

Report of the Committee on Practice and Procedure

I. INTRODUCTION

The FERC issued a number of significant orders in 1982 relating to practice and procedure. In Order No. 225, issued in Docket No. RM78-22, the Commission amended its rules regarding trial-type hearings. Later in the year, it issued Order No. 234, in Docket No. RM81-19-000, to provide a "blanket certificate" procedure under Section 7 of the Natural Gas Act (15 U.S.C. § 717f) ("NGA") whereby a one-time certificate is issued and thereafter certain routine activities can be undertaken without prior notification to the Commission. Other, less routine, activities can be undertaken after an expedited notice and comment period.

The Commission also delegated more authority to its Staff concerning activities under the NGA, the Natural Gas Policy Act (15 U.S.C. § 3301, *et seq.*) ("NGPA"), the Federal Power Act (16 U.S.C. § 797, *et seq.*) ("FPA"), and the Department of Energy Organization Act (42 U.S.C. §§ 7101, 7155) ("DOE Act"). It also issued a number of orders, to be discussed hereinafter, which reduced or amended reporting requirements by jurisdictional electric utilities under the FPA.¹

II. REVISION OF FERC RULES OF PRACTICE AND PROCEDURE TO EXPEDITE TRIAL-TYPE PROCEEDINGS

On April 28, 1982, the Commission issued Order No. 225, which revised a substantial portion of its Rules of Practice and Procedure.²

In revising its rules, the Commission sought to integrate the various rules it inherited from the Interstate Commerce Commission ("ICC") and the Federal Power Commission ("FPC") when the FERC was formed in 1977 by the Department of Energy Organization Act. It also recognized the need to expedite its trial-type hearings and generally improve the overall efficiency.

A. Status of Order No. 225

After issuing its Final Rule in Order No. 225 (and making certain technical corrections to that Order on May 24, 1982),³ a number of parties filed applications for rehearing.⁴ On August 12, 1982, the Commission issued Order 225-A⁵ denying the rehearing applications but making certain clarifying statements and minor corrections to the Final Rule. That same day, the Commission also issued Order No. 225-B⁶ denying a petition by the Association of Oil Pipelines for certain procedural

¹This report will not discuss the Commission's orders dealing with tax normalization (Order Nos. 144 and 144-A) and exemption of certain small hydroelectric facilities from the licensing requirements of the FPA (Order Nos. 202, 202-A, 255 and 255-A), since these orders will be dealt with by other FEBA committees.

²47 *Fed. Reg.* 19014 (May 3, 1982). The Notice of Proposed Rulemaking in this docket was discussed in last year's FEBA Report of the Committee on Rules of Practice and Procedure (2 Energy L.J. 395-399 (1981)).

³47 *Fed. Reg.* 23440 (May 28, 1982).

⁴The Commission's new Final Rules have changed the term "application for rehearing" to "requests for rehearing" (Rule 713).

⁵47 *Fed. Reg.* 35952 (August 18, 1982).

⁶47 *Fed. Reg.* 35956 (August 18, 1982).

rulings as to when the Final Rule would become effective. Finally, on August 24, 1982, the Commission issued Order No. 225-C⁷ denying a petition, also filed by the Association of Oil Pipelines, to stay the Final Rule.

B. Organization

Organizationally, the Commission's new Final Rule largely moved the rules of practice and procedure from 18 C.F.R. Part 1 to 18 C.F.R. Part 385, with the limited exception that some rules regarding oil pipeline proceedings still remain in 49 C.F.R. However, the Commission's public information regulations have been moved from 18 C.F.R. Part 1 to 18 C.F.R. Part 388. The Commission decided to discontinue its use of procedural regulations inherited from the ICC regarding oil pipeline filings and proceedings, except, for the time being, the ICC's *ex parte* rules and the ICC's modified procedures. These particular regulations still apply to oil pipeline cases.

The Commission envisions its Final Rule as formalizing a number of procedural innovations already informally adopted by the Commission such as: summary disposition by presiding officers; oral issuance of initial decisions; phasing of proceedings; correction of initial decisions by presiding officers; and extension of privileged status not only to settlement offers but also to comments made on those settlement offers. The Commission in its Final Rule, determined that new regulations governing Oil Pipeline Board proceedings will be developed at some unspecified later time and that, in the interim, such proceedings will be governed by the Commission's new rules.

A notable linguistic change made by the Commission's new regulations is that each section within Part 385 is now officially known as a "rule." For example, Section 385.103 is now referred to as "Rule 103."

C. Application of New Rules

The Commission's new rules apply to all Commission proceedings pending or initiated after August 26, 1982. However, the Commission has added an element of flexibility by providing that a "decisional authority" (defined as the Commission or a Commission employee, including the Oil Pipeline Board, who has the authority or responsibility to decide a particular question) can, in the interest of justice, apply the Commission's prior rules of practice and procedure. In addition, the Commission may, for good cause, and to the extent permitted by law, waive any provision of its rules of practice and procedure, and, replace those rules with alternative procedures it finds appropriate (Rule 101).

1. Rules Regarding Pleadings, Tariff and Rate Filings, Notices of Tariff or Rate Examination, Orders to Show Cause, Intervention and Summary Disposition.

Subpart B of the Commission's new rules contains Rules 201 through 217. These rules apply to pleadings, tariffs or rate filings, notices of tariff or rate examinations, orders to show cause, interventions and summary dispositions (Rule 201). The Commission defines "pleadings" to include applications, complaints, petitions, protests, notice of protests, answers, motions and

⁷47 *Fed. Reg.* 38115 (August 30, 1982). Further technical corrections were made on December 30, 1982. 48 *Fed. Reg.* 786 (January 7, 1983).

amendments and withdrawals of pleadings (Rule 202). On the other hand, the Commission states that pleadings do not include comments on rulemakings or comments on offers of settlement. (*Id.*) Some of the more important changes reflected in the Final Rule are set forth below.

a. *Combined Pleadings*

Rule 203 sets forth the necessary requirements for pleadings and tariff or rate filings. The Commission now officially recognizes the validity of combined pleadings as long as there is a separate designation for each item contained in the pleading.

b. *Complaints*

The Commission has changed, to a limited degree, its rule regarding complaints. The new general rule, contained in Rule 206, provides that “any person” may file a complaint 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.” Although this rule is broadly drafted, the Commission recognized in the preamble to the Final Rule that its authority to act in certain situations is limited by statute, particularly under the Natural Gas Act and the Federal Power Act. Those Acts specify persons having a right to file a complaint. Nevertheless, since the Commission’s rules govern proceedings under statutes other than the NGA and the FPA, *e.g.*, the Interstate Commerce Act, it decided to formulate broadly its new complaint rule. In addition, the Commission’s Rule 206 requires respondents to answer complaints filed against them. Respondents who do not file answers may be considered in default and be deemed to have admitted all relevant facts presented in the complaint (Rule 213(e)). Rule 206 also sets up a formal procedure for dismissing complaints once they have been satisfied.

c. *Petitions*

The Commission makes clear that there is a difference between “petitions” and “motions.” Rule 207 specifies that a person must file a petition when seeking relief pursuant to Subpart I (Commission Review of Remedial Orders), Subpart J (Commission Review of Adjustment Request Denials), or Subpart K (Petitions for Adjustments Under the NGPA), as well as when a person seeks:

- (i) a declaratory order or rule to terminate a controversy or remove uncertainty;
- (ii) action on appeal from a staff action (other than a decisional ruling of a presiding officer acting under Rule 1902);
- (iii) a rule of general applicability; or
- (iv) any other action which is within the discretion of the Commission and for which there is no other form of pleading prescribed.

A declaration of intent under Section 23(b) of the FPA Act is treated as a petition for declaratory order under Rule 207(b).

d. *Motions*

The Commission has changed its rules regarding motions in a number of significant ways. In Rule 212, the Commission has eliminated its prior practice of limiting motions only to hearings which have already begun and only to procedural matters and interlocutory relief. Now, motions may be used by any person who is a participant in a proceeding or by a person who has filed a timely motion to intervene which has not been denied. As with the Commission's existing rules, new Rule 212 permits motions to be made both to the Commission and to subordinate officials. Motions may, unless otherwise restricted, be filed at any time in any proceeding except an informal rulemaking proceeding. Generally, if a motion is made to the Commission after a hearing has begun and that motion is not acted upon within thirty days, it is deemed to be denied. This automatic denial provision is not applicable to motions filed prior to the commencement of a hearing. The Commission's prior rule which allowed presiding officers to refer motions to the Commission is, in part, still available pursuant to Rule 714 (regarding certified questions).

e. *Protests*

Protests, other than those filed pursuant to Rule 208 (regarding Notices of Protest by persons objecting to a tentative valuation of an oil pipeline), almost always must be served on the person against whom the protest is directed (Rule 211). However, the Secretary is authorized to waive procedural requirements, including service. If the service requirement is waived, the Secretary is to place the protest in the public file and may send a copy to the person against whom the protest is directed. The Commission has decided to continue its prior policy of not considering the allegations made in a protest when deciding the merits of a proceeding in which a hearing is held. Moreover, protestants are not automatically made a party to a proceeding, but instead must intervene under Rule 214. There is no requirement that a protest be served on all the parties to a proceeding and the rules do not provide an opportunity to answer protests.

f. *Intervention*

The Commission has changed its rule regarding intervention (Rule 214) to provide that timely motions to intervene will be automatically granted unless an answer in opposition is filed within fifteen days of the filing of the motion. The Commission has further changed its rule to provide that state commissions may only intervene by "notice of intervention" if that notice is filed within the prescribed time. A state commission filing late will be required to file a motion to intervene out-of-time and the decision whether to permit such late intervention will be made on a case-by-case basis. The new rule also explicitly sets forth, for the first time, the general criteria which will be applied to determine whether to grant late interventions.

g. *Summary Disposition*

The Commission's new rules now provide for summary disposition of proceedings set for hearing (Rule 217). This new rule provides that an initial decision must be prepared when summary disposition is granted by a decisional authority other than the Commission. This requirement is designed to enable the

Commission to review the decision as if an initial decision had been rendered after a hearing. Summary disposition only applies to decisions on the merits in pending cases and does not apply to a rejected filing before a proceeding is properly initiated. Generally, when a decisional authority other than the Commission considers summary disposition of a proceeding (or part of a proceeding) *sua sponte*, the decisional authority is to grant participants an opportunity to comment on the proposed disposition.

2. Rules Regarding the Conduct of Hearings

Subpart E of the Commission's new rules sets forth the rules for hearing proceedings. These rules usually involve proceedings in which a decision is made by a presiding officer after an on-the-record hearing is held. These proceedings include those which set rates or grant certificates or licenses under the Federal Power Act, the Natural Gas Act, or the Interstate Commerce Act. Subpart E provides rules with regard to hearings, consolidations and severance, presiding officers, witnesses, testimony, exhibits, evidence, stipulations, and transcripts. The primary result of Subpart E is that the Commission has rearranged and simplified its prior regulations (Sections 1.20-1.27).

The Commission's new Rule 503 gives the Chief Administrative Law Judge the power to consolidate or sever proceedings. Presiding officers have been given the authority to prescribe the order of presentation during a hearing and, as before, those officers have the authority to "cause discovery to be conducted" (Rule 504(b)(1) and (5)). The Commission's discovery rules (Rules 1905 and 1906) are unchanged from the Commission's previous regulations (Sections 1.23 and 1.24) except that they now cover oil pipeline matters. The Commission, in its preamble to the Final Rule, recognized that its discovery rules should be revised and updated but reiterated its position that a separate proposed rulemaking is necessary to develop those rules.

Presiding officers are vested with the potentially powerful authority to limit the number of persons representing "a similar interest" who may examine a witness and make motions or objections during a hearing (Rule 504(b)(17)). Further, Rule 504 grants presiding officers the authority to phase proceedings in order to separate issues or groups of issues from each other in a particular proceeding (Rule 504(b)(13)).

The Commission's new Rule 506 relates to the examination of witnesses during a hearing. That rule essentially follows the existing Commission practice in that both direct and rebuttal testimony must be prepared and submitted in written form and that witnesses must be available for cross-examination. Oral examination must be conducted under oath and in the presence of a presiding officer with an opportunity for participants to question the witness. The Commission decided not to go forward with the suggestion raised in its Notice of Proposed Rulemaking that oral testimony be permitted to be conducted outside the presence of a presiding officer and that written cross-examination be permitted. Similarly, the Commission decided not to include in its Final Rule a proposal to permit the use of trial depositions and interrogatories as testimony.

Rule 509 essentially restates the Commission's prior Rules of Evidence. The Commission noted however, that it will consider the possible use of the Federal Rules of Evidence, or the adoption of other rules on evidence, at some unspecified later time.

3. *Rules Regarding Conferences, Settlements, and Stipulations*

Subpart F, which includes new Rules 601 through 604, sets forth the Commission's rules with regard to conferences, settlements, and stipulations.

The Commission's regulations regarding conferences (Rule 601) is broadly stated so that conferences can be convened "at any time for any purpose related to the conduct or disposition of the proceeding, including submission and consideration of offers of settlement." Rule 602 sets forth the Commission's regulations regarding submission of settlement offers. The Commission's new Rule 602 is essentially a reenactment of its previous settlement rules. The Commission considered, in its Notice of Proposed Rulemaking, delegating authority to approve oil pipeline settlements to the Oil Pipeline Board, with a right of appeal to the Commission. However, the Commission's Final Rules did not provide for such delegation, and such settlements are to be treated like other settlements to be decided by the Commission.

The Commission's new rules modify the procedures for certifying a contested offer of settlement to the Commission (Rule 602). Previously, to certify a contested settlement offer to the Commission, the presiding officer was required to find, *inter alia*, that there was both substantial evidence in the record and no contested issue of material fact regarding the relevant portion of the proceeding. Now, the Commission's new rule provides that the presiding officer may certify to the Commission a settlement offer which, although contested, is merely determined to contain no genuine issue of material fact. As the Commission stated in its preamble to the Final Rule, "the judge may certify a contested settlement on the same basis as an uncontested settlement. Under both circumstances, the judge is not required to find substantial evidence."

The Commission's new Rule 603 essentially continues the Commission's previous rule on settlement negotiations before a settlement judge. However, some technical corrections have been made so that it is clear that settlement negotiations can be used in proceedings that have not yet been set for hearing.

4. *Rules Regarding the Decision Process*

Subpart G of the Final Rule sets forth the Commission's regulations regarding initial and final decisions and administrative review of those decisions in cases set for hearing under Subpart E, and other proceedings designated by the Commission, such as requests for rehearing, certified questions, and interlocutory appeals.

A new twist added to the Commission's rules is that now presiding officers have been vested with the authority to provide an opportunity for oral argument in lieu of, or in addition to, initial briefs and reply briefs (Rule 704). Similarly, if there is good cause, presiding officers may also deny a party an opportunity to file a reply brief or limit the issues which may be addressed in a reply.

The Commission's new Rule 705 specifies certain additional powers which presiding officers have regarding briefs. Rule 705 gives presiding officers the authority to limit the length of briefs and to call for additional briefs, such as pretrial briefs, if appropriate. The Commission's regulations regarding initial and reply briefs before an initial decision is presented in Rule 706. Generally, parties will file initial briefs and reply briefs simultaneously. Further, initial briefs must include a separate section for proposed findings of facts and conclusions of law.

The Commission's new Rule 708 sets forth the Commission's regulations regarding initial decisions. Oral initial decisions are now permitted to be made by

presiding officers. However, when a presiding officer makes such a decision that officer is also required to prepare “promptly” a written version.

The Commission’s new Rule 711 provides for exceptions and briefs on and opposing exceptions after an initial decision has been made. This Rule is essentially the same as before. The Commission has reiterated that failure to take exception from an initial decision will result in a waiver of the right to take exception at a later time. The Commission noted, however, that the requirement that exceptions be taken does not mean that participants must prepare extensive exceptions which merely duplicate exceptions made by other participants because the Rule also provides that a party may incorporate by reference another participant’s exceptions. Rule 711 also limits briefs on or opposing exceptions to 100 pages. This increase in the number of permitted pages is a result of the Commission’s corresponding change from single to double spacing made in Rule 2003. Furthermore, briefs to the Commission are not permitted to incorporate by reference arguments made in initial or reply briefs or to include any attached portion of initial or reply briefs. The Commission made these changes in order to promote “succinct argumentation.” The Commission now prohibits answers to motions for oral argument (Rule 711(c)(3)).

New Rule 716 provides that a presiding officer or the Commission may, for good cause, reopen the evidentiary record in a proceeding for the purpose of taking additional evidence. The Commission cautions, however, that it “does not contemplate reopening records after decisions are final.” The Commission did not place a time limit on when it can reopen an evidentiary record.

5. Formal Requirements for Filing in Proceedings Before the Commission

Subpart T of the Commission’s Rules sets forth the formal requirements for all filings made to the Commission. As previously noted, Rule 2003 has changed the Commission’s practice so that now almost all filings must be double spaced rather than single spaced. Tariff or rate filings may be single spaced. There has been a change in the computation of time periods so that now any half-day holiday which affects the Commission’s operations is counted as a holiday for purposes of computing when a time period ends.

The Commission has significantly changed its rules so that facts alleged in any filing need not be verified, unless such verification is required by statute, rule, or order (Rule 2005). However, all Commission filings must be signed.

III. INTERSTATE PIPELINE CERTIFICATES FOR ROUTINE TRANSACTIONS – BLANKET CERTIFICATE PROGRAMS (ORDER NO. 234)

On May 28, 1982, in Order No. 234 (Docket No. RM81-19-000), the Commission amended Parts 157 and 375 of its regulations concerning interstate pipeline certificate procedures by providing for a “blanket certificate” under Section 7 of the NGA. In adopting this Order, it was the Commission’s intention to achieve more simplified and effective procedures for certifying many routine pipeline transactions. Under this procedure, the Commission will issue a one-time blanket certificate. The interstate pipeline is then able to undertake certain routine pipeline activities without prior notice to the Commission. These activities pertain to construction, acquisition, operation and miscellaneous rearrangement of minor facilities which do not exceed \$4.2 million. More specifically, they deal with:

- (1) construction and operation of sales taps;

- (2) changes in delivery points;
- (3) contract storage services and any incidental transportation on behalf of any person if the storage is within the certificated capacity of the certificate holder's existing storage facilities;
- (4) underground storage, testing and development;
- (5) abandonment;
- (6) changes in rate schedules; and
- (7) changes in customer's name.

The second procedure involving "prior notice" applies to less routine matters, and includes construction, acquisition and operation of facilities, the costs of which exceed \$4.2 million, but are less than \$12 million. More specifically, the activities within these budget restraints which a pipeline may undertake are:

- (1) construction of sales taps;
- (2) changes in delivery points;
- (3) transportation and storage services;
- (4) increases in storage capacity; and
- (5) abandonment of any sales taps or lateral line and related facilities and service, if all customers currently served through the sales tap or lateral line agree in writing thereto.

Under this procedure, a pipeline submits its filing to the Commission with the information requested in Section 157.205(c) of the regulations. Thereafter, the filing is noticed in the *Federal Register*. If no protests are filed within the 45-day notice period, the transaction is authorized under the pipeline's "blanket" certificate. However, if a protest is filed within the 45-day period, the Commission Staff has 30 days to resolve the protest. If, during the 30-day period the protest(s) is not withdrawn, the transaction can only be authorized by the normal certificate procedures.

The Director of the Office of Pipeline and Procedure Regulations was delegated authority under the Order to approve or reject applications for "blanket certificates," waive project cost limitations and convene formal conferences during the 30-day reconciliation period.

Finally, the Commission agreed to automatically incorporate in every blanket certificate certain "standard conditions." These include conditions for the treatment of production-related costs, apportionment of costs for the treatment and handling of liquids and liquefiables, environmental compliance, the surrender of budget-type certificates, commencement of the authorized transaction and the filing of reports. Further, the general reporting requirements include an annual report to be filed with the Commission on or before the 1st of May of each year.

IV. RULES UNDER THE FEDERAL POWER ACT TO REDUCE REPORTING REQUIREMENTS

The Commission promulgated several rules to implement its program of reviewing all of the reporting requirements of jurisdictional utilities to eliminate data which the Commission does not consider necessary to its regulatory responsibilities.

The purpose is to ease the reporting burden on the utilities. These rules are discussed below.

A. Revision of FERC Form No. 1, Annual Report of Electric Utilities, Licensees and Others (Class A and Class B)

The Commission's Order No. 200 substantially revised the reporting requirements in the Commission's Form No. 1, the Annual Report that Class A and B electric utilities are required to file at the end of each year with the Commission.⁸ It also revised the regulations concerning that report which are found at 18 C.F.R. § 141.4. (For these purposes, Class A utilities are those jurisdictional electric utilities with annual electric operating revenues of \$2.5 million or more. Class B electric utilities have annual electric operating revenues of between \$1 million and \$2.5 million).

The rule accomplished three principal objectives. First, it deleted 34 schedules of the Form 1. It also deleted the existing requirement that a certified public accountant certify the accuracy of 14 of the remaining schedules. Second, it increased the dollar threshold before certain activities have to be reported. The thresholds are not uniform and vary with each schedule. Third, it extended the deadline for filing the form from March 31 to April 30 of each year.

On March 17, 1983, the U.S. Court of Appeals for the District of Columbia Circuit affirmed the Commission's order revising Form 1. *Certain Municipal Electric Systems v. FERC*, ____ F.2d ____, Docket No. 82-1642.

B. Discontinuance of Monthly Power Plant Report, Form No. 4

In Order No. 201, the Commission eliminated the requirement that electric utilities file Form No. 4, the monthly report for each plant operated by jurisdictional utilities.⁹ It also deleted Commission regulations found at 18 C.F.R. §§ 141.22, .23 and .24.

Under Form No. 4, the Commission collected information on the jurisdictional utility's installed capacity, net generation, monthly consumption of coal, oil and natural gas, and the end-of-month stocks of coal and oil for each plant operated by that utility. The FERC noted that the Energy Information Agency ("EIA") of the Department of Energy have assumed collection of this information under Form No. EIA-759 "Monthly Power Plant Report" beginning on January 1, 1982.

C. Interim Procedures For Shortages Of Electric Energy And Capacity Under Section 206 of the Public Utilities Regulatory Policies Act of 1978: Extension Of Interim Rule

Through this interim rule, the Commission extended the deadline from April 30, 1982 to April 30, 1983 for each public utility to report any shortages in electric energy and capacity expected to occur and the utility's plan for accommodating such shortages.¹⁰ The utilities are required to file copies of the report with the FERC, the utility's firm power wholesale customers and appropriate

⁸Docket No. RM80-55, Order No. 200, issued January 6, 1982, 18 FERC (CCH) ¶ 61,008 and FERC Statutes and Regulations ("Stat. and Reg.") ¶ 30,327.

⁹Docket No. RM82-9, Order No. 201, issued January 8, 1982, 18 FERC (CCH) ¶ 61,009 and FERC Stat. and Reg. (CCH) ¶ 30,328.

¹⁰Docket No. RM79-52-000, issued May 5, 1982, FERC Stat. and Reg. ¶ 30,359.

state regulatory authorities. This rule also amended the Commission's regulation found at 18 C.F.R. § 294.101 to conform with the rule.

D. Extension Of Filing Date Under Section 133 Of The Public Utility Regulatory Policies Act of 1978

Order No. 201 extends, from June 30, 1982 to June 30, 1983, the date by which electric utilities with total annual electric sales, for purposes other than resale, of one billion kilowatt-hours or less must file their initial report of certain cost of service information with the FERC.¹¹ Since electric utilities with annual sales of electricity for purposes other than resale of less than 500 million kilowatt-hours are not required to make this filing, this rule only affects the utilities with nonretail sales between 500 million and one billion kilowatt-hours. All utilities with more than 500 million kilowatt-hours of nonretail sales are required by the Public Utilities Regulatory Policies Act of 1978 ("PURPA") to file a report every two years disclosing certain cost-of-service information.

The Commission was concerned that the cost of complying with PURPA's requirement would be unnecessarily great for small utilities with sales between 500 million and one billion kilowatt-hours per year. They noted that much of the requested information can be collected only after the installation of expensive load metering equipment, and that this expense would fall unduly heavily on small utilities.

E. Elimination of Steam Electric Plant Air and Water Quality Control Data, Form No. 67

In Order No. 257, the Commission amended its regulations (18 C.F.R. § 141.59) to discontinue the filing of Form No. 67 with the Commission but to require jurisdictional electric utilities to file a similar form, Form No. EIA-767 with EIA in its place.¹²

The EIA requests information about fuel quality, fuel costs, and the power plant emissions. In addition the threshold size of power plants about which the utilities are required to report are raised from 25MW to 50MW.

F. Revision Of Monthly Report Of Costs And Quality of Fuels For Electric Plants, Form No. 423

The rule promulgated in Order No. 254 substantially revises Form No. 423.¹³

First, it raises from 25MW to 50MW the threshold reporting size of plants required to provide information.

Second, it eliminates the requirement for reporting information about nonsteam electric plants. Thus, jurisdictional utilities will not have to report data for combustion turbines, internal combustion or combined cycle plants.

Third, it attempts to clarify the instructions for reporting about the types of information to be disclosed.

¹¹Docket No. RM82-28, Order No. 231, issued May 19, 1982, 19 FERC (CCH) ¶ 61,163 and FERC Stat. and Reg. ¶ 30,366.

¹²Docket No. RM82-40-000, Order No. 257, issued August 31, 1982, 20 FERC ¶ 61,263, FERC Stat. and Reg. ¶ 30,388.

¹³Docket No. RM82-4-000, Order No. 264, issued October 5, 1982, 21 FERC ¶ 61,013 and FERC Stat. and Reg. ¶ 30,402.

Finally, it reduces the number of copies of the form a utility must submit from six to four.

G. Discontinuance Of FERC Form No. 5, Electric Utility Monthly Statement

Order No. 265 simply eliminated the electric utility monthly statement in its entirety.¹⁴ The rule notes that the same information will be required to be submitted on a monthly basis to EIA on Form No. EIA-826.

V. DELEGATION ORDER UNDER THE FEDERAL POWER ACT

The Commission issued one delegation order, Order No. 224, which affected its procedures under the Federal Power Act.¹⁵

This order delegated six new responsibilities to the Director of the Office of Electric Power Regulation.

First, it authorized him to accept for filing all uncontested rate schedule changes.

Second, it authorized him to act on certain uncontested license applications even if the project requires an environmental impact statement.

Third, it allows the Director to cancel preliminary comments for noncompliance with the terms and conditions of the permit. However, the Director can exercise this authority only if he gives 30 days' notice to the permittee and the permittee does not oppose the cancellation.

Fourth, the Director is now authorized to revoke an exemption from licensing for small hydroelectric projects if the exemptee fails to commence or complete construction within the time specified in the Commission's exemption order. This authority also can be exercised only after 30 days' notice and without opposition by the exemptee.

Fifth, the Director is authorized to terminate a license if construction is not commenced within the time required by the license. The license can be terminated, however, only if the licensee is given 90 days' notice or does not oppose the termination.

Last, the Director is authorized to rule upon notices of intervention in an uncontested rate proceeding.

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¹⁴Docket No. RM83-4, Order No. 265, issued November 22, 1982, 20 FERC (CCH) ¶ 61,106, FERC Stat. and Reg. ¶ 30,408.

¹⁵*Delegations Of The Commission's Authority To The Chief Accountant, the Director of the Office of Pipeline and Producer Regulations, the Director of the Office of Electric Power Regulation, and the General Counsel*, Docket No. RM82-27-000, Order No. 224, issued April 21, 1982, 19 FERC (CCH) ¶ 61,063, FERC Stat. and Reg. ¶ 30,356.