



FEDERAL ENERGY REGULATORY COMMISSION

May 21, 2009

Docket No. EL09-20-000

Item No. E-33

Commissioner Philip D. Moeller

**Statement of
Commissioner Philip D. Moeller
on
Northeastern Utilities and NSTAR Electric's Petition for Declaratory Order**

"This case presents a unique situation that calls for a unique response. Clarifying what this request is, and what it is not, is necessary to provide clear signals to potential developers and users of future transmission infrastructure. Each transmission project that comes before the Commission must independently satisfy our requirements with respect to non-discriminatory open access, market power and rate structure.

As the order explains, this proposal is not a merchant line given that the transmission rates charged will be subject to cost-based regulation. Additionally, this order finds that the proposed structure of the transaction does not violate the open access foundation of Order No. 888 and our subsequent determinations in Order. 890. While some parties to this proceeding argue that the proposed structure of the transmission project conflicts with our open-access and non-discriminatory transmission requirements, the parties have not clearly demonstrated how the Petitioners' request interferes with our existing requirements or Commission policy. At present, the Petitioners only seek approval of the structure of the transaction described in their filing and I find no compelling basis on which to deny their request."