

§ 240.14c-101 Schedule 14C. Information required in information statement.

* * * * *

Item 5. Delivery of documents to security holders sharing an address.

If one annual report or information statement is being delivered to two or more security holders who share an address, furnish the following information in accordance with § 240.14a-3(e)(1):

(a) State that only one annual report or information statement, as applicable, is being delivered to multiple security holders sharing an address unless the registrant has received contrary instructions from one or more of the security holders;

(b) Undertake to deliver promptly upon written or oral request a separate copy of the annual report or information statement, as applicable, to a security holder at a shared address to which a single copy of the documents was delivered and provide instructions as to how a security holder can notify the registrant that the security holder wishes to receive a separate copy of an annual report or information statement, as applicable;

(c) Provide the phone number and mailing address to which a security holder can direct a notification to the registrant that the security holder wishes to receive a separate annual report or proxy statement, as applicable, in the future; and

(d) Provide instructions how security holders sharing an address can request delivery of a single copy of annual reports or information statements if they are receiving multiple copies of annual reports or information statements.

Dated: October 27, 2000.

By the Commission.

Jonathan G. Katz,
Secretary.

[FR Doc. 00-28137 Filed 11-1-00; 8:45 am]

BILLING CODE 8010-01-P

DEPARTMENT OF ENERGY
**Federal Energy Regulatory
Commission**
18 CFR Part 157

[Docket No. RM98-16-001; Order No. 608-A]

**Collaborative Procedures for Energy
Facility Applications; Order on
Rehearing**

Issued October 27, 2000.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule, order on rehearing.

SUMMARY: The Federal Energy Regulatory Commission (Commission) affirms, modifies, and clarifies its final rule, Order No. 608.¹ The final rule implemented procedural regulations that offer prospective applicants seeking to construct, operate or abandon natural gas facilities or services the option, in appropriate circumstances and prior to filing an application, of designing a collaborative process that includes environmental analysis and issue resolution. This pre-filing collaborative process is optional, is designed to be adaptable to the facts and circumstances of each particular case, and is expected to result in improvements in filed applications.

EFFECTIVE DATE: Changes to Order No. 608 made in this order on rehearing will become effective on December 4, 2000.

FOR FURTHER INFORMATION CONTACT:

Richard Hoffmann, Office of Energy Projects, 888 First Street, NE., Washington, D.C. 20426, (202) 208-0066
Gordon Wagner, Office of the General Counsel, 888 First Street, NE., Washington, D.C. 20426, (202) 219-0122

SUPPLEMENTARY INFORMATION:

Introduction

On September 15, 1999, the Commission issued a final rule providing prospective applicants for natural gas facilities or services the option, in appropriate circumstances and prior to filing an application, to employ a collaborative process to identify and address significant issues.¹ Indicated Shippers² filed a timely request for rehearing.³

We will deny in part and grant in part the request for rehearing, for the reasons discussed below.

Background

Order No. 608 sets forth regulations to govern certain discussions that take place prior to the submission of an application to the Commission. Under these regulations, a prospective applicant that seeks to construct, operate, or abandon natural gas facilities or services may, in appropriate circumstances and prior to filing an application, design a collaborative

process to address and resolve issues raised by its proposal.

The Commission anticipates that if a natural gas company invites entities that might be interested in new facilities or services, or in the abandonment of existing facilities or services, to identify issues and discuss resource impacts as part of the process of developing a proposal, this will facilitate the filing of a complete application. A project sponsor that is able to submit an application that addresses and resolves issues, along with a preliminary draft environmental assessment (EA) or environmental impact statement (EIS) in accordance with the National Environmental Policy Act (NEPA),⁴ may be processed expeditiously. Applications that are incomplete, or that are amended in response to issues identified only after filing, or that require the submission of additional information or studies or resource impacts before the Commission is able to consider the merits, generally take longer to process than applications that are uncontested and complete.

As noted in the final rule, this pre-filing collaborative process is optional and voluntary and is intended to be flexible, adaptable, and responsive to the facts and circumstances of each particular case. The collaborative regulations do not delete or replace any existing regulations. Thus, a prospective gas facility applicant that elects to forego pre-filing collaborative consultation may continue to use the standard authorization procedures.

A project sponsor that seeks to undertake a pre-filing collaboration pursuant to the new regulations must demonstrate to the Commission that it has made reasonable efforts to contact and invite all potentially interested entities to participate and that it has developed a communications protocol to govern how the applicant and participants will communicate. The Commission will give public notice in the **Federal Register** of the requested collaboration and invite comments. The Commission will review the adequacy of the applicant's outreach efforts, consider comments, and weigh whether pre-filing discussions are likely to be productive. If the request to collaborate is approved, then Commission staff will be assigned to help guide the pre-filing process, which can include the preparation of a preliminary draft NEPA document. The applicant will maintain a file, available to the public, of all relevant documentation of the collaboration, including minutes or summaries of meetings.

¹ Collaborative Procedures for Energy Facility Applications, Order No. 608, 64 FR 51209 (Sept. 22, 1999); FERC Stats. & Regs., Regulations Preambles ¶ 31,080 (Sept. 15, 1999).

² Composed of Chevron U.S.A., Inc., Shell Offshore Inc., and Marathon Oil Company.

³ Mr. Frederick W. Martin filed a letter supporting Indicated Shippers' rehearing request. In addition, Travis Kenneth Bynum, I, filed a Motion to Deny Rehearing in this docket that raises no issues relevant to this proceeding.

⁴ 42 U.S.C. 4321-4307a.

Once underway, a pre-filing collaboration may continue until accord has been reached among the participants, until relevant resource issues have been considered and a preliminary draft EA or EIS prepared, or until the project sponsor or participants conclude further efforts to address unresolved issues are unlikely to be productive. A project sponsor undertaking a pre-filing collaboration is not foreclosed from filing an application at any time, nor is a collaborative participant (or non-participant) precluded from intervening and commenting on or protesting any aspect of an application once it is filed with the Commission and an on-the-record proceeding commences.⁵

Request for Rehearing

Indicated Shippers repeat objections raised in response to the Commission's notice of proposed rulemaking⁶ and assert the final rule fails to respond adequately to these objections; consequently, Indicated Shippers argue the final rule does not constitute reasoned decisionmaking. Indicated Shippers claim the pre-filing collaborative process would force entities to participate in pre-filing proceedings, discount or disregard the concerns of potentially affected entities, and result in biased decision making by the Commission.

Commission Authority To Implement Pre-Filing Collaborative Regulations

Indicated Shippers contend that section 7 of the Natural Gas Act (NGA) does not expressly authorize the Commission to promulgate pre-filing collaborative procedures and believe the Commission's review process should only begin after an application is filed. Indicated Shippers maintain pre-filing collaboration may render the Commission's post-filing consideration "academic and nothing more than an

empty formality,"⁷ whereby the Commission would rubber-stamp the outcome of a pre-filing collaboration. Indicated Shippers stress such action would contravene NGA section 7(c)(1)(B), which provides for notice and hearing following the filing of an application. While the Commission describes participation in a pre-filing collaboration as optional and voluntary, Indicated Shippers challenge this characterization, contending interested entities will be compelled to either participate in pre-filing procedures or otherwise lose their only meaningful opportunity to present their concerns.

Commission Response

Indicated Shippers is correct that the NGA does not specify procedural formalities to be followed prior to the time the Commission is asked to act in response to a petition. The Order No. 608 regulations establish an outline for certain pre-filing formalities, but these regulations only apply where a prospective applicant and interested entities agree to adhere to them, *i.e.*, they are voluntary. Further, being present at or absent from a pre-filing collaboration will not prejudice an entity's capacity to endorse or object to a proposed project subsequent to the applicant's submission to the Commission of a request for authorization. Finally, section 16 of the NGA grants the Commission "power to perform any and all acts, and to prescribe, issue, make, amend, and rescind such orders, rules, and regulations as it may find necessary or appropriate to carry out the provisions of this act." In this case, we find the regulations put in place by this rule are appropriate to promote the efficient review of requests NGA section 7 authorizations.

Indicated Shippers acknowledge that prior to Order No. 608, prospective applicants have engaged in pre-filing discussions, typically with Commission staff. Project sponsors also typically negotiate for easements with landowners along a prospective right-of-way and confer with resource agencies prior to proposing a route for new facilities. These conversations and negotiations occur in anticipation of obtaining NGA section 7(b) abandonment approval or section 7(c) certificate authorization, but for the most part, proceed unaided by Commission regulation. The new regulations offer an option to enhance the utility of such discussions by directing a project sponsor to contact a

more inclusive range of potentially affected entities and providing a framework to identify issues and initiate the NEPA review process. In effect, the Order No. 608 regulations encourage a project sponsor to converse collectively, not individually, and in public, not in private, with all affected entities in a single forum, subject to formalities designed to promote constructive dialogue.

Indicated Shippers' concern that a pre-filing collaboration could curtail entities' capability to bring concerns to the Commission following filing is unfounded. As discussed in the final rule, all entities have the option of participating in or abstaining from a collaboration, and participants are under no obligation to agree not to contest aspects of a proposal.

After a collaboration concludes and an application is filed, the Commission will consider the requested authorization in conformity with our standard procedures governing notice, comment, and the examination of all relevant issues. Regardless of the outcome of a pre-filing collaboration, following filing all interested entities will have a meaningful opportunity to comment and raise concerns. If collaborative participants reach agreements that are submitted in conjunction with an application, we will review the results, and then accept, reject, or modify the terms of the participants' agreements when we act on the application. Although we anticipate collaborative accords may enhance the acuity of our review of an application, we stress that regardless of the uniformity and ardor with which collaborative participants urge on a particular proposal, no authorization will issue unless we determine that a project is required by the public convenience and necessity.

Adequacy of Notice of a Pre-Filing Collaboration

A project sponsor seeking Commission approval to use the pre-filing collaborative process must demonstrate that it has made reasonable efforts to notify all potentially affected entities. Section 157.22(d) of the regulations states that the Commission "will give public notice in the **Federal Register** of a request to initiate a pre-filing collaboration. If the Commission approves the request,⁸ § 157.22(e)(1) states that "[t]o the extent feasible under the circumstances of the process, the

⁵ However, where pre-filing discussions result in an applicant and participants reaching accord on issues, presumably by means of compromises and concessions, the participants may elect to prepare an offer of settlement to be submitted to the Commission in conjunction with an application. We do not expect participants that agree to be bound to a particular position during pre-filing to attempt to revise their position post-filing. Further, as stated in § 157.22(e)(6), where scientific studies and alternative route analyses are included as part of a pre-filing collaboration, "[a]dditional requests for studies may be made to the Commission after the filing of an application only for good cause shown." This is to avoid duplicative efforts and avoid delay. Of course, if there is a legitimate need for additional studies, the Commission will require them as part of its process of reviewing the application.

⁶ 63 FR 59916 (Nov. 6, 1998); FERC Stats. & Regs., Proposed Regulations ¶ 32,536 (1998).

⁷ Indicated Shippers' Request for Rehearing at 7 (Oct. 15, 1999).

⁸ Section 375.307(h) of the regulations delegates to the Director of the Office of Energy Projects the authority to determine whether to approve a request to use pre-filing collaborative procedures.

Commission will give notice in the **Federal Register** . . . of the initial information meeting or meetings and the scoping of environmental issues.”⁹ Indicated Shippers question whether these procedures will be sufficient to ensure that potentially interested entities will have adequate notice of a proposal to initiate a pre-filing collaboration and the Commission’s acceptance thereof.

Indicated Shippers suspect a prospective applicant might serve notice selectively in an effort to exclude persons likely to object to the proposal. Further, Indicated Shippers note that § 157.22(b)(3) states that an applicant that decides to seek Commission approval to undertake a pre-filing collaboration, after inviting potentially interested entities to participate, is to then inform “all entities contacted by the applicant that have expressed an interest in the pre-filing collaborative process” of its decision. Indicated Shippers object that this approach not only does nothing to cure omissions in an applicant’s initial notification; rather, it restricts notice of Commission approval of a collaboration to only those entities that an applicant had previously contacted that had responded to express an interest.

Mr. Frederick W. Martin requests that notification of a proposed collaboration be sent by certified mail to all landowners with property eligible for listing on the National Registry of Historic Places.

Commission Response

Section 157.22(b)(1) of our regulations directs a project sponsor seeking to initiate a pre-filing collaboration to make “a reasonable effort” to contact “resource agencies, local governments, Indian tribes, citizens’ groups, landowners, customers, and others” that might be interested in its proposal. Commission staff will work closely with project sponsors to ensure that such outreach efforts are comprehensive. Where we find a prospective applicant’s efforts at notification to be inadequate, or the range of contacted parties to be too narrow, we will not grant the request to use the collaborative process unless identified defects are remedied. Thus, selective notification, as a means to handpick participants, is incompatible with the collaborative approach expressed in the final rule. We do not believe a more thorough application will result, or the time required to obtain project authorization will be reduced, by conducting a collaboration that merely serves as a

forum for the like-minded to praise a proposal.

We will adopt Indicated Shippers’ suggestion to modify the regulations to ensure that potentially interested entities be made aware of Commission approval of a request to use the collaborative process. Accordingly, we change § 157.22(e)(1) to read as follows:

The Commission will publish notice of its authorization to use the pre-filing process in the **Federal Register**; the applicant will publish notice of the Commission’s authorization to use the pre-filing process in a local newspaper of general circulation in the county or counties in which the proposed project is to be located. To the extent feasible, the applicants’ notice will specify the time and place of the initial information meeting(s) and the scoping of environmental issues and will be sent to a mailing list approved by the Commission that includes the names and addresses of landowners affected by the project.

In reference to Indicated Shippers’ argument for broader notification requirements, we clarify that the Commission-approved mailing list is expected to include all entities filing comments in response to the notice of a request to use the pre-filing process. However, we will not modify § 157.22(b)(3), which restricts the scope of the second round of notification—*i.e.*, notice that a request to use the pre-filing process has been submitted to the Commission—to the subset of potentially interested entities that have responded to the § 157.22(b)(1) invitation and expressed an interest in the pre-filing process. If a project sponsor makes an adequate initial effort to invite potentially interested entities to participate in a pre-filing collaboration, we find no need for the project sponsor to continue to inform non-responsive or uninterested entities of ongoing developments.

We also find no need to compel a project sponsor to send certified mail to certain landowners, as proposed by Mr. Frederick W. Martin, since we believe the above-described requirements will be sufficient to ensure adequate notice. Further, we note the early notification requirements recently put in place in § 157.6(d) of our regulations are designed to ensure that landowners that may be affected by a proposed project have ample time and opportunity to participate in the Commission’s consideration of a proposal following the filing of an application.¹⁰

¹⁰ See Landowner Notification, Expanded Categorical Exclusions, and Other Environmental Filing Requirements, Order No. 609, 64 FR 57374, (Oct. 25, 1999); FERC Stats. and Regs., Regulations Preambles ¶ 31,082 (Oct. 13, 1999), *order on reh’g*, Order No. 609-A, 65 FR 15234 (Mar. 22, 2000);

Adequacy of the Documentation of a Pre-filing Collaboration

Indicated Shippers are concerned the documentation of a pre-filing collaboration may not be adequate or timely and urge the Commission to ensure interested parties have access to information on an ongoing collaboration, without the need to actively participate in the process, by requiring the prospective applicant to make periodic reports to the Commission summarizing the progress of the pre-filing proceeding.

Commission Response

We are persuaded that periodic reporting on a collaboration will facilitate an entity’s oversight of an ongoing proceeding, in particular where an entity has interests in separate, simultaneous collaborative proceedings. Therefore, we will require that a collaborative sponsor submit quarterly reports on the progress of a collaboration. Such reports should summarize meetings held, topics addressed, studies undertaken, etc. We do not expect transcripts or extensive documentation and thus do not expect these quarterly updates to unduly burden a project sponsor. Accordingly, we will add the following requirement as § 157.22(e)(5):¹¹

Every three months, the applicant shall file with the Commission a report summarizing the progress made in the pre-filing collaborative process, referencing the public file maintained by the applicant as provided in § 157.22(e)(4) where additional information on that process can be obtained. Summaries or minutes of meetings held as part of the collaborative process may be used to satisfy this filing requirement.

We expect that collaborative participants, when establishing a communications protocol to govern discussions, will routinely include provisions regarding the mechanics of documenting the progress of discussions, studies, decisions, etc., and of making this documentation of the collaboration accessible. We also expect that at the conclusion of the collaborative process, participants will decide what data gathered during the pre-filing process should be filed with the application and thereby be entered into the record of the proceeding.

FERC Stats. and Regs., Regulations Preambles ¶ 31,095 (Mar. 16, 2000), *order rejecting reh’g*, 91 FERC ¶ 61,278 (2000).

¹¹ The existing §§ 157.22(e)(5), (e)(6), and (e)(7) will be redesignated as §§ 157.22(e)(6), (e)(7), and (e)(8).

⁹ 18 CFR 157.22(e)(1).

Commission Decision to Approve a Request to Use the Collaborative Procedure

In deciding whether to go forward with a proposed collaboration, or to resolve matters once a collaboration is underway, the rule directs participants to act by consensus, defined as "a collective opinion; the judgment arrived at by most of those concerned."¹² Indicated Shippers believe this standard is too vague and is open to abuse. Indicated Shippers are concerned that the regulations do not provide for review of Commission decisions on requests to use the collaborative process, and speculate the Commission may approve a collaborative request despite strong objections from a minority of interested entities.

Indicated Shippers complain that the Commission's decision to permit a pre-filing collaboration is not subject to review, thus entities opposing a collaboration are without recourse.

Commission Response

We stress that a pre-filing collaboration will not be permitted to commence unless we find that the weight of opinions expressed by a representative sample of interested entities favor going forward. Where support is insufficient, either because only a small number of affected entities endorse a pre-filing collaboration or because key players refuse to participate, we may decide pre-filing collaboration is unlikely to prove productive, and so deny the request.

We see no need to provide for any review of a decision on a request to use the pre-filing collaborative procedure. A project sponsor that does not meet the criteria for a pre-filing collaboration under § 157.22 of the regulations may nevertheless engage in pre-filing consultations. If a request to collaborate is approved despite an entity's objection, that entity's recourse can be to decline to participate in the collaboration. As noted, absence from a collaboration need not bar an entity from bringing any question, concern, or objection to the Commission's attention following filing of the application.

Entry Into an Ongoing Collaboration

If an entity becomes aware of an ongoing collaboration and seeks to join in, the collaborative regulations do not prevent participation, but do require that latecomers not delay or disrupt the process and abide by any ground rules that have already been established.

Indicated Shippers believe these constraints are inequitable because the latecomer may not have been aware of the collaboration due to defective notice on the part of the applicant and because there is no assurance that the protocol governing the collaboration will be sufficient to allow the latecomer to participate meaningfully. Further, Indicated Shippers anticipate that latecomers to an ongoing collaboration could be precluded from revisiting old or raising new issues, which may result in a filed application that fails to fully address all aspects of a proposed project.

Commission Response

The notification procedures in place, as modified herein, should prove sufficient to ensure all potentially interested entities are informed of the applicant's intent to undertake a pre-filing procedure, the applicant's request to the Commission to do so, Commission approval of the request, the time and place of the initial information meeting(s), and the expected scope of the collaboration.

If, during the course of an ongoing collaboration, the character of the originally proposed project is altered such that previously uninformed entities are affected, we expect the prospective applicant to contact those entities to notify them of the ongoing collaboration and invite them to participate. For example, if a new alternative routing is selected, the applicant should promptly contact landowners along the alternative route and invite them to join in the ongoing collaboration.

We expect adherence to a communications protocol, the project sponsor's maintenance of public files, and periodic reporting on a collaboration's progress to the Commission, will permit an entity entering an ongoing collaboration to be promptly brought up to date. Where a late-entering entity believes its concerns have been inadequately addressed despite its participation in the collaboration, that entity may so state in comments submitted to the Commission after an application is filed. Such comments will help ensure a full and complete record is before the Commission as it evaluates a proposed project.

Issues Open to Discussion in a Pre-filing Collaboration

Indicated Shippers renew their request to limit the scope of a pre-filing collaboration to environmental issues. Indicated Shippers contend that because environmental issues are "confined to a

well-defined geographic area," consideration in a pre-filing collaboration is a manageable undertaking that may "constitute a meaningful improvement" in the certification process.¹³ However, because non-environmental issues may not be neatly bounded, Indicated Shippers are concerned that pre-filing discussion of such issues may be impractical, as there may be large numbers of potentially interested entities involved, including an applicant's competitors. Indicated Shippers assert inclusion of non-environmental issues will create uncertainty and lead to discrimination.

Commission Response

In theory, participants in a pre-filing collaboration can take up and reach a comprehensive accord on all relevant issues; in practice, this will not be the case with every collaboration. Nevertheless, we expect applications to be more complete and less contentious following pre-filing collaborations. Additionally, we expect the post-filing NEPA process may be completed in less time than would be the case absent the pre-filing collaboration. The regulations are intended to permit the project sponsor and participants to trim the topics to be addressed to the interests of the collaborative group; we do not expect a collaboration to cover issues that are unlikely to be productively discussed. However, just as we see no point in insisting on a collaborative agenda that is all-inclusive, we see no point in precluding particular topics from discussion if the participants opt to pursue them.

We recognize that prospects may be dim for a collaboration to reach accord on certain non-environmental issues. Nevertheless, if the project sponsor and participants anticipate that pre-filing consideration of such issues may advance the preparation of an application, we see no reason to bar their consideration as part of the pre-filing collaborative process. An entity that is not at the collaborative table during discussions concerning such an issue, or that objects to the collaborative participants' treatment of the issue, is not precluded from commenting on the issue following the filing of the application. The Commission will thoroughly review all comments and the entire evidentiary record prior to taking any action on the application. Thus, we are not persuaded that the pre-filing consideration of non-environmental

¹² FERC Stats. & Regs., Regulations Preambles, ¶ 31,080 at 30,909.

¹³ Indicated Shippers' Request for Rehearing at 4 and 11 (Oct. 15, 1999).

issues by a collaborative group will result in discrimination to any entity.

Participation of Commission Staff in a Collaborative Procedure

In the final rule we stated that Commission staff involved in a pre-filing collaboration may participate in post-filing review of an application. Indicated Shippers renew their objection to this possibility, contending such involvement is contrary to prohibitions against *ex parte* communication.

Commission Response

The Commission's *ex parte* regulations are intended to avoid any prejudice, real or apparent, that might result to a party in a contested, on-the-record proceeding before the Commission were a party or "interceder" to communicate information regarding the merits to decision-making (advisory) staff without the knowledge of other parties.¹⁴ These regulations do not apply to a pre-filing collaboration because it does not constitute an on-the-record proceeding before the Commission. Such a proceeding only commences upon submission of an application to the Commission. The Commission's staff's role in a pre-filing collaboration, as described above, is limited to facilitating conversation and in assisting in initiating the NEPA review process; staff may, as they do now, provide general procedural, statutory, and regulatory guidance. However, Commission staff will neither make any determination regarding the merits of a prospective applicant's proposal nor endorse or reject any collaborative accords.

Indicated Shippers can make use of the communications protocol to address their concerns about private communications with Commission staff during the pre-filing process and to establish a degree of disclosure that is appropriate for communication between collaborative participants and Commission staff.

In view of the above, we affirm our determination in the final rule that a staff member's participation in a pre-filing discussion need not disqualify that individual from serving in an advisory role in a proceeding on an application that is subsequently filed. We stress that staff representations in the pre-filing forum cannot in any way bind the Commission, because the Commission alone is responsible for

making all final decisions on the application.

Information Collection Statement

The Office of Management and Budget (OMB) is required to approve certain information collection requirements imposed by agency rule.¹⁵ This order on rehearing clarifies the notice procedure described in § 157.22(e)(1) of the regulations and specifies a time frame for the periodic reports described in § 157.22(e)(4) of the regulations. The reporting burden imposed by the final rule was previously reviewed and approved by OMB and these minor modifications make no substantive or material change to the approved requirements. As noted in the final rule, due to the voluntary nature of a pre-filing process, no burdens will be imposed upon a project sponsor beyond those it elects to take upon itself. We will transmit to a copy of this order on rehearing to OMB for its information.

Document Availability

In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through FERC's Home Page (<http://www.ferc.fed.us>) and on FERC's Public Reference Room during normal business hours (8:30 a.m. to 5:00 p.m. Eastern time) as 888 First Street, NE., Room 2A, Washington, DC 20426.

From FERC's Home Page in the Internet, this information is available in both the Commission Issuance Posting System (CIPS) and RIMS.

- CIPS provide access to texts of formal documents issued by the Commission since November 14, 1994.
- CIPS can be accessed using the CIPS link or the Energy Information Online icon. The full text of this document is available on CIPS in ASCII and WordPerfect 8 format for viewing, printing, and/or downloading.
- RIMS contains images 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 from FERC's Home Page using the RIMS link or the Energy Information Online icon. Descriptions of documents back to November 16, 1981, are also available from RIMS-on-the-Web; requests for copies of these and other older documents should be submitted to the Public Reference Room.

User assistance is available for RIMS, CIPS, and the FERC Website during normal business hours from our Help line at (202) 208-2222 (E-mail to WebMaster@ferc.fed.us) or the Public Reference at (202) 208-1371 (E-Mail to public.referenceroom@ferc.fed.us).

During normal business hours, documents can also be viewed and/or printed in FERC's Public Reference Room, where RIMS, CIPS, and the FERC Website are available. User assistance is also available.

For the reasons discussed in the body of this order, we deny in part and grant in part Indicated Shippers' request for rehearing of Order No. 608.

Effective Date

Changes to Order No. 608 made in this order on rehearing will become effective on December 4, 2000.

Prior to issuance of Order No. 608, the Commission determined, with the concurrence of the Administrator of the Office of Information and Regulatory Affairs of OMB, that the rule was not a "major rule" as defined in Section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996.¹⁶ We affirm our prior determination, and find that the final rule, as clarified and modified herein, is not a major rule. This order on rehearing will be submitted to both houses of Congress, the General Accounting Office, and OMB for their information and records.

List of Subjects in 18 CFR Part 157

Administrative practice and procedure, Natural gas, Reporting and record keeping requirements.

By the Commission.

Linwood A. Watson, Jr.,
Acting Secretary.

In consideration of the foregoing, the Commission amends Part 157, Title 18, Code of Federal Regulations, as follows:

PART 157—APPLICATIONS FOR CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY AND FOR ORDERS PERMITTING AND APPROVING ABANDONMENT UNDER SECTION 7 OF THE NATURAL GAS ACT

1. The authority citation for Part 157 continues to read as follows:

Authority: 15 U.S.C. 717-717w; 3301-3432; 42 U.S.C. 7101-7352.

2. In § 157.22, paragraph (e)(1) is revised; existing paragraphs (e)(5), (e)(6), and (e)(7) are redesignated as paragraphs (e)(6), (e)(7), and (e)(8),

¹⁴ 5 U.S.C. 551-557 and 18 CFR 385.604 and 385.2201.

¹⁵ 5 CFR Part 1320.

¹⁶ 5 U.S.C. 804(2).

respectively; and a new paragraph (e)(5) is added, to read as follows:

§ 157.22 Collaborative procedures for applications for certificates of public convenience and necessity and for orders permitting and approving abandonment.

* * * * *

(e) * * *

(1) The Commission will publish notice of its authorization to use the pre-filing process in the **Federal Register**; the applicant will publish notice of the Commission's authorization to use the pre-filing process in a local newspaper of general circulation in the county or counties in which the proposed project is to be located. To the extent feasible, the applicants' notice will specify the time and place of the initial information meeting(s) and the scoping of environmental issues and will be sent to a mailing list approved by the Commission that includes the names and addresses of landowners affected by the project.

* * * * *

(5) Every three months, the applicant shall file with the Commission a report summarizing the progress made in the pre-filing collaborative process, referencing the public file maintained by the applicant as provided in paragraph (e)(4), of this section where additional information on that process can be obtained. Summaries or minutes of meetings held as part of the collaborative process may be used to satisfy this filing requirement.

* * * * *

[FR Doc. 00-28082 Filed 11-01-00; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 382

[Docket No. RM00-7-000; Order No. 641]

Revision of Annual Charges Assessed to Public Utilities Issued October 26, 2000

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final Rule.

SUMMARY: In an effort to reflect changes in the electric industry and in the way the Federal Energy Regulatory Commission (Commission) regulates the electric industry, the Commission is amending its regulations to establish a new methodology for the assessment of annual charges to public utilities. The regulation provides that annual charges

will be assessed to public utilities that provide transmission service based on the volume of electricity transmitted by those public utilities. The regulation thus will result in the Commission's now assessing annual charges on transmission rather than, as previously, assessing annual charges on both power sales and transmission.

EFFECTIVE DATE: This Final Rule will become effective January 1, 2001.

FOR FURTHER INFORMATION CONTACT:

Herman Dalgetty (Technical Information), Office of the Executive Director and Chief Financial Officer, 888 First Street, N.E., Washington, D.C. 20426, (202) 219-2918.

Jennifer Lokenvitz Schwitzer (Legal Information), Office of the General Counsel, 888 First Street, N.E., Washington, D.C. 20426, (202) 219-4471

SUPPLEMENTARY INFORMATION: Before Commissioners: James J. Hoecker, Chairman; William L. Massey, Linda Breathitt, and Curt Hebert, Jr.

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3. Standards for Waiving All or Part of an Annual Charge
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V. Regulatory Flexibility Act Certification
VI. Public Reporting Burden and Information Collection Statement
VII. Effective Date and Congressional Notification
VIII. Document Availability
Regulatory Text
List of Abbreviations

I. Introduction

In an effort to reflect changes in the electric industry and in the way the Federal Energy Regulatory Commission (Commission) regulates the electric

industry, the Commission is amending its regulations to establish a new methodology for the assessment of annual charges to public utilities. The regulation provides that annual charges will be assessed to public utilities that provide transmission service based on the volume of electricity transmitted by those public utilities. The regulation thus will result in the Commission's now assessing annual charges on transmission rather than, as previously, assessing annual charges on both power sales and transmission.

II. Background

A. Commission Authority

The Commission is required by section 3401 of the Omnibus Budget Reconciliation Act of 1986 (Budget Act)¹ to "assess and collect fees and annual charges in any fiscal year in amounts equal to all of the costs incurred * * * in that fiscal year."² The annual charges must be computed based on methods which the Commission determines to be "fair and equitable."³ The Conference Report accompanying the Budget Act provides the Commission with the following guidance as to this phrase's meaning:

[A]nnual charges assessed during a fiscal year on any person may be reasonably based on the following factors: (1) The type of Commission regulation which applies to such person such as a gas pipeline or electric utility regulation; (2) the total direct and indirect costs of that type of Commission regulation incurred during such year;⁴ (3) the amount of energy—electricity, natural gas, or oil—transported or sold subject to Commission regulation by such person during such year; and (4) the total volume of all energy transported or sold subject to Commission regulation by all similarly situated persons during such year.⁵

The Commission may assess these charges by making estimates based upon data available to it at the time of the assessment.⁶

The annual charges do not enable the Commission to collect amounts in excess of its expenses, but merely serve as a vehicle to reimburse the United

¹ 42 U.S.C. 7178.

² This authority is in addition to that granted to the Commission in sections 10(e) and 30(e) of the Federal Power Act (FPA). 16 U.S.C. 803(e), 823a(e).

³ 42 U.S.C. 7178(b).

⁴ The Commission is required to collect not only all its direct costs but also all its indirect expenses such as hearing costs and indirect personnel costs. See H.R. Conf. Rep. No. 99-1012 at 238 (1986), reprinted in 1986 U.S.C.A.N. 3868, 3883 (Conference Report); see also S. Rep. No. 99-348 at 56, 66 and 68 (1986).

⁵ See Conference Report at 238.

⁶ 42 U.S.C. 7178(c).