

153 FERC ¶ 61,025  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Norman C. Bay, Chairman;  
Philip D. Moeller, Cheryl A. LaFleur,  
Tony Clark, and Colette D. Honorable.

Bloom Energy Corporation

Docket No. EL15-81-000

ORDER GRANTING PETITION FOR DECLARATORY ORDER

(Issued October 15, 2015)

1. On June 30, 2015, Bloom Energy Corporation (Bloom) filed a petition under Rule 207(a) of the Commission's Rules of Practice and Procedure and sections 366.3(b)(1), 366.3(d), and 366.4(b)(3) of the Commission's regulations,<sup>1</sup> requesting that the Commission issue a declaratory order stating that Bloom and its current and future subsidiaries engaged in generating and selling at negotiated rates to non-captive customers electric energy generated from fuel cells using natural gas or renewable energy biogas as a fuel are exempt from certain Commission regulations under the Public Utility Holding Company Act of 2005 (PUHCA 2005).<sup>2</sup> In this order, we grant Bloom's petition.

**I. Background**

2. Bloom states that it develops, builds, and installs solid-oxide fuel cells that generate electric energy. These fuel cells are known as Bloom Energy Servers. The Bloom Energy Servers convert natural gas or renewable energy biogas into electricity using a direct electrochemical reaction rather than combustion. Bloom states that it regularly sells Bloom Energy Servers to third parties, who then use the servers to generate electric energy for their own use in commercial and industrial applications. According to Bloom, these transactions do not involve activities that lead to Bloom or its subsidiaries being subject to jurisdiction under PUHCA 2005.<sup>3</sup>

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<sup>1</sup> 18 C.F.R. §§ 385.207(a), 366.3(b)(1), 366.3(d), and 366.4(b)(3) (2015).

<sup>2</sup> 42 U.S.C. § 16451 *et seq.* (2012).

<sup>3</sup> Petition at 5.

3. Bloom states that in other cases, it sells Bloom Energy Servers to indirect subsidiaries of Bloom, which, in turn, use the Bloom Energy Servers to provide energy services to third party industrial and commercial customers, typically for installation at facilities such as data centers and large stores or warehouses. Bloom states that these indirect subsidiaries are public-utility companies under PUHCA 2005, making Bloom and certain of its intermediate subsidiaries “holding companies” that are subject to Commission jurisdiction under PUHCA 2005. In some cases, these arrangements involve sales at wholesale of electric energy, in which case the applicable Bloom subsidiaries have obtained exempt wholesale generator (EWG) status and market-based rate authorization. Bloom states that EWG status supports an exemption from PUHCA 2005 requirements under section 366.3(a) of the Commission’s regulations. In other cases, however, the applicable Bloom public-utility company subsidiaries provide energy services to commercial and industrial customers under arrangements that may be considered to be retail sales. Bloom states that these subsidiaries do not qualify for an exemption from PUHCA 2005 regulation as EWGs, since they do not make sales exclusively at wholesale.<sup>4</sup>

4. Bloom notes that the Commission established a procedure in part 366 of its regulations<sup>5</sup> for parties that do not otherwise qualify for an exemption from relevant Commission regulations under PUHCA 2005 to file a request for declaratory order to obtain a specific exemption from such regulations. Bloom also notes that the Commission previously issued a declaratory order (Exemption Order) finding that “Bloom’s subsidiaries that could be [qualifying facilities] if they used gas from landfills or biomass facilities as fuel meet the criteria for non-traditional utilities under section 366.3(b)(2)(ii), and thus satisfy the requirements of section 366.3(b)(1)(i).”<sup>6</sup> The specific regulations for which the Commission granted exemptions are sections 366.2, 366.21, 366.22, and 366.23 of the Commission’s regulations (Applicable Regulations).<sup>7</sup>

5. Bloom states that certain changes in facts have occurred since the issuance of the Exemption Order, and as a result, Bloom and its subsidiaries have filed their current

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<sup>4</sup> *Id.* at 5-6.

<sup>5</sup> 18 C.F.R. Pt. 366 (2015).

<sup>6</sup> *Bloom Energy Corp.*, 148 FERC ¶ 61,196, at P 13 (2014) (Exemption Order).

<sup>7</sup> 18 C.F.R. §§ 366.2, 366.21, 366.22, and 366.23 (2015).

petition to ensure that they continue to qualify for an exemption from the Applicable Regulations.<sup>8</sup>

## II. The Petition

6. Bloom identifies in its petition two changes in facts that have occurred since the Commission issued the Exemption Order, and it argues that these changes do not alter its qualification for exemption from the Applicable Regulations. Bloom maintains that it will continue to meet the standard provided in section 366.3(b)(1)(i) of the Commission's regulations for an exemption, i.e., the requirement that its "books, accounts, memoranda, and other records . . . are not relevant to the jurisdictional rates of a public utility or natural gas company."<sup>9</sup>

7. Bloom states that the first change in facts is that some of the Bloom public-utility company subsidiaries that provide energy services to commercial and industrial customers may file for market-based rate authorization even though they may not be EWGs or owners of QFs. Bloom states that two such subsidiaries, 2014 ESA Project Company, LLC (PPA IV) and 2015 ESA Project Company, LLC (PPA V), have filed applications with the Commission seeking authorization to make sales of electric energy at market-based rates and for various exemptions and blanket authorizations that the Commission routinely includes with market-based rate authorizations.<sup>10</sup> Bloom states that other Bloom subsidiaries may file for market-based rates in similar circumstances.<sup>11</sup> Bloom asks the Commission to broaden the exemption provided in the Exemption Order to cover PPA IV and PPA V and future subsidiaries that are similarly situated in all material respects.

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<sup>8</sup> Petition at 2-3.

<sup>9</sup> *Id.* at 9 (quoting 18 C.F.R. § 366.3(b)(1)(i) (2015)).

<sup>10</sup> Petition at 6 (referencing 2014 ESA Project Company, LLC, Application of 2014 ESA Project Company, LLC, for Order Accepting Market-Based Rate Tariff and Granting Waivers and Blanket Approvals, Docket No. ER15-1496-000 (filed Apr. 13, 2015); 2015 ESA Project Company, LLC, Application of 2015 ESA Project Company, LLC, for Order Accepting Market-Based Rate Tariff and Granting Waivers and Blanket Approvals, Docket No. ER15-2009-000 (filed Jun. 26, 2015)). The Commission granted PPA IV's application in a letter order in Docket No. ER15-1496-000 dated July 23, 2015, and it granted PPA V's application in a letter order in Docket No. ER15-2009-000 dated August 18, 2015.

<sup>11</sup> Petition at 6.

8. Bloom maintains that this change does not change the basis for the exemption provided in the Exemption Order. Bloom states that its only public-utility company subsidiaries that will have Commission-jurisdictional rates will be entities with market-based rate authorization. These entities may or may not be EWGs or owners of QFs. Bloom states that the books and records of the Bloom subsidiaries that generate electric energy and provide energy services to commercial and industrial customers will have no relevance to the market-based rates of such entities because these rates are not based on Bloom's costs or those of its subsidiaries. Instead the rates are negotiated between those Bloom entities and their customers based on market conditions. Bloom states that none of its subsidiaries will have a franchised service area or any captive customers, and no such subsidiaries (other than entities with Commission-jurisdictional market-based rates) will make sales at rates, including cost-of-service rates, that are subject to Commission or state public utility commission regulation. Bloom argues that as a result, it and its subsidiaries have no ability to pass their costs through to any captive customers that are subject to cost-based rates.<sup>12</sup>

9. Bloom states that the second change in facts is that Exelon Generation Company, LLC (ExGen), a wholly owned subsidiary of Exelon Corporation (Exelon), has acquired 100 percent of the indirect, non-managing Class B interests in two holding companies that respectively wholly own two Bloom subsidiaries, PPA IV and PPA V. PPA IV and PPA V are or will be engaged in owning, operating, and making sales from Bloom Energy Servers. Bloom states that it holds 100 percent of the Class A managing interests in the two holding companies in question, and it serves as the managing member of each of the holding companies.<sup>13</sup>

10. Bloom states that both Exelon and ExGen are holding companies under PUHCA 2005, and neither of them benefits from any exemption from the Commission's regulations under PUHCA 2005. Bloom notes that Exelon's indirect wholly owned subsidiaries, Commonwealth Edison Company (ComEd), PECO Energy Company (PECO), and Baltimore Gas and Electric Company (BGE), are franchised public utilities that own electric distribution systems through which they deliver electricity to customers in Illinois, Pennsylvania, and Maryland. However, according to Bloom, ComEd, PECO, and BGE do not own any electric generation facilities and only serve as default service

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<sup>12</sup> *Id.* at 9-10.

<sup>13</sup> *Id.* at 7. The petition is not consistent when naming the interests held by Bloom and ExGen, with each party being identified as holding Class A interests in some parts of the text, and Class B interests in others. However, based on the excerpts from the Agreements (as defined below) that are attached to the petition, ExGen has acquired Class A interests, and Bloom holds the Class B interests.

providers for those electric customers who do not choose competitive suppliers or whose competitive supplier failed to deliver electric supply. Moreover, Bloom states ComEd, PECO, or BGE have market-based rate authority, and that none of them have captive customers. Lastly, Bloom states that, while ComEd, PECO, and BGE own transmission facilities, they have transferred operational control over such facilities to PJM Interconnection, L.L.C., which provides transmission service pursuant to an Open Access Transmission Tariff on file with the Commission.<sup>14</sup>

11. Bloom states that ExGen and its subsidiaries own or control approximately 43,500 MWs of capacity nationwide. Bloom also states that ExGen supplies energy to, among others, utilities and municipalities to meet their native load obligations. Bloom further states that ExGen, through various subsidiaries, is a retail competitive energy provider. In addition, Bloom states that the Commission granted ExGen market-based rate authority.<sup>15</sup>

12. Bloom notes that, in the petition it filed in 2014 in the Exemption Order proceeding, it represented that none of its subsidiaries are affiliated with any jurisdictional utility that has captive customers, owns Commission-jurisdictional transmission facilities, or provides Commission-jurisdictional transmission service. Bloom states that this representation continues to be accurate, notwithstanding the investment by ExGen, because ExGen is not an “affiliate” of any Bloom subsidiaries under PUHCA 2005. Bloom argues that the ownership interests that ExGen holds in Bloom’s subsidiaries do not impart to ExGen sufficient rights to create an affiliate relationship.<sup>16</sup>

13. In support of this argument, Bloom notes that an “affiliate” of any company under PUHCA 2005 is “any company, 5 percent or more of the outstanding voting securities of which are owned, controlled, or held with power to vote, directly or indirectly, by such company.”<sup>17</sup> Bloom also states that, when acting under the Public Utility Holding Company Act of 1935 (PUHCA 1935), the Securities and Exchange Commission (SEC) held that whether companies were affiliated depends on the meaning of the term “voting securities.” Bloom notes that under PUHCA 1935, “voting securities” meant “any security presently entitling the owner or holder thereof to vote in the direction or

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<sup>14</sup> *Id.* at 7-8.

<sup>15</sup> *Id.* at 9.

<sup>16</sup> *Id.* at 11.

<sup>17</sup> *Id.* at 11 (quoting 42 U.S.C. § 16451(1) (2012); 18 C.F.R. § 366.1 (2015)).

management of the affairs of a company,”<sup>18</sup> which is the same meaning that it has under PUHCA 2005. Bloom also notes that, when the SEC dealt with non-managing equity interests under PUHCA 1935, whether a security qualified as a voting security depended on the scope of the consent rights attached to the security.<sup>19</sup>

14. Bloom states that for purposes of section 205 of the FPA, the Commission has held that investors holding non-managing equity interests in public utilities are not “affiliates” of those public utilities based on an analysis of the consent rights created by the non-managing equity interests.<sup>20</sup> However, Bloom also maintains that the precedent the SEC developed in applying the definition of affiliate under PUHCA 1935 should continue to guide the interpretation of the current definition. Bloom identifies as the principal SEC precedent on point, an SEC no-action letter involving General Electric Capital Corporation.<sup>21</sup> Bloom states that the consent rights that ExGen holds in Bloom’s subsidiaries, PPA IV and PPA V, are substantially similar to those that the SEC found would not create an affiliate relationship in *GE Capital*.

15. Bloom states that the interests in PPA IV and PPA V are established by limited liability company agreements (Agreements). In each case, the managing interests in the holding companies that own PPA IV and PPA V, respectively, are held indirectly by a Bloom subsidiary. Bloom states that under the respective Agreements, the managing member conducts, directs, and exercises control over all activities of the holding company and has full power and authority on behalf of the holding company to manage and administer the business and affairs of the holding company and to do anything it considers to be necessary or appropriate to conduct the business of the holding company, without the need for approval by or any other consent from any member.<sup>22</sup>

16. Bloom states that ExGen holds limited consent rights attached to its Class A Interests in the holding companies that respectively wholly own PPA IV and PPA V. These rights include limited rights to remove the managing member of either holding company for certain specific actions. In addition, ExGen has consent rights in connection

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<sup>18</sup> *Id.* at 12, n.28 (quoting 42 U.S.C. § 16451(17) (2012)).

<sup>19</sup> *Id.* at 12.

<sup>20</sup> *Id.* at 16.

<sup>21</sup> *General Elec. Capital Corp.*, 2002 SEC No-Act. LEXIS 496 (Apr. 26, 2002) (*GE Capital*).

<sup>22</sup> Petition at 15.

with actions related to bankruptcy, changing of organizational documents, admittance of additional members, mergers, or certain tax elections that are outside the scope of the respective Agreements.<sup>23</sup> However, Bloom states that the managing member of each of the holding companies, i.e., Bloom, has day-to-day control over PPA IV and PPA V. The managing member is only subject to removal with 30 days' notice by the consent of ExGen if the managing member has engaged in gross negligence, willful misconduct, or fraud; has breached any material duty, obligation, or covenant of the Agreement or caused the holding company to breach any material duty, obligation, or covenant of specified documents, or is declared bankrupt (subject to certain cure rights).<sup>24</sup>

17. Bloom states that the Commission's treatment of non-managing interests in other contexts supports the conclusion that ExGen should not be considered to be an affiliate of the Bloom subsidiaries in which it is a non-managing equity investor. Bloom notes, for example, that in *AES Creative Resources, L.P.*,<sup>25</sup> the Commission held that investors holding non-managing equity interests in public utilities were not affiliates of those public utilities for purposes of section 205 of the FPA.<sup>26</sup> Bloom asserts that the non-managing interests in question in *AES Creative Resources* were similar to the attributes of the interests held by ExGen in PPA IV and PPA V.<sup>27</sup>

18. Bloom also states that, in *AES Creative Resources*, the Commission discussed the definition of "voting securities" under PUHCA 2005, noting that it was adapted from the definition of that term in PUHCA 1935 and stating that the "PUHCA 1935 definition has a long history, is well understood, and has a direct connection to the development of the definition of an affiliate [in the FPA]."<sup>28</sup> The Commission stated that "the term 'voting securities,' as used in [its] market-based rate regulations, was intended to have the same meaning as the definition of 'voting securities' adapted from the PUHCA 1935 and set

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<sup>23</sup> *Id.* at 15-16, Attachment A-1 (listing consent rights regarding PPA V), Attachment A-2 (listing consent rights regarding PPA IV).

<sup>24</sup> *Id.* at 16.

<sup>25</sup> *AES Creative Resources, L.P.*, 129 FERC ¶ 61,239 (2009) (*AES Creative Resources*).

<sup>26</sup> Petition at 16.

<sup>27</sup> *Id.* at 16-17.

<sup>28</sup> *Id.* at 17 (citing *AES Creative Resources*, 129 FERC ¶ 61,239 at P 24).

forth in PUHCA [2005].”<sup>29</sup> Bloom argues that it follows that the converse is also true, i.e., that the “voting securities” definition in PUHCA 2005 should be found to have the same meaning as the definition in the Commission’s regulations under section 205 of the FPA, as interpreted in *AES Creative Resources*. Bloom concludes from this that the interest that ExGen holds in the applicable Bloom subsidiaries, which Bloom states are similar to the interests held by the investors at issue in *AES Creative Resources*, should not be considered to be voting interests for purposes of PUHCA 2005, and ExGen should not be considered to be an “affiliate” of those Bloom subsidiaries under PUHCA 2005.

### **III. Notice of Filing and Responsive Pleadings**

19. Notice of Bloom’s petition was published in the *Federal Register*, 80 Fed. Reg. 40,052 (2015), with interventions and protests due on or before July 30, 2015. None was filed. Exelon Corporation filed a timely motion to intervene.

### **IV. Discussion**

#### **A. Procedural Matters**

20. Pursuant to Rule 214 of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2015), the timely, unopposed motion to intervene serves to make the entity that filed it a party to this proceeding.

#### **B. Substantive Matters**

21. Section 366.3(b)(1)(i) of the Commission’s regulations authorizes the Commission to grant exemptions from the Applicable Regulations if it “finds that the books, accounts, memoranda, and other records of any person are not relevant to the jurisdictional rates of a public utility or natural gas company.”<sup>30</sup> The Commission found in the Exemption Order that Bloom’s subsidiaries that could be QFs if they used gas from landfills or biomass facilities as fuel meet the criteria for non-traditional utilities under section 366.3(b)(2)(ii), and thus satisfy the requirements of section 366.3(b)(1)(i).<sup>31</sup> Bloom’s petition in this proceeding presents two changes in facts that have occurred since the issuance of the Exemption Order: (1) two public-utility company subsidiaries of Bloom that are not EWGs or owners of QFs have filed for market-based rate authorization; and (2) ExGen has acquired 100 percent of the indirect, non-managing Class A interests in

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<sup>29</sup> *Id.* (citing *AES Creative Resources*, 129 FERC ¶ 61,239 at P 24).

<sup>30</sup> 18 C.F.R. § 366.3(b)(1)(i) (2015).

<sup>31</sup> Exemption Order, 148 FERC ¶ 61,196 at PP 12-16.

two Bloom subsidiaries. Bloom seeks confirmation that these changes do not affect the non-traditional utility status of the subsidiaries in question. We find that they do not.

22. Under section 366.3(b)(2)(ii) of the Commission's regulations, the utilities that would be considered to be non-traditional utilities, warranting a holding company's exemption from the Applicable Regulations, are

Commission-jurisdictional utilities that have no captive customers and that are not affiliated with any jurisdictional utility that has captive customers, and that do not own Commission-jurisdictional transmission facilities or provide Commission-jurisdictional transmission services and that are not affiliated with persons that own Commission-jurisdictional transmission facilities or provide Commission-jurisdictional transmission services, and holding companies that own or control only such utilities.<sup>32</sup>

23. The ability to qualify as a non-traditional utility thus depends on the attributes of the entity seeking that status and of its affiliates. Of the two changes in facts that Bloom describes in its petition, the first, the application for market-based rate authority, pertains to the attributes of Bloom subsidiaries that qualify as non-traditional utilities under the Exemption Order; the second, the acquisition of certain interests by ExGen, concerns whether ExGen and its affiliates should be considered to be affiliates of those Bloom subsidiaries. We turn first to the issue of market-based rate authority.

24. Bloom states that two of its subsidiaries that are not EWGs or owners of QFs have applied to the Commission for market-based rate authority for power sales. We note that these applications have since been granted.<sup>33</sup> The Bloom subsidiaries in question have not, however, acquired transmission facilities or provided transmission services, so the only issue presented is whether the grant of market-based rate authority for power sales means that these subsidiaries may now have captive customers. We find that it does not.

25. Under the Commission's regulations, captive customers are wholesale or retail customers served by a franchised public utility under cost-based regulation.<sup>34</sup> Making

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<sup>32</sup> Petition at 9 (quoting 18 C.F.R. § 366.3(b)(2)(ii) (2015)).

<sup>33</sup> *See supra* n.10.

<sup>34</sup> 18 C.F.R. §§ 33.1(b)(5), 35.43(a)(2) (2015); *Repeal of the Public Utility Holding Company Act of 1935 and Enactment of the Public Utility Holding Company Act of 2005*, Order No. 667, FERC Stats. & Regs. ¶ 31,197 (2005), *order on reh'g*, Order No. 667-A, FERC Stats. & Regs. ¶ 31,213, at P 17 n.35 (affirming that this definition of "captive customers" applies when identifying non-traditional utilities), *order on reh'g*,

power sales at market-based rates is thus consistent with non-traditional utility status because such power sales are not subject to cost-based regulation, and thus purchasers under such rates that are not served by a franchised public utility, which would be the case with customers of PPA IV and PPA V, are not captive customers.

26. The Commission has stated that “the mere fact that a public utility has been granted market-based rate authority is not sufficient by itself to allow it . . . to qualify for [the non-traditional utility] exemption.”<sup>35</sup> As indicated above, the exemption also has requirements regarding transmission facilities and services and also affiliation. By the same token, however, the mere fact that an entity that has qualified as a non-traditional utility has received market-based rate authority should not call that qualification into question. Market-based rate authority does not cause the utility to gain captive customers, and standing alone has no effects pertaining to ownership of transmission facilities or provision of transmission services. For these reasons, the acquisition of market-based rate authority does not affect the non-traditional utility status of Bloom subsidiaries that would otherwise qualify as non-traditional utilities under the Exemption Order.

27. With respect to ExGen’s acquisition of certain member interests in Bloom subsidiaries, Bloom states that neither ExGen nor ExGen’s utility affiliates have any captive customers. However, certain of ExGen’s utility affiliates do own transmission facilities that are subject to the Commission’s jurisdiction. For this reason, Bloom must show that ExGen is not an affiliate of the Bloom subsidiaries in which ExGen has acquired member interests if those subsidiaries are to continue to qualify as non-traditional utilities.

28. Under PUHCA 2005,

The term “affiliate” of a company means any company, 5 percent or more of the outstanding voting securities of which are owned, controlled, or held with power to vote, directly or indirectly, by such company.<sup>36</sup>

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Order No. 667-B, FERC Stats. & Regs. ¶ 31,224 (2006), *order on reh’g*, Order No. 667-C, 118 FERC ¶ 61,133 (2007).

<sup>35</sup> Order No. 667-A, FERC Stats. & Regs. ¶ 31,213 at P 17.

<sup>36</sup> 42 U.S.C. § 16541(1) (2012); 18 C.F.R. § 366.1 (2015).

Whether ExGen is an affiliate of the Bloom subsidiaries in which it holds member interests, PPA IV and PPA V, thus depends on whether those member interests constitute voting securities. We find that they do not.

29. PUHCA 2005 defines a “voting security” as “any security presently entitling the owner or holder thereof to vote in the direction or management of the affairs of a company.”<sup>37</sup> Since virtually all securities, including debt securities, confer on their owner rights to affect the issuer’s conduct in some way, the distinction between voting and non-voting securities cannot turn simply on the mere existence of any such rights. For this reason the Commission has distinguished between rights that give an investor the “authority to manage, direct, or control the activities” of a company and rights that give investors “only those limited rights necessary to protect their . . . investments.”<sup>38</sup> The former make a security a voting security; the latter are associated with a non-voting security and thus a passive investment interest. These passive rights typically take the form of consent or veto rights, although there is no material distinction between the terms consent or veto in this context because the power that consent rights confer is the power to withhold consent, which when exercised is the equivalent of a veto.<sup>39</sup>

30. The Commission has on numerous occasions, and in a number of contexts, found that consent or veto rights that are substantially similar to those that ExGen holds in the Bloom subsidiaries at issue here do not confer control over a public utility or allow the holder to participate in the public utility’s day-to-day operations.<sup>40</sup> In addition, with respect to the definitions of “affiliate” and “voting securities” under PUHCA 2005, we note that the Commission has stated that

for those definitions and other aspects of PUHCA 1935 that have been re-enacted as part of PUHCA 2005, we will, where appropriate, follow the past practice and precedent of the SEC in interpreting these provisions of

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<sup>37</sup> 42 U.S.C. § 16451(17); 18 C.F.R. § 366.1 (2015).

<sup>38</sup> *Solios Power LLC*, 114 FERC ¶ 61,161, at PP 9-10 (2006).

<sup>39</sup> *AES Creative Resource*, 129 FERC ¶ 61,239 at P 25.

<sup>40</sup> See, e.g., *ITC Holdings Corp.*, 102 FERC ¶ 61,182 (2003); *Trans-Elect, Inc.*, 98 FERC ¶ 61,142 (2002); *D.E. Shaw Plasma Power, L.L.C.*, 102 FERC ¶ 61,265 (2003); *accord GridFlorida LLC*, 94 FERC ¶ 61,363, at 62,331-32 (2001); *GridSouth Transco, LLC*, 94 FERC ¶ 61,273, at 61,985-88 (2001).

PUHCA 2005 to the extent that they are consistent with the statutory language adopted by Congress in PUHCA 2005.<sup>41</sup>

31. Both the definition of “affiliate” and of “voting security” in PUHCA 1935 have been incorporated into PUHCA 2005. We find that it is appropriate to follow the past precedent and practice of the SEC in interpreting these terms when analyzing the scope of passive rights that are appropriate for the purpose of investment protection. In its discussion of *GE Capital*, Bloom has demonstrated that ExGen’s rights are consistent with those that the SEC found in that case did not create an affiliate relation.

32. Based on the information and representations contained in Bloom’s petition, we find that Bloom and its current (and future, insofar as they are consistent with the representations made in this proceeding) subsidiaries are holding companies solely with respect to EWGs and non-traditional utilities, as described above, and thus are exempt from the Applicable Regulations.<sup>42</sup>

The Commission orders:

Bloom’s petition for declaratory order is hereby granted, as discussed in the body of this order.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.

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<sup>41</sup> Order No. 667, FERC Stats. & Regs. ¶ 31,197 at P 16.

<sup>42</sup> This exemption is subject to the requirements of sections 366.4(d) and (e) of the Commission’s rules, which require Bloom to notify the Commission of any material change in facts that may affect the exemption and which specify that Bloom and its subsidiaries may no longer be able to rely on the exemption if they fail to conform with any material facts or representations presented in their petition. 18 C.F.R. § 366.4(d)-(e) (2015).