

Federal Energy Regulatory Commission

§ 385.1305

§ 385.1303 Conferences (Rule 1303).

Inasmuch as experience has proved that informal conferences are the means most often used to enable commissions to work together to promote good regulation, affording means whereby common understandings may be reached, and the imposition of inconsistent or conflicting regulations upon companies subject to both Federal and State control may be avoided and means whereby State commissions may secure the assistance in State regulatory work which sections 209 and 17, respectively, of the Federal Power and Natural Gas Acts authorize the Commission to extend, any commission, Federal or State, should always feel free to suggest a conference to another commission, concerning any matter of regulation subject to the jurisdiction of either, with respect to which it is believed that a cooperative conference may be in the public interest. The commission desiring a conference upon any such matter should notify other interested commissions without delay, and thereupon the Commission or a State commission, as may be agreed, will promptly arrange for a conference in which all interested commissions will be invited to be represented.

§ 385.1304 Procedure governing matters referred to a board (Rule 1304).

(a) It is believed that the statutory provisions of sections 209 and 17, respectively, of the Federal Power and Natural Gas Acts, for the reference of a proceeding to a board constituted as therein provided, were designed for use in unusual cases, and as a means of relief to the Commission when it might find itself unable to hear and determine cases before it, in the usual course, without undue delay.

(b) Whenever the Commission, either upon its own motion or upon the suggestion of a State commission or at the request of any interested party, determines that it is desirable to refer a matter arising in the administration either of the Natural Gas Act or Part II of the Federal Power Act, to a board to be composed of a member or members from the State or States affected or to be affected by such matter, the procedure will be as follows: The Commission will send a request to each inter-

ested State commission to nominate a specified number of members to serve on such board. Whenever more than one State is involved, the representation of each State concerned shall be equal, unless one or more of the States affected chooses to waive such right of equal representation. The Commission will specify the functions to be performed by such board in each instance. When the member or members of any board have been nominated and appointed in accordance with the provisions of either section 209 of the Federal Power Act or section 17 of the Natural Gas Act, the Commission will issue an order referring the particular matter to such board, and such order will fix the time and place of hearing, define the "force and effect" which an action of the board will have, the manner in which the proceedings will be conducted, and specify the allowances to be made for the expense of the members of the board. As far as applicable, the rules of practice and procedure as from time to time adopted or prescribed by the Commission will govern such board. The board will have authority to adjourn the hearing from day to day, subpoena witnesses, rule on the relevancy, competency, and materiality of evidence, and will, after hearing all interested parties, submit its report to the Commission.

§ 385.1305 Joint and concurrent hearings (Rule 1305).

(a) The term "joint hearing" used in sections 209 and 17, respectively, of the Federal Power and Natural Gas Acts is understood to cover any hearing in which members of the Commission and members of one or more State commissions may sit together in a proceeding pending before one such commission, whether or not a proceeding or proceedings involving similar or corresponding issues be pending before any other commission.

(b) Two different types of proceedings have been called "joint hearings". One is that type of proceeding where members of one or more State commissions sit with members of the Commission for information or in an advisory capacity. The State commissioners in such case do not develop a record for their respective commissions and may

not, at their own discretion, make a recommendation to the Commission. The other type of joint hearing is often referred to as a "concurrent hearing". Under this procedure the Commission and one or more State commissions sit together to hear and jointly make a record upon a matter over which all of the participating commissions have jurisdiction and responsibility for action.

(c) The Commission or any State commission or commissions should feel free to suggest or request a joint or concurrent hearing at any time. It is believed that the concurrent hearing is the type of cooperative hearing which is likely to be most useful and effective.

(d) Whenever a concurrent hearing has been agreed upon by the Commission and one or more State commissions, the procedure will be:

(1) Each commission will designate the representative or representatives of such commission to sit at such concurrent hearing, and will designate the representative who will be the presiding officer for such commission.

(2) It will be understood that participation in such concurrent hearing will in no way affect the complete control by each commission of the proceeding before it. It will be understood, also, that participation in either a joint or concurrent hearing will in no way preclude any commission from causing to be presented in any such case pertinent evidence with respect to matters in issue.

(3) The representative designated by the Commission will be the presiding officer to announce rulings with respect to which there is no disagreement; and such rulings will be considered concurrent rulings. However, the presiding officer for any commission which does not concur in any ruling may announce a divergent ruling and such divergent ruling, whether with respect to the admissibility of evidence or any other matter, will be considered the ruling for his or her commission.

(4) The record of the concurrent hearing will be the record of each commission participating, except that, if divergent rulings are made, the rulings will be reported so as to separate and distinguish clearly the record of the respective participating commissions and

the evidence admitted in each record, in accordance with the rulings of the respective commissions. If, in any proceeding, the ruling of one presiding officer has the effect of admitting any voluminous exhibit or testimony which is excluded by the ruling of another presiding officer, the taking of such evidence, whenever possible, will be deferred until after the completion of the proceedings which can be conducted under concurrent rulings. When such testimony is taken, the transcript of such evidence will be made available to the participating commissions, if desired.

(5) In all respects concerning which there is no divergence of ruling, the hearing will be conducted in accordance with the rules of practice and procedure prescribed by the Commission, subject to the express understanding that each participating State commission will control its own record and make its own rulings as to the admissibility of evidence and as to other matters affecting its proceedings, and will make its own separate final decision or order therein.

(e) Before either the Commission or a participating State commission will enter any order or orders in a concurrent proceeding, opportunity will be afforded for conference between the Commission and the State commissions participating.

(f) Whenever a joint hearing other than a concurrent hearing is agreed upon, the commissioners which take part therein will agree upon the procedure to be followed in such hearing in advance of the opening of the same. With respect to any concurrent hearing, a special agreement may be made by the commissions taking part therein for a procedure or action differing from that outlined in this plan.

(g) Cooperation between two or more commissions in a concurrent hearing will preclude either from taking the position of an advocate or a litigant. If a commission wishes to take such a position, it will not be a cooperating participant in that proceeding. In such situation the appropriate method of procedure will be intervention under Rule 214.