



FEDERAL ENERGY REGULATORY COMMISSION

Date April 17, 2008

Docket No. EC08-40-000

Item No. E-12

Chairman Joseph T. Kelliher

Statement of Chairman Joseph T. Kelliher on Puget Energy, Inc.

"Today, the Commission conditionally approves the merger of Puget Energy, the holding company that owns Puget Sound Energy and other public utilities, and a number of investor firms, led by Macquarie Group. We authorize the transaction as consistent in the public interest. We find the transaction will not harm competition or rate, and will not adversely affect regulation. We also find that the merger will not result in improper cross subsidization.

This order demonstrates the Commission's approach to police improper cross subsidization, as required by the Energy Policy Act of 2005. Cross subsidization is not a new responsibility for the Commission, preventing cross subsidies has been at the heart of our economic regulation since the 1930s. Up to this point, we have policed cross subsidies primarily when we set rates, rather than at the point of a merger.

The Energy Policy Act of 2005 expanded the Commission's merger authority and gave us this new responsibility to police improper cross subsidies in the course of merger review. We have been careful in our exercise of this new authority.

It is important to recognize that a great variety of transactions are subject to section 203 of the Federal Power Act, and that certain types of transactions are unlikely to raise cross subsidization concerns. For example, transactions not involving a franchised public utility with captive customers, or transactions involving a sale of assets between a public utility and a non-affiliate. We established safe harbors for these types of transactions.

Other types of transactions raise some risk of cross subsidization. Both federal and state regulators have an interest in policing cross subsidies, and the kind of transactions that entail potential cross subsidization would typically be subject to review by both federal and state regulators. For that reason, we consulted closely with our state colleagues on the best way to police improper cross subsidies. Our state colleagues actively participated in the development of our expanded merger authority and urged us to refrain from taking a preemptive approach.

The reality is that as a general matter there is more than one way to prevent improper cross subsidization. In our exercise of our new responsibility to police cross subsidies in the course of merger review, we could have taken a preemptive approach, laying down a uniform federal rule on cross subsidization that would override inconsistent state approaches. Under this approach some state merger conditions would be preempted, even if they would guard against improper cross subsidization just as effectively as the federal rule. Recognizing the common interest in policing improper cross subsidization, that approach seemed wholly inappropriate, since it would produce unnecessary conflict between federal and state regulators that did not advance the public interest.

Under our more flexible approach, we will give a hard look to merger conditions imposed by a state



STATEMENT

commission to protect consumers from improper cross subsidization or encumbrance, such as ring fencing or other measures. If we determine these conditions are sufficient to guard against improper cross subsidization, FERC will not impose additional conditions. Where a state lacks authority to condition mergers, FERC will craft appropriate safeguards against improper cross subsidization.

In this case, the Washington Utilities and Transportation Commission has strong ring fencing requirements, and the applicants have proposed ring fencing commitments and other measures to insulate Puget Sound from any risk related to the financial activities of its affiliates as a result of the transaction. Under our approach, we will accept the conditions adopted by the Washington commission unless we find them inadequate to police improper cross subsidization. We reserve our authority to issue supplemental orders as appropriate after reviewing the ring fencing provisions adopted by the Washington commission

I believe our approach in this transaction demonstrates the soundness of FERC's approach towards policing improper cross subsidization."

