

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Electronic Tariff Filings

Docket No. RM01-5-000

NOTICE OF PROCEDURES FOR MAKING STATUTORY FILINGS WHEN
AUTHORIZATION FOR NEW OR REVISED
TARIFF PROVISIONS IS NOT REQUIRED

(June 3, 2020)

This guidance document reiterates prior guidance and sets forth the procedures that filers must use to make statutory filings pursuant to section 205(d) of the Federal Power Act (FPA), section 4(d) of the Natural Gas Act (NGA), or section 6 of the Interstate Commerce Act (ICA) in situations where the filer is not seeking approval of new or revised tariff provisions. Herein, the term “statutory filing” means a filing pursuant to the above-referenced statutory sections that would go into effect by operation of law, absent Commission action, after the expiration of the applicable statutory prior notice periods of 60 (under the FPA) or 30 days (under the NGA and ICA), or on a specific later effective date proposed by the filer.¹

I. Background

The FPA, NGA, and ICA each give the Commission authority to prescribe rules and regulations governing the form of filings to be made thereunder. Pursuant to that authority, the Commission issued Order No. 714,² requiring electronic filing for all tariffs³ made pursuant to Parts 35, 154, and 341 of the Commission’s regulations, which

¹ The Commission also has referred to statutory filings as those having a statutory action date, i.e., a deadline for Commission action. The effective date of a statutory filing, absent Commission action on the filing, is the 61st or 31st calendar day, respectively, after the date of filing, or a later date specified by the filer. Under the Commission’s regulations, the full 60 or 30 calendar days of notice must expire before the filing would become effective. 18 C.F.R. § 385.2007(a) (2019) (“[A]ny period of time . . . is computed to exclude the day of the act or event from which the time period begins to run.”).

² *Electronic Tariff Filings*, Order No. 714, 124 FERC ¶ 61,270 (2008), *clarified*, Order No. 714-A, 147 FERC ¶ 61,115 (2014).

³ The term “tariff” “refer[s] to tariffs, rate schedules, jurisdictional contracts, and

correspond to FPA, NGA, and ICA filings, respectively. In a subsequent order, the Commission explained that all filers making filings pursuant to these statutes must choose a statutory filing type and include a proposed effective date in eTariff in order to have their filings treated as filings upon which the Commission must act within statutorily-established time frames.⁴ In Order No. 714-A, the Commission revised its regulations to specify that filings intending to have statutorily-defined action dates must be made pursuant to the requirements and formats for electronic filing.⁵ That requirement is now stated within each applicable Part of the Commission's regulations:

A tariff or rate filing must be made electronically in accordance with the requirements and formats for electronic filing listed in the instructions for electronic filings. A tariff or rate filing not made in accordance with these requirements and formats will not have a statutory action date and will not become effective should the Commission not act by the requested action date.⁶

The required formats for electronic filing have been posted by the Secretary of the Commission.⁷ Consequently, any filing that filers intend to become effective by operation of law in the absence of Commission action must be made through the

other jurisdictional agreements that are required to be on file with the Commission.” *Id.* at P 13 n.11. The regulations promulgated by Order No. 714 required electronic filing of “tariffs, rate schedules and service agreements, or parts thereof, and material that relates to or bears upon such documents, such as cancellations, amendments, withdrawals, termination, or adoption of tariffs.” *See* 18 C.F.R. § 35.7(a) (2019).

⁴ *Electronic Tariff Filings*, 130 FERC ¶ 61,047, at P 5 (2010).

⁵ Order No. 714-A, 147 FERC ¶ 61,115 at P 4 (“The regulations now will provide explicitly that only tariff filings properly filed as and designated as statutory filings according to the Commission’s eTariff requirements will be considered to have statutory action dates, and that tariff filings not properly filed and designated as statutory filings will not become effective in the absence of Commission action.”). *See Pioneer Transmission, LLC*, 169 FERC ¶ 61,265 (2019) (a filing not made through eTariff does not have a statutory action date).

⁶ 18 C.F.R. §§ 35.7(d), 154(d), 341(d) (2019).

⁷ Office of the Secretary, *Implementation Guide for Electronic Filing of Parts 35, 154, 284, 300, and 341 Tariff Filings (Implementation Guide)* (Version: November 14, 2016), <https://www.ferc.gov/docs-filing/etariff/implementation-guide.pdf>.

Commission's eTariff system. Under the eTariff system, the statutory action dates for statutory filings are determined only by examining the filer's proposed effective dates in the tariff record dataset of an eTariff filing.⁸ Therefore, a statutory filing must be submitted using eTariff and must include at least one actual (not a *pro forma*) tariff record with a proposed effective date.

Since the development of eTariff, however, instances have arisen in which a filer seeks to make a statutory filing, but the authorization sought does not require the filing of a new or revised tariff record. For example, a public utility transmission provider with formula rates may wish to make a statutory filing pursuant to section 205 of the FPA for Commission approval of recovery through its formula transmission rates of certain costs such as those held as a regulatory asset, pre-commercial costs, or abandonment costs. If the existing formula rate on file contains a placeholder for recovery of these costs, the filing may not require a tariff revision to the public utility's rate formula in order to recover these costs upon authorization by the Commission. Another example of this situation is a response to a Commission staff deficiency letter that does not require a revision to the entity's tariff records.⁹

II. Procedure for Making a Statutory Filing When No New or Revised Tariff Records are Required

To make a statutory filing in circumstances where the filer has no need to change the text of the tariff record, the filer must make the filing through eTariff and include at least one actual tariff record (i.e., a "live" tariff record, not a *pro forma* tariff record) with

⁸ *Id.* at 5 ("The Commission will use the Type of Filing Code together with the Tariff Record Proposed Effective Date to establish whether a filing is statutory and the applicable statutory timelines.").

⁹ Staff deficiency letters frequently require that the deficiency response filing "must be filed ... by making a deficiency filing in accordance with the Commission's electronic tariff requirements." *See, e.g., PJM Interconnection, L.L.C.*, Docket No. ER20-457-000 (Jan. 16, 2020). *See generally*, Transmittal Letter, *Cal. Indep. Sys. Operator Corp.*, Docket No. ER17-1432-001, at 2 n.2 (July 5, 2017) (in response to a deficiency letter, "a tariff record must be included with the filing. Consistent with the Commission's directive, the CAISO is submitting one unchanged tariff record – proposed CAISO tariff Section 26.7.1."); Transmittal Letter, *PacifiCorp*, Docket No. ER13-1206-001, at 4 n.8 (Jun. 20, 2013) ("Because the Deficiency Letter does not direct any changes to the proposed tariff revisions, even though Tariff Record Versions must be included in this filing, PacifiCorp has included in this filing the unchanged April 1, 2013 Tariff Record Versions, and have numbered the versions one version higher in its eTariff filing system.").

a proposed effective date. The actual tariff record should be an exact duplicate of an existing tariff record, but with a proposed effective date that would be the proposed effective date for the new filing. While the filer can choose a duplicate of any existing tariff record to make such a filing (*i.e.*, Tariff Title, Table of Contents¹⁰), staff recommends that the filer include a duplicate of a tariff record to which the filing most closely relates.¹¹ For example, if the filing is to obtain approval for costs to be added to a formula rate, the filer would file a duplicate of its current formula rate tariff record. Filing a duplicate of a related existing tariff record will allow the Commission and the public to discern how the filing relates to the tariff on file. If the new filing becomes effective by operation of law or Commission acceptance, the duplicate eTariff record will become the new effective version of that record, superseding the identical tariff record without changing the contents of that record.

Below are the step-by-step procedures to have a tariff filing considered to be subject to a statutory action date.

1. The filer must choose a Type of Filing Code (TOFC) within the “Normal” Filing Category.¹² Specifically, the filer must choose a TOFC appropriate for the FERC Program (e.g., electric, market-based electric, NGA, or oil) at issue. The Type of Filing Codes for Normal filings include Electric Utilities - TOFC 10; Market-Based Rate Filers - TOFC 30; Natural Gas Pipelines - TOFC 570; and Oil Pipelines - TOFC 830.
2. Filers with multiple tariff databases should file the duplicate record in the Tariff ID to which the filing relates.
3. The filer must include at least one duplicate of an actual (live) tariff record (not a *pro forma* tariff record) and specify a proposed effective date.

¹⁰ See, e.g., Transmittal Letter, at 9, *GridLiance W. LLC*, Docket No. ER19-191-000 (filed Oct. 25, 2018) (“The instant Application does not necessitate any change to GridLiance West’s tariff. However, to ensure this Application is appropriately recognized as statutory submitted pursuant to section 205, GridLiance West includes an unrevised tariff record of the cover sheet to its Transmission Owner Tariff.”).

¹¹ See, e.g., cases cited *supra* note 9.

¹² The list of TOFCs can be found in documents posted on the Commission’s website at <https://www.ferc.gov/docs-filing/etariff.asp>. The TOFCs can be found in the documents entitled *Validation Error Codes*, https://www.ferc.gov/docs-filing/etariff/filing_type.csv and *Type of Filing Rules Table*, <https://www.ferc.gov/docs-filing/etariff/types-filing-rules-table.pdf>.

III. Determination of Effective Date for Statutory Filings

As discussed above, the NGA, ICA, or FPA all specify that filings with a statutory action date become effective following a statutory notice period of either 30 or 60 days, respectively, unless the Commission takes action that prevents that result. In cases in which a filer proposes an effective date for a tariff record that is later than the day after the end of the statutory notice period, the filing would become effective on that later date in the absence of a Commission order issued before that later date that rejects the filing or suspends its effectiveness. Therefore, the effective date for natural gas and oil pipeline filings subject to a statutory action date is the later of either the 31st day after the date of filing or the earliest of the proposed tariff record effective dates that is after the 31st day, and for public utility filings, the later of either the 61st day after the date of filing or the earliest of the proposed tariff record effective dates that is after the 61st day. A filing requesting waiver of the 30- or 60-day notice period would become effective on the 31st or 61st day if the Commission does not issue an order acting on the filing and granting the waiver.

IV. How to Ascertain Whether a Filing is Subject to a Statutory Action Date

There are two ways for filers and the public to ascertain the statutory status of a filing: the Commission's eLibrary system or the Commission's Notice of Filings.

First, in eLibrary, the search results page of a query includes a field called "Description." eTariff filings normally include a "Filing Type" code at the end of the filing's description. This "Filing Type" corresponds to the codes included in the Commission's list of filing codes.¹³ All statutory filings will use a "Normal" type filing code with a code description indicating a "Time expiration" in a specified number of days.¹⁴ The following are the filing codes generally associated with pipeline and utility

¹³ *Type of Filing Rules Table*, <https://www.ferc.gov/docs-filing/etariff/types-filing-rules-table.pdf> (Filing Rules Table).

¹⁴ While, as discussed earlier, Commission regulations require that pipelines and utilities must make statutory filings pursuant to NGA section 4(d), FPA section 205(d), and ICA section 6 using a "Normal" filing code, it is not necessarily true that all "Normal" filings fall under NGA section 4(d), FPA section 205(d), and ICA section 6. The Commission included some electric filing types as "Normal" filings in eTariff, to reflect the general Commission business practice of processing those filings within the specified time periods. For example, the Commission processes filings by "non-jurisdictional" electric entities for pass-through rates (TOFC Code 1030) as if they were FPA section 205(d) filings. Users must consult Commission and court precedent to

proposed tariff revisions:

	Filing Type Codes
NGA Section 4(d)	570, 630, 640, 650, 660, 680, 690, and 730
FPA Section 205(d)	10, 30, 280, 320, and 340
ICA Section 6	830, 840, 860, 890, 920, and 930

Second, for public utility and natural gas pipeline proposed tariff revisions, as a general matter, the Commission’s combined Notice of Filings publicly issued by the Commission’s Secretary translates these codes with a prefatory statement that the filing is an NGA “§4(d) Rate Filing” or an FPA “§205(d) Rate Filing” and will include proposed effective dates.¹⁵

V. **Consultation with FERC Staff**

Those who have filed or intend to make filings with the Commission may contact FERC staff to further discuss the guidance provided herein or other questions with respect to making eTariff filings. Inquiries can be directed to the Commission’s eTariff help line at (202) 502-6501 or via email at etariffresponse@ferc.gov.

Kimberly D. Bose,
Secretary.

determine whether filings are, in fact, subject to statutory time limits.

¹⁵ Oil pipeline filings are not noticed.

Document Content(s)

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