where the questions of whether liability exists, and of the amount of net liability from one party to another, have not yet determined in an initial decision.

On the other hand, the Commission does not believe that this annual compounding of interest rule should be restricted in application to cases which are commenced after the rule's effective date. The Commission believes that the purposes of this rule—providing a more equitable measure of compensation to the prevailing reparations litigant, and discouraging the frivolous prosecution or defense of a reparation case by a party standing to benefit from delaying the payment of a claim, are remedial in nature. Therefore, the rule should apply immediately to all pending cases in which an initial decision has not yet been reached. Application of the rule to all such cases would also promote Congress' intent, evidenced by the 1982 amendments to section 14(b) of the Act, that the Commission administer the reparations efficiently and expeditiously, insofar as it would encourage existing parties to settle the claims prior to a decision in reparations, thereby reducing the number of cases pending on the Commission's docket.[13]

II. Regulatory Flexibility Act And Other Matters

The Regulatory Flexibility Act ("RFA"), 5 U.S.C. 601, *et seq.*, requires agencies when adopting final rules to consider the impact of those rules on small businesses. While the rule as adopted could augment a litigation-related cost to one of the parties to a reparation proceeding, it would be speculative to quantify the likelihood that a particular small business entity will become a party in a reparations proceeding, and thus subject to this increased cost. Since this rule will not impact on any small business entities unless and until they become losing litigants in a reparations case, the rule is not likely to have any substantial economic impact on small business entities that is greater than their existing cost of litigating in federal court. Accordingly, pursuant to section 3(a) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Chairman certifies that § 12.407(d), as amended herein, would not have a significant economic impact on a substantial number of small business entities.

In proposing this rule, the Commission determined that the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* do not apply because a rule requiring the annual compounding of interest in connection with a reparation award does not contain a collection of information requirement, or an "information collection request" within the meaning of 44 U.S.C. 3502(4). For the same reason, the Commission continues to believe that the provisions of the Paperwork Reduction Act do not apply.

List of Subjects in 17 CFR Part 12

Administrative practice and procedure, Commodity exchange, Commodity futures, Reparations.

PART 12—[AMENDED]

17 CFR Part 12 is amended as follows:

1. The authority citation for Part 12 continues to read as follows:

Authority: 7 U.S.C. 12a(5), 18(b) (1982).

2. In Part 12, § 12.407(d) is revised to read as follows:

§ 12.407 [Amended]

* * * * *

(d) *Reinstatement.* The sanctions imposed in accordance with paragraph (c) of this section shall remain in effect until the person required to pay the reparation award demonstrates to the satisfaction of the Commission that he has paid the amount required in full with interest at the prevailing rate computed in accordance with 28 U.S.C. 1961 from the date directed in the final order to the date of payment, compounded annually.

* * * * *

Issued in Washington, D.C., on September 27, 1985, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 85-23580 Filed 10-2-85; 8:45 am]

BILLING CODE 6351-01-M

[13] By analogy, this treatment is also consistent with the permissive view of retroactive application of statutes announced by the United States Supreme Court in *Bradley* v. *Richmond School Board*, 416 U.S. 696 (1974). In *Bradley*, the Court stated:

"A court is to apply the law in effect at the time it renders its decision, unless doing so would result in manifest injustice or there is statutory direction or legislative history to the contrary."

Id., at 7111. As we have indicated, retroative application of the interest compounding rule to cases in which the initial decision has yet to be rendered in consistent, not contrary to, the 1982 amendments to Section 14 and the legislative history. And retroactive application does not work a manifest injustice to parties in these cases. *Cf. Nelson* v. *Chilcott, Inc.*, [1982-1984 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 21,934 (Dec. 12, 1983). Parties to these cases have all along been free to settle their claims privately, and will continue to have the opportunity to avoid application to this rule until an initial decision, or similar dispositive order, is reached in their cases. Whatever adverse consequences befall a party ordered to pay compounded interest in such a case are outweighed by the need to provide a more equitable measure of compensation to the prevailing party. Indeed, a failure to apply the rule to these pending cases could be said to perpetuate an injustice to parties who ultimately receive an award.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 2, 152, 154, 157, 284, 375, and 381

[Docket Nos. RM79-63-000 and RM82-31-000; Order No. 433]

Fees Applicable to Natural Gas Pipelines

Issued: September 30, 1985.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission is amending its regulations to establish fees for the services and benefits it provides to natural gas pipelines under the Natural Gas Act and the Natural Gas Policy Act of 1978. This is the fifth of a series of rules to be issued on fees. These fees are authorized by the Independent Offices Appropriations Act, which provides for the collection of fees to make agenices "self-sustaining to the extent possible."

EFFECTIVE DATE: This rule will become effective November 4, 1985.

FOR FURTHER INFORMATION CONTACT: William H. Sipe, III, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, (202) 357-9088.

SUPPLEMENTARY INFORMATION:

Before Commissioners: Raymond J. O'Connor, Chairman; Georgiana Sheldon, A.G. Sousa and Charles G. Stalon.*

I. Introduction

By this rule, the Federal Energy Regulatory Commission amends its regulations to establish fees for services and benefits provided under the Natural Gas Act (NGA)[1] and the Natural Gas Policy Act of 1978 (NGPA)[2] to natural gas pipeline companies. In earlier rulemakings, the Commission adopted its basic methodlogy for establishing fees with respect to services and benefits provided by the Commission, as well as the procedures for billing, collecting, waiving, and updating fees.[3]

*Commissioner Sheldon resigned effective July 19, 1985. She was present and voting when this order was approved at the June 28, 1985, meeting.

[1] 15 U.S.C. 717-717w (1982).

[2] 15 U.S.C. 3301-3432 (1982).

[3] Fees Applicable to Producer Matters Under the Natural Gas Act, 49 FR 5074 (Feb. 10, 1984) (Docket No. RM82-25-000) (issued Feb. 6, 1984), *reh'g denied and rule clarified*, 49 FR 17,435 (Apr. 20, 1984); Fees Applicable to Natural Gas Pipeline Rate Matters, 49

Continued

This rule also clarifies the Commission's fee collection practices in some respects.

This rule establishes the following fees for pipeline matters:

(1) $12,200 for review of an application for authorization under section 7(c) of the NGA for a certificate of public convenience and necessity, a substantial amendment to such an application, and an application to amend an outstanding authorization; [4]

(2) $1,700 for review of a request for authorization under the blanket certificate notice and protest procedures of § 157.205 for routine transactions; [5]

(3) $12,200 for review of an application under NGPA section 311(a) for transportation authorization filed under §§ 284.107, 284.127 and 284.244, a substantial amendment to such an application, and an application to amend an outstanding authorization;

(4) $3,300 for review of a tariff filing establishing a new or revising an existing curtailment plan filed under section 4 of the NGA in accordance with § 154.21; and

(5) $12,200 for review of an application for declaration of Hinshaw exemption under section 1(c) of the NGA, a substantial amendment to such an application, and an application to amend an outstanding exemption.

II. Background

The Commission is authorized under the Independent offices Appropriation Act of 1952 (IOAA) to establish fees for the services and benefits it provides.[6] The principal interpretation of the IOAA is Bureau of the Budget Circular A-25,[7] which states that a fee should be assessed for each measurable unit or amount of government service or property from which an identifiable recipient derives a special benefit.

In accordance with the IOAA and authoritative interpretations of that statute,[8] the Commission, in establishing any fee, must:

(a) identify the service for which the fee is to be assessed;

(b) explain why that particular service benefits an identifiable recipient more than it benefits the general public;

(c) base the fee on as small a category of service as practical;

(d) demonstrate what direct and indirect costs are incurred by the Commission in rendering the service, and show that those costs are incurred in connection with the service rendered to the beneficiary; and

(e) set a fair and equitable fee for the service.

For the reasons detailed below, the Commission believes that the fees set forth in this final rule meet those requirements.

III. Summary and Analysis of Comments

On September 10, 1982, the Commission issued its Notice of Proposed Rulemaking (NOPR) in Docket No. RM82-31-000 [9] and received twenty-four comments in response. The NOPR proposed fees for certain services and benefits provided to interstate natural gas pipelines under the NGA and the NGPA.

The Commission initially proposed a fee schedule for pipeline certificates and related services in Docket No. RM79-63.[10] However, in the NOPR the Commission stated at n.1 that it was superseding the proposal in Docket No. RM79-63 as to all issues except for the direct billing of Alaska Natural Gas Transportation System (ANGTS) proceedings. This action was taken because subsequent to the issuance of the NOPR in Docket No. RM79-63, the Commission reformulated the basis for establishing fees for its services to more fully and accurately recover costs consistent with the manner adopted in the other fee rules.[11] The second NOPR, therefore, proposed to calculate fees based on budgeted FY 1982 agency-wide direct and indirect costs, and actual FY 1981 project completions and time expended per employee per class of docketed activity (including non-docketed support functions). Accordingly, the NOPR eliminated the four categories of fees proposed in the earlier NOPR, the first of which assessed a nominal $50.00 fee upon the filing of certain applications. Instead, the Commission will charge a full-cost recovery fee (unless the Commission decides in its discretion to categorically reduce a fee for good cause) with respect to those activities for which the Commission has sufficient data to establish a fee and which bestow a special benefit upon an identifiable recipient; otherwise, no fee is charged.

Accordingly, in this final rule the Commission is issuing its regulations concerning Docket No. RM82-31-000 and the ANGTS direct billing proposal from Docket No. RM79-63. The final rule is in accord with the methodology proposed in the NOPR, but uses actual, more current costs, completions and time computations. Also, in response to comments, this final rule departs from the NOPR in Docket No. RM79-63 by treating ANGTS certificate applications on the same basis as applications for authorization for non-ANGTS projects requiring Commission certification.

This final rule, encompassing both ANGTS-related and non-ANGTS-related proceedings, establishes fees for review of natural gas pipeline certificate applications under section 7(c) of the NGA (including blanket certificates), requests for authorization under the

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FR 5083 (Feb. 10, 1984) (Docket No. RM83-2-000) (issued Feb. 6, 1984), *reh'g denied*, 49 FR 17,437 (Apr. 24, 1984). Petitions for review of these orders have been consolidated in *Phillips Petroleum Co. v. FERC*, Nos. 1846, 2267, and 2270 (10th Cir. 1984).

[4] The $12,200 fee will also apply to blanket certificates under 18 CFR 157.2011-157.204 and 284.221-284.222 (1984).

[5] If a pipeline proposes activity under the notice and protest procedures applicable to blanket certificates and a protest is filed, the Commission, under 18 CFR 157.205(f) (1984), treats the request as an application under NGA section 7 for authorization for the particular activity. Under those circumstances, the $1,700 fee paid for a request under the blanket certificate notice and protest procedures will be credited against the $12,200 fee for an application under section 7 of the NGA. The requirement under § 381.103(c) of the Commission's fees rules that the filing must be accompanied by the higher of the applicable fees when the filing may be considered within two or more categories or services for which a fee is established is inapplicable to § 157.205 filings, since most of these requests are uncontested and the higher fee is due only if a protest is filed. When the request becomes a regular section 7(c) application, the additional fee will be due within 20 days of the end of the reconciliation period determined by § 157.205(f).

[6] 31 U.S.C. 9701 (1982).

[7] Bureau of the Budget Circular A-25 (Sept. 23, 1959). This interpretation has been cited by the United States Supreme Court as "the proper construction of the Act." FPC v. New England Power Co., 415 U.S. 345, 351 (1974).

[8] *See* National Cable Television Association, Inc. v. United States, 415 U.S. 336 1974); FPC v. New England Power Co., 415 U.S. 345 (1974); Air Transport Association of America v. CAB, 732 F. 2d 219 (D.C. Cir. 1984); Mississippi Power & Light v. NRC, 601 F. 2d 223 (5th Cir. 1979), *cert. denied*, 444 U.S. 1102 (1980). National Cable Television Association, Inc. v. FCC, 554 F. 2d 1094 (D.C. Cir. 1976); Electronic Industries Association v. FCC, 554 F. 2d 1109 (D.C. Cir. 1976); National Association of Broadcasters v. FCC, 554 F. 2d 1118 (D.C. Cir. 1976); Capital Cities Communications, Inc. v. FCC, 554 F. 2d 1135 (D.C. Cir. 1976).

[9] Fees Applicable to Natural Gas Pipelines, 47 FR 40834 (Sept. 15, 1982) (proposed to be codified at 18 CFR Parts 2, 152, 153, 154, 156, 157, 281, 284, 375, and 381) (Docket No. RM82-31-000) (Sept. 10, 1982), hereinafter referred to as "NOPR".

[10] Fees Applicable to Natural Gas Pipelines, 46 FR 42,075 (Aug. 19, 1981) (Docket No. RM79-63) (issued Aug. 12, 1981), hereinafter referred to as "NOPR in Docket No. RM79-63."

[11] Fees Applicable to Producer Matters Under the Natural Gas Act, *supra*, n.3; Fees Applicable to Natural Gas Pipeline Rate Matters, *supra*, n.3; Fees Applicable to the Natural Gas Policy Act, 49 FR 35357 (Sept. 7, 1984) (Docket No. RM82-30-000) (issued Aug. 31, 1984), *reh'g denied*, 49 FR 44275 (Nov. 6, 1984), *appeal pending*, Phillips Petroleum Co. v. FERC, No. 2786 (10th Cir. 1984); Fees Applicable to General Activities, 49 FR 35348 (Sept. 7, 1984) (Docket No. RM82-35-000) (issued Aug. 31, 1984), *reh'g denied*, 49 FR 44273 (Nov. 6, 1984), *appeal pending*, Phillips Petroleum Co. v. FERC, No. 2787 (10th Cir. 1984).

blanket certificate notice and protest procedures under § 157.205, and review of applications under sections 311(a)(1) and 311(a)(2) of the NGPA. This final rule also establishes fees for review of tariff filings under NGA section 4 establishing new or revising existing curtailment plans in accordance with Part 154 and for review of applications for declarations of exemption from jurisdiction under NGA section 1(c). All substantial amendments to an application for a certificate, order, authorization, or to a proposed new or revised curtailment plan will be treated as initial applications and the fees prescribed by this final rule will be charged. Similarly, applications to amend an outstanding certificate order, authorization, or existing curtailment plan will be treated as initial applications and the fees prescribed by this final rule will be charged.

A. Identification of Services

The Commission processes a number of filings, among them the following:

(1) Applications for certificates of public convenience and necessity under NGA section 7(c);

(2) Requests for authorization filed pursuant to the blanket certificate notice and protest procedures for routine transactions;

(3) Applications under NGPA section 311(a) for transportation arrangements exceeding two years or otherwise requiring prior authorization;

(4) Review of tariff filings establishing new or revising existing curtailment plans under NGA section 4;

(5) Applications for declarations of exemption under NGA section 1(c);

(6) Applications by municipalities or local distribution companies requesting service under NGA section 7(a);

(7) Applications for abandonment authorization under NGA section 7(b);

(8) Requests for relief from curtailment under NGA section 4;

(9) Review of indices of entitlements filed under NGPA section 401;

(10) Applications (in certain limited circumstances) for authorization to import or export natural gas under NGA section 3;

(11) Applications under section 5 of the Outer Continental Shelf Lands Act (OCSLA), regarding proportionate amounts of gas to be transported or purchased by pipelines from submerged or outer Continental Shelf lands, and OCSLA section 25 applications, regarding the preparation of environmental impact statements; and

(12) Applications under Executive Order 10,485 with respect to facilities constructed on the borders of the United States.

Of these filings, a fee is established for review of the first five, and no fee is established at this time for review of the remaining seven activities.

1. Services for Which a Fee Is Being Charged

Under section 7(c) of the NGA, an interstate natural gas pipeline may not construct, extend, acquire or operate facilities for the transportation or sale of natural gas in interstate commerce without the prior approval of the Commission. Once the Commission provides the applicant with certificate authority, the applicant may enter a market, charge an initial rate for the transportation or sale of gas, and acquire, construct, or improve facilities necessary for the sale or transportation of natural gas in interstate commerce. While NGA section 7(g) provides that the issuance of a certificate does not grant the pipeline an exclusive right to serve a market, the certificate increases the prospects for successful bank financing for a project for the acquisition or construction of facilities. Also, a pipeline holding a certificate may exercise eminent domain authority under section 7(h) of the Natural Gas Act. Inasmuch as the interstate pipeline receives more immediate benefits from Commission review of an application for section 7(c) authority than the general public, charging a fee for this service is appropriate.

The fee for applications under NGA section 7(c) includes applications for blanket certificates filed pursuant to §§ 157.201–157.204 and §§ 284.221–284.222 of the Commission's regulations.[12] Under the Commission's blanket certificate program, an interstate pipeline can obtain a one-time blanket certificate to undertake or abandon certain activities.[13] The Commission broadened its blanket certificate program on July 20, 1983, by expanding the category of transactions that can be approved under a blanket certificate to include transportation to all end users and for off-system sales transactions between interstate pipelines.[14]

Once a pipeline receives the blanket certificate under NGA section 7(c), the pipeline is automatically authorized to undertake certain routine transactions using simplified procedures, subject only to specified reporting requirements. No fee is established under these simplified procedures because no Commission action is required. The blanket certificate also authorizes certain other activities only after notice is published and interested parties are given the opportunity to protest in accordance with § 157.205 of the Commission's regulations.[15] A fee is established to recover costs for review of a request under these procedures. The pipeline benefits in much the same way it benefits from the usual NGA section 7(c) authorization, but a substantially smaller fee is charged for this service, because significantly less work per completion is required.

The Commission has the authority under NGPA section 311(a) to authorize transportation by interstate pipelines for intrastate pipelines and local distribution companies, and to authorize transportation by intrastate pipelines for interstate pipelines and any local distribution company served by any interstate pipeline. The Commission has adopted regulations permitting the transportation of gas under section 311(a) on a self-implementing basis under certain circumstances.[16] Intrastate and interstate pipelines benefit from self-implementing transactions because they can transport gas for one another in a national transportation system without prior Commission approval of the transaction. Since prior Commission approval is not required, no basis exists for charging a fee. The Commission's implementing regulations, however, do require an application for authorization of transportation arrangements under sections 311(a)(1) and 311(a)(2) where the arrangement exceeds a period of two years or where a pipeline or local distribution company does not receive the gas for its system supply. Sections 284.107 and 284.127 of the Commission's

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[12] 18 CFR 157.201–157.204 and 284.221–284.222 (1984).

[13] Interstate Pipeline Certificates for Routine Transactions, 47 FR 24254 (June 4, 1982) (Docket No. RM81–19–000) (issued May 28, 1982), *reh'g denied in part and granted in part*, 47 FR 38871 (Sept. 3, 1982).

[14] Sales and Transportation by Interstate Pipelines and Distributors; Expansion of Categories Authorized Under Blanket Certificate, 48 FR 34875 (Aug. 1, 1983) (Order No. 319) (Docket No. RM81–29–000) (issued July 20, 1983); Interstate Pipeline Blanket Certificates for Routine Transactions and Sales and Transportation by Interstate Pipelines and Distributors, 48 FR 34872 (Aug. 1, 1983) (Order No. 234–B) (Docket Nos. RM81–19–000 and RM81–29–000) (issued July 20, 1983); *reh'g denied in part and granted in part*, 48 FR 51436 (Nov. 9, 1983) (Order Nos. 319 and 234–B); *Maryland People's Counsel* v. *FERC*, No. 84–1090, slip op. (D.C. Cir. May 10, 1985) (vacating in part and remanding Order No. 234–B). On June 17, 1985, the Commission extended the blanket certificate program in Order No. 234–C, Interstate Pipeline Blanket Certificates for Routine Transactions and Sales and Transportation by Interstate Pipelines and Distributors, 50 FR 25701 (June 21, 1985) (Docket Nos. RM81–19–000 and RM81–29–000).

[15] 18 CFR 157.205 (1984).

[16] These regulations are codified at 18 CFR 284.101–284.107 (1984) (transportation by interstate pipelines) and 18 CFR 284.121–284.127 (1984) (transportation by intrastate pipelines).

regulations enumerate the elements of an application that the interstate pipeline and intrastate pipeline, respectively, must file to undertake transportation arrangements under NGPA section 311(a).[17] These applications benefit pipelines by providing them with the opportunity to increase the volume of gas transported and thereby increase their transportation revenues over an extended period of time. A fee, therefore, is established for their review.

Pursuant to the Commission's authority under section 603 of the Outer Continental Shelf Lands Act Amendments of 1978,[18] an interstate pipeline may file an application under NGPA section 311(a)(1) or NGA section 7(c) for authorization to transport gas from the Outer Continental Shelf (OCS) on behalf of a local distribution company owning gas under a lease in the OCS for its general system supply, and an intrastate pipeline may file an application under NGPA section 311(a)(2) for such authorization.[19] The pipeline transporting gas from the OCS benefits from the service because access to the OCS provides another source of transportation revenue at the same time that it gives the pipeline an opportunity to develop its transportation system while meeting the reserve requirements of the local distribution company. A fee, therefore, is appropriate for review of these, as well as the preceding applications, for transportation authorization.

The NOPR proposed to charge a fee for tariff filings pertaining to curtailments. Pipelines that must curtail deliveries of natural gas to customers must do so in accordance with a curtailment tariff that all pipelines must file with the Commission under NGA section 4. To revise an existing plan, a pipeline must file new tariff sheets indicating the revisions. A pipeline curtailment plan provides the applicant with certainty with respect to the allocation of gas in times of shortage and a possible defense to breach of contract actions initiated by gas customers. Accordingly, a fee will be charged for filing a new or revising an existing curtailment plan. This view, also expressed in the NOPR, reflects a reconsideration of the Commission's position since issuance of the NOPR in Docket No. RM79-63.

Some companies may apply for a Hinshaw exemption under section 1(c) of the NGA. That section, by its own terms, exempts certain companies from Commission NGA jurisdiction.[20] While section 1(c) operates on a self-implementing basis for companies not presently subject to the Commission's jurisdiction, the Commission requires a declaration of exemption when the Commission is currently exercising NGA jurisdiction over a company and circumstances have changed such that the company may qualify for the exemption.[21] A company granted a declaration of exemption is subject to the jurisdiction of the state regulatory commission rather than to Commission jurisdiction under the NGA. Approval of an application for a declaration of an exemption under NGA section 1(c) is a benefit to the company that would otherwise be subject to the regulator requirements of the NGA and, therefore, review of such an application is a service for which a fee is appropriate. The fee will also be applicable where a pipeline not currently regulated under the NGA files an application to assure exempt status. In this respect, the NOPR and this final rule depart from the NOPR in Docket No. RM79-63, which assessed a nominal filing fee for NGA section 1(c) applications. It is the Commission's position that NGA section 1(c) applications benefit the applicant more than the general public, such that a full-cost recovery fee is justified.

2. Services for Which a Fee Is Not Being Charged

The NOPR proposed to charge the applicant a fee for review of NGA section 7(a) applications. Under the Commission's regulations implementing section 7(a),[22] a local gas distribution company or municipality may apply to the Commission for an order directing an interstate pipeline to extend or improve its transportation facilities, establish physical connection of its transportation facilities with, and sell gas to, the local gas distributor or municipality. Although section 7(a) exists mainly to benefit the customers of the pipeline, *i.e.*, the distributor-applicants, by expanding the customers' geographic market and/or securing for the customers an assured gas supply, the Commission is not charging the applicant a fee for review of section 7(a) applications due to the small number of applications filed and the resulting lack of representative data on which to establish a fee. Moreover, municipalities are exempt from all fees under the IOAA,[23] but the time spent reviewing applications filed by municipalities is not tracked separately from other section 7(a) applications. This integration further complicates the calculation of a representative fee with respect to applications filed by nonmunicipalities.

The NOPR also would have established a fee for review of an abandonment application filed under section 7(b) of the NGA. On reconsideration, the Commission has decided not to charge a separate fee at this time for that service.[24] In some cases, abandonments under NGA section 7(b) benefit gas consumers more than they benefit the pipeline. For instance, they may provide for the removal of unneeded or obsolete facilities from the rate base or may provide for reductions in contract demand (and the accompanying demand charges) for services that are no longer desired.

The Commission recognizes, nonetheless, that not all abandonments are for the primary benefit of the ultimate consumer. For instance, applications may be filed in order to transfer the facilities or operations of an interstate pipeline for economic reasons that benefit the pipeline.[25] Accordingly, the Commission may decide to establish a fee for abandonments in the future, or may decide to bill directly for the cost of processing a complex abandonment application, where the pipeline is clearly the primary beneficiary. Any decision to establish a filing fee in this instance would be made by subsequent rulemaking.

In the NOPR, the Commission indicated that a fee would be charged for review of applications for relief from curtailment under § 2.78(b) of the Commission's regulations[26] and for

[17] 18 CFR 284.107 and 284.127 (1984). The Commission notes, however, that in the Notice of Proposed Rulemaking in Docket No. RM85-1-000, issued on May 30, 1985, 50 FR 24130, it has proposed the removal of §§ 284.107 and 284.127.

[18] 43 U.S.C. 1862 (1982).

[19] *See* the Commission's implementing regulations at 18 CFR 284.243 (1984).

[20] Under the Commission's implementing regulations at 18 CFR 152.1-152.5 (1984), an applicant must demonstrate that all of the gas it receives from another person within or at the boundary of a state is ultimately consumed within that state and that the applicant is subject to state regulation.

[21] *See* Natural Gas Pipeline Co. of America and Energy Gathering, Inc., 18 FERC ¶ 61,235 (1982).

[22] The regulations appear at 18 CFR 156.1-156.11 (1984).

[23] Fees Applicable to General Activities, *supra*, n.8 (to be codified at 18 CFR 381.108).

[24] This is consistent with Docket No. RM82-25-000 (*see* n.3, *supra*), the final rule establishing fees for producer matters under the NGA.

[25] *See, e.g.*, Florida Gas Transmission Co., 20 FERC ¶ 61,298 (1982), *reh'g denied*, 24 FERC ¶ 61,005 (1983), *aff'd*, Port Everglades Authority, *et al.* v. FERC, No. 83-1934 (D.C. Cir. Oct. 5, 1984) (unpublished opinion).

[26] 18 CFR 2.78(b) (1984).

review of a pipeline's annual update of its index of entitlements for priority 2 (P-2) essential agricultural users under § 281.204 of the Commission's regulations.[27] The final rule, however, does not establish a fee for applications for relief from curtailment inasmuch as such applications benefit the particular customers seeking relief from the curtailment plan rather than the pipeline. In addition, any fee charged may act to negate the value of the relief sought. Similarly, this rule does not establish a fee for review of the pipeline's annual update of its index of entitlements for P-2 users because the pipeline cannot be identified as the primary recipient of the benefits.

While the NOPR proposed to charge a fee for Commission review of an application for authorization to export or import natural gas under section 3 of the NGA, the Commission has decided not to charge a fee for review of such an application. By sections 301(b) and 402(f) of the Department of Energy Organization Act, Congress transferred the Federal Power Commission's authority to approve the import or export of natural gas under section 3 of the NGA to the Secretary of Energy. The Secretary, in turn, has the authority to delegate or assign such a function to the Commission. At the time the NOPR was issued, the Secretary of Energy had delegated and assigned to the Commission certain functions with respect to the regulation of exports and imports of natural gas under NGA section 3.[28] After the Commission issued its NOPR, the Secretary of Energy redelegated the Commission's residual section 3 authority to the Economic Regulatory Administration (ERA), which has subsequently issued new regulations implementing section 3.[29] Inasmuch as almost all of the Commission's previously delegated authority under section 3 has now been withdrawn and redelegated to ERA,[30] this final rule does not establish a fee for applications under NGA section 3.[31]

The NOPR also proposed to charge a fee for review of applications under Outer Continental Shelf Lands Act (OCSLA) section 5 (for Commission determination of the proportionate amounts of natural gas to be transported or purchased by pipelines from submerged or Outer Continental Shelf lands)[32] and OCSLA section 25 (for the preparation of environmental impact statements regarding Outer Continental Shelf development and production plans involving the production and transportation of natural gas).[33] In addition, the NOPR proposed a fee for review of applications for a Presidential permit under Executive Order No. 10,485[34] for the construction and maintenance of facilities located on the borders of the United States for the exportation or importation of natural gas. These activities represent minimal Commission activity to date, and the Commission has inadequate current data to establish a fee. Also, despite reference in the NOPR to a fee for NGPA section 312 applications regarding the assignment of rights to receive surplus natural gas, no fee is established herein for review of these applications due to a lack of data.

Although the NOPR proposed to charge fees that included the costs of hearings in connection with services involved in this rule, the Commission has decided not to charge fees to recover these costs. Some commenters argue that the applicant should pay fees regardless of whether staff, the applicant, or intervenors ask for a hearing. On the other hand, pipelines argue that assessing pipelines a fee for a hearing requested by intervenors would encourage fruitless interventions and would confer no benefit on the pipeline that might otherwise have received certificate authorization without the hearing. One commenter suggests that the administrative law judge should determine responsibility for fees for a hearing requested by an intervenor.

These varied viewpoints illustrate the practical difficulties in determining the primary beneficiary or beneficiaries of any hearing. Absent more refined information or significant changes in the Commission's Rules of Practice and Procedure regarding hearings and interventions, the Commission believes that it is not administratively feasible to determine when fees would be appropriate for this service.

The Commission, in its discretion, has decided not to charge a fee for hearings at this time, but may, in the future, reconsider its position on this point. Meanwhile, the Commission does retain the option to bill an applicant directly [*see* Section III.H., *infra*] for the costs associated with a hearing where the hearing provides a private benefit to an identifiable recipient and where the hearing requires an extraordinary amount of Commission time and effort to process.

The Commission, as mentioned in the NOPR, is not establishing fees for other actions it takes relating to natural gas pipeline matters because they generally do not manifest the necessary, identifiable benefit to an individual entity. These actions include preliminary and formal enforcement investigations, Commission enforcement-related settlements, news releases, and litigation in the courts.

The Commission has also decided not to establish a fee for filing a petition for rehearing at this time. In those cases where an applicant's petition for rehearing seeks a private benefit, the Commission believes it could charge a fee for a review of that nature. However, there are also cases where a petition for rehearing raises matters that, on balance, address more general public interest issues. In those cases, the Commission does not believe it would be reasonable to impose a fee. Due to the substantial administrative burden involved in trying to segregate which rehearing petitions could be subject to a fee, no fee for such a service is established herein. In addition, the Commission has decided not to establish a separate fee category for rulemakings at this time, although it believes that these actions might warrant fees where special benefits are provided to identifiable recipients

[27] 18 CFR 281.204 (1984).

[28] *See* DOE Delegation Order No. 0204-55, 44 FR 56735 (Oct. 2, 1979) (effective Oct. 2, 1979).

[29] Department of Energy regulations, to be codified at 10 CFR 590.201, provide that any person seeking authorization to import or export natural gas into or from the United States must file an application with ERA. ERA will charge a non-refundable filing fee of $50.00, and intends to issue a separate rulemaking to establish other filing and processing fees for review of applications to import or export natural gas. Import and Export of Natural Gas; New Administrative Procedures, 49 FR 35302 (Sept. 6, 1984) (Docket No. ERA-R-81-05). *See also* Delegation Order No. 0204-112, 49 FR 6684 (Feb. 22, 1984) (effective Feb. 22, 1984), superseding Delegation Order No. 0204-55, *supra*, preceding note.

[30] Under Delegation Order No. 0204-112 (*see* preceding note), the Commission now has jurisdiction under section 3 in only two very limited areas. One is authorization of the place of import or export, but only when the import or export involves construction of new pipeline facilities. Under those circumstances, the section 3 applicant will invariably also have to file a section 7 application for the new construction (*see* footnote following). There are also rare instances in which the Commission has occasion to process applications under section 3 for authorization of section 7-type activities. *See* Distrigas Corp., *et al.* v. FPC, 495 F.2d 1057 (D.C. Cir. 1974); Inter-City Minnesota Pipelines Ltd., 29 FERC ¶ 61,150 (1984).

[31] Many import and export projects also involve other activities regulated under the NGA, such as construction of facilities to receive or ship natural gas in interstate commerce, or sale of natural gas for resale in interstate commerce. The typical applicant under section 3 must also apply for a certificate of public convenience and necessity under NGA section 7. *See* West Virginia Public Service Commission v. United States Department of Energy, 681 F.2d 847, 856 n. 38 (D.C. Cir. 1982). The $12,200 fee will be applicable to these related section 7 filings.

[32] 43 U.S.C. 1334(e), (f)(1)(B), (f)(2) (1982).

[33] 43 U.S.C. 1351(k) (1982).

[34] Exec. Order No. 10,485, 3 CFR 970 (1953), *amended*, Exec. Order No. 12,038, 3 CFR 136 (1979).

B. Special Benefits to Identifiable Recipients

In delineating the services or benefits for which agencies are permitted to charge under the terms of the IOAA, Budget Circular A-25 states that a fee may be charged to an identifiable recipient who derives a special benefit from a government service.[35] In addition, the circular states that a "special benefit" has accrued if the recipient obtains "more immediate or substantial gains or values (which may or may not be measurable in monetary terms) than those which accrue to the general public", or the service "provides business stability or assures public confidence in the business activity of the beneficiary (e.g., certificates of necessity and convenience . . . .)"[36]

Commenters generally argue that the Natural Gas Act is intended to benefit the consuming public and, therefore, that the services the Commission performs under the NGA do not primarily benefit identifiable recipients. Commenters add that there can be no value or benefit to the applicant because the applicant must comply with the Commission's regulatory requirements in order to engage in the activities authorized by statute. Rather than conferring a benefit or a special benefit on identifiable recipients, commenters argue that Commission activities may interfere with essential services performed by interstate pipelines.

The IOAA authorizes the Commission to charge fair and equitable fees for "a service or thing of value provided by the agency."[37] The United States Court of Appeals for the D.C. Circuit has held that a fee may be established even where the benefit to the applicant is not greater than the benefit to the general public.[38] Further, Budget Circular A-25 specifically cites a certificate of public convenience and necessity and a license as examples of services for which fees are appropriate because of the special benefits involved. Although not specifically cited as an example, review of a tariff filing is also an appropriate service for charging a fee by the same reasoning. Likewise, a fee for review of an application for a Hinshaw exemption under NGA section 1(c) is appropriate because Commission approval of the application enables the beneficiary to obtain more immediate and substantial benefits than those that accrue to the general public.

The court in *Electronic Industries Association* v. *FCC* observed that the FCC is "not prohibited [under the IOAA] from charging an applicant . . . the full cost of services rendered to an applicant which also result in some incidental public benefits."[39] The court reached this conclusion even though activities such as permits for construction of new or extended facilities or discontinuance of service are required by statute. As noted by the court:

> [T]he [agency] is entitled to charge for services which assist a person in complying with his statutory duties. Such services create an independent private benefit.[40]

Similarly, services for which fees are established in this rule assist pipelines in complying with the jurisdictional statutes. The public benefits derived from these services are incidental thereto and, as suggested by the *Electronic Industries* case, the assessment of fees is proper under such circumstances.

Many commenters argue that the proposed fees will increase the burner-tip price of gas paid by ratepayers and will result in a loss of customers for natural gas. Commenters argue that these consequences are contrary to the public interest under the NGA.

The NGA requires that the rates charged by an interstate natural gas pipeline to its jurisdictional customers be just and reasonable. Initial rates reflect estimated costs to the pipeline, including the amount of the fee incident to a section 7(c) application. The initial rate is determined to be in the public convenience and necessity until a new rate is approved in a subsequent section 4 or section 5 rate case under the "just and reasonable" standard. Therefore, the fees may be recovered through the pipeline's initial rates. Moreover, the burner-tip price of gas is related to all elements of cost, including an appropriate allocation of fixed costs, commodity costs, costs of transportation, and the cost of purchased gas. Given the magnitude of these costs, which are all reflected in a pipeline's rates, any rate effect caused by the fees imposed under this rule is likely to be insignificant. Finally, the Commission's authority to assess fees for services rendered to interstate natural gas pipelines exists independently under the IOAA. The IOAA provides that beneficiaries of a service should pay for it, and the Commission's authority to charge for such services under that statute is unfettered by the NGA or the NGPA.

C. Smallest Practical Unit

In designing a fee schedule, the IOAA requires the Commission to base fees on the smallest unit or category of service that is practical. The United States Court of Appeals for the D.C. Circuit set forth the general rule as follows:

> [W]e interpret the statute and the Supreme Court decisions to require reasonable particularization of the basis for the fees, accomplished by an allocation of costs to the smallest unit that is practical. In most cases, we expect this unit will be classes of carriers or applicants or grantees of services which the Commission has already singled out for separate treatment in its 1975 fee schedule. Classification is always a difficult problem, involving as it does the drawing of lines, but the solution is not to group dissimilar entities together. The Commission must examine its expenses and set forth the maximum particularization of costs which it conveniently can make, so that the correctness of its actions can be reviewed.[41]

Further, Budget Circular A-25 states that "costs shall be determined or established from the best available records in the agency, and new cost accounting systems will not be established solely for this purpose."[42]

The Commission, in keeping with Budget Circular A-25, is classifying its fees by types of applications or filings, which are the smallest practical units. The Commission has calculated its fees from its Management Information System (MIS), which is an agency system established to track workload. The MIS tracks time, by work-months, based on types of applications or proceedings. The Commission is establishing one fee for each filing because that filing is the smallest practical unit for which the Commission can develop a fee.[43]

The NOPR requested comments on whether smaller fee categories should be established and whether separate fees should be established for each stage of a proceeding. While some commenters do not believe that a further breakdown of fee categories should be

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[35] Budget Circular A-25, at 1.

[36] *Id.* at 2.

[37] 31 U.S.C. 9701 (1982). This phrase was changed in 1982 from "any work, service, publication, report, document, benefit, privilege, authority, use, franchise, license, permit, certificate, registration or similar thing of value or utility" for consistency and to eliminate unnecessary words. H.R. Rep. No. 651, 97th Cong., 2d Sess. 226 (1982). *See* former 31 U.S.C. 483a (1976).

[38] Electronic Industries Association v. FCC, 554 F.2d 1109, 111[illegible] n.12 (D.C. Cir. 1976).

[39] Electronic Industries Association v. FCC, 554 F.2d 1109, 1115 (D.C. Cir. 1976).

[40] *Id.* (discussing tariff filing).

[41] *Id.* at 1116.

[42] Budget Circular A-25, at 3.

[43] The Commission has recently enhanced the MIS by tracking its employees' time on a new system (Time Distribution Reporting System or "TDRS"), which provides an even greater degree of accuracy, as described in more detail below. Beginning in FY 1984, Commission-wide reports on time expended by staff are available under the new system; therefore, the fees established in the final rule are based on this data.

made, others recommend a multiple fee schedule for different stages of a litigated proceeding, separate fees for intrastate and interstate pipelines in section 311 transactions, or separate fees for the various section 7 applications. They believe that the Commission should establish the costs of each activity level, because each application presents distinct problems of review.

Since the Commission is not at this time charging fees to recover hearing costs, a multiple fee schedule or separate fees for various stages of the litigated proceeding is unnecessary. The only stage for which fees are being charged is the "nonformal" stage, which occurs before a matter is set for hearing. Subsequent to that stage, staff hours are recorded as "formal", signifying the point at which the costs are attributable to the hearing process. This "formal" staff time is excluded from the fee computations. Further, review of interstate pipeline applications under NGPA section 311 is very similar in nature to review of intrastate pipeline applications thereunder, neither of which is substantially different from NGA section 7(c) and section 1(c) applications. Accordingly, separate fees for each of these applications is not justified. Also, inasmuch as the final rule establishes a fee for certificate applications but not for other activities under NGA section 7, the rule does assign a fee for the smallest practical unit of service for which a fee will be charged under that section.

D. Basis of Cost Recovery

1. Direct and indirect costs included. The Commission's fee schedule is designed to account for all types of recoverable costs associated with the processing of specified applications and filings under the Commission's jurisdictional statutes. The costs attributable to a particular Commission service are not merely the salaries of the employees who review the applications or filings. The attributable costs include the direct salary costs as well as the substantial amount of indirect costs which the Commission expends in its reviews. As the Fifth Circuit has states:

> [Employees] must be supplied working space, heating, lighting, telephone service and secretarial support. Arrangements must be made so that [they are] hired, paid on a regular basis and provided specialized training courses. These and other costs such as depreciation and interest on plant and capital equipment are all necessarily incurred in the process of reviewing an application.[44]

Accordingly, the Commission has included in its identification of costs the following items: salaries and benefits; travel; transportation of things; rents, communications and utilities; printing; other support services; supplies; and equipment.

2. Methodology. (a) Underlying considerations. The Commission's calculation of the costs of providing each of the services represented by a fee category is directly related to the amount of time the Commission spends providing each of the services. The fees in this rule are based on information obtained through the Commission's MIS, *supra*, which provides the amount of time spent on all Commission functions. The functions are grouped into categories that represent the Commission's various programs, including gas wellhead pricing, gas pipeline rates, gas pipeline certificates, gas producer certificates, gas producer rates, oil pipeline regulation, hydropower regulation, and electric power regulation. The MIS workload data appear monthly in bound volumes.

With respect to each function, the supervisor records for the MIS the number of projects initiated (receipts) and completed (completions) in a particular time period. Most Commission functions can be measured in terms of the number of projects initiated and completed. In accordance with Commission practice, these projects are generally assigned docket numbers and, for purposes of this discussion, will be referred to as "docketed activities." Actual time expended is reported agency-wide through the Commission's new Time Distribution Reporting System (TDRS). On a daily basis, each employee fills out a time sheet, coded by product category, reflecting the amount of time spent processing each particular type of work-activity. Every two weeks, the supervisor in each organizational unit reviews and verifies the reports, and the TDRS data are entered into a computer base. Computer reports of time expended in each functional category, expressed in terms of work-months, are generated for use in the MIS. A work-month is defined in the Commission's regulations as the amount of work represented by one employee's devotion of 100 percent of his other time for one month.[45] Each type of work-activity is assigned a product category. NGA section 7(c), NGPA section 311(a), and NGA section 1(c) applications are assigned the same product category due to the similarity of the tasks involved in their review; hence, each is charged an identical fee. The TDRS supplants the previous reporting system, which was based on the unit supervisor's estimate of time expended, with more accurate, daily reports from the employees themselves.

Many non-docketed support functions are essential to the completion of any docketed activity. However, they cannot be measured in terms of receipts and completions because the nature of these functions makes it impractical to do so. Like other functions, the time spent on support activities is recorded by employees on a daily basis and is reported in terms of work-months.

Only those support functions that are related to providing a benefit are included in the fee calculations. These support functions will be referred to as "support activities" and can be divided into three categories. First, there are support activities that involve general supervision, personnel management, and routine administrative functions. Routine administrative functions include such activities as maintenance of time and leave records, the handling of property and supplies, staff meetings, the planning and organizing of leave, and business-related travel and transportation costs. The entire category is labeled "administrative services" and is included in the fee structure because it is essential to FERC's ability to complete docketed activities.

Second, support staff responds to requests for information that may not contribute directly to the completion of a docketed activity. Examples include requests for information from the public, Congress, the General Accounting Office, and other governmental agencies. The Commission has excluded from its calculation of fees the work-months associated with this second category of "inquiries and internal communications", because this type of support activity is not involved in completing docketed activities.

Third, support staff establishes or reviews certain Commission operations and procedures. This is "technical management and operations." These activities include work on the Commission budget, management information systems, and program development functions such as special studies or briefings on relevant subjects, but which are not identified with just one docketed activity. This category is therefore an integral part of completing docketed activities.

Support activities represent a type of indirect cost, but are channeled into the cost calculations separately from all other indirect costs (such as physical

[44] Mississippi Power & Light Co. v. NRC, 601 F.2d 223, 232 (5th Cir. 1979).

[45] 18 CFR 381.102 (1984).

plant overhead). These other indirect costs are added together with direct costs to arrive at an average monthly cost per Commission employee of $5,000.58, *infra*. That figure is multiplied by the time (in work-months) taken to review a type of application. In contrast, support activities represent work-months expended which cannot be allocated directly to each individually-tracked, docketed activity. Therefore, the work-months used in the fee calculation consist both of time actually spent reviewing a particular type of filing and also a *pro rata* share of the time spent on support activities associated with reviewing that type of filing.

(b) Calculation of Fee Amounts. For purposes of this rule, the Commission has used the following methodology to determine the costs of providing any service or benefit. First, the work-months reported for a class of docketed activity are added to the *pro rata* share of the work-months reported for the relevant support activities for that activity. This figure, representing the total number of work-months dedicated to a class of docketed activity for the year, is divided by the number of completions for that year for the given activity. The resulting quotient represents the average number of work-months required to complete one proceeding in that given class of docketed activity.

Second, the Commission used the following data provided by its Office of Program Management to figure the average cost of a work-month, based on the Commission's FY (Fiscal Year) 1984 actual costs:

Salaries and Benefits (Based on year-end payroll data and benefits)	$46,521
Travel	643
Transportation of Things	15
Rents, Communications & Utilities	5,695
Printing	1,448
Other Services—excludes direct program contracts	4,639
Supplies	693
Equipment	353
Total (average annual cost per employee)	$60,007

The total was divided by 12 to yield an average work-month cost per employee of $5,000.58.

Third, in order to determine the cost of an activity, the Commission multiplied the average cost per work-month by the average number of work-months required to complete the activity, the resulting product representing the norm.[46]

Commenters provide many different reasons for their belief that the Commission's cost methodology is either severely flawed or excessively vague. Among these reasons are an allegedly inadequate explanation of support cost calculations and inclusion of costs that do not benefit an identifiable recipient or are not actually incurred by the Commission in rendering a particular service. Some commenter suggest that actual costs per docketed activity, rather than average costs, would result in more reasonable fee levels. Others argue that the use of docket completions may encourage inefficiencies and may cause fees to fluctuate unduly from year to year. The suggested alternative is to base fees on the total number of dockets processed in any given year.

As for what costs are permissible for inclusion, the IOAA provides for the collection of fees which include both direct and indirect costs to the government. Thus, there is no reasons to exclude any item except for support functions relating to inquiries and internal communications, as discussed above. All other support activities are an integral part of completing docketed activities and therefore are included in the calculations. Moreover, in devising its fee schedule, the Commission is authorized to determined or estimate its costs "from the best available records in the agency."[47] For this Commission, that means the MIS, recently enhanced by the TDRS.

In determining the fees, the NOPR proposed to use 1982 budgeted cost figures and 1981 actual completions and work-months. In addition, the method of updating the fees was tied to 1981 as the "base year." Each subsequent year was to be adjusted by the change in costs between the base year and the year in consideration. The number of completions and work-months would not be changed from the FY 1981 base year numbers. Nevertheless, it is possible that 1981 may not be a typical year for completions and work-months, and thus would not be appropriate for use as the base year. Instead, the Commission believes that it would be more accurate to calculate fees from actual completions and work-months, as well as from actual costs, for the most current fiscal year for which data are available. Consistent with its decision in the other final fees rule, the Commission is using actual fiscal year figures in this rule as well as in updating the fees in subsequent years (*see* section III.E. below). Accordingly, the fees in this rule are based upon actual fiscal year 1984 direct and indirect costs, completions and work-months. This approach eliminates any inaccuracies that could arise from using budgeted figures and will keep data current. In addition, by updating completions and work-months with the most recently available data, the fees can be adjusted periodically to reflect any increased processing productivity, as discussed below.

To derive actual costs per filing, rather than average costs, would be extremely difficult or even impossible. The Commission would have to monitor each application to determine actual staff time per individual application, which is highly impractical from an administrative standpoint. Assignment of indirect costs would be complex or impossible as well. This approach would also preclude the use of an agency-wide fee schedule, an essential tool for assessing fees where large numbers of filings are processed in several distinct categories.

As for the use of docket completions rather than the number of dockets processed in computing the fees, Commission supervisory personnel are directly responsible for staff productivity and efficiency, and the Commission can, at any time, reduce the fee for a category of services if inefficiencies are present. Moreover, the use of actual completions should not cause the fees to fluctuate significantly because, although the number of completions in any given year may vary, the fee is determined by the average amount of time expended per completion. If there are more completions or less completions in one year than in the preceding year, the total work-months expended processing that type of work activity should be correspondingly higher or lower. The average time expended per completion, therefore, would remain essentially constant regardless of the number of completions. Accordingly, the applicable fee would not vary considerably so long as the cost of a work-month is basically unchanged from the previous year.

Several commenters also claim that the Commission should not use an agency-wide figure for determining its direct costs. Instead, they maintain that the Commission should determine fees based on the average salary of only those employees processing particular filings.

Agency-wide cost methodology is used for a number of reasons. First, cumulative agency fiscal expenditures

[46] Updated data sheets have been placed in the Commission's Public File Room detailing the calculations.

[47] Budget Circular A-25, at 3.

are reported only on an agency-wide basis, by object class, such as full time permanent staff salaries, specific support contracts, equipment rentals, telephone service, postage, printing, and the like. The Commission maintains no cumulative financial reporting systems which detail expenditures by individual organizational unit, *e.g.*, by office, division, branch, or level. Second, even though payroll reports by individual organizational unit are prepared by and available from the Department of Energy, they reflect only enrolled staff for any specific reporting period. The data are not cumulative, and will fluctuate widely based on the number and grade level of employees on board at any particular time. For example, salaries of any unit may vary from one pay period to the next, and additional outlays, such as monetary awards are not reflected in financial costs. Third, a one-time pilot study conducted by the Office of Program Management indicates that the fees would not be lowered by using participating employee costs. Rather, the results indicated virtually no change in fees the agency-wide cost methodology.[48]

Finally, changing the methodology from an agency-wide basis to a participating personnel cost basis would require the Commission to substantially refine and expand its organizational reporting procedures with regard to employee salaries. This would exceed the requirements of Budget Circular A-25, which states that "costs shall be determined or estimated from the best available records in the agency, and *new cost accounting systems will not be established solely for this purpose*" (emphasis added). Accordingly, for these reasons, this final rule utilizes the agency-wide method proposed in the NOPR.

E. Actual Fees Established and Procedures for Updating Fees

The following table (data for which are in the Commission's Public File Room) summarizes for FY 1984 the total number of work-months, completions, and the average cost per completion in rendering the services for which the Commission is establishing fees in this final rule:

Service	Total WM's in 1984	Total completions in 1984	Average number of WM's per completion in 1984	Average cost per completion in 1984
Application for authorization under NGA section 7(c)				
Application for authorization under NGPA section 311(a)	1,204.30	492	2.45	$12,251.42
Application for declaration of Hinshaw exemption under NGA section 1(c)				
Request under blanket certificate notice/protest procedures for routine transactions	122	355	0.34	1,700.00
Tariff filed to establish a new or revise an existing curtailment plan under NGA section 4	37	56	.66	3,300.38

The Commission does not believe that good cause exists at this time for the categorical reduction of any of these fees to less than full-cost recovery (*see* Section *III*. F. 1., *infra*). Accordingly, the following fees are established:[49]

Service	Fees
Application for Authorization under NGA section 7(c)	$12,200
Request under blanket certificate notice/protest procedures for routine transactions	1,700
Application for authorization under NGPA section 311(a)	12,200
Tariff filed to establish a new or revise an existing curtailment plan under NGA section 4	3,300
Application for declaration of Hinshaw exemption under NGA section 1(c)	12,200

All substantial amendments to pending applications and all applications to amend existing authorizations or exemptions are treated as initial applications, and the fees listed above will apply. An amendment to a pending application is deemed substantial if it changes the character or nature and/or magnitude of the proposal. The Commission wishes to make clear that its practice has not been to charge for insubstantial amendments. The determination of how "substantial" a filed amendment is will be made on a case-by-case basis.

In the natural gas pipeline certificates area, for example, an amendment to a pending application will be considered substantial if it changes, in effect, an application for transportation and delivery of gas for direct sale to one of sale for resale, or vice-versa. Amendment will also be deemed substantial if it significantly increases or decreases the amount of sales or transportation volumes, or changes the size or location of facilities or pipe. To clarify this point, this treatment of amendments to pending filings is being implemented by adding a new § 381.110 to guarantee a consistent policy for the collection of fees for all Commission activities.

One commenter suggests that charging the same fee for routine amendments to existing certificates as charged for major certificate applications is not cost justified. While it is true that a petition to amend an existing authorization may be routine compared to the scope of the initial proposal, this is true of initial applications as well, in the sense that some proposals are routine and require less staff time than major or controversial proposals. Nevertheless, the final rule establishes fees based on *average* costs. In the Commission's view, this is the only practical basis.

Applications to amend existing authorizations are in fact new applications. Some are complex and some are not, but they involve the same type of review as any initial application. As for amendments to pending applications, some change the initial application so much as to be tantamount to a new application. Moreover, each amendment to a pending proposal is assigned a sub-docket number upon filing, and when the case is closed, the initial application and any amendments to it are counted as separate completions for calculation of the fee amount. This substantially reduces the amount of the fee charged for most services, particularly NGA section 7(c) applications (wherein the majority of amendments are filed). The Commission believes, therefore, that the fees charged for substantial amendments and applications to amend are not excessive.

The Commission will update these fees each year to reflect the most current Commission costs. An updated fee schedule will be published annually in the **Federal Register**, after the close of the preceding fiscal year. The updated fees will be based on actual completions, work-months and costs from the preceding fiscal year. In this way, the fees will reflect the cost of providing benefits to the recipients

[48] The pilot study, which was conducted in April 1985 and the details of which have been placed in the Commission's Public File Room, utilized the salaries only of employees who work on pipeline certificate activities for which fees are to be collected herein.

[49] Fees are established by taking actual costs and rounding *down* to:

(1) The nearest $5 increment, if the total cost is $100 or less; and

(2) The nearest $100 increment, if the total cost is more than $100.

based on the most current data available.

F. Exceptions to Full Cost Recovery

1. Reduction in fee amounts by category.

As outlined above, this final rule establishes fees that include all the recoverable costs, excluding hearing-related costs, associated with the particular benefits and services provided. The Commission recognizes that there may be instances in the future where the Commission determines that full-cost recovery fees would have an adverse effect on applicants or would undermine Commission activities. In such cases, the Commission may exercise its discretion to reduce fees to less than full-cost recovery in order to prevent a disproportionate economic impact or for other good cause. Other good cause would include situations where the Commission wishes to encourage use of a service, where little or no Commission review time (as opposed to staff time) is required, or where a future reduction in the amount of time required to process a filing is likely with respect to services with which the Commission has had little previous experience. Contrary to the NOPR, the Commission has decided not to establish specific amounts of percentage reductions in advance. Rather, the Commission will determine the amount of the reduction at the time it decides that good cause exists for less than full-cost recovery in a particular situation. This alleviates concerns raised by several commenters.

Except for the annual determinations reflecting actual data, any new, future reduction in a fee would be initiated only by rulemaking. The same percentage of reduction would carry over to subsequent years unless, through a subsequent rulemaking, further notice was given by the Commission that it was altering that reduction.

Some commenters argue that the proposed standards for exceptions to full-cost recovery are vague, too discretionary, and ineffective. They urge the Commission to establish more specific guidelines in this area, especially with respect to undue economic hardship. The Commission believes that the standards enumerated above are sufficiently specific for parties to be apprised of the circumstances under which the Commission may reduce fees to less than full-cost recovery, particularly since any such categorical reduction will be done in the context of a rulemaking. Moreover, a decision to reduce fees to less than full-cost recovery for a class of filings might involve other policy considerations that cannot be predicted at this time. This categorical approach is to be distinguished from the situation where an individual applicant can demonstrate severe economic hardship and qualify for a waiver, as discussed below.

2. Case-by-Case Waiver Procedures

The Commission also realizes that a situation could arise in which an applicant is unable to pay the prescribed fees due to severe economic hardship.[60] The Commission has established the general procedures for case-by-case waiver of its fees in Subpart A of Part 381.[51] If an applicant is suffering severe economic hardship, it will bear the burden of presenting evidence to the Commission, such as a financial statement, showing that it is either economically unable to pay the fee or that if it does pay the fee, it will be placed in a state of financial distress or emergency. This evidence must be included with the petition for waiver at the time of filing the application. The Commission, or its designee, will analyze petitions for waiver to determine whether the standards for waiver have been met for each application. The Commission will notify the applicant as to whether the petition for waiver has been denied or accepted. Contrary to the suggestion of one commenter, the Commission is not granting an automatic waiver of application fees to pipelines with revenues or sales under a certain level because the Commission has decided to analyze each case on an individual basis.

Finally, with respect to the Commission's basic policy on waiver of fees, the Commission is not granting a waiver if the fee charged might exceed the exact cost of Commission review in a particular case. Because the Commission believes that the fees are cost-based overall and founded on the best available data, such a practice would create an administratively infeasible exception that would undermine the method by which fees are derived. The fees established in this final rule are based on the average cost per class of docketed activity, and it is inherent in the use of averages that filings may occasionally cost less to process than the fee charged, while others may cost more. Therefore, any fee over-collected in one instance will be offset by Commission under-recovery of costs in another.

G. Procedures for Paying Fees; Availability of Refunds

The Commission's notice proposed that fees be submitted by certified check, made payable to the Treasurer of the United States. A number of commenters argue that there is no reason to require certified checks. They state that a corporate check should be sufficient.

The Commission has already deleted the requirement for a certified check in establishing its general fee procedures in Subpart A of Part 381 (*see* 18 CFR 381.105). A check made payable to the Treasurer of the United States must still be included with the filing or application unless a petition for waiver is submitted in lieu of the fee. The check must indicate the type of filing for which the fee is being submitted, *e.g.*, application for transportation authority under section 311(a). This may be written on the bottom of the check. If the filing or application is not accompanied by either the appropriate fee or a petition for waiver, it will be considered deficient and will not be processed.

The final rule requires payment of the fee in full at the time the application is filed. Some commenters argue that the Commission should provide for payment of fees in increments during various stages of the proceeding. Other commenters complain that the requirement that fees be paid at the time of filing unduly burdens a pipeline's cash flow. The Commission's decision to require payment of fees in full when the application is filed will compensate the Commission for the staff effort needed to complete the necessary service. Payment of fees in installments would require additional staff time to ensure that payments are made on time. Inasmuch as the fees are relatively moderate, prepayment of the required fee in full is appropriate and is more administratively manageable. In addition, exclusion of the hearing costs initially proposed as part of the fees should greatly reduce the possibility of cash-flow problems for pipelines. As previously indicated, waiver procedures are also available to prevent undue economic hardship.

[60] Several commenters complain that fees for requests under a blanket certificate make some routine projects cost-ineffective. However, an applicant financially able to pay the appropriate fee for a request is not justified in requesting a waiver merely because the fee must be recouped in the rate base over the useful life of the investment. Further, once a pipeline is granted a blanket certificate, the pipeline is automatically authorized to undertake a variety of self-implementing transactions without the necessity of paying separate fees for each transaction, unless notice and protest procedures are involved. Finally, the $1,700 fee established in the final rule is far less than the $8,300 fee proposed in the NOPR.

[61] *See* Fees Applicable to Producer Matters Under the Natural Gas Act, *supra*, n.3 (codified at 18 CFR 381.106 (1984)).

Several commenters argue that the Commission should include a provision in the final rule whereby an applicant could receive a refund if the application were rejected on grounds other than nonpayment of fees or if the Commission did not respond within a reasonable amount of time. The IOAA, however, authorizes government agencies to become self-sustaining to the extent possible. To do so, the agency is to collect fees for services and benefits it provides. Congress gave this Commission the duty of carrying out functions under the NGA and the NGPA. These functions require reviewing each petition or application, not guaranteeing the issurance of the authorization, approval, or exemption sought. Some petitions, applications, or filings are accepted or granted; others are not. The Commission's fees cover the time and cost of providing these review services, as authorized by the IOAA. It does not necessarily cost the Commission any less when the Commission rejects an application or tariff filing. A filing, when made, should be fully supportable and supported. Fees are generally not refundable, therefore.

As a practical matter, however, some refunds are allowed. Specifically, fees paid will be refunded if the filing is withdrawn before it is noticed in the **Federal Register** or, if no notice is required, if it is withdrawn within 15 days of the date of filing. No fees will be charged, therefore, unless the review process is underway. Although this practice does not ensure that the Commission will not have invested staff resources processing a filing that is subsequently withdrawn, the Commission will presume that to be the case in order to establish clear demarcation for the refundability of fees.

H. Direct Billing

The methodology used to establish the fees in this rule is based on the actual time required to process filings and the actual agency-wide costs involved with this processing. The Commission takes the actual work-months associated with a class of docketed activity and divides it by the number of completions in that class to arrive at an average number of work-months per completion. The figure is then multiplied by the average cost per work-month to arrive at the fee, representing the average cost per class of docketed activity completed.

However, the Commission occasionally receives filings that require substantially more than an average number of work-months per completion. These filings may be extensive in scope and may present factual, legal, or policy issues of such complexity that the Commission may devote an extraordinary amount of time and effort in processing them. The standard fees established in this rule bear no reasonable relationship to the actual costs of processing such extraordinary filings. Moreover, if the costs of processing extraordinary filings were included in the costs associated with average filings, persons submitting average filings would be subsidizing those submitting the extraordinary filings. In the case of an extraordinary filing, therefore, the Commission reserves the option of ordering a direct billing procedure pursuant to § 381.107 of its regulations not later than one year after receiving a complete filing from an applicant.

Commenters state that the direct billing procedure is vague, abritrary, and could result in the payment of unlimited amounts of fees. Other commenters claim that the complexity of a filing might result from participation of Commission staff.

Under the direct billing procedure, the Commission will periodically bill the entity that submitted the filing for all the direct and indirect costs incurred by the Commission in processing the filing, unless a lesser amount is determined to be fair and equitable. The staff resources devoted to processing a filing resulting in a direct billing will be separately recorded and will not be included in the work-months associated with processing average filings. If the decision to bill the pipeline a lesser amount is based upon the participation of intervenors in a proceeding, the Commission retains the discretion to determine whether some of the cost not billed directly to an applicant should instead be billed to the intervenors. Any decision to bill intervenors directly will be made by order of the Commission on a case-by-case basis.

The Commission expects that direct billing will be rare. The direct billing procedures will be utilized only in those cases involving complex technical, environmental, and/or legal issues. Accordingly, the Commission is amending its regulations to provide guidance on the relative magnitude of the terms of § 381.107 under which it will resort to direct billing. It will not consider a filing for direct billing unless estimated staff processing time exceeds the average for that type of filing by a factor of five. This is the Commission's best estimate of when the additional fee to be collected begins to offset the administrative burden of direct billing. However, even if the estimated staff processing time is expected to exceed five times the average, the Commission must still determine that the filing is extraordinary before the direct billing procedures are instituted. Examples of such cases that might be subject to direct billing are the Trans Alaska Pipeline System (TAPS) case[52] and complicated Alaska Natural Gas Transportation System (ANGTS) applications. At the present time, only one major and highly complicated certificate application is being directly billed under § 381.017.[53]

Where there is a direct billing, the Commission will itemize, to the best degree of accuracy under the MIS, the costs involved in the direct billing. There is no way the Commission can estimate in advance what the costs will be, but once the party is advised that direct billing will be used, it can then decide whether or not to pursue the matter in the proceeding in which the filed application has been docketed. Moreover, the Commission will credit an applicant whose filing becomes subject to direct billing with any fee paid under the fee system prescribed here.

I. Prospective Application of the Rules

The NOPR proposed that any pipeline certificate application filed with the Commission prior to the effective date of the new rules be accompanied by the fees established by Part 159; applications filed on or after the effective date would be accompanied by the new fees prescribed and not by the fees under Part 159.[54] Some commenters

[52] Docket No. OR78-1. This proceeding is now pending before the Commission. However, it is not being directly billed under Part 381 of the Commission's Regulations because it was filed prior to the effective date of 18 CFR 381.107.

[53] Northern Border, Docket No. CP84-407-000. This case, however, is being directly billed at the option of the applicant pursuant to a settlement agreement between the applicant and the United States Department of Justice. One other case (Gas Research Institute, Docket No. RP84-85-000), now closed, has also been directly billed under § 381.107, but this was pursuant to the directive of 18 CFR § 381.206 concerning petitions for advance approval of rate treatment of research, development, and demonstration expenditures.

[54] The Commission's existing fee rules appear at 18 CFR 159.1-159.4 (1984). In addition to a nominal filing fee of $50.00 for applications not involving construction or acquisition of facilities, the Part 159 rules establish a three-tier fee schedule based on the estimated cost of construction. Applicants for a certificate of public convenience and necessity under section 7(c) of the NGA to construct, acquire, or operate facilities must pay, in addition to an initial $50.00 fee, 0.00065 of the estimated construction or aquisition cost within 30 days after the grant of the certificate, and 0.00195 of the excess of actual cost above estimated cost.

believe that the proposed fees should apply retroactively to all pending applications filed before the effective date of the new fees rules. Their reasons are twofold. First, they argue that the level of fees under the new rules would in some cases be less than the level of fees under the Part 159 regulations. Second, they believe that the fees rules in Part 159 are illegal. In particular, one commenter asks the Commission to waive further liability for fees under the Part 159 rules in the case of the HIOS Project [55] and to clarify the effect of this final rule on its pending request for rehearing of an earlier order issued by the Commission determining the amount of fees due.[56] Also, Alaskan Northwest Natural Gas Transportation Co., in its comments in Docket No. RM79-63, points out that it has pending before the Commission a petition requesting a decision with respect to the validity of the existing fees rules and a refund of fees paid under protest for the Alaska segment of ANGTS.[57]

The Commission disagrees with the view that the new fee schedule should apply to applications filed before the effective date of the final rule. For applications filed before the effective date of this rule, the Commission approved the construction, aquisition, or operation of facilities considering the fee levels prescribed by Part 159. The pipeline constructing the project also anticipated the payment of fees at the level authorized under Part 159. Applying the new fees to old applications still pending at the Commission would create the impression that the Part 159 regulations are no longer effective for any purpose. That conclusion would be incorrect. The existing Part 159 fees rules will still apply to any application filed before the effective date of the new rules established herein. Further, this rulemaking is not the appropriate forum to reconsider the legality of the Part 159 fee rules or to determine whether the Part 159 fees should be prospectively waived in a particular docket.

Generally, the fees established in this rule would become effective 30 days after publication in the **Federal Register**, unless the Commission finds "good cause" to apply this rule to pending and past filings.[58] The Commission does not believe that a good cause finding is appropriate in this situation. The Commission must draw the line of applicability of its rules at some reasonable point. The decision to give a new prospective or retroactive effect involves a degree of discretion.[59] Among the factors pertinent to determining whether the rules should have retroactive effect are the extent of reliance on the rejected rule, whether retroactivity would cause an unfair degree of burden, and whether there is a statutory impetus for retroactivity.[60]

The Commission's current Part 159 fees rules, as amended in subsequent years, have been in effect since 1966.[61] For nearly two decades, the Commission and the jurisdictional pipelines have relied on the existing Part 159 fee schedule, and most applicants have paid the fees without protest thereunder. As such, it would be inappropriate to subject applications in process to the new rules.

Although fee levels under the new rules may in some cases be less than the fee levels under the Part 159 rules, in other cases the new fees would be higher. Moreover, in applying a new fee schedule retroactively the Commission would be required to open up settled rate cases, make refunds, and determine eligible classes of beneficiaries of refunds. This would be administratively difficult, if not impossible, and would undermine the finality associated with all completed Commission proceedings.

In the Commission's view, the date an application is filed is the most reasonable criterion for determining the applicability of the new fee schedule. Accordingly, the Commission will apply the fees in this rule prospectively to all filings for which fees are established herein, including pipeline certificate applications,[62] filed on or after the effective date of this final rule, and will not now revoke or supersede the existing Part 159 rules to the extent they apply to applications pending, or authorizations issued for which fees have not yet been paid, on the designated effective date of the final rule.

J. Fees Applicable to Alaska Natural Gas Transportation System (ANGTS)

On August 12, 1981, the Commission issued its NOPR in Docket No. RM79-63, and received four comments in response to the proposed annual direct billing of the costs of processing applications for the construction and initial operation of the ANGTS, and to the proposed procedures for protest, refund, and waiver of ANGTS-related fees. Some commenters in that docket complain that the proposed direct billing procedure does not satisfy the IOAA because the notice fails to identify a specific service or benefit or identify the specific items of costs to be charged. They argue, therefore, that for ANGTS-related certificate applications the Commission should use the same fees regulations proposed under the new rules for non-ANGTS-related certificates.[63] If the direct billing proposal were eliminated, some commenters offered to pay, under the new rules, properly assessed fees for services rendered after the effective date of the new regulations.

In response to comments, the Commission is persuaded that applications for certificates related to ANGTS filed on or after the effective date of the new rules should be treated under the new rules in the same fashion as non-ANGTS-related applications. Under this approach, applications for a final certificate of public convenience and necessity filed on or after the effective date of the new rules must be accompanied by fees established under this final rule. Complicated applications for ANGTS-related projects filed under the new rules may be subject to the direct billing procedures implemented in Subpart A of Part 381. For example, applications for a certificate for authorization to construct the Alaska segment of ANGTS will most likely be

[55] HIOS is a general partnership, whose members are wholly-owned subsidiaries of several interstate pipelines, that transports natural gas purchased by various shippers from reserves in the High Island Area, Offshore Texas.

[56] The Order Determining Fee was issued on March 28, 1980, 10 FERC ¶ 61,294. On May 28, 1980, the Commission issued an order in Docket Nos. CP75-81 and CP75-104 granting rehearing for the purpose of further consideration. On May 22, 1985, the Commission issued an order approving settlement, pursuant to which HIOS will withdraw the pending petition for rehearing once the order becomes final and no longer subject to Commission review.

[57] The petition was filed on April 24, 1981, in Docket No. CP80-435, consolidated with Docket No. CP78-123 by order issued April 30, 1982.

[58] 5 U.S.C. 553(d)(3)(1982).

[59] *See, e.g.*, National Association of Broadcasters v. FCC, 554 F.2d 1118 (D.C. Cir. 1976) (the impact of retroactive application of the new rule ought to be the basis of consideration); Retail, Wholesale and Department Store Union v. NLRB, 466 F.2d 380 (D.C. Cir. 1972).

[60] National Association of Broadcasters v. FCC, 554 F.2d 1118, 1131-1132 (D.C. Cir. 1976); Retail, Wholesale and Department Store Union v. NLRB, 466 F.2d 380, 390 (D.C. Cir. 1972); Tennessee Gas Pipeline v. Federal Energy Regulatory Commission, 606 F.2d 1094, 1116 n.77 (D.C. Cir. 1979), *cert. denied*, 445 U.S. 920 (1980).

[61] Establishment of Fees to be Paid by Applicants for Natural Gas Pipeline Certificates and Other Authorizations, 31 FR 430 (Jan. 13, 1966) (Docket No. R-282), 35 F.P.C 30 (Jan. 5, 1966).

[62] A "pipeline certificate application" means any application filed pursuant to NGA sections 7(c) and 1(c), and NGPA section 311(a). The Rules will also apply prospectively to requests under the blanket certificate notice and protest procedures and to tariffs filed to established new or revise existing curtailment plans.

[63] One commenter in Docket No. RM82-31-000 urged the Commission to treat applications for the ANGTS project no differently than any other application filed under NGA section 7(c).

extremely complicated and, therefore subject to direct billing. Pending applications for authorization for the construction of segments of the ANGTS filed before the effective date of this final rule must be accompanied by the fees established under Part 159 of the Commission's rules to the extent such fees have not already been paid for services rendered before or after the effective date of the new rules or otherwise provided for by settlement.

The Commission is not implementing the rule proposed in Docket No. RM79-63 for ANGTS direct billing for two additional reasons. First, the proposed rule incorrectly presumes that the sponsors of the ANGTS project paid no fees under Part 159. Second, the proposed rule does not adequately deal with fee levels for relatively uncomplicated projects connected with the ANGTS that are inappropriate for direct billing.

K. Adequacy of Public Notice

Some commenters argue that the NOPR failed to provide sufficient cost data such that the accuracy of the proposed fees could be verified. For example, they cite an inability to review particular applications, the time involved in such review, the number of managerial or professional reviews, what staff work is actually required, the accounting principles used, or the method of allocating costs among the various categories of services. In addition, they claim that the notice did not clearly distinguish between the special benefits (and related costs) which are assigned to the fee-payor and those which are properly assigned to the public at large. These deficiencies, they maintain, deprived them of a meaningful opportunity to comment.

Although *Home Box Office Inc.* v. *FCC*,[64] requires that "an agency proposing informal rulemaking . . . make its views known to the public in a concrete and focused form so as to make criticism or formulation of alternatives possible", the statutory notice provision applicable to Commission rulemakings states that notice to the public is adequate when, as here, it includes either the terms or substance of the proposed rule or a description of the subjects and issues involved.[65] Furthermore, the purpose of notice is to seek "informed criticism and comments", and notice which is likely to elicit such comments is sufficient.[66] Moreover, the Administrative Procedure Act "does not require that interested parties be provided precise notice of each aspect of the regulations eventually adopted. Rather, notice is sufficient if it affords interested parties a reasonable opportunity to participate in the rulemaking process."[67]

The NOPR clearly apprised commenters of the substance of the proposed rules, including a detailed description of the methodology on which the proposed fees were based, as elicited comments fully indicate. The Commission, therefore, has properly discharged its obligation by affording interested parties reasonable opportunity to respond to, and participate in, the rulemaking initiative.

IV. Final Regulatory Flexibility Act Analysis

When an agency promulgates a final rule under the Administrative Procedure Act, 5 U.S.C. 553 (1982), after being required by that section or any other law to publish a notice of proposed rulemaking, a final regulatory flexibility analysis may be appropriate under the Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612 (1982). Each final regulatory flexibility analysis must contain: (1) A statement of need for, objectives of, and legal basis for, the rule; (2) a summary of the issues raised by the public comments in response to the initial regulatory flexibility analysis, and the agency response to those comments; and (3) a description of alternatives to the rule consistent with the stated objectives of the applicable statute which the agency considered and ultimately rejected.

In this preamble, the Commission has already detailed its reasons for this agency action, its objectives, and the legal basis for this rulemaking. As discussed, the rule establishes a schedule of fees to be paid to the Commission for certain benefits it provides, in accordance with the IOAA and Budget Circular A-25.

This rule affects natural gas pipelines subject to Commission jurisdiction under the NGA and the NGPA. According to the Commission's Office of Chief Accountant, there are approximately 145 jurisdictional interstate natural gas pipelines in the United States as of December 31, 1984. Interstate natural gas pipelines are primarily large businesses. The Small Business Administration's (SBA) regulations do not establish specific size standards for these gas pipelines.[68] The Commission's classification of natural gas pipelines recognizes that even "Nonmajor" pipelines sell, transport, or store substantial volumes of natural gas.[69] Therefore, while this rule may have some degree of economic impact on a number of small pipelines, there is no reason to expect that this impact will be significant for a substantial number of those pipelines.

Concerning the impact on pipelines, and in particular small pipelines, the final rule addresses those situations where there is either disproportionate economic burden or severe economic hardship on a pipeline. For example, the rule contains a provision for waiver of fees for applicants that demonstrate severe economic hardship, and provides a mechanism for reduction in fee amounts by category when the Commission finds disproportionate economic impact to exist. However, the Commission is also required to satisfy the IOAA's statutory directive to be "self sustaining to the extent possible." Hence, there is no blanket exemption for small entities. The Commission believes the rule as now promulgated represents a fair balance between the purposes of both the IOAA and the Regulatory Flexibility Act.

V. Paperwork Reduction Act Statement

The information collection provisions of this rule have been approved by the

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[64] 567 F.2d 9, 36 (D.C. Cir.), *cert. denied*, 434 U.S. 829 (1977).

[65] Administrative Procedure Act, 5 U.S.C. 553(b)(3)(1982).

[66] Ethyl Corp. v. EPA, 541 F.2d 1, 48 (D.C. Cir.), *cert. denied*, 426 U.S. 941 (1976).

[67] *Forester* v. *Consumer Product Safety Commission*, 559 F.2d 774, 787 (D.C. Cir. 1977) (referring to 5 U.S.C. 553 (1982)). *See also* Small Refiner Lead Phase-Down Task Force v. EPA, 705 F.2d. 506, 547 (D.C. Cir. 1983); Action for Children's Television v. FCC, 564 F.2d 458, 470 (D.C. Cir. 1977) (the notice need not specify every proposal the agency ultimately adopts as a rule); Connecticut Light and Power Co., 673 F.2d 525, 533 (D.C. Cir. 1982) (final rules that are a "logical outgrowth" of the rules as proposed satisfy the statutory notice requirements).

[68] 5 U.S.C. 601(3) (1982), *citing to* section 3 of the Small Business Act, 15 U.S.C. 632 (1982). Section of the Small Business Act defines "small-business concern" as a business which is independently owned and operated and which is not dominant in its field of operation. *See also* SBA's revised Small Business Size Standards, 49 FR 5024 (Feb. 9, 1984) (codified at 13 CFR Part 121 (1985)).

[69] Of the approximately 145 jurisdictional natural gas pipelines, the Commission considers approximately 46 to be "Major" natural gas companies (gas sold for resale, transported, or stored in excess of 50 million MCF in each of the three or stored in excess of 50 million Mcf in each of the three previous calendar years); approximately 86 to be "Nonmajor" (total gas sales or volume transactions between 200,000 Mcf and 50 million Mcf in each of the three previous calendar years); and approximately 13 to be exempted or unclassified (sales or volume transactions at or below 200,000 Mcf). *See* Revision to Public Utility and Natural Gas Company Classification Criteria, Uniform System of Accounts, Forms Nos. 1, 1-F, 2 and 2-A and Related Regulations, 49 FR 32,496 (Aug. 14, 1984) (Docket No. RM83-66-000) (Aug. 3, 1984) (to be codified at 19 CFR Part 201).

Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501–3520 (1982), and OMB's regulations, 5 CFR Part 1320 (1985). OMB issued Control Number 1902–0132 for these reasons. Interested persons can obtain information on the information collection provisions by contacting the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426 (Attention: William H. Sipe, (202) 357–9088).

VI. Effective Date

The amendments made by the final rule will be effective on November 4, 1985.

List of Subjects

18 CFR Part 2

Administrative practice and procedure, Electric power, Environmental impact statements, Natural gas, pipelines.

18 CFR Part 152

Natural gas.

18 CFR Part 154

Natural gas.

18 CFR Part 157

Natural gas.

18 CFR Part 284

Continental shelf, Natural gas, Reporting requirements

18 CFR Part 375

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

18 CFR Part 381

General fees.

In consideration of the foregoing, the Commission amends Chapter I, Title 18, *Code of Federal Regulations*, as set forth below.

By the Commission.

Kenneth F. Plumb,

Secretary.

PART 2—[AMENDED]

1. The authority citation for Part 2 is revised to read as follows:

Authority: Department of Energy Organization Act, 42 U.S.C. 7101–7352 (1982); Exec. Order No. 12,009, 3 CFR 142 (1978); Independent Offices Appropriations Act, 31 U.S.C. 9701 (1982); Natural Gas Act, 15 U.S.C. 717–717w (1982); Federal Power Act, 16 U.S.C. 791a–825r (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.

§ 2.79 [Amended]

2. In § 2.79, the introductory clause of paragraph (g) is amended by removing the words "accompanied by" and adding, in lieu thereof, the words "accompanied by the fee prescribed in Part 381 of this chapter or a petition for waiver pursuant to § 381.106 of this chapter, and".

PART 152—[AMENDED]

3. The authority citation for Part 152 is revised to read as follows:

Authority: Natural Gas Act, 15 U.S.C. 717–717w; Natural Gas Policy Act, 15 U.S.C. 3301–3432 (1982); Department of Energy Organization Act, 42 U.S.C. §§ 7101–7352 (1982); Exec. Order No. 12,009, 3 CFR 142 (1978), unless otherwise noted.

§ 152.3 [Amended]

4. In § 152.3, the introductory clause is amended by removing the words "in Part 159 of this subchapter" and adding, in lieu thereof, the words "in Part 381 of this chapter or a petition for waiver pursuant to § 381.106 of this chapter".

PART 154—[AMENDED]

5. The authority citation for Part 154 continues to read as follows:

Authority: Department of Energy Organization Act, 42 U.S.C. 7101–7352 (1982); Exec. Order No. 12,009, 3 CFR 142 (1978); Administrative Procedure Act, 5 U.S.C. 551–557 (1982); Natural Gas Act, 15 U.S.C. 717–717w (1982); Federal Power Act, 16 U.S.C. 791a–828c (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).

§ 154.21 [Amended]

6. Section 154.21 is amended by inserting between the first and second sentences, the followng sentence: "The tariff filing hereunder must be accompanied by the fee prescribed in Part 381 of this chapter or a petiton for waiver pursuant to § 381.106 of this chapter".

PART 157—[AMENDED]

7. The authority citation for Part 157 continues to read as follows:

Authority: Natural Gas Act, 15 U.S.C. 717–717w; Natural Gas Policy Act, 15 U.S.C. 3301–3432 (1982); Department of Energy Organization Act, 42 U.S.C. 7101–7352 (1982); Exec. Order No. 12,009, 3 CFR 142 (1978), unless otherwise noted.

§ 157.6 [Amended]

8. In § 157.6, the introductory clause of paragraph (b) is amended by removing the words "filed shall" and adding, in lieu thereof, the words "filed other than an application for permission and approval to abandon pursuant to section 7(b) shall" and by removing the words "in Part 159 of this subchapter" and adding, in lieu thereof, the words "in part 381 of this chapter or a petition for waiver pursuant to § 381.106 of this chapter".

9. In § 157.7, a new paragraph (h) is added to read as follows:

§ 157.7 Abbreviated applications.

* * * * *

(h) *Filing fees.* Each application filed in accordance with paragraphs (b), (c), (d), (e), and (g) of this section other than an application for permission and approval to abandon pursuant to section 7(b) must be accompanied by the fee prescribed in Part 381 of this chapter or a petition for waiver pursuant to § 381.106 of this chapter.

10 In § 157.103, the introductory clause is amended by removing the words "subpart must" and adding, in lieu thereof, the words "subpart must be accompanied by the fee prescribed in Part 381 of this chapter or a petition for waiver pursuant to § 381.106 of this chapter and must".

11. Section 157.204 is revised by adding a new paragraph (e) to read as follows:

§ 157.204 Application procedure.

* * * * *

(e) *Filing fees.* Each application for a blanket certificate under this subpart must be accompanied by the fee prescribed by Part 381 of this chapter or a petition for waiver pursuant to § 381.106 of this chapter.

12. In § 157.205, paragraph (b) is amended in the first sentence by removing the words "Commission an" and adding, in lieu thereof, the words "Commission the fee prescribed in Part 381 of this chapter or a petition for waiver pursuant to § 381.106 of this chapter and an".

PART 284—[AMENDED]

13. The authority citation for Part 284 continues to read as follows:

Authority: Natural Gas Act, 15 U.S.C. 717–717w (1982); Natural Gas Policy Act of 1978, 15 U.S.C. 3301–3432 (1982); Department of Energy Organization Act, 42 U.S.C. 7101–7352 (1982); Exec. Order No. 12,009, 3 C.F.R. 142 (1978).

14. In § 284.107, a new paragraph (c) is added to read as follows:

§ 284.107 Applications.

* * * * *

(c) *Filing fees.* Each application must be accompanied by the fee prescribed by Part 381 of this chapter or a petition for waiver pursuant to § 381.106 of this chapter.

15. In § 284.127, a new paragraph (c) is added to read as follows:

§ 284.127 Applications.

* * * * *

(c) *Filing fees.* Each application must be accompanied by the fee prescribed by Part 381 of this chapter or a petition for waiver pursuant to § 381.106 of this chapter.

§ 284.221 [Amended]

16. In § 284.221, the introductory clause of paragraph (c) is amended by removing the words "certificates shall" and adding, in lieu thereof, the words "certificates must be accompanied by the fee prescribed in Part 381 of this chapter or a petition for waiver pursuant to § 381.106 of this chapter and shall".

§ 284.222 [Amended]

17. In § 284.222 the introductory clause of paragraph (c) is amended by removing the words "certificates shall" and adding, in lieu thereof, the words "certificates must be accompanied by the fee prescribed in Part 381 of this chapter or a petition for waiver pursuant to § 381.106 of this chapter and shall".

18. Section 284.244 is amended by adding a new paragraph (g), to read as follows:

§ 284.244 Application requirements.

* * * * *

(g) *Filing fees.* Each application must be accompained by the fee prescribed by Part 381 of this chapter or a petition for waiver pursuant to § 381.106 of this chapter.

PART 375—[AMENDED]

19. The authority citation for Part 375 continues to read as follows:

Authority: Department of Energy Organization Act, 42 U.S.C. 7101–7352 (1982); Exec. Order No. 12,009, 3 CFR 142 (1978); Administrative Procedure Act, 5 U.S.C. 553 (1982).

20. In § 375.307, paragraph (u) is revised to read as follows:

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

* * * * *

(u) Deny or accept, in whole or in part, petitions for waiver of the 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(b) of this chapter.

PART 381—[AMENDED]

21. The authority citation for Part 381 continues to read as follows:

Authority: Department of Energy Organization Act, 42 U.S.C. 7101–7352 (1982); Exec. Order No. 12,009, 3 CFR 142 (1978); Independent Offices Appropriations Act, 31 U.S.C. 9701 (1982); Natural Gas Act, 15 U.S.C. §§ 717–717w (1982); Federal Power Act, 16 U.S.C. 791a–825r (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.

§ 381.107 [Amended]

22. In § 381.107, paragraph (a) is amended by inserting between the first and second sentences, the following sentence: "A filing will not be considered for direct billing unless the staff processing time required, as estimated by the Executive Director, is expected to exceed five times the average for that particular type of filing.

23. In Part 381, Subpart A, §§ 381.109 and 381.110 are added to read as follows:

Subpart A—General Provisions

* * * * *

§ 381.109 Refunds.

Fees established under this part may be refunded only if the related filing is withdrawn within fifteen (15) days of the date of filing or, if applicable, before the filing is noticed in the **Federal Register.**

§ 381.110 Fees for Substantial Amendments.

Fees established under this part for any filing will also be charged, as appropriate, for any substantial amendment to a pending filing. An amendment is considered substantial if it changes the character, nature, or the magnitude of the proposed activity or rate in the pending filing.

24. In Part 381, Subpart B, §§ 381.207, 381.208, and 381.209 are added to read as follows:

Subpart B—Fees Applicable to the Natural Gas Act and Related Authorities

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§ 381.207 Pipeline certificate applications.

(a) *Definition.* For purposes of this section, "pipeline certificate application" means any application for authorization or exemption, any substantial amendment to such an application, and any application to amend an outstanding authorization or exemption, by any person, made pursuant to:

(1) Section 7(c) of the Natural Gas Act filed in accordance with §§ 2.79, 157.6, 157.7, 157.103, 157.204, 284.221, 284.222, and 284.244 of this chapter;

(2) Section 311(a) of the Natural Gas Policy Act of 1978 filed in accordance with §§ 284.107, 284.127, and 284.244 of this chapter; or

(3) Section 1(c) of the Natural Gas Act filed in accordance with § 152.3 of this chapter. This definition does not include applications that fall within the scope of §§ 381.201 and 381.202 of Subpart B of Part 381.

(b) *Fee.* Unless the Commission orders direct billing under § 381.107 or otherwise, the fee established for a pipeline certificate application is $12,200. The fee filed under this paragraph must be submitted in accordance with Subpart A of this part and, as appropriate, §§ 2.79, 152.3, 157.6, 157.7, 157.103, 157.204, 284.107, 284.127, 284.221, 284.222, and 284.244.

(c) *Effective date.* Any pipeline certificate application filed with the Commission prior to November 4, 1985, is subject to the fees established by Part 159 of this chapter to the extent that Part 159 applies to such an application.

§ 381.208 Requests under the blanket certificate notice and protest procedures.

The fee established for a request for authorization under blanket certificate notice and protest procedures is $1,700.

The fee must be submitted in accordance with Subpart A of this part and § 157.205(b).

§ 381.209 Curtailment filings.

(a) *Definitions:* For purposes of this section, "curtailment filing" means a tariff establishing a new or revising an existing pipeline curtailment plan filed under section 4 of the Natural Gas Act in accordance with § 154.21 of this chapter. A curtailment filing excludes a tariff filing incorporating a pipeline's annual revision of its index of entitlements for priority 2 essential agricultural users under 18 CFR 281.204 or implementing an order granting a request for relief from curtailment under 18 CFR 2.78(b).

(b) *Fee.* The fee for review of a tariff filed to establish a new or revise an existing curtailment plan is $3,300. The fee must be submitted in accordance with Subpart A of this part and § 154.21.

[FR Doc. 85-23686 Filed 10-2-85; 8:45 am]

BILLING CODE 6717-01-M

18 CFR Parts 32, 33, 34, 35, 36, 45, 101, 292, 375, and 381

[Docket No. RM82-38-000; Order No. 435]

Fees Applicable to Electric Utilities, Cogenerators, and Small Power Producers

Issued September 30, 1985.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission is amending its regulations to establish fees for the service and benefits it provides to electric utilities, cogenerators and small power producers under the Federal Power Act and the Public Utility Regulatory Policies Act. This is the sixth of a series of rules to be issued on fees. These fees are authorized by the Independent Offices Appropriations Act, which provides for the collection of fees to make agencies "self-sustaining to the extent possible."

EFFECTIVE DATE: This rule will become effective November 4, 1985.

FOR FURTHER INFORMATION CONTACT: Thomas Moore, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426 (202) 357-8464.

SUPPLEMENTARY INFORMATION:

Before Commissioners: Raymond J. O'Connor, Chairman; A.G. Sousa and Charles G. Stalon.

I. Introduction

The Federal Energy Regulatory Commission (the Commission) is amending its regulations to establish fees for services and benefits provided under the Federal Power Act (FPA) [1] and the Public Utility Regulatory Policies Act (PURPA).[2] In earlier rulemakings, the Commission applied the same methodology for establishing fees as well as the procedures for billing, collecting, waiving, and updating fees, to services and benefits provided by the Commission.[3]

This rule establishes the following fees:

(1) $1,400.00 for review of a rate schedule filing under sections 205 and 206 of the FPA with no rate impact or involving only a rate decrease;

(2) $2,900.00 for review of a rate schedule filing under sections 205 and 206 of the FPA that has an impact on rates but that is not supported by Period II cost or service data under 18 CFR 35.13;

(3) $15,500.00 for review of a rate schedule filing under sections 205 and 206 of the FPA involving a rate increase that is supported using Period II cost of service data;

(4) $4,200.00 for review of a corporate application involving one or more jurisdictional utilities under section 203 of the FPA;

(5) $3,300.00 for review of an application for approval to assume obligations or liabilities as guarantor or for the negotiated placement of securities under section 204 of the FPA;

(6) $1,400.00 for review of an application for authorization to issue equity or long-term debt securities competitively or to issue short-term debt securities under section 204 of the FPA;

(7) $1,600.00 for review of a full application under 18 CFR Part 45 for authorization for officers or directors of utilities to hold interlocking positions under section 305 of the FPA;

(8) $1,200.00 for review of a filing to justify an extension of the period for testing equipment under the Uniform System of Accounts, 18 CFR Part 101;

(9) $1,800.00 for review of an application for certification of qualifying status as a small power production or cogeneration facility under section 201 of PURPA;

(10) no fee at present for review of an application for an order directing the physical connection of facilities uder sections 202(b) or 210 of the FPA; and

(11) no fee at present for review of an application for an order directing wheeling under section 211 of the FPA.

II. Background

The Commission is authorized under the Independent Offices Appropriation Act of 1952 (IOAA) to establish fees for the services and benefits it provides.[4] The principal interpretation of the IOAA is Bureau of the Budget Circular A-25,[5] which states that a fee should be assessed for each measurable unit or amount of government service or property from which an identifiable recipient derives a special benefit. The Commission is currently charging FPA filing fees under § 36.2 of its regulations.[6]

In accordance with the IOAA and authoritative interpretations of that statute,[7] the Commission, in establishing any fee, must:

(a) Identify the service for which the fee is to be assessed;

(b) Explain why that particular service benefits an identifiable recipient more than it benefits the general public;

(c) Base the fee on as small a category of service as practical;

(d) Demonstrate what direct and indirect costs are incurred by the Commission in rendering the service, and show that those costs are incurred in connection with the service rendered to the beneficiary; and

(e) Set a fair and equitable fee for the service.

For the reasons detailed below, the Commission believes that the fees set forth in this final rule meet those requirements.

III. Summary and Analysis of Comments

On September 1, 1982, the Commission issued its Notice of Proposed Rulemaking (NOPR) in Docket No. RM82-38-000 [8] proposing to

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[1] 16 U.S.C. 792-828c (1982).

[2] 16 U.S.C. 2601-2645 (1982).

[3] Fees Applicable to Producer Matters Under the Natural Gas Act, 49 FR 5074 (Feb. 10, 1984) (Docket No. RM82-25-000) (issued Feb. 6, 1984), *reh'g denied and rule clarified*, 49 FR 17,435 (Apr. 20, 1984); Fees Applicable to Natural Gas Pipeline Rate Matters, 49 FR 5083 (Feb. 10, 1984) (Docket No. RM83-2-000) (issued Feb. 6, 1984), *reh'g denied*, 49 FR 17,437 (Apr. 24, 1984). Petitions for review of these orders have been consolidated in Phillips Petroleum Co. v. FERC, Nos. 1846, 2267 and 2270 (10th Cir. 1984).

[4] 31 U.S.C. 9701 (1982).

[5] Bureau of the Budget Circular A-25 (Sept. 23, 1959). This interpretation has been cited by the United States Supreme Court as "the proper construction of the Act." *FPC* v. *New England Power Co.*, 415 U.S. 345, 351 (1974).

[6] 18 CFR 36.2 (1984). This rule deletes all of Part 36. The material which appeared in § 36.2 (the acutal fees) appears in new §§ 381.502-381.510. The miscellaneous material which appeared in § 36.3 is now governed by §§ 381.105, 381.108, and 381.109. The material in § 36.4, concerning accounting for fees, is deleted because the same information already appears in the Commission's accounting regulations, 18 CFR Part 101, account 928. The provision in § 36.1 concerning annual charges is eliminated because the Supreme Court has invalidated these annual charges. FPC v. New England Power Co., 415 U.S. 345 (1974).

[7] *See* National Cable Television Association, Inc. v. United States, 415 U.S. 336 (1974); FPC v. New England Power Co., 415 U.S. 345 (1974); Air Transport Association of America v. CAB, 732 F.2d 219 (D.C. 1984); Mississippi Power & Light v. NRC, 601 F.2d 223 (5th Cir. 1979), *cert. denied*, 444 U.S. 1102 (1980); National Cable Television Association, Inc. v. FCC, 554 F.2d 1094 (D.C. Cir. 1976); Electronic Industries Association v. FCC, 554 F.2d 1109 (D.C. Cir. 1976); National Association of Broadcasters v. FCC, 554 F.2d 118 (D.C. Cir. 1976); Capital Cities Communications, Inc. v. FCC, 554 F.2d 1135 (D.C. Cir. 1976).

[8] Fees Applicable to Electric Utilities, Cogenerators, and Small Power Producers, 47 FR 39851 (proposed Sept. 10, 1982) (to be codified at 18 CFR Parts 32, 33, 34, 35, 45, 292, 375, and 381) (Docket No. RM82-38-000).

establish fees for 12 categories of benefits and services provided under the FPA and PURPA. The Commission received over 100 responses to this NOPR.

A. Services for Which a Fee Is Being Charged

1. Rate Schedule and Rate Change Filings

The final rule charges fees for rate schedule and rate change filings. Under section 205 of the FPA, a public utility may not collect or change any rates, charges, classifications or service, or any rule, regulation, or contract relating thereto, in connection with the transmission or wholesale sale of electric energy in interstate commerce without filing with the Commission. Upon review of a rate schedule filing, the Commission is authorized by sections 205 and 206 of the FPA to order a utility to change any terms, conditions or practices affecting jurisdictional sales or transmission that are unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful.

If two or more public utilities make jurisdictional transactions under the same rate schedule, each utility transmitting or selling may separately file such rate schedule or, alternatively, one utility may file the rate schedule and the other parties may post a certificate of concurrence (an instrument stating agreement with the terms of another rate schedule filing, filed in lieu of such rate schedule filing). [9] The certificate of concurrence is, in effect, no more than an administrative convenience allowing one public utility to avoid executing, filing, and posting duplicative agreements or schedules of charges. It does not, however, obviate the need for each affected utility to submit appropriate support required under 18 CFR 35.12(a) and 35.13(a), including (1) the cost data and other information needed to support the charges for services rendered under the filing, (2) appropriate explanations of the terms and conditions pertaining to the service rendered, and (3) other general information, such as the revenue generated by the proposed rates and a comparison of the proposed rates with other similar services provided by the utility. As each utility must support the rate schedule with its own data, it is necessary for the Commission to perform an entirely separate review of the rate schedule for each utility providing service under the schedule.

One commenter notes that the NOPR in this docket failed to specify a charge for a certificate of concurrence. The review of the cost support data underlying a certificate of concurrence takes the same amount of time and resources as does review of the support for the principal rate schedule filing. Accordingly, the fee to be charged for this service is the same as the fee for the rate schedule represented by the certificate of concurrence. The Commission notes that this treatment is consistent with historic practice for fees purposes.

Three categories of sections 205 and 206 filings are identified in this rule for purposes of assessing filing fees, based on the general complexity of such filings. First (Class 1) are rate schedule filings that have no rate impact or that involve only a rate decrease. Second (Class 2) are rate schedule filings that have an impact on rates but that are supported using the Commission's abbreviated filing requirements [10]—that is, that are not supported by Period II cost of service data. These filings require less time to review than filings which include the more extensive Period II data. Third (Class 3) are rate increases supported by Period II data.

These categories differ from the three categories that appeared in the old § 36.2 and in the NOPR: nominal rate schedule filings, moderately complex rate schedule filings, and rate increase filings. The distinction in § 36.2 between nominal and moderately complex rate schedule filings was not completely clear, since both categories were described primarily through examples. The Commission's experience under the old categories is that companies had some difficulty determining into which category their filings fell. Moreover, any such confusion would prove more significant under the rules now being promulgated, since there will now be a greater difference between certain fees for individual categories. The Commission is adopting the new, more clearly defined categories to prevent confusion about which category is applicable—confusion which might otherwise lead to filing being found deficient for failure to file the proper fee. The enhanced clarity should also ensure that staff processing time is being recorded as accurately as possible.

The initial fees set by this rule for Class 1, Class 2, and Class 3 filings are based on data collected under the "nominal rate schedule," "moderately complex rate schedule," and "rate increase" categories as proposed in the NOPR. In some instances, as noted below, reclassification will result in a filing being treated under a less expensive fee category. This means that, in certain cases, the Commission is foregoing full cost recovery for the first year in which this rule is effective. In no case, however, will a higher fee result from the use of available historic data because no filing will be reclassified into a higher fee category than was proposed in the NOPR. Some filings that would have been classified as moderately complex under the NOPR will now be grouped in Class 1 and charged the lowest fee because they have no rate impact. These items are generally less time-consuming to process than those remaining in the intermediate class (Class 2) under the new system. Similarly, because all rate increases would have been categorized in the "rate increase" category under the NOPR, movement of less complex rate increase filings into Class 2 will have no negative effect. Thus, no applicant will be harmed by the Commission's use of data based on the old classification system to set the initial fees for these categories. In subsequent years, when the Commission has data concerning the processing time for filings under the new classification system, it will update the fees using the general updating procedure described in section III.E., below.

Charging fees for all the above services is appropriate because the IOAA authorizes the establishment of fees for the services an agency provides and because the filing entity, in each instance, receives a more immediate benefit from these services than does the general public. These fees will be charged under §§ 381.502, 381.503, and 381.504 of the final rule.

Several commenters point out that, under the NOPR, the fees for some filings could be higher than the resultant revenues, making routine projects cost-ineffective. Commenters suggest a separate fee for minor rate increases or expanding the definition of nominal rate schedule filings to incorporate such rate changes.

In the final rule, the Commission has taken steps to minimize this problem. Under the final rule, as described above, rate increases that are supported using only Period I cost of service data will be assessed a lower fee than rate increases supported by full Period II data. The Commission notes that the smaller rate increases supported by abbreviated data require less time to review than the more complex applications.

[9] 18 CFR 35.1 (1984).

[10] 18 CFR 35.13(a)(2) (1984).

2. Applications for the Physical Connection of Facilities

Sections 202(b) and 210 of the FPA allow various entities [11] to apply to the Commission for an order directing a public utility to establish physical connection of its transmission facilities with another entity's facilities or to sell or exchange energy with another entity. A Commission order directing such connection, sale, or exchange allows the entity to acquire power from a source which would otherwise be unavailable, or at a lower rate than would otherwise be applicable. Accordingly, § 381.503 of the final rule provides for a fee for such an order.

However, the Commission has so far had very little experience with these filings and does not have sufficient data to determine how much time it takes to process them. Therefore, this rule sets a zero fee at present for these filings. However, if sufficient data becomes available in the future to enable the Commission to determine the appropriate fee with reasonable accuracy, the Commission will update the fee under the general updating procedure described in section III.E., below.

3. Applications for Wheeling

The Commission has the authority, upon application under section 211 of the FPA, to order electric utilities to wheel (transmit) power for other utilities, geothermal power producers, or Federal power marketing agencies. An order directing such wheeling enables the entity requesting the order to purchase power from otherwise unavailable sources and to sell power to previously unavailable customers.

One commenter argues that the company which trasmits power subject to a wheeling order, rather than the entity which sought the order, is the primary beneficiary of a wheeling order. The Commission recognizes that the company wheeling the power is compensated for transmitting the power. However, utilities are not ordinarily required to provide transmission for other parties, and the order to wheel power is thus a special benefit to the party who requests the order. Therefore, §381.503 of the final rule provides for a fee for the review of wheeling applications. As with applications for interconnection orders, however, there is not enough data at present to set an amount, so this rule sets a fee of zero for the present. This fee will be updated if more data becomes available.

4. Applications for Authorization To Issue Securities and for Negotiated Placement of Securities

Section 204 of the FPA requires Commission approval of the issuance of securities if the State in which the utility operates does not regulate the issuance of securities. Once the Commission has approved the issuance of securities, the utility may invite bids and issue securities in accordance with the procedures in the Commission's regulations. If a utility wants to attempt a negotiated placement of securities, it must also seek Commission approval. Approval of a negotiated placement of securities enables the issuing utility to have the greatest degree of flexibility in placing securities. Given the special benefits associated with this statutory authorization, fees are established in §§381.507 and .508 of the final rule for the review of a negotiated placement of securities and for the review of applications for authorizations to issue securities.[12]

The NOPR proposed to charge separate fees for an authorization to assume an obligation or liability and an authorization for the negotiated placement of securities under section 204 of the FPA. The final rule establishes the same fee for each service. These services are tracked together in MIS because they require the same type of review in terms of time, difficulty, and general similarity of subject matter.

5. Applications to Assume an Obligation or Liability as a Guarantor.

Section 204 of the FPA also requires Commission approval before a public utility may assume any obligation or liability as guarantor or surety for a security of another entity.[13] Commission approval permits a company to enter into business arrangements, such as financing leases, which require a guarantee as part of the arrangement. These arrangements enhance the viability of projects or investments with which the utility is involved. In view of this individual benefit, a fee is also charged for this service under § 381.507 of the final rule.

6. Corporate Applications Involving One or More Jurisdictional Utilities

Under section 203 of the FPA, the Commission must authorize any merger, consolidation, or purchase or acquisition of securities of a public utility by a public utility, and any sale, lease, or other disposition of a jurisdictional facility, or a part of a facility, if the value of such facility or part exceeds $50,000. Commission authorization permits the utility to enter into desirable business arrangements which would otherwise be prohibited.[14] A fee, therefore, is established in § 381.509 of the final rule for review of any of these corporate applications.

7. Authorization To Hold Interlocking Positions

Under section 305 of the FPA, a person must receive prior Commission authorization to hold certain interlocking positions involving public utilities.[15] The Commission's authorization permits a person to be an officer or director of more than one public utility, or of a public utility and a bank, trust company, banking association or firm that is authorized by law to underwrite or participate in the marketing of securities of a public utility, or of a public utility and a company supplying electrical equipment to the public utility. Absent Commission authorization, these interlocking positions could be held. Accordingly, a fee will be charged for review of such applications filed in accordance with the full requirements of the Commission's regulations for such applications in 18 CFR Part 45.[16] This fee is prescribed in § 381.510 of the final rule.

8. Extension of Period for Testing Equipment

Commission review of filings to justify extensions of the period for testing equipment under 18 CFR Part 101 again provides the filing party with a benefit of more immediate value than that obtained by the general public. As a company invests in plant under construction, it is allowed to accrue the

[11] These entities are State commission, electric utilities, geothermal power producers, Federal power marketing agencies, qualifying cogenerators, and qualifying small power producers.

[12] These filings are made under 18 CFR Part 34 (1984).

[13] These filings are made under 18 CFR Part 34 (1984).

[14] These filings are made under 18 CFR Part 33 (1984).

[15] These filings are made under 18 CFR Part 45 (1984).

[16] Persons serving as officers or directors of public utilities and officers and directors of commercial banks that do not engage in the underwriting or marketing of public utility securities, including commercial paper, will not be charged for abbreviated applications to hold interlocking positions provided that the conditions and minimal filing requirements of Edison Electric Institute, 15 FERC ¶61,173 (1981), are met. In addition, the Commission has proposed to allow blanket authorization of certain interlocking positions in affiliated electric utilities because these applications have been routinely granted. Automatic Authorization for Holding Certain Corporate Positions that Require Commission Approval Under section 305(b) of the Federal Power Act, 50 FR 21304 (May 23, 1985) (Docket No. RM83-83-000).

Allowance for Funds Used During Construction (AFUDC) (defined under "Components of Construction Cost" in Plant Instruction 3 (17) in Part 101). Once the plant is placed in service the company is no longer permitted to accrue AFUDC. All facilities are tested as a routine function of the construction activity. Electric Plant Instruction 9D requires an electric utility to file data with the Commission when the test period exceeds standards specified therein. Staff review and acceptance of such data facilitates the processing of future staff audits of the company's books and records and provides the company with a date to cut off the capitalization of AFUDC that is acceptable to staff based upon the information furnished. The benefit of having this date determned justifies charging a fee. The fee is prescribed in § 381.506 of the final rule.

9. Applications for Certification of Qualifying Status

Under PURPA, Commission certification that a facility qualifies as a small power production or cogeneration facility or self-certification of such status under the Commission's regulations exempts most [17] such facilities from the burdens of certain Federal and State regulation.[18] Commission certification also has the effect of requiring electric utilities to offer to purchase power from the qualifying facility at the utilities' avoided cost of alternative power and to sell back-up power to the qualifying facility. Certification of qualifying status, facilitates project financing, the sale of power at avoided cost rates, the ability to get back-up power, and interconnection under PURPA. Inasmuch as the facility requesting certification of qualifying status receives more immediate benefits from Commission review or processing than does the general public, charging a fee for this service is appropriate. This fee is prescribed in § 381.505 of the final rule.

B. Special Benefits to Identifiable Recipients

In delineating the services or benefits for which agencies are permitted to charge fees under the terms of the IOAA, Budget Circular A-25 states that a fee may be charged to an identifiable recipient who derives a special benefit from a government service.[19] In addition, the circular states that a "special benefit" has accrued if the recipient obtains "more immediate or substantial gains or values (which may or may not be measurable in monetary terms) than those which accrue to the general public," or if the service "provides business stability or assures public confidence in the business activity of the beneficiary (*e.g.*, certificates of necessity and convenience. . . .)" [20]

Commenters generally argue that the FPA is intended to benefit the consuming public and, therefore, that the services the Commission performs under the FPA and PURPA do not primarily benefit identifiable recipients. For instance, several commenters argue that no fee should be charged for PURPA qualifying facility filings because the owner of a qualifying facility allegedly receives no benefit from Commission certification. Commenters add that there can be no value or benefit to the applicant from Commission regulation under the FPA and PURPA because the applicant must comply with the Commission's regulatory requirements in order to engage in the activities authorized by statute and that the Commission itself has recognized that its functions primarily benefit the general public.

While consumers may be ultimate beneficiaries of Commission regulation, that is not determinative of the Commission's obligation to charge fees under the IOAA. The IOAA authorizes the Commission to charge fair and equitable fees for "a service or thing of value provided by the agency."[21] The United States Court of Appeals for the D.C. Circuit has held that an otherwise valid fee is not rendered invalid because the public may also enjoy benefits from the Commission's action. That court, in *Electronic Industries Association* v. *FCC*, observed that the agency was "not prohibited [under the IOAA] from charging an applicant . . . the full cost of services rendered to an applicant which also result in some incidental public benefits."[22] The court reached this conclusion even though the services provided assisted persons in activities which are required by statute. As the court noted:

> [T]he [agency] is entitled to charge for services which assist a person in complying with his statutory duties. Such services create an independent private benefit.[23]

Thus, the assessment of fees is proper even though the public benefits from the service, as long as the applicant receives a special benefit. The specific benefits received by those who use the services covered by this rule are described under section IV.A. of the order, "Services for Which A Fee Is Being Charged," above. For instance, the considerable benefits to the owner of having a facility certified as a qualifying facility under PURPA are detailed in section III.A.9, above.

Several commenters point out that the Federal Power Commission at one time decided not to impose fees on the grounds that activities subject to the FPA are primarily for the public benefit.[24] In light of subsequent developments, including interpretation of the statutory scheme by the courts, this Commission has re-evaluated the position. Not until the 1970's did the courts begin reviewing fee structures of various agencies.[25] Those cases provided specific guidance regarding the IOAA, including the appropriate apportionment of public and private benefits. The Commission now believes that it can charge the fees established by this rule.

Some commenters express concern that full cost recovery would undermine the Commission's accountability to Congress, since Congress now provides operating funds for the Commission. However, the Commission notes that the Congressional policy as expressed in the

[17] Under 18 CFR 292.601(b)(1984), the FPA exemptions do not apply to a qualifying facility that has a power production capacity over 30 megawatts and that uses a primary energy source other than geothermal resources. Under 18 CFR 292.602(a)(1984), the exemptions from the Public Utility Holding Company Act and certain state laws do not apply to the facilities described in § 292.601(b) or to facilities over 30 megawatts that use energy sources other than biomass.

[18] These filings are under 18 CFR 292.207(1984). Self-certification under 18 CFR 292.207(a)(2)(1984) provides a facility with the same legal rights under PURPA as a facility which has received Commission certification. The Commission enters self-certification filings into its data system, maintains files, and publishes a list of filings in *The Qualifying Facilities Report.*

[19] Budget Circular A-25, at 1.

[20] *Id.* at 2.

[21] 31 U.S.C. 9701 (1982). This phrase was changed in 1982 from "any work, service, publication, report, document, benefit, privilege, authority, use, franchise, license, permit, certificate, registration or similar thing of value or utility" for consistency and to eliminate unnecessary words. H.R. Rep. No. 651, 97th Cong., 2d Sess. 226 (1982). *See* former 31 U.S.C. 483a (1976).

[22] Electronic Industries Association v. FCC, 554 F.2d 1109, 1114 n.12 (D.C. Cir. 1976).

[23] *Id.* (discussing tariff filings).

[24] Natural Gas Pipeline Company Certificates, Proposed Schedule of Filing Fees, 30 FR 12077 (Sept. 22, 1965).

[25] *See* National Cable Television Association, Inc. v. United States, 415 U.S. 336 (1974); FPC v. New England Power Co., 415 U.S. 345 (1974); Mississippi Power & Light Co. v. NRC, 601 F.2d 233 (5th Cir. 1979), *cert. denied*, 444 U.S. 1102 (1980); National Cable Television Association, Inc. v. FCC, 554 F.2d 1094 (D.C. Cir. 1976); Electronic Industries Association v. FCC, 544 F.2d 1109 (D.C. Cir. 1976); National Association of Broadcasters v. FCC, 554 F.2d 1118 (D.C. Cir. 1976); Capital Cities Communications, Inc. v. FCC, 554 F.2d 1135 (D.C. Cir. 1976).

IOAA is to require agencies to be self-sufficient to the extent possible.

C. Smallest Practical Unit

In designing a fee schedule under the IOAA, the Commission must base fees on the smallest unit or category of service that is practical. The United States Court of Appeals for the D.C. Circuit set forth the general rule as follows:

[W]e interpret the statute and the Supreme Court decisions to require reasonable particularization of the basis for the fees, accomplished by an allocation of costs to the smallest unit that is practical. In most cases, we expect this unit will be classes of carriers or applicants or grantees of services which the Commission has already singled out for separate treatment in its 1975 fee schedule. Classification is always a difficult problem, involving as it does the drawing of lines, but the solution is not to group dissimilar entities together. The Commission must examine its expenses and set forth the maximum particularization of costs which it conveniently can make, so that the correctness of its actions can be reviewed.[26]

However, Budget Circular A-25 states that "costs shall be determined or established from the best available records in the agency, and new cost accounting systems will not be established solely for this purpose." [27]

The Commission, in keeping with Budget Circular A-25, is classifying its fees by types of applications or filings, which are the smallest practical units. The Commission has calculated its fees from its Management Information System (MIS), which is an agency-wide system established to track workload. The MIS tracks time, by work-months, based on types of applications or proceedings. The Commission is establishing one fee for each filing because that filing is the smallest practical unit for which the Commission can develop a fee.[28]

The NOPR requested comments on whether smaller fee categories should be considered. Some commenters suggest subdividing interlocking directorate applications to reflect the time needed to process applications of various levels of complexity.

The Commission has recently proposed to allow blanket authorization of certain interlocking positions in affiliated electric utilities because this type of application has been routinely granted.[29] If the proposed rule becomes final, an individual wishing to hold such positions would not be required to file an application under Part 45 of the regulations. The Commission also currently provides an abbreviated application procedure for an interlocking position involving a public utility and a bank, if the bank does not participate in underwriting or marketing of public utility securities, including commercial paper,[30] and in certain other limited instances. Given these abbreviated procedures, the present rule establishes a filing fee only for full Part 45 interlocking directorate applications. The Commission believes that this distinction should obviate the principal concerns expressed by the commenters.

Commenters also suggest establishing a separate fee category for interconnection applications, arguing that the proposed fees would hurt competition. The final rule provides for separate fees for such requests. As discussed in section III.A.2, above, the fee at present is zero.

Although the NOPR in this docket proposed to charge fees that included the costs of formal evidentiary hearings initiated in connection with the services involved, the Commission has decided not to charge fees to recover these administrative costs. There are considerable practical difficulties in determining the primary beneficiary or beneficiaries of hearings generally. The commenters express various opinions concerning who benefits and who should pay for hearings. Many commenters say that the cost of Commission trial staff should be excluded, as the applicants allegedly receive no benefit from staff's participation. Some suggest apportioning the costs of hearings among the parties to a hearing. Absent more refined information or significant changes in the Commission's Rules of Practice and Procedure regarding hearings and interventions, the Commission believes that it is not administratively feasible to determine how fees should be assessed for this service.

The Commission, in its discretion, has decided not to charge a fee for hearings at this time, but may, in the future, reconsider its position on this point. Meanwhile, the Commission does retain the option to bill an applicant directly (see section III.H., *infra*) for the costs associated with a hearing where the hearing provides a private benefit to an identifiable recipient and where the hearing requires an extraordinary amount of Commission time and effort to process.

The Commission has also decided not to establish a fee for filing a request for rehearing at this time. In those cases where an applicant's request for rehearing seeks a private benefit, the Commission believes that it could charge a fee for a review of that nature. However, there are also cases where a request for rehearing raises matters that, on balance, address more general public interest issues. In those cases, the Commission does not believe that it would be reasonable to impose a fee. Due to the substantial administrative burden involved in trying to segregate which rehearings should be subject to a fee, no fee for such a service is established herein.

Since the final rule does not charge fees to recover hearing costs, a multiple fee schedule or separate fees charged to the various parties or for various stages of a litigated proceeding are unnecessary. The only stage for which filing fees are being charged is the "nonformal" stage, which occurs before a matter is set for hearing. After that stage, staff hours are recorded in the MIS as "formal" time, signifying the point at which the costs are attributable to the hearing process. This "formal" staff time is excluded from the filing fee computations.

D. Basis of Cost Recovery

1. Direct and Indirect Costs Included

The Commission's fee schedule is designed to account for all types of recoverable costs, except hearing and post-hearing costs, associated with the processing of specified applications and filings under the Commission's jurisdictional statutes. The costs attributable to a particular Commission service are not merely the salaries of the employees who review the applications. The attributable costs also include the substantial amount of indirect costs which the Commission incurs in its reviews. As the Fifth Circuit has stated:

[Employees] must be supplied working space, heating, lighting, telephone service and secretarial support. Arrangements must be made so that [they are] hired, paid on a regular basis and provided specialized training courses. These and other costs such as depreciation and interest on plant and

[26] Electronic Industries Association v. FCC, 554 F.2d 1109, 1116 (D.C. Cir. 1976).

[27] Budget Circular A-25, at 3.

[28] The Commission has recently enhanced the MIS by tracking its employees' time on a new system (Time Distribution Reporting System or "TDRS") that provides an even greater degree of accuracy, as described in more detail below. Beginning in FY 1984, Commission-wide reports on time expended by staff are available internally under TDRS; therefore, the fees established in the final rule are based on these data.

[29] Automatic Authorization for Holding Certain Corporate Positions that Require Commission Approval Under Section 305(b) of the Federal Power Act, 50 FR 21304 (proposed May 23, 1985) (Docket No. RM85-63-000).

[30] Edison Electric Institute, 15 FERC ¶ 61,173 (1981).

capital equipment are all necessarily incurred in the process of reviewing an application.[31]

Accordingly, the Commission has included in its identification of costs the following items: salaries and benefits; transportation of things; rents, communications and utilities; printing; other support services; supplies; and equipment.

2. Methodology

a. *Underlying Considerations.* The Commission's calculation of the costs of providing each of the services represented by a fee category is directly related to the amount of time that the Commission spends providing each of the services. The fees in this rule are based on information obtained through the Commission's MIS, *supra,* which shows the amount of time spent on all measured Commission functions. The functions are grouped into categories that represent the Commission's various programs, including electric power regulation as well as gas wellhead pricing, gas pipeline rates, gas pipeline certificates, gas producer certificates, gas producer rates, oil pipeline regulation, and hydropower regulation. The MIS workload data appear monthly in bound volumes for internal use at the Commission.

With respect to each function, the Dockets Branch of the Commission records for the MIS the number of projects initiated (receipts) and the various program offices track the completed projects (completions) for the MIS in a particular time period. Most Commission functions can be measured in terms of the number of projects initiated and completed. In accordance with Commission practice, these projects are generally assigned docket numbers and, for purposes of this discussion, will be referred to as "docketed activities."

Actual time expended is reported agency-wide through the Commission's new Time Distribution Reporting System (TDRS). Based on daily workload, each employee fills out a time sheet, coded by product category, reflecting the amount of time spent processing each particular type of work-activity. Twice a month, a supervisor in each organizational unit reviews and verifies the reports, and the TDRS data are entered into a computer base. Computer reports of time expended in each functional category, expressed in terms of work-months, are generated for internal use in the MIS. A work-month is defined in §381.102 of the Commission's regulations [32] as the amount of work represented by one employee's devotion of 100 percent of his or her time for one month. Each type of measured work-activity is assigned a product category. The TDRS supplants the previous reporting system, which was based on the unit supervisor's estimate of time expended, with more accurate, regular reports from the employees themselves.

Many non-docketed support functions are essential to the completion of any docketed activity. However, they cannot be measured in terms of receipts and completions because the nature of these functions makes it impractical to do so. Like other functions, the time spent each day on support activities is reported by employees and is recorded in terms of work-months.

Only those support functions that are related to providing a benefit are included in the fee calculations. Support functions will be referred to as "support activities" and can be divided into three categories. First, there are support activities that involve general supervision, personnel management, and routine administrative functions. Routine administrative functions include such activities as maintenance of time and leave records, the handling of property and supplies, staff meetings, and the planning and organizing of leave. The entire category is labeled "administrative services" and is included in the fee structure because it is essential to the Commission's ability to complete docketed activities.

Second, support staff responds to requests for information that may not contribute directly to the completion of a docketed activity. Examples include requests for information from the public, Congress, the General Accounting Office, and other governmental agencies. The Commission has excluded from its calculation of fees the work-months associated with this second category of "inquiries and internal communications," because this type of support activity is not involved in completing docketed activities.

Third, support staff establishes or reviews certain Commission operations and procedures. This is "technical management and operations." These activities include work which is not identified with a particular docketed activity but which is necessary in completing docketed activities generally (such as work on the Commission budget, management information systems, and program development functions such as special studies or briefings on relevant subjects). This category is therefore an integral part of completing docketed activities.

Support activities are a type of indirect cost, but are channeled into the cost calculations separately from all other indirect costs (such as physical plant overhead). These other indirect costs are added together with direct costs to arrive at an average monthly cost per Commission employee. That figure is multiplied by the time (in work-months) taken to review a type of application or filing. In contrast, support activities represent work-months expended which cannot be allocated directly to each individually-tracked, docketed activity. Therefore, the work-months used in the fee calculation consist both of time actually spent reviewing a particular type of filing and also a *pro rata* share of the time spent on support activities associated with reviewing that type of filing.

b. *Calculation of Fee Amounts.* i. Methodology Used. For purposes of this rule, the Commission has used the following methodology to determine the cost of providing any service or benefit. First, the work-months reported for a class of docketed activity are added to the *pro rata* share of the work-months reported for the relevant support activities for that activity. This figure, representing the total number of work-months dedicated to a class of docketed activity for a year, is divided by the number of completions for that year for the given activity. The resulting quotient represents the average number of work-months required to complete one proceeding in that given class of docketed activity.

Second, the Commission has used the following data provided by its Office of Program Management to figure the average cost of a work-month, based on the Commission's FY (Fiscal Year) 1984 actual costs:

Average Salaries and Benefits (Based on year-end payroll data and benefits)	$46,521
Travel	643
Transportation of Things	15
Rents, Communications & Utilities	5,695
Printing	1,448
Other Services—excludes direct program contracts	4,639
Supplies	693
Equipment	353
Total (average annual cost per employee)	60,007

The total was divided by 12 to yield an average work-month cost per employee of $5,000.58.

Third, in order to determine the cost of an activity, the Commission multiplied the average cost per work-month by the average number of work-months required to complete the activity, the resulting product representing the average cost of an activity.[33]

[31] Mississippi Power & Light Co. v. NRC, 601 F.2d 223, 232 (5th Cir. 1979).

[32] 18 CFR 381.102 (1984).

[33] Updated sheets detailing the calculations have been placed in the Commission's Public File Room.

Commenters provide many different reasons for their allegations that the Commission's cost methodology is either severely flawed or excessively vague. Among these reasons are an allegedly inadequate explanation of support cost calculations and inclusion of costs that are not actually incurred by the Commission in rendering a particular service. Some commenters suggest that actual costs per filing, rather than average costs, would result in more reasonable fee levels and prevent subsidization of complex filings. Others argue that the use of docket completions does not encourage efficiency. Some note that the Commission's work in a particular docket may occur primarily in one year, but be completed in another. Thus, the fee for that docket would be based on the year of completion rather than on the year in which most of the work took place. The alternatives suggested by the various commenters are to base fees on the total number of dockets processed in any given year, on the average costs of those employees actually performing the work, or on a comparison of the median and average time spent processing the filings.

As to what costs are permissible for inclusion, the IOAA provides for the collection of fees which include both direct and indirect costs to the government. Thus, there is no statutory reason to exclude any item except for support functions relating to inquiries and internal communications, as discussed above. All other support activities are an integral part of completing docketed activities and therefore are included in the calculations. Moreover, in devising its fee schedule, the Commission is authorized to determine or estimate its costs "from the best available records in the agency." [34] For the Commission, MIS, as recently enhanced by the TDRS, provides the best data for this purpose.

In determining the fees, the NOPR proposed to use 1982 budgeted cost figures and 1981 actual completions and work-months. In addition, the method of updating the fees was tied to 1981 as the "base year." Each subsequent year was to be adjusted by the change in costs between the base year and the year under consideration. The number of completions and work-months would not be changed from the FY 1981 base year numbers. However, the FY 1981 numbers are now outdated and thus would not be appropriate for use as the base year. Instead, the Commission believes that it is more reasonable to calculate fees from actual completions and work-months, as well as from actual costs, for the most current fiscal year for which data are available. Consistent with its decision in the other final fees rules, the Commission is using actual fiscal year figures in this rule as well as in updating the fees in subsequent years (*see* section III.E. below). Accordingly, the fees in this rule are based upon actual FY 1984 direct and indirect costs, completions, and work-months. This approach eliminates many inaccuracies that could arise from using budgeted figures and will keep data current. In addition, by updating completions and work-months with the most recently available data, the fees can be adjusted periodically to reflect any increased processing productivity, as discussed below.

To derive actual costs per filing, rather than average costs, would be extremely difficult and costly. The Commission would have to monitor each application to determine actual staff time per individual application, which is highly impractical from an administrative standpoint. Assignment of indirect costs would be complex or impossible as well. This approach would also preclude the use of an agency-wide fee schedule, an essential tool for assessing fees where large numbers of filings are processed in several distinct categories.

In response to the commenters who argue that focusing on completions will not encourage efficiency, the Commission notes that fee collection under the IOAA is not intended as an incentive to increase efficiency. Questions of efficency are a matter of Commission internal management outside the scope of this rule-making. The Commission finds no reason to believe that the recovery of costs through fees will have any direct effect on resource efficiency, however.

As for the fact that a docketed activity may span more than one year and will be counted as completed only in the last year, the Commission does not believe that this will unduly skew the analysis on which a particular year's fees are based. Each year's completion figures will include projects that were begun in a prior year but completed in that year and will exclude projects which are begun but not completed in that year. On balance, it is reasonable to assume that this imperfect synchronism will not produce any systematic bias. Moreover, the elimination of the hearing phase from the fee analysis condenses processing time, thus reducing the instances in which the measured activities span multiple years.

Several commenters also claim that the Commission should not use an agency-wide figure for determining its direct costs. Instead, they maintain that the Commission should determine fees based on the average salary of only those employees processing particular filings.

Agency-wide cost methodology is used for a number of reasons. First, cumulative agency fiscal expenditures are reported only on an agency-wide basis, by object class, such as full time permanent staff salaries, specific support contracts, equipment rentals, telephone service, postage, printing, and the like. The Commission maintains no cumulative financial reporting systems which detail expenditures by individual organizational unit, *e.g.*, by office, division, branch, or level. Second, even though payroll reports by individual organizational unit are prepared by and available from the Department of Energy, they reflect only enrolled staff for any specific reporting period. The data are not cumulative, and will fluctuate widely based on the number and grade level of employees on board at any particular time. For example, salaries of any unit may vary from one pay period to the next, and additional outlays, such as monetary awards, are not reflected in financial costs. Third, a one-time pilot study conducted by the Office of Program Management indicates that the fees would not be lowered by using participating employee costs. Rather, the results indicate a slight increase in fees from the agency-wide cost methodology.[35]

Finally, changing the methodology from an agency-wide basis to a participating personnel cost basis would require the Commission to substantially refine and expand its organizational reporting procedures with regard to employee salaries. This would exceed the requirements of Budget Circular A-25, which states that "costs shall be determined or estimated from the best available records in the agency, and new cost accounting systems will not be established solely for this purpose" (emphasis added). Accordingly, for these reasons, this final rule utilizes the agency-method proposed in the NOPR.

E. Actual Fees Established and Procedures for Updating Fees

The following table (data for which are in the Commission's Public File

[34] Budget Circular A-25, at 3.

[35] The pilot study, which was conducted in September 1985 and the details of which have been placed in the Commission's Public File Room, utilized the salaries only of employees who work in electric utility, cogenerator and small power activities for which fees are to be collected herein.

room) summarizes for FY 1984 the total number of work-months, completions, and average cost per completion in rendering the services for which the Commission is establishing fees in this final rule:[36]

Service	Total WM's in 1984	Total completions in 1984	Average number of WM's per completion in 1984	Average cost per completion in 1984
Review of nominal rate schedule filings under sections 205 and 206 of the FPA	114.2	388	.294	$1,470.17
Review of moderately complex rate schedule filings under 205 and 206 of the FPA, including rate changes supported by abbreviated data	127.5	217	.587	2,935.34
Review of rate schedule filings involving rate increases under sections 205 and 206 of the FPA supported by Period II data	213.9	69	3.1	15,501.79
Review of extension of equipment testing period filings	3.8	14	.257.0	1,285.15
Review of applications for authorization of the negotiated placement of securities under section 204 of the FPA and applications for approval to assume obligations or liabilities as guarantor under section 204 of the FPA	15.3	23	.665	3,330.38
Review of applications for authorization to issue equity or long term debt securities competitively or to issue short-term debt securities under section 204 of the FPA	15.7	53	.296	1,480.17
Review of applications for certification of qualifying status under section 201 of PURPA	105.96	284	.373	1,865.21
Review of applications involving one or more jurisdictional utilities under section 203 of the FPA	23.0	27	.852	4,260.49
Review of full applications to hold interlocking positions under section 305 of the FPA filed in accordance with Part 45 of the Commission's regulations	22.7	71	.32	1,600.17

The Commission does not believe that good cause exists at this time for the categorical reduction of any of these fees to less than full-cost recovery (see section III.F.1., *infra*). According, the following fees are established:[37]

Service	Fees
Class 1 Rate Schedule Filings (filings having no rate impact or involving only a rate decrease)	$1,400.00
Class 2 Rate Schedule Filings (filings that have a rate impact not based on Period II data)	2,900.00
Class 3 Rate Schedule Filings (filings involving rate increases supported by Period II data)	15,500.00
Applications for Physical Connection of Facilities	0
Applications for Wheeling	0
Extension of Equipment Testing Period Filings	1,200.00
Authorizations to Assume an Obligation or Liability as a Guarantor or for the Negotiated Placement of Securities	3,300.00
Authorizations to Issue Equity or Long-Term Debt Securities Competitively or to Issue Short-Term Debt Securities	1,400.00
Corporate Applications Involving One or More Jurisdictional Utilities	4,200.00
Full Applications to Hold Interlocking Filed in Accordance with 18 CFR Part 45	1,600.00
Certification of Qualifying Small Power Production or Cogeneration Status	1,800.00

The Commission will update these fees each year to reflect the most current Commission costs. An updated fee schedule will be published annually in the **Federal Register** after the close of each fiscal year. The updated fees will be based on actual completions, work-months, and costs from the preceding fiscal year. Although some commenters contend that the annual revision of fees is a drawback, the Commission feels that revision is necessary to reflect the cost of providing benefits to the recipients based on the most current data available.

F. Exceptions to Full Cost Recovery

1. Reduction in Fee Amounts

As outlined above, this final rule establishes fees that include all the recoverable costs, excluding hearing-related costs, associated with the particular benefits and services provided. The Commission recognizes that there may be instances in the future where the Commission determines that full-cost recovery fees would have an adverse effect on applicants or would undermine Commission activities. In such cases, the Commission may exercise its discretion by rulemaking to reduce fees to less than full-cost recovery in order to prevent a disproportionate economic impact or for other good cause. Other reasons would include situations where the Commission believes it is necessary to reduce fees in order to encourage use of a service, where little or no Commission time (rather than staff time) is required, or where a future reduction in the amount of time required to process a filing is likely with respect to services with which the Commission has had little or no previous experience, as suggested by commenters.

The Commission has decided not to establish specific amounts of percentage reductions in advance, as the NOPR proposed. Rather, the Commission will determine the amount of the reduction at the time it decides that good cause exists for less than full-cost recovery in a particular situation. This alleviates concerns raised by commenters that there was no basis for the three different rates of reduction in the proposed rule (40–60 percent to prevent a disproportionate economic impact, 20 percent to encourage use of a service and 5 percent if a service required only staff time to process or if the service is one with which the Commission has little experience). Except for the annual determinations reflecting actual data, any future reduction in a fee will be initiated only by rulemaking. The same percentage of reduction will carry over to subsequent years unless the Commission gives further notice that it is altering that reduction.

Some commenters argue that the proposed standards for exceptions to full-cost recovery are vague, discretionary, and ineffective. They urge the Commission to establish more specific guidelines in this area. The Commission believes that the standards enumerated above are sufficiently specific for parties to be aware of the

[36] Note, however, that the "nominal rate schedule," "moderately complex rate schedule" and "rate increase" categories are being replaced by a somewhat different method of categorization (see discussion in Section III.A.1., above). As noted in that discussion, no filing will be reclassified into a higher fee category.

[37] Fees are established by taking actual costs and rounding *down* to:

(1) The nearest $5 increment, if the total cost is $100 or less; and

(2) The nearest $100 increment, if the total cost is more than $100.

circumstances under which the Commission may consider reducing fees to less than full-cost recovery. Moreover, any such categorical reduction will be done by rulemaking. A decision to reduce fees to less than full-cost recovery for a class of filings might involve other policy considerations that cannot be predicted at this time. This categorical approach is to be distinguished from a situation where an individual applicant can demonstrate severe economic hardship and qualify for a waiver, as discussed below.

Many commenters argue that the proposed $2,600 fee for applying for certification as a qualifying facility under PURPA would violate PURPA's mandate to encourage small power production and cogeneration facilities. They generally argue that certification may be very important in order to obtain financing and that $2,600 is an excessive fee. Alternatives suggested include no fee, a fee only for larger projects, a sliding scale of fees, and fees based on a percentage of the cost of the facility or its annual revenue.

The fee in the final rule ($1,800) is considerably less than in the proposed rule. The Commission's staff estimates that qualifying facilities require substantial investments and ordinarily cost at least $120,000. The $1,800 fee is a small element in such investments, and the Commission believes that it is unlikely that the feasibility of any project would be jeopardized by this fee. There may be instances in which a project is so small or the developer so impecunious that the $1,800 fee would discourage development of this facility. These situations will be rare, however. In these cases, individual waivers are available for severe economic hardship, as with any of the fees rules. The Commission is determined not to undermine its PURPA program or to violate the expressed intent of the Congress.

A number of commenters took exception to the fact that the NOPR would have imposed fees on States, municipalities, and rural electric cooperatives. The Commission, however, provided an exemption for government entities in section 381.108 of its fees rules.[38] That exemption applies to all fees rules.

A commenter suggests that the Commission should make provision to lessen the impact of multiple fees resulting from the overlapping jurisdiction of the Commission and other agencies, such as the Securities and Exchange Commission. Each agency's review functions serve separate purposes and present different fee considerations. The IOAA requires this Commission to be self-sustaining, to the extent possible, and the fees imposed by this rule are therefore warranted, notwithstanding related activities by other agencies. The Commission cannot anticipate all instances in which a person might be subject to multiple fees. It would, of course, consider on a case-by-case basis whether such situations cause economic hardship. Any so-called "overlap" in jurisdiction is likely to involve approval of related activities, not duplicative review of the same regulated activity.[39] Because the benefit conferred by Commission approval is distinct, the Commission believes its fees are also separable.

A consumer-owned power system argues that the fees proposed in the NOPR are too high and, if passed through to customers, would have a chilling effect on the ability of consumers to challenge rate increases. Another commenter also objects to the results of the passing through of fees. In response, the Commission points out that the IOAA requires agencies to become as self-sustaining as possible. Moreover, many of the fees in the final rule are lower than in the NOPR, and the largest proposed fee, applicable to evidentiary hearings, has been eliminated. Given the relative magnitude of an electric utility's other costs, any rate effect caused by passing through the fees imposed under this rule is likely to be insignificant. Further, since the final rule does not charge for a hearing, a consumer challenge to a filing will not increase the fee; thus, consumers' rights to preserve their interests will not be chilled. Although the rate effect of the fees is a cost-of-service issue outside the scope of this rulemaking, the Commission believes that the dollar impact on individual customers will generally be small.

2. Case-by-Case Waiver Procedures

The Commission realizes that a situation could arise in which an applicant is unable to pay the prescribed fees due to severe economic hardship. The Commission has established the general procedures for case-by-case waiver of its fees in Subpart A of Part 381. If an applicant is suffering severe economic hardship, it will bear the burden of presenting evidence to the Commission, such as a financial statement, showing that it is either economically unable to pay the fee or that if it does pay the fee, it will be placed in a state of financial distress or emergency. This evidence must be included with the petition for waiver at the time of filing the application. If so supported, a filing date would be assigned and the statutory notice period would begin to run. The Commission, or its designee, will analyze petitions for waiver to determine whether the criteria for waiver have been met for each application. The Commission will notify the applicant as to whether the petition for waiver has been denied or accepted.

G. Procedures for Paying Fees

The Commission proposed that fees be submitted by certified check, made payable to the Treasurer of the United States. The Commission has deleted the requirement for a certified check in establishing its general fee procedures in Subpart A of Part 381 (*see* 18 CFR 381.105). A check made payable to the Treasurer of the United States must be included with the filing or application unless a petition for waiver is submitted in lieu of the fee. The check must indicate the type of filing for which the fee is being submitted, *e.g.*, application for an order directing wheeling under section 211 of the FPA. This may be written on the bottom of the check. If the filing or application is not accompanied by either the appropriate fee or an adequately supported petition for waiver, it will be considered deficient and will not be processed.

The final rule requires payment of the fee in full at the time the application is filed. The Commission's decision to require payment of fees in full when the application is filed will compensate the Commission for the resources needed to complete the necessary service. Payment of fees in installments would require additional staff time to ensure that payments are made on time. Inasmuch as the fees are relatively moderate, prepayment in full of the required fee is appropriate and is more administratively manageable. In addition, exclusion of the hearing costs initially proposed as part of the fees should greatly reduce the possibility of cash-flow problems.

The Commission has decided not to allow refunds of filing fees, except where a filing is withdrawn before review begins. This decision is consistent with the policy behind the IOAA. The statute requires government agencies to become self-sustaining to the extent possible. To do so, the agency is to collect fees for services and

[38] Fees Applicable to General Activities, 49 FR 35348 (Sept. 7, 1984) (to be codified at 18 CFR Parts 3, 375, 381, 385, and 389) (Docket No. RM82-35-000).

[39] There can be no actual overlap between the Commission's jurisdiction and that of the Securities and Exchange Commission (SEC). Under section 318 of the FPA, where there would be such an overlap, the FPA gives way to the SEC's statutory authority.

benefits it provides. Congress gave this Commission the duty of carrying out specific functions under the FPA and the PURPA. These functions require reviewing each petition or application, not guaranteeing the issuance of the authorization, approval, or exemption sought. Some applications or filings are accepted or granted; others are not. The Commission's fees cover the time and cost of providing these review services, as authorized by the IOAA. It does not necessarily cost the Commission any less when the Commission ultimately rejects an application or filing. A filing, when made, should be fully supportable and supported. Nonetheless, fees will be refunded if the filing is withdrawn before it is noticed in the Federal Register or, if no notice is issued, if it is withdrawn within 15 days of the date of filing. This ensures that no fees will be charged unless the review process is substantially under way.

H. Direct Billing

The methodology used to establish the fees in this rule is based on the actual time required to process filings and the actual agency-wide costs involved in this processing. As noted, the Commission takes the actual work-months associated with a class of docketed activity and divides it by the number of completions in that class to arrive at an average number of work-months per completion. The figure is then multiplied by the average cost per work-month to arrive at the fee, representing the average cost per class of docketed activity completed.

However, the Commission occasionally receives filings that require substantially more than an average number of work-months per completion. These filings may be extensive in scope and may present factual, legal, or policy issues of such complexity that the Commission may devote an extraordinary amount of time and effort to processing them. The Standard fees established in this rule bear no reasonable relationship to the actual costs of processing such extraordinary filings. While such filings are expected to be extremely rare, the Commission recognizes that to the extent they arise, they may skew the data upon which the fees for more average filings are calculated. In the case of an extraordinary filing, therefore, the Commission reserves the option of ordering a direct billing procedure pursuant to § 381.107 of its regulations; such a determination would be made as soon as practicable, but not later than one year after receiving a complete filing from an applicant.

Commenters state that the direct billing procedure is vague, arbitrary, and could result in the payment of unlimited amounts of fees. Other commenters urge that a direct billing alternative also be made available for routine filings.

Under the direct billing procedure, the Commission will periodically bill the entity that submitted the filing for all the direct and indirect costs incurred by the Commission in processing the filing, unless a lesser amount is determined to be fair and equitable. The staff resources devoted to processing a filing resulting in a direct billing will be separately recorded and will not be included in the work-months associated with processing average filings. If the decision to bill the applicant a lesser amount is based upon the participation of intervenors in a proceeding, the Commission retains the discretion to determine whether some of the costs not billed directly to an applicant should instead be billed to the intervenors. Any decision to bill intervenors directly will be made on a case-by-case basis.

Again, the Commission expects that direct billing will be rare. The direct billing procedures will be utilized only in those cases involving complex technical, environmental, and/or legal issues. The Commission will not consider a filing for direct billing unless estimated staff processing time exceeds the average for that type of filing by a factor of five. This is the Commission's best estimate of when the additional fee to be collected begins to offset the administrative burden of direct billing. However, even if the estimated staff processing time is expected to exceed five times the average, the Commission must still determine that the filing is extraordinary before the direct billing procedures are instituted.

Where there is a direct billing, the Commission will itemize, with the best accuracy available under the MIS, the costs involved in the direct billing. There is no way that the Commission can estimate in advance what the costs will be, but once the party is advised that direct billing will be used, it can then decide whether or not to pursue the matter in the proceeding in which the filed application has been docketed. Moreover, the Commission will credit an applicant whose filing becomes subject to direct billing with any fee paid under the fee system prescribed here.

IV. Final Regulatory Flexibility Act Analysis

When an agency promulgates a final rule under the Administrative Procedure Act, 5 U.S.C. 553 (1982), a final regulatory flexibility analysis may be required by the Regulatory Flexibility Act (RFA) of 1980, 5 U.S.C. 601–612 (1982). The RFA requires the agency to prepare certain statements, descriptions, and analyses of rules that would have "a significant economic impact on a substantial number of small entities." The Commission is not required to make such analyses if the rule would not have such an impact. Each final regulatory flexibility analysis must contain: (1) A statement of need for, objectives of, and legal basis for, the rule; (2) a summary of the issues raised by the public comments in response to the initial regulatory flexibility analysis, and the agency response to those comments; and (3) a description of alternatives to the rule consistent with the stated objectives of the applicable statute which the agency considered and ultimately rejected.

In this preamble, the Commission has already detailed its reasons for this agency action, its objectives, and the legal basis for this rulemaking. As discussed, the rule establishes a schedule of fees to be paid to the Commission for certain benefits it provides, in accordance with the IOAA and Budget Circular A-25.

This rule affects public utilities subject to Commission jurisdiction under the FPA and the PURPA as well as non-jurisdictional entities seeking qualifying status as small power production or cogeneration facilities. There are approximately 223 public utilities in the United States. The Small Business Administration's (SBA) regulations do not establish specific size standards for electric utilities.[40] Most utilities, however, are large businesses. Only about 26 of these could possibly be classified as small entities.[41]

Although some prospective cogenerators or small power producers may be small entities, many others are not small entities within the meaning of the RFA. Those developing cogeneration, for example have included the paper and chemical industries, hospitals, and large residential complexes. Further, as noted, projects of

[40] 5 U.S.C. 601(3) (1982), *citing to* section 3 of the Small Business Act, 15 U.S.C. 632 (1982). Section 3 of the Small Business Act defines "small-business concern" as a business which is independently owned and operated and which is not dominant in its field of operation. *See also* SBA's revised Small Business Size Standards, 13 CFR Part 121 (1985).

[41] For this analysis, small entities are those classified as nonmajor utilities; that is, utilities that are not classified as major, and that had total sales in each of the last three consecutive years of 10,000 megawatt-hours or more. (18 CFR Part 101, Uniform System of Accounts Prescribed for Public Utilities and Licensees Subject to the Provisions of the Federal Power Act, General Instructions, 1.A. (1) and (2).)

which the Commission is aware typically represent relatively large capital investments. In any case, the impact of the fees on these entities will not be significant. As discussed in the preamble, the fee for applications for Commission certification is small compared to the usual cost of even the smallest facilities. Therefore, the Commission does not expect that the fee will significantly affect the feasibility of developing or operating any qualifying facility. The Commission's regulations address situations where there is severe economic hardship. The regulations provide for waiver of fees for entities that demonstrate severe economic hardship and the rule discusses a mechanism (rulemaking) for reduction in fee amounts by category when the Commission finds disproportionate economic impact to exist.

Four commenters dispute the adequacy of the Initial Regulatory Flexibility Analysis. The commenters feel that the analysis did not adequately describe the small entities likely to be affected by the rule or the alternatives available to the Commission in lieu of its fees proposal. This Final Regulatory Flexibility Analysis describes the small entities likely to be affected with as much precision as is possible. The major alternatives available include: (1) Imposing no fees or (2) imposing higher or lower fees. The Commission believes that the rule as now promulgated represents a fair balance between the purposes of the IOAA, which directs agencies to be as self-sustaining as possible, and the FRA, which requires agencies to be sensitive to the effects of actions on small entities. The Commission does not believe that the impact of the rule will be significant for a substantial number of small entities.

V. Paperwork Reduction Act Statement

The information collection provisions of this rule have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501–3520 (1982), and OMB's regulations, 5 CFR Part 1320 (1985). OMB issued Control Number 1902–0132 for these sections. Interested persons can obtain information on the information collection provisions by contacting the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C., 20426 (Attention: Thomas Moore, (202), 357–8464).

VI. Effective Date

The amendments made by the final rule will be effective on November 4, 1985.

List of Subjects

18 CFR Part 32

Electric Utilities, Foreign Relations.

18 CFR Part 33

Electric Utilities, Securities.

18 CFR Part 34

Electric Power, Electric Utilities, Reporting Requirements Securities.

18 CFR Part 35

Electric Power Rates, Electric Utilities, Reporting Requirements.

18 CFR Part 36

Electric Utilities.

18 CFR Part 45

Electric Utilities.

18 CFR Part 101

Electric Power, Electric Utilities, Uniform System of Accounts.

18 CFR Part 292

Electric Utilities, Natural Gas, Reporting Requirements.

18 CFR Part 375

Authority Delegations (Government Agencies), Seals and Insignia, Sunshine Act.

18 CFR Part 381

General Fees.

In consideration of the foregoing, the Commission amends Chapter I, Title 18, *Code of Federal Regulations*, as set forth below.

By the Commission
Kenneth F. Plumb,
Secretary.

PART 32—[AMENDED]

1. The authority citation for Part 32 is revised to read as follows:

Authority: Department of Energy Organization Act, 42 U.S.C. 7101–7352 (1982); Exec. Order No. 12,009, 3 CFR 142 (1978); Independent Offices Appropriations Act, 31 U.S.C. 9701 (1982); Federal Power Act, 16 U.S.C. 791a–825r (1982); Public Utility Regulatory Policies Act, 16 U.S.C. 2601–2645 (1982).

§ 32.1 [Amended]

2. Section 32.1 is amended in the introductory clause by removing the words "Part 36 of this subchapter" and inserting, in their place, the words "Part 381 of this chapter".

§ 32.22 [Amended]

3. Section 32.22 is amended by removing the words "Part 36 of this subchapter" and inserting in their place, the words "Part 381 of this chapter".

§ 32.61 [Amended]

4. Section 32.61 is amended in the introductory clause by removing the words "Part 36 of this subchapter" and inserting, in their place, the words "Part 381 of this chapter".

PART 33—[AMENDED]

5. The authority citation for Part 33 is revised to read as follows:

Authority: Department of Energy Organization Act, 42 U.S.C. 7101–7352 (1982); Exec. Order No. 12,009, 3 CFR 142 (1978); Independent Offices Appropriations Act, 31 U.S.C. 9701 (1982); Federal Power Act, 16 U.S.C. 791a–825r (1982); Public Utility Regulatory Policies Act, 16 U.S.C. 2601–2645 (1982).

§ 33.2 [Amended]

6. Section 33.2 is amended in the introductory clause by removing the words "Part 36 of this subchapter" and inserting, in their place, the words "Part 381 of this chapter".

PART 34—[AMENDED]

7. The authority citation for Part 34 is revised to read as follows:

Authority: Department of Energy Organization Act, 42 U.S.C. 7101–7352 (1982); Exec. Order No. 12,009, 3 CFR 142 (1978); Independent Offices Appropriations Act, 31 U.S.C. 9701 (1982); Federal Power Act, 16 U.S.C. 791a–825r (1982); Public Utility Regulatory Policies Act, 16 U.S.C. 2601–2645 (1982).

§ 34.9 [Amended]

8. Section 34.9 is amended by removing the words "18 CFR 36.2" and inserting, in their place, the words "Part 381 of this chapter".

PART 35—[AMENDED]

9. The authority citation for Part 35 is revised to read as follows:

Authority: Department of Energy Organization Act, 42 U.S.C. 7101–7352 (1982); Exec. Order No. 12,009, 3 CFR 142 (1978); Independent Offices Appropriations Act, 31 U.S.C. 9701 (1982); Federal Power Act, 16 U.S.C. 791a–825r (1982); Public Utility Regulatory Policies Act, 16 U.S.C. 2601–2645 (1982).

§ 35.0 [Amended]

10. Section 35.0 is amended by removing the words "Part 36 of this subchapter" and inserting, in their place, the words "Part 381 of this chapter".

PART 36—[REMOVED]

11. Part 36 is removed.

PART 45—[AMENDED]

12. The authority citation for Part 45 is revised to read as follows:

Authority: Department of Energy Organization Act, 42 U.S.C. 7101–7352 (1982); Exec. Order No. 12,009, 3 CFR 142 (1978); Independent Offices Appropriations Act, 31 U.S.C. 9701 (1982); Federal Power Act, 16 U.S.C. 791a–825r (1982); Public Utility Regulatory Policies Act, 16 U.S.C. 2601–2645 (1982).

§ 45.8 [Amended]

13. Section 45.8 is amended in the introductory clause by removing the words "Part 36 of the subchapter" and inserting, in their place, the words "Part 381 of this chapter".

14. The authority citation for Part 101 is revised to read as follows:

Authority: Department of Energy Organization Act, 42 U.S.C. 7101–7352 (1982); Exec. Order No. 12,009, 3 CFR 142 (1978); Independent Offices Appropriations Act, 31 U.S.C. 9701 (1982); Federal Power Act, 16 U.S.C. 791a–825r (1982); Public Utility Regulatory Policies Act, 16 U.S.C. 2601–2645 (1982).

PART 101—[AMENDED]

15. In Part 101, the Uniform System of Accounts Prescribed for Public Utilities and Licensees Subject to the Provisions of the Federal Power Act, under ELECTRIC PLANT INSTRUCTIONS, in "9. EQUIPMENT", paragraph D is amended in the second sentence by inserting after "the utility shall" the words "pay the fee prescribed in Part 381 of this chapter and shall".

PART 292—[AMENDED]

16. The authority citation for Part 292 is revised to read as follows:

Authority: Department of Energy Organization Act, 42 U.S.C. 7101–7352 (1982); Exec. Order No. 12,009, 3 CFR 142 (1978); Independent Offices Appropriations Act, 31 U.S.C. 9701 (1982); Federal Power Act, 16 U.S.C. 791a–825r (1982); Public Utility Regulatory Policies Act, 16 U.S.C. 2601–2645 (1982).

§ 292.207 [Amended]

17. Section 292.207 is amended in paragraph (b)(2) by inserting in the introductory clause between the words "shall" and "contain" the phrase "be accompanied by the fee prescribed by Part 381 of this chapter and shall".

PART 375—[AMENDED]

18. The authority citation for Part 375 is revised to read as follows:

Authority: Department of Energy Organization Act, 42 U.S.C. 7101–7352 (1982); Exec. Order No. 12,009, 3 CFR 142 (1978); Independent Offices Appropriations Act, 31 U.S.C. 9701 (1982); Federal Power Act, 16 U.S.C. 791a–825r (1982); Public Utility Regulatory Policies Act, 16 U.S.C. 2601–2645 (1982).

19. Section 375.303 is amended by revising paragraph (g) to read as follows:

§ 375.303 Delegations to the Chief Accountant.

* * * * *

(g) Deny or grant, in whole or in part, petitions for waiver of the fees prescribed in §§ 381.301, 381.506, 381.507, 381.508, and 381.509 of this chapter in accordance with § 381.106(b) of this chapter.

20. Section 375.308 is amended by revising paragraph (m) to read as follows:

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

* * * * *

(m) Deny or grant, in whole or in part, petitions for waiver of the fees prescribed in §§ 381.502, 381.503, 381.504, 381.505, 381.510, 381.511, and 381.512 of this chapter in accordance with § 381.106(b) of this chapter.

* * * * *

PART 381—[AMENDED]

21. The authority citation for Part 381 is revised to read as follows:

Authority: Department of Energy Organization Act, 42 U.S.C. 7101–7352 (1982); Exec. Order No. 12,009, 3 CFR 142 (1978); Independent Offices Appropriations Act, 31 U.S.C. 9701 (1982); Federal Power Act, 16 U.S.C. 791a–825r (1982); Public Utility Regulatory Policies Act, 16 U.S.C. 2601–2645 (1982).

22. Part 381 is amended by adding a new Subpart E to read as follows:

Subpart E—Fees Applicable to Certain Matters Under Parts II and III of the Federal Power Act and the Public Utility Regulatory Policies Act

Subpart E—Fees Applicable to Certain Matters Under Parts II and III of the Federal Power Act and the Public Utility Regulatory Policies Act

§ 381.501 Applicability.

The fees set forth in this subpart apply to filings submitted on or after November 4, 1985.

§ 381.502 Class 1 rate schedule filings.

(a) *Definition.* For purposes of this section, "Class 1 rate schedule filings" are rate schedule changes under sections 205 and 206 of the Federal Power Act having no rate impact or involving only rate decreases.

(b) *Fee.* Unless the Commission orders direct billing under § 381.107 or otherwise, the fee established for a Class 1 rate schedule filing is $1,400.00. The fee filed under this paragraph must be submitted in accordance with Subpart A of this Part and Part 35 of this chapter.

§ 381.503 Class 2 rate schedule filings.

(a) *Definition.* For purposes of this section, "Class 2 rate schedule filings" are rate schedule changes under sections 205 and 206 of the Federal Power Act and under § 35.13(a)(2) of this chapter that have an impact on rates and that are not supported by Period II data.

(b) *Fee.* Unless the Commission orders direct billing under § 381.107 or otherwise, the fee established for a Class 2 rate schedule filing is $2,900.00. The fee filed under this paragraph must be submitted in accordance with Subpart A of this Part and, as appropriate, Part 35 or 32 of this chapter.

§ 381.504 Class 3 rate schedule filings.

(a) *Definition.* For purposes of this part, "Class 3 rate schedule filings" are those filings under sections 205 and 206 of the Federal Power Act that involve the filing of Period II cost of service data.

(b) *Fee.* Unless the Commission orders direct billing under § 381.107 or otherwise, the fee established for a Class 3 rate schedule filing is $15,500.00. The fee filed under this paragraph must be submitted in accordance with Subpart A of this part and Part 35 of this chapter.

§ 381.505 Certification of qualifying status as a small power production or cogeneration facility.

Unless the Commission orders direct billing under § 381.107 or otherwise, the fee established for an application for Commission certification as a qualifying facility under section 3(17) of the Federal Power Act, as amended by section 201 of the Public Utility Regulatory Policies Act, is $1,800.00. The fee filed under this paragraph must be submitted in accordance with Subpart A of this part and § 292.207(b)(2) of this chapter.

§ 381.506 Extension of equipment testing periods.

Unless the Commission orders direct billing under § 381.107 or otherwise, the fee established for an extension of equipment test period filing under Part 101 of this chapter (under ELECTRIC PLANT INSTRUCTIONS, in "9. EQUIPMENT", paragraph D), is $1,200.00. The fee filed under this paragraph must be submitted in accordance with Subpart A of this part and Part 101 of this chapter.

§ 381.507 Applications to assume obligation or liability as guarantor or for the negotiated placement of securities.

Unless the Commission orders direct billing under § 381.107 or otherwise, the fee established for an application for authorization to assume an obligation or liability as a guarantor or surety in respect to securities under section 204 of the Federal Power Act is $3,300.00. The fee filed under this paragraph must be submitted in accordance with Subpart A of this part and § 34.9 of this chapter.

§ 381.508 Equity, long-term or short-term debt securities.

Unless the Commission orders direct billing under § 381.107 or otherwise, the fee established for an application under section 204 of the Federal Power Act for authorization to issue equity or long-term debt securities competitively or to issue short-term debt securities is $1,400.00. The fee filed under this paragraph must be submitted in accordance with Subpart A of this part and § 34.9 of this chapter.

§ 381.509 Corporate applications involving one or more jurisdictional utilities.

Unless the Commission orders direct billing under § 381.107 or otherwise, the fee established for a corporate application under section 203 of the Federal Power Act involving one or more jurisdictional utilities is $4,200.00. The fee filed under this paragraph must be submitted in accordance with Subpart A of this part and § 33.2 of this chapter.

§ 381.510 Applications to hold interlocking positions.

Unless the Commission orders direct billing under § 381.107 or otherwise, the fee established for a full application under section 205 of the Federal Power Act and Part 45 of this chapter to hold an interlocking position is $1,600.00. The fee filed under this paragraph must be submitted in accordance with Subpart A of this part and § 45.8 of this chapter.

§ 381.511 Applications for physical connection of facilities.

Unless the Commission orders direct billing under § 381.107 or otherwise, the fee established for an application for an order directing physical connection of facilities under sections 202(b) and 210 of the Federal Power Act is zero.

§ 381.512 Applications for wheeling.

Unless the Commission orders direct billing under § 381.107 or otherwise, the fee established for an application for an order directing wheeling under section 211 of the Federal Power Act is zero.

[FR Doc. 85-23665 Filed 10-2-85; 8:45 am]

BILLING CODE 6717-01-M

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18 CFR Part 271

[Docket No. RM80-47-000; Order No. 94-G]

Regulations Implementing Section 110 of the Natural Gas Policy Act and Establishing Policy Under the Natural Gas Act

Issued: September 27, 1985.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Order Clarifying and Denying Rehearing of Order No. 94-F.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is clarifying Order No. 94-F, issued July 24, 1985, 50 FR 31347 (August 2, 1985), by stating that the terms "undisputed" and "uncontested," used in Order No. 94-F with reference to Natural Gas Policy Act section 110 costs, mean section 110 costs which natural gas purchasers agreed to offset against Btu refunds under Commission Order No. 399-A. The Commission also denies rehearing of Order No. 94-F.

EFFECTIVE DATE: September 27, 1985.

FOR FURTHER INFORMATION CONTACT: Frederick W. Peters, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, (202) 357-9115.

SUPPLEMENTARY INFORMATION:

Order Clarifying and Denying Rehearing of Order No. 94-F

Before Commissioners: Raymond J. O'Connor, Chairman; A.G. Sousa and Charles G. Stalon.

I. Introduction

The Federal Energy Regulatory Commission (Commission) is clarifying Order No. 94-F [1] by confirming that the terms "undisputed" and "uncontested," used in Order No. 94-F with reference to NGPA section 110 costs, mean section 110 costs which natural gas purchasers previously agreed to offset against Btu refunds under Commissioner Order No. 399-A.[2] The Commission also denies rehearing of Order No. 94-F.

II. Background

On July 24, 1985, the Commission issued Order No. 94-F, which provided guidance for payment of undisputed section 110 charges which purchasers had previously agreed to offset against Btu refunds pursuant to Order No. 399-A. Order No. 94-F was issued in light of the decision of the United States Court of Appeals for the District of Columbia Circuit in *Interstate Natural Gas Association* v. *Federal Energy Regulatory Commission* (*INGAA-II*) disallowing the offset procedure.[3] In Order No. 94-F, the Commission stated that good cause exists not to hold natural gas purchasers that used the previously-allowed offset procedures to pay these undisputed amounts to be in violation of the regulations requiring payment of these particular section 110 costs by December 31, 1984,[4] provided that the undisputed amounts are paid on or before September 30, 1985. Timely requests for rehearing of Order No. 94-F were filed by Associated Gas Distributors (AGD), and jointly by Panhandle Eastern Pipe Line Company and Trunkline Gas Company (Panhandle).

III. Discussion

A. Request for Clarification

AGD requests clarification of the term "undisputed" used in Order No. 94-F. AGD asserts that Order No. 94-F makes no mention of challenges by third parties to the contractual authority of first sellers to collect section 110 charges. AGD argues that the decision of the United States Court of Appeals for the Fifth Circuit in *Texas Eastern Transmission Corporation* v. *Federal*

[1] 50 FR 31347 (Aug. 2, 1985).

[2] 49 FR 46353 (Nov. 26, 1984).

[3] 756 F.2d 166 (D.C. Cir. 1985).

[4] *See*, Order No. 94-A, 48 FR 5152 (Feb. 3, 1983), and codified at 18 CFR 271.1104(e)(3) (1985).