

Department of Energy

§ 1040.131

provisions established by the FERC. At the time an answer is filed, the applicant or recipient may also submit written information or argument for the record if he/she does not request a hearing.

(c) An answer or stipulation may consent to the entry of an order in substantially the form set forth in the notice of opportunity for hearing. The order may be entered by the General Counsel or his/her designee. The consent of the applicant or recipient to the entry of an order shall constitute a waiver by him/her of a right to:

(1) A hearing under Sec. 902 of title IX of the Education Amendments of 1972, Section 602 of title VI of the Civil Rights Act of 1964, Section 16, Section 401 and §1040.113;

(2) Findings of fact and conclusions of law; and

(3) Seek review by the FERC.

(d) The failure of an applicant or recipient to file an answer within the period prescribed or, if the applicant or recipient requests a hearing, his failure to appear at the hearing shall constitute a waiver by him/her of a right to:

(1) A hearing under Section 902 of title IX of the Education Amendments of 1972, Section 602 of title VI of the Civil Rights Act of 1964, Section 16, Section 401, and §1040.113;

(2) Conclusions of law; and

(3) Seek review by the FERC.

In the event of such a waiver, the Secretary or a designee may find the facts on the basis of the record available and enter an order in substantially the form set forth in the notice of opportunity for hearing.

(e) An order entered in accordance with paragraph (c) or (d) of this section shall constitute the final decision of DOE unless the FERC, within forty-five (45) days after entry of the order, issues a subsequent decision which shall then constitute the final decision of DOE.

(f) A copy of an order entered by the FERC official shall be mailed to the applicant or recipient and to the complainant, if any.

§ 1040.122 Request for hearing or review.

Whenever an applicant or recipient requests a hearing or review in accordance with §1040.121(a)(1) or (b), the DOE General Counsel or his/her designee shall submit such request along with other appropriate documents to the FERC.

§ 1040.123 Consolidated or joint hearings.

In cases in which the same or related facts are asserted to constitute non-compliance with this part with respect to two or more programs to which this part applies or noncompliance with this part and the regulations of one or more other Federal departments or agencies issued to implement the requirements of the laws cited in this part, the Secretary or a designee, in coordination with FERC may, by agreement with other departments or agencies, where applicable, provide for the conduct of consolidated or joint hearings and for the application to such hearings of rules of procedure not inconsistent with this part. Final decision in such cases, insofar as programs subject to this part are concerned, shall be made in accordance with procedures established by the FERC.

§ 1040.124 Responsibility of the Federal Energy Regulatory Commission.

The FERC has authority under section 402(b) of the DOE Organization Act, Pub. L. 95-91, to promulgate regulations regarding the conduct of hearings to deny or terminate Federal financial assistance. Rules for conduct of hearings will be published by the FERC and will be placed in title 18 CFR.

JUDICIAL REVIEW

§ 1040.131 Judicial review.

Final DOE actions taken under this part to withhold or terminate Federal financial assistance are subject to judicial review under the following laws:

(a) Title VI—Section 603 of the Civil Rights Act of 1964;

(b) Title IX—Section 903 of the Education Amendments of 1972;

(c) Section 16, Section 401, Section 504—Pub. L. 89-554, 5 U.S.C. 702;