

Subpart T—Formal Requirements for Filings in Proceedings Before the Commission

§ 385.2001 Filings (Rule 2001).

(a) *Filings with the Commission.* (1) Except as otherwise provided in this chapter, any document required to be filed with the Commission must comply with Rules 2001 to 2005 and must be submitted to the Secretary by:

(i) Mailing the document to the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426;

(ii) Hand delivering the document to Room 1A, 888 First Street, NE., Washington, DC; or

(iii) By filing via the Internet pursuant to Rule 2003 through the links provided at <http://www.ferc.gov>.

NOTE TO PARAGRAPH (a)(1): Assistance for filing via the Internet is available by calling (202) 502-6652 or 1-866-208-3676 (toll free), or by e-mail to FERCOnlineSupport@ferc.gov.

(2) Any document is considered filed, if in paper form, on the date stamped by the Secretary or, in the case of a document filed via the Internet, on the date indicated in the acknowledgment that will be sent immediately upon the Commission's receipt of a submission, unless the document is subsequently rejected. Any document received after regular business hours is considered filed on the next regular business day.

(b) *Rejection.* (1) If any filing does not comply with any applicable statute, rule, or order, the filing may be rejected, unless the filing is accompanied by a motion requesting a waiver of the applicable requirement of a rule or order and the motion is granted.

(2) If any filing is rejected, the document is deemed not to have been filed with the Commission.

(3) Where a document is rejected under paragraph (b)(1) of this section, the Secretary, or the office director to whom the filing has been referred, will notify the submitter and indicate the deficiencies in the filing and the reason for the rejection.

(4) If a filing does not comply with any applicable requirement, all or part of the filing may be stricken. Any failure to reject a filing which is not in compliance with an applicable statute, rule, or order does not waive any obligation to comply with the requirements of this chapter.

[Order 619, 65 FR 57091, Sept. 21, 2000, as amended by Order 2002, 68 FR 51143, Aug. 25, 2003; Order 647, 69 FR 32440, June 10, 2004; Order 703, 72 FR 65664, Nov. 23, 2007]

§ 385.2002 Caption of filings (Rule 2002).

A filing must begin with a caption that sets forth:

(a) The docket designation, if any;

(b) The words "INTERLOCUTORY APPEAL" underneath the docket designation if the filing is an appeal under Rule 715(c) of a presiding officer's denial of a motion for an interlocutory appeal;

(c) The title of the proceeding if a proceeding has been initiated;

(d) A heading which describes the filing; and

(e) The name of the participant for whom the filing is made, or a shortened designation for the participant.

[Order 225, 47 FR 19022, May 3, 1982, as amended by Order 402, 49 FR 39539, Oct. 9, 1984]

§ 385.2003 Specifications (Rule 2003).

(a) *All filings.* Any filing with the Commission must be:

(1) Typewritten, printed, reproduced, or prepared using a computer or other word or data processing equipment;

(2) Have double-spaced lines with left margins not less than 1½ inch wide, except that any tariff or rate filing may be single-spaced;

(3) Have indented and single-spaced any quotation that exceeds 50 words; and

(4) Use not less than 10 point font.

(b) *Filing by paper.* (1) Any filing with the Commission made in paper form must be:

(i) Printed or reproduced, with each copy clearly legible;

(ii) On letter-size unglazed paper that is 8 to 8½ inches wide and 10½ to 11 inches long; and

(iii) Bound or stapled at the left side only, if the filing exceeds one page.

(2) Any log, graph, map, drawing, or chart submitted as part of a filing will be accepted on paper larger than provided in paragraph (b)(1) of this section, if it cannot be provided legibly on letter-size paper.

(c) *Filing via the Internet.* (1) All documents filed under this Chapter may be filed via the Internet except those listed by the Secretary. Except as otherwise specifically provided in this Chapter, filing via the Internet is in lieu of other methods of filing. Internet filings must be made in accordance with instructions issued by the Secretary and made available online at <http://www.ferc.gov>. Provisions of this chapter or directions from the Commission containing requirements as to the content and format of specific types of filings remain applicable.

(2) The Secretary will make available on the Commission's Web site a list of document types that may not be filed via the Internet, as well as instructions pertaining to allowable electronic file and document formats, the filing of complex documents, whether paper copies are required, and procedural guidelines.

(3) For purposes of statutes or regulations governing timeliness, a document filed via the Internet will be deemed to have been received by the Commission at the time the last byte of the document is received by the Commission.

(d) *Citation form.* Any filing with the Commission should comply with the rules of citation, except Rule 1.1, set forth in the most current edition of A Uniform System of Citation, published by The Harvard Law Review Association. Citations to specific pages of documents filed via the Internet should use the page numbers appearing in the PDF (Portable Document Format) version of the document available on the Commission's web site.

[Order 619, 65 FR 57091, Sept. 21, 2000, as amended by Order 2002, 68 FR 51143, Aug. 25, 2003; Order 647, 69 FR 32440, June 10, 2004; Order 703, 72 FR 65664, Nov. 23, 2007]

§ 385.2004 Originals and copies of filings (Rule 2004).

The requirements for making filings under this chapter are posted on the Commission's Web site at <http://www.ferc.gov>. The requirements cover documents and forms submitted on paper, on electronic media, or via the Commission's electronic filing systems.

[Order 737, 75 FR 43405, July 26, 2010]

§ 385.2005 Subscription and verification (Rule 2005).

(a) *Subscription.* (1) Any filing with the Commission must be signed.

(2) The signature on a filing constitutes a certificate that:

(i) The signer has read the filing signed and knows its contents;

(ii) The contents are true as stated, to the best knowledge and belief of the signer; and

(iii) The signer possesses full power and authority to sign the filing.

(3) A filing must be signed by:

(i) The person on behalf of whom the filing is made;

(ii) Any officer of the corporation, trust, association, or other organized group, on behalf of which the filing is made;

(iii) Any officer, agent, or employee of the governmental authority, agency, or instrumentality on behalf of which the filing is made; or

(iv) A representative qualified to practice before the Commission under Rule 2101 who possesses authority to sign.

(4) The signer of any filing may be required to submit evidence of authority to sign the filing.

(b) *Verification.* (1) The facts alleged in any filing need not be verified, unless verification is required by statute, rule, or order.

(2) If verification of any filing is required, the verification must be under oath by a person having knowledge of the matters set forth in the filing. If any verification is made by a person other than the signer, a statement must be attached to the verification explaining why a person other than the signer provides verification.

(3) Any requirement that a filing include or be supported by a sworn declaration, verification, certificate, statement, oath, or affidavit may be satisfied by compliance with the provisions of 28 U.S.C. 1746, provided that the filer, or an authorized representative of the filer, maintains a copy of the document bearing an original, physical signature until after such time as all administrative and judicial proceedings in the relevant matter are closed and all deadlines for further administrative or judicial review have passed.

(c) *Electronic signature.* In the case of any document filed in electronic form under the provisions of this Chapter, the typed characters representing the name of a person shall be sufficient to show that such person has signed the document for purposes of this section.

[Order 225, 47 FR 19022, May 3, 1982, as amended by Order 619, 65 FR 57092, Sept. 21, 2000; Order 653, 70 FR 8724, Feb. 23, 2005]

§ 385.2006 Docket system (Rule 2006).

- (a) The Secretary will maintain a system for docketing proceedings.
- (b) Any public information in any docket is available for inspection and copying by the public during the office hours of the Commission, to the extent that such availability is consistent with the proper discharge of the Commission's duties and in conformity with part 388 of this chapter.

[Order 226, 47 FR 19022, May 3, 1982; 48 FR 786, Jan. 7, 1983]

§ 385.2007 Time (Rule 2007).

- (a) *Computation.* (1) Except as otherwise required by law, any period of time prescribed or allowed by statute or Commission rule or order is computed to exclude the day of the act or event from which the time period begins to run.
 - (2) The last day of any time period is included in the time period, unless it is a Saturday, Sunday, day on which the Commission closes due to adverse conditions and does not reopen prior to its official close of business, part-day holiday that affects the Commission, or legal public holiday as designated in section 6103 of title 5, U.S. Code, in which case the period does not end until the close of the Commission business of the next day which is not a Saturday, Sunday, day on which the Commission closes due to adverse conditions and does not reopen prior to its official close of business, part-day holiday that affects the Commission, or legal public holiday.
- (b) *Date of issuance of Commission rules or orders.* (1) Any Commission rule or order is deemed issued when the Secretary does the earliest of the following:
 - (i) Posts a full-text copy in the Division of Public Information;
 - (ii) Mails or delivers copies of the order to the parties; or
 - (iii) Makes such copies public.(2) Any date of issuance specified in a rule or order need not be the date on which the rule or order is adopted by the Commission.
- (c) *Effective date of Commission rules or orders.* (1) Unless otherwise ordered by the Commission, rules or orders are effective on the date of issuance.
 - (2) Any initial or revised initial decision issued by a presiding officer is effective when the initial or revised initial decision is final under Rule 708(d).

[Order 225, 47 FR 19022, May 3, 1982, as amended by Order 375, 49 FR 21316, May 21, 1984; Order 376, 49 FR 21707, May 23, 1984; Order 645, 69 FR 2504, Jan. 16, 2004]

§ 385.2008 Extensions of time (Rule 2008).

- (a) Except as otherwise provided by law, the time by which any person is required or allowed to act under any statute, rule, or order may be extended by the decisional authority for good cause, upon a motion made before the expiration of the period prescribed or previously extended.

(b) If any motion for extension of time is made after the expiration of a specified time period, the decisional authority may permit performance of the act required or allowed, if the movant shows extraordinary circumstances sufficient to justify the failure to act in a timely manner.

§ 385.2009 Notice (Rule 2009).

Unless actual notice is given or unless newspaper notice is given as required by law, notice by the Commission is provided by the Secretary only by publication in the FEDERAL REGISTER. Actual notice is usually given by service under Rule 2010.

§ 385.2010 Service (Rule 2010).

(a) *By participants.* (1) Any participant filing a document in a proceeding must serve a copy of the document on:

(i) Each person whose name is on the official service list, or applicable restricted service list, for the proceeding or phase of the proceeding; and

(ii) Any other person required to be served under Commission rule or order or under law.

(2) If any person receives a rejection letter or deficiency letter from the Commission, the person must serve a copy of the letter on any person previously served copies of the rejected or deficient filing.

(b) *By the Secretary.* The Secretary will serve, as appropriate:

(1) A copy of any complaint on any person against whom the complaint is directed;

(2) A copy of any notice of tariff or rate examination or order to show cause, on any person to whom the notice or order is issued;

(3) A copy of any rule or any order by a decisional authority in a proceeding on any person included on the official service list, or applicable restricted service list, for the proceeding or phase of the proceeding, provided that such person has complied with paragraph (g) of this section.

(c) *Official service list.* (1) The official service list for any proceeding will contain:

(i) The name, address and, for proceedings commenced on or after March 21, 2005, e-mail address of any person designated for service in the initial pleading, other than a protest, or in the tariff or rate filing which is filed by any participant; and

(ii) The name of counsel for the staff of the Commission.

(2) Any designation of a person for service may be changed by following the instructions for the Commission's electronic registration system, located on its Web site at <http://www.ferc.gov> or, in the event that the proceeding was commenced prior to March 21, 2005, or the person designated for service is unable to use the electronic registration system, by filing a notice with the Commission and serving the notice on each person whose name is included on the official service list.

(d) *Restricted service list.* (1) For purposes of eliminating unnecessary expense or improving administrative efficiency, the Secretary, an office director, or the presiding officer may establish, by order, a restricted service list for an entire proceeding, a phase of a proceeding, one or more issues in a proceeding, or one or more cases in a consolidated proceeding.

(2) Any restricted service list will contain the names of each person on the official service list, or the person's representative, who, in the judgment of the decisional authority establishing the list, is an active

participant with respect to the proceeding or consolidated proceeding, any phase of the proceeding, or any issue in the proceeding, for which the list is established.

(3) Any restricted service list is maintained in the same manner as, and in addition to, the official service list under paragraph (c) of this section.

(4) Before any restricted service list is established, each person included on the official service list will be given notice of any proposal to establish a restricted service list and an opportunity to show why that person should also be included on the restricted service list or why a restricted service list should not be established.

(5) Any designation of a person for service on a restricted service list may be changed by filing written notice with the Commission and serving that notice on each person whose name is on the applicable restricted service list.

(e) *Intervenors.* If a motion to intervene or any notice of intervention is filed, the name, address and, for proceedings commenced on or after March 21, 2005, e-mail address of any person designated for service in the motion or notice are placed on the official service list or any applicable restricted service list, provided that such person has complied with paragraph (g) of this section. Any person placed on the official service list under this paragraph is entitled to service in accordance with this section. If a motion to intervene is denied, the name, address and e-mail address of each person designated for service pursuant to that motion will be removed from the official service list.

(f) *Methods of service.* (1) Except as provided in paragraph (g) of this section, service of any document in proceedings commenced prior to March 21, 2005, must be made by:

(i) Electronic means where the sender and recipient agree to such means;

(ii) United States mail, first class or better; or

(iii) Delivery in a manner that, and to a place where, the person on whom service is required may reasonably be expected to obtain actual and timely receipt.

(2) Except as provided in paragraph (g) of this section, service of any document in proceedings commenced on or after March 21, 2005, must be made by electronic means unless the sender and recipient agree otherwise or the recipient's e-mail address is unavailable from the official service list, except in the case of a recipient who has secured a waiver under the provisions of § 390.3 of this chapter, or is exempt under the provisions of § 390.4 of this chapter, or in the case of a protected or confidential document the security of which might be jeopardized by electronic service, in which case service upon that recipient or of that document only shall be made by:

(i) United States mail, first class or better; or

(ii) Delivery in a manner that, and to a place where, the person on whom service is required may reasonably be expected to obtain actual and timely receipt.

(3) Service of a document by electronic means shall be made by the transmission of a link to that document in the Commission's eLibrary system or by alternate means reasonably calculated to make the document available to required recipients. Alternate means may include but are not limited to, attachment of an electronic copy of the document to an e-mail or transmission of a link to an Internet site containing the document. It is the sender's responsibility to take reasonable steps to ensure that the means employed for service will be within the technological capabilities of the recipients.

(g) *Methods of Service by the Secretary.* Service by the Secretary shall be made by electronic means, unless such means are impractical, in which case service shall be made by United States mail.

(h) *Electronic registration.* In the case of proceedings commenced on or after March 21, 2005, any person, to be included on a service list, must have complied with the procedures for electronic registration made available on the Commission's Web site, at <http://www.ferc.gov>, unless such person has secured a waiver under the provisions of § 390.3 of this Chapter, or is exempt under the provisions of § 390.4 of this Chapter.

(i) *Timing of service.* (1) Service is made under this section when the document served is deposited in the mail or is delivered in another manner.

(2) Service of any document must be made not later than the date of the filing of the document.

(3) In the case of a document served through a link to the Commission's eLibrary system, as specified in paragraph (f)(2) of this section, if a link to the document does not become available in eLibrary within two business days after the document is filed, the person responsible for serving the document must immediately serve the document by other means, as specified in paragraph (f)(1) or (f)(2) of this section.

(j) *Certification.* (1) At the time any document required to be served is filed with the Commission, the original of a certificate of service must be attached to the document and a copy of the certificate must be attached to each copy of the document filed with the Commission.

(2) The certificate of service must conform to the following format:

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list [or the restricted service list, if applicable] compiled by the Secretary in this proceeding.

Dated at this

day of , 19 .

Name

(if applicable)

Address

Telephone No.

(k) *Designation of corporate officials to receive service.* (1) Any entity subject to regulation by the Commission must designate at least one, but not more than two, corporate officials or other persons to receive service of complaints, petitions for declaratory order, show cause orders, data requests, investigatory letters or other documents where a person to receive service has not otherwise been designated under Commission regulations. Each entity must file with the Secretary of the Commission:

(i) The name of the corporate official or person that is to receive service;

(ii) The title of the corporate official or person, if applicable;

(iii) The address of the corporate official or person, including, where applicable, department, room number, or mail routing code;

(iv) The telephone number of the corporate official or person;

(v) The facsimile number of the corporate official or person, if applicable; and

(vi) The electronic mail address of the corporate official or person, if applicable.

(2) Each regulated entity has a continuing obligation to file with the Secretary of the Commission updated information concerning the corporate official or person designated to receive service.

(3) A list of corporate officials and persons designated to receive service pursuant to this paragraph will be maintained by the Secretary of the Commission and will be made available to the public in hard copy upon request and through the Commission's web site at <http://www.ferc.gov>.

(4) Any person who wishes to serve a complaint or petition for declaratory order on any entity regulated by the Commission must serve the corporate official or person designated pursuant to this paragraph (i).

(5) The Commission will serve show cause orders, data requests, investigatory letters or other documents on the corporate official or person designated under this paragraph (i).

[Order 225, 47 FR 19022, May 3, 1982, as amended by Order 604, 64 FR 31496, June 11, 1999; Order 610, 64 FR 62582, Nov. 17, 1999; Order 647, 69 FR 32440, June 10, 2004; Order 653, 70 FR 8725, Feb. 23, 2005; 70 FR 21332, Apr. 26, 2005]

§ 385.2011 Procedures for filing on electronic media (Rule 2011).

(a) FERC Forms subject to the procedures provided in this section include:

(1) FERC Form No. 2, Annual report for major natural gas companies.

(2) FERC Form No. 2-A, Annual report for nonmajor natural gas companies.

(3) FERC Form No. 8, Underground gas storage report.

(4) FERC Form No. 11, Natural gas pipeline monthly statement.

(5) FERC Form No. 14, Annual report for importers and exporters of natural gas.

(6) FERC Form No. 1, Annual report of Major electric utilities, licensees and others.

(7) FERC Form No. 6, Annual Report of Oil Pipeline Companies.

(8) [Reserved]

(9) FERC Form No. 60, Annual report of centralized service companies.

(10) FERC Form No. 714, Annual Electric Balancing Authority Area and Planning Area Report.

(11) FERC Form No. 552, Annual Report of Natural Gas Transactions.

(b) These procedures also apply to:

(1) [Reserved]

(2) Certificate and abandonment applications filed under subparts A, E, and F of part 157 of this chapter.

(3) Blanket certificate applications filed under subpart G of part 284 of this chapter.

(c) *What to file.* (1) Except as provided in paragraph (e) of this section, any filing of a schedule or an update described in paragraphs (a) or (b) of this section must be submitted on electronic media.

(2) Electronic media suitable for Commission filings are listed in the instructions for each form and filings. Additionally, lists of suitable electronic media are available upon request from the Commission.

(3) With the exception of the FERC Form Nos. 1, 2, 2-A, 6, 60, and 714, the electronic media must be accompanied by the traditional prescribed number of paper copies.

(4) The formats for the electronic filing and the paper copy can be obtained at the Federal Energy Regulatory Commission, Public Reference and Files Maintenance Branch, Division of Information Services, Washington, DC 20426.

(5) The subscription required by § 385.2005(a) must state that the paper copies contain the same information as contained on the electronic media, that the signer knows the contents of the paper copies and electronic media, and that the contents as stated in the copies and on the electronic media are true to the best knowledge and belief of the signer.

(d)(1) *Where to file.* The electronic media, the paper copies, and accompanying cover letter must be submitted to: Office of the Secretary, Federal Energy Regulatory Commission, Washington, DC 20426.

(2) EDI data submissions must be made as indicated in the electronic filing instructions and formats for the particular form or filing, and the paper copies and accompanying cover letter must be submitted to: Office of the Secretary, Federal Energy Regulatory Commission, Washington, DC 20426.

(e) *Waiver* —(1) *Filing of petition.* If a natural gas company, electric utility, licensee or other entity does not have and is unable to acquire the computer capability to file the information required to be filed on electronic media, the company may request waiver from the requirement of this part, by filing an original and two copies of a petition. The natural gas company, electric utility, licensee or other entity may renew the waiver if the company can continue to show that it does not have and is unable to acquire the computer capability for electric filing.

(2) *Standard for waiver.* The petition for waiver must show that the natural gas company, electric utility, licensee or other entity does not have the computer capability to file the information required under this section on electronic media and that acquisition of the capability would cause the company severe economic hardship. This waiver may be granted for up to one year.

(3) *Timing.* The petition for waiver must be filed by the date on which the information in the manner affected by the petition is required to be initially filed.

(4) *Decision on petition.* The Commission or its designee will review a petition for waiver and notify the applicant of its grant or denial. Once the petition is decided, the natural gas company, electric utility, licensee or other entity will have 30 days from the date of notification of the decision to submit any information, in the manner specified by the Commission in the decision on the waiver petition, that was required to be filed while the petition was pending.

[53 FR 15032, Apr. 27, 1988]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 385.2011, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at www.fdsys.gov.

§ 385.2012 Petitions for review of Commission Orders (Rule 2012).

When a petition for review of an order issued by the Commission is filed in a United States Court of Appeals, a copy of the petition which has been stamped by the court with the date of filing must be mailed or hand delivered to the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. If within ten days after issuance of the Commission order, the Office of the Secretary has physically received court-stamped copies of petitions for review of the same order, which

petitions have been filed in two or more U.S. Courts of Appeals, the Commission will forward copies of those petitions to the Judicial Panel on Multidistrict Litigation pursuant to 28 U.S.C. 2112(a).

[Order 504, 53 FR 37546, Sept. 27, 1988, as amended by Order 737, 75 FR 43405, July 26, 2010]

§ 385.2013 Notification of requests for Federal authorizations and requests for further information (Rule 2013).

(a) For each Federal authorization— *i.e.* , permit, special use authorization, certification, concurrence, opinion, or other approval—required under Federal law with respect to a natural gas project for which an application has been filed under section 3 of the Natural Gas Act for a certificate of public convenience and necessity under section 7 of the Natural Gas Act, each Federal agency or officer, or State agency or officer acting pursuant to delegated Federal authority, responsible for a Federal authorization must file with the Commission within 30 days of the date of receipt of a request for a Federal authorization, notice of the following:

- (1) Whether the application is ready for processing, and if not, what additional information or materials will be necessary to assess the merits of the request;
- (2) The time the agency or official will allot the applicant to provide the necessary additional information or materials;
- (3) What, if any, studies will be necessary in order to evaluate the request;
- (4) The anticipated effective date of the agency's or official's decision; and
- (5) If applicable, the schedule set by Federal law for the agency or official to act.

(b) A Federal agency or officer, or State agency or officer acting pursuant to delegated Federal authority, considering a request for a Federal authorization that submits a data request to an applicant must file a copy of the data request with the Commission within 10 business days.

[Order 687, 71 FR 62921, Oct. 27, 2006]

§ 385.2014 Petitions for appeal or review of Federal authorizations (Rule 2014).

(a) For each Federal authorization— *i.e.* , permit, special use authorization, certification, concurrence, opinion, or other approval—required under Federal law with respect to a natural gas project for which an application has been filed for authorization under section 3 of the Natural Gas Act for a certificate of public convenience and necessity under section 7 of the Natural Gas Act, the Federal agency or officer, or State agency or officer acting pursuant to delegated Federal authority, responsible for each Federal authorization must file with the Commission within 30 days of the effective date of a final decision or action on a request for a Federal authorization or the expiration of the time provided by the Commission or by Federal law for a final decision or action, the following:

- (1) A copy of any final decision or action;
- (2) An index identifying all documents and materials—including pleadings, comments, evidence, exhibits, testimony, project alternatives, studies, and maps—relied upon by the agency or official in reaching a decision or action; and
- (3) The designation “Consolidated Record” and the docket number for the Commission proceeding applicable to the requested Federal authorization.

(b) The agencies' and officers' decisions, actions, and indices, and the Commission's record in each proceeding, constitute the complete consolidated record. The original documents and materials that make up the complete consolidated record must be retained by agencies, officers, and the Commission for at least three years from the effective date of a decision or action or until an appeal or review is concluded.

(c) Upon appeal or review of a Federal authorization, agencies, officers, and the Commission will transmit to the reviewing authority, as requested, documents and materials that constitute the complete consolidated record.

[Order 687, 71 FR 62921, Oct. 27, 2006]

§ 385.2015 Videotapes (Rule 2015).

Any person may file a videotape that portrays the site of, or some physical aspect of, an energy project, such as a waterfall or flood waters at the site of an existing or proposed hydroelectric project, or construction activities at the site of a natural gas pipeline. The filing must include a written statement describing the place, date, and time at which the videotape was filmed, who filmed it, what it purports to depict, and the caption and docket number of the proceeding (if any) in which it is to be filed. Any person who files a videotape and who is also a party (either as an applicant or as an intervenor) to a docketed proceeding in which the videotape is filed must file four copies of the videotape with the Commission's Secretary, in VHS format with voice-over or pictorial inclusion of the data contained in the accompanying written statement, serve copies of the videotape on all of the other parties to the proceeding, and include a certificate of service with the filing.

[Order 573, 59 FR 63247, Dec. 8, 1994. Redesignated by Order 687, 71 FR 62921, Oct. 27, 2006]

Subpart U—Appearance and Practice Before the Commission

§ 385.2101 Appearances (Rule 2101).

(a) A participant may appear in a proceeding in person or by an attorney or other qualified representative. An individual may appear in his or her own behalf, a member of a partnership may represent the partnership, a bona-fide officer of a corporation, trust, association or organized group may represent the corporation, trust, association or group, and an officer or employee of a State commission, of a department or political subdivision of a State or other governmental authority, may represent the State commission or the department or political subdivision of the State or other governmental authority, in any proceeding.

(b) A person compelled to appear or voluntarily testifying or making a statement before the Commission or the presiding officer, may be accompanied, represented, and advised by an attorney or other qualified representative.

(c) A person appearing before the Commission or the presiding officer must conform to the standards of ethical conduct required of practitioners before the Courts of the United States, and where applicable, to the requirements of Section 12(i) of the Public Utility Holding Company Act of 1935 (15 U.S.C. 791(i)).

§ 385.2102 Suspension (Rule 2102).

(a) After a hearing the Commission may disqualify and deny, temporarily or permanently, the privilege of appearing or practicing before it in any way to a person who is found:

- (1) Not to possess the requisite qualifications to represent others, or
- (2) To have engaged in unethical or improper professional conduct, or

(3) Otherwise to be not qualified.

(b) Contumacious conduct in a hearing before the Commission or a presiding officer will be grounds for exclusion of any person from such hearing and for summary suspension for the duration of the hearing by the Commission or the presiding officer.

§ 385.2103 Appearance of former employees (Rule 2103).

(a) No person having served as a member, officer, expert, administrative law judge, attorney, accountant, engineer, or other employee of the Commission may practice before or act as attorney, expert witness, or representative in connection with any proceeding or matter before the Commission which such person has handled, investigated, advised, or participated in the consideration of while in the service of the Commission.

(b) No person having been so employed may within 1 year after his or her employment has ceased, practice before or act as attorney, expert witness, or representative in connection with any proceeding or matter before the Commission which was under the official responsibility of such person, as defined in 18 U.S.C. 202, while in the service of the Commission.

(c) Nothing in paragraphs (a) and (b) of this section prevents a former member, officer, expert, administrative law judge, attorney, accountant, engineer, or other employee of the Commission with outstanding scientific or technological qualifications from practicing before or acting as an attorney or representative in connection with a particular matter in a scientific or technological field if the Chairman of the Commission makes a certification in writing, published in the FEDERAL REGISTER, that the national interest would be served by such action or representation.

Subpart V—Off-the-Record Communications; Separation of Functions

§ 385.2201 Rules governing off-the-record communications (Rule 2201).

(a) *Purpose and scope.* This section governs off-the-record communications with the Commission in a manner that permits fully informed decision making by the Commission while ensuring the integrity and fairness of the Commission's decisional process. This rule will apply to all contested on-the-record proceedings, except that the Commission may, by rule or order, modify any provision of this subpart, as it applies to all or part of a proceeding, to the extent permitted by law.

(b) *General rule prohibiting off-the-record communications.* Except as permitted in paragraph (e) of this section, in any contested on-the-record proceeding, no person outside the Commission shall make or knowingly cause to be made to any decisional employee, and no decisional employee shall make or knowingly cause to be made to any person outside the Commission, any off-the-record communication.

(c) *Definitions.* For purposes of this section:

(1) *Contested on-the-record proceeding* means

(i) Except as provided in paragraph (c)(1)(ii) of this section, any proceeding before the Commission to which there is a right to intervene and in which an intervenor disputes any material issue, any proceeding initiated pursuant to rule 206 by the filing of a complaint with the Commission, any proceeding initiated by the Commission on its own motion or in response to a filing, or any proceeding arising from an investigation under part 1b of this chapter beginning from the time the Commission initiates a proceeding governed by part 385 of this chapter.

(ii) The term does not include notice-and-comment rulemakings under 5 U.S.C. 553, investigations under part 1b of this chapter, proceedings not having a party or parties, or any proceeding in which no party disputes any material issue.

(2) *Contractor* means a direct Commission contractor and its subcontractors, or a third-party contractor and its subcontractors, working subject to Commission supervision and control.

(3) *Decisional employee* means a Commissioner or member of his or her personal staff, an administrative law judge, or any other employee of the Commission, or contractor, who is or may reasonably be expected to be involved in the decisional process of a proceeding, but does not include an employee designated as part of the Commission's trial staff in a proceeding, a settlement judge appointed under Rule 603, a neutral (other than an arbitrator) under Rule 604 in an alternative dispute resolution proceeding, or an employee designated as being non-decisional in a proceeding.

(4) *Off-the-record communication* means any communication relevant to the merits of a contested on-the-record proceeding that, if written, is not filed with the Secretary and not served on the parties to the proceeding in accordance with Rule 2010, or if oral, is made without reasonable prior notice to the parties to the proceeding and without the opportunity for such parties to be present when the communication is made.

(5) *Relevant to the merits* means capable of affecting the outcome of a proceeding, or of influencing a decision, or providing an opportunity to influence a decision, on any issue in the proceeding, but does not include:

(i) Procedural inquiries, such as a request for information relating solely to the status of a proceeding, unless the inquiry states or implies a preference for a particular party or position, or is otherwise intended, directly or indirectly, to address the merits or influence the outcome of a proceeding;

(ii) A general background or broad policy discussion involving an industry or a substantial segment of an industry, where the discussion occurs outside the context of any particular proceeding involving a party or parties and does not address the specific merits of the proceeding; or,

(iii) Communications relating to compliance matters not the subject of an ongoing proceeding.

(d) *Applicability of prohibitions.* (1) The prohibitions in paragraph (b) of this section apply to:

(i) Proceedings initiated by the Commission from the time an order initiating the proceeding is issued;

(ii) Proceedings returned to the Commission on judicial remand from the date the court issues its mandate;

(iii) Complaints initiated pursuant to rule 206 from the date of the filing of the complaint with the Commission, or from the date the Commission initiates an investigation (other than an investigation under part 1b of this chapter) on its own motion; and

(iv) All other proceedings from the time of the filing of an intervention disputing any material issue that is the subject of a proceeding.

(2) The prohibitions remain in force until:

(i) A final Commission decision or other final order disposing of the merits of the proceeding is issued; or, when applicable, after the time for seeking rehearing of a final Commission decision, or other final order disposing of the merits, expires;

(ii) The Commission otherwise terminates the proceeding; or

(iii) The proceeding is no longer contested.

(e) *Exempt off-the-record communications.* (1) Except as provided by paragraph (e)(2), the general prohibitions in paragraph (b) of this section do not apply to:

(i) An off-the-record communication permitted by law and authorized by the Commission;

(ii) An off-the-record communication related to any emergency concerning a facility regulated by the Commission or a facility that provides Commission-regulated services, involving injury or threat of injury to persons, property, or the environment, subject to disclosure under paragraph (g) of this section;

(iii) An off-the-record communication provided for in a written agreement among all parties to a proceeding that has been approved by the Commission;

(iv) An off-the-record written communication from a non-party elected official, subject to disclosure under paragraph (g) of this section;

(v) An off-the-record communication to or from a Federal, state, local or Tribal agency that is not a party in the Commission proceeding, subject to disclosure under paragraph (g) of this section, if the communication involves:

(A) an oral or written response to a request for information made by the Commission or Commission staff; or

(B) a matter before the Commission in which a Federal, state, local, or Tribal agency has regulatory responsibilities, including authority to impose or recommend conditions in connection with a Commission license, certificate, or exemption;

(vi) An off-the-record communication, subject to disclosure under paragraph (g) of this section, that relates to:

(A) The preparation of an environmental impact statement if communications occur prior to the issuance of the final environmental impact statement; or

(B) The preparation of an environmental assessment where the Commission has determined to solicit public comment on the environmental assessment, if such communications occur prior to the issuance of the final environmental document.

(vii) An off-the-record communication involving individual landowners who are not parties to the proceeding and whose property would be used or abuts property that would be used by the project that is the subject of the proceeding, subject to disclosure under paragraph (g) of this section.

(viii) An off-the-record communication from any person related to any national security-related issue concerning a facility regulated by the Commission or a facility that provides Commission-regulated services.

(2) Except as may be provided by Commission order in a proceeding to which this subpart applies, the exceptions listed under paragraph (e)(1) will not apply to any off-the-record communications made to or by a presiding officer in any proceeding set for hearing under subpart E of this part.

(f) *Treatment of prohibited off-the-record communications* —(1) *Commission consideration.* Prohibited off-the-record communications will not be considered part of the record for decision in the applicable Commission proceeding, except to the extent that the Commission by order determines otherwise.

(2) *Disclosure requirement.* Any decisional employee who makes or receives a prohibited off-the-record communication will promptly submit to the Secretary that communication, if written, or a summary of the substance of that communication, if oral. The Secretary will place the communication or the summary in the public file associated with, but not part of, the decisional record of the proceeding.

(3) *Responses to prohibited off-the-record communications.* Any party may file a response to a prohibited off-the-record communication placed in the public file under paragraph (f)(2) of this section. A party may also file a written request to have the prohibited off-the-record communication and the response included in the decisional record of the proceeding. The communication and the response will be made a part of the decisional record if the request is granted by the Commission.

(4) *Service of prohibited off-the-record communications.* The Secretary will instruct any person making a prohibited written off-the-record communication to serve the document, pursuant to Rule 2010, on all parties listed on the Commission's official service list for the applicable proceeding.

(g) *Disclosure of exempt off-the-record communications.* (1) Any document, or a summary of the substance of any oral communication, obtained through an exempt off-the-record communication under paragraphs (e)(1)(ii), (iv), (v), (vi) or (vii) of this section, promptly will be submitted to the Secretary and placed in the decisional record of the relevant Commission proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under paragraph (e)(1)(v) of this section.

(2) Any person may respond to an exempted off-the-record communication.

(3) Any document, or a summary of the substance of any oral communications, obtained through an exempt off-the-record communication under paragraphs (e)(1)(viii) of this section, will be submitted promptly to the Secretary and placed in a non-public decisional file of the relevant Commission proceeding and made available to parties to the proceeding, subject to their signing a non-disclosure agreement. Responses will also be placed in the non-public decisional file and held confidential. If the Commission determines that the communication does not contain sensitive national security-related information, it will be placed in the decisional file.

(h) *Public notice requirement of prohibited and exempt off-the-record communications.* (1) The Secretary will, not less than every 14 days, issue a public notice listing any prohibited off-the-record communications or summaries of the communication received by his or her office. For each prohibited off-the-record communication the Secretary places in the non-decisional public file under paragraph (f)(2) of this section, the notice will identify the maker of the off-the-record communication, the date the off-the-record communication was received, and the docket number to which it relates.

(2) The Secretary will not less than every 14 days, issue a public notice listing any exempt off-the-record communications or summaries of the communication received by the Secretary for inclusion in the decisional record and required to be disclosed under paragraph (g)(1) of this section.

(3) The public notice required under this paragraph (h) will be posted in accordance with § 388.106 of this chapter, as well as published in the FEDERAL REGISTER, and disseminated through any other means as the Commission deems appropriate.

(i) *Sanctions.* (1) If a party or its agent or representative knowingly makes or causes to be made a prohibited off-the-record communication, the Commission may require the party, agent, or representative to show cause why the party's claim or interest in the proceeding should not be dismissed, denied, disregarded, or otherwise adversely affected because of the prohibited off-the-record communication.

(2) If a person knowingly makes or causes to be made a prohibited off-the-record communication, the Commission may disqualify and deny the person, temporarily or permanently, the privilege of practicing or appearing before it, in accordance with Rule 2102 (Suspension).

(3) Commission employees who are found to have knowingly violated this rule may be subject to the disciplinary actions prescribed by the agency's administrative directives.

(j) *Section not exclusive.* (1) The Commission may, by rule or order, modify any provision of this section as it applies to all or part of a proceeding, to the extent permitted by law.

(2) The provisions of this section are not intended to limit the authority of a decisional employee to decline to engage in permitted off-the-record communications, or where not required by any law, statute or regulation, to make a public disclosure of any exempted off-the-record communication.

[Order 607-A, 65 FR 71254, Nov. 30, 2000, as amended by Order 623, 66 FR 67482, Dec. 31, 2001; Order 699, 72 FR 45328, Aug. 14, 2007; Order 718, 73 FR 62886, Oct. 22, 2008; Order 756, 77 FR 4895, Feb. 1, 2012]

§ 385.2202 Separation of functions (Rule 2202).

In any proceeding in which a Commission adjudication is made after hearing, or in any proceeding arising from an investigation under part 1b of this chapter beginning from the time the Commission initiates a proceeding governed by part 385 of this chapter, no officer, employee, or agent assigned to work upon the proceeding or to assist in the trial thereof, in that or any factually related proceeding, shall participate or advise as to the findings, conclusion or decision, except as a witness or counsel in public proceedings.

[Order 718, 73 FR 62886, Oct. 22, 2008]