

FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426
OFFICE OF ENERGY MARKET REGULATION

March 25, 2008

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Dear Sirs:

Re: Public Utility Holding Company Securities Acquisitions

Recent press reports have brought to the attention of the Federal Energy Regulatory Commission (Commission) staff that Horizon Asset Management, Inc. (Horizon) has acquired more than 10 percent of the common stock of Sierra Pacific Resources (Sierra Pacific), a public utility holding company under the Public Utility Holding Company Act of 2005 (PUHCA 2005).¹ The Commission administers PUHCA 2005, as well as section 203 of the Federal Power Act (FPA),² which requires prior Commission authorization for certain public utility holding companies to acquire specified amounts of the securities of certain other public utility holding companies or certain electric utility operating companies. The purpose of this letter is to seek further

¹ Energy Policy Act of 2005, Pub. L. No. 109-58, §§ 1261 *et seq.*, 119 Stat. 594 (2005).

² 16 U.S.C. § 824b.

information concerning Horizon's acquisition of an interest in Sierra Pacific and certain other acquisitions by Horizon that may be relevant to matters that are subject to the Commission's jurisdiction.

On June 15, 2006, Horizon filed in Commission Docket No. PH06-90-000 a Form FERC-65 Notice of Holding Company Status. That form states that Horizon is a holding company for purposes of PUHCA 2005 because it has power to vote 10 percent or more of the outstanding voting securities of Aquila, Inc. in its capacity as an advisor engaged in the management of discretionary accounts for individual clients and several hedge funds (Accounts). The filing was accompanied by a notice of petition seeking an exemption from the requirements of PUHCA 2005. That petition claimed an exemption under section 366.3(b)(2)(i)(C) of the Commission's regulations, 18 C.F.R. § 366.3(2)(i)(C) (2007), on the basis of the representation that Horizon is a fiduciary in its capacity as adviser to the Accounts and in exercising voting power with regard to securities in the Accounts. Horizon also represented that it did not at the time and had no intention to exercise in the future operational control over Aquila, Inc. or any other company whose stock it votes pursuant to agreements with its clients. On October 11, 2006, the Commission issued a Notice of Effectiveness that deemed Horizon's Notice of Petition to be granted by operation of law pursuant to 18 C.F.R. § 366.4.

We note that section 203(a)(2) of the FPA, 16 U.S.C. § 824b(a)(2), contains the following prohibition:

No holding company in a holding company system that includes a transmitting utility or an electric utility shall purchase, acquire, or take any security with a value in excess of \$10,000,000 of, or, by any means whatsoever, directly or indirectly, merge or consolidate with, a transmitting utility, an electric utility company, or a holding company in a holding company system that includes a transmitting utility, or an electric utility company, with a value in excess of \$10,000,000 without first having secured an order of the Commission authorizing it to do so.

We also note that according to a recent filing made by Horizon with the Securities and Exchange Commission (SEC), the value of the Sierra Pacific common stock acquired by Horizon is in excess of \$756 million.³ Finally, we note that the same SEC filing indicates that Horizon's holdings include common stock of the following holding companies with the value indicated:

³The filing in question is the Form 13F-HR filed by Horizon at the SEC on February 13, 2008.

Holding Company	Value of Common Stock Holdings
Allegheny Energy, Inc.	\$870,141,711
CenterPoint Energy, Inc.	\$127,409,114
CMS Energy Corporation	\$76,260,845
Mirant Corporation	\$50,073,592
NRG Energy, Inc.	\$109,257,935
Reliant Energy, Inc.	\$1,006,398,042

The SEC filing in question also indicates that Horizon's holdings in Reliant Energy, Inc. represent more than 10 percent of that company's common stock.

An exemption from the full requirements of PUHCA 2005 does not exempt a holding company or its affiliate or associate companies from the requirements of the FPA or by itself confer upon them any blanket authorizations under the FPA or the Commission's regulations under the FPA. Commission staff thus would like to have a better understanding of Horizon's acquisition of interests in Sierra Pacific Resources and any other company as it relates to the Commission's responsibilities under the FPA, and specifically section 203(a)(2). We therefore request that you provide Commission staff with any information and analysis that you believe would assist the staff in better understanding these matters. We seek, in particular, information that responds to the following questions:

- Does Horizon directly or indirectly own, control or hold the power to vote 10 percent or more of the securities of any of the companies listed in the chart above, Sierra Pacific, or any other utility or holding company that is subject to the provisions of the FPA?
- Does Horizon directly or indirectly own any non-voting securities of any holding company, public utility, or other company subject to the Commission's jurisdiction? If it does, do those securities entitle Horizon to exercise, directly or indirectly, any veto or other rights, whether for investment protection or other purposes, over the activities of those companies?
- What is Horizon's position with respect to whether section 203(a)(2) of the FPA is applicable to its acquisitions of holding company securities, or any other direct or indirect acquisitions it has made of securities of any

other companies of the type referenced in section 203(a)(2), with a value in excess of \$10 million?

- What is Horizon's position with respect to the applicability of any of the blanket authorizations set forth in 18 C.F.R. § 33.1(c) (2007) to any transaction it has engaged in directly or indirectly?
- Is it Horizon's position that it continues to qualify for an exemption from PUHCA 2005 under 18 C.F.R. § 366.3 (2007)?
- What is Horizon's position on the issue of whether any of the transactions mentioned above, or any other transactions involving the securities of companies subject to the Commission's jurisdiction since filing its Form FERC-65 Notice of Holding Company Status, necessitate any additional filings under Part 366 of the Commission's regulations, in particular under 18 C.F.R. § 366.4 (2007)?

We request that you respond to this letter within 30 days of receipt. Please feel free to contact Commission staff if you require further guidance in responding to this request.

Sincerely,

Steve P. Rodgers
Director
Division of Tariffs and Market Development - West

cc: Mr. Murray Stahl
Chief Executive Officer
Horizon Asset Management Inc.

Document Content(s)

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