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Even when these conditions are met, there is no guarantee that a party will be allowed to present evidence orally or to cross-examine witnesses. Depending upon the nature of the inquiry and the evidence, the full presentation of facts necessary for the Commission's determination may be achieved by the written submission of evidence.<sup>6</sup>

In general, the Commission appears to have the discretion to use paper hearings unless a party can make a compelling case that witness credibility, motive or intent is in question.<sup>7</sup> This characterization was implicitly adopted by the D.C. Circuit in its 1992 review of the procedural aspects of the Iroquois/Tennessee project in *Louisiana Ass'n of Independent Producers and Royalty Owners v. FERC*.<sup>8</sup>

## II. NATURAL GAS CASES

The Commission has made use of paper hearings to dispose of gas pipeline cases in the past, but has recently begun to accelerate their use in other types of cases.

In restructuring proceedings under Order No. 636,<sup>9</sup> the Commission has, for the first time, announced its *a priori* intent to dispose of an extensive array of cases without trial-type resolution of any disputed issue:

The Commission will use procedures designed to achieve the most expeditious resolution of any contested issues raised with respect to restructuring filings. . . . In proceedings where there are disputed issues that require development of a record, but not necessarily by means of a trial-type hearing, the Commission may use expedited "paper hearing" procedures. The Commission does not intend to require development of a record in a trial-type hearing; therefore the restructuring proceedings will not be set for a hearing before administrative law judge unless they are consolidated with other proceedings already pending before a judge.<sup>10</sup>

Although this suggests the possibility of oral hearings if an Order No. 636 restructuring were to be consolidated with an NGA section 4 rate proceeding, the Commission has denied motions for such consolidation. For example, in denying a request to consolidate pending rate proceedings with Columbia Gas Transmission Corporation's restructuring, the Commission stated:

As noted in Order No. 636, the Commission does not intend to require development of a record on restructuring in a trial-type hearing. The timetable for compliance with the order does not contemplate a procedural schedule like

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6. 955 F.2d at 1425.

7. Transcontinental Gas Pipe Line Corp., 48 F.E.R.C. ¶ 61,199, at 61,752-53 (1989).

8. 958 F.2d 1101, 1113 (D.C. Cir. 1992).

9. Pipeline Service Obligations and Revisions to Regulations Governing Self-Implementing Transportation; and Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol, 57 Fed. Reg. 13,267 (April 16, 1992), III F.E.R.C. Stats. & Regs. Preambles ¶ 30,939 (April 8, 1992); Order on reh'g, Order No. 636-A, 57 Fed. Reg. 36,128 (August 12, 1992), III F.E.R.C. Stats. & Regs. Preambles ¶ 30,950 (August 3, 1992), order on reh'g, Order No. 636-B, 57 Fed. Reg. 57,911 (December 8, 1992), 61 F.E.R.C. ¶ 61,272 (1992), reh'g denied January 8, 1993.

10. F.E.R.C. Stats. & Regs. [Regs. Preambles] ¶ 30,939 (1992). Over 90 pipelines have been required to comply with the restructuring provisions of Order No. 636, and the Commission has announced its resolute intention that all such restructurings be completed before the 1993-94 heating season. *Id.* at 30,467. No process that involves trial-type hearings for all these cases could possibly meet such a goal.

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