

§ 385.214

18 CFR Ch. I (4–1–13 Edition)

(4) An answer to a complaint must include documents that support the facts in the answer in possession of, or otherwise attainable by, the respondent, including, but not limited to, contracts and affidavits. An answer is also required to describe the formal or consensual process it proposes for resolving the complaint.

(5) When submitting with its answer any request for privileged treatment of documents and information in accordance with this chapter, a respondent must provide a public version of its answer without the information for which privileged treatment is claimed and its proposed form of protective agreement to each entity that has either been served pursuant to § 385.206(c) or whose name is on the official service list for the proceeding compiled by the Secretary.

(d) *Time limitations.* (1) Any answer to a motion or to an amendment to a motion must be made within 15 days after the motion or amendment is filed, except as described below or unless otherwise ordered.

(i) If a motion requests an extension of time or a shortened time period for action, then answers to the motion to extend or shorten the time period shall be made within 5 days after the motion is filed, unless otherwise ordered.

(ii) [Reserved]

(2) Any answer to a pleading or amendment to a pleading, other than a complaint or an answer to a motion under paragraph (d)(1) of this section, must be made:

(i) If notice of the pleading or amendment is published in the FEDERAL REGISTER, not later than 30 days after such publication, unless otherwise ordered; or

(ii) If notice of the pleading or amendment is not published in the FEDERAL REGISTER, not later than 30 days after the filing of the pleading or amendment, unless otherwise ordered.

(e) *Failure to answer.* (1) Any person failing to answer a complaint may be considered in default, and all relevant facts stated in such complaint may be deemed admitted.

(2) Failure to answer an order to show cause will be treated as a general

denial to which paragraph (c)(3) of this section applies.

[Order 225, 47 FR 19022, May 3, 1982; 48 FR 786, Jan. 7, 1983, as amended by Order 376, 49 FR 21705, May 23, 1984; Order 602, 64 FR 17099, Apr. 8, 1999; Order 602-A, 64 FR 43608, Aug. 11, 1999; Order 769, 77 FR 65476, Oct. 29, 2012]

§ 385.214 Intervention (Rule 214).

(a) *Filing.* (1) The Secretary of Energy is a party to any proceeding upon filing a notice of intervention in that proceeding. If the Secretary's notice is not filed within the period prescribed under Rule 210(b), the notice must state the position of the Secretary on the issues in the proceeding.

(2) Any State Commission, the Advisory Council on Historic Preservation, the U.S. Departments of Agriculture, Commerce, and the Interior, any state fish and wildlife, water quality certification, or water rights agency; or Indian tribe with authority to issue a water quality certification is a party to any proceeding upon filing a notice of intervention in that proceeding, if the notice is filed within the period established under Rule 210(b). If the period for filing notice has expired, each entity identified in this paragraph must comply with the rules for motions to intervene applicable to any person under paragraph (a)(3) of this section including the content requirements of paragraph (b) of this section.

(3) Any person seeking to intervene to become a party, other than the entities specified in paragraphs (a)(1) and (a)(2) of this section, must file a motion to intervene.

(4) No person, including entities listed in paragraphs (a)(1) and (a)(2) of this section, may intervene as a matter of right in a proceeding arising from an investigation pursuant to Part 1b of this chapter.

(b) *Contents of motion.* (1) Any motion to intervene must state, to the extent known, the position taken by the movant and the basis in fact and law for that position.

(2) A motion to intervene must also state the movant's interest in sufficient factual detail to demonstrate that:

(i) The movant has a right to participate which is expressly conferred by

statute or by Commission rule, order, or other action;

(ii) The movant has or represents an interest which may be directly affected by the outcome of the proceeding, including any interest as a:

- (A) Consumer,
- (B) Customer,
- (C) Competitor, or
- (D) Security holder of a party; or

(iii) The movant's participation is in the public interest.

(3) If a motion to intervene is filed after the end of any time period established under Rule 210, such a motion must, in addition to complying with paragraph (b)(1) of this section, show good cause why the time limitation should be waived.

(c) *Grant of party status.* (1) If no answer in opposition to a timely motion to intervene is filed within 15 days after the motion to intervene is filed, the movant becomes a party at the end of the 15 day period.

(2) If an answer in opposition to a timely motion to intervene is filed not later than 15 days after the motion to intervene is filed or, if the motion is not timely, the movant becomes a party only when the motion is expressly granted.

(d) *Grant of late intervention.* (1) In acting on any motion to intervene filed after the period prescribed under Rule 210, the decisional authority may consider whether:

(i) The movant had good cause for failing to file the motion within the time prescribed;

(ii) Any disruption of the proceeding might result from permitting intervention;

(iii) The movant's interest is not adequately represented by other parties in the proceeding;

(iv) Any prejudice to, or additional burdens upon, the existing parties might result from permitting the intervention; and

(v) The motion conforms to the requirements of paragraph (b) of this section.

(2) Except as otherwise ordered, a grant of an untimely motion to intervene must not be a basis for delaying or deferring any procedural schedule established prior to the grant of that motion.

(3)(i) The decisional authority may impose limitations on the participation of a late intervenor to avoid delay and prejudice to the other participants.

(ii) Except as otherwise ordered, a late intervenor must accept the record of the proceeding as the record was developed prior to the late intervention.

(4) If the presiding officer orally grants a motion for late intervention, the officer will promptly issue a written order confirming the oral order.

[Order 225, 47 FR 19022, May 3, 1982; 48 FR 786, Jan. 7, 1983, as amended by Order 376, 49 FR 21705, May 23, 1984; Order 2002, 68 FR 51142, Aug. 25, 2003; Order 718, 73 FR 62886, Oct. 22, 2008]

§ 385.215 Amendment of pleadings and tariff or rate filings (Rule 215).

(a) *General rules.* (1) Any participant, or any person who has filed a timely motion to intervene which has not been denied, may seek to modify its pleading by filing an amendment which conforms to the requirements applicable to the pleading to be amended.

(2) A tariff or rate filing may be amended or modified only as provided in the regulations under this chapter. A tariff or rate filing may not be amended, except as allowed by statute. The procedures provided in this section do not apply to amendment of tariff or rate filings.

(3)(i) If a written amendment is filed in a proceeding, or part of a proceeding, that is not set for hearing under subpart E, the amendment becomes effective as an amendment on the date filed.

(ii) If a written amendment is filed in a proceeding, or part of a proceeding, which is set for hearing under subpart E, that amendment is effective on the date filed only if the amendment is filed more than five days before the earlier of either the first prehearing conference or the first day of evidentiary hearings.

(iii) If, in a proceeding, or part of a proceeding, that is set for hearing under subpart E, a written amendment is filed after the time for filing provided under paragraph (a)(3)(ii) of this section, or if an oral amendment is made to a presiding officer during a hearing or conference, the amendment becomes effective as an amendment