Case Nos. 25-60055, 25-60149, 25-60329 & 25-60453

In the United States Court of Appeals for the Fifth Circuit

VISTRA CORPORATION, *ET AL.*,
Petitioners,

v.

FEDERAL ENERGY REGULATORY COMMISSION,
Respondent.

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

BRIEF FOR RESPONDENT FEDERAL ENERGY REGULATORY COMMISSION

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MAY 20, 2026

Case No. 25-60055

VISTRA CORPORATION; DYNEGY MARKETING AND TRADE, L.L.C.; LS POWER DEVELOPMENT, L.L.C.; ALPHA GENERATION, L.L.C.; ELECTRIC POWER SUPPLY ASSOCIATION; NEW ENGLAND POWER GENERATORS ASSOCIATION, INCORPORATED; NATIONAL GRID RENEWABLES DEVELOPMENT, L.L.C.; INDEPENDENT POWER PRODUCERS OF NEW YORK, INCORPORATED; THE PJM POWER PROVIDERS GROUP; LEEWARD RENEWABLE ENERGY, L.L.C.; RWE CLEAN ENERGY, L.L.C.; DESRI HOLDINGS, L.P.; INVENERGY WIND DEVELOPMENT NORTH AMERICA, L.L.C.; INVENERGY SOLAR DEVELOPMENT NORTH AMERICA, L.L.C.; LIGHTSOURCE RENEWABLE ENERGY OPERATIONS, L.L.C.; NEXTERA ENERGY RESOURCES, L.L.C.,
Petitioners,

v.

FEDERAL ENERGY REGULATORY COMMISSION,
Respondent.

consolidated with

No. 25-60149

INVENERGY NELSON, L.L.C.,
Petitioner,

v.

FEDERAL ENERGY REGULATORY COMMISSION,
Respondent.

consolidated with

No. 25-60329

LEEWARD RENEWABLE ENERGY, L.L.C.; RWE CLEAN ENERGY, L.L.C.; DESRI HOLDINGS, L.P.; INVENERGY WIND DEVELOPMENT NORTH AMERICA, L.L.C.; INVENERGY SOLAR DEVELOPMENT NORTH AMERICA, L.L.C.; LIGHTSOURCE RENEWABLE ENERGY OPERATIONS, L.L.C.; NEXTERA ENERGY RESOURCES, L.L.C.; VISTRA CORPORATION; DYNEGY MARKETING AND TRADE, L.L.C.; LS POWER DEVELOPMENT, L.L.C.; ALPHA GENERATION, L.L.C.; ELECTRIC POWER SUPPLY ASSOCIATION; NEW ENGLAND POWER GENERATORS ASSOCIATION, INCORPORATED; GERONIMO POWER, L.L.C.; INDEPENDENT POWER PRODUCERS OF NEW YORK, INCORPORATED; THE PJM POWER PROVIDERS GROUP,
Petitioners,

v.

FEDERAL ENERGY REGULATORY COMMISSION,
Respondent.

consolidated with

25-60453

PUBLIC SERVICE ELECTRIC & GAS COMPANY; PSEG POWER, L.L.C.; PSEG ENERGY RESOURCES & TRADE, L.L.C.,
Petitioners,

v.

FEDERAL ENERGY REGULATORY COMMISSION,
Respondent.

CERTIFICATE OF INTERESTED PERSONS

Case Nos. 25-60055, 25-60149, 25-60329 & 25-60453

VISTRA CORP., *ET AL.*;
LEEWARD RENEWABLE ENERGY, LLC, *ET AL.*,
Petitioners,

v.

FEDERAL ENERGY REGULATORY COMMISSION,
Respondent.

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.

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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 interpretation and application of the Federal Power Act to the Commission's rulemaking here on reactive power compensation.

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INTRODUCTION AND STATEMENT OF THE ISSUES

In order to sell the electricity they produce, generation resources (including traditional fossil-fuel power plants, nuclear, wind and solar facilities, etc.) must be able to produce and absorb "reactive" power. Reactive power plays a supporting role in electric systems, maintaining voltage levels so that "real" power—which illuminates light bulbs, runs motors, and heats and cools homes—can reliably flow over the interstate transmission grid and on to end users.

In the rulemaking orders on review, Respondent Federal Energy Regulatory Commission ("FERC" or the "Commission") adopted a rule standardizing a practice that many grid operators across the nation—including in Louisiana, Mississippi, and Texas—already had implemented, and that numerous customer and industry groups support. The rule ensures that, nationwide, customers are not required to pay electric generators for providing reactive power support under normal conditions (i.e., within a standard power factor range). Contrary to Petitioners' arguments, the rule does not require generators to produce any electricity "for free." Generators continue to be compensated for the electricity that they produce. The rule merely puts

an end to generators in some regions receiving hundreds of millions of dollars per year for, essentially, a maintenance function that generators perform at little or no cost, and for their own benefit.

The agency orders on review explain that, within a standard range, reactive power support is provided by the same equipment that also produces real power, at minimal cost (if any) to generators. Moreover, generators provide reactive power for their own benefit—they cannot move the real power they produce to market without reactive power, and they are required to produce and absorb reactive power in order to connect reliably to the transmission grid.

Accordingly, the Commission concluded that charging consumers for reactive power under normal conditions is inconsistent with the Federal Power Act's mandate that all rates be "just and reasonable." Federal Power Act sec. 206, 16 U.S.C. § 824e. The Commission's determination is based on (1) review of an extensive administrative record consisting of comments from myriad stakeholders, including ratepayer groups, transmission owners, and entities representing various generation technologies, and (2) decades of technical and ratemaking experience with reactive power compensation.

Two sets of petitioners challenge the rulemaking, arguing that generators are entitled to continued compensation. The opening briefs filed by Vistra Corp., *et al.* ("Vistra") (Doc. No. 219), and Leeward Renewable Energy, LLC, *et al.* ("Leeward") (Doc. No. 218), present similar, overlapping arguments. This answering brief will refer to all petitioners collectively as "Generators," except when referencing specific briefs.

The issues on appeal are:

1. Whether the Commission reasonably determined that, under Federal Power Act section 206, 16 U.S.C. § 824e, it is not "just and reasonable" to require ratepayers to pay generators for reactive power support within a standard range, when generators provide such reactive power as a condition of interconnection, at minimal cost (if any), and ratepayers receive no additional benefit from the payments;
2. Whether the Commission's rulemaking is reasonable, consistent with the cost causation principle, and not discriminatory or unconstitutional; and

3. Whether the Commission adequately addressed reliance interests in adopting the rule.

STATUTORY AND REGULATORY PROVISIONS

Pertinent statutes are reproduced in the Addendum to this brief.

STATEMENT OF FACTS

I. Statutory Background

The Federal Power Act "establishes a scheme for federal regulation of 'the sale of electric energy at wholesale in interstate commerce.'" *FERC v. Elec. Power Supply Ass'n*, 577 U.S. 260, 277 (2016) (quoting 16 U.S.C. § 824(b)(1)); *see also* 16 U.S.C. § 824(a) ("[T]he business of transmitting and selling electric energy for ultimate distribution to the public is affected with a public interest," and thus, "[f]ederal regulation of matters relating to generation . . . and . . . transmission of electric energy in interstate commerce and the sale of such energy at wholesale in interstate commerce is necessary in the public interest.").

The Federal Power Act "delegates responsibility to FERC to regulate the interstate wholesale market for electricity—both wholesale rates and the panoply of rules and practices affecting them." *FERC v. Elec. Power Supply Ass'n*, 577 U.S. at 277; *see also AEP Texas N. Co. v.*

Texas Indus. Energy Consumers, 473 F.3d 581, 584 (5th Cir. 2006) ("The [Act] gives FERC exclusive jurisdiction to regulate the transmission and wholesale sale of electric energy in interstate commerce.").

The Act provides that "'[a]ll 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." 16 U.S.C. § 824d(a); *Entergy La., Inc. v. La. Pub. Serv. Comm'n*, 539 U.S. 39, 41 (2003). If the Commission determines that the "just and reasonable" standard has been violated, it is required to "take remedial action." *FERC v. Elec. Power Supply Ass'n*, 577 U.S. at 277.

Specifically, Federal Power Act section 206 provides that, in the event the Commission finds a violation of the "just and reasonable standard," it "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." 16 U.S.C. § 824e(a). "[This] means FERC has the authority—and, indeed, the duty—to ensure that rules or practices 'affecting' wholesale rates are

just and reasonable." *FERC v. Elec. Power Supply Ass'n*, 577 U.S. at 277; *see also AEP Texas*, 473 F.3d at 585–86 ("[I]t is FERC's duty . . . to make an assessment of the broad public interests" in determining "whether wholesale rates are just and reasonable").

II. Getting Power onto the Grid: Generator Interconnection and Reactive Power

A. Generator Interconnection to the Transmission Grid

"Powering the modern world is no easy task. An energy source must first generate electricity; that electricity must then travel, often for long distances, over high-voltage wires for distribution; and distributors must deliver electricity to consumers over low-voltage wires." *NextEra Energy Cap. Holdings, Inc. v. Lake*, 48 F.4th 306, 310 (5th Cir. 2022); *see also Capital Power Corp. v. FERC*, 156 F.4th 644 (D.C. Cir. 2025) ("*Capital Power*") (same).

Generators are typically power plants that use fuels such as natural gas, coal, nuclear power, or renewable resources (e.g., solar, wind) to produce electricity. Electricity is then transmitted across vast distances over electric transmission "grids," made up of complex networks of high-voltage transmission lines that traverse the country. Any electricity entering the grid "immediately becomes a part of a vast

pool of energy . . . moving in interstate commerce." *New York v. FERC*, 535 U.S. 1, 7 (2002). Once electricity reaches the vicinity of end users, it may be locally distributed to individual customers over low-voltage service lines. *See generally FERC Reliability Primer* at 10 (Apr. 2020), https://www.ferc.gov/media/reliability-primer.

Electric transmission grids in parts of the United States are organized into territories managed by regional transmission organizations or independent system operators (generally, "grid operators"). *See Hughes v. Talen Energy Mktg., LLC*, 578 U.S. 150, 155 (2016). Apart from the transmission grid managed by the Electric Reliability Council of Texas ("ERCOT"),[1] the transmission and wholesale sale of electricity overseen by such grid operators are subject to Commission regulation under the Federal Power Act. *See NextEra*, 48 F.4th at 310–14 (discussing regional transmission grids). (The

[1] ERCOT administers a transmission grid that is located solely within the state of Texas. Ratemaking associated with the transmission of electricity occurring wholly within ERCOT is not subject to FERC jurisdiction. *See NextEra*, 48 F.4th at 313; *see also generally* https://www.ferc.gov/industries-data/electric/electric-power-markets/ercot.

Commission also regulates interstate transmission and wholesale sales outside these regional transmission grids.)



Figure 1. Regional system operators, https://www.ferc.gov/introductory-guide-electricity-markets-regulated-federal-energy-regulatory-commission.

Generators want to sell the electricity they produce. But they are often located far from where electricity is needed. To market their electricity, generators must first "interconnect" or plug into the transmission grid. *See generally Green Dev., LLC v. FERC*, 77 F.4th 997, 1001 (D.C. Cir. 2023). Generator interconnection is governed by standardized rules first established in a 2003 FERC rulemaking, as

modified in subsequent FERC rulemakings. *See Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003, 104 FERC ¶ 61,103 (2003), *on reh'g*, Order No. 2003-A, 106 FERC ¶ 61,220, *on reh'g*, Order No. 2003-B, 109 FERC ¶ 61,287 (2004), *on reh'g*, Order No. 2003-C, 111 FERC ¶ 61,401 (2005) ("Order No. 2003"), *aff'd sub nom. Nat'l Ass'n of Regul. Util. Comm'rs v. FERC*, 475 F.3d 1277 (D.C. Cir. 2007).[2]

B. Reactive Power Background

1. The Role of Reactive Power in Alternating Current Systems

The U.S. bulk power system operates on alternating current (often referred to as AC power), which oscillates back and forth, rather than

[2] The Commission recently issued Order No. 2023 to update generator interconnection rules and streamline the interconnection process. Challenges to that rule are pending before the D.C. Circuit. *See Advanced Energy United v. FERC*, D.C. Cir. 23-1282, *et al.* (fully briefed; argued Sept. 26, 2025). The interconnection rule revisions at issue in that case are not relevant here. Similarly, two cases concerning generator interconnection matters—*La. Pub. Serv. Comm'n v. FERC*, No. 25-60304 (fully briefed; argued March 3, 2026), and *Ark. Pub. Serv. Comm'n v. FERC*, No. 25-60127 (fully briefed; argument tentatively scheduled for week of October 5, 2026)—are pending before this Court; while not directly relevant, they may provide useful background on generator interconnection issues.

flowing in one direction like direct current (often referred to as DC power). *See generally FERC Reliability Primer* at 16–17; *Compensation for Reactive Power Within the Standard Power Factor Range*, Order No. 904, 189 FERC ¶ 61,034, P 3 (2024) ("Order"), R. 126, JA ___–___. Alternating current electric systems comprise two components—active or "real" power, which powers light bulbs, air conditioners, and refrigerators, and "reactive" power, which plays an important supporting role. *See Capital Power*, 156 F.4th at 647. Reactive power stabilizes voltage levels, which must be controlled to enable the delivery of real power and maintain system reliability in an alternating current system. *See* Order P 3, JA ___–___; *Dynegy Midwest Generation, Inc. v. FERC*, 633 F.3d 1122, 1124 (D.C. Cir. 2011) ("Inadequacies in reactive power can cause voltage collapse and blackouts."); *see also generally FERC Reliability Primer* at 16–18.

Reactive power is measured in megavolt-amperes reactive (MVAr), while real power is measured in watts (or kilowatts (1,000 watts), megawatts (1,000,000 watts), etc.). *See id.* Reactive power may be produced (or absorbed) by either generating facilities or transmission lines and other equipment. Order P 3. The Commission's landmark

Order No. 888 rulemaking, which required owners of high-voltage interstate transmission lines to open their systems to independent power generators and consumers (functionally "unbundling" generation and transmission), required transmission providers to provide reactive power, for which they would receive cost-based compensation (whether the reactive power was supplied by transmission or generation facilities). *See* Order PP 4–5, JA ___–___ (citing *Promoting Wholesale Competition Through Open-Access Non-Discriminatory Transmission Services by Public Utilities*, Order No. 888, 61 Fed. Reg. 21,540, at 21,581–82 (1996), *aff'd New York v. FERC*, 535 U.S. 1).

Reactive power supplied by transmission providers is distinct in purpose from reactive power supplied by generating facilities. *See* Order No. 888, 61 Fed. Reg. at 21,581–82; *see also Compensation for Reactive Power Within the Standard Power Factor Range*, Order Addressing Arguments Raised on Rehearing, 191 FERC ¶ 61,188, P 102 & nn.292–93 (2025) ("Rehearing Order"), R. 141, JA ___–___; Order P 4 (same), JA ___–___. Transmission providers supply reactive power to "control transmission system voltage levels to provide reliable transmission service." *See* Rehearing Order P 102, JA ___–___. As

relevant here, generating facilities provide reactive power to maintain voltage levels when supplying real power—the product that generating facilities produce and sell—to the electric grid. *See* Order PP 3, 8, 64, JA ___, ___, ___.

Reactive power can be provided either within a standard power factor range ("standard range," sometimes referred to as the "deadband"), or outside the standard range. *See Dynegy*, 633 F.3d at 1125. Operating "inside the standard power factor range" refers to a generating facility providing reactive power within the power factor range set forth in the generating facility's interconnection agreement when the unit is online and synchronized to the transmission system.[3] *Compensation for Reactive Power Within the Standard Power Factor*

[3] The power factor is the ratio of a generating facility's real power to its apparent power, where apparent power is the total power output of the system (both real and reactive power). Power factors can range from 1.0 to 0.0, with 1.0 representing only real power and 0.0 representing only reactive power. *See* Order P 6 n.10, JA ___–___. The standard power factor range is generally between 0.95 "leading" (reflecting the real/reactive ratio when the generator is consuming reactive power) and 0.95 "lagging" (reflecting the real/reactive ratio when the generator is supplying reactive power). *See Dynegy*, 633 F.3d at 1124 n.1; Order No. 2003, 104 FERC ¶ 61,103, P 542.

Range, Notice of Proposed Rulemaking, 186 FERC ¶ 61,203, P 1 n.1 (2024) ("Rulemaking Notice"), R. 71, JA ___.

2. Compensation for Reactive Power Within the Standard Range

Typically, under normal conditions, generators operate within the standard range, supplying or absorbing reactive power outside the standard range only when called upon by grid operators. *See* Order PP 6, 8, JA ___–___. A generator who is called upon to provide reactive power outside the standard range is compensated for doing so under relevant grid operator tariffs; this practice remains unaffected by the orders on review. *See id.*; *see also id.* P 167, JA ___–___ (same).

A generator's provision of reactive power within the standard range—the matter at issue here—involves different circumstances. First, all generators interconnected to the transmission grid are required to be able to supply or absorb reactive power within a standard range. *See id.* PP 6–7, ___–___ (discussing Order No. 2003 requirements).[4] Second, provision of reactive power by generators

[4] Previously, wind generators were exempt from this requirement; however, the Commission eliminated the exemption in 2016, and wind generators now are subject to the same reactive power requirements as

within the standard range is a matter of good utility practice; reactive power support provided by the generator maintains appropriate voltage levels to allow the generator's real power to enter the grid. *See id.* PP 6, 8, 64, JA ___–___, ___–___, ___–___.

Accordingly, the Commission has long held, as a general matter, that generators should not be paid for providing reactive power within the standard range. *See id.* PP 6–9, JA ___–___. Since 2003, the standard agreement for interconnection of generators to the transmission gird requires that generators maintain their facilities at a standard power factor range "when synchronized to the transmission system." *Id.* P 6, JA ___–___. If a transmission provider (a grid operator or other utility operating transmission facilities) requests that a generator operate its facilities outside this standard power factor range, then the generator must be compensated. *Id.* However, when operating within the standard range (normal conditions), generators "should not be compensated for reactive power . . . because doing so 'is

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other generators. *See* Order P 7, JA ___–___ (citing *Reactive Power Requirements for Non-Synchronous Generation*, Order No. 827, 155 FERC ¶ 61,277 (2016)).

only meeting [the generator's] obligation.'" *Id.* (quoting Order No. 2003, 104 FERC ¶ 61,103, P 546).

Notwithstanding this general rule, on rehearing of its Order No. 2003 rulemaking, the Commission accepted one party's argument that non-discrimination principles require that, if a transmission provider's own or affiliated generators are paid for providing reactive power within the standard range, then unaffiliated generators also must be paid for doing so. Order No. 2003-A, 106 FERC ¶ 61,220, PP 411, 416. This resulted in an exception to the general rule, often referred to as the "comparability standard" (here, "comparability exception"). *See* Order PP 6–8, JA ___–___; *see also Bonneville Power Admin. v. Puget Sound Energy Inc.*, 120 FERC ¶ 61,211, P 19 (2007) (Commission's policy that a generator is "entitle[d] . . . to compensation for providing reactive power within the [standard] range *if, and only if*, [a transmission provider] pays its own or affiliated generators" was "confirmed in Order No. 2003").

Technology and electricity markets have evolved significantly in the past several decades. *See NextEra*, 48 F.4th at 310–14 (describing evolution from vertically integrated utilities to competitive electricity

markets and independent power generators); *Capital Power*, 156 F.4th at 648 (describing significant FERC rulemakings). Today, the tariffs (rules and price schedules) of many regional grid operators do not provide for compensation for any generators providing reactive power within the standard range. *See* Order PP 13–15, JA ___–___. At the time the rule issued, just three FERC-jurisdictional regional grid operators provided for generator compensation for reactive power within the standard range: (1) mid-Atlantic grid operator PJM Interconnection, L.L.C. ("PJM"), (2) the New York Independent System Operator, Inc. ("New York ISO"), and (3) ISO New England, Inc. ("ISO New England"). *See id.* P 13, JA ___; Fig. 1, *supra* p. 8.

FERC-jurisdictional regional grid operators in this Circuit do not provide for reactive power compensation within the standard range. The Southwest Power Pool, Inc. ("Southwest Power Pool"), covering all or parts of 17 states in the central, southern, and western United States, including parts of Louisiana and parts of Texas, has not provided compensation to generators for reactive power within the standard range since 2007. *See* Rulemaking Notice P 18 & n.48 (citing *Sw. Power Pool, Inc.*, 119 FERC ¶ 61,199, P 30 (2007)).

The Midcontinent Independent System Operator, Inc. ("MISO"), which covers all or part of 15 states in the Midwest and South, including most of Louisiana, previously obtained FERC approval to cease compensating generators for reactive power in the standard range. *See Midcontinent Indep. Sys. Operator, Inc.*, 182 FERC ¶ 61,033 (2023), *on reh'g*, 184 FERC ¶ 61,022 (2024) ("*MISO*" orders). The D.C. Circuit vacated the MISO orders for failing to adequately address generators' short-term financial concerns in allowing MISO's tariff amendments to go into effect immediately, with no phase-in period. *See Capital Power*, 156 F.4th at 653–54. However, as discussed further below, the court expressed no views on the rule on review here, which provides a transition period and opportunities for grid operators to propose any necessary region-specific market adjustments. *See id.*[5]

Other grid operators do not provide for reactive power compensation in the standard range. ERCOT, like the Southwest Power Pool and MISO, does not. *See* Initial Comments of MISO Transmission Owners, Ex. I, May 28, 2024, R. 106, JA ___, ___. The

[5] Two petitioners here (National Grid Renewables Development, L.L.C. and NextEra Energy Resources, L.L.C.), were also petitioners in the *Capital Power* case.

Rule also noted that the California Independent System Operator ("California ISO") has "never provided compensation for reactive power within the standard power factor range." *See* Order P 14 & n.38 (citing *Cal. ISO*, 160 FERC ¶ 61,035, P 7 (2017) (explaining that the California ISO once considered the possibility of compensating generators for reactive power, but decided against it, reasoning that the ability to provide reactive power is part of a generator's fixed costs, which are recovered through power purchase agreements)).

Beyond the regional grid operators, other transmission providers also do not provide compensation to generators for reactive power within the standard range. *See* Order P 9 & n.21 (citing MISO orders and *Pub. Serv. Co. of N.M.*, 178 FERC ¶ 61,088, PP 29–31 (2022); *Nev. Power Co.*, 179 FERC ¶ 61,103, PP 20–21 (2022); *Bonneville Power Admin.*, 120 FERC ¶ 61,211, P 20; *E.ON U.S. LLC*, 119 FERC ¶ 61,340, P 15 (2007); and *Entergy Servs. Inc.*, 113 FERC ¶ 61,040, P 38 (2005)), JA ___–___; *id.* P 15 & n.41 (citing tariffs), JA ___–___.

As reflected in the 2005 FERC order concerning the Entergy system, consistent with Order No. 2003, Entergy previously paid its own generators for providing reactive power within the standard range,

and thus also paid unaffiliated generators for the same. *Entergy Servs. Inc.*, 113 FERC ¶ 61,040 (2005). However, in 2005, Entergy decided to end reactive power compensation for both its own and unaffiliated generators. *See id.* P 2 (citing Entergy's understanding that "the Commission's established policy . . . is that a transmission provider is not required to compensate non-affiliated generators for maintaining reactive power within the [standard range] as long as the transmission provider is not compensating its own or its affiliated generating facilities" for the same).

Mid-Atlantic grid operator PJM, the New York ISO, and ISO New England represent outliers in providing compensation to generators for reactive power within the standard range. *See* Order P 13, JA ___–___; *id.* P 24 & n.59, JA ___–___ (quoting comments indicating that PJM customers paid $388 million for reactive capability in 2023, while customers in the California ISO, Southwest Power Pool, and MISO paid $0); *see also* Vistra Br. 12 (generators received approximately $700 million in reactive power compensation in 2023 alone).

III. Procedural History

A. 2021 Notice of Inquiry on Reactive Power Compensation

The Commission initiated the underlying proceeding in November 2021, with a Notice of Inquiry soliciting comments on various issues relating to reactive power compensation. *Reactive Power Capability Compensation*, Notice of Inquiry, 177 FERC ¶ 61,118 (2021) ("Inquiry Notice"), R. 1, JA ___–___. The Inquiry Notice stated that, in regions providing for compensation of generators for reactive power, compensation is typically based on (1) the reactive power revenue requirement for individual resources, or fleets of resources, determined under the "AEP Methodology," or (2) a flat per-MVAr region-wide basis, based on testing of a resource's maximum MVAr capability. *Id.* P 12, JA ___–___.

The Commission observed that generation resources in PJM and MISO typically use the AEP Methodology to set reactive power compensation, while resources in ISO New England and New York ISO employ a flat rate approach. *Id.* Outside of these regional transmission organizations, when transmission providers pay for reactive power

support in the standard range, resources typically propose using the AEP Methodology to set reactive power compensation. *Id.*

The Commission explained that it "wish[ed] to explore several potential issues" with the AEP Methodology. *Id.* P 20, JA ___. The AEP Methodology was developed by vertically-integrated utility American Electric Power Service Corp. ("AEP"), as a means of allocating the costs of generator equipment between real power capability and reactive power capability for cost-of-service ratemaking purposes.[6] *See id.* P 9, JA ___. The Commission approved the method in 1999. *See AEP*, 88 FERC ¶ 61,141 (1999), *on reh'g*, 92 FERC ¶ 61,001 (2000). The AEP Methodology seeks to allocate the costs of four components of a synchronous[7] generation plant, used to produce both real and reactive

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[6] "Cost-of-service" rates "ensure[ ] that a seller of electricity recovers its costs plus a rate of return sufficient to attract necessary capital." *Morgan Stanley Cap. Grp. Inc. v. Pub. Util. Dist. No. 1*, 554 U.S. 527, 532 (2008).

[7] Synchronous generating facilities (e.g., coal, gas, nuclear resources) produce electricity in sync with the transmission system at the system frequency. Non-synchronous generating facilities (e.g., solar, wind, battery storage resources) produce electricity that is initially not in sync with the transmission system and use inverters to convert their electrical output to synchronize with the transmission

power, between the two functions. *See* Inquiry Notice P 9, JA ___ (describing components and formula). The AEP Methodology employed cost data from standard FERC accounting and reporting forms. *Id.* P 17, JA ___.

Since the inception of the AEP Methodology in 1999, "the electric industry has undergone significant changes, both in the generation resource mix and a general shift away from cost-of-service rates for generators selling into Commission-jurisdictional markets." *Id.* P 17, JA ___–___. "Now, the majority of the reactive power filings submitted to the Commission are made by owners of non-synchronous resources"—i.e., solar and wind generation facilities. *Id.*

These resources generally do not employ the standard FERC accounting and reporting forms contemplated by the 1999-era AEP Methodology, and produce reactive power via different physical processes, using different equipment, than that contemplated by the AEP Methodology (which was designed based on the physical attributes

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system. Order P 11 n.29 (citing *FERC, Payment for Reactive Power*, 7 (Apr. 22, 2014) (2014 Staff Report), https://www.ferc.gov/sites/default/files/2020-05/04-11-14-reactive-power.pdf).

of a synchronous resource). *Id.*; *see also id.* P 22, JA ___ (synchronous resources use generator-exciters, step-up transformers, and accessory electric equipment to provide reactive power, whereas non-synchronous resources may be capable of producing reactive power using only inverters).

The Commission reported that "customers and the Commission alike have faced challenges in evaluating proposed reactive power rate schedules submitted pursuant to section 205 of the Federal Power Act [16 U.S.C. § 824d], resulting in the majority of the filings being set for hearing and settlement procedures." *Id.* P 17, JA ___. The Commission further observed that some non-synchronous generating facilities have interpreted the AEP Methodology in a manner that "increases the annual revenue requirement for those resources on a relative basis as compared to the annual revenue requirements for synchronous resources." *Id.* P 23, JA ___–___.

Multiple parties submitted comments in response to the Inquiry Notice. *See* FERC Dkt. No. RM22-2.[8]

[8] Filings in FERC proceedings are available at https://elibrary.ferc.gov/eLibrary/search.

B. 2024 Notice of Proposed Rulemaking

In March 2024, the Commission issued a Notice of Proposed Rulemaking, proposing to revise Schedule 2 of its standard open-access transmission tariff and relevant sections of its standard generator interconnection agreement, "to prohibit transmission providers from including in their transmission rates any charges associated with the supply of reactive power within the standard power factor range from generating facilities." Rulemaking Notice P 1, JA ___.

The Rulemaking Notice preliminarily found that, "where transmission providers require transmission customers to pay for the provision of reactive power within the standard power factor range, transmission rates may be unjust and unreasonable, as they include costs without a sufficient economic basis or justification." *Id.* P 25, JA ___.

Numerous parties submitted comments in response to the Rulemaking Notice, including regional grid operators and other transmission providers, generating facilities, developers, transmission owners, retail load-serving entities, market monitoring entities, trade associations representing various generation technologies, and

consumer advocates. "[W]ith few exceptions, transmission owners, load-serving entities, the PJM Market Monitor,[9] and consumer advocates supported or did not oppose the Rulemaking Notice's proposal to eliminate reactive power compensation in the standard power factor range. *See* Order P 19, JA ___–___.

C. The Rule on Review (Order and Rehearing Order)

The Commission issued the final rule in October 2024, finding that "allowing transmission providers to charge transmission customers for a generating facility's provision of reactive power within the standard power factor range is unjust and unreasonable" in violation of the Federal Power Act. Order P 1, JA ___–___. Accordingly, the rule adopted the Rulemaking Notice as proposed, except with respect to the timing of compliance procedures and implementation. *See id.* P 20, JA ___–___. "[T]his reform will ensure that transmission providers do not pass onto transmission customers unjust and unreasonable charges

[9] The PJM Market Monitor is an independent entity tasked with monitoring and reporting on market conditions in the PJM region. *See Indep. Mkt. Monitor v. FERC*, 162 F.4th 1167, 1168 (D.C. Cir. 2025).

that lack a sufficient economic basis or justification and yield no commensurate benefit for ratepayers." *Id.* P 2, JA ___–___.

Parties filed requests for agency rehearing of the Order. In June 2025, the Commission issued an order on rehearing, reaffirming its findings and conclusions in the Order and addressing arguments raised on rehearing. Rehearing Order, JA ___–___. Petitioners filed petitions for review of the orders in several circuits, which ultimately were consolidated in this Court.

SUMMARY OF ARGUMENT

The orders on review—widely supported by industry participants and consumer groups—standardize nationwide via rulemaking a practice that is already in place in many regions, including in much of this Circuit. Applying decades of technical and ratemaking experience and judgment in an extensive, multi-year proceeding, the Commission found, on the record before it, a disconnect between (1) the substantial sums paid to generators for reactive power within a standard range, and (2) the fact that generators are required to provide such reactive power as a condition of interconnection to the interstate transmission system, and do so at minimal cost (if any), and for their own benefit

(i.e., to support voltage levels at the point of interconnection, thus enabling their real power to reliably flow onto the transmission system).

Generators tell a selective story, based on inaccurate and unsupported numbers, to assert a continued entitlement to reactive power compensation in regions where it is available. As discussed below, Generators' contentions are not consistent with the record developed before the agency, and are not consistent with the Federal Power Act's "just and reasonable" standard and statutory cost causation principle. In particular, Generators' arguments regarding the supposedly substantial costs of providing reactive power support rest on (1) the hundreds of millions of dollars per year paid to generators, primarily as the result of settlements using the 1999 AEP Methodology, a cost-of-service ratemaking methodology that does not reflect the actual cost of providing reactive power, and (2) misstatements about equipment costs.

As the Commission found based on the record, in providing reactive power as required by their interconnection agreements, generators incur *no* fixed capital costs (because the same equipment that produces real power also provides reactive power support), and, at

most, *de minimis* variable costs. The logic of the rule flows from these fundamental findings. Because reactive power support within the standard range costs generators little to nothing, there is no economic justification—i.e., it is not "just and reasonable" under Federal Power Act section 206—for ratepayers to pay substantial sums to generators for reactive power support in the standard range. (But to the extent generators incur any costs in providing reactive power within the standard range, they may recover them through sales of real power; outside the standard range, reactive power compensation remains available.)

The record developed in this proceeding crystallized for the Commission the conclusion that—consistent with the practice of multiple regions—the longstanding (Order No. 2003) general rule that generators should not be compensated for reactive power within the standard range still holds true. Given energy market and technological changes, and the Commission's experience with reactive power matters over the past two decades, there is no basis for retaining the "comparability" exception to Order No. 2003, under which many

generators have received significant reactive power payments in certain regions.

In the Commission's considered judgment, based on substantial evidence in the record and technical ratemaking experience, there is simply no basis for charging ratepayers hundreds of millions of dollars per year for something that generators do at minimal cost and for their own benefit. The rulemaking on review should be upheld.

ARGUMENT

I. Standard of Review

This Court reviews Commission 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 "deferential, and a court may not substitute its own policy judgment for that of the agency." *FCC v. Prometheus Radio Proj.*, 592 U.S. 414, 423 (2021); *Texas v. EPA*, 170 F.4th 328, 338 (5th Cir. 2026) (Administrative Procedure Act "mandate[s] that judicial review of agency policymaking and factfinding be deferential") (citing 5 U.S.C. §§ 706(2)(A), 706(2)(E)).

"A court is not to ask whether a regulatory decision is the best one possible or even whether it is better than the alternatives." *FERC v. EPSA*, 577 U.S. at 292. "Rather, the court must uphold a [decision] if the agency 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). In particular, the Commission's "choices in regulating rates, tariffs, and related practices involve technical issues within its purview that are entitled to great deference." *Gas Transmission Nw., L.L.C. v. FERC*, 157 F.4th 674, 700 (5th Cir. 2025) (citing *El Paso Elec.*, 832 F.3d at 503). "So too is the Commission's interpretation of its prior orders." *Id.* (citing *Pac. Gas Transmission Co. v. FERC*, 998 F.2d 1303, 1308 (5th Cir. 1993)).

The Commission's factual findings, "if supported by substantial evidence, shall be conclusive." 16 U.S.C. § 825*l*(b); *see also* 5 U.S.C. § 706(2)(E). "Substantial evidence is less than a preponderance of the evidence, but more than a scintilla." *BP Am., Inc. v. FERC*, 52 F.4th 204, 213 (5th Cir. 2022). This is, in effect, another form of reasonableness review. *See Consolo v. Fed. Maritime Comm'n*, 383 U.S.

607, 619–20 (1966) (finding substantial evidence despite "the possibility of drawing two inconsistent conclusions from the evidence").

II. The Commission Reasonably Found Compensation for Reactive Power Within the Standard Range To Be Inappropriate Under Federal Power Act Section 206, Consistent with Its Longstanding Precedent

Under Federal Power Act section 206, if the Commission determines that a rate is "unjust" or "unreasonable," it is obligated to "set a new just and reasonable rate." *Louisiana Pub. Serv. Comm'n v. FERC*, 771 F.3d 903, 905 (5th Cir. 2014) (citing 16 U.S.C. § 824e(a)). The "just and reasonable standard is . . . incapable of precise definition," such that the Commission is afforded great deference in its rate decisions. *See Morgan Stanley*, 554 U.S. at 532; *see also Loper Bright Enterprises v. Raimondo*, 603 U.S. 369, 394-95 (2024) (words in a statute such as "reasonable" (or "appropriate") confer "a degree of discretion" and "leav[e] agencies with flexibility"); *La. Pub. Serv. Comm'n*, 771 F.3d at 910 ("Because issues of rate design are fairly technical and, insofar as they are not technical, involve policy judgments that lie at the core of the regulatory mission, our review of whether a particular rate design is 'just and reasonable' is highly

deferential.") (quoting *Pub. Utils. Comm'n v. FERC*, 254 F.3d 250, 254 (D.C. Cir. 2001)).

The Commission's "findings must be supported by 'substantial evidence,' which . . . does not necessarily mean empirical evidence." *S.C. Pub. Serv. Auth. v. FERC*, 762 F.3d 41, 64–65 (2014) (quoting 5 U.S.C. § 706(2)(E)); *see also Prometheus Radio Proj.*, 592 U.S. at 427 ("The APA imposes no general obligation on agencies to conduct or commission their own empirical or statistical studies.").

A. The Rule Implements the General Rule in Place Since At Least 2003, and Does Not Represent an Abrupt "About Face"

Generators claim that the Rule represents an "about-face" from the Commission's prior precedent. Vistra Br. 31; *see also* Leeward Br. 2. Not so. The Commission has long held—since at least 2003—that generators should *not* be paid for providing reactive power within the standard range. *See supra* pp. 14–15. As the Commission acknowledged, the rule represents a change in eliminating the comparability exception of Order No. 2003-A (*see* Order P 24, JA ___),

under which generators have obtained substantial payments in some regions for reactive power in the standard range. *See id.*

Generators point to the "AEP Methodology" as enabling hundreds of millions of dollars annually in reactive power compensation for generators over the years. *See* Vistra Br. 11–12, 28–32; Leeward Br. 32–34. As the Commission explained, the AEP Methodology refers to a 1999 FERC order in which the Commission accepted a vertically-integrated utility's method for calculating the costs of synchronous generation equipment associated with the production of reactive power. *See* Order P 13 & n.34, JA ___–___ (citing *AEP*, 88 FERC ¶ 61,141 (1999)); *see also supra* pp. 20–23. Because real and reactive power are provided as "joint products with joint costs . . . from the same equipment, any allocation of joint fixed costs between real and reactive power could be viewed as inherently arbitrary." Order P 90, JA ___–___. Nevertheless, the AEP Methodology served as a rough tool, for cost-of-service ratemaking purposes, to assign power plant equipment costs between reactive power and real power. *See id.* P 98, JA ___–___. Based on the record before it, the Commission determined that the 1999

AEP Methodology does not justify compensating generators for reactive power within the standard range in today's circumstances.

First, as the Commission noted, AEP itself does not advocate for continued use of the eponymous AEP Methodology in these circumstances. *See* Order PP 29, 36 & n.87, JA ___–___. Rather, AEP filed comments supporting the Commission's proposal to terminate reactive power compensation within the standard range. AEP explained:

> As a transmission owner, owner of load serving entities, and generation owner, AEP has a broad and important perspective. . . . AEP supports the . . . proposal to eliminate compensation to generating facilities for the provision of reactive power within the standard power factor range because it has the potential to create cost savings for customers and reduce the burdens associated with conducting resource- and time-intensive cost-of-service reactive power rate proceedings for individual generating facilities.

AEP Comments at 1, May 28, 2024, R. 104, JA ___; *see also id*. at 4–5, JA ___–___ (FERC's proposal "will more equitably balance the interests of customers and generators, ensure that reactive power will continue to be provided as a requirement of interconnection, and significantly decrease the administrative burdens associated with individualized,

opaque, and inconsistent cost-of service reactive power rate proceedings"); Order P 36 & n.87, JA ___–___ (quoting AEP comments).

Second, as the Commission explained, the AEP Methodology was adopted in 1999, in the "era of vertically integrated utilities," and when "the majority of reactive power filings were made by synchronous [coal, gas, nuclear, etc.] resources that were owned by public utilities subject to [FERC accounting and reporting rules]." Order P 65, JA ___ (citing Rulemaking Notice P 39, JA ___); *id.* P 98, JA ___–___ (same); Rulemaking Notice P 30, JA ___–___ (prior to the advent of independent power producers operating only generation facilities, market-based rates for energy, and the development of regional grid operators and competitive markets, "the allocation of fixed costs between real and reactive power did not have a major effect on the overall revenues of a combined vertically integrated utility").

Today, most filings for reactive power compensation are made by non-synchronous generation resources (e.g., solar and wind) that provide reactive power using different types of equipment than those used by synchronous resources. *See* Inquiry Notice P 2, JA ___–___; Rulemaking Notice P 27 n.63, JA ___–___. Moreover, most entities

(both synchronous and non-synchronous) now operate under market-based rate authority, and no longer maintain their accounts using the FERC accounting and reporting rules required in 1999. *Id.*

Accordingly, the foundations for the AEP Methodology are no longer present. *See* AEP Comments, Feb. 22, 2022, JA ___–___ ("Attempting to apply the AEP method to non-synchronous resources and other resources that do not maintain accounts consistent with [FERC accounting and reporting requirements], is like attempting to fit the proverbial square peg into a round hole. It does not fit."); *see also* Order No. 827, 155 FERC ¶ 61,277, P 52 (AEP Methodology "does not translate to non-synchronous generation"; however, in light of insufficient record for determining a new method, non-synchronous facilities seeking reactive power compensation would need to propose a method for calculating such compensation).

In recent years, despite the drawbacks of the AEP Methodology, generators have used it to derive numbers for reactive power compensation purposes (where compensation is permitted under the comparability exception). *See* Order P 13, JA ___. This "reactive power compensation framework" has given rise to "'black-box' settlements that

lack transparency and result in vastly disparate rates." *See id.* P 71, JA ___ (citing comments of MISO and PJM Market Monitor); *see also* Rulemaking Notice P 27, JA ___ (same).

In particular, this compensation framework has resulted in "undue compensation and potential market distortions," especially in regions with organized competitive wholesale markets, like PJM and MISO. *See* Order P 71, JA ___–___ (citing comments by the PJM Market Monitor that "current rules create strong incentives for generating facilities to maximize the allocation of capital costs to reactive service in order to maximize guaranteed, nonmarket revenues"); *id.* P 65, JA ___–___ ("[T]he imprecision of the AEP Methodology . . . can lead to arbitrary increases in the utility's total recovery when cost-based reactive power payments are added to any market recoveries.") (citing Rulemaking Notice P 39, JA ___–___).

Ultimately, as the Commission explained, the AEP Methodology simply does not produce rates that represent the actual cost of providing reactive power. *See* Order P 98, JA ___–___. The AEP Methodology is a "cost allocation methodology only" that is "not designed to, and does not, establish 'evidence of significant reactive-

power-related capital investments.'" *See id.* & n.295, JA ___ (citing FERC staff report stating that "the allocation factor used in the AEP Methodology does not directly relate to the incremental investment cost in providing reactive [power]").[10]

In light of these findings, the Commission reasonably found that the AEP Methodology does not support continued compensation of generators for reactive power within the standard range.

B. The Commission Satisfied Statutory Requirements in Acting Under Federal Power Act Section 206

The comprehensive orders on review—along with the preceding Inquiry Notice and Rulemaking Notice—set forth the bases for the Commission's record- and experience-based determination that generator compensation for reactive power within the standard range is no longer just and reasonable under the Federal Power Act, 16 U.S.C. § 824e. *See* Order PP 20–24, JA ___–___ ("Based on more than two

[10] Contemporaneous with this rule, the Commission approved the use of the AEP Methodology to determine reactive power compensation for non-synchronous generators, but only for the period prior to implementation of this rule. *See Fern Solar LLC*, 189 FERC ¶ 61,035, PP 303, 394–96 (2024), *on reh'g*, 190 FERC ¶ 61,133, P 3 & n.6 (2025) (noting that Fern Solar's filing was made prior to the issuance of the rule on review, and that PJM's compliance filing to prospectively implement the rule was then pending before the Commission).

decades of experience since Order No. 2003, and the record developed in this proceeding, we find that, even as a function of comparability, charging transmission customers . . . for the provision of reactive power within the standard power factor range has become unjust and unreasonable."). In particular, such compensation is inappropriate because:

(1) The provision of reactive power by generating facilities in the standard range involves, at most, *de minimis* increases in cost beyond the cost of providing real power;

(2) Excessive compensation for such reactive power results in market distortions; and

(3) The provision of reactive power within the standard power factor range is an obligation of the generating facility as an interconnection customer and consistent with good utility practice.

Order P 89, JA ___. The next sections address these three findings.

1. Generators Provide Reactive Power Within the Standard Range at Minimal Cost (If Any)

As the Commission explained, both real and reactive power are provided as "joint products with joint costs . . . from the same

equipment." Order P 90 & n.268, JA ___–___ (citing Rulemaking Notice P 30, JA ___–___). For both synchronous and non-synchronous generating facilities, all the equipment used to produce reactive power is also necessary to produce and deliver real power to the transmission system. Order P 91, JA ___–___. That is, there are no fixed costs associated with producing reactive power beyond "the investments in equipment already necessary to generate and supply real power to the transmission system." Order P 90 & n.274, JA ___–___ (citing comments by MISO Transmission Owners, PJM Market Monitor, and others). While non-synchronous generating facilities use a different physical process to produce reactive power than synchronous facilities, "the most critical element in [reactive power] production, the inverter[11], . . . is also necessary for non-synchronous facilities to produce real power that can be reliably injected into [alternating current] systems." *Id.* & n.271–72. Second, there are—at most—minimal

[11] An inverter is a device that converts direct current from non-synchronous facilities such as wind and solar resources to alternating current, thus enabling real power from a wind or solar resource to be transmitted over the electric grid. *See generally Solar Energy Indus. Ass'n v. FERC*, 154 F.4th 863, 866 (D.C. Cir. 2025).

variable costs related to producing reactive power within the standard range. *See id.* (citing fuel and maintenance as examples).

Generators challenge these determinations as to fixed/equipment and variable costs, wrongly claiming that the Commission failed to address their arguments. *See* Vistra Br. 27–45; Leeward Br. 29–41.

i. Equipment Costs

Generators claim that there are significant equipment costs relating to the supply of reactive power, but these claims are based on vastly overstated and inaccurate numbers. *See* Leeward Br. 29–30 (citing hundreds of millions paid to generators under the AEP Methodology, and incorrectly stating that a 2014 FERC Report shows that that the cost of adding additional reactive power equipment "can be up to 20% of a project's total costs"); Vistra Br. 37 (same).

As described above, the AEP Methodology has significant limitations and does not accurately reflect the actual cost of providing reactive power. *See supra* pp. 33–38. Accordingly, amounts paid to generators using the AEP Methodology do not demonstrate the actual costs of reactive power service within the standard range. *See* Order P 98 & n.295, JA ___–___ (AEP Methodology does not represent

"evidence of significant reactive-power-related capital investments"); *see also* Rehearing Order P 104, JA ___–___.

Similarly, contrary to Generators' assertions, the 2014 FERC Report does not support the claim that reactive power equipment can add up to 20 percent of a project's total costs. *See* Vistra Br. 37 (claiming that 2014 FERC Report shows that "the costs of adding reactive power capability to solar photovoltaic generators ranged from 2% to 20% of a project's total costs") (emphasis added) (citing *Payment for Reactive Power*, App. 2, 2–3 (Apr. 22, 2014) ("2014 FERC Report"), https://www.ferc.gov/sites/default/files/2020-05/04-11-14-reactive-power.pdf; *see also* Leeward Br. 30 (claiming the same, based on comments citing the same report).

Generators misstate the relevant figures. The 2014 Staff Report indicates that two parties estimated the cost of adding reactive power equipment for solar photovoltaic generators as approximately 2 percent of overall project cost—not a range of 2 percent to 20 percent. 2014 FERC Report at 2–3, JA ___–___ (recounting California ISO and First Solar statements, including First Solar statements that "inverters account for 10–20 percent of the total project cost, depending on project

size," and "if providing reactive power requires everything to be up-sized by 10 percent, then reactive power accounts for *about 2 percent* of overall project cost"; also noting First Solar's assertions that installing certain fast-acting reactive power devices could be more costly) (emphasis added).[12]

Generators also overlook the Commission's factual determination (developed in the MISO orders, and in this proceeding) that the 2014 FERC Report figures are now overstated in light of evolving technology. *See* Order P 93 & n.282, JA ___ ("Older wind generators could not produce and control reactive power without the use of costly equipment because they did not use inverters like other non-synchronous generators but modern [wind] turbines now use inverters and newer wind generators now can") (quoting MISO Rehearing Order, 184 FERC ¶ 61,022, P 30 n.98 and Initial Comments of MISO Transmission

[12] Inverters are required for solar facilities to transmit real power to the grid, so there is no basis for attributing 100 percent of the cost of an inverter to reactive power. *See supra* p. 40. Nor does the referenced First Solar statement purport to do so; the statement makes clear that it is attributing 10 percent of the cost of an inverter (estimated to represent 10–20 percent of total project cost) to reactive power, and arriving at an estimate of "about 2 percent" of total project costs potentially attributable to reactive power.

Owners at 7, JA ___); *see also* Initial Comments of MISO Transmission Owners at 7, JA ___ ("Typically, generator equipment comes with reactive power capabilities that not only meet the standard range requirements . . . but go beyond them[.]"). Indeed, the 2014 FERC Report pre-dates the 2016 FERC order that removed the prior reactive power exemption for wind generating facilities because of "declining costs" resulting from "improvements in technology." *See* Order P 95 & n.289, JA ___–___ (citing Order No. 827, 155 FERC ¶ 61,277, P 24); *see also* Order P 7, JA ___–___ ("due to technological advancements . . . , the cost of providing reactive power no longer presented an obstacle to the development of wind generation"); *id.* P 102 & n.305 (same), JA ___–___.

Generators assert that some have installed "larger and more capable generation equipment to provide reactive power within the [standard range] compared to what they would need if they produced real power alone." Vistra Br. 37 (citing Affidavit of Dennis W. Bethel ¶ 102, R. 91, Att. A, JA ___). In particular, some "solar-powered plants . . . ha[ve] . . . install[ed] larger inverters that add hundreds of thousands of dollars in incremental costs." *See* Vistra Br. 37 (citing Affidavit of Sherman Knight ¶ 11, R. 85, Attach. A, JA ___); *see also*

Leeward Br. 37 (arguing that a portion of reactive power within the standard range constitutes "headroom" which supports grid reliability).

As the Commission explained, "because providing reactive power service within the standard power factor range is an obligation of the generating facility as an interconnection customer, . . . any design considerations to meet that obligation do not represent 'upsizing[.]'" Rehearing Order P 101, JA ___. In plain terms, it is not an option for generators to "produce[ ] real power alone" (Vistra Br. 37) with no voltage support from reactive power to enable their real power to move onto the transmission grid.[13]

To the extent that some generators have invested in superior equipment beyond what is required, such additional expenditures represent investment decisions (based on the previous compensation

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[13] To the extent that generators sometimes sell real power without reactive power, or reactive power without real power (*see* Leeward Br. 38), the Commission explained that assessing reactive power needs for local reliability are the responsibility of transmission providers and beyond the scope of the rule on review. *See* Order PP 96, 144, JA ___, ___. Furthermore, to the extent that generators are dispatched to provide reactive power outside the standard range, generators have the right to seek compensation for such dispatch; that right is not affected by the rule on review. *See supra* pp. 13–14.

framework) that do not justify requiring ratepayers to bear the costs. *See* Order P 55 & n.144, JA ___–___ (current compensation framework "'allows and even incentivizes generators to add as much reactive equipment as they desire, i.e., to gold plate a facility's reactive capability, regardless of whether that reactive support is needed at that point on the grid'") (quoting Reply Comments of the MISO Transmission Owners at 8, June 26, 2024, R. 124, JA ___).

ii. Opportunity Costs and Variable Fuel Costs

As to other costs, Generators assert that providing reactive power within the standard range results in lost opportunities to produce "additional amounts of real power." Vistra Br. 37–38. As with Generators' argument concerning equipment costs, this argument lacks merit because Generators are required to operate their facilities within a standard range. Again, it is not an option to produce only real power without reactive power support. *See* Rehearing Order P 99, JA ___ ("Reliably injecting real power into the transmission system requires the provision of reactive power within the standard power factor range and as such, providing reactive power within this range does not constitute a foregone opportunity[.]"); *see also* Order P 90 & n.274,

JA ___–___ (citing *Ariz. Pub. Serv. Co.*, 94 FERC ¶ 61,027, at p. 61,080 (2001) (rejecting generators' arguments that providing reactive power within a standard range limits the real power output of a generating facility and results in lost opportunity costs)). Thus, Generators' reference to an affidavit reporting a drop in "real power capability" for a generator operating within the standard range does not help them. *See* Vistra Br. 38 (citing Knight Aff. ¶¶ 12–13, JA ___–___).

As the Commission explained, "reactive power opportunity costs are an issue only when providing reactive power *outside* the standard power factor range." Order P 91, JA ___. "This is because, unlike the standard power factor range, generating facilities operating outside the standard power factor range forgo generating more real power output and thus, forgo sales of real power." *Id.* & n.280 (citing Rulemaking Notice P 32, JA ___). As noted, generators are compensated for providing reactive power outside the standard range, in light of these opportunity costs. *See supra* pp. 13–14.

Finally, as the Commission noted, reactive power production may increase generators' variable costs to some degree by increasing fuel consumption due to heating losses. *See* Rehearing Order P 100 & n.285,

JA ___–___. However, the Commission found that such variable costs are *de minimis*. *See id.*; *see also* Order P 51, JA ___–___ (citing, as an example, *Panda Stonewall, LLC*, 176 FERC ¶ 61,072, PP 6 n.9, 8 (2021), in which a generator's annual revenue requirement of $2,051,894 was determined to include just $10,018—i.e., 0.005 percent—of variable costs due to heating losses, after lengthy litigation before the agency "on a fully developed record," unlike the majority of reactive power filings that are resolved by settlement).

As the Commission determined, generators can recover such variable costs through their real power sales. *See* Rehearing Order P 99, JA ___–___ ("Generating facilities already had—and continue to have after [the rule on review]—the opportunity to recover the costs they incur to inject real power into the transmission system, including the joint costs incurred to provide reactive power, through the sale of real power."); *id.* P 100, JA ___–___ (parties did not demonstrate that they are unable to recover such costs through real power sales); *id.* P 137, JA ___–___ (same); *see also* Rulemaking Notice P 31, JA ___–___ (citing Southwest Power Pool comments that variable costs such as

heating losses are "part of the overall efficiency of the resource and, as such, are typically captured in the resource offers").

Generators' citation to decades-old cases in which the Commission has permitted reactive power compensation for heating losses (under the AEP Methodology) does not outweigh the Commission's findings here. *See* Vistra Br. 38–39 (citing *Dynegy Midwest Generation, Inc.*, 125 FERC ¶ 61,280, P 37 (2008); *Duke Energy Fayette, LLC*, 104 FERC ¶ 61,090, PP 8, 17 (2003)); *see also* Rehearing Order P 100 & n.285, JA ___–___ (noting that the Commission has accepted proxy data (under the AEP Methodology), rather than the "actual amount of heating loss costs," as a basis for reactive power compensation, potentially resulting in relatively high costs in some cases) (citing *Wabash Valley Power Ass'n, Inc.*, 154 FERC ¶ 61,245, P 26 (2016)); *see also supra* pp. 33–38 (discussing limitations of AEP Methodology).

As the Commission reasonably recognized, reactive power within the standard power factor range provides some reliability benefits, but there are "no incremental fixed costs" to providing such reactive power other than the costs that are already associated with the production of real power, and "at most de minimis incremental variable costs." Order

P 55, JA ___–___; *see also* Rulemaking Notice P 29, JA ___–___ ("[F]or both synchronous and non-synchronous generating facilities, there are few if any identifiable costs incurred by generators in order to provide reactive power beyond the investments in equipment already necessary to generate and supply real power to the transmission system."). The Commission's findings here are consistent with its findings in numerous prior cases. *See* Rulemaking Notice P 29 n.70, JA ___–___ (citing *Bonneville*, 120 FERC ¶ 61,211, P 21; *Mich. Elec. Transmission Co.*, 97 FERC ¶ 61,187, at pp. 61,852–53 (2001); *Ariz. Pub. Serv. Co.*, 94 FERC ¶ 61,027, at p. 61,080).

The Commission's factual findings—informed by decades of ratemaking experience, its prior orders, and substantial evidence in the record—should be reviewed deferentially. *See* 16 U.S.C. § 825*l*(b); *Gas Transmission Nw.*, 157 F.4th at 700; *El Paso Elec.*, 832 F.3d at 503.

2. Payments for Reactive Power Within the Standard Range Results in Excessive Compensation and Market Distortions

In arguing for their continued entitlement to reactive power compensation (in regions that provide it), Generators ignore the Commission's findings that such compensation has produced unjust and

unreasonable rates, in violation of the Federal Power Act. *See* Order PP 49–51, JA ___–___ (adopting Rulemaking Notice's preliminary findings concerning the need for reform); *see also* Rulemaking Notice PP 24–28, JA ___–___.

As the Commission explained, decades of experience with reactive power compensation matters (since the announcement of the comparability exception in Order No. 2003-A), along with the record before it, "demonstrate that where transmission providers provide compensation, the costs to transmission customers have increased substantially without any commensurate increase in benefits." Rulemaking Notice P 26, JA ___. As reflected in the record, these ballooning costs result from use of the antiquated AEP Methodology to assign values to reactive power, in the face of Commission (and grid operators') findings that generators provide reactive power within the standard range at minimal, if any, cost. *See supra* pp. 39–50.[14]

[14] Generators assert, without basis, that reactive power rates are "freely negotiated between parties with equal bargaining power," and thus enjoy a presumption that they are reasonable. *See* Vistra Br. 29–30 (citing *Morgan Stanley*, 554 U.S. at 545). The Commission explained that reactive power rates are "established through rate proceedings, not arms-length bilateral negotiations," and thus, are not entitled to any such presumption. *See* Rehearing Order P 73, JA ___.

In particular, the Commission found "substantial evidence to conclude that, under the current . . . framework, reactive power-related transmission charges are not tied to geographic need and result in excess reactive power capability that is not required for interconnection and does not provide transmission customers with commensurate reliability benefits." Order P 55 & n.144, JA ___–___ (citing comments); *see also* Rulemaking Notice P 26, JA ___ ("[I]n many regions today, resources are sited without regard to where there is a need for reactive power[.]").

As the Commission explained, unlike real power, reactive power cannot be efficiently transmitted over long distances. *See* Order P 27, JA ___–___. Thus, a compensation framework that is untethered to actual locational needs results in customers paying "excessive charges for reactive power that may not be needed or is in the wrong location." *See id.* P 55 & n.144 (quoting comments), JA ___–___. The Commission agreed with commenters "that the current framework allows for transmission rates that are neither just nor reasonable and can result in transmission customers being required to pay for a service that generators already are required to provide and that costs them little or

nothing to provide." *Id.* P 50, JA ___–___ (cleaned up). Absent reform, the Commission concluded, transmission customers would continue to pay charges that lack a "sufficient economic basis" and "do not result in transmission customers receiving commensurate reliability benefits." *Id.*

Moreover, as the Commission found, such undue compensation (especially under the old AEP Methodology) produces markets distortions in regions with organized competitive wholesale markets. *See* Order P 65, JA ___–___ ("imprecision" of the AEP Methodology "can lead to arbitrary increases in the utility's total recovery when cost-based reactive power payments are added to any market recoveries," especially "when markets fail to account for separate, cost-based reactive power revenues"). In the mid-Atlantic PJM region, for example, capacity market rules currently account for reactive power payments to resources by assuming average reactive power compensation of $2,546 per MW-year, but reactive power revenue requirements in PJM range from roughly $1,000 per MW-year to $13,000 per MW-year. *See id.* & n.167, JA ___–___. The Commission found that this "wide range of actual compensation, which is both above

and below the assumed reactive power compensation in the capacity market rules, can lead to market distortions." *Id.*

Ultimately, as the Commission found, requiring customers to foot the bill for hundreds of millions of dollars per year in payments, without corresponding benefits, is not "just and reasonable." The lack of "sufficient economic basis" for reactive power compensation within the standard range represents the "central logic" of the rule on review. *See id.* P 107, JA ___–___.

Contrary to Leeward's argument, the Commission did not cite "administrative burden" or an "internal administrative workload" as a basis for eliminating reactive power compensation. *See* Br. 41–42. The Commission simply observed, at various points, that filings for reactive power compensation have increased in volume, resulting in protracted litigation and administrative burdens for "transmission providers, transmission customers, other stakeholders, and the Commission." Rulemaking Notice P 27, JA ___; *see also* Order P 27, JA ___. Comments in the record support the Commission's statements. *See, e.g.*, Order P 36, JA ___ (quoting AEP comments describing "the administrative burdens associated with individualized, opaque, and

inconsistent cost-of-service reactive power rate proceedings") (AEP Initial Comments at 4–5, JA ___–___). In any event, the Commission did not rely on administrative burden as a substantive basis for the rule, and there is no basis for the contention that the Commission's alleged reliance on an administrative burden rationale is "arbitrary and capricious." *See* Leeward Br. 41.

3. Provision of Reactive Power Within the Standard Range is a Generator Obligation Under Standard Generator Interconnection Agreements, Consistent with Good Utility Practice

As described above, generators are required by their interconnection agreements (under Order No. 2003) to operate their facilities within a standard range, providing reactive power support to maintain voltages (and the flow of real power) within that range. *See supra* pp. 12–14. As the Commission explained, "to interconnect reliably to the transmission system and deliver power to customers, generating facilities must be capable of maintaining voltage levels for injecting real power into the transmission system." Order P 102, JA ___–___. In other words, "if a generator is to sell (and be able to deliver) its power to a customer, reactive power is essential to the transaction." *Id.*; *see also id.* & n.305, JA ___–___ (explaining how,

when wind generators were exempt from providing reactive power (prior to 2016 FERC order removing the exemption), wind generators "had to rely on dynamic reactive power service supplied by other generating facilities and equipment on the transmission system . . . to allow their real power to reliably flow onto the transmission system").

In these circumstances, it is a matter of "good utility practice" for generators to provide reactive power within the standard range. *See NextEra Energy Res., LLC v. FERC*, 118 F.4th 361, 367 (D.C. Cir. 2024) (upholding FERC ruling that "good utility practice," as required by standard generator interconnection agreement, compelled generation facility to upgrade a circuit breaker). There is no basis for Generators' assertion that the Commission's finding is "belied" by findings that it is also a matter of good utility practice for transmission providers to provide reactive power to support the electric grid. *See* Leeward Br. 25. As the orders on review explain, reactive power cannot be transmitted long distances, unlike real power, and thus must be provided by transmission providers and generators alike. *See* Order P 8 n.18, JA___–___; *see also* Order No. 888, 61 Fed. Reg. at 21,581 (reactive power "must be supplied at the location where it is needed").

III. The Statutory Standards of the Federal Power Act and the Cost Causation Principle Dictate that Transmission Customers Should Not Be Required to Make Uneconomic Reactive Power Payments to Generators

A. Contrary to Generators' Arguments, the Rule Does Not Require Generators to "Give Away Reactive Power for Free"

Generators contend that the rule effectively requires them to provide reactive power "for free" and deprives them of the ability to recover their costs. *See Vistra* Br. 24–25; Leeward Br. 42–48; *see also* Leeward Br. 58–60 (asserting that the rule results in "unconstitutional takings"). These contentions are unfounded. As the Commission made clear, it was "not presented with a litany of costs associated with the provision of reactive power for which it nonetheless prohibited recovery." Rehearing Order P 36, JA ___. Rather, it found that (i) there were no identifiable incremental fixed costs associated with providing reactive power in the standard range, (ii) generators provide reactive power for their own benefit in order to put their power on the grid and as a requirement of interconnection, and (iii) reactive power service is closely aligned with the provision of real power, and thus, any costs should be recovered in the market for real power. *Id.*; *see also supra* pp. 39–50.

The agency record demonstrates that generation facilities in regions that do not provide reactive power compensation in the standard range "have been able to recover any purported costs associated with the production of reactive power." *See* Order P 111, JA ___ (citing experiences of California ISO, Southwest Power Pool, and other grid operators); *see also* Rulemaking Notice P 48, JA ___–___ (citing comments by Petitioner Leeward Renewable Energy, LLC that "the lack of separate reactive power compensation in [California ISO and Southwest Power Pool] means that all costs have to be recovered through the applicable [power purchase agreement], which also means that those . . . prices are higher, all other variables being equal, than they would otherwise be") (Leeward Renewable Energy and Union of Concerned Scientists Comments at 16, Feb. 22, 2022, R. 51, JA ___–___).

As the Commission observed, "[g]iven that the primary function of a generating facility is to produce real power, and that the provision of reactive power within the standard power factor range is necessary to the provision of real power, . . . a generating facility's fixed and variable costs are appropriately recovered through payments for real power,

such as energy and/or capacity sales, whether in organized or bilateral markets." Order P 141, JA ___–___; Rehearing Order P 135, JA ___ (same); *see also* Rulemaking Notice P 45, JA ___ ("[S]eparate compensation for providing reactive power within the standard power factor range is not necessary for resources to be able to recover their costs.").

Generators argue that they are "entitled to a return that is sufficient to ensure that *new* capital can be attracted." *See* Leeward Br. 48 (citing *Ameren Servs. Co. v. FERC*, 880 F.3d 571, 581 (D.C. Cir. 2018)). This is one of the primary purposes of the competitive wholesale electric capacity markets overseen by grid operators in regions that provide compensation for reactive power within the standard range. *See NextEra Energy Res., LLC v. FERC*, 898 F.3d 14, 20 (D.C. Cir. 2018) (capacity markets use "competitive bidding . . . to incentivize and account for new entry . . . , while ensuring a price both adequate to support reliability and fair to consumers."); *New England Power Generators Ass'n, Inc. v. FERC*, 757 F.3d 283, 286 (D.C. Cir. 2014) (capacity market auctions are designed to provide sufficient compensation to "incent resources to provide sufficient energy capacity,

or energy available for later use"); s*ee also generally Hughes*, 578 U.S. at 155–58 (describing operation of PJM capacity auction).

In these circumstances, there is no basis for Generators' claims that they are being forced to provide reactive power "for free," and that they are subject to an "unconstitutional taking" under the Fifth and Fourteenth Amendments. *See* Leeward Br. 58–59 (citing, e.g., *Duquesne Light Co. v. Barasch*, 488 U.S. 299, 307–308 (1989)). As the Commission recognized, generators simply "do not have a property interest" in continued excessive compensation for reactive power in the standard range (in regions that provide it). Order P 58, JA ___–___. As explained (*see supra* pp. 39–50), the Commission appropriately accounted for the absence of generator costs and the impact on ratepayers who realize no additional benefits from higher charges. *See Fed. Power Comm'n v. Hope Nat. Gas*, 320 U.S. 591, 602–603 (1944) (recognizing that ratemaking involves a "balancing of the investor and the consumer interests," under which regulated utilities are generally entitled to a reasonable opportunity to recover their prudently incurred costs, but are not guaranteed such cost recovery); *accord Morgan Stanley Cap. Grp.*, 554 U.S. at 532.

B. To the Extent that the Cost Causation Principle Applies to Generators' Claim of Entitlement to Continued Compensation, the Rule Is Consistent with Cost Causation

Generators claim that elimination of reactive power compensation within the standard range violates the cost causation principle. Vistra Br. 47–59 (citing *El Paso Elec. Co. v. FERC*, 76 F.4th 352, 357 (5th Cir. 2023)); Leeward Br. 26 (contending that rule "give[s] transmission providers and their customers a free ride"). The Federal Power Act's "just and reasonable standard" incorporates a "cost causation principle," under which "FERC-approved rates must reflect to some degree the costs actually caused by the customer who must pay them." *El Paso Elec. Co.*, 76 F.4th at 357 (cleaned up); *see also City of Lincoln v. FERC*, 89 F.4th 926, 930–31 (D.C. Cir. 2024) (same).

Here, the Commission found that, in regions that provide for reactive power compensation within the standard range, transmission customers are making reactive power payments that lack a "sufficient economic basis" and do not produce "commensurate reliability benefits." Order P 50, JA ___. The Commission reasonably found that it is not reasonable for ratepayers to bear these costs, given the lack of commensurate benefits associated with the payments. *See supra*

pp. 39–50; *see also* Order P 115, JA ___ (citing comments by parties arguing that elimination of reactive power compensation will "resolve cost causation issues that result from the current practice of providing separate compensation for reactive power," because existing compensation framework "results in a proliferation of charges for reactive power that is disconnected from the actual benefits received").

Moreover, as the Commission explained, providing reactive power within the standard range "enables generating facilities to reliably deliver real power to the transmission system (i.e., make real power sales)." Order P 149, JA ___. Thus, the minimal costs (if any) of providing such reactive power are "caused" by the operating requirements of the generating facilities to deliver real power, not by the separate needs of transmission customers. *See id.*; *see also* Rehearing Order P 137, JA ___–___ ("[A]ny costs for providing reactive power within the standard . . . range are 'caused' by the generating facilities' need to get real power onto the transmission grid, not by the separate needs of the transmission customers because without reactive power a generating facility's real power will not reliably flow to load.").

The Commission's reasoned determination that ratepayers should not be required to pay unjustified sums to generators for reactive power within the standard range is entirely consistent with the cost causation principle. *See El Paso Elec. Co.*, 76 F.4th at 357; *City of Lincoln*, 89 F.4th at 930–35.

C. Generators' Undue Discrimination Claims Are Unsupported

Leeward claims that eliminating reactive power compensation for generators in this context constitutes "undue discrimination" against generators in favor of transmission providers that also (1) provide reactive power from their own or affiliated generation facilities that may be able to recover reactive-power related costs through retail rates, and (2) provide reactive power using equipment "located on the transmission grid that perform the same function as generation." *See* Leeward Br. 54–58; Rehearing Order PP 131–34, JA ___–___; Order PP 150–51, JA ___–___.

"[U]ndue discrimination occurs only if the entities are 'similarly situated,' such that 'there is no reason for the difference.'" *City of Lincoln*, 89 F.4th at 935 (citations omitted; cleaned up). "FERC has wide discretion to determine what constitutes undue discrimination."

Id. (cleaned up). Generators' undue discrimination arguments here fail for multiple reasons.

As described above, the Commission determined that generators provide reactive power at little or no cost. *See supra* pp. 39–50. Thus, as to Generators' first undue discrimination argument (*see* Leeward Br. 54–58), neither independent merchant generating facilities nor transmission-owned/affiliated generating facilities should be charging wholesale transmission customers separate rates for reactive power in the standard range. *See* Rehearing Order P 132, JA ___. As for retail rates, the Commission explained that it has "no authority to set retail rates," but noted that transmission-owned or affiliated generators are "not entitled to charge retail customers rates that guarantee full recovery of their costs," and "must first justify their rates to state authorities." *See id.* Moreover, merchant generating facilities are "no differently situated" from transmission-owned/affiliated generating facilities, in that they too may seek to recover reactive power-related costs (if any) through higher power sales rates of their own. *See id.*; *see also id.* P 133, JA ___ (rule "maintains a level playing field" between generators); Order P 151, JA ___ ("[M]erchant generators are free to

negotiate rates that they charge their customers for real power that are sufficient to compensate them for any costs that they may incur in producing reactive power . . . , just as affiliated generators may seek to negotiate rates that . . . are sufficient to compensate them[.]").

Generators' second undue discrimination argument (Leeward Br. 57–58) rests on an apples to oranges comparison. Generators contend that eliminating compensation for reactive power within the standard range represents undue discrimination against generating facilities, by comparison to transmission providers that recover costs through transmission rates for reactive power provided by transmission equipment.

As the Commission explained, it has "long held that reactive power supply from transmission facilities is distinct from reactive power supply from generating facilities." Rehearing Order P 134 & n.389, JA ___–___ (citing Order No. 888, 61 Fed. Reg. at 21,581–82); Order P 150, JA ___ (same). "[W]hile transmission provider investment in capacitor banks is needed to control system voltage levels to provide reliable transmission service, generating facilities must produce reactive power within the standard power factor range in order to allow

the generating facilities' real power to reliably flow onto the transmission system." Rehearing Order P 134, JA ___–___.

The distinction between reactive power provided by generation facilities versus transmission assets boils down to location. Reactive power is a "localized service that is quickly used by transmission system components and cannot be transported over long distances." *See* Order P 8 & n.18, JA ___–___ (quoting *Dynegy*, 125 FERC ¶ 61,280, P 16). Transmission providers, who are responsible for the reliability of the transmission system, including in locations that may be distant from generators, must provide reactive power at specific locations on the electric grid for overall system reliability. *See* Rehearing Order P 134, JA ___–___; Order P 150, JA ___–___. By contrast, generators provide reactive power to support voltage levels at the point of interconnection to the transmission system, which enables their real power to reliably flow onto the transmission system. *See* Rehearing Order P 134 & n.390, JA ___–___ (citing Order No. 888, 61 Fed. Reg. at 21,581–82 (noting distinction between "(1) reactive supply needed to support the voltage of the transmission system; and (2) reactive supply needed to correct for

the reactive portion of the customer's [i.e., the generator's] load at the delivery point")).

Ultimately, as the Commission reasonably found, generation facilities and transmission assets are not similarly situated with respect to the provision of reactive power. *See City of Lincoln*, 89 F.4th at 935 (upholding FERC's "well-reasoned conclusion" that "no undue discrimination occurred" because entities were not "similarly situated").

IV. The Commission Adequately Addressed Generators' Reliance Arguments

Generators claim that the Commission "ignored" their reliance interests on continued reactive power compensation, and that elimination of such compensation "upend[s] the structure of American power markets and disrupt[s] the investment-backed expectations of generators." *See* Vistra Br. 59–69; Leeward Br. 23. As discussed, the elimination of reactive power compensation within the standard range does not represent a dramatic reversal in FERC policy: only some regions provide for such compensation, and the rule harmonizes the compensation framework in those regions with regions that already do not provide such compensation, such as Southwest Power Pool,

California ISO, and various systems including the Entergy system. *See supra* pp. 16–19.

To the extent that the rule represents a change in position in disallowing further reactive power compensation under the old Order No. 2003-A comparability exception (*see supra* p. 15), the Commission reasonably addressed Generators' alleged reliance interests. *See Affirmed Energy, LLC v. FERC*, 166 F.4th 1070, 1087–88 (D.C. Cir. 2026) ("An agency is not precluded from changing its position. But when it does, it must assess whether there [are] reliance interests, determine whether they [are] significant, and weigh any such interests against competing policy concerns.") (cleaned up; citing *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 514–15 (2009); *Dep't of Homeland Sec'y v. Regents*, 591 U.S. 1, 33 (2020)).

First, contrary to Generators' arguments, the D.C. Circuit's recent *Capital Power* decision (*see supra* p. 17) does not supply a basis for finding that the Commission failed to consider reliance interests here. The *Capital Power* court made clear that its decision concerning reliance interests in the region-specific MISO orders "has no bearing on whether FERC adequately considered reliance interests in its separate,

nationwide order [the rule on review here]." *See* 156 F.4th at 654 (observing that the rule on review implements a phase-in period, unlike the MISO orders on review in *Capital Power*).

Moreover, as the D.C. Circuit correctly observed, by contrast to *Capital Power*, where the MISO tariff amendments approved by the Commission went into effect "overnight" (*id.* at 651), the Commission here solicited and carefully considered comments regarding the appropriate transition period for this rule. *See* Order PP 207–23, JA ___–___ (summarizing proposals for both short and extended transition periods). On review of the proposals, the Commission directed compliance filings by transmission providers within 60 days of the effective date of the final rule, including a proposed effective date within 90 days from the date of the compliance filing. *Id.* P 224, JA ___–___.

In particular, recognizing "concerns raised by commenters with respect to the interplay between existing reactive power revenue compensation mechanisms and energy and capacity market rules in ISO-[New England], [New York ISO], and PJM," the Commission permitted those regional grid operators to request an even later

effective date. *Id.*; *see also id.* P 225, JA ___ (noting that this flexibility would accommodate potential additional filings by grid operators to propose any necessary market rule adjustments).

The court in *Capital Power* noted concerns about "generators stuck in long-term contracts" at prices negotiated in reliance on separate, extra-contractual reactive power compensation. *See* 156 F.4th at 653. Here, the Commission found that the record before it "lack[ed] any concrete evidence showing whether, and to what extent, generating facilities factored reactive power revenues into their [power purchase agreements]." Order P 226, JA ___–___. Moreover, the Commission explained that long-term power contracts are not immune from regulatory changes. *See* Rehearing Order P 130, JA ___–___. In particular, "no generating facility could have reasonably relied on an inherent right to separate compensation for reactive power capability within the standard power factor range since Order Nos. 2003 and 2003-A because developers and generating facilities have been on notice since at least 2003 that their ability to file . . . to establish rates for reactive power compensation was subject to change if the transmission owner decided to eliminate reactive power compensation for its own or

affiliated generation." *See id.* (noting that, "in the more than 20 years since Order No. 2003," the Commission "consistently has accepted proposals to eliminate . . . payments to all affiliated and non-affiliated generators for providing reactive power within the standard power factor range").[15]

The Commission also specifically addressed arguments that it should provide "legacy treatment" to generators with "existing reactive power rate schedules," where generators may have made "investment decisions based on the availability of reactive power compensation that cannot be undone." Rehearing Order PP 174–75, JA ___–___. The Commission declined such legacy treatment as inappropriate, both because generators are obligated to provide reactive power support and do so at minimal cost, and because "there was no reasonable reliance interest on this stream of compensation." *Id.*; *see also* Order PP 226–27,

[15] The Commission also stated that any generating facilities with "individualized bilateral contracts providing for reactive power compensation within the standard power factor range may pursue claims that they have an independent contractual right to reactive power compensation within the standard power factor range." Order P 54 n.142, JA ___–___. However, the Commission "express[ed] no opinion . . . as to whether such generator would be entitled to such compensation." *Id.*

JA ___–___ (generators have had no "inherent right to separate compensation for reactive power capability within the standard power factor range since Order Nos. 2003 and 2003-A," and it would raise "undue discrimination concerns to continue to provide payment . . . to generating facilities with rates already on file when those rates have been found to be unjust and unreasonable").

The Commission here properly recognized and weighed Generators' alleged reliance interests. "In so doing, it balanced conflicting factors as it is sometimes required to do in enforcing the [Federal Power Act]." *Affirmed Energy*, 166 F.4th at 1087–88. The Commission's record-based, carefully considered determinations should be reviewed deferentially and upheld.

CONCLUSION

For the foregoing reasons, the petitions should be denied, and the Commission's rulemaking orders on reactive power compensation should be upheld in all respects.

Respectfully submitted,

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May 20, 2026

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), Fifth Circuit Rule 32.3, and the Court's August 25, 2025 and February 19, 2026 orders because this brief contains 13,668 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) because this brief has been prepared in a proportionally spaced typeface using Microsoft Office 365 in Century Schoolbook 14-point font.

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May 20, 2026

ADDENDUM

STATUTES

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Except to the extent that prior, adequate, and exclusive opportunity for judicial review is provided by law, agency action is subject to judicial review in civil or criminal proceedings for judicial enforcement.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 392; Pub. L. 94–574, §1, Oct. 21, 1976, 90 Stat. 2721.)

HISTORICAL AND REVISION NOTES

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

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

AMENDMENTS

1976—Pub. L. 94–574 provided that if no special statu-tory review proceeding is applicable, the action for ju-dicial review may be brought against the United States, the agency by its official title, or the appro-priate officer as defendant.

§ 704. Actions reviewable

Agency action made reviewable by statute and final agency action for which there is no other adequate remedy in a court are subject to judicial review. A preliminary, procedural, or intermediate agency action or ruling not directly reviewable is subject to review on the review of the final agency action. Except as otherwise expressly required by statute, agency action otherwise 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.

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

Sec.
801. Congressional review.
802. Congressional disapproval procedure.
803. Special rule on statutory, regulatory, and judicial deadlines.

applicable law, the Commission may refer the dispute to the Commission's Dispute Resolution Service. The Dispute Resolution Service shall consult with the Secretary and the Commission and issue a non-binding advisory within 90 days. The Secretary may accept the Dispute Resolution Service advisory unless the Secretary finds that the recommendation will not adequately protect the fish resources. The Secretary shall submit the advisory and the Secretary's final written determination into the record of the Commission's proceeding.

(June 10, 1920, ch. 285, pt. I, § 33, as added Pub. L. 109–58, title II, § 241(c), Aug. 8, 2005, 119 Stat. 675.)

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) of this section, 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 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*, 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*, 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

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

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.

(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.)

REFERENCES IN TEXT

The Rural Electrification Act of 1936, referred to in subsec. (f), is act May 20, 1936, ch. 432, 49 Stat. 1363, as amended, 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

2005—Subsec. (b)(2). Pub. L. 109–58, § 1295(a)(1), substituted ''Notwithstanding subsection (f) of this section, 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''.

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

Section 214 of Pub. L. 95–617 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

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

(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.

(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.)

AMENDMENTS

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).

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§ 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) of this section, 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) of this section 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.)

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, as amended, 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).

EFFECTIVE DATE OF 1988 AMENDMENT

Section 4 of Pub. L. 100–473 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.''

[1] See References in Text note below.

LIMITATION ON AUTHORITY PROVIDED

Section 3 of Pub. L. 100–473 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

Section 5 of Pub. L. 100–473 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.

(c) Availability of information and reports to State commissions; Commission experts

The Commission shall make available to the several State commissions such information and reports as may be of assistance in State regulation of public utilities. Whenever the Commission can do so without prejudice to the efficient and proper conduct of its affairs, it may upon request from a State make available to such State as witnesses any of its trained rate, valuation, or other experts, subject to reimbursement to the Commission by such State of the compensation and traveling expenses of such witnesses. All sums collected hereunder shall be credited to the appropriation from which the amounts were expended in carrying out the provisions of this subsection.

(June 10, 1920, ch. 285, pt. II, § 209, as added Aug. 26, 1935, ch. 687, title II, § 213, 49 Stat. 853.)

ices. 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 time as the court determines, any individual who is engaged or has engaged in practices constituting a violation of section 824u of this title (and related rules and regulations) from—

(1) acting as an officer or director of an electric utility; or

(2) engaging in the business of purchasing or selling—

(A) electric energy; or

(B) transmission services subject to the jurisdiction of the Commission.

(June 10, 1920, ch. 285, pt. III, § 314, as added Aug. 26, 1935, ch. 687, title II, § 213, 49 Stat. 861; amended June 25, 1936, ch. 804, 49 Stat. 1921; June 25, 1948, ch. 646, § 32(b), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107; Pub. L. 109–58, title XII, § 1288, Aug. 8, 2005, 119 Stat. 982.)

Editorial Notes

CODIFICATION

As originally enacted subsecs. (a) and (b) contained references to the Supreme Court of the District of Columbia. Act June 25, 1936, substituted ''the district court of the United States for the District of Columbia'' for ''the Supreme Court of the District of Columbia'', and act June 25, 1948, as amended by act May 24, 1949, substituted ''United States District Court for the District of Columbia'' for ''district court of the United States for the District of Columbia''. However, the words ''United States District Court for the District of Columbia'' have been deleted entirely as superfluous in view of section 132(a) of Title 28, Judiciary and Judicial Procedure, which states that ''There shall be in each judicial district a district court which shall be a court of record known as the United States District Court for the district'', and section 88 of Title 28 which states that ''the District of Columbia constitutes one judicial district''.

AMENDMENTS

2005—Subsec. (d). Pub. L. 109–58 added subsec. (d).

CERTIFICATE OF SERVICE

I hereby certify that, on May 20, 2026, I electronically filed the foregoing brief with the Clerk of the Court using the CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

/s/ *Susanna Y. Chu*
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