

§ 366.1 Definitions.

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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. 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.

Foreign utility company. 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:

(1) 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

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

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.

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

§ 366.2 Commission access to books and records.

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(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.

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(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 366.21 and any associated service company will be exempt from the requirements of §§366.2, 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 366.21 (applicable to holding companies) and §§366.2, 366.22, and 366.23 (applicable to the holding companies' associated service companies), 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)).

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

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

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

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

(3) Investors in independent transmission-only companies.

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

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

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