

intellectual property rights arising from assistance provided under this section.

(2) *Patent Procedures:* Each award by the Program shall include provisions assuring the retention of a governmental use license in each disclosed invention, and the government's retention of march-in rights. In addition, each award by the Program will contain procedures regarding reporting of subject inventions by finding Recipient to the Program, including the subject inventions of members of the joint venture (if applicable) in which the funding Recipient is a participant, contractors and subcontractors of the funding Recipient. The funding Recipient shall disclose such subject inventions to the Program within two months after the inventor discloses it in writing to the Recipient's designated representative responsible for patent matters. This disclosure shall consist of a detailed, written report which provides the Program with the following: the title of the present invention; the names of all inventors; the name and address of the assignee (if any); an acknowledgment that the United States has rights in the subject invention; the filing date of the present invention, or, in the alternative, a statement identifying that the Recipient determined that filing was not feasible; an abstract of the disclosure; a description or summary of the present invention; the background of the present invention or the prior art; a description of the preferred embodiments; and what matter is claimed. Upon issuance of the patent, the funding Recipient or Recipients must notify the Program accordingly, providing it with the Serial Number of the patent as issued, the date of issuance, a copy of the disclosure as issued, and if appropriate, the name, address, and telephone number(s) of an assignee.

* * * * *

§§ 295.10 and 295.11 [Removed]

§§ 295.12 and 295.13 [Redesignated as §§ 295.10 and 295.11]

9. Sections 295.10 and 295.11 are removed and §§ 295.12 and 295.13 are redesignated as §§ 295.10 and 295.11.

10. The newly redesignated § 295.11 is amended by revising the heading and by adding a new paragraph (c) to read as follows:

§ 295.11 Technical and Educational Services for ATP Recipients.

* * * * *

(c) From time to time, ATP may conduct public workshops and undertake other educational activities to foster the collaboration of funding recipients with other funding resources

for purposes of further development and commercialization of ATP-related technologies. In no event will ATP provide recommendations, endorsements, or approvals of any ATP funding recipients to any outside party.

11. Section 295.21 revised to read as follows:

§ 295.21 Qualifications of proposers.

Subject to the limitations set out in § 295.3, assistance under this Subpart is available only to industry-led joint research and development ventures. These joint ventures may include universities, independent research organizations, and governmental entities. Proposals for funding under this Subpart may be submitted on behalf of a joint venture by a for-profit company or an independent research organization that is a member of the joint venture. Proposals should include letters of commitment or excerpts of such letters from all proposed members of the joint venture, verifying the availability of cost-sharing funds, and authorizing the part submitting the proposal to act on behalf of the venture with the Program on all matters pertaining to the proposal. No costs shall be incurred under an ATP project by the joint venture members until such time as a joint venture agreement has been executed by all of the joint venture members and approved by NIST. NIST will withhold approval until it determines that a sufficient number of members have signed the joint venture agreement. Costs will only be allowed after the execution of the joint venture agreement and approval by NIST.

12. Section 295.24 is revised to read as follows:

§ 295.24 Registration.

Joint ventures selected for funding under the Program must notify the Department of Justice and the Federal Trade Commission under the National Cooperative Research Act of 1984. No funds will be released prior to receipt by the Program of copies of such notification.

[FR Doc. 98-25564 Filed 9-24-98; 8:45 am]

BILLING CODE 3510-13-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 292

[Docket No. RM88-6-000]

Administrative Determination of Full Avoided Costs, Sales of Power To Qualifying Facilities, and Interconnection Facilities; Order Terminating Proceeding

Issued September 21, 1998.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Order Terminating Proceeding.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is terminating this proceeding because the matters at issue in this proceeding have since been overtaken by events.

DATES: This order is withdrawn September 25, 1998.

FOR FURTHER INFORMATION CONTACT: Kimberly D. Bose, Federal Energy Regulatory Commission, Office of the General Counsel, 888 First Street, N.E., Washington, D.C. 20426, (202) 208-2284.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in the Public Reference Room at 888 First Street, N.E., Room 2A, Washington, D.C. 20426.

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This document is also available through the Commission's Records and

Information Management System (RIMS), an electronic storage and retrieval system of documents submitted to and issued by the Commission after November 16, 1981. Documents from November 1995 to the present can be viewed and printed. RIMS is available in the Public Reference Room or remotely via Internet through FERC's Homepage using the RIMS link or the Energy Information Online icon. User assistance is available at 202-208-2222, or by E-mail to RimsMaster@FERC.fed.us.

Finally, the complete text on diskette in WordPerfect format may be purchased from the Commission's copy contractor, RVJ International, Inc. RVJ International, Inc., is located in the Public Reference Room at 888 First Street, N.E., Washington, D.C. 20426.

Before Commissioners: James J. Hoecker, Chairman; Vicky A. Bailey, William L. Massey, Linda Breathitt, and Curt Hébert, Jr.

In 1988, the Commission issued a Notice of Proposed Rulemaking in this proceeding.¹ For the reasons given below, we are exercising our discretion to terminate this proceeding.

Background

In 1980, the Commission implemented rules regarding, among other things, rates for purchases from qualifying cogeneration and small power production facilities (QF) pursuant to sections 201² and 210³ of the Public Utility Regulatory Policies Act of 1978 (PURPA).⁴

In 1987, the Commission held a series of regional conferences and solicited written comments concerning the Commission's QF program. The Commission sought input concerning, *inter alia*, the so-called avoided cost rule and the implementation of that rule by state commissions and others.⁵ After

reviewing the information received in the regional conferences and in the written comments, the Commission issued the ADFAC NOPR.⁶

The ADFAC NOPR

The Commission's regulations define avoided cost as the incremental cost to an electric utility of electric capacity or energy, or both, which but for the purchase from the QF the utility would generate itself or purchase from another source.⁷ The regulations also provide that, if the rate paid by an electric utility to a QF for power and energy is equal to avoided cost, the rate is considered just and reasonable, non-discriminatory, and in the public interest.⁸ Finally, the regulations further provide a list of factors that, to the extent practicable, must be taken into account in determining avoided cost.⁹

The ADFAC NOPR, among other things, proposed amending the Commission's regulations to more precisely define the guidelines and criteria to be used by state commissions and others in administratively determining avoided cost.¹⁰ The ADFAC NOPR also acknowledged the difficulty of administratively determining avoided cost and setting avoided cost rates, and noted particularly that bidding was an alternative that promised greater efficiency in setting avoided cost rates.¹¹

Comments were filed in May 1988, reply comments were filed in July 1988, and a public hearing was held on July 21-22, 1988. A number of commenters supported the proposed rules, but often with qualifications and proposed changes. Many commenters, however, including public utilities and state commissions, opposed the proposed rules. Some urged the issuance of a policy statement rather than a

rulemaking. Many state commissions, in particular, deemed the proposed rules an intrusion on state authority, unnecessary or impractical.

Representatives of the QF industry urged major revisions of various particular proposals. Various parties representing consumer and utility interests also opposed the proposed rules.

Discussion

Over a decade has passed since the ADFAC NOPR was issued. During those ten years, conditions which directly or indirectly affect QFs have changed significantly. One significant development was the passage of the Energy Policy Act of 1992, Pub L. No. 102-486, 106 Stat. 2776 (1992) (codified in, among other places, 16 U.S.C.), which, among other things, created a new category of non-traditional power producers, exempt wholesale generators (EWGs), that, like most QFs, are exempt from the requirements of the Public Utility Holding Company Act of 1935 (PUHCA).¹² In fact, many of the entities that could qualify as QFs can also meet the criteria for EWG status and so need not be QFs in order to obtain exemption from PUHCA. Likewise, other non-traditional power producers that may be competitors of QFs, but may themselves not be QFs, can also qualify as EWGs.

The Energy Policy Act also expanded the Commission's authority to order transmission for, among others, QFs as well as certain EWGs.¹³ Additionally in this regard, the Commission in 1996 issued Order No. 888,¹⁴ in which the Commission directed that all public utilities that own, control or operate facilities used for the transmission of electric energy in interstate commerce file open access, non-discriminatory transmission tariffs with minimum terms and conditions of non-

¹ Administrative Determination of Full Avoided Costs, Sales to Qualifying Facilities, and Interconnection Facilities, 53 FR 9331 (1988), FERC Stats. & Regs. ¶ 32,457 (1988) (ADFAC NOPR).

² See 16 U.S.C. § 796.

³ See 16 U.S.C. § 824a-3.

⁴ See Small Power Production and Cogeneration Facilities; Regulations Implementing Section 210 of the Public Utility Regulatory Policies Act of 1978, Order No. 69, 45 FR 12214 (1980), FERC Stats. & Regs., Regulations Preambles 1977-1981 ¶ 30,128 (1980) and Small Power Production and Cogeneration Facilities—Qualifying Status, Order No. 70, 45 FR 17,959 (1980), FERC Stats. & Regs., Regulations Preambles 1977-1981 ¶ 30,134 (1980), order on reh'g, Order Nos. 69-A and 70-A, 45 FR 33958 (1980), FERC Stat. & Regs., Regulations Preambles 1977-1981 ¶ 30,160 (1980), *aff'd in part and vacated in part*, American Electric Power Service Corporation v. FERC, 675 F.2d 1226 (D.C. Cir. 1982), *rev'd in part*, American Paper Institute, Inc. v. American Electric Power Service Corporation, 461 U.S. 402 (1983).

⁵ See FERC Stats. & Regs. at 32,158; *accord*, Cogeneration; Small Power Production—Notice of

Public Conference and Request for Comments, 64 FERC ¶ 61,364 at 63,489-90 n.2 (1993).

⁶ The Commission also issued three other notices of proposed rulemakings. Regulations Governing Independent Power Producers, 53 FR 9327 (1988), FERC Stats. & Regs. ¶ 32,456 (1988); Regulations Governing Bidding Program, 53 FR 9324 (1988), FERC Stats. & Regs. ¶ 32,455 (1988); Regulations Governing the Public Utility Regulatory Policies Act of 1978, 53 FR 31021 (1988), FERC Stats. & Reg. ¶ 32,465 (1988). On September 29, 1993, these proceedings were terminated because the matters at issue had been overtaken by events. 64 FERC at 63,491-92.

All four of the proceedings, including the ADFAC NOPR, arose out of concerns expressed to the Commission that the Commission's QF regulations required revision and also that the Commission draft regulations to deal with newly-developing independent power producers. See generally *id.* at 63,490.

⁷ 18 CFR 292.101(b)(6).

⁸ 18 CFR 292.304(a)(1), 292.304(b)(2).

⁹ 18 CFR 292.304(e).

¹⁰ FERC Stats. & Regs. at 32,157, 32,162-74.

¹¹ FERC Stats. & Regs. at 32,164, 32,167.

¹² 15 U.S.C. §§ 79a *et seq.*; compare 15 U.S.C. § 79z-5a(e) with 18 CFR 292.601-02.

¹³ See 16 U.S.C. §§ 824j, 824k.

¹⁴ Promoting Wholesale Competition Through Open Access Non-discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities, Order No. 888, 61 FR 21540 (1996), FERC Stats. & Regs. ¶ 31,036 (1996), order on reh'g, Order No. 888-A, 62 FR 12274 (1997), FERC Stats. & Regs. ¶ 31,048, order on reh'g, Order No. 888-B, 81 FERC ¶ 61,248 (1997), order on reh'g, Order No. 888-C, 82 FERC ¶ 61,046 (1998), *accord*, Public Service Company of New Hampshire v. New Hampshire Electric Cooperative, Inc., 83 FERC ¶ 61,224 at 61,999 (1998) ("The regulatory context is now quite different from that which existed" when the QF regulations first were promulgated, with the requirement that public utilities now provide open access transmission service to, among other entities, QFs), *reh'g pending* (PSNH).

discriminatory service.¹⁵ The sellers eligible for such service expressly include QFs.¹⁶

In addition, as stated above, the ADFAC NOPR acknowledged the difficulty of administratively setting avoided cost rates, and particularly recognized that competitive bidding was a viable alternative to determining avoided cost. Since 1988, in fact, substantial experience has been gained by state commissions, electric utilities and QFs themselves regarding competitive bidding. While few states allowed competitive bidding at the time of the ADFAC NOPR, well over half the states now use competitive bidding to one degree or another in setting avoided cost rates.¹⁷ Indeed, in a number of cases, the Commission itself has considered rates resulting from competitive bidding and negotiation in which QFs were active participants.¹⁸ Accordingly, the industry itself appears to have made substantial progress regarding the determination of avoided cost and the setting of avoided cost rates.

Given these facts, as well as the continuing development of competitive power markets generally,¹⁹ the Commission does not believe it appropriate to adopt revisions proposed a decade ago.

Additionally, we note that certain of the issues addressed in the ADFAC NOPR were the subject of other proceedings: for example, allowing QFs to construct and own transmission lines and interconnection equipment.²⁰

¹⁵ *E.g.*, Order No. 888, FERC Stats. & Regs. at 31,635-36.

¹⁶ *E.g.*, *id.* at 31,688.

¹⁷ 64 FERC at 63,491; *accord*, Order No. 888, FERC Stats. & Regs. at 31,651; National Independent Energy Producers, *Competing for Power: A Survey on Competitive Procurement Systems and Blueprint for the Future* 5-6 (July 1991).

¹⁸ *E.g.*, PSNH, 83 FERC at 62,000-01 ("parties to QF purchases are free to negotiate purchase rates" and a "more competitive environment is expected to foster such outcomes"); *accord*, *id.* at 61,995-96, 62,001 n.20 (noting the use of competitive bidding by the applicant to establish an avoided cost rate); Enron Power Enterprise Corporation, 52 FERC ¶ 61,193 (1990) (involving multi-source, including QF, competitive bidding); Doswell Limited Partnership, 50 FERC ¶ 61,251 (1990) (involving QF competitive bidding); *see also* Southern California Edison Company, 70 FERC ¶ 61,215 at 61,675-76, 61,677, *order on reconsid.* 71 FERC ¶ 61,269 at 62,078-80 (1995); *cf.* Jersey Central Power & Light Company, 73 FERC ¶ 61,092 at 61,297 & n.5, *reh'g denied*, 73 FERC ¶ 61,333 (1995); Metropolitan Edison Company, 72 FERC ¶ 61,015 at 61,049 & n.6, *reh'g denied*, 72 FERC ¶ 61,269 at 62,184 (1995).

¹⁹ *See* Order No. 888, FERC Stats. & Regs. at 31,639-52; *accord*, Order No. 888-A, FERC Stats. & Regs. at 30,183-85; *see also* 70 FERC at 61,675-76.

²⁰ *See* Streamlining of Regulations Pertaining to Parts II and III of the Federal Power Act and the Public Utility Regulatory Policies Act of 1978, Notice of Proposed Rulemaking, 57 FR 55176 (1992), FERC Stats. & Regs. ¶ 32,489 at 32,643-44,

Likewise, the issue of whether states can require that rates for QF sales at wholesale be set above avoided cost, which was added to the ADFAC NOPR proceeding after the ADFAC NOPR was originally issued,²¹ has since been addressed in another proceeding.²²

Accordingly, because the revisions to the Commission's regulations proposed in the ADFAC NOPR have been overtaken by subsequent events, the Commission will exercise its discretion to terminate this proceeding.²³

Administrative Findings and Effective Date

The Administrative Procedure Act (APA)²⁴ requires a notice of proposed rulemaking to be published in the **Federal Register**. The APA also mandates that an opportunity for comments be provided when an agency proposes to promulgate regulations. The Commission finds that notice and comment are unnecessary when terminating a proceeding. The express language of the APA requires such notice and comment only when promulgating new regulations and not when the agency is, as in this case, terminating a proceeding that proposed amending pre-existing regulations.²⁵ Moreover, notice and comment are not required under the APA when the agency for good cause finds that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.²⁶ As explained above, this order merely removes from consideration proposed regulations that were never adopted and have since been overtaken by events, and thus are no longer necessary.

The Commission will make the termination of this proceeding effective on September 25, 1998.

32,647 (1992), *regulation adopted*, Order No. 575, 60 FR 4831 (1995), FERC Stats. & Regs. ¶ 30,014 at 31,279-81 (1995), *order on reh'g*, 71 FERC ¶ 61,121 (1995).

²¹ *See* Administrative Determination of Full Avoided Costs, 53 FR 24099 (1988), FERC Stats. & Regs. ¶ 32,462 (1988); *cf.* Orange and Rockland Utilities, Inc., 70 FERC ¶ 61,014, *reconsideration denied*, 71 FERC ¶ 61,034 (1995).

²² *See* Connecticut Light & Power Company, 70 FERC ¶ 61,012, *reconsideration denied*, 71 FERC ¶ 61,035 (1995).

²³ *See, e.g.*, Professional Drivers Council v. Bureau of Motor Safety, 706 F.2d 1216, 1220-21 (D.C. Cir. 1983) (discussing agency's decision not to promulgate new rules in an area already subject to agency regulation).

²⁴ 5 U.S.C. 553(b), (c).

²⁵ *See, e.g.*, *Kennecott Utah Copper Corporation v. United States Department of Interior*, 88 F.3d 1191, 1207-09 (D.C. Cir. 1996) (discussing challenges to withdrawal of draft final regulations without notice and comment); *accord*, ICORE, Inc. v. FCC, 985 F.2d 1075, 1082 (D.C. Cir. 1993) (not modifying a rule is not same as rulemaking).

²⁶ 5 U.S.C. 553(b).

List of Subjects in 18 CFR Part 292

Electric power plants, electric utilities, natural gas, reporting and recordkeeping requirements.

The Commission Orders

Docket No. RM88-6-000 is hereby terminated.

By the Commission.

David P. Boergers,

Secretary.

[FR Doc. 98-25676 Filed 9-24-98; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 385

[Docket No. RM98-1-000]

Regulations Governing Off-the-Record Communications

September 16, 1998.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is proposing to revise its rules concerning communications between persons outside the Commission and the Commission and its employees. The proposed regulations are designed to clarify ambiguities in the existing *ex parte* rules and to provide better guidance on what communications to and from the Commission are permissible and what communications are prohibited.

DATES: Written comments are due on or before December 24, 1998.

ADDRESSES: File comments with the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: David R. Dickey, Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, (202) 208-2140.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or -1a -copy the contents of this document during normal business hours in the Public Reference Room at 888 First Street, N.E., Room 2A, Washington, DC 20426.

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