Federal Energy Regulatory Commission

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of its public utility revenues from outside a single state. A holding company system or state commission may, pursuant to this subsection, seek a Commission determination that a holding company’s public utility operations are confined substantially to a single state by filing a petition for declaratory order pursuant to §385.207(a) of this chapter. Any holding company system or state commission seeking such a determination shall bear the burden of demonstrating that such determination is warranted.

(c) Other classes of transactions. Either upon petition for declaratory order or upon its own motion, the Commission may exclude from the scope of Commission review and authorization under paragraph (a) of this section any class of transactions that the Commission finds is not relevant to the jurisdictional rates of a public utility. Any holding company system or state commission seeking to obtain such a determination under this subsection shall file a petition for declaratory order pursuant to §385.207(a) of this chapter. Any holding company system or state commission seeking such an exemption shall bear the burden of demonstrating that such an exemption is warranted.

(d) Nothing in paragraphs (a)–(c) 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.

§ 366.6

Previously authorized activities.

(a) General. Unless otherwise provided by Commission rule or order, a person may continue to engage in activities or transactions authorized under the Public Utility Holding Company Act of 1935 prior to the effective date of the Public Utility Holding Company Act of 2005, February 8, 2006, until the later of the date such authorization expires or December 31, 2007, so long as that person continues to comply with the terms of such authorization. If any such activities or transactions are challenged in a formal Commission proceeding, the person claiming prior authorization shall be required to provide at that time the full text of any such authorization (whether by rule, order, or letter) and the application(s) or pleading(s) underlying such authorization (whether by rule, order, or letter).

(b) Financing Authorizations. Holding companies that intend to rely on financing authorization orders or letters issued by the Securities and Exchange Commission must file these orders or letters with the Commission within 30 days after the effective date of the Public Utility Holding Company Act of 2005, February 8, 2006; any reports or other submissions that, pursuant to such financing authorizations, previously were filed with the Securities and Exchange Commission must instead be filed with the Commission, effective February 8, 2006. For the purposes of this section, compliance with the terms of such financing authorizations includes the requirement to notify the Commission of any financing transactions that a holding company engages in pursuant to such financing authorization.

§ 366.7

Procedures for obtaining exempt wholesale generator and foreign utility company status.

(a) Self-certification notice procedure. An exempt wholesale generator or a foreign utility company, or its representative, may file with the Commission a notice of self-certification demonstrating that it satisfies the definition of exempt wholesale generator or foreign utility company (including stating the location of its generation); such notices of self-certification must be subscribed, consistent with §385.205(a) of this chapter, but need not be verified. In the case of exempt wholesale generators, the person filing a notice of self-certification under this section must also file a copy of the notice of self-certification with the state regulatory authority of the state in which the facility is located, and that person must also represent to this Commission in its submittal with this
§ 366.7  Commission that it has filed a copy of
the notice of self-certification with the
state regulatory authority of the state
in which the facility is located. Notice
of the filing of a notice of self-certifi-
cation will be published in the FED-
ERAL REGISTER. Persons that file a no-
tice of self-certification must include a
form of notice suitable for publication
in the FEDERAL REGISTER in ac-
dance with the specifications in
§ 385.203(d) of this chapter. A person fil-
ing a notice of self-certification in
good faith will be deemed to have tem-
porary exempt wholesale generator or
foreign utility company status. If the
Commission takes no action within 60
days from the date of filing of the no-
tice of self-certification, the self-cer-
tification shall be deemed to have been
granted; however, consistent with sec-
tion 32(c) of the Public Utility Holding
(c)) any self-certification of an exempt
wholesale generator may not become effec-
tive until the relevant state commis-
sions have made the determinations
provided for therein if such determina-
tions are necessary (if such determina-
tions are not necessary, the petition
for declaratory order should state so.)
Persons that file petitions must in-
clude a form of notice suitable for pub-
lication in the FEDERAL REGISTER in
accordance with the specifications in
§ 385.203(d) of this chapter.

(c) Procedure for notification of mate-
rial change in facts. If there is any ma-
terial change in facts that may affect
an exempt wholesale generator’s or a
foreign utility company’s status as an
exempt wholesale generator or a for-
eign utility company, the exempt
wholesale generator or foreign utility
company shall within 30 days of the
material change in facts:

(1) Submit a new notice of self-cer-
tification or a new petition for declara-
tory order, pursuant to paragraphs (a)
or (b) of this section, as appropriate;
(2) File a written explanation why
the material change in facts does not
affect its status; or
(3) Notify the Commission that it no
longer seeks to maintain its exempt
wholesale generator or foreign utility
company status.

(d) Revocation of status. (1) If an ex-
empt wholesale generator or a foreign
utility company fails to conform to the
criteria for such status or falls to con-
form with any material facts or repre-
sentations presented in its submit-
tals to the Commission, the notice of
self-certification of the status of the
facility or Commission order certifying
the status of the facility may no longer
be relied upon.

(b) Optional procedure for Commission
determination of exempt wholesale gener-
ator status or foreign utility company sta-
tus. A person may file for a Commis-
sion determination of exempt whole-
.sale generator status or foreign utility
company status under §366.1 by filing a
petition for declaratory order pursuant
to §385.207(a) of this chapter, justifying
the request for such status; however,
consistent with section 32(c) of the
Public Utility Holding Company Act of
1935 (15 U.S.C. 79z–5a (c)), a Commission
determination of exempt wholesale
generator status may not become effec-
tive until the relevant state commis-
sions have made the determinations
provided for therein if such determina-
tions are necessary. (If such determina-
tions are not necessary, the petition
for declaratory order should state so.)
Persons that file petitions must in-
clude a form of notice suitable for pub-
lication in the FEDERAL REGISTER in
accordance with the specifications in
§ 385.203(d) of this chapter.
§ 366.22 Accounts and records of service companies.

(a) Record-retention requirements—(1) General. Unless otherwise exempted or granted a waiver by Commission rule or order pursuant to §§366.3 and 366.4, beginning January 1, 2008, every central service company (See §367.2 of this chapter) must maintain and make available to the Commission such books, accounts, memoranda, and other records as the Commission prescribes in part 367 of this chapter, in sufficient detail to permit examination, audit, and verification, as necessary and appropriate for the protection of utility customers with respect to jurisdictional rates.

(2) Transition period. Until December 31, 2007, service companies in holding company systems registered under the Public Utility Holding Company Act of 1935 (15 U.S.C. 79a et seq.) may follow either the Commission’s records retention requirements in parts 125 and 225 of this chapter or the Securities and Exchange Commission’s records retention rules in 17 CFR part 257.

(3) Nothing in this section shall relieve any service company subject thereto from compliance with requirements as to record-retention that may be prescribed by any other regulatory agency.

(b) Accounting requirements—(1) General. Unless otherwise exempted or granted a waiver by Commission rule or order pursuant to §§366.3 and 366.4, beginning January 1, 2008, every central service company (See §367.2 of this chapter) must maintain and make available to the Commission such books, accounts, memoranda, and other records as the Commission prescribes in part 367 of this chapter, in