



January 29, 2010

Electronic Tariff Regulations Affect FERC Procedure

On January 21, 2010, the Federal Energy Regulatory Commission (FERC) issued an order establishing procedures relating to tariffs filed electronically (eTariffs).¹ The order is a follow-up to Order No. 714,² in which FERC adopted regulations requiring the filing of tariffs and tariff revisions electronically through a new database under development at FERC. The January 21 Order identifies ways in which the filing of eTariffs affects existing FERC docketing procedure to create new proceedings, and how entries in metadata fields required under eTariff will have primacy over other statements in a rate filing package.

A. Order No. 714

Order No. 714 was issued on September 19, 2008, after FERC, in conjunction with the North American Energy Standards Board (NAESB), spent several years evaluating how to integrate electronically filed tariffs into FERC's existing database management system. Order No. 714 requires that tariffs and tariff-related documents be filed electronically through a new FERC database being developed (eTariff database), and establishes the standards and protocols for filing eTariffs.

Pursuant to Order No. 714, there is a six month implementation period for eTariff that begins on April 1, 2010, and ends September 1, 2010. During that six month period, current versions of certain tariffs must be re-filed in electronic form or "baselined." For electric companies, tariffs that will need to be baselined include Open Access Transmission Tariffs (OATTs), market-based rate (MBR) tariffs, and other generally applicable tariffs. Interstate natural gas pipelines must baseline their existing Volume 2 tariffs, and intrastate and Hinshaw pipelines must file their statement of operating conditions (including their interstate service rates). Oil pipelines must baseline their tariff publications. All other tariffs, rate schedules, and jurisdictional agreements need not be baselined, but must be filed electronically when they are next revised.

Order No. 714 also mandates the development of an eTariff database, which will operate independently from FERC's current eLibrary database. A FERC-rendered copy of each clean tariff will be kept and managed by the eTariff database, and a public viewer (Tariff

For more information, contact:

Neil L. Levy
(202) 626-5452
nlevy@kslaw.com

David G. Tewksbury
(202) 626-5454
dtewksbury@kslaw.com

Bruce L. Richardson
(202) 626-5510
brichardson@kslaw.com

Grace Su
(202) 626-2952
gsu@kslaw.com

King & Spalding
Washington, DC
1700 Pennsylvania Avenue, NW
Washington, DC 20006-4706
Tel: (202) 737-0500
Fax: (202) 626-3737

www.kslaw.com



Global Transactions Practice Group

Browser) will allow interested parties to view complete tariffs online. Copies of entire tariff filings will continue to be kept and managed in the eLibrary database.

Before making an eTariff filing, one must use software to create a FERC-approved “XML filing package.” The software needed to create XML filing packages can be developed in-house, or purchased from niche vendors. The software requires the input of certain metadata elements which are predefined by FERC and are used to organize the filing in the prescribed manner. The software then packages the metadata and the filing data into the requisite XML filing package. An eTariff is filed when a zipped version of the XML filing package is uploaded through FERC’s existing eFiling webpage.

B. January 21 Order

FERC’s January 21 Order clarifies that the metadata elements used to create the XML filing package will have substantive legal and regulatory impacts. For instance, the statute an entity is filing under is designated by the “Type of Filing” code metadata element. If the Type of Filing code conflicts with the statutory filing type set out in the transmittal letter, the Type of Filing code will take priority. Similarly, metadata fields such as “Tariff Record Proposed Effective Date” will establish the proposed effective date (as long as it is after the other statutorily-established effective date), even if the transmittal letter requests another date.

In addition, the January 21 Order established new docketing procedures for filings associated with eTariff. With the implementation of eTariff, FERC intends to use the metadata in eTariff filings to automatically determine each proceeding’s docket number. For the most part, FERC intends to assign automatic docket numbers to eTariff filings based on the same procedures currently in place—that is, FERC assigns a root docket number to an initial filing and then adds subdockets to later filings in the same proceeding. After eTariff is implemented, filers will enter a unique “Filing Identifier” into the metadata each time they file. For compliance filings, filers will also enter the Filing Identifier of the previous eTariff filing in that proceeding (the Associated Filing Identifier). Metadata entry of the Associated Filing Identifier will allow FERC automatically to find the root docket and issue a new subdocket.

In cases where there is no Associated Filing Identifier because there was no previous tariff filing in the proceeding, such as with a compliance filing that is the result of a rulemaking or complaint, a new root docket number will be assigned. In such situations, a new docket is established and the entity filing the compliance filing is required to serve the compliance filing on all parties in the original docket. A party to the original docket wishing to participate in the new docket (*e.g.*, to protest, or comment on, the compliance filing) will need to intervene in the new docket in order to become a party to that proceeding and to be added to the service list.

¹ *Electronic Tariff Filings*, 130 FERC ¶ 61,047 (2010).

² *Electronic Tariff Filings*, Order No. 714, 73 FR 57,515 (Oct. 3, 2008) (“Order No. 714”).

Celebrating 125 years of service, King & Spalding is an international law firm with more than 800 lawyers in Abu Dhabi, Atlanta, Austin, Charlotte, Dubai, Frankfurt, Houston, London, New York, Paris, Riyadh (affiliated office), San Francisco, Silicon Valley and Washington, D.C. The firm represents half of the Fortune 100 and, according to a Corporate Counsel survey in August 2009, ranks fifth in its total number of representations of those companies. For additional information, visit www.kslaw.com.

This alert provides a general summary of recent legal developments. It is not intended to be and should not be relied upon as legal advice.