

## FERC Clarifies Holding Companies' Reporting Obligations, Asserts Jurisdiction over Activities of Investment Companies and Advisers

On November 20, 2008, the Federal Energy Regulatory Commission (FERC) issued orders clarifying the reporting obligations of holding companies under the Public Utility Holding Company Act of 2005 (PUHCA) and asserting jurisdiction under section 203(a)(2) of the Federal Power Act (FPA) over the activities of investment companies and advisers. The orders clarify when holding companies must submit notices of material changes in facts under PUHCA and when investment companies and advisers must seek prior authorization under FPA § 203(a)(2) in connection with managing securities that they are authorized to vote.

Entities that should have previously made a filing in light of these clarifications may submit a PUHCA notification by **January 9, 2009** or an FPA § 203(a)(2) application by **February 23, 2009**.

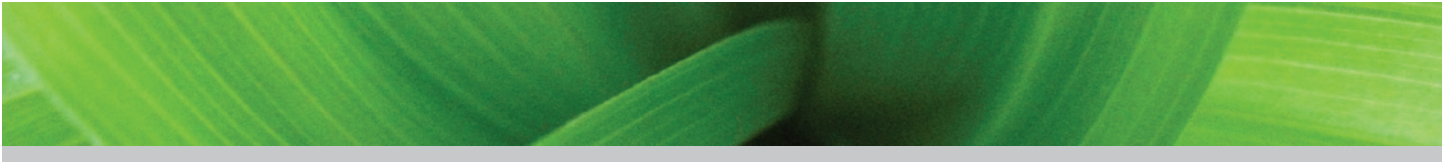
### NOTICE OF MATERIAL CHANGES IN FACTS UNDER PUHCA (DOCKET NO. PL09-2)

A "holding company" within the meaning of PUHCA owns or controls 10% or more of the voting securities of a public-utility company, *i.e.*, a company that owns or operates facilities used for the generation, transmission, or distribution of electric energy for sale or the distribution at retail of natural or manufactured gas. Holding companies are subject to certain accounting, record-retention, and reporting requirements under FERC's regulations implementing PUHCA. Passive investors, single-state holding companies, investors in independent transmission-only companies, and other classes of holding companies can obtain exemptions from or waivers of those requirements, but must notify FERC of any material change in facts that may affect the exemption or the waiver.

In the November 20, 2008 order issued in Docket No. PL09-2, FERC clarified that a holding company that obtained a PUHCA exemption or waiver must always file a notice when it becomes a holding company with respect to an additional public-utility company or holding company of a public-utility company. If a holding company obtains the power to vote 10% or more of the voting securities of an additional public-utility company or holding company of a public-utility company, it must notify FERC of the change in facts, regardless of whether the change affects the PUHCA exemption or waiver. Holding companies that failed to make such filings since receiving a PUHCA exemption or waiver may report to FERC their interests in any additional public-utility companies or holding companies of public-utility companies by **January 9, 2009**.

### FPA § 203(A)(2) JURISDICTION OVER INVESTMENT COMPANIES AND ADVISERS (DOCKET NO. EC08-91)

Section 203(a)(2) of the FPA requires holding companies within the meaning of PUHCA to obtain FERC authorization before purchasing, acquiring, or taking securities in excess of \$10 million of a transmitting utility, an electric utility company, or a holding company that includes a transmitting utility or an electric utility company.



In the November 20, 2008 order issued in Docket No. EC08-91, FERC clarified that investment companies and advisers are holding companies under PUHCA if they are delegated the power to vote 10% or more of the voting securities of a public-utility company, even if they do not own the securities. FERC further clarified that investment companies and advisers are subject to FPA § 203(a)(2) when they acquire the right to vote securities in excess of \$10 million of a transmitting utility, an electric utility company, or a holding company that includes a transmitting utility or an electric utility company. FPA § 203(a)(2) applies when investment companies and advisers control the right to vote the securities, even if they do not purchase them and do not take title or possession. Investment companies and advisers that may not have been aware of the reach of FPA § 203(a)(2) to their activities may file an application for FERC authorization by **February 23, 2009**. In Docket No. EC08-91, FERC granted Horizon Asset Management, Inc. a blanket authorization under FPA § 203(a)(2) for a period of three years, subject to certain conditions.

#### FOR ADDITIONAL INFORMATION

Van Ness Feldman regularly advises energy companies and financial institutions on issues arising under PUHCA and FPA § 203 and assists clients in obtaining PUHCA exemptions or waivers and FPA § 203 authorizations. For further information, please contact Peg Moore, Vincenzo Franco, or any member of the firm's Electricity practice at (202) 298-1800.

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