



**Federal Energy Regulatory Commission
June 21, 2007
Open Commission Meeting
Statement of
Commissioner Philip D. Moeller**

**Item E-1: Market-Based Rates for Wholesale Sales of Electric Energy,
Capacity and Ancillary Services by Public Utilities (Docket No. RM04-7-000)**

"The Commission has been granting market-based rate authority to applicants for 19 years now (1988-2007). Over the years, the Commission's policy has evolved based on its experience on a case-by-case basis. As I have mentioned before, competition is the law of the land for the energy industry as mandated by the Congress. Past Commissions and well as this Commission have implemented Congress' mandate in various ways. Our decision granting market-based rate authority to sellers-- allowing them to participate in energy, capacity and ancillary services markets-- enhances liquidity, thus improving the state of competitive markets. I support refining and codifying effective standards for market-based rates to help customers by ensuring that market-based rates are just and reasonable and protect customers from the exercise of market power. This rule also provides greater certainty to sellers seeking market-based rate authority.

The Western Energy Crisis of 2000-2001 provided an opportunity for some entities to abuse their market-based rate authority and various other entities to attack the Commission's implementation of its market-based rate authority program. We have come a long way. Now, the market-based rate program provides a rigorous up-front analysis of whether market-based rates should be granted and reinforces the Commission's ongoing oversight of market-based rates. Specifically, a grant of market-based rate authority imposes requirements upon a seller, including: a commitment to abide by affiliate restrictions that govern transactions and conduct between power sales affiliates where one or more of those affiliates has captive customers; a requirement to file post-transaction electric quarterly reports or "EQRs" containing specific information about contracts and transactions; a requirement to file any change of status; and a requirement for all large sellers to file triennial updates. If a seller is found to have market power, the market power can be addressed by mitigation or revocation of market-based rates. A violation of an seller's market-based rate tariff exposes the seller to revocation of market-based rate authority, penalties and/or disgorgement of profits. This final rule provides the consistent, clear and enforceable regulations that are needed for the market-based rate program.

Finally, I appreciate the difficult decisions and balancing that has been achieved in this rule, but as discussed in my partial dissent, any public utility that qualified and received a "1996 exemption" should retain its exemption from filing a generation market power analysis. Such a limited grandfathering provision is warranted to avoid modifying the understanding that certain generators relied upon to finance and construct new generation. I do not believe a limited grandfathering provision would have raised any new generation market power concerns. Such a provision would have fostered my goals of providing regulatory certainty, and promoting infrastructure investment and independent power production."