

**Before the Federal Energy Regulatory Commission  
Technical Conference  
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Mr. Chairman, Members of the Commission and Commission Staff, my name is Steven M. Fetter and I currently serve as President of Regulation UnFettered, an energy advisory firm I started in 2002, now based in Henderson, Nevada. I previously served as Chairman of the Michigan Public Service Commission and as head of the utility ratings practice at Fitch Ratings. Thank you for the opportunity to participate in this technical conference on issues raised at this stage of the Commission's implementation of last year's Energy Policy Act that repealed the Public Utility Holding Company Act of 1935.

In addition to the topics noticed for this third panel, FERC Staff has asked that I offer my thoughts with regard to separation of corporate activities, commonly known as "ring-fencing," the topic of the first panel earlier today. I welcome that opportunity because I have talked about that topic for years and my views mesh well with the approach that this Commission has taken with regard to exemptions and waivers under Order 667 and blanket authorizations under Federal Power Act section 203 pursuant to Order 669. Because of this specific Commission Staff request, I ask the Commission's indulgence if my presentation extends a minute or two.

As a prelude to my assessment of how the FERC has progressed with exemptions, waivers and blanket authorizations, I highlight my long-stated belief that “The best consumer and investor protection is open and frank communication between regulators and utility management. Such a course is far superior to trying to put in place statutory or regulatory policies and limitations aimed at dealing with future unknowns.” I call this “The Regulator’s Cardinal Rule,” and I believe this outlook should guide and inform the Commission’s consideration of the policy issues under discussion within this technical conference. Whether the issues are ring-fencing in the context of cross-subsidization concerns, structures allowing holding company leveraging of finances for greater efficiency, or the use of exemptions, waivers and blanket authorizations to facilitate movement away from the prior PUHCA environment to a new one that provides flexibility for further industry innovation, the key is that the safeguards necessary to protect consumers and other industry stakeholders from anti-competitive behavior accompany these productivity advances.

This technical conference is an excellent example of open communication among stakeholders. I view positively this Commission’s actions with regard to exemptions, waivers and blanket authorizations under Orders 667 and 669. You have provided leeway to allow utilities and holding companies to take structural steps that hold out the potential to be beneficial for both customers and investors through more efficient processes. And a technical conference such as this one serves as a mid-term check as to whether the process deserves to be further

refined and streamlined, or whether shadows of potential abuse have started to appear.

I have participated in other affiliate relations discussions that have caused me a certain amount of unease. Rather than identification of actual problems requiring specific ameliorative actions, the focus has been on shutting down potential strategic paths for fear that some abuse could conceivably occur. In an industry where high hopes for significant gains from competitive restructuring have not yet borne fruit, I believe a lockdown on innovation is precisely the wrong path for regulators to take. I am happy that this has not been the path that the FERC has taken in its initial implementation of the Energy Policy Act of 2005 in the post-PUHCA environment.

It is far better that identification of real potential problems regarding transactions between regulated and competitive affiliates be raised in a setting such as this one -- through communication among all stakeholders -- in order to give regulators the opportunity to remedy those problems *prospectively* through collaboration and compromise. Consumers, regulators, utility managements, and investors all win under such an approach.

As a former regulator, former bond rater, and now a consultant in the service of companies, commissions and consumers, I have seen the dangers that overbroad activity limitations can cause, most especially the inefficient skewing of hoped-for competitive markets. I firmly believe that where consumers of regulated services do not subsidize unregulated, competitive initiatives by an affiliate, the efficiency gains that can come from appropriate affiliate transactions

inure to the consumers on both sides of those activities. The rules necessary to implement appropriate affiliate transactions are best achieved through collaboration with regulators and compromise among stakeholders, following open communication. I am sure this Commission will benefit from the views expressed here today across the entire spectrum, making your ultimate judgments more clear, better supported, and more easily understood.

The once seemingly inexorable march toward wholesale *and* retail competition that began in the early- to mid-1990's did not anticipate that regulators would erect overly-rigid barriers between corporately-separate entities providing regulated and competitive services. Legitimate cost sharing and appropriate allocation of management expertise between both the regulated and competitive sides of the entity can give rise to immediate consumer benefits through cost reductions and the cultivation of an environment that fosters new ideas as to how to provide not only a very old and essential regulated service, but also pioneering concepts within the competitive sphere as well.

As I stated in an opinion piece I authored for Public Utilities Fortnightly two years ago, "hard-and-fast statutes and rules are not the best means to maintain order within the partially regulated/partially unregulated utility sector...Utility regulators should hesitate before putting policies in place today that limit managerial discretion in the future," based upon the regulators' belief that they can predict the future. You have not done that -- I believe this Commission is on the right path. Thank you.