

Insights

FERC: INVESTORS WITH UTILITY BOARD MEMBERS ARE AFFILIATES, 'POWER MAGAZINE'

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SUMMARY

BCLP Counsel Max Multer authored an article published Nov. 2 in *Power Magazine* regarding recent Federal Energy Regulatory Commission (FERC) decisions in *Evergy Kansas, Inc. (Evergy)* and *Transalta Energy Marketing (U.S.), Inc. (Transalta)* analyzing whether investments that were under 10% of outstanding voting shares, but were paired with appointment of directors that were accountable to the investors, constitute a change in control within the meaning of the Federal Power Act.

The commission held in *Transalta*: "Going forward, appointment of an investor's own officers or directors, or other appointee accountable to the investor, to the board of a public utility or holding company that owns public utilities will require prior Commission approval under Federal Power Act (FPA) section 203(a)(1)(A)."

"In addition to requiring prior approval, FERC announced that such officer and director appointments may also create affiliation. This, in turn, would seem to raise implications regarding affiliate restrictions, Market Based Rate (MBR) Authority change in status reporting, and maintenance of up-to-date information in FERC's Order No. 860 Relational Database," he wrote. "Public utilities and public utility holding companies should consider reviewing their board rosters to determine whether there have been changes in control or affiliations that may require corrective filings or self-reporting to the Office of Enforcement. Notably, although the commission's language in *Transalta* speaks in terms of prospective application, affiliation carries ongoing obligations."

Read the full article [here](#).

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