



**Federal Energy Regulatory Commission  
November 20, 2008  
Open Commission Meeting  
Staff Presentation  
Items E-18 and E-19**

"Good morning Chairman Kelliher and Commissioners.

The draft order in E-18 clarifies when a holding company that has received a waiver or exemption under the Commission's Public Utility Holding Company Act of 2005 regulations must notify the Commission of material changes in facts.

The Commission's regulations under PUHCA 2005 establish books and records access requirements, as well as accounting, record-retention, and reporting requirements. The regulations also provide for exemptions from and waivers of some or all of these requirements. Persons that receive an exemption or waiver must notify the Commission of material changes in facts that may affect the exemption or waiver and do so within 30 days of the change. However, the regulations do not further specify when a notification is required.

The draft order clarifies one type of change in facts that should in all cases be the subject of a notification. If a holding company that possesses an exemption or waiver acquires 10 percent or more of the voting securities of an additional public-utility company or holding company, it should file a notification of material change in facts. The filing should be made whether or not a change has occurred with respect to the basis on which the exemption or waiver was granted. This is because the filings also serve an informational purpose, and the addition of a new subsidiary company that is a public-utility company or holding company represents a material fact that should be reported to the Commission.

The draft order requires holding companies that have experienced a change of this type since the time the exemption or waiver was granted to file a notification of change in material facts within 45 days of the date the order is published in the Federal Register.

The draft order in E-19 clarifies an aspect of the Commission's jurisdiction under the "purchase, acquire, or take any security" clause of FPA section 203(a)(2). This provision requires public utility holding companies to obtain Commission approval before purchasing, acquiring or taking any security of a transmitting utility, electric utility company, or holding company that includes a transmitting utility or electric utility company, if the security has a value in excess of \$ 10 million.

The draft order denies a request filed by Horizon Asset Management for a disclaimer of jurisdiction under section 203(a)(2) of the Federal Power Act with respect to investments in public utility company securities. Horizon is an investment adviser whose primary business is the management and direction of separately managed accounts. The draft order finds that Horizon is a public utility holding company that "purchases, acquires or takes" securities for purposes of section 203(a)(2) with respect to investments in public utility company securities on behalf of its account holders.

The draft order grants, subject to certain conditions, Horizon's alternative request for 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. The draft order also denies Horizon's request for retroactive

approval of Horizon's holdings in excess of 10 percent of the voting shares of Reliant, Sierra Pacific, and Aquila but, in light of the Commission's previous lack of clarity regarding its interpretation of the scope of section 203(a)(2), the draft order determines not to impose sanctions for Horizon's failure to file for prior approval of these acquisitions of securities.

In recognition of the fact that not all investment entities, like Horizon, that are holding companies may have been aware of this interpretation of the Commission's jurisdiction under the "purchase, acquire, or take any security" clause of section 203(a)(2), the draft order allows any holding companies similar to Horizon to file within 90 days of the date of publication of this order in the Federal Register an application requesting authorization to engage in acquisitions of securities. After that time, the failure to make a timely filing may result in sanctions.

This completes our presentation. We would be happy to answer any questions."