



**Federal Energy Regulatory Commission**  
**December 21, 2006**  
**Open Commission Meeting**  
**Statement of**  
**Chairman Joseph T. Kelliher**

**Item E-1: Promoting Transmission Investment through Pricing Reform (RM06-4-001)**

"Today, the Commission takes final action to implement an important provision in the Energy Policy Act of 2005 relating to transmission investment.

It has taken a long time for us to get to this point. We started nearly four years ago, in January 2003, when the Commission issued its proposed policy statement on transmission pricing. After enactment of the Energy Policy Act we began a new effort, focused on the goal of transmission investment. The former Commission worked collaboratively on the rulemaking, and the final rule was issued in July by unanimous vote.

In the rehearing order, we make changes to the final rule. I think those changes reflect two dynamics. First, the strength of the rehearing requests. They were well reasoned and persuasive, particularly the arguments advanced by the American Public Power Association, National Rural Electric Cooperative Association (APPA/NRECA), and the National Association of Regulatory Utility Commissioners (NARUC). We grant the rehearing request of NARUC in large part and certain portions of the rehearing request of APPA/NRECA. Second, changes in the composition of the Commission itself. The new Commissioners brought a new perspective to our deliberations. Our rehearing order reflects the deliberations of the new Commission. I am pleased that the rehearing order, like the final rule, is approved by a unanimous vote.

The Commission has always had a responsibility, when it sets rates under section 205, to set rates at a level that attracts investment. That was true before enactment of section 219, it remains true after enactment.

When Congress enacted section 219 it was concerned with systemic underinvestment in transmission, and how underinvestment threatened reliability and impaired competitive wholesale power markets. Congress concluded that underinvestment in transmission was a national problem that required a national solution. Congress wanted change, not a continuation of the status quo.

Under the rules of statutory construction, Congress is presumed to understand the law, so Congress knew we had broad discretion under section 205 to set rates. Congress declined to amend section 205 to require us to set higher rates to attract transmission investment. The solution adopted by Congress was section 219, which directed us to conduct a rulemaking to increase transmission investment in order to benefit consumers by ensuring reliability and reducing grid congestion. In effect, Congress directed us to use our broad discretion under section 205 to set rates at a level that spurs increased investment. That is exactly what we did with the final rule and today's rehearing order. By not amending section 205 to require us to set higher rates, Congress trusted in our judgment on how exactly to set incentive rates. In my view, our final rule and rehearing order are fully consistent with Congressional intent.

**Federal Energy Regulatory Commission**  
**December 21, 2006**  
**Chairman Joseph T. Kelliher**  
**RM06-4-001**

Our approach also protects the consumer. Any incentive rates approved by the Commission in the wake of enactment of section 219 remain bounded by the zone of reasonableness. That provides the greatest consumer protection.

We also make some changes on rehearing that strengthen the consumer protections. We grant a number of the rehearing requests filed by NARUC regarding the rebuttable presumption. We clarify that our nexus test requires an applicant to demonstrate that the incentives sought are tailored to address the demonstrable risks and challenges faced by the applicant. This makes it clear an applicant must show a close link between incentives requested and the risks and challenges. We also clarify that we will balance an applicant's total package of requested incentives. If an applicant seeks a higher return to reflect the higher risk of a project, but also seeks recovery of construction work in progress and abandoned plant, which reduce project risk, the return granted may be lower than requested.

In my view, the rehearing order is consistent with Congressional intent and provides ample consumer protections."