



**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

**NOTICE AND OPPORTUNITY FOR COMMENT ON PROPOSED
AMENDMENTS TO THE CIRCUIT RULES**

Pursuant to 28 U.S.C. § 2071(b), comments are invited on the proposed changes to Ninth Circuit Rules 11-4.4, Transmittal of Clerk's Record and 15-3, Procedures for Review under the Pacific Northwest Electric Power Planning and Conservation Act.

Please direct comments to Molly C. Dwyer, Clerk of Court at Molly_Dwyer@ca9.uscourts.gov and Cole Benson, Supervising Deputy Clerk at Cole_Benson@ca9.uscourts.gov. Comments must be submitted no later than February 19, 2013.

Circuit Rule 11-4.4, Transmittal of Clerk's Record

When the Court of Appeals at any time requires all or part of the clerk's record, the Clerk of the Court of Appeals will request the record from the district court. The district court clerk shall transmit the record, including ~~state court or~~ agency records lodged or filed with the district court during the district court proceedings, to the Court within 7 days of receiving the request. In appeals from the Bankruptcy Appellate Panel, records will be treated in the same fashion as records on appeal in cases arising from the district court.

The district court shall within 7 days after a notice of appeal is filed transmit any state court records lodged or filed in 28 U.S.C. § 2254 proceedings to this Court unless the documents are available in the district court's electronic case file.

Purpose of Amendment: The revision is intended to ensure the court's ready access to state court records essential to review of appeals from the grant or denial of 28 U.S.C. § 2254 petitions. The clerk will consider methods to make these documents available to appellate counsel.

Circuit Rule 15-3, Procedures for Review Under the Pacific Northwest Electric Power Planning and Conservation Act

15-3.1. Contents of Petition

~~The A petition for review of a final Bonneville Power Administration (BPA) rate-making decision under the Pacific Northwest Electric Power Planning and Conservation Act (PNEPPCA) shall be labeled “Petition for Review under the PNEPPCA of (specify) Rates,” identifying rates at issue. ~~Any other petition shall be labeled “Petition for Review under the Northwest Power Act”~~ It must state on its and shall on the face the date of the decision from which review is sought, its title, the BPA docket number (if one exists) and the Ninth Circuit docket numbers of any known petitions for review of the same decision ~~of the petition identify any other known petitions for review of the same order or action.~~~~

15-3.2. ~~Service, Consolidation and Intervention~~

~~(a) Petitions for review from a single BPA decision under the PNEPPCA will be consolidated for briefing and argument. Petitions from related decisions may be scheduled for hearing before a single panel. Unless already consolidated by the court, respondent must file a motion to consolidate all petitions from a single decision within 10 days of the expiration of the time to file petitions for review from that decision.~~ ~~(b) All petitions for review of the same rates will be automatically consolidated by the clerk. All petitions for review of the same order or action will be automatically consolidated by the clerk. Other petitions may be consolidated by motion. Petitions shall, to the extent possible, comply with the service requirements of FRAP 15(c). If petitioners believe that compliance with FRAP 15(c) is impracticable or unreasonable in the circumstances, they may file a motion for a determination that service may be effected in a different fashion.~~

15-3.3 Intervention

Any petitioners in 1 of 2 or more consolidated cases and any party granted leave to intervene in 1 of 2 or more consolidated cases will be deemed to have intervened in all the consolidated cases. A party granted leave to intervene in 1 of a number of 2 or more consolidated cases will be deemed to have intervened in all consolidated cases. Intervention otherwise should be sought by motion under FRAP 15(d). Notwithstanding FRAP 15(d), motions to intervene may be filed within 30 days of the expiration of the time to file petitions for review from the decision at issue. A motion to intervene must state on its face the date of the decision from which

review is sought, its title, the BPA docket number (if one exists) and the Ninth Circuit docket numbers of any known petitions for review of the same decision.

Cross Reference: • Circuit Rule 1-2. Scope of Circuit Rules

Circuit Advisory Committee Note to Rule 15-3

Parties are encouraged to minimize the number of motions to intervene that they file. A petitioner need not file a motion to intervene in petitions challenging the same BPA decision that its petition challenges. A non-petitioner party seeking intervention may file a single motion to intervene – either in any one of the petitions from the decision at issue or in the consolidated petition. The deadline set forth in FRAP 15(d) to file motions to intervene has been relaxed in these cases in order to make this possible.

Purpose of Amendment: The modification (1) corrects currently untenable procedures governing consolidation of related petitions and (2) reduces the volume of motions to intervene.