

146 FERC ¶ 61,083
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

18 CFR Part 375

[Docket No. RM14-5-000; Order No. 795]

Delegation of Authority Regarding Consideration of Notice of Penalty

(Issued February 11, 2014)

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Commission issues this Final Rule to revise its regulations to delegate authority to the Director of the Commission's Office of Electric Reliability to issue orders extending the period of time for consideration of Notices of Penalty filed by the Electric Reliability Organization. In addition, this Final Rule revises the Commission's regulations to remove the same authority, and certain related authority, that is currently delegated to the Director of the Commission's Office of Enforcement. These revisions are necessary to enable the Commission to process routine, non-controversial Notices of Penalty in a timely and efficient manner.

EFFECTIVE DATE: This Rule will become effective **[insert date of publication in the FEDERAL REGISTER]**.

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FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

146 FERC ¶ 61,083
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FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Cheryl A. LaFleur, Acting Chairman;
Philip D. Moeller, John R. Norris,
and Tony Clark.

Delegation of Authority Regarding Consideration of Notice
of Penalty

Docket No. RM14-5-000

ORDER NO. 795

FINAL RULE

(Issued February 11, 2014)

1. The Commission issues this Final Rule to revise its delegations of authority to allow for the efficient and timely processing of Notices of Penalty (Notices) issued by the North American Electric Reliability Corporation (NERC), the Commission-certified Electric Reliability Organization (ERO). Specifically, this Final Rule delegates authority to the Director of the Office of Electric Reliability to issue orders extending the period of time for consideration of Notices filed by the ERO. This Final Rule removes the same authority currently delegated to the Director of the Office of Enforcement to extend the period of time to consider Notices. This Final Rule also removes the authority delegated to the Director of the Office of Enforcement to direct NERC or applicable Regional Entities to submit information when necessary to process Notices without the need for Commission action.

I. Background

2. The Energy Policy Act of 2005 added section 215 to the Federal Power Act (FPA), which requires a Commission-certified Electric Reliability Organization to develop mandatory and enforceable Reliability Standards, subject to Commission review and approval.¹ Pursuant to FPA section 215(e)(1), the ERO may impose a penalty on a user, owner or operator of the Bulk-Power System for a violation of a Reliability Standard approved by the Commission. Pursuant to FPA section 215(e)(4), the Commission authorized NERC, in its capacity as the ERO, to delegate authority to impose such penalties to eight Regional Entities through Commission-approved Delegation Agreements. Under FPA section 215(e), NERC must file each Notice with the Commission. The penalty is subject to Commission review upon its own motion or upon application by the entity subject to the proposed penalty within 30 days. If no review is sought or initiated, the penalty takes effect by operation of law.

3. In Order No. 728, the Commission determined that, in many cases involving the assessment of zero dollar penalties, Notices could be processed without a Commission vote.² Previously, when the Commission received a Notice, it was analyzed within thirty days by staff from the Office of Enforcement, the Office of Electric Reliability, and the Office of General Counsel, who then recommended to the Commission whether the

¹ 16 U.S.C. 824o.

² *Delegations for Notices of Penalty*, Order No. 728, FERC Stats. & Regs. ¶ 31,298, at P 5 (2009) (cross-referenced at 129 FERC ¶ 61,094 (2009)).

Notice should become effective by operation of law. The Commission would conduct a vote and, if it decided that no further action was warranted, the Commission instructed the Secretary to issue a public notice to that effect. In Order No. 728, the Commission stated that, in proceedings involving non-controversial zero dollar penalties, a Notice could be processed more efficiently by allowing the Secretary, without a formal Commission vote, to issue a notice indicating that the Commission will take no further action.

4. In Order No. 728, the Commission delegated authority to the Director of the Office of Enforcement to direct NERC or applicable Regional Entities to submit further information on a Notice where the Commission did not have sufficient information to reach a decision on the Notice. The Commission also delegated to the Director of the Office of Enforcement the authority to extend the period of time to consider Notices for the purpose of obtaining additional information from NERC and Regional Entities. Sections 375.311(u) and (v) of the Commission's regulations delegate these authorities to the Director of the Office of Enforcement. Order No. 728 also stated a policy that "Notices will not need a formal Commission vote only in zero dollar penalty cases that do not raise significant concerns or other issues," and specified various types of issues that would still require a formal Commission vote.³

³ Order No. 728, FERC Stats. & Regs. ¶ 31,298 at P 8 (cross-referenced at 129 FERC ¶ 61,094).

II. Discussion

5. The Commission believes that its internal processes will be more efficient if the Office of Electric Reliability is the lead office for reviewing and processing Notices. Accordingly, this Final Rule revises the delegations to the Director of the Office of Electric Reliability and Director of the Office of Enforcement. Specifically, this Final Rule transfers the authority to extend the period of time to consider Notices for the purpose of obtaining additional information, which is currently delegated to the Director of the Office of Enforcement in section 375.311(v) of the Commission's regulations, to the Director of the Office of Electric Reliability. In addition, this Final Rule removes the related authority delegated to the Director of the Office of Enforcement to require NERC or applicable Regional Entities to provide information necessary to review and process Notices, which is currently delegated in section 375.311(u) of the Commission's regulations.⁴

6. New section 375.303(a)(2)(vi) delegates to the Director of the Office of Electric Reliability the authority to extend the period of time to review Notices.

III. Information Collection Statement

7. Office of Management and Budget (OMB) regulations require OMB to approve certain information collection requirements imposed by agency rule.⁵ This Final Rule

⁴ As discussed in Order No. 728, the Director of the Office of Electric Reliability already possesses this delegated authority. Order No. 728, FERC Stats. & Regs. ¶ 31,298 at P 6 (cross-referenced at 129 FERC ¶ 61,094).

⁵ 5 CFR 1320.

contains no new or revised information collections. Therefore, OMB review of this Final Rule is not required.

IV. 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.⁶ Excluded from this requirement are rules that are procedural, ministerial, or internal administrative and management actions, programs or decisions.⁷ This Final Rule falls within this exception; consequently, no environmental consideration is necessary.

V. Regulatory Flexibility Act

9. The Regulatory Flexibility Act of 1980 (RFA)⁸ 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 it will not have such an impact. An analysis under the RFA is therefore not required.

VI. Document Availability

10. 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

⁶ *Regulations Implementing the National Environmental Policy Act of 1969*, Order No. 486, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs. ¶ 30,783 (1987).

⁷ 18 CFR 380.4(a)(1).

⁸ 5 U.S.C. 601-612.

(<http://www.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.

11. From the Commission's Home Page on the Internet, this information is available on 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 (i.e., the sub docket number, 000) in the docket number field.

12. User assistance is available for eLibrary and the Commission's website during normal business hours from FERC Online Support at (202) 502-6652 (toll free at (866) 208-3676) or email at ferconlinesupport@ferc.gov, or the Public Reference Room at (202) 502-8371, TTY (202) 502-8659. E-mail the Public Reference Room at public.referenceroom@ferc.gov.

VII. Effective Date and Congressional Notification

13. 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 internal agency procedure and practice and will not substantially affect the rights of non-agency parties.

14. 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 Final Rule concerns only internal agency procedure and practice. Therefore the Commission finds good cause to waive the notice period otherwise required before the effective date of this Final Rule.

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List of subjects in 18 CFR Part 375

The Commission

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

In consideration of the foregoing, the Commission amends Part 375, Chapter I, Title 18, *Code of Federal Regulations*, as follows:

Part 375 – THE COMMISSION

1. 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.

§ 375.303 [Amended]

2. In § 375.303 add paragraph (a)(2)(vi) as follows:

* * * * *

(a)(2)(vi) Issue an order extending the period of time for consideration of a Notice of Penalty filed under Section 215(e) of the Federal Power Act for the purpose of directing the Electric Reliability Organization or the applicable Regional Entity to provide such information as is necessary to implement Section 215(e)(2) of the Federal Power Act (16 U.S.C. 824o(e)(2)) pursuant to § 39.2 and Part 40 of this chapter.

§ 375.311 [Amended]

3. In § 375.311 remove paragraphs (u) and (v) in their entirety.

Document Content(s)

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