



FEDERAL ENERGY REGULATORY COMMISSION

Date April 17, 2008
Docket No. RM04-7-001
Item No. E-1

Commissioner Jon Wellinghoff

**Statement of
Commissioner Jon Wellinghoff
on
Market-Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services
by Public Utilities**

"I first want to thank the Team.

Competition in electricity markets provides many benefits for consumers. However, to preserve these benefits, we need to have a means to assess market power and effectively mitigate it where it exists. For the authority to sell electricity at market-based rates is a privilege, not a right. This Rule maintains the opportunity to achieve that privilege with the appropriate safeguards to ensure continued consumer benefits.

Our Market-Based Rate Program is a key tool in identifying market participants who have the potential to exercise market power to the detriment of consumers. And under our market-based rate regulations we mitigate that potential where it exists, by limiting the entity's ability to sell at market based rates.

In today's order we reaffirm our approach to analyzing the potential for market power and the consumer protections against its exercise.

We also expand our analysis in two ways that I think will assist us in identifying market power and mitigating it. First, we will consider on a case-by- case basis whether evidence of expected future changes should be taken into account in the "snapshot in time" approach that we have traditionally used. The Commission will consider these "sensitivity studies" and will also consider countervailing evidence.

The second expansion is to examine the way we mitigate the potential exercise of market power in long-term contracting by sellers whose sales of electricity are mitigated based on the failure of an indicative screen that is a "snapshot" of short-term market conditions. On a case-by case basis, the Commission will consider a request for a contract-specific market-based rate based on a demonstration by the seller that it does not have market power with respect to the specific long-term contract being filed. The mitigated seller must show that a buyer under a long-tem contract had viable alternatives to purchasing from this seller, including purchasing from third-party suppliers who build new generating capacity or building for itself. The burden is on the seller. We are not providing a "safe harbor" from mitigation for long-term sales. We will carefully examine the evidence presented by the seller, and other interested parties, and we will deny authority to charge a market based rate for a long-term contract when the mitigated seller cannot meet its evidentiary burden.

Thank you."