121 FERC ¶ 61,061
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Suedeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

Legg Mason, Inc.,	Docket Nos. EC06-166-000
its Subsidiaries, Accounts	EC06-166-001
and Funds Listed in Exhibit A	

ORDER ON REQUEST FOR BLANKET AUTHORIZATIONS UNDER SECTION 203 OF THE FEDERAL POWER ACT

(Issued October 18, 2007)

1. On September 25, 2006, as amended on March 21, 2007 (March 2007 Amended Application) and September 10, 2007 (September 2007 Amended Application) Applicants[1] filed a request for blanket authorizations under section 203 of the Federal Power Act (FPA)[2] for certain acquisitions and dispositions of Utility[3] securities. They state that these authorizations will allow increased investment in the electric utility industry while at the same time ensuring that electric and transmission utility customers are protected. In this order, we grant the request for blanket authorization under section 203(a)(2), subject to certain conditions, and dismiss the request for blanket authorization under section 203(a)(1), as discussed below.

[1] Applicants are Legg Mason, Inc. (Legg Mason), its investment-advisor subsidiaries and affiliates (now in existence or hereafter formed) (Subsidiaries) and the investment funds (Funds) and accounts (Accounts) sponsored and/or managed by each Subsidiary (now in existence or hereafter formed, and including series thereof) listed on Exhibit A of Legg Mason's March 21, 2007 application and included with this order as Attachment A.

[2] 16 U.S.C. § 824b (2000), *amended by* Energy Policy Act of 2005, Pub. L. No. 109-58, § 1289, 119 Stat. 594, 982-83 (2005) (EPAct 2005).

[3] Utility is defined by Applicants as any "public utility," "electric utility company," "transmitting utility," or "holding company in a holding company system that includes an electric utility company or transmitting utility" as those terms are used in section 203 of the FPA.

I. Background

A. Description of Applicants

1. Organizational Structure

2. Legg Mason is an asset-management firm and the corporate parent of investment-advisory firms.[4] Applicants state that Legg Mason's investment advisory business is currently structured to service three categories of clients: institutional investors, mutual fund investors, and high-net-worth individuals. Within each of these business segments, Legg Mason's Subsidiaries offer investment-advisory services. The Subsidiaries are located throughout the United States and abroad, and each, with limited exceptions, operates as an entirely independent business.

3. Legg Mason is a holding company under PUHCA 2005,[5] holding through certain Subsidiaries more than 10 percent of the voting securities of the AES Corp. (AES), as described in greater detail below. The voting securities of AES are held by clients of the Subsidiaries, but a Subsidiary may have the ability to (1) acquire or dispose of AES shares in a client account without consulting with the client for each trade (*i.e.*, discretionary management over client accounts), and/or (2) vote AES securities on behalf of the client.

4. Applicants state that their clients include separately managed Funds[6] and Accounts.[7] Each Fund is organized as a separate legal entity under applicable law and issues shares or interests to investors. The owners of each Fund are the investors that

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[4] In addition, Legg Mason is the parent company of a national bank, Legg Mason Investment Counsel & Trust Company, National Association (Legg Trust), which is an investment adviser that serves as trustee for certain managed accounts and funds. Legg Trust does not accept deposits or make loans.

[5] Energy Policy Act of 2005, Pub. L. No. 109-58, §§ 1261 *et seq.*, 119 Stat. 594 (2005) (PUHCA 2005).

[6] Funds include open-end management investment companies registered under the Investment Company Act of 1940, as amended (1940 Act) (these investments are commonly known as mutual funds), closed-end management investment companies registered under the 1940 Act, private investment funds that rely on applicable exemptions from registration under the 1940 Act (primarily sections 3(c)(1) and 3(c)(7)) and offshore funds.

[7] Accounts are managed separately and controlled directly by the account holder.

hold its shares. A Fund may issue shares in separate portfolios, or series, of the Fund. Applicants state that each series is treated as a Fund for purposes of the conditions Applicants propose in their application. According to Applicants, Funds that are registered investment companies under the 1940 Act have a board of directors or trustees comprised of a majority of members that are independent of Subsidiaries and their affiliates. These Funds, as well as Subsidiaries that are registered investment advisers under the Investment Advisers Act of 1940 (Advisers Act), are subject to periodic comprehensive books and records examinations by the Securities and Exchange Commission (SEC). Applicants state that Funds not registered under the 1940 Act have boards that, while not majority independent, owe a fiduciary duty to the Fund investors and review the Subsidiary adviser's performance and administration of the Fund for compliance with applicable law, regulations and orders of regulators.

5. Under advisory agreements, each Fund and Account advised or managed by the Subsidiaries has delegated to a Subsidiary the responsibility for supervising and managing the securities in its portfolio, including the authority to purchase and sell securities for the portfolio. Applicants state that, with the exception of certain Subsidiaries that do not accept investments from U.S. investors, the Subsidiaries are registered investment advisers under the Advisers Act and serve as investment advisers to the Funds and Accounts.[8]

6. Applicants assert that the Subsidiaries typically do not invest to control portfolio companies. Nevertheless, the prospectus and "statement of additional information" that describe the fundamental and non-fundamental investment policies of each Fund, and the governing documents of each Account, generally do not prohibit investments for control. Applicants explain that, while investments are not entered to control or influence management, Applicants may take an active role to protect their Funds or Accounts. Applicants acknowledge, however, that they cannot rely on the authorizations requested in their application if they seek to exercise control over a Utility.

7. Applicants also describe groups of Subsidiaries that operate in concert and oversee the investment assets of two or more Funds and/or Accounts, each of which group is a separate legal entity, but collectively are functionally managed and operated as a single business (Group).[9] The actions of a Group are limited by the terms and agreements with

[8] Applicants state that Subsidiaries operating outside the United States are subject to the applicable laws in their place of domicile or operations.

[9] Applicants list in Exhibit A of their March 21, 2007 application Groups that may share investment personnel and that may coordinate their investment activities. Applicants state that the SEC's guidelines on Schedule 13D and 13G filing requirements state that entities within the same corporate group will be treated as non-affiliates when they conduct their investment activities independently of each other. Accordingly, the

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each individual client as well as applicable fiduciary obligations. Applicants assert that Groups are careful to observe policies to maintain separate and independent conduct of investment, trading and proxy voting activities to comply with guidelines issued by the SEC regarding the disaggregation of interests held by affiliates engaging in unrelated investment activities. Applicants treat each Group as a single entity for reporting purposes under the securities laws and for purposes of the percentage limits on Utility security investments requested in their application.

8. Applicants state that they are not engaged in any energy-related business, do not own any physical electric utility assets and are not public utilities as the term is defined under the FPA, but they note that Legg Mason is a holding company under PUHCA 2005 because of its AES holdings.[10]

2. AES Investment

9. Applicants state that their investment in AES is held in Accounts and Funds that are managed by Subsidiaries. As an example, Applicants state that as of December 31, 2006, Legg Mason Value Trust, Inc. (Value Trust), a U.S.-organized Fund, held 7.35 percent of the outstanding common stock of AES in its diversified portfolio of securities, the largest AES interest held by any of the Funds or Accounts. A Subsidiary, Legg Mason Capital Management, Inc. (LMCM) is Value Trust's investment adviser. Applicants state that LMCM offers clients investment strategies designed to provide them with long-term capital appreciation. For each strategy, LMCM creates a proprietary model portfolio that typically emphasizes certain industrial sectors and specific companies within those sectors. Applicants state that AES figures prominently in three of LMCM's proprietary models.

10. In addition, LMCM cooperates (through the sharing of investment personnel, research and otherwise) with Subsidiary LMM LLC (LMM) that advises one Fund (collectively, the LMCM Group). Applicants state that as of December 31, 2006, Accounts and Funds managed by the LMCM Group held, in the aggregate, 18.93 percent

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Applicants state that their Subsidiaries or Groups have separated their investment operations and fulfill their Schedule 13D/13G filing requirements as stand alone Subsidiaries or Groups.

[10] Applicants explain that AES owns Indianapolis Power & Light Company, an electric utility company that provides retail electric service to approximately 460,000 residential, commercial and industrial customers in Indianapolis, Indiana and other central Indiana communities. AES, itself a holding company under PUHCA 2005, also owns certain wholesale electric generating facilities located in the United States and numerous other electric utility facilities located worldwide.

of AES's outstanding common stock. Of that amount, they note that 17.73 percent was held by Accounts and Funds managed by LMCM (including the amount held by Value Trust) and 1.20 percent by a single Fund managed by LMM. The LMCM Group periodically reports this holding in a joint filing on Schedule 13G to the SEC, indicating no intent to influence or control the management of AES. Applicants state that they hold interests in AES common stock in addition to that held by the LMCM Group and aggregating 0.04 percent of AES's total outstanding common stock as of December 31, 2006.

B. Request for Blanket Authorization

11. Applicants seek blanket authorization under sections 203(a)(1) and 203(a)(2) for certain acquisitions and dispositions of Utility securities.[11] They state that Subsidiaries purchase the voting securities of publicly-traded utilities in the ordinary course of business and on behalf of Funds and Accounts. They assert that, because in most cases the Subsidiaries have been delegated the authority to vote securities held by the Funds and Accounts, future acquisitions of Utility voting securities could be attributed to the Subsidiaries (as well as Legg Mason), making each a "holding company" and requiring Commission authorization for each transaction under 203 of the FPA. Applicants explain that because the Commission has ruled that the acquisition of Utility securities in a fiduciary capacity may implicate section 203(a)(1) as well as section 203(a)(2), they seek blanket authorization to acquire securities pursuant to both paragraphs. Applicants further note that, although the acquisitions for which blanket authorizations are requested may not in all (or any) cases require Commission authorization under section 203, they submit to the Commission's jurisdiction for purposes of obtaining approval of the transactions contemplated by their application.[12]

12. Applicants propose the following conditions to address possible Commission concerns about Applicants' control over jurisdictional facilities:[13]

> (1) All acquisitions of securities made pursuant to the authorizations requested in this application shall be securities of publicly-traded Utilities. The Applicants

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[11] September 2007 Amended Application at 5.

[12] Applicants rely on *Ocean State Power*, 47 FERC ¶ 61,321, at 62,130 (1989), for the proposition that the Commission may assume that it has jurisdiction over proposed transactions without ruling on threshold jurisdictional questions where the applicant has requested that the Commission assume that it has jurisdiction in order to facilitate the applicant's transactional efforts and where the request is not contested.

[13] September 2007 Amended Application at 6.

state that this requirement ensures that authorized acquisitions will be driven by public market considerations rather than a privately held Utility's ownership of particular physical assets.[14]

(2) All acquisitions of Utility securities made by Subsidiaries pursuant to the authorizations requested in this application shall be made in a fiduciary capacity on behalf of the Funds or Accounts, and the Subsidiaries shall make no acquisitions for their own account.

(3) No individual Fund or Account shall own 10 percent or more of the outstanding voting securities of any one Utility.

(4) The Funds and Accounts receiving investment management services from any one Subsidiary or Group shall not collectively own (and therefore the Subsidiary or Group shall not beneficially own for purposes of the Securities and Exchange Act of 1934[15]) more than 20 percent of the outstanding voting securities of any one Utility, with the exception that holdings by the LMCM Group in AES voting securities will be subject to a 25 percent limit.

(5) With respect to all beneficial ownership of Utility voting securities in reportable amounts under section 13 of the 1934 Act *(i.e.,* more than five percent of any class of equity security), Applicants shall make all required reports under Schedule 13G and shall continuously maintain their eligibility to file Schedule 13G with respect to all such holdings.

(6) The Subsidiaries, or Groups as the case may be, shall maintain their functional separation such that they continue to be treated as non-affiliates under the 1934 Act.

(7) Consistent with the provisions of 18 C.F.R. § 33.1(c)(4), at the time an Applicant files a Schedule 13G with the SEC in connection with the acquisition of Utility securities (or files a statement on Schedule 13D upon assuming the purpose or effect of changing or influencing control of a Utility issuer) it will file a copy of such schedule with the Commission.

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[14] The Applicants note that, if a Subsidiary that is a holding company seeks to acquire 10 percent or more of the non-publicly-traded voting securities of a Utility, it would first seek appropriate authorization from the Commission under section 203.

[15] 15 U.S.C. § 78a *et seq.* (2000) (1934 Act).

13. Applicants state that under the proposed conditions, Subsidiaries and Funds will essentially be passive investors and will not be able to exercise any control over Utilities. Therefore, Applicants argue, it is appropriate for the Commission to grant the requested blanket authorizations on a permanent basis.

II. Notice of Filing and Responsive Pleadings

14. Notice of the September 25, 2006 filing was published in the *Federal Register*, 71 Fed. Reg. 59,100 (2006), with interventions, comments, or protests due on or before October 16, 2006. None was filed. Notice of the March 21, 2007 amended filing was published in the *Federal Register*, 72 Fed. Reg. 15,681 (2007), with interventions, comments, or protests due on or before April 4, 2007. None was filed. Notice of the September 10, 2007 second amended filing was published in the *Federal Register*, 72 Fed. Reg. 53,551 (2007), with interventions, comments, or protests due on or before September 20, 2007. None was filed.

III. Discussion

A. Standard of Review Under Section 203

15. Under section 203(a)(1)(A) of the FPA, a public utility may not sell, lease, "or otherwise dispose of" its jurisdictional facilities of a value in excess of $10 million without prior Commission approval. The Commission has interpreted a transfer of control of jurisdictional facilities through disposition of securities to fall within the "or otherwise dispose" language of section 203(a)(1)(A) and thus require prior Commission authorization. Section 203(a)(2) requires prior Commission authorization for certain holding companies to acquire certain securities with values in excess of $10 million of transmitting utilities, electric utility companies or holding company systems containing such entities.

16. Section 203(a)(4) requires the Commission to approve a transaction if it determines that the transaction will be consistent with the public interest. Under the Commission's regulations, its analysis of whether a transaction will be consistent with the public interest generally involves consideration of three factors: (1) the effect on competition; (2) the effect on rates; and (3) the effect on regulation.[16] Section 203 also

[16] *Inquiry Concerning the Commission's Merger Policy Under the Federal Power Act: Policy Statement*, Order No. 592, FERC Stats. & Regs. ¶ 31,044 (1996), *reconsideration denied*, Order No. 592-A, 79 FERC ¶ 61,321 (1997) (Merger Policy Statement). *See also FPA Section 203 Supplemental Policy Statement*, 72 Fed. Reg. 42,277 (Aug. 2, 2007), FERC Stats. & Regs. ¶ 31,253 (2007). *See also Transactions Subject to FPA Section 203*, Order No. 669, FERC Stats. & Regs. ¶ 31,200 (2005), *order*

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requires the Commission to ensure that the transaction "will not result in cross-subsidization of a non-utility associate company or the pledge or encumbrance of utility assets for the benefit of an associate company, unless the Commission determines that the cross-subsidization, pledge, or encumbrance will be consistent with the public interest."[17] The Commission's regulations establish verification and informational requirements for applicants that seek a determination that a transaction will not result in inappropriate cross-subsidization or pledge or encumbrance of utility assets.[18] These determinations and requirements apply equally to requests for blanket authorizations under both sections 203(a)(1) and 203(a)(2).

B. Blanket Authorization under Section 203(a)(1)

17. Applicants request authorization under section 203(a)(1) to undertake the proposed transactions. Essentially, like applicants in *Capital Research Management Company*,[19] Applicants request blanket authority under section 203(a)(1) on behalf of unknown public utilities for Applicants' securities acquisitions, to the extent that such acquisitions could be deemed to accomplish a disposition of jurisdictional facilities.

18. We dismiss the request for blanket authorization under section 203(a)(1). While the Commission granted *CRMC*'s request for blanket authorization under 203(a)(1), we have since clarified that transactions that do not transfer control of a public utility or jurisdictional facilities do not fall within the "or otherwise dispose" language of section 203(a)(1)(A) and thus do not require approval under 203(a)(1)(A).[20] With the conditions we impose in granting Applicants' request for section 203(a)(2) authorization, we find that the proposed transactions will not result in the change in control of a public utility or jurisdictional facilities, or the sale, lease or merger of a public utility or jurisdictional facilities.[21] Therefore, we dismiss, as unnecessary, Applicants' request for authorization as to 203(a)(1).

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on reh'g, Order No. 669-A, FERC Stats. & Regs. ¶ 31,214, *order on reh'g*, Order No. 669-B, FERC Stats. & Regs. ¶ 31,225 (2006).

[17] EPAct 2005 § 203(a)(4).

[18] 18 C.F.R. § 33.2 (2007).

[19] *Capital Research and Management Co.*, 116 FERC ¶ 61,267 (2006) (*CRMC*).

[20] FPA section 203 Supplemental Policy Statement at P 37.

[21] We note that the proposed transactions do not implicate sections 203(a)(1)(C) or 203(a)(1)(D), which apply to public utilities' acquisitions of public utility securities and generating facilities.

C. Blanket Authorization under Section 203(a)(2)

1. Effect on Competition

a. Applicants' Analysis

19. Applicants argue that the proposed blanket authorizations will have no adverse effect on competition because their fiduciary obligations, as well as applicable securities laws, prevent them from purchasing any securities in order to manage or exercise control over their investment.

20. Specifically, Applicants argue that the Funds and the clients that own the Accounts are independent entities that have ultimate control over their assets even though the Subsidiaries have substantial day-to-day management responsibility for the Funds that they advise and the Accounts that they manage. They state that a majority of the board members or trustees of the Funds that are registered investment companies under the 1940 Act are independent of the Subsidiaries that serve as the Funds' investment advisers. They further state that the Funds that are exempt from the 1940 Act (as well as the clients that own the other Accounts) are separate, stand-alone legal entities or natural persons separate from the Subsidiaries. Applicants argue that the ability of each of these Funds and Accounts to terminate the relationship with its Subsidiary as investment adviser or manager prevents the Subsidiaries from controlling the securities held by the Funds or Accounts.

21. Applicants further state that under section 13 of the 1934 Act any person acquiring more than five percent of the beneficial ownership of any class of equity securities traded on a public exchange must file with the SEC, generally on either Schedule 13D or 13G, stating the acquirer's intentions with respect to the acquisition. Applicants do not anticipate acquiring public utility voting securities that are not publicly-traded and such acquisitions are not the subject of the requested authorization. Applicants seek authorization to acquire such publicly-traded securities, specifically those of public utility companies, and recognize that they cannot rely on the authorization requested if they seek to exercise control over the public utility whose securities they acquired. Therefore they commit to maintaining their eligibility to file Schedule 13G.[22] Applicants argue that, if they attempted to exercise control over a public utility whose securities they had acquired and if they improperly submitted a Schedule 13G filing, they could be subject to civil, and potentially criminal, liability under the SEC's regulations.

[22] A Fund that exceeds five percent reporting threshold would be included in the Schedule 13G or 13D filing made by a standalone Subsidiary or Group.

22. Next, Applicants argue that the conditions that they propose[23] prevent Applicants from exercising control over Utilities. For example, Applicants assert that, because the proposed transactions involve only publicly-traded Utilities, the authorized acquisitions will be driven by public market considerations rather than the physical assets owned by a privately-held Utility. Applicants also note the 10 percent limit on outstanding voting securities of any one Utility that an individual Funds or Accounts may own and the 20 percent limit on outstanding voting securities of any one Utility that the Funds or Accounts serviced by a single Subsidiary or Group may own.

23. With regard to attribution between Funds, Accounts, Subsidiaries, Groups and Legg Mason, Applicants state that the Subsidiaries (or Groups) have functionally separated their investment operations. Applicants state that Subsidiaries and Groups operate independently of each other with no coordination or communications of trades in equity securities. They argue that the functional separation of the Subsidiaries or Groups in accordance with SEC guidelines under the 1934 Act means that it would be difficult for the Subsidiaries or Groups to accomplish a disposition of public utility facilities for purposes of section 203(a)(1).[24] They assert that as long as separation is observed, the Subsidiaries cannot transfer control over a Utility through concerted action between themselves and their respective Subsidiaries.

24. In addition, Applicants state that Legg Mason does not participate in any way in the investment decisions of the Subsidiaries. While Applicants acknowledge that Legg Mason's senior officers typically constitute a majority of the board of directors of each of the Subsidiaries, they state that each Subsidiary is responsible for overseeing the investment of that Subsidiary's client assets. Each stand-alone Subsidiary is limited by the terms of its agreement with each individual client as well as applicable fiduciary obligations imposed by local jurisdictions.[25] In sum, Applicants state that Legg Mason does not control or coordinate the investment strategies of its Subsidiaries or the services that they provide. Furthermore, they state that their Subsidiaries, with certain limited

[23] *See supra* P 12.

[24] In addition to separate trading desks, separate proxy voting procedures, separate investment committees and separate investment decisions, Applicants describe an annual assessment of the informational barriers and record maintenance procedures that are in place to establish that Applicants are in compliance with Legg Mason's policies and procedures on informational barriers as described in Exhibit N attached to the Application and that any exceptions to the policies are documented.

[25] Applicants further note that any pension plan assets are controlled also by the Employee Retirement Income Security Act, 29 U.S.C. § 1001, *et al*., and comparable statutes governing non-U.S. pension plans.

exceptions,[26] do not share investment personnel or coordinate investment activities with other Subsidiaries.

25. Finally, Applicants request that the Commission grant the blanket authorizations on a permanent basis because they are more limited than those granted in *Goldman Sachs*.[27] In particular, Applicants argue that the proposed blanket authorizations are limited by discrete terms that are subject to monitoring and verification. They note that they do not own any physical Utility assets or engage in energy trading.

b. Commission Determination

26. We find that the conditions that Applicants propose, with certain additional requirements discussed below, address our concerns regarding possible transfers of control of a public utility or jurisdictional facilities. We agree that without a change in control, future transactions under the proposed blanket authorization will not adversely affect competition in any jurisdictional market because such transactions: (1) will not result in the consolidation of generation assets that would increase concentration in any relevant market; and (2) will not result in any combination of upstream and downstream assets that could create or enhance vertical market power.

27. The authorizations granted in this order are subject to the condition that Applicants must not acquire control over a public utility whose securities they acquire. We caution that if any of the proposed transactions, individually or in combination, should result in a change in control of jurisdictional facilities, applicants will not be able to rely on the authorizations granted in this order with respect to such transactions. Further, the authorizations we grant in this order are based, in part, on Applicants' representation that their sole business is investment management, that their investments are diversified and are made in the ordinary course of their business, and that none of Applicants is engaged in an energy-related business.[28]

28. With regard to attribution between Groups, Funds, Accounts, Subsidiaries and Legg Mason, the functional information barriers between Groups or Subsidiaries in this particular case allow us to treat such Groups and Subsidiaries' activities separately for

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[26] One exception is Legg Capital Management Group, which manages Legg Mason's AES investments. The other exceptions are a small number of Group Subsidiaries that operate in concert. These are treated as a Group with a single, aggregated 20 percent cap on their ownership of individual Utility securities.

[27] *The Goldman Sachs Group, Inc.*, 114 FERC ¶ 61,118 (2006).

[28] *See* FPA section 203 Policy Statement, 120 FERC ¶ 61,060, at P 46 (2007).

purposes of section 203(a)(2). In other words, securities owned or managed by Groups or Subsidiaries will not be attributed to a functionally separate Group or Subsidiary when determining whether that particular Group or Subsidiary falls within the 20 percent ownership limitation on securities of an individual Utility. However, if functional management and information barriers are not maintained, individual Utility securities held by one Group, Subsidiary, Fund, or Account will be attributed to others as well as to Legg Mason.

29. Accordingly, we condition our authorizations in this order on the continued existence of the information barriers and policies as described by Applicants in Exhibit N to their September 2007 Amended Application. Specifically, Subsidiaries and Groups must maintain separate trading desks, separate proxy voting procedures, separate investment committees, make separate investment decisions and perform annual assessment as described in the September 10, 2007 application.[29]

30. Furthermore, our order is premised, in part, on our understanding that investment advisors subject to the Investment Advisors Act must maintain detailed books and records of securities trades and holdings on behalf of their clients for a period of not less than five years. (*See* 17 C.F.R. § 275.204-2.) In addition, registered investment companies subject to regulation under the Investment Company Act of 1940 are required by SEC regulations to maintain detailed records of securities transactions and portfolio holdings permanently. (*See* 17 C.F.R. §§ 270.31a-1 and 270.31a-2.) Our approval is based on the condition that the Application will continue to follow the SEC record keeping requirements as they currently exist or may change from time to time, and the failure to follow those requirements will constitute a violation of this Commission's order. As in a recent order, *Ecofin Holdings Limited*,[30] we will require Applicants to file with this Commission, for informational purposes, within 45 days of the end of each calendar quarter, a quarterly report of public utility holdings by each Fund, Account, Subsidiary and Group stated in terms of the number of shares held as of the end of the quarter and as a percentage of the outstanding shares.

31. Further, we will grant the authorizations for a three-year period, rather than on a permanent basis. We find that a three-year limitation balances the Applicants' need to operate under the requested authorizations with our duty to provide adequate regulatory oversight under 203 of the FPA, particularly as we continue to gain experience with FPA section 203(a)(2) authorizations. Accordingly, the authorizations expire three years from the date of this order, without prejudice to requests to extend the authorizations.

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[29] September 2007 Amended Application at 17-19 and Exhibit N.

[30] *Ecofin HoldingsLimited*, 120 FERC ¶ 61,189, at P 41 (2007).

32. In addition to requesting authorization for Applicants already in existence, they ask for authorization for Applicants hereafter formed. The authorizations in this order apply to yet-to-be-formed Applicants, but only to the extent that they are substantially identical to entities authorized in this order and, therefore, are subject to the same restrictions on exercising control as described above. In addition, a new Applicant must file a notice within 45 days of the close of the quarter stating the name of the entity proposed to be covered by this blanket authorization, the new entity's activities and functions, and the safeguards as discussed in this order that are applicable to that entity. They must also commit to not acquire securities that will confer control to the Applicants over a public utility. If Applicants are not subject to the restrictions on control discussed in this order, then a new application under section 203(a)(2) must be filed.

2. Effect on Rates

a. Applicants' Analysis

33. Applicants state that the proposed blanket authorizations will have no adverse effect on the rates of wholesale or retail electric service customers because, without control over any Utility, they will have no role in the setting of rates by such entities. The Utilities in which they will invest will be selling electricity or providing transmission services either at market-based or at cost-based rates. They argue that, because their acquisition of securities will not affect market power in any relevant generation or transmission market, the acquisitions cannot affect the market-based price at which electricity is sold.

b. Commission Determination

34. As noted in the Commission's *Merger Policy Statement*,[31] the Commission primarily examines a transaction's effect on rates in order to protect wholesale power and transmission service customers. Nothing in the Application indicates that rates to customers will increase as a result of the proposed blanket authorization as conditioned above. Because Applicants do not, and commit that they will not, control any public utilities, they will not have the ability to direct public utility conduct pertaining to or that might affect the rates of any wholesale customers; therefore we find that transactions under the proposed blanket authorization, as conditioned by this order, will have no adverse effect on rates.

[31] *Merger Policy Statement*, FERC Stats. & Regs. ¶ 31,044 at 30,126.

3. Effect on Regulation

a. Applicants' Analysis

35. Applicants state that their acquisition of Utility securities will not result in any change in activities or corporate structure of a Utility that might affect its jurisdictional status under either federal or state law. Applicants add that they know of no state regulatory authority that has jurisdiction over the acquisitions of securities for which authorizations they request.

b. Commission Determination

36. The Commission finds that neither state nor federal regulation will be impaired by the proposed blanket authorization. As discussed above, the requested blanket authorization for the acquisition and disposition of securities will not result in a change of control of jurisdictional facilities. Nor will they result in a change in regulatory authority over utilities whose securities might be acquired. Thus, they will not affect the Commission's or any state commission ability to regulate the affected companies. While no state commission has intervened in this case, our review indicates that the proposed investments are in the ordinary course of an investment management business and not for the purpose of obtaining control of a public utility and therefore should not affect any state commission's authority to regulate a public utility over which the commission has jurisdiction.

4. Cross-subsidization and Encumbrance of Utility Assets

a. Applicants' Analysis

37. Applicants state that the proposed transaction will not in the future result in cross-subsidization of a non-utility associate company or the pledge or encumbrance of utility assets. Applicants provide a detailed showing, supported by an affidavit, that the transaction will not result in: (1) transfers of facilities between a traditional public utility associate company with wholesale or retail customers served under cost-based regulation and an associate company; (2) new issuances of securities by a traditional public utility associate company with wholesale or retail customers served under cost-based regulation for the benefit of an associate company; (3) new pledges or encumbrances of assets of a traditional public utility associate company with wholesale or retail customers served under cost-based regulation for the benefit of an associate company; or (4) any new affiliate contract between a non-utility associate company and a traditional public utility associate company with wholesale or retail customers served under cost-based regulation, other than non-power goods and services agreements subject to review under sections 205 and 206 of the FPA.

38. Applicants assert that the conditions they propose ensure that Applicants will not have control over a Utility and will not be in position to direct transactions that would result in a transfer of benefits from a utility with a captive customer to associate companies. Applicants state that they are not in the public utility or energy business or engaged in power marketing, electrical equipment manufacturing or fuel supply. Applicants argue that although the portfolios of Funds and Accounts may represent some of these companies, the possibility of a Subsidiary coordinating a cross-subsidy transaction between two portfolio companies, one of which is a Utility, is remote. Applicants contend that Funds and Accounts acquire Utility securities in public-market transactions at arms' length and, accordingly, they cannot arrange an abusive transaction for the benefit of any Applicants. Furthermore, no Applicants would borrow from a Utility.

b. Commission Determination

39. We find that Applicants have demonstrated that they will not obtain control over any entity for which they acquire securities under the proposed transactions. Further, Applicants have provided adequate assurance that the proposed transactions under the blanket authorization will not result in cross-subsidization of a non-utility associate company or pledge or encumbrance of utility assets for the benefit of an associate company. The transactions under the blanket authorization do not involve transactions between public utilities with captive customers and their market-regulated or non-utility affiliates, and do not permit any control over utility rates or practices that may affect rates. Applicants do not, and will not as a result of the proposed transactions, control any franchised public utility assets.

D. Authorization to Acquire AES Securities

1. Applicants' Analysis

40. Applicants request authorization to acquire up to 25 percent of the outstanding voting securities of AES. Applicants argue that LMCM Group's acquisition of up to 25 percent of the outstanding voting securities of AES will not affect control of AES because LMCM Group commits to maintain its eligibility to file Schedule 13G with the SEC. Moreover, Applicants argue that (1) there are no common officers or directors between AES companies and Applicants, (2) Applicants do not have advisory members on the AES board or the right to receive information or reports from AES, and (3) Applicants have no role in guiding, influencing, determining or controlling AES operating decisions such as budgeting, plant operations, maintenance schedules or any other aspects of the day-to-day management and control of AES assets and facilities, including AES' public utility company subsidiaries. Applicants assert that all these facts support the view that the LMCM Group is not able to exercise control over AES. Applicants further state that LMCM Group does not control any public utilities operating in the energy markets served by AES' public utility subsidiaries or elsewhere in the

United States, and does not engage in energy trading or marketing, own physical electric utility assets or otherwise engage in an energy-related business.

2. Commission Determination

41. We grant authorization under section 203(a)(2) for LMCM Group to acquire up to 25 percent of outstanding voting securities of AES, for a three-year period and subject to the conditions and quarterly reporting requirement set forth in this order. This authorization is limited to transactions between LMCM Group and its subsidiaries, and AES. We grant this authorization because the parties to both sides of the transactions are identified, the market areas in which AES operates are known, and neither LMCM Group nor any other Applicant engages in energy trading or marketing, own physical electric utility assets or otherwise engage in energy-related activities. In addition, the conditions set forth in this order ensure that LMCM Group will not be able to exercise control over AES or its subsidiaries. Therefore, we can determine that the proposed transactions are unlikely to create market power or otherwise adversely affect competition.

42. Further, based on Applicants' statements that they will have no involvement in the management and control of AES or its subsidiaries and the conditions as set forth in this order, we find that the rates of wholesale or retail electric service customers will not be adversely affected, and that neither state nor federal regulation will be impaired. Applicants have also provided adequate assurance that transactions between LMCM Group and AES under this 203(a)(2) authorization will not result in cross-subsidization of a non-utility associate company or pledge or encumbrance of utility assets for the benefit of an associate company.

The Commission orders:

(A) The Commission hereby dismisses the request for blanket authorization under FPA section 203(a)(1) and grants the request for blanket authorization under section 203(a)(2) for the Applicants now in existence and hereafter formed for a period of three years from the date of this order, without prejudice to requests to extend the authorization, as discussed in the body of the order.

(B) The Commission grants authorization under section 203(a)(2) for LMCM Group to acquire up to 25 percent of the voting securities in AES. This grant is specific and limited to transactions between the LMCM Group and AES.

(C) Transactions under the blanket authorizations are subject to the terms and conditions and quarterly reporting requirements and for the purposes set forth in the Application, as discussed and modified in the body of this order.

(D) The foregoing authorizations are without prejudice to the authority of the Commission or any other regulatory body with respect to rates, service, accounts,

valuation, estimates, or determinations of costs, or any other matter whatsoever now pending or which may come before the Commission.

(E) Nothing in this order shall be construed to imply acquiescence in any estimate or determination of costs or any valuation of property claimed or asserted.

(F) The Commission retains authority under sections 203(b) and 309 of the FPA to issue supplemental orders as appropriate.

(G) Applicants are subject to audit to determine whether they are in compliance with the representations, conditions and requirements upon which the authorizations are herein granted and with applicable Commission rules, regulations and policies. In the event of a violation, the Commission may take action within the scope of its oversight and enforcement authority.

(H) Applicants shall file with the Commission, for informational purposes, contemporaneous with filing at the SEC the Schedule 13G filings made with the SEC that are relevant to the authorizations granted in this order. Any changes in the information provided on the initial Schedule 13G must be reflected in an annual amended filing due within 45 days of the end of each calendar year. Applicants shall file with the Commission any comment or deficiency letters received from the SEC that concern Schedule 13G-related compliance audits conducted by the SEC. Such filings shall be made in this docket or in appropriate sub-dockets of this docket.

(I) Applicants shall file with the Commission, for informational purposes, within 45 days of the end of each calendar quarter, a quarterly report of public utility holdings by each Fund, Account, Subsidiary and Group stated in terms of the number of shares held as of the end of the quarter and as a percentage of the outstanding shares.

(J) Applicants shall retain the records of their transactions concerning public utility securities as required under the Advisers Act and the 1940 Act for five years.

(K) Applicants must inform the Commission of any change in circumstances that would reflect a departure from the facts the Commission relied upon.

(L) Applicants must inform the Commission, within 30 days, of any material change in circumstances that would reflect a departure from the facts, policies, and procedures the Commission relied upon in granting the request and specifying the terms

and conditions under which the blanket authorization is set forth in section 33.1(c)(5) of the Commission's regulations will be available to them.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.