

Federal Energy Regulatory Commission

Agenda for Technical Conference on Public Utility Holding Company Act of 2005 and Federal Power Act Section 203 Issues¹

December 7, 2006

Welcome Remarks: **9:30 a.m. – 9:45 a.m.**

Panel 1: Panel on Cross-Subsidization **9:45 a.m. – 11:45 a.m.**

The Commission invites panelists to discuss whether there are additional actions, under the Federal Power Act (FPA) or Natural Gas Act (NGA), that the Commission should take to supplement the protections against cross-subsidization that were implemented in Order No. 667, *et al.* and Order No. 669, *et al.* Specifically, the Commission seeks panelist input on any or all of the following issues:

FPA Section 203 Authorities

- In discussing the safeguards necessary to protect consumers under FPA section 203, Order No. 669 states that applicants “must adopt sufficient safeguards, including any necessary cash management controls (such as restrictions on upstream transfers of funds, ring fencing, etc.) to prevent any cross-subsidization between holding companies and their new subsidiaries before receiving section 203 approval.” As a general matter, the Commission and most states have authority to review proposed mergers/corporate dispositions involving public utilities and to impose cross-subsidization safeguards as a condition of approval; they also have rate related authorities to protect customers against inappropriate cross-subsidization. Should the Commission adopt specific generic cross-subsidization safeguards in its section 203 regulations or is it preferable, particularly in light of state authorities, for the Commission to permit applicants to implement safeguards on a case-by-case basis subject to audit oversight?
- With respect to FPA section 203 merger/corporate applications, should the Commission require more specific cross-subsidy protections in addition to the general requirement that there shall be no cross-subsidization resulting from or reasonably foreseeable as a result of a FPA section 203 transaction?
- Should the Commission adopt, by regulation, generic “ring fencing” or other conditions of merger approvals (other than codifying a version of its current code

¹ The lists of panelists for this technical conference may change. The Commission will issue a further notice of changes if time permits. Additionally, issues raised in the Order No. 667, *et al.* and Order No. 669, *et al.* rulemakings with respect to whether the Commission should change its merger policy, including its competition analysis, will be discussed at a subsequent technical conference.

- of conduct/merger restrictions) or should the Commission continue to consider such conditions on a case-by-case basis? In light of the fact that most states have authority to adopt such protections, is further generic action by the Commission inappropriate or unnecessary at this time?
- Is the Commission getting sufficient information in FPA section 203 applications to make a determination that a merger or other corporate transaction will not result in cross-subsidization or the encumbrance of utility assets? If not, what additional information should the Commission require FPA section 203 applicants to file?

FPA and NGA Rate and Accounting Authorities

- Are there additional generic actions the Commission should take under its FPA or NGA authorities (other than FPA section 203, which is discussed in other questions above) to protect customers against inappropriate cross-subsidization or encumbrances of utility assets? Are reporting requirements, rather than restrictions, a better way in which to protect against cross-subsidization and the encumbrance of utility assets?
- Should the Commission adopt regulations under FPA sections 205 and 206 to codify existing restrictions regarding power and non-power goods and services transactions between traditional public utilities and their “unregulated” affiliates? Should these existing restrictions apply to all traditional public utilities and their affiliates irrespective of whether they are seeking merger approval under FPA section 203 or market-based rate approval under FPA section 205? Should the scope of the existing power and non-power goods and services restrictions be expanded and, if so, how?
- In light of the submissions to date of the FERC Form No. 60 (Service Company Report), which applies to centralized service companies, is the Commission getting sufficient information to protect against inappropriate cross-subsidization and the encumbrance of utility assets? Is there other information the Commission should routinely collect, or is case-by-case access to books and records in audit and rate proceedings sufficient to ensure that customers are protected against inappropriate cross-subsidization?

Panelists:

- The Honorable Ray Baum, Commissioner, Oregon Public Utility Commission
- The Honorable Robert Garvin, Commissioner, Wisconsin Public Service Commission
- Clifford (Mike) M. Naeve, Skadden, Arps, Slate, Meagher & Flom LLP
- John Antonuk, President, The Liberty Consulting Group
- Randolph Elliott, Principal, Miller, Balis & O’Neil, P.C., on behalf of the American Public Power Association and the National Rural Electric Cooperative Association
- Joseph G. Sauvage, Managing Director and Co-Head, Global Power Group, Lehman Brothers

- Brian Little, Assistant Controller, AGL Resources Inc.
- Edward Comer, Vice President and General Counsel, Edison Electric Institute

Lunch: **12:00 p.m. – 1:15 p.m.**

Panel 2: Panel on Cash Management Programs and Money Pools **1:15 p.m. – 2:30 p.m.**

The Commission adopted its Cash Management Rule, Order No. 634, *et al.*, prior to the Public Utility Holding Company Act of 2005 (PUHCA 2005), when the Commission had no direct authority over holding companies. The Commission invites panelists to discuss whether, and if so how, the Commission should modify its Cash Management Rule in light of PUHCA 2005. Should the Commission codify specific safeguards that must be adopted for cash management programs and money pool agreements and transactions? If so, what should those safeguards be?

Panelists:

- Denise Parrish, Deputy Administrator, Wyoming Office of Consumer Advocate
- Denise M. Furey, Senior Director, Fitch Ratings
- Jerry Overman, Director, Cash Management and Short Term Funding, Dominion Resources Services, Inc.
- Kathryn L. Patton, Deputy General Counsel, Allegheny Power

Break: **2:30 p.m. – 2:45 p.m.**

Panel 3: Panel on Exemptions, Waivers and Blanket Authorizations Set Forth in Order Nos. 667, *et al.* and 669, *et al.* **2:45 p.m. – 4:15 p.m.**

In Order No. 667, *et al.* and Order No. 669, *et al.*, the Commission set forth specific exemptions, waivers and blanket authorizations from the regulatory requirements set forth in those orders. The Commission invites panelists to discuss whether modifications to the specific exemptions, waivers and blanket authorizations set forth in Order No. 667, *et al.* and Order No. 669, *et al.* are warranted. Specifically, the Commission seeks input as to the following issues:

- Exemptions and waivers set forth in Order No. 667, *et al.*:
 - Does the Commission need to consider additional or different exemptions and waivers than those set forth in Order No. 667, *et al.* or should it wait until it has had more experience under the current rules?
- Blanket authorizations set forth in Order No. 669, *et al.*:

- Does the Commission need to consider additional or different blanket FPA section 203 authorizations than those set forth in Order No. 669, *et al.* or should it wait until it has had more experience under the current rules?
- In Order No. 669, *et al.*, the Commission granted a blanket authorization under FPA section 203(a)(2) for holding companies to acquire up to 10 percent of voting securities of a securities in a transmitting utility, an electric utility company, or a holding company in a holding company system that includes a transmitting utility or an electric utility company. Under what circumstances would it be appropriate for the Commission to grant a parallel blanket authorization under FPA section 203(a)(1) for transactions that (a) involve or permit transfers (dispositions) of up to 10 percent of a public utility's voting stock; (b) involve a transfer of up to 10 percent of the voting stock of a holding company that directly or indirectly owns or controls a public utility?

Panelists:

- Kara M. da Silva, Senior Vice President, Radian Asset Assurance
- Steven M. Fetter, President, Regulation UnFettered
- Walter R. Burkley, Vice President and Counsel, Capital Research and Management Company
- Steven Bunkin, Managing Director and Associate General Counsel, Goldman, Sachs & Co./J. Aron & Company
- Debra Bolton, Vice President and Assistant General Counsel, Mirant
- Ike Gibbs, Vice President, Compliance Director and Assistant General Counsel, JPMorgan Chase & Co.
- Andrew F. MacDonald, Thelen, Reid, Brown, Raysman & Steiner LLP, on behalf of Edison Electric Institute

Closing Remarks:

4:15 p.m. – 4:30 p.m.

The Commissioners and staff may ask questions at the conclusion of presentations. All interested persons may file written comments following the technical conference on or before **January 26, 2007**.