

132 FERC ¶ 61,107
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

18 CFR Part 376

(Docket No. RM10-28-000; Order No. 738)

Supplement to Commission Procedures During Periods of Emergency
Operations Requiring Activation of Continuity of Operations Plan

(Issued August 5, 2010)

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final Rule.

SUMMARY: In this rule the Commission supplements the procedures previously established with regard to filing and other requirements if the Commission is required to implement its Continuity of Operations Plan in response to an emergency situation that disrupts communications to or from the Commission's headquarters or which otherwise impairs headquarters operations. The rule temporarily tolls for purposes of further consideration the time period for Commission action required for relief from, or reinstatement of, an electric utility's mandatory purchase obligation under the Public Utility Regulatory Policies Act of 1978.

EFFECTIVE DATE: The rule will become effective [insert date of publication in the Federal Register].

Docket No. RM10-28-000

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FOR FURTHER INFORMATION CONTACT:

Rachel E. Bryant
Office of the General Counsel
Federal Energy Regulatory Commission
Room 101-32
888 First St., NE
Washington, DC 20426
(202) 502-6736

Lawrence R. Greenfield
Office of the General Counsel
Federal Energy Regulatory Commission
Room 10D-01
888 First St., NE
Washington, DC 20426
(202) 502-6415

SUPPLEMENTARY INFORMATION:

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

Supplement to Commission Procedures During
Periods of Emergency Operations Requiring
Activation of Continuity of Operations Plan

Docket No. RM10-28-000

ORDER NO. 738

FINAL RULE

(Issued August 5, 2010)

I. Introduction

1. The Federal Energy Regulatory Commission (Commission) previously amended its regulations in Order No. 680 by modifying certain filing requirements and establishing procedures to be effective during emergencies affecting the Commission that require it to implement its Continuity of Operations Plan (COOP Plan). The COOP Plan was developed to address emergency conditions lasting up to 30 days during which Commission headquarters operations may be temporarily disrupted or communications may be temporarily unavailable, either of which may prevent the public or the Commission from meeting regulatory or statutory requirements.¹ The COOP Plan temporarily suspends filing requirements and ensures that deadlines for Commission

¹ More information concerning the COOP Plan can be found on the Commission's website at www.ferc.gov/coop.asp.

actions that fall during the period the COOP Plan is in operation are met, thereby providing continuity in the conduct of the Commission's business and certainty to parties with business before the Commission.²

2. One procedure established by the COOP Plan tolls for purposes of further consideration the time periods for certain Commission actions that would otherwise be required during an emergency.³ Examples of such actions include the 60-day period for acting on requests for Exempt Wholesale Generator or Foreign Utility Company status and the 30-day period for acting on requests for rehearing.⁴ The Commission is now amending this list to also provide for the tolling of Commission action required in granting relief from, or reinstatement of, an electric utility's mandatory purchase obligation under section 210(m) of the Public Utility Regulatory Policies Act of 1978.⁵

II. Discussion

3. The Energy Policy Act of 2005 (EPAct 2005)⁶ was signed into law on August 8, 2005. Section 1253(a) of EPAct 2005 added section 210(m) to the Public Utility

² Activation of the COOP Plan affects communications with headquarters only, and does not affect communications required to be made directly to the Commission's Regional Offices.

³ For a complete list of procedures, see Commission Procedures During Periods of Emergency Operations Requiring Activation of Continuity of Operations Plan, Order No. 680, FERC Stats. & Regs. ¶ 31,223 (2006).

⁴ To view a complete list of tolled Commission actions, see Order 680, FERC Stats. & Regs. ¶ 31,223 at P 5.

⁵ See 16 U.S.C. 824a-3(m) (2006).

⁶ Pub. L. No. 109-58, 1253, 119 Stat. 594 (2005).

Regulatory Policies Act of 1978⁷ which provided, among other things, for termination of the requirement that an electric utility enter into a new contract or obligation to purchase electric energy from qualifying cogeneration facilities and qualifying small power production facilities (QFs) if the Commission finds that the QF has nondiscriminatory access to one of the three categories of markets defined in section 210(m)(1)(A), (B) or (C).⁸ In consideration of the foregoing, the Commission previously amended Part 292 of the Commission's regulations.

4. Sections 292.309 and 292.310⁹ set forth the standards and filing requirements for an application by an electric utility seeking to terminate the requirement to enter into new purchase contracts and obligations with QFs. Sections 292.311 and 292.313 similarly provide the standards and filing requirements for an application for reinstatement of an electric utility's mandatory purchase obligation.¹⁰ In each of these situations the Commission issues an order within 90 days of such application either terminating or reinstating an electric utility's mandatory purchase obligation.

⁷ 16 U.S.C. 824a-3(m).

⁸ New PURPA Section 210(m) Regulations Applicable to Small Power Production and Cogeneration Facilities, Order No. 688, FERC Stats. & Regs. ¶ 31,233, at P 1-8, order on reh'g, Order No. 688-A, FERC Stats. & Regs. ¶ 31,250 (2007) (characterizing the three market types as: (1) auction based day-ahead and real time markets; (2) auction based real-time markets but not auction based day-ahead markets; and (3) comparable markets).

⁹ 18 CFR §§ 292.309, 292.310 (2010); see also 18 CFR § 292.312 (2010).

¹⁰ 18 CFR §§ 292.311, 292.313 (2010).

5. Section 376.209(c)¹¹ enables the Commission, during an emergency, to toll for purpose of further consideration the time periods for certain Commission actions. The Commission's regulations, while providing for the tolling of many Commission actions, do not address the termination of, or reinstatement of, the mandatory purchase obligation. To fill this gap, this rule amends the Commission's COOP Plan to include the tolling of the 90-day period for acting on applications requesting relief from, or reinstatement of, the mandatory purchase obligation.

III. Regulatory Flexibility Act Certification

6. The Regulatory Flexibility Act of 1980 (RFA)¹² 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.

IV. Information Collection Standard

7. Office of Management and Budget (OMB) regulations require OMB to approve certain information collection requirements imposed by agency rule.¹³ This final rule contains no new information collections. Therefore, OMB review of this final rule is not required.

¹¹ 18 CFR § 376.209(c) (2010).

¹² 5 U.S.C. § 601-12 (2006).

¹³ 5 CFR § 1320.12 (2006).

V. Environmental Analysis

8. 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 clarifying, corrective, or procedural or that do not substantially change the effect of the regulations being amended.¹⁴ This rule is procedural in nature and therefore falls within this exception; consequently, no environmental consideration is necessary.

VI. Document Availability

9. 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://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.

10. From the Commission's Home Page on the Internet, this information is available in the 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.

¹⁴ 18 CFR § 380.4(a)(2) (2010); Regulations Implementing the National Environmental Policy Act, Order No. 486, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs. ¶ 30,783 (1987).

11. 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 FERCOOnlineSupport@ferc.gov), or the Public Reference Room at (202) 502-8371, TTY (202) 502-8659 (e-mail at public.referenceroom@ferc.gov).

VII. Effective Date and Congressional Notification

12. 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.

13. 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 amends 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. In § 376.209, paragraph (c)(11) and (12) are revised and paragraph (c)(13) is added to read as follows:

§ 376.209 Procedures during periods of emergency requiring activation of the Continuity of Operations Plan.

* * * *

(c) * *

(11) 30-day period for acting on requests for rehearing;

(12) Time periods for acting on interlocutory appeals and certified questions;

and

(13) 90-day period for acting on applications requesting relief from, or reinstatement of, an electric utility's mandatory purchase obligation pursuant to section 210(m) of the Public Utility Regulatory Policies Act of 1978.

Document Content(s)

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