

## Federal Energy Regulatory Commission

## §2.17

and Location of Rights-of-Way and Transmission Facilities”.

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

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

### §2.15 Specified reasonable rate of return.

(a) Pursuant to section 10(d) of the Federal Power Act, the Commission has determined that the specified reasonable rate of return used in computing amortization reserves for hydroelectric project licenses shall be calculated annually based on current capital ratios developed from an average of 13 monthly balances of amounts properly includible in the licensee's long-term debt and proprietary capital accounts, as listed in the Commission's Uniform System of Accounts. The cost rate for such ratios shall be the weighted average cost of long-term debt and preferred stock for the year, and the cost of common equity shall be the interest rate on 10-year government bonds (reported as the Treasury Department's 10-year constant maturity series) computed on the monthly average for the year in question, plus four percentage points (400 basis points).

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

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

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

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

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

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

To implement compliance with the Supreme Court decision in *F.P.C. v. Con-Way Corp.*, 426 U.S. 271 (1976), aff'g

510 F. 2d 1264 (D.C. Cir. 1975) and to expedite the consideration of price squeeze issues in wholesale electric rate proceedings, the Commission adopts the following procedures for raising price squeeze issues which are to be followed unless they are demonstrated in an individual case to be inadequate:

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

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

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

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

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

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

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

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

(d) Within 30 days from the filing utility's response, the intervenors shall file their case-in-chief on price squeeze

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issues, which shall include their prima facie case, unless filed previously.

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

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

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

### § 2.18 Phased electric rate increase filings.

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

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

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

(2) To implement a rate moderation plan;

(3) To avoid price squeeze;

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

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

[52 FR 11, Jan. 11, 1987]

### § 2.19 State and Federal comprehensive plans.

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

oping, or conserving a waterway or waterways affected by the project that is prepared by:

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

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

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

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

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

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

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

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

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

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

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