



This document is scheduled to be published in the Federal Register on 05/21/2014 and available online at <http://federalregister.gov/a/2014-11767>, and on FDsys.gov

BILLING CODE 6717-01-P
DEPARTMENT OF ENERGY
Federal Energy Regulatory Commission

18 CFR Parts 35, 154, 341, and 385

[Docket No. RM01-5-001; Order No. 714-A]

Electronic Tariff Filings

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Commission is clarifying its regulations to make explicit that, consistent with Order No. 714 and its subsequent orders, statutory tariff and rate filings must be made electronically, according to the Commission's posted requirements for eTariff filings. Filings not made in proper electronic format will not become effective under the applicable statutes if the Commission fails to act by the proposed effective dates in the applicants' pleadings.

DATES: This rule will become effective [**Insert_Date 30 days after publication in the FEDERAL REGISTER**].

FOR FURTHER INFORMATION CONTACT:

Michael Goldenberg (Legal Information)
Office of the General Counsel
888 First Street, NE
Washington, DC 20426
202-502-8685
michael.goldenberg@ferc.gov
(Legal Issues)

H. Keith Pierce (Technical Information)
Office of Energy Market Regulation
888 First Street, NE
Washington, DC 20426
202-502-8525
keith.pierce@ferc.gov

SUPPLEMENTARY INFORMATION:

147 FERC ¶ 61,115
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Electronic Tariff Filings

Docket No. RM01-5-001

ORDER NO. 714-A

FINAL RULE

(Issued May 15, 2014)

1. By this instant Final Rule, the Commission is clarifying its regulations¹ to make explicit that, in order for filings to have a statutory action date, the filings must be made electronically as tariff filings in accordance with the Commission's posted requirements and formats (commonly known as "eTariff"). Filings not made in proper format consistent with the Commission's eTariff requirements will not become effective by operation of law under the statutes administered by the Commission, if the Commission fails to act on the filings within the timeframes in the statutes.² These revisions clarify

¹ 18 CFR 35.7, 154.4, 341.1, and 385.205.

² These statutes include the Natural Gas Act (NGA), the Federal Power Act (FPA), and the Interstate Commerce Act (ICA).

the regulations so they reflect the Commission's Order No. 714,³ adopting regulations requiring electronic filing of tariffs and tariff-related materials.

I. Discussion

2. Section 4 of the Natural Gas Act (NGA),⁴ section 205 of the Federal Power Act (FPA),⁵ and section 6 of the Interstate Commerce Act (ICA)⁶ provide that no change shall be made in rates, charges, classifications, or services except after prior notice provided to the Commission. The statutes further provide that if the Commission fails to act on such a filing within the statutorily prescribed notice period, the changes in the filing will become effective by operation of law.

3. These statutory provisions (section 4(c) of the NGA, section 205(c) of the FPA and section 6(6) of the ICA) also provide that filings to revise rates, terms and conditions of service must be filed in the form the Commission designates. In Order No. 714, the Commission adopted regulations⁷ governing the filing of such changes to rates, terms and

³ *Electronic Tariff Filings*, Order No. 714, 73 FR 57515 (Oct. 3, 2008), FERC Stats. & Regs., Regulations Preambles 2008-2013 ¶ 31,276 (2008).

⁴ 15 U.S.C. 717c.

⁵ 16 U.S.C. 824d.

⁶ 49 App. U.S.C. 6 (1988).

⁷ 18 CFR 35.7, 154.4, 157.217, 284.123, 284.224, 300.10, 341.1.

conditions of service and of other materials related to such changes,⁸ for natural gas pipelines, public utilities, and oil pipelines governed by these statutes. These regulations require that all tariff and tariff-related filings must be made electronically according to the requirements and formats for such electronic filing listed in the instructions for such electronic filing.⁹ The Commission stated that the formats and data elements in these requirements “are required to properly identify the nature of the tariff filing”¹⁰ In a subsequent order, the Commission further amplified the procedures for identifying whether tariff filings are statutory, explaining that only eTariff filings using the proper filing codes would establish the applicable filing and notice requirements under the NGA, FPA, and ICA.¹¹ In this regard, the Commission stated that the filer’s choice of electronic filing codes determines whether a filing has a statutory action date, and not statements in transmittal letters or other documents.¹²

⁸ Order No. 714 used the term “tariff” to refer to tariffs, rates schedules, jurisdictional contracts, and other jurisdictional agreements that are required to be on file with the Commission. *See* Order No. 714, FERC Stats. & Regs. ¶ 31,276 at P 13 n.11.

⁹ The Commission indicated that grandfathered agreements did not need to be refiled as part of the initial baseline filing to place jurisdictional agreements in eTariff. Order No. 714, FERC Stats. & Regs., Regulations Preambles 2008-2013 ¶ 31,276, at P 92 (2008). Such agreements, therefore, may be cancelled under section 35.17 of the regulations without the submission of an eTariff statutory filing.

¹⁰ *Id.* P 23.

¹¹ *Electronic Tariff Filings*, 130 FERC ¶ 61,047 (2010).

¹² *Id.* P 4.

4. Despite the passage of three years since the implementation of electronic tariff filing, many filers still are incorrectly filing what purport to be statutory filings, either by not making the filings through eTariff or by not using the proper filing codes for statutory filings.¹³ We are therefore revising sections 35.7, 154.4, and 341.1 of the Commission's regulations to reflect the Commission's required procedures and practices to better ensure accurate filing. The regulations now will provide explicitly that only tariff filings properly filed as and designated as statutory filings according to the Commission's eTariff requirements will be considered to have statutory action dates, and that tariff filings not properly filed and designated as statutory filings will not become effective in the absence of Commission action. We also are similarly amending section 385.205 to provide explicitly that a tariff filing must be made electronically, according to the requirements and formats for electronic filing posted by the Secretary.¹⁴

5. To help filers verify the nature of their filing, the Commission enables filers to verify whether their electronic filings match their intent. Filers making electronic tariff filings are notified of the "type of filing" code used in the responsive emails by the

¹³ As the Commission indicated in *Electronic Tariff Filings*, Commission staff would endeavor to call (and, in fact, have frequently called) filers to identify filings with transmittal letters that purport to be making statutory filings but that were not properly filed electronically as statutory filings. *Id.* P 5.

¹⁴ As we provided in Order No. 714, the Secretary of the Commission has delegated authority to make revisions to these instructions, including "type of filing" codes. 18 CFR 375.302(z). These instructions are *available at* <http://www.ferc.gov/docs-filing/etariff.asp>.

Secretary to their electronic filing, and the Commission's eLibrary filing description includes the "type of filing" code.¹⁵

II. Information Collection Statement

6. Office of Management and Budget (OMB) regulations require OMB to approve certain information collection requirements imposed by agency rule.¹⁶ However, this instant Final Rule does not contain or modify any information collection requirements.

III. Environmental Analysis

7. 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.¹⁷ Part 380 of the Commission's regulations lists exemptions to the requirement to draft an Environmental Analysis or Environmental Impact Statement, and this rulemaking qualifies under the exemption for procedural, ministerial or internal administrative actions.¹⁸

¹⁵ Federal Energy Regulatory Commission, eTariff, eTariff Email Templates, (<http://www.ferc.gov/docs-filing/etariff.asp>), <http://www.ferc.gov/docs-filing/etariff/etariff-temp.pdf>.

The statutory filing codes are listed in the "Type of Filing" Rules Table posted on the Commission's eTariff website, <http://www.ferc.gov/docs-filing/etariff/types-filing-rules-table.pdf> (Statutory Filings are those denominated under the heading "Filing Category" as "Normal", "Cancellation", and "Baseline New").

¹⁶ 5 CFR 1320.12.

¹⁷ *Regulations Implementing the National Environmental Policy Act of 1969*, Order No. 486, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs. ¶ 30,783 (1987).

¹⁸ 18 CFR 380.4(a)(1).

IV. Regulatory Flexibility Act

8. The Regulatory Flexibility Act of 1980 (RFA)¹⁹ generally requires a description and analysis of final rules that will have significant economic impact on a substantial number of small entities. This instant Final Rule concerns agency procedures. The Commission certifies that it will not have a significant economic impact upon participants in Commission proceedings. An analysis under the RFA is thus not required.

V. Document Availability

9. 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.

10. From the Commission's Home Page on the Internet, this information is available on 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 of this document in the docket number field.

¹⁹ 5 U.S.C. 601-12.

11. User assistance is available for eLibrary and the Commission's website during normal business hours from FERC Online Support at 202-502-6652 (toll free at 1-866-208-3676) or email at ferconlinesupport@ferc.gov, or the Public Reference Room at (202) 502-8371, TTY (202)502-8659. E-mail the Public Reference Room at public.referenceroom@ferc.gov.

VI. Effective Date and Congressional Notification

12. The Commission is issuing this rule as an instant Final Rule without a period for public comment. Under 5 U.S.C. 553(b), notice and comment procedures are unnecessary where a rulemaking concerns only agency procedure or practice, or where the agency finds that notice and comment is unnecessary. This rule concerns only matters of agency procedure, and will not significantly affect regulated entities or the general public.

List of Subjects

18 CFR Part 35

Electric power rates, Electric utilities, Reporting and recordkeeping requirements, Electricity.

18 CFR Part 154

Natural gas, Pipelines, Reporting and recordkeeping requirements, Natural gas companies, Rate schedules and tariffs.

18 CFR Part 341

Maritime carriers, Pipelines, Reporting and recordkeeping requirements.

18 CFR Part 385

Administrative practice and procedure, Electric power, Penalties, Pipelines,
Reporting and recordkeeping requirements.

By the Commission.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

In consideration of the foregoing, the Commission amends Parts 35, 154, 341, and 385, Chapter I, Title 18, Code of Federal Regulations, as follows:

PART 35 – FILING OF RATE SCHEDULES AND TARIFFS

1. The authority citation for Part 35 continues to read as follows:

Authority: 16 U.S.C. 791a-825r, 2601-2645; 31 U.S.C. 9701; 42 U.S.C. 7101-7352.

2. Section 35.7 is amended by revising the section heading, and adding paragraph (d) to read as follows:

§ 35.7 Electronic filing of tariffs and related materials.

* * * * *

(d) Only filings filed and designated as filings with statutory action dates in accordance with these electronic filing requirements and formats will be considered to have statutory action dates. Filings not properly filed and designated as having statutory action dates will not become effective, pursuant to the Federal Power Act, should the Commission not act by the requested action date.

PART 154 – RATE SCHEDULES AND TARIFFS

3. The authority citation for Part 154 continues to read as follows:

Authority: 15 U.S.C. 717-717w; 31 U.S.C. 9701; 42 U.S.C. 7102-7352.

4. Section 154.4 is amended by adding paragraph (d) to read as follows:

§ 154.4 Electronic filing of tariffs and related materials.

* * * * *

(d) Only filings filed and designated as filings with statutory action dates in accordance with these electronic filing requirements and formats will be considered to

have statutory action dates. Filings not properly filed and designated as having statutory action dates will not become effective, pursuant to the Natural Gas Act, should the Commission not act by the requested action date.

PART 341 – OIL PIPELINE TARIFFS: OIL PIPELINE COMPANIES SUBJECT TO SECTION 6 OF THE INTERSTATE COMMERCE ACT

5. The authority citation for Part 341 continues to read as follows:

Authority: 42 U.S.C. 7101–7352; 49 U.S.C. 1–27.

6. Section 341.1 is amended by adding paragraph (d) to read as follows:

§ 341.1 Electronic filing of tariffs and related materials.

* * * * *

(d) Only filings filed and designated as filings with statutory action dates in accordance with these electronic filing requirements and formats will be considered to have statutory action dates. Filings not properly filed and designated as having statutory action dates will not become effective, pursuant to the Interstate Commerce Act, should the Commission not act by the requested action date.

PART 385 – RULES OF PRACTICE AND PROCEDURE

7. The authority citation for Part 385 continues to read as follows:

Authority: 5 U.S.C. 551-557; 15 U.S.C. 717-717z, 3301-3432; 16 U.S.C. 791a-825v, 2601-2645; 28 U.S.C. 2461; 31 U.S.C. 3701, 9701; 42 U.S.C. 7101-7352, 16441, 16451-16463; 49 U.S.C. 60502; 49 App. U.S.C. 1-85 (1988).

8. Section 385.205 is revised to read as follows:

§ 385.205 Tariff or rate filings (Rule 205).

(a) A person must make a tariff or rate filing in order to establish or change any specific rate, rate schedule, tariff, tariff schedule, fare, charge, or term or condition of

service, or any classification, contract, practice, or any related regulation established by and for the applicant.

(b) A tariff or rate filing must be made electronically in accordance with the requirements and formats for electronic filing listed in the instructions for electronic filings. A tariff or rate filing not made in accordance with these requirements and formats will not have a statutory action date and will not become effective should the Commission not act by the requested action date.

[FR Doc. 2014-11767 Filed 05/20/2014 at 8:45 am; Publication Date: 05/21/2014]