BEFORE THE

FEDERAL ENERGY REGULATORY COMMISSION

IN THE MATTER OF:

CONSENT MARKETS, TARIFFS AND RATES - ELECTRIC :

CONSENT MARKETS, TARIFFS AND RATES - GAS :

CONSENT ENERGY PROJECTS - HYDRO :

CONSENT ENERGY PROJECTS - CERTIFICATES :

DISCUSSION ITEMS :

STRUCK ITEMS :

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901ST COMMISSION MEETING

OPEN MEETING

Commission Meeting Room

Federal Energy Regulatory Commission

888 First Street, N.E.

Washington, D.C.

Thursday, February 2, 2006

10:25 a.m.
APPEARANCES:

COMMISSIONERS PRESENT:

CHAIRMAN JOSEPH T. KELLIHER
COMMISSIONER NORA MEAD BROWNELL
COMMISSIONER SUEDEEN G. KELLY
SECRETARY MAGALIE R. SALAS

ALSO PRESENT:

ANNE G. BLOOM, Reporter
CHAIRMAN KELLIHER: Good morning. This open meeting of the Federal Energy Regulatory Commission will come to order to consider the matters that have been duly posed in accordance with the Government in the Sunshine Act for this time and place.

Please join us in the Pledge of Allegiance.

(Pledge of Allegiance recited.)

CHAIRMAN KELLIHER: I want to start by introducing a few special guests. This is a little bit like the State of the Union. There are some special guests in the gallery.

There is my wife, who many of you know. She was here at the meeting last July when I assumed the role as Chairman. And that's my son, Damien, our son Damien. Damien was born right about the -- almost the exact day when EPAct was enacted into law.

(Laughter.)

CHAIRMAN KELLIHER: He's an EPAct baby on one level.

(Laughter.)

CHAIRMAN KELLIHER: And we thought this was an important meeting and that he should be here, because if, 20 years from now, he asked, where were you when EPAct was
implemented, he can say he had a front-row seat.

(Laughter.)

In fact, why don't I bring him up?

(Applause.)

CHAIRMAN KELLIHER: He's a little sick, so he might not enjoy our meeting and might not stay for the whole meeting.

We have some other special guests. Since this meeting is an EPAct meeting, we had a number of Congressional visitors this morning, Staff from the two authorization committees, the House and Senate Committees, and some of them have stayed, the real die-hards have stayed to see us vote on some of the EPAct matters, and that would be Kurt Bilas, a Counsel at the House Energy and Commerce Committee, who handles electricity matters; Maryam Sabbaghian, who was here at our last meeting. She's becoming a devotee of FERC meetings.

(Laughter.)

CHAIRMAN KELLIHER: She's a Counsel also from the House Energy and Commerce Committee Majority Staff and handles gas matters. And there is Elizabeth Stack, who is also on the House side, on the Committee Staff. So I want to thank them for being here, and because we are trying to faithfully implement the Energy Policy Act in the way Congress intended, I hope that's recognized, and I'm glad
they're here to see us act.

(Baby cries.)

CHAIRMAN KELLIHER: It's probably time to return him.

(Laughter.)

CHAIRMAN KELLIHER: I also want to recognize Larry Gasteiger on my Staff, who has stepped out for a moment.

(Laughter.)

CHAIRMAN KELLIHER: Let me skip that for a moment, but I want to welcome all of our EPAct watchers who are viewing over the Internet. FERC now shows its open meetings over the website at www.ferc.gov, and I'll be curious, after this meeting, to see how many hits we had on this meeting, and, particularly how many were from Princeton, New Jersey.

(Laughter.)

CHAIRMAN KELLIHER: Now, Larry's not here, so let me talk about him anyway. Again, this is the last meeting where Larry will be officially part of my personal staff. He is going to the office of General Counsel.

I think he's done a magnificent job as I've been Chairman the past six months, and I'm going to miss him because of -- that's not Larry --

(Laughter.)
CHAIRMAN KELLIHER: -- because I will miss his friendship and also miss the excellent quality of his advice. And I'll also miss having four attorney advisors. I have really enjoyed having four attorney advisors the past two weeks, so I'll miss that advantage.

But I'm sure I'll still see him, and I'll have to have backlog meetings and meetings on Order 663 more frequently, just to make sure I have contact with him.

Let's turn to EPAct. Now, today, the Commission holds a special meeting to take action on a number of matters relating to implementation of the Energy Policy Act of 2005.

And President Bush deserves a lot of credit for the Energy Policy Act. I think there is little doubt that this important law would not have been enacted, but for the President's determination. He started pushing this bill nearly five years ago, and persisted until it became law.

Other Presidents would have abandoned the effort a long time ago, but President Bush persisted and the law was enacted.

Now, the Energy Policy Act of 2005 has three principal policy goals and areas of concern to the Commission: Frist, it reaffirmed the commitment to competition in wholesale power markets as national policy, the third major federal law to do so in the past 25 years.
Now, second, it strengthened the Commission's regulatory tools, recognizing that effective regulation is necessary to protect the consumer from exploitation and to assure fair competition.

And, third, it provided for development of a stronger energy infrastructure. The Energy Policy Act gave the Commission significant new responsibilities. It also gave us significant new authority to discharge those responsibilities.

Now, in my view, the Energy Policy Act of 2005, is the most important energy law enacted in decades and represents the most significant change in Commission authority since the New Deal.

This new law gives us regulatory tools to respond to changes in electricity and gas markets that have occurred since the 1930s. It gives us stronger regulatory tools to prevent exercise of market power in electricity markets; to prevent manipulation of electricity and gas markets; and assure the smooth workings of those markets.

It gives the Commission robust enforcement and civil penalty authority, something we sorely lacked. It gives us major new responsibility to establish and enforce electric reliability standards for the bulk power system.

We've taken on these duties and authorities with a sense of purpose, mindful of the public trust they entail,
and dedicated to meeting these obligations within the time allotted by Congress.

Now, the Commission is implementing the Energy Policy Act in a timely manner, and I believe we're the only federal agency with significant implementation responsibility, that has met or exceeded very statutory milestone in the law. We have met or exceeded every deadline Congress set for us.

One of the tasks Congress gave us, was to implement repeal of the Public Utility Holding Company Act of 1935, a 70-year old law, and implement a new law in its place, the Public Utility Holding Company Act of 2005, all in a four-month period, and we met that deadline.

Since EPAct was signed into law six months ago, and including actions we're taking today, the Commission has completed ten Notices of Proposed Rulemakings, six Final Rules, four reports to Congress, including one joint report with the Department of Energy that will be sent to Congress shortly, and entered into a Memorandum of Understanding with the Commodities Futures Trading Commission.

Out of the six rules, I'd like to mention that PUCA's 1935 repeal, as well as our expanded merger authority, will become effective next week.

In the development of the six final rules, Commission Staff reviewed roughly 5,000 pages of comments.
We held four technical conferences relating to implementation of the Energy Policy Act, and held the first Joint Board meetings in decades. We've also worked closely with other federal agencies on implementation of various provisions of the new law.

Now, our success in implementing the Energy Policy Act is due to a number of factors: First, we had an excellent plan. Right after the law was enacted, I asked Staff whether any of the deadlines were manifestly unattainable, and, if so, we should inform Congress immediately, rather than wait until the 11th hour.

Staff responded that the deadlines were aggressive, but attainable, and I instructed them to develop a plan, and they developed a very detailed implementation plan that reads like a train timetable.

Virtually every week, two or three or four actions have to occur, either internally or externally, to stay on schedule. Some actions slip, other advance, but in the end, we met the deadlines.

We also had strong management of that plan, and the credit here must go to Cindy Marlette, the Director of our Energy Policy Act implementation efforts. It's one thing to have a plan; it's another to execute that plan smoothly, and Cindy did just that.
I was also fortunate to share this responsibility with my colleagues, Nora Brownell and Suedeen Kelly, who have been dedicated to the task of implementing the Energy Policy Act in timely and effective manner.

Economic regulatory bodies typically are composed of multi-member commissions, in order to assure that a diversity of views is brought to bear, and I assure you that that occurred over the last six months.

My colleagues consistently improved our product, and I'm thankful for their efforts and their skill.

But, in the end, the key to successful implementation of the Energy Policy Act, was the complete professionalism of the Commission Staff. The Staff threw themselves into this effort.

The various teams were each composed of Staff from as many as three different program offices. Nonetheless, they functioned together smoothly, and, in my view, the performance of the Commission Staff over the past six months, has been superb.

Now, we have not yet fully completed implementation of the Energy Policy Act. Some of the required actions have 12-month deadlines; others, 18 months; still others, four years, but today marks the completion of our implementation of the lion's share of the Energy Policy Act responsibilities.
Implementation of the Energy Policy Act is a huge undertaking, and it may be tempting to think that with issuance of the last Final Rule, our work will have ended, but, in a larger sense, it will only have just begun.

The Energy Policy Act permanently changed the role that the Commission plays in energy markets. If you consider our reliability responsibility, our real work only begins with issuance of a Final Rule.

After that, we'll have to review one or more applications for certification of an electric reliability organization, examine more than 90 proposed continental reliability standards, review a pro forma delegation agreement, consider individual delegation agreements, examine a host of regional reliability standards, and oversee the effective enforcement of reliability standards.

Now, from that perspective, issuing the reliability Final Rule is not the end, but only the end of the beginning for the Commission.

The Energy Policy Act represents a vote of confidence in the Commission, and Congress gave us a tall task, but I think our actions to date prove we're worthy of that confidence.

We've been dedicated to faithfully executing the law in the manner Congress intended, and I think that's reflected in the decisions we have made and are poised to
I also want to recognize the hard work of the members of the House and Senate who led this effort, particularly Chairman Barton, Chairman Domenici, Senator Bingaman, and Representative Dingle. I want to praise the Congressional staff who labored on the Energy Policy Act, some of whom join us today.

Now, this bill was a long time in the making. The electricity provisions, in particular, have roots that go back nearly ten years. And there were many versions of the legislation over the years, and I'm thankful that the final version was the best of the lot.

Now, this bill was so long in the making, that I actually worked on early versions of it. Seven years ago, I was a counsel to the House Energy and Commerce Committee, working on electricity legislation, and now I'm privileged to be in a position to help implement this new law.

My colleagues and I have approached this task with the full knowledge that if we do our job well, the rules we issue today may well stay in place for years.

However, we also recognize that if we do our jobs poorly, those rules may also stay in place for years, and, for that reason, we've been dedicated to getting the rules right from the beginning.

And I'd like to ask my colleagues if you have any
comments you want to make on EPAct implementation.

COMMISSIONER KELLY: As you know, Joe and Nora, and many of you in the audience, I regularly ride the Metro to work, and I am not reluctant to criticize it.

(Laughter.)

COMMISSIONER KELLY: However, I have developed even more appreciation over the last six months, of how difficult it really is to make the trains run on time. I will no longer criticize WAMTA -- well, maybe every now and then -- and it really is, our success in this arena, really is due to the efforts of our Staff. They worked long and hard and there have been many of them.

They didn't have a decent Christmas vacation, and their dedication, their commitment to the public interest, is very inspiring. I'd like to thank them personally, and I'd also like Cindy to consider running for the Board of WAMTA.

(Laughter.)

COMMISSIONER BROWNELL: I think that having waited for years on the development of an energy bill -- I think I testified the first time in the House about ten days after I was confirmed as a state commissioner, which is a scary thought, because what I didn't know, was pretty much everything.

But it was fine, they didn't listen to me then,
so it was okay. But I think, given that this bill has been so contentious and there have been competing interests, it is really extraordinary that Congress, in a bipartisan way, was able to come to conclusions that clearly recognized the importance of critical infrastructure, of new technologies, of reliability, all, in my mind, elements of economic development, environmental development, and the social well-being and competitiveness of this country and probably the most time that I've had since I've been here has been implementing EPAct, because we're building for the future, instead of responding to the past.

And while it represents change at a time that the industry is, because of the market in California and Enron and other things, more reluctant to change than ever, I think all of the EPAct provisions that we are implementing and working with DOE on, will bring value to customers, which is why we're all here. Thanks.

CHAIRMAN KELLIHER: Excellent, thanks. Well, now I'd like to make a few announcements before we get to the discussion agenda.

The first is the introduction of our new Solicitor, the Commission's Solicitor, Bob Solomon. Bob, can you stand for a moment?

I'll say some nice things about you, and you can stand awkwardly.
(Laughter.)

CHAIRMAN KELLIHER: Bob has been named the new Solicitor of the Commission, and in that role, he will supervise the work and responsibilities of appellate attorneys and support professionals who are responsible for defending and enforcing the Orders and initiatives of the Commission in Federal Courts, primarily the Federal Courts of Appeal and the U.S. Supreme Court.

Bob is a 17-year veteran of the Commission. He became Deputy Solicitor in September of 2001.

Prior to that date, he served as legal advisor to Chairman Herbert, and from February 1998 to January of 2000, Bob served as legal advisor to Commissioner Vicky Bailey on electricity and hydroelectric issues.

From 1988 to early 1998, Bob served in the Commission's Office of General Counsel, first as an appellate attorney in the Solicitor's Office, defending Commission Orders, and then as Deputy Assistant General Counsel, managing a staff of 20 attorneys in the development of electric Orders and policies.

I have great confidence in Bob's abilities, and I am sure that he will continue to effectively serve the Commission in his role as Solicitor. I'd just like to recognize that Bob's father was General Counsel of the Commission, sometime ago, and I'm sure he would have been
very pleased to see you named as Solicitor of the Commission.

Bob has also pointed out what my win/loss record is so far at the Commission as Chairman. On my second day as Chairman, I lost in the D.C. Circuit, so I was 0 and 1 on my second day, but since then, I have recovered nicely and my current record is 11/4/3, so we're doing well.

But I told Bob I'd like my record as Chairman in the Courts to be similar to Georgetown Hoyas when Pat Ewing, the father, played for them.

(Laughter.)

CHAIRMAN KELLIHER: So we have a tall task, but we're doing well.

Now, we talked a lot about EPAct, and we will have to deal with summary hearing Orders soon on EPAct, and we are trying to deal Bob a good hand. The first line of defense in a Commission Order is the Order-writer himself or herself, and we are trying to deal Bob and his folks, a good hand, a strong hand, so that they can protect the Commission's Orders in court, and I look to Rehearing Orders. That's the next wave of activity. But, thanks again, Bob.
(Applause.)

CHAIRMAN KELLIHER: I'd also like to recap a demand response conference that the Commission held last week. On January 25th, the Commission convened a technical conference on demand response and advanced metering regarding issues raised in the Energy Policy Act. Pursuant to the Energy Policy Act, we're preparing a report by appropriate region that assesses demand response resources, including those available from all consumer classes.

The technical conference included five panels, with speakers from across the country. The first discussed demand response issues and policy implications from a broad perspective. The second panel focused on advanced metering, allowing experts to summarize the key developments and issues associated with advanced metering. The third panel considered demand response and time-based rate programs and tariffs in greater detail, learning from demand response activities from an international perspective and from demand response pioneers within the United States.

The last two panels gave Commission Staff the opportunity to review this critical issue from a regional perspective. Experts from around the country gave the status of demand response by region, focusing on the role of demand response in regional planning and regional transmission planning and operations. These experts
discussed the successes, challenges and barriers to demand response in their regions. Overall, the conference was very useful and informative and will assist us in preparing our report on demand response issues.

I'd also like to make an announcement regarding the Alaska natural gas pipeline program progress report.

Section 1810 of the Energy Policy Act of 2005 provides that within 180 days of the date of enactment and every 180 days thereafter until the Alaska natural gas pipeline commences operation, the Commission "shall submit to Congress a report describing the progress made in licensing and constructing the Alaska natural gas pipeline and any impediments thereto.

Yesterday, the Commission submitted the first of these reports to Congress. This report describes the status of the three potential projects seriously considered for bringing Alaska natural gas from the Alaska North Slope to the Lower Forty-Eight. It also describes the progress made in advancing each of them, including actions taken by the project sponsors, the Commission, and other federal and state entities and potential impediments to each of the projects. As discussed in this report, a successful Alaska natural gas pipeline will have to overcome a variety of significant impediments presented by the tremendous size, scope and cost of any such delivery system, the long lead time needed to develop such a project, unique environmental
and competitive conditions, and the international scope of such a project. The impediments are being addressed by legislative initiative and other governmental action, both at the federal and state level, including both industry and involved governmental entities.

Colleagues, any comment on demand response or Alaska pipeline?

COMMISSIONER KELLY: No, Joe. I think, though, in light of what the President said in his State of the Union address about our country's interest in not being dependent on foreign oil that it's appropriate that we all look for ways to better implement demand response. That, in the long run, is what's going to help us with our dependency, not only on foreign oil, but foreign gas.

COMMISSIONER BROWNELL: A couple of points. I've been at several technology conferences in the last 10 days, and the tools are there, the question is whether the political will is there. And that means dramatic changes in the way we do rate design, it means empowering customers in a way that we haven't done very effectively in this industry, and it means I think very, very careful and coordinated efforts by our agency, DOE, and the states.

And I think it also requires -- we talked a lot about the lack of focus. There are a thousand demand response opportunities out there, and I think we now need to
focus on some small number so we can begin to measure
impacts and take the next steps. So I hope that we can
continue to lead that debate. I think the demand response
conference -- I'm sorry I couldn't stay for the whole thing
-- was very effective and we've got a knowledgeable Staff
that can be a resource.

And on the Alaska pipeline, we had the great
honor last summer of visiting the governor and the
legislators and various stakeholders in the Alaska pipeline
project. It is of enormous size, enormous impact, and I
look forward to continuing to work with the parties and hope
they can come to some resolution. Because this really has
gone on a long time and we're missing opportunities, given
the fact of the long lead time. So I look forward to
continuing to work with the state, commend their leadership,
and hope everybody can step up to the plate very very soon.

CHAIRMAN KELLIHER: Thanks.

Madam Secretary, why don't we move to the
discussion agenda?

SECRETARY SALAS: Good morning, Mr. Chairman, and
good morning, Commissioners. Before we do that, Mr.
Chairman and Commissioners, I would just like to note for
the record that since the issuance of the Sunshine Notice on
January 26th, there were no struck items and also that you
have no consent items on the agenda this morning. In
addition to that, Commissioner Kelly votes first this morning.

And with that, we will take up the first item for discussion. It is E-1, Rules Concerning Certification of the Electric Reliability Organization and Procedures for the Establishment, Approval and Enforcement of Electric Reliability Standards. And this is a presentation by William Longenecker of our Office of Energy Markets and Reliability, Christy Walsh, Jonathan First, Kumar Agarwal, Michelle Veloso, David Miller and Cynthia Pointer.

MR. LONGENECKER: Good morning, Mr. Chairman and Commissioners. My name is Bill Longenecker and I'm with the Division of Policy Analysis and Rulemaking. Joining me at the table is Jonathan First, the co-lead of the electric reliability organization final rule team. As mentioned, also at the table are Kumar Agarwal, Michelle Veloso, David Miller and Cynthia Pointer from the Office of Energy Markets and Reliability, Christy Walsh from the Office of the General Counsel. Kevin Kelly is the sponsor of this initiative. Other contributors include Mike Miller of the Office of the Executive Director, Roger Morie and Mark Higgins of the Office of Market Oversight and Investigations.

On August 8th, 2005, Title XII of the Energy Policy Act of 2005 was enacted into law. It added new
section 215 of the Federal Power Act to provide for a system of mandatory enforceable reliability standards. Under this electric power reliability system enacted by the Congress, the United States will no longer rely on voluntary industry reliability requirements for operating and planning the bulk power system. Congress directed the development by industry of Commission-approved and enforceable electric reliability standards that are mandatory.

The draft final rule before you today as item E-1 would issue electric reliability regulations to implement the new section 215 of the Federal Power Act within the six-month deadline set by Congress. Adding those reliability requirements to the Commission's regulations as Congress directed us is an important step toward ensuring more reliable electric service in the continental United States.

New section 215 of the Federal Power Act obligates all users, owners and operators of the bulk power system to comply with the reliability standards that will become effective under the process contained in the draft rule. The draft final rule provides procedures for the Commission to certify a single electric reliability organization, or ERO, to oversee the reliability of the United States' portion of the North American Bulk Power System. An ERO candidates' application to be the ERO is due to be filed with the Commission 60 days after the rule
issues.

The ERO will be subject to the Commission's oversight. It will be responsible for developing and enforcing the mandatory reliability standards. The ERO must submit each reliability standard to the Commission for approval. Only a reliability standard approved by the Commission is enforceable under section 215 of the Federal Power Act. The reliability standards will apply to users, owners and operators of the bulk power system.

Because of the interconnected nature of the bulk power system in North America, which extends into Canada and Mexico, the ERO is expected to seek recognition by the appropriate Canadian and Mexican authorities.

In the draft final rule, the Commission finds that it is necessary to have a strong ERO that can effectively develop and enforce reliability standards. The draft final rule sets out the ERO's role and responsibilities and its relationships with regional entities. The Commission has the authority to approve all ERO actions and procedural rules and to order the ERO to carry out its responsibilities under section 215. The Commission may also independently enforce reliability standards.

The ERO may also delegate its enforcement responsibilities to regional reliability organizations called regional entities. The delegation is effective only
if approved by the Commission. In addition, a regional entity may propose a reliability standard to the ERO for submission to the Commission for approval. This reliability standard may be either for continent-wide application to the entire North American Bulk Power System or for application only within the region covered by the regional entity.

The ERO or a regional entity must monitor compliance with the reliability standards. The ERO or a regional entity may direct a user, owner or operator of the bulk power system that violates a reliability standard to come into compliance. The ERO or a regional entity may impose monetary or non-monetary penalty on a user, owner or operator for violating a reliability standard subject to a review by and appeal to the Commission.

Here are the main features of the draft final rule. The rule includes criteria that an ERO candidate must satisfy to become the ERO and procedures for the Commission review of the organizational rules and protocols of the ERO and regional entities. Procedures under which the ERO may propose a new or modified reliability standard for Commission review and approval. A process for timely resolution of any conflict between a reliability standard and a Commission-approved tariff or order. The rule includes a process for resolution of an inconsistency between a state action and a Commission-approved reliability
standard. Criteria under which the ERO may enter into an agreement to delegate authority to a regional entity for the purpose of enforcing reliability standards and proposing reliability standards to the ERO for submission to the Commission. Regulations pertaining to the funding of the ERO and regional entities.

The rule includes procedures governing ERO and regional entity enforcement of reliability standards including compliance audits and investigations into violations of reliability standards and the assessment of penalties.

The rule includes procedures for enforcement of Commission rules and orders that apply to the ERO and regional entities. Regulations governing the Era's issuance of periodic reports that will assess the reliability and adequacy of the bulk power system in North America. And finally, procedures for establishing regional advisory bodies to provide advice to the Commission, the ERO or a regional entity on matters of governance, applicable reliability standards, the reasonableness of reliability fees within the region, and other matters requested by the Commission.

Thank you.

CHAIRMAN KELLIHER: Thank you very much for that summary. I want to commend the Staff, this order -- it's a
long order, but I think it's very well written. It
discusses the issues and presents them very well. So I just
want to commend you for the quality of this rule, also the
timeliness of it.

Today the Commission issues final rules to
implement our reliability role under the Energy Policy Act
of 2005. Under the new law, the Commission is charged with
certifying an electric reliability organization,
establishing continental and regional reliability standards,
authorizing delegation of enforcement responsibility from
the ERO to regional entities and overseeing the enforcement
of mandatory continental and regional reliability standards.

Assuring reliability of the bulk power system is
arguably the most important responsibility given the
major regional blackouts, most recently in August 2003, were
all caused in part by violations of voluntary unenforceable
reliability standards. The August 2003 blackout spurred
Congress to enact legislation providing for mandatory
enforceable reliability standards.

The Commission moved swiftly on reliability
rules, issuing proposed rules only three weeks after the
Energy Policy Act was signed into law. Altogether, about
1700 pages of comments were filed on the proposed rule.
These comments were thoroughly reviewed and helped shape the
final rule. A number of significant changes were made to
the proposed rule, in large part because of the nature and
the strength and the persuasiveness of public comments.

As the rulemaking proceeded, the Commission acts
to improve its ability to discharge its new responsibilities
once an ERO is certified and reliability standards are
established. Last fall, in order to prepare the Commission
to discharge its duty to review proposed reliability
standards, I directed Commission Staff to hold a series of
technical conferences with industry and stakeholders to
review current continental and regional reliability
standards. These technical conferences reviewed procedures
for establishment, approval and enforcement of electric
reliability standards. As a result of these conferences, we
are now in a better position to review proposed reliability
standards.

The final rule is faithful to clear Congressional
intent manifested in the plain words and structure of the
new law. The Energy Policy Act gave the Commission the
important duty of assuring reliability of the bulk power
system. We will exercise that duty by certifying an ERO,
carefully reviewing proposed reliability standards,
approving standards that provide for reliable operation of
the bulk power system, remanding those that do not, and
working to improve reliability standards over time. We will
review proposed reliability standards to assure that they
not only have technical support but are written to be
enforceable against all users, owners and operators of the
bulk power system, as required by law.

I'm committed to faithfully executing the Energy
Policy Act in the manner Congress intended. The law does
not provide for absolute uniformity in reliability
standards. That much is clear from the plain words and
entities will propose regional standards or variances to the
national reliability organization charged with standards
development, the ERO, which can then propose to the
Commission those regional standards that it has approved.
Congress would not have provided for consideration of
regional standards or variances if it had intended a "one
size fits all" approach. For example, the law applies for
appropriate deference to standards developed on an
interconnect-wide basis.

Now we had both continental and regional
reliability standards before enactment of the Energy Policy
Act, and I expect we will continue to have both continental
and regional reliability standards after issuance of the
final rule.

The final rule does not, however, contemplate
retaining regional difference that reflect mere custom and
practice, as opposed to real physical differences. The ACT envisions an ERO that pursues a standard of excellence, that moves beyond historic practices. The ERO should pursue best practices which benefit all customers and maintain a strong economy.

The Energy Policy Act of 2005 also gave the Commission important new responsibilities to ensure that approved mandatory reliability standards are properly enforced. We will ensure that reliability standards are properly enforced including, where appropriate, through regional enforcement of such standards. The Act allows for delegation of enforcement authority to regional entities that meet certain statutory tests. But, the Commission has ultimate responsibility to enforce reliability standards.

I want to emphasize the importance of assuring effective enforcement of reliability standards. There's been a great deal of attention in recent months to working to get the right standards in place, and that is half of the job. The other half is to make sure that reliability standards, once approved, are effectively enforced. Inconsistent and inconstant enforcement of even the most robust standards will not assure reliability.

Now once our rule is final, our attention will turn to the application for ERO certification. It's critical that the ERO be a strong organization. A strong
ERO will be one that maintains its independence, is adequately staffed to perform its important functions, and that exercises careful oversight of the actions of regional entities.

Regional entities will perform certain important reliability functions and undertake enforcement actions. However, the ERO must exercise close oversight in these areas to assure that any proposed standards adequately maintain reliability and do not burden other regions, and that regional enforcement programs are of the highest quality.

Under the law, the Commission must approve any reliability standard before it becomes enforceable. I'm operating under the expectation that it is the Version 0 standards that will be proposed to the Commission for its consideration and review. In anticipation of the filing of Version 0 standards, the Commission has been conducting a constructive review of existing reliability standards. We have been examining the existing Version 0 standards and the relationship of Version 0 standards to regional standards. We are prepared to begin our review of proposed reliability standards.

However, we can make no promise that the reliability standards ultimately established by the Commission will never be violated. What we can do is
promise that, unlike in the past, if established reliability standards are violated, the violator will be subject to significant civil penalties.

And I support the final rule and look forward to the views of my colleagues.

COMMISSIONER KELLY: Thank you, Joe. And thank you Staff for putting together an excellent product in a very short period of time. I know that you spent many days, weeks, reviewing the comments that we received and we received a lot of them, and I am 100 percent supportive of this rule. I think that it takes the comments -- all the comments into account and has done a very good job of accommodating the diverse interests around the country.

I also think that we can look at Congress' directive that the country establish an electricity reliability organization as a sign, a signal, that the country has changed its perspective on how we view transmission. Obviously transmission started over 100 years ago in individual cities and towns and, over time, over 100 years, it's been linked together.

And I think today's issuance of this rule is a statement that the transmission system is different today. It is entirely linked together across our continent and we can't tolerate any weak links in the system. We're dependent, all of us are dependent on the strength of that
transmission chain across the country.

And we have great aspirations for the electricity reliability organization, as I know you'll see when you read the rule. Not only that it will keep us from experiencing another major blackout, but that it will also facilitate the beginning of a continent-wide improvement to the quality of power that people receive in the United States, in Mexico and in Canada.

And I'd like to emphasize the international aspect of this. The flow of electricity clearly doesn't recognize political boundaries, nor should it. We're all better off because of the fact that our transmission system is linked with that of Canada and Mexico. Our welfare and our economic health is intertwined also with the health and welfare of Mexico and Canada. And the statute and the rule recognizes this and recognizes that an effective ERO must operate in an international arena and must seek recognition and acceptance in Canada and Mexico, and the Commission is dedicated to working with our Canadian and Mexican counterparts regarding the cooperative development of mandatory reliability standards and over time the increasing effectiveness and reliability of our transmission system, and I'm very pleased to support this rule.

COMMISSIONER BROWNELL: Thank you. At a time when our infrastructure is stressed because of increased
demand and other investment, at a time when the security of our infrastructure is of growing concern, and at a time when reliability is more important than ever before for our economic and social well-being, this is, as the Chairman said, probably the most important rule we will ever undertake.

Change is difficult, particularly in an industry that is risk-averse. The Congress recognized that our country is owed a stronger, independent ERO with consistent and measurable rules. I thank them for giving us this responsibility; I think they'll find today that we take it very seriously.

I also thank EEI, NOACA, APPA and their members, as well as our Canadian and Mexican counterparts for their leadership and their vision. Their willingness to be change agents bodes well for our new efforts at certainty and accountability. They recognize their franchises bring responsibility to the public. They believe that least common denominator with no accountability is no longer enough. Pursuit of excellence is the goal at the national level and at the regional level.

And I think there have been concerns raised at the regional level about losing control and losing responsibility. On the contrary, I think their responsibilities under the new regime will increase
enormously. To recognize and validate where rules need to be different is an important responsibility, because it means that training can be more difficult, that the bar may be different in different regions and I know that is not their goal. As they move towards a larger enforcement role, independence is critical. And for those organizations at the regional level who have multiple responsibilities, it needs to be clear what resources are being allocated for reliability and how they will maintain the independence of the various functions and how reliability and enforcement will be the primary goal of the organization, confused not with other responsibilities nor influenced by other responsibilities.

So I think this is a time of opportunity for enormous growth, for accountability and for responsibility, and I think that this a great opportunity to demonstrate our commitment in this country and in North American to improving and adding value for customers that, frankly, I think has been missing. Today's rule is a great first step and this Staff has done just a wonderful job of sorting through an enormous number of very informed comments.

I need to thank my staff as well, who I think have 300-plus pages memorized at this point. If you see Christine's tabs, you know what I'm talking about.

But the fact remains this is not the end. We
will improve standards, but I hope we will continue to raise the bar and continue to improve standards that have more impact on our country like cybersecurity, standards we have not yet anticipated. We need to work on operator training and not do it on a haphazard basis. We need to be sure that the ERO is well staffed and well budgeted to achieve the goals that they have, which are enormously important. And I think the top-down approach, where they are approving both the governance and the rules and the budgets of the regions, will allow them to do their job, allow us to review their progress and the progress of the regions.

So I think we've made great progress, but it doesn't stop today. And I hope the sense of urgency that we felt in getting this rule done will be reflected in comments and in the work at the ERO in their application and their regions as we all rethink how we can do our job better.

Thank you.

CHAIRMAN KELLIHER: With that, why don't we vote?

COMMISSIONER KELLY: Aye.

COMMISSIONER BROWNELL: Aye.

CHAIRMAN KELLIHER: Aye.

SECRETARY SALAS: Next for discussion is E-2, Revised Regulations for Governing Small Power Production and Cogeneration Facilities, and is a presentation by Eric Winterbauer from our Office of General Counsel, S.L.
CHAIRMAN KELLIHER: The PURPA Staff have done a lot of work the past month. You all have been busy.

MR. WINTERBAUER: Good morning. In this rulemaking, the Commission is issuing a draft final rule, E-2, that revises the Commission's regulations governing small power production and cogeneration facilities in accordance with section 210(n) of PURPA, which was added to PURPA by section 1253 of EPAct 2005. The final rule ensures that new cogeneration facilities are using their output for legitimate purposes, and are not designed with a "sham" use of thermal output whose only purpose is to achieve QF status.

Specifically, the final rule does the following:

the rule ensures that new cogeneration facilities are using their thermal output in a manner that is productive and beneficial; the rule ensures that the output of new qualifying cogeneration facilities is used fundamentally for industrial, commercial or residential purposes; the rule ensures that there is that there is continuing progress in the development of efficient electric energy generating technology; and the rule amends the exemptions available to qualifying facilities from the Federal Power Act, eliminating for some entities the exemptions from rate
The Commission received over 60 comments and made several changes to the proposals in the Notice of Proposed Rulemaking based on those comments, especially for the smallest facilities. For example, in response to comments, QFs that are smaller than 20 megawatts will remain exempt from Federal Power Act rate regulation.

In addition, new cogeneration facilities under 5 megawatts will be given a rebuttable presumption that they satisfy the new requirements that their output be used in a manner that is productive and beneficial and that their output is used fundamentally for industrial, commercial or residential purposes.

Lastly, other changes in response to concerns of commenters include allowing the sales of electric energy made pursuant to existing contracts to continue to be exempt from Federal Power Act rate regulation.

Thank you.

CHAIRMAN KELLIHER: Thank you. I just want to thank the Staff for their work on this order. I think it's a good piece of work and it was a pleasure to read, actually.

Today the Commission issues final rules to implement provisions of the Energy Policy Act of 2005 and amend the qualifying facility thermal efficiency and
ownership provisions of the Public Utility Regulatory Policies Act of 1978, PURPA. These rules should limit the potential for abuse under PURPA, curtail sham uses, and prevent new PURPA machines.

The Energy Policy Act provisions relating to qualifying facility thermal efficiency reflect a concern by Congress about past abuse in PURPA with respect to sham uses and PURPA machines. Congress wanted to guard against certification of qualifying facilities whose thermal output was for contrived purposes, which were designed primarily to sell power and not to produce thermal output for a thermal host and whose primary purpose was electric power output.

For this reason, the Congress directed the Commission to issue rules to assure that new qualifying cogeneration facilities are using their thermal output in a productive and beneficial manner and that their electrical, thermal, chemical and mechanical output is fundamentally used for industrial, commercial or institutional purposes. These changes are intended to prevent certification of qualifying facilities that rely on sham uses of thermal, electrical and chemical output in order to exploit the PURPA mandatory purchase obligation.

Now in response, when the Commission analyzes the use of a new cogeneration facility's thermal output, it will no longer apply a presumptively useful standard that was
essentially an irrebuttable presumption. The Commission will instead examine the use of a cogeneration facility's thermal output to assure that it's used in a productive and beneficial manner.

With respect to implementation of the fundamental use provisions, the final rule adopts a case-by-case approach which provides the Commission flexibility to appropriately address various facilities and circumstances. However, we do adopt a safe harbor to provide greater regulatory certainty, improve administrative ease and make the certification process more objective. Under the safe harbor, at least 50 percent of the aggregated energy output of the facility is to be used for industrial, commercial, institutional or residential purposes. Facilities that fall within the safe harbor will be automatically deemed to comply with certain criteria of the fundamental use standard. The Commission may certify a qualifying facility that does not fall within the safe harbor, but the burden will be on the applicant to demonstrate that it meets the fundamental use standard.

The final rule retains the option of self-certification of qualifying facilities and provides that notices of self-certification and recertification will be published in the Federal Register, which is a departure from current practice. In additional, the final rule modifies
Commission regulations to provide that the Commission may, on its own motion, revoke the qualifying facility's status of self-certified and recertified qualifying facilities if we find that they do not meet the applicable requirements, and that should limit the potential for abuse.

We also act to close a regulatory gap relating to market-based wholesale power sales made by qualifying facilities outside of PURPA contracts, or non-PURPA sales. When the Commission originally implemented PURPA, it granted very broad exemptions from Federal Power Act and other federal and state laws. Since then we've become concerned about the potential for abuse in unregulated wholesale power sales by qualifying facilities outside the structure of PURPA. We've also reexamined the rationale for the broad exemption from the Federal Power Act and determined that it removed a large number of wholesale power sales from any regulatory oversight. We propose to eliminate the exemptions from sections 205 and 206 of the Federal Power Act that the Commission previously granted except for the sales governed by state commissions. We do not affect existing wholesale power contracts, however.

We also clarified that the new Federal Power Act provisions relating to market manipulation, false statement and market transparency apply to qualifying facilities, as well as other wholesale power sellers.
The Energy Policy Act also eliminated the ownership limitations for qualifying cogeneration and small power production facilities and the final rule conforms our regulations to this statutory change.

The Commission does have a continuing duty under PURPA to have in place such rules as are necessary to encourage cogeneration and small power production. We believe this proposed rule is consistent with that duty, as well as our new responsibility under the Energy Policy Act. And I support the final rule.

Colleagues?

COMMISSIONER KELLY: I think, in looking at this rule, it's important to acknowledge that there have been concerns in Congress about the implementation of QF, but I don't think we should stress that. Because Congress, in section 1253 of the Energy Policy Act, also was clear that it wanted to ensure -- quote -- "that there is continuing progress in the development of efficient electric energy generating technology."

And in his State of the Union message two nights ago, the President spoke about our nation's overreliance on fuel sources from foreign countries and the need to reduce that reliance. I completely agree, and in my opinion, qualifying facilities have quietly represented and continue to represent an important component of the strategy to
accomplish that goal in the United States.

As the overall strategy is to reduce our reliance on foreign energy resources, a particular comment of that strategy that I refer to here is the effort to have our nation use its resources more efficiently, to get more work out of each Btu of fuel energy. QF's, especially cogenerators, almost by definition use their input energy more efficiently than other generators. More efficient use of energy means lower demand for foreign energy sources that we would otherwise have. PURPA has long helped to foster investment and development work on more efficient use of energy, and it's my hope that this final rule will continue that vital effort.

I'd like to highlight several provisions of the rule. Upon review of the comments to the NOPR, the final rule abandons the NOPR's proposal to require QF applicants to make a showing that their projects use technology that demonstrates continuing progress in the development of efficient electric energy generating technology. Putting such a requirement on individual applicants could have had adverse consequences unintended by Congress in the Energy Policy Act, such as causing a bias towards just new technology even where new technology would not be an improvement over existing technology. So instead the final rule finds that the Commission is meeting our burden under
the Energy Policy Act to ensure continuing progress in the
development of efficient electric energy generating
technology through the particular rules that we put in place
today with this final rule. I support this change in the
NOPR as being more consistent with Congress' intent and with
the nation's goals for QF generation and for energy use in
general.

Also, until now, the Commission has relied on a
presumptively useful standard that was irrebuttable to
determine whether a cogeneration facility's thermal output
was useful. The Energy Policy Act essentially directed the
Commission to make a greater effort to ensure that such
output is indeed productive and beneficial, and this final
rule meets this requirement, as Joe explained, by putting
the burden on most QF applicants to show that their thermal
output meets the standard. However, the final rule does
make an exception for small facilities of 5 megawatts and
under and cogeneration facilities built to serve the thermal
needs of a preexisting thermal host.

The final rule finds that the purposes of the
Energy Policy Act are served by rebuttably presuming that
the thermal output of these two types of facilities will be
productive and beneficial. The final rules makes a similar
rebuttable presumption for small QFs with respect to the
fundamental use requirement.
I think that all of these provisions are appropriate, and I hope they will help relevant QF developers continue to do their part to reduce the nation's dependence on foreign fuel sources.

COMMISSIONER BROWNELL: Like all great experiments, PURPA was conceived with the best of intentions. But like all great experiments, it needs to be evaluated in light of current conditions. And I think that is what Congress directed us to do and I think that is what we have done.

Having lived through a restructuring in Pennsylvania, where we had to review these contracts, I understand that some achieved the goal of being a lab for innovation and creating competitive options; many did not. Much of the investment did not bring value to customers, it brought value to those who were investing.

So I think this creates opportunities but it also, consistent with the theme of the earlier order, brings accountability and measured metrics, so that we know that we're achieving what indeed these were intended to achieve. So for that, I support the final rule. I thank the Staff. I think some of the steps that they've taken, including some of the exemptions, are appropriate and desirable. But in the end, I think that we have expanded the options for achieving the goals of competition in innovation and we need
to make sure that those are also allowed in the marketplace.

Thank you.

CHAIRMAN KELLIHER: Okay. Shall we vote?
COMMISSIONER KELLY: Aye.
COMMISSIONER BROWNELL: Aye.
CHAIRMAN KELLIHER: Aye.
SECRETARY SALAS: And finally for discussion this morning is E-3. This is Long-Term Firm Transmission Rights in Organized Electricity Markets and Long-Term Transmission Rights in Markets Operated by Regional Transmission Organizations and Independent System Operators. It's a presentation by Jeff Dennis, Udi Helman, Harry Singh, Bud Earley and Roland Wentworth.

MR. DENNIS: Mr. Chairman and Commissioners, good morning. My name is Jeff Dennis, from the Office of the General Counsel. With me this morning are Bud Earley, Udi Helman and Roland Wentworth from the Office of Energy Markets and Reliability, and Harry Singh from the Office of Market Oversight and Investigations. Udi and Harry will be presenting in just a moment.

E-3 is a Draft Notice of Proposed Rulemaking in response to section 1233 of the Energy Policy Act of 2005. Section 1233(a) of that act adds a new section 217 to the Federal Power Act concerning native load service obligations. New section 217(b)(4) requires the Commission
to exercise its authority in a manner that facilitates the planning and expansion of transmission facilities to meet the reasonable needs of load-serving entities to satisfy their service obligations and enables load-serving entities to secure firm transmission rights on a long-term basis for long-term power supply arrangements made or planned to meet their service obligations.

Section 1233(b) of the Energy Policy Act requires the Commission to, within one year of enactment, implement a new section 217(b)(4) by rule or order in transmission organizations with organized electricity markets.

Prior to the enactment of the Energy Policy Act, the issues raised by introducing long-term transmission rights into the organized electricity markets were considered in a Staff paper released on May 11th, 2005 in Docket Number AD05-7-000. Comments received on the Staff paper were considered in preparing this proposal.

Long-term transmission rights are an important addition to the organized electricity markets because they will provide an additional measure of certainty to load-serving entities regarding the transmission component of the total cost to meet their service obligations. Several entities submitting comments on the Staff paper stated that this additional certainty would allow load-serving entities to more readily finance new generation investments. The
comments we received on the Staff paper also made clear that introducing long-term transmission rights into the existing organized electricity markets will present challenges, however, such as assuring the financial adequacy of such rights over time and maintaining the tradability of rights with longer terms.

In general, the draft NOPR proposes to require transmission organizations with organized electricity markets to make long-term firm transmission rights available to all market participants.

Because it is unlikely that there is a single approach or design for long-term firm transmission rights that would be appropriate for all regions with organized electricity markets, the draft NOPR proposes eight guidelines for the development of long-term firm transmission rights. Transmission organizations with organized electricity markets would make a compliance filing within 180 days of the final rule to either proposed specific long-term firm transmission right designs consistent with the guidelines or explain how they already make long-term firm transmission rights available that are consistent with the guidelines. This approach would provide flexibility for transmission organizations and their stakeholders to develop long-term firm transmission rights that fit their current market design and meet the needs of
load-serving entities in their region, while also ensuring that all long-term firm transmission rights have certain fundamental properties.

MR. HELMAN: I will now describe the features of the proposed rights. The key feature is the term of the rights. In the current organized electricity markets, the longest term of a transmission right allocated for existing use of the system is one year. The NOPR does not propose a specific term length for the long-term rights, but states that the Commission considers long-term to mean terms on the orders of multiple years. It proposes to require that long-term rights be offered for terms sufficient to support long-term supply contracts and investments that may be measured in decades. Because the rights would be renewable, the draft NOPR leaves it up to transmission organizations and stakeholders to determine how to specify rights that provide the long-term coverage.

In terms of what the long-term rights would look like, again the draft NOPR leaves many details open for regional discussion, although it reviews the features of some possible alternative designs. The guidelines in the NOPR would require, however, that the long-term rights offered by transmission organizations have certain properties.

For example, the NOPR proposes that the rights
are point to point with a source and sink, so that an LSE that wants coverage of transmission usage charges for a specific generator can obtain it. The NOPR also proposes that once a long-term right has been granted the hedging properties of the right should not be diminished for its term except in extraordinary circumstances. What this means is that if, in a particular period, the transmission organization does not collect sufficient revenues from transmission users to pay all the long-term rights, it will collect those funds from market participants following some agreed-upon risk sharing rule rather than diminish the payments to specific rights. The draft NOPR seeks comments on this issue, and on several others related to the proposed guidelines.

MR. SINGH: I'll now describe how these rights can be obtained.

The draft NOPR proposes two methods to obtain the rights. The first is to build new transmission capacity, and the NOPR proposes that all transmission organizations' tariffs should state clearly that the transfer capability created in an upgrade or expansion is available to the entity that pays for the upgrade in accordance with the applicable cost allocation rules.

The second is through allocation of rights to existing transmission capacity. In the event that all
requests for long-term rights to existing capacity cannot be fulfilled, requests from entities that have long-term power supply arrangements to satisfy service obligations will have a preference. Finally, once obtained, the long-term rights should be reassignable.

The draft NOPR also discusses language on "planning and expansion of transmission facilities" in the Energy Policy Act and seeks comments on several issues. In particular, it seeks comment on the provision of adequate planning and expansion of the grid to ensure that long-term rights remain feasible for the entire term of the long-term rights and the financial results of a failure to adequately do so.

We are available for any questions you may have.

Thank you.

CHAIRMAN KELLIHER: Thank you. I want to thank the Staff for this order as well. I think it was well done, well written, actually interesting to read, so I want to thank you for the quality of this one.

Today the Commission issues proposed rules to require transmission organizations with organized electricity markets to make available long-term firm transmission rights that satisfy certain guidelines set forth in the draft regulations. These guidelines provide a framework for the development of specific long-term firm
transmission right designs by each transmission organization with an organized market.

These proposed rules will implement provisions of the Energy Policy Act of 2005 concerning native load service obligations. Section 1233 of the Energy Policy Act directed the Commission to issue final rules within a year of enactment that facilitate the planning and expansion of transmission facilities to meet the reasonable needs of load-serving entities to satisfy their service obligations and enable load-serving entities to secure firm transmission rights or equivalent financial rights and make long-term supply arrangements.

Long-term firm transmission rights are an important issue, particularly to wholesale power customers who want to make long-term supply arrangements. These customers want to obtain rights comparable to what was available to them prior to the formation of organized markets, namely a fixed long-term level of service under pricing arrangements that hedged the congestion cost risk that they now face in the organized markets.

Long-term firm transmission rights are also important to development of the grid. Long-term rights are currently available to market participants that support an expansion or upgrade of grid transfer capability.

Specifying and allocating long-term firm transmission rights
supported by the existing transfer capability raises difficult issues.

While we're acting under the Energy Policy Act, we've been working on this issue for some time. The proposed rule is informed by the Staff white paper released last spring, as well as by public comments on the white paper. Some of these comments argue that failure to offer long-term transmission rights in the organized markets with terms of greater than one year is a key deficiency that increases financial risk, impedes development of forward energy markets, and erects barriers to investment in new generating capacity.

The guidelines in the proposed rule will help shape development of long-term transmission rights that transmission organizations would make available to all transmission customers. In the event a transmission organization cannot accommodate all requests for long-term firm transmission rights over existing transmission capacity, the Commission proposes that a preference be given to load-serving entities with long-term supply arrangements used to meet service obligations, and we believe that preference is consistent with the Energy Policy Act statutory language.

Under the guidelines, long-term firm transmission rights must be available with term lengths sufficient to
meet the needs of load-serving entities with long-term power supply arrangements, existing or planned, used to satisfy their service obligations. And as a general rule, we would expect proposals with multiple-year terms.

The approach the Commission is taking appropriately allows for regional flexibility. This flexibility will allow transmission organizations to craft alternative designs that reflect regional preferences and accommodate regional market design. The comments on the Staff white paper did not favor a "one size fits all" approach and that is not what we propose today.

Consistent with the Energy Policy Act, this proposed rule is limited to transmission organizations with organized electricity markets, not public utilities outside those regions. And I support the proposed rule.

Colleagues?

COMMISSIONER KELLY: The NOPR does parallel the statutory language in the Energy Policy Act requiring that RTOs and ISOs make long-term rights available sufficient to support load obligations served by long-term resources, and I also fully support this effort.

I recognize that this effort is complicated by the fact that the current RTO markets were not specifically designed to support long-term transmission rights or, for that matter, long-term power supply arrangements. However,
there is nothing unreasonable about the business model of entities who prefer to rely on long-term arrangements to serve their load. Essentially, they have chosen to trade off a certain amount of economic efficiency for the enhanced reliability and price certainty of long-term arrangements.

Provision of electricity is an important service, certainly important enough to justify such a trade-off for those who prefer to make it and are willing to pay the associated economic costs. Accordingly, I'm pleased that Congress directed this action and I'm pleased that we are carrying it out today.

I want to add to the Chairman's thanks to Staff for its very hard work in preparing this document. Not only is the issue complicated, but creating a proposed rule to handle it is complicated. And I think that the approach that you pioneered to set out a list of guidelines is an excellent one and a productive one. And I think that the guidelines that we will adopt in today's NOPR do appropriately balance Congress' directive that long-term transmission rights be made available with the fact that each organized electricity market in the United States is different, and each needs flexibility in order to be able to carry out Congress' directive.

I encourage comments that, in particular, would suggest that our approach is the wrong one, but I fully
believe that it is a very productive and efficient way to 
manage the process.

Thank you.

COMMISSIONER BROWNELL: I want to thank the Staff 
for kind of a different reason, and that is because I think 
long-term FTRs are a little bit like the search for the Holy 
Grail, and writing this order and amassing all the comments 
had to be like living in the inner circle of hell. So I 
appreciate what you did on what I think is a really complex 
issue.

And I think this is a good beginning, but in 
truth I don't know the answer: for example, are regional 
FTRs tomorrow's seam solution? How do we adequately address 
the issue of load growth without letting load growth be the 
way to institutionalize discrimination and access?

We talk about planning, and increasingly planning 
has become an issue, and I know Suedeen and I have talked 
about this. And I think this is the place maybe where we 
can get it right. Some of my concerns about the planning 
process is that it's not inclusive, that entrepreneurs are 
not included, TDUs are not included, other customers are not 
included. There's no way of validating the inputs. And so 
it's controlled by people who have a vested interest, 
particularly if they own generation and are benefiting from 
congestion, are basically controlling the planning process.
And I'm not sure that's particularly healthy.

I think that we also need a better calculation of benefits. I was at SPP the other day working with some
groups from a subregion, and I think SPP acknowledged, the
chairman acknowledged that maybe we're not looking at the
benefits in the right way, maybe we're not really looking at
subregional issues in an appropriate way. It to me again
also brings up what I think is a very tough issue, which is
what is the difference between economic projects and
reliability projects. And I don't get it. And we've had
endless discussions about this.

But to make this work I think that you've got to
address those critical issues and planning may be the most
important one of them. We did not create RTOs and ISOs to
establish a status quo and a bureaucracy, we created them,
as I say often, to bring incremental improvement and
opportunity for participation by new players in the
marketplace, and I think that's an effort that really needs
to pick up some steam as we look at this.

So I hope there's an answer to long-term
financial transmission rights, but I for one haven't a clue
what it might be. Thanks.

CHAIRMAN KELLIHER: Shall we vote?

COMMISSIONER KELLY: Aye.

COMMISSIONER BROWNELL: Aye.
CHAIRMAN KELLIHER: Aye.

Any other business colleagues?

(No response.)

CHAIRMAN KELLIHER: Okay. That's a wrap.

Where'd by gavel go? Oh, Damian had it.

(Laughter.)

Thank you.

(Whereupon, at 11:37 a.m., the Commission meeting was adjourned.)