

BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION

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IN THE MATTER OF: : Docket Number

NATURAL GAS PRICE FORMATION : AD03-7-001

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Commission Meeting Room  
Federal Energy Regulatory Commission  
888 First Street, NE  
Washington, D.C.  
Wednesday, July 2, 2003

The above-entitled matter came on for workshop, pursuant to notice, at 10:05 a.m., Steve Harvey, presiding.

APPEARANCES:

- JOAN DRESKIN, INGAA
- GREG LANDER, Skipping Stone
- MARK B. LIVELY, Lively Utility
- LAURA A. MARSHALL, NRECA
- KRISTIN E. GIBBS, Sutherland Asbill & Brennan
- KATHRYN D. RATTE, Shea & Gardner

## APPEARANCES CONTINUED:

RHONE A. RESCH, NGSA

CHRISTOPHER E. ONDECK, McDermott, Will & Emery

DAVID M. PERLMAN, Office of the General Council

PETER WEIGAND, Skipping Stone

KELLY DOOLAN, Platts

MICHAEL L. SMITH, CCRO

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

(10:05 a.m.)

MR. HEDERMAN: Good morning, and welcome to this informal workshop. We'll be as informal as we can be around here -- no jackets.

There are open seats up here, and, seriously, you're welcome to come up and sit, if you expect to be in the conversation a lot, because we do have people participating by telephone as well, and so to make comments, you will need to be at a microphone.

So, we're -- I appreciate your coming here. This is a tough week if you're traveling or even staying in town. Early July is a tough time here in Washington.

We wanted to follow up on this subject, and we wanted to give you the opportunity to first go back and check in with your organizations, because it seemed like it was a topic that deserved attention in the context of the price formation issue, and it was one that seemed to have different levels -- receive different levels of attention before we got going.

So, I've been out of town myself, and I'm going to turn this over to Steve Harvey to get the ball rolling with the conversation.

MR. HARVEY: Our workshop today is directly a followup to the conference on the 24th. I wanted to start

by saying that at the conference, we heard about a lot of serious progress being made on this issue, both by contributors in terms of submitting data from back or mid-offices, submitting transaction-level data, a lot of these sort of structural remedies on the contributor side that give us more confidence about the process.

There was also a lot of progress by index compilers in terms of more information about the indications of reported activity at locations. We also heard a little bit about beginning to develop some ways to work with the Commission Staff, particularly on specific investigations of importance.

And also, kind of in addition to that, yesterday, we certainly read with interest, the Platt's statement that detailed the progress that they've made toward their announced goals of reporting where they gave a fair amount of quantitative information about how close they've come and where they've gotten on that process, which I think also shows progress on this issue that we've seen over the last couple of months.

We also heard about concerns that remain about the level of contribution to price indices at the 24th Staff Conference. And the question, really, that we wanted to follow up on was, how do we increase submissions of information into the price discovery process?

It certainly seemed possible in the context of that discussion, to get to -- probably to get to an effective solution, based on voluntary submission of data, but there were concerns that we want to kind of talk about today in terms of making that a more workable expectation.

Now, I think that exploring that is really important. I think Staff is becoming more and more comfortable that, to the extent we need to make some of this mandatory, we could, but that doesn't seem like a good idea at this point, particularly if there is the ability to kind of move forward quickly.

In particular, what we were hearing was that certain participants thought that they were concerned about the risk of Commission action taken, really for simple errors, sort of in spite of overall working processes, to have simple kinds of errors that cropped up.

And there seemed to be some need for some kind of Commission action to reassure them about that issue. I think that today, that's kind of what we want to talk about. We also want to talk about any other issues that might be related to that or not, that are seen as sort of barriers to submitting price information, and really explore those issues so that we can help the Commission figure out what they need to do or not, in order to encourage this kind of voluntary solution.

Let me go through a couple of housekeeping details. We're going to be a lot more informal in our discussions today. That's why we'll continue to encourage you, periodically, those of you in the audience who want to participate, to come on down and join us around the table.

But, do understand that it is a public meeting, and what you say is public, so it's not that informal. There are people listening in by phone, and you have to speak into a microphone for them to hear you. You also need to speak into a microphone so that we can make a transcript of your comments.

And so the first time you speak, you really need to give your name and where you're from. And if you haven't spoken for awhile, it's probably good to do that again to kind of help keep you straight in the process of pulling together a transcript with as many different people participating as we hope will participate.

Ted Gerarden is manning a laptop, among other things, for us today, and that means that we can pull some things up and project them on a screen here in the room, if we want to go over some particular language or any information that we can pull from the docket or off the web or whatever.

Do remember that, to the extent that we use it that way, people on the phone won't be able to see it, so

we'll have to kind of work around that, one way or the other.

Given all those sort of housekeeping procedures - - and, by the way, we will, because of the telephone nature of this and because of the sort of open nature of this, we'll probably every once and awhile stop and ask if there are comments from people on the phone who would like to kind of jump in and may be having a tough time. We will be working through the technology on that one, as we go, to try to get that kind of participation.

So, given that, what I'd like to do is kind of start by, in particular, inviting comments from representatives of companies that do these transactions, and that either do or do not report, to talk about what their concerns are, you know, as specifically as possible, so that we can kind of explore that area.

Obviously, anybody with an opinion, we do want to encourage and understand that opinion, but, in particular, if we've got some representatives of those companies, that would be a great way, I think, to start the conversation.

On the phone, anybody?

MR RESCH: Good morning, my name is Rhone Resch, and I'm with the Natural Gas Supply Association. Although I'm with a trade group, I would like to give you a couple of examples where our member companies are reporting to the

indices.

About 90 percent of our member companies do report to the price index developers. They have continuously, although there was probably a decrease that occurred in the Fall, certainly in November.

And a large part of that is because they wanted to develop their internal housekeeping process to make sure that they were reporting numbers that they felt were accurate, and they have taken pains to ensure that kind of that back office signoff or review is in place in a way that is consistent with the way they manage their marketing and their sales.

And so most of those companies have come back at this point. I think that, with respect to the safe harbor provisions, that has not been a barrier for my member companies who are the producers and the marketers of natural gas.

But having said that, I think, in large part, there is support across the board for a safe harbor provision, simply because the opportunity for these types of clerical errors does exist, and will always exist. And there needs to be, I think -- certainly what we've heard at the past FERC Technical Conferences, is that there is concern that without clear guidance from FERC and without clear protection for those kinds of mistakes, that some

companies won't report.

So, I'm very, very supportive of this dialogue today, and I am excited to see what you all develop going forward.

MR. LANDER: Greg Lander, Energy Transaction Repository. Although we're not a trade association, among the client and interest groups, there were people who report or are people who report.

Some of the dialogue about what the concerns were, were not just the data entry errors, but other things like a guy goes on vacation and we don't report for two weeks; somebody changes and makes -- puts locations or misattributes.

One of the problems we have right now is neither the providers, who are reporting from the back office, mid- and back office, some front office, but mid- and back office, and the receivers, the developers, aren't used to doing what they're now doing.

In other words, the people in the providers who are at the back office, don't know, necessarily, or are very unfamiliar with -- the locations that are in the back offices tend to be codes. Sometimes they're specific point names, and don't necessarily correspond to anything, and so the same is true on the part of the provider, of the developers.

They're getting points. They don't know what points they go to, and so they're concerned with that kind of error; they're concerned with somebody goes on vacation for two weeks, systems break down for two weeks.

They start reporting -- either stop reporting for a period of time, or are spotty in the reporting, and are concerned that that would be taken as an attempt at manipulation. And so it's not just the data entry error, but it's the behavior or the activities around that.

And a safe harbor commensurate with that, what was articulated to us prior to the discussions about safe harbor at the last meeting, was cure periods, that there be, you know, opportunities, if something is pointed out for cure, from a fat finger or other type of mistake, or an allegation of some type of bad behavior.

I'm not sure that that shouldn't be considered as part of a safe harbor activity, had some sort of cure activity as well, but those are the types of things that they were concerned with, so safe harbor -- what was articulated to us was, cure period was critical; safe harbor is better; and safe harbor, plus cure period --

(Interruption from telephone lines.)

MR. LANDER: I don't know what I said either. I think I said belts and suspenders, safe harbor plus cure period would be even better.

MR. HARVEY: Okay, let me just -- I think we have our telephone folks here now. We've kind of gotten started. We're trying to make sure that everyone that speaks here, speaks into the microphones, so that you all can hear.

And we've -- unfortunately, I think we lost you for a little while there, or didn't have you, but Greg Lander is currently speaking, and let me go ahead and have him finish up his comment.

MR. LANDER: Just to finish up, the safe harbor really has two attributes, the "for," what do you get it "for" doing, and as the "from," what do you get it from? And on the "from" side, you know, we've got some language which is probably not appropriate now, because you asked a different question, which was, does it tend to help, and the answer is yes.

And we wanted to focus you on not just data entry errors, but other potential patterns of activity that are unintentional, associated with reporting, stopping reporting, a person goes on vacation, a person changes, system errors where for some reason reporting is interrupted for some period of time, that if they are unintentional, that they would also get safe harbor.

So it's not just data or the presence of mistakes, it's the absence of reporting, as well, for unintentional reasons.

MR. HARVEY: I mean, it seems to me -- this is Steve Harvey, for those of you on the phone -- it seems to me that the context for a safe harbor would be some level of process-in-place, as Rhone Resch talked about their members NGSAs members putting in place, processes that kind of took them out of the reporting game for awhile and then they have been coming back as they've gotten those processes in place.

How do you balance -- I mean, how do we think about what kind of process, what level of process integrity is necessary for us to get comfortable that these are sort of simple errors?

MR. LANDER: Well, keep in mind that there is a whole gradation of companies. And I guess we start with the view that the more companies, of all sizes and sophistication, reporting, or the more market participants reporting, the better.

And for some companies with large staffs and a large commitment to the buying and selling of natural gas and with front, mid-, and back office operations, those processes clearly make sense and are in place.

It would become a barrier to reporting, I think, you know, almost an elimination from reporting, if, you know, a small LDC in Tennessee with two staff people that do this, had to have in place, the same procedures and staffing that simply doesn't obtain.

They don't have -- you know, they don't have the boxes to check. And so I think there's got to be a balance between the processes that you follow and the applicability of those processes to your organization.

That's where I think, although the processes make sense and the mid- and back and front office distinction makes some sense, is more applicable to the largest of the players. That doesn't mean we should, you know -- you have think through, and the balance on your side between a process that is aimed only at the largest types of players, and both a process and a lack of intent by all parties.

So, I think, going directly to your question, having the processes in place makes a good deal of sense. If you have a series of processes that is so well specified, or too deeply specified, people who don't have those processes will simply not report, because they will neither need or want safe harbor or take the risk of having to add processes to do what? Report prices? What's their up side from doing that?

MS. GIBBS: Good morning. I'm Kirstin Gibbs. I'm here for a whole bunch of people that Greg may be talking about. I'm here for our Process Gas Consumers Group, American Iron and Steel Institute, Georgia Industrial Groups, Florida Industrial Groups, New Jersey Industrial Groups, as well as the Independent Petroleum Association of

America. And I think that some of the points that Greg hit on just now about some of the people that want to get in the reporting game and would be willing to do so, provided the rules of the road are known, are some of these smaller entities such as the groups that I am talking about today.

And I think it's important, what he's talked about. I'm trying to not deviate too much from your original question, but having the processes in place, making sure that the barriers to entry are low, and, I think, having safe harbor is an absolute step in the right direction.

We had gone out to a lot of these groups after the 24th conference, and, you know, when safe harbor was first really brought to light, I think it had been kicked around a bit in the consensus group in Kenesaw, but, you know, the more we talked about it after the 24th, I think people really got around it.

Some of the organizations that I'm talking about today do report, but some do not, and I think the further we can come along on clerical errors being, you know, excused, but also, as Greg pointed out, some of the people that would be doing the reporting are so small. We have some people in our organization that is the single purchaser and would then, in turn, be the single reporter, because that's really all there is in this organization.

And so trying to come up with procedures that, you know -- and I think some of our consensus document does that, where the trader is, you know, whoever makes a trade report, so long as they don't have a financial interest in the trade, and that kind of picks up for those people who have very few personnel in their corporation.

So I think that the more we think about that, if one of the goals is, and, I think, should be creating liquidity, creating more reporting, we have to keep all of those things in mind, and to the extent safe harbor does that, all the organizations that I'm talking about today would be very supportive of that.

MR. GOODMAN: Steve, this is Craig Goodman. Can I just make a clarifying statement?

MR. HARVEY: Yes, please.

MR. GOODMAN: In the thought process that I put in the record on the 24th, safe harbor had a lot of meanings to a lot of different people. But the thought process I was exploring was a rebuttable presumption of good faith or a rebuttable presumption that the information you're relying on is correct and for regulatory purposes.

If, indeed, a safe harbor is structured as a rebuttable presumption, and rebuttable only with clear and convincing evidence that there was some kind of active wrongdoing involved in either the reporting or collecting, I

believe that you get over that hurdle that you're concerned about, which is reliability, transpositional errors, things like that, which a lot of technology, I believe, already exists to either identify typos or identify matched trades, I mean wash trades.

So a lot of the cleansing process that goes into both in collecting the data and the catching of typos and inadvertent errors, I think becomes a non-issue, if the rebuttable -- if the safe harbor is, indeed, a rebuttable presumption, rebuttal only with some clear evidence that there is a malintent, it gives both the regulator and the regulated, a confidence level that they're not going to be, how shall we say it, prosecuted for a typographical error.

And it cuts down the enforcement activities to those truly, how shall we say it, intentional wrongdoers. So, a rebuttable presumption doesn't mean it is a foregone conclusion in all cases that everybody is acting without ill will. It just allows prosecution in those instances where there is ill intent, and it gives a good-faith presumption for the 99 percent of the population out there that is truly trying to comply, particularly the small entities that are doing the best they can to comply.

And typos do exist. I mean, that's what this is there for to catch. I wanted to put that thought out there.

So, I think that the FERC and the monitors will

have that comfort level, or should.

MR. PERLMAN: This Dave Perlman from the General Counsel's Office at FERC. I think everybody is talking predominantly about the same thing, which is something that the Commission could provide, which we were asked for at the last conference, that would give some level of comfort, that if there was an inadvertent error made of the nature that Craig was talking about, that there would not be some sort of sanctions taken.

And I think what we need to hear from you is what it is, with some particularity, that you're looking for. And we need to see a process that has some particularity that we can say, if followed, would give us comfort that the types of things that Craig is talking about, which are that the errors are inadvertent, would be relatively concluded by us, because the process would be designed to keep -- ferret out the other malintent-type elements.

I know that the CCRO group has filed something with us that has some level of specificity to it, and that's very helpful to us.

The one reaction that I have to what I've heard so far is that it would seem to me that if you're a small entity and you do very few transactions. And if you do very few transactions, then your burdens are equally small, and to keep the types of separations that the CCRO is talking

about, within the context of a small set of transactions or infrequent trades and just have different people report them, would not be all that difficult, I wouldn't think, but, you know, correct me if I'm wrong.

Also, I would be surprised that an entity that trades commodities goes on vacation for any period of time and doesn't keep its business going in some fashion. As a result, there ought be at least somebody there to keep the lights on, and if they do a trade, to be able report that trade.

It just doesn't sound like a real problem to me. Again, I could be wrong.

And the one thing that I thought was really helpful is, the gentleman from the NNSA mentioned that 90 percent of the membership today reports. If the various groups, when they do speak, or if you're speaking for a company, if you could let us know the type of participation in your group, or whether your particular company is engaged in reporting today.

MS. GIBBS: I'd just like to respond to your comment about the burden, if you're small.

MR. HEDERMAN: Excuse me, Kirstin. You just need to identify yourself each time for our phone people.

MS. GIBBS: Sure. I'm Kirstin Gibbs. I'm here for PGC et al.

Even though we are small, many of us consume large, large quantities of gas, and if we're talking about reportable transactions that last a day or a month, there is the potential that there could be quite a few.

Although I think we'll definitely find out how much of a burden, the indications that we've gotten from our member companies has been that this would pose some sort of additional cost and administrative burden on them. And they are interested in fully reporting and trying to be part of the process.

MR. PERLMAN: So do they not report today?

MS. GIBBS: I don't believe that all of them do. I think there are a few that do, but I would say that some of them, most of them probably do not.

MR. PERLMAN: Most do not?

MS. GIBBS: Um-hmm.

MR. PERLMAN: And the one that do, do they have the individual who does the purchasing transaction do the reporting, as opposed to another individual in the company?

MS. GIBBS: I don't know for sure, but there is one organization, in particular, that when we asked, you know, is there someone else in your office that could do it, the answer was no, that this person was the only person that made all the purchases -- and large purchases, lots of gas -- for different plants and stuff, and that she indicated

that she would be the reporter.

MS. GRANSEE: Marsha Gransee from Office of the General Counsel. It might be -- were they reporting before, and they've stopped reporting, or did they just never report?

MS. GIBBS: I don't have the answer to that, but that's something we'll probably look into then, to make sure to follow up with comments for you all.

MR. LANDER: This is Lander. I also wanted to respond back. This is Greg Lander, Energy Transaction Repository.

Mr. Perlman, you made the comment about traders, and I think, absolutely, with traders, that's the case. Traders don't go on vacation.

I was trying to articulate people who were all the way at either end of the value chain, meaning either at the production, the beginning of the value chain, or at the consumption end of the value chain, which, in many cases, once their production is put to bed, so to speak, that's done. Somebody else is buying it and the party who is engaged in the act of selling it, need not, if they have sold out for a period of time and it's all taken care of.

(Cell telephone rings.)

MR. LANDER: If that's for me, I'm not here.

(Laughter.)

MR. LANDER: On the other hand and at the other end of the line, it's the same thing. If you've put to bed, all of your consumption, if you're a big plant, you know, you make something at 40 different plants around the country, and you've bought your product for the next month, you do get to go on vacation.

And so the question then becomes, if these people are sought to be brought into the reporting regime -- and I can't speak on the buy side; I'm speaking of a client who, on the buy side, we never asked them if they reported; they just got interested in it because they do buy off of indices in many cases.

But on the supply side, they would be interested in reporting, because they think, in many cases, that the prices that they've seen, don't reflect their value, and would like to have their prices taken into account.

So, if we're trying to bring in more participation, then getting to the objective that I think the Coalition identified, which is the party who is doing the reporting, doesn't have the opportunity for financial gain -- let me actually read some language that we would provide:

The safe harbor provisions would apply to -- and this is, you know, not written by a lawyer, so it's worth what you paid for it -- actions taken or omitted, which were

taken or omitted without intent to influence index prices for the purpose of a) financial gain to the party to which the action taken or omitted applies; or, b) financial loss to a competitor.

And that's something that we haven't talked about previously, is that just someone with an interest in the transaction, but I think the interest should also be that no one is also trying to accomplish loss to a competitor, not just gain for themselves.

MR. PERLMAN: That doesn't sound like a rebuttable presumption; that sounds like a standard that the Commission would adjudicate against.

MR. LANDER: That's the thought process that our folks had towards it. I'm not arguing with Craig Goodman's approach.

Maybe the standard is the standard, which is the rebuttable -- in other words, whenever you have a rebuttable presumption, you have to have, what is the presumption about? I mean, did you do this -- you either did this action to accomplish these objectives or didn't, and you have a rebuttable presumption that you didn't, absent it was proven to be you did it for the purpose of financial gain to yourself or financial loss to another.

MR. PERLMAN: Right, but I guess the question is, is there a threshold showing you have to make to get the

rebuttable presumption.

MR. LANDER: Oh, in terms of what you have to accomplish, what you have to do?

MR. PERLMAN: You have to show before.

MR. LANDER: Right.

MR. PERLMAN: And then you get the rebuttable presumption, and you go through the burden of going forward and all that.

MR. LANDER: That's a different question. We do have -- I have been talking a lot and somebody else should probably go first, but we certainly have a lot of thought on what you have to do to get that rebuttable presumption.

MR. SMITH: If I could jump in, I'm Mike Smith with the Committee of Chief Risk Officers. We do believe there are two prongs to this fork, so to speak.

I mean, if you're going to have a safe harbor, before you have that, you have to have standards. People need to know the rules of the game, the way this is going to work, and that set of rules or those standards needs to a) be well known by everybody and endorsed by everybody, and consistently applied.

I mean, for somebody to have a safe harbor, i.e., the data providers, we believe that they must adhere to standards to gain protection of a safe harbor. So, we believe that that is the first step here, is for us to agree

to a set of standards.

We believe with those standards, we need to be very sensitive that we don't discriminate against the smaller player, and that's why we agree with the comments that have been made by Kirstin and others, that you've got to be careful about throwing around terms like mid-office, back office, risk officer organization. Not all companies have those kinds of organizations, but we do agree that standards can still be set, such that as opposed to saying it comes from a middle office, you say it comes from somebody other than a trader with a personal financial interest in the trade itself.

I think you have to get really, really, really small before you have an organization where is doing his own confirmation and his own accounting and the complete circle of activities, and if your organization is that small, is, indeed, that small, then there is a lot of faith that you're putting in that person, and one would question the adequacy of the controls.

But I won't go there with that. There should be at least two people in every organization, if you're going to be transacting in commodities, from our perspective.

The standards, we believe, need to be documented. We have got to agree on a set of standards. We have put some recommendations out. We were part of the Coalition,

the Kenesaw Coalition, I guess we're calling ourselves.

We supported that effort, as well, but we've got to get there in terms of standards that are consistently applied and well known and endorsed by all.

Once you have that and the data providers understand the rules of the road, then you have the safe harbor that I think can kick into what Craig is saying is a presumption of good faith, i.e., if a company is complying with standards, these standards that we have all agreed to, there is a presumption that they're acting in good faith.

Now, with this safe harbor, we're not intending to protect against actions that are fraudulent or intentional misconduct, manipulation, gross negligence, et cetera. But we're saying that absent proof of fraud or intentional misconduct, this safe harbor provides them protection, that there is a presumption of good faith, and that that will protect against the accusations or issues that arise with inadvertent errors, as you've called it in your scope for this agenda.

I will note that one of the standards that we have identified, that we would like to see put in place -- and it's in our white paper -- has to do with the fact that between the data providers and the index developers, there is an error resolution, error revision, or error challenge process, i.e., if somebody makes a mistakes or fingers

somebody, let's have a process where we correct it before we have to kick in the safe harbor language.

I mean, let's have an error resolution process. If a company discovers, 24 hours after it submitted something, that it made an error, let's have a process where the index developer and the data provider work through how that error is going to be amended and corrected, and not have the safe harbor language even come up.

That would be one of the standards that we would recommend we see on a going-forward basis.

MR. GOODMAN: Let me comment on this, Mike, because I think that is precisely what the joint document was intended to do. It was intended to be a consensus list of procedures, which, if followed -- and I believe that in that procedure, there was a dispute resolution or an error resolution process.

But we started off with a voluntary standard for both reporting and collecting that, if voluntarily implemented by either collectors or suppliers, that was the kickoff point for the safe harbor -- or, actually, the safe harbor was intended to incent people to use those standards in both reporting and collecting.

So, that was the beginning point, prior to which the -- excuse me -- a complement to which the safe harbor would incent more and more reporting and, therefore, higher

and higher quality information.

And within those standards, we did have the dispute resolution -- not dispute resolution -- the error resolution protocol as well. So I think that was the basis -- that was the first basis.

The safe harbor was merely a complement to that, to get the highest quality and quantity information we could. So I think that we're all speaking the same language here.

MR. SMITH: I think we may be saying the same thing, backwards and forwards, Craig. This is Mike, again.

I think what you're saying is companies are going to want a safe harbor, if they are going to be expected to be held to standards.

And what we're saying is, you've got to hold yourself to standards, if you expect to be protected by a safe harbor. So I think it's a circular reference that we're both endorsing here, but you need to have both aspects of this.

If one is granted a safe harbor, there is the expectation that they are complying with standards.

MR. GOODMAN: But we don't get one, unless you're complying with standards, basically.

MR. SMITH: Right.

MR. GOODMAN: I mean, that's the only way you get a safe harbor. I mean, if there is no process, a protocol that everyone agrees is designed to ensure the integrity of the information, if that is, indeed, the starting point, then if people comply with those standards, they should be granted some good-faith acknowledgement. We are saying the same thing.

MS. ARMY: This is Holly Army, and I'm at 10,000 feet, so if I break up, it's because I'm on a plane and we've lost the signal here.

MR. HARVEY: That is impressive.

MS. ARMY: Mike, I totally agree with what you said. The only concern I have is that if we have somebody who has accidentally put in wrong data, and they don't discover that for 24 hours, given the advent of clearing in the industry, we are already going to have made or margin calls and calls for collateral, based on the erroneous information, so correct it might mean, we correct it going forward, and unless people in the industry want to starting calling off of indexes, intra-day, that certainly is something to keep in mind, because I think it will increase the treasury and back office costs for companies.

Secondly, I think we need to make it clear that if you're, for example, Company A using the index and Company B reported, whether willfully or not, the erroneous

data, that Company A should be immune from any fallout for having used what it truly believed was a good index.

MR. O'NEILL: Can I ask sort of a broader question here? This is Dick O'Neill from FERC.

Is there a corrections process now for the index process? I assume that we're talking here about using indexes for actual payment in contracts, to settle contracts. Is there a corrections process now that people use or go through? And what do we see as the corrections process, going into the future, or have we thought about that?

MS. ARMY: I can only speak to what Energy -- does. If we have erroneous data, we usually get it corrected before the Fed wires come in the next morning at nine. So, for us, as long as it's within that timeframe, it's not a problem.

MR. O'NEILL: Do you mean, not a problem, meaning that there's time for somebody who is pricing their stuff to that index to make the correction or something?

MS. ARMY: Time for us to make a change at the clearinghouse and resend out the calls for Fed wires. Now, if you're a company and you have marked your book, I'm not sure as an energy trading company, what effect that would have.

If we are in the clearinghouse get those marks

later than 9:00 a.m. in the morning, then depending on the volatility and the difference between the erroneous data and how much it's going to affect the price, we will or will not call against the margin, if it exceeds some bounds.

But otherwise, you get into the loop of forever and perpetually calling for wires, which just ties up everyone else at the merchant energy trading company, and we don't really want to see that happen.

MS. LEWIS: Platt's came to the table, and I think maybe they want to answer your question.

MR. LIVELY: May I also make a comment? My name is Mark Lively, Utility Economic Engineers. When we're talking about a safe harbor, we talk about protection against a storm or from pirates. What is the storm or pirate that this safe harbor will protect against?

Is it sanctions from FERC? Is it that someone, as Holly has just said, gets a margin call that FERC has nothing to do with? Is FERC being the one -- the people reporting, what's the damage that FERC can do to these people for reporting or misreporting, if they're not a regulated entity?

Maybe we need to look at the regulated entity that FERC has jurisdiction over, and how they can contribute to the price formation, and maybe we should be looking at something other than just price reporting.

But FERC has control over the pipelines. I don't see the pipelines participating in this, even though they are the ones that FERC has control over.

MS. DRESKIN: Hi, I'm Joan Dreskin with INGAA, the pipeline association. The pipelines have signed onto the Kenesaw document. We buy and sell very little gas. We are not merchants anymore. Most pipelines are not in the sales function, subsequent to 636.

We will be happy to comply with the Kenesaw conditions for when we do buy and sell on the day- or month-ahead market. So I think your -- your interest in regulating or providing the pipelines with further reporting duties, is misplaced and, as I said, we are happy to comply with any of these reporting requirements.

The pipelines already -- and we talked within our group -- we report a lot already.

MR. LIVELY: It's not that I'm trying to get the pipelines to report more. My question is, what can FERC do to those people who have fat fingers or do something maliciously, if it's not a pipeline?

MR. LANDER: Impose the death penalty, like they did last week.

(Laughter.)

MR. LANDER: Let's hear from the Platt's and those guys who just came to the table. Sorry.

MR. HARVEY: Brian?

MR. JORDAN: My name is Brian Jordan. I'm Editorial Director for Platt's Electricity Markets, and here, also from Platt's, is Kelley Doolan, who is head of our natural gas markets.

When thinking about error revisions, I would suggest thinking about two different parts of that: One is scrubbing the data that comes into the indexers, and that is a very intense and important process that we go through, particularly with data coming in from the back office.

And there is routinely back-and-forth whenever we have questions or whenever things look like they may be outliers, and there's a lot of communications back and forth. Inadvertent errors do happen sometimes, where people might grab data from the wrong day, for instance.

But there's the whole process that goes on, you know, before the indexes and assessments are calculated.

Another element is error-to-error revision. What if people challenge the index, or people, data providers, say, you know, we didn't catch this yesterday. It didn't look like bad data. You didn't question us, so, therefore, it did get into the index.

We look at that very carefully on a case-by-case basis.

We have one very important role, which is no new data can come into an index after the fact. So if someone submitted data and they can convince us that they made an error, that it should have been X instead of Y, we will carefully look at exactly what that did to the published index. If it's a substantial change in an index or an assessment, we'll publish a correction.

But if someone comes in and says, oh we forgot to report, you know, the 15 transactions that we did at point X, so you should add those and recalculate, we have a hard and fast rule against that because that would open the door to a never ending process where people could say, whoops, we forgot. You know, now that we've seen the index, we forgot to report this, this and this.

MR. DOOLAN: This is Kelley Doolan. There's also the timing involved is very important. The further away you move from the time of publishing an index, the more people have acted on that price, and the horse is out of the barn.

Somewhere in this process there has to be a timing cap, because once you're more than 24 hours away, just so much has happened in back offices and in people's books that an error would have to be very, very egregious to make a revision, and we routinely don't do it.

MR. LANDER: Let me point out also that there's an underlying presumption that needs to be put out on the

table, and that is when -- and it goes back to the original divide that I identified last week about counterparty. If counterparty information is provided and matching takes place, and all those types of mismatch errors can be resolved pre-facto, meaning pre-publication, and the part that the gentleman from Platts identified as occurring before the publication, and it would dramatically if not infinitely reduce the amount of post facto material, because the chances of both parties not reporting legitimately pre-facto and then going oops, post facto, and that should affect the index, vanishes, or it comes almost to the vanishing point of zero.

But whenever you don't have matching, then all of these other judgments come into place and all of these where does the line get drawn between when do you fix something before the fact, when do you fix something after the fact. And implicit in our comments earlier about cure period, which is similar to the error resolution point, is the cure period is really pre-facto or there's a before publication, and essentially post facto, if there's no match, meaning one side doesn't come in, that information doesn't go into a matched trades index. It may go into some other type of index which has lots of, you know, loose ends that people may or may not want to price anything off of, and it may or may not be interesting information.

But if you have matched transactions where the parties, both sides say the same thing about the same deal, absent, you know, again, the manipulation of a competitor or of an index, matched trades are going to be your best source of information. Counterparty allows matched trades. That's the original divide. Safe harbor was offered as a reason, and to me, now we're getting at the first part, which is what do you have to do to get safe harbor, and our view is what you have to do to get safe harbor is basically what CCRO said prior to yesterday's comments, which is, you know, point, location, price, quantity, time, begin and counterparty, who you are.

And if you do that stuff, plus you provide the information to a provider, an index developer who -- or other data collectors. Let's call them data collectors for the moment -- who will make that information available to you, FERC, then you know what information is being provided, who is it being provided to, what's your access to it. And before you grant, you know, the get-out-of-jail-free cards, you ought to get something of value for it. And to us, that's what you would get of value, which would essentially be you'd get all the information and it would be made available to someplace where you could get access to it.

I can go through that again, but the point here is, and I wanted to point out that you would end up with far

less issues associated with revisions of any kind if you relied on matched trades. And if what you basically said is it had to be matched trades and you can only get matched trades through counterparty.

MR. ONDECK: Good morning. My name is Chris Ondeck. I'm here on behalf of the CCRO. I thought it might be appropriate to pick up on the comments where Greg left off about why the CCRO, kind of why it arrived at the statement that it filed for today's workshop.

I think briefly, the CCRO met and considered this last Thursday, and I think it made three fundamental decisions or assumptions that are embodied in this statement. The first is what Mike said, there has to be a set of standards. But to drill down one level into that is, when the CCRO considered this, it considered, maybe to pick up on a comment that Greg made, maybe the standard should be the CCRO's whitepaper.

That isn't what it recommended in the statement. What the CCRO did is that it adhered to the whitepaper comments that it made. But to try to make things, try to reach a little bit more consensus, what we did for the standard is we basically took the Kenesaw document, Points (a), (b), (c), (d) and (e), and fairly much used those as the standard. We added F, because that was not in our view, you know, not to criticize the Kenesaw document. Maybe it

was on the index publisher side, but we wanted to get (f) in for the data provider side, which is the error resolution revision and challenge process.

So just to make things a little bit more clear, (a), (b), (c), (d) and (e) are we feel basically word for word out of the Kenesaw document except in point (a) for corporate code of ethics, we added the word "written" corporate code of efforts. So we added (f), and then as to the Phase II, we made it a two-phase. For Phase II, we pulled buy/sell indicator out of Phase I.

Kenesaw wasn't structured as a Phase I/Phase II document, but we treat buy/sell indicator and counterparty name in the same way, we do in our whitepaper, so we felt like the standard, that would be a good way to do it here, that that should be a Phase II because the industry is still ramping up and there's people here who can speak to that pretty authoritatively in terms of providing the confidentiality protection through say written agreements to protect counterparty name and buy/sell indicator sufficient such that a lot of companies will feel comfortable providing it, or at least ones that don't currently provide that will provide it.

My sense is that the industry is getting that done, but it's not done, and it'll take a while. So that's why we did a Phase I/Phase II recommendation. And there

could be a lot of decisions as to how long should a Phase I be, you know, a year, nine months, six months, something along that line. That's fundamental assumption number one.

Fundamental assumption number two is what protection should be provided by the safe harbor such that it makes sense. And we picked up on some of the things I think that Craig Goodman and others have said, which is a presumption of good faith. The way you word it can be a lot of different ways, but basically as long as you meet the standard that's been set and published, in any instance of error we don't say necessarily inadvertent error, we say any error that isn't fraud or, what do we say here, intentional misconduct.

And we feel like someone might say, well, wait a second. What if a company has no process? And so they are making mistakes all the time. Should they then get the benefit of the safe harbor, because that's not fraud? We would say that company wouldn't meet the standard that's been set. They wouldn't meet points (a), (b), (c), (d), (e) and (f) of the prior page.

The final assumption we made, and I'll conclude, is through what mechanism does a safe harbor get provided, and that matters a lot. Is it legislation? Is it regulatory? Is it a policy statement by the FERC? That makes a big difference obviously. There's levels of

protection. If you had legislation, it could be protection from private, civil and criminal suits. It would not just be control like FERC is going to do, but it would control how private parties could sue each other who were out of the money say because of an error in an index.

We don't have a problem with that, obviously. We'd love to see the safe harbor extend to private lawsuits or the rights of parties who may feel like they've been injured by an error in an index. But we felt like what we realistically wanted to focus on was maybe an action that FERC would take that would be controlling or would have impact on what FERC itself does in terms of its actions that it takes, administrative actions, things like that.

Some of those Craig Goodman at times has listed. I think he probably -- a lot of people here know them better than I do. So those are the fundamental assumptions we made. And I think as an important level-setting exercise, I would be interested at least in hearing what does FERC think -- what is it thinking of doing? Is it thinking of, you know, statutes? Is it thinking of a rulemaking that's subject to notice and comment? Is it thinking of something like a policy statement or something that it would publish that would be persuasive but not law?

So, anyway, those are the assumptions that the CCRO made to kind of explain our filing.

MR. PERLMAN: Can I ask you a few questions about your paper and the things you just said, Chris? I think your paper is very helpful and useful to us. But the whole issue of confidentiality is say something the industry is working through. And I see two aspects to that. The first aspect is confidentiality that's elected in certain master agreements that may be in there or may not be in there, depending on the decisions made by the counterparties.

Is the CCRO and the industry in general working to modify the master agreements in a manner that would provide an exception for reporting to an index provider? And could you tell us where that process stands if it in fact is happening?

MR. ONDECK: I can speak to that. CCRO has advocated that the master agreements be modified. To the extent that they have confidentiality provisions that you might call blanket confidentiality provisions that prohibit release of any information, sometimes if you want to interpret them literally, that relate to a transaction, to any outside party. So really, it might impact, theoretically there could be an argument, any reporting, not just counterparty name and buy/sell indicator. But in the past, those have not been interpreted that way.

The CCRO has sent letters to a number of the sponsoring organizations like say EEI, of all the master

agreements I guess that have such blanket provisions, asking them to, pointing out exactly what part of the master agreement we think should be changed, and with draft language as to how it could be changed, to carve out reporting so it could be done to index publishers. We've done that.

The second thing -- and as to where that's going, that's a slow process. Not every industry group moves as quickly as every other one. To try and help that along, as an attachment to CCRO's whitepaper, we published an amendment, a model amendment, that people can use for their one off master agreements, or they could also use them for things like EEI or WSPP. Those are tougher, though, because the company has to go through its files for every single, you know, maybe one off agreement that it has and amend them.

So we've done those things. Then the final thing is what we've heard is when companies go to their counterparties and say I want to get permission from you so that I can release your name in our transaction data to an index publisher, what the counterparties frequently say is, what type of confidentiality protection do you have locked up? And so it's kind of a chicken and an egg.

What happens is, people feel like, well, I have to get a DSUCA or similar confidentiality protection

agreement signed up. I think some of the publishers have been very receptive to that and have tried to move very actively to get that done. And once everyone figured out that was the process that had to be followed, I think it started moving pretty rapidly.

But it's a process of some months.

MR. SMITH: And I would also say, Dave, just to jump in and add on something to what Chris has said -- and this is Mike Smith with the CCRO -- a lot of companies are actively moving down both these legs. They're trying to amend their master agreements. They're also trying to put these DSUCAs in place. But let's not fool ourselves. There are a lot of companies that are trying to wait and see what's going to happen with the bigger picture, i.e., I'm not going to go through all this effort if this goes down a different road, so I want to see some kind of overarching endorsement that ultimately this is the way we're going to do this, and that will kickstart our activities, especially as we see the safe harbor language and the standards get galvanized around this process as well.

MR. PERLMAN: And I guess to finish my question, it seems to me -- correct me if I'm wrong -- that the work has been done. The blanket approach to modification could be implemented if there was a desire to do so.

I remember when into synergy was changed in

definition, there was a date certain when it was going to happen. There were tens of thousands if not hundreds of thousands of transactions that all needed to be redocumented that were done in a month by the industry because they had to change their documents, and they had a Web site-based methodology to do that. And there's no reason in my opinion that this couldn't be done the same way, if there was a desire to do so, and I think are legitimate issues.

MR. LANDER: FERC is the chicken here.

MR. PERLMAN: That's what I'm asking. So if the logjam was broken because the FERC provided --

MR. LANDER: They have to lay the egg.

MR. PERLMAN: -- the adequate comfort, it seems that this could move relatively seamlessly. And we heard at the last conference, there was something that you would like from us. And the only thing that we've gotten is the CCRO paper, which is a phased paper, and it would seem to me that if FERC was the chicken and FERC gave the safe harbor, the confidentiality issue ought to just go away and Phase I and Phase II merge into one outcome, and life can go on. Is that wrong?

MR. LANDER: Greg Lander. I would assert -- I'm sorry.

MS. GIBBS: I feel compelled to jump in here. I'm Kirstin Gibbs from Process Gas Consumers and other

industrials as well as the IPAA. I think at the conference on the 24th, you all heard from Dena Wiggins, who is up here representing the same group of folks.

And although the legal concerns as far as the documents with the confidentiality clauses are an area of concern, we have another entirely different concern with the turning over of counterparty information, and I certainly won't bore everyone by repeating it in length again, but industrials especially have some very real concerns with competitive information being out in the open to other industrials of a similar manufacturing set for all sorts of reasons, reverse engineering and knowing where your competitor is at.

So we have -- anytime we hear about providing counterparty information, it really raises the hair on our backs, and we are concerned with how that will be protected. And at this point, still really would hope that the Commission would consider not requiring the release of counterparty information.

One of the things that we accomplished we believe in Kenesaw actually was a listing of what type of information would be provided, and that includes a buy-and-sell indicator. And we really believe that the buy-and-sell indicator will give the ability for the index provider to match up a great majority, probably not all, but a great

majority to make a real liquid, viable index.

So we would like to see the consensus document that we've worked on and signed onto used as the basis, the process you all keep talking about, about, you know, if you have these sets of protocols in place and you agree to adopt them, then in turn you will be eligible for the safe harbor.

So although we haven't provided a written document like the pros did just now, we I guess collectively I thought we felt like we had done that by providing the consensus document, which will provide the basis for the safe harbor if you agreed with those principles.

MR. PERLMAN: I'll try the same question with you I tried with Dena. If you report at all, period, then your proprietary information has been disclosed. The counterparty that you're protecting is your seller, not you. So you're concerned it sounds to me like that others will report, and in their reporting, they will disclose you as the buyer. You, if you have these concerns, and I'm not saying they're not legitimate concerns, but if you have these concerns at all, you shouldn't report at all.

So are you comfortable reporting saying you're the buyer, not disclosing the seller, and feel like that your information after such reporting is treated confidentially and protected?

MS. ARMY: This is Holly. Let me just make one

quick comment and I'm going to have to get off the phone. I think it's important that we have the counterparty information reported to the data collection center, but it should not be reported any further than that. It should be used by the data collection center to check the veracity of the data coming in. It should not be forwarded to other counterparties or to the price index saying, you know, well you can't use this, and I think that takes care of the issue of having your confidential data out there as, you know, you're a generator and this is how much you bought and sold with your client. Rather it's used by the data collector as an aid to matching and verifying the data.

MR. GOODMAN: NEMA supports that position as well.

MR. RESCH: This is Rhone Resch of the Natural Gas Supply Association.

MR. PERLMAN: I'd like to get an answer to that question.

MS. GIBBS: I'm going to try here. I think one of the things that we've been concerned about is well is there have been people talking about mandatory reporting. As long as the system remains voluntary -- first of all, that's the most important to us. Our concern is when the information is provided if it is released, whether we're the buyer.

So you're asking why I'm concerned as the buyer that the information is there?

MR. PERLMAN: Counterparty information.

MS. GIBBS: Right.

MR. PERLMAN: What you're going to report -- I'm assuming you're going to report, you're going to report that you're the buyer, you're going to report your quantities, duration, delivery point, all the things that are proprietary and of value to you as the buyer, you're going to report those things.

The only thing you don't want to report is that you bought them from him. And you're comfortable that once you've reported that information with all of its detail, and you as the buyer, that it's going to be treated confidentially. You just don't want to say who you bought it from. Is that right?

MS. GIBBS: I think that's a concern as well. I think I understand what you're saying. The volumes are there is what you're saying, so why am I concerned if somebody knows that I -- you can never tell with any certainty who I'm buying from. And, you know, there is the potential with the buy/sell that there is a match, you don't know the entities, you don't know the parties, so that information is not disclosed.

MR. PERLMAN: But what proprietary data --

MR. GOODMAN: Why can't the buyers be coded?

MR. PERLMAN: What proprietary data would be disclosed if you report it as the Kenesaw document --

MS. GIBBS: Volumes.

MR. PERLMAN: The Kenesaw document requires volumes.

MS. GIBBS: Right. But you wouldn't know that it was me. The public would not know whose volumes were --

MR. PERLMAN: Please on the telephone, let's finish this. We'll go to polling the telephone here in just a minute.

MR. GOODMAN: Sorry, Steve.

MR. PERLMAN: Go ahead.

MS. GIBBS: Okay. Well, having all of that information, the volumes, the location all together, and putting a name, two people together, is what we have a problem with.

MR. PERLMAN: But you have no problem again reporting as the buyer all that information, and you feel that when you do so, that it's treated with appropriate confidentiality by the people you've been reporting it to?

MS. GIBBS: And then if that information I guess is released, but they won't know that it was -- the public will not know or whoever will know that I was on the other end of that transaction.

MR. RESCH: Kirstin, if I can add something actually to the discussion, because I think this is an important nuance, again, Dave, going back to the comment I made before, 90 percent of our members report right now. They report all of their fixed price trades.

There's no cherry picking, and I think when you really step back and look at the backbone of reporting today, it comes from a lot of different companies, some of which are my members.

And I think the concern for companies like Kirstin's are not that they're going to be reporting information and it's going to be caught, but rather that my member companies will be reporting information and that their information will then be exposed to their competitors potentially.

She may only have 25 or 30 percent of her membership actually reporting, and they may not really care about the counterparty information, but the people who aren't reporting, they're the ones who do care about counterparty information being reported. If my member companies are then the ones who are reporting it, that's where the concerns really start to play in.

And so the counterparty information has to be I think approached from both sides of both the buyer and the seller.

And I also think, I mean, I think we're getting off the point here. We're strongly against reporting counterparty information as well, for a variety of different reasons, both legal and also just confidential business information. And I think when you talk about where were we trying to go in the future, we're trying to increase liquidity. And if you start to add requirements that are actually going to deter people from reporting, we're going the wrong direction.

We can handle so many of the issues with just increased liquidity, as you heard from Platts. Any kind of misreporting that might go on, let's say somebody is trying to manipulate the number and it gets through the screen and all the rest and that number is out there but it's one blip out of 200, it's not going to influence the overall number. That's the bottom line. It's the law of large numbers.

I mean, you look at statistical methodology here, and these guys follow a very rigorous routine, and as long as they have a large sample size, the ability for any kind of potential manipulation is minimized. That should be the goal of any kind of improvement to the price indices is increased liquidity. And I think as we go forward, that should be always in the back of the mind.

And when we developed this consensus document in Kenesaw, so much of it was what can we have in there that

improves the integrity but doesn't deter those from reporting. And so I think when we talk about rules -- and Mike's comments earlier were excellent, because you do need to have rules that you then can follow, and if you're abiding by the rules and in a worst case scenario you need a safe harbor, then it kicks in. So it's really, you know, several steps down the line.

We think that the rules that were established in the consensus document go very, very far to establishing both for the index reporters and for the index developers what those fair rules of engagement are, and within that, there are several different steps that are going to weed out any kind of potential false reporting way before you ever get to the need for a safe harbor.

And so I think, you know, when you look at those rules, keep in context that they're a very, very rigorous filter before you ever get to the point of a safe harbor.

MR. HARVEY: Let's hear from Platts real quick.

MR. JORDAN: I just wanted to reiterate what we've said many times before and I think what the CRO group and others have said and has been said this morning, that counterparty information provides you with a key tool that gives you a quantum leap in your ability to produce reliable indexes. So I didn't want our previous comments to be taken as, you know, we can screen out all bad deals and we don't

want counterparty information.

MR. DOOLAN: Can I speak to that as well? At Platts we do receive counterparty information from some participants in the surveys. They're always held in confidence. They're not forwarded to anyone else.

By getting counterparty information, it gives us a couple of very important tools. One, it allows us to identify errors. When one party makes an error in one way or another, either on volume or on price, by triangulating it with reports about deals other people have done with them, it allows us to identify that and pursue that. And those errors are normally just that; errors, and they can be corrected.

They also allow us to at least attempt to quantify what deals are being reported by one side of a deal and what deals are being double reported by two sides. You need a full universe of reporting to do anything with that in a measurable way, but that's important information.

Three, it allows us to see who is active in a market in any given place and not reporting, and that allows us to go approach those entities and try to draw them into the survey.

The depth of trading issue is very important. The deeper the number of trades and the activity of the pricing point, the less an impact that any one or a group of

deals at an extreme can have. However, in the kinds of volatile markets we see from time to time, take this month, for instance. I think we had a 70 percent spread over bid week. Deals done, a few large volume deals done at one extreme or another will impact a volume weighted average. Now it won't necessarily impact a median or other measures, but a volume weighted average it can.

So even in a deep survey, as volatility increases, those issues arise. That's all I have to add.

MR. HARVEY: I've been a little bit remiss. Let me go to the phones real quickly. We haven't let those folks kind of weigh in for a while. Anyone on the phone with a point that they'd like to make?

(Pause.)

I'm giving you time to get off the mute button.

MR. WILTFONG: This is Jim Wiltfong with Con Ed.

MR. HARVEY: I'm sorry. Can you repeat your name again? We lost it.

MR. WILTFONG: Jim Wiltfong. I'm with Con Ed in New York.

MR. HARVEY: Thank you.

MR. WILTFONG: I know this is a very contentious issue and there's strong feelings on all sides of it. And I understand what the publishers are saying, and I can't envision a way where they can effectively turn around the

numbers in the time they need to without some sort of matching and clearing of the deals a counterparty provides.

So unless there's another way to do that that somebody can come up with, I don't see how we're going to be able to avoid having to come to terms with this somehow.

MR. WEINSTEIN: This is Jeremy Weinstein with PacifiCorp. I wonder if I might make a comment.

MR. HARVEY: Yes, please do. And repeat your name again slowly for us so we can get it down.

MR. WEINSTEIN: My name is Jeremy Weinstein, and my company is PacifiCorp, which is a West Coast utility.

MR. HARVEY: Thank you.

MR. WEINSTEIN: One of the issues with counterparty information that I think should be contemplated when we're looking at designing the system is it's not just the individual transaction counterparty information that's significant proprietary information, but it's the aggregate overall view of the market that is visible to someone in possession of that counterparty information when, you know, all the counterparties have reported to each other.

So now unique of all commodity markets, here is a picture that is given and delivered somewhere that shows, you know, the entire transaction information in the entire market, which is a very high degree of regulation to begin with. And though I wouldn't want to cast aspersions in

advance, it is a very, very powerful data bucket that is a real invitation to corruption in terms of a bribe paid to a clerk who has possession or access to the information to provide it. It can leak like a sieve, and, you know, we're here talking right now because there's been corruption in this industry. That's just a pointed I wanted to make.

MR. LEVIN: Hi. This is Bob Levin from the New York Mercantile Exchange. Can I make a comment?

MR. HARVEY: Thanks, Bob.

MR. LEVIN: Thanks. I'm sort of hearing both sides of this issue, and it maybe is going to impact some other tough issues that need to be sorted out. I don't think anybody can dispute that having the counterparty information is an essential component of verifying all the information that somebody collecting this is getting, price reporters or aggregators.

And I understand we haven't -- in fact, I'm taking this in the context of not really trying to develop aggregation, because I don't think there's been consensus on that yet, but there's certainly been views expressed, including ours, to that regard.

The confidentiality without some more specified roles in aggregation, if it's going out to the price reporters, then people are right. It's going to be more complicated on the one hand, and they're going to have to

have their agreements with the price reporters extend that confidentiality, and the price reporters have all indicated they're doing that, they're capable of doing it. Folks are not currently doing it because they don't have the agreement, and I have no reason to doubt any of that. I think they all have that capability, and we trust them implicitly and explicitly in performing that role.

But on the other side of that, somebody could simply say they're not going to benefit from the safe harbor if they can't convince their counterparties to participate with them and allow their names to be shared. And that's under this more decentralized, less regulated type of framework that I'm taking the context of this conversation to be in.

If you decide to introduce some sort of more formal aggregator role, and then FERC or CUPCA or some combination, some sort of certification, you do get away -- then I can see -- I see that issue really going away. There has to be a presumption that if there's really that level of FERC or other regulator oversight that I don't see how anybody can presume the confidentiality does not have a lot of backing. I can still respect somebody's decision not to report prices, but there's certainly a lot of precedent in marketplaces, ours included, but even those that go beyond ours, where the confidence can be protected.

But I do see this issue as being one of several that are biting at other issues. It's more easily resolved under one framework that has its own controversy than under others. But there's no question that anybody getting this information, if they have both parties, then this fat finger, yeah, it's unlikely that two parties are making the same fat finger mistake, and you verify that right away.

And not all of these markets are going to benefit from great increases in liquidity because some of them are not as liquid as others. Some are small to begin with. So you're dealing at best with handfuls of transactions, yet those transactions are very important. There's a lot of cash market deals that depend on them. So it does have to be confronted and resolved one way or the other.

MR. HARVEY: Thank you, Bob. Let me make sure. Anybody else on the phone? To make sure we've gotten everybody.

(No response.)

MR. HARVEY: Okay. Any comments here in the room?

MS. GIBBS: My name is Kirstin Gibbs. I'm here for industrials and IPAA. I think one of the things that we have said is that if you want to provide the counterparty information, that's fine, you know, we just didn't want mandatory counterparty information.

And I think, just to echo some of the comments that we have heard and that other people, Dena Wiggins said on the 24th, you know, we don't see that this -- and I'll use the "mortally wounded" phrase again -- that we didn't come at that from that perspective, and that there have been improvements made. I think people have published about improvements that are happening.

And so I think it's important to focus on what's really going on and the issues we're actually really facing. If things are improving, that's great. And we're never saying that you can't go back and, you know, reevaluate this process. But if you've got a consensus position for now and it can be implemented with a safe harbor, I think that is where we would like to see the Commission focus.

MR. O'NEILL: Kirstin, can I clear up one of the things? Are you saying that if you don't have to report counterparty information, the PGC members are willing to report? Or they just don't want others reporting counterparty information and they're not going to report no matter what?

MS. GIBBS: No. I think that with no requirement of counterparty, PGC members would be much more likely to report, yes. And we've put that out there to them. Obviously we can't make them do anything, but we would encourage them and talk about how this process unfolded and

why it's in their best interest to report and how there's low barriers to entry, and there's no counterparty information. There's a safe harbor. You know, everything taken as a package.

It's kind of hard to pull these things out and, you know, have an up or down on the individual items. You need to look at it as a whole, and we would encourage them to report.

MR. O'NEILL: Can you clarify "much more likely to report"? Can you put it --

MS. GIBBS: Like I said, we've got indications that they would. I can't say that every single one would. I just don't know the answer to that. But we have put those types of questions out there. You know, what would be the minimum requirements to get you reporting? And not having to report counterparty information is very big.

MR. O'NEILL: Do you think that they would need some encouragement from FERC?

MS. GIBBS: I don't know. I'd have to ask them that. Yeah, I mean, they have endorsed -- Rhone makes a good point. They have endorsed the consensus document, and by their names being on there, I think that means that they would endeavor to follow those protocols.

MS. MARSHALL: Hi. I'm Laura Marshall. I'm with the National Rural Electric Cooperative Association. And

today I'm here for the EMIT Coalition. I was not here last week and I did not get to hear Gerald's eloquent statements on our behalf. So I apologize in advance if I repeat anything that he has said.

I've been absorbing this morning and trying to catch up and see where we are. The Kenesaw Coalition, that was an incredibly worthy exercise. I think it did move us farther down the road. It bumped us out of the stasis that I observed when many of the same entities convened in Houston.

Just to clarify, as you all know, EMIT still does advocate for mandatory reporting and for the inclusion of counterparty data, and I don't think I could argue for it better than Mr. Lander did earlier this morning, describing the effects that counterparty information would have on the volumes of data and the ease that might come with that for the publishers who are trying very hard to match a lot of data in a very short time and get a reliable product out the door.

So without deviating from advocacy for counterparty information, I remember in Kenesaw when we had gotten through a lot of our consensus items, we started but never finished an interesting conversation. And it posed the question of having mandatory reporting without counterparty information. It posed the question of whether

that would give us enough of a data field in the short term to sort of jumpstart things.

MR. LANDER: You had asked the question earlier, Dave, which I heard as, well, if we, you know, grant safe harbor, isn't that really just no Phase I and Phase II? And I'd like to observe that -- and this may be a little cheeky, and I'll apologize in advance if it is -- again, this is Greg Lander, ETR. But there are those at the table who would like to add the frosting of safe harbor to the cake of the consensus. And I sort of saw the trade as something different.

I saw that, you know, they came to the table without consensus, without safe harbor, and that safe harbor was an inducement to do more, not to do what they essentially agreed to, which was to some inadequate, at least to me viewing this and others, as inadequate. And when I say "inadequate", I don't mean that the effort wasn't worthy, it wasn't good, wasn't genuine, but when you recognize that associations are not wired to compromise. They're wired to advocate the least common denominator of their members, and they have to stay really as close to that as they possibly can.

And so the package that comes together out of that is of necessity, you know, people cannot give up their religious issues, otherwise they get fired, or they're no

longer paid the memberships by their associations.

But keeping in mind that what we have in front of us is really a fundamental question, which is, is the government going to grant a presumption of innocence to people that conduct a certain type of behavior, there ought to be something of value that is obtained for that. In other words, not just, you know, agreement not to pillage and arson and burn and do things like that. I mean, there ought to be some benefit.

To my mind, the benefit should be that -- and there's also some cost. The data collectors have to treat the information confidentially. The data collectors have to provide that information upon request to investigative authorities who will also treat it confidentially absent, you know, an outcome of an investigation.

One of the key things here isn't just that the protection that the collectors will provide, but if you in a market oversight role need to have access to that information, which I see also as a critical piece to this puzzle, you also have to offer back that you will provide confidential treatment of that information absent a finding of some wrongdoing. And you have to say that.

Otherwise, what'll happen is people will say, oh, yeah, I'm going to give it to the data collectors who will treat it confidentially, but if they're going to provide it

to the FERC, then if they don't treat it confidentially, then I've lost, you know, I've poured it into the sieve instead of into a vault.

And so, to my mind, this whole thing comes together around you providing safe harbor, you specifying the information that is required, your access to it, your treatment of it as confidential, and in return for that, you will have safe harbor for a fairly broad range of activities, absent intent to harm others or to benefit yourself.

MR. HEDERMAN: This is bill Hederman. Greg, I want to follow up on your point around the table if you will because Rob Gramlich from the Chairman's office had to leave recently, and he asked me to take a poll if you will, of whether people thought that safe harbor should be for a higher standard than the coalition agreement or not. So I'd just like to get people's read on that so we can pick that up.

Chris, do you want to start? Or Mike?

MR. SMITH: I'd like to speak on behalf of the CCRO. That is absolutely not our stance. We believe a safe harbor can coexist with any of the standards that we put forth thus far, and indeed should do so. And since day one, we have been advocating and we have called it a disclaimer in the past, but it's really a safe harbor, that that is

necessary for the adoption of standards. And it's absolutely not been our intent to say that, and I'll use the Kenesaw Coalition work product as an example, that to add safe harbor language forces you to go beyond that, I don't see that at all.

I mean, once again, safe harbor language is saying if you make an innocent mistake, you're not going to have punitive damage done to you, why should that not coexist with the Kenesaw document? I don't understand that argument at all.

MR. HEDERMAN: Okay. Chris?

MR. ONDECK: It's Chris Ondeck. I couldn't agree more, and just in my own mind I was kind of thinking over the issue of should it be a higher standard, and I think not. And I think the reason is, and it says in this statement, is because we're working from a presumption of the status quo, which is voluntary, where I think a CFTC commissioner once raised, there is no payment to the data providing companies. They do this on a voluntary basis.

There are certain reasons why as a group the whole industry should do this, but when you have just the individual company considering its own situation, it doesn't have to participate and it doesn't get paid.

Some of them make a decision to participate, you know, if you want to call it public citizenship or whatever,

but you're looking at any of the ones that participate currently can drop out tomorrow. And second, there is those ones that aren't participating now that you would seek to encourage them to join.

So it's not really that they're going to receive any more than regulatory certainty, or at least regulatory guidance, you might call it, which I think is a fair and appropriate thing for those companies to be seeking when they're going to participate in this process. And they're not gaining anything, which I think helps them financially in their business, or anything super directly that you could quantify with money. I think they're just seeking to understand the meter of what their liability will be, and then, you know, have expressed some willingness to act.

So with that I'll conclude and say I think that it is reasonable and I think it's an acceptable role of government to provide some type of guidance for whatever type of enforcement or way it's going to apply the law and rules that apply. I don't know it's anything more than that, but I think that's an appropriate thing to ask for, and I think the Kenesaw standards are a good way to go. And finally, as to the counterparty issue, I know it's a big issue, and it's somewhat consensus. The CCRO to handle that is a Phase I, Phase II approach.

Phase I, if you went for six months, the document

recommends that the FERC, in consultation with the industry, assess, has the whole industry moved to kind of create the protections such that everyone feels comfortable providing counterparty. It could be that situation. It could be that the FERC and the industry feel the counterparty isn't needed, because so much good data is coming in under such a controlled process that some of the arguments in favor of providing counterparty are no longer quite as compelling.

So both of those would argue in favor of doing a phased approach, putting counterparty off until a date certain in the future, and then maybe you could reinitiate -- you might Phase I is it, or you might find that the industry had moved, and Phase II was easy to go to. But it's no reason not to do Phase I on a pretty rapid basis.

MR. PERLMAN: I don't think anyone's arguing with that. The question I asked before restate it maybe a little bit more clearly, is what was keeping people from going to Phase II. And the answer I heard back was the FERC. The FERC hadn't given whatever adequate assurance people were looking for. And if you could, we wouldn't really need to distinguish Phase I and Phase II. Is that wrong?

Because that is sort of what came from the group in one voice I thought in answer to my question, because there was some uncertainty that once resolved, all the documentation that was prepared, people would follow through

on. And if that's wrong, please let us know and let us know what other issues would be a barrier in people's minds.

MR. RESCH: Dave, there seem to be two different definitions of Phase I and Phase II. I just want to be clear. This is Rhone Resch from NGSa again. That we are referring to the same type of phases.

In my mind, Phase I is the adoption in part of the Kenesaw type of consensus document, and this Phase II portion would be someplace down the road if we found that the Kenesaw methodology, for lack of a better word, wasn't working. And we give ourselves a year, and, you know, all the trade associations who sign on get out there and encourage their membership to participate and we increase liquidity and we do everything we say is in the document and implement it.

And if we find in a year we still have some pretty major problems, well then, determining Phase II and how to go forward from there would certainly be appropriate. But I think it's important to recognize that Phase I has to be given a chance, and we can't deem it inadequate before we ever even try it.

I mean, when you step back and you say okay, we've been developing price indices for 18 years. Guess what? They've been working for 18 years, you know. I mean, certainly there's improvements needed, but let's try making

the step one improvements, in my mind, which are the Kenesaw agreements, and then approach a step two later on. And my question is, am I defining that right?

MR. PERLMAN: I think to bring some clarity to this, I was reacting to, I don't know if you read it, the CCRO document that was filed here with the Commission. And what that document says, unless I misunderstand it, is there are some legal barriers between Phase I and Phase II, not that we need to give Phase I a try and Phase II might not be necessary. What the document says is that we should put them -- they are essential elements, and we should put them in only at such time as the Commission in consultation with industry stakeholders determines that they can address the business and legal issues associated with these essential elements. And if they're not essential, and the bar isn't legal in business issues, then that's a different proposal than I read. And maybe you can clarify that.

MR. SMITH: The business and legal, I mean, there are, as we've already talked about today, these cross-relationships that these companies have with one another. There are substantial contractual arrangements already out there that prohibit the divulging this information. You are putting your company at risk by providing counterparty information. Those have to be amended, all of those contracts, all of those relationships, if you were to go

down this path.

I think that's the business and legal context that we're referring to.

MR. LANDER: Right.

MR. SMITH: I think from our perspective on the CCRO, we do see the benefit of providing that information, but we also are trying to work with the industry in a coalition or a consensus here because first and foremost, you want the most people, the most companies participating in this.

And we do agree with -- we call it a phased approach. Others call it the adoption of the Kenesaw Coalition recommendation. Let's give that a chance. Let's see will that bring more companies in, will that bring a robustness of participation that we can all support and endorse.

And if we're seeing that evolve and that happen, you may not have to go on to Phase II. There may not need to be a next step. But if you do embrace the Kenesaw Coalition recommendation, there is a presumption there of a hardy, voluntary degree of participation that has to happen. We have to have confidence around indices, and confidence is first and foremost correlated with the amount of data coming in, the degree of participation

We're willing to push our recommendations that

counterparty information does provide you better matching, et cetera, et cetera back, because we've heard loud and clear from other industry constituents that that is a nonstarter. And a nonstarter means they're going to pull back.

You know, Rhone's group, NGSa, if indeed 90 percent of them are participating, a lot of that participation is conditioned upon not providing this information. That concerns us that we hear that. And we're willing to support the Kenesaw Coalition and that activity if indeed it does bring up a robust amount of participation.

And I think I can speak on behalf of everybody at that Kenesaw Coalition that that was indeed one of the consensus agreements that we could all agree to.

MR. SHAFFER: Mike, Mark Shaffer, NOGC. I just have one question. If you all are kind of wrapping your arms around the Kenesaw agreement, why do you need a safe harbor from FERC? Since it came in without that component initially.

MR. SMITH: Okay. Once again, I'll get back to what is the safe harbor trying to do? As Chris has already alluded to, this is a voluntary process where we're all trying to work together for the benefit of appropriate indices.

We all understand that this has some liability with it, but that liability needs to extend to fraud, intentional misconduct, gross negligence, et cetera, somebody making a human, honest error. I meant to send you in a transaction at \$3 and I inadvertently hit \$30, we're hoping that obviously with the standards around an error resolution process those kind of things are caught and corrected and amended.

But indeed, let's go down the dark road of a simple, honest human mistake gets put through. Companies are saying if I don't have safe harbor language that tells me I don't face a significant liability there, well, I'm never going to put myself in a position to have to ever be exposed to that. And that's why a lot of the companies that are not participating today are sitting on the sideline. They're saying it's a pinhole risk. It's a pinhole risk, but why should I take it if I don't have to? Safe harbor language would allow them to come back in and adopt these standards.

And these standards are not been there/done that, these are all significant improvements over what we have all been doing historically, and they are standards, and it's consistency that we have not had before. And you look at the standards: Transaction-level information, independent source of data, consistency as to what's provided,

independent annual audits. I mean, all of these should give you a tremendous amount of comfort on a going forward basis, and these things have not been there in the past.

So I tend to get a little bit irritated when I hear that we're trying to live with the status quo or we're trying to ask for more of a safe harbor around standards that aren't really standards. These are significant recommendations, and I think it's encouraging to me that out of the Kenesaw meeting you were able to see a document like that come out. I think that showed a tremendous amount of work and effort on the part of the industry. I'd like to see that be given a chance to be supported.

MR. WEIGAND: Peter Weigand, ETR. I'm very much an advocate of what came out of Kenesaw, but I do have a question perhaps for that group. If you don't disclose the counterparty data, how do we know who qualifies for safe harbor?

MS. LEWIS: I don't know if I'm going to answer that directly, but perhaps I will in a roundabout way, more probably in response to -- this Jane Lewis with the American Gas Association -- more in response maybe directly to Mark's question, and getting to the meeting that the industry coalition held in Kenesaw, if the fundamental goal is to increase voluntary submission of data to our index providers, it's critical to define the process. People have

to know what it is they're volunteering for.

Again, if you're trying to increase voluntary submission of data, you need to go with the set defined process that brings in the broadest coalition of industry participants who would be the ones reporting this information.

AGA is on record saying, yes, we believe counterparty information would be the best way to provide verification. You heard Jim Wiltfong of Con Ed express that earlier. But personally, what I am hearing today is you're hearing from rather significant segments of the industry that are saying at least right now, counterparty information chases their segment away from voluntary reporting.

And then, Mark, to answer you as to why then if everyone sat around this process do you need the safe harbor, I think the set process is first and foremost, because we haven't had one yet. It has been more of a survey polling phone call. And if you want people to volunteer their information, they need to know how to go about doing it and not wait for their phone to ring, and not rely on a process that is by chance having two people on two opposite ends of the phone actually make the right connection.

The safe harbor, though, as Mike Smith has already expressed today a few times, and I think Greg's

analogy was icing on the cake, it does give people that comfort level that you're not volunteering to throw yourself into a brick wall. You're not volunteering only to step up into an investigation.

MR. LANDER: It may also help answer your question, which although everybody said I think the truth, I'm not sure anybody answered your question directly, at least as I heard you ask it, Dave, which is, I also heard on June 24th that people said they weren't going to go through the effort of amending the masters agreements and go through the effort of getting all that stuff buttoned up so that they could do reporting either at all or reporting counterparty or whatever, unless the heard from FERC that it was worth the effort. That's what I head.

And so I think the direction -- and maybe the path here is you have safe harbor for the next three months, but at the end of this three months you continue to have safe harbor only if you've amended your master agreements and only if you've done this and only if you've done that, and if that's what Mike Smith I think is saying or some period of time or maybe you assess it again.

But what I'm hearing is that the effort of going through the master agreement amendments and going through that has to be worth something or has to be told that's what you have to do, and either safe harbor starts in three

months or it starts in six or it starts now but only continues in six months, what I'm hearing on the Phase II which I didn't hear earlier and didn't understand even from the filing, was that the effort of going through the amendment has to be worth something or has to be directed or has to be an objective, and that objective is either because Phase I isn't working, or because it's a timeline set up front just because it takes a while to get it done.

And in that context then whether you have a Phase I or Phase II because you want to start something right away and have it better later, that's fine. Or if you say later is actually 60 days from now which is essentially today anyway, then there is no Phase I, it's just a Phase II, what I'm hearing is that somebody has to say it's worth the effort of going through the master agreement amendments.

MR. SMITH: Well, let's put it this way, I mean, be honest. If Phase I doesn't work and we see -- and I know people may not want to talk in terms of what we put here, but let's go back to the Kenesaw agreement. If the Kenesaw agreement doesn't work and we're reevaluating it at some appropriate time and we say there needs to be more, it sounds like the heart of that is going to be companies are going to have to be made to provide more information. You're getting into the mandatory versus voluntary.

I don't think we need to mix up the safe harbor

language in that. I mean, safe harbor is not meant to make you go down this route that you don't want to go down of providing extremely confidential information. The safe harbor is meant to throw an additional amount of comfort around this Kenesaw standard. And I think it will. And it's not meant to take us beyond that. Let's give this Phase I or this Kenesaw standard a chance and see what happens. I think that's what you're seeing the industry coalition say.

MR. HEDERMAN: Do we have a phone response to that?

MR. GOODMAN: Yes. This is Craig. Can you hear me?

MR. HEDERMAN: Yes.

MR. GOODMAN: I'd like to put this all in context. The quality of the discussion I've just heard is outstanding in all respects. And Mike's points are very, very well taken.

It should be put in context, in my opinion, from where we started to where we are to where we want to be. And we had a choice to go through perhaps some major rulemaking mandating various things that don't exist now. That was a choice. If the government goes that way, then you've got all these consequences to deal with.

What is on the table is how to get the same thing

done in a voluntary way at the lowest cost with the highest comfort level so that FERC would feel comfortable with the quality of the data, and the suppliers would feel comfortable giving the data. Now having heard all the counterparty concerns, I personally believe there has to be a way to protect that information in a way that all parties feel comfortable, I really do, if not already.

And I'd like before you go to an unfunded regulatory mandate on the entire industry, small entities included, and what I believe would probably be an ATA major rule, this action that's being proposed here is probably the least cost, most efficient and flexible enough to ramp up or ramp down as you may see fit, that in policy terms, I don't see how we can do anything but that. Sorry.

(Laughter.)

MR. ONDECK: This is Chris Ondeck from the CCRI. I think it's a good point, and to provide a little bit more info on how the CCR reached its recommendations, one of the things that it did was it researched other examples in other industries of safe harbors and presumptions of good faith, a couple of dozen.

MR. HARVEY: We're getting some feedback from someone on the phone. If you're not talking, can you be muted?. It may be a cell phone problem too. Thank you, whoever did that.

MR. ONDECK: Chris Oudeck, and I was saying the CCRO arranged some examples of safe harbors in the spectrum basically and found that -- and I think it's important to keep in mind what possibly could come out of today or what the FERC may choose doing -- the top end of the spectrum are statutes that control the rights of private parties and would control the government itself.

And in addition, there are statutes that make legal conduct that's otherwise illegal. Like for example, that suspend the operation of the laws against, oh, the antitrust laws for instance, if you want to sell something overseas. Otherwise illegal conduct, but you get a pass for it for some policy purpose. Well, that's not this.

And second, I think the statute is not necessarily in the cards here either. I think at the kind of most efficient end of the spectrum, I don't want to call it the low end, but the most efficient end are nonstatute nonrulemaking statements by agencies. We found a lot of them where the statement tried to provide some guidance to its constituency as to how it plans to apply its rules or its controlling laws in certain situations, and they vary all over the place.

They're not binding on the agency. The agencies usually say, you know, this is how we plan to operate, but we always reserve the right to look at each specific

situation. But what we found, what we have a sense is that industries find those pretty useful in having some type of guidance as to should they amend their master agreements, should they invest in setting up these control processes.

I think it's a pretty efficient -- and I think Craig Goodman hit the nail on the head -- I think it's a pretty efficient way to go, and then to drill down into brass tacks, having a phased approach lets the FERC see, you know, is Phase I working, is Phase I enough. There are merits, and the CCRO is on record as saying there are merits to having the Phase II things, the counterparty and the buy/sell.

But in the interest of having the most people participate, I think there's a lot to be said for publishing some type of document that provides guidance. I think it's a very appropriate thing to do. Companies can take a lot away from that and then they can go to proceed to make investments and undertake actions so that they get this process rolling. It's already rolling, but rolling more.

MR. HEDERMAN: Chris' comment takes us to the point that the Chairman's office wanted. But I wanted to ask one more time if there's anyone -- we've heard a really discussion, I agree, on the high hurdle point. Are there any distinct opinions that people would like to provide on that point before we move on to the question of what kind of

signal would be appropriate from the Commission?

MS. MARSHALL: This is Laura Marshall from EMIT. We are not in disagreement with safe harbor. If you go back to Section (f) under the data providers -- I'm sorry, the data collectors' recommendations in the Kenesaw document, it goes through some concepts that could very well be interpreted as safe harbor.

EMIT will be filing some very simple, very direct language for safe harbor later today. I'm not sure that the other members of my coalition have had an adequate chance to look at the CCRO document. So that answers your first question. We don't disagree with the concept of a safe harbor. For my own members for electric co-ops, I would want to have that there of course.

Since we keep coming back to Phase I, Phase II, I'll give you a little background from Kenesaw. Where EMIT had to pull away from consensus on Phase I, Phase II was at the point where we could not reach full consensus among everyone in the room on what Phase II would look like, when Phase II might appear and what we would be doing to monitor Phase I while we anticipated a Phase II.

And I understand the concerns about not wanting to sandbag voluntary efforts. But we did want very much to see some definites, some benchmarks, some timelines, some guides along the way, so that we did not get to a date that

we picked out in the future, April 15th, 2004, and have no substantive work toward Phase II done.

MR. HEDERMAN: Kirstin.

MS. GIBBS: Kirstin Gibbs. And I would just like to then go on on the Phase I, Phase II points since we seem to be at that stage and say that where we came from is we didn't want to predetermine the outcome of Phase I by having a Phase II that required all these various new elements. You're not really giving Phase I a chance. However, we did indicate that we would be willing to continue to discuss the issue, see what was happening, see what changes needed to be made, if any, but the main point being if any, and not to say okay, after, you know, six months we know for sure we're moving to this next step that's an item on the nonconcensus position. Maybe there's something else that's going to come up that would be a way to fix any potential problem that occurred.

So we're not against continuing to debate the issue, absolutely not. But I also don't want to see us predetermine the outcome of the efforts that we've made in the Phase I approach. And we support safe harbor.

MR. RESCH: Hi. This is Rhone Resch from NGS. As I pointed out before, my members are reporting now without a safe harbor provision. We are signatories onto the Kenesaw document, and what I really heard in the June

24th meeting was that there were some companies who maybe were on the fence about reporting who needed that clear signal from FERC and that that other additional clear signal was the safe harbor provision, and if they had that, then they would start reporting.

And in my opinion, if that is what it takes to get more companies to report to increase the liquidity, then we should support it. So from my members' position, we support a safe harbor provision in anticipation that it would increase liquidity for those companies who aren't currently reporting.

MR. HEDERMAN: Let's turn to that question, specifically Chris' point about what might constitute that signal.

MR. GOODMAN: -- with a statement by the Commission that said we intend to guide our efforts on follow-up be adequate, or do people feel that there is a need for a more formal rule making? In a way this may have a Phase I and Phase II as well, and to start with something quite informal as guidance from the Commission.

Primarily, I guess, how OMOI would enforce the rules, or you could have a more prolonged process. It strikes me that in the interest of doing this quickly that the informal statement is probably going to get most of what people are talking about, but I would like to hear your reaction.

MR. HEDERMAN: Bill, can I say something on that point?

MR. GOODMAN: Okay. Is this Craig Goodman?

MR. GOODMAN: Yes.

MR. HEDERMAN: Okay.

MR. GOODMAN: In terms of -- repeat that question one more time, sir.

MR. HEDERMAN: Is this Craig Goodman?

MR. GOODMAN: I am coming in and out on a cell phone, and so forgive me.

MR. HEDERMAN: Craig, just what be the nature of the guidance helpful from the Commission?

MR. GOODMAN: Oh, sorry. My thought process

there is that there could be reach out as far as perhaps even the SEC. They provide guidance that is binding, but still informal in the manner in which they interpret security regulations.

And that would be an informal -- that would be one step short of an order or a formal rulemaking, but not a press release. That is the only thought that I would like to suggest.

MR. HEDERMAN: Okay. Here in the room. Greg.

MR. LANDER: Well, surprisingly, I have an opinion on this matter. I have been watching this Commission and dealing with both its regulatees and the people who deal with your regulatees, and have seen policy statements.

And unfortunately it is very cold comfort both for the regulatee and others, because you generally -- it is like that bummer of a birthmark, you know. You say I am trying to do something consistent with the policy statement, and everyone has a different opinion on what is consistent with a policy statement.

I think at the very minimum you should do probably that, but then begin the rule making process. Unfortunately, there is so much synergism over what happens or what the weight of a policy statement is. It may have had more at some time, and you may mean it to have more in

the future.

But at present it just does not do much, and for the people who are saying they want some guidance, they would tend to be among the most cynical and receive the least impetus from a policy statement.

This Commission has done well with its rule makings, and it has moved quickly, and I think possibly a policy statement followed by a rulemaking, you know, over a 60 day period so you can get your Phase I and Phase II.

I would love to believe that people would act differently than they are today, and invest the effort required to amend contracts based upon a policy statement. I just don't see it happening. I see it only happening through a rule making, which gives people some certainty as to what the regulation says, and what Section X, Y, Z, is going to be.

MS. LEWIS: Jane Lewis with the American Gas Association. As Greg was speaking about policy statements, actually one policy statement that I think has been very successful could be a guideline here.

I mean, the Commission issued a policy statement on how it was going to treat applications for new construction, and they set out and told the industry exactly how they were going to process those applications, and that has been a successful process.

People can look at that and know what the process will be, and it sounds like, Bill, that you were speaking about something that would set out guidelines that would give the industry an indication of how at least OMOI staff would look at this information going forward.

And I think that is obviously going to be a lot more quickly implemented than a rulemaking. You also have the advantage of policy statements not being subject to court review over a rulemaking, and Marsha has left the room, but Mark is sitting there.

So I think if we wanted to do something with great speed that a policy statement is probably the quickest way to get it done, and you can draft one that does give good guidance, because you have done it in the past.

MS. DRESKIN: This is Joan Dreskin with INGAA. I think the industry is looking -- you're right -- for some nod from FERC to get going, and start, and we all have an incentive as an industry to restore confidence in these indices, and we all recognize that FERC is not going to step down and say things are over, and that we are all within a transition period and a test to see whether the protocols that we propose will help solve some of the crises and confidence.

We differed in Kennesaw over next steps, and part of the reason is that we ran out of time on what the test

would be, and what the reevaluation would be, and what the signs of success or failure would be, and what the solution would be.

For example, if the gas price publishers were not able to verify data as a solution moving to counterparty or as a solution to mandatory reporting. We were not ready to get there because we could not predict if there was going to be any problems whatsoever.

So I would suggest that we get moving and have some nod from FERC and say this is a voluntary process. I do think that a safe harbor -- and that is something -- it is not in Kennesaw that we have considered it and rejected it because we didn't need it.

We frankly didn't even think about it. It co-exists with this protocol, and it makes common sense, and it is not a giant loophole. It is really just saying if you mess up, then there is some assurance. The lawyers within these companies that are reporting are extremely nervous, and they are saying that there is very little benefit to report nowadays because the liability is so great.

So let's give them the least bit of comfort by saying that if it is just a dumb mistake, FERC is not going to prosecute you. I think that a policy statement can be quick and effective.

It could say we are adopting these Kennesaw

protocols, whatever you want to call it, and lay out saying that they are data elements, and they are standards, and that we, like the industry, are going to be continuing to reassess these indices.

We fully expect that we are going to revisit this after some period of time. It is going to take some transition time for people to get their processes in place to comply with this.

And we will do all we can as trade associations to encourage our members to voluntarily report this, and let's reassess later how much more reporting we have, and whether the industry feels confident that they can rely on these indices.

MR. RESCH: This is Rhone Resch of NGSA. I agree that a policy statement would actually carry a lot of weight for several reasons, and one of which is how much work has already been done, both by FERC and by industry, and FERC has given a very clear signal to industry to go out and actually come up with some kind of agreed upon document.

We have done that, and FERC has held a series of different tech conferences. FERC has given a very clear signal already to the index developers that improvements need to be made, and the index developers have made those improvements.

I mean, there has been a tremendous change from

when we first started talking about this, and that needs to be recognized. And I think that a policy statement can do that very clearly, very effectively, and as Joan as said, also outline some of your future steps that might be needed in order to monitor how things are going, and make sure that there is confidence in place.

But it seems like a policy statement could accomplish a lot of what we are looking for.

MS. MARSHALL: This is Laura Marshall from EMIT. We would encourage a policy statement for the short term, but a rulemaking off in the future. And I do agree with what Joan said. We discussed -- we did run out of time in Kennesaw. There is certainly value in ongoing discussions among our groups.

MS. GIBBS: This is Kirstin Gibbs, and I would just like to add support for some of the comments that Rhone just made. In addition, I would just like to echo some of the support for some comments that I believe Mike made about this document is a change.

It is not the status quo, and there are some significant improvements and changes here, and that really need to be given time to be implemented, and see what happens. And if we can do that quickly, and if a policy statement is the best way to do that, we would be very supportive of that action.

This is Mark Lively, Utility Economic Engineers. Whatever FERC decides to do, it must show what liability, what damages, what safe harbor is going to protect the people from.

A death penalty as being the only damage or liability that FERC can impose doesn't have a whole lot of weight for a purchaser who -- FERC can't stop them from buying gas in the open market, or at least I don't think they can. Maybe you have that ability.

But there has to be some enunciation of what those damages, what those liabilities are, that FERC can impose if the safe harbor is not in place.

MR. ONDECK: This is Chris Ondeck from CCRO. That is something that we wrestled with, and I think that it is a very legitimate issue as to how specific -- and I am not sure that I know the answer, but I know what the CCRO said in its statement, and how specific should the safe harbor get.

And I know when the CCRO considered it that they kept it pretty general, in terms of the issues that have just been raised, which I think are significant ones, which is where does it get applied.

And I think that there is a route that could be gone that is a laundry list of every type of licensing and rate making authority, and that the FERC has every type of

administrative action that you might hold, and every type of damage or penalty that you might impose. It's tricky.

And maybe not as clean and neat, and the way that we at least made our statement of essential elements is to keep it broad, and said we -- we asked really for two things. We said that it is essentially a presumption of good faith in instances of errors.

And we included that if a company or data provider met the standards that were laid out, FERC would presume that that met a test of reasonableness, and so you can then take that and apply it almost everywhere.

You know, any specific damage, or liability, or penalty. I think that is enough. You can say, well, you go to that situation, and you say I have a presumption that if I met these standards that I acted reasonably. So that is the thing to do.

And the second issue is somebody has raised, and I think it is an appropriate issue, how will the company know that it is within the safe harbor or not, and I think you face two choices. One is pre-certification or pre-approval, or after the fact.

Pre-approval is a company would have to make some kind of filing, which I think is a bad idea, saying here is the standards for the safe harbor, and I would like to know in advance whether I am in it or not. I think that is

costly. It is a nightmare, and I don't think it is a very good way.

I think that the better way to do it is for companies or for the industry to look at whatever FERC puts out, and make its own decisions as to whether they think it is in it or not. If it is ever called into question, it can kind of the American way justify after the event. I think that is probably the way to do it.

MS. DRESKIN: This is Joan Dreskin. I don't think that as a provider, a data provider, that you report knowing that you are in a safe harbor. You report truthfully, and you report, and there is a mistake under the CCRO proposal, you fix it quickly.

And then if it is a mistake, you fall within -- that you didn't catch, you fall within the safe harbor. You don't knowingly report within a certain band of a safe harbor. I don't think that is the intent of it.

The intent is to make sure that if it by accident you make a mistake, and you goof, that there is some comfort that FERC is not interested in prosecuting that kind of mistake.

MR. ONDECK: This is Chris Ondeck from CCRO. I could not agree more. Just to give one example that drove us a little bit. We had a company that has currently implemented the CCRO best practices and they are reporting.

And they have all the protections in place, but they made a mistake. They received a call from the index to which they report, and this is pretty recent, and through just a screw-up, a pure human error, they justified their mistaken.

And it didn't give them any financial benefit, but then only the next day, they said maybe we should look at what we have got to call about, and what we were sure we were right about. And in fact they had pulled the number from the wrong place, and they were wrong.

So then they called the index publisher back up per their process, and said that we need to report this error. They then called me and said we are thinking of pulling out of this process, because we are a little concerned, because we just saw a kind of a mistake, and then a double mistake basically.

We made the initial mistake and then we justified it, and they said, you know, what is going to happen. Our people want to know. Is somebody going to be taken away in handcuffs. And I said, well, that is not going to happen. But that is me saying that.

So that is kind of what we are talking about here, and they were one of the big proponents of a statement of how the law on this issue gets handled, and the rules on this issue get handled, and that is kind of what we are

discussing here, would be very useful.

MR. PERLMAN: I think what you are saying makes a lot of sense. Everybody seems to be coalescing around an idea, but it is a parallel path. Let's start with what we have, and let's monitor how it is going.

So let me go -- and if we are not going to have prefilings, which I also think is probably a good idea, how do we monitor how it is going, because we don't know whether people are actually following the protocols.

And I guess we can look at the indices and see what kind of volatility -- excuse me, what kind of volumes they are reporting. But is there anything that we would do other than just look at the indices, real time, to monitor the success of this coalition's outcome that would help us make a judgment in the future whether it was successful?

MR. ONDECK: Chris Ondeck again. Somebody raised that before, and that is obviously an important question. Well, first you have your whole staff at OMOI who have some good ability to monitor that, but specifically I think you are going to want to set some more of this kind of thing in this same docket, or a new docket, at some points in the future.

Not just rely on totally -- and also ex parte, totally one-on-one communications with me or with somebody else on this panel, because it may not capture the full

picture.

Someone may say things are going great and they are not. So I think you would want to do that obviously, and you do that. but you probably want to set some date certain workshops, and also workshops in the future, with things such as like this, and also an ability for people to report in.

Because you have a diverse group that is here, and I think you have some surety based on the attendance at the prior meetings that you will continue to see some diverse representation, and that is a pretty adequate watch dog, plus your own activities.

MR. PERLMAN: One thing I was thinking is that we heard 90 percent of one group is reporting, and did gasp when we hear what would happen if we did this, and would we get more, and you said we don't know for sure, but we would certainly encourage them.

But would the groups be willing to give us information as to the success rate within their memberships as to whether they are reporting following these protocols to help us monitor?

MS. LEWIS: We could try and then you could criticize our assessments and our analytical capabilities. One thing that AJ has advocated that might help is for the index providers to periodically publish a list of the best

people.

MR. PERLMAN: I thought you did a great job on the 90 percent.

MS. LEWIS: I was not here with the 90 percent. I wish I could tell you it was 90 percent. I don't know. Some of our companies report and some don't, and some are getting ready to as soon as there is a process by which or with which they are comfort as I said last week.

But what we have advocated is that the index publishers periodically publish a list of those people reporting information to them, and that would give you an indication.

Obviously not by point, because that is confidential information, but an overall sense, and I know that has made some people uncomfortable, but we are after full disclosure in order to encourage people to report.

MR. JORDAN: Confidentiality has come up earlier this morning as a big issue, and we have signed a number of agreements. And those agreements cover not only the data, but the fact of whether or not a company is or is not providing data.

And the general notion of a black list or a good list has prompted some real bad feelings among the industry. So we would not like to be in that position, and we would encourage the companies to say publicly or report to FERC,

or whoever, would be appropriate on whether or not they are reporting.

MR. HEDERMAN: Let me just mention a closely related point. If you will look at the recent statements by the Commission, the Commission is setting up the information to be able to create such lists itself, in terms of saying you must tell us whether you report or not.

MS. DRESKIN: Although that is --

MR. HEDERMAN: It is only for jurisdictional --

MS. DRESKIN: Yes, that is a very small segment of those who might want to report.

MS. MARSHALL: This is Laura Marshall with EMIT. We are -- I can speak for the co-ops on this one and not for the rest of my coalition. We are actively encouraging GNTs to report and I will certainly transfer this question to the rest of the EMIT coalition, and get an answer back to you on what they are doing.

MR. RESCH: Bill, I think there is one other thing that is important for FERC to recognize, and I know that you do, is that you are going to be coming under increasing political pressure to do something, and the question is does a policy statement get you there.

And I think the answer is, yes, as long as it is couched properly, and that your action items and your evaluations are outlined as well, and what you will be doing

going forward.

And I think that one of the problems that exists outside of FERC in Washington is that there is -- there is a belief or there is a lack of understanding about how absolute prices of natural gas, price indices, and market manipulation are separate.

And I think there is a belief that they are all intertwined, and we have a very tight supply and demand balance now, and certainly in the winter, if that does not alleviate, we will continue to see this type of balance, and questions will be raised.

You know, was this fixed, and we still have high prices in natural gas, and was this fixed. So I think there is a role there for FERC to kind of educate a little bit of the rest of Washington on how unique each of these different components are.

And in addition I thought that Dick O'Neil's comments at the last tech conference were great when he actually compared what some of the indices were reporting, compared to what was being reported on ICE. That is a great way of checking out how accurate this is.

You know, looking at liquidity numbers that some of these indices are going to start publishing. You know, tracking and how that over time is improving is a great way to see how it is fixing.

And I think that one of the things that we may realize is that although we did a year ago have 196 price points around the country, we may not need 196 price points. We may need 50, and those numbers may decrease radically, or at least we might find liquidity is only available at 50.

And that is okay, and I think that is part of the improvement as well, and should not be viewed as the fact that the system is not working because we don't have liquidity. So I would definitely keep in mind kind of those points about making sure that this is not wrapped into the overall context of market manipulation and absolute price of metro gas.

MR. HARVEY: Can we make sure anyone on the phones who would like to answer that question about sort of the appropriate performance can speak up?

MR. LEVIN: Yes, this is Bob Levin from the New York Power Exchange. I think that this policy statement, since somebody noticed that there is a lot of coalescing around it, we certainly can respect that.

And it does seem though that the discussion to date has centered, as I think a lot of the activity at the tech conference last week centering on where industry consensus is arising, and there is a lot to be said for that.

And I think that what Mike Smith had said

previously defending how significant those steps are really holds forth, and it was really very persuasive. But something that continues to hit at us is that the Commission, who has been overseeing all of this, has really said very little about what -- I mean, and I apologize, and maybe we are just not perceptive enough.

But what it is that you are genuinely hoping to accomplish, and there is just such a lack of specificity. Do you want transparency. Do you want everybody to report. And it seems as if a policy statement as including not only some specific guidance on what you are looking for in terms of the people that collect data, and then provide data, but as a kind of macro accomplishment on those issues might be a good place to put it, because a policy statement is not binding.

But it could be at least signaling people, if that is what you want, and if that is not what you want, maybe something to that effect, because it is an issue that the industry came to FERC and said that we want to come to you with consensus-building documents, and you sought that initially, and now you are sort of stepping back.

And I just am not sure where you are headed, and the game is -- that type of guidance would be very helpful in all of this. Maybe the problem is less serious for some of us to consider, and that maybe this is satisfactory to

the Commission, at least at this time, and that is fine, too. But that kind of guidance in the policy statement.

MR. HARVEY: Okay. Anyone else on the phone?

MR. VICE: Steve, this is Chuck Vice, Intercontinental Exchange. I wanted to -

MR. HEDERMAN: This is Chuck Vice, from the Intercontinental Exchange. Go ahead, Chuck.

MR. VICE: Thank you. I just wanted to comment on one point that I believe Bill Hederman made a minute ago, and that was in response to some discussion about possibly, or just the general idea of a black list or a good list, and who maintained it, and did the Commission maintain it.

And this also relates a little bit to what Bob Levin was just saying, in terms of particularly over the long haul, and what potentially might be a Phase II some day, kind of preordaining what you are looking for.

And I would hope, for example, that we wouldn't through a FERC maintained black list, for example, kind of preordain what a long term solution might be, because part of what I think is working here and is good is that the market, the free market, and the players in the industry, are taking steps. They are making progress, and they are innovating.

And I think, for example, from our point of view that we have a lot of companies that trade on the ICE

system. They use the e-confirmed system to confirm trades, and that information is included in indices that we publish.

And so, for example, if those companies did that, but they didn't send data to in fact FERC, for example, would they be on the blacklist. So I guess the only question that I would ask and leave with the Commission, and just for thought, I suppose, is that is an example, and there probably are others, whether it is the policy statement or other actions that the Commission might be able to take of trying to the extent possible to allow the industry the flexibility to innovate and improve these, and fix these problems in ways that people may not necessarily be clear at this moment in time.

MR. HARVEY: Thank you, Chuck. Anybody else on the phone?

MR. HARRIS: This is Bryan Harris from NASHEA. Can you hear me?

MR. HARVEY: Yes, we can. Could you repeat your name for us?

MR. HARRIS: This is Bryan Harris with the National Association of State Utility Consumer Advocates, NASHEA.

MR. HARVEY: Thank you. Go ahead.

MR. HARRIS: Well, we have gotten way away from the kind of the original -- I thought was the original

purpose of the discussion, which was the very narrow issue of safe harbor language, to allow a lot of discussion about implementing the Kennesaw agreement, at least from our perspective out here in the hinterlands.

The Kennesaw agreement seemed to be the lowest common denominator that the industry could agree on and the Commission was still going to have to wrestle with some fairly difficult issues, like counter-party, mandatory versus voluntary reporting.

NASHEA has put in comments that recommended basically from what it sounds like turning CCRO's Phase I and Phase II on its head. We think that you can go to a voluntary reporting or a mandatory reporting scheme, and let everyone get comfortable with that, and realize that it is not going to be such a disaster that people are thinking it will be.

So I don't -- and there has even been a suggestion that the policy statement on the safe harbor should also implement the Kennesaw standards. I am not comfortable with you going that way. Safe harbor language is separate and distinct from tying up the whole package, I think.

MR. HARVEY: Thank you. Anybody else on the phones? Okay. Anyone else in here to finish up that round of -- sure.

MR. BIERMAN: This is David Bierman with the FERC staff. This really is a tangential issue I think, but it has been opened up here in the discussion with discussions of liquidity. In the past two meetings this has been raised, but never really discussed fully I don't think.

And we really have two kinds of liquidity here. One is liquidity in reporting, and then there is liquidity in having something to report. There are groups representing I think all segments of the industry here, and I would just like to hear a little about what FERC might do to encourage participation in the market, and by participation I mean actual negotiation of fixed-price trades by people in the past who may not normally have participated in that market fully, tending to trade more on the index.

But without that base of information all of the discussion about procedures and making sure that this information is accurate, and above-board, may not be as meaningful as we would like.

MR. GOODMAN: Bill, this is Craig Goodman. Can you hear me?

MR. HARVEY: Yes, Craig, go ahead.

MR. GOODMAN: A statement was made at the hearing on the 24th that you, the government, cannot mandate liquidity. You cannot force liquidity on to the

marketplace. I believe the safe harbor idea was floated specifically for that reason. It is sort of like an incentive to if it works could indeed increase liquidity.

The issue that the industry has been starved for is regulatory certainty, and to the extent that you offer some degree or a large degree of regulatory certainty, in my opinion the safe harbor represents a way -- the lowest cost way to incent liquidity without a mandate that may or may not work.

I'm sorry, but I am cracking up, and so I am going to have to go on mute, but I hope that I got the point across.

MR. HARVEY: Thank you.

MR. LANDER: Let me try to -- the point that government can't mandate liquidity is obviously I think clear, but David is correct. There is two issues. One is what is being reported about whatever the existing liquidity is, versus that liquidity, and is reported liquidity the same thing as liquidity, and I think the answer is obviously no, unless you have a hundred percent.

And if you have a hundred percent, then you have -- then you know what the liquidity is, because it is, quote, all reported. But what whether transactions are reported or not doesn't equal liquidity.

Liquidity exists independent of the reporting of

transactions, and let's just stop mixing those terms together, because I am just going to come out and strangle somebody.

But the point that you asked before, which is how do we know when we get there, and how do we know when we get there goes to the reporting question. So when you go to that reporting question, then you are saying of what. What is being reported of what, and so that is where that really does come into bear.

So we have to keep those two separate, and that is the reason to keep those two separate and maybe that is why you asked the question. And unfortunately I can see why Kennesaw came to no resolution on this, because unless the end point is mandatory, or unless there is some attribute of mandatory for you to understand or to delve the universe, you can't tell what the voluntary is against it, or at least that is the intellectual conundrum that one looks at.

I think the other way to think about it to get over that conundrum is you set forth a path, and I think it has to be done through rule making, where you say that we want everyone who is an entity who transports on an interstate, or who has a blanket certificate, or engages in interstate commerce through the production of electricity consumed from natural gas, to report your transactions, and that is our objective.

We don't care if you report it to an index provider, a data collector, an ICE, an IMEX, but it is reported to somebody eventually. And we will figure out what that universe is and whether we need to make it mandatory.

But our objective would be to have everybody. Our policy statement would be to have everybody. And the way we will know it is that we will be monitoring and auditing the people who claim to be one of those collectors, whether they are an index provider, or FERC, or ICE, and we are going to audit them, and see if we can interpret from all of that and the information that they collect that we know that it is working or not.

That way you are not going all the way to mandatory, but you are saying that the objective is that somebody or everybody report to somebody over a certain level, and then basically by putting the pieces together, if you are not going to go all the way to mandatory, where you will definitely know, or have a quarterly report like you do in the electric, where you have to report, and then we can measure that, or the index providers can measure that against their own.

And if you are not going to go to mandatory, you have to do something like the objective is, and we will monitor behavior, because otherwise not only will you not

know when you are there, you will not know that you are not there.

And people will be back here and over, and over, and over again, and it becomes an angels on the heads of pins argument.

MR. RESCH: For fear of getting strangled by Greg, I want to answer Dick's question about liquidity if I could. And your question was a good one, which is, is that there is a disincentive in large part for companies to enter into fixed price contracts, and what can the government do to encourage that.

And I would also kind of say that there is an incentive right now to enter into fixed price contracts just in order to maintain the success of price discovery in order to support indexes.

And I have heard from a number of my members that they hold back what normally would be a trade on an index and make it a fixed price contract just so they have something to report to the indexes in order to maintain that system.

That is a huge, huge point to make, and the reason why is that if you end up coming forward with some kind of strict mandatory process for reporting, well, guess what. There is probably going to be a fair number of companies who are not going to enter into those fixed price

contracts.

And this is not a threat. This is just what is a possibility here, and what you then have done is decrease liquidity significantly. And although it is mandatory to report, there are companies that won't have those trades to report anymore.

And that is the problem. I think that there is an economic incentive against fixed price contracts that is out there, and that what FERC needs to be aware of is that very quickly you could seriously damage liquidity in fixed price contracts if things get too strict.

And it is a very good question and perhaps even something that you should have more discussion on in a tech conference in the future, because I think that it is a very complicated issue, and it is a very good question to ask.

MR. O'NEIL: You know, I think -- this is Dick O'Neil. I think you could make exactly the opposite argument. If the indexes aren't true and faithful to the other trades, people will be forced off the indexes and into the cash market.

MR. RESCH: I think that is right in the long run as well. You are right.

MS. GIBBS: And I also think that it is the way you view what is happening right now. We are of the view that there has been some competence issues, and you

implement some of the things on the Kennesaw document, and we are very hopeful that that will be restored.

But if you go to the next step, Rhone is exactly right. I think that you run the risk of -- and although you will have liquidity in reporting, because you will have all the transactions, you will not have a liquid fixed price market because they will move away from that. Our industrials do both. Just so you know.

MR. O'NEIL: What do they move to if you don't -- if you don't have a liquid fixed price market, what do you move to?

MR. RESCH: I think the incentive is that you want to maintain the system. I mean, you want to make sure that --

MR. O'NEIL: Well, let me ask, answer the question. I mean --

MS. LEWIS: They do indexes.

MR. O'NEIL: If you don't have a fixed price market, where does the index come from?

MR. RESCH: Well, the point is that you start heading towards more free riders on the system. You want to encourage participation in the system, and reporting, and not have people actually turn away from it.

So the concern is -- and you are right, Dick. If you get to an extreme where all of a sudden there is no

fixed price contracts out there, there is no index. You're right. That is an extreme.

But what we are actually trying to do is get to a point where we are encouraging more reporting of those fixed price contracts that are actually happening. And Dave's question before, which is what can the government do to increase liquidity, my answer was, well, let's just make sure that we maintain the liquidity that we have first.

And then let's go into a tech conference and really talk about liquidity in the sense of the number of fixed price contracts that are out there, and is there anything that the government can do to encourage it.

MS. GIBBS: I think his question was also are they interrelated, or are they separate, and they are separate, but I think we would see some relationship into the protocols that you set for reporting would impact the liquidity of the actual market.

MS. LEWIS: May I speak to this issue of fixed price contracts? This is Jane Lewis with the American Gas Association. And I think one thing was established last week that we have lost sight of in this discussion.

There is a difference between the daily market and the month ahead market, and I think that people are pretty comfortable right now that the daily market does have a lot of fixed price transactions. The month ahead market

might be a little thin in that regard.

You asked what FERC can or should do to encourage people to enter into more fixed price contracts. I don't think that is FERC's role. Being with the American Gas Association representing the local distribution companies, we are reaching out to the State Commissions.

Local distribution companies are not going to enter into more fixed price contracts unless and until their State Commissions give them some assurances that they will not be found to be imprudent for doing so.

MR. LANDER: Can I also -- there is another issue here, which there is a confusion over the term of fixed price, and I think the Kennesaw document had a much better definition on this price, which is a price that is known at the time of delivery.

Now, let me give an example of why that is not just a fixed price. Let's say that someone buys at the end of the month, minus 5, and at a NYMEX close, plus 33. But when they enter into that transaction, they don't know what the NYMEX close will be because it is still 3 days away, or 2 days away, or whatever the numbers were supposed to be the example.

But at the time of delivery it will be a known price, and at the time at the end of month index is published, or the beginning of the month index is published,

it will be a known price.

The question becomes whether or not in the index provider if having entered into that on the day minus 5, or day minus 4, or day minus 3 means it will be included, that is a separate issue, and that is for the index publisher.

But the question of what constitutes a fixed price, in the Kennesaw document what they said was a price that is known at the time of delivery. That it is set at the transaction, and known at the time of delivery.

It may not be \$2.40, but if when you do the deal it is NYMEX close, which is going to be a known point, a known number at a known point in time, plus another known number which is fixed, then you do in fact have a price which is resolvable. And whether they use it or not, that is another question, but should those be reported, the answer is yes.

MR. HARVEY: Given our time, let's not -- this is an interesting discussion.

MR. LANDER: Well, if you are setting standards for what people report --

MR. HARVEY: No, I understand and I think we have gone over -- we have gone over many of these issues, and I think we are in pretty good shape. I just do know -- and I would love to discuss this. I have any number of people on the staff who shut right down when they see me, because I

want to talk about this stuff.

And one who will do this in the middle of meetings, and so you ought to watch. Our time is short, and I do kind of want to bring us back to the issue that we really wanted to get at today, and let me kind of summarize.

We really want to focus on I think the role and the possibility of some kind of a safe harbor provision. I think that legitimately as we have talked about today relates to this set of processes and the sort of understanding of what those processes and the interaction of those between, and I think we have had a lot of good conversation about that.

The other good conversation that I think has been very helpful is around the form that would work most effectively to send the signal that we think needs to be sent.

What I would like to do is spend our last 10 or 12 minutes or so going around and getting sort of final thoughts really tightly related to those sets of issues, and I see that Mike is ready to do that.

MR. SMITH: Yes. That was a very good summation of what we have done today, but I did want to have one clarifying point on the latter piece, and that is what you should do.

We agree on a policy statement of some sort, but

we would like to add to that that at both of our previous technical conferences those were actually co-sponsored by the FERC and the CFTC, and we would like to see this policy or this position address both entities as well.

I think we can all see the benefit of this certainty, this regulatory certainty coming out some kind of a policy or pronouncement. It would be that much more effective if it could almost be co-authored, or cover the concerns and issues of both agencies.

MR. HARVEY: And let me just say that we moved awfully quickly to set up this meeting as you all know, and so we didn't necessarily do a lot of work on our side to coordinate this with the CFTC in this case, because we wanted to get that feedback as quickly as possible.

So we will take that issue and thanks for that. Anything else, Mike, the kind of summary thoughts on the issue?

MR. SMITH: I can finish with what I started with, and that is that we really do see this as being two-prong. You know, you need the standards and the standards need to be well-known and endorsed, and consistently applied.

Once you have those standards in place the data providers must adhere to those to gain protection of a safe harbor. But if they are indeed adhering to those standards, the safe harbor should provide them with a presumption of

good faith in their activities, but by no means should that protect them against fraud or intentional misconduct. That is the thrust of our intent here.

MR. HARVEY: Others?

MR. LANDER: Have yourself, and the CFTC if necessary, into the information flow of the information collected, articulate that you will keep it confidential as well, and whatever, and that the people -- that you give the safe harbor for giving the information to someone who makes it available to you, and you will treat it confidentially.

Giving someone or having the issue of, well, I gave it to Johnnie over there, and that does not help you, and doesn't give any kind of audit trail.

MR. GOODMAN: Steve, Craig Goodman here. I agree with both of the last two gentlemen. I would suggest to you that going the way of a guidance in the form -- in whatever form you would care to call it, but guidance sufficient enough to get people comfortable while this group is working on more specifics.

And should there be consensus on the specifics, you can always ratchet it up to an order. But at this point, I think we have got a pretty broad agreement that incented properly, you could get 50, 60, 70 percent of the market reporting voluntarily without a costly mandate, and with that I will stop talking. Thank you.

MR. HARVEY: Thank you. Anyone else on the phone?

(No response.)

MR. HARVEY: Anyone else here who would like to sum up?

(No response.)

MR. HARVEY: Okay. Let me make a suggestion that it would be useful if anyone wants to file comments in this docket, and let me go through the docket number here for clarity, AD03-7-0001. It would probably be useful to have something filed with us pretty quickly to the extent that the Commission is interested, and if there is going to be action, it will be taken sooner rather than later. I would say really no later than the end of next week.

MS. GIBBS: We have comments I think due on July 11th in this docket, and maybe following the technical -- I can't remember which one it was from, but would that be an appropriate place to place any comments we have on safe harbor and what was discussed today?

MR. HARVEY: I think so, yes. This is the same docket as that one?

MS. GIBBS: Yes.

MR. HARVEY: Okay. That is the same docket and so in this docket that I just mentioned by July 11th, and we definitely appreciate the conversation and the discussion.

I think it is going to help a great deal in our job of helping the Commission figure out what to do. Thanks a lot.

(Whereupon, the meeting was concluded at 12:55 p.m.)