



BILLING CODE 6717-01-P  
DEPARTMENT OF ENERGY  
Federal Energy Regulatory Commission

18 CFR Part 385

[Docket No. RM19-8-000; Order No. 854]

Computation of Time During Emergencies

**AGENCY:** Federal Energy Regulatory Commission.

**ACTION:** Final rule.

**SUMMARY:** The Federal Energy Regulatory Commission (Commission or Agency) is amending its Rules of Practice and Procedure to update its provisions regarding the computation of time. This final rule will modify the Commission's regulations to cover situations in which the Commission is closed due to adverse conditions — including inclement weather — even though some official duties may continue through telework-ready employees. This change will prevent unintended Commission action by operation of law and will provide clarity as to filing deadlines and deadlines for action by the Commission.

**DATES:** The rule will become effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

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**SUPPLEMENTARY INFORMATION:**

## **I. Introduction**

1. By this final rule, the Federal Energy Regulatory Commission (Commission or agency) is amending 18 CFR 385.2007 (Rule 2007) to cover the computation of time in situations in which the Commission is closed due to adverse conditions — including inclement weather — even though some official duties may be performed by telework-ready employees. This rule prevents unintended Commission action by operation of law and provides clarity as to filing deadlines and deadlines for action by the Commission. The rule imposes no new obligations on the public and is consistent with prior procedure for computing time.

## **II. Background**

2. The Commission’s regulations address computing periods of time prescribed or allowed by statute or Commission rule or order. For many years, under Rule 2007, the last day of a time period is not counted if that day is a Saturday, Sunday, “part-day holiday that affects the Commission, or legal public holiday.”<sup>1</sup> In December 2003, the Commission issued *Emergency Closures*,<sup>2</sup> which added a provision to Rule 2007 to address the computation of time during closure of the Commission due to weather or other adverse conditions.

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<sup>1</sup> 18 CFR 385.2007(a)(2) (2018) (Rule 2007).

<sup>2</sup> Order No. 645, 105 FERC ¶ 61,296 (2003).

3. On April 10, 2018, the Office of Personnel Management (OPM) issued its final regulation implementing the weather and safety leave provisions of the Administrative Leave Act of 2016.<sup>3</sup> Under OPM’s regulations, Agencies may only grant weather and safety leave when it is determined that, because of severe weather or another emergency situation, employees cannot safely travel to or from, or perform work at, their normal worksite, a telework site, or other approved location.<sup>4</sup> OPM’s regulations further require that employees that are telework-ready continue to perform official duties, even though Federal offices are closed due to severe weather or another emergency situation.<sup>5</sup>

### **III. Discussion**

4. The timeframes for certain Commission action, including actions on certain rate proposals filed by natural gas pipeline companies, oil pipeline companies, and public utilities, are set by statute.<sup>6</sup> Although the Commission does not have the authority to change such statutory deadlines, the Commission has the authority to determine how such

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<sup>3</sup> Public Law 114-328, 130 Stat. 2000 (December 23, 2016) (enacted under section 1138 of the National Defense Authorization Act for Fiscal Year 2017).

<sup>4</sup> See 5 CFR 630.1603, *et al.*

<sup>5</sup> *Id.* For example, due to inclement weather on January 14, 2019, OPM announced that “FEDERAL OFFICES in the Washington, DC area are CLOSED. Emergency employees and telework employees continue to work.”

<sup>6</sup> See, e.g., 16 U.S.C. 824d (2012) (Federal Power Act) (60 days); 15 U.S.C. 717c (2012) (Natural Gas Act) (30 days); 49 App. U.S.C. 6(3) (Interstate Commerce Act) (30 days).

deadlines are computed.<sup>7</sup> For example, as noted above, under Rule 2007, the last day of a time period is not counted if that day is a Saturday, Sunday, part-day holiday that affects the Commission, legal public holiday, or a day on which the Commission closes due to adverse conditions and does not reopen prior to its official close of business.<sup>8</sup>

The Commission is amending Rule 2007 to implement the weather and safety leave provisions of the Administrative Leave Act of 2016 whereby the Commission is closed due to adverse conditions, including inclement weather or another emergency situation, even though telework ready employees may continue performing some official duties.

5. In such circumstances, employee and public access to the Commission's physical facilities may be restricted, not all employees may be telework-ready, and not all telework-ready employees may be able to telework due to the adverse conditions.<sup>9</sup> The Commission's ability to accept filings and issue orders thus may be affected when the Commission's facilities are closed due to adverse conditions. Likewise, when the Commission's facilities are closed due to adverse conditions, the public's ability to submit a filing on the last day on which a filing is due may also be restricted. As such,

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<sup>7</sup> See *Emergency Closures*, Order No. 645, 105 FERC ¶ 61,296, at P. 2 (citing *Tennessee Gas Pipeline Co.*, 95 FERC ¶ 61,169 (Commission may not extend 30-day rehearing deadline, although it can provide rules for computing time)), *aff'd sub nom. Londonderry Neighborhood Coalition v. FERC*, 273 F.3d 416 (1st Cir. 2001).

<sup>8</sup> 18 CFR 385.2007 (2018).

<sup>9</sup> See *Governmentwide Dismissal and Closure Procedures*, Office of Personnel Management, December 2015, <https://www.opm.gov/policy-data-oversight/pay-leave/reference-materials/handbooks/dcdismisal.pdf>.

the same justification on which the Commission relied to implement Rule 2007, and later to amend Rule 2007 to address emergency circumstances, is equally applicable to instances in which the Commission is closed, but employees continue some official duties through telework.

6. Furthermore, 18 CFR 385.2007(a)(2) only addresses the “last day of any time period,” and this final rule only addresses the computation instances in which the Commission is closed on the last day of a time period. This final rule also does not change the computation of time in instances when the Commission is closed for part of the day, but reopens prior to the official close of business.

#### **IV. Information Collection Statement**

7. Office of Management and Budget (OMB) regulations require approval of certain information collection requirements imposed by agency rule.<sup>10</sup> This final rule does not contain any information collection requirements. Therefore, compliance with OMB regulations is not required.

#### **V. Environmental Analysis**

8. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.<sup>11</sup> Issuance of this final rule does not represent a major

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<sup>10</sup> 5 CFR part 1320 (2018).

<sup>11</sup> *Regulations Implementing the National Environmental Policy Act*, Order No. 486, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs. ¶ 30,783 (1987).

federal action having a significant adverse effect on the human environment under the Commission's regulations implementing the National Environmental Policy Act of 1969. Part 380 of the Commission's regulations lists categorical 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>12</sup> This rulemaking is exempt under that provision.

#### **VI. Regulatory Flexibility Act**

9. The Regulatory Flexibility Act of 1980 (RFA)<sup>13</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 an interpretation of current Commission regulations and practices. 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.

#### **VII. Document Availability**

10. In addition to publishing the full text of this document in the *Federal Register*, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through the Commission's Home Page (<http://www.ferc.gov>) and in the Commission's Public Reference Room during normal

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<sup>12</sup> 18 CFR 380.4(a)(5) (2018).

<sup>13</sup> 5 U.S.C. 601-12 (2012).

business hours (8:30 a.m. to 5:00 p.m. Eastern time) at 888 First Street, NE, Room 2A, Washington, DC 20426.

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

12. User assistance is available for eLibrary and the Commission's website during normal business hours from FERC Online Support at (202) 502-6652 (toll free at 1-866-208-3676) or email 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).

### **VIII. Effective Date**

13. These regulations are effective immediately upon issuance. In accordance with 5 U.S.C. 553(d)(3), the Commission finds that good cause exists to make this final rule effective immediately. The final rule is intended to act as a contingency measure in order to preserve, rather than alter, the rights of persons appearing before the Commission.

Therefore, there is no reason to make it effective at a later date.

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.

14. The Commission is issuing this rule as a final rule without a period for public comment. Under 5 U.S.C. 553(b)(3)(A), notice and comment procedures are unnecessary for “rules of agency organization, procedure, or practice.” This final rule is directed at improving the efficient and effective operations of the Commission, not toward a determination of the rights or interests of affected parties. The final rule will not significantly affect regulated entities or the general public.

List of subjects in 18 CFR Part 385

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

By the Commission.

Issued: February 8, 2019.

Kimberly D. Bose,  
Secretary.

In consideration of the foregoing, the Commission amends part 385, chapter 2, title 18, Code of Federal Regulations, as follows:

**PART 385 – ADMINISTRATIVE PRACTICE AND PROCEDURE**

1. The authority citation for part 385 is revised 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.

2. Section 385.2007(a)(2) is revised to read as follows:

**§ 385.2007 Time (Rule 2007).**

(a) \* \* \*

(2) The last day of any time period is included in the time period, unless it is a Saturday; Sunday; a day on which the Commission closes due to adverse conditions and does not reopen prior to its official close of business, even though some official duties may continue through telework-ready employees; part-day holiday that affects the Commission; or legal public holiday as designated in section 6103 of title 5, U.S. Code. In each case the period does not end until the close of the Commission business of the next day which is not a Saturday; Sunday; a day on which the Commission closes due to adverse conditions and does not reopen prior to its official close of business even though some official duties may continue through telework-ready employees; part-day holiday that affects the Commission; or legal public holiday.

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