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BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION

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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 :  
- - - - -x

892ND COMMISSION MEETING  
OPEN MEETING

Commission Meeting Room  
Federal Energy Regulatory  
Commission  
888 First Street, N.E.  
Washington, D.C.

Wednesday, June 15, 2005  
8:15 a.m.

1 APPEARANCES:

2 COMMISSIONERS PRESENT:

3 CHAIRMAN PAT WOOD, III, Presiding

4 COMMISSIONER NORA MEAD BROWNELL

5 COMMISSIONER JOSEPH T. KELLIHER

6 COMMISSIONER SUEDEEN G. KELLY

7 SECRETARY MAGALIE R. SALAS

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19 ALSO PRESENT:

20 ANNE G. BLOOM, Reporter

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## 1 P R O C E E D I N G S

2 (8:15 a.m.)

3 CHAIRMAN WOOD: Good morning. This open meeting  
4 of the Federal Energy Regulatory Commission will come to  
5 order to consider the matters which have been duly posted in  
6 accordance with the Government in the Sunshine Act for this  
7 time and place. Let's start with the pledge to our flag.

8 (Pledge of allegiance recited.)

9 CHAIRMAN WOOD: I'd like to take a few moments,  
10 before we begin today's meeting, to introduce the  
11 Commission's Summer 2005 intern class and welcome them to  
12 the FERC. This summer's class represents 28 universities  
13 from 12 different states. The program provides career  
14 experience in the energy industry, an overview of the issues  
15 and challenges facing the industry, and an appreciation for  
16 the rewards of public service. The networking opportunities  
17 and the close mentoring relationships allow interns to not  
18 only set, but achieve their goals and aspirations. We are  
19 extremely proud of the accomplishments of our current --  
20 and, of course, all of our prior interns, which have made  
21 the last three summers here very enjoyable -- many of whom  
22 have actually joined the ranks of federal service here at  
23 the FERC or elsewhere in town. I'd like to congratulate all  
24 of you all for your accomplishments that got you here today  
25 and welcome you and hope that you enjoy a wonderful summer

1 here at FERC.

2 So I'd like to invite you all to stand and be  
3 recognized. The intern class of '05.

4 (Applause.)

5 COMMISSIONER BROWNELL: And I want to get -- I  
6 think everybody wants to get in on the intern summer tours.  
7 They end up seeing more of Washington and having a whole lot  
8 more fun than we do, so we're available if you're doing  
9 something fun.

10 CHAIRMAN WOOD: As you all know, we've been very  
11 focused on getting electronic information accessible here,  
12 and I have to say it's been real gratifying over the past  
13 few months to hear practitioners and other customers of the  
14 agency that go out of their way to just spontaneously remark  
15 on how much more accessible the agency's documents and  
16 orders and proceedings are. So I'd just like to say that we  
17 do have a very informative guide, a little brochure, here  
18 that's available to the general public, really written for  
19 the general user of the Commission but also the paralegal at  
20 a law firm or a regulatory affairs manager at a utility and  
21 everybody in-between to help them find the electronic  
22 information that they need.

23 This particular guide which is available today  
24 targets citizens affected by proposed natural gas, LNG and  
25 hydropower projects who are not familiar with how to use

1 FERC's electronic landscape. We plan on using these at our  
2 scoping meetings and site visits and at conferences. We  
3 hope that this will let the public use our website more  
4 efficiently and use our other applications to learn about  
5 proposed energy projects in their part of the country, to  
6 keep track of individual proceedings, and to learn about our  
7 E-library, where the public can access all of our decisions  
8 and case correspondence. I want to thank Ahava Leibtag and  
9 Alisa Lykens for leading this effort and McLane Layton, Mark  
10 Robinson, Magalie Salas, and Tim Herlihy for supporting this  
11 effort.

12 So copies of this guide are actually available in  
13 the back of the room today and from our Office of External  
14 Affairs.

15 Consent agenda, Madam Secretary.

16 SECRETARY SALAS: Good morning, Mr. Chairman, and  
17 good morning Commissioners. The following items have been  
18 struck from the agenda since the issuance of the Sunshine  
19 notice on June the 8th. They are E-1, E-2, E-3, E-6, M-2  
20 and G-9.

21 Your consent agenda for this morning is as  
22 follows: Electric items E-4, E-5, E-7, -9,  
23 -10, -11, -12, -13, -16, -17, -19, -20, -22, -23, -24, -27,  
24 -28, -29, -30, -31, -35, -36, -40, and -41.

25 Miscellaneous items: M-1.

1 Gas: G-1, -2, -3, -4, -6 and -7.

2 Hydro items: H-1, -2, -3, -4, -5 and -6.

3 Certificates: C-1, -2, -3, -4, -5, -6, -8, -9  
4 and -10.

5 As required by law, Commissioner Kelly is recused  
6 from the following items on the consent agenda: E-4 and E-  
7 28.

8 Specific votes for some of these items are as  
9 follows: E-5, Chairman Wood concurring with a separate  
10 statement, Commission Kelliher dissenting in part with a  
11 separate statement. E-7, Commissioner Brownell dissenting  
12 in part with a separate statement. E-31, Commissioner Kelly  
13 dissenting in part with a separate statement. G-1,  
14 Commissioner Brownell dissenting with a separate statement.  
15 G-6, Commissioner Brownell dissenting with a separate  
16 statement. H-1, Commissioner Kelly dissenting with a  
17 separate statement. H-5, Commissioner Kelliher concurring  
18 with a separate statement. And C-5, Commissioner Kelly  
19 dissenting in part with a separate statement. And  
20 Commissioner Kelly votes first this morning.

21 COMMISSIONER KELLY: Aye, noting my recusals and  
22 my dissents as stated by the Secretary.

23 COMMISSIONER KELLIHER: Aye, noting my statements  
24 referenced by the Secretary.

25 COMMISSIONER BROWNELL: Aye, noting my dissents

1 in G-1, G-6, and partial dissent in E-7.

2 CHAIRMAN WOOD: Aye, with my concurrence on E-5.

3 Okay. Some notes about the consent agenda.

4 There are a number of items and, of course, every item is  
5 important to somebody, but I'd like to highlight four  
6 particular items. E-4 was the New York ISO remand that we  
7 recently got back from the D.C. Circuit. In today's order,  
8 we respond to the Court's decision and direct the New York  
9 ISO to file revised tariff sheets to remove provisions  
10 permitting the use of the Automated Mitigation Procedure,  
11 the AMP, outside of New York City.

12 In E-5, the Midwest ISO, the Organization of  
13 Midwest States, OMS, and MISO have filed an application to  
14 allow MISO to share information with the state regulatory  
15 commissions. And this is an order on rehearing. In this  
16 order, we generally approved the MISO proposals but required  
17 certain revisions to conform to Commission precedent. And I  
18 concurred in that and Joe dissented in part.

19 In E-7, the Order 2003-C, which is the rehearing  
20 of the rehearing of the major interconnection rule for large  
21 generators, we reaffirmed and clarified Order 2003 on a  
22 number of issues there. In particular, we reaffirmed and  
23 clarified issues relating to the recovery of network upgrade  
24 costs and other non-pricing issues, including the 20-year  
25 reimbursement policy for network upgrade costs, clarified

1 our authority under the Federal Power Act to apply this rule  
2 to jurisdiction issues and further explained the payment  
3 obligations for reactive power supplied by the  
4 interconnection customer. And Nora dissented in part on  
5 this one.

6 And on the gas creditworthiness issue, the policy  
7 statement today setting forth our approach to credit issues  
8 relating to transportation on natural gas pipelines. And  
9 Nora, I believe, also dissented in part on that.

10 I again thank the Staff for all the hard work  
11 that it took to get some of the items done, reviewed,  
12 reviewed by the Commissioners and consented today.

13 Before I move on to the full agenda, I have some  
14 special presentations to make. When we were planning our  
15 celebration for the Federal Power Act, it's 70th anniversary  
16 later this month, in reviewing the area right outside the  
17 Commission that has like the gallery or whatever --

18 (Laughter.)

19 CHAIRMAN WOOD: -- Susan and I were looking  
20 around and we noticed some awards that had been given over  
21 the years and so I had the opportunity to look through these  
22 awards and noticed two glaring omissions. And so I wanted  
23 to rectify that today.

24 The first of which is to a West Virginian who  
25 certainly has earned the Exemplar for Public Service Award

1 but never actually gotten it, and that's Mr. Robinson. Mark  
2 has been with the Commission -- see, they don't know these  
3 things are happening.

4 (Laughter.)

5 CHAIRMAN WOOD: It wasn't even on the script that  
6 we all give ourselves.

7 Mark's been with the Commission for a number of  
8 years, starting in the hydropower licensing area, was  
9 appointed OEP Director in 2001, and has done a super job  
10 there, really the largest office within the agency, and has  
11 really I think in many, many regards, Mark, not only here at  
12 the agency, represented us well outside the agency,  
13 particularly in being very truthful and clear in stating the  
14 Commission's views to the Hill, both in public testimony and  
15 privately, and I think that's an important attribute that I  
16 think has served us well and, more importantly, has served  
17 the development of infrastructure of all kinds very well.

18 This has been a tremendous time of foment and  
19 change in developing infrastructure at the agency, and you  
20 have led a phenomenal team in the Office of Energy Projects,  
21 hiring good managers, trusting them to manage, attracting  
22 good employees from both the public and private sector to  
23 come work here and be inspired by working here.

24 So you are truly an exemplary public servant and  
25 it's a pleasure to actually make that formal now. So come

1 on up.

2 (Applause.)

3 CHAIRMAN WOOD: Another long-time veteran of the  
4 agency also is, much like Mark, one of the folks that really  
5 have built the agency and done a tremendous amount to  
6 contribute to its excellence. This North Carolina native,  
7 Ms. Marlette, has been obviously a friend of mine for a long  
8 time -- when I worked here the first time. She did those  
9 electric matters -- she and Larcamp would always be over  
10 talking to Jan McPherson and would always just lean into  
11 this old gas guy and say some nice encouraging words that,  
12 you know, kind of made it fun to come back and work with her  
13 again.

14 Cindy has been a dedicated public servant since  
15 she was an intern here -- paralegal or intern, Cindy?

16 MS. MARLETTE: Paralegal.

17 CHAIRMAN WOOD: Paralegal here back in the -- a  
18 few years ago.

19 (Laughter.)

20 CHAIRMAN WOOD: She's very youthful.

21 Cindy has taken over the Office of General  
22 Counsel, much like Mark did with his office, in '01 and did  
23 a phenomenal job, again, attracting talent to the Commission  
24 to work here to inspire them to do a tremendous amount of  
25 work, to go through the tremendously hard issues of

1 reconciling the California energy crisis with our limited  
2 approaches under the law to try to be as thoughtful and  
3 creative with approaches from everything from Order 888 --  
4 which certainly had a lot of her imprint on from the mid-  
5 90s, when she was Assistant General Counsel, and then Deputy  
6 General Counsel when I first got her, and now General  
7 Counsel.

8 So Cindy, I could go on and on all day with all  
9 your greatness, but I think everybody in the room knows it,  
10 so I'm just going to save you the angst and the pain and  
11 just let you come up here and get your Award for Exemplary  
12 Public Service.

13 (Applause.)

14 CHAIRMAN WOOD: All right. Another long-time  
15 veteran, this one is going to be a surprise, because she has  
16 actually been awarded the Exemplary Public Service before.  
17 But there's another row down that wall which seemed to fit.  
18 And this was ironic because I was actually down there with  
19 this Kentucky native when she and I looked at this, and I  
20 looked at the definition of this award, and I thought, huh,  
21 she's a direct fit for one, so I'll just read it:  
22 Chairman's Executive Leadership Award is presented to Susan  
23 J. Court in recognition of strong personal commitment,  
24 exceptional leadership, and furtherance of the public  
25 interest and the vision, mission, and values of the FERC.

1                   This award really is intended for folks who  
2 demonstrate significant leadership in the management  
3 executive model, and I would have to say as my chief of  
4 staff over the last year, Susan Court has been a phenomenal  
5 addition to this agency and my only regret is that I didn't  
6 contemplate this role and job and this match for Susan  
7 earlier. She's been a wonderful good friend. We worked  
8 together a few years ago on the Order 636 which, when she  
9 was Assistant General Counsel for Oil and Gas, during the  
10 Allday tenure, was really just a landmark achievement that  
11 she actually got to go down to the Solicitor's Office and  
12 successfully defend in the courts. And before that, she was  
13 an assistant to Commissioner -- or Acting Chairman Sousa and  
14 Martha Hesse, and before she actually came up to be chief of  
15 staff, did a great job in the General Administrative Law  
16 Division of our agency to really help, in my mind, restore a  
17 lot of the professional competence and applicable standards  
18 that we have hopefully successfully implemented over the  
19 years.

20                   She will be leaving next week to go represent for  
21 a three-month tour of duty in the Republic of Ireland, being  
22 our liaison there with our sister agency there in an  
23 exchange program that we have with other regulatory  
24 agencies. So before she skedaddles out of town, I wanted to  
25 present her with this award and thank her for her wonderful

1 service and friendship.

2 (Applause.)

3 CHAIRMAN WOOD: On that one in particular, she  
4 really plans these agendas and knows everything that's gonna  
5 happen, so Magalie and I had to work very hard with Tom  
6 Herlihy and some folks to keep that one quiet. But we did,  
7 so surprises are nice.

8 Let's move on to these items on the agenda, Madam  
9 Secretary.

10 SECRETARY SALAS: The first item for discussion  
11 this morning is E-8. This is reporting requirement for  
12 changes in status for public utilities with market-based  
13 rate authority. And it is a presentation by Brandon  
14 Johnson, Deborah Leahy and Jerry Pederson and Melissa Mosan.

15 MR. PEDERSON: Good morning, Mr. Chairman and  
16 Commissioners. Agenda Item E-8 is the draft order on  
17 rehearing of Order Number 652, a final rule that  
18 standardized market-based rate sellers' reporting  
19 requirement for changes in status. In response to the  
20 rehearing request, the draft order offers additional  
21 guidance as to the types of events and contractual  
22 arrangements that constitute a reportable change in status  
23 and the timing for reporting such changes in status.

24 Specifically, the following events and  
25 contractual arrangements would trigger the reporting

1 requirement: the acquisition of ownership or control of  
2 intrastate natural gas pipelines or storage facilities,  
3 construction contracts once the facility begins to generate  
4 test power and, to the extent that they transfer control to  
5 the purchaser, energy-only contracts, tolling agreements and  
6 fuel supply agreements.

7 By contrast, the following events would not  
8 constitute a reportable change in status: upgrades to a  
9 utility's own network that increase total transfer  
10 capability, acquisition of capacity on a non-affiliated  
11 interstate natural gas pipeline or acquisition of ownership  
12 or control of or affiliation with an interstate natural gas  
13 pipeline, and, changes in status that the Commission has  
14 already taken into account in an initial application for  
15 market-based rate authority or in a subsequent triennial  
16 review.

17 Furthermore, with respect to changes in status  
18 that occurred before the effective date of Order Number 652,  
19 market-based rate sellers are subject to their pre-existing  
20 reporting obligation. The draft order also grants requests  
21 for clarification that, in determining whether a given  
22 increase in generation exceeds the cumulative materiality  
23 threshold of 100 MW, market-based rate sellers may net  
24 decreases against increases -- for examples de-rates against  
25 up-rates in generation facilities -- and specifies the

1 language that market-based rate sellers are to incorporate  
2 into their market-based rate tariffs, which is based on the  
3 language in Section 35.27(c) of the Commission's  
4 regulations.

5 Thank you.

6 CHAIRMAN WOOD: Thank you, Brandon.

7 Any thoughts or questions on this one? This was  
8 one of the orders we had done earlier this year that I think  
9 did a lot to, I think, address what was probably a hole in  
10 the fence on the market-based rate issue. I think the Staff  
11 did a nice job on addressing all the issues. Anybody want  
12 to add anything?

13 All right. I just thought it was worth bringing  
14 out to let the world know we've done that one and let's  
15 vote.

16 COMMISSIONER KELLY: Aye.

17 COMMISSIONER KELLIHER: Aye.

18 COMMISSIONER BROWNELL: Aye.

19 CHAIRMAN WOOD: Aye. Thank you all.

20 On E-42, we've talked a lot about the  
21 transmission pricing policy statement and I wanted to, just  
22 for discussion today, bring up this issue briefly and talk  
23 about and kind of provide some input here so we can finalize  
24 this particular -- some thoughts on this item.

25 One of the things that has become clear to me as

1 we actually see that energy bill looking like it has some  
2 legs now and about to go forth is there's a requirement  
3 there -- we focused, I think, on PURPA reliability and the  
4 backstop authority and the electricity title, but one thing  
5 that is in there that I, quite frankly, had not focused on a  
6 lot most recently is Section 1241 which requires the  
7 Commission to, within one year of enactment of the  
8 legislation establish by rule incentive-based, including  
9 performance-based, rate treatments for transmission of  
10 electric energy for both reliability and for economic  
11 reasons. And so this mandate requires the Commission to do  
12 a pretty comprehensive rulemaking on these issues pretty  
13 soon.

14 So my general thought was the Commission is going  
15 to have this on its plate hopefully soon and that we ought  
16 to focus instead on one of the things that, between now and  
17 then, are not really clear. And I've looked at what we've  
18 done over the past several years, since the 90s, and then  
19 more recently on incentivizing transmission, particularly  
20 some of the items we've taken on some of the independent  
21 transmission companies, like the METSI, the Detroit Edison  
22 spin-offs, the regulatory totals we gave the American  
23 Transmission Company, the PATH 15 treatment out west, some  
24 of the other things that we've done on a case-by-case basis.

25

1           I think we've got one pending here that, while it  
2 was passed from today's agenda, E-6, will involve --  
3 depending on where the Commission wants to go on this issue,  
4 may involve some additional tools that are available to yet  
5 different business structures.

6           So I think we've got a lot of data points out  
7 there, and my feeling is that we probably ought to focus --  
8 rather than try to regurgitate everything that we've said  
9 and done, because that's out there and I've got pretty good  
10 feedback when I had a chance to visit with the financial  
11 community last week, that the Commission's made some pretty  
12 good decisions for investment purposes, the investor  
13 community, at least, with regards to some of the ones as  
14 good actions by the Commission, but have been continually  
15 focused -- and Joe, you mentioned this in some previous  
16 meetings about is there some other way that we can actually  
17 look at passive ownership, some other way that we can define  
18 independent that can satisfy our concerns about having  
19 independence from these, some of these institutions or some  
20 of these companies that get additional incentives or are  
21 allowed to do more non-traditional rate treatment but still  
22 allow for a bit more of the companies to stay, at least as a  
23 dividend recipient from what is considered a relatively  
24 stable revenue source.

25           And I think that that's a -- certainly it wasn't

1       there two years ago but I think, in looking at particularly  
2       the Wisconsin example -- and I have to say that's been one  
3       that I've watched with interest as an investment vehicle and  
4       as a means of developing new transmission that, you know,  
5       there is an opportunity there to allow a market participant  
6       to retain a passive ownership share in the company in the  
7       resulting kind of conglomerated company but yet not have  
8       control.

9                   And we spoke to this obliquely in a recent order  
10       called ITC Holdings when they were wanting to go, as I  
11       believe they're planning to do later this month, with an  
12       initial public offering for stock and they wanted some  
13       guidance from the Commission about would any of this, you  
14       know, trading jeopardize the independent status that we had  
15       given them in the prior order. And so we spoke to a 5  
16       percent maximum on voting rights in that context, and I  
17       thought that was a pretty good template there.

18                   That's what I think -- we could say more, but I  
19       think at a minimum that would be the thing I would be most  
20       interested in saying in a policy pronouncement here because  
21       I don't think we've really addressed it. Whereas I think  
22       we've talked about, you know, RTO adders, we've talked about  
23       the PATH 15 issue, you know, these other items that I  
24       mentioned earlier and I think we've got some other ones  
25       pending, again, as I mentioned here with IOUs and other

1 utilities' business structures. But this particular issue  
2 on passive ownership is one that I think we could provide  
3 some guidance on. It may allow for some industry  
4 development between now and the time that the Commission  
5 does the full comprehensive role that would be required  
6 under the law.

7 So I wanted to see if you all have thoughts on  
8 that or any feedback or any suggestions.

9 COMMISSIONER BROWNELL: I'll jump in. I think it  
10 is probably wise, although I was a champion of having the  
11 policy that answered every question anyone thought to ask,  
12 but I think with the pending energy bill, and I think some  
13 other things that are changing in the marketplace, including  
14 some reactions to some tax changes in the last session, it  
15 is probably wise to wait.

16 On the other hand, I think the issue of passive  
17 ownership -- Joe's brought it up a number of times, as you  
18 said, and we've heard a lot about that from people. I was  
19 probably the most reluctant in the building, but I've gotten  
20 increasingly comfortable with something like 49 percent  
21 passive ownership structure, keeping the 5 percent voting  
22 structure, with I think some provisions that we would want  
23 to see in the partnership agreements that would guarantee  
24 that passive really remained passive; otherwise, I think  
25 we're being intellectually dishonest.

1           But I'm assured that that happens in other  
2 industries. There are financial structures and arrangements  
3 out there that address, I think, the concerns that I had  
4 with simply rearranging the titles on the door and not  
5 really effectively changing anything. And when you look at  
6 the different models that you referenced, we see one of them  
7 -- particularly ITC -- all are investing in transmission at  
8 a much greater level than the traditional utilities. ITC  
9 particularly is building the interregional ties that expand  
10 competitive markets and address congestion, and I'm hoping  
11 that some of these new models will do exactly the same.

12           So I would love to see a statement, albeit  
13 limited, that addresses that very specifically with, I  
14 think, the guidance that we would give to further define  
15 what we mean in terms of the protections that would be built  
16 in. So I think it would certainly suffice, I think, at this  
17 moment, particularly because we have spoken very clearly. I  
18 looked at all of the things we had done in these various  
19 ones that we've approved, and there's quite a realm, a range  
20 of choices to be made that we've spoken to. So I'd be  
21 comfortable.

22           CHAIRMAN WOOD: Joe?

23           COMMISSIONER KELLIHER: I also want to say that I  
24 support the approach that the Chairman defined on  
25 transmission pricing reform. I just want to highlight that

1 I think there's broad agreement among the Commission, the  
2 members of the Commission that underinvestment in  
3 transmission is a national problem and that we need to  
4 develop some kind of national solution for that.

5 But as the Chairman indicated, there is  
6 legislative provisions in this area. I think we agree with  
7 Congress, there's agreement between both the Commission and  
8 the Congress that transmission underinvestment is a problem,  
9 there is an agreement that transmission pricing reform can  
10 help be part of the solution to that problem, there's also  
11 agreement that some federal siting authority is part of the  
12 solution to that problem. So we're really moving in the  
13 same policy direction as Congress but, as the Chairman says,  
14 it probably makes sense to wait a little bit, be a little  
15 patient, and see what the disposition of the energy  
16 legislation is.

17 I mean, I personally am more optimistic about the  
18 energy bill now than I've been in the past four years,  
19 because we're really reverting more to a normal dynamic in  
20 Congress on energy legislation. Energy legislation  
21 frequently has regional politics that normally governs --  
22 Texas Democrats and Texas Republicans disagree sometimes on  
23 energy policy. But this energy legislation has been  
24 partisan, and unnecessarily so, since 2001. But I think  
25 it's reverting now more to a normal dynamic, and I think a

1 lot of that's due to Chairman Domenici and the way he's  
2 developed the bill that's pending in the Senate. So I think  
3 we might as well be a little bit patient, see what the  
4 Senate does, and then we can really collaborate with  
5 Congress on transmission pricing reform.

6 But I do want to make one lawyer comment on the  
7 pending legislation in that provision. It's important to  
8 recognize why is that provision in the bill. That provision  
9 was added to the bill four years ago when there was a view  
10 that the Commission had discretion on transmission pricing  
11 reform but was disinclined to do so. That's why that  
12 provision's in the bill. It preceded our January '03 policy  
13 statement.

14 And I think it's clear now we not only recognize  
15 we have the authority to act on transmission pricing reform,  
16 but we have the willingness to do so. I mean, that's  
17 something we seem to all have accepted, there's some need to  
18 act on transmission pricing reform. So the provision a  
19 little bit reflects a premise that I think is incorrect and  
20 we do have a lot of discretion under current law and  
21 arguably the provision's not necessary at all, since I think  
22 it's also a problem that doesn't exist any longer. But it's  
23 still in the bill and, assuming it's enacted, we will have  
24 to undertake a rulemaking but it makes sense to be patient.

25 Now with respect to transcos, I agree with the

1 Chairman that that's an area where we probably can act  
2 sooner rather than later to revisit some of the positions  
3 the Commission has taken with respect to transcos in the  
4 past. The Commission has certainly favored the development  
5 of independent transcos. But there's an affiliate transco,  
6 ATC, that has really proven to be a success. The investment  
7 level has been very significant, much higher, as Nora  
8 indicated, than the prior owners. So I think we should  
9 revisit our policy and try to reinforce the success that  
10 we've seen so far with transcos, both affiliated and  
11 independent transcos.

12 It's interesting to note: transcos really now,  
13 in terms of market size, are in almost the exact same  
14 position as independent power was in 1978 when PURPA was  
15 enacted. Transcos right now own about 3 percent of the grid  
16 and so far we think they have proven to be a success, a  
17 successful vehicle to secure investment in transmission and  
18 there's lesser concerns about vertical market power exercise  
19 that result from transco formation, both affiliated and  
20 independent.

21 So I think we should try to encourage the growth  
22 of transcos -- and the transcos themselves, in independence,  
23 have urged us to revisit our policy because they find that  
24 the policy that we've established in the past does make it  
25 difficult for them to expand. And the experience so far has

1       been largely single company spin-offs, it's been harder for  
2       them to expand and expand their footprint. And if we think  
3       transcos are a good thing, larger, more regional scope  
4       transcos are probably an even better thing and that's more  
5       likely to occur through looking at passive ownership and  
6       other aspects to encourage affiliated transco development.

7                So I support the policy the Chairman -- the  
8       approach the Chairman has laid out.

9                CHAIRMAN WOOD: Thanks, Joe.

10               COMMISSIONER KELLY: I also support that. I am  
11       probably the least patient of the four of us in wanting to  
12       develop a transmission pricing policy. I think I'd like to  
13       stress that -- what Joe said is that fostering the expansion  
14       of transmission is a goal of all of us on the Commission.  
15       And should Congress not pass the energy bill, I trust that  
16       we will forge ahead in coming up with a policy, even if we  
17       aren't required to by the law. In the meantime, I think  
18       that we continue and we will continue and should continue to  
19       keep this a front-burner issue.

20               We've had successful technical conferences that  
21       have elucidated what some of the barriers are to building  
22       transmission. And I think just by airing the issue, we've  
23       seen movement in the industry. We now have a public  
24       offering of an independent transco, and we have discussions  
25       underway in the industry about using that business model to

1 build transmission. As a Commissioner from the western part  
2 of the country where perhaps building transmission is even  
3 more difficult because the regional planning processes that  
4 come with an ISO or an RTO are not in place, I think that we  
5 need to continue to focus our concerns there and foster  
6 regional planning and regional transmission.

7 The proposal by the states of Wyoming, Utah, and  
8 California to build the Frontier line is an interesting  
9 example of other ways that regional planning for  
10 transmission can be fostered and planning across existing  
11 markets is occurring. I think we should continue to be  
12 involved in those efforts and look for ways to provide  
13 incentives to get transmission built, particularly across  
14 regions. But in the meantime, I support the proposal, Pat,  
15 that you've suggested.

16 CHAIRMAN WOOD: Why don't we then talk short and  
17 sweet about what independence means in the context of this  
18 passive ownership issue? I think, Nora, you mentioned some  
19 concerns about making sure it really stays passive. I think  
20 we can put that on there and then save for a later day the  
21 broader discussion.

22 I should add though there was an interesting  
23 provision here that -- I think this may be a provision that  
24 Congress is telling us to do something we can already do or  
25 -- there is a provision, and it's gonna be y'all's to figure

1 out, but it just says the rules shall, number four, be for  
2 allowing recovery of, and then a would be all prudent costs  
3 necessary to comply with the reliability provision and, b,  
4 to allow recovery of all proven incurred costs relating to  
5 transmission infrastructure developed under the backstop  
6 siting authority.

7 And I think that that may have some opportunities  
8 there to maybe crack open the track cost issue that has, I  
9 think, maybe retarded the -- particularly the vertically  
10 integrateds from doing some of these investments for fear of  
11 not having cost recovery. I do think that there's something  
12 interesting there about allowing recovery of that may -- it  
13 may be existing law, but I think it may be the opportunity  
14 there to really get around the track cost issue that I know  
15 has been troubling to a number of the transmission owners in  
16 making some of these investments. So I'll just put that on  
17 the record.

18 All right. We'll take that up and get something  
19 else shortly then. Thank you all for that. Okay. Next  
20 item, Madam Secretary?

21 SECRETARY SALAS: The next item on the discussion  
22 is H-4, this is Georgia Power.

23 CHAIRMAN WOOD: This hydro license proceeding is  
24 the first one in which the ILP is being used, which is our  
25 Order 2002 process, and it's the first and thus far the only

1 instance in which the new study dispute resolution  
2 procedures have been invoked.

3 I want to say first that we appreciate the  
4 efforts of the parties that acted as pioneers in this new  
5 process; Georgia Power was the one that started this. We  
6 also recognize that no process is perfect and that it's  
7 difficult to determine how new procedures will work until  
8 they're actually tried out. This case has given us the  
9 opportunity to review some of the details of the dispute  
10 resolution process and to give guidance to others who are or  
11 will be engaged in the ILP.

12 However, in this particular case, we did not  
13 support in this proposed order the recommendation of the  
14 study panel. The intent of the regulations is to ensure  
15 that the director -- in this case it was Mark -- carefully  
16 considers the panel's recommendations in reaching a  
17 determination, not that the Director be required to comply  
18 with the precise formula for doing so. Here it's clear from  
19 the Director's determination that he thoughtfully examined  
20 the issues at hand, that he explained the basis of his  
21 decision that he disagreed with the panel as to whether the  
22 Interior have related the study to resource management goals  
23 and whether it had shown a proper nexus between the study  
24 involved that was required to form the license evaluation  
25 and the project. And in this case, I'm comfortable and our

1 draft order states that we ratified the Director's review  
2 and recommendations here on overturning the study panel's  
3 decisions.

4 I just want to say from a big picture angle that  
5 -- and why we called it separate is, you know, just taken in  
6 the general flush of orders that come forth after a meeting  
7 that maybe look like the Commission is being cavalier with  
8 the process that it set up and has put great faith in.  
9 That's not the case here at all. This was a hard case  
10 because it was a hard issue. And I think that the study  
11 panel efforts, while appreciated, did not, I think, weigh  
12 the balance here. And it's important for us, in the early  
13 stages of a new process, to monitor these -- case law that  
14 is being set forth here sets the parameters for when an  
15 applicant should be required to do a study that another  
16 federal agency or another participant in the proceeding may  
17 want and when it does not. And I think this was a proper  
18 case that it really was not necessarily required to be done  
19 and did not relate back to the purpose of the project.

20 So part of ILP was collaboration, but it also had  
21 on the other hand a very strong sense of streamlining and  
22 staying focused on the items that are necessary to make a  
23 complete and supportable decision. And so this step in the  
24 process, while it reversed a study panel's decision, should  
25 be viewed as being very supportive of the process but also a

1       pretty good indication that the Commission is watching this  
2       very closely, that we put a lot of faith in this process but  
3       that we're not going to just assume it works and walk away.  
4       We're going to stay engaged and make sure that it works.

5               So I just want to have those thoughts and  
6       comments -- I know -- some of you all want to add anything?

7               COMMISSIONER KELLIHER: That was an excellent  
8       description of the order. I just want to highlight --

9               CHAIRMAN WOOD: I read it straight from here.

10              (Laughter.)

11              COMMISSIONER KELLIHER: I just want to elaborate  
12       on one point, the deference question. Part of the argument  
13       of Interior was that the Director didn't give proper,  
14       adequate, sufficient deference to the decision of the panel.  
15       And I think the order resolves that issue exactly right. As  
16       the order points out in a footnote, during the rulemaking,  
17       ILP rulemaking, Interior had recommended that the Director  
18       be bound by the study dispute resolution panel's decision.  
19       And we correctly rejected that because we cannot delegate --  
20       delegation, of course, is one of my pet peeves; as Nora  
21       said, I must have been disappointed that there wasn't an  
22       interlocking directorate item on the agenda.

23              But deference is one of my other favorite issues.  
24       And we legally cannot delegate to a panel, we decline to do  
25       so during the rulemaking, and the director did exactly what

1 he was supposed to do, give careful consideration to the  
2 panel's recommendations and findings. He did so; the record  
3 shows that. But he had to exercise his own discretion, and  
4 I just wanted to highlight that aspect of the order.

5 CHAIRMAN WOOD: It is similar to the RSC issues  
6 that I know we're grappling with on E-5 and we've talked  
7 about in the SPP. It is delicate to ask people for their  
8 input and then sometimes not take it. And I think that's  
9 why, on this very first case where this came up where we did  
10 not take it, I just wanted to make sure that some of the  
11 incentives that we look at are very close and we refer to it  
12 and we can defer but we have to still make the decision at  
13 the end of the day -- I guess "defer" is not the right word,  
14 we respect the role of the panel.

15 COMMISSIONER KELLIHER: I mean, the Director  
16 carefully considered the recommendations and he weighed them  
17 and he reached another conclusion. But he was required to  
18 give careful consideration and he did exactly what he was  
19 required to do, nothing more.

20 CHAIRMAN WOOD: Okay. Let's vote this in.

21 COMMISSIONER KELLY: Aye.

22 COMMISSIONER KELLIHER: Aye.

23 COMMISSIONER BROWNELL: Aye.

24 CHAIRMAN WOOD: Aye.

25 SECRETARY SALAS: Next for discussion is C-7.

1 This is Vista Del Solution LNG terminal and it is a  
2 presentation by Pamela Romano, James Martin, Frank Sparber,  
3 and Lori Tsang.

4 MS. ROMANO: Good morning, Mr. Chairman and  
5 Commissioners. My name is Pamela Romano and I work in the  
6 Office of Energy Projects. Seated at the table with me are  
7 Frank Sparber, from the Office of Markets, Tariffs, and  
8 Rates, James Martin from OEP as well, and Lori Tsang from  
9 the Office of the General Counsel.

10 Today we are reporting on draft order Item C-7,  
11 as well as the continuing progress of LNG terminals in the  
12 Gulf Coast region. The draft order in Item C-7 to issue  
13 certificates to Vista Del Sol LNG Terminal LP and Vista Del  
14 Sol Pipeline LP, which are both affiliates of Exxon Mobil  
15 Corporation, to construct and operate the Vista Del Sol  
16 project.

17 The Vista Del Sol project will transport  
18 approximately 1.1 Bcf of natural gas from the Vista LNG  
19 Terminal to a terminus at an interconnection with Tennessee  
20 Gas Pipeline Corporation located in San Patricio County,  
21 Texas. In addition to the Tennessee Gas interconnect, the  
22 Vista Del Sol project will potentially interconnect with  
23 Texas Eastern Transmission Company, HPL/Channel A/S  
24 Pipeline, Crosstex Energy Pipeline, Kinder Morgan Tejas,  
25 Gulf South Pipeline, Natural Gas Pipeline Company of

1 American, and Transcontinental Pipeline Corporation, all in  
2 San Patricio County, Texas.

3 Vista LNG is located onshore near Corpus Christi  
4 on the La Quinta Channel in San Patricio County, Texas. The  
5 facilities will be used to import, store and vaporize  
6 approximately 1.1 Bcf per day of LNG on average, with a peak  
7 capacity of 1.4 Bcf per day. Some of the key facilities to  
8 be constructed include an LNG marine terminal with turning  
9 basin and one protected berth, LNG storage facilities  
10 including three 155,000 cubic meter storage tanks, LNG  
11 vaporization and sendout facilities, as well as other  
12 infrastructure and support systems including water and  
13 electrical services.

14 The Vista Pipeline will consist of approximately  
15 25 miles of 46-inch diameter pipeline with a mainline  
16 capability of 1.4 Bcf extending from the tailgate of the  
17 Vista LNG Terminal to a new metering and regulating station  
18 at an interconnection with Tennessee Gas located northwest  
19 of Sinton in San Patricio County, Texas. Vista Pipeline  
20 anticipates placing it into service in 2008 or 2009.

21 In October of 2003, Exxon Mobil Corporation and  
22 Qatar Petroleum announced a Heads of Agreement to supply LNG  
23 from Qatar to the United States for a period of 25 years,  
24 with expected deliveries to begin in 2008-2009. Qatar's  
25 North Field has been said to have proven natural gas

1 reserves in excess of 900 trillion cubic feet.

2 Vista LNG and Vista Pipeline took part in the  
3 Commission's prefiling process, allowing for expedited  
4 processing of certificate proceedings. As part of this  
5 prefiling process, the U.S. Coast Guard, Department of  
6 Homeland Security, U.S. Department of Transportation, U.S.  
7 Army Corps of Engineers, U.S. Department of Interior Fish  
8 and Wildlife Service, U.S. Department of Commerce, the NOAA,  
9 the National Marine Fisheries Service, the EPA, and the  
10 Texas Coastal Coordination Council all participated as  
11 cooperating agencies.

12 Because of this early participation of the  
13 affected stakeholders in the prefiling process, and the fact  
14 that this project was uncontested, Jim Martin, the project  
15 manager, and his team were able to prepare and issue a Final  
16 Environmental Impact Statement only eight months after the  
17 filing of certificate applications in August of 2004.

18 The draft order also establishes the Commission's  
19 commitment to cooperate with the Coast Guard's Navigation  
20 and Vessel Inspection Circular Guidance on Assessing the  
21 Suitability of a Waterway for Liquefied Natural Gas Marine  
22 Traffic, known as the NVIC. This was issued yesterday, June  
23 14th, 2005.

24 The purpose of this NVIC is to provide Coast  
25 Guard Captains of the Port, Federal Maritime Security

1 Coordinators, members of the LNG industry, and port  
2 stakeholders with guidance on assessing the suitability and  
3 security of a waterway for LNG marine traffic. It provides  
4 specific guidance on the timing and scope of the waterway  
5 suitability assessment, known as the WSA, which will address  
6 both safety and security of the port, the facility, and the  
7 vessels transporting the LNG. To facilitate implementation  
8 of the guidance presented in the NVIC, FERC will continue  
9 working with the Captains of the Port to determine how the  
10 guidance should be followed by various LNG project sponsors.

11

12 This brings us to the current state of affairs in  
13 the Gulf Coast region for LNG. This busy map shows the Gulf  
14 Coast region with the 23 new, amended, or modified onshore  
15 and offshore LNG projects that the Commission and MARAD  
16 Coast Guard have been working on for the past several years.

17 There are currently two LNG terminals in  
18 operation, as well as six terminals plus one expansion that  
19 have been approved and are now under construction or  
20 undergoing final design and procurement. There is also the  
21 Vista Del Sol project located near Corpus Christi, Texas  
22 which is under consideration today.

23 Additionally, Commission Staff and MARAD Coast  
24 Guard are currently working on 11 more projects that are in  
25 various stages of the NEPA process. We also know of one new

1 project and one expansion project that are being considered  
2 by industry sponsors.

3 There were many staff members in addition to  
4 those here today that helped on this project and we'd like  
5 to recognize them. It truly was a team effort. And this  
6 concludes our presentation for today. We are now available  
7 for any questions you may have.

8 CHAIRMAN WOOD: Wow, Jim, that's very impressive.  
9 I particularly liked that last map. That looks like a good  
10 place to live. I just told Joe and Nora, I'm going to get  
11 all gas appliances in my house again.

12 (Laughter.)

13 CHAIRMAN WOOD: Thank you all for the work. The  
14 FEIS looks solid. I support the order as you all drafted it  
15 and think it's important to get these permits that are  
16 worthy of approval on deck and approved so that the  
17 applicants can decide, in the marketplace, if that's where  
18 they want to go.

19 COMMISSIONER KELLY: I appreciate, Pamela, you're  
20 putting this into context, and I think it doesn't hurt to  
21 underscore that. There have been, since 2001, five new  
22 terminals approved. What's interesting -- and I think you  
23 were alluding to it, Pat -- is that they're all in the Gulf  
24 area. So the Gulf area continues to provide -- promises to  
25 continue to provide most of our natural gas. 12.5 Bcf per

1 day of deliverability has been approved by us and 63.6 Bcf  
2 of storage. That's very significant, particularly in light  
3 of the fact that the estimates are that we'll need 40  
4 percent more gas by 2025. So thank you for your hard work  
5 on this. I approve of the order and am happy to vote for it  
6 today.

7 COMMISSIONER BROWNELL: Could I just add a point?  
8 I think this is a beautiful picture of the Gulf and we're  
9 glad you're going to get gas appliances, for those who don't  
10 live in the Gulf though I think there is some belief that  
11 they will be served by having the energy farm for LNG  
12 elsewhere. And if you are at either end of the Coast, I  
13 think it's important to understand the transportation costs  
14 and -- what did we say last week when we were talking to  
15 some people, 10 percent, 20 percent to the cost, is that  
16 about right?

17 CHAIRMAN WOOD: Yeah, 50 to 80 cents.

18 COMMISSIONER BROWNELL: Yeah. So that for those  
19 who are considering LNG plants as they are in New England  
20 and California and other parts of the country, I think you  
21 have to understand the value is lost if you're depending on  
22 it being built all in Pat's home town.

23 (Laughter.)

24 CHAIRMAN WOOD: Plus there's the reliability  
25 component that we -- it's not just the economics, but it's

1 the ability to have gas there. And this is actually a very  
2 efficient way to store it because it's compressed and  
3 condensed and you don't have to use an underground cavern,  
4 assuming you even have the geology to have an underground  
5 cavern. It's so very important, reliability, as we've seen  
6 the Everett plant is for New England. So you're right, as  
7 always.

8 All right. Let's vote.

9 COMMISSIONER KELLY: Aye.

10 COMMISSIONER KELLIHER: Aye.

11 COMMISSIONER BROWNELL: Aye.

12 CHAIRMAN WOOD: Aye.

13 SECRETARY SALAS: The final item for discussion  
14 this morning --

15 CHAIRMAN WOOD: Thank you all very much. Good  
16 work.

17 SECRETARY SALAS: -- is A-3. It's the State of  
18 the Markets Report. It's a presentation by Steve Harvey,  
19 from the Office of Market Oversight and Investigations, also  
20 Dean Wight, Bob Flanders, Sebastian Tiger, and Stacy Angel.

21 MR. HARVEY: Good morning, Mr. Chairman,  
22 Commissioners. It's a great pleasure to present you today  
23 with the 2004 State of the Markets Report. The State of the  
24 Markets is our summary of important activity in energy  
25 markets in the preceding year.

1           The new report has been organized like an  
2 almanac, permitting us to focus on the highly regional  
3 nature of electric and natural gas markets and to explore  
4 other energy-related markets and factors. In addition to  
5 this regional approach, the report includes national  
6 summaries of electric and gas markets, four essays on a  
7 variety of topics, and short discussions of seven related  
8 markets or factors affecting energy.

9           In the essay on market information, we point out  
10 that there are really three types of customers for energy  
11 market information. We call these three types traders,  
12 price takers, and regulators. Traders operate inside the  
13 process and consequently have fairly good information about  
14 the formation of prices by forming them. Price takers are  
15 those sellers and buyers of energy who don't have the  
16 resources or inclination to actively trade. That would  
17 include most of the smaller sellers or buyers. As  
18 regulators, the Commission share a position with price  
19 takers of being effectively outside the market process,  
20 observers if you will. These distinctions are largely a  
21 matter of reasonable industry structure and activity.  
22 Still, the information needs of price takers and regulators  
23 matter a great deal.

24           We have designed the State of the Markets report  
25 this year to serve as a publicly available resource for the

1 many price takers and the other regulators interested in  
2 energy markets who do not have the resources to research the  
3 full array of markets that matter to them.

4 I won't spend much time today presenting the  
5 report to you. You saw most of it during Staff's regular  
6 reporting on energy market activity over the past year and a  
7 half. But I would like to quickly explore a few high-level  
8 points.

9 The most compelling theme to the authors of the  
10 report this year has been the fundamental interconnectedness  
11 among energy markets, in and outside the United States.  
12 This interconnectedness increased in 2004 in a number of  
13 interesting ways. First, at the highest level, electric  
14 prices increased in almost all regions in 2004. Increases  
15 reached almost 20% in some areas. Why was this?

16 Most significantly, prices increased due to fuel  
17 and other input price increases. Effects depended on what  
18 type of generation tended to determine market prices. For  
19 example, in upstate New York where natural gas fired  
20 generation tended to set prices, the small annual increase  
21 in average gas prices resulted in small increases to  
22 electric prices.

23 At Cinergy, where eastern coal predominated, on-  
24 peak and especially off-peak electric prices rose more  
25 significantly. That's because eastern spot prices for coal

1       went up by 68% in 2004 and emissions allowance prices  
2       increased even more. Western coal prices rose less than 10%  
3       and resulted in lower electric increases where it was used.

4                Reviewing national natural gas prices, we see  
5       smaller increases, about 7 percent; much smaller than in  
6       2003. Regionally, the exception was the Rocky Mountains,  
7       where new capacity installed in 2003 brought up prices seen  
8       by producers though not at the expense of customers outside  
9       the Rockies.

10               Natural gas prices in 2004 reflected the  
11       increasing price of oil. This graph needs some explanation.  
12       It plots the price of gas divided by the price of oil in  
13       relation to storage inventories. What it means is that in  
14       2004 we didn't see gas prices surge beyond oil prices  
15       because of low storage inventories like we did in 2004.  
16       Instead, gas prices remained pretty stable compared to oil.  
17       Oil prices, however, increased from an average of \$30 per  
18       barrel in 2003 to a little over \$40 on average in 2004.  
19       That change appeared to be driving gas prices.

20               Regionally, gas and electric markets interacted  
21       actively. New England, in early January 2004, experienced  
22       simultaneous stresses on both gas and electricity due to  
23       extreme cold. A combination of market forces and electric  
24       dispatch decisions avoided disaster by re-allocating gas  
25       across the two markets. This case has interested us because

1 of what it tells us about market behavior under stress. The  
2 occurrence is detailed in one of the four essays in the  
3 report.

4           There's been a lot of talk over the past year  
5 about the more aggressive entrance of financial players into  
6 energy markets, banks and hedge funds. We've documented  
7 some of this activity for electricity and natural gas. In  
8 this graph, we look at financial electric products trading  
9 on the InterContinental Exchange, or ICE. ICE is not the  
10 only place this trading is done -- much of it is through  
11 voice brokers -- but it's one of the few places where we can  
12 actually count how much activity is taking place.

13           The surge in activity in 2004 is clear.  
14 Nonetheless, electric financial trading still appears less  
15 active than in natural gas or certainly oil. In the report  
16 itself, we also looked at financial natural gas trading and  
17 see significant increases from its already higher level.

18           Another essay identifies trends in electric  
19 investment. In general in the United States electric  
20 generation markets are overbuilt. Given the highly regional  
21 nature of electricity though certain areas are underserved.  
22 In those areas, market prices did not clearly signal  
23 investment, reasons for which will continue to be a subject  
24 of research for us in 2005. Though electric transmission  
25 investment increased, it remained quite low on both an

1 absolute and relative basis.

2 To wrap up, we wanted to highlight a variety of  
3 energy market questions we're looking at coming out of our  
4 review of 2004. The first electric question gets at market  
5 performance under stress. This is already an imminent issue  
6 -- a few weeks ago, we spoke about our concerns in certain  
7 areas for the coming summer.

8 The second question has been a common concern  
9 about how well RTO markets can adapt to conditions in  
10 dispersed regions like the Midwest. So far, the indications  
11 are positive.

12 The third is important in the longer run: can  
13 market signals work fast enough to give incentives for  
14 investment in a timely way?

15 The fourth is a related question about whether  
16 active demand response by customers to price would improve  
17 the functioning of electric markets.

18 And finally, the challenge to integrate  
19 reliability and market concerns will remain important over  
20 the next couple of years.

21 Turning to natural gas, a key question is how gas  
22 markets respond to occasional stress from, for example,  
23 weather or supply disruption. The second question concerns  
24 the ability of higher prices to increase the pace of  
25 innovation in the industry, one of the most important things

1 that markets can do. Finally, the U.S. natural gas market  
2 is clearly becoming increasingly affected by global market  
3 considerations. How this relationship will develop may play  
4 a major role in how we use natural gas in the future.

5 There were many contributors to this effort  
6 across the Commission Staff. I won't spend the time  
7 thanking them individually -- and I'm not sure this is a  
8 complete list -- but I have appreciated everyone's  
9 participation in this project. The roughly 250 page report  
10 will be available electronically today on the Commission's  
11 website in the What's New at FERC section after this  
12 meeting.

13 We hope that the 2004 State of the Markets report  
14 will be useful to the many out there who, like us, are very  
15 interested but are on the outside of energy markets looking  
16 in. We look forward to getting feedback from them about  
17 whether we've met our goal.

18 Thank you, and we would be happy to answer any  
19 questions.

20 CHAIRMAN WOOD: Steve, thank you and the team.  
21 This is very important. I've been a big fan of almanacs  
22 since my grandmother used to have one under the Christmas  
23 tree for me every year, the World Almanac. And then one  
24 year she got some other brand and I kind of rebelled. But I  
25 can get use to this one. This is very helpful. I have

1 actually already used some of the graph stuff when I go out  
2 to give speeches and just need good source information.

3 But importantly the step up from last year is the  
4 analytical part, and I just wanted to continue to emphasize  
5 that role for your group. Nobody else in the economy really  
6 is charged with analyzing stuff without an agenda except for  
7 you, and so the "you" is the public interest agenda. Just  
8 tell the truth and let's talk about the stories, what they  
9 are. So, on the big picture, thanks.

10 On a particular one, I want to go back to that  
11 linkage map you had between oil and gas prices. I would  
12 save all the questions that I get kind of outside the  
13 Beltway crowd that, you know, might be a little more engaged  
14 on some of the details. People want to know are these the  
15 real prices, is oil really \$55 this morning driving in to  
16 work? How do we have confidence in those prices. I know  
17 this is bigger than the index issue, but how are those  
18 prices formed, oil, gas, coal?

19 MR. HARVEY: It's a slightly different answer in  
20 oil and gas and coal's question. Oil has an extremely  
21 robust and well-developed set of markets, both sort of  
22 locational spot markets that are reported on actively, an  
23 extremely strong inactive futures market that's tightly tied  
24 in to that and, as a consequence, that's a set of sort of  
25 resources that is being well established over time. It has

1       been challenged at different times, particularly in the  
2       late-90s -- I'm sorry, in the early 90s, I know producers  
3       were most concerned about the functioning of oil futures  
4       markets and other things and what those effects were on  
5       price. And then that sort of settled down to a certain  
6       degree.

7                 Gas, I would say is, no rule on that range but  
8       has a very similar structure to it.

9                 Coal, when you talk about -- we have a coal  
10       section in here, is very different. The spot market dynamic  
11       in coal has not been very influential in the past. It's  
12       tended to be longer-term contracts and so there hasn't been  
13       as much of a spot market. There isn't the kind of financial  
14       trading in coal because of the lack of a spot market and  
15       that volatility. But I would say that our team really saw  
16       in 2004 an increasing role for spot coal -- certainly an  
17       increasing price for spot coal -- and it will be interesting  
18       to see where that goes.

19                So I think the answer, in terms of confidence, is  
20       a little bit experience and a little bit of just time with  
21       that. That's not to separate from the very specific issues  
22       that each of those industries goes out in terms of its own  
23       price reporting.

24                CHAIRMAN WOOD: Thanks. Thoughts, questions?

25                COMMISSIONER BROWNELL: I have a couple of

1 questions. You talk about gas on margins, regions, and you  
2 refer to New England and what PJM West set up. Isn't the  
3 Northwest going to be having a greater reliance on gas  
4 particularly this summer, and you don't reference them at  
5 all. So would they expect to see increases of 8 to 12  
6 percent, 5 percent, what are you thinking now?

7 MR. HARVEY: In the Northwest, of course, it  
8 depends on the condition of hydro and exactly how much of a  
9 margin it's going to get --

10 COMMISSIONER BROWNELL: Right. We had that  
11 discussion, yeah.

12 MR. HARVEY: And so going into 2005, yeah, I  
13 would expect, personally -- as we said a couple weeks ago,  
14 we would expect gas to be much more actively driving prices  
15 in the Northwest. And so that effect of gas prices should  
16 come a lot more strongly into that.

17 COMMISSIONER BROWNELL: Okay. You also say in I  
18 think your last -- slide 11, "the fourth is a related  
19 question about whether active demand response by customers  
20 to price would improve the functioning of electricity  
21 markets." Is that a question? I thought that question had  
22 been asked and answered and the problem was the kind of  
23 inherent barriers to entry of any meaningful demand side  
24 programs in markets throughout the country. So what is it  
25 that you're going to be studying there?

1                   MR. HARVEY: I think, for those of us who worked  
2                   on this, the conclusion that we've come to is that to make  
3                   electricity markets work really well, it's very important to  
4                   have a demand response. And so I guess the question is,  
5                   notwithstanding the true difficulties in making that work in  
6                   an effective way, it is an important thing to wholesale  
7                   markets and to the functioning of the wholesale markets, and  
8                   we'd like to keep probing that issue to see if there are  
9                   ways of making that response work.

10                  COMMISSIONER BROWNELL: Well maybe we need to be  
11                  a little more specific in the probe. Maybe we need to  
12                  analyze -- maybe take the regional markets and take a look  
13                  at who has it, who doesn't, why not, and identify maybe the  
14                  three or four top or two or whatever barriers to entry and  
15                  see if there's something that we can do.

16                  MR. HARVEY: Sure.

17                  COMMISSIONER BROWNELL: I've been working with  
18                  the states and MADRE and they're very frustrated because  
19                  they think we can do more and I say well, in the infamous  
20                  SMD we tried and got a lot of push-back. But perhaps now is  
21                  the time for us to really look at what greater role we can  
22                  play in the wholesale markets, both the unorganized markets  
23                  of the Southeast and Northwest, and the organized markets  
24                  certainly ought to be easier.

25                  MR. HARVEY: In this particular document, one of

1 the other market discussions is about demand response.  
2 Stacy on our staff put that together. I would say we took  
3 it through trying to assess kind of what was working and  
4 what wasn't and to what extent, but I think probing --  
5 defining the word "probing" here --

6 COMMISSIONER BROWNELL: Think surgically boring  
7 with a sharp instrument.

8 MR. HARVEY: Exactly.

9 (Laughter.)

10 MR. HARVEY: The barriers to entry is a very good  
11 idea. We'll take that up.

12 COMMISSIONER BROWNELL: And maybe we can talk  
13 about that.

14 CHAIRMAN WOOD: Nurse Ratchet.

15 (Laughter.)

16 COMMISSIONER BROWNELL: It's taken a long time to  
17 earn that.

18 (Laughter.)

19 COMMISSIONER BROWNELL: You also raise a key  
20 question as to how the gas markets respond to occasional  
21 stress from weather or supply disruption. Once again,  
22 what's the question? I mean, I think we had some pretty  
23 good demonstrations of what happens when we had the  
24 hurricanes last season. I gather we're going to have a  
25 similarly difficult season, at least some weather

1 predictions. So what is it that we need to know?

2 MR. HARVEY: I think a good example of that is  
3 the experience in New England which, I think, for many  
4 people even in New England it struck them that their  
5 capacity, their gas capacity is pretty tight under stress at  
6 this point. In many instances, the question gets back to  
7 the discussion you all just had about the location of LNG  
8 terminals and about potentially more construction as you get  
9 farther out into the system, farther away from where supply  
10 is actually occurring in the natural gas system.

11 The New England experience was fairly extreme  
12 weather, but if you add a year or two to that, two years  
13 going into this next winter, of economic growth, of  
14 development, with not necessarily a whole lot of additional  
15 capacity being built, those issues become more and more  
16 important. So there is a level of issue of like the  
17 hurricane as it affects the entire national system, but  
18 there are very important regional issues with regard to  
19 natural gas and I think New England is one of concern for  
20 us.

21 COMMISSIONER BROWNELL: I'm still unclear as to  
22 what the questions are: supply gets tight, prices go up, it  
23 puts stress on a system that relies on gas and oil for both  
24 their electricity market and their heating market --

25 MR. HARVEY: Yes, that was the experience in New

1 England. And what it does, the very good news -- and one of  
2 the reasons we wanted to explore the early January 2004  
3 experience in New England was that the market and some of  
4 the work by the New England ISO actually redistributed gas -  
5 - it was at a very high price, but it actually redistributed  
6 those supplies in such a way that there weren't major  
7 failures. There was some pressure weakness, but there  
8 weren't any major failures. That's a very positive sign  
9 that the market can actually handle a stressed condition.

10 COMMISSIONER BROWNELL: And that was a good  
11 example. So what you mean by question, what you mean is  
12 we've now seen some situations -- the report contains an  
13 analysis that gives an accurate picture, there's not a lot  
14 of unknown there.

15 MR. HARVEY: Yeah, well there were coming out of  
16 that experience a couple of issues that start driving to  
17 make it work better. The big news to me was it worked and  
18 it worked pretty well. What the analysis does is it goes  
19 down a level and says well where could it have worked  
20 better, lining up the electric and gas day was an issue that  
21 was important because of the decisions being made.

22 So I guess what I'm saying is I think it was  
23 overall a very good experience about how markets can be very  
24 helpful in making that reallocation work, but it is, we  
25 feel, our job to continue to break that down and say how can

1 we make it work better.

2 COMMISSIONER BROWNELL: Okay. That's -- I  
3 thought you were suggesting with questions that we didn't  
4 know what would happen. So we know what would happen and we  
5 want to figure out better responses.

6 MR. HARVEY: I think that's right.

7 COMMISSIONER BROWNELL: Okay. Great. Thank you.  
8 This is good. Thanks.

9 CHAIRMAN WOOD: Suedeen?

10 COMMISSIONER KELLY: Steve, I appreciate your  
11 saving out the most important issues in electricity and gas,  
12 and it's about time for us to revisit our strategic plan for  
13 the next year. And so I hope that, and I anticipate that we  
14 will incorporate this into our next year's plan.

15 I wanted to agree with Nora that I think it is  
16 time specifically to look at demand side management. Over  
17 the last couple of months, we've had people visit us at the  
18 Commission talking about their interest, industrial  
19 customers, who have the ability to do more on demand side in  
20 organized markets. And they've talked to us initially about  
21 how the markets could function better to allow that to  
22 occur. So I hope that we will -- perhaps with the technical  
23 conference that we will initiate soon a more precise look at  
24 what the barriers are and what kinds of things we can do,  
25 particularly in the organized markets, I would suspect, to

1 make demand side a better resource. And that's probably  
2 also appropriate given the President's address later today,  
3 and I guess he'll be talking about it, too.

4 CHAIRMAN WOOD: One thing that -- we've got a  
5 case, I think, due up at our next meeting, but one of the  
6 barriers to entry is a jurisdictional one. And I'm very  
7 interested in the point you made, Nora, about the states  
8 think we ought to do more. I would love to hear them come  
9 forth -- as they did in the ICAP markets in New England, and  
10 you know they're not all working perfectly, but they said  
11 look we need you to take care of this because it's a multi-  
12 state issue, FERC, and we're gonna use your tariffs to get  
13 there and we're gonna have to grapple with that in the next  
14 two weeks so -- or if we want to do it that soon. But that  
15 is one barrier to entry that we're just going to have to  
16 work through that we unfortunately have not been able to do  
17 yet. It's just a silver bullet. And I'm glad you all are  
18 so focused on it because I do think once that's solved so  
19 much of the rest of this becomes so simple. So simple.

20 COMMISSIONER BROWNELL: We'll just be picking  
21 another great city where the -- Suedeen will run a technical  
22 conference.

23 (Laughter.)

24 COMMISSIONER KELLY: Houston.

25 CHAIRMAN WOOD: And Joe will be taking care of a

1 new baby by then.

2 COMMISSIONER BROWNELL: We'll let him have a  
3 vote, because we did choose the last one.

4 CHAIRMAN WOOD: All right. Joe, anything?

5 COMMISSIONER KELLIHER: Yes. I just wanted to  
6 ask about one point that surprised me a little bit in the  
7 report on page 27, regional planning and its relationship to  
8 transmission investment. You seem to find at the bottom of  
9 page 27 that regional planning has not led to more  
10 transmission investment and point out that in 2004 there  
11 were zero transmission miles added in New England and zero  
12 in MISO -- well, I guess MISO doesn't have regional planning  
13 quite yet, do they?

14 CHAIRMAN WOOD: There have actually been two  
15 sites.

16 COMMISSIONER KELLIHER: They do? Okay. And I  
17 guess I found that a little surprising and I just wanted to  
18 ask you about PJM. Is it true for PJM as well? Because  
19 your graph on figure one seems to suggest there was no  
20 transmission added, so is that true for PJM as well as MISO  
21 in New England?

22 MR. TIGER: I think it is. And one thing to note  
23 is that what we're looking here is transmission miles added.

24 COMMISSIONER KELLIHER: Right.

25 MR. TIGER: So that is one subset of investment.

1                   COMMISSIONER KELLIHER: Right. It's not dollars,  
2                   it's miles.

3                   MR. TIGER: It's not dollars, it's miles. As  
4                   shown in the FERC Form Ones there haven't been and there's  
5                   been a lot of -- as analysts, we've tried to look and see  
6                   what actually has been added and, you know, factually it  
7                   hasn't. There have been -- there are plans -- there's a  
8                   regional planning process. The question is is it  
9                   translating into miles being added and I think we'll be  
10                  addressing that more fully. But I did want to note that  
11                  that doesn't mean that there haven't been other types of  
12                  investments made in the transmission system.

13                  COMMISSIONER KELLIHER: But would we find, do you  
14                  think -- so far, the record shows that regional planning  
15                  results in greater investment in terms of dollars or do you  
16                  think that's not quite proved?

17                  MR. TIGER: I think the jury is still out and I  
18                  think there's regional plans and there's regional plans, and  
19                  the devil is in the details about sort of how they're  
20                  structured, whether they're conversations -- and this is  
21                  probably getting into debates that happen more in the agenda  
22                  and in the planning of the markets. But I think that it  
23                  really does boil down to the process and the alignment of  
24                  the incentives within those processes. So it's not a cut  
25                  and dried case.

1                   COMMISSIONER KELLIHER:   Okay.   Thank you.

2                   COMMISSIONER BROWNELL:   Joe, I think we're going  
3                   to hear this a little bit at the RPM conference later in the  
4                   week, but I think we're seeing it nationally is that the  
5                   planning process itself, for whatever reason, is not getting  
6                   -- certainly siting is obviously an issue, but it's also  
7                   definitely not dealing with the interregional.  If you look  
8                   at ATC, it's intra-, fixing a lot of load pockets.  There's  
9                   no -- you can define it whatever way you want but, you know,  
10                  there's nothing that's leading to that economic -- and what  
11                  we can do, what an energy bill will do, what siting will do  
12                  I think is probably something we're really going to need to  
13                  explore.  Because we can offer all the incentives in the  
14                  world but if the fundamental process isn't open enough or  
15                  transparent enough or aggressive enough, I think what I'm  
16                  hearing from state commissioners is you're just not going to  
17                  see anything built.  So I think we probably ought to put  
18                  that on our agenda as well and I think we'll hear the  
19                  beginnings of that -- Chairman Schisler from Maryland has  
20                  talked a lot about that in the last month or so.

21                  COMMISSIONER KELLIHER:   Thanks.

22                  CHAIRMAN WOOD:   I wanted to just add there is in  
23                  the back of the document are not only a nice set of contacts  
24                  for folks from outside, phone numbers and e-mails by subject  
25                  area, which I think is great, so that people have multiple

1       ways to contact us. But there's also an evaluation form --  
2       and I know this is like your school teacher and your  
3       conference planner. For those who have a chance to read  
4       this, either on the web or download, please use the  
5       evaluation form. That's how -- why we can make this  
6       document even more useful. So it's a nice idea and it's  
7       something we ought to do on everything we do.

8                   Anything else for the day? Madam Secretary?

9                   Meeting adjourned.

10                   (Whereupon, at 9:37 a.m., the meeting was  
11       adjourned.)

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