

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

18 CFR Parts 35, 366, and 375

(Docket No. RM06-20-000; Order No. 691)

Delegations of Authority

(Issued January 29, 2007)

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final Rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is amending its regulations governing delegations of authority to the Directors of the Office of Enforcement and the Office of Energy Markets and Reliability, as well as to the Commission's Chief Accountant. These amendments will eliminate regulatory uncertainty and provide clarity regarding the authority delegated to the Office of Enforcement and the Chief Accountant.

EFFECTIVE DATE: This Final Rule is effective [insert date of issuance].

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SUPPLEMENTARY INFORMATION:

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Delegations of Authority

Docket No. RM06-20-000

ORDER NO. 691

FINAL RULE

(Issued January 29, 2007)

1. The Federal Energy Regulatory Commission (Commission) is amending 18 CFR Parts 35, 366, and 375 to revise its regulations governing delegations of authority to the Directors of the Office of Enforcement (OE)<sup>1</sup> and the Office of Energy Markets and Reliability (OEMR), as well as to the Commission's Chief Accountant.<sup>2</sup> These amendments will eliminate regulatory uncertainty and provide clarity regarding the authority delegated to the Office of Enforcement and the Chief Accountant.

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<sup>1</sup> The changes to the regulations in Part 375 relate only to the Office of Enforcement and the Chief Accountant. While this rule makes certain changes to the Part 375 delegations to the Director of the Office of Markets, Tariffs, and Rates (now the Office of Energy Markets and Reliability), those changes are made merely to conform the regulations to current office structures and the responsibilities of the Office of Enforcement. The Commission anticipates issuing a rule in the future that will address other changes to Part 375.

<sup>2</sup> The Commission's Chief Accountant reports to the Director of Enforcement, but is delegated certain authority directly by the Commission.

## I. Background

2. The Commission has broad statutory authority to perform acts and make rules that are necessary or appropriate to carry out its statutory functions.<sup>3</sup> This includes the delegation of its statutory authority to staff members on routine matters, “which in many cases represent nothing more than a ministerial judgment by the office director concerning procedural matters,” to allow the Commission to focus on more complex and controversial tasks.<sup>4</sup> The Commission has delegated certain of its authority in a series of orders beginning in 1978.<sup>5</sup>

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<sup>3</sup> See Regulations Delegating Authority, Order No. 492, 53 FR 16058 (May 5, 1988), FERC Stats. & Regs. Regulations Preambles 1986-1990 ¶ 30,814 at 31,117 & n. 2 (1988), citing 16 U.S.C. 825h (Federal Power Act), 15 U.S.C. 717o (Natural Gas Act), and 15 U.S.C. 3411 (Natural Gas Policy Act of 1978).

<sup>4</sup> See J.R. Ferguson and Associates, 20 FERC ¶ 61,132 at p. 61,291 (1982) (footnote omitted).

<sup>5</sup> Existing delegations of authority were promulgated in a series of rulemakings initiated in 1978. See Delegations to Various Office Directors of Certain Commission Authority, 43 FR 36433 (Aug. 17, 1978), FERC Stats. & Regs. Regulations Preambles 1977-1981 ¶ 30,016 (1978); Chief Accountant, et al., Delegation of Authority; Final Regulation, Order No. 38, 44 FR 45449 (Aug. 8, 1979), FERC Stats. & Regs. Regulations Preambles 1977-1981 ¶ 30,068 (1979), reh'g denied, 8 FERC ¶ 61,299 (1979); Delegation of the Commission's Authority to the Directors of Office of Electric Power Regulation, Office of the Chief Accountant, and Office of Pipeline and Producer Regulation, Order No. 147, 46 FR 29700 (June 3, 1981), FERC Stats. & Regs. Regulations Preambles 1977-1981 ¶ 30,259 (1981); Delegation of Authority, Order No. 224, 47 FR 17806 (Apr. 26, 1982), FERC Stats. & Regs. Regulations Preambles 1982-1985 ¶ 30,356 (1982); Regulations Delegating Authority, Order No. 492, 53 FR 16058 (May 5, 1988), FERC Stats. & Regs. Regulations Preambles 1986-1990 ¶ 30,814 (continued...)

3. When the Office of Market Oversight and Investigations (OMOI), the predecessor to OE, was created in 2003, the Commission issued Order No. 632,<sup>6</sup> which promulgated OMOI's original delegations of authority. In Order No. 632, the Commission stated that certain delegations to the General Counsel and to the Director of the Office of Markets, Tariffs, and Rates (OMTR, now known as the Office of Energy Markets and Reliability or OEMR), were being duplicated in OMOI's delegations.

4. The following year, in Order No. 650,<sup>7</sup> the Commission revised the delegations promulgated in Order No. 632 to reflect the move of the Division of Regulatory Audits (renamed the Division of Financial Audits) from the Office of the Executive Director

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(1988); Streamlining Commission Procedures for Review of Staff Action, Order No. 530, 55 FR 50677 (May 5, 1988), FERC Stats. & Regs. Regulations Preambles 1986-1990 ¶ 30,906 (1990), reh'g denied, Order No. 530-A, 56 FR 4719 (Feb. 6, 1991), FERC Stats. & Regs. Regulations Preambles 1991-1996 ¶ 30,914 (1991); Delegation of Authority to the Secretary, the Director of the Office of Electric Power Regulation, and the General Counsel, Order No. 585, 60 FR 62326 (Dec. 6, 1995), FERC Stats. & Regs. Regulations Preambles January 1991-June 1996 ¶ 31,030 (1995); Delegation of Authority, Order No. 613, 64 FR 73403 (Dec. 30, 1991), FERC Stats. & Regs. Regulations Preambles July 1996-December 2000 ¶ 31,087 (1999); Delegation of Authority, Order No. 632, 68 FR 25814 (May 14, 2003), FERC Stats. & Regs. Regulations Preambles 2001-2005 ¶ 31,087 (2003).

<sup>6</sup> Delegations of Authority, Order No. 632, 68 FR 25814 (May 14, 2003), FERC Stats. & Regs. Regulations Preambles 2001-2005 ¶ 31,087 (2003).

<sup>7</sup> Delegations of Authority, 69 FR 64659 (Nov. 8, 2004), FERC Stats. & Regs. Regulations Preambles 2001-2005 ¶ 31,169 (2004). The original designation as Order No. 651 was corrected to Order No. 650 by an errata notice issued on November 12, 2004.

(OED) to OMOI. In Order No. 650, the relevant delegation provisions were added to the OMOI delegations and deleted from the OED delegations. In 2005, pursuant to another reorganization, the Regulatory Accounting policy function, as well as the Chief Accountant, were moved from OMTR to OMOI.

5. On April 17, 2006, the reorganization and re-naming of OMOI as OE became effective. OE includes an administrative branch and four divisions – Investigations, Audits, Financial Regulation (for which the Chief Accountant also serves as the Division Director), and Energy Market Oversight.

## **II. Discussion**

6. Part 375, Subpart C, of the Commission's rules and regulations sets out delegations of authority to the various office directors, such as the Directors of OMOI (now called OE)<sup>8</sup> and OMTR (now called OEMR),<sup>9</sup> as well as to statutory officers such as the Chief Accountant.<sup>10</sup> The regulations in Part 375 which are amended by this rule are found in §§ 375.303, 375.307, and 375.314, and are discussed below.

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<sup>8</sup> 18 CFR 375.314.

<sup>9</sup> 18 CFR 375.307.

<sup>10</sup> 18 CFR 375.303.

7. Section 375.314<sup>11</sup> includes the delegations of authority to the Director of OMOI (now OE). Amendments to this section are made to replace the former office title of Office of Market Oversight and Investigations with the title Office of Enforcement and occur in the title to § 375.314, and in the text of §§ 375.314(b), (c), and (d).<sup>12</sup>

8. Sections 375.314(i), (j), and (k)<sup>13</sup> of the current delegations to the Director of OMOI (now OE) concern auditing matters and essentially duplicate delegations formerly made to the Director of OMTR (now OEMR) at a time when auditing matters were handled in OMTR. These matters fall solely within the purview of the Director of OE. Accordingly, this rule removes §§ 375.307(a), (c), and (d)<sup>14</sup> from the delegations to the Director of OMTR (now OEMR).

9. The remaining amendments to the regulations, as discussed below, reflect changes in the responsibilities of the Chief Accountant which occurred when the Regulatory Accounting policy function was moved to OMOI (now OE), discussed above, as well as

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<sup>11</sup> 18 CFR 375.314.

<sup>12</sup> 18 CFR 375.314(b), (c), and (d), respectively.

<sup>13</sup> 18 CFR 375.314(i), (j), and (k), respectively.

<sup>14</sup> 18 CFR 375.307(a), (c), and (d), respectively.

through delegations made by the Commission in Order Nos. 667<sup>15</sup> and 679.<sup>16</sup> When the Regulatory Accounting policy function was moved to OMOI (now OE), responsibility for administering Annual Reports (FERC Form Nos. 1, 1-F, 2, 2-A, and 6)<sup>17</sup> and Electric Quarterly Reports (EQRs)<sup>18</sup> were transferred to the Chief Accountant. These, as well as all other forms, data collections, and reports administered by the Chief Accountant, assist the Commission in its review and approval of cost-based rates. The data contained in these forms, data collections, and reports serve other purposes as well.

10. In Order No. 679, among other things, the Commission created FERC-730 (report of transmission investment activity)<sup>19</sup> and delegated to the Chief Accountant the authority to act on motions for extensions of time to file the newly-created FERC-730, or motions to waive the requirements applicable to those filings. However, that recent

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<sup>15</sup> Repeal of the Public Utility Holding Company Act of 1935 and Enactment of the Public Utility Holding Company Act of 2005, Order No. 667, 70 FR 75592 (Dec. 20, 2005), FERC Stats. & Regs. ¶ 31,197 (2005), order on reh'g, Order No. 667-A, 71 FR 28446 (May 16, 2006), FERC Stats. & Regs. ¶ 31,213 (2006), order on reh'g, Order No. 667-B, 71 FR 42750 (July, 28, 2006), FERC Stats. & Regs. ¶ 31,224 (2006), reh'g pending.

<sup>16</sup> Promoting Transmission Investment through Pricing Reform, Order No. 679, 71 FR 43294 (Jul. 31, 2006), 116 FERC ¶ 61,057 (2006); order on reh'g, Order No. 679-A, 117 FERC ¶ 61,345 (2006).

<sup>17</sup> See 18 CFR 141.1, 141.2, 260.1, 260.2, and 357.2, respectively.

<sup>18</sup> See 18 CFR 35.10b.

<sup>19</sup> Codified at 18 CFR 35.35(h).

delegation is not reflected in the Chief Accountant's delegations in 18 CFR 375.303. Instead, the delegatory language was codified as part of § 35.35(h) which comprises the regulations describing the report and the filing requirements for that report. In order to centralize all delegations to the Chief Accountant, this rule amends the regulations to add this delegation to 18 CFR 375.303, and revises § 35.35(h)(3) to remove the delegatory language therein.

11. In Order Nos. 667, among other things, the Commission created FERC Form No. 60 (Annual Report of Centralized Service Companies).<sup>20</sup> In Order No. 667-A, the Commission created FERC-61 (narrative description of service company functions).<sup>21</sup> In Order No. 667-A, the Commission delegated to the Chief Accountant the authority to act on motions for extensions of time to file and requests for waiver of the requirements of FERC Form No. 60 and FERC-61.<sup>22</sup> In Order No. 684, §§ 375.303(f) and (g) were amended to include those delegations also.<sup>23</sup> In order to centralize all delegations to the

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<sup>20</sup> Order No. 667 at P 82-85; codified at 18 CFR 366.23.

<sup>21</sup> Order No. 667-A at P 49; codified at 18 CFR 366.23.

<sup>22</sup> Order No. 667-A; codified at 18 CFR 366.23(a)(3).

<sup>23</sup> Financial Accounting, Reporting and Records Retention Requirements Under the Public Utility Holding Company Act of 2005, 71 FR 65200 (Nov. 7, 2006), FERC Stats. & Regs. ¶ 31,229 (2006) at P 222-223.

Chief Accountant, this rule amends 18 CFR 375.303, and revises § 366.23(a)(3) to remove the delegatory language therein.

12. To summarize, currently, the Chief Accountant is authorized to: (1) act on motions for extension of time to file Form No. 60, FERC-61, and FERC-730; (2) act on requests for waiver of the requirements of Form Nos. 3-Q and 6-Q,<sup>24</sup> Form No. 60, FERC-61, and FERC-730; and (3) issue deficiency letters regarding Form Nos. 3-Q and 6-Q. The rule amends the regulations to uniformly authorize the Chief Accountant to: (1) act on motions for extensions of time to file, (2) act on requests for waiver of the requirements of, and (3) issue deficiency letters regarding, each of the above-discussed forms, data collections, and reports (Form Nos. 1, 1-F, 2, 2-A, 6, 3-Q, 6-Q, 60; FERC-61, FERC-730; and EQRs), so that the delegated authority applicable to these forms, data collections, and reports is consistent. To effectuate this delegation, the rule amends § 375.303 by replacing existing paragraphs (f) and (g) to provide that the Chief Accountant may deny or grant, in whole or in part, motions for extension of time to file, or requests for waiver of the requirements of Annual Reports (Form Nos. 1, 1-F, 2, 2-A, and 6); Quarterly Reports (Form Nos. 3-Q and 6-Q); Annual Report of Centralized Service Companies (Form No. 60); Narrative Description of Service Company Functions (FERC-61); Report of Transmission Investment Activity (FERC-730); and EQRs, as well as, where required,

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<sup>24</sup> 18 CFR 141.400 (electric), 260.300 (natural gas), and 357.4 (oil), respectively.

the electronic filing of such information, and provide notification if one of those forms, data collections, or reports is submitted and fails to comply with applicable statutory requirements, and with all applicable Commission rules, regulations or notify a party that a submission is acceptable.

13. Further, to centralize the authority delegated to the Chief Accountant and to avoid confusion as to the responsibility for the forms, data collections, and reports discussed herein, the delegations of authority to the Director of OMTR (now OEMR) are revised by removing the parenthetical phrase in 18 CFR 375.307(h)(3) which references Form Nos. 1, 1-F, 2, 2-A, and 6, and by removing in its entirety 18 CFR 375.307(i)(8), which also references Form No. 1.

### **III. Information Collection Statement**

14. Review by the Office of Management and Budget,<sup>25</sup> pursuant to section 3507(d) of the Paperwork Reduction Act of 1995,<sup>26</sup> is not required since this final rule does not contain new or modified information collection or recordkeeping requirements.

### **IV. Environmental Analysis**

15. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect

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<sup>25</sup> 5 CFR 1320.11.

<sup>26</sup> 44 U.S.C. 3507(d).

on the human environment.<sup>27</sup> Part 380 of the Commission's regulations exempts certain actions from the requirement that an Environmental Analysis or Environmental Impact Statement be prepared. Included is an exemption for procedural, ministerial, or internal administrative actions.<sup>28</sup> As this Final Rule falls within that exemption, issuance of the 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, and, thus, does not require an Environmental Analysis or Environmental Impact Statement.<sup>29</sup>

#### **V. Regulatory Flexibility Certification**

16. The Regulatory Flexibility Act of 1980 (RFA)<sup>30</sup> generally requires a description and analysis of Final Rules that will have significant economic impact on a substantial number of small entities. Rules that are exempt from the notice and comment requirements of section 553(b) of the Administrative Procedure Act are exempt from the

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<sup>27</sup> Regulations Implementing the National Environmental Policy Act, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs. Regulations Preambles 1986-1990 ¶ 30,783 (1987), codified at 18 CFR Part 380.

<sup>28</sup> 18 CFR 380.4(1) and (5).

<sup>29</sup> Id.

<sup>30</sup> 5 U.S.C. 601-12.

RFA requirements. This Final Rule concerns matters of internal agency procedure and, therefore, an analysis under the RFA is not required.

**VI. Document Availability**

17. 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.

18. From FERC's Home Page on the Internet, this information is available in eLibrary. The full text of this document is available in 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.

19. User assistance is available for eLibrary and the FERC's website during normal business hours from our Help line at (202)502-8222 or the Public Reference Room at (202) 502-8371 Press 0, TTY (202)502-8659. E-Mail the Public Reference Room at [public.referenceroom@ferc.gov](mailto:public.referenceroom@ferc.gov).

**VII. Effective Date and Congressional Notification**

20. These regulations are effective on issuance. While the Administrative Procedure Act generally mandates that an opportunity for comment be provided when an agency

promulgates regulations, notice and comment are not required where a rule, as here, relates to agency personnel or agency organization, procedure, or practice.<sup>31</sup> Since these regulations only concern internal agency procedure and will not affect regulated entities or the general public, notice and comment are not required.

21. The Small Business Regulatory Enforcement Fairness Act of 1996<sup>32</sup> requires agencies to report to Congress on the promulgation of certain Final Rules prior to their effective dates. Rules of agency procedure and practice are excluded from this notification requirement.<sup>33</sup> Therefore, this Final Rule will not be submitted to Congress.

#### List of Subjects

##### 18 CFR 35

Electric power rates, Electric utilities, Reporting and recordkeeping requirements

##### 18 CFR 366

Electric power, Natural gas, Reporting and recordkeeping requirements

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<sup>31</sup> See 5 U.S.C. 553(b)(A) and (B).

<sup>32</sup> 5 U.S.C. 801.

<sup>33</sup> 5 U.S.C. 804(3)(C).

18 CFR 375

Authority delegations (Government Agencies), Seals and insignia, Sunshine Act

By the Commission.

( S E A L )

Magalie R. Salas,  
Secretary.

In consideration of the foregoing, the Commission amends parts 35, 366, and 375, Chapter I, Title 18, Code of Federal Regulations, as follows:

**PART 35—FILING OF RATE SCHEDULES AND TARIFFS**

1. The authority citation for part 35 continues to read as follows:

Authority: 16 U.S.C. 791-825r, 2601-2645; 31 U.S.C. 9701; 42 U.S.C. 7101-7352.

2. Amend § 35.35 by revising paragraph (h)(3) to read as follows:

§ 35.35 **Transmission infrastructure investment.**

\* \* \* \* \*

(h) \* \* \*

(3) For good cause shown, the Commission may extend the time within which any FERC-730 filing is to be filed or waive the requirements applicable to any such filing.

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**PART 366—PUBLIC UTILITY HOLDING COMPANY ACT OF 2005**

3. The authority citation for part 366 continues to read as follows:

Authority: Pub. L. No. 109-58, 1261 et seq., 119 Stat. 594, 972 et seq.

4. Amend § 366.23 by revising paragraph (a)(3), to read as follows:

§ 366.23 **FERC Form No. 60, annual report of service companies, and FERC-61, narrative description of service company functions.**

(a) \* \* \*

(3) For good cause shown, the Commission may extend the time within which any such report or narrative description required to be filed pursuant to paragraphs (a)(1) or (2) of this section is to be filed or waive the requirements applicable to any such report or narrative description.

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**PART 375—THE COMMISSION**

5. 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.

6. Amend § 375.303 by revising paragraphs (f) and (g) to read as follows:

§ 375.303 **Delegations to the Chief Accountant.**

\* \* \* \* \*

(f) Deny or grant, in whole or in part, motions for extension of time to file, or requests for waiver of the requirements of the following forms, data collections, and reports: Annual Reports (Form Nos. 1, 1-F, 2, 2-A, and 6); Quarterly Reports (Form Nos. 3-Q and 6-Q); Annual Report of Centralized Service Companies (Form No. 60); Narrative Description of Service Company Functions (FERC-61); Report of Transmission Investment Activity (FERC-730); and Electric Quarterly Reports, as well as, where required, the electronic filing of such information (§ 385.2011 of this chapter, Procedures for filing on electronic media, paragraphs (a)(6), (c), and (e)).

(g) Provide notification if a submitted Annual Report (Form Nos. 1, 1-F, 2, 2-A, and 6), Quarterly Report (Form Nos. 3-Q and 6-Q), Annual Report of Centralized Service Companies (Form No. 60), Narrative Description of Service Company Functions (FERC-61), Report of Transmission Investment Activity (FERC-730), or Electric Quarterly Report fails to comply with applicable statutory requirements, and with all applicable Commission rules, regulations, and orders for which a waiver has not been granted, or, when appropriate, notify a party that a submission is acceptable.

\* \* \* \* \*

7. Amend § 375.307 as follows:

(a) Remove paragraphs (a), (c), (d), and (i)(8) and redesignate paragraphs (b) and (e) through (p) as paragraphs (a) through (m).

(b) Revise redesignated paragraph (h)(3) to read as follows:

§ 375.307 **Delegations to the Director of the Office of Markets, Tariffs and Rates.**

\* \* \* \* \*

(h) \* \* \*

(3) Accept for filing, data and reports required by Commission orders, or presiding officers' initial decisions upon which the Commission has taken no further action, if such filings are in compliance with such orders or decisions and, when appropriate, notify the filing party of such acceptance.

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8. In § 375.314, remove the words “Office of Market Oversight and Investigations” and insert, in their place, the words “Office of Enforcement” in the following sections:

- (a) Section 375.314;
- (b) Section 375.314(b);
- (c) Section 375.314(c); and
- (d) Section 375.314(d).