

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 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.

[Order 675, 71 FR 9706, Feb. 27, 2006]

#### §41.4 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.

[Order 141, 12 FR 8500, Dec. 19, 1947, as amended by Order 225, 47 FR 19056, May 3, 1982]

#### §41.5 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.

#### §41.6 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.

#### §41.7 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.

[Order 575, 60 FR 4854, Jan. 25, 1995]

#### §41.8 Burden of proof.

The burden of proof to justify every accounting entry shall be on the person making, authorizing, or requiring such entry.

#### CERTIFICATION OF COMPLIANCE WITH ACCOUNTING REGULATIONS

#### §41.10 Examination of accounts.

(a) All Major and Nonmajor public utilities and licensees not classified as Class C or Class D prior to January 1, 1984 shall secure, for the year 1968 and each year thereafter until December 31, 1975, the services of an independent certified public accountant, or independent licensed public accountant, certified or licensed by a regulatory authority of a State or other political subdivision of the United States, to test compliance in all material respects of those schedules as are indicated in the General Instructions set out in the Annual Report, Form No. 1, with the Commission's applicable Uniform System of Accounts and published accounting releases. The Commission expects that identification of questionable matters by the independent accountant will facilitate their early resolution and that the independent accountant will seek advisory rulings by the Commission on such items. This examination shall be deemed supplementary to periodic Commission examinations of compliance.

(b) Beginning January 1, 1976, and each year thereafter, only independent certified public accountants, or independent licensed public accountants who were licensed on or before December 31, 1970, will be authorized to conduct annual audits and to certify to compliance in all material respects, of those schedules as are indicated in the General Instructions set out in the Annual Report, Form No. 1, with the Commission's applicable Uniform System of Accounts, published accounting

#### §41.11

releases and all other regulatory matters.

[Order 462, 37 FR 26005, Dec. 7, 1972, as amended by Order 390, 49 FR 32505, Aug. 14, 1984]

#### §41.11 Report of certification.

Each Major and Nonmajor (including those companies classified as nonoperating under Part 101, General Instruction 1(A)(3) of this chapter) public utility or licensee operating on a calendar year and not classified as Class C or Class D prior to January 1, 1984 must file with the Commission a letter or report of the independent accountant certifying approval, together with or within 30 days after the filing of the Annual Report, Form No. 1, covering the subjects and in the form prescribed in the General Instructions of the Annual Report. For such utility or licensee operating on a non-calendar fiscal year, the letter or report of the independent accountant certifying approval must be filed within 150 days of the close of the company's fiscal year; the letter or report must also identify which, if any, of the examined schedules do not conform to the Commission's requirements and shall describe the discrepancies that exist. The Commission will not be bound by a certification of compliance made by an independent accountant pursuant to this paragraph.

[73 FR 58736, Oct. 7, 2008]

#### §41.12 Qualifications of accountants.

The Commission will not recognize any certified public accountant or public accountant through December 31, 1975, who is not in fact independent. Beginning January 1, 1976, and each year thereafter, the Commission will recognize only independent certified public accountants, or independent licensed public accountants who were licensed on or before December 31, 1970, who are in fact independent. For example, an accountant will not be considered independent with respect to any person or any of its parents or subsidiaries in whom he has, or had during the period of report, any direct financial interest. The Commission will determine the fact of independence by considering all the relevant circumstances

#### 18 CFR Ch. I (4–1–13 Edition)

including evidence bearing on the relationships between the accountant and that person or any affiliate thereof.

[Order 462, 37 FR 26006, Dec. 7, 1972]

### PART 42—LONG-TERM FIRM TRANSMISSION RIGHTS IN ORGANIZED ELECTRICITY MARKETS

Sec.

42.1 Requirement that Transmission Organizations with Organized Electricity Markets Offer Long-Term Firm Transmission Rights.

AUTHORITY: 16 U.S.C. 791a–825r and section 217 of the Federal Power Act, 16 U.S.C. 824q.

SOURCE: Order 681, 71 FR 43619, Aug. 1, 2006, unless otherwise noted.

#### §42.1 Requirement that Transmission Organizations with Organized Electricity Markets Offer Long-Term Firm Transmission Rights.

(a) *Purpose.* This section requires a transmission organization with one or more organized electricity markets (administered either by it or by another entity) to make available long-term firm transmission rights, pursuant to section 217(b)(4) of the Federal Power Act, that satisfy each of the guidelines set forth in paragraph (d) of this section. This section does not require that a specific type of long-term firm transmission right be made available, and is intended to permit transmission organizations flexibility in satisfying the guidelines set forth in paragraph (d) of this section.

(b) *Definitions.* As used in this section:

(1) *Transmission Organization* means a Regional Transmission Organization, Independent System Operator, independent transmission provider, or other independent transmission organization finally approved by the Commission for the operation of transmission facilities.

(2) *Load serving entity* means a distribution utility or an electric utility that has a service obligation.

(3) *Service obligation* means a requirement applicable to, or the exercise of authority granted to, an electric utility under Federal, State, or local law or under long-term contracts to provide electric service to end-users or to a distribution utility.