FEDERAL ENERGY REGULATORY COMMISSION

STATEMENT

November 20, 2008

Chairman Joseph T. Kelliher

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

Item Nos. E-18 and E-19

Statement of
Chairman Joseph T. Kelliher
on
Acquisitions of securities by public utility holding companies

"Today the Federal Energy Regulatory Commission (FERC) approves two orders related to acquisitions of securities by public utility holding companies. One order clarifies our Federal Power Act (FPA) jurisdiction over the acquisition of securities by certain financial investment advisers that are public utility holding companies. The other order clarifies one of our filing regulations under the Public Utility Holding Company Act of 2005 (PUHCA 2005), regarding the obligation of holding companies to file change of status notices with the Commission.

Under section 203(a)(2) of the Federal Power Act, certain holding companies are required to obtain prior approval of the Commission before they "purchase, acquire, or take any security" with a value exceeding $10 million in a transmitting utility, electric utility company, or a holding company in a holding company system that includes a transmitting utility or an electric utility company. A "holding company" is a company that directly or indirectly owns, controls, or holds, with power to vote, 10 percent or more of the voting securities of a public utility company or holding company of a public utility company. In the *Horizon* order, we find that investment adviser holding companies such as Horizon must obtain Commission authorization prior to acquiring additional utility securities.

In particular, we clarify in *Horizon* the Commission's jurisdiction under the "purchase, acquire, or take any security" clause of section 203(a)(2). This is a matter of first impression, since the Commission has not previously addressed the meaning of this clause. We specifically consider the circumstance in which a financial investment advisor itself is not a security account holder, the security account holders have delegated the power to vote securities to the investment advisor, and the investment advisor defers to another entity to actually vote the securities but reserves the right to override the recommendations of that entity. We interpret the statutory language as sufficiently broad to allow FERC to adequately protect customers of public utility companies and transmitting utilities in these circumstances. To do otherwise might permit investment holding companies to exercise control over public utility companies or other holding companies, without having sufficient regulatory protections in place.

Although we deny Horizon's request for a disclaimer of jurisdiction, we grant it a blanket authorization for acquisitions of voting securities of any transmitting utility, electric utility company or public utility holding company that includes a transmitting utility or electric utility company, but subject to certain conditions. Horizon is pre-authorized to hold such voting securities only if such holdings are less than 10 percent in any individual investor account and less than 20 percent cumulatively for Horizon and any affiliated entities. These ownership limits are similar to those established by the Commission in other contexts.

In *Horizon,* we find that Horizon violated section 203(a)(2) of the Federal Power Act, by purchasing securities without prior Commission approval. We decline the request to grant retroactive approval. However, because the Commission has not previously interpreted the scope of the "purchase, acquire, or take any security" clause, we decline to impose civil penalties on Horizon.

We are clarifying our statutory interpretation of this particular aspect of section 203(a)(2) for the first time, and recognize that similar investment adviser holding companies may have purchased securities without prior Commission approval. This order constitutes notice that we consider the types of utility transactions engaged in by holding companies such as Horizon to be jurisdictional. However, in order to give the regulated community an opportunity to come into compliance, the order allows similar investment adviser holding companies 90 days to make filings and come into compliance.

In the *PUHCA Clarification Order*, we clarify that holding companies that have an exemption from, or waiver of, requirements under PUHCA 2005 have an obligation to notify the Commission if they obtain the power to vote 10 percent or more of the voting securities of any additional public utility companies or holding companies, even if the basis for their exemption or waiver has not changed. Commission regulations require notification of material changes in facts that may affect an exemption or waiver, but they are not clear on this particular issue.

Because we recognize that holding companies with exemptions or waivers may not have been interpreting our regulations to require such filings, the order allows all such companies 45 days to make filings and come into compliance. We expect compliance with our regulatory requirements, but here we are providing clarity in this area for the first time, and believe it is appropriate to give companies an opportunity to come into compliance."