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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 375

[Docket No. RM12-20-000; Order No. 766]

Delegation of Authority Regarding Electric Reliability Organization's Budget,
Delegation Agreement, and Policy and Procedure Filings

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final Rule.

SUMMARY: The Commission is issuing this Final Rule to revise its delegations of authority to align with an internal Commission reorganization, which reassigned certain responsibilities for specific Electric Reliability Organization (ERO) filings. In particular, this Final Rule transfers delegated authority, from the Director of the Commission's Office of Electric Reliability to the Director of the Commission's Office of Energy Market Regulation, to act on ERO filings pertaining to ERO annual budgets, ERO delegation agreements, and ERO policies and procedures.

DATES: This rule is effective [insert date of publication in the FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

140 FERC ¶ 61,202
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Delegation of Authority Regarding Electric Reliability
Organization's Budget, Delegation Agreement, and Policy
and Procedure Filings

Docket No. RM12-20-000

ORDER NO. 766

FINAL RULE

(Issued September 20, 2012)

I. Background

1. The Energy Policy Act of 2005 added section 215 to the Federal Power Act (FPA), which requires a Commission-certified Electric Reliability Organization (ERO) to develop mandatory and enforceable Reliability Standards, subject to Commission review and approval.¹ Under this section, the ERO must, among other things, “allocate equitably reasonable dues, fees, and other charges among end users for all activities under this

¹ 16 U.S.C. 824o.

section,”² and the Commission also must issue regulations authorizing the ERO to enter into an agreement to delegate authority to a Regional Entity if the Regional Entity meets certain conditions.³

2. In Order No. 672, the Commission adopted regulations in accordance with FPA sections 215(c)(2)(B) and 215(e)(4): 39.4, Funding of the Electric Reliability Organization; 39.8, Delegation to a Regional Entity; and 39.10, Changes to an Electric Reliability Organization Rule or Regional Entity Rule.⁴

3. Section 39.4 of the Commission’s regulations requires the ERO to file with the Commission its proposed annual budget for statutory and non-statutory activities 130 days before the beginning of its fiscal year.⁵ This filing must also contain the line item budgets of each Regional Entity for statutory and non-statutory activities, and include supporting materials, including the ERO’s and each Regional Entity’s complete business plan and organization chart, and an explanation of the proposed collection of all dues, fees and charges and the proposed expenditure of funds collected.⁶ After notice and opportunity for hearing, the Commission will issue an order accepting, rejecting,

² *Id.* 824o(c)(2)(B).

³ *Id.* 840o(e)(4).

⁴ *Id.*

⁵ 18 CFR 39.4(b).

⁶ *Id.*

remanding or modifying the ERO's proposed budget and business plan no later than sixty days in advance of the beginning of the ERO's fiscal year.⁷ If the ERO requires additional funding before or after the fiscal budget review process, it may file with the Commission for authority to collect a special assessment; it must demonstrate that the request is pursuant to an unforeseen, extraordinary circumstance.⁸

4. Section 39.8 of the Commission's regulations requires the ERO to submit to the Commission for Commission approval any proposal to delegate the ERO's authority to a Regional Entity for the purpose of proposing or enforcing Reliability Standards.⁹ Alternatively, if a Regional Entity is unable to negotiate a delegation agreement with the ERO within a reasonable amount of time, it may apply to the Commission to assign to it the ERO's authority.¹⁰

5. Section 39.10 of the Commission's regulations requires the ERO to file with the Commission for Commission approval any proposed organization rule or rule change, including any Regional Entity rule or rule change.¹¹

⁷ *Id.* 39.4(c).

⁸ *Id.* 39.4(d).

⁹ 18 CFR 39.8.

¹⁰ *Id.* 39.8(f).

¹¹ *Id.* 39.10(b).

II. Discussion

6. Due to an internal Commission reorganization, the Office of Energy Market Regulation (OEMR) will be responsible to review ERO filings made pursuant to sections 39.4, 39.8, and 39.10 of the Commission's regulations. Accordingly, this Final Rule revises the delegations to the Director of OEMR, contained in section 375.307, to add authority to act pursuant to delegated authority on filings made pursuant to the aforementioned sections; thus, it reassigns from the Director of the Office of Electric Reliability (OER) to the Director of OEMR the delegations authorizing OER to act pursuant to sections 39.4, 39.8, and 39.10.

7. New section 375.307(a)(2)(v) delegates to the Director of OEMR the authority to take appropriate action on budget, business plan, and special assessment filings made pursuant to section 39.4.

8. New section 375.307(a)(2)(vi) delegates to the Director of OEMR the authority to take appropriate action on proposed ERO or Regional Entity organization rules or rule changes made pursuant to section 39.10.

9. New section 375.307(a)(2)(vii) delegates to the Director of OEMR the authority to take appropriate action on delegation agreement filings by the ERO or a Regional Entity made pursuant to section 39.8.

10. This Final Rule also revises that portion of section 375.303(a)(2)(i) stating that OER has the authority to approve revisions to ERO and Regional Entity rules or procedures, to reflect the change in Commission organization.

III. Information Collection Statement

11. Office of Management and Budget (OMB) regulations require OMB to approve certain information collection requirements imposed by agency rule.¹² This Final Rule contains no new or revised information collections. Therefore, OMB review of this Final Rule is not required.

IV. Environmental Analysis

12. 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.¹³ Excluded from this requirement are rules that are procedural, ministerial, or internal administrative and management actions, programs or decisions.¹⁴ This Rule falls within this exception; consequently, no environmental consideration is necessary.

V. Regulatory Flexibility Act

13. The Regulatory Flexibility Act of 1980 (RFA)¹⁵ generally requires a description and analysis of final rules that will have significant economic impact on a substantial

¹² 5 CFR 1320.

¹³ *Regulations Implementing the National Environmental Policy Act of 1969*, Order No. 486, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs. ¶ 30,783 (1987).

¹⁴ 18 CFR 380.4(a)(1).

¹⁵ 5 U.S.C. 601-612.

number of small entities. This Final Rule concerns a matter of internal agency procedure and it will not have such an impact. An analysis under the RFA is therefore not required.

VI. Document Availability

14. 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 5:00 p.m. Eastern time) at 888 First Street, NE, Room 2A, Washington, DC 20426.

15. From the Commission's Home Page on the Internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document (i.e., the sub docket number, 000) in the docket number field.

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

VII. Effective Date and Congressional Notification

17. The provisions of 5 U.S.C. 801 regarding Congressional review of Final Rules do not apply to this Final Rule because the rule concerns internal agency procedure and practice and will not substantially affect the rights of non-agency parties.

18. These regulations are effective on **[insert date of publication in the Federal Register]**. The Commission finds that notice and public comments are unnecessary because this Rule concerns only internal agency procedure and practice. Therefore the Commission finds good cause to waive the notice period otherwise required before the effective date of this Final Rule.

List of subjects in 18 CFR Part 375

The Commission

By the Commission.

Kimberly D. Bose,
Secretary.

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

Part 375 – THE COMMISSION

1. The authority citation for Part 375 continues to read as follows:

Authority: 5 U.S.C. 551-557; 15 U.S.C. 717-717w, 3301-3432; 16 U.S.C. 791-825r, 2601-2645; 42 U.S.C. 7101-7352.

2. In § 375.303, paragraph (a)(2)(i) is revised to read as follows:

§ 375.303 Delegations to the Director of the Office of Electric Reliability.

* * * * *

(a) * * *

(2) * * *

(i) Approve uncontested applications.

* * * * *

3. Section 375.307 is amended by revising (a)(2)(iv) and adding paragraphs (a)(2)(v), (vi), and (vii) to read as follows:

§ 375.307 Delegations to the Director of the Office of Energy Market Regulation.

* * * * *

(a) * * *

(2) * * *

(iv) Sign and issue deficiency letters for filings under Federal Power Act sections 203, 204, 215, and 305(b).

(v) Take appropriate action on uncontested Electric Reliability Organization budget, business plan, and special assessment filings made pursuant to § 39.4 of this chapter.

(vi) Take appropriate action on uncontested filings proposing Electric Reliability Organization or Regional Entity organization rules or rule changes made pursuant to § 39.10 of this chapter.

(vii) Take appropriate action on uncontested delegation agreement filings by the Electric Reliability Organization or Regional Entity made pursuant to section 39.8 of this chapter.

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