



Federal Energy Regulatory Commission
April 19, 2007
Open Commission Meeting
Talking Points of
Commissioner Suedeen G. Kelly

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

- CARE alleges in the complaints before us today that several recent Ninth Circuit Court of Appeals decisions, *Lockyer v. FERC*, *Pub. Util. Dist. No. 1 v. FERC*, and *Pub. Util. Com'n of the State of Cal. v. FERC*, have invalidated the Commission's market-based rate program. I think this order makes clear that is not the case. I believe that the Commission's market-based rate program is effective and, as detailed in the order, the Commission has taken a number of steps to strengthen its market-based rate program, its market oversight and enforcement capability, and its ability to impose remedies since the Western energy crisis in 2000 and 2001.
- In addition, the Commission initiated a rulemaking last year in Docket No. RM04-7, which proposes to amend the Commission's regulations governing market-based rate authorizations to require: a stringent up-front analysis of whether market-based rates should be granted, the inclusion of prophylactic conditions and ongoing filing requirements in all market-based rate authorizations, and the reinforcement of the Commission's ongoing oversight of market-based rates.
- Therefore, I agree with this order's dismissal of CARE's complaints.