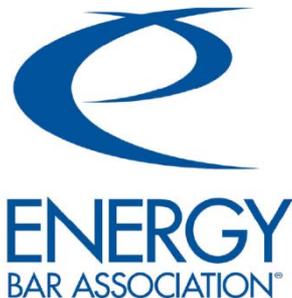


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**Energy Bar Association
Program:**

**Without A Quorum, How Will FERC
Operate? Senior FERC Staff Answer
Your Questions**

February 22, 2017



Energy Bar Association's Mission Statement

EBA has approximately 2,600 member and promotes the professional excellence and ethical integrity of its members in the practice, administration, and development of energy laws, regulations and policies by providing:

- superior educational programming,
- networking opportunities, and
- information resources.

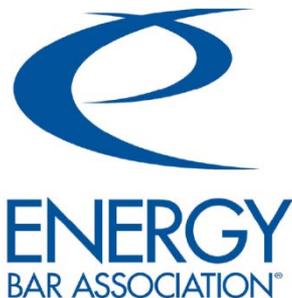


How Does an EBA Membership Enrich You?

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- * Volunteer leadership opportunities that allow you to establish yourself as a thought leader in the energy field

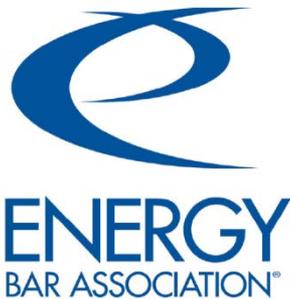
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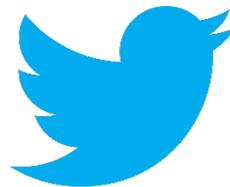
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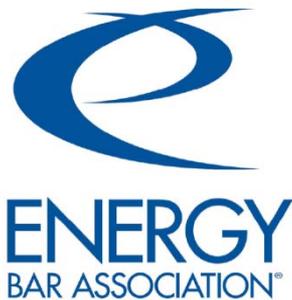
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**2017 Annual Meeting
& Conference**

April 3–4 | Renaissance Hotel, 999 Ninth Street, NW, Washington, DC





Delegations to “Markets” Staff in the Absence of a Commission Quorum

February 22, 2017

Lawrence R. Greenfield
Associate General Counsel
Federal Energy Regulatory Commission

The views expressed in this presentation are the author’s and do not necessarily represent the views of the Commission, individual Commissioners, or other Commission staff members.

Delegations - Generally

- Pre-existing. . . 18 CFR §§ 375.301-.315
 - 18 CFR §§ 375.301(a), 385.1902(a) – actions taken pursuant to delegated authority are subject to rehearing
 - 18 CFR § 375.301(b) - delegations of authority can be, and routinely are, sub-delegated
- New . . . *Agency Operations in the Absence of a Quorum*, 158 FERC ¶ 61,135 (2017)
 - “All pre-existing delegations of authority by the Commission to its staff continue to be effective.” *Id.* P 2 n.5
 - As with pre-existing delegations, “[d]ecisions made pursuant to delegated authority may be challenged on rehearing. . . .” *Id.* P 4 n.10
 - As with pre-existing delegations, “[t]his delegation of authority . . . may be further delegated to [an office director’s] designee consistent with 18 CFR § 375.301(b) (2016).” *Id.* P 2 n.6

Pre-Existing OSEC Delegations

- 18 CFR § 375.302
- Key provisions
 - (b) & (f) & (j): Extensions of time
 - (d) & (e): Interventions
 - (g): Reject out-of-time filings
 - (m): Institute Part 41/158 procedures
 - (n): Issue notices of filings
 - (v): Toll time for action on requests for rehearing – *See Agency Operations in the Absence of a Quorum*, 158 FERC ¶ 61,135, at P 2 n.5 (2017) (pre-existing delegations of authority that continue to be in effect “include[] the authority of the Secretary to toll the time for actions on requests for rehearing”)

Pre-Existing OALJ Delegations

- 18 CFR §§ 375.304, 385.401-.716
- 18 CFR § 375.304
 - (a): Part 385 authority
 - (b)(1): Consolidation & severance, designation of presiding officers, setting & extensions of time
- 18 CFR § 385.401-.716
 - 400's: Discovery
 - 500's: Hearings
 - 600's: Settlements & Settlement Judges
 - 700's: Briefing & Initial Decisions

Pre-Existing OEMR Delegations

- 18 CFR § 375.307
- Key provisions
 - (a)(1): Accept uncontested tariff & rate schedule filings made pursuant to Federal Power Act sections 205 and 206, act on requests/petitions for waiver of prior notice requirement, and issue deficiency letters
 - (a)(2): Take appropriate action on uncontested filings made pursuant to Federal Power Act sections 203 and 204 and on uncontested applications to hold interlocking positions pursuant to Federal Power Act section 305(b), and issue deficiency letters for filings under Federal Power Act sections 203, 204, and 305(b)

Pre-Existing OEMR Delegations . . . (cont'd)

- Key provisions . . . (cont'd)
 - (a)(3): Take appropriate action on uncontested exemption and waiver filings (65A's and 65B's) pursuant to the Public Utility Holding Company Act of 2005, and uncontested applications to allocate service company costs among members of a holding company system
 - (a)(4): Approve uncontested rates for the Power Marketing Administrations
 - (a)(6): Take appropriate action on uncontested applications for QF status
 - (a)(7): Accept uncontested tariff & rate schedule filings made pursuant to Natural Gas Act section 4(e), and act on requests/petitions for waiver of prior notice requirement
 - (a)(10): Accept uncontested oil pipeline-related filings

Pre-Existing Other Delegations

- OER - 18 CFR § 375.302
- GC - 18 CFR § 375.309
- OE - 18 CFR § 375.311
- OED - 18 CFR § 375.312
- Critical Energy/Electric Infrastructure Information (CEII) Coordinator - 18 CFR § 375.313 (as revised by *Regulations Implementing FAST Act Section 61003*, Order No. 833, 157 FERC ¶ 61,123 (2016))
- OEPI - 18 CFR § 375.315

New Delegations

- *Agency Operations in the Absence of a Quorum*, 158 FERC ¶ 61,135 (2017)
 - Pre-existing delegations were re-affirmed – *Id.* P 2 n.5
 - Staff’s ability to carry out emergency functions – which go to safety of human life and protection of property, and thus go to LNG facilities and hydropower projects – was reaffirmed – *Id.* P 2 n.7
 - Staff’s ability to exercise the new delegations runs until the Commission again has a quorum *and* takes action to lift the new delegations, *but* in no event will the new delegations extend beyond 14 days following the date a quorum is reestablished – *Id.* P 2
 - Action taken pursuant to delegated authority is subject to rehearing, and the authority to act on rehearing has not been delegated. Rather, the Secretary is authorized to toll the time for action on timely-submitted requests for rehearing, ensuring that the Commission will ultimately review the matter when it again has a quorum. *See id.* P 4 n.10

New Delegations . . . (cont'd)

- DOE Organization Act section 401 specifies that a Commission quorum is “at least three members present,” but a loss of quorum was on the horizon
- The Commission also, and importantly, recognized that it has a continuing responsibility to carry out its regulatory obligations under, e.g., the Federal Power Act, the Natural Gas Act, and the Interstate Commerce Act, among other statutes
- Thus, the Commission delegated further authority to its staff in four areas:
 - Involving rate and other filings
 - Involving extensions of time
 - Involving tariff, rate schedule and service agreement waivers
 - Involving settlements in litigated proceedings

New Delegations . . . (cont'd)

- Rate and Other Filings under the Federal Power Act, the Natural Gas Act, and the Interstate Commerce Act
 - Rate and other filings made pursuant to Section 4 of the Natural Gas Act, section 205 of the Federal Power Act, and section 6(3) of the Interstate Commerce Act may now be acted on by staff, and they may be **either**: (1) accepted, suspended, and made effective subject to refund *and subject to further order of the Commission*; **or** (2) accepted, suspended, and made effective subject to refund, *and set for hearing and settlement judge procedures*
 - The former option (i.e., effective subject to further order of the Commission), in particular, is expressly without prejudice to any further action of the Commission with respect to such filings once the Commission again has a quorum
 - For Federal Power Act section 205 initial rates or rate decreases, given that suspension and refund protection are unavailable for such proposed rates, staff is *also* delegated authority to institute a proceeding pursuant to Federal Power Act section 206
- Extensions of Time
 - Can now be acted on by staff pursuant to delegated authority **if** the extension is permitted by statute
 - Such requests expressly include the 180-day period for consideration of Federal Power Act section 203 filings and the period for consideration of Federal Power Act section 215 Notices of Penalties
- Tariff, Rate Schedule, and Service Agreement Waivers
 - Are now subject to appropriate action by staff pursuant to delegated authority **if** the filings are uncontested filings
 - Such filings expressly include filings involving waivers related to, e.g., capacity release and capacity market rules
- Rule 602 Settlements
 - Can now be accepted by staff pursuant to delegated authority **if** they are not contested by any party or participant (including Commission Trial Staff)

Thank you!