

explain and justify the use of different indices for pricing coordination sales and dispatch) makes the source of the index irrelevant. Accordingly, Illinois Power argues, utilities should not be burdened with having to make rate filings with the Commission (see 18 CFR 35.23(b)) indicating their choice of indices.

Commission Ruling

We disagree. Public utilities must indicate their choice of indices so that the Commission can determine whether the selling utility is using consistent criteria for pricing coordination sales and in dispatch decisions. If the selling public utility is not using the same index in its dispatch decisions as in pricing coordination sales (or does not explain and justify the difference if it uses different indices), there is no assurance that the index reflects the utility's incremental costs. Also, if there is no requirement that the selling utility indicate the index or combination of indices to be used in its filing, the seller may simply choose an index with the highest price at the time of the transaction, rather than the index that best reflects its incremental cost. Finally, the index or indices must be filed since they are part of the formula rate. Accordingly, we will not clarify the Policy Statement and Interim Rule as Illinois Power requests.

C. Federal vs. State Jurisdiction

The Pennsylvania Commission commends this Commission for its prompt consideration of EEI's application and for expedited issuance in this proceeding of the Policy Statement and Interim Rule. Nevertheless, the Pennsylvania Commission expresses concern that the Commission did not fully address all jurisdictional issues arising from EEI's application.

Specifically, the Pennsylvania Commission expresses concern with the Commission's decision in the Policy Statement to allow utilities to value emissions allowances at their incremental price, based on a market index. The Pennsylvania Commission states that it fully understands, and does not challenge, the basis for this decision—to encourage the development of a vigorous trading market and to provide for consistent rate treatment for emissions allowances in coordination sales rates. The Pennsylvania Commission also states, however, that it is compelled under Pennsylvania state law to value emissions allowances on the basis of historic costs for retail ratemaking purposes. Citing "jurisdictional

uncertainty," the Pennsylvania Commission urges this Commission to clarify that the Policy Statement is limited in scope to Commission-jurisdictional rates and is not intended to preempt state ratemaking treatment of emissions allowances in state jurisdictional rates.

Commission Ruling

We clarify that the general jurisdictional pronouncements made in the Policy Statement and Interim Rule are intended to address only the Commission's consideration of FERC-jurisdictional rates. The Commission has not made any preemptive determination as to any ratemaking treatment of emissions allowances to be applied at the retail level by the States. Whether there would be any preemption would have to be determined based on the facts of a particular case.

V. Environmental Statement

Commission regulations require that an environmental assessment or an environmental impact statement be prepared for any Commission action that may have a significant adverse effect on the human environment.¹² The Commission has categorically excluded certain actions from this requirement as not having a significant effect on the human environment.¹³ No environmental consideration is necessary for the promulgation of a rule that involves electric rate filings that public utilities submit under sections 205 and 206 of the FPA and the establishment of just and reasonable rates.¹⁴ Because this final rule involves such filings submitted under sections 205 and 206 of the FPA and the establishment of just and reasonable rates, no environmental consideration is necessary.

VI. Regulatory Flexibility Act Certification

The Regulatory Flexibility Act (RFA)¹⁵ requires rulemakings to either contain a description and analysis of the effect that the rule will have on small entities or to certify that the rule will not have a substantial economic impact on a substantial number of small entities. Because most, if not all, of the entities that would be required to comply with this rule are large public utilities that do not fall within the

RFA's definition of small entities,¹⁶ the Commission certifies that this rule will not have a "significant impact on a substantial number of small entities."

VII. Information Collection Statement

The Office of Management and Budget's (OMB) regulations¹⁷ require that OMB approve certain information collection requirements imposed by an agency. This rule neither contains new information collection requirements nor significantly modifies any existing information collection requirements in Part 35; therefore, it is not subject to OMB approval. However, the Commission will submit a copy of this rule to OMB for information purposes only.

VIII. Effective Date

This document adopts the interim rule in part 35 as final and amends the policy statement in part 2 effective June 5, 1995.

List of Subjects

18 CFR Part 2

Administrative practice and procedure, Electric power, Natural gas pipelines, Reporting and recordkeeping requirements.

18 CFR Part 35

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

By the Commission.

Lois D. Cashell,
Secretary.

In consideration of the foregoing, the interim rule amending 18 CFR Part 35 which was published at 59 FR 65930 on December 22, 1994, is adopted as a final rule without change and 18 CFR Part 2 which was amended as a final rule at 59 FR 65930 is further amended as set forth below.

PART 2—GENERAL POLICY AND INTERPRETATIONS

1. The authority citation for part 2 continues to read as follows:

Authority: 15 U.S.C. 717-717w, 3301-3432; 16 U.S.C. 791a-825r, 2601-2645; 42 U.S.C. 4321-4361, 7101-7352.

2. Part 2, § 2.25, is amended by revising § 2.25(e) to read as follows:

¹² Regulations Implementing the National Environmental Policy Act, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs., Regulations Preambles 1986-90 ¶ 30,783 (1987).

¹³ 18 CFR 380.4.

¹⁴ 18 CFR 380.4(15).

¹⁵ 5 U.S.C. 601-12.

¹⁶ 5 U.S.C. 601(13) (citing section 3 of the Small Business Act, 15 U.S.C. 632). Section 3 of the Small Business Act defines a small business concern as a business that is independently owned and operated and that is not dominant in its field of operation. 15 U.S.C. 632(a).

¹⁷ 5 CFR 1320.13.