

Energy Bar Association

EBA Energizer: Section 205/206 Fundamentals
and Insights

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Agenda

- Section 1: Introduction to FPA Section 205/206 Filings
- Section 2: The Importance of a Properly Prepared and Documented Filing
- Section 3: What to Expect Procedurally

Section 1

- Introduction to FPA Section 205/206 Filings

Rate Regulation Under the Federal Power Act

- FERC regulates the (1) rates, terms, and conditions (2) by which “public utilities” (3) transmit electric energy in interstate commerce or(4) make wholesale sales of electric energy in interstate commerce.
 - 16 U.S.C. § 824(b).
- Structure of the Federal Power Act:
 - FPA Section 205, 16 U.S.C. § 824d; and
 - FPA Section 206, 16 U.S.C. § 824e.

FPA Section 205

- First Five Sub-Parts:
 - (a) rates must be just and reasonable;
 - (b) rates must not be unduly discriminatory;
 - (c) rates must be on file;
 - (d) changes can only be made via timely filings that are properly noticed; and
 - (e) effective date may be suspended for up to five months.

Section 205 Proceedings

- Initial filings submitted by “public utilities”
 - Assigned an “ER” docket number.
 - Can be submitted on behalf of non-FERC jurisdictional entities.
 - Stated rate v. formula rate.
 - Are such filings “required?”
 - What is the appropriate scope of such a filing?
- Burden of proof/persuasion
- Next steps
 - Interventions, comments, and protests are generally due within 21 days of filing.
 - FERC action required within 60 days of filing.
 - Preview of Section 3 (slides 21-24).

FPA Section 206

- First Two Sub-Parts:
 - (a) Existing rate cannot be illegal and rate to be “thereafter observed ” must be legal; and
 - (b) requires FERC to establish a refund effective date.

Section 206 Proceedings

- Complaints are submitted by “[a]ny person” (*e.g.*, wholesale customers, state public utility commissions, other public utilities, etc.)
 - Assigned an “EL” docket number.
 - Requires a two-part showing. Or does it?
 - Must comply with procedural requirements in Rule 206.
 - What is the appropriate scope of a complaint?
 - What about non-jurisdictional entities?
- FERC may initiate Section 206 investigations

Section 206 Proceedings, cont.

- Burden of proof/persuasion
- Next steps
 - Answers by respondent, interventions, and comments are generally due within 20 days of filing.
 - Answers must comply with requirements in Rule 213.
 - No specified time period for FERC action.
 - Preview to Section 3 (slides 21-24).

Section 2

- The Importance of a Properly Prepared and Documented Filing

Basic Components of a 205 Filing

- Revenue Requirement & Cost of Service Study
- Cost of Capital
- Load Flow Studies and Technical Studies
- Rate Design (Stated or Formula Rate)
- Testimony in Narrative Form to Explain these Technical Elements

Revenue Requirement Formula

- Revenue Requirement Recovers
 - Operating & Maintenance Expenses (including Litigation Expense)
 - Depreciation
 - Taxes
 - Rate of Return (equity and debt service) on Rate Base
- Rate Base
 - Regulatory concept that represents the used and useful set of assets upon which the utility is able to recover a return
 - Typically based on net plant plus allowances for working capital, general plant, and other items; ADIT and customer contributions principal offsets.
- Case Stated on a Test Year Basis

Cost of Service Study

- A study that identifies the appropriate costs of providing transmission service for the purposes of developing a revenue requirement.
- Objective is to state the cost of the transmission system for the purpose of rate recovery
 - Note: transmission assets may be part of a stand-alone transmission only system; or
 - Part of an integrated distribution and transmission system.
 - Established standards and approaches for stating transmission assets exist.
 - FERC 7-Factor Test
 - Tariff Specific (Attachment AI – SPP OATT example)
 - Other

Uniform System of Accounts

- Principal Accounts Used in Transmission COS
- Transmission Plant Accounts (Acct. 350-359)
 - Acct 353 Station Equipment
 - Acct 354 Towers & Fixtures
 - Acct 355 Poles and Fixtures
- Accumulated Depreciation
 - Acct 108 – Accumulated Depreciation
 - Note: Ledger must separate transmission from other assets
- Transmission O&M Accounts (Acct. 560-590)
 - Acct. 560-566
 - Maintenance 569-573
- Depreciation Expense – Account 403

Cost of Capital

- The allowed rate of return on invested capital
- A hypothetical figure that often attracts a high degree of debate
- Many factors considered including:
 - Size of company and risk
 - Two Step Discounted Cash Flow (DCF) analysis
 - Other factors
- Recent FERC Opinion 531¹ established a tighter dead-band around which awards could be considered.
- Opinion used two-step DCF and established zone of reasonableness between 7.03% and 11.74%; other factors can affect appropriate level within zone

¹*Martha Coakley, Massachusetts Attorney General v. Bangor Hydro-Electric Co.*, Opinion No. 531, 147 FERC ¶ 61,234 (2014), *order on paper hearing*, Opinion No. 531-A, 149 FERC ¶ 61,032 (2014), *reh'g denied*, Opinion No. 531-B, 150 FERC ¶ 61,165 (2015), *appeal docketed*, *Emera Maine v. FERC*, No. 15-1118 (D.C. Cir. April 30, 2015).

Rate Design

- Two options for Rate Design: Fixed (Stated) Rate and Formula Rate
- Fixed Rate – rate is set for a specific term and does not change during that time
- Formula Rate – rate is set to recover costs using a specific formula to collect revenue requirement components
- Each rate has specific trade-offs that must be evaluated as part of filing planning.

Special Studies and Additional Support

- It is often helpful to provide additional studies and areas of support to make sufficient demonstration of cost causative link to transmission or to support other regulatory showings:
 - Load flow studies: To identify how system is used; to prevent double recovery of revenue requirement
 - Capitalized overhead studies: To support the level of operating and general expense supporting capital projects that should be reclassified as asset related
 - Other studies specific to the filing circumstance

Areas of Debate

- What is a transmission asset by regulatory standards?
 - Non-radial, interconnected to larger bulk system, generator step-up units excluded, etc.
- How much A&G and General Plant goes to support transmission function? Other functions?
- What is the appropriate level of Return on Equity for the transmission utility?
- Are the assets used by the utility for native load or other sales?
- Other issues

Common Evidentiary Pitfalls

- Rationale lacking for establishing that assets and expenses support transmission service
- Clear cost causal link between allocation of costs between transmission and other functions does not exist
- Lack of well documented cost of service study
- Insufficient support for cost of capital request
- Filing does not meet basic content requirements established by FERC

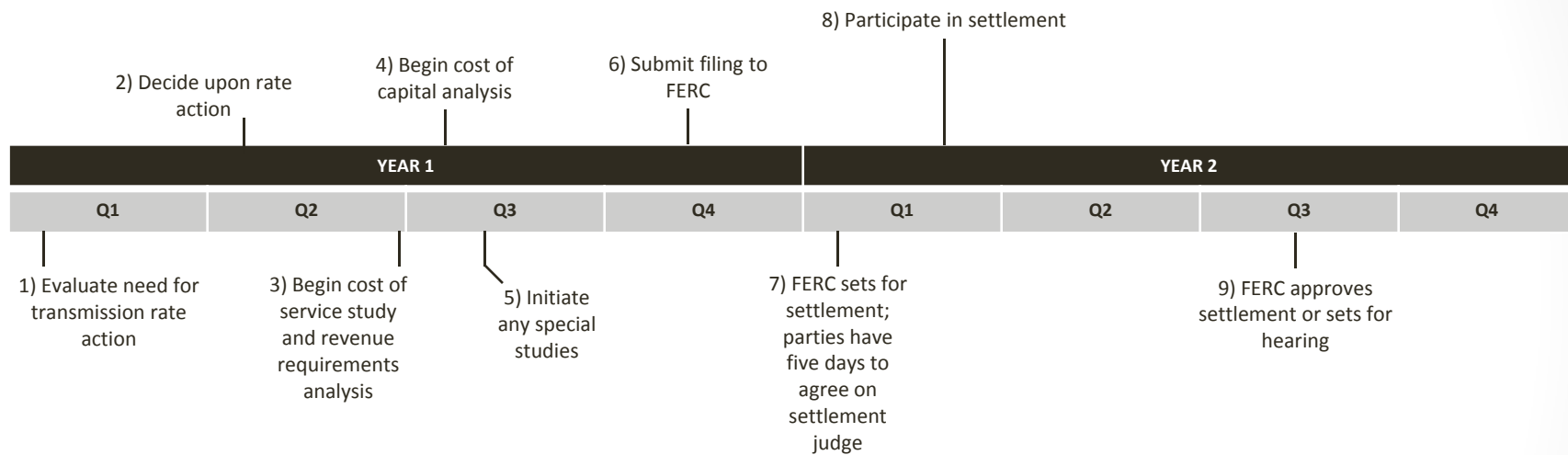
Basic Components of a 206 Filing

- Similar to 205 Filing (depending on area challenged)
- Difficulty in Obtaining Information Sufficient to Meet Burden?

Section 3

- What to Expect Procedurally

Illustrative Section 205 Settlement Timeline



Hearing Tracks for Litigated Cases

- Simple, Track I: Initial Decision Within 29.5 Weeks of Order Designating Presiding Judge
- Complex, Track II: Initial Decision Within 47 Weeks of Order Designating Presiding Judge
- Exceptionally Complex, Track III: Initial Decision Within 63 Weeks of Order Designating Presiding Judge

From Initial Decision to Final Action by FERC

- Briefs *on* Exceptions to the Initial Decision are Due within 30 days of Issuance
 - Rule 711(a)(1)
- Briefs *Opposing* Exceptions are Due within 20 Days of Filing Briefs *on* Exceptions
 - Rule 711(a)(ii)
- FERC Opinions Generally Issued within 12 to 18 Months of Issuance of Initial Decision
- FERC Order on Rehearing may be Issued within another 12-24 Months—This is the order that is subject to judicial review

Other Considerations in Section 206 Proceedings

- Expect “Pancaked” Complaints?
- Consolidation of “Pancaked” Complaints?

Appendix

Sampling of 205/206 Proceedings

Type	Filer	Docket Reference	Description
205 Filings			
Public Utility Stated Rate	Pacific Gas & Electric Company	ER16-2320	Application to increase existing transmission revenue requirement
Public Utility Formula Rate Template with No Cost of Service Elements	NextEra Energy Transmission Southwest, LLC	ER16-2720	Petition to implement a formula rate structure
Non-FERC Jurisdictional Stated Rate (Municipality)	The Central Nebraska Public Power & Irrigation District	ER15-279	Revisions to RTO OATT to implement a stated rate for a non-jurisdictional municipal entity
Non-FERC Jurisdictional Stated Rate (Rural Electric Cooperative)	Lea County Electric Cooperative	ER14-1225	Revisions to RTO OATT to implement a stated rate for a non-jurisdictional electric cooperative
206 Filings			
Complaints Against MISO Transmission Owners (return on equity)	Association of Businesses Advocating Tariff Equity	EL14-12 and EL15-45	ROE complaints against MISO Transmission Owners
<i>Kansas Corporation Commission v. Westar Energy Inc.</i>	Kansas Corporation Commission	EL14-93	ROE complaints brought by Kansas Corporation Commission against Westar Energy Inc.
<i>FERC Investigation viz. Southwest Power Pool</i>	Federal Energy Regulatory Commission	EL16-91	Reasonableness of SPP tariff with regards to non-jurisdictional utilities' revenue requirements

7 Factor Test

In Order 888, the FERC set out a seven-factor test to distinguish distribution facilities from transmission facilities when establishing whether the delivery component of an unbundled retail power sale was transmission or distribution:

- local distribution facilities are normally in close proximity to retail customers
- local distribution facilities are primarily radial in character
- power flows into local distribution systems, and rarely, if ever flows out
- when power enters a local distribution system, it is not reconsigned or transported on to some other market
- power entering a local distribution system is consumed in a comparatively restricted geographic area
- meters are based at the transmission/local distribution interface to measure flow into the local distribution system
- local distribution systems will be of reduced voltage

SPP Criteria for Inclusion of Facilities

- Non-radial power lines, substations, and associated facilities operating at ≥ 60 kV as well as radial lines (including open loops) and associated facilities operating at ≥ 60 kV that serve two or more customers
- Facilities connecting internal zones to each other and that connect SPP with surrounding entities
- Equipment necessary to control & protect Transmission Facilities
- For substations connected to transmission lines where power is transformed from ≥ 60 kV to < 60 kV, facilities on the high voltage side are included
- The Portion of DC interconnections with areas outside of SPP that are owned by a Transmission Owner within SPP (including < 60 kV)
- Facilities operated < 60 kV that have been determined to be transmission via the 7 factor test in FERC Order 888
- Excludes: Generator step-up transformers & generator leads, radial lines from a generating station to a substation or a transmission switching station, and Direct Assignment Facilities

Summary Cost of Service Study

A Line No	B Description	C FERC Account	D Reference	E Transmission Total
RATE BASE				
Gross Plant				
1	Relaying Equipment & Battery	334	Worksheet B	\$250,000
2	Transmission (Substations primarily)	350, 352, and 353	Worksheet B & C	2,200,000
3	Transmission Plant Towers & Fixtures	354	Worksheet B	4,000,000
4	General Plant	389-398	Worksheet B	60,000
5	Intangible Plant (FERC License)	303	Worksheet B	90,000
6	Construction Work Orders (CWO)		Worksheet D	410,000
7	<i>Subtotal Gross Plant</i>			<u>\$7,010,000</u>
Accumulated Depreciation				
8	Relaying Equipment & Battery	108	Worksheet B	\$(25,000)
9	Transmission (Substations & Towers)	108	Worksheet B & C	(1,000,000)
10	General Plant	108	Worksheet B	(55,000)
11	Intangible Plant	108	Worksheet B	(50,000)
12	<i>Subtotal Accumulated Depreciation</i>			<u>\$(1,130,000)</u>
13	Net Plant			\$5,880,000
14	Working Capital		Worksheet B	20,000
15	Materials	154	Worksheet M	35,000
16	Total Rate Base			<u>\$5,935,000</u>
EXPENSES				
17	O&M	561, 562, 569,570	Worksheet E	\$400,000
18	Office Related Expenses	535	Worksheet E	1,000
19	OPEB & Pension Obligations		Worksheet E	4,000
20	A&G	909-932	Worksheet E	8,000
21	Control Center	537	Worksheet E	35,000
22	FERC License Expense	537, 545	Worksheet E	5,000
23	FERC License Fees	928	Worksheet E	1,000
24	<i>Subtotal Operating Expenses</i>			<u>\$454,000</u>
DEPRECIATION				
25	Relaying Equipment & Battery	403	Worksheet H	\$6,000
26	Transmission (Substations & Towers)	403	Worksheet H	50,000
27	General Plant	403	Worksheet H	2,000
28	Intangible Plant	403	Worksheet H	3,000
29	<i>Subtotal Depreciation</i>			<u>\$61,000</u>
RETURN AND OTHER EXPENSES				
30	Return on Rate Base		Worksheet J	534,150
31	Litigation Expense		Worksheet I	120,000
32	Participation Fees		Worksheet L	7,000
33	TOTAL REVENUE REQUIREMENT BEFORE CREDIT			<u>\$1,176,150</u>
34	Revenue Credit		Worksheet K	176,775
35				-
36	Annual Transmission Revenue Requirement (ATRR)			<u>\$1,352,925</u>

Resources

- FPA Section 205,
<https://www.law.cornell.edu/uscode/text/16/824d>
- FPA Section 206,
<https://www.law.cornell.edu/uscode/text/16/824e>
- 18 C.F.R. 385.206,
<https://www.law.cornell.edu/cfr/text/18/385.206>
- 18 C.F.R. 385.213,
<https://www.law.cornell.edu/cfr/text/18/385.213>
- 18 C.F.R. 385.711,
<https://www.law.cornell.edu/cfr/text/18/385.711>

Resources, cont.

- Available Settlement Judges,
<http://www.ferc.gov/legal/adr/avail-judge.asp>
- FERC Hearing Tracks,
<http://www.ferc.gov/legal/admin-lit/time-sum.asp>
- FERC Discovery Timelines,
<https://www.ferc.gov/legal/admin-lit/time-dis.asp>

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