or vacating the contested order or directing other appropriate relief. The Commission will serve the final order on the participants.

[Order 225, 47 FR 19022, May 3, 1982, as amended by Order 416, 50 FR 15733, Apr. 22, 1985]

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§ 385.915 Off-the-record communications (Rule 915).

The provisions of Rule 2201 (prohibited communications and other communications requiring disclosure) apply to proceedings pursuant to this subpart, commencing at the time the Secretary issues a proposed remedial order under 10 CFR 205.192, an interim remedial order for immediate compliance under 10 CFR 205.199D, or a proposed order of disallowance under 10 CFR 205.199E.

[Order 607, 64 FR 51234, Sept. 22, 1999]

§ 385.916 Withdrawal of petition for review (Rule 916).

(a) At any time, including after a hearing has been held or convened, the petitioner may submit to the presiding officer, and serve on other participants in the proceeding, a withdrawal of the petition for review of the contested order. The presiding officer will thereupon issue, and serve the participants, an order terminating the proceeding conducted pursuant to this subpart, which order will be effective 10 days after issuance.

(b) Termination of the proceeding under paragraph (a) of this section, may be appealed to the Commission, within 10 days after issuance of the termination order, except that if the Commission does not act on an appeal within 30 days, it is deemed denied. The termination order is stayed pending the appeal. If the Commission rescinds the termination order, the proceeding will continue in accordance with this subpart.

§ 385.917 Sanctions (Rule 917).

Whenever it appears to the Commission that a person is engaged or about to engage in any act or practice which constitutes or will constitute a violation of rule, regulation, or order, made or imposed by the Commission or the presiding officer under this subpart, it may bring an action in the proper court of the United States to enjoin that act or practice and to enforce compliance with the order, and upon a proper showing, a permanent or temporary injunction or decree or restraining order will be granted without bond. The Commission may transmit such

evidence as may be available concerning that act or practice to the Attorney General, who may institute the necessary criminal proceedings.

Subpart J—Commission Review of Adjustment Request Denials

§ 385.1001 Scope (Rule 1001).

(a) *Applicability.* This subpart applies to proceedings of the Commission held in accordance with section 504(b) of the Department of Energy Organization Act, 42 U.S.C. 719(b), to review orders issued by the Secretary of Energy pursuant to section 504(a) of the Department of Energy Organization Act denying, in whole or in part, requests for adjustments.

(b) *Relationship to other rules.* When a provision of this subpart is inconsistent with a provision of any other subpart of this part, the former provision controls.

§ 385.1002 Definitions (Rule 1002).

For purposes of this subpart:

(a) *Commission* includes an officer or employee designated as presiding officer in a proceeding under this subpart.

(b) *Petitioner* means a person who is aggrieved or adversely affected by a contested order, as defined in this section, and who requests a review, pursuant to this subpart, by the Commission of the denial by the Secretary.

(c) *Secretary* means the Secretary of Energy or his delegate.

(d) *Contested order* means the decision or order issued by the Secretary denying, in whole or in part, a request for adjustment.

(e) *Participant* means, as appropriate, the petitioner, the Secretary, or an intervenor.

§ 385.1003 Request for nondisclosure of information (Rule 1003).

(a) For purposes of this section, nondisclosure means nondisclosure except to the participants in the proceedings and under the conditions as provided in paragraph (e) of this section.

(b) If a person filing under this subpart claims that some or all of the information contained in a document is exempt from the mandatory public disclosure requirements of the Freedom of

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Information Act (5 U.S.C. 552), is information referred to in 18 U.S.C. 1905, or is otherwise exempt by law from public disclosure, the person:

(1) Will request the presiding officer not to disclose such information, except to the participants in the proceedings and under the conditions as provided in paragraph (e) of this section, which request the person must serve upon the participants in the proceedings;

(2) Will file, together with the document, a second copy of the document from which has been deleted the information for which the person requests nondisclosure and must indicate in the original document that the original document is confidential or contains confidential information;

(3) If the information is claimed to come within the exception in 5 U.S.C. 552(b)(4), for trade secrets and commercial or financial information, it must include a statement specifying why the information is privileged or confidential;

(4) If the information for which nondisclosure is requested is not within the exception in 5 U.S.C. 552(b)(4), it must include a statement specifying the justification for nondisclosure.

(c) If the person filing a document does not submit a second copy of the document from which the appropriate information has been deleted, the presiding officer may assume that there is no objection to public disclosure of the document in its entirety.

(d) If information is submitted in accordance with paragraph (b) of this section, the information will not be disclosed except as provided in the Freedom of Information Act, in accordance with Part 388 of this subchapter and upon request in accordance with paragraph (e) of this section, to participants in the proceeding under the restrictions that the participants may not use or disclose the information except in the context of the proceeding conducted pursuant to this subpart and that the participants must return all copies of the information at the conclusion of the proceeding to the person who submitted the information under paragraph (b) of this section.

(e) At any time, a participant may request the presiding officer to direct a

person submitting information under paragraph (b) of this section to provide that information to the participant requesting the information under this paragraph. The presiding officer will so direct if the participant requesting the information agrees:

(1) Not to use or disclose the information except in the context of the proceeding conducted pursuant to this subpart; and

(2) To return all copies of the information, at the conclusion of the proceeding, to the person submitting the information under paragraph (b) of this section.

(f) At any time, a participant may request the presiding officer to direct that the complete record of prior proceedings, including information determined by the Secretary to be exempt from disclosure, be made available to that participant. The presiding officer will so direct if the participant requesting the complete record agrees:

(1) Not to use or disclose the information determined to be exempt except in the context of the proceeding conducted pursuant to this subpart, and

(2) To return all copies of the information determined to be exempt to the presiding officer at the conclusion of the proceeding.

[Order 225, 47 FR 19022, May 3, 1982, as amended by Order 422, 50 FR 21600, May 28, 1985]

§ 385.1004 Commencement of proceedings (Rule 1004).

(a) A petitioner commences proceedings, pursuant to this subpart, by filing with the Commission and serving upon the Secretary and any other participants in prior proceedings on the contested order a petition for review, which must contain:

(1) A copy of the decision or order denying, in whole or in part, request for adjustment (the contested order); and

(2) A complete statement of the petitioner's objections factual or legal to the contested order, including references to all authorities upon which the petitioner relies including but not limited to regulations, rulings, interpretations, and decisions on exceptions and appeals issued by the Department or its predecessor agencies and precedents established by the Commission.

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(b) A petition for review must be filed within 30 days of issuance by the Secretary of the order to be contested pursuant to this subpart.

(c) Each petition for review filed with the Secretary of the Commission must be accompanied by the fee prescribed by § 381.304 of this chapter.

(d) Upon receiving a petition for review and the fee required by paragraph (c), of this section, the Commission or its designee will designate a presiding officer for the proceedings.

[Order 225, 47 FR 19022, May 3, 1982, as amended by Order 395, 49 FR 35357, Sept. 7, 1984]

§ 385.1005 Replies (Rule 1005).

(a) *By the Secretary.* Within 20 days of service of the petition for review, the Secretary will file with the Commission and serve on the petitioners and the other participants in prior proceedings on the contested order, a reply to the petition for review stating fully his or her position supported by arguments to the petition for review.

(b) *By other participants.* A person who participated in prior proceedings on the contested order may be a participant in the proceedings pursuant to this subpart and may make filings and submittals as determined by the presiding officer.

(c) *By interveners.* A person who was denied the opportunity to participate in prior proceedings on the contested order or who is aggrieved or adversely affected by the contested order may move to intervene in accordance with Rule 214 (intervention). In order that the motion be granted, the movant must show, as appropriate, that denial of participation in prior proceedings was wrongful or why he or she is aggrieved or adversely affected by the contested order. If the presiding officer grants the motion, the person submitting the motion to intervene may make filings and submittals as determined by the presiding officer.

(d) A participant may request interim relief in a proceeding pursuant to this subpart.

(e) The presiding officer may require such other filings by the participants

as he or she deems necessary in the conduct of the proceedings.

[Order 225, 47 FR 19022, May 3, 1982, as amended by Order 422, 50 FR 21600, May 28, 1985]

§ 385.1006 Request for hearing (Rule 1006).

A participant may file with the Commission and serve on the other participants a request for hearing, which will be deemed granted. Such request must be filed concurrently with participant's first pleading.

[Order 225, 47 FR 19022, May 3, 1982, as amended by Order 422, 50 FR 21600, May 28, 1985]

§ 385.1007 Presiding officer (Rule 1007).

(a) The presiding officer will determine the issues to be resolved in the proceeding and will give notice thereof to the participants. The presiding officer may require additional information from the participants and convene a prehearing conference for the purpose of determining the issues to be considered at a hearing, if one is to be held. The presiding officer may also specify the time available for oral argument and determine the nature of the hearing to be held.

(b) The presiding officer may determine, upon request by a participant, whether to permit the participant to raise new facts or issues not raised in prior proceedings on the contested order. Such a request may be granted if the facts or issues are facts or issues that:

(1)(i) Were not known and could not, with the exercise of due care, have been known to the participant at the time they could have been raised in prior proceedings; or

(ii) Are facts or issues that the participant was not permitted to raise in prior proceedings on the contested order due to an adverse procedural ruling alleged to be erroneous; and

(2) Are necessary for a full and true disclosure of the facts.

(c) The petitioner must file a request to raise new facts or issues simultaneously with its petition for review. The Secretary must file such a request simultaneously with its reply to the petition for review. A third party must

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make such a request by the filing deadline set by the presiding officer.

[Order 225, 47 FR 19022, May 3, 1982, as amended by Order 422, 50 FR 21600, May 28, 1985]

§ 385.1008 Hearings (Rule 1008).

As soon as practicable, after receiving any request for hearing and all the pleadings under Rules 1004 (commencement of proceedings) and 1005 (replies), the presiding officer will give notice to the participants as to the time and place of the hearing.

§ 385.1009 Proof (Rule 1009).

(a) A participant seeking relief from the Secretary's denial of a request for adjustment has the burden of demonstrating the participant's entitlement to the relief sought.

(b) Relief will be granted under this subpart if a participant demonstrates, by a preponderance of the evidence, that such relief is warranted.

§ 385.1010 Certification of the record (Rule 1010).

The presiding officer will certify and file with the Office of the Secretary of the Commission, for the Commission, a copy of the record in the proceeding.

[Order 422, 50 FR 21600, May 28, 1985]

§ 385.1011 Final order (Rule 1011).

The Commission will issue a final order, affirming, modifying or vacating the contested order or directing other appropriate relief.

§ 385.1012 Off-the-record communications (Rule 1012).

The provisions of Rule 2201 (prohibited communications and other communications requiring disclosure) apply to proceedings pursuant to this subpart, commencing at the time a petitioner files a petition for review under Rule 1004 (commencement of proceedings).

[Order 607, 64 FR 51234, Sept. 22, 1999]

§ 385.1013 Attachments to pleadings (Rule 1013).

(a) Each party will file, as an appendix to each pleading which cites documents in the record developed in the prior proceedings on the adjustment re-

quest, one copy of each such document in its entirety and, if such document contains information exempt from public disclosure pursuant to rule 1003, a second copy of such document with such information deleted. The top of the first page of each such document will contain the word "PUBLIC" or "NON-PUBLIC," to indicate whether it contains exempt information.

(b) One copy of the PUBLIC and NON-PUBLIC versions must be served on counsel for the petitioner and/or the Secretary, and one copy of the PUBLIC version must be served on counsel for each other participant separately represented unless the conditions of Rule 1003 are met, in which situation such counsel must be served with copies of both versions.

(c) In compiling appendices, the parties will include only documents specifically cited and relied upon in their pleadings. In light of the fact that the Commission always has access to the Secretary's entire administrative record, the parties must not include irrelevant or repetitive documents in the appendices.

[Order 422, 50 FR 21601, May 28, 1985]

Subpart K—Petitions for Adjustments Under the NGPA

§ 385.1101 Applicability (Rule 1101).

(a) *Proceedings to which applicable.* Except as provided in paragraph (b) of this section, this subpart applies to proceedings of the Commission held in accordance with section 502(c) of the NGPA to provide for adjustments of:

(1) Commission rules, and

(2) Commission orders having the applicability and effect of a rule as defined in section 551(4) of title 5 of the United States Code (5 U.S.C. 551(4)) and issued under the NGPA, except orders issued under sections 301, 302, and 303 of the NGPA.

(b) This subpart does not apply to:

(1) Proceedings wherein the Commission by order grants an adjustment on its own motion or;

(2) Proceedings for which the Commission by order waives the provision of this subpart.

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(c) *Relationship to other rules.* (1) Where a provision of this subpart is inconsistent with a provision in another subpart of this part, the former provision controls.

(2) When provisions of other subparts of this part require Commission action, such provisions as applied under this subpart shall be deemed to require staff action. This subpart does not require a hearing to which subpart E applies.

[Order 225, 47 FR 19022, May 3, 1982, as amended by Order 478, 52 FR 28467, July 30, 1987]

§ 385.1102 Definitions (Rule 1102).

For purposes of this subpart:

(a) *Adjustment* means an order issued by Staff under Rule 1109 (orders):

(1) Granting relief from an order or rule issued by the Commission under the NGPA,

(i) Including exceptions, exemptions, modification, and rescissions of rules and orders have the effect of rule as defined in section 551 of title 5 of the United States Code (5 U.S.C. 551(4)) and issued under the NGPA; but

(ii) Excluding requests for just and reasonable rates under sections 104, 106, and 109 of the NGPA; and

(2) Granting an exemption, in whole or in part, for incrementally priced industrial boiler fuel facilities from section 201 of the NGPA, under the authority of section 206(d) of the NGPA and §282.206 (industrial boiler fuel facilities exemption);

(b) *Petitioner* means a person who files a petition for adjustment under paragraph (c) of this section;

(c) *Petition* means a petition for adjustment filed under Rule 1103 (commencement of adjustment proceedings);

(d) *NGPA* means the Natural Gas Policy Act of 1978;

(e) *Party* means, with respect to a particular petition for adjustment, the person making the petition, and intervenor, or a person who has moved to intervene but whose motion has not been granted or denied under Rule 1105(b) (intervention in adjustment proceedings).

(f) *Staff* means the Director of the Office of Producer and Pipeline Regulation, or a person who is designated by

the Director and who is an employee of the Commission.

§ 385.1103 Commencement of proceeding (Rule 1103).

A person commences a proceeding for an adjustment by filing a petition for adjustment with the Commission.

§ 385.1104 Initial petition (Rule 1104).

(a) *Content.* (1) The petition must contain:

(i) A full and complete statement of the relevant facts, including the documentary support pertaining to the circumstances, act or transaction that is the subject of the petition;

(ii) A complete statement of the business reasons why the relief should be granted and the business consequences that will result if the relief is denied; and

(iii) A statement specifying how the denial of relief will cause the applicant to suffer special hardship, inequity, or unfair distribution of burdens.

(2) The petition must contain a complete statement of the legal basis of the relief requested including citations to authorities relied upon to support the petition.

(3) The petition must specify the exact nature of the relief sought.

(4) The certificate of service required under Rule 2010(h) (certificate of service) must indicate the names and addresses of all persons served.

(5) The petition must include a proposed notice of the adjustment proceeding which must state the petitioner's name, the rule or order under the NGPA of which an adjustment is sought, the date of the petition, and a brief summary of the relief requested. The proposed notice must be in the following form:

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION
(Name of Petitioner) _____
Docket No. _____

NOTICE OF PETITION FOR ADJUSTMENT

On (date petition was filed), (name of petitioner) filed with the Federal Energy Regulatory Commission a petition for an adjustment under the rule or order under the NGPA of which an adjustment is sought,

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wherein (name of petitioner) sought (relief requested).

The procedures applicable to the conduct of this adjustment proceeding are found in subpart K of the Commission's Rules of Practice and Procedure.

Any person desiring to participate in this adjustment proceeding must file a motion to intervene in accordance with the provisions of such subpart K. All motions to intervene must be filed within 15 days after publication of this notice in the FEDERAL REGISTER.

(6) The petition must be accompanied by the fee prescribed in §381.401 of this chapter or by a petition for waiver pursuant to §381.106 of this chapter.

(b) *Service.* (1) The petitioner must serve a copy of the petition, or a copy from which confidential information has been deleted in accordance with Rule 1112 (requests for confidential treatment) on each person who is reasonably ascertainable by the petitioner as a person who may suffer direct and measurable economic impact if the relief is granted.

(2) Notwithstanding paragraph (b)(1) of this section, if a petitioner determines that compliance with such paragraph of this section would be impracticable, the petitioner must:

(i) Comply with the requirements of such paragraph with regard to those persons whom it is reasonable and practicable to serve; and

(ii) Include with the petition a description of the persons or class or classes of persons to whom notice was not sent.

(3) Staff may require the petitioner to provide alternate or additional service and will cause notice of the application to be published in the FEDERAL REGISTER.

[Order 225, 47 FR 19022, May 3, 1982, as amended by Order 394, 49 FR 35365, Sept. 7, 1984]

§ 385.1105 Intervention (Rule 1105).

(a) A motion to intervene in an adjustment proceeding, in conformity with Rule 214 (intervention) must be filed within 15 days after publication in the FEDERAL REGISTER of notice of the petition for adjustment.

(b) A motion to intervene is granted unless it is denied by staff within 75 days after the day on which it was filed.

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§ 385.1106 Other filings (Rule 1106).

(a) *Interveners.* Responses to the petition must be filed at the time the motion to intervene is filed.

(b) *Petitioner.* The petitioner may respond to filings of another party within 15 days after service of such filings. Amended pleadings may be filed under Rule 215 (amendments) if the petitioner discovers facts unavailable at the time the initial petition was filed, or if such pleadings are requested or permitted by Staff under Rule 1107 (evaluations).

§ 385.1107 Evaluations (Rule 1107).

(a) Staff will consider the filings made in connection with the petition for adjustment. Staff may also consider information received under paragraph (b) of this section. If Staff obtains information under paragraphs (b)(1) or (b)(3) of this section and relies upon such information, the petitioner will be advised of such information and will be given 15 days to respond to such information.

(b)(1) Staff may initiate an investigation of any statement in a petition and use in its evaluation any relevant fact obtained in such an investigation.

(2) Staff may request additional information from the petitioner.

(3) Staff may solicit and accept submissions from interveners or third persons relevant to the petition.

(4) Staff may consider information obtained in informal conferences held under Rule 1111 (adjustment conferences).

[Order 225, 47 FR 19022, May 3, 1982, as amended by Order 24-C, 50 FR 21596, May 28, 1985]

§ 385.1108 Criteria (Rule 1108).

(a) Staff will grant a petition where there are sufficient facts to make a determination on the merits and where Staff determines that an adjustment is necessary to prevent or alleviate:

(1) Special hardship;

(2) Inequity; or

(3) An unfair distribution of burdens.

(b) When there are not sufficient facts to make a determination on the merits, the Staff may dismiss the petition without prejudice; except, that when Staff has requested additional material information under Rule 1107

(adjustment evaluations) of this section and the petitioner has failed to provide the requested information, Staff may deny the petition if the requested information was reasonably available to the petitioner.

[Order 225, 47 FR 19022, May 3, 1982, as amended by Order 24-C, 50 FR 21596, May 28, 1985]

§ 385.1109 Orders (Rule 1109).

(a) Staff will issue a decision and an order granting or denying the petition in whole or in part. The order will articulate the basis for the decision, noting any dispute with the factual assertions of the petitioner.

(b) In addition to service otherwise required under this subpart, Staff will serve the decision and order on the persons who sought and were denied an opportunity to participate in the proceeding under this subpart.

(c) If Staff fails to issue an order granting or denying the petition for adjustment within the determination period, the petitioner may treat the application as having been denied and may, within 30 days after the close of the determination period, request review thereof as prescribed in Rule 1110(a) (review of denials). For purposes of this paragraph, "determination period" means the 150 days commencing with the filing of the petition, unless Staff for good cause extends such period.

(d) An order of Staff issued under paragraph (a) of this section granting an adjustment, in whole or in part, is final 30 days after it is issued, unless, during such 30-day period:

(1) A petition for review is filed under subpart J of this subchapter in accordance with Rule 1110(a) (review of denials) in which case the order is final when the review process under subpart J has been completed; or

(2) The Commission directs that the order be reviewed under subpart J in accordance with Rule 1110(b), in which case the order is final when the review process under subpart J has been completed unless the Commission expressly states that the order shall be effective pending review proceeding.

§ 385.1110 Review of initial decision and order for adjustment (Rule 1110).

(a) *General rule.* (1) Within 30 days after the issuance by Staff of an order granting or denying, in whole or in part, a petition for adjustment relief under this subpart, a person may file a petition for Commission review of that order in accordance with subpart J of this subchapter, if the person:

(i) Is aggrieved or adversely affected by that order; and

(ii) Participated, or sought and was denied an opportunity to participate, in the proceeding under this subpart.

(2) Except as otherwise provided in this paragraph, the provisions of subpart J other than Rule 1013 (attachments to pleadings) shall apply to Commission review of both grants and denials of adjustment petitions under this subpart.

(i) *Contested order* in subpart J means the order issued by Staff granting or denying, in whole or in part, a petition for adjustment under this subpart.

(ii) "Staff" is substituted for "Secretary" in subpart J. With respect to review of an order denying a petition for adjustment under this subpart, Staff may participate in the proceeding in the same manner prescribed for the Secretary in Rule 1005 (replies in reviews of adjustment denials). With respect to review of an order granting a petition for adjustment under this subpart, Staff may not participate in the proceeding except to the extent necessary to file the list identifying the documents in the record as prescribed in paragraph (a)(2)(iii). With respect to review of an order granting in part and denying in part a petition for adjustment under this subpart, Staff may participate as prescribed in Rule 1005(a)(1) (replies), only if a petition for review has been filed which specifically seeks review of the portion of the order denying the petition for adjustment.

(iii) Within 15 days of service of the petition for review, Staff must file with the Commission a list identifying each document in the record developed in the prior proceedings on the contested order, who filed the document, and the date it was filed.

(3) A motion to intervene under Rule 1005(c) (interventions in adjustment

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proceedings) may be filed only by a person who sought and was denied an opportunity to participate, in the proceeding under this section. A person who did not file a motion to intervene in the Staff proceeding may file a motion for late intervention under Rule 214(d) (grant of late intervention).

(4) There is no exhaustion of administrative remedies until a request for review is filed under subpart J in accordance with this section and the review process under subpart J is completed by the issuance of an order granting or denying, in whole or in part, the relief requested.

(b) *Review initiated by the Commission.* Within 30 days after the issuance by Staff of an order granting, in whole or in part, a petition for adjustment relief under this subpart, the Commission may direct that the order be reviewed in a proceeding which, insofar as practicable, will conform to proceedings under subpart J. The order directing such review will specify the manner in which such proceeding will be conducted and the extent to which subpart J apply.

(c) *Separation of functions.* Any person who participated in the proceeding to review the grant or denial of that adjustment under this Rule as a witness or counsel may not advise the Commission concerning the review of the grant or denial of that adjustment.

[Order 225, 47 FR 19022, May 3, 1982; 48 FR 786, Jan. 7, 1983, as amended by Order 24-C, 50 FR 21596, May 28, 1985]

§ 385.1111 Conferences (Rule 1111).

Staff may direct that a conference be convened. The conference will be conducted by Staff in accordance with procedures Staff determines will most expeditiously further the purpose of the conference. A conference will be convened only after actual notice of the time, place and nature of the conference is provided to the parties. All parties may attend the conference. However, if a party wishes to present confidential information at the conference, Staff may exclude the other parties from that part of the conference when the confidential information is presented.

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§ 385.1112 Requests for confidential treatment (Rule 1112).

(a) If a person filing a document under this subpart claims that some or all of the information contained in a document is exempt from the mandatory disclosure requirements of the Freedom of Information Act, or is otherwise exempt by law from public disclosure, that person may request confidential treatment of such information. At the time request is made for confidential treatment, the person must submit a copy of the document which contains the confidential information and two copies of the document which exclude the information for which confidential treatment is requested. The request for confidential treatment must describe the information deleted and specify the grounds for the claim for confidential treatment. The service requirements of Rule 2010 (service) are deemed satisfied if a copy of the document with the confidential information deleted is served.

(b) If a determination to disclose the information is made under part 388 (public information and requests), the person who has requested confidential treatment will be given notice thereof and will be afforded no less than 10 days to respond to such determination before the information is disclosed.

§ 385.1113 Interim relief (Rule 1113).

(a) The petitioner may at any time file a request for interim relief in a proceeding under this subpart, setting forth the legal and factual basis for the request. Service of such request must comply with the service requirements set forth in Rule 1104(b) (initial petition of adjustment request) and must be made on each person described in such rule as well as on any other party to the proceeding.

(b) The grounds for granting interim relief are:

(1)(i) A showing that irreparable injury will result in the event the interim relief is denied; and

(ii) A showing that denial of the interim relief requested will result in a more immediate special hardship or inequity to the person requesting the interim relief than the consequences that would result to other persons if the interim relief were granted; or

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(2) A showing that it will be in the public interest to grant the interim relief.

(c) A party may within 10 days after the filing of the request for interim relief file a reply to the request for interim relief.

(d) Staff may request a written statement of the views of a party regarding whether the interim relief should be granted and may convene an expedited conference on the request for interim relief.

(e) If Staff has not granted the request for interim relief within 30 days after it is filed, the request is denied.

(f)(1) Subject to paragraph (f)(2) of this section, Staff will issue an order granting or denying the request for interim relief and will notify the parties. Any grant of interim relief is subject to further modification in the order issued under Rule 1109 (orders).

(2) The Commission may, on its own motion, at any time revoke, modify, rescind, stay or take any other appropriate action concerning the order granting interim relief.

[Order 225, 47 FR 19022, May 3, 1982, as amended by Order 24-C, 50 FR 21596, May 28, 1985]

§ 385.1114 Motions (Rule 1114).

A party may file a motion at any time. Motions must set forth the ruling or relief requested and must state the grounds therefor and the statutory or other authority relied upon. Staff will rule on all motions.

§ 385.1115 Procedural rulings (Rule 1115).

Staff may make any procedural rule or provide any procedural relief.

§ 385.1116 Appeals (Rule 1116).

All actions under this subpart are taken by Staff, except with respect to requests for public information under part 388. Except as provided in Rule 1110 (review of initial adjustment decision) of this section, there are no appeals to the Commission from Staff action taken under this section.

§ 385.1117 Petition for adjustment treated as request for interpretation (Rule 1117).

(a) Staff may, if appropriate, treat a petition filed under Rule 1103 (petition for adjustment) as a request for an interpretation under section 502(c) of the NGPA, or rule or order issued under that Act.

(b) If the Staff exercises its discretion under paragraph (a) of this section to treat a petition for adjustment as a request for an interpretation, then:

(1) Staff will notify the parties to the proceeding that the petition is being treated as a request for an interpretation under Rule 1901; and

(2) The time limits in this section are stayed pending issuance of the interpretation.

(c) After the interpretation is issued, if the petitioner wishes to reinstate the adjustment proceeding, the petitioner may do so by notifying the Commission in writing that the petition should be reinstated.

Subpart L [Reserved]

Subpart M—Cooperative Procedure with State Commissions

§ 385.1301 Policy (Rule 1301).

(a) The Federal Power and Natural Gas Acts, sections 209 and 17, respectively, authorize cooperation between the Federal Energy Regulatory Commission and the State commissions of the several States in the administration of said Acts, which include authorization for:

(1) Reference of any matter arising in the administration of these Acts to a board to be composed of a member or members from a State or States affected, or to be affected, by the particular matters pending before the Commission;

(2) Conferences with State commissions regarding the relationship between rate structures, costs, accounts, charges, practices, classifications, and regulations of public utilities or natural gas companies subject to the jurisdiction of such State commissions and of the Commission; and

(3) Joint hearings with State commissions in connection with any matter with respect to which the Commission is authorized to act.

(b) The matters that should be the subject of a conference referred to a board, or heard at a joint hearing of State commissions and the Commission, obviously, cannot be determined in advance. It is understood, therefore, that the Commission or any State commission will freely suggest cooperation with respect to any proceeding or matter affecting any public utility or natural gas company subject to the jurisdiction of the Commission and of a State commission, and concerning which it is believed that cooperation will be in the public interest.

§ 385.1302 Notice (Rule 1302).

(a) *By Commission.* (1) Whenever there is instituted before the Commission any proceeding under either the Federal Power Act or the Natural Gas Act, the State commission or commissions of the State or States affected thereby will be given notice thereof immediately by the Commission. As deemed necessary for an understanding of the subject matter, each such notice will be supplemented by copies of applications, complaints, petitions, or orders instituting proceedings. Each such notice given to a State commission will request that the Commission be notified within a reasonable time whether the proceeding is deemed one that should be considered under the cooperative provisions of this subpart, and, if so, to advise the Commission as to the nature of its interest in the matter, and further, to specify whether it desires a conference, the creation of a board, or a joint or concurrent hearing, as defined in this subpart and the reasons for such request.

(2) Any commission suggesting some form of such cooperative procedure should also state whether there is pending, or will be pending before it, a proceeding in which a concurrent hearing might appropriately be held and whether its proposal is for such hearing covering such proceeding and the proceeding pending before the Commission.

(3) A State commission recommending to the Commission reference

of a proceeding to a board, under either the Federal Power Act or the Natural Gas Act, should state with fullness the reasons which led it to believe that such reference is desirable and in the public interest.

(4) Upon the receipt from a State commission of a communication suggesting cooperation, the Commission will consider the same, and may confer with the commission making the request and with other interested commissions, if any, in such manner as may be most suitable, and, if cooperation in the manner proposed, or in any other manner, appears to be practicable and desirable, will so advise each interested State commission, and will invite it to participate therein.

(b) *By State commission.* (1) Each State commission should, in like manner, notify the Commission of any proceeding instituted before it the subject matter of which is also subject to the jurisdiction of the Commission, or in which it believes the Commission is interested. Such notice should be supplemented by copies of applications, petitions, complaints, or orders instituting proceedings which may be necessary to an understanding of the subject matter. Such notice should include the suggestions which the State commission may wish to make concerning cooperative procedure.

(2) Upon receipt of such notice, the Commission will consider the same and will promptly notify the State commission whether or not in its opinion cooperation in the manner proposed, or in any other manner, appears to be practicable and desirable. The Commission is free to propose cooperative procedures whether or not such proposal of cooperation has been made by the State commission first giving notice of the proceeding.

(c) *Commission or State commissions to invite participation in cooperative procedure.* In the event that cooperation in a particular proceeding has been determined upon, the Commission or a State commission before which the proceeding is pending will so advise each interested State commission and will invite it to take part therein.

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§ 385.1303 Conferences (Rule 1303).

Inasmuch as experience has proved that informal conferences are the means most often used to enable commissions to work together to promote good regulation, affording means whereby common understandings may be reached, and the imposition of inconsistent or conflicting regulations upon companies subject to both Federal and State control may be avoided and means whereby State commissions may secure the assistance in State regulatory work which sections 209 and 17, respectively, of the Federal Power and Natural Gas Acts authorize the Commission to extend, any commission, Federal or State, should always feel free to suggest a conference to another commission, concerning any matter of regulation subject to the jurisdiction of either, with respect to which it is believed that a cooperative conference may be in the public interest. The commission desiring a conference upon any such matter should notify other interested commissions without delay, and thereupon the Commission or a State commission, as may be agreed, will promptly arrange for a conference in which all interested commissions will be invited to be represented.

§ 385.1304 Procedure governing matters referred to a board (Rule 1304).

(a) It is believed that the statutory provisions of sections 209 and 17, respectively, of the Federal Power and Natural Gas Acts, for the reference of a proceeding to a board constituted as therein provided, were designed for use in unusual cases, and as a means of relief to the Commission when it might find itself unable to hear and determine cases before it, in the usual course, without undue delay.

(b) Whenever the Commission, either upon its own motion or upon the suggestion of a State commission or at the request of any interested party, determines that it is desirable to refer a matter arising in the administration either of the Natural Gas Act or Part II of the Federal Power Act, to a board to be composed of a member or members from the State or States affected or to be affected by such matter, the procedure will be as follows: The Commission will send a request to each inter-

ested State commission to nominate a specified number of members to serve on such board. Whenever more than one State is involved, the representation of each State concerned shall be equal, unless one or more of the States affected chooses to waive such right of equal representation. The Commission will specify the functions to be performed by such board in each instance. When the member or members of any board have been nominated and appointed in accordance with the provisions of either section 209 of the Federal Power Act or section 17 of the Natural Gas Act, the Commission will issue an order referring the particular matter to such board, and such order will fix the time and place of hearing, define the "force and effect" which an action of the board will have, the manner in which the proceedings will be conducted, and specify the allowances to be made for the expense of the members of the board. As far as applicable, the rules of practice and procedure as from time to time adopted or prescribed by the Commission will govern such board. The board will have authority to adjourn the hearing from day to day, subpoena witnesses, rule on the relevancy, competency, and materiality of evidence, and will, after hearing all interested parties, submit its report to the Commission.

§ 385.1305 Joint and concurrent hearings (Rule 1305).

(a) The term "joint hearing" used in sections 209 and 17, respectively, of the Federal Power and Natural Gas Acts is understood to cover any hearing in which members of the Commission and members of one or more State commissions may sit together in a proceeding pending before one such commission, whether or not a proceeding or proceedings involving similar or corresponding issues be pending before any other commission.

(b) Two different types of proceedings have been called "joint hearings". One is that type of proceeding where members of one or more State commissions sit with members of the Commission for information or in an advisory capacity. The State commissioners in such case do not develop a record for their respective commissions and may

not, at their own discretion, make a recommendation to the Commission. The other type of joint hearing is often referred to as a "concurrent hearing". Under this procedure the Commission and one or more State commissions sit together to hear and jointly make a record upon a matter over which all of the participating commissions have jurisdiction and responsibility for action.

(c) The Commission or any State commission or commissions should feel free to suggest or request a joint or concurrent hearing at any time. It is believed that the concurrent hearing is the type of cooperative hearing which is likely to be most useful and effective.

(d) Whenever a concurrent hearing has been agreed upon by the Commission and one or more State commissions, the procedure will be:

(1) Each commission will designate the representative or representatives of such commission to sit at such concurrent hearing, and will designate the representative who will be the presiding officer for such commission.

(2) It will be understood that participation in such concurrent hearing will in no way affect the complete control by each commission of the proceeding before it. It will be understood, also, that participation in either a joint or concurrent hearing will in no way preclude any commission from causing to be presented in any such case pertinent evidence with respect to matters in issue.

(3) The representative designated by the Commission will be the presiding officer to announce rulings with respect to which there is no disagreement; and such rulings will be considered concurrent rulings. However, the presiding officer for any commission which does not concur in any ruling may announce a divergent ruling and such divergent ruling, whether with respect to the admissibility of evidence or any other matter, will be considered the ruling for his or her commission.

(4) The record of the concurrent hearing will be the record of each commission participating, except that, if divergent rulings are made, the rulings will be reported so as to separate and distinguish clearly the record of the respective participating commissions and

the evidence admitted in each record, in accordance with the rulings of the respective commissions. If, in any proceeding, the ruling of one presiding officer has the effect of admitting any voluminous exhibit or testimony which is excluded by the ruling of another presiding officer, the taking of such evidence, whenever possible, will be deferred until after the completion of the proceedings which can be conducted under concurrent rulings. When such testimony is taken, the transcript of such evidence will be made available to the participating commissions, if desired.

(5) In all respects concerning which there is no divergence of ruling, the hearing will be conducted in accordance with the rules of practice and procedure prescribed by the Commission, subject to the express understanding that each participating State commission will control its own record and make its own rulings as to the admissibility of evidence and as to other matters affecting its proceedings, and will make its own separate final decision or order therein.

(e) Before either the Commission or a participating State commission will enter any order or orders in a concurrent proceeding, opportunity will be afforded for conference between the Commission and the State commissions participating.

(f) Whenever a joint hearing other than a concurrent hearing is agreed upon, the commissioners which take part therein will agree upon the procedure to be followed in such hearing in advance of the opening of the same. With respect to any concurrent hearing, a special agreement may be made by the commissions taking part therein for a procedure or action differing from that outlined in this plan.

(g) Cooperation between two or more commissions in a concurrent hearing will preclude either from taking the position of an advocate or a litigant. If a commission wishes to take such a position, it will not be a cooperating participant in that proceeding. In such situation the appropriate method of procedure will be intervention under Rule 214.

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§ 385.1306 Intervention by State commissions (Rule 1306).

Any interested State commission may intervene in any proceeding before the Federal Energy Regulatory Commission, as provided in Rule 214.

Subpart N—Oil Pipeline Proceedings

AUTHORITY: Administrative Procedure Act, 5 U.S.C. 551-557; Department of Energy Organization Act, 42 U.S.C. 7101-7352, E.O. 12,009, 3 CFR 142 (1978); Interstate Commerce Act, 49 U.S.C. 1, *et seq.*

§ 385.1401 Applicability (Rule 1401).

(a) This subpart applies to oil pipeline proceedings.

(b) If any provision of this subpart is inconsistent with any provision of another subpart of this part, the provision of this subpart governs and the provision of the other subpart is inapplicable to the extent of the inconsistency.

[Order 312, 48 FR 29479, June 27, 1983]

§ 385.1402 Subscriber lists (Rule 1402).

(a) Not later than December 31 of each year, an oil pipeline must request, in writing, each of its subscribers and each person who has been served under any of its tariffs during the preceding twelve months to notify the pipeline as to whether the subscriber or person wishes to be included on the subscriber list for any of the oil pipeline's integrated pipeline systems.

(b) The oil pipeline must immediately add to the specified subscriber list any subscriber or person which responds in writing within 30 days of receipt of the oil pipeline request and which indicates in that response that it wishes to be included on the specified list.

[Order 312, 48 FR 29479, June 27, 1983]

§ 385.1403 Petitions seeking institution of rulemaking proceedings (Rule 1404).

Any person may file a petition requesting the Commission to institute a proceeding for the purpose of issuing statements, rules, or regulations of general applicability and significance designed to implement or interpret

law, or to formulate general policy for future effect. No reply to such a petition may be filed. Whether a proceeding shall be instituted as requested is within the discretion of the Commission and the ruling on the petition will be final. In the event a rulemaking proceeding is instituted by the Commission, the procedure to be employed for the taking of evidence or the receipt of views and comments will be designated by Commission order.

[Order 276, at 49 FR 21705, May 23, 1984. Redesignated by Order 606, 64 FR 44405, Aug. 16, 1999]

Subpart O—Procedures for the Assessment of Civil Penalties Under Section 31 of the Federal Power Act

§ 385.1501 Scope (Rule 1501).

The rules in this subpart apply to and govern proceedings for the assessment of civil penalties pursuant to section 31 of the Federal Power Act, 16 U.S.C. 823b.

§ 385.1502 Persons subject to civil penalties (Rule 1502).

(a) Any licensee or permittee under the Federal Power Act, or exemptee from any requirement of Part I of the Federal Power Act, may be subject to civil penalties; and

(b) Any person who must have a license under, or exemption from, the Federal Power Act, but does not, may be subject to civil penalties.

§ 385.1503 Actions subjecting persons to civil penalties (Rule 1503).

(a) The actions that subject persons to civil penalties are violations of:

(1) Any rule or regulation issued under Part I of the Federal Power Act;

(2) Any term or condition of a license or permit issued under Part I of the Federal Power Act or an exemption issued from any provision of Part I of the Federal Power Act;

(3) Any compliance order issued under section 31(a) of the Federal Power Act; or

(4) Any requirement of Part I of the Federal Power Act.

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(b) Only actions occurring on or after October 16, 1986, may subject a person to civil penalties.

§ 385.1504 Maximum civil penalty (Rule 1504).

(a) Except as provided in paragraph (b) of this section, the Commission may assess a civil penalty of up to \$10,000 for each day that the violation continues.

(b) No civil penalty may be assessed where a license or exemption is ordered revoked.

§ 385.1505 Determination of proposed penalty amount (Rule 1505).

(a) In determining the amount of a proposed penalty, the Commission will consider the nature and seriousness of the violation, and the efforts of the licensee, exemptee, permittee or one who should possess appropriate authority but does not, to remedy the violation in a timely manner.

(b) In making its determination under paragraph (a), the Commission will consider the following factors:

(1) Whether the person had actual knowledge of the violation;

(2) Whether the person had constructive knowledge of the violation deemed to be possessed by a reasonable individual acting under similar circumstances;

(3) Whether the person has a history of previous violations;

(4) Whether the violation caused loss of life or injury to persons;

(5) Whether economic benefits were derived because of the violation;

(6) Whether the violation caused damage to property or the environment;

(7) Whether the violation endangered persons, property or the environment;

(8) Whether there were timely remedial efforts;

(9) Whether there were untimely remedial efforts;

(10) Whether there were no remedial efforts; and

(11) Whether there are any other pertinent considerations.

§ 385.1506 Notice of proposed penalty (Rule 1506).

(a) Before issuing an order assessing a civil penalty under this subpart

against any person, the Commission will provide to the person notice of the proposed penalty.

(b) The notice of proposed penalty will:

(1) Include the amount of the proposed penalty;

(2) Include a statement of the material facts constituting the alleged violation; and

(3)(i) Inform the person of the opportunity to elect in writing within 30 days of receipt of the notice to have the procedures of Rule 1509 (in lieu of those of Rule 1508) apply with respect to the assessment, or,

(ii) If a final compliance order is issued under section 31(a) of the Federal Power Act, no notice of election will be provided for a violation of, or a failure or refusal to comply with, the final order.

§ 385.1507 Election of procedures and answer (Rule 1507).

(a) If the respondent receiving the notice of proposed penalty wishes to have the procedures of Rule 1509 apply, then the respondent must file with the Commission, within 30 days of receipt of the notice, a notification of the election in accordance with subpart T, part 385 of this chapter. The notification may include an answer setting forth factual or legal reasons why the proposed assessment order should not be issued, should be reduced in amount, or should otherwise be modified. If a person fails to file an answer within the 30-day time limit, all material facts stated in the Commission's notice will be deemed admitted.

(b) Any election to have the procedures of Rule 1509 apply may not be revoked after the 30-day election period in paragraph (a) of this section, without the consent of the Commission.

§ 385.1508 Commission administrative procedures (Rule 1508).

(a) If the respondent is not entitled to an election pursuant to Rule 1506(b)(3)(ii) or does not timely elect to have the procedures of Rule 1509 apply, the Commission will commence a proceeding in accordance with the provisions of subpart E of this chapter.

(b) The Commission's Rules of Practice and Procedure in part 385 of this

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chapter will apply, as appropriate, to any evidentiary proceeding to assess a civil penalty.

(c) An assessment order under this section shall include the administrative law judge's findings and the basis for such assessment.

§ 385.1509 District court procedures (Rule 1509).

(a) After receipt of the notification of election to apply the provisions of this section pursuant to Rule 1507, the Commission will promptly assess the penalty it deems appropriate, in accordance with Rule 1505.

(b) If the civil penalty is not paid within 60 calendar days after the assessment order is issued under paragraph (a) of this section, the General Counsel, unless otherwise directed by the Commission, will institute an action in the appropriate United States District Court for an order affirming the assessment of the civil penalty.

§ 385.1510 Modification of civil penalty (Rule 1510).

(a) The Commission may compromise, modify, or remit, with or without conditions, any civil penalty (with leave of court if necessary).

(b) In exercising its authority under paragraph (a) of this section, the Commission may consider the nature and seriousness of the violation, and the efforts of the licensee, exemptee, permittee, or one who should possess appropriate authority but does not, to remedy the violation in a timely manner.

(c) The Commission's authority to compromise, modify or remit a civil penalty may be exercised at any time prior to a final decision by the United States Court of Appeals if Rule 1508 procedures are utilized, or prior to a final decision by the United States District Court if Rule 1509 procedures are utilized.

§ 385.1511 Collection of civil penalties (Rule 1511).

If any person fails to pay a civil penalty assessment, the Commission will seek to recover the amount of the penalty plus interest in any appropriate District Court of the United States. Interest will begin to accrue on the date

the Commission issues a final order under Rule 1508 or the date on which the appropriate District Court enters final judgment in favor of the Commission under Rule 1509.

[Order 502, 53 FR 32039, Aug. 23, 1988]

Subparts P—R [Reserved]

Subpart S—Miscellaneous

§ 385.1901 Interpretations and interpretative rules under the NGPA (Rule 1901).

(a) *Purpose and applicability*—(1) *Purpose*. The purpose of this section is to provide procedures by which:

(i) A person may seek a written interpretation from the General Counsel construing a provision of the NGPA, or clarifying a rule issued by the Commission under the NGPA; and

(ii) The Commission may publish an interpretative rule that will have general applicability and effect.

(2) *Applicability*. (i) This section applies to requests under section 502(c) of the NGPA for interpretations of the NGPA or of rules or of orders, having the applicability and effect of a rule as defined in 5 U.S.C. 551(4), issued under the NGPA. It does not apply to orders issued under sections 301, 302, and 303 of the NGPA.

(ii) This section applies to requests for interpretations to prospective, existing or completed facts, acts, or transactions. Interpretations based on hypothetical facts, acts, or transactions will not be considered.

(b) *Definitions*. For the purpose of this section, the following definitions apply.

(1) *Direct participant* means any person or legal entity who is, or plans to be an actual party in the act, transaction, or circumstance presented, and who has an immediate or direct financial interest in the act, transaction, or circumstance.

(2) *Interpretation* means a written statement of the General Counsel which applies a particular rule to a particular set of facts, acts, circumstances or transactions. In the discretion of General Counsel, the interpretation may contain a detailed factual and legal analysis, a summary of

the facts or the law, or both, or it may be a conclusory statement.

(3) *Interpretative rule* means an official interpretative statement of general applicability issued by the Commission and published in the FEDERAL REGISTER that applies the NGPA or rules issued thereunder to a specific set of facts, acts, circumstances and transactions.

(4) *NGPA* means the Natural Gas Policy Act of 1978.

(5) *Request* means a request for an interpretation.

(6) *Rule* means a rule or an order having the effect of a rule as defined in 5 U.S.C. 551(4).

(c) *Persons who may request an interpretation*—(1) Any person who is or will be a direct participant in an act, transaction, or circumstance affected by the NGPA or a rule issued by the Commission under the NGPA may file with the Office of the General Counsel a request for an interpretation.

(2) Requests for interpretations must be addressed to the Office of the General Counsel as follows:

Federal Energy Regulatory Commission, Interpretations Section, Office of the General Counsel, Suite 8000, 825 North Capitol Street, NE., Washington, D.C. 20426.

(3) Requests for interpretation under this paragraph need not be filed with the Secretary.

(d) *Content of request*—(1) *Facts*. A request for interpretation must contain a full and complete statement of the relevant and material facts pertaining to the act, transaction, or circumstance that is the subject of the request for interpretation. When the request pertains to only one step of a larger integrated transaction, the facts, circumstances, and other relevant information pertaining to the entire transaction must be included in the request.

(2) *Statement of the question*. The request must clearly designate the section of the statute, regulation, rule, or part thereof which the person making the request seeks to have interpreted and must set forth clearly and concisely the question for which an interpretation is sought. The request may also set forth a proposed answer to the question.

(3) *Analysis*. If the request proposes a particular answer:

(i) The request must set forth a legal analysis in support of the proposed answer and cite relevant authorities in support thereof.

(ii) The request must set forth the legal and business consequences which will flow from the proposed answer.

(4) *Factual statements*. (i) The request must be accompanied by a statement that to the best of the applicant's personal information, knowledge, and belief there is no untrue statement of a material or relevant fact and there is no omission of a material or relevant fact made in the request.

(ii) Any untrue statement or omission of a material or relevant fact upon which the Office of the General Counsel relied in a request for an interpretation is deemed to be a statement or entry under section 1001 of Title 18, United States Code.

(5) *Notification of other parties*. (i) A person submitting a request must specify each person who is a direct participant in the circumstance, act or transaction; must notify them in writing of the request for an interpretation; and must send them a copy of such request. Such notification and the addresses of the persons notified must be included in a request to the General Counsel.

(ii) Each person notified pursuant to paragraph (d)(5)(i) of this section may submit information regarding any fact provided in the request of which it has personal knowledge, if such fact is different from the facts presented by the applicant. Such fact must be presented to the Office of the General Counsel as set forth in paragraph (d)(4) of this section.

(6) The request must be accompanied by the fee prescribed in §381.405 of this chapter or by a petition for waiver pursuant to §381.106 of this chapter.

(e) *Additional information*. The General Counsel may request additional information, documentation or legal analysis in connection with any request for any interpretation.

(f) *Referral of information*. Information submitted in a request for interpretation may be used by the Commission or its Staff in their official capacity. Any information received will be placed in a public file in the Commission's Office of Public Information.

(g) *The interpretation*—(1) Except as provided in paragraph (g)(2) of this section, the General Counsel will provide a copy of his or her written interpretation of the NGPA or rule as applied to the act, transaction, or circumstance presented upon the person who made the request for the interpretation and upon persons named in the request as direct participants in the act, transaction, or circumstance.

(2) The General Counsel may determine not to issue an interpretation, in which case the person who made the request and direct participants as specified in the request will be notified in writing of the decision not to issue an interpretation, and the reason for the decision.

(3) Only those persons to whom an interpretation is specifically addressed and other persons who are named in the request, who have been informed by the applicant for an interpretation of the pendency of the request and who are direct participants in the act, transaction or circumstance presented, may rely upon it. The effectiveness of an interpretation depends entirely on the accuracy of the facts presented to the General Counsel. If a material or relevant fact has been misrepresented or omitted or if any material or relevant fact changes after an interpretation is issued or if the action taken differs from the facts presented in the request, the interpretation may not be relied upon by any person.

(4) An interpretation may be rescinded or modified prospectively at any time. A rescission or modification is effected by notifying persons entitled to rely on the interpretation at the address contained in the original request.

(5) Any interpretation based on the NGPA or a rule issued thereunder in effect at the time of issuance may be relied upon only to the extent such law or rule remains in effect.

(6) Except as provided in paragraphs (g)(3), (g)(4) and (g)(5) of this section, the Staff will not recommend any action to the Commission which is inconsistent with the position espoused in the interpretation. The interpretation of the General Counsel is not the interpretation of the Commission. An interpretation provided by the General

Counsel is given without prejudice to the Commission's authority to consider the same or like question and to issue a declaratory order to take other action which has the effect of rescinding, revoking, or modifying the interpretation of the General Counsel.

(h) *Appeal*. There is no appeal to the Commission of an interpretation.

(i) *Interpretative rules*. Upon the petition of any person or upon its own motion, the Commission may publish in the FEDERAL REGISTER an interpretative rule regarding any question arising under the NGPA or a rule promulgated thereunder. Any person is entitled to rely upon an interpretative rule.

(j) *Applications for adjustments treated as requests for interpretations*. Except for the notification provisions of paragraph (d)(5) of this section, the provisions of this section apply to any petition for an adjustment which is deemed a request for an interpretation under Rule 1117. Notice to all parties to an adjustment proceeding under subpart K of this part that is deemed to be a request for an interpretation will be given under Rule 1117(d)(1).

[Order 225, 47 FR 19022, May 3, 1982, as amended by Order 394, 49 FR 35366, Sept. 7, 1984]

§ 385.1902 Appeals from action of staff (Rule 1902).

(a) Any staff action (other than a decision or ruling of presiding officer, as defined in Rule 102(e)(1), made in a proceeding set for hearing under subpart E of this part) taken pursuant to authority delegated to the staff by the Commission is a final agency action that is subject to a request for rehearing under Rule 713 (request for rehearing).

(b) All appeals of staff action that were timely filed prior to December 3, 1990 and that had not been acted upon by the Commission on their substantive merits are deemed to be timely filed requests for rehearing of final agency action. All notices issued by the Commission prior to December 3, 1990 stating the Commission's intent to act on appeals of staff action such that they are not deemed denied by the expiration of a 30-day period after the filing of the appeal, are deemed to be orders granting rehearing of final agency

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action for the sole purpose of further consideration, unless the Commission issued an order on the substantive merits of the appeal prior to December 3, 1990. No later than January 2, 1991, persons who had timely filed appeals of staff action prior to December 3, 1990 which were pending before the Commission on that date may file additional pleadings to update or supplement those appeals.

[Order 530, 55 FR 50682, Dec. 10, 1990, as amended by Order 606, 64 FR 44405, Aug. 16, 1999]

§ 385.1903 Notice in rulemaking proceedings (Rule 1903).

Before the adoption of rule of general applicability or the commencement of hearing on such a proposed rulemaking, the Commission will cause general notice to be given by publication in the FEDERAL REGISTER, such notice to be published therein not less than 15 days prior to the date fixed for the consideration of the adoption of a proposed rule or rules or for the commencement of the hearing, if any, on the proposed rulemaking, except where a shorter period is reasonable and good cause exists therefor; *Provided however*, That:

(a) When the Commission, for good cause, finds it impracticable, unnecessary, or contrary to the public interest to give such notice, it may proceed with the adoption of rules without notice by incorporating therein a finding to such effect and a concise statement of the reasons therefor;

(b) Except when notice or hearing is required by statute, the Commission may issue at any time rules of organization, procedure or practice, or interpretative rules, or statements of policy, without notice or public proceedings; and

(c) This section is not to be construed as applicable to the extent that there may be involved any military, naval, or foreign affairs function of the United States, or any matter relating to the Commission's management or personnel, or to United States property, loans, grants, benefits, or contracts.

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§ 385.1904 Copies of transcripts (Rule 1904).

The Commission will cause to be made a stenographic record of public hearings and such copies of the transcript thereof as it requires for its own purposes. Participants desiring copies of such transcript may obtain the same from the official reporter upon payment of the fees fixed therefor.

§ 385.1907 Reports of compliance (Rule 1907).

When any licensee, permittee, or any other person subject to the jurisdiction of the Commission is required to do or perform any act by Commission order, permit, or license provision, there must be filed with the Commission within 30 days following the date when such requirement became effective, a notice, under oath, stating that such requirement has been met or complied with; *Provided, however*, That the Commission, by rule or order, or by making specific provision therefor in a license or permit, may provide otherwise for the giving of such notice of compliance. Five conformed copies of such notice must be filed in lieu of the fourteen conformed copies required by Rule 2004 (copies of filings).

Subpart T—Formal Requirements for Filings in Proceedings Before the Commission

§ 385.2001 Filings (Rule 2001).

(a) *Filings with the Commission.* (1) Except as otherwise provided in this chapter, any document required to be filed with the Commission must comply with Rules 2001 to 2005 and must be submitted to the Secretary by:

(i) Mailing the document to the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426;

(ii) Hand delivering the document to Room 1A, 888 First Street, NE., Washington, DC; or

(iii) In the case of qualified documents as defined in Rule 2003(c)(2), by filing via the Internet pursuant to Rule 2003(c) at the following URL: *www.ferc.fed.us*.

NOTE: Help for filing via the Internet is available by phone at 202-208-0258 or e-mail at *efiling@ferc.fed.us*.

(2) Any document is considered filed, if in paper form, on the date stamped by the Secretary or, in the case of a document filed via the Internet, on the date indicated in the acknowledgment that will be sent immediately upon the Commission's receipt of a submission, unless the document is subsequently rejected. Any document received after regular business hours is considered filed on the next regular business day.

(b) *Rejection.* (1) If any filing does not comply with any applicable statute, rule, or order, the filing may be rejected, unless the filing is accompanied by a motion requesting a waiver of the applicable requirement of a rule or order and the motion is granted.

(2) If any filing is rejected, the document is deemed not to have been filed with the Commission.

(3) Where a document is rejected under paragraph (b)(1) of this section, the Secretary, or the office director to whom the filing has been referred, will notify the submitter and indicate the deficiencies in the filing and the reason for the rejection.

(4) If a filing does not comply with any applicable requirement, all or part of the filing may be stricken. Any failure to reject a filing which is not in compliance with an applicable statute, rule, or order does not waive any obligation to comply with the requirements of this chapter.

[Order 619, 65 FR 57091, Sept. 21, 2000]

§ 385.2002 Caption of filings (Rule 2002).

A filing must begin with a caption that sets forth:

- (a) The docket designation, if any;
- (b) The words "INTERLOCUTORY APPEAL" underneath the docket designation if the filing is an appeal under Rule 715(c) of a presiding officer's denial of a motion for an interlocutory appeal;
- (c) The title of the proceeding if a proceeding has been initiated;
- (d) A heading which describes the filing; and
- (e) The name of the participant for whom the filing is made, or a shortened designation for the participant.

[Order 225, 47 FR 19022, May 3, 1982, as amended by Order 402, 49 FR 39539, Oct. 9, 1984]

§ 385.2003 Specifications (Rule 2003).

(a) *All filings.* Any filing with the Commission must be:

(1) Typewritten, printed, reproduced, or prepared using a computer or other word or data processing equipment;

(2) Have double-spaced lines with left margins not less than 1½ inch wide, except that any tariff or rate filing may be single-spaced;

(3) Have indented and single-spaced any quotation that exceeds 50 words; and

(4) Use not less than 10 point font.

(b) *Filing by paper.* (1) Any filing with the Commission made in paper form must be:

(i) Printed or reproduced, with each copy clearly legible;

(ii) On letter-size unglazed paper that is 8 to 8½ inches wide and 10½ to 11 inches long; and

(iii) Bound or stapled at the left side only, if the filing exceeds one page.

(2) Any log, graph, map, drawing, or chart submitted as part of a filing will be accepted on paper larger than provided in paragraph (b)(1) of this section, if it cannot be provided legibly on letter-size paper.

(c) *Filing via the Internet.* (1) A document filed with the Commission via the Internet must:

(i) Be a qualified document;

(ii) Be filed in accordance with instructions issued by the Secretary and made available on the Commission's web site at www.ferc.fed.us/efi/doorbell.htm.

(2) For purposes of Internet filings, qualified documents shall be those categories of documents listed in instructions to be issued by the Secretary. The Secretary is authorized to issue and amend a list of qualified documents only to the extent that no additional requirements are placed upon submitters of electronic documents beyond those contained in the Commission's regulations.

(3) Documents requiring privileged or protected treatment by the Commission may not be filed via the Internet.

(4) Qualified documents may not be combined with other documents in an electronic filing. (Example: A protest that is a qualified document and a notice of intervention that is not may

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not be filed electronically as one document. The protest must be filed electronically as a separate document.)

(5) For purposes of statutes or regulations governing timeliness, a document filed via the Internet will be deemed to have been received by the Commission at the time the last byte of the document is received by the Commission.

(d) *Citation form.* Any filing with the Commission should comply with the rules of citation, except Rule 1.1, set forth in the most current edition of A Uniform System of Citation, published by The Harvard Law Review Association. Citations to specific pages of documents filed via the Internet should use the page numbers appearing in the PDF (Portable Document Format) version of the document available on the Commission’s web site.

[Order 619, 65 FR 57091, Sept. 21, 2000]

§ 385.2004 Original and copies of filings (Rule 2004).

Any person filing under this chapter must provide an original of the filing and fourteen exact copies, unless otherwise required by statute, rule, or order. The provisions of this section and of § 4.34(h) of this Chapter do not apply in the case of a document properly filed via the Internet under Rule 2003(c).

[Order 619, 65 FR 57092, Sept. 21, 2000]

§ 385.2005 Subscription and verification (Rule 2005).

(a) *Subscription.* (1) Any filing with the Commission must be signed.

(2) The signature on a filing constitutes a certificate that:

(i) The signer has read the filing signed and knows its contents;

(ii) The contents are true as stated, to the best knowledge and belief of the signer; and

(iii) The signer possesses full power and authority to sign the filing.

(3) A filing must be signed by:

(i) The person on behalf of whom the filing is made;

(ii) Any officer of the corporation, trust, association, or other organized group, on behalf of which the filing is made;

(iii) Any officer, agent, or employee of the governmental authority, agency,

or instrumentality on behalf of which the filing is made; or

(iv) A representative qualified to practice before the Commission under Rule 2101 who possesses authority to sign.

(4) The signer of any filing may be required to submit evidence of authority to sign the filing.

(b) *Verification.* (1) The facts alleged in any filing need not be verified, unless verification is required by statute, rule, or order.

(2) If verification of any filing is required, the verification must be under oath by a person having knowledge of the matters set forth in the filing. If any verification is made by a person other than the signer, a statement must be attached to the verification explaining why a person other than the signer provides verification.

(c) *Electronic signature.* In the case of a document filed via the Internet pursuant to Rule 2003(c), the typed characters representing the name of a person shall be sufficient to show that such person has signed the document for purposes of this section.

[Order 225, 47 FR 19022, May 3, 1982, as amended by Order 619, 65 FR 57092, Sept. 21, 2000]

§ 385.2006 Docket system (Rule 2006).

(a) The Secretary will maintain a system for docketing proceedings.

(b) Any public information in any docket is available for inspection and copying by the public during the office hours of the Commission, to the extent that such availability is consistent with the proper discharge of the Commission’s duties and in conformity with part 388 of this chapter.

[Order 226, 47 FR 19022, May 3, 1982; 48 FR 786, Jan. 7, 1983]

§ 385.2007 Time (Rule 2007).

(a) *Computation.* (1) Except as otherwise required by law, any period of time prescribed or allowed by statute or Commission rule or order is computed to exclude the day of the act or event from which the time period begins to run.

(2) The last day of any time period is included in the time period, unless it is a Saturday, Sunday, part-day holiday

that affects the Commission, or legal public holiday as designated in section 6103 of title 5, U.S. Code, in which case the period does not end until the close of the Commission business of the next day which is not a Saturday, Sunday, part-day holiday that affects the Commission, or legal public holiday.

(b) *Date of issuance of Commission rules or orders.* (1) Any Commission rule or order is deemed issued when the Secretary does the earliest of the following:

- (i) Posts a full-text copy in the Division of Public Information;
- (ii) Mails or delivers copies of the order to the parties; or
- (iii) Makes such copies public.

(2) Any date of issuance specified in a rule or order need not be the date on which the rule or order is adopted by the Commission.

(c) *Effective date of Commission rules or orders.* (1) Unless otherwise ordered by the Commission, rules or orders are effective on the date of issuance.

(2) Any initial or revised initial decision issued by a presiding officer is effective when the initial or revised initial decision is final under Rule 708(d).

[Order 225, 47 FR 19022, May 3, 1982, as amended by Order 375, 49 FR 21316, May 21, 1984; Order 376, 49 FR 21707, May 23, 1984]

§ 385.2008 Extensions of time (Rule 2008).

(a) Except as otherwise provided by law, the time by which any person is required or allowed to act under any statute, rule, or order may be extended by the decisional authority for good cause, upon a motion made before the expiration of the period prescribed or previously extended.

(b) If any motion for extension of time is made after the expiration of a specified time period, the decisional authority may permit performance of the act required or allowed, if the movant shows extraordinary circumstances sufficient to justify the failure to act in a timely manner.

§ 385.2009 Notice (Rule 2009).

Unless actual notice is given or unless newspaper notice is given as required by law, notice by the Commission is provided by the Secretary only by publication in the FEDERAL REG-

ISTER. Actual notice is usually given by service under Rule 2010.

§ 385.2010 Service (Rule 2010).

(a) *By participants.* (1) Any participant filing a document in a proceeding must serve a copy of the document on:

(i) Each person whose name is on the official service list, or applicable restricted service list, for the proceeding or phase of the proceeding; and

(ii) Any other person required to be served under Commission rule or order or under law.

(2) If any person receives a rejection letter or deficiency letter from the Commission, the person must serve a copy of the letter on any person previously served copies of the rejected or deficient filing.

(b) *By the Secretary.* The Secretary will serve, as appropriate:

(1) A copy of any complaint on any person against whom the complaint is directed;

(2) A copy of any notice of tariff or rate examination or order to show cause, on any person to whom the notice or order is issued;

(3) A copy of any rule or any order by a decisional authority in a proceeding on any person included on the official service list, or applicable restricted service list, for the proceeding or phase of the proceeding.

(c) *Official service list.* (1) The official service list for any proceeding will contain:

(i) The names and addresses of any person designated for service in the initial pleading, other than a protest, or in the tariff or rate filing which is filed by any participant; and

(ii) The name of counsel for the staff of the Commission.

(2) Any designation of a person for service may be changed by filing a written notice with the Commission and serving the notice on each person whose name is included on the official service list.

(d) *Restricted service list.* (1) For purposes of eliminating unnecessary expense or improving administrative efficiency, the Secretary, an office director, or the presiding officer may establish, by order, a restricted service list for an entire proceeding, a phase of a

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proceeding, one or more issues in a proceeding, or one or more cases in a consolidated proceeding.

(2) Any restricted service list will contain the names of each person on the official service list, or the person's representative, who, in the judgment of the decisional authority establishing the list, is an active participant with respect to the proceeding or consolidated proceeding, any phase of the proceeding, or any issue in the proceeding, for which the list is established.

(3) Any restricted service list is maintained in the same manner as, and in addition to, the official service list under paragraph (c) of this section.

(4) Before any restricted service list is established, each person included on the official service list will be given notice of any proposal to establish a restricted service list and an opportunity to show why that person should also be included on the restricted service list or why a restricted service list should not be established.

(5) Any designation of a person for service on a restricted service list may be changed by filing written notice with the Commission and serving that notice on each person whose name is on the applicable restricted service list.

(e) *Interveners.* (1) If any motion to intervene or any notice of intervention is filed within time period prescribed for that motion or notice, the name and address of any person designated for service in the motion or notice are placed on the official service list or any applicable restricted service list. Any person placed on the official service list under this paragraph is entitled to service in accordance with this section. If a motion to intervene is denied, the name and address of each person designated for service pursuant to that motion will be removed from the official service list.

(2) If a motion to intervene is not filed within the period prescribed for that motion, the name and address of any person designated for service in the motion are placed on the official service list, or any applicable restricted service list, only after the motion is granted. Any person who files a late motion to intervene will be served only the documents that are filed after the motion is granted.

(f) *Methods of service.* Service of any document must be made:

(1) By United States mail, first-class or better;

(2) By delivery in a manner that, and to a place where, the person on whom service is required may reasonably be expected to obtain actual and timely receipt; or

(3) By electronic means to participants who have agreed to receive service via the specified electronic means.

(g) *Timing of service.* (1) Service is made under this section when the document served is deposited in the mail or is delivered in another manner.

(2) Service of any document must be made not later than the date of the filing of the document.

(h) *Certification.* (1) At the time any document required to be served is filed with the Commission, the original of a certificate of service must be attached to the document and a copy of the certificate must be attached to each copy of the document filed with the Commission.

(2) The certificate of service must conform to the following format:

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list [or the restricted service list, if applicable] compiled by the Secretary in this proceeding.

Dated at this day of , 19 .

Name _____

(if applicable)

Address _____

Telephone No. _____

(i) *Designation of corporate officials to receive service.* (1) Any entity subject to regulation by the Commission must designate at least one, but not more than two, corporate officials or other persons to receive service of complaints, petitions for declaratory order, show cause orders, data requests, investigatory letters or other documents where a person to receive service has not otherwise been designated under Commission regulations. Each entity must file with the Secretary of the Commission:

(i) The name of the corporate official or person that is to receive service;

(ii) The title of the corporate official or person, if applicable;

(iii) The address of the corporate official or person, including, where applicable, department, room number, or mail routing code;

(iv) The telephone number of the corporate official or person;

(v) The facsimile number of the corporate official or person, if applicable; and

(vi) The electronic mail address of the corporate official or person, if applicable.

(2) Each regulated entity has a continuing obligation to file with the Secretary of the Commission updated information concerning the corporate official or person designated to receive service.

(3) A list of corporate officials and persons designated to receive service pursuant to this paragraph will be maintained by the Secretary of the Commission and will be made available to the public in hard copy upon request and through the Commission's web site at <http://www.ferc.fed.us>.

(4) Any person who wishes to serve a complaint or petition for declaratory order on any entity regulated by the Commission must serve the corporate official or person designated pursuant to this paragraph (i).

(5) The Commission will serve show cause orders, data requests, investigatory letters or other documents on the corporate official or person designated under this paragraph (i).

[Order 225, 47 FR 19022, May 3, 1982, as amended by Order 604, 64 FR 31496, June 11, 1999; Order 610, 64 FR 62582, Nov. 17, 1999]

§ 385.2011 Procedures for filing on electronic media (Rule 2011).

(a) FERC Forms subject to the procedures provided in this section include:

(1) FERC Form No. 2, Annual report for major natural gas companies.

(2) FERC Form No. 2-A, Annual report for nonmajor natural gas companies.

(3) FERC Form No. 8, Underground gas storage report.

(4) FERC Form No. 11, Natural gas pipeline monthly statement.

(5) FERC Form No. 14, Annual report for importers and exporters of natural gas.

(6) FERC Form No. 1, Annual report of Major electric utilities, licensees and others.

(7) FERC Form No. 6, Annual Report of Oil Pipeline Companies.

(b) These procedures also apply to:

(1) Material submitted electronically pursuant to § 154.4 of this chapter.

(2) Certificate and abandonment applications filed under subparts A, E, and F of part 157 of this chapter.

(3) Blanket certificate applications filed under subpart G of part 284 of this chapter.

(4) Discount rate reports filed pursuant to § 284.7 of this chapter.

(5) Non-discriminatory open access transmission tariffs filed pursuant to § 35.28 of this chapter.

(6) Material submitted electronically pursuant to § 330.2 of this chapter.

(c) *What to file.* (1) Except as provided in paragraph (e) of this section, any filing of a schedule or an update described in paragraphs (a) or (b) of this section must be submitted on electronic media.

(2) Electronic media suitable for Commission filings are listed in the instructions for each form and filings. Additionally, lists of suitable electronic media are available upon request from the Commission.

(3) The electronic media must be accompanied by the traditional prescribed number of paper copies.

(4) The formats for the electronic filing and the paper copy can be obtained at the Federal Energy Regulatory Commission, Public Reference and Files Maintenance Branch, Division of Information Services, Washington, DC 20426.

(5) The subscription required by § 385.2005(a) must state that the paper copies contain the same information as contained on the electronic media, that the signer knows the contents of the paper copies and electronic media, and that the contents as stated in the copies and on the electronic media are true to the best knowledge and belief of the signer.

(d)(1) *Where to file.* The electronic media, the paper copies, and accompanying cover letter must be submitted

to: Office of the Secretary, Federal Energy Regulatory Commission, Washington, DC 20426.

(2) EDI data submissions must be made as indicated in the electronic filing instructions and formats for the particular form or filing, and the paper copies and accompanying cover letter must be submitted to: Office of the Secretary, Federal Energy Regulatory Commission, Washington, DC 20426.

(e) *Waiver*—(1) *Filing of petition*. If a natural gas company, electric utility, licensee or other entity does not have and is unable to acquire the computer capability to file the information required to be filed on electronic media, the company may request waiver from the requirement of this part, by filing an original and two copies of a petition. The natural gas company, electric utility, licensee or other entity may renew the waiver if the company can continue to show that it does not have and is unable to acquire the computer capability for electric filing.

(2) *Standard for waiver*. The petition for waiver must show that the natural gas company, electric utility, licensee or other entity does not have the computer capability to file the information required under this section on electronic media and that acquisition of the capability would cause the company severe economic hardship. This waiver may be granted for up to one year.

(3) *Timing*. The petition for waiver must be filed by the date on which the information in the manner affected by the petition is required to be initially filed.

(4) *Decision on petition*. The Commission or its designee will review a petition for waiver and notify the applicant of its grant or denial. Once the petition is decided, the natural gas company, electric utility, licensee or other entity will have 30 days from the date of notification of the decision to submit any information, in the manner specified by the Commission in the decision on the waiver petition, that was

required to be filed while the petition was pending.

[53 FR 15032, Apr. 27, 1988, as amended at Order 493-C, 54 FR 21199, May 17, 1989; Order 493-D, 58 FR 7987, Feb. 11, 1993; Order 554, 58 FR 38528, July 19, 1993; Order 574, 60 FR 1718, Jan. 5, 1995; Order 581, 60 FR 53074, Oct. 11, 1995; Order 888, 61 FR 21695, May 10, 1996; Order 639, 65 FR 20371, Apr. 17, 2000; Order 620, 65 FR 81344, Dec. 26, 2000]

§ 385.2012 Petitions for review of Commission Orders (Rule 2012).

When a petition for review of an order issued by the Commission is filed in a United States Court of Appeals, a copy of the petition which has been stamped by the court with the date of filing must be mailed or hand delivered to the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426. If within ten days after issuance of the Commission order, the Office of the Secretary has physically received court-stamped copies of petitions for review of the same order, which petitions have been filed in two or more U.S. Courts of Appeals, the Commission will forward copies of those petitions to the Judicial Panel on Multidistrict Litigation pursuant to 28 U.S.C. 2112(a).

[Order 504, 53 FR 37546, Sept. 27, 1988]

§ 385.2013 Videotapes (Rule 2013).

Any person may file a videotape that portrays the site of, or some physical aspect of, an energy project, such as a waterfall or flood waters at the site of an existing or proposed hydroelectric project, or construction activities at the site of a natural gas pipeline. The filing must include a written statement describing the place, date, and time at which the videotape was filmed, who filmed it, what it purports to depict, and the caption and docket number of the proceeding (if any) in which it is to be filed. Any person who files a videotape and who is also a party (either as an applicant or as an intervenor) to a docketed proceeding in which the videotape is filed must file four copies of the videotape with the

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Commission's Secretary, in VHS format with voice-over or pictorial inclusion of the data contained in the accompanying written statement, serve copies of the videotape on all of the other parties to the proceeding, and include a certificate of service with the filing.

[Order 573, 59 FR 63247, Dec. 8, 1994]

Subpart U—Appearance and Practice Before the Commission

§ 385.2101 Appearances (Rule 2101).

(a) A participant may appear in a proceeding in person or by an attorney or other qualified representative. An individual may appear in his or her own behalf, a member of a partnership may represent the partnership, a bona-fide officer of a corporation, trust, association or organized group may represent the corporation, trust, association or group, and an officer or employee of a State commission, of a department or political subdivision of a State or other governmental authority, may represent the State commission or the department or political subdivision of the State or other governmental authority, in any proceeding.

(b) A person compelled to appear or voluntarily testifying or making a statement before the Commission or the presiding officer, may be accompanied, represented, and advised by an attorney or other qualified representative.

(c) A person appearing before the Commission or the presiding officer must conform to the standards of ethical conduct required of practitioners before the Courts of the United States, and where applicable, to the requirements of Section 12(i) of the Public Utility Holding Company Act of 1935 (15 U.S.C. 791(i)).

§ 385.2102 Suspension (Rule 2102).

(a) After a hearing the Commission may disqualify and deny, temporarily or permanently, the privilege of appearing or practicing before it in any way to a person who is found:

- (1) Not to possess the requisite qualifications to represent others, or
- (2) To have engaged in unethical or improper professional conduct, or

(3) Otherwise to be not qualified.

(b) Contumacious conduct in a hearing before the Commission or a presiding officer will be grounds for exclusion of any person from such hearing and for summary suspension for the duration of the hearing by the Commission or the presiding officer.

§ 385.2103 Appearance of former employees (Rule 2103).

(a) No person having served as a member, officer, expert, administrative law judge, attorney, accountant, engineer, or other employee of the Commission may practice before or act as attorney, expert witness, or representative in connection with any proceeding or matter before the Commission which such person has handled, investigated, advised, or participated in the consideration of while in the service of the Commission.

(b) No person having been so employed may within 1 year after his or her employment has ceased, practice before or act as attorney, expert witness, or representative in connection with any proceeding or matter before the Commission which was under the official responsibility of such person, as defined in 18 U.S.C. 202, while in the service of the Commission.

(c) Nothing in paragraphs (a) and (b) of this section prevents a former member, officer, expert, administrative law judge, attorney, accountant, engineer, or other employee of the Commission with outstanding scientific or technological qualifications from practicing before or acting as an attorney or representative in connection with a particular matter in a scientific or technological field if the Chairman of the Commission makes a certification in writing, published in the FEDERAL REGISTER, that the national interest would be served by such action or representation.

Subpart V—Off-the-Record Communications; Separation of Functions

§ 385.2201 Rules governing off-the-record communications (Rule 2201).

(a) *Purpose and scope.* This section governs off-the-record communications with the Commission in a manner that

permits fully informed decision making by the Commission while ensuring the integrity and fairness of the Commission's decisional process. This rule will apply to all contested on-the-record proceedings, except that the Commission may, by rule or order, modify any provision of this subpart, as it applies to all or part of a proceeding, to the extent permitted by law.

(b) *General rule prohibiting off-the-record communications.* Except as permitted in paragraph (e) of this section, in any contested on-the-record proceeding, no person outside the Commission shall make or knowingly cause to be made to any decisional employee, and no decisional employee shall make or knowingly cause to be made to any person outside the Commission, any off-the-record communication.

(c) *Definitions.* For purposes of this section: (1) *Contested on-the-record proceeding* means (i) Except as provided in paragraph (c)(1)(ii), any proceeding before the Commission to which there is a right to intervene and in which an intervenor disputes any material issue, any proceeding initiated pursuant to rule 206 by the filing of a complaint with the Commission, or any proceeding initiated by the Commission on its own motion or in response to a filing.

(ii) The term does not include notice-and-comment rulemakings under 5 U.S.C. 553, investigations under part 1b of this chapter, proceedings not having a party or parties, or any proceeding in which no party disputes any material issue.

(2) *Contractor* means a direct Commission contractor and its subcontractors, or a third-party contractor and its subcontractors, working subject to Commission supervision and control.

(3) *Decisional employee* means a Commissioner or member of his or her personal staff, an administrative law judge, or any other employee of the Commission, or contractor, who is or may reasonably be expected to be involved in the decisional process of a proceeding, but does not include an employee designated as part of the Commission's trial staff in a proceeding, a settlement judge appointed under Rule 603, a neutral (other than an arbi-

trator) under Rule 604 in an alternative dispute resolution proceeding, or an employee designated as being non-decisional in a proceeding.

(4) *Off-the-record communication* means any communication relevant to the merits of a contested on-the-record proceeding that, if written, is not filed with the Secretary and not served on the parties to the proceeding in accordance with Rule 2010, or if oral, is made without reasonable prior notice to the parties to the proceeding and without the opportunity for such parties to be present when the communication is made.

(5) *Relevant to the merits* means capable of affecting the outcome of a proceeding, or of influencing a decision, or providing an opportunity to influence a decision, on any issue in the proceeding, but does not include:

(i) Procedural inquiries, such as a request for information relating solely to the status of a proceeding, unless the inquiry states or implies a preference for a particular party or position, or is otherwise intended, directly or indirectly, to address the merits or influence the outcome of a proceeding;

(ii) A general background or broad policy discussion involving an industry or a substantial segment of an industry, where the discussion occurs outside the context of any particular proceeding involving a party or parties and does not address the specific merits of the proceeding; or,

(iii) Communications relating to compliance matters not the subject of an ongoing proceeding.

(d) *Applicability of prohibitions.* (1) The prohibitions in paragraph (b) of this section apply to:

(i) Proceedings initiated by the Commission from the time an order initiating the proceeding is issued;

(ii) Proceedings returned to the Commission on judicial remand from the date the court issues its mandate;

(iii) Complaints initiated pursuant to rule 206 from the date of the filing of the complaint with the Commission, or from the date the Commission initiates an investigation (other than an investigation under part 1b of this chapter) on its own motion; and

(iv) All other proceedings from the time of the filing of an intervention

disputing any material issue that is the subject of a proceeding.

(2) The prohibitions remain in force until:

(i) A final Commission decision or other final order disposing of the merits of the proceeding is issued; or, when applicable, after the time for seeking rehearing of a final Commission decision, or other final order disposing of the merits, expires;

(ii) The Commission otherwise terminates the proceeding; or

(iii) The proceeding is no longer contested.

(e) *Exempt off-the-record communications.* (1) Except as provided by paragraph (e)(2), the general prohibitions in paragraph (b) of this section do not apply to:

(i) An off-the-record communication permitted by law and authorized by the Commission;

(ii) An off-the-record communication related to any emergency concerning a facility regulated by the Commission or a facility that provides Commission-regulated services, involving injury or threat of injury to persons, property, or the environment, subject to disclosure under paragraph (g) of this section;

(iii) An off-the-record communication provided for in a written agreement among all parties to a proceeding that has been approved by the Commission;

(iv) An off-the-record written communication from a non-party elected official, subject to disclosure under paragraph (g) of this section;

(v) An off-the-record communication to or from a Federal, state, local or Tribal agency that is not a party in the Commission proceeding, subject to disclosure under paragraph (g) of this section, if the communication involves:

(A) an oral or written response to a request for information made by the Commission or Commission staff; or

(B) a matter before the Commission in which a Federal, state, local, or Tribal agency has regulatory responsibilities, including authority to impose or recommend conditions in connection with a Commission license, certificate, or exemption;

(vi) An off-the-record communication, subject to disclosure under para-

graph (g) of this section, that relates to:

(A) The preparation of an environmental impact statement if communications occur prior to the issuance of the final environmental impact statement; or

(B) The preparation of an environmental assessment where the Commission has determined to solicit public comment on the environmental assessment, if such communications occur prior to the issuance of the final environmental document.

(vii) An off-the-record communication involving individual landowners who are not parties to the proceeding and whose property would be used or abuts property that would be used by the project that is the subject of the proceeding, subject to disclosure under paragraph (g) of this section.

(2) Except as may be provided by Commission order in a proceeding to which this subpart applies, the exceptions listed under paragraph (e)(1) will not apply to any off-the-record communications made to or by a presiding officer in any proceeding set for hearing under subpart E of this part.

(f) *Treatment of prohibited off-the-record communications.* (1) *Commission consideration.* Prohibited off-the-record communications will not be considered part of the record for decision in the applicable Commission proceeding, except to the extent that the Commission by order determines otherwise.

(2) *Disclosure requirement.* Any decisional employee who makes or receives a prohibited off-the-record communication will promptly submit to the Secretary that communication, if written, or a summary of the substance of that communication, if oral. The Secretary will place the communication or the summary in the public file associated with, but not part of, the decisional record of the proceeding.

(3) *Responses to prohibited off-the-record communications.* Any party may file a response to a prohibited off-the-record communication placed in the public file under paragraph (f)(2) of this section. A party may also file a written request to have the prohibited off-the-record communication and the response included in the decisional

record of the proceeding. The communication and the response will be made a part of the decisional record if the request is granted by the Commission.

(4) *Service of prohibited off-the-record communications.* The Secretary will instruct any person making a prohibited written off-the-record communication to serve the document, pursuant to Rule 2010, on all parties listed on the Commission's official service list for the applicable proceeding.

(g) *Disclosure of exempt off-the-record communications.* (1) Any document, or a summary of the substance of any oral communication, obtained through an exempt off-the-record communication under paragraphs (e)(1)(ii), (iv), (v), (vi) or (vii) of this section, promptly will be submitted to the Secretary and placed in the decisional record of the relevant Commission proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under paragraph (e)(1)(v) of this section.

(2) Any person may respond to an exempted off-the-record communication.

(h) *Public notice requirement of prohibited and exempt off-the-record communications.* (1) The Secretary will, not less than every 14 days, issue a public notice listing any prohibited off-the-record communications or summaries of the communication received by his or her office. For each prohibited off-the-record communication the Secretary places in the non-decisional public file under paragraph (f)(1) of this section, the notice will identify the maker of the off-the-record communication, the date the off-the-record communication was received, and the docket number to which it relates.

(2) The Secretary will not less than every 14 days, issue a public notice listing any exempt off-the-record communications or summaries of the communication received by the Secretary for inclusion in the decisional record and required to be disclosed under paragraph (g)(1) of this section.

(3) The public notice required under this paragraph (h) will be posted in accordance with §388.106 of this chapter, as well as published in the FEDERAL REGISTER, and disseminated through any other means as the Commission deems appropriate.

(i) *Sanctions.* (1) If a party or its agent or representative knowingly makes or causes to be made a prohibited off-the-record communication, the Commission may require the party, agent, or representative to show cause why the party's claim or interest in the proceeding should not be dismissed, denied, disregarded, or otherwise adversely affected because of the prohibited off-the-record communication.

(2) If a person knowingly makes or causes to be made a prohibited off-the-record communication, the Commission may disqualify and deny the person, temporarily or permanently, the privilege of practicing or appearing before it, in accordance with Rule 2102 (Suspension).

(3) Commission employees who are found to have knowingly violated this rule may be subject to the disciplinary actions prescribed by the agency's administrative directives.

(j) *Section not exclusive.* (1) The Commission may, by rule or order, modify any provision of this section as it applies to all or part of a proceeding, to the extent permitted by law.

(2) The provisions of this section are not intended to limit the authority of a decisional employee to decline to engage in permitted off-the-record communications, or where not required by any law, statute or regulation, to make a public disclosure of any exempted off-the-record communication.

[Order 607-A, 65 FR 71254, Nov. 30, 2000]

§ 385.2202 Separation of functions (Rule 2202).

In any proceeding in which a Commission adjudication is made after hearing, no officer, employee, or agent assigned to work upon the investigation or trial of the proceeding or to assist in the trial thereof, in that or any factually related proceeding, shall participate or advise as to the findings, conclusion or decision, except as a witness or counsel in public proceedings.

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AUTHORITY: 5 U.S.C. 301-305, 551, 552 (as amended), 553-557; 42 U.S.C. 7101-7352.

SOURCE: Order 488, 53 FR 1473, Jan. 20, 1988, unless otherwise noted.

§ 388.101 Scope.

This part prescribes the rules governing public notice of proceedings, publication of decisions, requests for informal advice from Commission staff, procedures for press, television, radio and photographic coverage, requests for Commission records, requests for confidential treatment of documents submitted to the Commission, procedures for responding to subpoenas seeking documents or testimony from Commission employees or former employees, fees for various requests for documents, and requests for reduction or waiver of these fees.

§ 388.102 Notice of proceedings.

(a) Public sessions of the Commission for taking evidence or hearing argument; public conferences and hearings before a presiding officer; and public conferences or hearings in substantive rulemaking proceedings, will not be held except upon notice.

(b) Notice of applications, complaints, and petitions, is governed by Rule 2009 (notice) in part 385 of this chapter. Notice of applications for certificates of public convenience and necessity under section 7 of the Natural

Gas Act is governed by § 157.9 of this chapter (notice of application). Notice of public sessions and proceedings and of meetings of the Commission is governed by Rule 2009 (notice) in part 385 of this chapter. Notice of hearings and of initiation or pendency of rulemaking proceedings is governed by Rule 1903 (notice in rulemaking proceedings) in part 385 of this chapter. Notice of application under Part I of the Federal Power Act for preliminary permits and licenses is governed by §§ 4.31 and 4.81 of this chapter (acceptance or rejection and contents). Notice of proposed alterations or surrenders of license under section 6 of the Federal Power Act may be given by filing and publication in the FEDERAL REGISTER as stated in Rule 1903 (notice in rulemaking proceedings) in part 385 of this chapter, and where deemed desirable by the Commission, by local newspaper advertisement. Notice of rates charged and changes therein is governed by the filing requirements of subchapters B and E of this chapter (regulations under the Federal Power Act and regulations under the Natural Gas Act). Other notice required by statute, rule, regulation, or order, or deemed desirable, may be given by filing and publication in the FEDERAL REGISTER as governed by Rule 1903 in part 385 of this chapter (notice in rulemaking proceedings) or by service as governed by Rule 2010 (service) in part 385 of this chapter.

§ 388.103 Notice and publication of decisions, rules, statements of policy, organization and operations.

Service of intermediate and final decisions upon parties to the proceedings is governed by Rule 2010 (service) in part 385 of this chapter. Descriptions of the Commission's organization, its methods of operation, statements of policy and interpretations, procedural and substantive rules, and amendments thereto will be filed with and published in the FEDERAL REGISTER. Commission opinions together with accompanying orders, Commission orders, and intermediate decisions will be released to the press and made available to the public promptly. Copies of Commission

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opinions, orders in the nature of opinions, rulemakings and selected procedural orders, and intermediate decisions which have become final are published in the *Federal Energy Guidelines* and upon payment of applicable charges, may be obtained from: Commerce Clearing House, Inc. 4025 West Peterson Avenue, Chicago, Illinois 60646. Attention: Order Department.

§ 388.104 Informal advice from Commission staff.

(a) The Commission staff provides informal advice and assistance to the general public and to prospective applicants for licenses, certificates, and other Commission authorizations. Opinions expressed by the staff do not represent the official views of the Commission, but are designed to aid the public and facilitate the accomplishment of the Commission's functions. Inquiries may be directed to the chief of the appropriate office or division.

(b) Any inquiry directed to the Chief Accountant that requires a written response must be accompanied by the fee prescribed in § 381.301 of this chapter.

(c) A request directed to the Office of the General Counsel for a legal interpretation of any statute or implementing regulation under the jurisdiction of the Commission must be accompanied by the fee prescribed in § 381.305 of this chapter.

[53 FR 15383, Apr. 29, 1988]

§ 388.105 Procedures for press, television, radio, and photographic coverage.

(a) The Commission issues news releases on major applications, decisions, opinions, orders, rulemakings, new publications, major personnel changes, and other matters of general public interest. Releases are issued by and available to the media from the Office of External Affairs. Releases may be obtained by the public through the Public Reference Room.

(b) Press, television, radio and photographic coverage of Commission proceedings is permitted as follows:

(1) Press tables are located in each hearing room, and all sessions of hearings are open to the press, subject to standards of conduct applicable to all others present;

(2) Television, movie and still cameras, and recording equipment are permitted in hearing rooms prior to the opening of a hearing or oral arguments, and during recesses, upon prior arrangement with the Commission or presiding administrative law judge. All equipment must be removed from the room before hearings or oral arguments begin or resume;

(3) Television, movie and still cameras, and recording equipment may not be used while hearings and oral arguments before administrative law judges are in progress;

(4) Television and press cameras and recording equipment may be used at Commission press conferences under prior arrangement with the Office of External Affairs, provided their use does not interfere with the orderly conduct of the press conference;

(5) Regulations pertaining to the use of television, movie and still cameras, and recording equipment in connection with the Commission's open public meetings under the Government in the Sunshine Act are found in § 375.203 of this chapter.

§ 388.106 Requests for Commission records available in the Public Reference Room.

(a)(1) A Public Reference Room is maintained at the Commission's headquarters and is open during regular business hours as provided in § 375.101(c) of this chapter. Documents may be obtained in person or in writing from the Public Reference Room by reasonably describing the records sought.

(2) Documents created by FERC on or after November 1, 1996, or earlier in some instances, also are electronically available on the Commission's World Wide Web site, (www.ferc.fed.us), and the Bulletin Board Network. All public documents created or received by the Commission since November 1995 will be electronically available upon implementation of the Records and Information Management System (RIMS) on the Web. These may be accessed in person using a personal computer in the Public Reference Room, or by using a personal computer with a modem at a remote location.

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(b) The public records of the Commission that are available for inspection and copying upon request in the Public Reference Room, or are otherwise available under paragraph (a)(2) of this section, include:

(1) Applications, declarations, complaints, petitions, and other papers seeking Commission action;

(2) Financial, statistical, and other reports to the Commission, power system statements of claimed cost of licensed projects, original cost and reclassification studies, proposed accounting entries, certificates of notification (under section 204(e) of the Federal Power Act), rates or rate schedules and related data and concurrences, and other filings and submittals to the Commission in compliance with the requirements of any statute, executive order, or Commission rule, regulation, order, license, or permit;

(3) Answers, replies, responses, objections, protests, motions, stipulations, exceptions, other pleadings, notices, certificates, proofs of service, transcripts of oral arguments, and briefs in any matter of proceeding;

(4) Exhibits, attachments and appendices to, amendments and corrections of, supplements to, or transmittals or withdrawals of any of the foregoing;

(5) All parts of the formal record in any matter or proceeding set for formal or statutory hearing, and any Commission correspondence related thereto;

(6) Presiding officer actions, correspondence, and memoranda to or from others, with the exception of internal communications within the Office of Administrative Law Judges;

(7) Commission orders, notices, findings, opinions, determinations, and other actions in a matter or proceeding;

(8) Commission correspondence relating to any furnishing of data or information, except to or by another branch, department, or agency of the Government;

(9) Commission correspondence with respect to the furnishing of data, information, comments, or recommendations to or by another branch, department, or agency of the Government where furnished to satisfy a specific requirement of a statute or where made

public by that branch, department or agency;

(10) Staff reports on statements of claimed cost by licensees when such reports have been served on the licensee;

(11) Commission correspondence on interpretation of the Uniform System of Accounts and letters on such interpretation signed by the Chief Accountant and sent to persons outside the Commission;

(12) Commission correspondence on the interpretation or applicability of any statute, rule, regulation, order, license, or permit issued or administered by the Commission, and letters of opinion on that subject signed by the General Counsel and sent to persons outside the Commission;

(13) Copies of the filings, certifications, pleadings, records, briefs, orders, judgments, decrees, and mandates in court proceedings to which the Commission is a party and the correspondence with the courts or clerks of court;

(14) The Commission's Directives System;

(15) The Commission's opinions, decisions, orders and rulemakings;

(16) Reports, decisions, maps, and other information on electric power and natural gas industries;

(17) Subject index of major Commission actions;

(18) Annual report to Congress in which the Commission's operations during a past fiscal year are described; and

(19) Statements of policy and interpretations which have been adopted by the Commission and are not published in the FEDERAL REGISTER;

(20) Administrative staff manuals and instructions to staff that affect a member of the public;

(21)(i) Copies of all records released under § 388.108, which, because of their nature and subject, the Director of the Office of External Affairs has determined are likely to be requested again, and

(ii) An index of the records so designated;

(22) Reference materials and guides for requesting Commission records as required by 5 U.S.C. § 552(g), as amended; and

(23) Commission correspondence relating to the foregoing.

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(c) For purposes of this section,

(1) *Commission correspondence* includes written communications and enclosures, in hard copy or electronic format, received from others outside the staff and intended for the Commission or sent to others outside the staff and signed by the Chairman, a Commissioner, the Secretary, the Executive Director, or other authorized official, except those which are personal.

(2) *Formal record* includes:

(i) Filings and submittals in a matter or proceeding,

(ii) Any notice or Commission order initiating the matter or proceeding, and

(iii) If a hearing is held, the designation of the presiding officer, transcript of hearing, exhibits received in evidence, exhibits offered but not received in evidence, offers of proof, motions, stipulations, subpoenas, proofs or service, references to the Commission, and determinations made by the Commission thereon, certifications to the Commission, and anything else upon which action of the presiding officer or the Commission may be based.

The *formal record* does not include proposed testimony or exhibits not offered or received in evidence.

(3) *Matter or proceeding* means the Commission's elucidation of the relevant facts and applicable law, consideration thereof, and action thereupon with respect to a particular subject within the Commission's jurisdiction, initiated by a filing or submittal or a Commission notice or order.

[Order 488, 53 FR 1473, Jan. 20, 1988, as amended by Order 597, 63 FR 5453, Feb. 3, 1998]

§ 388.107 Commission records exempt from public disclosure.

The following records are exempt from disclosure.

(a)(1) Records specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy, and

(2) Those records are in fact properly classified pursuant to such Executive order;

(b) Records related solely to the internal personnel rules and practices of an agency;

(c) Records specifically exempted from disclosure by statute, provided that such statute:

(1) Requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or

(2) Establishes particular criteria for withholding or refers to particular types of matters to be withheld;

(d) Trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(e) Interagency or intraagency memoranda or letters which would not be available by law to a party other than an agency in litigation with the agency;

(f) Personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

(g) Records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information:

(1) Could reasonably be expected to interfere with enforcement proceedings,

(2) Would deprive a person of a right to a fair trial or an impartial adjudication,

(3) Could reasonably be expected to constitute an unwarranted invasion of personal privacy,

(4) Could reasonably be expected to disclose the identity of a confidential source, including a state, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source,

(5) Would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law, or

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(6) Could reasonably be expected to endanger the life or physical safety of any individual;

(h) Geological and geophysical information and data, including maps, concerning wells.

[Order 488, 53 FR 1473, Jan. 20, 1988, as amended by Order 597, 63 FR 5453, Feb. 3, 1998]

§ 388.108 Requests for Commission records not available through the Public Reference Room (FOIA requests).

(a)(1) Except as provided in paragraph (a)(2) of this section, a person may request access to Commission records, including records maintained in electronic format, that are not available through the Public Reference Room, by using the following procedures:

(i) The request must be in writing, addressed to the Director, Office of External Affairs, and clearly marked "Freedom of Information Act Request."

(ii) The request must include:

(A) A statement by the requester of a willingness to pay a reasonable fee or fees not to exceed a specific amount, or

(B) A request for waiver or reduction or fees.

(iii) The request must identify the fee category of the request, consistent with the provisions of § 388.109(b) (1) and (2).

(2) A request that fails to provide the identification required in paragraph (a)(1)(iii) of this section will not be processed until the Director, Office of External Affairs, can ascertain the requester's fee category.

(3) A request for records received by the Commission not addressed and marked as indicated in paragraph (a)(1)(i) of this section will be so addressed and marked by Commission personnel as soon as it is properly identified, and forwarded immediately to the Director, Office of External Affairs.

(4) Requests made pursuant to this section will be considered to be received upon actual receipt by the Director, Office of External Affairs, unless otherwise indicated in paragraph (a)(5) of this section.

(5) Except for the purpose of making a determination regarding expedited

processing under paragraph (d)(3) of this section, no request will be deemed received while there is an unresolved fee waiver issue under § 388.109(b)(6), unless the requester has provided a written statement agreeing to pay some or all fees pending the outcome of the waiver question.

(b)(1) Multitrack processing. Upon receipt of a request, the Director, Office of External Affairs, will place the request in one of three tracks for processing:

(i) Track One—records that are readily identifiable and were previously cleared for release (including those subject to multiple requests and placed in the Public Reference Room);

(ii) Track Two—records that are readily identifiable, and require limited review; and

(iii) Track Three—complex and/or voluminous records requiring a significant search and/or review.

(2) Each track specified in paragraph (b)(1) of this section will be processed on a first in, first out basis, where practicable. A requester may modify a request to obtain processing on a faster track.

(c)(1) *Timing of response.* Except as provided in paragraphs (c)(4) and (d)(3) of this section, within 20 working days after receipt of the request for agency records, the Director, Office of External Affairs, will comply with the request or deny the request in whole or in part, and will notify the requester of the determination, of the reasons for a decision to withhold any part of a requested document, and of the right of the requester to appeal any adverse determination in writing to the General Counsel or General Counsel's designee.

(2) The Director, Office of External Affairs, will attempt to provide records in the form or format requested, where feasible, but will not provide more than one copy of any record to a requester.

(3) Any determination by the Director, Office of External Affairs, to withhold information will, where feasible, indicate the approximate volume of information withheld, and will indicate, for partially-released materials, where redactions have been made, unless to do so would harm an interest protected by a FOIA exemption.

(4) The time limit for the initial determination required by paragraph (c)(1) of this section may be extended as set forth in § 388.110(b).

(d)(1) *Expedited processing.* A requester may seek expedited processing on the basis of a compelling need. Expedited processing will be granted if the requester demonstrates that:

(i) Failure to obtain the records on an expedited basis can reasonably be expected to pose an imminent threat to the life or physical safety of an individual, or

(ii) In the case of a requester primarily engaged in the dissemination of information, there is an urgency to inform the public concerning Federal Government activity.

(2) A request for expedited processing under this section must be supported with detailed credible documentation, including a statement certified to be true and correct to the requester's best knowledge and belief.

(3) The Director, Office of External Affairs, will decide within 10 calendar days of receipt of the request whether it is eligible for expedited processing. The Director will notify the requester of the reasons for denial of expedited processing and of the right of the requester to appeal to the General Counsel or General Counsel's designee.

(e) The procedure for appeal of denial of a request for Commission records, or denial of a request for expedited processing, is set forth in § 388.110.

[Order 488, 53 FR 1473, Jan. 20, 1988, as amended by Order 562, 58 FR 62521, Nov. 29, 1993; Order 597, 63 FR 5453, Feb. 3, 1998]

§ 388.109 Fees for record requests.

(a) *Fees for records available through the Public Reference Room—(1) General rule.* The fee for finding and duplicating records available in the Commission's Public Reference Room will vary depending on the size and complexity of the request. A schedule of fees for such services is prescribed annually. A person can obtain a copy of the schedule of fees in person or by mail from the Public Reference Room. Copies of documents also may be made on self-service duplicating machines located in the Public Reference Room. In addition, copies of data extracted from the Commission's files through electronic

media are available on a reimbursable basis, upon written request to the Public Reference Room.

(2) Stenographic reports of Commission hearings are made by a private contractor. Interested persons may obtain copies of public hearing transcripts from the contractor at prices set in the contract, or through the search and duplication service noted above. Copies of the contract are available for public inspection in the Public Reference Room.

(3) Copies of transcripts, electronic recordings, or minutes of Commission meetings closed to public observation containing material nonexempt pursuant to § 375.206(f) of this chapter are also available at the actual cost of duplication or transcription.

(4)(i) The public may purchase hard copies of documents available in electronic form from the Commission's Records and Information Management System (RIMS) for 15 cents per page.

(ii) The public may purchase hard copies of documents that are available on microform from RIMS for 15 cents per page. There will be no fee for requests for RIMS microform documents consisting of ten or fewer pages.

(5) Except for requests for certification by Government agencies, certification of copies of official Commission records must be accompanied by a fee of \$5.00 per document. Inquiries and orders may be made to the Public Reference Room in person or by mail.

(6) The fee schedule for Commission documents is available on the Commission's Web site at www.ferc.fed.us.

(b) *Fees for records not available through the Public Reference Room (FOIA requests).* The cost of duplication of records not available in the Public Reference Room will depend on the number of documents requested, the time necessary to locate the documents requested, and the category of the persons requesting the records. The procedures for appeal of requests for fee waiver or reduction are set forth in § 388.110.

(1) *Definitions.* For the purpose of paragraph (b) of this section:

(i) *Commercial use request* means a request from or on behalf of one who seeks information for a use or purpose that furthers commercial, trade, or

profit interests as these phrases are commonly known or have been interpreted by the courts in the context of the Freedom of Information Act;

(ii) *Educational institution* refers to a preschool, a public or private elementary or secondary school, an institution of graduate higher education, an institution of undergraduate higher education, an institution of professional education, and an institution of vocational education, which operates a program of scholarly research;

(iii) *Noncommercial scientific institution* refers to an institution that is not operated on a commercial basis and which is operated solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry;

(iv) *Representative of the news media* refers to any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term *news* means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations broadcasting to the public at large, and publishers of periodicals (but only in those instances when the periodicals can qualify as disseminations of "news") who make their products available for purchase or subscription by the general public. These examples are not intended to be all-inclusive. Moreover, as traditional methods of news delivery evolve (e.g., electronic dissemination of newspapers through telecommunications services), such alternative media may be included in this category. A *freelance* journalist may be regarded as working for a news organization if the journalist can demonstrate a solid basis for expecting publication through that organization, even though the journalist is not actually employed by the news organization. A publication contract would be the clearest proof, but the Commission may also look to the past publication record of a requester in making this determination.

(2) *Fees.* (i) If documents are requested for commercial use, the Commission will charge the employee's hourly pay rate plus 16 percent for ben-

efits for document search time and for document review time, and 15 cents per page for duplication. Commercial use requests are not entitled to two hours of free search time or 100 free pages of reproduction of documents.

(ii) If documents are not sought for commercial use and the request is made by an educational or noncommercial scientific institution, whose purpose is scholarly or scientific research, or a representative of the news media, the Commission will charge 15 cents per page for duplication. There is no charge for the first 100 pages.

(iii) For a request not described in paragraphs (b)(2)(i) or (ii) of this section the Commission will charge the employee's hourly pay rate plus 16 percent for benefits for document search time and 15 cents per page for duplication. There is no charge for the first 100 pages of reproduction and the first two hours of search time will be furnished without charge.

(iv) The Director, Office of External Affairs, will normally provide documents by regular mail, with postage prepaid by the Commission. However, the requester may authorize special delivery, such as express mail, at the requester's own expense.

(v) The Commission, or its designee, may establish minimum fees below which no charges will be collected, if it determines that the costs of routine collection and processing of the fees are likely to equal or exceed the amount of the fees. If total fees assessed by Commission staff for a Freedom of Information Act request are less than the appropriate threshold, the Commission may not charge the requesters.

(vi) Payment of fees must be by check or money order made payable to the U.S. Treasury.

(vii) Requesters may not file multiple requests at the same time, each seeking portions of a document or documents, solely in order to avoid payment of fees. When the Commission reasonably believes that a requester, or a group of requesters acting in concert, is attempting to break a request down into a series of requests for the purpose of evading assessment of fees, or otherwise reasonably believes that two or

more requests constitute a single request, the Commission may aggregate any such requests and charge the requester accordingly. The Commission will not aggregate multiple requests on unrelated subjects from a requester. Aggregated requests may qualify for an extension of time under § 388.110(b).

(3) *Fees for unsuccessful search.* The Commission may assess charges for time spent searching, even if it fails to locate the records, or if records located are determined to be exempt from disclosure. If the Commission estimates that search charges are likely to exceed \$25, it will notify the requester of the estimated amount of search fees, unless the requester has indicated in advance willingness to pay fees as high as those anticipated. The requester can meet with Commission personnel with the object of reformulating the request to meet his or her needs at a lower cost.

(4) *Interest—notice and rate.* The Commission will assess interest charges on an unpaid bill starting on the 31st day following the day on which the billing was sent. Interest will be at the rate prescribed in 31 U.S.C. 3717 and will accrue from the date of the billing.

(5) *Advance payments.* The Commission will require a requester to make an advance payment, *i.e.*, payment before work is commenced or continued on a request, if:

(i) The Commission estimates or determines that allowable charges that a requester may be required to pay are likely to exceed \$250. The Commission will notify the requester of the estimated cost and either require satisfactory assurance of full payment where the requester has a history of prompt payment of fees, or require advance payment of the charges if a requester has no history of payment; or

(ii) A requester has previously failed to pay a fee charged in a timely fashion. The Commission will require the requester to pay the full amount owed plus any applicable interest, and to make an advance payment of the full amount of the estimated fee before the Commission will begin to process a new request or a pending request from that requester. When the Commission requires advance payment or an agreement to pay under this paragraph, or

under § 388.108(a)(5), the administrative time limits prescribed in this part will begin only after the Commission has received the required payments, or agreements.

(c) *Fee reduction or waiver.* (1) Any fee described in this section may be reduced or waived if the requester demonstrates that disclosure of the information sought is:

(i) In the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government, and

(ii) Not primarily in the commercial interest of the requester.

(2) The Commission will consider the following criteria to determine the public interest standard:

(i) Whether the subject of the requested records concerns the operations or activities of the government;

(ii) Whether the disclosure is likely to contribute to an understanding of government operations or activities;

(iii) Whether disclosure of the requested information will contribute to public understanding; and

(iv) Whether the disclosure is likely to contribute significantly to public understanding of government operations or facilities.

(3) The Commission will consider the following criteria to determine the commercial interest of the requester:

(i) Whether the requester has a commercial interest that would be furthered by the requested disclosure; and, if so

(ii) Whether the magnitude of the identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is primarily in the commercial interest of the requester.

(4) This request for fee reduction or waiver must accompany the initial request for records and will be decided under the same procedures used for record requests.

(d) *Debt collection.* The Commission will use the authorities mandated in the Debt Collection Act of 1982, 31 U.S.C. 3711, 3716-3719 (1982), including disclosure to consumer reporting agencies and use of collection agencies,

where appropriate, to encourage payment of outstanding unpaid FOIA invoices.

(e) *Annual adjustment of fees*—(1) *Update and publication*. The Commission, by its designee, the Executive Director, will update the fees established in this section each fiscal year. The Executive Director will publish the fees in the FEDERAL REGISTER.

(2) *Payment of updated fees*. The fee applicable to a particular Freedom of Information Act request will be the fee in effect on the date that the request is received.

[Order 488, 53 FR 1473, Jan. 20, 1988, as amended by Order 597, 63 FR 5454, Feb. 3, 1998; Order 640, 65 FR 33448, May 24, 2000]

§ 388.110 Procedure for appeal of denial of requests for Commission records not publicly available or not available through the Public Reference Room, denial of requests for fee waiver or reduction, and denial of requests for expedited processing.

(a)(1) A person whose request for records, request for fee waiver or reduction, or request for expedited processing is denied in whole or part may appeal that determination to the General Counsel or General Counsel's designee within 45 days of the determination. Appeals filed pursuant to this section must be in writing, addressed to the General Counsel of the Commission, and clearly marked "Freedom of Information Act Appeal." Such an appeal received by the Commission not addressed and marked as indicated in this paragraph will be so addressed and marked by Commission personnel as soon as it is properly identified and then will be forwarded to the General Counsel. Appeals taken pursuant to this paragraph will be considered to be received upon actual receipt by the General Counsel.

(2) The General Counsel or the General Counsel's designee will make a determination with respect to any appeal within 20 working days after the receipt of such appeal. An appeal of the denial of expedited processing will be considered as expeditiously as possible within the 20 working day period. If, on appeal, the denial of the request for records, fee reduction, or expedited processing is upheld in whole or in

part, the General Counsel or the General Counsel's designee will notify the person making the appeal of the provisions for judicial review of that determination.

(b)(1) *Extension of time*. In unusual circumstances, the time limits prescribed for making the initial determination pursuant to § 388.108 and for deciding an appeal pursuant to this section may be extended by up to 10 working days, by the Secretary, who will send written notice to the requester setting forth the reasons for such extension and the date on which a determination or appeal is expected to be dispatched.

(2) The extension permitted by paragraph (b)(1) of this section may be made longer than 10 working days when the Commission notifies the requester within the initial response time that the request cannot be processed in the specified time, and the requester is provided an opportunity to limit the scope of the request to allow processing within 20 working days; or to arrange with the Commission an alternative time frame.

(3) Two or more requests aggregated into a single request under § 388.109(b)(2)(vii) may qualify for an extension of time if the requests, as aggregated, otherwise satisfy the unusual circumstances specified in this section.

(4) *Unusual circumstances* means:

(i) The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the requests;

(ii) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(iii) The need for consultation, which will be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request or among two or more components of the agency having substantial subject-matter interest therein.

[Order 488, 53 FR 1473, Jan. 20, 1988, as amended by Order 597, 63 FR 5455, Feb. 3, 1998]

§ 388.111 Procedures in event of subpoena.

(a)(1) The procedures specified in this section will apply to all subpoenas directed to Commission employees that relate in any way to the employees' official duties. These procedures will also apply to subpoenas directed to former Commission employees if the subpoenas seek nonpublic materials or information acquired during Commission employment. The provisions of paragraph (c) of this section will also apply to subpoenas directed to the Commission.

(2) For purposes of this section,

(i) *Employees*, except where otherwise specified, includes "special government employees" and other Commission employees; and

(ii) *Nonpublic* includes any material or information which is exempt from availability for public inspection and copying;

(iii) *Special government employees* includes consultants and other employees as defined by section 202 of Title 18 of the United States Code.

(iv) *Subpoena* means any compulsory process in a case or matter, including a case or matter to which the Commission is not a party;

(b) Any employee who is served with a subpoena must promptly advise the General Counsel of the Commission of the service of the subpoena, the nature of the documents or information sought, and all relevant facts and circumstances. Any former employee who is served with a subpoena that concerns nonpublic information shall promptly advise the General Counsel of the Commission of the service of the subpoena, the nature of the documents or information sought, and all relevant facts and circumstances.

(c) A party causing a subpoena to be issued to the Commission or any employee or former employee of the Commission must furnish a statement to the General Counsel of the Commission. This statement must set forth the party's interest in the case or matter, the relevance of the desired testimony or documents, and a discussion of whether the desired testimony or documents are reasonably available from other sources. If testimony is desired, the statement must also contain a gen-

eral summary of the testimony and a discussion of whether Commission records could be produced and used in lieu of testimony. Any authorization for testimony will be limited to the scope of the demand as summarized in such statement.

(d) Commission records or information which are not part of the public record will be produced only upon authorization by the Commission.

(e) The Commission or its designee will consider and act upon subpoenas under this section with due regard for statutory restrictions, the Commission's Rules of Practice and Procedure, and the public interest, taking into account factors such as applicable privileges including the deliberative process privilege; the need to conserve the time of employees for conducting official business; the need to avoid spending the time and money of the United States for private purposes; the need to maintain impartiality between private litigants in cases where a substantial government interest is not involved; and the established legal standards for determining whether justification exists for the disclosure of confidential information and records.

(f) The Commission authorizes the General Counsel or the General Counsel's designee to make determinations under this section.

§ 388.112 Requests for privileged treatment of documents submitted to the Commission.

(a) *Scope*. Any person submitting a document to the Commission may request privileged treatment by claiming that some or all of the information contained in a particular document is exempt from the mandatory public disclosure requirements of the Freedom of Information Act, 5 U.S.C. 552, and should otherwise be withheld from public disclosure.

(b) *Procedures*. A person claiming that information is privileged under (a) of this section must file:

(1) For documents submitted in hard copy,

(i) A written statement requesting privileged treatment for some or all of the information in a document, and the justification for nondisclosure of the information;

(ii) The original document, boldly indicating on the front page "Contains Privileged Information—Do Not Release" and identifying within the document the information for which the privileged treatment is sought;

(iii) Fourteen copies of the document without the information for which privileged treatment is sought, and with a statement indicating that information has been removed for privileged treatment;

(iv) The name, title, address, telephone number, and telecopy information of the person or persons to be contacted regarding the request for privileged treatment of documents submitted to the Commission.

(2) For documents submitted on electronic media,

(i) A written statement requesting privileged treatment for some or all of the information on the electronic media, and the justification for non-disclosure of the information;

(ii) One copy of a complete filing on the electronic media marked "Contains Privileged Information—Do Not Release" and identifying on the electronic media only the information for which the privileged treatment is sought with one paper copy also marked "Contains Privileged Information—Do Not Release";

(iii) One copy of the electronic media without the information for which privileged treatment is sought and with a statement that information has been removed for privileged treatment with fourteen paper copies without the information for which privileged treatment is sought; and

(iv) The name, title, address, telephone number and telecopy information of the person or persons to be contacted regarding the request for privileged treatment of documents submitted to the Commission.

(c) *Effect of privilege claim*—(1) *For documents filed with the Commission.* (i) The Secretary of the Commission will place documents for which privileged treatment is sought in accordance with paragraph (b)(1)(ii) of this section in a nonpublic file, while the request for privileged treatment is pending. By placing documents in a nonpublic file, the Commission is not making a determination on any claim for privilege.

The Commission retains the right to make determinations with regard to any claim of privilege, and the discretion to release information as necessary to carry out its jurisdictional responsibilities.

(ii) The Secretary of the Commission will place the request for privileged treatment described in paragraph (b)(1) of this section and a copy of the original document described in paragraph (b)(1)(iii) of this section in a public file, while the request for privilege treatment is pending.

(2) *For documents submitted to Commission staff.* The notification procedures of paragraphs (d) (e) and (f) of this section will be followed by staff before making a document public.

(d) *Notification of request and opportunity to comment.* When a FOIA requester seeks a document for which privilege is claimed, the Commission official who will decide whether to make the document public will notify the person who submitted the document and give the person an opportunity (at least five days) in which to comment in writing on the request. A copy of this notice will be sent to the FOIA requester.

(e) *Notification before release.* Notice of a decision by the Director, Office of External Affairs, the Chairman of the Commission, the General Counsel or General Counsel's designee, a presiding officer in a proceeding under part 385 of this chapter, or any other appropriate official to deny a claim of privilege, in whole or in part, will be given to any person claiming that information is privileged no less than five days before public disclosure. The notice will briefly explain why the person's objections to disclosure are not sustained by the Commission. A copy of this notice will be sent to the FOIA requester.

(f) *Notification of suit in Federal courts.* When a FOIA requester brings suit to compel disclosure of confidential commercial information, the Commission will notify the person who submitted documents containing confidential commercial information of the suit.

[Order 488, 53 FR 1473, Jan. 20, 1988, as amended at 53 FR 15032, Apr. 27, 1988; Order 448-A, 54 FR 47761, Nov. 17, 1989; Order 562, 58 FR 62521, Nov. 29, 1993; Order 597, 63 FR 5455, Feb. 3, 1998]

PART 389—OMB CONTROL NUMBERS FOR COMMISSION INFORMATION COLLECTION REQUIREMENTS

AUTHORITY: 44 U.S.C. 3501-3520.

§ 389.101 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

(a) *Purpose.* This part collects and displays control numbers assigned to information collection requirements of the Commission by the Office of Management and Budget (OMB) pursuant to the Paperwork Reduction Act of 1980. This part fulfills the requirements of section 3507(f) of the Paperwork Reduction Act, which requires that agencies display a current control number assigned by the Director of OMB for each agency information collection requirement.

(b) *Display.*

18 CFR part or section where the information collection requirement is located	Current OMB control number (all numbers begin with 1902-)
2.19	0058, 0015
2.55	0161
2.56a	0055
2.69	0060
2.75	0052
2.76	0051, 0052, 0055
2.77	0051, 0052, 0055
2.78	0066
2.79	0060
2.80	0128
Part 4 Subpart D	0073
Part 4 Subpart E	0058
Part 4 Subpart F	0058
Part 4 Subpart G	0115
Part 4 Subpart H	0115
Part 4 Subpart J	0115
Part 4 Subpart L	0058
Part 4 Subpart L	0115
Part 4 Subpart M	0136
4.30	0073
4.31	0073
4.32	0058, 0073, 0115, 0136
4.33	0073
4.34	0073
4.80	0073
4.81	0073
4.82	0073
Part 6	0068
Part 9	0069
11.3(c)	0136
11.3(d)	0136
11.4(b)	0136
11.16	0087
16.1	0058, 0115
16.14	0058, 0115
16.15	0058, 0115
16.16	0058, 0115
24.1	0079
Part 33	0082
Part 34	0043
Part 35 Subpart A	0096
35.12	0096
35.13	0096
35.26	0096
35.27	0096
35.30	0096
Part 45	0083
46.3	0114
46.6	0099
Part 101	0021, 0029
Part 116	0021
Part 125	0098
141.1	0021
141.2	0029
141.14	0106
141.51	0140
141.61	0024
Part 152	0116
Part 153	0062
Part 154	0052
154.38	0070
154.52	0070
154.61	0070
154.62	0070
154.63	0070
154.64	0070
154.65	0070
154.66	0070
154.67	0070
154.91	0055
154.92	0055
154.93	0055
154.94	0055
154.94(k)	0057
154.95	0055
154.96	0055
154.97	0055
154.98	0055
154.99	0055
154.100	0055
154.101	0055
154.102	0055
154.103	0055
154.104	0055
154.105	0055
154.106	0055
154.107	0055
154.108	0055
154.109	0055
154.110	0055
154.111(a)(3)	0070
154.301	0070
154.303	0070
154.304	0070
154.305	0070
154.306	0070
154.308	0070
154.309	0070
154.310	0070
Part 156	0061
Part 157	0052
157.5	0060
157.6	0060
157.7	0060
157.8	0060
157.9	0060
157.10	0060
157.11	0060
157.12	0060
157.13	0060
157.14	0128
157.15	0060

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18 CFR part or section where the information collection requirement is located	Current OMB control number (all numbers begin with 1902-)	18 CFR part or section where the information collection requirement is located	Current OMB control number (all numbers begin with 1902-)
157.16	0060	Part 274 Subpart B	0038
157.17	0060	275.204	0093
157.18	0060	276.108	0098
157.20	0060	277.210	0098
157.21	0051, 0060	Part 281	0066
157.23	0052	Part 282	0110
157.24	0052	282.502	0028
157.25	0052	Part 284	0086
157.26	0052	284.7	0086
157.27	0052	284.8	0060, 0086
157.28	0052	284.9	0060, 0086
157.30	0051	284.10	0060, 0086
157.40	0052	284.11	0086, 0161
157.100	0005, 0051, 0052	284.12	0005
157.102	0060	284.102	0086
157.103	0060, 0070	284.105	0086
157.201	0060	284.106	0086
157.202	0060	284.122	0086
157.203	0060	284.125	0086
157.204	0060	284.126	0086
157.205	0060	Part 284 Subpart D	0086
157.206	0060	Part 284 Subpart E	0086
157.207	0060	284.221	0060
157.208	0060	284.222	0060
157.209 (e)(3), (e)(4)	0060	284.223	0060, 0086, 0160
157.210	0060	284.224	0060
157.211	0060	284.226(d)	0086
157.212	0060	Part 284 Subpart H	0060, 0086
157.213	0060	Part 284 Subpart I	0144
157.214	0060	Part 290	0042
157.215	0060	Part 292	0075
157.216	0060	292.209	0058, 0115
157.217	0060	300.10	0088
157.218	0060	300.11	0088
157.301	0055	Part 340	0089
Part 158	0098	Part 341	0089
159.1	0060	Part 342	0089
160.1	0098	Part 343	0089
161.3	0157	Part 344	0089
Part 201	0028, 0030	Part 345	0089
Part 216	0028	Part 346	0089
Part 225	0098	Part 347	0089
Part 250	0052	Part 351	0022
250.5	0055	Part 352	0022
250.7	0051	Part 356	0098
250.8	0055	Part 360	0003
250.9	0055	382.105(a)	0132
250.10	0052	382.201(b)(4)	0132
250.13	0008	360.100	0015
250.14	0036, 0055	360.101	0016
250.15	0086	360.102	0017
250.16	0157	360.103	0014
260.1	0028	360.104	0013
260.2	0030	361.100	0011
260.3	0032	361.101	0018
260.4	0027	361.102	0010
260.7	0037	361.103	0009
260.8	0005	Part 380	0128
260.9	0004	381.106(b)	0132
260.11	0026	381.108	0132
260.12	0025	381.302	0132
260.15	0101	381.303	0132
Part 270	0057	381.304	0132
270.101	0070	382.105(a)	0132
Part 271 Subpart K	0057	382.201(b)	0132
271.503	0124	Part 385 Subpart N	0089
271.603	0124		
271.703(c)	0112		
271.903	0124		
Part 273	0111		
273.302	0070, 0084		
Part 274	0112		

[49 FR 12692, Mar. 30, 1984]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 389.101, see the List of CFR Sections Affected, which appears in the

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Finding Aids section of the printed volume
and on GPO Access.

PARTS 390-399 [RESERVED]