



# FEDERAL ENERGY REGULATORY COMMISSION

NEWS

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RM07-21-000

NEWS MEDIA CONTACT

Barbara Connors - 202.502.8680

## **Commission Strengthens Cross Subsidization Safeguards, Provides Regulatory Guidance on Corporate Transactions**

The Federal Energy Regulatory Commission today issued a trio of orders designed to provide greater clarity and guidance on its merger and corporate review policies while ensuring ratepayer protection against unauthorized cross-subsidies of utility and non-utility affiliates.

“As we gain more experience under the expanded corporate review authority Congress granted us two years ago, we have the opportunity to strengthen our cross subsidization protections and provide more regulatory certainty,” Commission Chairman Joseph T. Kelliher said. “Today we take further steps to ensure that wholesale customers are protected, while allowing for needed investment and a more competitive and vibrant electricity market.”

In a Supplemental Policy Statement (PL07-1), the Commission provides guidance regarding future implementation of section 203 of the Federal Power Act (FPA). The guidance is based on the Commission’s experience since amending its FPA section 203 regulations and enacting new regulations under the Public Utility Holding Company Act of 2005 (both in December 2005), and discussion at two technical conferences held in December 2006 and March 2007. All of these actions are an outgrowth of the Commission’s implementation of the Energy Policy Act of 2005 (EPAAct 2005).

In a Notice of Proposed Rulemaking (NOPR), the Commission proposes to codify cross-subsidy pricing restrictions on power and non-power goods and services transactions between franchised public utilities with captive customers and their market-regulated power sales affiliates or non-utility affiliates (RM07-15). A separate NOPR issued today seeks comment on a proposal to grant an additional limited blanket authorization for certain dispositions of jurisdictional facilities (RM07-21).

Section 203 requires Commission authorization for public utility mergers, and dispositions and acquisitions involving electric generation and transmission companies. EPAAct 2005 expanded the scope of the Commission’s section 203 review authority to include certain holding company mergers and acquisitions, and certain public utility acquisitions of electric generating facilities.

The Policy Statement issued today supplements the Commission’s 1996 Merger Policy Statement (Order No. 592). It adopts policies to provide sufficient flexibility to adopt additional customer protections as needed, work in a complementary fashion with the states in protecting customers, and appropriately addresses the need for regulatory certainty while addressing ways to allow beneficial utility industry investment that does not harm captive customers.

Among the issues discussed in the Supplemental Policy Statement are:



- Safe harbor transactions that are unlikely to raise cross-subsidization issues.
- Deference to state-adopted protections, such as ring-fencing measures. Ring-fencing is a means of separating and protecting the financial assets and ratings of a regulated utility from the business risks of other companies in a holding company.
- Broader blanket authorizations considered on a case-by-case basis and a proposal for certain generic blanket authority addressed in a concurrent NOPR discussed below.
- Guidance regarding disposition of “control” jurisdictional facilities.
- The Appendix A merger analysis, used to help identify instances of market power. The Commission will continue to analyze mergers by focusing on a company’s ability and incentive to exercise market power.

In Docket No. RM07-15, the Commission proposes to codify restrictions on the pricing of power and non-power goods and services transactions between franchised public utilities with captive customers and their market-regulated power sales affiliates or non-utility affiliates. The proposed rule expands the transactions and entities to which these restrictions apply in order “to protect against inappropriate cross-subsidization of market-regulated and unregulated activities.”

Comments on this NOPR, *Cross-Subsidization Restrictions on Affiliate Transactions*, are due 30 days after publication in the *Federal Register*.

Today’s third order (RM07-21) proposes to codify a limited blanket authorization under section 203 (a) (1) of the FPA. This authorizes a public utility, without prior Commission authorization, to dispose of less than 10 percent of its voting securities to a public utility holding company only if, after the disposition, the holding company and any associate company will own, in the aggregate, less than 10 percent of the public utility. The Commission believes that the disposition of such limited voting interests (less than 10 percent) with the proposed “in aggregate” restriction and the existing reporting requirements applicable to holding companies will not harm competition or captive customers and will accommodate additional investment and market liquidity in the electric industry.

Comments on the NOPR, *Blanket Authorization Under FPA Section 203*, are due 30 days after publication in the *Federal Register*.