

**Statement of FERC Chairman Joseph T. Kelliher on reforming  
Order No. 888's Open Access Tariff**

“Open Access Transmission Tariff (OATT) reform is one of my top priorities as Chairman. I would like to take a moment to elaborate on why we are acting today. It really starts with certain basic principles. Under the Federal Power Act, we have a legal duty to prevent undue discrimination and preference in transmission service. That was the purpose of Order No. 888 and the OATT itself.

“The OATT has been a tremendous success. It has promoted wholesale competition and encouraged very significant generation entry in many regions. But the OATT was issued nearly a decade ago, and a lot has changed since then. A lot has changed in the industry structure. In part, because of those changes, the time has come to reform the OATT.

“The OATT is very significant. It really is the underpinning of wholesale competitive markets, particularly outside RTO and ISO regions. It is the highway, indeed, it is the foundation for competitive markets outside the RTO and ISO regions.

“In the past, the Commission has concluded that the OATT no longer prevents undue discrimination and preference. That conclusion was reached as long as five years ago in Order No. 2000, the RTO order. I think what we are really doing here today is picking up where the Commission left off five years ago with Order No. 2000.

“The Notice of Inquiry (NOI) in Docket No. RM05-25-000 makes a preliminary finding that the OATT does not prevent undue discrimination and preference, and it asks a host of questions on various aspects of the OATT, some of which are areas that generators and transmission customers have been complaining about for many years, such as transmission pricing, the obligation to expand capacity, joint transmission planning and joint ownership, rollover rights, imbalances, and other issues. We asked a lot of questions in those areas.

“I also want to specifically note that we asked for comment on the implementation of section 1231 of the Energy Policy Act of 2005, which authorizes the Commission to order open access by unregulated transmitting utilities by rule or order. By asking for comment, and of course this in the NOI, we are reflecting our commitment to faithfully execute the new law.

“Now, one problem, frankly, with the OATT is the lack of prescription. Public utilities have come to differing interpretations of their OATTs and differing conclusions about what is necessary to comply with the Commission's rules. The

Available Transfer Capability (ATC) calculation is one example of that lack of prescription. The ATC calculation really is at the heart of the OATT, because it determines how much transmission capacity has to be made available for open access, yet the Commission has allowed public utilities and jurisdictional utilities to choose whichever ATC calculation methodology they prefer.

“There was a NERC long term ATC report that was issued in the spring and it pointed out a bewildering variety of methodologies. Given the lack of prescription, it makes it hard to determine compliance, and it makes it hard to identify violations. Compliance with the OATT should not be elusive. I think a greater prescription may help assure compliance and make it easier for the Commission to identify violations.

“Now, the goal of the NOI in this proceeding is very clear. It is spelled out in the title: Preventing Undue Discrimination and Preference in Transmission Service. We are not talking about market design. We are not talking about restructuring. We are talking about preventing undue discrimination and preference.

“From my point of view personally, I have frankly come to the conclusion that OATT reform is necessary. So on that threshold question, I guess it is more than preliminary for me. Although I am convinced of the need for reform, I am not convinced of the extent of necessary reform. To me, the NOI and the responses to it will be dispositive. At least from my point of view, on the extent of reforms that are necessary. So given the importance of the NOI to me, I encourage interested parties to submit very high quality comments, because they will be read, and we will rely on them.

“I am glad we are taking the first step in this direction. I hope we can take the last step in due course. It is a top priority for me. ”

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