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Part III

Department of Energy

Federal Energy Regulatory Commission

18 CFR Parts 365 and 366
Repeal of the Public Utility Holding Company Act of 1935 and Enactment of the Public Utility Holding Company Act of 2005; Final Rule
DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 365 and 366

[Docket No. RM05–32–000, Order No. 667]

Repeal of the Public Utility Holding Company Act of 1935 and Enactment of the Public Utility Holding Company Act of 2005

Issued December 8, 2005.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: In this final rule, the Federal Energy Regulatory Commission (Commission) is amending its regulations to implement the repeal of the Public Utility Holding Company Act of 1935 and the enactment of the Public Utility Holding Company Act of 2005, by adding a new subchapter and part to its regulations and removing its exempt wholesale generator rules as they are no longer necessary.

DATES: This final rule will become effective on February 8, 2006.


SUPPLEMENTARY INFORMATION: Before Commissioners: Joseph T. Kelliher, Chairman; Nora Mead Brownell, and Suedeen G. Kelly.

Introduction

1. On August 8, 2005, the Energy Policy Act of 2005 (EPAct 2005) 3 was signed into law. In relevant part, it repeals the Public Utility Holding Company Act of 1935 (PUHCA 1935) 2 and enacts the Public Utility Holding Company Act of 2005 (PUHCA 2005), 4 which, with one exception not relevant here, will become effective six months from the date of enactment (February 8, 2006). 5 Sections 1266, 1272, and 1275 of EPAct 2005 direct the Commission to issue certain rules and to provide detailed recommendations to Congress on technical and conforming amendments to federal law within four months after the date of enactment, i.e., by December 8, 2005. 6 In addition, EPAct 2005 directs the Commission to issue a final rule exempting certain entities from the federal access to books and records provisions of EPAct 2005 within 90 days of the effective date of Title XII, Subtitle F of EPAct 2005. This rulemaking addresses all mandatory rulemaking requirements contained in PUHCA 2005.

2. On September 16, 2005, the Commission issued a notice of proposed rulemaking (NOPR) 7 in which it proposed to add a new Subchapter U and Part 366 to Title 18 of the Code of Federal Regulations to implement Title XII, Subtitle F of EPAct 2005 and to remove Subchapter T and Part 365 of Title 18 of the Code of Federal Regulations.

3. Section 1264 of PUHCA 2005 concerns Commission access to the books and records of holding companies and other companies in holding company systems, and section 1275 of PUHCA 2005 addresses the Commission’s review and authorization of the allocation of costs for non-power goods or administrative or management services when requested by a holding company system or state commission. As we stated in the NOPR, the federal books and records access provision, section 1264, and the non-power goods and services provision, section 1275, of PUHCA 2005 supplement the Commission’s existing authorities under the Federal Power Act (FPA) 8 and the Natural Gas Act (NGA) 9 to protect customers against improper cross-subsidization or encumbrances of assets, including the Commission’s broad authority under FPA section 301 and NGA section 8 to obtain the books and records of regulated companies and any person that controls or is controlled by such companies if relevant to jurisdictional activities.

4. In responding to the comments on the NOPR and in deciding whether to adopt the proposals in the NOPR, our decisionmaking has been guided by the clear intent of Congress to repeal the regulatory regime established by PUHCA 1935 and to rely on state regulatory authorities and the Commission to protect energy customers, by supplementing the Commission’s books and records authority under PUHCA 2005 and by enhancing our already significant authority over public utility mergers, acquisitions and dispositions of jurisdictional facilities. 10 As we recognized in the NOPR, PUHCA 2005 is primarily a “books and records access” statute and does not give the Commission any new substantive authorities. In fact, the only substantive requirement contained in the new law is that we address requests involving certain allocations of costs of non-power goods and services. Accordingly, as discussed in greater detail below, we are rejecting requests that we re-impose particular requirements in PUHCA 1935 that Congress chose not to include in PUHCA 2005.

5. Our primary means of protecting customers serviced by jurisdictional companies that are members of holding company systems continues to be the FPA and NGA. In particular, the Commission’s rate authorities and information access authorities under the FPA and NGA enable the Commission to detect and disallow from jurisdictional rates any imprudently-incurred, unjust or unreasonable, or unduly discriminatory or preferential costs resulting from affiliate transactions between companies in the same holding company system. 11 This includes both power transactions and non-power goods or services transactions between Commission-regulated companies that have captive customers and their “unregulated” affiliates. The Commission routinely places code of conduct restrictions on power sales at market-based rates between regulated and non-regulated affiliates. In the context of registered holding companies, we also have placed conditions on non-power goods and services transactions involving public utilities. Further, as discussed in greater detail infra, in the context of individual rate cases involving public utilities that seek to flow through in jurisdictional rates the costs of affiliate purchases of non-power goods or services, the Commission has the ability to protect customers by reviewing the prudence and the justness

3 EPAct 2005 at § 1264 et seq.
4 EPAct 2005 at § 1272, 1275 of EPAct 2005 direct the Commission to issue certain rules and to provide detailed recommendations to Congress on technical and conforming amendments to federal law within four months after the date of enactment, i.e., by December 8, 2005. In addition, EPAct 2005 directs the Commission to issue a final rule exempting certain entities from the federal access to books and records provisions of EPAct 2005 within 90 days of the effective date of Title XII, Subtitle F of EPAct 2005. This rulemaking addresses all mandatory rulemaking requirements contained in PUHCA 2005.
5 Sections 1266, 1275 of EPAct 2005 direct the Commission to issue certain rules and to provide detailed recommendations to Congress on technical and conforming amendments to federal law within four months after the date of enactment, i.e., by December 8, 2005. In addition, EPAct 2005 directs the Commission to issue a final rule exempting certain entities from the federal access to books and records provisions of EPAct 2005 within 90 days of the effective date of Title XII, Subtitle F of EPAct 2005. This rulemaking addresses all mandatory rulemaking requirements contained in PUHCA 2005.
6 Id. at § 1274(a).
7 Id. at §§ 1266, 1272, 1275.
12 EPAct 2005 at § 1280.
13 Since the vast majority of registered holding companies have been electric public utility holding companies, our description here focuses primarily on the FPA. However, except for merger and corporate authority under the FPA, our authorities and processes under the NGA are similar.
and reasonableness of such costs. The Commission also has adopted rules and policies regarding cash management practices or arrangements that involve Commission-jurisdictional companies. Importantly, repeal of PUHCA 1935 also does not repeal non-PUHCA securities laws and accounting requirements for companies.

6. It is against this backdrop that we have determined not to require in this final rule all of the filing requirements that we originally proposed to adopt. In addition, in response to the numerous comments filed, we have determined that it is appropriate to permit certain exemptions from those requirements that are being adopted, based upon an expedited notification process. An overview of the final rule’s requirements and exemptions is provided below. We emphasize, however, that this final rule (including its exemptions) does not affect the Commission’s independent ability to obtain access to books and records under the FPA and NGA. Further, to the extent additional rules or orders may be needed to protect customers, the Commission will take appropriate actions in the future. The Commission will hold a technical conference no later than one year from the effective date of PUHCA 2005 to assess whether additional actions are needed.

Overview of Final Rule

7. In the NOPR, the Commission proposed to incorporate in part 366 of its regulations, largely without modification, the provisions of PUHCA 1935, and we have adopted a number of those proposals in the final rule. However, based on the very constructive comments received, the final rule modifies or departs from the approach in the NOPR in several respects, and we summarize the final rule below.

8. In the NOPR, we proposed adopting several of the Securities and Exchange Commission’s (SEC) accounting and record-keeping requirements into our own regulations and stated that we did not intend to broaden their applicability beyond the types of companies to which they now apply. Specifically, the NOPR proposed to adopt the following portions of the SEC’s accounting and record-keeping requirements: 17 CFR 250.26 (financial statement and record-keeping requirements for registered holding companies and subsidiaries); 17 CFR 250.27 (classification of accounts prescribed for utility companies not already subject thereto); 17 CFR 250.80 (definitions of terms used in rules under section 13 of PUHCA 1935); 17 CFR 250.93 (accounts and records of mutual and subsidiary service companies); 17 CFR 250.94 (annual reports by mutual and subsidiary service companies); 17 CFR part 256 (uniform system of accounts for mutual and subsidiary service companies) (SEC Uniform System of Accounts); and 17 CFR part 257 (preservation and destruction of records for registered holding companies and of mutual and subsidiary service companies) (SEC record-retention rules). 9. Additionally, the NOPR proposed to require companies to file certain SEC forms with the Commission, including: SEC Form U–13–60 (annual report for mutual and subsidiary service companies); SEC Form U–5S (annual report for registered holding companies); and a version of SEC Form U–5A (notification of registration status).

10. As discussed further below, the Commission has concluded that there is no statutory basis for continuing to apply the statutory exemptions contained in PUHCA 1935, which Congress has repealed.12 Although, as also discussed below, we will provide certain exemptions from PUHCA 2005, we will not re-create the PUHCA 1935 distinction between “exempt” and “registered” holding companies. Accordingly, we will apply the books and records requirements of PUHCA 2005 equally to all holding companies. However, the Commission will give holding companies until January 1, 2007, to comply with the Commission’s record-retention requirements; holding companies, in contrast to traditional, centralized service companies (as distinguished from service companies that are special-purpose companies such as a fuel supply company or a construction company), will not be required to comply with the Commission’s Uniform System of Accounts.

11. The final rule adopts modified, streamlined versions of 17 CFR 250.1, 250.26, 250.80, 250.93, 250.94, and 259.313 in Part 366 of its regulations. Section 366.4(a) of our regulations will be a modified and simplified version of 17 CFR 250.1(a), which originally required registered holding companies to file SEC Form U–5A, notification of registration. Section 366.4 requires holding companies to file a FERC–65 (Notification of Holding Company Status), and, if they wish to claim an exemption from PUHCA 2005 or a waiver of the Commission’s regulations thereunder, FERC–65A (Exemption Notification) or FERC–65B (Waiver Notification). The final rule does not adopt the 17 CFR 250.1(b) (registration statement) and 250.1(c) (annual report for holding companies, to be filed on SEC Form U–5S). Section 366.21 of our regulations instead contains a modified version of 17 CFR 250.26 (financial statement and recordkeeping requirements for holding companies and subsidiaries), including subparagraph (a)(2) (requirement to maintain books and records for auditing purposes), paragraphs (d) and (g) (compliance with Commission and other agencies’ record-retention rules), and paragraph (e) (savings clause for previous accounting orders). It does not adopt paragraphs (a)(1) (mandating compliance with SEC Regulation S–X), (f) (information to be supplied with form SEC Form U–5S), (c) (mandating use of the equity method of accounting), or (g) (cross reference to section 250.26). In section 366.1, we adopt the definitions contained in 17 CFR 250.80 (definitions of terms), i.e., “services,” “goods,” and “construction,” and we add a definition for service company. We also adopt streamlined versions of 17 CFR 250.93 (accounts and records of service companies), 250.94 (annual reports for service companies), and 259.313 (SEC Form U–13–60, for annual reports pursuant to 1935), in sections 366.21, 366.22 and 366.23, which prescribe the Uniform System of Accounts and annual reporting requirement for service companies. The final rule does not adopt 17 CFR 259.5s, and it does not require the submission of SEC Form U–5S. The Commission has determined that the information in these eliminated provisions is not relevant to the costs incurred by jurisdictional entities or is not necessary or appropriate for the protection of utility customers with respect to jurisdictional rates.

12. Specifically, the final rule also adopts the following requirements:

(1) Holding companies will file FERC–65 (Notification of Holding Company Status), which will be treated as an informational filing.

(2) Holding companies seeking to claim an exemption from PUHCA 2005 or waiver of the Commission’s regulations thereunder may file FERC–65A (Exemption Notification) or FERC–65B (Waiver Notification).

Section 5(a) of PUHCA 1935 provides five statutory exemptions for:

(1) Predominantly intrastate holding companies;

(2) Public-utility holding companies whose operations as such do not extend beyond the State in which they are organized and states contiguous thereto;

(3) Holding companies that are only incidentally a holding company;

(4) Holding companies that are temporarily holding companies;

(5) Primarily foreign utility holding companies.
(3) Traditional, centralized service companies will be required to file a newly-created FERC Form No. 60 (Annual Report for Service Companies), which is based on a streamlined version of SEC Form U–13–60. The FERC Form No. 60 eliminates the following supporting schedules originally contained in SEC Form U–13–60: Outside Services Employed—Account 923; Employee Pensions and Benefits—Account 926; General Advertising Expenses—Account 930.1; Rents—Account 931; Taxes Other Than Income Taxes—Account 408; Donations—Account 426.1; and Other Deductions—Account 426.5. The schedules were eliminated to remove information that is either duplicative or that the Commission has determined is not necessary to carry out its statutory responsibilities under PUHCA 2005.

(4) Unless otherwise exempted by Commission rule or order, all holding companies and service companies must maintain and make available to the Commission their books and records. In addition, all holding companies and all service companies that do not currently follow the Commission’s record-retention requirements in Parts 125 and 225 of the Commission’s regulations, as applicable, will be required to transition to the Commission’s requirements by January 1, 2007. Holding companies registered under PUHCA 1935 that currently follow the SEC’s record-retention rules in 17 CFR Part 257, and their service companies, have the option to follow either the Commission’s or the SEC’s record-retention rules, as they exist on the day before the effective date of PUHCA 2005, for calendar year 2006, but these entities must transition to the Commission’s record-retention rules by January 1, 2007. And, as noted above, holding companies, unlike traditional, centralized service companies, will not be required to comply with the Commission’s Uniform System of Accounts.

13. The NOPR did not propose any specific exemptions from the books and records requirements of PUHCA 2005, except as required by section 1266 (i.e., persons that are holding companies solely with respect to one or more exempt wholesale generators (EWGs), foreign utility companies (FUCOs), or qualifying facilities (QFs)), but sought comments on whether passive investors and mutual funds should be exempted. Rather, we proposed to rely on case-by-case petitions for declaratory order to determine what additional waivers are appropriate. Based on the extensive comments received, in the final rule we have modified our original proposal to rely on declaratory order requests for exemptions and we have determined that it is appropriate to use an expedited notification process to either exempt from the books and records requirements of PUHCA 2005 or waive the Commission’s accounting, record-retention and reporting regulations thereunder for the following persons and classes of transactions:

1. Passive investors, including mutual funds and other financial institutions;
2. Commission-jurisdictional utilities that have no captive customers;
3. Certain holding company and affiliate transactions that will not affect jurisdictional rates;
4. Electric power cooperatives;
5. Local distribution companies;
6. Single-state holding companies;
7. Holding companies that own 100 MW or less of generation used fundamentally for their own load or for sales to affiliated end-users; and
8. Investors in independent transmission companies.

Other exemptions and waivers will be considered through the declaratory order process on a case-by-case basis.

14. With respect to Commission review of service company cost allocations in section 1275(b) and the exemption for single-state holding companies in section 1275(b), the Commission sought comments as to whether the Commission should require the formal filing of service company cost-allocation agreements under the FPA and NGA, and whether the Commission should apply its traditional “market” standard for the pricing of non-power goods and services provided by system service companies or instead adopt the SEC’s “at-cost” standard. We conclude below that we will not require the formal filing of cost allocation agreements and that we will not require any entities that are currently using the SEC’s “at-cost” standard for traditional centralized service companies to switch to our “market” standard. With respect to traditional, centralized service companies that use the “at-cost” standard, we will apply a presumption that “at-cost” pricing of the non-power goods and services they provide to public utilities within their holding company system is reasonable, but persons may file complaints if they believe that use of at-cost pricing results in costs that are above market price. We will also retain the Commission’s existing “market” standard for non-

15. With respect to EWGs, we proposed to cease making case-by-case determinations of exempt wholesale generator status in the future and we proposed to delete our EWG regulations. In light of the comments received, we have determined that it is reasonable to interpret PUHCA 2005 to permit new wholesale sellers to obtain EWG status. We will thus establish procedures in section 366.7 of our regulations for both self-certification of EWG and FUCO status, and Commission determinations of EWG and FUCO status, similar to the options available for entities seeking QF status.

16. Additionally, for those definitions and other aspects of PUHCA 1935 that have been re-enacted as part of PUHCA 2005, we will, where appropriate, follow the past practice and precedent of the SEC in interpreting these provisions of PUHCA 2005 to the extent that they are consistent with the statutory language adopted by Congress in PUHCA 2005.
Commission intends to issue a final rule on any appropriate accounting or record-retention rule modifications well in advance of January 1, 2007, so that service companies will be able to transition to the Commission’s Uniform System of Accounts and record-retention rules and holding companies can transition to the Commission’s record-retention rules by the January 1, 2007 deadline.

1. Definitions

18. The Commission proposed in the NOPR to largely incorporate in section 366.1 of its regulations the text of section 1262 of EPAct 2005, which contains the definitions of relevant terms used in PUHCA 2005 and in our proposed regulations. Commenters suggested a number of changes to these definitions. As these definitions are taken from section 1262 of EPAct 2005, any modification would likely create undesirable discrepancies between our regulations and the statutory language. Accordingly, we will address these comments below under the heading “Additional Technical and Conforming Amendments,” below. However, to the extent that a given comment requesting clarifications of the definitions proposed in section 366.1 of the Commission’s regulations can be addressed consistent with the statutory text, they are addressed below.

Comments

19. American Public Power Association and National Rural Electric Cooperative Association (APPA/NRECA) note that section 1268 of EPACT 2005 expressly exempts States and any political subdivision of a state from the provisions of PUHCA 2005, while the definition of “electric utility company” in the proposed section 366.1 includes “any company that owns or operates facilities used for the generation, transmission, or distribution of electric energy for sale,” which appears to come directly from section 1262(5) of EPAct 2005. According to APPA/NRECA, this section, read standing alone, could be construed to state that the regulations apply to all electric utilities. APPA/NRECA thus urge the Commission to make explicit the exclusion of states and their political subdivisions from the regulations by cross-referencing in its regulations the exclusion in section 1268 of the statute.14

20. Coral Power, L.L.C. and Shell WindEnergy, Inc. (Coral Power and Shell WindEnergy) request that the Commission deem EWGs, FUCOs, and QFs not to be “electric utility companies” under PUHCA 2005, so that their upstream owners will not be “holding companies” under PUHCA 2005.15

21. With respect to the definition of “public-utility companies,” the Edison Electric Institute (EEI) urges the Commission to clarify that energy marketers are not “public-utility companies” under the PUHCA 2005 definition. EEI notes that, under PUHCA 2005, a “public-utility company” is either an “electric utility company,” which is an entity that owns or operates facilities used for the generation, transmission or distribution of electric energy for sale, or a “gas utility company,” which is basically an entity that owns or operates facilities used for distribution at retail of natural or manufactured gas. EEI further asserts that the SEC has found that the ownership of only contracts and related books and records are not facilities used for the generation of electric energy, but that only physical facilities are used for the generation of electric energy. According to EEI, if power marketers are not electric utility companies, their parent companies would not be considered utility holding companies under PUHCA 2005 by reason of their ownership of such marketers. The same logic would apply to gas marketers, and they too, therefore, should not be considered gas utility companies, provided they own no physical gas distribution assets and their gas retail sales are made through contracts.16

22. Goldman Sachs Group (Goldman Sachs) and Morgan Stanley Capital Group (Morgan Stanley) urge the Commission to adopt a rule similar to the SEC’s 7(4) that excludes owner-lessee and owner participants in lease financing transactions involving utility assets from the definition of “public-utility company” and their parent companies from the definition of “holding company.”17

23. NiSource Inc. (NiSource) requests that the Commission clarify that gas utility companies authorized to make sales for resale of natural gas pursuant to a blanket certificate are not subject to new part 366 of the Commission’s regulations.18

24. Finally, a number of commenters urge the Commission to amend certain definitions to exclude rural electric cooperatives from the scope of PUHCA 2005. APPA/NRECA urge the Commission to clarify that electric cooperatives were not regulated as public utility holding companies under PUHCA 1935 because member interests in cooperatives do not constitute a “voting security” interest.19 Cooperatives state that the Commission could, alternatively, declare definitively that member interests in cooperatives do not constitute a “voting security” interest for purposes of PUHCA 2005.20 If the Commission does not adopt this interpretation of “voting securities,” APPA/NRECA urge the Commission to, at the very least, make clear that those cooperatives that have received no-action letters or other assurances in the past from the SEC can continue to rely on those assurances without any need to seek additional confirmation or a no-action assurance or waiver from the Commission.21 Arizona Electric Power Cooperative, Inc., Southwest Transmission Cooperative, Inc., and Sierra Southwest Cooperative Services, Inc. (Cooperatives) argue that, while the Commission could grant the Cooperatives an individual waiver, the better course would be for the Commission to create a class exemption from PUHCA 2005 for cooperatives. According to Cooperatives, with the recent amendment of FPA § 201(f), cooperatives are unlikely to qualify as public utilities, and cooperatives do not operate any NGA jurisdictional pipelines.22

Commission Determination

25. We will grant the request of APPA/NRECA and others to clarify that section 1268 exempts from PUHCA 2005 states and any political subdivision of a state. Accordingly, we clarify in section 366.2(a) that, for the purposes of this subchapter, no provision of PUHCA 2005 shall apply to or be deemed to include: (1) The United States; (2) a state or political subdivision of a state; (3) any foreign governmental authority not operating in the United States; (4) any agency, authority, or instrumentality of any entity referred to in subparagraphs (1), (2) or (3); or (5) any officer, agent, or employee of any entity referred to in subparagraphs (1), (2), (3), or (4) as such in the course of his or her official duty.

14 APPA/NRECA Comments at 42. See also City of Santa Clara [Santa Clara] Comments at 23.
16 EII Comments at 19–20.
17 Goldman Sachs Comments at 7, Morgan Stanley Comments at 5.
18 NiSource Comments at 15.
19 APPA/NRECA Comments at 42. See also Santa Clara Comments at 23, TANC Comments at 23.
20 Cooperatives Comments at 8.
21 APPA/NRECA Comments at 42–44. See also Tri-State Comments at 3–7.
22 Cooperatives Comments at 7. See also APPA/NRECA Comments at 44.
26. In response to the request of Coral Power and ShellWindEnergy that we consider EWGs, FUCOs, and QFs not to be “electric utility companies” so that their upstream owners would not be holding companies under PUHCA 2005, we note that Congress has exempted from section 1264 of EPAct 2005 entities that are holding companies solely with respect to EWGs, FUCOs, and QFs and that exemption is reflected in the regulations we adopt herein. However, we clarify that EWGs themselves are not considered “electric utility companies” under PUHCA 2005. The purpose of creating “ exempt” wholesale generators in the amendments to section 32 of PUHCA 1935 made by the Energy Policy Act of 1992 (EPAct 1992)23 was to exempt from PUHCA 1935 persons that meet the definition of EWG. This was reflected in section 32(e) of PUHCA 1935, which specifically provided that EWGs would not be considered electric utility companies under PUHCA 1935 and would be exempt. Here, we have determined to continue to allow generators to obtain EWG status, so they will not be considered electric utility companies subject to PUHCA 2005.  

27. With respect to FUCOs and QFs, we clarify as follows. Section 1262(6) of PUHCA 2005 contains the term “foreign utility company,” and cross-references section 33 of PUHCA 1935. Section 33 of PUHCA 1935, as amended by EPAct 1992,24 provided that a FUCO would be exempt from PUHCA 1935 and not deemed an electric utility company, but the exemption would not apply or be effective unless the relevant state commission(s) certified that they had the authority and resources to protect ratepayers of public utility companies that are associated or affiliated with the FUCO. As with EWGs, we will continue to allow persons to obtain FUCO status. FUCOs will not be considered electric utility companies subject to PUHCA 2005 and will be exempt from PUHCA 1935 if they can demonstrate that the relevant state commission(s) have made the determination described in section 33 of PUHCA 1935. However, even if FUCOs do not demonstrate that they should be totally exempted from PUHCA 2005, we will waive the accounting, record-retention, and reporting requirements thereunder.25 As for QFs, QFs previously received an exemption from PUHCA pursuant to the Commission’s regulations under the Public Utility Regulatory Policies Act of 1978. Nothing in PUHCA 2005 changes that.  

28. With respect to EEI’s request that we clarify that power marketers are not “public-utility companies,” we note that EEI’s reference to the “Commission” appears to be to the SEC rather than to this Commission. While the SEC has not treated power marketers as electric utility companies under PUHCA 1935, the Commission has determined that electric marketers own facilities used for wholesale sales, i.e., “paper facilities,” and therefore are public utilities under the FPA. Similarly, we have treated natural gas marketers making jurisdictional sales as natural gas companies under the NGA. In light of long-standing SEC precedent in interpreting PUHCA 1935, we will follow the same interpretation under PUHCA 2005 and will exempt power and natural gas marketers from the definition of “public-utility company,” as that term is used in PUHCA 2005. However, our interpretation here does not change our long-standing precedent with respect to these entities’ jurisdictional status under the FPA and the NGA.  

29. We will grant the request for clarification from Goldman Sachs and Morgan Stanley that we not treat owner-lessees and owner participants in lease financing transactions involving utility assets as “public-utility companies” and their parents as “holding companies” under PUHCA 2005, so long as the ownership arrangements are passive.  

30. We find that, as discussed below, electric power cooperatives should not be regulated as holding companies under PUHCA 2005.  

2. Books and Records Requirements  

31. Sections 1264(a) and (b) of EPAct 2005 generally provide that each holding company and each associate company of a holding company, as well as each affiliate of a holding company or any subsidiary company of a holding company, shall maintain, and shall make available to the Commission, such books, accounts, memoranda, and other records (books and records) as the Commission determines are relevant to the costs incurred by a public utility or natural gas company that is an associate company of such holding company and necessary or appropriate for the protection of public utility or natural gas company customers with respect to jurisdictional rates. Moreover, section 1264(c) empowers the Commission to examine the books and records of any company in a holding company system, or any affiliate thereof, that the Commission determines are relevant to the costs incurred by a public utility or natural gas company within such holding company system and necessary or appropriate for the protection of public utility or natural gas company customers with respect to jurisdictional rates. Finally, section 1264(d) forbids any member, officer, or employee of the Commission from divulging any fact or information that has come to his or her knowledge during the course of the examination of such books and records, except as may be directed by the Commission or a court of competent jurisdiction.26 In the NOPR, the Commission proposed to incorporate largely without modification the text of section 1264 by adding section 366.2 to the Commission’s regulations.  

32. In the NOPR, the Commission also proposed to adopt certain accounting, cost-allocation, record-keeping, and related rules promulgated by the SEC for holding companies and their service companies, as they existed on the date of enactment of EPAct 2005, specifically 17 CFR 250.1, 250.26, 250.27, 250.80, 250.93, 250.94, 259.5S, and 259.313 and 17 CFR parts 256 and 257. The Commission invited comments on which SEC reporting requirements the Commission should retain, which ones it should not retain, and whether the Commission should adopt any additional accounting, cost-allocation, recordkeeping and related rules to carry out its statutory duties under PUHCA 2005. Finally, the Commission stated that it does not intend to broaden the applicability of any adopted reporting requirements beyond the types of companies to which they now apply and invited comments as to whether the proposed scope of applicability is appropriate.

33. The comments below focused primarily on the Commission’s proposal to adopt certain SEC regulations and are organized as follows: (a) Scope of applicability, i.e., whether the books and records requirements will apply to all holding companies equally or only to holding companies registered under PUHCA 1935; (b) general comments on the Commission’s proposal to adopt certain SEC regulations, including whether PUHCA 2005 grants the Commission the legal authority to adopt them; (c) comments on particular provisions of the SEC regulations; (d) other issues related to the adoption of

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25 As discussed infra, we will waive our accounting, record-retention, and reporting requirements for FUCOs, but we will not exempt them from the general provision in section 1264 of PUHCA 2005 and repeated in section 366.2 of our regulations, which authorizes access to their books and records as necessary, with respect to jurisdictional rates.  
SEC regulations; and (e) other comments related to the books and records requirements of section 1264.

a. Scope of Applicability Comments

34. The majority of commenters urged the Commission to apply any SEC regulations adopted equally to all holding companies, without regard to whether an entity was registered or exempt under PUHCA 1935, primarily because PUHCA 2005 does not state that PUHCA 1935 exemptions should continue in force.27 APPA/NRECA state that the Commission should apply any rules to the full universe of companies because, post-PUHCA 1935, there is no longer a statutory basis for distinguishing between the former registered and exempt holding companies. APPA/NRECA contend that the Commission cannot treat some holding companies differently from others without a reasonable basis and that their legal designations under a now-repealed statute are not a reasonable basis. According to APPA/NRECA, the Commission should make distinctions based on the complexity of each holding company’s corporate structure, the quantity and type of business risks in the corporate family, the magnitude of potential for cross subsidization (e.g., due to the presence of common costs between the public utility and non-utility businesses), and the geographic reach of the holding company (which could make state regulation more difficult). They argue that, to avoid charges of undue discrimination, the Commission can apply the rules to all holding companies initially, announce these factors as among those it will consider in granting exemptions, and then invite requests for exemption from some or all of the reporting companies.28 Similarly, American Electric Power Service Corporation (AEP) and National Fuel Gas argue that the statute mandates equal treatment of all holding companies.29

35. However, a number of commenters argue that the Commission should continue to exempt under PUHCA 2005 those holding companies exempted under PUHCA 1935 and SEC precedent. MidAmerican Energy Company (MidAmerican) states that the Commission should not impose a new set of accounting and reporting requirements on entities that have been exempt from the requirements developed by the SEC to enforce PUHCA 1935. Accordingly, MidAmerican, the information required under the SEC rules would require these entities to prepare and file reports that are duplicative of information contained in reports already filed with the Commission (e.g., FERC Forms 1 and 2 and the quarterly financial reports) and reports filed with the SEC (e.g., Form 10–K and Form 10–Q) and imposes an unnecessary burden and expense on such entities and provides no significant additional information to the Commission. According to MidAmerican, the information required under the SEC rules would require these entities to prepare and file reports that are duplicative of information contained in reports already filed with the Commission (e.g., FERC Forms 1 and 2 and the quarterly financial reports) and reports filed with the SEC (e.g., Form 10–K and Form 10–Q) and imposes an unnecessary burden and expense on such entities and provides no significant additional information to the Commission.

36. FirstEnergy suggests that, if the Commission adopts this proposal, it should clarify the regulatory text of proposed section 366.2(e) to delineate between those holding company systems to which the rules apply and those that are exempt from such provisions, and should explain the reasons justifying such distinction.31

Alcoa states that, even if the Commission decides not to exempt from the requirements under PUHCA 1935, consideration at least should be given to blanket exemptions for holding companies having a section 3(a)(3) exemption which are, by definition and determination by SEC, engaged in a business other than being a public utility holding company.32

Commission Determination

37. With respect to the general applicability of the federal access to books and records requirements in section 1264 of EPAct 2005, there is no basis in PUHCA 2005 for distinguishing between holding companies based on their registered or exempt status under PUHCA 1935. Accordingly, the Commission will subject all holding company systems, whether previously exempt or registered, to the books and records requirements that PUHCA 2005 imposes on holding companies and affiliates, associate companies, and subsidiaries thereof, unless they qualify for one of the statutory exemptions provided for under section 1266 of PUHCA 2005.33 We have also determined that, while we cannot exempt certain persons from the statutory requirements of PUHCA 2005, we can and should grant waivers of the accounting, record-retention, and reporting requirements adopted herein for certain persons and classes of transactions. Additionally, for entities that do have to comply with our filing requirements, we will limit the filings that have to be made and will delay until January 1, 2007, the compliance deadline for companies not currently subject to the SEC rules. Finally, throughout the following discussion, we will distinguish between obligations that apply to all service companies and those that apply to traditional, centralized service companies.34 Traditional, centralized service companies are a subset of service companies that holding companies have formed. They provide certain specialized services to other


30 Alcoa Comments at 5.

31 See 1266, discussed infra, requires the Commission to exempt any person that is a holding company solely with respect to EWGs, FUCOs, and QFs. It also requires the Commission to exempt a person or transaction if it finds that the books and records of a person are not relevant to jurisdictional rates or a class of transactions is not relevant to jurisdictional rates.

32 “Service companies” are defined in section 366.1 as “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 in the same holding company system.”

33 These “services,” as defined in section 366.1, include “any managerial, financial, legal, engineering, purchasing, marketing, accounting, statistical, advertising, publicity, tax, research, or any other service (including supervision or negotiation of construction or of sales), information or data, which is sold or furnished for a charge.”

34 These comments are duplicative of information contained in reports already filed with the Commission (e.g., FERC Forms 1 and 2 and the quarterly financial reports) and reports filed with the SEC (e.g., Form 10–K and Form 10–Q) and imposes an unnecessary burden and expense on such entities and provides no significant additional information to the Commission.
companies in the holding company system. They are to be distinguished from other service companies that are special-purpose companies such as a fuel supply company or a construction company.

38. Specifically, the Commission will require the following for entities that are not otherwise exempted from PUHCA 2005 requirements or granted a waiver of the Commission’s regulations thereunder:

(1) Unless otherwise exempted by Commission rule or order or granted a waiver, all holding companies and all service companies that do not currently follow the Commission’s record-retention requirements in Parts 125 and 225 of the Commission’s regulations must, effective January 1, 2007, comply with the Commission’s record-retention requirements. Formerly-registered holding companies and service companies in such holding company systems that currently follow the SEC’s record-retention rules in 17 CFR part 257 have the option, until December 31, 2006, to follow either the Commission’s or the SEC’s record-retention requirements. But these service companies must transition to the Commission’s rules by January 1, 2007. Formerly-exempt holding companies and service companies within such holding company systems, which currently do not follow either the SEC’s or the Commission’s record-retention requirements will not be required to comply with the Commission’s record-retention requirements until January 1, 2007.

(2) Unless otherwise exempted by Commission rule or order or granted a waiver, traditional, centralized service companies (i.e., those that are not special-purpose companies such as a fuel supply company or a construction company) that do not currently follow the Commission’s Uniform System of Accounts in parts 101 and 201 of the Commission’s regulations, will be given until January 1, 2007, to transition to the Commission’s Uniform System of Accounts. Traditional, centralized service companies in formerly-registered holding company systems that currently follow the SEC’s Uniform System of Accounts have the option to follow either the Commission’s or the SEC’s Uniform System of Accounts for calendar year 2006. But these service companies must transition to the Commission’s rules by January 1, 2007. Traditional, centralized service companies within formerly-exempt holding company systems, which currently do not follow the SEC’s or the Commission’s Uniform System of Accounts, will not be required to comply with the Commission’s Uniform System of Accounts until January 1, 2007. And, as noted above, holding companies, while they will be required to comply with the Commission’s record-retention requirements, will not be required to comply with the Commission’s Uniform System of Accounts.

(3) All entities that are currently or become holding companies under PUHCA 2005, whether previously exempt or registered under PUHCA 1935, must file FERC–65 (Notification of Holding Company Status), which will be treated as an informational filing, and holding companies seeking to claim an exemption from PUHCA 2005 or waiver of the Commission’s regulations there under may file FERC–65A (Exemption Notification) or FERC–65B (Waiver Notification). All persons that are holding companies on the effective date of PUHCA 2005 must file FERC–65 within 30 days of the effective date of PUHCA 2005, and any person that becomes a holding company thereafter must file FERC–65 within 30 days after becoming a holding company; and

(4) All traditional, centralized service companies will be required to submit an annual report on FERC Form No. 60. Such service companies in formerly-registered holding company systems must submit their first annual report, for calendar year 2005, by May 1, 2006. Such service companies in formerly-exempt holding company systems will be required to submit their first FERC Form No. 60, for calendar year 2007, by May 1, 2008.

39. The Commission will not require the filing of SEC Forms U–5A (notification of registration status), U–5S (annual reports for registered holding companies), U3A–2 (statement by holding company claiming exemption), or U–5B (registration statement), as previously proposed or suggested by some commenters. Information in these forms is in many cases available elsewhere and/or was for the purpose of monitoring activities or transactions that, with the repeal of PUHCA 1935, are no longer prohibited or no longer require prior approval. Additionally, this information is either not relevant to the costs incurred by jurisdictional entities or is not necessary or appropriate for the protection of utility customers with respect to jurisdictional rates. Further, information needed to protect against inappropriate cross-subsidization will be contained in the accounting and record-keeping requirements that we are adopting herein.

b. General Comments Concerning Adoption of SEC Regulations

Comments

40. APPA/NRECA suggest that, rather than incorporate the SEC rules by reference, the Commission should import the actual wording (with appropriate revisions as discussed below) into its own regulations. Merely cross-referencing existing SEC regulations (as proposed section 366.2(e) would do) would fail in its purpose if the SEC subsequently revises its own regulations to eliminate its PUHCA 1935-related regulations. Moreover, rather than adopt the SEC rules word-by-word, APPA/NRECA urge the Commission to make certain wording adjustments and offer rationales based on the current and likely future industry structure. 36

41. EEI urges the Commission to integrate whatever it adopts from SEC practice into current Commission procedures and forms. According to EEI, repeal of PUHCA 1935 was intended to reduce the level of holding company regulation, but if current exempt holding companies suddenly are required to contend with unfamiliar SEC practice, it would have precisely the opposite effect. These formerly-exempt companies in effect would become subject to a new level of complex regulation. To avoid this unintended consequence of repealing PUHCA 1935, EEI believes that the Commission should seek to integrate whatever it adopts from SEC practice into current Commission procedures and forms, which would involve simply including existing public filings, in particular a holding company’s SEC Form 10–K, as exhibits to the Commission’s Form 1.37

42. For the same reasons, EEI requests that the Commission provide a reasonable period between the effective date of its new rules and the date on which the initial filings will be due. EEI proposes that the initial filings should be due in April 2007, giving companies time to adopt any new recordkeeping and reporting requirements and to file information starting with the next round of Form 1 for which the new information would be available. The Commission also should specify the format that will be required for filings under its new rules, and the Commission should make clear when adopting the final rule, the date(s) on which companies will first be required

36. APPA/NRECA Comments at 23–24. See also FirstEnergy Service Company (FirstEnergy) Comments at 9.
37. EEI Comments at 3–4.
to make any newly required filings under such rules. 38
43. Georgia Public Service
Commission (Georgia PSC) urges the
Commission to ensure that the rules to
implement PUHCA 2005 provide that
the Commission will have access to all
of the information and documents
previously provided to the SEC under
PUHCA 1935. Georgia PSC emphasizes
that state commissions have relied upon
the filings made by holding companies
with the SEC and on audits of holding
companies performed by the SEC as a
major source of information necessary in
setting rates for the holding companies’ subsidiaries that are
regulated by state commissions.
Accordingly, the Commission should
adopt all provisions of the SEC rules and
retain all SEC reporting
requirements. 39 Similarly, the California
Electricity Oversight Board (CEOB) and
Utility Workers Union of American
(Utility Workers) supports the
Commission’s adoption of the SEC
accounting, cost-allocation,
recordkeeping, and related rules
identified in the PUHCA NOPR. 40
44. Entergy Services, Inc. states that it
agrees with the Commission’s proposal
to adopt the SEC regulations, but that
the Commission should limit the
applicability of these rules to those
items that are “relevant to costs incurred
by a public utility or natural
gas company” and “necessary or
appropriate for the protection of utility
customers with respect to jurisdictional rates” as required by EPAct 2005 section
1264(a). 41 Similarly, FirstEnergy argues
that the Commission should provide a
clear explanation of why each category
of information that is to be maintained
is within the statutory limits above. To
reflect these limits, FirstEnergy argues
that, at a minimum, the Commission
should modify proposed section
366.2(e), consistent with the other
subsections of section 366.2, to add the
following qualification at the end of the
paragraph: “insofar as the Commission
determines that such accounting, cost-
allocation and related rules are relevant
to costs incurred by a public utility or
natural gas company that is an associate
company of such holding company and
necessary or appropriate for the
protection of utility customers with
respect to jurisdictional rates.” 42
45. Several commenters argued that the
Commission lacks the authority to
adopt SEC regulations under PUHCA
2005 43 or that PUHCA 2005 does not
specifically authorize the imposition of
reporting requirements. 44 AGL
Resources, Inc. (AGL Resources) questions the appropriateness of any
requirement to file any reports at all,
emphasizing that the requirement in
section 1264 to maintain records does
not amount to a requirement to file
reports. AGL Resources emphasizes that
section 14 of PUHCA 1935, which
permits the SEC to require certain
reports from companies subject to its
jurisdiction, has been repealed by EPAct
2005, and the EPAct did not grant the
Commission similar authority. 45
46. Electric Power Supply Association
(EPSA) argues that the adoption of the
SEC rules as a means of implementing
PUHCA 2005 is neither wise nor
necessary or appropriate for the
protection of utility customers with
respect to jurisdictional rates. According
to EPSA, the two statutory regimes are
completely different and the PUHCA
1935 regulations are incompatible with the
considerably more narrow scope of
PUHCA 2005, which the Commission
itself notes is primarily a book and
records access statute and a statute that
does not give the Commission authority
to pre-approve holding company
activities. 46 EPSA further contends that
the adoption of such rules would be
contrary to Congress’ intent and exceed
the authority granted to it under PUHCA
2005, improperly and unnecessarily
imposing PUHCA 1935-type regulation
on all PUHCA 2005 holding companies
and their relevant affiliates, including a
large number of holding companies
exempted from PUHCA 1935. 47
Moreover, EPSA emphasizes that, while
the Commission has the authority to
disallow a utility’s recovery in its
jurisdictional rates of improper affiliate
charges, the Commission does not have
the authority to regulate transactions
among non-utility affiliates by requiring
“at cost” pricing, and, therefore, has no
authority to impose financial and
complex accounting and reporting
requirements to implement “at cost”
pricing. 48
Commission Determination
47. We agree with the comments of
APPA/NRECA and EWI that any SEC
regulations that the Commission adopts
should be imported into and integrated with the Commission’s regulations,
rather than, for example, being
incorporated by reference. However, the
Commission does not find it appropriate
to incorporate all of the relevant SEC
rules at this time. Accordingly, the
Commission will adopt in Part 366 of its
regulations certain provisions of 17 CFR
parts 250 and 259, which are discussed
further below. We will not adopt the
SEC Uniform System of Accounts and
record-retention rules in 17 CFR parts
256 and 257 into the Commission’s
regulations at this time. Instead, the
Commission will initiate a separate
rulemaking proceeding, which we
intend to complete well in advance of
the January 1, 2007 deadline, to address
how the Commission’s Uniform System of
Accounts and record-retention rules in
parts 101, 125, 201, and 225 of its
regulations can be modified to adopt or
otherwise integrate the relevant parts of
the SEC’s Uniform System of Accounts
and record-retention rules into the
Commission’s regulations. As discussed
above, unless otherwise exempted or
granted a waiver, both holding
companies and service companies will
be required to comply with the
Commission’s record-retention
requirements effective January 1, 2007,
but only traditional, centralized service
companies will be required to comply
with the Commission’s Uniform System of
Accounts. We will give holding
companies registered under PUHCA
1935 and service companies within
formerly-registered holding company
systems that currently follow the SEC’s
record-retention rules in 17 CFR part
257 the option to follow either the
Commission’s or the SEC’s record-
retention rules, as they exist on the day
before the effective date of PUHCA
2005, for calendar year 2006. Similarly,
traditional, centralized service
companies in formerly-registered
holding company systems that currently
follow the SEC’s Uniform System of
Accounts in 17 CFR part 256 may follow
either the SEC’s or the Commission’s
Uniform System of Accounts for
calendar year 2006. But, as discussed
above, these entities must transition to
the Commission’s rules, by January 1,
2007.
48. We also agree with the comments of
EWI that it is appropriate to provide a
reasonable transition period between the
effective date of this Final Rule and the
date on which the initial filings will be
due. As discussed above, we will
give traditional, centralized service
companies until January 1, 2007 to
conform their accounts and records to
the requirements of the Commission’s
Uniform System of Accounts and
record-retention rules. Similarly, we

38 Dominion Comments at 3. EEI Comments at 6.
39 Georgia PSC Comments at 1.
40 CEOB Comments at 2–3. Utility Workers
Comments at 3.
41 Entergy Comments at 3.
42 FirstEnergy Comments at 6.
44 See, e.g., E.ON/LG&E Energy Comments at 12.
45 AGL Resources Comments at 5.
46 EPSA Comments at 6–7.
47 Id. at 7.
48 Id. at 10.
will give holding companies and service companies until January 1, 2007 to conform to the requirements of the Commission’s record-retention rules. Accordingly, we will adopt only those SEC regulations that were substantive regulatory and nowhere in PUHCA 2005 did it give the Commission the discretion to prescribe the manner in which these entities are to “make available” their books and records to the Commission and “the form or forms of all statements, declarations, applications, and reports to be filed with the Commission.”

For the same reasons, we similarly reject the argument submitted by AGL Resources, who notes that the SEC was empowered to require the filing of reports by section 14 of PUHCA 1935, which has been repealed, and concludes from the fact that Congress has not enacted an identically-worded provision in PUHCA 2005 that the Commission lacks the authority to require entities to file any reports under PUHCA 2005. AGL Resources’ interpretation appears to rest on the erroneous assumption that, by using the terms “maintain” and “make available,” Congress necessarily meant that entities were only required to make these books and records available to the Commission on the entities’ premises, rather than in the form of a report filed with the Commission. Had Congress meant to restrict the Commission’s access to books and records in this manner, it clearly could have done so, as it did with respect to state commissions under section 1265; section 1265 provides that entities are to “produce for inspection” “upon * * * written request” of a state commission a much more limited range of documents. Here, in section 1264 (and sections 1272 and 1270), Congress chose not to adopt such a restriction.

Finally, we note that, where appropriate, we have removed from the SEC regulations adopted herein all references to PUHCA 1935 and related SEC regulations and, where appropriate, replaced them with references to PUHCA 2005 or to the relevant Commission regulations. Therefore, we will not further address in this Final Rule the various comments received suggesting that we remove such references.

c. Comments on Particular SEC Regulations

17 CFR 250.1 and 259.5A (Form U–5A)

Comments

55. SEC Form U–5A requires each non-exempt holding company to submit a complete list of corporate affiliates and brief description of the kind of business each affiliate transacts. APPA/NRECA support the adoption of 17 CFR 250.1, which will require each public utility holding company to inform the Commission of its status. As to exemptions, APPA/NRECA argue that the Commission should distinguish...
between the exemption available under section 1266(a) (for QFs, EWGs and FUCOs) and 1266(b) (for persons and classes of transactions “not relevant to the jurisdictional rates of a public utility or natural gas company”), so that the notification the Commission requests would be limited to section 1266(a).

According to APPA/NRECA, the “relevance” exemption of section 1266(b) requires more Commission attention, in the form of general standards to be applied case by case.50

56. Energy East Corporation (Energy East) opposes the adoption of this section because it contends that the notification requirement is inconsistent with the statement in the NOPR indicating that the Commission does not intend to reimpose the registration requirement. Energy East states that the Commission could simply instead rely on disclosure in FERC Forms 1 and 2 which require a public utility or natural gas company to state the name of any controlling corporation, the manner in which control is held and the extent of control.51 Similarly, Dominion Resources, Inc. (Dominion) and EEI state that the Commission’s intention to not reimpose the registration requirement is inconsistent with the adoption of the three filing requirements set forth in section 250.1 (i.e., SEC Forms U–5A, U–5B, and U–5S).52

57. Dominion agrees with retention of the Form U–5A filing requirement because this form is considerably less burdensome than either Form U–5B or U–5S. Dominion also suggests that this form be revised to provide for a claim of exemption under section 1266 of EPAct 2005.53 Scottish Power PLC (Scottish Power) also supports the retention of Form U–5A and suggests that the Commission consider adding a component to the Form U–5A to allow a holding company to make a claim for an exemption from the books and records requirements of section 1264.54

Commission Determination

58. The Commission will adopt in section 366.4(a) of its regulations a provision analogous to that contained in paragraph (a) of 17 CFR 250.1. However, the Commission will not require holding companies to submit a Commission-adopted version of SEC Form U–5A and will instead require persons that are holding companies on the effective date of PUHCA 2005 to submit FERC–65 (Notification of Holding Company status) and, for companies seeking exemption or waiver, FERC–65A (Exemption Notification) or FERC–65B (Waiver Notification) within 30 days of the effective date of PUHCA 2005, February 8, 2006. Furthermore, any entity that becomes a holding company after the effective date of PUHCA 2005 must submit FERC–65 (and, if appropriate, FERC–65A or FERC–65B) within 30 days of the date on which such entity becomes a holding company. This filing will be for informational purposes and will not be noticed in the Federal Register, but will be available on the Commission’s website.

59. As discussed above, entities seeking exemption or waiver may do so by filing FERC–65A or FERC–65B, along with their FERC–65. All notifications of exemption or waiver submitted on FERC–65A and FERC–65B will be noticed in the Federal Register.

60. However, we will limit the use of FERC–65A and FERC–65B to those persons who claim that they qualify for one of the mandatory statutory exemptions in section 1266(a) (i.e., that they are a holding company solely with respect to one or more EWGs, FUCOs, or QFs) or for one of the class exemptions or waivers that the Commission adopts in this Final Rule, which are listed in section 366.3(b) and (c) of the Commission’s regulations, or in subsequent rules or orders. Persons will be considered to have a temporary exemption or waiver upon a good faith filing of FERC–65A or FERC–65B and the exemption or waiver will be deemed granted after 60 days from the date of the filing, absent Commission action to the contrary before that date. The Office of the Secretary will periodically issue a notice listing the persons whose notifications of exemption or waiver have gone into effect by operation of the Commission’s regulations, i.e., in the absence of Commission action to the contrary within 60 days after the date of filing.

61. Persons seeking any other type of exemption or waiver must file a petition for declaratory order pursuant to section 385.207(a) of the Commission’s regulations, as required by section 366.3(d) of the regulations adopted herein. These petitions for declaratory order will be noticed in the Federal Register and no temporary exemption or waiver will attach. Such requests for exemptions or waivers will be considered case-by-case and deemed granted only upon order of the Commission.

62. We reject the assertion of Energy East and others that the adoption of a Commission analogue to 17 CFR 250.1(a) (i.e., the SEC’s registration requirement) is tantamount to re-imposing the registration requirement under PUHCA 1935. First and foremost, the Commission in the NOPR proposed to use a version of the SEC Form U–5A as a notification requirement, not as a registration requirement. Moreover, in this Final Rule, we are not adopting the proposal in the NOPR to require submission of SEC Form U–5A and instead using what is called FERC–65 (Notification of Holding Company Status). This notification requirement simply requires persons that are holding companies to inform the Commission of their status as such and thus that they are subject to the Commission’s access to books and records under PUHCA 2005. As commenters have noted, the registration system established by PUHCA 1935 was part of a pervasive regulatory regime addressing virtually all aspects of a registered holding company’s and its subsidiaries’ financial and corporate activities, while PUHCA 2005 is a narrower statute intended to give the Commission access to books and records relevant to costs incurred by a public utility or natural gas company and necessary or appropriate for the protection of utility customers with respect to jurisdictional rates. For the Commission to carry out its jurisdictional rate responsibilities, it must be able to identify the entities that are holding companies of jurisdictional public utilities or natural gas companies. The requirement to notify the Commission facilitates our ability to do so and is thus consistent with Congress’ intent enacting PUHCA 2005, and, in any event, is hardly burdensome.

17 CFR 250.26

Comments

63. 17 CFR 250.26 directs registered holding companies and their subsidiaries to comply with a number of SEC accounting and record-keeping rules, including Regulation S–X, the equity accounting method, and the record-retention rules in 17 CFR Part 257. E.ON and LG&E Energy assert that section 250.26(c), which requires holding companies to use the equity method of accounting for investments in subsidiaries, is outside the jurisdiction of the Commission under section 1264 of EPAct 2005 and should not be adopted by the Commission.55

Dominion and EEI argue that section 250.26(b), which deals with information to be supplied with Form U–5S, should

50 APPA/NRECA Comments at 24.
51 Energy East Comments at 4.
52 Dominion Comments at 11–12, EEI Comments at 16.
53 Dominion Comments at 12.
54 Scottish Power Comments at 4.
55 E.ON/LG&E Energy Comments at 16.
be deleted and that sections 250.26(c) and (g) should not be adopted by the Commission. Moreover, EEI and Dominion argue that, rather than adopting section 250.26(d), which mandates the use of SEC record-retention policy, holding companies should have the option of following either SEC or Commission document retention requirements.\(^56\) EPSA states that 17 CFR 250.26 pertains to financial recordkeeping requirements that would conflict with accounting and reporting requirements that many non-registered holding company systems are not currently required to follow, i.e., Regulation S–X. Moreover, EPSA notes that Rule 250.26 prohibits any company in a registered holding company system to declare or pay dividends or reacquire its securities absent SEC approval under section 12 of PUHCA 1935.\(^57\) Finally, Energy East opposes the adoption of this rule because all top-tier registered holding companies are public issuers and most large holding companies subject to PUHCA 2005 are likely to be public issuers and are thus already required to prepare financial statements in accordance with Regulation S–X, unless exempted by other SEC rules or form instructions.\(^58\)

**Commission Determination**

64. With respect to the concerns expressed by E.ON and LG&E Energy on the use of the equity method of accounting for investments in subsidiaries and Energy East and EPSA regarding SEC Regulation S–X, the Commission is not adopting paragraph (a)(1) of 17 CFR 250.26 (a)(1), which mandates compliance with this SEC Regulation S–X, or paragraph (c), which mandates use of the equity method of accounting. In addition, the Commission is not adopting paragraph (b), which requires certain information to be supplied with the Form U–5S, or paragraph (g), which is a cross reference to 17 CFR 250.26. Also, as recommended by Dominion and EEI, the Commission will not adopt paragraph (d) regarding the SEC rules on record retention in 17 CFR Part 257. Instead, as discussed above, we will permit holding companies registered under PUHCA 1935 and service companies within such holding company systems that currently follow the SEC’s record-retention rules in 17 CFR Part 257 to follow either the Commission’s or the SEC’s record-retention rules, as they exist on the day before the effective date of PUHCA 2005, for calendar year 2006. These entities must transition to the Commission’s rules by January 1, 2007. 17 CFR 250.27

**Comments**

65. 17 CFR 250.27 requires registered holding companies and public-utility company subsidiaries thereof that are not subject to the Commission’s or a state commission’s system of accounts to conform to a classification of accounts prescribed by the Commission. If the public-utility company subsidiary is a gas utility company, it must conform to the system of accounts recommended by NARUC. According to Dominion and EEI, it is questionable whether this rule currently applies to any companies and whether there are any public utility companies under PUHCA 1935 that would not be subject to the Commission’s Uniform System of Accounts or the requirements of a state utility commission. In addition, Dominion and EEI assert that section 250.27 is potentially inconsistent with the waiver of Part 101 of the Commission’s regulations commonly received in connection with an authorization to sell power at market-based rates because this section would subject to Part 101 any public utility under the FPA that is not required to comply with it.\(^59\)

66. APPA/NRECA oppose the adoption of this section because it does not seem to add anything presently required by the Commission’s Uniform System of Accounts.\(^60\) Finally, Energy East opposes the adoption of this section as unnecessary because there is no evidence that utilities subject to the Commission’s ratemaking jurisdiction lack a uniform system of accounting standards.\(^61\)

**Commission Determination**

67. We agree with commenters that this provision should not be adopted as part of the Commission’s regulations because it does not add anything to the Commission’s Uniform System of Accounts. All public utilities and natural gas companies, except those that have been granted waiver of the Commission’s accounting, record-retention, and reporting requirements (e.g., power marketers), already maintain their books and records in accordance with the Commission’s Uniform System of Accounts in Parts 101 and 201 of its regulations. 17 CFR 250.80

**Comments**

68. Section 250.80 defines the terms “construction,” “goods,” and “services,” as used in the SEC regulations under PUHCA 1935. APPA/NRECA support the adoption of section 250.80, but suggest that the Commission should import the definitions of “service,” “goods,” and “construction” in this section into its own rules.\(^62\) EEI and Dominion also support the adoption of this section.\(^63\) E.ON and LG&E Energy also endorse the Commission’s proposal to adopt section 250.80.\(^64\)

**Commission Determination**

69. We agree with APPA/NRECA and other commenters, and as these terms and their definitions are relevant under PUHCA 2005, we will adopt the definitions contained in 17 CFR 250.80 in section 366.1 of the Commission’s regulations and thereby import the SEC’s definitions of these terms for the purposes of PUHCA 2005. In addition, we will remove references to PUHCA 1935, where appropriate, as we have done with the other regulations adopted in this final rule. 17 CFR 250.93 and 17 CFR Parts 256 and 257

**Comments**

70. Section 250.93 requires service companies to adopt the SEC’s Uniform System of Accounts in 17 CFR Part 256 and its record-retention rules in 17 CFR Part 257. Some commenters opposed the adoption of these SEC regulations, while others supported their adoption or suggested various ways in which their application could be limited, in particular, by allowing holding companies and service companies to adopt the Commission’s Uniform System of Accounts in Part 101 of its regulations and its record-retention rules under Part 125 of its regulations.\(^65\)

71. Dominion and EEI agree with the Commission’s proposal to adopt the SEC’s Uniform System of Accounts. However, they state this system of accounts closely tracks the requirements of SEC Form U–13–60 and therefore includes a number of components that no longer will be relevant following repeal of PUHCA 1935. They thus recommend that the Commission adopt only those portions of 17 CFR Part 256 that correspond to the information it

\(^{56}\) Dominion Comments at 12, EEI Comments at 17. See also Southern Company Services, Inc. (Southern Company Services) Comments at 5.

\(^{57}\) EPSA Comments at 11.

\(^{58}\) Energy East Comments at 7.

\(^{59}\) Dominion Comments at 12–13, EEI Comments at 18.

\(^{60}\) APPA/NRECA Comments at 25.

\(^{61}\) Energy East Comments at 9.


\(^{63}\) Dominion Comments at 13, EEI Comments at 18.

\(^{64}\) E.ON/LG&E Energy Comments at 14.

\(^{65}\) But see APPA/NRECA Comments at 25–26.
recommends be included with SEC Form U–13–60.66

72. Dominion and EEI also argue that holding company service companies should have the option of adopting the Commission’s Uniform System of Accounts and record-retention rules instead of the SEC’s. They further contend that there is no reason that any company that currently follows the Commission’s record-retention regulations should be required to adopt those found in 17 CFR part 257 and that the Commission could reconcile the differences between the two sets of requirements in a subsequent rulemaking.67

73. Entergy encourages the Commission to consider limiting the applicability of these requirements to service companies and, in the case of the record-retention requirements imposed under 17 CFR part 257, limiting the scope of these requirements to information that bears a direct relationship to costs incurred by service companies or other associate companies whose costs are reflected in the jurisdictional rates or charges of public utilities.68

74. Energy East also opposes the adoption of 17 CFR part 257 because, it contends, some of the SEC’s record retention requirements are outdated, particularly as to the storage media specified, given information storage and retrieval technologies that are now available and in common use. The Commission’s rules are more flexible because a public utility or licensee may select its own storage media subject to conditions related to life expectancy and internal control procedures to assure data reliability. Energy East thus urges the Commission to expand its Part 125 rules, making them applicable to public utilities, service companies, and holding companies.69

75. Finally, APPA/NRECA suggest that the Commission adjust the requirements of the SEC’s Uniform System of Accounts to make them consistent with the Commission’s Uniform System of Accounts under the FPA applicable to public utilities.70

Commission Determination

76. As discussed above, the requirements of section 1264 of EPAct

2005 to maintain and make available books and records apply equally to all holding companies and affiliates, associate companies, and subsidiaries thereof, regardless of their registered or exempt status under PUHCA 1935, absent a prospective exemption or waiver. Nevertheless, the Commission recognizes the long-standing differences in the treatment of these classes of entities under PUHCA 1935 and SEC regulations, namely, that companies in formerly-registered holding company systems were subject to PUHCA 1935 and the SEC’s accounting and other regulations thereunder, while companies in formerly-exempt holding company systems were not. We will therefore provide all holding companies and service companies with a reasonable period of time to transition to the Commission’s regulations under PUHCA 2005. Specifically, all traditional, centralized service companies that do not currently follow the Commission’s Uniform System of Accounts (Parts 101 and 201) will have until January 1, 2007 to comply with the Commission’s Uniform System of Accounts, and all holding companies and service companies that do not currently follow the Commission’s record-retention requirements (Parts 125 and 225) will have until January 1, 2007 to comply with the Commission’s record-retention requirements.

Furthermore, traditional, centralized service companies within registered holding company systems that currently follow the SEC’s Uniform System of Accounts in 17 CFR part 256 have the option to follow either the Commission’s or the SEC’s Uniform System of Accounts, as they exist on the day before the effective date of PUHCA 2005, for calendar year 2006. Similarly, all holding companies and service companies within registered holding company systems that currently follow the SEC’s record-retention rules in 17 CFR part 257 have the option to follow either the Commission’s or the SEC’s record-retention requirements, as they exist on the day before the effective date of PUHCA 2005, for calendar year 2006. But, as discussed above, these entities must transition to the Commission’s rules by January 1, 2007.

77. However, traditional, centralized service companies following the Commission’s Uniform System of Accounts must also comply with the General Instructions and other requirements contained in the SEC’s Uniform System of Accounts. These instructions and requirements pertain specifically to service company accounts and are not, at present, adequately addressed in the Commission’s Uniform System of Accounts.

17 CFR 250.94 and 259.313 (Form U–13–60)

Comments

78. Service companies are required by 17 CFR 250.94 and 259.313 to file SEC Form U–13–60, which is the annual report for service companies in registered holding company systems. It requires the submission of the service company’s financial statements for each calendar year prepared using the SEC’s Uniform System of Accounts. It also contains certain supporting schedules providing a more detailed analysis of amounts recorded in individual accounts, an analysis of billings to associated and non-associated companies, expense distribution by company department, and an accompanying statement of methods of cost allocation.

79. Several commenters support the adoption of 17 CFR 250.94 and 259.313. APPA/NRECA support the retention of 17 CFR 250.94 and Form U–13–60.71 Energy East states that it is beneficial to have one form of service company report that could be filed with the Commission and state commissions that require affiliate transactions reporting and thus supports the proposed SEC Form U–13–60 filing requirement, with which the states are already familiar. Energy East further recommends that the Commission focus the requirements of Form U–13–60, as recommended by EEI, on the information that is most relevant to allocations of costs.72

80. Dominion and EEI also note that the current Form U–13–60 requires companies to file a substantial amount of information that is not relevant to the Commission’s duties under PUHCA 2005. EEI therefore proposes that the balance sheet and income statement portions of the Form U–13–60 be retained, but that a number of accounts and schedules not relevant to cost-allocation issues be eliminated, as these accounts and schedules in question are extremely time consuming to prepare and in some cases require invoice level detail to complete, and EEI offers suggestions as to accounts and schedules that should be modified.73

Finally, EEI requests that the Commission clarify that the form applies to system service companies and provide a definition of “service company” in section 366.1 that tracks the language in section 1275(b) of

66 Dominion Comments at 16, EEI Comments at 20.

67 Dominion Comments at 16–17, EEI Comments at 20–21. According to Dominion and EEI, to the extent the coverage of the SEC requirements is broader than the Commission’s, the additional requirements relate largely to securities matters that are no longer relevant under PUHCA 2005.

68 Entergy Comments at 6.

69 Energy East Comments at 9.

70 APPA/NRECA Comments at 25.


72 Energy East Comments at 10.

73 Id.
PUHCA 2005, i.e., “a company organized specifically for the purpose of providing non-power goods and services to any public utility in the same holding company system.”

81. E.ON and LG&E Energy contend that the implementation of section 250.94 and Form U–13–60 is beyond the scope of the jurisdiction granted to the Commission in section 1275 of EPAct 2005, which is much more limited than that granted to the SEC to authorize the organization and conduct of service companies under section 13 of PUHCA 1935. They suggest that, if it is nonetheless appropriate for the Commission in its administration of PUHCA 2005 to impose reporting requirements under the FPA, the nature and extent of such reports should be limited to those matters over which the Commission is granted jurisdiction. They further contend that Form U–13–60 largely contains information which is not relevant to the jurisdiction of the Commission and propose that the Commission should instead require that FERC Form 1 be supplemented to include the following information: (i) Annual filing of cost-allocation methodology used by the service company to allocate costs; (ii) annual filing of statement of receivables from and payables to associated companies, identified by associate company name; and (iii) annual filing of all charges received by associate companies from a services company, identified by associate company and by FERC account.

Commission Determination

82. Based on the comments received, the Commission has decided not to adopt SEC Form U–13–60, and the Commission will instead require traditional, centralized service companies to file their annual reports on FERC Form No. 60, attached as Appendix 2, which is based on a streamlined version of SEC Form U–13–60. FERC Form No. 60 substantially reduces the amount of information required by SEC Form U–13–60 by deleting certain schedules not necessary to fulfill our jurisdictional responsibilities. Section 366.23 of the Commission’s regulations, which are based on 17 CFR 250.94 and 259.313, will thus require all traditional, centralized service companies to file with the Commission FERC Form No. 60 by May 1 of the year following the calendar year that is the subject of the report. Traditional, centralized service companies in formerly-registered holding company systems must submit their first FERC Form No. 60, for calendar year 2005, by May 1, 2006, while traditional, centralized service companies in formerly-exempt holding company systems will have until May 1, 2008, to submit their first annual report, for calendar year 2007, on FERC Form No. 60.

83. SEC Form U–13–60 contains a set of financial statements for service companies, detailed supporting schedules, organizational charts, a list of cost-allocation methods they use, and other information. Prior to the repeal of PUHCA 1935, the companies to which these reporting requirements applied were entities formed specifically for the purpose of providing non-power goods and services to a public-utility company, as defined in section 366.1 of the Commission’s regulations, of a holding company system. In 17 CFR 250.60, the SEC defined the type of specialized services that these traditional, centralized service companies provided to public-utility companies within their holding company systems, and we have taken over this definition in section 366.1 of our regulations. With the repeal of PUHCA 1935 and its associated rules on cross-subsidization, diversification, and requirements to obtain SEC approval for affiliate transactions and the formation of service companies, these traditional, centralized service companies may increasingly provide centralized services not only for public utility affiliates, but also for non-utility affiliates of financial institutions or other industrial conglomerates, increasing the opportunity for cross-subsidization.

84. The annual financial reporting requirement for service companies in FERC Form No. 60, which is based on a truncated version of SEC Form U–13–60, will provide transparency and will enable the Commission and others to better monitor for cross-subsidization. Such information will aid the Commission to perform its statutory duties in a number of contexts, including in its assessment of whether a given disposition of jurisdictional facilities under section 203 of the FPA will result in cross-subsidization, in its ratemaking under sections 205 and 206 of the FPA and sections 4 and 5 of the NGA, and in its review and approval of cost-allocations under section 1275 of EPAct 2005. The accounting, record-retention, and reporting rules for service companies that we are adopting in this Final Rule are a measured response to the need for information about service company costs and functions necessary for the Commission to carry out its statutory responsibilities. Finally, in response to EEI’s request that the Commission provide a definition of service company that tracks the language in section 1275(b), we note that we have added a definition of service company in section 366.1 of the Commission’s regulations.

85. While we believe an annual reporting requirement for service companies is an important tool to aid the Commission in carrying out its responsibilities under the FPA and NGA, and its review of cost allocations requested under section 1275 of PUHCA 2005, as noted above, we have considered the comments received regarding the current content of SEC Form U–13–60 and concluded that some, but not all, recommendations for modifications and deletions of certain schedules should be adopted. Specifically, there are a number of schedules currently contained in the SEC Form U–13–60 that provide a greater level of detail for some items than the Commission will require in FERC Form No. 60 to carry out its statutory responsibilities. Therefore, we will not carry over from SEC Form U–13–60 to FERC Form No. 60 the requirement to submit supporting schedules for Outside Services Employed, Employee Pensions and Benefits, General Advertising Expenses, Rents, Taxes Other than Income Taxes, Donations, and Other Deductions.

86. We will not, however, adopt EEI’s request to delete Schedule XIII—Current and Accrued Liabilities. This schedule contains information about the outstanding balances of accounts and notes payable to associated companies. We consider this information to be integral to understanding inter-company transactions and cost allocations within the holding company system.

87. We also will not adopt requests to modify or delete the Schedule of Expense by Department or Service Function or the Departmental Analysis of Salaries. This information is relevant to affiliate costs recovered in jurisdictional rates. Section 1275(b) of EPAct 2005 specifically requires the Commission in certain circumstances to review and authorize the allocation of costs for non-power goods or services provided by service companies to public utilities within the same holding.

74 Dominion Comments at 14, EEI Comments at 19.
75 E.ON/LG&E Energy Comments at 15–16. See also Entery Comments at 6.
company system. The determination of proper cost allocation requires knowledge of the total costs and how they are distributed within the holding company system, particularly to the jurisdictional entity(ies). The submission of the information in this schedule will facilitate the Commission’s understanding of cost allocations within the holding company system.77 The Departmental Analysis of Salaries shows how salary expenses are allocated to each parent company, associate company, and non-associate company based on the department or service function allocation methods. This schedule is a tool to determine whether cost allocations are being made in accordance with the authorized methods of cost allocation and whether inappropriate cross-subsidization has occurred. The Schedule of Expense by Department or Service Function similarly promotes this end.

88. Finally, the Commission will not adopt EEI’s recommendation to delete the supporting schedule for Account 930.2, Miscellaneous General Expenses. Account 930.2 is a catch-all account for recording expenses not provided for elsewhere. A single-sum total for this account simply does not provide sufficient information about the nature of the items included in the account or the associated amounts for each item. The additional disclosure that this schedule provides therefore remains important for understanding service company costs and functions. Additionally, we note that a similar schedule is required for the FERC Form No. 1 submitted by public utilities.

17 CFR 259.5S (Form U–Ss)

Comments

89. SEC Form U–5S is the annual report registered holding companies must submit, which includes information about the company’s corporate structure, board of directors, acquisitions or sales of utility assets, securities transactions, investments in companies outside the holding company family, political contributions, contracts between the service company and utility affiliates; relations between the holding company and any EWG or FUCO, and a copy of the company’s yearly financial reports.

90. APPA/NRECA support the retention of Form U–5S.78 Georgia PSC also supports the adoption of this reporting requirement, and suggests that the Commission should add cash flow statements to the Financial Statement and Exhibits section of Form U–5S.79

91. The majority of commenters, however, oppose the adoption of Form U–5S. EEI argues that the Form U–5S filing requirement should not be adopted because it imposes burdensome and duplicative information collection requirements. EEI states that, although the Office of Management and Budget estimates that companies need approximately 13 hours to complete Form U–5S, in the experience of EEI’s registered holding company members this form requires hundreds of hours to complete and as a result imposes millions of dollars in costs on ratepayers and shareholders. Much of the information required by Form U–5S is contained in other public filings, including the Commission’s Form 1 and 3Q and the quarterly and annual reports that companies file with the SEC on Forms 10–Q and 10–K. Other information included in the Form U–5S relates to matters that repeal of PUHCA 1935 has made irrelevant and that holding companies no longer should be required to file.80

92. Similarly, AGL Resources and Emera Incorporated (Emera) argue that the information solicited by this SEC form is generally irrelevant to the Commission’s ratemaking jurisdiction. They further contend that the Commission already obtains the information that it needs to regulate public utilities and natural gas companies on FERC Forms 1 and 2 and that the Commission’s need for holding company-level information can be satisfied by reviewing regular SEC reports on Forms 10–K, 10–Q and 8–K, and by soliciting targeted information on a case-by-case basis should particular issues arise. Finally, they argue that the Commission should delay the imposition of additional reporting requirements until it has had sufficient time to evaluate the extent of its information needs.81

93. FirstEnergy suggests that, to the extent that the Commission desires to utilize information contained in those forms, it should modify those forms so that the only information required to be maintained is information that is deemed to be necessary or appropriate for the protection of utility customers with respect to jurisdictional rates. The Commission should also provide a clear explanation of why each category of information that is to be maintained is within the statutory limits.82 Finally, FirstEnergy notes that Item 10 of Form U–5S contemplates that the annual report for each holding company system include consolidating financial statements for the parent holding company and each of its subsidiaries for the year of the report, and will be accompanied by the opinion of the independent accountants as to the consolidated financial statements. This requirement for an accountant’s opinion imposes additional costs of obtaining an opinion of the independent accountants with respect to the consolidated financial statements. Because the financial statements of the individual subsidiaries would have been audited and opinions prepared in anticipation of development of consolidated financial statements, this need for an additional opinion with respect to the consolidated financial statements is not necessary and should be eliminated.83

94. Entergy submits that the proposed implementation of the comprehensive reporting requirements of the Form U–5S is unduly burdensome and unnecessary for the Commission to prevent cross-subsidization or otherwise to achieve purposes within the scope of its jurisdiction. Entergy asserts that, at a minimum, the Commission should at least review the individual items in the rules and SEC Forms and determine what, if any, additional information is really necessary for it to discharge its statutory obligations under PUHCA 2005 or the FPA.84

Commission Determination

95. We will not require entities that are holding companies under PUHCA 2005 to continue to file SEC Form U–5S. We agree with commenters that the information in this form is available in other Commission or SEC filings and/or is not relevant to costs incurred by jurisdictional entities and is not necessary or appropriate for the protection of utility customers with respect to jurisdictional rates.

d. Other Issues Concerning Adoption of SEC Regulations

Comments

96. NARUC submits that the Commission should retain the reporting requirement set forth in 17 CFR

77 As discussed elsewhere in this Final Rule, although we have the authority to require the filing of cost allocation agreements pursuant to our ratemaking authority under sections 4 and 5 of the NGA and sections 205 and 206 of the FPA, we will not do so because the Commission believes that the submission of relevant cost-allocation information on FERC Form No. 60 provides a less burdensome method for collecting this information, for both services companies and the Commission.


79 Georgia PSC Comments at 2.

80 EEI Comments at 5. See also E.ON/LG&E Energy Comments at 14, PacificCorp Comments at 5, Progress Energy Comments at 5.

81 AGL Resources Comments at 4, Emera Comments at 10.

82 FirstEnergy Comments at 5–6.

83 Id. at 7. See also Emera Comments at 10.

84 Entergy Comments at 6.
should continue to be made, but should now be made with the Commission.

100. We will not grant Detroit Edison’s requested clarification that the Commission will not require any holding company (or its associate companies) to maintain books and records that are not in use in preparing quarterly and annual filings for the Commission. The clarification Detroit Edison requests could produce loopholes in holding company obligations to maintain and make available to the Commission their books and records in sufficient detail to permit examination, audit, and verification of the financial statements, schedules, and reports they are required to file with the Commission or that are issued to shareholders, as required by sections 366.21 and 366.22. For example, we will not carry over from SEC Form U–13–60 to FERC Form No. 60 the requirement to submit a schedule that provides a more detailed breakdown of outside services, but the removal of this schedule does not relieve the traditional, centralized service company of its obligation to provide this information upon request by the Commission. If we were to adopt Detroit Edison’s suggested clarifying language, the traditional, centralized service company (which is an associate company within the holding company system) could argue that it does not have to provide the requested information because it was not kept as it was not necessary to complete FERC Form No. 60.

e. Other Comments on the NOPR

Definition of “Relevance”

101. Several commenters urge the Commission to clarify its standard for relevance under section 1264.99 For example, APPA/NRECA propose that the Commission should consider the books and records relating to a corporate relationship or transaction, and the parties thereto, “relevant” if there is a reasonable possibility that the arrangement will affect a public utility affiliate in any material way, including increasing its costs; adversely impacting its financial rating or access to capital; diminishing its sales opportunities; or adversely affecting operations, planning or maintaining activities.100

98. The FERC–65 (Notification of Holding Company Status) and FERC Form No. 60 (Service Company Report) adopted above will provide us with information to carry out our statutory rate responsibilities under PUHCA 2005. It is neither necessary nor appropriate to require the submission of additional forms at this time, though, in light of the first year’s submissions, the comments received at the technical conference within the next year, and our day-to-day experience in implementing PUHCA 2005, we do not foreclose the possibility that additional filing requirements will later be found necessary.

99. With respect to PacifiCorp and Scottish Power’s concerns, we will not adopt 17 CFR 250.24. However, as discussed below with respect to previously authorized activities, we have concluded that filings directed by prior SEC financing authorizations

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APPA/NRECA Comments at 19. According to APPA/NRECA, the following new corporate relationships and transactions are of relevance to the Commission: (i) ownership by a holding company of public utilities having no operational integration with each other; (ii) ownership by multi-

102. Detroit Edison submits that section 366.2 as currently worded is far too open-ended, and leaves holding companies in an untenable state of uncertainty with respect to the relevance of any “books, accounts, memoranda” or “other records.”101 PacifiCorp concurs and urges that, at a minimum, the Commission clarify that it will provide a notice-and-comment proceeding before expanding its current information collection under this provision.102

Commission Determination

103. In PUHCA 2005, Congress left it to the Commission’s discretion to determine what books and records are relevant to the costs incurred by a public utility or natural gas company and necessary or appropriate for the protection of public utility or natural gas company customers with respect to jurisdictional rates. We do not find it appropriate here to follow APPA/NRECA’s suggestion that we provide a general definition of relevance. We have instead adopted the requirements in Part 366 of the Commission’s regulations. In particular, sections 366.21 and 366.22 require that holding companies and service companies maintain books and records of their transactions in sufficient detail to permit examination, audit, and verification of the financial statements, schedules, and reports they are required to file with the Commission or that are issued to shareholders. We will provide further guidance as to which books and records are relevant at the technical conference that we will convene within one year of the effective date of PUHCA 2005 and in the separate rulemaking proceeding we will institute to address changes in the Commission’s Uniform System of Accounts and record-retention requirements. We believe that these provisions provide adequate certainty as to which books and records that holding companies and service companies need to maintain and make available to the Commission.

state holding companies (or their public utility affiliates) of non-utility businesses having no functional relationship to the public utility businesses; (iii) ownership of multiple public utility companies by non-utility ventures; (iv) financings by multi-state public utility companies that fall outside standard debt-equity ratios, or that would fail the six criteria of Section 7(d)(1) of PUHCA 1935; (v) public utility loans to, or guarantees of indebtedness of, the holding company or any other affiliate. Id. at 17–18.

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Detroit Edison Comments at 5–6. See also Cinergy Comments at 21, EEI Comments at 5.

102

PacifiCorp Comments at 5.
Preemption of State Laws

Comments

104. Several commenters request that the Commission confirm that its own access under section 1264 does not preempt rights to access information by state commissions under section 1265. In order to prevent future arguments that the federal access provisions of section 1264 preempt state commission access under section 1265, Santa Clara urges the Commission to grant this clarification in the final rule.93 NARUC emphasizes that Congress expressly provided that states would have access under section 1265; that this means of state access was non-exclusive; and that Congress did not contemplate federal occupation of this field.94 Moreover, according to NARUC, there is no inherent conflict between state access under either section 1265 or state law and federal access under section 1264.95 Finally, Indiana Utility Regulatory Commission (IURC) requests that the final regulations include language paralleling the language of sections 1265(d), 1267(b), 1269, and 1275(c) of EPAct 2005 that confirms that the new law (and regulations promulgated under it) does not disturb historical state authority in the identified areas.96

Commission Determination

105. We agree with NARUC that there is no inherent conflict between state access under either section 1265 or state law and federal access under section 1264. We find that our own access under section 1264 does not preempt rights to access information by state commissions under section 1265. With respect to IURC’s argument, we do not find it necessary to adopt regulatory text on this point, in light of the clear statutory language.

Scope of Commission Authority and Access to Data

Comments

106. APPA/NRECA urge the Commission to explicitly state in the final rule that the data access granted under section 1264(a) of EPAct 2005 supplements, rather than supplants, the Commission’s pre-EPAct 2005 access to books and records and that this pre-existing access stems from the Commission’s ratemaking authority and from the general provisions of section 301 of the FPA and section 8 of the NGA.97

Commission Determination

107. The Commission grants APPA/NRECA’s proposed clarification. The Commission’s pre-EPAct 2005 access to books and records pursuant to section 301 of the FPA and section 8 of the NGA remains unchanged. As provided in section 1271 of EPAct 2005, nothing in PUHCA 2005 limits the Commission’s authority under the FPA or the NGA.

State Access to Books and Records Obtained by the Commission

108. Oklahoma Corporation Commission recommends that the Commission consider language that would allow state commissions to continue to receive notices of any investigations of regulated public utility companies.98 Public Citizen notes that Congress has not given state commissions in PUHCA 2005 the right to require holding companies or their associate companies to maintain, keep or preserve any records affecting retail rates, so that the state commission can only require the maintenance of holding company/associate company books and records that affect only retail rates if the Commission uses its existing authorities under FPA section 301 to do so. Public Citizen thus urges the Commission to explicitly state in the final rule that the Commission has the authority under FPA section 301 to require holding companies and their associates to maintain books and records that state commissions determine affect their retail rates and provide a process through which the states can request the maintenance and preservation of such books and records.99

Commission Determination

109. In response to the request of Oklahoma Corporation Commission that state commissions be apprised of any investigations of regulated public utility companies, we believe our current practices regarding the disclosure of investigations are appropriate and should not be broadened at this time. We are open to further consideration on this point at the technical conference. However, Congress set forth the rights of state commissions to obtain access to the books and records of companies within a holding company system in section 1265 of EPAct 2005, and they may seek to obtain access to the books and records of holding companies in accordance with that provision. With respect to Public Citizen’s request that the Commission use section 301 of the FPA to give states the opportunity to request the maintenance and preservation of books and records that state commissions determine affect their retail rates, we do not interpret section 301 to give the Commission the authority to provide a process for states to request maintenance of books and records for retail purposes. Congress has addressed in section 1265 the issue of state access to books and records of holding company systems and their members.

3. Exemption Authority

110. Section 1266(a) of EPAct 2005 directs the Commission to issue a final rule within 90 days after the effective date of Subtitle F exempting from the requirements of section 1264 of EPAct 2005 any person that is a holding company, solely with respect to one or more:

(1) Qualifying facilities under the
Public Utility Regulatory Policies Act of
(2) Exempt wholesale generators; or
(3) Foreign utility companies.

111. Section 1266(b) further directs the Commission to exempt a person or transaction from the requirements of section 1264 if, upon application or sua sponte:

(1) The Commission finds that the
books and records of a person are not
relevant to the jurisdictional rates of a
public utility or natural gas company;
or
(2) The Commission finds that a class
of transactions is not relevant to the
jurisdictional rates of a public utility or
natural gas company.

112. PUHCA 2005 requires the Commission to exempt any person that falls within the classes designated by section 1266(a) from the requirements of section 1264, and therefore, the Commission proposed to adopt such an exemption. In the NOPR, however, the Commission did not propose to categorically exempt classes of entities or transactions described in section 1266(b) from the requirements of section 1264. Rather, we proposed to rely on case-by-case applications for these exemptions until we have gained further experience subsequent to the repeal of PUHCA 1935. However, we sought comment on whether the Commission should exempt classes of transactions involving mutual fund passive investors or other groups of passive investors from the new federal books and records access requirements.

113. Finally, we noted that, although a person that is a holding company...
solely with respect to EWGs or QFs will be exempted from the federal access to books and records provisions in section 1264, many EWGs and QFs may nevertheless be public utilities under section 201 of the FPA 100 and remain subject to the Commission’s authority with regard to their books and records under section 301 of the FPA, unless otherwise exempted.101 Below, the Commission addresses comments requesting that the Commission adopt the following exemptions or waivers: (a) Passive investors; (b) nontraditional utilities with non-captive customers or non-customers, including power marketers; (c) certain holding company and affiliate transactions; (d) electric power cooperatives; (e) local distribution companies; (f) single-state holding companies; (g) holding companies owning small generators; and (h) investors in independent transmission companies.

114. As discussed further below, the Commission is adopting certain specific exemptions and waivers proposed by commenters. We are also providing in section 366.4(b) and (c) of our regulations the procedures for filing for exemption or waiver, which are available for specified persons or classes of transactions. A holding company that falls into one of the identified categories may file for exemption or waiver by submitting FERC–65A (Exemption Notification) or FERC–65B (Waiver Notification) and shall be deemed to have a temporary exemption or waiver upon a good faith filing. Notices of all such notifications of exemption or waiver will be published in the Federal Register. If the Commission has taken no action within 60 days after the date of the filing, the exemption or 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 claim for exemption or waiver will remain temporary until such time as the Commission has informed the holding company of its decision to grant or deny the application for exemption or waiver. In addition, the Office of the Secretary will periodically issue notice letters listing the holding companies whose notifications of exemption or waiver are deemed to have been granted in the absence of Commission action to the contrary within 60 days after the date of filing.

115. Holding companies that seek exemptions or waivers other than those specifically identified in section 366.3(b) or (c) of the Commission’s regulations may not do so by means of FERC–65A or FERC–65B. Such holding companies must instead seek an individual exemption or waiver by filing a petition for declaratory order pursuant to sections 366.3(e), 366.4(b)(2) and 366.4(c)(2). Such petitions will be noticed in the Federal Register. No temporary exemption or waiver will attach, and the requested exemption or waiver will be effective only if approved by the Commission.

116. Finally, if a holding company that has been granted an exemption or waiver under section 366.4(b) or (c) fails to conform with any material facts or representations presented in its submittals to the Commission in FERC–65A or FERC–65B, the exemption or waiver may no longer be relied on. Also, the Commission may, on its own motion or on the motion of any person, revoke the exemption or waiver granted under section 366.4(b), if the holding company fails to conform to any of the Commission’s criteria under this part for obtaining the exemption or waiver.

a. Exemption of Passive Investors

117. Commenters expressed near-unanimous support for an exemption for mutual fund and other passive investors from the requirements of section 1264.102 Commenters note that the SEC exempted passive investors under PUHCA 1935 and contend that such passive investors are similarly exempt from PUHCA 2005.103 EEI urges the Commission to follow current SEC no-action letter practice for exempting passive investors from holding company status under section 2(a)(7) of PUHCA 1935 and Commission practice in disclaiming jurisdiction under section 201(c) of the FPA.104 Barrydale suggests that, if Commission does not adopt this proposal, it should define “holding company” to exclude passive investors who own, control, or hold 20 percent or less of the outstanding voting securities of public utility or holding company and does not otherwise exercise controlling influence.105 Alternatively, National Grid suggests that, if Commission does not adopt this proposal, it should define “holding company” to exclude passive investors who own, control, or hold 20 percent or less of the outstanding voting securities.106 Finally, Morgan Stanley recommends that the Commission modify section 366.2 of the proposed rules to make clear that holding securities in the ordinary course of business as a broker/dealer, underwriter or as a fiduciary, and not exercising operations control over the utility, does not make one a “holding company.”107

118. Some commenters expressed general support for the proposed exemption, but argued that passive investors should not be exempted when certain circumstances were present. NARUC submits that the Commission should not exempt passive investors where either of the following conditions occurs or is present: (1) The transaction involves and will result in an ownership interest of ten percent or more of the debt or equity capital of any entity within the holding company system; or (2) the transaction will result in the mutual fund or other passive investor groups holding two or more seats or ten percent or more of the voting representation seats on the board of directors of any entity within the holding company system.109 Wisconsin PSC and CEOB assert that passive investors can exert control where their stock ownership or debt interest grants them control or influence over the selection of the board of directors. They urge the Commission to scrutinize carefully an application for an exemption filed by a passive investor who holds the power to influence the outcome of any jurisdictional issue that comes before the holding company’s board of directors, and to deny the application for exemption in those circumstances.110 MBI Insurance, on the other hand, argues that the Commission should not at this time...
grant an across-the-board exemption for entities that may claim passive investor status.\footnote{111}{MBIA Insurance Comments at 14.}

Commission Determination

119. We agree with the majority of commenters that the Commission should exempt passive investors from section 1264. Passive investors do not exercise control over jurisdictional companies, and thus the Commission does not need access to their books and records for purposes of ensuring just and reasonable rates. In response to the comments of Barclays and Morgan Stanley, we will also clarify here that the exemption for passive investors applies to the following entities: Mutual funds; passive investments in collective investment vehicles whose assets are managed by banks, savings and loan associations and their operating subsidiaries, or brokers/dealers; and persons that directly, or indirectly through their subsidiaries or affiliates, buy and sell the securities of public utilities in the ordinary course of business as a broker/dealer, underwriter or fiduciary, and not exercising operational control over the public utility.

120. We will not adopt a specific definition of “passive investor” at this time. Our precedent under the FPA on whether certain asset owners are “passive” and thus not public utilities provides guidance for purposes of claiming exemption under PUHCA 2005; further guidance may be provided in the Commission’s rulemaking to implement EPAct 2005 amendments to section 203 of the FPA. In addition, claimants should describe the relevant facts in their FERC (Notification of Holding Company Status), FERC-65A (Exemption Notification), or petition for declaratory order.

b. Nontraditional Utilities With No Captive Customers or Non-Utilities

Comments

121. EPSA proposes that the following classes of entities be exempted from section 1264’s requirements: (i) Utilities that do not serve captive customers and are not affiliated with a utility that serves captive customers (nontraditional utilities); and (ii) a holding company that owns only nontraditional utilities and/or EWGs, FUCOs, or QFs.\footnote{112}{EPSA Comments at 18.}

According to EPSA, the PUHCA 2005 rate protections simply are not needed for such entities.\footnote{113}{Id.} EPSA notes that the Commission has reasoned that when nontraditional utilities serve no captive customers, the potential for “transactions undertaken by any of the non-traditional affiliates [affiliates without captive customers] at the expense of other non-traditional affiliates simply results in an allocation of revenues among the ‘non-regulated’ affiliates; the profits ultimately go to the shareholders regardless of the entity that makes the sale.”\footnote{114}{Id. (citing U.S. Gen Power Services, L.P., 73 FERC ¶ 61,037 at 61,846 (1995)).}

122. EPSA proposes that the Commission should not consider energy marketers (i.e., energy sellers owning no “hard” assets for power sales but only contracts for wholesale or retail electric energy sales or retail gas sales) to be “public-utility companies” under the PUHCA 2005 definition. According to EPSA, if power marketers are not electric utility companies, their parent companies would not be considered utility holding companies under PUHCA 2005 by reason of their ownership of such marketers. The same logic would apply to gas marketers, and they too, therefore, should not be considered gas utility companies, provided that they own no physical gas distribution assets and their gas retail sales are made through contracts.\footnote{115}{EPSA Comments at 19–20.}

Commission Determination

123. The Commission will exempt power marketers and other utilities that do not serve captive customers and are not affiliated with a utility that serves captive customers (i.e., non-traditional utilities) from section 1264 because we find that the books and records of these entities are not necessary to protect customers. Although we regulate most power marketers’ rates under the FPA pursuant to their authorizations to sell energy sales or retail gas sales) to be “public-utility companies” under the PUHCA 2005 definition. According to EPSA, if power marketers are not electric utility companies, their parent companies would not be considered utility holding companies under PUHCA 2005 by reason of their ownership of such marketers. The same logic would apply to gas marketers, and they too, therefore, should not be considered gas utility companies, provided that they own no physical gas distribution assets and their gas retail sales are made through contracts.

116 Id.

117 Id. at 8.

118 Id.
126. MidAmerican proposes exemptions for transactions in the ordinary course of business between and among a public utility holding company’s non-utility subsidiaries and affiliates and de minimis ordinary course transactions involving the public utility company. In arguing for these exemptions, MidAmerican states that without these exemptions these transactions will be too numerous to track and requiring an individual exemption for each of them from Rule 366.2(e) could overwhelm the Commission while increasing the cost of doing business for the regulated entities.119

Commission Determination

127. We will grant MidAmerican’s first and second requests for exemptions: (i) In cases 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 any costs or expenses in connection with goods and service transactions, and will not engage in financing transactions with any public utility except as authorized by a state commission or the Commission; and (ii) transactions between or among affiliates that are independent of and do not include a public utility or natural gas company. These classes of transactions are not relevant to jurisdictional rates and will therefore be exempted from the books and records requirements of section 1264.

128. The Commission will deny MidAmerican’s request for an exemption of transactions between a public utility or a natural gas company and an affiliate if such transactions are conducted in the ordinary course of business, occur at prevailing market prices or on terms not different from those made available to unaffiliated entities and do not exceed individually or in the aggregate in cost to the public utility or natural gas company one-half of one percent of its operating revenue during its most recent fiscal year, or are conducted in accordance with and pursuant to an approved rate or service tariff. These transactions involve regulated companies, and we do not believe they should be exempted because of the potential for cross-subsidization between regulated and non-regulated companies in the same holding company system, which could adversely affect jurisdictional rates.

d. Rural Electric Cooperatives

Comments

129. Several commenters urge the Commission to exempt rural electric cooperatives from section 1264. APPA/NRECA argue that the Commission should recognize that under longstanding SEC precedent, electric cooperatives were not regulated as public utility holding companies under PUHCA 1935 and that, read together with the plain language of PUHCA 2005, that precedent shows that rural cooperatives fall outside PUHCA 2005. In addition, APPA/NRECA contend that, at an absolute minimum, the Commission should make clear that those cooperatives that have received no-action letters or other assurances in the past from the SEC can continue to rely on those assurances without any need to seek additional confirmation or a no-action assurance or waiver from the Commission and adopt a class exemption from PUHCA 2005 for cooperatives that are organized and operate in reliance on such well-settled precedent. Similarly, Santa Clara and TANC note that the SEC has consistently excluded rural cooperatives from PUHCA 1935 requirements for several reasons, including the fact that the ownership relationship in a cooperative is not a voting security under PUHCA 1935 and urge the Commission to follow this precedent in implementing PUHCA 2005.121

Commission Determination

130. The Commission finds the arguments of APPA/NRECA and other commenters in this regard persuasive. We find that all electric power cooperatives, including those that are regulated by the Commission under the FPA, i.e., those that are not financed under the Rural Electrification Act of 1936 or that sell four million or more megawatt-hours of electricity per year, should be exempted. We are therefore granting the request to define “voting security” to not include member interests in electric power cooperatives; this definition in and of itself should result in most cooperatives being excluded from the definition of a holding company, and thus most cooperatives will automatically fall outside the scope of PUHCA 2005. For those cooperatives that might still fall within the definition of holding company and thus within the scope of PUHCA 2005, they may be exempted from PUHCA 2005 by filing for exemption pursuant to the procedures in section 366.4(b).122

e. Local Distribution Companies

Comments

131. American Gas Association requests that the Commission clarify that local distribution companies that are not regulated by the Commission are not embraced within the phrase “natural-gas company.” American Gas Association also notes that the Commission does not regulate local distribution companies124 Washington Gas & Light argues that the Commission should clarify that the proposed rules do not apply to local distribution companies and section 7(f) companies that have previously been exempt from regulation by the Commission.125 Washington Gas & Light notes that no regulatory gap exists here, and new Commission regulation would be duplicative.126

Commission Determination

132. The Commission finds that the books and records of local distribution companies that are not regulated by the Commission are not relevant to jurisdictional rates. Therefore, we will amend the proposed rules to reflect that local distribution companies are exempt from the regulations.

f. Single-State Holding Companies

Comments

133. Consolidated Edison (ConEd) contends that customers of single-state holding companies are adequately protected by the Commission’s existing regulatory authority under the FPA and NGA, so that the imposition of additional books-and-records requirements would be superfluous. Accordingly, ConEd requests that the proposed regulations be revised to expressly exempt from the provisions of section 366.2 all single-state holding companies that were exempt under PUHCA 1935 as of the date of enactment of PUHCA 2005 and all companies that subsequently demonstrate to the Commission their status as a single-state holding company. Those companies should remain exempt pending a change

119 Id. at 11.

120 APPA/NRECA Comments at 42–44.
121 Santa Clara Comments at 23, TANC Comments at 23. See also Redding Comments at 3.
122 To the extent electric cooperatives are public utilities subject to our jurisdiction under the FPA, as noted above, we have broad authority under FPA section 301 to obtain the books and records of regulated companies and any person that controls or is controlled by such companies if relevant to jurisdictional activities. 16 U.S.C. 825 (2000); accord 15 U.S.C. 717g (2000)
123 American Gas Association Comments at 2. See also Keyspan Corporation (Keyspan) Comments at 6–7.
124 American Gas Association Comments at 3.
125 Washington Gas & Light Comments at 3.
126 Id. at 4.
in circumstances that alters a company’s single-state status. \footnote{127 ConEd Comments at 7.} 

134. In its reply comments, Public Citizen argues that the single state exemption, for example, requires that both a utility and its holding company primarily operate in a single state, so that the state is capable of regulating the holding company, as well as the utility, under state law. Such companies at a minimum should be required to file an annual statement, as they do now, to show that they continue to meet the standards for such an exemption. \footnote{128 Public Citizen Reply Comments at 13.} 

Commission Determination

135. We cannot approve a categorical exemption for single-state holding companies. Congress has chosen not to re-enact this exemption from PUHCA 1935, and ConEd has not demonstrated that single-state holding companies satisfy the criterion for exemption pursuant to section 1266(b) of PUHCA 2005 \textit{(i.e., that their books and records are not relevant to the jurisdictional rates of a public utility or natural gas company).} Nevertheless, single-state holding companies do not present the scope of potential cross-subsidy and cost allocation issues that multi-state holding companies do; state commissions generally have significant regulatory authority over single-state holding companies and their transactions, and we have sufficient authority pursuant to sections 205 and 206 of the FPA and sections 4 and 5 of the NGA to address any issues that could affect jurisdictional rates for public utilities in single-state holding companies. Therefore, the Commission will grant a waiver of our requirements in sections 366.21, 366.22, and 366.23 of our regulations \footnote{129 The Commission is permitted to exempt entities from the requirements of section 1264 only if their books and records are not relevant to jurisdictional rates. In this case, the books and records are relevant to jurisdictional rates, so we cannot exempt single-state holding companies from the statute. However, the Commission always possesses discretion to waive a regulatory requirement.} for single-state holding companies.

\section*{g. Holding Companies Owning Industrial Small Generators}

Comments

136. Barrick Goldstrike Mines argue that the Commission should exempt the holding companies of small industrial generators and their transactions from regulatory oversight because the exemptions that have existed until now, have encouraged the development of additional electrical generation. \footnote{130 Barrick Goldstrike Mines Comments at 9. See also Morgan Stanley Reply Comments at 6.} Alternatively, Mittal Steel requests that the Commission issue an exemption to any company who would not otherwise qualify as a “holding company,” but for its ownership of an entity that has been granted authority to sell electric power for resale at market-based rates. If the Commission is unwilling to adopt a general exemption as proposed by Barrick and Mittal Steel at this time, the Commission should grant a limited waiver of its PUHCA 2005 regulations to persons that file good faith applications for exemptions under section 366.3 within sixty (60) days of the Commission’s final order in this proceeding, with such waiver effective until such time as the Commission denies the exemption application. \footnote{131 Mittal Steel Reply Comments at 1–2.} 

Commission Determination

137. The Commission is not persuaded by the arguments of Barrick and Mittal Steel to provide a blanket exemption for holding companies owning industrial small generators, since they have not demonstrated that the statutory criterion is satisfied, \textit{i.e., that books and records of such holding companies are not relevant to jurisdictional rates.} However, to eliminate what might otherwise be a barrier to the development of additional electric generation, we will allow a waiver of our requirements in sections 366.21, 366.22, and 366.23 of our regulations \footnote{132 International Transmission Company Comments at 8.} for independent transmission-only companies.

\section*{4. Allocation of Costs of Non-Power Goods or Services}

140. Section 1275(b) of EPAct 2005 provides that, 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 certain holding company systems or a state commission having jurisdiction over the public utility, the Commission, after the effective date of PUHCA 2005, shall review and authorize an allocation of costs for such goods and services to the extent relevant to that associate company. In the NOPR, we proposed to reflect this statutory provision in new section 366.5(b) of our regulations.

\subsection*{a. Mandatory Filing of Cost-Allocation Agreements}

142. In the NOPR, we noted that, irrespective of the new section 1275(b) of PUHCA 2005, with the repeal of PUHCA 1935 and the elimination of SEC review of the allocation of costs for non-power goods and services, we have authority under sections 205 and 206 of the FPA and sections 4 and 5 of the NGA to review the rate recovery in jurisdictional rates of such associate and affiliated company non-power goods
and services costs, either upon application under section 205 of the FPA or section 4 of the NGA or upon complaint or our own motion under section 206 of the FPA and section 5 of the NGA, and that we also have the authority to review and/or require the filing of cost-allocation agreements with the Commission since they are contracts affecting jurisdictional rates. We invited comments as to whether, in light of the repeal of PUHCA 1935, holding companies that prior to the repeal of PUHCA 1935 were registered holding companies should be required to file such cost-allocation agreements with the Commission under section 205 of the FPA and section 4 of the NGA.

Comments

143. A number of commenters supported the Commission’s proposal to require holding companies that were registered under PUHCA 1935 to file cost-allocation agreements under section 205 of the FPA and section 4 of the NGA. These commenters emphasize the importance of information on cost allocations for effective federal and state regulation.

In addition, Santa Clara argues that Commission oversight of cost allocations is necessary due to the lack of uniformity of state review. Santa Clara further emphasizes that, under current rules promulgated pursuant to section 13 of PUHCA 1935, the SEC generally requires that such companies seek prior approval from the SEC to engage in such transactions. Thus, the requirement to file cost-allocation agreements with the Commission would simply maintain the current obligation, albeit with a different agency.

144. Some commenters suggest expansion of the Commission’s proposed filing requirement. APPA/ NRECA noted that the risk of misallocation of costs and cross-subsidization does not depend on whether the public utility holding company was registered or statutorily exempted under PUHCA 1935 and urges the Commission to require the filing of all cost-allocation practices between public utility and non-utility activities, including both formerly registered and exempted utility holding companies. NARUC recommends that the Commission institute procedures for periodic audits of cost allocations, to be conducted in coordination with state regulators.

145. Several commenters opposed the Commission’s proposed filing requirement as contrary to Congress’ intent and inconsistent with the statutory scheme established by PUHCA 2005 and the FPA. FirstEnergy contends that there is nothing in PUHCA 2005 to suggest that the Congress intended to grant the Commission the authority to regulate the agreements for procurement of non-power goods and services by public utility companies from associated service companies in the same way that it regulates the sale of electricity for resale and that, if the Commission found that such agreements are contracts affecting jurisdictional rates within the meaning of section 205(c) of the FPA it would be asserting jurisdiction over virtually every agreement for procurement of non-power goods and services by all regulated electric utilities. Entergy argues that the Commission’s proposal is inconsistent with the voluntary review procedures established under section 1275(b) of EPAct 2005. According to Entergy, to mandate the filing of such service company agreements would read out of PUHCA 2005 the ability of the holding company or applicable retail regulators to elect or, more importantly, not elect Commission review and authorization of cost allocations.

146. EPSA opposes the mandatory filing requirement because it contends that the Commission lacks jurisdiction to impose this requirement under the FPA. EPSA asserts that section 205 of the FPA requires only public utilities as defined in section 201(e) of the FPA to file with the Commission the schedules, tariffs and agreements under which they provide FPA jurisdictional services. Registered holding companies, by contrast, (and non-registered holding companies) may have public utility subsidiaries, but they are not public utilities under section 201(e) of the FPA. In addition, EPSA claims that being required to make filings under section 205 of the FPA could force a holding company to become a fully regulated public utility. Under existing Commission precedent, upon the acceptance of a filing under section 205 of the FPA, the Commission has deemed that the filing entity owns FPA jurisdictional facilities within the meaning of section 201(e) of the FPA. Hence, they argue, if registered holding companies are required to file cost-allocation agreements under section 205, this could have the unintended effect of forcing such companies to become public utilities.

147. A number of commenters state that the Commission already has authority under sections 205, 206, and 301 of the FPA and PUHCA 2005 to require the public utility to file any relevant cost-allocation agreements with affiliates to the extent they affect jurisdictional rates. Thus, they argue, there is no need to impose an additional filing requirement. Dominion and EEI argue that there should be no mandatory filing unless these agreements are relevant to Commission review of cost-allocation at the election of a holding company or a state commission pursuant to section 1275(b) of PUHCA 2005, or where they are relevant to a Commission rate proceeding. According to Dominion and EEI, there are no grounds for reopening all cost-allocation arrangements at this time by requiring that allocation agreements be filed for

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133 16 U.S.C. 824d–e (2000); accord 15 U.S.C. 717c–d (2000); see generally EPAct 2005 at § 1275(c) (stating that nothing in section 1275 affects the authority of the Commission under other applicable law). While the scope of our jurisdiction over wholesale sales of natural gas is more limited than our jurisdiction over wholesale sales of electric energy, and our rate reviews may differ in certain respects, such reviews could be undertaken under sections 4 or 5 of the NGA.

134 See, e.g., Georgia PSC Comments at 2, Santa Clara Comments at 6–7, TANC Comments at 6–7.

135 Georgia PSC at 2, IURC Comments at 7.

136 Santa Clara Comments at 8.

137 16 U.S.C. 824(e) (2000); accord 15 U.S.C. 717c–d (2000); see generally EPAct 2005 at § 1275(c) (stating that nothing in section 1275 affects the authority of the Commission under other applicable law). While the scope of our jurisdiction over wholesale sales of natural gas is more limited than our jurisdiction over wholesale sales of electric energy, and our rate reviews may differ in certain respects, such reviews could be undertaken under sections 4 or 5 of the NGA.

138 See also American Public Gas Association Comments at 4.

139 NARUC Comments at 9 (arguing that multi-state holding companies should be subject to filing requirement), Ohio PUC Comments at 3, Utility Workers Comments at 3–4, Wisconsin U Co Comments at 7.

140 EPSA Comment at 23–25. EPSA’s argument that the filing of a contract affecting jurisdictional rates forces every party to the contract to become a jurisdictional public utility is erroneous and a misunderstanding of the law. See also NiSource Comments at 11. NiSource further states that it is opposed to the mandatory filing requirement, but if filing is made mandatory, such agreements should be filed for informational purposes only in the same manner as cash management agreements.

141 American Services [Ameren] Comments at 15–16, Entergy Comments at 14, E.ON/LG&E Energy Comments at 19, EPSA Comments at 24–25, Scottish Power Comments at 9, Santa Clara Comments at 6–7. See also Energy East Comments at 14 (arguing that cost-allocation methods are disclosed in the report on Form U–13–60, so there is no reason to require their filing in another context).
review under section 205 of the FPA and section 4 of the NGA.\textsuperscript{144} 148. Finally, Coral Power and Shell WindEnergy argue that holding companies that own only EWGs, FUCOs, and QFs and are not affiliated with traditional utilities with captive ratepayers should be exempted from the filing requirement. They argue that such entities typically sell energy at negotiated or market-based rates, not at cost-based rates, so there can be no issue of cost allocation when rates are not based on the generator’s costs, so that they cannot pass through excessive costs associated with affiliate transactions without pricing themselves out of the market.\textsuperscript{145}

Commission Determination

149. We reject arguments that the Commission does not have the authority under the FPA to require public utilities that are members of a holding company system to file agreements involving the allocation of costs of non-power goods and services to public utilities and other members of the holding company. Clearly, if one or more of the public utility members of the holding company seeks to recover their share of the allocated costs in jurisdictional rates, the agreement is a contract affecting rates and may be reviewed by the Commission insofar as it pertains to jurisdictional rates.

150. We also disagree with Entergy’s argument that, if the Commission were to require cost-allocation agreements affecting jurisdictional rates to be filed, this would be inconsistent with section 1275(b) of PUHCA 2005, which allows holding company systems or state commissions to obtain a Commission determination of appropriate cost allocations under such agreements. While the Commission has discretion under section 205(c) of the FPA to require contracts affecting jurisdictional rates to be filed (i.e., contracts affecting rates are to be filed within such time and in such form as the Commission may prescribe),\textsuperscript{146} and may on its own change cost allocations to jurisdictional companies that seek recovery of the costs in jurisdictional rates, we interpret section 1275(b) to require the Commission to make a cost-allocation determination if one is sought by the holding company system or the state commission.

151. The Commission will not mandate the blanket filing of cost-allocation agreements governing the costs of non-power goods and services purchased by jurisdictional public utilities from affiliated service companies under section 1275(b) of EPAct 2005. As discussed above, although we have the authority to require the filing of cost-allocation agreements pursuant to our ratemaking authority under sections 4 and 5 of the NGA and sections 205 and 206 of the FPA, we do not find it necessary to do so in light of the requirement that traditional, centralized service companies (i.e., service companies that are not special-purpose companies such as a fuel supply company or a construction company) file relevant cost-allocation information on FERC Form No. 60. FERC Form No. 60 is a less burdensome method for collecting this information from service companies. Furthermore, where appropriate, we will rely on our ratemaking authority to examine these agreements or require them to be filed on an as-needed basis to determine whether the regulated utility’s purchases of non-power goods and services were prudently incurred and just and reasonable.

152. We agree with the numerous commenters who express a desire to protect captive customers from inflated affiliate transactions. However, imposing a blanket requirement to file each cost-allocation agreement for non-power goods and services is not necessary to fulfill our jurisdictional responsibilities. Instead, we believe that the review of cost-allocation information contained in FERC Form No. 60 submissions by traditional, centralized service companies, review of service agreements and other information in the context of rate proceedings, and/or review of cost information through the audit function provide sufficient protection for customers.

b. Inclusion of Natural Gas Companies Under Section 1275(b)

153. In the NOPR, we also noted that section 1275(b) provides that holding companies and state commissions may under certain circumstances require Commission review and authorization of cost allocations for non-power goods or services provided by service companies to public utilities, but it does not provide for such determinations where such non-power goods and services are provided to gas utility companies and natural gas companies. We invited comments as to whether the Commission should recommend an amendment clarifying that holding company systems and state commissions having jurisdiction over gas utility companies and natural gas companies in the holding company systems are included within the scope of section 1275(b).

Comments

154. Commenters were generally supportive of the Commission’s proposal in this regard. Dominion and EEI state that such a clarification would be appropriate with respect to holding companies with combined electric utility company and gas utility company systems because cost allocations in those systems will affect both types of companies and the inclusion of both in section 1275(b) would help ensure that a consistent approach is applied throughout the system.\textsuperscript{147} NARUC also supports the proposal, arguing that, since gas utility companies and natural gas companies are included in most of the other provisions of PUHCA 2005, their omission from section 1275(b) impacts the Commission’s ability to prevent the cross-subsidization of affiliates of public utilities and natural gas companies, as well as effectively eliminating the prior review of the allocation of service company costs upon the result of state commissions and holding company systems to public utilities.\textsuperscript{148} In addition, NARUC recommends that gas-related agreements be filed with the Commission and that the Commission institute procedures for periodic audits, as discussed above in reference to the electric context.\textsuperscript{149}

155. Duke opposes the inclusion of natural gas companies under section 1275(b) because, unlike public utilities, natural gas companies are not subject to the ratemaking authority of state regulatory commissions, and therefore are not in danger of incurring trapped or otherwise unrecoverable costs as a result of conflicting state commission decisions.\textsuperscript{150}

Commission Determination

156. In the report to Congress mandated by section 1272(2) of EPAct 2005, we intend to request that Congress clarify whether it intended section 1275(b) to include natural gas companies and, if so, to adopt a conforming amendment. As EEI and

\textsuperscript{144} Dominion Comments at 19–20, EEI Comments at 25–26. See also Alliant Comments at 6, Ameren Comments at 15, Scottish Power Comments at 9.

\textsuperscript{145} Coral Power/Shell WindEnergy Comments at 12.


\textsuperscript{147} Dominion Comments at 19–20, EEI Comments at 26. See also Ameren Comments at 16, Energy Comments at 24–25, Energy East Comments at 12, Keyspan Comments at 5, NASUCA Comments at 3, Northeast Utilities Comments at 6, Oklahoma Corporation Commission Comments at 5.

\textsuperscript{148} NARUC Comments at 9–10. See also IURC Comments at 9–10, Ohio PUC Comments at 3–4.

\textsuperscript{149} Id. at 10.

\textsuperscript{150} Duke Comments at 5. See also NiSource Comments at 9.
Dominion note, many holding company systems include both electric and natural gas companies, utilities, affiliates, and subsidiaries. Maintaining a consistent standard would add to transparency and reduce confusion.

c. Adoption of the SEC “At Cost” Standard

157. The SEC and state commissions previously have been primarily responsible for determining allocations of costs for non-power goods and services among the various associate companies in registered holding company systems, and these allocations have been made on an “at cost” basis. By contrast, the Commission’s long-standing policy is that registered holding company special-purpose subsidiaries must provide non-power goods and services to a public utility regulated by the Commission at a price no higher than market. For at least a decade, we have imposed this standard as a condition for approval of mergers that result in the creation of a new registered holding company.154 We invited comments as to whether the Commission should apply the market standard for the allocation of costs for non-power goods and services, or if we should instead adopt the SEC at cost standard.

Comments

158. The comments as to whether the Commission should adopt the SEC’s “at cost” standard were mixed, with a number of entities expressing general support for a lower of cost or market standard.152 APPA/NRECA argue that, first, with respect to purchases of goods and services by the public utility from a non-utility affiliate, a public utility should not pay to a non-utility affiliate a price exceeding what the public utility would have incurred had the public utility self-provided the service or purchased it prudently from an unaffiliated third party; similarly, if the affiliate can produce the good or service at a below-market price, presumably so the public utility. APPA/NRECA assert that the pricing rule that supports these principles is the Commission’s market standard.153 Second, with respect to the sale of goods and services by the public utility to the non-utility affiliate, APPA/NRECA contend that the price to the non-utility affiliate should be at no less than cost. According to APPA/NRECA, this rule follows from the public utility’s obligation to minimize its revenue requirement, and a standard of no less than cost removes any incentive for a public utility to “over acquire” resources and provide them at a price below cost to a non-utility affiliate.154 Finally, with respect to public utility provision of financial support to affiliated non-utility ventures, APPA/NRECA note that section 12(c) of PUHCA 1935 prohibited a registered holding company from receiving any such benefit from a public utility subsidiary or any other subsidiary and urges the Commission to continue this prohibition.155

159. APPA/NRECA note that the argument made for service companies is the efficiency of centralization, but argue that the use of such companies can do damage to auditability. The damage arises from the holding company practice, endorsed by the SEC, of charging service company costs to FERC Account 923—Outside Services. According to APPA/NRECA, what appears on the public utility’s books is not detail about each service company cost, but instead a single large charge representing the public utility’s allocated share of total service company costs. They further argue that the use of the Commission’s “Outside Services” account implies an arm’s-length relationship between the buyer of the outside services and the supplier; but in fact the relationship between service company and public utility is not at arm’s length. APPA/NRECA contend that the solution for this problem would be for the Commission to require an accounting process that treats the public utility operating company incurring these inter-affiliate costs as if the public utility had incurred the costs directly. The public utility would post the charges to the appropriate accounts (making sure to segregate the costs passed through by the service company from the public utility’s own directly incurred costs), thereby facilitating oversight by the Commission and by outside auditors.156

160. NARUC supports a lower of cost or market standard, noting that the NARUC Guidelines state that: “Generally, the price for services, products and the use of assets provided by a non-regulated affiliate to a regulated affiliate should be at the lower of fully allocated cost or prevailing market prices. Under appropriate circumstances, prices could be based on incremental cost, or other pricing mechanisms determined by the regulator.” Although the NARUC Guidelines call for more flexibility than was reflected in the NOPR, NARUC asserts that its position and the Commission’s standard for the allocation of costs for non-power goods and services are consistent.157

161. In their reply comments, Xcel and Progress Energy submit that there are a number of failings to the arguments in favor of the market standard. Xcel states that, first, if the affiliated service company charges for its services at cost, it does not and cannot profit from its activities. Second, the notion that at cost pricing could cause a utility to pay a service company more for services than it would otherwise incur is, as a practical matter, also wrong. Third, the underlying premise of service company formation is that such administrative and general activities can be performed more efficiently and at a less costly rate by a service company on behalf of a utility than a utility could perform the service for itself. Progress Energy contends that, typically, service companies provide administrative services such as tax, accounting, human resources, legal, information technology, finance and shareholder relations, which are materially different from other products or services needed by a utility such as fuel, vehicles, poles, transformers, etc. Specifically, the services provided by a service company are not fungible, and there is no market for such specialized services.158

162. On the other hand, the majority of commentors favor the continued use of the SEC’s at-cost standard. Dominion and EEI argue that the Commission has not demonstrated the need to revise the current standards. They assert that the cost-allocation factors found in registered holding company system service agreements have been worked out in cooperation with both the SEC...
and the relevant state commissions, and that there is no evidence that the application of this standard has led to cross subsidization or other forms of abuse. MidAmerican emphasizes that public utilities have relied on the at-cost standard as the basis for assigning the costs of non-power goods and services and that these costs may be subject to the provisions of an intercompany services agreement which has received state regulatory approval and have proven to work well. In addition, Entergy argues that its existing retail rates are based on the at-cost standard and any changes will disrupt existing agreements and retail rate structures. MBIA Insurance, however, also asserts that many utilities have already committed to using a lower-of-cost or market standard as part of various mergers. It contends that holding companies already applying the lower-of-cost-or-market standard for non-power goods and services should continue meeting this requirement and not disrupt pre-existing arrangements.

Dominion and EEI further argue that there is no need to revise these standards because the Commission can address this issue in ratemaking proceedings. Given the repeal of PUHCA 1935 and section 318 of the FPA, they assert that there is no longer an impediment to the exercise of the Commission’s powers under sections 205 and 206 of the FPA to disallow particular expenditures made at cost that the Commission finds to be imprudent. AEP adds that cost-based standards also have the benefit of being verifiable and easy to audit.

EEI further asserts that a market test can be difficult to apply for highly-specialized goods or services because there is no market for the services supplied by a system service company and, thus, it can be extremely difficult to calculate a market price for such services. None of these difficulties accompany the at-cost standard.

Similarly, MidAmerican argues that, by using cost, the public utility company or affiliate is not required to undertake a potentially lengthy and subjective process to ascertain what a market price would be for the non-power goods or service, which in many instances, such as the allocation of employee labor, is not readily available due to the variation in pay scales across the industry and the country. Moreover, EEI argues that there is a significant danger of under-recovery of costs under the Commission’s market standard where the service company’s cost to provide a service is higher than market. Thus, while the at-cost standard keeps the service company whole, a lower of cost or market standard can lead only to under-recovery and an increase in the regulated utilities’ cost of capital. Finally, Oklahoma Corporation Commission opposes the adoption of the Commission’s market basis because it might impose additional costs on such entities due to potential requirements that companies enter into a competitive bidding processes, hire consultants, enter into special contracts, and use variable pricing structures based on the different services that are provided. Santa Clara responds that the at-cost standard allows the holding company to bill its utility affiliate for the total cost of the non-power goods or services, no matter how unnecessarily high the costs might be. Thus, the holding company has no incentive to minimize its costs.

EEI Comments at 23. See also Cinergy at 21–22, Energy East Comments at 13, Southern Company Services Comments at 4.

EEI Comments at 9. See also Alliant Comments at 5–6, Kvspan Comments at 4, Progress Energy Comments at 3, Southern Company Services Comments at 4.

MidAmerican Comments at 13–14.

Dominion Comments at 9. See also Alliant Comments at 5–6, Kvspan Comments at 4, Progress Energy Comments at 3, Southern Company Services Comments at 4.

EEI Comments at 11. See also Ameren Comments at 23.

MidAmerican Comments at 13.

EEI Comments at 23. See also Ameren Comments at 15, AEP Comments at 6, Duke Energy Comments at 6, Energy East Comments at 13–15, FirstEnergy Comments at 14.

Oklahoma Corporation Commission Comments at 5–6.

Santa Clara Comments at 12.

EEI Comments at 5. See also Cinergy at 23. See also Alliant Energy Corporation (Alliant) Comments at 5–6, Ameren Comments at 6, E.ON/LG&E Energy Comments at 14, Xcel Comments at 6.


EEI Comments at 11. See also Ameren Comments at 23. See also Cinergy at 21–22, Energy East Comments at 13, Southern Company Services Comments at 4.


Oklahoma Corporation Commission Comments at 5–6.

Santa Clara Comments at 12.


EEI Comments at 13. See also Ameren Comments at 5–6, Kvspan Comments at 4, Progress Energy Comments at 3, Southern Company Services Comments at 4.

EEI Comments at 23. See also Ameren Comments at 15, AEP Comments at 6, Duke Energy Comments at 6, Energy East Comments at 13–15, FirstEnergy Comments at 14.

Oklahoma Corporation Commission Comments at 5–6.

Santa Clara Comments at 12.


EEI Comments at 23. See also Ameren Comments at 15, AEP Comments at 6, Duke Energy Comments at 6, Energy East Comments at 13–15, FirstEnergy Comments at 14.

Oklahoma Corporation Commission Comments at 5–6.

Santa Clara Comments at 12.

166 Dominion Comments at 17, EEI Comments at 22–23. See also Cinergy Comments at 21–22, Entergy Comments at 9, E.ON/LG&E Energy Comments at 14, FirstEnergy Comments at 14, Kvspan Comments at 4, Progress Energy Comments at 3, Southern Company Services Comments at 4.

167 Dominion Comments at 13–14.

168 Dominion Comments at 9. See also Alliant Comments at 5–6, Kvspan Comments at 4, Progress Energy Comments at 3, Southern Company Services Comments at 4.

169 MidAmerican Comments at 11.

170 EEI Comments at 23. See also Ameren Comments at 15, AEP Comments at 6, Duke Energy Comments at 6, Energy East Comments at 13–15, FirstEnergy Comments at 14.


172 EEI Comments at 23. See also Black Hills Comments at 4, Energy East Comments at 13, FirstEnergy Comments at 13, NiSource Comments at 13, Northeast Utilities Comments at 5, Southern Company Services Comments at 4.


175 IURC Comments at 11.

176 Energy East Comments at 12.

177 EPSA Comments at 10–11.

178 Dominion Comments at 17, EEI Comments at 22–23. See also Black Hills Comments at 4, Energy East Comments at 13, FirstEnergy Comments at 13, NiSource Comments at 13, Northeast Utilities Comments at 5, Southern Company Services Comments at 4.


180 Energy East Comments at 12.

181 EPSA Comments at 10–11.
Commission Determination 167. As an initial matter, some commenters appear to misconstrue the purposes of the Commission’s request for comments on the use of the SEC’s “at-cost” or “market” standard. Contrary to EPA’s implication that the Commission seeks to approve the formation and corporate structure of companies within a holding company system, this was not the subject of the Commission’s proposal or request for comments. Rather, there are two circumstances in which the “at-cost” or “market” standard may arise in the context of the Commission’s jurisdictional responsibilities. First, the Commission has a responsibility to ensure that the costs of non-power goods and services provided by a traditional, centralized service company to public utilities within the holding company system are just, reasonable, and not unduly discriminatory or preferential. This can arise in the context of a review of the prudence of costs incurred when a public utility seeks to flow through the costs in jurisdictional rates or a general review of the justness and reasonableness of the public utility’s costs. It can arise in the context of an individual public utility within the holding company system or in the appropriate non-discriminatory allocation among multiple public utilities within the same holding company system.177 In reviewing centralized service company cost allocations, the Commission’s focus would be on the costs allocated to the jurisdictional public utilities, whether the jurisdictional public utilities are bearing their fair share of costs vis-à-vis the non-regulated affiliates (i.e., whether the non-regulated affiliates are receiving an undue preference), and whether costs are fairly allocated among public utilities. If the Commission disallowed costs to be allocated to public utilities or changed the allocation among multiple public utilities, this would not directly affect allocations to the non-jurisdictional, non-regulated companies. Our concern and jurisdictional responsibilities relate to how the costs are allocated to and among Commission-jurisdictional companies, not how remaining costs are allocated among the non-regulated affiliates. 168. The second context in which the “at-cost” or “market” standard is likely to arise is when a service company that is a special-purpose company within a holding company (e.g., a fuel supply company or construction company), provides non-power goods or services to one or more public utilities in the same holding company system. The same potential issues arise: Whether the public utility’s costs incurred in purchasing from the affiliate are prudently incurred and just and reasonable, and whether non-regulated affiliates purchasing non-power goods and services from the same special-purpose company are receiving preferential treatment vis-à-vis the public utility. The Commission in this context also, if it found costs were imprudent, unjust and unreasonable, or unduly discriminatory vis-à-vis the public utility, would develop a rate or remedy applicable to the jurisdictional public utility. 169. With these two types of situations in mind—traditional, centralized service companies and service companies that are special-purpose companies—we reach the following conclusions based on the comments. The Commission will not require traditional, centralized service companies currently using the SEC’s at-cost standard to comply with the Commission’s market standard for their sales of non-fuel, non-power goods and services to regulated affiliates. Fundamentally, we agree with commenters such as American Transmission Company and Progress Energy that centralized provision of accounting, human resources, legal, tax and other services benefits ratepayers through increased efficiency and economies of scale. Further, we recognize that it is frequently difficult to define the market value of the specialized services provided by centralized service companies. Accordingly, the Commission will apply a rebuttable presumption that costs incurred under “at cost” pricing of such services are reasonable. However, we will entertain complaints that “at cost” pricing for such services exceeds the market price, but complainants will have the burden of demonstrating that that is the case. 170. We also agree with commenters such as Dominion and EED that the Commission has the power to disallow any expenditures that it finds to be imprudent under sections 205 and 206 of the FPA, and sections 4 and 5 of the NGA. Additionally, the audit function can be used to identify and protect against any cross-subsidization between regulated public utilities and non-regulated affiliates. 171. With respect to non-power goods and services transactions between holding company affiliates other than traditional, centralized service companies, i.e., service companies that are non-regulated, special-purpose affiliates such as a fuel supply company or a construction company, we will continue our prior policies.178 First, with respect to sales from a public utility to a non-regulated, affiliated special-purpose company, we agree with APPA/NRECA that the price should be no less than cost, i.e., the higher of cost or market; otherwise, a public utility could attempt to game the system and forego profits it could otherwise obtain by selling to a non-affiliate, to the benefit of its non-regulated affiliate who receives a good or service at a below-market price. When the situation is reversed, i.e., the non-regulated, affiliated special-purpose company is providing non-power goods and services to the public utility affiliate, the Commission will continue to apply its market standard. The non-regulated, affiliated special-purpose company may not sell to its public utility affiliate at a price above the market price. We believe that such transactions involving such non-regulated, affiliated special-purpose companies pose a greater risk of inappropriate cross-subsidization and adverse effects on jurisdictional rates. 172. APPA/NRECA note that section 12(c) of PUHCA 1935 prohibits a public utility from providing financial support to affiliated non-utility ventures, and they suggest that the Commission continue this prohibition through its regulations. Congress did not reenact this provision of PUHCA 1935 in PUHCA 2005, and, although we believe we have authority under the FPA and NGA to impose such a restriction, we do not believe such a restriction is necessary at this time. 173. We find that APPA/NRECA raise some valid points concerning service company billings and how those amounts should be reflected in the accounts of a public utility company. However, resolution of this issue may have policy implications as well as practical accounting system implementation issues that should be

177 While the Commission would have authority to require pre-approval of non-power goods and services cost allocations to public utilities that want recovery of such costs in Commission-jurisdictional rates, the Commission historically has not taken such an approach, and instead typically reviews such matters at the time the public utility files for rate recovery.
explored more broadly than the record in this proceeding allows. Therefore, we decline to adopt at this time APPA/NRECA’s recommendations on this issue.

174. We disagree with Energy East and EPSA that section 1275 of PUHCA 2005 in any way restricts this Commission’s authority to impose either the market standard or the at-cost standard. By remaining silent on the standard to be employed, Congress has placed the matter squarely within the Commission’s discretion. Contrary to assertions by EPSA and others, the Commission is not exceeding its authority by establishing policies governing the sale or provision of non-power goods and services by a non-regulated company to an affiliated public utility. The standard used affects jurisdictional rates, and the Commission has the authority to establish a standard insofar as it pertains to jurisdictional rates pursuant to its ratemaking authority under sections 205 and 206 of the FPA and section 4 and 5 of the NGA, as well as pursuant to the additional authority to review and authorize cost allocations requested under section 1275 of EPAct 2005.

d. Other Issues Regarding Cost-Allocation Agreements

Comments

175. APPA/NRECA assert that the language of proposed section 366.5(b) could be misinterpreted to mean that a company “organized specifically” for one purpose (say, providing legal services to the system’s utility members) and that later takes on other responsibilities (like providing accounting services to the system’s utility members) can escape review under this section (for example, at the request of a state commission). Such “after-acquired” functions should not preclude Commission review. Similarly, MBIA Insurance contends that, even if the non-utility associate exists primarily for another purpose, such as providing services to companies outside of the system, its intra-system costs to regulated utilities should still be subject to the Commission’s review, if a state or holding company opts for Commission review. To the extent that the Commission believes it may lack the authority to adopt such a regulation, MBIA Insurance urges the Commission to ask Congress to clarify or grant the Commission this authority to protect customers and prevent regulatory gaps.

176. A number of commenters expressed concern about the potential preemptive effect of Commission review of cost-allocation agreements. In order to avoid any preemption issue, NARUC suggests that the filing of such agreements occur under section 304 of the FPA and section 10 of the NGA, instead of under section 205 of the FPA and section 4 of the NGA.

181 Missouri PSC states that a Commission-approved allocation should bind Commission ratemaking but not state ratemaking, except in limited circumstances, and urges the Commission to make clear that a state commission is not preempted by any Commission-determined service cost allocation, whether the initiating entity is a holding company system or another state commission. In addition, Missouri PSC urges the Commission not to interpret section 1275(b) to permit gaming of the state commission retail ratemaking process by holding companies or state commissions, i.e., to permit state commissions or holding companies to petition the Commission to review and authorize a holding company system-wide cost-allocation methodology that would be imposed on all state commissions. Finally, Missouri PSC contends that an interpretation of section 1275(b) giving Commission-approved cost allocations preemptive effect would also be contrary to the clear language contained within section 1275(c), which provides that: “Nothing in this section shall affect the authority of the Commission or a state commission under other applicable law.” Since state commissions have state law authority to set retail rates, including authority to disallow purchase costs or sales prices deemed unreasonable or imprudent, section 1275(c) on its face protects the state commissions from any asserted preemptive effect of a Commission allocation under section 1275(b). By contrast, Xcel and NiSource contend that any Commission-approved cost allocations under section 1275 will necessarily preempt state determinations. Xcel argues that it would negate the intent of Congress to give the Commission the authority to review these allocations if state commissions could undertake their own cost allocations and urges the Commission to avoid any kind of actions or statements that would support the argument that the preemptive effect of section 1275 is dependent on the form of filing of service agreements with the Commission.

184 NiSource states that it fails to see how the Commission can approve service company cost allocations that will apply to entities across multiple states if one of these state commissions can then simply refuse to accept the Commission’s cost allocation as binding. For this reason, NiSource requests that the Commission needs to provide certainty in the final rule that a Commission-approved cost allocation is binding on the states.

178. Dominion and EEI contend that the primary situation in which the Commission would need to impose a specific methodology would be a situation in which a multi-state holding company system finds that all state commissions do not approve a single allocation agreement. In such cases, the multi-state holding company system would apply to the Commission to impose consistent requirements that would eliminate the possibility of trapped costs.

Commission Determination

179. In response to APPA/NRECA’s concerns regarding the “organized specifically” language, we clarify that we do not interpret this to allow a cost allocation to escape review if the associate company later takes on additional responsibilities. In response to the comments from MBIA Insurance, the Commission has authority to review any intra-system costs to any jurisdictional company under FPA and NGA authority.

180. In response to the requests for clarification of the potential preemptive effect of section 1264 and the Commission’s regulations thereunder, we believe that issues related to preemption are more appropriately addressed on a case-by-case basis to give the Commission the opportunity to consider the potential preemptive effect of section 1264 in specific circumstances. However, we anticipate that such issues would arise only in unusual circumstances.

5. Single-State Holding Company Systems and Other Classes of Transactions

181. Section 1275(d) of EPAct 2005 directs the Commission to issue rules no later than four months after the date of enactment of EPAct 2005 to exempt from the requirements of section 1275 (service allocation requests by holding

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179 APPA/NRECA Comments at 8. See also Missouri PSC at 9.
180 MBIA Insurance Comments at 18.
181 NARUC Comments at 2.
182 Missouri PSC Comments at 9.
183 Id. at 11–12. See also Progress Energy Comments at 9.
184 Xcel Reply Comments at 5–6.
185 NiSource Reply Comments at 7.
186 Dominion Comments at 18–19, EEI Comments at 25–26.
company systems or state commission) “any company in a holding company system whose public utility operations are confined substantially to a single state” and any other class of transactions that the Commission finds are not relevant to the jurisdictional rates of a public utility. We interpreted this to exempt single-state holding companies and sought comments on how the Commission should define “confined substantially to a single state.”

182. While section 1275(d) states that companies in single-state holding company systems are exempt from the “requirements” of section 1275, section 1275 does not impose any requirements on holding company systems or companies within these systems, but rather grants holding company systems and relevant state commissions the right to obtain Commission review and authorization of cost allocations. Instead, the only requirements in section 1275 are directed toward the Commission, in particular that “the Commission shall review and authorize” cost allocations if asked to do so by the holding company system or the relevant state commission. Based on the structure of section 1275, we suggested that the most reasonable interpretation of the exemption in section 1275(d) is that Congress intended to deny single-state holding company systems and state commissions having jurisdiction over a public utility in such systems the right to obtain Commission review of cost allocations pursuant to section 1275. Accordingly, we proposed to reflect this limitation by excluding single-state holding company systems from the scope of Commission review under section 366.5(b) of the Commission’s regulations.

183. Some commenters agree with the Commission’s interpretation that section 1275(d) exempts single-state holding company systems whose public utility operations are confined substantially to a single state (i.e., all of the holding companies’ public utility affiliates or subsidiaries operate principally in a single state), whereas other commenters (as discussed below) interpret the exemption to apply only to individual “companies” within the holding company system, i.e., where the individual public utility, operating primarily in a single state.

184. A number of commenters who agree with the Commission’s interpretation also suggest various modifications to the scope of the single-state holding company exemption and propose definitions of the phrase “confined substantially to a single state.” EEI suggests that the Commission follow SEC practice and precedent in interpreting this exemption, in particular, section 3(a)(1) of PUHCA 1935 which provides an exemption for intrastate holding companies. According to EEI, under current SEC practice, a holding company will qualify for the intrastate exemption if it derives no more than approximately 13 percent of its utility revenues from out-of-state public utility company operations. EEI further suggests that, in administering this exemption, the Commission should follow current SEC practice and require the annual submission of information in Part 3 of Form U–3A–2 by companies seeking an exemption under section 1275(d). Scottish Power also agrees that Congress intended to deny single-state holding company systems and relevant state commissions the right to obtain Commission review of cost allocations pursuant to section 1275 and urges the Commission to clearly reflect this limitation by excluding single-state holding company systems from the scope of Commission review under section 366.5(b) of the Commission’s regulations.

185. NARUC submits that the exemption should apply to any company in a holding company system whose public utility operations are confined substantially to a single state, rather than applying the exemption to the holding company system as a whole. Thus, the relevant inquiry should involve an analysis of the extent to which the individual company operates in a single state rather than the extent to which the holding company system is predominately single-state in nature. NARUC further asserts that the Commission should follow the SEC’s interpretation of this single-state holding company exemption under PUHCA 1935. Consistent with this precedent, NARUC proposes that, if a company in a holding company system whose public utility operations derive 70 percent or more of its gross utility operating revenues from within a single state, that individual company should be considered exempt from section 1275 and any related Commission regulations.

186. Commenters also suggested revisions to the Commission’s proposed regulatory text in section 366.5. NiSource notes that the current language can be read so that a holding company with operations in multiple states falls under section 1275(b) even if its public utility is confined substantially (or entirely) to a single state. NiSource urges the Commission to modify the first sentence in section 366.5(c) to read that “any company in a holding company system whose public utility operations are confined substantially to a single state, as defined herein, is exempt from paragraph (b) of this section.” Santa Clara and TANC state that, in light of the complexities of effective state oversight and regulations of holding companies, the Commission should interpret the definition of single-state strictly and narrowly to prevent creeping variations from the letter and spirit of the exemption, and avoid a gap in effective regulation of multi-state utility holding company systems. Santa Clara and TANC therefore urge the Commission to reevaluate its interpretation of the single-state holding company exemption from Commission review under section 1275. Ameren argues that the focus of the term “confined substantially to a single state” should be on the state or states in which a holding company system is subject to retail rate regulation since there are no “captive” customers who could be harmed in a state where the public utility does not have cost-based rates. Finally, Public Citizen contends that the single-state exemption requires that both a public utility and its holding company operations be entirely confined to a single state.”

187 EEI Comments at 27–28. See also MidAmerican Comments at 11.
188 Scottish Power Comments at 11.
189 NARUC Comments at 12–13.
190 NiSource Comments at 9.
191 Id. See also KEN/LG&E Energy Comments at 18–19 (the standard should be whether 80 percent or more of the retail customers served by the public utilities in the holding company system are located within a single state).
193 Ameren Comments at 18.
company primarily operate in a single state, so that the state is capable of regulating the holding company, as well as the public utility, under state law.\textsuperscript{195}

**Commission Determination**

187. Despite the ambiguous language of section 1275(d), we believe that the most reasonable interpretation of section 1275(b) and (d) together is that section 1275(b) is designed to offer this Commission as a forum for holding company systems and state commissions to obtain cost allocations within holding companies whose public utility operations are not confined substantially to a single state. Specifically, section 1275(b) is designed to allow multi-state holding companies, or the regulatory agencies of states in which the holding company’s public utility subsidiaries operate, to obtain Commission review and authorization of cost allocations. However, Congress in section 1275(d) does not permit single-state holding companies to take advantage of the procedures in section 1275(b).\textsuperscript{196} This means that, if a holding company has several public utility subsidiaries operating in different states, even if the individual subsidiaries’ businesses are each confined substantially to a single state, the holding company itself does not confine its public utility operations to a single state, and therefore, the exemption does not apply. On the other hand, if the holding company has multiple non-utility subsidiaries operating in more than one state, but one or more public utility subsidiaries that all operate primarily in the same state, the exemption would apply.

188. Several commenters agree that a holding company should be considered to be a single-state holding company if it complies with current SEC practice on granting a similar exemption under PUHCA 1935, which requires that a certain percentage of public-utility revenues be derived from operations within a single state. We believe it is reasonable to adopt a standard that is consistent with SEC rules and will define a single-state holding company as one that does not derive more than 13 percent of its public-utility revenues from outside a single state.

189. We agree with several commenters that the relevant analysis should be whether a holding company’s regulated public utility operations are confined substantially to a single state, not whether the holding company itself is confined substantially to a single state. As discussed above, we interpret the single-state holding company exemption in section 1275(d) to apply in cases where a holding company has multiple non-utility subsidiaries operating in more than one state, but one public utility subsidiary that operates primarily in a single state. In such a case, the holding companies’ public utility operations would be subject to the jurisdiction of a single state commission, while the holding companies’ operations would not. Accordingly, we find that Public Citizen’s interpretation is inconsistent with the text of section 1275(d).

**b. Other Classes of Transactions That Should Be Exempted**

190. In the NOPR, we concluded that an exemption under section 1275(d) forecloses Commission review under section 1275(b). In section 366.5(c) of the Commission’s regulations, we proposed to establish a procedure by which the Commission, either upon petition for declaratory order or upon its own motion, may exclude from the scope of Commission review and authorization under section 1275(d), any class of transactions that we determine are not relevant to the jurisdictional rates of a public utility. The Commission invited comments as to other classes of transactions that, pursuant to section 1275(d), should be exempted from the requirements of section 1275.

**Comments**

191. No comments were received on this subject. Accordingly, we will not at this time establish any blanket exemptions for certain classes of transactions.

6. Previously Authorized Activities

192. Section 1271 of EPAct 2005 states essentially that a person may continue to engage in activities or transactions authorized by rule or order as of the date of enactment of EPAct 2005 if that person continues to comply with the terms of the authorization. In the NOPR, the Commission proposed to reflect this statutory provision in section 366.6 of the Commission’s regulations. The Commission also proposed to require that, if any such activities are challenged in a formal Commission proceeding, the person claiming prior authorization shall be required to

provide 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).

193. A number of commenters have noted that proposed section 366.6 states that persons will be able to continue to engage in activities or transactions authorized under PUHCA 2005, and that it should instead refer to PUHCA 1935. In response to the comments, we have corrected this error in the regulations adopted here.

**Comments**

194. The majority of the comments supported the Commission’s proposal to allow entities to rely on SEC orders, in particular, SEC financing authorizations.\textsuperscript{197} For example, Dominion and EEI note that, with the repeal of section 318 of the FPA, many additional public utilities will become subject to Commission jurisdiction under section 204 and that, unless registered holding company public utility subsidiaries can rely on their current SEC orders, it will be necessary for them to apply immediately for Commission authorization under section 204 of the FPA. According to Dominion and EEI, this would create a substantial burden for the holding companies and their public utility subsidiaries and could also lead to a surge in section 204 applications at precisely the time that the Commission is burdened with implementing its new duties under EPAct 2005. Dominion and EEI thus recommend that the Commission in its rulemaking make a finding under section 204 of the FPA authorizing holding company public utility subsidiaries, at their option, to issue securities and assume liabilities following the effective date of PUHCA 2005, provided that they comply with the terms of their SEC financing authorization. Dominion and EEI further recommend that this authorization continue through the later of December 31, 2007 or the date on which the SEC order is set to expire.\textsuperscript{198}

195. EEI further suggests that, to the degree it deems necessary, the Commission could condition its acceptance of SEC financing authorizations on specific requirements related to the provisions of FPA section 204, such as the restrictions on secured and unsecured debt set forth in Westar

\textsuperscript{195} Public Citizen Comments at 13.

\textsuperscript{196} With respect to NARUC’s alternative interpretation of the scope of this exemption, we note that the phrase “whose public utility operations are confined substantially to a single state” directly follows, and thus modifies, “holding company system” rather than “company.” This interpretation is consistent with the structure of section 1275(b) which provides the election to the holding company system, rather than individual companies within it.

\textsuperscript{197} See, e.g., Cinergy Comments at 25–27, FirstEnergy Comments at 16–17, National Grid Comments at 7–8, Scottish Power Comments at 12, Xcel Comments at 6.

\textsuperscript{198} Dominion Comments at 20–21, EEI Comments at 29–30.
Energy, Inc.\textsuperscript{199} However, if the Westar or other conditions are imposed, EEI contends that they should apply prospectively only and not to securities issued prior to February 8, 2006.\textsuperscript{200}

196. Entergy supports the Commission’s proposed interpretation of the savings provision in section 1271, but asserts that there are several technical concerns regarding the manner in which the proposed rule is drafted that, if not corrected, may prevent the rule from achieving its intended purpose. Entergy urges the Commission to clarify the condition in the proposed rules insofar as it provides authority to continue to engage in “activities or transactions” approved by the SEC “[u]nless, otherwise provided” by Commission rule or order. Entergy inquires if, for example, a Commission section 204 financing order imposes a condition that is not present in an existing SEC financing order issued to another public utility under PUHCA 1935, can the other public utility continue to rely on its PUHCA 1935 order or is the applicability of the saving provision negated by the referenced condition? Similarly, Entergy asserts that there may be a question whether the “unless otherwise provided language” will necessitate compliance with the requirements of Part 34 of the Commission’s regulations or other regulatory conditions or requirements adopted by the Commission, to the extent that such requirements are absent from an existing PUHCA 1935 financing order (which otherwise would continue in effect beyond the PUHCA 1935 repeal date as a result of the saving provision).\textsuperscript{201}

197. Entergy also seeks clarification as to the statement in the NOPR that existing PUHCA 1935 authorizations are to remain “in effect for the period of time provided in such authorization” with respect to authorizations that do not contain a specified expiration date, in particular, orders authorizing creation of service companies, which typically do not reference any expiration date. Entergy recommends that authorizations granted by the SEC under PUHCA 1935 should remain in effect after repeal, unless and until such time as such authorization would otherwise expire under the applicable PUHCA 1935 order, rule or statutory provision, or until such time as the Commission issues a new order expressly modifying the authorization previously granted to the applicable company by the SEC under PUHCA 1935.\textsuperscript{202}

198. Finally, Entergy requests clarification of the statement in the NOPR that such authorizations will remain effective only “so long as that person continues to comply with the terms of such authorization.” According to Entergy, many orders issued by the SEC require periodic reporting to the SEC of financing transactions that are consummated pursuant to the authorization set forth in the order, so the question arises as to whether such reporting requirements will be considered “terms” of the PUHCA 1935 authorization that must be satisfied in order to continue to engage in the SEC-approved financing transactions subsequent to the February 8, 2006. Entergy requests that the Commission clarify that following February 8, 2006, such reports (originally required to be filed with the SEC pursuant to Rule 24, adopted under PUHCA 1935) are to be filed with the Commission, rather than with the SEC.\textsuperscript{199}

PacifiCorp requests that the Commission clarify that SEC financing authorizations will be preserved for a sufficient period of time to permit a reasonable transition period (through December 31, 2007) to the requirements of section 204 for both utilities and the Commission. PacifiCorp further requests that the Commission provide a mechanism for such further approvals until February 8, 2006, and to preserve tax treatment by retaining the right of holding companies to avail themselves of Internal Revenue Code section 1081, which section 1271 also preserves.\textsuperscript{204}

200. MGTCT requests that the Commission clarify that prior status determinations by the SEC remain valid and are grandfathered by the operation of section 1271, so that, for example, if a person was declared not to be a “gas utility company” by the SEC, and the facts on which that determination was made have not materially changed, that person will not be a “natural gas company” under PUHCA 2005 and implementing regulations. MGTCT further contends that, if the Commission is not willing at this time to issue a broad declaration that prior SEC status determinations are grandfathered by section 1271, the Commission should nonetheless hold that a person that the SEC found was not a “gas utility company” under PUHCA 1935 will not be required to comply with the Commission’s new regulations until the Commission makes an affirmative finding that the person is a “natural gas utility” under PUHCA 2005.\textsuperscript{205}

201. Northeast Utilities Service Company (Northeast Utilities) notes that some registered holding companies may have obtained amendments to existing SEC orders or new orders after August 8, 2005, i.e., date of enactment of EPAct 2005, and thus urges the Commission to make clear that such modified and/or new orders should also be grandfathered, if possible.\textsuperscript{206}

202. Some commenters, however, emphasized that section 1271 of EPAct 2005 does not insulate activities previously approved by the SEC from Commission review under the FPA or NGA.\textsuperscript{207} According to APPA/NRECA, the savings provision in section 1271(a) of EPAct 2005, which allows entities with SEC approvals to continue engaging in the transactions so approved, does not diminish the Commission’s authority to establish conditions that ensure just and reasonable rates under the FPA or NGA.\textsuperscript{208} APPA/NRECA further emphasize that any interpretation of section 1271(a) that would limit the Commission’s ability to review the effect of particular activities or transactions on Commission-jurisdictional rates would be inconsistent with section 1271(b), which makes clear that section 1271(a) does not circumscribe in any way the Commission’s regulatory authority under the FPA and the NGA.\textsuperscript{209} Similarly, Santa Clara notes that it might be argued that a conflict between section 1271(a) and 1271(b) arises when SEC rules under PUHCA 1935 require different or less rigorous standards than the Commission’s rules under the FPA, e.g. SEC at-cost standard vs. the Commission’s market standard. Santa Clara urges the Commission to clarify that all activities, including those previously authorized by the SEC and the Commission itself, are subject to review, rules, regulations and policy administered independently by the Commission under the FPA.\textsuperscript{210}

203. Finally, Oklahoma Corporation Commission suggests that the Commission should amend proposed section 366.6 to include language that clearly articulates that said person or

\textsuperscript{199} 102 FERC ¶ 61,186 (2003), order rescinding authorization. 104 FERC ¶ 61,018 (Westar).

\textsuperscript{200} EEI Comments at 30.

\textsuperscript{201} Entergy Comments at 12–13.

\textsuperscript{202} Id. at 13–14.

\textsuperscript{203} Id. See also NiSource Comments at 14–15 (the Commission should clarify that only the SEC’s conditions and terms apply, unless the Commission states otherwise in a specific order).

\textsuperscript{204} PacifiCorp Comments at 7–8.

\textsuperscript{205} MGTCT Reply Comments at 1, 4. See also Mittal Steel Reply Comments at 2–5.

\textsuperscript{206} Northeast Utilities Comments at 6.

\textsuperscript{207} See, e.g., Arkansas PSC Comments at 7, Missouri PSC Comments at 14–15.

\textsuperscript{208} APPA/NRECA Comments at 4. See also Santa Clara Comments at 17, TANC Comments at 17.

\textsuperscript{209} Id. at 13–14.

\textsuperscript{210} Santa Clara Comments at 18–19.
entity should also bear the burden of proof that that person or entity has complied with the rule, order, or letter.\textsuperscript{211}

Commission Determination

204. In the NOPR, we noted that the repeal of PUHCA 1935 and section 318 of the FPA would give the Commission jurisdiction under section 204 of the FPA over certain issuances of securities and assumptions of liabilities by companies within holding company systems that are currently subject to the jurisdiction of the SEC. Furthermore, Congress expanded the Commission’s jurisdiction over holding company acquisitions of securities through its amendments to section 203 of the FPA in section 1289 of EPAct 2005. Finally, Congress explicitly stated in section 1271(b) that nothing in PUHCA 2005 limits the Commission’s authority under the FPA and the NGA. Thus, it is clear that in EPAct 2005 Congress intended to preserve, and in some ways expand, the Commission’s authority over issuances of securities, assumptions of liabilities by companies within holding company systems, and holding company acquisitions of securities. However, Congress also included in PUHCA 2005 a transition provision, which allows persons to continue to rely on previously-authorized SEC authorizations.

205. We will adopt section 366.6 as proposed in the NOPR and allow entities to continue to rely on SEC orders, including SEC financing authorizations. We will also grant a number of the clarifications with respect to SEC financing authorizations requested by commenters. However, the Commission will require all holding companies that intend to rely on their SEC financing authorizations to issue securities, assume liabilities, or engage in securities transactions that would otherwise be reportable under section 203 of the FPA, as amended by EPAct 2005, or section 204 of the FPA to file with the Commission a copy of these SEC orders by the effective date of PUHCA 2005. The filing of these orders will permit the Commission to maintain effective oversight of the previously-authorized activities and transactions that, due to the repeal of PUHCA 1935, are now subject to the Commission’s jurisdiction under the FPA.

206. Section 1271(a) states that nothing in PUHCA 2005 or PUHCA 1935 and the rules, regulations, and orders thereunder, prohibits a person from engaging in or continuing to engage in activities or transactions in which it is legally engaged or authorized to engage on the date of enactment of PUHCA 2005, if that person continues to comply with the terms (other than an expiration date or termination date) of any such authorization. This provision, and section 366.6 of our regulations that we adopt herein, permit persons to rely on the SEC multi-year financing authorizations for the period of time provided in that authorization. Accordingly, we clarify that, to the extent companies in a holding company system engage in authorized financing transactions, in compliance with the terms of that authorization, we will not require those entities to seek additional authorization under sections 203 or 204 at this time.

207. We find that EEI’s concerns regarding Westar are beyond the scope of this rulemaking and, therefore, we will not address them here. Instead, the Commission will consider whether to place Westar conditions upon future applications on a case-by-case basis.

208. Section 1271(a) permits a person to engage in previously-authorized activities if that person continues to comply with the terms of that authorization, other than an expiration date or termination date. We agree that it is necessary to provide a reasonable transition period for entities subject to the requirements of PUHCA 2005 and, therefore, we agree with Dominion and EEI that these authorizations should continue through the later of December 31, 2007 or the date on which the SEC order is set to expire and with PacifiCorp that the Commission’s authorization should not be required until December 31, 2007, without regard to the duration of the SEC authorization. We conclude that it is reasonable to permit entities to rely on their SEC financing authorizations for the period of their duration or through December 31, 2007, whichever is later. Similarly, with respect to Entergy’s request for clarification regarding authorizations for the formation of service companies, which do not have a termination date, we conclude that PUHCA 2005 does not grant the Commission authority over service company formation and thus Commission authorization is not required.

209. We will also grant Entergy’s clarification that, after the effective date of PUHCA 2005 (i.e., February 8, 2006), for SEC orders that require periodic reporting to the SEC of financing transactions that are consummated pursuant to the authorization set forth in the order, such reports are to be filed with the Commission rather than with the SEC, so long as the company continues to rely on such authorization. We do not think it is reasonable to assume that Congress intended to carry forward the SEC’s financing authorizations without the specific reports required to be submitted as a condition of those authorizations. More importantly, the receipt of such reports will allow the Commission to perform its oversight duties, while allowing the entities to continue to rely on these SEC financing authorizations for a reasonable transition period.

210. PacifiCorp appears to be requesting that the Commission grant further financing approvals under PUHCA 1935 until February 8, 2006, since it could not do so under PUHCA 2005, which does not take effect before that date. While the Commission has no authority to take any action under PUHCA 1935, which was entrusted to the SEC, to the extent necessary to permit continuity of financing authorizations or to preserve tax treatment referenced in section 1271(c) of PUHCA 2005,\textsuperscript{212} the Commission will entertain requests for financing approvals prior to February 8, 2006, but will be able to make any such approvals effective only upon the effective date of PUHCA 2005, February 8, 2006.

211. As noted, section 1271(c) explicitly states that tax treatment under section 1081 of the Internal Revenue Code of 1986 as a result of transactions ordered in compliance with PUHCA 1935 shall not be affected in any manner due to the repeal of PUHCA 1935 and the enactment of PUHCA 2005, and we will comply with this provision insofar as such tax treatment is reflected in jurisdictional rates or in the Commission’s Uniform System of Accounts and the SEC’s Uniform System of Accounts, as they exist on the day before the date of enactment of PUHCA 2005.

212. We will also grant Northeast Utilities’ request that section 1271 will apply to modifications of SEC orders made between the date of enactment and the effective date of PUHCA 2005.

213. We will also grant the clarification requested by APPA/NRECA and others that transactions entered into pursuant to prior SEC authorizations are not insulated from Commission review under the FPA and the NGA. Previously, certain securities transactions were exempted from Commission jurisdiction due to section 318 of the FPA, which Congress has repealed. While we agree that section 1271(a) permits companies within

\textsuperscript{211} Oklahoma Corporation Commission Comments at 7.

\textsuperscript{212} Section 1271(c) of PUHCA 2005 states that such tax treatment shall not be affected in any manner due to the repeal of PUHCA 1935 and enactment of PUHCA 2005.
holding company systems to continue to rely on SEC financing authorizations. This authorization simply permits them to engage in such transactions without prior Commission approval under sections 203 and 204 of the FPA, but does not insulate them from our review of jurisdictional rates under sections 205 and 206 of the FPA and sections 4 and 5 of the NGA.

214. We will not adopt Oklahoma Corporation Commission’s suggestion that we amend section 366.6 to include language that clearly articulates that said person or entity should also bear the burden of proof that that person or entity has complied with the rule, order, or letter. We find that such an amendment is unnecessary at this time.

7. Exempt Wholesale Generators and Foreign Utility Companies

215. EPAct 2005 repeals PUHCA 1935 in its entirety, including section 32, which requires the Commission to make EWG determinations on a case-by-case basis, upon application. Although the definitional section of PUHCA 2005 references section 32 of PUHCA 1935, the Congress nevertheless repealed section 32 in its entirety and did not re-enact that provision in the new PUHCA 2005. The Commission stated in the NOPR that it believed that the most reasonable interpretation of EPAct 2005, given the omission of section 32 in the new PUHCA 2005, is that Congress did not intend the Commission to continue to make case-by-case determinations of EWG status in the future (i.e., after the effective date of PUHCA 2005). Rather, we stated in the NOPR that the most reasonable interpretation of the statute is that only those entities that are holding companies with respect to persons granted EWG status before the repeal of PUHCA 1935 would qualify for an exemption from the new federal books and records access requirements under proposed section 366.3(a)(2) of the Commission’s regulations. Accordingly, we proposed to remove Part 365 of the Commission’s regulations, which set forth the filing requirements and ministerial procedures for persons seeking EWG status under section 32 of PUHCA 1935, and we invited comments on whether we should do so.

216. We further noted that the benefit of EWG status under PUHCA 1935 was that entities that the Commission determined to have met the definition of EWG were exempted from the myriad requirements of PUHCA 1935. The principal benefit of being an EWG under PUHCA 1935 was to make determinations from the new federal books and records access requirements. To the extent that these new federal books and records access requirements add to the Commission’s existing very broad books and records access authority under FPA section 301 and NGA section 8, we concluded that our interpretation served to err on the side of greater customer protection.

217. We also noted that, in any event, entities that qualified as EWGs under PUHCA 1935 were not exempted from the Commission’s authority under the FPA if they met the FPA definition of “public utility,” including the very broad access to books and records provisions of FPA section 301. Nor will they be exempt from these FPA provisions as a result of PUHCA 2005.

218. In addition, we noted that Congress repealed section 33 of PUHCA 1935, which addresses FUCOs. As with EWGs, we stated our belief that Congress intended to limit the exemption for persons that are holding companies with respect to FUCOs to those attaining FUCO status before repeal of PUHCA 1935. The Commission invited comments as to this interpretation of EPAct 2005.

Comments

219. Some commenters expressed support for the Commission’s decision to no longer make determinations of EWG status. These commenters note that, while Congress repealed the section of PUHCA 1935 addressing EWGs, the exemption in subsection 1266(a)(2) refers to these repealed designations, they have to apply to something, and they agree with the Commission’s position that the exemptions must apply only to the existing EWGs and FUCOs.213 Public Citizen agrees that grandfathered EWGs have a reliance argument for maintaining their status, but disagrees with extending such grandfathering to new entities that are now aware that the distinction no longer exists. Furthermore, Public Citizen states that grandfathered EWGs must continue to comply with EWG requirements to maintain their grandfathered EWG status and that they should be required to make an annual filing with the Commission stating how each continues to comply with the original terms of its EWG or FUCO exemptions.214

220. The majority of commenters, however, opposed the Commission’s proposal to stop making determinations of EWG status as contrary to Congress’ intent and the plain meaning of the statute.215 According to Calpine, by incorporating the definition of EWG into PUHCA 2005 and relying on that definition to permit holding companies with respect to only EWGs, QFs, and/or FUCOs to be exempt from the federal books and records access requirement, Congress recognized the continuing need for EWG determinations after the repeal of PUHCA 1935 takes effect; nowhere in EPAct 2005 is the exemption limited to holding companies with EWGs prior to the repeal of PUHCA 1935 takes effect. Calpine thus contends that, if Congress wanted to restrict EWG determinations to a certain time period, it knew how to do so, but chose not to.216 Similarly, Dominion and EEI argue that, by preserving the meaning of the term “exempt wholesale generator” found in PUHCA 1935, Congress in essence preserved section 32(a) of PUHCA 1935, which defines an EWG, in part, as a company that the Commission determines to be an EWG. Thus, according to Dominion and EEI, the Commission’s case-by-case determination process is incorporated directly in the definition.217 Morgan Stanley argues that the Commission’s interpretation effectively renders superfluous the EWG exemption contained in EPAct 2005.218

221. Other commenters believe that the Commission’s interpretation is not a permissible one because the decision to eliminate Part 365 and future EWG determinations would produce unreasonable or unduly discriminatory results. Calpine argues that, under the Commission’s interpretation of the statute, if Calpine added one more wholesale generator that would have been an EWG under Part 365, Calpine and its subsidiaries will lose the exemption and thus it is not reasonable for the addition of one wholesale generator that is identical to Calpine’s EWG affiliates in every respect but one (i.e., EWG status), to result in all of these companies and their affiliates being subject to the books and records access requirements and SEC rules, particularly when these companies were exempt from regulation under PUHCA 1935 and have no captive customers in need of protection.219 Further, Calpine


216 Calpine Comments at 5–6 (quoting section 1253(a) of EPAct 2005 defining “existing qualifying cooperation facility”).

217 Dominion Comments at 22–23, EEI Comments at 32.

218 Morgan Stanley Comments at 7.

219 Calpine Comments at 6. See also Coral Power/Shell WindEnergy Comments at 8.
asserts that the use of proposed section 366.3(b), which would provide for entities to file for a petition for a declaratory order that they are exempt from the Commission's books and records requirements, is not an adequate alternative for Calpine due to the high costs of filing such petitions. Morgan Stanley further argues that comments supporting the Commission's proposed deletion of Part 365 offer no substantive basis for why such a course of action comports with legislative intent, nor do they explain how it will not chill investor confidence or dissuade capital from entering the wholesale generation sector. Finally, Dominion and EEI note that a number of states provide records access requirement and the SEC subject such affiliates to the books and operations of its domestic affiliates to having no potential to impact the sector. Calpine asserts that, by incorporating the definition of FUCO into PUHCA 2005, we conclude that it is reasonable to interpret PUHCA 2005 to allow entities to obtain EWG status under PUHCA 2005. However, we will reject the requests from various commenters that we retain part 365 of our regulations, which permit only case-by-case applications for EWG status. Instead, in line with the comments received from Scottish Power and others, we will establish a self-certification process for companies that believe they satisfy the criteria for EWG or FUCO status. This process is similar to that used for self-certifications for QFs under the Public Utility Regulatory Policies Act of 1978, and is set forth in section 366.7. Section 366.7(a) provides that the owner or operator of an EWG or FUCO, or its representative, may file with the Commission a notice of self-certification demonstrating that it satisfies the definition of EWG or FUCO. In the case of EWGs, the owner or operator must also file a copy of the notice with the state regulatory authority of each state in which the facility is located. Notices of self-certification or self-recertification will be published in the Federal Register. An entity filing a good faith notice of self-certification of EWG or FUCO status will be deemed to have temporary status upon filing. If no action is taken by the Commission within 60 days after the date of filing of a self-certification notice, the exempt wholesale generator status or foreign utility company status shall be deemed to have been granted. The Office of the Secretary will periodically issue notices listing the entities whose self-certification of EWG or FUCO status is deemed to have been granted in the absence of Commission action to the contrary within 60 days after the date of filing. We believe that such a self-certification of EWG and FUCO status will be adequate in the vast majority of cases.

For entities that require a higher degree of legal certainty as to their status, we will permit them to seek a Commission determination of their EWG and FUCO status as defined under section 366.1 of the Commission's regulations. Specifically, section 366.7(b) provides that they may seek such a determination by filing a petition for declaratory order pursuant to Rule 207(a) of the Commission's Rules of Practice and Procedure justifying the request for EWG or FUCO status. These petitions will be noticed in the Federal Register. A person filing a petition for declaratory order in good faith will be deemed to have temporary EWG or FUCO status until the Commission takes action to grant or deny the petition.

The self-certification procedure established herein, along with the continued availability of Commission determinations of EWG and FUCO status, ensures that the EWG and FUCO exemptions will continue to be available to any persons who satisfy the statutory criteria. Moreover, we note that the self-certification procedures established herein, and advocated by various commenters, are less burdensome than the procedures established under section 32 of PUHCA 1935.

We disagree with comments such as Calpine and EEI who argue that Congress, by incorporating the definition of EWGs and FUCOs into PUHCA 2005, carried over the requirement from PUHCA 1935 that the Commission make case-by-case determinations of EWG status. This argument appears to rest on the erroneous assumption that Congress effectively reenacted (only) section 32(a) of PUHCA 1935. Had Congress meant to do so, it could have simply so stated in PUHCA 2005; alternatively, it could have imported the text from section 32(a) of PUHCA 1935, with appropriate modifications, into section 1262(6) of EPAct 2005, as it did for many of the other definitions carried over from PUHCA 1935. Instead, however, Congress directed that “[t]he terms ‘exempt wholesale generator’ and

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220 Id. at 16–11.
221 Morgan Stanley Reply Comments at 2–3.
222 Dominion Comments at 23, EEI Comments at 33.
223 Calpine Comments at 8–9. See also EPISCA Comments at 16–17, PPM Comments at 3.
224 EEI Comments at 34. See also National Grid Comments at 3–9. National Grid also argues that extending the Commission's books and records mandates to FUCOs would subject them to conflicting mandates resulting in maintaining separate duplicate books and improperly expand the extraterritorial impact of PUHCA 2005 without any benefit to U.S. consumers.
225 Scottish Power Comments at 14. See also EEI Comments at 34, Public Citizen Comments at 6.
PUHCA 2005 is primarily a
Encumbrances of Utility Assets
customers in the United States.

ensure adequate protection of captive

concerning the treatment of FUCOs

approach that we adopt here is

obtain access as necessary with respect

will not exempt them from section 366.2

requirements for FUCOs. However, we

will waive our accounting and reporting

the FUCO. Given that PUHCA 2005 is

companies associated or affiliated with

state commission(s) certified that they

had the authority and resources to

authorize certain non-power goods and

encumbrances of utility assets,

231. In the NOPR, we noted that
PUHCA 2005 is primarily a "books and
records access" statute and does not
give the Commission any new

statutory authorities, other than the
requirement in section 1275 of EPAct
2005 that the Commission review and
authorize certain non-power goods and
services cost allocations among holding
company members upon request. Nor
does it give the Commission authority to
pre-approve holding company activities.
Accordingly, outside the context of
reviewing a holding company
transaction requiring approval under
section 203 of the FPA or a proposed
issuance or disposition under section
204 of the FPA, the Commission will
continue to rely primarily on its

ratemaking authorities under sections
205 and 206 of the FPA and sections 4
and 5 of the NGA to protect
jurisdictional customers against
inappropriate cross-subsidization or
encumbrances of utility assets on an
ongoing basis.

232. In the NOPR, we also noted that
the Commission already has in place,
pursuant to the FPA and NGA, certain
reporting requirements regarding money
pools and cash management activities
that affect jurisdictional companies.

Further, in the electric area, we have
policies that proscript against cross-
subsidization occurring as a result of
wholesale power sales between affiliates
in a holding company system as well as
sales of non-power goods and services
between such affiliates.

In the NOPR, we invited comment on
whether, in

light of the repeal of PUHCA 1935, the
Commission needs to promulgate
additional rules or to adopt additional
policies to protect against inappropriate
cross-subsidization or encumbrances of
utility assets, pursuant to our authorities
under the FPA and NGA. For example,
we asked whether, if it has the authority
to do so, the Commission should issue
rules regarding public utility holding
company diversification into non-utility
businesses. Would the Commission
have authority to promulgate such rules
under its FPA or NGA ratemaking
authority? Should the Commission
modify its existing cash management
rules to apply not only to public
utilities, natural gas companies, and oil
pipelines, but also to include public
utility holding companies? We sought
comment on these and any other related
issues in order to determine whether,
in addition to the regulations being
proposed herein under PUHCA 2005,
the Commission may need to consider
promulgating separate, additional rules
under the FPA or the NGA.

Comments

233. Commenters were largely
opposed to the adoption of any new
rules on cross-subsidization,
encumbrances of utility assets,
diversification into non-utility
businesses, or the extension of existing
cash management rules.

With respect
to rules on cross-subsidization and
encumbrances of utility assets, several
commenters emphasize that additional
Commission rules are unnecessary
because existing Commission and state
oversight is adequate. For example,
E.ON and LG&E Energy assert that it is
not necessary or appropriate for the
Commission to promulgate additional
rules or adopt additional policies with
respect to cross-subsidization or
encumbrances of utility assets because,
with the repeal of PUHCA 1935,
Congress expressed the clear intent to
eliminate the comprehensive regulation
of holding company systems which had
been characterized by PUHCA 1935.
In addition, E.ON and LG&E Energy assert
that current Commission and state
regulation of affiliate transactions is
sufficient, emphasizing that: (i) Affiliate
transactions also are controlled and/or
monitored on an ongoing basis through
codes of conduct in many states; (ii) the
Commission regulates wholesale power
sales between affiliates, which is often
the largest portion of affiliate
transactions activity; (iii) under section
1275 of EPAct 2005, the Commission
has additional authority to review the
allocation of non-power goods and
service transactions between service
companies and public utilities; (iv) the
terms of affiliate financing transactions
also are closely monitored by the
Commission and state commissions to
make sure that public utility capital
costs are not inflated; (v) where state
commissions do not have jurisdiction
over such issuances, Commission
authorization would be required under
section 204 of the FPA; and (vi) the
Commission has jurisdiction under
section 203 of the FPA over the sale,
lease or disposal of public utility
facilities subject to Commission
jurisdiction and under section 204 of
the FPA, the Commission must
authorize the assumption of any
obligation or liability as guarantor,
donor, surety, or otherwise in respect
of any security of another person.

FirstEnergy argues that the routine
review of each of the FirstEnergy
Operating Companies by independent
financial rating agencies also acts as a
deterrent to inappropriate cross-

229 See, e.g., EPSA Comments at 25, FirstEnergy
Comments at 17–19.

230 Regulation of Cash Management Practices,
Order No. 634, 68 FR 40500 (Jul. 8, 2003), III FERC

231 See Merger Policy Statement, FERC Stats. &
Regs. ¶ 31,044 at 30,124–25. See also Heartland
Energy Services, Inc., 68 FERC ¶ 61,223 at 62,062–65 (1994); LG&E Power Marketing Inc., 68 FERC ¶

232 See, e.g., Alliant Comments at 6, AEP
Comments at 9–10, Ameren Comments at 20, AGL
Resources Comments at 8–9, Cinergy Comments at
subsidization or establishment of unreasonable encumbrances on utility assets.\textsuperscript{231} Finally, Energy East argues that no new rules are required, but contends that some benefit could be gained from a single, uniform set of federal rules on cross-subsidization and affiliate abuse and federal code of conduct to avoid potentially conflicting state-imposed standards.\textsuperscript{232}

234. With respect to rules on diversification, several commenters argued that the Commission lacks the statutory authority to adopt such rules.\textsuperscript{233} For example, commenters argue that the SEC had authority under section 10 and 11 of PUHCA 1935 to regulate such diversification, but that these sections were repealed and Congress did not provide the Commission with authority to issue these or similar rules and that the cross-subsidization language in the PUHCA repeal subtitle is only a reference to the Commission’s existing authorities under the FPA, not a new grant of authority and that the Commission already has ample authority under sections 203, 205 and 206 of that statute to address whether inappropriate cross-subsidization or other forms of affiliate abuse have occurred.

235. With respect to the Commission’s cash management rules, Dominion and EEI contend that there is no need to extend the Commission’s current cash management rules to apply to holding companies. According to Dominion and EEI, the rules already effectively apply to holding companies because, where a jurisdictional utility is a participant in a cash management arrangement with a holding company, that arrangement must comply with Commission cash management rules and the agreement must be filed. The only “extension” of the rules would be to require a holding company to comply with the rule in a cash management arrangement that involved only non-utility companies. That would be an inappropriate expansion of the Commission’s authority.\textsuperscript{234}

236. A number of commenters, however, argued that the Commission should adopt additional rules to protect against the dangers of cross-subsidization and diversification into non-utility businesses,\textsuperscript{235} in particular, structural separation requirements regarding transactions between utility and non-utility affiliates. APPA/NRECA argue that the Commission must ensure complete structural protection, so that the public utility’s affiliation with a non-utility business causes no additional, non-utility risk, including the following requirements: (i) Public utility business must be conducted through corporations legally distinct (and financially insulated) from non-utility affiliates; (ii) public utilities must maintain books and records that are separate from the books and records of non-utility affiliates, and must prepare separate financial statements; (iii) public utilities must not commingle their assets or liabilities with the assets or liabilities of a non-utility affiliate, or pledge or encumber their assets on behalf of a non-utility affiliate; and (iv) service or management fees charged by a public utility’s holding company parent or affiliated service company to the public utility must not include allocations of financing costs for entities other than the public utility, charges against equity in other subsidiaries of the parent holding company, or operating losses of the parent holding company or other affiliated companies.\textsuperscript{236} MBIA Insurance argues that the Commission should impose financial and corporate separation requirements regarding transactions between utility and non-utility affiliates to adequately protect utilities and their customers: (i) A utility company must not declare or pay any dividend on any security of the utility if such action would threaten the financial integrity of the utility; (ii) utilities should have at least one independent director on their boards of directors; (iii) non-utility affiliates should not have recourse against the tangible or intangible assets of utility affiliates; (iv) utility must not cross-subsidize or shift costs from a non-utility affiliate of the utility to the utility, and must fully disclose and fully value any assets or services by the utility that are provided for the benefit of a non-utility affiliate; (v) electricity and natural gas customers must not be subject to the financial risks of non-utility diversification, and must not be subject to rates or charges that are not reasonably related to the provision of electricity or natural gas service.\textsuperscript{237} NARUC urges the Commission to prohibit holding companies from encumbering the assets of its public utility in order to fund a diversification program and from issuing debt or preferred securities to pay dividends to a holding company or to making unduly risky loans to any organization within the holding company system. Specifically, the Commission should guard against a situation where the relationship between a financially strong public utility and relatively weaker affiliates has the effect of increasing the utility’s cost of capital to the detriment of customers. In the event that a public utility became overleveraged as a result of subsidization of the holding company, Commission should consider taking appropriate action, including limitations of the payment of common stock dividends from the utility to a parent.\textsuperscript{238}

237. NASUCA argues that, in the case of captive customers, the proper structural protection would be to prohibit a utility’s affiliation with non-utility businesses, unless there is no risk involved. If a customer has power supply options, dealings between utilities and their non-utility affiliates could be approved if: (a) the information on the risk is fully disclosed; (b) the potential gains to the customer are commensurate with the risk; and (c) there can be no possible level of harm so large as to render the utility unable to comply with its duty to provide service reliably and economically.\textsuperscript{239} Finally, Ohio PUC recommends that the Commission adopt rules similar to those found in its transition plan administrative rules, which prevent electric utilities from issuing any security for the acquisition, ownership, or operation of an affiliate, assuming liabilities with respect to any security of an affiliate, or pledge, mortgage, or use as collateral any of its assets for the benefit of an affiliate. In addition, Ohio PUC recommends the Commission utilize the newly-established joint federal/state board to develop “ring-fencing” rules to insulate regulated assets from being the subject of cross-collateralization with unregulated assets.\textsuperscript{240}

\textsuperscript{231}FirstEnergy Comments at 19.

\textsuperscript{232}Energy East Comments at 14–15.

\textsuperscript{233}See, e.g., Chairman Barton Reply Comments at 10–11, Dominion Comments at 25, EEI Comments at 36, EON/NGE Energy Comments at 22, EPSA Comments at 25.

\textsuperscript{234}Dominion Comments at 24, EEI Comments at 35.

\textsuperscript{235}See, e.g., CEOB Comments at 3, Missouri PSC Comments at 30–32, Santa Clara Comments at 21–22, TANC Comments at 21–22, Utility Workers Comments at 3.

\textsuperscript{236}APPA/NRECA Comments at 34–35.

\textsuperscript{237}MBIA Insurance Comments at 20–24. But see EEI Reply Comments at 3.

\textsuperscript{238}NARUC Comments at 13–14. National Grid and NiSource assert that NARUC has not shown that the existing protections are ineffective and that NARUC’s proposed additional reporting requirements are unnecessary. National Grid Reply Comments at 7–8, NiSource Reply Comments at 5.

\textsuperscript{239}NASUCA Comments at 11–12.

\textsuperscript{240}Ohio PUC Comments at 6–8. AGL Resources argues that Ohio PUC’s ring-fencing proposals are unnecessary, but that if the Commission decides to impose additional rules, it should do so through a collaborative process including the Commission, state commissions, and industry participants. AGL Resources Reply Comments at 2. See also National Grid Reply Comments at 7–8.
238. With respect to the procedure for implementing these structural measures to protect customers against the risks of diversification into non-utility businesses, APPA/NRECA urge the Commission to create a procedure for evaluating a public utility’s acquisition of, or acquisition by, a non-utility business to ensure: (a) Compliance with aforementioned limits; (b) non-interference by the non-utility side in the management of the public utility side; and (c) that holders of the public utility’s debt, and credit rating agencies which rate that debt, have confirmed that there is no risk of adverse effect on their position. 241

239. These commenters argue that the Commission has sufficient authority to issue additional rules on cross-subsidization and diversification. For example, Arkansas PSC contends that the Commission has authority under sections 203, 205, and 206 of the FPA to issue such rules. 242 Emera argues that the Commission should use its current authority under sections 203 and 204 of the FPA to address international diversification. Emera thus urges the Commission to explain in its orders authorizing public utility financing under FPA section 204 that no public utility shall use the proceeds of any such financing to finance the acquisition or operation of a FUCO, where pledges of utility assets to support FUCO financings would similarly be restricted under FPA section 203. 243

240. A number of entities also supported the extension of the Commission’s cash management rules to public utility holding companies. 244 According to MBIA Insurance, the Commission’s cash management rules are insufficient to adequately protect regulated utilities, and it urges the Commission to broaden the application of the rules beyond utilities and to apply them to holding companies. 245

Commission Determination

241. We interpret section 1275(c) of EPAct 2005 to be a savings clause, which does not give the Commission the authority to issue additional Commission rules regarding cross-subsidization, encumbrances of utility assets, diversification into non-utility businesses, or the extension of existing cash management rules. Rather, any such authority resides in the FPA and NGA. In addition, as noted by E.ON and LG&E Energy, current Commission and state regulations already provide oversight regarding cross-subsidization and encumbrances of utility assets. Accordingly, we will monitor industry activities, and we will adopt new regulations on cross-subsidization or encumbrances of utility assets, pursuant to our FPA and NGA authorities, only at such time as our current regulations appear to be insufficient. However, these matters will be further addressed at the technical conference that we will be holding within the next year. 242

242. The Commission finds persuasive Dominion’s argument that Congress repealed the investment diversification limitations that have been applicable to registered holding companies, and therefore we will not propose additional rules regarding diversification into non-utility businesses at this time. Moreover, we note that, if the Commission were to propose such rules, we would have to do so under our FPA and NGA authorities, as we lack the authority to do so under PUHCA 2005.

243. Finally, we will not propose to extend our cash management rules to holding companies. As noted by Dominion and EEI, the cash management rules adopted under the FPA and NGA already effectively apply to holding companies because, where a jurisdictional utility is a participant in a cash management arrangement with a holding company, that arrangement must comply with Commission cash management rules and the agreement must be filed. Therefore, the Commission will not propose to extend existing cash management rules.

9. Additional Conforming or Technical Amendments

244. Section 1272(2) of EPAct 2005 directs the Commission to submit to Congress detailed recommendations on technical and conforming amendments to federal law necessary to carry out PUHCA 2005 within four months after the date of enactment. In the NOPR, the Commission invited comments as to what technical and conforming amendments the Commission should include in this submission to Congress. 245 We received comments on recommendations we should make to Congress, as well as comments on how we should interpret certain terms in PUHCA 2005 or modifications we should make to our proposed regulatory text.

a. Amendments of Definitions

246. Oklahoma Corporation Commission requests that the definitions of “affiliate” and “subsidiary” in PUHCA 2005 be amended. Oklahoma Corporation Commission contends that the difference in the two percentages, i.e., five percent for affiliates and ten percent for subsidiaries, would cause an affiliate company that is five percent owned by a holding company to be subject to Commission rules while a subsidiary that is also owned five percent by a holding company would avoid the Commission rules. Thus, it urges the Commission to consider definitions that would cause both the terms “affiliate” and “subsidiary” to have the same requirements and treatment. 246

247. A number of entities requested amendments to the definition of “electric utility company.” Morgan Stanley contends that the definition of “electric utility company” is not in accord with other definitions in PUHCA 2005 and that Congress intended that the two types of “public-utility companies,” i.e., “electric utility company” and “gas utility company” should relate to retail activities only. Accordingly, Morgan Stanley recommends that the words “and not for resale” be placed at the end of the PUHCA 2005 definition of “electric utility company” to conform this definition with “public utility company” and “gas utility company.” 247

248. Morgan Stanley also urges the Commission to recommend to Congress that at least the entire definition of “exempt wholesale generator” from PUHCA 1935 be incorporated into PUHCA 2005, including other terms that appear within that defined term, namely, “eligible facility” from 15 U.S.C. 792–5(a)(2), and “affiliate” from 15 U.S.C. 79b(a)(1). 248

249. Emera and National Grid recommend that the Commission adopt a definition of “foreign utility company” clarifying that a FUCO is not a “public-utility company”, an “electric utility company,” or a “gas utility company.” Emera contends that such a definition would be consistent with section 33 of PUHCA 1935 which

247 Morgan Stanley Comments at 10.
248 Id.

241 APPA/NRECA Comments at 35–36. See also NASUCA Comments at 12.
242 Arkansas PSC Comments at 24–32.
243 Emera Comments at 7.
244 See, e.g., Georgia PSC Comments at 4, Santa Clara Comments at 22, TANC Comments at 22. AGL Resources opposes comments to expand cash management rule, noting that some holding companies such as AGL have two cash management programs to address concerns regarding cross-subsidization and encumbrances, i.e., separate utility and non-utility money pools and that the Commission’s current rules allow it to review the utility money pool. AGL Resources Reply Comments at 4–5.
245 MBIA Insurance Comments at 25.
provides that FUCOs are not “public-utility companies.” 249

250. Emera and National Grid argue that the Commission should implement the exemption for passive investors by seeking an amendment to clarify the definition of “holding company” to exclude passive investors in a public-utility company or holding company securities, such as investment companies. 250

251. Some commenters have requested that local distribution companies be exempted from the requirements of PUHCA 2005 and suggest that the Commission exclude them from the definition of “natural gas company.” For example, American Gas Association requests that the Commission clarify that local gas distribution companies that are not regulated by the Commission are not embraced within the phrase “natural-gas company,” noting that EPAct 2005 defines the separate term “gas utility” as a local distribution company. AGA asserts that, while many local distribution companies are technically “natural-gas companies” under the NGA because the natural gas in their systems flows in interstate commerce, the Commission does not regulate local distribution companies that are exempted under section 1(b) of the NGA, Hinshaw pipelines exempted under section 1(c) of the NGA, entities subject to service-area determinations under section 7(f) of the NGA, and local distribution companies with blanket certificates. 251 Dominion requests that the Commission clarify that this same pattern of exemption from Commission regulation will be carried over with the respect to the rules that the Commission proposes to issue here. 252 Finally, Washington Gas & Light urges the Commission to clarify that the proposed rules do not apply to local distribution companies and section 7(f) companies that have previously been exempt from regulation by the Commission. Washington Gas & Light emphasizes that no regulatory gap would result because these local distribution companies and section 7(f) companies are subject to oversight of their rates and terms and conditions of service by relevant local regulatory commissions. Washington Gas & Light further contends that failure to grant this exemption could cause federal rules, especially for rate setting purposes, to become inconsistent with the regulations promulgated by state commissions, creating compliance issues that might have to be litigated in order to find resolution. 253

Commission Determination

252. We will reject Oklahoma Corporation Commission’s request to modify the definitions of “affilee” and “subsidiary.” Congress chose to carry over these long-standing definitions from PUHCA 1935 to PUHCA 2005 and thus clearly expressed its intent to retain these statutory thresholds. However, we emphasize that section 1262(16)(B) gives the Commission the authority to deem someone a “subsidiary” if necessary for the rate protection of utility customers, even for ownership interests of less than ten percent. Further, section 1264 gives the Commission the authority to examine the books and records of any company in a holding company system, including affiliates and subsidiaries. Thus, we believe that the Commission has sufficient authority to protect customers without seeking a modification of these definitions.

253. We will reject the requests of Morgan Stanley and others to amend the definitions of “electric utility company.” The definitions of “electric utility company” and “gas utility company” in PUHCA 1935 similarly differed in that the definition of “electric utility company” was not limited to retail activities. By carrying over this distinction into PUHCA 2005, it is clear that Congress did not intend that these two definitions should be consistent. Moreover, if adopted, Morgan Stanley’s proposal would deprive the Commission of jurisdiction over holding companies that own public utilities, and Morgan Stanley has not provided any evidence that Congress meant to do so. With respect to the definition of “exempt wholesale generator,” we will grant Morgan Stanley’s request to carry over the definition of “eligible facility” since that term is used within the definition of EWG. The definition of eligible facility and other relevant provisions are cross-referenced in the regulatory text of this final rule.

254. We deny Emera and National Grid’s requests that we change the definition of FUCO to state that a FUCO shall “not be deemed a public utility company, electric utility company or gas company under this part.” However, we clarify the definition of FUCO to state that these companies shall not be subject to any of the requirements of this subchapter other than section 366.2.

255. Washington Gas & Light Comments at 3–4. Therefore, FUCOs are not required to follow PUHCA 2005 accounting and reporting requirements, but must continue to grant the Commission access to their accounts, books, memoranda, and other records. 255. We will reject Emera’s and National Grid’s request that we recommend an amendment to the definition of “holding company” to reflect the exemption for passive investors. We have already adopted this exemption in our regulations, and thus it is unnecessary to amend the statutory definition.

256. With respect to the requests by various commenters on an amendment concerning local distribution companies that are not regulated by the Commission as natural gas companies under the NGA, we find that such a statutory amendment is unnecessary, as we have exempted local distribution companies from the books and records requirements of PUHCA 2005 in section 366(c) of our regulations, pursuant to our exemption authority under section 1266(b).

b. Other Proposed Amendments

Comments

257. EEI suggests that Commission recommend a technical amendment to section 3(c)(8) of the Investment Company Act of 1940 (ICA). According to EEI, section 3(c)(8) currently provides that, notwithstanding the definition of “investment company” found in section 3(a) of the ICA, a company subject to regulation under PUHCA 1935 shall not be an investment company. By the date of repeal of PUHCA 1935 becomes effective, many holding companies will need to assert their exempt status under section 3(b)(1) of the ICA, or seek an order of exemption from the SEC under section 3(b)(2) of the ICA; if section 3(c)(8) is not amended, holding companies may be expected to seek the certainty provided by an SEC order under section 3(b)(2), rather than to rely on “self-certification” under section 3(b)(1). EEI asserts that an amendment to section 3(c)(8) would, by continuing the exemption from investment company status that holding companies have enjoyed to date, make sure that holding company financing may proceed without disruption after the date of repeal of PUHCA 1935 becomes effective. 254

258. NARUC notes that section 1270 of EPAct 2005 indicates that the Commission has the same powers to enforce the provisions of PUHCA 2005

254 EEI Comments at 37. See also Energy East Comments at 16–18, National Grid Comments at 34–35.

available under Sections 306 through 317 of the FPA. NARUC recommends that the Commission request an amendment clarifying that the Commission is able to enforce the provisions of PUHCA 2005 concerning natural gas companies using the equivalent powers granted under the NGA. 255

259. EEI submits that the Commission should recommend that section 1274(a) of EPAct 2005 be amended to specify that the savings provisions of section 1271 are effective as of the date EPAct 2005 was enacted. 256 Similarly, PacifiCorp suggests that, in order to avoid any gaps, the Commission propose a correction to the savings provision in section 1271 of EPAct 2005 that allows activities and transactions authorized under PUHCA 1935 or other law until February 8, 2006, when PUHCA 2005 takes effect, to continue under the terms of the authorization notwithstanding any provision of PUHCA 2005 or related Commission regulations to the contrary. 257

260. EEI submits that the Commission should provide a procedure similar to the SEC’s general procedural rules, for submitting information on a confidential basis. 258 FirstEnergy states that certain information is contained in Form U–5S is proprietary information and that, although the Commission has rejected requests by regulated public utilities to protect the confidentiality of certain information contained in their FERC Forms 1, the SEC has permitted examination of books and records as provided in this section, except as may be provided in its own regulations. Commenters have not demonstrated that the Commission’s current rules are inadequate, and we conclude that it is unnecessary to adopt further rules at this time.

265. In response to the requests of EEI and others concerning the protection of confidential information, we note that section 1264(d) provides that no member, officer, or employee of the Commission shall divulge any fact or information that may come to his or her knowledge during the course of examination of books and records as provided in this section, except as may be directed by the Commission or by a court of competent jurisdiction.

Furthermore, the Commission already has in place procedures governing the treatment of confidential and other non-public information in Part 388 of its regulations. Commenters have not demonstrated that the Commission’s current rules are inadequate, and we conclude that it is unnecessary to adopt further rules at this time.

266. We will also reject FirstEnergy’s request that the Commission clarify that any rules adopted in this final rule are of an interim nature. Nevertheless, the Commission will evaluate the rules it adopts here on an ongoing basis based on its own experience and the submissions received from parties in individual proceedings and the technical conference.

Information Collection Statement

267. Office of Management and Budget (OMB) regulations require OMB to approve certain information collection requirements imposed by agency rule. 262 However, the Commission is carrying out an express statutory mandate spelled out in EPAct 2005. Moreover, to the extent that the Commission is carrying over and applying requirements that the SEC previously has applied, we note that the proposed regulations assume responsibility for already approved information collections and reduce their reporting burdens. Indeed, insofar as the regulations adopted herein eliminate certain SEC regulations concerning accounting, cost-allocation, recordkeeping, and related rules, they reduce the information collection burden on regulated entities.

268. In particular, we are adopting a FERC Form No. 60 (annual reports for service companies), a substantially streamlined version of what had previously been SEC Form U13–60 implemented by the SEC. In addition, we will require entities that are or become holding companies within the meaning of PUHCA 2005 to submit a simple one-time filing, FERC–65 (Notification of Holding Company Status), as compared to the more substantial filings and forms previously required by SEC Form U–5A. We establish a similar, simplified filing, as compared to the SEC’s existing filings and forms, for exemptions and waivers, namely FERC–65A (Exemption Notification) and FERC–65B (Waiver Notification).

269. The Commission also eliminates the requirements contained in its own regulations in 18 CFR part 365; the corresponding information collection is

FERC-598 “Determinations for Entities Seeking Wholesale Generator Status.” In its place, we are allowing a much simpler self-certification. Public Reporting Burden: (The table below reflects both SEC reporting burden estimates and the Commission’s projections.)

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<th>Data collection</th>
<th>Number of respondents</th>
<th>Number of responses</th>
<th>Number of hours per response</th>
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<td>1</td>
<td>3</td>
<td>51</td>
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</tbody>
</table>

Action: Revision and adoption by Commission of currently approved SEC collections of information.


Frequency of Responses: The FERC Form No. 60 information collection has annual submissions while FERC Form Nos. 65, 65A, and 65B involve one-time submittals. FERC–598 certifications will be submitted on occasion.

Necessity of the Information: The proposed rule implements new rules under part 366 of the Commission’s regulations and deletes requirements contained in part 365 of its regulations. These revisions are to implement the repeal of PUHCA 1935 and the implementation of certain provisions of the EPAct 2005.

270. For information on the requirements, submitting comments on these collection of information including ways to reduce the burden imposed by these requirements, please send your comments to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 (Attention: Michael Miller, Office of the Executive Director, 202–502–8415) or send comments to the Office of Management and Budget (Attention: Desk Officer for the Federal Energy Regulatory Commission, fax: 202–395–7285, e-mail: oira_submission@omb.eop.gov.)

Environmental Analysis

271. 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.263 The Commission has categorically excluded certain actions from this requirement as not having a significant effect on the human environment. Included in the exclusion are rules that carry out legislation, involve information gathering, analyses and dissemination, and involve accounting.264 Thus, we affirm the finding made in the NOPR that this Final Rule carries out EPAct 2005 and involve information gathering and analysis and accounting and therefore falls under this exception; consequently, no environmental consideration is necessary.

Regulatory Flexibility Act Certification

272. The Regulatory Flexibility Act of 1980 (RFA) requires rulemakings to contain either a description and analysis of the effect that the rule will have on small entities or to contain a certification that the rule will not have a significant economic impact on a substantial number of small entities.265 The Commission concludes that the Final Rule would not have such an impact on small entities. Most companies to which the Final Rule applies do not fall within the RFA’s definition of small entity.266 Therefore, the Commission certifies that this Final Rule will not have a significant economic impact on a substantial number of small entities. Moreover, PUHCA 2005 exempts certain persons, and allows the Commission to exempt other persons and classes of transactions. The various exemptions and waivers adopted herein further minimize the effect of the Final Rule on small entities, as many of the entities that should be able to take advantage of these exemptions and waivers are small entities.

Document Availability

273. 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 p.m. Eastern time) at 888 First Street, NE., Room 2A, Washington, DC 20426.

274. From the Commission’s Home Page on the Internet, this information is available in the Commission’s document management system, 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.

275. User assistance is available for eLibrary and the Commission’s website during normal business hours. For assistance, please contact FERC Online Support at 1–866–208–3676 (toll free) or 202–502–6652 (e-mail at FERCOnlineSupport@FERC.gov), or the Public Reference Room at 202–502–8371, TTY 202–502–8659 (e-mail at public.referenceroom@ferc.gov).
COMPANY ACT OF 2005
Subpart A
THE PUBLIC UTILITY HOLDING COMPANY

2. Subchapter U, consisting of part 366, is added to read as follows:

366.7 Procedures for obtaining exempt wholesale generator status.

Subpart B—PUHCA 2005 Accounting and Recordkeeping

366.21 Accounts and records of holding companies.

366.22 Accounts and records of service companies.

366.23 FERC Form No. 60, annual reports by service companies.


§ 366.1 Definitions.

For purposes of this part:

Affiliate. The term “affiliate” of a company means any company, 5 percent or more of the outstanding voting securities of which are owned, controlled, or held with power to vote, directly or indirectly, by such company.

Associate company. The term “associate company” of a company means any company in the same holding company system with such company.


Company. The term “company” means a corporation, partnership, association, joint stock company, business trust, or any organized group of persons, whether incorporated or not, or a receiver, trustee, or other liquidating agent of any of the foregoing.

Construction. The term “construction” means any construction, extension, improvement, maintenance, or repair of the facilities or any part thereof of a company, which is performed for a charge.

Electric utility company. The term “electric utility company” means any company that owns or operates facilities used for the generation, transmission, or distribution of electric energy for sale. For the purposes of this subchapter, “electric utility company” shall not include entities that engage only in marketing of electric energy or “exempt wholesale generators.”

Exempt wholesale generator. The term “exempt wholesale generator” means any person engaged directly, or indirectly through one or more affiliates as defined in this subchapter, and exclusively in the business of owning or operating, or both owning and operating, all or part of one or more eligible facilities and selling electric energy at wholesale. For purposes of establishing or determining whether an entity qualifies for exempt wholesale generator status, sections 32(a)(2) through (4), and sections 32(b)(d) through (d) of the Public Utility Holding Company Act of 1935 (15 U.S.C. 79z–5a(2)–(4). 79z–5b(b)–(d)) shall apply. An exempt wholesale generator shall not be considered an electric utility company under this subchapter.

Foreign utility company. (1) The term “foreign utility company” means any company that owns or operates facilities that are not located in any state and that are used for the generation, transmission, or distribution of electric energy for sale or the distribution at retail of natural or manufactured gas for heat, light, or power, if such company:

(i) Derives no part of its income, directly or indirectly, from the generation, transmission, or distribution of electric energy for sale or the distribution at retail of natural or manufactured gas for heat, light, or power, within the United States; and

(ii) Neither the company nor any of its subsidiary companies is a public utility company operating in the United States.

(2) A foreign utility company shall not be subject to any requirements of this subchapter other than § 366.2.

Gas utility company. The term “gas utility company” means any company that owns or operates facilities used for distribution at retail (other than the distribution only in enclosed portable containers or distribution to tenants or employees of the company operating such facilities for their own use and not for resale) of natural or manufactured gas for heat, light, or power. For the purposes of this subchapter, “gas utility company” shall not include entities that engage only in marketing of natural and manufactured gas.

Goods. The term “goods” means any goods, equipment (including machinery), materials, supplies, appliances, or similar property (including coal, oil, or steam, but not including electric energy, natural or manufactured gas, or utility assets) which is sold, leased, or furnished, for a charge.

Holding company. (1) In general. The term “holding company” means—

(i) Any company that directly or indirectly owns, controls, or holds, with power to vote, 10 percent or more of the outstanding voting securities of a public-utility company or of a holding company of any public-utility company; and

(ii) Any person, determined by the Commission, after notice and opportunity for hearing, to exercise directly or indirectly (either alone or pursuant to an arrangement or understanding with one or more persons) such a controlling influence over the management or policies of any public-utility company or holding company as to make it necessary or
appropriate for the rate protection of utility customers with respect to rates that such person be subject to the obligations, duties, and liabilities imposed by this subtitle upon holding companies.

(2) Exclusions. The term “holding company” shall not include—

(i) A bank, savings association, or trust company, or their operating subsidiaries that own, control, or hold, with the power to vote, public utility or public utility holding company securities so long as the securities are—

(A) Held as collateral for a loan;

(B) Held in the ordinary course of business as a fiduciary; or

(C) Acquired solely for purposes of liquidation and in connection with a loan previously contracted for and owned beneficially for a period of not more than two years; or

(ii) A broker or dealer that owns, controls, or holds with the power to vote public utility or public utility holding company securities so long as the securities are—

(A) Not beneficially owned by the broker or dealer and are subject to any voting instructions which may be given by customers or their assigns; or

(B) Acquired in the ordinary course of business as a broker, dealer, or underwriter with the bona fide intention of effecting distribution within 12 months of the specific securities so acquired.

Holding company system. The term “holding company system” means a holding company, together with its subsidiary companies.

Jurisdictional rates. The term “jurisdictional rates”, means rates accepted, established or permitted by the Commission for the transmission of electric energy in interstate commerce, the sale of electric energy at wholesale in interstate commerce, the transportation of natural gas in interstate commerce, and the sale in interstate commerce of natural gas for resale for ultimate public consumption for domestic, commercial, industrial, or any other use.

Natural gas company. The term “natural gas company” means a person engaged in the transportation of natural gas in interstate commerce or the sale of such gas in interstate commerce for resale.

Person. The term “person” means an individual or company.

Public utility. The term “public utility” means any person who owns or operates facilities used for transmission of electric energy in interstate commerce or sales of electric energy at wholesale in interstate commerce.

Public-utility company. The term “public-utility company” means an electric utility company or a gas utility company. For the purposes of this subchapter, the owner-lessees and owner participants in lease financing transactions involving utility assets shall not be treated as “public-utility companies.”

Service. The term “service” means any managerial, financial, legal, engineering, purchasing, marketing, auditing, statistical, advertising, publicity, tax, research, or any other service (including supervision or negotiation of construction or of sales), information or data, which is sold or furnished for a charge.

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 in the same holding company system.

Single-state holding company system. The term “single-state holding company system” means a holding company system whose public utility operations are confined substantially to a single state.

State commission. The term “state commission” means any commission, board, agency, or officer, by whatever name designated, of a state, municipality, or other political subdivision of a state that, under the laws of such state, has jurisdiction to regulate public utility companies.

Subsidiary company. The term “subsidiary company” of a holding company means—

(1) Any company, 10 percent or more of the outstanding voting securities of which are directly or indirectly owned, controlled, or held with power to vote, by such holding company; and

(2) Any person, the management or policies of which the Commission, after notice and opportunity for hearing, determines to be subject to a controlling influence, directly or indirectly, by such holding company (either alone or pursuant to an arrangement or understanding with one or more other persons) so as to make it necessary for the rate protection of utility customers with respect to rates that such person be subject to the obligations, duties, and liabilities imposed by this subtitle upon subsidiary companies of holding companies.

Voting security. The term “voting security” means any security presently entitling the owner or holder thereof to vote in the management of the affairs of a company. For the purposes of this subchapter, the term “voting security” shall not include member interests in electric power cooperatives.

§ 366.2 Commission access to books and records.

(a) In general. Unless otherwise exempted by Commission rule or order, each holding company and each affiliate company thereof shall maintain, and shall make available to the Commission, such books, accounts, memoranda, and other records as the Commission determines are relevant to costs incurred by a public utility or natural gas company that is an associate company of such holding company and necessary or appropriate for the protection of utility customers with respect to jurisdictional rates. However, for purposes of this subchapter, no provision in the subchapter shall apply to or be deemed to include:

1. The United States;
2. A state or political subdivision of a state;
3. Any foreign governmental authority not operating in the United States;
4. Any agency, authority, or instrumentality of any entity referred to in paragraphs (a)(1), (2), or (3) of this section; or
5. Any officer, agent, or employee of any entity referred to in paragraphs (a)(1), (2), (3), or (4) of this section as such in the course of his or her official duty.

(b) Affiliate companies. Unless otherwise exempted by Commission rule or order, each affiliate of a holding company or of any subsidiary company of a holding company shall maintain, and shall make available to the Commission, such books, accounts, memoranda, and other records with respect to any transaction with another affiliate, as the Commission determines are relevant to costs incurred by a public utility or natural gas company that is an associate company of such holding company and necessary or appropriate for the protection of utility customers with respect to jurisdictional rates.

(c) Holding company systems. The Commission may examine the books, accounts, memoranda, and other records of any company in a holding company system, or any affiliate thereof, as the Commission determines are relevant to costs incurred by a public utility or natural gas company within such holding company system and necessary or appropriate for the protection of utility customers with respect to jurisdictional rates.

(d) Confidentiality. No member, officer, or employee of the Commission provided with access to such books, accounts, memoranda, and other records shall be required to reveal the contents thereof to anyone except to the extent the Commission determines is necessary or appropriate for the protection of utility customers with respect to jurisdictional rates.
shall divulge any fact or information that may come to his or her knowledge during the course of examination of books, accounts, memoranda, or other records as provided in this section, except as may be directed by the Commission or by a court of competent jurisdiction.

§ 366.3 Exemption from Commission jurisdiction.

Commission or by a court of competent jurisdiction, except as may be directed by the Commission or by a court of competent jurisdiction.


(a) Notification of holding company status.

Companies 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 30 days after their formation. Notifications shall be made by submitting FERC–65 (notification of holding company status), which contains 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 or 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.

(b) FERC–65A (exemption notification) and petitions for exemption. (1) Persons or companies seeking exemption from the requirements of PUHCA 2005 and the Commission’s regulations therunder under § 366.3(a), or one of the class exemptions adopted under § 366.3(b), may do so by filing FERC–65A (exemption notification). These filings will be noticed in the Federal Register; persons or companies that 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). Persons or companies that 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 claim for exemption will remain temporary 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, and authority to act on uncontested FERC–65A filings is delegated to the Director of the Office of Markets, Tariffs and Rates or to the Director of the Office of Markets, Tariffs and Rates’ designee.

(2) Persons or companies that do not qualify for exemption pursuant to § 366.3(a) or § 366.3(b) 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(e). Such petitions will be noticed in the Federal Register; persons or companies 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). No temporary exemption will attach upon filing and the requested exemption will be effective only if approved by the Commission. Persons or companies may also seek exemptions for classes of transactions by filing a petition for declaratory order.

(c) FERC–65B (waiver notification) and petitions for waiver. (1) Persons or companies seeking a waiver of the Commission’s regulations under PUHCA 2005 pursuant to § 366.3(c) may do so by filing FERC–65B (waiver notification). FERC–65B will be noticed in the Federal Register: persons or companies that 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). Companies that 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 waiver will remain temporary 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, and authority to act on uncontested FERC–65B filings is delegated to the Director of the Office of Markets, Tariffs and Rates or the Director of the Office of Markets and Rates’ designee.

(2) Persons or companies 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 pursuant as required under § 366.3(e). Such petitions will be noticed in the Federal Register: persons or companies 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 or companies may also seek waivers for classes of transactions by filing a petition for declaratory order.

(d) Revocation of exemption or waiver. (1) If a person or company that has been granted an exemption or waiver under paragraphs (b) or (c) of this section fails to conform with any material fact or representation presented in its submittals to the Commission, such company or company may no longer rely upon FERC–65A, FERC–65B, or a Commission determination granting the exemption or waiver.

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

§ 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 the system (the public utility holding company, together with its subsidiary companies) 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. Any holding company system whose public utility operations are confined substantially to a single state is exempt from the requirements of paragraph (a) of this section. A holding company system’s public utility operations will be deemed confined substantially to a single state if the holding company system does not derive more than 13 percent 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 Rule 207(a) of the Commission’s Rules of Practice and Procedure ($ 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 the classes 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 Rule 207(a) of the Commission’s Rules of Practice and Procedure justifying its request for exemption ($ 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 determination is warranted.

(d) Nothing in paragraphs (a) through (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.

§ 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 their 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. 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 with the state regulatory authority of the state in which the facility is located. Notices of self-certification will be published in the Federal Register. Persons that file such notices 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. A person filing a notice of self-certification in good faith will be deemed to have temporary exempt wholesale generator or foreign utility company status. If the Commission takes no action within 60 days from the date of filing of the notice of self-certification, the self-certification 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 cases, the person’s exempt wholesale generator or foreign utility company status will remain temporary until such time as the Commission has determined whether to grant or deny exempt wholesale generator or foreign utility company status. Authority to toll the 60-day period is delegated to the Secretary or the Secretary’s designee, and authority to act on uncontested notices of self-certification is delegated to the General Counsel or the General Counsel’s designee.

(b) Optional procedure for Commission determination of exempt wholesale generator status or foreign utility company status. A person may file for a Commission determination of exempt wholesale generator status or foreign utility company status under § 366.1 by filing a petition for declaratory order pursuant to Rule 207(a) of the Commission’s Rules of Practice and Procedure (§ 385.207(a) of this chapter), justifying its request for exemption. Persons that file petitions 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. Authority to act on uncontested notices of self-certification is delegated to the General Counsel or the General Counsel’s designee.

(c) Revocation of status. (1) If an exempt wholesale generating facility or a foreign utility company fails to conform with any material facts or representations presented by the applicant in its submittals 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.

(2) The Commission may, on its own motion or on the application of any person, revoke the status of a facility or company, if the facility or company fails to conform to any of the Commission’s criteria under this part.

Subpart B—PUHCA 2005 Accounting and Recordkeeping

§ 366.21 Accounts and records for holding companies.

(a) General. Unless otherwise exempted or granted a waiver by Commission rule or order, every holding company shall maintain and make available to the Commission books, accounts, memoranda, and other records of all of its transactions in sufficient detail to permit examination, audit and verification, as necessary and appropriate for the protection of utility customers with respect to jurisdictional rates, of the financial statements, schedules and reports required to be filed with the Commission or issued to stockholders.

(b) Unless otherwise exempted or granted a waiver by Commission rule or order, beginning January 1, 2007, all holding companies must comply with the Commission’s record-retention requirements for public utilities and licensees or for natural gas companies, as appropriate (parts 125 and 225 of this chapter). Until December 31, 2006, holding companies registered under the Public Utility Holding Company Act of 1935 (16 U.S.C. 79a et seq. (2000)) may follow either the Commission’s record-retention requirements in parts 125 and 225 of this chapter or the Securities and Exchange Commission’s record-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, beginning January 1, 2007, every service company that is not a special-purpose company (e.g., a fuel supply company or a construction company) shall maintain and make available to the Commission such books, accounts, memoranda, and other records as the Commission prescribes in parts 101 and 201 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. Every such service company shall maintain and make available such books, accounts, memoranda, and other records in such manner as are prescribed in parts 101 and 201 of this chapter, and shall keep no other records with respect to the same subject matter except:

(i) Records other than accounts;

(ii) Records required by federal or state law;

(iii) Subaccounts or supporting accounts which are not inconsistent with the accounts required either by the Uniform System of Accounts in parts 101 and 201 of this chapter; and

(iv) Such other accounts as may be authorized by the Commission.

(2) Transition period. Until December 31, 2006, service companies in holding company systems registered under the Public Utility Holding Company Act of 1935 (16 U.S.C. 79a et seq.), as described in paragraph (b)(1) of this
section, may follow either the
Commission’s Uniform System of
Accounts in parts 101 and 201 of this
chapter or the Securities and Exchange
Commission’s Uniform System of
Accounts in 17 CFR part 256.

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

§366.23  FERC Form No. 60, annual
reports by service companies.

(a) General. Unless otherwise
exempted or granted a waiver by
Commission rule or order, every service
company in a holding company system
that is not a special-purpose company
(e.g., a fuel supply company or a
construction company) that provides
non-power goods or services to a
Commission-jurisdictional public utility
or natural gas company shall file with
the Commission by May 1, 2006 and by
May 1 each year thereafter, a report,
FERC Form No. 60, for the prior
calendar year. Every such report shall be
submitted on the FERC Form No. 60
then in effect and shall be prepared in
accordance with the instructions
incorporated in such form. For good
cause shown, the Commission may
extend the time within which any such
report is to be filed or waive the
requirements applicable to any such
report. The authority to act on motions
for extensions of time to file any such
reports or to waive the requirements
applicable to any such reports,
including granting or denying such
motions, in whole or in part, is
delegated to the Chief Accountant or the
Chief Accountant’s designee.

(b) Transition period. Service
companies in holding company systems
exempted from the requirements of the
Public Utility Holding Company Act of
1935 (16 U.S.C. 79a et seq.) need not file
an annual report, FERC Form No. 60, for
calendar years 2005 and 2006.

Note: The following appendixes will not

Appendix 1  List of Commenters

<table>
<thead>
<tr>
<th>Acronym</th>
<th>Name</th>
</tr>
</thead>
<tbody>
<tr>
<td>AGL Resources</td>
<td>AGL Resources Inc.</td>
</tr>
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</tr>
<tr>
<td>Alliant</td>
<td>Alliant Energy Corporation.</td>
</tr>
<tr>
<td>Ameren</td>
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<td>AEP</td>
<td>American Electric Power Service Corporation.</td>
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<td>American Gas Association.</td>
</tr>
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<td>American National Power</td>
<td>American National Power, Inc.</td>
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<tr>
<td>APGA</td>
<td>American Public Gas Association.</td>
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<tr>
<td>Cooperatives</td>
<td>American Transmission Company LLC.</td>
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<td>Arkansas PSC</td>
<td>Arkansas Public Service Commission.</td>
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<tr>
<td>Barclays</td>
<td>Barclays Global Investors, N.A.</td>
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<tr>
<td>Barrick</td>
<td>Barrick Goldstrike Mines Inc.</td>
</tr>
<tr>
<td>Black Hills</td>
<td>Black Hills Corporation.</td>
</tr>
<tr>
<td>CEOB</td>
<td>California Electricity Oversight Board.</td>
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<td>Calpine Corporation.</td>
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<td>Cinergy</td>
<td>Capital Research and Management Company.</td>
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<tr>
<td>Santa Clara</td>
<td>Cenergy Corporation.</td>
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<tr>
<td>Chairman Barton</td>
<td>City of Redding, California.</td>
</tr>
<tr>
<td>ConEd</td>
<td>City Santa Clara, California.</td>
</tr>
<tr>
<td>Coral Power and Shell WindEnergy</td>
<td>Congressman Joe Barton.</td>
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<tr>
<td>Detroit Edison</td>
<td>Consolidated Edison Company of New York, Inc.</td>
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<tr>
<td>Dominion</td>
<td>Coral Power, LLC and Shell WindEnergy Inc.</td>
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<td>Duke Energy</td>
<td>Detroit Edison Company.</td>
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<td>Dominion Resources, Inc.</td>
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<td>ELCON</td>
<td>Edison Electric Institute.</td>
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<td>Emera</td>
<td>Electric Power Supply Association.</td>
</tr>
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<td>Entergy</td>
<td>Emera Incorporated.</td>
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<td>Exelon</td>
<td>Entergy Services, Inc.</td>
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<td>E.ON AG and LG&amp;E Energy LLC.</td>
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<td>FPL Group</td>
<td>Exelon Corporation.</td>
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<td>Georgia PSC</td>
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<td>MBIA</td>
<td>International Transmission Company.</td>
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<td>MGTC</td>
<td>Investment Advisor Association.</td>
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<td>MidAmerican</td>
<td>Investment Company Institute.</td>
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<td>Kentucky Public Service Commission.</td>
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<tr>
<td>MGTC Inc.</td>
<td>Missouri Public Service Commission.</td>
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</table>
Appendix 2  FERC Form No. 60

United States
Federal Energy Regulatory Commission
Washington, DC 20426

FORM 60
ANNUAL REPORT
FOR THE PERIOD
Beginning _______ and Ending _______

To the
Federal Energy Regulatory Commission of

(Exact Name of Reporting Company)

A _____ Service Company
(“Mutual” or “Subsidiary”)

Date of Incorporation _____ If not incorporated, Date of Organization

State or Sovereign Power under which

Incorporated or Organized

Location of Principal Executive Offices of

Reporting Company

Name, title, and address of officer to whom

correspondence concerning this report

should be addressed:

(Name) (Title) (Address)

Name of Principal Holding Company under

which Reporting Company is organized:

Instructions For Use of Form 60

1. Timing of Filing
On or before the first day of May in each calendar year, each mutual service company and each subsidiary service company shall file with Commission an annual report on Form 60 and in accordance with the Instructions for that form.

2. Number of Copies
Each annual report shall be filed in duplicate. The company shall prepare and retain at least one extra copy for itself in case correspondence with reference to the report becomes necessary.

3. Period Covered by Report
The first report filed by the company shall cover the period from the date the Uniform System of Accounts was required to be made effective as to that company to the end of that calendar year. Subsequent reports should cover a calendar year.

4. Report Format
Reports shall be submitted on the forms prepared by the Commission. If the space provided on any sheet of such form is inadequate, additional sheets may be inserted of the same size as a sheet of the form or folded to each size.

5. Money Amounts Displayed
All money amounts required to be shown in financial statements may be expressed in whole dollars, in thousands of dollars or in hundred thousands of dollars, as appropriate and subject to provisions of Regulation S–X (210.3–01).

6. Deficits Displayed
Deficits and other like entries shall be indicated by the use of either brackets or a parenthesis with corresponding reference in footnotes (Regulation S–X, 210.3–01(c)).

7. Major Amendments or Corrections
Any company desiring to amend or correct a major omission or error in a report after it has been filed with the Commission shall submit an amended report including only those pages, schedules and entries that are to be amended or corrected. A cover letter shall be submitted requesting the Commission to incorporate the amended report changes and shall be signed by a duly authorized officer of the company.

8. Definitions
Definitions contained in Instruction 01–8 to the Uniform System of Accounts for Mutual Service Companies and Subsidiary Service Companies, Public Utility Holding Act of 2005, shall be applicable to words or terms used specifically within this Form 60.

9. Organization Chart
The Service Company shall submit with each annual report a copy of its current organization chart.

10. Methods of Allocation
The Service Company shall submit with each annual report a listing of all effective methods of allocation being used by the service company and on file and approved previously by the Securities and Exchange Commission pursuant to the Public Utility Holding Company Act of 1935.

11. Annual Statement of Compensation for Use of Capital Billed
The service company shall submit with each annual report a copy of the annual statement supplied to each associate company in support of the amount of compensation for use of capital billed during the calendar year.

12. Collection of Information
The information requested by this form is being collected under authority of the Public
Utility Holding Act of 2005. The Commission estimates that it will take each respondent thirteen and one-half (13.5) hours to respond to this collection of information. A response to this form is mandatory. The information on this form will not be kept confidential. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless a currently valid OMB control number is displayed.

13. Where To File
File Form 60 at the following address:
Federal Energy Regulatory Commission,
888 First Street, NE,
Washington, DC 20426.

LISTING OF SCHEDULES AND ANALYSIS OF ACCOUNTS

<table>
<thead>
<tr>
<th>Description of Schedules and Accounts</th>
<th>Schedule or Account No.</th>
<th>Page No.</th>
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<tbody>
<tr>
<td>Comparative Balance Sheet</td>
<td>Schedule I</td>
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<tr>
<td>Service Company Property</td>
<td>Schedule II</td>
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<tr>
<td>Accumulated Provision for Depreciation and Amortization of Service Company Property.</td>
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<td>Investments</td>
<td>Schedule IV</td>
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<td>Accounts Receivable from Associate Companies</td>
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<tr>
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<td>Schedule VI</td>
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<td>Stores Expense Undistributed</td>
<td>Schedule VII</td>
<td>10</td>
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<tr>
<td>Miscellaneous Current and Accrued Assets</td>
<td>Schedule VIII</td>
<td>11</td>
</tr>
<tr>
<td>Miscellaneous Deferred Debits</td>
<td>Schedule IX</td>
<td>11</td>
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<td>Research, Development, or Demonstration Expenditures</td>
<td>Schedule X</td>
<td>12</td>
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<td>Proprietary Capital</td>
<td>Schedule XI</td>
<td>12</td>
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<td>Long-Term Debt</td>
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<td>Current and Accrued Liabilities</td>
<td>Schedule XIII</td>
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</tr>
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<td>Notes to Financial Statements</td>
<td>Schedule XIV</td>
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<tr>
<td>Comparative Income Statement</td>
<td>Schedule XV</td>
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<td>Analysis of Billing—Associate Companies</td>
<td>Account 457</td>
<td>16</td>
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<tr>
<td>Analysis of Billing—Nonassociate Companies</td>
<td>Account 458</td>
<td>17</td>
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<td>Analysis of Charges for Service—Associate and Nonassociate Companies</td>
<td>Schedule XVI</td>
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<td>Schedule of Expense Distribution by Department or Service Function</td>
<td>Schedule XVII</td>
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<td>Departmental Analysis of Salaries</td>
<td>Account 920</td>
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<tr>
<td>Miscellaneous General Expenses</td>
<td>Account 930.2</td>
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<tr>
<td>Notes to Statement of Income</td>
<td>Schedule XVIII</td>
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<tr>
<td>Organization Chart</td>
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<td>Methods of Allocation</td>
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<td>Annual Statement of Compensation for Use of Capital Billed</td>
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<td>22</td>
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ANNUAL REPORT OF

SCHEDULE I—COMPARATIVE BALANCE SHEET

(Give balance of the Company as of December 31 of the current and prior year.)

<table>
<thead>
<tr>
<th>Account</th>
<th>Assets and other debits</th>
<th>As of December 31,</th>
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<tbody>
<tr>
<td></td>
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<td>Current</td>
</tr>
<tr>
<td>101 ......</td>
<td>Service company property (Schedule II)</td>
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<td>107 ......</td>
<td>Construction work in progress (Schedule II)</td>
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<td>108 ......</td>
<td>Less: Accumulated provision for depreciation and amortization of service company property (Schedule III) Net Service Company Property</td>
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<td>123 ......</td>
<td>Investments in associate companies (Schedule IV)</td>
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<td>124 ......</td>
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<td>131 ......</td>
<td>Cash</td>
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<td>134 ......</td>
<td>Special deposits</td>
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<td>135 ......</td>
<td>Working funds</td>
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<td>Temporary cash investments (Schedule IV)</td>
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<td>141 ......</td>
<td>Notes receivable</td>
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<td>143 ......</td>
<td>Accounts receivable</td>
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<td>144 ......</td>
<td>Accumulated provision for uncollectible accounts</td>
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<td>146 ......</td>
<td>Accounts receivable from associate companies (Schedule V)</td>
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</tr>
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<td>152 ......</td>
<td>Fuel stock expenses undistributed (Schedule VI)</td>
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<td>154 ......</td>
<td>Materials and supplies</td>
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<td>163 ......</td>
<td>Stores expense undistributed (Schedule VII) Prepayments</td>
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<td>165 ......</td>
<td>Miscellaneous current and accrued assets (Schedule VIII)</td>
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<td>174 ......</td>
<td>Total Current and Accrued Assets</td>
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### SCHEDULE I—COMPARATIVE BALANCE SHEET—Continued

[Give balance of the Company as of December 31 of the current and prior year.]

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<thead>
<tr>
<th>Account</th>
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<td>Research, development, or demonstration expenditures (Sch. X)</td>
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<td>Accumulated deferred income taxes</td>
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<td>Total Deferred Debits</td>
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<tr>
<td></td>
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<td>Total Assets and Other Debits</td>
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</table>

### SCHEDULE I—COMPARATIVE BALANCE SHEET

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<tr>
<th>Account</th>
<th>Liabilities and proprietary capital</th>
<th>As of December 31,</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>Current</td>
</tr>
<tr>
<td></td>
<td>Proprietary Capital</td>
<td></td>
</tr>
<tr>
<td>201</td>
<td>Common stock issued (Schedule XI)</td>
<td></td>
</tr>
<tr>
<td>211</td>
<td>Miscellaneous paid-in-capital (Schedule XI)</td>
<td></td>
</tr>
<tr>
<td>215</td>
<td>Appropriated retained earnings (Schedule XI)</td>
<td></td>
</tr>
<tr>
<td>216</td>
<td>Unappropriated retained earnings (Schedule XI)</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Total Proprietary Capital</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Long-Term Debt</td>
<td></td>
</tr>
<tr>
<td>223</td>
<td>Advances from associate companies (Schedule XII)</td>
<td></td>
</tr>
<tr>
<td>224</td>
<td>Other long-term debt (Schedule XII)</td>
<td></td>
</tr>
<tr>
<td>226</td>
<td>Unamortized premium on long-term debt</td>
<td></td>
</tr>
<tr>
<td>227</td>
<td>Unamortized discount on long-term debt-debit</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Total Long-Term Debt</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Current and Accrued Liabilities</td>
<td></td>
</tr>
<tr>
<td>228</td>
<td>Accumulated provision for pensions and benefits</td>
<td></td>
</tr>
<tr>
<td>231</td>
<td>Notes payable</td>
<td></td>
</tr>
<tr>
<td>232</td>
<td>Accounts payable</td>
<td></td>
</tr>
<tr>
<td>233</td>
<td>Notes payable to associate companies (Schedule XIII)</td>
<td></td>
</tr>
<tr>
<td>234</td>
<td>Accounts payable to associate companies (Schedule XIII)</td>
<td></td>
</tr>
<tr>
<td>236</td>
<td>Taxes accrued</td>
<td></td>
</tr>
<tr>
<td>237</td>
<td>Interest accrued</td>
<td></td>
</tr>
<tr>
<td>241</td>
<td>Tax collections payable</td>
<td></td>
</tr>
<tr>
<td>242</td>
<td>Miscellaneous current and accrued liabilities (Schedule XIII)</td>
<td></td>
</tr>
<tr>
<td>243</td>
<td>Obligations under capital leases—Current</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Total Current and Accrued Liabilities</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Deferred Credits</td>
<td></td>
</tr>
<tr>
<td>253</td>
<td>Other deferred credits</td>
<td></td>
</tr>
<tr>
<td>255</td>
<td>Accumulated deferred investment tax credits</td>
<td></td>
</tr>
<tr>
<td>282</td>
<td>Accumulated Deferred Income Taxes</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Total Liabilities and Proprietary Capital</td>
<td></td>
</tr>
</tbody>
</table>

### SCHEDULE II—SERVICE COMPANY PROPERTY

<table>
<thead>
<tr>
<th>Account</th>
<th>Description</th>
<th>Balance at beginning of year</th>
<th>Additions</th>
<th>Retirements or sales</th>
<th>Other changes</th>
<th>Balance at close of year</th>
</tr>
</thead>
<tbody>
<tr>
<td>301</td>
<td>Organization</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>303</td>
<td>Miscellaneous Intangible Plant</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>304</td>
<td>Land and Land Rights</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>305</td>
<td>Structures and Improvements</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>306</td>
<td>Leasehold Improvements</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>307</td>
<td>Equipment²</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>308</td>
<td>Office Furniture and Equipment</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
### Schedule II—Service Company Property—Continued

<table>
<thead>
<tr>
<th>Account</th>
<th>Description</th>
<th>Balance at beginning of year</th>
<th>Additions</th>
<th>Retirements or sales</th>
<th>Other changes</th>
<th>Balance at close of year</th>
</tr>
</thead>
<tbody>
<tr>
<td>309</td>
<td>Automobiles, Other Vehicles and Related Garage Equipment</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>310</td>
<td>Aircraft and Airport Equipment</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>311</td>
<td>Other Property: ³</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Sub-Total for Subaccount: Total 107 Construction Work in Progress ⁴

### Schedule III—Accumulated Provision for Depreciation and Amortization of Service Company Property

<table>
<thead>
<tr>
<th>Account</th>
<th>Description</th>
<th>Balance at beginning of year</th>
<th>Additions charged to account 403</th>
<th>Retirements</th>
<th>Other changes additions (deductions)</th>
<th>Balance at close of year</th>
</tr>
</thead>
<tbody>
<tr>
<td>301</td>
<td>Organization</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>303</td>
<td>Miscellaneous Intangible Plant</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>304</td>
<td>Land and Land Rights</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>305</td>
<td>Structures and Improvements</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>306</td>
<td>Leasehold Improvements</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>307</td>
<td>Equipment</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>308</td>
<td>Office Furniture and Equipment</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>309</td>
<td>Automobiles, Other Vehicles and Related Garage Equipment</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>310</td>
<td>Aircraft and Airport Equipment</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>311</td>
<td>Other Service Company Property:</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

*Provide an explanation of those changes considered material.*

### Schedule IV—Investments

<table>
<thead>
<tr>
<th>Description</th>
<th>Balance at beginning of year</th>
<th>Balance at close of year</th>
</tr>
</thead>
<tbody>
<tr>
<td>Account 123—Investment in Associate Companies</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Account 124—Other Investments</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Account 136—Temporary Cash Investments</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

*Provide a listing by subaccount of equipment additions during the year and balance at the close of the year.*

### Notes

¹ Provide an explanation of those changes considered material.
² Subaccounts are required for each class of equipment owned. The service company shall provide a listing by subaccount of equipment additions during the year and balance at the close of the year.
³ Describe other service company property.
⁴ Describe construction work in progress.
### SCHEDULE V—ACCOUNTS RECEIVABLE FROM ASSOCIATE COMPANIES

[Instructions: Complete the following schedule listing accounts receivable from each associate company. Where the service company has provided accommodation or convenience payments for associate companies, a separate listing of total payments for each associate company by subaccount should be provided.]

<table>
<thead>
<tr>
<th>Description</th>
<th>Balance at beginning of year</th>
<th>Balance at close of year</th>
</tr>
</thead>
<tbody>
<tr>
<td>Account 146—Accounts Receivable from Associate Companies</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total Analysis of Convenience or Accommodation Payments: Total Payments for each associate Company</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total Payments</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

### SCHEDULE VI—FUEL STOCK EXPENSES UNDISTRIBUTED

[Instructions: Report the amount of labor and expenses incurred with respect to fuel stock expenses during the year and indicate amount attributable to each associate company. Under the section headed “Summary” listed below give an overall report of the fuel functions performed by the service company.]

<table>
<thead>
<tr>
<th>Description</th>
<th>Labor</th>
<th>Expenses</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Account 152—Fuel Stock Expenses Undistributed</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total Summary:</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

### SCHEDULE VII—STORES EXPENSE UNDISTRIBUTED

[Instructions: Report the amount of labor and expenses incurred with respect to stores expense during the year and indicate amount attributable to each associate company.]

<table>
<thead>
<tr>
<th>Description</th>
<th>Labor</th>
<th>Expenses</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Account 163—Stores Expense Undistributed</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total Summary:</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

### SCHEDULE VIII—MISCELLANEOUS CURRENT AND ACCRUED ASSETS

[Instructions: Provide detail of items in this account. Items less than $10,000 may be grouped, showing the number of items in each group.]

<table>
<thead>
<tr>
<th>Description</th>
<th>Balance at beginning of year</th>
<th>Balance at close of year</th>
</tr>
</thead>
<tbody>
<tr>
<td>Account 174—Miscellaneous Current and Accrued Assets</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

### SCHEDULE IX—MISCELLANEOUS DEFERRED DEBITS

[Instructions: Provide detail of items in this account. Items less than $10,000 may be grouped, showing the number of items in each group.]

<table>
<thead>
<tr>
<th>Description</th>
<th>Balance at beginning of year</th>
<th>Balance at close of year</th>
</tr>
</thead>
<tbody>
<tr>
<td>Account 186—Miscellaneous Deferred Debits</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
### SCHEDULE X—RESEARCH, DEVELOPMENT OR DEMONSTRATION EXPENDITURES

[Instructions: Provide a description of each material research, development, or demonstration project which incurred costs by the service corporation during the year.]

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Account 188—Research, Development, or Demonstration Expenditures</td>
<td>Total</td>
</tr>
</tbody>
</table>

### SCHEDULE XI—PROPRIETARY CAPITAL

<table>
<thead>
<tr>
<th>Account No.</th>
<th>Class of stock</th>
<th>Number of shares authorized</th>
<th>Par or stated value per share</th>
<th>Outstanding number of shares</th>
<th>Close of period total amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>201 .............</td>
<td>Common Stock Issued</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Instructions: Classify amounts in each account with brief explanation, disclosing the general nature of transactions which give rise to the reported amounts.

**Description** Amount

Account 211—Miscellaneous Paid-In Capital

Account 215—Appropriated Retained Earnings

Total

Instructions: Give particulars concerning net income or (loss) during the year, distinguishing between compensation for the use of capital owed or net loss remaining from servicing nonassociates per the General Instructions of the Uniform System of Accounts. For dividends paid during the year in cash or otherwise, provide rate percentage, amount of dividend, date declared and date paid.

<table>
<thead>
<tr>
<th>Description</th>
<th>Balance at beginning of year</th>
<th>Net income or (loss)</th>
<th>Dividend paid</th>
<th>Balance at close of year</th>
</tr>
</thead>
<tbody>
<tr>
<td>Account 216—Unappropriated Retained Earnings.</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

### SCHEDULE XII—LONG-TERM DEBT

[Instructions: Advances from associate companies should be reported separately for advances on notes, and advances on open accounts. Names of associate companies from which advances were received shall be shown under the class and series of obligation column. For Account 224—Other long-term debt, provide the name of creditor company or organization, terms of the obligation, date of maturity, interest rate, and the amount authorized and outstanding.]

<table>
<thead>
<tr>
<th>Name of creditor</th>
<th>Term of obligation class &amp; series of obligation</th>
<th>Date of maturity</th>
<th>Interest rate</th>
<th>Amount authorized</th>
<th>Balance at beginning of year</th>
<th>Additions deductions*</th>
<th>Balance at close of year</th>
</tr>
</thead>
<tbody>
<tr>
<td>Account 223 Advances From Associate Companies Account 224—Other Long-Term Debt: Total</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

*Given an explanation of deductions:

### SCHEDULE XIII—CURRENT AND ACCRUED LIABILITIES

[Instructions: Provide balance of notes and accounts payable to each associate company. Give description and amount of miscellaneous current and accrued liabilities. Items less than $10,000 may be grouped, showing the number of items in each group.]

<table>
<thead>
<tr>
<th>Description</th>
<th>Balance at beginning of year</th>
<th>Balance at close of year</th>
</tr>
</thead>
<tbody>
<tr>
<td>Account 233—Notes Payable to Associate Companies Total</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Account 234—Accounts Payable to Associate Companies Total</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
### Schedule XIII - Current and Accrued Liabilities—Continued

[Instructions: Provide balance of notes and accounts payable to each associate company. Give description and amount of miscellaneous current and accrued liabilities. Items less than $10,000 may be grouped, showing the number of items in each group.]

<table>
<thead>
<tr>
<th>Description</th>
<th>Balance at beginning of year</th>
<th>Balance at close of year</th>
</tr>
</thead>
<tbody>
<tr>
<td>Account 242—Miscellaneous and Accrued Liabilities</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

### Schedule XIV—Notes to Financial Statements

Instructions: The space below is provided for important notes regarding the financial statements or any account thereof. Furnish particulars as to any significant contingent assets or liabilities existing at the end of the year. Notes relating to financial statements shown elsewhere in this report may be indicated here by reference.

### Schedule XV—Comparative Income Statement

<table>
<thead>
<tr>
<th>Account</th>
<th>Description</th>
<th>Current year</th>
<th>Prior year</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td><strong>Income</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>457</td>
<td>Services rendered to associate companies taxes</td>
<td></td>
<td></td>
</tr>
<tr>
<td>458</td>
<td>Services rendered to non associate companies</td>
<td></td>
<td></td>
</tr>
<tr>
<td>421</td>
<td>Miscellaneous income or loss</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td><strong>Total Income</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td><strong>Expense</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>920</td>
<td>Salaries and wages</td>
<td></td>
<td></td>
</tr>
<tr>
<td>921</td>
<td>Office supplies and expenses</td>
<td></td>
<td></td>
</tr>
<tr>
<td>922</td>
<td>Administrative expense transferred—credit</td>
<td></td>
<td></td>
</tr>
<tr>
<td>923</td>
<td>Outside services employed</td>
<td></td>
<td></td>
</tr>
<tr>
<td>924</td>
<td>Property insurance</td>
<td></td>
<td></td>
</tr>
<tr>
<td>925</td>
<td>Injuries and damages</td>
<td></td>
<td></td>
</tr>
<tr>
<td>926</td>
<td>Employee pensions and benefits</td>
<td></td>
<td></td>
</tr>
<tr>
<td>928</td>
<td>Regulatory commission expense</td>
<td></td>
<td></td>
</tr>
<tr>
<td>930.1</td>
<td>General advertising expenses</td>
<td></td>
<td></td>
</tr>
<tr>
<td>930.2</td>
<td>Miscellaneous general expenses</td>
<td></td>
<td></td>
</tr>
<tr>
<td>931</td>
<td>Rents</td>
<td></td>
<td></td>
</tr>
<tr>
<td>403</td>
<td>Depreciation and amortization expense</td>
<td></td>
<td></td>
</tr>
<tr>
<td>408</td>
<td>Taxes other than income taxes</td>
<td></td>
<td></td>
</tr>
<tr>
<td>409</td>
<td>Income taxes</td>
<td></td>
<td></td>
</tr>
<tr>
<td>410</td>
<td>Provision for deferred income taxes</td>
<td></td>
<td></td>
</tr>
<tr>
<td>411</td>
<td>Provision for deferred income taxes—credit</td>
<td></td>
<td></td>
</tr>
<tr>
<td>411.5</td>
<td>Investment Tax Credit</td>
<td></td>
<td></td>
</tr>
<tr>
<td>426.1</td>
<td>Donations</td>
<td></td>
<td></td>
</tr>
<tr>
<td>426.5</td>
<td>Other deductions</td>
<td></td>
<td></td>
</tr>
<tr>
<td>427</td>
<td>Interest on long-term debt</td>
<td></td>
<td></td>
</tr>
<tr>
<td>430</td>
<td>Interest on debt to associate companies</td>
<td></td>
<td></td>
</tr>
<tr>
<td>431</td>
<td>Other interest expense</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td><strong>Total Expense</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td><strong>Net Income of (Loss)</strong></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

### Analysis of Billing Associate Companies—Account 457

<table>
<thead>
<tr>
<th>Name of associate company</th>
<th>Direct costs charged</th>
<th>Indirect costs charged</th>
<th>Compensation for use of capital</th>
<th>Total amount billed</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>457–1</td>
<td>457–2</td>
<td>457–3</td>
<td></td>
</tr>
</tbody>
</table>

Total

ANNUAL REPORT OF _______________________________ For the Year Ended _______________________________
<table>
<thead>
<tr>
<th>Name of associate company</th>
<th>Direct costs charged</th>
<th>Indirect costs charged</th>
<th>Compensation for use of capital</th>
<th>Total amount billed</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>458-1</td>
<td>458-2</td>
<td>458-3</td>
<td></td>
</tr>
</tbody>
</table>

**ANNUAL REPORT OF** ___________ **For the Year Ended** ___________

**SCHEDULE XVI**—**ANALYSIS OF CHARGES FOR SERVICE—ASSOCIATE AND NONASSOCIATE COMPANIES**

[Instruction: Total cost of service will equal for associate and nonassociate companies the total amount billed under their separate analysis of billing schedules.]

<table>
<thead>
<tr>
<th>Acct.</th>
<th>Description of items</th>
<th>Associate company</th>
<th>Nonassociate company</th>
<th>Total charges for services</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>Direct cost</td>
<td>Indirect cost</td>
<td>Total cost</td>
</tr>
<tr>
<td>920</td>
<td>Salaries and wages</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>921</td>
<td>Office supplies and expenses</td>
<td></td>
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<td>Property insurance</td>
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<td>Injuries and damages</td>
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<td>Regulatory commission expense</td>
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<td>General advertising expenses</td>
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<td>Rents</td>
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<tr>
<td>403</td>
<td>Depreciation and amortization expense</td>
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<tr>
<td>408</td>
<td>Taxes other than income taxes</td>
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<tr>
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<td>411</td>
<td>Provision for deferred income taxes—credit</td>
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<td>Other deductions</td>
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<tr>
<td>427</td>
<td>Interest on long-term debt</td>
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<tr>
<td>430</td>
<td>Interest on debt to associate companies</td>
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<tr>
<td>431</td>
<td>Other interest expense</td>
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</table>

**ANALYSIS OF BILLING ASSOCIATE COMPANIES—ACCOUNT 458**

[Instruction: Provide a brief description of the services rendered to each nonassociate company:]
### Schedule XVII—Schedule of Expense Distribution by Department or Service Function

[Instruction: Indicate each department or service function. (See Instruction 01–3 General Structure of Accounting System: Uniform System of Accounts.)]

<table>
<thead>
<tr>
<th>Account</th>
<th>Description of Items</th>
<th>Total Amount</th>
<th>Overhead</th>
<th>Department or Service Function</th>
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<tr>
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<td>Other interest expense</td>
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### Annual Report of

For the Year Ended

#### Departmental Analysis of Salaries

<table>
<thead>
<tr>
<th>Name of Department</th>
<th>Departmental Salary Expense Included in Amounts Billed to Others</th>
<th>Number of Personnel End of Year</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Total amount</td>
<td>Parent Company</td>
</tr>
</tbody>
</table>

Total

#### Miscellaneous General Expenses—Account 930.2

[Instructions: Provide a listing of the amount included in Account 930.2, “Miscellaneous General Expenses” classifying such expenses according to their nature. Payments and expenses permitted by Section 321 (b)(2) of the Federal Election Campaign Act, as amended by Public Law 94–283 in 1976 (2 U.S.C. 441(b)(2)) shall be separately classified.]

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
</table>

Total

Methods of Allocation

Annual Statement of Compensation for Use of Capital Billed

Organization Chart
Signature Clause

Pursuant to the requirements of the Public Utility Holding Company Act of 2005 and the rules and regulations of the Federal Energy Regulatory Commission issued thereunder, the undersigned company has duly caused this report to be signed on its behalf by the undersigned officer thereunto duly authorized.

(Name of Reporting Company)

(Signature of Signing Officer)

(Printed Name and Title of Signing Officer)

Date:

[FR Doc. 05–24116 Filed 12–19–05; 8:45 am]

BILLING CODE 6717–01–P