

## SUBCHAPTER W—REVISED GENERAL RULES

### PART 375—THE COMMISSION

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AUTHORITY: 5 U.S.C. 551–557; 15 U.S.C. 717–717w, 3301–3432; 16 U.S.C. 791–825r, 2601–2645; 42 U.S.C. 7101–7352.

SOURCE: 45 FR 21217, Apr. 1, 1980, unless otherwise noted.

#### Subpart A—General Provisions

##### § 375.101 The Commission.

(a) *Establishment.* The Federal Energy Regulatory Commission is an independent regulatory commission within the Department of Energy established by section 401 of the DOE Act.

(b) *Offices.* The principal office of the Commission is at 825 North Capitol Street, NE., Washington, D.C. 20426. Regional offices are maintained at Atlanta, Ga., Chicago, Ill., Fort Worth, Texas, New York, N.Y., and San Francisco, Calif.

(c) *Hours.* Unless the Chairman otherwise directs, the offices of the Commission are open each day, except Saturdays, Sundays, and Holidays, from 8:30 a.m. to 5:00 p.m.

(d) *Sessions.* The Commission may meet and exercise its powers at any place in the United States. The time and place of meetings of the Commission are announced in advance as provided in § 375.204.

(e) *Quorum.* A quorum for the transaction of business consists of at least three members present.

(f) *Action by Commissioners or representatives.* The Commission may, by one or more of its members or by such agents as it may designate, conduct any hearing, or other inquiry necessary or appropriate to its functions, except that nothing in this paragraph supercedes the provisions of section 556, of Title 5, United States Code relating to Administrative Law Judges.

##### § 375.102 Custody and authentication of Commission records.

(a) *Custody of official records.* (1) The Secretary shall have custody of the Commission's seal, the minutes of all action taken by the Commission, the transcripts, electronic recordings, or minutes of meetings closed to public observation, its rules and regulations, and its administrative orders.

(2) The Executive Director shall have custody of records of the Commission except records designated in paragraph (a)(1) of this section.

(b) *Authentication of Commission action.* All orders and other actions of the Commission shall be authenticated or signed by the Secretary or the Secretary's designee.

##### § 375.103 Official seal.

The Commission hereby prescribes as its official seal, judicial notice of

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which shall be taken pursuant to section 401(e) of the DOE Act, the imprint illustrated below and described as follows:

A circle, the outside border of which shall consist of two concentric circles enclosing the words "Department of Energy" and "Federal Energy Regulatory Commission." Within the inner circle shall appear a stylized eagle with head facing to its right. Its body shall be in the shape of a tapered shield, widest at the top, consisting of nine vertical stripes. The top of the shield contains five equally-spaced light color stars representing the five members of the Commission appointed by the President under Title IV of the DOE Act. Identical stylized wings appear on either side of the shield, each incorporating twenty stylized feathers protruding from a solid color wing-like shape. Below the eagle shall appear five squares, arranged in a horizontal line. Each of these squares shall contain a circle representing an area of the Commission's responsibility. The first square at the left of the line shall include a stylized representation of a pipeline; the second square shall represent a hydroelectric power facility; the third, and center square, shall represent a natural gas flame; the fourth square shall represent a drilling rig; the fifth square shall represent a stylized lightning bolt.



### § 375.104 Transfer of proceedings from other agencies to the Commission.

(a) *Transfer of pending proceedings.* Pursuant to the authorization provided in section 705(b)(2), and the provisions of section 705(b)(1) of the DOE Act, all proceedings and applications pending at the time such Act took effect, before any department, agency, commission, or component thereof, the functions of which have been transferred to the

Commission by the Act, have been transferred in accordance with the joint regulations issued by the Commission and the Secretary of Energy on October 1, 1977. Those joint regulations appear as an appendix to this section.

(b) *Substitution of Commission for other agencies in court proceedings.* Pursuant to section 705(e) of the DOE Act, the Commission authorizes the Solicitor of the Commission to file the appropriate pleadings to substitute the Commission for the Interstate Commerce Commission or the Federal Power Commission as necessary in any pending court litigation, responsibility for which is transferred to the Commission.

#### APPENDIX TO § 375.104

#### PART 1000—TRANSFER OF PROCEEDINGS TO THE SECRETARY OF ENERGY AND THE FEDERAL ENERGY REGULATORY COMMISSION

##### § 1000.1 TRANSFER OF PROCEEDINGS.

(a) *Scope.* This part establishes the transfer of proceedings pending with regard to those functions of various agencies which have been consolidated in the Department of Energy and identifies those proceedings which are transferred into the jurisdiction of the Secretary and those which are transferred into the jurisdiction of the Federal Energy Regulatory Commission.

(b) *Proceedings transferred to the Secretary.* The following proceedings are transferred to the Secretary:

- (1) All Notices of Proposed Rulemaking, pending and outstanding, which have been proposed by the Department of Energy;
- (2) All Notices of Inquiry which have been issued by the Department of Energy;
- (3) All Requests for Interpretations which have been filed pursuant to 10 CFR part 205, subpart F, and on which no interpretation has been issued, with the Office of General Counsel of the Department of Energy;
- (4) All Applications for Exception Relief which have been filed pursuant to 10 CFR part 205, subpart D, and on which no final decision and order has been issued, with the Office of Exceptions and Appeals of the Department of Energy;
- (5) All petitions for special redress, relief or other extraordinary assistance which have been filed pursuant to 10 CFR part 205, subpart R, and on which no order has been issued, with the Office of Private Grievances and Redress of the Department of Energy;
- (6) All appeals from Remedial Orders, Exception Decisions and Orders, Interpretations issued by the Office of General Counsel, and other agency orders which have been filed pursuant to 10 CFR part 205, subpart H, and on which no order has been issued prior

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to October 1, 1977, with the Office of Exceptions and Appeals of the Department of Energy;

(7) All applications for modification or rescission of any DOE order or interpretation which have been filed pursuant to 10 CFR part 205, subpart J, and on which no order has been issued prior to October 1, 1977, with the Office of Exceptions and Appeals of the Federal Energy Administration;

NOTE: For a document relating to procedures for natural gas import and export proceedings see 42 FR 61856, Dec. 7, 1977.

(8) All applications for temporary stays and stays which have been filed pursuant to 10 CFR part 205, subpart I, and on which no order has been issued, with the Office of Exceptions and Appeals of the Department of Energy;

(9) All applications which have been filed with the Office of Regulatory Programs of the Department of Energy and on which no final order has been issued;

(10) All investigations which have been instituted and have not been resolved by the Office of Compliance of the Department of Energy;

(11) All Notices of Probable Violation which have been issued prior to October 1, 1977, by the Office of Compliance of Department of Energy;

(12) All Notices of Proposed Disallowance which have been issued prior to October 1, 1977, by the Office of Compliance of Department of Energy;

(13) All Prohibition Orders which have been issued pursuant to 10 CFR part 303 and as to which no Notice of Effectiveness has been issued;

(14) From the Department of the Interior:  
(i) The tentative power rate adjustments for the Central Valley Project, California, proposed on September 12, 1977 (42 FR 46619, September 16, 1977).

(15) From the Interstate Commerce Commission:

(i) Ex Parte No. 308 (Sub-No. 1)—Investigation of Common Carrier Pipelines.

(16) From the Federal Power Commission:

(i) Cases:  
(A) Northwest Pipeline Corporation, Docket No. CP75-340.

(B) Midwestern Gas Transmission Co., Docket No. CP77-458, *et al.*

(C) St. Lawrence Gas Company, Docket No. G-17500.

(D) U.S.D.I. Bonneville Power Administration, Docket No. E-9563.

(E) U.S.D.I. Southwestern Power Administration, Docket No. E-7201.

(F) U.S.D.I. Southeastern Power Administration, Docket No. E-6957.

(G) Tenneco InterAmerica, Inc., Docket No. CP77-561.

(ii) Applications:

(A) Maine Public Service Co., Docket No. E-6751, (ERA Docket No. IE-78-1).

(B) Northern States Power Co., Docket No. E-9589, (ERA Docket No. IE-78-2).

(C) Arizona Public Service Co., Docket No. IT-5331, (ERA Docket No. IE-78-3).

(D) Niagara Mohawk Power Corp., Docket No. E-7022, (ERA Docket No. IE-77-6).

(E) Maine Public Service Co., Docket No. IT-6027, (ERA Docket No. PP-12).

(F) Boise Cascade, Docket No. E-7765, (ERA Docket No. PP-52).

(G) Bonneville Power Administration, Docket No. IT-5959, (ERA Docket No. PP-10).

(H) EPR—Oregon (Geothermal Steam Leases).

(I) EPR—Utah (Geothermal Steam Leases).

(J) EPR—Idaho (Geothermal Steam Leases).

(K) EPR—Oregon (Geothermal Steam Leases).

(L) EPR—Idaho (Geothermal Steam Leases).

(iii) Rulemakings:

(A) Implementation of sections 382(b) and 382(c) of the Energy Policy and Conservation Act of 1971. Docket No. RM77-3.

(B) New Form Nos:

151, Docket No. RM76-19.

153, Docket No. RM76-27.

154, Docket No. RM36-33.

156, Docket No. RM76-32.

157, Docket No. RM76-21.

158, Docket No. RM76-31.

159, Docket No. RM76-23.

160, Docket No. RM76-20.

161, Docket No. RM76-26.

162, Docket No. RM76-34.

155, Docket No. RM76-28.

163, Docket No. RM76-30.

164, Docket No. RM76-25.

(C) Procedures for the Filing of Federal Rate Schedules Docket No. RM77-9.

(iv) Project withdrawals and power site revocations:

(A) Project 1021, 1226, 1606, and 1772—(Wyoming)—U.S. Forest Service (Applicant).

(B) Project Nos. 1021, 1226, 1606, and 1772—(Wyoming)—U.S. Forest Service (Applicant).

(C) Project Nos. 220 and 691—(Wyoming)—Cliff Gold Mining Co. (Applicant for P-691) The Colowyo Gold Mining Co. (Applicant for P-220).

(D) Project No. 1203—(Wyoming)—F. D. Foster (Applicant).

(E) Project No. 1241—(Wyoming)—F. B. Hommel (Applicant).

(F) Project No. 847—(Oregon)—H. L. Vorse (Applicant).

(G) Project No. 907—(Colorado)—S. B. Collins (Applicant).

(H) Project No. 941—(Colorado)—Marian Mining Company (Applicant).

(I) Project Nos. 347 and 418—(Colorado)—Jones Brothers (Applicant for P-347) Frank Gay et al. (Applicant for P-418).

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(J) Project Nos. 373, 521, 937, 1024, 1415, 1546, 1547, and 1025—( )—U.S. Forest (Applicant).

(K) Project No. 163—(Colorado)—James F. Meyser and Edward E. Drach (Applicants).

(L) Project Nos. 385, 445, 506, 519, 1220, 1296, 1418, 1519, 1576, 1615, 1616, 1618, 1678, 1682, and 1750—(Colorado)—U.S. Forest Service (Applicant).

(M) DA-117—(Alaska)—Bureau of Land Management (Applicant).

(N) Project No. 114—(Alaska)—Elizabeth H. Graff et al. (Applicant).

(O) DA-222—(Washington)—Bureau of Land Management (Applicant).

(P) DA-562—(Oregon)—U.S. Geological Survey (Applicant).

(Q) DA-601—(Idaho)—Bureau of Land Management (Applicant).

(R) DA-509—(Colorado)—Fed. Highway Admin. (Applicant).

(S) DA-616—(Idaho)—U.S. Forest Service (Applicant).

(T) DA-1—(South Carolina)—U.S. Forest Service (Applicant).

(U) DA-1116—(California)—U.S. Geological Survey (Applicant).

(V) DA-154—(Arizona)—U.S. Geological Survey (Applicant).

(W) DA-1098—(California)—Merced Irrigation District (Applicant).

(c) *Proceedings transferred to the Commission.* There are hereby transferred to the jurisdiction of the Federal Energy Regulatory Commission the following proceedings:

(1) From the Interstate Commerce Commission:

(i) Ex Parte No. 308—Valuation of Common Carrier Pipelines.

(ii) I&S 9164—Trans Alaska Pipeline System—Rate Filings (including I&S 9164 (Sub-No. 1), NOR 36611, NOR 36611 (Sub-No. 1), NOR 36611 (Sub-No. 2), NOR 36611 (Sub-No. 3), NOR 36611 (Sub-No. 4)).

(iii) I&S 9089—General Increase, December 1975, Williams Pipeline Company.

(iv) I&S 9128—Anhydrous Ammonia, Gulf Central Pipeline Company.

(v) NOR 35533 (Sub-No. 3)—Petroleum Products, Southwest & Midwest Williams Pipeline.

(vi) NOR 35794—Northville Dock Pipeline Corp. et al.

(vii) NOR 35895—Inexco Oil Company v. Belle Fourche Pipeline Co. et al.

(viii) NOR 36217—Department of Defense v. Interstate Storage & Pipeline Corp.

(ix) NOR 36423—Petroleum Products Southwest to Midwest Points.

(x) NOR 36520—Williams Pipeline Company—Petroleum Products Midwest.

(xi) NOR 36553—Kerr-McGee Refining Corporation v. Texoma Pipeline Co.

(xii) Suspension Docket 67124—Williams Pipeline Co.—General Increase.

(xiii) Valuation Docket 1423—Williams Pipeline Company (1971-1974 inclusive).

(2) To remain with the Commission until forwarding to the Secretary:

The following proceedings will continue in effect under the jurisdiction of the Commission until the timely filing of all briefs on and opposing exceptions to the initial decision of the presiding Administrative Law Judge, at which time the Commission shall forward the record of the proceeding to the Secretary for decision on those matters within his jurisdiction:

(i) *El Paso Eastern Co., et al.*, Docket No. CP 77-330, *et al.*

(ii) *Tenneco Atlantic Pipeline Co., et al.*, Docket No. CP 77-100, *et al.*

(iii) *Distrigas of Massachusetts Corp., et al.*, Docket No. CP 70-196, *et al.*

(iv) *Distrigas of Massachusetts Corp., et al.*, Docket No. CP 77-216, *et al.*

(v) *Eascogas LNG, Inc., et al.*, Docket No. CP 73-47, *et al.*

(vi) *Pacific Indonesia LNG Co., et al.*, Docket No. CP74-160, *et al.*, (except as provided in paragraph (c)(3) of this section).

(3) The Amendment to Application of Western LNG Terminal Associates, filed on November 11, 1977, in *Pacific Indonesia LNG Co., et al.*, FPC Docket No. CP74-160, *et al.*, ERA Docket No. 77-001-LNG, is transferred to the jurisdiction of the Commission until timely filing of all briefs on and opposing exceptions to the Initial Decision of the presiding Administrative Law Judge on that Amendment, at which time the Commission shall forward a copy of the record of that proceeding to the Secretary of Energy for decision on those matters within his jurisdiction. (If the Commission waives the preparation of an initial decision, the Commission will forward a copy of the record after completion of the hearing, or after the timely filing of any briefs submitted to the Commission, whichever occurs later.)

(d) *Residual clause.* All proceedings (other than proceedings described in paragraphs (b) and (c) of this section) pending with regard to any function of the Department of Energy, the Department of Energy, Department of the Interior, the Department of Commerce, the Department of Housing and Urban Development, the Department of Navy, and the Naval Reactor and Military Applications Programs which is transferred to the Department of Energy (DOE) by the DOE Organization Act, will be conducted by the Secretary. All proceedings (other than proceedings described in paragraphs (b) and (c) of this section) before the Federal Power Commission or Interstate Commerce Commission will be conducted by the Federal Energy Regulatory Commission.

(Department of Energy Organization Act, Pub. L. 95-91; EO 12009, 42 FR 46267)

[42 FR 55534, Oct. 17, 1977, as amended at 43 FR 21434, May 18, 1978; 43 FR 21658, May 19, 1978]

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### § 375.105 Filings.

(a) *Filings in pending proceedings.* All filings in proceedings referred to in § 375.104 shall be made with the Secretary.

(b) *Filings in connection with functions transferred to the Commission.* All persons required to file periodic or other reports with any agency or commission whose functions are transferred under such Act to the Commission shall file such reports which relate to those transferred functions with the Secretary. The Commission hereby continues in effect all previously-approved forms for making periodic or other reports.

(c) *Where to make filings.* All filings of documents with the Commission shall be made with the Secretary. The address for filings to be made with the Secretary is: Secretary, Federal Energy Regulatory Commission, 825 N. Capitol St., NE., Washington, DC 20426. Where a document to be filed with the Secretary is hand-delivered, it shall be submitted to room 3110, 825 North Capitol Street, NE., Washington, DC 20426. Documents received after regular business hours are deemed to have been filed on the next regular business day.

## Subpart B—Procedures Under the Government in the Sunshine Act

### § 375.201 Purpose.

The purpose of this subpart is to set forth the Commission procedures for conduct of its official business in accordance with the provisions of 5 U.S.C. 552b. The Commission may waive the provisions set forth in this subpart to the extent authorized by law.

### § 375.202 Definitions and limitations on definitions.

(a) *Definitions.* For purposes of this subpart:

(1) *Meeting* means the deliberations of at least a quorum of the Commission where such deliberations determine or result in the joint conduct of official Commission business, except that such term does not include deliberations to determine whether to conduct a closed meeting.

(2) *Portion of a meeting* means the consideration during a meeting of a particular topic or item separately identified in the notice of Commission meeting described in § 375.204.

(3) *Open* when used in the context of a Commission meeting or a portion thereof, means the public may attend and observe the deliberations of the Commission during such meeting or portion of a meeting consistent with the provisions of § 375.203.

(4) *Closed* when used in the context of a Commission meeting or a portion thereof, means that the public may not attend or observe the deliberations of the Commission during such meeting or portion of such meeting.

(b) *Limitations on other definitions in this chapter.* For purposes of this subpart:

(1) Transcripts, minutes and electronic recordings of Commission meetings (whether or not prepared at the direction of the Commission) are not part of the “formal record” as defined in § 388.101(c) of this chapter; and

(2) Transcripts, minutes and electronic recordings of Commission meetings (whether or not prepared at the direction of the Commission) are not part of the “public record” of the Commission as defined in § 388.105(b) of this chapter.

[45 FR 21217, Apr. 1, 1980, as amended by Order 225, 47 FR 19058, May 3, 1982]

### § 375.203 Open meetings.

(a) *General rule.* Except as provided in § 375.206, meetings of the Commission will be open meetings.

(b) *Public participation in open meetings.* (1) Members of the public are invited to listen and observe at open meetings.

(2)(i) Subject to the provisions of paragraphs (b)(2) (ii), (iii), and (iv) of this section, members of the public may record discussions at Commission meetings by means of electronic or other devices (including tape recorders, stenotype, stenomask, or shorthand). The photographing of Commission meetings by still or movie camera, or by video taping without lighting aids, is permitted.

(ii) Due to the limited space of the Commission meeting room, use of recording or photographic equipment

which would require the user to move about the room during the meeting is not allowed. Recording and photographic equipment may be set up and used only in the public areas of the Commission meeting room as designated by the Commission.

(iii) Except for portable equipment which is used at an individual's seat in the audience, equipment must be in place and ready to use prior to the start of the meeting or set up during a recess of the meeting. Such equipment may be removed only at the conclusion of the meeting or during a recess. A pre-arranged recess for the set up or removal of equipment may be requested through the Commission's Director of the Division of Public Information.

(iv) No microphones may be placed on the tables used by the Commissioners and Staff.

(c) *Physical arrangements.* The Secretary shall be responsible for seeing that ample space, sufficient visibility, and adequate acoustics are provided for public observation of open meetings.

#### § 375.204 Notice of meetings.

(a) *Public announcements of meetings—*  
(1) *General rule.* Except to the extent that information described in § 375.205(a) (involving closed meetings) is exempt from disclosure, the Secretary shall announce at least one week before each Commission meeting, the time, place, and subject matter of the meeting, whether it is an open meeting or closed meeting, and the name and telephone number of the official designated by the Commission to respond to requests for information about the meeting.

(2) *Abbreviated notice.* If the Commission determines by a majority of its members by a recorded vote that Commission business requires that a Commission meeting be called with less than one week's notice as prescribed in paragraph (a)(1) of this section, the Secretary shall make public announcements of the time, place, and subject matter of such meeting and whether open or closed to the public, at the earliest practicable time.

(3) *Change in the time or place.* If there is a change in time or place of a meeting following the public announcement prescribed in paragraph (a)(1) or (2) of

this section the Secretary shall publicly announce such change at the earliest practicable time.

(4) *Change in the subject matter or the determination to open or close a meeting.* The subject matter of a meeting, or the determination of the Commission to open or close a meeting or a portion of a meeting, may be changed following the public announcement prescribed in paragraph (a) (1) or (2) of this section only if:

(i) The Commission determines by a recorded vote by a majority of the membership that Commission business so requires and that no earlier announcement of the change is possible; and

(ii) The Secretary publicly announces such change and the vote of each member upon such change at the earliest practicable time.

(b) *Stricken items.* Notwithstanding the provisions of paragraph (a) of this section, individual items that have been announced for consideration at Commission meetings may be deleted without vote or notice.

(c) *Definitions.* For the purpose of this section, *earliest practicable time*, means as soon as practicable, which should in few, if any, instances be later than the commencement of the meeting or portion of the meeting in question.

(d) *Informing public of meeting announcements.* (1) The Secretary shall use reasonable means to assure that the public is fully informed of the public announcements required by this section. For example, such announcements may be posted on the Commission's public notice boards, published in official Commission publications, or sent to the persons on a mailing list maintained for those who want to receive such material.

(2) Immediately following each public announcement required by this section, notice of the time, place, and subject matter of a meeting, whether the meeting is open or closed, any change in a preceding announcement, and the name and telephone number of the official designated by the Commission to respond to requests for information about the meeting shall also be submitted by the Secretary for publication in the FEDERAL REGISTER.

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(e) *Issuance of list of Commission actions.* Following each Commission meeting, the Secretary shall issue a list of Commission actions taken which shall become effective as of the date of issuance of the related order (or date designated therein) or other document, which the Secretary shall issue in due course, in the manner prescribed by the Commission.

**§ 375.205 Closed meetings.**

(a) Meetings will be closed to public observation where the Commission properly determines, according to the procedures set forth in § 375.206, that such meeting or portion of the meeting or disclosure of information to be considered at the meeting is likely to:

(1) Disclose matters that are (i) specifically authorized under criteria established by an Executive order to be kept secret in the interests of national defense or foreign policy and are (ii) in fact properly classified pursuant to such Executive order;

(2) Relate solely to the internal personnel rules and practices of the Commission;

(3) Disclose matters specifically exempted from disclosure by statute (other than 5 U.S.C. 552): *Provided*, That such statute:

(i) Requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or

(ii) Establishes particular criteria for withholding or refers to particular types of matters to be withheld;

(4) Disclose the trade secrets and commercial or financial information obtained from a person and privileged or confidential, which may include geological or geophysical information and data, including maps, concerning wells;

(5) Involve accusing any person of a crime, or formally censuring any person;

(6) Disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy, including personnel and medical files and similar files;

(7) Disclose investigatory records compiled for law enforcement purposes, or information which if written would be contained in such records, but only

to the extent that the production of such records or information would:

(i) Interfere with enforcement proceedings;

(ii) Deprive a person of a right to a fair trial or an impartial adjudication;

(iii) Constitute an unwarranted invasion of personal privacy;

(iv) Disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source;

(v) Disclose investigative techniques and procedures, or;

(vi) Endanger the life or physical safety of law enforcement personnel.

(8) Disclose information contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions;

(9) Disclose information the premature disclosure of which would be:

(i) In the case of an agency which regulates currencies, securities, commodities, or financial institutions, likely to:

(A) Lead to significant financial speculation in currencies, securities, or commodities, or

(B) Significantly endanger the stability of any financial institution; or

(ii) Likely to frustrate significantly implementation of a proposed Commission action, except that paragraph (a)(9)(i) of this section shall not apply where the Commission has already disclosed to the public the content or nature of such proposed action, or where the Commission is required by law to make such disclosure on its own initiative prior to taking final agency action on such proposal; or

(10) Specifically concern the Commission's issuance of a subpoena, or the Commission's participation in a civil action or proceeding, an action in a foreign court or international tribunal, or an arbitration, or the initiation, conduct, or disposition by the Commission of a particular case:

(i) Of formal Commission adjudication pursuant to the procedures in 5 U.S.C. 554; or

(ii) Otherwise involving a determination on the record after opportunity for a hearing.

(b) Commission meetings shall not be closed pursuant to paragraph (a) of this section when the Commission finds that the public interest requires that they be open.

**§ 375.206 Procedures to close meetings.**

(a) *General rule.* A meeting or a portion of a meeting may be closed only when the Commission votes by a majority of the membership to close the meeting. A separate vote shall be taken with respect to each Commission meeting or portion of a meeting which is proposed to be closed to the public or with respect to any information which is proposed to be withheld. A single vote may be taken with respect to a series of meetings, a portion or portions of which are proposed to be closed to the public, or with respect to any information concerning such series of meetings, so long as each meeting in such series involves the same particular matters and is scheduled to be held no more than thirty days after the initial meeting in such series. The vote of each Commission member participating in such vote shall be recorded and no proxies shall be allowed.

(b) *Request for closed meeting.* Whenever any person whose interests may be directly affected by a meeting or a portion of a meeting requests that the Commission close such portion to the public for any of the reasons referred to in paragraph (a) (5), (6), or (7) of § 375.205, the Commission, upon request of any one of its members, shall vote by recorded vote whether to close such meeting.

(c) *Release of vote.* Within one day of any vote taken pursuant to paragraph (a) or (b) of this section, the Secretary of the Commission shall make publicly available a written copy of such vote reflecting the vote of each member. If a portion of a meeting is to be closed to the public, the Secretary shall, within one day of the vote taken pursuant to paragraph (a) or (b) of this section, make publicly available a full written explanation of the Commission's action

closing the portion together with a list of all persons expected to attend the meeting and their affiliation. The information required by this paragraph shall be disclosed except to the extent that it is exempt from disclosure under the provisions of § 375.205(a).

(d) *Certification.* Prior to a determination that a meeting should be closed pursuant to paragraph (a) or (b) of this section, the General Counsel of the Commission shall publicly certify that, in his opinion, the meeting may be closed to the public and shall state each relevant exemptive provision. A copy of such certification, together with a statement from the presiding officer of the meeting setting forth the time and place of the meeting, and the persons present, shall be retained by the Secretary of the Commission as part of the transcript, recording, or minutes required by paragraph (e) of this section.

(e) *Transcripts, recordings, minutes.* (1) The Secretary shall maintain a complete transcript or electronic recording adequate to record fully the proceedings of each meeting, or portion of a meeting, closed to the public, except that in the case of a meeting, or portion of a meeting, closed to the public pursuant to § 375.205(a)(8), (9)(i), or (10), the Secretary shall maintain either a transcript or recording, or a set of minutes. Any such minutes shall fully and clearly describe all matters discussed and shall provide a full and accurate summary of any actions taken, and the reasons therefor, including a description of each of the views expressed on any item and the record of any rollcall vote (reflecting the vote of each member on the question). All agenda documents considered in connection with any Commission action shall be identified in such minutes.

(2) The Secretary shall maintain a complete verbatim copy of the transcript, a complete copy of the minutes, or a complete electronic recording of each meeting, or portion of a meeting, closed to the public, for a period of at least two years after such meeting, or until one year after the conclusion of any Commission proceeding with respect to which the meeting or portion was held, whichever occurs later.

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(f) *Public availability of transcripts, records, minutes.* (1) Within a reasonable time after the adjournment of a meeting closed to the public, the Commission shall make available to the public, in the Division of Public Information of the Commission, Washington, DC, the transcript, electronic recording, or minutes of the discussion of any item on the agenda, or of any item of the testimony of any witness received at the meeting, except for such item or items of such discussion or testimony as the Director of Public Information determines may be withheld under § 375.204. Copies of such transcript, or minutes, or a transcription of such recording shall be furnished to any person at the actual cost of duplication or transcription.

(2) The determination of the Director of the Division of Public Information to withhold information pursuant to paragraph (f)(1) of this section may be appealed to the General Counsel or the General Counsel's designee, in accordance with § 388.107 of this chapter.

[45 FR 21217, Apr. 1, 1980, as amended at 52 FR 7825, Mar. 13, 1987]

## Subpart C—Delegations

### § 375.301 Purpose and subdelegations.

(a) The purpose of this subpart is to set forth the authorities that the Commission has delegated to staff officials. Any action by a staff official under the authority of this subpart may be appealed to the Commission in accordance with § 385.1902 of this chapter.

(b) Where the Commission, in delegating functions to specified Commission officials, permits an official to further delegate those functions to a designee of such official, *designee* shall mean the deputy of such official, the head of a division, or a comparable official as designated by the official to whom the direct delegation is made.

(c) For purposes of Subpart C, *uncontested* and *in uncontested cases* mean that no motion to intervene, or notice of intervention, in opposition to the pending matter made under § 385.214

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(intervention) has been received by the Commission.

[Order 112, 45 FR 79025, Nov. 28, 1980, as amended by Order 225, 47 FR 19058, May 3, 1982; Order 492, 53 FR 16062, May 5, 1988]

### § 375.302 Delegations to the Secretary.

The Commission authorizes the Secretary, or the Secretary's designee to:

(a) Sign official general correspondence on behalf of the Commission, except as otherwise provided in this section.

(b) Except as provided in § 385.213 of this chapter, prescribe, for good cause, a different time than that required by the Commission's Rules of Practice and Procedure for filing by public utilities, licensees, natural gas companies, and other persons of answers to complaints, petitions, motions, and other documents. Absent a waiver, no answers will be required to be filed by a party within less than ten days after the date of service of the document.

(c) Schedule hearings and issue notices thereof.

(d) Accept for filing notices of intervention and petitions to intervene by commissions and agencies of the States and the Federal government.

(e) Pass upon motions to intervene before a presiding administrative law judge is designated. If a presiding administrative law judge has been designated, the provisions of § 385.504(b)(12) of this chapter are controlling.

(f) Deny motions for extensions of time (other than motions made while a proceeding is pending before a presiding officer as defined in § 385.102(e)), except that such motions may be granted in accordance with § 385.2008 of this chapter.

(g) Reject any documents filed later than the time prescribed by an order or rule of the Commission, except that such documents may be accepted in accordance with § 385.2008 of this chapter.

(h) Reject any documents filed that do not meet the requirements of the Commission's rules which govern matters of form, except that such documents may be accepted in accordance with § 385.2001 of this chapter for good cause shown.

(i) Waive requirements of the Commission's rules which govern matters of form, when consistent with the public interest in a particular case.

(j) Pass upon, in contested proceedings, questions of extending time for electric public utilities, licensees, natural gas companies, and other persons to file required reports, data, and information and to do other acts required to be done at or within a specific time by any rule, regulation, license, permit, certificate, or order of the Commission.

(k) Accept service of process on behalf of the Commission.

(l) Accept for filing bonds or agreements and undertakings submitted in rate suspension proceedings.

(m) Issue notices or orders instituting procedures to be followed concerning contested audit issues under part 41 or 158 of this chapter either when the utility:

(1) Initially notifies the Commission that it requests disposition of a contested issue pursuant to §41.7 or 158.7 of this chapter; or

(2) Requests disposition of a contested issue pursuant to the shortened procedures provided in §41.3 or 158.3 of this chapter.

(n) Publish notice of land withdrawals under section 24 of the Federal Power Act.

(o) Issue notices of applications filed under the Federal Power Act and the Natural Gas Act, fixing the time for filing comments, protests or petitions to intervene and schedule hearings on such applications when appropriate or required by law.

(p) Accept for filing amendments to agreements and contracts or rate schedules submitted in compliance with Commission orders accepting offers of rate settlements if such filings are in satisfactory compliance with such orders.

(q) Grant authorizations, pursuant to the provisions of §35.1(a) of this chapter for a designated representative to post and file rate schedules of public utilities which are parties to the same rate schedule.

(r) Redesignate proceedings, licenses, certificates, rate schedules, and other authorizations and filing to reflect changes in the names of persons and

municipalities subject to or invoking Commission jurisdiction under the Federal Power Act or the Natural Gas Act, where no substantive changes in ownership, corporate structure or domicile, or jurisdictional operation are involved.

(s) Change the appropriate hydroelectric project license article upon application by the licensee to reflect the specified reasonable rate of return as provided in §2.15 of this chapter.

(t) Reject without prejudice all requests for rehearing and requests for modification of a proposed order issued in a proceeding under section 210 or section 211 of the Federal Power Act, 16 U.S.C. 824i, 824j.

(u) Reject without prejudice all motions for clarification that are combined with requests for rehearing and/or requests for modification of a proposed order issued in a proceeding under section 210 or section 211 of the Federal Power Act, 16 U.S.C. 824i, 824j.

(v) Toll the time for action on requests for rehearing.

(w) Issue notices in compliance with section 206(b) of the Federal Power Act.

(x) Issue instructions for electronic registration pursuant to, grant applications for waivers of the requirements of, and make determinations regarding exemptions from 18 CFR part 390.

[43 FR 36435, Aug. 17, 1978. Redesignated and amended at 45 FR 21224, 21225, Apr. 1, 1980; Order 112, 45 FR 79025, Nov. 28, 1980; Order 147, 46 FR 29702, June 3, 1981; Order 224, 47 FR 17809, Apr. 26, 1982; Order 225, 47 FR 19058, May 3, 1982; Order 492, 53 FR 16062, May 5, 1988; Order 570, 59 FR 53351, Oct. 24, 1994; Order 585, 60 FR 62328, Dec. 6, 1995; Order 891, 67 FR 52410, Aug. 12, 2002]

#### § 375.303 Delegations to the Chief Accountant.

(a) The Commission authorizes the Chief Accountant or the Chief Accountant's designee to issue interpretations of the Uniform System of Accounts for public utilities, licensees, natural gas companies and oil pipeline companies.

(b) Pass upon any proposed accounting matters submitted by or on behalf of public utilities, licensees, natural gas companies, and oil pipeline companies, that require Commission approval under the Uniform System of Accounts, except that if the proposed accounting matters involve unusually

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large transactions or unique or controversial features, the Director must present the matters to the Commission for consideration.

(c) Pass upon applications to increase the size or combine property units of public utilities, licensees, natural gas companies and oil pipeline companies.

[Order 613, 64 FR 73404, Dec. 30, 1999]

### § 375.304 Delegations to the Chief Administrative Law Judge.

(a) The Commission authorizes the Chief Administrative Law Judge and the Administrative Law Judge designated by the Chief Administrative Law Judge to exercise the power granted to a Presiding Officer by part 385, particularly § 385.504 of this chapter.

(b) The Commission authorizes the Chief Administrative Law Judge to

(1) For those proceedings pending under subpart E of part 385 of this chapter:

(i) Consolidate for hearing two or more proceedings on any or all issues,

(ii) Sever two or more proceedings or issues in a proceeding,

(iii) Designate and substitute presiding officers, and

(iv) Extend any close or record date ordered by the Commission in a proceeding for good cause, and

(v) Set or extend procedural time standards, including but not limited to hearing, briefing and initial decision dates, including dates set by the Commission, unless the Commission states otherwise in its hearing order.

(2) For proceedings under subparts I and J of part 385 of this chapter, designate presiding officers who will have all the authorities and duties vested in presiding officers by those rules and other applicable rules in conducting proceedings pursuant to sections 503(c) and 504(b)(1) of the Department of Energy Organization Act, 42 U.S.C. 7193(c) and 7194(b)(1) (1982).

(3) Deny or grant, in whole or in part, petitions for waivers of fees prescribed in §§ 381.303 and 381.304 of this chapter in accordance with § 381.106 of this chapter.

[Order 492, 53 FR 16063, May 5, 1988, as amended by Order 629, 68 FR 6609, Feb. 10, 2003]

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### § 375.305 Delegations to the Solicitor.

The Commission authorizes the Solicitor, or the Solicitor's designee to:

(a) File with the appropriate court of the United States a certified list of the materials comprising the record of any proceeding which involves the Commission;

(b) Retain appropriate materials; and

(c) Deliver such materials to the court as required.

[43 FR 36435, Aug. 17, 1978. Redesignated and amended at 45 FR 21224, 21225, Apr. 1, 1980; Order 112, 45 FR 79025, Nov. 28, 1980]

### § 375.307 Delegations to the Director of the Office of Markets, Tariffs and Rates.

The Commission authorizes the Director or the Director's designee to:

(a) Sign all correspondence on behalf of the Commission with state regulatory commissions and agencies in connection with non-financial auditing matters.

(b) Pass upon any uncontested application for authorization to issue securities or to assume obligations and liabilities, filed by public utilities and licensees pursuant to part 34 of this chapter.

(c) Sign non-financial audit reports of jurisdictional companies.

(d) In connection with non-financial audits, pass upon and review requests by state and federal agencies to review staff audit working papers if the company agrees to the release of the audit working papers provided:

(1) The papers are examined at the Commission; and

(2) The requester

(i) Only makes general notes concerning the contents of the audit working papers,

(ii) Does not make copies of the audit working papers, and

(iii) Does not remove the audit working papers from the area designated by the Director.

(e) Take appropriate action on the following types of uncontested applications for authorizations and uncontested amendments to applications and authorizations and impose appropriate conditions:

(1) Applications by a pipeline for the deletion of delivery points but not facilities;

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(2) Applications to abandon pipeline services, but not facilities, involving a specific customer or customers, if such customer or customers have agreed to the abandonment;

(3) Applications for temporary or permanent certificates (and for amendments thereto) for services, but not facilities, in connection with the transportation, exchange or storage of natural gas, provided that the cost of construction of the certificate applicant's related facility is less than the limits specified in column 2 of table I in §157.208(d) of this chapter;

(4) Blanket certificate applications by interstate pipelines and local distribution companies served by interstate pipelines filed pursuant to §§284.221 and 284.224 of this chapter;

(5) Applications for temporary certificates involving transportation service or sales, but not facilities, pursuant to §157.17 of this chapter;

(6) Dismiss any protest to prior notice filings involving existing service, made pursuant to §157.205 of this chapter, that does not raise a substantive issue and fails to provide any specific detailed reason or rationale for the objection;

(7) Applications pertaining to approval of changes in customer names where there is no change in rate schedule, rate, or other incident of service;

(8) Applications for approval of customer rate schedule shifts;

(9) Applications filed under section 1(c) of the Natural Gas Act and part 152 of this chapter, for declaration of exemption from the provisions of the Natural Gas Act and certificates held by the applicant; and

(10) Applications and amendments requesting authorizations filed pursuant to section 7(c) of the Natural Gas Act for new or additional service to right-of-way grantors either directly or through a distributor, where partial consideration for the granting of the right-of-way was the receipt of gas service pursuant to section 7(c) of the Natural Gas Act.

(f) Act upon filings for all initial rate schedules, rate schedule changes and notices of changes in rates submitted by gas companies and impose conditions to the following extent, in uncontested cases:

(1) Accept a tariff or rate schedule filing, except a major pipeline rate increase under section 4(e) of the Natural Gas Act and under subpart D of part 154 of this chapter, if it complies with all applicable statutory requirements, and with all applicable Commission rules, regulations and orders for which a waiver has not been granted, or if a waiver has been granted by the Commission, if it complies with the terms of the waiver;

(2) Reject a tariff or rate schedule filing, if it patently fails to comply with applicable statutory requirements and with all applicable Commission rules, regulations and orders for which a waiver has not been granted; and

(3) Advise the filing party of any actions taken under paragraph (b)(1) or (b)(2) of this section and designate rate schedules, rate schedule changes, and notices of changes in rates, and the effective date thereof.

(g) Take appropriate action on the following:

(1) Any notice of intervention or petition to intervene, filed in an uncontested application for pipeline service and not facilities, or an uncontested rate schedule proceeding;

(2) An uncontested request from one holding an authorization, granted pursuant to the Director's delegated authority, to vacate all or part of such authorization;

(3) Petitions to permit after an initial 60-day period one additional 60-day period of exemption pursuant to §284.264(b) of this chapter where the application or extension arrives at the Commission later than 45 days after the commencement of the initial period of exemption and where only services are involved; and

(4) Applications for extensions of time to file required reports, data and information and to perform other acts required at or within a specific time by any rule, regulation, license, permit, certificate, or order by the Commission.

(h) Undertake the following actions:

(1) Issue reports for public information purposes. Any report issued without Commission approval must:

(i) Be of a noncontroversial nature, and

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(ii) Contain the statement, “This report does not necessarily reflect the view of the Commission,” in bold face type on the cover;

(2) Issue and sign deficiency letters regarding natural gas applications; and

(3) Accept for filing, data and reports (including Forms 1, 1F, 2, 2A, and 6) required by Commission orders, or presiding officers’ initial decisions upon which the Commission has taken no further action, if such filings are in compliance with such orders or decisions and, when appropriate, notify the filing party of such acceptance.

(i) Take appropriate action on requests or petitions for waivers of:

(1) Any action incidental to the exercise of delegated authority, including waiver of notice as provided in section 4(d) of the Natural Gas Act, provided the request conforms to the requirements of § 385.2001 of this chapter;

(2) Filing requirements for statements and reports under Parts 260, 261 and 357 of this chapter;

(3) Fees prescribed in §§ 381.207, 381.403, and 381.505 of this chapter in accordance with § 381.106(b) of this chapter;

(4) Annual charges prescribed in § 382.202 of this chapter in accordance with the standard set forth in § 382.105 of this chapter;

(5) Section 154.403 of this chapter, as necessary, in order to rule on out-of-cycle purchased gas adjustment filings;

(6) The requirements of subpart C of part 292 of this chapter governing cogeneration and small power production facilities made by any state regulatory authority or nonregulated electric utility pursuant to § 292.402 of this chapter;

(7) Annual charges prescribed in § 382.201 of this chapter in accordance with the standard set forth in § 382.105 of this chapter; and

(8) Deny or grant, in whole or in part, requests for waiver of the requirements for statements or reports under § 141.1 of this chapter (FERC Form No. 1, Annual Report of Major Electric Utilities, Licensees and Others) and § 141.2 of this chapter (FERC Form No. 1-F, Annual Report for Nonmajor Public Utilities and Licensees), and of the filing of FERC Form No. 1 on electronic media (§ 385.2011 of this chapter, Procedures

for filing on electronic media, paragraphs (a)(6), (c), and (e)).

(j) Take the following actions relating to the regulation of oil pipelines under the Interstate Commerce Act:

(1) Accept any uncontested item which has been filed consistent with Commission regulations and policy;

(2) Reject any filing which patently fails to comply with applicable statutory requirements and with all applicable Commission rules, regulations and orders for which a waiver has not been granted;

(3) Prescribe for carriers the classes of property for which depreciation charges may be properly included under operating expenses, review the fully documented depreciation studies filed by the carriers, and authorize or revise the depreciation rates reflected in the depreciation study with respect to each of the designated classes of property; and

(4) Refer any matter to the Commission which the Director believes should be acted upon by the Commission.

(k) Take the following actions with respect to rates, rate schedules, and rate filings:

(1) Accept for filing all uncontested initial rate schedules and uncontested rate schedule changes submitted by public utilities, including changes which would result in rate increases; waive the requirement of statutory notice for good cause shown; advise the filing party of such acceptances; and designate rate schedules and the effective dates thereof;

(2) Approve uncontested rates and rate schedules filed by the Secretary of Energy or his designee, for power developed at projects owned and operated by the federal government and for services provided by federal power marketing agencies;

(3) Reject a rate filing, unless accompanied by a request for waiver in conformity with § 385.2001 of this chapter, if it fails patently to comply with applicable statutory requirements or Commission rules, regulations and orders; and

(4) Assign to an Administrative Law Judge (ALJ), with the ALJ’s concurrence, uncontested interim electric rate motions that would result in lower

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rates, pending Commission action on settlement agreements.

(1) Take appropriate action on uncontested applications for:

(1) The sale or lease or other disposition of facilities, consolidation of facilities, and acquisition of securities of public utilities under section 203 of the Federal Power Act;

(2) Interlocking positions under section 305(b) of the Federal Power Act;

(3) Certification of the qualifying status for small power production and co-generation facilities under §292.207 of this chapter; and

(4) The extension of time for public utilities to file required reports, data, and information and to do other acts required to be done within a specific time period by any rule, regulation or order of the Commission.

(m) Take appropriate action on:

(1) Notices of intervention or petitions to intervene in an uncontested rate schedule proceeding;

(2) Requests for authorization for a designated representative to post and file rate schedules of public utilities which are parties to the same rate schedule; and

(3) Filings related to uncontested nonexempt qualifying small power production facilities, including action on requests for waivers of the Commission's regulations under the Federal Power Act and related authorizations consistent with Massachusetts Refusetech, Inc., 31 FERC ¶61,048 (1985), and the orders cited therein without limitation as to whether qualifying status is by Commission certification or notice of qualifying status, provided that in the case of a notice of qualifying status, any waiver is granted on condition that the filing party has correctly noticed the facility as a qualifying facility.

(n) Undertake the following actions:

(1) Redesignate proceedings, rate schedules, and other authorizations and filings to reflect changes in the names of persons and municipalities subject to invoking Commission jurisdiction under the Federal Power Act, where no substantive changes in ownership, corporate structure or domicile, or jurisdictional operation are involved;

(2) Issue deficiency letters regarding electric rate schedule filings, refund reports, corporate applications for the sale, lease or disposition of property, consolidation of facilities, acquisition of securities of public utilities and applications to hold interlocking positions;

(3) With respect to amendments to agreements, contracts, and rate schedules (including approved rate settlements), and data and reports submitted by public utilities pursuant to Commission opinions, orders, decisions, or other actions or presiding officers' initial decisions:

(i) Accept for filing any amendment, contract, rate schedule, data and reports which are in compliance and, when appropriate, notify the filing party of such acceptance; or

(ii) Reject for filing any amendment, contract, rate schedule, data, and reports which are not in compliance or not required and, when appropriate, notify the filing party of such rejection; and

(4) Adopt final allocations of costs for federal multiple-purpose reservoir projects for which the Commission has statutory responsibility, and review and comment on cost allocations prepared by others.

(o) In connection with the regulation of oil pipelines under the Interstate Commerce Act, refer any matter to the Commission which the Director believes should be acted upon by the Commission.

(p) Take the following actions under the Natural Gas Policy Act of 1978:

(1) Notify jurisdictional agencies within 45 days after the date on which the Commission receives notice of a determination pursuant to §270.502(b) of this chapter that the notice is incomplete under §270.204 of this chapter.

(2) Issue preliminary findings under §270.502(a)(1) of this chapter.

[Order 613, 64 FR 73404, Dec. 30, 1999, as amended by Order 616, 65 FR 45872, July 26, 2000]

### § 375.308 Delegations to the Director of the Office of Energy Projects.

The Commission authorizes the Director or the Director's designee to:

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(a) Take appropriate action on uncontested applications and on applications for which the only motion or notice of intervention is filed by a competing preliminary permit or exemption applicant that does not propose and substantiate materially different plans to develop, conserve, and utilize the water resources of the region for the following:

- (1) Licenses (including original, new, and transmission line licenses) under part I of the Federal Power Act;
- (2) Exemptions from all or part of the licensing requirements of part I of the Federal Power Act; and
- (3) Preliminary permits for proposed projects.

(b) Take appropriate action on uncontested applications for:

- (1) Amendments (including changes in the use or disposal of water power project lands or waters or in the boundaries of water power projects) to licenses (including original, new, and transmission line licenses) under part I of the Federal Power Act, exemptions from all or part of the requirements of part I of the Federal Power Act, and preliminary permits; and
- (2) Surrenders of licenses (including original and new), exemptions, and preliminary permits.

(c) Take appropriate action on the following:

- (1) Determinations or vacations with respect to lands of the United States reserved from entry, location, or other disposal under section 24 of the Federal Power Act;
- (2) Transfer of a license under section 8 of the Federal Power Act;
- (3) Applications for the surrender of transmission line licenses pursuant to part 6 of this chapter;
- (4) Motions filed by licensees, permittees, exemptees, applicants, and others requesting an extension of time to file required submittals, reports, data, and information and to do other acts required to be done at or within a specific time period by any rule, regulation, license, exemption, permit, notice, letter, or order of the Commission in accordance with §385.2008 of this chapter;
- (5) Declarations of intent and petitions for declaratory orders concerning the Commission's jurisdiction over a

hydropower project under the Federal Power Act;

- (6) New or revised exhibits, studies, plans, reports, maps, drawings, or specifications, or other such filings made voluntarily or in response to a term or condition in a preliminary permit, license, or exemption issued for a hydropower project, or in response to the requirements of an order of the Commission or presiding officer's initial decision concerning a hydropower project;
- (7) Requests by applicants to withdraw, pursuant to §385.216 of this chapter, any pleadings under part I of the Federal Power Act and any pleadings related to exemptions from all or part of part I of the Federal Power Act;
- (8) Requests by licensees for exemption from:

- (i) The requirement of filing FERC Form No. 80, Licensed Projects Recreation, under §8.11 of this chapter; and
- (ii) The fees prescribed in §381.302(a) of this chapter in accordance with §381.302(c) of this chapter and the fees in §381.601 of this chapter, in accordance with §381.106 of this chapter;

(9) Requests for waivers incidental to the exercise of delegated authority provided the request conforms to the requirements of §385.2001 of this chapter;

(10) Proposals for the development of water resources projects submitted by other agencies of the Federal government for Commission review or comment. The Director shall direct comments, when necessary, to the sponsoring agency on matters including, but not limited to, the need for, and appropriate size of, any hydroelectric power installation proposed by any other agency of the Federal government;

(11) The reasonableness of disputed agency cost statements pursuant to §4.303(d) of this chapter.

(d) Issue an order pursuant to section 5 of the Federal Power Act to cancel a preliminary permit if the permittee fails to comply with the specific terms and conditions of the permit; provided:

- (1) The Director gives notice to the permittee of probable cancellation no less than 30 days prior to the issuance of the cancellation order, and
- (2) The permittee does not oppose the issuance of the cancellation order.

(e) Issue an order to revoke an exemption of a small conduit hydroelectric facility from the licensing provisions of part I of the Federal Power Act granted pursuant to §4.93 of this chapter, or an exemption of a small hydroelectric power project from the licensing provisions of part I of the Federal Power Act granted pursuant to §4.105 of this chapter if the exemption holder fails to begin or complete actual construction of the exempted facility or project within the time specified in the order granting the exemption or in Commission regulations at §4.94(c) or §4.106(c) of this chapter, provided:

(1) The Director gives notice to the exemption holder by certified mail of probable revocation no less than 30 days prior to the issuance of the revocation order, and

(2) The holder of the exemption does not oppose the issuance of the revocation order.

(f) Issue an order pursuant to section 13 of the Federal Power Act to terminate a license granted under part I of the Federal Power Act if the licensee fails to commence actual construction of the project works within the time prescribed in the license, provided:

(1) The Director gives notice by certified mail to the licensee of probable termination no less than 30 days prior to the issuance of the termination order, and

(2) The licensee does not oppose the issuance of the termination order.

(g) Require licensees and applicants for water power projects to make repairs to project works, take any related actions for the purpose of maintaining the safety and adequacy of such works, make or modify emergency action plans, have inspections by independent consultants, and perform other actions necessary to comply with part 12 of this chapter or otherwise protect human life, health, property, or the environment.

(h) For any unlicensed or unexempted hydropower project, take the following actions:

(1) Conduct investigations to ascertain the Commission's jurisdiction,

(2) Make preliminary jurisdictional determinations, and

(3) If a project has been preliminarily determined to require a license, issue

notification of the Commission's jurisdiction; require the filing of a license application; and require that actions necessary to comply with part 12 of this chapter or otherwise protect human life, health, property, or the environment are taken.

(i) Take appropriate action on uncontested settlements among non-Federal parties involving headwater benefits.

(j) Dismiss applications for licenses and approve the withdrawal of applications for hydropower project licenses, in instances where no petition for or notice of intervention contending that licensing is required under part I of the Federal Power Act has been filed and the Director determines that licensing is not required by such Part I.

(k) Reject or dismiss an application filed under Part I of the Federal Power Act or an application for an exemption from some or all of the requirements of Part I of the Federal Power Act if:

(1) An application is patently deficient under §4.32(d)(2)(i);

(2) A revised application

(i) Does not conform to the requirements of §§4.32(a), 4.32(b), or 4.38, under §4.32(d)(1) or

(ii) If revisions to an application are not timely submitted under §4.32(d)(1); or

(3) The applicant fails to provide timely additional information, documents, or copies of submitted materials under §4.32(f).

(l) Redesignate proceedings, licenses, and other authorizations and filings to reflect changes in the names of persons and municipalities subject to or invoking Commission jurisdiction under the Federal Power Act, where no substantive changes in ownership, corporate structure or domicile, or jurisdictional operation are involved.

(m) Determine payments for headwater benefits from the operation of Federal reservoir projects.

(n) Determine whether to allow a credit against annual charges for the use of government dams or other structures billed to licensees each year for contractual payments for the construction, operation, and maintenance of a Federal dam.

(o) Prepare and issue comments on general water policy and planning

issues for the use of the Director of the Water Resources Council or the Assistant Secretaries of the Department of Energy.

(p) Prepare and transmit letters concerning power site lands to the Bureau of Land Management and the U.S. Geological Survey; respond to routine requests for information and any non-docketed correspondence; prepare and transmit letters requesting comments or additional information on applications for hydropower project licenses, preliminary permits, exemptions, amendments of licenses, permits, or exemptions, and other similar matters from Federal, state, and local agencies, from applicants, and from other appropriate persons; and prepare and transmit letters regarding whether transmission lines are works of a hydro-power project and are required to be licensed.

(q) Reject an application or other filing under Section 405 of the Public Utility Regulatory Policies Act of 1978, unless accompanied by a request for waiver in conformity with § 385.2001 of this chapter, if it fails patently to comply with applicable statutory requirements or Commission rules, regulations, and orders.

(r) Pass upon petitions filed under §§ 292.210 and 292.211 of this chapter.

(s) Make any preliminary determination of inconsistency between a fish and wildlife agency's fish and wildlife recommendation and applicable law, and conduct through staff whatever consultation with the agency that is necessary or appropriate in order to attempt to resolve any inconsistency, under section 10(j) of the Federal Power Act, and to take such related actions as are required under that section.

(t) Waive the pre-filing consultation requirements in §§ 4.38 and 16.8 of this title whenever the Director, in his discretion, determines that an emergency so requires, or that the potential benefit of expeditiously considering a proposed improvement in safety, environmental protection, efficiency, or capacity outweighs the potential benefit of requiring completion of the consultation process prior to the filing of an application.

(u) Approve, on a case-specific basis, and issue such orders as may be necessary in connection with the use of alternative procedures, under § 4.34(i) of this chapter, for the development of an application for an original, new or subsequent license, exemption, or license amendment subject to the pre-filing consultation process, and assist in the pre-filing consultation and related processes.

(v) Take appropriate action on the following types of uncontested applications for authorizations and uncontested amendments to applications and authorizations and impose appropriate conditions:

(1) Applications or amendments requesting authorization for the construction or acquisition and operation of facilities that have a construction or acquisition cost less than the limits specified in column 2 of table I in § 157.208(d) of this chapter;

(2) Applications by a pipeline for the abandonment of pipeline facilities;

(3) Applications for temporary certificates for facilities pursuant to § 157.17 of this chapter;

(4) Petitions to amend certificates to conform to actual construction;

(5) Applications for temporary certificates for facilities pursuant to § 157.17 of this chapter;

(6) Dismiss any protest to prior notice filings made pursuant to § 157.205 of this chapter and involving pipeline facilities that does not raise a substantive issue and fails to provide any specific detailed reason or rationale for the objection;

(7) Applications for temporary or permanent certificates (and for amendments thereto) for the transportation, exchange or storage of natural gas, provided that the cost of construction of the applicant's related facility is less than the limits specified in column 2 of table 1 in § 157.208(d) of this chapter; and

(8) Applications for blanket certificates of public convenience and necessity pursuant to subpart F of part 157 of this chapter, including waiver of project cost limitations in §§ 157.208 and 157.215 of this chapter, and the convening of informal conferences during the 30-day reconciliation period pursuant to the procedures in § 157.205(f).

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(w) Take appropriate action on the following:

(1) Any notice of intervention or petition to intervene, filed in an uncontested application for pipeline facilities;

(2) An uncontested request from one holding an authorization, granted pursuant to the Director's delegated authority, to vacate all or part of such authorization;

(3) Petitions to permit after an initial 60-day period one additional 60-day period of exemption pursuant to § 284.264(b) of this chapter where the application or extension arrives at the Commission later than 45 days after the commencement of the initial period of exemption when the emergency requires installation of facilities; and

(4) Applications for extensions of time to file required reports, data, and information and to perform other acts required at or within a specific time by any rule, regulation, license, permit, certificate, or order by the Commission.

(x) Undertake the following actions:

(1) Compute, for each calendar year, the project limits specified in table I of § 157.208 and table II of § 157.215(a) of this chapter, adjusted for inflation, and publish such limits as soon as possible thereafter in the FEDERAL REGISTER;

(2) Issue reports for public information purposes. Any report issued without Commission approval must:

(i) Be of a noncontroversial nature, and

(ii) Contain the statement, "This report does not necessarily reflect the view of the Commission," in bold face type on the cover;

(3) Issue and sign deficiency letters regarding natural gas applications;

(4) Accept for filing, data and reports required by Commission orders, or presiding officers' initial decisions upon which the Commission has taken no further action, if such filings are in compliance with such orders or decisions and, when appropriate, notify the filing party of such acceptance;

(5) Reject requests which patently fail to comply with the provisions of 157.205(b) of this chapter; and

(6) Take appropriate action on requests or petitions for waivers of any action incidental to the exercise of del-

egated authority, including waiver of notice as provided in section 4(d) of the Natural Gas Act, provided the request conforms to the requirements of § 385.2001 of this chapter.

(y) Take appropriate action on the following:

(1) Any action incidental to the exercise of delegated authority, including waiver of notice as provided in section 4(d) of the Natural Gas Act, provided the request conforms to the requirements of § 385.2001 of this chapter; and

(2) Requests or petitions for waivers of filing requirements for statements and reports under §§ 260.8 and 260.9 of this chapter.

(z) Approve, on a case-specific basis, and make such decisions as may be necessary in connection with the use of pre-filing collaborative procedures, for the development of an application or certificate or abandonment authorization under Section 7 of the Natural Gas Act, or the development of an application for facilities under Section 3 of the Natural Gas Act, and assist in the pre-filing collaborative and related processes.

[Order 492, 53 FR 16065, May 5, 1988; 53 FR 21992, June 13, 1988, as amended by Order 499, 53 FR 27005, July 18, 1988; Order 533, 56 FR 23154, May 20, 1991; Order 556, 58 FR 51223, Oct. 1, 1993; Order 596, 62 FR 59812, Nov. 5, 1997. Redesignated and amended by Order 613, 64 FR 73406, Dec. 30, 1999]

### § 375.309 Delegations to the General Counsel.

The Commission authorizes the General Counsel or the General Counsel's designee to:

(a) Designate officers empowered to administer oaths and affirmations, subpoena witnesses, compel their attendance and testimony, take evidence, compel the filing of special reports and interrogatories, gather information, and require the production of any books, papers, correspondence, memoranda, contracts, agreements, or other records, in the course of formal investigations conducted by the Office of the General Counsel to the extent the Commission's order of investigation expressly provides for the exercise of such investigative powers.

(b) Grant or deny requests of persons pursuant to § 1b.12 of this chapter to

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procure copies of the transcripts of their testimony taken during non-public investigations conducted by the Office of the General Counsel.

(c) Terminate any informal non-public investigation conducted by the Office of the General Counsel.

(d) Terminate the authority of officers to administer oaths and affirmations, subpoena witnesses, compel their attendance and testimony, take evidence, compel the filing of special reports and interrogatories, gather information, and require the production of any books, papers, correspondence, memoranda, contracts, agreements or other records in the course of formal investigations conducted by the Office of the General Counsel.

(e) Designate presiding officers for proceedings under § 385.1110, who will have all the authorities and duties vested in presiding officers by that section and other applicable rules in conducting proceedings pursuant to section 502(c) of the Natural Gas Policy Act of 1978, 15 U.S.C. 3301-3432 (1982).

(f) Deny or grant, in whole or in part, petitions for waivers of fees prescribed in § 381.305 of this chapter in accordance with § 381.106 of this chapter.

(g) Grant uncontested applications for exempt wholesale generator status that do not involve unusual or interpretation issues; to act on uncontested motions to withdraw such applications; and to act on uncontested amendments to applications for EWG status that do not present unusual or interpretation issues.

[Order No. 38, 44 FR 46453, Aug. 8, 1979. Redesignated and amended at 45 FR 21224, 21225, Apr. 1, 1980; Order 112, 45 FR 79025, Nov. 28, 1980; Order 224, 47 FR 17810, Apr. 24, 1982; Order 225, 47 FR 19058, May 3, 1982; Order 396, 49 FR 36829, Sept. 20, 1984; Order 417, 50 FR 15731, Apr. 22, 1985; Order 421, 50 FR 21427, May 24, 1985; 50 FR 47532, Nov. 19, 1985; Order 494, 53 FR 15382, Apr. 29, 1988; Order 585, 60 FR 62329, Dec. 6, 1995; Order 591, 61 FR 57328, Nov. 6, 1996]

### § 375.310 Delegations during emergency conditions.

For delegations of Commission authority during emergency conditions, see subpart B of part 376 of this chapter.

[45 FR 21217, Apr. 1, 1980. Redesignated by Order 613, 64 FR 73407, Dec. 30, 1999]

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### § 375.311 Delegations to the Director, Office of External Affairs.

The Commission authorizes the Director, Office of External Affairs to waive or reduce fees in accordance with §§ 388.108 through 388.110 of this chapter.

[Order 562, 58 FR 62521, Nov. 29, 1993. Redesignated by Order 613, 64 FR 73407, Dec. 30, 1999]

### § 375.312 Delegations to the Director of the Office of Finance, Accounting and Operations.

The Commission authorizes the Director or the Director's designee to:

(a) Sign all correspondence with respect to financial accounting and reporting matters on behalf of the Commission.

(b) Pass upon actual legitimate original cost and depreciation thereon and the net investment in jurisdictional companies and revisions thereof, and sign audit reports resulting from the examination of the books and records of jurisdictional companies,

(1) If the company agrees with the audit report, or

(2) If, in the case of a financial audit, the company does not agree with the audit report, provided that notification of the opportunity for a hearing under Section 301(a) of the Federal Power Act or Section 8(a) of the Natural Gas Act accompanies the audit report.

(c) Pass upon and approve requests by state and federal agencies to review staff working papers from financial audits if the company agrees to the release of the audit working papers provided:

(1) The papers are examined at the Commission, and

(2) The requester—

(i) Only makes general notes concerning the contents of the audit working papers,

(ii) Does not make copies of the audit working papers, and

(iii) Does not remove the audit working papers from the area designated by the Director.

(d) With regard to billing errors noted as a result of the Commission staff's examination of automatic adjustment tariffs approved by the Commission, approve corrective measures, including recomputation of billing and

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refunds, to the extent the company agrees.

(e) Deny or grant, in whole or in part, requests for waiver of the requirements of parts 352 and 356 of this chapter, except if the matters involve unusually large transactions or unique or controversial features, the Director must present the matters to the Commission for consideration.

(f) Prescribe the updated fees for part 381 of this chapter in accordance with § 381.104 of this chapter.

(g) Prescribe the updated fees for part 381 of this chapter in accordance with § 388.109(b)(2) of this chapter.

(h) Deny or grant, in whole or in part, petitions for waiver of fees prescribed in § 381.302 of this chapter in accordance with § 381.106(b) of this chapter.

(i) Deny or grant, in whole or in part, petitions for exemption from fees prescribed in part 381 of this chapter in accordance with § 381.108 of this chapter.

(j) Determine the annual charges for administrative costs, for use of United States lands, and for use of government dams or other structures.

(k) Grant or deny waiver of penalty charges for late payment of annual charges.

(l) Give credit for overpayment of annual charges.

(m) Deny or grant, in whole or in part, petitions for exemption from annual charges under § 11.6 of this chapter for state and municipal licensees.

(n) Grant or deny petitions for waiver of annual charges for oil pipelines.

[Order 613, 64 FR 73407, Dec. 30, 1999]

### § 375.313 Delegations to the Critical Energy Infrastructure Information Coordinator.

The Commission authorizes the Coordinator or the Coordinator's designee to:

(a) Receive and review all requests for critical energy infrastructure information as defined in § 388.113(c)(1).

(b) Make determinations as to whether particular information fits within the definition of CEII found at § 388.113(c)(1).

(c) Make determinations as to whether a particular requester's need for and ability and willingness to protect critical energy infrastructure information

warrants limited disclosure of the information to the requester.

(d) Establish reasonable conditions on the release of critical energy infrastructure information.

(e) Release critical energy infrastructure information to requesters who satisfy the requirements in paragraph (b) of this section and agree in writing to abide by any conditions set forth by the Coordinator pursuant to paragraph (c) of this section.

EFFECTIVE DATE NOTE: By Order 630, 68 FR 9869 Mar. 3, 2003, § 375.313 was added, effective Apr. 2, 2003.

## PART 376—ORGANIZATION, MISSION, AND FUNCTIONS; OPERATIONS DURING EMERGENCY CONDITIONS

### Subpart A—Organization, Mission, and Functions

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376.105	Chairman.

### Subpart B—Commission Operation During Emergency Conditions

376.201	Emergency condition defined.
376.202	Authority to move Commission offices.
376.203	Mailing address of Commission during emergency conditions.
376.204	Delegation of Commission's authority during emergency conditions.
376.205	Delegation of Chairman's authority during emergency conditions.
376.206	Delegation of functions of certain Commission staff members.
376.207	Personnel and fiscal functions.
376.208	Effect upon existing Commission requirements.

AUTHORITY: 5 U.S.C. 553; 42 U.S.C. 7101-7352; E.O. 12009, 3 CFR 1978 Comp., p. 142.

SOURCE: 45 FR 21222, Apr. 1, 1980, unless otherwise noted.

### Subpart A—Organization, Mission, and Functions

#### § 376.101 Purpose.

This subpart sets forth the organization, mission and functions of the Commission, and its offices and divisions.

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### § 376.102 Organization.

The Commission is established as an independent regulatory Commission within the DOE by the DOE Act. The Commission is composed of five members appointed by the President, by and with the advice and consent of the Senate. One of the members is designated by the President as the Chairman. To carry out its mission and functions, the Chairman has organized the Commission into a number of major offices, some of which are further organized into divisions and lower units. The organization of the Commission staff structure may be obtained from the Division of Public Information.

### § 376.103 Mission.

The Commission is responsible for developing, managing, and directing energy regulatory programs and activities assigned to it by statute, executive orders, or by the Secretary, DOE. The Chairman serves as the chief executive officer of the Commission and is responsible for the conduct of all Commission executive and administrative functions. In carrying out its mission, the Commission and its employees are not subject to the supervision or direction of any other official of DOE.

### § 376.104 Functions.

The functions of the Commission include:

- (a) All functions vested in the Commission under the DOE Act;
- (b) All functions delegated to the Commission by the Secretary of Energy in accordance with the DOE Act; and
- (c) All functions vested in the Commission by statute.

### § 376.105 Chairman.

(a) *Administrative head of agency.* The Chairman is the administrative head of the Commission.

(b) *Administrative responsibilities.* The Chairman is responsible on behalf of the Commission for the executive and administrative operation of the Commission, including functions of the Commission with respect to—

- (1) The appointment and employment of Administrative Law Judges in ac-

cordance with the provisions of Title 5, United States Code.

(2) The selection, appointment, and fixing of the compensation of such personnel as he deems necessary.

(3) The supervision of personnel employed by or assigned to the Commission, except that each Commissioner may select and supervise personnel for his personal staff.

(4) The distribution of business among personnel and among administrative units of the Commission.

(5) The procurement of services of experts and consultants in accordance with section 3109 of Title 5, United States Code.

[45 FR 21222, Apr. 1, 1980, as amended by Order 613, 64 FR 73407, Dec. 30, 1999]

## Subpart B—Commission Operation During Emergency Conditions

### § 376.201 Emergency condition defined.

For purposes of this subpart, emergency conditions:

(a) Shall commence:

(1) At the time of an armed attack upon the United States, or its territories or possessions;

(2) At the time the Commission is officially notified of the likelihood or imminence of such an attack; or

(3) At a time specified by the authority of the President; and

(b) Shall continue until the Commission is officially notified of the end of such conditions.

### § 376.202 Authority to move Commission offices.

The Commission may provide for removal of its headquarters to any location in the United States for the duration of emergency conditions. Consistent with directives of the Chairman, the Commission officer or employee in charge of a regional office of the Commission may move such office to a new location in the United States for the duration of emergency conditions.

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### § 376.203 Mailing address of Commission during emergency conditions.

The Chairman may direct that during the continuance of emergency conditions, communications, filings, reports, or other submittals to the Commission shall be addressed to the Federal Energy Regulatory Commission, Official Mail and Messenger Service, United States Postal Service to such or other address as the Commission may designate.

### § 376.204 Delegation of Commission's authority during emergency conditions.

(a) *Delegation of authority to one or two Commissioners.* During emergency conditions, the Commission shall function as usual, if a quorum of the Commission is available and capable of acting. If by reason of such conditions a quorum of the Commission is not available and capable of acting, all functions of the Commission are delegated to the Commissioner or Commissioners who are available and capable of acting.

(b) *Delegation of authority to Commission staff.* (1) When, by reason of emergency conditions, there is no Commissioner available and capable of acting, the functions of the Commission are delegated to the first five members of the Commission staff on the list set forth in paragraph (b)(2) of this section who are available and capable of acting.

(2) The list referred to in paragraph (b)(1) of this section is:

- (i) Director of the Office of Finance, Accounting and Operations;
- (ii) Director of the Office of Markets, Tariffs and Rates;
- (iii) Director of the Office of Energy Projects;
- (iv) General Counsel;
- (v) Executive Assistant to the Chairman;
- (vi) Deputy Directors, Office of Markets, Tariffs and Rates, in order of seniority;
- (vii) Deputy Directors, Office of Energy Projects, in order of seniority;
- (viii) Deputy General Counsel;
- (ix) Associate General Counsels, Assistant General Counsels and Solicitor, in order of seniority;

(x) Assistant Directors and Division heads, Office of Markets, Tariffs and Rates; Assistant Directors and Division heads, Office of Energy Projects; and Assistant General Counsels; in order of seniority.

(3) For purposes of paragraph (b)(2) of this section order of seniority shall be based on the highest grade and longest period of service in that grade but without regard to the particular office or Division to which assigned.

(c) *Reconsideration of staff action taken under delegations.* Action taken pursuant to the delegations provided for in this section shall be subject to reconsideration by the Commission, acting with a quorum, within thirty days after the date upon which public notice is given that a quorum of the Commission has been reconstituted and is functioning.

[45 FR 21222, Apr. 1, 1980, as amended by Order 613, 64 FR 73407, Dec. 30, 1999]

### § 376.205 Delegation of Chairman's authority during emergency conditions.

When, by reason of emergency conditions, the Chairman is not available and capable of acting, his functions are delegated to the Commissioner available and capable of acting and who is designated by the President. Until such time as the President designates, or if no such Commissioner is designated, such functions are delegated to the Commissioner designated by the Chairman as Acting Chairman, but if such Acting Chairman is not available and capable of acting such functions are delegated to the Commissioner who is available and capable of acting and who has the longest tenure as a member of the Commission. If there is no Commissioner available and capable of acting, such functions are delegated to the person on the Commission staff who is available and capable of acting and who is highest on the list set forth in § 376.204(b)(2).

### § 376.206 Delegation of functions of certain Commission staff members.

When, by reason of emergency conditions, the Secretary; Director of the Office of Finance, Accounting and Operations; Director of any Office or Division, or officer in charge of a regional

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office, is not available and capable of carrying out his functions, such functions are delegated to staff members designated by the Chairman to perform such functions. If no staff member so designated is available and capable of carrying out his functions, such functions are delegated to the next subordinate employee in the Office or Division of the highest grade and longest period of service in that grade.

[Order 613, 64 FR 73408, Dec. 30, 1999]

**§ 376.207 Personnel and fiscal functions.**

Subject to modifications or revocation by authority of the Director of the Office of Finance, Accounting and Operations, during the continuation of emergency conditions authority to effect temporary appointments of such additional officers and employees, to classify and allocate positions to their proper grades, to issue travel orders, and to effect emergency purchases of supplies, equipment and services shall be exercised by the respective Directors of Offices and officials in charge of regional offices, their deputies, or staff in line of succession, as may be required for the discharge of the lawful duties of such organization.

[Order 613, 64 FR 73408, Dec. 30, 1999]

**§ 376.208 Effect upon existing Commission requirements.**

All outstanding Commission orders, rules and regulations shall remain in force and effect during the continuance of emergency conditions, except to the extent modified in accordance with authority exercised under this subpart.

**PART 380—REGULATIONS IMPLEMENTING THE NATIONAL ENVIRONMENTAL POLICY ACT**

Sec.

- 380.1 Purpose.
- 380.2 Definitions and terminology.
- 380.3 Environmental information to be supplied by an applicant.
- 380.4 Projects or actions categorically excluded.
- 380.5 Actions that require an environmental assessment.
- 380.6 Actions that require an environmental impact statement.

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- 380.7 Format of an environmental impact statement.
- 380.8 Preparation of environmental documents.
- 380.9 Public availability of NEPA documents and public notice of NEPA related hearings and public meetings.
- 380.10 Participation in Commission proceedings.
- 380.11 Environmental decisionmaking.
- 380.12 Environmental reports for Natural Gas Act applications.
- 380.13 Compliance with the Endangered Species Act.
- 380.14 Compliance with the National Historic Preservation Act.
- 380.15 Siting and maintenance requirements.

**APPENDIX A TO PART 380—MINIMUM FILING REQUIREMENTS FOR ENVIRONMENTAL REPORTS UNDER THE NATURAL GAS ACT**

AUTHORITY: 42 U.S.C. 4321–4370a, 7101–7352; E.O. 12009, 3 CFR 1978 Comp., p. 142.

SOURCE: Order 486, 52 FR 47910, Dec. 17, 1987, unless otherwise noted.

**§ 380.1 Purpose.**

The regulations in this part implement the Federal Energy Regulatory Commission’s procedures under the National Environmental Policy Act of 1969. These regulations supplement the regulations of the Council on Environmental Quality, 40 CFR parts 1500 through 1508 (1986). The Commission will comply with the regulations of the Council on Environmental Quality except where those regulations are inconsistent with the statutory requirements of the Commission.

**§ 380.2 Definitions and terminology.**

- For purposes of this part—
- (a) *Categorical exclusion* means a category of actions described in § 380.4, which do not individually or cumulatively have a significant effect on the human environment and which the Commission has found to have no such effect and for which, therefore, neither an environmental assessment nor an environmental impact statement is required. The Commission may decide to prepare environmental assessments for the reasons stated in § 380.4(b).
  - (b) *Commission* means the Federal Energy Regulatory Commission.
  - (c) *Council* means the Council on Environmental Quality.
  - (d) *Environmental assessment* means a concise public document for which the

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Commission is responsible that serves to:

(1) Briefly provide sufficient evidence and analysis for determining whether to prepare an environmental impact statement or a finding of no significant impact.

(2) Aid the Commission's compliance with NEPA when no environmental impact statement is necessary.

(3) Facilitate preparation of a statement when one is necessary. Environmental assessments must include brief discussions of the need for the proposal, of alternatives as required by section 102(2)(E) of NEPA, of the environmental impacts of the proposed action and alternatives, and a listing of agencies and persons consulted.

(e) *Environmental impact statement* (EIS) means a detailed written statement as required by section 102(2)(C) of NEPA. DEIS means a draft EIS and FEIS means a final EIS.

(f) *Environmental report* or ER means that part of an application submitted to the Commission by an applicant for authorization of a proposed action which includes information concerning the environment, the applicant's analysis of the environmental impact of the action, or alternatives to the action required by this or other applicable statutes or regulations.

(g) *Finding of no significant impact* (FONSI) means a document by the Commission briefly presenting the reason why an action, not otherwise excluded by § 380.4, will not have a significant effect on the human environment and for which an environmental impact statement therefore will not be prepared. It must include the environmental assessment or a summary of it and must note other environmental documents related to it. If the assessment is included, the FONSI need not repeat any of the discussion in the assessment but may incorporate it by reference.

### § 380.3 Environmental information to be supplied by an applicant.

(a) An applicant must submit information as follows:

(1) For any proposed action identified in §§ 380.5 and 380.6, and environmental report with the proposal as prescribed in paragraph (c) of this section.

(2) For any proposal not identified in paragraph (a)(1) of this section, any environmental information that the Commission may determine is necessary for compliance with these regulations, the regulations of the Council, NEPA and other Federal laws such as the Endangered Species Act, the National Historic Preservation Act or the Coastal Zone Management Act.

(b) An applicant must also:

(1) Provide all necessary or relevant information to the Commission;

(2) Conduct any studies that the Commission staff considers necessary or relevant to determine the impact of the proposal on the human environment and natural resources;

(3) Consult with appropriate Federal, regional, State, and local agencies during the planning stages of the proposed action to ensure that all potential environmental impacts are identified. (The specific requirements for consultation on hydropower projects are contained in § 4.38 and § 16.8 of this chapter and in section 4(a) of the Electric Consumers Protection Act, Pub. L. No. 99-495, 100 Stat. 1243, 1246 (1986));

(4) Submit applications for all Federal and State approvals as early as possible in the planning process; and

(5) Notify the Commission staff of all other Federal actions required for completion of the proposed action so that the staff may coordinate with other interested Federal agencies.

(c) *Content of an applicant's environmental report for specific proposals*—(1) *Hydropower projects*. The information required for specific project applications under part 4 or 16 of this chapter.

(2) *Natural gas projects*. (i) For any application filed under the Natural Gas Act for any proposed action identified in §§ 380.5 or 380.6, except for prior notice filings under § 157.208, as described in § 380.5(b), the information identified in § 380.12 and Appendix A of this part.

(ii) For prior notice filings under § 157.208, the report described by § 157.208(c)(11) of this chapter.

[Order 486, 52 FR 47910, Dec. 17, 1987, as amended by Order 533, 56 FR 23155, May 20, 1991; Order 603, 64 FR 26611, May 14, 1999]

**§ 380.4 Projects or actions categorically excluded.**

(a) *General rule.* Except as stated in paragraph (b) of this section, neither an environmental assessment nor an environmental impact statement will be prepared for the following projects or actions:

(1) Procedural, ministerial, or internal administrative and management actions, programs, or decisions, including procurement, contracting, personnel actions, correction or clarification of filings or orders, and acceptance, rejection and dismissal of filings;

(2)(i) Reports or recommendations on legislation not initiated by the Commission, and

(ii) Proposals for legislation and promulgation of rules that are clarifying, corrective, or procedural, or that do not substantially change the effect of legislation or regulations being amended;

(3) Compliance and review actions, including investigations (jurisdictional or otherwise), conferences, hearings, notices of probable violation, show cause orders, and adjustments under section 502(c) of the Natural Gas Policy Act of 1978 (NGPA);

(4) Review of grants or denials by the Department of Energy (DOE) of any adjustment request, and review of contested remedial orders issued by DOE;

(5) Information gathering, analysis, and dissemination;

(6) Conceptual or feasibility studies;

(7) Actions concerning the reservation and classification of United States lands as water power sites and other actions under section 24 of the Federal Power Act;

(8) Transfers of water power project licenses and transfers of exemptions under Part I of the Federal Power Act and Part 9 of this chapter;

(9) Issuance of preliminary permits for water power projects under Part I of the Federal Power Act and Part 4 of this chapter;

(10) Withdrawals of applications for certificates under the Natural Gas Act, or for water power project preliminary permits, exemptions, or licenses under Part I of the Federal Power Act and Part 4 of this chapter;

(11) Actions concerning annual charges or headwater benefits, charges

for water power projects under Parts 11 and 13 of this chapter and establishment of fees to be paid by an applicant for a license or exemption required to meet the terms and conditions of section 30(c) of the Federal Power Act;

(12) Approval for water power projects under Part I of the Federal Power Act, of “as built” or revised drawings or exhibits that propose no changes to project works or operations or that reflect changes that have previously been approved or required by the Commission;

(13) Surrender and amendment of preliminary permits, and surrender of water power licenses and exemptions where no project works exist or ground disturbing activity has occurred and amendments to water power licenses and exemptions that do not require ground disturbing activity or changes to project works or operation;

(14) Exemptions for small conduit hydroelectric facilities as defined in § 4.30(b)(26) of this chapter under Part I of the Federal Power Act and Part 4 of this chapter;

(15) Electric rate filings submitted by public utilities under sections 205 and 206 of the Federal Power Act, the establishment of just and reasonable rates, and confirmation, approval, and disapproval of rate filings submitted by Federal power marketing agencies under the Pacific Northwest Electric Power Planning and Conservation Act, the Department of Energy Organization Act, and DOE Delegation Order No. 0204-108.

(16) Approval of actions under sections 4(b), 203, 204, 301, 304, and 305 of the Federal Power Act relating to issuance and purchase of securities, acquisition or disposition of property, merger, interlocking directorates, jurisdictional determinations and accounting orders;

(17) Approval of electrical interconnections and wheeling under sections 202(b), 210, 211, and 212 of the Federal Power Act, that would not entail:

(i) Construction of a new substation or expansion of the boundaries of an existing substation;

(ii) Construction of any transmission line that operates at more than 115 kilovolts (KV) and occupies more than

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ten miles of an existing right-of-way; or

(iii) Construction of any transmission line more than one mile long if located on a new right-of-way;

(18) Approval of changes in land rights for water power projects under Part I of the Federal Power Act and Part 4 of this chapter, if no construction or change in land use is either proposed or known by the Commission to be contemplated for the land affected;

(19) Approval of proposals under Part I of the Federal Power Act and Part 4 of this chapter to authorize use of water power project lands or waters for gas or electric utility distribution lines, radial (sub-transmission) lines, communications lines and cables, storm drains, sewer lines not discharging into project waters, water mains, piers, landings, boat docks, or similar structures and facilities, landscaping or embankments, bulkheads, retaining walls, or similar shoreline erosion control structures;

(20) Action on applications for exemption under section 1(c) of the Natural Gas Act;

(21) Approvals of blanket certificate applications and prior notice filings under §157.204 and §§157.209 through 157.218 of this chapter;

(22) Approvals of blanket certificate applications under §§284.221 through 284.224 of this chapter;

(23) Producers' applications for the sale of gas filed under §§157.23 through 157.29 of this chapter;

(24) Approval under section 7 of the Natural Gas Act of taps, meters, and regulating facilities located completely within an existing natural gas pipeline right-of-way or compressor station if company records show the land use of the vicinity has not changed since the original facilities were installed, and no significant nonjurisdictional facilities would be constructed in association with construction of the interconnection facilities;

(25) Review of natural gas rate filings, including any curtailment plans other than those specified in §380.5(b)(5), and establishment of rates for transportation and sale of natural gas under sections 4 and 5 of the Natural Gas Act and sections 311 and 401

through 404 of the Natural Gas Policy Act of 1978;

(26) Review of approval of oil pipeline rate filings under Parts 340 and 341 of this chapter;

(27) Sale, exchange, and transportation of natural gas under sections 4, 5 and 7 of the Natural Gas Act that requires no construction of facilities;

(28) Abandonment in place of a minor natural gas pipeline (short segments of buried pipe of 6-inch inside diameter or less), or abandonment by removal of minor surface facilities such as metering stations, valves, and taps under section 7 of the Natural Gas Act so long as appropriate erosion control and site restoration takes place;

(29) Abandonment of service under any gas supply contract pursuant to section 7 of the Natural Gas Act;

(30) Approval of filing made in compliance with the requirements of a certificate for a natural gas project under section 7 of the Natural Gas Act or a preliminary permit, exemption, license, or license amendment order for a water power project under Part I of the Federal Power Act;

(31) Abandonment of facilities by sale that involves only minor or no ground disturbance to disconnect the facilities from the system;

(32) Conversion of facilities from use under the NGPA to use under the NGA;

(33) Construction or abandonment of facilities constructed entirely in Federal offshore waters that has been approved by the Minerals Management Service and the Corps of Engineers, as necessary;

(34) Abandonment or construction of facilities on an existing offshore platform;

(35) Abandonment, construction or replacement of a facility (other than compression) solely within an existing building within a natural gas facility (other than LNG facilities), if it does not increase the noise or air emissions from the facility, as a whole; and

(36) Conversion of compression to standby use if the compressor is not moved, or abandonment of compression if the compressor station remains in operation.

(b) *Exceptions to categorical exclusions.*

(1) In accordance with 40 CFR 1508.4,

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the Commission and its staff will independently evaluate environmental information supplied in an application and in comments by the public. Where circumstances indicate that an action may be a major Federal action significantly affecting the quality of the human environment, the Commission:

(i) May require an environmental report or other additional environmental information, and

(ii) Will prepare an environmental assessment or an environmental impact statement.

(2) Such circumstances may exist when the action may have an effect on one of the following:

(i) Indian lands;

(ii) Wilderness areas;

(iii) Wild and scenic rivers;

(iv) Wetlands;

(v) Units of the National Park System, National Refuges, or National Fish Hatcheries;

(vi) Anadromous fish or endangered species; or

(vii) Where the environmental effects are uncertain.

However, the existence of one or more of the above will not automatically require the submission of an environmental report or the preparation of an environmental assessment or an environmental impact statement.

[Order 486, 52 FR 47910, Dec. 17, 1987, as amended at 53 FR 8177, Mar. 14, 1988; Order 486-B, 53 FR 26437, July 13, 1988; 54 FR 48740, Nov. 27, 1989; Order 603, 64 FR 26611, May 14, 1999; Order 609, 64 FR 57392, Oct. 25, 1999]

### **§ 380.5 Actions that require an environmental assessment.**

(a) An environmental assessment will normally be prepared first for the actions identified in this section. Depending on the outcome of the environmental assessment, the Commission may or may not prepare an environmental impact statement. However, depending on the location or scope of the proposed action, or the resources affected, the Commission may in specific circumstances proceed directly to prepare an environmental impact statement.

(b) The projects subject to an environmental assessment are as follows:

(1) Except as identified in §§ 380.4, 380.6 and 2.55 of this chapter, authoriza-

tion for the site of new gas import/export facilities under DOE Delegation No. 0204-112 and authorization under section 7 of the Natural Gas Act for the construction, replacement, or abandonment of compression, processing, or interconnecting facilities, onshore and offshore pipelines, metering facilities, LNG peak-shaving facilities, or other facilities necessary for the sale, exchange, storage, or transportation of natural gas;

(2) Prior notice filings under § 157.208 of this chapter for the rearrangement of any facility specified in §§ 157.202 (b)(3) and (6) of this chapter or the acquisition, construction, or operation of any eligible facility as specified in §§ 157.202 (b)(2) and (3) of this chapter;

(3) Abandonment or reduction of natural gas service under section 7 of the Natural Gas Act unless excluded under § 380.4 (a)(21), (28) or (29);

(4) Except as identified in § 380.6, conversion of existing depleted oil or natural gas fields to underground storage fields under section 7 of the Natural Gas Act.

(5) New natural gas curtailment plans, or any amendment to an existing curtailment plan under section 4 of the Natural Gas Act and sections 401 through 404 of the Natural Gas Policy Act of 1978 that has a major effect on an entire pipeline system;

(6) Licenses under Part I of the Federal Power Act and part 4 of this chapter for construction of any water power project—existing dam;

(7) Exemptions under section 405 of the Public Utility Regulatory Policies Act of 1978, as amended, and §§ 4.30(b)(27) and 4.101–4.106 of this chapter for small hydroelectric power projects of 5 MW or less;

(8) Licenses for additional project works at licensed projects under Part I of the Federal Power Act whether or not these are styled license amendments or original licenses;

(9) Licenses under Part I of the Federal Power Act and part 4 of this chapter for transmission lines only;

(10) Applications for new licenses under section 15 of the Federal Power Act;

(11) Approval of electric interconnections and wheeling under sections 202(b), 210, 211, and 212 of the Federal

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Power Act, unless excluded under § 380.4(a)(17); and

(12) Regulations or proposals for legislation not excluded under § 380.4(a)(2).

(13) Surrender of water power licenses and exemptions where project works exist or ground disturbing activity has occurred and amendments to water power licenses and exemptions that require ground disturbing activity or changes to project works or operations.

[Order 486, 52 FR 47910, Dec. 17, 1987; Order 486, 53 FR 4817, Feb. 17, 1988, as amended by 53 FR 8177, Mar. 14, 1988; Order 486-B, 53 FR 26437, July 13, 1988]

### § 380.6 Actions that require an environmental impact statement.

(a) Except as provided in paragraph (b) of this section, an environmental impact statement will normally be prepared first for the following projects:

(1) Authorization under sections 3 or 7 of the Natural Gas Act and DOE Delegation Order No. 0204-112 for the siting, construction, and operation of jurisdictional liquefied natural gas import/export facilities used wholly or in part to liquefy, store, or regasify liquefied natural gas transported by water;

(2) Certificate applications under section 7 of the Natural Gas Act to develop an underground natural gas storage facility except where depleted oil or natural gas producing fields are used;

(3) Major pipeline construction projects under section 7 of the Natural Gas Act using right-of-way in which there is no existing natural gas pipeline; and

(4) Licenses under Part I of the Federal Power Act and Part 4 of this chapter for construction of any unconstructed water power project.

(b) If the Commission believes that a proposed action identified in paragraph (a) of this section may not be a major Federal action significantly affecting the quality of the human environment, an environmental assessment, rather than an environmental impact statement, will be prepared first. Depending on the outcome of the environmental assessment, an environmental impact statement may or may not be prepared.

(c) An environmental impact statement will not be required if an environ-

mental assessment indicates that a proposal has adverse environmental effects and the proposal is not approved.

[Order 486, 52 FR 47910, Dec. 17, 1987, as amended at 53 FR 8177, Mar. 14, 1988; Order 486-B, 53 FR 26437, July 13, 1988]

### § 380.7 Format of an environmental impact statement.

In addition to the requirements for an environmental impact statement prescribed in 40 CFR 1502.10 of the regulations of the Council, an environmental impact statement prepared by the Commission will include a section on the literature cited in the environmental impact statement and a staff conclusion section. The staff conclusion section will include summaries of:

(a) The significant environmental impacts of the proposed action;

(b) Any alternative to the proposed action that would have a less severe environmental impact or impacts and the action preferred by the staff;

(c) Any mitigation measures proposed by the applicant, as well as additional mitigation measures that might be more effective;

(d) Any significant environmental impacts of the proposed action that cannot be mitigated; and

(e) References to any pending, completed, or recommended studies that might provide baseline data or additional data on the proposed action.

### § 380.8 Preparation of environmental documents.

The preparation of environmental documents, as defined in § 1508.10 of the regulations of the Council, on hydroelectric projects, is the responsibility of the Commission's Office of Hydro-power Licensing, 888 First Street NE., Washington, DC 20426, (202) 219-2700. The preparation of environmental documents on natural gas projects is the responsibility of the Commission's Office of Pipeline Regulation, (202) 208-0700, 888 First Street NE., Washington, DC 20426. Persons interested in status reports or information on environmental impact statements or other elements of the NEPA process, including the studies or other information the

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Commission may require on these projects, can contact these sections.

[Order 486, 52 FR 47910, Dec. 17, 1987, as amended by Order 603-A, 64 FR 54537, Oct. 7, 1999]

#### **§ 380.9 Public availability of NEPA documents and public notice of NEPA related hearings and public meetings.**

(a)(1) The Commission will comply with the requirements of 40 CFR 1506.6 of the regulations of the Council for public involvement in NEPA.

(2) If an action has effects of primarily local concern, the Commission may give additional notice in a Commission order.

(b) The Commission will make environmental impact statements, environmental assessments, the comments received, and any underlying documents available to the public pursuant to the provisions of the Freedom of Information Act (5 U.S.C. 552 (1982)). The exclusion in the Freedom of Information Act for interagency memoranda is not applicable where such memoranda transmit comments of Federal agencies on the environmental impact of the proposed action. Such materials will be made available to the public at the Commission's Public Reference Room at 888 First Street NE., Room 2A, Washington, DC 20426 at a fee and in the manner described in Part 388 of this chapter. A copy of an environmental impact statement or environmental assessment for hydroelectric projects may also be made available for inspection at the Commission's regional office for the region where the proposed action is located.

[Order 486, 52 FR 47910, Dec. 17, 1987, as amended by Order 603-A, 64 FR 54537, Oct. 7, 1999]

#### **§ 380.10 Participation in Commission proceedings.**

(a) *Intervention proceedings involving a party or parties—(1) Motion to intervene.*

(i) In addition to submitting comments on the NEPA process and NEPA related documents, any person may file a motion to intervene in a Commission proceeding dealing with environmental issues under the terms of § 385.214 of this chapter. Any person who files a motion to intervene on the basis of a

draft environmental impact statement will be deemed to have filed a timely motion, in accordance with § 385.214, as long as the motion is filed within the comment period for the draft environmental impact statement.

(ii) Any person that is granted intervention after petitioning becomes a party to the proceeding and accepts the record as developed by the parties as of the time that intervention is granted.

(2)(i) *Issues not set for trial-type hearing.* An intervenor who takes a position on any environmental issue that has not yet been set for hearing must file a timely motion with the Secretary containing an analysis of its position on such issue and specifying any differences with the position of Commission staff or an applicant upon which the intervenor wishes to be heard at a hearing.

(ii) *Issues set for trial-type hearing.* (A) Any intervenor that takes a position on an environmental issue set for hearing may offer evidence for the record in support of such position and otherwise participate in accordance with the Commission's Rules of Practice and Procedure. Any intervenor must specify any differences from the staff's and the applicant's positions.

(B) To be considered, any facts or opinions on an environmental issue set for hearing must be admitted into evidence and made part of the record of the proceeding.

(b) *Rulemaking proceedings.* Any person may file comments on any environmental issue in a rulemaking proceeding.

#### **§ 380.11 Environmental decision-making.**

(a) *Decision points.* For the actions which require an environmental assessment or environmental impact statement, environmental considerations will be addressed at appropriate major decision points.

(1) In proceedings involving a party or parties and not set for trial-type hearing, major decision points are the approval or denial of proposals by the Commission or its designees.

(2) In matters set for trial-type hearing, the major decision points are the initial decision of an administrative

law judge or the decision of the Commission.

(3) In a rulemaking proceeding, the major decision points are the Notice of Proposed Rulemaking and the Final Rule.

(b) *Environmental documents as part of the record.* The Commission will include environmental assessments, findings of no significant impact, or environmental impact statements, and any supplements in the record of the proceeding.

(c) *Application denials.* Notwithstanding any provision in this part, the Commission may dismiss or deny an application without performing an environmental impact statement or without undertaking environmental analysis.

**§ 380.12 Environmental reports for Natural Gas Act applications.**

(a) *Introduction.* (1) The applicant must submit an environmental report with any application that proposes the construction, operation, or abandonment of any facility identified in § 380.3(c)(2)(i). The environmental report shall consist of the thirteen resource reports and related material described in this section.

(2) The detail of each resource report must be commensurate with the complexity of the proposal and its potential for environmental impact. Each topic in each resource report shall be addressed or its omission justified, unless the resource report description indicates that the data is not required for that type of proposal. If material required for one resource report is provided in another resource report or in another exhibit, it may be incorporated by reference. If any resource report topic is required for a particular project but is not provided at the time the application is filed, the environmental report shall explain why it is missing and when the applicant anticipates it will be filed.

(3) The appendix to this part contains a checklist of the minimum filing requirements for an environmental report. Failure to provide at least the applicable checklist items will result in rejection of the application unless the Director of OPR determines that the applicant has provided an acceptable

reason for the item's absence and an acceptable schedule for filing it. Failure to file within the accepted schedule will result in rejection of the application.

(b) *General requirements.* As appropriate, each resource report shall:

(1) Address conditions or resources that might be directly or indirectly affected by the project.

(2) Identify significant environmental effects expected to occur as a result of the project;

(3) Identify the effects of construction, operation (including maintenance and malfunctions), and termination of the project, as well as cumulative effects resulting from existing or reasonably foreseeable projects;

(4) Identify measures proposed to enhance the environment or to avoid, mitigate, or compensate for adverse effects of the project;

(5) Provide a list of publications, reports, and other literature or communications, including agency contacts, that were cited or relied upon to prepare each report. This list should include the name and title of the person contacted, their affiliations, and telephone number.

(6) Whenever this section refers to "mileposts" the applicant may substitute "survey centerline stationing" if so desired. However, whatever method is chosen should be used consistently throughout the resource reports.

(c) *Resource Report 1—General project description.* This report is required for all applications. It will describe facilities associated with the project, special construction and operation procedures, construction timetables, future plans for related construction, compliance with regulations and codes, and permits that must be obtained. Resource Report 1 must:

(1) Describe and provide location maps of all jurisdictional facilities, including all aboveground facilities associated with the project (such as: meter stations, pig launchers/receivers, valves), to be constructed, modified, abandoned, replaced, or removed, including related construction and operational support activities and areas such as maintenance bases, staging areas, communications towers, power lines, and new access roads (roads to be

built or modified). As relevant, the report must describe the length and diameter of the pipeline, the types of aboveground facilities that would be installed, and associated land requirements. It must also identify other companies that must construct jurisdictional facilities related to the project, where the facilities would be located, and where they are in the Commission's approval process.

(2) Identify and describe all nonjurisdictional facilities, including auxiliary facilities, that will be built in association with the project, including facilities to be built by other companies.

(i) Provide the following information:

(A) A brief description of each facility, including as appropriate: Ownership, land requirements, gas consumption, megawatt size, construction status, and an update of the latest status of Federal, state, and local permits/approvals;

(B) The length and diameter of any interconnecting pipeline;

(C) Current 1:24,000/1:25,000 scale topographic maps showing the location of the facilities;

(D) Correspondence with the appropriate State Historic Preservation Officer (SHPO) or duly authorized Tribal Historic Preservation Officer (THPO) for tribal lands regarding whether properties eligible for listing on the National Register of Historic Places (NRHP) would be affected;

(E) Correspondence with the U.S. Fish and Wildlife Service (and National Marine Fisheries Service, if appropriate) regarding potential impacts of the proposed facility on federally listed threatened and endangered species; and

(F) For facilities within a designated coastal zone management area, a consistency determination or evidence that the owner has requested a consistency determination from the state's coastal zone management program.

(ii) Address each of the following factors and indicate which ones, if any, appear to indicate the need for the Commission to do an environmental review of project-related nonjurisdictional facilities.

(A) Whether or not the regulated activity comprises "merely a link" in a corridor type project (e.g., a transportation or utility transmission project).

(B) Whether there are aspects of the nonjurisdictional facility in the immediate vicinity of the regulated activity which uniquely determine the location and configuration of the regulated activity.

(C) The extent to which the entire project will be within the Commission's jurisdiction.

(D) The extent of cumulative Federal control and responsibility.

(3) Provide the following maps and photos:

(i) Current, original United States Geological Survey (USGS) 7.5-minute series topographic maps or maps of equivalent detail, covering at least a 0.5-mile-wide corridor centered on the pipeline, with integer mileposts identified, showing the location of rights-of-way, new access roads, other linear construction areas, compressor stations, and pipe storage areas. Show nonlinear construction areas on maps at a scale of 1:3,600 or larger keyed graphically and by milepost to the right-of-way maps.

(ii) Original aerial images or photographs or photo-based alignment sheets based on these sources, not more than 1 year old (unless older ones accurately depict current land use and development) and with a scale of 1:6,000 or larger, showing the proposed pipeline route and location of major aboveground facilities, covering at least a 0.5 mile-wide corridor, and including mileposts. Older images/photographs/alignment sheets should be modified to show any residences not depicted in the original. Alternative formats (e.g., blue-line prints of acceptable resolution) need prior approval by the environmental staff of the Office of Pipeline Regulation.

(iii) In addition to the copy required under § 157.6(a)(2) of this chapter, applicant should send two additional copies of topographic maps and aerial images/photographs directly to the environmental staff of the Office of Pipeline Regulation.

(4) When new or additional compression is proposed, include large scale (1:3,600 or greater) plot plans of each compressor station. The plot plan should reference a readily identifiable point(s) on the USGS maps required in paragraph (c)(3) of this section. The

maps and plot plans must identify the location of the nearest noise-sensitive areas (schools, hospitals, or residences) within 1 mile of the compressor station, existing and proposed compressor and auxiliary buildings, access roads, and the limits of areas that would be permanently disturbed.

(5)(i) Identify facilities to be abandoned, and state how they would be abandoned, how the site would be restored, who would own the site or right-of-way after abandonment, and who would be responsible for any facilities abandoned in place.

(ii) When the right-of-way or the easement would be abandoned, identify whether landowners were given the opportunity to request that the facilities on their property, including foundations and below ground components, be removed. Identify any landowners whose preferences the company does not intend to honor, and the reasons therefore.

(6) Describe and identify by milepost, proposed construction and restoration methods to be used in areas of rugged topography, residential areas, active croplands, sites where the pipeline would be located parallel to and under roads, and sites where explosives are likely to be used.

(7) Unless provided in response to Resource Report 5, describe estimated workforce requirements, including the number of pipeline construction spreads, average workforce requirements for each construction spread and meter or compressor station, estimated duration of construction from initial clearing to final restoration, and number of personnel to be hired to operate the proposed project.

(8) Describe reasonably foreseeable plans for future expansion of facilities, including additional land requirements and the compatibility of those plans with the current proposal.

(9) Describe all authorizations required to complete the proposed action and the status of applications for such authorizations. Identify environmental mitigation requirements specified in any permit or proposed in any permit application to the extent not specified elsewhere in this section.

(10) Provide the names and mailing addresses of all affected landowners

specified in §157.6(d) and certify that all affected landowners will be notified as required in §157.6(d).

(d) *Resource Report 2—Water use and quality.* This report is required for all applications, except those which involve only facilities within the areas of an existing compressor, meter, or regulator station that were disturbed by construction of the existing facilities, no wetlands or waterbodies are on the site and there would not be a significant increase in water use. The report must describe water quality and provide data sufficient to determine the expected impact of the project and the effectiveness of mitigative, enhancement, or protective measures. Resource Report 2 must:

(1) Identify and describe by milepost perennial waterbodies and municipal water supply or watershed areas, specially designated surface water protection areas and sensitive waterbodies, and wetlands that would be crossed. For each waterbody crossing, identify the approximate width, state water quality classifications, any known potential pollutants present in the water or sediments, and any potable water intake sources within 3 miles downstream.

(2) Compare proposed mitigation measures with the staff's current "*Wetland and Waterbody Construction and Mitigation Procedures*," which are available from the Commission Internet home page or the Commission staff, describe what proposed alternative mitigation would provide equivalent or greater protection to the environment, and provide a description of site-specific construction techniques that would be used at each major waterbody crossing.

(3) Describe typical staging area requirements at waterbody and wetland crossings. Also, identify and describe waterbodies and wetlands where staging areas are likely to be more extensive.

(4) Include National Wetland Inventory (NWI) maps. If NWI maps are not available, provide the appropriate state wetland maps. Identify for each crossing, the milepost, the wetland classification specified by the U.S. Fish and Wildlife Service, and the length of the crossing. Include two copies of the NWI

maps (or the substitutes, if NWI maps are not available) clearly showing the proposed route and mileposts directed to the environmental staff. Describe by milepost, wetland crossings as determined by field delineations using the current Federal methodology.

(5) Identify aquifers within excavation depth in the project area, including the depth of the aquifer, current and projected use, water quality and average yield, and known or suspected contamination problems.

(6) Describe specific locations, the quantity required, and the method and rate of withdrawal and discharge of hydrostatic test water. Describe suspended or dissolved material likely to be present in the water as a result of contact with the pipeline, particularly if an existing pipeline is being retested. Describe chemical or physical treatment of the pipeline or hydrostatic test water. Discuss waste products generated and disposal methods.

(7) If underground storage of natural gas is proposed:

(i) Identify how water produced from the storage field will be disposed of, and

(ii) For salt caverns, identify the source locations, the quantity required, and the method and rate of withdrawal of water for creating salt cavern(s), as well as the means of disposal of brine resulting from cavern leaching.

(8) Discuss proposed mitigation measures to reduce the potential for adverse impacts to surface water, wetlands, or groundwater quality to the extent they are not described in response to paragraph (d)(2) of this section. Discuss the potential for blasting to affect water wells, springs, and wetlands, and measures to be taken to detect and remedy such effects.

(9) Identify the location of known public and private groundwater supply wells or springs within 150 feet of proposed construction areas. Identify locations of EPA or state-designated sole-source aquifers and wellhead protection areas crossed by the proposed pipeline facilities.

(e) *Resource Report 3—Fish, wildlife, and vegetation.* This report is required for all applications, except those involving only facilities within the im-

proved area of an existing compressor, meter, or regulator station. It must describe aquatic life, wildlife, and vegetation in the vicinity of the proposed project; expected impacts on these resources including potential effects on biodiversity; and proposed mitigation, enhancement or protection measures. Resource Report 3 must:

(1) Describe commercial and recreational warmwater, coldwater, and saltwater fisheries in the affected area and associated significant habitats such as spawning or rearing areas and estuaries.

(2) Describe terrestrial habitats, including wetlands, typical wildlife habitats, and rare, unique, or otherwise significant habitats that might be affected by the proposed action. Describe typical species that have commercial, recreational, or aesthetic value.

(3) Describe and provide the affected acreage of vegetation cover types that would be affected, including unique ecosystems or communities such as remnant prairie or old-growth forest, or significant individual plants, such as old-growth specimen trees.

(4) Describe the impact of construction and operation on aquatic and terrestrial species and their habitats, including the possibility of a major alteration to ecosystems or biodiversity, and any potential impact on state-listed endangered or threatened species. Describe the impact of maintenance, clearing and treatment of the project area on fish, wildlife, and vegetation. Surveys may be required to determine specific areas of significant habitats or communities of species of special concern to state or local agencies.

(5) Identify all federally listed or proposed endangered or threatened species and critical habitat that potentially occur in the vicinity of the project. Discuss the results of the consultation requirements listed in § 380.13(b) at least through § 380.13(b)(5)(i) and include any written correspondence that resulted from the consultation. The initial application must include the results of any required surveys unless seasonal considerations make this impractical. If species surveys are impractical, there must be field surveys to determine the presence of suitable

habitat unless the entire project area is suitable habitat.

(6) Identify all federally listed essential fish habitat (EFH) that potentially occurs in the vicinity of the project. Provide information on all EFH, as identified by the pertinent Federal fishery management plans, that may be adversely affected by the project and the results of abbreviated consultations with NMFS, and any resulting EFH assessments.

(7) Describe site-specific mitigation measures to minimize impacts on fisheries, wildlife, and vegetation.

(8) Include copies of correspondence not provided pursuant to paragraph (e)(5) of this section, containing recommendations from appropriate Federal and state fish and wildlife agencies to avoid or limit impact on wildlife, fisheries, and vegetation, and the applicant's response to the recommendations.

(f) *Resource Report 4—Cultural resources.* This report is required for all applications. In order to prepare this report, the applicant must follow the principles in §380.14 of this part. Guidance on the content and the format for the documentation listed below, as well as professional qualifications of preparers, is detailed in “*OPR's Guidelines for Reporting on Cultural Resources Investigations*,” which is available from the Commission Internet home page or from the Commission staff.

(1) Resource Report 4 must contain:

(i) Documentation of the applicant's initial cultural resources consultation, including consultations with Native Americans and other interested persons (if appropriate);

(ii) Overview and Survey Reports, as appropriate;

(iii) Evaluation Report, as appropriate;

(iv) Treatment Plan, as appropriate; and

(v) Written comments from State Historic Preservation Officer(s) (SHPO), Tribal Historic Preservation Officers (THPO), as appropriate, and applicable land-managing agencies on the reports in paragraphs (f)(1)(i)–(iv) of this section.

(2) *Initial filing requirements.* The initial application must include the documentation of initial cultural resource

consultation, the Overview and Survey Reports, if required, and written comments from SHPOs, THPOs and land-managing agencies, if available. The initial cultural resources consultations should establish the need for surveys. If surveys are deemed necessary by the consultation with the SHPO/THPO, the survey report must be filed with the application.

(i) If the comments of the SHPOs, THPOs, or land-management agencies are not available at the time the application is filed, they may be filed separately, but they must be filed before a final certificate is issued.

(ii) If landowners deny access to private property and certain areas are not surveyed, the unsurveyed area must be identified by mileposts, and supplemental surveys or evaluations shall be conducted after access is granted. In such circumstances, reports, and treatment plans, if necessary, for those inaccessible lands may be filed after a certificate is issued.

(3) The Evaluation Report and Treatment Plan, if required, for the entire project must be filed before a final certificate is issued.

(i) The Evaluation Report may be combined in a single synthetic report with the Overview and Survey Reports if the SHPOs, THPOs, and land-management agencies allow and if it is available at the time the application is filed.

(ii) In preparing the Treatment Plan, the applicant must consult with the Commission staff, the SHPO, and any applicable THPO and land-management agencies.

(iii) Authorization to implement the Treatment Plan will occur only after the final certificate is issued.

(4) Applicant must request privileged treatment for all material filed with the Commission containing location, character, and ownership information about cultural resources in accordance with §388.112 of this chapter. The cover and relevant pages or portions of the report should be clearly labeled in bold lettering: “CONTAINS PRIVILEGED INFORMATION—DO NOT RELEASE.”

(5) Except as specified in a final Commission order, or by the Director of the Office of Pipeline Regulation, construction may not begin until all cultural

resource reports and plans have been approved.

(g) *Resource Report 5—Socioeconomics.* This report is required only for applications involving significant above-ground facilities, including, among others, conditioning or liquefied natural gas (LNG) plants. It must identify and quantify the impacts of constructing and operating the proposed project on factors affecting towns and counties in the vicinity of the project. Resource Report 5 must:

(1) Describe the socioeconomic impact area.

(2) Evaluate the impact of any substantial immigration of people on governmental facilities and services and plans to reduce the impact on the local infrastructure.

(3) Describe on-site manpower requirements and payroll during construction and operation, including the number of construction personnel who currently reside within the impact area, would commute daily to the site from outside the impact area, or would relocate temporarily within the impact area.

(4) Determine whether existing housing within the impact area is sufficient to meet the needs of the additional population.

(5) Describe the number and types of residences and businesses that would be displaced by the project, procedures to be used to acquire these properties, and types and amounts of relocation assistance payments.

(6) Conduct a fiscal impact analysis evaluating incremental local government expenditures in relation to incremental local government revenues that would result from construction of the project. Incremental expenditures include, but are not limited to, school operating costs, road maintenance and repair, public safety, and public utility costs.

(h) *Resource Report 6—Geological resources.* This report is required for applications involving LNG facilities and all other applications, except those involving only facilities within the boundaries of existing aboveground facilities, such as a compressor, meter, or regulator station. It must describe geological resources and hazards in the project area that might be directly or

indirectly affected by the proposed action or that could place the proposed facilities at risk, the potential effects of those hazards on the facility, and methods proposed to reduce the effects or risks. Resource Report 6 must:

(1) Describe, by milepost, mineral resources that are currently or potentially exploitable;

(2) Describe, by milepost, existing and potential geological hazards and areas of nonroutine geotechnical concern, such as high seismicity areas, active faults, and areas susceptible to soil liquefaction; planned, active, and abandoned mines; karst terrain; and areas of potential ground failure, such as subsidence, slumping, and landsliding. Discuss the hazards posed to the facility from each one.

(3) Describe how the project would be located or designed to avoid or minimize adverse effects to the resources or risk to itself, including geotechnical investigations and monitoring that would be conducted before, during, and after construction. Discuss also the potential for blasting to affect structures, and the measures to be taken to remedy such effects.

(4) Specify methods to be used to prevent project-induced contamination from surface mines or from mine tailings along the right-of-way and whether the project would hinder mine reclamation or expansion efforts.

(5) If the application involves an LNG facility located in zones 2, 3, or 4 of the Uniform Building Code's Seismic Risk Map, or where there is potential for surface faulting or liquefaction, prepare a report on earthquake hazards and engineering in conformance with "Data Requirements for the Seismic Review of LNG Facilities," NBSIR 84-2833. This document may be obtained from the Commission staff.

(6) If the application is for underground storage facilities:

(i) Describe how the applicant would control and monitor the drilling activity of others within the field and buffer zone;

(ii) Describe how the applicant would monitor potential effects of the operation of adjacent storage or production facilities on the proposed facility, and vice versa;

(iii) Describe measures taken to locate and determine the condition of old wells within the field and buffer zone and how the applicant would reduce risk from failure of known and undiscovered wells; and

(iv) Identify and discuss safety and environmental safeguards required by state and Federal drilling regulations.

(i) *Resource Report 7—Soils.* This report is required for all applications except those not involving soil disturbance. It must describe the soils that would be affected by the proposed project, the effect on those soils, and measures proposed to minimize or avoid impact. Resource Report 7 must:

(1) List, by milepost, the soil associations that would be crossed and describe the erosion potential, fertility, and drainage characteristics of each association.

(2) If an aboveground facility site is greater than 5 acres:

(i) List the soil series within the property and the percentage of the property comprised of each series;

(ii) List the percentage of each series which would be permanently disturbed;

(iii) Describe the characteristics of each soil series; and

(iv) Indicate which are classified as prime or unique farmland by the U.S. Department of Agriculture, Natural Resources Conservation Service.

(3) Identify, by milepost, potential impact from: Soil erosion due to water, wind, or loss of vegetation; soil compaction and damage to soil structure resulting from movement of construction vehicles; wet soils and soils with poor drainage that are especially prone to structural damage; damage to drainage tile systems due to movement of construction vehicles and trenching activities; and interference with the operation of agricultural equipment due to the probability of large stones or blasted rock occurring on or near the surface as a result of construction.

(4) Identify, by milepost, cropland and residential areas where loss of soil fertility due to trenching and backfilling could occur.

(5) Describe proposed mitigation measures to reduce the potential for adverse impact to soils or agricultural productivity. Compare proposed mitigation measures with the staff's cur-

rent "*Upland Erosion Control, Revegetation and Maintenance Plan*", which is available from the Commission Internet home page or from the Commission staff, and explain how proposed mitigation measures provide equivalent or greater protections to the environment.

(j) *Resource Report 8—Land use, recreation and aesthetics.* This report is required for all applications except those involving only facilities which are of comparable use at existing compressor, meter, and regulator stations. It must describe the existing uses of land on, and (where specified) within 0.25 mile of, the proposed project and changes to those land uses that would occur if the project is approved. The report shall discuss proposed mitigation measures, including protection and enhancement of existing land use. Resource Report 8 must:

(1) Describe the width and acreage requirements of all construction and permanent rights-of-way and the acreage required for each proposed plant and operational site, including injection or withdrawal wells.

(i) List, by milepost, locations where the proposed right-of-way would be adjacent to existing rights-of-way of any kind.

(ii) Identify, preferably by diagrams, existing rights-of-way that would be used for a portion of the construction or operational right-of-way, the overlap and how much additional width would be required.

(iii) Identify the total amount of land to be purchased or leased for each aboveground facility, the amount of land that would be disturbed for construction and operation of the facility, and the use of the remaining land not required for project operation.

(iv) Identify the size of typical staging areas and expanded work areas, such as those at railroad, road, and waterbody crossings, and the size and location of all pipe storage yards and access roads.

(2) Identify, by milepost, the existing use of lands crossed by the proposed pipeline, or on or adjacent to each proposed plant and operational site.

(3) Describe planned development on land crossed or within 0.25 mile of proposed facilities, the time frame (if

available) for such development, and proposed coordination to minimize impacts on land use. Planned development means development which is included in a master plan or is on file with the local planning board or the county.

(4) Identify, by milepost and length of crossing, the area of direct effect of each proposed facility and operational site on sugar maple stands, orchards and nurseries, landfills, operating mines, hazardous waste sites, state wild and scenic rivers, state or local designated trails, nature preserves, game management areas, remnant prairie, old-growth forest, national or state forests, parks, golf courses, designated natural, recreational or scenic areas, or registered natural landmarks, Native American religious sites and traditional cultural properties to the extent they are known to the public at large, and reservations, lands identified under the Special Area Management Plan of the Office of Coastal Zone Management, National Oceanic and Atmospheric Administration, and lands owned or controlled by Federal or state agencies or private preservation groups. Also identify if any of those areas are located within 0.25 mile of any proposed facility.

(5) Identify, by milepost, all residences and buildings within 50 feet of the proposed pipeline construction right-of-way and the distance of the residence or building from the right-of-way. Provide survey drawings or alignment sheets to illustrate the location of the facilities in relation to the buildings.

(6) Describe any areas crossed by or within 0.25 mile of the proposed pipeline or plant and operational sites which are included in, or are designated for study for inclusion in: The National Wild and Scenic Rivers System (16 U.S.C. 1271); The National Trails System (16 U.S.C. 1241); or a wilderness area designated under the Wilderness Act (16 U.S.C. 1132).

(7) For facilities within a designated coastal zone management area, provide a consistency determination or evidence that the applicant has requested a consistency determination from the state's coastal zone management program.

(8) Describe the impact the project will have on present uses of the affected area as identified above, including commercial uses, mineral resources, recreational areas, public health and safety, and the aesthetic value of the land and its features. Describe any temporary or permanent restrictions on land use resulting from the project.

(9) Describe mitigation measures intended for all special use areas identified under paragraphs (j)(2) through (6) of this section.

(10) Describe proposed typical mitigation measures for each residence that is within 50 feet of the edge of the pipeline construction right-of-way, as well as any proposed residence-specific mitigation. Describe how residential property, including for example, fences, driveways, stone walls, sidewalks, water supply, and septic systems, would be restored. Describe compensation plans for temporary and permanent rights-of-way and the eminent domain process for the affected areas.

(11) Describe measures proposed to mitigate the aesthetic impact of the facilities especially for aboveground facilities such as compressor or meter stations.

(12) Demonstrate that applications for rights-of-way or other proposed land use have been or soon will be filed with Federal land-management agencies with jurisdiction over land that would be affected by the project.

(k) *Resource Report 9—Air and noise quality.* This report is required for applications involving compressor facilities at new or existing stations, and for all new LNG facilities. It must identify the effects of the project on the existing air quality and noise environment and describe proposed measures to mitigate the effects. Resource Report 9 must:

(1) Describe the existing air quality, including background levels of nitrogen dioxide and other criteria pollutants which may be emitted above EPA-identified significance levels.

(2) Quantitatively describe existing noise levels at noise-sensitive areas, such as schools, hospitals, or residences and include any areas covered by relevant state or local noise ordinances.

(i) Report existing noise levels as the  $L_{eq}$  (day),  $L_{eq}$  (night), and  $L_{dn}$  and include the basis for the data or estimates.

(ii) For existing compressor stations, include the results of a sound level survey at the site property line and nearby noise-sensitive areas while the compressors are operated at full load.

(iii) For proposed new compressor station sites, measure or estimate the existing ambient sound environment based on current land uses and activities.

(iv) Include a plot plan that identifies the locations and duration of noise measurements, the time of day, weather conditions, wind speed and direction, engine load, and other noise sources present during each measurement.

(3) Estimate the impact of the project on air quality, including how existing regulatory standards would be met.

(i) Provide the emission rate of nitrogen oxides from existing and proposed facilities, expressed in pounds per hour and tons per year for maximum operating conditions, include supporting calculations, emission factors, fuel consumption rates, and annual hours of operation.

(ii) For major sources of air emissions (as defined by the Environmental Protection Agency), provide copies of applications for permits to construct (and operate, if applicable) or for applicability determinations under regulations for the prevention of significant air quality deterioration and subsequent determinations.

(4) Provide a quantitative estimate of the impact of the project on noise levels at noise-sensitive areas, such as schools, hospitals, or residences.

(i) Include step-by-step supporting calculations or identify the computer program used to model the noise levels, the input and raw output data and all assumptions made when running the model, far-field sound level data for maximum facility operation, and the source of the data.

(ii) Include sound pressure levels for un-muffled engine inlets and exhausts, engine casings, and cooling equipment; dynamic insertion loss for all mufflers; sound transmission loss for all compressor building components, including

walls, roof, doors, windows and ventilation openings; sound attenuation from the station to nearby noise-sensitive areas; the manufacturer's name, the model number, the performance rating; and a description of each noise source and noise control component to be employed at the proposed compressor station. For proposed compressors the initial filing must include at least the proposed horsepower, type of compression, and energy source for the compressor.

(iii) Far-field sound level data measured from similar units in service elsewhere, when available, may be substituted for manufacturer's far-field sound level data.

(iv) If specific noise control equipment has not been chosen, include a schedule for submitting the data prior to certification.

(v) The estimate must demonstrate that the project will comply with applicable noise regulations and show how the facility will meet the following requirements:

(A) The noise attributable to any new compressor station, compression added to an existing station, or any modification, upgrade or update of an existing station, must not exceed a day-night sound level ( $L_{dn}$ ) of 55 dBA at any pre-existing noise-sensitive area (such as schools, hospitals, or residences).

(B) New compressor stations or modifications of existing stations shall not result in a perceptible increase in vibration at any noise-sensitive area.

(5) Describe measures and manufacturer's specifications for equipment proposed to mitigate impact to air and noise quality, including emission control systems, installation of filters, mufflers, or insulation of piping and buildings, and orientation of equipment away from noise-sensitive areas.

(1) *Resource Report 10—Alternatives*. This report is required for all applications. It must describe alternatives to the project and compare the environmental impacts of such alternatives to those of the proposal. The discussion must demonstrate how environmental benefits and costs were weighed against economic benefits and costs, and technological and procedural constraints. The potential for each alternative to meet project deadlines and

the environmental consequences of each alternative shall be discussed. Resource Report 10 must:

(1) Discuss the “no action” alternative and the potential for accomplishing the proposed objectives through the use of other systems and/or energy conservation. Provide an analysis of the relative environmental benefits and costs for each alternative.

(2) Describe alternative routes or locations considered for each facility during the initial screening for the project.

(i) For alternative routes considered in the initial screening for the project but eliminated, describe the environmental characteristics of each route or site, and the reasons for rejecting it. Identify the location of such alternatives on maps of sufficient scale to depict their location and relationship to the proposed action, and the relationship of the pipeline to existing rights-of-way.

(ii) For alternative routes or locations considered for more in-depth consideration, describe the environmental characteristics of each route or site and the reasons for rejecting it. Provide comparative tables showing the differences in environmental characteristics for the alternative and proposed action. The location of any alternatives in this paragraph shall be provided on maps equivalent to those required in paragraph (c)(2) of this section.

(m) *Resource Report 11—Reliability and safety.* This report is required for applications involving new or recommissioned LNG facilities. Information previously filed with the Commission need not be refiled if the applicant verifies its continued validity. This report shall address the potential hazard to the public from failure of facility components resulting from accidents or natural catastrophes, how these events would affect reliability, and what procedures and design features have been used to reduce potential hazards. Resource Report 11 must:

(1) Describe measures proposed to protect the public from failure of the proposed facilities (including coordination with local agencies).

(2) Discuss hazards, the environmental impact, and service interrup-

tions which could reasonably ensue from failure of the proposed facilities.

(3) Discuss design and operational measures to avoid or reduce risk.

(4) Discuss contingency plans for maintaining service or reducing downtime.

(5) Describe measures used to exclude the public from hazardous areas. Discuss measures used to minimize problems arising from malfunctions and accidents (with estimates of probability of occurrence) and identify standard procedures for protecting services and public safety during maintenance and breakdowns.

(n) *Resource Report 12—PCB contamination.* This report is required for applications involving the replacement, abandonment by removal, or abandonment in place of pipeline facilities determined to have polychlorinated biphenyls (PCBs) in excess of 50 ppm in pipeline liquids. Resource Report 12 must:

(1) Provide a statement that activities would comply with an approved EPA disposal permit, with the dates of issuance and expiration specified, or with the requirements of the Toxic Substances Control Act.

(2) For compressor station modifications on sites that have been determined to have soils contaminated with PCBs, describe the status of remediation efforts completed to date.

(o) *Resource Report 13—Engineering and design material.* This report is required for construction of new liquefied natural gas (LNG) facilities, or the recommissioning of existing LNG facilities. If the recommissioned facility is existing and is not being replaced, relocated, or significantly altered, resubmittal of information already on file with the Commission is unnecessary. Resource Report 13 must:

(1) Provide a detailed plot plan showing the location of all major components to be installed, including compression, pretreatment, liquefaction, storage, transfer piping, vaporization, truck loading/unloading, vent stacks, pumps, and auxiliary or appurtenant service facilities.

(2) Provide a detailed layout of the fire protection system showing the location of fire water pumps, piping, hydrants, hose reels, dry chemical systems, high expansion foam systems, and auxiliary or appurtenant service facilities.

(3) Provide a layout of the hazard detection system showing the location of combustible-gas detectors, fire detectors, heat detectors, smoke or combustion product detectors, and low temperature detectors. Identify those detectors that activate automatic shutdowns and the equipment that would shut down. Include all safety provisions incorporated in the plant design, including automatic and manually activated emergency shutdown systems.

(4) Provide a detailed layout of the spill containment system showing the location of impoundments, sumps, subdikes, channels, and water removal systems.

(5) Provide manufacturer's specifications, drawings, and literature on the fail-safe shut-off valve for each loading area at a marine terminal (if applicable).

(6) Provide a detailed layout of the fuel gas system showing all taps with process components.

(7) Provide copies of company, engineering firm, or consultant studies of a conceptual nature that show the engineering planning or design approach to the construction of new facilities or plants.

(8) Provide engineering information on major process components related to the first six items above, which include (as applicable) function, capacity, type, manufacturer, drive system (horsepower, voltage), operating pressure, and temperature.

(9) Provide manuals and construction drawings for LNG storage tank(s).

(10) Provide up-to-date piping and instrumentation diagrams. Include a description of the instrumentation and control philosophy, type of instrumentation (pneumatic, electronic), use of computer technology, and control room display and operation. Also, provide an overall schematic diagram of the entire process flow system, including maps, materials, and energy balances.

(11) Provide engineering information on the plant's electrical power generation system, distribution system, emergency power system, uninterruptible power system, and battery backup system.

(12) Identify of all codes and standards under which the plant (and marine terminal, if applicable) will be designed, and any special considerations or safety provisions that were applied to the design of plant components.

(13) Provide a list of all permits or approvals from local, state, Federal, or Native American groups or Indian agencies required prior to and during construction of the plant, and the status of each, including the date filed, the date issued, and any known obstacles to approval. Include a description of data records required for submission to such agencies and transcripts of any public hearings by such agencies. Also provide copies of any correspondence relating to the actions by all, or any, of these agencies regarding all required approvals.

(14) Identify how each applicable requirement will comply with 49 CFR part 193 and the National Fire Protection Association 59A LNG Standards. For new facilities, the siting requirements of 49 CFR part 193, subpart B, must be given special attention. If applicable, vapor dispersion calculations from LNG spills over water should also be presented to ensure compliance with the U.S. Coast Guard's LNG regulations in 33 CFR part 127.

(15) Provide seismic information specified in Data Requirements for the Seismic Review of LNG facilities (NBSIR 84-2833, available from FERC staff) for facilities that would be located in zone 2, 3, or 4 of the Uniform Building Code Seismic Map of the United States.

[Order 603, 64 FR 26611, May 14, 1999, as amended by Order 603-A, 64 FR 54537, Oct. 7, 1999; Order 609, 64 FR 57392, Oct. 25, 1999]

### § 380.13 Compliance with the Endangered Species Act.

(a) *Definitions.* For purposes of this section:

(1) *Listed species* and *critical habitat* have the same meaning as provided in 50 CFR 402.02.

(2) *Project area* means any area subject to construction activities (for example, material storage sites, temporary work areas, and new access roads) necessary to install or abandon the facilities.

(b) *Procedures for informal consultation*—(1) *Designation of non-Federal representative*. The project sponsor is designated as the Commission's non-Federal representative for purposes of informal consultations with the U.S. Fish and Wildlife Service (FWS) and the National Marine Fisheries Service (NMFS) under the Endangered Species Act of 1973, as amended (ESA).

(2) *Consultation requirement*. (i) Prior to the filing of the environmental report specified in § 380.12, the project sponsor must contact the appropriate regional or field office of the FWS or the NMFS, or both if appropriate, to initiate informal consultations, unless it is proceeding pursuant to a blanket clearance issued by the FWS and/or NMFS which is less than 1 year old and the clearance does not specify more frequent consultation.

(ii) If a blanket clearance is more than 1 year old or less than 1 year old and specifies more frequent consultations, or if the project sponsor is not proceeding pursuant to a blanket clearance, the project sponsor must request a list of federally listed or proposed species and designated or proposed critical habitat that may be present in the project area, or provide the consulted agency with such a list for its concurrence.

(iii) The consulted agency will provide a species and critical habitat list or concur with the species list provided within 30 days of its receipt of the initial request. In the event that the consulted agency does not provide this information within this time period, the project sponsor may notify the Director of the Office of Pipeline Regulation and continue with the remaining procedures of this section.

(3) *End of informal consultation*. (i) At any time during the informal consultations, the consulted agency may determine or confirm:

(A) That no listed or proposed species, or designated or proposed critical habitat, occurs in the project area; or

(B) That the project is not likely to adversely affect a listed species or critical habitat;

(ii) If the consulted agency provides the determination or confirmation described in paragraph (b)(3)(i) of this section, no further consultation is required.

(4) *Potential impact to proposed species*.

(i) If the consulted agency, pursuant to informal consultations, initially determines that any species proposed to be listed, or proposed critical habitat, occurs in the project area, the project sponsor must confer with the consulted agency on methods to avoid or reduce the potential impact.

(ii) The project sponsor shall include in its proposal, a discussion of any mitigating measures recommended through the consultation process.

(5) *Continued informal consultations for listed species*. (i) If the consulted agency initially determines, pursuant to the informal consultations, that a listed species or designated critical habitat may occur in the project area, the project sponsor must continue informal consultations with the consulted agency to determine if the proposed project may affect the species or designated critical habitat. These consultations may include discussions with experts (including experts provided by the consulted agency), habitat identification, field surveys, biological analyses, and the formulation of mitigation measures. If the provided information indicates that the project is not likely to adversely affect a listed species or critical habitat, the consulting agency will provide a letter of concurrence which completes informal consultation.

(ii) The project sponsor must prepare a Biological Assessment unless the consulted agency indicates that the proposed project is not likely to adversely affect a specific listed species or its designated critical habitat. The Biological Assessment must contain the following information for each species contained in the consulted agency's species list:

(A) Life history and habitat requirements;

(B) Results of detailed surveys to determine if individuals, populations, or suitable, unoccupied habitat exists in the proposed project's area of effect;

(C) Potential impacts, both beneficial and negative, that could result from the construction and operation of the proposed project, or disturbance associated with the abandonment, if applicable; and

(D) Proposed mitigation that would eliminate or minimize these potential impacts.

(iii) All surveys must be conducted by qualified biologists and must use FWS and/or NMFS approved survey methodology. In addition, the Biological Assessment must include the following information:

(A) Name(s) and qualifications of person(s) conducting the survey;

(B) Survey methodology;

(C) Date of survey(s); and

(D) Detailed and site-specific identification of size and location of all areas surveyed.

(iv) The project sponsor must provide a draft Biological Assessment directly to the environmental staff of the Office of Pipeline Regulation for review and comment and/or submission to the consulted agency. If the consulted agency fails to provide formal comments on the Biological Assessment to the project sponsor within 30 days of its receipt, as specified in 50 CFR 402.120, the project sponsor may notify the Director, OPR, and follow the procedures in paragraph (c) of this section.

(v) The consulted agency's comments on the Biological Assessment's determination must be filed with the Commission.

(c) *Notification to Director.* In the event that the consulted agency fails to respond to requests by the project sponsor under paragraph (b) of this section, the project sponsor must notify the Director of the Office of Pipeline Regulation. The notification must include all information, reports, letters, and other correspondence prepared pursuant to this section. The Director will determine whether:

(1) Additional informal consultation is required;

(2) Formal consultation must be initiated under paragraph (d) of this section; or

(3) Construction may proceed.

(d) *Procedures for formal consultation.*

(1) In the event that formal consultation is required pursuant to paragraphs

(b)(5)(v) or (c)(2) of this section, the Commission staff will initiate formal consultation with the FWS and/or NMFS, as appropriate, and will request that the consulted agency designate a lead Regional Office, lead Field/District Office, and Project Manager, as necessary, to facilitate the formal consultation process. In addition, the Commission will designate a contact for formal consultation purposes.

(2) During formal consultation, the consulted agency, the Commission, and the project sponsor will coordinate and consult to determine potential impacts and mitigation which can be implemented to minimize impacts. The Commission and the consulted agency will schedule coordination meetings and/or field visits as necessary.

(3) The formal consultation period will last no longer than 90 days, unless the consulted agency, the Commission, and project sponsor mutually agree to an extension of this time period.

(4) The consulted agency will provide the Commission with a Biological Opinion on the proposed project, as specified in 50 CFR 402.14(e), within 45 days of the completion of formal consultation.

[Order 603, 64 FR 26617, May 14, 1999]

#### **§ 380.14 Compliance with the National Historic Preservation Act.**

(a) Section 106 of the National Historic Preservation Act, as amended (16 U.S.C. 470(f)) (NHPA), requires the Commission take into account the effect of a proposed project on any historic property and to afford the Advisory Council on Historic Preservation (Council) an opportunity to comment on projects if required under 36 CFR 800. The project sponsor, as a non-Federal party, assists the Commission in meeting its obligations under NHPA section 106 and the implementing regulations at 36 CFR part 800 by following the procedures at § 380.12(f). The project sponsor may contact the Commission at any time for assistance. The Commission will review the resultant filings.

(1) The Commission's NHPA section 106 responsibilities apply to public and private lands, unless subject to the provisions of paragraph (a)(2) of this section. The project sponsor will assist

the Commission in taking into account the views of interested parties, Native Americans, and tribal leaders.

(2) If Federal or Tribal land is affected by a proposed project, the project sponsor shall adhere to any requirements for cultural resources studies of the applicable Federal land-managing agencies on Federal lands and any tribal requirements on Tribal lands. The project sponsor must identify, in Resource Report 4 filed with the application, the status of cultural resources studies on Federal or Tribal lands, as applicable.

(3) The project sponsor must consult with the SHPO(s) and THPOs, if appropriate. If the SHPO or THPO declines to consult with the project sponsor, the project sponsor shall not continue with consultations, except as instructed by the Director of the Office of Pipeline Regulation.

(4) If the project is covered by an agreement document among the Commission, Council, SHPO(s), THPO(s), land-managing agencies, project sponsors, and interested persons, as appropriate, then that agreement will provide for compliance with NHPA section 106, as applicable.

(b) [Reserved]

[Order 603, 64 FR 26618, May 14, 1999]

**§ 380.15 Siting and maintenance requirements.**

(a) *Avoidance or minimization of effects.* The siting, construction, and maintenance of facilities shall be undertaken in a way that avoids or minimizes effects on scenic, historic, wildlife, and recreational values.

(b) *Landowner consideration.* The desires of landowners should be taken into account in the planning, locating, clearing, and maintenance of rights-of-way and the construction of facilities on their property, so long as the result is consistent with applicable requirements of law, including laws relating to land-use and any requirements imposed by the Commission.

(c) *Safety regulations.* The requirements of this paragraph do not affect a project sponsor's obligation to comply with safety regulations of the U.S. Department of Transportation and recognized safe engineering practices.

(d) *Pipeline construction.* (1) The use, widening, or extension of existing rights-of-way must be considered in locating proposed facilities.

(2) In locating proposed facilities, the project sponsor shall, to the extent practicable, avoid places listed on, or eligible for listing on, the National Register of Historic Places; natural landmarks listed on the National Register of Natural Landmarks; officially designated parks; wetlands; and scenic, recreational, and wildlife lands. If rights-of-way must be routed near or through such places, attempts should be made to minimize visibility from areas of public view and to preserve the character and existing environment of the area.

(3) Rights-of-way should avoid forested areas and steep slopes where practical.

(4) Rights-of-way clearing should be kept to the minimum width necessary.

(5) In selecting a method to clear rights-of-way, soil stability and protection of natural vegetation and adjacent resources should be taken into account.

(6) Trees and vegetation cleared from rights-of-way in areas of public view should be disposed of without undue delay.

(7) Remaining trees and shrubs should not be unnecessarily damaged.

(8) Long foreground views of cleared rights-of-way through wooded areas that are visible from areas of public view should be avoided.

(9) Where practical, rights-of-way should avoid crossing hills and other high points at their crests where the crossing is in a forested area and the resulting notch is clearly visible in the foreground from areas of public view.

(10) Screen plantings should be employed where rights-of-way enter forested areas from a clearing and where the clearing is plainly visible in the foreground from areas of public view.

(11) Temporary roads should be designed for proper drainage and built to minimize soil erosion. Upon abandonment, the road area should be restored and stabilized without undue delay.

(e) *Right-of-way maintenance.* (1) Vegetation covers established on a right-of-way should be properly maintained.

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

(3) Chemical control of vegetation should not be used unless authorized by the landowner or land-managing agency. When chemicals are used for control of vegetation, they should be approved by EPA for such use and used in conformance with all applicable regulations.

(f) *Construction of aboveground facilities.* (1) Unobtrusive sites should be selected for the location of aboveground facilities.

(2) Aboveground facilities should cover the minimum area practicable.

(3) Noise potential should be considered in locating compressor stations, or other aboveground facilities.

(4) The exterior of aboveground facilities should be harmonious with the surroundings and other buildings in the area.

(5) The site of aboveground facilities which are visible from nearby residences or public areas, should be planted in trees and shrubs, or other appropriate landscaping and should be installed to enhance the appearance of the facilities, consistent with operating needs.

[Order 603, 64 FR 26619, May 14, 1999]

APPENDIX A TO PART 380—MINIMUM FILING REQUIREMENTS FOR ENVIRONMENTAL REPORTS UNDER THE NATURAL GAS ACT

ENVIRONMENTAL REPORTS UNDER THE NATURAL GAS ACT.

*Resource Report 1—General Project Description*

1. Provide a detailed description and location map of the project facilities. (§380.12(c)(1)).

2. Describe any nonjurisdictional facilities that would be built in association with the project. (§380.12(c)(2)).

3. Provide current original U.S. Geological Survey (USGS) 7.5-minute-series topographic maps with mileposts showing the project facilities; (§380.12(c)(3)).

4. Provide aerial images or photographs or alignment sheets based on these sources with mileposts showing the project facilities; (§380.12(c)(3)).

5. Provide plot/site plans of compressor stations showing the location of the nearest noise-sensitive areas (NSA) within 1 mile. (§380.12(c)(3,4)).

6. Describe construction and restoration methods. (§380.12(c)(6)).

7. Identify the permits required for construction across surface waters. (§380.12(c)(9)).

8. Provide the names and address of all affected landowners and certify that all affected landowners will be notified as required in §157.6(d). (§§380.12(c)(10))

*Resource Report 2—Water Use and Quality*

1. Identify all perennial surface waterbodies crossed by the proposed project and their water quality classification. (§380.12(d)(1)).

2. Identify all waterbody crossings that may have contaminated waters or sediments. (§380.12(d)(1)).

3. Identify watershed areas, designated surface water protection areas, and sensitive waterbodies crossed by the proposed project. (§380.12(d)(1)).

4. Provide a table (based on NWI maps if delineations have not been done) identifying all wetlands, by milepost and length, crossed by the project (including abandoned pipeline), and the total acreage and acreage of each wetland type that would be affected by construction. (§380.12(d)(1 & 4)).

5. Discuss construction and restoration methods proposed for crossing wetlands, and compare them to staff's Wetland and Waterbody Construction and Mitigation Procedures; (§380.12(d)(2)).

6. Describe the proposed waterbody construction, impact mitigation, and restoration methods to be used to cross surface waters and compare to the staff's Wetland and Waterbody Construction and Mitigation Procedures. (§380.12(d)(2)).

7. Provide original National Wetlands Inventory (NWI) maps or the appropriate state wetland maps, if NWI maps are not available, that show all proposed facilities and include milepost locations for proposed pipeline routes. (§380.12(d)(4)).

8. Identify all U.S. Environmental Protection Agency (EPA)- or state- designated aquifers crossed. (§380.12(d)(9)).

*Resource Report 3—Vegetation and Wildlife*

1. Classify the fishery type of each surface waterbody that would be crossed, including fisheries of special concern. (§380.12(e)(1)).

2. Describe terrestrial and wetland wildlife and habitats that would be affected by the project. (§380.12(e)(2)).

3. Describe the major vegetative cover types that would be crossed and provide the acreage of each vegetative cover type that would be affected by construction. (§380.12(e)(3)).

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4. Describe the effects of construction and operation procedures on the fishery resources and proposed mitigation measures. (§380.12(e)(4)).

5. Evaluate the potential for short-term, long-term, and permanent impact on the wildlife resources and state-listed endangered or threatened species caused by construction and operation of the project and proposed mitigation measures. (§380.12(e)(4)).

6. Identify all federally listed or proposed endangered or threatened species that potentially occur in the vicinity of the project and discuss the results of the consultations with other agencies. Include survey reports as specified in §380.12(e)(5).

7. Identify all federally listed essential fish habitat (EFH) that potentially occurs in the vicinity of the project and the results of abbreviated consultations with NMFS, and any resulting EFH assessments. (§380.12(e)(6))

8. Describe any significant biological resources that would be affected. Describe impact and any mitigation proposed to avoid or minimize that impact. (§§380.12(e)(4 & 7))

*Resource Report 4—Cultural Resources*

See §380.14 and “OPR’s Guidelines for Reporting on Cultural Resources Investigations” for further guidance.

1. Initial cultural resources consultation and documentation, and documentation of consultation with Native Americans. (§380.12(f)(1)(i) & (2)).

2. Overview/Survey Report(s). (§380.12(f)(1)(ii) & (2)).

*Resource Report 5—Socioeconomics*

1. For major aboveground facilities and major pipeline projects that require an EIS, describe existing socioeconomic conditions within the project area. (§380.12(g)(1)).

2. For major aboveground facilities, quantify impact on employment, housing, local government services, local tax revenues, transportation, and other relevant factors within the project area. (§380.12(g)(2–6)).

*Resource Report 6—Geological Resources*

1. Identify the location (by milepost) of mineral resources and any planned or active surface mines crossed by the proposed facilities. (§380.12(h)(1 & 2)).

2. Identify any geologic hazards to the proposed facilities. (§380.12(h)(2))

3. Discuss the need for and locations where blasting may be necessary in order to construct the proposed facilities. (§380.12(h)(3))

4. For LNG projects in seismic areas, the materials required by “Data Requirements for the Seismic Review of LNG Facilities,” NBSIR84–2833. (§380.12(h)(5))

5. For underground storage facilities, how drilling activity by others within or adjacent to the facilities would be monitored, and how

old wells would be located and monitored within the facility boundaries. (§380.12(h)(6))

*Resource Report 7—Soils*

1. Identify, describe, and group by milepost the soils affected by the proposed pipeline and aboveground facilities. (§380.12(i)(1))

2. For aboveground facilities that would occupy sites over 5 acres, determine the acreage of prime farmland soils that would be affected by construction and operation. (§380.12(i)(2))

3. Describe, by milepost, potential impacts on soils. (§380.12(i)(3,4))

4. Identify proposed mitigation to minimize impact on soils, and compare with the staff’s Upland Erosion Control, Revegetation, and Maintenance Plan. (§380.12(i)(5))

*Resource Report 8—Land Use, Recreation and Aesthetics*

1. Classify and quantify land use affected by: (§380.12(j)(1))

a. Pipeline construction and permanent rights-of-way (§380.12(j)(1));

b. Extra work/staging areas (§380.12(j)(1));

c. Access roads (§380.12(j)(1));

d. Pipe and contractor yards (§380.12(j)(1)); and

e. Aboveground facilities (§380.12(j)(1)).

2. Identify by milepost all locations where the pipeline right-of-way would at least partially coincide with existing right-of-way, where it would be adjacent to existing rights-of-way, and where it would be outside of existing right-of-way. (§380.12(j)(1))

3. Provide detailed typical construction right-of-way cross-section diagrams showing information such as widths and relative locations of existing rights-of-way, new permanent right-of-way, and temporary construction right-of-way. (§380.12(j)(1))

4. Summarize the total acreage of land affected by construction and operation of the project. (§380.12(j)(1))

5. Identify by milepost all planned residential or commercial/business development and the time frame for construction. (§380.12(j)(3))

6. Identify by milepost special land uses (e.g., sugar maple stands, specialty crops, natural areas, national and state forests, conservation land, etc.). (§380.12(j)(4))

7. Identify by beginning milepost and length of crossing all land administered by Federal, state, or local agencies, or private conservation organizations. (§380.12(j)(4))

8. Identify by milepost all natural, recreational, or scenic areas, and all registered natural landmarks crossed by the project. (§380.12(j)(4 & 6))

9. Identify all facilities that would be within designated coastal zone management areas. Provide a consistency determination or evidence that a request for a consistency

determination has been filed with the appropriate state agency. (§380.12(j)(4 & 7))

10. Identify by milepost all residences that would be within 50 feet of the construction right-of-way or extra work area. (§380.12(j)(5))

11. Identify all designated or proposed candidate National or State Wild and Scenic Rivers crossed by the project. (§380.12(j)(6))

12. Describe any measures to visually screen aboveground facilities, such as compressor stations. (§380.12(j)(11))

13. Demonstrate that applications for rights-of-way or other proposed land use have been or soon will be filed with Federal land-managing agencies with jurisdiction over land that would be affected by the project. (§380.12(j)(12))

*Resource Report 9—Air and Noise Quality*

1. Describe existing air quality in the vicinity of the project. (§380.12(k)(1))

2. Quantify the existing noise levels (day-night sound level ( $L_{dn}$ ) and other applicable noise parameters) at noise-sensitive areas and at other areas covered by relevant state and local noise ordinances. (§380.12(k)(2))

3. Quantify existing and proposed emissions of compressor equipment, plus construction emissions, including nitrogen oxides ( $NO_x$ ) and carbon monoxide (CO), and the basis for these calculations. Summarize anticipated air quality impacts for the project. (§380.12(k)(3))

4. Describe the existing compressor units at each station where new, additional, or modified compressor units are proposed, including the manufacturer, model number, and horsepower of the compressor units. For proposed new, additional, or modified compressor units include the horsepower, type, and energy source. (§380.12(k)(4))

5. Identify any nearby noise-sensitive area by distance and direction from the proposed compressor unit building/enclosure. (§380.12(k)(4))

6. Identify any applicable state or local noise regulations. (§380.12(k)(4))

7. Calculate the noise impact at noise-sensitive areas of the proposed compressor unit modifications or additions, specifying how the impact was calculated, including manufacturer's data and proposed noise control equipment. (§380.12(k)(4))

*Resource Report 10—Alternatives*

1. Address the "no action" alternative. (§380.12(1)(1))

2. For large projects, address the effect of energy conservation or energy alternatives to the project. (§380.12(1)(1))

3. Identify system alternatives considered during the identification of the project and provide the rationale for rejecting each alternative. (§380.12(1)(1))

4. Identify major and minor route alternatives considered to avoid impact on sensitive environmental areas (e.g., wetlands, parks, or residences) and provide sufficient comparative data to justify the selection of the proposed route. (§380.12(1)(2)(ii))

5. Identify alternative sites considered for the location of major new aboveground facilities and provide sufficient comparative data to justify the selection of the proposed site. (§380.12(1)(2)(ii))

*Resource Report 11—Reliability and Safety*

Describe how the project facilities would be designed, constructed, operated, and maintained to minimize potential hazard to the public from the failure of project components as a result of accidents or natural catastrophes. (§380.12(m))

*Resource Report 12—PCB Contamination*

1. For projects involving the replacement or abandonment of facilities determined to have PCBs, provide a statement that activities would comply with an approved EPA disposal permit or with the requirements of the TSCA. (§380.12(n)(1))

2. For compressor station modifications on sites that have been determined to have soils contaminated with PCBs, describe the status of remediation efforts completed to date. (§380.12(n)(2))

*Resource Report 13—Additional Information Related to LNG Plants*

Provide all the listed detailed engineering materials. (§380.12(o))

[Order 603, 64 FR 26619, May 14, 1999, as amended by Order 603-A, 64 FR 54537, Oct. 7, 1999; Order 609, 64 FR 57392, Oct. 25, 1999; Order 609-A, 65 FR 15238, Mar. 22, 2000]

## PART 381—FEES

### Subpart A—General Provisions

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- 381.401 Review of jurisdictional agency determinations.
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- 381.501 Applicability.
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### Subpart F [Reserved]

### Subpart G—Fees Applicable to the Interstate Commerce Act and Related Authorities [Reserved]

### Subpart H—Fees Applicable to the Public Utility Holding Company Act of 1935

- 381.801 Applications for exempt wholesale generator status.

AUTHORITY: 15 U.S.C. 717-717w; 16 U.S.C. 791-828c, 2601-2645; 31 U.S.C. 9701; 42 U.S.C. 7101-7352; 49 U.S.C. 60502; 49 App. U.S.C. 1-85.

SOURCE: Order 360, 49 FR 5081, Feb. 10, 1984, unless otherwise noted.

### Subpart A—General Provisions

#### § 381.101 Purpose.

The purpose of this part is to set forth the fees charged by the Commission for services and benefits provided by the Commission.

#### § 381.102 Definitions.

For purposes of this part, the following definitions apply.

(a) *Person* means any person, group, association, organization, partnership, corporation, or business, except those

authorized to engage in the transaction of official business for the United States Government.

(b) *Work year cost* means the ratio of the Commission's budgeted expenses during any given fiscal year to the authorized staff level for that fiscal year.

(c) *Work-month* means the amount of work represented by one employee's devotion of 100 percent of his or her time for one month.

(d) *Filing* means any application, tariff or rate filing, intervention, complaint, petition, request, or motion submitted to the Commission in connection with any of the services or benefits for which a fee is established in this part.

#### § 381.103 Filings.

(a) *Submittal of fees.* Except as provided in §§ 274.201(e) and 381.106, a fee in the amount set forth in this part shall accompany each filing for which a fee has been established.

(b) *Deficiencies.* (1) Any filing that is not accompanied by either the fee established for that filing or a petition for waiver in accordance with § 381.106(b) is deficient.

(2) The Secretary will inform any person submitting a deficient filing that:

(i) Such filing will be rejected unless the appropriate fee is submitted within a time specified by the Secretary;

(ii) The Commission will not process any filing that is deficient under this paragraph; and

(iii) The date of filing is the date on which the Commission receives the appropriate fee.

(3) This provision does not preclude a determination that a filing is deficient for any other reason.

(c) *Choice of two or more fees.* If a filing for one service or benefit may be considered as falling within two or more categories or services for which a fee is established, that filing must be accompanied by the higher or highest of the applicable fees.

[Order 360, 49 FR 5081, Feb. 10, 1984, as amended by Order 394, 49 FR 35365, Sept. 7, 1984]

#### § 381.104 Annual adjustment of fees.

(a) *Update and publication.* The Commission, by its designee the Executive

Director, will update its fees each fiscal year according to the formula in paragraph (c) of this section. The Executive Director will publish the fees in the FEDERAL REGISTER.

(b) *Payment of updated fees.* Any person who submits a filing for which a fee is established in this part must pay the currently effective fee unless a waiver is granted.

(c) *Formula.* (1) Except as provided in paragraph (c)(2) of this section, the formula for determining each fee is the workmonths dedicated to the given fee category for the six fiscal years 1987 through 1992 or all years prior to FY 93 for which data are available divided by the number of actual completions in the six fiscal years 1987 through 1992 or all years prior to FY 93 for which data are available multiplied by the average monthly employee cost in the most recent fiscal year for which data are available.

(2) With respect to the fees charged to pipelines filing pursuant to § 381.207(a), the fee for the first year will be \$1,000. The formula for the fee in future years will be the workmonths from the immediately prior year divided by the number of actual completions in that year multiplied by the average monthly employee cost in the most recent fiscal year for which data are available. With the addition of future years, the formula for § 381.207(a) fees will be updated to include that year as part of the base period.

(d) *Effective date of fee.* Any fee updated under this section is effective on the thirtieth day after publication in the FEDERAL REGISTER of the revised sections in this part, unless otherwise specified in the FEDERAL REGISTER notice.

[Order 360, 49 FR 5081, Feb. 10, 1984, as amended by Order 494, 53 FR 15382, Apr. 29, 1988; Order 521, 55 FR 12171, Apr. 2, 1990; 58 FR 2975, Jan. 7, 1993]

#### § 381.105 Method of payment.

Fee payment shall be made by check or money order payable to the Treasurer of the United States. The check should state the nature of the filing and the docket number where applicable so that the fee category for which the check is being submitted is clearly identifiable.

#### § 381.106 Waivers.

(a) *Filing of petition.* If an applicant is suffering from severe economic hardship at the time of filing an application which makes the applicant economically unable to pay the appropriate fee for the application, rate change, tariff, petition, request or other filing requiring a fee, the applicant may submit an original and two copies of a petition for waiver with the application in lieu of the applicable fee. The petition for waiver must include evidence, such as a financial statement, clearly showing either that the applicant does not have the money to pay all or part of the fee, or that if the applicant does pay the fee, the applicant will be placed in financial distress or emergency.

(b) *Decision on petition.* The Commission or its designee will analyze each petition to determine whether the applicant has met the standards for waiver and then will notify the applicant of its grant or denial, in whole or in part. If the petition is denied, the applicant will have 30 days from the date of notification of the denial to submit the appropriate fee to the Commission.

[Order 360, 49 FR 5081, Feb. 10, 1984, as amended by Order 395, 49 FR 35356, Sept. 7, 1984]

#### § 381.107 Direct billing.

(a) *Applicability.* If a filing presents an issue of fact, law, policy, procedural difficulty, or technical complexity that requires an extraordinary amount of expense to process, the Commission may institute a direct billing procedure for the direct and indirect costs of processing that filing. The Commission will make a direct billing determination under this paragraph not later than one year after receiving a complete filing from an applicant.

(b) *Procedures.* (1) Direct billing will not be instituted with respect to any filing until the person who submitted the filing is notified that direct billing will be applied to the filing in lieu of the fees established under this part.

(2) Any fee submitted with the filing will be applied, as a credit, to the amount billed directly for processing costs. The Secretary will thereafter periodically bill the person who submitted the filing for the actual direct

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and indirect costs of processing the filing.

(3) If the Commission institutes a direct billing for the costs of a hearing and reduces the fee to the applicant to less than full cost recovery due to the presence of intervenors, the Commission will consider, on a case-by-case basis, direct billing the intervenors for all or part of the reduced portion.

[Order 360, 49 FR 5081, Feb. 10, 1984, as amended by Order 433, 50 FR 40346, Oct. 3, 1985; 58 FR 2975, Jan. 7, 1993]

### § 381.108 Exemptions.

(a) *Filing of petition.* States, municipalities and anyone who is engaged in the official business of the Federal Government are exempt from the fees required by this part and may file a petition for exemption in lieu of the applicable fee.

(b) *Decision on petition.* A petitioner may claim this exemption by filing an original and two copies of a petition for exemption that includes evidence that the petitioner is a State or municipality, or is engaged in the official business of the Federal Government. The Commission or its designee will analyze each petition to determine whether the petition has met the standards for exemption and will notify the petitioner whether it is granted or denied. If the petition is denied, the person will have thirty days from the date of notification of the denial to submit the appropriate fee to the Commission.

[Order 395, 49 FR 35356, Sept. 7, 1984]

### § 381.109 Refunds.

Fees established under this part may be refunded only if the related filing is withdrawn within fifteen (15) days of the date of filing or, if applicable, before the filing is noticed in the FEDERAL REGISTER or, if the fee is inappropriately paid for a filing for which no fee is established. Fees paid in excess of the fees established under this part may be refunded to the extent of the amount paid in excess. To obtain a refund, the applicant must file a motion

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requesting refund with the Commission.

[Order 433, 50 FR 40346, Oct. 3, 1985, as amended by Order 433-A, 51 FR 43607, Dec. 3, 1986]

### § 381.110 Fees for substantial amendments.

Fees established under this part for any filing will also be charged, as appropriate, for any substantial amendment to a pending filing. An amendment is considered substantial if it changes the character, nature, or the magnitude of the proposed activity or rate in the pending filing. For purposes of this section, an application for a temporary certificate is not considered to be an amendment to a pending certificate application.

[Order 433-A, 51 FR 43607, Dec. 3, 1986]

### Subpart B—Fees Applicable to the Natural Gas Act and Related Authorities

### § 381.207 Pipeline certificate applications.

(a) *Definition.* For purposes of this section, “pipeline certificate application” means any application for authorization or exemption, any substantial amendment to such an application, and any application, other than an application for a temporary certificate, for authorization to amend an outstanding authorization or exemption, by any person, made pursuant to section 7(c) of the Natural Gas Act filed in accordance with § 284.224 of this chapter.

(b) *Fee.* Unless the Commission orders direct billing under § 381.107 or otherwise, the fee established for a blanket certificate application is \$1,000. The fee filed under this paragraph must be submitted in accordance with § 284.224 of this chapter.

(c) *Effective date.* Any pipeline certificate application filed with the Commission prior to November 4, 1985, is subject to the fees established by part

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159 of this chapter to the extent that part 159 applies to such an application.

[Order 433, 50 FR 40346, Oct. 3, 1985, as amended by Order 433-A, 51 FR 43607, Dec. 3, 1986; 52 FR 10367, Apr. 1, 1987; 53 FR 15384, Apr. 29, 1988; 54 FR 12901, Mar. 29, 1989; 55 FR 13901, Apr. 13, 1990; 56 FR 15497, Apr. 17, 1991; 58 FR 2975, Jan. 7, 1993]

**Subpart C—Fees Applicable to General Activities**

**§ 381.302 Petition for issuance of a declaratory order (except under Part I of the Federal Power Act.)**

(a) Except as provided in paragraph (b) of this section, the fee established for filing a petition for issuance of a declaratory order under § 385.207 of this chapter is \$18,260. The fee must be submitted in accordance with subpart A of this part.

(b) No fee is necessary to file a petition for issuance of a declaratory order that solely concerns the investigation, issuance, transfer, renewal, revocation, and enforcement of licenses and permits for the construction, operation, and maintenance of dams, water conduits, reservoirs, powerhouses, transmission lines, or other works for the development and improvement of navigation and for the development and utilization of power across, along, from, or in navigable waters under Part I of the Federal Power Act.

(c) A person claiming the exemption provided in paragraph (b) of this section must file an original and two copies of a petition for exemption in lieu of a fee along with its petition for issuance of a declaratory order. The petition for exemption should summarize the issues raised in the petition for issuance of a declaratory order and explain why the exemption is applicable. The Commission or its designee will analyze each petition to determine whether the petition has met the standards for exemption and will notify the applicant whether it is granted or denied. If the petition is denied, the petitioner will have thirty days from the date of notification of the denial to

submit the appropriate fee to the Commission.

[Order 395, 49 FR 35356, Sept. 7, 1984, as amended at 52 FR 10367, Apr. 1, 1987; 53 FR 15382, Apr. 29, 1988; 54 FR 12901, Mar. 29, 1989; 55 FR 13901, Apr. 13, 1990; 56 FR 15497, Apr. 17, 1991; 57 FR 15225, Apr. 27, 1992; 58 FR 26523, May 4, 1993; 59 FR 25563, May 17, 1994; 60 FR 31390, June 15, 1995; 61 FR 40723, Aug. 6, 1996; 62 FR 36982, July 10, 1997; 63 FR 44995, Aug. 24, 1998; 64 FR 44653, Aug. 17, 1999; 66 FR 3452, Jan. 16, 2001; 66 FR 63163, Dec. 5, 2001; 67 FR 54087, Aug. 21, 2002]

**§ 381.303 Review of a Department of Energy remedial order.**

(a) Except as provided in § 381.303(b), the fee established for an answer to a Department of Energy remedial order under subpart I of the Commission's Rules of Practice and Procedure, 18 CFR part 385, subpart I (1983), is \$26,660. The fee must be submitted in accordance with subpart A of this part.

(b) If the amount in controversy is below \$30,000, then the fee to file a petition for review of a DOE remedial order is reduced as follows:

	Fee
Amount in controversy:	
\$0 to \$9,999 .....	\$100
\$10,000 to \$29,999 .....	600

(c) In order to qualify for the fees in paragraph (b) of this section, the check must be accompanied by an affidavit by the petitioner that states the amount in controversy.

[Order 395, 49 FR 35356, Sept. 7, 1984, as amended at 49 FR 44275, Nov. 6, 1984; 52 FR 10367, Apr. 1, 1987; 53 FR 15384, Apr. 29, 1988; 54 FR 12901, Mar. 29, 1989; 55 FR 13901, Apr. 13, 1990; 56 FR 15497, Apr. 17, 1991; 57 FR 15225, Apr. 27, 1992; 58 FR 26523, May 4, 1993; 59 FR 25563, May 17, 1994; 60 FR 31390, June 15, 1995; 61 FR 40723, Aug. 6, 1996; 62 FR 36982, July 10, 1997; 63 FR 44995, Aug. 24, 1998; 64 FR 44653, Aug. 17, 1999; 66 FR 3452, Jan. 16, 2001; 66 FR 63163, Dec. 5, 2001; 67 FR 54087, Aug. 21, 2002]

**§ 381.304 Review of Department of Energy denial of adjustment.**

(a) Except as provided in § 381.304(b), the fee established for filing a petition for review of a Department of Energy denial of an adjustment request under subpart J of the Commission's Rules of Practice and Procedure, 18 CFR part

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385, subpart J (1983), is \$13,980. The fee must be submitted in accordance with subpart A of this part.

(b) If the amount in controversy is below \$30,000, then the fee to file a petition for review of a DOE denial of an adjustment is reduced as follows:

	Fee
Amount in controversy:	
\$0 to \$9,999 .....	\$100
\$10,000 to \$29,999 .....	600

(c) In order to qualify for the fees in paragraph (b) of this section, the check must be accompanied by an affidavit by the petitioner that states the amount in controversy.

[Order 395, 49 FR 35356, Sept. 7, 1984, as amended at 49 FR 44275, Nov. 6, 1984; 52 FR 10367, Apr. 1, 1987; 53 FR 15384, Apr. 29, 1988; 54 FR 12901, Mar. 29, 1989; 55 FR 13901, Apr. 13, 1990; 58 FR 26523, May 4, 1993; 59 FR 25563, May 17, 1994; 60 FR 31390, June 15, 1995; 61 FR 40723, Aug. 6, 1996; 62 FR 36982, July 10, 1997; 63 FR 44996, Aug. 24, 1998; 64 FR 44653, Aug. 17, 1999; 66 FR 3452, Jan. 16, 2001; 66 FR 63163, Dec. 5, 2001; 67 FR 54087, Aug. 21, 2002]

**§ 381.305 Interpretations by the Office of the General Counsel.**

(a) Except as provided in paragraph (b) of this section, the fee established for a written interpretation by the Office of the General Counsel of any statute or implementing regulation under the jurisdiction of the Commission is \$5,240. The fee must be submitted in accordance with subpart A of this part and § 385.1901 or § 388.104 of this chapter.

(b) No fee is necessary to file a request for a written interpretation by the Office of the General Counsel that solely concerns matters under Part I of the Federal Power Act.

(c) A person claiming the exemption provided in paragraph (b) of this section must file an original and two copies of a petition for exemption in lieu of a fee along with the request for a written interpretation. The petition for exemption should summarize the issues raised in the request for a legal opinion and explain why the exemption is applicable. The Commission or its designee will analyze each petition to determine whether the petition has met the standards for exemption and will notify the applicant whether it is granted or denied. If the petition is de-

nied, the applicant will have 30 days from the date of notification of the denial to submit the appropriate fee to the Commission.

[Order 494, 53 FR 15382, Apr. 29, 1988, as amended at 54 FR 12901, Mar. 29, 1989; 55 FR 13901, Apr. 13, 1990; 56 FR 15497, Apr. 17, 1991; 57 FR 15226, Apr. 27, 1992; 58 FR 26523, May 4, 1993; 59 FR 25563, May 17, 1994; 60 FR 31390, June 15, 1995; 61 FR 40723, Aug. 6, 1996; 62 FR 36982, July 10, 1997; 63 FR 44996, Aug. 24, 1998; 64 FR 44653, Aug. 17, 1999; 66 FR 3452, Jan. 16, 2001; 66 FR 63163, Dec. 5, 2001; 67 FR 54087, Aug. 21, 2002]

**Subpart D—Fees Applicable to the Natural Gas Policy Act of 1978**

**§ 381.401 Review of jurisdictional agency determinations.**

The fee established for review of a jurisdictional agency determination is \$115. The fee must be submitted in accordance with subpart A of this part and § 270.301(c) of this chapter.

[Order 616, 65 FR 45872, July 26, 2000]

**§ 381.403 Petitions for rate approval pursuant to § 284.123(b)(2).**

The fee established for a petition for rate approval pursuant to § 284.123(b)(2) is \$9,090. Such fee must be submitted in accordance with subpart A of this part and § 284.123(b)(2).

[Order 394, 49 FR 35365, Sept. 7, 1984, as amended at 52 FR 10367, Apr. 1, 1987; 53 FR 15384, Apr. 29, 1988; 54 FR 12901, Mar. 29, 1989; 55 FR 13901, Apr. 13, 1990; 56 FR 15497, Apr. 17, 1991; 57 FR 15226, Apr. 27, 1992; 58 FR 26523, May 4, 1993; 59 FR 25563, May 17, 1994; 60 FR 31391, June 15, 1995; 61 FR 40723, Aug. 6, 1996; 62 FR 36982, July 10, 1997; 63 FR 44996, Aug. 24, 1998; 64 FR 44653, Aug. 17, 1999; 66 FR 3452, Jan. 16, 2001; 66 FR 63163, Dec. 5, 2001; 67 FR 54087, Aug. 21, 2002]

**§ 381.404 [Reserved]**

**Subpart E—Fees Applicable to Certain Matters Under Parts II and III of the Federal Power Act and the Public Utility Regulatory Policies Act**

**§ 381.501 Applicability.**

The fees set forth in this subpart apply to filings submitted on or after November 4, 1985.

[Order 435, 50 FR 40358, Oct. 3, 1985]

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### § 381.505 Certification of qualifying status as a small power production facility or cogeneration facility.

(a) Unless the Commission orders direct billing under § 381.107 of this chapter or otherwise, the fee established for an application for Commission certification as a qualifying small power production facility, as defined in section 3(17) of the Federal Power Act, is \$15,700 and the fee established for an application for Commission certification as a qualifying cogeneration facility, as defined in section 3(18) of the Federal Power Act, is \$17,770.

(b) The fee filed under this section must be submitted in accordance with subpart A of this part and § 292.207(b)(2) of this chapter.

[Order 494, 53 FR 15382, Apr. 29, 1988, as amended at 54 FR 12901, Mar. 29, 1989; 55 FR 13901, Apr. 13, 1990; 56 FR 15497, Apr. 17, 1991; 57 FR 15226, Apr. 27, 1992; 58 FR 26523, May 4, 1993; 59 FR 25563, May 17, 1994; 60 FR 31391, June 15, 1995; 61 FR 40723, Aug. 6, 1996; 62 FR 36982, July 10, 1997; 63 FR 44996, Aug. 24, 1998; 64 FR 44653, Aug. 17, 1999; 66 FR 3452, Jan. 16, 2001; 66 FR 63163, Dec. 5, 2001; 67 FR 54087, Aug. 21, 2002]

### Subpart F [Reserved]

### Subpart G—Fees Applicable to the Interstate Commerce Act and Related Authorities [Reserved]

### Subpart H—Fees Applicable to the Public Utility Holding Company Act of 1935

#### § 381.801 Applications for exempt wholesale generator status.

The fee established for applications for exempt wholesale generator status under section 32 of the Public Utility Holding Company Act of 1935 and subchapter T, part 365 of this chapter, applicable to applicants who will not become public utilities as defined in section 201(e) of the Federal Power Act upon the sale of electric energy at wholesale, is \$990. The fee must be sub-

mitted in accordance with subpart A of this part.

[Order 550, 58 FR 8907, Feb. 18, 1993, as amended at 59 FR 25563, May 17, 1994; 60 FR 31391, June 15, 1995; 61 FR 40723, Aug. 6, 1996; 62 FR 36982, July 10, 1997; 63 FR 44996, Aug. 24, 1998; 64 FR 44653, Aug. 17, 1999; 64 FR 47107, Aug. 30, 1999; 66 FR 3452, Jan. 16, 2001; 66 FR 63163, Dec. 5, 2001; 67 FR 54087, Aug. 21, 2002]

## PART 382—ANNUAL CHARGES

### Subpart A—General Provisions

Sec.

- 382.101 Purpose.
- 382.102 Definitions.
- 382.103 Payment.
- 382.104 Enforcement.
- 382.105 Waiver.
- 382.106 Accounting for annual charges paid under part 382.

### Subpart B—Annual Charges

- 382.201 Annual charges under Parts II and III of the Federal Power Act and related statutes.
- 382.202 Annual charges under the Natural Gas Act and Natural Gas Policy Act of 1978 and related statutes.
- 382.203 Annual charges under the Interstate Commerce Act.

AUTHORITY: 5 U.S.C 551–557; 15 U.S.C 717–717w, 3301–3432; 16 U.S.C. 791a–825r, 2601–2645; 42 U.S.C. 7101–7352; 49 U.S.C. 60502; 49 App. U.S.C. 1–85.

SOURCE: Order 472, 52 FR 21292, June 5, 1987, unless otherwise noted.

### Subpart A—General Provisions

#### § 382.101 Purpose.

The purpose of this part is to establish procedures for calculating and assessing annual charges to reimburse the United States for all of the costs incurred by the Commission, other than costs incurred in administering Part I of the Federal Power Act and costs recovered through the Commission's filing fees.

#### § 382.102 Definitions.

For the purpose of this part:

(a) *Natural gas pipeline company* means any person:

(1) Engaged in natural gas sales for resale or natural gas transportation subject to the jurisdiction of the Commission under the Natural Gas Act

whose sales for resale and transportation exceed 200,000 Mcf at 14.73 psi (60°F) in any of the three calendar years immediately preceding the fiscal year for which the Commission is assessing annual charges; and

(2) Not engaged solely in “first sales” of natural gas as that term is defined in section 2(21) of the Natural Gas Policy Act of 1978; and

(3) To whom the Commission has not issued a Natural Gas Act Section 7(f) declaration; and

(4) Not holding a limited jurisdiction certificate.

(b) *Public utility* means any person who owns or operates facilities subject to the jurisdiction of the Commission under Parts II and III of the Federal Power Act, and who has rate schedule(s) on file with the Commission and who is not a “qualifying small power producer” or a “qualifying cogenerator”, as those terms are defined in section 3 of the Federal Power Act, or the United States or a state, or any political subdivision of the United States or a state, or any agency, authority, or instrumentality of the United States, a state, political subdivision of the United States, or political subdivision of a state.

(c) *Oil pipeline company* means any person engaged in the transportation of crude oil and petroleum products subject to the Commission’s jurisdiction under the Interstate Commerce Act with annual operating revenues greater than \$350,000 in any of the three calendar years immediately preceding the fiscal year for which the Commission is assessing annual charges.

(d) *Natural gas regulatory program* is the Commission’s regulation of the natural gas industry under the Natural Gas Act; Natural Gas Policy Act of 1978; Alaska Natural Gas Transportation Act; Public Utility Regulatory Policies Act; Department of Energy Organization Act; Outer Continental Shelf Lands Act; Energy Security Act; Regulatory Flexibility Act; Crude Oil Windfall Profit Tax Act; National Environmental Policy Act; National Historic Preservation Act.

(e) *Electric regulatory program* is the Commission’s regulation of the electric industry under Parts II and III of the Federal Power Act; Public Utility Reg-

ulatory Policies Act; Powerplant and Industrial Fuel Use Act; Department of Energy Organization Act; Energy Security Act; Regulatory Flexibility Act; Pacific Northwest Electric Power Planning and Conservation Act; Flood Control and River and Harbor Acts; Bonneville Project Act; Federal Columbia River Transmission Act; Reclamation Project Act; Nuclear Waste Policy Act; National Environmental Policy Act; and the Public Utility Holding Company Act.

(f) *Oil regulatory program* is the Commission’s regulation of the oil pipeline industry under the Interstate Commerce Act; Department of Energy Organization Act; Regulatory Flexibility Act; Outer Continental Shelf Lands Act; and the Crude Oil Windfall Profit Tax Act.

(g) *Person* means an individual, partnership, corporation, association, joint stock company, public trust, or organized group of persons, whether incorporated or not.

(h) *Operating revenues* means the monies:

(1) Received by an oil pipeline company for providing interstate common carrier services regulated by the Commission, and

(2) Included in FERC Account No. 200, 210, or 220 in FERC Annual Report Form No. 6, page 301, lines 1, 2 and 3, column d, under part 352 of the Commission’s regulations.

(i) *Fiscal year* means the twelve-month period that begins on the first day of October and ends on the last day of September.

(j) *Preceding calendar year* means the twelve-month period that begins on the first day of January and ends the last day of December and immediately precedes the end of the fiscal year for which the Commission is assessing annual charges.

(k) *Adjusted costs of administration* means the difference between the estimated costs of administering a regulatory program for each fiscal year adjusted to reflect any overcollection or undercollection of cost attributable to that regulatory program in the annual charge assessment for the preceding fiscal year, and the estimated amount of filing fees collected during that fiscal year under the provisions of parts

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346 and 381 of the Commission's regulations for activities that relate to that regulatory program.

(1) *Power Marketing Agencies* means the Bonneville Power Administration, the Alaska Power Administration, the Southeastern Power Administration, the Southwestern Power Administration, and the Western Area Power Administration.

[Order 472, 52 FR 21292, June 5, 1987, as amended by Order 472-B, 52 FR 36022, Sept. 25, 1987; Order 529, 55 FR 47321, Nov. 13, 1990; Order 575, 60 FR 4859, Jan. 25, 1995; Order 583, 60 FR 53117, Oct. 12, 1995; Order 641, 65 FR 65768, Nov. 2, 2000]

### § 382.103 Payment.

(a) Annual charges assessed under this part must be paid within 45 days of the issuance of the bill by the Commission, unless a petition for waiver has been filed under § 382.105 of this part.

(b) Payment must be made by check, draft, or money order, payable to the United States Treasury.

(c) If payment is not made within 45 days of issuance of a bill, interest will be assessed. Interest will be computed in accordance with § 154.501(d) of this chapter, from the date on which the bill becomes delinquent.

[Order 472, 52 FR 21292, June 5, 1987, as amended at 61 FR 13421, Mar. 27, 1996]

### § 382.104 Enforcement.

The Commission may refuse to process any petition, application, or other filing submitted by or on the behalf of any person that does not pay the annual charge assessed when due, or may take any other appropriate action permitted by law.

### § 382.105 Waiver.

(a) *Filing of petition.* Any annual charges bill recipient may submit a petition for waiver of the regulations in this part. An original and two copies of a petition for waiver must include evidence, such as a financial statement, clearly showing either that the petitioner does not have the money to pay all or part of the annual charge, or, if the petitioner does pay the annual charge, that the petitioner will be placed in financial distress or emergency. Petitions for waiver must be filed with the Office of the Secretary of

the Commission within 15 days of issuance of the bill.

(b) *Decision on petition.* The Commission or its designee will review the petition for waiver and then will notify the applicant of its grant or denial, in whole or in part. If the petition is denied in whole or in part, the annual charge becomes due 30 days from the date of notification of the denial.

### § 382.106 Accounting for annual charges paid under part 382.

(a) Any natural gas pipeline company subject to the provisions of this part must account for annual charges paid by charging the account to Account No. 928, Regulatory Commission Expenses, of the Commission's Uniform System of Accounts.

(b) Any public utility subject to the provisions of this part must account for annual charges paid by charging the amount to Account No. 928, Regulatory Commission Expenses, of the Commission's Uniform System Accounts.

(c) Any oil pipeline company subject to the provisions of this part must account for annual charges paid by charging the amount to Account No. 510, Supplies and Expenses, of the Commission's Uniform System of Accounts.

[Order 472, 52 FR 21292, June 5, 1987, as amended by Order 472-B, 52 FR 36022, Sept. 25, 1987]

## Subpart B—Annual Charges

### § 382.201 Annual charges under Parts II and III of the Federal Power Act and related statutes.

(a) *Determination of costs to be assessed to public utilities.* The adjusted costs of administration of the electric regulatory program, excluding the costs of regulating the Power Marketing Agencies, will be assessed to public utilities that provide transmission service (measured, as discussed in paragraph (c) of this section, by the sum of the megawatt-hours of all unbundled transmission and the megawatt-hours of all bundled wholesale power sales (to the extent these latter megawatt-hours were not separately reported as unbundled transmission)).

(b) *Determination of annual charges to be assessed to public utilities.* The costs

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determined under paragraph (a) of this section will be assessed as annual charges to each public utility providing transmission service based on the proportion of the megawatt-hours of transmission of electric energy in interstate commerce of each such public utility in the immediately preceding reporting year (either a calendar year or fiscal year, depending on which accounting convention is used by the public utility to be charged) to the sum of the megawatt-hours of transmission of electric energy in interstate commerce in the immediately preceding reporting year of all such public utilities.

(c) *Reporting requirement.* (1) For purposes of computing annual charges, as of January 1, 2002, a public utility, as defined in § 382.102(b), that provides transmission service must submit under oath to the Office of the Secretary by April 30 of each year an original and conformed copies of the following information (designated as FERC Reporting Requirement No. 582 (FERC-582)): The total megawatt-hours of transmission of electric energy in interstate commerce, which for purposes of computing the annual charges and for purposes of this reporting requirement, will be measured by the sum of the megawatt-hours of all unbundled transmission (including MWh delivered in wheeling transactions and MWh delivered in exchange transactions) and the megawatt-hours of all bundled wholesale power sales (to the extent these latter megawatt-hours were not separately reported as unbundled transmission). This information must be reported to 3 decimal places; *e.g.*, 3,105 KWh will be reported as 3.105 MWh.

(2) Corrections to the information reported on FERC-582, as of January 1, 2002, must be submitted under oath to the Office of the Secretary on or before the end of each calendar year in which the information was originally reported (*i.e.*, on or before the last day of the year that the Commission is open to accept such filings).

(d) *Determination of annual charges to be assessed to power marketing agencies.* The adjusted costs of administration of the electric regulatory program as it applies to Power Marketing Agencies

will be assessed against each power marketing agency based on the proportion of the megawatt-hours of sales of each power marketing agency in the immediately preceding reporting year (either a calendar year or fiscal year, depending on which accounting convention is used by the power marketing agency to be charged) to the sum of the megawatt-hours of sales in the immediately preceding reporting year of all power marketing agencies being assessed annual charges.

[Order 641, 65 FR 65768, Nov. 2, 2000]

### § 382.202 Annual charges under the Natural Gas Act and Natural Gas Policy Act of 1978 and related statutes.

The adjusted costs of administration of the natural gas regulatory program will be assessed against each natural gas pipeline company based on the proportion of the total gas subject to Commission regulation which was sold and transported by each company in the immediately preceding calendar year to the sum of the gas subject to the Commission regulation which was sold and transported in the immediately preceding calendar year by all natural gas pipeline companies being assessed annual charges.

[Order 472-B, 52 FR 36022, Sept. 25, 1987]

### § 382.203 Annual charges under the Interstate Commerce Act.

(a) The adjusted costs of administration of the oil regulatory program will be assessed against each oil pipeline company based on the proportion of the total operation revenues of each oil pipeline company for the immediately preceding calendar year to the sum of the operating revenues for the immediately preceding calendar year of all oil pipeline companies being assessed annual charges.

(b) No oil pipeline company's annual charge may exceed a maximum charge established each year by the Commission to equal 6.339 percent of the adjusted costs of administration of the oil regulatory program. The maximum charge will be rounded to the nearest \$1000. For every company with an annual charge determined to be above the

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maximum charge, that company's annual charge will be set at the maximum charge, and any amount above the maximum charge will be reapportioned to the remaining companies. The reapportionment will be computed using the method outlined in para-

graph (a) of this section (but excluding any company whose annual charge is already set at the maximum amount). This procedure will be repeated until no company's annual charge exceeds the maximum charge.