

§ 366.4

18 CFR Ch. I (4–1–10 Edition)

own Commission-jurisdictional transmission facilities or provide Commission-jurisdictional transmission services, and holding companies that own or control only such utilities;

(iii) Transactions where the holding company affirmatively certifies on behalf of itself and its subsidiaries, as applicable, that it will not charge, bill or allocate to the public utility or natural gas company in its holding company system any costs or expenses in connection with goods and services transactions, and will not engage in financing transactions with any such public utility or natural gas company;

(iv) Transactions between or among affiliates that are independent of and do not include a public utility or natural gas company;

(v) Electric power cooperatives;

(vi) Local distribution companies that are not regulated as “natural gas companies” pursuant to sections 1(b) or 1(c) of the Natural Gas Act, (15 U.S.C. 717(b), (c)).

(vii) Natural gas companies that distribute natural or manufactured gas at retail to industrial or electric generation customers and/or distribute *de minimis* amounts of natural or manufactured gas at retail to farmer or rancher customers located adjacent to the natural gas company’s rights-of-way.

(c) *Waivers.* Any person that is a holding company solely with respect to one or more of the following may file to obtain a waiver of the accounting, record-retention, and reporting requirements of §366.21 (applicable to holding companies) and §§366.22 and 366.23 (applicable to the holding companies’ associated service companies), pursuant to the notification procedures contained in §366.4(c):

(1) Single-state holding company systems; for purposes of §366.3(c)(1), a holding company system will be deemed to be a single-state holding company system if the holding company system derives no more than 13 percent of its public-utility company revenues from outside a single state (for purposes of this waiver, revenues derived from exempt wholesale generators, foreign utility companies and qualifying facilities will not be considered public-utility company revenues);

(2) Holding companies that own generating facilities that total 100 MW or less in size and are used fundamentally for their own load or for sales to affiliated end-users; or

(3) Investors in independent transmission-only companies.

(d) *Other requests for exemptions and waivers.* Any person seeking an exemption or waiver that is not covered by paragraphs (a), (b)(2) or (c) of this section, shall file a petition for declaratory order pursuant to §385.207(a) of this chapter justifying the request for exemption or waiver. Any person seeking such an exemption or waiver shall bear the burden of demonstrating that such an exemption or waiver is warranted.

(e) Nothing in paragraphs (a)–(d) of this section shall affect the authority of the Commission under the Federal Power Act (16 U.S.C. 791 *et seq.*), the Natural Gas Act (15 U.S.C. 717 *et seq.*), or other applicable law, including the authority of the Commission with respect to rates, charges, classifications, rules, regulations, practices, contracts, facilities, and services under the Federal Power Act and Natural Gas Act and with respect to access to books and records under the Federal Power Act and Natural Gas Act.

[Order No. 667–A, 71 FR 28457, May 16, 2006, as amended by Order 667–B, 71 FR 42755, July 28, 2006]

§ 366.4 FERC–65, notification of holding company status, FERC–65A, exemption notification, and FERC–65B, waiver notification.

(a) *Notification of holding company status.* (1) Persons that meet the definition of a holding company as provided by §366.1 as of February 8, 2006 shall notify the Commission of their status as a holding company no later than June 15, 2006. Holding companies formed after February 8, 2006 shall notify the Commission of their status as a holding company, no later than the later of June 15, 2006 or 30 days after they become holding companies.

(2) The notification required pursuant to §366.4(a)(1) shall be made by submitting FERC–65 (notification of holding company status), which shall contain the following: The identity of the

holding company and of the public utilities and natural gas companies in the holding company system; the identity of service companies, including special-purpose subsidiaries providing non-power goods and services; the identity of all affiliates and subsidiaries; and their corporate relationship to each other. This filing will be for informational purposes and will not be noticed in the FEDERAL REGISTER, but will be available on the Commission's Web site. FERC-65 must be subscribed, consistent with § 385.2005(a) of this chapter, but need not be verified.

(3) Notwithstanding § 366.4(a)(1) and (2), holding companies that are exempt holding companies pursuant to § 366.3(a) are not required to notify the Commission of their status or to submit FERC-65 (notification of holding company status).

(b) *FERC-65A (exemption notification) and petitions for exemption.* (1) Persons who, pursuant to § 366.3(b)(2), seek exemption from the requirements of § 366.2 and the accounting, record-retention, and reporting requirements of §§ 366.21, 366.22, and 366.23, may seek such exemption by filing FERC-65A (exemption notification); FERC-65A must be subscribed, consistent with § 385.2005(a) of this chapter, but need not be verified. These filings will be noticed in the FEDERAL REGISTER; persons who file FERC-65A must include a form of notice suitable for publication in the FEDERAL REGISTER in accordance with the specifications in § 385.203(d) of this chapter. Persons who file FERC-65A in good faith shall be deemed to have a temporary exemption upon filing. If the Commission has taken no action within 60 days after the date of filing FERC-65A, the exemption shall be deemed to have been granted. The Commission may toll the 60-day period to request additional information or for further consideration of the request; in such case, the temporary exemption will remain in effect until such time as the Commission has determined whether to grant or deny the exemption. Authority to toll the 60-day period is delegated to the Secretary or the Secretary's designee.

(2) Notwithstanding § 366.4(b)(1), persons that are exempt holding companies pursuant to § 366.3(a) are not re-

quired to file FERC-65A (exemption notification).

(3) Persons that do not qualify for exemption pursuant to § 366.3(b)(2) may seek an individual exemption from this subchapter. They may not do so by means of filing FERC-65A and instead must file a petition for declaratory order as required under § 366.3(d). Such petitions will be noticed in the FEDERAL REGISTER; persons that file a petition must include a form of notice suitable for publication in the FEDERAL REGISTER in accordance with the specifications in § 385.203(d) of this chapter. No temporary exemption will attach upon filing and the requested exemption will be effective only if approved by the Commission. Persons may also seek exemptions for classes of transactions by filing a petition for declaratory order pursuant to § 385.207(a) of this chapter justifying the request for exemption. Any person seeking such an exemption shall bear the burden of demonstrating that such exemption is warranted.

(c) *FERC-65B (waiver notification) and petitions for waiver.* (1) Persons who, pursuant to § 366.3(c), seek waiver of the accounting, record-retention, and reporting requirements of §§ 366.21, 366.22, and 366.23, may seek such waiver by filing FERC-65B (waiver notification); FERC-65B must be subscribed, consistent with § 385.2005(a) of this chapter, but need not be verified. FERC-65B will be noticed in the FEDERAL REGISTER; persons who file FERC-65B must include a form of notice suitable for publication in the FEDERAL REGISTER in accordance with the specifications in § 385.203(d) of this chapter. Persons who file FERC-65B in good faith shall be deemed to have a temporary exemption upon filing. If the Commission has taken no action within 60 days after the date of filing of FERC-65B, the waiver shall be deemed to have been granted. The Commission may toll the 60-day period to request additional information or for further consideration of the request; in such case, the temporary waiver will remain in effect until such time as the Commission has determined whether to grant or deny the waiver. Authority to toll the 60-day period is delegated to the Secretary or the Secretary's designee.

§ 366.5

18 CFR Ch. I (4–1–10 Edition)

(2) Persons that do not qualify for waiver pursuant to § 366.3(c) may seek an individual waiver from this subchapter. They may not do so by means of filing FERC-65B and instead must file a petition for declaratory order as required under § 366.3(d). Such petitions will be noticed in the FEDERAL REGISTER; persons that file a petition must include a form of notice suitable for publication in the FEDERAL REGISTER in accordance with the specifications in § 385.203(d) of this chapter. No temporary waiver will attach upon filing and the requested exemption will be effective only if approved by the Commission. Persons may also seek waivers for classes of transactions by filing a petition for declaratory order pursuant to § 385.207(a) of this chapter justifying the request for waiver. Any person seeking such waiver shall bear the burden of demonstrating that such waiver is warranted.

(d) *Procedure for notification of material change in facts.* (1) If there is any material change in facts that may affect an exemption or waiver granted pursuant to paragraphs (b) or (c) of this section, the person receiving the exemption or waiver shall within 30 days of the material change in facts:

(i) Submit a new FERC-65A (exemption notification) or FERC-65B (waiver notification) or a petition for declaratory order, pursuant to paragraphs (b) or (c) of this section, as appropriate;

(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.

(2) If there is a material change in facts that may affect the automatic exemption allowed under § 366.3(a) of this subpart, the person receiving the exemption or waiver shall within 30 days of the material change in facts:

(i) Submit a FERC-65A (exemption notification) or FERC-65B (waiver notification) or a petition for declaratory order, pursuant to paragraphs (b) or (c) of this section, as appropriate;

(ii) File a written explanation why the material change in facts does not affect the exemption; or

(iii) Notify the Commission that it no longer seeks to maintain its exemption.

(e) *Revocation of exemption or waiver.*

(1) If a person that is exempt pursuant to § 366.3(a) fails to conform to the criteria for such exemption, or if a person that has been granted an exemption or waiver pursuant to paragraphs (b) or (c) of this section either fails to conform to the criteria for such exemption or waiver or fails to conform with any material facts or representations presented in its submittals to the Commission, such person may no longer rely upon the exemption or waiver.

(2) The Commission may, on its own motion or on the complaint of any person, revoke the exemption or waiver granted under § 366.3(a) or paragraphs (b) or (c) of this section, if the person fails to conform to any of the criteria under this part for exemption or waiver.

[Order No. 667-A, 71 FR 28457, May 16, 2006, as amended by Order 699, 72 FR 45326, Aug. 14, 2007]

§ 366.5 Allocation of costs for non-power goods and services.

(a) *Commission review.* In the case of non-power goods or administrative or management services provided by an associate company organized specifically for the purpose of providing such goods or services to any public utility in the same holding company system, at the election of that holding company system or a state commission having jurisdiction over the public utility, the Commission shall review and authorize the allocation of the costs for such goods or services to the extent relevant to that associate company. Such election to have the Commission review and authorize cost allocations shall remain in effect until further Commission order.

(b) *Exemptions.* Paragraph (a) of this section shall not apply to any holding company system whose public utility operations are confined substantially to a single state. For purposes of this section, a holding company system will be deemed to have its public utility operations confined substantially to a single state if the holding company system derives no more than 13 percent