

KIRKLAND & ELLIS

Blog Post

Energy Regulatory Update: FERC Takes Action to Alleviate COVID-19 Regulatory Burdens and Uncertainty, and State Regulatory Commissions Updates

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The COVID-19 global pandemic continues to place strains and uncertainty on the energy markets, and companies across the country are working to adapt their operations and commercial arrangements to meet shifting supply and demand in the energy markets while also complying with federal and state regulations and various emergency orders. In response, government agencies are continuing to take steps to relieve regulatory burdens that may hinder the collective response to the pandemic.

April 2 FERC Policy Statement

On April 2, 2020, FERC took additional steps in that direction by issuing a [Policy Statement](#) providing regulatory guidance on energy infrastructure, market, reliability and security matters. In announcing the Policy Statement, Chairman Neil Chatterjee stated that “[r]egulated entities are taking extraordinary steps to ensure continuity of our energy systems during this unprecedented time. We are doing all we can to lift regulatory burdens and uncertainty, so that the focus can remain on critical front-line efforts.”

The Policy Statement recognizes that many of the entities FERC regulates may have questions and concerns about how to meet certain regulatory requirements and/or recover the costs resulting from their respective emergency actions taken in response to the COVID-19 pandemic. FERC stated it will expeditiously review and act on requests for relief, including but not limited to, requests for cost recovery necessary to assure business continuity of the regulated entities’ energy infrastructure, and will give its

highest priority to processing filings made for the purpose of assuring the business continuity of regulated entities' energy infrastructure.

Other FERC Actions

In addition, FERC has taken the following actions:

- Created a Standards of Conduct (“SOC”) Task Force and directed it to address emergency-related SOC requests expeditiously. The Chairman confirmed that the COVID-19 pandemic qualifies as an emergency under 18 C.F.R. § 358.7(g)(2) of FERC’s regulations, triggering the suspension of certain SOC posting requirements for regulated entities.
- Created a No-Action Letter (“NAL”) Task Force and directed it to process emergency-related NAL requests expeditiously, and to provide informal staff guidance regarding NAL requests.
- Delegated authority until June 1, 2020, to the Director of FERC’s Office of Energy Market Regulation to act on uncontested requests for prospective waiver of certain regulatory requirements to address needs resulting from steps regulated entities have taken to meet emergency conditions.
- Delegated authority to the Director of FERC’s Office of Energy Policy and Innovation to act on motions for extension of time to file, or requests or petitions for waiver of the requirements of, FERC Form No. 552 and FERC-730.
- Announced an extension to June 1, 2020, for FERC Form Nos. 552, 60, and 61, as well as Electric Quarterly Reports.
- Announced that enforcement staff will continue to monitor its surveillance data feeds and screening processes while operating in a remote status in order to continue to protect market participants and consumers from the effects of anti-competitive behavior.
- Announced that enforcement staff will not begin any new audits until July 31, 2020, but will contact entities regarding surveillance inquiries that involve market behavior that could result in significant risk of harm to the market.
- Announced that entities may delay for 60 days the submission of self-reports that involve inadvertent errors producing no significant harm to the markets, ratepayers or other market participants.
- Approved a blanket waiver of requirements through September 1, 2020, in Open Access Transmission Tariffs that require entities to hold meetings in person and to provide or obtain notarized documents in any tariff, rate schedule, service

agreement or contract subject to the Commission's jurisdiction under the Federal Power Act, Natural Gas Act or the Interstate Commerce Act.

- Extended the time period for Regional Transmission Operators and Independent System Operators to post all Uplift Reports and Operator Initiated Commitment Reports that would have been due between April 2020 and September 2020 to October 20, 2020.

State Energy Regulatory Commissions

Although this update addresses developments with FERC, readers should note that there continue to be important developments with state energy regulatory commissions. For up-to-date information on state energy regulatory commission activity, we suggest that you visit the [National Association of Regulatory Utility Commissioners' \("NARUC"\) website](#). NARUC and the National Regulatory Research Institute launched this resource site to track state energy regulatory commissions' responses to COVID-19. We are actively monitoring the responses of state energy regulatory commissions to COVID-19 and encourage you to reach out to us with any questions regarding COVID-19's impact on state energy regulatory commissions or otherwise as they apply to energy regulatory matters.

Finally, all in-person meetings across the country held by each of the grid operators, and federal and state agencies we are monitoring continue to be canceled, postponed or rescheduled as virtual meetings through at least May 1, 2020.

As promised in our [initial post](#), we will continue to monitor regulatory developments related to the COVID-19 pandemic and provide updates to this blog post, including the state and federal actions covered in our prior post, as conditions warrant.

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