

**Federal Energy Regulatory Commission
May 18, 2006 Commission Meeting
Statement of
Commissioner Suedeen Kelly**

E-2: MBR NOPR (RM04-7-000)

“Like the draft NOPR in E-1, this draft NOPR deals with extremely important and difficult issues and required a great deal of time and effort from staff.

That effort shows and I think the industry and the public will be impressed by the quality of this NOPR.

Here again I am pleased to be able to vote for an order that embodies an appropriate set of balanced policies.

On the one hand, this NOPR includes proposals that should increase regulatory certainty for sellers in a variety of ways and streamline and reduce the regulatory burden for many sellers.

For example, while larger sellers will still be subject to the current three-year update requirement, certain small sellers that meet the requirements defined in the NOPR will no longer need to file three-year updates to their market power analyses.

On the other hand, this NOPR includes proposals that will enhance customer protection over the status quo.

For example, we are proposing to rescind the current exemption from market power analysis requirements for generators built after 1996, since this exemption can no longer be justified.

This change was very important to me and I'm pleased that my colleagues and I were all in agreement on it.

The other thing I would like to highlight also involves a customer protection issue; specifically the cost-based mitigation we have required for power sales in markets where a seller is found to have market power.

Cost-based mitigation, in fact, is essentially the corner-stone of our customer protection where a seller is found to have market power.

However, we have heard from some customers that it may not be sufficient protection where the seller is able to shift its sales to neighboring markets where it retains Market-Based Rate authority.

This draft NOPR seeks comments on the issue and on appropriate ways to address it.

Customer protection from market power is our number-one priority and I vote for this NOPR because I believe it is fully consistent with that goal.

Thank you again to the team for its hard work and I look forward to reading the comments in response to this NOPR.”