No exception in Rule for costs of intervenors. — This Rule generally contemplates taxation of costs in favor of the prevailing party and against the losing party, and there is no broadside exception for review of agency proceedings and the costs of intervenors. American Pub. Gas Ass'n v. Federal Energy Regulatory Comm'n, 587 F.2d 1089 (D.C. Cir. 1978).

Costs may be taxed either for or against intervenors in agency review proceeding. Delta Air Lines v. Civil Aeronautics Bd., 505 F.2d 386 (D.C. Cir. 1974).

Court is ordinarily inclined to tax costs in favor of winning intervenors, without taking the time required to make a more defined determination of any additional or incremental contribution. American Pub. Gas Ass'n v. Federal Energy Regulatory Comm'n, 587 F.2d 1089 (D.C. Cir. 1978).

But practice not ironclad rule. — While there is a prevailing practice of the taxation of costs for or against intervenors as prevailing or losing parties, it is a practice, not an ironclad rule. Delta Air Lines v. Civil Aeronautics Bd., 505 F.2d 386 (D.C. Cir. 1974).

Different considerations are involved in determining costs in cases testing general industry regulations, where the number of interested participants and intervenors balloons exponentially, and consumer interests have relatively modest resources. American Pub. Gas Ass'n v. Federal Energy Regulatory Comm'n, 587 F.2d 1089 (D.C. Cir. 1978).

And Court considers intervenor's contribution, issues' novelty, intervention's necessity and public interest. — In deciding whether or not to award costs, the Court is called upon to exercise discretion, and to consider not only who won and who lost but also such other factors as the relative merit of the intervenor's contribution, the novelty of the issues, the necessity of intervention and the public interest. American Pub. Gas Ass'n v. Federal Energy Regulatory Comm'n, 587 F.2d 1089 (D.C. Cir. 1978).

Petitioners representing strands of public opinion not denied sums for briefs. — The fact that the petitioners represent strands of public interest will not warrant denying the party respondent the modest sums required for a duplication of briefs. American Pub. Gas Ass'n v. Federal Energy Regulatory Comm'n, 587 F.2d 1089 (D.C. Cir. 1978).

But intervenors not entitled to reimbursement for duplicative briefs. — Insofar as the intervenors' briefs duplicated what was presented by the government agency responsible for the order or regulation involved, these were costs essentially for their own account, a kind of extra insurance for which they paid the premium and were not entitled to reimbursement. American Pub. Gas Ass'n v. Federal Energy Regulatory Comm'n, 587 F.2d 1089 (D.C. Cir. 1978).

III. BILL OF COSTS.

Order regarding rehearing petition not entry of judgment. — Entry of judgment means exactly what it states and does not have reference to an order that may be entered with regard to a petition for rehearing. Laffey v. Northwest Airlines, 587 F.2d 1223 (D.C. Cir. 1978).

And filing period for bills of costs not tolled by petition. — Nothing in the Rules gives the pendency of a petition for rehearing the effect of tolling the filing period for bills of costs seeking taxation of printing expenses. Laffey v. Northwest Airlines, 587 F.2d 1223 (D.C. Cir. 1978).

Authority under Rule 26 (b) encompasses extensions of time for filing bills of costs. Laffey v. Northwest Airlines, 587 F.2d 1223 (D.C. Cir. 1978).

Recovery of costs is not foreclosed by failure to file within 14-day period specified by subdivision (d). Saunders v. Washington Metropolitan Area Transit Auth., 505 F.2d 331 (D.C. Cir. 1974).

As particular circumstances may explain tardiness. — Claims for costs should be submitted promptly after the rendition of the judgment on appeal; the 14-day limit subserves that policy and should be scrupulously observed. Yet it is evident that the circumstances of particular situations may satisfactorily explain tardiness and may call for an allowance of costs nonetheless. Saunders v. Washington Metropolitan Area Transit Auth., 505 F.2d 331 (D.C. Cir. 1974).

Rule 40. Petition for rehearing.

(a) *Time for filing; content; answer; action by Court if granted.* A petition for rehearing may be filed within 14 days after entry of judgment unless the time is shortened or enlarged by order or by local rule. The petition shall state with particularity the points of law or fact which in the opinion of the petitioner the Court has overlooked or misapprehended and shall contain such argument in support of the petition as the petitioner desires to present. Oral argument in

support of the petition will not be permitted. No answer to a petition for rehearing will be received unless requested by the Court, but a petition for rehearing will ordinarily not be granted in the absence of such a request. If a petition for rehearing is granted the Court may make a final disposition of the cause without reargument or may restore it to the calendar for reargument or resubmission or may make such other orders as are deemed appropriate under the circumstances of the particular case.

(b) *Form of petition; length.* The petition shall be in a form prescribed by Rule 32 (a), and copies shall be served and filed as prescribed by Rule 31 (b) for the service and filing of briefs. Except by permission of the Court, or as specified by local rule of the Court of Appeals, a petition for rehearing shall not exceed 15 pages. (Amended, Apr. 30, 1979.)

Notes of Advisory Committee on Appellate Rules. — This is the usual rule among the circuits, except that the express prohibition against filing a reply to the petition is found only in the Rules of the Fourth, Sixth and Eighth Circuits (it is also contained in Supreme Court Rule 58 (3). It is included to save time and expense to the party victorious on appeal. In the very rare instances in which a reply is useful, the Court will ask for it.

Editor's notes. — The Supreme Court Rules were extensively revised in 1980. There is no longer a Rule 58, referred to in the first sentence in the Advisory Committee Notes. Rule 51 deals with rehearings.

Cited in City of Gallup v. Federal Energy Regulatory Comm'n, 726 F.2d 772 (D.C. Cir. 1984).

Rule 41. Issuance of mandate; stay of mandate.

(a) *Date of issuance.* The mandate of the Court shall issue 21 days after the entry of judgment unless the time is shortened or enlarged by order. A certified copy of the judgment and a copy of the opinion of the Court, if any, and any direction as to costs shall constitute the mandate, unless the Court directs that a formal mandate issue. The timely filing of a petition for rehearing will stay the mandate until disposition of the petition unless otherwise ordered by the Court. If the petition is denied, the mandate shall issue 7 days after entry of the order denying the petition unless the time is shortened or enlarged by order.

(b) *Stay of mandate pending application for certiorari.* A stay of the mandate pending application to the Supreme Court for a writ of certiorari may be granted upon motion, reasonable notice of which shall be given to all parties. The stay shall not exceed 30 days unless the period is extended for cause shown. If during the period of the stay there is filed with the Clerk of the Court of Appeals a notice from the Clerk of the Supreme Court that the party who has obtained the stay has filed a petition for the writ in that Court, the stay shall continue until final disposition by the Supreme Court. Upon the filing of a copy of an order of the Supreme Court denying the petition for writ of certiorari the mandate shall issue immediately. A bond or other security may be required as a condition to the grant or continuance of a stay of the mandate.

Notes of Advisory Committee on Appellate Rules. — The proposed Rule follows the rule or practice in a majority of circuits by which copies of the opinion and the judgment serve in lieu of a formal mandate in the ordinary case. Compare Supreme Court Rule 59. Although 28 U.S.C. § 2101 (c) permits a writ of certiorari to be filed within 90 days after entry