APPENDIX A TO PART 11—FEE SCHEDULE FOR FY 1999—Continued

State	County	Rate per acre
	Cowlitz.	
	Grays Harbor.	
	Island.	
	Jefferson.	
	King.	
	Kitsap.	
	Lewis.	
	Mason.	
	Pacific.	
	Pierce.	
	San Juan.	
	Skagit.	
	Skamania.	
	Snohomish.	
	Thurston.	
	Wahkiakum.	
	Whatcom.	
West Virginia	All Counties	24.53
Wisconsin	All Counties	18.41
Wyoming	Albany	6.12
	Campbell.	
	Cargon.	
	Converse.	
	Goshen.	
	Hot Springs.	
	Johnson.	
	Laramie.	
	Lincoln.	
	Natrona.	
	Niobrara.	
	Platte.	
	Sheridan.	
	Sweetwater.	
	Fremont.	
	Sublette.	
	Uinta.	
	Washakie.	
	Big Horn	18.41
	Crook.	
	Park.	
	Teton.	
	Weston.	
All Other Zones		6.53

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BILLING CODE 6719–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 35

[Docket No. RM93–24–001; Order No. 600–A]

Revision of Fuel Cost Adjustment Clause Regulation Relating to Fuel Purchases From Company-Owned or Controlled Source; Order Denying Rehearsing and Other Relief

Issued November 24, 1998.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule; Order denying rehearing and other relief.

SUMMARY: The Federal Energy Regulatory Commission (Commission) denies a request, filed October 21, 1998, by Pacific Gas and Electric Company, for clarification, reconsideration or rehearing of the Final Rule, issued September 21, 1998, in which the Commission amended its regulations to state that where a regulatory body has jurisdiction over the price of fuel purchased from a company-owned or controlled source, and exercises that jurisdiction to approve such price, the Commission will presume, subject to rebuttal, that the cost of fuel so purchased is reasonable and includable in the fuel adjustment clause.

FOR FURTHER INFORMATION CONTACT: Wayne W. Miller, Federal Energy Regulatory Commission, Office of the General Counsel, 888 First Street, NE, Washington, DC 20426, (202) 208–0466.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in the Public Reference Room at 888 First Street, NE, Room 2A, Washington, DC 20426.

The Commission Issuance Posting System (CIPS) provides access to the texts of formal documents issued by the Commission. CIPS can be accessed via Internet through FERC's Homepage (http://www.ferc.fed.us) using the CIPS Link or the Energy Information Online icon. The full text of this document will be available on CIPS in ASCII and WordPerfect 6.1 format. CIPS is also available through the Commission's

electronic bulletin board service at no charge to the user and may be accessed using a personal computer with a modem by dialing 202–208–1397, if dialing locally, or 1–800–856–3920, if dialing long distance. To access CIPS, set your communications software to 19200, 14400, 12000, 9600, 7200, 4800, 2400, or 1200 bps, full duplex, no parity, 8 data bits and 1 stop bit. User assistance is available at 202–208–2474 or by E-mail to CipsMaster@FERC.fed.us.

This document is also available through the Commission's Records and Information Management System (RIMS), an electronic storage and retrieval system of documents submitted to and issued by the Commission after November 16, 1981. Documents from November 1995 to the present can be viewed and printed. RIMS is available in the Public Reference Room or remotely via Internet through FERC's Homepage using the RIMS link or the Energy Information Online icon. User assistance is available at 202–208–2222, or by E-mail to RimsMaster@FERC.fed.us.

Finally, the complete text on diskette in WordPerfect format may be purchased from the Commission's copy contractor, RVJ International, Inc. RVJ International, Inc., is located in the Public Reference Room at 888 First Street, NE, Washington, DC 20426.

Before Commissioners: James J. Hoecker, Chairman; Vicky A. Bailey, William L. Massey, Linda Breathitt, and Curt Hébert, Jr.

On October 21, 1998, Pacific Gas and Electric Company (PG&E) filed a request for clarification, reconsideration or rehearing of the Final Rule, issued September 21, 1998.[1] The Final Rule amended section 35.14(a)(7) of the Commission's regulations, 18 CFR § 35.14(a)(7) (1998), relating to fuel adjustment clauses, to state that where a regulatory body has jurisdiction over the price of fuel purchased by a utility from a company-owned or controlled source, and that regulatory body exercises that jurisdiction to approve such price, the Commission will presume, subject to rebuttal (rather than conclusively ''deem'') the cost of fuel so purchased to be reasonable and includable in the fuel adjustment clause. We deny the request for rehearing and other relief.

[1] Revision of Fuel Cost Adjustment Clause Regulation Relating to Fuel Purchases From Company-Owned or Controlled Source, Order No. 600, 63 FR 53,085 (October 7, 1998), FERC Stats. & Regs. ¶ 31, 066 (1998) (Final Rule).

Background

In 1993, the Commission proposed to amend section 35.14(a)(7) of the Commission's regulations, relating to fuel adjustment clauses, to state that where a regulatory body has jurisdiction over the price of fuel purchased by a utility from a company-owned or controlled source, and that regulatory body exercises that jurisdiction to approve such price, the Commission will presume, subject to rebuttal (rather than conclusively ''deem'') the cost of fuel so purchased to be reasonable and includable in the fuel adjustment clause.[2] The Commission explained that the need for this amendment arises from the decision of the D.C. Circuit in *Ohio Power Company* v. *FERC*, 954 F.2d 779 (D.C. Cir.), *cert. denied*, 506 U.S. 981 (1992) (*Ohio Power*). In *Ohio Power*, among other things, the D.C. Circuit held that section 35.14(a)(7) establishes a *conclusive* presumption that a Securities and Exchange Commission (SEC)-approved price for an inter-affiliate fuel purchase is just and reasonable and, accordingly, cannot be upset by the Commission. In analyzing section 35.14(a)(7), the court focused on the meaning of the word ''deemed,'' finding that it establishes a conclusive presumption regarding the reasonableness of SEC-approved prices. The court thus rejected the Commission's position that the word ''deemed'' sets only a rebuttable presumption.[3]

As a consequence, the Commission proposed to amend section 35.14(a)(7) to clearly specify only a rebuttable presumption of reasonableness, making it clear that the Commission has no intention of abdicating its statutory responsibility to independently review wholesale rates (including fuel adjustment clauses) to ensure that they are just and reasonable. The Commission noted a special need for Commission review when affiliate transactions are involved.

The Commission received 12 comments in response to this NOPR; PG&E did not submit any comments. While generally in accord with (or at least neutral to) the intent of the NOPR, the commenters suggested various changes to the proposed regulation. The suggested modifications principally involved three concerns: (a) whether the relevant sentence of section 35.14(a)(7) should simply be eliminated, rather than revised to set forth a rebuttable presumption; (b) the meaning of the term ''regulatory body'' in the proposed rule; and (c) retroactivity. After reviewing and considering the comments, the Commission issued its Final Rule amending section 35.14(a)(7) in the manner initially proposed in the NOPR.

As relevant here, in the Final Rule, the Commission stated that, as to challenges to affiliate fuel prices recovered through the fuel adjustment clause prior to the effective date of this rule change (November 6, 1998) (and which are not subject to an alternate ground for decision in *Ohio Power*), how the Commission should address such challenges is best decided in each individual case in which the issue arises, rather than generically in the abstract.[4]

PG&E's Request

PG&E requests clarification that the Commission did not intend to apply the new rule to inter-affiliate fuel purchases that occurred, and were approved by regulatory authorities with jurisdiction over the purchases, prior to the effective date of the Final Rule. If the Commission did intend to leave the door open to such retroactive application, then PG&E requests reconsideration or rehearing. PG&E contends that any retroactive application of the new rule to inter-affiliate fuel purchases before the effective date of the Final Rule exceeds the Commission's authority under the Federal Power Act (FPA), and the Administrative Procedure Act (APA). PG&E argues that the Commission may not circumvent this prohibition by implementing a new legislative rule retroactively in case-by-case adjudications.[5] Additionally, PG&E argues that, because the NOPR was

[2] Revision of Fuel Cost Adjustment Clause Regulation Relating to Fuel Purchases From Company-Owned or Controlled Source, 58 FR 51,259 (October 1, 1993), IV FERC Stats. & Regs. ¶ 32,502 (1993) (NOPR).

[3] 954 F.2d at 783–84.

[4] FERC Stats. & Regs. ¶ 31,066 at 30,727. The Commission noted that the fuel adjustment clause allows public utilities to pass through to their ratepayers increases or decreases in the cost of their fuel, without having to make separate filings to reflect each change in fuel cost and without having to obtain prior Commission review of each change in fuel cost. Consequently, the Commission stated that it has sanctioned after-the-fact review and refunds in later proceedings. Without later review and the ability to order refunds, the Commission explained, overcharges collected through the fuel adjustment clause would be exempt from all scrutiny and refunds. *Id.* at 30,727, n.21.

[5] PG&E maintains that the precedents cited by the Commission in footnote 21 of the Final Rule are inapplicable because in none of those cases did the Commission apply a new legislative rule retroactively in later adjudications. Instead, PG&E argues, the Commission retroactively reviewed the reasonableness of costs flowed through formula rates, applying the same regulations that were in effect at the time the costs were incurred. PG&E Request at 3.

silent on potential retroactive application of the rule, retroactive application violates the APA's notice and comment procedures.[6]

Discussion

We will deny PG&E's request for clarification, reconsideration and rehearing.

We disagree with PG&E that the Commission must clarify or reconsider the Final Rule at this time because of retroactivity concerns. In the Final Rule, the Commission did not state that it necessarily would take any particular action. Rather, the Commission merely stated that challenges to affiliate fuel prices recovered through the fuel adjustment clause prior to the effective date of this rule change are best decided on a case-by-case basis. When the Commission is presented with a case involving fuel adjustment clause recovery before the effective date of the Final Rule of the price of affiliate fuel purchases, the Commission can determine at that time how best to proceed.

The Commission Orders

PG&E's request for clarification, reconsideration and rehearing is hereby denied, as discussed in the body of this order.

By the Commission.

(SEAL)

David P. Boergers,

Secretary.

[FR Doc. 98–31960 Filed 11–30–98; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 172

[Docket No. 94F–0454]

Food Additives Permitted for Direct Addition to Food for Human Consumption; White Mineral Oil, USP

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of white mineral oil as a dust control agent for rough rice at an application rate of 800 parts per million (ppm). This action is in response to a petition filed by Lyondell-Citgo Refining Co., Ltd.

[6] 5 U.S.C. 553 (1994).

DATES: This regulation is effective December 1, 1998; written objections and requests for a hearing by December 31, 1998.

ADDRESSES: Submit written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Blondell Anderson, Center for Food Safety and Applied Nutrition (HFS–206), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, –202–418–3106.

SUPPLEMENTARY INFORMATION:

I. Introduction

In a notice published in the **Federal Register** of January 25, 1995 (60 FR 4920), FDA announced that a food additive petition (FAP 5A4440) had been filed by Lyondell-Citgo Refining Co., Ltd., P.O. Box 2451, Houston, TX 77252–2451, proposing that the food additive regulations be amended in § 172.878 *White mineral oil* (21 CFR 172.878), to provide for the safe use of white mineral oil as a dust control agent for rough rice at an application rate of 800 ppm (0.08 percent of the weight of the rice). An application rate of 200 ppm (0.02 percent of the weight of the grain) is currently permitted under § 172.878(c) for use on wheat, corn, soybean, barley, rice, rye, oats, and sorghum as a dust suppressant. On September 17, 1996, the petitioner amended the petition to limit its request to the use of white mineral oil of ISO 100 oil viscosity (100 centistokes (cSt) at 100°F).

II. Comments

The agency has received nine comments from rice warehouses and an oil supply company in support of the proposed application rate of food grade white mineral oil for rough rice indicating that the current regulated rate of 200 ppm does not effectively control rice dust. Because the comments are consistent with the regulation as set forth in the codified section of this document, FDA sees no need to address them.

III. Conclusion

The agency has evaluated all the data in the petition and other information and concludes that the proposed use of white mineral oil of ISO 100 oil viscosity (centistokes (cSt) at 100 °F) is safe for use as a dust control agent for rough rice and that the additive will achieve its technical effect. Therefore, the agency concludes that the food additive regulations should be amended as set forth as follows.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in § 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

IV. Environmental Effects

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

V. Paperwork Reduction Act of 1995

This final rule contains no collections of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

VI. Objections

Any person who will be adversely affected by this regulation may at any time on or before December 31, 1998, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in