

111 FERC ¶ 61,021
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

18 CFR Parts 385, 390

(Docket No. RM04-9-001)

Electronic Notification of Commission Issuances

(Issued April 13, 2005)

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final Rule; Order on Rehearing of Order No. 653.

SUMMARY: This order on rehearing makes several minor revisions to the Final Rule that was adopted in Order No. 653. The Commission, in that order, amended its regulations to provide for electronic service of Commission issuances and to enhance the use of electronic service between parties to Commission proceedings. The revisions adopted here are necessary to clarify the rules governing service among parties.

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

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SUPPLEMENTARY INFORMATION:

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UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, Joseph T. Kelliher,
and Suedeen G. Kelly.

Electronic Notification of Commission
Issuances

Docket No. RM04-9-001

ORDER NO. 653-A

ORDER ON REHEARING AND CLARIFICATION

(Issued April 13, 2005)

1. The Commission issued Order No. 653 on February 10, 2005. In that order it adopted revisions to its regulations to, among other things, provide for electronic service of Commission issuances by the Secretary in proceedings beginning on or after March 21, 2005; modify its electronic registration (eRegistration) system to include e-mail addresses of the members of service lists; and increase the usage of electronic methods of service by service list members serving documents upon one another. Electronic Notification of Commission Issuances, Order No. 653, 70 Fed. Reg. 8,720 (Feb. 23, 2005). The order required persons wishing to be included on the service list of proceedings that begin on or after March 21, 2005, to eRegister with their e-mail addresses, so as to facilitate electronic service of Commission issuances

by the Secretary, as well as electronic service by participants upon each other.¹ The order further amended the Commission's regulations to provide that, absent agreement otherwise, participants shall serve one another electronically in all proceedings, not just those beginning on or after March 21.²

2. The Commission has received one rehearing request, filed by Spiegel & McDiarmid (Spiegel). Spiegel requests rehearing or clarification on several, mainly technical points, and also requests that the Commission stay the effectiveness of the Final Rule.

3. One point that Spiegel raises, and with which the Commission agrees, is that the requirement for electronic service, absent agreement among participants, in proceedings begun prior to March 21 may create difficulties in some cases. Because the requirement that service list members eRegister with their e-mail addresses is effective only for proceedings beginning on or after that date, a participant in a proceeding begun before that date would be required to obtain an e-mail address for each service list member. In the interest of clarity, the Commission is revising Rule 2010(f)³ to provide for electronic service where the sender and recipient agree.

4. Spiegel also expresses concern that the revised rules would require electronic service between participants of protected materials. Spiegel correctly notes that Order No. 653 effectively substituted electronic for paper service with respect to protected

¹ 18 C.F.R. § 385.2010(h) (2004).

² 18 C.F.R. § 385.2010(f) (2004).

³ Id.

information. In Spiegel's view, protection of electronic information is more difficult than protection of paper documents, with a higher degree of risk of inadvertent disclosure.

5. In the interest of allowing participants the necessary flexibility to protect sensitive information, the Commission is revising Rule 2010(f) so that service of protected information in electronic form is not required. The revision provides that the serving participant may employ paper service where electronic service could jeopardize the security of sensitive information.

6. Spiegel next points to the Commission's indication in Order No. 653 that it will require standardized language in the subject line of service e-mails. The purpose of such a requirement would be to allow recipients to set their filters so as to avoid rejecting service e-mails. Spiegel complains that this requirement was not added to the regulations.

7. This was not an inadvertent omission. The Commission as a general matter does not place technical requirements in its electronic filing and service regulations. Such requirements, particularly in connection with information technology applications, change often. Revising the regulations for each such change would be cumbersome and impractical. It was the Commission's intention to place rules, such as standardized subject line language, on its web site in a location where they would be readily visible to all users. Since Order No. 653 was issued, the Commission's staff has had extensive contact with customers regarding, among other things, internal forwarding rules, which companies and law firms often use to route important e-mails

to the right person. Forwarding rules, in turn, have implications for standardized subject line language. The Commission is endeavoring now to find solutions that will work for its customers. Once it has done so, instructions will be posted at FERC Online. Placing such requirements in the regulations would seriously hamper the Commission's efforts to identify viable business practices. Spiegel's request on this subject therefore must be rejected.

8. Spiegel points out that the disclaimer on the Commission's web site⁴ states that the paper version of a filed document is the official version. For many electronically filed documents, of course, there is no paper version. This matter is beyond the scope of Order No. 653. The Commission will, however, be revising the disclaimer.

9. Spiegel next states that, although the Commission's regulations governing waivers of the requirement to eRegister refer to a paper registration form to be filed with the Secretary with a request for a waiver, there is no form available from the Secretary. The Commission is revising its regulations⁵ to remove the reference to a form. A person seeking a waiver need simply file a request stating its reasons, together with the name and address of a contact.

⁴ <http://ferc.gov/disclaimers.asp>.

⁵ 18 C.F.R. § 390.3(a) (2004).

10. Finally, Spiegel requests clarification on modifying service list contacts.

Spiegel's questions are not entirely clear, but it seems to be asking whether it can use a general service e-mail, as opposed to an individual's e-mail, as a service list contact.

It also appears to be asking how to modify existing service list contact information.

11. These are technical questions better addressed through the use of the phone number or e-mail address for support, available at <http://www.ferc.gov/docs-filing/docs-filing.asp>. The Commission does note, however, that a participant may employ a general e-mail address for document service when it adds contacts to the service list. General e-mail addresses, however, should only be listed as "other contacts." The "primary contact" should be an individual person. With respect to the second question, modifications to service list contacts must be made by the filing of a notice with the Commission, as such changes must be made manually by the Secretary. The other participants must also be notified of changes to service list contact information. The Commission will, however, delete the word "written" from Rule 2010(c)(2),⁶ as there is no reason a request to change service list contact information cannot be filed electronically.

12. Given these revisions, the Commission sees no purpose in a stay of Order No. 653. This request is therefore denied.

⁶ 18 C.F.R. § 385.2010(c)(2) (2004).

Information Collection Statement

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

Environmental Analysis

14. 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 The Commission has categorically excluded certain actions from this requirement as not having a significant effect on the human environment. Included in the exclusion are rules that are clarifying, corrective, or procedural or that do not substantially change the effect of the regulations being amended.⁹ This Final Rule is procedural in nature and therefore falls under this exception; consequently, no environmental consideration is necessary.

⁷5 CFR 1320.12 (2004).

⁸ 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).

⁹18 CFR 380.4(a)(2)(ii).

Regulatory Flexibility Act Certification

15. 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. The Commission is not required to make such analyses if a rule would not have such an effect. The Commission certifies that this Final Rule will not have such an impact on small entities.

Document Availability

16. 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.

17. From FERC's Home Page on the Internet, this information is available in the Commission's document management system, 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.

¹⁰ 5 U.S.C. 601-612.

18. User assistance is available for eLibrary and the FERC's website during normal business hours. For assistance, please contact FERC Online Support at 1-866-208-3676 (toll free) or 202-502-6652 (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

19. These regulations are effective immediately upon issuance.

20. The provisions of 5 U.S.C. § 801 regarding Congressional review of Final Rules does 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.

List of subjects

18 C.F.R. Part 385

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

18 C.F.R. Part 390

Administrative practice and procedure, Electronic filing, Reporting and recordkeeping requirements.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.

In consideration of the foregoing, the Commission grants rehearing and clarification in part, denies the request for a stay, and amends Parts 385 and 390, 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–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 (1988).

2. Amend § 385.2010 by deleting the word “written” from paragraph (c)(2) and revising paragraph (f) to read as follows:

§ 385.2010 Service (Rule 2010).

* * * * *

(f) Methods of service. (1) Except as provided in paragraph (g), service of any document in proceedings commenced prior to March 21, 2005, must be made by:

- (i) Electronic means where the sender and recipient agree to such means;
- (ii) United States mail, first class or better; or
- (iii) Delivery in a manner that, and to a place where, the person on whom

service is required may reasonably be expected to obtain actual and timely receipt.

(2) Except as provided in paragraph (g), service of any document in proceedings commenced on or after March 21, 2005, must be made by electronic means unless the sender and recipient agree otherwise or the recipient’s e-mail address is unavailable from the official service list, except in the case of a recipient

who has secured a waiver under the provisions of § 390.3 of this Chapter, or is exempt under the provisions of § 390.4 of this Chapter, or in the case of a protected or confidential document the security of which might be jeopardized by electronic service, in which case service upon that recipient or of that document only shall be made by:

(i) United States mail, first class or better; or

(ii) Delivery in a manner that, and to a place where, the person on whom service is required may reasonably be expected to obtain actual and timely receipt.

(3) Service of a document by electronic means shall be made by the transmission of a link to that document in the Commission's eLibrary system or by alternate means reasonably calculated to make the document available to required recipients. Alternate means may include but are not limited to, attachment of an electronic copy of the document to an e-mail or transmission of a link to an Internet site containing the document. It is the sender's responsibility to take reasonable steps to ensure that the means employed for service will be within the technological capabilities of the recipients.

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PART 390—ELECTRONIC REGISTRATION

3. The authority citation for Part 390 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. 9701; 42 U.S.C. 7101–7352; 49 U.S.C. 60502; 49 App. U.S.C. 1–85 (1988).

4. Amend § 390.3 by replacing the phrase “using the paper form prescribed under” in paragraph (b) with “pursuant to,” and revising paragraph (a) to read as follows:

§ 390.3 Waiver applications.

(a) A person may satisfy the requirement of Sec. 390.1 by submitting a written statement showing good cause why the person is unable to register electronically, and including the name and address of the person serving as a contact. The statement must be mailed to the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, or hand delivered to Room 1A at the same address.

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