

**Federal Energy Regulatory Commission
April 20, 2006 Commission Meeting
Statement of
Chairman Joseph T. Kelliher**

M-1: Repeal of the Public Utility Holding Company Act of 1935 and Enactment of the Public Utility Holding Company Act of 2005 (RM05-32-001); and M-2: Financial Accounting Reporting and Records Retention Requirements Under PUHCA (RM06-11-000)

"In this order we deny in part and grant in part the various requests for rehearing received by the Commission, and amend our regulations accordingly.

As a general matter, the Commission's order on rehearing recognizes Congress' clear intent to repeal the regulatory regime established by the Public Utility Holding Company Act (PUHCA) of 1935. Congressional intent is quite plain, since subtitle F of the Energy Policy Act of 2005 was titled "Repeal of PUHCA."

The PUHCA repeal rehearing order should facilitate investment in the electricity business by traditional utilities, nontraditional utilities, and financial institutions. It also accommodates efficient day-to-day financial operations of utility systems, while ensuring captive customers are protected.

The order on rehearing improves and clarifies our new regulations for implementing the Commission's new authorities concerning access to the books and records of holding companies and other companies in holding company systems, and our review and authorization of the allocation of costs for non-power goods or services. These new authorities were provided to the Commission under section 1264 and section 1275 of the Energy Policy Act of 2005, which although entitled the Public Utility Holding Company Act of 2005 (PUHCA 2005), is a very different regulatory regime than the 1935 Act.

Contemporaneously with the Order on Rehearing, we are issuing a Notice of Proposed Rulemaking proposing a new Uniform System of Accounts and new record retention requirements necessary for implementing repeal of the 1935 Act and enactment of PUHCA 2005.

On rehearing of its final rules on PUHCA repeal and merger review, the Commission has harmonized discrepancies in its PUHCA and merger regulations. There is considerable overlap in the Commission's determinations in the PUHCA 2005 regulations and merger regulations, particularly with respect to new section 203(a)(2). The determination of whether an entity is a "public utility holding company" or an "electric utility company" under the Commission's PUHCA 2005 regulations may affect whether holding company acquisitions of securities require section 203 authorization. There is also overlap with respect to protecting captive customers.

In the PUHCA repeal rehearing order, we affirm our determination in the final rule that persons that own only exempt wholesale generators (EWGs), qualifying facilities (QFs), or foreign utility companies (FUCOs) are public utility holding companies. The rehearing order reaffirms these holding companies receive a blanket exemption from the PUHCA 2005 books

and records requirements and the Commission's PUHCA regulations and clarifies that this is a self-effectuating exemption.

In addition, we require service companies that do not file Form No. 60 to file annually a description of their functions to be identified as FERC Form No. 61. In response to concern over self-certification of EWGs and FUCOs, such certifications will be noticed in the Federal Register, allowing interested persons an opportunity to object in particular cases. The PUHCA repeal rehearing order also adds a new requirement that persons with a waiver or exemption notify the Commission if facts or circumstances change.

In the Order on Rehearing, we find that many of the requests for rehearing addressed issues beyond the scope of the authority granted to us under PUHCA 2005; concerned matters that we believe are better handled under our existing authorities; or asked the Commission to require holding companies to provide information that is made available through other means, including FERC Form No. 1 and SEC Form 10-K.

For example, with respect to the argument that the exemption for transactions independent of public utilities should be interpreted to "ring fence" jurisdictional utilities from the holding-company's non-utility operations, we note that Order No. 667 rejected requests that urged the Commission to adopt new rules on cross-subsidization, encumbrances of utility assets, and diversification into non-utility businesses. We did so there, which we uphold here, because PUHCA 2005 gives the Commission no authority to issue additional rules in these areas and because we believe rules under the Federal Power Act and the Natural Gas Act are sufficient to prevent cross-subsidization.

With respect to the argument that the Commission should adopt regulations to prohibit public utilities from providing financial support to the non-utility businesses of their parent holding companies, the order notes PUHCA 2005 is primarily a books and records access statute and does not give the Commission any new substantive authorities, other than the requirement regarding review of certain non-power goods and services cost allocations. In addition, PUHCA 2005 does not give the Commission the authority to pre-approve holding company activities.

In addition to requests for rehearing that we decline to accept, there are certain matters raised on rehearing that the Commission revises, clarifies, or indicates will be addressed during a technical conference, to be held after we have had some experience with PUHCA 2005."