of a given class, the holding company or its subsidiary shall not vote such holdings to the extent that they are 10 percent or more.

(11) Any public utility is granted a blanket authorization under section 203(a)(1) of the Federal Power Act to transfer a wholesale market-based rate contract to any other public utility affiliate that has the same ultimate upstream ownership, provided that neither affiliate is affiliated with a traditional public utility with captive customers.

■ 6. Section 33.2 is amended by revising paragraph (j) to read as follows:

§ 33.2 Contents of application—general information requirements.

* * * * *

(j) An explanation, with appropriate evidentiary support for such explanation (to be identified as Exhibit M to this application):

(1) Of how applicants are providing assurance that the proposed transaction will not result in cross-subsidization of a non-utility associate company or pledge or encumbrance of utility assets for the benefit of an associate company, including:

(i) Disclosure of existing pledges and/or encumbrances of utility assets; and

(ii) A detailed showing that the transaction will not result in:

(A) Any transfer of facilities between a traditional public utility associate company that has captive customers or that owns or provides transmission service over jurisdictional transmission facilities, and an associate company;

(B) Any new issuance of securities by a traditional public utility associate company that has captive customers or that owns or provides transmission service over jurisdictional transmission facilities, for the benefit of an associate company;

(C) Any new pledge or encumbrance of assets of a traditional public utility associate company that has captive customers or that owns or provides transmission service over jurisdictional transmission facilities, for the benefit of an associate company; or

(D) Any new affiliate contract between a non-utility associate company and a traditional public utility associate company that has captive customers or that owns or provides transmission service over jurisdictional transmission facilities, other than non-power goods and services agreements subject to review under sections 205 and 206 of the Federal Power Act; or

(2) If no such assurance can be provided, an explanation of how such cross-subsidization, pledge, or encumbrance will be consistent with the public interest.

■ 7. Section 33.11 is revised to read as follows:

§ 33.11 Commission procedures for the consideration of applications under section 203 of the FPA.

(a) The Commission will act on a completed application for approval of a transaction (*i.e.,* one that is consistent with the requirements of this part) not later than 180 days after the completed application is filed. If the Commission does not act within 180 days, such application shall be deemed granted unless the Commission finds, based on good cause, that further consideration is required to determine whether the proposed transaction meets the standards of section 203(a)(4) of the FPA and issues, by the 180th day, an order tolling the time for acting on the application for not more than 180 days, at the end of which additional period the Commission shall grant or deny the application.

(b) The Commission will provide for the expeditious consideration of completed applications for the approval of transactions that are not contested, do not involve mergers, and are consistent with Commission precedent.

(c) Transactions, provided that they are not contested, do not involve mergers and are consistent with Commission precedent, that will generally be subject to expedited review include:

(1) A disposition of only transmission facilities, including, but not limited to, those that both before and after the transaction remain under the functional control of a Commission-approved regional transmission organization or independent system operator; and

(2) Transactions that do not require an Appendix A analysis; [1] and

(3) Internal corporate reorganizations that result in the reorganization of a traditional public utility that has captive customers or owns or provides transmission service over jurisdictional transmission facilities, but do not present cross-subsidization issues.

[FR Doc. 06–4041 Filed 5–15–06; 8:45 am]

BILLING CODE 6717–01–P

[1] *Inquiry Concerning the Commission's Merger Policy Under the Federal Power Act; Policy Statement,* Order No. 592, 61 FR 68,595 (Dec. 30, 1996), FERC Stats. & Regs. ¶ 31,044 (1996), *reconsideration denied,* Order No. 592–A, 62 FR 33,340 (June 19, 1977), 79 FERC ¶ 61,321 (1997) (Merger Policy Statement).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 365 and 366

[Docket No. RM05–32–001, Order No. 667–A]

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

Issued April 24, 2006.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final Rule; Order on rehearing.

SUMMARY: In this order on rehearing, the Federal Energy Regulatory Commission (Commission) reaffirms its determinations in part and grants rehearing in part of Order No. 667, which amended the Commission's 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.

DATES: *Effective Date:* The final rule and order on rehearing are effective June 15, 2006.

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SUPPLEMENTARY INFORMATION:

Before Commissioners: Joseph T. Kelliher, Chairman; Nora Mead Brownell, and Suedeen G. Kelly; Order on Rehearing

1. On December 8, 2005, the Federal Energy Regulatory Commission (Commission) issued Order No. 667,[1] in which the Commission amended 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 Subchapter U and Part 366 to its regulations and removing its exempt wholesale generator rules previously

[1] *Repeal of the Public Utility Holding Company Act of 1935 and Enactment of the Public Utility Holding Company Act of 2005,* Order No. 667, 70 FR 75592 (Dec. 20, 2005), FERC Stats. & Regs. ¶ 31,197 (2005).

found in Subchapter T and Part 365. In this order, we deny in part and grant in part the various requests for rehearing received by the Commission, and amend Subchapter U and Part 366 of our regulations accordingly.[2]

Introduction

2. Order No. 667 was issued in response to the Energy Policy Act of 2005 (EPAct 2005),[3] which in relevant part repeals the Public Utility Holding Company Act of 1935 (PUHCA 1935)[4] and enacts the Public Utility Holding Company Act of 2005 (PUHCA 2005).[5] Order No. 667 was issued to comply with various sections of EPAct 2005, which directed the Commission to issue certain rules on or before December 8, 2005.[6]

Background

3. 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.

4. 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. 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 jurisdictional company 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.[10]

5. In implementing Order No. 667, the Commission recognized ''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.''[11]

6. Subsequent to our issuance of Order No. 667, on February 8, 2006, the repeal of PUHCA 1935 and the new PUHCA 2005 became effective. As we emphasized in Order No. 667, however, the changes in law do not affect our primary means of protecting customers served by jurisdictional companies that are members of holding company systems: 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.[12] Additionally, the Commission's authority under section 203 of the FPA,[13] as amended by EPAct 2005, over mergers and other corporate transactions involving public utilities and certain public utility holding companies provides the ability to ensure that proposed transactions are consistent with the public interest and do not result in inappropriate cross-subsidization or encumbrances of utility assets. We also emphasize that nothing in new Subchapter U and Part 366 of the Commission's regulations affects the Commission's independent ability to obtain access to books and records under the FPA and NGA.

7. Finally, we note that we have committed in Order No. 667 to hold a technical conference no later than one year from the effective date of PUHCA 2005 to assess whether additional actions are needed in order to effectively safeguard ratepayers.

Discussion

1. Definitions

8. A number of commenters sought rehearing and/or clarification of the definitions provided in § 366.1 of the Commission's regulations. However, these requests are more appropriately addressed in the ''Exemption Authority'' section below, and will be discussed there.

2. Books and Records Requirements

9. American Public Power Association and the National Rural Electric Cooperative Association (APPA/NRECA) argue that Order No. 667 should be amended to require that service companies submit as part of their annual report (Form No. 60) detailed supporting schedules for Outside Services Employed and Employee Pensions and Benefits.[14] According to APPA/NRECA, excluding supporting details of the costs incurred for outside services employed and employee pensions and benefits provides an opportunity for non-utility related costs incurred by service companies to be inappropriately passed on to jurisdictional public utilities and the schedule of expense by department or service function in Form No. 60 does not appear to provide sufficient

[2] We note that contemporaneously with this order, we are issuing in Docket No. RM06–11–000, a Notice of Proposed Rulemaking proposing a new Uniform System of Accounts and new record retention requirements, along with conforming changes to 18 CFR 366.21–366.23. *See Financial Accounting, Reporting and Records Retention Requirements Under the Public Utility Holding Company Act of 2005,* Notice of Proposed Rulemaking, published elsewhere in this issue of the **Federal Register**, FERC Stats. & Regs. ¶ 32,600 (2006).

[3] Energy Policy Act of 2005, Pub. L. 109–58, 119 Stat. 594 (2005).

[4] 15 U.S.C. 79a *et seq.*

[5] EPAct 2005 at 1261 *et seq.*

[6] *Id.* at 1266, 1272, 1275. Concurrently with the issuance of Order No. 667, the Commission submitted a report to Congress on proposed technical and conforming amendments to PUHCA 2005. One such proposed amendment was a revision to section 1275(b) to provide for Commission review of cost allocations not only to public utilities but also to natural gas companies within a holding company system. The Interstate Natural Gas Association of America subsequently asked the Commission to clarify that it intended to recommend an amendment to provide for Commission review of cost allocations to gas utility companies and not natural gas companies. We agree. We misspoke and intended to recommend to Congress an amendment to provide for Commission review of cost allocations to gas utility companies and not natural gas companies; there is little or no likelihood of conflicting regulation that would necessitate amendment of section 1275(b) to address cost allocations to natural gas companies. Separately, we also note that our authority with respect to natural gas companies is already substantial and no further authority is needed.

[7] *Repeal of the Public Utility Holding Company Act of 1935 and Enactment of the Public Utility Holding Company Act of 2005,* Notice of Proposed Rulemaking, 70 FR 55,805 (2005), FERC Stats. & Regs. ¶ 32,588 (2005).

[8] 16 U.S.C. 824d–e.

[9] 15 U.S.C. 717c–d.

[10] 16 U.S.C. 825; 15 U.S.C. 717g.

[11] Order No. 667 at P 4.

[12] Since the vast majority of registered public utility holding companies under PUHCA 1935 were 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.

[13] 16 U.S.C. 824b; Pub. L. 109–58, 1289, 119 Stat. 594, 982–83 (2005).

[14] APPA/NRECA Rehearing Request at 4.

transparency to enable detection of cross-subsidies.[15]

10. APPA/NRECA further argue that Order No. 667 should be amended to require holding companies to continue to file Securities and Exchange Commission (SEC) Form U–5S for the time being.[16] APPA/NRECA notes that Order No. 667 states the filing of SEC Form U–5S will not be required because ''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.'' [17] According to APPA/NRECA, by using ''and'' and ''or'' conjunctions, this sentence provides no clear rationale for the Commission's conclusion. Moreover, it does not identify the Commission or SEC filings in which the information in SEC Form U–5S is available or explain why information that is not available in other Commission or SEC filings is not relevant to jurisdictional rates. APPA/NRECA thus urges the Commission to retain Form U–5S and determine at a later date whether to continue requiring holding companies to file it.

11. We will not at this time adopt APPA/NRECA's request and require that service companies submit as part of their annual Form No. 60 detailed supporting schedules for outside services employed and employee pensions and benefits. We are not persuaded that such additional detail is needed in the annual Form No. 60. If necessary, such information is accessible in the context of a rate case when a public utility files to change its rates under section 205,[18] or the Commission, on its own motion, may obtain access to such information as necessary in the context of an audit or the institution of a section 206 rate investigation.[19] Moreover, we note that, in Order No. 667, we committed to hold a technical conference to address, among other things, what changes to the Commission's accounting, record-retention, reporting or related rules may be necessary.[20] APPA/NRECA's concerns would be more appropriately addressed in that technical conference after the Commission has received the first Form No. 60's, which are required to be filed on or before May 1, 2006.[21]

12. We will not require holding companies to continue to file SEC Form U–5S. Section 1264 of EPAct 2005 supplements our broad authority under section 301 of the FPA and section 8 of the NGA to obtain the books and records of public utilities and natural gas companies, and any person that controls, directly or indirectly, a public utility or natural gas company, and any other company controlled by such person, insofar as the books and records relate to transactions with or the business of the jurisdictional company.[22] In Order No. 667, we determined that these FPA and NGA authorities, along with the other accounting, record-retention, and reporting requirements adopted under PUHCA 2005, are sufficient to ensure that the Commission may obtain any books and records relevant to costs incurred by jurisdictional entities. Moreover, we saw no need for the wholesale adoption of SEC Form U–5S because we determined, on balance, that the information contained therein was either duplicative or unnecessary. For example, Item 2 in the U–5S calls for the reporting of acquisitions or sales of utility assets. However, the same or similar information is required to be reported by public utilities within a holding company system on page 108 of their Form No. 1. Similarly, Item 3 in the U–5S calls for reporting the issuance or sale of system securities. The same or similar information is required to be reported by public utilities within a holding company system on pages 256 and 257 of their Form No. 1. Also, the notes to the consolidated financial statements required by Item 10 in the U–5S contain the same information required to be reported in the SEC Form 10–K.

3. Exemption Authority

Section 1266(a) Exemptions

13. A number of the requests for rehearing argue that the Commission should clarify that holding companies that are exempt under section 1266(a) of PUHCA 2005 are not ''holding companies'' and thus should not be required to file either FERC–65 (notification of holding company status) or to seek exemption or waiver by means of FERC–65A (exemption notification) or FERC–65B (waiver notification).[23] Coral Power, L.L.C. and Shell WindEnergy, Inc. (Independent Power Producers) request that the Commission amend Order No. 667 such that the requirement to file FERC–65A is not imposed on entities that they claim, by definition, are not ''holding companies.'' [24] Independent Power Producers further argue that Order No. 667 does not completely implement the Commission's stated intent to deem EWGs, FUCOs, and qualifying facilities (QFs), and power and gas marketers not to be ''public-utility companies'' under PUHCA 2005, and Independent Power Producers thus seek rehearing or clarification insofar as Order No. 667 refers to owners of certain entities that are excluded from the definition of ''public-utility company'' as ''holding companies.'' [25] Similarly, Morgan Stanley Capital Group (Morgan Stanley) urges the Commission to state explicitly that any ''person or company'' qualified to file Form FERC–65A (exemption notification) is merely filing notice that it is not a ''holding company'' under PUHCA 2005, and that such party is not filing as a ''holding company'' applying for exemption from PUHCA 2005's books and records obligations.[26] In the alternative, if the Commission does not provide the clarification requested above, then Morgan Stanley requests rehearing of Order No. 667 to the extent it purports to construe owners of EWGs, FUCOs, and QFs, as well as passive investors, mutual funds, broker/dealers, underwriters or trusts as ''holding companies.'' [27] Finally, NRG requests that the Commission should amend the definition of ''electric utility company'' to provide that a QF is not an ''electric utility company,'' consistent with section 1266(a) of PUHCA 2005 and section 210(e) of PURPA.[28]

14. The Commission will deny the requests to clarify that companies that are exempt under section 1266(a) (*i.e.*, entities that own or control only EWGs, FUCOs, or QFs) are not holding companies under PUHCA 2005. In

[15] *Id.* at 15.

[16] Prior to the repeal of PUHCA 1935, the SEC required registered public utility holding companies to file an annual Form U–5S, providing information on 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 exempt wholesale generator (EWG) or foreign utility company (FUCO), and a copy of the company's yearly financial reports.

[17] Order No. 667 at P 95.

[18] 16 U.S.C. 824d; 18 CFR 35.13; 18 CFR 385.401–11, 385.504(b)(5).

[19] 16 U.S.C. 824d, 825; 18 CFR 385.401–11, 385.504(b)(5).

[20] Order No. 667 at P 17.

[21] *See* 18 CFR 366.23.

[22] *See* 16 U.S.C. 825(c); 15 U.S.C. 717g(c).

[23] We note that, unlike Form No. 60, the FERC–65, FERC–65A and FERC–65B are not forms *per se*, and we left to the discretion of the person or company filing them how to best provide the information and showing that needs to be submitted.

[24] Independent Power Producers Rehearing Request at 2–3.

[25] *Id.*

[26] Morgan Stanley Rehearing Request at 1.

[27] *Id.* at 4.

[28] NRG Rehearing Request at 3.

defining the term ''holding company'' in PUHCA 2005, Congress expressly excluded from the definition certain financial and securities firms, but did *not* exclude from the definition companies that own, control or hold the power to vote securities of only QFs, EWGs, or FUCOs. Rather, Congress specifically stated in section 1266 of PUHCA 2005 that the Commission was to ''exempt'' from section 1264 of PUHCA 2005 ''any person that is a holding company, solely with respect to one or more [QFs, EWGs, or FUCOs].'' Thus, the wording of the exemption itself recognizes that such persons are holding companies, but mandates that an exemption be provided for such persons.[29] Accordingly, it would be inconsistent with the statute to find that such persons are not holding companies. We recognize, however, that there is an internal inconsistency in our finding that the statute considers such persons to be holding companies and in the regulatory text of Order No. 667 which excludes EWGs from the definition of ''electric utility company.'' As commenters point out, if an EWG is not considered an ''electric utility company,'' then a person that owns only EWGs arguably would not even be a holding company because it does not control an electric utility company.[30] Accordingly, to be consistent with the statutory construction of PUHCA 2005, we are amending § 366.1 of our regulations to remove from the definitions of ''electric utility company'' and ''exempt wholesale generator'' the statement that an EWG is not an electric utility company.[31] Moreover, including EWGs, FUCOs and QFs as electric utility companies is consistent with common usage, which supports defining electric utility companies as companies owning electric facilities (generation, transmission or distribution) for the sale of electric energy. However, as discussed *infra*, persons that are holding companies solely with respect to EWGs, QFs, or FUCOs will receive an automatic exemption and will not be required to file FERC–65 or FERC–65A.

15. For the same reasons, we will deny Morgan Stanley's request that we should treat all passive investors, mutual funds, broker/dealers, underwriters or trusts not as ''holding companies.'' If such entities fall within the exclusion from the definition of holding company contained in § 366.1 of our regulations, which tracks the statutory definition of holding company, they would not be holding companies (and thus would not be subject to Commission regulation under PUHCA 2005), but if they instead fall within the definition of holding company, then they would be holding companies (and, absent exemption or waiver, would be subject to Commission regulation under PUHCA 2005). Section 366.3(b) of our regulations as revised herein, consistent with section 1266(b) of PUHCA 2005, permits the Commission to exempt other persons or classes of transactions based on a determination that their books and records are not relevant to jurisdictional rates. Persons who believe that they are entitled to exemption may seek such exemption if they are not covered by one of the blanket exemptions contained in the rule.

Section 1266(b) Exemptions: Non-Traditional Utilities

16. A number of entities sought clarification with respect to the additional exemptions that the Commission adopted in Order No. 667 pursuant to its discretion under section 1266(b) of PUHCA 2005. With respect to the exemption for ''non-traditional utilities,'' APPA/NRECA request that the Commission clarify that § 366.3(b)(2)'s exemption for ''non-traditional'' utilities without ''captive customers'' will be narrowly construed and that, in particular, the fact that a public utility has been granted market-based rate authority should not be sufficient to qualify it for this exemption.[32] NRG argues that the Commission should clarify the distinction, if any, between the exemption granted to holding companies that own only EWGs, and the exemption granted to holding companies that own non-traditional utilities, and that there is no federal regulatory need to obtain or maintain EWG status if the electric utility company that is owned by a holding company is also a non-traditional utility. NRG reports that banks and other lenders are uncertain about the new exemption, and are insisting that NRG seek traditional EWG status for its projects. To counteract this trend, NRG asks that the Commission clarify that NRG (and other similarly situated entities) need not take any action if NRG wants to create a new non-traditional utility that owns generation (other than filing for and obtaining market-based rates) or if NRG desires to become a holding company of a non-traditional utility that does not also qualify as an EWG, QF or power marketer.[33]

17. With respect to APPA/NRECA's request for clarification of what is now the § 366.3(b)(2)[34] exemption for ''non-traditional utilities,'' we clarify that the mere fact that a public utility has been granted market-based rate authority is not sufficient by itself to allow it, or a holding company owning it, to qualify for this exemption. We clarify that this exemption requires that the person claiming the exemption not have captive customers[35] and not be affiliated with any jurisdictional utility that has captive customers. Further, in response to APPA/NRECA's concerns expressed here as well as on rehearing of Order No. 669[36] with respect to potential cross-subsidization issues involving jurisdictional transmission services, we clarify here consistent with our response on rehearing of Order No. 669[37] that the ''non-traditional utility'' exemption does not apply to persons that own Commission-jurisdictional transmission facilities or that provide

[29] The Commission notes that under sections 32 and 33 of PUHCA 1935, EWGs and FUCOs were not included in the term ''electric utility company.'' However Congress did not include such a statement in PUHCA 2005. Instead, PUHCA 2005 says only that EWGs and FUCOs should have the same ''meanings'' as in PUHCA 1935. The exemptions in PUHCA 1935 were not in the definitional subsections on EWGs or FUCOs. If EWGs, FUCOs and QFs are not electric utility companies, then section 1266(a) would be superfluous. Thus, we reject any arguments that EWGs or FUCOs do not fall under the definition of ''electric utility company.''

[30] As noted previously, to accept this line of argument by commenters would also render the section 1266 exemption superfluous and thus would be inconsistent with the principle that a statute should be construed to give effect to all of its provisions. *See, e.g.*, 2A N. Singer, Statutes and Statutory Construction 46.06 at 181–186 (Rev. 6th Ed. 2000).

[31] We note that there is a similar regulatory text problem in Order No. 671, which excludes QFs from the definition of ''electric utility company.'' *See Revised Regulations Governing Small Power Production and Cogeneration Facilities*, Order No. 671, 71 FR 7852 (Feb. 15, 2006), FERC Stats. & Regs. ¶ 31,203 at P 92, 102 (2006). For the same reasons as discussed above, upon further consideration, we have concluded that the position taken in Order No. 671 would similarly render superfluous the exemption granted in section 1266(a)(1) to a person that is a holding company solely with respect to QFs. Therefore, we clarify here that QFs will not be excluded from the definition of ''electric utility company'' but nevertheless we intend to exempt QFs from PUHCA 2005 and most FPA requirements pursuant to our PURPA authority to grant such exemptions. We intend to revise 18 CFR 292.602 of the Commission's regulations to remove the statement that a QF is not an ''electric utility company'' within the meaning of PUHCA 2005.

[32] APPA/NRECA Rehearing Request at 5, 21.

[33] NRG Rehearing Request at 2.

[34] We note that we have restructured 18 CFR 366.3 to promote readability by more clearly tying former 18 CFR 366.3(d) to former 18 CFR 366.3(b), making them both part of revised 18 CFR 366.3(b).

[35] We note that, in Order No. 669–A, issued concurrently with this order, we have clarified that a utility is considered to have captive customers if it sells electric energy at wholesale or retail under cost-based regulation. *See Transactions Subject to FPA Section 203*, Order No. 669–A, published elsewhere in this issue of the **Federal Register**, FERC Stats. & Regs. ¶ 31,213 (2006).

[36] *See id.*

[37] *See id.*

Commission-jurisdictional transmission services or to persons that are affiliated with persons that own Commission-jurisdictional transmission facilities or that provide Commission-jurisdictional transmission services.

18. In response to NRG's request for clarification of the ''non-traditional utilities'' exemption, we note that there is some overlap between the mandatory exemption under section 1266(a) (for EWG, QF and FUCO holding companies) and the discretionary exemptions the Commission adopted in Order No. 667 pursuant to its authority under section 1266(b). The statutory exemption is for any person who is a holding company solely with respect to EWGs, FUCOs, or QFs, all of which are ''non-traditional'' utilities. The discretionary exemption for non-traditional utilities that do not have captive customers, adopted pursuant to section 1266(b), additionally covers other non-traditional utilities, such as power exchanges, that do not have captive customers.[38] While there may be an overlap in the two exemptions, and it is possible that a holding company could qualify for both exemptions, we here clarify that the discretionary exemption for non-traditional utilities that do not have captive customers, adopted pursuant to our authority under section 1266(b), is broader in coverage than the statutory exemption under section 1266(a).

Section 1266(b) Exemptions: Local Distribution Companies

19. AOG requests that the Commission clarify that holding companies, which are holding companies only because they own or control exempt local distribution companies (LDCs), are also exempt from § 366 of the Commission's regulations.[39] According to AOG, the Commission has already determined that ''the books and records of local distribution companies that are not regulated by the Commission are not relevant to jurisdictional rates.''[40] Therefore, if a holding company owns only LDCs whose books and records ''are not relevant to jurisdictional rates,'' the holding company itself should have no books and records that would be ''relevant to jurisdictional rates'' and, accordingly, should similarly be exempt from § 366 of the Commission's regulations.

20. In response to AOG, we note that revised § 366.3(b)(2)(vi) of the Commission's regulations provides that any person that is a holding company solely with respect to LDCs that are not regulated as natural gas companies under the NGA would qualify for this exemption. A holding company that owned only such LDCs would be exempted upon compliance with the procedures in § 366.4(b) and there is no need to amend our regulations.[41]

Section 1266(b) Exemptions: Exempt Financing Transactions and Transactions Independent of Public Utilities

21. APPA/NRECA request that the Commission clarify and narrow the scope of §§ 366.3(b)(3) and (4), *i.e.*, exempt ''financing transactions'' and transactions ''independent'' of public utilities. APPA/NRECA notes that § 366.3(b)(3) (now revised § 366.3(b)(2)(iii)) exempts transactions where a:

> Holding company affirmatively certifies on behalf of itself and its subsidiaries, as applicable, that it will not charge, bill or allocate to the public utility or natural gas company in its holding company system any costs or expenses in connection with goods and services transactions, and will not engage in financing transactions with any such public utility or natural gas company, except as authorized by a state commission or the Commission.

According to APPA/NRECA, a too broad construction of the undefined term ''financing transactions'' might permit a holding company to engage in cross-subsidization of unregulated affiliates by the use of guarantees, swaps, hedges, derivatives, or various financial arrangements other than conventional loans. Moreover, APPA/NRECA contends that access to the books and records is still needed to monitor compliance with regulatory approvals and to guard against other, non-approved transactions. With respect to § 366.3(b)(4)'s (now revised § 366.3(b)(2)(iv)) exemption for ''transactions between or among affiliates that are independent of and do not include a public utility or natural gas company,'' APPA/NRECA asserts that the meaning of ''independent'' and ''include'' is unclear. According to APPA/NRECA, this could be interpreted to mean that books and records are exempt even if there are other intra-company transactions that ''include'' jurisdictional public utilities and which should be subject to the Commission's books and records regulations. Under this interpretation, a service company could engage in ''independent'' transactions with other affiliates that inflate the service company's costs, and then that service company could engage in other transactions that allocate these inflated costs to a jurisdictional public utility or natural gas company. APPA/NRECA thus urges the Commission to clarify that the intended exemption is narrow and ''walls off'' or ''ring fences'' the jurisdictional public utilities and natural gas companies from bearing any costs from, or providing any financial support for, the holding company's non-utility operations.

22. In light of APPA/NRECA's concerns, we will remove the phrase ''except as authorized by a state commission or the Commission.'' This should help address APPA/NRECA's concerns that the provision could be interpreted to allow a holding company to engage in transactions subject to Commission or state approval but without the Commission being permitted to obtain books and records under PUHCA 2005.[42]

23. However, at this time, we will reject APPA/NRECA's request that the Commission clarify and narrow the scope of ''financing transactions'' and transactions ''independent'' of public utilities. APPA/NRECA here appears to be concerned about the potential for a holding company or for unregulated affiliates within a holding company system to engage in inappropriate cross-subsidization or affiliate abuse. We do not believe that we can clarify or narrow these terms in the abstract, but rather we believe that this is an issue best addressed on particular facts as they arise. In addition, though, we note that

[38] Power marketers would also be a type of non-traditional utility. However, because we have determined that power marketers should not be considered ''electric utility companies'' under PUHCA 2005 (consistent with SEC interpretation under PUHCA 1935), there would be no need for an exemption because of ownership of power marketers.

[39] AOG Rehearing Request at 4.

[40] *Id.* (citing Order No. 667 at P 132).

[41] While not raised on rehearing, we are aware that there may be confusion regarding holding companies that have subsidiary holding companies. In response, we note that the exemptions or waivers from the Commission's regulations under PUHCA 2005 that would be granted pursuant to revised 18 CFR 366.3(b) and (c) and revised 18 CFR 366.4(b) and (c) would apply to the holding company and its subsidiaries. Hence, where one holding company holds another, the exemption or waiver that would apply to the parent holding company also would apply to the subsidiary holding company. Where the parent holding company qualifies for an exemption or waiver, the subsidiary holding company would necessarily equally qualify; phrased differently, if the subsidiary did not qualify for a particular exemption or waiver, then the parent would not qualify for that same exemption or waiver either.

[42] A holding company may seek exemption for the class of transactions for which it can make the affirmative certification required by the regulations. To the extent that a holding company or its subsidiaries engage in goods and services or financing transactions affecting jurisdictional companies and subject to Commission review for purposes of assuring just and reasonable rates, the Commission may obtain access to relevant books and records.

we will evaluate this issue further in the technical conference. We also emphasize that the Commission has substantial, existing authority to address such transactions,[43] and section 1275 supplements that authority specifically with respect to the ability of certain holding companies and states to obtain review and authorization of the allocation of costs for non-power goods and services provided by service companies. In addition, APPA/NRECA has not convinced us that this exemption would prevent the Commission from guarding against inappropriate transactions, because the Commission has broad authority under FPA section 301 and NGA section 8 to obtain the books and records of public utility and natural gas companies, of any person that controls such companies, and of any other company controlled by such person, to the extent relevant to jurisdictional rates or activities. Finally, with respect to APPA/NRECA's argument that the exemption for transactions independent of public utilities should be interpreted to ''ring fence'' jurisdictional utilities from the holding company's non-utility operations, we note that in Order No. 667 we rejected the requests of commenters such as APPA/NRECA who urged the Commission to adopt new rules on cross-subsidization, encumbrances of utility assets, diversification into non-utility businesses. We did so because we found that PUHCA 2005 does not give the Commission the authority to issue additional rules on these matters and because at this time we believe the existing rules under the FPA and the NGA are sufficient to prevent inappropriate cross-subsidization.[44] We believe that allowing a holding company to certify that any goods and services costs and financing transactions will be conducted independent of its public utility and natural gas company affiliates represents a further voluntary safeguard holding companies may adopt in exchange for this exemption.

Waivers: Independent Transmission-Only Companies

24. APPA/NRECA further contends that § 366.3(c)(3)'s waiver for investors in independent transmission-only companies should be eliminated.[45] APPA/NRECA notes that the Commission's rationale for this waiver is that ''the rate issues that may arise in connection with entities that serve retail customers or that generate or sell electricity at wholesale are not present with respect to an independent transmission company.'' APPA/NRECA argues that this finding is unexplained and that independent transmission companies within holding companies may still present rate issues that justify compliance with § 366 of the Commission's regulations, *e.g.*, by engaging in cross-subsidization or affiliate abuse.

25. We will reject APPA/NRECA's request that we eliminate the waiver for investors in independent transmission companies. APPA/NRECA misinterprets the scope of this waiver. APPA/NRECA appears to be arguing that a holding company that owned other, non-exempt public-utility companies, but also had an interest in a jurisdictional independent transmission company, would be able to obtain this waiver and thereby shield the entire holding company system from PUHCA 2005. However, this waiver is, by its terms, only available to a person who is a holding company ''solely'' with respect to its interest in an independent transmission company; an investor that is also a holding company within the meaning of PUHCA 2005 due to its ownership of a public-utility company other than the independent transmission company would thus not qualify for this waiver. In addition, we reiterate that the Commission has authority under sections 205 and 206 of the FPA, as well as authority under section 301 of the FPA, to obtain the relevant books and records of the independent transmission company, any company that controls the independent transmission company, and any other company that is controlled by the company that controls the independent transmission company.

Waivers: Single-State Holding Company Systems

26. Section 366.1 of Order No. 667's regulatory text defines the term ''single-state holding company system'' as ''a holding company system whose public utility operations are confined substantially to a single state.'' The term is used in § 366.3(c)(1) to allow single-state holding company systems to request waiver of the books and records requirements of §§ 366.21, 366.22, and 366.23. Additionally, § 366.5(b), relating to a holding company or state commission obtaining a cost allocation determination from the Commission pursuant to section 1275(b) of PUHCA 2005 (which involves cost allocation of non-power goods and services costs), also makes reference to holding company systems ''whose public utility operations are confined substantially to a single state;'' but, it does not use the defined term ''single-state holding company system.''

27. Consolidated Edison and Orange and Rockland Utilities (ConEd) argue that the operations of generation and marketing affiliates should not be considered in evaluating requests for waiver under § 366.3(c)(1) because the operations of such affiliates are not relevant to that waiver and would frustrate the objective of Order No. 667. ConEd thus urges the Commission to clarify that only public-utility company revenues count for purposes of the single-state holding company system waiver.[46] Edison International (Edison) separately argues that, in § 366.5(b) of the Commission's regulations, the Commission erred by using the phrase ''public utility operations'' rather than ''public-utility company operations.'' According to Edison, this error potentially eliminates the ability of numerous holding companies that had obtained a single-state exemption under PUHCA 1935 from obtaining exemption under § 366.5(b) of the Commission's regulations—which the narrative text of Order No. 667 plainly indicates should remain available to them.[47]

28. In light of the comments of ConEd and Edison, we realize that there is confusion in Order No. 667's regulatory text with respect to the Commission's regulatory ''single state holding company system'' waiver pursuant to § 366.3(c)(1) from the accounting, reporting and records retention requirements, and the separate statutory exemption under PUHCA 2005 section 1275(d) for ''holding company systems whose public utility operations are confined substantially to a single state.''[48] The confusion is compounded by the fact that we defined the term ''single state holding company system,'' which is relevant to the regulatory waiver pursuant to § 366.3(c)(1), by reference to the language used in connection with the separate statutory exemption of PUHCA 2005 section

[43] The Commission's existing ratemaking authorities under sections 205 and 206 of the FPA and section 4 and 5 of the NGA enable it to protect customers against improper cross-subsidization or encumbrances of assets and to 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.

[44] Order No. 667 at P 241.

[45] APPA/NRECA Rehearing Request at 4.

[46] ConEd Rehearing Request at 1.

[47] Edison Rehearing Request at 2.

[48] As we discuss further below, the regulatory waiver of 18 CFR 366.3(c)(1) considers ''public-utility company'' revenues, while the statutory exemption of PUHCA 2005 section 1275(d) considers ''public utility'' operations and revenues—and PUHCA 2005 and consequently our regulations define the two terms differently.

1275(d). In retrospect, this definition is unnecessary in light of other clarifications being made to the regulatory text, and we will therefore delete it from the regulations. Our intent in adopting the ''single state holding company'' regulatory waiver of § 366.3(c)(1) from the accounting, reporting and records retention requirements was to provide a waiver similar to the exemption provided by the SEC under section 3(a)(1) of PUHCA 1935 for ''a holding company and every subsidiary thereof which is a 'public-utility company' '' if they were predominantly intrastate in character and carried on their business substantially in a single state in which the holding company and its subsidiaries were organized. Further, our intent was to adopt for this waiver the 13 percent test previously used by the SEC, *i.e.*, we would consider an entity to be a single state holding company system if the holding company system derives no more than 13 percent of its ''public-utility company'' revenues from outside a single state. However, we did not include this 13 percent test in the regulatory text. Accordingly, we will add to the ''single state holding company system'' regulatory waiver of § 366.3(c)(1) specific regulatory text to reflect that a holding company system will be deemed to be single state holding company system for purposes of the waiver if it derives no more than 13 percent of its ''public-utility company'' revenues from outside a single state.[49]

29. With respect to the separate PUHCA 2005 section 1275(d) statutory exemption, our intent was to use the 13 percent test but adapt it to reflect the specific language of section 1275. Section 1275 clearly states that the exemption is to be for ''any company in a holding company system whose *public utility* operations are confined substantially to a single State * * *''[50] Thus, under section 1275(d), if a holding company system has ''public utility'' operations (as opposed to ''public-utility company'' operations) confined substantially to a single state, then that holding company system or a state having jurisdiction over a ''public utility'' in that holding company system, may not obtain a Commission determination of service cost allocations pursuant to section 1275. Although the SEC's 13 percent test was used by the SEC in the context of an exemption focusing on ''public-utility company'' operations rather than a narrower focus on ''public utility'' operations, we believe it is reasonable to use such a test for purposes of section 1275(d). Further, we believe we are constrained by the specific language of section 1275(d) to confine the test to ''public-utility'' operations.

30. Accordingly, we grant in part and deny in part the request to apply the 13 percent test to ''public-utility company'' operations.

31. Additionally, as noted above, section 1275(d) of PUHCA 2005 uses ''public utility'' as defined in section 201(e) of the FPA, which is ''any person who owns or operates facilities subject to the jurisdiction of the Commission under [Part II of the FPA]''[51] *i.e.*, facilities used for the transmission of electric energy in interstate commerce or for sales of electric energy at wholesale in interstate commerce. For purposes of section 1275(d) of PUHCA 2005, this would include owners of ''paper facilities'' such as power marketers, as well as owners of actual physical facilities, such as owners of generation facilities.[52] Because we realize there could be ambiguity in pinning down in which State a power marketer derives its revenues, we clarify that the Commission will rebuttably presume that a power marketer's sales (and thus its revenues) take place outside a single State. Should a company wish to rebut this presumption, it may request a declaratory order that the power marketer's sales take place within a single State. Barring such a declaratory order, the revenues of affiliated power marketers will be counted in determining whether the 13 percent threshold for out-of-state revenue is satisfied and thus whether an entity qualifies for the section 1275(d) statutory exemption.[53]

32. Finally, we take this opportunity to clarify that a holding company system seeking single-state holding company system waiver under § 366.3(c)(1) of our regulations must sufficiently justify in its FERC–65B filing its claim that the holding company system meets the 13 percent threshold for out-of-state revenues necessary to qualify as a single-state holding company system.

Exemptions and Waivers: Procedural Matters

33. Finally, APPA/NRECA requests that Order No. 667 be amended to provide that no exemption or waiver of a holding company is effective except upon the issuance of an affirmative Commission order to that effect, rather than allowing a ''notification'' of exemption or waiver to become effective in 60 days upon Commission inaction.[54] APPA/NRECA notes that there is no pre-existing body of Commission interpretation or precedent under PUHCA 2005 to guide interested parties and that timely development of Commission precedent under PUHCA 2005 may not occur with this procedure. Moreover, APPA/NRECA emphasizes that this procedure invites abuse by holding companies seeking unjustified exemptions or waivers, and Order No. 667 provides no remedies when an exemption or waiver is erroneously allowed to take effect. Finally, APPA/NRECA contends that this procedure threatens to frustrate PUHCA 2005's central purpose, which is to prevent harm before it occurs, and signals a lax rather than vigorous approach to enforcement.[55]

34. We reject APPA/NRECA's request that Order No. 667 be amended to provide that no exemption or waiver is effective except upon the issuance of an affirmative Commission order to that effect. Section 1266 of PUHCA 2005 does not require the Commission to adopt any specific procedures to implement the exemptions or waivers. Instead, section 1272(1) of PUHCA 2005 authorizes the Commission to issue

[49] If a holding company system has already filed for the regulatory waiver of 18 CFR 366.3(c)(1) using the 13 percent of ''public utility'' revenues standard, it does not need to re-file, since it would automatically meet the broader ''public-utility company'' revenues standard.

[50] Emphasis added. Section 1275(a) provides that the term ''public utility'' as used in section 1275 has the same meaning as in section 201(e) of the FPA. Thus, this section is narrowly focused on a subset of public-utility companies (*i.e.*, focused on public utilities) and the ability of holding companies and states to obtain cost allocation determinations affecting public utilities and their customers under this provision. Where public utility operations are substantially confined to a single state, presumably a state commission would have sufficient ability to make such determinations and such determinations would not involve multi-state allocation issues among public utilities.

[51] This definition would not include facilities that would be subject to Commission jurisdiction solely by reason of sections 206(e) and (f), 210, 211, 211A, 212, 215, 216, 217, 218, 219, 220, 221, or 222 of the FPA.

[52] *See* Order No. 667 at P 28 (holding that power marketers are not ''public-utility companies'' under PUHCA 2005, but are ''public utilities'' under the FPA).

[53] While, consistent with SEC precedent, we do not treat power marketers as ''electric utility companies'' and thus as ''public-utility companies'' under PUHCA 2005, power marketers *are* considered to be ''public utilities'' and thus their revenues would be taken into account with respect to the section 1275(d) statutory exemption because that exemption focuses on ''public utility'' operations and revenues. Their revenues would not be taken into account with respect to the 18 CFR 366.3(c)(1) waiver, however, because that waiver focuses on ''public-utility company'' revenues.

[54] APPA/NRECA Rehearing Request at 4.

[55] *Id.* at 19.

such regulations as it finds necessary or appropriate to implement PUHCA 2005. The Commission has had extensive experience in processing self-certifications and Commission certifications for QFs under PURPA as well as extensive experience processing EWGs within a statutory timeframe under the former section 32 of PUHCA 1935, and we believe an effective program of exemptions and waivers can be achieved with adequate protection of customers—through the process and deadlines we have established and the substantive provisions of the FPA and NGA.

35. We further note that section 1266(a) of PUHCA 2005, in particular, is a mandatory exemption and that the Commission has no discretion to deny exemption to a person that is a holding company solely with respect to QFs, EWGs, or FUCOs.[56] In fact, as discussed further below, the statute appears to contemplate an automatic exemption for such holding companies. Thus, any objections regarding status of the QFs, EWGs or FUCOs themselves are more appropriately addressed in, and can be addressed in, the underlying proceedings in which they seek to qualify for such status.[57]

36. We clarify that persons that are holding companies with respect to QFs, EWGs, or FUCOs are automatically exempt from section 1266(b) and do not need to file a notification of holding company status or a FERC–65A. Other entities seeking exemption pursuant to section 1266(b) of PUHCA 2005 and §§ 366.3(b) and 366.4(b) of the Commission's regulations, or waiver pursuant to §§ 366.3(c) and 366.4(c) of the Commission's regulations, however, must file both a FERC–65 (notification of holding company status) as well as a FERC–65A (exemption notification) or FERC–65B (waiver notification). These latter filings will be noticed in the **Federal Register** for public comment to allow interested persons the opportunity to raise objections with the Commission as to whether the holding company in fact qualifies for the claimed exemption or waiver.[58] In addition, the Commission may toll the 60-day period if it concludes that further information is necessary to determine whether a person qualifies for the requested exemption or waiver.

37. And what will now be § 366.4(e) (formerly § 366.4(d))[59] provides for revocation of an exemption or waiver should the person or company no longer qualify for such exemption or waiver. Indeed, if circumstances change such that a person or company no longer qualifies for exemption or waiver, or no longer conforms to the material facts or representations in its submittals to the Commission, it can no longer rely on such exemption or waiver.

4. Allocation of Costs of Non-Power Goods or Services

38. In Order No. 667, the Commission allowed centralized service companies to sell non-power goods and services to affiliated utilities using an ''at cost'' standard. There is a rebuttable presumption that such ''at cost'' sales for such non-power goods and services between a centralized service company and its affiliates are reasonable. Non-power goods and services transactions between holding company affiliates other than centralized service companies, *i.e.*, service companies that are special-purpose affiliates such as a fuel supply company or a construction company, continue to be subject to the Commission's lower of cost or market standard. Finally, rather than require the filing of individual cost allocation agreements, the Commission allowed service companies to provide such information in their annual Form No. 60 filings.

Allocation of Costs of Non-Power Goods or Services: Filing of Agreements

39. APPA/NRECA requests rehearing of the Commission's decision not to require the filing of every individual cost allocation agreement between affiliated companies for the purchase of non-power goods and services. APPA/NRECA argues that there are two problems with relying on information submitted on Form No. 60. First, only traditional, centralized service companies are required to file a Form No. 60; special purpose service companies would not have to file a Form No. 60 and could avoid scrutiny of their non-power goods and services transactions. Second, the information on a Form No. 60 is not sufficient to determine whether costs are just and reasonable. Without the filing of cost allocation agreements, APPA/NRECA assert that costs may be inappropriately shifted to consumers. Additionally, APPA/NRECA note that the filing burden associated with filing cost allocation agreements is minimal since the agreements already exist, and would merely have to be filed. Alternatively, even if the Commission does not require the filing of cost allocation agreements, it should clarify that Order No. 667 does not prejudge whether particular cost allocation agreements must be filed in a particular ratemaking proceeding.

40. We disagree with APPA/NRECA that the Commission should require the filing of all non-power goods and services cost allocation agreements with the Commission. At this time, we believe the burden of formal filing for Commission review of every non-power goods and service cost allocation agreement far outweighs any benefit that would be gained from such filing and review. Importantly, though, the Commission retains the authority to require in particular instances the filing of such cost allocation agreement should it determine that doing so is necessary to protect ratepayers.[60] In this regard, we retain our full authority under sections 4 and 5 of the NGA and sections 205 and 206 of the FPA to protect customers. As we stated in Order No. 667:

> 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.[61]

41. We also disagree that the information provided on Form No. 60, in conjunction with information that would be available from exercise of other statutory authority, including audits, would be insufficient to ensure just and reasonable rates.[62] Form No. 60 provides extensive information with comparatively little regulatory burden. And we agree with APPA/NRECA that the filing of Form No. 60 would not limit the Commission's ability to require additional information in a particular proceeding.

42. Finally, as we noted in Order No. 667, we will revisit the issue of whether Form No. 60 is sufficient to carry out our statutory duties at a future technical conference. While ''[i]t is neither

[56] Section 1266(a) of PUHCA 2005 directed the Commission to adopt a final rule, within 90 days of the effective date of PUHCA 2005, exempting from section 1264 of PUHCA 2005 any person that is a holding company solely with respect to QFs, EWGs, or FUCOs.

[57] We take this opportunity to clarify that, with the elimination of Part 365, the filing fee provided for in 18 CFR 381.801 for applications under Part 365 is no longer applicable. We will address revisions to our filing fee regulations in a separate proceeding.

[58] Alternatively, we note that they may instead file a petition for declaratory order. That filing, too, would be noticed in the **Federal Register** for public comment.

[59] The renumbering reflects the addition of a provision intended to address material changes in fact subsequent to a grant of exemption or waiver. As originally promulgated, the regulations did not address such changes.

[60] Even if not required to be filed, such agreements also may be the subject of discovery in particular proceedings. *See* 18 CFR 385.401–11, 385.504(b)(5).

[61] Order No. 667 at P 151.

[62] *Id.* at P 152.

necessary nor appropriate to require the submission of additional forms at this time,'' we did ''not foreclose the possibility that additional filing requirements will later be found necessary.'' [63]

Allocation of Costs of Non-Power Goods or Services: Newly Created Service Companies

43. Cinergy requests clarification that both existing and newly created centralized service companies will be permitted to use the at-cost standard for sales of non-power goods and services. Specifically, paragraph 169 of Order No. 667 states that ''we will not require traditional, centralized service companies *currently using* the SEC's at-cost standard to comply with the Commission's market standard'' (emphasis added). If this is not what the Commission intended, Cinergy requests rehearing and asserts that no distinction should be made between an existing centralized service company and a newly-formed centralized service company. Cinergy adds that it expects to create such a new centralized service company, once its merger with Duke Energy is completed, that will offer centralized services to both companies.

44. In response to Cinergy, it is the type of service company—not the date of its creation—that will govern whether the particular service company will be subject to an ''at cost'' or a ''lower of cost or market'' standard. Hence, we will not treat newly-formed centralized service companies differently merely because they are newly-formed; all centralized service companies will be subject to an ''at cost'' standard.

Allocation of Costs of Non-Power Goods or Services: Definition of ''Service Company''

45. ConEd requests clarification that only service companies that provide services to traditional utilities having cost-based rates should fall within the centralized service company category. ConEd notes that service companies may also provide services exclusively to generation or marketing affiliates that do not have cost-based rates. Since such generation and marketing affiliates typically sell power and energy at market-based rates, there is no need for the Commission to review the books and records of such a company. ConEd proposes modifying the definition of ''service company'' by substituting ''public-utility company'' for ''public utility,'' so that the definition would read:

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 company in the same holding company system.

46. With respect to the definition of ''service company,'' since PUHCA 2005 is primarily a books and records access statute that assists us in assuring that jurisdictional rates are just and reasonable, we generally agree with ConEd that it should not be necessary for ''service companies'' providing goods and services solely to generation or marketing affiliates that sell at market-based rates to follow the Uniform System of Accounts, as required of service companies that provide services to traditional utilities. Granting these entities a waiver would reduce the regulatory burden on service companies within a holding company system that are providing goods and services solely to entities selling at market-based rates. However, we believe that a blanket waiver for such service companies could be overly broad and potentially invite abuses.[64] Instead, we will permit service companies providing goods and services solely to member companies that do not sell at cost-based rates to come to the Commission with case-specific requests for waiver of our accounting requirements found in § 366.22 and the requirement to file Form No. 60 in § 366.23. Both §§ 366.22 and 366.23 already state that service companies ''otherwise exempted or granted a waiver by Commission rule or order'' are not required to comply with those portions of our regulations. A service company seeking such waiver should file a petition for declaratory order pursuant to § 385.207(a) of our regulations justifying the request for waiver.[65] Any service company seeking such waiver shall bear the burden of demonstrating that such an exemption is warranted.

Allocation of Costs of Non-Power Goods or Services: Special Purpose Service Companies

47. APPA/NRECA argues that any bright-line distinction between special purpose service companies and traditional, centralized service companies may become blurred, and that the Commission should not create an incentive for companies to use one type of service company over another. Instead, the Commission should adopt one cost standard applicable to all service companies and that standard should be the market standard, and the Commission should set a date-certain when all service companies will use the market standard for all non-power goods and services transactions. Alternatively, the Commission should require all holding companies to file a notice and description of functions when creating any new service company and to file an annual report listing and describing all special-purpose service companies not required to file a Form No. 60.

48. In response to APPA/NRECA's concerns that the Commission should adopt one standard for all service companies, a market standard, we found in Order No. 667 that centralized service companies and service companies that are special-purpose service companies should not be subject to the same standard. Rather, only the latter should be subject to a market standard.[66] We are not persuaded that we should adopt a different approach on rehearing. The two types of service companies are different types of service companies, as we noted in Order No. 667, and it is appropriate to adopt a different standard for each. Special purpose service companies are different from centralized service companies in that they provide a discrete good or service, typically one for which a market price can be determined. This is in contrast to centralized service companies that provide a wide array of services (such as legal, accounting, human resources, and other administrative resources) for which establishing a market price may be difficult or even impossible.[67] Sales of non-power goods and services from special-purpose service companies to public utility affiliates thus will continue to be governed by the Commission's existing market standard, while sales of non-power services from centralized service companies should be subject to an ''at cost'' standard.[68]

49. We share APPA/NRECA's concern that the distinction between different types of service companies may become blurred over time, however. We will thus monitor the evolution of service companies and will reevaluate the application of the ''at cost'' standard as appropriate. We will require service companies that do not file Form No. 60 instead to file annually a narrative

[63] *Id.* at P 98.

[64] We adopt this approach rather than ConEd's suggested modification to the definition of service company, since our regulatory concerns are with respect to allocation of costs to entities whose rates are regulated by the Commission under the FPA and NGA, *i.e.*, public utilities and natural gas companies.

[65] *See* 18 CFR 385.207(a).

[66] Order No. 667 at P 167–71.

[67] *Id.* at P 169.

[68] *Id.* at P 171; *see also id.* at P 171 n.178 (discussing the differences between service companies).

description of their functions, to be identified as FERC–61. This will aid us in our monitoring of the evolution of service companies. Additionally, if a person has concerns that a particular service company is not following the appropriate rules, that person may file a complaint with the Commission. In complying with this new requirement, a holding company may make a single filing on behalf of all such service company subsidiaries.

5. Previously Authorized Activities

50. MGTC contends that Order No. 667 is vague and ambiguous with respect to the continuing validity of prior determinations made by the SEC. MGTC notes that, in paragraph 200 of Order No. 667, the Commission acknowledged but does not resolve MGTC's request for clarification that a person found by the SEC not to be a gas utility company under PUHCA 1935 would not be a natural gas company under PUHCA 2005. MGTC requests that the Commission grant clarification or rehearing, and confirm that prior status determinations by the SEC, such as that currently applicable to MGTC, remain valid.

51. MGTC adds that, to the extent the Commission intended Order No. 667 to establish a termination date of December 31, 2007 for prior SEC status determinations, without regard to whether the underlying facts are unchanged, the Commission should grant clarification or rehearing by amending § 366.6 of its regulations to provide that the December 31, 2007 sunset date with respect to the continuing validity of prior determinations and orders issued by the SEC is inapplicable to orders issued without expiration dates to individual entities finding that such entities are not subject to PUHCA 1935.

52. We agree with MCTC that SEC determinations of status are not ''sunsetted'' under this regulation and are distinct from the ''authorizations'' addressed by the regulations. Moreover, while we are not necessarily bound by such SEC determinations, we expect to follow them generally but that changed facts or circumstances may warrant the Commission ultimately reconsidering and reaching a different conclusion.

6. Exempt Wholesale Generators and Foreign Utility Companies

53. APPA/NRECA asserts that Order No. 667 should be amended to provide that no certification of EWGs or FUCOs becomes effective except upon the issuance of an affirmative Commission order to that effect, rather than allowing a notice of self-certification to become effective in 60 days upon Commission inaction.[69] APPA/NRECA notes that the Order No. 667 reverses field from the NOPR and concludes that it can continue to certify EWGs and FUCOs despite the repeal of PUHCA 1935. APPA/NRECA contends that, given the past problems with QF self-certifications, the Commission's adoption of that same procedure without any explanation is unjustified. APPA/NRECA further asserts that, if the Commission is uncertain whether it even still has the authority to continue certifying additional EWGs and FUCOs (an uncertainty evidenced by the NOPR), it makes no sense for the Commission to now adopt a procedure for their self-certification without Commission action.[70]

54. NRG requests that the Commission clarify whether EWGs can simply report activities that are incidental to the sale of electric energy at wholesale and that generate revenue through the self-certification process in § 366.7(a) of the Commission's regulations (without having to file a petition for declaratory order).[71]

55. We reject APPA/NRECA's request that we revise Order No. 667 to provide that EWG and FUCO certification will be effective only upon Commission order. In Order No. 667, balancing the facts that Congress repealed sections 32 and 33 of PUHCA 1935 in their entirety, yet PUHCA 2005 still referred to sections 32 and 33 with respect to the meaning of EWGs and FUCOs, we concluded that it is reasonable to interpret PUHCA 2005 to allow entities to continue to obtain EWG and FUCO status under PUHCA 2005.[72] APPA/NRECA has not demonstrated that the Commission's construction of the statute is impermissible. There is nothing in PUHCA 2005, however, that prescribes, or even addresses the procedures for obtaining EWG and FUCO status.[73] And the procedure the Commission has adopted for EWGs and FUCOs is really no different than the procedures long used for QFs and even similar to the procedures employed for rate filings under section 205 of FPA and section 4 of the NGA[74] and adopted for exemptions and waivers under PUHCA 2005.

56. Moreover, while APPA/NRECA is concerned with the notion of self-certification generally, APPA/NRECA does not identity for us the particular problems with the Commission's self-certification procedure for QFs that concern it and that carry over to self-certification of EWG and FUCO status, and, in fact, the process for QFs has recently been reaffirmed.[75] Unlike in the past with respect self-certification of QFs,[76] the self-certifications of EWG and FUCO status will be noticed in the **Federal Register**, allowing interested persons an opportunity to object in particular cases should they find it appropriate to do so.[77] This opportunity to object in particular cases should vitiate any remaining concerns that APPA/NRECA may have.

57. With respect to NRG's request for clarification, we note that Order No. 667 does not set forth a particular set of circumstances in which applicants must file a petition for declaratory order to obtain EWG or FUCO status. Accordingly, we clarify that persons seeking EWG status, in particular, may report activities that are incidental to the sale of electric energy at wholesale and that generate revenue through the self-certification process. However, we emphasize that, in all situations, it is incumbent upon persons seeking such status to determine, in light of existing Commission precedent, whether such incidental activities would cause the person to fail to satisfy the statutory criteria for EWG status. Furthermore, the Commission may, for example, toll the 60-day period to request additional information, or to allow for further consideration of the request (in which case the EWG status will not be deemed to have been granted after 60 days from the date of filing).

7. Cross-Subsidization and Encumbrances of Utility Assets

58. APPA/NRECA argue that the Commission should adopt regulations to prohibit public utilities from providing financial support to the nonutility businesses of their parent holding companies and nonutility affiliates; the Commission's decision not to adopt such regulations, APPA/NRECA states, was unexplained and unjustified.[78]

[69] APPA/NRECA Rehearing Request at 4.

[70] *Id.* at 20.

[71] NRG Rehearing Request at 2.

[72] Order No. 667 at P 225.

[73] *Id.* at P 229.

[74] Section 205 of the FPA and section 4 of the NGA allow for proposed rates to go into effect by operation of law if the Commission does not act within a particular timeframe: Typically 60 days for filings pursuant to section 205 of the FPA; and typically 30 days for filings pursuant to section 4 of the NGA.

[75] Order No. 671, FERC Stats. & Regs. ¶ 31,203 at P 78.

[76] We now issue, and publish in the **Federal Register**, notices of the filing of self-certifications for qualifying facility status by new cogeneration facilities. *Id.* at P 80.

[77] Order No. 667 at P 225.

[78] APPA/NRECA Rehearing Request at 3.

59. In Order No. 667, we noted that PUHCA 2005 is primarily a books and records access statute and does not give the Commission any new substantive authorities, other than the requirement in section 1275 of PUHCA 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. APPA/NRECA has presented no reason that persuades us that we have erred in this respect.[79] Accordingly, we will deny its request for rehearing in this regard. If in the future we find that additional safeguards such as those suggested by APPA/NRECA are needed, we will take appropriate actions under our FPA and NGA authorities.

8. Miscellaneous

60. The Commission, in addition to the changes to the regulatory text to reflect the above discussion, takes this opportunity to make certain minor corrections as well as to provide further clarification and filing guidance: (1) The Commission will revise the regulations to provide, both as to exemptions and waivers, and as to EWG and FUCO status determinations, a process to deal with subsequent material changes in facts. (2) We clarify that the FERC–65, FERC–65A, and FERC–65B filings and the notices of self-certification for EWG and QF status addressed in § 366 must be subscribed, pursuant to Rule 2005(a) of the Rules of Practice and Procedure,[80] but need not be verified.[81] (3) The Commission has also included, in the regulations addressing EWG and FUCO determinations, references to provisions and obligations that applications might otherwise have mistakenly ignored, thus potentially delaying action on, and the effectiveness of, their filings for EWG and FUCO status. (4) If there are multiple holding companies within a single holding company system, the parent holding company may file on behalf of all the holding companies within the system the notification of holding company status so long as all relevant information is included. (5) All holding companies claiming an exemption or waiver must make a filing pursuant to §§ 366.4(b) or (c), respectively,[82] except persons that are holding companies with respect to EWGs, QFs, or FUCOs. The latter receive an automatic, self-effectuating exemption and do not need to file a notification of status or a notice of exemption. (6) The Commission clarifies the difference between exemptions and waivers. If an entity receives an *exemption*, unless otherwise specified, it will be exempt from the entire subchapter—both the accounting and record retention requirements as well as the Commission's access on a case-specific basis under § 366.2 to whatever books and records the company maintains. If an entity receives a *waiver*, on the other hand, only the accounting and record retention requirements will be waived. Such company remains subject to the Commission's ability to obtain access to its books and records under § 366.2 on a case-specific basis, however. (7) Any person that obtained EWG or FUCO status prior to February 8, 2006, does not need to re-apply under this subpart unless facts have changed which might affect its status.

61. Finally, for the convenience of interested persons given the number and scope of the changes, so that the revised § 366 regulations are available in convenient form, the Commission has attached the revised § 366 regulations in their entirety, rather than attaching just the changes.

9. Information Collection Statement

62. The regulations of the Office of Management and Budget (OMB)[83] require that OMB approve certain information requirements imposed by an agency. OMB has approved the information requirements contained in Order No. 667. Specifically, OMB approved the following information collections and assigned the corresponding OMB control numbers: Notification of Holding Company Status (FERC–65) (1902–0218); Exemption Notification (FERC–65A) (1902–0216); Waiver Notification (FERC–65B) (1902–0217) and Annual Report by Service Companies (Form No. 60) (1902–0215).

63. This order on rehearing adopts a number of changes. Two of these are important with respect to information collection. First, as noted above, we will now exempt from information collection, *i.e.*, from the need to file FERC–65 and FERC–65A, holding companies that hold only qualifying facilities, exempt wholesale generators, and foreign utility companies; such holding companies will not need to file FERC–65 and FERC–65A. Second, in response to the comments of APPA/NRECA, we will require service companies that do not file Form No. 60 instead to file annually a narrative description of their functions (which will be identified as FERC–61). We do not anticipate that this new requirement to file a narrative description will impose a significant burden on service companies, although the narrative description will necessarily vary in length for each company depending on the range of functions each company performs. Until the Commission has some experience with the administration of this latter requirement, it will be difficult to project how many companies need to respond to this requirement or the effort required to respond. Therefore, taking into account both changes, we will allow the original projected burden estimates expressed in Order No. 667 to stand. We will, however, adjust these burden estimates accordingly as we receive filings and we will notify OMB of any changes that may be necessary.

64. Interested persons may obtain information on the information requirements by contacting the following: The Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 [Attention: Michael Miller, Office of the Executive Director, ED–34], Phone: (202) 502–8415, Fax: (202) 273–0873, e-mail: *michael.miller@ferc.gov.*

65. To submit comments concerning the collection(s) of information and provide estimates on the associated burden, please send your comments to the contact listed above and to the Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503 [Attention: Desk Officer for the Federal Energy Regulatory Commission], Phone: (202) 395–4650. Comments should be e-mailed to *oira_submission@omb.eop.gov* and reference the OMB Control numbers listed above.

The Commission orders:

Rehearing is hereby granted in part and denied in part, as discussed in the body of this order.

By the Commission.

Magalie R. Salas,

Secretary.

List of Subjects in 18 CFR Part 366

Electric power, Natural gas, Public utility holding companies and service companies, Reporting and recordkeeping requirements, and Cost allocations.

■ In consideration of the foregoing, under the authority of EPAct 2005, the

[79] We further note that section 1289 of EPAct 2005 amended section 203 of the FPA to explicitly direct the Commission to consider the cross-subsidization issues raised by APPA/NRECA.

[80] 18 CFR 385.2005(a).

[81] *See* 18 CFR 385.2005(b).

[82] Holding companies that seek an exemption or waiver pursuant to 18 CFR 366.4(b) or (c) must also file a FERC–65, notification of holding company status. Particularly if the filings are to be e-filed, however, the filings should be submitted to the Commission as separate filings rather than as a single filing.

[83] 5 CFR 1320.12.

Commission is amending part 366 in Chapter I of Title 18 of the *Code of Federal Regulations*, as set forth below:

■ 1. Subchapter U, consisting of part 366, is revised to read as follows:

Subchapter U—Regulations Under the Public Utility Holding Company Act of 2005

PART 366—PUBLIC UTILITY HOLDING COMPANY ACT OF 2005

Subpart A—PUHCA 2005 Definitions and Provisions

Sec.
366.1 Definitions.
366.2 Commission access to books and records.
366.3 Exemption from Commission access to books and records; waivers of accounting, record-retention, and reporting requirements.
366.4 FERC–65, notification of holding company status, FERC–65A, exemption notification, and FERC–65B, waiver notification.
366.5 Allocation of costs for non-power goods and services.
366.6 Previously authorized activities.
366.7 Procedures for obtaining exempt wholesale generator and foreign utility company 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 report of service companies, and FERC–61, narrative description of service company functions.

Authority: Pub. L. 109–58, 1261 *et seq.*, 119 Stat. 594, 972 *et seq.*

Subpart A—PUHCA 2005 Definitions and Provisions

§ 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.

Commission. The term ''Commission'' means the Federal Energy Regulatory Commission.

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 persons that engage only in marketing of electric energy.

Exempt wholesale generator. (1) 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) through (d) of the Public Utility Holding Company Act of 1935 (15 U.S.C. 79z–5a(a)(2)–(4), 79z–5a(b)–(d)) shall apply.

(2) An exempt wholesale generator shall not be subject to any requirements of this part other than § 366.7, *i.e.*, procedures for obtaining exempt wholesale generator status.

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 part other than § 366.7, *i.e.*, procedures for obtaining foreign utility company status.

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-lessors 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.

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 direction or 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 associate 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 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 access to books and records; waivers of accounting, record-retention, and reporting requirements.

(a) *Exempt classes of entities.* Any person that is a holding company solely with respect to one or more of the following will be exempt from the requirements of § 366.2 and the accounting, record-retention, and reporting requirements of §§ 366.21, 366.22, and 366.23; such person need not make the filings provided in § 366.4(a) or (b):

(1) Qualifying facilities under the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 2601 *et seq.*);

(2) Exempt wholesale generators; or

(3) Foreign utility companies.

(b) *Exemptions of additional persons and classes of transactions*—(1) *Commission authority to exempt additional persons and classes of transactions.* The Commission shall exempt a person or class of transactions from the requirements of § 366.2 and the accounting, record-retention, and reporting requirements of §§ 366.21, 366.22, and 366.23 if, upon individual application or upon the motion of the Commission—

(i) The Commission finds that the books, accounts, memoranda, and other records of any person are not relevant to

the jurisdictional rates of a public utility or natural gas company; or

(ii) The Commission finds that any class of transactions is not relevant to the jurisdictional rates of a public utility or natural gas company.

(2) *Commission exemption of additional persons and classes of transactions.* The Commission has determined that the following persons and classes of transactions satisfy the requirements of paragraph (b)(1) of this section, and any person that is a holding company solely with respect to one or more of the following may file to obtain an exemption for that person or class of transactions, as appropriate, from the requirements of § 366.2 and the accounting, record-retention, and reporting requirements of §§ 366.21, 366.22, and 366.23, pursuant to the notification procedure contained in § 366.4(b):

(i) Passive investors, so long as the ownership remains passive, including:

(A) Mutual funds,

(B) Collective investment vehicles whose assets are managed by banks, savings and loan associations and their operating subsidiaries, or brokers/dealers; and

(C) Persons that directly, or indirectly through their subsidiaries or affiliates, buy and sell the securities of public-utility companies in the ordinary course of business as a broker/dealer, underwriter or fiduciary, and not exercising operational control over such companies;

(ii) Commission-jurisdictional utilities that have no captive customers and that are not affiliated with any jurisdictional utility that has captive customers, and that do not own Commission-jurisdictional transmission facilities or provide Commission-jurisdictional transmission services and that are not affiliated with persons that own Commission-jurisdictional transmission facilities or provide Commission-jurisdictional transmission services, and holding companies that own or control only such utilities;

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

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

(v) Electric power cooperatives;

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

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

(1) Single-state holding company systems; for purposes of § 366.3(c)(1), a holding company system will be deemed to be a single-state holding company system if the holding company system derives no more than 13 percent of its public-utility company revenues from outside a single state;

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

(3) Investors in independent transmission-only companies.

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

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

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

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

(2) The notification required pursuant to § 366.4(a)(1) shall be made by submitting FERC–65 (notification of holding company status), which shall contain the following: The identity of the holding company and of the public utilities and natural gas companies in the holding company system; the identity of service companies, including special-purpose subsidiaries providing non-power goods and services; the identity of all affiliates and subsidiaries; and their corporate relationship to each other. This filing will be for informational purposes and will not be noticed in the **Federal Register,** but will be available on the Commission's Web site. FERC–65 must be subscribed, consistent with § 385.2005(a) of this chapter, but need not be verified.

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

(b) *FERC–65A (exemption notification) and petitions for exemption.* (1) Persons that, pursuant to § 366.3(b)(2), seek exemption from the requirements of § 366.2 and the accounting, record-retention, and reporting requirements of §§ 366.21, 366.22, and 366.23, may seek such exemption by filing FERC–65A (exemption notification); FERC–65A must be subscribed, consistent with § 385.2005(a) of this chapter, but need not be verified. These filings will be noticed in the **Federal Register;** persons 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) of this chapter. Persons 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 Energy Markets and Reliability, or its successor, or the Director's designee.

(2) Notwithstanding § 366.4(b)(1), persons that are exempt holding companies pursuant to § 366.3(a) are not required to file FERC–65A (exemption notification).

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

(c) FERC–65B (waiver notification) and petitions for waiver. (1) Persons that, pursuant to § 366.3(c), seek waiver of the accounting, record-retention, and reporting requirements of §§ 366.21, 366.22, and 366.23, may seek such waiver by filing FERC–65B (waiver notification); FERC–65B must be subscribed, consistent with § 385.2005(a) of this chapter, but need not be verified. FERC–65B will be noticed in the **Federal Register;** persons 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) of this chapter. Persons 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 Energy Markets and Reliability, or its successor, or the Director's designee.

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) *Exemptions.* Paragraph (a) of this section shall not apply to any holding company system whose public utility operations are confined substantially to a single state. For purposes of this section, a holding company system will be deemed to have its public utility operations confined substantially to a single state if the holding company system derives no more than 13 percent of its public utility revenues from outside a single state. A holding company system or state commission may, pursuant to this subsection, seek a Commission determination that a holding company's public utility operations are confined substantially to a single state by filing a petition for declaratory order pursuant to § 385.207(a) of this chapter. Any holding company system or state commission seeking such a determination shall bear the burden of demonstrating that such determination is warranted.

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

Any holding company system or state commission seeking such an exemption shall bear the burden of demonstrating that such an exemption is warranted.

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

§ 366.6 Previously authorized activities.

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

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

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

(a) *Self-certification notice procedure*. An exempt wholesale generator or a foreign utility company, or its representative, may file with the Commission a notice of self-certification demonstrating that it satisfies the definition of exempt wholesale generator or foreign utility company (including stating the location of its generation); such notices of self-certification must be subscribed, consistent with § 385.2005(a) of this chapter, but need not be verified. In the case of exempt wholesale generators, the person filing a notice of self-certification under this section must also file a copy of the notice of self-certification with the state regulatory authority of the state in which the facility is located, and that person must also represent to this Commission in its submittal with this Commission that it has filed a copy of the notice of self-certification with the state regulatory authority of the state in which the facility is located. Notice of the filing of a notice of self-certification will be published in the **Federal Register**. Persons that file a notice of self-certification 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; however, consistent with section 32(c) of the Public Utility Holding Company Act of 1935 (15 U.S.C. 79z–5a(c)) and section 33(a)(2) of the Public Utility Holding Company Act of 1935 (15 U.S.C. 79z–5b(a)(2)), any self-certification may not become effective until the relevant state commissions have made the determinations and certifications provided for therein (if such determinations or certifications are not necessary, the notice of self-certification should state so). 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; however, consistent with section 32(c) of the Public Utility Holding Company Act of 1935 (15 U.S.C. 79z–5a (c)) and section 33(a)(2) of the Public Utility Holding Company Act of 1935 (15 U.S.C. 79z–5b(a)(2)), any self-certification may not become effective until the relevant state commissions have made the determinations and certifications provided for therein. 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 § 385.207(a) of this chapter, justifying the request for such status; however, consistent with section 32(c) of the Public Utility Holding Company Act of 1935 (15 U.S.C. 79z–5a (c)) and section 33(a)(2) of the Public Utility Holding Company Act of 1935 (15 U.S.C. 79z–5b(a)(2)), a Commission determination of exempt wholesale generator status or foreign utility company status may not become effective until the relevant state commissions have made the determinations and certifications provided for therein. (If such determinations or certifications are not necessary, the petition for declaratory order should state so.) 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.

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

(1) Submit a new notice of self-certification or a new petition for declaratory order, pursuant to paragraphs (a) or (b) of this section, as appropriate;

(2) File a written explanation why the material change in facts does not affect its status; or

(3) Notify the Commission that it no longer seeks to maintain its exempt wholesale generator or foreign utility company status.

(d) *Revocation of status*. (1) If an exempt wholesale generator or a foreign

utility company fails to conform to the criteria for such status or fails to conform with any material facts or representations presented 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 complaint of any person, revoke the status of a facility or company, if the facility or company fails to conform to any of the criteria under this part for such status.

Subpart B—PUHCA 2005 Accounting and Recordkeeping

§ 366.21 Accounts and records of holding companies.

(a) *General.* Unless otherwise exempted or granted a waiver by Commission rule or order pursuant to §§ 366.3 and 366.4, 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 of the financial statements, schedules and reports either required to be filed with the Commission or issued to stockholders, as necessary and appropriate for the protection of utility customers with respect to jurisdictional rates.

(b) Unless otherwise exempted or granted a waiver by Commission rule or order pursuant to §§ 366.3 and 366.4, 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 (15 U.S.C. 79a *et seq.*) may follow either the Commission's record-retention rules for public utilities and licensees or for natural gas companies, as appropriate (parts 125 and 225 of this chapter), or the Security and Exchange Commission's record-retention rules in 17 CFR part 257.

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

§ 366.22 Accounts and records of service companies.

(a) *Record-retention requirements.*—(1) *General.* Unless otherwise exempted or granted a waiver by Commission rule or order pursuant to §§ 366.3 and 366.4, beginning January 1, 2007, every service company shall maintain and make available to the Commission such books, accounts, memoranda, and other records in such manner, and preserve them for such periods as the Commission prescribes in parts 125 and 225 of this chapter, in sufficient detail to permit examination, audit, and verification, as necessary and appropriate for the protection of utility customers with respect to jurisdictional rates.

(2) *Transition period.* Until December 31, 2006, service companies in holding company systems registered under the Public Utility Holding Company Act of 1935 (15 U.S.C. 79a *et seq.*) may follow either the Commission's 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 pursuant to §§ 366.3 and 366.4, 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 (15 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 report of service companies, and FERC–61, narrative description of service company functions.

(a) *General.*—(1) *FERC Form No. 60.* Unless otherwise exempted or granted a waiver by Commission rule or order pursuant to §§ 366.3 and 366.4, every service company in a holding company system that is not a special-purpose company (*e.g.*, a fuel supply company or a construction 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.

(2) *FERC–61.* Unless otherwise exempted or granted a waiver by Commission rule or order pursuant to §§ 366.3 and 366.4, every service company in a holding company system, including a special-purpose company (*e.g.*, a fuel supply company or a construction company), that does not file a FERC Form No. 60 shall instead file with the Commission by May 1, 2007 and by May 1 each year thereafter, a narrative description, FERC–61, of the service company's functions during the prior calendar year. In complying with this section, a holding company may make a single filing on behalf of all such service company subsidiaries.

(3) For good cause shown, the Commission may extend the time within which any such report or narrative description required to be filed pursuant to paragraphs (a)(1) or (2) of this section is to be filed or waive the requirements applicable to any such report or narrative description. 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 or narrative descriptions, 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 (15 U.S.C. 79a *et seq.*) need not file an annual report, FERC Form No. 60, for calendar years 2005 and 2006, after which they must comply with the provisions of this section.

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