

125 FERC ¶ 61,208
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Sudeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

Material Changes in Facts that Require
Notifications Under Commission Regulations
Under the Public Utility Holding Company
Act of 2005

Docket No. PL09-2-000

ORDER CLARIFYING REQUIREMENT TO NOTIFY COMMISSION OF
MATERIAL CHANGES IN FACTS UNDER THE PUBLIC UTILITY HOLDING
COMPANY ACT OF 2005 AND ALLOWING 45-DAY FILING PERIOD FOR
UPDATED NOTIFICATIONS

(Issued November 20, 2008)

1. The Commission's regulations under the Public Utility Holding Company Act of 2005 (PUHCA 2005)¹ currently require persons that meet the definition of a holding company set forth at 18 C.F.R. § 366.1 (2008) to notify the Commission of their status as a holding company no later than 30 days after they become a holding company.² The Commission's PUHCA 2005 regulations also provide exemptions from or waivers of requirements that apply to holding companies.³ The companies that receive certain of these exemptions or waivers are required to notify the Commission of material changes in facts that may affect the exemption or waiver.⁴ It has come to the Commission's attention that we may not have provided sufficient clarity regarding an aspect of the scope of this filing requirement and the purpose of this order is to clarify and provide guidance on certain filings that need to be made under this regulation.

¹ 42 U.S.C. §§ 16451 *et seq.* (2006).

² 18 C.F.R. § 366.4(a)(1) (2008).

³ *Id.* § 366.3.

⁴ *Id.* § 366.4(d).

2. The exemptions in question apply to a number of entities, including certain passive investors and certain utility operating companies, as well as to certain classes of transactions. Qualifying entities or classes of transactions are exempt from the requirements concerning access to books and records found at section 366.2, as well as the accounting, record-retention, and reporting requirements of sections 366.21, 366.22, and 366.23 of the Commission's regulations.⁵ To receive one or more of these exemptions, a person must file an exemption notification with the Commission, i.e., FERC-65A. The exemption is deemed granted if the Commission does not take action on the notification within 60 days.⁶ Persons that do not qualify for an exemption under the regulations may petition for a declaratory order granting one.⁷

3. The waivers in question apply to holding companies that have single-state holding company systems, as defined in section 366.3(c)(1) of the Commission's regulations, as well as investors in independent transmission-only companies and holding companies with 100 MW of generation or less that is used for their own load or sales to affiliated end users.⁸ Qualifying entities receive a waiver of the accounting, record-retention, and reporting requirements found in sections 366.21, 366.22 and 366.23 of the Commission's regulations.⁹ To receive one or more of these waivers, a person must file a waiver notification with the Commission, i.e., FERC-65B. The waiver is deemed granted if the Commission does not take action on the notification within 60 days.¹⁰ Persons that do not qualify for a waiver under the regulations may petition for a declaratory order granting one.¹¹

4. The Commission's regulations specify that if there is any material change in facts that may affect an exemption or waiver of the type described above, the person that received the exemption or waiver must notify the Commission of the change within 30 days of the material change. At that time the person must (i) submit a new FERC-65A,

⁵ *Id.* § 366.3(b).

⁶ *Id.* § 366.4(b)(1).

⁷ *Id.* § 366.4(b)(3); *accord id.* § 366.3(d).

⁸ *Id.* § 366.3(c).

⁹ *Id.* § 366.4(c).

¹⁰ *Id.* § 366.4(c)(1).

¹¹ *Id.* § 366.4(c)(2); *accord id.* § 366.3(d).

FERC-65B, or petition for declaratory order; (ii) file a written explanation why the material change in facts does not affect the exemption or waiver; or (iii) notify the Commission that it no longer seeks to maintain its exemption or waiver.¹²

5. The Commission's regulations require only notification of those material changes in facts that may affect an exemption or waiver, but they do not otherwise state when a notification is required. The Commission wishes to clarify one type of change in facts that should in all cases be the subject of a notification. If a holding company that has previously filed an exemption or waiver notification, i.e., FERC 65A or FERC 65B, or that has received an exemption or waiver through a declaratory order, becomes a holding company with respect to an *additional* public-utility company or holding company of any public-utility company (i.e., obtains the power to vote 10 percent or greater of the voting securities of an *additional* company), that holding company should file with the Commission a notification of material change in facts that describes the additional public-utility company or holding company of any public-utility company and otherwise complies with the requirements of section 366.4(d)(1) of the Commission's regulations by selecting one of the three possible courses of action set forth in that section. This filing should be made *whether or not* a change has occurred with respect to the basis on which the exemption or waiver was granted.¹³ We note that the FERC-65 filing requirements are intended, in part, to serve an informational purpose,¹⁴ and the addition of a new subsidiary company that is a public-utility company or holding company of a public-utility company represents a material fact that should be reported to the Commission.

6. Because not all holding companies may have been interpreting the Commission's regulations to require such filings where the basis on which their exemption or waiver was granted has not changed, and because the Commission has not previously clarified this requirement for notifications of material changes in fact, we will allow all such companies to file within 45 days of the date of publication of this order in the *Federal Register* a notification of change in material facts which updates the Commission on any

¹² *Id.* § 366.4(d).

¹³ For example, if a holding company received an exemption from the PUHCA 2005 regulations on the basis of its status as a passive investor of the type identified in 18 C.F.R. § 366.3(b)(2)(i), it should notify the Commission whenever it acquires as a passive investor interests in an additional public-utility company or holding company that, upon acquisition, becomes a "subsidiary company," as defined in 18 C.F.R. § 366.1, of the passive investor. This filing should be made even if the holding company continues to qualify for an exemption as a passive investor.

¹⁴ *Id.* § 366.4(a)(2).

investments of 10 percent or more of the voting securities of a public-utility company or holding company of a public-utility company since the time the exemption or waiver was granted. The Secretary is directed to publish a copy of this order in the *Federal Register*.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.