



**Federal Energy Regulatory Commission
July 19, 2007
Open Commission Meeting
Statement of
Chairman Joseph T. Kelliher**

Items E-1, E-2, and E-3: FPA Section 203 Supplemental Policy Statement (Docket No. PL07-1-000), Cross-Subsidization Restrictions on Affiliate Transactions (RM07-15-000), and Blanket Authorization Under FPA Section 203 (Docket No. RM07-21-000)

"Today we approve a package of orders designed to further implement the expanded merger and corporate review authority granted by Congress two years ago and strengthen our protections against cross subsidization. The actions we take today are careful and deliberate, and reflect our growing experience with our expanded corporate review authority, as well as the record of two technical conferences we have held on these matters in recent months. This package reflects both a commitment to discharge our statutory duty and a desire to facilitate transactions in a capital intensive industry.

The Energy Policy Act of 2005 significantly expanded the Commission's merger and corporate review jurisdiction. The Act granted us authority over holding company mergers and acquisitions and transfers of generation facilities. It charged the Commission with assuring mergers and acquisitions will not result in inappropriate cross subsidization. It also resulted in additional Commission review of holding company securities transactions. The Commission moved quickly to implement its expanded merger and corporate review authority.

We take a number of additional steps today to further implement our expanded corporate review authority. Significantly, we strengthen our protections against cross subsidization, by proposing to codify restrictions on affiliate transactions, by clarifying the types of mergers and acquisitions that raise legitimate cross subsidization issues and are therefore subject to cross subsidization protections, and by providing guidance on what kinds of cross subsidization protections are appropriate, including ring fencing. These actions provide greater regulatory certainty on how the Commission will police cross subsidization, and provide useful guidance to section 203 applicants.

As a general matter, the beneficiaries of cross-subsidization protections are both retail customers and wholesale captive customers. Most state commissions have authority to review mergers of state regulated utilities, and most state commissions can impose ring fencing conditions or other conditions designed to protect retail consumers. Our central focus in merger proceedings is whether there will be potential cross-subsidization by wholesale customers as a result of the proposed merger. While our primary means of protecting customers at the wholesale level is through rate mechanisms, we must also review whether additional protections are needed in the context of a proposed merger. If the answer is yes, our policy will be to defer to state-imposed protections if they are sufficient to protect wholesale customers. If state commissions do not have authority to impose necessary protections or state-imposed protections are not sufficient to protect wholesale customers, we will act to fill any regulatory gap.

If the Commission were to take an expansive approach towards implementation of the new cross subsidization provisions in section 203, and adopt inflexible, mandatory federal standards, the result could be direct conflict with our state colleagues. Today's approach implements the new provision in a manner that seeks to avoid regulatory conflicts, is respectful of state authority, and builds on other

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Commission efforts to harmonize federal-state regulation for the protection of ratepayers.

The policy statement also provides greater regulatory certainty about the kinds of transactions that might be subject to cross subsidization protections imposed by the Commission. Not all transactions subject to section 203 raise legitimate cross subsidization issues. Participants at the December 2006 conference urged the Commission to identify the universe of transactions where there are legitimate concerns about possible cross subsidization, and to identify appropriate protections. That would provide greater regulatory certainty and reduce unnecessary burdens on transactions.

That is what we do today in the policy statement, by providing safe harbors for section 203 transactions that do not raise legitimate cross subsidization issues, namely transactions that do not involve a franchised public utility, transactions that are subject to review by a state commission, and transactions involving only nonaffiliates.

The policy statement we issue today not only addresses cross-subsidization issues but also provides important regulatory guidance on a number of critical issues, including what constitutes "control" of a public utility under section 203 of the FPA and the competitive analysis used by the Commission to analyze mergers.

We also facilitate certain securities transactions, by granting blanket approval of minor dispositions of public utility securities to a holding company. Previously we have granted blanket authorizations for certain securities acquisitions by holding companies where the Commission determined there is no harm to captive utility customers.

In my view, today we complete our initial implementation of the rules that will govern future Commission actions on section 203 transactions. However, the Commission will remain vigilant in its oversight of industry activity and will make future adjustments to its policies and rules as necessary."