Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

NUCLEAR REGULATORY COMMISSION

2 CFR Chapter XX

5 CFR Chapter XLVIII

10 CFR Chapter I

[NRC–2011–0246]

Retrospective Review Under Executive Order 13579

AGENCY: Nuclear Regulatory Commission.

ACTION: Initial plan for retrospective analysis of existing rules.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC or the Commission) has made available its initial Plan for retrospective analysis of its existing regulations to determine whether any such regulations should be modified, streamlined, expanded, or repealed. This action is part of the NRC's voluntary implementation of Executive Order (EO) 13579, ''Regulation and Independent Regulatory Agencies,'' issued by the President on July 11, 2011. The purpose of the NRC's review is to make its regulatory program more effective and less burdensome in achieving its regulatory objectives. The NRC is not instituting a public comment period for the initial Plan at this time but anticipates issuing a revised version for public comment in Calendar Year (CY) 2012 to reflect, as appropriate, any Commission decisions related to the Fukushima Task Force Report.

DATES: November 16, 2011.

ADDRESSES: You can access publicly available documents related to this document using the following methods:

- *NRC's Public Document Room (PDR):* The public may examine and purchase copies of publicly available documents at the NRC's PDR, O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* Publicly available documents created or received at the NRC are available online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html*. From this page, the public can gain entry into ADAMS, which provides text and image files of the NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's PDR reference staff at 1–(800) 397–4209, (301) 415–4737, or by email to *pdr.resource@nrc.gov*. The NRC's initial Plan is in ADAMS under Accession Number ML112690277.
- *Federal Rulemaking Web Site:* Supporting materials related to this document can be found at *http://www.regulations.gov* by searching on Docket ID NRC–2011–0246. Address questions about NRC dockets to Carol Gallagher, telephone: (301) 492–3668; email: *Carol.Gallagher@nrc.gov*.

The NRC's initial Plan may be viewed online on the NRC's Public Web site at *http://www.nrc.gov/about-nrc/plans-performance.html#rules*.

FOR FURTHER INFORMATION CONTACT: Cindy Bladey, Chief, Rules, Announcements, and Directives Branch, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; *telephone:* (301) 492–3667 or *email: Cindy.Bladey@nrc.gov*.

SUPPLEMENTARY INFORMATION:

Background

On January 18, 2011, President Obama issued EO 13563, ''Improving Regulation and Regulatory Review.'' Executive Order 13563 directs Federal agencies to develop and submit a preliminary plan to the Office of Information and Regulatory Affairs that (1) Considers how the agencies will review existing significant regulations and (2) identifies regulations that can be made more effective or less burdensome in achieving regulatory objectives. Executive Order 13563 did not, however, apply to independent regulatory agencies. Subsequently, on July 11, 2011, the President issued EO 13579, which recommends that independent regulatory agencies also develop retrospective plans similar to those required of other agencies under EO 13563. In response to EO 13579, the NRC is making available an initial Plan on the NRC's Public Web site.

Initial Plan for Retrospective Review

The NRC's initial Plan describes the NRC's plans, processes, and activities relating to retrospective review of existing regulations, including discussion of efforts to (1) Incorporate risk assessments into regulatory decisionmaking and (2) address cumulative effects of regulation.

On July 12, 2011, ''Recommendations for Enhancing Reactor Safety in the 21st Century: The Near-Term Task Force Review of Insights from the Fukushima Dai-ichi Accident'' (Fukushima Task Force Report, ML111861807), was issued. The Commission has recently directed staff to engage promptly with stakeholders to review and assess the recommendations of the Fukushima Task Force Report for the purpose of providing the Commission with fully-informed options and recommendations. The Commission's decision regarding the options and recommendations contained in the Fukushima Task Force Report may substantially affect the NRC's near-term rulemaking activities. Once the Commission reaches a decision, the NRC will then revise the initial Plan to incorporate any changes to rulemaking activities. The NRC will update the initial Plan on the NRC's Public Web site and publish the updated Plan for public comment in the **Federal Register**. The NRC anticipates this to occur in CY 2012.

Dated at Rockville, Maryland, this 7th day of November 2011.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

[FR Doc. 2011–29418 Filed 11–15–11; 8:45 am]

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FEDERAL ENERGY REGULATORY COMMISSION

5 CFR Chapter XXIV

18 CFR Chapter I

[Docket No. AD12–6–000]

Retrospective Review Under Executive Order 13579

AGENCY: Federal Energy Regulatory Commission.

ACTION: Plan for retrospective analysis of existing rules.

SUMMARY: On July 11, 2011, the President issued Executive Order 13579, requesting independent regulatory agencies follow the key principles of Executive Order 13563. These principles were designed to promote public participation, improve integration and innovation, promote flexibility and freedom of choice, and ensure scientific integrity during the rulemaking process in order to create a regulatory system that protects public health, welfare, safety, and the environment while promoting economic growth, innovation, competitiveness, and job creation. The Chairman of the Federal Energy Regulatory Commission (FERC or the Commission) directed Commission staff to develop a plan in support of the principles and goals of the Executive Order.

DATES: Issued November 10, 2011.

ADDRESSES: Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: Kimberly D. Bose, Secretary, (202) 502–8400.

SUPPLEMENTARY INFORMATION:

I. Executive Summary of Plan

On July 11, 2011, the President issued Executive Order 13579, requesting independent regulatory agencies follow the key principles of Executive Order 13563. These principles were designed to promote public participation, improve integration and innovation, promote flexibility and freedom of choice, and ensure scientific integrity during the rulemaking process in order to create a regulatory system that protects public health, welfare, safety, and the environment while promoting economic growth, innovation, competitiveness, and job creation.

As part of this effort, Executive Order 13579 requests that independent agencies issue public plans for periodic retrospective analysis of their existing ''significant regulations.'' Retrospective analysis should identify ''significant regulations'' that may be outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them in order to achieve the agency's regulatory objective. Plans for retrospective analysis should be made available to the public by November 8, 2011.

The Chairman of the Federal Energy Regulatory Commission (FERC or the Commission) directed Commission staff to develop a plan in support of the principles and goals of the Executive Orders. This plan sets forth a schedule for reassessing the Commission's regulations in order to comply with the key principles and achieve the goals of Executive Orders 13579 and 13563.

This plan summarizes the Commission's continuing efforts to identify regulations that warrant repeal or modification, or strengthening, complementing, or modernizing where necessary or appropriate. The Commission voluntarily and routinely, albeit informally, reviews its regulations to ensure that they achieve their intended purpose and do not impose undue burdens on regulated entities or unnecessary costs on those entities or their customers. In addition, the Commission considers the spirit of these Executive Orders when evaluating possible new regulations.

This plan also outlines additional steps for the future to identify regulations that warrant repeal or modification, or strengthening, complementing, or modernizing where necessary or appropriate. This plan is in addition to the Commission's current voluntary review of its regulations.

Executive Order 13579 asks independent agencies to review ''significant regulations.'' The executive order does not define what should be considered ''significant regulations.'' Commission staff considered the definition of a ''significant regulatory action'' provided in Executive Order 12866, which is the executive order that established the modern regulatory review structure.[1] Commission staff also considered the Office of Management and Budget's definition of ''major rules'' in section 351 of the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) to guide our review. In particular, 5 U.S.C. 610 provides for a 10-year review of rules that have a ''significant economic impact upon a substantial number of small entities.'' However, the Commission, in consultation with OMB, has determined that a very limited number of the Commission's rules are ''major rules'' because they do not have a ''significant economic impact upon a substantial number of small entities.''[2] FERC's rules, likewise, are typically not considered a ''significant regulatory action.''

Because the Commission has relatively few ''major rules'' or ''significant regulatory actions'', this plan establishes a process for reviewing both those Commission actions and other Commission rules that nonetheless would be considered of particular importance to the industry regulated by the Commission and the public. Commission staff will develop an internal list of such regulations and other actions. On a biennial basis, staff will prepare a memo detailing which of the listed regulations are ripe for evaluation based on a 10-year review cycle. This plan establishes a 10-year review cycle because that period is consistent with OMB regulations requiring a 10-year review of all major regulations. In addition, there may be sufficient changes in the industries that the Commission regulates over a 10-year period to warrant an evaluation of whether the regulations are outdated.

Commission staff will make its memo available for public comment, providing an opportunity for public input as to which of the regulations that are ripe for evaluation warrant a formal public review. This input, in addition to staff's recommendation, will inform the Commission's decision as to which regulations will be the subject of a formal public review. This public review could be initiated by a Notice of Inquiry seeking public comment on whether the regulations continue to meet their original objectives[3] or by a proposal of specific changes to the regulations, similar to the changes proposed in the Notice of Proposed Rulemaking leading to Order No. 890.[4]

II. Scope of Plan

This plan covers existing regulations, significant guidance documents available on the Commission's Web site,

[1] Section 3(f) of Executive Order 12866 defines ''significant regulatory action'' to be one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel, legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

[2] The following rules have been considered ''major rules'': Order Nos. 888 and 889 (considered together) adopting a *pro forma* open access transmission tariff (OATT) and a related open access same-time information system (OASIS), Order No. 693 approving the first batch of Reliability Standards, and Order No. 706 approving the first batch of cyber security standards. In addition, the Smart Grid Policy Statement was considered a major rule by OMB.

[3] *See, e.g., Promoting Transmission Investment Through Pricing Reform,* 135 FERC 61,146 (2011).

[4] *See, e.g., Preventing Undue Discrimination and Preference in Transmission Service,* Order No. 890, FERC Stats. & Regs. 31,241, *order on reh'g*, Order No. 890–A, FERC Stats. & Regs. 31,261 (2007), *order on reh'g*, Order No. 890–B, 123 FERC 61,299 (2008), *order on reh'g*, Order No. 890–C, 126 FERC 61,228 (2009), *order on clarification*, Order No. 890–D, 129 FERC 61,126 (2009).

existing information collections, and unfinished proposed rules.

III. Rules for Retrospective Review

The Commission regularly reviews its regulations to ensure that they achieve their intended purpose and do not impose undue burdens on regulated entities or unnecessary costs on those entities or their customers. To this end, the Commission has recently reviewed or is in the process of reviewing several important regulations. Those efforts are outlined in Section V, below.

Rules Reviewed Pursuant to Executive Order 13563

Changes to Electric Quarterly Reports

In response to the review performed pursuant to Executive Order 13563, Commission enforcement staff noted the requirement for companies to correct previously-filed Electronic Quarterly Reports (EQRs). At the time of the issuance of Executive Order 13563, if there was an inaccuracy in one or more of a company's previously-filed EQRs, the Commission had required the company to go back and correct all of its previously-filed EQRs affected by the error. Staff determined that correcting errors on all affected prior reports is not particularly useful and imposes a growing burden on filers that serves little purpose. The Commission has now implemented an informal policy of directing filers to correct the most recent 12 reports (three years of data) with a note placed in the EQR stating that other reports may also contain the error. This approach provides as much useful information to staff and the public as the previous policy of correcting all affected previously-filed EQRs, while being less burdensome to filers. This change did not necessitate a change in the Commission's regulations.

Proposed Retirement of Semi-Annual Storage Reports for Interstate and Intrastate Natural Gas Companies

On December 16, 2010, the Commission in Docket No. RM11–4–000 issued a Notice of Inquiry regarding whether to revise regulations requiring interstate and intrastate natural gas pipelines to report semi-annually on their storage activities. In analyzing the comments received in response to the Notice of Inquiry, the Commission considered the comments received and the goals of those executive orders. Subsequently, on September 15, 2011, the Commission issued a Notice of Proposed Rulemaking proposing to retire the Semi-Annual Storage Report for both interstate and intrastate natural gas companies.[5] The Commission is seeking to streamline its natural gas pipeline reporting requirements, as part of its continuing efforts to ensure Commission regulations are effective, timely, and up to date. Retiring the Semi-Annual Storage Report would reduce the filing and administrative burden on filers. More significantly, the retirement would avoid the generation of duplicative data that is available from other Commission information collections and via company web postings. The Commission is still in the process of reviewing comments to the Notice of Proposed Rulemaking and has not taken final action on this proposal.

Review of Significant Regulations

As stated above, the Commission, in consultation with OMB, has determined that a very limited number of the Commission's rules are considered ''major rules'' or ''significant regulatory actions.'' The actions discussed below were considered ''major rules.'' This plan calls for the Commission to review these actions at least every ten years.

Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities

Order Nos. 888 and 889, issued in 1996, were together considered major rules pursuant to section 351 of the SBREFA.[6] Order No. 888 prohibited public utilities from using their monopoly power over transmission to restrain or prevent competition. Order No. 889 established rules governing an Open Access Same-time Information System (OASIS) and prescribing standards of conduct. However, the Commission certified that these final rules would not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (RFA).[7] In 2007, the Commission undertook a 10-year review of its electric transmission open access regulations culminating in the issuance of Order No. 890, which revisited the Commission's open access policies and amended its pro forma Open Access Transmission Tariff to further improve competition in wholesale markets by, among other things: eliminating the wide discretion that transmission providers had in calculating available transfer capability; increasing the ability of customers to access new generating resources and promote efficient utilization of transmission by requiring an open, transparent, and coordinated transmission planning process; promoting more efficient use of the transmission grid by establishing a new conditional firm service; and strengthening compliance and enforcement efforts.

Mandatory Reliability Standards for the Bulk Power System

Order No. 693 was issued in 2007. This major rule concerned a Congressional mandate to adopt mandatory standards to protect electric reliability under section 215 of the Federal Power Act (FPA). That rule required compliance with 83 previously voluntary Reliability Standards developed by industry. These Reliability Standards are reviewed periodically by the entity developing mandatory reliability standards for Commission approval, the North American Electric Reliability Corporation (NERC). Any revisions to those standards come to the Commission for review and approval. According to NERC's rules of procedure, it must ''complete a review of each NERC reliability standard at least once every five years from the effective date of the standard or the latest revision to the standard, whichever is later.''[8]

Order No. 706, issued in 2008, was also issued pursuant to Part 40 of the Commission's regulations and was considered a major rule pursuant to the SBREFA, but did not have a significant economic impact on a substantial number of small entities. Order No. 706 was issued to make mandatory certain cyber security reliability standards to protect the reliability of the electric system. The rules were developed by industry consensus and have been updated several times. NERC most

[5] *Storage Reporting Requirements of Interstate and Intrastate Natural Gas Companies, Notice of Proposed Rulemaking,* 136 FERC 61,172 (2011).

[6] *See* 5 U.S.C. 804(2) (2006). Under SBREFA, if an order is a ''major rule,'' it may not go into effect until 60 Congressional days after it has been submitted to Congress. During that time, Congress may review, and potentially reject, a rule. A major rule is defined by SBREFA has the following:

a. An annual effect on the economy of $100,000,000 or more;

b. A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

c. Significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S. companies to compete with foreign companies in domestic and export markets.

[7] The RFA requires agencies in drafting a proposed rule: (1) To assess the affect that their regulation will have on small entities; (2) to analyze effective alternatives that may minimize a regulation's impact; and (3) to make their analyses available for public comment. 5 U.S.C. 601–604 (2006). In its Notice of Proposed Rulemaking, the agency must either include an initial regulatory flexibility analysis (Initial RFA) or certify that the proposed rule will not have a ''significant impact on a substantial number of small entities.''

[8] *See* Rules of Procedure of the North American Electric Reliability Corporation, Rule 315.

recently filed to modify the Reliability Standards approved in Order No. 706 on February 10, 2011. Those revisions are currently under review by the Commission.'' [9]

Smart Grid Policy Statement

The Smart Grid Policy Statement that the Commission issued in 2009 is also considered by OMB to be a ''major rule.'' [10] This Policy Statement provides guidance regarding the development of a smart grid for the nation's electric transmission system, focusing on the development of key standards to achieve interoperability and functionality of smart grid systems and devices. In response to the need for urgent action on potential challenges to the bulk-power system, in this Policy Statement the Commission provided additional guidance on standards to help to realize a smart grid. The Commission also adopted an Interim Rate Policy for the period until interoperability standards are adopted by the Commission, which will encourage investment in smart grid systems.

Review of Other Commission Regulations

Because the Commission has relatively few rules that are considered ''major rules'' or ''significant regulatory actions,'' the review to be conducted under this plan is broader than just a review of rules considered ''major rules'' or ''significant regulatory actions.'' [11]

Commission staff will develop an internal list of other Commission rules that nonetheless would be considered of particular importance to the industry regulated by the Commission and the public. On a biennial basis, staff will prepare a memo detailing which of the listed regulations are ripe for evaluation based on a 10-year review cycle. In other words, in 2012, staff will evaluate whether those regulations last revised in 2001 and 2002 should be formally reviewed. There would be no evaluation in 2013. In 2014, staff would evaluate the regulations last revised in 2003 and 2004.

Evaluating regulations every ten years is consistent with OMB regulations requiring a 10-year review of all major regulations. It is also consistent with other agencies which review their major regulations every 10 years.[12] Further, there may be sufficient changes in the industries it regulates over a 10-year period to warrant an evaluation of whether the regulations are outdated.

There are several reasons why this plan calls for a biennial evaluation. First, while the Commission, as an economic regulator covering multiple industries, has a significant number of regulations, it has only a few major rules or significant regulatory actions. Second, as outlined in section V, the Commission regularly, voluntarily, and routinely, albeit informally, reviews its regulations to ensure that they achieve their intended purpose and do not impose undue burdens on regulated entities or unnecessary costs on those entities or their customers. The formal plan created pursuant to Executive Order 13579 is in addition to this current voluntary review. Third, evaluating regulations every year may take too many staff resources.

IV. Public Access and Participation

As stated above, on a biennial basis, staff will prepare a memo detailing which of the Commission's regulations are ripe for evaluation based on a 10-year review cycle. Staff will make that memo available for public comment, providing an opportunity for public input as to which of the regulations that are ripe for evaluation warrant a formal public review. This input, in addition to staff's recommendation, will inform the Commission's decision as to which regulations will be the subject of a formal public review.

Of course, members of the public and industry participants always may suggest the need for revisions in existing regulations, even outside of existing proceedings. The Commission seriously considers such input. Input from the public and industry participants is often part of the Commission's determination to reevaluate existing policy and rules. Similarly, members of the public and industry participants may submit filings to the Commission if they believe that ongoing information reporting obligations may no longer be needed.

Public participation is a regular and crucial part of the Commission's rulemaking process. The Commission's rulemaking proceedings typically provide multiple opportunities for public participation through the submission of comments on Notices of Inquiry and Notices of Proposed Rulemaking; where appropriate, participation in any public outreach meetings; and the filing of requests for rehearing of final rules.

V. Current Agency Efforts Already Underway Independent of Executive Order 13579

Since the issuance of Executive Order 13563, the Commission has made efforts to adhere to the spirit of the executive order even though, as an independent agency, it is not subject to the executive order.

Even prior to the issuance of Executive Orders 13563 and 13579, the Commission has adopted a culture of retrospective review and analysis of its regulations and processes. The Commission constantly examines ways to reduce regulatory burdens, simplify the regulatory process, remove barriers to entry, and to otherwise make its regulations more effective and less burdensome. Below are examples of measures that the Commission has taken in recent years to identify areas where burdens could be reduced.

This year, the Commission issued a Notice of Inquiry to reassess whether its electric transmission ratemaking incentive regulations are effectively encouraging the development of transmission infrastructure in a manner consistent with the intent of the Energy Policy Act of 2005 (EPAct 2005), which directed FERC to establish rules to provide incentive rates to encourage development of electric transmission infrastructure. The development of transmission infrastructure will facilitate competition in regional electricity markets, which helps ensure just and reasonable rates without burdensome regulatory oversight.

In the natural gas markets, the Commission, last year, exempted certain transactions from natural gas index reporting requirements, particularly with reference to blanket sales certificates, because it found that those transactions were burdensome to report and provided little market information. The Commission also exempted small entities that were obligated to report solely by virtue of possessing a blanket sales certificate. Thus, the Commission removed regulatory burdens on

[9] On September 15, 2011, the Commission issued a notice of proposed rulemaking proposing to approve those revisions, while providing that the electric industry, through the NERC standards development process, should continue to develop an approach to cybersecurity that is meaningful and comprehensive to assure that the nation's electric grid is capable of withstanding a cybersecurity incident. *Version 4 Critical Infrastructure Protection Reliability Standards, Notice of Proposed Rulemaking,* 136 FERC ¶ 61,184 (2011).

[10] *Smart Grid Policy Statement,* 128 FERC ¶ 61,060 (2009).

[11] The determination that a rule is suitable for the purpose of this review should be distinguished from a determination that the rule is a ''significant regulatory action'' or ''major'' for the purpose of OMB reporting.

[12] For example, the Economic Growth and Regulatory Paperwork Reduction Act of 1996 requires certain independent agencies (Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, National Credit Union Association, and the Federal Deposit Insurance Corporation) to review regulations once every 10 years to identify any outdated, unnecessary, or overly burdensome rules or requirements.

regulated entities, including small businesses.

In 2007, the Commission conducted a comprehensive review of its electric transmission open-access regulations, including its landmark Order No. 888, which prohibited public utilities from using their monopoly power over transmission to restrain or prevent competition. It reached out to the regulated industry and other stakeholders. This effort culminated in the issuance of Order No. 890, which revisited the Commission's open-access policies and amended its *pro forma* Open Access Transmission Tariff to further improve competition in wholesale markets by, among other ways, increasing the ability of customers to access new generating resources and promoting efficient utilization of transmission by requiring an open, transparent, and coordinated transmission planning process.

In the hydropower arena, the Commission has entered into a number of memoranda of understanding with other Federal agencies and state governments to reduce regulatory conflict and overlap.

In March 2010, the Commission issued a final rule to exempt generating facilities that are 1 MW and smaller from the need to file a Form 556 in order to be certified by the Commission as a Qualifying Facility (QF). This change will facilitate the development of small generating facilities. The final rule also removed the content of Form 556 from the Commission's regulations and, in their place, provided that an applicant seeking to certify QF status of a small power production or cogeneration facility must complete, and electronically file, the Form 556 that is in effect at the time of filing. The Commission stated that this change takes advantage of newer technologies that will reduce both the filing burden for applicants and the processing burden for the Commission.

In addition to reducing regulatory burdens, the Commission has sought out ways to simplify the regulatory process and provide educational resources, thereby helping entities, particularly small ones, navigate the Federal regulatory process. One example of this outreach is the Commission's encouragement of small hydropower development. In 2010, the Commission signed a memorandum of understanding with the State of Colorado to simplify procedures for the development of small-scale hydropower projects. Similarly, in response to rising public interest in small and low-impact hydropower projects, the Commission has developed a publicly available and user-friendly website that provides detailed information on how to navigate the small hydropower regulatory process. Commission staff also has been and will continue to host public tutorials and webinars tailored to the needs of entities intending to file applications to develop small hydropower projects. In addition, Commission staff conducted a study last year in coordination with the hydropower industry, government agencies, Native American tribes, non-governmental organizations, and the general public to evaluate the effectiveness of the Commission's integrated licensing process for hydroelectric facilities.

The Commission has coordinated seminars around the country on environmental review and compliance for natural gas facilities. In the past two years, over 1,000 people have attended these seminars. These seminars increase transparency, help stakeholders better understand the natural gas regulatory process, improve inter-agency coordination, and allow faster processing of applications.

The Commission has also taken various steps to simplify the regulatory process by moving from paper to electronic formats in a number of areas. Most notably, the Commission has developed and implemented a standard electronic tariff filing system known as eTariff. Electronic filing allows the public and regulated entities faster and easier access to tariffs. Similarly, the Commission is moving to automate various forms to simplify the regulatory process. For example, section 205(f) of the FPA requires respondents to submit certain information in Form 580, Interrogatory on Fuel and Energy Purchase Practices. In 2010, the Commission established Form 580 in an electronic pdf-fillable form and streamlined the information required by the Form.

The eTariff filing process described above has greatly improved public access to tariff filing documents by posting such filings in near real-time into the public record, and increased ten-fold the number of FERC regulated tariffs that are now available through the Commission's Web site.

Another way that the Commission has adopted a culture of retrospective review is to examine ways to reduce the barriers to entry for new businesses and emerging technologies. In recent years, improvements in technology have led to an increasing variety of resources being capable of contributing to reliable, efficient, and sustainable energy services. The Commission has recently initiated a number of rulemaking proceedings that are responsive to these developments to ensure that regulations do not inhibit the use of emerging technologies to provide services subject to the Commission's jurisdiction.

Last year, for example, the Commission initiated a rulemaking proceeding on issues related to the reliable integration of variable energy resources, such as solar, wind, and hydrokinetic generation, to determine whether operational and pricing reforms would result in more efficient integration of variable energy resources into the grid, which, in turn, would lay a foundation for continued development of variable energy resources.

Further, the Commission has taken steps to remove barriers to the use of emerging technologies, such as flywheels and other electric storage devices, that are capable of responding to certain transmission system needs more quickly than traditional generators. In October 2011, the Commission revised its regulations pertaining to organized wholesale electric markets of regulation service to ensure that resources that provide faster and more accurate regulation services are compensated appropriately for their performance.[13] This would result in increased competition, which will tend to place downward pressure on rates for regulation service.

Similarly, the Commission issued a Notice of Inquiry in June 2011, seeking public comment on ways in which the Commission can facilitate competition in the provision of ancillary services from all resource types, including electric storage, and whether the Commission's accounting requirements present a barrier to development of electric storage.

The Commission also has recently taken a number of steps to remove barriers to demand response participation in organized wholesale electric markets. Pursuant to a Congressional directive, Commission staff in 2009 found that the potential for peak electricity demand reductions across the country is between 38 GW and 188 GW, up to 20 percent of national peak demand, depending on the penetration of advanced metering and the applicable regulatory policies. The Commission also has amended its regulations to facilitate demand response participation in organized markets. In Order No. 719, for example, the Commission amended its regulations to eliminate certain barriers to participation by demand response

[13] *Frequency Regulation Compensation in the Organized Wholesale Power Markets,* Order No. 755, 137 FERC ¶ 61,064 (2011).

resources that are technically capable of providing ancillary services on the grid. More recently, the Commission issued Order No. 745, which addresses compensation for demand response resources participating in organized wholesale energy markets.

VI. Elements of Plan

Plan To Develop Culture of Retrospective Analysis

As described in Part V of this plan, the Commission has developed a strong and longstanding culture of retrospective analysis of its existing significant regulations. The Commission currently has several proceedings in which it is examining regulations to ensure they continue to be appropriate to meet the goal of the regulations without imposing an undue burden. These proceedings were initiated in large part because the Commission has a culture of retrospective analysis of its rules. In addition, since the issuance of Executive Orders 13563 and 13579, Commission staff has sought to expand the Commission's effort to conduct regulatory reform and to make suggestions to modify, improve, or repeal regulations that may further the purpose of the executive orders. The Commission also considers the spirit of these Executive Orders when evaluating possible new regulations.

Prioritization

Before Commission staff identifies candidate regulations to review, it will consider a number of factors, including measures to effectively carry out the Commission's statutory responsibilities; staff resources; market dynamics; the effect of regulations on small businesses; comments from other agencies, stakeholders, and regulated entities; stakeholder actions; government actions; technological developments; and the public interest. Currently, Commission staff has not compiled a list of candidate rules for which it will recommend review in the next two years.

Structure and Staffing

Name/Position Title: Christy Walsh, Special Counsel, Office of the General Counsel.

Email address: Christy.walsh@ferc.gov.

Independence

Because of staff limitations, the Commission cannot separate staff involved with retrospective review of regulations from staff responsible for writing and implementing regulations. Instead, in order to maintain sufficient independence staff involved with the retrospective review, the Commission has created a team consisting of staff from all of the Commission's offices. In such an environment, the views of those who write and implement regulations pertaining to their respective office would be balanced by the views of the rest of the team. Such a structure ensures objective analysis of individual regulations.

Plan for Retrospective Review and Revision of Rules

In addition to continuing the measures described in Part V, this plan establishes a process to enhance the Commission's retrospective analysis of regulations in the future. Beginning in November 2011, Commission staff will conduct reviews on a biennial basis to identify existing regulations that have become ineffective, outmoded, or overly burdensome.

Interagency Coordination and Peer Review

The Commission, as an independent regulatory agency, cannot always coordinate with other federal agencies. The Commission has historically coordinated with state and other federal agencies and has harmonized related regulations, when feasible, in order to reduce redundancy and conflict. Over the last three decades, the Commission has entered into memoranda of understanding and letters of understanding with state governments and other federal agencies. This effort has lead to predictability, clarity, a decrease in costs for the public and regulated entities. The Commission will continue to look for opportunities to further promote interagency coordination.

With respect to peer review, the Commission must seek comments on any proposed change to its regulations. The Commission routinely receives comments on its proposals from industry and other interested individuals. Before issuing a final decision, the Commission must review those comments.

VII. Components of Retrospective Analysis

Fulfilling the Commission's mission involves pursuing two primary goals: ensuring that rates, terms and conditions are just, reasonable and not unduly discriminatory or preferential, and promoting the development of safe, reliable and efficient infrastructure that serves the public interest. When evaluating whether regulations should be reviewed under this Plan, Commission staff will consider a number of factors, including measures to effectively carry out the Commission's statutory responsibilities, staff resources, whether the regulations contain barriers to entry of new market participants, whether there have been changes in market dynamics, and if there have been stakeholder actions or government actions that could warrant regulatory change. In addition, Commission staff will consider whether new technologies have emerged that may warrant changes in the Commission's regulations. Commission staff's review will also include an examination of the effect of regulations on small businesses to ensure that they are not overly burdensome. Finally, Commission staff will consider the public interest, in order to make recommendations on retrospective review.

VIII. Publishing the Agency's Plan Online

The Commission will publish its retrospective review plan in the **Federal Register** and on its Web site, *http://www.ferc.gov.* A docket on the Commission's eLibrary, which is its filing and document management system, will be opened for this plan.

Dated: November 10, 2011.

Kimberly D. Bose,

Secretary.

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DEPARTMENT OF ENERGY

10 CFR Parts 429 and 430

[Docket No. EERE–2010–BT–TP–0021]

RIN 1904–AC08

Energy Conservation Program: Test Procedures for Residential Clothes Washers

Correction

In proposed rule document 2011–28543 appearing on pages 69870–69893 in the issue of November 9, 2011, make the following correction:

On page 69870, in the first column, the RIN No. in the heading is corrected to read as set forth above.

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