



**Federal Energy Regulatory Commission  
February 15, 2007  
Open Commission Meeting  
Statement of  
Chairman Joseph T. Kelliher**

**Item E-1: Preventing Undue Discrimination and Preference in  
Transmission Service (RM05-17-000, RM05-25-000)**

"Let me begin by congratulating the OATT Reform Team on their superb work throughout this rulemaking. The Team was charged with reviewing about 6,500 pages of detailed comments from over 300 parties, identifying the major issues that the Commission had to decide, proposing options for our consideration, assisting our deliberations, and drafting an order and tariff language making comprehensive reforms.

Preventing Undue Discrimination and Preference

The primary task of the Commission in the area of electric regulation is to "guard the consumer from exploitation by noncompetitive electric power companies." The action we take today is fully consistent with that duty.

The primary goal of the OATT reform final rule is to prevent undue discrimination and preference in transmission service. We have secondary goals as well, namely promoting competition in wholesale power markets and strengthening our power grid.

Today, we conclude that the existing Open Access Transmission Tariff (OATT) provides an opportunity to engage in undue discrimination and preference in transmission service, and act to prevent that undue discrimination and preference. When we make a finding of undue discrimination and preference we are required by law to act to prevent it, we must act. We cannot allow undue discrimination and preference to remain undisturbed.

The final rule prevents undue discrimination and preference by increasing the transparency of OATT administration. It will now be possible to pry open the black box that has frustrated transmission customers for so long.

The final rule prevents undue discrimination and preference by eliminating the wide discretion that transmission providers currently have in calculating available transfer capacity (ATC). This discretion is an invitation to engage in undue discrimination, and we eliminate that opportunity.

The final rule prevents undue discrimination by requiring an open, transparent, and coordinated transmission planning process that will consider the needs of native load customers of transmission customers as well as transmission providers.

The final rule prevents undue discrimination by requiring that transmission providers offer conditional firm transmission service and modifying their redispatch obligations.

The final rule also makes a host of other reforms, such as reforming our rollover rights policy, removing the price cap on reassigned capacity, granting a priority to pre-confirmed requests for transmission service, and providing greater clarity regarding wholesale contracts that qualify as network resources.

The changes will also facilitate compliance. Recently the Commission has taken significant steps to enforce the OATT. In the past, there may have been a

perception the Commission assumed compliance with the OATT. That is no longer the case. Now we are acting to assure compliance.

The final rule will facilitate compliance by providing greater clarity. If we are going to enforce the OATT there is a burden on the Commission to be clear on its requirements. Just as the wide discretion in ATC calculation frustrated transmission customers, it also frustrated the efforts of regulated companies to comply and the Commission's efforts to enforce.

The final rule rests on strong legal grounds. The rulemaking is based on our authority under section 206 of the Federal Power Act. The courts have recognized that the Commission's remedial authority is at its zenith when we act to prevent undue discrimination and preference.

#### Promoting Wholesale Competition

The Commission guards the consumer in different ways. One way is through effective regulation. Another is by promoting competition in wholesale power markets. In my view, OATT reform will promote competition in wholesale power markets as well as provide effective regulation.

A vital means of promoting effective competition in wholesale power markets is open access transmission. The relationship between open access and effective competition has long been recognized. Each of the three major federal electricity laws enacted in the past 25 years promoted open access in order to encourage the development of competitive wholesale markets.

Competitive wholesale markets in this country face challenges. The OATT reform final rule is not the solution to all these challenges, nor was it intended to be. But the OATT reform final rule will promote competitive markets, by preventing undue discrimination and preference and assuring more perfect open access to the interstate transmission grid.

#### Strengthening the Transmission Grid

The OATT reform final rule will also strengthen the interstate power grid. The reality is that we do not have a national grid, but a series of regional grids. At the same time, ownership of the transmission grid in the United States is highly disaggregated. The solution we advance is strengthening regional transmission planning. That should work to the advantage of wholesale and transmission customers, but also to the transmission owners themselves. Effective regional planning should make it easier to resolve cost allocation.

We have been careful in our approach. We started with a Notice of Inquiry that posed a host of questions. We had a long period of outreach leading up to the proposed rule last May. That outreach was critical in developing a proposed rule that had a great deal of support when it was issued, and has made it easier to act on a final rule today.

The responses to the Notice of Inquiry and our outreach showed that there was broad consensus around a few points. One is that the Commission should build on

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the OATT, not dismantle it. That is exactly what we did. We began this reform process by praising the OATT, not by burying it. The OATT reform final rule strengthens the OATT and ensures that it achieves its original purpose – reducing barriers to entry by remedying undue discrimination.

I believe this final rule shows the Commission at its best. OATT reform has been one of my top priorities as Chairman. However, the final rule is the product of the entire Commission, both the staff and the members of the Commission.

OATT reform is actually the product of two different Commissions. This process began under the prior Commission, when Nora, Suedeen and I approved the Notice of Inquiry and proposed rule, both by unanimous votes.

OATT reform concludes under the current Commission the same way it began, through joint deliberation and unanimous votes. The Commission speaks loudest when it speaks with one voice. Today, we speak with one voice, and demonstrate a commitment to guard the consumer from exploitation and discharge our legal duty to prevent undue discrimination and preference.”