

## *Report of The Committee on FERC Physical Facilities and Services*

The Committee met twice, on February 3, 1981, and on April 2, 1981, to discuss the major problems which should be addressed by the Committee in a meeting with the appropriate FERC personnel.

By letter of April 22, 1981, the Committee requested a meeting with Acting Chairman Sheldon and with the appropriate FERC personnel to discuss the following items of concern:

1. The practice of "posting" FERC notices, orders, etc.
2. The security system.
3. The status of docket sheets.
4. Photocopying procedures.
5. Acquisition of files at OPI.
6. Status of FPC/FERC reports.
7. Procedures at FERC open meetings.

The Committee on May 4, 1981, met with Acting Chairman Sheldon, FERC Secretary Kenneth Plumb, Executive Director William McDonald, Director of the Office of Management Services William McDermott, and Deputy General Counsel David A. Lackie, to discuss the items listed above. Following is a brief summary of that discussion.

The *first* item discussed was the practice of "posting" FERC notices, orders, etc. The Committee observed that it felt that with the exception of emergency orders that require posting within a statutory/regulatory time period, there was no excuse for the practice of posting; that it adversely affected the procedural due process rights of in-town and out-of-town counsel because time periods begin to run as of the date the notices, etc. are posted which may be several weeks before they are received by counsel.

The Commission representatives indicated an awareness of the problem and indicated that they were initiating procedures to limit the practice to the extent possible. Apparently in the future only orders will be posted when there are sufficient copies to be mailed out to the parties of record. In addition, only notices, orders, etc. will be posted where there is a good and valid reason for posting rather than waiting until sufficient copies are available for distribution to the general public. Mr. McDermott of the FERC is the individual particularly responsible for remedying the evils associated with posting, and he seemed determined to accomplish that result.

The *second* item discussed was the security system. The Committee pointed out that it felt the current security system was both ineffective and burdensome. Its ineffectiveness stems from the fact that anybody bent on getting access to the inside of the building could do so regardless of the security system. This was underscored by the fact that on the morning of the subject meeting, the Committee chairman was able to enter the building and proceed both to the OPI and to the office of the Acting Chairman without being confronted by any member of the security system.

The system is burdensome in that since it is the law-abiding citizens who choose to comply with it, there is inevitably a line on the second floor just prior to

10 a.m. each day, which means that lawyers that arrived at the building in time for a hearing are often late.

The FERC personnel pointed out that security was in fact needed because of the numerous petty and not-so-petty crimes being perpetrated almost daily at the FERC. The Committee did not dispute the need for such a system but questioned whether an ineffective system was not worse than no system at all.

With regard to the burdensome nature of the process, it seemed to be the consensus of those present that some sort of card system could be instituted whereby, for example, FEBA members could show their cards to the security guards in lieu of the signing-in process.

Tangentially, it was pointed out that there is a Beltway Limo that runs between the subway stop at Union Station and the FERC building between 7 and 9 a.m. and between 4 and 6:30 p.m. in the evenings. This transportation system is available to non-governmental as well as government workers. It was instituted because of security problems in the area.

The *third* item discussed was the matter of the docket sheets. It was pointed out by the Committee that the docket sheets are critical to each case and should be kept accurately, though recently such accuracy was missing. In addition, the Committee noted that it took considerable time, upwards of three hours, to secure such docket sheets.

Mr. McDermott for the FERC responded to this point, indicating his sensitivity to the needs for accuracy of docket sheets and for quick retrieval. He indicated that the FERC is working on this so that docket sheets can now presumably be obtained very quickly because of a new system just instituted. Apparently when the request for a docket sheet is received on the third floor, the docket sheet is xeroxed and brought immediately to the DPI. (The office formerly known as OPI is now the Division of Public Information.)

There was also an indication that the turn-around time on other materials at DPI is quickening, though only time will tell whether this age-old problem of the FERC bar will be ameliorated.

The *fourth* item to be discussed was photocopying procedures. The Committee pointed out that the current system was very time-consuming since each page had to be paid for individually.

Mr. McDermott indicated that he was looking into a system whereby a contractor would handle one or more machines at DPI such that any attorney with a copying request could deal with the operator at the "contract" machines and could be billed subsequently by the contractor. Presumably this would substantially speed up the process; and for short jobs, the coin-operated machines would continue to be available.

The *fifth* item discussed was acquisition of files at DPI. The point made here primarily was the long turn-around time, an issue already discussed as noted above. Also discussed was the need for updating of index cards relating to the status of proceedings at the FERC.

Mr. Plumb indicated that his office continually updated such index cards but he was unaware of what happened to such cards once received by DPI. (The committee subsequently found that these cards became part of a subject matter index at DPI, which index is available to the public but not known to be available by most of the public and not in view of the casual visitor to DPI).

The *sixth* item discussed was the status of FPC/FERC reports, which are woefully out of date.

Mr. Leckie for the FERC indicated that the remaining seven volumes of the FPC reports should be complete by late September 1981, which would take that series through September 1, 1977. With regard to subsequent volumes, all FERC matters are to be handled through a contractor (CCH) which prints Federal Energy Guidelines. This is to be the official reporter of the FERC, though it is issued under the name of Federal Energy Regulatory Commission Reports. (Subsequent inquiries revealed that Volumes 1-10 of this edition, covering the period October 1977, through year-end 1979 are not available through CCH; this was brought to the attention of Mr. Leckie who indicated that the problem was known and would be solved by the FERC).

We also discussed in the same context the need for access by private practitioners to any computer research materials that the FERC developed, noting the March 18, 1981 comments of Acting Chairman Sheldon on the Hill. The FERC representatives indicated that they are currently experimenting with the use of computers in indexing legal precedent, and that whatever system is developed should be available to the public.

The *seventh* item discussed was the procedures at FERC open meetings. The Committee made two points: first, that it was difficult to hear many of the Commissioners and other FERC personnel at such meetings since they did not speak into the microphone; and, second, that it would be helpful if the draft orders were accessible during lunch and other break periods.

Mr. Plumb responded that the reason the draft orders were secured during such recesses was that theft was commonplace. He documented this to the satisfaction of the members of the Committee such that we now realize it is impractical to keep these draft orders available throughout the day. With regard to the sound system, however, the FERC representatives indicated a willingness to attempt to get the persons involved to use the microphones in a more consistent manner.

At the conclusion of the meeting, the Committee indicated its thanks to the Acting Chairman and to the other members of the FERC present for their time and attention and indicated our encouragement by their collective responses on most of the items raised for discussion. We also indicated the need and desire for future follow-up meetings to assure coordination between the FERC and the practicing bar. Though nothing formal was arranged, Acting Chairman Sheldon indicated that further contacts were indeed desirable.

It is the view of the undersigned that the Committee has made a good beginning in bringing to the attention of the FERC some of the major problem areas bothering practitioners before the Commission; however, it is up to the members of the Federal Energy Bar to pursue these matters vigorously, not through petty gripes but through reasoned and reasonable communications with the responsible FERC representatives. Those representatives are generally responsive to our concerns and will react positively to enlightened criticism.

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