

# FEDERAL ENERGY REGULATORY COMMISSION



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## NEWS RELEASE

### NEWS MEDIA CONTACT:

Mary O'Driscoll  
(202) 502-8680

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### COMMISSION'S NEW MARKET-BASED RATE REFORMS PREVENT EXERCISE OF MARKET POWER

The Federal Energy Regulatory Commission today finalized a series of fundamental reforms to its market-based rate program that will strengthen competitive markets and protect consumers by reinforcing regulations for just and reasonable wholesale electric power sales.

The reforms are intended to protect consumers from an electric power seller's exercise of market power.

"This new rule reflects the Commission's fundamental responsibilities to strengthen wholesale power markets and protect consumers from exploitation in those markets," Chairman Joseph T. Kelliher said. "These reforms reform and codify our existing standards to help protect customers and provide greater certainty to sellers seeking market-based rate authority."

The new rule has five major elements:

- It collapses the Commission's four-prong analysis for determining whether a wholesale seller of electric energy, capacity or ancillary services qualifies for market-based rate authority into a two-part test covering horizontal (generation) and vertical (transmission and other barriers to market entry) market power. Restrictions on affiliate abuse will be codified in regulations and must be satisfied as a condition of obtaining and retaining market-based rate authority.
- It eliminates what is known as the section 35.27 exemption for all generation built after July 9, 1996. The Commission was concerned that retaining the exemption could allow a seller to gain a dominant position in the market without being

subject to any generation market power analysis. All sellers seeking market-based rate authority, or filing updated market power analyses, on or after the effective date of the rule must provide a horizontal market power analysis for the generation they own or control, including generation built after July 1996..

- It allows a seller to use the entire RTO/ISO geographic footprint as the default relevant geographic market if the RTO/ISO has sufficient market structure and a single energy market. But if the Commission determines there is a submarket within an RTO/ISO, the submarket becomes the default relevant geographic market.
- For sellers that do not demonstrate a lack of market power, it provides that the Commission will determine appropriate mitigation on a case-specific basis, including whether a “must offer” requirement is necessary to mitigate market power.
- Finally, it allows mitigated sellers to make market-based rate sales “to the border” if that seller commits that the power will leave home and not ricochet through an affiliate. The rule imposes a record retention requirement on mitigated sellers making such sales and required tariff language to allow for such sales.

The final rule divides market-based rate sellers into two categories for purposes of filing regularly scheduled updated market power analyses. Generally, Category 1 is for wholesale power marketers and power producers that own or control 500 MW or less of generation in aggregate per region, do not own other than minimal transmission facilities, and are not affiliated with any franchised utility in the region. They are exempt from filing updated market power analyses. Category 2 is for all other power sellers. They must continue filing their triennial studies under a new regional approach that separates the country into six geographic regions. Companies in two regions would file their studies with the Commission in any given year. Both Category 1 and 2 sellers must continue to file change in status reports.

The final rule does not adopt a proposal for a standardized market-based rate tariff, or require all sellers in a corporate family to be under the same tariff. Instead, the final rule outlines specific provisions that all sellers must have in their tariffs.

The final rule takes effect 60 days after publication in the Federal Register.

More information on the Commission’s market based rate policy can be found at <http://www.ferc.gov/industries/electric/gen-info/mbr.asp>.

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