

BEFORE THE FEDERAL ENERGY REGULATORY COMMISSION

Technical Conference on Public Utility Holding)
Company Act of 2005 and Federal Power Act) Docket No. AD07-2-000
Section 203 Issues)

**OPENING COMMENTS OF DENISE KAY PARRISH
REPRESENTING THE
NATIONAL ASSOCIATION OF STATE UTILITY CONSUMER ADVOCATES
REGARDING
CASH MANAGEMENT AND MONEY POOL ISSUES
(Conference Date: December 7, 2006)**

My name is Denise Kay Parrish and I am the Deputy Administrator of the Wyoming Office of Consumer Advocate. I am here as a representative of NASUCA. The National Association of State Utility Consumer Advocates (NASUCA) is an association representing 44 state utility consumer advocate offices in 41 states and the District of Columbia. NASUCA member offices are authorized by the laws of their respective jurisdictions to represent the interests of utility consumers in matters before state and federal utility regulators and courts. I am a member of the NASUCA Tax and Accounting Committee. I am also a member of the NARUC Staff Subcommittee on Accounting and Finance and the NARUC Staff Subcommittee on International Relations. I am an instructor at Michigan State University's Institute of Public Utilities annual regulatory training course. I have been involved in utility regulation for more than 29 years having worked for four different state utility commissions and two consumer advocacy offices.

The regulation of public utilities and the protection of the public interest require the joint and coordinated efforts of state regulators, consumer advocates, federal regulators, and the industry. Regulation and the protection of the public interest are at their best – and both shareholder's and ratepayers' interests are balanced – when there is an explicit recognition of the role of both state and federal regulatory activities. It is within this context that my suggestions are made.

The provisions of the Energy Policy Act of 2005 that repealed the Public Utility Holding Company Act of 1935 (PUHCA) did not eliminate the need for proper regulation of affiliate transactions. To the contrary, Section 1267 of the Act explicitly sets forth the Commission's authority to require just and reasonable rates, and specifically states that the Commission's authority includes actions necessary to prevent cross-subsidization and actions *necessary or appropriate for the protection of utility customers*. I am here today to urge to the Commission to closely examine and seek formal comment from interested parties on what those appropriate actions may be relative to cash management and money pools beyond the reporting requirements that are currently in effect.

Specifically, I urge the Commission to consider implementing a minimum set of protections that would address appropriate and inappropriate actions on the part of public utilities who participate in money pools with parent companies, affiliate companies, or unregulated subsidiaries. These minimum standards should be developed with input from the state regulators, consumer advocates and industry. These should be mandatory, enforceable standards, rather than guidelines, but should not diminish any state standards that may supplement or complement the minimum federal requirements. A state -- through statute, rule or order -- should not be prohibited from imposing different or more strict standards if it so chooses. Nor should a utility be prohibited from agreeing to additional restrictions on a voluntary basis or as part of a stipulated agreement. The Commission's minimum standards would simply be in place to protect customers in regulatory areas where no state standards exist. The federal standards could also be complimentary to the standards of the state, in that the Commission's authority may be able to bridge gaps in regulatory oversight that may otherwise be limited by state boundaries. This may be particularly true given the movement of cash that occurs among regulated and non-regulated entities and among multiple jurisdictions.

I offer some examples of the types of regulations the Commission should seek comment on relative to cash management issues:

- A designated level or percentage of equity at the holding company level and the utility subsidiary or affiliate level, or a designated minimum level of equity as a percentage of all debt and common stock equity reported on the balance sheet of the consolidated holding company system, all to assure that the internal payment of dividends, the lending of all excess cash, or the forced borrowing from unregulated affiliates does not irreparably skew the utility's capital structure, credit rating, or ability to obtain outside financing.
- A prohibition against internal money management transactions with affiliates or subsidiaries whose securities are not designated as at-least investment grade level, limiting the risk of not being repaid.
- A prohibition against allowing the regulated utility to lend asset-secured funds to others within the holding company or to unregulated affiliated entities, thus protecting customer assets from the risk of an unsecured, unregulated transaction.
- A limitation on the amount of funds that a utility may internally lend an affiliate, subsidiary, or parent entity thus limiting the amount of funds that are not otherwise available for utility capital and operating needs.
- A prohibition against a utility borrowing from an affiliate if it would not be cost effective to do so, that is, if it would cost more to borrow from an internal fund than it would to borrow from a bank, through the sale of its own commercial paper, or from other alternative sources of funding.
- A requirement that the utility lending funds to a non-regulated affiliate receive interest or other compensation of not less than what the utility would receive from an unaffiliated transaction of reasonably similar risk, or alternatively, not less than the rate that the unregulated affiliate would pay to an unrelated third party, in order to avoid harm to the utility and discourage cross-subsidization of the unregulated affiliate.
- The maintenance of a liquidity ratio at a rate that would reasonably allow a regulated entity to meet its current obligations without the intercession of a parent company.

- A mandatory statement indicating compliance with the minimum standards signed by the utility's auditor, a utility's officer, or both, with the certification included as a periodic mandatory reporting item.

The capital intensive nature of utilities is more apparent in today's market than at any time in recent history, as the need for new infrastructure intensifies. Yet, as more mergers and acquisitions occur, as private equity firms look to purchase utilities, and as utilities become part of organizations with competing cash needs, the risk increases that the internal funds needed to meet the utilities' operational and capital requirements will not be available. Minimum federal money pooling and cash management standards should be considered that limit the risk to the utility and its customers. I urge the Commission to take the next step of soliciting formal comments from interested parties on the specific requirements that would provide a reasonable level of protection for both utility customers and utility investors.

Thank you for your time and I look forward to further discussion on these issues.