Before the
United States of America
Federal Energy Regulatory Commission

Standards of Conduct for Transmission Providers) Docket No. RM07-1-000

Reply Comment of the
Federal Trade Commission

May 3, 2007

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alternatives by narrowing the application of Order No. 2004 to the marketing affiliates of

both natural gas and electricity transmission providers, or by removing all standards of previous FTC convergence merger cases as examples that could be used to support Order 2004.

As it considers whether to adopt a permanent narrowing of Order No. 2004 to marketing affiliates, FERC may wish to focus on the economic incentives of utilities to discriminate in favor of affiliates in a manner that is likely to result in an inefficient allocation of resources. If there is a sound economic basis to apply standards of conduct [redacted] same is true with regard to non-marketing affiliates.

subsidization of an affiliate may cause the affiliate to expand at the expense of more

[redacted]

principles and recent developments in economic theory and empirical analysis to

competition issues.

The natural gas transmission and distribution industries have been an important focus of the FTC's enforcement of the antitrust laws.[7] The FTC's competition advocacy [illegible]

III. A Natural Gas Transmission Provider Is Likely to Have Similar Incentives to Discriminate and Cross-subsidize with Regard to Both its Marketing and its Non-Marketing Affiliates

As stated in the comment that the FTC staff filed with FERC in December 2001, "[t]here are two competitive concerns raised by the interaction between regulated

[illegible]

The second problem identified in FTC staff's December 2001 comment is that "the transmission utility could engage in anticompetitive cross-subsidization in favor of its unregulated affiliates. This conduct adversely affects competition and economic efficiency. For example, cross-subsidization of an affiliate may allow a less-efficient play a key role in determining market prices for wholesale electric energy.[16] For

[redacted]

The FTC staff based its 2001 comment (cited by FERC and discussed by the D.C.

[redacted]

electric power transmission than in natural gas transmission, both because electricity transmission is technically more complex and because natural gas transmission is buffered by substantial storage capacity. Previous FTC comments to FERC have raised

[redacted]

customers are vulnerable to subtle misrepresentations about transmission conditions that delay or add uncertainty about finalizing transmission arrangements. Hesitancy or uncertainty on the part of the grid operator in providing information about transmission availability can disrupt bilateral transactions between an independent generator and its prospective wholesale customers and can pressure such customers to buy from the generation affiliates of the transmission operator. It is likely to be challenging for FERC

[redacted]

cause inefficient resource allocations apply to both natural gas transmission providers and

[redacted]