

**Staff Presentation for  
March 11 Conference on Investigation of Terms and Conditions  
of Public Utility Market-Based Rate Authorizations  
Docket No. EL01-118-000**

I. Introduction and Background

! Tariff provision as proposed:

As a condition of obtaining or retaining market-based rate authority, the seller is prohibited from engaging in anticompetitive behavior or the exercise of market power. The seller's market-based rate authority is subject to refunds or other remedies as may be appropriate to address any anticompetitive behavior or exercise of market power.

! Commenters express concerns regarding what the Commission will determine constitutes anticompetitive behavior or the exercise of market power.<sup>1</sup>

! Commenters express concerns regarding the circumstances in which the Commission would impose refunds and other remedies. For example, they claim that a potentially unlimited refund obligation would cause uncertainty about the risks of investing in needed infrastructure, and may make it difficult to secure financing for such infrastructure.

! With your assistance in this conference, we hope to add greater certainty by developing more specific examples of what may constitute anticompetitive behavior and the exercise of market power.

! With your assistance in this conference, we also hope to limit refund exposure by developing a process that the Commission could follow in response to allegations that the tariff provision has been violated.

II. Identify Examples of Prohibited Behavior

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<sup>1</sup>We note that the Commission held a technical conference on February 7, 2002, in Docket No. RM01-12-000, that included a discussion concerning circumstances in which the exercise of market power would trigger mitigation.

- ! Are there examples of anticompetitive behavior and the exercise of market power, other than economic and physical withholding, and erecting barriers to entry?
- ! Are there ways to take into account legitimate environmental, operational and/or reliability factors to determine whether a supplier who fails to offer output to the market, or offers it at a price considered too high, has engaged in physical or economic withholding?
- ! Physical and economic withholding are defined with reference to "market price." How can the Commission be more specific regarding how it will determine the market price in a particular case (e.g., time (forward v. spot), product (energy v. reserves) and geographic market)?
- ! Should legitimate and verifiable opportunity costs be included in determining full incremental costs? If so, should these opportunity costs be included for only energy-limited units?

### III. Identify Options for Limiting Uncertainty

- ! Review by complaint or upon the Commission's own motion.
- ! To limit exposure, should claims of anticompetitive behavior and the exercise of market power be tied to specific transaction(s) and should any refund-related relief be tied to the specific transaction(s)?
- ! With respect to pricing disputes, should the Commission limit the time period for filing allegations of anticompetitive behavior and the exercise of market power?