

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

18 CFR Parts 366 and 385

(Docket No. RM06-25-000; Order No. 685)

Electronic Filing of FERC Form No. 60

(Issued October 19, 2006)

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final Rule.

SUMMARY: In this Final Rule, the Federal Energy Regulatory Commission (Commission) is amending its regulations to further implement the Public Utility Holding Company Act of 2005 (PUHCA 2005). Specifically, the Commission is providing for electronic filing of the currently-effective FERC Form No. 60, Annual Report of Centralized Service Companies, for the 2006 and 2007 reporting years, to be filed by May 1, 2007 and May 1, 2008, respectively. No changes are being made to the currently-effective FERC Form No. 60 itself. The Commission has concluded that the automation of the FERC Form No. 60 filing will yield significant benefits, including reduced cost of data entry and retrieval, overall reduction of reporting burden, more timely analysis and publication of data, and increased data analysis capability.

EFFECTIVE DATE: The Final Rule will become effective [insert 60 days after publication in the **FEDERAL REGISTER**].

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UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Sudeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

Electronic Filing of FERC Form No. 60

Docket No. RM06-25-000

ORDER NO. 685

FINAL RULE

(October 19, 2006)

1. The Federal Energy Regulatory Commission (Commission) is amending its regulations to further implement the Public Utility Holding Company Act of 2005 (PUHCA 2005). Specifically, the Commission is providing for electronic filing of the currently-effective FERC Form No. 60, Annual Report of Centralized Service Companies, adopted in Order No. 667,¹ for the 2006 and 2007 reporting years, to be filed

¹ Order No. 667, 70 FR 75592 (Dec. 20, 2005), FERC Stats. & Regs., Regulations Preambles 2001-2005 ¶ 31,197 (2005), order on reh'g, Order No. 667-A, 70 FR 28446 (May 16, 2006), FERC Stats. & Regs. ¶ 31,213 (2006), order on reh'g, Order No. 667-B, 71 FR 42750 (July 28, 2006), FERC Stats. & Regs., ¶ 31,224 (2006).

by May 1, 2007 and May 1, 2008, respectively.² No changes are being made to data reported in the currently-effective FERC Form No. 60 itself.

Background

2. On August 8, 2005, the Energy Policy Act of 2005 (EPAAct 2005)³ was signed into law. In relevant part, it repealed the Public Utility Holding Company Act of 1935 (PUHCA 1935)⁴ and enacted the Public Utility Holding Company Act of 2005 (PUHCA 2005),⁵ which, with one exception not relevant here, became effective on February 8, 2006 (six months from the date of enactment). The intent of Congress in EPAAct 2005 was to repeal the Securities and Exchange Commission's (SEC) regulatory regime established by PUHCA 1935 and to rely on this Commission and state regulatory authorities to protect energy customers, by supplementing the Commission's books and records authority under the Federal Power Act (FPA) and the Natural Gas Act (NGA)

² We note that, contemporaneously with this Final Rule, we are issuing, in Docket No. RM06-11-000, a Final Rule adding a new Uniform System of Accounts (USofA) for Centralized Service Companies, adding new records retention requirements for holding companies and service companies, and revising FERC Form No. 60, Annual Report for Centralized Service Companies to provide for financial reporting consistent with the new USofA. The Final Rule in that docket provides that revised FERC Form No. 60 will be filed electronically beginning with the 2008 reporting year and subsequent reporting years. See Financial Accounting, Reporting and Records Retention Requirements Under the Public Utility Holding Company Act of 2005, Order No. 684, published elsewhere in this issue of the Federal Register, FERC Stats. & Regs. ¶ 31,229 (2006).

³ Energy Policy Act of 2005, Pub. L. 109-58, 119 Stat. 594 (2005).

⁴ 15 U.S.C. 79a et seq.

⁵ EPAAct 2005 at 1261 et seq.

(and by enhancing the Commission's already significant authority over public utility mergers, acquisitions and dispositions of jurisdictional facilities⁶).

3. On December 8, 2005, the Commission issued Order No. 667, adding a new Subchapter U and Part 366 to Title 18 of the Code of Federal Regulations to implement PUHCA 2005.⁷ Among other things, the Commission required centralized service companies⁸ to file an annual financial report, the new FERC Form No. 60.⁹ Specifically, every centralized service company in a holding company system,¹⁰ i.e., was not a special-

⁶ Id. at 1289.

⁷ See supra note 1.

⁸ “Service companies” are defined in 18 CFR 366.1 as “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.” “Centralized service companies” are defined in 18 CFR 367.1(a)(7) as a service company that provides services such as administrative, managerial, financial, accounting, recordkeeping, legal or engineering services, which are sold, furnished, or otherwise provided (typically for a charge) to other companies in the same holding company system. Centralized service companies are different from other service companies that only provide a discrete good or service.

⁹ See Order No. 667, FERC Stats. & Regs. ¶ 31,197 at P 82-88 (codified at 18 CFR 366.23).

¹⁰ As defined in 18 CFR 366.1, 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

(continued...)

purpose company (such as, a fuel supply company or a construction company) that provides non-power goods or services to a Commission-jurisdictional public utility or natural gas company, was required to file with the Commission by May 1, 2006 and by May 1 each year thereafter, FERC Form No. 60, for the prior calendar year.¹¹

4. Centralized service companies began filing FERC Form No. 60 beginning with the 2005 reporting year, due by May 1, 2006.¹² They filed FERC Form No. 60 in a paper format because, at the time Order No. 667 was issued, the Commission had not developed the form submission software to permit electronic filing.

Discussion

5. The Commission's regulations provide for electronic filing of annual reports submitted by entities subject to Commission jurisdiction, including: FERC Form No. 1, Annual Report of Major Electric Utilities, Licensees and Others; FERC Form No. 2, Annual Report for Major Natural Gas Companies; FERC Form No. 2-A, Annual Report for Nonmajor Natural Gas Companies; and FERC Form No. 6, Annual Report of Oil

customers with respect to rates that such person be subject to the obligations, duties and liabilities imposed by this subtitle upon holding companies.

¹¹ See 18 CFR 366.23(a).

¹² The Commission provided centralized service companies in holding company systems exempted by the SEC from the reporting requirements of PUHCA 1935 a transition period for reporting years 2005 and 2006 during which time they need not file FERC Form No. 60. See 18 CFR 366.23(b).

Pipeline Companies.¹³ The electronic filing of these annual reports yields significant benefits, including reduced cost of data entry and retrieval, overall reduction of reporting burden, more timely analysis and publication of data, and increased data analysis capability.¹⁴ And, in general, filers and users alike agree that electronic filing of these annual reports yields significant benefits in terms of process simplification and savings of time and expense.¹⁵

6. Electronic filing of the currently-effective FERC Form No. 60 should result in similar benefits.¹⁶ The Commission, therefore, will require centralized service companies to file the currently-effective FERC Form No. 60 in an electronic medium for the 2006 and 2007 reporting years, to be filed by May 1, 2007 and May 1, 2008, respectively.

7. No changes are being made to the information reported in the currently-effective FERC Form No. 60. However, the Commission will need to make minor formatting changes to the currently-effective FERC Form No. 60 to facilitate the development of form submission software. These minor changes will include the placement of

¹³ See 18 CFR 385.2011.

¹⁴ See, e.g., Electronic Filing of FERC Form No. 1, Order No. 574, 60 FR 1716 (Jan. 5, 1995), FERC Stats. & Regs. ¶ 31,013 at 31,257 (1995).

¹⁵ Id. at 31,256-57.

¹⁶ We note that, contemporaneously with this Final Rule, we are issuing a Final Rule in Docket No. RM06-11-000 that provides for electronic filing of a revised FERC Form No. 60 beginning with the 2008 reporting year. Commenters in that rulemaking docket did not oppose the Commission's proposal to require electronic filing of the revised form. See supra note 2.

instructions for each schedule at the top of each page, updating certain schedules so that the data and information is reported in a structured format on the schedule, renumbering of certain pages, and updating the General Instructions to the form to clarify that the respondents will no longer file two paper copies of the FERC Form No. 60, but rather the respondents will be required to use the form submission software to file the form.

8. In a separate notice, instructions will be provided concerning how a centralized service company may register as a respondent and download the form submission software for use in filing the FERC Form No. 60.

Information Collection Statement

9. Office of Management and Budget (OMB) regulations require OMB to approve certain information collection requirements imposed by an agency.¹⁷ The Final Rule will not change the reporting requirements in the currently-effective FERC Form No. 60. This rule, therefore, is not subject to OMB review. The Commission is submitting a copy of the Final Rule to OMB for information purposes only. Interested persons may obtain information on these reporting requirements by contacting the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426 [Attn: Michael Miller, Information Services Division, (202) 502-8415]. Comments on the requirements of this rule can be sent to the Office of Information and Regulatory Affairs of OMB [Attn: Desk

¹⁷ 5 CFR 1320.11.

Officer for the Federal Energy Regulatory Commission; phone, (202) 395-4650, fax: (202) 395-27285, e-mail: oira_submission@omb.eop.gov].

Environmental Analysis

10. Commission regulations require that an Environmental Assessment or an Environmental Impact Statement be prepared for any Commission action that may have a significant adverse effect on the human environment.¹⁸ The Commission has categorically excluded certain actions from this requirement as not having a significant effect on the human environment.¹⁹ No environmental consideration is necessary for the promulgation of a rule that is clarifying, corrective or procedural.²⁰ Because the electronic filing requirement for the currently-effective FERC Form No. 60 adopted in this Final Rule is merely procedural, no environmental statement is necessary.

Regulatory Flexibility Act Certification

11. The Regulatory Flexibility Act of 1980 (RFA)²¹ generally requires either a description and analysis of a rule that will have a significant economic impact on a substantial number of small entities or a certification that the rule will not have a

¹⁸ Regulations Implementing the National Environmental Policy Act, Order No. 486, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs. ¶ 30,783 (1987) (codified at 18 CFR part 380).

¹⁹ 18 CFR 380.4.

²⁰ 18 CFR 380.4(a)(2)(ii).

²¹ 5 U.S.C. 601-612.

significant economic impact on a substantial number of small entities. Most centralized service companies and holding companies to which this Final Rule applies would not fall within the RFA's definition of small entity.²² Consequently, the Commission certifies that this Final Rule will not have a "significant economic impact on a substantial number of small entities."

Document Availability

12. In addition to publishing the full text of this document in the Federal Register, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through the Commission's Home Page (<http://www.ferc.gov>) and in the Commission's Public Reference Room during normal business hours (8:30 a.m. to 5:00 p.m. Eastern time) at 888 First Street, N.E., Room 2A, Washington D.C. 20426.

13. From the Commission's Home Page on the Internet, this information is available in the Commission's document management system, eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing,

²² 5 U.S.C. 601(3), citing to section 3 of the Small Business Act, 15 U.S.C. 632. Section 3 of the Small Business Act defines a "small business concern" as a business that is independently owned and operated and that is not dominant in its field of operation. The Small Business Size Standards component of the North American Industry Classification System (NAICS) defines a small electric utility as one that, including its affiliates, is primarily engaged in the generation, transmission, and/or distribution of electric energy for sale and whose total electric output for the preceding fiscal year did not exceed four million MWh. NAICS defines a small natural gas pipeline company as one that transports natural gas and whose annual receipts (total income plus cost of goods sold) did not exceed \$6.5 million dollars for the preceding year. 13 CFR 121.201.

printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

14. User assistance is available for eLibrary and the Commission's website during normal business hours. For assistance, please contact FERC Online Support at 1-866-208-3676 (toll free) or 202-502-6652 (e-mail at FERCON-lineSupport@ferc.gov) or the Public Reference Room at 202-502-8371, TTY 202-502-8659 (e-mail at public.referenceroom@ferc.gov).

Administrative Findings And Effective Date

15. The Administrative Procedure Act (APA)²³ requires rulemakings to be published in the Federal Register. The APA also mandates that an opportunity for comments be provided when an agency promulgates regulations. However, notice and comment are not required under the APA when the agency for good cause finds that notice and public procedure thereon are impracticable, unnecessary or contrary to the public interest.²⁴

16. The Commission finds that notice and comment are unnecessary for this rulemaking. As explained above, this Final Rule is merely procedural in nature. The Commission is not revising the data the centralized service companies file in the currently-effective FERC Form No. 60. The Commission is merely requiring electronic filing of the currently-effective FERC Form No. 60. The Commission, therefore, finds

²³ 5 U.S.C. 551-59.

²⁴ 5 U.S.C. 553(B); see, e.g., Mid-Tex Electric Cooperative, Inc. v. FERC, 822 F.2d 1123 (D.C. Cir. 1987).

good cause to make this Final Rule effective [insert date that is 60 days after publication in the **FEDERAL REGISTER**].

Congressional Notification

17. The provisions of the Small Business Regulatory Enforcement Fairness Act of 1996²⁵ regarding Congressional review of Final Rules does not apply to this Final Rule, because the rule concerns agency procedure and practice and will not substantially affect the substantive rights of non-agency parties.²⁶

List of subjects

18 CFR Part 366

Electric power
Natural gas
Reporting and recordkeeping requirements

18 CFR Part 385

Administrative practice and procedure
Electric power
Penalties
Pipelines
Reporting and recordkeeping requirements

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.

²⁵ 5 U.S.C. 801.

²⁶ 5 U.S.C. 804(3)(B).

In consideration of the foregoing, the Commission amends parts 366 and 385, Chapter I, Title 18, Code of Federal Regulations, as follows:

PART 366 – PUBLIC UTILITY HOLDING COMPANY ACT OF 2005

1. The authority citation for part 366 is revised to read as follows:

Authority: 42 U.S.C. 16451-16463.

2. In § 366.23, paragraph (a)(1) is revised to read as follows:

§ 366.23 FERC Form No. 60, Annual reports of service companies, and FERC-61, Narrative description of service company functions.

(a) General. (1) FERC Form No. 60. Unless otherwise exempted or granted a waiver by Commission rule or order pursuant to §§ 366.3 and 366.4, every centralized service company (see § 367.2 of this chapter) in a holding company system must file an annual report, FERC Form No. 60, as provided in § 369.1 of this chapter. Every report must be submitted on the FERC Form No. 60 then in effect and must be prepared in accordance with the instructions incorporated in that form.

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PART 385 – RULES OF PRACTICE AND PROCEDURE

3. The authority citation for part 385 is revised to read as follows:

Authority: 5 U.S.C. 551-557; 15 U.S.C. 717-717z, 3301-3432; 16 U.S.C. 791a-825v, 2601-2645; 28 U.S.C. 2461; 31 U.S.C. 3701, 9701; 42 U.S.C. 7101-7352, 16441, 16451-16463; 49 U.S.C. 60502; 49 App. U.S.C. 1-85 (1988).

4. In § 385.2011, paragraph (a)(9) is added and paragraph (c)(3) is revised to read as follows:

§ 385.2011 Procedures for filing on electronic media (Rule 2011).

(a) * * *

(9) FERC Form No. 60, Annual report of centralized service companies.

* * * * *

(c) What to file. * * *

(3) With the exception of the Form Nos. 1, 2, 2-A, 6 and 60, the electronic media must be accompanied by the traditional prescribed number of paper copies.

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