

131 FERC ¶ 61,018
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

18 CFR Part 1b

(Docket No. RM10-21-000; Order No. 734)

Instant Final Rule Transferring Certain Enforcement Hotline Matters to
the Dispute Resolution Service

(Issued April 15, 2010)

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final Rule.

SUMMARY: The Commission is revising its regulations to substitute the Commission's Dispute Resolution Service (DRS) for the Commission's Enforcement Hotline as the contact for handling dispute-related calls pertaining to the construction and operation of jurisdictional infrastructure projects, effective May 1, 2010. Currently, the Commission's regulations require that natural gas pipeline companies provide contact information for the Enforcement Hotline when providing notice to affected landowners on a blanket certificate project under the Natural Gas Act. In practice, the Enforcement Hotline also attempts to resolve disputes between individuals and natural gas pipeline companies on all certificated construction projects under the Natural Gas Act. The Enforcement Hotline also receives calls pertaining to hydroelectric projects regulated under the Federal Power Act. The Commission is implementing this Final Rule because the Office of Enforcement's priorities currently are to focus on matters involving: fraud and market manipulation; serious violations of the reliability standards; anticompetitive conduct; and

conduct that threatens the transparency of regulated markets.¹ By transferring the responsibility of dispute-related calls pertaining to the construction and operation of jurisdictional infrastructure projects to DRS, with its expertise in conflict resolution, and allowing the Office of Enforcement to focus on its priorities, the Commission will ensure an efficient allocation of its resources that will better serve the public interest.

EFFECTIVE DATE: The rule will become effective on May 1, 2010.

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SUPPLEMENTARY INFORMATION:

¹ 2009 Report on Enforcement, Docket No. AD07-13-002 at 2 (2009).

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Before Commissioners: Jon Wellinghoff, Chairman;
Marc Spitzer, Philip D. Moeller,
and John R. Norris.

Instant Final Rule Transferring Certain Enforcement
Hotline Matters to the Dispute Resolution Service

Docket No. RM10-21-000

ORDER NO. 734

FINAL RULE

(Issued April 15, 2010)

I. Introduction

1. The Commission is revising its regulations to substitute the Commission's Dispute Resolution Service (DRS) for the Commission's Enforcement Hotline as the contact for handling dispute-related calls pertaining to the construction and operation of jurisdictional natural gas and hydroelectric infrastructure projects, effective May 1, 2010. The Commission is implementing this Final Rule because the Office of Enforcement's priorities currently are to focus on matters involving: fraud and market manipulation; serious violations of the reliability standards; anticompetitive conduct; and conduct that threatens the transparency of regulated markets. By transferring the responsibility of dispute-related calls pertaining to the construction and operation of jurisdictional infrastructure projects to DRS, with its expertise in conflict resolution, and allowing the Office of Enforcement to focus on its priorities, the Commission will ensure an efficient allocation of its resources that will better serve the public interest.

II. Background

2. The Commission's Enforcement Hotline has been in existence since June 1987. In April 1999, the Enforcement Hotline was codified under section 1b.21 of the Commission's regulations. 18 CFR 1b.21. In addition to providing information to the public and informal, non-binding staff opinions, any person may seek the Enforcement Hotline's assistance in the informal resolution of a dispute, provided that the dispute is not before the Commission in a docketed proceeding. 18 CFR 1b.21(b). The Enforcement Hotline is staffed by personnel from the Division of Investigations in the Office of Enforcement.

3. The Enforcement Hotline receives communications relating to a wide variety of matters including: allegations of market manipulation; failure to follow the requirements of a transmission tariff; abuse of an affiliate relationship; failure to follow electric reliability standards; and landowner complaints relating to natural gas pipeline construction or compliance with hydroelectric project licensing conditions.²

4. Landowner calls to the Enforcement Hotline are partly the result of the dispute resolution process set forth in the Commission's regulations. Section 157.203(d) of the

² For internal recordkeeping purposes, the Office of Enforcement considers "landowner" calls to include calls from tenants renting from the landowner or any other individual affected by a project's construction or physical operation. As noted earlier, section 1b.21, which codifies the Enforcement Hotline, provides that "any person" may seek assistance. This rulemaking also includes disputes involving tenants and other individuals affected by a project's construction or physical operation. However, for the purpose of convenience, this preamble includes them in the general category of "landowner" except as discussed in the next paragraph herein when that term is used in connection with the specific provisions of section 157.203(d).

Commission's regulations sets forth the landowner notification requirements that a natural gas pipeline company must follow if it plans to engage in a project authorized under a blanket certificate under the Natural Gas Act (NGA). Among the requirements is to provide all affected landowners with a description of the company's environmental complaint resolution procedures, which must include company contact telephone numbers which landowners can use to identify and resolve environmental mitigation problems and concerns during construction of the project and restoration of the right-of-way. 18 CFR 157.203(d)(iii). The complaint resolution procedures must also instruct landowners that, if they are still not satisfied with the company's response to their complaints, they may contact the Commission's Enforcement Hotline. 18 CFR 157.203(d)(iii)(D). The company must provide the affected landowners with the current telephone number and e-mail address of the Enforcement Hotline. Id.

5. In practice, natural gas pipeline companies provide affected landowners with environmental complaint resolution procedures, including contact information for the Enforcement Hotline, for all certificate projects under the NGA.

6. Landowner calls to the Enforcement Hotline primarily raise substantive issues concerning the effects of project construction, such as whether a pipeline company has properly restored the construction right-of-way, whether compressor stations exceed the noise limits set forth in the Commission's order or regulations, and whether the use of the easement is consistent with the purpose for which the easement was granted. The Enforcement Hotline attempts to resolve such calls primarily in consultation with the

Commission's Office of Energy Projects (OEP) and, when needed, the Commission's Office of the General Counsel.

7. The Enforcement Hotline also at times receives calls from landowners concerned about whether a hydroelectric project operator is in compliance with the project's licensing conditions. In such instances, the Enforcement Hotline refers the matter to the OEP's Division of Hydropower Administration and Compliance.

III. Commission Determination

8. This Final Rule amends 18 CFR 157.203(d)(iii)(D) to substitute the Commission's DRS for the Enforcement Hotline as the contact for landowners that have unresolved disputes with pipeline companies following use of the pipeline companies' environmental complaint resolution procedure. This change will result in a better allocation of Commission resources that will better serve the public interest. While the Enforcement Hotline continues to successfully handle landowner calls, such calls are unrelated to the current priorities of the Office of Enforcement, which are: fraud and market manipulation; serious violations of the reliability standards; anticompetitive conduct; and conduct that threatens the transparency of regulated markets.³ By transferring the responsibility of dispute-related calls pertaining to the construction and operation of jurisdictional infrastructure projects to DRS, with its expertise in conflict resolution, and allowing the Office of Enforcement to focus on its priorities, the Commission will ensure an efficient allocation of its resources, thereby better serving the public interest.

³ 2009 Report on Enforcement at 2.

Similarly, the Commission is transferring the responsibility of dispute-related calls pertaining to the construction and operation of jurisdictional hydroelectric power projects to DRS, which will interact with the OEP's Division of Hydropower Administration and Compliance. This transfer of responsibilities will become effective on May 1, 2010.

9. The DRS is well suited to take over the Enforcement Hotline's role in attempting to informally resolve landowner disputes with natural gas pipeline companies, as well as landowner disputes relating to hydroelectric projects which the OEP's Division of Hydropower Administration and Compliance wishes to submit for DRS resolution. The central mission of the Commission's DRS is to reach consensual resolution of disputed matters through the use of alternative dispute resolution methods such as mediation. DRS staff also has extensive substantive expertise in environmental, natural gas pipeline certificate, hydroelectric, and liquefied natural gas facility matters. Finally, DRS already receives and addresses a number of calls from landowners affected by projects under the Commission's jurisdiction. This will not be a new duty, but rather an extension of an existing service.⁴ Thus, the Commission will be able to continue serving the public interest through the use of DRS' expertise in attempting to resolve landowner disputes formerly handled by the Enforcement Hotline, and will better serve the public interest by allowing the Office of Enforcement to focus on its priorities.

⁴ The Commission's Office of External Affairs (OEA) currently handles calls from landowners asking general questions about the Commission's certificate or licensing process, as well as specific questions about particular proceedings such as the dates of meetings or site visits. Such questions will remain within the purview of OEA.

10. This Final Rule also amends 18 CFR 1b.21 to add a provision stating that any person affected by either the construction or operation of a certificated natural gas pipeline under the NGA or by the construction or operation of a project under the Federal Power Act (FPA) may seek the informal resolution of a dispute by calling or writing the DRS. Finally, because DRS will be the contact, this Final Rule deletes 18 CFR 157.203(d)(iv), which references the Enforcement Hotline regulation at 18 CFR 1b.21 as a source for obtaining further information about the Enforcement Hotline.

IV. Information Collection Statement

11. The Office of Management and Budget's (OMB) regulations require that OMB approve certain information collection requirements imposed by agency rule.⁵ This Final Rule contains no information reporting requirements, and, as such, is exempt from the provisions of the Paperwork Reduction Act.⁶

V. Environmental Analysis

12. 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.⁷ Issuance of this Final Rule does not represent a major federal action having a significant adverse effect on the human environment under the

⁵ 5 CFR Part 1320.

⁶ 44 U.S.C. § 3518(c); 5 CFR 1320.4.

⁷ Order No. 486, Regulations Implementing the National Environmental Policy Act, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs., Regulations Preambles 1986-1990 ¶ 30,783 (1987).

Commission's regulations implementing the National Environmental Policy Act.⁸ Part 380 of the Commission's regulations lists exemptions to the Environmental Analysis or Environmental Impact Statement requirement. Included is an exemption for procedural, ministerial or internal administrative actions.⁹ This rulemaking is exempt under that provision.

VI. Regulatory Flexibility Act Certification

13. The Regulatory Flexibility Act of 1980¹⁰ generally requires a description and analysis of final rules that will have significant economic impact on a substantial number of small entities. This Final Rule concerns a matter of internal agency procedure and the Commission therefore certifies that it will not have such an impact. An analysis under the RFA is not required.

VII. Document Availability

14. 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 FERC's Home Page (<http://www.ferc.gov>) and in FERC'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.

⁸Order No. 486, 52 FR 47897 (Dec. 17, 1987); FERC Stats. & Regs., Regulations Preambles 1986-1990 ¶ 30,783 (Dec. 10, 1984) (codified at 18 CFR Part 380).

⁹ 18 CFR 380.4(1) and (5).

¹⁰ 5 U.S.C. § 601-612 (RFA).

15. From FERC'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.

16. User assistance is available for eLibrary and the FERC's website during normal business hours from FERC Online Support at 202-502-6652 (toll free at 1-866-208-3676) or e-mail 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.

VIII. Effective Date

17. These regulations are effective on May 1, 2010. In accordance with 5 U.S.C. § 553(d)(3), the Commission finds that good cause exists to make this Final Rule effective less than 30 days after its publication in the Federal Register. The rule concerns a matter of administrative procedures and does not affect the rights of persons appearing before the Commission. Therefore, there is no reason to make it effective at a later time.

18. 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.

19. The Commission is issuing this as a 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 and 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 in 18 CFR Part 157

Interstate Pipeline Blanket Certificates and Authorization under Section 7 of the Natural Gas Act for Certain Transactions and Abandonment

List of subjects in 18 CFR Part 1b:

Rules relating to Investigations

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

In consideration of the foregoing, the Commission amends Parts 1b and 257, Chapter I, Title 18, Code of Federal Regulations, as follows:

Part 1b – RULES RELATING TO INVESTIGATIONS

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

Authority: 15 U.S.C. 717 *et seq.*; 16 U.S.C. 792 *et seq.*; 49 U.S.C. 60502; 49 A.P.U.S.C. 1-85; 42 U.S.C. 7101-7352; E.O. 12009, 42 FR 46297.

2. In § 1b.21, paragraph (b) is revised and paragraphs (g) and (h) are added to read as follows:

§ 1b.21 Enforcement hotline

* * * * *

(b) Except as provided for in paragraph (g) of this section, any person may seek information or the informal resolution of a dispute by calling or writing to the Hotline at the telephone number and address in paragraph (f) of this section. The Hotline Staff will informally seek information from the caller and any respondent, as appropriate. The Hotline Staff will attempt to resolve disputes without litigation or other formal proceedings. The Hotline Staff may not resolve matters that are before the Commission in docketed proceedings.

* * * * *

(g) Any person affected by either the construction or operation of a certificated natural gas pipeline under the Natural Gas Act or by the construction or operation of a project under the Federal Power Act may seek the informal resolution of a dispute by calling or writing the Commission’s Dispute Resolution Service. The Dispute Resolution

Service may be reached by calling the DRS Helpline toll-free at 1-877-337-2237, or by e-mail at ferc.adr@ferc.gov, or writing to: Dispute Resolution Service, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

(h) Any person who contacts the Dispute Resolution Service Helpline is not precluded from filing a formal action with the Commission if discussions assisted by the Dispute Resolution Service staff are unsuccessful at resolving the matter. A caller may terminate the use of alternative dispute resolution procedures at any time.

* * * * *

Part 157 – APPLICATIONS FOR CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY AND FOR ORDERS PERMITTING AND APPROVING ABANDONMENT UNDER SECTION 7 OF THE NATURAL GAS ACT

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

Authority: 15 U.S.C. 717-717w

2. In § 157.203, paragraph (d)(iii)(D) is revised and paragraph (d)(iv) is deleted to read as follows:

§ 157.203 Blanket certification

* * * * *

(d) *Landowner Notification*

* * * * *

(iii) * * *

(D) Instruct landowners that, if they are still not satisfied with the

response, they may contact the Commission's Dispute Resolution Service at the current telephone number and e-mail address, which is to be provided in the notification.

(iv) [deleted]

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