

**Testimony of Jon Wellinghoff
Commissioner, Federal Energy Regulatory Commission
Before the Committee on Energy and Natural Resources
United States Senate
May 1, 2008**

Chairman Bingaman, Ranking Member Domenici, and members of the Committee, thank you for the opportunity to appear before you today.

I endorse Chairman Kelliher's testimony concerning the role of the Federal Energy Regulatory Commission (FERC) in protecting consumers against improper cross-subsidization from mergers that involve an electric utility holding company. I would like to highlight three related issues.

First, I strongly support Chairman Kelliher's statement that FERC is a consumer protection agency. I also agree that FERC and state regulators have a common interest in policing cross-subsidization. I believe that FERC's approach to this issue appropriately reflects both of those important principles.

Specifically, FERC's approach recognizes that states have an important role to play in protecting customers against improper cross-subsidization in the context of corporate transactions. As Chairman Kelliher described, in evaluating a merger application pursuant to section 203 of the Federal Power Act (FPA) as amended by the Energy Policy Act of 2005 (EPAct 2005), FERC reviews ring fencing measures and other merger conditions that a state commission imposes to safeguard customers against cross-subsidization. If that examination convinces us that such state-imposed conditions are sufficient, then we will not impose additional conditions.

However, our approach also recognizes that the Congress assigned new authority to FERC in EAct 2005. Where we determine that state-imposed conditions are inadequate, or that a relevant state commission lacks the authority to act, FERC can and will use our new authority under EAct 2005 to protect customers and ultimate consumers against improper cross-subsidization.

I believe that such initial deference to state regulatory review, where appropriate, both promotes an efficient use of resources and fosters greater federal-state coordination. By contrast, I am concerned that a less flexible, pre-emptive approach would unnecessarily undermine such coordination and would limit the ability of state commissions to craft cross-subsidization safeguards. In this regard, I agree with comments made at FERC's December 2006 technical conference on these issues by Oregon Commissioner Ray Baum and former Wisconsin Commissioner Robert Garvin, who observed that many state commissions are effectively and independently carrying out their statutory responsibilities to protect retail customers from the adverse effects of subsidization by public utility affiliates within a holding company organization.

Second, it is worth emphasizing that in every case under section 203 of the FPA, the Commission bases its decision on the record developed in that case by the applicant and other parties. In addition to submissions from customers, competitors, state commissioners, and attorneys general, I would like to highlight the contributions that FERC receives from state consumer advocates. I was honored to serve as Nevada's first consumer advocate for customers of public utilities, and I believe that state consumer

advocates can and do play an important role in building the case records that support FERC's actions to protect customers against improper cross-subsidization.

Finally, while it is essential to have well-designed rules in place at the federal and state levels to protect against improper cross-subsidization, it is equally important to ensure that those rules are being followed. This is the place for auditing. Because FERC has greater resources for auditing than the states in many instances, this is an area in which federal-state collaboration can be particularly constructive. As Chairman Kelliher stated in his testimony, FERC's audit staff interacts frequently with state regulators during an audit, reflecting our recognition that maintaining contact with state regulators is mutually beneficial to FERC and the states. I would like to reiterate Chairman Kelliher's commitment that FERC will continue to seek additional funds from the Congress if we believe that more resources are needed to carry out our essential auditing responsibilities, including cross-subsidization audits, just as FERC recently did when requesting additional funds for transmission system reliability audits.

Thank you again for inviting me to speak here today.