

(2) Is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

(3) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this AD. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

#### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

#### Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

#### PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

##### § 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

**2005-14-05 Boeing:** Amendment 39-14182. Docket No. FAA-2004-19764; Directorate Identifier 2004-NM-02-AD.

#### Effective Date

(a) This AD becomes effective August 10, 2005.

#### Affected ADs

(b) None.

#### Applicability

(c) This AD applies to Boeing Model 777-200 and -300 series airplanes, certificated in any category; as listed in Boeing Special Attention Service Bulletin 777-57-0046, dated September 25, 2003.

#### Unsafe Condition

(d) This AD was prompted by a report that an anti-static coating was not applied correctly on doors located within a flammable fluid leakage zone. We are issuing this AD to prevent an uncontrollable fire in the leading edge of the wing, which could damage critical wing structures and cause a fuel tank explosion.

#### Compliance

(e) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

#### Modification and Resistance Test

(f) Within 18 months after the effective date of this AD, apply an anti-static

conductive coating to the fuel access and thermal anti-icing blowout doors at the location of the bonding fasteners, and perform a resistance test on the new coating, in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 777-57-0046, dated September 25, 2003. Where Note (b) of Figures 1 and 2 of the Accomplishment Instructions of the service bulletin specifies to maintain the thickness of the conductive coating between 0.0004 and 0.0008 inch, this AD requires applying a uniform coating to avoid runs, sags, or wrinkles, and to ensure the anti-static coating touches the anti-static coating exposed during surface preparation.

(1) If the resistance measured between the door surface and a fastener located within the doors' surrounding support structure is within the limits specified in the service bulletin, no further action is required by this paragraph.

(2) If the resistance measured between the door surface and a fastener located within the doors' surrounding support structure is outside the limits specified in the service bulletin, before further flight, repeat the actions as required by paragraph (f) of this AD up to five times, as applicable. If the results of the fifth test exceed the limits specified in the service bulletin, before further flight, contact the Manager, Seattle Aircraft Certification Office (ACO), FAA, for disposition of repairs.

#### Alternative Methods of Compliance (AMOCs)

(g) The Manager, Seattle ACO, FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

#### Material Incorporated by Reference

(h) You must use Boeing Special Attention Service Bulletin 777-57-0046, dated September 25, 2003, to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approves the incorporation by reference of this document in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. To get copies of the service information, contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124-2207. To view the AD docket, go to the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., room PL-401, Nassif Building, Washington, DC. To review copies of the service information, go to the National Archives and Records Administration (NARA). For information on the availability of this material at the NARA, call (202) 741-6030, or go to [http://www.archives.gov/federal\\_register/code\\_of\\_federal\\_regulations/ibr\\_locations.html](http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html).

Issued in Renton, Washington, on June 24, 2005.

**Michael J. Kaszycki,**  
Acting Manager, Transport Airplane  
Directorate, Aircraft Certification Service.  
[FR Doc. 05-13224 Filed 7-5-05; 8:45 am]

**BILLING CODE 4910-13-P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

#### 18 CFR Part 35

[Docket No. PL05-11-000]

### Policy Statement Regarding Evaluation of Independent Ownership and Operation of Transmission

Issued June 27, 2005.

**AGENCY:** Federal Energy Regulatory Commission, DOE.

**ACTION:** Policy statement.

**SUMMARY:** The Federal Energy Regulatory Commission (Commission) is adopting this Policy Statement to clarify the ownership structures that could qualify for passive ownership in regards to independent ownership and operation.

**DATES:** *Effective Date:* The Policy Statement will become effective immediately.

#### FOR FURTHER INFORMATION CONTACT:

Sebastian Tiger (Technical Information), Office of Market Oversight and Investigations, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502-6079.

Andre Goodson (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502-8560.

#### SUPPLEMENTARY INFORMATION:

Before Commissioners: Pat Wood, III, Chairman; Nora Mead Brownell, Joseph T. Kelliher, and Suede G. Kelly.

#### I. Introduction

1. The Commission is issuing this Policy Statement to provide clarity and remove barriers to the formation of independent transmission companies. Specifically, the Policy Statement clarifies that the Commission would be willing to accept proposals from independent transmission companies (ITCs) which have market participants as passive minority equity owners. On various occasions, the Commission has allowed innovative rate treatments both to facilitate the creation of ITCs and to stimulate investment in transmission infrastructure by ITCs.<sup>1</sup>

<sup>1</sup> These incentive proposals include: enhanced returns on equity, within the zone of reasonableness; hypothetical or imputed capital structures; recovery of deferred income tax liabilities; cost deferrals; Construction Work in Progress (CWIP) in rate base; accelerated book depreciation; and expensing of pre-certification

Continued

2. The Policy Statement describes a non-exclusive list of the factors which the Commission will consider when evaluating rate proposals by ITCs to ensure that passive ownership does not affect the independent operation, planning and construction of their transmission systems. The Commission will evaluate the merits of such proposals on an individual basis.

3. The Commission recently demonstrated additional flexibility in a case involving the initial public offering of shares in an ITC that allows for the potential that market participants could purchase a small percentage of its shares in the public equity markets. In *ITC Holdings II*,<sup>2</sup> the order authorizing the disposition of jurisdictional facilities and confirming the independence of ITC Holdings, the Commission confirmed that International Transmission would continue to be independent of market participants and remain eligible for innovative rate treatment after a change in ownership is effected through an initial public offering of its shares. International Transmission adopted certain safeguards to ensure its continued independence, including limits on potential ownership by market participants as well as a corporate governance structure that assures that market participants that do purchase limited stakes in the company would not be able to influence its independent operation. Several commenters at an April 22, 2005 technical conference at the Commission noted that allowing market participant sellers to retain a passive ownership stake in stand-alone transmission companies (with appropriate safeguards to ensure their independence) could facilitate transactions creating such stand-alone transmission companies as ITCs.<sup>3</sup>

costs associated with new transmission. In addition, the Commission is willing to consider further incentives for independent transmission companies, among which are 100 percent recovery of CWIP, 100 percent recovery of abandoned plant costs, and accelerated depreciation. See *Michigan Electric Transmission Co., LLC*, 105 FERC ¶ 61,214 (2003) (METC); *ITC Holdings Corp.*, 102 FERC ¶ 61,182, reh'g denied, 104 FERC ¶ 61,033 (2003); *American Transmission Co. and Midwest Independent Transmission Operator, Inc.*, 105 FERC ¶ 61,388 (2003), order dismissing reh'g as moot, providing clarification and approving uncontested settlement, 107 FERC ¶ 61,117 (2004) (ATC).

<sup>2</sup> *ITC Holdings Corp. and International Transmission Co.*, 111 FERC ¶ 61,149 (2005) (ITC Holdings II).

<sup>3</sup> E.g., *Transmission Independence and Investment*, Docket No. AD05-5-000, Tr. 190-91 (Paul McCoy, Trans-Elect, Inc. (Trans-Elect)); Tr. 195-97 (Dale Landgren, American Transmission Company); Docket No. AD05-5-000, Supplemental Comments of Trans-Elect at 3-4; Supplemental Comments of National Grid USA at 18-19.

## II. Factors the Commission Will Evaluate in Determining if Market Participants Are Passive Equity Owners in Proposed Independent Transmission Companies

4. In this Policy Statement, the Commission is identifying a non-exclusive list of the relevant considerations that it intends to take into account in evaluating if market participants are truly passive owners in any application for incentive rate treatment filed by ITCs or stand-alone transmission companies under section 205 of the Federal Power Act (FPA).<sup>4</sup> These factors include:

- The percentage ownership held by market participants;
- Composition of the board of directors and the responsibilities and rights of the board;
- The corporate governance structure of the applicant;
- The 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.

5. In evaluating any proposed passive ownership structure in an ITC application, the Commission will focus on the ability of the applicant to operate free of market participant control or influence. When determining if an applicant could qualify as an ITC, the Commission will consider proposals involving passive minority participation of up to 49 percent ownership by a single market participant. In addition, as in *ATC*, the Commission would be willing to consider applications in which multiple market participants owned greater than 49 percent of the applicant's equity. The Commission is concerned about the level of voting control (if any) held by market participants. In *ITC Holdings II*, for example, the applicants committed to prohibit a market participant that does acquire five percent or more of any class of ITC Holdings' stock from voting, giving consent in respect of, or directing or controlling five percent or more of ITC Holdings stock, in order to limit direct or indirect voting control over the applicant. The Commission will

continue to use this standard in evaluating ITC applicants with passive ownership. In determining the applicant's level of independence from market participant control or influence to determine if it should qualify as an ITC, the Commission will also consider the applicant's governance structure and any rights that could allow market participant owners to directly or indirectly affect the applicant's operation, planning or investment decisions.

6. Evaluation of the ITC applicant's board of directors will weigh the representation (if any) by market participants, and consider factors such as the composition and responsibilities of the board committees (e.g., compensation, audit and investment committees) and the extent and nature of corporate actions for which company management must obtain prior board approval. We appreciate the need for market participant representation to consider significant business decisions such as a sale of or merger of the company. However, the Commission will review the need (if present) for management to seek board approval in the normal course of operations for capital investments above a certain size. The degree to which market participant board members have granular knowledge of or ability to influence individual investment decisions would influence the appropriateness of allowing incentive rate treatments.

7. The Commission will consider the potential role that equity holders that are market participants play in financing ongoing investments by the independent transmission company, to gauge if there is a risk that those equity holders could frustrate investment in transmission infrastructure either by disapproving a plan or by denying capital to projects in the plan.

8. In evaluating the independence of applicants, the Commission will review executive compensation and deferred compensation plans to understand if those plans involve financial interests in market participants that would be inconsistent with independent operation, planning and expansion of the applicant's transmission system.<sup>5</sup>

<sup>5</sup> In discussing independence, the Commission has previously highlighted the importance of separation from financial interests in market participants. See *Regional Transmission Organizations*, Order No. 2000, 65 FR 809 (Jan. 6, 2000), FERC Statutes & Regulations, Regulations Preambles July 1996-December 2000 ¶ 31,089 (1999), order on reh'g, Order No. 2000-A, 65 FR 12-088 (Mar. 8, 2000), FERC Statutes & Regulations, Regulations Preambles July 1996-December 2000 ¶ 31,092 (2000), aff'd sub nom. *Public Utility District. No. 1 of Snohomish County, Washington v. FERC*,

<sup>4</sup> 16 U.S.C. 824d (2000).

9. In evaluating the applicability of incentive rate treatment for structures allowing equity interests by market participants, the Commission will not limit its consideration to passive participation by integrated sellers who wish to retain a financial stake. The Commission will also consider ownership structures that facilitate participation by municipalities, cooperatives, and other transmission dependent users of the grid to the degree that corporate governance structures provide for independent operation, planning and investment. The Commission has approved the creation of a stand-alone transmission company, and allowed innovative rate treatments, for American Transmission Company (ATC), which is jointly-owned by investor-owned utilities which contributed their systems, and by public power customers which contributed cash in return for equity stakes in ATC with limited voting and governance rights.<sup>6</sup> The Commission remains comfortable that the governance structure of ATC allows some degree of participation by market participants, but ensures the operational and managerial independence of the stand-alone transmission company.

#### Document Availability

10. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this

document via the Internet through FERC's Home page (<http://www.ferc.gov>) and in FERC's Public Reference Room during normal business hours (8:30 a.m. to 5 p.m. E.T.) at 888 First Street, NE., Room 2A, Washington DC 20426.

11. From FERC's Home page on the Internet, this information is available in the eLibrary. The full text of this document is available on elibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

12. User assistance is available for eLibrary and the FERC's website during normal business hours from our Help line, toll-free at (866) 208-3676 or for TTY, contact (202) 502-8659. The Public Reference Room may be reached at (202) 502-8371, or by e-mail at, [public.referenceroom@ferc.gov](mailto:public.referenceroom@ferc.gov).

#### Effective Date

13. This Policy Statement is effective immediately.

By the Commission.

**Magalie R. Salas,**  
*Secretary.*

[FR Doc. 05-13200 Filed 7-5-05; 8:45 am]

**BILLING CODE 6717-01-P**

## DEPARTMENT OF THE INTERIOR

### National Park Service

#### 36 CFR Part 7

#### RIN 1024-AC94

#### Fire Island National Seashore, Personal Watercraft Use

**AGENCY:** National Park Service, Interior.

**ACTION:** Final rule.

**SUMMARY:** This rule designates areas where personal watercraft (PWC) may be used in Fire Island National Seashore, New York. This rule implements the provisions of the National Park Service (NPS) general regulations authorizing parks to allow the use of PWC by promulgating a special regulation. The *NPS Management Policies 2001* require individual parks to determine whether PWC use is appropriate for a specific park area based on an evaluation of that area's enabling legislation, resources and values, other visitor uses, and overall management objectives.

**EFFECTIVE DATE:** This rule is effective July 6, 2005.

**ADDRESSES:** Mail inquiries to Superintendent, Fire Island National

Seashore, 120 Laurel Street, Patchogue, NY 11772. E-mail: [michael\\_reynolds@nps.gov](mailto:michael_reynolds@nps.gov). (631) 289 4810 x225.

**FOR FURTHER INFORMATION CONTACT:** Jerry Case, Regulations Program Manager, National Park Service, 1849 C Street, NW., Room 7241, Washington, DC 20240. Phone: (202) 208-4206. E-mail: [Jerry\\_Case@nps.gov](mailto:Jerry_Case@nps.gov).

#### SUPPLEMENTARY INFORMATION:

##### Background

##### *Personal Watercraft Regulation*

On March 21, 2000, the National Park Service published a regulation on the management of PWC use within all units of the national park system (65 FR 15077). This regulation prohibits PWC use in all national park units unless the NPS determines that this type of waterbased recreational activity is appropriate for the specific park unit based on the legislation establishing that park, the park's resources and values, other visitor uses of the area, and overall management objectives. The regulation banned PWC use in all park units effective April 20, 2000, except 21 parks, lakeshores, seashores, and recreation areas. The regulation established a 2-year grace period following the final rule publication to provide these 21 park units time to consider whether PWC use should be allowed.

##### *Description of Fire Island National Seashore*

Fire Island National Seashore is a vital part of America's national system of parks, monuments, battlefields, recreation areas, and other natural and cultural resources. Located on a 32-mile long barrier island off the south shore of Long Island, New York, Fire Island National Seashore encompasses approximately 19,500 acres—many of which are bay and ocean waters—available to more than 4 million visitors each year. The National Seashore is interspersed with 17 local private communities, the William Floyd Estate, a maritime forest known as the Sunken Forest, and the Otis Pike Wilderness Area—the only Federal wilderness area in New York State. Together, these components comprise a seashore ecosystem of wildlife, private communities, and outdoor recreational activities, such as the use of personal watercraft (PWC).

The Fire Island National Seashore extends from the easterly boundary of the main unit of Robert Moses State Park eastward to Moriches Inlet and includes Fire Island proper and the surrounding islands and marshlands in

272 F.3d 607 (D.C. Cir. 2001), where the Commission stated:

We reaffirm the NOPR proposal that the RTO, its employees and any non-stakeholder directors must not have any financial interests in market participants. As noted in the NOPR, our focus will be on current financial interests. Since this principle raises a number of specific issues, especially with respect to pension rights and benefits, we will continue our current policy of implementing this principle on a case-by-case basis. Order No. 2000 at 31,063.

<sup>6</sup> See American Transmission Co. and Midwest Independent Transmission Operator, Inc., 105 FERC ¶ 61,388 at P 24-31 (2003) (allowing ATC to apply innovative rate treatment, but only to projects that are accepted by Midwest ISO's Transmission Expansion Plan, and providing that ATC's incentive rates could remain effective only so long as ATC remains a member of Midwest ISO), order dismissing reh'g as moot, providing clarification and approving uncontested settlement, 107 FERC ¶ 61,117 (2004) (ATC), which is also discussed further in the Appendix to this Policy Statement; see also Docket No. AD05-5-000, Tr. 195-96 (Dale Landgren, ATC) ("Our form of governance is a variation on passive ownership in that the larger owners each have a seat on our board along with independent members. ATC demonstrates that this form of governance does not inhibit us from operating independently from market participants, which is after all the real objective."). Further, each ATC board member has one vote per owner, regardless of their size. Docket No. AD05-5-000, Tr. 196 (Dale Landgren, ATC).