under revised § 35.13(a)(2)(i) need not submit a comprehensive filing when it makes its initial submittal, but it must support all calculations that are not derived directly from Form 1, and explain how it has functionalized, classified and allocated its costs. Should the Commission set the proposed increase for hearing, the filing utility will be afforded a reasonable opportunity to file testimony and exhibits to fully support the reasonableness of its proposed rates. This approach minimizes regulatory burdens while allowing the applicant to balance the expense of preparing a comprehensive filing versus the risk of not initially sustaining its burden of proof with an abbreviated filing.

Fourth, the NOPR used the terms "historical test year" and "test period" interchangeably and without reference to the definition of Period I applicable to other paragraphs of § 35.13. The revised regulation adds a definition for "Test Period," deletes references to the "historical test year" and provides that utilities that file under this subparagraph must use as the test period the most recent calendar year for which actual data are available. Utilities that elect to use a non-calendar year test period must file rate increases under § 35.13(d).

The Commission notes that proposed § 35.13(a)(2)(i) inadvertently eliminated the requirement that utilities submit rate design information and the general information now required for all abbreviated rate change filings. The final rule requires submission of the general information specified in paragraphs (b), (c)(2) and (c)(3) of § 35.13 and in § 35.12(b)(2), while the information required by § 35.13(c)(1), § 35.12(b)(5) and § 35.13(h)(37) is elicited as part of the revenue data, allocation data and rate design information requirements.

The final rule also requires that filings under §§ 35.13(a)(2) (i) and (ii) comply with Commission precedent and policy.

## 2. Other Changes to § 35.13

The Commission will eliminate § 35.13(a)(2)(ii)(B) of the proposed regulations <sup>18</sup> and make corresponding editorial changes to § 35.13(a)(2)(iii)(A). Section 35.13(a)(2)(ii)(B) cross-references rate decrease filings made under § 35.27 pursuant to the 1987 reduction in federal corporate income tax rates under the Tax Reform Act of 1986. However, § 35.27 was eliminated

in a previous rulemaking.<sup>19</sup> Therefore, this section is now superfluous.

A cross-reference to § 35.13(a)(2)(ii) has been added to § 35.13(d)(1), mirroring the existing reference to subparagraph (a)(2)(i). In addition, existing paragraph (d)(1), as printed in the 1994 Code of Federal Regulations, omits the word "this" prior to "section" as shown by brackets in the text below:

(d) Cost of service information—(1) Filing of Period I data. Any utility that is required under Section (a)(1) of [ ] section to submit cost of service information \* \* \* The final rule corrects these omissions.

## D. Part 41—Accounts, Records and Memoranda: Sections 41.3 and 41.7

In the NOPR the Commission proposed to change its regulations to provide that if a utility consents to a matter's being handled under the shortened procedure under § 41.3, that utility has waived any right to subsequently request a hearing under § 41.7 and may not later request such a hearing. The Commission also re-stated its policy that it will not assign proceedings for hearings when there are no material facts in dispute.

Baltimore Gas & Electric, Duke Power, EEI and Southern Companies commented on this proposed change. Baltimore Gas & Electric recognizes that the proposed change would eliminate redundancy in the Commission's regulations and supports the proposed change. Duke Power and EEI argue that, rather than streamlining the Commission's procedures, the proposed change will encourage utilities to contest more issues under § 41.7 in order to preserve the right to a full hearing.

We disagree. Persons subject to the Commission's accounting requirements have the right of election under the Commission's procedures and, under § 41.7, have a right to seek a hearing on any issue that they wish to contest. The proposed change in the Commission's regulations would merely prevent such persons from changing their minds in mid-proceeding and deciding to contest an issue that they had previously recognized involved no disputed issue of material fact. We do not think that requiring persons to make their election of procedure at the outset of a proceeding will necessarily lead to more hearings. Rather, it will more likely reduce the number of hearings, because public utilities will no longer have the election to bring to hearing an issue that

they had previously considered not to be worthy of a hearing.

Southern Companies challenges the Commission's reiteration of its policy that it will not assign proceedings for hearings where no material facts are in dispute. Southern Companies fears that the Commission may use this policy to deprive a person of the due process right to a hearing. Southern Companies' concern is misplaced. The proposed change will not deprive anyone of the right to a trial-type evidentiary hearing when such a hearing is warranted. However, as Southern Companies recognizes, a trial-type evidentiary hearing is not necessary if no material facts are in dispute.<sup>20</sup>

E. Proposed Procedural Modifications and Revised Definitions Under Part 292—Regulations Under Sections 201 and 210 of the Public Utility Regulatory Policies Act of 1978 (PURPA) <sup>21</sup> With Regard to Small Power Production and Cogeneration

The Commission is revising and clarifying its procedural and technical rules to reflect its experience with the qualifying facilities (QF) program. By adopting these clarifying changes, the Commission is satisfying its continuing PURPA obligation to review its policies and rules that encourage cogeneration and small power production, energy conservation, efficient use of facilities and resources by electric utilities and equitable rates for electric consumers.

## 1. Administration of the 90-Day Certification Period

When an applicant files an application for Commission certification of qualifying status with the Secretary under § 292.207 of the Commission's regulations, § 292.207(b)(5) provides that within 90 days of the filing of an application the Commission will issue an order granting or denying the application, setting the matter for hearing, or "tolling" the time for issuance of an order. In the NOPR, the Commission noted some confusion on the part of many applicants as to when the 90-day period starts. The Commission proposed to codify its practice by revising § 292.207(b)(3)(ii) to provide that the 90-day period for issuance of an order granting or denying an application for Commission certification of the qualifying status of a facility does not begin until an applicant has submitted all the information

 $<sup>^{18}</sup>$  It is § 35.13(a)(2)(iii)(B) in the proposed regulations.

 $<sup>^{19}</sup>$  Eliminating Unnecessary Regulation, Order No. 541, 57 FR 21730 (May 22, 1992), III FERC Stats. & Regs.  $\P$  30,943 (1992).

<sup>&</sup>lt;sup>20</sup> See, e.g., General Motors Corp. v. FERC, 656 F.2d 791 (D.C. Cir. 1981); Citizens for Allegan County, Inc. v. Federal Power Commission, 414 F.2d 1125 (D.C. Cir. 1969).

<sup>21 16</sup> U.S.C. 796(17)-(23), 824a-3.