

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

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Filing Via the Internet –)	Docket No. RM07-16-000
Notice of Proposed Rulemaking)	
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COMMENTS OF THE EDISON ELECTRIC INSTITUTE

Introduction

The Edison Electric Institute (EEI) is filing these comments in response to the above-referenced notice of proposed rulemaking (NOPR), which the Federal Energy Regulatory Commission (FERC or the Commission) issued on July 23, 2007, and published at 72 Fed. Reg. 42330 on August 2, 2007. The Commission also held a technical conference to discuss the NOPR on August 22, 2007. The Commission issued a notice about the conference on August 1, 2007, published the notice at 72 Fed. Reg. 44438 on August 8, 2007, and posted a draft of “Instructions for Electronic Filing Submissions” to be discussed at the conference under the calendar of events for the workshop at www.ferc.gov. The Commission invited comments on the NOPR by October 1, 2007.

In the NOPR, the Commission has proposed to make several changes to its internet filing procedures, which are applicable to many types of filings, including motions, pleadings, and comments. However, the Commission has noted that the modified procedures would not govern “tariff filings,” which are covered by a separate

rulemaking in Docket No. RM01-5, or FERC forms that are submitted using specialized software developed by the Commission. For the general filings to which the modified procedures would apply, the Commission proposes:

- (1) to accept filings of all documents except those specifically excluded by the Secretary, rather than the current practice of accepting only specified documents;
- (2) to allow the Secretary to issue instructions as to allowable filing formats and other details of internet filing, though in cases where regulations or current instructions require particular content or format, they will continue to control;
- (3) to accept confidential information, other than documents subject to protective orders, with separate file uploads for public information, confidential information, and critical energy infrastructure information (CEII);
- (4) to require paper copies in addition to electronic copies of some documents, such as oversized maps and possibly longer documents;
- (5) to discontinue the Commission's practice of converting documents to PDF-format copies;
- (6) possibly to require filers to submit some or all files in "open file formats" such as text, html, rtf, or PDF, either instead of or in addition to native format;
- (7) to allow "documentless intervention" without requiring a person to be e-registered to do filings at FERC; and
- (8) to allow "quick comments" via a standard form without requiring filing of separate documents.

The Commission also is considering whether to extend the electronic filing deadline each day from 5 p.m. to midnight Eastern time.

EEI Has a Direct Interest in This Proceeding

EEI is the trade association of United States shareholder-owned electric companies, international affiliates, and industry associates worldwide. Our U.S. member companies serve 92 percent of the ultimate customers in the shareholder-owned segment of the industry and 67 percent of all electric utility ultimate customers in the nation, and

they generate almost 60 percent of the electricity produced in the United States. These companies include numerous public utilities that are subject to Commission permitting and regulations for a wide variety of activities under Parts I and II of the Federal Power Act (FPA) and submit filings to the Commission in those and other proceedings.

Furthermore, EEI participates actively in selected Commission proceedings, in particular rulemaking and policymaking proceedings, in which we also submit filings to the Commission. EEI and our members actively use the Commission's current eFiling and eLibrary system, and have benefited for years from the relative ease and simplicity of that system. We and our members will be affected by the changes the Commission is considering in the NOPR, and we therefore have a significant, direct interest in this rulemaking.

EEI Supports the Commission's Proposed Expansion of its Internet Filing System

By enabling EEI, our members, and other participants in Commission proceedings to file and retrieve documents electronically using the eFiling and eLibrary systems in the past decade, the Commission has vastly simplified our ability to interact with the Commission and one another. In the true spirit of the Paperwork Reduction Act, the Commission's eFiling and eLibrary systems have reduced the burden on the regulated community and increased productivity for regulated entities and the Commission. By no longer requiring filers to make up to 14 paper copies of filings and carry them across town or beyond manually to the Commission's offices, the Commission has reduced the lead time required for filing, reduced costs, and reduced paper flow. EEI and our members greatly appreciate these benefits.

Therefore, we support the Commission’s current proposal to expand the range of filings that can be submitted electronically to include all filing types not otherwise precluded by the Secretary, including more complex filings that until now the Commission has not accepted electronically. Already in recent years, the Commission has made it easier to submit multiple attachments as part of a single filing, and has increased the size of the allowable attachments. The new proposals to accommodate all filings unless the Secretary specifies otherwise – and to allow up to 200 attachments for each security class and to permit attachments up to 50 MB in size – are consistent steps in the right direction.

We encourage the Secretary to minimize the exceptions, so the vast majority of documents can be filed and retrieved via eFiling and eLibrary. We also encourage the Commission not to require documents to be submitted on paper unless absolutely necessary. However, the Commission should allow filers to submit filings in paper form when that is easier for them, and as a backup if electronic filing proves difficult or unavailable at certain times.

The eFiling and eLibrary Systems Need to Accommodate Tariff Filings

In the NOPR, the Commission says that the eFiling system will not handle electronic filing of tariffs, which are governed by a separate “eTariff” rulemaking in Docket No. RM01-5. In that separate rulemaking, at least for the electric quadrant, “tariffs” have been understood to mean documents designated as tariffs as well as rate schedules and certain service agreements that are required to be filed at FERC.

However, through EEI’s participation in the eTariff rulemaking and a related North American Energy Standards Board (NAESB) e-tariff proceeding, we understand

that tariff filings will continue to be posted on the Commission's eLibrary system. Thus, the eFiling "instructions" adopted by the Secretary are likely to apply to documents submitted through eTariff. Also, EEI understands that eFiling will serve as the web portal to access eTariff. The Commission should recognize this interplay between the two rulemakings in its final internet filing rule in this docket.

In addition, EEI encourages the Commission to allow filers to submit tariff filings using the eFiling system, from now at least until completion of the eTariff rulemaking, which could easily take another year or two to complete. Furthermore, as we have recommended in the eTariff rulemaking, we encourage the Commission to allow use of eFiling for tariff filings over the longer-term, in particular if filers are prepared to submit integrated copies of their tariffs as those are revised. In fact, in the eTariff rulemaking, we have proposed simple additions to eFiling to accommodate tariff filings in a relatively simple way that we believe would fully achieve the Commission's goals.

There are many reasons why we would like the Commission to allow use of eFiling for tariff information. These include that eFiling preserves the appearance and formatting of documents, including color, shading, graphs, and tables; it avoids the need for conversion of documents into different formats or use of additional software to manage the documents being filed; it allows text to be searched; and it facilitates electronic submittal, service, and distribution of documents.

Nonetheless, in the eTariff rulemaking and related NAESB proceeding, Commission staff have focused on requiring use of a data-base approach to filing, managing, and retrieving tariffs and related documents. EEI is fully participating in the NAESB process and seeking to keep the ultimate eTariff filing process as simple as

possible. Even so, the eTariff data base approach will require tariff filers to purchase or create tariff “data management” software, and this approach promises to make the tariff management and filing process far more complex than it needs to be, especially for integrated tariffs.

Although EEI anticipates that we will have an opportunity to raise these concerns when the eTariff issue returns from NAESB to FERC, we encourage the Commission to accommodate the filing of tariffs and related documents via eFiling now and, at least for integrated tariffs, over the longer term as well.

EEI Supports Internet Filing of Confidential Information, With Care

EEI supports the Commission’s proposal to accept filing of confidential information, using separate upload designations and processes for public, confidential, and CEII information. However, the NOPR did not provide much information about the upload mechanisms and procedures, although it did indicate that the Commission’s files may not be encrypted. Therefore, we encourage the Commission to provide additional information on the steps the Commission will take to ensure that confidential information and CEII will be safe “in transit” without encryption and will be handled securely after filing.

In addition, more information is needed concerning the Commission’s proposed limitation on filings under protective orders and why the limitation is needed. For example, a complaint may contain confidential information that is being submitted at the same time as a draft protective order, because a protective order is virtually inevitable in such dockets. It is unclear whether such a complaint should or should not be eFiled, and if not why not. Similarly, in a hearing proceeding, testimony or exhibits may contain

confidential information, and they typically are filed pursuant to a protective order. Again, it is unclear whether such testimony and pre-filed exhibits can or cannot be submitted through eFiling (with both a public and non-public version being submitted), and if not why not. EEI encourages the Commission to allow eFiling of information to the maximum extent possible, absent good cause for exclusions.

The Commission Should Continue to Allow eFiling in Native and PDF Formats

One of the most positive features of the eFiling and eLibrary systems has been their simplicity and ease of use. In particular, EEI and our members have appreciated that the systems allow filers generally to submit and retrieve documents in the native formats in which the documents have been created and maintained – such as Word, WordPerfect, Excel, and PowerPoint – without having to convert the documents to other formats prior to submittal.

We encourage the Commission to continue to allow filers to submit documents in native formats, at least formats that are in common use such as the ones just mentioned, and we encourage the Commission to keep eFiling up-to-date on widely used formats. When large numbers of filers typically use a given form of software such as Word and Excel to create and manage documents, the Commission makes their lives simpler by not requiring conversion to another format prior to submitting the documents.

At the same time, the Commission should allow filers the option to submit documents in PDF format, and the Commission should encourage filers to use this option as a way of achieving greater uniformity. The Commission should note that filers may wish to use PDF to prevent others from seeing document “meta data,” such as the history of the document, or to “lock in” the pagination and format.

But the Commission should not require filers to submit documents in PDF format. Not all filers have PDF writer software, and converting to PDF is an extra step that filers may not have time or wish to take, especially for time-sensitive filings with large numbers of attachments that all would have to be “written to PDF.” Furthermore, as the Commission has acknowledged in the NOPR, not all documents convert cleanly to PDF. The format of tables may be jumbled when converted; and as the Commission noted in its NOPR, Excel spreadsheets with embedded formulas can lose content when converted to PDF and typically will need to be submitted in native format. PDF also can render shaded text nearly impossible to read. Therefore, filers should have the option to file in native format rather than being required to use PDF format, especially in these circumstances.

If filers do submit documents in PDF format, EEI generally agrees with the Commission’s proposal to require the documents to be submitted in searchable PDF format – provided the documents are in an electronic format that can easily be “written” to searchable PDF. But if the documents are on paper, or the conversion process will jumble format or content, filers should have the option to scan the documents and submit them as non-searchable PDF files. The Commission should allow filers to make the choice with considerable room for judgment.

EEI would understand if the Commission decided not to continue converting documents submitted to the Commission in native format to PDF, if this process is burdensome on the Commission. On the other hand, if the conversion process is not too burdensome, the Commission might consider continuing the practice, which may provide

some marginal additional access to individuals who might not have copies of less common native format software for retrieving and opening documents from eLibrary.

The Commission Should Allow But Not Require Paper Copies

If a filer prefers to submit documents on paper rather than electronically through eFiling, it should have the option to do so, and the Commission should continue to scan the filings for posting in eLibrary. Similarly, if a filer prefers to submit documents as a combination of paper and computer disc (CD), as is common for certain types of filings, the filer should have the option to do so, and the Commission should continue to scan the paper portion and post that and the electronic portion from the CD in eLibrary.

However, the Commission should not require filers to submit even oversized or large documents on paper. As long as a filer can keep documents under the Commission's proposed 50 MB size limit for each document, the filer should not be required to submit the documents on paper. Indeed, requiring filers to submit larger documents on paper would undercut the value of internet filing where it should be highest – as a means of avoiding the need to print, photocopy, and deliver voluminous documents on paper, which the Commission would then have to store.

Likewise, the Commission should not require duplicative paper copies of documents filed electronically. If the Commission does require such duplicative filings, the Commission should allow the paper copies to be submitted by regular first class mail postmarked the day after the electronic filing.

EEI Encourages the Commission to Keep the eFiling System Simple and Easy to Use

One of the best features of the current eFiling system is that it is simple to use and filings can be made in short order. The current process involves only a modest number of steps – (1) identifying the person submitting the filing (must be e-registered at FERC), the docket number if already assigned, the nature of the filing, the filing entity, the person signing the filing (must be e-registered at FERC), and other contact persons (also must be e-registered); (2) uploading the document or documents to be filed; (3) naming the filing; and (4) submitting the package. This process typically takes just a few minutes. We strongly encourage the Commission to keep the process this simple.

EEI Encourages the Commission to Automate the Service Process

Consistent with the goal of keeping eFiling simple, EEI encourages the Commission, to the extent possible, to automate the process of serving copies of documents on parties including interveners in proceedings where service is required. Ideally, rather than requiring a filer to pull up the Commission’s e-service list for the proceeding and distribute documents to interveners on that list by e-mail, when the filer submits a document through eFiling to the Commission, the eFiling system should automatically notify persons on the e-service list by e-mail that a document has been posted, with a link to the document, and should notify the filer if one or more interveners require service on paper by regular mail.

The simplest way to achieve this result would be for the Commission automatically to send notices that it currently sends to persons who are on the Commission’s “e-subscriber” list for each docket also to persons who are on the e-service list for the docket. The e-subscriber list is a list of participants who want to follow a

proceeding but not necessarily to intervene, while the e-service list is a list of parties who have intervened or otherwise achieved party status. Furthermore, the two lists typically do not overlap because persons on the e-service list generally do not also join the e-subscriber list, to avoid duplicative notices.

The Commission currently provides notices of all filings to persons on the e-subscriber lists. By also providing these notices to persons on the e-service list, the Commission would avoid the need for separate service to them. In fact, it is an anomaly that FERC alerts e-subscribers of filings but does not alert the e-service list as well.

At the same time, if a given docket has individuals who can receive service only on paper via regular mail, not electronically, the Commission needs to retain a list of such persons for all filers to use in providing service. The eFiling web screen should give a prominent warning that a particular docket has such persons, and that filers must serve them with paper copies, when service is required.

Also, the Commission should be sure that, if it adopts the “documentless intervention” and “quick comment” concepts discussed further below, interveners who intervene using documentless intervention are added to the e-service list, and quick comments are served on all parties on that list.

The Commission will need to adjust its service regulations at 18 C.F.R. §385.2010 to reflect these changes.

The Final Instructions Should Be Corrected

In connection with the August 22, 2007 technical conference, the Commission posted draft “Instructions for Electronic Filing Submissions,” which indicated that the instructions will have a different format when finalized and posted by the Secretary. The

draft instructions were somewhat unclear, particularly as to when the instructions reflected requirements versus guidance. They also were unclear as to what types of filings and documents each instruction applies to. The Commission staff proved very helpful in understanding the draft instructions and providing needed clarifications. These clarifications need to be included in any final posted instructions. Below, EEI provides comments on those draft instructions which raised concerns.

Instruction 4.A includes the requirement that all documents be submitted in PDF (or ASCII). EEI has already discussed the format issue above, and the instructions should be modified accordingly to allow filing in native formats, on paper, on paper accompanied with a CD, or in PDF, at the filer's choice.

At the technical conference, Commission staff indicated that Instructions 4.B and 4.E.c should not be read as requiring the use of automatic table of content and bookmarking functions. That is, even if filers have access to such tools, they do not have to use them. Given that many filers are not conversant in use of such features, EEI strongly supports the final instruction being revised to allow or at most merely to encourage the use of such features and to make clear that their use is not required.

The discussion at the technical conference on Instruction 4.C indicated that spreadsheets do not need to be in native format if they contain no formulas. This point should be clarified in the final instructions.

The discussion at the technical conference on Instruction 4.D indicated that it should have stated "Files other than spreadsheets or text files ..." because spreadsheets were covered by Instruction 4.C and text files by Instruction 4.A. The final instructions should reflect this change.

As for Instruction 5, the Commission should clarify that there is no need to include a transmittal letter, and indeed should discourage the filing of transmittal letters, when a single document such as a rulemaking comment is filed. The Commission should clarify that it will continue to allow a single electronic file to include a transmittal letter as well as all the other documents that comprise the filing. Such changes in the instructions will help clarify that filers need a separate electronic document entitled “Transmittal Letter” only when multiple, separate electronic files are being uploaded.

Regarding Instructions 6 and 8, the Commission should clarify that the “eight character” limit addresses files in DOS and that the Commission would expect Instruction 8 to be followed only by persons using DOS. Otherwise, filers should simply use names that are easy to understand. The vast majority of filers, who are not using DOS, are subject only to the character limit for file names. At the technical conference, it was indicated that the current “no spaces in file names” convention will be eliminated. The instructions should reflect this change. Also, the word “tariff” in Instruction 6 should be deleted because the point does not relate only to tariff filings, assuming the Commission does allow them to be filed via eFiling as EEI has requested above.

Instructions 11 to 14 should be modified to reflect the Commission’s regulations at 18 C.F.R. § 385.2003, which contain format specifications such as margin and font requirements applicable to filings at the Commission. If the Commission’s intent is to relax or modify some of those requirements, such changes should be reflected in the regulations, not just the instructions, to avoid confusion. For example, if the Commission is proposing to allow 1” left margins instead of 1.5” margins, a change we would support,

the Commission should reflect that in section 385.2003, which currently requires 1.5” margins, not just in the instructions.

Also, if there are some documents to which section 385.2003 does not apply, the instructions should mention them. Further, the instructions should note that text filings do not require a “document header,” so the header instructions apply only to documents *other* than tariffs (which have regulation-defined header and footer requirements) that require headers or footers, and some examples should be provided. In addition, Instruction 12 should be clarified to explain that it does not apply to testimony or exhibits, where an administrative law judge typically dictates header format. Finally, as acknowledged at the technical conference, the instructions should specify that the “company name” referenced in a filing can include “et al.” to accommodate joint filings by parent and affiliated companies.

At the technical conference, Commission staff indicated that the second sentence of Instruction 17 is erroneous and should be deleted.

Also at the technical conference, staff indicated that while Instruction 28.d prohibits hyperlinks, such links are permitted if they simply link to websites that are citations or are e-mail addresses. Word software, by its default settings, adds such hyperlinks. And while the hyperlinks are removable, many filers may not be aware that the links are automatically created or how to delete them.

EEI Questions Use of Documentless Intervention and Quick Comments

At first glance, the Commission’s proposals to allow documentless intervention and quick comments sound like positive efforts to facilitate participation in Commission proceedings, especially by the general public and individuals who may not participate

regularly in such proceedings. However, on further reflection, EEI is concerned that the proposals may raise more issues than the benefits they might provide.

Regarding documentless intervention, the Commission would need to provide an opportunity for other parties to a proceeding to respond, just as the Commission's rules at 18 C.F.R. §§ 385.213 and 214 now allow answers to motions to intervene. Thus, unless the Commission provides notice of all quick interventions to all other parties, or that function is handled automatically as EEI has suggested above, "quick" interveners will need to provide notice that they have sought to intervene to all persons on the service list for the proceeding. Further, as discussed above, if some persons on the service list can accept service only on paper by mail, either the Commission or the quick interveners will have to provide this notice to them by mail. In the NOPR, the Commission notes that e-subscribers will receive notification of quick interventions. But as already discussed, the e-subscriber list does not typically include persons on the e-service list.

In addition, the Commission will need sufficient information about each "quick" intervener to decide whether to grant intervention, again applying the requirements of section 385.214. And if it does grant intervention, the Commission will need to add the intervener to the service list and to inform others on the list. EEI is concerned that documentless intervention may undercut the Commission's ability to ensure that interventions are timely and otherwise appropriate. At a minimum, late interventions probably should not be permitted via documentless intervention, given the intervener's need to establish "good cause" for its participation in the proceeding.

As for quick comments, which the Commission proposes to accept only in hydro license and gas pre-filing and certificate proceedings, we are concerned whether this will

encourage overly casual filings, rather than careful review of pertinent documents and considered input. If the Commission does pursue this idea, EEI supports the proposal to limit it to gas and hydro proceedings, and we recommend that the Commission try it on a pilot basis with a small group of willing volunteer applicants. Furthermore, the Commission should consider imposing some reasonable size limit on comments that can be submitted this way, to avoid large blocks of information being submitted without standard document pagination and other formatting. Also, the Commission should clarify that filing quick comments does not constitute intervention or add the filer to the service list for a proceeding, and it needs to ensure that persons on the service list receive notice and a link to or attached copies of the comments.

EEI Takes No Position on the Filing Deadline, But Suggests Conditions to Extend It

Though a number of EEI members would prefer the Commission to retain the current 5 p.m. Eastern time deadline, some of our Western members would prefer to have until 5 p.m. in their time zone to submit their filings. Those preferring the current deadline note that it puts everyone in the country on a single deadline within the standard work day for all time zones, and ensures that Commission staff are available if the internet filing system experiences problems. Those preferring a later deadline would like the ability to have a full final work day to submit their filings.

Therefore, EEI takes no position on what the deadline should be. However, if the Commission does extend the deadline, we encourage the Commission to make some related adjustments. First, we encourage the Commission to postpone posting documents in eLibrary and requiring service or undertaking automatic e-service until the next day, to avoid later-in-the-day filers being able to review and respond to earlier-in-the-day filings.

Also, we encourage the Commission to align the internet and paper filing deadlines, by making it possible to submit paper filings using an after-hours drop box similar to the one used by the U.S. Court of Appeals for the D.C. Circuit. Filers using the court's after-hours box complete a simple cover sheet, use a date stamp machine near the court's guard station to show when the documents are being submitted, and then deposit them in the drop box. Finally, we encourage the Commission to consider having technical staff available until the filing deadline to address problems with the eFiling system or a particular filer's attempt to file.

If the Commission's internet filing system goes down, especially near the filing deadline, the Commission should continue its current practice of accepting filings the next day as being timely filed even if due the day before.

Conclusion, Contact Information

In conclusion, EEI encourages the Commission: to expand its internet filing system as proposed; to accommodate simple electronic filing of tariffs and related documents; to accept electronic filing of confidential information and CEII, with appropriate care to preserve the confidentiality of the information; to continue allowing filers to submit documents in native format, PDF format, on CD, or on paper, at the filer's election; not to require duplicate filings in different formats or electronically and on paper; to keep the filing process simple; to automate the service process as much as possible; not to adopt documentless intervention or quick comments unless and until our concerns about those proposals are fully addressed; to correct the draft Instructions; and if the Commission extends the filing deadline, to do so only with several other

adjustments to ensure that all filings can be made on a level playing field and with adequate technical support.

If the Commission has any questions regarding these comments, please contact either of us.

Respectfully submitted,

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Edward H. Comer
Vice President & General Counsel
Henri D. Bartholomot
Director, Regulatory Legal Issues
Edison Electric Institute
701 Pennsylvania Avenue, N.W.
Washington, DC 20004
(202) 508-5000

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