

§ 4.8 [Corrected]

3. Section 4.8. Appeals from initial determinations or untimely delays. On page 6976, in the second column, in paragraph (d), in the fifth line, Section "4.4" should read Section "4.6".

In the third column, in paragraph (e), in the third line, "5 U.S.C.(e)(4)" should read "5 U.S.C. 552(a)(6)(C)".

§ 4.9 [Corrected]

4. On page 6977, in the first column, in § 4.9(a)(2), in the fifth line, the word "paragarph" should read "paragraph". In the third column, in § 4.9(c)(1), in the 12th line, "reply" should read "rely".

Note.—An additional correction to this document is published elsewhere in the Corrections Section of this issue of the Federal Register.

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DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission**

18 CFR Parts 154, 157, 260, 284, 385 and 388

[Docket No. RM87-17-001; Order No. 493]

Natural Gas Data Collection System

Issued: May 2, 1988.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Order granting rehearing for the purpose of further consideration and suspending effective date.

SUMMARY: On April 5, 1988, the Federal Energy Regulatory Commission (Commission) issued a final rule, Order No. 493, 54 FR 15023 (Apr. 27, 1988), requiring natural gas companies to use an electronic data medium when filing certain rate filings, certificate and abandonment applications and FERC Forms. The Commission provided in Order No. 493 that the record formats for these electronic data submissions would be available on April 30, 1988. The effective date for Order No. 493 is May 2, 1988, subject to OMB approval of the information collection provisions in the order. Petitions for rehearing must be filed on or before May 5, 1988.

The Commission is granting rehearing of Order No. 493 generally for the purpose of further consideration. Applicants filing timely petitions for rehearing on or before May 5, 1988, in this rulemaking docket will have an opportunity to supplement their petitions for 45 days from the date all

the record formats are available to the public. The Commission will issue a notice of availability to trigger that date. This will provide applicants additional time to review the record formats and supplement their petitions for rehearing.

The Commission is also suspending the effective date of May 2, 1988, until the record formats are available to the public. The Commission will issue a notice of the new effective date for Order No. 493 at that time.

DATES: This order is effective May 2, 1988.

Petitions for rehearing of Order No. 493 must be filed on or before May 5, 1988. Applicants filing timely petitions for rehearing may supplement these petitions for 45 days after all the record formats are available to the public.

The effective date of Order No. 493 is suspended until further notice.

FOR FURTHER INFORMATION CONTACT: Julia Lake White, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC. 20426, (202) 357-8530.

SUPPLEMENTARY INFORMATION:

Before Commissioners: Martha O. Hesse, Chairman; Anthony G. Sousa, Charles G. Stalon and Charles A. Trabandt.

On April 5, 1988, the Federal Energy Regulatory Commission (Commission) issued a final rule, Order No. 493, requiring natural gas companies to use an electronic data medium when filing certain rate filings, certificate and abandonment applications and FERC Forms.¹ The Commission provided in Order No. 493 that the record formats for these electronic data submissions would be available on April 30, 1988. The effective date for Order No. 493 is May 2, 1988, subject to OMB approval of the information collection provisions in the order. Petitions for rehearing must be filed on or before May 5, 1988.

On April 27, 1988, the Interstate Natural Gas Association of America (INGAA) filed a letter with the Commission. INGAA argues that it will not have an adequate amount of time to incorporate arguments on the record formats in its petition for rehearing.

In response to INGAA's letter, the Commission is granting rehearing of Order No. 493 generally for the purpose of further consideration. Interested persons filing for rehearing of Order No. 493, including INGAA, must file timely petitions for rehearing on or before May 5, 1988, in order to preserve their judicial

right to appeal the Commission's final rule in this docket.²

The Commission will provide petitioners who file timely petitions an additional 45 days to supplement their petitions when all the record formats are available to the public. The Commission will issue a notice of availability to trigger that date. This additional time will enable petitioners to review the record formats in Order No. 493 and to supplement their petitions for rehearing. The Commission will then issue an order on rehearing in this docket and make any necessary changes to the implementation dates in the final rule.

The Commission is also suspending the effective date of May 2, 1988. The Commission will issue a notice that the record formats are available and establish a new effective date for Order No. 493.

This order granting rehearing is effective on the date of issuance. This action does not constitute a grant or denial of petitions for rehearing on their merits in whole or in part.

Pursuant to Rule 713(d) of the Commission's Rules of Practice and Procedure,³ no answers to petitions for rehearing will be entertained by the Commission.

By the Commission.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-10093 Filed 5-4-88; 8:45 am]

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18 CFR Parts 375 and 385

[Docket No. RM87-25-000, Order No. 492]

Regulations Delegating Authority

Issued April 5, 1988.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is amending its regulations regarding the authority it has delegated to its staff. This rule reorganizes the existing regulations and adopts new regulations that delegate additional authority to office directors. The rule grants designated officials the authority to decide actions that are routine and warrant initial staff decision subject to appeal to the Commission.

EFFECTIVE DATE: April 5, 1988.

² See 15 U.S.C. 3416(a)(2) (1982) and 18 CFR 385.713 (1987).

³ See 18 CFR 385.713 (1987).

¹ 53 FR 15023 (Apr. 27, 1988).

FOR FURTHER INFORMATION CONTACT:

Michael A. Stosser, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, (202) 357-8530.

SUPPLEMENTARY INFORMATION:

Before Commissioners: Martha O. Hesse, Chairman; Anthony G. Sousa, Charles G. Stalon and Charles A. Trabandt.

Final Rule**I. Introduction**

The Federal Energy Regulatory Commission (Commission) is amending its regulations regarding the authority it has delegated to its staff. This rule reorganizes the existing regulations and adopts new regulations that delegates additional authority to office directors.

II. Background

The Commission has previously made several delegations to office directors and members of its staff.¹ This final rule grants designated officials the authority to decide actions that are routine and warrant initial staff decision subject to appeal to the Commission.

The Commission has broad statutory authority to perform any and all acts and make such rules as are necessary or appropriate to carry out its statutory functions.² Courts have held that agencies may delegate these powers to their employees.³ Delegations which result in final decisions may be reviewed by the Commission. Such review acts as a safeguard in the exercise of delegated authority.⁴

A party may appeal a staff action made pursuant to delegated authority under 18 CFR 385.1902 (1987).⁵ However,

this section does not confer an automatic appeal right from every action taken by staff pursuant to the delegation provisions. An appeal is appropriate "only if the identical action would have been final, and therefore subject to an application for rehearing, had the Commission initially acted on it."⁶ A matter must deal with the merits of a case to the subject of appeal.⁷

III. Discussion

Generally, the Commission is granting authority to rule on matters that are routine and do not raise new policy issues. The delegation regulations contained in Subpart C of Part 375 are amended by this rule as described below.⁸

A. Delegations to the Secretary

The Secretary currently has authority to waive requirements of the Commission's rules that govern matters of form and to reject late-filed documents. In this rule, the Commission is granting the Secretary additional authority to reject any documents which do not meet the requirements of the Commission's rules governing matters of form.⁹ The Secretary is also delegated the authority to waive this requirement for good cause shown. This delegation rounds out the Secretary's authority to act expeditiously on filings that do not comply with the Commission's requirements and thus cannot be acted on.

The Commission is also delegating authority to the Secretary to institute procedures under Parts 41 and 158 of the Commission's regulations for considering contested audit issues.¹⁰

pursuant to authority delegated to the staff by the Commission that would be final, but for the provisions of this section, may be appealed to the Commission by a party. A Commission decision on a petition for appeal is a prerequisite to a request for rehearing under Rule 713."

⁶ J.R. Ferguson and Associates, 20 FERC ¶ 61,132, at 61,291 (Aug. 2, 1982).

⁷ Niagara Mohawk Power Corp., 29 FERC ¶ 61,005 (Oct. 2, 1984) at 61,009 (dismissal of appeal without prejudice of claim that Office Director should have rejected preliminary permit applications where no decision had been made on the merits regarding the applications) and 61,012 n.8 (the acceptance of (and the issuance of public notice for) an application is not a final staff action subject to appeal). See also Tuolumne Regional Water District, 21 FERC ¶ 61,125 (Nov. 23, 1982) at 61,353 (staff's decision to accept an application for processing is not subject to appeal unless appellant can demonstrate a jurisdictional bar or irreparable injury.)

⁸ Conforming changes and changes made to update the regulations are noted in the accompanying Appendix A. Office directors may generally delegate their authority to designees as noted in past and current 18 CFR 375.301(b).

⁹ New § 375.302(h).

¹⁰ New § 375.302(m). The proceedings are under Part 41, "Accounts, Records, and Memoranda" under the Commission's regulations implementing

There are approximately 15 cases per year involving contested audit issues. The Commission makes this delegation concurrently with its delegation in this rule to the Chief Accountant to sign audit reports that contain contested issues, as is explained more fully below. Thus, if a person subject to the Commission's accounting regulations does not agree to a shortened procedure (the submission of memoranda) or if any party in interest requests a hearing for a contested audit issue, the proceeding will be assigned for hearing by the Secretary in accordance with the Commission's procedural rules.¹¹ The Commission believes that this delegation will reduce the processing time for contested audits by 30 to 45 days and will assist the prompt resolution of these audits.

B. Delegations to the Chief Accountant

The Commission is delegating new authority to the Chief Accountant in three areas. First, the Chief Accountant may sign audit reports in cases in which companies do not agree with the report, provided that notice is given of the opportunity for a hearing.¹² Currently, if the staff and a company disagree, the Commission issues a letter order summarizing the results of the audit, noting the company's disagreement, and requesting the company to advise the Commission whether it consents to disposition of the matters on which there is disagreement under the shortened procedures provided in Part 41 or 158 of the Commission's regulations. There are about fifteen financial audits that are contested each year. This delegation allows the Chief Accountant to issue the letter order summarizing the results of audits which contain staff recommendations with which the company disagrees. It would reduce the processing times for each contested audit by about 30 to 45 days, and, along with the delegation to the Secretary to institute procedures, expedite resolution of these matters.

Second, the Chief Accountant may approve requests by state and federal agencies to review audit working papers, subject to certain conditions, if the company being audited has no objection.¹³ Commission authorization

the Federal Power Act, 18 CFR Part 41, and Part 158. "Accounts, Records, and Memoranda" under the Commission's regulations implementing the Natural Gas Act, 18 CFR Part 158.

¹¹ 18 CFR 41.7 and 158.7 (1987). Sections 385.501 and 385.502 of the Commission's rules which provide for setting matters for hearing are amended in this rule.

¹² New § 375.303(f).

¹³ New § 375.303(h).

¹ The Commission has made several delegations through general rulemakings. These were "Delegations to Various Office Directors of Certain Commission Authority," 43 FR 36,433 (Aug. 17, 1978); "Chief Authority, et al., Delegation of Authority, Final Regulation," 44 FR 46,449 (Aug. 8, 1979); "Delegation of the Commission's Authority to the Directors of Office of Electric Power Regulation, Office of the Chief Accountant, and Office of Pipeline and Producer Regulation," 46 FR 29,700 (June 3, 1981); and "Delegation of Authority," 47 FR 17,806 (Apr. 26, 1982). In addition, the Commission has made numerous delegations in conjunction with specific rulemakings and orders.

² See, e.g., Section 309 of the Federal Power Act, 16 U.S.C. 825h; section 16 of the Natural Gas Act, 15 U.S.C. 717o; and section 501(a) of the Natural Gas Policy Act of 1978, 15 U.S.C. 3411.

³ *Fleming v. Mohawk Wrecking & Lumber Co.*, 331 U.S. 111, 121, 67 S. Ct. 1129, 1134 (1947); *O'Neal v. U.S.*, 140 F.2d 908 (6th Cir.), cert. denied, 322 U.S. 729, 64 S. Ct. 945 (1944); and see Davis, *Administrative Law Treatise*, 2d Ed., Vol. 1, sections 3.16 and 3.17 (1978).

⁴ Davis, *op. cit.*, section 315.

⁵ Section 385.1902(a) provides: "Any staff action (other than a decision or ruling of presiding officer, as defined in Rule 102(e)(1), made in a proceeding set for hearing under Subpart E of this part) taken

is required to make this information available.¹⁴ The primary reason to delegate such authority is to be more responsive to the needs of those requesting access to the papers. There are about ten requests per year from the General Accounting Office and state public utility commissions. This delegation allows approval to be given in a more timely manner.

Lastly, the Chief Accountant is authorized, in the absence of objections from the affected company, to require the company to take measures to correct billings that are in violation of Commission approved automatic adjustment tariffs or related regulations.¹⁵ The Office of the Chief Accountant examines billings made by gas and electric companies under automatic adjustment tariffs approved by the Commission to insure compliance with the terms and conditions of the tariffs and related Commission regulations. On occasion, technical violations of these regulations occur. In most cases, they do not have a significant dollar impact on tariff billings. The Commission is delegating authority to the Chief Accountant to resolve these violations, if the company agrees, through approving corrective measures, including recomputation and refunds. This delegation will allow these issues to be resolved quickly.

C. Delegations to the Chief Administrative Law Judge

The Chief Administrative Law Judge is given the authority to designate and substitute presiding officers.¹⁶ Previously his explicit authority to designate or substitute a presiding officer applied where the judge who presided over the receipt of evidence became unavailable.¹⁷ This delegation gives the Chief Administrative Law Judge flexibility in assigning and substituting presiding officers. The Commission believes this delegation will enable the Chief Administrative Law Judge to manage the Commission's docket of cases set for hearing more effectively since he may now distribute or redistribute the caseload as the need arises.

D. Delegations to the Director of the Office of Pipeline and Producer Regulation

The Commission is delegating authority to the Director of the Office of Pipeline and Producer Regulation to grant or deny requests for waivers of the requirements for statements and reports under Part 260 (statements and Reports (Schedules)) of the Commission's regulations.¹⁸ The Director has previously been able to extend the time for filing of reports and waive requirements for filing.

E. Delegations to the Director of the Office of Electric Power Regulation

Formerly, the Director of the Office of Electric Power Regulation was authorized to reject rate filings and other filings that failed to comply with the requirements of Section 405 of the Public Utility Regulatory Policies Act (PURPA) relating to exemptions from Part I of the Federal Power Act. In this rule, the Commission is granting the Director authority to reject rate filings that patently fail to comply with applicable statutory requirements or Commission rules, regulations, or orders.¹⁹ The authority pertaining to other Section 405 PURPA filings has been transferred to the Director of the Office of Hydropower Licensing.²⁰ This delegation makes the authority of the Director of the Office of Electric Power Regulation comparable to that of the Director of the Office of Producer and Pipeline Regulation.²¹ It also permits prompt disposition of electric rate filings.

F. Delegations to the Director of the Office of Economic Policy

The Commission is delegating authority to the Director of the Office of Economic Policy to issue quarterly updates of the benchmark rate of return for public utilities²² under the Federal Power Act.²³ The updates are prepared by a mechanical application of the formula established in a proceeding which is conducted through informal rulemakings.²⁴ Calculation of the updates is thus wholly ministerial and does not require formal action by the Commission itself.²⁵

G. Delegations to the Executive Director

The Commission is delegating authority to the Executive Director to grant municipal exemptions from annual charges²⁶ under the Commission's regulations.²⁷

H. Delegations to the Director of the Office of Hydropower Licensing

The Commission is delegating authority to the Director of the Office of Hydropower Licensing to take additional action in two areas—enforcement and exemptions.

The Commission is delegating to the Director the authority to require a licensee or an applicant to take actions necessary to comply with the Commission's dam safety regulations²⁸ or actions that are otherwise necessary to protect human life, health, property, or the environment.²⁹ This delegation will make enforcement action by the Commission more rapid and effective.

The Commission is particularly concerned with the safety of projects that may be within its jurisdiction and are unlicensed. The Office of Hydropower Licensing is currently undertaking an inspection program to ensure that the owner of any unlicensed project within the Commission's jurisdiction obtains a license and takes any safety measures that may be necessary for the safe operation of the project and the prevention of injury.

The delegation to the Director relating to an unlicensed project confirms the Director's authority to take action on an unlicensed project. It expressly states that the Director may ascertain the Commission's jurisdiction over an unlicensed project, require filing of a license application, and require that actions necessary to comply with the Commission's dam safety regulations or otherwise protect human life, health, property, or the environment are undertaken.³⁰

The Commission is also granting the Director authority to deny as well as grant applications for exemption³¹ and

generic rate of return proceeding and in that proceeding will decide whether to hold subsequent annual proceedings or to convert to periodic proceedings. See "Generic Determination of Rate of Return on Common Equity for Public Utilities," Docket No. RM87-35-000, Order No. 489 (Jan. 29 1988), 53 Fed. Reg. 3342, 3359 (Feb. 5, 1988).

²⁶ New § 375.313(h).

²⁷ 18 CFR 11.6 (1987).

²⁸ 18 CFR Part 12 (1987).

²⁹ New § 375.314(g). Authority to require actions to comply with Part 12 of the Commission's regulations, 18 CFR Part 12 (1987) is already delegated in § 12.4 of Title 18 CFR.

³⁰ New § 375.314(h).

³¹ New § 375.314(a)(2).

¹⁴ See section 8(b) of the Natural Gas Act, 15 U.S.C. 717g, section 301(b) of the Federal Power Act 16 U.S.C. 825, and section 20(f) of the Interstate Commerce Act, 49 U.S.C. 11901(c) (1987).

¹⁵ New § 375.303(i).

¹⁶ New § 375.304(b)(iii).

¹⁷ 18 CFR 385.708(c)(2) (1987).

¹⁸ New § 375.307(f)(2).

¹⁹ New § 375.308(a)(3).

²⁰ New § 375.314(r).

²¹ New § 375.307(b)(2), formerly 18 CFR 375.307(b)(2).

²² 18 CFR 37.3(a) (1987).

²³ New § 375.310(b).

²⁴ 18 CFR 37.4 (1987).

²⁵ In a recent final rule updating the benchmark rate of return on common equity for the jurisdictional operations of electric public utilities, the Commission stated it will hold another annual

the authority to reject or dismiss an application if an applicant does not correct deficiencies in the application or if an applicant fails to provide timely additional information³² as required under Commission regulations.³³

H. Other Amendments.

The Commission also amends its Rules of Practice and Procedure to conform to the delegations regarding the institution of procedures for contested audit issues.³⁴

IV. Effective Date

The Administrative Procedure Act (APA)³⁵ requires that a notice of proposed rulemaking be published in the *Federal Register* and that an opportunity for comment be provided when an agency promulgates regulations. The APA sets forth exemptions to the notice and comment requirements if the rule is, *inter alia*, a rule of agency organization, procedure, or practice, or if the Commission for good cause finds that notice and comment procedures thereon are impracticable, unnecessary, or contrary to the public interest.

These regulations delegating authority set forth internal procedures to be followed by the Commission's staff. They relate to the performance of duties by the Commission staff and the way in which Commission business is conducted. The Commission finds that the rule is one of agency organization, procedure, or practice and that notice and public procedure thereon are not required.

In addition, under the APA, a substantive rule does not become effective until 30 days after publication or service.³⁶ This rule is procedural, rather than substantive, and therefore may become effective immediately.

List of Subjects

18 CFR Part 375

Authority delegations (Government agencies), Seals and insignia, Sunshine Act.

18 CFR Part 385

Administrative practice and procedure, Pipelines, Reporting and recordkeeping requirements.

In consideration of the foregoing, the Commission amends Parts 375 and 385, Chapter I of Title 18, Code of Federal Regulations, as set forth below, effective April 15, 1988.

By the Commission. Commissioner Trabandt dissented in part with a separate statement attached.

Lois D. Cashell,

Acting Secretary.

Opinion of Commission Charles A. Trabandt, Dissenting in Part

I dissent in part as to three new specific delegations to the Director to the Office of Hydro Power Licensing (OHL).

First, I dissent from the new delegation on environmental matters in new section 375.314(g). This allows the Director to require operators of projects to undertake actions to protect the environment under the following conditions: (i) where the Commission has not acted yet to establish environmental protection requirements in the license or permit articles and conditions applicable to a project; or (ii) where required actions would not be consistent fully with any such license articles or conditions already established by the Commission.

I object to the provision for several reasons. First of all, the majority has failed to demonstrate any need for such new delegated authority. I see no reason for us to authorize the Director to impose on a project environmental protection measures before the Commission acts or outside any articles or conditions the Commission has already established. Additionally, such delegated authority would grant the Director a virtual "blank check" to order applicants, licensees and permittees to take almost any form of action the name of environmental protection, irrespective of pending or completed Commission action in the licensing process. We must not forget that current law requires that the licensing process reflect "equal consideration" of all relevant values, not only environmental concerns.

My opposition to this delegation goes beyond that. Clearly, the Director's new authority could also encompass issuing an order to an operating project to modify or cease operations without any prior notice to or participation by the Full Commission. Such unlimited delegation also offends the general notion that delegations be accompanied by specific guidelines for action and reflect already settled policy previously established by the Commission.

Second, I dissent from the new delegation in new section 375.314(h). Here, the Commission empowers the Director to independently initiate an investigation of the jurisdictional status of an unlicensed existing project, make the jurisdictional determination, require the filing of a license, and require actions equivalent to those of section

375.314(g). This new jurisdictional determination authority will codify an existing *unauthorized* practice of the Director over the past year, discussed in my opinion dissenting in part in the order issued by the Commission in Docket Nos. UL87-3-001 and UL87-9-001 in cases affecting two existing projects of the Fairfax County Water Authority.

The threshold issue for me, as it should be for the Commission, in hydro licensing regulation is the jurisdictional status of a project and whether it must be licensed under the Federal Power Act. The mandatory licensing of existing projects under such jurisdictional determinations the Director makes can impose on operators significant financial, operational and construction requirements. I am not persuaded that there is, in the first instance, any justification for the year-old nation wide investigatory program, whether as a matter of law of policy as discussed in my opinion in the *Fairfax County* cases.

But, even if there was such a persuasive justification, the actual jurisdictional determination should be vested in the Full Commission and *not* by delegation to the Director. The fact that the Director has already made 38 or more such wholly unauthorized determinations does not constitute persuasive justification. This delegation, in my judgment, is a plain and simple abdication of the Full Commission's jurisdictional determination responsibilities with absolutely no redeeming public policy purpose.

Finally, I dissent from the new delegation, in new sections 375.314(k)(2) and (k)(3), to the Director to reject or dismiss an application if an applicant does not correct deficiencies in the application or if an applicant fails to provide timely additional information. The Director of OHL in September and October 1985, used similar actions to dismiss over a 150 then pending applications as deficient. All but a few of those projects were lost as a result of that dismissal effort. Eventually, when the occasional appeals of the Director's actions reached the Full Commission, we granted further consideration to the projects and adopted a new "reasonable man" review standard for reversal of Director actions in place of the prior "arbitrary and capricious" standard. This new delegation effectively ratifies the general approach which lead to the 1985 Director actions and codifies it for the future.

Permitting project owners to appeal the Director's determinations to the Full Commission offers scant comfort. The appeal process, taking many months and

³² New §§ 375.314 (k)(2) and (k)(3).

³³ 18 CFR 4.32 (a), (b), (d)(1), and (f) and 4.38 (1987).

³⁴ 18 CFR 385.501 and 385.502 (1987).

³⁵ 5 U.S.C. 553(b) (1982).

³⁶ 5 U.S.C. 553(d) (1982).

much effort, especially on the part of the large number of smaller and less financially capable project sponsors, does not provide a reasonable and practical procedural opportunity for them to challenge the Director's actions. That was the result in 1985 and, unfortunately, could be the result again under this new delegation if projects are dismissed by the Director and then, as it were, financially drowned by the delays and expenses in the appeal process to a clearly unsympathetic, if not completely uninterested, Full Commission. I am concerned seriously that this delegation will, at a minimum, create the delegated authority and procedural dynamics to bring about that irresponsible result time and time again.

In conclusion, I am reminded of a recent letter of March 17, 1988, from Cong. John D. Dingell, in his capacity as Chairman of the Subcommittee on Oversight and Investigations, of the House Committee on Energy and Commerce. In that letter, which was critical of the Commission's handling of cumulative impact assessments, Chairman Dingell commented that, "the subcommittee is interested in the FERC staff view * * * they are undoubtedly very capable, but under the law they are not the policy makers and they are not the people accountable to Congress * * * That is the role of the Commissioners." I could not agree more completely with the distinguished Chairman of the Subcommittee.

The Commissioners are the policy makers and hydro licensing authorities under the Federal Power Act and the Full Commission, not the staff, is accountable by law to Congress. The three areas of this delegation order discussed above, in the aggregate, constitute a significant delegation of our authority in hydro licensing to the staff and therefore to that extent an abdication of our statutory responsibilities. I cannot and will not support that clear and unambiguous result in this order.

Charles A. Trabandt,
Commissioner.

PART 375—THE COMMISSION

1. The authority citation of Part 375 is revised to read as follows:

Authority: Omnibus Budget Reconciliation

Act of 1986, 42 U.S.C. 7178; Electric Consumers Protection Act of 1986, 16 U.S.C. 791a note; Department of Energy Organization Act, 42 U.S.C. 7101-7532, E.O. 12009, 3 CFR 1978 Comp., p. 142; Administrative Procedure Act, 5 U.S.C. 551-557 (1982); Federal Power Act, 16 U.S.C. 791-828c, as amended; Natural Gas Act, 15 U.S.C. 717-717w, as amended; Natural Gas Policy Act of 1978, 15 U.S.C. 3301-3432; Public Utility Regulatory Policies Act of 1978, 16 U.S.C. 2601 *et seq.*, as amended.

§ 375.301 [Amended]

2. Section 375.301 is amended in paragraph (c) by removing "in contested cases" and inserting in its place "in uncontested cases."

3. Section 375.302 is amended by revising paragraphs (b) and (e), redesignating paragraph (g) as paragraph (f) and revising newly redesignated (f), redesignating and revising paragraph (h) as paragraph (g), adding a new paragraph (h), adding paragraph (m), and redesignating paragraphs (q) through (t) as (p) through (s), all to read as follows:

Subpart C—Delegations

§ 375.302 Delegations to the Secretary.

(b) Except as provided in § 385.213 of this chapter, prescribe, for good cause, a different time than that required by the Commission's Rules of Practice and Procedure for filing by public utilities, licensees, natural gas companies, and other persons of answers to complaints, petitions, motions, and other documents. Absent a waiver, no answers will be required to be filed by a party within less than ten days after the date of service of the document.

(e) Pass upon motions to intervene before a presiding administrative law judge is designated. If a presiding administrative law judge has been designated, the provisions of § 385.504(b)(12) of this chapter are controlling.

(f) Deny motions for extensions of time (other than motions made while a proceeding is pending before a presiding officer as defined in § 385.102(e)), except that such motions may be granted in accordance with § 385.2008 of this chapter.

(g) Reject any documents filed later than the time prescribed by an order or rule of the Commission, except that such documents may be accepted in accordance with § 385.2008 of this chapter.

(h) Reject any documents filed that do not meet the requirements of the Commission's rules which govern matters of form, except that such documents may be accepted in accordance with § 385.2001 of this chapter for good cause shown.

(m) Issue notices or orders instituting procedures to be followed concerning contested audit issues under Parts 41 or 158 of this chapter either when the utility:

(1) Initially notifies the Commission that it requests disposition of a contested issue pursuant to §§ 41.7 or 158.7 of this chapter; or

(2) Requests disposition of a contested issue pursuant to the shortened procedures provided in §§ 41.3 or 158.3 of this chapter.

4. Section 375.303 is amended by revising paragraphs (f) and (g) and adding new paragraphs (h) and (i), to read as follows:

§ 375.303 Delegations to the Chief Accountant.

(f) Pass upon actual legitimate original cost and depreciation thereon and the net investment in jurisdictional companies and revisions thereof, and sign audit reports resulting from the examination of the books and records of jurisdictional companies,

(1) If the company agrees with the audit report, or

(2) If the company does not agree with the audit report, provided that notification of the opportunity for a hearing under Section 301(a) of the Federal Power Act or Section 8(a) of the Natural Gas Act accompanies the audit report.

(g) Deny or grant, in whole or in part, petitions for waiver of the fees prescribed in §§ 381.301, 381.506, 381.507, and 381.508 of this chapter in accordance with § 381.106(b) of this chapter.

(h) Pass upon and approve requests

by state and federal agencies to review staff audit working papers if the company agrees to the release of the audit working papers provided:

- (1) The papers are examined at the Commission; and
- (2) The requester
 - (i) Only makes general notes concerning the contents of the audit working papers,
 - (ii) Does not make copies of the audit working papers, and
 - (iii) Does not remove the audit working papers from the area designated by the Chief Accountant.

(i) With regard to billing errors noted as a result of Commission staff's examination of automatic adjustment tariffs approved by the Commission, approve corrective measures, including recomputation of billing and refunds, to the extent the company agrees.

5. Section 375.304 is revised to read as follows:

§ 375.304 Delegations to the Chief Administrative Law Judge.

(a) The Commission authorizes the Chief Administrative Law Judge and the Administrative Law Judge designated by the Chief Administrative Law Judge to exercise the power granted to a Presiding Officer by Part 385, particularly § 385.504 of this chapter.

(b) The Commission authorizes the Chief Administrative Law Judge to

- (1) For those proceedings pending under Subpart E of Part 385 of this chapter:
 - (i) Consolidate for hearing two or more proceedings on any or all issues,
 - (ii) Sever two or more proceedings or issues in a proceeding,
 - (iii) Designate and substitute presiding officers, and
 - (iv) Extend any close or record date ordered by the Commission in a proceeding for good cause.

(2) For proceedings under Subparts I and J of Part 385 of this chapter, designate presiding officers who will have all the authorities and duties vested in presiding officers by those rules and other applicable rules in conducting proceedings pursuant to sections 503(c) and 504(b)(1) of the Department of Energy Organization Act, 42 U.S.C. 7193(c) and 7194(b)(1) (1982).

(3) Deny or grant, in whole or in part, petitions for waivers of fees prescribed in §§ 381.303 and 381.304 of this chapter in accordance with § 381.106 of this chapter.

6. Section 375.307 is revised to read as follows:

§ 375.307 Delegation to the Director of the Office of Pipelines and Producer Regulation.

The Commission authorizes the Director of the Office of Pipeline and Producer Regulation or the Director's designee to:

(a) Take appropriate action on the following types of uncontested applications for authorizations and uncontested amendments to applications and authorizations and impose appropriate conditions:

(1) Applications or amendments requesting authorization for the construction or acquisition and operation of facilities that have a construction or acquisition cost of less than \$5,000,000;

(2) Abbreviated applications and amendments thereto, pursuant to § 157.7 (b), (c), (d), (e), and (g) of this chapter, including requests for waiver of single project and annual cost limits as prescribed in § 157.7(b)(1), (c) (d), and (g) of this chapter;

(3) Applications by a pipeline for the abandonment of pipeline gas purchase facilities with a construction cost of less than \$1,000,000 or for the deletion of delivery points. This authority shall be exercised only if the producer servicing the jurisdictional pipeline has received Commission approval to abandon service to the pipeline or if the producer servicing the jurisdictional pipeline has demonstrated that the gas involved is not subject to section 7(b) of the Natural Gas Act by operation of section 601(a)(1) (A) or (B) of the Natural Gas Policy Act of 1978;

(4) Applications to abandon pipeline or producer facilities or services (other than budget applications) involving a specific customer or customers, if such customer or customers have agreed to the abandonment;

(5) Applications for temporary and permanent certificates (and for amendments thereto) for the transportation, exchange or storage of natural gas, provided that the estimated cost of construction of the certificate applicant's related facility is less than \$5,000,000 as provided in § 375.307(a)(3) of this chapter;

(6) Blanket certificate applications by interstate pipelines and local distribution companies served by interstate pipelines filed pursuant to §§ 284.221 and 284.224 of this chapter;

(7) Applications for temporary certificates pursuant to § 157.17 of this chapter;

(8) Applications for temporary and permanent certificates of public convenience and necessity by independent producers pursuant to §§ 157.23, 157.28, and 157.40 of this chapter;

(9) Applications to take the following actions pursuant to section 7(c) of the Natural Gas Act, if such applications provide that the sales volumes remain within total existing contract demand and certificate levels:

(i) Change delivery points for existing sales customers,

(ii) Add new delivery points for existing sales customers, and

(iii) Change volumes of gas to be delivered from one to another of an existing sales customer's delivery points;

(10) Petitions to amend certificates to conform to actual construction;

(11) Applications and amendments requesting authorizations filed pursuant to section 7(c) of the Natural Gas Act for new or additional service to right-of-way grantors either directly or through a distributor, where partial consideration for the granting of the right-of-way was the receipt of gas service pursuant to section 7(c) of the Natural Gas Act;

(12) Applications for blanket certificates of public convenience and necessity pursuant to Subpart F of Part 157 of this chapter, including waiver of project cost limitations on §§ 157.208 and 157.215 of this chapter, and the convening of informal conferences during the 30-day reconciliation period pursuant to the procedures in § 157.205(f) of this chapter;

(13) Applications for certificates of public convenience and necessity for off-system sales, pursuant to the Statement of Policy issued April 25, 1983 in Docket No. PL83-2-000;

(14) Applications pertaining to approval of changes in customer names where there is no change in rate schedule, rate or other incident of service;

(15) Applications for approval of customers rate schedule shifts;

(16) Applications filed under section 1(c) of the Natural Gas Act and Part 152 of this chapter, for declaration of exemption from the provisions of the Natural Gas Act and certificates held by the applicant;

(17) Certificates and related rate schedules of an independent producer, to the extent the service is no longer subject to Commission jurisdiction under the Natural Gas Act including:

(i) Vacating the order previously issued granting a certificate of public convenience and necessity; and

(ii) Cancelling the prior acceptance of, and permitting withdrawal of, the related rate schedule upon request of the filing party or if the certificate or application is currently being or has been previously withdrawn; and

(18) Offers of settlement in the Independent Oil and Gas Association of West Virginia proceedings in Docket Nos. RI74-188 and RI75-21, that are substantially similar to settlements previously approved by the Commissions therein.

(b) Act upon filings for all initial rate schedules, rate schedule changes and notices of changes in rates submitted by gas companies and impose such appropriate conditions to the following extent, in uncontested cases:

(1) Accept a tariff or rate schedule filing, except a major pipeline rate increase under § 154.303(e) and § 154.63(a)(2) of this chapter, and under section 4(e) of the Natural Gas Act, if it complies with all applicable statutory requirements, and with all applicable Commission rules, regulations, and orders for which a waiver has not been granted, or if a waiver has been granted by the Commission, if it complies with the terms of such waiver.

(2) Reject a tariff or rate schedule filing, if it patently fails to comply with applicable statutory requirements and with all applicable Commission rules, regulations and orders for which a waiver has not been granted;

(3) Advise the filing party of any actions taken under paragraphs (b)(1) or (b)(2) of this section and designate rate schedules, rate schedule changes, and notices of changes in rates, and the effective date thereof;

(4) Accept rate filings of jurisdictional natural gas companies which involve replacement and rollover contracts; and

(5) Accept statements of eligibility filed under § 2.56(p) of this chapter by producers of natural gas, as defined in §§ 154.91 and 157.40 of this chapter.

(c) Take the following actions under the Natural Gas Policy Act of 1978:

(1) Compute, for each month, pursuant to section 101(b)(6) of the Natural Gas Policy Act of 1978, the maximum lawful prices prescribed under Title I of the act and the monthly equivalent of the annual inflation adjustment factor for each such month, and publish as soon as possible thereafter such prices and such

factor for such month in the Federal Register;

(2) Notify jurisdictional agencies within 45 days after the date on which the Commission receives notice pursuant to § 274.104 of this chapter of a well category determination by a jurisdictional agency that the notice is incomplete, in accordance with § 275.202(b)(2) of this chapter; and

(3) Pass upon an uncontested request for extension of time to file a report for an extension of authorization to sell natural gas under section 311(b) of the Natural Gas Policy Act of 1978 when such report must be filed pursuant to § 284.148(c) of this chapter. If such report for which an extension of time has been granted by the Director under this paragraph is filed late, the Director will notify the one making such filing that there will be 90 days for Commission consideration of extension of authorization requested by the report, after which time an extension of authorization is deemed granted if the Commission has not acted.

(d) Take appropriate action on the following:

(1) Any notice of intervention or petition to intervene, filed in an uncontested application or an uncontested rate schedule proceeding;

(2) An uncontested request from one holding an authorization, granted pursuant to the Director's delegated authority, to vacate all or part of such authorization;

(3) Petitions to permit after an initial 60-day period one additional 60-day period of exemption pursuant to § 284.264(b) of this chapter where the application or extension arrives at the Commission later than 45 days after the commencement of the initial period of exemption; and

(4) Applications for extensions of time to file required reports, data, and information and to perform other acts required at or within a specific time by any rule, regulation, license, permit, certificate, or order by the Commission.

(e) Undertake the following actions:

(1) Compute, for each calendar year, the project limits specified in Table I of § 157.208 and Table II of § 157.215(a) of this chapter, adjusted for inflation, and publish such limits as soon as possible thereafter in the Federal Register;

(2) Issue reports for public information purposes. Any report issued without Commission approval must:

(i) Be of a noncontroversial nature, and

(ii) Contain the statement, "This report does not necessarily reflect the view of the Commission," in bold face type on the cover;

(3) Initiate an annual survey of the impact of winter gas supply (Omnibus Report);

(4) Issue and sign deficiency letters regarding natural gas applications;

(5) Accept for filing, data and reports required by Commission orders, or presiding officers' initial decisions upon which the Commission has taken no further action, if such filings are in compliance with such orders or decisions and, when appropriate, notify the filing party of such acceptance;

(6) Reject requests which patently fail to comply with the provisions of § 157.205(b) of this chapter; and

(7) Grant any producer's uncontested application for abandonment, in accordance with § 2.77 of this chapter.

(f) Take appropriate action on requests or petitions for waivers of:

(1) Any action incidental to the exercise of delegated authority, including waiver of notice as provided in section 4(d) of the Natural Gas Act, provided the request conforms to the requirements of § 385.2001 of this chapter;

(2) Filing requirements for statements and reports under Part 260 of this chapter;

(3) Fees prescribed in §§ 381.201, 381.202, 381.203, 381.204, 381.205, 381.206, 381.207, 381.208, 381.209, 381.401, 381.402, 381.403, and 381.404 of this chapter in accordance with § 381.106(d) of this chapter; and

(4) Annual charges prescribed in § 382.202 of this chapter in accordance with the standard set forth in § 382.106 of this chapter.

7. Section 375.308 is revised to read as follows:

§ 375.308 Delegations to the Director of the Office of Electric Power Regulation.

The Commission authorizes the Director of the Office of Electric Power Regulation or the Director's designee to:

(a) Take the following actions with respect to rates, rate schedules, and rate filings:

(1) Accept for filing all uncontested initial rate schedules and uncontested rate schedule changes submitted by public utilities, including changes which would result in rate increases; waive the requirement of statutory notice for good cause shown; advise the filing party of such acceptances; and designate rate schedules and the effective dates thereof;

(2) Approve uncontested rates and rate schedules filed by the Secretary of Energy, or his designee, for power developed at projects owned and operated by the Federal government and

for services provided by Federal power marketing agencies:

(3) Reject a rate filing, unless accompanied by a request for waiver in conformity with § 385.2001 of this chapter, if it fails patently to comply with applicable statutory requirements or Commission rules, regulations, and orders.

(b) Take appropriate action on uncontested applications for:

(1) The sale or lease or other disposition of facilities, consolidation of facilities, and acquisition of securities of public utilities under section 203 of the Federal Power Act;

(2) Interlocking positions under section 305(b) of the Federal Power Act;

(3) Exemptions pursuant to § 290.601 of this chapter, extensions pursuant to § 290.602 of this chapter, and withdrawals of exemptions and extensions pursuant to § 290.603 of this chapter;

(4) Certification of the qualifying status for small power production and cogeneration facilities under § 292.207 of this chapter; and

(5) The extension of time for public utilities to file required reports, data, and information and to do other acts required to be done within a specific time period by any rule, regulation, or order of the commission.

(c) Take appropriate action on:

(1) Notices of intervention or petitions to intervene in an uncontested rate schedule proceeding;

(2) Requests for authorization for a designated representative to post and file rate schedules of public utilities which are parties to the same rate schedule; and

(3) Filings relating to uncontested nonexempt qualifying small power production facilities, including action on requests for waivers of the Commission's regulations under the Federal Power Act and related authorizations consistent with *Massachusetts Refusetech, Inc.*, 31 FERC ¶ 61,048 (1985), and the orders cited therein without limitation as to whether qualifying status is by Commission certification or notice of qualifying status, provided that in the case of a notice of qualifying status, any waiver is granted on condition that the filing party has correctly noticed the facility as a qualifying facility.

(d) Undertake the following actions:

(1) Redesignate proceedings, rate schedules, and other authorizations and filings to reflect changes in the names of persons and municipalities subject to invoking Commission jurisdiction under the Federal Power Act, where no substantive changes in ownership,

corporate structure or domicile, or jurisdictional operation are involved;

(2) Issue deficiency letters regarding electric rate schedule filings, refund reports, corporate applications for the sale, lease or disposition of property, consolidation of facilities, acquisition of securities of public utilities and applications to hold interlocking positions;

(3) With respect to amendments to agreements, contracts, and rate schedules (including approved rate settlements), and data and reports submitted by public utilities pursuant to Commission opinions, orders, decisions or other actions or presiding officers' initial decisions:

(i) Accept for filing any amendment, contract, rate schedule, data and reports which are in compliance and, when appropriate, notify the filing party of such acceptance; or

(ii) Reject for filing any amendment, contract, rate schedule, data, and reports which are not in compliance or not required and, when appropriate, notify the filing party of such rejection; and

(4) Adopt final allocations of costs for Federal multiple-purpose reservoir projects for which the Commission has statutory responsibility, and review and comment on cost allocations prepared by others.

(e) Take appropriate action on requests or petitions for waivers of:

(1) Filing requirements for matters which are the subject of delegated authority, provided the request conforms to the requirement of § 385.2001 of this chapter;

(2) Fees prescribed in §§ 381.502, 381.503, 381.504, 381.505, 381.509, 381.510, 381.511, and 381.512 of this chapter in accordance with § 381.106(b) of this chapter;

(3) The requirements of Subpart C of Part 292 of this chapter governing cogeneration and small power production facilities made by any state regulatory authority or nonregulated electric utility pursuant to § 292.403 of this chapter; and

(4) Annual charges prescribed in § 382.201 of this chapter in accordance with the standard set forth in § 382.105 of this chapter.

8. Section 375.310 is added to read as follows:

§ 375.310 Delegations to the Director of the Office of Economic Policy.

The Commission authorizes the Director of the Office of Economic Policy, or the Director's designee, to issue quarterly updates of the benchmark rate of return on common equity for the jurisdictional operations

of public utilities under Part 37 of this chapter.

9. Section 375.313 is amended by adding new paragraphs (e) through (h).

§ 375.313 Delegations to the Executive Director.

(e) Determine the annual charges for administrative costs, for use of United States lands, and for use of Government dams or other structures.

(f) Grant or deny waiver of penalty charges for late payment of annual charges.

(g) Give credit for overpayment of annual charges.

(h) Deny or grant, in whole or in part, petitions for exemption from annual charges under § 11.6 of this chapter for state and municipal licensees.

10. Section 375.314 is revised to read as follows:

§ 375.314 Delegations to the Director of the Office of Hydropower Licensing.

The Commission authorizes the Director of the Office of Hydropower Licensing or the Director's designee to:

(a) Take appropriate action on uncontested applications and on applications for which the only motion or notice of intervention is filed by a competing preliminary permit or exemption applicant that does not propose and substantiate materially different plans to develop, conserve, and utilize the water resources of the region for the following:

(1) Licenses (including original, new, and transmission line licenses) under Part I of the Federal Power Act;

(2) Exemptions from all or part of the licensing requirements of Part I of the Federal Power Act; and

(3) Preliminary permits for proposed projects.

(b) Take appropriate action on uncontested applications for:

(1) Amendments (including changes in the use or disposal of water power project lands or waters or in the boundaries of water power projects) to licenses (including original, new, and transmission line licenses) under Part I of the Federal Power Act, exemptions from all or part of the requirements of Part I of the Federal Power Act, and preliminary permits; and

(2) Surrenders of licenses (including original and new), exemptions, and preliminary permits.

(c) Take appropriate action on the following:

(1) Determinations or vacations with respect to lands of the United States reserved from entry, location, or other disposal under section 24 of the Federal Power Act;

(2) Transfer of a license under section 8 of the Federal Power Act;

(3) Applications for the surrender of transmission line licenses pursuant to Part 6 of this chapter;

(4) Motions filed by licensees, permittees, exemptees, applicants, and others requesting an extension of time to file required submittals, reports, data, and information and to do other acts required to be done at or within a specific time period by any rule, regulation, license, exemption, permit, notice, letter, or order of the Commission in accordance with § 385.2008 of this chapter;

(5) Declarations of intent and petitions for declaratory orders concerning the Commission's jurisdiction over a hydropower project under the Federal Power Act;

(6) New or revised exhibits, studies, plans, reports, maps, drawings, or specifications, or other such filings made voluntarily or in response to a term or condition in a preliminary permit, license, or exemption issued for a hydropower project, or in response to the requirements of an order of the Commission or presiding officer's initial decision concerning a hydropower project;

(7) Requests by applicants to withdraw, pursuant to § 385.216 of this chapter, any pleadings under Part I of the Federal Power Act and any pleadings related to exemptions from all or part of Part I of the Federal Power Act;

(8) Requests by licensees for exemption from:

(i) The requirement of filing FERC Form No. 80, Licensed Projects Recreation, under § 8.11 of this chapter; and

(ii) The fees prescribed in § 381.302(a) of this chapter in accordance with § 381.302(c) of this chapter and the fees in § 381.305 of this chapter, in accordance with § 381.106 of this chapter;

(9) Requests for waivers incidental to the exercise of delegated authority provided the request conforms to the requirements of § 385.2001 of this chapter;

(10) Proposals for the development of water resources projects submitted by other agencies of the Federal government for Commission review or comment. The Director shall direct comments, when necessary, to the sponsoring agency on matters including, but not limited to, the need for, and appropriate size of, any hydroelectric power installation proposed by any other agency of the Federal government;

(11) The reasonableness of disputed agency cost statements pursuant to § 4.303(d) of this chapter.

(d) Issue an order pursuant to section 5 of the Federal Power Act to cancel a preliminary permit if the permittee fails to comply with the specific terms and conditions of the permit; provided:

(1) The Director gives notice to the permittee of probable cancellation no less than 30 days prior to the issuance of the cancellation order, and

(2) The permittee does not oppose the issuance of the cancellation order.

(e) Issue an order to revoke an exemption of a small conduit hydroelectric facility from the licensing provisions of Part I of the Federal Power Act granted pursuant to § 4.93 of this chapter, or an exemption of a small hydroelectric power project from the licensing provisions of Part I of the Federal Power Act granted pursuant to § 4.105 of this chapter if the exemption holder fails to begin or complete actual construction of the exempted facility or project within the time specified in the order granting the exemption or in Commission regulations at § 4.94(c) or § 4.106(c) of this chapter, provided:

(1) The Director gives notice to the exemption holder by certified mail of probable revocation no less than 30 days prior to the issuance of the revocation order, and

(2) The holder of the exemption does not oppose the issuance of the revocation order.

(f) Issue an order pursuant to section 13 of the Federal Power Act to terminate a license granted under Part I of the Federal Power Act if the licensee fails to commence actual construction of the project works within the time prescribed in the license, provided:

(1) The Director gives notice by certified mail to the licensee of probable termination no less than 90 days prior to the issuance of the termination order, and

(2) The licensee does not oppose the issuance of the termination order.

(g) Require licensees and applicants for water power projects to make repairs to project works, take any related actions for the purpose of maintaining the safety and adequacy of such works, make or modify emergency action plans, have inspections by independent consultants, and perform other actions necessary to comply with Part 12 of this chapter or otherwise protect human life, health, property, or the environment.

(h) For any unlicensed or unexempted hydropower project, take the following actions:

(1) Conduct investigations to ascertain the Commission's jurisdiction.

(2) Make preliminary jurisdictional determinations, and

(3) If a project has been preliminarily determined to require a license, issue notification of the Commission's jurisdiction; require the filing of a license application; and require that actions necessary to comply with Part 12 of this chapter or otherwise protect human life, health, property, or the environment are taken.

(i) Take appropriate action on uncontested settlements among non-Federal parties involving headwater benefits.

(j) Dismiss applications for licenses and approve the withdrawal of applications for hydropower project licenses, in instances where no petition for or notice of intervention contending that licensing is required under Part I of the Federal Power Act has been filed and the Director determines that licensing is not required by such Part I.

(k) Reject or dismiss an application filed under Part I of the Federal Power Act or an application for an exemption from some or all of the requirements of Part I of the Federal Power Act if:

(1) An application is patently deficient under § 4.32(d)(2)(i);

(2) A revised application (i) Does not conform to the requirements of §§ 4.32(a), 4.32(b), or 4.38, under § 4.32(d)(1) or

(ii) If revisions to an application are not timely submitted under § 4.32(d)(1); or

(3) The applicant fails to provide timely additional information, documents, or copies of submitted materials under § 4.32(f).

(l) Redesignate proceedings, licenses, and other authorizations and filings to reflect changes in the names of persons and municipalities subject to or invoking Commission jurisdiction under the Federal Power Act, where no substantive changes in ownership, corporate structure or domicile, or jurisdictional operation are involved.

(m) Determine payments for headwater benefits from the operation of Federal reservoir projects.

(n) Determine whether to allow a credit against annual charges for the use of government dams or other structures billed to licensees each year for contractual payments for the construction, operation, and maintenance of a Federal dam.

(o) Prepare and issue comments on general water policy and planning issues for the use of the Director of the Water Resources Council or the Assistant Secretaries of the Department of Energy.

(p) Prepare and transmit letters concerning power site lands to the

Bureau of Land Management and the U.S. Geological Survey; respond to routine requests for information and any non-docketed correspondence; prepare and transmit letters requesting comments or additional information on applications for hydropower project licenses, preliminary permits, exemptions, amendments of licenses, permits, or exemptions, and other similar matters from Federal, state, and local agencies, from applicants, and from other appropriate persons; and prepare and transmit letters regarding whether transmission lines are works of a hydropower project and are required to be licensed.

(q) Reject an application or other filing under Section 405 of the Public Utility Regulatory Policies Act of 1978, unless accompanied by a request for waiver in conformity with § 385.2001 of this chapter, if it fails patently to comply with applicable statutory requirements or Commission rules, regulations, and orders.

PART 385—RULES OF PRACTICE AND PROCEDURE

11. The authority citation of Part 385 continues to read as follows:

Authority: Department of Energy Organization Act, 42 U.S.C. 7101-7352 (1982); E.O. 12009, 3 CFR 1978 Comp., p. 142; Administrative Procedure Act, 5 U.S.C. 551-557 (1982); Independent Offices Appropriations Act, 31 U.S.C. 9701 (1982); Federal Power Act, 16 U.S.C. 791-825r (1982); Natural Gas Act, 15 U.S.C. 717-717w (1982); Natural Gas Policy Act, 15 U.S.C. 3301-3432 (1982); Public Utility Regulatory Policies Act, 16 U.S.C. 2601-2645 (1982); Interstate Commerce Act, 49 U.S.C. 1-27 (1976), unless otherwise noted.

12. Section 385.501 is revised to read as follows:

§ 385.501 Applicability (Rule 501).

This subpart applies to any proceeding, or part of a proceeding, that the Commission or the Secretary under delegated authority sets for a hearing to be conducted in accordance with this subpart.

13. In § 385.502, paragraph (a)(2) is revised to read as follows:

§ 385.502 Initiation of hearing (Rule 502).

(a) Notice or order initiating hearing.

(2) Notice by the Secretary at the direction of the Commission or under delegated authority; or

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 101

[Docket No. 85P-0119]

Food Labeling; Exemption of Required Label Statements on Food Containers With Separate Lids

AGENCY: Food and Drug Administration.
ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is broadening an exemption from the food labeling rule that requires certain label statements to appear on the same label panel. Presently the exemption applies to containers of certain dairy foods and frozen confections that have separate lids and that meet other qualifications. The amendment will make the exemption applicable to all foods meeting the container and labeling specifications.

DATE: Effective May 5, 1988.

FOR FURTHER INFORMATION CONTACT: Terry C. Troxell, Center for Food Safety and Applied Nutrition (HFF-312), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202-485-0229.

SUPPLEMENTARY INFORMATION: In the Federal Register of December 27, 1985 (50 FR 52937), FDA published a proposal to exempt all foods in qualifying containers from the food labeling rule that requires placement of certain label statements on a single label panel (21 CFR 101.2(d)(1)). For a food to qualify for this exemption (21 CFR 101.2(d)(2)), its container must meet all of the following conditions: (1) The container has a separate lid and body; (2) the lid qualifies for and is used as a principal display panel; and (3) the container bears nutrition labeling in accordance with 21 CFR 101.9. The proposal was based in part on a petition from the National Association of Margarine Manufacturers (NAMM). Prior to this rulemaking, this labeling exemption was limited to certain dairy foods and frozen confections.

Without the § 101.2(d)(2) exemption, the label statements that are generally required by §§ 101.2 (b) and (d)(1) to be placed on a single panel are as follows: The ingredient statement (§ 101.4); the name and place of business of the manufacturer, packer, or distributor (§ 101.5); the number of servings (§ 101.8); nutrition labeling (§ 101.9); label warnings (§ 101.17); cholesterol, fat, and fatty acid labeling (§ 101.25);

and labeling for foods for special dietary use (21 CFR Part 105). Some of these label statements, such as nutrition labeling, are required only under certain conditions. These conditions are given in specific labeling regulations.

The purpose for establishing the § 101.2(d)(2) exemption was to permit separation of certain of the above required label information so that the same container body, i.e., a generic body, can be used to package several products. For example, the name and address of the responsible firm is permitted to appear on the lid, separate from the nutrition labeling and the ingredient statement that appear on the body of the container. Thus, the exemption makes it possible for several distributors of the same food to use the same container body that is lithographed with the same nutrition and ingredient information (generic container body). This reduces labeling costs because one rather than several differently printed container bodies is required and cost per container is minimized by printing larger quantities of containers in a production run. Thus, the limited exemption from the single panel grouping requirement to permit use of generic container bodies would benefit manufacturers and consumers by lowering labeling costs without decreasing the label information provided to consumers.

Four comments were received, including comments from NAMM, two other food industry trade associations, and an attorney. These comments generally supported the proposal. One comment, however, pointed out an error in the preamble of the proposal regarding what label statements must appear on the same label panel. Another comment requested an expansion of the exemption. A discussion of the two issues raised in the comments and the agency's responses follows.

1. One comment concerned an error in the preamble to the proposal. The comment pointed out that § 101.2(d)(1) does not require all label statements to be placed on a single panel of the label.

FDA agrees with the comment. The requirement in § 101.2(d)(1) to place certain label information on a single panel of the label pertains only to the label information specified in § 101.2(b) (this information is outlined in the introduction to this document) to be listed on either the principal display panel or the information panel. The requirement to place these label statements on a single panel does not apply to other required label statements, such as the statement of identity and the quantity of contents statement, which