SECURITIES AND EXCHANGE COMMISSION

[Release No. 27574; File No. 3–10909]

Public Utility Holding Company Act of 1935; Administrative Proceeding; Applications of Enron Corp. for Exemptions Under the Public Utility Holding Company Act of 1935, (Nos. 70–9661 and 70–10056)

October 7, 2002.

Order Scheduling Hearing Pursuant to Section 19 of the Public Utility Holding Company Act of 1935

Enron Corp. (''Enron''), an Oregon corporation with headquarters at 1400 Smith Street, Houston, Texas 77002–7361, has filed two applications with the Securities and Exchange Commission (''Commission'') seeking orders exempting Enron from all provisions of the Public Utility Holding Company Act of 1935 (the ''Act'') except section 9(a)(2). Enron represents that it is a public utility holding company by reason of its ownership of all of the outstanding voting securities of Portland General Electric Company (''Portland General''). In one application, Enron requests exemption under section 3(a)(1) of the Act.[1] In the other application, Enron requests exemption under sections 3(a)(3) and 3(a)(5) of the Act.[2]

We have reviewed the applications. For the reasons described below, we conclude that it is appropriate to hold a hearing on Enron's applications before ruling on them.

An exemption under section 3(a)(1) is available to a public-utility holding company if—

such holding company, and every subsidiary company thereof which is a public-utility company from which such holding company derives, directly or indirectly, any material part of its income, are predominantly intrastate in character and carry on their business substantially in a single state in which such holding company and every such subsidiary company thereof are organized.[3]

We cannot, from the face of Enron's application for an exemption under section 3(a)(1), determine facts sufficient to conclude that Enron meets the statutory criteria. Among other things, we must determine whether Portland General is predominantly intrastate in character and carries on its business substantially in a single state.[4] That issue is clouded by representations in the application that raise questions concerning (1) Portland General's 20% ownership stake in the Pacific Northwest Intertie,[5] (2) the extent to which Portland General uses its stake in the Pacific Northwest Intertie to facilitate sales of electricity outside of Oregon delivered at the Mid-Columbia trading hub, and (3) the percentage of Portland General's revenue that is generated through its ownership of a station in Colstrip, Montana.

An exemption under section 3(a)(3) is available to a public-utility holding company if—

such holding company is only incidentally a holding company, being primarily engaged or interested in one or more businesses other than the business of a public utility company and (A) not deriving, directly or indirectly, any material part of its income from any one or more subsidiary companies, the principal business of which is that of a public utility company, or (B) deriving a material part of its income from any one or more such subsidiary companies, if substantially all the outstanding securities of such companies are owned, directly or indirectly, by such holding company.[6]

We cannot, from the face of Enron's application for an exemption under section 3(a)(3), determine facts sufficient to conclude that Enron meets the statutory criteria. To find that these criteria are satisfied, we must determine, among other things, that Enron's ownership of Portland General bears a necessary functional relationship to, and primarily serves the needs of, Enron's nonutility operations.[7] We must also make determinations concerning, among other things, Enron's income derived through Portland General in comparison with Enron's other income.[8] Because Enron is currently being reorganized under the supervision of the United States Bankruptcy Court for the Southern District of New York, and because of related disruptions to its business and financial affairs,[9] the record must be more fully developed before we can determine whether Enron satisfies the 3(a)(3) criteria.

An exemption under section 3(a)(5) is available to a public-utility holding company if—

such holding company is not, and derives no material part of its income, directly or indirectly, from any one or more subsidiary companies which are, a company or companies the principal business of which within the United States is that of a public-utility company.[10]

We cannot, from the face of Enron's application for an exemption under section 3(a)(5), determine facts sufficient to conclude that Enron meets the statutory criteria. An application for exemption under section 3(a)(5) requires us to make some of the same determinations as are required for an exemption under section 3(a)(3), including determinations about relationships between Enron's income derived from Portland General and Enron's other income.[11] For the reasons described above, a more fully developed record is required to make that determination. In addition, determining

[1] SEC File No. 70–10056 (filed Feb. 28, 2002; Amendment No. 1 filed May 31, 2002). Enron had previously been exempt under section 3(a)(1) by virtue of making certain representations on Form U–3A–2, pursuant to Rule 2 under the Act (17 CFR § 250.2). Enron states that it ''is presently unable to collect and produce the information required by Form U–3A–2,'' and it therefore seeks an order of exemption rather than exemption by operation of Rule 2.

[2] SEC File No. 70–9661 (filed Apr. 12, 2000). At the time that Enron filed this application for exemption under sections 3(a)(3) and 3(a)(5), Enron was already exempt under section 3(a)(1) by operation of Rule 2. Enron nevertheless requested exemption under sections 3(a)(3) and 3(a)(5) because an exemption under those provisions (unlike an exemption under section 3(a)(1)) would have the effect of affording Enron relief from the ''qualifying facility'' (or ''QF'') ownership restrictions under the Public Utility Regulatory Policies Act of 1978 and the rules of the Federal Energy Regulatory Commission thereunder.

[3] 15 U.S.C. § 79c(a)(1).

[4] See NIPSCO Industries, Inc., Holding Co. Act Release No. 26975 (Feb. 10, 1999).

[5] According to Enron's application, the Pacific Northwest Intertie is a 4,800 MW transmission facility between the towns of John Day in Northern Oregon, and Malin, in Southern Oregon which is near the California border. Enron represents that this line is primarily used for interstate sales and purchases of electric energy among the Bonneville Power Administration (a federal agency that markets electric energy generated by federal hydroelectric dams located on the Columbia River in Oregon and Washington), utilities in the Pacific Northwest, and certain California utilities.

[6] 15 U.S.C. § 79c(a)(3).

[7] See generally Electric Bond and Share Company, 33 S.E.C. 21, 41–43 (1952); Standard Oil Company, 10 S.E.C. 1122, 1125–28 (1942); Manufacturer's Trust Company, 9 S.E.C. 283, 288 note 5 (1941); Cities Service Co., 8 S.E.C. 318, 329–32 (1940). In its application, Enron asserts that it is ''only incidentally'' a holding company in that its affiliation with Portland General has given Enron ''insight and access to new business opportunities in the broader energy industry,'' and that Portland General has provided Enron with ''valuable expertise in evaluating regional electric distribution assets that complement Enron's strategy.''

[8] See, *e.g.*, Cities Service Co., 8 S.E.C. 318 (1940). We must also consider whether Portland General is small other than in relation to Enron, which requires us to consider Portland General's size in relation to the state, regional and national electricity markets in which it operates. Id.

[9] In its application for exemption under section 3(a)(1), Enron has acknowledged this disruption, stating that ''[a]s a consequence of the bankruptcy, the loss of a substantial portion of its staff, and the dismissal of its auditor Arthur Andersen LLP, Enron is presently unable to collect and produce the information required by Form U–3A–2, including the consolidating financial statements of Enron and its subsidiaries for the year ended December 31, 2001.''

[10] 15 U.S.C. § 79c(a)(5).

[11] See, *e.g.*, AES Corporation, Holding Co. Act Release No. 27063 (Aug. 20, 1999); Cities Service Co., 8 S.E.C. 318 (1940).

whether to grant an exemption pursuant to section 3(a)(5) requires us to determine whether Enron is the type of holding company to which section 3(a)(5) was intended to apply.

Finally, if a more fully developed record shows that Enron satisfies the more specific statutory criteria for any one of the three exemptions discussed above, we must nevertheless decline to grant the exemption if we find that the exemption would be ''detrimental to the public interest or the interest of investors or consumers.''[12] In this particular matter, in light of the acknowledged disruptions to Enron's business and financial affairs,[13] we believe that the question of whether an exemption would be detrimental to the public interest or the interest of investors and consumers is itself a question that should be the subject of a hearing before any exemption is granted.

We also recognize, however, that the question of whether an exemption would be detrimental to the public interest or the interest of investors and consumers is a question that we need reach only if it first appears that Enron satisfies any of the specific statutory criteria for an exemption. We therefore conclude that the most efficient way to proceed with a hearing on Enron's applications is in two phases. Phase I will be for the limited purpose of determining whether Enron satisfies any of the particular statutory criteria for an exemption under section 3(a)(1), section 3(a)(3), or section 3(a)(5) of the Act, and evidence and arguments presented shall be limited to those specific questions. Phase II, if the hearing officer determines it to be necessary, will be for the purpose of determining whether granting an exemption to Enron would be detrimental to the public interest or the interest of investors or consumers.

For the foregoing reasons,

It Is Ordered that a hearing shall be commenced, pursuant to section 19 of the Act and in accordance with the Commission's Rules of Practice,[14] at a time and place to be fixed by further order, for the purpose of determining whether Enron satisfies the statutory criteria for an exemption under section 3(a)(1), section 3(a)(3), or section 3(a)(5) of the Act and, if so, whether granting such an exemption would be detrimental to the public interest or the interest of investors or consumers;

It Is Further Ordered that Commissioner Roel C. Campos shall preside as hearing officer at the hearing, shall exercise the authority described in Commission Rule of Practice 111,[15] and shall, pursuant to Commission Rule of Practice 360,[16] prepare an initial decision;

It Is Further Ordered that Enron and the Division of Investment Management shall be parties to the proceeding and that Enron, as the proponent of the exemptive orders it seeks, shall, pursuant to 5 U.S.C. § 556(d), bear the burden of proving that it is entitled to such exemptive orders;

It Is Further Ordered that any person who seeks to intervene as a party pursuant to Rule of Practice 210(b)[17] shall file a motion to intervene with the Secretary of the Commission no later than October 21, 2002, and any person who seeks to participate on a limited basis pursuant to Rule of Practice 210(c)[18] shall file a motion for leave to participate with the Secretary of the Commission no later than 20 days prior to the date fixed for the Phase I hearing. A movant shall serve a copy of any such motion upon Enron at the address noted above in accordance with Rule 150(c) of the Commission's Rules of Practice, and proof of such service shall be filed with the Secretary of the Commission contemporaneously with the motion. Any such motion shall state whether the movant seeks to intervene or participate for purposes of Phase I only, Phase II only, or both Phases, and shall describe the nature and extent of the movant's interest with respect to each such Phase. Such motions as have already been received concerning Enron's applications shall be considered as timely filed in this matter,[19] although movants may supplement those motions in light of this Order if such supplements are received no later than October 21, 2002;

It Is Further Ordered that, without prejudice to the ability of the hearing officer to decide that additional factual or legal issues should be considered as part of the hearing in this matter, particular attention should be given at the hearing to the questions described above; and

It Is Further Ordered that the Secretary of the Commission shall give notice of the hearing by sending copies of this Order by certified mail to Enron at the address noted above; that the Secretary of the Commission shall mail a copy of this Order to each of the persons that have sought to intervene concerning Enron's applications; and that notice to all other persons shall be given by publication of this Order in the **Federal Register**.

By the Commission.

Margaret H. McFarland

Deputy Secretary.

[FR Doc. 02–26025 Filed 10–10–02; 8:45 am]

BILLING CODE 8010–01–P

[12] 15 U.S.C. § 79c(a).

[13] See note 9, *supra.*

[14] 17 CFR Part 201.

[15] 17 CFR § 201.111.

[16] 17 CFR § 201.360.

[17] 17 CFR § 201.210(b).

[18] 17 CFR § 201.210(c).

[19] Motions to intervene have been received from Southern California Edison Company (received March 27, 2002), Sithe/Independence Power Partners, L.P. (received April 16, 2002), and the Electric Power Supply Association (received April 16, 2002).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–27573]

Filings Under the Public Utility Holding Company Act of 1935, as Amended (''Act'')

October 4, 2002.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) is/are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by October 29, 2002, to the Secretary, Securities and Exchange Commission, Washington, DC 20549–0609, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After October 29, 2002, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Energy East Corporation, et al. (70–9609)

Energy East Corporation (''Energy East''), P.O. Box 12904, Albany, New York 12212–2904, a registered holding company under the Act, along with its direct and indirect subsidiaries listed below, has filed a post-effective