

SUBCHAPTER T—REGULATIONS UNDER SECTION 32 OF THE PUBLIC UTILITY HOLDING COMPANY ACT OF 1935

PART 365—FILING REQUIREMENTS AND MINISTERIAL PROCEDURES FOR PERSONS SEEKING EXEMPT WHOLESALE GENERATOR STATUS

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AUTHORITY: 15 U.S.C. 79.

SOURCE: Order 550, 58 FR 8906, Feb. 18, 1993, unless otherwise noted.

§ 365.1 Purpose.

The purpose of part 365 is to implement section 32 of the Public Utility Holding Company Act of 1935, as added by section 711 of the Energy Policy Act of 1992.

§ 365.2 Definitions.

(a) For the purpose of this part terms will have the same meaning as defined in the Public Utility Holding Company Act of 1935, as amended by the Energy Policy Act of 1992, except as provided in paragraph (b) of this section.

(b) For the purpose of this part:

(1) *Commission* means the Federal Energy Regulatory Commission; and

(2) *Receipt of an application* means the date on which the Commission receives the application or an amendment allowed for good cause shown and the applicable filing fee, if any; and

(3) *Affected State commission* means the State commission of each state in which a generating facility owned and/or operated by the applicant is located; each State commission regulating the retail rates of an electric utility that will purchase power from the applicant, if known at the time of application; and, each State commission regu-

lating a retail utility that is affiliated with the applicant.

[Order 550, 58 FR 8906, Feb. 18, 1993, as amended by Order 591, 61 FR 57327, Nov. 6, 1996]

§ 365.3 Contents of application and procedure for filing.

(a) A person seeking status as an exempt wholesale generator (applicant) must file with the Commission, and serve on the Securities and Exchange Commission and any affected State commission, the following:

(1) A sworn statement, by a representative legally authorized to bind the applicant, attesting to any facts or representations presented to demonstrate eligibility for EWG status, including:

(i) A representation that the applicant is engaged directly, or indirectly through one or more affiliates as defined in section 2(a)(11)(B) of the Public Utility Holding Company Act of 1935, 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;

(ii) Any exceptions for foreign sales of power at retail; and

(iii) If the applicant intends to satisfy the “and selling electric energy at wholesale” requirement of paragraph (a)(1)(i) as a person engaged exclusively in operating all or part of one or more eligible facilities, a representation that the operator has an agency relationship with the person (or persons) who sells electric energy at wholesale from the eligible facility (or facilities).

(2) A brief description of the facility or facilities which are or will be eligible facilities owned and/or operated by the applicant including:

(i) The related transmission interconnection components;

(ii) Any lease arrangements involving the facilities, including leases to one or more public utility companies; and

(iii) Any electric utility company that is an affiliate company or associate company of the applicant.

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(b) If a rate or charge for, or in connection with, the construction of a facility described in paragraph (a)(2) of this section, or for electric energy produced by a facility described in paragraph (a)(2) of this section (other than any portion of a rate or charge which represents recovery of the cost of a wholesale rate or charge), was in effect under the laws of any State on October 24, 1992, or if any portion of a facility described in paragraph (a)(2) of this section is owned or operated by an electric utility company that is an affiliate or associate company of the applicant, the applicant must also file a copy of a specific determination from every State commission having jurisdiction over any such rate or charge, or if the rate or charge is a rate or charge of an affiliate of a registered holding company, a specific determination from every State commission having jurisdiction over the retail rates and charges of the affiliates of the registered holding company, that allowing the facility to be an eligible facility:

- (1) Will benefit consumers,
- (2) Is in the public interest, and
- (3) Does not violate State law.

(c) Applications for exempt wholesale generator status must also include a copy of a notice of the application suitable for publication in the FEDERAL REGISTER. The notice must state the applicant's name, the date of the application, and a brief description of the applicant and the facility or facilities which are or will be eligible facilities owned and/or operated by the applicant. The applicant must also submit a copy of its notice on a 3½" diskette in ASCII format. Each diskette must be clearly marked with the name of the applicant and the words "notice of filing." The notice must be in the following form:

(Name of Applicant)
Docket No. EG-

Notice of Application for Commission Determination of Exempt Wholesale Generator Status

On (date application was filed), (name and address of applicant) filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

[Brief description of the applicant and the facility or facilities which are or will be eligible facilities owned and/or operated by the applicant, including reference and citation to any applicable State commission determinations.]

Any person desiring to be heard concerning the application for exempt wholesale generator status should file a motion to intervene or comments with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application. All such motions and comments should be filed on or before _____ and must be served on the applicant. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

[Order 550, 58 FR 8906, Feb. 18, 1993, as amended by Order 550-A, 58 FR 21255, Apr. 20, 1993]

§ 365.4 Effect of filing.

A person applying in good faith for a Commission determination of exempt wholesale generator status will be deemed to be an exempt wholesale generator from the date of receipt of the application until the date of Commission action pursuant to § 365.5.

§ 365.5 Amendment of applications.

The Commission will allow amendments of applications for good cause shown without payment of additional filing fees. If the amendment is accepted, notice of the amended application will be published in the FEDERAL REGISTER, with further opportunity for comments.

[Order 591, 61 FR 57328, Nov. 6, 1996]

§ 365.6 Commission action.

If the Commission has not issued an order granting or denying an application within 60 days of receipt of the application, the application will be deemed to have been granted.

[Order 550, 58 FR 8906, Feb. 18, 1993. Redesignated by Order 591, 61 FR 57327, Nov. 6, 1996]

§ 365.7 Notification of Commission action to the Securities and Exchange Commission.

The Secretary of the Commission will notify the Securities and Exchange