

considers relevant regarding the matters under investigation.

**§ 1b.19 Submissions.**

When the Investigating Officer determines it is appropriate in the interest of the proper administration of the law, he may inform any person that a recommendation may be made to the Commission that said person be a defendant in a civil action to be brought by the Commission. In such case, said person may submit a statement of fact, argument, and/or memorandum of law, with such supporting documentation as said person chooses showing why said person should not be a defendant in any civil action brought by the Commission. The investigating officer shall inform said potential defendant of the date by which such statement may be submitted to said officer, and if such statement is submitted by such date, it shall be presented to the Commission together with any recommendation for enforcement action by the office responsible for the investigation.

**§ 1b.20 Request for confidential treatment.**

Any person compelled to produce documents in an investigation may claim that some or all of the information contained in a particular document(s) is exempt from the mandatory public disclosure requirements of the Freedom of Information Act (5 U.S.C. 552), is information referred to in 18 U.S.C. 1905, or is otherwise exempt by law from public disclosure. In such case, the person making such claim shall, at the time said person produces the document to the officer conducting the investigation shall also produce a second copy of the document from which has been deleted the information for which the person wishes to claim confidential treatment. The person shall indicate on the original document that a request for confidential treatment is being made for some or all of the information in the document and shall file a statement specifying the specific statutory justification for non-disclosure of the information for which confidential treatment is claimed. General claims of confidentiality are not sufficient. Sufficient information must be furnished for the officer conducting

the investigation, or other appropriate official, to make an informed decision on the request for confidential treatment. If the person states that the information comes within the exception in 5 U.S.C. 552(b)(4) for trade secrets and commercial or financial information, the person shall include a statement specifying why the information is privileged or confidential. If the person filing a document does not submit a second copy of the document with the confidential information deleted, the Officer conducting the investigation may assume that there is no objection to public disclosure of the document in its entirety. The Commission retains the right to make the determination with regard to any claim of confidentiality. Notice of the decision by the investigating Officer or other appropriate official to deny a claim, in whole or in part, and an opportunity to respond shall be given to a person claiming confidentiality no less than 5 days before its public disclosure.

**PART 2—GENERAL POLICY AND INTERPRETATIONS**

STATEMENTS OF GENERAL POLICY AND INTERPRETATIONS OF THE COMMISSION

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- 2.500 Penalty reduction/waiver policy for small entities.

### APPENDIX C TO PART 2—NATIONWIDE PROCEEDING COMPUTATION OF FEDERAL INCOME TAX ALLOWANCE INDEPENDENT PRODUCERS, PIPELINE AFFILIATES AND PIPELINE PRODUCERS CONTINENTAL U.S.

AUTHORITY: 5 U.S.C. 601; 15 U.S.C. 717–717w, 3301–3432; 16 U.S.C. 792–825y, 2601–2645; 42 U.S.C. 4321–4361, 7101–7352.

### STATEMENTS OF GENERAL POLICY AND INTERPRETATIONS OF THE COMMISSION

## § 2.1 Initial notice; service; and information copies of formal documents.

(a) Whenever appropriate, publication of an initial notice or order in the FEDERAL REGISTER shall be the primary means of informing interested persons and the general public that the proceeding to which the notice or order relates has been instituted before the Commission. The mailing of individual copies shall be confined to that which is required by law, by the Commission's rules and regulations, or by other considerations deemed valid by the Secretary in specific instances.

(1) It is the policy of the Commission to publish notice in the FEDERAL REGISTER upon the institution of the following proceedings before the Commission:

- (i) *Natural gas pipeline companies and public utility rate schedules and tariffs.*
  - (A) Initial rate schedule filings and changes in rates schedules proposed by public utilities and changes in rate

schedules or tariffs proposed by natural gas pipeline companies, including purchased gas adjustment clauses.

(B) Changes in rates proposed by natural gas pipeline companies for field sales.

(C)-(D) [Reserved]

(E) Tracking rate schedule or tariff filings made pursuant to settlement agreements.

(F) Rate schedule or tariff filings made by natural gas pipeline companies or public utilities in compliance with Commission orders.

(G) Reports of refunds by natural gas pipeline companies and public utilities.

(H) [Reserved]

(I) Complaints against natural gas pipeline companies and public utilities, unless otherwise directed.

(ii) *Interconnections, service and exportation pursuant to the Federal Power Act.*

(A) Applications for interconnection and service under section 202(b).

(B)-(C) [Reserved]

(D) Applications pursuant to section 207.

(E) [Reserved]

(iii) *Hydroelectric, Federal Power Act.*

(A) Applications for preliminary permits pursuant to section 4(f).

(B) Applications for licenses for constructed or unconstructed projects, or notice of declaration of intention, sections 4(e), 23(a)(b).

(C) Applications for amendment of license, unless otherwise directed.

(D) Application for relicenses or nonpower licenses, or a recommendation for takeover, sections 14 and 15.

(E) Applications for transfer of license, section 8.

(F) Applications for surrender of license, section 6.

(G) Proceeding for revocation or termination of license, sections 6, 13, 26.

(H) Issuance of annual licenses, section 15.

(I) Lands withdrawn pursuant to an application for preliminary permit or license, and the vacation of such land withdrawals, section 24.

(J) Complaints against licensees, unless otherwise directed.

(iv) *Corporate electric.* (A) Applications pursuant to sections 203, 204, of the Federal Power Act, and applications or complaints pursuant to section 305 of the Federal Power Act.

(v) *Accounting, gas and electric.* (A) Applications pursuant to sections 4, 23, 301, and 302 of the Federal Power Act.

(B) Applications pursuant to sections 8 and 9 of the Natural Gas Act.

(vi) *Federal rates.* (A) Application for confirmation and approval of rate schedules for Federal hydroelectric projects.

(vii) *Natural gas pipeline certificates, exportations, and importations, Natural Gas Act.* (A) Applications for exemption under section 1(c).

(B) Applications for authorization to import and export gas under section 3.

(C) Applications for orders directing physical connection of facilities and sale of natural gas under section 7(a).

(D) Applications for permission and approval to abandon under section 7(b).

(E) Applications for permanent certificates under section 7(c).

(F) [Reserved]

(G) Complaints against natural gas pipeline companies, filed by individuals and companies, unless otherwise directed.

(viii) *Independent producers.* (A) Orders suspending rates for independent producers and initiating a hearing thereon.

(B) Filing of offers of settlement.

(C) Small producer applications and petitions for relief relating to small producer matters.

(D) Petitions for special relief under the Commission's area rate opinions.

(ix) [Reserved]

(x) *Environmental statements.* (A) Notice to be published pursuant to Order series 415.

(xi) *Miscellaneous, gas and electric.* (A) Order instituting an investigation in which hearings are fixed or in which an opportunity is given for filing comments or petitions to intervene.

(B) Show cause order, in which hearings are fixed or in which an opportunity is given for filing comments or petitions to intervene.

(C) Order or notice consolidating proceedings for hearing purposes or severing a proceeding formerly consolidated for hearing purposes.

(D) Applications for declaratory order, disclaimers of jurisdiction, or waiver of Commission regulations, unless otherwise directed.

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(E) Requests for redesignation pursuant to § 3.5(a)(26) of this subchapter, unless otherwise directed.

(F) Requests for extension of time pursuant to § 3.75.302(j) of this chapter, unless otherwise directed.

(G) Consolidations and severance pursuant to § 375.302(f) of this chapter, unless otherwise directed.

(H) Notice of correction of a document in any of the above categories.

(I) Notice of meetings of advisory committees established by the Commission.

(J) Notices of conferences in docketed rulemaking proceedings.

(K) Such other notices or orders as may be submitted by the Secretary for publication.

(2) *Otherwise directed*, as referred to above, shall be interpreted to mean notice given by the discretion of the Secretary.

(b) After notice has been given, the service of formal documents issued in a proceeding shall be confined to the parties of record or their attorneys, and the mailing of information copies shall be confined to that which is required by the Commission's rules and regulations, by courtesy in response to written requests for copies, or by other considerations deemed valid by the Secretary in specific instances.

(Secs. 308, 309; 49 Stat. 858; 16 U.S.C. 825g, 825h; secs. 15, 16; 52 Stat. 829, 830; 15 U.S.C. 717n, 717o)

[Order 211, 24 FR 1345, Feb. 21, 1959, as amended by Order 463, 37 FR 28054, Dec. 20, 1972; 38 FR 3192, Feb. 2, 1973; 44 FR 34941, June 18, 1979; 45 FR 21224, Apr. 1, 1980; Order 541, 57 FR 21733, May 22, 1992]

### **§ 2.1a Public suggestions, comments, proposals on substantial prospective regulatory issues and problems.**

(a) The Commission by this policy statement explicitly encourages the public, including those persons subject to regulation by the Commission, to submit suggestions, comments, or proposals concerning substantial prospective regulatory policy issues and problems, the resolution of which will have a substantial impact upon those regulated by the Commission or others affected by the Commission's activities. This policy is intended to serve as a means of advising the Commission on a

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timely basis of potential significant issues and problems which may come before it in the course of its activities and to permit the Commission an early opportunity to consider argument regarding policy questions and administrative reforms in a general context rather than in the course of individual proceedings.

(b) Upon receipt of suggestions, comments, or proposals pursuant to paragraph (a) of this section, the Commission shall review the matters raised and take whatever action is deemed necessary with respect to the filing, including, but not limited to, requesting further information from the filing party, the public, or the staff, or prescribing an informal public conference for initial discussion and consultation with the Commission, a Commissioner, or the Staff, concerning the matter(s) raised. In the absence of a notice of proposed rulemaking, any conferences or procedures undertaken pursuant to this section shall not be deemed by the Commission as meeting the requirements of the Administrative Procedure Act with respect to notice of rulemakings, but are to be utilized by the Commission as initial discussions for advice as a means of determining the need for Commission action, investigation or study prior to the issuance of a notice of proposed rulemaking to the extent required by the Administrative Procedure Act, 5 U.S.C. 553.

(c) [Reserved]

(d) A person may not invoke this policy as a means of advocating ex parte before the Commission a position in a proceeding pending at the Commission and any such filing will be rejected. Comments must relate to general conditions in industry or the public or policies or practices of the Commission which may need reform, review, or initial consideration by the Commission.

[Order No. 547, 41 FR 15004, Apr. 9, 1976, as amended by Order 225, 47 FR 19054, May 3, 1982]

### **§ 2.1b Availability in contested cases of information acquired by staff investigation.**

Pursuant to the Commission's authority under the Natural Gas Act, particularly subsection (b) of section 8 thereof, and under the Federal Power

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Act, particularly subsection (b) of section 301 thereof, upon request by a party to the proceedings, or as required in conjunction with the presentation of a Commission staff case of staff's cross-examination of any other presentation therein, all relevant information acquired by Commission staff, including workpapers pursuant to any staff investigation conducted under sections 8, 10, or 14 of the Natural Gas Act, and sections 301, 304 or 307 of the Federal Power Act, shall, without further order of the Commission, be free from the restraints of said subsection (b) of section 8 of the Natural Gas Act, and subsection (b) of section 301 of the Federal Power Act, regarding the divulgence of information, with respect to any matter hereafter set for formal hearing.

[58 FR 38292, July 16, 1993]

### STATEMENTS OF GENERAL POLICY AND INTERPRETATIONS UNDER THE FEDERAL POWER ACT

AUTHORITY: Sections 2.2 through 2.13, issued under sec. 309, 49 Stat. 858; 16 U.S.C. 825h, unless otherwise noted.

#### § 2.2 Transmission lines.

In a public statement dated March 7, 1941, the Commission announced its determination that transmission lines which are not primary lines transmitting power from the power house or appurtenant works of a project to the point of junction with the distribution system or with the interconnected primary transmission system as set forth in section 3(11) of the Act are not within the licensing authority of the Commission, and directed that future applications filed with it for such licenses be referred for appropriate action to the Federal department having supervision over the lands or waterways involved.

[Order 141, 12 FR 8471, Dec. 19, 1947. Redesignated by Order 147, 13 FR 8259, Dec. 23, 1948]

#### § 2.4 Suspension of rate schedules.

The Commission approved and adopted on May 29, 1945, the following conclusions as to its powers of suspension of rate schedules under section 205 of the act:

(a) The Commission cannot suspend a rate schedule after its effective date.

(b) The Commission can suspend any new schedule making any change in an existing filed rate schedule, including any rate, charge, classification, or service, or in any rule, regulation, or contract relating thereto, contained in the filed schedule.

(c) Included in such changes which may be suspended are:

(1) Increases.

(2) Reductions.

(3) Discriminatory changes.

(4) Cancellation or notice of termination.

(5) Changes in classification, service, rule, regulation or contract.

(d) Immaterial, unimportant or routine changes will not be suspended.

(e) During suspension, the prior existing rate schedule continues in effect and should not be changed during suspension.

(f) Changes under escalator clauses may be suspended as changes in existing filed schedules.

(g) Suspension of a rate schedule, within the ambit of the Commission's statutory authority is a matter within the discretion of the Commission.

(Natural Gas Act, 15 U.S.C. 717-717w (1976 & Supp. IV 1980); Federal Power Act, 16 U.S.C. 791a-828c (1976 & Supp. IV 1980); Dept. of Energy Organization Act, 42 U.S.C. 7101-7352 (Supp. IV 1980); E.O. 12009, 3 CFR part 142 (1978); 5 U.S.C. 553 (1976))

[Order 141, 12 FR 8471, Dec. 19, 1947. Redesignated by Order 147, 13 FR 8259, Dec. 23, 1948, and amended by Order 303, 48 FR 24361, June 1, 1983; Order 575, 60 FR 4852, Jan. 25, 1995]

#### § 2.7 Recreational development at licensed projects.

The Commission will evaluate the recreational resources of all projects under Federal license or applications therefor and seek, within its authority, the ultimate development of these resources, consistent with the needs of the area to the extent that such development is not inconsistent with the primary purpose of the project. Reasonable expenditures by a licensee for public recreational development pursuant to an approved plan, including the purchase of land, will be included as part of the project cost. The Commission will not object to licensees and operators of recreational facilities within the boundaries of a project charging

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reasonable fees to users of such facilities in order to help defray the cost of constructing, operating, and maintaining such facilities. The Commission expects the licensee to assume the following responsibilities:

(a) To acquire in fee and include within the project boundary enough land to assure optimum development of the recreational resources afforded by the project. To the extent consistent with the other objectives of the license, such lands to be acquired in fee for recreational purposes shall include the lands adjacent to the exterior margin of any project reservoir plus all other project lands specified in any approved recreational use plan for the project.

(b) To develop suitable public recreational facilities upon project lands and waters and to make provisions for adequate public access to such project facilities and waters and to include therein consideration of the needs of physically handicapped individuals in the design and construction of such project facilities and access.

(c) To encourage and cooperate with appropriate local, State, and Federal agencies and other interested entities in the determination of public recreation needs and to cooperate in the preparation of plans to meet these needs, including those for sport fishing and hunting.

(d) To encourage governmental agencies and private interests, such as operators of user-fee facilities, to assist in carrying out plans for recreation, including operation and adequate maintenance of recreational areas and facilities.

(e) To cooperate with local, State, and Federal Government agencies in planning, providing, operating, and maintaining facilities for recreational use of public lands administered by those agencies adjacent to the project area.

(f)(1) To comply with Federal, State and local regulations for health, sanitation, and public safety, and to cooperate with law enforcement authorities in the development of additional necessary regulations for such purposes.

(2) To provide either by itself or through arrangement with others for facilities to process adequately sewage,

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litter, and other wastes from recreation facilities including wastes from watercraft, at recreation facilities maintained and operated by the licensee or its concessionaires.

(g) To ensure public access and recreational use of project lands and waters without regard to race, color, sex, religious creed or national origin.

(h) To inform the public of the opportunities for recreation at licensed projects, as well as of rules governing the accessibility and use of recreational facilities.

[Order 313, 30 FR 16198, Dec. 29, 1965, as amended by Order 375-B, 35 FR 6315, Apr. 18, 1970; Order 508, 39 FR 16338, May 8, 1974]

### §2.8 Simplification of wholesale electric rate schedule filings.

(a) In making changes in rate schedules required to be on file with the Commission, public utilities may find it advantageous to file substitute sheets to reflect changes, in lieu of filing rate schedule supplements.

(1) *Identification—substitute sheets.* (i) At the top right of the page, the sheet number may be designated as “—— Revised Sheet No. ——”, followed by “Superseding —— Sheet No. ——”. The first of these blanks would show the number of the revision (i.e., first, second, etc.) and the sheet number would be the same as the sheet replaced. The third and fourth blanks would be filled according to the numbering of the sheet replaced.

(ii) Sheets which are to be inserted between two consecutively numbered sheets may be designated “Original Sheet No. ——”, with the blank space filled with the appropriate number and a letter to indicate an insertion (i.e., between Sheet Nos. 1 and 2, Original Sheet No. 1a).

(iii) Customer agreement, if required, may be indicated on the bottom of the page, by the signature of the person authorized to agree to the proposed change. The name and title of the person authorized to file the substitute sheet may also be shown on the bottom of the page.

(b) Whenever pursuant to §35.12 of this chapter an initial rate schedule filing is to be made, or whenever pursuant to §35.13 of this chapter a rate

schedule is to be replaced in its entirety or extensively revised (for example if a large number of the pages are to be changed), public utilities may find it advantageous to use a simplified format, such as the following:

(1) *Format.* A brief service agreement setting forth such items as the name of the purchaser, service to be rendered, term of the agreement, and signatures of the parties. Applicable points of delivery and delivery voltages, applicable rates and charges and applicable terms and conditions may be incorporated in the agreement by reference to separate appendices attached thereto as follows:

(i) Appendix setting forth in detail delivery points, delivery voltages and metering voltages.

(ii) Appendix containing a statement of the rates and charges, set forth separately under appropriate headings such as: Demand charges, energy charges, billing demand determinants, power factor clauses, minimum bill provisions, etc.

(iii) Appendix containing terms and conditions, set forth separately under appropriate headings such as: Services, facilities at the points of connection, meter adjustments, continuity of service, liability, etc.

(2) *Identification.* (i) At the top right of the page, the sheet number may be designated as "Original Sheet No. \_\_\_\_\_".

(ii) Sheets which are to be replaced or inserted may be designated in the same manner suggested in paragraph (a)(1) of this section.

(Secs. 205, 206, 49 Stat. 851, 852; 16 U.S.C. 824d, 824e)

[Order 347, 32 FR 7494, May 20, 1967]

**§ 2.9 Conditions in preliminary permits and licenses—list of and citations to "P—" and "L—" forms.**

(a) The Commission has approved several sets of standard conditions for normal inclusion in preliminary permits or licenses for hydroelectric developments. In a special situation, of course, the Commission in issuing a permit or license for a project will modify or eliminate a particular article (condition). For reference purposes the sets of conditions are designated as "Forms"—those for preliminary permits are published in Form P-1, and

those for licenses are published in Form L's. There are different Form L's for different types of licenses, and the forms have been revised from time to time. Thus at any given time there will be several series of standard forms applicable to the various vintages of different types of licenses. The forms and their revisions are published in the Federal Power Commission reports and citations thereto are listed below.

(b) New or revised forms may be approved after preparation of this list (which is current as of October, 1975) and consequently do not appear herein. Forms currently in use, including those forms which have not yet appeared in the FPC reports, may be obtained from the Federal Power Commission, Office of Public Information, Washington, DC 20426.

(c) Within each of the categories, unless retired, the last-listed form is the one in use at the date of preparation of the list. The dates in the list represent issuance dates of the orders with which the particular forms were first published, or subsequently revised, in the FPC reports.

P-1: Preliminary Permit, 11 F.P.C. 699 (December 2, 1952), 16 F.P.C. 1303 (December 4, 1956), 54 F.P.C. — (October —, 1975).

L-1: Constructed Major Project Affecting Lands of the United States, 12 F.P.C. 1262 (September 25, 1953), 32 F.P.C. 71 (July 8, 1964), 54 F.P.C. — (October —, 1975).

L-2: Unconstructed Major Project Affecting Lands of the United States, 12 F.P.C. 1137 (August 7, 1953), 17 F.P.C. 62 (January 18, 1957), 31 F.P.C. 528 (March 10, 1964), 54 F.P.C. — (October —, 1975).

L-3: Constructed Major Project Affecting Navigable Waters of the United States, 12 F.P.C. 836 (February 6, 1953), 17 F.P.C. 385 (March 4, 1957), 30 F.P.C. 1658 (November 21, 1963), 32 F.P.C. 1114 (October 15, 1964), 36 F.P.C. 971 (December 6, 1966), 40 F.P.C. 1136 (October 29, 1968), 54 F.P.C. — (October —, 1975).

L-4: Unconstructed Major Project Affecting Navigable Waters of the United States, 16 F.P.C. 1284 (November 29, 1956), 32 F.P.C. 839 (September 21, 1964), 42 F.P.C. 280 (July 30, 1969), 54 F.P.C. — (October —, 1975).

L-5: Constructed Major Project Affecting Navigable Waters and Lands of the United States, 12 F.P.C. 1329 (October 23, 1953), 17 F.P.C. 110 (January 13, 1957), 38 F.P.C. 203 (July 26, 1967), 54 F.P.C. — (October —, 1975).

L-6: Unconstructed Major Project Affecting Navigable Waters and Lands of the United States, 12 F.P.C. 1271 (September 29, 1953),

- 16 F.P.C. 1127 (October 29, 1956), 31 F.P.C. 284 (February 5, 1964), 34 F.P.C. 1114 (October 7, 1965), 54 F.P.C. ——— (October —, 1975).
- L-7 (retired): Minor Project Affecting Lands of the United States, 12 F.P.C. 911 (March 30, 1953), 17 F.P.C. 486 (April 2, 1957).
- L-8 (retired): Minor-Part Project (Transmission Line), 12 F.P.C. 1017 (June 12, 1953), 41 F.P.C. 217 (March 5, 1969).
- L-9: Constructed Minor Project Affecting Navigable Waters of the United States, 32 F.P.C. 577 (August 10, 1964), 54 F.P.C. ——— (October —, 1975).
- L-10: Constructed Major Project Affecting the Interests of Interstate or Foreign Commerce, 37 F.P.C. 860 (May 9, 1967), 40 F.P.C. 1489 (December 20, 1968), 54 F.P.C. ——— (October —, 1975).
- L-11: Unconstructed Major Project Affecting the Interests of Interstate or Foreign Commerce, 34 F.P.C. 602 (August 26, 1965), 36 F.P.C. 687 (September 26, 1966), 41 F.P.C. 719 (June 6, 1969), 54 F.P.C. ——— (October —, 1975).
- L-12: Constructed Minor Project Affecting the Interests of Interstate or Foreign Commerce, 35 F.P.C. 875 (June 3, 1966), 40 F.P.C. 1447 (December 10, 1968), 54 F.P.C. ——— (October —, 1975).
- L-13: (retired): Unconstructed Major Project Affecting the Interests of Interstate or Foreign Commerce and Affecting Lands of the United States, 42 F.P.C. 367 (August 6, 1969).
- L-14: Unconstructed Minor Project Affecting Navigable Waters of the United States, 54 F.P.C. ——— (October —, 1975).
- L-15: Unconstructed Minor Project Affecting the Interests of Interstate or Foreign Commerce, 54 F.P.C. ——— (October —, 1975).
- L-16: Constructed Minor Project Affecting Lands of the United States, 54 F.P.C. ——— (October —, 1975).
- L-17: Unconstructed Minor Project Affecting Lands of the United States, 54 F.P.C. ——— (October —, 1975).
- L-18: Constructed Minor Project Affecting Navigable Waters and Lands of the United States, 54 F.P.C. ——— (October —, 1975).
- L-19: Unconstructed Minor Project Affecting Navigable Waters and Lands of the United States, 54 F.P.C. ——— (October —, 1975).
- L-20: Constructed Transmission Line Project, 54 F.P.C. ——— (October —, 1975).
- L-21: Unconstructed Transmission Line Project, 54 F.P.C. ——— (October —, 1975).
- (Secs. 3, 4, 15, 16, 301, 304, 308, and 309 (41 Stat. 1063–1066, 1068, 1072, 1075; 49 Stat. 838, 839, 840, 841, 854–856, 858–859; 82 Stat. 617; 16 U.S.C. 796, 797, 803, 808, 809, 816, 825, 825b, 825c, 825g, 825h, 826i), as amended, secs. 8, 10, and 16 (52 Stat. 825–826, 830; 15 U.S.C. 717g, 717i, 717o))
- [Order 348, 32 FR 8521, June 14, 1967, as amended by Order 540, 40 FR 51998, Nov. 7, 1975; Order 567, 42 FR 30612, June 16, 1977]

### § 2.12 Calculation of taxes for property of public utilities and licensees constructed or acquired after January 1, 1970.

Pursuant to the provisions of section 441(a)(4)(A) of the Tax Reform Act of 1969, 83 Stat. 487, 625, public utilities and licensees regulated by the Commission under the Federal Power Act which have exercised the option provided by that section to change from flow through accounting will be permitted by the Commission, with respect to liberalized depreciation, to employ a normalization method for computing federal income taxes in their accounts and annual reports with respect to property constructed or acquired after January 1, 1970, to the extent with which such property increases the productive or operational capacity of the utility and is not a replacement of existing capacity. Such normalization will also be permitted for ratemaking purposes to the extent such rates are subject to the Commission's ratemaking authority. As to balances in Account 282 of the Uniform System of Accounts, "Accumulated deferred income taxes—Other property," it will remain the Commission's policy to deduct such balances from rate base in rate proceedings.

(Secs. 3, 4, 15, 16, 301, 304, 308, and 309 (41 Stat. 1063–1066, 1068, 1072, 1075; 49 Stat. 838, 839, 840, 841, 854–856, 858–859; 82 Stat. 617; 16 U.S.C. 796, 797, 803, 808, 809, 816, 825, 825b, 825c, 825g, 825h, 826i), as amended, Secs. 8, 10, and 16 (52 Stat. 825–826, 830; 15 U.S.C. 717g, 717i, 717o))

[Order 404, 35 FR 7964, May 23, 1970, as amended by Order 567, 42 FR 30612, June 16, 1977]

### § 2.13 Design and construction.

(a) The Commission recognizes the importance of protecting and enhancing natural, historic, scenic, and recreational values at projects licensed or proposed to be licensed under the Federal Power Act.

(b) The Commission has adopted "Guidelines for the Protection of Natural, Historic, Scenic, and Recreational Values in the Design and Location of Rights-of-Way and Transmission Facilities"<sup>1</sup> as set forth in Order No. 414

<sup>1</sup> Filed as part of the original document.

issued November 27, 1970. The Commission will consider these guidelines inter alia, in the determination of whether applications for any licenses under the Federal Power Act are best adapted to a comprehensive plan for developing a waterway. The guidelines may be obtained from the Office of Public Information, Federal Power Commission, Washington, DC 20426.

(c) In furtherance of these policies, the Commission will not (1) permit the amendment of any license for the purpose of construction of additional facilities or (2) authorize the disposition of any interest in project lands for construction of any type, unless a showing is made that the construction will be designed to avoid or minimize conflict with the natural, historic, and scenic values and resources of the project area, including compliance with the Commission's "Guidelines for the Protection of Natural, Historic, Scenic, and Recreational Values in the Design and Location of Rights-of-Way and Transmission Facilities".

(Secs. 3, 4, 15, 16, 301, 304, 308, and 309 (41 Stat. 1063-1066, 1068, 1072, 1075; 49 Stat. 838, 839, 840, 841, 854-856, 858-859; 82 Stat. 617; 16 U.S.C. 796, 797, 803, 808, 809, 816, 825, 825b, 825c, 825g, 825h, 826i), as amended, Secs. 8, 10, and 16 (52 Stat. 825-826, 830; 15 U.S.C. 717g, 717i, 717o))

[Order 414, 35 FR 18586, Dec. 8, 1970, as amended by Order 567, 42 FR 30612, June 16, 1977]

#### § 2.15 Specified reasonable rate of return.

(a) Pursuant to section 10(d) of the Federal Power Act, the Commission has determined that the specified reasonable rate of return used in computing amortization reserves for hydroelectric project licenses shall be calculated annually based on current capital ratios developed from an average of 13 monthly balances of amounts properly includible in the licensee's long-term debt and proprietary capital accounts, as listed in the Commission's Uniform System of Accounts. The cost rate for such ratios shall be the weighted average cost of long-term debt and preferred stock for the year, and the cost of common equity shall be the interest rate on 10-year government bonds (reported as the Treasury Department's 10-year constant maturity

series) computed on the monthly average for the year in question, plus four percentage points (400 basis points).

(b) The Statement of Policy adopted herein shall be effective upon issuance of this order.

(c) The Secretary shall cause prompt publication of this order to be made in the FEDERAL REGISTER.

(d) All requests and suggestions not specifically dealt with herein are hereby denied.

(e) The Secretary is hereby authorized to change the appropriate license article upon application by the licensees to reflect the specified reasonable rate of return as adopted herein.

[Order 550, 41 FR 27032, July 1, 1976]

#### § 2.17 Price discrimination and anti-competitive effect (price squeeze issue).

To implement compliance with the Supreme Court decision in *F.P.C. v. Con-Way Corp.*, 426 U.S. 271 (1976), aff'g 510 F. 2d 1264 (D.C. Cir. 1975) and to expedite the consideration of price squeeze issues in wholesale electric rate proceedings, the Commission adopts the following procedures for raising price squeeze issues which are to be followed unless they are demonstrated in an individual case to be inadequate:

(a) Any wholesale customer, state commission or other interested person may file petitions to intervene alleging price discrimination and anticompetitive effects of the wholesale rates. In order to have the issue of price discrimination considered in the rate proceeding, the intervening customer or other interested person must support its allegation by a prima facie case. The elements of the prima facie case shall include at a minimum:

(1) Specification of the filing utility's retail rate schedules with which the intervening wholesale customer is unable to compete due to purchased power costs;

(2) A showing that a competitive situation exists in that the wholesale customer competes in the same market as the filing utility;

(3) A showing that the retail rates are lower than the proposed wholesale rates for comparable service;

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(4) The wholesale customer's prospective rate for comparable retail service, i.e. the rate necessary to recover bulk power costs (at the proposed wholesale rate) and distribution costs;

(5) An indication of the reduction in the wholesale rate necessary to eliminate the price squeeze alleged.

(b) Where price squeeze is alleged, the Commission shall, in the order granting intervention, direct the Administrative Law Judge to convene a prehearing conference within 15 days from the date of the order for the purpose of hearing intervenors' request for data required to present their case, including prima facie showing, on price squeeze issues.

(c) Within 30 days from the date of the conference the filing utility shall respond to the data requests authorized by the Administrative Law Judge.

(d) Within 30 days from the filing utility's response, the intervenors shall file their case-in-chief on price squeeze issues, which shall include their prima facie case, unless filed previously.

(e) The burden of proof (i.e. the risk of nonpersuasion) to rebut the allegations of price squeeze and to justify the proposed rates are on the utility proposing the rates under section 205(e) of the Federal Power Act.

(f) In proceedings where price squeeze is an issue, the Secretary shall include the state commission, agency or body which is responsible for regulation of retail rates in the state affected in the service list maintained under § 385.2010(c) of this chapter.

[Order 563, 42 FR 16132, Mar. 25, 1977, as amended by Order 225, 47 FR 19054, May 3, 1982]

## § 2.18 Phased electric rate increase filings.

(a) In general, when a public utility files a phased rate increase, the Commission will determine the appropriate suspension period based on the total increase requested in all phases. If a utility files a rate increase within sixty days after filing another rate increase, the Commission will consider the filings together to be a phased rate increase request.

(b) This policy will not be applied if the increase is phased:

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(1) To coordinate with new facilities coming on line;

(2) To implement a rate moderation plan;

(3) To avoid price squeeze;

(4) To comply with a settlement approved by the Commission; or

(5) If the utility makes a convincing showing that application of the policy would be harsh and inequitable and that, therefore, good cause has been shown not to apply the policy in the case.

[52 FR 11, Jan. 11, 1987]

## § 2.19 State and Federal comprehensive plans.

(a) In determining whether the proposed hydroelectric project is best adapted to a comprehensive plan under section (10)(a)(1) of the Federal Power Act for improving or developing a waterway, the Commission will consider the extent to which the project is consistent with a comprehensive plan (where one exists) for improving, developing, or conserving a waterway or waterways affected by the project that is prepared by:

(1) An agency established pursuant to Federal law that has the authority to prepare such a plan, or

(2) A state agency, of the state in which the facility is or will be located, authorized to conduct such planning pursuant to state law.

(b) The Commission will treat as a state or Federal comprehensive plan a plan that:

(1) Is a comprehensive study of one or more of the beneficial uses of a waterway or waterways;

(2) Includes a description of the standards applied, the data relied upon, and the methodology used in preparing the plan; and

(3) Is filed with the Secretary of the Commission.

[Order 481-A, 53 FR 15804, May 4, 1988]

## § 2.20 Good faith requests for transmission services and good faith responses by transmitting utilities.

(a) *General Policy.* (1) This Statement of Policy is adopted in furtherance of the goals of sections 211(a) and 213(a) of the Federal Power Act, as amended and added by the Energy Policy Act of 1992.

(2) Under section 211(a), the Commission may issue an order requiring a transmitting utility to provide transmission services (including any enlargement of transmission capacity necessary to provide such services) only if an applicant has made a request for transmission services to the transmitting utility that would be the subject of such order at least 60 days prior to its filing of an application for such order. The requirement in section 211(a) that an applicant make such a request will be met if such an applicant has, pursuant to section 213(a) of the FPA, made a good faith request to a transmitting utility to provide wholesale transmission services and requests specific rates and charges, and other terms and conditions.

(3) It is the Commission's intention to apply the standards of this Statement of Policy when determining whether and when a valid "good faith" request for service was made.

(4) It is the Commission's intention to encourage an open exchange of information that exhibits a reasonable degree of specificity and completeness between the party requesting transmission services and the transmitting utility.

(5) The Commission intends to apply this Statement of Policy so as to carry out Congress' objective that, subject to appropriate terms and conditions and just and reasonable rates, in conformance with section 212 of the FPA, access to the electric transmission system for the purposes of wholesale transactions be more widely available.

(b) *The Components of a good faith request.* The Commission generally considers the following to constitute the minimum components of a good faith request for transmission services:

(1) The identity, address, telephone number, and facsimile number of the party requesting transmission services, and the same information, if different, for the party's contact person or persons.

(2) A statement that the party requesting transmission services is, or will be upon commencement of service, an entity eligible to request transmission under sections 211(a) and 213(a) of the FPA.

(3) A statement that the request for transmission services is intended to satisfy the "request for transmission services" requirement under sections 211(a) and 213(a) of the FPA, and that the request is not a request for mandatory retail wheeling prohibited under section 212(h) of the FPA.

(4) The party requesting transmission services should specify the character and nature of the services requested. Some types of service may require more detailed information than others. Where point-to-point service is requested, the party requesting transmission services should specify the anticipated point(s) of receipt to the transmitting utility's grid and the anticipated point(s) of delivery from the transmitting utility's grid. Where a party requesting transmission services requests additional flexibility to schedule multiple resources to meet its needs (e.g., network service), the request for services should contain a description of the requested services in sufficient detail to permit the transmitting utility to model the additional services on its transmission system.

(5) The names of any other parties likely to provide transmission service to deliver electric energy to, and receive electric energy from, the transmitting utility's grid in connection with the requested transmission services.

(6) The proposed dates for initiating and terminating the requested transmission services.

(7) The total amount of transmission capacity being requested.

(8) To the extent it is known or can be estimated, a description of the "expected transaction profile" including load factor data describing the hourly quantities of power and energy the party requesting transmission services would expect to deliver to the transmitting utility's grid at relevant points of interconnection. In the event delivery is to multiple points within the transmitting utility's electric control area, the requestor should describe, to the extent it is known or can be estimated, the expected load (over a given duration of time) at each such delivery point.

(9) Whether firm or non-firm service is being requested. Where a party requests non-firm service, it should specify the priority of service it is willing to accept, or the conditions under which it is willing to accept interruption or curtailment, if known.

(10) A statement as to whether the request is being made in response to a solicitation and a copy of the solicitation if publicly available. This will help the transmitting utility determine whether requests for transmission services are duplicative or mutually exclusive of requests filed by other parties.

(11) The proposed rates, terms and conditions for the requested transmission services as required by section 213(a). It is not necessary for the requestor to propose a specific numerical rate. Rather, a party requesting transmission services can fulfill the rates, terms and conditions requirement by specifying a rate methodology (e.g., embedded or incremental cost) or by referencing an existing formula rate, transmission tariff, or transmission contract. The validity of the good faith request will not depend on the rates proposed by the party requesting transmission services. This requirement is not intended to allow utilities to delay responses to requests for transmission services, or to deny requests for transmission services on the basis of an overly rigid or technical approach to the “rates, terms and conditions” element of the request.

(12) Any other information to facilitate the expeditious processing of its request. Such information will improve the negotiation process, reduce costs, and will improve chances to arrange the requested transmission without resorting to section 211 application procedures before the Commission.

(c) *Components of a Reply to a Good Faith Request.* The Commission generally considers the following to constitute the minimum components of a reply to a good faith request for transmission services under section 213(a):

(1) Unless the parties agree to a different time frame, the transmitting utility must acknowledge the request within 10 days of receipt. The acknowledgment must include a date by which a response will be sent to the party re-

questing transmission services and a statement of any fees associated with responding to the request (e.g., initial studies).

(2) The transmitting utility may ask the applicant to provide clarification of only the information needed to evaluate and process a “good faith” request. If the person requesting transmission services believes the transmitting utility is attempting to frustrate the process by making excessive requests for clarification, it may raise this issue if, and when, it files a request for a section 211 order with the Commission.

(3) The transmitting utility must respond to a request within 60 days of receipt or some other mutually agreed upon response date. If both parties agree to an alternative schedule, the agreement must be in writing and signed by both parties.

(4) If the transmitting utility determines that it can provide all the requested services from existing capacity, it should respond by offering the party requesting transmission services an executable service agreement that at a minimum contains the following information:

(i) A description of the proposed transmission rate and any other costs. It is not necessary for the proposed service agreement to contain a fully developed cost-of-service. However, the agreement should explain the basis for the charges for each component of service, including the unbundled components of any transmission rate as well as any other charges.

(ii) The proposed service agreement should explicitly describe all of the applicable terms and conditions of the transmission services provided under the agreement.

(iii) The transmitting utility should accompany the proposed service agreement with a clear statement of the time during which the offer to provide the transmission services will remain open. An open agreement offer may obligate the seller while imposing no countervailing obligation on the purchaser, and an unexecuted contract potentially ties up transmission facilities, thus jeopardizing the availability and price for subsequent requests that would use the same facilities. However,

at a minimum, a transmitting utility should permit the party requesting transmission services sufficient time to review service agreements and coordinate multiple stages of joint transactions.

(5) If the transmitting utility determines that it must construct additional facilities or modify existing facilities to provide all or part of the requested services, it must:

(i) Identify the specific constraints and their duration that prevent it from providing all the requested services and explain how these constraints prevent it from providing all the requested services or the desired level of firmness.

(ii) Provide to the applicant all studies, computer input and output data, planning, operating and other documents, work papers, assumptions and any other material that forms the basis for determining the constraints.

(iii) Offer to the applicant an executable agreement under which the applicant agrees to reimburse the transmitting utility for all costs of performing any studies necessary to determine what changes to the transmitting utility's grid are needed to overcome the constraint and provide the requested services, their cost, and the estimated time to complete them. At a minimum, the proposed agreement should contain the following:

(A) An estimate of the cost of the study and the time required to complete it, and

(B) A commitment to supply to the party requesting transmission services all computer input and output data, planning, operating and other documents, work papers, assumptions and any other material used to perform the study.

(iv) If a transmitting utility determines that it can provide part but not all of the requested services without building new facilities, it should inform the applicant of any portion of the requested services that can be performed without constructing additional facilities or modifying existing facilities. In effect, the transmitting utility may be able to treat such a request as two separate transactions—one for service on existing facilities and the other as a request involving ex-

pansion decisions. Furthermore, where there are alternative, less expensive means of satisfying all or a portion of a transmission request, the Commission expects the transmitting utility to explore such alternatives (e.g., re-dispatching certain generating units to alleviate a constraint).

[58 FR 38969, July 21, 1993]

### § 2.21 Regional Transmission Groups.

(a) *General policy.* The Commission encourages Regional Transmission Groups (RTGs) as a means of enabling the market for electric power to operate in a more competitive and efficient way. The Commission believes that RTGs can provide a means of coordinating regional planning of the transmission system and assuring that system capabilities are always adequate to meet system demands. RTG agreements that contain components that satisfy paragraphs (b) and (c) of this section generally will be considered to be just, reasonable, and not unduly discriminatory or preferential under the Federal Power Act (FPA). The Commission encourages RTG agreements that contain as much detail as possible in all of the components listed, particularly if the RTG participants will be seeking Commission deference to decisions reached under an RTG agreement.

(b) *Organizational components.* (1) An RTG agreement should provide for broad membership and, at a minimum, allow any entity that is subject to, or eligible to apply for, an order under section 211 of the FPA to be a member. An RTG agreement should encompass an area of sufficient size and contiguity to enable members to provide transmission services in a reliable, efficient, and competitive manner.

(2) An RTG agreement should provide a means of adequate consultation and coordination with relevant state regulatory, siting, and other authorities.

(3) An RTG agreement should include fair and nondiscriminatory governance and decisionmaking procedures, including voting procedures.

(c) *Other components.* (1) An RTG agreement should impose on member transmitting utilities an obligation to provide transmission services for other members, including the obligation to

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enlarge facilities, on a basis that is consistent with sections 205, 206, 211, 212 and 213 of the FPA. To the extent practicable and known, the RTG agreement should specify the terms and conditions under which transmission services will be offered.

(2) An RTG agreement should require, at a minimum, the development of a coordinated transmission plan on a regional basis and the sharing of transmission planning information, with the goal of efficient use, expansion, and coordination of the interconnected electric system on a grid-wide basis. An RTG agreement should provide mechanisms to incorporate the transmission needs of non-members into regional plans. An RTG agreement should include as much detail as possible with regard to operational and planning procedures.

(3) An RTG agreement should include voluntary dispute resolution procedures that provide a fair alternative to resorting in the first instance to section 206 complaints or section 211 proceedings.

(4) An RTG agreement should include an exit provision for RTG members that leave the RTG, specifying the obligations of a departing member.

(d) *Filing procedures.* Any proposed RTG agreement that in any manner affects or relates to the transmission of electric energy in interstate commerce by a public utility, or rates or charges for such transmission, must be filed with the Commission. Any public utility member of a proposed RTG may file the RTG agreement with the Commission on behalf of the other public utility members under section 205 of the FPA.

[58 FR 41632, Aug. 5, 1993]

### **§ 2.22 Pricing policy for transmission services provided under the Federal Power Act.**

(a) The Commission has adopted a Policy Statement on its pricing policy for transmission services provided under the Federal Power Act. That Policy Statement can be found at 69 FERC 61,086. The Policy Statement constitutes a complete description of the Commission's guidelines for assessing the pricing proposals. Paragraph

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(b) of this section is only a brief summary of the Policy Statement.

(b) The Commission endorses transmission pricing flexibility, consistent with the principles and procedures set forth in the Policy Statement. It will entertain transmission pricing proposals that do not conform to the traditional revenue requirement as well as proposals that conform to the traditional revenue requirement. The Commission will evaluate "conforming" transmission pricing proposals using the following five principles, described more fully in the Policy Statement.

(1) Transmission pricing must meet the traditional revenue requirement.

(2) Transmission pricing must reflect comparability.

(3) Transmission pricing should promote economic efficiency.

(4) Transmission pricing should promote fairness.

(5) Transmission pricing should be practical.

(c) Under these principles, the Commission will also evaluate "non-conforming" proposals which do not meet the traditional revenue requirement, and will require such proposals to conform to the comparability principle. Non-conforming proposals must include an open access comparability tariff and will not be allowed to go into effect prior to review and approval by the Commission under procedures described in the Policy Statement.

[59 FR 55039, Nov. 3, 1994]

### **§ 2.23 Use of reserved authority in hydropower licenses to ameliorate cumulative impacts.**

The Commission will address and consider cumulative impact issues at original licensing and relicensing to the fullest extent possible consistent with the Commission's statutory responsibility to avoid undue delay in the relicensing process and to avoid undue delay in the amelioration of individual project impacts at relicensing. To the extent, if any, that it is not possible to explore and address all cumulative impacts at relicensing, the Commission will reserve authority to examine and address such impacts after the new license has been issued, but will define that reserved authority as narrowly and with as much specificity as

possible, particularly with respect to the purpose of reserving that authority. The Commission intends that such articles will describe, to the maximum extent possible, reasonably foreseeable future resource concerns that may warrant modifications of the licensed project. Before taking any action pursuant to such reserved authority, the Commission will publish notice of its proposed action and will provide an opportunity for hearing by the licensee and all interested parties. Hydropower licenses also contain standard "re-opener" articles (see §2.9 of this part) which reserve authority to the Commission to require, among other things, licensees of projects located in the same river basin to mitigate the cumulative impacts of those projects on the river basin. In light of the policy described above, the Commission will use the standard "re-opener" articles to explore and address cumulative impacts only (except in extraordinary circumstances) where such impacts were not known at the time of licensing or are the result of changed circumstances. The Commission has authority under the Federal Power Act to require licensees, during the term of the license, to develop and provide data to the Commission on the cumulative impacts of licensed projects located in the same river basin. In issuing both new and original licenses, the Commission will coordinate the expiration dates of the licenses to the maximum extent possible, to maximize future consideration of cumulative impacts at the same time in contemporaneous proceedings at relicensing. The Commission's intention is to consider to the extent practicable cumulative impacts at the time of licensing and relicensing, and to eliminate the need to resort to the use of reserved authority.

[59 FR 66718, Dec. 28, 1994]

**§2.24 Project decommissioning at relicensing.**

The Commission issued a statement of policy on project decommissioning at relicensing in Docket No. RM93-23-000 on December 14, 1994.

[60 FR 347, Jan. 4, 1995]

**§2.25 Ratemaking treatment of the cost of emissions allowances in coordination transactions.**

(a) *General Policy.* This Statement of Policy is adopted in furtherance of the goals of Title IV of the Clean Air Act Amendments of 1990, Pub. L. 101-549, Title IV, 104 Stat. 2399, 2584 (1990).

(b) *Costing Emissions Allowances in Coordination Sales.* If a public utility's coordination rate on file with the Commission provides for recovery of variable costs on an incremental basis, the Commission will allow recovery of the incremental costs of emissions allowances associated with a coordination sale. If a coordination rate does not reflect incremental costs, the public utility should propose alternative allowance costing methods or demonstrate that the coordination rate does not produce unreasonable results. The Commission finds that the cost to replace an allowance is an appropriate basis to establish the incremental cost.

(c) *Use of Indices.* The Commission will allow public utilities to determine emissions allowance costs on the basis of an index or combination of indices of the current price of emissions allowances, provided that the public utility affords purchasing utilities the option of providing emissions allowances. Public utilities should explain and justify any use of different incremental cost indices for pricing coordination sales and making dispatch decisions.

(d) *Calculation of Amount of Emissions Allowances Associated With Coordination Transactions.* Public utilities should explain the methods used to compute the amount of emissions allowances included in coordination transactions.

(e) *Timing.* (1) Public utilities should provide information to purchasing utilities regarding the timing of opportunities for purchasers to stipulate whether they will purchase or return emissions allowances. A public utility may require a purchasing utility to declare, no later than the beginning of the coordination transaction:

(i) Whether it will purchase or return emissions allowances; and

(ii) If it will return emissions allowances, the date on which those allowances will be returned.

(2) Public utilities may include in agreements with purchasing utilities

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non-discriminatory provisions for indemnification if the purchasing utility fails to provide emissions allowances by the date on which it declares that the allowances will be returned.

(f) *Other Costing Methods Not Precluded.* The ratemaking treatment of emissions allowance costs endorsed in this Policy Statement does not preclude other approaches proposed by individual utilities on a case-by-case basis.

[59 FR 65938, Dec. 22, 1994, as amended by Order 579, 60 FR 22261, May 5, 1995]

### § 2.26 Policies concerning review of applications under section 203.

(a) The Commission has adopted a Policy Statement on its policies for reviewing transactions subject to section 203. That Policy Statement can be found at 77 FERC ¶ 61,263 (1996). The Policy Statement is a complete description of the relevant guidelines. Paragraphs (b)–(e) of this section are only a brief summary of the Policy Statement.

(b) *Factors Commission will generally consider.* In determining whether a proposed transaction subject to section 203 is consistent with the public interest, the Commission will generally consider the following factors; it may also consider other factors:

- (1) The effect on competition;
- (2) The effect on rates; and
- (3) The effect on regulation.

(c) *Effect on competition.* Applicants should provide data adequate to allow analysis under the Department of Justice/Federal Trade Commission Merger Guidelines, as described in the Policy Statement and Appendix A to the Policy Statement.

(d) *Effect on rates.* Applicants should propose mechanisms to protect customers from costs due to the merger. If the proposal raises substantial issues of relevant fact, the Commission may set this issue for hearing.

(e) *Effect on regulation.* (1) Where the merged entity would be part of a registered public utility holding company, if applicants do not commit in their application to abide by this Commission's policies with regard to affiliate transactions, the Commission will set the issue for a trial-type hearing.

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(2) Where the affected state commissions have authority to act on the transaction, the Commission will not set for hearing whether the transaction would impair effective regulation by the state commission. The application should state whether the state commissions have this authority.

(3) Where the affected state commissions do not have authority to act on the transaction, the Commission may set for hearing the issue of whether the transaction would impair effective state regulation.

[Order 592, 61 FR 68606, Dec. 30, 1996]

### STATEMENTS OF GENERAL POLICY AND INTERPRETATIONS UNDER THE NATURAL GAS ACT

#### § 2.51 [Reserved]

#### § 2.52 Suspension of rate schedules.

The interpretation stated in § 2.4 applies as well to the suspension of rate schedules under section 4 of the Natural Gas Act.

(Natural Gas Act, 15 U.S.C. 717–717w (1976 & Supp. IV 1980); Federal Power Act, 16 U.S.C. 791a–828c (1976 & Supp. IV 1980); Dept. of Energy Organization Act, 42 U.S.C. 7101–7352 (Supp. IV 1980); E.O. 12009, 3 CFR part 142 (1978); 5 U.S.C. 553 (1976))

[Order 303, 48 FR 24361, June 1, 1983]

#### § 2.55 Definition of terms used in section 7(c).

For the purposes of section 7(c) of the Natural Gas Act, as amended, the word *facilities* as used therein shall be interpreted to exclude:

(a) *Auxiliary installations.* Installations (excluding gas compressors) which are merely auxiliary or appurtenant to an existing transmission pipe line system and which are installed only for the purpose of obtaining more efficient or more economical operation of authorized transmission facilities, such as: valves; drips; yard and station piping; cathodic protection equipment; gas cleaning, cooling and dehydration equipment; residual refining equipment; water pumping, treatment and cooling equipment; electrical and communication equipment; and buildings.

(b) *Replacement of facilities.* (1) Facilities which constitute the replacement of existing facilities that have or will

soon become physically deteriorated or obsolete, to the extent that replacement is deemed advisable, if:

(i) The replacement will not result in a reduction or abandonment of service through the facilities;

(ii) The replacement facilities will have a substantially equivalent designed delivery capacity as the facilities being replaced; and

(iii) Except as described in paragraph (b)(2) of this section, the company files notification of such activity with the Commission at least 30 days prior to commencing construction.

(2) *Advance notification not required.* The advance notification described in paragraph (b)(1)(iii) of this section is not required if:

(i) The cost of the replacement project does not exceed the cost limit specified in Column 1 of Table I of § 157.208(d) of this chapter; or

(ii) U.S. Department of Transportation safety regulations require that the replacement activity be performed immediately;

(3) *Contents of the advance notification.* The advance notification described in paragraph (b)(1)(iii) of this section must include the following information:

(i) A brief description of the facilities to be replaced (including pipeline size and length, compression horsepower, design capacity, and cost of construction);

(ii) Current U.S. Geological Survey 7.5-minute series topographic maps showing the location of the facilities to be replaced; and

(iii) A description of the procedures to be used for erosion control, revegetation and maintenance, and stream and wetland crossings.

(4) *Reporting requirements.* (i) *One-time report.* A company must file (on electronic media pursuant to § 385.2011 of this chapter, accompanied by 7 paper copies) a one-time report with the Commission, by December 9, 1992, that includes all of the information required in paragraph (b)(3) of this section, for any replacement activity authorized under paragraph (b)(1) of this section that cost more than \$6.2 million and was commenced between July 14, 1992 and November 9, 1992.

(ii) *Annual report.* On or before May 1 of each year, a company must file (on electronic media pursuant to § 385.2011 of this chapter, accompanied by 7 paper copies) an annual report that lists for the previous calendar year each replacement project that was completed pursuant to paragraph (b)(1) of this section and that was exempt from the advance notification requirement pursuant to paragraph (b)(2) of this section. For each such replacement project, the company must include all of the information described in paragraph (b)(3) of this section. *Exception.* A company does not have to include in this annual report any above-ground replacement project that did not involve compression facilities or the use of earthmoving equipment.

(c) [Reserved]

(d) *Taps.* Taps on existing transmission pipelines which are installed solely for the purpose of enabling a purchaser or transporter to take delivery of gas from an independent producer. An independent producer means any person as defined in the Natural Gas Act who is engaged in the production or gathering of natural gas and who sells natural gas in interstate commerce for resale, but who is not engaged in the transportation of natural gas (other than gathering) by pipeline in interstate commerce.

(Sec. 7, 52 Stat. 824; 15 U.S.C. 717f)

[Order 148, 14 FR 681, Feb. 16, 1949, as amended by Order 220, 25 FR 2363, Mar. 19, 1960; Order 241, 27 FR 510, Jan. 18, 1962; Order 148-A, 38 FR 11450, May 8, 1973; 55 FR 33015, Aug. 13, 1990; Order 544, 57 FR 46495, Oct. 9, 1992; Order 544-A, 58 FR 57735, Oct. 27, 1993]

#### **§ 2.57 Temporary certificates—pipeline companies.**

The Federal Power Commission will exercise the emergency powers set forth in the second proviso of section 7(c) of the Natural Gas Act to authorize in appropriate cases, by issuance of temporary certificates, comparatively minor enlargements or extensions of an existing pipeline system. It will not be the policy of the Commission, however, to proceed summarily, i.e., without notice or hearing, in cases where the proposed construction is of major proportions. Pipeline companies are accordingly urged to conduct their planning

and to submit their applications for authority sufficiently early so that compliance with the requirements relating to issuance of permanent certificates of public convenience and necessity (when those requirements are deemed applicable by the Commission) will not cause undue delay in the commencement of necessary construction.

(52 Stat. 824; 56 Stat. 83; 15 U.S.C. 717f)

[Gen. Policy 62-1, 26 FR 10098, Oct. 27, 1961]

**§ 2.60 Facilities and activities during an emergency—accounting treatment of defense-related expenditures.**

The Commission, cognizant of the need of the natural gas industry for advice with respect to the applicability of the Natural Gas Act and the Commission's regulations thereunder regarding activities and operations of natural gas companies taking security measures in preparation for a possible national emergency, sets forth the following interpretation and statement of policy:

(a) *Facilities.* The definition of *auxiliary installations* in § 2.55(a) for which no certificate authority is necessary includes such defense-related facilities as (1) fallout shelters at compressor stations and other operating and maintenance camps; (2) emergency company headquarters or other similar installations; and (3) emergency communication equipment.

(b) The Commission will consider reasonable investment in defense-related facilities, such as those described in paragraph (a) of this section, to be *prudent investment* for ratemaking purposes.

(c) When a person, not otherwise subject to the jurisdiction of the Commission, files an application for a certificate of public convenience and necessity authorizing the construction of facilities to be used solely for operation in a national emergency for the delivery of gas to, or receipt of gas from, a person subject to the Commission's jurisdiction, the Commission will consider a request by such applicant for waiver of the requirement to keep and maintain its accounts in accordance with the Uniform System of Accounts for Natural Gas Companies (parts 201 and 204 of this chapter) or to file the annual reports to the Commission re-

quired by §§ 260.1 and 260.2 of this chapter.

(Secs. 3, 4, 15, 16, 301, 304, 308, and 309 (41 Stat. 1063–1066, 1068, 1072, 1075; 49 Stat. 838, 839, 840, 841, 854–856, 858–859; 82 Stat. 617; 16 U.S.C. 796, 797, 803, 808, 809, 816, 825, 825b, 825c, 825g, 825h, 826i), as amended, secs. 8, 10, and 16 (52 Stat. 825–826, 830; 15 U.S.C. 717g, 717i, 717o))

[Order 274, 28 FR 12866, Dec. 4, 1963, as amended by Order 567, 42 FR 30612, June 16, 1977]

**§ 2.65 Applications for certificates of public convenience and necessity for gas transmission facilities to be installed in the off-shore southern Louisiana area.**

(a) It will be the general policy of the Commission to require that applications for certificates of public convenience and necessity, filed pursuant to section 7(c) of the Natural Gas Act, for the construction and operation of pipeline facilities to be installed in the southern Louisiana offshore area, be filed on or before September 1st of the year immediately preceding the proposed installation. We direct our staff to review these applications on both a joint and individual company basis with a view toward the development of pipeline company gas exchange procedures that will minimize cross-hauls and toward the promotion of joint use arrangements that will assure the early full utilization of large capacity facilities in the Outer-Continental Shelf area. To assist this Commission staff effort, and to aid the Commission's disposition of offshore certificate applications during our formal and statutory hearing procedures, an applicant should include as a part of Exhibit Z to its application, additional information which will:

(1) Detail with appropriate engineering and economic showings the efforts it has made to utilize the existing and proposed offshore facilities owned by other jurisdictional companies to transport Applicant's gas;

(2) Demonstrate that it has consulted with other jurisdictional entities with respect to the possibility of utilizing the proposed facilities to transport gas to onshore installations for such entities;

(3) Utilize 30-inch (or larger if technologically possible) pipe for its offshore main line facilities although upon good

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cause shown Applicant may demonstrate in the alternative, the feasibility of a smaller proposed line;

(4) Demonstrate that its proposed facilities will be utilized, either by it individually or jointly with other pipeline companies, at a minimum annual load factor of 60 percent of the annual capacity available by the end of a 12-month period following the installation thereof, unless a waiver is issued.

(b) It is the intention of the Commission to enforce the fourth requirement by permitting offshore pipeline facilities, certificated after the date of this order, to be included in Applicant's cost-of-service in future rate proceedings at an average unit cost predicated upon load factors of not less than 60 percent of the annual capacity available.

(Sec. 7, 52 Stat. 824; 15 U.S.C. 717f)

[Order 363, 33 FR 8593, June 12, 1968]

### **§ 2.67 Calculation of taxes for property of pipeline companies constructed or acquired after January 1, 1970.**

Pursuant to the provisions of section 441(a)(4)(A) of the Tax Reform Act of 1969, 83 Stat. 487, 625, natural gas pipeline companies which have exercised the option provided by that section to change from flow through accounting will be permitted by the Commission, with respect to liberalized depreciation, to employ a normalization method for computing Federal income taxes in their accounts and annual reports with respect to property constructed or acquired after January 1, 1970, to the extent to which such property increases the productive or operational capacity of the utility and is not a replacement of existing capacity. Such normalization will also be permitted for ratemaking purposes. As to balances in Account No. 282 of the Uniform System of Accounts, "Accumulated deferred income taxes—Other property," it will remain the Commission's policy to deduct such balances from the rate base of natural gas pipeline companies in rate proceedings.

(Secs. 3, 4, 5, 8, 9, 10, 15, 16, 301, 304, 308, and 309 (41 Stat. 1063–1066, 1068, 1072, 1075; 49 Stat. 838, 839, 840, 841, 854–856, 858–859; 52 Stat. 822, 823, 825, 826; 76 Stat. 72; 82 Stat. 617; 16 U.S.C. 796, 797, 803, 808, 809, 816, 825, 825b, 825c, 825g, 825h, 826i); as amended, secs. 8, 10, and 16 (52

Stat. 825–826, 830; 15 U.S.C. 717c, 717d, 717g, 717h, 717i, 717o))

[Order 404, 35 FR 7964, May 23, 1970, as amended by Order 567, 42 FR 30612, June 16, 1977]

### **§ 2.69 Guidelines to be followed by natural gas pipeline companies in the planning, locating, clearing and maintenance of rights-of-way and the construction of aboveground facilities.**

(a) In the interest of preserving scenic, historic, wildlife and recreational values, the construction and maintenance of facilities authorized by certificates granted under section 7(c) of the Natural Gas Act should be undertaken in a manner that will minimize adverse effects on these values. Accordingly, the Commission believes that the planning, locating, clearing and maintenance of rights-of-way and the construction of aboveground facilities should, as a general practice, conform to the guidelines set forth below. The National Environmental Policy Act of 1969, Pub. L. 91–190, 83 Stat. 852, title I, section 102 thereof, directs agencies of the Federal Government to utilize a systematic, interdisciplinary approach which will insure integrated use of the natural and social sciences and the environmental design arts in planning and in decision-making which may have an impact on man's environment. Congress has declared as a national policy the critical importance of restoring and maintaining environmental quality and directed that all practicable means be used to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social and economic requirements of present and future generations of Americans. There is increasing need to fit the construction of pipeline facilities into an overall plan for land development and use in Federal, State, and regional land use planning and development. While these guidelines would require greater advance planning and earlier filing of applications than has been the past practice, it is clear that such earlier planning and filing would generally result in minimizing the time delay caused by considering location as part of an overall plan for land development and use. To the extent landowners may have

special interests concerning the planning, locating, clearing and maintenance of rights-of-way and the construction of aboveground facilities on their property, those desires may be taken into account by natural gas companies so long as the result is consistent with local laws relating to land use. These guidelines do not affect an applicant's obligation to comply with the applicable safety regulations of the Department of Transportation, pursuant to the Natural Gas Pipeline Safety Act of 1968.

(1) *Pipeline construction.* (i) In locating proposed facilities, consideration should be given to the utilization, enlargement or extension of existing rights-of-way belonging to either applicant or others, such as pipelines, electric powerlines, highways, and railroads.

(ii) Where practical, rights-of-way should avoid the national historic places listed in the National Register of Historic Places and natural landmarks listed in the National Register of Natural Landmarks maintained by the Secretary of the Interior, and parks, scenic, wildlife, and recreational lands, officially designated by duly constituted public authorities. If rights-of-way must be routed through such historic places, parks, wildlife, or scenic areas, they should be located in areas or placed in a manner so as to be least visible from areas of public view and so far as possible in a manner designed to preserve the character of the area.

(iii) Rights-of-way should avoid heavily timbered areas and steep slopes, where practical.

(iv) Right-of-way clearings should be kept to the minimum necessary width to prevent interference of trees or other vegetation with the construction of proposed transmission facilities.

(v) The method of clearing rights-of-way should take into account matters of soil stability, protection of natural vegetation and the protection of adjacent resources.

(vi) Trees and other vegetation cleared from rights-of-way in areas of public view should be disposed of without undue delay. In all phases of construction, including burning of debris, such measures shall be taken for the

prevention and control of fire and other hazards as are required by applicable law and regulations. Tree stumps which are adjacent to roads and other areas of public view should be cut close to the ground or removed.

(vii) Trees and shrubs which are not cleared should not be unnecessarily damaged during construction.

(viii) Efforts should be made to avoid clearance of rights-of-way to the mineral soil, except in the ditch itself. Where this does occur in scattered areas of the rights-of-way, the surface should be restored and stabilized without undue delay.

(ix) Soil which has been excavated during construction and not used should be evenly filled back onto the cleared area or removed from the site. The soil should be graded to comport with terrain of the adjacent land and vegetation planted and fertilized, where appropriate.

(x) Terraces and other erosion control devices should be constructed where necessary to prevent soil erosion on slopes on which rights-of-way are located.

(xi) Where rights-of-way cross streams and other bodies of water, the banks should be stabilized to prevent erosion. Construction on rights-of-way should be conducted in such manner as to keep to a minimum damage to shorelines, recreational areas and fish and wildlife habitats.

(xii) Replacement of earth adjacent to water crossings should be at slopes equal to or less than the normal angle of response for the soil type involved and sandbagging, seeding, or other methods of soil stabilization should be accomplished without undue delay.

(xiii) Blasting should not be done within or near stream channels without prior consultation with Federal and State conservation authorities having jurisdiction to determine what protective measures should be taken to minimize damage to fish and other aquatic life.

(xiv) Any potholes, marshes or similar water areas drained to facilitate construction should be reestablished to their preconstruction water levels and

flow characteristics following completion of construction, if such reestablishment is consistent with landowner wishes.

(xv) Cofferdam or other diversionary techniques to lay pipe across streams should be used where necessary and practical to permit flow in one part of the stream while construction work is being performed in another part.

(xvi) Care should be taken to avoid oil spills and other types of pollution while work is performed in streams and other bodies of water and in their immediate drainage areas.

(xvii) Water used for pipeline testing taken from streams or other bodies of water should be taken in such manner as to minimize harm to the ecology, fish and wildlife resources, or aesthetic values of the areas. When testing water is released, it should be done in such a manner as not to cause erosion and siltation or damage to the ecology of the area.

(xviii) Excess construction materials and other debris should be removed from the right-of-way or otherwise suitably disposed of.

(xix) In wooded areas long views of cleared rights-of-way, visible from highways and other areas of public view, should be avoided. The rights-of-way alignment of these locations should be deflected before entering and leaving highways and areas of public view where such deflection is consistent with safe and sound engineering practice and accomplishes the desired results.

(xx) Where practical, rights-of-way should not cross hills and other high points at the crests, particularly where such crossing is in forested areas and clearly visible from highways and other areas of public view. When they must do so the alignment should be deflected near the crests where such deflection is consistent with safe and sound engineering practice and accomplishes the desired result of eliminating the notch in the tree line at the crests.

(xxi) Where rights-of-way enter dense timber from a meadow or other clearing and where such entrance is visible from highways and other areas of public view, screen planting should be employed.

(xxii) Temporary roads used for construction should be designed for proper drainage and built in such manner as to minimize soil erosion. Upon abandonment, such roads should be stabilized without undue delay.

(2) *Right-of-way maintenance.* (i) Once a cover of vegetation has been established on a right-of-way, it should be properly maintained.

(ii) Access roads and service roads should be maintained with proper cover, water bars and the proper slope in order to minimize soil erosion. They should be jointly used with other utilities and land management agencies where practical.

(iii) When chemicals are used for weed control, they should be applied at such time and in such manner as to minimize the impact of temporary discoloration of the foliage. Care should be taken to assure that chemicals used to control the growth of tree stumps do not damage the vegetation or add to water or soil pollution.

(iv) During inspection of rights-of-way attention should be given to locate gullies and fallen timber and to observe the condition of the vegetation. The use of aircraft to inspect and maintain rights-of-way should be encouraged.

(3) *Construction of aboveground appurtenant facilities.* (i) The proposed exterior plans and location of compressor stations and other aboveground facilities, including meter and regulator stations and communication towers, should be made appropriately available to local agencies which have jurisdiction.

(ii) Unobstrusive sites should be selected where practical for the location of aboveground facilities.

(iii) Potential noise should be considered when the location for compressor stations is being determined. Such facilities should be located in areas where sound resonance would be minimal; consideration should be given to the use of acoustical treatment as a further means of noise abatement.

(iv) The size of aboveground facilities should be kept to the minimum feasible.

(v) The exterior of compressor stations and other aboveground facilities,

to the extent consistent with the functional needs and economic feasibility of construction of such facilities, should not unduly detract from the surroundings and other buildings in the area.

(vi) In areas adjacent to such above-ground facilities, trees and shrubs should be planted, or other appropriate landscaping installed, in order to enhance the appearance of such facilities, consistent with operating needs.

(vii) Storage tanks should be placed below ground where technology and economics make it feasible.

(viii) Yards and surrounding areas should be kept clean and free of unused or discarded materials.

(ix) The design and operation of aboveground facilities should conform to applicable air and water quality standards.

(Secs. 7(c), 7(e), 52 Stat. 825, 56 Stat. 83, 84; 15 U.S.C. 717(c), 717f(e); Pub. L. 96-511, 94 Stat. 2812 (44 U.S.C. 3501 *et seq.*))

[Order 407, 35 FR 11389, July 16, 1970]

**§ 2.76 Regulatory treatment of payments made in lieu of take-or-pay obligations.**

With respect to payments made to a first seller of natural gas as consideration for waiving or revising any agreement for the first sale of natural gas, as defined by section (2)(21) of the Natural Gas Policy Act (NGPA), the Commission sets forth the following statement of general policy and interpretation of law.

(a) *Payments in consideration.* A first seller of natural gas that receives payments as consideration for amending or waiving the take-or-pay or similar minimum payment provisions of a contract for the first sale of natural gas is not in violation of section 504(a) of the NGPA.

(b) *Recovery in rates.* A pipeline that makes any payments referred to under paragraph (a) of this section, to first sellers may file to recover such costs in any section 4(e) rate filing other than a filing to recover purchased gas costs.

(c) *Case-specific review.* A pipeline's method of recovering these costs and how it should apportion them among customers will be addressed on a case-by-case basis in the context of individual rate case filings.

(d) *Customers' rights.* When a pipeline seeks to recover payments referred to under paragraph (a) of this section, its customers will have the full opportunity contemplated by section 4 of the Natural Gas Act to raise questions as to the prudence of such payments, the apportionment of costs among customers proposed by the filing pipeline, and any other reasonably related matters.

(e) *Certificate amendments and abandonment.* With regard to natural gas the sale of which is subject to the Commission's jurisdiction under the Natural Gas Act, if any payments referred to under paragraph (a) of this section are accompanied by a change in or a termination of, the first seller's contractual obligation to provide natural gas service, the Commission will, as a general policy under sections 7(c) and 7(b) of the Natural Gas Act, expeditiously grant any certificate amendments or abandonment authorizations, required to effectuate such contractual or service modifications.

In cases where a producer abandonment application is based on payments made pursuant to this policy statement, the interstate pipeline making the payments will be deemed to have waived any right to oppose the abandonment.

[50 FR 16080, Apr. 24, 1985, as amended by Order 436, 50 FR 42487, Oct. 18, 1985]

**§ 2.78 Utilization and conservation of natural resources—natural gas.**

(a)(1) The national interests in the development and utilization of natural gas resources throughout the United States will be served by recognition and implementation of the following priority-of-service categories for use during periods of curtailed deliveries by jurisdictional pipeline companies:

(i) Residential, small commercial (less than 50 Mcf on a peak day).

(ii) Large commercial requirements (50 Mcf or more on a peak day), firm industrial requirements for plant protection, feedstock and process needs, and pipeline customer storage injection requirements.

(iii) All industrial requirements not specified in paragraph (a)(1)(ii), (iv), (v), (vi), (vii), (viii), or (ix) of this section.

(iv) Firm industrial requirements for boiler fuel use at less than 3,000 Mcf per day, but more than 1,500 Mcf per day, where alternate fuel capabilities can meet such requirements.

(v) Firm industrial requirements for large volume (3,000 Mcf or more per day) boiler fuel use where alternate fuel capabilities can meet such requirements.

(vi) Interruptible requirements of more than 300 Mcf per day, but less than 1,500 Mcf per day, where alternate fuel capabilities can meet such requirements.

(vii) Interruptible requirements of intermediate volumes (from 1,500 Mcf per day through 3,000 Mcf per day), where alternate fuel capabilities can meet such requirements.

(viii) Interruptible requirements of more than 3,000 Mcf per day, but less than 10,000 Mcf per day, where alternate fuel capabilities can meet such requirements.

(ix) Interruptible requirements of more than 10,000 Mcf per day, where alternate fuel capabilities can meet such requirements.

(2) The priorities-of-deliveries set forth above will be applied to the deliveries of all jurisdictional pipeline companies during periods of curtailment on each company's system; except, however, that, upon a finding of extraordinary circumstances after hearing initiated by a petition filed under § 385.207 of this chapter, exceptions to those priorities may be permitted.

(3) The above list of priorities requires the full curtailment of the lower priority category volumes to be accomplished before curtailment of any higher priority volumes is commenced. Additionally, the above list requires both the direct and indirect customers of the pipeline that use gas for similar purposes to be placed in the same category of priority.

(4) The tariffs filed with this Commission should contain provisions that will reflect sufficient flexibility to permit pipeline companies to respond to emergency situations (including environmental emergencies) during periods of curtailment where supplemental deliveries are required to forestall irreparable injury to life or property.

(b) Request for relief from curtailment shall be filed under § 385.1501 of this chapter. Those petitions shall use the priorities set forth in (paragraph (a)(1) of this section) above, the definitions contained in paragraph (b)(3) of this section and shall contain the following minimal information:

(1) The specific amount of natural gas deliveries requested on peak day and monthly basis, and the type of contract under which the deliveries would be made.

(2) The estimated duration of the relief requested.

(3) A breakdown of all natural gas requirements on peak day and monthly bases at the plantsite by specific end-uses.

(4) The specific end-uses to which the natural gas requested will be utilized and should also reflect the scheduling within each particular end-use with and without the relief requested.

(5) The estimated peak day and monthly volumes of natural gas which would be available with and without the relief requested from all sources of supply for the period specified in the request.

(6) A description of existing alternate fuel capabilities on peak day and monthly bases broken down by end-uses as shown in paragraph (b)(3) of this section.

(7) For the alternate fuels shown in paragraph (b)(5) of this section, provide a description of the existing storage facilities and the amount of present fuel inventory, names and addresses of existing alternate fuel suppliers, and anticipated delivery schedules for the period for which relief is sought.

(8) The current price per million Btu for natural gas supplies and alternate fuels supplies.

(9) A description of efforts to secure natural gas and alternate fuels, including documentation of contacts with the Federal Energy Office and any state or local fuel allocation agencies or public utility commission.

(10) A description of all fuel conservation activities undertaken in the facility for which relief is sought.

(11) If petitioner is a local natural gas distributor, a description of the

currently effective curtailment program and details regarding any flexibility which may be available by effectuating additional curtailment to its existing industrial customers. The distributor should also provide a breakdown of the estimated disposition of its natural gas estimated to be available by end-use priorities established in paragraph (a)(1) of this section for the period for which relief is sought.

(c) When used in paragraphs (a) and (b) of this section, the following terms will be defined as follows:

(1) *Residential*. Service to customers which consists of direct natural gas usage in a residential dwelling for space heating, air conditioning, cooking, water heating, and other residential uses.

(2) *Commercial*. Service to customers engaged primarily in the sale of goods or services including institutions and local, state, and federal government agencies for uses other than those involving manufacturing or electric power generation.

(3) *Industrial*. Service to customers engaged primarily in a process which creates or changes raw or unfinished materials into another form or product including the generation of electric power.

(4) *Firm service*. Service from schedules or contracts under which seller is expressly obligated to deliver specific volumes within a given time period and which anticipates no interruptions, but which may permit unexpected interruption in case the supply to higher priority customers is threatened.

(5) *Interruptible service*. Service from schedules or contracts under which seller is not expressly obligated to deliver specific volumes within a given time period, and which anticipates and permits interruption on short notice, or service under schedules or contracts which expressly or impliedly require installation of alternate fuel capability.

(6) *Plant protection gas*. Is defined as minimum volumes required to prevent physical harm to the plant facilities or danger to plant personnel when such protection cannot be afforded through the use of an alternate fuel. This includes the protection of such material in process as would otherwise be de-

stroyed, but shall not include deliveries required to maintain plant production. For the purposes of this definition propane and other gaseous fuels shall not be considered alternate fuels.

(7) *Feedstock gas*. Is defined as natural gas used as raw material for its chemical properties in creating an end product.

(8) *Process gas*. Is defined as gas use for which alternate fuels are not technically feasible such as in applications requiring precise temperature controls and precise flame characteristics. For the purposes of this definition propane and other gaseous fuels shall not be considered alternate fuels.

(9) *Boiler fuel*. Is considered to be natural gas used as a fuel for the generation of steam or electricity, including the utilization of gas turbines for the generation of electricity.

(10) *Alternate fuel capabilities*. Is defined as a situation where an alternate fuel could have been utilized whether or not the facilities for such use have actually been installed; *Provided, however*, Where the use of natural gas is for plant protection, feedstock, or process uses and the only alternate fuel is propane or other gaseous fuel then the consumer will be treated as if he had no alternate fuel capability.

(Sec. 4, 52 Stat. 822, 76 Stat. 72 (15 U.S.C. 717c); Sec. 5, 52 Stat. 823 (15 U.S.C. 717d); Sec. 7, 52 Stat. 824, 825, 56 Stat. 83, 84, 61 Stat. 459 (15 U.S.C. 717f); Sec. 10, 52 Stat. 826 (15 U.S.C. 717i); Sec. 14, 52 Stat. 820 (15 U.S.C. 717m); Sec. 15, 52 Stat. 829 (15 U.S.C. 717n); Sec. 16, 52 Stat. 930 (15 U.S.C. 717o); Pub. L. 96-511, 94 Stat. 2812 (44 U.S.C. 3501 *et seq.*))

[Order 467A, 38 FR 2171, Jan. 22, 1973, as amended by Order 467B, 38 FR 6386, Mar. 9, 1973; Order 493-A, 38 FR 30433, Nov. 5, 1973; Order 467-C, 39 FR 12984, Apr. 10, 1974; Order 225, 47 FR 19055, May 3, 1982]

STATEMENT OF GENERAL POLICY TO IMPLEMENT PROCEDURES FOR COMPLIANCE WITH THE NATIONAL ENVIRONMENTAL POLICY ACT OF 1969

AUTHORITY: Sections 2.80-2.82 issued under secs. 4, 10, 15, 307, 309, 311 and 312 (41 Stat. 1065, 1066, 1068, 1070; 46 Stat. 798, 49 Stat. 839, 840, 841, 942, 843, 844, 856, 857, 858, 859, 860, Stat. 501, 82 Stat. 617; 16 U.S.C. 797, 803, 808, 825f, 825h, 825j, 825k), and the Natural Gas Act, particularly secs. 7 and 16 (52 Stat. 824, 825, 830, 56 Stat. 83, 84; 61 Stat. 459; 15 U.S.C. 717f, 717o), and the National Environmental

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Policy Act of 1969, Pub. L. 91-190, approved January 1, 1970, particularly secs. 102 and 103 (83 Stat. 853, 854), unless otherwise noted.

### § 2.80 Detailed environmental statement.

(a) It will be the general policy of the Federal Energy Regulatory Commission to adopt and to adhere to the objectives and aims of the National Environmental Policy Act of 1969 (NEPA) in its regulations promulgated for statutes under the jurisdiction of the Commission, including the Federal Power Act, the Natural Gas Act and the Natural Gas Policy Act. The National Environmental Policy Act of 1969 requires, among other things, all Federal agencies to include a detailed environmental statement in every recommendation or report on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment.

(b) Therefore, in compliance with the National Environmental Policy Act of 1969, the Commission staff will make a detailed environmental statement when the regulatory action taken by the Commission under the statutes under the jurisdiction of the Commission will have a significant environmental impact. The specific regulations implementing NEPA are contained in part 380 of the Commission's regulations.

[Order 486, 52 FR 47910, Dec. 17, 1987]

STATEMENT OF GENERAL POLICY TO IMPLEMENT THE ECONOMIC STABILIZATION ACT OF 1970, AS AMENDED, AND EXECUTIVE ORDERS 11615 AND 11627

AUTHORITY: Sections 2.90 through 2.102 issued under 84 Stat. 799, as amended, 85 Stat. 38, unless otherwise noted.

### §§ 2.100—2.101 [Reserved]

### § 2.102 Policy respecting production-related activities performed by an interstate pipeline.

(a) *Policy.* (1) If an interstate pipeline purchases natural gas in a first sale, then in any proceeding brought under the Natural Gas Act to determine the lawfulness of the rates and charges of such pipeline, a production-related service provided by the pipeline with respect to the purchase of such gas, or

by another on behalf of the pipeline, shall be deemed prudent, unless the terms of the gas sales contract governing the pipeline's purchase of the gas expressly provide that the seller perform the activity.

(2) Any production-related service not deemed prudent under paragraph (a)(1) of this section, and the level of costs to perform any production-related service, is not deemed imprudent. The prudence of such service, or of the level of costs, is to be determined in an appropriate pipeline rate or certificate proceeding brought under the Natural Gas Act.

(b) *Definitions.* For purposes of this section the following definitions apply:

(1) The terms *first sale* and *interstate pipeline* have the same meaning as such terms have under the NGPA.

(2) The term *production-related service* has the same meaning as that term has under § 271.1104(c)(6) of this part.

[Order 94-A, 48 FR 5177, Feb. 3, 1983]

### § 2.103 Statement of policy respecting take or pay provisions in gas purchase contracts.

(a) Recognizing that take or pay contract obligations may be shielding the prices of deregulated and other higher cost gas from market constraints, the Commission sets forth its general policy regarding prepayments for natural gas pursuant to take or pay provisions in gas contracts and amendments thereto between producers and interstate pipelines which become effective December 23, 1982. The provisions of this policy statement do not establish a binding norm but instead provide general guidance. In particular cases, both the underlying validity of the policy and its application to particular facts may be challenged and are subject to further consideration.

(b) With respect to gas purchase contracts entered into on or after December 23, 1982, the Commission intends to apply a rebuttable presumption in general rate cases that prepayments to producers will not be given rate base treatment if the prepayments are made pursuant to take or pay requirements in such gas purchase contracts or amendments which exceed 75 percent of annual deliverability.

(Natural Gas Act, 15 U.S.C. 717-717w; Natural Gas Policy Act of 1978, Pub. L. No. 95-621, 92 Stat. 3350, 15 U.S.C. 3301-3432)

[47 FR 57269, Dec. 23, 1982]

**§ 2.104 Mechanisms for passthrough of pipeline take-or-pay buyout and buydown costs.**

(a) *General Policy.* The Commission as a matter of policy will provide two distinct mechanisms for passthrough of take-or-pay buyout and buydown costs of interstate natural gas pipelines. The first is pursuant to existing Commission policy and practice. Under this method, pipelines may pass through prudently incurred take-or-pay buyout and buydown costs in their sales commodity rates. The second method is available to pipelines which agree to an equitable sharing of take-or-pay costs and which transport under part 284 of this chapter. Qualifying pipelines may utilize the alternative passthrough mechanisms described in this section. Where a pipeline agrees to absorb from 25 to 50 percent of take-or-pay buyout and buydown costs, the Commission will permit the pipeline to recover through a fixed charge an amount equal to (but not greater than) the amount absorbed. Any remaining costs up to 50 percent of total buyout and buydown costs may be recovered either through a commodity rate surcharge or a volumetric surcharge on total throughput.

(b) *Cost allocation procedures.* A pipeline's volume-based surcharges must be based on the volumes which underlie its most recent Commission-approved rates. Fixed charges must be based on each customer's cumulative deficiency in purchases in recent years (during which the current take-or-pay liabilities of the pipelines were incurred) measured in relation to that customer's purchases during a representative period during which take-or-pay liabilities were not incurred. The allocation formula employed must incorporate the following guidelines:

(1) A representative base period must be selected. The base period must reflect a representative level of purchases by the pipeline's firm customers during a period preceding the onset of changed conditions which resulted in

reduced purchases and growth of the take-or-pay problem.

(2) Firm purchases by each customer during the base year under firm rate schedules or contracts for firm service must be determined.

(3) Firm sales purchase deficiency volumes for each subsequent year must be determined.

(4) A fixed charge based on each customer's cumulative deficiencies as compared to total cumulative deficiencies must be derived. The filing pipeline will be free to select for rate calculation and filing purposes a reasonable amortization period for buyout and buydown costs being recovered through fixed charges or volumetric surcharges. The pipeline will be entitled to interest at the rate set forth in part 154 of this chapter on unamortized amounts.

(c) *Implementing procedures.* (1) Pipelines acting pursuant to this section may submit on or before December 31, 1990, a non-PGA rate filing under section 4(e) of the Natural Gas Act. Pipelines may include in their filings a fixed charge and a volumetric surcharge to recover buyout and buydown costs actually paid as of the date of filing plus similar costs which are known and measurable within the following nine months. Detailed support for the amounts claimed and for the calculation of customer surcharges must be provided. In addition, the pipeline must disclose and describe all consideration, both cash and noncash, given to producers in exchange for take-or-pay relief.

(2) In any filings made under this section, pipelines must include proposals for periodic (preferably annual) adjustments to customer surcharges, together with any necessary accounting procedures, designed to assure that revenues recovered by the pipeline remain in balance with buyout and buydown costs covered by the filing and actually incurred by the pipeline.

(d) *Prudence.* (1) The Commission will examine the issue of prudence if it is raised by a party in an individual proceeding. If it is raised, the pipeline will be required to demonstrate the prudence of take-or-pay buyout and

buydown costs which it seeks to recover from its customers through both fixed and volume-based charges.

(2) The Commission intends to exercise its authority to the full extent permitted by the Natural Gas Act to approve take-or-pay settlements. The Commission intends to approve uncontested take-or-pay settlements which are consistent with this section and found to be in the public interest. The Commission will also, if it appears reasonable and permissible to do so, approve contested settlements as to all consenting parties and initiate separate hearings to establish the rates for opposing parties. Alternatively, the Commission will approve contested settlements on the merits if supported by substantial evidence in the record. In any case where hearings are held as to the prudence of take-or-pay buyout and buydown costs, the Commission will permit the pipeline the opportunity to recover all take-or-pay costs found to be prudent from the contesting parties on a proportional basis, even if the amount allowed is greater than the amounts initially sought to be recovered by the pipeline.

(e) *Flowthrough by downstream pipelines.* Downstream pipelines must flow through approved take-or-pay fixed charges based on the cumulative purchase deficiencies of their customers. Volumetrically-based surcharges must be flowed through on a volumetric basis. Customers of downstream pipelines have the right in connection with either PGA or general rate filings to challenge the purchasing practices of such pipelines. Remedies for purchasing practices found by the Commission to be imprudent will be determined on a case-by-case basis.

(f) *Ongoing proceedings.* Pipeline rate proceedings pending September 15, 1987 may be utilized as a forum for implementing the approved cost recovery mechanisms set forth in this section. Permission will be granted in cases where implementation of this policy in pending proceedings appears feasible, will not result in inordinate delay, or can be expected to result in unnecessary or cumulative rate filings with the Commission. In the event permission is granted, the presiding judge(s) will allow pipelines to supplement

their filings to the extent necessary to assure compliance with the filing and data requirements set forth herein. The presiding judges shall also establish any procedures necessary to protect the rights of all parties. Any rates established pursuant to this section will be permitted to become effective only prospectively upon Commission approval.

(g) *Scope.* This section does not go beyond the Commission's determination in the April 10, 1985, policy statement (Docket No. PL85-1-000) that take-or-pay buyout and buydown costs do not violate the pricing provision of the Natural Gas Policy Act of 1978 (NGPA). It is not intended to affect take-or-pay prepayments made by pipelines and included in account 165 and in their rate bases. Nor does it address the issue of whether take-or-pay prepayments to a producer for gas not taken and which cannot be made up violate the Title I pricing provisions of the NGPA. This policy statement applies only to buyout and buydown costs paid by pipelines that are transporting under part 284 of this chapter, under existing contracts, and is not intended to disturb in any way take-or-pay settlements previously entered into between pipelines and their producer suppliers.

[Order 500, 52 FR 30351, Aug. 14, 1987, as amended at 52 FR 35539, Sept. 22, 1987; Order 500-F, 53 FR 50924, Dec. 19, 1988; 54 FR 52394, Dec. 21, 1989; Order 581, 60 FR 53064, Oct. 11, 1995]

#### § 2.105 Gas supply charges.

An interstate natural gas pipeline that transports under part 284 of this chapter may include in its tariff a charge, not related to facilities, for standing ready to supply gas to sales customers in accordance with the following principles:

(a) The pipeline may not recover take-or-pay or similar charges from suppliers by any other means.

(b) The pipeline must allow its sales customers to nominate levels of service freely within their firm sales entitlements or otherwise employ a mechanism for the renegotiation of levels of service at regular intervals.

(c) The pipeline must announce prior to nominations by the customers a firm price or pricing formula for the

service, and hold that price or pricing formula firm during the interval arranged in paragraph (b) of this section.

(d) By nominating a new level of service lower than its current level, a customer has consented to any abandonment sought by the pipeline commensurate with the difference between the current level of service and the nominated level.

[Order 500, 52 FR 30352, Aug. 14, 1987; 52 FR 35539, Sept. 22, 1987, and 54 FR 52394, Dec. 21, 1989]

#### RULES OF GENERAL APPLICABILITY

#### § 2.201 [Reserved]

#### STATEMENT OF GENERAL POLICY AND INTERPRETATIONS UNDER THE NATURAL GAS POLICY ACT OF 1978

#### § 2.300 Statement of policy concerning allegations of fraud, abuse, or similar grounds under section 601(c) of the NGPA.

Recognizing the potential for an increasing number of intervenor complaints predicated on the fraud, abuse, or similar grounds exception to guaranteed passthrough, the Commission sets forth the elements of a cognizable claim under section 601(c)(2) which it expects to apply in cases in which fraud, abuse, or similar grounds is raised. The provisions of this policy statement do not establish a binding norm but instead provide general guidance. In particular cases, both the underlying validity of the policy and its application to particular facts may be challenged and are subject to further consideration. The procedure prescribed conforms with the NGPA's general guarantee of passthrough by placing the burden of pleading the elements and proving the elements of a case on intervenors who would allege fraud, abuse, or similar grounds as a basis for denying passthrough of gas prices incurred by an interstate pipeline.

(a) In order for the issue of fraud, as that term is used in section 601(c) of the NGPA, to be considered in a proceeding, an intervenor or intervenors must file a complaint alleging that:

(1) The interstate pipeline, any first seller who sells natural gas to the interstate pipeline, or both acting together, have made a fraudulent misrepresentation or concealment; and

(2) Because of that fraudulent misrepresentation or concealment, the amount paid by the interstate pipeline to any first seller of natural gas was higher than it would have been absent the fraudulent conduct.

(b) In order for the issue of abuse, as that term is used in section 601(c) of the NGPA, to be considered in a proceeding, an intervenor or intervenors must file a complaint alleging that:

(1) The interstate pipeline, a first seller who sells to the interstate pipeline, or both acting together, have made a negligent misrepresentation or concealment, or other misrepresentation or concealment in disregard of a duty; and

(2) Because of that negligent misrepresentation or concealment, or other misrepresentation or concealment in disregard of a duty, the amount paid by the interstate pipeline to any first seller of natural gas was higher than it would have been absent the negligent misrepresentation or concealment, or other misrepresentation or concealment made in disregard of a duty.

(c) In order for the issue of similar grounds, as that term is used in section 601(c) of the NGPA, to be considered in a proceeding, an intervenor or intervenors must file a complaint alleging that:

(1) The interstate pipeline, any first seller who sells natural gas to the interstate pipeline, or both acting together, have made an innocent misrepresentation of fact; and

(2) Because of that innocent misrepresentation of facts, the amount paid by the interstate pipeline to any first seller of natural gas was higher than it would have been absent the innocent misrepresentation of fact.

(Natural Gas Policy Act of 1978, Pub. L. 95-621, 92 Stat. 3350, (15 U.S.C. 3301-3432))

[47 FR 6262, Feb. 11, 1982]

Federal Energy Regulatory Commission

§ 2.500

STATEMENT OF INTERPRETATION UNDER  
THE PUBLIC UTILITY REGULATORY  
POLICIES ACT OF 1978

**§2.400 Statement of interpretation of  
waste concerning natural gas as the  
primary energy source for qualify-  
ing small power production facili-  
ties.**

For purposes of deciding whether natural gas may be considered as waste as the primary energy source pursuant to §292.204(b)(1)(i) of this chapter, the Commission will use the criteria described in paragraphs (a), (b) and (c) of this section.

(a) *Category 1.* Except as provided in paragraph (b) of this section, natural gas with a heating value of 300 Btu per standard cubic foot (scf) or below will be considered unmarketable.

(b) *Category 2.* In determining whether natural gas with a heating value above 300 Btu but not more than 800 Btu per scf and natural gas produced in the Moxa Arch area is unmarketable, the Commission will consider the following information:

(1) The percentages of the chemical components of the gas, the wellhead pressure, and the flow rate;

(2) Whether the applicant offered the gas to all potential buyers located within 20 miles of the wellhead under terms and conditions commensurate with those prevailing in the region and that such potential buyers refused to buy the gas; and

(3) A study, which may be submitted by an applicant, that evaluates the economics of upgrading the gas for sale and transporting the gas to a pipeline. The study should include estimates of the revenues which could be derived from the sale of the gas and the fixed and variable costs of upgrading.

(c) *Category 3.* In determining whether natural gas with a heating value above 800 Btu per scf is marketable, the Commission will consider the information included in paragraph (b) of this section and whether:

(1) The gas has actually been flared, vented to the atmosphere, or continuously injected into a non-producing zone for a period of one year, pursuant to legal authority; or

(2) The gas has been certified as waste, *i.e.*, suitable for disposal, by an appropriate state authority.

[Order 471, 52 FR 19310, May 22, 1987]

STATEMENT OF PENALTY REDUCTION/  
WAIVER POLICY TO COMPLY WITH THE  
SMALL BUSINESS REGULATORY EN-  
FORCEMENT FAIRNESS ACT OF 1996

**§2.500 Penalty reduction/waiver pol-  
icy for small entities.**

(a) It is the policy of the Commission that any small entity is eligible to be considered for a reduction or waiver of a civil penalty if it has no history of previous violations, and the violations at issue are not the product of willful or criminal conduct, have not caused loss of life or injury to persons, damage to property or the environment or endangered persons, property or the environment. An eligible small entity will be granted a waiver if it can also demonstrate that it performed timely remedial efforts, made a good faith effort to comply with the law and did not obtain an economic benefit from the violations. An eligible small entity that cannot meet the criteria for waiver of a civil penalty may be eligible for consideration of a reduced penalty. Upon the request of a small entity, the Commission will consider the entity's ability to pay before assessing a civil penalty.

(b) Notwithstanding paragraph (a) of this section, the Commission reserves the right to waive or reduce civil penalties in appropriate individual circumstances where it determines that a waiver or reduction is warranted by the public interest.

[Order 594, 62 FR 15830, Apr. 3, 1997]

APPENDIX C—NATIONWIDE PROCEEDING COMPUTATION OF FEDERAL INCOME TAX ALLOWANCE INDEPENDENT PRODUCERS, PIPELINE AFFILIATES AND PIPELINE PRODUCERS CONTINENTAL U.S.—1972 DATA (DOCKET NO. R-478)

Line No.	Particulars	Sched-ule No.	Line No.	(1)—Total <sup>1</sup>	(2)—Total ex-cluding produc-tion taxes <sup>2</sup>	(3)—Gas only <sup>3</sup>	(4)—Lease separation <sup>3</sup>	(5)—No lease separa-tion <sup>3</sup>	(6)—Total <sup>4</sup>	(7)—Per-centage lease separa-tion gas <sup>5</sup>	(8)—Allocated amount gas <sup>6</sup>	
PRODUCTION, EXPLORATION AND DEVELOPMENT COSTS												
2 ...	Direct and indirect lease costs and expenses.	1-A	01	1,694,893,558	1,694,893,558	57,287,938	\$144,679,567	\$19,763,791	\$221,731,296	90.33	207,740,782	
2 ...	Taxes (except income and produc-tion).	A-1	02	210,335,720	210,335,720	16,507,630	20,431,444	4,360,024	41,299,098	9.33	39,323,337	
4 ...	Production taxes	1-A	03	479,424,297	.....	27,124,210	96,699,673	10,005,599	133,829,482	90.33	124,478,624	
5 ...	Other lease expenses	1-A	04	61,102,433	61,102,433	17,527,077	24,988,900	336,427	42,852,404	90.33	40,435,977	
6 ...	Depletion, depreciation and amorti-zation.	1-A	05	1,716,823,070	1,716,823,070	105,999,777	297,881,312	25,502,048	429,383,137	90.33	400,578,014	
7 ...	Corporate general expense	1-A	06	278,845,909	278,845,909	13,611,337	25,077,796	3,579,728	42,268,861	90.33	39,843,838	
8 ...	Area, district, division and field ex-pense.	1-A	07	261,718,417	26,178,417	7,207,320	21,758,604	2,778,944	31,744,868	90.33	29,640,811	
9 ...	Miscellaneous lease revenues	1-A	09	(12,203,136)	(12,203,136)	(1,348,729)	(2,768,788)	(314,067)	(4,431,584)	90.33	(4,163,842)	
10	Return on production rate base at 15 percent.	1-A	13	2,505,272,672	2,505,272,672	186,055,524	427,939,601	69,857,212	663,852,337	90.33	622,470,578	
11	Exploration and development costs and expenses.	1-A	15	1,673,945,853	1,673,945,853	.....	.....	.....	.....	.....	594,971,262	
12	Return on exploration rate base at 15 percent.	1-A	16	588,558,894	588,558,894	.....	.....	.....	.....	.....	234,604,103	
13	Regulatory commission expense in-cluding return.	1-A	17	6,514,279	6,514,279	.....	.....	.....	.....	.....	6,514,852	
14.	Total computed revenue	.....	.....	9,465,231,966	8,985,807,669	.....	.....	.....	.....	.....	2,336,439,376	
15	(gross income).	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	
16	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	
17.	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	
18	revenue deductions.	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	
19	Direct and indirect lease costs and expenses.	1-A	01	1,694,893,558	1,694,893,558	.....	.....	.....	.....	.....	207,740,872	
20	Taxes (except income and produc-tion).	1-A	02	210,335,720	210,335,720	.....	.....	.....	.....	.....	39,323,377	
21	Production taxes	1-A	03	479,424,297	.....	.....	.....	.....	.....	.....	124,478,624	
22	Other lease expenses	1-A	04	61,102,433	61,102,433	.....	.....	.....	.....	.....	40,435,977	
23	Book depletion	.....	.....	7 (283,121,142)	283,121,242	24,287,986	61,675,828	6,177,596	92,141,410	90.33	86,177,357	
24	Depreciation expense	1-A	05	7 (654,604,447)	654,604,447	30,223,586	94,010,520	7,007,662	131,241,768	90.33	122,150,951	
25	Amortization of capitalized IDC	.....	.....	7 (779,097,382)	779,097,382	51,488,205	142,194,964	12,316,790	205,999,959	90.33	192,249,706	
26	Corporate general expense	1-A	06	278,845,909	278,845,909	.....	.....	.....	.....	.....	39,843,838	

27	Area, district, division and field expense	1-A	07	261,718,417	261,718,417	29,640,811
28	Miscellaneous lease revenues	1-A	09	(12,203,136)	(12,203,136)	(4,163,842)
29	Exploration and development costs and expenses			1,673,945,853	1,673,945,853	594,971,262
30	Regulatory commission expense	4-A	01	6,394,384	6,394,384	6,394,384
31.						
32	Total book expenses			6,371,380,505	5,891,856,209	1,479,243,227
33.						
34	Production net income (line 15 less line 32).			3,093,951,461	3,093,951,460	857,190,149
35.						
36	tax adjustment—add (DEDUCT).					
37	Amortization of capitalized IDC			779,097,282	779,097,382	192,249,706
38	Estimated IDC capitalized in 1972			<sup>8</sup> (1,470,935,857)	(1,470,935,857)	(362,967,445)
39	Interest expense (calculated)			<sup>9</sup> (243,846,540)	(243,846,540)	(60,587,136)
40.						
41	Taxable income			2,158,266,445	2,158,266,445	625,891,274
42.						
43	Federal income tax at 48 percent.			1,992,245,949	1,992,245,949	<sup>10</sup> 577,745,791

<sup>1</sup> Lines 1 thru 15, col. (1). From Notice issued Sept. 12, 1974, app. A, p. 12, col. (d).  
<sup>2</sup> Production taxes have been deleted from col. (1).  
<sup>3</sup> From notice issued Sept. 12, 1974, app. A, p. 12, cols. (g), (h), and (i).  
<sup>4</sup> Col. (3) plus col. (4) plus col. (5).  
<sup>5</sup> Calculated on a modified British thermal unit basis (1.5 to 1).  
<sup>6</sup> Col. (7) times col. (4) plus cols. (3) and (5).  
<sup>7</sup> See composites mailed to all parties on Feb. 13, 1974.  
<sup>8</sup> Calculated, 188.8 percent (A R64-1-2) times \$779,097,382 equals \$1,470,935,857.  
<sup>9</sup> Calculated 0.0146 (interest rate) times \$16,701,817,818 (app. A, schedule 2-A, (d), line 11, p. 13) equals \$243,846,540.  
<sup>10</sup> \$577,745,791 divided by 9,508,369,001 equals 6.08 cents per thousand cubic feet.

[Opinion 749, 41 FR 3092, Jan. 21, 1976]