

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.

Financial Forms Software

Docket No. AD07-10-000

ORDER ELIMINATING CAPABILITY TO MARK
FERC FORM NOS. 1, 2, 2-A AND 3-Q DATA AS PRIVILEGED IN FORM
SUBMISSION SOFTWARE

(Issued February 15, 2007)

1. This order provides notice to filers of FERC Form Nos. 1, 2, 2-A and 3-Q, that the Commission-provided electronic software used by filers of these FERC financial forms will no longer provide an option to mark data as “privileged.”¹ Companies may continue to seek privileged treatment of documents by claiming that some or all of the information contained in a particular document is exempt from the mandatory disclosure requirements of the Freedom of Information Act, by following the appropriate procedures provided in the Commission’s regulations.²

2. The financial information reported in FERC Form Nos. 1, 2, 2-A, and 3-Q has long been considered by the Commission as public information.³ Commission precedent

¹ Congress has authorized the Commission to prescribe annual or other periodic reports to assist the Commission in the administration of its jurisdictional responsibilities. *See* sections 4, 304 and 309 of the Federal Power Act, 16 U.S.C. 797, 825c and 825h (2000); and sections 10(a) and 16 of the Natural Gas Act, 15 U.S.C. 717i(a) and 7170 (2000).

² *See* 18 C.F.R. § 388.112 (2006).

³ FERC Form No. 1 provides annual financial data from major utilities or licensees. FERC Form No. 2 reports financial data from major natural gas pipeline companies and FERC Form No. 2-A reports the same data from non-major natural gas pipeline companies. FERC Form No. 3-Q is filed by both utilities and natural gas companies and submits similar data on a quarterly basis. The forms provide information to the Commission which includes a balance sheet, statement of income, and notes to financial statements.

and policy support the Commission's obligation to provide information to the public.⁴ Indeed, all reports required to be submitted by Commission rule and necessary for the Commission's jurisdictional activities are considered public information.⁵ The financial forms provide data that enables the Commission to develop and monitor cost-based rates, analyze costs of different services, and evaluate the reasonableness of rates subject to the Commission's jurisdiction. In addition, the cover page of each of the financial forms specifies that the Commission does not consider the reports to be of a confidential nature. The ability to mark data as privileged was initially offered on the forms as a convenience to electronic filers, but it was not intended to offer *carte blanche* discretion to withhold data from the public domain.

3. The information contained in the forms is essential to the Commission's oversight responsibilities and also is relied upon by electric utility, interstate natural gas pipeline customers, state commissions, and trade associations to develop and monitor rates. The Commission's ability to protect customers from unreasonable rates and undue discrimination depends also on the customer's capacity to determine when rates may be excessive and bring a complaint under section 206 of the Federal Power Act (FPA) or section 5 of the Natural Gas Act (NGA).⁶ Denying public access to FERC Form Nos. 1, 2, 2-A and 3-Q data would deny the customers the information they need to evaluate whether their rates are excessive or whether they are the victims of undue discrimination.

4. Moreover, the order is consistent with the Commission's decision in Order No. 2001 which required public utilities subject to the Commission's jurisdiction to electronically file Electric Quarterly Reports (EQRs) summarizing the terms and conditions of their agreements for jurisdictional service.⁷ In that order, the Commission

⁴ See *National Fuel Gas Supply Corp.*, 117 FERC ¶ 61,186 (2006) (denying rehearing of a Letter Order denying the company's request for confidential treatment of certain data filed in FERC Form No. 2); *PECO Energy Co.*, 88 FERC ¶ 61,330 (1999) (denying requests for rehearing of letter orders denying privileged status to data filed in FERC Form No. 1); and *Consolidated Edison Company of New York, Inc. and Central Hudson Gas & Electric Corp.*, 72 FERC ¶ 61,184 (1995) (denying request for stay of the General Counsel's denial to accord trade secret and privileged status to certain data filed in FERC Form No. 1).

⁵ See 18 C.F.R. § 388.106(b)(2)(2006).

⁶ 16 U.S.C. 824d; 15 U.S.C. 717d.

⁷ *Revised Public Utility Filing Requirements*, Order No. 2001, 67 Fed. Reg. 31,034 (May 8, 2002), FERC Stats. & Regs. ¶ 31,127 (2002), *reh'g denied*, Order No. 2001-A, 100 FERC ¶ 61,074, *reh'g denied*, Order No. 2001-B, 100 FERC ¶ 61,342, *order directing filing*, Order No. 2000-D, 102 FERC ¶ 61,334 (2003).

stated that “competitive and robust markets demand more, not less, transparency of data” and denied requests to keep some information unavailable to public scrutiny.⁸ The Commission-provided software for EQR filers does not provide the option of marking data as “privileged.”

5. This order eliminates the option for filers to arbitrarily mark as “privileged” data submitted in the forms rather than requesting and supporting a claim that a document be treated as privileged pursuant to the requirements of section 388.112 of the Commission’s regulations. By doing so, we affirm the Commission’s policy of making the information contained in these forms available to the public. This does not, however, preclude any company from seeking privileged treatment for data by using the appropriate procedures.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.

⁸ *Id.* at P 94.