

§ 284.504

18 CFR Ch. I (4–1–11 Edition)

calculation of the market concentration of the relevant markets using the Herfindahl-Hirschman Index. The statement must also set forth the applicant's market share, inclusive of affiliated service offerings, in the markets to be served. The statement must also set forth the calculation of other market-power measures relied on by the applicant. The statement must include complete particulars about the applicant's calculations.

(8) *Statement H—other factors.* This statement must describe any other factors that bear on the issue of whether the applicant lacks significant market power in the relevant markets. The description must explain why those other factors are pertinent.

(9) *Statement I—prepared testimony.* This statement must include the proposed testimony in support of the application and will serve as the applicant's case-in-chief, if the Commission sets the application for hearing. The proposed witness must subscribe to the testimony and swear that all statements of fact contained in the proposed testimony are true and correct to the best of his or her knowledge, information, and belief.

§ 284.504 Standard requirements for market-power authorizations.

(a) Applicants granted the authority to charge market-based rates under § 284.503 that provide cost-based service(s) must separately account for all costs and revenues associated with facilities used to provide the market-based services. When it files to change its cost-based rates, applicant must provide a summary of the costs and revenues associated with market-based rates with applicable cross references to §§ 154.312 and 154.313 of this chapter. The summary statement must provide the formulae and explain the bases used in the allocation of common costs between the applicant's cost-based services and its market-based services.

(b) A storage service provider granted the authority to charge market-based rates under § 284.503 is required to notify the Commission within 10 days of acquiring knowledge of significant changes occurring in its market power status. Such notification should include a detailed description of the new

facilities/services and their relationship to the storage service provider. Significant changes include, but are not limited to:

(1) The storage provider expanding its storage capacity beyond the amount authorized in this proceeding;

(2) The storage provider acquiring transportation facilities or additional storage capacity;

(3) An affiliate providing storage or transportation services in the same market area; and

(4) The storage provider or an affiliate acquiring an interest in or is acquired by an interstate pipeline.

§ 284.505 Market-based rates for storage providers without a market-power determination.

(a) Any storage service provider seeking market-based rates for storage capacity, pursuant to the authority of section 4(f) of the Natural Gas Act, related to a specific facility put into service after August 8, 2005, may apply for market-based rates by complying with the following requirements:

(1) The storage service provider must demonstrate that market-based rates are in the public interest and necessary to encourage the construction of the storage capacity in the area needing storage services; and

(2) The storage service provider must provide a means of protecting customers from the potential exercise of market power.

(b) Any storage service provider seeking market-based rates for storage capacity pursuant to this section will be presumed by the Commission to have market power.

PART 286—ACCOUNTS, RECORDS, MEMORANDA AND DISPOSITION OF CONTESTED AUDIT FINDINGS AND PROPOSED REMEDIES

- Sec.
- 286.101 Application for stay.
- 286.102 Application for rehearing.

DISPOSITION OF CONTESTED AUDIT FINDINGS AND PROPOSED REMEDIES

- 286.103 Notice to audited person.
- 286.104 Response to notification.
- 286.105 Shortened procedure.
- 286.106 Form and style.
- 286.107 Verification.

Federal Energy Regulatory Commission

§ 286.103

286.108 Determination.

286.109 Assignment for oral hearing.

AUTHORITY: 5 U.S.C. 551 *et seq.*; 15 U.S.C. 717-717w, 3301-3432; 42 U.S.C. 7102-7352.

§ 286.101 Application for stay.

(a) *General rule.* Any person who believes that any provision of a final or interim regulation issued under the Natural Gas Policy Act of 1978 is unlawful as applied to such person may file an application for stay.

(b) *Content of application.* The application shall state, clearly and concisely:

(1) The provision of the regulation, by section, paragraph, subparagraph and clause, as appropriate, which applicant seeks to have stayed;

(2) The conditions which the applicant believes require the stay, including the irreparable injury which the applicant believes will result if the stay is not granted; and

(3) The factual and legal basis for applicant's contention that the final or interim regulation is unlawful.

(c) *Filing requirements.* The application shall be under oath. An original and three conformed copies shall be filed with the Secretary of the Commission.

(d) *Commission action.* The Commission may grant the application, in whole or in part, by issuing an order specifying the scope of the stay granted and the effective dates of the stay.

[43 FR 57599, Dec. 8, 1978, as amended at 44 FR 13473, Mar. 12, 1979]

§ 286.102 Application for rehearing.

(a) *General rule.* Any person aggrieved by any order or regulation or any amendment to a regulation issued under the NGPA and subject to judicial review under section 506(a) or (b) thereof shall file a petition for rehearing within 30 days after the order or regulation is issued by the Commission or February 3, 1979, whichever is later. There has not been an exhaustion of administrative remedies until a petition for rehearing has been filed under this section and the proceeding is complete by the denial of the request, or if rehearing is granted, an order affirming, modifying or revoking the challenged order or regulation is issued.

(b) *Specifications of error.* The application for rehearing shall state clearly and concisely with respect to the challenged order or regulation:

(1) The provision of the order or the regulation, by section, and where appropriate, by paragraph;

(2) Applicant's interest in the particular provision; and

(3) The facts and legal analysis upon which the request for rehearing is based.

(c) *Procedural requirements.* Except as otherwise provided in this section, the procedures for rehearing in § 385.713 of this chapter shall apply.

(d) *Commission action upon the application.* (1) The Commission may grant the request for rehearing, in whole or in part, by issuing an order specifying the scope of rehearing. If, and to the extent that rehearing is granted, the Commission may request Staff, applicant or any other party to file briefs. In every case where rehearing is granted, the Commission will issue an order affirming, modifying or revoking the challenged order or regulation.

(2) The Commission may modify the original order or regulation without further hearing.

(3) Unless the Commission acts upon the application within 30 days after it is filed, such application shall be considered to have been denied. If the Commission grants rehearing in part, any part of the application outside the scope of the order granting rehearing shall be considered to have been denied.

[44 FR 2383, Jan. 11, 1979, as amended by Order 225, 47 FR 19058, May 3, 1982]

DISPOSITION OF CONTESTED AUDIT FINDINGS AND PROPOSED REMEDIES

SOURCE: Order 675, 71 FR 9707, Feb. 27, 2006, unless otherwise noted.

§ 286.103 Notice to audited person.

An audit conducted by the Commission's staff under authority of the Natural Gas Policy Act may result in a notice of deficiency or audit report or similar document containing a finding or findings that the audited person has not complied with a requirement of the Commission with respect to, but not limited to, the following: A filed tariff

§ 286.104

or tariffs, contracts, data, records, accounts, books, communications or papers relevant to the audit of the audited person; matters under the Standards of Conduct or the Code of Conduct; and the activities or operations of the audited person. The notice of deficiency, audit report or similar document may also contain one or more proposed remedies that address findings of noncompliance. Where such findings, with or without proposed remedies, appear in a notice of deficiency, audit report or similar document, such document shall be provided to the audited person, and the finding or findings, and any proposed remedies, shall be noted and explained. The audited person shall timely indicate in a written response any and all findings or proposed remedies, or both, in any combination, with which the audited person disagrees. The audited person shall have 15 days from the date it is sent the notice of deficiency, audit report or similar document to provide a written response to the audit staff indicating any and all findings or proposed remedies, or both, in any combination, with which the audited person disagrees, and such further time as the audit staff may provide in writing to the audited person at the time the document is sent to the audited person. The audited person may move the Commission for additional time to provide a written response to the audit staff and such motion shall be granted for good cause shown. Any initial order that the Commission subsequently may issue with respect to the notice of deficiency, audit report or similar document shall note, but not address on the merits, the finding or findings, or the proposed remedy or remedies, or both, in any combination, with which the audited person disagreed. The Commission shall provide the audited person 30 days to respond to the initial Commission order concerning a notice of deficiency, audit report or similar document with respect to the finding or findings or any proposed remedy or remedies, or both, in any combination, with which it disagreed.

[Order 675-A, 71 FR 29785, May 24, 2006]

18 CFR Ch. I (4-1-11 Edition)

§ 286.104 Response to notification.

Upon issuance of a Commission order that notes a finding or findings, with or without proposed remedies, with which the audited person has disagreed, the audited person may: Acquiesce in the findings and proposed remedies by not timely responding to the Commission order, in which case the Commission may issue an order approving them or taking other action; or challenge the finding or findings and any proposed remedies with which it disagreed by timely notifying the Commission in writing that it requests Commission review by means of a shortened procedure, or, if there are material facts in dispute which require cross-examination, a trial-type hearing.

§ 286.105 Shortened procedure.

If the audited person subject to a Commission order described in § 286.103 notifies the Commission that it seeks to challenge one or more audit findings, or proposed remedies, or both, in any combination, by the shortened procedure, the Commission shall thereupon issue a notice setting a schedule for the filing of memoranda. The person electing the use of the shortened procedure, and any other interested entities, including the Commission staff, shall file, within 45 days of the notice, an initial memorandum that addresses the relevant facts and applicable law that support the position or positions taken regarding the matters at issue. Reply memoranda shall be filed within 20 days of the date by which the initial memoranda are due to be filed. Only participants who filed initial memoranda may file reply memoranda. Subpart T of part 385 of this chapter shall apply to all filings. Within 20 days after the last date that reply memoranda under the shortened procedure may be timely filed, the audited person who elected the shortened procedure may file a motion with the Commission requesting a trial-type hearing if new issues are raised by a party. To prevail in such a motion, the audited person must show that a party to the shortened procedure raised one or more new issues of material fact relevant to resolution of a matter in the shortened procedure such that fundamental fairness

Federal Energy Regulatory Commission

§ 286.109

requires a trial-type hearing to resolve the new issue or issues so raised. Parties to the shortened procedure and the Commission staff may file responses to the motion. In ruling upon the motion, the Commission may determine that some or all of the issues be litigated in a trial-type hearing.

§ 286.106 Form and style.

Each copy of such memorandum must be complete in itself. All pertinent data should be set forth fully, and each memorandum should set out the facts and argument as prescribed for briefs in § 385.706 of this chapter.

§ 286.107 Verification.

The facts stated in the memorandum must be sworn to by persons having knowledge thereof, which latter fact must affirmatively appear in the affidavit. Except under unusual circumstances, such persons should be those who would appear as witnesses if

hearing were had to testify as to the facts stated in the memorandum.

§ 286.108 Determination.

If no formal hearing is had the matter in issue will be determined by the Commission on the basis of the facts and arguments submitted.

§ 286.109 Assignment for oral hearing.

Except when there are no material facts in dispute, when a person does not consent to the shortened procedure, the Commission will assign the proceeding for hearing as provided by subpart E of part 385 of this chapter. Notwithstanding a person's not giving consent to the shortened procedure, and instead seeking assignment for hearing as provided for by subpart E of part 385 of this chapter, the Commission will not assign the proceeding for a hearing when no material facts are in dispute. The Commission may also, in its discretion, at any stage in the proceeding, set the proceeding for hearing.