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TITLE 18--CONSERVATION OF POWER AND WATER RESOURCES

CHAPTER I--FEDERAL ENERGY REGULATORY COMMISSION, DEPARTMENT OF ENERGY

PART 366_PUBLIC UTILITY HOLDING COMPANY ACT OF 2005--Table of Contents

Subpart A_PUHCA 2005 Definitions and Provisions

Sec. 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 Sec. 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 Sec. 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

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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 Sec. 385.2005(a) of this chapter, but need not be verified.

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

(b) FERC-65A (exemption notification) and petitions for exemption.
(1) Persons who, pursuant to Sec. 366.3(b)(2), seek exemption from the requirements of Sec. 366.2 and the accounting, record-retention, and reporting requirements of Sec. Sec. 366.21, 366.22, and 366.23, may seek such exemption by filing FERC-65A (exemption notification); FERC-65A must be subscribed, consistent with Sec. 385.2005(a) of this chapter, but need not be verified. These filings will be noticed in the Federal Register; persons who file FERC-65A must include a form of notice suitable for publication in the Federal Register in accordance with the specifications in Sec. 385.203(d) of this chapter. Persons who file FERC-65A in good faith shall be deemed to have a temporary

exemption upon filing. If the Commission has taken no action within 60 days after the date of filing FERC-65A, the exemption shall be deemed to have been granted. The Commission may toll the 60-day period to request additional information or for further consideration of the request; in such case, the temporary exemption will remain in effect until such time as the Commission has determined whether to grant or deny the exemption. Authority to toll the 60-day period is delegated to the Secretary or the Secretary's designee.

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

(3) Persons that do not qualify for exemption pursuant to Sec. 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 Sec. 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 Sec. 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 Sec. 385.207(a) of this chapter justifying the request for exemption. Any person seeking such an exemption shall bear the burden of demonstrating that such exemption is warranted.

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

(2) Persons that do not qualify for waiver pursuant to Sec. 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

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file a petition for declaratory order as required under Sec. 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 Sec. 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 Sec. 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 Sec. 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 Sec. 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 Sec. 366.3(a) or paragraphs (b) or (c) of this section, if the person fails to conform to any of the criteria under this part for exemption or waiver.

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