

in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of QLT, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of QLT's issuances of securities or assumptions of liability.

Copies of the full text of the Commission's Order are available from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Commission's Web site at <http://www.ferc.gov>, using the eLibrary link. Enter the docket number excluding the last three digits in the docket number filed to access the document. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

**Magalie R. Salas,**  
Secretary.

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. PL05-5-000]

#### Inquiry Regarding Income Tax Allowances; Request for Comments

December 2, 2004.

1. On July 20, 2004, the Court of Appeals for the District of Columbia Circuit issued an opinion in *BP West Coast Producers, LLC v. FERC*.<sup>1</sup> In reviewing a series of orders involving SFPP, L.P.,<sup>2</sup> the court held, among other things, that the Commission had not adequately justified its policy of providing an oil pipeline limited partnership with an income tax allowance equal to the proportion of its limited partnership interests owned by corporate partners. In that case, SFPP,

Inc., the corporate partner owned some 42.7 percent of SFPP, L.P.'s limited partnership interests. Thus, under the Commission's ruling in the Opinion No. 435 orders, SFPP, L.P. was permitted an income tax allowance for 42.7 percent of the net operating (pre-tax) income expected from operations. Pursuant to the so-called Lakehead income tax allowance doctrine,<sup>3</sup> SFPP, L.P. was denied an income tax allowance equal to the 57.3 percent of its limited partnership interests that were held by non-corporate partners. The rationales for this doctrine the court rejected include: (1) The double taxation of corporate earnings, (2) the equalization of returns between different types of publicly held interests,<sup>4</sup> and (3) encouraging capital formation and investment.

2. The Commission is seeking comments on whether the court's ruling applies only to the specific facts of the SFPP, L.P. proceeding,<sup>5</sup> or also extends to other capital structures involving partnership and other forms of ownerships. For example, should the court's reasoning apply to partnerships in which: (1) All the partnership interests are owned by investors without intermediary levels of ownership; (2) the only intermediary ownership is a general partnership; (3) all the partnership interests are owned by corporations; and (4) the corporate ownership of the partnership interests is minimal, such as a 1 percent general partnership interest of a master limited partnership? If the court's decision precludes an income tax allowance for a partnership or other ownership interests under any of these situations, will this result in insufficient incentives for investment in energy infrastructure? Or will generally the same amount of investment occur through other ownership arrangements? Are there other methods of providing an opportunity to earn an adequate return that are not dependent on the tax implications of a particular capital structure?

3. The Commission invites interested persons to submit comments on the issues and specific questions identified in this notice. Comments are due by December 22, 2004. Comments must refer to Docket No. PL05-5-000.

<sup>1</sup> *BP West Coast Producers, LLC v. FERC*, 374 F.3d 1263 (BP West Coast), *reh'g denied*, 2004 U.S. App. LEXIS 20976-98 (2004).

<sup>2</sup> *Opinion No. 435* (86 FERC ¶ 61,022 (1999)), *Opinion No. 435-A* (91 FERC ¶ 61,135 (2000)), *Opinion No. 435-B* (96 FERC ¶ 61,281 (2000)), and an *Order on Clarification and Rehearing* (97 FERC ¶ 61,138 (2001)) (collectively the Opinion No. 435 orders.)

<sup>3</sup> *Lakehead Pipe Line Company, L.P.*, 71 FERC ¶ 61,388 (1995), *reh'g denied*, 75 FERC ¶ 61,181 (1998) (*Lakehead*).

<sup>4</sup> These were the stock of the corporate partner (which involves two layers of taxation of SFPP, L.P. earnings) and the limited partnership interests (which involve only one).

<sup>5</sup> Now pending before the Commission on remand and rehearing in Docket Nos. OR92-8-000, *et al.*, and OR96-2-000, *et al.*, respectively.

By direction of the Commission.

**Magalie R. Salas,**  
Secretary.

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. EG05-19-000, *et al.*]

#### Texas Genco, L.P., *et al.*; Electric Rate and Corporate Filings

November 3, 2004.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

##### 1. Texas Genco, LP

[Docket No. EG05-19-000]

Take notice that on October 28, 2004, Texas Genco, LP (Genco) tendered for filing an application for a determination of exempt wholesale generator status, pursuant to section 32(a)(1) of the Public Utility Holding Company Act of 1935, as amended (PUHCA), 15 U.S.C. 79z-5a(a)(1) (2000), and subchapter T, part 365 of the regulations of the Federal Energy Regulatory Commission 18 CFR part 365 (2004).

Genco states that it is a limited partnership organized and existing under the laws of the State of Texas that will continue to own an interest in an electric generating facility with an aggregate maximum capacity of approximately 2,500 megawatts located in Texas. Genco states that it is and will continue to be engaged directly, or indirectly through one or more affiliates as defined in section 2(a)(11)(B) of PUHCA, and exclusively in the business of owning eligible facilities, and selling electric energy at wholesale.

*Comment Date:* 5 p.m. eastern time on November 18, 2004.

##### 2. TransCanada Hydro Northeast Inc.

[Docket No. EG05-20-000]

On October 29, 2004, TransCanada Hydro Northeast Inc. (TC Hydro NE), a Delaware corporation with its principal place of business in Westborough, Massachusetts, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

TC Hydro NE states it will operate hydroelectric assets with a total generating capacity of approximately 560 MW located in Massachusetts, New