FEDERAL ENERGY REGULATORY COMMISSION

STATEMENT

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

Chairman Joseph T. Kelliher

Statement of Chairman Joseph T. Kelliher on Market-Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities

"Today, the Commission takes final action to reform its market based rate rules to strengthen our regulatory program and prevent the exercise of market power in wholesale power sales. This is the final step in a process that began in May 2006.

By preventing the exercise of market power, this order will strengthen competitive wholesale power markets, especially in the bilateral markets. This order also reflects our commitment to continuous improvement in competitive markets.

We have steadily strengthened the market based rate program in recent years, and FERC has made a series of important changes to this program going back to 2001. This rulemaking is only the latest reform, although arguably the most important.

It is critical that FERC have effective oversight over wholesale power markets in order to guard the consumer from exploitation. I believe we have developed the capacity to effectively regulate competitive wholesale power markets.

The rehearing order makes one substantive change to the final rule issued last year, with regard to mitigation of long term wholesale power sales by companies that lost or surrendered their market based rate authority. There was some inconsistency in the final rule regarding mitigation of long term sales. On the one hand, the Commission has long viewed long term markets as competitive. Yet, the final rule would impose mitigation on long term sales by companies that lost or surrendered their market based rate authority, although our market power test only measures market power in short term markets.

This issue was not raised until after the final rule was issued. But it was necessary to address this internal inconsistency.

To encourage more long-term contracts and at the same time ensure that sellers do not exercise market power, the Commission has revised its approach to allow sellers the opportunity to demonstrate that they do not have market power with respect to specific long-term contracts (i.e., transactions greater than one year).

The rehearing order provides that any seller who fails the Commission's test for short-term market-power nevertheless may seek to demonstrate that it does not have market power with respect to the specific long-term contract being filed. Regarding the Commission's mitigation of long-term transactions, the rehearing order provides that any seller who fails the Commission's market-based rate test or surrenders market-based rate authority may file with the Commission under section 205, on a case-by-case basis, a request for contract-specific market-based rates based on a demonstration that the seller does not have

market power with respect to the specific long-term contract being filed. The rehearing order requires the mitigated seller to show that a buyer under a long-term contract has viable alternatives including the entry of an appropriate amount of third-party newly-constructed resources during the relevant future period as an alternative to purchasing under the contract at issue.

FERC has a duty to safeguard the consumer from exploitation. We also have an interest in assuring the security of our electricity supply at a reasonable cost. Under the approach we adopt today, we can fulfill both duties."