FEDERAL ENERGY REGULATORY COMMISSION

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NEWS RELEASE

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ER05-17-001

COMMISSION ADOPTS POLICY STATEMENT ON INCOME TAX ALLOWANCES FOR REGULATED ENTITIES

The Federal Energy Regulatory Commission today adopted a policy to permit cost-of-service rates to reflect actual or potential income tax liability for all public utility assets, regardless of the form of ownership.

The policy statement stems from public comments received in response to the Commission's Request for Comments issued in December 2004 in Docket No. PL05-5-000. The Commission requested comments as the result of an opinion issued by the U.S. Court of Appeals for the District of Columbia Circuit in *BP West Coast Products, LLC v. FERC*. That opinion remanded the Commission's decisions on tax allowance treatment in an oil pipeline rate proceeding involving SFPP, L.P.

The Request for Comments asked whether the court's ruling applied only to the specifics of SFPP's case or extended to other capital structures involving partnerships and other forms of ownerships.

In the policy statement, the Commission concluded the court's opinion has broader implications for other proceedings and FERC's other regulated entities.

Under the policy, all entities or individuals owning public utility assets would be permitted an income tax allowance on the income from those assets, provided that they have an actual or potential income tax liability on that public utility income. Thus, a taxpaying corporation, partnership, limited liability corporation, or other pass-through entity would be permitted an income tax allowance on the income imputed to the corporation, or to the partners or the members of pass-through entities, provided that the corporation or the partners or the members have an actual or potential income tax liability on that income.

Any pass-through entity seeking an income tax allowance in a specific rate proceeding should establish that its partners or members have an actual or potential income tax obligation on the entity's public utility income. If any of the partners or members does not have such an actual or potential income tax obligation, the amount of any income tax allowance will be reduced accordingly to reflect the weighted income tax liability of the entity's partners or members.

In a separate ruling, the Commission denied two rehearing requests of a December 2004 order that accepted and suspended a transmission revenue requirement and proposed tariff filed by Trans-Elect NTD Path 15, LLC, subject to the outcome of the policy statement proceeding in Docket No. PL05-5-000. The Commission permitted Trans-Elect to retain its income tax allowance if it can demonstrate in a compliance filing required by the order that it meets the standard for an allowance set out in the policy statement.