



Federal Energy Regulatory Commission

Technical Conference on the Commission's
Merger and Acquisition Review Standards
Under FPA Section 203
March 8, 2007

Agenda

Welcoming Remarks and Opening Statements 10:00 a.m. – 10:20 a.m.

Panel 1: The effectiveness of the Appendix A analysis
in analyzing a merger's effect on competition 10:20 a.m. – 12:00 p.m.

The Commission has received comments from certain groups that they believe that the Appendix A analysis may no longer be appropriate to analyze mergers because of changes that have occurred in recent years in the industry landscape (e.g., the development of RTOs) and the regulatory landscape (e.g., the repeal of PUHCA and new authorities given to the Commission in EAct 2005). The following are among the issues that these commenters have raised and which will be considered in this panel:

- In light of recent industry and regulatory changes in the electric utility industry, is Appendix A effective in measuring the effect on competition of “long-distance” mergers (i.e., where applicant systems are not contiguous)?
- Is Appendix A effective in measuring the effect on competition in mergers that involve applicants in RTO markets?
- Is Appendix A adequate to consider the effects associated with generation-only mergers and acquisitions, now subject to Commission jurisdiction as a result of EAct 2005?
- Are any changes needed regarding how Appendix A accounts for transmission constraints in RTO and non-RTO regions?

Panelists:

- The Honorable Sam J. “Jimmy” Ervin, IV, Commissioner, North Carolina Utilities Commission, and Chairman of the NARUC Electricity Committee

- Susan Kelly, Vice President of Policy Analysis and General Counsel, American Public Power Association
- Dr. Darren Bush, Assistant Professor of Law, University of Houston Law Center
- Dr. Mark W. Frankena, Deputy Director for Antitrust, Bureau of Economics, Federal Trade Commission
- Julie R. Solomon, Vice President, CRA International, Inc.
- The Honorable Clifford “Mike” M. Naeve, Partner, Skadden, Arps, Slate, Meagher & Flom LLP

Lunch 12:00 p.m. – 1:00 p.m.

Panel 2: Assessment of the factors the Commission uses in reviewing mergers, and coordination between the Commission and other agencies (including state commissions) with merger review responsibility 1:00 p.m. – 2:40 p.m.

- Should the Commission retain the factors it currently uses in reviewing mergers (effect on competition, rates and regulation)? Are any revisions needed in the focus of the current factors?
- At present, and taking into account the Commission’s *ex parte* rule prohibitions regarding pending contested proceedings and the new section 203 requirement that the Commission act on a merger application within 180 days of filing (with one additional 180 days for good cause shown), is the level of coordination appropriate between the Commission and other Federal and state agencies involved in merger review? Is the level of information exchange between the Commission and other agencies adequate?
- What would be the pros and cons of having the Commission use a regional market computer model to analyze mergers? Would there be extensive data inputs that would be needed to run such a model, and what would be the resource commitments and costs associated with the Commission running such a model?

Proposed panelists:

- Mark Hegedus, Attorney with Spiegel & McDiarmid, on behalf of TAPS
- Dr. Diana Moss, Vice President, American Antitrust Institute
- Dr. Mark J. Niefer, Trial Attorney, Antitrust Division, U.S. Department of Justice
- Jonathan Baliff, Managing Director, Global Energy Group, Credit Suisse
- Douglas G. Green, Partner, Steptoe & Johnson LLP

Concluding Remarks 2:40 p.m. – 3:00 p.m.