

successor section) and non-qualified Funds.

(d) A utility must regularly supply to the Fund's Investment Manager, and regularly update, essential information about the nuclear unit covered by the Trust Fund Agreement, including its description, location, expected remaining useful life, the decommissioning plan the utility proposes to follow, the utility's liquidity needs once decommissioning begins, and any other information that the Fund's Investment Manager would need to construct and maintain, over time, a sound investment plan.

(e) A utility should monitor the performance of all Fiduciaries of the Fund and, if necessary, replace them if they are not properly performing assigned responsibilities.

(f) These regulations apply only to Commission-jurisdictional funds.

EFFECTIVE DATE NOTE: At 60 FR 39252, Aug. 2, 1995, the following provisions in §35.32 were stayed as of July 31, 1995:

1. The requirements in 18 CFR 35.32(a)(1) and (f) that public utilities must establish a separate nuclear decommissioning trust fund for Commission-jurisdictional Fund collections.

2. The requirement in 18 CFR 35.32(a)(4) (the words "and any other Fiduciary") that a Fund investment manager must have a net worth of at least \$100 million.

§35.33 Specific provisions.

(a) In addition to the general provisions of §35.32, the Trustee must observe the provisions of paragraph (b) of this section.

(b) The Trustee may use Fund assets only to:

(1) Satisfy the liability of a utility for decommissioning costs of the nuclear power plant to which the Fund relates as provided by §35.32; and

(2) Pay administrative costs and other incidental expenses, including taxes, of the Fund as provided by §35.32;

(3) To the extent that the Trustee does not currently require the assets of the Fund for the purposes described in paragraphs (b)(1) and (b)(2) of this section, the Investment Manager, when investing Fund assets, must exercise the same standard of care that a reasonable person would exercise in the same circumstances. In this context, a

"reasonable person" means a prudent investor as described in *Restatement of the Law, (Third), Trusts §227*, and including general comments and reporter's notes, pages 8-101. St. Paul, MN: American Law Institute Publishers, 1992. ISBN 0-314-84246-2. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the American Law Institute, 4025 Chestnut Street, Philadelphia, PA 19104, and are also available in local law libraries. Copies may be inspected at the Federal Energy Regulatory Commission's Library, Room 8502, 825 North Capitol St., NE., Washington, DC or at the Office of the Federal Register, 400 North Capitol St., NW., Room 700, Washington, DC.

(c) The utility must submit to the Commission by April 1, 1996 and by March 31 of each year thereafter, a copy of the financial report furnished to the utility by the Fund's Trustee that shows for the previous calendar year:

(1) Fund assets and liabilities at the beginning of the period;

(2) Activity of the Fund during the period, including amounts received from the utility, purchases and sales of investments, gains and losses from investment activity, disbursements from the Fund for decommissioning activity and payment of Fund expenses, including taxes; and

(3) Fund assets and liabilities at the end of the period. The report should not include the liability for decommissioning.

(d) If an independent public accountant has expressed an opinion on the report or on any portion of the report, then that opinion must accompany the report.

PART 36—RULES CONCERNING APPLICATIONS FOR TRANSMISSION SERVICES UNDER SECTION 211 OF THE FEDERAL POWER ACT

AUTHORITY: 5 U.S.C. 551-557; 16 U.S.C. 791a-825r; 31 U.S.C. 9701; 42 U.S.C. 7107-7352.

§36.1 Notice provisions applicable to applications for transmission services under section 211 of the Federal Power Act.

(a) *Definitions.* (1) *Affected party* means each affected electric utility, each affected State regulatory authority, and each affected Federal power marketing agency.

(2) *Affected electric utility* means each electric utility that has made arrangements for the sale or purchase of electric energy to be transmitted pursuant to the particular application for transmission services, and each transmitting utility, as defined in section 3(23) of the Federal Power Act, 16 U.S.C. 796(23), being requested to transmit such electric energy.

(3) *Affected State regulatory authority* means a State regulatory authority, as defined in section 3(21) of the Federal Power Act, 16 U.S.C. 796(21), regulating the rates and charges of each affected electric utility.

(4) *Affected Federal power marketing agency* means a Federal power marketing agency that operates in the service area of each affected electric utility.

(b) *Additional filing requirements.* Any person filing an application for transmission services pursuant to section 211 of the Federal Power Act, 16 U.S.C. 824j, shall include the following:

(1) A form of notice suitable for publication in the FEDERAL REGISTER, as well as a copy of the same statement in electronic format (in either ASCII text, WordPerfect 5.1 for DOS or WordPerfect 5.2 for Windows format) on a 3½" diskette marked with the name of the applicant and the words "Notice of Filing." The notice shall state the applicant's name, the date of the application, the names of the affected parties, and a brief description of the transmission services sought. The notice shall be in the following form:

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY
COMMISSION

[Name of Applicant] _____
Docket No. TX []-[]-000

NOTICE OF APPLICATION FOR ORDER
REQUESTING TRANSMISSION SERVICES

On [date application was filed], [name and address of applicant] filed with the Federal Energy Regulatory Commission an application requesting that the Commission order [name of transmitting utility subject to the request for transmission services] to provide transmission services pursuant to section 211 of the Federal Power Act.

[Brief description of the transmission services sought, including the proposed dates for initiating and terminating the requested transmission services; the total amount of transmission capacity requested; a brief description of the character and nature of the transmission services being requested, and whether the transmission services requested are firm or non-firm.]

Any person desiring to be heard or objecting to the granting of the requested transmission services should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests must be filed on or before _____ and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

(2) A sworn statement that actual notice, including the applicant's name, the date of the application, the names of the affected parties, and a brief description of the transmission services sought (including the proposed dates for initiating and terminating the requested transmission services, the total amount of transmission capacity requested, a brief description of the character and nature of the transmission services being requested, and whether the transmission services requested are firm or non-firm) has been served, pursuant to Rule 2010 of the Commission's Rules of Practice and Procedure, §385.2010 of this chapter, on each affected party. Such statement shall enumerate each person so served.

(c) *Other filing requirements.* All other filing requirements of the Commission's Rules of Practice and Procedure

remain in effect for applications under this section.

[Order 560, 58 FR 57737, Oct. 27, 1993, as amended by Order 593, 62 FR 1283, Jan. 9, 1997]

EFFECTIVE DATE NOTES: 1. By Order 560, 58 FR 57737, Oct. 27, 1993, §36.1 was added. The section contains information collection and recordkeeping requirements and will not become effective until approval has been given by the Office of Management and Budget.

2. By Order 593, 62 FR 1283, Jan. 9, 1997, §36.1 was amended by revising the first sentence of paragraph (b)(1), effective Feb. 10, 1997. For the convenience of the user, the superseded text is set forth as follows:

§36.1 Notice provisions applicable to applications for transmission services under section 211 of the Federal Power Act.

* * * * *

(b) * * *

(1) A statement of public notice, suitable for publication in the FEDERAL REGISTER. * *

* * * * *

PART 37—OPEN ACCESS SAME-TIME INFORMATION SYSTEMS AND STANDARDS OF CONDUCT FOR PUBLIC UTILITIES

- Sec.
- 37.1 Applicability.
- 37.2 Purpose.
- 37.3 Definitions.
- 37.4 Standards of conduct.
- 37.5 Obligations of Transmission Providers and Responsible Parties.
- 37.6 Information to be posted on an OASIS.
- 37.7 Auditing Transmission Service Information.
- 37.8 Implementation schedule for OASIS requirements; phases.

AUTHORITY: 16 U.S.C. 791–825r, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7101–7352.

SOURCE: Order 889, 61 FR 21764, May 10, 1996, unless otherwise noted.

§37.1 Applicability.

This part applies to any public utility that owns, operates, or controls facilities used for the transmission of electric energy in interstate commerce and to transactions performed under the *pro forma* tariff required in part 35 of this chapter.

§37.2 Purpose.

(a) The purpose of this part is to ensure that potential customers of open access transmission service receive access to information that will enable them to obtain transmission service on a non-discriminatory basis from any Transmission Provider. These rules provide standards of conduct and require the Transmission Provider (or its agent) to create and operate an Open Access Same-time Information System (OASIS) that gives all users of the open access transmission system access to the same information.

(b) The OASIS will provide information by electronic means about available transmission capability for point-to-point service and will provide a process for requesting transmission service. OASIS will enable Transmission Providers and Transmission Customers to communicate promptly requests and responses to buy and sell available transmission capacity offered under the Transmission Provider’s tariff.

§37.3 Definitions.

(a) *Transmission Provider* means any public utility that owns, operates, or controls facilities used for the transmission of electric energy in interstate commerce.

(b) *Transmission Customer* means any eligible customer (or its designated agent) that can or does execute a transmission service agreement or can or does receive transmission service.

(c) *Responsible party* means the Transmission Provider or an agent to whom the Transmission Provider has delegated the responsibility of meeting any of the requirements of this part.

(d) *Reseller* means any Transmission Customer who offers to sell transmission capacity it has purchased.

(e) *Wholesale merchant function* means the sale for resale of electric energy in interstate commerce.

(f) *Affiliate* means:

(1) For any exempt wholesaler generator, as defined under section 32(a) of the Public Utility Holding Company Act of 1935, as amended, the same as provided in section 214 of the Federal Power Act; and