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DEPARTMENT OF ENERGY
FEDERAL ENERGY REGULATORY COMMISSION

18 CFR Part 376

[Docket No. RM12-13-000; Order No. 765]

Continuity of Operations Plan

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final Rule.

SUMMARY: In this rule the Commission revises its regulations pertaining to its Continuity of Operations Plan to allow the Commission the discretion to better address not only long-term and catastrophic events but also short-term events including loss of power or water. The rule allows for greater discretion regarding: the activation and deactivation of the Continuity of Operations Plan and any suspension of Commission operations; the length of time that the Continuity of Operations Plan is in effect and the length of time that Commission operations are suspended; the deactivation schedule and the resumption of full Commission operations; and the rescheduling of hearings, conferences and meetings. The rule also adds items to the list of requirements which are suspended when Commission operations are suspended.

EFFECTIVE DATE: The rule will become effective [insert date of publication in the Federal Register].

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SUPPLEMENTARY INFORMATION:

140 FERC ¶ 61,055
DEPARTMENT OF ENERGY
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Philip D. Moeller, John R. Norris,
Cheryl A. LaFleur, and Tony T. Clark.

Continuity of Operations Plan

Docket No. RM12-13-000

ORDER NO. 765

FINAL RULE

(Issued July 19, 2012)

I. Introduction

1. The Commission's regulations pertaining to its Continuity of Operations Plan (COOP) were originally developed to address emergency conditions lasting up to 30 days during which Commission headquarters operations are disrupted or communications are unavailable, either of which may prevent the public or the Commission from meeting regulatory or statutory requirements.¹ Events such as the power outage and earthquake that affected Commission headquarters operations in 2011 show that the Commission's regulations pertaining to its COOP need to address a wide range of disruptions during which the Commission's headquarters is unable to function, either in whole or in part, in the ordinary manner. Accordingly, this Final Rule revises the Commission's regulations

¹ More information concerning the COOP can be found on the Commission's website at www.ferc.gov/coop.asp.

pertaining to its COOP to better address not only longer term and catastrophic events, but also shorter term events such as loss of power or water.

II. Discussion

2. The Commission, in this Final Rule, adopts revisions to its COOP regulations. In doing so, however, the Commission emphasizes that its goal in the event of an emergency is to continue operations in as normal a manner as circumstances allow,² and, where a full or partial suspension of agency operations does occur, to return to full, normal operations as quickly as possible.

3. With this approach in mind, this Final Rule revises the Commission's COOP regulations to allow greater discretion to respond to the varying situations which may disrupt Commission headquarters functions.³ This Final Rule recognizes that Commission headquarters operations may be temporarily disrupted in whole or in part, or communications with Commission headquarters may be temporarily unavailable, in whole or in part, due to a variety of causes and for periods of varying length depending on the cause. Accordingly, this Final Rule allows for the activation of the COOP and,

² For example, teleworking may allow certain Commission functions to continue in particular circumstances as if there had been no or only limited disruption to Commission headquarters functions. As appropriate in particular circumstances, such functions may include, for example, participation by Commission Trial Staff in informal settlement conferences and discussions in those proceedings that have been set for trial-type evidentiary hearing and/or settlement judge procedures.

³ Notwithstanding the revisions to the Commission's COOP regulations adopted here, the Commission's goal in the event of an emergency that requires a full or partial suspension of agency operations is to return to full, normal operations as quickly as possible.

following such activation, for the suspension of Commission operations, in whole or in part, as appropriate, in a variety of emergency situations, including situations such as loss of power or water.

4. Currently, the COOP can be activated for a period of varying length up to 30 days. This Final Rule explicitly provides that the Chairman (or the Chairman's delegate, pursuant to section 376.205 of the Commission's regulations,⁴ as appropriate) may activate the COOP, and, following activation of the COOP, suspend Commission operations in whole or in part.⁵ The Final Rule also explicitly provides that the Chairman (or the Chairman's delegate) may shorten the time during which the COOP is activated to less than 30 days, and the Commission (or the Commission's delegate pursuant to section 376.204 of the Commission's regulations,⁶ as appropriate) may extend the time during which the COOP is activated to beyond 30 days, and that the Chairman (or the Chairman's delegate) may similarly shorten any suspension of Commission operations, and the Commission (or the Commission's delegate) may similarly extend any suspension of Commission operations. This Final Rule further explicitly provides time for the Commission to transition from the period when the COOP is active, and when Commission operations are suspended in whole or in part, to a return to full Commission

⁴ 18 CFR 376.205.

⁵ 42 U.S.C. 7171(c) (the Chairman "shall be responsible on behalf of the Commission for the executive and administrative operation of the Commission"); *accord* 18 CFR 376.205 (the Chairman is "administrative head" of the Commission); *cf.* 42 U.S.C. 7171(h) (the Commission may sit anywhere in the United States).

⁶ 18 CFR 376.204.

functionality and normal operations.⁷ To aid this transition, this Final Rule not only provides time for such transition but also explicitly provides that the Chairman (or the Chairman's delegate) may deactivate the COOP and may resume Commission operations either simultaneously for all activities, or activity by activity gradually over time, as the Chairman (or the Chairman's delegate) determines to be appropriate, in order to better manage the return to full Commission functionality and normal operations.

5. This Final Rule revises the timing of when filings are due and when the Commission must act, in the event of a suspension of Commission operations. This Final Rule also adds to the existing list of requirements which are suspended during a suspension of Commission operations several matters that were either inadvertently left out of prior Final Rules or were only implicitly covered, including: (1) comments responding to notices of inquiry; (2) responses to deficiency letters; (3) notices of intent to file new applications and applications for new licenses pursuant to section 15 of the Federal Power Act; (4) requests for rehearing of orders or letter orders issued by the Commission or its delegate; and (5) certain submittals by the Electric Reliability Organization.

⁷ The revised regulations do so by, among other things, providing a 14-day period when certain deadlines and activities continue to be held in abeyance notwithstanding the deactivation of the COOP; this 14-day period will allow a smooth transition from suspension of Commission operations to full Commission functionality and normal operations.

6. This Final Rule further explicitly provides that administrative law judges and the Commission may reschedule hearings, conferences, and other meetings after the resumption of Commission operations following the suspension of those operations.

III. Regulatory Flexibility Act Certification

7. The Regulatory Flexibility Act of 1980 (RFA)⁸ generally requires a description and analysis of Final Rules that will have a significant economic impact on a substantial number of small entities. This Final Rule concerns a matter of internal agency procedure and it will not have such an impact. An analysis under the RFA is not required.

IV. Information Collection Standard

8. Office of Management and Budget (OMB) regulations require OMB to approve certain information collection requirements imposed by agency rule.⁹ This Final Rule contains no new information collections. Therefore, OMB review of this Final Rule is not required.

V. Environmental Analysis

9. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment. Excluded from this requirement are rules that are clarifying, corrective, or procedural or that do not substantially change the effect of the regulations

⁸ 5 U.S.C. 601-12.

⁹ 5 CFR 1320.12.

being amended.¹⁰ This rule is procedural in nature and therefore falls within this exception; consequently, no environmental consideration is necessary.

VI. Document Availability

10. In addition to publishing the full text of this document in the *Federal Register*, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through the Commission's Home Page (<http://www.ferc.gov>) and in the Commission's Public Reference Room during normal business hours (8:30 a.m. to 5:00 p.m. Eastern time) at 888 First Street, NE, Room 2A, Washington, DC 20426.

11. From the Commission's Home Page on the Internet, this information is available in eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits (i.e., the subdocket number – e.g., 000, 001, 002, etc.) in the docket number field.

12. User assistance is available for eLibrary and the Commission's web site during normal business hours. For assistance, please contact Online Support at 1-866-208-3676 (e-mail at FERCOnlineSupport@ferc.gov), or the Public Reference Room at (202) 502-8371, TTY (202) 502-8659 (e-mail at public.referenceroom@ferc.gov).

¹⁰ 18 CFR 380.4(a)(2); *Regulations Implementing the National Environmental Policy Act*, Order No. 486, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs. ¶ 30,783 (1987).

VII. Effective Date and Congressional Notification

13. The provisions of 5 U.S.C. 801 regarding Congressional review of Final Rules do not apply to this Final Rule because the rule concerns agency procedure and practice and will not substantially affect the rights of non-agency parties.

14. These regulations are effective on [**insert date** of publication in the **Federal Register**]. The Commission finds that notice and public comments are unnecessary because this rule concerns only agency procedure or practice. Therefore the Commission finds good cause to waive the notice period otherwise required before the effective date of a Final Rule.

List of Subjects in 18 CFR Part 376

Civil defense, Organization and functions (Government agencies)

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

In consideration of the foregoing, the Commission amends part 376, Chapter I, Title 18, *Code of Federal Regulations*, to read as follows:

PART 376 – ORGANIZATION, MISSION, AND FUNCTIONS; COMMISSION OPERATION DURING EMERGENCY CONDITIONS

1. The authority citation for part 376 continues to read as follows:

Authority: 5 U.S.C. 553; 42 U.S.C. 7101-7352; E.O. 12009, 3 CFR 1978 Comp., p. 142.

2. Section 376.209 is revised to read as follows:

§ 376.209 Continuity of Operations Plan and suspension of Commission operations.

(a)(1)(i) *Activation of COOP and suspension of Commission operations.* The Commission's Continuity of Operations Plan may be activated by the Chairman (or the Chairman's delegate pursuant to § 376.205, as appropriate). In circumstances in which the Commission's Continuity of Operations Plan is activated, Commission headquarters operations may be temporarily disrupted in whole or in part or communications with Commission headquarters may be temporarily unavailable, either of which may prevent the public or the Commission from meeting regulatory or statutory requirements. After the Commission's Continuity of Operations Plan is activated, Commission operations other than emergency functions may be suspended in whole or in part by the Chairman (or the Chairman's delegate, as appropriate). The provisions of this section are effective upon activation of the Continuity of Operations Plan and the subsequent suspension of Commission operations, in whole or in part, and shall remain in effect up to 30 days, or such shorter time than 30 days as the Chairman (or the Chairman's delegate, as

appropriate) determines to be appropriate, or such longer time than 30 days as the Commission (or the Commission's delegate pursuant to section 376.204 of this Part, as appropriate) determines to be appropriate. Resumption of Commission operations following activation of the Continuity of Operations Plan and any subsequent suspension of Commission operations, in whole or in part, may occur either simultaneously for all activities, or over time for just some activities, and in such manner and at such time, as the Chairman (or the Chairman's delegate, as appropriate) or the Commission (or the Commission's delegate, as appropriate) determines to be appropriate.

(ii) *Notification of COOP activation and, following such activation, notification of suspension of Commission operations.* During periods when the Commission's Continuity of Operations Plan is activated and, following such activation, when Commission operations are subsequently suspended in whole or in part, the Chairman (or the Chairman's delegate pursuant to § 376.205, as appropriate) will notify the public that the Continuity of Operations Plan has been activated and that Commission operations have been suspended in whole or in part by sending a press release announcing that fact to major wire services, industry press, and appropriate metropolitan area radio stations. The Commission's Web site (<http://www.ferc.gov>) or the Commission's alternative Web site (<http://www.fercalt.gov>), as appropriate, will be activated and a notice that the Continuity of Operations Plan has been activated and that Commission operations have been suspended in whole or in part will be prominently displayed thereon. The Web site or alternative Web site, as appropriate, will act as a resource for the press, industry, and

general public. An additional press release will be sent to appropriate media outlets and a notice will be prominently displayed on the Commission's Web site or alternative Web site, as appropriate, when the Continuity of Operations Plan is deactivated and the Commission's headquarters are reopened or reconstituted and Commission operations resume.

(2) *Activities continued during COOP.* Notwithstanding other provisions of this section, during periods when the Commission's Continuity of Operations Plan is activated and, following such activation, when Commission operations are subsequently suspended in whole or in part, the Commission will continue to conduct emergency functions. As part of its emergency functions, the Commission will act on requests to ensure continued construction of essential natural gas facilities with sensitive construction timelines, on Commencement of Service requests, and on completion of dam safety work, in a manner consistent with the maintenance of environmental protections. Also as part of its emergency functions, the Commission will ensure that its personnel are available to respond to plant accidents or reportable incidents at LNG facilities, and to address dam safety, public safety, and security incidents at jurisdictional hydropower projects and to address other matters involving the safety of human life or protection of property.

Alternate channels of communication will include measures to ensure that these activities can go forward unhindered.

(b) *Standards of conduct for transmission service providers.* During periods when the Commission's Continuity of Operations Plan is activated and, following such activation,

when Commission operations are suspended in whole or in relevant part, a Transmission Provider affected by the same emergency affecting the Commission may, for up to 30 days, or such other time as the Chairman (or the Chairman's delegate pursuant to § 376.205, as appropriate) may direct, delay compliance with the requirement to report to the Commission each emergency that resulted in any deviation from the standards of conduct within 24 hours of such deviation. If the emergency prevents such Transmission Provider from posting information on its OASIS or Internet Web site, the Transmission Provider may, for up to 30 days, or such shorter time as the Chairman (or the Chairman's delegate, as appropriate) may direct or such longer time as the Commission (or the Commission's delegate pursuant to § 376.204, as appropriate) may direct, also delay compliance with the requirements of § 358.4(a)(2) of this chapter to post this information on its OASIS or Internet Web site, as applicable.

(c) Tolling of time periods for Commission action. Unless otherwise directed, for those pending matters where the date that the Commission must act falls during the period when the Continuity of Operations Plan is activated and, following such activation, when Commission operations are suspended in whole or in relevant part and also during the 14 days thereafter, the Commission tolls, for purposes of further consideration, the time period in which the Commission must act. Such matters include:

(1) 60-day period to act on requests for Exempt Wholesale Generator or Foreign Utility Company status;

- (2) 90-day period for acting on requests for certification of qualifying facility status;
- (3) 60-day period for acting on interlocking directorate applications;
- (4) 60-day period for acting on Public Utility Holding Company Act exemptions and waivers;
- (5) 180-period for acting on applications under section 203 of the Federal Power Act;
- (6) 150-day period for acting on intrastate pipeline applications for approval of proposed rates;
- (7) Period ending 60 days prior to the Electric Reliability Organization's (ERO) fiscal year for acting on the ERO's budget;
- (8) 60-day period for acting on notifications that a Reliability Standard may conflict with a function, rule, order, tariff, rate schedule or agreement;
- (9) 60-day period for acting on applications for review of a penalty imposed by the ERO for violation of a Reliability Standard;
- (10) 45-day protest period for protesting Prior Notice Filings, and the 30-day period for resolving and filing to withdraw such Protests;
- (11) 30-day period for acting on requests for rehearing;

(12) Time periods for action by a presiding officer or the Motions Commissioner, as well as by the Commission, on motions to permit interlocutory appeals, interlocutory appeals and certified questions; and

(13) 90-day period for acting on applications requesting relief from, or reinstatement of, an electric utility's mandatory purchase obligation pursuant to section 210(m) of the Public Utility Regulatory Policies Act of 1978.

(d) *Suspension of certain requirements.* Unless otherwise directed, during periods when the Commission's Continuity of Operations Plan is activated and, following such activation, when Commission operations are suspended in whole or in relevant part, the requirements to file by a certain date are suspended when communications with Commission headquarters are unavailable such that filings, submissions, and notifications cannot be received by the Commission. Unless otherwise directed by the Chairman (or the Chairman's delegate pursuant to § 376.205, as appropriate), those filings, submissions, and notifications, the filing of which was suspended, will be due the first day that communications with Commission headquarters are available such that filings, submissions, and notifications can be received by the Commission. Such filings, submissions, and notifications include:

(1) Filings to comply with orders or notices, including orders or notices issued by the Commission, a presiding officer, and a Commission decisional employee (including the directors of the Commission's various offices and their delegates);

- (2) Filings required to be made by a date certain either under the Commission's regulations, or under orders and notices issued by the Commission, a presiding officer, and a Commission decisional employee (including the directors of the Commission's various offices and their delegates); such filings include, e.g., briefs, motions, and answers to motions;
- (3) Motions to intervene and notices of intervention, or protests;
- (4) Comments responding to notices of inquiry, proposed rulemakings or technical conferences;
- (5) Responses to data requests and deficiency letters issued either by the Commission or by a decisional employee pursuant to delegated authority;
- (6) Self-reports of violations;
- (7) Responses to staff audit reports;
- (8) Contacts with the Commission's Enforcement Hotline;
- (9) Accounting filings required by the Commission's Uniform Systems of Accounts;
- (10) Forms required to be filed by a date certain;
- (11) Notices of intent to file new applications and applications for new licenses pursuant to section 15 of the Federal Power Act;

(12) Requests for rehearing of orders and letter orders issued either by the Commission or by a decisional employee pursuant to delegated authority; and

(13) The Electric Reliability Organization's advising the Commission of the Electric Reliability Organization's intent to issue Level 1 Advisories, Level 2 Recommendations, and Level 3 Essential Actions, and the Electric Reliability Organization's reporting to the Commission on actions taken in response to Level 2 Recommendations and Level 3 Essential Actions.

(e) *Acceptance and suspension of rate and other filings.* Unless otherwise directed, if the date by which the Commission is required to act on rate and other filings made pursuant to section 4 of the Natural Gas Act, section 205 of the Federal Power Act, and section 6(3) of the Interstate Commerce Act falls during a period when the Continuity of Operations Plan is activated and, following such activation, when Commission operations are suspended in whole or in relevant part and also during the 14 days thereafter, such filings shall be deemed to be accepted for filing and suspended and made effective on the requested effective date, subject to refund and further order of the Commission. The acceptance for filing and suspension of these filings is without prejudice to any further action the Commission may take with respect to these filings.

(f) *Electric Reliability Organization penalties.* Unless otherwise directed, if the date a penalty imposed by the Electric Reliability Organization under section 215 of the Federal Power Act would take effect falls during a period when the Continuity of Operations

Plan is activated and, following such activation, when Commission operations are suspended in whole or in relevant part and also during the 14 days thereafter, review of such penalty by the Commission shall be deemed to be initiated and the penalty shall be stayed pending further action of the Commission.

(g) *Consistency of State action with Reliability Standard.* Unless otherwise directed, if the date by which a Commission determination under section 215 of the Federal Power Act as to whether a State action is inconsistent with a Reliability Standard is required to be made falls during a period when the Continuity of Operations Plan is activated and, following such activation, when Commission operations are suspended in whole or in relevant part and also during the 14 days thereafter, the effectiveness of the State action will be deemed to be stayed pending further action by the Commission.

(h) *Suspension of evidentiary hearings and related conferences and meetings.* During periods when the Continuity of Operations Plan is activated and, following such activation, when Commission operations are suspended in whole or in relevant part, all evidentiary hearings, prehearing conferences, settlement conferences, and other meetings before presiding officers are suspended, and any requirement that a presiding officer act on motions (including motions to permit interlocutory appeals and to certify questions) is also suspended. Service of data requests and other discovery, and responses thereto, by and to the Commission's Trial Staff is similarly suspended. Upon resumption of Commission operations in whole or in relevant part, such hearings, conferences and other meetings will be rescheduled, action on motions also will be rescheduled, and service of

data requests and other discovery, and responses thereto, by and to the Commission's Trial Staff, will similarly be rescheduled, by the presiding officer or the Commission, as appropriate.

(i) *Enforcement Actions under the Public Utility Regulatory Policies Act of 1978.* Unless otherwise directed, if the date by which the Commission is required to act on a petition for enforcement action under section 210(h)(2) of the Public Utility Regulatory Policies Act of 1978 falls during a period when the Continuity of Operations Plan is activated and, following such activation, when Commission operations are suspended in whole or in relevant part, and also during the 14 days thereafter, the Commission will not initiate such an enforcement action under section 210(h)(2) of the Public Utility Regulatory Policies Act of 1978 and the petitioner may itself bring its own enforcement action in the appropriate court.

(j) *Chairman's and Commission's authority to modify deadlines and timeframes.* During periods when the Continuity of Operations Plan is activated and, following such activation, when Commission operations are suspended in whole or in part and also during the 14 days thereafter, the Chairman (or the Chairman's delegate pursuant to § 376.205, as appropriate), may shorten, and the Commission (or the Commission's delegate pursuant to § 376.204, as appropriate) may extend, with respect to the matters addressed in this section, as appropriate:

(1) The time periods and dates for filings with the Commission, a decisional employee, or a presiding officer;

(2) The time periods and dates for reports, submissions and notifications to the Commission, a decisional employee, or a presiding officer; and

(3) The time periods and dates for actions by the Commission, a decisional employee, or a presiding officer.

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