

**FEDERAL ENERGY REGULATORY COMMISSION**  
WASHINGTON, DC 20426

OFFICE OF THE CHAIRMAN

May 8, 2003

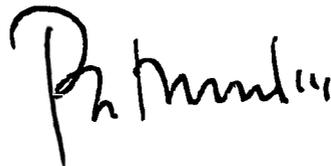
The Honorable John D. Dingell  
Ranking Member  
Committee on Energy and Commerce  
United States House of Representatives  
Washington, D.C. 20515-6115

Dear Congressman Dingell:

Thank you for your April 30, 2003 letter seeking clarification on the procedural effect of the White Paper on Wholesale Power Market Power Platform issued by the Federal Energy Regulatory Commission on April 28, 2003 in Docket No. RM01-12-000.

I have enclosed my responses. If you need additional information, please do not hesitate to let me know.

Best regards,

A handwritten signature in black ink, appearing to read "Pat Wood, III". The signature is written in a cursive style with a large initial "P".

Pat Wood, III  
Chairman

Enclosure

**Answers to Questions from Congressman John D. Dingell  
Concerning the White Paper**

- 1 Does the White Paper represent the views of the Chairman and other Commissioners, or of the Commission staff? How does the process by which the White Paper was approved compare to the process by which the Commission issued the proposed standard market design rule?

The White Paper represents the views of the Federal Energy Regulatory Commission (Commission). The White Paper was voted on by all the members of the Commission, just as the notice of proposed rulemaking was, prior to issuance.

- 2 What status does the White Paper have under the Administrative Procedures Act? Is it intended to be the equivalent of a new notice of proposed rulemaking?

The White Paper is an assessment of how the electric utility industry should move forward to achieve long-term benefits for electricity customers, and how the Commission intends to change the rule proposed in Docket No. RM01-12-000 on July 31, 2002, to meet the concerns that have been raised in rulemaking comments. While the White Paper is part of the rulemaking process and the Commission is allowing an opportunity for public comment on the White Paper, it is not intended to be the equivalent of a new notice of proposed rulemaking.

- 3 How long does the public have to comment on the White Paper? Will the Commission make such comments part of the official record of the rulemaking?

The Commission published a notice on April 28, 2003 under Docket No. RM01-12-000 that requested public comment on the White Paper. The notice provided that all comments would be available for public review at the Commission or on the Commission's website at <http://www.ferc.gov>. These comments will be made part of the official record of the rulemaking. The Commission decided not to impose a deadline for comments. The Commission intends to continue its outreach by holding technical conferences in the near future and receiving further comment to tailor the final rule to benefit customers within each region.

- 4 Are the changes to the proposed rule which are announced by the White Paper final? If so, does that mean the Commission would not reconsider these decisions under any circumstances, regardless of any public comments filed in response to the White Paper?

No, the changes to the proposed rule announced by the White Paper are not final. The White Paper sets forth how the Commission intends to change the proposed rule to meet the concerns that have been raised in rulemaking comments. The Commission seeks comment on the White Paper and plans to hold regional technical conferences in the near future, to discuss with states and market participants in each region reasonable timetables for addressing wholesale market design issues discussed in the White Paper and ways to tailor the Commission's final rule to benefit customers within the region. The White Paper comments and technical conferences will help inform the Commission in developing a final rule.

5. Are the changes to the proposed rule which the White Paper announced subject to judicial review? If so, could a party seek review of such changes prior to the Commission's issuance of a final rule?

No, the White Paper does not constitute final agency action within the meaning of the Administrative Procedure Act, 5 U.S.C. § 704 (2000), and hence the changes to the proposed rule announced in the White Paper are not subject to judicial review. Therefore, a party cannot seek review of such changes prior to issuance of a final rule, and rehearing of a final rule.

6. The White Paper states that the Commission will consider "any pending electricity legislation being considered in the U.S. Congress, prior to issuing a Final Rule." The meaning and significance of "pending legislation" appears ambiguous. For example, during the House consideration of electricity legislation, the provisions in the Committee's initial Committee Print were modified substantially in both Subcommittee and Full Committee. Provisions introduced in the Senate may well change as well, and if differences exist with the House, it will face an unsettled future Conference. How will you identify "pending legislation" in your consideration? Will it include all introduced bills, such as H.R. 1276, which I sponsored with a number of other Members of the House, or just certain bills? How will you consider legislation which differs in the House and Senate? Do you intend to incorporate such legislation into the public record of the rulemaking, to seek comments on the legislation, and to make it part of the record subject to judicial review?

The Commission intends to follow the progress of the energy legislation under consideration by Congress. As the legislation proceeds through Congress, we will follow the developments and ideas discussed. If a bill becomes law before we adopt a final rule, we will ensure that the final rule conforms with the enacted bill. The Commission does not intend to incorporate the proposed legislation into the public record of the rulemaking, nor will the Commission seek comments on the legislation.