

Federal Energy Regulatory Commission

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the Commission under paragraph (d) of this section and under §270.503.

(4) In the event that the Commission fails to issue a final order within 120 days after issuance of the preliminary finding, the determination of the jurisdictional agency shall become final.

§ 270.503 Protests to the Commission.

(a) *Who may file.* Any person may file a protest with the Commission with respect to a determination of a jurisdictional agency within 20 days after the date that notice of receipt of a determination is issued by the Commission pursuant to §270.204.

(b) *Grounds.* Protests may be based only on the grounds the final determination is:

(1) Not supported by substantial evidence;

(2) Not consistent with information which is contained in the public records of the Commission and which was not part of the record on which the determination was made;

(3) Not consistent with information submitted with the protests for inclusion in the public records of the Commission, which information was not part of the record on which the determination was made; or

(4) Not based on an application which complied with the filing requirements set forth in this part.

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Each protest must include:

(a) An identification of the determination protested;

(b) The name and address of the person filing the protest;

(c) A statement of whether or not the person filing the protest participated in the proceeding before the jurisdictional agency, and if not, the reason for the nonparticipation;

(d) A statement of the effect the determination will have on the protestor;

(e) A statement of the precise grounds under §270.503(f) for the protest, and all supporting documents or references to any information relied on which is in the record on which the determination is based or is in or to be inserted in the public files of the Commission; and

(f) A statement that the protestor has served, in accordance with §385.2010 of this chapter, a copy of the protest together with all supporting documents on the jurisdictional agency and all persons listed in the notice of determination filed pursuant to §270.204.

§ 270.505 Procedure for reopening determinations.

(a) *Grounds.* At any time subsequent to the time a determination becomes final pursuant to this subpart, the Commission, on its own motion, or in response to a petition filed by any person aggrieved or adversely affected by the determination, may reopen the determination if it appears that:

(1) In making the determination, the Commission or the jurisdictional agency relied on any untrue statement of material fact; or

(2) There was omitted a statement of material fact necessary in order to make the statements made not misleading, in light of the circumstances under which they were made to the jurisdictional agency or the Commission.

(b) *Contents of petition.* A petition to reopen the determination proceedings must contain the following information, under oath:

(1) The name and address of the person filing the petition;

(2) The interest of the petitioner in the outcome of the determination proceeding;

(3) The statement of material fact that is alleged to be untrue or omitted;

(4) A statement explaining why the outcome of the determination proceeding would have been different had the statement or omission not occurred; and

(5) Copies of all documents relied on by the petitioner, or references to such documents if they are contained in the public files of the Commission.

(c) *Procedures after reopening.* In the event the Commission reopens a determination pursuant to this section it will:

(1) Give notice to the jurisdictional agency and all persons who participated before both that agency and the Commission in the proceedings resulting in the determination in question;

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(2) Permit the jurisdictional agency and other persons receiving notice pursuant to paragraph (c)(1) of this section to submit whatever documentary evidence such agency or persons deem relevant; and

(3) Take such other action or hold or cause to be held such proceedings as it deems necessary or appropriate for a full disclosure of the facts.

(d) *Final order of Commission.* Within 150 days after issuance of the notice under paragraph (c)(1) of this section, the Commission shall issue a final order. If the Commission finds that the grounds referred to in paragraph (a) of this section exist, it will vacate the determination.

§ 270.506 Confidentiality.

(a) Except as provided in paragraph (b) of this section, the Commission will accord confidential protection to, and not disclose to the public, any information submitted by a jurisdictional agency under § 270.204, if:

(1) The jurisdictional agency, on its own motion or on request of the applicant, afforded such information confidential treatment before the jurisdictional agency; and

(2) The agency order or the applicant's request stated grounds for confidential treatment which fall within one of the exemptions described in paragraphs (1) through (9) of 5 U.S.C. 552(b).

(b) Upon receipt of a request for disclosure of information treated as confidential under paragraph (a) of this section, the Commission will determine in accordance with 5 U.S.C. 552 whether the information is exempt. 5 U.S.C. 552(b). If it determines the information is not exempt, the information will be made public. If it determines the information is exempt, the Commission will not make it public unless determines that its conduct of the proceeding to review the jurisdictional agency determination requires making such information available to the public or to particular parties, subject to conditions (including a protective order) as the Commission may prescribe. Before making any information public under this paragraph, the Commission will provide at least 5 days notice to the person who submitted the information.