

**Federal Energy Regulatory Commission
December 15, 2005 Meeting
Commissioner Suedeem G. Kelly**

**C-1
Gas Storage Pricing Reform**

Intro:

- The Gas Storage Pricing Notice of Proposed Rulemaking has two main components: 1) for the purposes of Commission authorizations for market-based rates, it expands the definition of the relevant product market to include close substitutes for gas storage services; and 2) it implements the new Natural Gas Act section 4(f), which permits the Commission to authorize market-based rates even where an applicant has market power.

Comments on the NOPR

- I believe our existing policy for authorizing market-based rates has worked well: since we issued the 1996 Alternative Ratemaking Policy Statement, the Commission has received approximately 40 applications for storage facilities. Market-base rates were authorized for all but three of these facilities. Two of the three facilities were developed under cost-based rates, while the one remaining was not built, for reasons unknown.
- I question whether there is an imminent need for new gas storage facilities. We have not heard from LDC's, the primary customers of storage facilities, that there is such a need, except perhaps in New England, whose geology generally precludes the development of underground gas storage.
- Accordingly, as far as the record goes, it is not clear to me that the Commission needs to make radical changes to our existing policy for authorizing market-based rates for new gas storage facilities.
- I do support this NOPR, because it codifies in our regulations what has been, to date, our market-based rate policy. Moreover, it is a good decision to expand the definition of good alternatives to gas storage for the purposes of Commission determinations on requests for market-based rates for new facilities. We should look at other possible alternatives under the right circumstances.

- However, I am uneasy about authorizing market-based rates for entities that can exercise market power. This is an extraordinary step. The Commission does not authorize any other monopoly that we regulate to charge market-based rates if it has market power, whether it is for wholesale sales of electricity, transmission providers, or gas transportation providers.
- This is a serious endeavor we are undertaking. Nevertheless, Congress has authorized us to approve market-base rates for companies even if they are unable to demonstrate that they lack market power. Fortunately, Congress recognizes that authorizing market-based rates under these circumstances is extraordinary, and therefore authorizes the Commission to do so only in specific circumstances.
- The Commission must determine that market-based rates are in the public interest and necessary to encourage the construction of the storage capacity in the area needing storage services. Most important, the Commission must determine that customers are adequately protected, and must review periodically whether the market-based rate is just, reasonable, and not unduly discriminatory or preferential.
- The periodic review requirements are critical, particularly given our reporting and monitoring responsibilities pursuant to the 2004 *Lockyer* decision. For these reasons, I believe the final rule should incorporate an approach offered in the NOPR that would require any company that receives authorization for market-based rates to file updated market-power analyses every five years to ensure it is charging rates that are just, reasonable, and not unduly discriminatory or preferential.
- Given these protections, there may very well be circumstances presented to the Commission, on a case-by-case basis, under which market-based rates may be authorized without harming LDC's or other customers.
- However, the devil is always in the details. For example, while I believe that if an applicant demonstrates the need for a particular storage facility, it should get built, it is uncertain to me how need will be adequately defined. Would a showing of 80% of capacity contracted for be sufficient? What about 20%? Clearly, we cannot develop any bright line tests for implementing section 4(f), but must instead decide on a case-by case basis, in deciding whether to authorize market-based rates.

- We invite comments from all interested entities on each component of the NOPR. It is in everyone's best interest to thoroughly consider the repercussions of any final rule that we promulgate. Through careful consideration by all concerned, I believe the Commission can come up with a fair and reasonable final rule.