



FEDERAL ENERGY REGULATORY COMMISSION

NEWS

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PL09-2-000

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FERC Clarifies FPA Jurisdiction, PUHCA Filing Requirement; Provides Time for Filings

The Federal Energy Regulatory Commission (FERC) today denied a request by Horizon Asset Management (Horizon), an investment adviser, for a disclaimer of jurisdiction under the Federal Power Act (FPA) with respect to investments in public utility company securities. FERC put Horizon, and other companies in a similar situation, on notice that failure to comply may result in potential civil penalties or other sanctions.

Separately today, FERC clarified the requirement under which a company that receives certain exemptions or waivers under the Public Utility Holding Company Act of 2005 (PUHCA 2005) must notify the Commission of material changes in facts that may affect the exemption or waiver.

FPA section 203(a)(2) requires prior Commission authorization for holding companies to acquire certain securities with values in excess of \$10 million, and of transmitting utilities, electric utility companies or holding company systems containing such entities. The Energy Policy Act of 2005 and the repeal of the Public Utility Holding Company Act of 1935 expanded FERC's jurisdiction over securities acquisitions involving the utility industry.

"Today we clarify our jurisdiction under the Federal Power Act and make clear that companies must be responsible and make appropriate filings," FERC Chairman Joseph T. Kelliher said. "Failure to do so may result in sanctions. Companies are on notice that they have 90 days to comply with FERC's regulations."

In finding that Horizon is a public utility holding company that "purchases, acquires or takes" securities for purposes of FPA section 203(a)(2), FERC denied Horizon's request for a disclaimer of jurisdiction with respect to investments in public utility company securities. However, FERC granted, subject to certain conditions, Horizon's request for a blanket authorization under section 203(a)(2) to acquire voting securities of less than 10 percent for any individual investor account and less than 20 percent cumulatively for Horizon and any of its affiliates in public utility companies or public utility holding companies for a period of three years.

Entities in situations that are similar to Horizon and that have not yet done so must apply to FERC for authorization within 90 days of the date of the order's publication in the *Federal Register*. After that time, the failure to make a timely filing may result in potential civil penalties or other sanctions.

In the second order, FERC clarified when a holding company that has received, pursuant to 18 C.F.R. § 366.4 (2008), a waiver or exemption of regulatory requirements under PUHCA 2005 must provide notification of material changes in facts. A holding company that has received that exemption or waiver must notify FERC each time it acquires 10 percent or more of any additional public utility company or public utility holding company.





All such companies must file with FERC, within 45 days of the date of the order's publication in the *Federal Register*, a notification of change in material facts that provides updates on any investments of 10 percent or more of a public utility company or holding company's voting securities since the time the exemption or waiver was granted.

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