
FEDERAL ENERGY REGULATORY COMMISSION



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NEWS RELEASE

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COMMISSION STRENGTHENS CUSTOMER PROTECTION, FACILITATES INVESTMENT IN ELECTRICITY INDUSTRY

The Federal Energy Regulatory Commission today harmonized provisions of two key Energy Policy Act of 2005 rulemakings addressing mergers and utility holding companies. It also proposed changes to its regulations that will simplify the accounting, reporting and record retention of financial information of public utility holding companies and centralized service companies.

“The Commission’s actions today should facilitate investment in the electricity business by traditional utilities, nontraditional utilities, and financial institutions. It also accommodates efficient day-to-day financial operations of utility systems, while ensuring captive customers are protected,” observed Commission Chairman Joseph T. Kelliher.

The Energy Policy Act repealed the Public Utility Holding Company Act of 1935 and replaced it with the Public Utility Holding Company Act of 2005, or PUHCA 2005. On December 8, 2005, the Commission adopted Order No. 667 to implement PUHCA 2005, which took effect February 8, 2006. Order No. 667 required holding companies and service companies, unless exempted or granted a waiver by the Commission, to maintain and make available their records and books.

The Energy Policy Act also provided the Commission with expanded authority over certain utility corporate transactions under section 203 of the Federal Power Act, including certain mergers and acquisitions of securities by holding companies. The Energy Policy Act increased the monetary threshold for most transactions subject to Commission authorization, extended the Commission’s authority to include acquisitions of generation facilities, and required the Commission to make cross-subsidization determinations in reviewing jurisdictional transactions. The Commission adopted Order No. 669 on December 23, 2005, to implement these changes.

The Commission today acted on rehearing in both the PUHCA repeal and section 203 proceedings, harmonizing discrepancies between the two rules, sharpening its focus on protection of captive customers, and broadening some of the blanket authorizations and providing new blanket authorizations.

The most significant changes in the two rehearing orders are as follows:

- The Commission affirms its determination that persons that own only Exempt Wholesale Generators (EWGs), Qualifying Facilities (QFs), or Foreign Utility Companies (FUCOs) are public utility holding companies. It also finds that EWGs, QFs and FUCOs are “electric utility companies” for purposes of PUHCA and for purposes of section 203. However, persons that are holding companies solely by virtue of owning EWGs, QFs or FUCOs receive an automatic statutory exemption from PUHCA 2005 and the Commission’s PUHCA regulations. In addition, on rehearing of the section 203 rule, the Commission grants a new blanket authorization for such holding companies to acquire additional EWGs, QFs and FUCOs without Commission pre-approval.
- In the section 203 rehearing, the Commission modifies the regulatory text to make clear that public utilities have blanket authorization to acquire securities of other public utilities in the context of intra-system cash management transactions, subject to protections against cross-subsidization and encumbrances of utility assets. Holding companies were authorized in Order 669 to acquire securities of subsidiaries.
- In the section 203 rehearing, the Commission also modifies the regulatory text to make clear that the previously granted blanket authorization for certain holding company acquisitions involving internal corporate reorganizations also applies to public utility transactions within the holding company, as long as the restructuring does not result in the reorganization of a traditional public utility that has captive customers or that owns or provides transmission service over Commission jurisdictional transmission facilities.
- In the section 203 rehearing, the Commission grants additional blanket authorizations to certain holding companies and their subsidiaries regulated by the Bank Holding Company Act to acquire securities in the normal course of business, as a fiduciary, for derivatives hedging purposes incidental to the business of banking, as collateral for a loan or other limited purposes, but subject to certain restrictions and reporting requirements. It also grants a blanket authorization for certain acquisitions of utility securities for purposes of underwriting and hedging transactions, but subject to conditions and reporting requirements.
- In the section 203 and PUHCA rehearings, several important customer protection changes have been made. In both rules the Commission has clarified that “captive customers” include wholesale and retail energy customers served under cost-based regulation. In addition, with respect to exemptions and blanket authorizations that may involve or affect a public utility with “captive customers,” the Commission on rehearing has now included consideration of whether the public utility owns or provides transmission service over Commission jurisdictional transmission facilities. For example, if a holding company granted a blanket authorization or any member of its holding company system has captive customers or owns or provides transmission service over Commission jurisdictional transmission

facilities, the transaction will be conditioned on certain demonstrations being made that such customers are not adversely affected.

- Regarding blanket authorization for holding companies to acquire securities of intrastate-only, local distribution-only and/or retail-only utilities, if there is any public utility within the holding company with captive customers or that owns or provides transmission service over jurisdictional facilities, the rehearing includes a new condition that such company report the acquisition to the Commission, including any state actions or conditions related to the transaction, and provide an explanation of why the transaction does not result in cross-subsidization.
- With respect to all section 203 transactions that do not receive a blanket authorization, the Commission on rehearing is adding to the regulatory text a specific requirement that an applicant disclose existing pledges and/or encumbrances of utility assets and four specific detailed showings that the proposed transaction will not result in cross-subsidization or pledges or encumbrances of utility assets or, if assurances cannot be made, an explanation of how the transaction is consistent with the public interest.
- The PUHCA rehearing also adds a new requirement that persons with a waiver or exemption notify the Commission if facts or circumstances change.
- Finally, in the PUHCA rehearing rule, the Commission is adding a new requirement that service companies not already required to file Form 60 annually will need to file a Form 61 narrative description of their functions.

The Commission reiterates in both rehearing orders that it will hold a technical conference this year to reevaluate numerous issues raised in both proceedings.

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Also today, the Commission proposed to adopt a Uniform System of Accounts for centralized service companies and modify record retention requirements for both holding companies and service companies. A holding company's centralized service company provides centralized, headquarters-type services including legal, financial, accounting, recordkeeping and engineering services.

After a review of its existing accounting and records retention requirements, the Commission concluded that applying its existing regulations would potentially be too confusing and difficult for users. The proposed rule, with a new Uniform System of Accounts for centralized service companies and modified record-retention requirements for both holding companies and service companies, would be less burdensome in tracking and submitting information to comply with PUHCA 2005, the Commission said.

The proposed rule would implement a new Uniform System of Accounts for centralized service companies, to include standard accounting rules that are necessary to reflect the unique business characteristics of centralized service companies.

The proposed accounting rules would be adapted from both the Commission's existing Uniform Systems of Accounts for public utilities and natural gas companies, and from the U.S. Security and Exchange Commission's Uniform System of Accounts, which is particularly relevant to business activities and transactions of centralized service companies. These are not specifically addressed in the instructions and accounts in the Commission's existing Uniform Systems of Accounts for public utilities and natural gas companies contained in Parts 101 and 201 of FERC's regulations.

In addition to adopting a new Uniform System of Accounts for centralized service companies, the proposed rule would modify the record retention requirements for both holding companies and service companies and incorporate them in the Commission's regulations. In some cases, record retention periods would be reduced. In other cases, where the Commission's retention requirements differ from other regulatory agencies' requirements, the proposed rule would require holding companies and service companies to retain their records for longer periods.

The Commission proposes to require all holding companies and service companies that must file FERC Form No. 60, FERC's Annual Report for Centralized Service Companies, to do so electronically. The Commission further proposes to change the format of the existing schedules of FERC Form No. 60 to require companies that meet the definition of a service company to prepare and file electronically by April 18 for the previous calendar year. The filing date currently is May 1. The proposed April 18 filing date, along with other revisions, would provide for financial information to be submitted in a format more consistent with that required annually in FERC Form No. 1 for public utilities and FERC Form No. 2 for natural gas pipelines. FERC staff is developing submission software to provide for electronic filing of the revised FERC Form 60.

The Commission emphasized that while the proposed Uniform System of Accounts for centralized service companies applies only to centralized service companies, the proposed rule would require all holding companies and service companies to comply with the record-retention requirements.

The Commission directed staff to hold a technical conference to provide for public comment and discussion of specific details of the proposed rule. Another technical conference, focusing on the details of the Order No. 667 and other issues related to final rules and regulations regarding PUHCA 2005 and related Federal Power Act statutes, also is planned. Further information on the two technical conferences will be announced in separate notices to be issued later.