

Six comment letters were received, including letters from the National Futures Association; the Futures Industry Association; the CBOE Futures Exchange; the Chicago Board of Trade; the Chicago Mercantile Exchange and Kansas City Board of Trade writing jointly; and Mr. Dennis Gartman. The comments received were studied carefully and are under advisement by the Commission. However, the Commission has yet to take final action on the proposed amendments.

Until such time as the definition of “public director” is finalized, the operational provisions of the Acceptable Practices, which are dependent on the definition, cannot be properly applied by DCMs or enforced by the Commission. Recognizing this fact, and in order to carefully consider its next steps, the Commission has determined to stay the Acceptable Practices for Core Principle 15 adopted on January 31, 2007. Accordingly, the two-year compliance period is also stayed.

#### Related Matters

##### A. Cost-Benefit Analysis

Section 15(a) of the Act requires the Commission to consider the costs and benefits of its actions in advance of issuing any new regulation or order.<sup>2</sup> More specifically, Section 15(a) states that the costs and benefits of a proposed rule or order shall be evaluated with regard to five broad areas of market and public concern: (1) Protection of market participants and the public; (2) efficiency, competitiveness, and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations. In conducting its analysis, the Commission may give greater weight to any one of the five enumerated areas of market and public concern and determine, notwithstanding potential costs, that the implementation of a particular rule or order is necessary or appropriate to protect the public's interest or to effectuate or accomplish any of the provisions or purposes of the Act.<sup>3</sup>

On February 14, 2007, the Commission published its first Acceptable Practices for Core Principle 15. The four-part Acceptable Practices, described above, were designed to facilitate the reduction of conflicts of interest in DCMs' decision making

processes.<sup>4</sup> Although the Acceptable Practices became effective on March 16, 2007, the Commission established a phase-in period for DCMs to implement the Acceptable Practices or to otherwise come into full compliance with Core Principle 15. The phase-in period extended well beyond the date of effectiveness and consisted of the lesser of two years or two regularly scheduled board elections.

On March 26, 2007, the Commission published proposed amendments to one element of the new Acceptable Practices—the definition of “public director.” To date, the Commission has yet to act upon the proposed amendments. The Commission recognizes that the operational provisions of Acceptable Practices cannot be properly applied by DCMs until the definition of “public director” is resolved. Accordingly, the Commission has determined, for the purpose of regulatory clarity, to stay the Acceptable Practices for Core Principle 15 and thereby lift any potential compliance costs associated with those Acceptable Practices.

##### B. Paperwork Reduction Act of 1995

The stay of the effective date of the Acceptable Practices for Core Principle 15 reduces the information collection burden to levels previously approved by the Office of Management and Budget (OMB). The OMB control number for this collection is 3038–0052. The Commission has submitted the required Paperwork Reduction Act Change Worksheet (OMB–83C) to OMB to reflect the change.

##### C. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, requires federal agencies, in promulgating rules, to consider the impact of those rules on small entities. The stay of the effective date for the Acceptable Practices for Core Principle 15 affects DCMs. The Commission has previously determined that DCMs are not small entities for purposes of the Regulatory Flexibility Act.<sup>5</sup> Accordingly, the acting Chairman, on behalf of the Commission, hereby certifies pursuant to 5 U.S.C. 605(b) that the stay of the Acceptable Practices will not have a significant economic impact on a substantial number of small entities.

Therefore, paragraph (b) of Core Principle 15 in Appendix B to 17 CFR part 38 is stayed indefinitely.

Issued in Washington, DC, on November 16, 2007, by the Commission.

**David Stawick,**

*Secretary of the Commission.*

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

#### 18 CFR Parts 375 and 385

[Docket No. RM07–16–000; Order No. 703]

#### Filing Via the Internet

Issued November 15, 2007.

**AGENCY:** Federal Energy Regulatory Commission, DOE.

**ACTION:** Final rule.

**SUMMARY:** The Commission is revising its regulations to provide that all documents will be eligible for filing by means of the Commission's eFiling system, with exceptions to be posted by the Secretary of the Commission on the Commissions Web site.

**DATES:** *Effective Date:* This rule will become effective December 24, 2007. Changes made by this rule to the Commission's eFiling system will be implemented at a later date, to be announced by the Secretary of the Commission.

**FOR FURTHER INFORMATION CONTACT:** Wilbur Miller, Office of General Counsel, 888 First Street, NE., Washington, DC 20426, (202) 502–8953. [wilbur.miller@ferc.gov](mailto:wilbur.miller@ferc.gov).

#### SUPPLEMENTARY INFORMATION:

Before Commissioners: Joseph T. Kelliher, Chairman; Sudeen G. Kelly, Marc Spitzer, Philip D. Moeller, and Jon Wellingshoff.

#### I. Background

1. On July 23, 2007, the Commission issued a Notice of Proposed Rulemaking (NOPR) seeking comments on proposed revisions to its regulations that will enable the implementation of the next version of its system for filing documents via the Internet, eFiling 7.0. *Filing Via the Internet*, 72 FR 42330 (July 23, 2007), FERC Stats. & Regs. ¶ 32,621 (2007). The NOPR proposed to allow the option of filing all documents in Commission proceedings through the eFiling interface except for specified exceptions. The NOPR also sought comments on the possibility of shifting its deadline for filings through the eFiling system from close of business to midnight, and of utilizing online forms to allow “documentless” interventions in all filings and quick comments in P

<sup>2</sup> 7 U.S.C. 19(a).

<sup>3</sup> *Fishermen's Dock Co-op., Inc. v. Brown*, 75 F.3d 164 (4th Cir. 1996); *Center for Auto Safety v. Peck*, 751 F.2d 1336 (D.C. Cir. 1985) (agency has discretion to weigh factors in undertaking costs-benefits analyses).

<sup>4</sup> 72 FR 6936 (February 14, 2007).

<sup>5</sup> See Policy Statement and Establishment of Definitions of “Small Entities” for Purposes of the Regulatory Flexibility Act, 47 FR 18618, 18619 (Apr. 30, 1982).

(Hydropower Project), PF (Pre-Filing NEPA activities for proposed gas pipelines), and CP (Certificates for Interstate Natural Gas Pipelines) proceedings. Finally, the NOPR asked for input on a number of technical issues that will be covered in the instructions for eFiling that will be issued by the Secretary of the Commission. These issues also were the subject of a technical conference that took place on August 22, 2007.

2. This Final Rule adopts the NOPR's proposal to amend the Commission's regulations<sup>1</sup> to provide that all documents filed with the Commission may be submitted through the eFiling interface except for documents specified by the Secretary. This reverses the existing presumption, as the current regulations allow eFiling only of documents specified by the Secretary. The changes we are implementing in this Final Rule mean that categories such as oversized documents and most confidential documents will be accepted via eFiling. At this time, the principal exceptions, as noted in the NOPR, will be tariffs, tariff revisions and rate change applications; some forms;<sup>2</sup> and documents that are subject to protective orders. As stated in the NOPR, for the time being, the Secretary's instructions will specify that submitters file paper copies of oversized and some other documents<sup>3</sup> in addition to the electronic documents.

3. This rulemaking will become effective 30 days after publication in the **Federal Register**, but implementation of eFiling 7.0 will occur at a later date. The Secretary will announce the implementation of the upgrade in advance and will also at that time post filing instructions, as discussed below.

4. This Final Rule implements the proposals, discussed in the NOPR, to institute online forms that would permit optional "documentless" intervention in all proceedings and "quick comments" in P (Hydropower Project), PF (Pre-Filing NEPA activities for proposed gas pipelines), and CP (Certificates for Interstate Natural Gas Pipelines) proceedings. It should be noted that the quick comment and documentless intervention features will

not require revisions to the Commission's regulations. We are not at this time implementing the proposal to move the filing deadline to midnight.

5. Prior to the release of eFiling 7.0, the Secretary will issue instructions specifying formats and other technical parameters, as well as instances in which paper copies will be required. As noted in the NOPR, the Commission has already issued instructions specifying acceptable file formats for filings submitted on CD-ROM, DVD and other electronic media. These can be found at <http://www.ferc.gov/help/submission-guide/electronic-media.asp>. In addition, in some cases Commission staff has issued instructions applying to specific types of filings. Where there are no specifications for a particular type of filing, users must follow the Secretary's instructions. The Commission received useful input on formatting issues both in the comments on the NOPR and in the technical conference. Users of eFiling should bear in mind that changes will inevitably take place as staff implements improvements and technology changes. Staff also receives feedback from users on an informal basis, which it uses to continue improving the system.

6. At this time, the eFiling system will accept documents in their native formats. This will include both text or word processing documents, and other more specialized documents such as spreadsheets and maps. It will also accept text documents in searchable formats, including scanned documents that have been saved in searchable form. As noted above, the Secretary has issued a list of acceptable formats for CD-ROM, DVD and other electronic media, available at <http://www.ferc.gov/help/submission-guide/electronic-media.asp>. This same list will serve as the list of acceptable formats for eFiling 7.0. Submitters will be able to choose a suitable format from that list unless they are instructed otherwise in specific instances by regulation or by direction from Commission staff. Audio and video files will be accepted only in waveform audio format (.wav) for audio content and either audio-video interleave (.avi) or quicktime (.mov) files for video content, except where submitters are specifically instructed otherwise.

7. The NOPR requested comments on the possibility of discontinuing the practice of posting PDF versions of filings in eLibrary that are created by Commission staff. For the time being, we will continue this practice. As discussed in the NOPR, however, users should note that PDF conversions are not always accurate or complete and should not be considered authoritative.

Some documents are not susceptible to conversion at all. The PDF versions will be provided on a "best efforts" basis, so in some cases no PDF version may appear in eLibrary, or there may only be a placeholder file indicating that a PDF version could not be generated.

8. Finally, the NOPR requested comments on whether the Secretary should require documents created electronically by the filer using word processing software be filed in native applications or print-to-PDF format rather than an unsearchable, scanned format. The Secretary's instructions will adopt this proposal. Scanned, non-searchable formats may be used only for documents that cannot, as a practical matter, be put into searchable formats.

## II. Discussion

### A. Expansion of eFiling

9. As stated above, upon implementation of eFiling 7.0 the Commission will accept the electronic filing of all documents through the eFiling interface except for tariff filings, some forms<sup>4</sup> and documents submitted under protective orders. The comments received by the Commission on the expansion of eFiling were uniformly favorable. Some commenters urged us to continue to expand the range of submissions acceptable through eFiling. In some cases, commenters<sup>5</sup> urged us to accept tariff filings through the eFiling gateway, either on a permanent basis or on a temporary basis pending the institution of eTariff, which is the subject of a separate proceeding.<sup>6</sup>

10. We intend, as far as practicable, to continue decreasing our reliance on paper documents and to continue to upgrade eFiling capabilities in furtherance of the Commission's responsibilities under the Government Paperwork Elimination Act.<sup>7</sup> At this time, however, the Commission will not accept tariff filings through the eFiling system. The eTariff rulemaking will remain the forum for addressing the electronic submission of tariff filings with tariff material. However, eFiling may be used to file material in tariff proceedings provided the filing does not contain tariff material. Examples include testimony filed as part of the hearing, Schedules G-1 through G-6,<sup>8</sup> and updated statements such as

<sup>1</sup> Rule 2003(c) of the Commission's Rules of Practice and Procedure, 18 CFR 385.2003(c).

<sup>2</sup> The following will continue to be submitted through eForms: FERC Form No. 1, FERC Form No. 2, FERC Form No. 2-A, FERC Form No. 3-Q, FERC Form No. 6, FERC Form No. 6-Q, Form 60, Form 714, and Electric Quarterly Reports. FERC Form 1-F is currently not included in eForms, so it may be efiled. Open Access Transmission Tariff (OATT) filings may also be efiled.

<sup>3</sup> A list of examples of documents for which the Commission will require paper copies is contained in the Appendix to the NOPR.

<sup>4</sup> See Note 2 *infra*.

<sup>5</sup> Edison Electric Institute (EEL), pp. 4-6; Arizona Public Service Company (APSC), p. 3; Nevada Power Company & Sierra Pacific Power Company (Nevada/Sierra), p. 3.

<sup>6</sup> *Electronic Tariff Filings*, Docket No. RM01-5-000, FERC Stats. and Regs. ¶ 35,551 (2005).

<sup>7</sup> Pub. L. No. 105-277, § 1704, 112 Stat. 2681, 2681-750 (1998).

<sup>8</sup> 18 CFR 154.313(j)(2) (2007).

required by section 154.311 of the Commission's regulations.<sup>9</sup> Also, Natural Gas Act Section 7 certificate filings with *pro forma* tariff sheets may be filed under this version of eFiling 7.0.<sup>10</sup>

11. Some commenters<sup>11</sup> expressed caution about the submission of confidential documents, including a desire for more detail about that function. There was some concern about the ability to alter a document's security designation after it is filed.<sup>12</sup> Some commenters also requested clarification on the procedures for filing protected documents,<sup>13</sup> including the procedures for documents submitted together with requests for protective orders.<sup>14</sup>

12. The anticipated procedure for the submission of confidential documents is as follows: When a user accesses the File Upload screen, the user will see tabs for three submission categories: Public, CEII and Privileged. The files uploaded to each of these tabs will automatically receive an accession number and be marked as Public, CEII or Privileged. The entire eFiling session will be secured so the documents during transmission will be encrypted. The following system checks will be performed during the eFiling process:

- The file size will be checked to ensure the size is not greater than 50MB.
- The file format will be checked to ensure it is a format that FERC can support. The acceptable file format list can be found at the following location: <http://www.ferc.gov/help/submission-guide/electronic-media.asp>.
- Files will be checked for viruses.
- The file name will be checked to ensure it is less than 60 characters including the period, spaces, and file extension (.doc, .xls, .pps, etc.).

If for any reason, the files that have been uploaded fail to pass any one of the checks above, a message will be displayed identifying the issue and the

user will not be permitted to proceed with the filing process.

13. It will not be possible for a user, through eFiling, to change the designation of a file as public, privileged, or CEII after submission of the document. This will only be possible *before* submission, in case the user changes her mind or finds a mistake. Any subsequent redesignation request will have to be made by calling FERC Online Support or the eFiling Help Line. Users should continue to follow the Commission's regulations governing submission of confidential documents.<sup>15</sup> If a user needs to submit both a redacted and a privileged form of a document, the latter should be submitted as privileged and the former as public.

14. In some instances, a document may contain portions that are privileged and other portions that constitute CEII. In such an instance, the CEII portions would be filed as CEII and the privileged portions would be filed separately and designated as privileged. If a portion of a document was both privileged and CEII, it would be filed as privileged because that is the higher security classification.

15. Some parties request the ability to file privileged or CEII material in paper-only format. The Commission notes that this Final Rule only provides filers the option to use eFiling to make filings with the Commission. Filers who do not wish to use eFiling need not do so. To the extent that these commenters are requesting that the Commission permit filers to split their filings into an electronic component and a paper component, the Commission rejects this request. The Commission does not want to assume the responsibility of finding the paper and electronic components of a single filing and reassembling those components for uploading into eLibrary or internal distribution and analysis. Dual format filings create significant potential for errors and delays.<sup>16</sup>

16. To clarify, materials subject to protective orders should not be eFiled because the Secretary's office does not put protected material into eLibrary, as opposed to material filed pursuant to Section 388.112 of the Commission's regulations. The same restriction applies to confidential materials filed with a request for a protective order.

### B. Paper Copies

17. The NOPR proposed to continue to require paper copies of filings

submitted electronically through eFiling 7.0, for instance, oversized documents such as maps, diagrams and drawings. The NOPR explained that due to the size of standard monitors and other hardware and software limitations, it was impractical at this time for the Commission to review certain documents in electronic form. The NOPR also raised the possibility of requiring paper copies for documents over a certain length, such as 500 pages. Some commenters requested that "oversized documents" or "large documents" be defined as those documents larger than 8.5" x 11",<sup>17</sup> 8.5" x 14",<sup>18</sup> or 8.5" x 17".<sup>19</sup> Others asked for further clarifications, such as whether the paper requirement applies only to the oversized portions of documents that also have standard dimensions.<sup>20</sup> Commenters were not in favor of requiring paper copies of long documents.<sup>21</sup>

18. The Secretary's instructions will require paper copies in a specified number of documents larger than 11" x 17". This is a standard dimension for "oversized" documents. If a document contains both oversized and standard dimensions, only the former need be filed on paper. Paper copies of long documents, *i.e.*, documents longer than a specified number of pages, will not be required. Further specifics will be contained in the instructions to be issued by the Secretary. Over time, as we upgrade our capabilities, we expect to be able to reduce the necessity of filing paper copies.<sup>22</sup>

19. In response to the comments about the timing of submission of paper copies, we wish to state clearly the roles played by the paper and electronic copies. The revisions made in this Final Rule, in 18 CFR 385.2003(c)(1), will provide that "filing via the Internet is in lieu of other methods of filing." Thus, the electronic copy will be the "filed" copy. This will be the copy to which the Commission looks for matters such as determining timeliness. Paper copies will be required in some instances because they are currently necessary for FERC staff to carry out its functions. The Secretary's instructions will specify the

<sup>17</sup> Williston Basin, p. 7.

<sup>18</sup> Pacific Gas & Electric Company (PG&E), p. 4.

<sup>19</sup> INGAA, p. 5.

<sup>20</sup> MISO, p. 3. PG&E, p. 3, asked for clarification of the timeframe and dimensions, while INGAA, pp. 4-5, asked that the paper copies be due after an accession number is assigned. SoCal, pp. 3-4, urged that eFiling not be required where paper copies are submitted. This will necessarily be the case, because the Commission is not at this time making eFiling mandatory.

<sup>21</sup> INGAA, pp. 5-6; SoCal, p. 3; Nevada/Sierra, p. 5; PG&E, pp. 4-5; Williston Basin, pp. 7-8.

<sup>22</sup> See comments of Nevada/Sierra, p. 4.

<sup>9</sup> 18 CFR 154.311 (2007).

<sup>10</sup> Interstate Natural Gas Association of America (INGAA), Appendix A, pp. 2 and 3, requests clarification of which part of certificate and tariff filings would be filed utilizing eFiling 7.0, and which part would be filed under the eTariff procedures. The eTariff requirements are not complete, thus it is premature to speculate as to what the electronic filing process for filings with tariffs will be. At this time, however, tariff filings cannot be split between electronic and paper filings. No part of a tariff filing will be accepted through eFiling 7.0.

<sup>11</sup> EEI, pp. 6-7; Enbridge Energy Partners, L.P. and Enbridge, Inc. (Enbridge), pp. 3-5; Midwest Independent Transmission System Operator, Inc. (MISO), pp. 2-3; Southern California Edison Company (SoCal), pp. 2-3; Williston Basin Interstate Pipeline Company (Williston Basin), p. 6.

<sup>12</sup> American Rivers, pp. 1-2.

<sup>13</sup> INGAA, p. 3; MISO, pp. 2-3; Williston Basin, pp. 6-7.

<sup>14</sup> EEI, pp. 6-7.

<sup>15</sup> 18 CFR 388.112.

<sup>16</sup> The Commission notes that filers can make separate, free-standing, paper-only and electronic only filings in the same proceeding.

time by which the paper copies must be submitted.

### C. File Formats

20. The NOPR raised the possibility of discontinuing our practice of creating PDF versions of documents in eLibrary.<sup>23</sup> In conjunction with this possibility, the NOPR requested comments on several alternative requirements for file formats of documents submitted through eFiling. The three alternatives noted were: Requiring that all word processing filings be made in open file formats, such as text, html, rtf, or possibly PDF; permitting filings in open file formats as well as in certain Microsoft Office formats; and requiring that documents created with proprietary software be filed in the proprietary software along with an open source format. The NOPR also discussed the possibility of prohibiting the practice of filing non-searchable, scanned versions of documents created in native formats.

21. Generally speaking, commenters opposed any requirement that documents be filed in more than one format.<sup>24</sup> Some commenters favored retention of FERC-created PDFs<sup>25</sup> or otherwise expressed a preference for some sort of open file format to maximize accessibility of documents to the public.<sup>26</sup> Preferences between native and converted formats varied. Some commenters favored prohibiting the practice of scanning documents and filing them in non-searchable formats.<sup>27</sup> Some noted that data-oriented documents such as spreadsheets lose much of their utility if not filed in their native formats.<sup>28</sup> Others expressed a preference for filing scanned, non-searchable documents, in PDF format, in some cases out of concern that the documents could be manipulated.<sup>29</sup>

22. Based on the comments received, we will continue to create PDF versions of submitted documents in eLibrary on

a “best efforts” basis. This practice assures that users who may lack specific proprietary software will be able to access documents most of the time. As noted above, however, some documents cannot be converted to PDF successfully and thus some conversions will not be entirely accurate or complete. The FERC-created PDFs should not be considered authoritative. Persons submitting documents through eFiling will have the option of filing in any format listed as acceptable by the Secretary.

23. The Secretary’s instructions will require PDF files that are submitted to be produced in a manner that retains the ability to search the document (“print-to-PDF”), except in cases where it is impracticable for the filer to do otherwise. This is often the case with exhibits, for example. The search feature provides the Commission and the public access to tools that permit faster searches, increased accuracy, and enhanced analytical and processing capabilities that modern software technology provides.<sup>30</sup>

24. Submission of text documents will be permissible in native or in searchable format. We will not require submission of text documents in both native and open formats. In most cases, submission of text documents in their native formats is the simplest option. Not all users possess the same degree of technical knowledge. Requiring conversion of documents to open formats might serve as a barrier to the use of the eFiling system for some users, a possibility that runs counter to the underlying purpose of the system.

25. Submission of spreadsheets in native format will be required. Some commenters expressed concern that spreadsheets in native format may contain formulas and other data that are confidential.<sup>31</sup> One commenter argues further that formula and data may contain proprietary information, and that a native format requirement may contravene the Interstate Commerce Act prohibition against disclosing individual shipper information. That commenter believes the requirement to provide formulas may lead to less publicly available data.<sup>32</sup>

26. The Commission addressed these issues before. In Order No. 582, the Commission required pipelines filing rate cases pursuant to Part 154 of the Commission’s regulations to file data

and allocation and rate design formulas in electronic formats. The Commission found that formulas facilitate an understanding of the applicant’s positions and reduce the requirement for subsequent data requests. The Commission went on to note that the requirement was not to submit the whole rate case in spreadsheet format.<sup>33</sup> The same will be true here. The Commission is simply providing a different means by which data requirements may be submitted, not changing the requirements themselves. A filer still may request confidential treatment. In such cases, the data sets and spreadsheets should be submitted in both privileged, unredacted form and in public, redacted form, pursuant to 18 CFR 388.112.<sup>34</sup> Depending on the application and the information being redacted, a redaction might be accomplished by filing a print to PDF or a scanned, searchable document, by converting a spreadsheet to values-only form, or by some other means. It would be up to the filer to choose an appropriate means of protecting its information in requesting confidential treatment under the Commission’s regulations.

27. We do not agree with the concerns that documents may be altered. There is no reason to believe that users will be able to compromise the Commission’s system and alter files in eLibrary. Furthermore, if a user downloads a document from eLibrary and alters it for the user’s own purposes, the authoritative document will remain in eLibrary to refute the alteration. We also do not believe that the desire to include a scanned signature is sufficient to outweigh the greater usefulness of searchable documents. As stated in the NOPR, the Commission’s regulations provide for electronic signatures, so an image of a signature is not necessary for purposes of verification. For submitters who still see a need for an image of a handwritten signature, we note that it is possible to insert an image into a Word document. Moreover, filers that previously scanned documents into PDF format can produce a print-to-PDF searchable document and attach a single scanned signature page.

### D. Quick Comment and Documentless Intervention

28. The NOPR’s proposal to implement online forms that would allow users to intervene in Commission proceedings without filing separate

<sup>23</sup> Some commenters referred to FERC-created Text documents as well as PDF documents. Users should note that FERC creates Text versions only of Commission issuances. It does not create such versions of documents submitted through eFiling.

<sup>24</sup> American Gas Association (AGA), p. 1 (word processing documents); EEL, pp. 7–8; FirstEnergy Companies (FirstEnergy), pp. 6–7; Nevada/Sierra, pp. 6–7; SoCal, p. 4; Williston Basin, pp. 8–9; INGAA, p. 8; Enbridge, pp. 7–8.

<sup>25</sup> AGA, pp. 5–6; EEL, pp. 7–9; Bonneville Power Administration (Bonneville), p. 2; PG&E, pp. 5–6; American Rivers, pp. 2–3; U.S. Department of the Interior (Interior), p. 1; INGAA, p. 7; Nevada/Sierra, p. 6.

<sup>26</sup> American Rivers, pp. 3–4.

<sup>27</sup> AGA, p. 5; American Rivers, p. 4; Nevada/Sierra, p. 7; MISO, p. 4; SoCal, p. 4; EEL, p. 8.

<sup>28</sup> American Rivers, pp. 3–4.

<sup>29</sup> PJM Interconnection, L.L.C. (PJM), p. 2; MISO, p. 4; Interior, p. 1.

<sup>30</sup> The Commission notes that PG&E’s PDF posting is an excellent example of such a document: [http://elibrary.ferc.gov/idmws/doc\\_info.asp?document\\_id=13543136](http://elibrary.ferc.gov/idmws/doc_info.asp?document_id=13543136).

<sup>31</sup> MISO, p. 4; PJM Interconnection, p. 3; Enbridge, p. 8.

<sup>32</sup> 32 Enbridge, p. 8.

<sup>33</sup> *Filing and Reporting Requirements for Interstate Natural Gas Company Rate Schedules and Tariffs*, Order No. 582, FERC Stats. and Regs., ¶ 31,025, p. 31,435 (1995).

<sup>34</sup> See Order No. 582 at pp. 31,412–413, 31,435.

documents and to submit comments easily in P (Hydropower Project), PF (Pre-Filing NEPA activities for proposed gas pipelines), and CP (Certificates for Interstate Natural Gas Pipelines) proceedings drew support from some commenters<sup>35</sup> and opposition from a smaller number. Some commenters objected to these features as unneeded.<sup>36</sup> Some commenters expressed concern that there should be some provision for prompt service of interventions and comments submitted through the proposed online forms.<sup>37</sup> One commenter requested that users submitting quick comments be required to provide mailing addresses and other information.<sup>38</sup> Another suggested that the quick comment feature be extended to include electric matters and rulemakings.<sup>39</sup>

29. Both features are sufficiently useful to justify their implementation. Documentless intervention, which will be available for all proceedings, will provide a simple method of intervening. The filer and text for all documentless interventions will be placed on eLibrary to permit challenges to intervention. We believe that the quick comment feature will make it easier for individuals who are not intimately familiar with Commission procedures to submit comments. This added convenience should primarily impact proceedings in which landowners may wish to comment, which is the reason we will restrict this feature to the proceedings listed in the preceding paragraph. We will consider expanding the availability of the feature in the future. We will not require quick comment submitters to include mailing addresses, a potential invasion of privacy that is not warranted. With respect to service of interventions and comments, these features will not involve changes to the Commission's regulations. Any regulations governing service will continue to apply. Furthermore, the use of eSubscription should suffice to ensure that interested persons receive prompt notice of these submissions.

#### E. Midnight Filing

30. Comments were mixed on whether to regard documents submitted through eFiling as having been filed on a specific day as long as the document is received on or before midnight

<sup>35</sup> AGA, p. 4; American Rivers, pp. 4–5; Enbridge, p. 11; PG&E, pp. 7–8; Spectra Energy Transmission, LLC (Spectra) (quick comment only), p. 3; INGAA, pp. 9–10.

<sup>36</sup> FirstEnergy (quick comment only), pp. 3–5; Nevada/Sierra, pp. 7–8; EEL, pp. 14–16.

<sup>37</sup> EEL, p. 15; Enbridge, p. 11; SoCal, p. 5.

<sup>38</sup> INGAA, p. 10.

<sup>39</sup> PG&E, p. 7.

Eastern Standard Time of that day. While some commenters favored the change,<sup>40</sup> a larger number either favored it only under specified conditions or opposed it altogether.<sup>41</sup> The objections included the personal hardship of late-hour filing, unfairness to paper filers, and the possibility that some filers would use the opportunity to file improper reply comments in response to comments filed earlier in the day. Some commenters suggested that if we moved the deadline, we should ensure that comments would not be visible to the public in eLibrary until the next day. Others were concerned that the eFiling system could be unavailable to a user facing a deadline after it was too late to make a paper filing. We also received suggestions that move the deadline to an intermediate hour,<sup>42</sup> such as 8 p.m. Eastern Time, as an accommodation to users in Western time zones.

31. Based on the concerns raised in the comments, we will not at this time alter the filing deadline. It will remain at close of business, i.e., 5 p.m. Eastern Time.

#### F. Miscellaneous Comments

32. On August 22, 2007, the Commission hosted a technical conference that discussed the proposed changes to electronic filing and electronic file and document format instructions that are associated with this proceeding. The conference was conducted in two sessions. Session 1 presented an overview of the electronic filing submission instructions that will apply universally. Session 2 was divided into sections that discussed information that is specific to each industry.

33. We received some comments on various technical aspects of documents submitted through eFiling, many of which were discussed during the technical conference.<sup>43</sup> These comments will be taken into account by Commission staff<sup>44</sup> in developing and revising the filing instructions that the Secretary will issue. The instructions for eFiling are an ongoing process, as staff often receives feedback on the system from users, including comments

<sup>40</sup> APSC, p. 3; Bonneville, p. 2; Spectra, p. 4.

<sup>41</sup> AGA, pp. 6–8; INGAA, pp. 11–12; FirstEnergy, pp. 2–3; Mill, Balis & O'Neil, P.C., pp. 1–4; Phillip Marston, p. 1; PJM Interconnection, p. 3–4; PJM Transmission Owners, pp. 2–6; Nevada/Sierra, p. 8; MISO, p. 5; Williston Basin, pp. 9–12; Enbridge, pp. 11–13; EEL, pp. 16–17.

<sup>42</sup> PJM Transmission Owners, p. 6; SoCal, pp. 5–6.

<sup>43</sup> PG&E, pp. 6–7; PJM, p. 3; EEL, pp. 11–14.

<sup>44</sup> The Appendix contains the comments on the draft document manual that was discussed at the technical conference, as well as the Commission's responses.

received informally during outreach efforts that give users an introduction to various aspects of FERC Online.<sup>45</sup> The delegated authority the Commission is giving the Secretary to make changes to the various requirements to make an electronic filing through the notice process will permit these instructions to be updated in a timely manner in response to user needs and changes in FERC's technological capabilities.<sup>46</sup>

34. INGAA proposes that the pipeline's Index of Customers report, already an electronic-only filing, be made through eFiling 7.0.<sup>47</sup> The Commission agrees.

35. INGAA and PG&E<sup>48</sup> request that the Commission hold additional technical conferences to review both the proposed instructions applicable to electronic documents in general and existing electronic document instructions, and software techniques that may assist filers in creating documents that satisfy the filers' objectives. Further conferences should not be necessary. The Secretary engages in outreach with the public to review new or existing electronic document or submission instructions. This outreach often generates feedback that Commission staff takes into account in managing the system.

36. Some commenters made suggestions for improvements in the Commission's online systems. These included requests that we take steps to ensure that each entity in the eRegistration system has only one registration<sup>49</sup> and that we institute an automated service feature for service among participants.<sup>50</sup> The problem of multiple registrations, specifically with entities being registered more than once under slightly different names, is an issue that we hope to address in the future. Similarly, an automated service feature would add value for users and we hope to be able to institute such a feature as we upgrade the system.

#### III. Information Collection Statement

37. Office of Management and Budget (OMB) regulations require OMB to approve certain information collection requirements imposed by agency rule.<sup>51</sup> This Final Rule does not contain any

<sup>45</sup> One commenter, Enbridge, pp. 10–11, expressed concern about file naming conventions. Users should be aware that naming conventions will change with eFiling 7.0, a change that will be spelled out in the Secretary's instructions.

<sup>46</sup> Williston, p. 5.

<sup>47</sup> INGAA, App. A, p. 5.

<sup>48</sup> INGAA, pp. 2–3, App. A, pp. 4–8; PG&E, pp. 6–7.

<sup>49</sup> Enbridge, pp. 6–7.

<sup>50</sup> EEL, pp. 10–11.

<sup>51</sup> 5 CFR 1320.12.

information collection requirements and compliance with the OMB regulations is thus not required.

**IV. Environmental Analysis**

38. 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.<sup>52</sup> Issuance of this Final Rule does not represent a major federal action having a significant adverse effect on the quality of the human environment under the Commission's regulations implementing the National Environmental Policy Act. Part 380 of the Commission's regulations lists exemptions to the requirement to draft an Environmental Analysis or Environmental Impact Statement. Included is an exemption for procedural, ministerial or internal administrative actions.<sup>53</sup> This rulemaking is exempt under that provision.

**V. Regulatory Flexibility Act**

39. The Regulatory Flexibility Act of 1980 (RFA)<sup>54</sup> 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 procedural matters and is expected to increase the ease and convenience of filing. The Commission certifies that it will not have a significant economic impact upon participants in Commission proceedings. An analysis under the RFA is not required.

**VI. Document Availability**

40. 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://www.ferc.gov>) and in the Commission's Public Reference Room during normal business hours (8:30 a.m. to 5 p.m. Eastern time) at 888 First Street, NE., Room 2A, Washington, DC 20426.

41. 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 in the docket number field.

42. User assistance is available for eLibrary and the Commission's Web site during normal business hours from FERC Online Support at 202-502-6652 (toll free at 1-866-208-3676) or e-mail at [ferconlinesupport@ferc.gov](mailto: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](mailto:public.referenceroom@ferc.gov).

**VII. Effective Date and Congressional Notification**

43. These revisions are effective December 24, 2007. Changes made by this Final Rule to the Commission's eFiling system will be implemented at a later date to be announced by the Secretary.

44. 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.

**List of Subjects**

18 CFR Part 375

Authority delegations (Government agencies), Seals and insignia, Sunshine Act.

18 CFR Part 385

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

By direction of the Commission.

**Kimberly D. Bose,**

*Secretary.*

■ In consideration of the foregoing, the Commission amends Parts 375 and 385, 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, 16451-16463.

■ 2. Section 375.302 is amended by revising paragraph (z) to read as follows:

**§ 375.302 Delegations to the Secretary.**

\* \* \* \* \*

(z) Issue instructions pertaining to allowable electronic file and document formats, the filing of complex documents, whether paper copies are

required, and procedural guidelines for submissions via the Internet, on electronic media or via other electronic means.

**PART 385—RULES OF PRACTICE AND PROCEDURE**

■ 3. 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-825v, 2601-2645; 28 U.S.C. 2461; 31 U.S.C. 3701, 9701; 42 U.S.C. 7101-7352, 16441, 16451-16463; 49 U.S.C. 60502; 49 App. U.S.C. 1-85 (1988).

■ 4. Section 385.2001 is amended by revising paragraph (a)(1)(iii) to read as follows:

**§ 385.2001 Filings (Rule 2001).**

(a) *Filings with the Commission.*

(1) \* \* \*

(iii) By filing via the Internet pursuant to Rule 2003 through the links provided at <http://www.ferc.gov>.

\* \* \* \* \*

■ 5. Section 385.2003 is amended by revising paragraphs (c)(1) and (c)(2) to read as follows:

**§ 385.2003 Specifications (Rule 2003).**

\* \* \* \* \*

(c) *Filing via the Internet.* (1) All documents filed under this Chapter may be filed via the Internet except those listed by the Secretary. Except as otherwise specifically provided in this Chapter, filing via the Internet is in lieu of other methods of filing. Internet filings must be made in accordance with instructions issued by the Secretary and made available online at <http://www.ferc.gov>. Provisions of this chapter or directions from the Commission containing requirements as to the content and format of specific types of filings remain applicable.

(2) The Secretary will make available on the Commission's Web site a list of document types that may not be filed via the Internet, as well as instructions pertaining to allowable electronic file and document formats, the filing of complex documents, whether paper copies are required, and procedural guidelines.

\* \* \* \* \*

**Note:** The following Appendix will not appear in the Code of Federal Regulations.

**Appendix**

<sup>52</sup> 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).

<sup>53</sup> 18 CFR 380.4(1) and (5).

<sup>54</sup> 5 U.S.C. 601-612.

## COMMENTS ON DOCUMENT MANUAL

No.	Commenter	Manual ¶	Comment	Response
1	EEl, p. 12 INGAA, App. A, p. 5.	4.B and 4.E.c ...	Consistent with Staff's comments at the technical conference, the instructions should be read as not requiring, but only encouraging, the use of automatic table of contents and booking marking functions, and that not using these features will not result in rejection of the filing.	The Commission agrees with regard to the general instructions. However, to the extent that there are regulations that require table of contents in a document, then these software features should be used.
2	EEl, p. 12	4.C	EEl requests clarification that spreadsheets do not need to be submitted in native file format if no formulas are included.	The Commission clarifies that the instruction is written broadly. EEl's proposal could be implemented in a manner that could inhibit the ability to view and analyze the data. The Commission will permit such submissions, but will monitor the manner in which filers use this flexibility.
3	EEl, p. 12	4.D	This instruction should be corrected to include both spreadsheets and text files in the list of exceptions, as they are covered by other instructions.	EEl is correct.
4	INGAA, App. A, p. 6	4.E	Clarify that it is acceptable to use the "Insert" feature of PDF applications during the creation of an electronic file.	The Adobe "Document/Insert" function is acceptable.
5	EEl, p. 13	5	There is no need to include a transmittal letter and, indeed, it should be discouraged, when a single document filing is made. Further, the Commission should encourage the use of a single electronic document file and require the use of the label "Transmittal Letter" only when multiple and separate electronic documents are filed.	The Commission clarifies that the term "Transmittal Letter" as used in the instructions is solely for the purpose of the eFiling software to identify the requisite lead public document for filings consisting of several documents. It does not have the same definition as used in several sections of the Commission regulations. The contents of the "Transmittal Letter" electronic file can go beyond the content requirements of a transmittal letter as provided for in the regulations.
6	Enbridge, pp. 10-11	5-10	The Commission should clarify the effect that the file naming conventions will have on existing file naming conventions.	The example provided by Enbridge is related to the Index of Customers. Consistent with finding that the Index of Customers may be eFiled, the Secretary will modify the acceptable electronic file list.
7	EEl, p. 13	6	The word "tariff" should be removed from the instruction.	It will be corrected.
8	Enbridge, p. 10; INGAA, App. A, p. 6.	6	The proposed 60 character limit needs to be reflected in other eFiling documents, and the Commission should clarify whether characters other than alpha-numeric are permitted in file names.	The Secretary will update other eFiling documentation to reflect this and other changes.
9	EEl, p. 13	6 and 8	The DOS file name character limit should be followed only by persons using DOS. Otherwise, more user-friendly names should be used.	No change is necessary.
10	EEl, p. 13	11 and 14	The instructions should be modified to reflect the format requirements of § 385.2003. If the intent is to relax these regulations, then the regulations should be rewritten. If there are any documents to which § 385.2003 does not apply, the instructions should note them.	There are hundreds of different types of documents filed with the Commission. The instructions are meant to be flexible and not prescriptive for all possible documents. The Commission will monitor how filers' documents appear and their utility. If changes to either the instructions or regulations are necessary, either the Secretary or the Commission will propose the necessary modifications.
11	EEl, p. 14	12	Instruction should note that it does not apply to text filings, nor testimony or exhibits where the ALJ typically dictates header format.	The Commission clarifies that the required information should be shown at least once at the beginning of every document. Readers should not have to rely on the Commission's eLibrary to determine the source of the document. ALJs may impose additional requirements.
12	EEl, p. 14	12	The use of "et al." should be permitted with the company name.	The Commission so clarifies.

COMMENTS ON DOCUMENT MANUAL—Continued

No.	Commenter	Manual ¶	Comment	Response
13	Enbridge, p. 10	12	With regard to the location of data in the headers and footers, clarify that if there is no specific instruction for the data's location, it may be placed in any location in the header.	See item 11 above.
14	Enbridge, p. 10; INGAA, App. A, pp. 7-8.	13	Clarify the meaning of "hard-keyed" headers or footers in tab-delimited or native format data files, and whether this requirement is applicable to headers and footers created by text programs such as Word.	Most native format data files and some spreadsheet files should not have hard-keyed headers or footers, as they disrupt the analysis and manipulation of the contents. The instruction is not relevant for text files, where the word processor normally manages headers and footers separate from the text content.
15	EEl, p. 14 PJM, p. 3	17	EEl notes that the last sentence is in error and should be deleted; whereas PJM is concerned about the implications this instruction may have with regard to access to its internal data.	EEl is correct, the last sentence should be struck. This moots PJM's concern.
16	EEl, p. 14 INGAA, App. A, p. 5-6.	28.d	Clarify the use and appearance of hyperlinks in an electronic document, and whether their use will result in a rejection of the filing.	The Commission clarifies that parties may not use hyperlinks as a means to include items as part of the record they intend to rely upon. Hyperlinks may be used as part of citations, and word processor conversions into hyperlinks were not the focus of this instruction.
17	INGAA, App. A, p. 3	passim	INGAA notes that the Commission's Part 154 electronic document instructions date from 1977[sic]. INGAA requests that those instructions be updated to reflect some of the flexibility offered by the new general instructions for electronic documents.	While beyond the scope of this proceeding, INGAA should contact the Secretary with a list of suggested changes and procedures.

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**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Food and Drug Administration**

**21 CFR Part 558**

**New Animal Drugs For Use in Animal Feeds; Ractopamine**

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Elanco Animal Health. The supplemental NADA provides for an increased level of monensin in two-way combination Type B and Type C medicated feeds containing ractopamine hydrochloride and monensin for cattle fed in confinement for slaughter.

**DATES:** This rule is effective November 23, 2007.

**FOR FURTHER INFORMATION CONTACT:** Daniel A. Benz, Center for Veterinary

Medicine (HFV-126), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301-827-0223, e-mail: [daniel.benz@fda.hhs.gov](mailto:daniel.benz@fda.hhs.gov).

**SUPPLEMENTARY INFORMATION:** Elanco Animal Health, A Division of Eli Lilly & Co., Lilly Corporate Center, Indianapolis, IN 46285, filed a supplement to NADA 141 225 that provides for use of OPTAFLEXX (ractopamine hydrochloride) and RUMENSIN (monensin USP) Type A medicated articles to make dry and liquid two-way combination medicated feeds for cattle fed in confinement for slaughter. The supplemental NADA provides for an increased level of monensin in combination Type B and Type C medicated feeds. The supplemental NADA is approved as of October 30, 2007, and the regulations in 21 CFR 558.500 are amended to reflect the approval.

In accordance with the freedom of information provisions of 21 CFR part 20 and 21 CFR 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Division of Dockets Management (HFA-305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9

a.m. and 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.33(a)(2) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor environmental impact statement is required.

This rule does not meet the definition of "rule" in 5 U.S.C. 804(3)(A) because it is a rule of "particular applicability." Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801-808.

**List of Subjects in 21 CFR Part 558**

Animal drugs, Animal feeds.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under the authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 558 is amended as follows:

**PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS**

■ 1. The authority citation for 21 CFR part 558 continues to read as follows:

**Authority:** 21 U.S.C. 360b, 371.