

§41.1

CERTIFICATION OF COMPLIANCE WITH ACCOUNTING REGULATIONS

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AUTHORITY: 16 U.S.C. 791a-825r, 2601-2645; 42 U.S.C. 7101-7352.

SOURCE: Order 141, 12 FR 8500, Dec. 19, 1947, unless otherwise noted.

CROSS REFERENCE: For rules of practice and procedure, see part 385 of this chapter.

ADJUSTMENTS OF ACCOUNTS AND REPORTS

§41.1 Notice of deficiencies.

If, as the result of an examination by a representative of the Commission of the accounts of a person subject to the act and to the Commission's accounting requirements, or of an examination of any statement or report submitted by such person, it appears that the accounts, or any books or records pertaining to or in support thereof, are not being kept and maintained as required by the Commission, or that the statements or reports prepared and submitted are not in proper form, the failure or deficiency will be called to the attention of such person either formally or informally as the circumstances appear to warrant.

§41.2 Response to notification.

If, as the result of such formal or informal notice, the matter is not adjusted within the time fixed by said notice, or within a reasonable time in case no date is specified, or if there is a disagreement between such person and the Commission or its representative respecting the application or interpretation of the act or requirements of the Commission with respect to the matter at issue, such person will be requested to advise the Commission in writing within a time to be specified whether it consents to the disposition of the questions involved under the shortened procedure provided in this part.

§41.3 Facts and argument.

If the person consents to the matter being handled under such shortened procedure, the person and any other parties interested, including representatives of the Commission, shall submit

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to the Commission, within 30 days after the receipt of notice from the Commission to do so, a memorandum of the facts and, separately stated, of the argument relied upon, to sustain the position taken respecting the matter at issue together with copies in sufficient number to enable the Commission to retain three copies for its own use and make service in accordance with §385.2010 of this chapter, upon all parties designated in said notice. Twenty days will be allowed in which to file a reply by any party who filed an original memorandum. If a person consents to the matter being handled under the shortened procedure, that person has waived any right to subsequently request a hearing under §41.7 and may not later request such a hearing.

[Order 141, 12 FR 8500, Dec. 19, 1947, as amended by Order 225, 47 FR 19056, May 3, 1982; Order 575, 60 FR 4854, Jan. 25, 1995]

§41.4 Form and style.

Each copy of such memorandum must be complete in itself. All pertinent data should be set forth fully, and each memorandum should set out the facts and argument as prescribed for briefs in §385.706 of this chapter.

[Order 141, 12 FR 8500, Dec. 19, 1947, as amended by Order 225, 47 FR 19056, May 3, 1982]

§41.5 Verification.

The facts stated in the memorandum must be sworn to by persons having knowledge thereof, which latter fact must affirmatively appear in the affidavit. Except under unusual circumstances, such persons should be those who would appear as witnesses if hearing were had to testify as to the facts stated in the memorandum.

§41.6 Determination.

If no formal hearing is had the matter in issue will be determined by the Commission on the basis of the facts and arguments submitted.

§41.7 Assignment for oral hearing.

Except when there are no material facts in dispute, when a person does not consent to the shortened procedure, the Commission will assign the

proceeding for hearing as provided by subpart E of part 385 of this chapter. Notwithstanding a person's not giving consent to the shortened procedure, and instead seeking assignment for hearing as provided for by subpart E of part 385 of this chapter, the Commission will not assign the proceeding for a hearing when no material facts are in dispute. The Commission may also, in its discretion, at any stage in the proceeding, set the proceeding for hearing.

[Order 575, 60 FR 4854, Jan. 25, 1995]

§41.8 Burden of proof.

The burden of proof to justify every accounting entry shall be on the person making, authorizing, or requiring such entry.

CERTIFICATION OF COMPLIANCE WITH ACCOUNTING REGULATIONS

§41.10 Examination of accounts.

(a) All Major and Nonmajor public utilities and licensees not classified as Class C or Class D prior to January 1, 1984 shall secure, for the year 1968 and each year thereafter until December 31, 1975, the services of an independent certified public accountant, or independent licensed public accountant, certified or licensed by a regulatory authority of a State or other political subdivision of the United States, to test compliance in all material respects of those schedules as are indicated in the General Instructions set out in the Annual Report, Form No. 1, with the Commission's applicable Uniform System of Accounts and published accounting releases. The Commission expects that identification of questionable matters by the independent accountant will facilitate their early resolution and that the independent accountant will seek advisory rulings by the Commission on such items. This examination shall be deemed supplementary to periodic Commission examinations of compliance.

(b) Beginning January 1, 1976, and each year thereafter, only independent certified public accountants, or independent licensed public accountants who were licensed on or before December 31, 1970, will be authorized to conduct annual audits and to certify to compliance in all material respects, of

those schedules as are indicated in the General Instructions set out in the Annual Report, Form No. 1, with the Commission's applicable Uniform System of Accounts, published accounting releases and all other regulatory matters.

[Order 462, 37 FR 26005, Dec. 7, 1972, as amended by Order 390, 49 FR 32505, Aug. 14, 1984]

§41.11 Report of certification.

Each Major and Nonmajor public utility or licensee not classified as Class C or Class D prior to January 1, 1984 shall file with the Commission a letter or report of the independent accountant certifying approval, together with or within 30 days after the filing of the Annual Report, Form No. 1, covering the subjects and in the form prescribed in the General Instructions of the Annual Report. The letter or report shall also set forth which, if any, of the examined schedules do not conform to the Commission's requirements and shall describe the discrepancies that exist. The Commission shall not be bound by a certification of compliance made by an independent accountant pursuant to this paragraph.

(Sec. 304, 49 Stat. 855; 16 U.S.C. 825c)

[Order 356, 33 FR 143, Jan. 5, 1968, as amended by Order 390, 49 FR 32505, Aug. 14, 1984]

§41.12 Qualifications of accountants.

The Commission will not recognize any certified public accountant or public accountant through December 31, 1975, who is not in fact independent. Beginning January 1, 1976, and each year thereafter, the Commission will recognize only independent certified public accountants, or independent licensed public accountants who were licensed on or before December 31, 1970, who are in fact independent. For example, an accountant will not be considered independent with respect to any person or any of its parents or subsidiaries in whom he has, or had during the period of report, any direct financial interest. The Commission will determine the fact of independence by considering all the relevant circumstances