



FEDERAL ENERGY REGULATORY COMMISSION

STATEMENT

Date April 17, 2008
Docket No. RM04-7-001
Item No. E-1

Commissioner Suedeen G. Kelly

**Talking Points of
Commissioner Suedeen G. Kelly
on
Market-Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services
by Public Utilities**

"I would like to thank the team for all of their hard work on the rehearing order. You did a great job of putting together a 400-page order and dealing with our staffs in the past week with patience and grace

Today's order is another step in our efforts to establish the best possible standards governing sales of electric energy, capacity, and ancillary services at market-based rates.

This has been a long road. The Notice of Proposed Rulemaking in this docket was issued in May of 2006, almost 2 years ago. But, as the docket number reflects, we have actually been engaged in this process, in cooperation with stakeholders and market participants since 2004.

I am pleased that the rehearing order upholds many of the determinations we made in Order No. 697, including our indicative screens and the Delivered Price Test. I would note that we have also granted rehearing or clarification in certain areas, such as permitting modifications to RTO/ISO mitigation measures where warranted.

The order doesn't change regulatory text specifying that the default mitigation in the case of a mitigated seller entering into contracts of one year or longer is sales at the embedded costs. We do announce here that we will entertain applications that permit a mitigated seller, on a case-by-case basis, to sell under a long-term contract at market-based rates.

My own view is that, if executed properly, such a change could be a useful and productive means for spurring competition and long-term contracting. Ideally, we would apply an ordered, transparent and predictable test to each application. One that would include an examination of structural barriers to entry.

We have no such test yet. However, even without one, the case-by-case approach described in this order allows the Commission to examine these applications with the appropriate rigor.

I, for one, would prefer such applications to include an identified buyer. With an identified buyer, any assessment of the application is confined to a set of circumstances specific to the transaction. However, with neither a specific test nor an identified buyer, I worry that the Commission may end up granting a mitigated seller more general based rate authority for a particular area and period of time, which ultimately may impede competition.

I am hopeful that, with the help of interested parties and FERC-sponsored workshops, we will arrive at a helpful test sooner than later."