

## SUBCHAPTER U—REGULATIONS UNDER THE PUBLIC UTILITY HOLDING COMPANY ACT OF 2005, FEDERAL POWER ACT AND NATURAL GAS ACT

### PART 366—BOOKS AND RECORDS

#### Subpart A—Definitions and Provisions Under PUHCA 2005, the Federal Power Act and the Natural Gas Act

- 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—Accounting and Record-keeping Under PUHCA 2005, the Federal Power Act and the Natural Gas Act

- 366.21 Accounts and records of holding companies.
- 366.22 Accounts and records of service companies.
- 366.23 FERC Form No. 60, Annual reports of centralized service companies, and FERC-61, Narrative description of service company functions.

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#### Subpart A—Definitions and Provisions Under PUHCA 2005, the Federal Power Act and the Natural Gas Act

##### § 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.* 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

§ 366.1

18 CFR Ch. I (4-1-14 Edition)

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 or any natural gas company, or both, 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; Order 731, 74 FR 68529, Dec. 28, 2009]

#### **§ 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