

## Federal Energy Regulatory Commission

## § 385.1003

### § 385.915 Off-the-record communications (Rule 915).

The provisions of Rule 2201 (prohibited communications and other communications requiring disclosure) apply to proceedings pursuant to this subpart, commencing at the time the Secretary issues a proposed remedial order under 10 CFR 205.192, an interim remedial order for immediate compliance under 10 CFR 205.199D, or a proposed order of disallowance under 10 CFR 205.199E.

[Order 607, 64 FR 51234, Sept. 22, 1999]

### § 385.916 Withdrawal of petition for review (Rule 916).

(a) At any time, including after a hearing has been held or convened, the petitioner may submit to the presiding officer, and serve on other participants in the proceeding, a withdrawal of the petition for review of the contested order. The presiding officer will thereupon issue, and serve the participants, an order terminating the proceeding conducted pursuant to this subpart, which order will be effective 10 days after issuance.

(b) Termination of the proceeding under paragraph (a) of this section, may be appealed to the Commission, within 10 days after issuance of the termination order, except that if the Commission does not act on an appeal within 30 days, it is deemed denied. The termination order is stayed pending the appeal. If the Commission rescinds the termination order, the proceeding will continue in accordance with this subpart.

### § 385.917 Sanctions (Rule 917).

Whenever it appears to the Commission that a person is engaged or about to engage in any act or practice which constitutes or will constitute a violation of rule, regulation, or order, made or imposed by the Commission or the presiding officer under this subpart, it may bring an action in the proper court of the United States to enjoin that act or practice and to enforce compliance with the order, and upon a proper showing, a permanent or temporary injunction or decree or restraining order will be granted without bond. The Commission may transmit such

evidence as may be available concerning that act or practice to the Attorney General, who may institute the necessary criminal proceedings.

## Subpart J—Commission Review of Adjustment Request Denials

### § 385.1001 Scope (Rule 1001).

(a) *Applicability.* This subpart applies to proceedings of the Commission held in accordance with section 504(b) of the Department of Energy Organization Act, 42 U.S.C. 719(b), to review orders issued by the Secretary of Energy pursuant to section 504(a) of the Department of Energy Organization Act denying, in whole or in part, requests for adjustments.

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

### § 385.1002 Definitions (Rule 1002).

For purposes of this subpart:

(a) *Commission* includes an officer or employee designated as presiding officer in a proceeding under this subpart.

(b) *Petitioner* means a person who is aggrieved or adversely affected by a contested order, as defined in this section, and who requests a review, pursuant to this subpart, by the Commission of the denial by the Secretary.

(c) *Secretary* means the Secretary of Energy or his delegate.

(d) *Contested order* means the decision or order issued by the Secretary denying, in whole or in part, a request for adjustment.

(e) *Participant* means, as appropriate, the petitioner, the Secretary, or an intervener.

### § 385.1003 Request for nondisclosure of information (Rule 1003).

(a) For purposes of this section, nondisclosure means nondisclosure except to the participants in the proceedings and under the conditions as provided in paragraph (e) of this section.

(b) If a person filing under this subpart claims that some or all of the information contained in a document is exempt from the mandatory public disclosure requirements of the Freedom of

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Information Act (5 U.S.C. 552), is information referred to in 18 U.S.C. 1905, or is otherwise exempt by law from public disclosure, the person:

(1) Will request the presiding officer not to disclose such information, except to the participants in the proceedings and under the conditions as provided in paragraph (e) of this section, which request the person must serve upon the participants in the proceedings;

(2) Will file, together with the document, a second copy of the document from which has been deleted the information for which the person requests nondisclosure and must indicate in the original document that the original document is confidential or contains confidential information;

(3) If the information is claimed to come within the exception in 5 U.S.C. 552(b)(4), for trade secrets and commercial or financial information, it must include a statement specifying why the information is privileged or confidential;

(4) If the information for which nondisclosure is requested is not within the exception in 5 U.S.C. 552(b)(4), it must include a statement specifying the justification for nondisclosure.

(c) If the person filing a document does not submit a second copy of the document from which the appropriate information has been deleted, the presiding officer may assume that there is no objection to public disclosure of the document in its entirety.

(d) If information is submitted in accordance with paragraph (b) of this section, the information will not be disclosed except as provided in the Freedom of Information Act, in accordance with Part 388 of this subchapter and upon request in accordance with paragraph (e) of this section, to participants in the proceeding under the restrictions that the participants may not use or disclose the information except in the context of the proceeding conducted pursuant to this subpart and that the participants must return all copies of the information at the conclusion of the proceeding to the person who submitted the information under paragraph (b) of this section.

(e) At any time, a participant may request the presiding officer to direct a

person submitting information under paragraph (b) of this section to provide that information to the participant requesting the information under this paragraph. The presiding officer will so direct if the participant requesting the information agrees:

(1) Not to use or disclose the information except in the context of the proceeding conducted pursuant to this subpart; and

(2) To return all copies of the information, at the conclusion of the proceeding, to the person submitting the information under paragraph (b) of this section.

(f) At any time, a participant may request the presiding officer to direct that the complete record of prior proceedings, including information determined by the Secretary to be exempt from disclosure, be made available to that participant. The presiding officer will so direct if the participant requesting the complete record agrees:

(1) Not to use or disclose the information determined to be exempt except in the context of the proceeding conducted pursuant to this subpart, and

(2) To return all copies of the information determined to be exempt to the presiding officer at the conclusion of the proceeding.

[Order 225, 47 FR 19022, May 3, 1982, as amended by Order 422, 50 FR 21600, May 28, 1985]

**§ 385.1004 Commencement of proceedings (Rule 1004).**

(a) A petitioner commences proceedings, pursuant to this subpart, by filing with the Commission and serving upon the Secretary and any other participants in prior proceedings on the contested order a petition for review, which must contain:

(1) A copy of the decision or order denying, in whole or in part, request for adjustment (the contested order); and

(2) A complete statement of the petitioner's objections factual or legal to the contested order, including references to all authorities upon which the petitioner relies including but not limited to regulations, rulings, interpretations, and decisions on exceptions and appeals issued by the Department or its predecessor agencies and precedents established by the Commission.