MEDIA ALERT

FERC Authorizes Bank of America-Merrill Lynch Deal

November 17, 2008
Docket No. EC09-7-000

The Federal Energy Regulatory Commission (FERC) has authorized the sale of FERC-jurisdictional facilities of Merrill Lynch & Co. Inc. to Bank of America Corporation. The transaction involves market-based rate tariffs, wholesale power sales contracts and associated books and records owned by subsidiaries of both companies.

Background and Orders

FERC approved the sale of facilities under section 203(a)(4) of the Federal Power Act. FERC is required to approve a transaction if it finds that it will be consistent with the public interest. The Commission weighs three factors in considering a proposed transaction: (1) the effect on competition; (2) the effect on rates; and (3) the effect on regulation. FERC determined that the proposed transaction would not have an adverse effect on competition, rates or regulation and thus was consistent with the public interest. FERC also determined that the transaction will not result in cross-subsidization or pledge of encumbrance of utility asset for the benefit of an associate company and thus would not harm ratepayers.

FERC also granted blanket authorization for future integration of the two companies' power marketing businesses.

The companies filed their application Oct. 17, 2008. Under the deal, Bank of America NA, a wholly owned subsidiary of Bank of America, will merge with Merrill Lynch, resulting in Bank of America's indirect purchase of the securities of Merrill Lynch Commodities, Inc., a wholly owned indirect subsidiary of Merrill Lynch that engages in wholesale electricity transactions as a power marketer.

MA08-46

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