the Statement of Policy of the Secretary of Agriculture effective July 24, 1971, (36 FR 13804) relating to notices of proposed rulemaking and public participation in rulemaking. These regulations are thus issued as final. In addition, section 1601(c)(3) of the 2002 Act provides that the Secretary, in carrying out the rulemaking exception, shall utilize the authority in section 808 of title 5 of the U.S. Code. Accordingly, under 5 U.S.C. 808, it is further found that it would be contrary to the public interest to delay implementation of this rule for the special Congressional review provisions provided for in 5 U.S.C. 802 *et seq.*, to the extent, if any, that they would otherwise apply.

Executive Order 12866

This rule has been determined to be ''Not Significant'' under Executive Order 12866 and has not been reviewed by the Office of Management and Budget (OMB).

Regulatory Flexibility Act

The Regulatory Flexibility Act does not apply to this rule because CCC is not required by 5 U.S.C. 553 or any other law to publish a notice of proposed rulemaking with respect to the subject of this rule.

Environmental Assessment

The environmental impacts of this rule have been considered consistent with the provisions of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*, the regulations of the Council on Environmental Quality (40 CFR parts 1500–1508), and FSA's regulations for compliance with NEPA, 7 CFR part 799. To the extent these authorities may apply, CCC has concluded that this rule is categorically excluded from further environmental review as evidenced by the completion of an environmental evaluation. No extraordinary circumstances or other unforeseeable factors exist which would require preparation of an environmental assessment or environmental impact statement. A copy of the environmental evaluation is available for inspection and review upon request.

Executive Order 12988

The rule has been reviewed in accordance with Executive Order 12988. This rule preempts State laws to the extent such laws are inconsistent with it. This rule is not retroactive. Before judicial action may be brought concerning this rule, all administrative remedies set forth at 7 CFR parts 11 and 780 must be exhausted.

Executive Order 12372

This program is not subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. See the notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) does not apply to this rule because CCC is not required by 5 U.S.C. 553 or any other law to publish a notice of proposed rulemaking for the subject of this rule. Further, this rule contains no unfunded mandates as defined in sections 202 and 205 of UMRA.

Paperwork Reduction Act

Under 7 U.S.C. 7991(c)(2)(A) these regulations may be promulgated and the program administered without regard to chapter 5 of title 44 of the United States Code (the Paperwork Reduction Act). Accordingly, these regulations and the forms and other information collection activities needed to administer the provisions authorized by these regulations are not subject to review by the Office of Management and Budget under the Paperwork Reduction Act.

Government Paperwork Elimination Act

CCC is committed to compliance with the Government Paperwork Elimination Act (GPEA) and the Freedom to E-File Act, which require Government agencies in general, and the FSA in particular, to provide the public the option of submitting information or transacting business electronically to the maximum extent possible. Most forms used by CMA's may be submitted to CCC by electronic submission.

List of Subjects in 7 CFR Part 1425

Agricultural commodities, Cooperatives, Cotton, Feed grains, Oilseeds, Price support programs.

■ For the reasons set out in the preamble, 7 CFR part 1425 is amended as set forth below.

PART 1425—COOPERATIVE MARKETING ASSOCIATIONS

■ 1. The authority citation continues to read as follows:

Authority: 7 U.S.C. 1441 and 1421, 7 U.S.C. 7931–7939; and 15 U.S.C. 714b, 714c, and 714j.

■ 2. Amend § 1425.18 by revising paragraph (a)(1) to read as follows:

§ 1425.18 Distribution of proceeds.

(a)(1) If CCC makes loans or LDP's for any quantity in a loan pool, the related proceeds shall be distributed or otherwise made available to the members account:

(i) Based on the quantity and quality of the commodity delivered by each member;

(ii) Less any authorized charges for services performed or paid by the CMA necessary to condition or otherwise make the commodity eligible for loans or LDP's, according to the marketing agreement provided for in § 1425.13;

(iii) Within 15 work days from the date the CMA receives loan or LDP proceeds from CCC, or held according to the terms of a deferred payment agreement if requested by the member.

* * * * *

Signed in Washington, DC, on July 17, 2006.

Teresa C. Lasseter,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. E6–12068 Filed 7–27–06; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 366

[Docket No. RM05–32–002, Order No. 667–B]

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

Issued July 20, 2006.

AGENCY: Federal Energy Regulatory Commission, DoE.

ACTION: Final Order; Order on Rehearing.

SUMMARY: By this order, the Federal Energy Regulatory Commission (Commission) grants clarification and rehearing in part of Order No. 667–A. Order No. 667–A granted rehearing in part and denied rehearing in part of Order No. 667, which amended the Commission's regulations to implement repeal of the Public Utility Holding Company Act of 1935 and enactment of the Public Utility Holding Company Act of 2005.

DATES: *Effective Date:* This order is effective on August 28, 2006.

FOR FURTHER INFORMATION CONTACT:

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James Guest (Technical Information), Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. (202) 502–6614.

SUPPLEMENTARY INFORMATION:

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

Order on Rehearing

1. Subtitle F of Title XII of the Energy Policy Act of 2005 (EPAct 2005) repealed the Public Utility Holding Company Act of 1935 (PUHCA 1935) and enacted the Public Utility Holding Company Act of 2005 (PUHCA 2005).[1] In Order No. 667, the Federal Energy Regulatory Commission (Commission) amended Subchapter U of its regulations to implement Subtitle F.[2] In Order No. 667–A, the Commission denied rehearing in part and granted rehearing in part of Order No. 667.[3] In the present order, we grant clarification and rehearing in part of Order No. 667–A and amend our regulations accordingly.

Introduction

2. On rehearing of Order No. 667–A, commenters[4] raise five issues. First, National Grid, EEI, Duke, and Consumers seek clarification and/or rehearing of changes in the regulatory text that could be construed to place conditions on the effectiveness of status as an exempt wholesale generator (EWG) or foreign utility company (FUCO). Under the Commission's PUHCA 2005 regulations, a person that is a holding company solely with respect to an EWG or FUCO is eligible for exemption from books-and-records, accounting, record retention and reporting requirements.[5] In Order No. 667–A, the Commission modified the regulatory text governing procedures for obtaining EWG status to state that self-certification (or a Commission determination) would not become effective until the relevant state commissions had made certain determinations under section 32(c) of PUHCA 1935 in those cases where such determinations were necessary under section 32(c) of PUHCA 1935. Similar language was included with respect to FUCO self-certifications (and Commission determinations); *i.e.*, that such status would not become effective until the relevant state commissions had provided certain certifications under section 33(a)(2) of PUHCA 1935. National Grid, EEI, Duke, and Consumers suggest that the Commission cannot and should not require those determinations and certifications, and they seek clarification or rehearing. As discussed below, we reaffirm that EWGs are subject to section 32(c) of PUHCA 1935.[6] However, we clarify that we did not intend that an entity that meets the definition of a FUCO would not have FUCO status until a state commission certification is also provided. Accordingly, we revise the regulatory text that created this confusion.

3. Second, EEI, Sempra, Edison, PPL, and AES ask for clarification or rehearing of the Commission's definition of "single-state holding company system." Under the Commission's PUHCA 2005 regulations, a single-state holding company system is eligible for waiver of accounting, record retention and reporting requirements.[7] In Order No. 667–A, for purposes of such waiver, the Commission defined "single-state holding company system" as a system that derives no more than thirteen percent of its "public-utility company" revenues from outside of a state. The Commission also defined "public-utility company" and "electric utility company" to include EWGs, FUCOs, and qualifying facilities (QFs).[8] As a result, interests in out-of-state EWGs, FUCOs or QFs might make a system ineligible for waiver. EEI, Sempra, Edison, PPL, and AES suggest that this result is unnecessary and would discourage investment. We grant clarification as discussed below, and modify the regulatory text to reflect this clarification.

4. Third, ALCOA expresses concern as to the requirement in Order No. 667–A that, when a subsidiary owns jurisdictional transmission facilities, the parent company must apply for exemption from the Commission's PUHCA 2005 regulations rather than being eligible for exemption upon the provision of notice. ALCOA suggests that, if the subsidiary is not primarily engaged in the provision of transmission service, the parent company should be eligible for exemption upon provision of notice. We deny rehearing as discussed below.

5. Fourth, INGAA requests clarification of the Commission's definition of "gas utility company." Under Order No. 667–A, a natural gas pipeline company that makes only incidental retail sales is a "gas utility company." An upstream owner of the pipeline company is therefore subject to regulation under the Commission's PUHCA 2005 regulations. It asserts that this result imposes unnecessary burdens and should be avoided through adoption of a *de minimis* standard for retail sales. We grant clarification and revise the relevant regulatory text to add an additional exemption to address this circumstance as discussed below.

6. Finally, we clarify (1) in response to a concern raised by EEI and Duke, a subsidiary holding company may be eligible for an exemption or waiver even if an upstream holding company is not; and (2) in response to a concern raised by Invenergy, service companies within an exempt holding company system are themselves exempt from the requirements of sections 366.2, 366.22, and 366.23.

Discussion

1. EWG and FUCO Status

Background

7. PUHCA 2005 requires the Commission to exempt from its books-and-records requirements companies that are holding companies solely with respect to an "exempt wholesale generator" or "foreign utility

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

[2] *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).

[3] *Repeal of the Public Utility Holding Company Act of 1935 and Enactment of the Public Utility Holding Company Act of 2005,* Order No. 667–A, 71 FR 28446 (May 16, 2006), FERC Stats. & Regs. ¶ 31,213 (2006).

[4] Commenters in this second rehearing phase include: AES Corporation (AES); ALCOA Inc. (ALCOA); Consumers Energy Company and CMS Energy Corporation (Consumers); Duke Energy Corporation (Duke); Edison Electric Institute (EEI); Edison International (Edison); Interstate Natural Gas Association of America (INGAA); Invenergy Investment Company LLC and Mayflower Management Services LLC (Invenergy); National Grid USA (National Grid); PPL Corporation (PPL); and Sempra Energy (Sempra).

[5] 18 CFR 366.7(a).

[6] We note that, in practice, section 32(c) of PUHCA only applies to EWGs whose generation facilities' costs were included in state-regulated rates and rate base as of the date of enactment of the Energy Policy Act of 1992 (October 24, 1992). Where it does not apply and therefore where State commission determinations are not necessary, an EWG need merely inform us of that fact.

[7] 18 CFR 366.3(c)(1).

[8] *See* 18 CFR 366.1.

company.''[9] PUHCA 2005 gives the term ''exempt wholesale generator'' the same meaning as in section 32 of PUHCA 1935 and gives the term ''foreign utility company'' the same meaning as in section 33 of PUHCA 1935.[10]

8. In the regulations implementing PUHCA 2005, the Commission restated the definition of EWG in section 32(a)(1) of PUHCA 1935. Under that definition, an EWG is a person that owns or operates an ''eligible facility,'' which is a facility that, with minor exception, is dedicated to wholesale sales.[11]

9. The Commission also incorporated into the definition of EWG the requirement for state commission determinations in section 32(c) of PUHCA 1935.[12] Section 32(c) applies to generation facilities whose costs were included in state-regulated rates and rate base as of the date of enactment of the Energy Policy Act of 1992 (October 24, 1992).[13] Under section 32(c), for such a facility to be considered an ''eligible facility,'' the relevant state commission must determine that dedication of the facility to wholesale sales will benefit consumers, will be in the public interest and will not violate state law.[14] Because, by definition, an EWG can only own or operate eligible facilities, a person seeking EWG status whose generation facilities' costs were included in state-regulated rates and rate base as of the date of enactment of the Energy Policy Act of 1992 (October 24, 1992) would not qualify as an EWG until the relevant state commission issues the specified determinations.[15]

10. In implementing PUHCA 2005, the Commission adopted the definition of ''foreign utility company'' in section 33(a)(3) of PUHCA 1935.[16] Under this definition, a FUCO is a company that owns or operates electricity or natural or manufactured gas facilities that are not located in the United States, that does not derive income from the generation, transmission or distribution of electricity or the distribution at retail of natural or manufactured gas in the United States, and that is not and has no subsidiary that is a public-utility company operating in the United States.

11. In modifications to the regulatory text adopted on rehearing, the Commission included in the definition of ''foreign utility company'' a provision that exempts FUCOs from all sections but section 366.7 of the Commission's PUHCA 2005 regulations;[17] section 366.7 provides that FUCO status does not become effective until the FUCO has obtained state commission certification consistent with section 33(a)(2) of PUHCA 1935.[18] Section 33(a)(2) of PUHCA 1935, in turn, required state certification as a condition on exemption of a FUCO's parent company from public utility holding company regulation under PUHCA 1935. For the exemption to be effective, each state commission with jurisdiction over associated retail electricity and natural gas suppliers needed to certify that the state commission could adequately protect retail ratepayers.[19]

Comments

12. National Grid, EEI, Duke, and Consumers seek clarification and/or rehearing of the requirements for state commission determinations and certifications. They assert that the requirements violate PUHCA 2005 by incorporating operative provisions of PUHCA 1935. They add that state involvement is unnecessary because the Commission may prevent cross-subsidization between EWGs and FUCOs and retail suppliers. Finally, they assert that, if the Commission conditions FUCO status on state commission certification, it will prevent companies from representing that they have FUCO status until state commission certification has been obtained, and also will be inconsistent with such companies' ability to rely on FUCO status under PUHCA 1935. According to these commenters, the associated uncertainty and delay will put companies with United States affiliates at a disadvantage in bidding for foreign utility companies.

Decision

13. We will deny rehearing with respect to EWGs, but grant relief with respect to FUCOs.

14. For some entities, EWG status does not take effect until state commission determinations have been obtained consistent with section 32(c) of PUHCA 1935.[20] PUHCA 2005 gives the term ''exempt wholesale generator'' the same meaning as in section 32 of PUHCA 1935.[21] Section 32(a)(1) of PUHCA 1935 defines ''exempt wholesale generator'' as a person that owns or operates an ''eligible facility.'' Section 32(c) of PUHCA 1935 states that certain facilities, *i.e.*, those whose costs were included in state-regulated rates and rate base as of the date of enactment of the Energy Policy Act of 1992 (October 24, 1992), are not eligible facilities until specified state commission determinations are obtained.[22] Thus, because, by definition, an EWG can only own or operate eligible facilities, and certain facilities can only be eligible facilities with state commission determinations, a person cannot be an EWG if it owns or operates such facilities (*i.e.*, if it owns or operates generation facilities whose costs were included in state-regulated rates and rate base as of the date of enactment of the Energy Policy Act of 1992 (October 24, 1992)) without having obtained the necessary State commission determinations.

15. With respect to FUCOs, we clarify that the Commission did not intend to establish a requirement that an entity cannot meet the definition of a FUCO without first obtaining state commission certification. In contrast to the statutory definition of EWG in section 32 of PUHCA 1935, the statutory definition of FUCO in section 33 of PUHCA 1935 is not tied to state commission certification, and PUHCA 2005 gives the term ''foreign utility company'' the same meaning as in section 33 of PUHCA 1935. Under section 33 of PUHCA 1935, state commission certification affected only the availability of an exemption from public utility holding company regulation under PUHCA 1935, but was not part of the definition of ''foreign utility company.''[23] As a result, state commission certification is not required by PUHCA 2005 as a condition of FUCO status, and we will eliminate the reference to such state commission certification in the regulatory text.

16. Consistent with the foregoing, we also will move paragraph (2) of the definitions of EWG and FUCO to a new section 366.7(e).

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[9] EPAct 2005 1266. *See also* EPAct 2005 1264.

[10] EPAct 2005 1262(6).

[11] 18 CFR 366.1; 15 U.S.C. 79z–5(a)(1) and (2).

[12] 18 CFR 366.1, definition of ''exempt wholesale generator'' (1). *See also* 18 CFR 366.1, definition of ''exempt wholesale generator'' (2); 18 CFR 366.7 (conditioning EWG status on State determinations under section 32(c) of PUHCA 1935).

[13] Pub. L. 102–486, 106 Stat. 2776 (1992). To the extent that the facilities that are at issue are not encompassed within section 32(c) of PUHCA 1935, *e.g.*, the facilities are new facilities, then section 32(c) would not apply and the state commission determinations provided for in section 32(c) would not be necessary. The regulations state that, in such circumstances, the EWG need simply inform the Commission of that fact.

[14] 15 U.S.C. 79z–5a(a)(2) and (c).

[15] As noted supra note 13, to the extent that section 32(c) of PUHCA 1935 does not apply in a particular instance, the person seeking EWG status need simply inform the Commission of that fact.

[16] 18 CFR 366.1, definition of ''foreign utility company.'' *See also* 15 U.S.C. 79z–5b(a)(3)(B).

[17] *Id.*

[18] 18 CFR 366.7.

[19] *See* 15 U.S.C. 79z–5b(a)(1) and (2).

[20] As noted *supra* note 13, to the extent that section 32(c) of PUHCA 1935 does not apply in a particular instance, the person seeking EWG status need simply inform the Commission of that fact.

[21] EPAct 2005 1262.

[22] *See* 15 U.S.C. 79z–5a(a)(1) and (c).

[23] *See* 15 U.S.C. 79z–5b(a).

2. Single-State Holding Companies

Background

17. In implementing PUHCA 2005, the Commission provided for waiver of accounting, recordkeeping and reporting requirements for single state holding company systems.[24] The waiver reflects the principle that, when a system operates substantially within a single state, ratepayers are adequately protected by state oversight as well as by federal oversight under the Federal Power Act, 16 U.S.C. 824 *et seq.*

18. In Order No. 667–A, the Commission defined ''single-state holding company system'' with reference to revenues from in-state versus out-of-state activities. For purposes of waiver from the Commission's accounting, record-keeping and reporting requirements, the Commission defined a single-state holding company system as a system that derives no more than thirteen percent of its ''public-utility company revenues'' from outside of a single state.[25] The Commission also defined ''public-utility company'' and ''electric utility company'' to include EWGs, FUCOs and QFs.[26] As a result, a system whose traditional utility operations are largely confined to a single state might be subject to federal accounting, record-keeping and reporting requirements as a result of owning out-of-state EWGs, FUCOs or QFs.

Comments

19. EEI, Sempra, Edison, PPL, and AES suggest that ownership of out-of-state EWGs, FUCOs or QFs should not affect a system's eligibility for waiver of federal accounting, recordkeeping and reporting requirements. They state that ownership of out-of-state EWGs, FUCOs and QFs did not affect a system's eligibility for the single-state exemption from public utility holding company regulation under PUHCA 1935. They suggest that considering ownership of out-of-state EWGs, FUCOs and QFs now would subject holding company systems to new obligations and would therefore contradict Congress's goal in PUHCA 2005 of removing regulatory obstacles to investment.

Decision

20. The Commission's intent in adopting the 13 percent of revenues standard to identify who is a single state holding company system entitled to a waiver was to use the same 13 percent standard applied by the SEC under PUHCA 1935. Although we have defined ''public-utility company'' and ''electric utility company'' to include EWGs, FUCOs, and QFs, we clarify that we did not intend to include such entities' revenues for purposes of applying the 13 percent of revenues standard to identify who is a single state holding company system entitled to waiver. We will revise the relevant regulatory text in 18 CFR 366.3(c)(1) accordingly.

21. This approach is similar to the section 3(a) exemption under PUHCA 1935, which exempted single-state holding company systems from plenary federal oversight of the system's corporate and financial structure.[27] The section 3(a) exemption of PUHCA 1935 reflected Congress's assessment that the states and the federal government, through corporate and rate regulation, could otherwise effectively oversee a single-state system without the necessity of public utility holding company regulation. Existing state and federal regulation should continue to be sufficient to protect against any abuses associated with ownership of out-of-state EWGs, FUCOs and QFs.

22. Accordingly, we will amend our regulations to provide that, for purposes of waiver under section 366.3(c)(1), revenues derived from EWGs, FUCOs and QFs will not be considered to be ''public-utility company'' revenues and therefore will not affect the availability of waiver of federal accounting and related requirements.[28]

3. Companies That Are Not Primarily Engaged in Transmission

Background

23. In Order No. 667–A, the Commission exempted from its PUHCA 2005 regulations persons that are holding companies with respect to Commission-jurisdictional utilities when (1) neither the utility nor an affiliate has captive customers and (2) neither the utility nor an affiliate owns Commission-jurisdictional transmission facilities or provides Commission-jurisdictional transmission services.[29]

Comments

24. ALCOA suggests that the Commission should exempt, under 18 CFR 366.3(b)(2) and 366.4(b)(1), *i.e.*, by way of FERC–65A, companies whose subsidiaries have no captive customers and are not primarily engaged in transmission in interstate commerce, regardless of whether a subsidiary owns transmission facilities. According to ALCOA, the Commission's regulations as they stand require companies such as ALCOA to instead apply for exemption, under 18 CFR 366.3(d) and 366.4(b)(3), when a subsidiary owns discrete transmission facilities and acquired those facilities by what it characterizes as historical coincidence. ALCOA suggests that there is no regulatory interest in oversight of the parent company in those circumstances and that, therefore, the parent company should not be required to apply for exemption.

25. ALCOA also suggests that the Commission must make the exemption process provided in 18 CFR 366.3(b)(2) and 366.4(b)(1), *i.e.*, by way of FERC–65A, available to companies such as ALCOA because (1) those companies were exempted from public utility holding company regulation under PUHCA 1935, (2) the Commission's notice of proposed rulemaking in this proceeding suggested that the Commission did not intend to impose burdens beyond those in PUHCA 1935, and (3) the Commission did not make the parent company of a transmission owner ineligible for the notification process until rehearing of the Commission's initial order in this proceeding. According to ALCOA, to now require ALCOA to apply for exemption would violate notice requirements of the Administrative Procedure Act, 5 U.S.C. 551–59, and ALCOA's constitutional right to the equal protection of the laws.

Decision

26. At issue is not whether ALCOA and similar companies are eligible for exemption from the Commission's PUHCA 2005 regulations but whether those companies must individually and formally apply for exemption under 18 CFR 366.3(d) and 366.4(b)(3), rather than submitting an exemption notification, *i.e.*, a FERC–65A, under 18 CFR 366.4(b)(1). Contrary to ALCOA's suggestion, at this early stage in our implementation of PUHCA 2005, there is a strong regulatory interest in

[24] 18 CFR 366.3(c).

[25] 18 CFR 366.3(c)(1).

[26] 18 CFR 366.1.

[27] 15 U.S.C. 79c(a).

[28] In the separate context of the statutory exemption of PUHCA 2005 section 1275(d), as reflected in 18 CFR 366.5, involving cost allocation for non-power goods and services in the case of a holding company system whose public utility operations are confined substantially to a single state, EEI asks that the Commission not require that a holding company file a petition for declaratory order in order to obtain a Commission determination that the holding company's public utility operations are confined substantially to a single state. EEI Rehearing Request at 4, 12–13. As a Commission determination that a holding company's public utility operations are confined substantially to a single state would be a declaratory order, the appropriate vehicle to seek such a determination would be a petition for a declaratory order.

[29] *See* 18 CFR 366.3(b)(2)(ii).

requiring holding companies that do not qualify for the exemptions or waivers identified in 18 CFR 366.3(b)(2) and 366.3(c) to apply formally for exemption. As relevant here, that would include, where no other exemption or waiver applies, where the company or a subsidiary owns jurisdictional transmission facilities or provides jurisdictional transmission service. We do not mean to suggest that on the facts and circumstances of a particular case an exemption or waiver might not be appropriate. Rather, at this point in time, the formal application process gives the Commission the opportunity to make such determinations on the facts and circumstances of each case. For example, the process gives the Commission the opportunity to determine whether there might be significant potential for transmission service customers to subsidize wholesale sales and, if so, whether the cross-subsidies could be adequately addressed through rate regulation. Based on that analysis, the Commission would or would not, as the facts and circumstances dictate, permit exemption from oversight under the Commission's PUHCA 2005 regulations.[30]

27. Moreover, the requirement does not impose undue regulatory burdens. In its request for rehearing, ALCOA cites cases in which the SEC determined that ALCOA was exempt from holding company regulation under PUHCA 1935. In light of the SEC's past, active involvement in determining eligibility for exemption under PUHCA 1935, our requirement that companies formally apply to us for exemption under the Commission's PUHCA 2005 regulations (rather than obtaining exemption by filing a FERC–65A) is unexceptional. It is true that companies like ALCOA must apply anew for exemption rather than relying on prior SEC determinations. That obligation flows directly from Congress's decision to change the governing law and is not an unreasonable cost of doing business.

28. Finally, the Administrative Procedure Act does not require us to issue a new notice of proposed rulemaking every time that we make a change to a proposed rule. The express purpose of the comment, decision, and rehearing process is to allow the Commission to make changes to a proposed rule. As evidenced by ALCOA's request for rehearing, moreover, ALCOA had actual and timely notice and opportunity to address provisions and changes that affected ALCOA.

4. Pipeline Companies That Make Incidental Retail Gas Sales

Background

29. Pursuant to PUHCA 1935, and specifically section 2(a)(4) of PUHCA 1935, a natural gas pipeline that was not ''primarily engaged'' in the sale of natural gas at retail was not considered to be a ''gas utility company.'' [31] As a result, under PUHCA 1935, a holding company with interests in that pipeline would not, by virtue of those interests, be subject to public utility holding company regulation.[32]

30. PUHCA 2005 defines ''gas utility company'' without regard to whether a company is primarily engaged in the retail sale of natural gas.[33] In implementing PUHCA 2005, the Commission adopted the statutory definition of ''gas utility company,'' with the added clarification that an entity that is engaged only in the marketing of natural gas is not a ''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.[34]

Under that definition, a pipeline that makes incidental retail sales of natural gas could be interpreted to be a ''gas utility company,'' such that a parent of the pipeline would be subject to the Commission's PUHCA 2005 regulations.[35]

Comments

31. INGAA seeks clarification of the Commission's interpretation of ''gas utility company'' and asks us to find that a company that ''owns an interstate natural gas pipeline company, which pipeline makes deliveries to industrial customers and power plants and/or *de minimis* deliveries to farmers and/or ranchers located adjacent to the pipeline's rights-of-way is not, due to such ownership, a 'holding company' under the Commission's PUHCA [2005] regulations.'' INGAA relies primarily on section 2(a)(4) of PUHCA 1935, which allowed the SEC to except from the definition of ''gas utility company'' companies that were not ''primarily engaged in'' retail sales of natural gas. According to INGAA, section 2(a)(4) of PUHCA 1935 demonstrated Congressional intent not to impose holding company regulation in the context of pipeline companies that make incidental retail sales. INGAA suggests there is no need to change that longstanding practice under PUHCA 1935 and, in particular, to impose regulatory obligations under PUHCA 2005 where none existed under PUHCA 1935. It also points out that under PUHCA 1935 the SEC promulgated a regulation exempting entities from the definition of ''gas utility company'' if their revenues from retail distribution of natural gas were *de minimis* and that the most recent monetary limit was an average annual amount of $5 million over the preceding three calendar years.

Decision

32. A holding company is defined in PUHCA 2005 and in the Commission's PUHCA 2005 regulations based on its ownership of a public-utility company. A public-utility company, in turn, includes a gas utility company, but does not include a natural gas company. So, for a public-utility company that is a gas utility company, its parent may fall within the definition of a holding company. In contrast, for a public-utility company that is a natural gas company and not a gas utility company, its parent would not fall within the definition of a holding company. INGAA's concern is that some pipelines may make incidental sales of natural gas at retail. That fact would result in their also being considered gas utility companies rather than solely natural gas companies—thus resulting in regulation of their parent companies as holding companies.

33. The relevant language in PUHCA 2005 at issue here defining ''gas utility company'' and when exemptions would be warranted under PUHCA 2005 is not identical to the corresponding language in PUHCA 1935 highlighted by INGAA above defining ''gas utility company'' and when exemptions were warranted under PUHCA 1935. That fact notwithstanding, we agree with INGAA and believe that the fact that a pipeline makes sales of natural gas to end-use customers located adjacent to the pipeline's right of way should not, on that basis alone, lead to the pipeline's parent being considered a holding

[30] In fact, ALCOA has made a formal filing, in Docket No. EL06–75–000, seeking an exemption. That filing is presently pending.

[31] 15 U.S.C. 79b(a)(4).

[32] 15 U.S.C. 79b(a)(7); *see also* 17 CFR 250.7(a) (a pipeline company was not ''primarily engaged'' in the sale of natural gas at retail if gross revenues from retail sales were less than an average, annual amount of $5,000,000 over the preceding three calendar years).

[33] EPAct 2005 1262(7).

[34] 18 CFR 366.1.

[35] EPAct 2005 1262(8) and (13); 18 CFR 366.1.

company under PUHCA 2005.[36] We will revise the regulatory text accordingly to add an additional exemption to address such circumstances.

5. Additional Clarifications

34. We hereby grant two clarifications to Order No. 667–A. The first clarification relates to the following statement in the narrative preamble of Order No. 667–A:

> 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.[37]

EEI and Duke urge us to delete the latter portion of the quoted sentence that begins with ''phrased differently'' on the grounds that it creates unnecessary confusion. Upon further review, the first portion of the above-quoted sentence is sufficiently clear on its own. We therefore void the latter, ''phrased differently'' portion of the sentence.

The second clarification relates to section 366.3(a) of our regulations, which states that holding companies that meet the requirements of that section are exempt from specified provisions of the Commission's PUHCA 2005 regulations:

> 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 * * *.[38]

35. The specified provisions include two provisions—sections 366.22 and 366.23—that apply to service companies. Invenergy requests clarification that, if a holding company is exempt as provided in section 366.3(a), service companies within the holding company system are exempt from sections 366.22 and 366.23. We agree with the requested clarification and will change section 366.3(a) accordingly.

Information Collection Statement

36. The regulations of the Office of Management and Budget (OMB)[39] require that OMB approve information-collection burdens that are imposed by an agency. OMB has approved the information-collection burdens that were imposed in Order Nos. 667 and 667–A.[40] The present order clarifies those orders. Accordingly, OMB approval for this order is not necessary. The Commission will send a copy of this order to OMB for informational purposes.

37. Interested persons may obtain information on the information requirements by contacting the following: 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*.

The Commission Orders

Rehearing and clarification 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.

■ In consideration of the foregoing, under the authority of PUHCA 2005, the Commission is amending Part 366 in Chapter I of Title 18 of the *Code of Federal Regulations*, as set forth below:

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

■ 1. The authority citation for part 366 continues to read as follows:

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

■ 2. Section 366.1 is amended by revising the definitions of ''exempt wholesale generator'' and ''foreign utility company'' to read as follows:

Subpart A—PUHCA 2005 Definitions and Provisions

§ 366.1 Definitions.

For purposes of this part:

* * * * *

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.

* * * * *

■ 3. Section 366.3 is amended by revising paragraphs (a) introductory text, (b)(2) introductory text, (c) introductory text, and (c)(1), and by adding paragraph (b)(2)(vii) to read as follows:

§ 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 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):

* * * * *

(b) * * *

(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

[36] As we previously noted in both Order No. 667 and Order No. 667–A, we again note that we have independent authority under the Natural Gas Act to obtain the books and records of regulated companies and any person that controls such companies if relevant to jurisdictional activities. 15 U.S.C. 717g.

[37] Order No. 667–A at P 20, n.41.

[38] 18 CFR 366.3(a).

[39] 5 CFR 1320.12.

[40] *See* OMB Control Nos. 1902–0166, 1902–0216.

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):

* * * * *

(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);

* * * * *

■ 4. In § 366.7, paragraphs (a) and (b) are revised to read as follows, and paragraph (e) is added to read as follows:

§ 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)) any self-certification of an exempt wholesale generator may not become effective until the relevant state commissions have made the determinations provided for therein if such determinations are necessary (if such determinations 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)), any self-certification of an exempt wholesale generator may not become effective until the relevant state commissions have made the determinations provided for therein if such determinations are necessary (if such determinations are not necessary, the notice of self-certification should state so). 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)), a Commission determination of exempt wholesale generator status may not become effective until the relevant state commissions have made the determinations provided for therein if such determinations are necessary. (If such determinations 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.

* * * * *

(e) 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. 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.

[FR Doc. E6–12048 Filed 7–27–06; 8:45 am]

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DEPARTMENT OF DEFENSE

Office of the Secretary

[DOD–2006–OS–0077; 0790–AG31]

32 CFR Part 202

Department of Defense Restoration Advisory Boards

AGENCY: Department of Defense.

ACTION: Final rule; correction.

SUMMARY: The Department of Defense (DoD) published a final rule document on May 12, 2006 promulgating the Restoration Advisory Board (RAB) rule regarding the scope, characteristics, composition, funding, establishment, operation, adjournment, and dissolution of RABs. That rule implemented the requirement established in 10 U.S.C. 2705(d)(2)(A), which requires the Secretary of Defense to prescribe regulations regarding RABs. That rule was based on DoD's current policies for establishing and operating RABs, as well as the Department's experience over the past ten years. This document makes administrative corrections to the preamble of that document.

DATES: This rule is effective July 28, 2006.

FOR FURTHER INFORMATION CONTACT: Ms. Patricia Ferrebee, Office of the Deputy