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ELECTRICITY
REGULATION

Factors Affecting the
Processing of Electric Power
Applications

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Mr. Chairman and Members of the Subcommittee:

We appreciate the opportunity to appear before you today to discuss the findings of our report on the Federal Energy Regulatory Commission's (FERC) processing of applications for approval of proposed wholesale electricity transactions.¹ In that report, we reviewed (1) factors affecting the time that FERC takes to process electric power applications; (2) ways the Energy Policy Act of 1992 might affect FERC's work load, particularly the Commission's new authorities and responsibilities concerning electricity transmission; and (3) potential procedural changes that could reduce application processing time.

In summary, we found the following:

- The processing times for electric power applications depend primarily on the applications' characteristics-- particularly whether or not the applications raise factual, legal, or policy issues or are contested by wholesale customers, third parties, or FERC staff. These factors largely determine the procedures FERC follows. We analyzed the 4,475 applications FERC decided on during fiscal years 1990-92. About 80 percent were "routine"; that is, they did not raise factual, legal, or policy issues and were not contested. FERC staff decided on these applications within an average of 68 days. The remaining applications required the attention of the commissioners. While the average time to process these applications was 275 days, many took years to complete.
- The Energy Policy Act of 1992 is likely to increase the number of wholesale electricity sellers and transactions requiring FERC's approval. Most importantly, the act expanded FERC's authority to order utility companies to provide electricity transmission services. As a result, FERC is likely to begin receiving more applications for such orders. Because its authority to issue such orders prior to the act was limited, FERC has little experience in this area. The effect of transmission applications on FERC's work load is difficult to determine. It depends in part on the volume and complexity of the applications and the extent to which potential buyers and sellers reach voluntary agreements before submitting the applications to FERC.
- Cost-effective approaches exist that could reduce the time FERC takes to decide on applications. Accordingly, our report recommended that the Chair of FERC (1) revise the method for tracking applications in FERC's management

¹Electricity Regulation: Factors Affecting the Processing of Electric Power Applications (GAO/RCED-93-168, July 23, 1993).

evidentiary hearing before one of FERC's administrative law judges (ALJ), or decide on the application directly without a trial-type hearing.

Nonroutine applications that raise legal or policy issues-- rather than questions of fact--are typically decided on directly by the commissioners without the use of a trial-type hearing. For example, FERC has processed roughly 50 market-based rate applications since 1984. While such applications represented a change in the Commission's policy, the facts in these cases were not contested and thus a trial-type hearing was unnecessary. During fiscal years 1990-92, the commissioners decided on 747 applications without a trial-type hearing in an average time of 169 days.

The commissioners typically use a trial-type hearing for those applications in which affected parties and/or FERC staff contest the factual information contained in the application. Contested applications frequently involve factual disputes about wholesale (cost-based) rate increases, in which the basis for the increase (the seller's costs) are disputed by customers or FERC staff. During fiscal years 1990-92, FERC decided on 172 applications that had been previously scheduled for a trial-type hearing. Half were settled voluntarily (before the ALJ issued a decision) in an average of 1.2 years; the other half proceeded through the entire hearing process and took, on average, 2.8 years to decide. As shown in the table in appendix II, all application types included nonroutine applications and these applications required, on average, roughly four times longer to decide than routine applications.

STATUTORY CHANGES COULD INCREASE FERC'S WORK LOAD

The Energy Policy Act of 1992 amended two key statutes that regulate electric utilities: the Federal Power Act and the Public Utility Holding Company Act of 1935 (PUHCA). These amendments, in conjunction with industry changes already under way, are likely to increase (1) applications requesting FERC orders for transmission services and (2) applications for wholesale power transactions, especially those proposing market-based rates. However, the magnitude of these increases and the change, if any, in the level of resources FERC will need to respond are uncertain.

FERC Faces New Role in Electricity Transmission

In 1978, FERC was authorized to mandate the provision of transmission services. However, partly because such orders had to satisfy a number of rigorous criteria, FERC has virtually never used this authority. The 1992 act (1) expanded FERC's

earn greater returns, wholesale suppliers may be more likely to propose market-based, rather than cost-based, rates. The analysis of market-based rates--which includes a review of the seller's and buyer's relative influence in determining the "market" price--differs significantly from traditional cost-based rate applications, which require FERC to review utility cost information. According to FERC officials, substantially fewer issues can be contested in market-based rate applications than in cost-based rate applications. As a result, market-based rate applications are less likely than cost-based rate applications to require a trial-type hearing.

ACTIONS COULD REDUCE AVERAGE PROCESSING TIME

FERC officials agreed that cost-effective approaches exist to further reduce the time it takes to process electric power applications.

First, changes to FERC's automated information system would improve its usefulness as a management tool. We reported in February 1992 that FERC's management information system--the Key Indicator Case Tracking System (KICTS)--did not enable FERC to effectively evaluate its application review process for natural gas pipelines.³ Specifically, KICTS did not retain the original target dates for key phases in the review process. Retaining these dates would have allowed FERC to assess its performance in meeting target dates and identify areas needing improvement. FERC officials agreed with our assessment and altered KICTS to retain these dates for gas pipeline cases.

Similarly, KICTS files used to assess electric power applications could benefit from upgrades to capture certain dates. Under its current design, KICTS does not consistently retain beginning and end dates as applications move through the various stages of FERC's review process. Such information would allow FERC to assess its performance in processing applications and identify bottlenecks in the review process. KICTS also does not capture the number of incomplete applications FERC receives or the time it takes applicants who file incomplete applications to provide missing information. Improving KICTS to capture this information would allow FERC to use KICTS as a management tool for identifying the volume of incomplete applications and the additional time spent processing them--first steps in reducing the incidence of incomplete applications.

Second, systematically analyzing issues arising and information exchanged between applicants and FERC staff could

³Natural Gas: Factors Affecting Approval Times for Construction of Natural Gas Pipelines (GAO/RCED-92-100, Feb. 26, 1992).

number of incomplete applications and the length of time needed for applicants to supply missing information;

- systematically gather data on incomplete applications, through deficiency letters and telephone calls regarding filing requirements, and periodically assess this information to determine if revisions to FERC's filing requirements, policy statements, or other strategies could be used to eliminate or reduce the number of recurring problems; and
- expedite the adoption of a policy, as required by the Administrative Dispute Resolution Act, allowing for the use of additional alternative settlement procedures.

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This concludes our prepared statement. We will be glad to answer any questions that you or other Members of the Subcommittee may have.

**Processing Times for
Routine and Nonroutine Applications
Decided During Fiscal Years 1990-92**

Application type	Routine application		Nonroutine application	
	Number completed	Average (days)	Number completed	Average (days)
Rate changes	1,771	77	313	403
Complaints			75	396
Rehearing requests	1	32	376	152
Qualifying facilities	1,039	32	32	148
Compliance actions	244	99	34	190
Corporate actions	41	90	18	190
Interlocking positions	428	93	7	509
Federal rate review	30	154	11	602
Declaratory orders	2	229	37	294
Court remands			16	154
Total	3,556		919	
Weighted average		68		275

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information system to identify potential bottlenecks, (2) improve the accuracy of applications received by analyzing the number of and reasons for incomplete applications, and (3) increase the use of voluntary settlement procedures when possible by adopting a policy--as required by a 1990 law--designed to encourage alternatives to lengthy trial-type hearings.

BACKGROUND

Under the Federal Power Act, FERC is responsible for ensuring that the rates, terms, and conditions of wholesale electricity transactions are "just and reasonable" and nondiscriminatory. In addition, owners and operators of facilities used in the sale and transmission of wholesale electricity are required to obtain FERC's approval before selling, merging, consolidating, or otherwise disposing of those facilities. Utilities and other sellers of wholesale power that wish to carry out these transactions must submit an application to FERC. Under the Federal Power Act and the Administrative Procedure Act, FERC must follow certain procedural rules in deciding on proposed electric power transactions. These procedures include filing a public notice of the transactions and allowing affected parties--such as utility customers, state utility commission officials, or others--to comment.

Historically, FERC approved proposed transactions largely after ensuring that rates properly reflected the seller's costs, including a predetermined limit on the rate of return; such rates are called cost-based rates. In the 1980s, FERC began approving certain wholesale transactions if it found that they were the result of an operating free market; such rates are called market-based rates. Market-based rates require less regulatory oversight and provide sellers with an opportunity to earn a greater rate of return than they can under cost-based regulation.

TIME IT TAKES TO PROCESS APPLICATIONS DEPENDS ON APPLICATIONS' CHARACTERISTICS

FERC receives a variety of electric power applications. The largest number are rate-change applications--proposals to establish (or modify existing) agreements for the sale and/or transmission of wholesale electric power. About nine other types of applications do not directly involve rates, terms, or conditions, but serve other regulatory or procedural purposes.

As shown graphically in the flowchart in appendix I, routine applications are decided on by the Director of FERC's Office of Electric Power Regulation (OEPR) under authority delegated by the commissioners. In contrast, nonroutine applications must be decided on by the commissioners. Depending on the application's characteristics, the commissioners may either use a trial-type

authority to issue mandatory orders by reducing the number of criteria that must be satisfied and (2) required FERC to acquire and make publicly available information about utilities' transmission capacity and known constraints.

The effects of these amendments on FERC's overall work load are difficult to estimate and could be contradictory. For example, those seeking transmission services may be more likely to request a mandatory order simply because FERC has expanded authority to issue such orders. However, when information about available transmission capacity is made public, those seeking transmission services may be in a better position to negotiate voluntary arrangements with transmission owners, thus precluding the need for a mandatory FERC order. Also, because of FERC's lack of experience in issuing such orders, owners of transmission facilities may be more willing to enter into voluntary arrangements to avoid uncertainty or a FERC order with unfavorable rates, terms, or conditions.

Requests for mandatory orders or approval of voluntary agreements could add to FERC's work load by requiring FERC to undertake complex analyses of transmission systems and the effects of various transmission options--information that it previously has not been required to routinely analyze. FERC officials responsible for electricity regulation stated that they have limited experience in these kinds of analyses and that the effect on FERC's work load of applications requesting mandatory orders is difficult to determine. Specific effects depend on how many transmission applications FERC receives; whether they are contested or raise factual, legal, or policy issues that the Commission must decide; and whether parties can reach voluntary settlements before submitting applications to FERC.

Potential Exists for More Wholesale Transactions

Partly in response to economic and regulatory changes, wholesale electricity markets have grown significantly in recent years. Electricity sold in wholesale transactions now accounts for more than half of the electricity sold to retail customers. As we reported in 1992, amendments to PUHCA are likely to further increase the number of wholesale suppliers in electricity markets and the proportion of electricity generated for wholesale consumption.²

The increase in the number of wholesale suppliers and expanded access to transmission facilities may create or augment wholesale electricity markets. Because of the opportunity to

²Electricity Supply: Potential Effects of Amending the Public Utility Holding Company Act (GAO/RCED-92-52, Jan. 7, 1992).

help reduce the incidence of incomplete applications. FERC staff responsible for processing electric power applications estimated that 30 percent of all rate-change applications fail to satisfy FERC's application filing requirements. To minimize processing time, FERC staff often telephone applicants if information is missing from an uncontested application. FERC staff estimate that they place roughly 250 calls annually. For contested applications, the staff issue formal letters requesting the needed information. These letters are infrequent, averaging about 40 per year during fiscal years 1990-92. Applicants also have the option of telephoning FERC staff to discuss filing requirements before submitting an application. FERC staff estimate that they receive about 200 such calls annually. However, issues raised and information communicated in telephone calls and letters are not analyzed.

Finally, FERC could reduce the number and/or duration of lengthy trial-type hearings by adopting alternative methods of resolving contested applications. As illustrated in the bar graph in appendix III of this statement, our analysis of applications completed during fiscal years 1990-92 clearly indicates that those requiring trial-type hearings take significantly more time and that processing time can be reduced if the parties settle voluntarily. FERC has had some success in encouraging parties to reach voluntary settlements: Half of the applications scheduled for a trial-type hearing that were decided on during fiscal years 1990-92 were settled voluntarily.

The Administrative Dispute Resolution Act, enacted in November 1990, authorized federal agencies, until October 1, 1995, to use measures other than trial-type hearings, including arbitration and mediation, to resolve cases. The act requires almost all government authorities, including FERC, to adopt a policy addressing the use of alternative settlement procedures but does not specify a mandatory deadline. As of August 2, 1993, FERC had not yet adopted such a policy under the act.

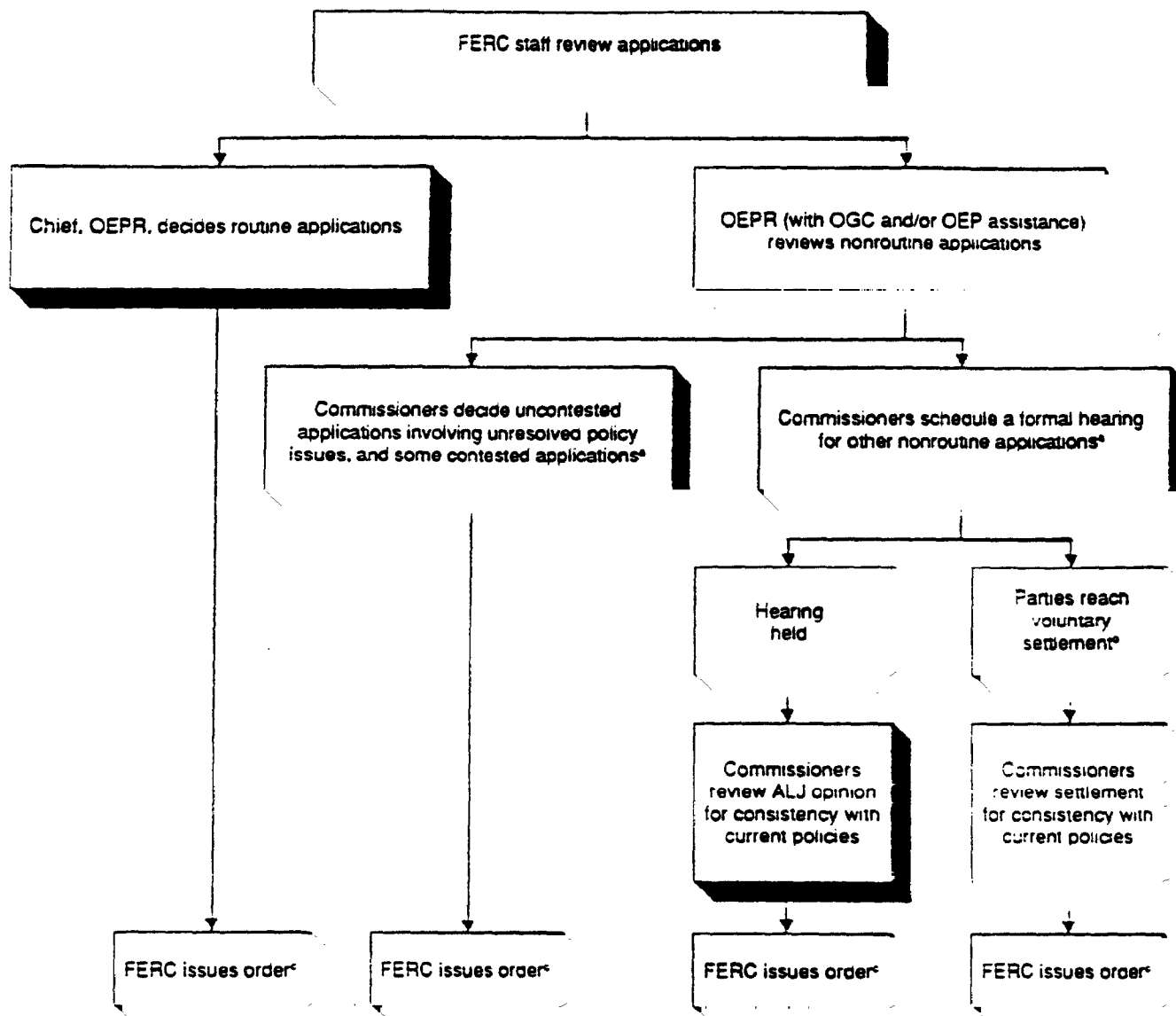
CONCLUSIONS AND RECOMMENDATIONS

Our work has shown that FERC has opportunities to decrease the time it takes to process electric power applications. These opportunities are especially important considering the potential that FERC's work load will increase as a result of the Energy Policy Act.

Accordingly, our report recommends that FERC's Chair

- upgrade FERC's management information system to retain (1) data reflecting start and completion dates of when applications' moved through the various stages of the application review process and (2) data indicating the

Overview of FERC Application Review Process

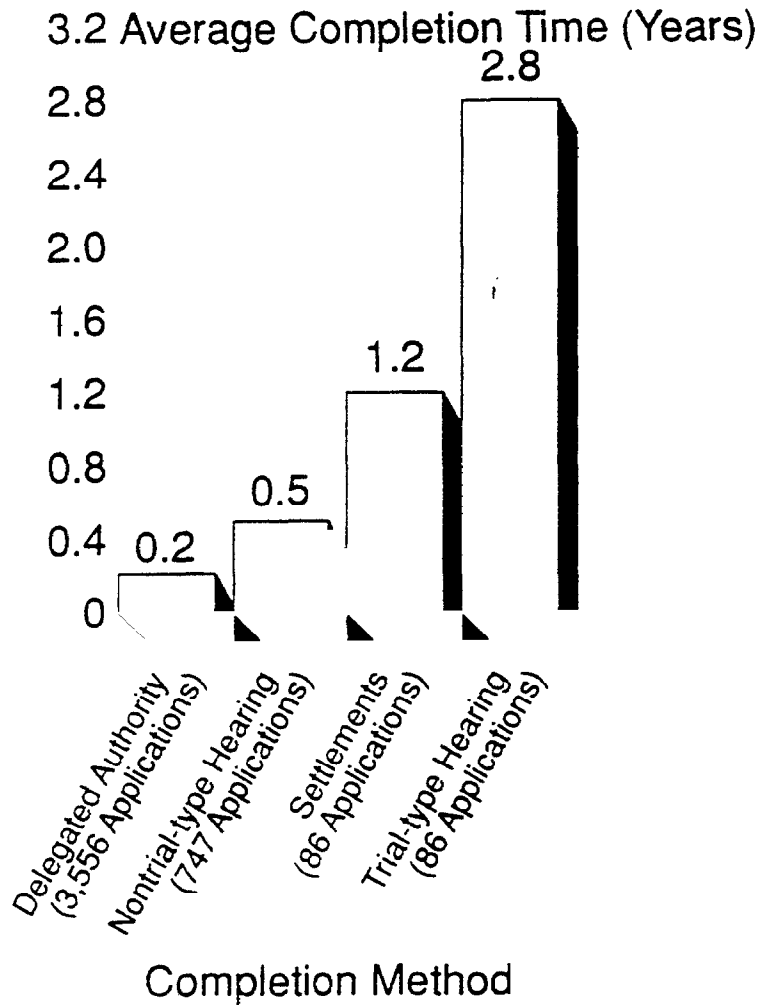


*At this point, the commissioners may reject part or all of an application.

†Although most settlements occur at this stage, settlements can occur before a hearing is scheduled or after a hearing.

‡Although an application has been decided at this point, a request for rehearing necessitates additional Commission action, which concludes by the Commission issuing an order on rehearing.

GAO Applications Processed FY 1990-92



Note: The total number of applications completed was 4,475.

Source: GAO analysis of FERC data

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