

107 FERC ¶ 61,254
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

18 CFR Parts 1b, 4, 11, 12, 33, 34, 35, 36, 154, 157, 292, 300, 365, 375, 385, 388

(Docket No. RM04-10-000)

ORDER NO. 647

Notice Format and Technical Corrections

(Issued June 3, 2004)

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final Rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is revising its regulations to simplify the formats it requires for various types of notices. This change will make it easier for the Commission to take advantage of technological upgrades without the necessity of revising its regulations repeatedly. In addition, this Final Rule revises a number of outdated informational references in the Commission's regulations.

EFFECTIVE DATE: The rule will become effective **[insert date 30 days after publication in the FEDERAL REGISTER]**.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, Joseph T. Kelliher,
and Suedeen G. Kelly.

Notice Format and Technical Corrections

Docket No. RM04-10-000

ORDER NO. 647

FINAL RULE

(Issued June 3, 2004)

1. This Final Rule revises the Federal Energy Regulatory Commission's (Commission's) regulations to simplify the format requirements specified for various notices that are submitted to the Commission. It also contains a number of corrections to information references in various regulations.
2. Currently, several of the Commission's regulations require the inclusion of a form of notice with the filing and require that such forms of notice employ specified formats. These formats include headings, informational content, and similar, non-substantive matters. As the Commission continues to rely more heavily on electronic systems for document submission, detailed format requirements may interfere with its ability to employ upgrades and other improvements. Consequently, the Commission is deleting the format requirements listed below and replacing them with a reference to a new subsection, 18 C.F.R. § 385.203(d). That provision, in turn, refers to the Commission's

web site or Public Reference Room for instructions on form of notice formats. The Secretary will issue instructions that will be placed in both locations. This revision will provide for more uniform formatting and make it easier for the Commission to update form of notice formatting by eliminating the need for a rulemaking with every change.

3. The affected provisions of Title 18 of the Code of Federal Regulations are as follows:

- § 33.6—Notices of applications to authorize disposition of jurisdictional facilities.
- § 34.3(k)—Applications for issuance of securities.
- § 35.8(b)—Protests or interventions relating to electric service tariff filings.
- § 36.1(b)(1)—Applications for transmission service under Section 211 of the Federal Power Act.
- § 154.209—Notice of proposed changes in gas tariff or of compliance filing.
- § 157.6(b)(7)—Applications for certificates of public convenience and necessity and for orders approving abandonment.
- § 157.205(b)(5)—Prior notice of activity pursuant to blanket certificate under section 7 of the Natural Gas Act.
- § 292.207(b)(4)—Applications for qualifying facility status.
- § 300.10(a)(1)—Applications for confirmation and approval of rates of Federal Power Marketing Administrations.
- § 365.3(c)—Applications for exempt wholesale generator status.
- § 385.206(b)(10)—Complaints.

- § 385.1104(a)(5)—Petitions for adjustments under the Natural Gas Policy Act.

All of these provisions except §§ 157.6(b)(7), 157.205(b)(5) and 385.1104(a)(5) currently contain requirements that notices be provided on diskette. In order to retain these requirements, the revisions provide that the Secretary will specify electronic media.

4. In addition to notice format provisions, the Commission is revising various information references, such as addresses and URLs, that are out of date. Finally, this Final Rule deletes two provisions from the rules governing filings. Section 385.2003(c)(3) currently provides that confidential documents may not be filed via the internet. section 385.2003(c)(4) provides that documents qualified for electronic filings may not be combined with other documents. These provision are inconsistent with the Commission's decision, in section 385.2003(c)(2), to delegate to the Secretary the authority to determine what documents may be filed via the internet. They are therefore being deleted.

INFORMATION COLLECTION STATEMENT

5. The Office of Management and Budget's (OMB) regulations require that OMB approve certain information collection requirements imposed by agency rule. 5 C.F.R. Part 1320. This Final Rule contains no information reporting requirements, and is not subject to OMB approval.

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.¹ Issuance of this 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.² Part 380 of the Commission's regulations lists exemptions to the requirement that an Environmental Analysis or Environmental Impact Statement be done. Included is an exemption for procedural, ministerial or internal administrative actions. 18 C.F.R. § 380.4(1) and (5). This rulemaking is exempt under that provision.

REGULATORY FLEXIBILITY ACT CERTIFICATION

7. The Regulatory Flexibility Act of 1980 (RFA)³ 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.

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 FERC's Home Page (<http://www.ferc.gov>) and in FERC's Public Reference Room during normal business

¹ Order No. 486, Regulations Implementing the National Environmental Policy Act, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs. Preambles 1986-1990 ¶ 30,783 (1987).

² Order 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).

³ 5 U.S.C. 601-612.

hours (8:30 a.m. to 5:00 p.m. Eastern time) at 888 First Street, N.E., Room 2A, Washington D.C. 20426

9. From FERC's Home Page on the Internet, this information is available in the Commission's document management system, 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 FERC's website during normal business hours from FERC Online Support at FERCOnlineSupport@ferc.gov or toll-free at (866)208-3676, or for TTY, contact (202)502-8659.

EFFECTIVE DATE

11. These regulations are effective [**insert date 30 days after publication in the FEDERAL REGISTER**].

12. 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.

13. 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

18 C.F.R. Part 1b

Investigations.

18 C.F.R. Part 4

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

18 C.F.R. Part 11

Electric power, Reporting and recordkeeping requirements.

18 C.F.R. Part 12

Electric power, Reporting and recordkeeping requirements.

188 C.F.R. Part 33

Electric utilities, Reporting and recordkeeping requirements, Securities.

18 C.F.R. Part 34

Electric power, Reporting and recordkeeping requirements.

18 C.F.R. Part 35

Electric power, Reporting and recordkeeping requirements.

18 C.F.R. Part 36

Electric power, Reporting and recordkeeping requirements.

18 C.F.R. Part 154

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

18 C.F.R. Part 157

Administrative practice and procedure, Natural gas, Reporting and recordkeeping requirements.

18 C.F.R. Part 292

Electric power, Reporting and recordkeeping requirements.

18 C.F.R. Part 300

Electric power, Reporting and recordkeeping requirements.

18 C.F.R. Part 365

Exempt wholesale generators.

18 C.F.R. Part 375

Authority delegations (Government agencies), Seals and insignia, Sunshine Act.

18 C.F.R. Part 385

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

18 C.F.R. Part 388

Confidential business information, Freedom of information.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.

In consideration of the foregoing, the Commission amends Parts 1b, 4, 11, 12, 33, 34, 35, 36, 154, 157, 292, 300, 365, 375, 385, and 388, 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 App. U.S.C. 1-85; 42 U.S.C. 7101-7352; E.O. 12009, 42 FR 46267.

2. Section 1b.21 is amended by revising paragraph (f) to read as follows:

§ 1b.21 Enforcement hotline.

* * * * *

(f) The Hotline may be reached by calling 202-502-8390 or 1-888-889-8030 (toll free), by email at hotline@ferc.gov, or writing to: Enforcement Hotline, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

PART 4—LICENSES, PERMITS, EXEMPTIONS, AND DETERMINATION OF PROJECT COSTS

3. The authority citation for Part 4 continues to read as follows:

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

4. Section 4.303 is amended in paragraphs (a)(2) and (e)(2) by removing the phrase “Hydropower Licensing” and add in its place the phrase “Energy Projects.”

PART 11—ANNUAL CHARGES UNDER PART I OF THE FEDERAL POWER ACT

5. The authority citation for Part 11 continues to read as follows:

Authority: 16 U.S.C. 791a–825r; 42 U.S.C. 7101–7352.

6. Section 11.3 is amended in paragraph (d) by removing the phrase “Hydropower Licensing” and adding in its place the phrase “Energy Projects.”

PART 12—SAFETY OF WATER POWER PROJECTS AND PROJECT WORKS

7. The authority citation for Part 12 is revised to read as follows:

Authority: 16 U.S.C. 792–828c; 42 U.S.C. 7101–7352; E.O. 12009, 3 CFR 142 (1978).

8. Part 12 is amended throughout the Part by removing the phrase “Hydropower Licensing” wherever it appears and adding in its place the phrase “Energy Projects.”

9. Section 12.3(b)(10) is amended by removing the phrase “Fort Worth” and adding in its place the phrase “Portland.”

PART 33—APPLICATION FOR ACQUISITION, SALE, LEASE, OR OTHER DISPOSITION, MERGER OR CONSOLIDATION OF FACILITIES, OR FOR PURCHASE OR ACQUISITION OF SECURITIES OF A PUBLIC UTILITY

10. The authority citation for Part 33 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.

11. Section 33.6 is revised to read as follows:

§ 33.6 Form of Notice.

The applicant must include a form of notice of the application suitable for publication in the Federal Register in accordance with the specifications in § 385.203(d) of this Chapter. The form of notice shall be on electronic media as specified by the Secretary.

PART 34—APPLICATION FOR AUTHORIZATION OF THE ISSUANCE OF SECURITIES OR THE ASSUMPTION OF LIABILITIES

12. The authority citation for Part 34 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.

13. Section 34.3 is amended by revising paragraph (k) to read as follows:

§ 34.3 Contents of application for issuance of securities.

* * * * *

(k) The applicant must include a form of notice of the application suitable for publication in the Federal Register in accordance with the specifications in § 385.203(d) of this Chapter. The form of notice shall be on electronic media as specified by the Secretary.

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PART 35—FILING OF RATE SCHEDULES AND TARIFFS

14. 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.

15. Section 35.8 is amended by revising paragraph (b) to read as follows:

§ 35.8 Protests and interventions by interested parties and form for Federal Register notice.

* * * * *

(b) Form of notice. The applicant must include a form of notice of the application suitable for publication in the Federal Register in accordance with the specifications in § 385.203(d) of this Chapter. The form of notice shall be on electronic media as specified by the Secretary.

PART 36—RULES CONCERNING APPLICATIONS FOR TRANSMISSION SERVICES UNDER SECTION 211 OF THE FEDERAL POWER ACT

16. The authority citation for Part 36 continues to read as follows:

Authority: 5 U.S.C. 551-557; 16 U.S.C. 791a–825r; 31 U.S.C. 9701; 42 U.S.C. 7101–7352.

17. Section 36.1 is amended by revising paragraph (b)(1) to read as follows:

§ 36.1 Notice provisions applicable to applications for transmission services under section 211 of the Federal Power Act.

* * * * *

(b) * * *

(1) The applicant must include a form of notice of the application suitable for publication in the Federal Register in accordance with the specifications in § 385.203(d) of this Chapter. The form of notice shall be on electronic media as specified by the Secretary.

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PART 154—RATE SCHEDULES AND TARIFFS

18. 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.

19. Section 154.209 is revised to read as follows:

§ 154.209 Form of notice for Federal Register.

The applicant must include a form of notice of the application suitable for publication in the Federal Register in accordance with the specifications in § 385.203(d) of this Chapter. The form of notice shall be on electronic media as specified by the Secretary.

**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**

20. The authority citation for Part 157 continues to read as follows:

Authority: 15 U.S.C. 717–717w, 3301–3432; 42 U.S.C. 7101–7352.

21. Section 157.6 is amended by revising paragraph (b)(7) to read as follows:

§ 157.6 Applications; general requirements.

* * * * *

(b) * * *

(7) A form of notice of the application suitable for publication in the Federal Register in accordance with the specifications in § 385.203(d) of this Chapter.

* * * * *

22. Section 157.205 is amended by revising paragraph (b)(5) to read as follows:

§ 157.205 Notice procedure.

* * * * *

(b) * * *

(5) A form of notice of the application suitable for publication in the Federal Register in accordance with the specifications in § 385.203(d) of this Chapter; and

PART 292—REGULATIONS UNDER SECTIONS 201 AND 210 OF THE PUBLIC UTILITY REGULATORY POLICIES ACT OF 1978 WITH REGARD TO SMALL POWER PRODUCTION AND COGENERATION

23. The authority citation for Part 292 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.

24. Section 292.207 is amended by revising paragraph (b)(4) to read as follows:

§ 292.207 Procedures for obtaining qualifying status.

* * * * *

(b) * * *

(4) Notice. The applicant must include a form of notice of the application suitable for publication in the Federal Register in accordance with the specifications in § 385.203(d) of this Chapter. The form of notice shall be on electronic media as specified by the Secretary.

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**PART 300—CONFIRMATION AND APPROVAL OF THE RATES OF
FEDERAL POWER MARKETING ADMINISTRATIONS**

25. The authority citation for Part 300 continues to read as follows:

Authority: 16 U.S.C. 825s, 832–832i, 838–838k, 839–839h; 42 U.S.C. 7101–7352; 43 U.S.C. 485–485k.

26. Section 300.10 is amended by revising paragraph (a)(1) to read as follows:

§ 300.10 Application for confirmation and approval.

(a) General provisions—(1) Contents of filing. Any application under this subpart for confirmation and approval of rate schedules must include, as described in this section a letter of request for rate approval, a form of notice suitable for publication in the Federal Register in accordance with the specifications in § 385.203(d) of this Chapter, the rate schedule, a statement of revenue and related costs, the order, if any, placing the rates into effect on an interim basis, the Administrator's Record of Decision or explanation of

the rate development process, supporting documents, a certification, and technical supporting information and analysis. The form of notice shall be on electronic media as specified by the Secretary.

* * * * *

**PART 365— FILING REQUIREMENTS AND MINISTERIAL PROCEDURES
FOR PERSONS SEEKING EXEMPT WHOLESALE GENERATOR STATUS**

27. The authority citation for Part 365 continues to read as follows:

Authority: 15 U.S.C. 79.

28. Section 365.3 is amended by revising paragraph (c) to read as follows:

§ 365.3 Contents of Application and procedure for filing.

* * * * *

(c) Applications for exempt wholesale generator status must also include a copy of a notice of the application suitable for publication in the Federal Register in accordance with the specifications in § 385.203(d) of this Chapter. The notice must state the applicant's name, the date of the application, and a brief description of the applicant and the facility or facilities which are or will be eligible facilities owned and/or operated by the applicant. The notice shall be on electronic media as specified by the Secretary.

PART 375—THE COMMISSION

29. The authority citation for Part 375 continues to read as follows:

Authority: 5 U.S.C. 551–557; 15 U.S.C. 717–717w, 3301–3432; 16 U.S.C. 791–825r, 2601–2645; 42 U.S.C. 7101–7352.

30. Section 375.101 is amended by revising paragraph (b) to read as follows:

§ 375.101 The Commission.

* * * * *

(b) Offices. The principal office of the Commission is at 888 First Street, NE, Washington, D.C. 20426. Regional offices are maintained at Atlanta, Ga., Chicago, Ill., Portland, Ore., New York, N.Y., and San Francisco, Calif.

* * * * *

31. Section 375.105 is amended by revising paragraph (c) to read as follows:

§ 375.105 Filings.

* * * * *

(c) Where to make filings. All filings of documents with the Commission shall be made with the Secretary. The address for filings to be made with the Secretary is: Secretary, Federal Energy Regulatory Commission, 888 First St., NE, Washington, DC 20426. Where a document to be filed with the Secretary is hand-delivered, it shall be submitted to Room 1A, 888 First St., NE., Washington, DC 20426. Documents received after regular business hours are deemed to have been filed on the next regular business day.

PART 385—RULES OF PRACTICE AND PROCEDURE

32. 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–825r, 2601–2645; 28 U.S.C. 2461; 31 U.S.C. 3701, 9701; 42 U.S.C. 7101–7352; 49 U.S.C. 60502; 49 App. U.S.C. 1–85 (1988).

33. Section 385.203 is revised by adding paragraph (d) as follows:

§ 385.203 Contents of pleadings and tariff or rate filings (Rule 203).

* * * * *

(d) Form of notice. If a pleading or tariff or rate filing must include a form of notice suitable for publication in the Federal Register, the company shall submit the draft notice in accordance with the form of notice specifications prescribed by the Secretary and posted under the Filing Procedures link at <http://www.ferc.gov> and available in the Commission’s Public Reference Room.

34. Section 385.206 is amended by revising paragraph (b)(10) to read as follows:

§ 385.205 Complaints (Rule 206).

* * * * *

(b) * * *

(10) Include a form of notice of the complaint suitable for publication in the Federal Register in accordance with the specifications in § 385.203(d) of this Part. The form of notice shall be on electronic media as specified by the Secretary.

* * * * *

35. Section 385.1104 is amended by revising paragraph (a)(5) to read as follows:

§ 385.1104 Initial petition (Rule 1104).

(a) * * *

(5) The petition must include a form of notice suitable for publication in the Federal Register in accordance with the specifications in § 385.203(d) of this Part.

* * * * *

36. Section 385.2001 is amended by revising paragraph (a) (1)(iii) and the following note to read as follows:

§ 385.2001 Filings (Rule 2001).

(a) * * *

(1) * * *

(iii) In the case of qualified documents as defined in Rule 2003(c)(2), by filing via the Internet pursuant to Rule 2003(c) using the FERC Online links at <http://www.ferc.gov>.

Note to paragraph (a):

Assistance for filing via the Internet is available by calling 202-502-6652 or 1-866-208-3676 (toll free), or by e-mail to FERCOnlineSupport@ferc.gov.

* * * * *

37. Section 385.2003 is amended by removing paragraphs (c)(3) and (c)(4), redesignating paragraph (c)(5) as (c)(3), and revising paragraph (c)(1)(ii) to read as follows:

§ 385.2003 Specifications (Rule 2003).

* * * * *

(c) * * *

(1) * * *

(ii) Be filed in accordance with instructions issued by the Secretary and made available via the FERC Online links at <http://www.ferc.gov>.

* * * * *

38. Section 385.2010 is amended in paragraph (i)(3) by removing the term “<http://www.ferc.fed.us>” and add in its place the term “<http://www.ferc.gov>.”

PART 388—INFORMATION AND REQUESTS

39. The authority citation for Part 388 continues to read as follows:

Authority: 5 U.S.C. 301–305, 551, 552 (as amended), 553–557; 42 U.S.C. 7101–7352.

40. Section 388.106 is amended by removing the section heading and paragraph (a) to read as follows:

§ 388.106 Requests for Commission records available in the Public Reference Room and from the Commission’s web site, www.ferc.gov.

(a)(1) A Public Reference Room is maintained at the Commission's headquarters and is open during regular business hours as provided in §375.101(c) of this chapter. Publicly available documents may be obtained in person or in writing from the Public Reference Room by reasonably describing the records sought. Additional information on charges and services is available on the web site and in the Public Reference Room.

(2) Documents created by or received by FERC on or after November 1981 also are available on the Commission's web site through its document management system. These may also be accessed in person using a personal computer in the Public Reference Room.

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