

REQUIREMENTS FOR FILINGS BY PUBLIC UTILITIES SEEKING TO EXTEND THE DATE FOR COMMISSION ACTION ON STATUTORY FILINGS

Public utilities filing under Part 35¹ sometimes make filings with the Commission seeking to extend the date by which the Commission must act on a pending statutory filing on which the Commission has not yet acted. There are many reasons why utilities seek to extend the Commission action date. One common reason for such filings is to provide an opportunity to discuss a statutory filing with protesters and perhaps reach agreement that may result in the filing of a settlement or other revisions to the filing.

With the advent of eTariff, filings to extend the date by which the Commission must act are required to be made under the eTariff filing procedures for amendment filings in section 35.17(b) of the Commission regulations.² Filings not made through eTariff, but rather through the Commission's electronic filing system or on paper will not affect the date by which the Commission must act.

Under eTariff, filings to extend the Commission action date must be made as an amendment-type filing using the appropriate amendment code for the program in question.³ An amendment-type filing is considered to be a statutory filing and extends the time for Commission action on all pending tariff provisions in the proceeding.⁴ As described by the Commission,⁵ an amendment-type filing must contain at least one tariff

¹ These are the companies that file under the program codes E and M.

² 18 C.F.R. § 35.17(b) (“*Amendments or modifications to rate schedule, tariff or service agreement sections prior to Commission action on the filing. A public utility may file to amend or modify, and may file a settlement that would amend or modify, a rate schedule, tariff or service agreement section contained in a rate schedule, tariff or service agreement filing that has not become effective and upon which no Commission or delegated order has yet been issued*”).

³ See *Electronic Tariff Filings*, 130 FERC ¶ 61,047, at P 4 (2010) (filings that affect statutory action dates must be filed through eTariff).

⁴ An amendment filing is part of the same proceeding as the original tariff filing. 18 C.F.R. § 35.17(b) (An amendment filing “will toll the notice period in section 205(d) of the Federal Power Act for the original filing, and establish a new date on which the entire filing will become effective, in the absence of the Commission action, no earlier than 61 days from the date of the filing of the amendment or modification”). A notice of the amendment filing will be issued.

⁵ *Electronic Tariff Filings*, Order No. 714, 73 FR 57515 (Oct. 3, 2008), FERC Stats. & Regs. ¶ 31,276, at P 81 (2008); *Electronic Tariff Filings*, 130 FERC ¶ 61,047, at (continued)

record provision. The type of filing code and the proposed effective dates in the amendment-type filing establish the proposed effective date for any statutory filing.⁶ As part of the eTariff rules, a proposed effective date of 12/31/9998 has been established as an administratively-designated proposed effective date to be used if the effective date is not known at the time of the filing.⁷

The following outlines two possible approaches that utilities can use to request an extension of the date for Commission action, without affecting the proposed effective date in the original filing. Other than the use of these procedures, revisions to a proposed effective date could potentially affect the effective date for a proposed tariff provision.

1. Extending the Date for the Standard 60-day Period:

- a) Under this procedure, the utility would refile a single Pending Tariff Record from the filing in question with the same text and proposed effective date as in the original filing.⁸ This approach will maintain the existing proposed effective date of the filing while providing an additional 60-day statutory period for Commission action.
- b) If a further extension is needed, another amendment-type filing for that Tariff Record will need to be made to extend the time period further; otherwise, the Commission will issue an order at the end of the 60-day period.
- c) If agreement is reached between the parties, an amendment-type filing containing any revised tariff provisions must be made with appropriate proposed effective dates to reflect the agreement.

P 4 (2010).

⁶ *Electronic Tariff Filings*, 130 FERC ¶ 61,047, at P 6 (describing how the Tariff Record Proposed Effective Date establishes the date on which, by statute, a tariff filing would go into effect by operation of law in the absence of Commission action).

⁷ Federal Energy Regulatory Commission, Office of the Secretary, Implementation Guide for Electronic Filing of Parts 35, 154, 284, 300, and 341 Tariff Filings, at 10 (Version: December 22, 2011).

⁸ As with all tariff records, the filer must use a discrete version number for the revised Tariff Record. The Record Effective Priority Order number used will determine which Tariff Record will supersede any other Tariff Records proposed to be effective for the same date.

2. Extending the Date Indefinitely

- a) Under this procedure, the utility would refile a single Tariff Record pending in the proceeding with a 12/31/9998 Date accompanied by a transmittal letter explaining that it is seeking a delay of Commission action on the original filing and that it intends the original proposed effective date to be retained. This approach will maintain the existing proposed effective date of all the tariff records in the existing filing while providing an unlimited time for the parties to hold discussions (without the need for additional amendment-type filings to extend time periods). No action will be taken on the original or amendment-type filing until the filer makes another amendment-type filing as described below to inform the Commission as to how it desires to proceed.
- b) An amendment-type filing will be needed to restart the processing of the original filing. The amendment filing would propose to revise the 12/31/9998 date in the Tariff Record to the original proposed effective date.
- c) If agreement is reached between the parties, an amendment-type filing containing any revised tariff provisions must be made with appropriate proposed effective dates to reflect the agreement.