

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Technical Conference on Public Utility Holding  
Company Act of 2005 and Federal Power Act  
Section 203 Issues

Docket No. AD07-2-001

SUPPLEMENTAL NOTICE OF TECHNICAL CONFERENCE

(March 2, 2007)

On February 9, 2007 the Commission announced that a technical conference will be held at the Federal Energy Regulatory Commission on March 8, 2007 to discuss certain issues raised in rulemakings issued in Docket Nos. RM05-32 and RM05-34. This is the second technical conference<sup>1</sup> being held as a follow-up to the Commission's Orders No. 667 and No. 669.<sup>2</sup> The technical conference will be held from approximately 10:00 a.m. to 3:00 p.m. (EST) at the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in the Commission Meeting Room. Commissioners are expected to attend. All interested persons are invited to attend, and registration is not required.

The subject of this technical conference is whether the Commission's current merger policy should be revised, in particular whether the Commission's Appendix A analysis is sufficient to identify market power concerns in today's electric industry market environment. An agenda for this technical conference is attached to this Supplemental Notice.

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<sup>1</sup> The first technical conference was held on December 7, 2006, and primarily focused on matters pertaining to cross subsidization; cash management programs and money pools; and exemptions, waivers and blanket authorizations set forth in Order Nos. 667 and 669.

<sup>2</sup> *Repeal of the Public Utility Holding Company Act of 1935 and Enactment of the Public Utility Holding Company Act of 2005*, Order No. 667, FERC Stats. & Regs. ¶ 31,197 (2005), *order on reh'g*, Order No. 667-A, FERC Stats. & Regs. ¶ 31,213, *order on reh'g*, Order No. 667-B, FERC Stats. & Regs. ¶ 31,224 (2006), *reh'g pending*; *Transactions Subject to FPA Section 203*, Order No. 669, FERC Stats. & Regs. ¶ 31,200 (2006), *order on reh'g*, Order No. 669-A, FERC Stats. Regs. ¶ 31,214 (2006), *order on reh'g*, Order No. 669-B, FERC Stats. & Regs. ¶ 31,225 (2006).

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Transcripts of the conference will be immediately available from Ace Reporting Company (202-347-3700 or 1-800-336-6646) for a fee. They will be available for the public on the Commission's eLibrary system seven calendar days after FERC receives the transcript.

A free webcast of this event will be available through [www.ferc.gov](http://www.ferc.gov). Anyone with Internet access who desires to view this event can do so by navigating to [www.ferc.gov](http://www.ferc.gov)'s Calendar of Events and locating this event in the Calendar. The event will contain a link to its webcast. The Capitol Connection provides technical support for the free webcasts. It also offers access to this event via television in the DC area and via phone bridge for a fee. If you have any questions, visit [www.CapitolConnection.org](http://www.CapitolConnection.org) or contact Danelle Perkowski or David Reininger at 703-993-3100.

Commission conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations please send an email to [accessibility@ferc.gov](mailto:accessibility@ferc.gov) or call toll free 1-866-208-3372 (voice) or 202-208-1659 (TTY), or send a FAX to 202-208-2106 with the required accommodations.

For more information about this conference, please contact: Sarah McKinley, Office of External Affairs, Federal Energy Regulatory Commission, (202) 502-8004, [sarah.mckinley@ferc.gov](mailto:sarah.mckinley@ferc.gov).

Magalie R. Salas  
Secretary

Attachment A

Agenda  
 Technical Conference on FPA Section 203  
 March 8, 2007

Welcome Remarks	10:00 a.m. – 10:10 a.m.
Panel 1: The effectiveness of the Appendix A analysis in analyzing a merger's effect on competition	10:10 a.m. – 12:00 p.m.

The Commission has received comments from certain groups that they believe that the Appendix A analysis may no longer be appropriate to analyze mergers because of changes that have occurred in recent years in the industry landscape (e.g., the development of RTOs) and the regulatory landscape (e.g., the repeal of PUHCA and new authorities given to the Commission in EAct 2005). The following are among the issues that these commenters have raised and which will be considered in this panel:

- In light of recent industry and regulatory changes in the electric utility industry, is Appendix A effective in measuring the effect on competition of “long-distance” mergers (i.e., where applicant systems are not contiguous)?
- Is Appendix A effective in measuring the effect on competition in mergers that involve applicants in RTO markets?
- Is Appendix A adequate to consider the effects associated with generation-only mergers and acquisitions, now subject to Commission jurisdiction as a result of EAct 2005?
- Are any changes needed regarding how Appendix A accounts for transmission constraints in RTO and non-RTO regions?

Panelists:

- The Honorable Sam J. “Jimmy” Ervin IV, Commissioner, North Carolina Utilities Commission, and Chairman of the NARUC Electricity Committee
- Susan Kelly, Vice President of Policy Analysis and General Counsel, American Public Power Association
- Darren Bush, Assistant Professor of Law, University of Houston Law Center
- Mark Frankena, Deputy Director for Antitrust, Bureau of Economics, Federal Trade Commission
- Julie R. Solomon, Vice President, CRA International, Inc.
- The Honorable Clifford “Mike” N. Naeve, Partner, Skadden, Arps, Slate, Meagher & Flom LLP

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Lunch

12:00 p.m. – 1:00 p.m.

Panel 2: Assessment of the factors the Commission uses in reviewing mergers, and coordination between the Commission and other agencies (including state commissions) with merger review responsibility

1:00 p.m. – 3:00 p.m.

- Should the Commission retain the factors it currently uses in reviewing mergers (effect on competition, rates and regulation)? Are any revisions needed in the focus of the current factors?
- At present, and taking into account the Commission's *ex parte* rule prohibitions regarding pending contested proceedings and the new section 203 requirement that the Commission act on a merger application within 180 days of filing (with one additional 180 days for good cause shown), is the level of coordination appropriate between the Commission and other Federal and state agencies involved in merger review? Is the level of information exchange between the Commission and other agencies adequate?
- What would be the pros and cons of having the Commission use a regional market computer model to analyze mergers? Would there be extensive data inputs that would be needed to run such a model, and what would be the resource commitments and costs associated with the Commission running such a model?

Proposed panelists:

- Mark Hegedus, Attorney with Spiegel & McDiarmid, on behalf of TAPS
- Diana Moss, Vice President, American Antitrust Institute
- Mark J. Niefer, Trial Attorney, Antitrust Division, U.S. Department of Justice
- Douglas G. Green, Partner, Steptoe & Johnson LLP