

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;  
Richard Glick, Bernard L. McNamee,  
and James P. Danly.

Waiver of Tariff Requirements

Docket No. PL20-7-000

PROPOSED POLICY STATEMENT ON WAIVER OF TARIFF REQUIREMENTS  
AND PETITIONS OR COMPLAINTS FOR REMEDIAL RELIEF

(Issued May 21, 2020)

1. In this Proposed Policy Statement, the Commission proposes to clarify its policy regarding requests for waiver of tariff provisions.<sup>1</sup> Reviewing courts have instructed that “[t]he filed rate doctrine and the rule against retroactive ratemaking leave the Commission no discretion to waive the operation of a filed rate or to retroactively change or adjust a rate for good cause or for any other equitable considerations.”<sup>2</sup> The Commission’s waiver orders have sometimes drifted beyond the limits imposed by the filed rate doctrine and the rule against retroactive making.<sup>3</sup> This Proposed Policy

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<sup>1</sup> We will use the shorthand term “tariff” in this Proposed Policy Statement to refer to the full range of documents that the relevant statutes and our regulations require be filed with the Commission, including rates, non-rate terms and conditions, market rules, and procedural deadlines set forth in tariffs, rate schedules, service agreements, and contracts. *See infra* P 6.

<sup>2</sup> *Old Dominion Elec. Coop., Inc. v. FERC*, 892 F.3d 1223, 1230 (D.C. Cir. 2018) (*ODEC*) (citing *Columbia Gas Transmission Corp. v. FERC*, 895 F.2d 791, 794-97 (D.C. Cir. 1990)). *ODEC* did not make new law, but rather reiterated existing law. *See, e.g., Ark. La. Gas Co. v. Hall*, 453 U.S. 571, 578 (1981) (*Arkla*) (finding that “the Commission itself has no power to alter a rate retroactively”).

<sup>3</sup> *See infra* notes 36-37.

Statement sets forth the approach the Commission would propose to take going forward to ensure compliance with these doctrines.<sup>4</sup> We seek comments on this proposal.

### **I. Background**

2. The Commission's authority to grant remedial relief for actions or omissions that occur prior to a filing with the Commission differs markedly from its authority to grant prospective waivers of tariffs. We start with the Commission's statutory authority to review and approve public utility rates, as set forth in Federal Power Act (FPA) sections 205 and 206,<sup>5</sup> and the parallel provisions in Natural Gas Act (NGA) sections 4 and 5.<sup>6</sup>

3. FPA section 205 and NGA section 4 require that public utilities and pipelines file all rates with the Commission and also file any changes to their existing rates before a proposed change may go into effect.<sup>7</sup> The FPA prior notice period is 60 days,<sup>8</sup> while the NGA prior notice period is 30 days.<sup>9</sup> Both statutes permit the Commission to waive the prior notice requirement for good cause, but the courts have held that this does not authorize the Commission to permit a rate change to go into effect prior to the date it was filed unless (i) there was notice that the previously-charged rate was tentative and subject to retroactive adjustment or (ii) the parties to a contract agreed in advance that the contractual rate could go into effect prior to the filing date.<sup>10</sup>

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<sup>4</sup> We propose that waiver requests pending as of the date of issuance of a final Policy Statement in this proceeding be handled in accordance with the Policy Statement. Applicants could refile pending waiver requests as appropriate.

<sup>5</sup> 16 U.S.C. §§ 824d, 824e (2018).

<sup>6</sup> 15 U.S.C. §§ 717c, 717d (2018).

<sup>7</sup> See 16 U.S.C. § 824d(c)-(d); 15 U.S.C. § 717c(c)-(d).

<sup>8</sup> 16 U.S.C. § 824d(d).

<sup>9</sup> 15 U.S.C. §§ 717c(d).

<sup>10</sup> See *Consolidated Edison Co. of N.Y. v. FERC*, 347 F.3d 964, 969 (D.C. Cir. 2003); *Columbia Gas Transmission Corp. v. FERC*, 895 F.2d 791, 795-97 (D.C. Cir. 1990). This exception was adopted by the courts in *City of Piqua v. FERC*, 610 F.2d 950, 954-55 (D.C. Cir. 1979), and it is reflected in several long-standing waiver practices this Proposed Policy Statement would not change. See *infra* note 50.

4. Likewise, the Commission's authority to change rates under FPA section 206 and NGA section 5 does not permit retroactive changes to filed rates; on the contrary, those statutes permit the Commission, after conducting a hearing, to establish the rate "to be thereafter observed."<sup>11</sup> Neither statute permits the Commission to order refunds for any period prior to the date a complaint is filed or, if a proceeding is initiated by the Commission on its own motion pursuant to FPA section 206, the date that the Commission's determination to initiate such proceeding is published in the *Federal Register*.

5. Two related doctrines have been developed through judicial precedent interpreting these ratemaking provisions in the FPA and NGA, as well as other statutory regimes governing rate-setting for regulated entities.<sup>12</sup> The first is the filed rate doctrine, which holds that a public utility may not charge any rate other than what has been filed by the Commission and allowed to go into effect.<sup>13</sup> The second is the rule against retroactive ratemaking: "Not only do the courts lack authority to impose a different rate than the one approved by the Commission, but the Commission itself has no power to alter a rate retroactively."<sup>14</sup> As the D.C. Circuit made clear in *ODEC*, "[t]he filed rate doctrine and the rule against retroactive ratemaking leave the Commission no discretion to waive the operation of a filed rate or to retroactively change or adjust a rate for good cause or for any other equitable considerations."<sup>15</sup>

6. The filed rate doctrine and rule against retroactive ratemaking precedents were developed in the context of rates. However, the statutory provisions on which those rules were based apply equally to non-rate terms and conditions. For example, FPA

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<sup>11</sup> 16 U.S.C. § 824e(a); 15 U.S.C. § 717d(a).

<sup>12</sup> See, e.g., *Am. Tel. & Tel. Co. v. Cent. Office Tel., Inc.*, 524 U.S. 214, 223 (1998) (*AT&T*) (telephone rates); *Maislin Indus., U.S., Inc. v. Primary Steel, Inc.*, 497 U.S. 116, 128, 131-32 (1990) (transportation rates).

<sup>13</sup> See *Arkla*, 453 U.S. at 577; *Mont.-Dakota Utils. Co. v. Nw. Pub. Serv. Co.*, 341 U.S. 246, 251-52 (1951).

<sup>14</sup> *Arkla*, 453 U.S. at 578.

<sup>15</sup> *ODEC*, 892 F.3d at 1230 (citing *Columbia Gas Transmission Corp.*, 895 F.2d at 794-97). In describing the rule against retroactive ratemaking, the court in *ODEC* also noted that this "otherwise categorical prohibition" yields in the limited circumstance of formula rates, noting that such rates are "not really an exception at all." *Id.* at 1227 & n.1; accord, e.g., *Pub. Utils. Comm'n of Cal. v. FERC*, 254 F.3d 250, 254 & n.3 (D.C. Cir. 2001).

section 205(d) requires prior notice not only of changes in rates, but also to changes to “any . . . classification, or service, or . . . any rule, regulation, or contract relating thereto.”<sup>16</sup> The Commission’s regulations implementing FPA section 205 thus require the filing not only of “rates” but of “rate schedules” and “tariffs,”<sup>17</sup> both of which are defined as including “all classifications, practices, rules, or regulations which in any manner affect or relate to the aforementioned service, rates, and charges.”<sup>18</sup> The Commission’s regulations also codify the filed rate doctrine and make it applicable to non-rate terms and conditions.<sup>19</sup> In addition, the Commission has consistently held that non-rate terms and conditions must be filed.<sup>20</sup> Thus, there is no basis for the Commission to conclude that those doctrines apply any differently to non-rate terms and conditions than to rates.<sup>21</sup>

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<sup>16</sup> 16 U.S.C. § 824d(d); *accord* 16 U.S.C. § 824e(a) (giving the Commission the authority to require prospective changes to “any rule, regulation, practice, or contract affecting such rate, charge, or classification”).

<sup>17</sup> 18 C.F.R. § 35.1(a) (2019).

<sup>18</sup> 18 C.F.R. § 35.2(b) and (c)(1) (2019).

<sup>19</sup> *See* 18 C.F.R. § 35.1(e) (“No public utility shall, directly or indirectly, demand, charge, collect or receive any rate, charge or compensation for or in connection with electric service subject to the jurisdiction of the Commission, or impose any classification, practice, rule, regulation or contract with respect thereto, which is different from that provided in a rate schedule required to be on file with this Commission unless otherwise specifically provided by order of the Commission for good cause shown.”).

<sup>20</sup> *See, e.g., Chehalis Power Generating, L.P.*, 152 FERC ¶ 61,050, at P 16 & n.40 (2015) (citing *Prior Notice*, 64 FERC ¶ 61,139; *Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utils.; Recovery of Stranded Costs by Pub. Utils. and Transmitting Utils.*, Order No. 888, FERC Stats. & Regs. ¶ 31,036, at 31,768 (1996) (cross-referenced at 75 FERC ¶ 61,080) (holding that non-rate terms and conditions of a transmission provider’s open access transmission tariff be must filed with the Commission), *order on reh’g*, Order No. 888-A, FERC Stats. & Regs. ¶ 31,048 (cross-referenced at 78 FERC ¶ 61,220), *order on reh’g*, Order No. 888-B, 81 FERC ¶ 61,248 (1997), *order on reh’g*, Order No. 888-C, 82 FERC ¶ 61,046 (1998), *aff’d in relevant part sub nom. Transmission Access Policy Study Group v. FERC*, 225 F.3d 667 (D.C. Cir. 2000), *aff’d sub nom. New York v. FERC*, 535 U.S. 1 (2002)).

<sup>21</sup> *See, e.g., Seminole Elec. Power Coop., Inc. v. Fla. Power & Light Co.*, 139 FERC ¶ 61,254, at P 44 (2012) (finding that a time bar provision “is itself the filed rate”), *reh’g denied*, 153 FERC ¶ 61,037, at P 27 (2015) (reiterating that “the Commission

7. There are two additional factors relevant to this discussion. First, “no violation of the filed rate doctrine occurs when ‘buyers are on adequate [advance] notice that resolution of some specific issue may cause a later adjustment to the rate being collected at the time of service.’”<sup>22</sup> The provision of notice of a potential change does not create an exception to the rule against retroactive ratemaking. Rather, notice “changes what would be purely retroactive ratemaking into a functionally prospective process by placing the relevant audience on notice at the outset that the rates being promulgated are provisional only and subject to later revision.”<sup>23</sup> Therefore, if a tariff indicates that a specific tariff provision is subject to a remedial waiver, then such waivers may be granted without violating the filed-rate doctrine and rule against retroactive ratemaking.<sup>24</sup>

8. Second, the Commission has authority under FPA section 309 and NGA section 16 to “perform any and all acts, and to prescribe, issue, make, amend, and rescind such orders, rules, and regulations as it may find necessary or appropriate to carry out the provisions of this chapter.”<sup>25</sup> The courts have held that this expansive language “permits [the Commission] to advance remedies not expressly provided by the FPA,” which in some circumstances has included authorizing changes to amounts paid or received by entities.<sup>26</sup> For example, courts have upheld the Commission’s use of this authority to: (i) require surcharges to certain public utility customers where the total rate charged by the public utility did not change, only the allocation of cost responsibility among customers

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has found time limitations on the correction of bills involving violation of the filed rate doctrine to be consistent with the filed rate doctrine”), *aff’d sub nom. Seminole Elec. Coop., Inc. v. FERC*, 861 F.3d 230, 234-35 (D.C. Cir. 2017).

<sup>22</sup> *ODEC*, 892 F.3d at 1231 (quoting *Natural Gas Clearinghouse v. FERC*, 965 F.2d 1066, 1075 (D.C. Cir. 1992)).

<sup>23</sup> *Columbia Gas Transmission Corp.*, 895 F.2d at 791, quoted in *Natural Gas Clearinghouse*, 965 F.2d at 1075; see also *Columbia Gas Transmission Corp. v. FERC*, 831 F.2d 1135, 1141 (D.C. Cir. 1987).

<sup>24</sup> See *infra* P 16 & note 44.

<sup>25</sup> 16 U.S.C. § 825h; 15 U.S.C. § 717o.

<sup>26</sup> *Verso Corp. v. FERC*, 898 F.3d 1, 10 (D.C. Cir. 2018) (citing *TNA Merch. Projects, Inc. v. FERC*, 857 F.3d 354, 359 (D.C. Cir. 2017) (citing *Niagara Mohawk Power Corp. v. FPC*, 379 F.2d 153, 158 (D.C. Cir. 1967)), cert. denied sub nom. *City of Mackinac Island v. FERC*, 139 S. Ct. 2044 (2019)).

did;<sup>27</sup> (ii) retroactively adjust rates in order to recoup erroneous refunds;<sup>28</sup> (iii) order refunds where the rate paid exceeded the filed rate;<sup>29</sup> and (iv) impose refund protection where the Commission erred in accepting a tariff revision that lacked such a commitment.<sup>30</sup>

9. The Commission's remedial authority under FPA section 309 and NGA section 16 is not unlimited, however.<sup>31</sup> Rather, "the [Commission's] action [must] conform[] with the purposes and policies of Congress and [may] not contravene any terms of the Act."<sup>32</sup> Judicial precedent forecloses purely equitable exceptions to the filed rate doctrine and the rule against retroactive ratemaking:

It bears repeating, however, that the Commission does not have the authority *to ignore the law to achieve an equitable result*. Had we found that its actions violated the filed rate doctrine or the rule against retroactive ratemaking, we would not then invoke the Commission's assessment of the equities to overcome those violations.<sup>33</sup>

As the Supreme Court has explained in the context of transportation rates, its consistent policy of "strict adherence to the filed rate has never been justified on the ground that a

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<sup>27</sup> *Id.* at 10-11.

<sup>28</sup> See *TNA Merch. Projects*, 857 F.3d at 362; *Canadian Ass'n of Petroleum Prods. v. FERC*, 254 F.3d 289, 299-300 (D.C. Cir. 2001).

<sup>29</sup> See *Towns of Concord v. FERC*, 955 F.2d 67, 73 (D.C. Cir. 1992).

<sup>30</sup> See *Xcel Energy Servs. Inc. v. FERC*, 815 F.3d 947, 954-56 (D.C. Cir. 2016).

<sup>31</sup> See *Fed. Power Comm'n v. Texaco*, 417 U.S. 380 (1974) (holding that NGA section 16 "does not authorize the Commission to set at naught an explicit provision of the Act").

<sup>32</sup> *Verso Corp.*, 898 F.3d at 12 (quoting *Niagara Mohawk*, 379 F.2d at 158).

<sup>33</sup> *Public Utils. Comm'n of Cal. v. FERC*, 988 F.2d 154, 168 n.12 (D.C. Cir. 1993) (citation omitted) (emphasis added).

carrier is equitably entitled to that rate, but rather that such adherence, despite its harsh consequences in some cases, is necessary to enforcement of the Act.”<sup>34</sup>

10. From the above, we find that the Commission has the authority to grant prospective waivers of deadlines or other provisions established in tariffs, e.g., a request to waive a deadline before the deadline has passed. Such waivers are, in effect, temporary or otherwise limited amendments to relevant tariff provisions, and the Commission may approve such proposed prospective tariff changes under FPA section 205 or NGA section 4. The Commission may not grant retroactive relief, however, unless the applicant makes a showing that either (1) the request for remedial relief does not violate the filed rate doctrine or the rule against retroactive ratemaking due to adequate prior notice or, alternatively, (2) that the requested relief is within the Commission’s authority to grant under FPA section 309 or NGA section 16—that is, granting the requested relief conforms with the purposes and policies of Congress and does not contravene any terms of the FPA or NGA.<sup>35</sup>

11. We recognize that the Commission suggested in a 2016 decision that the filed rate doctrine and rule against retroactive ratemaking may not apply to non-rate terms and conditions.<sup>36</sup> Further, the Commission has previously granted retroactive waivers of non-rate terms and conditions of public utility tariffs.<sup>37</sup> However, upon further consideration, we propose to no longer grant retroactive waivers of tariff provisions except as consistent with the discussion in this Proposed Policy Statement.

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<sup>34</sup> *Maislin Indus.*, 497 U.S. at 117; *accord AT&T*, 524 U.S. at 223 (explaining that the filed rate doctrine applies regardless of any motive “to benefit or harm a particular customer”).

<sup>35</sup> *See Verso Corp.*, 898 F.3d at 12; *Niagara Mohawk*, 379 F.2d at 158.

<sup>36</sup> *See Old Dominion Elec. Coop.*, 154 FERC ¶ 61,155, at P 19 n.40 (2016) (“A retroactive waiver of a non-rate term and condition that does not subject ratepayers to an additional surcharge may not violate the filed rate doctrine or the rule against retroactive ratemaking.”).

<sup>37</sup> *See, e.g., Cal. Indep. Sys. Operator Corp.*, 164 FERC ¶ 61,065 (2018) (non-time bar billing waivers); *Consol. Edison Co. of N.Y., Inc.*, 168 FERC ¶ 61,047 (2019) (time bar billing waivers); *Renewable Energy Aggregators*, 167 FERC ¶ 61,013 (2019) (waiver of procedural deadlines).

## II. Guidance

12. To implement this new approach, we propose the following guidance on filing procedures. *First*, we propose that when seeking remedial relief in connection with actions or omissions that have already occurred prior to the date relief is sought from the Commission, requesting entities should not describe the requested relief as a waiver, which incorrectly suggests that the Commission may alter the substance of a filed tariff retroactively from the date a filing is made. Rather, such filings should be characterized as a request for remedial relief. In response to such a request, the Commission will focus on what remedy, if any, is required to cure acknowledged or alleged deviations from a filed tariff. We propose that the term waiver should be confined to: (a) requests for prospective relief when a requested future deviation from the filed tariff has not yet occurred at the time a request is filed; or (b) petitions for remedial relief when a tariff expressly authorizes regulated entities to seek a remedial waiver from the Commission for past non-compliance with the filed tariff.

13. *Second*, we propose that when the entity requesting remedial relief is the entity that acted in a manner inconsistent with the tariff, or believes it may have done so, such requests should be filed as petitions for declaratory order under Rule 207 of the Commission's Rule of Practice and Procedure.<sup>38</sup> We propose that when the filing entity alleges a different entity has acted in a manner inconsistent with the tariff, such requests should be filed as complaints under Rule 206.<sup>39</sup>

14. *Third*, for petitions or complaints seeking remedial relief for actions or omissions that occurred prior to the date of filing, where the petitioner acknowledges or the

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<sup>38</sup> 18 C.F.R. § 385.207 (2019). In cases where a petitioner is seeking remedial relief for its own failure to comply with a tariff, and such failure results in a violation of the tariff, the petitioner may also submit a self-report to the Office of Enforcement, consistent with the guidance on the Commission's website, <http://www.ferc.gov/enforcement/self-reports.asp>. Such self-reports would not appear to be necessary when a petitioner seeks remedial relief from a tariff where the petitioner's action or omission caused it to be excluded from the benefits the tariff would otherwise provide. An example is where the petitioner misses a deadline set in the tariff to participate in a voluntary program (such as missing the deadline to provide notice as a precondition to continue to provide service) and, as a result, is precluded from further participating in the program established by tariff. In that instance, the petitioner has not violated the tariff; instead, the petitioner seeks relief so that it can participate in the program offered under the tariff.

<sup>39</sup> 18 C.F.R. § 385.206 (2019).

complainant alleges violation of a tariff filed under the FPA or the NGA, we propose that such petitions or complaints should expressly request Commission action pursuant to FPA section 309<sup>40</sup> or NGA section 16.<sup>41</sup> The federal courts have found that those statutory provisions afford the Commission latitude to remedy past non-compliance, “provided the agency’s action conforms with the purposes and policies of Congress and does not contravene any terms of the Act.”<sup>42</sup>

15. We recognize that this proposal represents a change from the Commission’s past approach, particularly in situations where inadvertent failures to comply with ministerial tariff requirements have not been protested.<sup>43</sup> To avoid what otherwise may appear to be harsh outcomes by comparison to past practice, we also propose to offer suggestions about ways that tariffs may be modified to avoid conflict with the filed rate doctrine and the rule against retroactive ratemaking.

16. *First*, when deadlines are involved, a tariff may be modified to expressly state that failure to comply with a certain deadline may be waived by order of the Commission.<sup>44</sup> Advance notice that a specific tariff provision may be waived by a future Commission order accomplishes the core purpose of the filed rate doctrine and provides an opportunity to seek relief for past errors without running afoul of the rule against retroactive ratemaking.<sup>45</sup> When an entity seeks to revise its tariff to provide advance

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<sup>40</sup> 16 U.S.C. § 825h (2018).

<sup>41</sup> 15 U.S.C. § 717o (2018).

<sup>42</sup> *Verso Corp.*, 898 F.3d at 10 (quoting *Niagara Mohawk*, 379 F.2d at 158); *see also Columbia Gas Transmission Corp. v. FERC*, 750 F.2d 105, 109 (D.C. Cir.1984) (“The principle fairly drawn from prior cases is that the Commission has broad authority to fashion remedies so as to do equity consistent with the public interest.”).

<sup>43</sup> *See supra* note 37.

<sup>44</sup> One such example may be found in the tariff of PJM Interconnection, L.L.C. (PJM), which describes the conditions under which a capacity market seller may seek a remedial waiver from the Commission if the seller does not timely take actions to remove its resource from the capacity market or exempt its resource from the must-offer requirements. *See* PJM, Intra-PJM Tariffs, OATT, Attachment DD, 6 Market Power Mitigation (22.0.0), § 6.6(g) Offer Requirement for Capacity Resources; *see also, e.g., AEP Generation Resources Inc.*, 170 FERC ¶ 61,103 (2020) (granting a waiver request in accordance with the remedial waiver provision in PJM’s tariff).

<sup>45</sup> Advance notice that failure to comply with a specific tariff provision may be waived by order of the Commission does not guarantee a waiver will be granted; nor does

notice that a specific tariff provision may be waived by a future Commission order, the Commission will evaluate the merits of such proposed revisions on a case-by-case basis, as requests to make specific tariff provisions subject to a remedial waiver may or may not be just and reasonable.<sup>46</sup>

17. *Second*, tariffs may be modified to allow various kinds of errors to be cured by the relevant entities themselves within a reasonable period of time after a default has occurred or an error has been discovered. Such two-stage deadlines—one initial deadline that allows errors or omissions to be corrected, the other a final deadline after the opportunity to take corrective action has passed—should reduce or avoid the need for entities to seek remedial action from the Commission in most instances.

18. Under current practice, when considering requests for waiver in cases involving wholesale power or electric transmission rates and services, the Commission has granted waiver of tariff provisions where: (1) the underlying error was made in good faith; (2) the waiver is of limited scope; (3) the waiver addresses a concrete problem; and (4) the waiver does not have undesirable consequences, such as harming third parties.<sup>47</sup> When considering requests for waiver in cases involving natural gas pipeline rates and services, the Commission's analysis has been comparatively less structured. Going forward, we propose to incorporate that four-part analysis in considering both requests for prospective waiver and petitions for remedial relief, and further propose to do so in circumstances involving wholesale power or electric transmission rates and services as well as natural gas pipeline rates and services.

19. However, while we propose to clarify that we will apply the existing four-part analysis to both prospective waiver requests and petitions for remedial relief, we stress that we propose that the four-part analysis will be applied to petitions for remedial relief only in those limited circumstances, described above, when (1) the request for remedial relief does not violate the filed rate doctrine or the rule against retroactive ratemaking due to adequate prior notice, or (2) the requested relief is within the Commission's authority to grant under FPA section 309 or NGA section 16.

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it change the guidance proposed here that a petition for declaratory order seeking remedial relief should be made under Rule 207 when the petitioner itself failed, or believes it may have failed, to comply with the filed tariff. *See supra* P 13.

<sup>46</sup> For example, an excessively broad advance waiver provision would erode commercial certainty in rule-based outcomes, therefore undermining the core purpose of the filed rate doctrine and the rule against retroactive ratemaking.

<sup>47</sup> *E.g.*, *AEP Generation Resources Inc.*, 170 FERC ¶ 61,103, at P 14 & n.22 (2020) (listing cases).

20. We also propose to find that it is appropriate to require a stronger showing when a petitioner is seeking remedial relief for its own failure to comply with a tariff. For example, we propose to find that arguments that a petition for remedial relief has been made in good faith will be more compelling when the petition contends the error was caused by something more than inadvertent error or administrative oversight; that arguments that a petition for remedial relief is limited in scope will be less compelling when the petition involves long-standing tariff provisions that affect large numbers of similarly-situated entities; and that arguments that remedial relief addresses a concrete problem will be more compelling when the concrete problem was not created by the petitioner in the first place. Finally, we propose that petitioners requesting remedial relief will generally be denied when a protestor credibly contends that the petition for remedial relief will result in undesirable consequences, such as harm to third parties. However, we propose to find that the absence of a protester does not necessarily mean that there is no harm to other parties. In certain circumstances, the Commission may determine that the effects of a waiver will result in harm to third parties.<sup>48</sup>

21. The foregoing proposed guidance is limited to requests for remedial relief to address tariff-related actions or omissions that have already occurred before a petition or complaint is filed. Requests for remedial relief are distinct from prospective requests to waive the 60-day prior notice requirement under FPA section 205(d), or the 30-day prior notice requirement under NGA section 4(d), which the Commission has discretion to waive “for good cause shown.”<sup>49</sup> The Commission has long found that waiver of the prior notice requirement will generally be granted in certain circumstances,<sup>50</sup> and we

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<sup>48</sup> For example, the Commission could acknowledge that participation by an additional entity in the process at issue (e.g., auction or interconnection queue) through a waiver could harm the entities that complied with all the tariff requirements, even though those other entities did not protest.

<sup>49</sup> 16 U.S.C. § 824d(d); 17 U.S.C. § 717c(d).

<sup>50</sup> See *Cent. Hudson Gas & Elec. Corp.*, 60 FERC ¶ 61,106, *order on reh’g*, 61 FERC ¶ 61,089 (1992) (*Central Hudson*). Factors that will generally support a waiver of prior notice include: (1) uncontested filings that do not change rates; (2) filings that reduce rates and charges; and (3) filings that increase rates as prescribed by a previously-accepted contract or settlement on file with the Commission. See *Central Hudson*, 60 FERC at 61,338-39; *Prior Notice and Filing Requirements under Part II of the Federal Power Act*, 64 FERC ¶ 61,139, at 61,974-75 (summarizing *Central Hudson*), *order on reh’g*, 65 FERC ¶ 61,081 (1993) (*Prior Notice*); see also *Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines*, 74 FERC ¶ 61,076, at 61,241-42 (1996). The Commission has also found that prior notice may be waived for service agreements under an umbrella tariff if such service agreements are filed within 30 days after service

propose that this policy will remain in effect to the extent that entities seek an effective date no earlier than the day after the date a rate change is submitted to the Commission.<sup>51</sup>

### **Comment Procedures**

22. The Commission invites comments on this Proposed Policy Statement by June 4, 2020 and reply comments by June 11, 2020. Comments must refer to Docket No. PL20-7-000, and must include the commenter's name, the organization they represent, if applicable, and their address in their comments.

23. The Commission encourages comments to be filed electronically via the eFiling link on the Commission's web site at <http://www.ferc.gov>. The Commission accepts most standard word processing formats. Documents created electronically using word processing software should be filed in native applications or print-to-PDF format and not in a scanned format. Commenters filing electronically do not need to make a paper filing.

24. Commenters that are not able to file comments electronically must send an original of their comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE, Washington, DC 20426.

25. All comments will be placed in the Commission's public files and may be viewed, printed, or downloaded remotely as described in the Document Availability section below. Commenters on this proposal are not required to serve copies of their comments on other commenters.

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commences. *See Prior Notice*, 64 FERC at 61,984; 18 C.F.R § 35.3(a)(2). Commission Staff retains its existing delegated authority to accept service agreement filings under 18 C.F.R § 35.3(a)(2), to accept notices of cancellation under 18 C.F.R § 35.15, and to accept notices of succession under 18 C.F.R § 35.16. *See* 18 C.F.R. § 375.307(a)(1)(iii), 307(a)(7)(iv) (2019) (delegating authority to resolve uncontested requests for waiver of the prior notice requirement under FPA section 205(d) and NGA section 4(d)).

<sup>51</sup> *See Evergy Ks. Cent., Inc.*, 171 FERC ¶ 61,016, at P 17 (2020). While the decision in *Evergy* permitted the filing to take effect as of the day it was filed, we propose that our general intent going forward will be to permit new filings to go into effect no earlier than the day after filing, rather than the day of filing, to provide some amount of prior notice. FPA section 206(b), by contrast, permits same-day notice in the case of complaints because the statute specifically states that the refund effective date in an FPA section 206 complaint proceeding "shall not be earlier than the date of the filing of such complaint." 16 U.S.C. § 824e(b).

**Document Availability**

26. The Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through the Commission's Home Page (<http://www.ferc.gov>). At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID-19), issued by the President on March 13, 2020.

27. From the Commission's Home Page on the Internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

28. User assistance is available for eLibrary and the Commission's website during normal business hours from the Commission's Online Support at (202) 502-6652 (toll free at 1-866-208-3676) or email at [ferconlinesupport@ferc.gov](mailto:ferconlinesupport@ferc.gov), or the Public Reference Room at (202) 502-8371, TTY (202) 502-8659. E-mail the Public Reference Room at [public.referenceroom@ferc.gov](mailto:public.referenceroom@ferc.gov).

By the Commission.

( S E A L )

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