

128 FERC ¶ 61,144
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

18 CFR Part 385

[Docket No. RM09-20-000; Order No. 725]

Service of Interlocutory Appeals

(Issued August 10, 2009)

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final Rule.

SUMMARY: The Commission is amending Rule 715(c)(1) of its Rules of Practice and Procedure, 18 CFR 385.715(c)(1), which specifies on whom persons appealing a presiding officer's denial of a motion to permit an interlocutory appeal must serve copies of the appeal. The amendment requires that any person filing an appeal must separately serve a copy on not only the Motions Commissioner but also on the General Counsel.

EFFECTIVE DATE: This rule will become effective [**Insert_Date 30 days after publication in the FEDERAL REGISTER**]

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SUPPLEMENTARY INFORMATION:

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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ORDER NO. 725

FINAL RULE

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FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Sudeen G. Kelly, Marc Spitzer,
and Philip D. Moeller.

Service of Interlocutory Appeals

Docket No. RM09-20-000

(Issued August 10, 2009)

ORDER NO. 725

FINAL RULE

I. Introduction

1. By this instant final rule, the Commission is amending Rule 715(c)(1) of its Rules of Practice and Procedure, 18 CFR 385.715(c)(1), which governs the appeal process when a presiding officer has denied a motion to permit an interlocutory appeal. This amendment specifies on whom persons appealing a presiding officer's denial of a motion to permit an interlocutory appeal must serve copies of the appeal. Given that the Motions Commissioner has only seven days to act on an interlocutory appeal, it is important that the Motions Commissioner be made aware of the appeal as quickly as possible. Accordingly, the amendment adopted here requires that any person filing an appeal must serve a copy not only on the Motions Commissioner but also on the General Counsel.

II. Background

2. On April 28, 1982, the Commission promulgated Order No. 225,¹ reorganizing, revising, and updating its Rules of Practice and Procedure.

3. In Order No. 225, the Commission adopted Rule 715, which governs interlocutory appeals to the Commission and sets forth the relevant standard by which a presiding officer or the Motions Commissioner determines whether to permit or deny an interlocutory appeal to the Commission. These procedures allow a question raised in a proceeding pending before a judge, or other presiding officer, to be determined by the Commission at a time prior to presentation of the entire case to the Commission for decision or review.²

4. In Order No. 402, the Commission revised Rule 715 and required that those filing an appeal of a denial of a motion to permit an interlocutory appeal separately serve an additional copy of the appeal on the Motions Commissioner.³

¹ Revision of Rules of Practice and Procedure To Expedite Trial-Type Hearings, Order No. 225, 47 FR 19014 (May 3, 1982), FERC Stats. & Regs. ¶ 30,358 (1982), order on reh'g, Order No. 225-A, 47 FR 35952 (August 18, 1982), FERC Stats. & Regs. ¶ 30,385 (1982).

² 18 CFR 385.715.

³ Rules of Practice and Procedure; Interlocutory Appeals, Order No. 402, 49 FR 39538 (October 9, 1984), FERC Stats. & Regs. ¶ 30,604 (1984).

III. Discussion

5. The Commission is amending Rule 715(c)(1) to require persons filing an interlocutory appeal to serve an additional copy of the appeal of a denial of a motion to permit an interlocutory appeal on the General Counsel.

6. The Motions Commissioner has seven days after an appeal is filed to make a determination as to whether or not the participant that has filed the appeal has demonstrated extraordinary circumstances that warrant Commission action.⁴ Within those seven days, the Motions Commissioner must: (1) obtain the participant's filing; (2) consider whether the information presented is sufficiently complete; and (3) determine whether extraordinary circumstances exist which make prompt Commission review of the contested ruling necessary to prevent detriment to the public interest or to prevent irreparable harm to a person. If no extraordinary circumstances determination is made within seven days after the appeal is filed and if the Motions Commissioner has not otherwise provided for a different time period to receive and consider additional information, the appeal is automatically denied under Rule 715(c)(5).⁵

⁴ 18 CFR 385.715.

⁵ Id.; Rules of Practice and Procedure; Interlocutory Appeals, Order No. 402, 49 FR 39538 (October 9, 1984), FERC Stats. & Regs. ¶ 30,604 (1984).

7. The Motions Commissioner, as noted, has only seven days to decide whether an appeal meets the extraordinary circumstances standard. Thus, it is important that the Motions Commissioner be made aware of the appeal as quickly as possible.⁶

8. The Commission believes that serving a copy of the appeal on the General Counsel, in addition to the Motions Commissioner, will better ensure that the Motions Commissioner receives the appeal in sufficient time to reach a decision.

IV. Information Collection Statement

9. Office of Management and Budget (OMB) regulations require OMB to approve certain information collection requirements imposed by agency rule.⁷ However, this instant Final Rule does not contain any information collection requirements and compliance with OMB regulations is thus not required.

V. Environmental Analysis

10. 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.⁸ Issuance of this Final Rule does not represent a major federal action having a significant adverse effect on the human environment under the

⁶ 18 CFR 385.715; Rules of Practice and Procedure; Interlocutory Appeals, Order No. 402, 49 FR 39538 (October 9, 1984), FERC Stats. & Regs. ¶ 30,604 (1984).

⁷ 5 CFR 1320.12.

⁸ Regulations Implementing the National Environmental Policy Act, Order No. 486, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs. ¶ 30,783 (1987).

Commission's regulations implementing the National Environmental Policy Act of 1969. Part 380 of the Commission's regulations lists exemptions to the requirement to draft an Environmental Analysis or Environmental Impact Statement. Included is an exemption for procedural, ministerial or internal administrative actions.⁹ This rulemaking is exempt under that provision.

VI. Regulatory Flexibility Act

11. The Regulatory Flexibility Act of 1980 (RFA)¹⁰ generally requires a description and analysis of final rules that will have significant economic impact on a substantial number of small entities. This instant Final Rule concerns agency procedures. The Commission certifies that it will not have a significant economic impact upon participants in Commission proceedings. An analysis under the RFA is not required.

VII. Document Availability

12. 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, N.E., Room 2A, Washington DC 20426.

⁹ 18 CFR 380.4(a)(1).

¹⁰ 5 U.S.C. 601-12.

13. 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.

14. 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 1-866-208-3676) or email 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

15. The Commission is issuing this rule as an instant 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 or 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.

16. These regulations are effective [insert date 30 days from publication in Federal Register].

List of subjects in 18 CFR Part 385

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

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

In consideration of the foregoing, the Commission 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. 717-717z, 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).

2. Section 385.715, paragraph (c)(1), is amended to read as follows:

§ 385.715 Interlocutory appeals to the Commission from rulings of presiding officers (Rule 715).

* * * * *

(c) Appeal of a presiding officer’s denial of motion to permit appeal.

(1) If a motion to permit appeal is denied by the presiding officer, the participant

who made the motion may appeal the denial to the Commissioner who is designated Motions Commissioner, in accordance with this paragraph. For purposes of this section, “Motions Commissioner” means the Chairman or a member of the Commission designated by the Chairman to rule on motions to permit interlocutory appeal. Any person filing an appeal under this paragraph must serve separate copies of the appeal on the Motions Commissioner and on the General Counsel by Express Mail or by hand delivery.

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