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# FEDERAL ENERGY REGULATORY COMMISSION



WASHINGTON, D.C. 20426

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## NEWS RELEASE

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### FOR IMMEDIATE RELEASE

October 20, 2005  
Docket Nos. ER02-1406-006, et  
al. and ER99-1005-004, et al.

## COMMISSION TERMINATES SECTION 206 PROCEEDINGS; UTILITIES REBUT PRESUMPTION OF MARKET POWER

The Federal Energy Regulatory Commission today terminated market-based rate investigation proceedings for two companies after they successfully rebutted the Commission's presumption of market power.

"These are significant orders, as they mark the first time the Commission has accepted a showing by companies successfully rebutting the presumption of market power under our revised market-based rate program. The orders show the rebuttable presumption is not irrebuttable, and they further show the Commission properly weighs the obligation to serve native load," Commission Chairman Joseph T. Kelliher observed.

The Commission allows wholesale electric power sales at market-based rates if the seller and its affiliates do not have, or have adequately mitigated, market power in generation and transmission and cannot erect other barriers to entry by other suppliers. The Commission also looks for evidence of affiliate abuse or reciprocal dealing. As a condition of a company's authorization to sell power at market-based rates, the company must file an updated market power analysis every three years.

In separate orders today, the Commission terminated proceedings under section 206 of the Federal Power Act against Acadia Power Partners (ER02-1406-006, *et al.*) and Kansas City Power and Light Co. (ER99-1005-004, *et al.*). In these two proceedings, the companies successfully rebutted the Commission's presumption of market power in their respective control areas. The companies had failed their respective preliminary market power screens.

However, in the case of Acadia Power Partners, because the Cleco companies failed to comply with a directive in a previous Commission order, the Commission instituted a section 206 proceeding to investigate whether the Cleco companies may

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continue to charge market-based rates in the neighboring Lafayette and Louisiana Energy and Power Authority control areas.

The orders result from a new process for reviewing applications for market-based rate authority, which the Commission initiated in April 2004 (Docket No. ER96-2495-016, *et al.*). The Commission adopted two new generation market power screens to preliminarily assess whether a seller is a pivotal supplier and how much market share a seller has compared to other competitors.

Failure of one or both of the Commission's generation market power screens establishes a presumption of market power, which companies have an opportunity to rebut in further proceedings under section 206 of the Federal Power Act. Initiation of a section 206 proceeding does not revoke a company's market-based rates or impose mitigation. The proceeding provides refund protections to wholesale customers while allowing the applicant and other interested parties an opportunity to submit additional evidence and analysis to address whether the applicant has market power. In addition, companies can adopt default cost-based rates or propose tailored mitigation for Commission consideration.

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