



FERC Revises Its Regulations Regarding Computation of Time

Feb 11, 2019

Reading Time : **2 min**

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The Final Rule modifies Rule 2007 to address days when FERC “is closed due to adverse conditions—including inclement weather—even though some official duties may be performed by telework-ready employees.” FERC explains that the change will prevent “unintended Commission action by operation of law,” such as where a pipeline or public utility rate filing would become effective automatically absent a FERC order at the end of a statutory period, and “provides clarity as to filing deadlines and deadlines for action by the Commission.”

Previously, Rule 2007 provided that the last day of any period is included in that period, “unless it is a Saturday, Sunday, day on which the Commission closes due to adverse conditions and does not reopen prior to its official close of business, part-day holiday that affects the Commission, or legal public holiday . . . , in which case the period does not end until the close of the Commission business of the next day which is not” such a day.

FERC explains that Office of Personnel Management regulations promulgated in April 2018 to implement the weather and safety leave provisions of the Administrative Leave Act of 2016 require “employees that are telework-ready continue to perform official duties, even though Federal offices are closed due to severe weather or another emergency situation.” Thus, to avoid confusion when FERC closes due to adverse conditions but some FERC employees continue to perform official duties, FERC revised Rule 2007 to make clear that such a day will not be counted as the last day of the relevant period. FERC explains that, “[i]n such circumstances, employee and public access to the Commission’s physical facilities may be restricted, not all employees may be telework-ready, and not all telework-ready employees may be able to telework due to the adverse conditions.” Accordingly, when FERC is closed

due to adverse conditions, its “ability to accept filings and issue orders . . . may be affected,” and “the public’s ability to submit a filing on the last day on which a filing is due may also be restricted”; accordingly, such a day should not be counted as the last day of any relevant period.

Importantly, the changes to Rule 2007 address only the “last day of any time period” (i.e., closures do not otherwise extend any relevant period) and days when FERC closes and does not reopen before 5:00 p.m. ET on that day.

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