

110 FERC ¶61,110
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

18 CFR Parts 5, 16, 156, 157, 385

Order No. 653

(Docket No. RM04-9-000)

Electronic Notification of Commission Issuances

(Issued February 10, 2005)

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final Rule.

SUMMARY: The Federal Energy Regulatory Commission is amending its regulations to provide for electronic notification of Commission issuances to service list recipients. In most instances, the Commission will now send such notices by e-mail. This change will increase the speed with which participants receive notice, reduce the Commission's costs, and provide for more accurate service lists. Allowance will be made for participants who are unable to utilize e-mail. Other revisions to the Commission's regulations will allow it to send electronic notifications to mailing list recipients once a system for doing so becomes operational. This final rule also makes revisions that are intended to increase the utilization of electronic forms of service between participants, and to clarify the Commission's regulations to ensure that documents with certification or verification requirements may be filed electronically.

EFFECTIVE DATE: The rule will become effective on March 21, 2005.

FOR FURTHER INFORMATION CONTACT:

Wilbur Miller
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, DC 20426

(202) 502-8953

SUPPLEMENTARY INFORMATION:

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. RM04-9-000

ORDER NO. 653

FINAL RULE

(Issued February 10, 2005)

1. On June 23, 2004, the Commission issued a Notice of Proposed Rulemaking (NOPR) requesting comments on proposed revisions to its regulations regarding service of documents. Electronic Notification of Commission Issuances, 107 FERC ¶ 61,311, FERC Stats. & Regs. ¶ 32,574 (2004). The Commission, in the NOPR, proposed to begin serving notice of Commission issuances to persons on service and mailing lists via e-mail rather than postal mail, with exemptions for persons unable to receive notice electronically. The NOPR also proposed to make service by electronic means the standard form of service in Commission proceedings, and to clarify the Commission's regulations to ensure that documents with signature certification or verification requirements could be filed electronically.

I. Background

2. The NOPR's proposal, which this Final Rule adopts, was to initiate in early 2005 an eService program that will require each person on a service list to provide an e-mail address, registered through the Commission's eRegistration system, at which that person can receive notification of Commission issuances. The Commission views this program as an important element in its efforts to reduce the use of paper in compliance with the Government Paperwork Elimination Act.¹ This revision is intended to provide faster notification to participants in Commission proceedings while also reducing the Commission's mailing costs.

3. This Final Rule implements the eService system by amending Rule 2010² to require persons eligible to receive service to eRegister pursuant to 18 C.F.R. § 390.1 (2004). This requirement applies only to proceedings initiated on or after March 21, 2005. A person submitting an initial filing on behalf of one or more participants will designate the official contact for those participants on the service list. That person will, however, be able to designate additional contacts who will also be included on the service list if they are eRegistered. Persons for whom electronic notification is impractical may apply for a waiver and register by a paper form, as provided in 18 C.F.R. § 390.3 (2004). Such persons will receive postal mail notification.

¹ 44 U.S.C. § 3504.

² 18 C.F.R. § 385.2010 (2004).

4. As a backup in the early stages of the eService system, the Secretary will continue to send copies of Commission issuances by postal mail. This will continue for three months from the time this Final Rule becomes effective, after which notification will be solely by e-mail to contacts who are fully eRegistered, unless a waiver or exemption applies.

5. In addition to service by the Commission, this final rule adopts the NOPR's proposal to make electronic service the standard form of service under Rule 2010(f).³ The Commission is amending its service rule to provide that, with the exception of those who are unable to receive such service, senders and recipients will serve documents upon one another by electronic means unless they agree otherwise.

6. The Commission will not at this time be implementing the system, proposed in the NOPR, of electronic notification for persons on the Commission's various mailing lists. It will, however, do so in the future. As explained in the NOPR, the Commission maintains a variety of mailing lists that it utilizes to inform potentially affected persons of certain developments in proceedings related to hydroelectric projects and natural gas facilities. Recipients include state and federal agencies, elected officials, Indian tribes, landowners, and other potentially interested persons and entities. The Commission intends to institute a system whereby mailing list recipients are given the ability to sign up to receive e-mail notifications of matters in which they might have an interest. There will be an option for receipt of postal

³ 18 C.F.R. § 385.2010(f) (2004).

notification for persons for whom electronic notification is impractical. The Commission will provide further information to the public once the manner in which this system will operate has been established.

7. The Commission is adopting in this Final Rule the regulatory revisions that the NOPR proposed to facilitate electronic notification to mailing list recipients. These revisions do not place any requirements on such recipients and thus can be adopted now, without need for a further rulemaking once the Commission has determined the precise manner in which electronic notification will work. The Commission is revising the following sections of 18 C.F.R.:

- § 5.4(b)(1)(iii)—Request for acceleration of license expiration date.
- § 5.8(e)(3)—Commencement of proceeding and scoping document, or approval to use traditional licensing process or alternative procedures.
- § 5.19(c)(2)—Tendering notice and schedule.
- § 16.6(d)(1)(iii)—Notification under Section 15 of the Federal Power Act.
- §§ 16.9(d)(1)(iii), (d)(2)(ii)—License applications under Sections 14 and 15 of the Federal Power Act.
- § 156.8—Applications for orders under Section 7(a) of the Natural Gas Act.
- § 157.9—Applications for certificates of public convenience and necessity and for orders approving abandonment under Section 7 of the Natural Gas Act.

8. Finally, the Commission is adopting the NOPR's proposal to revise Rule 2003(c)⁴ to provide specifically that any requirement for certification, notarization, verification, or any similar means by which a witness represents that his statement is true, may be satisfied through the provisions of 28 U.S.C. § 1746. Consequently, a declaration under penalty of perjury will suffice for verification purposes. Under Rule 2005(c),⁵ the typed characters of the signer's name are sufficient to show that that person signed an eFiled document. These two provisions, taken together, will remove potential barriers to the electronic filing of documents requiring signature and verification. The Commission is requiring, however, that a document with an original signature be maintained by the submitter until the relevant proceeding has been concluded.

II. Comments and Discussion

9. The Commission received eleven comments on the NOPR.⁶ The commenters were uniformly positive about the proposal in general and offered a number of suggestions for features that they believe will improve the utility and efficiency of the system. As explained below, the Commission in some cases has incorporated these suggestions in the system that will become operational by March 21, 2005. In other cases, the Commission intends to add the suggested features, or similar ones, in the future. The eService system that will be released when this rulemaking becomes

⁴ 18 C.F.R. § 385.2003(c) (2004).

⁵ 18 C.F.R. § 385.2005(c) (2004).

⁶ Comments are listed in Appendix A.

effective will not be the final iteration, as the Commission will endeavor on an ongoing basis to improve all of its information systems in ways that will add value to the public. The Commission will make public announcements as further enhancements become available. The comments that the Commission received, as well as other forms of input from users of its online systems, will continue to play an important role in its efforts to provide information quickly and efficiently to industry and the public.

10. Some commenters also requested clarification or further explanation of the system's operation. These comments also are addressed below.

A. Basic Requirements of eService.

11. Several commenters⁷ suggest that the system be designed to serve filings automatically upon persons included in the service list. The Commission agrees that this feature would add considerable value to the system by making it unnecessary in most cases for the filer to serve documents. It will not be possible to include this feature in the system by the effective date of this rulemaking, but the Commission may add it via a subsequent rulemaking.

12. One of the more difficult issues presented by the conversion to electronic service, and one addressed by many commenters,⁸ is the question whether e-mail

⁷ Edison Electric Institute (EEI), p. 7; Spiegel & McDiarmid, p. 7; Sullivan & Worcester, LLP. (Sullivan & Worcester), pp. 3-4.

⁸ FPL Group, Inc. (FPL Group), pp. 2-3; Interstate Natural Gas Association of America, pp. 1-2; Miller, Balis & O'Neil, P.C. (Miller, Balis), p. 2; Missouri Public Service Commission (MPSC), pp. 3-4; NiSource, Inc., pp. 3-4; Spiegel & McDiarmid,

notifications should link to a document in the Commission's eLibrary database or, instead, contain the served document as an attachment. Each solution presents a potential difficulty: filed documents are not always available immediately in eLibrary, and attachments may become voluminous and overburden a recipient's e-mail system, particularly in a proceeding in which numerous filings may be due on a specific date.

13. The Commission is revising Rule 2010 to provide that the person responsible for making service may do so by sending a link to the document in the Commission's eLibrary system or by alternate means that are reasonably calculated to make the document available to the recipients. Service of a link to eLibrary will be easy to accomplish. When a document is filed electronically, the person making the filing will receive a confirmation e-mail. The e-mail contains a link to the document. Even though the document will not yet be in eLibrary, the same link will take a viewer to the document once it is in eLibrary. Therefore, the person making the filing may simply forward the confirmation e-mail to the recipients on the service list. In rare instances, there may be some delay before a document becomes available in eLibrary. The revisions therefore provide that, where a document does not become available within two business days, the sender must provide service immediately by alternate means.

14. The revised Rule 2010 leaves open the possibility that participants may wish to employ means of service other than links to eLibrary. In many cases, participants may wish to use means such as service of documents as attachments or service of links to web sites operated by the filing participant. Although the rule will not require participants to agree on alternate means of service, the Commission anticipates that in most proceedings, participants will voluntarily settle upon some mutually acceptable means. Alternate means of service are being employed now in many proceedings before the Commission. In some larger proceedings, Commission staff currently is establishing listservs on which parties may post filings, making them quickly and conveniently available to all parties in a proceeding. Available technology offers numerous means of exchanging documents quickly and efficiently. The Commission is loath to constrain the ability of participants in its proceedings to take advantage of such technology and is confident that participants will cooperate with one another in doing so to the greatest possible degree.

15. Several commenters⁹ suggest the use of standardized language in the subject line of e-mails for service both by the Commission and by participants. Such a requirement would make it easier for participants to set e-mail filters to avoid blocking messages relating to Commission proceedings. The Commission agrees that such a requirement is desirable and will include directions for standardized subject

⁹ Miller, Balis, p. 3; MPSC, p. 3; Spiegel & McDiarmid, p. 2; Sullivan & Worcester, pp. 4-5.

lines at a prominent location in the system. Participants will be directed to include the phrase “Document Service” in the subject line of service e-mails.

16. One commenter¹⁰ asked that, if it could do so with little or no delay, the Commission make this rule effective with the start of a new docket year, which would be October 1. The timing has, however, worked out in such a way as to make it impractical. The eService system could not have been functional by October 1, 2004, and the Commission does not wish to delay the benefits of the system until late 2005.

17. One commenter¹¹ requested that the “default” for service among participants be changed to allow participants to employ electronic service even without advance agreement among the participants. The Commission also received the suggestion¹² that the service rule be clarified to state that, where one participant is unable to receive electronic service, the remaining participants may still serve each other via electronic service. The Commission agrees with both comments. It is revising Rule 2010(f) to provide that service shall be by electronic means unless the participants otherwise agree, except where a participant is unable to receive electronic service. This provision will not be limited to proceedings commenced after the effective date of this Final Rule. In addition, the revised rule will make clear that electronic service is still to be employed among participants who are able to use it. This is what the Commission originally intended.

¹⁰ Miller, Balis, p. 4.

¹¹ EEI, p. 6.

¹² EEI, pp. 5-6; Spiegel & McDiarmid, pp. 7-8.

18. One commenter¹³ asked how service of protected documents will be handled. Currently, the Commission's regulations on service do not require that protected documents be served electronically, nor do they prohibit it. The owner of the document retains the ability to decide whether to transmit it electronically to other participants in a proceeding. Obviously, in this situation serving a link to eLibrary will not work, so participants will have to make other arrangements. This Final Rule makes no change on this issue. Participants are best left to assess for themselves the risks and benefits of different methods of transmitting protected information, as the most desirable method undoubtedly will vary from case to case.

B. Miscellaneous Features.

19. One commenter¹⁴ states that it has experienced problems with group interventions in the Commission's electronic filing system. The commenter reports that placing more than two representatives on the service list when filing electronically has been difficult and that the system does not always pick up the correct designations of principals and counsel when members of a group intervene jointly. This comment is outside the scope of the NOPR, but the Commission expects the new interface for its eFiling system to resolve this problem.

¹³ Spiegel & McDiarmid, p. 2.

¹⁴ Miller, Balis, p. 3.

20. A commenter¹⁵ suggests that the Commission's eSubscription system allow subscription by applicant name. This comment also is outside the scope of the NOPR, but a later revision to the eSubscription system will allow applicant-name-based subscription.

21. The U.S. Postal Service suggests that the Commission utilize its Electronic Postmark (EPM) system to provide security for its eService system. The EPM system requires payment of a fee, however, and the Commission believes that it can achieve sufficient levels of security without EPM.

22. Some commenters¹⁶ suggest that the Commission allow users to employ a second e-mail address, that is, an e-mail address other than the one they use for eRegistration, for eService. Some also suggest the allowance of group e-mail addresses for service purposes. They state that such capability will make it easier for them to route service e-mails within their organizations. The Commission does not consider this approach practical. Part of the Commission's purpose in initiating the eRegistration system was to obtain cleaner service and mailing lists by reducing duplicative and conflicting entries. Creating a system of e-mail addresses that would be separate from the eRegistration would defeat this purpose. In addition, standardizing the subject line of service e-mails—possibly by requiring inclusion of

¹⁵ Miller, Balis, p. 4.

¹⁶ FPL Group, p. 2; Spiegel & McDiarmid, pp. 3-4.

docket numbers—should make it possible for companies and law firms to establish their own internal forwarding rules, which would achieve the same purpose addressed by the comments.

23. One commenter¹⁷ suggested that the Commission employ a format that would allow a downloaded service list to be inserted into e-mail programs. The Commission intends to add a feature of this type in the future. For this release, the eService system will only provide a file download of all the e-mail addresses on a service list. In a later release, however, it should be possible for the user to open a new message in the user's e-mail application so that the "To" field will automatically be populated with all the e-mail addresses on the relevant service list.

24. A commenter¹⁸ suggested that the system provide a drop list of users who are already registered, which the commenter believed might be useful for various purposes. It would not be possible to implement such a functionality in this release of the system. The Commission may revisit this point, however, in designing future releases. One concern is privacy. Obviously, e-mail addresses contained on service lists must be exposed to the view of participants who are eFiling, but the use of a drop list might arguably be an inappropriate level of exposure. The Commission intends to examine the appropriate balance of privacy and ease of use.

¹⁷ Miller, Balis, p. 4.

¹⁸ Spiegel & McDiarmid, pp. 4-5.

25. One commenter¹⁹ suggested that the Commission design the system to alert other participants if a participant receives a waiver of the eRegistration requirement. Such a function should not be necessary, because the identity of persons receiving waivers will be apparent from the service list, which will show their mailing addresses but no e-mail addresses. Similarly, it would be impractical at this time to implement a function that would provide participants with notice that people they added to the service list were receiving service. Generally speaking, failure to receive service would become apparent in the same manner as with postal mail. A person who adds others to the service list would simply need to verify that the others received service of the first document after they were added.

26. One commenter²⁰ requested that the Commission clarify what would happen if the Commission serves an issuance on a person after that person has been prompted by the system to eRegister but before the person has had a chance to do so. This scenario will not arise because the system, as designed, will require that all contacts listed by a filer be eRegistered. The system will not send out notifications to persons (who are not eRegistered) inviting them to eRegister. The signer or counsel of record would be responsible for serving other contacts who are not eRegistered.

27. One commenter²¹ requested an explanation of the statement in the NOPR that the person submitting the initial filing on behalf of a participant would by default

¹⁹ EEI, p 5.

²⁰ Spiegel & McDiarmid, p. 5.

²¹ Spiegel & McDiarmid, pp. 5-6.

become the representative contact on the service list. The commenter asked whether a paralegal filing for an attorney would need to log in as the attorney to ensure that the attorney was the representative. Another commenter²² suggested that the signer of the document be the “default” contact. The new system will address this issue. Until now, the field for the “signer” of a document defaulted to the login ID—i.e., the paralegal—so that if the paralegal did not enter the attorney’s e-mail address, the paralegal would become the contact. In the new system, there will be no default, so the paralegal will be required to enter an e-mail address, which will be the attorney’s e-mail address.

28. One commenter²³ asked for clarification of whether programs used by some organizations to download and clean up service lists will still function despite the security measures that the Commission will have to implement to ensure that e-mail addresses remain available only to persons who are eRegistered. Currently, third party programs of this nature access contact information such as street addresses, but not e-mail addresses. The initial release of the eService system will continue to allow access by third party software to contacts’ information such as street addresses, but will not allow access to their e-mail addresses.

²² Sullivan & Worcester, p. 5.

²³ Spiegel & McDiarmid, p. 6.

29. One commenter²⁴ suggested that the Commission include an ID number on mailings in hydroelectric and natural gas proceedings—i.e., to mailing lists as opposed to service lists—to eliminate the need for a private link or a complicated URL to allow the recipient to access Non-Internet Public (NIP) documents. The Commission cannot, consistent with its security requirements, provide IDs to eLibrary to allow access to non-public documents.

30. One commenter²⁵ preferred that the Commission not adopt the requirement, proposed in the NOPR, that a participant retain physically signed copies of electronically served, signature-required documents. The commenter stated that it is attempting to go entirely “paperless.” The Commission does not wish to impede the commenter’s efforts, but believes this requirement will have very limited impact. The requirement is needed to ensure that a signature’s validity will not be subject to challenge in later administrative or judicial proceedings.

31. One commenter²⁶ suggested that the Commission maintain service lists in hydroelectric proceedings for the separate proceedings and not for entire dockets. This comment is outside the scope of the NOPR. The Commission will, however, investigate the possibility of making such a change at a later time.

²⁴ Spiegel & McDiarmid, p. 9.

²⁵ Williston Basin, p. 6.

²⁶ Spiegel & McDiarmid, pp. 9-10.

32. One commenter²⁷ stated that the Commission should recognize facsimile transmissions, commonly called “fax” transmissions, as electronic transmissions within this rulemaking. The Commission does not consider facsimile transmissions to be electronic transmissions in the same manner as, for instance, e-mails. Although a facsimile transmission is an electronic means of sending a document, it produces only a paper document. Thus, it does not adequately further the Commission’s, and Congress’, goal of reducing the use of paper. The Commission therefore does not regard it as an alternative form of electronic transmission for purposes of this Final Rule.

Information Collection Statement

33. Office of Management and Budget (OMB) regulations require OMB to approve certain information collection requirements imposed by agency rule.²⁸ This Final Rule does not contain any information collection requirements and compliance with the OMB regulations is thus not required.

Environmental Analysis

34. 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.²⁹ The Commission has categorically excluded

²⁷ Adirondack Mountain Club.

²⁸ 5 C.F.R. 1320.12.

²⁹ Order No. 486, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs., Regulations Preambles 1986-1990, ¶ 30,783 (Dec. 10, 1987) (codified at 18 C.F.R.

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.³⁰ This Final Rule is procedural in nature and therefore falls under this exception; consequently, no environmental consideration is necessary.

Regulatory Flexibility Act Certification

35. The Regulatory Flexibility Act of 1980³¹ 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

36. 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

Part 380).

³⁰18 C.F.R. 380.4(a)(2)(ii).

³¹5 U.S.C. 601-612.

37. 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.

38. 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

39. These regulations are effective on March 21, 2005.

40. 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 5

Administrative practice and procedure, Electric power, Reporting and recordkeeping requirements.

18 C.F.R. Part 16

Administrative practice and procedure, Electric power, Reporting and recordkeeping

requirements.

18 C.F.R. Part 156

Administrative practice and procedure, Natural Gas, Reporting and recordkeeping requirements.

18 C.F.R. Part 157

Administrative practice and procedure, Natural gas, Reporting and recordkeeping requirements.

18 C.F.R. Part 385

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

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.

In consideration of the foregoing, the Commission amends Parts 5, 16, 156, 157, and 385, Chapter I, Title 18, Code of Federal Regulations, as follows.

PART 5B INTEGRATED LICENSE APPLICATION PROCESS

1. The authority citation for part 5 continues to read as follows:

Authority: 16 U.S.C. 791a-825r, 2601–2645; 42 U.S.C. 7101–7352.

2. Amend § .4 by revising paragraph (b)(1)(iii) to read as follows:

§ 5.4 Acceleration of a license expiration date.

* * * * *

(b) * * *

(1) * * *

(iii) Notifying appropriate Federal, state, and interstate resource agencies and Indian tribes, and non-governmental organizations likely to be interested, by electronic means if practical, otherwise by mail.

* * * * *

3. Amend § 5.8 by revising paragraph (e)(3) to read as follows:

§ 5.8 Notice of commencement of proceeding and scoping document, or of approval to use traditional licensing process or alternative procedures.

* * * * *

(e) * * *

(3) Notifying appropriate Federal, state, and interstate resource agencies, state water quality and coastal zone management plan consistency certification agencies, Indian tribes, and non-governmental organizations, by electronic means if practical, otherwise by mail.

4. Amend § 5.19 by revising paragraph (c)(2) to read as follows:

§ 5.19 Tendering Notice and Schedule.

* * * * *

(c) * * *

(2) Notifying appropriate Federal, state, and interstate resource agencies, state water quality and coastal zone management plan consistency certification

agencies, Indian tribes, and non-governmental organizations, by electronic means if practical, otherwise by mail.

* * * * *

PART 16-PROCEDURES RELATING TO TAKEOVER AND RELICENSING OF LICENSED PROJECTS

5. The authority citation for part 16 continues to read as follows:

Authority: 16 U.S.C. 791a–825r; 42 U.S.C. 7101–7352.

6. Amend § 16.6 by revising paragraph (d)(1)(iii) to read as follows:

§ 16.6 Notification procedures under section 15 of the Federal Power Act.

* * * * *

(d) * * *

(1) * * *

(iii) Notifying the appropriate Federal and state resource agencies, state water quality and coastal zone management consistency certifying agencies, and Indian tribes, by electronic means if practical, otherwise by mail.

* * * * *

7. Amend § 16.9 by revising paragraphs (d)(1)(iii) and (d)(2)(ii) to read as follows:

§ 16.9 Applications for new licenses and nonpower licenses for projects subject to sections 14 and 15 of the Federal Power Act.

* * * * *

(d) * * *

(1) * * *

(iii) Notifying appropriate Federal, state, and interstate resource agencies, Indian tribes, and non-governmental organizations, by electronic means if practical, otherwise by mail.

(2) * * *

(ii) Provide the notice to appropriate Federal, state, and interstate resource agencies and Indian tribes, by electronic means if practical, otherwise by mail; and

* * * * *

PART 156-APPLICATIONS FOR ORDERS UNDER SECTION 7(a) OF THE NATURAL GAS ACT

8. The authority citation for part 156 continues to read as follows:

Authority: 52 Stat. 824, 829, 830; 56 Stat. 83, 84; 15 U.S.C. 717f, 717f(a), 717n, 717o.

9. Revise § 156.8 to read as follows:

§ 156.8 Notice of application.

Notice of each application filed, except when rejected in accordance with §156.6, will be published in the Federal Register and copies of such notice sent to the State affected thereby via electronic means if practical, otherwise by mail.

PART 157-APPLICATIONS FOR CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY AND FOR ORDERS PERMITTING AND APPROVING ABANDONMENT UNDER SECTION 7 OF THE NATURAL GAS ACT

10. The authority citation for part 156 continues to read as follows:

Authority: 15 U.S.C. 717–717w, 3301–3432; 42 U.S.C. 7101–7352.

11. Revise § 157.9 to read as follows:

§ 157.9 Notice of application.

Notice of each application filed, except when rejected in accordance with §157.8, will be issued within 10 days of filing, and subsequently will be published in the Federal Register and copies of such notice sent to States affected thereby, by electronic means if practical, otherwise by mail. Persons desiring to receive a copy of the notice of every application shall so advise the Secretary.

PART 385—RULES OF PRACTICE AND PROCEDURE

29. 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).

30. Amend § 385.2005 by adding paragraph (b)(3) and revising paragraph (c) to read as follows:

§ 385.2005 Subscription and verification (Rule 2005).

* * * * *

(b) * * *

(3) Any requirement that a filing include or be supported by a sworn declaration, verification, certificate, statement, oath, or affidavit may be satisfied by compliance with the provisions of 28 U.S.C. § 1746, provided that the filer, or an authorized representative of the filer, maintains a copy of the document bearing an original, physical signature until after such time as all administrative and judicial proceedings in the relevant matter are closed and all deadlines for further administrative or judicial review have passed.

(c) Electronic signature. In the case of any document filed in electronic form under the provisions of this Chapter, the typed characters representing the name of a person shall be sufficient to show that such person has signed the document for purposes of this section.

31. Amend § 385.2010 by redesignating paragraphs (h) and (i) as (j) and (k), adding new paragraphs (h) and (i), and revising paragraphs (a) through (g) as follows:

§ 385.2010 Service (Rule 2010).

(a) By participants. (1) Any participant filing a document in a proceeding

must serve a copy of the document on:

(i) Each person whose name is on the official service list, or applicable restricted service list, for the proceeding or phase of the proceeding; and

(ii) Any other person required to be served under Commission rule or order or under law.

(2) If any person receives a rejection letter or deficiency letter from the Commission, the person must serve a copy of the letter on any person previously served copies of the rejected or deficient filing.

(b) By the Secretary. The Secretary will serve, as appropriate:

(1) A copy of any complaint on any person against whom the complaint is directed;

(2) A copy of any notice of tariff or rate examination or order to show cause, on any person to whom the notice or order is issued;

(3) A copy of any rule or any order by a decisional authority in a proceeding on any person included on the official service list, or applicable restricted service list, for the proceeding or phase of the proceeding, provided that such person has complied with paragraph (g).

(c) Official service list. (1) The official service list for any proceeding will contain:

(i) The name, address and, for proceedings commenced on or after March 21, 2005, e-mail address of any person designated for service in the initial

pleading, other than a protest, or in the tariff or rate filing which is filed by any participant; and

(ii) The name of counsel for the staff of the Commission.

(2) Any designation of a person for service may be changed by following the instructions for the Commission's electronic registration system, located on its web site at <http://www.ferc.gov> or, in the event that the proceeding was commenced prior to March 21, 2005, or the person designated for service is unable to use the electronic registration system, by filing a written notice with the Commission and serving the notice on each person whose name is included on the official service list.

(d) Restricted service list. (1) For purposes of eliminating unnecessary expense or improving administrative efficiency, the Secretary, an office director, or the presiding officer may establish, by order, a restricted service list for an entire proceeding, a phase of a proceeding, one or more issues in a proceeding, or one or more cases in a consolidated proceeding.

(2) Any restricted service list will contain the names of each person on the official service list, or the person's representative, who, in the judgment of the decisional authority establishing the list, is an active participant with respect to the proceeding or consolidated proceeding, any phase of the proceeding, or any issue in the proceeding, for which the list is established.

(3) Any restricted service list is maintained in the same manner as, and in addition to, the official service list under paragraph (c) of this section.

(4) Before any restricted service list is established, each person included on the official service list will be given notice of any proposal to establish a restricted service list and an opportunity to show why that person should also be included on the restricted service list or why a restricted service list should not be established.

(5) Any designation of a person for service on a restricted service list may be changed by filing written notice with the Commission and serving that notice on each person whose name is on the applicable restricted service list.

(e) Intervenors. (1) If a motion to intervene or any notice of intervention is filed, the name, address and, for proceedings commenced on or after March 21, 2005, e-mail address of any person designated for service in the motion or notice are placed on the official service list or any applicable restricted service list, provided that such person has complied with paragraph (g). Any person placed on the official service list under this paragraph is entitled to service in accordance with this section. If a motion to intervene is denied, the name, address and e-mail address of each person designated for service pursuant to that motion will be removed from the official service list.

(f) Methods of service. (1) Except as provided in paragraph (g), service of any document must be made by electronic means unless the sender and all recipients agree otherwise, 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, in which case service upon that recipient 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.

(2) 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.

(g) Methods of Service by the Secretary. Service by the Secretary shall be made by electronic means, unless such means are impractical, in which case service shall be made by United States mail.

(h) Electronic registration. In the case of proceedings commenced on or after March 21, 2005, any person, to be included on a service list, must have complied with the procedures for electronic registration made available on the Commission's web site, at <http://www.ferc.gov>, unless such person 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.

(i) Timing of service. (1) Service is made under this section when the document served is deposited in the mail or is delivered in another manner.

(2) Service of any document must be made not later than the date of the filing of the document.

(3) In the case of a document served through a link to the Commission's eLibrary system, as specified in paragraph (f)(2), if a link to the document does not become available in eLibrary within two business days after the document is filed, the person responsible for serving the document must immediately serve the document by other means, as specified in paragraph (f)(1) or (f)(2).

* * * * *

APPENDIX A

Adirondack Mountain Club

Edison Electric Institute

FPL Group, Inc.

Interstate Natural Gas Association of America

Miller, Balis & O'Neil, P.C.

Missouri Public Service Commission

NiSource, Inc.

Spiegel & McDiarmid

Sullivan & Worcester, LLP.

United States Postal Service

Williston Basin Interstate Pipeline Company