

143 FERC ¶ 61,014
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

18 CFR Part 376

[Docket No. RM13-10-000; Order No. 778]

Continuity of Operations Plan

(Issued April 4, 2013)

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final Rule.

SUMMARY: In this Final Rule the Commission revises its Continuity of Operations Plan regulations to revise its hierarchy of delegation of Commission authority during emergency conditions, principally to ensure that, during emergency conditions, there are staff members located outside the National Capital Region to whom authority is delegated.

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

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SUPPLEMENTARY INFORMATION:

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Before Commissioners: Jon Wellinghoff, Chairman;
Philip D. Moeller, John R. Norris,
Cheryl A. LaFleur, and Tony Clark.

Continuity of Operations Plan

Docket No. RM13-10-000

ORDER NO. 778

FINAL RULE

(Issued April 4, 2013)

1. The Office of Energy Projects and the Office of Electric Reliability maintain regional offices outside the National Capital Region. This Final Rule revises the Commission's Continuity of Operations Plan (COOP) regulations to incorporate its regional offices into the hierarchy of delegation of Commission authority during emergency conditions, and also to revise that hierarchy.

Discussion

2. This Final Rule revises the Commission's COOP regulations to expand the hierarchy list to incorporate staff members at its regional offices; this revision recognizes that staff members working in the National Capital Region may be unavailable or incapable of acting to assume authority during an emergency, and accordingly this revision allows for delegation of authority to staff members located in regional offices outside the National Capital Region. In addition, this Final Rule revises the hierarchy list

to change the order of positions of the General Counsel and Deputy General Counsels on that list, and adds to the hierarchy list the Deputy Director of the Office of Enforcement who inadvertently was not included when the regulations were earlier revised.

Regulatory Flexibility Act

3. The Regulatory Flexibility Act of 1980 (RFA)¹ generally requires a description and analysis of Final Rules that will have a significant economic impact on a substantial number of small entities. This Final Rule concerns a matter of internal agency procedure and it will not have such an impact. An analysis under the RFA is not required.

Information Collection Statement

4. Office of Management and Budget (OMB) regulations require OMB to approve certain information collection requirements imposed by agency rule.² This Final Rule contains no new information collections. Therefore, OMB review of this Final Rule is not required.

Environmental Analysis

5. 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. Excluded from this requirement are rules that are procedural, ministerial, or internal administrative and management actions.³ This rule is procedural

¹ 5 U.S.C. 601-12.

² 5 CFR 1320.12.

³ 18 CFR 380.4(a)(1); *Regulations Implementing the National Environmental Policy Act*, Order No. 486, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs. ¶ 30,783 (1987).

in nature and therefore falls within this exception; consequently, no environmental consideration is necessary.

Document Availability

6. 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, NE, Room 2A, Washington, DC 20426.

7. From the Commission's Home Page on the Internet, this information is available in 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 (i.e., the subdocket number – e.g., 000, 001, 002, etc.) in the docket number field.

8. User assistance is available for eLibrary and the Commission's web site during normal business hours. For assistance, please contact Online Support at 1-866-208-3676 (e-mail at FERCOnlineSupport@ferc.gov), or the Public Reference Room at (202) 502-8371, TTY (202) 502-8659 (e-mail at public.referenceroom@ferc.gov).

Effective Date and Congressional Notification

9. The provisions of 5 U.S.C. section 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.

10. These regulations are effective on [**insert date of publication in the Federal Register**]. The Commission finds that notice and public comments are unnecessary because this rule concerns only agency procedure or practice. Therefore the Commission finds good cause to waive the notice period otherwise required before the effective date of a Final Rule.

List of subjects in 18 CFR Part 376

Civil defense, Organization and functions (Government agencies)

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

In consideration of the foregoing, the Commission proposes to amend Part 376, Chapter I, Title 18, *Code of Federal Regulations*, as follows:

Part 376 – Organization, Mission, and Functions; Commission Operation During Emergency Conditions

1. The authority citation for part 376 continues to read as follows:

Authority: 5 U.S.C. 553; 42 U.S.C. 7101-7352; E.O. 12009, 3 CFR 1978 Comp., p. 142.

2. Section 376.204 is revised to read as follows:

§ 376.204 Delegation of Commission authority during emergency conditions

(a) *Delegation of authority to one or two Commissioners.* During emergency conditions, the Commission shall function as usual, if a quorum of the Commission is available and capable of acting. If by reason of such conditions a quorum of the Commission is not available and capable of acting, all functions of the Commission are delegated to the Commissioner or Commissioners who are available and capable of acting.

(b) *Delegation of authority to Commission staff.*

(1) When, by reason of emergency conditions, there is no Commissioner available and capable of acting, the functions of the Commission are delegated to the first five members of the Commission staff on the list set forth in paragraph (b)(2) of this section who are available and capable of acting.

(2) The list referred to in paragraph (b)(1) of this section is:

(i) General Counsel;

(ii) Executive Director;

(iii) Director of the Office of Energy Market Regulation;

(iv) Director of the Office of Energy Projects;

(v) Director of the Office of Electric Reliability;

- (vi) Director of the Office of Enforcement;
 - (vii) Deputy General Counsels, in order of seniority;
 - (viii) Deputy Directors, Office of Energy Market Regulation, in order of seniority;
 - (ix) Deputy Directors, Office of Energy Projects, in order of seniority;
 - (x) Deputy Directors, Office of Electric Reliability, in order of seniority;
 - (xi) Deputy Directors, Office of Enforcement, in order of seniority;
 - (xii) Associate General Counsels and Solicitor, in order of seniority;
 - (xiii) In order of seniority, Assistant Directors and Division heads, Office of Energy Market Regulation; Assistant Directors and Division heads, Office of Energy Projects; Assistant Directors and Division heads, Office of Electric Reliability; Deputy Associate General Counsels; Assistant Directors and Division heads, Office of Enforcement;
 - (xiv) In order of seniority, Regional Engineers and Branch Chiefs of the Office of Energy Projects' regional offices; and Deputy Division Directors and Group Managers of the Office of Electric Reliability's regional offices.
- (3) For purposes of paragraph (b)(2)(vii)-(xiv) of this section, order of seniority shall be based on the highest grade and longest period of service in that grade and, furthermore, for purposes of paragraph (b)(2)(xiii)-(xiv) of this section, order of seniority shall be without regard to the particular Office or Division or Branch or Group to which the member of staff is assigned.

(c) *Devolution of authority to Commission staff during emergencies affecting the National Capital Region.* (1) To the extent not otherwise provided by this section, during emergency conditions when the Chairman is not available and capable of acting, when no Commissioner is available and capable of acting, and when no person listed in paragraph (b)(2)(i)-(xiii) of this section who is located in the National Capital Region is available and capable of acting, the functions of the Commission are delegated, in order of seniority (as described in paragraph (b)(3) of this section), to Regional Engineers and Branch Chiefs of the Office of Energy Projects' regional offices and Deputy Division Directors and Group Managers of the Office of Electric Reliability's regional offices.

(2) Such delegation shall continue until such time as the Chairman is available and capable of acting, one or more Commissioners are available and capable of acting, or persons listed in paragraph (b)(2)(i)-(xiii) of this section who are located in the National Capital Region are available and capable of acting.

(d) *Reconsideration of staff action taken under delegations.* Action taken pursuant to the delegations provided for in this section shall be subject to reconsideration by the Commission, acting with a quorum, within thirty days after the date upon which public notice is given that a quorum of the Commission has been reconstituted and is functioning.