ONE HUNDRED EIGHTH CONGRESS

U.S. House of Representatives
Committee on Energy and Commerce
Washington, DC 20515–6115

JOE BARTON, TEXAS
CHAIRMAN

April 21, 2004

The Honorable William H. Donaldson
Chairman
Securities and Exchange Commission
450 Fifth Street, N.W.
Washington, D.C. 20549

The Honorable David M. Walker
Comptroller General
U.S. General Accounting Office
441 G Street. N.W.
Washington, D.C. 20548

Dear Chairman Donaldson and Mr. Walker:

We are writing to acknowledge receipt of Chairman Donaldson's undated letter, transmitting a 13-page memorandum, dated March 4, 2004, from the Director of the Securities and Exchange Commission's Division of Investment Management, in response to the questions raised in our February 11, 2004 letter regarding the Commission's administration of the Public Utility Holding Company Act of 1935 (PUHCA or the Act).

We are especially pleased to receive the assurances in Chairman Donaldson's letter that "the Commission shares your goal of effectively administering the Act, particularly in light of the crucial importance of our nation's utility industry to our economy and to national security." Unfortunately, in recent history, actual practice has rarely met that standard. Moreover, we find that the SEC staff's analysis, while well-documented and well thought out, raises a number of additional questions and concerns, some of them quite troubling. In particular, we fear that a continuation of current Commission practices will allow Enron-like accounting and corporate structures to circumvent the investor and consumer protections of PUHCA. In order to assist us in fully and fairly evaluating these critical matters, we request that the Commission provide us no later than Friday, May 28, 2004, with responses to the followup questions enclosed with this letter.

In addition, we request that the U.S. General Accounting Office (GAO) conduct a study and submit a report to us on the Commission's administration of PUHCA, especially the exemption provisions that have been abused by Enron and others to the detriment of investors, ratepayers, and the public interest. Please have GAO staff contact our staffs about the design of this project which should, at a minimum, cover the issues and case studies discussed in the subject correspondence between us and the SEC.

In the wake of the Enron debacle, and in the face of possible repeal of PUHCA, we cannot overstate the importance to investors and consumers of resolving these issues sooner rather than too late to forestall disaster. Thank you for your cooperation and assistance. Should you have any questions about our requests, please contact us or have your staffs contact Consuela Washington (225-3641) or Sue Sheridan (226-3400) of the Energy and Commerce Committee Democratic staff or Jeffrey Duncan (225-2836) of Rep. Markey's office.

Sincerely,

JOHN D. DINGELL
RANKING MEMBER

EDWARD J. MARKEY
MEMBER
SUBCOMMITTEE ON ENERGY AND
AIR QUALITY

Enclosure – Questions for SEC Chairman Donaldson

cc: The Honorable Joe Barton, Chairman
Committee on Energy and Commerce

The Honorable Ralph Hall, Chairman
Subcommittee on Energy and Air Quality

The Honorable Rick Boucher, Ranking Member
Subcommittee on Energy and Air Quality

Questions for SEC Chairman Donaldson
April 21, 2004

I. The Enron Decision and the SEC's Administration of Section 3(a)(1)

1. Section 3 (a)(1) of the Public Utility Holding Company Act (PUHCA or the Act) requires the Commission, "unless and except insofar as it finds the exemption detrimental to the public interest or the interest of investors or consumers" to exempt any holding company if the holding company, and every subsidiary company thereof from which the holding company derives, directly or indirectly any material part of its income, "are predominantly intrastate in character and carry on their business substantially in a single state in which such holding company and every such subsidiary company are organized." Rule 2 (exemption of holding companies which are intrastate or predominantly operating companies) provides that any such holding company, and every subsidiary thereof, shall be exempt from all the provisions of the Act and rules thereunder, except section 9(a)(2), upon the filing of an exemption statement on Form U-3A-2. Rule 6 (termination of exemptions) provides that, if it appears to the Commission (on the basis of statements claiming exemption or otherwise) that a substantial question of law or fact exists as to whether the holding company is entitled to the exemption, or if it appears that any question exists as to whether the self-certified exemption may be detrimental to the public interest or the protection of investors or consumers, the Commission may notify such holding company and the exemption will terminate 30 days after that notification.

   Does the SEC believe that the current system, which allowed Enron to operate under a claim of exempt status under PUHCA that was only revoked after the company collapsed in scandal, is consistent with the public interest and the protection of investors and consumers? If so, how were Enron and Portland General Electric (PGE) investors and consumers and the public benefitted by the SEC's failure to take any action to revoke Enron's exempt status until after the company was in bankruptcy?

2. In light of the Enron experience, why hasn't the SEC revised Rule 2 so that companies can no longer claim exempt holding company status under PUHCA without some type of formal process which requires the Commission and its staff to actually evaluate whether the claim is warranted based on the facts and circumstances? In the absence of reforms to the Commission's administration of Section 3 of PUHCA and Rule 2 promulgated thereunder, what is to prevent another Enron situation from occurring?

3. What is the current process at the SEC for evaluating whether exempt status claimed or previously granted to a utility holding company should be revoked as "detrimental to the public interest or the interest of investors or consumers"? Who has standing to initiate such a review? How many staff people are working on the matter and what internal deadlines do they have?

4. In addition to the Enron proceeding, how many inquiries, investigations, or other proceedings has the SEC conducted over the last 15 years to determine whether an exemption should be revoked? What has been the result of any such inquiries? If there have been no such inquiries, how can the SEC know whether those currently claiming or otherwise operating under an exemption from PUHCA actually merit exempt status? How many staff are assigned to this task and for how long and with what results?

5. The SEC staff memorandum (p. 5) indicates that Enron's PUHCA exemption was revoked due to its ownership of out-of-state utility assets and its participation in out-of-state electricity transactions. Are there other exempt holding companies that are also substantial participants in interstate electricity or natural gas markets? If so, has the SEC ever inquired whether these companies might also have out-of-state generation or transmission assets? If not, why?

6. Is it your view that Enron was more severely harmed by PGE's activities in wholesale energy markets or by Enron's far-flung non-utility activities?

7. The most common source of financial stress to a utility is its ownership of non-utility businesses. A review of a number of recent reports issued by nationally recognized credit rating agencies (*see* attached list) indicate that the financial and operating performance of exempt holding companies is frequently worse than that of registered holding companies, and that where registered holding companies have seen downgrades, losses from unregulated business may be largely to blame. Is the Commission aware of these reports?

   Don't the findings merit a re-examination of your previous holdings that confine examination of the appropriateness of a Section 3(a)(1) exemption to only utility subsidiaries and parent holding companies, especially in light of the language of Section 3(a) that permits the SEC to deny a holding company an exemption to which it is otherwise entitled if it finds that the exemption would be "detrimental to the public interest or the interest of investors or consumers"? If not, why not?

8. The SEC staff memorandum (p. 6, fn. 17) states: "we vigorously review the non-utility activities of newly registered holding companies to ensure that they remain within the restrictions imposed by section 11(b) of the Act." How many such reviews have been conducted, by how many staff, and with what results?

9. We are aware of a number of companies that currently enjoy an exemption under Section 3(a)(1) and yet appear to engage in interstate wholesale electricity sales (*see* attachment). Please describe the efforts that you have made to determine whether these or other utility holding companies exempt under Section 3(a)(1) are similarly engaged in wholesale markets.

10. A recent Standard & Poor's report found that PUHCA has played a valuable role in preventing registered holding companies from engaging in practices such as investment in noncore business industries like savings and loan, insurance, aircraft leasing, real estate, telecom, emerging market utilities, independent power, and energy marketing and trading that have been the cause of financial difficulties for non-registered holding companies.[1] Moreover, the report found that the potential repeal of PUHCA creates the risk of highly leveraged companies purchasing utilities, leveraging them up, and using the cash to invest in higher-risk ventures.[2] Please explain, in light of this finding, why the Commission continues to endorse a forgiving and expansive view of the exemptions available from the registration requirement, when the record clearly indicates that consumers and investors are better served by registration?

11. Given the clear link between non-regulated investment and weakened financial performance among exempt holding companies – as recognized by Wall Street credit agencies – why has the SEC not revisited its current interpretation of its enforcement role under Section 3(a)(1) and other PUHCA exemptions, which does not provide for any meaningful regulation or oversight of non-regulated investments by exempt holding companies?

12. Given that acquisitions of utilities by non-utility companies are on the rise and at least one Wall Street credit rating agency has noted the leveraged structure of one such transaction with disapproval,[3] shouldn't the SEC be closely considering the financial impact on exempt utility holding companies and their regulated utilities that may result from such transactions?

13. We understand that the 3(a)(1) exemption that Enron had was just one of at least three that the company had received through no-action letters from the SEC staff. Is this true? What was the basis for the other no-action letters granted to Enron? To what extent was continued compliance monitored?

14. We also understand that Enron enjoyed exemptions under Section 3(a)(3) and 3(a)(5) of PUHCA, simply because it filed for such exemptions and the SEC did not take any final action to disapprove them. Is this true?

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[1] *See* Is PUHCA Beneficial or Detrimental to U.S. Utilities' Credit?, Standard & Poor's at 1, February 19, 2004.

[2] Id. at 4.

[3] A recent S&P report indicates that S&P placed the ratings of Tucson Electric Power Co. (TEP) on CreditWatch with negative implications in reaction to the announcement that TEP parent, UniSource Energy Corp., would "sell 100% of the company to a private equity firm for about $3 billion, including the assumption of $2.1 billion in debt." S&P explains that **"UniSource is highly leveraged," and that TEP may be downgraded soon "because of UniSource's unexpected move toward a leveraged buyout structure, which, regardless of whether the transaction is completed or not, raises concerns about management's commitment to credit quality."** (Emphasis added.) *See* *U.S. Utilties Ratings Decline Continued in 2003, but Pace Slows*, Standard & Poor's (Jan. 29, 2004).

15. Does the SEC or its staff review the totality of PUHCA exemptions and no-action letters granted to a single person or entity to evaluate the cumulative effect of the exemptions, and whether they might be undermining the purposes of the Act? If so, how is this done? If not, why not?

II. Investments by Non-Utility Companies in Utilities

A. Ownership Structures

16. Section 2 (a)(7) of the Act defines a holding company as "any company which directly or indirectly owns, controls, or holds with power to vote, 10 per centum or more of the outstanding voting securities of a public-utility company or of a company which is a holding company." The SEC staff memorandum (pp. 7-10) indicates that the staff has issued a number of no-action letters during the past ten years under this section and cites the letter issued to Berkshire Hathaway in 2000 as the most prominent example. How does the SEC reconcile the analysis and conclusions reached by the SEC staff in the Berkshire Hathaway no-action letter with the Commission's earlier precedent in the *H.M. Byllesby & Company* and *United Corporation* decisions?

17. Is it common for SEC staff no-action letters to reverse decisions previously made by the Commission itself?

18. What is the process through which a company obtains a no-action letter from the SEC staff? Does it make a difference whether the request is routine or one that raises novel or controversial issues or that asks the staff to reverse prior positions?

19. Is the no-action process open to the public? If not, why not? Is a no-action result appealable to the courts? Are potential interveners given notice and an opportunity to comment on whether the no-action letter should be granted? Are potential intervenors afforded an opportunity to submit evidence and get discovery? If not, doesn't that mean that the "facts" that form the basis for the no-action letter are only those represented by the applicant? Do those who seek no-action letters cite prior no-action letters as precedent? If so, isn't the SEC setting important policy using a process that is inconsistent with the accountability intended by the drafters of PUHCA?

20. Does the SEC staff conduct any independent analysis or investigation to verify whether the claims made by the applicant for a no-action letter with respect to the question of holding company status under PUHCA are in fact true, or whether there may be additional evidence that might bear on the question of whether or not the applicant should be considered to be a holding company for the purposes of the Act?

21. Do companies ever negotiate the terms of a no-action letter in private with SEC staff prior to the isssuance to a no-action letter? Did this occur with respect to the Berkshire Hathaway no-action letter, or the other no-action letters referred to in footnotes 18 and 22 on pages 8 and 9 of the SEC staff memorandum?

22. Following the grant of a no-action letter, does the SEC ever conduct any follow-up to determine whether the facts and circumstances cited in the applicant's letter remain accurate?

23. On how many occasions over the last 10 years has a request for a no-action letter under PUHCA been filed and granted on the same day? On how many occasions has such a request been filed and granted within less than a month? How do you explain acting on no-action letters so quickly, but letting the Arizona Corporation Commission's complaint against Pinnacle West sit for years?

24. The SEC staff memorandum (p. 7) advises that the staff has agreed not to recommend enforcement action to the Commission for an entity's failure to register under the Act in situations where "the entity has acquired up to 9.9 percent of the voting securities of a utility or utility holding company and has also made a significant investment in the non-voting securities of the utility or utility holding company." Why wouldn't the fact that a person holds 9.9 percent or less of the common stock of a public utility holding company, plus substantial ownership of warrants or convertible stock in the company, provide evidence that such person exercises a controlling influence?

25. Since Kohlberg, Kravis & Roberts (KKR) and Texas Pacific Group (TPG) are not publicly traded companies who must comply with SEC registration and reporting requirements, how would interested parties be able to obtain access to information about how these entities are organized, governed, what agreements or arrangements they may have entered into with other parties with respect to their utility investments, so that such parties might be able to independently assess whether KKR or TPG might be able to exercise a controlling influence over a public utility or utility holding company?

26. In a filing before the Oregon Public Utilities Commission (*see* attachment), TPG lists 25 "consent rights" that empower it to exercise veto power over a wide array of corporate transactions, financings, acquisitions, sales, and corporate governance decisions made by the Oregon Electric Utility Company (Oregon Electric), the shell corporation created for the purpose of acquiring PGE. Does the Commission believe that these consent rights give TPG a controlling influence over Oregon Electric, and hence over PGE? If not, why not? If so, will TPG be required to register under the Act?

27. The aforementioned TPG filing also notes that several aspects of the consent rights remain "to be negotiated with the SEC." Has the SEC or its staff entered into negotiations with TPG over its consent rights? Will these "negotiations" be conducted in a public forum, allowing other interested parties to participate, submit comments, or filings in support or in opposition?

28. In another filing submitted to the Oregon Public Utilities Commission, TPG reports that after the application, TPG "will hold approximately 79.9 percent of the economic interest in Oregon Electric, but they will have only five percent of the voting securities."

Electric, which in turn will – after completion of the transaction – hold 100 percent of the voting securities of PGE, render the successor company and its affliates a registered holding company under the Act? Why wouldn't TPG be able to exert a controlling influence over Oregon Electric and PGE?

29. Since the SEC determined in the *Enron* decision that PGE was not predominantly intrastate in character and that Enron would have to file with the SEC as a registered holding company, why wouldn't the sale of PGE to another holding company also require that company to either have to register with the SEC or divest itself of the assets that gave rise to the SEC's decision in the Enron case?

30. Has TPG made any material representations to the Commission to suggest that Oregon Electric will cap or otherwise maintain interstate wholesale sales below the level conducted by PGE that contributed to the revocation of PGE's exemption?

B. Pending and Existing Investments in the Utility Sector

31. The SEC staff memorandum (p. 11) notes that "KKR did not seek the staff's or the Commission's approval of" its acquisitions of DPL, a holding company that owns Dayton Power & Light, and International Transmission Company (ITC), a company that owns transmission assets in Michigan and is involved in developing transmission facilities elsewhere in the United States. Has the SEC or its staff reviewed whether KKR's claim of exempt status is valid, or whether the public interest and the interests of consumers and investors would be better protected by requiring it to register under the Act? If not, why not?

32. Why wouldn't the fact that KKR owns a 4.9 percent voting interest in DPL, along with unexercised warrants to purchase another 19.2 percent voting interest in DPL, and that KKR holds an approximate 66.5 percent limited partnership interest in the entity that effectively controls ITC provide sufficient evidence of KKR's control over these entities, trigger a requirement for registration under the Act?

33. Does the SEC or its staff believe that the utility assets owned or controlled by DPL and ITC would meet PUHCA's integration test? Please explain.

34. The SEC staff memorandum (p. 12) notes that "we anticipate that we will carefully review KKR's interests in DPL and International Transmission as part of our review of any application we receive in connection with a proposed acquisition of UniSource and its three utility subsidiaries." Will this review occur in a forum that would allow other interested parties to obtain access to all materials filed with or presented to the SEC and to submit statements or other evidence in opposition to the request for a grant of exempt status?

35 The SEC staff memorandum (p. 11, fn. 25) notes that Saguro Utility Group, the shell company that has been created to facilitate KKR's acquisition of Unisource, is 62 percent owned by KKR. Does the SEC have sufficient evidence to know whether KKR has a controlling influence over Saguro? Has the SEC obtained copies of any agreements, consent rights or other documents that set forth any arrangements between KKR and Saguro?

36. The SEC staff memorandum (p. 12) states that a key part of the review that it will conduct of the Unisource transaction will focus on whether KKR or some intermediate holding company should be required to register and become subject to PUHCA requirements, including physical integration. Does the SEC believe utility assets located in Ohio, Michigan, and Arizona would actually meet PUHCA's "integrated public-utility system" test? Is the SEC intending to rely on the reasoning it used to approve the merger of American Electric Power (AEP) and Central and Southwest (CSW), the same reasoning struck down by the Court of Appeals in *National Rural Electric Cooperative Association and American Public Power Association v. SEC*?

III. Review of Existing Exemptions Pursuant to Section 3(a)(1)

37. The SEC staff memorandum (p. 12) states that "it is important for both the staff and the Commission to review exempt entities' compliance with the requirements of the exemption on a regular basis. We agree that it is important to conduct such reviews, and we do so." How many reviews has the SEC and its staff conducted of exempt entities compliance with PUHCA over the last five years? How many over the last ten years? In how many instances did the SEC or its staff find the exempt entity to not be in compliance with the requirements of the exemption? What actions were taken in response? How many of these entities were required to register under PUHCA as a result of these reviews?

38. The SEC staff memorandum (p. 13) reports that the utility holding companies claiming exemption pursuant to rule 2 are required to file an annual statement on Form U-3A-2 and that the staff reviews these filings "carefully to determine if they raise any questions as to any holding company's exempt status under the Act" and that "in conducting these reviews, we focus most specifically on data regarding potential interstate sales of electricity at wholesale by the holding company's utility subsidiaries – the type of sales that were central in the Enron proceeding." Other than the Enron example, in how many instances over the last five years has the SEC found an exempt utility to have engaged in interstate sales of electricity at wholesale?

39. What is the threshold (if any) for interstate sales of electricity at wholesale that the SEC has determined should result in a revocation of a previously issued exemption? How was that threshold (if any) established? What steps does the SEC take to verify that the interstate electricity sales data submitted in Form U-3A-2 filings is accurate?

40. The SEC staff memorandum (p. 13) says that "we are committeed to following up any concerns that we have based on these filings." How many audits, inspections, or examinations has the SEC staff conducted to follow-up on any concerns raised by exempt holding companies' Form U-3A-2 filings?

41. The SEC staff memorandum (p. 13) reports that the staff is planning to update Form U-3A-2 "so that it will be more readily apparent if a holding company's utility subsidiaries are engaging in practices that may raise an issue concerning its continuing claim to exemption under the Act. Have some exempts submitted false or misleading Form U-3A-2's in the past, or submitted forms which may have omitted information which might be material to determining whether they should continue to remain exempt? Which companies? What action was taken by the SEC in response?

42. The SEC staff memorandum (p. 13) reports that the D.C. Circuit Court of Appeals remanded the AEP-CSW merger to the Commission in 2002, concluding that the SEC "had not adequately explained its conclusions that the two utilities were integrated and that they were in the same area or region." The memo goes on to report that "we expect the record in that matter will be reopened sometime this spring and that the Commission will reassess the permissability of the merger shortly thereafter." Why has it taken two years for the SEC to respond to an order by the Court in this matter – a major judicial reversal of what is perhaps the largest PUHCA transaction in decades – while it expedites no action letters? Why wasn't the record reopened immediately after the Court issued its order remanding the decision back to the SEC? How many staff lawyers are working on this case and for how long? Is it true that most of the SEC's original decision in this matter was copied or paraphrased from AEP-CSW submissions?

43. It has been suggested to us that the SEC and its staff chose simply to ignore the Court's remand of the AEP-CSW merger in the hope that Congress would simply repeal PUHCA and thereby render the entire case moot. Is this true?

44. We understand that ChevronTexaco appears to be enjoying an exemption from being regulated under PUHCA as a holding company despite owning 25 percent of the voting shares of Dynegy. Prior to the time it filed this exemption in July 2003, ChevronTexaco appears to have had a pending – since 1999 – Section 3(a)(3) application that claimed it was only "incidentally" a holding company for the purposes of the Act, or that in the alternative, that it was not a holding company within the meaning of Section 2(a)(7) of the Act. ChevronTexaco's Form U-1 has been amended five times since the initial submission in 1999, and it apparently remains pending before the Commission. The most recent amendment is dated June 27, 2003. Did the SEC or its staff ever inform ChevronTexaco that its application would be denied? Isn't it true that the Commission's failure to act on this application has the effect of granting ChevronTexaco the exemption it is seeking? Does the Commission believe that is an effective way to administer PUHCA?

45. How does ChevronTexaco's ownership of 26 percent of the shares of Dynegy comply with the 9.9 percent threshold in the SEC staff's previous no-action letters, or with the requirements of the Act with respect to the exercise of a controlling influence over a public utility or utility holding company?

46. How much longer does the SEC and its staff intend to grant ChevronTexaco this exemption from the Act simply by taking no action on this matter?

47. Eleven days after ChevronTexaco submitted its most recent amendment to its Form U-1, on July 7, 2003, Dynegy filed its own Form U-1 with the Commission, also seeking exemption from PUHCA (more specifically, from being declared a subsidiary of ChevronTexaco within the meaning of the Act). Why wouldn't the SEC also reject this application, based on the 9.9 percent threshold outlined in the SEC staff memorandum and the no-action letters referenced therein? Moreover, why wouldn't Chevron-Texaco's ownership of 26 percent of Dynegy's shares, as well as its ownership of other covertible preferred shares and the rights attendant to these shares also allow it to exercise a controlling influence over Dynegy?

48. Please describe the efforts the SEC and its staff has made subsequent to the rendering of a decision in the *Enron* case to examine whether Dynegy's exemption under Section 3(a)(1) is proper, and whether ChevronTexaco's 26 percent ownership of Dynegy's voting shares should trigger registration under the Act.

49. Over the last five years, how many audits, examinations, inquiries, or investigations has the SEC or its staff conducted to determine whether registered holding companies are complying with the requirements of Section 12 (dealing with intercompany loans, dividends, security transtions, sales of utility assets, proxies, and other transactions) and Section 13 (dealing with service, sales, and construction contracts) of PUHCA? How many staff people worked on the audits and for how many hours each? How frequently is each registered holding company audited under these sections?

50. How many SEC staff personnel are assigned to the task of auditing or inspecting registered holding companies to ensure their compliance with Sections 12 and 13 of the Act? Does the Commission believe that sufficient personnel have been allocated for this purpose? If not, why hasn't the Commission reassigned additional personnel to this mission? Can the Commission honestly say that there are no transactions under Sections 12 and 13 that are priced in excess of reasonable cost?

CREDIT RATING AGENCY REPORTS ON U.S. UTILITIES

1. Research: Credit Quality for U.S. Utilities Continues Negative Trend, Standard & Poor's (Jan. 24, 2003)

2. 2002 Default in Profile, Standard & Poor's (Jan. 31, 2003)

3. Rating Linkage within U.S. Utility Groups: Ring-Fencing Mechanisms, Fitch Ratings (April 8, 2003)

4. Life After PUHCA: Event Risk Would Rise, but Strategy Trumps Regulation for Creditors, Fitch Ratings (Sept. 2, 2003)

5. Outlook 2004: U.S. Power and Gas: Utilities Recover; Power Merchants Pause for Breath, Fitch Ratings (Dec. 15, 2003)

6. U.S. Utilities Ratings Decline Continued in 2003, but Pace Slows, Standard & Poor's (Jan. 29, 2004)

7. U.S. Utilities Survey of State Public Service Commissions, Fitch Ratings (Feb. 2004)

8. Fitch Ratings Raises Westar's Senior Secured to BBB-; Outlook Stable, Fitch Ratings (March 2, 2004)

9. Westar Energy's New Debt Rated; All Ratings Reaffirmed, Standard & Poor's (March 12, 2004)

10. Fitch Lowers DPL & Subsidiary on Liquidity Concerns; Placed on Rating Watch Negative, Fitch Ratings (March 17, 2004)

SECTION 3(A)(1) COMPANIES ENGAGING IN INTERSTATE WHOLESALE POWER TRANSACTIONS[1]

1. **DP&L** provides electric services to over 500,000 retail customers in West Central Ohio. DPL Energy is a diversified regional energy company, operating both traditional coal fired generation capacity and natural gas fired peaking units. Its more than 4,600 megawatts of capacity is marketed on a wholesale basis throughout the eastern United States. See DP&L website, available at http://www.dplinc.com/dplenergy/dplenergy_index.html.

2. **American Transmission Company** is the first multi-state transmission-only company in the United States. It provides electric transmission service from the Upper Peninsula of Michigan, throughout the eastern half of Wisconsin and into portions of Illinois. Transporting electricity from where it's generated to where it's needed is accomplished through a network of transmission lines, both within states and throughout a region. See ATC website, available at http://www.atcllc.com/about.shtml.

3. **AmerenCILCO** is an operating company of Ameren Corporation and was founded in 1913 as Central Illinois Light Company. **CILCORP Energy Services Inc.** ("CESI") markets and provides natural gas management services to business customers throughout Illinois. CESI is an unregulated affiliate of AmerenCILCO and part of AmerenEnergy Marketing, a subsidiary of Ameren Corporation. Ameren Energy Marketing is an electric utility that serves 1.7 million electric customers and 500,000 natural gas customers in a 49,000-square mile area of Missouri and Illinois. See CESI website, available at http://www.ameren.com/CESI/ADC_CESI_HomePage.asp.

4. **PECO Energy** is an energy services company that delivers electricity to 1.5 million customers and natural gas to 430,000 customers in Southeastern Pennsylvania. It appears that PECO Energy has engaged in an interstate wholesale power transaction with Delmarva Power & Light for 3056 KWH of energy. See PECO Energy website, available at http://www.exeloncorp.com/peco/overview/epi_overview.shtml.

5. **Texas-New Mexico Power Company** ("TNMP") has provided electric service since 1935. The company currently serves more than 238,000 customers in 85 communities in Texas and New Mexico. In New Mexico, TNMP operates as a fully integrated electric utility, handling transmission and distribution of power, along with power sales and service. TNMP does not own any generation in New Mexico but provides power through a long-term wholesale power contract with Public Service Company of New Mexico. See TNMP website, available at http://www.tnpe.com/aboutcorprofile2.asp.

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[1] Note that all companies appear to be Section 3(a)(1) exempt holding companies under PUHCA, based on review of materials including the following: references made in various SEC orders; company SEC reports; and review of the SEC's website. However, it is possible that the companies' status may have changed. It is often difficult to determine whether Section 3(a)(1) status is currently present, as the SEC generally appears not to issue any orders on 3(a)(1) exemptions, per se.

6. **Vectren Corporation**, headquartered in Evansville, Indiana, is an energy and applied technology holding company with approximately $3 billion in assets. Vectren's energy delivery subsidiaries provide gas and/or electricity to over one million customers in adjoining service territories that cover nearly two-thirds of Indiana and west central Ohio. Vectren's non-regulated subsidiaries and affiliates currently offer energy-related products and services to customers throughout the surrounding region. These services include energy marketing; coal mining; utility infrastructure services; and broadband communication services. See Vectren website, available at http://www.vectren.com/web/holding/frameset.jsp.

7. **LG&E Energy** is a subsidiary of German registered holding company, E.ON AG. LG&E Energy LLC, headquartered in Louisville, Ky., is a diversified energy services company that is a member of E.ON AG (NYSE: EON; Frankfurt: EOA) family of companies. LG&E operates in domestic and international markets from its headquarters in Louisville, Kentucky. Wholesale power sales by LG&E were made to MISO/BREC. See LG&E website, available at http://apps.lgeenergy.com/fercgen/gensales.asp.

8. **Unisource Energy Corp.** was founded in 1892. Tucson Electric Power, the principal subsidiary of UniSource Energy®, is an electric utility serving more than 360,000 customers in a southern Arizona service territory of 1,155 square miles. See Tucson Electric Power's website, available at http://www.tucsonelectric.com/. Tucson Electric Power has entered into contracts for power with Nevada Power and El Paso Electric. While all sections of Tucson Electric Power's Electric Quarterly Report ("EQR") are not available, it appears that from the contract portion of the EQR that Tucson Electric Power has engaged in interstate wholesale power transactions.

9. **FPL Group** has annual revenues of more than $8 billion and is nationally known as a high-quality, efficient, and customer-driven organization focused on energy-related products and services. With a growing presence in 25 states, it is widely recognized as one of the country's premier power companies. Its principal subsidiary, Florida Power & Light Company, serves more than 4 million customer accounts in Florida. FPL Group, through its power marketing trading group, has engaged in interstate electricity sales with ISO New England. FPL Energy, LLC, FPL Group's unregulated wholesale generating subsidiary, is a leader in producing electricity from clean and renewable fuels. See FPL website, available at http://www.fplgroup.com/.

10. **Dynegy** provides electricity, natural gas and natural gas liquids to customers throughout the United States. Through its energy businesses, it owns and operates a diverse portfolio of energy assets, including power plants totaling more than 12,700 megawatts of net generating capacity, gas processing plants that process more than two billion cubic feet of natural gas per day and approximately 40,000 miles of electric transmission and distribution lines. Dynegy provides wholesale power to utilities, cooperatives, municipalities and other energy companies throughout North American Energy Reliability Council (NERC) regions. It also serves the load requirements of commercial and industrial customers in markets where it has a generation presence and where the regulatory environment supports these activities.

It currently provides power for commercial and industrial customers in Texas, Illinois, Michigan and New York. See Dynegy's website, available at http://www.dynegy.com/. Dynegy has engaged in interstate electricity sales with Con Edison Energy Inc.

11. **TECO Energy Inc.** ("TECO Energy") is an energy company located in Tampa, traded on the New York Stock Exchange (TE) and part of the S&P 500 Index. It has a strong portfolio of regulated utility operations and profitable diversified businesses, and its core competency is in electric generation. TECO Power Services Inc. ("TPS"), an independent power company, builds, owns and operates electric generation facilities in high growth areas of North America, with 2,000 MW in commercial operation. Among its 5,600 MW under construction, TPS is building the two largest independent power projects in the nation as a joint venture with Panda Energy International. **TECO EnergySource** ("TES") is the state-of-the-art power marketing subsidiary of TECO Energy Inc. It markets the output of TECO wholesale generation assets, providing needed electricity and services to high-growth areas of North and Central America. See TECO Energy website, available at http://www.tecoenergy.com/. TECO EnergySource has engaged in interstate electricity sales with American Electric Power Service Corporation.

12. **DTE Energy Company** is a Michigan based energy and energy technology provider that develops merchant power and industrial energy projects. It sells electricity, natural gas, coal, landfill gas, steam and chilled water. It is one of the nation's largest purchasers, transporters and marketers of coal. It develops and invests in emerging energy technologies such as distributed generation and intends to become the pre-eminent supplier of integrated distributed generation solutions. See DTE Energy Company's website, available at http://www.dteenergy.com/. DTE Energy Company has engaged in interstate electricity sales with Independent Electricity Market Operator - Ontario.

13. **Cleco Corporation ("Cleco")** is an energy services company based in central Louisiana with a history of service that spans nearly 70 years. It has two primary businesses: Cleco Power LLC, an electric utility, and Cleco Midstream Resources LLC, a wholesale energy business. Its vision is to be the region's premier energy services company recognized for outstanding leadership, reliability and innovative use of technology by protecting and growing shareholder value by efficiently optimizing investments in the regulated utility and wholesale generation business. See Cleco website, available at http://www.cleco.com/. Cleco has engaged in interstate electricity sales with Westar Energy.

14. **Constellation Energy Group Inc.** ("Constellation") is a Fortune 500 company based in Baltimore. It is a competitive supplier of electricity to large commercial and industrial customers and one of the nation's largest wholesale power sellers. It owns and operates power plants throughout the United States, markets energy throughout North America, and also delivers electricity and natural gas through its regulated utility in Central Maryland, the Baltimore Gas and Electric Company ("BGE"). See Constellation's website, available at http://www.constellationenergy.com/.

Constellation has engaged in interstate electricity sales with American Ref-Fuel of Niagara L.P.

BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

UM 1121

In the Matter of the Application of OREGON ELECTRIC UTILITY COMPANY, LLC, TPG PARTNERS III, L.P., TPG PARTNERS IV, L.P., MANAGING MEMBER LLC, NEIL GOLDSCHMIDT, GERALD GRINSTEIN, and TOM WALSH for an Order Authorizing Oregon Electric Utility Company, LLC to Acquire Portland General Electric Company

EXHIBIT 7

LIST OF TPG APPLICANT CONSENT RIGHTS

ATER WYNNE LLP
222 SW COLUMBIA, SUITE 1800
PORTLAND, OR 97201-6618
(503) 226-1191

EXHIBIT 7

LIST OF TPG APPLICANT CONSENT RIGHTS[1]

The consent of the holders of a majority in interest of the Class A Interests would be required for any of the following matters:

1. any recapitalization, reorganization, reclassification, merger, consolidation, liquidation, dissolution or other winding up, spin-off, subdivision or other combination of OEUC, the Company or any of their respective subsidiaries;

2. any declaration, setting aside or payment of any dividend or other similar distribution (including a redemption or repurchase of capital) in respect of any class of capital stock of OEUC, the Company or any of their respective subsidiaries, other than payments of cash dividends on the Preferred Stock of the Company outstanding as of the date of the Closing of the Acquisition in accordance with the terms of the Preferred stock as in effect on the date of the Closing of the Acquisition;

3. any authorization, sale, issuance or redemption of equity securities (or any warrants, options or rights to acquire equity securities or any securities convertible into or exchangeable for equity securities) of OEUC, the Company or any of their respective subsidiaries, other than in accordance with any then-current annual operating or capital budget and business plan approved in accordance with these consent rights;

4. any incurrence of indebtedness by OEUC, the Company or any of their respective subsidiaries in the aggregate in excess of $[•]: (a) for borrowed money, (b) evidenced by notes, bonds debentures or other similar instruments, (c) under capital or financing leases or installment sale agreements, or (d) in the nature of guarantees of the obligations described in clauses (a) through (c) of any other person or entity, other than in accordance with any then-current annual operating or capital budget and business plan approved in accordance with these consent rights;

5. any loan or advance (not specified in clause 4) to any person, other than trade credit in the ordinary course of business consistent with past practice;

6. any redemption, acquisition, cancellation or prepayment of a complete or partial discharge in advance of a scheduled payment date with respect to any material modification or other material amendment of any terms of, or waiver of any material right under, any indebtedness of OEUC, the Company or any of their respective subsidiaries (whether for borrowed money or otherwise), other than in accordance with any then-current annual operating or capital budget and business plan approved in accordance with these consent rights;

[1] Consent rights and all proposed amounts indicated as $[•] herein to be negotiated with the SEC.

7. the entering into or amendment of any contract, agreement, arrangement or commitment with respect to the procurement of goods or services which creates or could reasonably be expected to create a financial obligation in an amount, whether payable at one time or in a series of payments, in excess of $[•], except as contemplated by any then-current annual operating or capital budget and business plan approved in accordance with these consent rights;

8. any capital expenditures in an amount greater than$[•], in any transaction or series of related transactions, except as contemplated by the then-current annual operating or capital budget approved in accordance with these consent rights;

9. any purchase, lease or other acquisition of any securities or assets of any other person, except for acquisitions of securities, products, supplies and equipment in the ordinary course of business consistent with past practice or acquisitions pursuant to the then-current annual operating or capital budget and business plan approved in accordance with these consent rights;

10. any sale, lease, exchange, transfer, or other disposition of OEUC's, the Company's or their respective subsidiaries' assets or businesses on a consolidated basis (including, without limitation, the capital stock of any subsidiary), except to the extent that such transactions in any fiscal year in aggregate do not exceed $[•] or [•]% of such entity's net revenues, as determined by an independent appraiser of national standing;

11. any joint venture, partnership or other material operating alliance by OEUC, the Company or any of their respective subsidiaries with any other person;

12. any material change in accounting policies, practices or principles, or voluntary change in OEUC's or the Company's outside independent auditor or accountants;

13. any voluntary proceeding or filing of any petition by or on behalf of OEUC, the Company or any of their respective subsidiaries seeking relief under the Bankruptcy Code or the voluntary wind up, dissolution or liquidation of OEUC, the Company or any of their respective subsidiaries;

14. any employment contract with the executive officers of OEUC, the Company or any of their respective subsidiaries, including any material change in the compensation or terms of employment of such executive officers, or any employee stock option plan, equity incentive plan or any other material employee benefit plan;

15. the hiring or firing of a Chief Executive Officer, Chief Operating Officer or Chief Financial Officer of the Company;

16. any change in the principal line of business of OEUC, the Company or any of their respective subsidiaries as in effect on the Closing;

17. the adoption of, or amendment to, the Company's annual operating budget, capital budget and three-year financial plan, each of which will be updated annually;

18. any public offering or private sale of equity securities (other than financing activities in the ordinary course) or any change of control of OEUC, the Company or any of their respective subsidiaries;

19. any transaction involving conflicts of interest between the OEUC and the Managing Member, any member or Affiliate thereof (including employees and directors of the Managing Member, any member or Affiliate thereof) or payment of any advisory or similar fees by OEUC, the Company or any of their respective subsidiaries to the Managing Member, any member or Affiliate thereof;

20. any amendment or modification of OEUC's, the Managing Member's, the Company's or any of the Company's subsidiaries' organizational documents (including limited liability company agreements);

21. any filing to obtain a material governmental permit or approval, any material filing in connection with a Company rate proceeding or any material change to the rates or other charges under any Company tariff, or any material amendment to any such filings;

22. initiation, settlement or compromise of any action, suit, claim, dispute, arbitration or proceeding by or against OEUC, the Company or any of their respective subsidiaries (i) that would materially adversely affect such party, (ii) that results in aggregate value/cost of more than $[•], or (iii) would require OEUC, the Company or any of their respective subsidiaries to be subject to any material equitable relief or to take or refrain from taking any material action in connection with the conduct of its business;

23. any action (or failure to act) by OEUC, the Company or any of their respective subsidiaries that would result in any holder of a membership interest in OEUC or any affiliate thereof being subject to (a) regulation as a "holding company" or a "subsidiary company" or an "affiliate" of a "holding company" or a "public-utility company" under the 1935 Act, or (b) any other federal or state regulation, in each case that is reasonably determined by such affected party to have an adverse effect;

24. any modification of the name of OEUC or the Company; or

25. any contract, agreement, arrangement or commitment to do or engage in any of the foregoing.