

**Federal Energy Regulatory Commission
February 16, 2006 Commission Meeting
Statement of
Chairman Joseph T. Kelliher**

Market Behavioral Rules (E-4, G-1, M-2, and M-3)

“Last month, the Commission issued final rules proscribing manipulation in wholesale power and natural gas markets. We acted quickly to implement the new anti-manipulation authority granted us by Congress in the Energy Policy Act of 2005.

In light of our adoption of the anti-manipulation final rule, today, we issue a package of orders concerning the Market Behavior Rules that make conforming changes to wholesale power market-based rate tariffs and authorizations, and to pipeline sales and gas blanket certificate authorizations.

Specifically, E4 and M2 rescind rules 2 and 6 from wholesale power market-based rate tariffs and authorizations, remove rules 1, 3, 4, and 5 from those tariffs, and codify them, with no substantive change, into part 35 of the Commission’s regulations under the Federal Power Act. This codification of rules 1, 3, 4, and 5 will be an instant final rule, effective upon publication in the Federal Register.

G1 removes the natural gas analog of rule 2 from the Commission’s regulations regarding pipeline sales and gas certificates. Finally, M3 is a notice of proposed rulemaking to extend the current three-year record retention requirement of rule 5 and its gas-side equivalent to five years, matching the five year statute of limitations for violations subject to civil penalties.

To the extent there was clarity in the Market Behavior Rules, that clarity is carried over into the anti-manipulation rules.

We take this action to reduce regulatory uncertainty, to assure that all market participants are held to the same standard, and to provide clarity to persons subject to our rules and regulations.

This proceeding began last November, when the Commission proposed to rescind the Market Behavior Rules once we issued final rules implementing the anti-manipulation authority granted the Commission by the Energy Policy Act of 2005. We explained that rescinding the Market Behavior Rules is consistent with congressional intent in the Energy Policy Act of 2005, which provided the Commission with explicit anti-manipulation authority. The Market Behavior Rules had been challenged in court, and relying on our explicit anti-manipulation authority was deemed to be the better course.

By its terms, the Energy Policy Act of 2005 did not reverse or repeal the Market Behavior Rules. It is also apparent the new law did not ratify them either. Congress knows how to ratify regulatory policy, particularly when that policy is threatened by legal challenge. Congress did not do that in this instance, and instead specifically directed the Commission to use a different regulatory model than the Market Behavior Rules to police manipulation. That led to adoption of the anti-manipulation final rule.

It is clear that Congress gave the Commission discretion with respect to reform or repeal of the Market Behavior Rules. After careful review of the comments, we exercise that discretion.

The package rescinds Market Behavior Rule 2, since it is clearly covered by the anti-manipulation rule. In my view, having two general anti-manipulation rules, applying to two different universes of sellers, two different scopes of transactions, and with two different intent standards, would result in significant regulatory uncertainty without offering any additional protection for customers. Having two sets of anti-manipulation rules barring the same behavior does not offer more protection to customers.

The package also rescinds Market Behavior Rule 6, since it merely restates an obligation that a market-based rate seller adhere to the code of conduct and standards of conduct. For that reason, we determined rule 6 to be redundant, and rescind it.

With respect to the other Market Behavior Rules, the Commission concluded that there is some benefit to retaining their requirements and incorporating them into the Commission's regulations. The scope and applicability of these rules is unchanged.

I support the package.”