Oral Argument Has Not Been Scheduled

Nos. 25-1045, 25-1066, 25-1069, 25-1115, 25-1124, 25-1126
(consolidated)

United States Court of Appeals for the District of Columbia Circuit

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MISO Transmission Owners, *et al.*
and
Louisiana Public Service Commission,
Petitioners,
v.
Federal Energy Regulatory Commission,
Respondent.

On Petitions for Review of Orders of the
Federal Energy Regulatory Commission

INTERVENOR BRIEF OF THE LOUISIANA PUBLIC SERVICE COMMISSION AND OTHER ALIGNED INTERVENORS

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December 12, 2025

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CERTIFICATE AS TO PARTIES, RULINGS, AND RELATED CASES

A. Parties:

The parties appearing before this Court and before the Federal Energy Regulatory Commission are as stated in the Federal Energy Regulatory Commission's Brief.

B. Rulings under review:

The rulings under review before this Court are as stated in the Federal Energy Regulatory Commission's Brief.

C. Related Cases:

This case concerns the review of Federal Energy Regulatory Commission Orders issued on remand from this Court's decision in *MISO Transmission Owners v. FERC*, 45 F.4th 248 (D.C. Cir. 2022). To counsel's knowledge, there are no related cases pending elsewhere.

Respectfully submitted,

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CORPORATE DISCLOSURE STATEMENTS

Pursuant to Rule 26.1 of the Federal Rules of Appellate Procedure and Circuit Rule 26.1, the following intervenors submit the required Disclosure Statements:[1] Alliant Energy Corporate Services, Inc.; American Municipal Power, Inc.; Industrial Customer Group; Organization of MISO States, Inc.; Norris Electric Cooperative; Resale Power Group of Iowa; Rural Electric Convenience Cooperative; and Southwestern Electric Cooperative, Inc.

Corporate Disclosure Statement of Alliant Energy Corporate Services, Inc.

Alliant Energy Corporate Services, Inc. ("Alliant Services") is a direct, wholly owned subsidiary of Alliant Energy Corporation ("Alliant"), a regulated investor-owned public utility holding company incorporated in Wisconsin with corporate headquarters in Madison, Wisconsin. There is no corporation that owns a 10% or greater interest in Alliant.

Alliant Services is agent for Interstate Power and Light Company and Wisconsin Power and Light Company (collectively, the "Alliant Operating Companies"), each of which is a wholly owned subsidiary of Alliant. Collectively,

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[1] The Louisianna Public Service Commission, the Mississippi Public Service Commission, Missouri Public Service Commission, and Missouri Joint Municipal Electric Utility Commission d/b/a the Missouri Electric Commission, as government entities, are exempt from providing Corporate Disclosure Statements under Federal Rule of Appellate Procedure 26.1 and Circuit Rule 26.1.

the Alliant Operating Companies provide regulated electric and natural gas service to approximately 992,300 electric and approximately 426,150 natural gas customers in Iowa and Wisconsin.

The Alliant Operating Companies purchase electric transmission service from the Midcontinent Independent System Operator for delivery of electricity to their retail and wholesale electric service customers pursuant to rates regulated by and on file at the Federal Energy Regulatory Commission ("FERC"). In the orders under review, FERC ordered a reduction in the return on equity used to calculate such rates being charged to the Alliant Operating Companies. The FERC also ordered payment of refunds to transmission service customers of Midcontinent, including the Alliant Operating Companies, based on the reduced Return.

Corporate Disclosure Statement of
American Municipal Power, Inc.

American Municipal Power, Inc. ("AMP") is a non-profit Ohio corporation with more than 130 municipal members in the states of Indiana, Kentucky, Maryland, Michigan, Ohio, Pennsylvania, Virginia, and West Virginia, and the Delaware Municipal Electric Corporation, a joint action agency with eight Delaware members. AMP is a wholesale power supplier and services provider for its members' electric systems.

AMP issues no stock, has no parent corporation, and is not owned in whole or in part by any publicly held corporation.

Corporate Disclosure Statements of Industrial Customer Group

Association of Businesses Advocating Tariff Equity ("ABATE") is a voluntary association of large industrial businesses that are located in and doing business in the state of Michigan. ABATE has been formed for the express purpose of participating in regulatory proceedings to protect the interests of businesses in connection with energy and utility matters. Members of ABATE consume substantial quantities of electricity and natural gas, and, in Michigan alone, their combined gas and electric bills are approximately $1.2 billion per year. ABATE has no parent companies, and there are no publicly held companies that have a 10% or greater ownership interest in ABATE.

Coalition of MISO Transmission Customers ("CMTC") is a continuing ad hoc association of large industrial and commercial end-users of electricity in the Midwest operated for the purposes of representing the interests of industrial energy consumers before regulatory, judicial, and legislative bodies. CMTC members have facilities throughout the Midcontinent Independent System Operator, Inc. region, and CMTC is a Midcontinent Independent System Operator, Inc. member. CMTC has no parent companies, and there are no publicly held companies that have a 10% or greater ownership interest in CMTC.

Illinois Industrial Energy Consumers ("IIEC") is an association of large industrial customers in the State of Illinois. They are eligible to choose a retail

supplier other than their electric utility under Illinois law, and they are eligible for transmission service under the applicable Regional Transmission Organization and Independent System Operator tariffs. They consume approximately 13 billion kilowatt-hours of electricity and employ approximately 90,000 people in the State of Illinois. They have members served by Ameren Illinois, a member of Midcontinent Independent System Operator, Inc. They also have manufacturing facilities located within the Midcontinent Independent System Operator, Inc.'s region. IIEC has no parent companies, and there are no publicly held companies that have a 10% or greater ownership interest in IIEC.

Indiana Industrial Energy Consumers, Inc. ("INDIEC") is a not-for-profit 501(C)(6) corporation incorporated and doing business in the State of Indiana. INDIEC was formed to provide large energy users an independent voice in regulatory and legislative matters that impact utility rates and energy policies. INDIEC's 23 member companies' electric spend is over $529 million annually. INDIEC has no parent companies, and there are no publicly held companies that have a 10% or greater ownership interest in INDIEC.

Wisconsin Industrial Energy Group ("WIEG") is a voluntary member association consisting of large industrial and commercial customers in the State of Wisconsin. As key drivers of economic growth and development throughout the state, WIEG members collectively employ approximately 50,000 people in

Wisconsin and consume approximately 3.6 billion kilowatt-hours of electricity annually. WIEG has no parent companies, and there are no publicly held companies that have a 10% or greater ownership interest in WIEG.

Corporate Disclosure Statement of
Norris Electric Cooperative

Norris Electric Cooperative is an electric distribution cooperative that serves rural consumers in southern Illinois. Norris Electric Cooperative's members are located within the Ameren Illinois Company rate zone within the Midcontinent footprint. Norris Electric Cooperative also takes transmission service at rates calculated by Ameren Illinois Company's transmission rate formula.

Norris Electric Cooperative has no parent companies, and there are no publicly held companies that have a 10% or greater ownership interest in Norris Electric Cooperative.

Corporate Disclosure Statement of Organization of MISO States, Inc.[2]

The Organization of MISO States, Inc. is a Non-Profit Domestic Corporation (under the Indiana Nonprofit Corporation Act of 1991), self-governed, member-based organization of representatives from entities with regulatory jurisdiction over utilities participating in the Midcontinent Independent System Operator, Inc. The purpose of the Organization of MISO States is to promote the public interest and social welfare by providing means for its members to act in concert when deemed to be in the common interest of their affected publics. The Organization of MISO States does not issue securities to the public and is not owned by any publicly held company.

[2] The Organization of MISO States is submitting this brief because the following members voted in support of filing: Arkansas Public Service Commission, Illinois Commerce Commission, Iowa Utilities Commission, Kentucky Public Service Commission, Louisiana Public Service Commission, Michigan Public Service Commission, Minnesota Public Utilities Commission, Mississippi Public Service Commission, Missouri Public Service Commission, Montana Public Service Commission, New Orleans City Council, North Dakota Public Service Commission, South Dakota Public Utilities Commission, Public Service Commission of Wisconsin, and Public Utility Commission of Texas. The Manitoba Public Utilities Board and the Indiana Utility Regulatory Commission did not participate in the vote on this filing.

Corporate Disclosure Statement of Resale Power Group of Iowa

Resale Power Group of Iowa ("RPGI") is a special-purpose governmental entity organized pursuant to Chapter 28E of the Code of Iowa to purchase electric supply, transmission and related services as an agent for its members. RPGI does not issue stock or debt securities and does not have a parent company. RPGI's members are 24 Iowa municipal utilities, one cooperative, and one privately-owned utility. RPGI's members hold joint ownership interests in its assets. As local government entities, these members do not issue shares, and, to the best of RPGI's knowledge and belief, do not issue debt securities to the public.

Corporate Disclosure Statement of Rural Electric Convenience Cooperative

Rural Electric Convenience Cooperative is an electric distribution cooperative that serves rural consumers in Illinois. Rural Electric Convenience Cooperative's members are located within the Ameren Illinois Company rate zone within the Midcontinent footprint. Rural Electric Convenience Cooperative also takes transmission service at rates calculated by Ameren Illinois Company's transmission rate formula.

Rural Electric Convenience Cooperative has no parent companies, and there are no publicly held companies that have a 10% or greater ownership interest in Rural Electric Convenience Cooperative.

Corporate Disclosure Statement of
Southwestern Electric Cooperative, Inc.

Southwestern Electric Cooperative, Inc. ("Southwestern") is an electric distribution cooperative that serves rural consumers in Bond, Clay, Clinton, Effingham, Fayette, Macoupin, Madison, Marion, Montgomery, Shelby, and St. Clair counties in the State of Illinois. Located approximately 45 miles east of St. Louis, Missouri and 85 miles south of Springfield, Illinois, Southwestern serves nearly 24,000 members and operates over 3,500 miles of energized electric line. Southwestern is a Midcontinent transmission customer located within the Ameren Illinois Company rate zone and takes service under the Ameren Illinois Company transmission rate formula.

Southwestern Electric Cooperative, Inc. has no parent companies, and there are no publicly held companies that have a 10% or greater ownership interest in Southwestern Electric Cooperative, Inc.

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Briefing Order	*Ass'n of Bus. Advocating Tariff Equity v. Midcontinent Indep. Sys. Operator*, *Inc*., 165 FERC ¶ 61,118 (November 15, 2018)
Clearinghouse	*Nat. Gas Clearinghouse v. FERC*, 965 F.2d 1066 (D.C. Cir. 1992)
Commission or FERC	Respondent Federal Energy Regulatory Commission
Emera Maine	*Emera Me. v. FERC*, 854 F.3d 9 (D.C. Cir. 2017)
FERC Br.	Opening Brief of Respondent, the Federal Energy Regulatory Commission
First Complaint	November 12, 2013, complaint filed in Docket No. EL14-12 by Association of Businesses Advocating Tariff Equity, et al.
First Complaint Hearing Order	*Ass'n of Bus. Advocating Tariff Equity v. Midcontinent Indep. Sys. Operator, Inc.*, 148 FERC ¶ 61,049 (2014)
FPA	Federal Power Act
Initial Decision	*Ass'n of Bus. Advocating Tariff Equity v. Midcontinent Indep. System Operator, Inc.*, 153 FERC ¶ 63,027 (2015)

July 2017 Refund Report	Midcontinent, Refund Report, ER17-215, (July 29, 2017)[3]
Midcontinent	Midcontinent Independent System Operator, Inc.
MISO Transmission	*MISO Transmission Owners v. FERC*, 45 F.4th 248 (D.C. Cir. 2022)
NGA	Natural Gas Act
OCC Ohio	*Off. of Consumers' Counsel, State of Ohio v. FERC*, 826 F.2d 1136 (D.C. Cir. 1987)
Opinion 551	*Ass'n of Bus. Advocating Tariff Equity v. Midcontinent Indep. Sys. Operator*, *Inc.*, Opinion 551,156 FERC ¶ 61,234 (Sept. 28, 2016)
Opinion 569	*Ass'n of Bus. Advocating Tariff Equity v. Midcontinent Indep. Sys. Operator*, *Inc.*, Opinion 569, 169 FERC ¶ 61,129 (Nov. 21, 2019)
Opinion 569-A	*Ass'n of Bus. Advocating Tariff Equity v. Midcontinent Indep. Sys. Operator*, *Inc.*, Opinion 569-A, 171 FERC ¶ 61,154 (May 21, 2020)
Opinion 569-B	*Ass'n of Bus. Advocating Tariff Equity v. Midcontinent Indep. Sys. Operator*, *Inc.*, Opinion 569-B, 173 FERC ¶ 61,159 (Nov. 19, 2020)

[3] Although submitted for filing in Docket No. EL14-12, FERC's eLibrary associated the July 2017 Refund Report only with the refund compliance Docket, No. ER17-215, and it is consequently omitted from FERC's Certified Record Index. Nonetheless, it should be included in the deferred Joint Appendix.

Opinion 531	*Martha Coakley, et al v. Bangor Hydro-Electric Co., et al.*, Opinion 531, 147 FERC ¶ 61,234 (2014)
Owners	Petitioners MISO Transmission Owners
Owners Br.	Opening Brief of Petitioners MISO Transmission Owners
Remand Order	*Ass'n of Bus. Advocating Tariff Equity v. Midcontinent Indep. Sys. Operator, Inc.*, 189 FERC ¶ 61,036 (Oct. 17, 2024)
Return	Return on Equity
Second Complaint	February 12, 2015, complaint filed in Docket No. EL15-45 by Arkansas Electric Cooperative Corporation, et al.
Second Complaint Hearing Order	*Arkansas Elec. Coop. Corp. v. ALLETE, Inc.*, 151 FERC ¶ 61,219 (2015)
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Xcel	*Xcel Energy Servs., Inc. v. FERC*, 815 F.3d 947 (D.C. Cir. 2016)

STATUTES AND REGULATIONS

The pertinent statutes and regulations are produced in an Addendum to this brief.

SUMMARY OF ARGUMENT

The Federal Energy Regulatory Commission ("Commission or FERC") satisfied all three Federal Power Act ("FPA") Section 206(a) predicates for placing a replacement rate into effect upon complaint. FERC heard the MISO Transmission Owners' ("Owners") defense of the prior 12.38% return on equity ("Return"), found such Return unjust and unreasonable, and in 2016 specified a replacement Return to apply thereafter. Opinion 551, P67. However, the replacement Return FERC initially selected (10.32%) embodied reversible error, made plain while this case remained pending before FERC, in light of this Court's related 2017 decision in *Emera Me. v. FERC*, 854 F.3d 9 (D.C. Cir. 2017) ("*Emera Maine*"). In 2018, FERC invited further briefing and new evidence to support a replacement Return free of that error, to be implemented with the same 2016 effective date ordered in Opinion 551.

Owners initially supported the 2016 effective date, arguing for a replacement Return exceeding 10.50%. Intervenors accepted the reopening of the record, and the resulting delay, because the 2016 effective date placed them in the position they would have occupied without FERC's legal error. In 2019-2020, after working its way through Owners' multifaceted arguments for Return-increasing method changes, FERC revised the replacement Return first to 9.88% and later to 10.02%.

At this point, Owners launched their challenge to the 2016 effective date. In 2022, this Court granted, in part, a petition for review from customers, finding FERC's Return method arbitrary and vacating and remanding FERC's 2019-2020 orders. In the 2024-25 remand orders now under review, FERC further adjusted the replacement Return to 9.98%. Owners accept this Return level but contend that FERC should have let them continue charging an unjust and unreasonable Return until 2024.

Owners claim that enactment of Section 206(b) implicitly amended Section 206(a) to require that replacement rates cannot take effect until "the conclusion" of proceedings thereunder, and that such conclusion occurs only with a final, non-appealable FERC order. The statutory text, legislative history, and controlling precedent before and after that 1988 amendment all belie that claim. Indeed, FERC has explicit statutory authority, recognized in controlling precedent, to repair an erroneous replacement rate while keeping its effective date, so as to place parties in the position they would have occupied but for FERC's error.

Owners complain that the September 2016 effective date undermines rate "predictability." But all parties were on notice, from the day Opinion 551 was challenged on rehearing, that the replacement Return was subject to change while maintaining September 2016 as the "thereafter" effective date. Reversing course

now to delay FERC's remedy by over eight years would subject customers to hundreds of millions of dollars in unjust and unreasonable overcharges.

Finally, because FERC ultimately granted no relief for the February 12, 2015, complaint filed in Docket No. EL15-45 by Arkansas Electric Cooperative Corporation, *et al* ("Second Complaint"), Owners' arguments that FERC should not have even entertained the Second Complaint is moot. Moreover, Owners' claim that serial complaints are categorically precluded by FPA Section 206 is without merit.

ARGUMENT

I. FERC Properly Ordered September 2016 as the Prospective Effective Rate for the 9.98% Return.

Owners assert that FERC must perpetuate an unjust and unreasonable rate until it gets the replacement rate perfectly right—that if FERC holds a hearing, finds a rate unreasonable, sets a prospective replacement rate, and then reconsiders and alters that replacement rate on rehearing or remand to correct errors that would not survive judicial review, the prior, unjust and unreasonable rate must apply until FERC issues a final non-appealable order establishing a legally sound replacement. Owners Br. 17. This assertion violates the statutory text and legislative intent, as construed by binding precedent.

A. Opinion 551 Fixed the Replacement Rate and Followed the Section 206 Predicates for Prospective Relief.

Owners maintain that FERC did not fix a rate until *Ass'n of Bus. Advocating Tariff Equity v. Midcontinent Indep. Sys. Operator, Inc.*, 189 FERC ¶ 61,036 (Oct. 17, 2024) ("Remand Order"), because the extensive process following Opinion 551 nullified its rate-fixing effect. Owners Br. 22. Owners further argue that because the allowed fifteen months of retrospective refunds under Section 206(b) follow "the conclusion" of complaint proceedings, the effective date of a Section 206(a) prospective replacement rate must likewise await the very end of FERC's process. *Id.* 24. These claims lack merit.

Both FPA Section 206(a) and analogous Natural Gas Act ("NGA") Section 5 require only a prior hearing, a resulting finding that the prior rate was unreasonable, and a published order specifying a replacement rate to apply thereafter. FERC satisfied all three statutory predicates for placing a replacement rate into effect upon complaint. Here, after a full hearing proved that the prior 12.38% Return was unreasonable, Opinion 551 established a specific replacement Return, 10.32%, to apply thereafter. Opinion 551, P 67. Nothing in FPA Section 206(a) prohibits FERC from continuing to use the September 2016 effective date established in Opinion 551 because it refined the replacement Return to address fatal flaws with the approach that produced the 10.32% value.

1) Having Found the Existing Return Unjust and Unreasonable, FERC was Obligated to Promptly Establish an Effective Prospective Return.

In Opinion 551, PP 7, 9, JA____, ____, FERC affirmed the Initial Decision's finding that the existing 12.38% Return was unjust and unreasonable under the longstanding *Hope* and *Bluefield* ratemaking standard.[1] FERC adopted findings that the existing Return would exploit consumers and exceed the standards of *Hope* and *Bluefield*. Opinion 551, PP 11-13 & nn.20-23, JA____ (citing Initial Decision, P 24, JA____).[2] Although FERC revised its Return methodology over the course of this proceeding, every subsequent substantive order confirmed that 12.38% was unjust and unreasonable. Indeed, no one now disputes that the 12.38% pre-existing Return, the 10.32% Return of Opinion 551, and the 10.02% Return of Opinion 569-B all exceeded the just and reasonable level for all periods at issue.

Amicus New England Transmission Owners ("*Amicus*") would sweep that unreasonableness finding under the rug, trapping FERC in a doom loop unable to

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[1] *See Bluefield Waterworks & Improvement Co. v. Pub. Serv. Comm'n of W. Va.*, 262 U.S. 679 (1923); *Fed. Power Comm'n v. Hope Nat. Gas Co.*, 320 U.S. 591 (1944). Opinion 551, PP 11-13, JA____-____.

[2] Indeed, the Initial Decision found that the 12.38% Return "exceed[ed] the high end of the zone of reasonableness" and was thus clearly unjust and unreasonable. Initial Decision, PP 110-12, JA____-____. FERC agreed that 12.38% was unjust and unreasonable but explained that FPA Section 206 "does not require complainants or the Commission to demonstrate that an existing [Return] falls outside the zone of reasonableness in order for that [Return] to be considered unjust and unreasonable." Opinion 551, P 16, JA____.

keep parties whole by timely correcting legal errors. They argue that because the Order on Remand confirmed FERC's unreasonableness finding under its revised analysis, earlier unreasonableness findings fail to meet the "step one" predicate to Section 206(a) relief. (*Amicus* Br. 13-15). As FERC points out, this argument is jurisdictionally barred as outside Owners' rehearing requests. FERC Br. 52-53. In any case, it is wrong. Opinion 551 included an explicit unreasonableness finding, which, as discussed above, rested on a different and better-explained basis than that critiqued in *Emera Maine*. This Court's opinion in *MISO Transmission Owners v. FERC*, 45 F.4th 248 (D.C. Cir. 2022) ("*MISO Transmission*") recognized that FERC's 2019-2020 orders did not nullify Opinion 551's unreasonableness finding, but rather "more effectively *verif[ied]*" that same finding. *MISO Transmission*, 45F.4th at 261 (emphasis added).

Having ruled in 2016 that 12.38% was unreasonable, FERC was clearly authorized, indeed obliged, to promptly set a just and reasonable replacement rate. FPA Section 206(a) ("shall"); *La. Pub. Serv. Comm'n v. FERC*, 184 F.3d 892, 897 (D.C. Cir. 1999) (FERC "has the duty—not the option—to reform rates that by virtue of changed circumstances are no longer just and reasonable"). That duty empowers FERC to make its remedies timely. *Cf. Fed. Power Comm'n v. Nat. Gas Pipeline Co.*, 315 U.S. 575, 583-85 (1942) (upholding interim order "decreasing revenues" prior to the Commission "establishing a specific [replacement] schedule of rates" as

"in harmony with the purpose of the Act"). Delaying the effective date of the replacement rate for eight years after finding the existing rate unreasonable would have constituted legal error. *See Off. of Consumers' Counsel, State of Ohio v. FERC*, 826 F.2d 1136, 1139 (D.C. Cir. 1987) ("*OCC Ohio*") (having found a rate unreasonable, FERC's "legal error was in failing to remedy that violation.").

2) The FPA and Precedent Confirm that FERC has Authority to Maintain the 2016 Effective Date.

Contrary to Owners' claims, neither Section 206(a), nor the parallel NGA Section 5, prevents FERC from establishing the effective date of a replacement rate prior to the "conclusion" of a proceeding in a final non-appealable order. Owners Br. 24. Both statutory provisions clearly permit further process to refine the replacement rate after giving it effect "thereafter." *See Nat. Gas Pipeline Co.*, 315 U.S. 583-85; *Tenn. Valley Mun. Gas Ass'n v. Fed. Power Comm'n*, 470 F.2d 46, 452–53 (D.C. Cir. 1972) ("*Tennessee*").[3] The "conclusion" clause of FPA Section 206(b) makes sense there, because it relates to FERC's authority to extend the 15-month retrospective refund period if a utility is dilatory any time before that conclusion. When Congress enacted Section 206(b) in 1988, it could have added the

[3] Courts have routinely found that the relevant provisions of the FPA and the NGA are analogous and are to be construed *in pari materia*. *Hughes v. Talen Energy Mktg., LLC*, 578 U.S. 150, 164 n.10 (2016); *Emera Maine v. FERC*, 854 F.3d 9, 20 (D.C. Cir. 2017) ("judicial interpretations of the FPA and the NGA may be followed interchangeably").

"conclusion" clause to Section 206(a) as well. Instead, Congress chose to leave intact the provisions for effectiveness prior to refinement that *Tennessee* had recognized in 1972.

Other FPA provisions confirm FERC's authority to keep September 2016 as the prospective effective date for the replacement rate. Because FPA Section 313 authorizes FERC to modify its orders and findings "in whole or in part," a request for rehearing as to the replacement rate's level does not preclude the Commission from changing the rate before the record is filed in a court of appeals. 16 U.S.C. § 825*l*(a). FPA Section 309 (discussed *infra* in Part I.B.1) also authorizes FERC to "perform any and all acts," including "amend[ing] … orders," "as it may find necessary or appropriate to carry out the provisions of" the FPA. 16 U.S.C. § 825h. Thus, FERC was expressly authorized to retain Opinion 551's replacement rate effective date while modifying its level.

As FPA Sections 313(a) and 313(b) are parallel ("modify or set aside, in whole or in part" parallels "affirming, modifying, or setting aside, in whole or in part"), FERC's authority to modify orders on rehearing parallels that of this Court on judicial review. Just as this Court backdated a replacement rate effective date to cure legal error in *Tennessee*, FERC has authority to do so here.

Owners' contrary arguments, based on FPA Section 206(b) and *Electrical District v. FERC*, 774 F.2d 490 (D.C. Cir. 1985), lack merit. The 1988 enactment of

FPA Section 206(b) only *expanded* FERC's pre-existing authorities under FPA Sections 206(a), 309, and 313. *City of Redding v. FERC*, 693 F.3d 828, 838 (9th Cir. 2012); *see, e.g.*, 134 Cong. Rec. H8094-02 (daily ed. Sept. 23, 1988) (statement of Rep. Gejdenson) (explaining that the amendment sought to "to make the current regulatory process more equitable, giving electric consumers the same protections and considerations that supplying utilities currently receive"). Moreover, Section 206(b)'s text does not diminish FERC's broad pre-existing powers under FPA Section 309. Indeed, Section 309 and Section 206(b) serve distinct purposes. *See, e.g.*, *Verso Corp. v. FERC*, 898 F.3d 1, 10 (D.C. Cir. 2018); *see also Town of Concord v. FERC*, 955 F.2d 67, 73 (D.C. Cir. 1992) (explaining parallel refund authorities under FPA Section 309 and NGA Section 16); *Consolidated Gas Transmission Corp. v. FERC*, 771 F.2d 1536, 1551 (D.C. Cir.1985).

Next, Owners twist this Court's decision in *Electrical District* to contend that only the last rate determination counts as "fixing" a rate. However, FERC here did precisely what *Electrical District* suggested it should: "ensure that just and reasonable rates are made effective *as soon as possible*" by "complet[ing] the [rate specification] process itself and fix[ing] the rates in its initial order." *Electrical Dist. No. 1*, 774 F.2d at 494 (Emphasis added).

Nothing in *Electrical District* requires this "initial" order fixing the rate to become the last word before it can take prospective effect. To the contrary, *Electrical*

District invited an initial, rate-fixing order with "refund [of] any excess payments if final review of the rates produces an adjustment." *Id.*

The concern expressed in *Electrical District* was that merely setting "basic principles," i.e., general concepts eventually distillable to specific rates, provides insufficient notice of the rate applicable to ongoing transactions. *Id.* at 493. Such open-ended uncertainty differs markedly from the situation here, where FERC ordered a specific replacement rate that faced specific challenges on rehearing and appeal. While some degree of uncertainty inherently persists during rehearing and appeal, procedural requirements cabin the issues and notify all that rates paid remain subject to adjustment.

The present appeal underscores the difference between FERC acting to correct errors identified on rehearing and appeal and FERC belatedly arriving at a specific rate after previously setting merely general principles. The eight years between Opinion 551 and the Order on Remand were not spent on a *de novo* attempt to reduce the general principle of financial cost recovery to a specific Return. Rather, they were spent correcting substantial errors embedded in the specific Return FERC had fixed; errors which this Court recognized were, or would have been, fatal on direct judicial review.

B. FERC Properly Acted to Correct Prior Legal Errors.

1) Binding Circuit Precedent Confirms the Error-Correction Authority FERC Applied Here.

Binding Court precedent establishes FERC's authority to repair its errors by establishing corrected replacement rates effective as of the error date. In *Nat. Gas Clearinghouse v. FERC*, 965 F.2d 1066 (D.C. Cir. 1992) ("*Clearinghouse*"), this Court approved FERC's decision to order "retroactive recoupment of refunds that were found on judicial review to have been improperly ordered." *Clearinghouse*, 965 F.2d at 1074. Owners elide both *Clearinghouse* and this Court's explanation that FERC's remedial authority "emanates from an understanding that an 'agency, like a court, can undo what is wrongfully done by virtue of its order.'" *TNA Merch. Projects, Inc. v. FERC*, 857 F.3d 354, 361 (D.C. Cir. 2017) ("*TNA*") (quoting *United Gas Improvement Co. v. Callery Props., Inc.*, 382 U.S. 223, 229 (1965)). This Court explained: "[o]ur case law makes it clear that both § 309 and FERC's implicit remedial authority under the [FPA] provide [FERC] with considerable latitude when…attempting to undo harms caused by its own mistaken or unlawful acts." *TNA*, 857 F.3d at 360. FERC has clear authority, in fashioning remedies, to consider equitable principles, one of which is to regard as being done that which should have been done. *Clearinghouse*, 965 F.2d at 1071-72.

Accordingly, as this Court found in *OCC Ohio*, FERC may "impose [the updated rate] with a measure of retroactivity in order to place the petitioner 'in the

same position that it would have occupied had the error not been made.'" *OCC Ohio*, 826 F.2d at 1139 (Quoting *Tennessee*, 470 F.2d at 452). The Court distinguished between retroactive ratemaking ("belated determinations that rates charged in the past were excessive") and the fact that rates that had been updated, but were later corrected, were subject to refund. *Id.* (citing *Tennessee*, 470 F.2d at 452).

FERC has the same authority under the FPA. *See supra* note 3; *see also Town of Concord v. FERC*, 955 F.2d 67, 73 (D.C. Cir. 1992); *Xcel Energy Servs. v. FERC*, 815 F.3d 947, 955 (D.C. Cir. 2016) ("*Xcel*"). This authority includes, but is not limited to, authority "to implement judicial reversals." *Clearinghouse*, 965 F.2d at 1073. Again, it broadly encompasses *mistaken or unlawful* acts. *TNA*, 857 F.3d at 360.

Owners downplay and seek to cabin that broad remedial authority. Owners Br. 28-36. Contrary to Owners' position, however, FERC's 15-month refund authority under FPA Section 206(b) does not limit its Section 309 authority. *See supra,* Part I.A.2. Before and after the 1988 enactment of Section 206(b), FERC was and is authorized to "perform any and all acts ... as it may find necessary or appropriate" to carry out the FPA's consumer-protecting provisions. 16 U.S.C. § 825h. Accordingly, a remedy need not be "spelled out in detail" in the FPA for FERC to prescribe it. *Niagara Mohawk Power Corp. v. Fed. Power Comm'n*, 379 F.2d 153, 158 (D.C. Cir. 1967). So long as the chosen remedial action conforms with

the intent of Congressional intent and does not otherwise "contravene any terms" of the FPA—which FERC's action here does not—the action must stand. *TNA*, 857 F.3d at 359.

In particular, Section 309 "affords the agency broad authority to 'remedy its errors' and correct unjust situations." *Id.* (quoting *Xcel*, 815 F.3d at 956). Section 309 authorizes FERC to identify and repair its own mistakes, remediating past actions that it or a court determines to be wrong. *Xcel*, 815 F.3d at 954-56. An agency must have the ability to right its own mistakes to ensure the agency is otherwise complying with its statutory obligations, *i.e.*, FERC's duty to ensure that *all* jurisdictional rates are just and reasonable. *See Xcel*, 815 F.3d at 955-56.

Owners deem it "absurd" that Opinion 551 fixed a replacement rate, because Opinion 551 was subsequently vacated. Owners Br. 22. That gets the error-correction doctrine backwards; because FERC's underlying orders were vacated, FERC had to set the new Return and "confront the problem anew." FERC Br. 40 (quoting *Indep. U.S. Tanker Owners Comm. v. Dole*, 809 F.2d 847, 854 (D.C. Cir. 1987)). Following *vacatur*, so long as it respected this Court's direction, FERC was authorized to reinstate the vacated orders "in whole or in part," just as it was free to retain non-erroneous rulings on rehearing under FPA Section 313(a).

In *MISO Transmission*, 45 F.4th at 252, this Court "agree[d] with the customers that FERC's development of the new Return methodology was arbitrary

and capricious." This Court, therefore, expressly did not reach Owners' effective-date issue. Instead, it remanded "for further proceedings" and "vacate[d] FERC's 'rate-determination orders.'" *Id.* at 265. Nothing in *MISO Transmission* suggests that this Court intended to hand Owners years of unjust enrichment at a 12.38% Return, far above the 10.02% that this Court had just found to arbitrarily aggrieve customers. Yet, that is what Owners seek.

2) FERC's Revisions to the Replacement Return Were Necessary to Correct Legal Errors.

Owners are wrong to claim that FERC was not acting in its error-correcting capacity. Owners Br. 31-37. *Emera Maine*'s ruling on FERC's use of the upper midpoint required FERC to revisit Opinion 551 to craft a legally defensible order. *Emera Maine* found that FERC "did not set forth a rational connection between the record evidence and its placement of the base [Return]" at "the midpoint of the upper half of the zone of reasonableness." *Emera Maine*, 854 F.3d at 27. "Rather than citing record evidence demonstrating that 10.57 percent was … just and reasonable …, FERC simply noted that it 'traditionally looked to the central tendency'… and then chose the midpoint of the upper half of the zone of reasonableness because it had done so 'in the past.'" *Id.* at 29 (quoting Opinion 531 PP 151-52). In response, FERC proposed methodology changes that would (i) produce a higher midpoint, and (ii) rely on that midpoint rather than the upper

midpoint. *Ass'n of Bus. Advocating Tariff Equity v. Midcontinent Indep. Sys. Operator, Inc.,* 165 FERC ¶ 61,118, P 60 (November 15, 2018) ("Briefing Order").

Although reopening lengthened proceedings that had already lasted five years, FERC assured parties that it would use its "broad remedial authority" to correct its "legal error" as of the date FERC had erred. Briefing Order, P 61, JA__. Far from challenging the effective date, Owners (while proposing a higher replacement Return of 10.5%) affirmatively supported it. Supplemental Initial Brief of Owners, R.542 1, 28, JA___ (stating "support" for FERC's "overall approach," as "statutorily and procedurally sound," and specifically asking FERC to make the replacement Return "effective for the applicable statutory refund period of November 12, 2013, to February 11, 2015, *and, prospectively, as of September 28, 2016*") (emphasis added). Owners did not challenge the September 2016 effective date until FERC's review of the resulting expanded record produced a replacement Return below that of Opinion 551.

Given that FERC's proposal to retain the September 2016 effective date was not challenged by Owners, Intervenors accepted the resulting procedural re-opening and lengthening, both before FERC and by refraining from seeking judicial mandamus as FERC took years to consider the expanded record. The resulting lengthy process eventually corrected FERC's erroneous Opinion 551 upper midpoint placement (along with its unsupported use of the risk-premium model identified in

MISO Transmission) and adjusted the methods FERC had proposed to substitute for that placement. FERC was not obliged to offset that error correction by wrongly (and as discussed below, quite inequitably) altering the replacement rate effective date.

C. FERC's Remedy Serves the FPA's Consumer Protection Purposes.

The remedy at issue merely puts consumers "in the same position that [they] would have occupied had the error not been made." *OCC Ohio*, 826 F.2d at 1139 (Citing *Tennessee*). As in *OCC Ohio*, FERC here made no "belated determination" about a past rate. Rather, FERC resolved issues with the replacement rate for the unjust and unreasonable 12.38% Return, issues which had been continually disputed since Opinion 551 specified a replacement in September 2016. Given that the replacement rate was never subject to a final, non-appealable order, it was always apparent that those rates were subject to change. *See Canadian Ass 'n of Petroleum Producers v. FERC*, 254 F.3d 289, 299-300 (D.C. Cir. 2001).

Undoing FERC's remedy would delay effectiveness of a replacement rate by over eight years. Owners argue that the 9.98% just and reasonable Return should apply (i) in calculating refunds for the fifteen-month period after the First Complaint (November 2013 to February 2015); and (ii) starting almost ten years later (so eight-plus years after Opinion 551) in October 2024, upon issuance of the Remand Order. Owners Br. 19. Owners are notably silent as to what Return would apply between those dates, but the logic of their claim that FERC fixed the just and reasonable rate

only in October 2024 demands that the excessive 12.38% Return would apply for that entire, nearly decade-long interim.

Such delays would merely perpetuate the errors of FERC's erroneous prior orders adopting higher Returns. Indeed, it would punish customers with hundreds of millions of dollars in excessive rates for their *serial success* in reducing the Return to 10.02% (when FERC addressed the same flaws that this Court identified in *Emera Maine*) and then 9.98% (on remand from *MISO Transmission*).

In July 2017, when Midcontinent Independent System Operator, Inc. ("Midcontinent") resettled 15 months of transmission charges for the difference between the former Return of 12.38% and the 10.32% of Opinion 551, it showed hundreds of millions of dollars in associated refunds. *See* July 2017 Refund Report. In April 2022, Midcontinent further reported the effect, over additional years, of reducing that 10.32% to the 10.02% of Opinion 569-B; it showed hundreds of millions of dollars in further resettlements. *Id.* Owners would unwind those substantial resettlements, delay the effectiveness of reasonable rates needed to cure FERC's legal errors, and discourage customers from seeking judicial review of erroneous FERC orders. None of those results are consistent with the FPA's primary aim: "protection of consumers from excessive rates and charges." *Alexandria, Minn. v. Fed. Power Comm'n*, 555 F.2d 1020, 1028 (D.C. Cir. 1977) (quoting *Mun. Light Bds. v. Fed. Power Comm'n*, 450 F.2d 1341, 1348 (D.C. Cir. 1971)).

Against those powerful considerations, Owners claim only that FERC's retention of the September 2016 rate replacement date would somehow deprive them of desirable "predictability." Owners Br. 21. But predictability, in a regulated environment, must yield to notice that rates charged are subject to the pending resolution of disputed issues. *See Okla. Gas & Elec. Co. v. FERC*, 11 F.4th 821, 830-33 (D.C. Cir. 2021). Rehearing and appeal activate the notice exception and allow ratemaking to take effect as of prior decision dates that might otherwise be considered improperly retroactive. *See Clearinghouse*, 965 F.2d at 1075. Under *Tennessee*, although the FPA and its filed rate doctrine seek to protect "established expectations under *legally established* rate schedules," they do not protect expectations premised on "legal error by the Commission" that "wrongfully and unfairly prolongs" the applicability of excessive rates. *Tennessee*, 470 F.2d at 452-53 (emphasis added).

Here, all parties knew, as they labored through this lengthy litigation, that the 10.32% Return set in Opinion 551 was subject to change on rehearing with September 2016 effectiveness. Far from challenging such effectiveness, Owners supported it—until FERC arrived at a replacement rate they disfavored. To be sure, that rehearing process took years and admitted new evidence, as FERC considered method changes that would raise the midpoint on which it now contemplated relying. FERC bent over backwards to consider Owners' myriad ways of doing so, such as

disregarding cost (*see*, Opinion 569, PP 200-28, JA __-__) and laboriously echoing Returns set in prior cases reflecting higher capital costs (*see MISO Transmission*, 45 F.4th at 263-64). But customers accepted that lengthening given FERC's then-unchallenged promise to retain Opinion 551's September 2016 effective date. Briefing Order, P 61, JA____ . *That* is the expectation deserving protection.

II. This Court should Reject Owners' Arguments Regarding the Second Complaint.

Owners claim that FERC erred in even entertaining the Second Complaint, which it ultimately denied. Owners Br. 37-41 (Supported by *Amicus* Br. 22-26). As FERC explains, FERC's decision to grant no relief as an outcome of the Second Complaint moots and precludes judicial review of contentions that such denial should have occurred earlier, as a "dismissal."[4] FERC Br. 61-67.

We note, however, that if Owners were to prevail in reinstating 12.38% as the Return effective until October 2024, then FERC would need to consider on remand whether 12.38%, rather than the considerably lower Returns that FERC applied as existing in its analyses dismissing the Second Complaint, should be treated as the existing Return for purposes of the Second Complaint. *See MISO Transmission*, 45 F.4th at 262 ("FERC must look to the current Return at the time of decision"). And

[4] This assumes FERC's denial of all relief. LPSC has briefed separately, and we do not here address, its position that FERC should have granted refunds based on the Second Complaint.

we add three points supporting FERC's further argument on the merits of Owners' successive complaints claim. FERC Br. 67-69.

First, Owners err in contending that serial complaints serve "solely to circumvent" the FPA's fifteen-month refund limitation. Owners Br. 37. Financial market conditions change continuously, sometimes dramatically. As *Amicus* concede, FERC precedent allows second complaints to proceed "based on 'a material changed circumstance.'" *Amicus* Br. 26 (quoting cases). But in order for FERC to evaluate whether circumstances have changed materially such that a second complaint should produce its own relief, FERC first must entertain it.

Indeed, in some circumstances, FERC could deny a first complaint for failing to prove an existing Return unreasonable but find that a second complaint *does* meet that burden based on more recent financial data. Dismissing the second complaint in this circumstance would allow an unjust rate to continue, contrary to the FPA, and it would be especially unjust if one customer's decision to file the first complaint forfeited a different customer's opportunity to file later, perhaps for years.

Second, Owners err in contending that FERC entertained serial complaints "challenging the very same rates" based on "identical data." Owners Br. 37-39. Under FERC's disposition, the Second Complaint was resolved as a challenge to the First Complaint's "thereafter" outcome of 9.98%, *not* the 12.38% target of the First Complaint. Remand Order, P 34, JA____. The data periods and ranges FERC applied

to those respective challenges also differed. *Id.*, PP 27-28, 37-38, JA____, ____. And the initial analysis filed in 2015 to support the second complainants' request for a hearing on the Second Complaint presented a different witness, different time frame, and different methods from what the first complainants had filed in 2013 to support their request for a hearing on the First Complaint.[5]

Third, *contra* Owners' Br. 40, FERC did not "render[] the refund limit a nullity." That limit produced a 17-month refund gap (between February 2015 and September 2016) that cost consumers hundreds of millions of dollars. *See* supra, Part I.B.2.

CONCLUSION

In closing, the frustration voiced by Owners in this protracted litigation is deeply magnified for the customers who have borne the weight of excessive Returns. While there are debates about whether FERC complied with the expediency mandate of FPA Section 206(b), there is no question that this drawn-out process has had significant economic impact on customers, including industrial entities facing intense global competition and who rely on reasonable electric rates to remain viable, and economically stressed families juggling tight budgets.

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[5] The differences are plainly shown by comparing the Second Complaint Hearing Order, PP 6-13, JA___, ___, with First Complaint Hearing Order, PP 7-22.

Justice requires that customers—who have already suffered lost refunds from February 2015 to September 2016 and years of subsequent overcharges—should not be further penalized, and that Owners must not recoup or retain the unjust windfalls obtained from their years-long collections of excessive Returns. The Court should deny the Petitions for Review of Owners.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

Pursuant to Fed. R. App. P. 32(g) and Circuit Rule 32(e), I certify that this brief complies with the type-volume limitation in Fed. R. App. P. 32(a)(7)(B), as modified by the Court's July 11, 2025 Briefing Order, because this brief contains 4,943 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f).

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 Times New Roman with size 14-point font using Microsoft Word 365.

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ADDENDUM

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Editorial Notes

AMENDMENTS

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

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

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

Statutory Notes and Related Subsidiaries

STUDY OF ELECTRIC RATE INCREASES UNDER FEDERAL POWER ACT

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

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

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

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

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

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

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

Notwithstanding subsection (b), in a proceeding commenced under this section involving two or more electric utility companies of a registered holding company, refunds which might otherwise be payable under subsection (b) shall not be ordered to the extent that such refunds would result from any portion of a Commission order that (1) requires a decrease in system production or transmission costs to be paid by one or more of such electric companies; and (2) is based upon a determination that the amount of such decrease should be paid through an increase in the costs to be paid by other electric utility companies of such registered holding company: *Provided*, That refunds, in whole or in part, may be ordered by the Commission if it determines that the registered holding company would not experience any reduction in revenues which results from an inability of an electric

utility company of the holding company to recover such increase in costs for the period between the refund effective date and the effective date of the Commission's order. For purposes of this subsection, the terms ''electric utility companies'' and ''registered holding company'' shall have the same meanings as provided in the Public Utility Holding Company Act of 1935, as amended.[1]

(d) Investigation of costs

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

(e) Short-term sales

(1) In this subsection:

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

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

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

(3) This section shall not apply to—

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

(B) an electric cooperative.

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

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

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

[1] See References in Text note below.

(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.)

Editorial Notes

REFERENCES IN TEXT

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

AMENDMENTS

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

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

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

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

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

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

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 1988 AMENDMENT

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

LIMITATION ON AUTHORITY PROVIDED

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

costs to be paid by other electric utility companies of such registered holding company. For purposes of this section, the terms 'electric utility companies' and 'registered holding company' shall have the same meanings as provided in the Public Utility Holding Company Act of 1935, as amended [15 U.S.C. 79 et seq.].''

STUDY

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

§ 824f. Ordering furnishing of adequate service

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

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

§ 824g. Ascertainment of cost of property and depreciation

(a) Investigation of property costs

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

(b) Request for inventory and cost statements

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

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

§ 824h. References to State boards by Commission

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

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

(b) Cooperation with State commissions

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

(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.)

§ 824i. Interconnection authority

(a) Powers of Commission; application by State regulatory authority

(1) Upon application of any electric utility, Federal power marketing agency, geothermal power producer (including a producer which is not an electric utility), qualifying cogenerator, or qualifying small power producer, the Commission may issue an order requiring—

(A) the physical connection of any cogeneration facility, any small power production fa-

16 U.S.C. § 825h
(FPA Section 309)

matter under investigation or in question; and any failure to obey such order of the court may be punished by such court as a contempt thereof. All process in any such case may be served in the judicial district whereof such person is an inhabitant or wherever he may be found or may be doing business. Any person who willfully shall fail or refuse to attend and testify or to answer any lawful inquiry or to produce books, papers, correspondence, memoranda, contracts, agreements, or other records, if in his or its power so to do, in obedience to the subpena of the Commission, shall be guilty of a misdemeanor and, upon conviction, shall be subject to a fine of not more than $1,000 or to imprisonment for a term of not more than one year, or both.

(d) Testimony by deposition

The testimony of any witness may be taken, at the instance of a party, in any proceeding or investigation pending before the Commission, by deposition, at any time after the proceeding is at issue. The Commission may also order testimony to be taken by deposition in any proceeding or investigation pending before it, at any stage of such proceeding or investigation. Such depositions may be taken before any person authorized to administer oaths not being of counsel or attorney to either of the parties, nor interested in the proceeding or investigation. Reasonable notice must first be given in writing by the party or his attorney proposing to take such deposition to the opposite party or his attorney of record, as either may be nearest, which notice shall state the name of the witness and the time and place of the taking of his deposition. Any person may be compelled to appear and depose, and to produce documentary evidence, in the same manner as witnesses may be compelled to appear and testify and produce documentary evidence before the Commission, as hereinbefore provided. Such testimony shall be reduced to writing by the person taking the deposition, or under his direction, and shall, after it has been reduced to writing, be subscribed by the deponent.

(e) Deposition of witness in a foreign country

If a witness whose testimony may be desired to be taken by deposition be in a foreign country, the deposition may be taken before an officer or person designated by the Commission, or agreed upon by the parties by stipulation in writing to be filed with the Commission. All depositions must be promptly filed with the Commission.

(f) Deposition fees

Witnesses whose depositions are taken as authorized in this chapter, and the person or officer taking the same, shall be entitled to the same fees as are paid for like services in the courts of the United States.

(June 10, 1920, ch. 285, pt. III, § 307, as added Aug. 26, 1935, ch. 687, title II, § 213, 49 Stat. 856; amended Pub. L. 91–452, title II, § 221, Oct. 15, 1970, 84 Stat. 929; Pub. L. 109–58, title XII, § 1284(b), Aug. 8, 2005, 119 Stat. 980.)

Editorial Notes

AMENDMENTS

2005—Subsec. (a). Pub. L. 109–58 inserted ‘‘, electric utility, transmitting utility, or other entity’’ after ‘‘person’’ in two places and inserted ‘‘, or in obtaining information about the sale of electric energy at wholesale in interstate commerce and the transmission of electric energy in interstate commerce’’ before period at end of first sentence.

1970—Subsec. (g). Pub. L. 91–452 struck out subsec. (g) which related to the immunity from prosecution of any individual compelled to testify or produce evidence, documentary or otherwise, after claiming his privilege against self-incrimination.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–452 effective on 60th day following Oct. 15, 1970, and not to affect any immunity to which any individual is entitled under this section by reason of any testimony given before 60th day following Oct. 15, 1970, see section 260 of Pub. L. 91–452, set out as an Effective Date; Savings Provision note under section 6001 of Title 18, Crimes and Criminal Procedure.

§ 825g. Hearings; rules of procedure

(a) Hearings under this chapter may be held before the Commission, any member or members thereof or any representative of the Commission designated by it, and appropriate records thereof shall be kept. In any proceeding before it, the Commission, in accordance with such rules and regulations as it may prescribe, may admit as a party any interested State, State commission, municipality, or any representative of interested consumers or security holders, or any competitor of a party to such proceeding, or any other person whose participation in the proceeding may be in the public interest.

(b) All hearings, investigations, and proceedings under this chapter shall be governed by rules of practice and procedure to be adopted by the Commission, and in the conduct thereof the technical rules of evidence need not be applied. No informality in any hearing, investigation, or proceeding or in the manner of taking testimony shall invalidate any order, decision, rule, or regulation issued under the authority of this chapter.

(June 10, 1920, ch. 285, pt. III, § 308, as added Aug. 26, 1935, ch. 687, title II, § 213, 49 Stat. 858.)

§ 825h. Administrative powers of Commission; rules, regulations, and orders

The Commission shall have power to perform any and all acts, and to prescribe, issue, make, amend, and rescind such orders, rules, and regulations as it may find necessary or appropriate to carry out the provisions of this chapter. Among other things, such rules and regulations may define accounting, technical, and trade terms used in this chapter; and may prescribe the form or forms of all statements, declarations, applications, and reports to be filed with the Commission, the information which they shall contain, and the time within which they shall be filed. Unless a different date is specified therein, rules and regulations of the Commission shall be effective thirty days after publication in the manner which the Commission shall

prescribe. Orders of the Commission shall be effective on the date and in the manner which the Commission shall prescribe. For the purposes of its rules and regulations, the Commission may classify persons and matters within its jurisdiction and prescribe different requirements for different classes of persons or matters. All rules and regulations of the Commission shall be filed with its secretary and shall be kept open in convenient form for public inspection and examination during reasonable business hours.

(June 10, 1920, ch. 285, pt. III, § 309, as added Aug. 26, 1935, ch. 687, title II, § 213, 49 Stat. 858.)

Statutory Notes and Related Subsidiaries

COMMISSION REVIEW

Pub. L. 99–495, § 4(c), Oct. 16, 1986, 100 Stat. 1248, provided that: ''In order to ensure that the provisions of Part I of the Federal Power Act [16 U.S.C. 791a et seq.], as amended by this Act, are fully, fairly, and efficiently implemented, that other governmental agencies identified in such Part I are able to carry out their responsibilities, and that the increased workload of the Federal Energy Regulatory Commission and other agencies is facilitated, the Commission shall, consistent with the provisions of section 309 of the Federal Power Act [16 U.S.C. 825h], review all provisions of that Act [16 U.S.C. 791a et seq.] requiring an action within a 30-day period and, as the Commission deems appropriate, amend its regulations to interpret such period as meaning 'working days', rather than 'calendar days' unless calendar days is specified in such Act for such action.''

§ 825i. Appointment of officers and employees; compensation

The Commission is authorized to appoint and fix the compensation of such officers, attorneys, examiners, and experts as may be necessary for carrying out its functions under this chapter; and the Commission may, subject to civil-service laws, appoint such other officers and employees as are necessary for carrying out such functions and fix their salaries in accordance with chapter 51 and subchapter III of chapter 53 of title 5.

(June 10, 1920, ch. 285, pt. III, § 310, as added Aug. 26, 1935, ch. 687, title II, § 213, 49 Stat. 859; amended Oct. 28, 1949, ch. 782, title XI, § 1106(a), 63 Stat. 972.)

Editorial Notes

CODIFICATION

Provisions that authorized the Commission to appoint and fix the compensation of such officers, attorneys, examiners, and experts as may be necessary for carrying out its functions under this chapter ''without regard to the provisions of other laws applicable to the employment and compensation of officers and employees of the United States'' have been omitted as obsolete and superseded.

Such appointments are subject to the civil service laws unless specifically excepted by those laws or by laws enacted subsequent to Executive Order No. 8743, Apr. 23, 1941, issued by the President pursuant to the Act of Nov. 26, 1940, ch. 919, title I, § 1, 54 Stat. 1211, which covered most excepted positions into the classified (competitive) civil service. The Order is set out as a note under section 3301 of Title 5, Government Organization and Employees.

As to the compensation of such personnel, sections 1202 and 1204 of the Classification Act of 1949, 63 Stat. 972, 973, repealed the Classification Act of 1923 and all other laws or parts of laws inconsistent with the 1949 Act. The Classification Act of 1949 was repealed Pub. L. 89–554, Sept. 6, 1966, § 8(a), 80 Stat. 632, and reenacted as chapter 51 and subchapter III of chapter 53 of Title 5. Section 5102 of Title 5 contains the applicability provisions of the 1949 Act, and section 5103 of Title 5 authorizes the Office of Personnel Management to determine the applicability to specific positions and employees.

''Chapter 51 and subchapter III of chapter 53 of title 5'' substituted in text for ''the Classification Act of 1949, as amended'' on authority of Pub. L. 89–554, § 7(b), Sept. 6, 1966, 80 Stat. 631, the first section of which enacted Title 5.

AMENDMENTS

1949—Act Oct. 28, 1949, substituted ''Classification Act of 1949'' for ''Classification Act of 1923''.

Statutory Notes and Related Subsidiaries

REPEALS

Act Oct. 28, 1949, ch. 782, cited as a credit to this section, was repealed (subject to a savings clause) by Pub. L. 89–554, Sept. 6, 1966, § 8, 80 Stat. 632, 655.

§ 825j. Investigations relating to electric energy; reports to Congress

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

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

§ 825k. Publication and sale of reports

The Commission may provide for the publication of its reports and decisions in such form and manner as may be best adapted for public information and use, and is authorized to sell at reasonable prices copies of all maps, atlases, and reports as it may from time to time publish. Such reasonable prices may include the cost of compilation, composition, and reproduction. The Commission is also authorized to make such charges as it deems reasonable for special statistical services and other special or periodic serv-

16 U.S.C. § 825*l*
(FPA Section 313)

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

Pursuant to Rule 25(d) of the Federal Rules of Appellate Procedure, I hereby certify that I have this twelfth day of December 2025 served the foregoing document by electronic mail through the Court's CM/ECF system upon the parties to this appellate proceeding.

Dated at Washington D.C., this twelfth day of December 2025.

/s/ Andrea Sarmentero
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