



**Federal Energy Regulatory Commission  
June 21, 2007  
Open Commission Meeting  
Statement of  
Chairman Joseph T. Kelliher**

**Item E-1: Market-Based Rates for Wholesale Sales of Electric Energy,  
Capacity and Ancillary Services by Public Utilities (Docket No. RM04-7-000)**

"Today, the Commission takes an important step to further strengthen its market based rate program and prevent the exercise of market power in wholesale power sales, by issuing this final rule reforming our market based rate program.

This action is timely, coming on the heels of the decision by the U.S. Supreme Court earlier in the week to leave the *Lockyer* decision undisturbed. The Ninth Circuit in *Lockyer* found that Commission had legal authority to authorize market based rate sales. The Supreme Court's decision removes any remaining question about our legal authority to authorize market based rate sales.

This final rule is not the first action we have taken to strengthen the market based rate program in recent years. Beginning in 2001, the Commission has made a series of important reforms designed to strengthen our market based rate program. In 2001, we reinforced the reporting requirements that were so important to the Ninth Circuit in *Lockyer*.

In 2004, we changed the generation market power test, raising the bar to demonstrate a lack of generation market power. Also in 2004, we adopted the changes in status rule, which guards against accumulation of market power by sellers authorized to make market based rate sales.

In 2005, we began to revoke the market based rate authorizations for companies that failed to satisfy the conditions of their authorization, namely the timely submission of triennial market analysis and electronic quarterly reports. This change reflects a view that market based rate authorization is a privilege, not a right and it is wholly appropriate to revoke the privilege when companies violate these conditions.

We took the next step last year, when we issued the proposed rule to reform our market based rate program and codify the test in Commission rules.

In the long term contracts case issued last December, the Ninth Circuit was very critical of the Commission's market based rate program. However, the program they criticized was the program as it existed in 2000-2001. We have steadily strengthened that program over the years, and it now bears little resemblance to the program the court criticized.

As I indicated in my earlier statement on the Competition ANOPR, the Commission never relied solely on competition to assure just and reasonable wholesale power prices, we never stopped regulating. The nature of our regulation changed in response to changes in the dynamic power industry.

It is critical that the Commission have effective oversight of wholesale power markets. Without effective oversight, we cannot guard the consumer from exploitation by noncompetitive power companies. I believe the Commission has developed the capacity to effectively regulate wholesale power markets, and the final rule we are approving today is an important element of our regulation.

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Contrast the Commission's market oversight and enforcement today with seven years ago. Seven years ago, the Commission had a small enforcement staff that largely focused on hydro license and gas certificate complaints and certain affiliate rules. Now we have Office of Enforcement that is performing effective oversight across power and gas markets. Now we have Office of Enforcement that is performing effective oversight and conducting firm but fair enforcement. Seven years ago, we had virtually no civil penalty authority. Now we have can impose civil penalties of up to \$1 million per day per violation. Seven years ago, it was not illegal under federal electricity law to manipulate power markets. Now there is an express prohibition of market manipulation in the Federal Power Act. We have issued rules implementing the anti-manipulation provisions, and are actively investigating alleged manipulation.

We have developed effective market oversight and enforcement in part because Congress gave us the necessary regulatory tools.

The final rule is an important step to prevent the exercise of market power and assure effective competition in wholesale power markets."