FEDERAL ENERGY REGULATORY COMMISSION

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NEWS RELEASE

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COMMISSION FINALIZES RULE ON NEW M&A AUTHORITY; ENERGY POLICY ACT PROVISIONS IMPLEMENTED

The Federal Energy Regulatory Commission today issued final rules to implement the electric company merger and acquisition provisions of the Energy Policy Act of 2005. The rule provides blanket authorizations for certain transactions while ensuring that captive utility customers are protected.

"The Energy Policy Act granted the Commission new regulatory tools, strengthening the agency's ability to prevent the exercise of market power. This final rule will help prevent the accumulation of generation market power. At the same time, the rule allows needed investment in generation and transmission," observed Commission Chairman Joseph T. Kelliher.

Section 203 of the Federal Power Act requires Commission authorization for mergers, and dispositions and acquisitions involving electric generation and transmission companies. Section 1289 of the Energy Policy Act amended section 203 of the Federal Power Act and expanded the Commission's authorities and requirements.

Among other things, the Energy Policy Act amended section 203 of the Federal Power Act to:

- increase the threshold value triggering Commission review from $50,000 to $10 million for certain transactions subject to section 203;
- extend the scope of Commission review to include transactions involving certain transfers of electric generation facilities and public utility holding company acquisitions;
- require the Commission to make cross-subsidization findings and generally determine that the transaction will not result in a regulated utility subsidizing a non-utility affiliated company; and
- direct the Commission to adopt, by rule, procedures for the expeditious consideration of applications for the approval of dispositions,

consolidations, or acquisitions under section 203.

"Our goal is to carry out the expanded authorities and requirements contained in the new section 203 amendments to ensure that all jurisdictional transactions subject to section 203 are consistent with the public interest and at the same time ensure that our rules do not impede day-to-day business transactions or stifle timely investment in transmission and generation infrastructure," the Commission said in today's final rule.

The final rule states that while the amended law applies to holding company acquisitions of foreign utilities, the Commission will grant blanket authorizations of such acquisitions if certain conditions are met to protect captive utility customers.

"This approach will allow U.S. companies to successfully compete abroad," Chairman Kelliher commented.

The rule also grants blanket authorizations for certain types of transactions, including intra-holding company system financing and cash management arrangements, certain internal corporate reorganizations, and certain acquisitions by holding companies of non-voting securities and up to 9.9 percent of voting securities of transmitting utilities and electric utility companies.

In determining the "value" of a transaction, the Commission will adopt market value as the appropriate measure for transfers of physical facilities, such as transmission or generation facilities. When a transaction occurs between non-affiliates, the Commission will rebuttably presume that market value is the transaction price. In transactions involving affiliates, the Commission will use a valuation based on the undepreciated original cost.

The final rule calls for section 203 applicants to explain how they will ensure the proposed transaction will not result in cross-subsidizations or, if it does result in cross-subsidization, to explain how this may be consistent with the public interest. The Commission noted that it has already adopted a number of policies to address affiliate abuse and cross-subsidization. Other protections may be needed on a case-by-case basis, the final rule said.

The Commission said that it will expeditiously consider completed applications for the approval of transactions that are not contested, do not involve mergers and are consistent with Commission precedent.

The new rule takes effect February 8, 2006.

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