

Commission identifying itself and providing details about its prior filings that establish that it complied with the Commission's Electric Quarterly Report filing requirements.

8. If the above-captioned market-based rate seller does not wish to continue having market-based rate authority, it may file a notice of cancellation with the Commission pursuant to section 205 of the FPA to cancel its market-based rate tariff.

The Commission orders:

(A) Within 15 days of the date of issuance of this order, the public utility listed in the caption of this order shall file with the Commission all delinquent Electric Quarterly Reports. If the public utility fails to make this filing, the Commission will revoke that public utility's authority to sell power at market-based rates and will terminate its electric market-based rate tariff. The Secretary is hereby directed, upon expiration of the filing deadline in this order, to promptly issue a notice, effective on the date of issuance, listing the public utility whose tariff has been revoked for failure to comply with the requirements of this order and the Commission's Electric Quarterly Report filing requirements.

(B) The Secretary is hereby directed to publish this order in the **Federal Register**.

By the Commission.

Kimberly D. Bose,
Secretary.

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PL09-2-000]

Material Changes in Facts That Require Notifications Under Commission Regulations Under the Public Utility Holding Company Act of 2005; Order Clarifying Requirement To Notify Commission of Material Changes in Facts Under the Public Utility Holding Company Act of 2005 and Allowing 45-Day Filing Period for Updated Notifications

Issued November 20, 2008.

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

1. The Commission's regulations under the Public Utility Holding Company Act of 2005 (PUHCA 2005)¹

currently require persons that meet the definition of a holding company set forth at 18 CFR 366.1 (2008) to notify the Commission of their status as a holding company no later than 30 days after they become a holding company.² The Commission's PUHCA 2005 regulations also provide exemptions from or waivers of requirements that apply to holding companies.³ The companies that receive certain of these exemptions or waivers are required to notify the Commission of material changes in facts that may affect the exemption or waiver.⁴ It has come to the Commission's attention that we may not have provided sufficient clarity regarding an aspect of the scope of this filing requirement and the purpose of this order is to clarify and provide guidance on certain filings that need to be made under this regulation.

2. The exemptions in question apply to a number of entities, including certain passive investors and certain utility operating companies, as well as to certain classes of transactions. Qualifying entities or classes of transactions are exempt from the requirements concerning access to books and records found at section 366.2, as well as the accounting, record-retention, and reporting requirements of sections 366.21, 366.22, and 366.23 of the Commission's regulations.⁵ To receive one or more of these exemptions, a person must file an exemption notification with the Commission, *i.e.*, FERC-65A. The exemption is deemed granted if the Commission does not take action on the notification within 60 days.⁶ Persons that do not qualify for an exemption under the regulations may petition for a declaratory order granting one.⁷

3. The waivers in question apply to holding companies that have single-state holding company systems, as defined in section 366.3(c)(1) of the Commission's regulations, as well as investors in independent transmission-only companies and holding companies with 100 MW of generation or less that is used for their own load or sales to affiliated end users.⁸ Qualifying entities receive a waiver of the accounting, record-retention, and reporting requirements found in sections 366.21, 366.22 and 366.23 of the Commission's regulations.⁹ To receive one or more of

these waivers, a person must file a waiver notification with the Commission, *i.e.*, FERC-65B. The waiver is deemed granted if the Commission does not take action on the notification within 60 days.¹⁰ Persons that do not qualify for a waiver under the regulations may petition for a declaratory order granting one.¹¹

4. The Commission's regulations specify that if there is any material change in facts that may affect an exemption or waiver of the type described above, the person that received the exemption or waiver must notify the Commission of the change within 30 days of the material change. At that time the person must (i) submit a new FERC-65A, FERC-65B, or petition for declaratory order; (ii) file a written explanation why the material change in facts does not affect the exemption or waiver; or (iii) notify the Commission that it no longer seeks to maintain its exemption or waiver.¹²

5. The Commission's regulations require only notification of those material changes in facts that may affect an exemption or waiver, but they do not otherwise state when a notification is required. The Commission wishes to clarify one type of change in facts that should in all cases be the subject of a notification. If a holding company that has previously filed an exemption or waiver notification, *i.e.*, FERC-65A or FERC-65B, or that has received an exemption or waiver through a declaratory order, becomes a holding company with respect to an *additional* public-utility company or holding company of any public-utility company (*i.e.*, obtains the power to vote 10 percent or greater of the voting securities of an *additional* company), that holding company should file with the Commission a notification of material change in facts that describes the additional public-utility company or holding company of any public-utility company and otherwise complies with the requirements of section 366.4(d)(1) of the Commission's regulations by selecting one of the three possible courses of action set forth in that section. This filing should be made *whether or not* a change has occurred with respect to the basis on which the exemption or waiver was granted.¹³ We

¹⁰ *Id.* § 366.4(c)(1).

¹¹ *Id.* § 366.4(c)(2); *accord id.* § 366.3(d).

¹² *Id.* § 366.4(d).

¹³ For example, if a holding company received an exemption from the PUHCA 2005 regulations on the basis of its status as a passive investor of the type identified in 18 CFR 366.3(b)(2)(i), it should notify the Commission whenever it acquires as a passive investor interests in an additional public-utility company or holding company that, upon

² 18 CFR 366.4(a)(1) (2008).

³ *Id.* § 366.3.

⁴ *Id.* § 366.4(d).

⁵ *Id.* § 366.3(b).

⁶ *Id.* § 366.4(b)(1).

⁷ *Id.* § 366.4(b)(3); *accord id.* § 366.3(d).

⁸ *Id.* § 366.3(c).

⁹ *Id.* § 366.4(c).

¹ 42 U.S.C. 16451 *et seq.* (2006).

note that the FERC-65 filing requirements are intended, in part, to serve an informational purpose,¹⁴ and the addition of a new subsidiary company that is a public-utility company or holding company of a public-utility company represents a material fact that should be reported to the Commission.

6. Because not all holding companies may have been interpreting the Commission's regulations to require such filings where the basis on which their exemption or waiver was granted has not changed, and because the Commission has not previously clarified this requirement for notifications of material changes in fact, we will allow all such companies to file within 45 days of the date of publication of this order in the **Federal Register** a notification of change in material facts which updates the Commission on any investments of 10 percent or more of the voting securities of a public-utility company or holding company of a public-utility company since the time the exemption or waiver was granted. The Secretary is directed to publish a copy of this order in the **Federal Register**.

By the Commission.

Kimberly D. Bose,
Secretary.

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98-150-012]

Millennium Pipeline Company, L.L.C.; Notice of Petition To Amend

November 19, 2008.

Take notice that on November 17, 2008, Millennium Pipeline Company, L.L.C. (Millennium), One Blue Hill Plaza, Seventh Floor, P.O. Box 1565, Pearl River, New York 10965, filed in Docket No. CP98-150-012, a petition to amend the certificate of public convenience and necessity issued on December 21, 2006 in Docket No. CP98-150-006, *et al.* It is stated that Millennium seeks authority to amend its certificate authorization to allow it to implement a contingency plan to acquire, construct, and operate

additional facilities if it is unable to complete the horizontal directional drill at the East Branch of the Delaware River or at Wheeler Creek in time to make its facilities available for service prior to December 31, 2008. Specifically, Millennium requests authorization to (1) decrease the diameter of the pipeline facilities to be constructed at Wheeler Creek from 30 inches to 24 inches, and permanently provide service utilizing the reduced diameter facilities; (2) delay completion of the horizontal directional drill (HDD) at the East Branch of the Delaware River until no later than September 30, 2009; (3) acquire from Columbia two 10-inch diameter pipelines and a small segment of one 12-inch diameter pipeline located to the west of the two 10-inch lines (Crossing Facilities) which Columbia is authorized to abandon in place; (4) construct limited facilities, including approximately 850 feet of 12-inch pipeline, cathodic protection equipment and overpressure protection facilities, necessary to interconnect Columbia's Crossing Facilities with Millennium's newly constructed 30-inch diameter mainline at the East Branch of the Delaware River; and (5) provide service utilizing the Crossing Facilities until such time as Millennium completes the HDD or implements an approved alternative at the East Branch of the Delaware River. It is stated that if the requested authorizations would only be implemented if Millennium determines that either of the HDDs would not be completed in time to permit Millennium to make its system available for service prior to December 31, 2008.

It is also stated that if Millennium is able to complete one HDD, but not the other HDD, Millennium would only implement the authorization that applies to the HDD it is unable to complete, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at <http://www.ferc.gov> using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at FERCOnlineSupport@ferc.gov or toll free at (866) 208-3676; or for TTY, contact (202) 502-8659.

Any initial questions regarding Millennium's proposal in this petition should be directed to counsel for Millennium, Daniel F. Collins or Letitia W. McKoy, Fulbright & Jaworski, L.L.P., 801 Pennsylvania Avenue, NW.,

Washington, DC 20004; telephone (202) 662-4586 (Daniel) or (202) 662-4668 (Letitia), fax (202) 662-4643.

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this

acquisition, becomes a "subsidiary company," as defined in 18 CFR 366.1, of the passive investor. This filing should be made even if the holding company continues to qualify for an exemption as a passive investor.

¹⁴ *Id.* § 366.4(a)(2).