

Federal Energy Regulatory Commission

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(b) A petition for review must be filed within 30 days of issuance by the Secretary of the order to be contested pursuant to this subpart.

(c) Each petition for review filed with the Secretary of the Commission must be accompanied by the fee prescribed by § 381.304 of this chapter.

(d) Upon receiving a petition for review and the fee required by paragraph (c), of this section, the Commission or its designee will designate a presiding officer for the proceedings.

[Order 225, 47 FR 19022, May 3, 1982, as amended by Order 395, 49 FR 35357, Sept. 7, 1984]

§ 385.1005 Replies (Rule 1005).

(a) *By the Secretary.* Within 20 days of service of the petition for review, the Secretary will file with the Commission and serve on the petitioners and the other participants in prior proceedings on the contested order, a reply to the petition for review stating fully his or her position supported by arguments to the petition for review.

(b) *By other participants.* A person who participated in prior proceedings on the contested order may be a participant in the proceedings pursuant to this subpart and may make filings and submittals as determined by the presiding officer.

(c) *By interveners.* A person who was denied the opportunity to participate in prior proceedings on the contested order or who is aggrieved or adversely affected by the contested order may move to intervene in accordance with Rule 214 (intervention). In order that the motion be granted, the movant must show, as appropriate, that denial of participation in prior proceedings was wrongful or why he or she is aggrieved or adversely affected by the contested order. If the presiding officer grants the motion, the person submitting the motion to intervene may make filings and submittals as determined by the presiding officer.

(d) A participant may request interim relief in a proceeding pursuant to this subpart.

(e) The presiding officer may require such other filings by the participants

as he or she deems necessary in the conduct of the proceedings.

[Order 225, 47 FR 19022, May 3, 1982, as amended by Order 422, 50 FR 21600, May 28, 1985]

§ 385.1006 Request for hearing (Rule 1006).

A participant may file with the Commission and serve on the other participants a request for hearing, which will be deemed granted. Such request must be filed concurrently with participant's first pleading.

[Order 225, 47 FR 19022, May 3, 1982, as amended by Order 422, 50 FR 21600, May 28, 1985]

§ 385.1007 Presiding officer (Rule 1007).

(a) The presiding officer will determine the issues to be resolved in the proceeding and will give notice thereof to the participants. The presiding officer may require additional information from the participants and convene a prehearing conference for the purpose of determining the issues to be considered at a hearing, if one is to be held. The presiding officer may also specify the time available for oral argument and determine the nature of the hearing to be held.

(b) The presiding officer may determine, upon request by a participant, whether to permit the participant to raise new facts or issues not raised in prior proceedings on the contested order. Such a request may be granted if the facts or issues are facts or issues that:

(1)(i) Were not known and could not, with the exercise of due care, have been known to the participant at the time they could have been raised in prior proceedings; or

(ii) Are facts or issues that the participant was not permitted to raise in prior proceedings on the contested order due to an adverse procedural ruling alleged to be erroneous; and

(2) Are necessary for a full and true disclosure of the facts.

(c) The petitioner must file a request to raise new facts or issues simultaneously with its petition for review. The Secretary must file such a request simultaneously with its reply to the petition for review. A third party must

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make such a request by the filing deadline set by the presiding officer.

[Order 225, 47 FR 19022, May 3, 1982, as amended by Order 422, 50 FR 21600, May 28, 1985]

§ 385.1008 Hearings (Rule 1008).

As soon as practicable, after receiving any request for hearing and all the pleadings under Rules 1004 (commencement of proceedings) and 1005 (replies), the presiding officer will give notice to the participants as to the time and place of the hearing.

§ 385.1009 Proof (Rule 1009).

(a) A participant seeking relief from the Secretary's denial of a request for adjustment has the burden of demonstrating the participant's entitlement to the relief sought.

(b) Relief will be granted under this subpart if a participant demonstrates, by a preponderance of the evidence, that such relief is warranted.

§ 385.1010 Certification of the record (Rule 1010).

The presiding officer will certify and file with the Office of the Secretary of the Commission, for the Commission, a copy of the record in the proceeding.

[Order 422, 50 FR 21600, May 28, 1985]

§ 385.1011 Final order (Rule 1011).

The Commission will issue a final order, affirming, modifying or vacating the contested order or directing other appropriate relief.

§ 385.1012 Off-the-record communications (Rule 1012).

The provisions of Rule 2201 (prohibited communications and other communications requiring disclosure) apply to proceedings pursuant to this subpart, commencing at the time a petitioner files a petition for review under Rule 1004 (commencement of proceedings).

[Order 607, 64 FR 51234, Sept. 22, 1999]

§ 385.1013 Attachments to pleadings (Rule 1013).

(a) Each party will file, as an appendix to each pleading which cites documents in the record developed in the prior proceedings on the adjustment re-

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quest, one copy of each such document in its entirety and, if such document contains information exempt from public disclosure pursuant to rule 1003, a second copy of such document with such information deleted. The top of the first page of each such document will contain the word "PUBLIC" or "NON-PUBLIC," to indicate whether it contains exempt information.

(b) One copy of the PUBLIC and NON-PUBLIC versions must be served on counsel for the petitioner and/or the Secretary, and one copy of the PUBLIC version must be served on counsel for each other participant separately represented unless the conditions of Rule 1003 are met, in which situation such counsel must be served with copies of both versions.

(c) In compiling appendices, the parties will include only documents specifically cited and relied upon in their pleadings. In light of the fact that the Commission always has access to the Secretary's entire administrative record, the parties must not include irrelevant or repetitive documents in the appendices.

[Order 422, 50 FR 21601, May 28, 1985]

Subpart K—Petitions for Adjustments Under the NGPA

§ 385.1101 Applicability (Rule 1101).

(a) *Proceedings to which applicable.* Except as provided in paragraph (b) of this section, this subpart applies to proceedings of the Commission held in accordance with section 502(c) of the NGPA to provide for adjustments of:

(1) Commission rules, and

(2) Commission orders having the applicability and effect of a rule as defined in section 551(4) of title 5 of the United States Code (5 U.S.C. 551(4)) and issued under the NGPA, except orders issued under sections 301, 302, and 303 of the NGPA.

(b) This subpart does not apply to:

(1) Proceedings wherein the Commission by order grants an adjustment on its own motion or;

(2) Proceedings for which the Commission by order waives the provision of this subpart.