



New Mexico Regulation and Licensing Department
SECURITIES DIVISION

Toney Anaya Building • 2550 Cerrillos Road • Santa Fe, New Mexico 87505
(505) 476-4580 • Fax (505) 984-0617 • Toll free in NM (800) 704-5533
www.rld.state.nm.us/sec

August 25, 2010

Bill Richardson
GOVERNOR

Kelly O'Donnell, Ph.D.
SUPERINTENDENT

Julie Ann Meade
DEPUTY
SUPERINTENDENT

Randall Cherry
CHIEF GENERAL
COUNSEL

Michael Vargon
ACTING
DIRECTOR

Mr. Herbert J. Short
Sutherland Asbill & Brennan LLP
999 Peachtree Street NE
Atlanta, Georgia 30309

Offer and Sale of Oglethorpe Power Corporation bonds;
Request for No Action: Your June 28, 2010 letter

Dear Mr. Short:

On behalf of your client Oglethorpe Power Corporation ("Oglethorpe Power"), by letter dated June 28, 2010, you requested an interpretive opinion or no-action position from the staff of the New Mexico Securities Division with respect to the applicability of Section 201(E) (the "public utility exemption") of the New Mexico Uniform Securities Act ("the New Mexico Act") to the proposed offer and sale by Oglethorpe Power, including through one or more broker-dealers, of investment grade first mortgage bonds registered on a Form S-3 registration statement with the Securities and Exchange Commission.

We understand from your letter that Oglethorpe Power is a Georgia electric membership corporation that was incorporated in 1972 under Title 46 - Public Utilities and Public Transportation of the Georgia Code (See Ga. Code Ann § 46-3-200), that Oglethorpe Power's principal business is providing wholesale electric power to its members, that Oglethorpe Power operates on a not-for-profit basis and that Oglethorpe Power is owned by 39 retail electric distribution cooperative members.

We further understand from your June 28, 2010 letter that Oglethorpe Power is subject to reporting requirements under the Securities Exchange Act of 1934 and has filed reports thereunder since 1986. Your letter states that on May 27, 2010, Oglethorpe Power filed a registration statement on form S-3 (File No. 333-167135) with the SEC in connection with its proposed offer and sale from time to time of investment grade first mortgage bonds in one or more transactions up to an aggregate principal amount of \$1 billion. The first mortgage bonds will be secured equally and ratably under Oglethorpe Power's mortgage indenture by a lien on substantially all of its tangible and some of its intangible assets, including those it acquires in the future.

Your June 28, 2010 letter to our office encloses a copy of a June 7, 2010 letter from the SEC staff that, among other things, states that the SEC staff has not and will not review Oglethorpe Power's registration statement, reminds the

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company that Oglethorpe Power and its management are responsible for the accuracy and adequacy of the disclosures in the registration statement and advises Oglethorpe Power that the SEC staff will consider a written request for acceleration of the effective date of the registration statement.

Your June 28, 2010 letter acknowledges that, because the offer and sale of the first mortgage bonds by Oglethorpe Power does not fall within the definition of a "covered security" under Section 18 of the Securities Act of 1933, Oglethorpe Power will need to register the offer and sale of the first mortgage bonds in New Mexico or avail itself of an exemption from the requirement of registration under the New Mexico Act.

Under Section 58-13C-201(E) of the New Mexico Act, securities exempt from the requirement of registration include:

A security issued or guaranteed by a railroad, other common carrier, public utility or public utility holding company that is:

- (1) regulated in respect to its rates and charges by the United States or a state;
- (2) regulated in respect to the issuance or guarantee of the security by the United States, a state, Canada, or a Canadian province or territory; or
- (3) a public utility registered pursuant to the federal Public Utility Holding Company Act of 1935 or a subsidiary of such a registered holding company within the meaning of that act; . . .

From your June 28, 2010 letter, your associate Darryl Smith's letter to me dated July 12, 2010 responding to my telephone inquiry and Oglethorpe Power's Form 10-K for the fiscal year ended December 31, 2009, our understanding of the form of the regulation of Oglethorpe Power's rates is that changes to Oglethorpe Power's rate schedule under the wholesale power contracts that Oglethorpe Power has with its members are generally subject to federal Rural Utilities Service approval pursuant to Oglethorpe Power's loan agreement with the Rural Utilities Service. We also understand that adjustments to Oglethorpe Power's rates to reflect changes in its budgets ("inputs" to rate formula) are generally not subject to Rural Utilities Service approval. We further understand that Oglethorpe Power's rates are not subject to the approval of any other federal or state agency or authority, including the Georgia Public Service Commission.


Your June 28, 2010 letter observes, among other things, that (1) the rate regulation of Oglethorpe Power by the Rural Utilities Service is directed at ensuring that Oglethorpe Power is able to repay loans made to it by the Rural Utilities Service to fund electricity service projects, (2) the rate schedule set forth in the wholesale power contracts is intended to ensure that Oglethorpe Power collects rates from its members in amounts sufficient for it, to, among other things, pay the principal and interest on its indebtedness, including any bonds sold in New Mexico, and (3), as a result, rate regulation by the Rural Utilities Service of Oglethorpe will inure to the benefit of the purchasers of the bonds (as opposed to the more conventional notion of rate regulation which is intended to protect the consumers of the public utility).

You conclude that Oglethorpe Power should be able to rely on Section 58-13C-201(E) of the New Mexico Act to exempt the offer and sale of its first mortgage bonds in New Mexico as a public utility "regulated in respect to its rates and charges by the United States"

Based upon the representations recited herein and those contained in your letter of June 28, 2010 and enclosures, as a matter of enforcement policy, the Division staff would not recommend enforcement action for violation of the registration provisions of the New Mexico Act if Oglethorpe Power were to offer and sell the investment grade first mortgage bonds, as described above, without first registering the bonds pursuant to the New Mexico Act.

Because our position is based on the representations made to the Division in your letter and enclosures, it should be noted that different facts or conditions might require a different conclusion. Moreover, our response reflects only the staff's position on enforcement action and does not purport to express any legal conclusion on the question presented. We also direct your attention to the anti-fraud provisions of the New Mexico Uniform Securities Act and note that responsibility for compliance with these and other applicable provisions of the New Mexico Act rests with Oglethorpe Power and any registered broker-dealers who may offer or sell bonds on Oglethorpe Power's behalf.

Sincerely,


Marianne Woodard
Senior Regulatory Attorney
Securities Division