§95.8005 JET ROUTES CHANGEOVER POINTS

AIRWAY SEGMENT		CHANGEOVER POINTS	
FROM	TO	DISTANCE	FROM
	J-24		
	IS AMENDED BY ADDING		
CHARLESTON, WV VORTAC	MONTEBELLO, VA VOR/DME	104	CHARLESTON
	J-48		
	IS AMENDED BY ADDING		
MONTEBELLO, VA VOR/DME	CASANOVA, VA VORTAC	16	MONTEBELLO
	J-134		
	IS AMENDED BY ADDING		
HENDERSON, WV VORTAC	LINDEN, VA VORTAC	133	HENDERSON
	J-191		
	IS AMENDED TO DELETE		
HOPEWELL, VA VORTAC	PATUXENT, MD VORTAC	20	HOPEWELL

7

[FR Doc. 88-9480 Filed 4-28-88; 8:45 am]
BILLING CODE 4910-13-C

14 CFR Part 97

[Docket No. 25592; Amdt. No. 1372]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: *Effective:* An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference—approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which the affected airport is located; or
3. The Flight Inspection Field Office which originated the SIAP.

For Purchase

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA-200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located

By Subscription

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald K. Funai, Flight Procedures Standards Branch (AFS-230), Air Transportation Division, Office of Flight Standards, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-8277.

SUPPLEMENTARY INFORMATION: This amendment to Part 97 of the Federal Aviation Regulations (14 CFR Part 97) prescribes new, amended, suspended, or revoked Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR Part 51, and § 97.20 of the Federal Aviation Regulations (FARs). The applicable FAA Forms are identified as FAA Forms 8260-3, 8260-4, and 8260-5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form document is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

This amendment to Part 97 is effective on the data of publication and contains separate SIAPs which have compliance dates stated as effective dates based on related changes in the National Airspace System or the application of new or revised criteria. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs is unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Approaches, Standard instrument, Incorporation by reference.

Issued in Washington, DC, on April 15, 1988.

Robert L. Goodrich,
Director of Flight Standards.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 97 of the Federal Aviation Regulations (14 CFR Part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 G.M.T. on the dates specified, as follows:

PART 97—[AMENDED]

1. The authority citation for Part 97 continues to read as follows:

Authority: 49 U.S.C. 1348, 1354(a), 1421, and 1510; 49 U.S.C. 106(g) (revised, Pub. L. 97-449, January 12, 1983; and 14 CFR 11.49(b)(2))

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, and 97.35 [Amended].

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

* * * *Effective June 30, 1988*

Foley, AL—Foley Muni, NDB RWY 18, Orig.
Los Banos, CA—Los Banos Muni, VOR/DME RWY 14, Amdt. 3
Merced, CA—Merced Municipal/Macready Field, VOR RWY 12, Amdt. 6
Merced, CA—Merced Municipal/Macready Field, VOR RWY 30, Amdt. 14
Merced, CA—Merced Municipal/Macready Field, LOC BC RWY 12, Amdt. 8
Merced, CA—Merced Municipal/Macready Field, ILS RWY 30, Amdt. 9
Santa Monica, CA—Santa Monica Muni, VOR-A, Amdt. 7
Fort Morgan, CO—Fort Morgan Muni, NDB RWY 14, Amdt. 1
Fort Morgan, CO—Fort Morgan Muni, NDB RWY 32, Amdt. 1
Lakeland, FL—Lakeland Muni, VOR RWY 13, Amdt. 3, *Cancelled*
Clarinda, IA—Schenck Field, NDB-A, Amdt. 3
Sac City, IA—Sac City Muni, NDB RWY 36, Amdt. 2
Gastonia NC—Gastonia Muni, NDB RWY 3, Amdt. 6
Monroe, NC—Monroe, LOC RWY 5, Orig.
Monroe, NC—Monroe, NDB RWY 5, Orig.
Lancaster, OH—Fairfield County, VOR-A, Amdt. 7
Lancaster, OH—Fairfield County, SDF RWY 28, Amdt. 4
Lancaster, OH—Fairfield County, NDB RWY 28, Amdt. 5
Winnsboro, SC—Fairfield County, NDB RWY 4, Amdt. 3
Dickson, TN—Dickson Muni, NDB RWY 17, Orig.
Lebanon, TN—Lebanon Muni, NDB RWY 18, Orig.

* * * *Effective June 2, 1988*

Carrollton, GA—West Georgia Regional, LOC RWY 34, Orig.
Carrollton, GA—West Georgia Regional, NDB RWY 34, Orig.
Carrollton, GA—West Georgia Regional, NDB RWY 34, Amdt. 2, *Cancelled*
Macon, GA—Herbert Smart Downtown, RADAR-1, Amdt. 1
Vandalia, IL—Vandalia Muni, VOR RWY 18, Amdt. 11
Warsaw, IN—Warsaw Muni, VOR RWY 9, Amdt. 5
Warsaw, IN—Warsaw Muni, VOR RWY 27, Amdt. 5
Warsaw, IN—Warsaw Muni, SDF RWY 9, Amdt. 4
Ida Grove, Ida—Ida Grove Muni, NDB RWY 29, Amdt. 2, *Cancelled*
Milford, IA—Fuller, VOR/DME-A, Orig.
Rock Rapids, IA—Rock Rapids Muni, NDB RWY 16, Amdt. 1
Waukon, IA—Waukon Muni, VOR RWY 7, Orig., *Cancelled*
Jackson, MS—Hawkins Field, NDB RWY 16, Amdt. 4
Jackson, MS—Hawkins Field, ILS RWY 16, Amdt. 3
Jackson, MS—Hawkins Field, RNAV RWY 16, Amdt. 4
Kenansville, NC—P. B. Raiford, NDB RWY 22, Amdt. 4
Mt. Gilead, OH—Morrow County, VOR-A, Amdt. 3
Oklahoma City, OK—Will Rogers World, VOR RWY 17L, Orig.
Charleston, SC—Charleston AFB/INTL, ILS RWY 15, Amdt. 20
Charleston, SC—Charleston Executive, VOR-A, Amdt. 7, Cancelled
Center, TX—Center Muni, NDB RWY 16, Orig.

* * * *Effective May 5, 1988*

Portland, OR—Portland Intl, NDB RWY 28L, Amdt. 2

* * * *Effective April 13, 1988*

Binghamton, NY—Edwin A. Link Field Broome County, ILS RWY 16, Amdt. 4

* * * *Effective April 12, 1988*

Daggett, CA—Barstow-Daggett, VOR or TACAN RWY 22, Amdt. 8

* * * *Effective April 7, 1988*

St. Paul, MN—Lake Elmo, NDB RWY 3, Amdt. 2
Palestine, TX—Palestine Muni, VOR/DME RWY 17, Amdt. 1.

[FR Doc. 88-9479 Filed 4-28-88; 8:45 am]
BILLING CODE 4910-13-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 4, 157, 292, 375, 381 and 388

[Docket No. RM87-26-000]

Filing Fees Under the Independent Offices Appropriations Act of 1952

Issued April 6, 1988.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is amending its regulations in order to establish two new filing fees for services and benefits the Commission provides under its jurisdictional statutes. The Commission is assessing these fees to reimburse the Agency for services and benefits provided by it. The new fees are for (1) applications for exemption of a small hydroelectric power project from all or part of Part I of the Federal Power Act and (2) written legal interpretations of the General Counsel. The Commission is also revising several existing filing fees for various reasons.

EFFECTIVE DATE: This order will become effective May 31, 1988.

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

SUPPLEMENTARY INFORMATION:

Order No. 494

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

I. Introduction

The Federal Energy Regulatory Commission (Commission) is amending its regulations to establish two new filing fees for services and benefits the Commission provides under its jurisdictional statutes. The Commission is also revising several existing filing Fees.[1]

II. Background

The Commission assesses filing fees and annual charges under several statutes. These provisions either authorize filing fees set at levels calculated to reimburse the government agencies involved for the average cost of rendering a specific service [2] or authorize annual charges for broad classes of entities to reimburse the Commission for the costs or regulating entire industry groups.[3] The

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[1] The Commission's fee structure and procedures for collecting fees are codified in 18 CFR Part 381 (1987).

[2] Section 30(e) of the Federal Power Act (FPA), 16 U.S.C. 823a(e) (Supp. 1987), instructs the Commission to establish for applicants for licenses or exemptions for hydroelectric projects fees adequate to reimburse Federal and state fish and wildlife agencies for costs reasonably incurred in connection with studies and reviews carried out for purposes of compliance with section 30 of the FPA. The Commission established the fees authorized by section 30(e) of the FPA in December 1987. Order No. 487, Fees for Hydroelectric Project Applications to Reimburse Fish and Wildlife Agencies, 52 FR 48398 (Dec. 22, 1987), FERC Stats. & Regs. ¶ 30,784. These fees and procedures to be codified at 18 CFR 4.300-4.305.

[3] Section 10(e) of the FPA, 16 U.S.C. 803(e) (1982), provides that licensees of hydroelectric projects under Part I of that statute shall pay reasonable annual charges as reimbursement for the Commission's costs of administering that Part and as compensation for the use, occupancy, and enjoyment of federal lands or other property. The Commission's regulations for annual charges under Part I of the FPA are codified at 18 CFR Part 11 (1987).

Section 3401 of the Omnibus Budget and Reconciliation Act of 1986, 42 U.S.C. 7178 (Supp. 1987), grants more comprehensive authority, providing that the Commission shall "assess and collect fees and annual charges in any fiscal year in amounts equal to all the costs incurred by the Commission in that fiscal year." The Commission established these annual charges in May 1987. Order No. 472, Annual Charges Under the Omnibus Budget Reconciliation Act of 1986, 52 FR 21263 (June 5, 1987), FERC States. & Regs. ¶ 30,746. The annual charges, to be codified at 18 CFR 382.201-382.203, are based on volumes of energy transported and sold by the gas pipelines, electric utilities, power marketing administrations, and the electric cooperative, and on the operating revenues received by the oil pipelines.

Independent Offices Appropriations Act of 1952 (IOAA) [4] authorizes the Commission to establish fees for specific services and benefits it renders to identifiable beneficiaries.

This final rule adds to and revises the Commission's fee schedule and procedures under the IOAA. The statute provides only general guidance on the manner in which agencies are to assess fees. It instructs the agencies to be fair in imposing any fees required and to consider such factors as the costs to the Government, the value of the service to the recipient, the public policy or other interest served, and "other relevant facts." [5] The IOAA states that it is the sense of Congress that each service or thing of value provided by an agency to a person is to be "self-sustaining to the extent possible." [6]

The principal administrative interpretation of the IOAA is OMB Circular A-25,[7] which states that a fee should be assessed against each identifiable recipient of a measurable unit or amount of Government service or property from which that recipient derives a special benefit.[8] The Circular further construes the IOAA as precluding a charge for services rendered "when the identification of the ultimate beneficiary is obscure and the services can be primarily considered as benefitting broadly the general public." [9]

The IOAA, OMB Circular A-25, and subsequent case law have established certain criteria that must be met in levying a fee under the IOAA. The Commission must:

(1) Identify the service for which the fee is to be assessed; [10]

(2) Explain why the particular service benefits the identifiable recipient more than it benefits others in the industry or the general public; [11]

(3) Base the fee on as small a category of service as possible; [12]

(4) Demonstrate calculation of the cost basis of each fee assessed.[13] The agency may satisfy this criterion by presenting a reasonable, not necessarily exact, relationship between its costs and the fee assessed.[14]

The Commission has established filing fees under its IOAA authority for many of its activities under its jurisdictional statutes, including the Natural Gas Act (NGA), the Natural Gas Policy Act of 1978 (NGPA), the Public Utility Regulatory Policies Act of 1978 (PURPA), and Parts II and III of the Federal Power Act (FPA). These fees and general procedures for determining them and collecting them are codified at 18 CFR Part 381. The U.S. Court of Appeals for the Tenth Circuit has upheld the fees established by the Commission under the authority of the IOAA in four prior rulemaking proceedings.[15]

The Commission calculated its fees using data on the work time expended on various Commission activities, on the number of completions of each activity, and on its annual costs. The Time Distribution Reporting System (TDRS) collects data on staff time expended on various activities (product categories).[16] The basic measure of work time expended is the work-month (WM), the amount of work represented by one employee's devotion of 100 percent of his or her time for one month.[17] The Commission also compiles data on the number of completions in each product category and calculates an annual figure for its average total costs per employee.

The Commission's fee schedule is designed to account for all types of recoverable costs attributable to a particular Commission service and not merely the salaries of the employees who review the notices, applications, and requests in the particular product category. Pro rata portions of certain indirect costs are properly included in the calculation of fees for various agency services.[18] The Commission's actual yearly costs per employee for fiscal year 1987 were:

Salaries and benefits	$48,989.01
Travel	700.36
Transportation of things	50.51
Rents, communications, and utilities	6,048.83
Printing	1,221.97
Other services—excludes direct program contracts	6,812.19
Supplies	829.46
Equipment	2,346.94
Total	66,999.27

The Commission divides this annual total by twelve to yield an average WM cost of $5,583.27. The formula for determining each fee is the actual WMs dedicated to a given fee category for the previous fiscal year (including direct WMs plus a pro rata share of WMs reported for relevant support activities) divided by the number of actual completions in that product category in the previous fiscal year and then multiplied by the average cost per WM in the previous fiscal year. The Commission multiplies the average WM cost by the average number of WMs required to complete each activity to obtain the average cost for each activity and then sets its fees on the basis of those average costs.

On November 5, 1987, the Commission issued a Notice of Proposed Rulemaking (NOPR), in which it proposed to

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

[5] *Id.* Section 9701(b)(2) (A)-(D).

[6] *Id.* Section 9701(a).

[7] Issued as Bureau of the Budget Circular A-25 (September 23, 1959). The United States Supreme Court expressed general approval for the interpretation of the IOAA embodied in Circular A-25. Federal Power Commission v. New England Power Co., 415 U.S. 345, 349-51 (1974).

[8] A "special benefit" accrues when a Government-rendered service "enables the beneficiary to obtain 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," provides business stability or assures public confidence in the business activity of the beneficiary, or is performed at the request of the recipient and is above and beyond the services regularly received by the same industry or group or by the general public. OMB Circular A-25, ¶ 3(a)(1).

[9] *Id.* ¶ 3(a)(2).

[10] National Cable Television Ass'n, Inc. v. F.C.C., 554 F.2d 1094, 1100 (D.C. Cir. 1976) (the agency "must identify the activity which justifies each particular fee it assesses"). *See also* Federal Power Commission v. New England Power Co. at 349-351 (invalidating assessments against jurisdictional utilities in proportion to their wholesale sales and interchange of electricity since the "thrust of the Act" reached "only specific charges for specific services to specific individuals or companies" and Commission's formula could result in charges to companies which had no proceedings before the Commission during the year in question).

[11] Electronic Industries Ass'n v. F.C.C., 554 F.2d 1109, 1114 (D.C. Cir. 1976) ("require a certain nexus, a threshold level of private benefit, between the regulatee and the agency before a fee can be assessed against the recipient of the service.").

[12] *Id.* at 1116 ("we 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.").

[13] *Id.* at 1117 ("This involves (a) an allocation of the specific direct and indirect expenses which form the cost basis for the fee to the smallest practical unit; (b) exclusion of any expenses incurred to serve an independent public interest; and (c) a public explanation of the specific expenses included in the cost basis for a particular fee, and an explanation of the criteria used to include particular terms.").

[14] National Cable Television Ass'n, Inc. v. F.C.C. at 1105-06 ("Any computation such as those must necessarily be based on numerous approximations and can only be expected to be accurate within reasonable limits. It is sufficient for the Commission to identify the specific items of direct or indirect cost incurred in providing each service or benefit for which it seeks to assess a fee, and then to divide that cost among the members of the recipient class * * * in such a way as to assess each a fee which is roughly proportional to the 'value' which that member has thereby received.")

[15] Phillips Petroleum Co. v. FERC, 786 F.2d 370, 379 (10th Cir. 1986) (upholding the fees promulgated in Order Nos. 360, 361, 394 and 395).

[16] Twice a month Commission employees prepare TDRS report forms, listing the product categories on which they worked during the prior half-month period and the number of hours spent on each activity. These TDRS forms are forwarded through reviewer/supervisors and office coordinators, undergoing reviews at each stage to ensure the accuracy of the information, and are compiled by the Office of Administration.

[17] 18 CFR 381.102(c) (1987).

[18] Mississippi Power & Light Co. v. NRC, at 601 F.2d 223, 232 (5th Cir. 1979) *cert. denied*, 444 U.S. 1102 (1980).

establish three new fees and to revise seven existing filing fees or fee procedures.[19] Fourteen persons submitted comments in response to the NOPR.[20]

III. Discussion

A. New Fees

The Commission proposed new fees:

(1) For filing an application for exemption from all or part of Part I of the FPA for small hydroelectric power projects of 5 megawatts or less;

(2) For requesting a written legal interpretation by the General Counsel of a statute or regulation under the jurisdiction of the Commission (except for a request for interpretation of Part I of the FPA, the costs of which are included in charges assessed pursuant to section 10(e) of the FPA); and

(3) For filing by the owner or operator of a cogeneration or small power production facility of a notice under 18 CFR 292.207(a)(2) that the facility meets the requirements of 18 CFR 292.203 (qualifying facility notice).

Middle South Utilities System, the only commenter to address the proposals for new fees, supports imposition of a cost-based filing fee for each of the three services.[21]

1. *5 Megawatt Exemption.* The Commission is establishing a fee of $16,430 [22] for an application for exemption of a small hydroelectric power project from all or part of Part I of the FPA. This exemption is available for projects with a total installed capacity of 5 megawatts or less and is governed by Part 4, Subpart K of the Commission's regulations (5MW exemption).[23]

An application for a 5MW exemption is processed primarily by the Commission's Office of Hydropower Licensing (OHL). OHL first reviews the application to determine whether it meets the requirements of Part 4, Subpart K. If the application meets those requirements, it is accepted for filing and the Commission circulates a notice of application for exemption to interested agencies and publishes that notice in the **Federal Register.** Commission staff reviews any comments of government agencies and the general public, prepares an environmental assessment of the proposed project, and may recommend additional conditions for inclusion in any exemption issued. The Office of the General Counsel provides legal support in the review.

The Commission's costs and the costs of other Federal agencies in processing 5MW exemptions have heretofore been collected from hydroelectric licensees as part of the annual charges authorized by section 10(e) of the FPA. However, in order to implement the IOAA objective of assessing fees for specific services and benefits rendered to identifiable recipients, the Commission is establishing a separate filing fee for applications for 5MW exemptions.

An entity that receives a 5MW exemption obtains authorization to construct and operate a hydroelectric power project without the requirement of obtaining a license under Part I of the FPA. In practice, this exempts that entity from compliance with the broad range of continuing regulatory oversight provisions that are regularly included in such licenses. The streamlined procedure and the lower level of regulatory oversight associated with the 5MW exemption confer special benefits on an entity receiving that exemption.

The TDRS product category of an application for a 5MW exemption is the smallest practical unit of service on which to base a filing fee. The Commission currently collects work time data for this category and it has calculated the fee using that data for fiscal 1987.

2. *Written Legal Interpretation of the General Counsel.* The Commission is also establishing a fee of $2,460 for a request for a written legal interpretation by the General Counsel of any statute or regulation under the jurisdiction of the Commission, except for Part I of the FPA.[24] A request for an interpretation describes a specific fact situation, problem, or issue. It requires the General Counsel's staff to analyze relevant Commission and court precedents and applicable statutes in order to provide an opinion on the question posed.

The Commission had assessed a fee of $35 for a written legal interpretation of the NGPA and had not charged a fee for other written legal interpretations of the General Counsel.

Persons who receive written legal interpretations from the General Counsel benefit because the information and legal analysis provided in the opinion can guide the recipient in decisionmaking and in planning transactions and activities.

The category of requests for written legal interpretations from the General Counsel is the smallest practical unit for compiling work time and completion data. Although this data has been compiled separately for requests for written legal interpretations under the NGPA, the Commission no longer collects data according to the subject of the request. It is administratively more convenient to use a single category of written legal interpretations of the General Counsel, especially since the Commission will assess fees for all such requests.

3. *Qualifying Facility Notice.* The Commission has decided not to establish a fee for the filing of a notice by an owner or operator of a small power production facility or a cogeneration facility stating that the facility meets the criteria set forth in 18 CFR 292.203 to be a qualifying facility (QF).[25]

The Commission's Office of Electric Power Regulation (OEPR) enters receipt of a notice of qualifying status into the Commission's computer system and lists the facility as a qualifying small power production facility or a qualifying cogeneration facility in the Commission publication, "The Qualifying Facilities Report."

An owner or operator of a cogeneration or small power production facility is not required to file a notice of qualifying status. The Commission wishes to encourage the filing of QF notices for informational purposes and now believes that imposition of a fee, even the relatively small fee based on the Commission's minimal processing time, may discourage owners or operators from filing the discretionary QF notice.

B. Revised Fees and Procedures

The Commission also proposed seven revisions in its existing IOAA filing fees and procedures. These are discussed below:

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[19] Filing Fees under Independent Offices Appropriations Act of 1952, Docket No. RM87-26-000, 52 FR 43612 (Nov. 13, 1987), FERC Stats. & Regs. [Proposed Regulations 1982-1987], ¶ 32,454.

[20] Comments were submitted by: Allegheny Power System; Arizona Public Service Company; American Gas Association; Central Illinois Public Service Company; Commonwealth Edison Company *et al.*; Consumers Power Company; Iowa Public Service Company; Lone Star Gas Company; Middle South Utilities System; Oklahoma Gas and Electric Company; Public Citizen's Critical Mass Energy Project; Tampa Electric Company; Union Electric Company; and Wisconsin Power & Light Company.

[21] Comments of Middle South Utilities System at 2.

[22] The NOPR proposed a fee of $11,010, based on fiscal year 1986 TDRS and cost data. In calculating all fees in this final rule, the Commission uses fiscal year 1987 TDRS and cost data, which has become available since the issuance of the NOPR.

[23] 18 CFR 4.101-4.113 (1987).

[24] Costs incurred in completing written legal opinions interpreting Part I of the FPA are collected from hydroelectric licensees as a class under the annual charges provisions of section 10(e) of the FPA, which requires the Commission to recover the costs of administering Part I of the FPA through annual charges.

[25] 18 CFR 292.207(a) (1987).

1. *Revision of Rounding Procedure.* The Commission is adopting its proposal to revise its procedure for rounding costs in the calculation of filing fees when average costs for completion of a service exceed $100. The Commission will round the actual average costs per completion down to the nearest $10, rather than to the nearest $100, as had been the practice since the Commission adopted its first group of IOAA filing fees in 1984.[26] When average costs are $100 or less, the Commission will continue to round down to the nearest $5. None of the commenters opposed this proposal.

The Commission is revising its rounding procedure in order to establish fees that more accurately reflect the full costs of providing the services. Rounding procedures are not mandated by the IOAA and are governed by the dual objectives of full recovery of costs and administrative convenience. The revised rounding procedure adequately balances those two objectives and is effective for fees based on fiscal year 1987 data and for each fiscal year thereafter.

2. *Fee for Written Interpretations of the Natural Gas Policy Act by the General Counsel.* The Commission is including the existing fee category for written legal interpretations of the NGPA by the General Counsel [27] in the new fee category it is establishing in this rule for all written legal interpretations by the General Counsel. This action eliminates written legal interpretations under the NGPA as a separate fee category and raises the fee for such filings to the level set for all requests for written legal interpretations under the new § 381.305, or $2,460.

The Commission established a fee category in 1984 for written interpretations of the NGPA by the General Counsel. Historically, the Commission has categorically reduced the fee by approximately 65 percent from full cost recovery because it believed that recovery of actual costs through fees would substantially discourage requests for such interpretations.[28]

The American Gas Association (AGA) argues that a large increase in the fee for written interpretations of the NGPA could adversely affect small entities which, out of economic necessity, must rely on the Commission's legal opinions relatively more than do larger firms. AGA argues that the Commission recognized this concern when it established and adjusted the fee at a categorically reduced level. AGA also argues that requests for General Counsel interpretations do not confer special benefits on applicants but rather are Commission tools for voluntary compliance and enforcement and are prompted by ambiguity or lack of clarity in the Commission's own regulations.[29]

Any entity, including a small entity, may petition the Commission for a waiver of any filing fee pursuant to § 381.106 of the Commission's regulations upon a showing that recovery of the full cost of providing the service would cause hardship. A general provision for full cost recovery, coupled with the availability of the waiver procedure for specific cases of financial hardship, more closely reflects the intent of the IOAA that recipients of special benefits bear the costs of providing those beneficial services than does a categorical reduction of the fee for all applicants.

A person that receives a written legal interpretation derives a special benefit because it can use the information and legal analysis it receives to guide its planning and decisionmaking. The facts that such an interpretation may also be available to the Commission and to members of the public who did not pay for the service and that it may have a beneficial compliance and enforcement impact do not preclude assessment of a fee under the IOAA. In fact, a fee is not rendered invalid because the services rendered to the applicant result in some incidental public benefits.[30]

The Commission finds that the category of written legal interpretations of the General Counsel is the smallest practical unit on which to base cost data and fee calculations, that it is appropriate to assess a fee for all such interpretations, and that there is no persuasive reason to attempt to differentiate among written legal interpretations regarding the Commission's various jurisdictional statutes.

3. *Fees for Commission Certification of a Qualifying Small Power Production Facility and a Qualifying Cogeneration Facility.* The Commission divides the current fee category for applications for certification of qualifying facility (QF) status [31] into two categories, one for certification of qualifying small power production facilities and the other for certification of qualifying cogeneration facilities. The certification of qualifying status is for benefits under the Public Utility Regulatory Policies Act of 1978.

When the Commission established the single fee in 1985, it did not differentiate between applications for small power production facilities and cogeneration facilities because it did not anticipate a differential in the costs of reviewing the two kinds of applications and because the Commission's management information system did not separate the two types of applications.[32] However, the current TDRS includes separate product categories for the two types of certification applications and analysis of that TDRS data reveals a clear differential in processing times. In order to comply with the IOAA requirement that fees be based on costs to the Government and to reflect fiscal year 1987 costs of completion, the Commission is increasing the fee for certification as a qualifying facility from $1,300 to $6,560 for a small power production facility and from $1,300 to $4,310 for a cogeneration facility.

AGA supports the concept of different fees for the two types of requests based on the varied requirements and time involved in processing the applications, but objects to their level. AGA states that filing fees for applications for qualifying status discourage small industrial and commercial energy users from obtaining the benefits of cogeneration and that the proposed increase in those fees is inconsistent with the stated congressional intent of PURPA to remove "institutional barriers against cogeneration." [33]

Middle South Utilities System notes that the splitting of the QF fee categories is inconsistent with the Commission's proposal to consolidate electric rate filing fee categories discussed below.[34]

Fees for the costs of services actually rendered to QF certification applicants are not "institutional barriers to cogeneration," but are part of a broad structure of agency fees, authorized by the IOAA and based on special benefits

[26] Order No. 360, Fees Applicable to Producer Matters Under the Natural Gas Act, 49 FR 5074 (Feb. 10, 1984), FERC Stats. and Regs. [Regulations Preambles 1982–1985] ¶ 30,542.

[27] 18 CFR 381.405 (1987)

[28] Order No. 394, Fees Applicable to the Natural Gas Policy Act, 49 FR 35357, 35361 (Sept. 7, 1984), FERC Stats. and Regs. [Regulations Preambles 1982–1985] ¶ 30,593. The Commission continued that categorical reduction in the two subsequent annual adjustments of fees. 51 FR at 4311 (Feb. 4, 1986); and 52 FR at 10367 (April 1, 1987).

[29] Comments of AGA at 8–10.

[30] Electronic Industries Association v. F.C.C., 554 F.2d 1109, 1115 (D.C. Cir. 1976); Mississippi Power & Light Co. v. NRC, 601 F.2d 223, 230 (5th Cir. 1979), *cert denied*, 444 U.S. 1102 (1980).

[31] 18 CFR 381.505 (1987)

[32] 52 FR 43615 (Nov. 13, 1987).

[33] Comments of AGA at 3, citing H.R. Rep. No. 543, 95th Cong., 2d Sess. 57 (1978), reprinted in 1978 U.S. Code Cong. & Ad. News 7673.

[34] Comments of Middle South Utilities System at 2.

accruing to identifiable beneficiaries. QF certification exempts such facilities from the burden of complying with certain state and Federal regulations, requires electric utilities to offer to purchase power from the QF at the utilities' avoided cost of alternative power and to sell back-up power to the QF, and facilitates project financing. Inasmuch as applicants clearly receive special benefits from the process, it is appropriate to charge for that service. The legislative interest in promoting cogeneration and small power production facilities does not justify an across-the-board reduction or elimination of these fees for all members of the applicant class, especially given the existence of the waiver procedure for individual applicants whose circumstances may warrant a fee reduction.

AGA also suggests that the higher fees are particularly inappropriate in the case of packaged cogeneration units with modular components and standardized installation.[35] This suggestion does not justify creation of special product and fee categories. Attempts to create subcategories based on patterns or similarities in filings within the existing TDRS product categories and current fee categories are administratively infeasible because they go beyond the smallest practical unit of service.

AGA also notes that, despite the Commission's acknowledgment in the NOPR that there may be a disproportionate burden on small companies, the fee waiver process provides no significant relief for many small companies.[36] AGA's criticism that the waiver procedure cannot provide relief for small but profitable firms reflects a misreading of that provision. The Commission has already addressed this objection in an earlier IOAA fees rulemaking. The Commision stated that it would grant a waiver if an applicant demonstrates that payment of the fee would cause severe economic hardship. The fact that an applicant is solvent does not mean it cannot qualify, if payment of the fee would cause such hardship.[37]

AGA makes the broader argument that a Commission certification of a cogeneration or a small power production facility does not benefit the applicant more than the general public and therefore is not an appropriate subject for fees under the IOAA.[38] AGA's statement that qualifying facility certification does not benefit the applicant more than the general public is incorrect. Certification as a qualifying facility under PURPA permits the facility to sell or purchase power at avoided cost rates and may facilitate financing for the project. Both are special benefits. The fact that the general public may also benefit from the operation of small power production and cogeneration facilities does not invalidate the filing fee. A fee is not rendered invalid because the services rendered to the applicant result in some incidental public benefits.[39]

4. *Fee for Petition for Declaratory Order.* The Commission is raising the fee for a petition for issuance of a declaratory order under § 385.207 of the Commission's Procedural Rules [40] to $11,670, which reflects full recovery of the Commission's costs of processing those petitions.

That provision permits a person to file a petition seeking a declaratory order to terminate a controversy or to remove uncertainty.

In the NOPR, the Commission proposed to raise the fee for a petition for a declaratory order to a level that would fully recover the costs of processing those petitions. The Commission had established this fee in 1984 at a level reflecting an approximately 60 percent reduction from full cost recovery and had continued that categorical reduction through the two subsequent annual adjustments.[41] Three commenters object to this change.

Lone Star Gas Company (Lone Star) urges the Commission to exercise its discretion to limit fees to less than full cost recovery to avoid either undermining Commission activities or adversely affecting applicants. Lone Star suggests that the Commission should be encouraging applications for declaratory orders, which can eliminate controversies and remove uncertainties over the proper interpretation and application of Commission requirements.[42]

Public Citizens' Critical Mass Energy Project (Public Citizen) and AGA comment that requests for declaratory orders are often filed by developers of cogeneration and small power production projects who seek interpretations of Commission requirements prior to making substantial investments. They express concern that higher declaratory order fees would disproportionately impact smaller projects and that these and other fees would discourage innovative new projects, thereby stunting technological development.[43]

Contrary to the arguments by Public Citizen and AGA, the great majority of applications for delcaratory orders have been filed by large or financially substantial entities.[44] Any entity that is economically unable to pay the appropriate fee may petition for a waiver of that fee under 19 CFR 381.106. Full cost recovery with the availability of a fee waiver for economic hardship is preferable, in terms of both equity and fiscal responsibility, to categorical reduction of an entire fee category in which experience has shown that the majority of applicants can easily bear the full costs.

Based on its experience, the Commission no longer believes that concern that a fee representing the full cost of issuing a declaratory order may discourage potential applicants from filing requests justifies a categorical reduction of that fee.

AGA further maintains that requests for declaratory orders do not confer special benefits and, therefore, are not appropriate subjects for fees under the IOAA. It suggests that such petitions are often necessary because Commission regulations are ambiguous or unclear and that the Commission has sometimes used declaratory orders to provide industry-wide guidance on public policy issues extending beyond the case of the individual applicant. Finally, AGA suggests that interveners in declaratory order proceedings drive up costs, derive benefits from the proceedings, and pay nothing, thereby causing applicants to subsidize the interveners.[45]

An applicant for a declaratory order seeks to settle a controversy or to remove uncertainty on an issue, usually in order to advance its own decisionmaking or planning. The applicant is a clearly identifiable

[35] Comments of AGA at 4–5.

[36] Comments of AGA at 5–6.

[37] Order 435–A, Fees Applicable to Electric Utilities, Cogenerators and Small Power Producers, 51 FR 35347, at 35352 (Oct. 3, 1986), FERC Stats. & Regs. ¶ 30,713.

[38] Comments of AGA at 6–7

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

[40] 18 CFR 385.207 (1987). No fee is assessed for declaratory order petitions that solely concern hydroelectric matters under Part I of the FPA under the IOAA because those costs are included in the calculation of the annual charges under section 10(e) of the FPA, which provides for reimbursement of the costs of administering Part I.

[41] Order No. 395, Fees Applicable to General Activities, 49 FR 35348 (Sept. 7, 1984), FERC Stats. Regs. (Regulations Preambles 1982–85) ¶ 30,592, 51 FR 4310 (Feb. 4, 1986); 52 FR 10366 (April 1, 1987).

[42] Comments of Lone Star at 2–3.

[43] Comments of Public Citizen at 1–2; Comments of AGA at 9.

[44] Of 99 applications for declaratory orders filed with the Commission in fiscal years 1985, 1986, and 1987, over four-fifths were filed by large or financially substantial entities.

[45] Comments of AGA at 10.

recipient of a special benefit, since its gain is more immediate and substantial than any incidental gain for the general public from the resolution of the issue. Although interveners may derive benefits from and increase the costs of declaratory order proceedings, the declaratory order applicants remain the prinicpal beneficiaries and the mere fact that others may benefit does not preclude assessing a fee against those who initiate the proceeding to seek a special benefit.

5. *Fee for Commission Review of Jurisdictional Agency Determinations.* The Commission is revising the means by which it determines the fee for its review of jurisdictional agency determinations under section 503 for the NGPA [46] and is raising that fee from $35 to $75.

Section 503 provides that Federal or state jurisdictional agencies may determine that natural gas from particular wells qualifies for certain NGPA price categories, subject to review by the Commission. Within 15 days of its decision, the jurisdictional agency gives written notice of its determination to the Commission.[47] If the Commission does not reverse the jurisdictional agency's well-category determination on review, the producer may receive the maximum lawful price for the category determined.[48]

In the NOPR, the Commission proposed to include the cost of determination audits in the cost basis for this product category. In determination audits, the Commission reviews certain of the jurisdictional agency determinations processed during the previous year to verify their accuracy.[49]

AGA opposes implementing this proposal. AGA argues that applicants would be required to pay for double-checking the accuracy of the Commission work.[50] In the past, the Commission has excluded the costs of determination audits from the cost of jurisdictional determinations because it believed that the audits were not part of the service of reviewing a jurisdictional agency determination.[51] However, the Commission's experience has demonstrated that, because determination audits are the primary means of ensuring that the initial determinations are accurate, their costs are appropriately included in the total costs of reviews of jurisdictional agency determinations. Review mechanisms to assure the accuracy of a process are a legitimate part of the Commission's provision of the service.

6. *Fee for Electric Utility Rate Filings Under Sections 205 and 206 of the FPA.* The Commission is modifying its fee categories for electric utility rate filings under sections 205 and 206 of the FPA. All electric utility rate filings under those provisions, except those that have no effect on the rate the utility charges or that involve only rate decreases, will be subject to a fee of $5,780. Those excepted filings, formerly defined as "Class 1 rate schedule filings," will not be subject to a fee. All filings formerly classified as "Class 2 rate schedule filings" and "Class 3 rate schedule filings" will be subject to the single filing fee of $5,780.[52]

The Commission proposed to consolidate the three categories of filing fees it established in Order No. 435 [53] into one fee category. The Commission stated that it had found that the three-tiered classification scheme was administratively unworkable.[54]

Eleven commenters oppose consolidation of the electric rate filing fees, arguing generally that the three-tiered classification system is both valid and workable, that the proposed changes would be contrary to the express provisions and judicial and regulatory interpretations of the IOAA, and that those changes would create practical problems. Several commenters suggest that, even if some modification of the fee categories is warranted, there are more appropriate alternatives than that proposed by the Commission.

Commenters maintain that the rationale for the creation and use of the three fee categories stated in Order No. 435 remains convincing and that the Commission has failed to provide specific facts to support its assertions that three categories are unworkable.[55] Several commenters contend that a single consolidated fee is an unjustified step away from the IOAA objective that a fee be based on as small a category of service as practical, especially in the face of evidence from two years' experience that the more specific three-tiered fee system is both workable and justified by administrative costs differences.[56] Other commenters suggest that the Commission's apparent justifications of greater simplicity and ease of administration are not primary considerations under the IOAA and do not outweigh the requirements that fee structures be cost-based, equitable, and self-sustaining to the extent possible.[57]

Two commenters argue that if the three classes were consolidated, Class 3-type filings would no longer be selfsustaining, but would be subsidized by Class 1 and Class 2 fees.[58]

One commenter suggests that a blended fee may discourage certain types of small-scale transactions, such as short-term sales of interchange or coordination energy and short-term voluntary wheeling, which the Commission has recently been encouraging.[59]

Commenters offer a range of alternatives in which they seek to reduce administrative problems with the multiple-category system. One commenter suggests that the Commission could resolve problems with the classification process by more carefully defining the various categories of filings.[60] Other commenters suggest an expedited initial review by employees trained to verify electric rate filing classes or a post-processing review to determine whether the initial fee classification was correct, with a surcharge levied if the initial fee was too low or a refund issued if the initial fee was too high.[61]

Commenters suggest two-tiered fee systems based on whether there is an agreement by customers to the proposed rate [62] or whether the filing is supported by Period II data.[63] Another commenter suggests that the Commission use direct billing to eliminate intra-class subsidies.[64]

During the time the three-tiered classification system for rate filings has been in effect, the Commission has found it administratively difficult to make a prompt and accurate determination of the class of a rate filing upon receipt of that filing. Classification is made difficult because the

[46] 15 U.S.C. 3413 (1982).

[47] 18 CFR 274.104 (1987).

[48] 18 CFR 275 (1987).

[49] 52 FR at 43616 (Nov. 13, 1987).

[50] Comments of AGA at 10–11.

[51] 52 FR 43616 (Nov. 13, 1987).

[52] Rate filing classes and fee categories were defined at 18 CFR 381.502–381.504 (1987).

[53] Fees Applicable to Electric Utilities, Cogenerators, and Small Power Producers, 50 FR 40 347 at 40,348 (Oct. 3, 1985), FERC Stats. and Regs. [Regulation Preambles 1982–1985], ¶ 30,663.

[54] 52 FR 43616–43617 (Nov. 13, 1987).

[55] Comments of Central Illinois Public Service at 3.

[56] Comments of Arizona Public Service at 2; Comments of Consumers Power Company at 2–3.

[57] Comments of Iowa Public Service at 2.

[58] Comments of Central Illinois Public Service at 5; Comments of Consumers Power Company at 3.

[59] Comments of Commonwealth Edison at 13.

[60] Comments of Oklahoma Gas and Electric at 2.

[61] Comments of Middle South Utilities at 2; Comments of Wisconsin Power & Light Company at 2.

[62] Comments of Iowa Public Service at 2–3.

[63] Comments of Consumers Power Company at 4–5; Comments of Tampa Electric Company at 8.

[64] Comments of Central Illinois Public Service at 12.

Commission frequently receives multiple rate filings under single cover and rate filings which are misclassified and because ambiguous filings require transfer from clerical docketing staff to rate analysts for proper classification. Because of the volume of electric rate filings the Commission receives, the Commission believes that the need for prompt and accurate fee determinations requires a departure from the use of the three-tiered classification system.[65] Therefore, despite the best efforts of the Commission, the three classes established in Order No. 435 have not proven to be the smallest practical units of service, as the Commission had hoped in promulgating those fee categories, and the Commission has decided to abandon that framework.

However, the Commission is persuaded by the comments that to consolidate all three filing fee categories would cause those who file relatively simple class 1 rate filings, that often involve minor schedule modifications, to bear a disproportionate fee burden. The Commission has therefore determined that equity and administrative ease support eliminating fees for filings that would have no effect on rates or would involve only rate decreases (formerly "Class 1 rate schedule filings") and consolidating all other rate schedule filings under sections 205 and 206 of the FPA into a single fee category. A person that submits a filing that would have no effect on rates or would involve only rate decreases should include a statement to that effect on the cover sheet of the filing and it will not be assessed a fee. The former class 2 and class 3 rate schedule filings, which involve a significantly greater amount of processing time, will be assessed a uniform fee of $5,780 per filing.

7. *Elimination of Fee for Certain Applications for Prior Notice Blanket Certificates.* The Commission is eliminating the fee associated with an application for a prior notice blanket certificate under § 284.223(b) of the Commission's regulations when the applicant for that certificate has already paid the fee required under § 284.223(d) to accompany the filing of its initial report of transportation pursuant to a self-implementing blanket certificate under § 284.223(a).

Current fees associated with transportation under the NGA section 7 blanket certificate regulations[66] are greater than those associated with the NGPA section 311 transportation regulations[67] if the transportation is for more than 120 days.

This difference in fees may create a regulatory bias in favor of transportation of gas under NGPA section 311 and the Commission is therefore revising its regulations to eliminate the difference.

AGA and Lone Star commented in support of this change.[68]

IV. Final Regulatory Flexibility Analysis

The Regulatory Flexibility Act (RFA)[69] generally requires a description and analysis of final rules that will have a significant economic impact on a substantial number of small entities. Specifically, if an agency promulgates a final rule under the Administrative Procedure Act,[70] a final RFA analysis must contain (1) a statement of the need for and objectives of the rule, (2) a summary of the issues raised by public comments in response to any initial regulatory flexibility analysis and the agency response to those comments, and (3) a description of significant alternatives to the rule consistent with the stated objectives of the applicable statute that the agency considered and ultimately rejected.

The broad purpose of the RFA is to ensure more careful and informed agency consideration of rules that may significantly affect small entities and to encourage the agency's consideration of alternative approaches that may better resolve any unnecessarily costly or adverse effects on small entities.

In this final rule, the Commission presents its reasons for its action, its objectives, and the legal basis for this rulemaking. As discussed, the rule establishes several new fees and revises several existing fees paid to the Commission for certain benefits provided. This rule would affect a wide variety of entities under the jurisdiction of the Commission, including electric utilities, natural gas pipelines, developers of 5MW hydroelectric projects, persons seeking certification of QF status as small power producer or cogeneration facilities, and entities seeking declaratory orders, written interpretation by the Office of the General Counsel, or jurisdictional agency determinations.

The Commission recognizes that the new and revised fees adopted in this rule may have a significant impact on a substantial number of small entities. Section 603(c) of the RFA requires that the Commission discuss significant alternatives to the proposal if that proposal may have a significant economic impact on a substantial number of small entities. The Commission had already attempted to minimize any disproportionate burden of this rule on small businesses. The Commission's regulations concerning fees include a provision for the waiver of fees for applicants that demonstrate severe economic hardship.[71]

The Commission believes that it has satisfied the dual statutory mandates of the RFA and the IOAA in this rulemaking by establishing a fee structure which includes equitable, self-sustaining charges for services which provide special benefits to identifiable recipients, but also provides mechanisms for relief for small entities.

V. Paperwork Reduction Act

The information collection provisions in this final rule are being submitted to the Office of Management and Budget (OMB) for its approval under the Paperwork Reduction Act[72] and OMB's regulations.[73] Interested persons can obtain information on the proposed information collection provisions by contacting the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 (Attention: Timothy Shaughnessy, Division of Organization and Management Analysis, (202) 357-5600). Comments on the information collection provisions in this rule may 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.)

VI. Effective Date

This rule is effective May 31, 1988.

List of Subjects

18 CFR Part 4

Electric power, Reporting and recordkeeping requirements.

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[65] The Commission received 737 electric rate filings in fiscal year 1987.

[66] 18 CFR Part 284, Subpart G (1987). A shipper that chooses the blanket certificate option under NGA section 7 generally first obtains a self-implementing blanket certificate under § 284.223(a). That certificate is valid for one period of up to 120 days and § 284.223(d) requires that an initial report of transportation be accompanied by the fee set in § 381.404. For transportation beyond the initial 120 days, a shipper must apply for a prior notice blanket certificate under § 284.223(b) and § 157.205 requires that an applicant for a prior notice certificate pay the fee set in § 381.208.

[67] 18 CFR Part 284, Subpart B (1987). A shipper that chooses to utilize the NGPA section 311 transportation regulations obtains a permanent certificate and is required by § 284.106(e) to pay the fee set by § 381.404 to accompany an initial report of transportation.

[68] Comments of AGA at 11; Lone Star at 3.

[69] 5 U.S.C. 601-612 (1982).

[70] 5 U.S.C. 553 (1982).

[71] 18 CFR 381.106 (1987).

[72] 44 U.S.C. 3501-20 (1982).

[73] 5 CFR 1320.12 (1987).

18 CFR Part 157

Administrative practice and procedure, Natural gas, Reporting and recordkeeping requirements.

18 CFR Part 292

Electric power plants, Electric utilities, Natural gas, Reporting and recordkeeping requirements.

18 CFR Part 375

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

18 CFR Part 381

Natural gas, Reporting and recordkeeping requirements.

18 CFR Part 388

Freedom of information.

In consideration of the foregoing, the Commission proposes to amend Parts 4, 157, 292, 375, 381, and 388 in Chapter I, Title 18, *Code of Federal Regulations*, as set forth below.

By the Commission.

Lois D. Cashell,

Acting Secretary.

PART 4—LICENSES, PERMITS, EXEMPTIONS, AND DETERMINATION OF PROJECT COSTS

1. The authority citation for Part 4 is revised to read as follows:

Authority: Federal Power Act, 16 U.S.C. 791a–825r, as amended by the Electric Consumers Protection Act of 1986; Public Utility Regulatory Policies Act of 1978, 16 U.S.C. 2601–2645 (1982); Department of Energy Organization Act, 42 U.S.C. 7101–7352 (1982); E.O. 12009, 3 CFR 1978 Comp., p. 142.

2. In § 4.107, paragraph (a) is revised to read as follows:

§ 4.107 Contents of application for exemption from licensing.

(a) *General requirements.* An application for exemption from licensing submitted under this subpart must contain the introductory statement, the exhibits described in this section, the fee prescribed in § 381.601 of this chapter and, if the project structures would use or occupy any lands other than Federal lands, an appendix containing documentary evidence showing that applicant has the real property interests required under § 4.31(c)(2)(ii).

* * * * *

PART 157—APPLICATIONS FOR CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY AND FOR ORDERS PERMITTING AND APPROVING ABANDONMENT UNDER SECTION 7 OF THE NATURAL GAS ACT

3. The authority citation for Part 157 is revised to read as follows:

Authority: Natural Gas Act, 15 U.S.C. 717–717w (1982); Department of Energy Organization Act, 42 U.S.C. 7101–7352 (1982); E.O. 12009, 3 CFR 1978 Comp., p. 142; Natural Gas Policy Act of 1978, 15 U.S.C. 3301–3432 (1982).

4. In § 157.205, paragraph (b) is revised to read as follows:

§ 157.205 Notice procedure.

* * * * *

(b) *Contents.* In addition to the fee prescribed in paragraph (c) of this section, for any activity subject to the requirements of this section, the certificate holder must file with the Secretary of the Commission an original and fifteen copies of request for authorization under the notice of this section that contains:

(1) The exact legal name of the certificate holder and mailing address and telephone number of the person or persons to whom communications concerning the request are to be addressed;

(2) The docket number in which its blanket certificate was issued;

(3) Any information required in § 157.208 through § 157.218 of this chapter for the particular activity;

(4) A verified statement that the proposed activity complies with the requirements of this subpart;

(5) A form of notice suitable for publication in the **Federal Register** which briefly summarizes the facts contained in the request with sufficient particularity so as to notify the public of its scope and purpose; and

(6) Identities and docket numbers of other applications related to the transaction. All related filings must be made within 10 days of the first filing. Otherwise the applications on file will be rejected under paragraph (d) of this section without prejudice to refiling when all parties are ready to proceed.

* * * * *

5. In § 157.205, paragraphs (c) through (h) are redesignated as paragraphs (d) through (i) and a new paragraph (c) is added to read as follows:

(c) *Fees.* The certificate holder must file the fee prescribed in § 381.208 of this chapter or a petition for waiver pursuant to § 381.106 of this chapter, except that no fee will be assessed for abandonment activities under § 157.216(b) of this chapter or for transportation under § 284.223(b) of this chapter, if the fee required under § 284.223(d) for the initial report has previously been paid for existing transportation authorized by § 284.223(a) of this chapter.

* * * * *

PART 292—REGULATIONS UNDER SECTIONS 201 AND 210 OF THE PUBLIC UTILITY REGULATORY POLICIES ACT OF 1978 WITH REGARD TO SMALL POWER PRODUCTION AND COGENERATION

6. 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); E.O. 12009, 3 CFR 1978 Comp., p. 142; Indepenent Offices Appropriations Act, 31 U.S.C. 9701 (1982); Federal Power Act, 16 U.S.C. 791a–825r (1982), as amended by the Electric Consumers Protection of 1986; Public Utility Regulatory Policies Act, 16 U.S.C. 2601–2645 (1982) as amended.

7. In § 292.207, paragraph (b)(2) is revised to read as follows:

§ 292.207 Procedures for obtaining qualifying status.

* * * * *

(b) * * *

(2) *General contents of application.* The application must be accompanied by the fee prescribed in § 381.505 of this chapter and must contain the following information:

(i) The name and address of the applicant and location of the facility;

(ii) A brief description of the facility, including a statement indicating whether such facility is a small power production facility or a cogeneration facility;

(iii) The primary energy source used or to be used by the facility;

(iv) The power production capacity of the facility; and

(v) The percentage of ownership by any electric utility or by any electric utility holding company, or by any person owned by either.

* * * * *

PART 375—THE COMMISSION

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

Authority: Department of Energy Organization Act, 42 U.S.C. 7101–7532 (1982), E.O. 12009, 3 CFR 1978 Comp., p. 142; Administrative Procedure Act, 5 U.S.C. 553 (1982); Federal Power Act, 16 U.S.C. 791–828c (1982), as amended by the Electric Consumers Protection Act of 1986; Natural Gas Act, 15 U.S.C. 717–717w (1982); Natural Gas Policy Act of 1978, 15 U.S.C. 3301 *et seq.*; Public

Utility Regulatory Policies Act of 1978, 16 U.S.C. 2601 *et seq.*, as amended.

9. In § 375.308, paragraph (m) is revised to read as follows:

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

* * * * *

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

* * * * *

10. In § 375.309, paragraph (f) is revised to read as follows:

§ 375.309 Delegations to the General Counsel.

* * * * *

(f) Deny or grant, in whole or in part, petitions for waivers of fees prescribed in § 381.305 of this chapter in accordance with § 381.106 of this chapter.

11. In § 375.314, paragraph (gg) is revised to read as follows:

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

* * * * *

(gg) Deny or grant, in whole or in part, petitions for exemption from the fees prescribed in § 381.302(a) of this chapter in accordance with § 381.302(c) of this chapter and the fees in § 381.601 of this chapter, in accordance with § 381.106 of this chapter.

* * * * *

PART 381—FEES

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

Authority: Department of Energy Organization Act, 42 U.S.C. 7101–7352 (1982); E.O. 12009, 3 CFR 1978 Comp., p. 142; 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. 791–828c (1982); Public Utility Regulatory Policies Act, 16 U.S.C. 2601–2645 (1982); Interstate Commerce Act, 49 U.S.C. 1–27 (1976).

13. In § 381.104, paragraph (c) is revised to read as follows:

§ 381.104 Annual adjustment of fees.

* * * * *

(c) *Formula.* The formula for determining each fee is the actual work-months dedicated to a given fee category for the previous fiscal year divided by the number of actual completions in the previous fiscal year multiplied by the average cost per work-month in the previous fiscal year. The fee is rounded down to the nearest $5 increment if the fee is $100 or less, and to the nearest $10 increment if the fee is more than $100.

* * * * *

14. Section 381.208 is revised to read as follows:

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

(a) Except as provided in paragraph (b) of this section, the fee established for a request for authorization under blanket certificate notice and protest procedures is $2,120. The fee must be submitted in accordance with Subpart A of this part and § 157.205(b) of this chapter.

(b) If the fee for an application under § 284.223(d) of this chapter has been paid for an existing transportation authorization pursuant to § 284.223(a) of this chapter, then no fee is assessed for the authorization under the blanket certificate notice and protest procedures.

15. In § 381.302, paragraph (a) is revised to read as follows:

§ 381.302 Petition for issuance of a declaratory order (except under Part I of the Federal Power Act.)

(a) Except as provided in paragraph (b) of this section, the fee established for filing a petition for issuance of a declaratory order under § 385.207 of this chapter is $11,670. The fee must be submitted in accordance with Subpart A of this part.

* * * * *

16. A new § 381.305 is added to read as follows:

§ 381.305 Interpretations by the Office of the General Counsel.

(a) Except as provided in paragraph (b) of this section, the fee established for a written interpretation by the Office of the General Counsel of any statute or implementing regulation under the jurisdiction of the Commission is $2,460. The fee must be submitted in accordance with Subpart A of this part and § 385.1901 or § 388.104 of this chapter.

(b) No fee is necessary to file a request for a written interpretation by the Office of the General Counsel that solely concerns matters under Part I of the Federal Power Act.

(c) A person claiming the exemption provided in paragraph (b) of this section must file an original and two copies of a petition for exemption in lieu of a fee along with the request for a written interpretation. The petition for exemption should summarize the issues raised in the request for a legal opinion and explain why the exemption is applicable. The Commission or its designee will analyze each petition to determine whether the petition has met the standards for exemption and will notify the applicant whether it is granted or denied. If the petition is denied, the applicant will have 30 days from the date of notification of the denial to submit the appropriate fee to the Commission.

17. Section 381.402 is revised to read as follows:

§ 381.402 Review of jurisdictional agency determinations.

The fee established for review of a jurisdictional agency determination is $75. The fee must be submitted in accordance with Subpart A of this part and § 274.201(e) of this chapter.

§ 381.405 [Removed and Reserved]

18. Section 381.405, Interpretations by the Office of the General Counsel, is removed in its entirety and reserved.

19. Section 381.502 is revised to read as follows:

§ 381.502 Rate schedule filings under sections 205 and 206 of the Federal Power Act.

(a) Except as provided in paragraph (b) of this section, and unless the Commission orders direct billing under § 381.107 or otherwise, the fee established for rate schedule filings under sections 205 and 206 of the Federal Power Act is $5,780. The fee filed under this paragraph must be submitted in accordance with Subpart A of this part and Part 35 of this chapter.

(b) There is no fee charged for rate schedule filings under sections 205 and 206 of the Federal Power Act which have no effect on the rate the utility charges or which involve only rate decreases.

§ 381.503 [Removed and Reserved]

20. Section 381.503, Class 2 rate schedule filings, is removed in its entirety and reserved.

§ 381.504 [Removed and Reserved]

21. Section 381.504, Class 3 rate schedule filings, is removed in its entirety and reserved.

22. Section 381.505 is revised to read as follows:

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

(a) Unless the Commission orders direct billing under § 381.107 of this chapter or otherwise, the fee established for an application for Commission certification as a qualifying small power production facility, as defined in section 3(17) of the Federal Power Act, is $6,560 and the fee established for an application for Commission certification as a qualifying cogeneration facility, as defined in section 3(18) of the Federal Power Act, is $4,310.

(b) The fee filed under this section must be submitted in accordance with Subpart A of this part and § 292.207(b)(2) of this chapter.

23. Subpart F consisting of § 381.601 is added to read as follows:

Subpart F—Fees Applicable to the Public Utility Regulatory Policies Act of 1978

§ 381.601 5 Megawatt exemption application.

The fee established for a 5 Megawatt exemption application under section 405 of the Public Utility Regulatory Policies Act of 1978 and Part 4, Subpart K of this chapter is $16,430. The fee must be submitted in accordance with Subpart A of this part.

PART 388—INFORMATION AND REQUESTS

24. The authority citation for Part 388 continues to read as follows:

Authority: Freedom of Information Act, 5 U.S.C. 552 (1982) as amended by Freedom of Information Reform Act of 1986; Administrative Procedure Act, 5 U.S.C. 551–557 (1982).

25. Section 388.104 is revised to read as follows:

§ 388.104 Informal advice from Commission staff.

(a) The Commission staff provides informal advice and assistance to the general public and to prospective applicants for licenses, certificates, and other Commission authorizations. Opinions expressed by the staff do not represent the official views of the Commission, but are designed to aid the public and facilitate the accomplishment of the Commission's functions. Inquiries may be directed to the chief of the appropriate office or division.

(b) Any inquiry directed to the Chief Accountant that requires a written response must be accompanied by the fee prescribed in § 381.301 of this chapter.

(c) A request directed to the Office of the General Counsel for a legal interpretation of any statute or implementing regulation under the jurisdiction of the Commission must be accompanied by the fee prescribed in § 381.305 of this chapter.

[FR Doc. 88-9462 Filed 4-28-88; 8:45 am]

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18 CFR Part 381

[Docket Nos. RM82-25-000 et al.]

Update of Filing Fees Under the Independent Offices Appropriations Act of 1952

April 6, 1988.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission, in accordance with § 381.104 of the Commission's regulations, issues an annual adjustment of the filing fees assessed under the authority of the Independent Offices Appropriations Act of 1952. The Commission updates these fees on the basis of data for fiscal year 1987.

EFFECTIVE DATE: May 31, 1988.

FOR FURTHER INFORMATION CONTACT: Lois D. Cashell, Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, (202) 357-8400.

SUPPLEMENTARY INFORMATION:

In the Matter of: Fees Applicable to Producer Matters Under the Natural Gas Act, Docket No. RM82-25-000; Fees Applicable to Natural Gas Pipeline Rate Matters, Docket No. RM83-2-000; Fees Applicable to the Natural Gas Policy Act, Docket No. RM82-30-000; Fees Applicable to General Activities, Docket No. RM82-35-000; Fees Applicable to Natural Gas Pipelines, Docket No. RM82-31-000; Fees Applicable to Electric Utilities, Cogenerators, and Small Power Producers, Docket No. RM82-38-000; Revisions to the Purchased Gas Adjustment Regulations, Docket No. RM86-14-000; and Filing Fees Under The Independent Offices Appropriations Act of 1952, Docket No. RM87-26-000.

The Federal Energy Regulatory Commission (Commission), by its designee the Executive Director,[1] is issuing this final rule to update the filing fees the Commission assesses for specific services and benefits provided to identifiable beneficiaries. The Independent Offices Appropriations Act of 1952 (IOAA) authorizes the Commission to establish and collect these fees [2] and the Commission's regulations require an annual update of the IOAA fees based on data from the previous fiscal year.[3] The Commission is establishing updated fees on the basis of the Commission's cost, completion, and work time data for fiscal year 1987.[4]

The adjusted fees announced in this final rule will become effective 30 days after publication in the **Federal Register**.

The new fee schedule is as follows:

Fees Applicable to Producer Matters Under the Natural Gas Act	
1. Blanket certificates for small producers (codified at 18 CFR 381.201)	$540
2. Producer certificates of public convenience and necessity (18 CFR 381.202)	1,920
3. Changes in producer rate schedules (18 CFR 381.203)	510
Fees Applicable to Natural Gas Pipeline Rate Matters	
1. Pipeline tariff filings for general changes in rates and for changes other than in rates (18 CFR 381.204)	4,320
2. Pipeline tariff filings that track certain costs:	
(a) Annual filing under § 154.305 (18 CFR 381.205(a))	4,440
(b) Quarterly filing under § 154.308 (18 CFR 381.205(b))	910
(c) Interim adjustment filing under § 154.309 (18 CFR 381.205(c))	910
(d) Any other tariff filing that tracks costs (18 CFR 381.205(d))	910
Fees Applicable to the Natural Gas Policy Act	
1. Adjustments under section 502(c) of the Natural Gas Policy Act (18 CFR 381.401)	2,430
2. Review of jurisdictional agency determinations (18 CFR 381.402)	75
3. Petitions for rate approval pursuant to § 284.123(b)(2) (18 CFR 381.403)	1,990
4. Initial or extension reports for Title III transactions (18 CFR 381.404)	410
Fees Applicable to General Activities	
1. Request for interpretation by the Office of the Chief Accountant (18 CFR 381.301)	200
2. Petition for issuance of a declaratory order (except under Part I of the Federal Power Act) (18 CFR 381.302)	11,670
3. Review of a Department of Energy remedial order:	
Amount in controversy	
$0-9,999 (18 CFR 381.303(b))	100
$10,000-29,999 (18 CFR 381.303(b))	600
$30,000 or more (18 CFR 381.303(a))	10,260
4. Review of a Department of Energy denial of adjustment:	
Amount in controversy	
$0-9,999 (18 CFR 381.304(b))	100
$10,000-29,999 (18 CFR 381.304(b))	600

[1] 18 CFR 375.313(a) (1987).

[2] 31 U.S.C. 9701 (1982).

[3] 18 CFR 381.104 (1987).

[4] The final rule in Filing Fees Under The Independent Offices Appropriations Act of 1952, Docket No. RM87-26-000, published April 29, 1988, established three new filing fees and updated several other IOAA fees based on fiscal year 1987 cost, completion, and work time data. That rule established current levels for the fees found in 18 CFR 381.208(a), 381.302(a), 381.305(a), 381.402, 381.502(a), 381.505(a), and 381.601.