FEDERAL ENERGY REGULATORY COMMISSION

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NEWS RELEASE

NEWS MEDIA CONTACT:
Barbara A. Connors
(202) 502-8680

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COMMISSION OUTLINES POLICY TO SUPPORT FORMATION OF INDEPENDENT TRANSMISSION COMPANIES

In an effort to remove barriers to the formation of independent transmission companies (ITCs), the Federal Energy Regulatory Commission today clarified its policy on passive ownership of ITCs by signaling a more flexible approach to passive equity ownership of ITCs by market participants.

To improve the performance and efficiency of the grid's operation, the Commission has spotlighted the critical need to expand the nation's transmission grid system and increase power-grid investment. Today's action is another step toward policies that will encourage development of a more reliable transmission grid for the nation's consumers, the Commission said in spelling out its more flexible approach to independent transmission ownership.

Chairman Pat Wood, III said: "In recent Congressional testimony, I underscored the need for additional investment in the nation's grid system. We need a more robust transmission system to support growing demand. This policy will provide the flexibility to accommodate diverse proposals, stimulate new transmission investment and provide more regulatory certainty for the electric power industry." Press Release | Testimony Summary [PDF] | Full Testimony [PDF] | Grid 2030 Report [PDF]

The Commission's policy statement complements Congressional legislation, the Jobs Creation Act, signed into law late last year by President George W. Bush, which provided for companies that sell transmission assets to an independent transmission company to realize their taxable gains over an eight-year period, Chairman Wood noted.

Independence is important because it helps eliminate the incentive for market participants that own or control transmission assets to discriminate against other potential system users. In determining whether an applicant could qualify as an ITC, the Commission would consider proposals involving passive participation of up to 49 percent ownership by a single market participant. The Commission would also consider proposals in which multiple market participants own greater than 49 percent of the applicant's equity.

A non-exclusive list of factors which the Commission would consider when evaluating whether market participants are passive equity owners include:

- The percentage ownership held by market participants;
- Composition of the board of directors and the responsibilities;
- Corporate governance structure of the applicant;
- Nature of the applicant's capital investment planning and policies;
- The relationship, if any, of capital investment policies with those governing capital contributions or dividend reinvestment by passive equity holders;
- The role of executive compensation agreements and other management incentives in shaping independent operation and investment decisions; and,
- The nature and strictness of limits on contractual service and legacy relationships with ex-affiliates that are market participants.

To ensure that a stand-alone transmission company can operate free of market participant control or influence, the Commission will also consider the level of voting control held by market participants. The Commission will adhere to a standard set in a May 2005 case, *ITC HoldingsCorp. and International Transmission Co* (http://www.ferc.gov/whats-new/comm-meet/050405/E-7.pdf) in which the Commission accepted the applicant's commitment to prohibit a market participant that acquires 5 percent or more of any class of stock from voting, giving consent in respect of, or directing or controlling 5 percent or more of ITC Holdings' stock, so as to limit direct or indirect voting control over the applicant.

In January 2003, the Commission proposed an incentive pricing policy to help boost needed investment in the transmission grid by adopting certain return on equity (ROE) incentives (Docket No. PL03-1-000). After extensive review of more than 100 comments responding to the proposal, a subsequent technical conference held in April 2005 and supplemental comments received after the technical conference, the Commission had a substantial record before it. There is also pending Congressional legislation (Senate energy bill S.10) that would require FERC to initiate a formal rulemaking to establish transmission rate incentives. However, the Commission believes that policy guidance and additional regulatory certainty on passive ownership by market participants could be useful at this time.

The Commission will evaluate the merits of proposals for consideration by stand-alone transmission companies with passive market participant equity ownership to decide if they qualify as ITCs on an individual basis. In past instances, the Commission has allowed innovative rate treatments to foster independent transmission companies and to stimulate transmission investment. Included among these rate treatments are: enhanced return on equity; recovery of deferred income tax liabilities; cost deferrals; construction-work-in-progress (CWIP) in rate base; and accelerated book depreciation. The Commission would consider further incentives for ITCs, including proposals for allowance of up to 100 percent CWIP treatment for new transmission investments, 100 percent recovery of abandoned plant cost and accelerated depreciation.

The Commission will also consider ownership structures that promote participation by municipalities, cooperatives and other transmission-dependent users of the grid. The Commission noted that it has approved the creation of a stand-alone transmission company, Pewaukee, Wis.-based American Transmission Co., which is jointly owned by investor-owned utilities and public power customers.

The *Policy Statement Regarding Evaluation of Independent Ownership and Operation of Transmission* is available at www.ferc.gov. It takes effect immediately.

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