

129 FERC ¶ 61,227
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

18 CFR Parts 366 and 367

(Docket No. RM09-21-000; Order No. 731)

Revised Filing Requirements for Centralized Service Companies Under the Public Utility Holding Company Act of 2005, the Federal Power Act, and the Natural Gas Act

(Issued December 17, 2009)

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final Rule.

SUMMARY: The Federal Energy Regulatory Commission is revising its regulations to require every centralized service company that provides non-power services to any public utility, natural gas company, or both, to file Form No. 60 (Annual Report of Centralized Service Companies) annually and abide by the Uniform System of Accounts, unless exempted or granted a waiver. This rule provides greater transparency and will aid the Commission in fulfilling its regulatory obligations under the Federal Power Act and the Natural Gas Act to ensure that rates are just and reasonable.

EFFECTIVE DATE: This rule will become effective [**insert date 30 days after publication in the FEDERAL REGISTER**].

FOR FURTHER INFORMATION CONTACT:

Thomas Russo (Technical Information)
Division of Financial Regulation
Office of Enforcement
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, DC 20426
Telephone (202) 502-8792

Lawrence Greenfield (Legal Information)
Office of the General Counsel – Energy Markets
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, DC 20426
Telephone (202) 502-6415

Gary D. Cohen (legal issues)
Office of the General Counsel
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, DC 20426
(202) 502-8321

SUPPLEMENTARY INFORMATION:

129 FERC ¶ 61,227
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FEDERAL ENERGY REGULATORY COMMISSION

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

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Service Companies Under the Public Utility
Holding Company Act of 2005, the Federal
Power Act, and the Natural Gas Act

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ORDER NO. 731

FINAL RULE

(Issued December 17, 2009)

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I. Introduction

1. The Federal Energy Regulatory Commission (Commission) is revising its regulations at 18 CFR 366.1, 366.23, 367.1 and 367.2 to require every centralized service company that provides non-power services to any public utility, natural gas company, or both, to file Form No. 60 (Annual Report of Centralized Service Companies) annually

and abide by the Uniform System of Accounts, unless exempted or granted a waiver pursuant to 18 CFR 366.3 or 366.4.¹

2. The Commission believes that these revisions promote transparency and are consistent with the Commission's regulatory obligation to regulate public utilities under the Federal Power Act (FPA)² and natural gas companies under the Natural Gas Act (NGA)³ to ensure that rates are just and reasonable. The revisions also better track the Commission's intent in prior orders directing the filing of Form No. 60.

II. Background

3. On September 17, 2009, the Commission issued a notice of proposed rulemaking proposing to revise 18 CFR 366.1 and 18 CFR 367.1 to clarify that "service companies" includes entities providing non-power goods or services to any public utility or any natural gas company, or both, in the same holding company system, and to revise 18 CFR 366.23 and 18 CFR 367.2 to clarify that every centralized service company that provides non-power services to a public utility, a natural gas company, or both, in the same holding company system, must file FERC Form No. 60 (Annual Report of Centralized

¹ We are not adopting any revisions to the regulatory text of 18 CFR Part 368 or 18 CFR 369.1, because the current text of those regulations already is consistent with this Final Rule.

² 16 U.S.C. 791a et seq.

³ 15 U.S.C. 717 et seq.

Service Companies) annually and must abide by the Uniform System of Accounts, unless the holding company is exempted or granted a waiver pursuant to 18 CFR 366.3 or 366.4.⁴

4. In the Form 60 Notice, the Commission explained that the Commission intended in Order Nos. 667, 667-A, and 684,⁵ to require every centralized service company that provides non-power services to a public utility, a natural gas company, or both, to file Form No. 60 (Annual Report of Centralized Service Companies) annually, unless the holding company is exempted or granted a waiver pursuant to 18 CFR 366.3 or 366.4.

5. However, as explained in the Form 60 Notice, the codification of this requirement in the regulatory text did not make this requirement clear. Thus, in the Form 60 Notice, the Commission proposed new language that would more clearly express this requirement.

6. In response to the Form 60 Notice, comments were filed by the American Public Gas Association (APGA). These comments, more specifically addressed below, support the Commission's proposals in the Form 60 Notice.

⁴ Revised Filing Requirements for Centralized Service Companies Under the Public Utility Holding Company Act of 2005, the Federal Power Act, and the Natural Gas Act, Notice of Proposed Rulemaking, 74 FR 48884 (Sep. 25, 2009), FERC Stats. & Regs. ¶ 32,647 (2009) (Form 60 Notice).

⁵ Repeal of the Public Utility Holding Company Act of 1935 and Enactment of the Public Utility Holding Company Act of 2005, Order No. 667, FERC Stats. & Regs. ¶ 31,197 (2005), order on reh'g, Order No. 667-A, FERC Stats. & Regs. ¶ 31,213 (2006), order on reh'g, Order No. 667-B, FERC Stats. & Regs. ¶ 31,224 (2006), order on reh'g, Order No. 667-C, 118 FERC ¶ 61,133 (2007); Financial Accounting, Reporting and Records Retention Requirements Under the Public Utility Holding Company Act of 2005, Order No. 684, FERC Stats. & Regs. ¶ 31,229 (2006).

III. Discussion

7. It was our intention in Order Nos. 667, 667-A and 684 that every centralized service company providing non-power services either to any public utility or to any natural gas company (or to both) in the same holding company system file Form No. 60 and comply with the Uniform System of Accounts, unless the holding company is exempted or granted a waiver. However, as explained in the Form 60 Notice, it has recently come to our attention that, as currently written, the regulatory text of 18 CFR 366.1, 366.23, 367.1 and 367.2 could be read to reach a different, unintended conclusion. Namely, that centralized service companies providing non-power services to natural gas companies would be excluded from the requirement to file Form No. 60 if the companies that were part of the holding company system did not include a public utility. The proposed revisions to 18 CFR 366.1, 18 CFR 366.23, 18 CFR 367.1 and 18 CFR 367.2 described in the Form 60 Notice were all designed to close this inadvertent loophole.⁶

A. Comments

8. APGA supports the Commission's proposals in the Form 60 Notice. APGA argues both that the proposed regulations are consistent with the Commission's expressed intention as to the scope of the filing requirement and that "centralized service companies that provide services to natural gas companies or both natural gas companies and public

⁶ See Form 60 Notice, FERC Stats. & Regs. ¶ 32,647 at P 12-17; accord id. P 4-11. We note, however, that, irrespective of the revisions we are adopting in this Final Rule, under 18 CFR 366.23(a)(2), any service company in a holding company system that does not file Form No. 60 is required to file a narrative description of the company's functions during the prior calendar year (Form No. 61) absent an exemption or waiver.

utilities warrant the same treatment as centralized service companies that provide services to just public utilities. In APGA's view, this is because the same concerns regarding transparency (and effective rate regulation) persist among both natural gas companies and public utilities.”⁷ Thus, APGA supports revisions to the Commission's regulations to make the requirement to file Form No. 60 clearer and adds that the “Commission's proposal is consistent with its obligation to ensure just and reasonable rates for public utilities under the FPA and for natural gas companies under the NGA.”⁸ Finally, APGA states that the Commission possesses the authority to require centralized service companies to file FERC Form No. 60, pursuant to the FPA and NGA, respectively, in addition to its authority under PUHCA 2005.⁹

B. Analysis

9. Based on the analysis contained in the Form 60 Notice and after consideration of the comments filed in response to the Form 60 Notice, we are revising our regulations to clarify that the FERC Form No. 60 annual filing requirement, as well as the requirement to abide by the Uniform System of Accounts, extends to any centralized service company that provides non-power services to any public utility or any natural gas company, or both, in the same holding company system, so that the filing requirements will now expressly apply to all the entities that the Commission envisioned covering in its earlier

⁷ APGA Comments at 2-3.

⁸ Id. at 3.

⁹ Id.

___, the centralized service companies that serve public utilities and natural gas companies subject to the Commission's jurisdiction under the FPA and NGA).

10. Therefore, in this Final Rule, the Commission is revising 18 CFR 366.1 and 18 CFR 367.1 to clarify that "service companies" include entities providing non-power goods or services to any public utility or any natural gas company, or both, in the same holding company system, and to revise 18 CFR 366.23 and 18 CFR 367.2 to clarify that every centralized service company that provides non-power services to a public utility, a natural gas company, or both, in the same holding company system, must file FERC Form No. 60 (Annual Report of Centralized Service Companies) annually and must abide by the Uniform System of Accounts, unless the holding company is exempted or granted a waiver pursuant to 18 CFR 366.3 or 366.4.

11. The Commission finds that these revisions will promote transparency and are consistent with the Commission's regulatory obligation to regulate public utilities under the FPA and natural gas companies under the NGA to ensure just and reasonable rates. The revisions also better track the Commission's intent in prior orders directing the filing of FERC Form No. 60.¹⁰

12. In contrast to Order Nos. 667, 667-A and 684, in this rulemaking the Commission is relying explicitly on the Commission's authority under the FPA and NGA, in addition to its authority under PUHCA 2005. Accordingly, in this Final Rule, we are also revising the name of subchapter U, and of parts 366 and 367, title 18, CFR, to better reflect the

¹⁰ See Form 60 Notice, FERC Stats. & Regs. ¶ 32,647 at P 12-17.

Commission's reliance on its statutory authority under the FPA and NGA, in addition to its authority under PUHCA 2005.

C. Filing Date

13. As this Final Rule merely clarifies existing filing obligations that are already in place, we will require centralized service companies that are subject to this Final Rule to file Form No. 60 by May 1, 2010.

IV. Information Collection Statement

14. Office of Management and Budget (OMB) regulations require OMB to review and approve certain information collection requirements imposed by agency rule.¹¹ The Commission is submitting notification of the information collection requirements contained in this Final Rule to OMB for review and approval under section 3507(d) of the Paperwork Reduction Act of 1995.¹²

15. The Office of Management and Budget's (OMB) regulations in 5 CFR 1320.11 require that it approve certain reporting and recordkeeping requirements (collections of information) imposed by an agency. Upon approval of a collection of information, OMB will assign an OMB control number and an expiration date. Respondents subject to the filing requirements of this Final Rule will not be penalized for failing to respond to these collections of information unless the collections of information display a valid OMB control number.

¹¹ 5 CFR 1320.11.

¹² 44 U.S.C. 3507(d).

16. This Final Rule clarifies that the requirement to file FERC Form No. 60 as it currently exists applies to centralized service companies in holding company systems that include a natural gas company (where there is not also a public utility); in holding company systems that include a public utility, these requirements already apply.

Likewise, this Final Rule clarifies that the Uniform System of Accounts as it currently exists applies to centralized service companies in holding company systems that include a natural gas company (where there is not also a public utility); in holding company systems that include a public utility, these requirements already apply. Finally, this Final Rule revises the definitions in 18 CFR parts 366 and 367 to match the requirements we are implementing in this Final Rule.

17. Since most holding companies include only public utilities or include both public utilities and natural gas companies and so would already be subject to these requirements, we expect that this clarification will have an impact on only a relatively small number of companies. Implementation of this Final Rule is necessary to provide greater transparency and will aid the Commission in fulfilling its regulatory obligation under the FPA and the NGA to ensure that rates are just and reasonable.

18. In the Form 60 Notice, the Commission explained that, when the Commission issued Order Nos. 667, 667-A and 684, it did not intend to exclude centralized service companies providing non-power services to holding companies that included natural gas companies (but no public utilities) from the requirement to file Form No. 60 or to abide by the Uniform System of Accounts. Thus, the Commission continues to rely on the

estimate made in Order No. 684 of the burden associated with the annual filing of Form No. 60 (2,850 hours and \$342,000).¹³

19. Moreover, in response to the Form 60 Notice, the sole comment filed supported the Form 60 Notice proposals and did not raise any concerns as to the reporting burden. Therefore, the Commission will use the same estimate in this Final Rule.

Data Collection	No. of Respondents	No. of Responses Per Respondent	Hours Per Response	Total No. of Hours
FERC Form No. 60	38	1	75	2,850

Information Collection Costs: 2,850 hours at \$120/hour = \$342,000.

Title: FERC Form No. 60, Annual Report of Centralized Service Companies.

Action: Proposed collections.

OMB Control No.: 1902-0215.

Respondents: Business or other for profit, Interstate natural gas pipelines and public utilities (not applicable to small businesses).

Frequency of Responses: Annually.

20. Necessity of Information: This Final Rule explicitly requires, absent an exemption or waiver, any centralized service company providing non-power services to any natural gas company or any public utility, or both, to file FERC Form No. 60 annually and to comply with the Uniform System of Accounts. This information is needed to promote

¹³ See Order No. 684, FERC Stats. & Regs. ¶ 31,229, at P 226; see also Form 60 Notice, FERC Stats. & Regs. ¶ 32,647 at P 20.

transparency and to allow the Commission to determine whether rates of natural gas pipelines and public utilities are just and reasonable.

21. Implementation of these requirements will help the Commission carry out its responsibilities under the FPA, NGA, and PUHCA 2005 to ensure that public utilities and natural gas companies do not engage in improper pricing and undue discrimination. The information collection requirements of this Final Rule will be reported to the Commission and posted on the Commission's web site.

Internal Review: The Commission has reviewed the reporting and accounting requirements proposed in this Final Rule. These requirements conform to the Commission's plan for efficient information collection, communication, and management within the natural gas pipeline and electric power industries, and are necessary to meet the Commission's obligations under PUHCA, the FPA, and the NGA. The Commission has assured itself, by means of its internal review, that there is specific, objective support for the burden estimates associated with the information collection requirements.

22. Interested persons may obtain information on the reporting requirements by contacting the following:

Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, DC 20426
[Attention: Michael Miller, Office of the Chief Information Officer
Phone: (202)502-8415, fax: (202)273-0873
e-mail: michael.miller@ferc.gov]

23. Comments concerning the collection of information and the associated burden estimate, should be sent to the contact listed above and to the Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503

[Attention: Desk Officer for the Federal Energy Regulatory Commission, phone: (202)395-4638, fax: (202)395-7285].

V. Environmental Analysis

24. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.¹⁴ The Commission has categorically excluded certain actions from these requirements as not having a significant effect on the human environment.¹⁵ The actions proposed here fall within categorical exclusions in the Commission's regulations for rules that are clarifying, corrective, or procedural, for information gathering, analysis, and dissemination, for accounting-related matters, and for rate-related matters.¹⁶ Therefore, no environmental assessment is necessary.

VI. Regulatory Flexibility Act Certification

25. The Regulatory Flexibility Act of 1980 (RFA)¹⁷ generally requires a description and analysis of rulemakings that will have a significant economic impact on a substantial number of small entities. The regulations adopted here impose requirements only on holding companies of public utilities and natural gas pipelines, the majority of which are not small businesses, and thus the regulations proposed here will not have a significant

¹⁴ Regulations Implementing the National Environmental Policy Act of 1969, Order No. 486, FERC Stats. & Regs. ¶ 30,783 (1987).

¹⁵ 18 CFR 380.4.

¹⁶ See 18 CFR 380.4(a)(2)(ii), 380.4(a)(5), 380.4(a)(15), 380.4(a)(16), 380.4(a)(25); accord id. 380.4(a)(27).

¹⁷ 5 U.S.C. 601-12.

VII. Document Availability

26. In addition to publishing the full text of this document in the Federal Register, 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>) and in the Commission's Public Reference Room during normal business hours (8:30 a.m. to 5:00 p.m. Eastern time) at 888 First Street, N.E., Room 2A, Washington, DC 20426.

27. From the Commission's Home Page on the Internet, this information is available in eLibrary. The full text of this document is available in eLibrary both 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 web site during the Commission's normal business hours. For assistance, contact FERC Online Support by email at FERCOnlineSupport@ferc.gov, or by telephone at 202-502-6652 (toll-free at (866) 208-3676) or for TTY, contact (202) 502-8659.

List of subjects in 18 CFR part 366

Electric power

Natural gas

Reporting and recordkeeping requirements

List of subjects in 18 CFR part 367

Electric power

Natural gas

Uniform System of Accounts

Reporting and recordkeeping requirements

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

In consideration of the foregoing, the Commission amends parts 366 and 367, subchapter U, Chapter I, Title 18, Code of Federal Regulations, as follows:

- 1. The title of Subchapter U is revised to read as follows:

SUBCHAPTER U - REGULATIONS UNDER THE PUBLIC UTILITY HOLDING COMPANY ACT OF 2005, FEDERAL POWER ACT AND NATURAL GAS ACT

- 2. The title of part 366 is revised to read as follows:

PART 366 -- BOOKS AND RECORDS

- 3. The authority citation for part 366 is revised to read as follows:

Authority: 15 U.S.C. 717 et seq., 16 U.S.C. 791a et seq., and 42 U.S.C. 16451-16463.

- 4. The title of Subpart A is revised to read as follows:

Subpart A- Definitions and Provisions under PUHCA 2005, the Federal Power Act and the Natural Gas Act

- 5. In § 366.1, the definition of “service company” is revised to read as follows:

* * * * *

Service company. The term “service company” means any associate company within a holding company system organized specifically for the purpose of providing non-power goods or services or the sale of goods or construction work to any public utility or any natural gas company, or both, in the same holding company system.

* * * * *

6. The title of Subpart B is revised to read as follows:

Subpart B- Accounting and Recordkeeping under PUHCA 2005, the Federal Power Act and the Natural Gas Act

7. In § 366.23, paragraph (a) is revised to read as follows:

§ 366.23 FERC Form No. 60, Annual reports of centralized service companies, and FERC-61, Narrative description of service company functions.

(a) General. (1) FERC Form No. 60. Unless otherwise exempted or granted a waiver by Commission rule or order pursuant to §§ 366.3 and 366.4, every centralized service company (see § 367.2 of this chapter) in a holding company system, regardless of whether that service company is providing services to a public utility, a natural gas company, or both, must file an annual report, FERC Form No. 60, as provided in § 369.1 of this chapter. Every report must be submitted on the FERC Form No. 60 then in effect and must be prepared in accordance with the instructions incorporated in that form.

* * * * *

8. The title of part 367 is revised to read as follows:

PART 367 – UNIFORM SYSTEM OF ACCOUNTS FOR CENTRALIZED SERVICE COMPANIES SUBJECT TO THE PROVISIONS OF THE PUBLIC UTILITY HOLDING COMPANY ACT OF 2005, FEDERAL POWER ACT AND NATURAL GAS ACT

9. The authority citation for part 367 is revised to read as follows:

Authority: 15 U.S.C. 717 et seq., 16 U.S.C. 791a et seq., and 42 U.S.C. 16451-16463.

10. In § 367.1, paragraph (a)(45) is revised to read as follows:

§ 367.1 Definitions.

(a) * * *

(45) Service company means any associate company within a holding company system organized specifically for the purpose of providing non-power goods or services or the sale of goods or construction work to any public utility or any natural gas company, or both, in the same holding company system.

* * * * *

11. In § 367.2, paragraph (a) is revised to read as follows:

§ 367.2 Companies for which this system of accounts is prescribed.

(a) Unless otherwise exempted or granted a waiver by Commission rule or order pursuant to §§ 366.3 and 366.4 of this chapter, this Uniform System of Accounts applies to any centralized service company operating, or organized specifically to operate, within a holding company system for the purpose of providing non-power services to any public utility or any natural gas company, or both, in the same holding company system.

* * * * *