**February 21, 2008**
Docket Nos. RM07-15-000, RM07-21-000 and PL07-1-001

**News Media Contact:**
Barbara A. Connors - 202.502.8680

# FERC Acts to Strengthen Cross-Subsidization Rules

The Federal Energy Regulatory Commission today finalized rules to ensure that ratepayers are protected against unauthorized cross-subsidies by utilities of their non-utility affiliates and to accommodate greater investment in the electric utility industry.

Section 203 of the Federal Power Act requires FERC authorization for public utility mergers and dispositions and acquisition of jurisdictional electric generation and transmission facilities. The Energy Policy Act of 2005 expanded the scope of FERC's section 203 review authority to include certain holding company mergers and acquisitions and certain public utility acquisitions. The Commission has been actively implementing its new review authority over the past two years.

"Since Congress expanded our merger and corporate review authority we have sought to discharge our statutory duty to prevent the accumulation and exercise of market power and guard against improper cross subsidization, while facilitating investment in a very capital intensive industry," FERC Chairman Joseph T. Kelliher said. "These orders today complete our initial implementation of the rules governing future Commission action on section 203 transactions and explain how we will use our ratemaking authority to protect the consumer."

In the final rule *Cross-Subsidization Restrictions on Affiliate Transactions* (RM07-15), FERC adopts restrictions on affiliate transactions between franchised public utilities that have captive customers or that own or provide transmission service over jurisdictional transmission facilities, and their market-regulated power sales affiliates or non-utility affiliates. The rule will provide certainty to public utilities and customers with respect to the pricing standard that must be applied to certain affiliate transactions. The rule also strengthens FERC's ability to ensure that customers are protected against affiliate abuse.

In the final rule *Blanket Authorization Under FPA Section 203* (RM07-21-000), FERC grants certain limited blanket authorizations that will facilitate investment in the electric utility industry and, at the same time, ensure that public utility customers are adequately protected from any adverse effects of such transactions. As proposed in the notice of proposed rulemaking, the rule would pre-authorize a public utility to dispose of less than 10 percent of its voting securities to a public utility holding company but only if, after the disposition, the holding company and any associate or affiliate companies, in the aggregate, will own less than 10 percent of that public utility.

The rule adopts three additional blanket authorizations under section 203(a)(1) to parallel, for the most part, existing blanket authorizations granted to holding companies under section 203(a)(2). In addition, the rule grants a blanket authorization under section 203(a)(1) for the acquisition or disposition of a jurisdictional contract where neither the entity acquiring the contract nor the entity transferring the contract has captive customers or owns or provides transmission service over jurisdictional facilities, the contract does not convey control over the operation of a generation or transmission facility, the parties to the transaction are neither associate nor affiliate companies, and the acquirer is a public utility. The rule also provides clarifications about certain of the existing blanket authorizations under section 203.

In a separate order, FERC denies requests for clarification and/or reconsideration of its *FPA Section 203 Supplemental Policy Statement*, issued in July 2007 (PL07-1-001). The Supplemental Policy Statement provided additional guidance on FERC's implementation of its corporate review authority, and adopted policies to provide FERC sufficient flexibility to adopt additional customer protections as needed and work in a complementary manner with the states in protecting customers. In particular, the Supplemental Policy Statement stated that FERC uses the merger-related change in market concentration only as a screen, and that in its analysis it looks at, and will continue to look at, the entire theory of competitive harm potentially resulting from a merger or acquisition.

(30)

R08-10