



FEDERAL ENERGY REGULATORY COMMISSION

NEWS

April 17, 2008

Docket No. RM04-7-001

News Media Contact

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FERC Affirms, Clarifies New Market-Based Rate Policy

The Federal Energy Regulatory Commission (FERC) today largely affirmed its findings in the market-based rate final rule it enacted last year to strengthen competitive markets and protect consumers by reinforcing regulations for just and reasonable wholesale electric power sales.

The final rule, Order No. 697, was issued in June 2007 and clarified in December 2007. Today's order, which takes effect 30 days after publication in the *Federal Register*, affirms several basic determinations made in the rule, including the horizontal and vertical market power analysis, the use of a balancing authority area or the regional transmission organization/independent system operator market as the default relevant geographic market, a regional approach for triennial market power studies that separates the country into six geographic regions, and codification of restrictions on affiliate abuse in the regulations.

Also in today's order, FERC clarifies some important points concerning the horizontal market power analysis, noting that while it affirms its continued use of historical data and a "snapshot in time" approach, it also will consider case-specific sensitivity studies that present clear, compelling evidence that certain changes in a market should be considered as part of the market power analysis.

Finally, to encourage long-term contracts and at the same time protect customers against market power, today's order also notes that the Commission will allow mitigated sellers to demonstrate on a case-by-case basis that they do not have market power with respect to long-term contracts.

"The Commission takes seriously its fundamental responsibilities to strengthen wholesale power markets and protect consumers from exploitation in those markets," Chairman Joseph T. Kelliher said. "Order No. 697 provides the fundamental market reforms that will do just that."

FERC stressed that under this new policy all mitigated sellers have the burden of making case-specific arguments for being able to make long-term sales at market-based rates. An applicant must file with FERC under section 205 of the Federal Power Act a case-specific request for contract-specific market-based rates by demonstrating that it does not have market power with respect to the specific long-term contract being filed.

Elsewhere in today's order, FERC granted rehearing on the adoption of a two-way information sharing restriction by finding, among other things, that a one-way information sharing restriction adequately protects captive customers. FERC also provided clarifications regarding other aspects of Order No. 697, including addressing questions that have arisen concerning the implementation process adopted in Order No. 697.

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R-08-31