



**Federal Energy Regulatory Commission
June 21, 2007
Open Commission Meeting
Statement of
Commissioner Suedeen G Kelly**

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

"With regard to E-1, this Market-Based Rate Final Rule addresses many complex issues.

As with other recent major rulemakings, like the OATT Reform Rule in Order 890, it has often been difficult to decide many of the issues because there are, in fact, reasonable concerns on both sides of the issue.

Nevertheless, I feel that this rule has struck an appropriate balance that we can all be proud of.

The package achieved here is just and reasonable to everyone, balancing the customer's need for protection against market power with the sellers' need for a fair review and regulatory certainty.

For example, some groups argued that cost-based mitigation is not enough if the mitigated seller can just shift all of her sales to a neighboring region where she has market-based rate authority.

These groups argued that all such mitigated sellers should be required to offer cost-based power in the mitigated market or else customers in that market might not have access to sufficient supplies to serve their own needs.

The rule essentially finds that such concerns can not be addressed generically because they are so dependent on specific circumstances such as the existence of available transmission capacity to reach alternate suppliers.

Accordingly, the rule declines to put such a must-offer requirement in place on a generic basis.

However, nothing precludes parties from making a case-by-case showing of the need for a must-offer requirement.

In my own preliminary thinking on the subject, I suspect that such a case-by-case showing would have to demonstrate that the mitigated seller is the only entity physically able to meet all of the buyer's needs.

If other entities are physically able to meet those needs, then I'm not sure a must-offer requirement would be appropriate.

However, if only the mitigated seller can meet the customer's needs, then applying a cost-based must-offer requirement would appear to be nothing more than a necessary return to the old regulatory compact of guaranteed cost recovery plus just and reasonable return, in exchange for a service obligation where no one else can provide the service.

But again, I think any such argument would be highly dependent on the particular circumstances and, thus, would require a case-by-case determination to achieve an appropriate outcome and so I support the Rule.

Federal Energy Regulatory Commission
June 21, 2007
Commissioner Suedeen G. Kelly
Item E-1

Regarding E-20, I would just like to stress that we all recognize the positive effects on liquidity and the smooth operation of the bilateral markets, not just in the West but elsewhere as well, that the WSPP Agreement has brought.

The fact remains, however, that the cost-based ceilings in the WSPP Agreement are based on 18 year old data, and are based on the costs of only 18 companies that were originally deemed to be representative of the original 40 WSPP members.

Well, costs change over 18 years and there are now over 300 members of the agreement instead of only 40, and unlike the original members, many of the new members don't even operate in the Western Interconnection.

It's time to look at whether the rate needs updating.

However, my hope is that this necessary update will not cause any major disruptions to those who have come to rely on the WSPP Agreement, including relying on its "representative" cost-based rate option.

Accordingly, I am pleased to vote for both E-1 and E-20.

Thank you"