



FEDERAL ENERGY REGULATORY COMMISSION

FACT SHEET

November 6, 2008

Docket Nos. EC08-59, EC08-67,
EC08-87 and EC08-117

MEDIA CONTACT

Mary O'Driscoll – 202.502.8680

FERC Authorizes Securities Transactions by Investment Firms

The Federal Energy Regulatory Commission (FERC) has authorized corporate transactions in four separate orders, and in so doing addressed issues concerning investment company ownership in utilities under section 203 of the Federal Power Act (FPA).

The orders demonstrate that FERC's implementation of the Energy Policy Act of 2005 is fulfilling the congressional intent of reducing barriers to investment in the utility industry while protecting customers from harmful effects on competition, rates, regulation and cross-subsidization. Reducing barriers to investment is particularly important in current market conditions

Background and Orders

FERC is required to approve a transaction if it finds it to be consistent with the public interest under section 203 (a)(4) of the FPA. 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 also must determine that the transaction will not result in cross-subsidization or a pledge of encumbrance of utility assets for the benefit of an associate company.

The Commission acted on the following four section 203 applications:

LS Power Development, LLC and Luminus Management Pacificorp (EC08-67)

FERC granted LS Power's, a holding company, and Luminus' acquisition (through their subsidiaries) of up to 20 percent of the common stock of TransAlta Corp., a wholesale power seller in Canada, the United States and Mexico.

Entegra Power Group, LLC, Gila Rivert L.P., Union Power Partners, L.P., Harbinger Capital Partners Master Fund I, Ltd. And Harbinger Capital Partners Special Situations Fund, L.P. (EC08-87-000)

FERC conditionally authorized the disposition of up to 20 percent of the outstanding voting securities of Entegra to Harbinger, a hedge fund. The Commission determined that without conditions, the transaction would result in Harbinger's ability to exert control over Calpine Corporation and result in unacceptably high market concentration in the Entergy balancing authority area. To address these concerns, FERC restricted Harbinger's actions relative to its seat on the Board of Directors, directed Harbinger not to act together with a minority shareholder to achieve control and not cast any vote that would affect power prices. Based on those restrictions, FERC said the transactions would not affect Calpine's market-based rate authority.

Harbinger Capital Partners Master Fund I Ltd. Harbinger Capital Partners Special Situations Fund, L.P. (EC08-59-000, 001)

FERC granted authorization under FPA section 203 (a)(1) for the disposition of up to 25 percent of the outstanding voting securities of Mirant Corporation to Harbinger. Harbinger Master Fund and Harbinger Special Situations are separate investment funds, but under common control. Harbinger currently owns 9 percent of the outstanding shares of Mirant Corporation and approximately 21 percent of the outstanding voting shares of Calpine. The Commission determined that even if Harbinger would control both Mirant and Calpine, following the proposed transaction there would be no adverse effect on competition in terms of horizontal market power. The transaction would not result in vertical market power, the Commission said, and would not have adverse effects on rates or regulation and not result in cross-subsidization.

Harbinger Capital Partners Master Fund I Ltd. Harbinger Capital Partners Special Situations Fund L.P. (EC08-117-000)

FERC granted authorization for the disposition of up to 20 percent of the outstanding voting securities of Sunoco Power Generation to Harbinger.





FACT SHEET

FERC noted in the above orders that the issue of what constitutes control for section 203 and market-based rate purposes is the subject of a petition for guidance filed by the Electric Power Supply Association (Docket No. PL09-3), and the Commission's actions in these orders are subject to the outcome of that case.