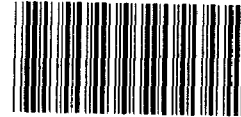


REPORT BY THE U.S.

General Accounting Office

Federal Energy Regulatory Commission Has Expedited Case Processing; Additional Improvements Needed

The Federal Energy Regulatory Commission has implemented most of the recommendations made in GAO's July 15, 1980, report on the need for the Commission to expedite its processing of various types of applications (such as rate increase and licensing requests) from the electric power, natural gas, and oil pipeline industries. The result is that the number of cases backlogged beyond what the Commission considers a reasonable processing time has decreased from about 3,600 cases in fiscal year 1978 to about 2,000 cases in fiscal year 1982. The Commission, however, could further reduce the number of backlog cases by acting on the remaining recommendations cited in the report.



121722

RESTRICTED — Not to be released outside the General Accounting Office except on the basis of specific approval of the Office of Congressional Relations.



RELEASED

GAO/RCED-83-51

JUNE 10, 1983

525867

Request for copies of GAO reports should be sent to:

**U.S. General Accounting Office
Document Handling and Information
Services Facility
P.O. Box 6015
Gaithersburg, Md. 20760**

Telephone (202) 275-6241

The first five copies of individual reports are free of charge. Additional copies of bound audit reports are \$3.25 each. Additional copies of unbound report (i.e., letter reports) and most other publications are \$1.00 each. There will be a 25% discount on all orders for 100 or more copies mailed to a single address. Sales orders must be prepaid on a cash, check, or money order basis. Check should be made out to the "Superintendent of Documents".



COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON D.C. 20548

B-197573

The Honorable Charles Percy
Chairman, Subcommittee on Energy,
Nuclear Proliferation and
Government Processes
Committee on Governmental Affairs
United States Senate

Dear Mr. Chairman:

As requested in your March 8, 1982, letter, this report discusses the status of the Federal Energy Regulatory Commission's current caseload and the improvements it has made in its caseload management in response to our prior report entitled "Additional Management Improvements Are Needed To Speed Case Processing at the Federal Energy Regulatory Commission" (EMD-80-54, July 15, 1980). The report, on pages 26 and 27, also discusses two recommendations which we made to the Congress in previous reports.

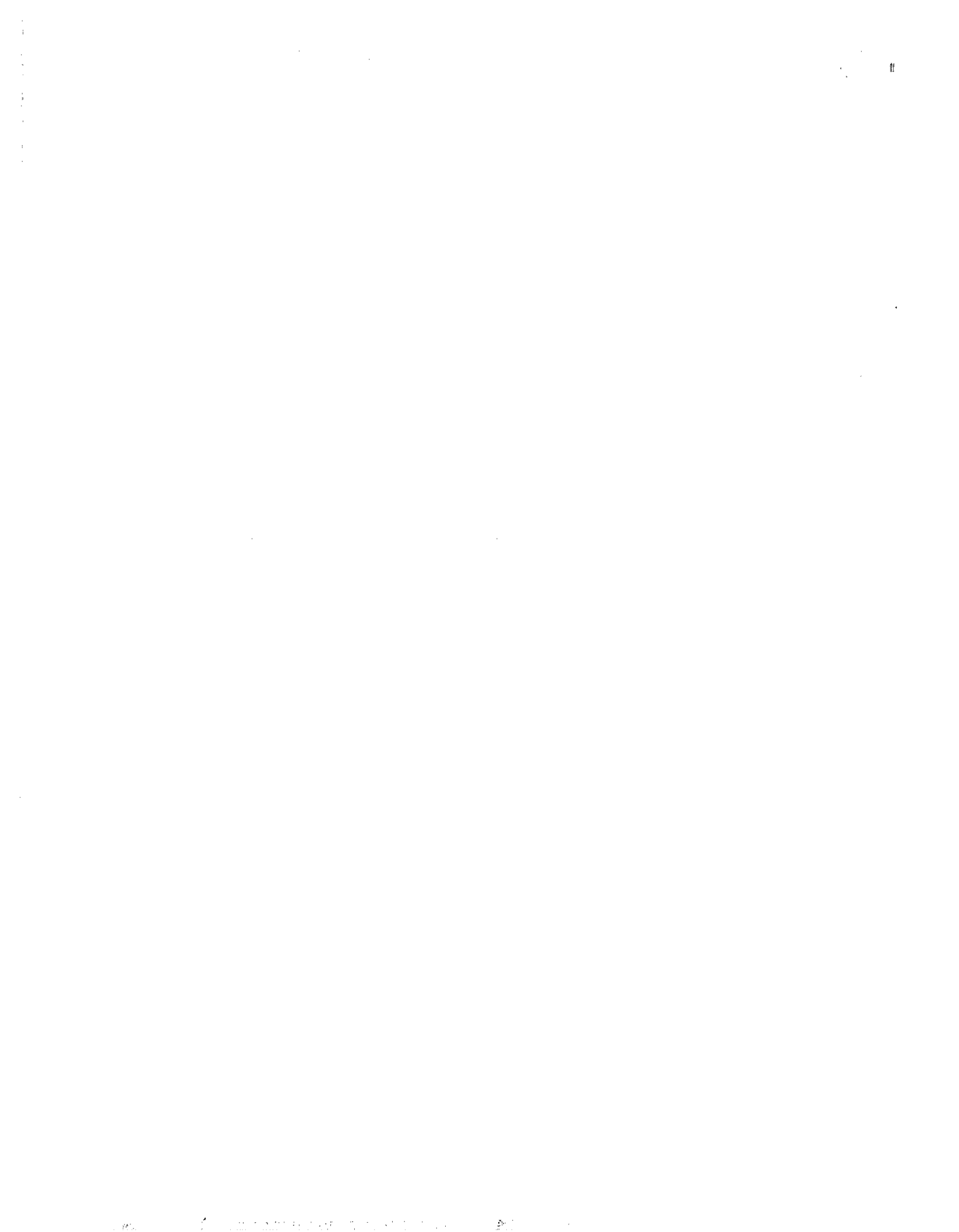
You also requested that we provide information on the processing of electric rate cases at the Commission. As agreed with your office, this subject is being addressed in a separate review.

As arranged with your office, unless you announce its contents earlier, we plan to distribute this report to coincide with the release of its contents during the Department of Energy's oversight hearings. Should the hearings be postponed, however, we will send copies to interested parties and make other copies available upon request 14 days from the date of the report.

Sincerely yours,

A handwritten signature in cursive script that reads "Charles A. Bowsher".

Comptroller General
of the United States



COMPTROLLER GENERAL'S REPORT

FEDERAL ENERGY REGULATORY
COMMISSION HAS EXPEDITED
CASE PROCESSING; ADDITIONAL
IMPROVEMENTS NEEDED

D I G E S T

The Federal Energy Regulatory Commission implemented most of the recommendations made in GAO's July 15, 1980, report entitled "Additional Management Improvements Are Needed To Speed Case Processing at the Federal Energy Regulatory Commission." However, the Commission still has about 2,000 cases in backlog-- i.e., in processing beyond what the Commission considers a reasonable processing time.

This followup report, which was requested by the Chairman, Subcommittee on Energy, Nuclear Proliferation, and Government Processes, Senate Committee on Governmental Affairs, summarizes the Commission's actions on the recommendations in GAO's 1980 report and notes the actions that are still needed to further reduce the backlog. (See table on p. 62.)

The Commission processes many types of cases such as applications for construction of hydroelectric dams and for increased wholesale electric rates. Cases go through three phases--technical analysis, hearings, and Commission decision. All cases first undergo technical review by Commission staff. If there is an objection to a proposal in an application and a legal settlement cannot be reached, the proposal is ordered to a hearing before one of the Commission's administrative law judges (ALJs). The ALJ's decision is then either adopted, modified, or reversed by the full Commission. Alternatively, cases may be decided without a formal hearing, either by the Commission or, on delegated decisions, by an office director. (See pp. 1 and 2.)

PROBLEMS IDENTIFIED
IN THE PRIOR REPORT

GAO's prior report noted problems in the Commission's technical and environmental

review, hearings procedures, and post-hearing legal review. It also noted overall managerial problems. For example, the Commission's technical staff often took over a year to review applications requesting approval of such matters as increases in electric rates or the construction of hydroelectric projects. A major time-consuming factor was the large number of incomplete applications received, necessitating an inordinate amount of staff followup time. (See pp. 13 to 17.)

The report also noted that many of the Commission's lengthiest cases could be expedited if its administrative law judges were stricter about granting time extensions. Another major concern was that the Commission took about a year to review the ALJs' initial decisions and issue a final decision. (See pp. 21 and 35.)

GAO's prior report also concluded that the Commission could expedite case processing by delegating the more routine cases to staff for decision. The report also stated that the Commission should make sure that its management information system contained sufficient data for management to identify where delays are occurring. It could also establish rules on issues common to many cases, thus reducing or eliminating the need to relitigate those issues. (See pp. 31, 39, and 42.)

COMMISSION ACTIONS TO EXPEDITE CASE PROCESSING

The Commission has made improvements consistent with 26 of GAO's 33 previous recommendations. The result is that several major types of cases are now processed more quickly. For example, in fiscal year 1979, preliminary permits for hydroelectric projects took about 13 months to process, but recently they took only 7 months. Over this same time period, the Commission's approval of certificates for gas pipeline construction was reduced from 46 months to 34 months. Such reduced case processing times have, in turn, helped the Commission reduce the backlog from about 3,600 cases

in fiscal year 1978 to about 2,000 cases in fiscal year 1982. The reduction in the backlog is particularly noteworthy, given the increase in the Commission's responsibilities and caseload under the National Energy Act. (See pp. 5 to 12.)

By processing cases more quickly, the Commission helps expedite the delivery of additional energy supplies to consumers and also helps prevent the additional costs that may occur if a project is delayed. The Commission's former Chairman testified in appropriations hearings in May 1978 that each month the Commission takes to approve a new hydroelectric project can add an additional \$6 million to the construction costs ultimately reflected in consumers' energy bills. The Commission's Director of Hydropower Licensing believes this is still a valid estimate. (See p. 17.)

ADDITIONAL ACTIONS THAT COULD EXPEDITE CASE PROCESSING

While the Commission has made many significant improvements, GAO found that further actions in the Commission's technical, environmental, and legal reviews and some overall managerial improvements are possible and would yield benefits. For example, electric rate cases currently take about 2 years to decide; any reduction in this time could reduce costs incurred by regulated companies in these proceedings. To achieve such a reduction, GAO is repeating seven recommendations and is making one new recommendation to the Commission. (See pp. 19, 37, 44, and 45.)

In two previous reports on the administrative law process, GAO recommended that in order to increase incentives for ALJs to expedite the hearing process, the Congress require agencies such as the Commission to establish performance standards for ALJs. GAO also recommended that the Congress make an independent agency, such as the Office of Personnel Management, responsible for evaluating the performance of ALJs in regulatory agencies such as the Commission. At the time of GAO's 1980 report on

the Commission's case processing, two bills were pending that would have implemented this recommendation, but neither was enacted. While the complexity of the ALJs' role makes evaluating their performance difficult, the importance of their role in case management makes evaluation essential. Thus, GAO continues to believe that the Congress should require performance standards and independent evaluation of ALJs. (See p. 27.)

The Commission could also reject incomplete natural gas applications rather than consuming time following up to get the additional data. Recently it rejected a severely deficient gas application and stated that it will be carefully reviewing future applications. GAO believes this is an important first step and that the Commission should continue to reject other deficient applications. (See pp. 13 to 17.)

The Commission's ALJs render an initial decision on hearing cases, and the Commission's legal staff reviews the judges' initial decisions before the Commission issues its final decision. The Commission should review options for limiting and expediting this review process, which currently averages 11 months. One means of achieving this would be to adopt all or large portions of judges' initial decisions in a greater number of routine cases. Currently, the Commission may substantially revise these decisions even when they are routine cases which do not involve major policy issues or novel questions of law or fact. Although the Commission proposed in November 1982 to follow such a policy on appropriate electric rate cases, it has not proposed similar measures for other types of cases. GAO believes that this policy could also be applied to other appropriate cases. (See pp. 35 to 36.)

The Commission should also issue final rules on certain common issues, such as a standard rate of return for electric rates. It has proposed rulemakings on several of these

issues but has not issued final rules. Case processing could be expedited if final rules were issued on these precedent-setting issues since these rules would establish a standard policy the Commission could use to prevent unnecessary litigation in future cases. (See p. 42.)

In addition, the Commission should (1) tighten its procedures for rehearing cases by establishing reasonable deadlines on such cases, (2) assure that its management information system contains more complete information so that case processing bottlenecks can be identified, and (3) use available monetary penalties, where appropriate, to discourage unnecessary delays by applicants. (See pp. 36, 39, and 43.)

SUMMARY OF OPEN GAO RECOMMENDATIONS

In order to achieve the additional actions needed, the Commission should implement the remaining recommendations from GAO's 1980 report:

- Reject incomplete natural gas applications.
- Limit and expedite its review of ALJs' decisions.
- Adopt ALJs' decisions on routine cases.
- Tighten procedures for rehearing cases.
- Assure that its management information system contains more complete information.
- Establish Commission policy on recurring issues.
- Use fines, where appropriate, to discourage unnecessary delays by applicants. (See pp. 19, 37, 44, and 45.)

Additionally, the Congress should

- require regulatory agencies such as the Commission to develop ALJ performance standards and
- assign the responsibility for periodic evaluation of ALJ performance to an organization other than the employing agency, such as the Office of Personnel Management or the Administrative Conference of the United States. (See p. 27.)

NEW GAO RECOMMENDATION

GAO is making the following new recommendation: The Commission should obtain the timely involvement of its Director, Office of Electric Power Regulation, to expedite interagency comments on hydroelectric projects. (See p. 19.)

AGENCY COMMENTS

The Commission agreed with four of the eight recommendations. (See pp. 19 and 45.)

On the remaining four recommendations, the Commission believes that it has already taken sufficient action or notes that further action is difficult. In response to GAO's recommendation that it finalize rulemakings on common issues, the Commission stated that it is fully utilizing the rulemaking process and noted that it is currently considering many proposed rulemakings. On GAO's recommendations that it review options for limiting and expediting its review of judges' decisions, adopt judges' decisions on routine cases, and tighten procedures for rehearing cases, the Commission commented that it does attempt to expedite cases by such actions but that it is difficult to do so because many cases involve complex issues requiring careful deliberation. (See pp. 37 and 45.)

While GAO recognizes that the Commission has made many improvements, further action can be taken on these recommendations. A complete discussion of the Commission's comments and GAO's evaluations are contained at the end of each chapter. (See pp. 19, 27, 37, 44, and 45.)

C o n t e n t s

		<u>Page</u>
DIGEST		i
CHAPTER		
1	INTRODUCTION	1
	FERC's decisionmaking process	2
	Objectives, scope, and methodology	4
	Status of GAO's Recommendations	4
2	THE STATUS OF FERC'S CASELOAD	5
	Pending caseload	5
	Other measurements of the status of FERC's caseload	8
3	THE TECHNICAL ANALYSIS PHASE	13
	Filing requirements	13
	Deficient applications	15
	Expediting environmental review of hydroelectric projects	17
	Conclusions	19
	Recommendations to the Chairman, FERC	19
	Agency comments and our evaluation	19
4	THE HEARING PHASE	21
	Time Extensions	21
	Discovery procedures	22
	Early identification of issues	23
	Format of ALJs' initial decisions	24
	Interlocutory appeals	24
	Commission action on settlements	25
	Using hearing status report as a management tool	26
	ALJ performance evaluation	26
	Conclusions	27
	Recommendations to the Congress	27
	Agency comments and our evaluation	27
5	COMMISSION DECISIONMAKING PHASE	29
	Legal review of cases	29
	Further delegations of authority	31
	Implementation of a legal precedents system	32
	Tracking cases through the legal review process	33
	Revised rules on exception briefs	33

	<u>Page</u>
CHAPTER	
OGC review of nonhearing cases	34
Limiting the review of initial decisions	35
Tighter controls still needed on rehearings	36
Conclusions	37
Recommendations to the Chairman, FERC	37
Agency comments and our evaluation	37
 6	
OVERALL MANAGEMENT INITIATIVES	39
Improvements in the management information system	39
Managerial accountability	40
Generic rulemaking	42
Establishing and attaining reasonable processing time frames	43
Conclusions	44
Recommendations to the Chairman, FERC	44
Agency comments and our evaluation	45
 APPENDIX	
 I	
Letter dated March 8, 1982, from the Chairman, Subcommittee on Energy, Nuclear Proliferation and Government Processes, Senate Committee on Governmental Affairs	46
 II	
Letter dated February 3, 1983, from the Executive Director, Federal Energy Regulatory Commission	48
 III	
Summary of FERC and Congressional actions on recommendations in GAO's 1980 report	62

ABBREVIATIONS

ALJ	administrative law judge
FERC	Federal Energy Regulatory Commission
GAO	General Accounting Office
MIS	Management Information System
NEA	National Energy Act of 1978
NGPA	Natural Gas Policy Act of 1978
OEPR	Office of Electric Power Regulation
OOR	Office of Opinions and Reviews
OPM	Office of Personnel Management
OPPR	Office of Pipeline and Producer Regulation

CHAPTER 1

INTRODUCTION

The Federal Energy Regulatory Commission (FERC) has a wide range of regulatory functions. Its primary responsibilities are to regulate electric power, natural gas, and oil in interstate commerce. Specific responsibilities include such diverse areas as licensing new hydroelectric projects, approving the construction of new natural gas pipelines, and regulating wholesale electric and natural gas pipeline rates. Effectively administering these responsibilities is necessary to provide consumers with adequate supplies of energy at reasonable prices and to give energy producers the incentives necessary to maintain domestic supplies.

In an earlier report on FERC's caseload management process,¹ we noted that FERC had inefficient case processing procedures and that it had many new responsibilities imposed on it by the National Energy Act of 1978.² Although FERC was taking some actions to improve the timeliness of its case processing, it still had a large number of pending and backlogged cases. As a result, we made 33 recommendations to FERC and 2 to the Congress, which we concluded would further expedite case processing. (A table showing the status of each of our recommendations is included as appendix III.)

On March 8, 1982, Senator Charles Percy, Chairman of the Senate Subcommittee on Energy, Nuclear Proliferation, and Government Processes, Committee on Governmental Affairs, requested that we follow up on the previous report to determine the status of FERC's current caseload and the improvements made in its case processing. This report responds to that request.

The subcommittee also requested that we provide information on the "pancaking" of electric rate cases, whereby an electric utility continues to file rate increase applications with FERC even though FERC has not taken final action on the utility's original rate request. As agreed with the subcommittee, we will respond to this item in a separate report.

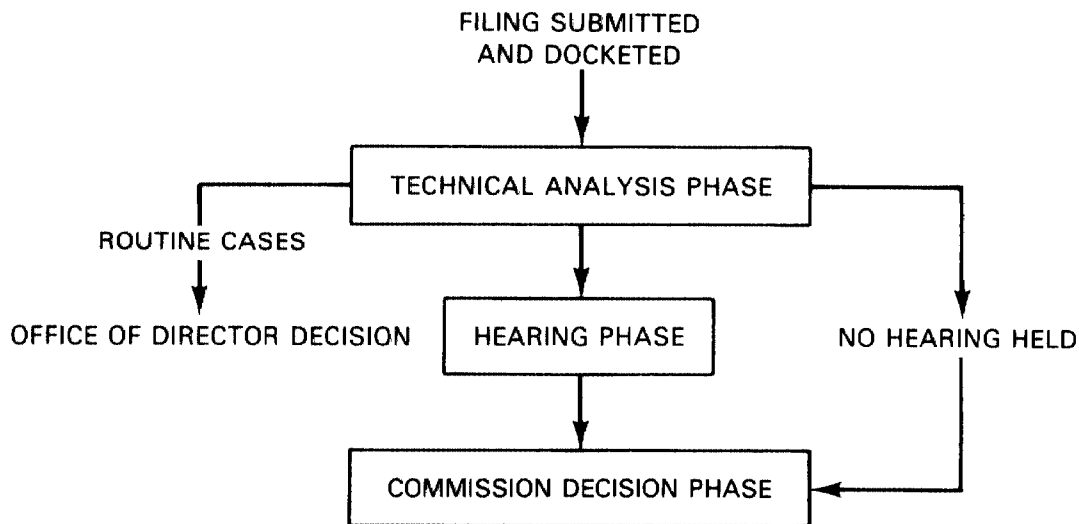
¹"Additional Management Improvements Are Needed To Speed Case Processing at the Federal Energy Regulatory Commission" (EMD-80-54, July 15, 1980).

²Five separate pieces of legislation comprise what is referred to as the National Energy Act: the Public Utility Regulatory Policies Act of 1978, The Energy Tax Act of 1978, the National Energy Conservation Act of 1978, the Power Plant and Industrial Fuel Use Act of 1978, and the Natural Gas Policy Act of 1978.

The status of FERC's pending caseload, as well as the size of its backlog of older cases and the average time it takes to process certain major types of cases, is presented in chapter 2. The remaining chapters discuss FERC's actions to improve each major phase of its case processing procedures and to implement overall managerial initiatives.

FERC's DECISIONMAKING PROCESS

Recent FERC internal management studies identified over 80 different types of cases that go through FERC's decisionmaking process. Two examples of the types of cases decided by FERC are requests by utilities for increases in electric rates and requests by applicants for approval to construct hydroelectric projects. While individual case processing steps vary widely from case to case, all cases can be divided into three phases: technical analysis, hearing, and Commission decision. The flow chart below shows how cases proceed through these three phases.

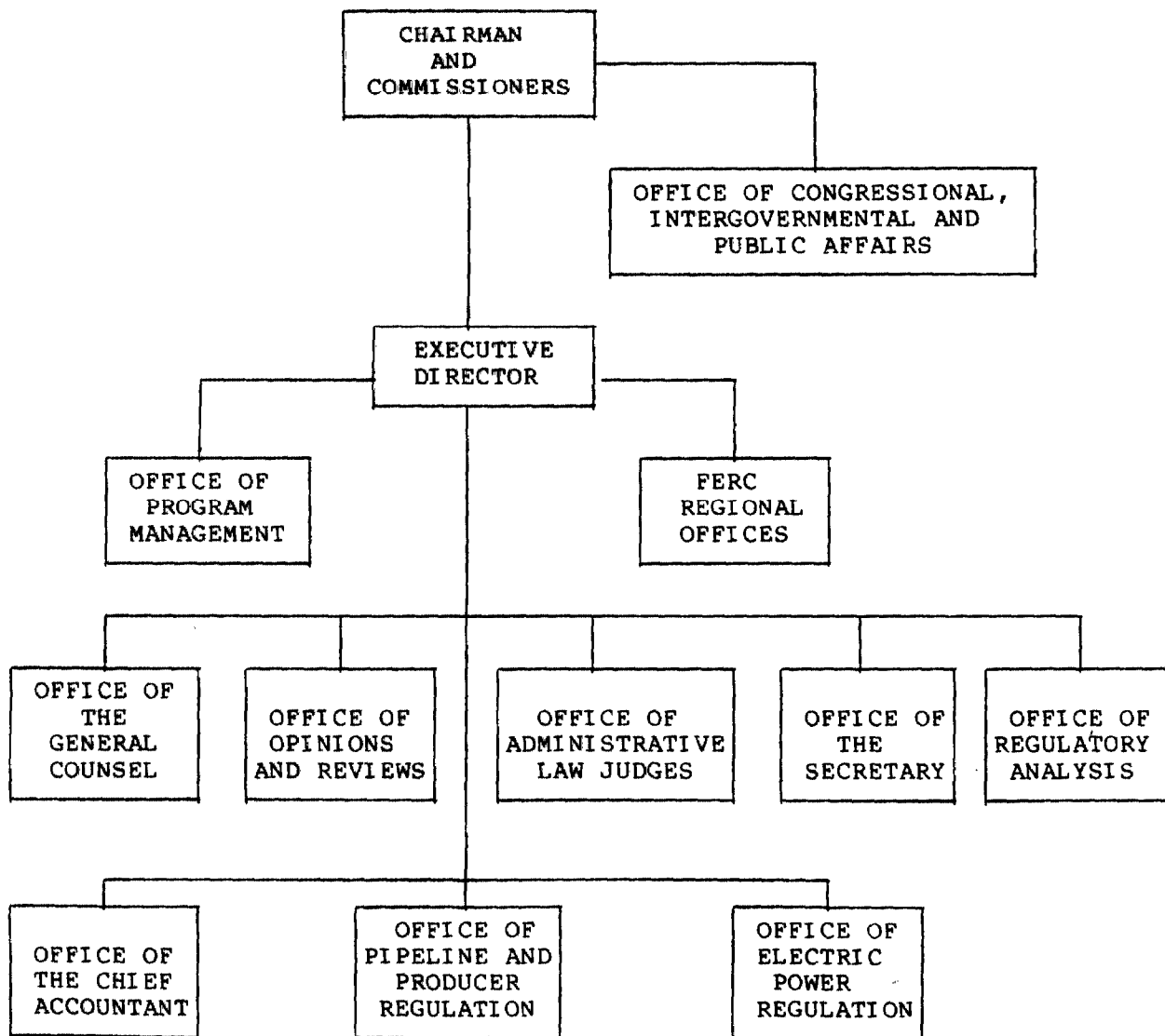


As the above chart indicates, all cases undergo some type of technical review. If there is an objection to a proposal in an application and a legal settlement cannot be reached, the proposal is ordered to a hearing before one of FERC's administrative law judges (ALJs). The ALJ's decision is then either adopted, modified, or reversed by the full Commission.³ Alternatively, cases

³The full Commission includes a Chairman and four commissioners.

may be decided without a formal hearing, either by the Commission or, on delegated cases, by an office director.

FERC's fiscal year 1982 budget appropriation was about \$76 million. These funds were divided among FERC's major areas of regulation: electric power, natural gas, oil pipelines, and hydropower licensing. Regulation is carried out by the offices shown in the following organization chart. The case processing roles of most of these offices are discussed in the appropriate places in the report.



OBJECTIVES, SCOPE, AND METHODOLOGY

As requested by the subcommittee, the objectives of this review were to determine the status of FERC's current caseload and to evaluate FERC's actions to implement the recommendations in our previous report.

To achieve these objectives, we examined available FERC records, including both its management information system (MIS) reports on its caseload and individual reports on selected categories of cases. We also obtained FERC's comments on each of our recommendations and interviewed office heads, branch chiefs, and technical staff on actions taken, or planned, to speed case processing.

We also analyzed some of the results of the improvements FERC has made. For example, we examined the improvements made in the hearing phase and compared the current timeliness of this phase with what it was in prior years.

We limited the depth of our review on some recommendations due to time constraints and the large number of recommendations to follow up on. Such limitations are noted in our discussion of those recommendations. For example, we did not attempt to determine the number of discovery requests⁴ granted during hearings or how long they took to resolve. Instead, we reviewed actions FERC has taken to reduce the time consumed by discovery.

This review was performed in accordance with generally accepted government audit standards.

STATUS OF GAO's RECOMMENDATIONS

In our July 1980 report we had 33 recommendations to FERC and 2 to the Congress. Based on our followup work, we have updated the status of each of these recommendations and added one additional one. All of the recommendations are summarized in the table in appendix III and are also discussed in detail in chapters 3 through 6.

⁴Discovery requests are those in which a hearing participant requests information beyond that which the Commission routinely requires in applications.

CHAPTER 2

THE STATUS OF FERC'S CASELOAD

We measured the overall results of FERC's effort to improve the efficiency of its case processing activities by examining its caseload status and the timeliness of its case processing. The results indicate that since the time of our prior report, FERC has shortened the time it takes to process certain major types of cases and has reduced the number of older, backlogged cases awaiting decision, although some backlog still exists.

These improvements in the Commission's case processing efficiency help to expedite the delivery of additional energy supplies to consumers and also help prevent the additional costs that may occur if a project is delayed. The Commission's former Chairman testified in appropriations hearings in May 1978 that each month FERC takes to approve a new hydroelectric project can add an additional \$6 million to the construction costs. (In September 1982 FERC's Director of Hydropower Licensing said that this was still a reasonable estimate, although it might need to be reduced slightly due to the somewhat lower current inflation rate.) These costs are ultimately reflected in consumers' energy bills.

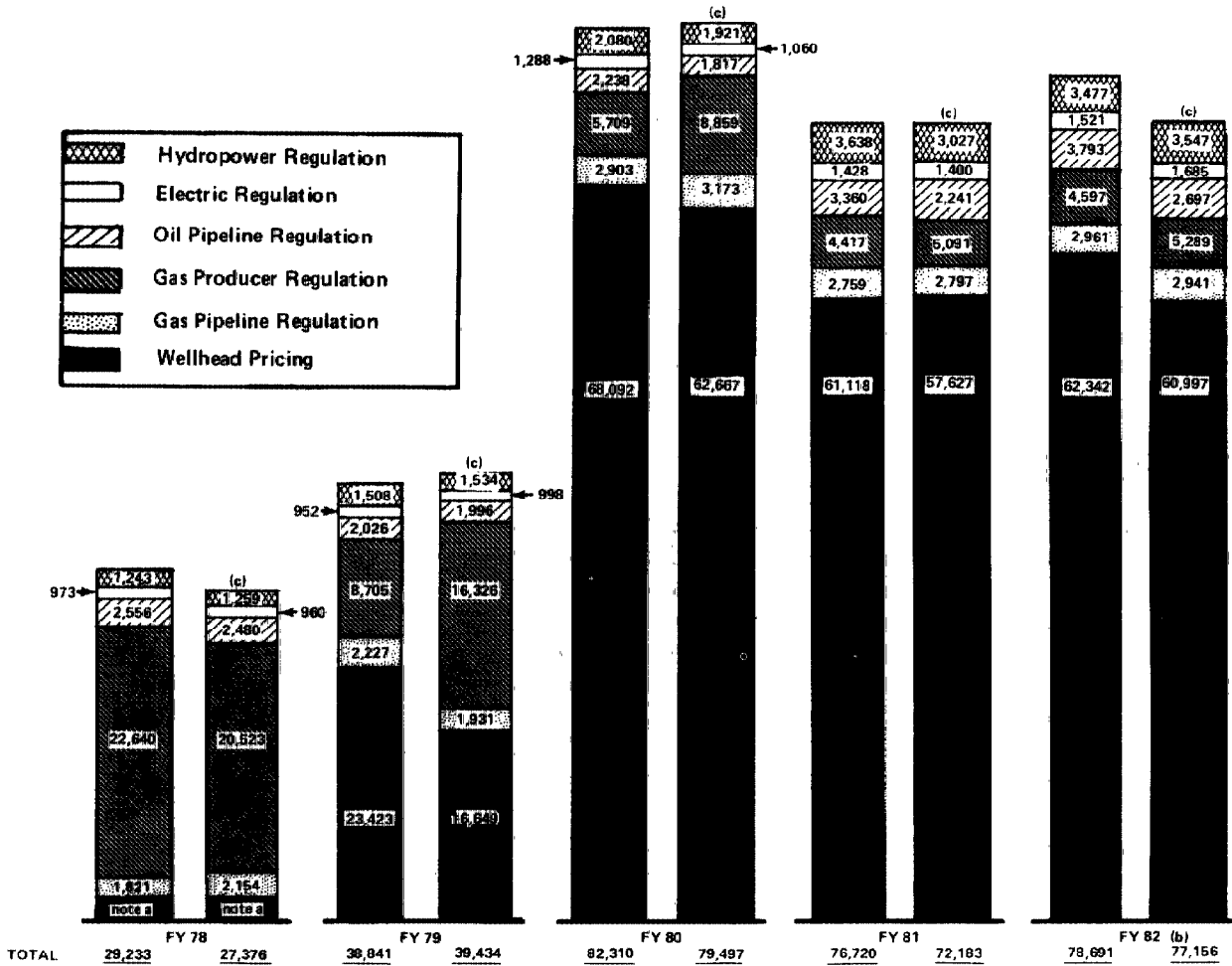
PENDING CASELOAD

As shown on the following chart, FERC had a large increase in the total number of new case receipts between fiscal years 1978 and 1982, which affected its pending caseload. The increased receipts in the wellhead pricing category were due largely to the provisions of the Natural Gas Policy Act (NGPA) (15 U.S.C. 3301), which require that FERC review other jurisdictional agencies' (including States') pricing determinations that automatically take effect unless reversed or remanded by FERC within 45 days. These are routine cases that do not require much time to process.

The increase in the hydropower licensing receipts in the last several years reflects a renewed interest in developing hydropower resources, which was stimulated by the economic, regulatory, and tax incentives provided by recent legislation, such as the National Energy Act and the Energy Security Act. The exemptions and simplified regulations FERC issued in this area, however, have enabled it to greatly increase its number of case completions per year. The increased receipts in the wellhead pricing and hydroelectric categories have been partially offset by decreased receipts in the gas producer regulation category. This category decreased because it generally involves gas sales or contracts predating the NGPA.

FEDERAL ENERGY REGULATORY COMMISSION
Workload Summary

CASE RECEIPTS AND COMPLETIONS

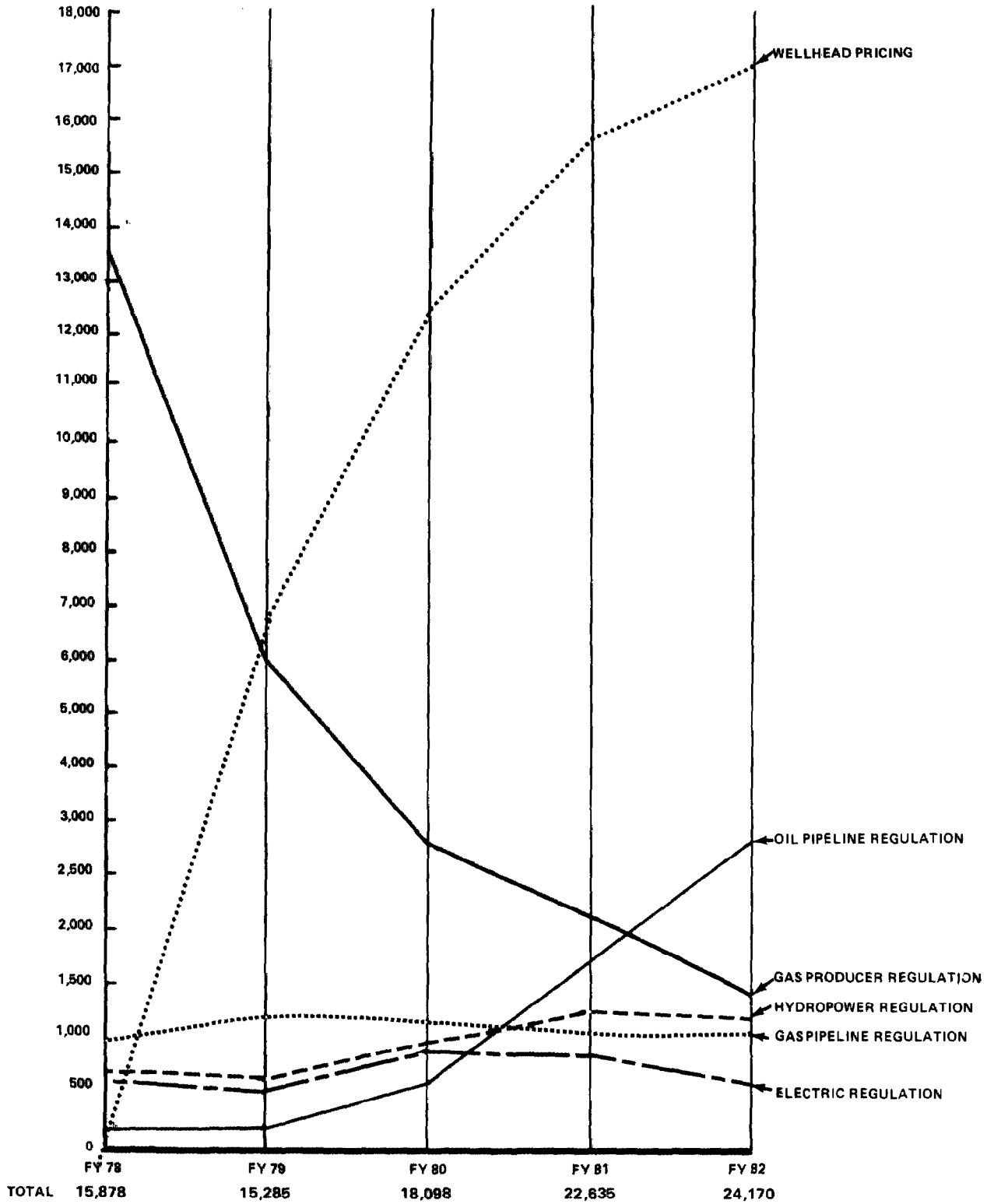


NOTES:

- (a) Denotes Zero.
- (b) These figures are FERC estimates
- (c) Second bar in each fiscal year denotes completed cases.

Source: Derived by GAO from data furnished by FERC.

**CASES PENDING AT THE END
OF FISCAL YEARS
1978 THROUGH 1982**



Source: Derived by GAO from data furnished by FERC.

The chart on page 7 depicting FERC's pending caseload for the end of the last five fiscal years shows the large increase in wellhead pricing cases and a large decrease in gas producer cases. These changes were caused mainly by the legislation cited above. In one other category--oil pipeline regulation--the pending caseload significantly increased because the resolution of many cases depended on the outcome of the precedent-setting Williams Pipeline Company case, which remained undecided for several years. FERC decided to use this case to establish its methodology for fixing rate of return for oil pipeline cases. FERC issued its decision in the Williams case on November 30, 1982. Since its decision was that oil pipeline rates would be questioned only when aggrieved parties complained about them, FERC dismissed over 400 cases in a December 21, 1982, order.

OTHER MEASUREMENTS OF THE STATUS OF FERC'S CASELOAD

Other means of measuring how well FERC manages its caseload include determining the number of cases in backlog and the average case processing time. While FERC has shown substantial improvement in both areas, a backlog still exists and two of the six average processing times we examined have increased.

Backlogged cases

The following chart shows that the total number of backlogged cases¹ has decreased since fiscal year 1978. This decrease is noteworthy because it was achieved during a period of substantial increases in case receipts. However, the existing backlog is still substantial.

¹FERC defines backlogged cases as those that have been pending longer than what the staff estimates is a reasonable length of time to complete that type of case. We did not evaluate the reasonableness of these staff estimates.

Cases in Backlog at FERC

		Fiscal year				
		<u>1978</u>	<u>1979</u>	<u>1980</u>	<u>1981</u>	<u>1982</u>
Hydropower Regulation	Backlogged cases	493	467	347	488	421
	Months of backlog (note a)	28,701	26,586	12,777	7,305	6,347
Electric Regulation	Backlogged cases	314	253	294	359	228
	Months of backlog	3,729	4,174	3,541	4,238	4,091
Gas Regulation	Backlogged cases	2,759	2,413	1,122	993	803
	Months of backlog	59,633	55,449	24,332	14,726	15,902
Oil Pipeline Regulation	Backlogged cases	18	37	87	361	594
	Months of backlog	154	358	669	3,398	8,506
Other (note b)	Backlogged cases	49	118	199	214	
	Months of backlog	<u>704</u>	<u>1,295</u>	<u>2,360</u>	<u>3,632</u>	<u>(c)</u>
Total (note d)	Backlogged cases	3,633	3,288	2,049	2,415	2,046
	Months of backlog	<u>92,921</u>	<u>87,862</u>	<u>43,679</u>	<u>33,299</u>	<u>34,846</u>

a/Indicates the age of backlog; for example, a case that is 1 month older than the standard processing time represents 1 month of backlog.

b/Includes items such as formal complaints made to FERC and proposed rulemakings on generic cases.

c/In fiscal year 1982 this category was split among the above categories.

d/This chart does not include gas producer rate filings since these cases are not individually tracked by FERC. FERC officials did state, however, that the backlog of these cases has greatly decreased.

Source: Derived by GAO from data furnished by FERC.

As shown in the chart on page 6, receipts in the hydropower area increased from 1,243 in fiscal year 1978 to 3,638 in fiscal year 1981. Despite this large increase, the number of backlogged cases increased only slightly. Also, because FERC completed many of its oldest cases, the age of the backlog was reduced. Certain licensing exemptions and simplified licensing regulations helped to achieve these improvements.

In electric regulation, the age of backlogged cases increased from 3,729 months in fiscal year 1978 to 4,238 in fiscal year 1981. FERC had an increased number of case receipts in this

period, and although it increased its case completions from 960 in 1978 to 1,400 in 1981, it was unable to keep pace with the backlog. FERC's Director of Electric Rate Regulation could not attribute the backlog increase to any particular cause other than complexity of the issues, but noted that additional staff might be needed to process cases more quickly. We did not analyze staff workload and productivity to determine whether a staffing increase is warranted.

The number and age of backlogged natural gas cases have decreased. This is due partly to the greatly decreased number of case receipts in the gas producer rates and certificates categories because of the regulatory changes brought about by NGPA. Various FERC officials, including the Executive Director, told us that increased delegations of authority and revised filing requirements have also helped to bring about the decreases.

The number and age of backlogged oil regulation cases increased pending a decision in the precedent-setting Williams Pipeline Company case. A decision was made on this case on November 30, 1982, and many oil regulation cases were subsequently dismissed.

The "other" area of regulation includes such categories as rulemaking proposals, formal legal complaints, and declaratory orders. While some of these items, such as rulemaking proposals, increased over the last several years, some of the other items might not be reliable because the Office of General Counsel (OGC) did not place a high priority on assuring that complete data was entered into its management information system. A recent memo from FERC's Executive Director instructed staff to submit complete information.

Two FERC actions greatly reduced the backlog of gas producer rate cases. The first was the passage of the NGPA which allows the filing of a blanket affidavit to cover inflation adjustments, thus eliminating the need for many rate increase requests. The other action was the formation of a task force utilized for 2 months in 1982 to reduce the backlog.

Case processing times

Another means of measuring the efficiency of FERC's caseload management is reviewing actual case processing times. We examined processing times for selected major categories that contained a large number of cases or a large percentage of complex cases. The chart below shows that some categories of cases are now decided more quickly than in previous years but that formal electric cases, those that go through the full hearing process, take longer now than they did in 1979. FERC's Executive Director said that these cases were lengthy because of the complex issues involved.

He noted, however, that FERC proposed a rulemaking on November 19, 1982, that would change some of the procedures associated with electric rate cases and that should speed decisions on such cases. This subject is being addressed more fully in our separate review on electric rate regulation. Electric rate cases that went through a hearing process and were decided in the first three quarters of fiscal year 1982 took an average of 27 months to decide, compared with 22 months in 1979. Both time frames are much longer than the 12 months within which some States require a retail rate decision. Also, FERC's former Chairman proposed 12 months as a goal for FERC's wholesale electric rate decisions. Under the current Chairman, the Commission is considering a proposal under which FERC expects to be able to decide routine electric rate cases in 12 months.

FERC Average Case Processing Times

	<u>Fiscal year (note a)</u>			
	<u>1979</u>	<u>1980</u>	<u>1981</u>	<u>1982</u> <u>(note b)</u>
	----- (months) -----			
Hydroelectric license, preliminary permits	13	6	6	7
Major hydroelectric license, new capacity (nonformal)	18	11	12	15
Formal electric cases:				
Rate level	22	27	31	27
Other than rate level	16	24	27	24
Gas pipeline certificates, construction and operation (formal)	46	32	38	34
Gas producer certificates, new service	19	37	17	9

a/Comparable data was not available for fiscal years preceding 1979.

b/Through June 30, 1982.

Source: Derived by GAO from data furnished by FERC.

The average time to issue licenses on major new hydroelectric projects that do not involve a hearing decreased from 18 months in fiscal year 1979 to 12 months in fiscal year 1981 because of streamlined processing procedures. This average, however, increased to 15 months during the first three quarters of fiscal

year 1982. According to FERC's Director of Hydropower Licensing, in fiscal year 1982 FERC had to evaluate a significantly increased number of competing applications, which involved two or more parties filing applications to develop the same site. As a result, FERC needed more time to reach a decision in such cases.

On preliminary hydroelectric permits, the average improved from 13 months in fiscal year 1979 to 7 months in fiscal year 1982. This improvement was achieved despite an increase in permit requests from 76 in fiscal year 1979 to over 900 in fiscal year 1982. The improvement is attributable to the simplified licensing regulations that FERC issued in 1979 and 1981.

The time required for natural gas pipeline construction and operation decisions declined from an average of 46 months in fiscal year 1979 to 34 months in 1982. FERC's Director of Pipeline Certificates attributed the improvement to earlier settlements and a more expeditious hearings phase.

The processing of gas producer certificates for new service improved from 19 months in fiscal year 1979 to 9 months in 1982. The NGPA legislation reduced the number of new cases received in this category, and the caseload can therefore be managed more efficiently. Also, delegations of authority helped to expedite cases.

CHAPTER 3

THE TECHNICAL ANALYSIS PHASE

FERC has taken several major actions to speed its technical staff's application analyses. However, other actions are still needed. Our prior report noted that technical analysis was sometimes delayed because applications were incomplete. We recommended that FERC clarify its data requirements and reject incomplete applications. Also, to expedite its environmental reviews, we recommended that FERC staff begin preparing environmental impact statements earlier and obtain interagency agreements as a means of accelerating the review of environmental statements. FERC has clarified many of its filing requirements and does reject certain electric and hydroelectric applications that are not corrected within 30 days. It still needs to reject deficient natural gas applications, however, and obtain written interagency agreements as a means to accelerate the environmental statements reviews.

For purposes of our discussion, FERC's technical analysis phase:

- Begins when an application for a license, permit, rate increase, etc., is received and ends when the technical staff prepares a document summarizing its position on whether the applicant's request should be accepted, rejected, or modified in some manner.
- Includes all initial staff reviews of each application by such technical offices as the Office of Electric Power Regulation (OEPR) and the Office of Pipeline and Producer Regulation (OPPR).

FILING REQUIREMENTS

FERC regulations specify what information applicants for licenses and rate increases need to submit. We recommended that, to improve the quality of filings and minimize application deficiencies, FERC continue to expand its efforts to simplify and clarify application data requirements. We also recommended that FERC issue a centralized filing requirements source book and conduct seminars to educate industry and FERC staff regarding these filing requirements.

FERC acted on the first recommendation by expanding its efforts to revise its filing requirements. By expanding the data it requires from electric rate applicants, FERC can more quickly analyze requested rate increases and, according to its Acting Director of Electric Rate Regulation, has facilitated early

settlement discussions that can speed case resolution. In the hydroelectric area, several rules were issued that clarified filing requirements and expedited licensing by expanding the applicability of short-form licensing procedures. In July 1982 FERC issued a rule allowing blanket certificates to be issued that automatically allow certain activities on natural gas pipelines, such as constructing certain operating and storage facilities.

FERC is now examining possible revisions to its filing requirements for the rates charged by interstate natural gas pipeline companies. We believe that the actions cited above demonstrate a strong commitment to improve major filing requirements and that they adequately respond to our first recommendation.

FERC has also taken several actions in response to our second recommendation. OEPR published its Application Procedures for Hydropower Licenses, Exemptions, and Preliminary Permits. This document presents FERC's revised hydropower regulations and also discusses the basic requirements for filing each type of application. This document was particularly needed in the hydropower area, which has experienced a greatly increased caseload over the last 5 years. According to FERC's Director of Hydropower Licensing, the document has been well received by industry.

FERC has also conducted seminars for industry and FERC staff on its filing requirements and how it analyzes applications. The following are descriptions of these activities:

- FERC has held training seminars on hydropower filing requirements and stated that it will continue to do so as needed.
- An official in FERC's natural gas pipeline rates branch conducts periodic seminars for FERC technical and legal staff on rate-of-return issues. These seminars explain FERC's rate-of-return methodology and are available to staff and the public on video cassettes in FERC's library.
- On electric rate cases, FERC makes available to applicants software containing its rate computation methodology. This enables applicants to determine what rate FERC staff will consider just and reasonable. A FERC policy announced in 1982 allows proposed rates within 10 percent of FERC's computation to go into effect almost immediately.

We believe that, based on the actions cited above, FERC has adequately responded to our second recommendation in this area.

DEFICIENT APPLICATIONS

Our previous report noted that one cause of delay in the technical analysis phase was the receipt of deficient or incomplete applications. Staff cannot complete its analysis of such applications until after the missing information is received. Applications have two types of deficiencies. The most common results from lack of compliance with FERC's data requirements. The other type involves the need for supplemental information, not normally required but needed to complete the review of a particular application.

We recommended that FERC impose deadlines on applicant response time to staff data inquiries and on the staff's review time. We also recommended that FERC not routinely accept and process deficient applications but rather, in appropriate cases, reject the applications or fine the applicant.

As shown in the following table, the percentage of deficient hydroelectric and electric applications has generally decreased since our previous report. In the gas and oil pipeline regulation categories, however, significant percentages of deficient applications are still being submitted. Such deficiencies result in extended review times. The review of a deficient application can add 12 to 115 days to case processing time.

<u>Product category</u>	<u>Type of application</u>	<u>Deficient applications</u>	
		<u>As of March 1979</u>	<u>As of May 1982</u>
		----- (percent) -----	
Major hydroelectric licenses	Constructed	75	40
	Relicense (without formal hearing)	50	30
Minor hydroelectric licenses	Constructed	60	20
	New capacity	40	(a)
	Relicense	40	20
Electric licenses	Transmission license	60	20
Electric rate adjustments	Rate filings	25	15
Gas pipeline certificates	Construction and operation/transportation/exchange and storage (nonformal)	30	30
	Abandonment of existing facilities	75	75
	Import/export	100	100
	Allocation	95	10
Oil pipeline	Rate adjustment	30	30

a/Not listed in FERC's May 1982 "Management Information System Report."

Source: Derived by GAO from data furnished by FERC.

One reason for the reduction in deficient applications is, as we discussed in the previous section, FERC's revisions of its filing requirements. Revised filing requirements can reduce deficient filings by more clearly defining for applicants what information FERC requires. This appears to be the case for hydroelectric regulation. Another reason for the improvement is that FERC issued regulations in 1979 that allowed deficient

hydroelectric applications to be rejected if they were not corrected within specified time limits. According to FERC's Director of Hydropower Licensing, more than 400 deficient hydroelectric applications were rejected during the 1-year period ended June 30, 1982.

On electric rate cases, FERC adopted a policy in November 1980, according to its Director of Electric Rate Regulation, of rejecting deficient applications that are not corrected within 30 days. Applicants are notified by letter of any deficiencies and the 30-day deadline. As a result, deficient applications on electric rate cases have decreased from 25 to 15 percent.

A large percentage of applications, especially in the natural gas regulation area, are still deficient. In a June 1982 written response on this matter, FERC stated that the deficiency letters on such gas applications generally contain a deadline which the applicant is asked to meet. However, applications are not rejected for failing to meet such deadlines because (1) such rejection may involve substantial FERC effort and applicants would reapply anyway and (2) the nature of some of the deficiencies does not justify rejection. Concerning the second reason, FERC noted that in some cases applicants must obtain data from other companies. For example, a pipeline application may be incomplete if the pipeline company has not obtained data from a gas producer on the amount of gas available to the proposed pipeline, since FERC requires information on gas supply before approving construction of a pipeline.

The rejection of applications is a severe measure and is not appropriate in all cases; but we believe it needs to be used on appropriate natural gas cases as it is on hydroelectric licenses and electric rate cases.

EXPEDITING ENVIRONMENTAL REVIEW OF HYDROELECTRIC PROJECTS

FERC has expedited its environmental review of hydroelectric projects. It took an average of 34 months to develop the environmental impact statements on hydroelectric projects it issued in 1978 and 1979. This average was reduced to 21 months in 1981.

Any delays in the environmental review process can greatly affect project costs. FERC's Chairman testified at appropriations hearings in May 1978 that each month that FERC takes to approve hydroelectric projects can add an additional \$6 million to the construction costs. In September 1982 FERC's Director of Hydropower Licensing said that this was still a reasonable estimate,

although it might need to be reduced slightly due to the somewhat lower current inflation rate. These costs are eventually passed on to consumers.

In our prior report we recommended that FERC expedite its environmental review process by beginning to prepare the statements immediately after it reviews the application. We also recommended that it intensify its efforts to enter into written agreements with other agencies on a reasonable time period for such agencies to comment on the environmental impact of hydroelectric projects.

On the first recommendation, we believe FERC has taken sufficient action to start its work on environmental statements as soon as feasible. FERC's Director of Environmental Analysis for hydroelectric projects said that the main reason for a delay before work began on the statements was that applications frequently did not contain all of the required environmental information and the staff had to wait until this additional information was received. To correct this problem, FERC issued an order on November 6, 1981, more clearly specifying the required information. Also, FERC encourages early consultation with applicants wanting guidance on application preparation.

According to its Director of Hydropower Licensing, FERC has also adopted a policy of rejecting any application on which complete environmental information is not furnished within 90 days. If FERC believes that an application is so deficient that complete information could probably not be furnished within the 90 days, it is rejected immediately.

On our second recommendation, FERC's Director of Hydropower Licensing told us that written interagency agreements have not been reached but that FERC officials have met with the other agencies and have emphasized the need for expedited comments. The timeliness of agencies' comments on FERC's draft statements has improved. We examined those 5 projects on which final statements were issued in 1978 and 1979 and found that agency comments on FERC's draft statements took an average of 106 days. This average improved to 86 days for the 8 projects on which a final statement was issued in 1981.

FERC's Director of Hydropower Licensing stated that it is very difficult to reach any written agreement with the other agencies because the many laws governing hydroelectric licensing have created conflict among the agencies over their respective environmental roles. In a April 28, 1981, letter to the Chairman, Subcommittee on Energy and Water Development, House Committee on Appropriations, the acting FERC Chairman stated that many licensing delays have occurred because of these conflicts and

suggested that FERC be given centralized authority and accountability for hydroelectric licensing.

While a legislative change may be the best long-term approach to solving this problem, the best immediate means of expediting the review process seems to be interagency cooperation. Although FERC has had some success in reducing the time other agencies take to provide comments, this process still takes about 86 days. FERC's Executive Director said that one means of speeding interagency comments on hydroelectric projects involving new sources of power would be for FERC's Director, OEPR, to become immediately involved in individual cases that are taking an extensive time. We agree and make such a recommendation.

CONCLUSIONS

While FERC has taken a number of steps to improve the technical analysis phase, two problems need to continue to be addressed to help speed decisionmaking and to help reduce regulatory costs to utilities and consumers. FERC still receives deficient natural gas applications, which can require a lengthy time for staff to examine and pursue. Also, other agencies do not always provide FERC with timely comments on the environmental impact of hydroelectric projects, and this can delay their construction and increase their costs.

RECOMMENDATIONS TO THE CHAIRMAN, FERC

To help improve the quality of filings and expedite the technical analysis phase, we recommend that the Chairman direct staff to:

- Reject incomplete natural gas applications to discourage unnecessary applicant delays in resolving deficiencies, when such action is in the public interest.
- Obtain the timely involvement of the Director, OEPR, to expedite those cases where interagency comments are required on the environmental impact of new hydroelectric projects.

AGENCY COMMENTS AND OUR EVALUATION

In commenting on our draft report, FERC stated that it recently rejected a severely deficient natural gas application (December 23, 1982) and that it planned to carefully review future applications and take appropriate action if it finds they are deficient. These are important first steps, and we urge FERC to aggressively follow through on them.

FERC agreed with our recommendation to have the Director, OEPR, become involved in expediting the environmental review process when requested to do so by OEPR's Director of Hydropower Licensing.

We also proposed that FERC reach written agreement with cognizant agencies to establish reasonable time frames for the agencies' comments on draft environmental impact statements. FERC stated that, in fiscal year 1982, agencies' comments on the two statements drafted were received in an average of 50 days. This is an improvement over the 86-day average for the eight statements issued in 1981. Since FERC's efforts to expedite the time it takes to review comments from agencies has resulted in a substantial reduction, we have dropped this proposal.

CHAPTER 4

THE HEARING PHASE

FERC has taken actions on each of the recommendations we previously made on how hearings could be expedited. For example, it revised its procedural rules to speed decisions on interlocutory appeals.¹ Hearings are proceeding more quickly now than at the time of our prior report. Also, we still believe that the Congress should require (1) periodic evaluations of law judges by an outside agency, such as the Office of Personnel Management, and (2) regulatory agencies to develop performance standards.

Cases are going through the hearings phase more quickly now than at the time of our prior review. Cases in which a final order was issued in fiscal year 1978 spent an average of 623 days in the hearing phase. This average improved to 540 days in fiscal year 1979, and for a recent 1-year period the average was 505 days. While this is a considerable improvement, it still is longer than the 1-year goal for resolving electric rate cases proposed by the former FERC Chairman, which the Commission is currently considering.

TIME EXTENSIONS

Our prior report noted that a frequent and major time-consuming factor in the hearing process was the ALJs' liberal approval of time extensions. Any party participating in a hearing may request that the presiding ALJ grant an extension or a recess for a good cause. For example, an applicant's attorney may file a motion stating that he or she needs an additional 2 weeks to prepare an initial brief. Recently, extensions added from 1 month to over a year to cases in hearing.

We recommended that the Chief ALJ urge ALJs to more critically evaluate requests for time extensions, particularly those requests made just prior to established deadlines, and grant them only in the most exceptional circumstances. We believe that if the hearing process is to be expedited, such extensions and postponements must be minimized. To achieve time reductions, ALJs may, for example, have to deny a party's request for additional time to prepare briefs or grant a shorter extension than requested.

The number of extensions granted has decreased. In our prior report we noted that for the 11 ALJ decisions issued in fiscal

¹An interlocutory appeal is a request filed by any hearing party for the Commission to overturn an ALJ's ruling made during the course of a proceeding.

year 1978 that took the longest time to decide, ALJs granted 139 of the 149 extension requests. We recently examined the 11 lengthiest decisions in the 1-year period ended April 30, 1982, and found that on these 11 cases, 114 of the 119 extensions requested were granted. While these figures indicate that ALJs still frequently grant extension requests, the number of requests has declined. According to the Chief ALJ, this decrease is attributable to the ALJs' telling the attorneys to be more selective in requesting extensions, which has resulted in attorneys generally providing better justification for extension requests.

FERC's Chief ALJ has urged the judges to more critically evaluate extension requests and, as noted above, the number of extensions has decreased. We believe the Chief ALJ's continued action on this recommendation can help FERC further reduce its case processing time. One goal proposed by FERC's former Chairman, which FERC is currently considering, was that routine electric rate cases be decided in 12 months. The proposed schedule allowed about 8 months for the hearing phase, a substantial reduction from the recent actual average of over 16 months. In this regard, on December 10, 1981, the Chief ALJ wrote a memo to the ALJs that the time had come to tighten procedural schedules on electric rate cases and to grant extensions of time and postponements "only for the most compelling reasons." As an example, he attached copies of orders he had issued denying two extension requests in an electric rate case. We encourage such a continued tightening of hearing schedules and believe that such continuing efforts are needed to (1) meet the proposed time frame for electric cases and (2) further improve the timeliness of the hearing process.

DISCOVERY PROCEDURES

Our previous report noted that resolving all discovery requests (requests by a hearing party for information beyond that which FERC routinely requires) during the prehearing conference could significantly expedite the subsequent steps in the hearing process. However, such requests were frequently not made until well after such conferences and, therefore, might not have been expeditiously resolved. This could significantly delay further proceedings. In fact, our prior report noted that in 3 of 11 cases we sampled, replying to discovery requests took more than a year.

We recommended that the Commission direct the Chief ALJ to urge the ALJs to resolve discovery requests as early as possible, preferably at the prehearing conference, and establish strict deadlines for submission of discovery data.

Due to time constraints, we did not attempt to determine the recent number of discovery requests granted after the prehearing conference or how long they took to resolve. Instead, we reviewed

actions FERC has taken to reduce the time consumed by discovery. We found that two FERC actions and a planned third one should help expedite discovery. First, the Chief ALJ stated that he does urge the ALJs to resolve discovery requests as early as possible and that this is one of the main purposes of the prehearing conference. Second, FERC has revised and expanded the information that it requires of applicants, thus reducing the information that it later needs to obtain in discovery.

FERC plans to revise its rules of practice on discovery and has already obtained some public comments on this subject. As to the specific rules to be adopted, the commentators differed on whether FERC should adopt the Federal rules on discovery or establish its own rules. In any case, FERC recognizes that its discovery rules need to be revised and updated and is starting to take action.

EARLY IDENTIFICATION OF ISSUES

Another means of expediting the hearing process is for the parties to identify the disputed issues as early as possible. As stated in our prior report:

"Without at least a solidification of the issues and positions prior to commencement of hearings, research on the part of the ALJ is unnecessarily compounded, the potential for settlement is reduced, and the initial discovery period, as well as the overall hearing process, unnecessarily extended."

To prevent such unnecessary delays, we recommended that (1) the ALJs be urged to require all parties to at least agree on issues before formal hearings begin and (2) FERC revise its rules to require all parties to file statements of issues and position both before and after formal hearings.

FERC's Chief ALJ stated that FERC has taken actions consistent with these recommendations. On the first one, the Chief ALJ said that he does urge ALJs to require parties to define the issues before the hearing and that they generally do so. We did not, due to time constraints, attempt to determine just how strict the ALJs have been, but the actions cited below indicate that FERC has made conscientious efforts to conform to our recommendations.

Concerning the second recommendation, although FERC has not revised its rules to require filing of prehearing briefs that contain the parties' statements of issues and position, it has revised its rules to allow the ALJ to decide whether to require such briefs. In addition, FERC's Deputy General Counsel for Litigation requires FERC attorneys to submit prehearing briefs on

every case whether the ALJ requires them or not. The brief includes a statement of the issues, the staff's position, and the findings of fact and law that the staff asks the ALJ to make in his/her decision. He also encourages staff attorneys to confer with other hearing parties and reach a joint stipulation of the issues and facts. Such joint stipulations can speed the ALJs' decisions by reducing the time they would otherwise need to write the background parts of their decisions.

We believe the actions taken are consistent with our recommendations and that the present rule allowing the ALJ to decide whether to require such statements is sufficient and gives the ALJ an additional means to expedite cases.

FORMAT OF ALJs' INITIAL DECISIONS

Our previous report noted that our examination of 22 initial decisions showed that many were inadequately summarized, organized, and referenced. We concluded that such problems could make a review of the decisions unnecessarily difficult and slow. The decisions are reviewed by FERC's Office of Opinions and Reviews (OOR), and the Commission, and may also be reviewed by the U.S. Court of Appeals and the U.S. Supreme Court. Therefore, we recommended that the ALJs be urged to include in their initial decisions a brief summary of findings of fact and conclusions of law and that they also include more frequent references to the hearing transcript. A related recommendation was that the Chairman encourage the Director, OOR, and the Chief ALJ to meet periodically to resolve mutual concerns and establish reasonable constraints on the form, content, citations, support, and summary of ALJ initial decisions.

Our followup work showed that recent ALJ initial decisions have been written in a manner that conforms to our recommendations and that can help expedite their review. We reviewed the 15 most recent initial decisions as of June 4, 1982, and found that all had summaries of findings and conclusions and appeared reasonably well organized. All but two had frequent references to the transcript or other supporting documentation. Frequent referencing for the remaining two did not seem appropriate since one was only a two-page decision and the other was an oral decision printed from the transcript.

INTERLOCUTORY APPEALS

FERC has acted on our recommendation that it expedite the review of interlocutory appeals by (1) delegating decisions on such appeals to a single Commissioner and (2) automatically denying the appeals within 30 days except in the most unusual circumstances. Under Commission rules (18 C.F.R. 1.28 (a) and (c)), an interlocutory appeal is a request filed by any hearing

party for the Commission to overturn an ALJ's ruling made during the course of a proceeding. Such appeals can delay hearings. At the time of our prior report, eight appeals were pending, including three that had been pending for over 6 months. FERC has revised its rules to allow a single Commissioner to review appeals. The Commissioner refers appeals to the full Commission only if he determines extraordinary circumstances exist. Appeals are now resolved more quickly. For the 1-year period ended August 1, 1982, 25 interlocutory appeals were filed and all were resolved within a month. The Chief ALJ said that the revised rule on interlocutory appeals is effective and that such appeals no longer cause delay of hearings.

COMMISSION ACTION ON SETTLEMENTS

In our previous report, we recommended that the Commission (1) urge ALJs to review and comment on proposed settlements to expedite FERC decisionmaking, (2) establish mandatory rather than voluntary deadlines on staff review of uncontested settlements, and (3) place reasonable deadlines on issuing final decisions on settlements, particularly uncontested ones. We believe FERC has addressed the intent of all three recommendations.

Although FERC has not directly implemented the first recommendation, it has acted to speed settlement negotiations by revising its rules to allow a second ALJ to be appointed to the case. This settlement ALJ, unlike the ALJ who presides over formal case hearings, can help speed resolution of the case by participating in settlement discussions with the parties and helping them reach a compromise. According to the Chief ALJ, presiding ALJs do not participate in settlement discussions because the proposed compromises discussed could affect their subsequent decision in the case.

While FERC has not formally issued a directive on our second and third recommendations, it has continued to place a high priority on expediting settlements. Our prior report noted that the former Chairman had issued a directive that staff should attempt to schedule uncontested settlements (settlements to which all hearing parties agree) on FERC's agenda within 30 days of the proposed settlement and contested settlements should be on the agenda in 60 days. However, compliance was voluntary and no deadline was set on how quickly FERC would issue a final decision on those cases. Our recommendations were aimed at ensuring that priority continues to be placed on expediting final decisions on settlements.

We found that FERC generally does place a high priority on expediting its decisions on settlements. In our previous report, we noted that as of April 20, 1979, 71 settlements were pending Commission action, including 17 that had been pending for over a

year. By December 1, 1979, FERC records showed only 41 pending settlements with none over a year old. More recently, of the 71 settlements decided in the 1-year period ended April 30, 1982, none were over a year old and all but 9 were decided within 60 days. On the basis of these results, we believe the intent of our second and third recommendations has been satisfied.

USING HEARING STATUS REPORT AS A MANAGEMENT TOOL

FERC used to prepare a monthly status report on cases in the hearing phase. It contained information on the status of each case, the name of the presiding ALJ, the dates that major milestones were completed, and an estimated date for issuing the initial decision. We recommended that the Chief ALJ use this report as an aid in (1) assigning cases, (2) consulting with ALJs on their performance, and (3) making recommendations to the Office of Personnel Management (OPM) on the need for disciplinary action.

Our specific recommendation is no longer feasible because FERC no longer issues the hearing status report. According to the Chief ALJ, FERC decided that the report was not needed because the monthly Management Information System reports provide the same information. In addition, the Office of ALJs maintains records on the status of its cases and periodically prepares an informal report that the Chief ALJ said he uses to assign cases and, when he believes ALJs could do more to expedite their cases, to consult with ALJs on their performance. He noted, however, that he does not periodically evaluate each ALJ because the Administrative Procedure Act prohibits agencies from rating their ALJs. We believe that the actions cited above are sufficient to implement the intent of first two recommendations to the extent currently possible.

The Chief ALJ said that he has not referred any ALJ to OPM for disciplinary action because (1) no ALJ's performance has been poor enough to warrant such action and (2) OPM does not attempt to evaluate ALJ performance anyway. We noted the latter in our prior report and recommended that the Congress assign a performance evaluation role to OPM or another outside organization.

ALJ PERFORMANCE EVALUATION

ALJs have almost complete control over cases in the hearing phase, but no standards have been established for evaluating ALJ performance. FERC's control over its ALJs is limited by the Administrative Procedure Act, which seeks to ensure the independence and objectivity of ALJs who serve FERC and 27 other Federal agencies. The act precludes agencies from controlling ALJ performance. While it gives OPM the responsibility for defining ALJ qualifications, compensation, and tenure, it does not provide for OPM or any other organization to evaluate ALJ performance.

In our prior report and two reports on the administrative law process,² we recommended to the Congress that it (1) require agencies, such as FERC, to establish performance standards for ALJs and (2) make an outside agency, such as OPM or an ad hoc committee composed of private attorneys, Federal judges, chief ALJs, agency officials, and the Administrative Conference of the United States, responsible for periodically evaluating the performance of ALJ's in regulatory agencies such as FERC. Two regulatory reform bills in the 96th Congress, S. 262 and S. 755, contained provisions for ALJ evaluation by an outside agency. However, the Congress did not adopt either bill.

While the complexity of the ALJs' role makes evaluating their performance particularly difficult, the importance of their role in case management makes evaluation essential. We therefore continue to believe that ALJ performance evaluation is important.

CONCLUSIONS

FERC has made numerous improvements in the hearings phase, and as a result, cases go through this phase more quickly than at the time of our prior report. FERC's Chief ALJ is, as we recommended, urging ALJs to more critically evaluate requests for time extensions. We believe that such continuing action will help FERC further reduce the current 16-month average for hearings and help meet its proposed goal of deciding routine electric rate cases in one year.

RECOMMENDATIONS TO THE CONGRESS

To increase incentives for ALJs to expedite the hearings process, we still believe that Congress should amend the Administrative Procedure Act to:

- Require regulatory agencies, such as FERC, to develop ALJ performance standards.
- Assign the responsibility for periodically evaluating ALJ performance to another organization, such as the Office of Personnel Management or the Administrative Conference of the United States.

AGENCY COMMENTS AND OUR EVALUATION

Our draft report proposed that FERC urge ALJs to provide comments on proposed settlements as a further means of expediting

²"Administrative Law Process: Better Management Is Needed" (FPCD-78-25, May 15, 1978), and "Management Improvements in the Administrative Law Process: Much Remains To Be Done" (FPCD-79-44, May 23, 1979).

FERC's review of such cases. We noted that ALJs are familiar with the issues involved in a case and their comments could be a valuable aid to FERC's review of these proposed settlements. The Chief ALJ told us that, although such comments could help expedite subsequent review, ALJs only occasionally provide them.

FERC's comments on the draft report, however, noted that obtaining ALJ comments would slow the submission of the settlement to the Commission for review, although it did not comment as to whether it might expedite the actual review. The net effect that this measure would have on timeliness is unknown since it is not currently used. However, because FERC's actions on our other recommendations have substantially expedited its review of settlements in the last few years, we believe it is unnecessary to try a new procedure at this time.

In commenting on our proposal concerning ALJs' granting time extensions, FERC noted that management control over ALJs is limited by statute. It added, however, that the Chief ALJ has supported FERC efforts to expedite hearings by urging ALJs to limit time extensions on all cases, and it concluded that he has been acting effectively to eliminate frivolous time extensions. In view of the emphasis being placed on limiting time extensions, we consider our proposal to have been implemented.

CHAPTER 5

COMMISSION DECISIONMAKING PHASE

Commission decisionmaking is the final phase of case processing and can represent over one-half of total case processing time. For nonhearing cases, this phase begins with the completion of the technical analysis and ends with the Commission's final order. For hearing cases, it begins with the ALJ's initial decision and ends with the final order. This phase may also include a rehearing of a "final" Commission order.

In our prior report, we identified procedural problems in this process and made recommendations aimed at correcting them. Consistent with these recommendations, FERC has

- delegated authority to staff to decide many nonhearing cases,
- implemented a centralized legal reference system to speed legal research,
- implemented an agenda forecasting system to aid advance preparation on cases due for final Commission decision, and
- revised rules on exception briefs to speed case review.

FERC, however, still needs to act on our other recommendations by expediting rehearings, limiting and expediting the review of initial decisions, and ensuring that the Office of General Counsel provides complete information for FERC's Management Information System.

LEGAL REVIEW OF CASES

Nonhearing cases

On nonhearing cases the final review phase has been expedited, to some degree, since the time of our previous report. For these cases FERC's OGC is responsible for legal review of the technical staff's recommendations before their referral for final decisionmaking. On the basis of its review, OGC normally drafts a proposed final order. The final decision is then made either by the Commission or, on some more routine nonpolicy cases, by an office director. FERC has delegated a considerable number of matters to its office directors for decision, which has expedited the final review phase of these cases.

To determine FERC's progress in expediting legal review of nonhearing cases, we examined the same major categories (hydroelectric license and gas pipeline certificate) of nonhearing

cases included in our prior report. The following chart summarizes the results of our comparison.

Time period	Type of case	Total no. of cases	Days required to complete OGC legal review					
			1-15	16-30	31-60	61-90	91-120	Over 120
1978 (note a)	Hydroelectric license	124	20	19	22	23	6	34
1981 (note b)	Hydroelectric license	272	208	38	14	8	2	2
1981	Hydroelectric license	20	8	4	0	0	2	6
1978	Gas pipeline certificate	398	86	226	47	17	6	16
1981	Gas pipeline certificate	234	44	26	74	46	22	22

a/These cases are for fiscal year 1978.

b/Cases delegated to an office director for final decision.

Source: Derived by GAO from data furnished by FERC.

As shown in the chart, the time required for legal review of hydroelectric cases has improved. The principal reason is that since many cases are now delegated to an office director for decision, the orders for such cases are routinely drafted in the Office of Electric Power Regulation rather than in OGC. Therefore, OGC merely has to concur with the OEPR-drafted order.

On gas pipeline cases, the Assistant General Counsel for Pipeline Certificates and Curtailments noted that legal review is still sometimes lengthy because the cases are complex. Some of the more routine gas pipeline cases, however, have been delegated to office directors for decision and thus should be completed more quickly because the orders are drafted in the Office of Pipeline and Producer Regulation and merely concurred with by OGC. Since neither OGC nor the MIS has information on how quickly OGC acts on these gas pipeline cases, we were not able to determine the time saved on delegated cases. In December 1982, FERC's Director of Planning and Information Management stated that he would soon act to assure that such data is entered in the MIS.

Hearing cases

In our prior report, the length of time that FERC's Office of Opinions and Reviews spent reviewing hearing cases led to our recommendation that FERC review options for limiting and expediting this review process. For example, we recommended that FERC provide guidance on how OOR could limit its review of hearing cases. We continue to believe that our recommendation has merit and should be implemented.

OOR reviews all of the ALJs' initial decisions for compliance with FERC policy and drafts proposed final decisions for FERC. In our prior report we noted that the 48 cases decided during the last half of 1978 spent almost 11 months in this review phase. Our analysis of the 35 cases entering this phase in 1980 showed that they remained there for an average of over 11 months. Also, of the 55 cases entering this phase in 1981, as of July 6, 1982, 30 were decided within an average of 9.6 months and 25 had been pending for an average of over 11 months. The overall average was over 10 months. It should also be noted that, for electric rate cases, this review phase took an average of over 14 months for the 14 cases decided in the 1-year period ended July 12, 1982.

FURTHER DELEGATIONS OF AUTHORITY

Our previous report noted that FERC had amended its rules in 1978 and 1979 to delegate limited authority for deciding routine matters to various staff office directors, subject to appeal within 15 days to the full Commission. According to FERC, it delegated more than 11,000 routine and uncontested matters annually to key staff members for decision. We also noted that although further delegations were being considered, FERC was reluctant to issue them because staff decisions are appealable to the full Commission, and if there were many such appeals, the delegations could in effect add an extra layer of review and slow the decisionmaking process.

We recommended that FERC (1) review its remaining nondelegated functions to determine which could be delegated to key staff and (2) formally request from the Congress the authority to delegate final decisionmaking authority for those functions it deems appropriate.

FERC has implemented the first recommendation. Since our previous report, FERC has issued two more delegations of authority and plans another. On May 22, 1981, FERC increased its delegations of authority to annually transfer about 1,300 decisions to the Director, OPPR, and to delegate other functions to other office directors. An example is the delegation raising the threshold level of the OPPR Director's authority to issue permanent

certificates or amend certificates for the construction or operation of natural gas pipeline facilities from \$1 million to \$5 million. On April 21, 1982, FERC delegated additional authority to its office directors to rule on other matters. FERC estimates that the Director of OPPR alone could now rule on an additional 1,700 items a year. FERC staff is also currently preparing a list of other matters that FERC could delegate.

These delegations allow the Commission more time for cases involving policy, or precedent-setting issues. The FERC Chairman has testified before the House Appropriations Committee that the implemented delegations have spared the Commission the necessity of acting on more than 14,000 matters annually. In fact, the Commission now ordinarily meets only twice a month, instead of every week as in previous years. With a lighter caseload, the Commission has more time to consider cases involving major policy issues. Timely and carefully considered decisions on these major policy issues can help FERC expedite its decisions on subsequent cases involving such issues.

FERC has not implemented our second recommendation that it formally request from the Congress authority to delegate final decisionmaking. This was intended to address FERC's concern that delegations of authority may not speed the decisionmaking process because parties might appeal to the Commission many of the delegated decisions. FERC officials recently told us that few delegated decisions have been appealed. Although the minimal number of appeals may indicate that delegation of final authority is not urgently needed, we believe that FERC needs to closely monitor the need for such a measure so that an early request could be made for such authority if appeals do become a significant factor.

IMPLEMENTATION OF A LEGAL PRECEDENTS SYSTEM

We also recommended that FERC develop a legal precedents manual to expedite legal research throughout the agency. FERC has accomplished this by using an automated legal precedents system to speed its legal research. FERC now subscribes to LEXIS, a computerized legal research and retrieval system. According to FERC's Assistant Director for Program Planning and Legal Systems, 14 terminals are located throughout the agency and 300 employees have been trained to use the system. Under this system, the user enters key words on a desired topic or issue and a list of relevant FERC orders or court decisions is displayed. In addition to case law, the system also contains applicable statutes and regulations. Such a system reduces the amount of time-consuming, manual legal research and thus speeds the preparation of briefs and decisions.

TRACKING CASES THROUGH THE LEGAL REVIEW PROCESS

We recommended that FERC improve its casetracking system for cases that are under OGC review and thus are pending final Commission action. While FERC has made some improvements, we believe that it can do more to assess the status and/or timeliness of OGC review.

In April 1982 FERC, as part of its MIS, began preparing agenda forecasting reports that aid advance preparation for cases that are pending legal review and are expected to be placed on the Commission's agenda within a short time. The advance notice provided by the reports will allow early case preparation, allocation of staff resources, and establishment of case priorities. The reports include information on the type of case, the estimated date it will be placed on the agenda, the parties that have worked on it, and the major issues. Major cases that involve a particularly important or possibly precedent-setting issue are also identified.

While these forecasting reports should help in managing OGC's caseload, their usefulness is limited because the MIS often does not contain the actual dates that OGC receives and subsequently completes its action on a case. Therefore, the exact status of the case and the timeliness of OGC's work cannot be determined. We asked FERC for such information on recently completed hydroelectric cases. FERC's Assistant Director for Program Planning and Legal Systems stated that the MIS did not contain the information but that it was available in manual records. He explained that, while the MIS was set up to accommodate such dates, OGC generally did not record the dates. An August 24, 1982, memo from FERC's Executive Director requested OGC and other offices to enter more complete milestone data in the MIS to aid management review of case processing activities. We support the Executive Director's request and believe that FERC should continue to improve its casetracking system for cases under OGC review. The need for more complete MIS data is also addressed on page 40 of this report.

REVISED RULES ON EXCEPTION BRIEFS

Acting on a proposal by the former FERC Chairman and a recommendation made in our previous report, FERC required, as of August 1982, that exception briefs be prepared in a manner that will expedite their review and consideration. Specifically, these exception briefs, which are filed by parties to a case following the ALJ's initial decision, are to, among other requirements, (1) be limited to 100 pages, (2) summarize the writer's arguments, (3) list the errors of fact or law that are asserted, and (4) summarize policy issues that warrant Commission review. These changes should help speed the Commission's decision on whether to

affirm an initial decision or reverse the ALJ on some or all issues.

While FERC's new rule appears to be responsive to our recommendation, we are concerned about the degree to which FERC will enforce it. Our concern stems from FERC's June 1982 written response to our inquiry on this matter. FERC stated that it was reluctant to rigorously enforce this rule because it could "* * * deprive someone of his day in court because of a formal defect in his brief." While we agree that rigorous enforcement may not always be appropriate, we believe that all parties to a case should be reminded that their briefs will be the most effective--that is, they will aid the Commission's quick understanding of the attorney's assertions--if they conform to these requirements. In addition, FERC's General Counsel should emphasize to OGC trial attorneys the importance of adhering to these requirements. Therefore, we continue to believe that such requirements and their effective implementation are necessary. We reserve judgment on FERC's response until we have had time to evaluate its implementation and enforcement of this rule.

OGC REVIEW OF NONHEARING CASES

Our prior report suggested revised procedures to help expedite OGC's review of nonhearing cases. Specifically, we recommended that the Chairman require FERC technical staff to prepare memorandums providing comments on each case in the form of draft orders.

FERC technical staff does now draft all delegation and some routine nondelegation orders for OGC review. However, FERC said that this was not feasible for the more complex cases because the technical memorandums may contain information it would not want to make public in an order. After reevaluating the situation, we agree.

FERC has acted to expedite OGC's review of the large number of cases that FERC has delegated to an office director for decision. On these more routine cases, technical staff now prepares both a technical memorandum and a draft order for OGC concurrence. This expedites the review process because OGC does not have to become as heavily involved as it would if it had to prepare the draft order. This procedure is not feasible for the more complex cases that go to the Commission for review because such cases require OGC legal analysis rather than just concurrence.

On a related recommendation, that the heads of OGC and the technical staff should periodically meet to discuss technical staff's input to OGC, FERC appears to have taken sufficient action. In a June 1982 written response on this matter, FERC

stated that OGC and the technical staff work closely together and that meetings are held as needed. In addition, as previously noted, the technical staff frequently prepares draft orders on delegated cases, generally helping to expedite OGC review.

On nondelegated cases, FERC's identification of upcoming Commission workload in its agenda forecasting reports can aid both technical staff and OGC in developing all relevant legal and policy issues.

LIMITING THE REVIEW OF INITIAL DECISIONS

In our prior report we recommended that the Chairman, FERC, review options for limiting and expediting staff's review of ALJs' initial decisions and summarily affirm (adopt) those initial decisions that do not meet the Commission's criteria for review. FERC, however, has not implemented these recommendations, although it is now considering adopting similar procedures on wholesale electric rate cases.

The time spent reviewing initial decisions is still quite lengthy. In fiscal year 1979 this review took about 11 months. For those cases entering the review phase in 1980, this process took about a year. In the 1-year period ended July 12, 1982, the 14 completed electric rate cases averaged 14 months in this review phase.

We believe that these time frames show the need for FERC to improve this phase of its operations. Others agree. As noted in our prior report, the American Petroleum Institute suggested criteria by which FERC's review could be limited and thus expedited. In addition, several OGC attorneys, ALJs, the Chairman of FERC, and representatives of industry and the public have also suggested that the Commission limit its review of certain kinds of ALJ decisions. Such limitations could substantially reduce both the OOR workload and the time it takes to complete its review phase. In addition, a 1968 recommendation by the Administrative Conference of the United States¹ and a 1977 Senate study² proposed that agencies summarily affirm initial decisions unless certain reasons for review exist. The two differed somewhat on the proposed review criteria but basically specified that initial decisions would be reviewed only if the decision was not supported by the evidence, involved a procedural error or erroneous legal conclusion, or raised a novel issue of law or policy. Currently, the

¹ 1 C.F.R. 305.68-6.

² "Delay in the Regulatory Process." Senate Committee on Governmental Affairs, July 1977.

Commission may substantially revise these decisions even when they are routine cases which do not involve major policy issues or novel questions of law or fact.

On November 19, 1982, FERC issued a proposed rulemaking that is consistent with our recommendations and that could substantially expedite its decisions on routine wholesale electric rate cases. It proposed that expedited procedures be used on electric rate cases not involving a major policy issue or a novel question of fact or law. Under these procedures the ALJs would reconsider their initial decisions to correct any errors or clarify any points. As a result, FERC expects to expedite its review of these cases and summarily affirm the initial decisions more often than it now does.

Given the amount of time FERC spends reviewing ALJs' initial decisions and the comments generated on this process, we continue to believe that FERC needs to implement our prior recommendations.

TIGHTER CONTROLS STILL NEEDED ON REHEARINGS

To expedite rehearings and reduce the burden that they can place on the Commission, we recommended in our July 1980 report that FERC place an initial time limit, such as 90 days, on the time it allows to resolve the cases and allow additional time only in exceptional cases. We also recommended that FERC formally request from the Congress appropriate legislative authority to permit the Commission to waive rehearing provisions in appropriate cases.

FERC has not acted upon our first recommendation. Although FERC's rules state that a rehearing application is denied unless the Commission acts upon it within 30 days after it is filed, the Commission can indefinitely suspend this 30-day constraint by a suspension order that allows for further consideration of the application. As a result, rehearings frequently take longer than 30 days to resolve. For example, as of June 1982, 155 rehearing cases were pending, 124 were over 30 days old, and of these, 25 were over a year old. This compares with 154 cases pending during May 1979 with 145 over 30 days old and 2 over a year.

We believe that these time frames support our recommendation for a time limit on resolving rehearing requests. Also, as noted in our prior report, the former FERC Chairman and several industry officials agree that FERC's rehearing process can be expedited. In fact, the former Chairman said that new cases cannot be dealt with expeditiously because both the Commission and its decisionmaking employees are tied up with reconsiderations and rehearings.

Concerning our second recommendation, a provision in H.R. 5363 would amend the Federal Power Act to allow FERC to waive rehearings on electric rate cases. The bill was not adopted during the 97th session of Congress, but it may be reintroduced. If it is enacted, the Commission could adopt such policies and procedures regarding rehearings as it deems appropriate. While FERC did not seek this provision, the current FERC Chairman has expressed approval of this provision of the bill.

CONCLUSIONS

FERC has made some improvements in the Commission's decisionmaking phase, such as increased delegations of authority, a centralized legal reference system, and an agenda forecasting system. FERC still needs to expedite, however, its review of ALJs' initial decisions and cases in rehearing.

RECOMMENDATIONS TO THE CHAIRMAN, FERC

We recommend that the Chairman improve the efficiency and effectiveness of the Commission's review of cases pending final Commission action or reconsideration by:

- Limiting and expediting the OOR review process and revising OOR review policy to reflect those options that would best accomplish this objective.
- Summarily affirming all ALJ initial decisions not meeting the criteria it establishes under this review policy.
- Placing a higher priority on Commission action in cases pending rehearing by initially limiting extensions of time for decisions on rehearing requests to a firm, but reasonable, time period (90 days) and, thereafter, allowing further extensions only upon finding certain exceptional case characteristics that it should define in its rules of practice and procedure.

AGENCY COMMENTS AND OUR EVALUATION

In its comments on our draft report, FERC stated that OOR's review is lengthy because the cases involve complex matters requiring careful deliberation and that it is not always appropriate to summarily affirm an ALJ's initial decision even when the Commission agrees with the ALJ's conclusions. For example, the decision may need to be rewritten to clarify or improve the rationale for the decision to prevent remand by a reviewing court. Although we acknowledge this fact, FERC's proposed rulemaking on electric rate cases indicates its willingness to try to expedite the review

of the more routine ones by identifying such cases at an early stage and summarily affirming many of them. We continue to believe that there are appropriate cases where (1) the review of initial decisions could be limited and/or expedited and (2) FERC could summarily affirm these initial decisions.

On our recommendation concerning rehearings, FERC stated that its Office of the Secretary and Office of General Counsel do review the list of rehearing cases to assure their prompt completion. It also noted that some cases will be resolved when FERC issues a rulemaking on certain generic issues, such as how to treat production-related costs under NGPA. FERC noted that such issues are highly technical and controversial and require careful deliberation.

Despite FERC's efforts to act promptly on these cases, the age of cases awaiting rehearing has increased. Our prior report noted that in May 1979, 154 cases were awaiting rehearing with two of them pending for over a year. In June 1982, 155 cases were pending rehearing, with 25 pending for over a year. While cases in rehearing can be technical and controversial, delayed decisions postpone the final resolution of these cases and tie up the Commission and its employees. We therefore believe that FERC should act more promptly on cases pending rehearing.

CHAPTER 6

OVERALL MANAGEMENT INITIATIVES

Our prior report noted that while FERC was improving the technical analysis, hearing, and Commission decisionmaking phases to expedite case processing, certain overall managerial initiatives were also needed. The report recommended that FERC (1) increase managerial accountability for case processing, (2) increase the accuracy, completeness, and efficiency of the MIS, (3) encourage staff and applicants to adhere strictly to established target dates, and (4) expand the use of generic rulemakings to prevent relitigation of common issues. FERC has responded to some of these recommendations. It has continued to improve the completeness and efficiency of the MIS, introduced an agenda forecasting system to increase accountability and aid in allocating staff time, and initiated rulemakings on generic issues and generic procedures for processing certain types of cases.

However, FERC needs to finalize its actions on some recommendations. FERC is now trying to (1) assure that all key milestone dates are entered in its MIS and (2) reach final decisions on pending major generic rulemakings.

IMPROVEMENTS IN THE MANAGEMENT INFORMATION SYSTEM

Our prior report noted that FERC's development of an MIS for tracking pending cases was a major positive step toward identifying bottlenecks in case processing. However, we also noted that the system's usefulness as a management decision tool was being hampered by certain problems that FERC should correct as part of its continuing development of the system. One problem was that the data base was incomplete and inaccurate. Not all pending cases were tracked, nor did the system have certified historical data on completed cases. Thus, the system did not provide management with reliable information on the timeliness of case processing.

Another problem was that individual FERC offices maintained their own casetracking systems. Some of these systems contained more information on milestone dates than the MIS. The report noted that FERC's basis for this was that such data could serve lower level management but might not be significant to top management. We believed, however, that top management could use this data to help identify bottlenecks in case processing and that the centralized system could then meet the needs of all management levels. The final problem noted was that the manual reporting system was unnecessarily clumsy and time consuming.

To increase the accuracy, completeness, and efficiency of the system, we recommended that FERC (1) incorporate verified historical data on average case processing time, (2) centralize the MIS subsystem data bases, (3) supplement the present centralized MIS manual report system with more detailed information to meet the needs of lower level management, and (4) fully automate the current manual method for preparing monthly MIS status reports.

Following our recommendation, FERC started using support documents to record historical data on completed cases, and thus average case processing times can now be computed. Historical data on case completion times can be used to show where improvements were made or are needed. The Executive Director said that FERC's progress in reducing these times is discussed in monthly meetings with key staff. Managers also use these averages to help develop reasonable standard times for case processing.

On the second and third parts of the recommendation, FERC has, according to its Assistant Director for Program Planning and Legal Systems, eliminated a duplicative electric case tracking system and a system for tracking natural gas cases. FERC has also increased the accuracy and completeness of case-tracking information in its MIS since the time of the previous report, although some important milestone dates are still frequently not recorded. However, FERC is acting to correct this. In an August 24, 1982, memorandum to office directors, the Executive Director noted that certain important milestone dates were not regularly tracked in the system, making it difficult for management to identify where improvements were needed in case processing. The dates cited included the date the applications are determined to be adequate, the date that technical analysis is completed, and the date that draft Commission orders are prepared. He then requested that these and 14 other milestone dates be recorded regularly for all cases that were filed by August 1, 1982, or later.

Lastly, FERC no longer uses a time-consuming manual method to update its system. In December 1981 the system became interactive; that is, staff uses a terminal to directly and immediately update case status. More than 20 such terminals are located throughout FERC.

MANAGERIAL ACCOUNTABILITY

Our prior report stated that cases had at one time been processed without any one individual or group being held responsible for delays. It noted that to help resolve this problem, FERC started developing a centralized management information system to track cases (as discussed in the previous section) and also appointed project managers for each of about 100 critical energy cases. Critical cases were those having a significant impact on

the Nation's energy supply or on questions of energy policy. The project manager was to monitor the critical case and report its progress to FERC.

Our report noted that this critical case approach did help to expedite these cases and that FERC was considering expanding it to additional cases. However, FERC's Executive Director was concerned that FERC might be expediting critical cases at the expense of its remaining caseload. We concluded that FERC should try a limited expansion of the critical case approach, evaluate the results, and if warranted (1) increase the number of staff members designated as project managers, (2) expand the role of project managers to include full accountability to top agency management for delays in case processing until a case reaches hearing or final Commission decision, and (3) hold project managers responsible for supervising and coordinating staff review on all their cases.

FERC decided that expansion of the critical case approach was not warranted and, in fact, dropped the approach in 1981 because it believed that it caused too much concentration on critical cases at the expense of other cases. However, FERC noted the importance of staff accountability for expediting cases and took steps to further improve it. We believe these steps, as cited below, accomplish our recommendation's intent that accountability be increased.

FERC began preparing agenda forecasting reports from its MIS in April 1982. Under this system, OGC and OOR forecast when cases will be ready to be placed on the Commission's agenda for final decision. The Deputy General Counsel stated that OGC and OOR managers are to use the forecasting system to help set priorities and allocate staff resources. The system places responsibility on both technical and legal staff to assure that briefs, opinions, and technical and legal support material are prepared in a timely manner to meet this schedule. The system identifies the major issues involved in cases, and according to the Deputy General Counsel, any possibly precedent-setting cases will be scheduled for decision first so that other related cases can be expedited.

The system is a potentially valuable tool for increasing managerial accountability and expediting cases. FERC only began testing and implementing it in 1982; thus, it is too early to estimate its success in expediting cases.

FERC also took other steps to improve accountability. Its MIS reports identify the technical staff person assigned to each case or group of related cases. An additional step that FERC took in 1980, but which is no longer frequently used, is its Management Control System. Under this system, FERC staff identifies major cases, rulemakings, and management initiatives; these matters are

discussed in periodic meetings between the Chairman and office directors; and FERC monitors the subsequent action taken on each matter. However, the system is no longer used frequently and the meetings have not been held since January 1982. Instead, the current Chairman prefers to rely on the agenda forecasting reports and periodic informal meetings with staff. As previously noted, it is too early to evaluate the effectiveness of using these reports and whether they obviate the need to use the Management Control System.

GENERIC RULEMAKING

Our previous report noted that FERC could expedite case processing if it established generic rules on issues common to many cases, thus reducing or eliminating the need to relitigate those issues. With fewer complex issues to litigate, cases might be decided more quickly. Generic rulemaking can also be used to provide generic exemptions or authorizations for certain types of activities. For example, generic authorizations could be allowed for minor changes to existing projects.

We recommended that FERC give high priority to, and expand the use of, generic rulemaking to prevent unnecessary relitigation of common issues.

Since our report, FERC has issued a final rule on at least one major generic issue and has started rulemaking proceedings on several others. The final rule concerned the tax normalization issue and set forth FERC's policy on how rate applicants are to account for certain taxes. An important generic issue currently being considered under a rulemaking proceeding involves an attempt to devise a generic method of determining appropriate rates of return for electric utilities. This can be a time-consuming issue in electric rate cases, and its generic resolution could help speed decisions. A notice of proposed rulemaking was issued on August 26, 1982, and public comments are now being obtained on the rate-of-return proposal.

Another issue which arises in many rate cases is price squeeze. This is a complex issue in which wholesale customers of a utility allege that they are victims of price discrimination and anticompetitive effects. A rulemaking is under consideration that would set procedural rules for cases involving this issue. Other issues are also being considered in ongoing generic rulemakings.

FERC has also issued several rules which revise regulations to allow certain generic exemptions or authorizations. One final rule allows a generic exemption from certain licensing requirements of hydroelectric projects with an installed capacity of 5 megawatts or less. Another rule automatically authorizes certain relatively minor changes to natural gas pipeline systems.

We believe that FERC has taken substantial action to issue generic rules that can expedite its case processing. Because final rules have not yet been issued on several important issues, however, we cannot fully evaluate the impact of these generic rulemakings on case processing.

ESTABLISHING AND ATTAINING
REASONABLE PROCESSING TIME FRAMES

Our prior report noted that to expedite case processing, FERC should, at least on a trial basis, impose reasonable deadlines on the various phases of its regulatory processes. The former FERC Chairman also suggested such action in his proposal to establish a 12-month deadline for electric rate cases. In addition, applicants were causing delays on some energy-critical cases--that is, cases that have a significant impact on the Nation's energy supply or involve important policy issues.

Based on these observations, we recommended that FERC (1) establish and enforce reasonable deadlines for all cases based on periodically updated historical case completion times, (2) require project managers to explain in FERC's monthly status reports any failure to meet the deadlines and identify appropriate remedies, and (3) discourage unnecessary delay by applicants, by imposing fines and seeking authority to dismiss cases when applicants fail to meet prescribed deadlines and when such penalties are in the public interest. We also recommended that FERC actively seek from the Congress new legislative authority to impose increased monetary civil penalties of up to \$25,000 a day.

On the first two recommendations, FERC has taken action to establish reasonable deadlines and to hold appropriate staff accountable for delays. As noted earlier in this chapter, FERC seems to be taking sufficient action to identify reasonable processing time frames and the staff responsible for case progress. In its monthly case status books, FERC sets standard time frames for the various types of cases. Different standards have been set, depending on whether the case is simple or complex and whether the case involves a deficient application, a hearing, an environmental impact statement, or some other aspect(s).

FERC also prepares a backlog report on cases that have been pending longer than the standard time; the report indicates that FERC has made substantial progress in meeting these time frames. As shown on page 9, a backlog still exists, but substantial progress is being made in reducing it. FERC's monthly reports also identify staff responsible for assuring the timely processing of cases, and the report often lists possible further actions to reduce processing times for each category of case. We therefore consider the first two recommendations to have been implemented.

On the last recommendation, FERC has taken action to dismiss cases when appropriate, and in one case it fined an applicant who delayed FERC proceedings. FERC did dismiss two recent cases involving the proposed import of liquid natural gas because the applicants failed to actively pursue the cases. Also, as noted in our previous discussion of action on deficient applications, FERC has acted to dismiss incomplete applications for hydroelectric projects. FERC also imposed a fine of \$30,000 on a natural gas pipeline company that failed to file complete information. FERC's Assistant Advisory Counsel said that other pipeline companies are subsequently reevaluating their compliance with FERC's filing requirements. While this action shows that FERC is attempting to take appropriate action on this recommendation, we reserve judgment until we have had time to evaluate FERC's continued response to it. We have reassessed our other recommendation that FERC request authority to impose greater monetary fines. We now believe that FERC should not make such a request until it determines that existing authority is not sufficient to deter applicant delay.

CONCLUSIONS

FERC has made several significant managerial improvements to speed case processing. These actions include at least some progress on all of our recommendations in this chapter. However, FERC needs to act on the following remaining problems:

- The MIS does not yet contain all milestone dates; management therefore cannot fully evaluate the efficiency of all stages of case processing.
- Although FERC is considering rules on several major issues that commonly arise in its cases, case processing will not be expedited until it issues final rules.
- Although FERC recently fined an applicant for delaying a case, it needs to continue to identify cases where fines would help expedite case processing.

RECOMMENDATIONS TO THE CHAIRMAN, FERC

We recommend that the Chairman:

- Complete ongoing actions to assure that complete processing milestone dates are entered in the MIS.
- Finalize its generic rulemakings to prevent unnecessary relitigation of common, or generic, issues.

--Use currently available monetary penalties to discourage unnecessary delay by applicants when prescribed deadlines have not been met and such action is in the public interest.

AGENCY COMMENTS AND OUR EVALUATION

FERC stated that it has had some success in its ongoing efforts to assure that its MIS contains complete milestone dates on a consistent basis and that OGC staff is now being trained on the system and encouraged to use it for tracking its casework. Although these actions are consistent with our recommendation, FERC should also ensure that OGC enters milestone dates so that the progress of its cases can be monitored.

On our recommendation concerning generic rulemakings, FERC stated that it is fully utilizing the rulemaking process and cited its final rules and its several other possible rules on generic issues currently being considered. Our draft report had already noted most of these final and proposed rulemakings. While these actions show that FERC is making progress, final rules are needed before time savings on case processing can be achieved. Because FERC has sometimes taken several years to finalize its rulemakings, we urge it to increase its efforts to finalize its rules on important generic issues as a means of expediting case processing.

On our recommendation concerning applicant delays, FERC stated that its June 1982 order concerning the Valero Transmission Company demonstrates its willingness to impose fines when prescribed deadlines have not been met and when such action is in the public interest. It said that imposing fines will not be the general practice because (1) such action is not always in the public interest and (2) using an alternative measure, the rejection of deficient applications, may provide sufficient incentive to prevent future deficiencies.

We believe that FERC's action on the cited case and its stated plans to impose future fines in appropriate instances are consistent with our recommendation and if actively pursued would help expedite case processing.

WILLIAM V. ROTH, JR., DEL., CHAIRMAN
 CHARLES H. PERCY, ILL.
 TED STEVENS, ALASKA
 CHARLES MC C. MATHIAS, JR., MD.
 JOHN C. DANFORTH, MO.
 WILLIAM S. COHEN, MAINE
 DAVID DURENBERGER, MINN.
 MACK MATTINGLY, GA.
 SEN. B. HODGMAN, R.I.
 JOAN M. MC ENTEE, STAFF DIRECTOR

CHARLES H. PERCY, ILL., CHAIRMAN
 DAVID DURENBERGER, MINN.
 WILLIAM S. COHEN, MAINE
 MACK MATTINGLY, GA.
 JOHN GLENN, OHIO
 HENRY M. JACKSON, WASH.
 CARL LEVIN, MICH.
 WILLIAM A. STRAUSS
 CHIEF COUNSEL AND STAFF DIRECTOR

United States Senate
 COMMITTEE ON
 GOVERNMENTAL AFFAIRS
 SUBCOMMITTEE ON ENERGY, NUCLEAR
 PROLIFERATION AND GOVERNMENT PROCESSES
 WASHINGTON, D.C. 20510

March 8, 1982

The Honorable Charles A. Bowsher
 Comptroller General of the United
 States
 General Accounting Office
 441 G Street, N.W.
 Washington, D.C. 20548

Dear Mr. Bowsher:

On July 15, 1980, the General Accounting Office submitted a report to Congress entitled "Additional Management Improvements are Needed to Speed Case Processing at the Federal Energy Regulatory Commission." The report contains a number of recommendations regarding administrative and possibly legislative remedies to FERC's caseload problem. The study also stresses the need for strong congressional oversight to assure that improvements are implemented.

To aid Congress in continuing to exercise its oversight responsibilities, I would appreciate your agency conducting an evaluation of how effectively FERC has responded to the criticism and recommendations made in your earlier study. The study should include an assessment of the current status of FERC's pending caseload and any additional recommendations you may have for either administrative or legislative remedies to continued caseload problems. I am particularly concerned with a problem commonly referred to as "pancaking" in which utilities institute one rate increase after another, piling them up like pancakes, before FERC has approved them, and would like this problem also to be addressed.

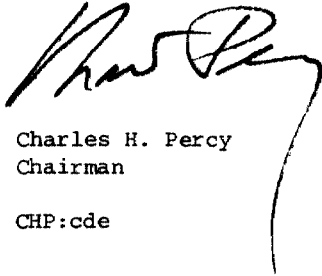
To aid you in undertaking this evaluation, I have requested that the Chairman of FERC, Charles M. Butler, III, provide GAO a current assessment of what actions FERC has taken in response to each of GAO's recommendations by April 12. A copy of my request is attached.

Given that this issue may be raised in the context of Congressional consideration of the Administration's proposal to dismantle the Department of Energy and make FERC an independent body, I would appreciate that the study be completed by May 17, if at all possible.

The Honorable Charles A. Bowsher
March 8, 1982
page 2

Thank you for your attention to this request. I look forward to your report on this subject.

Sincerely,

A handwritten signature in black ink, appearing to read "Charles H. Percy". The signature is written in a cursive style with a large, sweeping flourish at the end.

Charles H. Percy
Chairman

CHP:cde

FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

FEB 3 1983

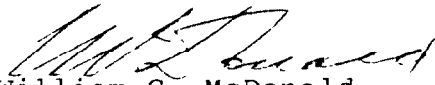
Mr. J. Dexter Peach
Director
Resources, Community, and
Economic Development Division
United States General Accounting Office
Washington, DC 20548

Dear Mr. Peach:

I am forwarding to you the Federal Energy Regulatory Commission's responses to the 12 recommendations included in your draft report, "The Federal Energy Regulatory Commission Has Expedited Case Processing But Additional Improvements Are Still Needed," issued January 19, 1983. Thank you for the opportunity to comment on your findings.

Please contact me if additional information is needed.

Sincerely,


William G. McDonald
Executive Director

-
Attachments

1. RECOMMENDATION:

Reject incomplete natural gas applications to discourage unnecessary applicant delays in resolving deficiencies, when such action is in the public interest.

RESPONSE:

The Office of Pipeline and Producer Regulation (OPPR), is making progress in this area; for example, OPR recently brought before the Commission a proposed order to reject Docket No. CP82-251 (Flormex Energy Corporation). The application was patently deficient: it included neither an assured gas supply nor buyer. The Commission rejected the application. Since receiving this signal from the Commission, OPR has been advising applicants with deficient applications to withdraw them. Several applications have been withdrawn as a result.

Given this guidance from the Commission, OPR will be reviewing incoming applications very carefully for deficiencies and taking the appropriate action.

(GAO COMMENT: See p. 19 for discussion of this matter.)

2. RECOMMENDATION:

Enter into written interagency coordination agreements with cognizant agencies which establish a reasonable time period for these agencies to comment on the environmental impact of hydroelectric projects.

RESPONSE:

The comment period for other agencies is normally 45 days. In FY 1982, OEPR staff completed two draft environmental impact statements (EIS) for which it took an average of fifty days to receive comments from other agencies. This average is a substantial improvement over the 86 days cited in the GAO draft report and very close to the expected 45-day comment period. In addition, improved planning and tracking are now available through an Internal Management Document specifically developed for the EIS process. This is expected to further reduce overall time required in EIS preparation.

(GAO COMMENT: See p. 20.)

3. RECOMMENDATION:

Obtain the timely involvement of its Director of the Office of Electric Power Regulation to expedite those cases where interagency comments are required on the environmental impact of new hydroelectric projects.

RESPONSE:

The Director, Office of Electric Power Regulation, will become involved in expediting interagency comments at the request of the Director, Division of Hydropower Licensing, who is responsible for the planning and tracking of environmental impact statements (EIS). The Director of Hydropower Licensing now uses the newly developed Internal Management Document to expedite EIS's. Timely communication between the Director, OEPR, and heads of commenting agencies at appropriate stages is expected to preclude delays.

(GAO COMMENT: See p. 20.)

4. RECOMMENDATION:

Obtain the cooperation of its Chief Administrative Law Judge in urging all law judges to more critically evaluate requests for time extensions, and grant them only in the most exceptional circumstances.

RESPONSE:

The Chief Judge has been extremely cooperative in urging Administrative Law Judges (ALJs) to be more critical of requests for extensions of time. As discussed in the draft report, management control over administrative law judges is limited by statute; however, the Chief Administrative Law Judge has supported FERC management in its efforts to shorten the length of time spent in hearing. He has made it clear to his judges that all schedules should be as tight as possible. The memo concerning electric rate cases, cited in the draft report, has been applied to all cases in hearing according to the Chief Administrative Law Judge. The policy of limiting extensions of time has been reiterated frequently in the weekly ALJ staff meetings. The Chief Judge is doing virtually everything in his power to eliminate frivolous time extensions.

(GAO COMMENT: See p. 28.)

5. RECOMMENDATION:

Urge ALJs to review settlements and provide the Commission with position statements on the fairness and public interest of these settlements to expedite and enhance reasoned Commission decisionmaking.

RESPONSE:

Under this Commission's present settlement procedures, there would be little benefit to such a position statement from an ALJ. In fact, such a requirement would add a substantial amount of time to the settlement procedure. Currently, ALJs must review settlement records filed with the Commission in order to ascertain that there are no material issues of fact, and to verify whether the settlement is contested or uncontested. Uncontested settlements are reviewed by technical staff and by the Office of the General Counsel, and an order on settlement is generally scheduled on the Commission's consent agenda within 30 days. The Office of Opinions and Review looks at contested settlements. Asking the ALJ's to provide the Commission with position statements prior to staff review would be redundant and would increase the processing time for all settlements.

(GAO COMMENT: See p. 28.)

6. RECOMMENDATION:

Limiting and expediting the OOR review process and revising OOR review policy to reflect those options which would best accomplish this objective.

RESPONSE:

Because of the Commission's success with delegating authority, it is only the most critical matters--i.e., sensitive legal questions and cases of major importance--that reach the Commission. These normally are the cases which cannot be summarily disposed of or settled, and for which hearings, followed by initial decisions issued by the presiding administrative law judge, are held. By their nature, these cases are complex and normally present difficult questions of fact, law, and policy. The record has to be complete, and the decision must be based upon sound legal principles, applicable precedent, the evidence, and other relevant materials in the record. Therefore, these cases take longer to prepare and decide than those of a more routine nature. If the Commission were remiss in performing its duties, it would be overflowing with remands from higher courts; this is not the case. Since 1979, the Director and Deputy Director of OOR have stressed brevity and expediting the review process. (See Tab A.)

(GAO Note: Tab A has not been included since it was too voluminous. A copy of it is available, however, upon request to GAO.)

(GAO COMMENT: See p. 37.)

7. RECOMMENDATION:

Summarily affirming ALJ initial decisions not meeting the Commission's criteria for review.

RESPONSE:

In general, it is the FERC's policy to affirm ALJ initial decisions whenever possible, and summary affirmances are more common now than in the past. However, in any instance where exceptions to the initial decision are filed by a party to the case, it is the duty of advisory staff to review these and determine the merits of the opposing argument. Attached at Tab B are examples of summary affirmances drafted by OOR, and accepted by the Commission. Attorneys in OOR have been instructed not to draft lengthy discussions of initial decisions, when these are unnecessary.

If the judge reaches the right decision for the wrong reason and is summarily affirmed, the affirmance also goes to the reasoning, which then becomes precedential in succeeding like cases. Moreover, the decision in the particular case may be appealed to the courts. There, an ALJ's decision that has been summarily affirmed will be deemed the Commission's decision. Should the stated rationale for that decision be erroneous or deficient, the court will be constrained to remand for further proceedings. And if such a result seems probable, the Commission's Solicitor may advise it to confess error and to ask the reviewing court for an opportunity to take another look at the matter. Therefore, even when the Commission does not disagree with the conclusion, it sometimes is necessary to correct or clarify the reasoning. The point is very simple. Even when the result reached is believed to be correct, summary affirmance does not necessarily save time in the end.

(GAO Note: Tab B has not been included since it was too voluminous. A copy of it is available, however, upon request to GAO.)

(GAO COMMENT: See p. 37.)

8. RECOMMENDATION:

Developing a more reliable program branch recordkeeping and casetracking system to monitor cases pending completion of OGC review and final Commission decision.

RESPONSE:

A major internal goal of this agency has been to bring the Office of the General Counsel (OGC) into the computer tracking system in order to account more accurately for all casework pending in OGC. With the support of the Chairman and General Counsel, OGC is now actively participating in the Commission's internal computer system and is beginning to use the system intensively for office recordkeeping and scheduling. As OGC relies more heavily on the computer data, the data included in the system will become more accurate. Since April of 1982, when the Agenda Forecasting System (AFS) was implemented as a function of the computer tracking system (READI), OGC has actively participated in the READI system. Only OGC and OOR may schedule items on the Commission agenda through the AFS; consequently, OGC has been forced to enter data into the computer. There have also been incentives for OGC to become accustomed to using the READI system for purposes other than agenda forecasting. These purposes include monitoring internal workload and coordinating schedules with other Commission offices. Four OGC divisions are currently using READI data for planning and scheduling, and special computer reports have been developed for their benefit.

Additional incentives for accuracy and timeliness of pending workload data have come from the use of OGC workload data from READI in the Commission's Management Information System Report (Red Book). Beginning with October 1982 data, all OGC workload receipts and completions are taken from computer reports. Pending workload may be verified through the use of the Red Book Appendix in which all pending docketed Commission workload is reported.

(GAO COMMENT: This was merged with the recommendation on page 44.)

9. RECOMMENDATION:

Placing a higher priority on Commission action in cases pending rehearing by initially limiting extensions of time for decisions on rehearing requests to a firm, but reasonable, time period (i.e., 90 days), and thereafter allowing further extensions only upon finding certain exceptional case characteristics specifically defined in its rules of practice and procedure.

RESPONSE:

Every petition for rehearing deserves to be acted on in a timely manner. As pointed out in the original response to this same recommendation, the Federal Energy Regulatory Commission is guided by specific rules of practice and procedure in regard to petitions for rehearing of Commission orders. The Commission must issue an order on rehearing within 30 days of the filing of a rehearing petition. If an order addressing the merits of the rehearing petition is not ready within the 30-day period, the Commission issues a "tolling order," which grants rehearing solely for the purposes of further consideration. The Commission has adopted a policy of rescheduling cases involving tolling orders for a Commission meeting within 30 days of the issuance of the tolling order. In addition, the Office of the Secretary and the Office of General Counsel review the list of cases where tolling orders have been issued to assure prompt completion of orders on the merits. In certain cases the Commission may be asked to decide a controversial issue involving millions of dollars by means of a generic rulemaking. In such a case, a number of tolling orders have been issued because no order on the merits can be prepared prior to the completion of the rulemaking process. An example of this is the treatment of production-related costs under the NGPA. The Commission's recent actions on this issue will offer guidelines for resolving thousands of petitions for rehearing which had been tolled. The delay in acting on tolled cases resulted not from the failure of the tracking system or from lack of priority for these rehearings, but from the amount of deliberation required for resolving such a highly technical and controversial issue.

(GAO COMMENT: See p. 38.)

10. RECOMMENDATION:

Complete its ongoing actions to assure that complete processing milestone dates are entered in the management information system.

RESPONSE:

The Commission has been very active and successful in this area particularly in the last year. The Agenda Forecasting System, referred to in GAO's draft report (page 33) has been successfully implemented. The Office of General Counsel (OGC) and the Office of Opinions and Review (OOR) are entering proposed agenda dates into the system. Additionally, OGC and OOR are entering workload counts for rulemakings, rehearings and appeals into the computer system and ultimately into the Management Information System Report.

In the past year, OOR has also begun to track in the computer when it begins working on a case and when that work is completed. Our review indicates they are doing so consistently. Also, time and resources are being devoted to OGC for training to encourage the use of the computer system for tracking their casework.

(GAO Note: FERC's page number reference has been changed to correspond to the page number in the final report.)

(GAO COMMENT: See p. 45.)

11. RECOMMENDATION:

Finalize its generic rulemakings to prevent unnecessary relitigation of common, or generic, issues.

RESPONSE

At the present time, the Commission is fully utilizing the generic rulemaking alternative. As of January 1, 1983, the Commission had more than 150 docketed generic rulemaking proceedings in process. These proceedings involve all aspects of the Commission's jurisdiction and include regulations for the natural gas, oil pipeline, electric utility, and hydroelectric power industries as well as regulations governing administrative practices and procedures.

Several generic rulemaking proceedings should be mentioned as having particularly important impacts on litigation issues. Apart from the rules and rulemakings cited in response to the GAO recommendation to "[s]implify and clarify applicant data requirements," these include:

- a final rule, cited in the draft follow-up report and in effect since the summer of 1982, establishing abbreviated procedures and expedited hearing alternatives for certification of routine pipeline activities, and a proposal to expand this rule;
- a final rule, now implemented, to govern interperiod tax normalization for both electric utility and gas rate cases;
- a notice of proposed rulemaking regarding construction work in progress for electric utilities (comments are now being analyzed and a final rule is scheduled to be ready by summer of 1983);
- a rulemaking proceeding to consider generic methods of determining appropriate levels of rates of return on equity for electric utilities (comments are now being analyzed and a final rule is scheduled to be ready by fall of 1983);
- interim rules and rulemakings to govern rates charged by, and to, the Bonneville Power Administration (final rules are scheduled to be ready by fall of 1983);
- rules to establish procedures and practices for developing "price squeeze" issues in electric rate litigations;

- 2 -

- ° a series of rulemakings to simplify implementing section 110 of the NGPA for production-related costs and to respond to related pipeline rate issues; issued as final and interim rules in January 1983 (among other things, this series will offer guidance for disposing of several thousand pending cases on rehearing);
- ° a series of other rulemakings to implement generic rules for natural gas pricing under the NGPA; 2/
- ° a notice of inquiry on the impact of the NGPA on current and projected natural gas markets;

In addition to these generic rulemaking efforts, the Commission has also instituted generic rulemakings to address related problems. Among the more important of these are:

- ° a series of rulemakings to improve the Commission's entire spectrum of its rules of practice and procedure, including new rules of practice to expedite trial-type proceedings now in effect and a rulemaking for discovery procedures.
- ° a rulemaking to revise, or provide exemptions from the cost of service and load data requirements currently in effect under section 133 of the Public Utility Regulatory Policies Act of 1978 (proposal issued and comments being received).

2/ These rulemakings include rules for pricing natural gas produced from wells drilled in deep water or from wells drilled in deep formations, for special relief and production enhancement. They also include rules to implement the "tight formation" pricing program. Under the generic procedures adopted by the Commission to provide prices for natural gas drilled from tight formations, 120 separate rulemaking proceedings have been completed and an additional 43 are in progress.

(GAO COMMENT: See p. 45.)

12. RECOMMENDATION:

Use currently available monetary penalties to discourage unnecessary delay by applicants when prescribed deadlines have not been met and such action is in the public interest.

RESPONSE:

On June 22, 1982, the Commission issued an order concerning the Valero Transmission Company, Docket Number ST82-330. The order directed Valero to pay the Commission a \$30,000 fine for failure to provide required information.

This is only one instance, but it does demonstrate that the Commission is willing to and, in fact, has fined an abusive applicant. Additionally, this signal by the Commission has caused other applicants in similar circumstances to file requested material with the Commission in more reasonable time periods.

Assessing fines will not be the general practice of the Commission because in most cases such fines would not be in the public interest. In a sense the rejection of a deficient application is a form of a fine, due to the extra expense and time it takes to resubmit an application.

(GAO COMMENT: See p. 45.)

SUMMARY OF FERC AND CONGRESSIONAL

ACTIONS ON RECOMMENDATIONS IN

GAO's 1980 REPORT

<u>GAO RECOMMENDATION</u>	<u>STATUS</u>	<u>PAGE REFERENCE</u>
<u>A. TECHNICAL ANALYSIS PHASE</u>		
To improve the quality of filings and minimize application deficiencies, we recommended that the Commission:		
1. Impose reasonable, but strict, deadlines on applicant response time to staff inquiries and on staff review time.	Action completed.	Discussed starting on page 15 of this report.
2. Use fines and reject incomplete applications to discourage unnecessary applicant delays in resolving deficiencies, when such action is in the public interest.	Action in progress.	See page 15.
3. Discontinue the present practice of routinely accepting and processing incomplete or deficient filings.	Action completed.	See page 15.
4. Continue and expand efforts to simplify and clarify current application data requirements.	Action completed.	See page 13.
5. Develop and use a centralized filing requirements source-book and conduct seminars for the education of industry and FERC staff regarding current Commission rules on filing requirements.	Action completed.	See page 13.

A. TECHNICAL ANALYSIS PHASE - continued

To expedite environmental reviews and preparation of environmental impact statements, we recommended that the Commission:

- | | | | |
|----|---|--|--------------|
| 6. | Require Commission staff to begin preparing such statements immediately after completion of its initial review of an application. | Action completed. | See page 17. |
| 7. | Intensify its efforts to enter into written interagency coordination agreements with cognizant agencies which establishes a reasonable time period for these agencies to comment on the environmental impact of hydroelectric projects. | No longer needed since other ongoing action would accomplish intent of recommendation. | See page 17. |
| 8. | Obtain the timely involvement of its Director of the Office of Electric Power Regulation to expedite those cases where interagency comments are required on the environmental impact of new hydroelectric projects. ¹ | Action in progress. | See page 17. |

B. HEARING PHASE

We recommended that the Commission should direct its Chief Administrative Law Judge to encourage more active exercise of ALJ controls over unnecessary delays during the hearing process by:

¹New recommendation, i.e., not listed in GAO's 1980 report.

<u>GAO RECOMMENDATION</u>	<u>STATUS</u>	<u>PAGE REFERENCE</u>
B. <u>HEARING PHASE</u> - continued		
9. Urging that all administrative law judges more critically evaluate requests for time extensions, particularly those which violate the Commission's four-fifths rule, ¹ and grant them only in the most exceptional circumstances, in accordance with specific criteria established by the Commission and set forth in its rules of practice (18 C.F.R.).	Action completed.	See page 21.
10. Urging that ALJs resolve discovery requests as early as possible, preferably at the prehearing conference, and to establish strict deadlines for submission of discovery data and completion of settlement negotiations.	Action completed.	See page 22.
11. Urging that all ALJs require all parties to a proceeding to at least agree on what the major issues are at the prehearing conference or prior to the commencement of formal hearings.	Action completed.	See page 23.
12. Requesting that ALJs include in their initial decisions a brief summary of (1) specific findings of fact and conclusions of law and (2) more frequent transcript citations to expedite subsequent review of ALJ decisions.	Action completed.	See page 24.
13. Using the Commission's monthly hearing status report to aid in (1) assigning cases, (2) consulting ALJs on their performance, and (3) making recommendations to OPM on the need for disciplinary action.	Action completed.	See page 26.

¹Those requests made just prior to established deadlines.

<u>GAO RECOMMENDATION</u>	<u>STATUS</u>	<u>PAGE REFERENCE</u>
B. <u>HEARING PHASE</u> - continued		
We also recommended that the Commission itself take the following procedural measures to expedite the processing of cases through hearings:		
14. Revise current rules of practice and procedure to require applicants, staff, intervenors, and all other parties to a proceeding to file statements of issues and position prior to the commencement of hearings, preferably at the prehearing conference and also at the close of hearings.	Action completed.	See page 23.
15. More strictly adhere to its own rules on interlocutory appeals, by allowing exceptions to the Commission's automatic denial of these appeals only in the most extraordinary circumstances. In addition, the Commission should seriously consider whether it can delegate the review of interlocutory appeals to a single Commissioner to expedite the hearing process.	Action completed.	See page 24.
16. Urge ALJs to review all settlements and provide the Commission with position statements on the fairness and public interest of these settlements to expedite and enhance reasoned Commission decisionmaking.	Action completed (other action accomplishes intent of recommendation).	See page 25.
17. Impose reasonable deadlines on final Commission action on all settlements, particularly uncontested ones.	Action completed.	See page 25.
18. Establish a mandatory rather than voluntary rule that Commission staff schedule uncontested settlements on the agenda within 30 days after the settlement offer.	Action completed.	See page 25.

<u>GAO RECOMMENDATION</u>	<u>STATUS</u>	<u>PAGE REFERENCE</u>
C. <u>COMMISSION DECISIONMAKING PHASE</u>		
We recommended that the Chairman improve the efficiency and effectiveness of the Commission's legal review procedures by:		
19. Encouraging the heads of the Office of the General Counsel and technical staff offices to meet periodically to resolve their mutual concerns and establish reasonable constraints on the format, content, and support of technical staff input to OGC.	Action completed.	See page 34.
20. Requiring technical staff to prepare memos in the form of draft orders as a means of accelerating the OGC review process.	No longer needed since other action accomplished intent of recommendation.	See page 34.
21. Encouraging the Director of the Office of Opinions and Reviews and the Chief ALJ to meet periodically to resolve their mutual concerns and establish reasonable constraints on the form, content, citations, support, and summary of ALJ initial decisions.	Action completed.	See page 24.
22. Reviewing options for limiting and expediting the OOR review process and revising OOR review policy to reflect those options which would best accomplish this objective.	Some action in progress (action under consideration, but only on routine electric cases).	See page 35.
23. Summarily affirming all ALJ initial decisions not meeting the aforementioned criteria.	Some action in progress (see above comment).	See page 35.

<u>GAO RECOMMENDATION</u>	<u>STATUS</u>	<u>PAGE REFERENCE</u>
C. <u>COMMISSION DECISIONMAKING PHASE</u> - continued		
24. Requiring exception briefs filed subsequent to an initial decision to: follow a standard format, list errors of fact or law asserted, summarize the writer's arguments, and present a concise discussion of policy considerations that warrant Commission review.	Action completed.	See page 33.
25. Developing and periodically updating a legal precedents manual for use throughout the Commission, particularly the Office of the General Counsel, Office of Opinions and Reviews, and administrative law judges. Once developed, the manual should then be used as a research tool to speed the identification of appropriate legal precedents, trends in Commission policy, and issues conducive to generic rulemaking.	Action completed.	See page 32.
We recommended that the Commission increase managerial accountability for cases pending Commission action or reconsideration by:		
26. Developing a more reliable program branch recordkeeping and casetracking system to monitor cases pending completion of OGC review and final Commission decision.	Merged with recommendation #32.	See page 33.

<u>GAO RECOMMENDATION</u>	<u>STATUS</u>	<u>PAGE REFERENCE</u>
C. <u>COMMISSION DECISIONMAKING PHASE</u> - continued		
27. Placing a higher priority on Commission action in cases pending rehearing by initially limiting extensions of time for decision on rehearing requests to a firm, but reasonable, time period (i.e., 90 days), and thereafter allowing further extensions only upon finding certain exceptional case characteristics specifically defined in its rules of practice and procedure.	Open.	See page 36.
28. Formally requesting from the Congress appropriate legislative authority to permit the Commission to waive rehearing provisions in appropriate cases.	Action completed.	See page 36.
We recommended that the Commission increase delegation of agency authority for routine noncritical case decisionmaking by:		
29. Reviewing all nondelegated functions to determine which can be transferred or delegated to key staff, subject to appeal, and delegating these functions immediately.	Action completed.	See page 31.
30. Formally requesting from the Congress authority to delegate final decisionmaking authority for those remaining functions it deems appropriate.	No longer needed.	See page 31.

GAO RECOMMENDATION

STATUS

PAGE REFERENCE

D. OVERALL MANAGEMENT INITIATIVES

We recommended that the Commission:

- 31. Increase managerial accountability for processing delays, efficiency, and overall work performance by (1) increasing the number of staff members designated as project managers, (2) expanding the role of project managers to include full accountability to top agency management for delays in case processing until a case reaches hearing or final Commission decision, and (3) holding project managers responsible for supervising and coordinating staff review on all their cases.

Action completed. See page 40.

- 32. Increase the accuracy, completeness, and efficiency of the present management information system by (1) incorporating verified historical data on average case processing time, (2) centralizing the MIS subsystem data bases, (3) supplementing the present MIS manual report system with more detailed information to meet the needs of lower level management, and (4) fully automating the current manual method for preparing monthly MIS status reports.

Action in progress
(some parts completed). See page 39.

GAO RECOMMENDATION

STATUS

PAGE REFERENCE

D. OVERALL MANAGEMENT INITIATIVES - continued

- | | | |
|--|---|---------------------|
| <p>33. Increase incentives for expediting case processing by (1) establishing and strictly enforcing reasonable target dates and deadlines for all parties to a case with the deadlines based on periodically updated historical case completion time, (2) requiring project managers to provide explanations for failure to meet prescribed deadlines in the Commission's monthly MIS case status reports for all cases assigned and identify the appropriate actions needed to resolve these cases within the prescribed time frames, and (3) using currently available monetary penalties as well as seeking authority to dismiss cases in order to discourage unnecessary delay by applicants when prescribed deadlines have not been met and such action is in the public interest. Also, actively seek from the Congress new legislative authority to impose increased monetary civil penalties of up to \$25,000 a day.</p> | <p>Action in progress (some parts completed).</p> | <p>See page 43.</p> |
| <p>34. Expand the use of generic rulemaking to prevent unnecessary relitigation of common, or generic, issues and include these rulemakings among what the Commission considers to be its highest priority actions.</p> | <p>Action in progress.</p> | <p>See page 42.</p> |

GAO RECOMMENDATION

STATUS

PAGE REFERENCE

PREVIOUS RECOMMENDATIONS TO THE CONGRESS

To increase incentives for ALJs to expedite the hearings process, we recommended that the Congress:

- | | | |
|--|-------|--------------|
| 1. Require regulatory agencies such as the Commission to develop ALJ performance standards. | Open. | See page 26. |
| 2. Assign the responsibility for periodic evaluation of ALJ performance to an organization other than the employing agency such as the Office of Personnel Management or the Administrative Conference of the United States. | Open. | See page 26. |

25434

AN EQUAL OPPORTUNITY EMPLOYER

UNITED STATES
GENERAL ACCOUNTING OFFICE
WASHINGTON, D.C. 20548

OFFICIAL BUSINESS
PENALTY FOR PRIVATE USE, \$300

POSTAGE AND FEES PAID
U. S. GENERAL ACCOUNTING OFFICE



THIRD CLASS