9-23-87
Vol. 52 No. 184
Pages 35679-35904

federal register

Wednesday
September 23, 1987

HeinOnline -- 52 Fed. Reg. I 1987

customers. NRECA asserts that it would be inappropriate to increase the CWIP allocation of the current wholesale class based upon claims by the supplier that it will be attracting new wholesale customers. NRECA requests the Commission to make clear that foward looking allocation ratios will serve only to *reduce* wholesale CWIP responsibility that otherwise would attach from utilizing test year allocation factors. With respect to the final rule's discussion of obligation to serve, NRECA claims that the record does not support treating prodigal customers and new customers differently. Further, it argues that there are serious questions about extending the benefits of CWIP payments made by current wholesale customers to new customers. It suggests that a solution may be to have CWIP tracked on a customer basis.

In Order No. 474, the Commission adopted the forward looking allocation ratio approach to prevent cross-subsidization of customers. This means that there may be times when individual wholesale customers or even the entire wholesale group will properly require an allocation of CWIP through forward looking allocation ratios that exceeds that which would be produced using test period ratios, *i.e.*, to track load growth conditions where there is more rapid wholesale growth than retail growth. This would not be the case however, where the entirety of the greater wholesale growth is the product of the new prospective wholesale customer. In these circumstances, the new load would be excluded from the numerator of the forward looking allocation ratio representing the projected wholesale load of the current customers, but it would be included in the denominator representing the estimated system territorial load. The ultimate effect would be to not allocate the CWIP attributable to the new customer to the current wholesale customers.

NRECA is correct in pointing out that there may be instances when the only proper way to treat the power supply independence plans of a wholesale customer will be to require consideration of individual customer usage rather than class usage in the determination of appropriate forward looking ratios. However, the final rule specifically provides for this at § 35.26(c)(4) by requiring supporting documentation to permit examination and verification of the forward looking allocation ratio's recognition of each wholesale customer's plans, if any, for future alternative or supplementary power supplies. For purposes of preventing anticompetitive effects, including CWIP-induced price squeeze and double whammy, § 35.26(a)(4) also provides that sufficient recognition of such plans may require separate customer groups or provide for a rate design incorporating selected CWIP project credits. This acknowledges that all wholesale customers may not pursue power supply independence. Separate rate treatment for those wholesale customers anticipating alternative power supplies may be necessary to give these customers a full accounting of this.

Concerning NRECA's argument that there is no bases for treating prodigal customers and new wholesale customers differently regarding provision of service, the final rule expressly states that they are to be treated the same.[39]

IV. Effective Date

The change to the Commission's regulations in this order is effective October 23, 1987.

List of Subjects in 18 CFR Part 35

Electric power rates, Electric utilities, Reporting and recordkeeping requirements.

V. The Commission Orders

In light of the foregoing, the Commission grants rehearing in part, denies rehearing in part, clarifies Order No. 474, and amends Part 35, Chapter I, Title 18 of the Code of Federal Regulations, as set forth below.

By the Commission. Commissioner Stalon concurred with a separate statement to be issued later.

Kenneth F. Plumb

Secretary.

PART 35—FILING OF RATE SCHEDULES

1. The authority citation for Part 35 continues to read as follows:

Authority: Department of Energy Organization Act, 42 U.S.C. 7101–7352 (1992); Exec. Order No. 12009, 3 CFR 1978 Comp., p. 142; Independent Offices Appropriations Act, 31 U.S.C. 9701 (1982); Federal Power Act, 16 U.S.C. 791a–825r (1982); Public Utility Regulatory Policies Act, 16 U.S.C. 2601–2645 (1982).

2. In § 35.26, paragraphs (b)(1) and (g)(2) are revised to read as follows:

§ 35.26 Constuction work in progress.

* * * * *

(b) *Definitions.* For purposes of this section:

(1) "Constuction work in progress" or "CWIP" means any expenditure for public utility plant in process of construction that is properly included in Accounts 107 (construction work in progress) and 120.1 (nuclear fuel in process of refinement, conversion, enrichment, and fabrication) of Part 101 of this chapter, the Uniform System of Accounts Prescribed for Public Utilities and Licensees Subject to the Provisions of the Federal Power Act (Major and Nonmajor), that would otherwise be eligible for allowance for funds used during construction (AFUDC) treatment.

* * * * *

(g) * * *

(2) *Preliminary relief.* If an intervenor in its initial pleading alleges that a prices squeeze will occur as a direct result of the public utility's request for CWIP pursuant to § 35.26(c)(3) of this part and makes a concrete, substantial showing that it is likely to incur imminent, irreparable harm if such CWIP is allowed, the Commission will consider preliminary relief at the suspension stage of the case pursuant to paragraph (g)(4) of this section. Whether or not preliminary relief is granted at the suspension stage will not preclude consideration of further remedies later in the proceedings, if warranted.

* * * * *

3. In § 35.26(c)(4), the citation to "§§ 35.26 (1), (2), and (3) of this part" is revised to read "§§ 35.26(c) (1), (2), and (3) of this part".

[FR Doc. 87–21888 Filed 9–22–87; 8:45 am]

BILLING CODE 6717-01-M

[39] 52 FR 23,961, III FERC Statutes and Regulations ¶ 30,751 at 30,720.

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Parts 211, 212, and 225

Contracts for Prospecting and Mining on Indian Lands; Oil and Gas and Geothermal Contracts

September 18, 1987.

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Final rule; deferred of effective date.

SUMMARY: A final rulemaking document was published in the **Federal Register** on August 24, 1987 at 52 FR 31916. The effective date of the document was listed as September 23, 1987. The Bureau of Indian Affairs has decided it would be in the public interest to defer, by this notice, the effective date for an additional 30 days to allow the public sufficient time to review the final

HeinOnline -- 52 Fed. Reg. 35702 1987

rulemaking document prior to its becoming effective.

Interested persons wishing to provide additional comments on the final rulemaking document may do so in writing to the individual identified in the **"FOR FURTHER INFORMATION CONTACT"** section.

EFFECTIVE DATE: The final rulemaking document for 25 CFR Parts 211, 212, and 225 is effective October 24, 1987.

FOR FURTHER INFORMATION CONTACT: Joseph Johnston, Chief, Division of Energy and Mineral Resources, Bureau of Indian Affairs, Room 340-SIB, 1951 Constitution Avenue NW., Washington, DC 20245; telephone (202) 343-3722.

W.P. Ragsdale,

Acting Assistant Secretary—Indian Affairs.

[FR Doc. 87-21875 Filed 9-22-87; 8:45 am]

BILLING CODE 4310-02-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-4-FRL-3266-1; FL-020]

Approval and Promulgation of Implementation Plans; Florida; Smart-Pak Industries Consent Order

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA today approves the revision to the Florida State Implementation Plan (SIP) to include the Smart-Pak Industries Consent Order. This Consent Order was negotiated with Smart-Pak Industries by the Florida Department of Enviromental Regulation (DER) and EPA Region IV. The intent of the Consent Order is to ensure federal enforceability of negotiated permit conditions which limit the volatile organic compound (VOC) emissions from the facility to less than 100 tons per year (TPY). The State has certified that, based on the available evidence, implementation of the Consent Order will not jeopardize the attainment and maintenance of ambient air quality standards.

DATE: This action is effective November 23, 1987 unless notice is received within 30 days that someone wishes to submit adverse or critical comments.

ADDRESSES: Copies of the materials submitted by Florida may be examined during normal business hours at the following locations:

Environmental Protection Agency, Region IV Air Programs Branch, 345 Courtland Street NE., Atlanta, Georgia 30365

Florida Department of Environmental Regulation, Bureau of Air Quality Management, Twin Towers Office Building, 2600 Blair Stone Road, Tallahassee, Florida 32301

Public Information Reference Unit, Library Systems Branch, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460

FOR FURTHER INFORMATION CONTACT: Jill Perry, Air Programs Branch, EPA Region IV, at the above address and telephone number (404) 347-2864 or FTS 257-2864.

SUPPLEMENTARY INFORMATION: On November 21, 1983, the Florida DER issued an operating permit, No AO 13-68559, to the Smart-Pak Industries facility in Dade County. The Smart-Pak facility includes five graphic arts rotogravure presses which have the potential to emit more than 100 TPY of VOC emissions. These presses are subject to the emission limiting standards in the reasonably available control technology (RACT) regulation for graphic arts, Rule 17-2.650(1)(f)16, and to the compliance schedules required by Rule 17-2.650(1)(b)e. Smart-Pak did not apply for a construction permit by January 1, 1981, date specified in Rule 17-2.650(1)(b)e; final compliance with the applicable emission limiting standards would have been required by September 1, 1982. Instead, Smart-Pak elected to reduce VOC emissions by instituting internal management and housekeeping procedures between September 30, 1980, and September 30, 1983. These actions reduced the actual VOC emissions from over 200 TPY to less than 100 TPY. However, EPA determined that the specific conditions of the operation permit were not federally enforceable. Therefore, the Florida DER commenced negotiations for a Consent Order with Smart-Pak Industries.

The Consent Order establishes: (1) Requirements which will limit VOC emissions from the facility to less than 100 TPY; (2) measures to ensure that Smart-Pak Industries will continously comply with the applicable emission limiting standard; (3) penalties for failure to comply with the applicable provisions of the Consent Order; and (4) penalties for failure to comply with the applicable compliance schedule in the Florida Administrative Code Chapter 17-2. The provisions of the Consent Order are consistent with the requirements of the Florida Administrative Code Chapter 17-2 which requires the application of RACT level controls to VOC sources in ozone nonattainment areas. On March 21, 1986, the Consent Order was signed, and on June 17, 1986, it was adopted as a revision to the Florida SIP to ensure federal enforceability. On August 14, 1986, the Florida DER submitted the Consent Order to EPA for Approval.

For more detailed information, please refer to the Technical Support Document. This document is available for inspection at the EPA Region IV office.

Final Action

The Consent Order meets EPA requirements. This action is being taken without prior proposal because the change is noncontroversial and EPA anticipates no comments on it. The public should be advised that this action will be effective 60 days from the date of this **Federal Register** notice. However if notice is received within 30 days that someone wishes to submit adverse or critical comments, this action will be withdrawn and two subsequent notices will be published before the effective date. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period. Therefore, EPA is today approving the revision to the Florida SIP.

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities (see 46 FR 8709).

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 23, 1987. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air Pollution Control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone.

Note: The Director of the Federal Register approved the incorporation by reference of the Florida SIP on July 1, 1982.

Date: September 17, 1987.

Lee M. Thomas,

Administrator.

Part 52 of Chapter I, Title 40, Code of Federal Regulations, is amended as follows:

HeinOnline -- 52 Fed. Reg. 35703 1987