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Amnesty Window Provided for Public Utility Holding Companies to Comply with FERC Orders

At its open meeting yesterday, the Federal Energy Regulatory Commission (“FERC” or the “Commission”) approved two orders related to acquisitions of securities by public utility holding companies.

The first order clarifies FERC jurisdiction over the acquisition of securities by certain financial investment advisers that are public utility holding companies. Specifically, the Commission clarifies its jurisdiction under the “purchase, acquire, or take any security” clause of Federal Power Act (FPA) section 203(a)(2). FERC denied a request by Horizon Asset Management, a holder of the securities of various utilities, for a disclaimer of jurisdiction under the FPA with respect to investments it made in public utility company securities in excess of 10 percent of the voting shares, without receiving FERC’s prior approval. FERC’s order put on notice other companies that are in similar situations that failure to comply may result in potential civil penalties or other sanctions.

“Having now clarified our interpretation of the Commission’s jurisdiction under the ‘purchase, acquire, or take any security’ clause of section 203(a)(2), however, we caution Horizon and other similar investment advisers that they may face possible monetary or other sanctions if they fail to obtain advance approval under section 203(a)(2) of similar acquisitions

of securities. Further, we remind investment companies and advisers that if they participate or have a role in other types of acquisitions of securities of public utility companies or public utility holding companies and it is not clear to them whether section 203(a)(2) approval is needed for those types of transactions, they have the option of seeking a jurisdictional determination from the Commission through a declaratory order or other appropriate procedural mechanism prior to engaging in the transactions.”

“Today we clarify our jurisdiction under the Federal Power Act and make clear that companies must be responsible and make appropriate filings,” FERC Chairman Joseph T. Kelliher said. “Failure to do so may result in sanctions. Companies are on notice that they have 90 days to comply with FERC’s regulations.”

In the second order, FERC clarified the requirement under which a company that receives certain exemptions or waivers under the Public Utility Holding Company Act of 2005 (PUHCA 2005) must notify the Commission of material changes in facts that may affect the exemption or waiver. This PUHCA Clarification Order provides a 45-day amnesty window for all holding companies with exemptions or waivers that may not have been interpreting FERC’s regulations to require

such change in status filings, to make filings and come into compliance. The provision of the amnesty window by the Commission likely indicates its concern that noncompliance with this requirement is widespread.

Hunton & Williams' energy regulation, markets & reliability team regularly works with clients on these and similar issues. Please do not hesitate to contact us should you have any questions.

Click here to access the orders:

[Horizon Asset Management Order](#)

[PUHCA Clarification Order](#)

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