



**Federal Energy Regulatory Commission**  
**April 19, 2007**  
**Open Commission Meeting**  
**Statement of**  
**Commissioner Philip D. Moeller**

**Item E-6: Californians for Renewable Energy, Inc. v. California Public Utilities Commission, et al. (Docket Nos. EL07-37-000 and EL07-40-000)**

"I agree with the decision to dismiss CARE's complaints for its failure to state an actionable claim upon which relief can be granted. After reviewing the pleadings, I could not find any evidence that would satisfy CARE's burden of proof to demonstrate that these long-term market-based rate contracts that were entered into earlier this year are unjust or unreasonable.

I am pleased that this order makes clear that the recent the Ninth Circuit cases have not rejected our market-based rate program. These court decisions addressed a unique set of facts and a market-based rate program that has undergone substantial improvements over the past few years. Since 2001, however, the Commission has undertaken numerous measures to address market structure flaws and potential market manipulation in California markets and markets nationwide to ensure that there are appropriate market safeguards in place to prevent a repeat of the Western 2000-2001 energy crisis. The Commission has strengthened its market-based rate program, its market oversight and enforcement capabilities, and its ability to impose meaningful remedies. It has also accepted California ISO's market redesign proposal, in fact we are acting on the rehearing order on this agenda, as a measure to improve the California energy markets.

Further, I would like to emphasize that to ensure reliable and adequate service for consumers, buyers and sellers alike must be able to rely on stable long-term contracts. Protecting parties' contractual expectations encourages sellers and buyers to contract for rate certainty through fixed-rate contracts and make investments to support such long-term contracts.

Finally, our Solicitor, Bob Solomon, recently argued a case before the D.C. Circuit court on the validity of FERC's market-based rate program. I am hoping that the court will also uphold the Commission's market-based rate program, similar to the *Lockyer* court, that conducting an ex ante finding of the absence of market power, coupled with ongoing reporting requirements, satisfies the notice and filing requirements of section 205 of the Federal Power Act."