



FEDERAL ENERGY REGULATORY COMMISSION

November 20, 2008

Commissioner Philip D. Moeller

Item Nos. E-18 & E-19

Docket Nos. EC08-91-000 and -001, and PL09-2-000

Statement of Commissioner Philip D. Moeller on Acquisitions of securities by public utility holding companies

"The Energy Policy Act of 2005 (EPAcT 2005) indisputably affected all major areas of this Commission's authority. This morning we talked about enforcement and on this agenda we are voting on reliability orders—two topics that have garnered a lot of attention. However, in enacting EPAcT 2005, Congress also demonstrated its support for wholesale competition in the electric industry by repealing the Public Utility Holding Company Act (PUHCA) of 1935 and enhancing our merger/corporate review authority under the Federal Power Act.

PUHCA 1935 encouraged concentration of generation assets because of its requirement that facilities be integrated or capable of being integrated. It was also a disincentive to certain transmission investments because investment in companies in disparate geographic regions of the country could trigger holding company status and registration requirements. Advocates of PUHCA reform felt that state and Federal regulatory ability to ensure just and reasonable rates, including protection against cross-subsidization, as well as corporate merger and other review authority, and securities and accounting laws that did not exist prior to 1935, provided sufficient customer protection without PUHCA, as long as states and FERC have adequate authority to obtain books and records of holding companies and their members.

EPAcT 2005 repealed PUHCA 1935 and replaced it with a new PUHCA 2005 which does not contain substantive restrictions but rather, among other things, provides FERC and state access to books and records of holding companies and their members (except for entities that are holding companies solely with respect to EWGs, QFs or foreign utility companies).

In this arena, this Commission has taken various steps to not only improve competition in the wholesale electric markets but also protect consumers. EPAcT 2005 strengthened FERC's corporate review authority under FPA section 203 with new provisions. These include a requirement that public utility leases or acquisitions of generation-only facilities receive FERC approval if the facilities are used for wholesale sales in interstate commerce. FERC has new authority over certain holding company mergers and certain holding company purchases or acquisitions of securities of a transmitting utility or electric utility company. A new requirement was created that FERC review and make FPA section 203 findings regarding cross-subsidization and encumbrances or pledges of utility assets. On the other hand to reduce restrictions on merger activities, the monetary trigger for most FPA section 203 authorizations has been raised from facilities having a value in excess of \$50,000 to facilities having a value in excess of \$10 million. Also, to avoid undue delays in processing these applications, FERC must act on applications within 180 days, except for good cause it may take an additional 180 days.

This Commission has issued rulemakings, policy statements and orders pursuant to this authority. Today's orders provide helpful clarifications to the industry as we gain more experience in implementing our authority while recognizing the changing face of the electric industry. As discussed earlier, E-18 requires that the Commission be notified if there are material changes in facts for an entity even if it has previously received an exemption or waiver from certain PUHCA 2005 regulations. E-19, the Horizon Asset Management order, interprets the meaning of "to purchase, acquire or take any security" under FPA section 203(a)(2). Importantly, we waive sanctions for this company because we are, for the first time, interpreting the meaning of the noted statutory language in this proceeding."