

CORONAVIRUS

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FERC Provides Additional Regulatory Relief and Guidance in Response to Coronavirus Pandemic

On April 2, 2020, the Federal Energy Regulatory Commission (“FERC” or “Commission”) announced several measures intended to provide relief to regulated entities responding to the COVID-19 pandemic. A summary of FERC’s previous COVID-19-related relief and guidance can be found [here](#).

In a Policy Statement,¹ the Commission indicated it will prioritize and expeditiously act on requests for relief filed by regulated entities in connection with ensuring business continuity of their energy infrastructure.² In a series of notices and orders, the Commission also extended or clarified the relief available to regulated entities that are unable to meet certain deadlines or regulatory requirements as a result of their COVID-19 response. This relief includes:

- Extension to June 1, 2020 for the following deadlines:³
 - 1) Form Nos. 60 (Annual Report of Centralized Service Companies) and 61 (Narrative Description of Service Company Functions);
 - 2) Form No. 552 (Annual Report of Natural Gas Transactions); and
 - 3) Electric Quarterly Report Form 920.

- Extensions to May 1, 2020 for the following deadlines for categories of filings that would otherwise be due on or before May 1, 2020:⁴

- 1) interventions, protests, or comments to a complaint;
- 2) briefs on and opposing exceptions to an initial decision;
- 3) answers to complaints and orders to show cause; and
- 4) initial and reply briefs in paper hearings.

- Waiver of FERC regulations governing the form of filings submitted to the Commission (*e.g.*, provision of sworn declarations) through May 1, 2020.⁵

- Shortening of the answer period to three business days for motions for extensions of time due to COVID-19 emergency conditions.⁶ The Commission indicated it will also consider requests to shorten the comment period for motions seeking waiver of requirements in Commission orders, regulations, tariffs, rate schedules, and service agreements to as short as five days.⁷

- Temporary blanket waivers from document notarization and in-person meeting requirements established under open access transmission tariffs or other tariffs, rate

schedules, service agreements, or contracts subject to the Commission's jurisdiction. These waivers are effective through September 1, 2020.⁸

- Extension of time for filing regional transmission organization ("RTO")/independent system operator ("ISO") Uplift Reports⁹ and Operator Initiated Commitment Reports¹⁰ required pursuant to Order No. 844 that were originally due between April and September 2020.¹¹ These reports are now due to be posted on the RTOs/ISOs websites by October 20, 2020.¹²

The Commission has reiterated that entities responding to COVID-19-related emergency conditions may also file motions for extension of other deadlines not specifically enumerated above.¹³

In addition, the Commission has temporarily delegated authority to the Director of the Office of Energy Marketing Regulation (or the Director's designee) to take action on uncontested requests or petitions under the Natural Gas Act, Federal Power Act, and Interstate Commerce Act for waivers of requirements under Commission orders, regulations, tariffs, rate schedules, and service agreements necessary in connection with movants' coronavirus response efforts. This delegation of authority is effective until June 1, 2020.¹⁴ The Commission also issued a final rule delegating authority to the Director of the Office of Energy Policy and Innovation (or the Director's designee) to take appropriate action on motions for extension of time to file or requests or petitions for waiver of requirements of FERC Form No. 552 (Annual Report of Natural Gas Transactions) and FERC-730 (Report of Transmission Investment Activity).¹⁵

On enforcement and compliance issues, Chairman Chatterjee announced various additional coronavirus response measures, including that:¹⁶

- Enforcement Staff will not begin new audits until July 31, 2020.
- With respect to existing non-public investigations, audits, and other continuing compliance obligations, Enforcement Staff will work with entities to provide flexible discovery or other deadlines through July 31, 2020.
- With respect to surveillance inquiries, Enforcement Staff will for the time being focus on market behavior with a potentially significant risk of market harm and will

postpone other inquiries to a later date.

- Self-reports involving inadvertent errors without significant harm to markets, ratepayers, or market participants may be delayed for 60 days. Enforcement Staff will take the COVID-19 pandemic into consideration when evaluating the timeliness of self-reports, including in the context of a self-report credit under the Penalty Guidelines.
- Enforcement Staff will take the COVID-19 pandemic into account in the evaluation of compliance programs under the Penalty Guidelines and in currently ongoing audits.
- FERC has created Commission task forces to process standards of conduct waiver requests and no-action letters in an expedited manner. The Chairman further confirmed that the COVID-19 pandemic is an emergency that triggers the suspension of certain standards of conduct posting requirements under FERC's regulations.

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1. *Business Continuity of Energy Infrastructure*, Policy Statement, 171 FERC ¶ 61,007 (2020).
2. Such requests include, but are not limited to, requests for cost recovery. *See id.* at P 1.
3. *See Notice Granting Extension of Time*, Docket Nos. AD20-11 & ER02-2001 (Apr. 2, 2020).
4. *See Supplemental Notice Granting Extension of Time for Non-Statutory Deadlines, Waiving Regulations, and Shortening Answer Period*, Docket No. AD20-11 (Apr. 2, 2020).
5. *Id.*
6. *Id.*
7. *Id.*
8. *Order Granting Blanket Waiver of In-Person Meeting and Document Notarization Requirements*, 171 FERC ¶ 61,004 (2020).
9. Uplift Reports required to be posted by each RTO/ISO on the public available portions of its website include: (1) a report of uplift, paid in dollars and categorized by transmission zone, day, and uplift category, due within 20 days after the end of each month; (2) a report of the resource name and the total amount of uplift paid in dollars aggregated across the month to each resource that received uplift payments within the calendar month, due within 90 days after the end of each month.
10. Operator Initiated Commitment Reports are reports required to be posted by each RTO/ISO on a publicly accessible portion of its website of each operator-initiated commitment listing the size of the commitment, transmission zone, commitment reason, and commitment start time. Such reports are due within 30 days of the end of each month.
11. *Order Extending Time for Posting Required Reports*, 171 FERC ¶ 61,005 (2020).
12. Reports required to be filed after the April-September range must still comply with the regulatory timing requirements unless an extension is granted.
13. *See Supplemental Notice Granting Extension of Time for Non-Statutory Deadlines, Waiving Regulations, and Shortening Answer Period*, Docket No. AD20-11 at 2 (Apr. 2, 2020).
14. *See Order Temporarily Delegating Further Authority*, 171 FERC ¶ 61,006 (2020). The Commission notes that this delegation does not permit violations, even in the context of uncontested cases, of the filed rate doctrine and rule against retroactive ratemaking.
15. *See Delegation of Authority*, Final Rule, Order No. 870, 171 FERC ¶ 61,008 (2020). This authority was previously delegated to the Office of Enforcement.
16. *See Coronavirus Update: FERC Acts to Help Regulated Entities Manage Compliance* (Apr. 2, 2020), available [here](#).