compensation policy. The district board's policy-making authority is limited by the requirement that only those services performed in a district board director's official capacity are eligible for compensation. Should a district board determine that some kind of retainer method of compensation is appropriate, the FCA would review the documentation justifying the decision in the normal examination process. Should FCA find that director compensation set by any district board is beyond reasonable bounds, FCA retains the authority under section 5.5 of the Act to require adjustment of the level of compensation and to address any related unsafe of unsound practices in a System bank.

In response to the Baltimore District's specific concern about participation by telephone at duly convened meetings, the FCA Board would not object if a district board policy included a provision for compensation for such participation. However, the Board expects any such district board policy to include standards defining the level of active participation in, and contribution to, telephone meetings necessary in order to be compensated for such meetings. The documentation requirements set forth in § 611.1020(c) would apply to compensation paid pursuant to such a policy.

List of Subjects in 12 CFR Part 611

Accounting, Agriculture, Archives and records, Banks, Banking, Credit, Government securities, Investments, Organization and functions (Government agencies), Rural areas.

As stated in the preamble, Part 611 of Chapter VI, Title 12 of the Code of Federal Regulations is revised as follows:

PART 611—ORGANIZATION

1. The authority citation for Part 611 continues to read as follows:

Authority: 12 U.S.C. 2031, 2061, 2162, 2183, 2216–2216k, 2243, 2244, 2250, 2252.

Subpart F—General Rules for the Districts

2. Section 611.1020 is revised to read as follows:

§ 611.1020 Compensation of district board members.

(a) Each district board director may be compensated for services performed in that person's official capacity as a director of the district banks or as a member of the district board, provided such compensation is fair and reasonable. Payment of such compensation shall be consistent with the compensation policy established by a district board in accordance with 5.5 of the Act and this regulation. A district board director may not be compensated as a district board director for undertaking activities on behalf of Federal land bank associations, production credit associations, cooperatives of which the director is a member, or for performing other assignments of a nonofficial nature.

(b) Each district board shall develop a written policy regarding the compensation of district directors. The policy shall address, at a minimum, the following areas:

(1) The activities or functions for which the attendance or directors is necessary and appropriate and may be compensated.

(2) The rate of compensation to be paid district directors, which shall not exceed $200 per day, plus reasonable allowances for travel, subsistence, and other related expenses incurred in connection with such activities or functions.

(3) The formula used to determine each director's rate of compensation and allowance for expenses, and the timing and frequency when such compensation and allowance is periodically adjusted.

(4) The extent of the compensation to be allowed directors for travel time involved in attending such activities or functions.

(5) The circumstances, if any, under which travel and subsistence expenses for directors' spouses are a necessary expense for which reimbursement may be made.

(c) Each district board shall maintain records documenting all compensation and expense allowances paid to directors by such board. These records shall specify:

(1) The activity or function for which the director is being compensated;

(2) The reason the attendance of the director (and the director's spouse) at such activity or function is necessary and appropriate;

(3) The duration of the director's stay and the location of such activity or function;

(4) The compensation paid the director and the total payments made by the institution in order for the director to attend the activity or function; and

(5) The amount of necessary expenses of the director (and the director's spouse) that are reimbursed and an itemized explanation of the purpose and justification for the expenses.

§§ 611.1021, 611.1022, 611.1030 and 611.1031 [Removed and Reserved]

3. Sections 611.1021, 611.1022, 611.1030, and 611.1031 are removed and reserved.

Elizabeth A. Kirby,

Acting Secretary, Farm Credit Administration Board.

[FR Doc. 87-22133 Filed 9-24-87; 8:45 am]

BILLING CODE 6705-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 154 and 382

[Docket Nos. RM87-3-002 through 018; Order No. 472-B]

Annual Charges Under Omnibus Budget Reconciliation Act of 1986

Issued September 16, 1987.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule; order granting rehearing in part, denying rehearing in part, and making conforming amendments.

SUMMARY: The Federal Energy Regulatory Commission grants in part rehearing of its final rule regarding "Annual Charges Under the Omnibus Budget Reconciliation Act of 1986," 52 FR 21263 (June 5, 1987). The rehearing order removes certain types of gas volumes and oil revenues from the annual charge assessment computations, and specifies the required contents of a gas tariff filing for gas pipelines seeking to pass through their annual charge expenses to their customers through the use of an annual charge mechanism.

EFFECTIVE DATE: November 4, 1987.

FOR FURTHER INFORMATION CONTACT: Roland M. Frye, Jr., Federal Energy Regulatory Commission, Office of the General Counsel, 825 North Capitol Street, NE., Washington, DC 20426, (202) 357-8308.

SUPPLEMENTARY INFORMATION:

Note.—Appendixes A–D are available from the Federal Energy Regulatory Commission at the address listed under "FOR FURTHER INFORMATION CONTACT."

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

I. Introduction and Background

The Federal Energy Regulatory Commission (Commission) grants in part and denies in part timely requests to

rehear[1] portions of Order No. 472.[2] That final rule established annual charges as required by section 3401 of the Omnibus Budget Reconciliation Act of 1986.[3] Many of the arguments raised on rehearing are reiteration of comments filed in response to the notice of proposed rulemaking[4] in this docket. The Commission has already fully addressed these issues. However, applicants rais new issues. These are specifically discussed below.

II. Discussion

A. Constitutionality of the Budget Act and the Annual Charges Regulations

Numerous entities have again raised the argument that the enabling statute and therefore the annual charges promulgated under that statute are unconstitutional.[5] The Commission continues to believe that it must accept the constitutionality of a statute enacted by Congress, and that the regulations implementing the statute are likewise constitutional.[6] In any event, the Commission believes that Congress properly delegated the authority to promulgate these regulations to the Commission and that the Commission has not exceeded its authority.

B. Multiple Assessment of Energy Units

Many entities question the propriety of the Commission assessing an annual charge on a unit of energy each time it moves from one regulated entity to another (multiple assessment).[7] In Order No. 472, the Commission adopted this approach in lieu of the method recommended in the petition for rehearing, *i.e.*, that the Commission impose a Gas Research Institute (GRI)-type surcharge which would attach to a unit of energy only once, as it was leaving the Commission's sales or transportation jurisdiction. In supporting their position that multiple assessment is unfair and inequitable, the petitioners argue that the Conference Report merely allowed, but did not require, the Commission to base its annual charge computations on:

(1) The type of Commission regulation which applies to such person such as gas pipeline or electric utility regulation;

(2) The total direct and indirect costs of that type of Commission regulation incurred during such year;

(3) The amount of energy—electricity, natural gas, or oil—transported or sold subject to Commission regulation by such person during such year; and

(4) The total volume of all energy transported or sold subject to Commission regulation by all similarly situated persons during such year.[8]

Petitioners further argue that multiple assessment unfairly comes from "upstream" pipeline suppliers and transporters;[9] unfairly assesses multiple charges against subsidiaries, parents, affiliates, and power pool members selling or transporting the same energy;[10] and unfairly assesses the same annual charge unit amount on gas traveling through long and short natural gas pipelines despite the "fact" that regulation of gas traveling through short pipelines requires far less Commission resources.[11]

The Commission continues to believe that its approach of assessing a unit of gas or electricity each time it is sold or transported by a jurisdictional entity is fully in accord with Congressional guidance that the Commission consider: (1) The amount of energy transported or sold in interstate commerce by *each* regulated entity, and compare that amount with (2) the total amount of energy transported or sold in interstate commerce by *all* similar entities.[12] In other words, the Commission is assessing *entities* on the basis of their throughput, rather than assessing *energy volumes* as such. As noted above, annual charges computed under a GRI-type approach would be based on a comparison quite different from that set forth in the Conference Report. They would be calculated by comparing (1) the amount of energy transported or sold by a regulated entity to other entities which are not subject to Commission jurisdiction and (2) the total amount of energy sold or transported by all regulated entities to other entities which are not subject to Commission jurisdiction.

The Commission disagrees that multiple assessment unfairly burdens the "downstream" natural gas pipelines (or electric utilities) and their customers. Those entities frequently pay multiple transportation expenses to receive their energy, due to the presence of "middlemen." For instance, in its rates, an "upstream" pipeline passes along to the "downstream" pipelines the cost of obtaining its natural gas pipeline certificates. Thus, the fact that a "downstream" pipeline incurs more certificate-related costs than an "upstream" pipeline merely results from the pipelines' respective locations, not from any unfairness in the regulations. The same principle applies to annual charges.

Moreover, as noted in the final rule, the annual charge assessments are based on the expenses incurred by the Commission in regulating the energy industries, not on the expenses of the industry members in acquiring their energy. Because the Commission incurs expenses in providing benefits not specifically sought through company filings (such as audits, publication of the *FERC Reports*, availability of staff for informal consultation, *etc.*) and also incurs expenses not fully recouped through filing fees regarding every sale and transportation it reviews and regulates or certificate it issues (even for those certificates issued to subsidiaries, parents, affiliates, and power pool members), the Commission is justified in recouping those expenses from the entities which file for and receive those rates and certificates, regardless of their relationship to their suppliers or purchasers. Similarly, the Commission must issue certificates and establish rates for small and large pipelines alike. The length of the pipe does not

---

[1] A list of timely applications for rehearing is included in Appendix A.

[2] Order No. 472, "Annual Charges Under the Omnibus Budget Reconciliation Act of 1986," 52 FR 21263 (June 5, 1987), III FERC Stats. & Regs. ¶ 30,746, *clarified*, Order No. 472-A, 52 FR 23650 (June 24, 1987), 39 FERC ¶ 61,316.

[3] Act of October 21, 1986, Pub. L. No. 99-509, Title III, Subtitle E, sec. 3401, 1986 U.S. Code Cong. & Ad. News (100 Stat.) 1874, 1890-1891 (to be codified at 42 U.S.C. 7178), I FERC Stats. & Regs. ¶ 6253.

[4] 52 FR 3128 (Feb. 2, 1987), IV FERC Stats. & Regs. ¶ 32,434.

[5] Petitions of Interstate Natural Gas Ass'n of America (INGAA) at 3-4; ANR Pipeline Co. and Colorado Interstate Gas Co. (ANR) at 1; Texas Eastern Transmission Corp. (Texas Eastern) at 1 and 5; United Distribution Cos. (UDC) at 1-3; Connecticut Natural Gas Corp. (Connecticut Natural) at 2; Consolidated Gas Transmission Corp. (Consolidated) at 10-11; Central Illinois Public Service Co. (CIPSCo) at 1-2; Southern Company Services Inc. (SCSI) at 2-9) Southern Company Services Inc., Blackstone Valley Electric Co., Boston Edison Co., Central Vermont Public Service Corp., Eastern Edison Co., El Paso Electric Co., EUA Power Corp., Florida Power Corp., Montaup Electric Co., Northern States Power Co., Public Service Co. of Indiana, Inc., Public Service Co. of N.H., and Wisconsin Electric Power Co. (collectively referred to as Electric Utilities Group at 2-9; Edison Electric Institute (EEI) at 2-4.

[6] *See, e.g.*, McDonald v. Board of Election Comm'rs, 394 U.S. 802, 809 (1969) ("Legislatures are presumed to have acted constitutionally. . . .")

[7] Petitions of Columbia Gas Transmission Corp. (Columbia) at 2-3; INGAA at 4-7; ANR at 3-5; Texas Eastern at 2-3 and 9; Consolidated at 2-6; SCSI at 9-11; Electric Utilities Group at 9-11.

[8] Conference Report at 239, 1986 U.S. Code Cong. & Ad. News at 3884, *quoted in* Petition of INGAA at 6.

[9] Petitions of ANR at 3-4; Columbia at 2-3; Consolidated at 4.

[10] Petitions of SCSI at 9-11; Electric Utilities Group at 10-11; Columbia at 2-3.

[11] Petitions of Consolidated at 3-4; League of Small Pipelines at 1-3.

[12] *See* 52 FR 21278, *citing* Conference Report at 239, 1986 U.S. Code Cong. & Ad. News at 3884.

necessarily affect the Commission's regulatory expenses.

C. Failure to Increase the Use of Filing Fees

Numerous petitioners criticize the Commission for failing to assess intervenors filing fees,[13] to assess larger filing fees against natural gas pipelines' competitors,[14] and to use more frequently its direct billing authority for computing filing fees.[15] As noted in the final rule, expansion or variation of the Commission's filing fee requirements is not within the scope of this rulemaking proceeding, the only purpose of which is to promulgate regulations concerning annual charges.[16] The Commission will continue to evaluate its fees annually and will refine its fee structure and change its fees as appropriate.[17]

CIPSCo asserts that the Commission should use its direct billing mechanism to recover costs on a case-by-case basis.[18] CIPSCo asserts that there is no reason why the Commission should limit its direct billing to instances where an individual entity presents an issue which will primarily benefit it and which will cost the Commission five times the average amount needed to decide issues of that kind.[19]

CIPSCo is correct that the Budget Act does not require the Commission to use only annual charges when recovering its costs. However, the Budget Act neither expands nor limits the Commission's authority to assess filing fees under the Independent Offices Appropriations Act of 1952 (IOAA).[20] Whatever costs the Commission could recover under the IOAA, it can still recover under that Act, but no more.

The Commission has already considered that extent to which it can and will utilize its direct billing authority under the IOAA. Under the IOAA, the Commission determined that the smallest practical unit for which it could develop a fee was a filing. It determined that the costs of formal evidentiary hearings initiated in connection with the services involved could not be recovered through a direct fee because of the "considerable practical difficulties in determining the primary beneficiary or beneficiaries of hearings generally." [21] Indeed, the Commission found that, given the way the necessary cost information is reported by Commission staff, "it is not administratively feasible to determine how fees should be assessed for this service [hearings]." [22] It is important to note that the IOAA only required that the Commission use the best *available* records to determine costs and that "new cost accounting systems will not be established solely for this purpose." [23]

D. Gross Receipts Tax Vulnerability

Texas Eastern asserts that the Commission's tracking methodology may subject the assessed amounts to gross receipts taxes in certain jurisdictions.[24] Texas Eastern is correct. However, such taxes would be subject to recovery in the pipelines' rate cases.[25]

E. Prorating of DOE Appeal Costs

Texas Eastern also criticizes the Commission for prorating only to interstate gas pipelines the costs associated with DOE adjustment requests and remedial orders, and for failing to take into account that the parties to the DOE cases are readily identifiable and should bear the costs.[26] The company misreads the final rule. Order No. 472 prorated the DOE appeal expenses across gas pipelines, electric utilities, power marketing agencies, and oil pipelines, not just the natural gas pipelines. Moreover, the Commission discussed at considerable length why it cannot collect the entire expense of these proceedings from the appellants.[27] Texas Eastern has raised no arguments not already fully considered and rejected in the final rule.

F. Filing Fee Credits

Texas Eastern challenges the final rule's approach of reducing program costs by the amount of filing fees collected in the prior year for that program. The company asserts that this approach results in a subsidy for some pipelines at the expense of others.[28] Texas Eastern's argument is correct, but irrelevant. As the Commission noted in the final rule, "under either approach [crediting the filing fees to the program or to the companies which paid the fees], some companies will, in varying degrees, subsidize other companies' shares of this agency's expenses.[29] The Commission concurred with numerous commenters that the crediting of individual companies for their filing fees "would undermine the Commission's filing fee system and would contravene the Commission's policy that those who use the Commission's services should pay more than those who do not." [30] Texas Eastern has raised no arguments which would lead the Commission to alter these conclusions.

G. Carrying Costs for Natural Gas Annual Charges

Petitioners argue that annual charge recipients choosing the annual charge adjustment (ACA) clause option (rather than the rate case option) by which to recoup their annual charges should be able to recoup the time value of the charges.[31] Commenters point out that the recipients will either have to borrow money at some cost to pay the charges or forego alternate interest-paying investments.[32] One commenter suggests that the Commission resolve this problem by providing for "either an interest-bearing mechanism or a built-in, one time interest component in the [ACA] unit charge" which pipelines may pass through to their customers.[33]

The Commission agrees that pipelines should be given an opportunity to collect annual charges carrying costs, to recognize the time value of money. However, the mechanism for seeking recovery of this type of expense currently exists. In a rate proceeding, a pipeline may seek to recover this cost and other such cash working capital

---

[13] Petitions of INGAA at 7–9; Texas Eastern at 4, 12–13.

[14] Petition of INGAA at 7.

[15] Petition of CIPSCo at 2, 10–12.

[16] 52 FR at 21270–21271. The Commission notes that § 381.107(b)(3) of its regulations permits direct billing of intervenors. 18 CFR 381.107(b)(3) (1987).

[17] 52 FR 21271.

[18] Petition of CIPSCo at 10–11. *Cf.* Petition of Arizona Public Service Co. (APSCo) at 3–4 and 5, in which the company argues that filing fees should recover all the Commission's expenses.

[19] Petition of CIPSCo at 10–11, referring to the standard established for the use of the direct billing mechanism, Order No. 435, "Fees Applicable to Electric Utilities, Cogenerators, and Small Power Producers," 50 FR 40347–40351 (Oct. 3, 1985), FERC Stats. & Regs. (Regulations Preambles 1982–1985) ¶ 30,663 at 31,458–31,459, *reh'g denied,* 51 FR 35347 (Oct. 3, 1986), III FERC Stats. & Regs. ¶ 30,713.

[20] 31 U.S.C. 9701 (1982).

[21] Order No. 435, 50 FR at 40351.

[22] *Id.*

[23] *Id., quoting* Budget Circular A–25 at 3.

[24] Petition of Texas Eastern at 10.

[25] The Commission notes that the amount attributable to a gross receipts tax on annual charges is quite small. Assuming a 0.75 percent tax rate on sales-for-resale receipts (such as in New York), a typical natural gas pipeline company would be assessed only about .019 percent of its net income (0.75 percent of the amount by which the annual charges will reduce the gas pipeline industry's net income [2.5 percent]), or $.000015 per Mcf (0.75 percent of the per Mcf ACA unit charge of $.0021).

[26] Petition of Texas Eastern at 11.

[27] 52 FR 21266.

[28] Petition of Texas Eastern at 12.

[29] 52 FR 21267.

[30] *Id.*

[31] For a description of these two options, *see* 52 FR 21278–21279.

[32] Petitions of INGAA at 6; Consolidated at 9.

[33] Petition of Consolidated at 9.

costs. Section 154.63 of the Commission's regulations provides for the filing of a fully developed lead-lag study for purposes of determining whether a pipeline experiences a net expense payment lag in its cash items.[34] The Commission believes that this is the appropriate vehicle for providing pipelines the opportunity to collect the time value of the money used to pay annual charges.

H. Incomplete Recovery of Natural Gas Annual Charges Through Passthrough Mechanism

Two petitioners argue that the annual charge adjustment mechanism is flawed. They claim that the mechanism does not permit downstream gas pipelines to flow through to their customers all of the annual charge assessments passed on to the downstream pipelines in the rates of upstream pipelines.[35] Texas Eastern asserts that the Commission's ACA methodology exposes pipelines to the risk of undercollection.[36] INGAA raises a similar point and also argues that the collection mechanism has the potential for anticompetitive results because pipelines will be required to recover part of their annual charges in the commodity portion of their rates.[37]

Generally, the Commission's gas rate regulation does not guarantee the actual recovery of costs. It only guarantees the opportunity to recover costs. Actual recovery depends on market factors.[38] The annual charge regulations as modified herein provide natural gas pipelines the opportunity to recover both their direct and indirect annual charge expenses.

The Commission adopted the ACA mechanism in order to offer pipelines an alternative to recover of annual charges through Natural Gas Act section 4(e) rate filings.[39] The ACA charge is intended to provide for recovery of a pipeline's own annual charges costs but not the annual charges incurred by other pipelines. To the extent that annual charges are included in the cost of service, and hence the rates, of upstream pipelines, there is no reason why this particular cost component warrants special treatment in the rates of the downstream pipeline purchasing the service. Thus, if a pipeline purchases gas from another pipeline that includes an ACA charge in its sales rate, the purchasing pipeline would treat the ACA charge as part of the purchase price and pass the cost through in its rates as a purchased gas cost. Likewise, if a pipeline ships gas via another pipeline that includes an ACA charge in the transportation rate, the shipping pipeline would pass through the charge in its rates as a transportation cost (booked in Account No. 858—Transportation and Compression by Others).

The annual charge costs included in the rates of upstream pipelines are recoverable, therefore, by the downstream pipeline, and the petitioners have not shown why automatic passthrough of these costs in their ACA charges is necessary. Furthermore, the passthrough of such indirect annual charge expenses would be quite difficult to administer because each pipeline would require a different ACA unit charge, depending on the volumes of gas and the quantities of transportation and storage services it purchases from other pipelines. The ACA mechanism established by the Commission provides for an industry-wide rate calculated at the time annual charges are assessed. If upstream pipeline ACA charges are also included in each pipeline's own ACA unit charge, then each ACA unit charge would be different and the Commission would need to review and verify each calculation.

Texas Eastern points out that the ACA mechanism exposes a pipeline to the risk of underrecovery because the pipeline's throughput over which the ACA is collected may be lower than the throughput on which it was assessed. By the same token, however, the pipeline may reap a benefit if its throughput increases. Over the long term, discrepancies in throughput should balance, because the following year's annual charge will be based on the changed throughput. Moreover, if a pipeline does not wish to risk such underrecovery, it may instead seek to recoup its annual charge expenses in a rate proceeding.

INGAA complains that recovery of annual charge costs in commodity rates is anticompetitive. The Commission disagrees. All interstate pipelines are assessed the same unit charge, so there is no adverse competitive effect as between pipelines. Furthermore, this unit charge, 2.1 mills per Mcf for 1987, should have a *de minimis* effect on gas costs and competition with alternative fuels.

I. Natural Gas System Storage Double Assessment

On June 17, 1987, the Commission issued Order No. 472-A, which clarified that the only natural gas storage volumes to be considered in assessing annual charges will be those storage volumes not also included in the reporting pipeline's sales and transportation volumes. Order No. 472-A was designed to prevent the double assessment of storage volumes inherent in Order No. 472, which provided for the calculation of annual charges based upon all sales and transportation volumes plus all volumes delivered to underground storage. Order No. 472-A recognized that certain volumes delivered to storage will also be sold or transported, and endeavored to alleviate the double assessment of such volumes. While Order No. 472-A precluded the double assessment of all volumes that were delivered to storage and either sold or transported in the same calendar year, it did not preclude the double assessment of volumes delivered to storage but not removed from storage during the same calendar year. ANR, Consolidated, and Columbia object to the Commission's double assessment of

---

[34] 18 CFR 154.63 (1987).

[35] Petitions of Columbia at 4; Consolidated at 6–7.

[36] Petition of Texas Eastern at 10–11.

[37] Petition of INGAA at 6–7.

[38] *See, e.g.*, Panhandle Eastern Pipeline Co., 38 FERC ¶ 61,164 at 61,470 (1987).

[39] Pipelines wishing to take advantage of the ACA mechanism must file a tariff sheet with the Commission, as they do when seeking to pass through their GRI-related expenses pursuant to § 154.38(d)(5) of the Commission's regulations. *See* 18 CFR 154.38(d)(5) (1987). Pipelines' ACA-related tariff filings must be made pursuant to § 154.38(d)(6) of the Commission's regulations. This regulation is amended to require that the ACA-related tariff sheets include language specifying the purpose and manner of collecting the ACA (to collect an ACA per unit charge as specified by the Commission, applicable to all the pipeline's sales and transportation schedules), the per unit amount of the ACA (2.1 mills per Mcf for purposes of recouping the pipelines' FY 1987 annual charges bill), the proposed effective date of the tariff change (30 days after the filing of the tariff sheet, unless a shorter period is specifically requested and justified in a waiver petition), and an expression of the pipeline's intent not to recover any annual charges recorded in FERC Account No. 928 in a NGA section 4 rate case. These tariff sheets must be accompanied by a $4,700 filing fee pursuant to § 381.204 of the Commission's regulations. 18 CFR 381.204 (1987). Subsequent tariff filings amending the initial ACA-related tariff sheet must be accompanied by the filing fee specified in § 381.205 of the Commission's regulations. However, if a pipeline files in 1987 a revision of an ACA-related tariff filing for the purpose of complying with the new requirements stated above, the pipeline will not be required to pay a filing fee for the revised tariff sheet. A pipeline seeking to take advantage of the ACA mechanism must file a tariff sheet for *all* its sales and transportation rates.

A pipeline availing itself of this option should account for its annual charges by charging the amount to Account No. 928, Regulatory Commission Expenses, of the Commission's Uniform System of Accounts. Section 382.106(a) of the Commission's annual charges regulations failed to specify the account into which these pipelines should charge their annual charges expenses. *See* 52 FR 21294. The Commission has amended that regulation to correct this omission.

annual charges on these unremoved system supply storage volumes.[40]

The Commission in Order No. 472-A intended to remove from the annual charges calculations all storage volumes other than contract storage volumes.[41] Order No. 472-A did not fully accomplish that objective. The Commission therefore will give natural gas pipelines the opportunity to inform the Commission of the volumes of gas or LNG which were: (1) Delivered to storage as system supply storage and subsequently sold or transported during calendar year 1986, (2) delivered to storage as system supply storage and intended for transportation or sale in a subsequent calendar year, and (3) delivered to storage as contract storage volumes. Natural gas pipelines may file this data under oath with the Commission by close of business, November 25, 1987.[42] Pipelines should file the data with the Office of the Secretary, Att'n: Jewel Poore, Division of Management Systems. When the Commission recomputes the 1987 annual charges this fall (in order to reflect the Commission's actual FY 1987 expenses),[43] it will also consider such data and will revise the natural gas pipelines' bills to remove assessments based on system supply storage intended for transportation or sale in a subsequent year. Any company that fails to file the data requested in this order will not benefit from the recalculation of storage volumes for the 1987 annual charge bills.

For future years, the Commission will require such data in its Form Nos. 2 and 2-A. To this end, the Commission is amending its instructions for these forms to require that every natural gas pipeline provide such data as part of a footnote on pages 520-521 of Form No. 2 or pages 18-19 of Form No. 2-A.[44]

J. Natural Gas Field Sales Double Assessment

Columbia argues that pipeline production field sales reflected in its Form No. 2 should not be included in calculating its annual charges because they have also been included in Columbia's transportation volumes.[45] The Commission in Order No. 472 did not intend such a double assessment. The Commission will therefore give a natural gas pipeline the opportunity to inform the Commission of the volumes of pipeline production field sale which were included in both the sales and the transportation totals in Form No. 2, page 521, lines 42 and 46, or Form No. 2-A, page 18, lines 11 and 13-15. The pipelines may file this data under oath with the Commission by close of business November 25, 1987.[46] Pipelines should file the data with the Office of the Secretary, Att'n: Jewel Poore, Division of Management Systems. When the Commission recomputes the 1987 annual charges this fall (in order to reflect the Commission's actual FY 1987 expenses),[47] it will also consider such data and will revise the pipelines' bills to correct such double assessment. A pipeline company that fails to file the data requested in this order will not benefit from this correction in the recalculation of the 1987 annual charge bills.

In future years, the Commission will require such data in its Form Nos. 2 and 2-A. To this end, the Commission is amending its instructions for these forms to require that every natural gas pipeline provide such data as part of a footnote on pages 520-521 of Form No. 2 or pages 18-19 of Form No. 2-A.[48]

K. Exemption of Natural Gas Producers and Intrastate Pipelines

INGAA and Texas Eastern object to the Commission's exemption of natural gas producers and section 311 intrastate pipelines.[49] However, these petitioners raise no arguments not previously considered and rejected in the final order.[50]

L. Assessment of Limited Jurisdiction Certificate Holders

Connecticut Natural seeks a clarification that Order No. 472 does not apply to natural gas companies holding limited jurisdiction certificates under section 7(c) of the Natural Gas Act.[51] The company also requests the Commission to revise § 382.102(a) of its annual charges regulations to provide that companies holding limited jurisdiction certificate authority are exempt from annual charges. As already noted in the final rule, the Commission intends that natural gas companies holding limited jurisdiction certificates not be assessed annual charges.[52] The definition of "natural gas pipeline company" in § 382.102(a) of the Commission's annual charges regulations is amended to reflect this intent.

M. Special Requests From Natural Gas Companies

1. *National Fuel Gas Distribution Corporation (NFGDC).* In the Commission's Notice of Proposed Rulemaking issued in this proceeding on January 28, 1987,[52a] NFGDC was listed as a "Section 7(f)" company. In its comments, NFGDC advised the Commission that its section 7(f) status had been vacated pursuant to the Commission's Order of November 4, 1986, in Docket No. CP86-351, which

---

[40] Petitions of ANR at 5-6; Consolidated at 9-10; Motion for Clarification of Columbia at 1-3.

[41] *See* 52 FR 23650 (Part V) (June 24, 1987).

[42] To facilitate such natural gas pipelines' timely filing of this data, the Commission is serving a copy of this order on each pipeline which is listed in Appendix B of Order No. 472 and which either reported storage volumes in its 1986 annual report or filed a 1986 Form No. 2-A. This service is by United States Mail on the date of issuance of this order.

[43] *See* 52 FR 21269. Any adjustments will be reflected by a credit to the 1988 annual charges bills of those companies filing the data specified above.

[44] The instructions which Order No. 472-A added to these pages (52 FR 23650 [June 24, 1987], 39 FERC ¶ 61,316) are deleted in their entirety, and are replaced with the following language:

Also indicate by footnote (1) the system supply volumes of gas which are stored by the reporting pipeline during the reporting year and also reported as sales, transportation and compression volumes by the reporting pipeline during the same reporting year, (2) the system supply volumes of gas which are stored by the reporting pipeline during the reporting year and which the reporting pipeline intends to sell or transport in a future reporting year, and (3) contract storage volumes.

This language supplements the instructions which Order No. 472 added to these pages (see 52 FR 21274 n. 151 and 21297-21300 [Appendices C and D]). Revised pages 520-521 and 18-19 are in Appendices B and C and contain all instructions added to those pages as a result of this rulemaking proceeding.

The Commission also notes that it is clarifying instruction 4 on pages 520-521 of Form No. 2 and instruction 2 on pages 18-19 of Form No. 2-A to replace the reference to "nonjurisdictional gas" with the reference to "gas not subject to Commission regulation." The Commission has incorporated this change into the revised pages 520-521 and 18-19. Finally, the Commission notes that it is making a similar revision in § 382.202 of the annual charges regulations by deleting the word "jurisdictional" from the phrase "jurisdictional gas subject to Commission regulation."

[45] Petition of Columbia at 3-4.

[46] To facilitate such natural gas pipelines' timely filing of this data, the Commission is serving a copy of this order on each pipeline which is listed in Appendix B of Order No. 472. This service is by United States Mail on the date of issuance of this order.

[47] *See* 52 FR at 21269. Any adjustments will be reflected by a credit to the 1988 annual charges bills of those companies filing the data specified above.

[48] The new instructions added to pages 520-521 of Form No. 2 and pages 18-19 of Form No. 2-A concerning pipeline production field sales are:

Also indicate the volumes of pipeline production field sales which are included in both the company's total sales figure and the company's total transportation figure (lines 42 and 46 of page 521 on Form No. 2, or lines 11 and 13-15 of page 19 on Form No. 2-A).

Revised pages 520-521 and 18-19 are attached as Appendices B and C of this order, and contain all instructions added to those pages as a result of this rulemaking proceeding.

[49] Petitions of INGAA at 7-9; Texas Eastern at 1, 5-9.

[50] *See* 52 FR 21271-21273.

[51] Petition of Connecticut Natural at 1-3, referring to 15 U.S.C. 717f(c) (1982).

[52] *See* 52 FR at 21276.

[52a] 52 FR 3128 (Feb. 2, 1987), IV FERC Stats. & Regs. ¶ 32,434.

issued NFGDC a certificate to transport gas to Eastern Natural Gas Company (Eastern) and to construct and operate measuring facilities.[53] In Order No. 472, the Commission deleted NFGDC from the list of section 7(f) companies and placed it upon no other list. It also exempted all section 7(f) companies from annual charges.

NFGDC seek clarification that its absence from the lists appearing in Appendix B to Order No. 472 means that it is not subject to annual charges. In the November 4, 1986 order, the Commission limited its jurisdiction over NFGDC to the certificated services.[54] The order expressly stated that certification of the services to Eastern did not affect the nonjurisdictional status of NFGDC's other operations.[55] As a limited jurisdiction certificate holder, NFGDC is not subject to annual charges.[56]

2. *Phillips Petroleum Company.* Both Phillips Petroleum Co. and Marathon Oil Co. were listed as "Importers with NGA Sections 3 and Presidential Permit Authority Only," one of the classes of companies not subject to annual charges. Phillips states that these two companies export rather than import natural gas from the Kenai LNG plant in the Cook Inlet area of Alaska, and that Phillips 66 Natural Gas Co. has succeeded to export permit previously held by Phillips Petroleum Co. relating to the Kenai LNG sale. The Commission will correct its record to reflect these changes. However, as neither company pays annual charges, these corrections will not affect the amount of any company's annual charge bill.

N. Oil Not Subject to the Commission's Oil Transportation Jurisdiction

Eureka Pipe Line Co., Natural Transit Co. and Arco Pipe Line Co. argue that the Commission inadvertently failed to exclude revenue from the intrastate transportation of oil in computing annual charges for oil pipelines. It was not the Commission's intent to include such revenue, for to do so would contravene Congressional intent that the Commission base its annual charges assessments on "the amount of energy . . . transported or sold subject to Commission regulation." [57]

The Commission is therefore amending the definition of "operating revenues" in § 382.102(o) of the annual charges regulations, and will give a jurisdictional oil pipeline the opportunity to file a sworn statement which separates: (1) The revenue in FERC Account Nos. 200, 210 and 220 derived from the interstate transportation of oil from (2) the revenue in FERC Account Nos. 200, 210 and 220 derived from the intrastate transportation of oil. Such statements must be filed with the Commission by close of business, November 25, 1987.[58] Pipelines should file the data with the Office of the Secretary, Att'n: Jewel Poore, Division of Management Systems. When the Commission recomputes the 1987 annual charges this fall (in order to reflect the Commission's actual FY 1987 expenses),[59] it will also consider such data and will revise the oil pipelines' bills to reflect only the revenue derived from the interstate transportation of oil. A company that chooses not to file the data requested in this order will not benefit from the exclusion of intrastate transportation revenue in the recalculation of the 1987 annual charge bills.

In the future, the Commission will require this data in its Form No. 6. Therefore, the Commission is amending its instructions for Form No. 6 to require that every oil pipeline provide such data as part of a footnote on page 301 of that form.[60]

O. Proposed Apportionment of Electric Program Costs

In the final rule, the electric program costs (with the exception of the costs of regulating PMAs) are apportioned among IOUs based upon each IOU's total jurisdictional adjusted sales for resale and adjusted coordination sales. Some IOUs seek rehearing on this issue, asserting that there is no relationship between the number of kilowatt-hours sold and the budgetary impact of regulation of their rate schedules on the Commission.[61]

The Commission is not persuaded by these previously raised arguments. As Order No. 472 stated, the Conference Report indicates Congress' intent that the annual charges be assessed on the basis of the "annual sales or volumes transported." [62]

The Commission has been asked to reconsider its decision to include certain long-term coordination and transmission sales in the adjusted sales for resale category. APSCo alleges that these transactions "normally entail a nominal review by the Commission upon submission of the initial contract." [63] The Commission disagrees with APSCo's argument. Rates for long-term coordination and transmission sales usually require greater use of Commission resources than those for sales which have a duration of less than five years. Long-term sales rates tend to be based upon fully distributed costs and require cost projections (test year data) which must be reasonable. Rates for short-term coordination or transmission sales, on the other hand, are not necessarily exclusively cost-based, but may be made for many non-cost reasons as well.

CIPSCo maintains that the Commission should not assess annual charges on transmission rate volumes because the charges would discourage voluntary transmission. CIPSCo also asserts that these rates benefit the buyer or seller of the power more than the transmitting entity.[64] The Commission believes that the assessment of annual charges on the order of 1/100 of a mill per kilowatt-hour should have no appreciable effect on voluntary transmission, especially in light of the facts that transmitting entities often add up to 1 mill per kilowatt-hour to the otherwise-justified rates for unquantifiable costs. The Commission has seen no evidence that this additional one mill has jeopardized the provision of voluntary transmission service.[65] *A fortiori*, the addition of 1/100 of a mill would not discourage these transactions.

SCSI objects to the Commission's inclusion of certain unit sales in the adjusted sales for resale category. SCSI's assertion brings to light a fundamental misunderstanding reflected

---

[53] 37 FERC ¶ 61.082.

[54] *Id.* at 61.214.

[55] *Id.*

[56] *See* Part II L *supra*.

[57] Conference Report at 239, 1986 U.S. Code Cong. & Ad. News at 3834.

[58] To facilitate oil pipeline's timely filing of this data, the Commission is serving a copy of this order on each such pipeline listed in Appendix E of Order No. 472. This service is by United States Mail on the date of issuance of this order.

[59] *See* 52 FR 21269. Any adjustments will be reflected by a credit to the FY 1988 annual charges bills of those companies filing the data specified above.

[60] A revised page 301 of Form No. 6 is in Appendix D. The new instructions are:

Also indicate by footnote: (1) The revenues in Account Nos. 200, 210 and 220 which are derived from the interstate transportation of oil, and (2) the revenues in Account Nos. 200, 210 and 220 which are derived from the intrastate transportation of oil. The sum of the two revenue figures should equal the total revenues in Account Nos. 200, 210 and 220.

[61] Petitions of APSCo at 5, 7; CIPSCo at 8.

[62] 52 FR 21287, *quoting* Conference Report at 239, 1986 U.S. Code Cong. & Ad. News at 3884.

[63] Petition of APSCo at 6.

[64] Petition of CIPSCo at 17.

[65] *See* Order No. 84, "Regulations Limiting Percentage Adders in Electric Rates for Transmission Services," 45 FR 31294 (May 13, 1980), FERC Stats. & Regs. (Regulations Preambles 1977–1981), ¶ 30.153, *reh'g denied*, 12 FERC ¶ 61.017 (1980); Allegheny Power System, 20 FERC ¶ 61.336 (1982).

in many petitions for rehearing. The Budget Act does not require that the Commission tailor the annual charges so closely as to, in effect, direct bill all jurisdictional entities. The Commission may utilize reasonable generalized categories for assessment. In general, the rates for long-term unit power sales require a similar use of Commission resources to that required for other sales-for-resale transactions. Consequently, the assessment of the same annual charge per kilowatt-hour for some unit sales as for sales for resale does not give rise to an unreasonable subsidy, nor is it likely to discourage unit power sales.

SCSI maintains that the final rule creates inequities by assessing annual charges to energy transactions among subsidiaries, parents, affiliates, or power pool members. In support of this contention, SCSI makes the same arguments previously raised in response to the NOPR, *i.e.*, these transactions are not normally intended to generate a profit, and such annual charges may produce multiple billing for the same unit of electricity.[66] SCSI further asserts that these types of transactions should be exempted because annual charges would discourage voluntary interconnection and coordination of electric facilities which Congress, in section 202(a) of the Federal Power Act (FPA),[67] specifically instructed the Commission to promote and encourage.

The Commission has already adequately addressed the issue of the role that the profit motive is to play in the assessment of annual charge. Order No. 472 also adequately justified the so-called "multiple billing" for the same kilowatt-hour.[68] The Commission intends to continue encouraging voluntary interconnection.[69] However, the Commission does not believe than an annual charge of the magnitude being charged will affect an entity's decision of whether to engage in voluntary interconnection and coordination.

P. Absence of an Automatic Tracking Mechanism for Electric Annual Charges

Several IOUs argue that the Commission should reconsider its decision not to establish an automatic tracking mechanism for near-contemporaneous recovery of the electric industry's annual charges.[70] The IOUs are particularly concerned with what they characterize as arbitrary and discriminatory treatment that they will receive compared to the natural gas pipelines (which are allowed to use a rate adjustment mechanism to recover annual charges).

The Commission continues to believe that the IOU's alleged need for automatic tracking mechanisms does not outweigh the Commission's long-established policy against such tracking in the electric area. In contrast to fuel costs, which are permitted to be recovered through an automatic adjustment clause, the annual charge expense for electric utilities is a relatively stable cost item which is reasonably easy to project, once the annual charge program is underway. Second, the magnitude of the annual charge expense is not a major element of an electric utility's cost of service. Therefore, the Commission does not believe that annual charge expenses for electric utilities are an appropriate cost item for recovery through an annual charges adjustment clause. However, as stated in the final rule, these annual charge expenses are more appropriately recoverable via inclusion in test period data in an FPA Section 205 rate application.

With respect to the alleged discriminatory treatment of allowing ACA surcharge procedures for the natural gas pipelines and not the electric utilities, the discussion in the final rule as to this exception sufficiently addresses the arguments made by the IOUs in their rehearing petitions.[71]

Q. Cogeneration and Small Power Production

In late-filed request for rehearing, Edison Electric Institute (EEI) argues that the Commission should assess annual charges to cogenerators and small power producers rather than require the IOUs to absorb the cost of regulating these entities.[72] First, EEI argues that under the Budget Act the Commission does not have the authority to exempt all these entities from assessment of annual charges. According to EEI, the Commission only has the power to waive, on an individual basis, responsibility for part or all of an annual charge payment after it has been assessed.[73] Second, EEI

---

[66] SCSI argues that the Commission failed to identify significant additional costs associated with the filing of rate schedules for these types of transactions. SCSI also argue that the Commission has already recovered through the filing and service fees the cost of regulating these transactions. Petitions of SCSI at 9–10; Electric Utilities Group at 10–11. SCSI misunderstands the nature of the annual charge. Costs which are directly attributable to these transactions are recovered in the filing fees or not recovered from the responsible entities for policy reasons. All costs not recovered through fees must be recovered through the annual charges. That is what Order No. 472 does.

[67] 16 U.S.C. § 824a(a) (1982).

[68] 52 FR at 21285–21286.

[69] *FERC as a Least-Cost Regulator: Hearing Before the Subcommittee on Energy Conservation and Power of the Committee on Energy and Commerce, House of Representatives*, 97th Cong., 2d Sess. 30 (April 23, 1982) (statement of C.M. Butler, III, Chairman, FERC). *See also FERC Wants Volunteers for Experiments with Bulk-Power Deregulation*, Inside F.E.R.C., April 26, 1982, at 1.

[70] *See* Petitions of APSCo at 8; SCSI at 11–12; Electric Utilities Group at 12–13; EEI at 13; and CIPSCo at 19–22.

[71] In addition, there are significant differences between the electric and the natural gas regulatory programs. For example, electric utilities provide a much wider range of classes of services than do gas utilities. The rates, terms and conditions for these electric services are typically established by individual contracts. This accounts for the approximately 3,000 to 4,000 electric rate schedules on file with the Commission for fewer than 200 IOUs.

A revision in these contracts to allow special rate surcharge procedures for the annual charges similar to those adopted for the natural gas program would require a utility to file a separate filing with the Commission for each of its rate schedules, and annual revisions thereafter. It would require the Commission to notice every filing and subject to that filing to litigation.

Natural gas pipelines, however, typically have only one tariff. Consequently, implementation of ACA surcharge procedures would involve a significant ongoing process that would be unduly burdensome to implement compared to the natural gas pipelines program.

The Commission notes that implementing such a system would also present a burden on the electric utility because it would have to revise its rate schedules annually in order to incorporate the most recent annual charge data. Additionally, such a filing would require the utility to pay a filing fee for each periodic revision.

[72] EEI filed its Request for Rehearing one day after the statutorily-imposed 30-day deadline for such filings. The Request was filed with an accompanying motion for extension of time to file the Request which alleged that the Request was untimely filed through no fault of the firm representing EEI. EEI also argues that the FPA does not govern the rule to be applied to the late rehearing. Rather, EEI maintains that the Budget Act gives the Commission discretion concerning the deadline for rehearing requests.

The Commission disagrees. This proceeding was instituted under both the FPA and the Budget Act. The Budget Act contains no provision addressing this issue. Section 313(a) of the FPA requires a petition for rehearing to be made within thirty days after the issuance of a Commission order. 16 U.S.C. 825 1(a) (1982). EEI concedes that it did not file its petition within this statutory deadline. The Commission has no discretion to waive the statutory deadline. *See* Kansas Cities v. FERC, 723 F.2d 82 (D.C. Cir. 1983). While the Commission is precluded from considering the late pleading filed by EEI as a request for rehearing, it does have the discretion to consider the pleading as a motion for reconsideration. *See generally* Modesto and Turlock Irrigation Districts and City and County of San Francisco, 24 FERC ¶ 61,152 (1983). EEI was the only entity to raise the issues of assessing annual charges to cogenerators and small power producers. The Commission's decision to view EEI's petition as a reconsideration request gives those arguments one final airing. However, because EEI did not file a timely rehearing request, it will not be able to raise the issues in a later judicial appeal. FPA § 313(b), 16 U.S.C. 825 1(b) (1982).

[73] Petition of EEI at 6–7.

argues that, even if the Commission has the power to exempt these entities from the assessment of annual charges, there is no sound policy reason to do so.[74] According to EEI, "(i)t seems utterly implausible that [the cogeneration and small power production program's] costs [of two cents per kilowatt of installed capacity] could have a 'chilling effect' on the development of cogeneration or small power production capacity." [75] Third, EEI proposes that the Commission correct the problem of not knowing which cogenerators and small power producers to assess annual charges by adopting a filing requirement specifically for that purpose.

The Commission disagrees with EEI's interpretation of the legislative grant of waiver or exemption authority. It is true that the House bill's wholesale exemption for cogenerators and small power producers was not adopted in the Budget Act. However, the Conference Report specifically addressed the issue, saying that the Commission retained the power to achieve the same result.[76] The result to which the conferees referred was the wholesale exemption of these entities from the assessment of annual charges, not the waiver of all or part of an annual charge on an individual basis.

EEI asserts that the Commission should utilize the Budget Act to recover the as-yet unrecovered two-thirds of the costs of regulating these entities. The Commission is in the process of reconsidering recovery of these costs through IOAA filing fees. In light of the possibility that the Commission may in fact decide to recovery through revised filing fees the entire cost of regulating these entities, it will deny EEI's request. At that time, interested persons will be allowed the opportunity to make relevant comments. The Commission also believes that the administrative burden of implementing and administering a new filing requirement outweighs any resulting monetary benefits to be gained from assessing annual charges to these entities.

R. Special Requests From Electric Entities

1. *Central Illinois Public Service Company (CIPSCo).* CIPSCo has requested that the Commission clarify the status of capacity participation sales which it makes to some of its customers. According to CIPSCo, these transactions, "include provisions for supplemental power, economic energy and nondisplacement energy, emergency or back-up energy, spinning reserves, transmission and many other provisions found in traditional coordination and interchange transactions." [77]

CIPSCo's Capacity Participation Agreement represents several different types of services contained within a single contract. These different services are to be used during different operating circumstances of the general plant providing the service. The central service being provided under this agreement is long-term firm capacity service. Long-term firm capacity service is properly included in the "adjusted sales for resale" category for annual charge purposes. CIPSCo refers to the other services, such as economy, emergency, supplemental power, or back-up energy as "traditional coordination and interchange transactions." [78] The Commission believes that only these services are properly categorized as "adjusted coordination sales" for annual charge purposes. CIPSCo requests that the Commission state that *all* capacity participation arrangements are "coordination sales." The Commission does not believe such a broad pronouncement would be appropriate in light of the various services being provided in this arrangement; the separate and distinct operating conditions and terms and conditions; as well as the differing terms and conditions of these various services.

CIPSCo should separate these transactions occurring under this single agreement into the two categories of adjusted sales for resale and adjusted coordination sales, as these categories are defined in Order No. 472. This separation will facilitate the proper assessment of annual charges.

2. *Texas Utilities Electric Company (TUECo).* TUECo requests reconsideration of the Commission decision to categorize it as a public utility for annual charges purposes. This objection stems from TUECo's claim that it is not a "public utility" as defined by the FPA. TUECo refers to the Notice of Proposed Rulemaking (NOPR) in this proceeding which erroneously concluded that the Conference Report instructed the Commission to use the House bill as a guide to determine every entity to be assessed charges.[79] In Order No. 472, the Commission expressly refused to adopt the NOPR's conclusion.[80] Thus, while TUECo's assertion that it is not a "public utility" within the meaning of the FPA may be true, this does not exclude TUECo from being a "public utility" within the meaning of the Budget Act. TUECo is a "public utility" for purposes of the Budget Act because it owns or operates facilities used for interconnection and wheeling under sections 210, 211, and 212 of the FPA.[81]

Order No. 472 defines the term "public utility" for the purposes of the Commission's authority to assess annual charges pursuant to the Budget Act. While the Budget Act term is the same as that in the FPA, the respective definitions are not. The very entities (other than governmental entities) that are excluded from the FPA term "public utility" are included in the Order No. 472 term "public utility." TUECo meets Order No. 472's definition of "public utility" and it meets the final rule criteria for annual charge assessment: That it files a Form No. 1 with the Commission and it has a rate schedule on file. The Commission's inclusion of TUECo in the list of entities to be assessed annual charges is therefore appropriate.

3. *Houston Lighting and Power Company (HL&PCo).* HL&PCo requests rehearing relying on the very same misinterpretation of the Budget Act's legislative history as does TUECo. It is irrelevant for purposes of the final rule whether HL&PCo meets the FPA definition of "public utility." HL&PCo admits that it will own or operate facilities subject to the jurisdiction of the Commission under sections 210, 211 and 212 of the FPA. Those sections of the FPA are in Part II of the statute; therefore HL&PCo meets the definition of "public utility" for purposes of the final rule. Because HL&PCo files a Form No. 1 and has a transmission rate schedule on file, it will be required to pay annual charges, if the charges are not waived.

HL&PCo also argues that, since it is not the direct beneficiary of the Commission's regulatory services, it is not fair or equitable to assess it annual charges. HL&PCo claims that it is not "directly affected" by the Commission's regulations. Furthermore, HL&PCo

[74] Petition of EEI at 8–9.

[75] Petition of EEI at 9.

[76] Conference Report at 239, 1986 U.S. Code Cong. & Ad. News at 3884.

[77] Petition of CIPSCo at 13–14.

[78] *Id.*

[79] *See* Notice of Proposed Rulemaking, Part VI B, 52 FR 3128 at 3136–3137 (February 2, 1987). The House bill restricted the set of entities that could be assessed annual charges to only those entities which were defined as "public utilities" in the FPA. The FPA defines public utility as:

Any person who owns or operates facilities subject to the jurisdiction of the Commission under this subchapter (other than facilities subject to such jurisdiction solely by reason of section 824i, 824j, or 824k of this title).

16 U.S.C. 824(e) (1982).

[80] 52 FR 21283 n. 276.

[81] *See, e.g.*, Central Power & Light Company, 17 FERC ¶ 61,078 (1981), *modified*, 18 FERC ¶ 61,100 (1982).

claims that the filing fees it paid covered all of the costs of Commission regulation of its transmission rate schedule.

HL&PCo misunderstands congressional intent to have entities which are "directly affected" by Commission regulation pay annual charges. In fact, HL&PCo's understanding of the term "directly affected" would make the Budget Act superfluous. HL&PCo would have the Commission assess annual charges only to entities to which it could specifically attribute a particular regulatory benefit.

If it were possible to assign directly all the Commission's costs with that level of specificity, then the Commission could recover all of its costs through IOAA fees. This cannot be done because there are many aspects of Commission regulatory activities which generally benefit jurisdictional entities and which cannot be specifically assigned. Furthermore, the Commission's resources must always be available to deal with any activities in which HL&PCo or any other IOU or their customers may wish to engage in before the Commission, *e.g.*, rate changes, investigations, and complaints. Consequently, HL&PCo is "directly affected" by Commission regulation and will be assessed annual charges based upon energy transactions carried out pursuant to the rate schedule it has on file with the Commission.[82]

4. *Citizens Energy Corporation (CEC).* On June 12, 1987, CEC requested that the Commission confirm CEC's understanding that it will not be assessed annual charges. CEC points out that the Commission waived any requirements that it file a Form No. 1 or 1-F or any other reports or maintain its accounts in accordance with the Commission's Uniform System of Accounts.[83]

CEC correctly points out that its name was excluded from Appendix F in Order No. 472 which listed the electric entities to be assessed annual charges. The Commission continues to believe that CEC should not be assessed annual charges so long as it does not meet both of these criteria.

5. *Southern Company Services, Inc. (SCSI).* In both of its requests for rehearing, SCSI asked that the Commission reconsider its decision denying requests for a longer comment period, technical conferences, and a hearing. According to SCSI, these procedures are necessary for meaningful participation of interested IOUs in this rulemaking. Such a procedure, SCSI alleges, is the only way to formulate a fair and equitable final rule.[84]

The Commission remains convinced that the procedure it adopted for public comment on the NOPR and the final rule provided for adequate and substantive participation by interested entities. SCSI has raised no new points to bolster its procedural requests. Because Order No. 472 adequately addresses these issues,[85] the Commission will not reconsider them.

III. Paperwork Reduction Act Statement

The information collection provisions of this rule are being submitted to the Office of Management and Budget (OMB) for its approval under the Paperwork Reduction Act[86] and OMB's regulations.[87] Interested persons can obtain information on the information collection provisions by contacting the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 (Attention: Ellen Brown, (202) 357-5311). Comments on the information collection provisions can be sent to the Office of Information and Regulatory Affairs of OMB, New Executive Office Building, Washington, DC 20503 (Attention: Desk Officer for the Federal Energy Regulatory Commission).

If the information collection provisions in this rule do not receive OMB approval before November 25, 1987 filing deadline, then the information collection requirements will be suspended pending OMB approval. The public will be notified by notice in the **Federal Register** if suspension of the information collection requirements is necessary.

IV. Effective Date

Section 553(d) of the Administrative Procedure Act requires, with certain exceptions, that an agency publish or serve any substantive rule not less than 30 days before its effective date.[88] In order to provide the companies sufficient time to collect and file the requested data and to provide OMB sufficient time to review the new information collection requirements, this order becomes effective on November 4, 1987.

List of Subjects

18 CFR Part 154

Natural gas, Pipelines, Reporting and recordkeeping requirements.

18 CFR Part 382

Annual charges.

In consideration of the foregoing, the Commission amends Parts 154 and 382 of Title 18, Code of Federal Regulations as set forth below.

By the Commission.

Kenneth F. Plumb,
Secretary.

PART 154—[AMENDED]

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

Authority: Omnibus Budget Reconciliation Act of 1986, Pub. L. No. 99-509, Title III, Subtitle E, Sec. 3401 (Oct. 21, 1986); Natural Gas Act, 15 U.S.C. 717-717w (1982); Natural Gas Policy Act, 15 U.S.C. 3301-3432 (1982); Administrative Procedure Act, 5 U.S.C. 551-557 (1982); Interstate Commerce Act, 49 U.S.C. 1-27 (1976); Department of Energy Organization Act, 42 U.S.C. 7102-7352 (1982); E.O. 12,009, 3 CFR 1978 Comp., p. 142; Federal Power Act, 16 U.S.C. 791a-828c (1982); Public Utility Regulatory Policies Act, 16 U.S.C. 2601-2645 (1982).

2. Section 154.38(d)(6)(ii) is revised to read as follows:

§ 154.38 Composition of rate schedule.

* * * * *

(d) *Statement of rate.* * * *

(6) * * *

(ii) (A) Except as provided in paragraph (d)(6)(ii)(B) of this section, a company must reflect the ACA unit charge in each of its rate schedules applicable to sales or transportation deliveries. The company must apply the ACA unit charge to the commodity component of rate schedules with two-part rates. The company seeking authorization to use an ACA unit charge must file with the Commission an ACA-related tariff sheet which must include:

(*1*) Language specifying the purpose and manner of collecting the ACA (to collect an ACA per unit charge as specified by the Commission, applicable to all the pipeline's sales and transportation schedules),

(*2*) The per unit charge of the ACA,

(*3*) The proposed effective date of the tariff change (30 days after the filing of the tariff sheet, unless a shorter period is specifically requested and justified in a waiver petition), and

[82] The Commission disagrees with HL&PCo's assertion that it is being treated unfairly because it is being assessed annual charges while Alaskan and Hawaiian IOUs are not. HL&PCo is being treated differently from Alaskan and Hawaiian IOUs because it has a rate schedule on file which is regulated by the Commission. HL&PCo ignores the fact that, while Alaskan and Hawaiian IOUS do file Form Nos. 1 or 1-F, they *do not* have rate schedules on file. Both conditions must be present if an annual charge is to be assessed.

[83] *See* Citizens Energy Corp., 35 FERC ¶ 61,198 (1986).

[84] Petitions of SCSI at 12-13; Electric Utilities Group at 13-14.

[85] 52 FR 21267-21268.

[86] 44 U.S.C. 3501-3502 (1982).

[87] 5 CFR 1320.13 (1987).

[88] 5 U.S.C. 553(d) (1982).

(4) An expression of the pipeline's intent not to recover any annual charges recorded in FERC Account No. 928 in a NGA Section 4 rate case.

(5) Tariff sheets must be accompanied by the filing fee specified in § 381.204 of the Commission's regulations. Subsequent tariff filings amending the initial ACA-related tariff sheet must be accompanied by the filing fee specified in § 381.205 of the Commission's regulations.

(B) If a pipeline files in 1987 a revision of an ACA-related tariff for the purpose of complying with the requirements of this section, the pipeline will not be required to pay a filing fee for the revised tariff sheet.

* * * * *

PART 382—[AMENDED]

3. The authority citation for Part 382 continues to read as follows:

Authority: Omnibus Budget Reconciliation Act of 1986, Pub. L. No. 99-509, Title III, Subtitle E, Sec. 3401 (Oct. 21, 1986); Department of Energy Organization Act, 42 U.S.C. 7101-7352 (1982); E.O. 12,009, 3 CFR 1978 Comp., p. 142; 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).

4. In § 382.102 paragraphs (a) and (o) are revised to read as follows:

§ 382.102 Definitions.

* * * * *

(a) "Natural gas pipeline company" means any person:

(1) Engaged in natural gas sales for resale or natural gas transportation subject to the jurisdiction of the Commission under the Natural Gas Act whose sales for resale and transportation exceed 200,000 Mcf at 14.73 psi (60°F) in any of the three calendar years immediately preceding the fiscal year for which the Commission is assessing annual charges; and

(2) Not engaged solely in "first sales" of natural gas as that term is defined in section 2(21) of the Natural Gas Policy Act of 1978; and

(3) To whom the Commission has not issued a Natural Gas Act Section 7(f) declaration; and

(4) Not holding a limited jurisdiction certificate.

* * * * *

(o) "Operating revenues" means the monies: (1) Received by an oil pipeline company for providing interstate common carrier services regulated by the Commission, and (2) included in FERC Account No. 200, 210, or 220 in FERC Annual Report Form No. 6, page 301, lines 1, 2 and 3, column d, under Part 352 of the Commission's regulations.

* * * * *

5. Section 382.106(a) revised to read as follows:

§ 382.106 Accounting for Annual Charges paid under Part 382.

(a) Any natural gas pipeline company subject to the provisions of this part must account for annual charges paid by charging the account to Account No. 928, Regulatory Commission Expenses, of the Commission's Uniform System of Accounts.

* * * * *

6. Section 382.202 is revised to read as follows:

§ 382.202 Annual Charges under the Natural Gas Act and Natural Gas Policy Act of 1978 and related statutes.

The adjusted costs of administration of the natural gas regulatory program will be assessed against each natural gas pipeline company based on the proportion of the total gas subject to Commission regulation which was sold and transported by each company in the immediately preceding calendar year to the sum of the gas subject to the Commission regulation which was sold and transported in the immediately preceding calendar year by all natural gas pipeline companies being assessed annual charges.

[FR Doc. 87-21830 Filed 9-24-87; 8:45 am]
BILLING CODE 6717-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 510

Animal Drugs, Feeds, and Related Products; Change of Sponsor Address

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect a change of sponsor address for Sterivet Laboratories, Inc.

EFFECTIVE DATE: September 25, 1987.

FOR FURTHER INFORMATION CONTACT: David L. Gordon, Center for Veterinary Medicine (HFV-238), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-6243.

SUPPLEMENTARY INFORMATION: Sterivet Laboratories, Inc., sponsor of approved NADA 113-510 for phenylbutazone granules, advised FDA of a change of address from 7320 Florence Blvd., Omaha, NE 68101, to 3909 Nashua Dr., Mississauga, ON, Canada L4V 1R3. The agency is amending 21 CFR 510.600(c)(1) and (2) to reflect the change.

List of Subjects in 21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Part 510 is amended as follows:

PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR Part 510 continues to read as follows:

Authority: Secs. 512, 701(a) (21 U.S.C. 360b, 371(a)); 21 CFR 5.10 and 5.83.

§ 510.600 [Amended]

2. Section 510.600 *Names, addresses, and drug labeler codes of sponsors of approved applications* is amended in paragraph (c)(1) in the entry for "Sterivet Laboratories, Inc.," and in paragraph (c)(2) in the entry for "047408" by amending the sponsor address to read "3909 Nashua Dr., Unit 5, Mississauga, ON, Canada L4V 1R3."

Dated: September 18, 1987.

Richard A. Carnevale,

Acting Associate Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 87-22118 Filed 9-24-87; 8:45 am]
BILLING CODE 4160-01-M

21 CFR Parts 510, 520, 522, 524, and 540

Animal Drugs, Feeds, and Related Products; Change of Sponsor

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect a change of sponsor of several new animal drug applications (NADA's) from Wendt Laboratories to Quality Plus Essar Corp.

EFFECTIVE DATE: September 25, 1987.

FOR FURTHER INFORMATION CONTACT: David L. Gordon, Center for Veterinary Medicine (HFV-238), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-6243.

SUPPLEMENTARY INFORMATION: Quality Plus Essar Corp., P.O. Box 459, Fort Dodge, IA 50501, has informed FDA of a change of sponsor for several NADA's from Wendt Laboratories, 100 Nancy Dr., P.O. Box 128, Belle Plaine, MN 56011. Wendt Laboratories also informed FDA of the sponsor change. The NADA's affected are:

Product	NADA
Oxytetracycline-50 injectable	48-287
Phenylbutazone injection	48-646
Phenylbutazone tablets	48-647
Procaine penicillin G mastitis tubes	65-383
Nitrofurazone ointment	118-506
Iron hydrogenated dextran injection	119-142
Nitrofurazone solution (injection)	119-974
Dexamethasone sodium phosphate injection	123-815
Oxytocin injection	124-241

This sponsor change does not involve any changes in manufacturing facilities, equipment, procedures, or production personnel.

FDA is amending 21 CFR 520.1720a(b)(5), 522.540(e)(2), 522.1183(e)(1), 522.1662a(i)(2), 522.1680(b), 522.1720(b)(2), 524.1580d(b), and 540.874a(c) (3)(i) and (4)(i) to reflect the sponsor change.

FDA is also amending 21 CFR 510.600(c)(1) and (c)(2) to remove Wendt Laboratories because it is no longer the sponsor of any approved NADA's.

List of Subjects

21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

21 CFR Part 520

Animal drugs.

21 CFR Part 522

Animal drugs.

21 CFR Part 524

Animal drugs.

21 CFR Part 540

Animal drugs, Antibiotics.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Parts 510, 520, 522, 524, and 540 are amended as follows:

PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR Part 510 continues to read as follows:

Authority: Secs. 512, 701(a) (21 U.S.C. 360b, 371(a)); 21 CFR 5.10 and 5.83.

§ 510.600 [Amended]

2. In § 510.600 *Names, addresses, and drug labeler codes of sponsors of approved applications* in paragraph (c)(1) by removing the entry for "Wendt Laboratories" and in paragraph (c)(2) by removing the entry for "015579."

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

3. The authority citation for 21 CFR Part 520 continues to read as follows:

Authority: Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)); 21 CFR 5.10 and 5.83.

§ 520.1720a [Amended]

4. In § 520.1720a *Phenylbutazone tablets and boluses* by removing paragraph (b)(5).

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

5. The authority citation for 21 CFR Part 522 continues to read as follows:

Authority: Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)); 21 CFR 5.10 and 5.83.

§ 522.540 [Amended]

6. In § 522.540 *Dexamethasone injection* in pargaph (e)(2) by removing "015579" and inserting in numerical sequence in its place "053617."

§ 522.1183 [Amended]

7. In § 522.183 *Iron hydrogenated dextran injection* in paragraph (e)(1) by removing "015579" and inserting in its place "053617."

§ 522.1662a [Amended]

8. In § 522.1662a *Oxytetracycline hydrochloride injection* in paragraph (i)(2) by removing "015579" and inserting in its place "053617."

§ 522.1680 [Amended]

9. In § 522.1680 *Oxytocin injection* in paragraph (b) by removing "015579" and inserting in numerical sequence in its place "053617."

§ 522.1720 [Amended]

10. In § 522.1720 *Phenylbutazone injection* in paragraph (b)(2) by removing "015579."

PART 524—OPHTHALMIC AND TOPICAL DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

11. The authority citation for 21 CFR Part 524 continues to read as follows:

Authority: Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)); 21 CFR 5.10 and 5.83.

§ 524.1580d [Amended]

12. In § 524.1580d *Nitrofurazone solution* in paragraph (b) by removing "015579" and inserting in numerical sequence in its place "053617," and further in the paragraph by removing "and 053617."

PART 540—PENICILLIN ANTIBIOTIC DRUGS FOR ANIMAL USE

13. The authority citation for 21 CFR Part 540 continues to read as follows:

Authority: Sec. 512, 82 Stat. 343-351 (21 U.S.C. 360b); 21 CFR 5.10 and 5.83.

§ 540.874a [Amended]

14. In § 540.874a *Procaine penicillin G in oil* in paragraph (c)(3)(i) and (4)(i) by removing "015579" and inserting in its place "053617."

Dated: September 18, 1987.

Richard A. Carnevale,

Acting Associate Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 87-22119 Filed 9-24-87; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Parts 1910 and 1971

[Docket No. S-506 B]

Servicing of Single Piece and Multi-Piece Rim Wheels at Marine Terminals

AGENCY: Occupational Safety and Health Administration, Labor.

ACTION: Final rule.

SUMMARY: The Occupational Safety and Health Administration (OSHA) is amending its rules for the servicing of rim wheels at marine terminals to include safety measures to be taken for the servicing of both single piece and multi-piece rim wheels. Prior to this regulatory action, only multi-piece rim wheel servicing was addressed in OSHA's rules for marine terminals (29 CFR 1917.44(o)). With this notice, OSHA adopts by reference the General Industry Standards (29 CFR 1910.177) that are specific to the servicing of both single piece and multi-piece rim wheels, for application within the marine terminal environment.

EFFECTIVE DATE: This rule shall become effective October 26, 1987.

FOR FURTHER INFORMATION CONTACT: Mr. James F. Foster, U.S. Department of Labor, Occupational Safety and Health Administration, Room N-3637, 200