

(ii) For violations committed between October 23, 2000 and October 22, 2004, not more than \$575,000 for each such violation;

(iii) For violations committed between October 23, 2004 and October 22, 2008, not more than \$625,000 for each such violation; and

(iv) For violations committed on or after October 23, 2008, not more than the greater of \$675,000 or triple the monetary gain to such person for each such violation, provided that—

(v) In any case of manipulation or attempted manipulation in violation of Section 6(c), 6(d), or 9(a)(2) of the Act committed on or after May 22, 2008, not more than the greater of \$1,000,000 or triple the monetary gain each such violation.

\* \* \* \* \*

Issued in Washington, DC, on September 30, 2008 by the Commission.

**David A. Stawick,**

*Secretary of the Commission.*

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**18 CFR Parts 35, 131, 154, 157, 250, 281, 284, 300, 341, 344, 346, 347, 348, 375 and 385**

[Docket No. RM01-5-000; Order No. 714]

#### Electronic Tariff Filings

Issued September 19, 2008.

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

**ACTION:** Final rule.

**SUMMARY:** The Federal Energy Regulatory Commission is revising its regulations to require that all tariffs and tariff revisions and rate change applications for the public utilities, natural gas pipelines, oil pipelines and power administrations be filed electronically according to a set of standards developed in conjunction with the North American Energy Standards Board. This rule is part of the Commission's efforts to comply with the Paperwork Reduction Act, the Government Paperwork Elimination Act (GPEA), and the E-Government Act of 2002 by developing the capability to file electronically with the Commission via the Internet. Electronic filing reduces physical storage space needs and document processing time, provides for easier tracking of document filing

activity; potentially reduces mailing and courier fees; allows concurrent access to the tariff filing by multiple parties as well as the ability to download and print tariff filings; and provides automatic e-mail notification to an applicant of receipt of the filing and whether or not it has been accepted. Upon implementation of this rule, the Commission will no longer accept tariff filings submitted in paper format.

**DATES:** *Effective Dates:* This rule will become effective November 3, 2008. Implementation will begin April 1, 2010 pursuant to a six month staggered schedule.

#### FOR FURTHER INFORMATION CONTACT:

H. Keith Pierce (Technical Information), Office of Energy Market Regulation, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502-8525, [Keith.Pierce@ferc.gov](mailto:Keith.Pierce@ferc.gov).

Anthony Barracchini (IT Information), Office of the Executive Director, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502-8940, [Anthony.Barracchini@ferc.gov](mailto:Anthony.Barracchini@ferc.gov).

Andre Goodson (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502-8560, [Andre.Goodson@ferc.gov](mailto:Andre.Goodson@ferc.gov).

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*Before Commissioners:* Joseph T. Kelliher, Chairman; Suedeen G. Kelly, Marc Spitzer, Philip D. Moeller, and Jon Wellinghoff.

1. The Commission in the last several years has expanded its capability to accept electronic filings. As part of this process, the Commission has sought to develop a means by which publicly regulated utilities could file tariffs, rate schedules, and other jurisdictional contracts and agreements electronically in a fashion that would permit the Commission to assemble and organize the disparate pieces of these agreements for display and for use by the Commission and the public. Commission staff in collaboration with the wholesale electric and gas quadrants of the North American Energy Standards Board (NAESB), and representatives from the Association of Oil Pipelines (AOPL) developed a set of standards to be used by companies in making tariff and tariff related filings at the Commission. The Commission is adopting these standards as the requirement for making tariff and tariff related filings.

## I. Background

2. The development of these standards began in 2004 with a Notice of Proposed Rulemaking<sup>1</sup> in which the Commission proposed to require public utilities, power administrations, interstate and intrastate gas pipelines, and oil pipelines to file tariff and tariff related material electronically. The Commission proposed to develop an electronic tariff database to store tariff and tariff related information for retrieval by Commission staff and the public. In order to implement a tariff database system that would permit such functionality, Commission staff developed a software system for tariff

filings similar to that used in filing forms with the Commission. Commission staff worked with many industry representatives and experts to test this software and held public meetings to demonstrate and receive comment on the software.

3. While some commenters supported using the Commission-provided software as an acceptable solution, others were concerned that this software might not work well for making tariff filings. Some also were concerned that the Commission software would not integrate well with their existing tariff management systems and that formatting tariffs to fit the parameters of the software could be difficult or time consuming.

4. As a result of the review of the comments, on February 1, 2007, a public meeting was held with NAESB to discuss NAESB's assistance in the process of developing the protocols, standards, and data formats needed to provide tariff and related data to enable the Commission to develop a database to track electronic tariff and rate schedules filings. At the meeting, NAESB agreed to develop these standards and report back to the Commission.

5. NAESB established two committees, a business eTariff Subcommittee and an eTariff Technical Task Force. These committees included representatives from the wholesale natural gas industry, wholesale electric industry, oil pipelines, intrastate natural gas pipelines, and third party software developers who worked along with Commission staff to develop the applicable standards. Between February 1, 2007 and January 23, 2008, these committees held a total of 16 meetings in various cities over 24 days. Total attendance in all the meetings was 991 participants either in person or by electronic conferencing, with an average attendance of 62 people for each meeting.

6. The committees determined not to use the Commission developed software, but instead to develop standards that would enable individual companies to develop or procure

software for making tariff filings that would best meet the needs of each company's business requirements. The Executive Committees for both the Wholesale Gas and Wholesale Electric Quadrants of NAESB approved the standards on March 4, 2008, and the NAESB membership ratified the standards on April 4, 2008.

7. On April 15, 2008, NAESB filed the standards with the Commission along with a record of the NAESB proceedings. This material included questions about the policies to be followed in using the standards to make tariff filings. NAESB also provided a copyright waiver stating: "While the eTariff standards are copyrighted by NAESB, a limited waiver is granted to the FERC to modify and post any excerpts of the eTariff standards and eTariff work products that they deem appropriate. These excerpts will be available for companies to reproduce only for their own internal use."

8. On April 17, 2008, the Commission issued a Supplemental Notice of Proposed Rulemaking (NOPR) proposing to use the NAESB developed standards as the means to effectuate electronic tariff filing.<sup>2</sup> The NOPR also proposed solutions to several issues raised during the NAESB process, such as the filing process for shared and joint tariffs. Twenty comments were filed, with most generally favoring the use of the NAESB standards.<sup>3</sup>

## II. Discussion

9. As the background indicated, this proceeding has followed a long and winding road, with a number of detours and U-turns, but we have reached the end of the road and are adopting a final set of standards for electronic tariff filings.<sup>4</sup> We again want to thank

<sup>1</sup> *Electronic Tariff Filings*, Notice of Proposed Rulemaking 69 FR 43,929 (July 23, 2004) FERC Stats. & Regs., Proposed Regulations 2004–2007 ¶ 32,575 (2004) (2004 NOPR), *Notice of Additional Proposals and Procedures*, 70 FR 40941 (July 15, 2005), FERC Stats. & Regs. ¶ 35,551 (2005) (2005 Notice). The 2004 NOPR was the result of an earlier Notice of Inquiry and Informal Conference in this same proceeding (*Electronic Tariff Filings*, 66 FR 15673 (March 20, 2001), FERC Stats. & Regs. ¶ 35,538, at 35,789–91 (2001)).

<sup>2</sup> As used in this Final Rule, the "NAESB standards" or "standards" refer to a set of data elements and requirements that are posted on the Commission Web site. *Instruction Manual for Electronic Filing of Parts 35, 154, 300, 341 and 284 Tariff Filings*. (<http://elibrary.ferc.gov/idmws/common/OpenNat.asp?fileID=11683627>)

<sup>3</sup> Appendix A lists the commenters and the abbreviations used for each.

<sup>4</sup> *Smith v. Lachter (In re Smith)*, 352 B.R. 702 (B.A.P. 9th Cir. 2006) ("This matter is reminiscent

NAESB, its Board of Directors, and the numerous volunteers from across the spectrum of the gas, electric, and oil industries who were able to meet with staff and develop a set of standards and protocols that will achieve the Commission's goal of establishing a robust electronic filing environment for tariffs and tariff related material and will make it possible for the Commission staff and the public to retrieve this material from a database. We will adopt the standards and protocols developed through the NAESB collaborative process in place of providing Commission-created software. Adoption of these standards and protocols will provide each company with enhanced flexibility to develop software to better integrate tariff filings with their individual tariff maintenance and business needs. These standards and protocols also will provide an open platform permitting third-party software developers to create more efficient tariff filing and maintenance applications, which will spread the development costs over larger numbers of companies.

10. Over the last few years, the Commission has greatly expanded its ability to accept electronically filed material, including interventions, protests, rehearings, complaints, and applications for certificates and licenses.<sup>5</sup> We now are expanding these filings to include tariffs and tariff-related material, which comprise a large portion of the Commission's workload. But tariff filings raise special challenges that our current filing systems do not address. eLibrary is designed and works extremely well as a repository that stores, and permits retrieval of, all documents filed in individual docketed proceedings. But while an individual tariff filing is made in an individual docket, the tariff itself is an organically changing document that is comprised of individual filings made in many different dockets over time. In order for

the Commission and the public to obtain a complete picture of a company's tariff, these various provisions need to be integrated into a single system that will provide information as to the status of tariff provisions, permit the assembly of a complete tariff, and permit tariff related research. Indeed, for tariffs filed on paper, the Commission has managed these tariffs as a database by keeping tariff books, open to the public at our headquarters, in which new pages are inserted to replace old pages to reflect revisions, and such changes are recorded in "numbering" sheets to ensure that the tariff reflects the currently effective tariff.<sup>6</sup> The standards we are adopting in this Final Rule merely replace this paper system with a very similar electronic database that will similarly track the tariff submissions and tariff history, but in a form that will make tariff information more widely available over the Internet.

11. The database will provide easier access to tariffs and allow the viewing of proposed tariff sections in context. One of the principal benefits of such a database is the ability to do historical research into tariffs. For example, proceedings such as complaints may involve past tariff provisions that have already been revised by the utility by the time the complaint is considered by the Commission. In order to expeditiously process such filings, the Commission, the parties, and the public need to be able to obtain the tariff provision that applies to the time period under review, rather than the currently effective tariff provision. In fact, the effectiveness of tariff provisions arises in a number of contexts, particularly in complaint cases, in which the Commission and the participants need to know the effective tariff at a particular point in time.<sup>7</sup>

12. The set of NAESB standards provides a foundation for building such a database. The standards define an extensible markup language (XML) schema<sup>8</sup> that will permit filers to

assemble an XML filing package that includes the tariff changes, the accompanying tariff-related documents, such as the transmittal letter, rate schedules, and spreadsheets that are required to accompany various tariff filings, and other required information such as the proposed effective date of the filing. Upon the receipt of the filing electronically, the XML schema will enable the Commission to parse<sup>9</sup> (divide) the filed package into its component parts, place the filed documents into its eLibrary system and provide the metadata<sup>10</sup> that will permit automated organization of the tariff and permit the Commission and the public to search that database. As an example of the expanded public access to tariffs, the Commission currently provides electronic access to approximately 150 NGA interstate pipeline tariffs utilizing the FASTR standards. That access under the NAESB standards should expand to at least 1600 companies' tariffs. The NAESB standards also will provide flexibility to companies making tariff filings by enabling each regulated company to design or purchase software for creating tariff filings that will best accommodate its filing patterns and needs.

13. Some of the principal requirements of the standards and regulations being adopted here are:

- Tariffs<sup>11</sup> may be filed either using the current sheet based nomenclature or using section-based numbering at the choice of the filer.<sup>12</sup>
- Tariffs may be filed as entire documents in either of two electronic formats, RTF<sup>13</sup> or

sections of tariff text. The tagged information can be extracted and separately searched.

<sup>9</sup> Parse means to capture the hierarchy of the text in the XML file and transform it into a form suitable for further processing.

<sup>10</sup> The term metadata is based on the Greek word "meta" meaning after or beyond and in epistemology means "about." Thus, metadata is data or information beyond or about other data. Digital Libraries, by William Arms (M.I.T. Press 2000), <http://www.cs.cornell.edu/wya/DigLib/MS1999/Chapter1.html> (visited April 11, 2008); The University of Queensland, <http://www.library.uq.edu.au/iad/ctmeta4.html> (visited April 11, 2008); The Linux Information Project, <http://www.linfo.org/metadata.html> (visited April 11, 2008). For example, in the XML schema, one required element is a proposed effective date and another element is the text of the tariff provision. The proposed effective date would be considered metadata relative to the tariff text.

<sup>11</sup> The term tariff is used herein to refer to tariffs, rate schedules, jurisdictional contracts, and other jurisdictional agreements that are required to be on file with the Commission.

<sup>12</sup> Section-based filings will not have to include the sheet based nomenclature as a header or footer on the tariff page.

<sup>13</sup> RTF refers to Rich Text Format which is a standardized textual format that can be produced by a number of word processors.

of that old Beatles' standard, 'The Long and Winding Road,' a brooding song about a road that never ends. One can only hope that, with this opinion, the end of the road is indeed in sight").

<sup>5</sup> See *Electronic Registration*, Order No. 891, 67 FR 52,406 (Aug. 12, 2002), FERC Stats. & Regs. ¶ 31,132 (2002); *Electronic Filing of FERC Form 1*, and Elimination of Certain Designated Schedules in Form Nos. 1 and 1F, Order No. 626, 67 FR 36,093 (May 23, 2002), FERC Stats. & Regs. ¶ 31,130 (2002); *Electronic Service of Documents*, 66 FR 50,591 (Oct. 4, 2001), FERC Stats. & Regs. ¶ 35,539 (2001); *Revised Public Utility Filing Requirements*, Order No. 2001, 67 FR 31,043 (May 8, 2002), FERC Stats. & Regs. ¶ 31,127 (2002); *Electronic Filing of Documents*, Order No. 619, 65 FR 57,088 (Sept. 21, 2000), FERC Stats. & Regs. ¶ 31,107 (2000); *Electronic Notification of Commission Issuances*, Notice of Proposed Rulemaking, FERC Stats. & Regs. ¶ 32,574 (2004); *Filing Via the Internet*, Order No. 703, 72 FR 65,659 (Nov. 23, 2007), FERC Stats. & Regs. ¶ 31,259, P 33 (2007) (Order No. 703).

<sup>6</sup> In fact, companies often arrange to view their own tariffs to try and recreate either effective tariffs or the tariff in effect during the time period of a particular proceeding.

<sup>7</sup> See *FPL Energy Marcus Hook, L.P. v. PJM Interconnection, LLC*, 123 FERC ¶ 61,289, at P 39 n.77, 77–80 (2008) (in a complaint case, the complainant and all other parties relied on the current version of a tariff provision rather than the provision in effect at the time).

<sup>8</sup> XML schemas facilitate the sharing of data across different information systems, particularly via the Internet, by structuring the data using tags to identify particular data elements. For example, each filed tariff change will include tags for the relevant information, such as the utility name, the tariff section being changed, the name for that section, the proposed effective date, and certain

PDF,<sup>14</sup> except with respect to open access transmission tariffs for electric utilities and interstate natural gas companies which would have to be filed as individual sheets or as sections in RTF format as defined in the regulations.

- Tariff filings can be served electronically using the same approach used for electronic service of other Commission filings.

- Filings of joint tariffs (tariffs covering two regulated entities) may be made with a single tariff filing by the entity designated to make the filing.

- Tariff filings for tariffs shared among companies (such as regional transmission organization (RTO) tariffs) can be made individually by any of the companies with rights to file tariff changes.

- During initial baseline implementation of electronic tariff filing, only open access transmission tariffs (OATs) and agreements need to be filed.

- After implementation of electronic tariff filing, all new tariffs and agreements must be filed using the standards. Existing agreements need to be filed electronically only when they are revised.

14. Although the comments generally supported the adoption of the NAESB standards, some commenters suggested the adoption of alternative approaches. As the Commission has previously stated: "Standardization, by definition, requires accommodation of varying interests and needs, and rarely can there be a perfect standard satisfactory to all."<sup>15</sup> We find that the NAESB standards best accommodate the needs of regulated utilities in making filings electronically and the needs of the Commission and the public for an electronic system that will enable efficient, user-friendly retrieval of tariffs. We will discuss below the technical requirements applicable to electronic tariff filing and the comments received on various aspects of the standards.

#### A. Electronic Filing Requirements

##### 1. Companies Required To File Tariffs Electronically

15. The companies or entities covered by this Final Rule are those that submit tariffs, rates, or contracts with the Commission pursuant to the Natural Gas Act (NGA), the Natural Gas Policy Act of 1978 (NGPA), the Federal Power Act (FPA), the Interstate Commerce Act (ICA), the Flood Control Act, the Bonneville Power Act, the Northwest Power Planning Act, and other relevant statutes. Included among the companies

or entities covered by the requirements are: RTOs and independent system operators (ISOs); power authorities and federal power marketing administrations which file rates, contracts, or tariffs at the Commission; intrastate natural gas pipelines that file rates and operating conditions pursuant to the NGPA; interstate natural gas pipelines subject to the NGA which serve only an industrial customer; and companies or entities that may make voluntary tariff filings, such as reciprocity filings pursuant to Order No. 888.

##### 2. Procedures for Making Tariff Filings

16. Using the new XML schema, companies, and all those authorized to make filings on behalf of the company, such as outside counsel, will make tariff related filings using the existing eFiling portal. As described below, the filing process will be modified slightly from the current eFiling process, in particular to include a company registration that will provide increased security for the filing, as well as additional e-mail notifications of potential problems with the filing.

17. The person making a tariff filing must have previously registered in eFiling (Filer). Upon successfully logging into the FERC eFiling portal, the Filer will be presented with the introductory screen indicating success in accessing the site, and presented with a link to the filing creation part of the site, which will include an option to make a Tariff filing (eTariff portal).

18. The eTariff portal will prompt the Filer to enter the company identification number assigned during the company registration process and an associated password. After successfully passing this step, the Filer will upload an eTariff XML filing package that conforms to the XML schema. Once the filing is uploaded, the eFiling web page will indicate the filing has been submitted.

19. After the filing has been submitted, a Confirmation of Receipt will be e-mailed to both the e-mail address of the Filer and to the e-mail address on file with FERC for the company identification number. This e-mail only acknowledges the receipt of the filing through the eFiling portal, provides a timestamp, and indicates that the filing is placed in the queue to be processed.

20. The XML filing package will be validated programmatically by an eTariff verification process. Depending upon the success of the verification process, a number of e-mails will be sent.

- If the verification is completed successfully, an e-mail will be sent to the validation e-mail address provided in the XML package and to the e-mail address associated with the company whose tariff is being revised.<sup>16</sup> This e-mail means only that the filing has passed the validation, not that it has been officially accepted by the Secretary of the Commission.

- If the XML filing package can be parsed (and the validation e-mail address can be obtained), but the package does not otherwise pass verification, an e-mail will be sent to the validation e-mail address provided in the XML filing package. This e-mail will provide information about the problems encountered during the verification process.

- If the XML filing package cannot be parsed at all (is unreadable), an e-mail will be sent to the Filer and to the e-mail address associated with the company identification number indicating a problem has been encountered with the filing.

21. Once passed validation, the standard eFiling e-mail will be sent to indicate whether the Secretary of the Commission has accepted and docketed the filing or rejected it. As occurs with all filings, the docketing e-mail does not guarantee that other filing deficiencies will not result in rejection or other action pertaining to the filing later in the review processes within the Commission. After this step, the filing is passed on to eLibrary, the tariff database and other Commission systems.

22. INGAA requests that the Commission establish a procedure for submission of tariff filings in the event of an electronic failure of the Commission's eFiling and eTariff system. Such a request is beyond the scope of this rulemaking. In Order No. 703, the Commission delegated to the Secretary of the Commission the authority to develop procedures for electronic filing, including procedures to be followed in case of an electronic failure of the eFiling system.<sup>17</sup> Since the tariff filing component will be a part of the eFiling system, the same procedures followed by the Secretary for electronic failure will apply to eTariff as well.

##### 3. XML Schema and Tariff Database

23. Under the standards, the tariff filing must be made in conformance with the XML schema. The schema essentially is a method by which the filing entities can communicate information to the Commission. The schema proscribes the metadata elements and the textual information that must be included in the filing

<sup>14</sup> PDF refers to Portable Document Format which is a format used for representing documents that closely resembles the original formatting of the document.

<sup>15</sup> *Standards For Business Practices Of Interstate Natural Gas Pipelines*, Order No. 587, 61 FR 39,053, 39,057 (July 26, 1996), FERC Stats. & Regs. ¶ 31,038, at 30,059 (1996).

<sup>16</sup> This may not be the same company making the filing; for example, in the case of a shared tariff, one notification will go to the company making the filing and the other will go to the ISO or RTO whose tariff is being revised.

<sup>17</sup> *Filing Via the Internet*, Order No. 703, 72 FR 65659, FERC Stats. & Regs. ¶ 31,259, at P 33 (2007).

package. The data elements included in the XML package are required to properly identify the nature of the tariff filing, organize the tariff database, and maintain the proper relationship of tariff provisions in relation to other provisions. For example, these elements will identify which tariff provision is being revised so that the revised tariff provision can be placed electronically in the proper location within the tariff hierarchy. The filing package itself will include the text of tariff changes as well as all filing attachments, such as transmittal letters.<sup>18</sup> The XML schema will be maintained on the Commission Web site along with the required codes, descriptions, and other requirements, as well as information that may be useful to those developing filing software.<sup>19</sup> Contemporaneously with the issuance of this Final Rule, we are posting on the Web site the XML schema along with the descriptions of the fields used in the schema, the instruction manual and codes to be used with the XML schema.

24. Although we do not envision that the schema and related code values will need to be changed frequently, the Secretary of the Commission, under Order No. 703, has delegated authority to make modifications to them if necessary.<sup>20</sup> Before any such changes are made, a notice of the proposed change will be issued sufficiently in advance to permit companies to revise their software.

25. A few commenters object to the use of the XML schema for electronic filing and argue that the Commission should simply rely on filings in eLibrary.<sup>21</sup> They argue that documents are maintained in standard word processing formats and that filing such tariffs through eLibrary would be easier on the filer. They assert that any tracking of such filings could be accomplished by assigning a docket number. Nevada Power, for example, argues that managing tariffs is a document management, rather than a database function. It maintains that the ability to access prior tariffs can be solved by retaining all previous effective versions of the tariff.

26. As explained above, eLibrary is principally a system that manages and tracks filed documents based on individual proceedings (dockets). It was neither designed, nor will it function well, to retrieve individual sections or pages of tariffs that are filed in different

dockets over the course of many years. The tariff database, on the other hand, will enable the Commission staff, as well as the public, to access all or portions of a company's tariffs and rate schedules compiled using date, text, and status criteria.

27. The use of a database to track individual pages or sections of tariffs is not inappropriate to the task of managing tariffs, as the comments suggest. The Commission has for over twenty years maintained the FASTR database for gas tariff filings and has made the results of that database available to the public. The XML schema on which the industry agreed will update the FASTR methodology to provide an even more effective database for managing tariffs and conducting tariff searches.

28. Some commenters suggest assigning a docket or other unique number to each tariff or rate schedule, and Nevada Power suggests that instead of an electronic database, each utility could file an updated history of changes to its tariff so that customers can determine where to find specific sheets in which they are interested. Nevada Power attached, as an example of its proposal, a history for its OATT that is only six pages long covering a relatively small number of tariff filings.

29. These solutions would require users to search through reams of filing materials to obtain the particular section or page of the tariff that they need. Such solutions are not a reasonable substitute for a database, given the large number of gas, oil, and electric companies, some of whom may make hundreds of tariff filings a year, with a list of changes that would eventually grow to hundreds of pages using the Nevada Power approach. PJM Interconnection, LLC for example made over 130 tariff related filings in a one year period. Trying to keep track of, and find, particular tariff provisions in this massive amount of data using only a docket or other numeric identifier and a spreadsheet would be a monumental task.<sup>22</sup> But the tariff database, using the metadata supplied with each filing, will be able to store and retrieve this information.

30. Those arguing for an eLibrary approach envision that tariff documents would not be filed in individual sections, but as entire documents. But not all industry members supported this entire document approach. The gas pipelines, for example, supported the

continued use of sheet-based filings in which utilities file only the specific tariff sheet that is being revised.<sup>23</sup> Other tariffs are so large that filing them as a single document would be unwieldy.<sup>24</sup> The flexibility to file tariffs using different approaches was key to developing the NAESB standards, and the industry consensus supporting those standards.<sup>25</sup> The approach suggested by the commenters would not provide the flexibility the industry sought. The use of a database utilizing the NAESB standards provides that flexibility and is the most efficient method of processing such filings in a way that will permit the easy and efficient integration of such individual filings into an entire tariff.

31. As we have discussed above, the development of standards requires cooperation and accommodation between companies with different needs and requirements. The NAESB process provided a means by which various members of the affected industries and customers, including those from the oil pipeline industry, could develop a set of standards that reasonably meet the needs of a large range of different types of tariff filers, large and small companies, frequent and infrequent tariff filers, companies using different methods of storing tariffs, including databases, word processing software, and spreadsheets. After examining a variety of alternative approaches over 24 days of meetings, a consensus of the gas and electric industry<sup>26</sup> agreed upon the use of the data elements and XML schema as the most efficient means for

<sup>23</sup> Minutes of February 1, 2007 eTariff Meeting. ("Ms. Nagle [Tennessee Gas Pipeline] asked whether FERC Staff supported using a section-based tariff system (in lieu of a sheet based system) and if so does everyone need to move to the section-based system?"). <http://www.naesb.org/pdf2/etariff020107fm.doc>.

<sup>24</sup> For example, PJM's posted tariff is over 8 megabytes. <http://www.pjm.com/documents/agreements.html>, and the California ISO's tariff is over 4 megabytes. ISO New England (<http://www.iso-ne.com/regulatory/tariff/index.html>) and the New York ISO (<http://www.nyiso.com/public/documents/tariffs/oatt.jsp>) post tariffs that already are divided into sections.

<sup>25</sup> Minutes of July 27, 2008 eTariff Meeting, at P 5 ("flexibility is present to support whole document filings, sheet based filings and section based filings. This flexibility is provided for individual companies and for the industries themselves, as a given company may choose to use any of the three choices depending on the filing to be made. This flexibility is a key underlining assumption from which all the work papers were developed and as such, was reflected in the vote just taken"). <http://www.naesb.org/pdf3/etariff072707fm.doc>.

<sup>26</sup> Although the oil pipelines and their customers did not have an official vote during the NAESB process, they participated in formulating the requirements and have supported the data elements and XML schema in their comments in this rulemaking.

<sup>18</sup> The XML package must be filed as a zip (compressed) file.

<sup>19</sup> Currently located at <http://www.ferc.gov> under the tab Documents and Filings, eTariff.

<sup>20</sup> 18 CFR 375.302(z).

<sup>21</sup> Duke Energy, EEL, Nevada Power, Southern California Edison, and PSEG.

<sup>22</sup> Nevada Power's listing is similar to the Commission's current numbering sheets used in its paper tariff database. These numbering sheets run to 70 linear feet for all utilities. Using such a system to research extensively revised tariffs is difficult, time consuming, and prone to error.

electronically filing tariffs.<sup>27</sup> We therefore will adopt the database approach and standards as approved through the NAESB process.

32. CAISO asks that the RTOs not be required to provide all the metadata required by the standards or, if it is not possible to eliminate the metadata, that such metadata be kept to a minimum. The technical meetings with NAESB were designed to develop the minimum required metadata that would be necessary to feed and operate the database. The CAISO has not indicated specific metadata elements that can safely be eliminated and still maintain the integrity of the database.

#### B. Tariff Filing Requirements

33. The Commission's current regulations require companies to file tariff sheets that include specifically defined nomenclature to identify each sheet of the tariff.<sup>28</sup> A company is required to file only the tariff sheets containing the tariff revisions or changes.

34. Based on the NAESB meetings and the comments submitted, we will allow far more flexibility in the structure and identification of tariffs. Companies may determine to structure their tariffs either using the existing tariff sheet format or as sections. Companies will also be given more flexibility to file tariffs either by dividing the tariff into sheets or sections and filing only the revised sheet or section, or for a wide range of tariff documents, by filing the entire tariff document that is revised. In order to ensure that the Commission and the public have the ability to identify specific tariff provisions, versioning information is required to be included as part of the XML package. But, this information has been simplified and will no longer need to be included as text on individual sheets or sections, with the exception of certain documents filed as PDFs.

#### 1. Sheet or Section Filing Requirements

35. In order to compile the tariff database, the standards require

companies to file tariff text as a specific data element. Companies, however, will be permitted to choose whether to continue to number tariff provisions as individual tariff sheets (e.g., Sheet No. 1) or sections (e.g., Section 1.1.1). Except as discussed in the following section with respect to open access tariffs, companies will be allowed to determine based on the nature of the tariff and frequency of filing whether to file tariffs by breaking the tariff into sheets or sections or by filing the tariff as an entire document. Companies that initially file using the entire document option will be allowed later to divide the tariff document into sections or sheets. However, a company that has already broken its tariff into sections or sheets, will not be able to recompile those sheets or sections and use the entire document option unless a company files a request for waiver.

36. The NAESB standards provide that tariff text must be filed either using the RTF file format or the PDF file format.<sup>29</sup> Tariffs filed under the entire document option may be filed either in RTF or PDF. Tariffs filed as sections or sheets must be filed in RTF, due to limitations on the ability to process and assemble PDF files.<sup>30</sup>

37. The comments support the flexibility to use sheet, section, and entire document options using PDF format.<sup>31</sup> AOPL for example "strenuously supports this aspect of the rule which provides benefits to both shippers and pipelines."<sup>32</sup>

38. TransCanada asks that the Commission clarify whether and under what conditions companies that initially file using the sheet-based option may be allowed to later re-file using the section-based option, and vice-versa. For both the shipper and Commission staff benefit, we certainly would not encourage utilities to switch back and forth frequently between a sheet and a section-based system, because such a change will make the ability to research

past provisions more difficult.<sup>33</sup> But because both the sheet and section approaches provide equivalent granularity and flexibility for users, utilities can make such a change without obtaining special permission. The only time special permission is required is if a utility wants to convert from a sheet or section based approach to entire document, because such a change does reduce usability.

39. AGA requests that tariffs be fully text searchable. As described above, all tariffs, including those filed using PDF, must be filed in text searchable format.

#### 2. Gas and Electric Open Access Transmission Tariffs

40. Tariffs for interstate natural gas pipelines and electric utilities must be filed by breaking the document into sheets or sections. Unlike individual service agreements or contracts that affect only the signatories to the agreements, the open access transmission tariffs affect a wide variety of customers and are the most frequently revised. Moreover, because of the breadth of these tariffs, and the need to review and research portions of these tariffs, it would not be efficient for staff or for the public to have these documents refiled in their entirety every time a company proposes to revise an individual tariff section or page.

41. We are revising §§ 35.9 and 154.102 to require that open access transmission tariffs, which will include other open access documents and documents of general applicability, such as ISO/RTO operating agreements and market rules, must be filed as sheets or sections. Because the electric OATTs are based on the Commission's pro forma OATT, we have specified the minimum required divisions for such filings. For non-ISO/RTO OATTs, the OATT must be divided at least at the section 1.0 level, with individual sections for each schedule or attachment. Because ISO/RTO OATTs are much more complex, ISO/RTOs will be required to divide their OATTs at the 1.1 level at a minimum. Filers are encouraged to use even smaller divisions that are appropriate to their individual tariffs and filing patterns. In addition, to aid electric utilities in filing their OATTs, we are posting on our Web site a pro forma OATT divided into the largest

<sup>27</sup> APS, an active participant in the beta testing of the Commission's original software, as well as a participant in the NAESB process, recognizes that the standards provide "a useable platform for industry compliance with the new standardized requirements for electronic filing of tariff, as well as a convenient tool for market participants and FERC staff to access and review tariffs and agreements \* \* \* [and this methodology] to be the superior choice to implement this Commission requirement." APS Comment, at 2. AOPL similarly recognizes that compromises were necessary to meet the needs of all the industries, stating the standards "reflect significant improvements to the proposed electronic filing regulations, in light of the particular circumstances and needs of the oil pipeline industry." AOPL Comment, at 1.

<sup>28</sup> 18 CFR 35.9; 154.102(e).

<sup>29</sup> The requirements adopted by the Commission in Order No. 703 will apply to PDF formatted documents filed as tariff text. Tariffs filed in PDF format must use the print-to-pdf feature as opposed to an unsearchable scanned format, except that tariff documents existing only on paper may be scanned into PDF. Order No. 703, FERC Stats. & Regs. ¶ 31,259 at P 23. We, however, encourage filers that scan old paper tariff documents to use an optical character recognition program to convert the scanned file to text prior to filing, so that copy and paste and search functions may be used.

<sup>30</sup> RTF is a text format that will enable the Commission's software to assemble quickly the sheets or sections into a complete tariff document. In contrast, PDF is not a textual format, and does not permit such processing.

<sup>31</sup> Midwest ISO, INGAA, and AOPL.

<sup>32</sup> AOPL Comment, at 4.

<sup>33</sup> The database will store each sheet or section so that a user wishing to examine a past sheet or section can do so. If the utility decides to change between sheets and sections, the prior history of a particular provision may be more difficult to access. For example, in a sheet to section change, the past sheet (record) will still appear in the database, but it will not be linked to the section (record) that will replace it.

allowable sections, as well as information that will help companies develop Microsoft® Word macros to electronically divide tariffs at this level.

42. Because we have not specified a pro forma interstate natural gas transportation tariff, the regulation we adopt requires that the interstate natural gas pipeline open access tariffs filed as sections be divided so that each section includes only related subject matter and is of reasonable length.<sup>34</sup> Negotiated rate agreements and other non-conforming service agreements need not be divided, but can be filed as entire documents.

43. EEI requests that non-RTOs be allowed to file their OATTs as single documents, maintaining that these are relatively static documents and that allowing the filing of an entire document will reduce the time and expense necessary to break such tariffs into sections and may simplify the filing software that such companies need to build or acquire.

44. We will not relax the requirement to at least divide the pro forma OATTs at the 1.0 level. As described above, OATTs can be large and unwieldy documents and run to over 160 pages; dividing the document at the 1.0 level will ensure that Commission staff and the public can review and search for tariff provisions relating to the same subject matter. Dividing the OATT at the 1.0 level will result in only 57 sections, each addressing a different topic, and such division will only have to be done once. Moreover, EEI maintains that most OATTs are maintained as Microsoft Word documents. Commission staff has developed and will post a macro that in many cases will divide the OATT at the appropriate level. Commission staff also has posted a pro forma OATT divided into the requisite sections that can be used as a reference. Creating the sectionalized pro forma OATT manually only took one hour. In balancing the burden of a one-time conversion of an OATT into individual sections against the benefits of being able to easily locate and search for specific OATT sections, we find that the benefits of requiring that OATTs be broken into sections outweigh the costs.

45. AGA argues that the Commission should set a minimum requirement for gas pipelines similar to that set for electric utilities and suggests that the minimum should at least match the table of contents and include as a separate section each topic listed under General Terms and Conditions of Service. We find that this suggestion does provide useful guidance as to the

minimum sections required and therefore revise the regulation in § 154.102 accordingly.

### 3. Versioning

46. The Commission currently requires each tariff page to include a version number that can be used to identify the particular revision of that page (e.g., First Revised Sheet No. 1 would replace Original Sheet No. 1). Because tariff provisions change, often frequently, this convention is useful over time for identifying and referring to particular tariff provisions in orders. With the adoption of the NAESB standards, the versioning requirement will be modified and made less complicated.

47. The NAESB standards require that each sheet, section, or entire tariff document be identified with a version number in an x.y.z format.<sup>35</sup> The x.y.z format will accommodate the same level of identification as our existing nomenclature, including items such as squeezed and retroactive sheets. As long as each tariff section, sheet, or entire document is identified uniquely, companies can choose how complex to make their identification. Some companies may want to continue this detailed approach to better identify the placement and relative position of tariff sheets and sections, and the x.y.z format will accommodate such identification. Other companies may not choose to include such a detailed hierarchy of changes. Companies, for example, may choose simply to numerically number each section, sheet, or entire tariff document as they file it, using just the x field.

48. As proposed in the NOPR, and adopted in this Final Rule, identification of versioning need not be included in the text of the individual tariff revisions that are filed with the exception of tariffs filed in PDF format. Companies however may choose to include such identification in the tariff text if they desire. The XML schema requires that the requisite versioning information be included as metadata, and versioning information will be made available to staff and the public in the tariff database. Moreover, to ensure that the versioning information is available to the public on eLibrary, the

Commission will use the metadata provided in the XML package to generate a document on eLibrary that contains the appropriate versioning information. Because we are creating this document by electronically combining information from the XML package, the formatting of the versions and tariff text may not appear identical to the filing made by the company.

49. The only exception to this rule is for tariff documents filed using PDF. Because PDF is not a textual format and does not permit easy electronic manipulation, we cannot generate a document for eLibrary that contains the correct versioning information. For these documents, therefore, the Instruction Guide requires that the first page of the tariff document include the required information: Company name, tariff title (if applicable), and the appropriate version number.

50. INGAA suggests that for gas tariffs, the regulations should continue to require that the first section or sheet of the tariff include: The FERC Gas Tariff Volume Number, the name of the natural gas company, as well as the name, title, address, telephone number, e-mail address and facsimile number of a person to whom communications concerning the tariff should be sent. We will modify the regulation to continue this requirement.

51. EEI recommends that the Commission eliminate various formatting requirements required under Order No. 614.<sup>36</sup> As we have discussed above, we are eliminating a variety of the required formatting requirements because they are included in the XML metadata and the other formatting requirements are included in the standards. As a result, the formatting and filing requirements of Order No. 614 have been supplanted by the regulations and requirements addressed in this rulemaking.<sup>37</sup>

### 4. Marked Tariff Changes

52. The Commission's current interstate natural gas pipeline (§ 154.201) and electric utility regulations (§ 35.10), require companies

<sup>36</sup> *Designation of Electric Rate Schedule Sheets*, Order No. 614, 65 FR 18,221 (Apr. 7, 2000), FERC Stats. & Regs. ¶ 31,096 (2000).

<sup>37</sup> The provisions of § 35.5 regarding rejection of material (adopted in Order No. 614) are being retained. In filing pre-existing contracts and rate schedules, electric utilities are still required to eliminate the use of supplements and include in their filings only effective provisions. See 18 CFR 35.1 (revised to remove the use of supplements); *Boston Edison Company*, 98 FERC ¶ 61,292 (2002) (utilities must file effective tariff provisions); *Vermont Yankee Nuclear Power Corporation*, 98 FERC ¶ 61,122, at 61,366 (2002) (utility required to remove tariff language that was no longer effective from its rate schedule).

<sup>34</sup> 18 CFR 154.102.

<sup>35</sup> The x.y.z format is a representation of the version (designation) of a tariff filing where "x" represents revision number for the given tariff provision (tariff record), "y" delineates that it is a substitute for a previously filed tariff provision, and "z" indicates that it is a "squeeze" tariff provision. A "squeeze" tariff provision occurs when a tariff provision needs to be made effective on a date which occurs between the effective dates of two tariff provisions that already are filed with the Commission.



to provide a marked version of the tariff text in the tariff filing indicating the changes and deletions made to the existing tariff text. The oil pipeline regulations (§ 341.3) provide for the use of special symbols to denote changes.

53. We are continuing the requirement for filing marked versions of tariffs. We also are modifying the symbols used by the oil pipelines using the symbols proposed by AOPL so that the symbols can be entered into a find or search message box using keystrokes available on a keyboard. In contrast to past practice in which tariff changes were filed only as individual sheets or supplements, the standards permit tariff documents to be filed as large sections or as entire documents. Although we are confident that filing companies will not intentionally make unmarked changes to tariff text, we want to ensure that both staff and the public are not put in the position of having to read the entire tariff text of large sections or an entire document to ensure that unmarked changes were not made. As a precaution, therefore, we are revising our regulations to make clear that only the sections of the tariff document appropriately identified in the filing will be considered part of the filing and any acceptance of a filing by the Commission will not constitute acceptance of an unmarked tariff change.

54. INGAA supports the regulation, but requests that the Commission modify it to state that “interested parties may comment only on those revisions appropriately designated and marked to constitute the filing; provided, however, comments on unmarked and undesignated language will be permitted when such comments provide useful information to the Commission for the resolution of issues directly related to the filing.” We will not adopt the proposed language as part of the regulation because, as INGAA itself recognizes, determinations as to the appropriateness of such comments need to be made on a case by case basis. The Commission must in individual cases determine if the protest or comment on the unchanged tariff text bears upon the justness and reasonableness of the proposed tariff change or is a request for the Commission to take action under section 5 of the Natural Gas Act to revise the unchanged provision.

55. AOPL argues that the Commission should remove the proposed language in § 341.3 of the regulations arguing that a filed tariff change should be deemed effective even if a symbol is misplaced or incorrect. AOPL states that under long-standing ICA precedent the omission of a symbol in a tariff denoting

a change in rate does not affect the validity or applicability of the tariff item.

56. We never meant for this provision of the regulations to constitute a trap that would penalize an oil pipeline if it simply used the wrong symbol or failed to include a symbol in the tariff as long as its overall filing was sufficient to provide notice of the proposed change. We therefore have revised the regulation from that proposed in the NOPR to make clear the regulation does not apply to an improper or omitted symbol so long as the change is identified in the tariff filing.<sup>38</sup> The purpose of this regulation is to ensure that shippers and the Commission receive the required notice of proposed changes by the pipeline and that shippers are not penalized by the failure of the pipeline to provide the requisite notice. As part of the NAESB process, agreement was reached on allowing oil pipelines to file entire tariffs as PDF files. Because of the nature of PDF files, however, it will be difficult for the Commission staff or the pipeline’s customers to create a document comparison of a PDF document. Thus, the oil pipeline would be in the best position to create a document comparison, and we find the burden of ensuring proper notice legitimately should fall on the oil pipeline making the filing. The oil pipeline could for example satisfy this requirement by indicating its changes in the transmittal letter or attaching to the transmittal letter a redline-strikeout version of the tariff being revised.

57. Section 6(3) of the Interstate Commerce Act (ICA) recognizes that it is the responsibility of an oil pipeline in making a filing to change its tariff to “plainly state the changes proposed to be made in the schedule then in force.” *ICC v. American Trucking Association*,<sup>39</sup> cited by AOPL, does not establish the invalidity of the Commission’s regulation. In *American Trucking*, the Interstate Commerce Commission (ICC) sought to reject tariff rates based on violations of rate bureau agreements. While the Court found that the ICC was without statutory authority retroactively to reject a tariff in violation of the rate bureau agreement after the tariff has taken effect, the Court found that the ICC did have authority to condition tariff approval in a manner

<sup>38</sup> The NOPR used the phrase “revisions that are marked appropriately,” which in the context of the oil pipeline regulations might be read to connote marked with the correct symbol. We are revising the regulation to read “revisions to tariffs identified in the filing” which will cover revisions that are explained in the transmittal letter even if the symbol is incorrect or omitted in the tariff.

<sup>39</sup> 467 U.S. 354 (1984) (*American Trucking*).

reasonably tied to statutory objectives. In this regulation, we are not retroactively rejecting a tariff we have previously accepted; rather we are imposing a regulatory condition governing the filing prior to acceptance that will ensure that customers are protected in the event that the oil pipeline fails to provide sufficient notice of a tariff change. Moreover, the regulation does not determine the regulatory outcome of any challenge to the unidentified rate. We recognize the regulatory differences between the ICA and the FPA and NGA,<sup>40</sup> and that interpretations of the ICA have provided that, in some circumstances, the failure to identify a rate change could be deemed a technical defect that would not necessarily void an unidentified rate, but could subject the pipeline to damages or other remedies as provided in the ICA.<sup>41</sup>

#### 5. Clean Tariff Sheets Filed as Attachments

58. As discussed above, the tariff text for use by the database will be filed as a separate data element, and the Commission may not be able to generate a formatted version of that tariff text acceptable to the filer for inclusion in eLibrary. For this reason, the standards provide that companies will also include as an attachment to their filing a clean copy of the relevant tariff sheets, sections, or entire document formatted as the filer prefers.<sup>42</sup> The clean version of the tariff text may be filed using any electronic file format currently approved by the Secretary of the Commission for eFiling.

59. AOPL requests clarification as to which of the tariff documents included in the XML package, including the marked version made by the utility,

<sup>40</sup> The ICA for example provides a two-year period for reparations, which is not part of the NGA or FPA. 49 App. U.S.C. 16(3)(b) (1988).

<sup>41</sup> See *Genstar v. ICC*, 665 F.2d 1304, 1308 (D.C. Cir. 1981) (for rates with procedural irregularities, the remedy is correction of the “harm if any caused by unlawfulness or irregularity”). For example, a shipper that does not have effective notice, may not be able to protest the filed rate and may only be aware of, and challenge, a rate after it has received a bill. After such a challenge is filed, the Commission could review the rate to determine if it is just and reasonable. If the Commission were to determine that the filed rate is not just and reasonable, but that a different rate is justified, the damages could be computed based on the difference between what the pipeline charged and the just and reasonable rate ultimately determined by the Commission.

<sup>42</sup> The text of the tariff provisions (including the entire tariff document if that option is chosen) to be included in the database must, of course, match exactly the text of the clean copy of the tariff provisions filed as an attachment. The standards also will require the company to include a non-formatted plain text copy of the tariff provisions for search purposes.



constitutes the official version of the tariff filing. As stated above, no substantive differences should exist between the tariff provisions filed as part of the XML data and the tariff provisions filed as attachments. To the extent that such differences exist, and they are significant, they will need to be addressed on a case-by-case basis by the Commission.

#### 6. Joint, Shared, and Section 206 Filings

60. All utilities, but principally the electric industry, may make joint and shared tariff filings. Joint filings refer to tariffs applicable to more than one company. Shared tariffs refer to a tariff that can be revised by one or more parties. Shared tariffs principally refer to ISO or RTO tariffs, sections of which can be revised by the ISO and RTO as well as by individual transmission owners. Section 206 tariff filings again relate principally to ISOs and RTOs, which may not have the ability to make tariff filings under section 205 of the FPA, but have the right under their operating agreements to make tariff filings under section 206 of the FPA. The following approaches should ensure that parties with filing rights can make appropriate filings without undue burden.

##### a. Joint Tariff Filings

61. Section 35.1(a) of the Commission's regulations establishes two methods by which public utilities that are parties to the same rate schedule may file the rate schedule with the Commission: (1) Each public utility can file the rate schedule itself, or (2) "the rate schedule may be filed by one such public utility and all other parties having an obligation to file may post and file a certificate of concurrence."<sup>43</sup> Prior to Order No. 614, when filers made a single filing, Commission staff would copy the rate schedule or tariff for the number of joint filers, place the appropriate designations on the documents, and put them in the tariff books. In Order No. 614, the Commission stated in the preamble that "on joint services, each utility offering a service must file its own tariff sheets."<sup>44</sup> Currently, we therefore receive a single filing usually from a designated filer with identical tariff sheets for each joint filing utility, except that each utility's tariff contains the appropriate sheet designation for that utility.

62. In the Commission's current state of software development, we are not in

a position to permit a single designated filer to submit tariff provisions on behalf of multiple entities as part of a single filing. We, however, recognize the inefficiency and confusion for the filer, the staff, and the public in having multiple identical filings made on behalf of different companies. To deal with this issue, the following approach will minimize the burden on the filer and also provide ready access to the tariff.

63. We will no longer require utilities to follow the Order No. 614 preamble instructions to file multiple copies of a tariff. Instead, the joint filers will be permitted to designate one filer to submit a single tariff filing for inclusion in its database that reflects the joint tariff, along with the requisite certificates of concurrence. The non-designated joint filers would include in their tariff database a tariff section consisting of a single page or section that would provide the appropriate name of the tariff and the identity of the utility designated as the filer for the joint tariff. In this way, the staff or the public will be able to find quickly the appropriate tariff in the database, without the need for multiple filings by each of the filers.

64. EEI maintains that parties with joint tariffs should have flexibility to make modifications to these tariffs, but it does not object to the procedure outlined above. We, therefore, will adopt this approach to joint tariffs.

##### b. Shared Tariffs

65. Shared tariffs refer principally to ISO and RTO tariffs, portions of which may be revised by FPA section 205 filings by the ISO/RTO or other transmission owners. Depending on the tariff section involved, one party may have exclusive rights to modify the section or multiple parties may have rights to modify the section. The structure of all the ISO and RTO tariffs as well as their filings rights are different.

66. In order to file revisions to shared tariffs today, parties with shared filing rights have to share information about the tariff, such as the current section numbering and sheet designations as well as the text of the provisions. Some ISOs and RTOs provide in their tariffs that the ISO/RTO is responsible for administering the tariff.<sup>45</sup>

67. The use of electronic filing will provide parties with shared tariffs with

greater opportunities to develop electronic filing methods that fit their respective tariff structure, filing rights, and business processes. First, parties in organized markets can develop or obtain filing software to be shared among those with filing rights that imposes restrictions on filing rights as applicable under the individual ISO or RTO tariff. Second, ISOs and RTOs can agree to make all filings on behalf of the members in order to maintain administrative control over the tariff. Third, each of the respective parties with filing rights can continue to make individual filings as they do today by sharing certain relevant tariff and metadata among the parties with shared rights.

68. With respect to the third option, individual filings by each company, we have developed a method for making such filings. The party initiating the filing (Company A) would need to have an eRegistered party (Filer) log-on to make the filing. The Filer would have to know Company A's company identification number and password. In order to make such a filing, the ISO and RTO would have to share with Company A its company identification number (but not its password) and tariff identifier used in the XML schema for the ISO or RTO's tariff along with other required metadata for making the filing.

69. Currently, for some ISOs and RTOs, when a transmission owner makes a section 205 filing to revise an ISO or RTO tariff, the ISO or RTO is notified only through service. In order to provide greater security and more immediate notification to the ISO or RTO, we will provide an e-mail notification to the ISO or RTO when the XML filing passes verification checks. This notification will ensure that the ISO or RTO can detect immediately any potential unauthorized filing. Moreover, because the person making the filing will be eRegistered and will be using the company identification number of the filer (Company A), we will be able to easily identify who made the filing in case any questions are raised.

70. New England PTOs support the Commission's approach to shared document filings, but request that the Commission provide additional time for possible needed revisions to the OATT of ISO New England. As discussed later, the Commission will be providing sufficient time to develop software and implement the electronic filing requirements. Such time should be sufficient to make whatever tariff or other changes may be needed to accommodate shared document filings. If ISO New England can show that

<sup>43</sup> Midwest ISO Transmission Tariff, Appendix K, § F. [http://mktweb.midwestiso.org/publish/Document/469a41\\_10a26fa6c1e\\_-6d790a48324a/TOA%20\(As%20Accepted%20on%2012-03-07%20EC07-89\).pdf?action=download&\\_property=Attachment](http://mktweb.midwestiso.org/publish/Document/469a41_10a26fa6c1e_-6d790a48324a/TOA%20(As%20Accepted%20on%2012-03-07%20EC07-89).pdf?action=download&_property=Attachment).

<sup>43</sup> 18 CFR 35.1(a).

<sup>44</sup> Order No. 614, FERC Stats. & Regs. ¶ 31,096 at 31,503.

additional time is required, it may file for an extension of time.

71. While generally supporting the Commission's approach, ISO New England suggests that the Commission should provide additional security for shared tariff filers by developing and administering a database that would permit a tariff owner to control the parties authorized to file tariff changes to its tariff.<sup>46</sup> We have closely examined the potential security risks to the eTariff system and find that at this point the benefits of ISO New England's proposal for increased security do not justify the enhanced costs for the Commission to build and support an administrative Web site and database necessary to implement ISO New England's proposal.

72. The eTariff system will be more secure than the current paper filing system and the current eFiling system, and we have not experienced unauthorized filings to date through either our paper or eFiling system. In the current eFiling system, a filer need only be eRegistered.<sup>47</sup> The eTariff system, however, will provide additional security because in addition to eRegistration, the filer must possess both a company registration number and a password. These forms of identification will be limited to regulated utilities. The RTO's or ISO's password will be unique to each company and need not be shared with another utility having shared filing rights, thereby providing enhanced security. Further, any filing made using the RTO's or ISO's company registration number will generate an e-mail to the RTO or ISO, so that it can monitor actively any potential unauthorized filings.

73. After comparing the potential benefits of ISO New England's approach against the costs of implementation, we have decided not to try to implement the authorized filer proposal. If we find after implementation that additional security is necessary, we will reconsider this option at that time.<sup>48</sup>

<sup>46</sup> For example, the Web site would permit ISO New England to select those transmission owners with the authority to make filings to amend the ISO New England's OATT.

<sup>47</sup> Paper filings are delivered by courier or mail with no way for the Commission to verify that the filing is authorized by the purported filer.

<sup>48</sup> First Energy raises a question about filings by outside counsel, and similarly suggests a system of having administrators provide passwords with respect to filings by outside counsel. As discussed above, outside counsel will be able to submit filings as long as they adhere to the standards, and the company provides them with the appropriate filing identifiers, passwords, and other information. Just as companies have to protect their internal use of passwords, they will need to protect against the use of passwords by outside counsel or others making

c. Section 206 Filings Related to ISOs/ RTOs

74. ISOs and RTOs sometimes have tariff or operating agreement provisions that require a certain percentage of stakeholder support for making FPA section 205 filings. As a result, if the requisite stakeholder approval is not obtained, ISOs and RTOs have retained rights to make filings pursuant to section 206 of the FPA, and may make a single filing under both section 205 and section 206.<sup>49</sup> In addition, transmission owners that are part of the RTO also may file complaints under FPA section 206 contending that the ISO or RTO tariff is unjust and unreasonable.

75. For ISO or RTO transmission owners filing a complaint against the ISO or RTO, the complaint must be filed pursuant to the standard complaint mechanism. While these transmission owners may have legal rights to make section 205 filings to change certain aspects of the ISO or RTO tariff, they do not have any different rights than any other party to file complaints under section 206. If the Commission agrees with the complainant, the ISO or RTO would then be directed to submit a compliance filing through the eTariff portal to make the required tariff changes.

76. However, the RTO or ISO making a filing to revise its own tariff pursuant to section 206 should make such a filing through the eTariff portal with the appropriate tariff revisions using the NAESB standards. Because such a filing relates to the ISO's or RTO's own tariff, and the ISO or RTO has a reserved right to make such a section 206 filing, such a filing is more similar to a standard tariff filing by a utility as opposed to a complaint filing. In addition, since RTOs or ISOs may make a single filing in one proceeding under both sections 205 and 206, it seems appropriate to have such a filing made using the standard eTariff mechanism.<sup>50</sup>

### C. Other Business Practice Changes

#### 1. Electronic Service

77. In the NOPR, the Commission proposed to permit electronic service for initial filings.<sup>51</sup> We are revising our regulations to permit electronic service

filings on their behalf. Companies of course can design their own software to provide administrative password rights, but for the reasons discussed above, we do not find it necessary for the Commission to provide such administrative control.

<sup>49</sup> See, e.g., *PJM Interconnection, LLC*, 115 FERC ¶ 61,079 (2006).

<sup>50</sup> No comments were filed on this approach.

<sup>51</sup> *Notice of Additional Proposals and Procedures*, FERC Stats. & Regs. ¶ 35,551 at P 7.

according to the same procedures and protocols used for other forms of service under the Commission's regulations.<sup>52</sup> Customers and state agencies wishing to receive service will be required to provide the company with an applicable e-mail address (since a service list will not exist at the time of an initial filing). Any customer believing it is unable to receive electronic service will need to request a waiver of electronic service as provided in the regulations.<sup>53</sup>

78. EEL asks for further clarification of how electronic service should be made, including questions about the provision of e-mail addresses, suggestions related to the use of generic service e-mail addresses and the ability to serve after a filing has been posted. In this rulemaking, we have expanded the scope of electronic service to include initial filings. We have expressly provided in the regulations that customers must provide an e-mail address for initial service to the utility unless they obtain a waiver of electronic service under Part 390 of our regulations. Other than establishing a procedure for obtaining customer e-mail address, all other aspects of electronic service for initial filings will be the same as those for service in a proceeding with a service list, including the e-mail addresses to be used for service, and the use of a link to the filing in eLibrary as the means of providing service.<sup>54</sup>

#### 2. Attachment Documents

79. Under the standards, all attachments to a filing, such as the transmittal letter, testimony, and cost-of-service statements, will be included as part of the XML package. The attachments must meet the formatting requirements for any other eFiled document, as set forth by the Secretary of the Commission. AOPL suggests deleting the requirement to file a proposed form of protective agreement in the existing (and proposed) § 348.2. AOPL does not explain its suggestion, and we do not find that the adoption of electronic filing requirements for tariffs necessitates removal of the requirement to file proposed forms of protective agreements. Under the NAESB standards, proposed forms of protective agreements must be filed as attachment documents.

#### 3. Withdrawal of Pending Tariff Filings and Amendments to Tariff Filings

80. As discussed in the 2004 NOPR, the electric, gas, and oil industries have

<sup>52</sup> 18 CFR 385.2010.

<sup>53</sup> 18 CFR 390.3.

<sup>54</sup> See 18 CFR 385.2010(f)(3).

different procedures for withdrawing and amending a tariff filing. For example, the regulations governing oil pipelines permit withdrawal of proposed tariff filings before the tariff filing is effective,<sup>55</sup> while the regulations for electric and gas companies do not address withdrawal of tariff filings prior to suspension.<sup>56</sup> Because tariff withdrawal and amendment filings affect the status of tariff proposals, standardization of these procedures is needed in order to effectuate an electronic tariff system. We are therefore revising our regulations to permit a company to withdraw in its entirety a tariff filing, which has not become effective, and upon which no Commission or delegated order has been issued, by filing a withdrawal motion with the Commission. The withdrawal will become effective, and the filing deemed withdrawn, at the end of 15 days, so long as no answer in opposition to the withdrawal motion is filed within that period and the Commission has not acted to deny the withdrawal motion. If such an answer in opposition is made, the withdrawal is not effective until a Commission or delegated order accepting the withdrawal is issued. In order to ensure that the tariff database remains accurate, such withdrawal filings will need to be made through the eTariff portal using the XML filing requirement so that the appropriate data elements can be revised.

81. Electric utilities and interstate pipelines file amendments or modifications to tariff provisions to make substantive changes to their filings as well as to correct minor errors. Because such modifications can have substantive effect, we are revising § 35.17 and § 154.205 to make clear that the filing of an amendment or modification to a tariff provision will toll the period for action on the prior filing and establish a new period for action.

82. In the 2004 NOPR, we recognized that in the past, we have sought to process minor changes filed in NGA cases within the 30-day statutory period, and we will continue to try to do so for those amendments that are not significant or do not create a major substantive difference in the tariff proposal. INGAA filed a comment asking to include the following in the regulatory text: "For tariff filings containing minor changes in the tariff proposal, the Commission will seek to process minor changes filed in NGA cases, within the 30-day statutory notice period for the original filing." While we

intend to try to abide by our past practice, we find this language inappropriate for inclusion in our regulations, because it only reflects a goal or aim, and is not sufficiently precise to be included as a regulation.

#### 4. Motions

83. Several types of motions may be made by regulated entities that do not include tariff sheets, but that affect the status of a tariff filing. For example, interstate natural gas pipelines may file motions to move suspended tariff sheets into effect, and other regulated companies may file motions to change the effective dates of tariff filings or to withdraw tariff filings. Because such filings affect the metadata associated with the tariff filing, such motions must be filed through the eTariff portal using the XML filing package.

#### 5. Rate Sheets for Tariff Filings by Intrastate and Hinshaw Pipelines

84. Under the Commission's current regulations in section 284, subparts C and G, an intrastate or Hinshaw pipeline must provide the Commission with an election of how it will determine its interstate service rates. An intrastate or Hinshaw pipeline also is required to file with the Commission, within 30 days of the commencement of service, a statement of operating conditions, which includes the rate election it has made, but which currently does not require a statement of the interstate rates to be charged. The interstate rates are included only as part of the overall filing.

85. In implementing the proposal for electronic tariff filing, the statement of operating conditions will be placed in the tariff database. To facilitate easier access by the Commission and the public to the interstate service rates of intrastate and Hinshaw pipelines, we are revising § 284.123 of the regulations to require intrastate and Hinshaw pipelines to include a statement of their interstate service rates as part of the statement of operating conditions that will appear in the tariff database. Including a statement of interstate service rates in the statement of operating conditions will ensure that all relevant information related to interstate service will be accessible in the tariff database.

#### D. Regulatory Text

86. Many commenters submitted detailed proposals to revise regulatory text in a number of areas. We very much appreciate the interest that has been paid to trying to ensure that the regulatory text is as accurate as possible. We have carefully reviewed those

suggestions, included the ones we find appropriate, and discussed above the substantive revisions we determined not to make. The suggestions we did not adopt were stylistic, linguistic, or syntactical revisions that, in some cases, did not conform to the requirements of the **Federal Register**, or that we did not find superior to the regulatory text we are adopting. We will not discuss each of these proposed revisions individually.

#### E. Transition Procedures

##### 1. Testing of Software

87. We recognize that after the Final Rule, companies and third-party vendors developing tariff filing software will need time for development as well as a mechanism for testing their software to make sure that their filings will be accepted by the Commission. We will therefore provide a testing site where companies can make test electronic filings to determine whether their XML packages can be received and can be parsed in order to determine if the XML package can be opened and broken into its constituent parts, and to verify whether the metadata supplied meets the requirements of the XML schema.

88. Further, as the development process continues, we think it will be useful to continue the dialog among FERC staff and the industries involved to help the industries better understand the use of the code values as well as to discuss issues that may arise regarding methods of implementing the standards. Commission staff will therefore hold technical conferences as needed during this process.

89. UNICON argues that the Commission's testing site should be permanent in the event the standards are revised. It also argues that the testing site should fully simulate FERC's live eTariff environment. It maintains that regulated companies could use this testing site to verify that the XML packages being submitted are valid and can be parsed by FERC's software and validate that the filing contents within the XML packages will be processed appropriately.

90. We are committed to providing as robust an electronic testing site as we are able, within resource and budgetary constraints. When, and if, the standards are revised we recognize that we may need to provide some additional testing, and depending on budgetary constraints we will try to maintain the electronic testing platform even after the implementation date as companies may need to experiment with different types of filings. Because much of the

<sup>55</sup> 18 CFR 341.13.

<sup>56</sup> 18 CFR 35.17; 154.205.

processing of tariff filings received by the Commission will not be automatic, but dependant on the human interaction with software on our end, we cannot commit to providing companies with a complete review of all test filings, including how these will be displayed on our web viewer. Our staff is, and has been, committed to making this program a success. As discussed above, staff will conduct, perhaps with NAESB, conferences on implementation issues and staff will continue to provide as much information on particular eTariff filing issues as their time permits.

91. EEI requests that the Commission post on its Web site all the required information necessary to implement the eTariff approach and place all information, including code values, into a single document. As discussed earlier, we will provide on our web site all the information needed to implement eTariff in as user friendly a means as possible. Because the industries during the NAESB process requested it, we have posted code values separately so that companies can download that information more efficiently. These technical issues can be discussed at the technical conferences, and we will continue to try to post information in the manner that will be most useful to industry.

## 2. Baseline Tariff Filings

92. Each regulated entity will be required to make a filing to establish its baseline tariffs. In the NOPR, we proposed to reduce the burden in making the baseline filing and limit such filings to tariffs of general applicability. As applied to filings by electric utilities, the baseline filing will include open access transmission tariffs (OATTs), power sales tariffs available to any customer, and market-based rate tariffs. Individually negotiated rate schedules and agreements will not have to be included as part of the baseline filing. Interstate natural gas pipelines will have to file their existing Volume No. 1 tariffs, but will not have to file special rate schedules included in Volume No. 2 tariffs, or any existing negotiated rate or non-conforming service agreements. Intrastate and Hinshaw pipelines will have to file their statement of operating conditions including their interstate service rates. Oil pipelines will need to file their tariff publications. Other pre-existing effective tariffs, rate schedules, and agreements do not need to be included in the baseline filing, although companies are free to include these agreements in their baseline filings, and we would encourage them to do so.

93. After implementation, all new tariffs and rates schedules would have to be filed using the NAESB standards. Existing tariffs and rate schedules not included as part of the baseline filing are required to be filed electronically only when they are revised or amended.

94. We recognize that some of the pre-existing tariffs and rates schedules, such as older rate schedules and contracts, may not exist in electronic form. Companies having or electing to file such agreements do not need to retype the entire agreement. They may scan these agreements into PDF or another image format and file them in that fashion as an entire document.<sup>57</sup> Although not required, companies are encouraged to run an optical character recognition program (OCR) to convert these scanned documents into a textual format so that the text of the tariff can be searched and copied.<sup>58</sup>

95. The baseline tariff filing is not a substantive tariff revision. The baseline filing, therefore, should reflect the existing accepted tariff provisions, with no proposed substantive changes or revisions. The baseline tariff filings will be subject to notice and comment solely to permit customers to ensure that the proposed baseline tariff is an accurate reflection of the effective tariff. No protests involving other issues, such as the merits of various sections of the tariff, will be considered. We also are providing a one-time delegation of authority to the Director of OEMR to rule on protests.

96. If a regulated entity has a pending or suspended tariff change filing at the time of the filing of the baseline tariff, the regulated entity should not file these pending or suspended tariff sections as part of the baseline tariff filing. When the Commission acts on pending or suspended tariffs provisions, the companies will file the tariff provisions as a compliance filing through the eTariff portal for inclusion in the database.

97. As discussed above, in filing joint tariffs, utilities have the option of designating one utility as the designated filer, as opposed to each utility filing the identical tariff. For companies adopting the designated filer option, the designated filer will file the baseline tariff; the non-designated utility will

<sup>57</sup> As in the current practice, utilities filing scanned documents can comply with the requirement to show only the effective tariff provisions by making handwritten edits or cutting and pasting provisions.

<sup>58</sup> We recognize that OCR may not work well on some older documents. But even if the OCR version is not sufficiently legible to be filed as the tariff text, a filer could include the OCR version in the plain text field of the XML schema, so that it can be used for search purposes.

need to include in its baseline filing a tariff section that provides the appropriate name of the tariff and identifies the utility that is the designated filer for the joint tariff.

98. EEI requests clarification whether a baseline filing or tariff filings by electric utilities would be limited to OATTs. First Energy requests that prior versions of the baseline tariffs will not need to be filed. As stated above, electric utilities need to include as part of their baseline tariff filings the following three types of documents: OATTs, power sales tariffs available to any customer, and market-based rate tariffs. Only the currently accepted versions of the baseline tariffs need to be filed; historic copies should not be filed.

99. EEI, Duke, and the CAISO request that companies be allowed to include pending compliance filings (which have not yet been accepted) in their baseline filings. They maintain that the tariff text in compliance filings reflects Commission directives that the utilities are implementing and that if compliance filings are not included in the baseline filings, the baseline tariff as displayed by the Commission could be inaccurate.

100. Because eTariff is a database system with no existing records, the baseline tariff needs to reflect the tariff as accepted by the Commission. Any subsequent tariff changes, including previously filed compliance filings, need to be filed separately so that the system can appropriately record the status of such filings. To reduce the burden on parties making baseline filings, we are limiting the baseline filing obligation only to the accepted tariff provisions. Pending tariff provisions in compliance filings will be added seriatim to the database as the Commission acts on a company's compliance filings. This will reduce the number of baseline filings companies are required to make.

101. However, we will permit companies wishing to place pending compliance filings into the database during the baseline filing process to do so. But we emphasize that baseline filings of compliance provisions are not required; this is only an option available to those companies wishing to avail themselves of it. The details of including compliance provisions as part of the baseline filing process can be discussed with staff during the technical conferences.

## 3. Implementation Date for eTariff

102. While we think the entire industry, both filers and customers alike, will benefit from quick

implementation of eTariff, we recognize that we need to provide sufficient time for software development and testing to ensure that the filing of tariffs electronically has as few bugs as possible. In the NOPR, we generally proposed that compliance would begin within six months to one year after the Final Rule is issued.

103. Many of the commenters thought that six months was too short and requested implementation periods of one year or longer.<sup>59</sup> INGAA and AOPL urge the Commission not to set a firm implementation date, but rather focus on successful implementation.

104. In order to provide companies with sufficient time to develop and test software, we will provide 18 months for implementation, until April 1, 2010, with a staggered implementation schedule for companies over the next six months. Staff and industry should work out the schedule for staggered implementation during the technical conferences.

### III. Information Collection Statement

105. The Office of Management and Budget (OMB) regulations require that OMB approve certain reporting, recordkeeping, and public disclosure (information collections) imposed by an agency. Pursuant to OMB regulations, the Commission is providing notice of its information collections to OMB for review under section 3507(d) of the Paperwork Reduction Act of 1995.

106. The Commission identifies the information provided under Part 35 as contained in FERC-516 "Electric Rate Schedules and Tariff Filings; Part 154 as contained in FERC-545 Gas Pipeline Rates: Rate Change (Non-Formal); Part 284 as contained in FERC-549 Gas Pipeline Rates: NGPA Title III Transactions and Parts 341 and 344 as contained in FERC-550 "Oil Pipeline Rates: Tariff Filings." The Commission solicited comments on the need for this information, whether the information will have practical utility, ways to enhance the quality, utility, and clarity of the information to be collected, and any suggested methods for minimizing respondents' burden, including the use of information technology. The Commission received specific

comments regarding its burden estimates.

#### A. Comments on the NOPR's Burden Estimates

107. INGAA, EEI, TransCanada, and Southern California Edison contend that the burden estimates used by the Commission in the NOPR are understated. As part of the NAESB process, a consensus of all the industries chose the flexibility provided by using the NAESB standards, and the use of XML protocols for business communication, in place of using filing software furnished by the Commission.<sup>60</sup> The industries recognized that adopting such standards would entail the building or purchasing of software compatible with the XML protocols. By adopting these standards, companies opted for the enhanced flexibility to obtain software, or modify existing tariff maintenance software, in order to better integrate tariff filings with their individual tariff maintenance and business needs. The use of the NAESB standards, as opposed to the Commission distributed software, also provides an open framework for third-party software developers to develop filing and tariff maintenance applications or processes, which, by managing tariffs for multiple parties, will enable development costs to be spread over a large number of users. The industry consensus was that the flexibility offered by the standards outweighed the added costs of developing or purchasing software to implement the standards.

108. But this flexibility, and the likelihood that third-party providers will reduce the costs of constructing systems, makes computing burden estimates difficult, particularly given the difficulty in separating the costs of compliance from the other business functions provided by various software systems. INGAA contends that the costs for a tariff filing system should be in the range of \$20,000 per tariff, but TransCanada argues the costs for its system suggest a \$10,000 cost estimate.

109. We developed the burden estimates in the NOPR based only on the necessary costs of developing a bare-bones filing system that would enable a company to make a filing in compliance

with the standards.<sup>61</sup> But we fully recognize that, while not strictly required by this Final Rule, companies making larger numbers of tariff filings will want to obtain a more robust software package that will provide various forms of tariff management and storage in addition to simply facilitating a tariff filing. Accordingly, we have determined to revise our burden estimates to include the greater cost of obtaining more robust software.

110. EEI maintains that companies will have multiple tariffs that need to be filed as baseline tariffs. But in this Final Rule, at EEI's request, we limited the baseline filing for electric companies to OATTs, power sales tariffs available to any customer, and market-based rate tariffs.

111. EEI maintains we have underestimated the time for legal review of certain data fields. We have included in these revised estimates additional time for legal review of the baseline tariff filings. Since the baseline filings consist only of already accepted tariff sheets, such legal review should not be significant. For ongoing tariff filings, this rulemaking does not entail additional legal review, since attorneys generally already review the substantive tariff and attachment data contained in such filings, and the metadata fields are not substantive.

112. EEI suggests that the estimates leave out one-time costs for evaluating software, and training on new systems. We recognize that we did overlook such costs, and we have added additional hours for evaluation and training of relevant personnel.

#### B. Burden Estimates

113. The following burden estimates reflect the cost to an individual company of obtaining software sufficient to meet the requirements of the regulation, as well as the cost of making the required baseline filing. Investment in electronic filing will reduce filing costs over time. Therefore, we include an estimate of the cost savings per year due to the savings in mail, messenger delivery, and copying. The public reporting and records retention burdens for the reporting requirements and the records retention requirement are as follows.<sup>62</sup>

<sup>59</sup> EEI, Duke, Nevada Power (proposes two years); ISO New England and TransCanada (proposes at least one year); UNICON (proposes 18 months); FirstEnergy (proposes 18–24 months).

<sup>60</sup> The President's Management Agenda (PMA) encourages the development of protocols that enable digital communication using XML protocols as the language of e-business. E-Government Strategy, at 8 (Executive Office of the President, April 2003) (minimization of burden on business by

\* \* \* using XML or other open standards to receive transmissions), [http://www.whitehouse.gov/omb/egov/2003egov\\_strat.pdf](http://www.whitehouse.gov/omb/egov/2003egov_strat.pdf).

<sup>61</sup> The elements for such a system include a database program; an Internet browser; an XML form generator, a Base64 converter; and a ZIP file converter, many of which can be obtained for free or at low cost. See [http://www.download.com/Base64-De-Encoder/3000/2248\\_4/10571789.html?tag=lst-1](http://www.download.com/Base64-De-Encoder/3000/2248_4/10571789.html?tag=lst-1) (freeware Base 64

converter); [http://www.altova.com/products/databasespy/database\\_tool.html](http://www.altova.com/products/databasespy/database_tool.html) (XML form generator); <https://shopm.winzip.com/cgi-bin/wzct1.cgi> (ZIP file generator). We also included time and cost for hiring a computer programmer.

<sup>62</sup> These burden estimates apply only to this Final Rule and do not reflect upon all of FERC-516, FERC-545, FERC-539 or FERC-550.

## BASELINE TARIFF—HOURS

Data collection	Number of respondents	Hours per tariff	Total hours	Installation hours	Total install hours	Total hours
FERC-516:						
Utilities .....	152	9	1368	20	3040	4408
Marketers .....	984	5	4920	20	9840	14760
RTOs/ISOs .....	6	362	2172	28	168	2340
FERC-545:						
Small Pipelines .....	106	7	742	20	2120	2862
Large Pipelines .....	62	18	1116	20	1240	2356
NGPA .....	200	6	1200	20	4000	5200
FERC-550 Oil .....	200	9	1800	20	4000	5800
Totals .....			13318		24408	37726

Total Annual Hours for Collections:  
37,726.

## BASELINE TARIFF—COSTS

Data collection	Number of respondents	Cost per tariff	Total filing cost	Software purchase & installation	Total cost purchase & installation
FERC-516:					
Utilities .....	152	\$211	\$32,072	\$10,000	\$1,520,000
Marketers <sup>63</sup> .....	984	109	107,256	1,035	1,018,440
RTOs/ISOs .....	6	8,345	50,070	10,000	60,000
FERC-545:					
Small Pipelines .....	106	171	18,126	2,070	219,420
Large Pipelines .....	62	423	26,226	10,000	620,000
NGPA .....	200	132	26,400	2,070	414,000
FERC-550 Oil .....	200	206	41,200	10,000	2,000,000
Totals .....			301,350		5,851,860
Combined Total .....					6,153,210

## GOING FORWARD COST SAVINGS PER ANNUM

	Total number of filings	Cost per filing	Total cost
Oil .....	689	\$110	\$75,790
Electric .....	4,445	406	1,804,670
Gas .....	2,548	406	1,034,488
Total .....			2,914,948

114. OMB's regulations require it to approve certain information collection requirements imposed by an agency rule. The Commission is submitting notification of this Final Rule to OMB.

Title: FERC-516, Electric Rate Schedules and Tariff Filings; FERC-545, Gas Pipeline Rates: Rate Change (Non Formal); FERC-549 Gas Pipeline Rates: NGPA Title III Transactions; and FERC-550 Oil Pipeline Rates: Tariff Filings.

Action: Proposed Collections.

OMB Control Nos. 1902-0096, 1902-0154, 1902-0086 and 1902-0089.

Respondents: Business or other for profit; Federal Government.

Frequency of responses: On occasion.

115. *Necessity of the Information:* The Federal Energy Regulatory Commission is amending its regulations to require that all tariffs and tariff revisions and rate change applications for the public utility, natural gas pipeline, and oil pipeline industries be filed with the Commission in lieu of paper.

Electronically filed paper tariffs and rate case filings should improve the efficiency of the administrative process for tariff and rate case filings, by providing time and resource savings for all stakeholders. Specifically, electronic filing reduces physical storage space needs and document processing time, provides for easier tracking of document filing activity; potentially reduces

mailing and courier fees; allows concurrent access to the tariff filing by multiple parties as well as the ability to download and print tariff filings; and provides automatic e-mail notification to an applicant of receipt of the filing and whether or not it has been accepted. The Commission's staff will be able to retrieve and analyze information contained in these filings more readily than under the current system; mandated electronic filing of these documents should facilitate the staff's retrieval and review of a particular document. These capabilities will be extremely beneficial as many tariff filings involve statutory processing deadlines.

<sup>63</sup> The costs for marketers assume that affiliated marketers will share a single installation.

116. The Final Rule will assist the Commission's efforts to comply with the Paperwork Reduction Act,<sup>64</sup> the Government Paperwork Elimination Act (GPEA)<sup>65</sup> and E-Government Act of 2002<sup>66</sup> by developing the capability to file electronically with the Commission via the Internet with uniform formats using software that is readily available and easy to use. Expanding Electronic Government is one of the five key elements of the President's Management Agenda (PMA). The PMA proposed 24 "E-Government" initiatives including Government to Business (G2B). The goals of the G2B portfolio are to reduce burdens on business, provide one-stop access to information and enable digital communication using the language of e-business (XML). G2B also directs agencies to take advantage of commercial electronic transaction protocols.

117. The standards being adopted here were developed in conjunction with NAESB, an ANSI accredited standards developer, and employs XML protocols, as suggested in G2B. The deployment of more effective technology will help to streamline the many reporting requirements as well as facilitate a more efficient means for businesses to interact with the government.

118. Interested persons may obtain information on the reporting requirements by contacting the following: Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, [Attention: Michael Miller, Office of the Executive Director, Phone: (202) 502-8415, fax: (202) 273-0873, e-mail: [michael.miller@ferc.gov](mailto:michael.miller@ferc.gov).] Please send comments concerning the collections of information and the associated burden estimate(s) to the contact listed above and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503 [Attention: Desk Officer for the Federal Energy Regulatory Commission, phone (202) 395-7345, fax: (202) 395-7285. Due to security concerns, comments should be sent electronically to the following e-mail address: [oir\\_submission@omb.eop.gov](mailto:oir_submission@omb.eop.gov). Please reference the docket number of this rulemaking in your submission.

#### IV. Environmental Analysis

119. 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>67</sup> The Commission concludes that neither an Environmental Assessment nor an Environmental Impact Statement is required for this Final Rule under Section 380.4(a) of the Commission's regulations. Section 380.4(a)(15) provides for a categorical exemption for approval of actions taken under Sections 205 and 206 of the FPA relating to the filing of schedules containing all rates and charges for the transmission or sale subject to the Commission's jurisdiction, plus the classification, practices, contracts and regulations that affect rates charges, classifications and services. Section 380.4(a), (25) provides a categorical exemption for review of natural gas filings. Section 38.4(26) provides an exclusion for review of oil pipeline filings. In addition, section 380.4(a) provides an exemption for rules that are clarifying corrective, or procedural and that provide for information gathering, analysis, and dissemination. Because this Final Rule only involves these matters, no environmental consideration is necessary.

#### V. Regulatory Flexibility Act

120. The Regulatory Flexibility Act of 1980 (RFA)<sup>68</sup> generally requires a description and analysis of whether the Final Rule will have a significant economic impact on a substantial number of small entities or a certification that the Final Rule will not have a significant economic impact on such entities. In the NOPR, we stated that the proposed rule would be applicable to all entities regulated by the Commission, a small number of which may be small entities. However, the Commission did not believe the rule would have a significant impact on these small businesses because the software necessary to create the XML software is commercially available from several Internet Web sites as shareware or subject to low-cost licensing options. From the Commission staff's own experience, relatively inexpensive XML software can be obtained that can adequately provide the basic tariff filing.

121. This Final Rule applies to public utilities that own, control or operate interstate transmission facilities, natural gas companies and oil pipeline companies, the majority of which are

not small businesses.<sup>69</sup> The Commission has identified that less than 2% of these entities qualify as small entities. Moreover, by eliminating the requirement to file numerous paper copies of tariffs and documents associated with rate filings, these regulations are designed to reduce the filing burden on all companies, including small businesses. Accordingly, the Commission finds that these regulations will not impose a significant economic impact on small businesses and no regulatory flexibility analysis is required pursuant to § 605(b) of the RFA.

#### VI. Document Availability

122. 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 p.m. Eastern time) at 888 First Street, NE., Room 2A, Washington, DC 20426.

123. From FERC'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.

124. User assistance is available for eLibrary and the FERC'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).

<sup>69</sup> See 5 U.S.C. 601(3), citing Section 3 of the Small Business Act, 15 U.S.C. 623. Section 3 of the SBA defines a "small business concern" as a business which is independently owned and operated and which is not dominant in its field of operation. The Small Business Size Standards component of the North American Industry Classification System defines a small utility as a company including its affiliates that is primarily engaged in the generation, transmission, and/or distribution of electric energy for sale and whose total electric output for the preceding fiscal year did not exceed 4 million megawatt hours. A small natural gas company is defined as a company that transports natural gas and whose annual receipts (total income plus cost of good sold) did not exceed \$6.5 million for the previous year. A small oil pipeline company is defined a company with 1,500 or less employees for the year.

<sup>64</sup> Pub. L. 104-13, 109 Stat. 163, (Oct. 1, 1995).

<sup>65</sup> Title XVII, Pub. L. 105-277, 112 Stat. 2681 (Oct. 21, 1998).

<sup>66</sup> Pub. L. 107-347, 116 Stat. 2899 (Dec. 17, 2002).

<sup>67</sup> *Regulations Implementing the National Environmental Policy Act*, Order No. 486, 52 FR 47,897 (Dec. 17, 1987), FERC Stats. & Regs., Regulations Preambles 1986-1990 ¶ 30,783 (1987).

<sup>68</sup> 5 U.S.C. 601-612.



## VII. Effective Date and Congressional Notification

125. These regulations are effective November 3, 2008. The Commission has determined, with the concurrence of the Administrator of the Office of Information and Regulatory Affairs of OMB, that this rule is not a “major rule” as defined in section 351 of the Small Business Regulatory Enforcement Fairness Act of 1996.

### List of Subjects

#### 18 CFR Part 35

Electric power rates, Electric utilities, Reporting and recordkeeping requirements, Electricity, Incorporation by reference.

#### 18 CFR Part 131

Electric power.

#### 18 CFR Part 154

Natural gas, Pipelines, Reporting and recordkeeping requirements, Natural gas companies, Rate schedules and tariffs.

#### 18 CFR Part 157

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

#### 18 CFR Part 250

Natural gas, Reporting and recordkeeping requirements.

#### 18 CFR Part 281

Natural gas, Reporting and recordkeeping requirements.

#### 18 CFR Part 284

Continental Shelf, Natural gas, Reporting and recordkeeping requirements, Incorporation by reference.

#### 18 CFR Part 300

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

#### 18 CFR Part 341

Maritime carriers, Pipelines, Reporting and recordkeeping requirements.

#### 18 CFR Part 344

Pipelines, Reporting and recordkeeping requirements.

#### 18 CFR Part 346

Pipelines, Reporting and recordkeeping requirements.

#### 18 CFR Part 347

Pipelines, Reporting and recordkeeping requirements.

#### 18 CFR Part 348

Pipelines, Reporting and recordkeeping requirements.

#### 18 CFR Part 375

Authority delegations (Government agencies), Seals and insignia, Sunshine Act, Electric power rates, Electric utilities, Reporting and recordkeeping requirements.

#### 18 CFR Part 385

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

By the Commission.

**Kimberly D. Bose,**  
*Secretary.*

■ In consideration of the foregoing, the Commission amends Parts 35, 131, 154, 157, 250, 281, 284, 300, 341, 344, 346, 347, 348, 375 and 385, Chapter I, Title 18, *Code of Federal Regulations*, as follows:

### PART 35—FILING OF RATE SCHEDULES AND TARIFFS

■ 1. The authority citation for part 35 continues to read as follows:

**Authority:** 16 U.S.C 791a–825r, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7101–7352.

■ 2. Section 35.1 is amended as follows:

- a. The section heading is revised;
- b. In paragraph (a), the first sentence is revised;
- c. In paragraph (a), the phrase “or tariff” is added after the phrase “rate schedule”;
- d. In paragraphs (b) and (c), remove all references to “supplement”;
- e. In paragraphs (b) and (c), the phrase “or tariff” is removed and the phrase “, tariff, or service agreement” is added in its place;
- f. In paragraph (c), the phrase “Notices of Cancellation or Termination” is removed, and the phrase “cancellation or termination” is added in its place;
- g. In paragraph (d), the phrase “, tariffs or service agreements” is added after the phrase “rate schedules”;
- h. In paragraph (g), the phrase “service” is added before the phrase “agreement”. The revisions read as follows:

#### § 35.1 Application; obligation to file rate schedules, tariffs and certain service agreements.

(a) Every public utility shall file with the Commission and post, in conformity with the requirements of this part, full and complete rate schedules and tariffs and those service agreements not meeting the requirements of § 35.1(g), clearly and specifically setting forth all

rates and charges for any transmission or sale of electric energy subject to the jurisdiction of this Commission, the classifications, practices, rules and regulations affecting such rates, charges, classifications, services, rules, regulations or practices, as required by section 205(c) of the Federal Power Act (49 Stat. 851; 16 U.S.C. 824d(c)). \* \* \*

■ 3. Section 35.2 is amended as follows:

- a. Paragraph (b) is revised;
- b. Paragraphs (c), (d), and (e) are redesignated as paragraphs (d), (e), and (f) respectively;
- c. In redesignated paragraphs (d) and (f), the phrase “rate schedule” is removed and the phrase “rate schedule, tariff or service agreement” is added in its place;
- d. Paragraph (c) is added; and
- e. Newly redesignated paragraph (e) is revised.

The revisions read as follows:

#### § 35.2 Definitions.

(b) *Rate schedule.* The term *rate schedule* as used herein shall mean a statement of (1) electric service as defined in paragraph (a) of this section, (2) rates and charges for or in connection with that service, and (3) all classifications, practices, rules, or regulations which in any manner affect or relate to the aforementioned service, rates, and charges. This statement shall be in writing and may take the physical form of a contract, purchase or sale or other agreement, lease of facilities, or other writing. Any oral agreement or understanding forming a part of such statement shall be reduced to writing and made a part thereof. A rate schedule is designated with a Rate Schedule number.

(c)(1) *Tariff.* The term *tariff* as used herein shall mean a statement of (1) electric service as defined in paragraph (a) of this section offered on a generally applicable basis, (2) rates and charges for or in connection with that service, and (3) all classifications, practices, rules, or regulations which in any manner affect or relate to the aforementioned service, rates, and charges. This statement shall be in writing. Any oral agreement or understanding forming a part of such statement shall be reduced to writing and made a part thereof. A tariff is designated with a Tariff Volume number.

(2) *Service agreement.* The term *service agreement* as used herein shall mean an agreement that authorizes a customer to take electric service under the terms of a tariff. A service agreement

shall be in writing. Any oral agreement or understanding forming a part of such statement shall be reduced to writing and made a part thereof. A service agreement is designated with a Service Agreement number.

\* \* \* \* \*

(e) *Posting* (1) The term posting as used in this part shall mean:

(i) Keeping a copy of every rate schedule, service agreement, or tariff of a public utility as currently on file, or as tendered for filing, with the Commission open and available during regular business hours for public inspection in a convenient form and place at the public utility's principal and district or division offices in the territory served, and/or accessible in electronic format, and

(ii) Serving each purchaser under a rate schedule, service agreement, or tariff either electronically or by mail in accordance with the service regulations in Part 385 of this chapter with a copy of the rate schedule, service agreement, or tariff. Posting shall include, in the event of the filing of increased rates or charges, serving either electronically or by mail in accordance with the service regulations in Part 385 of this chapter each purchaser under a rate schedule, service agreement or tariff proposed to be changed and to each State Commission within whose jurisdiction such purchaser or purchasers distribute and sell electric energy at retail, a copy of the rate schedule, service agreement or tariff showing such increased rates or charges, comparative billing data as required under this part, and, if requested by a purchaser or State Commission, a copy of the supporting data required to be submitted to this Commission under this part. Upon direction of the Secretary, the public utility shall serve copies of rate schedules, service agreements, or tariffs, and supplementary data, upon designated parties other than those specified herein.

(2) Unless it seeks a waiver of electronic service, each customer, State Commission, or other party entitled to service under this paragraph (e) must notify the public utility of the e-mail address to which service should be directed. A customer, State Commission, or other party may seek a waiver of electronic service by filing a waiver request under Part 390 of this chapter providing good cause for its inability to accept electronic service.

\* \* \* \* \*

■ 4. Section 35.3 is amended as follows:

■ a. Paragraph (a) is revised;

■ b. In paragraph (b), first sentence, the phrase “, tariffs or service agreements”

is added after the phrase “Rate schedules”;

■ c. In paragraph (b), second sentence, the phrase “or service agreement” is added after the phrase “rate schedule”.

The revision reads as follows:

### § 35.3 Notice requirements.

(a)(1) *Rate schedules or tariffs*. All rate schedules or tariffs or any part thereof shall be tendered for filing with the Commission and posted not less than sixty days nor more than one hundred-twenty days prior to the date on which the electric service is to commence and become effective under an initial rate schedule or tariff or the date on which the filing party proposes to make any change in electric service and/or rate, charge, classification, practice, rule, regulation, or contract effective as a change in rate schedule or tariff, except as provided in paragraph (b) of this section, or unless a different period of time is permitted by the Commission. Nothing herein shall be construed as in any way precluding a public utility from entering into agreements which, under this section, may not be filed at the time of execution thereof by reason of the aforementioned sixty to one hundred-twenty day prior filing requirements. The proposed effective date of any rate schedule or tariff filing having a filing date in accordance with § 35.2(d) may be deferred by the public utility making a filing requesting deferral prior to the rate schedule or tariff's acceptance by the Commission.

(2) *Service agreements*. Service agreements that are required to be filed and posted authorizing a customer to take electric service under the terms of a tariff, or any part thereof, shall be tendered for filing with the Commission and posted not more than 30 days after electric service has commenced or such other date as may be specified by the Commission.

\* \* \* \* \*

### § 35.4 [Amended]

■ 5. In § 35.4, the phrase “, tariff or service agreement” is added following the phrase “rate schedule”.

### § 35.6 [Amended]

■ 6. In § 35.6, the phrase “, tariff or service agreement” is added following the phrase “rate schedule”.

■ 7. Section 35.7 is revised to read as follows:

### § 35.7 Electronic filing requirements.

(a) *General rule*. All filings made in proceedings initiated under this part must be made electronically, including tariffs, rate schedules and service

agreements, or parts thereof, and material that relates to or bears upon such documents, such as cancellations, amendments, withdrawals, termination, or adoption of tariffs.

(b) *Requirement for signature*. All filings must be signed in compliance with the following:

(1) The signature on a filing constitutes a certification that: the contents are true and correct to the best knowledge and belief of the signer; and that the signer possesses full power and authority to sign the filing.

(2) A filing must be signed by one of the following:

(i) The person on behalf of whom the filing is made;

(ii) An officer, agent, or employee of the company, governmental authority, agency, or instrumentality on behalf of which the filing is made; or,

(iii) A representative qualified to practice before the Commission under § 385.2101 of this chapter who possesses authority to sign.

(3) All signatures on the filing or any document included in the filing must comply, where applicable, with the requirements in Part 385 of this chapter with respect to sworn declarations or statements and electronic signatures.

(c) *Format requirements for electronic filing*. The requirements and formats for electronic filing are listed in instructions for electronic filing and for each form. These formats are available on the Internet at <http://www.ferc.gov> and can be obtained at the Federal Energy Regulatory Commission, Public Reference Room, 888 First Street, NE., Washington, DC 20426.

■ 8. In § 35.8, the section heading is revised as set forth below, paragraph (b) is removed, the designation “(a)” is removed from paragraph (a), and the paragraph (a) heading, “*Protests or interventions*” is removed.

### § 35.8 Protests and interventions by interested parties.

\* \* \* \* \*

■ 9. Section 35.9 is revised to read as follows:

### § 35.9 Requirements for filing rate schedules, tariffs or service agreements.

(a) Rate schedules, tariffs, and service agreements may be filed either by dividing the rate schedule, tariff, or service agreements into individual sheets or sections, or as an entire document except as provided in paragraphs (b) and (c) of this section.

(b) Open Access Transmission Tariffs (OATT) filed by utilities that are not Independent System Operators or Regional Transmission Organizations must be filed either as individual sheets

or sections. If filed as sections, the sections must be no larger than the 1.0 level, although each schedule or attachment may be a single section. Individual service agreements that are entered into pursuant to the OATT may be filed as entire documents.

(c) OATT and other open access documents filed by Independent System Operators or Regional Transmission Organizations must be filed either as individual sheets or sections. If filed as sections, the sections must be no larger than the 1.1 level, including schedules or attachments. Individual service agreements that are part entered into pursuant to the OATT may be filed as entire documents.

■ 10. Section 35.10 is amended as follows:

- a. The section heading is revised;
- b. In paragraph (a), the phrase “, tariff or service agreement” is added after the phrase “rate schedule” anywhere it appears in the paragraph; and
- c. Paragraphs (b) and (c) are revised. The revisions read as follows:

**§ 35.10 Form and style of rate schedules, tariffs and service agreements.**

\* \* \* \* \*

(b) At the time a public utility files with the Commission and posts under this part to supersede or change the provisions of a rate schedule, tariff, or service agreement previously filed with the Commission under this part, in addition to the other requirements of this part, it must list in the transmittal letter the sheets or sections revised, and file a marked version of the rate schedule, tariff or service agreement sheets or sections showing additions and deletions. New language must be marked by either highlighting, background shading, bold text, or underlined text. Deleted language must be marked by strike-through.

(c) In any filing to supersede or change the provisions of a rate schedule, tariff, or service agreement previously filed with the Commission under this part, only those revisions appropriately designated and marked under paragraph (b) of this section constitute the filing. Revisions to unmarked portions of the rate schedule, tariff or service agreement are not considered part of the filing nor will any acceptance of the filing by the Commission constitute acceptance of such unmarked changes.

**§ 35.10a [Amended]**

■ 11. In § 35.10a(b), the phrase “in the same format” is removed and the phrase “filed electronically as” is added in its place, and the phrase “§ 35.10(b)” is removed, and the phrase “§ 35.7” is added in its place.

**§ 35.11 [Amended]**

■ 12. In § 35.11, the phrase “, tariff or service agreement” is added after the phrase “rate schedule”.

■ 13. Section 35.12 is amended as follows:

- a. The section heading is revised to read as set forth below;
- b. In paragraphs (a), (b)(2)(i), (b)(4), and (b)(5)(ii), the phrase “schedule” is removed, and the phrase “rate schedule or tariff” is added in its place; and
- c. In paragraph (b)(2)(ii), the phrase “or she” is added after the phrase “he”.

**§ 35.12 Filing of initial rate schedules and tariffs.**

\* \* \* \* \*

■ 14. Section 35.13 is amended as follows:

- a. The section heading and paragraph (a) introductory text are revised;
- b. In paragraph (a)(1), the phrase “, tariff, or service agreement” is added following the phrase “rate schedule”.
- c. In paragraph (a)(2)(iii), the phrase “, tariff, or service agreement” is added after the phrase “rate schedule”, and the phrase “schedule or tariff” is removed in the first sentence.
- d. In paragraphs (a)(2)(iv), (a)(2)(iv)(A) and (a)(2)(iv)(B), the phrase “schedule” is removed after the word “rate” in all places where it appears.
- e. In paragraph (b)(1), the phrase “schedule” is removed.
- f. In paragraph (b)(2), the phrase “schedule” is removed.
- g. In paragraph (b)(3), the phrase “schedule” is removed, and the phrase “mailed or e-mailed” is removed, and the phrase “posted” is added in its place.
- h. In paragraphs (b)(4), (b)(5), (b)(6), the phrase “schedule” is removed.
- i. Paragraph (b)(8) is removed.
- j. The heading to paragraph (c) introductory text is amended by removing the word “schedule”.
- k. In paragraph (c)(1), introductory text, remove the reference to “or supplemented”.
- l. In paragraph (c)(1) introductory text, the phrase “, tariff, or service agreement” is added after the first phrase “rate schedule,” and the second phrase “schedule or tariff” is removed after the phrase “rate”.
- m. In paragraphs (c)(1)(i), (c)(1)(ii)(A), (c)(1)(ii)(B), (c)(2), (c)(3), the phrase “schedule” is removed following the word “rate”.
- n. In paragraphs (d)(1)(ii) introductory text, (d)(3)(i), (d)(3)(ii)(A), and (d)(3)(ii)(B), the phrase “schedule” is removed following the word “rate”.
- o. In paragraph (d)(5), the phrase “cut or folded to letter size,” is removed and the phrase “provided in electronic

format, shall be legible,” is added in its place.

■ p. In paragraph (e)(1)(i), the phrase “schedule” is removed after the phrase “rate”.

■ q. In paragraph (f), the phrase “schedule” is removed after the phrase “rate” anywhere it appears in the paragraph.

The revisions read as follows:

**§ 35.13 Filing of changes in rate schedules, tariffs or service agreements.**

\* \* \* \* \*

(a) *General rule.* Every public utility shall file the information required by this section, as applicable, at the time it files with the Commission under § 35.1 all or part of a rate schedule, tariff or service agreement to supersede or otherwise change the provisions of a rate schedule, tariff or service agreement filed with the Commission under § 35.1. Any petition filed under § 385.207 of this chapter for waiver of any provision of this section shall specifically identify the requirement that the applicant wishes the Commission to waive.

\* \* \* \* \*

**§ 35.14 [Amended]**

■ 15. Section 35.14 is amended as follows:

- a. In paragraph (a), introductory text, the phrase “(fuel clause)” is added after phrase “Fuel adjustment clause”, and the phrase “, tariffs or service agreements” is added after the phrase “rate schedules” anywhere it appears in the paragraph’s introductory text.
- b. In paragraph (a)(7), the phrase “schedule” is removed in the second to last sentence.

■ 16. In § 35.15, paragraph (a) is revised, to read as follows:

**§ 35.15 Notices of cancellation or termination.**

(a) *General rule.* When a rate schedule, tariff or service agreement or part thereof required to be on file with the Commission is proposed to be cancelled or is to terminate by its own terms and no new rate schedule, tariff or service agreement or part thereof is to be filed in its place, a filing must be made to cancel such rate schedule, tariff or service agreement or part thereof at least sixty days but not more than one hundred-twenty days prior to the date such cancellation or termination is proposed to take effect. A copy of such notice to the Commission shall be duly posted. With such notice, each filing party shall submit a statement giving the reasons for the proposed cancellation or termination, and a list of the affected purchasers to whom the notice has been provided. For good cause shown, the

Commission may by order provide that the notice of cancellation or termination shall be effective as of a date prior to the date of filing or prior to the date the filing would become effective in accordance with these rules.

\* \* \* \* \*

#### § 35.16 [Amended]

■ 17. In § 35.16, the phrase “on the form indicated in § 131.51 of this chapter” is removed and the phrase “with a tariff consistent with the electronic filing requirements in § 35.7 of this part” is added in its place.

■ 18. Section 35.17 is amended as follows:

- a. The section heading is revised;
- b. Paragraphs (a), (b), and (c) are redesignated as paragraphs (c), (d), and (e), respectively;
- c. New paragraphs (a) and (b) are added; and
- d. In redesignated paragraphs (c), (d), and (e), the phrase “tariff” is removed and the phrase “, tariffs or service agreements” is added in its place. The revisions and additions read as follows:

#### § 35.17 Withdrawals and amendments of rate schedules, tariff or service agreement filings.

(a) *Withdrawals of rate schedule, tariff or service agreement filings prior to Commission action.* (1) A public utility may withdraw in its entirety a rate schedule, tariff or service agreement filing that has not become effective and upon which no Commission or delegated order has been issued by filing a withdrawal motion with the Commission. Upon the filing of such motion, the proposed rate schedule, tariff or service agreement sections will not become effective under section 205(d) of the Federal Power Act in the absence of Commission action making the rate schedule, tariff or service agreement filing effective.

(2) The withdrawal motion will become effective, and the rate schedule, tariff or service agreement filing will be deemed withdrawn, at the end of 15 days from the date of filing of the withdrawal motion, if no answer in opposition to the withdrawal motion is filed within that period and if no order disallowing the withdrawal is issued within that period. If an answer in opposition is filed within the 15 day period, the withdrawal is not effective until an order accepting the withdrawal is issued.

(b) *Amendments or modifications to rate schedule, tariff or service agreement sections prior to Commission action on the filing.* A public utility may file to amend or modify, and may file a

settlement that would amend or modify, a rate schedule, tariff or service agreement section contained in a rate schedule, tariff or service agreement filing that has not become effective and upon which no Commission or delegated order has yet been issued. Such filing will toll the notice period in section 205(d) of the Federal Power Act for the original filing, and establish a new date on which the entire filing will become effective, in the absence of Commission action, no earlier than 61 days from the date of the filing of the amendment or modification.

\* \* \* \* \*

#### § 35.18 [Amended]

■ 19. In § 35.18, paragraph (a), first sentence, the phrase “, tariff or service agreement” is added after the phrase “rate schedule”.

#### § 35.21 [Amended]

■ 20. In § 35.21, footnote 5, the words “footnote 1 to” are removed.

#### § 35.22 [Amended]

■ 21. In § 35.22, in the section heading, paragraph (a), paragraph (f) heading, and paragraph (f)(1), the phrase “, tariffs or service agreements” is added after the phrase “rate schedules”.

■ 22. In § 35.23, paragraph (b)(1)(ii) is revised to read as follows:

#### § 35.23 General provisions.

(b) \* \* \*

(1) \* \* \*

(ii) Submit the revisions in accordance with § 35.7; and

\* \* \* \* \*

#### §§ 35.1, 35.4, 35.5, 35.6, 35.11, 35.12, 35.13, and 35.17 [Amended]

■ 23. In addition to the amendments set forth above, in 18 CFR Part 35, the following nomenclature changes are made to the sections indicated:

■ a. In §§ 35.1(b) and (c), 35.4, 35.6, 35.11, 35.12(a), 35.13(a), 35.13(a)(1), 35.13(a)(2)(iii), 35.13(b)(1), 35.13(c)(1), 35.17(c), 35.17(d), and 35.17(e), all references to “rate schedule” are removed and “rate schedule or tariff” is added in their place.

■ b. In the headings of §§ 35.17(c), 35.17(d), and 35.17(e), all references to “rate schedules” are removed and “rate schedules or tariffs” is added in their place.

#### PART 131—FORMS

■ 24. The authority citation for part 131 continues to read as follows:

**Authority:** 16 U.S.C. 791a–825r, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7101–7352.

#### § 131.51 [Removed]

■ 25. Section 131.51 is removed and reserved.

#### § 131.52 [Amended]

■ 26. In § 131.52, the words “(An original and one conformed copy to be submitted)” are removed.

#### § 131.53 [Removed]

■ 27. Section 131.53 is removed and reserved.

#### PART 154—RATE SCHEDULES AND TARIFFS

■ 28. The authority citation for part 154 continues to read as follows:

**Authority:** 15 U.S.C. 717–717w; 31 U.S.C. 9701; 42 U.S.C. 7102–7352.

■ 29. In § 154.2, paragraph (b) is amended by removing the words “either in book form or”, and paragraph (d) is revised to read as follows:

#### § 154.2 Definitions.

\* \* \* \* \*

(d) *Post means:* to make a copy of a natural gas company's tariff and contracts available during regular business hours for public inspection in a convenient form and place at the natural gas company's offices where business is conducted with affected customers; and, to serve each affected customer and interested state Commission in accordance with § 154.208 of this Part.

\* \* \* \* \*

■ 30. Section 154.4 is revised to read as follows:

#### § 154.4 Electronic filing of tariffs and related materials.

(a) *General rule.* All filings made in proceedings initiated under this part must be made electronically, including tariffs, rate schedules, service agreements, and contracts, or parts thereof, and material that relates to or bears upon such documents, such as cancellations, amendments, withdrawals, termination, or adoption of tariffs, and motions relating to suspension.

(b) *Requirement for signature.* All filings must be signed in compliance with the following:

(1) The signature on a filing constitutes a certification that the contents are true to the best knowledge and belief of the signer, and that the signer possesses full power and authority to sign the filing.

(2) A filing must be signed by one of the following:

(i) The person on behalf of whom the filing is made;

(ii) An officer, agent, or employee of the company, governmental authority, agency, or instrumentality on behalf of which the filing is made; or,

(iii) A representative qualified to practice before the Commission under § 385.2101 of this chapter who possesses authority to sign.

(3) All signatures on the filing or any document included in the filing must comply, where applicable, with the requirements in § 385.2005 of this chapter with respect to sworn declarations or statements and electronic signatures.

(c) Format requirements for electronic filing. The requirements and formats for electronic filing are listed in instructions for electronic filing and for each form. These formats are available on the Internet at <http://www.ferc.gov> and can be obtained at the Federal Energy Regulatory Commission, Public Reference Room, 888 First Street, NE., Washington, DC 20426.

#### § 154.5 [Amended]

■ 31. In § 154.5, the words “375.307(b)(2)” are removed and the words “Part 375” are added in their place.

■ 32. In § 154.7, paragraph (b) is revised to read as follows:

#### § 154.7 General requirements for the submission of a tariff filing or executed service agreement.

\* \* \* \* \*

(b) A certification of service to all customers and state commissions pursuant to § 154.2(d).

#### § 154.101 [Removed]

■ 33. Section 154.101 is removed and reserved.

■ 34. Section 154.102 is revised to read as follows:

#### § 154.102 Requirements for filing rate schedules and tariffs.

(a) All rates schedules, tariffs, and service agreements may be filed either by dividing the rate schedule, tariff, or agreement into individual tariff sheets, or tariff sections, or as an entire document except as provided in paragraph (b) of this section.

(b) Open access transportation tariffs must be filed either as individual sheets or sections. If filed as sections, each section must include only material of related subject matter and must be of reasonable length and must include at a minimum a section for each item listed in the table of contents under § 154.103 of this section and each topic listed under General Terms and Conditions of Service.

(c) Individual negotiated rate agreements, non-conforming service

agreements, or other agreements that are included in the tariff may be filed as entire documents.

(d) The first section or sheet of the tariff must include:

(1) The FERC Gas Tariff Volume Number and Name of the Natural Gas Company, for example

FERC Gas Tariff Volume No. [ ] of [Name of Natural Gas Company]

(2) The name, title, address, telephone number, e-mail address and facsimile number of a person to whom communications concerning the tariff should be sent.

■ 35. Section 154.104 is revised to read as follows:

#### § 154.104 Table of contents.

The table of contents must contain a list of the rate schedules, sections of the general terms and conditions, and other sections in the order in which they appear, showing the sheet number of the first page of each section or the section number. The list of rate schedules must consist of: The alphanumeric designation of each rate schedule, a very brief description of the service, and the sheet number of the first page of each rate schedule or the section number.

#### § 154.106 [Amended]

■ 36. In § 154.106, paragraph (b) is removed and reserved.

■ 37. In § 154.112, the fourth through sixth sentences of paragraph (a) and the second sentence of paragraph (b) are revised to read as follows:

#### § 154.112 Exception to form and composition of tariff.

(a) \* \* \*. Modifications must be made by inserting revised sheets, sections or the entire document as appropriate. Special rate schedules must be included in a separate volume of the tariff. Each such separate volume must contain a table of contents which is incorporated as a sheet or section in the open access transmission tariff.

(b) \* \* \*. Such non-conforming agreements must be referenced in the open access transmission tariff.

#### § 154.107 [Amended]

■ 38. Section 154.107 is amended as follows:

■ a. In paragraphs (d) and (e) all references to “sheet” are removed and “sheet or section” is added in their place.

■ b. In paragraph (e) the reference to “or Gas Research Institute” is removed.

■ 39. Section 154.201 (a) is revised to read as follows:

#### § 154.201 Filing requirements.

\* \* \* \* \*

(a) A list in the transmittal letter of the tariff sheets or sections being revised and a marked version of the sheets or sections to be changed or superseded showing additions and deletions. New numbers and text must be marked by either highlight, background shading, bold, or underline. Deleted text and numbers must be indicated by strike-through. Only those revisions appropriately designated and marked constitute the filing. Revisions to unmarked portions of the rate schedule or tariff are not considered part of the filing nor will any acceptance of the filing by the Commission constitute acceptance of such unmarked changes.

\* \* \* \* \*

■ 40. Section 154.205 is amended as follows:

■ a. Paragraphs (a), (b), and (c) are redesignated as paragraphs (c), (d), and (e), respectively.

■ b. The section heading is revised, and paragraphs (a) and (b) are added to read as follows:

#### § 154.205 Withdrawals and amendments of tariff filings and executed service agreements.

(a) *Withdrawals of tariff filings or service agreements prior to Commission action.* (1) A natural gas company may withdraw in its entirety a tariff filing or executed service agreement that has not become effective and upon which no Commission or delegated order has been issued by filing a withdrawal motion with the Commission. Upon the filing of such motion, the proposed tariff sheets, sections or service agreements will not become effective under section 4(d) of the Natural Gas Act in the absence of Commission action making the rate schedule or tariff filing effective.

(2) The withdrawal motion will become effective, and the rate schedule or tariff filing will be deemed withdrawn, at the end of 15 days from the date of filing of the withdrawal motion, if no answer in opposition to the withdrawal motion is filed within that period and if no order disallowing the withdrawal is issued within that period. If an answer in opposition is filed within the 15 day period, the withdrawal is not effective until an order accepting the withdrawal is issued.

(b) *Amendments or modifications to tariff sheets, sections or service agreements prior to Commission action on a tariff filing.* A natural gas company may file to amend or modify a tariff or service agreement contained in a tariff filing upon which no Commission or delegated order has yet been issued. Such filing will toll the notice period in section 4(d) of the Natural Gas Act for

the original filing, and establish a new date on which the entire filing will become effective, in the absence of Commission action, no earlier than 31 days from the date of the filing of the amendment or modification.

\* \* \* \* \*

■ 41. In § 154.208, the section heading is revised, paragraph (d) is revised, and paragraphs (e) and (f) are added to read as follows:

**§ 154.208 Service of tariff filings on customers and other parties.**

\* \* \* \* \*

(d) A customer or other party may designate a recipient of service. The filing company must serve the designated recipient, in accordance with this section, instead of the customer or other party. For the purposes of this section, service upon the designated recipient will be deemed service upon the customer or other party.

(e) The company may choose to effect service either electronically or by paper. Such service must be made in accordance with the requirements of Part 385 of this chapter.

(f) Unless it seeks a waiver of electronic service, each customer or party entitled to service of initial tariff filings under this section must notify the company of the e-mail address to which service should be directed. A customer or party may seek a waiver of electronic service by filing a waiver request under Part 390 of this chapter, providing good cause for its inability to accept electronic service.

**§ 154.209 [Removed]**

■ 42. Section 154.209 is removed and reserved.

**§ 154.402 [Amended]**

■ 43. In § 154.402, paragraph (b)(1), the word “schedules” is removed and the words “rate schedules” are added in its place.

**§ 154.602 [Amended]**

■ 44. Section 154.602 is amended by removing the phrase “on the form indicated in § 250.2 or § 250.3 of this chapter, whichever is applicable” and adding in its place the phrase “tariff filing in the electronic format required by § 154.4”.

■ 45. Section 154.603 is revised as follows:

**§ 154.603 Adoption of the tariff by a successor.**

Whenever the tariff or contracts of a natural gas company on file with the Commission is to be adopted by another company or person as a result of an acquisition, or merger, authorized by a

certificate of public convenience and necessity, or for any other reason, the succeeding company must file with the Commission, and post within 30 days after such succession, a tariff filing in the electronic format required by § 154.4 bearing the name of the successor company.

**§§ 154.7, 154.111, 154.202, 154.206, 154.208, 154.402, and 154.403 [Amended]**

■ 46. In addition to the amendments set forth above, in 18 CFR Part 154, the following nomenclature changes are made to the sections as amended:

■ a. In §§ 154.7(a)(5), 154.111(c), 154.202(b), 154.206(a), 154.208(a), all references to “sheets” are removed and “sheets or sections” is added in their place.

■ b. In §§ 154.402(b) introductory text, 154.402(b)(3), 154.403(b), all references to “sheet” are removed and “sheet or section” is added in their place.

**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**

■ 47. The authority citation for part 157 continues to read as follows:

**Authority:** 15 U.S.C. 717–717w.

■ 48. Amend § 157.217 by adding a sentence to the end of paragraph (a)(4) to read as follows:

**§ 157.217 Changes in rate schedules.**

(a) \* \* \*

(4) \* \* \* This tariff filing must be filed in the electronic format required by § 154.4 of this chapter.

\* \* \* \* \*

**PART 250—FORMS**

■ 49. The authority citation for part 250 continues to read as follows:

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

**§§ 250.2, 250.3, and 250.4 [Removed]**

■ 50. Sections 250.2, 250.3, and 250.4 are removed and reserved.

**PART 281—NATURAL GAS CURTAILMENT UNDER THE NATURAL GAS POLICY ACT OF 1978**

■ 51. The authority citation for part 281 continues to read as follows:

**Authority:** 15 U.S.C. 717–717w, 3301–3432; 16 U.S.C. 2601–2645; 42 U.S.C. 7101–7352.

■ 52. In § 281.204, the first sentence in paragraph (a) is revised to read as follows:

**§ 281.204 Tariff filing requirements.**

(a) *General Rule.* Each interstate pipeline listed in § 281.202 shall file tariff sheets, in accordance with § 154.4 of this chapter, including an index of entitlements, which provides that if the interstate pipeline is in curtailment, natural gas will be delivered in accordance with the provisions of this subpart. \* \* \*

\* \* \* \* \*

**§§ 281.204, 281.212, 281.213 [Amended]**

■ 53. In addition to the amendments set forth above, in 18 CFR Part 281, the following nomenclature changes are made to the sections as amended:

■ a. In §§ 281.204(a), 281.212(a), 281.212(b), 281.212(c), 281.213(b), 281.213(d), 281.213(e), all references to “sheets” are removed and “sheets or sections” is added in their place.

■ b. In § 281.212, the section heading is amended to remove the reference to “sheets.”

**PART 284—CERTAIN SALES AND TRANSPORTATION OF NATURAL GAS UNDER THE NATURAL GAS POLICY ACT OF 1978 AND RELATED AUTHORITIES**

■ 54. The authority citation for part 284 continues to read as follows:

**Authority:** 15 U.S.C. 717–717w, 3301–3432; 42 U.S.C. 7101–7352; 43 U.S.C. 1331–1356.

■ 55. In § 284.123, paragraph (e) is revised and paragraph (f) is added to read as follows:

**§ 284.123 Rates and charges.**

\* \* \* \* \*

(e) *Filing requirements.* Within 30 days of commencement of new service, any intrastate pipeline that engages in transportation arrangements under this subpart must file with the Commission a statement that includes the pipeline’s interstate rates, the rate election made pursuant to paragraph (b) of this section, and a description of how the pipeline will engage in these transportation arrangements, including operating conditions, such as quality standards and financial viability of the shipper. If the pipeline changes its operations, rates, or rate election under this subpart, it must amend the statement and file such amendments not later than 30 days after commencement of the change in operations or the change in rate election.

(f) *Electronic filing of statements, and related materials—(1) General rule.* All

filings made in proceedings initiated under this part must be made electronically, including rates and charges, or parts thereof, and material related thereto, statements, and all workpapers.

(2) *Requirements for signature.* All filings must be signed in compliance with the following:

(i) The signature on a filing constitutes a certification that the contents are true to the best knowledge and belief of the signer, and that the signer possesses full power and authority to sign the filing.

(ii) A filing must be signed by one of the following:

(A) The person on behalf of whom the filing is made;

(B) An officer, agent, or employee of the company, governmental authority, agency, or instrumentality on behalf of which the filing is made; or,

(C) A representative qualified to practice before the Commission under § 385.2101 of this chapter who possesses authority to sign.

(iii) All signatures on the filing or any document included in the filing must comply, where applicable, with the requirements in § 385.2005 of this chapter with respect to sworn declarations or statements and electronic signatures.

(3) *Format requirements for electronic filing.* The requirements and formats for electronic filing are listed in instructions for electronic filing and for each form. These formats are available on the Internet at <http://www.ferc.gov> and can be obtained at the Federal Energy Regulatory Commission, Public Reference Room, 888 First Street, NE., Washington, DC 20426.

■ 56. In § 284.224, paragraph (e)(5) is revised to read as follows:

**§ 284.224 Certain transportation and sales by local distribution companies.**

\* \* \* \* \*

(e) \* \* \*

(5) *Filing Requirements.* Filings under this section must comply with the requirements of § 284.123 (f) of this part. The tariff filing requirements of Part 154 of this chapter shall not apply to transactions authorized by the blanket certificate.

\* \* \* \* \*

**PART 300—CONFIRMATION AND APPROVAL OF THE RATES OF FEDERAL POWER MARKETING ADMINISTRATIONS**

■ 57. The authority citation for part 300 continues to read as follows:

**Authority:** 16 U.S.C. 825s, 832–8321, 838–838k, 839–839h; 42 U.S.C. 7101–7352; 43 U.S.C. 485–485k.

■ 58. In § 300.10, paragraph (a)(4) is added to read as follows:

**§ 300.10 Application for confirmation and approval.**

(a) \* \* \*

(4) *Electronic filing.* All material must be filed electronically in accordance with the requirements of § 35.7 of this chapter.

\* \* \* \* \*

**PART 341—OIL PIPELINE TARIFFS: OIL PIPELINE COMPANIES SUBJECT TO SECTION 6 OF THE INTERSTATE COMMERCE ACT**

■ 59. The authority citation for part 341 continues to read as follows:

**Authority:** 42 U.S.C. 7101–7352; 49 U.S.C. 1–27.

■ 60. In § 341.0, paragraph (a)(11) is revised and paragraph (a)(13) is added to read as follows:

**§ 341.0 Definitions; application.**

(a) \* \* \*

(11) *Tariff publication* means all parts of a filed tariff, including revised pages, supplements and sections.

\* \* \* \* \*

(13) *Section* means an individual portion of a tariff that is tracked and accorded appropriate legal status (proposed, suspended, effective). A section is the smallest portion of a tariff that can be submitted as part of a tariff filing.

\* \* \* \* \*

■ 61. Section 341.1 is revised to read as follows:

**§ 341.1 Electronic filing of tariffs and related materials.**

(a) *General rule.* Filings of tariff publications and related materials must be made electronically.

(b) *Requirement for signature.* All filings must be signed in compliance with the following:

(1) The signature on a filing constitutes a certification that the contents are true to the best knowledge and belief of the signer, and that the signer possesses full power and authority to sign the filing.

(2) A filing must be signed by one of the following:

(i) The person on behalf of whom the filing is made;

(ii) An officer, agent, or employee of the company, governmental authority, agency, or instrumentality on behalf of which the filing is made; or,

(iii) A representative qualified to practice before the Commission under § 385.2101 of this chapter who possesses authority to sign.

(3) All signatures on the filing or any document included in the filing must comply, where applicable, with the requirements in § 385.2005 of this chapter with respect to sworn declarations or statements and electronic signatures.

(c) *Format requirements for electronic filing.* The requirements and formats for electronic filing are listed in instructions for electronic filing and for each form. These formats are available on the Internet at <http://www.ferc.gov> and can be obtained at the Federal Energy Regulatory Commission, Public Reference Room, 888 First Street, NE., Washington, DC 20426.

■ 62. Section 341.2 is amended as follows:

■ a. Paragraph (c)(3) is removed.

■ b. In paragraph (c)(1), the reference to “or supplement numbers” is removed and “supplemental numbers, or tariff sections” is added in its place.

■ c. Paragraphs (a) and (c)(2) are revised to read as follows:

**§ 341.2 Filing requirements.**

(a) *Service of filings.* (1) Carriers must serve tariff publications and justifications to each shipper and subscriber. The company may choose to effect service either electronically or by paper. Such service shall be made in accordance with the requirements of Part 385 of this chapter.

(2) Unless it seeks a waiver of electronic service, each customer or party entitled to service under this paragraph (a) must notify the company of the e-mail address to which service should be directed. A customer or party may seek a waiver of electronic service by filing a waiver request under Part 390 of this chapter providing good cause for its inability to accept electronic service.

\* \* \* \* \*

(c) \* \* \*

(2) *Certification.* Letters of transmittal must certify that the filing has been sent to each subscriber of the tariff publication pursuant to paragraph (a) of this section. For service made on paper, the letters of transmittal must certify that the filing has been sent to each customer or party by first class mail or other agreed-upon means. If there are no subscribers, letters of transmittal must so certify.

\* \* \* \* \*

■ 63. In § 341.3, paragraphs (a), (b)(6)(ii), and (b)(10)(i) are revised, and paragraph (b)(10)(vi) is added to read as follows:

**§ 341.3 Form of tariff.**

(a) Tariffs may be filed either by dividing the tariff into individual loose-



leaf tariff sheets or tariff sections, or as an entire document.

(b) \* \* \*

(6) \* \* \*

(ii) Each rule must be given a separate item number, (e.g., Item No. 1), and the title of each rule must be distinctive.

\* \* \* \* \*

(10) \* \* \*

(i) All tariff publications must identify where changes have been made in existing rates or charges, rules, regulations or practices, or classifications. One of the following letter designations or uniform symbols may be used to indicate the change, and insertions, other than to tables and rates, must be indicated by either highlight, background shading, bold, or underline, with deleted text indicated by strike-through:

Description	Option 1	Option 2
Increase .....	>	[I]
Decrease .....	<	[D]
Change in wording only.	^	[W]
Cancel .....	/	[C]
Reissued Item .....	~	[R]
Unchanged Rate .....	=	[U]
New .....	+	[N]

\* \* \* \* \*

(vi) Only revisions to tariff provisions identified in the filing constitute the tariff filing. Revisions to unidentified portions of the rate schedule or tariff are not considered part of the filing nor will any acceptance of the filing by the Commission constitute acceptance of such unmarked changes.

\* \* \* \* \*

#### § 341.4 [Amended]

■ 64. In § 341.4, paragraph (c) is removed and reserved.

■ 65. In § 341.13, paragraph (a) and paragraph (b) introductory text are revised to read as follows:

#### § 341.13 Withdrawal of proposed tariff publications.

(a) *Proposed tariff publications.* A proposed tariff publication which is not yet effective may be withdrawn at any time by filing a notice with the Commission with a certification that all subscribers have been notified by copy of such withdrawal.

(b) *Tariff publications that are subject to investigation.* A tariff publication that has been permitted to become effective subject to investigation may be withdrawn at any time by filing a notice with the Commission, which includes a transmittal letter, a certification that all subscribers have been notified of the withdrawal, and the previous tariff provisions that are to be reinstated upon

withdrawal of the tariff publication under investigation. Such withdrawal shall be effective immediately upon the submission of the notice, unless a specific effective date is set forth in the notice, and must have the following effects:

\* \* \* \* \*

#### PART 344—FILING QUOTATIONS FOR U.S. GOVERNMENT SHIPMENTS AT REDUCED RATES

■ 66. The authority citation for part 344 continues to read as follows:

**Authority:** 42 U.S.C. 7101–7352; 49 U.S.C. 1–27.

■ 67. Amend § 344.2 as follows:

■ a. Remove and reserve paragraph (b).

■ b. Revise paragraphs (a) and (c) to read as follows:

#### § 344.2 Manner of submitting quotations.

(a) The quotation or tender must be submitted to the Commission concurrently with the submittal of the quotation or tender to the Federal department or agency for whose account the quotation or tender is offered or the proposed services are to be rendered.

(b) [Reserved]

(c) *Filing procedure.* (1) The quotation must be filed with a letter of transmittal that prominently indicates that the filing is in accordance with section 22 of the Interstate Commerce Act.

(2) All filings pursuant to this part must be filed electronically consistent with §§ 341.1 and 341.2 of this chapter.

\* \* \* \* \*

#### PART 346—OIL PIPELINE COST-OF-SERVICE FILING REQUIREMENTS

■ 68. The authority citation for part 346 continues to read as follows:

**Authority:** 42 U.S.C. 7101–7352; 49 U.S.C. 60502; 49 App. U.S.C. 1–85.

■ 69. In § 346.1, the introductory text is revised to read as follows:

#### § 346.1 Content of filing for cost-of-service rates.

A carrier that seeks to establish rates pursuant to § 342.2(a) of this chapter, or a carrier that seeks to change rates pursuant to § 342.4(a) of this chapter, or a carrier described in § 342.0(b) of this chapter that seeks to establish or change rates by filing cost, revenue, and throughput data supporting such rates, other than pursuant to a Commission-approved settlement, must file, consistent with the requirements of §§ 341.1 and 341.2 of this chapter:

\* \* \* \* \*

#### PART 347—OIL PIPELINE DEPRECIATION STUDIES

■ 70. The authority citation for part 347 continues to read as follows:

**Authority:** 42 U.S.C. 7101–7352; 49 U.S.C. 60502; 49 App. U.S.C. 1–85.

■ 71. In § 347.1, remove the second sentence of paragraph (a), remove the last two sentences of paragraph (c), and revise paragraph (b) to read as follows:

#### § 347.1 Material to support request for newly established or changed property account depreciation studies.

\* \* \* \* \*

(b) All filings under this Part must be made electronically pursuant to the requirements of §§ 341.1 and 341.2 of this chapter.

\* \* \* \* \*

#### PART 348—OIL PIPELINE APPLICATIONS FOR MARKET POWER DETERMINATIONS

■ 72. The authority citation for part 348 continues to read as follows:

**Authority:** 42 U.S.C. 7101–7352; 49 U.S.C. 60502; 49 App. U.S.C. 1–85.

■ 73. In § 348.2, paragraphs (a) and (c) are revised to read as follows:

#### § 348.2 Procedures.

(a) All filings under this Part must be made electronically pursuant to the requirements of §§ 341.1 and 341.2 of this chapter. A carrier must submit with its application any request for privileged treatment of documents and information under § 388.112 of this chapter and a proposed form of protective agreement.

\* \* \* \* \*

(c) A letter of transmittal must describe the market-based rate filing, including an identification of each rate that would be market-based, and the pertinent tariffs, state if a waiver is being requested and specify the statute, section, subsection, regulation, policy or order requested to be waived. Letters of transmittal must be certified pursuant to § 341.1(b) of this chapter.

\* \* \* \* \*

#### PART 375—THE COMMISSION

■ 74. 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.

■ 75. Amend § 375.307 as follows:

■ a. Paragraph (b)(1)(i) is amended by removing the word “and” from the end of the paragraph.

■ b. Paragraph (b)(1)(ii) is amended by removing the period at the end of the

paragraph and adding “; and” in its place.

■ c. Paragraph (b)(1)(iii) is added to read as follows:

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

\* \* \* \* \*

(b) \* \* \*

(1) \* \* \*

(iii) Filings for administrative revisions to electronic filed tariffs.

\* \* \* \* \*

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

■ 76. 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).

**§ 385.203 [Amended]**

■ 77. In § 385.203, paragraph (a)(4), the reference to “sheets” is removed and “sheets or sections” is added in its place.

■ 78. In § 385.215, paragraph (a)(2) is amended by adding a new first sentence to read as follows:

**§ 385.215 Amendment of pleadings and tariff or rate filings (Rule 215).**

(a) \* \* \*

(2) A tariff or rate filing may be amended or modified only as provided in the regulations under this chapter.

\* \* \*

\* \* \* \* \*

■ 79. In § 385.216, the heading and paragraph (a) are revised to read as follows:

**§ 385.216 Withdrawal of pleadings and tariff or rate filings (Rule 216).**

(a) *Filing.* Any participant, or any person who has filed a timely motion to intervene which has not been denied, may seek to withdraw a pleading by filing a notice of withdrawal. The procedures provided in this section do not apply to withdrawals of tariff or rate filings, which may be withdrawn only as provided in the regulations under this chapter.

\* \* \* \* \*

**§ 385.217 [Amended]**

■ 80. In § 385.217, paragraph (d)(1)(iii), the reference to “sheets” is removed and “sheets or sections” is added in its place.

**§ 385.2011 [Amended]**

■ 81. In § 385.2011, paragraph (b)(1) is removed and reserved, and paragraphs (b)(4) and (b)(5) are removed.

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

**Appendix**

**Commenters and Abbreviations**

American Gas Association (AGA)  
Arizona Public Service Company (APS)  
Association of Oil Pipe Lines (AOPL)  
Bonneville Power Administration (Bonneville)  
California Independent System Operator Corporation (CAISO)  
Duke Energy Corporation (Duke Energy)  
Edison Electric Institute (EEI)  
Entergy Services, Inc. (Entergy)  
FirstEnergy Service Company (FirstEnergy)  
Interstate Natural Gas Association of America (INGAA)  
ISO New England, Inc. (ISO New England)  
Midwest Independent Transmission System Operator, Inc. (Midwest ISO)  
Nevada Power Company and Sierra Pacific Power Company (Nevada Power)  
New England Participating Transmission Owners Administrative Committee (New England PTOs)  
Public Service Electric and Gas Company and PSEG Energy Resources & Trade LLC (PSEG)  
Southern California Edison Company (Southern California Edison)  
TransCanada Corporation (TransCanada)  
UNICON, Inc. (UNICON)

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**DEPARTMENT OF THE INTERIOR**

**Office of Surface Mining Reclamation and Enforcement**

**30 CFR Part 950**

[SATS No. WY–036–FOR; Docket ID OSM–2008–0008]

**Wyoming Abandoned Mine Land Reclamation Plan**

**AGENCY:** Office of Surface Mining Reclamation and Enforcement, Interior.

**ACTION:** Final rule; approval of amendment.

**SUMMARY:** We are approving an amendment to the Wyoming abandoned mine land reclamation (AMLR) plan (hereinafter referred to as the “Wyoming plan”) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Wyoming intended to revise its plan by submitting a revision to W.S. 35–11–1210 to correct an inadvertent error in the statute that was enacted during the 2007 Legislative Session. Specifically, the amendment

clarifies that W.S. § 35–11–1210 only applies to SMCRA section 411(h)(1) funds.

**DATES:** *Effective Date:* October 3, 2008.

**FOR FURTHER INFORMATION CONTACT:** Jeffrey Fleischman, Casper Field Office Director. Telephone: (307) 261–6550. Internet address: [jfleischman@osmre.gov](mailto:jfleischman@osmre.gov).

**SUPPLEMENTARY INFORMATION:**

I. Background on the Wyoming Plan  
II. Submission of the Proposed Amendment  
III. Office of Surface Mining Reclamation and Enforcement’s (OSM’s) Findings  
IV. Summary and Disposition of Comments  
V. OSM’s Decision  
VI. Procedural Determinations

**I. Background on the Wyoming Plan**

The Abandoned Mine Land Reclamation Program was established by Title IV of the Act (30 U.S.C. 1201 *et seq.*) in response to concerns over extensive environmental damage caused by past coal mining activities. The program is funded by a reclamation fee collected on each ton of coal that is produced. The money collected is used to finance the reclamation of abandoned coal mines and for other authorized activities. Section 405 of the Act allows States and Indian tribes to assume exclusive responsibility for reclamation activity within the State or on Indian lands if they develop and submit to the Secretary of the Interior for approval, a program (often referred to as a plan) for the reclamation of abandoned coal mines.

On February 14, 1983, the Secretary of the Interior approved Wyoming’s AMLR Plan. You can find general background information on the Wyoming Plan, including the Secretary’s findings and the disposition of comments, in the February 14, 1983, **Federal Register** (48 FR 6536). OSM announced in the May 25, 1984, **Federal Register** (49 FR 22139), the Director’s decision accepting certification by Wyoming that it had addressed all known coal-related impacts in the State that were eligible for funding under the Wyoming Plan. Wyoming could then proceed in reclaiming low priority non-coal projects. The Director accepted Wyoming’s proposal that it would seek immediate funding for reclamation of any additional coal-related problems that occur during the life of the Wyoming Plan. You can find later actions concerning Wyoming’s Plan and plan amendments at 30 CFR 950.35.

**II. Submission of the Proposed Amendment**

By letter dated March 21, 2008, Wyoming submitted a proposed