ORAL ARGUMENT HAS NOT BEEN SCHEDULED

In the United States Court of Appeals for the Fifth Circuit

No. 25-60019
consolidated with
No. 25-60264

SUSQUEHANNA NUCLEAR, L.L.C.,
Petitioner

v.

FEDERAL ENERGY REGULATORY COMMISSION,
Respondent

ON PETITIONS FOR REVIEW OF ORDERS OF THE FEDERAL ENERGY REGULATORY COMMISSION

BRIEF OF RESPONDENT FEDERAL ENERGY REGULATORY COMMISSION

DAVID L. MORENOFF
ACTING GENERAL COUNSEL

ROBERT H. SOLOMON
SOLICITOR

JARED B. FISH
SENIOR ATTORNEY

FOR RESPONDENT
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426
(202) 502-8101

OCTOBER 3, 2025

CERTIFICATE OF INTERESTED PARTIES

Susquehanna Nuclear, L.L.C. v. FERC, Nos. 25-60019, 25-60264

The undersigned counsel of record certifies that the following listed persons and entities, as described in the fourth sentence of Rule 28.2.1, have an interest in the outcome of this case. These representations are made in order that judges of this Court may evaluate possible disqualifications or recusal.

COUNSEL FOR AMERICAN ELECTRIC POWER SERVICE CORPORATION:
Marnie A. McCormick of Duggins Wren Mann & Romero, L.L.P.

COUNSEL FOR EXELON CORPORATION:
Stan Berman of Berman & Todderud, L.L.P.

COUNSEL FOR FEDERAL ENERGY REGULATORY COMMISSION:
David L. Morenoff, Robert H. Solomon, and Jared B. Fish of Federal Energy Regulatory Commission

COUNSEL FOR MARYLAND OFFICE OF PEOPLE'S COUNSEL:
Alexis Lewis of Maryland Office of People's Counsel

COUNSEL FOR PPL ELECTRIC UTILITIES CORPORATION:
Shannen Wayne Coffin of Steptoe, L.L.P.

COUNSEL FOR SUSQUEHANNA NUCLEAR, L.L.C.:
Jeremy Charles Marwell, James T. Dawson (withdrawn), Garrett Meisman, and William S. Scherman of Vinson & Elkins, L.L.P.

COUNSEL FOR VISTRA CORPORATION:
Nicholas M. Gladd and Steven G. Boughton of Wilson Sonsini Goodrich & Rosati

*/s/ Jared B. Fish*________
Attorney of Record
for Federal Energy
Regulatory Commission

October 3, 2025

STATEMENT REGARDING ORAL ARGUMENT

In accordance with Circuit Rule 28.2.3 and Federal Rule of Appellate Procedure 34(a)(1), Respondent Federal Energy Regulatory Commission submits that oral argument would assist the Court's resolution of this case. Oral argument will enable counsel to answer any questions the Court might have regarding the Court's subject-matter jurisdiction to hear Susquehanna's appeal, as well as the Commission's standard under the Federal Power Act for assessing the lawfulness of non-conforming interconnection service agreements.

TABLE OF CONTENTS

PAGE

TABLE OF AUTHORITIES

COURT CASES: **PAGE(S)**

TABLE OF AUTHORITIES

COURT CASES: **PAGE(S)**

TABLE OF AUTHORITIES

COURT CASES: **PAGE(S)**

TABLE OF AUTHORITIES

COURT CASES: **PAGE(S)**

TABLE OF AUTHORITIES

COURT CASES: **PAGE(S)**

TABLE OF AUTHORITIES

COURT CASES: **PAGE(S)**

ADMINISTRATIVE CASES:

TABLE OF AUTHORITIES

ADMINISTRATIVE CASES: **PAGE(S)**

TABLE OF AUTHORITIES

ADMINISTRATIVE CASES: **PAGE(S)**

STATUTES:

TABLE OF AUTHORITIES

STATUTES: **PAGE(S)**

REGULATIONS:

OTHER AUTHORITIES:

In the United States Court of Appeals for the Fifth Circuit

No. 25-60019
consolidated with
No. 25-60264

SUSQUEHANNA NUCLEAR, L.L.C.,
Petitioner

v.

FEDERAL ENERGY REGULATORY COMMISSION,
Respondent

ON PETITIONS FOR REVIEW OF ORDERS OF THE FEDERAL ENERGY REGULATORY COMMISSION

BRIEF OF RESPONDENT FEDERAL ENERGY REGULATORY COMMISSION

INTRODUCTION

In 2003, Respondent Federal Energy Regulatory Commission (“Commission” or “FERC”) issued its landmark Order 2003 rulemaking to clear the backlog of electric generators seeking to interconnect to the grid. To that end, the Order required grid operators to file with FERC generally applicable *pro forma* interconnection terms. Only in rare circumstances would FERC approve non-conforming interconnection service agreements (“ISAs”). To qualify for the exception, a grid operator must prove that a non-conforming ISA is both necessary for and unique to a particular interconnection. FERC has applied this standard for two decades.

In April 2024, PJM Interconnection, L.L.C. ("PJM")—operator of the Mid-Atlantic electric transmission grid—issued a generally applicable Guidance Document prescribing terms for "co-location" interconnections across its grid. Under the co-location arrangement at issue in this proceeding, electricity that a generator would normally send to the grid for general distribution is instead routed exclusively to a nearby source of electric demand. The Guidance is not part of the *pro forma* ISA or otherwise included in PJM's operating tariff that is on file with FERC.

Two months later, in June 2024, PJM filed with FERC a non-conforming ISA between PJM, Petitioner Susquehanna Nuclear, L.L.C. ("Susquehanna"), and Intervenor PPL Electric Utilities Corporation ("PPL"). Susquehanna owns a nuclear power plant in Pennsylvania and PPL owns the transmission lines in the area—lines operated by PJM. The ISA provides for co-location as between Susquehanna's plant and data centers, and includes terms that closely track provisions in the Guidance.

FERC rejected the non-conforming ISA in the orders here on judicial review. It concluded that, given the ISA's similarities to the generally applicable Guidance, PJM failed to meet its burden of proving that its non-conforming provisions were both unique and necessary.

Around the same time, FERC instituted a separate proceeding to explore whether PJM's tariff should be revised to address co-location on a grid-wide basis. Should that proceeding, which is ongoing, ultimately result in formal, generally applicable co-location terms, that could displace case-by-case non-conforming ISAs. Further, in June 2025, after it sought judicial review, Susquehanna's parent company announced that it was abandoning the co-location arrangement at the heart of this appeal.

JURISDICTIONAL STATEMENT

The Court does not have jurisdiction for lack of Article III standing, mootness, and/or ripeness. *Infra* Argument Parts II and III.

STATEMENT OF ISSUES PRESENTED FOR REVIEW

(1) Whether Susquehanna's petitions should be dismissed (A) for lack of Article III standing, (B) because its claims will soon be moot, and/or (C) because its claims are unripe, given that Susquehanna has effectively remedied its own grievance by abandoning behind-the-meter co-location.

(2) Should the Court reach the merits: Whether FERC reasonably found that PJM failed to satisfy its burden of proving that the Amended ISA is both unique and necessary given, among other things, the Amended ISA's similarities to PJM's generally applicable Guidance Document.

STATUTES AND REGULATIONS

Pertinent statutes and regulations are reproduced in the Addendum to this brief.

STATEMENT OF THE CASE

I. Legal background

The Federal Power Act vests in FERC "authority to regulate 'the transmission of electric energy in interstate commerce' and 'the sale of electric energy at wholesale in interstate commerce.'" *FERC v. Elec. Power Supply Ass'n*, 577 U.S. 260, 266 (2016) (quoting FPA Section 201(b)(1), 16 U.S.C. §824(b)(1)). Consistent with this authority, FERC exercises jurisdiction over the interconnections of electric generation facilities to the electric grid—a necessary process for transmitting electric energy to load.[1]

---

[1] "Load" is industry parlance for "[a]n end-use device or customer that receives power from the electric system." *Solar Energy Indus. Ass'n v. FERC*, 2025 WL

Nat'l Ass'n of Reg. Util. Comm'rs v. FERC, 475 F.3d 1277, 1280 (D.C. Cir. 2007) *("Nat'l Ass'n I")*; *see also NextEra Energy Cap. Holdings, Inc. v. Lake*, 48 F.4th 306, 311 (5th Cir. 2022) (FERC has "jurisdiction to regulate 'all facilities for [the interstate] transmission … of electric energy.'" (quoting §824(b)(1))).

FERC exercised its authority over generator interconnections when, in 2003, it issued its landmark Order 2003, *Standardization of Generator Interconnection Agreements & Procedures*, 104 FERC ¶61,103, which was upheld on judicial review in *Nat'l Ass'n I*, 475 F.3d at 1279. Order 2003 put an end to the "inadequate" and "inefficient" case-by-case interconnection negotiations between electric generators and grid operators. *Nat'l Ass'n I*, 475 F.3d at 1279 (quoting Order 2003 P[2] 10). To speed up the process and also to prevent undue discrimination against particular generators, Order 2003 required grid operators to adopt a standardized, *pro forma* ISA for large generators. *Xcel Energy Servs. Inc. v. FERC*, 41 F.4th 548, 552–553 (D.C. Cir. 2022).

2599488, *6 (D.C. Cir. Sept. 9, 2025) (quoting *Load (electric)*, U.S. Energy Info. Admin., https://perma.cc/36SM-GVMN) (cleaned up).

2 "P" indicates an internal paragraph of a FERC order.

In the matter on review, PJM is the grid operator that manages the electric wholesale sales, interstate transmissions, and generator interconnections in the mid-Atlantic region. *Hughes v. Talen Energy Mktg.*, LLC, 578 U.S. 150, 155 (2016); *see infra* Figure 1. Consistent with its Order 2003 obligations, at all relevant times PJM had on file with FERC a *pro forma* ISA. *See, e.g.*, *Am. Elec. Power Serv. Corp. v. PJM Interconnection, L.L.C.*, 167 FERC ¶61,121, P 1 (2019).

Under Order 2003, if a grid operator like PJM seeks to execute interconnection terms that do not conform to the *pro forma* ISA, it must file the non-conforming provisions with FERC for review. *See NRG Power Mktg., LLC v. FERC*, 718 F.3d 947, 955 n.1 (D.C. Cir. 2013). Since at least 2005 FERC has followed a policy of accepting non-conforming ISAs only in "extraordinary" circumstances—i.e., those involving "reliability concerns, novel legal issues or other unique factors" that "require" non-conforming provisions. *E.g.*, *Midwest Indep. Transmission Sys. Operator, Inc.*, 114 FERC ¶61,078, P 6 (2006); *Midwest Indep. Transmission Sys. Operator, Inc.*, 111 FERC ¶61,421, P 11 (2005).

II. Factual background

1. In 2023, PJM submitted for FERC approval an executed, uncontested ISA (the "2023 ISA") between PJM, Susquehanna, and PPL. *PJM Interconnection, L.L.C.*, 189 FERC ¶61,078, P 7 (Nov. 1, 2024) ("Decisional Order," R.85); *see* Federal Power Act Section 205(d), 16 U.S.C. §824d(d) (setting forth filing rights of public utilities).[3] The 2023 ISA included non-conforming terms to accommodate Susquehanna's request to physically connect its 2,520-megawatt nuclear power plant—consisting of two, 1,260-megawatt generating units—directly to large data center loads behind the plant's generation meter ("behind-the-meter") and behind the point of interconnection to the PJM transmission system. Decisional Order PP 5, 7; R.1:2. In plain English, the 2023 ISA implemented a co-located load arrangement between Susquehanna and large data centers that would allow the data centers to receive power directly from the power plant.

Under the 2023 ISA, Susquehanna dedicated electric energy up to a specified amount (300 megawatts) for data centers instead of delivering that

---

[3] Like Susquehanna, FERC cites its orders in this case by their paragraph number—e.g., <Decisional Order P [*paragraph number*]>. Other record documents are cited as <R.[*record number in FERC's certified index*]:[*page number of the document*]>. If a document does not include internal pagination, the .pdf page number is used instead.

power to the PJM grid. R.1:5 n.13 & Appendix 1 at pdf p.37. This meant that, instead of receiving (and paying for) power off the grid like other load (e.g., residential consumers), the data centers would receive an exclusive power supply. *See* Decisional Order P 7. In March 2023, FERC staff accepted the uncontested 2023 ISA via delegated letter order. *Id.* P 7. FERC staff subsequently issued another delegated letter order accepting an amendment to the ISA (also uncontested) in May 2024. *Id.* P 8.

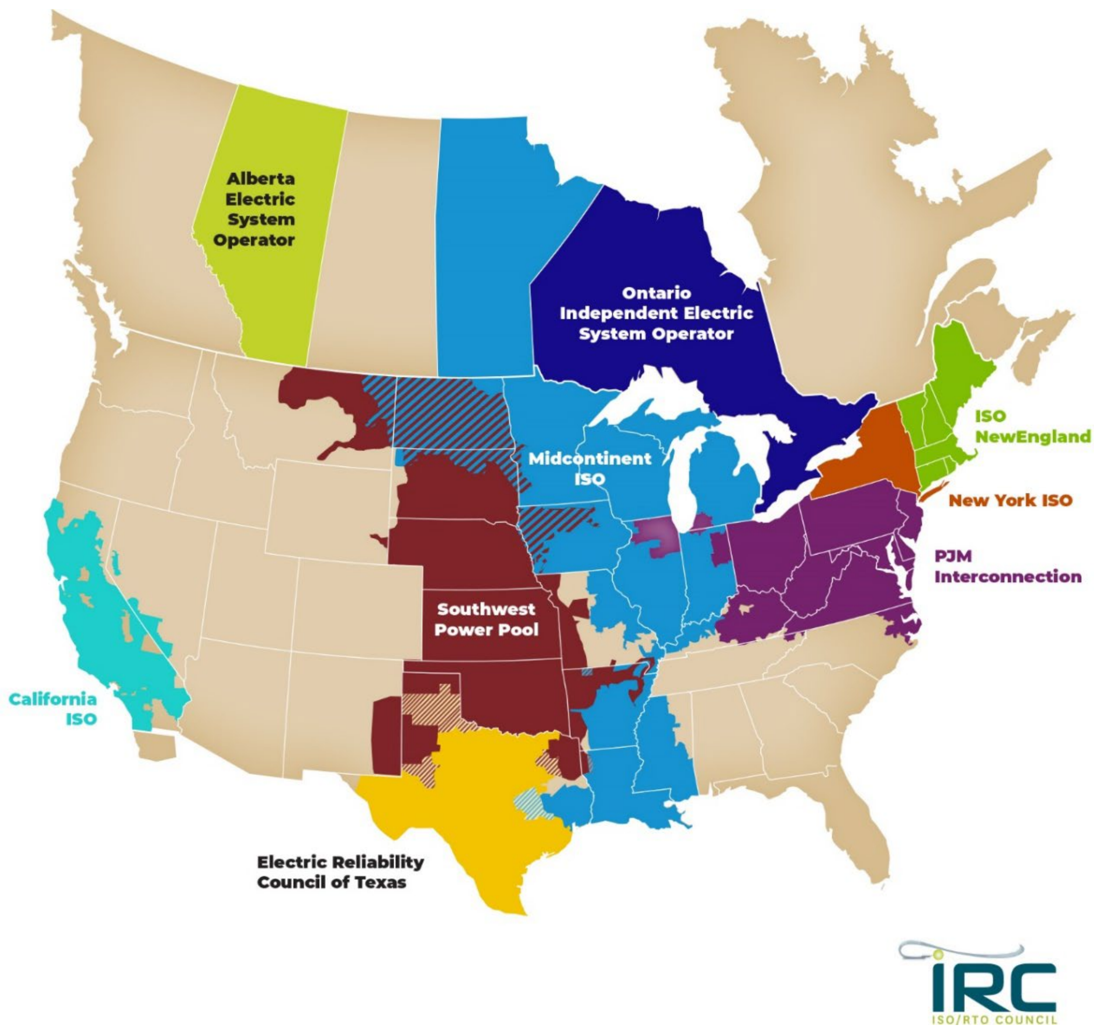

Figure 1: Wholesale market operators, https://perma.cc/NZY3-JPQB

2. On June 3, 2024, PJM filed a further amendment to the ISA—the Amended ISA—which is the subject of Susquehanna's petitions. *Id.* P 1. The Amended ISA includes "substantial revisions" to the existing ISA. *Id.* P 9. For one thing, it increases the maximum dedicated power supply from 300 megawatts to 480 megawatts, above which PJM found that siphoning off power from the broader grid would cause reliability issues. *Id.* P 10.

The Amended ISA also includes new non-conforming provisions addressing, among other things, co-located load's ability to take power from Susquehanna's back-up generation unit, and coordination protocols for outages at the Susquehanna plant before the co-located load may consume back-up power. *Id.* PP 11–12; *PJM Interconnection, L.L.C.*, 191 FERC ¶61,025, P 4 (Apr. 10, 2025) ("Rehearing Order," R.100). The Amended ISA also includes provisions geared at minimizing the potential for co-located load to take power from the broader grid, language specifying that the co-located load is neither Station Power Load nor Network Load,[4] and a

[4] "Station Power Load" means a generator's own, on-site demand, whereas "Network Load" means demand that is served using PJM's integrated transmission network service, which service is set forth in PJM's tariff. Decisional Order P 3; PJM Open Access Transmission Tariff ("OATT"), §I.1 (L-M-N, OATT Definitions), at pdf pp.12–13, https://perma.cc/SU4P-3XJA; *Ind. Mun. Power Agency v. PJM Interconnection, L.L.C.*, 172 FERC ¶61,243, P 2 (2020).

provision requiring that Susquehanna comply with certain requirements if it seeks to add more co-located load. Decisional Order P 13; Rehearing Order P 4; R.1:11.

III. The Challenged FERC Orders

As the filing party, PJM bore the burden of proving that the Amended ISA was, as the Federal Power Act requires, "just and reasonable" and not unduly discriminatory. *E.g.*, *Belmont Mun. Light Dep't v. FERC*, 38 F.4th 173, 184 (D.C. Cir. 2022); 16 U.S.C. §824d(a)–(b), (e). On November 1, 2024, by a 2-1 vote, the Commission rejected the Amended ISA, holding that PJM failed to clear this threshold. Decisional Order P 1.

FERC explained that Order 2003 contemplates approving only a "small number of extraordinary interconnections that would call for the filing of a non-conforming interconnection agreement." *Id.* P 2. Accordingly, the filing party must demonstrate that any non-conforming provisions are both unique and necessary. Rehearing Order P 23. That is, such provisions must address "specific reliability concerns, novel legal issues, or other unique factors" that render the non-conforming provisions "necessary." *Id.* P 3; *accord NRG*, 718 F.2d at 955 n.1. FERC has applied this standard for two decades. *See* Rehearing Order P 3 nn.9–10 (collecting cases); *supra* p.6.

FERC found that, on this record, PJM did not show that the proposed non-conforming provisions in the Amended ISA were unique and necessary. In fact, the Amended ISA includes several provisions that track an April 2024-issued PJM Guidance Document, which establishes generic protocols for behind-the-meter, co-location interconnections across PJM's multi-state grid. *See* PJM, *Guidance on Co-Located Load* (Apr. 17, 2024) ("Guidance"), https://perma.cc/4DJN-ZVVB. For instance, both the Guidance and Amended ISA include requirements that address diverting back-up generation from the PJM grid to co-located load. *Compare* R.70:15 (Part D.2 of the Amended ISA prevents "unilaterally and automatically" cutting a "back-up" "Generation Capacity Resource['s]" service to "the PJM Region"), *with* Guidance at 3 (prevents cutting a "back-up Generation Capacity Resource['s]" provision of "energy to the PJM system"). Similarly, both documents address procedures to secure PJM's approval before back-up power may be used for co-located load. *Compare* R.70:14 (requiring Susquehanna to secure PJM's approval to supply back-up power to co-located load), *with* Guidance 3–4 (requiring "[c]oordination with PJM

Operations … before the back-up Generation Capacity Resource … can serve the co-located load"). And both documents require adherence to certain PJM tariff procedures before modifications may be made to co-located load. *Compare* R.70:20–21 (Part F.5 requires Susquehanna to follow PJM tariff procedures before making any modifications to the co-located load), *with* Guidance at 5 (requiring that PJM tariff provisions be followed regarding "any planned modifications to the co-located Customer Facility").

PJM failed to explain how similarities between the Amended ISA and Guidance nevertheless render the Amended ISA necessary to address issues unique to the Susquehanna co-location arrangement. Decisional Order P 87. In fact, PJM mustered no rebuttal to FERC's findings *at all*.

While PJM declined to pursue the Amended ISA after FERC rejected it, Susquehanna sought agency rehearing of the Decisional Order—a prerequisite to petitioning for judicial review of that Order. *See* 16 U.S.C. §825*l*(a). In responding to Susquehanna's objections, FERC affirmed its rejection of the Amended ISA (again by a 2-1 vote), reiterating that "PJM failed to carry its burden to justify due to specific reliability concerns, novel legal issues, or other unique factors the non-conforming provisions that rely on the PJM Guidance Document." Rehearing Order P 27.

IV. Recent events affect this Court's review of Susquehanna's petitions

1. Events in the last year have affected the justiciability of Susquehanna's petitions. On August 2, 2024—i.e., before FERC issued the November 2024 Decisional Order in this matter—FERC announced a technical conference "to discuss generic issues related to the co-location of large loads at generating facilities." *Notice of Commissioner-Led Technical Conference*, FERC Dkt. No. AD24-11, https://perma.cc/FJ4X-HCLP; Decisional Order P 46 n.139. That conference, combined with the submittal of other filings including a complaint lodged by Constellation Energy Generation, LLC, moved FERC to institute a proceeding pursuant to Federal Power Act Section 206, 16 U.S.C. §824e. Section 206 affords FERC the power and duty to *sua sponte* remedy unjust, unreasonable, or unduly discriminatory electric rates—including interconnection rules—by imposing new ones. *Miss. Power & Light Co. v. Miss. ex rel. Moore*, 487 U.S. 354, 360 n.6 (1988). Exercising this authority, on February 20, 2025, FERC directed PJM to either (1) show cause why PJM's tariff remains lawful notwithstanding its lack of generally applicable co-location rules, or (2) explain what changes to PJM's tariff are warranted to accommodate co-location. *Constellation Energy Generation, LLC v. PJM Interconnection,*

L.L.C., 190 FERC ¶61,115, P 2 (Feb. 20, 2025) ("Section 206 Co-Location Order").

2. Separately, in June 2025, Susquehanna's parent company, Talen Energy Corporation, contracted with Amazon Web Services to abandon Susquehanna's current behind-the-meter co-location scheme. Talen Energy Press Release, *Talen Energy Expands Nuclear Energy Relationship with Amazon* (June 11, 2025), https://perma.cc/2WYV-HQA2 ("Talen Press Release"); Br. 16. Beginning Spring 2026, "[t]he existing Susquehanna co-located load arrangement between Talen and Amazon will transition to a 'front-of-meter' arrangement," *id.*, thus "supersed[ing]" the FERC-rejected Amended ISA, Br. 16.

SUMMARY OF ARGUMENT

This Court lacks jurisdiction to consider Susquehanna's petitions. Susquehanna has already contracted to abandon the behind-the-meter co-location arrangement at issue in this appeal. Beginning Spring 2026, Susquehanna will serve its data center customer through a more standard front-of-meter arrangement. By nevertheless pursuing judicial review, Susquehanna seeks an advisory opinion from the Court to guide some hypothetical, future co-location endeavor. The petitions should be dismissed.

If the Court reaches the merits, it should deny Susquehanna's petitions. FERC reasonably found that PJM did not satisfy its burden of proving that the Amended ISA is both unique and necessary.

I. Susquehanna lacks Article III standing, its petitions are effectively moot, and its legal claims are unripe. Standing requires a petitioner to show that its claimed injury is likely redressable by a favorable judicial decision. Susquehanna, however, redressed its own injury by contracting to abandon the type of co-location arrangement that is the subject of its appeal. Given that Susquehanna's new, front-of-meter design will take effect in mere months, it is *un*likely Susquehanna would obtain relief from a favorable judicial opinion before it secured a remedy due to its own actions.

Relatedly, Susquehanna's petitions are effectively moot and, for that reason, also unripe. Should Susquehanna's appeal remain pending before the Court after Spring 2026, its new front-of-meter setup will have rendered the Amended ISA defunct, extinguishing any live case or controversy. And even if the Court *were* prepared to issue a decision before Spring 2026, and even if the Court *were* inclined to find that Susquehanna has Article III standing, the proper course would be to hold the appeal in abeyance pending Susquehanna's transition to the front-of-meter arrangement, and then dismiss the petitions as moot. This conclusion is bolstered by the existence of the parallel Section 206 co-location proceeding. There, FERC is considering formal co-location rules for PJM that could address the very issues implicated in Susquehanna's appeal.

II. Susquehanna's petitions also lack merit. Susquehanna argues that, as a matter of law, non-conforming ISAs need only be necessary to a particular co-location arrangement, not also unique. But the operative standard—dating back to 2005—plainly requires uniqueness *and* necessity. The filing party—here, PJM—must prove that the non-conforming provisions raise "specific reliability concerns, novel legal issues, or *other* unique factors" that are "necessary." The word "other" indicates that all items in that list must be "unique," not only—as Susquehanna argues—"other … factors."

Having anchored its claim in an erroneous legal premise, Susquehanna's evidence-based arguments veer off course. It contends that the Amended ISA includes provisions specific to the implicated co-location interconnection. But that fails to rebut FERC's conclusion that the ISA lacks the requisite indicia of uniqueness and necessity. Indeed, several of the Amended ISA's non-conforming provisions are addressed in PJM's generally applicable, April 2024-issued Guidance Document. FERC thus reasonably found that key aspects of the Amended ISA address general issues as opposed to concerns specific to the Susquehanna interconnection—let alone concerns that are *unique* to that interconnection.

Similarly, Susquehanna fails to overcome FERC's determination that PJM did not show that several of the Amended ISA's provisions are necessary to the Susquehanna co-location interconnection. In fact, PJM stated the opposite, asserting that certain provisions are warranted for *other*, *future* co-location schemes.

Susquehanna also argues that the Amended ISA involves "novel legal issues" because the Susquehanna co-location arrangement is, itself, novel. But the alleged novelty of a particular co-location scheme does not render the implicated *legal issues* novel, much less unique. And, in any event, the issues Susquehanna *does* identify are questions of policy not law.

Nor does Susquehanna gain traction by asserting that FERC departed from certain of its past decisions blessing particular non-conforming provisions. Actually, those decisions confirm that FERC's test requires a showing of uniqueness *and* necessity.

Susquehanna further complains that FERC should have, in the April 2025 Rehearing Order, considered the impact of PJM's apparent March 2025 rescission of the Guidance on FERC's assessment of the Amended ISA. But judicial review of FERC's orders is based on the administrative record as it existed when FERC decided the matter—here, at the time of the November 2024 Decisional Order. The Guidance was extant at that time. Had Susquehanna sought to compel FERC's assessment of the Guidance rescission, it was required to promptly file a motion with FERC requesting record reopening to admit evidence of that development. Susquehanna may not end-run that procedure by presenting new evidence for the first time on appeal.

Finally, Susquehanna criticizes FERC for not nationalizing the context of the particular interconnection on review by considering how co-locating data centers promotes international competitiveness and national security. FERC, however, reasonably deemed these issues beyond the scope of this particular proceeding. The pertinent question under FERC's 20-year-old test is, instead, whether a particular non-conforming ISA is both a unique and necessary deviation from the *pro forma* ISA.

ARGUMENT

I. Standard of Review

Questions of Article III standing, mootness, and ripeness implicate this Court's jurisdiction and are reviewed *de novo*. *E.g.*, *Lopez v. City of Houston*, 617 F.3d 336, 339, 342 (5th Cir. 2010).

By contrast, the Court reviews FERC action under the arbitrary-and-capricious standard of the Administrative Procedure Act, 5 U.S.C. §706(2)(A). *El Paso Elec. Co. v. FERC*, 832 F.3d 495, 503 (5th Cir. 2016). That standard is "deferen[tial]," and a court "may not substitute [its] own judgment for that of the agency." *Elec. Power Supply Ass'n*, 577 U.S. at 292 (cleaned up). The question is whether FERC "has examined the relevant considerations and articulated a satisfactory explanation for its action, including a rational connection between the facts found and the choice made." *Id.* (cleaned up)

Similarly, "FERC's factual findings are conclusive if supported by substantial evidence," *El Paso*, 832 F.3d at 503 (citing 16 U.S.C. §825*l*(b))—i.e., "more than a mere scintilla," *Capstone Logistics, L.L.C. v. NLRB*, 122

F.4th 194, 200 (5th Cir. 2024) (cleaned up). The question "is not whether record evidence supports petitioner's version of events, but whether it supports FERC's." *N.J. Bd. of Pub. Utils. v. FERC*, 744 F.3d 74, 94 (3d Cir. 2014) (quoting *Fla. Mun. Power Agency v. FERC*, 315 F.3d 362, 368 (D.C. Cir. 2003)) (cleaned up).

II. Susquehanna lacks Article III standing and, relatedly, its appeal should be dismissed or held on mootness grounds

Every litigant invoking the Court's jurisdiction must satisfy Article III standing requirements: a showing of an actionable injury-in-fact, caused by respondent's conduct, and which "is likely to be redressed by a favorable judicial decision." *Spokeo, Inc. v. Robins*, 578 U.S. 330, 338 (2016).

1. Susquehanna fails to demonstrate standing because its claimed injury is not "likely to be redressed by a favorable judicial decision." Susquehanna filed its petitions challenging FERC's rejection of the Amended ISA on January 15, 2025 and May 12, 2025. At those times, a judicial decision vacating FERC's rejection reasonably could have redressed Susquehanna's grievance. But all that changed in June 2025 when Susquehanna's parent company, Talen Energy Corporation, together with Amazon Web Services, canceled the existing behind-the-meter co-location arrangement—the setup implicated in Susquehanna's petitions—and

explained that the Amended ISA would be "superseded" by a new contract. *See* Br. 16 (citing Talen Press Release). That already-inked contract nullifies "[t]he existing Susquehanna co-located load arrangement between Talen and Amazon" and replaces it with a traditional, front-of-meter design. *See* Talen Press Release; *see also* Talen Energy Corp., *Executing Our Strategy: Validating the Thesis on Power & Data Intersection* (June 11, 2025) ("Talen SEC Form 8-K"), https://perma.cc/QS82-LK3E (attached to https://perma.cc/5LKR-FXD9) (explaining that the new contract "[s]hifts campus to retail 'Front-of-the-Meter' after grid connection established; maintains 300 [megawatt] 'Behind-the-Meter' ('BTM') status *in the interim period*" (first emphasis omitted; second emphasis added)). The front-of-meter scheme is slated to take effect Spring 2026. Talen Press Release.

The June 2025 contract is fatal to Susquehanna's standing. Redressability is satisfied if a petitioner shows that *the Court* is *likely* to remedy its injury. *Reule v. Jackson*, 114 F.4th 360, 368 (5th Cir. 2024). If it is "'just as plausible' that the court's action will not redress the plaintiff's injury as that it will, Article III's redressability requirement is not met." *Hecate Energy LLC v. FERC*, 126 F.4th 660, 666 (D.C. Cir. 2025) (quoting

Simon v. E. Ky. Welfare Rights Org., 426 U.S. 26, 43 (1976)). Here, it is *less* than plausible that any Court decision would remedy Susquehanna's injury; such an outcome is *unlikely*. That is because Susquehanna (through Talen Energy Corporation) has already taken action to redress its own harm.

The timeline of Susquehanna's appeal confirms this conclusion. Final submissions will be filed on November 21, 2025, just before the Thanksgiving and December holidays. Even if the Court heard oral argument in early 2026 and shortly thereafter issued a decision vacating FERC's orders on review and remanding the matter to FERC "for further consideration" (as Susquehanna requests, Br. 1, 56), FERC would still need to decide the merits of Susquehanna's Amended ISA on remand. *See* 16 U.S.C. §825*l*(b) (in adjudicating a FERC order, a court's jurisdiction extends to "affirm[ing], modify[ing], or set[ting] aside such order in whole or in part"). Only if FERC subsequently approved the Amended ISA would Susquehanna obtain relief redressing its injury. Yet it is unlikely all these events would occur by Spring 2026 (or, for that matter, by June 2026[5]),

[5] Susquehanna avers that the front-of-meter arrangement takes effect June 2026. Br. 16. But the cited press release states the transition is expected "in the Spring of 2026," *see* Talen Press Release, which commences months earlier, in March 2026, *see* The Old Farmer's Almanac, *When Do the Seasons Start and End in 2025*

when the new front-of-meter arrangement takes effect and moots the present controversy. The upshot is that the Court is unlikely to afford Susquehanna any meaningful relief beyond what relief Susquehanna has already conferred upon itself. *See Dobbin Plantersville Water Supply Corp. v. Lake*, 108 F.4th 320, 326 (5th Cir. 2024) (judicial "relief that does not remedy the injury suffered cannot bootstrap a plaintiff into federal court" (cleaned up)).

2. A petitioner must have standing throughout the life of a litigation. *K.P. v. LeBlanc*, 729 F.3d 427, 438 (5th Cir. 2013). A loss of standing is compelling evidence that the case has become moot—a related jurisdictional bar to judicial review. *See Fontenot v. McCraw*, 777 F.3d 741, 747 (5th Cir. 2015). The standing and mootness inquiries are mutually reinforcing in this case given that "mootness arises because of the lack of redressability." *Gulden v. Exxon Mobil Corp.*, 119 F.4th 299, 309 n.4 (3d Cir. 2024). If the Court does not issue a decision by Spring 2026, then there will, at that time, exist no persisting case or controversy, meaning the Court cannot offer relief and Susquehanna's petitions must be dismissed as moot. *E.g.*, *Spell v.*

---

and 2026?, https://perma.cc/APC9-KHL9. Regardless of which statement is accurate, the standing, mootness, and ripeness analyses are the same.

Edwards, 962 F.3d 175, 179 (5th Cir. 2020) (dispute about executive orders that expired on their own terms was moot); *Motient Corp. v. Dondero*, 529 F.3d 532, 537–538 (5th Cir. 2008) (stock divestiture mooted Securities Exchange Act claims for injunctive relief); *Motor and Equipment Mfrs. Ass'n v. EPA*, 627 F.2d 1095, 1104 n.18 (D.C. Cir. 1979) (new regulations adopted after oral argument mooted claim).

That said, even if the Court *were* prepared to issue a decision before the front-of-meter design took effect (one in which the Court concluded Susquehanna had standing and its claims were ripe), the proper course would be to abstain from deciding the merits given impending mootness. In *Pietzsch v. Mattox*, the Court held that the district court properly declined to render a judgment on challenged statutes given that Texas state courts might interpret the statutes in a way that could moot plaintiffs' constitutional claims. 719 F.2d 129, 132 (5th Cir. 1983). The Court found that staying the federal case was appropriate. *Id.*; *see also Little Rock School Dist. v. Pulaski Cnty. Special School Dist. No. 1*, 921 F.2d 1371, 1380 n.9 (8th Cir. 1990) (abeyance appropriate where the dispute might be resolved by a pending settlement agreement); *West v. Vill. of Morrisville*, 728 F.2d 130, 131, 134–

136 (2d Cir. 1984) (abeyance appropriate given the possibility that resolution of state law issues in state court might moot constitutional issues on appeal).

Here, it is not just a *possibility* that Susquehanna's challenge will be mooted *a la Mattox*, *Pulaski*, and *Morrisville*; it is a *fait accompli* of Susquehanna's own making: Susquehanna has committed to transitioning to a front-of-meter design. Thus, if the Court does not dismiss Susquehanna's petitions for lack of standing or ripeness (*see infra*), it should hold the appeal until the case is rendered moot due to the front-of-meter transition, after which the Court should dismiss Susquehanna's petitions. *See Church of Scientology of Cal. v. United States*, 506 U.S. 9, 12 (1992) (where an event occurs during the pendency of an appeal that prevents the court from granting relief, "the appeal must be dismissed" as moot).

III. Susquehanna's claims are unripe

Susquehanna's claims are also unripe. "[S]tanding, mootness, [and] ripeness" are "overlapping doctrines springing from [Article III's] case or controversy requirement." *Gulf Publ'g Co. v. Lee*, 679 F.2d 44, 46 (5th Cir. 1982). Whether a claim is ripe for review turns on "both the fitness of the issue for the judicial determination and the hardship to the parties of withholding consideration." *Coliseum Square Ass'n v. Jackson*, 465 F.3d 215, 244–245 (5th Cir. 2006) (quoting *Abbott Labs. v. Gardner*, 387 U.S. 136, 148 (1967)). Even if a petitioner demonstrates standing, its claim may still be unripe. *See, e.g.*, *Nat'l Park Hosp. Ass'n v. Dep't of Interior*, 538 U.S. 803, 817 (2003) (Breyer, J., dissenting) (recognizing that the majority found standing but a lack of ripeness); *Severance v. Patterson*, 566 F.3d 490, 496, 500 (5th Cir. 2009) (petitioner had standing to raise takings claim but the claim was not ripe).

"As compared to standing, ripeness assumes that an asserted injury is sufficient to support standing, but asks whether the injury is too contingent or remote to support present adjudication." *S. Utah Wilderness All. v. Palma*, 707 F.3d 1143, 1157 (10th Cir. 2013) (quoting 13B Charles Alan Wright, *et al.*, *Federal Practice and Procedure* §3532.1 (3d ed. 2008)). Given that "federal courts may exercise power only in the last resort, and as a necessity," *Allen v. Wright*, 468 U.S. 737, 752 (1984) (cleaned up), it does not suffice for a petitioner to show he *can* invoke the court's jurisdiction by proving standing; he must also show that the court "*need[s]* to decide [his petition]" by proving his claim is ripe, *see In re Aiken Cnty.*, 645 F.3d 428, 433–434 (D.C. Cir. 2011) (emphasis added) (discussing *Allen v. Wright* and explaining that ripeness "may be addressed prior to consideration of other

Article III justiciability doctrines"). Thus, a claim is not ripe for adjudication where "[i]t is altogether possible that future developments will moot the[] issues." *Stop H-3 Ass'n v. Coleman*, 533 F.2d 434, 446 (9th Cir. 1976).

Susquehanna's claims are unripe because it has committed to mooting the very controversy that is the subject of its appeal. By invoking the Court's jurisdiction—and demanding the Court's time—to remedy a harm Susquehanna has ensured is fleeting, Susquehanna seeks an advisory opinion from the Court to guide a future, hypothetical controversy concerning a future, hypothetical co-location scheme. *See Ecee, Inc. v. FERC*, 611 F.2d 554, 559 n.9 (5th Cir. 1980) ("[A]n advisory opinion[] [is] a concept which largely overlaps with the notion of ripeness."). Such a tactic is precisely what the bar on issuing advisory opinions forestalls. *See TransUnion LLC v. Ramirez*, 594 U.S. 413, 423–424 (2021) ("Under Article III, federal courts do not adjudicate hypothetical or abstract disputes .... [They] do not issue advisory opinions.")

The impending mootness of Susquehanna's claim is dispositive of the ripeness inquiry. Two of the three other factors courts consider in assessing ripeness bolster this conclusion. Courts analyze "(1) whether delayed review would cause hardship to the [petitioner]; (2) whether judicial intervention would inappropriately interfere with further administrative action; and (3) whether the courts would benefit from further factual development of the issues presented." *Coliseum*, 465 F.3d at 245 (quoting *Ohio Forestry Ass'n v. Sierra Club*, 523 U.S. 726, 733 (1998)).

First, delayed judicial review would not "*cause* hardship to Susquehanna." *See id.* (emphasis added; cleaned up). Susquehanna has acted to *resolve* its hardship—FERC's rejection of the Amended ISA—irrespective of *any* judicial review by entering into the June 2025 contract.

Aiken County is on point. Petitioners there challenged the Department of Energy's ("DOE") decision to request withdrawal of its application to the Nuclear Regulatory Commission ("NRC") for a license to deposit nuclear waste. 645 F.3d at 432–433. At the time, the NRC's Licensing Board had denied the withdrawal request, but that denial was pending final review before the full NRC—thus, a live controversy persisted. *Id.* at 434–435. Nevertheless, the *Aiken County* court deemed the matter unripe because the NRC *might* take future action mooting petitioners' appeal—e.g., by upholding the Licensing Board's denial of DOE's withdrawal request—meaning delayed review would "cause[] little harm to Petitioners' interest." *Id.* at 435–436. If the *Aiken County* petitioners' claim was unripe where it was *speculative* that future action *might* moot their appeal, *a fortiori* Susquehanna's claim is unripe because it is *known* that Susquehanna's own actions *will* moot its appeal.

Second, "judicial intervention would inappropriately interfere with further administrative action." *Coliseum*, 465 F.3d at 245 (cleaned up). FERC has opened a Federal Power Act Section 206 proceeding to address co-location issues as a general matter. That proceeding addresses, on a comprehensive basis, dozens of issues related to co-located loads, with the goal of formally amending PJM's tariff—if necessary—to address those issues. *See* Section 206 Co-Location Order P 87. Included among them are matters addressed in the Amended ISA, such as "backup arrangements," the "reliability impact to the transmission system of load co-locating," and questions of generator "resource adequacy" if more generators co-locate with load. *See id.* P 88. As Susquehanna acknowledges, the Section 206 co-location proceeding could result in formal rules allowing it to secure the very co-location arrangement it originally pursued through non-conforming provisions in the Amended ISA. *See* Br. 7, 18 (observing that the Section 206 proceeding "may or may not result in changes to PJM's tariff that would be relevant to Susquehanna," and that the proceeding may allow "Susquehanna to effectuate the proposed [Interconnection Service Agreement] terms" if and when that "proceeding is resolved"). Accordingly, the proper course is to dismiss Susquehanna's petitions given FERC's parallel proceeding aimed at addressing a grievance relevant to Susquehanna's claims in this case. *See Nat'l Park*, 538 U.S. at 812.

The D.C. Circuit arrived at just this conclusion under analogous circumstances. *United Distribution Cos. v. FERC* involved a petition by a natural gas pipeline customer, Elizabethtown, claiming that the challenged FERC orders failed to comply with a prior court decision requiring FERC to address a particular compensation issue. 88 F.3d 1105, 1145 (D.C. Cir. 1996). The court agreed, finding that FERC had "avoid[ed] the question of curtailment compensation" and that FERC's orders did "not exhibit … reasoned consideration." *Id.* Nevertheless, the court held that the claim was unripe because, in a separate proceeding, FERC had fashioned an alternative compensation scheme. *Id.* at 1145–1146. Given that FERC's alternative might redress Elizabethtown's grievance, the court concluded it was premature to adjudicate Elizabethtown's challenge—even though the dispute arguably remained a live controversy. If Elizabethtown remained aggrieved, it could later petition for review of FERC's decision in that separate proceeding. *Id.*

So too here. The Section 206 proceeding could set rules that facilitate co-location agreements pertinent to co-location schemes like Susquehanna's Amended ISA. *See* Section 206 Co-Location Order P 87. And, in any event, irrespective of the outcome of the Section 206 proceeding, Susquehanna has already memorialized the looming obsolescence of its claims challenging FERC's orders on review by entering into the June 2025 contract.

IV. On the merits, FERC reasonably rejected the Amended ISA

A. FERC's test for assessing non-conforming ISAs requires a showing of both uniqueness *and* necessity

"As the filing utility" making the Federal Power Act Section 205 filing, "[PJM] bore the burden of showing that" the Amended ISA was lawful. *E.g.*, *Belmont*, 38 F.4th at 184 (citing 16 U.S.C. §824d(e)). The Commission rejected the Amended ISA because PJM failed "to explain [1] the *unique* circumstances of the interconnection and [2] why these circumstances *necessitate* the filing of a non-conforming interconnection agreement." Rehearing Order P 23 (quoting *PJM Interconnection, L.L.C.*, 111 FERC ¶61,098, P 8 (2005)) (cleaned up). In other words, the utility—here, PJM—filing a non-conforming ISA for FERC approval must show both unique factors implicated by a particular interconnection and, assuming this criterion is satisfied, why those unique factors render a departure from the *pro forma* ISA necessary. *Id.*

1. Susquehanna criticizes FERC's standard as inconsistent with FERC's three-part test, whereby the Commission assesses whether a non-conforming ISA "raises [1] specific reliability concerns, [2] novel legal issues, or [3] other unique factors." Rehearing Order P 22; Br. 4–5. Susquehanna reasons this test requires an applicant to show *either* uniqueness on the one hand *or* specific reliability concerns or novel legal issues on the other. Br. 21–22.

Susquehanna's argument fails at the threshold: It contravenes the plain language of FERC's test and dispenses with two decades of FERC precedent requiring a showing of uniqueness *and* necessity. *See* Rehearing Order P 3 nn.9–10 (collecting cases), P 23 & n.72; *supra* p.6. Contrary to Susquehanna's reading, the word "unique" modifies each of the three disjunctive items in the list, not just the last one. That is manifest in the test's use of the modifier "other" before "unique factors." *See id.* P 22; *see also, e.g.*, *Magee v. Coca-Cola Refreshments USA, Inc.*, 833 F.3d 530, 533 (5th Cir. 2016) (quoting a statute that refers to "an inn, hotel, motel, or *other* place of lodging"—plainly indicating that all items in the list are a "place of lodging" by dint of the word "other" (emphasis added; cleaned up)).

Had FERC drafted its test to require a showing of "specific reliability concerns, novel legal issues, or unique factors"—i.e., had it omitted the word "other"—Susquehanna's interpretation would likely command force. In that scenario, "unique" would modify only the word "factors," indicating that any "specific reliability concerns" or "novel legal issues" need *not* be unique.

Put another way, Susquehanna's construction of FERC's *actual* test excises the word "other," rendering the word redundant and violating the interpretive "canon against surplusage." *United States v. Palomares*, 53 F.4th 640, 644 (5th Cir. 2022); *accord Williams v. Taylor*, 529 U.S 362, 404 (2000) ("It is … a cardinal principle of statutory construction that we must give effect, if possible, to every clause and word of a statute." (cleaned up)). In short, FERC properly applied its test in assessing whether "PJM ha[d] … met its burden to show that [the Amended ISA's non-conforming] provisions are necessary for any interest unique to the interconnection of the Susquehanna Customer Facility." Decisional Order P 87.

2. Susquehanna's foundational legal error quickly leads it astray. It complains that "FERC's orders thus wrongly focused on just one factor (the

supposed absence of 'uniqueness')" to the exclusion of assessing the other two factors (specific reliability concerns and novel legal issues). Br. 22. But a proper reading of FERC's test makes plain that FERC was correct to consider "whether a *unique* factor necessitated non-conforming provisions." *Id.* (emphasis added) (quoting Rehearing Order P 23). A specific reliability concern or novel legal issue must also be unique.

Susquehanna is similarly incorrect in contending that FERC violated its traditional standard of assessing whether a non-conforming ISA is "necess[ary]" by asking here whether it is "unique." *See* Br. 21–22, 34. No inconsistency exists. "[T]he Commission uses the necessary standard—as it did in reaching its conclusion in the [Decisional] Order—to determine whether the filing of a non-conforming agreement is justified." Rehearing Order P 30. And "the Commission consistently evaluates uniqueness as an essential factor in applying the necessary standard." *Id.* P 22 & n.70 (collecting cases).

Susquehanna's reliance on prior FERC orders hurts rather than helps its case. In *Southwest Power Pool* (Br. 34), FERC parroted the test it applied in this case: "[N]on-conforming agreements may be *necessary* for interconnections ***with*** specific reliability concerns, novel legal issues, or *other unique factors*." *Compare Sw. Power Pool*, 189 FERC ¶61,109, P 13 (2024) (emphases added), *with* Rehearing Order P 3 (substantively identical). Susquehanna reads *Southwest* as requiring an entity to "show a 'necessary' deviation from the *pro forma* ISA, which ***can be*** established by demonstrating [1] specific reliability concerns, [2] novel legal issues, **<u>or</u>** [3] other unique factors." Br. 34 (first emphasis added). But that's not what *Southwest* says. The latter three criteria do not constitute a non-exclusive list of ways to satisfy the "necessary" standard; those three criteria are *prerequisites* to meeting that standard. It's the difference between saying it is necessary for a pilot who overshoots a runway to undergo retraining ***with*** 15 hours of flight simulator exercises, and saying it is necessary for such pilot to undergo retraining that ***can be*** satisfied with 15 hours of simulator exercises. Under the first phrasing 15 hours of simulator exercises are mandatory. Under the second phrasing maybe the pilot just reads a manual. As applied here, PJM could show a deviation from the *pro forma* standard was "necessary" only "with" an interconnection involving "unique factors." Rehearing Order P 3.

B. FERC reasonably concluded that PJM failed to satisfy its burden of showing that the Amended ISA is unique and necessary

FERC reasonably concluded that PJM failed to satisfy its burden of proving that the proposed non-conforming ISA is a unique and necessary departure from PJM's *pro forma* ISA. *E.g.*, *Belmont*, 38 F.4th at 184. Specifically, FERC found that "significant aspects of the proposed non-conforming provisions rely heavily on a generally applicable [guidance] document," and that PJM otherwise did not demonstrate why certain non-conforming provisions are necessary. Rehearing Order PP 22, 27 (quoting Decisional Order P 87).

1. FERC reasonably found that PJM failed to show the Amended ISA is unique or even addresses reliability concerns specific to Susquehanna's interconnection

The PJM Guidance Document, issued two months before PJM filed the Amended ISA with FERC, establishes interconnection procedures that PJM would apply to behind-the-meter, co-location arrangements like Susquehanna's own. *See* Guidance at 1 ("This document provides guidance on the use of co-located load configurations."). Given that the Guidance sets forth generally applicable terms for all co-location schemes, FERC required PJM to show that the non-conforming terms in the purportedly case-specific

Amended ISA are "unique"—a showing FERC reasonably deemed undercut by similarities between the Amended ISA and the "generally applicable" Guidance. *See* Rehearing Order P 5 (citing Decisional Order P 87).

1. Remarkably, PJM *embraced* the Amended ISA's similarities to the Guidance. It explained that the Amended ISA "advances additional terms and conditions (many of which [protesting parties] acknowledge[] were raised in the stakeholder process)," and which are addressed in "the PJM document labeled Guidance on Co-Located Load." R.41:3 & n.10 (discussed at Rehearing Order P 27 & n.91); R.12:20–21. PJM is correct. Numerous Amended ISA provisions are reflected in the Guidance, particularly those aimed at addressing grid reliability concerns.

For example, Part C.2 of the Amended ISA requires that, if "the co-located load relies on back-up power from Susquehanna's second nuclear unit," that unit must, "at all times[,] continue fulfilling its generation obligations to the PJM network." Br. 26; *see* R.70:11. The Guidance addresses the same issue. It provides that, "[i]f the co-located load configuration allows for a back-up Generation Capacity Resource(s) to serve the co-located load, then that back-up Generation Capacity Resource(s) must fulfill its obligations as a PJM Generation Capacity Resource, ...

including providing energy to the PJM system when needed[.]" Guidance at 3; *see* Decisional Order P 87 & nn.238, 240 (discussing these provisions); Rehearing Order P 27 (similar).

Several other provisions of the Amended ISA that Susquehanna claims (Br. 27–29) qualify as addressing "specific reliability concerns" are also reflected in the Guidance. *Compare* R.70:15 (Part D.2 of Amended ISA prevents "unilaterally and automatically" cutting a "back-up" "Generation Capacity Resource['s]" service to "the PJM Region"), *with* Guidance at 3 (prevents cutting a "back-up Generation Capacity Resource['s]" provision of "energy to the PJM system"); *compare* R.70:14 (Part D.3 requires Susquehanna to secure PJM's approval to supply back-up power to co-located load), *with* Guidance at 3–4 (requiring "[c]oordination with PJM Operations … before the back-up Generation Capacity Resource … can serve the co-located load"); *compare* R.70:17–18 (Parts F.1 and F.4 explain that the co-located load is neither "station power load" nor "network load"), *with* Guidance at 2, 4 (co-located load is not "station power load" and setting forth provisions for "co-located load that is **not** PJM Network Load"); *compare* R.70:20–21 (Part F.5 requires Susquehanna to follow PJM tariff procedures before making any modifications to the co-located load), *with*

Guidance at 5 (requiring that PJM tariff provisions be followed regarding "any planned modifications to the co-located Customer Facility"). *See* Decisional Order P 87 & nn.238, 240 (discussing these provisions); Rehearing Order P 27 (similar).

2. Susquehanna's various rejoinders fail to rebut FERC's conclusion that PJM did not demonstrate the Amended ISA's uniqueness. For instance, Susquehanna insists the Amended ISA addresses "specific reliability concerns" because the provisions just discussed are tailored to Susquehanna's co-location arrangement. *See* Br. 26–27. But this argument is irremediably biased by Susquehanna's focus on necessity at the expense of uniqueness. *See id.* at 34–35 (distinguishing "FERC's laser-like focus on the 'uniqueness' inquiry" from "site-specific reliability concerns").

Even if Susquehanna were correct that "specific reliability concerns" need *not* be unique, its argument would still fail. The Amended ISA's similarities to the Guidance show that the "reliability concerns" addressed in that ISA are commonly shared and *not* specific to the Susquehanna interconnection. Susquehanna confuses "specific concerns" with "specific factual contexts." A commonly shared "concern" or "issue" may arise in various fact-specific circumstances. But the need to tailor a solution to a specific circumstance (here, the particular configuration of a generation facility and co-located load) does not make the concern addressed (here, various reliability-related issues) any less common.

Put another way, Susquehanna's approach proves too much. Because every interconnection will have idiosyncrasies by virtue of its distinct context, Susquehanna's test could qualify virtually any interconnection as implicating "specific reliability concerns." That would convert the exception of approving non-conforming ISAs into the rule. Hence FERC's conclusion that, notwithstanding any distinguishing features of Susquehanna's interconnection, the Amended ISA does not warrant approval given its discussion of issues—e.g., those involving reliability—that are also addressed in the PJM Guidance. *See* Decisional Order P 87 (just because the Amended ISA "address[es] the circumstances of this particular interconnection," that does not overcome the fact that "significant aspects of the proposed non-conforming provisions rely heavily on a generally applicable document, the PJM Guidance Document"); *see also* Rehearing Order PP 22–23, 27.

Susquehanna also argues that the Guidance itself contemplates site-specific reliability concerns. Br. 34–35. This argument, however, is jurisdictionally forfeited because Susquehanna did not press it in its application for rehearing filed with FERC; the Court may not consider it. *Ameren Servs. Co. v. FERC*, 893 F.3d 786, 793 (D.C. Cir. 2018) (quoting 16 U.S.C. §825*l*(b)). Instead, Susquehanna raised the distinct objection that "not every co-located load ISA will conform to a *pro forma* agreement and the Commission erred by concluding that a PJM guidance document suggests otherwise." R.87:19.

That will not do. Federal Power Act Section 313(b), §825*l*(b), requires that, to preserve an objection for appeal, a petitioner must comply with the statute's "unusually strict exhaustion requirement." *Ameren*, 893 F.3d at 793 (cleaned up). This "virtually unheard-of" obligation, *ASARCO, Inc. v. FERC*, 777 F.2d 764, 774 (D.C. Cir. 1985), is applied "punctiliously," *Nw. Pipeline Corp. v. FERC*, 863 F.2d 73, 78 (D.C. Cir. 1988) (cleaned up); *see also NICOR Exploration Co. v. FERC*, 50 F.3d 1341, 1346–1347 (5th Cir. 1995) (rehearing requirement's "waiver provision is construed as a strict jurisdictional limitation on this court's power to review the Commission's orders").[6] A petitioner must have pressed an argument in its own rehearing application

[6] While *ASARCO*, *Northwest*, and *NICOR* involved the Natural Gas Act, it is well-established that "the relevant provisions of the [Federal Power Act and Natural Gas Act] are analogous," meaning "[t]his Court has routinely relied on [Natural Gas Act] cases in determining the scope of the [Federal Power Act], and vice versa." *Hughes*, 578 U.S. at 164 n.10.

to raise it on appeal. *Entergy Servs., Inc. v. FERC*, 391 F.3d 1240, 1247 (D.C. Cir. 2004). Further, a petitioner must "raise each argument with specificity; objections may not be preserved either indirectly or implicitly." *Ameren*, 893 F.3d at 793 (cleaned up). Susquehanna made no argument—direct or implied—in its rehearing application that the Guidance contemplates site-specific issues.

Anyhow, Susquehanna's argument fails: That the Guidance made the obvious point that a particular co-located load arrangement might implicate particular "reliability impacts" (*see* Guidance at 5; Br. 34–35) does not undermine FERC's finding that the Amended ISA and Guidance address many of the same concerns. *See* Decisional Order P 87.

Finally, Susquehanna perceives a lack of evidence that the Guidance would apply to "all co-located arrangements." Br. 36–37 (quoting Decisional Order P 1 n.1 (Phillips, Chairman, dissenting)). But this argument, too, is jurisdictionally forfeited for failure to raise it on rehearing. In fact, Susquehanna there argued the opposite, positing that the Guidance *would* apply to future co-locations. *See* R.87:24–25 (asserting that the "guidance allows generators to make informed decisions in structuring co-located load configurations and presenting such configurations to PJM"). Susquehanna's past position better aligns with the Guidance itself, which sets forth numerous requirements that shall "appl[y]" "[i]f the co-located load is **not** PJM Network Load" (i.e., if it is behind-the-meter). *See* Guidance at 2–4. And, at any rate, even if the Guidance did not apply universally to "all co-located arrangements" (Br. 36 (cleaned up)), that "does not mean that the provisions are not generally applicable." Decisional Order P 89.

3. Notably, PJM never challenged FERC's findings that the Amended ISA "rel[ies] heavily on … the PJM Guidance Document," or that the Guidance might apply broadly to "interconnection customers" that are "similarly situated" to Susquehanna. *See id.* P 87. Instead, PJM abandoned any argument to the contrary by waiving its right to seek agency rehearing of FERC's Decisional Order. *See* 16 U.S.C. §825*l*(a). That is fatal to Susquehanna's claim on judicial review. As discussed *supra* p.31, the reasonableness of FERC's determination turns on the filer, *PJM*'s—i.e., not Susquehanna's—showing. *E.g.*, *Belmont*, 38 F.4th at 184; Rehearing Order PP 22–23, 27 (holding that "PJM failed to carry its burden"). If, as FERC concluded, PJM fell short of making a *prima facie* case that the Amended ISA satisfies the high bar for accepting a non-conforming ISA, Susquehanna cannot post hoc prevail by filling in the blanks. *Cf. Belmont*, 38 F.4th at 184.

And even if Susquehanna could, as a legal matter, make PJM's case for it, as discussed *supra*, Susquehanna falls short in the endeavor.

* * *

FERC reasonably determined that PJM did not prove that the Amended ISA lawfully departs from the *pro forma* standard. That FERC may not have addressed *all* the Amended ISA's provisions (Br. 33) does not undermine its conclusion that the filing as a whole lacks the requisite indicia of uniqueness and necessity. *Cf.* Rehearing Order P 27. That is particularly so given that FERC's role in evaluating a Federal Power Act Section 205 filing is generally limited to accepting or rejecting the filing as submitted. *See Hecate*, 126 F.4th at 662 ("In evaluating proposed rule changes under Section 205, FERC plays an essentially passive and reactive role," meaning "FERC may accept or reject the proposal[.]" (cleaned up)). Accordingly, FERC acted well within its discretion in rejecting the Amended ISA, a determination that deserves "great deference" as a "FERC[] choice in regulating rates, tariffs, and related practices." *El Paso*, 832 F.3d at 503.

2. FERC reasonably found that PJM failed to explain why several provisions of the Amended ISA are necessary

Given that a non-conforming ISA must be both unique and necessary, FERC's conclusion that PJM failed to show the Amended ISA's uniqueness is dispositive. *See* Rehearing Order P 22. For good measure, the Commission also found that PJM failed to show that several of the Amended ISA's non-conforming provisions are necessary. *See id.* P 27.

FERC's conclusion is no surprise given that PJM *disclaimed* necessity. For example, PJM stated that the non-conforming provisions of Amended ISA Parts F.1 and F.5 "are *not* necessary to provide clarity for Susquehanna's interconnection, but [are] only necessary for other market participants." *Id.* P 27 & n.95. As to Part F.1 specifically, that provision provides that, while Susquehanna is "not confused by th[e] concept" that "Co-Located Load" differs from "Station Power Load," "other market participants have claimed to be—hence, PJM" distinguished the two in Susquehanna's ISA "to establish clear expectations" *for others*. *Id.* P 27 n.95 (quoting R.70:17 (emphases omitted)).

Similarly, Part F.5 prescribes procedures Susquehanna must follow if it seeks to expand the total proposed co-located load. *Id.* Importantly, the provision is included because "some entities" that are "not Susquehanna" "have taken the position" that they need not comply with such requirements when adding co-located load. *Id.* (quoting R.70:20–21 (emphasis omitted)). In other words, PJM acknowledged Part F.5 is *not* necessary for the

Amended ISA on review—in fact, its contents are directly applicable to other entities that, in the future, may seek a co-location arrangement like Susquehanna's own.

Elsewhere, PJM simply did not demonstrate certain non-conforming provisions' necessity. Amended ISA Parts C.2 and F "clarify Susquehanna's rights and obligations," while Part D "clarif[ies] roles and responsibilities" to ensure "reliable system operations." *Id.* P 27 & n.94 (quoting R.1:7–8, 11). As FERC found, PJM's assertions do not explain why these particular provisions constitute necessary departures from the *pro forma* ISA, as opposed to merely being salutary features of the Amended ISA. *See id.* P 27. For its part, Susquehanna made the conclusory, unsubstantiated statement that provisions of the Amended ISA "resolve circumstances not addressed by the *pro forma* ISA as well as reliability concerns and other unique factors." *Id.* P 27 n.97 (quoting R.77:13).

C. Susquehanna confuses novel *policy* issues for novel *legal* issues and, in any event, jurisdictionally forfeits its related claim

Susquehanna argues that, irrespective of any uniqueness, the Amended ISA presents "novel legal issues" because it marks "the first time that [interconnection] terms of this kind had ever been proposed." Br. 23.

This argument is jurisdictionally forfeited because Susquehanna did not press it with specificity in its rehearing application. At most, Susquehanna asserted that its co-location's "precise configuration and implementation" and the "[Amended] ISA" are novel—not that the Amended ISA presents *legal issues* that are, themselves, novel. *Cf.* R.87:4.

Even if Susquehanna's contention *were* properly preserved, it fails. Susquehanna espies novel legal issues in the "behind-the-meter configuration" of its co-location arrangement. Br. 23. For support, it cites the Amended ISA's provisions related to the appropriate levels of co-located load payments for grid distribution service and Susquehanna's obligations to provide back-up power under certain circumstances. *Id.* at 23–24. But these are policy, not legal, issues: They are "determinations specifically entrusted to an agency's expertise." *Sierra Club v. FERC*, 827 F.3d 36, 48–49 (D.C. Cir. 2016) (cleaned up). Questions of law, by contrast, comprise matters that are the ultimate province of the judiciary. *See id.* at 49.

For example, in *National Ass'n I*, the court explained that whether Order 2003 (*see supra* p.5) reasonably assigned costs for interconnection-related infrastructure was a policy question, whereas questions of Order 2003's intrusion on States' jurisdictional field were questions of law. *See* 475 F.3d at 1279, 1282, 1286. Similarly, in *Xcel*, the court explained that FERC's rejection of a proposed deviation from the *pro forma* interconnection standard was a question of "agency policy." 41 F.4th at 551. This all makes sense: Deciding what constitutes a "just and reasonable" rate—FERC's charge in assessing Section 205 filings like PJM's here, *see* 16 U.S.C. §824d(a), (e)—involves "a judgment involving regulatory *policy* at the core of FERC's mission." *Sacramento Mun. Util. Dist. v. FERC*, 616 F.3d 520, 528, 533 (D.C. Cir. 2010) (emphasis added); *accord El Paso*, 832 F.3d at 503.

Anyway, it does not suffice to simply show novel legal issues. PJM also needed to prove that any such issues were both *unique* to this ISA and also made it *necessary* to depart from the *pro forma* approach. *See* Rehearing Order PP 23, 27. Besides being jurisdictionally forfeited for failure to raise the point in its rehearing application, Susquehanna's attempt to connect these dots falters on appeal. Susquehanna makes only the circular, conclusory assertion that the Amended ISA's back-up power provision in particular is "'necessary' because Susquehanna's provision of back-up service to a co-located load from an existing generation resource on the PJM network 'is a novel issue.'" Br. 24. What Susquehanna leaves unanswered is *why* a particular novel (legal) issue renders a non-conforming provision "necessary," let alone "unique."

D. FERC acted consistent with its precedent

"An agency must either conform to its prior precedent or explain its reasoning for departure from that precedent." *Laclede Gas Co. v. FERC*, 722 F.2d 272, 275 (5th Cir. 1984). An agency unlawfully departs from past decisions if the matters under comparison are similarly situated and the agency does not offer a rational explanation for differential treatment. *Baltimore Gas and Elec. Co. v. FERC*, 954 F.3d 279, 283 (D.C. Cir. 2020).

Susquehanna argues that FERC's rejection of the Amended ISA constitutes an unreasoned departure from FERC's prior orders. Br. 39–40. Susquehanna is incorrect. The orders upon which Susquehanna relies involved materially distinct circumstances and, in any event, confirm the lawfulness of FERC's approach in the matter on review.

1. Susquehanna accuses FERC of departing from its action, in *El Paso Electric Co.*, of blessing a first-of-its-kind non-conforming ISA that, like the Amended ISA, was based on general "guidelines." Br. 35 (quoting 175 FERC ¶61,199, P 3 (2021) *("El Paso I")*). Susquehanna nowhere lodged this objection in its rehearing application; it is jurisdictionally forfeited. Instead,

while Susquehanna previously acknowledged in passing the guidelines implicated in *El Paso I*, it pressed an entirely different objection: that *El Paso I* stands for the proposition that FERC will accept a first-of-its-kind non-conforming ISA, from which FERC departed here by *not* accepting the first-of-its-kind Amended ISA. R.87:18–19.

Both objections fail. To begin, *El Paso I* was a delegated letter order issued by Commission staff. *See* 175 FERC ¶61,199; *see* 18 C.F.R. §375.307(a) (delegating to FERC staff certain decisional authority). In a subsequent decision, the full Commission—acting by majority vote of the Commissioners—disavowed the prior acceptance of the same non-conforming provisions in *El Paso I*. FERC found that "it is now evident … that these non-conforming provisions are not needed to address specific reliability concerns or other unique factors." *El Paso Elec. Co.*, 177 FERC ¶61,212, P 26 (2021) *("El Paso II")*; *see* Rehearing Order P 26. Indeed, while FERC had previously accepted the disputed non-conforming provisions on multiple occasions, it "clarif[ied]" in *El Paso II* that the governing test focuses on whether such provisions are "unique to [a] proceeding[]." *El Paso II*, 177 FERC ¶61,212, PP 25–26. Given *El Paso II*, *El Paso I*'s earlier approval of non-conforming provisions that were assertedly based on general guidelines is beside the point. *See Duke Energy Progress, LLC v. FERC*, 106 F.4th 1145, 1156 (D.C. Cir. 2024) ("Once an agency has acknowledged that some of its prior cases were wrongly decided, this Court's precedent does not require the agency to endlessly repeat its error for the sake of consistency.").

Susquehanna's reliance on an order implicating PJM is even further misplaced. *See* Br. 46 (citing *PJM Interconnection, L.L.C.*, 188 FERC ¶61,206 (2024)). That case is immediately distinguishable because it did not involve non-conforming provisions that relied on generally applicable guidance. *See* Rehearing Order P 26 & n.89; *see also id.* P 23 (distinguishing cases where the non-conforming provisions did not rely on generally applicable guidance). Moreover, the 2024 *PJM* decision is consistent with the 2021 *El Paso II* order in finding that replication of non-conforming provisions across cases demonstrates that such provisions lack the requisite uniqueness. *See* 188 FERC ¶61,206, P 42. Far from standing for Susquehanna's proposition that FERC must accept non-conforming provisions the first time they are offered (*see* Br. 45), *El Paso II* and *PJM* simply clarify that repeating non-conforming terms is proof positive that the terms should be rejected as not unique. And, more to the point, nothing in those orders requires FERC to deem a "first-of-its-kind" non-conforming ISA—like the Amended ISA—unique where generally applicable guidance indicates it will not be *one*-of-a-kind. *See* Rehearing Order P 26.

Susquehanna fares no better citing an order where FERC accepted non-conforming terms notwithstanding other entities' interest in the same provisions. *See* Br. 47–58. In *Pacific Gas & Electric Co.*, another utility expressed "the same concerns" with the *pro forma* ISA as the filing utility. 128 FERC ¶61,175, P 11 (2009). Equating other entities' "concerns" regarding the *pro forma* standard with a guidance document that *prescribes* non-conforming provisions, as Susquehanna does, jumbles apples and oranges. Nothing from *PG&E* undercuts FERC's determination in *this* matter that the PJM Guidance indicates that the Amended ISA is not unique. *See* Rehearing Order P 23.

Susquehanna retorts with two cases from 2016 (Br. 45, 48) in which FERC deemed non-conforming provisions "unique" even though it had "accepted th[e] [same] specific treatment previously." *See Midcontinent Indep. Sys. Operator, Inc.*, 156 FERC ¶61,166, PP 11–12 (2016); *see also Midcontinent Indep. Sys. Operator, Inc.*, 155 FERC ¶61,286, P 22 (2016). But, as discussed, FERC more recently, in *El Paso II*, clarified what is evident from the plain text of the Commission's test: To qualify as an "extraordinary" circumstance warranting a departure from the *pro forma* ISA, the non-conforming ISA must be "unique to [a] proceeding[]." *El Paso II*, 177 FERC ¶61,212, PP 25–26. FERC was not required, in the matter on review, to misdefine "unique" to mean, as Susquehanna demands, merely "unusual" (Br. 49) just because FERC did so in a pair of cases nearly a decade ago. *See Chem-Haulers, Inc. v. ICC*, 565 F.2d 728, 730 (D.C. Cir. 1977) ("The mere fact that the Commission may have nodded on one occasion does not entitle a litigant to a repetition of its blunder." (cleaned up)).[7]

2. Trying a different tack, Susquehanna insists FERC should have accepted the Amended ISA to fill in "gaps" in the *pro forma* ISA or, relatedly, to serve as a "bridge" to standardized co-location terms under consideration in the parallel Section 206 co-location proceeding (*see supra* pp.13–14, 29–30). Br. 40–41, 50–51. But that is a policy choice for the agency, not a legal obligation, and FERC has issued no policy requiring acceptance of non-conforming provisions whenever a particular circumstance is absent from a *pro forma* ISA, or whenever a new regulatory regime is on the

---

[7] Susquehanna also cites a delegated letter order (Br. 48–49), but that one-page issuance includes neither factual context nor any reasoning.

horizon. Nor do any of the orders Susquehanna cites (Br. 40–41, 50–51) cast any doubt on FERC's conclusion in *this* case that PJM failed to show the non-conforming provisions are unique and necessary given the Guidance. *See* Rehearing Order PP 26–27 (explaining the distinct circumstance of a generally applicable guidance document); *see also Int'l Transmission Co. v. FERC*, 988 F.3d 471, 484 (D.C. Cir. 2021) (given the "deference that [courts] owe FERC in rate-related matters," the court "[could] not conclude that [FERC]'s finding was undermined by other cases in which it … reached different results based on distinct records"); *Nat'l Ass'n I*, 475 F.3d at 1285 (FERC need only respond to "significant" objections raised on rehearing and may "ignore insignificant ones").

E. Susquehanna remains free to submit a non-conforming ISA that meets FERC's standard

Susquehanna complains that the combined effect of FERC's rejection of the Amended ISA and the ongoing Section 206 proceeding deprives it of "securing behind-the-meter interconnection terms" until the Section 206 co-location proceeding concludes, which it describes as "an untenable Catch-22." Br. 43 (cleaned up).

Susquehanna is incorrect twice over. As a first matter, FERC made clear it was rejecting PJM's filing based on *this* record, and was not "prejudg[ing]" the lawfulness of "any … future filing," irrespective of the ongoing Section 206 proceeding. Rehearing Order P 30.

More fundamentally, Susquehanna is not stuck. That Susquehanna might not obtain the co-location arrangement it desires until FERC's Section 206 proceeding concludes does not trap it in an untenable situation; it simply means FERC found the Amended ISA to be unjust and unreasonable under the Federal Power Act. *Cf. Chem. Mfrs. Ass'n v. EPA*, 870 F.2d 177, 259 (5th Cir. 1989) (no "catch-22" where "the trap is of Congress' making"). Susquehanna assumes it is entitled *now* to approval of its desired co-location arrangement, and so having to wait for the Section 206 proceeding to conclude robs it of a present right. *See* Br. 43 (alleging that FERC's orders "leave[] Susquehanna without any current option through which to bring its co-location plans to fruition"). But Susquehanna is only entitled to its preferred co-location terms if FERC finds that PJM made the requisite showing of uniqueness and necessity. *See* Rehearing Order P 27. And, in any event, as just discussed, FERC did not preclude Susquehanna from proposing, *at any time*, a non-conforming ISA that passes muster. *See id.* P 30.

F. FERC acted well within its Federal Power Act-conferred powers

Venturing further afield, Susquehanna advances two inchoate suggestions that FERC's orders on review might exceed its regulatory powers. Both claims are jurisdictionally forfeited for failure to raise them in Susquehanna's rehearing application.[8]

They are also meritless. Susquehanna first contends that FERC's rejection of the Amended ISA might violate utilities' Federal Power Act Section 205 filing rights. Br. 43–44. That is incorrect. Utilities have the right to file their rates with FERC under Section 205; FERC has the right (and duty) to reject unreasonable rates under Section 205. *E.g.*, *Constellation Mystic Power, LLC v. FERC*, 45 F.4th 1028, 1035 (D.C. Cir. 2022) (citing 16 U.S.C. §824d(e)). PJM did the former; FERC did the latter.

Susquehanna swiftly compounds one statutory misreading with another. It muses that perhaps FERC's review and rejection of the Amended ISA exceeds FERC's jurisdiction by encroaching on States' authority to

[8] Susquehanna is wrong that it has "reasonable ground" for failing to raise these regulatory-power arguments in its rehearing application because the Section 206 co-location proceeding had not yet commenced. Br. 44 n.17 (quoting 16 U.S.C. §825*l*(b)). FERC's power to reject the Amended ISA does not depend on the existence *vel non* of the Section 206 proceeding. And, in any event, by the time Susquehanna's rehearing application was due, FERC *had* already announced a proceeding to address co-location grid-wide. Decisional Order P 47 & nn.139, 141.

regulate power plants. Br. 44; *see* 16 U.S.C. §824(b)(1) (States exercise authority over electric generating facilities). This assertion is forfeited for underdevelopment, *United States v. Lopez-Velasquez*, 526 F.3d 804, 808 n.2 (5th Cir. 2008), and is, in any event, baseless. It is black-letter law that FERC's jurisdiction extends to generator interconnections to the electric grid via its well-established power over "over all wholesale transmissions, *regardless of the nature of the facility*." *La. Pub. Serv. Comm'n v. FERC*, 522 F.3d 378, 390 (D.C. Cir. 2008) (emphasis added; cleaned up); *accord Lake*, 48 F.4th at 311 ("[T]he Federal Power Act provides FERC with exclusive authority over the wholesale transmission market.")[9]; *Nat'l Ass'n I*, 475 F.3d at 1280, 1282. In fact, contrary to Susquehanna's suggestion, FERC *also* "may exercise jurisdiction *over generation facilities* to the extent necessary to regulate interstate transmission" and interconnections, *NextEra Energy Res., LLC v. FERC*, 118 F.4th 361, 369 (D.C. Cir. 2024) (emphasis added; cleaned up), or to otherwise "ensure that rules or practices 'affecting' wholesale rates are just and reasonable," *Elec. Power Supply Ass'n*, 577 U.S. at 277 (citing 16 U.S.C. §§824(b)(1), 824e(a)); *see also Nat'l Ass'n of Reg. Util. Comm'rs v.*

[9] To be sure, FERC's jurisdiction extends to *all* interstate transmissions of electricity. *New York v. FERC*, 535 U.S. 1, 17–19 (2002) (citing §824(b)).

FERC, 964 F.3d 1177, 1186 n.5 (D.C. Cir. 2020) *(Nat'l Ass'n II")*; *La. Pub. Serv. Comm'n*, 522 F.3d 390.

Here, FERC is not directly regulating the Susquehanna nuclear generating facility, nor did Pennsylvania protest the Amended ISA as beyond FERC's authority. Instead, FERC has asserted the relatively modest power over an interconnection *to* Susquehanna's facility. The Amended ISA allocates power as between PJM's interstate grid and co-located load, and involves an interconnection *to* PJM's interstate grid—activities that are core to FERC's jurisdiction over both interstate electric transmissions and matters directly "affecting" wholesale rates. *See, e.g.*, *Elec. Power Supply Ass'n*, 577 U.S. at 277; *Nat'l Ass'n I*, 475 F.3d at 1280, 1282; Decisional Order P 14; *see also id*. P 2 & n.2 (Christie, Commissioner, concurring) ("Co-location arrangements … could have huge ramifications for both grid reliability and consumer costs."). Lest there be any doubt on this score, the Amended ISA's provisions discussing interstate transmissions extinguish it: The co-located load is both physically capable of "drawing power from the [PJM] Transmission System" and "interconnected to the Interconnected Transmission Owner's [i.e., PPL's] transmission facilities." R1:Attachment B at pdf pp.237–238 (Amended ISA Part F §§4, 9).

G. FERC reasonably did not consider PJM's rescission of the co-location Guidance Document, nor may the Court consider the rescission on judicial review

Susquehanna seeks to present, for the first time on appeal, new evidence that PJM rescinded the Guidance Document. Br. 38–39. It argues FERC erred in not considering that new evidence—which was never presented to the Commission in this proceeding—in the April 2025 Rehearing Order. *Id.* Susquehanna's argument relies on a stray statement made by PJM, buried in an 89-page March 24, 2025 filing, and lodged in a separate FERC docket (the Section 206 co-location proceeding). There, PJM stated that it "rescinds its previously issued Guidance Document pending Commission guidance in this docket about a Commission-approved path forward" on broadly applicable co-location rules. PJM Answer, FERC Dkt. Nos. EL25-49, *et al.*, at 33 (Mar. 24, 2025), https://perma.cc/J96K-5TMC.

Susquehanna's argument lacks merit. FERC reasonably did not consider the March 2025 evidence of PJM's apparent rescission of the Guidance because that evidence arose after FERC issued the November 2024 Decisional Order. And by tardily presenting this evidence for the first time on appeal, rather than moving the agency in this proceeding to reopen the record, Susquehanna seeks to short-circuit both statutory and regulatory procedures requiring that new evidence be presented *first* to FERC.

1. The Federal Power Act provides that the record on judicial review is "the record upon which the order complained of was entered." 16 U.S.C. §825*l*(b). "[T]he order complained of" is the decisional, "'aggrieving' order"—*not* any subsequent "order of the Commission upon the application for rehearing' (rehearing order)." *City of Oconto Falls v. FERC*, 204 F.3d 1154, 1159 (D.C. Cir. 2000) (quoting §825*l*(b)). Indeed, "[t]he [Federal Power Act] distinguishes an 'order' from the 'application to the Commission for rehearing' that follows it." *Fore River Residents Against the Compressor Station v. FERC*, 77 F.4th 882, 891 (D.C. Cir. 2023) (quoting the Natural Gas Act analog to §825*l*(a)). "[T]he disposition of the application for rehearing is not, without more, a reviewable 'order.'" *Id.* In this way the Federal Power Act jibes with garden-variety tenets of administrative law. Under the Administrative Procedure Act, "[t]he administrative record includes all materials compiled by the agency that were before the agency *at the time the decision was made*." *James Madison Ltd. by Hecht v. Ludwig*, 82 F.3d 1085, 1095 (D.C. Cir. 1996) (emphasis added; cleaned up).

Here, the "order complained of" is the aggrieving, November 2024 Decisional Order. *See* §825*l*(b). Accordingly, the Court considers FERC's orders based on the "record upon which the [November 2024 Decisional Order] was entered." *Id.* And at the time FERC issued the Decisional Order, the PJM Guidance Document had not been rescinded. The upshot is that the Guidance's rescission does not factor into the Court's assessment of FERC's orders on review.

2. Susquehanna's attempt to press evidence of the Guidance rescission for the first time on appeal fails for an additional reason. The Federal Power Act prescribes a specific process for "adduc[ing] additional evidence" on appeal that was not first raised to the Commission. *Id.* The proffering party "shall apply to the court for leave" to present that evidence and "shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for failure to adduce such evidence in the proceedings before the Commission." *Id.*

Susquehanna did not engage in this mandatory process. It neither sought leave to introduce on appeal PJM's March 2025 document nor did it even attempt to show "reasonable grounds" for failure to first present the document to FERC in this proceeding. *Cf.* Br. 39 n.15 (making the narrower, distinct argument that Susquehanna had "reasonable ground" for not raising the rescission in its November 2024 rehearing application). Nor do "reasonable grounds" exist given that FERC's regulations accommodate this very scenario. Upon motion of a party, "[t]he Commission may, for good cause [shown], reopen the evidentiary record in a proceeding for the purpose of taking additional evidence." 18 C.F.R. §385.716(a)-(c). Once PJM lodged evidence (in a separate proceeding) of the Guidance rescission in March 2025, Susquehanna should have promptly filed a motion to reopen the record to add that evidence to *this* proceeding. *See, e.g.*, *Cent. Me. Power Co.*, 55 FERC ¶61,060, p.61,170 (1991) ("[T]o preserve the integrity of [FERC's] processes, ... due diligence must be used to obtain and present evidence in a timely manner.").

Susquehanna instead chose the opposite course. Its parent company, Talen Energy Corporation, *did* make a filing in this proceeding (on April 9, 2025) after PJM noticed the Guidance rescission in its March 24, 2025 filing. *See generally* R.99. But far from asking FERC to reopen the record to consider this new evidence, Talen did not mention the Guidance rescission and instead urged FERC to act "as expeditiously as possible" on "the merits of Talen's [i.e., Susquehanna's] November 20, 2024 Request for Rehearing." R.99:1 (referenced at Rehearing Order P 20 n.68).

Talen's choice to seek expedition rather than record-reopening was an informed one. Specifically, Talen's (Susquehanna's) April 9 submission was a direct response to a motion by Intervenor Vistra Corp. (lodged only in the separate Section 206 co-location proceeding), which motion was expressly "informed by" PJM's March 24 filing. *See* Vistra Corp. Mot., FERC Dkt. No. EL25-49, at 1 (Apr. 4, 2025), https://perma.cc/DT3G-75A6. Talen (Susquehanna) can't have it both ways: ignoring new evidence for purposes of seeking a quick rehearing order, then turning around and complaining on appeal that FERC's failure to consider that new evidence *in* the rehearing order constitutes reversible error.

Susquehanna's failure to seek record reopening is particularly material given that the Guidance rescission occurred at a time when FERC could have taken meaningful action. FERC may modify a decisional order "until the record in the proceeding shall have been filed in a court of appeals"; only after record filing is the court's jurisdiction "exclusive[] to affirm, modify, or set aside [an] order in whole or in part." *E.g.*, *Clifton Power Corp. v. FERC*, 294 F.3d 108, 111 (D.C. Cir. 2002) (quoting 16 U.S.C. §825*l*(a)–(b); cleaned up); §825*l*(b). Here, FERC filed the record with the Court on May 14, 2025, months after PJM made its March 24 filing in the Section 206 co-location docket. Had Susquehanna acted diligently in seeking to augment the record, FERC could have exercised its prerogative to decide in the first instance whether record reopening was warranted—a decision that would have been judicially reviewable. *See ICC v. Bd. of Locomotive Eng'rs*, 482 U.S. 270, 278 (1987) (court's role is to decide whether an agency reasonably exercised its discretion in deciding whether to reopen the record). By delaying and instead introducing evidence of the Guidance rescission for the first time on appeal, Susquehanna unlawfully seeks to bypass FERC's record-reopening rules.

3. Susquehanna's improper proffer of new evidence for the first time on appeal is dispositive. But it is worth noting that complying with FERC's reopening procedure addresses Susquehanna's concern that it could not raise the Guidance rescission in its rehearing application. *See* Br. 39 n.15. Had FERC denied a record-reopening request, Susquehanna could have sought agency rehearing of that decision, urging FERC to consider the rescission's impact on its review of the Amended ISA (precisely the argument Susquehanna presents for the first time in this Court). *See*

§825*l*(b); Br. 38–39. If, upon reconsideration, FERC affirmed an initial denial to reopen, Susquehanna could have then—consistent with the Federal Power Act's requirement that a party press an objection in a rehearing application before raising it on appeal—challenged that decision in a petition for judicial review. *Ameren*, 893 F.3d at 793; *see also Locomotive Eng'rs*, 482 U.S. at 278. Accordingly, Susquehanna is wrong that it had "reasonable ground" for *not* raising the Guidance rescission in a rehearing application. *Cf.* Br. 39 n.15.

4. In sum, Susquehanna had ample opportunity to present the March 2025 evidence of the Guidance rescission to FERC. Neither the Federal Power Act nor FERC's record-reopening rules allowed Susquehanna to sit on that evidence for more than four months, only to raise it for the first time in its opening brief to this Court. And absent a motion to reopen the record, FERC properly considered the evidence as it existed at the time it issued the November 2024 Decisional Order. *See* §825*l*(b); *Fore River Residents*, 77 F.4th at 891; *James Madison*, 82 F.3d at 1095. At that time, the Guidance remained in effect.

H. Susquehanna's invocation of national security concerns and international competitiveness are beyond the scope of the FERC proceeding

Susquehanna makes a last stand by invoking the "broader context" of "U.S. international competitiveness and national security." Br. 52–53. But the Commission reasonably deemed such issues "beyond the scope of [its] inquiry"—an inquiry that focuses on whether an Amended ISA is both unique and necessary. Rehearing Order P 22. FERC also reasonably found a lack of evidence that rejecting this particular Amended ISA, on this particular record, would "impinge" "on reliability and national security." Decisional Order P 89; *see also id.* P 3 (Christie, Commissioner, concurring) (argument "that failure to approve this specific proposal at this specific time endangers 'reliability,' and even 'national security,' is simply unproven on this record").

These conclusions are fortified by recent events. For one thing, FERC's parallel Section 206 co-location proceeding tackles head-on the "national security implications" and "resource adequacy and reliability impacts of co-location arrangements," and does so beyond the discrete co-location scheme here on review. Section 206 Co-Location Order P 88.e.v, P 88.f.vi. For another thing, Susquehanna has contractually committed to abandon the behind-the-meter co-location that is the heart of this appeal by entering into the June 2025 contract. That immediately diminishes the national security, competition, and reliability implications of rejecting the Amended ISA.

CONCLUSION

For the foregoing reasons, the Court should either dismiss Susquehanna's petitions, hold the petitions in abeyance pending events mooting them (and then dismiss the petitions), or, if the Court reaches the merits, deny the petitions.

Respectfully submitted,

David L. Morenoff
Acting General Counsel

Robert H. Solomon
Solicitor

/s/ Jared B. Fish
Jared B. Fish
Senior Attorney

Federal Energy Regulatory Commission
Washington, D.C. 20426
Tel: (202) 502-8101
jared.fish@ferc.gov

October 3, 2025

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Fifth Circuit by using the appellate CM/ECF system on October 3, 2025. Participants in the case will be served by the appellate CM/ECF system.

/s/ Jared B. Fish
Jared B. Fish
Senior Attorney

CERTIFICATE OF COMPLIANCE

Pursuant to Fed. R. App. P. 32(g) and Circuit Rule 32.3, I certify that this brief complies with the type-volume limitation in Fed. R. App. P. 32(a)(7)(B), because this brief contains 13,000 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f) and Circuit Rule 32.2.

I further certify that this brief complies with the type-face requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6) and Circuit Rule 32.1 because this brief has been prepared in Miller Text 14-point font (footnotes in 12.5-point font) using Microsoft Word 365.

/s/ Jared B. Fish
Jared B. Fish
Senior Attorney

Federal Energy Regulatory Commission
Washington, DC 20426
Tel.: (202) 502-8101
E-mail: Jared.Fish@ferc.gov

October 3, 2025

In the United States Court of Appeals for the Fifth Circuit

No. 25-60019
consolidated with
No. 25-60264

SUSQUEHANNA NUCLEAR, L.L.C.,
Petitioner

v.

FEDERAL ENERGY REGULATORY COMMISSION,
Respondent

ON PETITIONS FOR REVIEW OF ORDERS OF THE FEDERAL ENERGY REGULATORY COMMISSION

ADDENDUM to BRIEF OF RESPONDENT FEDERAL ENERGY REGULATORY COMMISSION

DAVID L. MORENOFF
ACTING GENERAL COUNSEL

ROBERT H. SOLOMON
SOLICITOR

JARED B. FISH
SENIOR ATTORNEY

FOR RESPONDENT
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426
(202) 502-8101

OCTOBER 3, 2025

TABLE OF CONTENTS

erwise final is final for the purposes of this section whether or not there has been presented or determined an application for a declaratory order, for any form of reconsideration, or, unless the agency otherwise requires by rule and provides that the action meanwhile is inoperative, for an appeal to superior agency authority.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 392.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
....	5 U.S.C. 1009(c).	June 11, 1946, ch. 324, §10(c), 60 Stat. 243.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface of this report.

§ 705. Relief pending review

When an agency finds that justice so requires, it may postpone the effective date of action taken by it, pending judicial review. On such conditions as may be required and to the extent necessary to prevent irreparable injury, the reviewing court, including the court to which a case may be taken on appeal from or on application for certiorari or other writ to a reviewing court, may issue all necessary and appropriate process to postpone the effective date of an agency action or to preserve status or rights pending conclusion of the review proceedings.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 393.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
....	5 U.S.C. 1009(d).	June 11, 1946, ch. 324, §10(d), 60 Stat. 243.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface of this report.

§ 706. Scope of review

To the extent necessary to decision and when presented, the reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action. The reviewing court shall—

(1) compel agency action unlawfully withheld or unreasonably delayed; and

(2) hold unlawful and set aside agency action, findings, and conclusions found to be—

(A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;

(B) contrary to constitutional right, power, privilege, or immunity;

(C) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right;

(D) without observance of procedure required by law;

(E) unsupported by substantial evidence in a case subject to sections 556 and 557 of this title or otherwise reviewed on the record of an agency hearing provided by statute; or

(F) unwarranted by the facts to the extent that the facts are subject to trial de novo by the reviewing court.

In making the foregoing determinations, the court shall review the whole record or those parts of it cited by a party, and due account shall be taken of the rule of prejudicial error.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 393.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
....	5 U.S.C. 1009(e).	June 11, 1946, ch. 324, §10(e), 60 Stat. 243.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface of this report.

Statutory Notes and Related Subsidiaries

ABBREVIATION OF RECORD

Pub. L. 85–791, Aug. 28, 1958, 72 Stat. 941, which authorized abbreviation of record on review or enforcement of orders of administrative agencies and review on the original papers, provided, in section 35 thereof, that: ''This Act [see Tables for classification] shall not be construed to repeal or modify any provision of the Administrative Procedure Act [see Short Title note set out preceding section 551 of this title].''

CHAPTER 8—CONGRESSIONAL REVIEW OF AGENCY RULEMAKING

§ 801. Congressional review

(a)(1)(A) Before a rule can take effect, the Federal agency promulgating such rule shall submit to each House of the Congress and to the Comptroller General a report containing—

(i) a copy of the rule;

(ii) a concise general statement relating to the rule, including whether it is a major rule; and

(iii) the proposed effective date of the rule.

(B) On the date of the submission of the report under subparagraph (A), the Federal agency promulgating the rule shall submit to the Comptroller General and make available to each House of Congress—

(i) a complete copy of the cost-benefit analysis of the rule, if any;

(ii) the agency's actions relevant to sections 603, 604, 605, 607, and 609;

(iii) the agency's actions relevant to sections 202, 203, 204, and 205 of the Unfunded Mandates Reform Act of 1995; and

(iv) any other relevant information or requirements under any other Act and any relevant Executive orders.

(C) Upon receipt of a report submitted under subparagraph (A), each House shall provide copies of the report to the chairman and ranking member of each standing committee with jurisdiction under the rules of the House of Rep-

SUBCHAPTER II—REGULATION OF ELECTRIC UTILITY COMPANIES ENGAGED IN INTERSTATE COMMERCE

§ 824. Declaration of policy; application of subchapter

(a) Federal regulation of transmission and sale of electric energy

It is declared that the business of transmitting and selling electric energy for ultimate distribution to the public is affected with a public interest, and that Federal regulation of matters relating to generation to the extent provided in this subchapter and subchapter III of this chapter and of that part of such business which consists of the transmission of electric energy in interstate commerce and the sale of such energy at wholesale in interstate commerce is necessary in the public interest, such Federal regulation, however, to extend only to those matters which are not subject to regulation by the States.

(b) Use or sale of electric energy in interstate commerce

(1) The provisions of this subchapter shall apply to the transmission of electric energy in interstate commerce and to the sale of electric energy at wholesale in interstate commerce, but except as provided in paragraph (2) shall not apply to any other sale of electric energy or deprive a State or State commission of its lawful authority now exercised over the exportation of hydroelectric energy which is transmitted across a State line. The Commission shall have jurisdiction over all facilities for such transmission or sale of electric energy, but shall not have jurisdiction, except as specifically provided in this subchapter and subchapter III of this chapter, over facilities used for the generation of electric energy or over facilities used in local distribution or only for the transmission of electric energy in intrastate commerce, or over facilities for the transmission of electric energy consumed wholly by the transmitter.

(2) Notwithstanding subsection (f), the provisions of sections 824b(a)(2), 824e(e), 824i, 824j, 824j–1, 824k, 824*o*, 824*o*–1, 824p, 824q, 824r, 824s, 824t, 824u, and 824v of this title shall apply to the entities described in such provisions, and such entities shall be subject to the jurisdiction of the Commission for purposes of carrying out such provisions and for purposes of applying the enforcement authorities of this chapter with respect to such provisions. Compliance with any order or rule of the Commission under the provisions of section 824b(a)(2), 824e(e), 824i, 824j, 824j–1, 824k, 824*o*, 824*o*–1, 824p, 824q, 824r, 824s, 824t, 824u, or 824v of this title, shall not make an electric utility or other entity subject to the jurisdiction of the Commission for any purposes other than the purposes specified in the preceding sentence.

(c) Electric energy in interstate commerce

For the purpose of this subchapter, electric energy shall be held to be transmitted in interstate commerce if transmitted from a State and consumed at any point outside thereof; but only insofar as such transmission takes place within the United States.

(d) "Sale of electric energy at wholesale" defined

The term ''sale of electric energy at wholesale'' when used in this subchapter, means a sale of electric energy to any person for resale.

(e) "Public utility" defined

The term ''public utility'' when used in this subchapter and subchapter III of this chapter means 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 824e(e), 824e(f),[1] 824i, 824j, 824j–1, 824k, 824*o*, 824*o*–1, 824p, 824q, 824r, 824s, 824t, 824u, or 824v of this title).

(f) United States, State, political subdivision of a State, or agency or instrumentality thereof exempt

No provision in this subchapter shall apply to, or be deemed to include, the United States, a State or any political subdivision of a State, an electric cooperative that receives financing under the Rural Electrification Act of 1936 (7 U.S.C. 901 et seq.) or that sells less than 4,000,000 megawatt hours of electricity per year, or any agency, authority, or instrumentality of any one or more of the foregoing, or any corporation which is wholly owned, directly or indirectly, by any one or more of the foregoing, or any officer, agent, or employee of any of the foregoing acting as such in the course of his official duty, unless such provision makes specific reference thereto.

(g) Books and records

(1) Upon written order of a State commission, a State commission may examine the books, accounts, memoranda, contracts, and records of—

(A) an electric utility company subject to its regulatory authority under State law,

(B) any exempt wholesale generator selling energy at wholesale to such electric utility, and

(C) any electric utility company, or holding company thereof, which is an associate company or affiliate of an exempt wholesale generator which sells electric energy to an electric utility company referred to in subparagraph (A),

wherever located, if such examination is required for the effective discharge of the State commission's regulatory responsibilities affecting the provision of electric service.

(2) Where a State commission issues an order pursuant to paragraph (1), the State commission shall not publicly disclose trade secrets or sensitive commercial information.

(3) Any United States district court located in the State in which the State commission referred to in paragraph (1) is located shall have jurisdiction to enforce compliance with this subsection.

(4) Nothing in this section shall—

(A) preempt applicable State law concerning the provision of records and other information; or

(B) in any way limit rights to obtain records and other information under Federal law, contracts, or otherwise.

[1] So in original. Section 824e of this title does not contain a subsec. (f).

(5) As used in this subsection the terms ''affiliate'', ''associate company'', ''electric utility company'', ''holding company'', ''subsidiary company'', and ''exempt wholesale generator'' shall have the same meaning as when used in the Public Utility Holding Company Act of 2005 [42 U.S.C. 16451 et seq.].

(June 10, 1920, ch. 285, pt. II, § 201, as added Aug. 26, 1935, ch. 687, title II, § 213, 49 Stat. 847; amended Pub. L. 95–617, title II, § 204(b), Nov. 9, 1978, 92 Stat. 3140; Pub. L. 102–486, title VII, § 714, Oct. 24, 1992, 106 Stat. 2911; Pub. L. 109–58, title XII, §§ 1277(b)(1), 1291(c), 1295(a), Aug. 8, 2005, 119 Stat. 978, 985; Pub. L. 114–94, div. F, § 61003(b), Dec. 4, 2015, 129 Stat. 1778.)

Editorial Notes

REFERENCES IN TEXT

The Rural Electrification Act of 1936, referred to in subsec. (f), is act May 20, 1936, ch. 432, 49 Stat. 1363, which is classified generally to chapter 31 (§ 901 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see section 901 of Title 7 and Tables.

The Public Utility Holding Company Act of 2005, referred to in subsec. (g)(5), is subtitle F of title XII of Pub. L. 109–58, Aug. 8, 2005, 119 Stat. 972, which is classified principally to part D (§ 16451 et seq.) of subchapter XII of chapter 149 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 15801 of Title 42 and Tables.

AMENDMENTS

2015—Subsec. (b)(2). Pub. L. 114–94, § 61003(b)(1), inserted ''824*o*–1,'' after ''824*o*,'' in two places.

Subsec. (e). Pub. L. 114–94, § 61003(b)(2), inserted ''824*o*–1,'' after ''824*o*,''.

2005—Subsec. (b)(2). Pub. L. 109–58, § 1295(a)(1), substituted ''Notwithstanding subsection (f), the provisions of sections 824b(a)(2), 824e(e), 824i, 824j, 824j–1, 824k, 824*o*, 824p, 824q, 824r, 824s, 824t, 824u, and 824v of this title'' for ''The provisions of sections 824i, 824j, and 824k of this title'' and ''Compliance with any order or rule of the Commission under the provisions of section 824b(a)(2), 824e(e), 824i, 824j, 824j–1, 824k, 824*o*, 824p, 824q, 824r, 824s, 824t, 824u, or 824v of this title'' for ''Compliance with any order of the Commission under the provisions of section 824i or 824j of this title''.

Subsec. (e). Pub. L. 109–58, § 1295(a)(2), substituted ''section 824e(e), 824e(f), 824i, 824j, 824j–1, 824k, 824*o*, 824p, 824q, 824r, 824s, 824t, 824u, or 824v of this title'' for ''section 824i, 824j, or 824k of this title''.

Subsec. (f). Pub. L. 109–58, § 1291(c), which directed amendment of subsec. (f) by substituting ''political subdivision of a State, an electric cooperative that receives financing under the Rural Electrification Act of 1936 (7 U.S.C. 901 et seq.) or that sells less than 4,000,000 megawatt hours of electricity per year,'' for ''political subdivision of a state,'', was executed by making the substitution for ''political subdivision of a State,'' to reflect the probable intent of Congress.

Subsec. (g)(5). Pub. L. 109–58, § 1277(b)(1), substituted ''2005'' for ''1935''.

1992—Subsec. (g). Pub. L. 102–486 added subsec. (g).

1978—Subsec. (b). Pub. L. 95–617, § 204(b)(1), designated existing provisions as par. (1), inserted ''except as provided in paragraph (2)'' after ''in interstate commerce, but'', and added par. (2).

Subsec. (e). Pub. L. 95–617, § 204(b)(2), inserted ''(other than facilities subject to such jurisdiction solely by reason of section 824i, 824j, or 824k of this title)'' after ''under this subchapter''.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by section 1277(b)(1) of Pub. L. 109–58 effective 6 months after Aug. 8, 2005, with provisions relating to effect of compliance with certain regulations approved and made effective prior to such date, see section 1274 of Pub. L. 109–58, set out as an Effective Date note under section 16451 of Title 42, The Public Health and Welfare.

STATE AUTHORITIES; CONSTRUCTION

Nothing in amendment by Pub. L. 102–486 to be construed as affecting or intending to affect, or in any way to interfere with, authority of any State or local government relating to environmental protection or siting of facilities, see section 731 of Pub. L. 102–486, set out as a note under section 796 of this title.

PRIOR ACTIONS; EFFECT ON OTHER AUTHORITIES

Pub. L. 95–617, title II, § 214, Nov. 9, 1978, 92 Stat. 3149, provided that:

''(a) PRIOR ACTIONS.—No provision of this title [enacting sections 823a, 824i to 824k, 824a–1 to 824a–3 and 825q–1 of this title, amending sections 796, 824, 824a, 824d, and 825d of this title and enacting provisions set out as notes under sections 824a, 824d, and 825d of this title] or of any amendment made by this title shall apply to, or affect, any action taken by the Commission [Federal Energy Regulatory Commission] before the date of the enactment of this Act [Nov. 9, 1978].

''(b) OTHER AUTHORITIES.—No provision of this title [enacting sections 823a, 824i to 824k, 824a–1 to 824a–3 and 825q–1 of this title, amending sections 796, 824, 824a, 824d, and 825d of this title and enacting provisions set out as notes under sections 824a, 824d, and 825d of this title] or of any amendment made by this title shall limit, impair or otherwise affect any authority of the Commission or any other agency or instrumentality of the United States under any other provision of law except as specifically provided in this title.''

§ 824a. Interconnection and coordination of facilities; emergencies; transmission to foreign countries

(a) Regional districts; establishment; notice to State commissions

For the purpose of assuring an abundant supply of electric energy throughout the United States with the greatest possible economy and with regard to the proper utilization and conservation of natural resources, the Commission is empowered and directed to divide the country into regional districts for the voluntary interconnection and coordination of facilities for the generation, transmission, and sale of electric energy, and it may at any time thereafter, upon its own motion or upon application, make such modifications thereof as in its judgment will promote the public interest. Each such district shall embrace an area which, in the judgment of the Commission, can economically be served by such interconnection and coordinated electric facilities. It shall be the duty of the Commission to promote and encourage such interconnection and coordination within each such district and between such districts. Before establishing any such district and fixing or modifying the boundaries thereof the Commission shall give notice to the State commission of each State situated wholly or in part within such district, and shall afford each such State commission reasonable opportunity to present its views and recommendations, and shall receive and consider such views and recommendations.

indorser, surety, or otherwise in respect of any security of another person, unless and until, and then only to the extent that, upon application by the public utility, the Commission by order authorizes such issue or assumption of liability. The Commission shall make such order only if it finds that such issue or assumption (a) is for some lawful object, within the corporate purposes of the applicant and compatible with the public interest, which is necessary or appropriate for or consistent with the proper performance by the applicant of service as a public utility and which will not impair its ability to perform that service, and (b) is reasonably necessary or appropriate for such purposes. The provisions of this section shall be effective six months after August 26, 1935.

(b) Application approval or modification; supplemental orders

The Commission, after opportunity for hearing, may grant any application under this section in whole or in part, and with such modifications and upon such terms and conditions as it may find necessary or appropriate, and may from time to time, after opportunity for hearing and for good cause shown, make such supplemental orders in the premises as it may find necessary or appropriate, and may by any such supplemental order modify the provisions of any previous order as to the particular purposes, uses, and extent to which, or the conditions under which, any security so theretofore authorized or the proceeds thereof may be applied, subject always to the requirements of subsection (a) of this section.

(c) Compliance with order of Commission

No public utility shall, without the consent of the Commission, apply any security or any proceeds thereof to any purpose not specified in the Commission's order, or supplemental order, or to any purpose in excess of the amount allowed for such purpose in such order, or otherwise in contravention of such order.

(d) Authorization of capitalization not to exceed amount paid

The Commission shall not authorize the capitalization of the right to be a corporation or of any franchise, permit, or contract for consolidation, merger, or lease in excess of the amount (exclusive of any tax or annual charge) actually paid as the consideration for such right, franchise, permit, or contract.

(e) Notes or drafts maturing less than one year after issuance

Subsection (a) shall not apply to the issue or renewal of, or assumption of liability on, a note or draft maturing not more than one year after the date of such issue, renewal, or assumption of liability, and aggregating (together with all other then outstanding notes and drafts of a maturity of one year or less on which such public utility is primarily or secondarily liable) not more than 5 per centum of the par value of the other securities of the public utility then outstanding. In the case of securities having no par value, the par value for the purpose of this subsection shall be the fair market value as of the date of issue. Within ten days after any such issue, renewal, or assumption of liability, the public utility shall file with the Commission a certificate of notification, in such form as may be prescribed by the Commission, setting forth such matters as the Commission shall by regulation require.

(f) Public utility securities regulated by State not affected

The provisions of this section shall not extend to a public utility organized and operating in a State under the laws of which its security issues are regulated by a State commission.

(g) Guarantee or obligation on part of United States

Nothing in this section shall be construed to imply any guarantee or obligation on the part of the United States in respect of any securities to which the provisions of this section relate.

(h) Filing duplicate reports with the Securities and Exchange Commission

Any public utility whose security issues are approved by the Commission under this section may file with the Securities and Exchange Commission duplicate copies of reports filed with the Federal Power Commission in lieu of the reports, information, and documents required under sections 77g, 78*l*, and 78m of title 15.

(June 10, 1920, ch. 285, pt. II, § 204, as added Aug. 26, 1935, ch. 687, title II, § 213, 49 Stat. 850.)

Executive Documents

TRANSFER OF FUNCTIONS

Executive and administrative functions of Securities and Exchange Commission, with certain exceptions, transferred to Chairman of such Commission, with authority vested in him to authorize their performance by any officer, employee, or administrative unit under his jurisdiction, by Reorg. Plan No. 10 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out in the Appendix to Title 5, Government Organization and Employees.

§ 824d. Rates and charges; schedules; suspension of new rates; automatic adjustment clauses

(a) Just and reasonable rates

All rates and charges made, demanded, or received by any public utility for or in connection with the transmission or sale of electric energy subject to the jurisdiction of the Commission, and all rules and regulations affecting or pertaining to such rates or charges shall be just and reasonable, and any such rate or charge that is not just and reasonable is hereby declared to be unlawful.

(b) Preference or advantage unlawful

No public utility shall, with respect to any transmission or sale subject to the jurisdiction of the Commission, (1) make or grant any undue preference or advantage to any person or subject any person to any undue prejudice or disadvantage, or (2) maintain any unreasonable difference in rates, charges, service, facilities, or in any other respect, either as between localities or as between classes of service.

(c) Schedules

Under such rules and regulations as the Commission may prescribe, every public utility shall file with the Commission, within such time and in such form as the Commission may designate, and shall keep open in convenient form and place for public inspection schedules showing all rates and charges for any transmission or sale subject to the jurisdiction of the Commission, and the classifications, practices, and regulations affecting such rates and charges, together with all contracts which in any manner affect or relate to such rates, charges, classifications, and services.

(d) Notice required for rate changes

Unless the Commission otherwise orders, no change shall be made by any public utility in any such rate, charge, classification, or service, or in any rule, regulation, or contract relating thereto, except after sixty days' notice to the Commission and to the public. Such notice shall be given by filing with the Commission and keeping open for public inspection new schedules stating plainly the change or changes to be made in the schedule or schedules then in force and the time when the change or changes will go into effect. The Commission, for good cause shown, may allow changes to take effect without requiring the sixty days' notice herein provided for by an order specifying the changes so to be made and the time when they shall take effect and the manner in which they shall be filed and published.

(e) Suspension of new rates; hearings; five-month period

Whenever any such new schedule is filed the Commission shall have authority, either upon complaint or upon its own initiative without complaint, at once, and, if it so orders, without answer or formal pleading by the public utility, but upon reasonable notice, to enter upon a hearing concerning the lawfulness of such rate, charge, classification, or service; and, pending such hearing and the decision thereon, the Commission, upon filing with such schedules and delivering to the public utility affected thereby a statement in writing of its reasons for such suspension, may suspend the operation of such schedule and defer the use of such rate, charge, classification, or service, but not for a longer period than five months beyond the time when it would otherwise go into effect; and after full hearings, either completed before or after the rate, charge, classification, or service goes into effect, the Commission may make such orders with reference thereto as would be proper in a proceeding initiated after it had become effective. If the proceeding has not been concluded and an order made at the expiration of such five months, the proposed change of rate, charge, classification, or service shall go into effect at the end of such period, but in case of a proposed increased rate or charge, the Commission may by order require the interested public utility or public utilities to keep accurate account in detail of all amounts received by reason of such increase, specifying by whom and in whose behalf such amounts are paid, and upon completion of the hearing and decision may by further order require such public utility or public utilities to refund, with interest, to the persons in whose behalf such amounts were paid, such portion of such increased rates or charges as by its decision shall be found not justified. At any hearing involving a rate or charge sought to be increased, the burden of proof to show that the increased rate or charge is just and reasonable shall be upon the public utility, and the Commission shall give to the hearing and decision of such questions preference over other questions pending before it and decide the same as speedily as possible.

(f) Review of automatic adjustment clauses and public utility practices; action by Commission; "automatic adjustment clause" defined

(1) Not later than 2 years after November 9, 1978, and not less often than every 4 years thereafter, the Commission shall make a thorough review of automatic adjustment clauses in public utility rate schedules to examine—

(A) whether or not each such clause effectively provides incentives for efficient use of resources (including economical purchase and use of fuel and electric energy), and

(B) whether any such clause reflects any costs other than costs which are—

(i) subject to periodic fluctuations and

(ii) not susceptible to precise determinations in rate cases prior to the time such costs are incurred.

Such review may take place in individual rate proceedings or in generic or other separate proceedings applicable to one or more utilities.

(2) Not less frequently than every 2 years, in rate proceedings or in generic or other separate proceedings, the Commission shall review, with respect to each public utility, practices under any automatic adjustment clauses of such utility to insure efficient use of resources (including economical purchase and use of fuel and electric energy) under such clauses.

(3) The Commission may, on its own motion or upon complaint, after an opportunity for an evidentiary hearing, order a public utility to—

(A) modify the terms and provisions of any automatic adjustment clause, or

(B) cease any practice in connection with the clause,

if such clause or practice does not result in the economical purchase and use of fuel, electric energy, or other items, the cost of which is included in any rate schedule under an automatic adjustment clause.

(4) As used in this subsection, the term ''automatic adjustment clause'' means a provision of a rate schedule which provides for increases or decreases (or both), without prior hearing, in rates reflecting increases or decreases (or both) in costs incurred by an electric utility. Such term does not include any rate which takes effect subject to refund and subject to a later determination of the appropriate amount of such rate.

(g) Inaction of Commissioners

(1) In general

With respect to a change described in subsection (d), if the Commission permits the 60-day period established therein to expire without issuing an order accepting or denying the change because the Commissioners are divided two against two as to the lawfulness of the change, as a result of vacancy, incapacity, or recusal on the Commission, or if the Commission lacks a quorum—

(A) the failure to issue an order accepting or denying the change by the Commission shall be considered to be an order issued by the Commission accepting the change for purposes of section 825*l*(a) of this title; and

(B) each Commissioner shall add to the record of the Commission a written statement explaining the views of the Commissioner with respect to the change.

(2) Appeal

If, pursuant to this subsection, a person seeks a rehearing under section 825*l*(a) of this title, and the Commission fails to act on the merits of the rehearing request by the date that is 30 days after the date of the rehearing request because the Commissioners are divided two against two, as a result of vacancy, incapacity, or recusal on the Commission, or if the Commission lacks a quorum, such person may appeal under section 825*l*(b) of this title.

(June 10, 1920, ch. 285, pt. II, § 205, as added Aug. 26, 1935, ch. 687, title II, § 213, 49 Stat. 851; amended Pub. L. 95–617, title II, §§ 207(a), 208, Nov. 9, 1978, 92 Stat. 3142; Pub. L. 115–270, title III, § 3006, Oct. 23, 2018, 132 Stat. 3868.)

Editorial Notes

AMENDMENTS

2018—Subsec. (g). Pub. L. 115–270 added subsec. (g).

1978—Subsec. (d). Pub. L. 95–617, § 207(a), substituted "sixty" for "thirty" in two places.

Subsec. (f). Pub. L. 95–617, § 208, added subsec. (f).

Statutory Notes and Related Subsidiaries

STUDY OF ELECTRIC RATE INCREASES UNDER FEDERAL POWER ACT

Section 207(b) of Pub. L. 95–617 directed chairman of Federal Energy Regulatory Commission, in consultation with Secretary, to conduct a study of legal requirements and administrative procedures involved in consideration and resolution of proposed wholesale electric rate increases under Federal Power Act, section 791a et seq. of this title, for purposes of providing for expeditious handling of hearings consistent with due process, preventing imposition of successive rate increases before they have been determined by Commission to be just and reasonable and otherwise lawful, and improving procedures designed to prohibit anticompetitive or unreasonable differences in wholesale and retail rates, or both, and that chairman report to Congress within nine months from Nov. 9, 1978, on results of study, on administrative actions taken as a result of this study, and on any recommendations for changes in existing law that will aid purposes of this section.

§ 824e. Power of Commission to fix rates and charges; determination of cost of production or transmission

(a) Unjust or preferential rates, etc.; statement of reasons for changes; hearing; specification of issues

Whenever the Commission, after a hearing held upon its own motion or upon complaint, shall find that any rate, charge, or classification, demanded, observed, charged, or collected by any public utility for any transmission or sale subject to the jurisdiction of the Commission, or that any rule, regulation, practice, or contract affecting such rate, charge, or classification is unjust, unreasonable, unduly discriminatory or preferential, the Commission shall determine the just and reasonable rate, charge, classification, rule, regulation, practice, or contract to be thereafter observed and in force, and shall fix the same by order. Any complaint or motion of the Commission to initiate a proceeding under this section shall state the change or changes to be made in the rate, charge, classification, rule, regulation, practice, or contract then in force, and the reasons for any proposed change or changes therein. If, after review of any motion or complaint and answer, the Commission shall decide to hold a hearing, it shall fix by order the time and place of such hearing and shall specify the issues to be adjudicated.

(b) Refund effective date; preferential proceedings; statement of reasons for delay; burden of proof; scope of refund order; refund orders in cases of dilatory behavior; interest

Whenever the Commission institutes a proceeding under this section, the Commission shall establish a refund effective date. In the case of a proceeding instituted on complaint, the refund effective date shall not be earlier than the date of the filing of such complaint nor later than 5 months after the filing of such complaint. In the case of a proceeding instituted by the Commission on its own motion, the refund effective date shall not be earlier than the date of the publication by the Commission of notice of its intention to initiate such proceeding nor later than 5 months after the publication date. Upon institution of a proceeding under this section, the Commission shall give to the decision of such proceeding the same preference as provided under section 824d of this title and otherwise act as speedily as possible. If no final decision is rendered by the conclusion of the 180-day period commencing upon initiation of a proceeding pursuant to this section, the Commission shall state the reasons why it has failed to do so and shall state its best estimate as to when it reasonably expects to make such decision. In any proceeding under this section, the burden of proof to show that any rate, charge, classification, rule, regulation, practice, or contract is unjust, unreasonable, unduly discriminatory, or preferential shall be upon the Commission or the complainant. At the conclusion of any proceeding under this section, the Commission may order refunds of any amounts paid, for the period subsequent to the refund effective date through a date fifteen months after such refund effective date, in excess of those which would have been paid under the just and reasonable rate, charge, classification, rule, regulation, practice, or contract which the Commission orders to be thereafter observed and in force: *Provided*, That if the proceeding is not concluded within fifteen months after the refund effective date and if the Commission determines at the conclusion of the proceeding that the proceeding was not resolved within the fifteen-month period primarily because of dilatory behavior by the public utility, the Commission change, as a result of vacancy, incapacity, or recusal on the Commission, or if the Commission lacks a quorum—

(A) the failure to issue an order accepting or denying the change by the Commission shall be considered to be an order issued by the Commission accepting the change for purposes of section 825*l*(a) of this title; and

(B) each Commissioner shall add to the record of the Commission a written statement explaining the views of the Commissioner with respect to the change.

(2) Appeal

If, pursuant to this subsection, a person seeks a rehearing under section 825*l*(a) of this title, and the Commission fails to act on the merits of the rehearing request by the date that is 30 days after the date of the rehearing request because the Commissioners are divided two against two, as a result of vacancy, incapacity, or recusal on the Commission, or if the Commission lacks a quorum, such person may appeal under section 825*l*(b) of this title.

(June 10, 1920, ch. 285, pt. II, § 205, as added Aug. 26, 1935, ch. 687, title II, § 213, 49 Stat. 851; amended Pub. L. 95–617, title II, §§ 207(a), 208, Nov. 9, 1978, 92 Stat. 3142; Pub. L. 115–270, title III, § 3006, Oct. 23, 2018, 132 Stat. 3868.)

Editorial Notes

AMENDMENTS

2018—Subsec. (g). Pub. L. 115–270 added subsec. (g).

1978—Subsec. (d). Pub. L. 95–617, § 207(a), substituted "sixty" for "thirty" in two places.

Subsec. (f). Pub. L. 95–617, § 208, added subsec. (f).

Statutory Notes and Related Subsidiaries

STUDY OF ELECTRIC RATE INCREASES UNDER FEDERAL POWER ACT

Section 207(b) of Pub. L. 95–617 directed chairman of Federal Energy Regulatory Commission, in consultation with Secretary, to conduct a study of legal requirements and administrative procedures involved in consideration and resolution of proposed wholesale electric rate increases under Federal Power Act, section 791a et seq. of this title, for purposes of providing for expeditious handling of hearings consistent with due process, preventing imposition of successive rate increases before they have been determined by Commission to be just and reasonable and otherwise lawful, and improving procedures designed to prohibit anticompetitive or unreasonable differences in wholesale and retail rates, or both, and that chairman report to Congress within nine months from Nov. 9, 1978, on results of study, on administrative actions taken as a result of this study, and on any recommendations for changes in existing law that will aid purposes of this section.

§ 824e. Power of Commission to fix rates and charges; determination of cost of production or transmission

(a) Unjust or preferential rates, etc.; statement of reasons for changes; hearing; specification of issues

Whenever the Commission, after a hearing held upon its own motion or upon complaint, shall find that any rate, charge, or classification, demanded, observed, charged, or collected by any public utility for any transmission or sale subject to the jurisdiction of the Commission, or that any rule, regulation, practice, or contract affecting such rate, charge, or classification is unjust, unreasonable, unduly discriminatory or preferential, the Commission shall determine the just and reasonable rate, charge, classification, rule, regulation, practice, or contract to be thereafter observed and in force, and shall fix the same by order. Any complaint or motion of the Commission to initiate a proceeding under this section shall state the change or changes to be made in the rate, charge, classification, rule, regulation, practice, or contract then in force, and the reasons for any proposed change or changes therein. If, after review of any motion or complaint and answer, the Commission shall decide to hold a hearing, it shall fix by order the time and place of such hearing and shall specify the issues to be adjudicated.

(b) Refund effective date; preferential proceedings; statement of reasons for delay; burden of proof; scope of refund order; refund orders in cases of dilatory behavior; interest

Whenever the Commission institutes a proceeding under this section, the Commission shall establish a refund effective date. In the case of a proceeding instituted on complaint, the refund effective date shall not be earlier than the date of the filing of such complaint nor later than 5 months after the filing of such complaint. In the case of a proceeding instituted by the Commission on its own motion, the refund effective date shall not be earlier than the date of the publication by the Commission of notice of its intention to initiate such proceeding nor later than 5 months after the publication date. Upon institution of a proceeding under this section, the Commission shall give to the decision of such proceeding the same preference as provided under section 824d of this title and otherwise act as speedily as possible. If no final decision is rendered by the conclusion of the 180-day period commencing upon initiation of a proceeding pursuant to this section, the Commission shall state the reasons why it has failed to do so and shall state its best estimate as to when it reasonably expects to make such decision. In any proceeding under this section, the burden of proof to show that any rate, charge, classification, rule, regulation, practice, or contract is unjust, unreasonable, unduly discriminatory, or preferential shall be upon the Commission or the complainant. At the conclusion of any proceeding under this section, the Commission may order refunds of any amounts paid, for the period subsequent to the refund effective date through a date fifteen months after such refund effective date, in excess of those which would have been paid under the just and reasonable rate, charge, classification, rule, regulation, practice, or contract which the Commission orders to be thereafter observed and in force: *Provided*, That if the proceeding is not concluded within fifteen months after the refund effective date and if the Commission determines at the conclusion of the proceeding that the proceeding was not resolved within the fifteen-month period primarily because of dilatory behavior by the public utility, the Commission may order refunds of any or all amounts paid for the period subsequent to the refund effective date and prior to the conclusion of the proceeding. The refunds shall be made, with interest, to those persons who have paid those rates or charges which are the subject of the proceeding.

(c) Refund considerations; shifting costs; reduction in revenues; "electric utility companies" and "registered holding company" defined

Notwithstanding subsection (b), in a proceeding commenced under this section involving two or more electric utility companies of a registered holding company, refunds which might otherwise be payable under subsection (b) shall not be ordered to the extent that such refunds would result from any portion of a Commission order that (1) requires a decrease in system production or transmission costs to be paid by one or more of such electric companies; and (2) is based upon a determination that the amount of such decrease should be paid through an increase in the costs to be paid by other electric utility companies of such registered holding company: *Provided*, That refunds, in whole or in part, may be ordered by the Commission if it determines that the registered holding company would not experience any reduction in revenues which results from an inability of an electric utility company of the holding company to recover such increase in costs for the period between the refund effective date and the effective date of the Commission's order. For purposes of this subsection, the terms "electric utility companies" and "registered holding company" shall have the same meanings as provided in the Public Utility Holding Company Act of 1935, as amended.[1]

(d) Investigation of costs

The Commission upon its own motion, or upon the request of any State commission whenever it can do so without prejudice to the efficient and proper conduct of its affairs, may investigate and determine the cost of the production or transmission of electric energy by means of facilities under the jurisdiction of the Commission in cases where the Commission has no authority to establish a rate governing the sale of such energy.

(e) Short-term sales

(1) In this subsection:

(A) The term "short-term sale" means an agreement for the sale of electric energy at wholesale in interstate commerce that is for a period of 31 days or less (excluding monthly contracts subject to automatic renewal).

(B) The term "applicable Commission rule" means a Commission rule applicable to sales at wholesale by public utilities that the Commission determines after notice and comment should also be applicable to entities subject to this subsection.

(2) If an entity described in section 824(f) of this title voluntarily makes a short-term sale of electric energy through an organized market in which the rates for the sale are established by Commission-approved tariff (rather than by contract) and the sale violates the terms of the tariff or applicable Commission rules in effect at the time of the sale, the entity shall be subject to the refund authority of the Commission under this section with respect to the violation.

(3) This section shall not apply to—

(A) any entity that sells in total (including affiliates of the entity) less than 8,000,000 megawatt hours of electricity per year; or

(B) an electric cooperative.

(4)(A) The Commission shall have refund authority under paragraph (2) with respect to a voluntary short term sale of electric energy by the Bonneville Power Administration only if the sale is at an unjust and unreasonable rate.

(B) The Commission may order a refund under subparagraph (A) only for short-term sales made by the Bonneville Power Administration at rates that are higher than the highest just and reasonable rate charged by any other entity for a short-term sale of electric energy in the same geographic market for the same, or most nearly comparable, period as the sale by the Bonneville Power Administration.

(C) In the case of any Federal power marketing agency or the Tennessee Valley Authority, the Commission shall not assert or exercise any regulatory authority or power under paragraph (2) other than the ordering of refunds to achieve a just and reasonable rate.

(June 10, 1920, ch. 285, pt. II, § 206, as added Aug. 26, 1935, ch. 687, title II, § 213, 49 Stat. 852; amended Pub. L. 100–473, § 2, Oct. 6, 1988, 102 Stat. 2299; Pub. L. 109–58, title XII, §§ 1285, 1286, 1295(b), Aug. 8, 2005, 119 Stat. 980, 981, 985.)

[1] See References in Text note below.

Editorial Notes

References in Text

The Public Utility Holding Company Act of 1935, referred to in subsec. (c), is title I of act Aug. 26, 1935, ch. 687, 49 Stat. 803, which was classified generally to chapter 2C (§ 79 et seq.) of Title 15, Commerce and Trade, prior to repeal by Pub. L. 109–58, title XII, § 1263, Aug. 8, 2005, 119 Stat. 974. For complete classification of this Act to the Code, see Tables.

Amendments

2005—Subsec. (a). Pub. L. 109–58, § 1295(b)(1), substituted "hearing held" for "hearing had" in first sentence.

Subsec. (b). Pub. L. 109–58, § 1295(b)(2), struck out "the public utility to make" before "refunds of any amounts paid" in seventh sentence.

Pub. L. 109–58, § 1285, in second sentence, substituted "the date of the filing of such complaint nor later than 5 months after the filing of such complaint" for "the date 60 days after the filing of such complaint nor later than 5 months after the expiration of such 60-day period", in third sentence, substituted "the date of the publication" for "the date 60 days after the publication" and "5 months after the publication date" for "5 months after the expiration of such 60-day period", and in fifth sentence, substituted "If no final decision is rendered by the conclusion of the 180-day period commencing upon initiation of a proceeding pursuant to this section, the Commission shall state the reasons why it has failed to do so and shall state its best estimate as to when it reasonably expects to make such decision" for "If no final decision is rendered by the refund effective date or by the conclusion of the 180-day period commencing upon initiation of a proceeding pursuant to this section, whichever is earlier, the Commission shall state the reasons why it has failed to do so and shall state its best estimate as to when it reasonably expects to make such decision''.

Subsec. (e). Pub. L. 109–58, § 1286, added subsec. (e).

1988—Subsec. (a). Pub. L. 100–473, § 2(1), inserted provisions for a statement of reasons for listed changes, hearings, and specification of issues.

Subsecs. (b) to (d). Pub. L. 100–473, § 2(2), added subsecs. (b) and (c) and redesignated former subsec. (b) as (d).

Statutory Notes and Related Subsidiaries

Effective Date of 1988 Amendment

Pub. L. 100–473, § 4, Oct. 6, 1988, 102 Stat. 2300, provided that: ''The amendments made by this Act [amending this section] are not applicable to complaints filed or motions initiated before the date of enactment of this Act [Oct. 6, 1988] pursuant to section 206 of the Federal Power Act [this section]: *Provided, however*, That such complaints may be withdrawn and refiled without prejudice.''

Limitation on Authority Provided

Pub. L. 100–473, § 3, Oct. 6, 1988, 102 Stat. 2300, provided that: ''Nothing in subsection (c) of section 206 of the Federal Power Act, as amended (16 U.S.C. 824e(c)) shall be interpreted to confer upon the Federal Energy Regulatory Commission any authority not granted to it elsewhere in such Act [16 U.S.C. 791a et seq.] to issue an order that (1) requires a decrease in system production or transmission costs to be paid by one or more electric utility companies of a registered holding company; and (2) is based upon a determination that the amount of such decrease should be paid through an increase in the costs to be paid by other electric utility companies of such registered holding company. For purposes of this section, the terms 'electric utility companies' and 'registered holding company' shall have the same meanings as provided in the Public Utility Holding Company Act of 1935, as amended [15 U.S.C. 79 et seq.].''

Study

Pub. L. 100–473, § 5, Oct. 6, 1988, 102 Stat. 2301, directed that, no earlier than three years and no later than four years after Oct. 6, 1988, Federal Energy Regulatory Commission perform a study of effect of amendments to this section, analyzing (1) impact, if any, of such amendments on cost of capital paid by public utilities, (2) any change in average time taken to resolve proceedings under this section, and (3) such other matters as Commission may deem appropriate in public interest, with study to be sent to Committee on Energy and Natural Resources of Senate and Committee on Energy and Commerce of House of Representatives.

§ 824f. Ordering furnishing of adequate service

Whenever the Commission, upon complaint of a State commission, after notice to each State commission and public utility affected and after opportunity for hearing, shall find that any interstate service of any public utility is inadequate or insufficient, the Commission shall determine the proper, adequate, or sufficient service to be furnished, and shall fix the same by its order, rule, or regulation: *Provided*, That the Commission shall have no authority to compel the enlargement of generating facilities for such purposes, nor to compel the public utility to sell or exchange energy when to do so would impair its ability to render adequate service to its customers.

(June 10, 1920, ch. 285, pt. II, § 207, as added Aug. 26, 1935, ch. 687, title II, § 213, 49 Stat. 853.)

§ 824g. Ascertainment of cost of property and depreciation

(a) Investigation of property costs

The Commission may investigate and ascertain the actual legitimate cost of the property of every public utility, the depreciation therein, and, when found necessary for rate-making purposes, other facts which bear on the determination of such cost or depreciation, and the fair value of such property.

(b) Request for inventory and cost statements

Every public utility upon request shall file with the Commission an inventory of all or any part of its property and a statement of the original cost thereof, and shall keep the Commission informed regarding the cost of all additions, betterments, extensions, and new construction.

(June 10, 1920, ch. 285, pt. II, § 208, as added Aug. 26, 1935, ch. 687, title II, § 213, 49 Stat. 853.)

§ 824h. References to State boards by Commission

(a) Composition of boards; force and effect of proceedings

The Commission may refer any matter arising in the administration of this subchapter to a board to be composed of a member or members, as determined by the Commission, from the State or each of the States affected or to be affected by such matter. Any such board shall be vested with the same power and be subject to the same duties and liabilities as in the case of a member of the Commission when designated by the Commission to hold any hearings. The action of such board shall have such force and effect and its proceedings shall be conducted in such manner as the Commission shall by regulations prescribe. The board shall be appointed by the Commission from persons nominated by the State commission of each State affected or by the Governor of such State if there is no State commission. Each State affected shall be entitled to the same number of representatives on the board unless the nominating power of such State waives such right. The Commission shall have discretion to reject the nominee from any State, but shall thereupon invite a new nomination from that State. The members of a board shall receive such allowances for expenses as the Commission shall provide. The Commission may, when in its discretion sufficient reason exists therefor, revoke any reference to such a board.

(b) Cooperation with State commissions

The Commission may confer with any State commission regarding the relationship between rate structures, costs, accounts, charges, practices, classifications, and regulations of public utilities subject to the jurisdiction of such State commission and of the Commission; and the Commission is authorized, under such rules and regulations as it shall prescribe, to hold joint hearings with any State commission in connection with any matter with respect to which the Commission is authorized to act. The Commission is authorized in the administration of this chapter to avail itself of such cooperation, services, records, and facilities as may be afforded by any State commission.

not otherwise subject to the jurisdiction of the Commission, including the generation, transmission, distribution, and sale of electric energy by any agency, authority, or instrumentality of the United States, or of any State or municipality or other political subdivision of a State. It shall, so far as practicable, secure and keep current information regarding the ownership, operation, management, and control of all facilities for such generation, transmission, distribution, and sale; the capacity and output thereof and the relationship between the two; the cost of generation, transmission, and distribution; the rates, charges, and contracts in respect of the sale of electric energy and its service to residential, rural, commercial, and industrial consumers and other purchasers by private and public agencies; and the relation of any or all such facts to the development of navigation, industry, commerce, and the national defense. The Commission shall report to Congress the results of investigations made under authority of this section.

(June 10, 1920, ch. 285, pt. III, § 311, as added Aug. 26, 1935, ch. 687, title II, § 213, 49 Stat. 859.)

§ 825k. Publication and sale of reports

The Commission may provide for the publication of its reports and decisions in such form and manner as may be best adapted for public information and use, and is authorized to sell at reasonable prices copies of all maps, atlases, and reports as it may from time to time publish. Such reasonable prices may include the cost of compilation, composition, and reproduction. The Commission is also authorized to make such charges as it deems reasonable for special statistical services and other special or periodic services. The amounts collected under this section shall be deposited in the Treasury to the credit of miscellaneous receipts. All printing for the Federal Power Commission making use of engraving, lithography, and photolithography, together with the plates for the same, shall be contracted for and performed under the direction of the Commission, under such limitations and conditions as the Joint Committee on Printing may from time to time prescribe, and all other printing for the Commission shall be done by the Director of the Government Publishing Office under such limitations and conditions as the Joint Committee on Printing may from time to time prescribe. The entire work may be done at, or ordered through, the Government Publishing Office whenever, in the judgment of the Joint Committee on Printing, the same would be to the interest of the Government: *Provided*, That when the exigencies of the public service so require, the Joint Committee on Printing may authorize the Commission to make immediate contracts for engraving, lithographing, and photolithographing, without advertisement for proposals: *Provided further*, That nothing contained in this chapter or any other Act shall prevent the Federal Power Commission from placing orders with other departments or establishments for engraving, lithographing, and photolithographing, in accordance with the provisions of sections 1535 and 1536 of title 31, providing for interdepartmental work.

(June 10, 1920, ch. 285, pt. III, § 312, as added Aug. 26, 1935, ch. 687, title II, § 213, 49 Stat. 859; amended Pub. L. 113–235, div. H, title I, § 1301(b), (d), Dec. 16, 2014, 128 Stat. 2537.)

Editorial Notes

CODIFICATION

''Sections 1535 and 1536 of title 31'' substituted in text for ''sections 601 and 602 of the Act of June 30, 1932 (47 Stat. 417 [31 U.S.C. 686, 686b])'' on authority of Pub. L. 97–258, § 4(b), Sept. 13, 1982, 96 Stat. 1067, the first section of which enacted Title 31, Money and Finance.

Statutory Notes and Related Subsidiaries

CHANGE OF NAME

''Director of the Government Publishing Office'' substituted for ''Public Printer'' in text on authority of section 1301(d) of Pub. L. 113–235, set out as a note under section 301 of Title 44, Public Printing and Documents.

''Government Publishing Office'' substituted for ''Government Printing Office'' in text on authority of section 1301(b) of Pub. L. 113–235, set out as a note preceding section 301 of Title 44, Public Printing and Documents.

§ 825*l*. Review of orders

(a) Application for rehearing; time periods; modification of order

Any person, electric utility, State, municipality, or State commission aggrieved by an order issued by the Commission in a proceeding under this chapter to which such person, electric utility, State, municipality, or State commission is a party may apply for a rehearing within thirty days after the issuance of such order. The application for rehearing shall set forth specifically the ground or grounds upon which such application is based. Upon such application the Commission shall have power to grant or deny rehearing or to abrogate or modify its order without further hearing. Unless the Commission acts upon the application for rehearing within thirty days after it is filed, such application may be deemed to have been denied. No proceeding to review any order of the Commission shall be brought by any entity unless such entity shall have made application to the Commission for a rehearing thereon. Until the record in a proceeding shall have been filed in a court of appeals, as provided in subsection (b), the Commission may at any time, upon reasonable notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any finding or order made or issued by it under the provisions of this chapter.

(b) Judicial review

Any party to a proceeding under this chapter aggrieved by an order issued by the Commission in such proceeding may obtain a review of such order in the United States court of appeals for any circuit wherein the licensee or public utility to which the order relates is located or has its principal place of business, or in the United States Court of Appeals for the District of Columbia, by filing in such court, within sixty days after the order of the Commission upon the application for rehearing, a written petition praying that the order of the Commission be modified or set aside in whole or in part. A copy of such petition shall forthwith be transmitted by the clerk of the court to any member of the Commission and thereupon the Commission shall file with the court the record upon which the order complained of was entered, as provided in section 2112 of title 28. Upon the filing of such petition such court shall have jurisdiction, which upon the filing of the record with it shall be exclusive, to affirm, modify, or set aside such order in whole or in part. No objection to the order of the Commission shall be considered by the court unless such objection shall have been urged before the Commission in the application for rehearing unless there is reasonable ground for failure so to do. The finding of the Commission as to the facts, if supported by substantial evidence, shall be conclusive. If any party shall apply to the court for leave to adduce additional evidence, and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for failure to adduce such evidence in the proceedings before the Commission, the court may order such additional evidence to be taken before the Commission and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper. The Commission may modify its findings as to the facts by reason of the additional evidence so taken, and it shall file with the court such modified or new findings which, if supported by substantial evidence, shall be conclusive, and its recommendation, if any, for the modification or setting aside of the original order. The judgment and decree of the court, affirming, modifying, or setting aside, in whole or in part, any such order of the Commission, shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28.

(c) Stay of Commission's order

The filing of an application for rehearing under subsection (a) shall not, unless specifically ordered by the Commission, operate as a stay of the Commission's order. The commencement of proceedings under subsection (b) of this section shall not, unless specifically ordered by the court, operate as a stay of the Commission's order.

(June 10, 1920, ch. 285, pt. III, § 313, as added Aug. 26, 1935, ch. 687, title II, § 213, 49 Stat. 860; amended June 25, 1948, ch. 646, § 32(a), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107; Pub. L. 85–791, § 16, Aug. 28, 1958, 72 Stat. 947; Pub. L. 109–58, title XII, § 1284(c), Aug. 8, 2005, 119 Stat. 980.)

Editorial Notes

CODIFICATION

In subsec. (b), ''section 1254 of title 28'' substituted for ''sections 239 and 240 of the Judicial Code, as amended (U.S.C., title 28, secs. 346 and 347)'' on authority of act June 25, 1948, ch. 646, 62 Stat. 869, the first section of which enacted Title 28, Judiciary and Judicial Procedure.

AMENDMENTS

2005—Subsec. (a). Pub. L. 109–58 inserted ''electric utility,'' after ''Any person,'' and ''to which such person,'' and substituted ''brought by any entity unless such entity'' for ''brought by any person unless such person''.

1958—Subsec. (a). Pub. L. 85–791, § 16(a), inserted sentence to provide that Commission may modify or set aside findings or orders until record has been filed in court of appeals.

Subsec. (b). Pub. L. 85–791, § 16(b), in second sentence, substituted ''transmitted by the clerk of the court to'' for ''served upon'', substituted ''file with the court'' for ''certify and file with the court a transcript of'', and inserted ''as provided in section 2112 of title 28'', and in third sentence, substituted ''jurisdiction, which upon the filing of the record with it shall be exclusive'' for ''exclusive jurisdiction''.

Statutory Notes and Related Subsidiaries

CHANGE OF NAME

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted ''court of appeals'' for ''circuit court of appeals''.

§ 825m. Enforcement provisions

(a) Enjoining and restraining violations

Whenever it shall appear to the Commission that any person is engaged or about to engage in any acts or practices which constitute or will constitute a violation of the provisions of this chapter, or of any rule, regulation, or order thereunder, it may in its discretion bring an action in the proper District Court of the United States or the United States courts of any Territory or other place subject to the jurisdiction of the United States, to enjoin such acts or practices and to enforce compliance with this chapter or any rule, regulation, or order thereunder, and upon a proper showing a permanent or temporary injunction or decree or restraining order shall be granted without bond. The Commission may transmit such evidence as may be available concerning such acts or practices to the Attorney General, who, in his discretion, may institute the necessary criminal proceedings under this chapter.

(b) Writs of mandamus

Upon application of the Commission the district courts of the United States and the United States courts of any Territory or other place subject to the jurisdiction of the United States shall have jurisdiction to issue writs of mandamus commanding any person to comply with the provisions of this chapter or any rule, regulation, or order of the Commission thereunder.

(c) Employment of attorneys

The Commission may employ such attorneys as it finds necessary for proper legal aid and service of the Commission or its members in the conduct of their work, or for proper representation of the public interests in investigations made by it or cases or proceedings pending before it, whether at the Commission's own instance or upon complaint, or to appear for or represent the Commission in any case in court; and the expenses of such employment shall be paid out of the appropriation for the Commission.

(d) Prohibitions on violators

In any proceedings under subsection (a), the court may prohibit, conditionally or unconditionally, and permanently or for such period of

(iii) Issue and sign requests for additional information regarding applications, filings, reports and data processed by the Office of Electric Reliability.

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

[Order 701, 72 FR 61054, Oct. 29, 2007, by Order 721, redesignated at 74 FR 6541, Feb. 10, 2009; Order 766, 77 FR 59747, Oct. 1, 2012; Order 795, 79 FR 9403, Feb. 19, 2014]

§ 375.304 Delegations to the Chief Administrative Law Judge.

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

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

(1) For those proceedings pending under subpart E of part 385 of this chapter:

(i) Consolidate for hearing two or more proceedings on any or all issues,

(ii) Sever two or more proceedings or issues in a proceeding,

(iii) Designate and substitute presiding officers, and

(iv) Extend any close or record date ordered by the Commission in a proceeding for good cause, and

(v) Set or extend procedural time standards, including but not limited to hearing, briefing and initial decision dates, including dates set by the Commission, unless the Commission states otherwise in its hearing order.

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

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

(c) The Commission authorizes the Chief Administrative Law Judge, and the Administrative Law Judge designated by the Chief Administrative Law Judge to serve as a settlement judge for a proceeding, to certify to the Commission uncontested offers of settlement.

[Order 492, 53 FR 16063, May 5, 1988, as amended by Order 629, 68 FR 6609, Feb. 10, 2003; Order 883, 87 FR 31730, May 25, 2022]

§ 375.305 Delegations to the Solicitor.

The Commission authorizes the Solicitor, or the Solicitor's designee to:

(a) File with the appropriate court of the United States a certified list of the materials comprising the record of any proceeding which involves the Commission;

(b) Retain appropriate materials; and

(c) Deliver such materials to the court as required.

[43 FR 36435, Aug. 17, 1978. Redesignated and amended at 45 FR 21224, 21225, Apr. 1, 1980; Order 112, 45 FR 79025, Nov. 28, 1980]

§ 375.307 Delegations to the Director of the Office of Energy Market Regulation.

The Commission authorizes the Director or the Director's designee to:

(a) *Program-Specific Delegated Authority:* Take the following actions with respect to the following programs:

(1) *Sections 205 and 206 of the Federal Power Act.* (i) Accept for filing all uncontested tariffs or rate schedules and uncontested tariff or rate schedule changes submitted by public utilities, including changes that would result in rate increases, if they comply with all applicable statutory requirements, and with all applicable Commission rules, regulations and orders for which waivers have not been granted, or if waivers have been granted by the Commission, if the filings comply with the terms of the waivers;

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

(iii) Take appropriate action on requests or petitions for waivers of notice as provided in section 205(d) of the Federal Power Act, provided the requests conform to the requirements of § 385.2001 of this chapter;

(iv) Refer to the Chief Administrative Law Judge (Chief ALJ) for action by the Chief ALJ, with the Chief ALJ's concurrence, uncontested motions that would result in lower interim settlement rates, pending Commission action on settlement agreements;

(v) Sign and issue deficiency letters; and

(vi) Act on requests for authorization for a designated representative to post and file rate schedules of public utilities which are parties to the same rate schedules.

(2) *Other sections of the Federal Power Act*. (i) Pass upon any uncontested application for authorization to issue securities or to assume obligations and liabilities filed by public utilities and licensees pursuant to Part 34 of this chapter;

(ii) Take appropriate action on uncontested applications for the sale or lease or other disposition of facilities, merger or consolidation of facilities, purchase or acquisition or taking of securities of a public utility, or purchase or lease or acquisition of an existing generation facility under section 203 of the Federal Power Act;

(iii) Take appropriate action on uncontested applications for interlocking positions under section 305(b) of the Federal Power Act; and

(iv) Sign and issue deficiency letters for filings under Federal Power Act sections 203, 204, 215, and 305(b).

(v) Take appropriate action on uncontested Electric Reliability Organization budget, business plan, and special assessment filings made pursuant to § 39.4 of this chapter.

(vi) Take appropriate action on uncontested filings proposing Electric Reliability Organization or Regional Entity organization rules or rule changes made pursuant to § 39.10 of this chapter.

(vii) Take appropriate action on uncontested delegation agreement filings by the Electric Reliability Organization or Regional Entity made pursuant to section 39.8 of this chapter.

(3) *Public Utility Holding Company Act of 2005*. Take appropriate action on:

(i) Uncontested FERC–65A (exemption notification) filings;

(ii) Uncontested FERC–65B (waiver notification) filings; and

(iii) Uncontested applications under section 1275(b) of the Energy Policy Act of 2005 and/or the Federal Power Act to allocate service company costs to members of a holding company system.

(4) *Federal Power Marketing Administration Filings*. Approve uncontested rates and rate schedules filed by the Secretary of Energy or his designee, for power developed at projects owned and operated by the federal government and for services provided by federal power marketing agencies.

(5) *Section 210(m) of the Public Utility Regulatory Policies Act of 1978*. (i) Approve uncontested applications;

(ii) Reject an application, unless accompanied by a request for waiver in conformity with § 385.2001 of this chapter, if it fails patently to comply with applicable statutory requirements or with all applicable Commission rules, regulations and orders;

(iii) Act on any request or petition for waiver, consistent with Commission policy; and

(iv) Sign and issue deficiency letters.

(6) *Other sections of the Public Utility Regulatory Policies Act of 1978*. Take appropriate action on:

(i) Filings related to uncontested nonexempt qualifying small power production facilities;

(ii) Uncontested applications for certification of qualifying status for small power production and cogeneration facilities under § 292.207 of this chapter;

(iii) Requests or petitions for waivers of the requirements of subpart C of Part 292 of this chapter governing cogeneration and small power production facilities made by any state regulatory authority or nonregulated electric utility pursuant to § 292.402 of this chapter;

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

(v) Requests or petitions for waivers of the technical requirements applicable to qualifying small power production facilities and qualifying cogeneration facilities.

(7) *Sections 4 and 5 of the Natural Gas Act*. (i) Accept for filing all uncontested tariffs or rate schedules and uncontested tariff or rate schedule changes, except major pipeline rate increases under section 4(e) of the Natural Gas Act and under subpart D of Part 154 of this chapter, if they comply with all applicable statutory requirements, and with all applicable Commission rules, regulations and orders for which waivers have not been granted, or if waivers have been granted by the Commission, if the filings comply with the terms of the waivers;

(ii) Accept for filing all uncontested tariff or rate schedules changes made in compliance with Commission orders;

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

(iv) Take appropriate action on requests or petitions for waiver of notice as provided in section 4(d) of the Natural Gas Act, provided the request conforms to the requirements of § 385.2001 of this chapter; and

(v) Refer to the Chief Administrative Law Judge (Chief ALJ) for action by the Chief ALJ, with the Chief ALJ's concurrence, uncontested motions that would result in lower interim settlement rates, pending Commission action on settlement agreements.

(8) *Section 7 of the Natural Gas Act*. Take appropriate action on the following types of uncontested applications for authorizations and uncontested amendments to applications and authorizations filed pursuant to section 7 of the Natural Gas Act and impose appropriate conditions:

(i) Applications by a pipeline for the deletion of delivery points but not facilities;

(ii) Applications to abandon pipeline services, but not facilities, involving a specific customer or customers, if such customer or customers have agreed to the abandonment;

(iii) Applications for temporary or permanent certificates (and for amendments thereto) for services, but not facilities, in connection with the transportation;

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

(v) Applications for temporary certificates involving transportation service or sales, but not facilities, pursuant to § 157.17 of this chapter;

(vi) Dismiss any protest to prior notice filings involving existing service, made pursuant to § 157.205 of this chapter, that does not raise a substantive issue and fails to provide any specific detailed reason or rationale for the objection;

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

(viii) Applications for approval of customer rate schedule shifts;

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

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

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

(xii) Sign and issue deficiency letters.

(9) *Natural Gas Policy Act of 1978.* (i) Notify jurisdictional agencies within 45 days after the date on which the Commission receives notice of a determination pursuant to § 270.502(b) of this chapter that the notice is incomplete under § 270.204 of this chapter;

(ii) Issue preliminary findings under § 270.502(a)(1) of this chapter;

(iii) Accept any uncontested item that has been filed under § 284.123 of this chapter consistent with Commission regulations and policy;

(iv) Reject an application filed pursuant to § 284.123 of this chapter, unless accompanied by a request for waiver in conformity with § 385.2001 of this chapter, if it fails patently to comply with applicable statutory requirements or Commission rules, regulations and orders; and

(v) Take appropriate action on petitions to permit after an initial 60-day period one additional 60-day period of exemption pursuant to § 284.264(b) of this chapter where the application for extension arrives at the Commission no later than 45 days after the commencement of the initial period of exemption and where only services are involved.

(10) *Regulation of Oil Pipelines Under the Interstate Commerce Act.* (i) Accept any uncontested item that has been filed consistent with Commission regulations and policy;

(ii) Reject any filing, unless accompanied by a request for waiver in conformity with § 385.2001 of this chapter, that patently fails to comply with applicable statutory requirements and with all applicable Commission rules, regulations and orders; and

(iii) Prescribe for carriers the classes of property for which depreciation charges may be properly included under operating expenses, review the fully documented depreciation studies filed by the carriers, and authorize or revise the depreciation rates reflected in the depreciation study with respect to each of the designated classes of property.

(b) *General, Non-Program-Specific Delegated Authority.* (1) Take appropriate action on:

(i) Any notice of intervention or motion to intervene, filed in an uncontested proceeding processed by the Office of Energy Market Regulation;

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

(iii) Filings for administrative revisions to electronic filed tariffs.

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

(i) Filing requirements for the appropriate statements and reports processed by the Office of Energy Market Regulation under Parts 46, 141, 260 and 357 of this chapter, §§ 284.13 and 284.126 of this chapter, and other relevant Commission orders; and

(ii) Fees prescribed in §§ 381.403 and 381.505 of this chapter in accordance with § 381.106(b) of this chapter.

(3) Undertake the following actions:

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

(A) Be of a noncontroversial nature, and

(B) Contain the statement, ''This report does not necessarily reflect the views of the Commission,'' in bold face type on the cover;

(ii) Issue and sign requests for additional information regarding applications, filings, reports and data processed by the Office of Energy Market Regulation; and

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

[Order 699, 72 FR 45326, Aug. 14, 2007, as amended by Order 701, 72 FR 61054, Oct. 29, 2007; Order 714, 73 FR 57537, Oct. 3, 2008; Order 766, 77 FR 59747, Oct. 1, 2012]

(6) If the presiding officer does not issue an order under paragraph (b)(1) of this section within 15 days after the motion is filed under paragraph (b)(1) of this section, the motion is denied.

(c) *Appeal of a presiding officer's denial of motion to permit appeal.* (1) If a motion to permit appeal is denied by the presiding officer, the participant who made the motion may appeal the denial to the Commissioner who is designated Motions Commissioner, in accordance with this paragraph. For purposes of this section, ''Motions Commissioner'' means the Chairman or a member of the Commission designated by the Chairman to rule on motions to permit interlocutory appeal. Any person filing an appeal under this paragraph must serve separate copies of the appeal on the Motions Commissioner and on the General Counsel by Express Mail or by hand delivery.

(2) A participant must submit an appeal under this paragraph not later than 7 days after the motion to permit appeal under paragraph (b) of this section is denied. The appeal must state why prompt Commission review is necessary under the standards set forth in paragraph (c)(5) of this section. The appeal must be labeled in accordance with §385.2002(b) of this chapter.

(3) A participant who appeals under this paragraph must file with the appeal a copy of the written order denying the motion or, if the denial was issued orally, the relevant portions of the transcript.

(4) The Motions Commissioner may, in considering an appeal under this paragraph, order the presiding officer or any participant in the proceeding to provide additional information.

(5) The Motions Commissioner will permit an appeal to the Commission under this paragraph only if the Motions Commissioner finds extraordinary circumstances which make prompt Commission review of the contested ruling necessary to prevent detriment to the public interest or to prevent irreparable harm to a person. If the Motions Commissioner makes no determination within 7 days after filing the appeal under this paragraph or within the time the Motions Commissioner otherwise provides to receive and consider information under this paragraph, the appeal to the Commission under paragraph (b) of this section will not be permitted.

(6) If appeal under paragraph (b) of this section is not permitted, the contested ruling of the presiding officer will be reviewed in the ordinary course of the proceeding as if the appeal had not been made.

(7) If the Motions Commissioner permits an appeal to the Commission, the Secretary will issue an order containing that decision.

(d) *Commission action.* Unless the Commission acts upon an appeal permitted by a presiding officer under paragraph (b) of this section, or by the Motions Commissioner under paragraph (c) of this section, within 15 days after the date on which the presiding officer or Motions Commissioner permits appeal, the ruling of the presiding officer will be reviewed in the ordinary course of the proceeding as if the appeal had not been made.

(e) *Appeal not to suspend proceeding.* Any decision by a presiding officer to permit appeal under paragraph (b) of this section or by the Motions Commissioner to permit an appeal under paragraph (c) of this section will not suspend the proceeding, unless otherwise ordered by the presiding officer or the Motions Commissioner.

[Order 225, 47 FR 19022, May 3, 1982, as amended by Order 376, 49 FR 21705, May 23, 1984; Order 402, 49 FR 39539, Oct. 9, 1984; Order 725, 74 FR 41039, Aug. 14, 2009]

§385.716 Reopening (Rule 716).

(a) *General rule.* To the extent permitted by law, the presiding officer or the Commission may, for good cause under paragraph (c) of this section, reopen the evidentiary record in a proceeding for the purpose of taking additional evidence.

(b) *By motion.* (1) Any participant may file a motion to reopen the record.

(2) Any motion to reopen must set forth clearly the facts sought to be proven and the reasons claimed to constitute grounds for reopening.

(3) A participant who does not file an answer to any motion to reopen will be deemed to have waived any objection to the motion provided that no other participant has raised the same objection.

(c) *By action of the presiding officer or the Commission.* If the presiding officer or the Commission, as appropriate, has reason to believe that reopening of a proceeding is warranted by any changes in conditions of fact or of law or by the public interest, the record in the proceeding may be reopened by the presiding officer before the initial or revised initial decision is served or by the Commission after the initial decision or, if appropriate, the revised initial decision is served.

[Order 225, 47 FR 19022, May 3, 1982, as amended by Order 375, 49 FR 21316, May 21, 1984]

Subpart H—Shortened Procedures

§ 385.801 Waiver of hearing (Rule 801).

In any proceeding in which the Commission is authorized to act after opportunity for hearing, if the parties waive hearing, such opportunity will be deemed to have been afforded by service or publication in the FEDERAL REGISTER of notice of the application or other initial pleading, request, or other filing, such notice fixing a reasonable period of time within which any person desiring to be heard may file a protest or petition. Upon the expiration of such period of time, in the absence of a request for hearing, the Commission may forthwith dispose of the matter upon the basis of the pleadings and other submittals and the studies and recommendations of the staff. A party not requesting oral hearing in its pleadings will be deemed to have waived a hearing for the purpose of such disposition, but will not be bound by such a waiver for the purposes of any request for rehearing with respect to an order so entered.

§ 385.802 Noncontested proceedings (Rule 802).

Noncontested proceedings. In any proceeding required by statute to be set for hearing, the Commission, when it appears to be in the public interest and to be in the interest of the parties to grant the relief or authority requested in the initial pleading, and to omit the intermediate decision procedure, may, after a hearing during which no opposition or contest develops, forthwith dispose of the proceedings upon consideration of the pleadings and other evidence filed and incorporated in the record: *Provided,* (a) The applicant or other initial pleader requests that the intermediate decision procedure be omitted and waives oral hearing and opportunity for filing exceptions to the decision of the Commission; and (b) no issue of substance is raised by any request to be heard, protest or petition filed subsequent to publication in the FEDERAL REGISTER of the notice of the filing of an initial pleading and notice or order fixing of hearing, which notice or order will state that the Commission considers the proceeding a proper one for disposition under the provisions of this subpart. Requests for the procedure provided by this subpart may be contained in the initial pleading or subsequent request in writing to the Commission. The decision of the Commission in such proceeding after noncontested hearing, will be final, subject to reconsideration by the Commission upon request for rehearing as provided by statute.

Subpart I—Commission Review of Remedial Orders

§ 385.901 Scope (Rule 901).

(a) *Proceedings to which applicable.* The provisions of this subpart apply to proceedings of the Commission held in accordance with section 503(c) of the Department of Energy Organization Act (42 U.S.C. 7193(c)) to review orders issued by the Secretary of Energy pursuant to section 503(a) of the Department of Energy Organization Act (42 U.S.C. 7193(c)), and initiated by notices of probable violation, proposed remedial orders, or other formal administrative initiating documents issued on or after October 1, 1977, which are contested by the recipient.

(b) *Relationship to other rules.* (1) Where a provision of this subpart is inconsistent with a provision in any other subpart of this part, the provision in this subpart controls.

(2) Subpart F of this part, except Rule 601, does not apply to proceedings under this subpart.

§ 385.902 Definitions (Rule 902).

For purposes of this subpart:

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Fifth Circuit by using the appellate CM/ECF system on October 3, 2025. Participants in the case will be served by the appellate CM/ECF system.

/s/ Jared B. Fish
Jared B. Fish
Senior Attorney