



# FEDERAL ENERGY REGULATORY COMMISSION

October 16, 2008

**Docket No.** RM07-1-000

**Item No.** M-1

**Chairman Joseph T. Kelliher**

## **Statement of Chairman Joseph T. Kelliher on Standards of Conduct for Transmission Providers**

"Today the Federal Energy Regulatory Commission establishes new rules to prevent undue discrimination and preference by electricity and natural gas companies in their provision of transmission and transportation service.

The final rule refocuses the scope of the Standards of Conduct rule on the relationship between marketing affiliates and transmission providers, and eliminates the corporate separation approach in favor of the employee functional approach used previously.

Our action today shows that FERC is committed to fairness in the exercise of our new enforcement powers. It is worth noting that the *National Fuel* decision did not obligate the Commission to make any changes in the Standards of Conduct rule with respect to the electricity industry. The rule was vacated only as it applied to the natural gas industry.

However, my colleagues and I concluded that doing so would have been fundamentally unfair. There was no more factual or legal basis to apply the rule as it existed at the time of *National Fuel* to the electricity industry than the natural gas industry. Theoretically, we could have continued to apply a rule found by the courts to be arbitrary and capricious to the electricity industry. But doing so would have been an abuse.

The approach we took with respect to the second proposed Standards of Conduct rule demonstrates our commitment to facilitating compliance. Last year, we were poised to issue a final rule based on the first proposed rule. As we were drafting the final rule, we realized that in some respects we were introducing additional complexities into a rule that already had a wealth of complexity. We reconsidered our approach and issued the second proposed rule and led to our action today.

It has been difficult to get this rule right. Essentially, what we have been trying to do is identify those relationships between a marketing affiliate and a transmission provider that run the greatest risk of undue discrimination and preference. We then subject those companies to prophylactic rules designed to reduce that risk. In my view, a prophylactic rule should be limited to areas where there is high risk of affiliate abuse.

To be clear, the new Standards of Conduct final rule does not define the full scope of our authority under section 206 of the Federal Power Act and section 5 of the Natural Gas Act. The final rule identifies those affiliate relationships where there is the greatest potential and risk for undue discrimination and preference, and subjects them to restrictions. The Commission has a duty to address allegations of affiliate abuse that fall outside the scope of the rule, both on our own motion and on complaint.

I think the final rule is a good rule, and will help the Commission discharge its statutory duty. In my personal view, a good rule established by a regulatory body has a sound public policy purpose, actually achieves or furthers that purpose, is reasonably tailored to that end and does not impose undue burdens





## STATEMENT

on the regulated community, is capable of effective enforcement, and facilitates compliance. Of course, a good rule also must be within the legal authority of an agency.

In my view, the final rule we approve today meets that test, while the previous Standards of Conduct rule fell well short of this ideal.

It is with great personal satisfaction that I vote to reform the Standard of Conduct rule.”

