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United States Government Accountability Office
Washington, DC 20548

January 5, 2005

The Honorable John D. Dingell
Ranking Minority Member
Committee on Energy and Commerce
House of Representatives

The Honorable Edward J. Markey
Member
Committee on Energy and Commerce
House of Representatives

Subject: SEC's Administration of PUHCA

This letter confirms our commitment to study the Securities and Exchange Commission's (SEC's) administration and enforcement of the Public Utility Holding Company Act of 1935. In our September 1, 2004 letter to you, we outlined our approach to designing the study. Based on that design and discussions with your staff, on December 22, 2004, we will complete our work and issue a report to you by June 17, 2005. The enclosure to this letter sets forth the key aspects of the study.

We look forward to working with you and your staff on this assignment. Should you have any questions, please contact me on (202) 512-2717, jonesy@gao.gov or Karen C. Tremba, Assistant Director, on (202) 512-3113, trembak@gao.gov.

Yvonne D. Jones
Acting Director, Financial Markets
and Community Investment

Enclosure

cc: Consuela Washington
Sue Sheridan
Jeff Duncan

Terms of the Work

Objectives/Key Questions

The objectives of this engagement are to discuss: 1) the extent to which SEC's Office of Public Utility Regulation (OPUR) reviews registered holding companies and the results of the reviews; 2) the extent to which OPUR reviews claims of exemption—filed as either self-certifications or applications for SEC order and the results of the reviews; 3) OPUR's process for issuing no-action letters; and 4) how OPUR determines whether companies have a controlling influence in public utilities or public utility holding companies.

Scope

Our review will focus on how OPUR is administering PUHCA. To that end, we will meet with OPUR officials and review selected PUHCA workpaper files in Washington, DC.

We will also meet with officials from the offices of the chief counsel within SEC's divisions of Corporation Finance and Investment Management, SEC's Inspector General, the Commodity Futures Trading Commission, the Federal Energy Regulatory Commission, interested industry groups—such as the American Public Power Association, the National Rural Electric Cooperative Association, the Edison Electric Institute, Public Citizen, and the National Association of Regulatory Utility Commissions—and other knowledgeable parties in Washington, DC. In addition, we will interview knowledgeable Wall Street and credit rating agency officials in New York, NY; officials from selected state utility commissions throughout the U.S.; representatives of selected registered holding companies throughout the U.S.; and representatives of selected companies that have received no-action letters throughout the U.S.

Methodology

To assess how OPUR reviews registered holding companies, we will interview OPUR officials, the SEC Inspector General, knowledgeable industry groups, and other experts, including Wall Street participants, the Federal Energy Regulatory Commission, and state utility commission officials to solicit their views on SEC's administration of the act. We will also review recent PUHCA orders, pending applications, current PUHCA forms, and a selected sample of workpaper files from recently completed examinations to gather additional information on OPUR's oversight of registered companies. In addition, we will review SEC data on the length of time that PUHCA applications remain pending and measurable outputs from PUHCA examinations, and verify that these data meet GAO's data reliability standards. Finally, we will administer telephone surveys to representatives of a sample of registered holding companies and to all OPUR attorneys, financial analysts and accountants at the sub-branch chief level to identify strengths and weaknesses in how OPUR reviews registered companies.

To assess how OPUR reviews claims of exemption from PUHCA, we will interview OPUR officials, the SEC-Inspector General, knowledgeable industry groups, and other experts. We will also review recent Commission decisions, selected workpaper files from recent exemption reviews, and PUHCA forms to gather additional information on how OPUR reviews claims of exemption. In addition, we will administer telephone surveys to representatives of a sample of registered holding companies and to all OPUR attorneys, financial analysts and accountants at the sub-branch chief level to evaluate this process.

To assess OPUR's process for issuing no-action letters, we will interview OPUR officials, the SEC-Inspector General, knowledgeable industry groups and other experts. To compare OPUR's process with those in other agencies or SEC offices, we will interview officials from the Commodity Futures Trading Commission, SEC's Division of Corporate Finance, and SEC's Division of Investment Management, Office of the Chief Counsel. We will also review a select sample of workpaper files from recently issued PUHCA no-action letters to gather additional information on OPUR's no-action letter procedures. Finally, we will administer telephone surveys to representatives of a sample of registered holding companies, to all OPUR attorneys, financial analysts and accountants at the sub-branch chief level, and to representatives of a sample of companies that have recently received PUHCA no-action letters to assess OPUR's process for issuing no-action letters.

To assess how OPUR determines whether companies exercise a controlling influence, we will interview OPUR officials and review existing SEC orders and no-action letters on this issue to provide a legal framework for this issue.

We will conduct our work in accordance with Generally Accepted Government Auditing Standards (GAGAS). We will obtain comments from the Securities and Exchange Commission on a written draft of this product prior to issuance.

Product Type and Delivery Date

We will issue a letter report by June 17, 2005

Reporting on Job Status

We will maintain contact with your staff and provide periodic updates on the status of our work.