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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 385

[Docket No. RM18-7-000; Order No. 846]

Withdrawal of Pleadings

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Commission adopts a more accurate title of “Withdrawal of pleadings (Rule 216),” for Rule 216 of the Commission’s Rules of Practice and Procedure. The Commission also clarifies the text of the Rule.

DATES: This rule is effective **[Insert Date 30 days after date of publication in the Federal Register]**

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

ORDER NO. 846

FINAL RULE

(Issued May 17, 2018)

1. In this Final Rule, as proposed in its Notice of Proposed Rulemaking,<sup>1</sup> the Commission revises the title and text of Rule 216 of the Commission’s Rules of Practice and Procedure, 18 CFR 385.216. The Commission adopts the more accurate title of “Withdrawal of pleadings (Rule 216).” The Commission also clarifies the text of the Rule.

**I. Discussion**

2. The Commission shall implement two changes to Rule 216. First, the preexisting title may confuse some readers by implying that Rule 216 governs the withdrawal of tariff or rate filings, which are instead governed by separate regulations.<sup>2</sup> Thus, the Commission revises the title from “Withdrawal of pleadings and tariff or rate filings (Rule 216)” to “Withdrawal of pleadings (Rule 216).”

3. Second, the Commission revises the first sentence of Rule 216(a) to read, “Any person may seek to withdraw its pleading by filing a notice of withdrawal.” This change clarifies that it is the person who has submitted a pleading that may withdraw that

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<sup>1</sup> *Withdrawal of Pleadings*, 83 FR 8019 (February 23, 2018), 162 FERC ¶ 61,111 (2018) (NOPR).

<sup>2</sup> *E.g.*, 18 CFR 35.17, 154.205, 284.123, 341.13 (2017).

pleading. The Commission also makes a conforming change, to refer to “person” rather than “party,” in Rule 216(c).

4. The Commission received one comment, from A. Hewitt Rose III, an attorney who practices before the Commission. Mr. Rose generally supports the proposed rule but objects to the use of the word “its” in the phrase, “Any person may seek to withdraw its pleading by filing a notice of withdrawal.” Mr. Rose argues that “it” is not necessarily the correct pronoun for the word “person,” which refers not only to legal entities but also to natural persons. Mr. Rose notes, however, that the best replacement pronoun, “their,” is not universally recognized as the correct pronoun for a singular subject. Therefore, Mr. Rose proposes adjusting the sentence so that “it” refers to the pleading, not the person: “Any person that filed a pleading may seek to withdraw it by filing a notice of withdrawal.” We accept Mr. Rose’s proposal, which serves the Commission’s goal of developing a clear and concise set of Rules of Practice and Procedure, and we revise Rule 216(a) accordingly.

## **II. Regulatory Requirements**

### **A. Information Collection Statement**

5. Review by the Office of Management and Budget, pursuant to section 3507(d) of the Paperwork Reduction Act of 1995, is not required since this Final Rule does not contain new or modified information collection or recordkeeping requirements.

### **B. Environmental Analysis**

6. 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.<sup>3</sup> Section 380.4(a)(1) of the Commission's regulations exempts certain actions from the requirement that an Environmental Analysis or Environmental Impact Statement be prepared.<sup>4</sup> Included is an exemption for procedural actions. As this Final Rule falls within that exemption, issuance of the Final Rule does not represent a major federal action having a significant adverse effect on the human environment under the Commission's regulations implementing the National Environmental Policy Act, and, thus, does not require an Environmental Analysis or Environmental Impact Statement.

**C. Regulatory Flexibility Act Analysis**

7. The Regulatory Flexibility Act of 1980 (RFA)<sup>5</sup> generally requires a description and analysis of proposed rules that will have significant economic impact on a substantial number of small entities. This Final Rule concerns clarifications to agency procedure. The Commission certifies that the proposed clarifications will not have a significant economic impact upon a substantial number of small entities in Commission proceedings and, therefore, an analysis under the RFA is not required.

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<sup>3</sup> *Regulations Implementing National Environmental Policy Act of 1969*, Order No. 486, FERC Stats. & Regs. ¶ 30,783 (1987) (cross-referenced at 41 FERC ¶ 61,284).

<sup>4</sup> 18 CFR 380.4(a)(1) (2017).

<sup>5</sup> 5 U.S.C. 601-12 (2012).

**D. Document Availability**

8. 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.

9. 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.

10. 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 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).

**E. Effective Date and Congressional Notification**

11. These regulations are effective [**Insert date 30 days after date of 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.

**List of Subjects in 18 CFR Part 385**

Electric power rates, Electric power, Reporting and recordkeeping requirements

By the Commission.

Issued: May 17, 2018

Kimberly D. Bose,  
Secretary.

In consideration of the foregoing, the Commission hereby 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. 717-717w, 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); 28 U.S.C. 2461 note (1990); 28 U.S.C. 2461 note (2015).

2. In § 385.216, revise the section heading and paragraphs (a) and (c) to read as follows:

**§ 385.216 Withdrawal of pleadings (Rule 216).**

\* \* \* \* \*

(a) *Filing*. Any person that filed a pleading may seek to withdraw it by filing a notice of withdrawal. The procedures provided in this section do not apply to withdrawals of tariff or rate filings, which may be withdrawn only as provided in the regulations under this chapter.

\* \* \* \* \*

(c) *Conditional withdrawal*. In order to prevent prejudice to other participants, a decisional authority may, on motion or otherwise, condition the withdrawal of any pleading upon a requirement that the withdrawing person leave material in the record or otherwise make material available to other participants.

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