# United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, D.C. 20240

MAR 22 1999

**PEP - ENVIRONMENTAL REVIEW MEMORANDUM NO. ERM99-2**

To: Heads of Bureaus and Offices

From: Director, Office of Environmental Policy and Compliance

Subject: Interventions in Proceedings of the Federal Energy Regulatory Commission (FERC)

1. PURPOSE

This memorandum describes the procedures to be followed in the Department for intervention in the formal proceedings of FERC. These procedures are in accordance with 452 DM 2.3 A (1) and apply to hydroelectric power and natural gas projects under consideration by FERC.

2. POLICY

It is the Department's policy that FERC intervention actions are delegated to bureau Regional Directors and Regional Solicitors with only occasional elevations to headquarters as appropriate and as described in Part 4 below.

3. PROCESS

A. The Regional Director, or equivalent official, of a bureau requesting intervention will circulate a proposal to intervene (with supporting information) to the Regional Solicitor (RSOL), the Regional Environmental Officer (REO), and regional officials of other bureaus in the region. Bureau supporting information shall include the status of consultations with State, local, and other appropriate entities regarding their concerns with the project and their intervention intentions.

The initiating bureau usually arrives at a decision to seek intervention during the application review process conducted by the Office of Environmental Policy and Compliance (OEPC) under 516 DM 7. The initiating bureau should use the circulation list contained in the OEPC distribution memorandum. In some cases the initiating bureau may make a decision to seek intervention before or after the formal application review process. In these cases the initiating bureau is advised to consult with the REO to determine which other bureaus may have an interest in the matter.

B. The bureau circulation will request comments and recommendations from other bureaus within five working days. It

is the responsibility of the initiating bureau to deliver the circulation documents as expeditiously as possible. It is strongly recommended that hand delivery and fax transmission be used to meet this requirement. Timing is important because late filings at FERC require preparation of additional documentation to make a case for our late intervention. Late filings also mean the decision must be made by the Commission. The decision is automatic if the Department is on time.

C. Other bureaus may provide "no comment" responses to the initiating bureau by telephone. All substantive comments and recommendations in support or opposition shall use either hand delivery or fax transmission to meet the five working day requirement. If the initiating bureau receives no comment within the review period from a particular bureau, it may assume that there are no comments.

D. The RSOL will review the proposal for legal issues and advise the initiating bureau of these findings. This advice and the remainder of the regional record will form the basis of the later decision to (not to) intervene by the Office of the Solicitor.

E. The REO will review the proposal for intra-Departmental, Federal-State, or potential environmental policy issues and advise the initiating bureau of these findings. This advice and the remainder of the regional record will form the basis of the later decision to (not to) intervene by the Office of the Solicitor. The REO shall receive a copy of the record as supplied to the Office of the Solicitor whenever the REO has made substantive comments and/or recommendations.

F. Both sets of findings in "D." and "E.", along with other bureau comments, will serve to guide the initiating bureau regarding potential elevation within the Department. It is at this time that it should be clear whether or not elevation of the request within the Department is needed.

G. If no comments are received by the initiating bureau, that bureau will request the Office of the Solicitor to decide the issue and, if appropriate, file the intervention petition before the close of FERC's comment period.

H. If the initiating bureau and other bureaus determine that intervention is necessary and there are no inter-bureau conflicts, the initiating bureau will request, on behalf of other bureaus, the Office of the Solicitor to decide the issue and, if appropriate, file the intervention petition before the close of FERC's comment period.

I. If the initiating bureau and other bureaus determine that intervention is necessary and there are inter-bureau conflicts that cannot be resolved, the procedures in Part 4 below will be followed.

J. OEPC shall notify the Office of the Solicitor at the appropriate time of its concurrence (non-concurrence) with the intervention request in accordance with 452 DM 2.3 A (5). In most cases, this will likely occur under "E." above but may occur later in controversial cases where the record takes longer to develop.

K. The Office of the Solicitor shall keep track of all FERC intervention activities and include OEPC on the official service list for a copy of any intervention petition filed at FERC. This copy need only be furnished to OEPC headquarters for the central project file.

L. Post-licensing proceedings often involve compliance matters which provide limited time frames for Departmental responses. In such cases, the Office of the Solicitor is authorized to file intervention petitions as necessary to protect and advance the Department's interests in that project proceeding. Such interventions may be made on behalf of any bureau(s) for which the Department intervened in the underlying licensing proceeding, and are made with the concurrence of OEPC [452 DM 2.3A(5)]. Bureaus not seeking intervention in post-licensing matters may be removed from future intervention petitions by notice to the attorney of record.

4. <u>ELEVATION AND CONFLICT RESOLUTION</u>

A. Any intervention request may be elevated to headquarters for Secretarial or other senior management approval upon the recommendation of the RSOL or the REO acting through their respective headquarters' offices whether or not inter-bureau conflict is involved.

B. If bureau conflicts cannot be resolved in the field, the initiating bureau shall forward a request for resolution to the bureau director who will seek resolution with other bureau directors.

C. If resolution cannot be achieved by the bureau directors, the initiating bureau will seek resolution with the assistant secretaries and the Assistant Secretary-Policy, Management and Budget serving as the Department's Dispute Resolution Specialist will apply alternative dispute resolution techniques.

D. If necessary, any assistant secretary seeking to resolve an intervention issue and not fully satisfied with the dispute resolution process may request that the Secretary review the issue.

E. The Secretary may address bureau conflicts at any stage in this process and resolve the matter as he or she may determine to be appropriate.

F. Upon completion of the dispute resolution process, the

Office of the Solicitor will proceed with the filing of the intervention petition unless the decision was not to intervene.

5. <u>REISSUE</u>

This memorandum replaces ERM94-6.