



# FEDERAL ENERGY REGULATORY COMMISSION

October 16, 2008

**Docket Nos.** RM07-19-000 and AD07-7-000

**Item No.** E-1

**Commissioner Suedeen G. Kelly**

## **Statement of Commissioner Suedeen G. Kelly on Wholesale Competition in Regions with Organized Markets**

"I believe that many of the Final Rule's findings will promote competition in organized wholesale electric markets, thereby helping the Commission to fulfill our statutory mandate to ensure adequate and reliable service at just and reasonable rates. I thank the team for their hard work during this long process from ANOPR to Final Rule and want to point out some of the truly important proposals that the Commission is adopting today. In particular, I support the Final Rule's requirements that regional transmission organizations (RTOs) and independent system operators (ISOs): (1) accept bids for certain ancillary services from demand response resources that meet technical requirements and submit a bid at or below the market-clearing price; (2) permit qualified aggregators of retail customers to bid demand response on behalf of retail customers; and (3) eliminate deviation charges during system emergencies to a purchaser of electric energy for taking less energy in the real-time market than it purchased in the day-ahead market. I also agree with the Final Rule's direction to each RTO/ISO to demonstrate its responsiveness to stakeholders and customers with the Commission evaluating each filing based upon inclusiveness, fairness in balancing diverse interests, representation of minority positions, and ongoing responsiveness. I also believe that it is appropriate to require each RTOs/ISOs to include a tariff provision that commits to providing market monitoring units (or MMUs) with the data, resources, and personnel necessary to carry out the MMUs' functions.

I continue to be troubled by the Final Rule's directive to each RTO or ISO with an organized energy market to make a compliance filing to propose any necessary reforms to allow for scarcity pricing in times of emergency by modifying market power mitigation rules, such as raising energy supply bids caps and demand bid caps. While the Final Rule makes substantial efforts to address market power associated with scarcity pricing and to ensure that there is an adequate record regarding any scarcity pricing proposal, this does not alleviate my fundamental concerns regarding the very real impacts on customers associated with such scarcity pricing proposals. I continue to believe that, absent the necessary demand response infrastructure to give consumers the ability to respond to higher prices, it is not responsible to allow energy supply bid caps and demand bid caps to rise without regard to the impacts on consumers.

I also disagree with the Final Rule's decision to promote responsiveness of RTOs/ISOs by allowing them to adopt hybrid boards with stakeholder members. This kind of hybrid board would jeopardize the independence of any RTO/ISO that adopts this kind of governing structure.

Finally, I am concerned about the issue of MMUs being removed from tariff administration and mitigation. I note that a large number and variety of commenters to the NOPR were also concerned about this proposal, including American Forest, California PUC, Indianapolis P&L, ISO New England, Industrial Coalitions, Maine PUC, NARUC, NEPOOL Participants, New York PSC, North Carolina Electric Membership, Ohio PUC, Old Dominion, OMS, Potomac Economics, and Xcel. ISO New England stated that it "disagrees with the proposition that an MMU's performance of mitigation functions compromises the MMU's independence or distracts an MMU from its core functions,"<sup>1</sup> referring to the arguments against MMUs' involvement in mitigation as "unconvincing."<sup>2</sup> Maine PUC stated that "[t]he Commission has not demonstrated that there is a lack of independence or a conflict of interest in having those who are experts in the areas of market mitigation performing day-to-day mitigation."<sup>3</sup> Industrial Coalition called the Commission's proposal,

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<sup>1</sup> ISO New England Apr. 21, 2008 Comments, Docket No. RM07-19, at 19.

<sup>2</sup> *Id.*

<sup>3</sup> Maine PUC Apr. 21, 2008 Comments, Docket No. RM07-19, at 7.



## STATEMENT

“objectionable because it would place responsibility for mitigation in the hands of the RTO/ISO staff that designed, and have a vested interest in the success of, market rules.”<sup>4</sup>

I do not mean to imply that the Final Rule totally ignores these concerns. Indeed, the Final Rule does make changes to the NOPR proposal by drawing a distinction between RTOs/ISOs that have a single MMU and those that have hybrid MMUs, with both an “external” and “internal” market monitor. Under these changes, a RTO/ISO may allow its MMU - whether it is a single MMU or a hybrid MMU - to perform retrospective mitigation. However, only a RTO/ISO with both an internal and external MMU may allow its internal MMU to continue to perform prospective mitigation.<sup>5</sup> In those instances, the internal MMU may perform the prospective mitigation, but only if the RTO/ISO moves the responsibility and the tools to monitor the quality and appropriateness of the mitigation conducted by the internal MMU to its external MMU. Finally, both single MMUs and hybrid MMUs may provide the RTO/ISO with the inputs needed for the RTO/ISO to conduct prospective mitigation, including “reference levels, identification of system constraints, and cost calculations.”

My question is, after all of this long, drawn-out process, what is the problem we are actually trying to solve here? MMUs are professionals who have been performing mitigation in a competent, professional, and efficient manner for many years. I disagree with the misgivings expressed in the Final Rule that “unfettered conduct of mitigation by MMUs makes them subordinate to the RTOs and ISOs and raises conflict of interest concerns.” I do not think the record supports that assertion. I am also concerned that the dictates of the Final Rule may put some RTOs/ISOs to unnecessary expense. While the Final Rule has evolved in a positive way on this issue, I believe it continues to be an answer in search of a problem.

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<sup>4</sup> Industrial Coalitions Apr. 21, 2008 Comments, Docket No. RM07-19, at 22.

<sup>5</sup> The Final Rule considers prospective mitigation to include mitigation that can affect market outcomes on a forward-going basis, such as altering the prices of offers or altering the physical parameters of offers at or before the time they are considered in a market solution.