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# FEDERAL ENERGY REGULATORY COMMISSION

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WASHINGTON, D.C. 20426

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## NEWS RELEASE

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### FOR IMMEDIATE RELEASE

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Docket No. RM05-34-000

## COMMISSION PROPOSES RULES TO UPDATE MERGER POLICY AND IMPLEMENT ENERGY POLICY ACT PROVISIONS

The Federal Energy Regulatory Commission today proposed rules and amendments to the Commission's regulations to implement merger review provisions of the Energy Policy Act of 2005, which amended section 203 of the Federal Power Act.

"The Energy Policy Act of 2005 improved the ability of the Commission to prevent the exercise of generation market power, by granting authority to review acquisition of electric generation facilities. Today, the Commission acts to implement this significant new responsibility," said Commission Chairman Joseph T. Kelliher.

Section 203 of the Federal Power Act requires Commission authorization for mergers and acquisitions and dispositions of jurisdictional assets. Among other things, the Energy Policy Act amended section 203 of the Federal Power Act to:

- increase the value threshold 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 transactions;
- 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 associate 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.

The new provisions will take effect February 8, 2006. Under the existing section 203, the Commission reviews utility mergers to ensure they are "consistent with the public interest." In 1996, the Commission updated and clarified its merger review policy in order to provide greater certainty and means to expedite merger reviews. The Merger Policy Statement (RM96-6) established three factors that the Commission considers when

analyzing section 203 transactions: (1) the effect on competition; (2) the effect on rates; and (3) the effect on regulation.

As a result of the changes to section 203, the Commission is seeking comment on the proposed definitions of “value.” The Commission proposes that “value,” as applied to transmission facilities and existing generation facilities, be defined as the market value of such facilities for transactions between non-affiliates. Regarding wholesale contracts, the Commission proposes that “value” would be based on total expected contract revenues over the remaining life of the contract. “Value” for securities would be defined as the market price at the time the security is acquired.

The Commission seeks comment on its proposed definition of “existing generation facility” as a facility that is operational at the time the transaction is consummated. The proposal also seeks comment on cross-subsidization issues.

“In light of the Congress’ clear directive in EPAct 2005 that the Commission make findings regarding cross-subsidization and the pledge or encumbrance of utility assets in the context of a section 203 application, we seek comment . . . on what additional safeguards or conditions may need to be placed on section 203 transactions,” the rulemaking proposal says. “[T]he Commission solicits comments on the adequacy of its present policies preventing affiliate abuse and cross-subsidization, and whether conditions such as those imposed by state commissions may need to be placed on section 203 transactions.”

Further, the Commission proposes to provide for the expeditious consideration of completed section 203 applications that are not contested, are not mergers and are consistent with Commission precedent.

The Commission intends to issue a final rule by February 8, 2006, the date on which the amended section 203 provisions take effect.

Comments on the proposed rule are due 30 days after the Notice of Proposed Rulemaking, *Transactions Subject to FPA Section 203*, is published in the Federal Register (available at [www.gpoaccess.gov](http://www.gpoaccess.gov)).