

105 FERC ¶ 61,296
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

18 CFR Part 385

(Docket No. RM04-3-000)

Emergency Closures

(Issued December 18, 2003)

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final Rule.

SUMMARY: The Commission is modifying its regulations governing computation of time to cover situations in which its offices are closed due to temporary emergency conditions such as severe weather. This change will prevent unintended Commission action and eliminate possible hardship by ensuring that filing deadlines and deadlines for action by the Commission do not expire during times when the Commission is unable to accept filings or issue orders.

EFFECTIVE DATE: The rule will become effective immediately upon issuance.

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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.

Emergency Closures

Docket No. RM04-3-000

ORDER NO. 645

FINAL RULE

(Issued December 18, 2003)

1. This Final Rule revises the Commission's regulations to ensure that filing deadlines and deadlines for action by the Commission do not expire during periods in which the Commission is closed due to temporary emergency conditions, such as severe weather emergencies. The Commission's regulations currently provide that the last day of a time period is not counted if that day is a Saturday, Sunday, part-day holiday that affects the Commission, or legal public holiday. 18 C.F.R. § 385.2007(a)(2) (2003) (Rule 2007). Thus, Rule 2007 would not have covered, for example, the Commission's temporary closure for two and one-half days in September 2003 due to the effects of Hurricane Isabel.

2. This Final Rule adds a provision to Rule 2007 covering temporary closures due to weather or other adverse conditions. The absence of such a provision could result in unintended action by the Commission or otherwise cause hardship to participants in Commission proceedings who face filing deadlines. This would particularly be a problem in connection with statutory deadlines that the Commission cannot extend, such as the 30-day period for requesting rehearing of a Commission order.¹ See 15 U.S.C. § 717r(a) (Natural Gas Act); 16 U.S.C. § 825l(a) (Federal Power Act). In addition, situations could arise in which the Commission is required to take action by a date certain but cannot do so because its offices are closed. For example, the Commission must act by a specified time on a rate proposal filed by a public utility, or an oil or natural gas pipeline, or the filing becomes effective by operation of law. See 16 U.S.C. § 824d (Federal Power Act) (60 days); 15 U.S.C. § 717c (Natural Gas Act) (30 days); 49 App. U.S.C. § 6(3) (Interstate Commerce Act) (30 days). It is therefore in the public interest to revise the Commission's rules to ensure that a day on which it is closed due to adverse conditions does not count as the last day of the time period for a deadline.

3. In view of the foregoing, the Commission is making one addition to Rule 2007. Currently, the last day of a time period is extended if it falls on a weekend, part-day holiday or legal public holiday. The addition will cover days on which the Commission

¹ See, e.g., Tennessee Gas Pipeline Co., 95 FERC ¶ 61,169 (Commission may not extend 30-day rehearing deadline, although it can provide rules for computing time as it has done in Rule 2007), aff'd sub nom. Londonderry Neighborhood Coalition v. FERC, 273 F.3d 416 (1st Cir. 2001).

is closed due to adverse conditions. It will apply to full-day closures and also part-day closures as long as the Commission does not reopen prior to the official close of business.

INFORMATION COLLECTION STATEMENT

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

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.² 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.³ 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 CFR 380.4(1) and (5). This rulemaking is exempt under that provision.

² 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).

³ 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).

REGULATORY FLEXIBILITY ACT [ANALYSIS OR CERTIFICATION]

6. The Regulatory Flexibility Act of 1980 (RFA)⁴ 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

7. 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, N.E., Room 2A, Washington D.C. 20426.

8. From FERC's Home Page on the Internet, this information is available in the Federal Energy Regulatory Records Information System (FERRIS). The full text of this document is available on FERRIS in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in FERRIS, type the docket number excluding the last three digits of this document in the docket number field.

9. User assistance is available for FERRIS and the FERC's website during normal business hours from our Help line at (202)502-8222 or the Public Reference Room at

⁴ 5 U.S.C. 601-612.

(202) 502-8371 Press 0, TTY (202)502-8659. E-Mail the Public Reference Room at public.referenceroom@ferc.gov.

EFFECTIVE DATE

10. These regulations are effective immediately upon issuance. In accordance with 5 U.S.C. § 553(d)(3), the Commission finds that good cause exists to make this Final Rule effective immediately. The rule is intended to act as a contingency measure in order to preserve, rather than alter, the rights of persons appearing before the Commission.

Therefore, there is no reason to make it effective at a later date.

11. 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.

12. 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.

Docket No. RM04-3-000

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List of subjects in 18 CFR Part 385

Administrative practice and procedure; Electric Power; Penalties; Pipelines; Reporting and recordkeeping requirements.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.

In consideration of the foregoing, the Commission amends Part 385, Chapter I, Title 18, Code of Federal Regulations, as follows:

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-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.

2. Section 385.2007 by revising paragraph (a) to read as follows:

§ 385.2007 Time (Rule 2007).

(a) * * *

(2) The last day of any time period is included in the time period, unless it is a Saturday, Sunday, day on which the Commission closes due to adverse conditions and does not reopen prior to its official close of business, part-day holiday that affects the Commission, or legal public holiday as designated in section 6103 of title 5, U.S. Code, in which case the period does not end until the close of the Commission business of the next day which is not a Saturday, Sunday, day on which the Commission closes due to adverse conditions and does not reopen prior to its official close of business, part-day holiday that affects the Commission, or legal public holiday.