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UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Nora Mead Brownell, and Suedeen G. Kelly.

The Goldman Sachs Group, Inc.

Docket Nos. EL06-27-000
EC06-38-000

ORDER GRANTING IN PART AND DENYING IN PART PETITION FOR
DECLARATORY ORDER AND GRANTING
BLANKET AUTHORIZATION FOR ACQUISITION OF
SECURITIES

(Issued February 7, 2006)

1. The Goldman Sachs Group, Inc. (Goldman) requests in a petition for declaratory order that the Commission concur in certain interpretations of section 203(a)(2) of the Federal Power Act (FPA),¹ which becomes effective on February 8, 2006. It asks that we find that section 203(a)(2) will not apply to certain acquisitions by certain Goldman subsidiaries of utility and holding company securities. Goldman alternatively filed an application for blanket authorization² under section 203(a)(2) seeking authorization for itself and for certain Goldman subsidiaries to acquire securities³ of any “electric utility company,” as that term is used in section 203(a)(2), any “transmitting utility,” as that term is defined in section 3 of the FPA, as amended by section 1291 of the Energy Policy Act of 2005 (EPAAct 2005),⁴ or any “holding company” in any “holding company system,” as those terms are defined in section 1289(a)(6) of EPAAct 2005, that includes a transmitting utility or electric utility company, subject to certain proposed conditions and

¹ 16 U.S.C. § 824b (2000), *amended by* Energy Policy Act of 2005, Pub. L. No. 109-58, 119 Stat. 594 (2005).

² Goldman states that it will withdraw the application for blanket authorization if the declaratory relief requested is granted.

³ For purposes of this order, the term “securities” is used consistent with the meanings and limitations given it in EPAAct 2005.

⁴ EPAAct 2005 §§ 1261, *et seq.*

limitations. Goldman identifies certain subsidiaries as its “Nonutility Subsidiaries.”⁵ We grant in part and deny in part the requested declaratory relief and grant the blanket authorization subject to the conditions and limitations described below.

Background

2. Goldman is an investment banking, securities and investment management firm providing a range of financial services to corporations, financial institutions, governments and high-net-worth individuals. Its three core businesses are: (1) Investment Banking, which includes financial advisory services with respect to mergers and acquisitions, divestitures, corporate defense activities, restructurings and spin-offs, and underwritings of public offerings and private placements of equity, equity-related and debt; (2) Trading and Principal Investments, which includes market making in, and trading of, fixed income and equity securities and related products, currencies, commodities (including electric energy) and derivatives on those products, providing execution and clearing services in relation to a range of securities and derivative products, providing various financing arrangements and products and taking proprietary positions in public and private companies, either through subsidiaries or through funds that Goldman subsidiaries manage; and (3) Asset Management and Securities Services, which include providing investment advisory, management and financial services to institutions and individuals; and prime brokerage, financing services and securities lending services to mutual funds, pension funds, hedge funds, foundations and high-net-worth individuals.

3. Goldman states that, solely for purposes of the two filings, it assumes that it is a holding company by reason of its indirect ownership of certain merchant generating subsidiaries that are exempt wholesale generators and, in one case, a foreign utility company. “Exempt Wholesale Generator” (EWG) and “Foreign Utility Company” (FUCO) are defined terms in sections 32 and 33, respectively, of the Public Utility Holding Company Act of 1935 (PUHCA 1935) and are incorporated by reference into the Public Utility Holding Company Act of 2005 (PUHCA 2005).⁶

4. Certain of Goldman’s subsidiaries are active in the electric power industry and some are subject to regulation by the Commission as “public utilities.” Cogentrix Energy, Inc., East Coast Power, L.L.C. and Horizon Wind Energy LLC are in the independent electric generation business through entities that own or operate qualifying

⁵ Goldman identifies as “Nonutility Subsidiaries” Goldman Sachs & Co., a broker-dealer registered with the Securities and Exchange Commission, Goldman Sachs Asset Management Co., and various unnamed subsidiaries identified as “proprietary trading and merchant banking subsidiaries.”

⁶ Subtitle F, §§ 1261 – 1277 of EAct 2005 may be cited as the “Public Utility Holding Company Act of 2005.”

facilities (QF) within the meaning of the Public Utility Regulatory Policies Act of 1978, as amended (PURPA), entities classified as EWGs and an entity certified as a FUCO. These companies are collectively referred to by Goldman as its “Utility Subsidiaries.” The total assets of these subsidiaries are less than 0.05% of Goldman’s consolidated assets,⁷ and the Utility Subsidiaries are not held in the same chain of ownership as the Nonutility Subsidiaries discussed in the paragraph below.

5. An organizational chart is attached as Exhibit A to the petition for declaratory order. A list of the 35 Goldman energy companies operating in the United States is attached as Exhibit B to the application for blanket authorization. Goldman also owns J. Aron & Company and Power Receivable Finance, LLC, which are authorized under the FPA to market wholesale power at market-based rates. J. Aron is also in the commodities and commodities derivatives business. Power Receivable sells power exclusively into the market operated by the California Independent System Operator, and its sales are limited to the California Department of Water Resources under a long-term contract.

Description of the Petition

6. Section 203(a)(2) states, “[n]o holding company in a holding company system that includes a transmitting utility or an electric utility shall purchase, acquire, or take any security with a value in excess of \$10,000,000 of, or, by any means whatsoever, directly or indirectly, merge or consolidate with, a transmitting utility, an electric utility company, or a holding company in a holding company system that includes a transmitting utility, or an electric utility company, with a value in excess of \$10,000,000 without first having secured an order of the Commission authorizing it to do so.”⁸ Goldman requests that the Commission confirm its view that: (1) section 203(a)(2) will not apply to any acquisition of utility securities by any Nonutility Subsidiary of Goldman unless the subsidiary is or separately becomes a “holding company,” as defined under PUHCA of 2005, and that any acquisition of utility securities by a Nonutility Subsidiary will not be attributed “up-stream” to Goldman; and (2) the acquisition of any “voting securities” of a utility or

⁷ The petition does not state the percentage of Goldman’s consolidated income represented by the Utility Subsidiaries.

⁸ Because this order relates only to acquisitions of securities worth more than \$10,000,000, when we refer to acquisitions of securities in this order, we mean only acquisitions that meet this threshold amount. Similarly, because this order addresses only acquisitions of securities of a transmitting utility, an electric company or a holding company in a holding company system that includes a transmitting utility or an electric utility company, we will simply refer to such securities or acquisitions as “covered securities” or as a “covered” acquisition of securities.

holding company by a Nonutility Subsidiary of Goldman acting in a fiduciary capacity will not be considered for purposes of evaluating whether the subsidiary is a “holding company.”

7. Goldman offers two arguments in support of the first clarification requested. First, it says that the phrase “directly or indirectly” does not appear in the portion of section 203(a)(2) that addresses purchases, acquisitions or takings of the securities, but only in the portion that addresses mergers or consolidations. Goldman argues that Congress was concerned about changes in control of a transmitting utility, electric utility company or holding company that occur when there is a merger or acquisition. Goldman suggests, however, that Congress was not similarly concerned with the acquisition of the securities of such companies because there are business reasons other than effecting a change in control that may underlie such acquisitions.

8. Second, Goldman points out that the definition of “holding company” in section 1262(8)(B) of PUHCA 2005 specifically excludes a broker or dealer that owns, controls, or holds with the power to vote public utility or public utility holding company securities, under certain conditions.⁹ Goldman suggests that Congress’ focus on mergers and acquisitions that entail changes in control, as well as the explicit exclusion of, under certain conditions, a broker, dealer or underwriter from classification as a holding company, supports the conclusion that Nonutility Subsidiaries should not be required to obtain Commission approval for the acquisition of certain securities. Similarly, Goldman argues that none of the acquisitions of securities subject to section 203(a)(2) by any of the Nonutility Subsidiaries should be attributed “up-stream” to Goldman. In other words, Goldman is arguing that an acquisition by a Nonutility Subsidiary should not be regarded as an indirect acquisition by Goldman. Additionally, Goldman argues that the declaratory relief requested will not result in a gap in the Commission’s jurisdiction over a transfer of control over a public utility because the utility itself is required, under section 203(a)(1), to obtain authorization for an acquisition of securities that results in a disposition of facilities with a value in excess of \$10,000,000.

9. Goldman offers two arguments in support of the second clarification requested (that acquisitions in a fiduciary capacity should not require Commission approval). First, it says that the Commission has recognized distinctions among the forms of securities ownership by financial services companies in previous cases under section 203. The Commission has granted blanket authorization for acquisitions of securities made in a fiduciary capacity, but required case-by-case prior authorization for acquisitions of voting

⁹ Those conditions are that the broker or dealer is not the beneficial owner of the securities, the securities are subject to any voting instructions that may be given by the customers, the securities are acquired within 12 months in the ordinary course of business as a broker, dealer or underwriter and the securities are acquired with the bona fide intention of effecting distribution.

securities held in a proprietary capacity or for their own account. Second, Goldman argues that this precedent is consistent with the definition of “holding company” because the definition focuses only on ownership of voting securities held in a proprietary capacity, not on holdings in a fiduciary capacity. Goldman principally cites *UBS AG and Bank of America, N.A.*, 101 FERC ¶ 61,312 (2002), *reh’g granted in part and denied in part*, 103 FERC ¶ 61,284 (2003), *reh’g granted*, 105 FERC ¶ 61,078 (2003) and section 1262(8)(B)(i) of PUHCA 2005.

10. In the event the Commission does not grant the clarifications requested, Goldman requests that the Commission grant the application for blanket authorization for the acquisition of securities filed in Docket No. EC06-38-000 by February 8, 2006.

Notice of Filings and Responsive Pleadings

11. Notice of the December 12 filings by Goldman was published in the *Federal Register*, 71 Fed. Reg. 595 (2006), with interventions or protests due on or before January 11, 2006. Timely interventions were filed by Merrill Lynch & Co. (Merrill) and by Morgan Stanley Capital Group, Inc. (Morgan Capital).

12. Both Merrill and Morgan Capital support Goldman’s petition for a declaratory order. They also, however, state that they do not believe that Goldman’s petition is necessary. They argue that Goldman is not, as Goldman assumes, a holding company under PUHCA 2005 by virtue of its ownership of EWGs or FUCOS.¹⁰ If, however, the Commission finds that Goldman is a holding company, the intervenors say that the Commission should find that section 203(a)(2) does not apply to the acquisition of covered securities by a financial institution’s non-utility subsidiaries in the ordinary course of their financial services and activities. The Commission should find also that a non-utility subsidiary that is not itself a holding company will not become a holding company unless it acquires and holds in a proprietary capacity not merely as a fiduciary – 10% or more of the outstanding voting securities of a utility or utility holding company. Merrill would go further on the second finding and add that holding in a proprietary capacity should have to be with the intent or ability to control the issuer in order to make

¹⁰ The Commission in Order No. 669 adopted the definition of holding company that is contained in PUHCA 2005 and rejected requests to clarify that a person that only owns EWGs, FUCOs or QFs is not a holding company for purposes of section 203. The issue is pending on rehearing of that rule. As required by PUHCA 2005, the Commission by separate rule also exempted from the federal books and records provision of PUHCA 2005 any person that is a holding company solely with respect to one or more QFs, EWGs or FUCOs. *Repeal of the Public Utility Holding Company Act of 1935 and Enactment of the Public Utility Holding Company Act of 2005*, 70 Fed. Reg. 55,805 (2005), Order No. 667, FERC Stats. & Regs. ¶ 31,197 (2005).

the subsidiary a holding company. It would equate holding in a non-controlling proprietary capacity with holding as a fiduciary.

Discussion

13. We grant Goldman's first request for clarification for several reasons. First, we do not interpret section 203(a)(2) to require subsidiaries that are not themselves holding companies to seek prior authorization from the Commission to purchase, acquire or take covered securities under FPA section 203(a)(2). Section 1289 (a)(6) of PUHCA 2005 states that, for purposes of the subsection, the term "holding company" has the meaning given it in PUHCA 2005. Section 1262(8)(A)(i) of PUHCA 2005 defines as a "holding company" a company that directly or indirectly owns, controls or holds, with the power to vote, 10% or more of the outstanding voting securities of a public utility company or of a holding company of a public utility company. If Goldman's Nonutility Subsidiaries do not hold 10% or more of such securities, and do not otherwise meet the definition in section 1262 (8)(A)(ii), then they are not holding companies for purposes of section 1268 of PUHCA 2005 and thus are not holding companies required to obtain prior authorization under section 203(a)(2) of the FPA.¹¹

14. Second, for purposes of determining whether an upstream holding company must file under section 203 (a)(2) of the FPA for an indirect acquisition of securities, we do not interpret section 203(a)(2) to attribute to an upstream holding company (here, Goldman) an acquisition of securities by one of its holding company subsidiaries. Our interpretation is based on the construction of section 203(a)(2) and the fact that the portion of 203(a)(2) addressing securities acquisitions does not contain language requiring approval of indirect acquisitions. Section 203(a)(2) has two parts. The first part addresses purchases of securities. The second part addresses mergers or consolidations. The first part states that "[n]o holding company...shall acquire...any security ..." and does not contain the modifier "directly or indirectly," while the second part begins "...or, by any means whatsoever, directly or indirectly,..." and does contain the modifier. The presence of the modifier in one part and its absence in the other indicates that Congress intended a difference. Giving effect to that intent, the Commission concludes that the first part of section 203(a)(2), regarding acquisitions of securities, addresses direct acquisitions by holding companies, not indirect acquisitions of securities by holding companies (acquisitions by subsidiaries of holding companies). Therefore, acquisitions of covered securities by a subsidiary that is not already a holding company should not be attributed "up-stream" to the parent holding company and do not require prior authorization from the Commission.

15. Although we have concluded that the most reasonable interpretation of section 203(a)(2) is that subsidiaries that are not holding companies do not have to seek section

203(a)(2) authorization, and that subsidiaries' securities acquisitions are not attributable to the upstream holding company and thus the upstream holding company also is not required to seek section 203(a)(2) authorization for its subsidiaries' acquisitions, we make an important clarification. These findings do not mean that authorization may not be required under other provisions of section 203. For example, if one or more non-utility subsidiaries acquire securities of a public utility, that public utility must obtain section 203(a)(1)(A) authorization if the transaction results in a transfer of control of facilities valued at more than \$10,000,000 to the non-utility subsidiaries. Further, if each of a number of non-utility subsidiaries were to acquire, e.g., up to 9.99% of the same public utility (in order to avoid becoming a holding company and/or avoid a transfer of control to a single one of the subsidiaries), it is possible that the public utility disposition of securities to several companies under common control would, taken as a whole, result in a transfer of control. Finally, it is also possible that, irrespective of the dollar amount of the transaction, an indirect merger or consolidation could occur and require approval under section 203(a)(1)(b).

16. Goldman's second request is that we state that acquisitions of securities will not make the acquirer a holding company when the acquirer will be acting in a fiduciary capacity rather than on its own behalf. Goldman provides descriptions of three groups of functions, some of which are single companies and some of which contain more than one company. It refers collectively to the companies contained within these functions as its Nonutility Subsidiaries and is seeking the clarification on their behalf. One of these companies is Goldman, Sachs & Co., which Goldman describes as a registered broker/dealer with the Securities and Exchange Commission. Under certain conditions specified at section 1262(8)(B)(ii)(I) and (II) of PUHCA 2005, a broker/dealer is excluded from the definition of a holding company. If Goldman Sachs & Co. meets those conditions, it will not be a holding company. Goldman does not, however, explain in its petition whether or how Goldman Sachs & Co. qualifies for this exclusion.¹²

17. As to the asset manager company or function, Congress provided, at section 1262(8)(B) of PUHCA 2005, two exclusions from the definition of a holding company. The exclusions concern "a bank, savings association or trust company," and (as discussed above) brokers or dealers that hold public utility company or public utility holding company securities under certain specified conditions. If Goldman's Nonutility Subsidiaries meet either of these exclusions, they will not be holding companies. Goldman does not, however, allege that any of its Nonutility Subsidiaries are a "bank, savings association or trust company" or (apart from Goldman Sachs & Co.) a broker or dealer. Moreover, Goldman does not explain the circumstances under which the asset manager would be holding as a fiduciary.

¹² Nor does Goldman allege that Goldman Sachs & Co. qualifies under the section 1262(8)(B) exclusion of "bank, savings association or trust company."

18. Goldman essentially asks us to conclude, irrespective of the two specific statutory exclusions from the definition of holding company, that any acquisition and holding in a fiduciary capacity by its proprietary trading entities would not cause the entity to meet the definition of a holding company. Goldman does not claim to come within either of the two exclusions and does not explain why or how proprietary trading entities, trading for their own accounts, would be holding securities as fiduciaries or, if they are, how the definition of a holding company, which on its face excludes fiduciary holdings only for banks, savings associations and trust companies, can be so interpreted. The two functions, proprietary trading of securities while holding those securities as a fiduciary for another party, appear to be at odds. Accordingly, we do not grant Goldman's request that we conclude that a company does not become a holding company by virtue of holding securities in a fiduciary capacity.

19. Because we do not grant Goldman's request for declaratory order in full, we turn next to its alternative application for blanket authorization under section 203(a)(4). Section 203(a)(4) of the FPA, as amended, provides that the Commission is to approve a transaction if it finds that the proposed transaction will be consistent with the public interest and will not result in cross-subsidization of a non-utility associate company or the pledge or encumbrance of utility assets for the benefit of an associate company, unless the Commission determines that the cross-subsidization, pledge or encumbrance will be consistent with the public interest. The Commission's Merger Policy Statement provides that the Commission will generally take into account three factors in analyzing proposed section 203 transactions: (1) effect on competition; (2) effect on rates; and (3) effect on regulation.¹³ In addition, under EPAct 2005 and Order No. 669,¹⁴ the Commission determines whether the transaction will result in cross-subsidization of a non-utility associate company and, if so, whether the cross-subsidization, pledge or encumbrance will be consistent with the public interest.

¹³ *Inquiry Concerning the Commission's Merger Policy Under the Federal Power Act: Policy Statement*, Order No. 592, 61 Fed. Reg. 68,595 (1996); FERC Stats. & Regs. ¶ 31,044 (1996), *reconsideration denied*, Order No. 592-A, 62 Fed. Reg. 33,341 (1997), 79 FERC ¶61,321 (1997) (*Merger Policy Statement*); *see also Revised Filing Requirements Under Part 33 of the Commission's Regulations*, Order No. 642, 65 Fed. Reg. 70,983 (2000), FERC Stats. & Regs., Regulations Preambles July 1996-Dec. 2000 ¶ 61,289 (2001) (*Merger Filing Requirements*); *Transactions Subject to FPA Section 203*, Notice of Proposed Rulemaking, 70 Fed. Reg. 58,636(2005), FERC Stats. & Regs. ¶ 32,589 (2005).

¹⁴ *Transactions Subject to FPA Section 203*, 71 Fed. Reg. 1,348 (2006), Order No. 669, FERC Stats. & Regs. ¶ 31,200 (2005), *reh'g. pending*.

20. Goldman argues that, in repealing PUHCA 1935, Congress intended to remove a statute that discouraged the flow of investment capital into the electric industry. Goldman also argues that Congress did not intend to replace PUHCA 1935 with an alternative and burdensome regulatory scheme. However, at the same time, Congress required authorizations for certain acquisitions of securities in order to provide rate protection for utility customers. Because some of the issues raised by Goldman have been raised on rehearing in Order No. 669 and in order to maintain the status quo of Goldman's activities permitted by the Securities and Exchange Commission under PUHCA 1935, the Commission grants a temporary blanket authorization for Goldman's Nonutility Subsidiaries to continue to acquire and hold covered securities. The temporary blanket authorization expires one year from the date of this order, without prejudice to renewal, as discussed further below.

21. Goldman requests for itself and its Nonutility Subsidiaries blanket authorization to acquire, directly or indirectly, utility securities, in the ordinary course of business, subject to substantially the same limitations, exclusions and conditions that the Commission approved in *Bank of America*, except that Goldman is requesting blanket approval to acquire and own, as principal, up to 10% of each class of voting securities of any such entity rather than 5%, the limit imposed in *Bank of America*.¹⁵ Specifically, Goldman proposes that its Nonutility Subsidiaries be permitted to acquire and hold debt and equity securities of public utilities in a fiduciary capacity, in the course of their business as underwriters and dealers, in connection with trading activities, in connection with their lending activities, in passive lease financing activities involving subsidiaries and in the course of their routine dealing and trading as principals for their own account.

22. Goldman also makes the same commitments made by applicants in *Bank of America*, subject to certain proposed modifications (except that Goldman is requesting blanket authorization to acquire up to 10%, rather than up to 5%, of the outstanding voting securities of any utility or holding company). Goldman further states that these promises are subject to the overriding principle that the utility interests acquired must confer no control on Goldman or any of its affiliates. Specifically, these conditions are as follows:

a. Goldman will report for itself and its affiliates by electric utility company, transmitting utility or holding company (i) holdings of voting securities acquired under

¹⁵ Goldman requests that if the Commission does not grant the 10% limit, we at least grant Goldman and its Nonutility Subsidiaries blanket authorization to acquire, as principals, utility securities, subject to the 5% limit.

the authorization requested herein¹⁶ and held as principal, and (ii) total holdings of voting securities irrespective of the capacity in which such securities are held within 45 days after the close of each calendar quarter. The reports are subject to a de minimis threshold of 1%.

b. Goldman and its affiliates may own up to 10% of the voting securities as principal of each class of voting securities issued by any electric utility company, transmitting utility or electric utility holding company, provided that Goldman and its affiliates obtain no right to control the operation or management of the issuer.

c. Acquisition of debt securities will be excluded from the 10% limit, except that an application under section 203 would be required before Goldman could take control of the borrowing electric utility company or transmitting utility through foreclosure, bankruptcy or otherwise.

d. Dealer/trader activities will be excluded from the 10% limit.

e. Fiduciary holdings will be excluded from the 10% limit.

f. Acquisitions of securities in connection with underwriting activities will not be subject to the 10% limit. This exemption automatically extends for 45 days. In the case of a failed underwriting, the exemption would be extended if Goldman files within 45 days for section 203(a) approval to retain the securities and commits during the pendency of such application not to vote the securities held as a result of the failed underwriting.

g. The 10% limit may be exceeded based on a commitment not to vote securities in excess of the 10% limit if such securities were acquired for hedging purposes.

In addition, Goldman is proposing that the following transactions be exempted from the 10% limit, as well as from the reporting obligations:

a. The acquisition by Goldman, directly or indirectly, of the securities of any electric utility company or electric holding company that does not own or operate any facilities located in and used for the generation, transmission or distribution of electric energy in the United States.

¹⁶ Goldman would not include in this report holdings of voting securities of any public utility, electric utility company or transmitting utility the acquisition of which has been authorized by the Commission under section 203(a) in a separate proceeding.

b. Any acquisition by Goldman, directly or indirectly, of utility securities issued by any company that is already a “subsidiary company” (as defined in section 1262(16) of EPAct 2005) of Goldman.

c. Acquisition of securities of any entity formed to acquire, finance and lease utility assets to any public utility, electric utility company or transmitting utility under a long-term lease.

23. Goldman asserts that under these conditions, the proposed transactions will meet the standard in section 203 of the FPA. First, it argues that the transaction would not adversely affect competition. Goldman contends that the acquisition of securities, directly or indirectly through a Nonutility Subsidiary, as proposed in the application, will not enable it to control, directly or indirectly, generation or transmission facilities of a previously unaffiliated entity. It states that many of its holdings, including those in an underwriting capacity, will be passive and transitory in nature and that its holdings in a fiduciary capacity do not confer control. In addition, Goldman points out that the commitment not to vote more than 10% of the voting securities held for hedging purposes further prevents it from exercising control over any public utility or its facilities. Further, Goldman notes that the Commission has previously declined to assert jurisdiction over passive owners or lessors in connection with their leasing and financing activities involving generation facilities, provided that they do not participate in the operation of such facilities or the sale of power. Goldman argues that its acquisition of securities in connection with lease financing for affiliate generation raises no competitive issues.

24. Second, Goldman asserts that the proposed transactions will not adversely affect rates. Goldman states that it will have no role in setting the rates of any utility whose securities its Nonutility Subsidiaries acquire. It also states that the securities will be purchased in public markets and will not have any effect on the cost structures of the issuers that might affect cost-based rates.

25. Third, Goldman contends that the proposed transactions will not affect regulation of the issuers of securities by either the Commission or state commissions. It states that the acquisition of securities will not result in a change in activities or corporate structure of the issuer that might affect its jurisdictional status under either federal or state law. Goldman further states that the public utility issuers will continue to be subject to the Commission’s jurisdiction and that those public utilities that were previously subject to state jurisdiction will continue to be after the securities are acquired.

26. Fourth, Goldman contends that the acquisition of securities will not result in cross-subsidization of a non-utility associate company or the pledge or encumbrance of utility assets for the benefit of an associate company. Goldman states that, because its ownership of securities (other than that separately authorized under section 203) will be

subject to the conditions and limitations described above, it will have no practical ability to improperly cause the entities in which it invests to cross-subsidize their non-utility associate companies or to pledge or encumber their assets.

27. The Commission finds that, with the conditions discussed above on the proposed transactions, the transactions will not adversely affect competition, rates or regulation and will not result in cross-subsidization or a pledge or encumbrance of assets. However, we are in the early stages of implementing EPAct 2005. For that reason, and in order to preserve the status quo of Goldman's activities permitted by the Securities and Exchange Commission under PUHCA 1935, the Commission concludes that it is appropriate to grant the authorization, to the extent it is not already granted under Order No. 669, for one year. The authorization expires one year from the effective date of this order without prejudice to requests to extend the authorization and subject to any relevant Commission action on rehearing of Order No. 669, including the imposition of any additional conditions, to be prospectively applied, that may be necessary for the protection of ratepayers.

The Commission orders:

(A) We hereby grant Goldman's request for a declaratory order confirming that the Nonutility Subsidiaries that are not themselves holding companies need not seek prior authorization from the Commission to purchase, acquire or take covered securities under section 203(a)(2) of the FPA and that those indirect acquisitions by the Goldman Sachs Group, Inc. will not require a filing by Goldman under section 203(a)(2) of the FPA.

(B) Goldman's request for a declaratory order confirming that acquiring and holding covered securities by the Nonutility Subsidiaries acting in a fiduciary capacity will not make the subsidiary a holding company is hereby denied, as discussed in the body of this order.

(C) Goldman's proposed transactions are temporarily and conditionally authorized, as discussed in the body of this order.

(D) The foregoing authorization is 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.

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

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

(G) Goldman shall make any appropriate filings under sections 205 of the FPA, as necessary, to implement the proposed transactions.

(H) If the proposed transactions result in changes in the status or the upstream ownership of Goldman's affiliated qualifying facilities, if any, an appropriate filing for recertification pursuant to 18 C.F.R. § 292.207 shall be made.

(I) The approvals granted herein are subject to the outcome of Commission action on rehearing of Order No. 669, Docket No. RM05-34-000, including any additional conditions for ratepayer protections that the Commission may impose on any similar blanket authorizations granted in association with that docket.

(J) The effective date of this order is February 8, 2006.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.