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# FEDERAL ENERGY REGULATORY COMMISSION



WASHINGTON, D.C. 20426

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## NEWS RELEASE

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### FOR IMMEDIATE RELEASE

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### **PROPOSED CODIFICATION OF MARKET BASED RATE STANDARDS SEEKS TO STREAMLINE PROCEDURES, ENSURE MARKET OVERSIGHT**

The Federal Energy Regulatory Commission today proposed reforms to its current four-prong analysis for determining whether a wholesale seller of electric energy, capacity or ancillary services is qualified for market-based rate authority.

The proposed regulations, for the most part, would adopt the Commission's current standards for granting market-based rates, but would refine and codify the standards to help ensure that customers are protected from the exercise of market power, the Commission said. The proposal also will provide greater certainty to sellers seeking market-based rate authority.

"The Commission has steadily strengthened its market-based rate test in recent years," observed Commission Chairman Joseph T. Kelliher. "We have bolstered reporting requirements, raised the generation market power threshold, established a change-of-status reporting requirement, and now consistently revoke the market-based rate authorization for companies that fail to submit triennial market analyses or electronic quarterly reports, as required by their authorization. We propose another step today."

The current four-prong analysis examines generation market power, transmission market power, other barriers to entry and affiliate abuse. Under today's proposal the review would be reformed into a more traditional horizontal and vertical market power analysis.

Regarding horizontal – or generation – market power, the Commission proposes to retain the current indicative screens, with some modification, and proposes to eliminate the exemption from the market power analysis for post-1996 generation. The Commission proposes to modify the treatment of newly constructed generation to avoid a situation in which all generation becomes exempt from the market power analysis as new generation is constructed and older (pre-1996) generation is retired.

The Commission proposes to retain its policy that having an open-access transmission tariff (OATT) on file is deemed to mitigate a seller's transmission market power, the Commission said. However, the Commission is proposing that violation of the OATT may be cause to revoke market-based rate authority.

At present, all sellers with market-based rate authority must file a triennial review to ensure the company continues to satisfy the Commission's standards for obtaining or retaining market-based rate authority. However, the Commission proposes to modify that general practice and to put in place a structured, systematic review to assist the Commission in analyzing sellers based on a coherent and consistent set of data.

The Commission proposes to establish two categories of sellers. Category 1, about 550 sellers, would consist of power marketers and power producers that, among other things, own or control 500 megawatts or less of generating capacity in aggregate and that are not affiliated with any public utility with a franchised service territory. Category 1 sellers would not be required to file a regular triennial review. For these sellers, the Commission proposes to rely on change-in-status reports required of all sellers as well as ongoing enforcement monitoring. Category 2 sellers would include other sellers, about 600 entities. In addition to change-in-status reports, Category 2 sellers would be required to file regular triennial reviews.

To streamline the processing of triennial reviews and ensure greater consistency in the data used to evaluate Category 2 sellers, the Commission proposes to continue to analyze each seller individually, but to concurrently review market-based rate sellers in the same region.

The Commission also proposes to adopt a market-based rate (MBR) tariff of general applicability for all market-based rate sellers. Rather than each entity having its own MBR tariff, each corporate family would have one tariff and be required to list all affiliates with market-based rate authority on the tariff.

Regarding affiliates, the Commission proposes to retain its policy that sales of power between a utility and any of its non-regulated power sales affiliates must be pre-approved by the Commission prior to transacting. The Commission also proposes to codify code of conduct restrictions in its regulations, to help protect against cross-subsidization by captive customers of "non-regulated" power sales affiliates.

Existing cost-based rates on file with the Commission may be used for mitigation purposes and the Commission seeks comment on the rate methodologies that should apply to cost-based mitigation, including:

- whether there should be a standard methodology for determining cost-based

ceiling rates and the appropriate methodology for sales of less than one week;

- whether selective discounting should be allowed for sellers that have been found to have market power, or that accept a presumption of market power, and are offering power under cost-based rates; and
- whether a mitigated seller that seeks to sell excess power generated within a mitigated market should be required to first offer its available capacity at cost-based rates to customers within the mitigated market.

Comments on the proposed rule, “Market-Based Rates for Wholesale Sales of Energy, Capacity and Ancillary Services by Public Utilities,” are due within 60 days after the NOPR’s publication in the *Federal Register*. Reply comments are due 30 days after the deadline for initial comments.

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