



**Federal Energy Regulatory Commission**  
**April 5, 2007**  
**Technical Conference AD07-8**  
**Review of Market Monitoring Policies**  
**Statement of**  
**Chairman Joseph T. Kelliher**

"The Commission meets today to review its market monitoring policies, with an emphasis on the role of market monitors in the organized markets. I believe this is an important conference, and it is my hope that we can help further clarify the role of market monitors, both what they can do and what they cannot do.

The concept of market monitoring was first proposed generically in Order No. 2000, which set the framework for establishment of the organized markets. The basic approach towards market monitoring was to "let a thousand flowers bloom". Market monitoring was a new concept, and the Commission recognized that regional transmission organizations (RTOs) and independent system operators (ISOs) may develop along different lines.

Since Order No. 2000, about a dozen flowers have bloomed. There are more than a dozen market monitoring positions in the country, counting both the market monitors in the organized markets and the handful of market monitors that review the operation of individual utility systems in the bilateral markets. There is variety in the manner in which market monitors operate and the roles they perform.

Two years ago, the Commission acted to clarify the role of market monitors by issuing the *Policy Statement on Market Monitoring Units*. We did so because we had developed experience with market monitoring. We also acted because we were more mindful of the legal limits on the role of market monitors. Court decisions in *Electric Power Supply Association* and *U.S. Telecomm* had raised very legitimate questions about the relationship between the Commission and market monitors.

I believe the Policy Statement was an important order that provided more clarity on the role of market monitors. However, the Policy Statement may have provided more clarity on what market monitors cannot do than what they can or should do. In light of the *U.S. Telecomm* decision, I think it is clear that market monitors cannot be enforcers in the traditional sense. The Commission has no express authority to delegate enforcement power to a market monitor or a RTO or ISO for that matter. I think the Commission is now more careful about the limits on delegation than previously. Under some circumstances, a market monitor can help an RTO or ISO administer its tariff, although that role may vary depending on whether the market monitor is internal or external.

Frankly, I would have preferred that the Commission define the role of market monitors by rulemaking rather than policy statement two years ago. That was not the will of the Commission. However, a policy statement does not impose an obligation on the part of RTOs to act to conform their market monitoring policies with our policies. Initially, only PJM filed to conform its policies with our policy statement. Recently, MISO made a filing. Market monitoring policies in a number of regions may be inconsistent with the Commission's 2005 Policy Statement.

There are a number of policy questions before the Commission. One is whether the Commission should initiate a rulemaking to establish the role of market monitors. If so, should we adopt the role defined in the policy statement, or go beyond the policy statement and provide even more guidance?

In any proceeding to define the role of market monitors, I think we should ask two

**Federal Energy Regulatory Commission**  
**April 5, 2007**  
**Chairman Joseph T. Kelliher**  
**AD07-8-000**

fundamental questions. First, what *should* the role of market monitors be? Second, what *can* the role of market monitors be? In a perfect world, the answer to both these questions would be the same. But they may not, given the legal limits on the relationship between the Commission and market monitors. If these questions elicit different answers, then we must respect those legal limits.

As someone who likes history, I am tempted to assume that there is nothing new under the sun. However, it seems that market monitoring is something new. I have searched for a regulatory model for market monitors and been unable to find a satisfactory model. The organized markets have some attributes of securities and commodities exchanges, but the exchanges are self regulating organizations that have the legal authority to set and enforce rules. Neither RTOs nor market monitors have that authority. Analogies have been drawn to inspectors general at federal agencies, but that analogy also fails because inspectors general, unlike market monitors, are government officials.

If we were to reach the conclusion that it is necessary that market monitors have a robust enforcement role, it is possible the only way to reconcile that conclusion with the legal limits on our relationship with market monitors is if market monitoring becomes a Commission function, performed by Commission staff. That may be the only way to avoid an improper delegation of enforcement authority. Market monitoring performed by the Commission would be subject to due process rules governing our decisionmaking.

To be clear, I do not start from the premise that it is necessary that market monitors have a robust enforcement role. I believe their greatest contribution can be in improving the performance of the organized markets: identifying possible market manipulation and exercise of market power, making referrals to the Commission for enforcement action, analyzing the operation of RTO markets, and identifying possible market rule changes.

Earlier this year, we initiated an effort to improve the competitiveness of wholesale power markets, both the bilateral markets and the organized markets. I believe the technical conference today is part of this effort, since to the extent that we strengthen our market monitoring policies we improve the competitiveness of the organized markets.

I look forward to hearing the views of my colleagues as well as the panelists."