

(B) Transactions under the blanket authorizations are subject to the terms and conditions and quarterly reporting requirements and for the purposes set forth in the Application, as discussed and modified in the body of this order.

(C) The foregoing authorizations are without prejudice to the authority of the Commission or any other regulatory body with respect to rates, service, accounts, valuation, estimates, or determinations of costs, or any other matter whatsoever now pending or which may come before the Commission.

(D) Nothing in this order shall be construed to imply acquiescence in any estimate or determination of costs or any valuation of property claimed or asserted.

(E) The Commission retains authority under sections 203(b) and 309 of the FPA to issue supplemental orders as appropriate.

(F) Horizon is subject to audit to determine whether it is in compliance with the representations, conditions and requirements upon which the authorizations are herein granted and with applicable Commission rules, regulations and policies. In the event of a violation, the Commission may take action within the scope of its oversight and enforcement authority.

(G) Horizon shall file with the Commission, for informational purposes, contemporaneously with filing at the SEC the Schedule 13G filings made with the SEC that are relevant to the authorizations granted in this order. Any changes in the information provided on the initial Schedule 13G must be reflected in an annual amended filing due within 45 days of the end of each calendar year. Horizon shall file with the Commission any comment or deficiency letters received from the SEC that concern Schedule 13G-related compliance audits conducted by the SEC. Such filings shall be made in this docket or in appropriate sub-dockets of this docket.

(H) Horizon shall file with the Commission, for informational purposes, within 45 days of the end of each calendar quarter, a quarterly report of securities of public utilities and public utility holding companies as of the last day of the calendar quarter stated in terms of the number of shares held as of the end of the quarter and as a percentage of the outstanding shares.

(I) Horizon shall retain the records of its transactions concerning public utility securities as required under the Investment Advisers Act.

(J) Horizon must inform the Commission, within 30 days, of any material change in circumstances that

would reflect a departure from the facts, policies, and procedures the Commission relied upon in granting the request and specifying the terms and conditions under which the blanket authorization, as set forth in section 33.1(c)(5) of the Commission's regulations, will be available to them.

(K) 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. ER02-2001-009; Docket No. ER07-559-000]

Before Commissioners: Joseph T. Kelliher, Chairman; Suedeene G. Kelly, Marc Spitzer, Philip D. Moeller, and Jon Wellingshoff; Electric Quarterly Reports, Flat Earth Energy, LLC Order on Intent To Revoke Market-Based Rate Authority

November 20, 2008.

1. Section 205 of the Federal Power Act (FPA), 16 U.S.C. 824d (2000), and 18 CFR part 35 (2008), require, among other things, that all rates, terms, and conditions of jurisdictional services be filed with the Commission. In Order No. 2001, the Commission revised its public utility filing requirements and established a requirement for public utilities, including power marketers, to file Electric Quarterly Reports summarizing the contractual terms and conditions in their agreements for all jurisdictional services (including market-based power sales, cost-based power sales, and transmission service) and providing transaction information (including rates) for short-term and long-term power sales during the most recent calendar quarter.¹

2. Commission staff's review of the Electric Quarterly Report submittals indicates that one utility with authority to sell electric power at market-based rates has failed to file its Electric Quarterly Reports. This order notifies this public utility that its market-based

rate authorization will be revoked unless it complies with the Commission's requirements within 15 days of the date of issuance of this order.

3. In Order No. 2001, the Commission stated that,

[i]f a public utility fails to file a[n] Electric Quarterly Report (without an appropriate request for extension), or fails to report an agreement in a report, that public utility may forfeit its market-based rate authority and may be required to file a new application for market-based rate authority if it wishes to resume making sales at market-based rates.²

4. The Commission further stated that,

[o]nce this rule becomes effective, the requirement to comply with this rule will supersede the conditions in public utilities' market-based rate authorizations, and failure to comply with the requirements of this rule will subject public utilities to the same consequences they would face for not satisfying the conditions in their rate authorizations, including possible revocation of their authority to make wholesale power sales at market-based rates.³

5. Pursuant to these requirements, the Commission has revoked the market-based rate tariffs of several market-based rate sellers that failed to submit their Electric Quarterly Reports.⁴

6. As noted above, Commission staff's review of the Electric Quarterly Report submittals identified one public utility with authority to sell power at market-based rates that failed to file Electric Quarterly Reports through the third quarter of 2008. Commission staff contacted this entity to remind it of its regulatory obligations.⁵ Nevertheless, the public utility listed in the caption of this order has not met those obligations.⁶ Accordingly, this order notifies this public utility that its market-based rate authorization will be revoked unless it complies with the Commission's requirements within 15 days of the issuance of this order.

7. In the event that the above-captioned market-based rate seller has already filed its Electric Quarterly Report in compliance with the Commission's requirements, its inclusion herein is inadvertent. Such market-based rate seller is directed, within 15 days of the date of issuance of this order, to make a filing with the

² Order No. 2001 at P 222.

³ *Id.* at P 223.

⁴ See, e.g., *Electric Quarterly Reports*, 73 FR 31,460 (June 2, 2008); *Electric Quarterly Reports*, 115 FERC ¶ 61,073 (2006), *Electric Quarterly Reports*, 114 FERC ¶ 61,171 (2006).

⁵ See *Flat Earth Energy, LLC*, Docket No. ER07-559-000 (October 7, 2008) (unpublished letter order).

⁶ According to the Commission's records, the company subject to this order last filed its Electric Quarterly Reports for the 1st quarter of 2008.

¹ Revised Public Utility Filing Requirements, Order No. 2001, FERC Stats. & Regs. ¶ 31,127, *reh'g denied*, Order No. 2001-A, 100 FERC ¶ 61,074, *reconsideration and clarification denied*, Order No. 2001-B, 100 FERC ¶ 61,342, *order directing filings*, Order No. 2001-C, 101 FERC ¶ 61,314 (2002) *order directing filings*, Order No. 2001-D, 102 FERC ¶ 61,334 (2003).

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; Suedeen 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).