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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 385

[Docket No. RM15-5-000]; Order No. 811

Revised Exhibit Submission Requirements for Commission Hearings

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule.

SUMMARY: In this Final Rule, the Federal Energy Regulatory Commission (Commission) is amending Rule 508 of the Commission's Rules of Practice and Procedure to eliminate the requirement that participants in Commission trial-type evidentiary hearings must provide paper copies of all exhibits introduced as evidence. The Final Rule will facilitate a shift toward electronic hearing procedures which should improve the efficiency and administrative convenience of the Commission hearing process, reduce the burden and expense associated with paper exhibits, and facilitate the compilation and transmittal of the hearing record to the Commission in electronic format.

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

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SUPPLEMENTARY INFORMATION:

ORDER NO. 811

FINAL RULE

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1. In this Final Rule, the Federal Energy Regulatory Commission (Commission) is amending Rule 508 of the Commission's Rules of Practice and Procedure<sup>1</sup> to eliminate the requirement that participants in Commission trial-type evidentiary hearings must provide paper copies of all exhibits introduced as evidence. The Commission is amending section 385.508 of the Commission's regulations by removing paragraph (a)(2) and redesignating paragraph (a)(3) as paragraph (a)(2). While still retaining the option to provide exhibits in paper form, the Final Rule will facilitate a shift toward electronic hearing procedures which should improve the efficiency and administrative convenience of the Commission hearing process, reduce the burden and expense associated with paper exhibits, and facilitate the compilation and transmittal of the hearing record to the Commission in electronic format.

**I. Background**

2. The Federal government has set a goal to substitute electronic means of communication and information storage for paper. For example, the Government Paperwork Elimination Act directed agencies to provide for the optional use and acceptance of electronic documents and signatures, and electronic record-keeping, where practical.<sup>2</sup> Similarly, the Office of Management and Budget (OMB) Circular A-130 required agencies to use electronic information collection techniques, where such means

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<sup>1</sup> 18 CFR 385.508.

<sup>2</sup> 44 U.S.C. 3504.

will reduce the burden on the public, increase efficiency, reduce costs, and help provide better service.

3. On September 21, 2000, the Commission issued Order No. 619, which implemented the use of the Internet for submission of certain documents to the Commission for filing.<sup>3</sup> The eFiling system plays an important role in the Commission's efforts to comply with the Government Paperwork Elimination Act's requirement that agencies provide the option to submit information electronically, when practicable, as a substitute for paper.<sup>4</sup> Filing via the Internet is optional for eligible documents.<sup>5</sup> Since issuing Order No. 619, the Commission has greatly expanded its ability to accept electronically filed material, including interventions, protests, rehearings, complaints, and applications for certificates and licenses.<sup>6</sup> In 2008, the Commission further implemented a system for electronic tariff filing.<sup>7</sup> Consistent with these prior efforts to provide

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<sup>3</sup> *Electronic Filing of Documents*, Order No. 619, 65 FR 57088 (Sept. 21, 2000), FERC Stats. & Regs. ¶ 31,107 (2000).

<sup>4</sup> 44 U.S.C. 3504.

<sup>5</sup> 18 CFR 385.2001(a).

<sup>6</sup> See *Electronic Registration*, Order No. 891, 67 FR 52,406 (Aug. 12, 2002), FERC Stats. & Regs. ¶ 31,132 (2002); *Electronic Filing of FERC Form 1, and Elimination of Certain Designated Schedules in Form Nos. 1 and 1F*, Order No. 626, 67 FR 36,093 (May 23, 2002), FERC Stats. & Regs. ¶ 31,130 (2002); *Electronic Service of Documents*, 66 FR 50,591 (Oct. 4, 2001), FERC Stats. & Regs. ¶ 35,539 (2001); *Revised Public Utility Filing Requirements*, Order No. 2001, 67 FR 31,043 (May 8, 2002), FERC Stats. & Regs. ¶ 31,127 (2002); *Filing Via the Internet*, Order No. 703, 72 FR 65,659 (Nov. 23, 2007), FERC Stats. & Regs. ¶ 31,259 (2007).

<sup>7</sup> *Electronic Tariff Filings*, Order No. 714, FERC Stats. & Regs. ¶ 31,276 (2008).

electronic filing options, on March 19, 2015, the Commission issued a Notice of Proposed Rulemaking proposing to eliminate the requirement that all exhibits introduced at Commission hearings must be provided in paper form. In response to the NOPR, the Commission received comments from the New York Transmission Owners,<sup>8</sup> stating that they support the Commission's proposed elimination of the requirement to provide paper copies of exhibits introduced during evidentiary hearings, and that they agree with the Commission that this would improve the efficiency and administrative convenience of the Commission hearing process as well as reduce the substantial burden and expense associated with providing paper copies of exhibits.

## **II. Discussion**

4. Section 385.508 of the Commission's regulations currently requires that "[a]ny participant who seeks to have an exhibit admitted into evidence must provide one copy of the exhibit to the presiding officer and two copies to the reporter, not later than the time that the exhibit is marked for identification."<sup>9</sup> Under current practice, the court reporter assigns Exhibit Numbers to the paper copies and provides the paper copies to the Commission's Docket Branch to be scanned into the Commission's eLibrary system.

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<sup>8</sup> The New York Transmission Owners consist of Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., New York Power Authority, New York State Electric & Gas Corporation, Niagara Mohawk Power Corporation d/b/a National Grid, Orange and Rockland Utilities, Inc., Power Supply Long Island, and Rochester Gas and Electric Corporation.

<sup>9</sup> 18 CFR 385.508(2).

Copies of all exhibits and motions that are not pre-filed must also be provided to all participants at the hearing.<sup>10</sup>

5. The administrative law judges recently adopted a revised practice for handling exhibits and creating the Exhibit List that removes the need for providing paper copies at the hearing. Under this policy, within seven days of the end of the hearing, participants must file (via eFiling) a “Joint Exhibit List” and each sponsoring party must file (via eFiling) the "Official Copies" of each exhibit that was offered into evidence and admitted or rejected.<sup>11</sup> Thus, it is no longer necessary or efficient to require all participants to provide the presiding judge and court reporter with paper copies of each exhibit introduced at the hearing.

6. In this Final Rule, the Commission is therefore eliminating the requirement that participants provide one paper copy of each exhibit to the presiding officer and two paper copies to the court reporter.<sup>12</sup> This Final Rule represents a continuation of the

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<sup>10</sup> 18 CFR 385.510(d).

<sup>11</sup> *See Notice to the Public, Procedures for Handling Exhibits and Developing the Electronic Hearing Record* (issued December 12, 2014), <http://www.ferc.gov/media/headlines/2014/2014-4/12-12-14-notice.pdf>.

All electronically-filed exhibits must comply with eFiling file format requirements. *See Filing Via the Internet*, Order No. 703, FERC Stats. & Regs. ¶ 31,259 at P 33.

For exhibits that have not previously been provided to the participants, such exhibits must still be provided to the participants at the hearing. *See* 18 CFR 385.510(d).

<sup>12</sup> Most participants file pre-filed testimony and exhibits electronically via the eFiling system before the hearing. The presiding judge in each case will continue to

(continued ...)

Commission's efforts to implement the goal of substituting electronic means of communication and information storage for paper means. The Final Rule should save resources because participants will no longer be required to make multiple paper copies of all exhibits that they intend to submit into evidence. The Final Rule also will facilitate the presiding judge's compilation and transmittal of the hearing record to the Commission in electronic format.

### **III. Information Collection Statement**

7. Certain collections of information are subject to review by the Office of Management and Budget (OMB) under section 3507(d) of the Paperwork Reduction Act of 1995 (PRA).<sup>13</sup> OMB's regulations require OMB to approve certain information collection requirements imposed by agency rule.<sup>14</sup> This Final Rule does not contain any information collection requirements, as defined under section 3502(3) of the PRA, and compliance with the OMB regulations is thus not required.

### **IV. Environmental Analysis**

8. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect

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determine how participants exchange exhibits brought to the hearing. *See* 18 CFR 385.504(b)(1), (4).

<sup>13</sup> 44 U.S.C. 3507(d).

<sup>14</sup> 5 CFR 1320.12.

on the human environment.<sup>15</sup> This action has been categorically excluded under section 380.4(a)(2)(ii), addressing procedural rules.<sup>16</sup>

#### **V. Regulatory Flexibility Act**

9. The Regulatory Flexibility Act of 1980 (RFA)<sup>17</sup> generally requires a description and analysis of rules that will have a significant economic impact on a substantial number of small entities. This Final Rule concerns procedural matters and is expected to reduce the burden and expense associated with paper exhibits and improve the efficiency and administrative convenience of the Commission hearing process.

10. Accordingly, the Commission certifies that this Final Rule will not have a significant economic impact on a substantial number of small entities. An analysis under the RFA is not required.

#### **VI. Document Availability**

11. 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

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<sup>15</sup> *Regulations Implementing the National Environmental Policy Act of 1969*, Order No. 486, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs. Preambles 1986-1990 ¶ 30,783 (1987).

<sup>16</sup> 18 CFR 380.4(a)(2)(ii).

<sup>17</sup> 5 U.S.C. 601-12.

business hours (8:30 a.m. to 5:00 p.m. Eastern time) at 888 First Street, NE, Room 2A, Washington, DC 20426.

12. 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.

13. User assistance is available for eLibrary and the Commission's website during normal business hours from the Commission's Online Support at (202) 502-6652 (toll free at 1-866-208-3676) or email at [ferconlinesupport@ferc.gov](mailto: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](mailto:public.referenceroom@ferc.gov).

## **VII. Effective Date and Congressional Notification**

14. This Final Rule is effective [INSERT DATE 30 days after publication in the FEDERAL REGISTER]. The Commission has determined, with the concurrence of the Administrator of the Office of Information and Regulatory Affairs of OMB, that this rule is not a "major rule" as defined in section 351 of the Small Business Regulatory Enforcement Fairness Act of 1996.<sup>18</sup> This Final Rule is being submitted to the Senate, House, and Government Accountability Office.

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<sup>18</sup> 5 U.S.C. 804(2).

List of Subjects in 18 CFR Part 385

Exhibits

By the Commission.

Issued: June 18, 2015

Kimberly D. Bose,  
Secretary.

In consideration of the foregoing, the Commission amends Part 385, Chapter I, Title 18, Code of Federal Regulations, as follows.

**PART 385 – RULES OF PRACTICE AND PROCEDURE**

1. 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. 792-828c, 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).

2. Section 385.508 is amended by revising paragraph (a) to read as follows:

**§ 385.508 Exhibits (Rule 508).**

(a) *General rules.* (1) Except as provided in paragraphs (b) through (e) of this section, any material offered in evidence, other than oral testimony, must be offered in the form of an exhibit.

(2) The presiding officer will cause each exhibit offered by a participant to be marked for identification.

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