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BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

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IN THE MATTER OF: :
CONSENT MARKETS, TARIFFS AND RATES - ELECTRIC :
CONSENT MARKETS, TARIFFS AND RATES - GAS :
CONSENT ENERGY PROJECTS - HYDRO :
CONSENT ENERGY PROJECTS - CERTIFICATES :
DISCUSSION ITEMS :
STRUCK ITEMS :
- - - - -x

890TH COMMISSION MEETING
OPEN MEETING

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

Wednesday, May 25, 2005
10:15 a.m.

1 APPEARANCES :

2 COMMISSIONERS PRESENT :

3 CHAIRMAN PAT WOOD, III, Presiding

4 COMMISSIONER NORA MEAD BROWNELL

5 COMMISSIONER JOSEPH T. KELLIHER

6 COMMISSIONER SUEDEEN G. KELLY

7 SECRETARY MAGALIE R. SALAS

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19 ALSO PRESENT :

20 JANE W. BEACH, Reporter

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

2 (10:15 a.m.)

3 CHAIRMAN WOOD: This meeting of the Federal
4 Energy Regulatory Commission will come to order to consider
5 the matters which have been posted in accordance with the
6 Government in the Sunshine Act for this time and place.

7 Please join us in the Pledge to our Flag.

8 (Pledge of Allegiance recited.)

9 CHAIRMAN WOOD: Before we start, I wanted to make
10 a special recognition to a long-time friend and one who's
11 done a lot here. That's David Coffman.

12 David will be leaving the Commission in a little
13 over a week, to take on a new post as an Administrative Law
14 Judge at the Department of Health and Human Resources, in
15 its Office of Medicare Hearings and Appeals.

16 He's been here for 25 years in the Office of
17 Enforcement, and, most recently and currently, in the Office
18 of the Solicitor. We'll miss his service, but it's quite a
19 single honor for one of our Staff to be selected as an
20 Administrative Law Judge in the Federal Government, and so I
21 wanted to take this opportunity to thank David for his years
22 of service, and also congratulate him on his nomination to
23 the ALJ post at HSS.

24 (Applause.)

25 CHAIRMAN WOOD: Congratulations, and we'll miss

1 you. In last week, in part of our series of events that
2 run up to the celebration of the 70th year of the Federal
3 Power Act, which we will celebrate, I should add, here at
4 the Commission on the 29th of June, in the afternoon, we --
5 Joe and Sudeen and I went over to the Museum of American
6 History, the Smithsonian Museum of Natural History, and one
7 of Nora's dearest friend from there is the proprietor of
8 that Museum, and brought us around refurbished exhibits that
9 focused on Thomas Edison and subsequent events in the
10 development of electricity.

11 I just wanted to say that it was a great event,
12 and I highly recommend it to people in the industry, people
13 who are visiting, town people who live here. There are so
14 many wonderful things at that Museum, but we spent a good
15 solid two hours there, learning about how this great
16 invention that we take for granted, came to be.

17 And I think it's one of the neat things about
18 living here, that all this wonderful education is available
19 for free.

20 Nora, I know you had something you wanted to add.

21 COMMISSIONER BROWNELL: I did, and in an industry
22 that we haven't seen a lot of innovation in since Edison --

23 (Laughter.)

24 COMMISSIONER BROWNELL: -- I was thrilled
25 yesterday, and I'm not sure if I had an opportunity to visit

1 with everybody, to visit with 3M and Excel, who just
2 completed their first project using the new product,
3 superconductivity line.

4 They doubled their capacity in half the time, and
5 went over very sensitive wetlands areas, without having to
6 replace any towers or do any serious construction.

7 So we're glad to see that there is innovation
8 coming into the industry, and we hope to see more, because
9 there are lots of other choices out there, as well.

10 CHAIRMAN WOOD: Great, great.

11 COMMISSIONER BROWNELL: Get them into the Museum.

12 CHAIRMAN WOOD: Actually, the new space that was
13 just recently added, that we spent some time on toward the
14 end, focused on the innovations that have taken place in
15 energy efficiency, just in the more recent years. So there
16 is a whole thing about the different types of incandescent
17 bulbs, how they've morphed into the ones that we have so
18 many of here at this Commission, the more energy-efficient
19 light bulbs, but all kinds of technologies are there, too.

20 All right, Madam Secretary?

21 SECRETARY SALAS: Good morning, Mr. Chairman, and
22 good morning, Commissioners.

23 The following items have been struck from the
24 agenda since the issuance of the Sunshine Notice on May the
25 18. They are: E-6, E-21, E-32, E-43, E-51, E-55, E-65, E-

1 70, G-4, H-2, and C-8.

2 Your consent agenda for this morning is as
3 follows: Electric Items - E-10, 111, 12, 13, 14, 15, 16,
4 17, 18, 19, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32 -- I'm
5 sorry, that was struck -- 33, 34, 35, 37, 39, 40, 41, 48,
6 49, 50, 52, 54, 58, 59, 60, 61, 62, 63, 64, 67, 68, 69, 73,
7 75, 76, 77, 78, 79, 80, 81, 84, 85, 86, and 87.

8 Gas Items: G-2, 3, 5, 6, 7, 9, 10, 11, 15, 16,
9 and 17.

10 Hydro Items: H-1, 4, 5, and 6.

11 Certificates: C-2, 3, 4, and 6.

12 As required by law, Commissioner Kelly is recused
13 from the following items on the consent agenda: E-31, E-39,
14 E-59, E-64, E-81, G-11, and G-17.

15 Specific votes for some of the items on the
16 consent agenda are: E-25, Commissioner Kelliher dissenting,
17 in part, with a separate statement; E-48, Commissioner Kelly
18 dissenting, in part, with a separate statement; E-50,
19 Commissioner Kelly dissenting, in part, with a separate
20 statement; E-61, Commissioner Kelly dissenting, in part,
21 with a separate statement; E-62, Commissioner Kelly
22 dissenting, in part, with a separate statement; E-63,
23 Commissioner Kelly dissenting, in part, with a separate
24 statement; E-68, Commissioner Kelliher dissenting, with a
25 separate statement; E-75, Commissioner Kelliher dissenting,

1 in part, with a separate statement; E-78, Commissioner
2 Kelliher dissenting, in part, with a separate statement; G-
3 3, Commissioner Kelly concurring, with a separate statement;
4 G-6, Commissioner Brownell dissenting, with a separate
5 statement; G-7, Commissioner Brownell dissenting, with a
6 separate statement; and H-6, Commissioner Kelliher
7 dissenting, in part, with a separate statement.

8 And Commissioner Kelliher votes first. If there
9 are any clarifications to the numbers that I have read, we
10 can do it now. Anything that we need to correct?

11 (No response.)

12 SECRETARY SALAS: No? Everybody okay?

13 (No response.)

14 SECRETARY SALAS: All right, Commissioner
15 Kelliher?

16 COMMISSIONER KELLIHER: Aye, noting my dissent in
17 E-68, and my partial dissents in E-25, E-75, E-78, and H-6.

18 COMMISSIONER KELLY: Aye, noting my concurrences
19 and dissents and recusals, as stated by the Secretary.

20 COMMISSIONER BROWNELL: Aye, noting my dissent,
21 in part, on G-6 and 7.

22 CHAIRMAN WOOD: Aye.

23 (Discussion off the record.)

24 CHAIRMAN WOOD: Thank you very much. We'll start
25 now with -- I wanted to say a couple of things about what

1 was on that wonderful consent agenda.

2 A number of these things, as there are in every
3 meeting, are a large number of settlements. I want to just
4 take this public opportunity to thank the hard workers at
5 the Office of ALJs, Judge Wagner and the Judges who oversee
6 the settlement process in many cases, and certainly Rick
7 Miles and his ADR group do quite a bit as well to resolve
8 cases before they even get filed with us, the Trial Staff
9 and the Administrative Litigation Division, and, of course,
10 the parties working through their disputes.

11 We have six, for example, uncontested settlements
12 today. The issues are as diverse as reactive power to how
13 to pay for regional system transmission upgrades.

14 And this is typical. We usually have five or six
15 in each of these meetings, and this work, quite frankly,
16 never gets subject to a presentation by Staff. They're
17 rarely called separately by a member of the Commission to
18 discuss the issues in the cases, because the parties have
19 worked them out.

20 But that doesn't mean we don't appreciate how
21 parties are attempting to resolve their differences without
22 us having to do so. We've got a case on today's agenda that
23 we just consented, which I should just hop to that, G-16,
24 the "Full Employment Act" for the Oil Bar, the SFPP case,
25 that has not, unfortunately, resolved itself and is

1 requiring the Commission now.

2 This case was begun when Martin Albay was
3 Chairman, and I was here as a much younger man. I
4 appreciate that there are some real tough issues of first
5 impression there, so I'm not making light of it, but this
6 issue, this Order did go out just under the consent agenda
7 with a number of other Orders, and I think it's a noteworthy
8 Order.

9 We just didn't call it separate for discussion
10 today. It does require some further procedures in
11 accordance with our recent policy statement on income tax
12 allowances, and will require some further procedures in that
13 regard.

14 We strongly encourage parties, with the
15 Commission's guidance, both from the court and the
16 Commission's implementation of the court's remand, as well
17 as further guidance from the Commission, to try settle this
18 case.

19 It is, quite frankly, ridiculous that a case has
20 gone on that long, and it's starting to make the hydro cases
21 -- give them a little company, and we don't need that. We
22 need to have all these folks get some justice, get some
23 decisions, and get some rate certainty for both the
24 customers and the companies as soon as possible.

25 So in that context, again, I appreciate the hard

1 work of our Judges that lead this process, and our Staff who
2 provide a lot of the horsepower to make settlements come
3 about.

4 There are two other items on the Gas agenda that
5 I think are a little noteworthy. One is G-2, which is a
6 Columbia case, where we denied rehearing of an Order. It
7 required the Company to eliminate three discounted rate
8 agreements.

9 Inside those agreements, there was a provision
10 under which the customer waived any right under Section 5 of
11 the Natural Gas Act, to challenge recourse rates. This was
12 not a reciprocal type of balancing act that we have approved
13 in other cases where Section 5 was waived by the customer,
14 if Section 4 was waived by the pipeline.

15 That duality was not present here, and for that
16 reason, we distinguished the Columbia case from some recent
17 cases, particularly Algonquin, where there was a duality to
18 the reciprocal waiver there.

19 So that's one of them in the settlement front
20 that we'd like to call attention to and encourage parties to
21 read that.

22 Then the final case that I wanted to call out
23 separately and talk about, was the Dominion case. This is,
24 I think, a helpful case, because we do have some pressure,
25 certainly from customers that are concerned about pipelines

1 rates. I think this is a great procedure here in which
2 the Company and the customers worked out rate issues in a
3 streamlined way, and brought those to the Commission, not in
4 a full rate case, either initiated by the Commission or
5 initiated by the pipeline, but brought it together as a
6 settlement.

7 And because it's kind of a new procedural
8 approach here, we wanted to lay out some guidance from the
9 Commission's point of view about -- we approved this, of
10 course, but we want to lay out how this can be done more
11 expeditiously in the future when we have other rate issues
12 being addressed in a settlement format, even prior to there
13 being a filed Section 4 or Section 5 case.

14 So, we want to just call your attention to G-3,
15 and, please, if you're in the gas bar or are a gas customer,
16 gas pipeline, please take a look at this Order specifically,
17 and please note the specific filing requirements that we put
18 there, so that these can be handled by the Commission in a
19 very expeditious manner and provide some rate relief for the
20 customers.

21 So, I think that's all I had as far as Items.
22 We had a number to talk about today, so that's okay, and
23 we'll jump right ahead and do that.

24 SECRETARY SALAS: Mr. Chairman and Commissioners,
25 the first item in your discussion agenda this morning is an

1 overview of items on the consent agenda pertaining to
2 market-based rates. And this is a presentation by Jerry
3 Pederson, Larry Greenfield, Steve Rodgers, Mary Beth Tighe,
4 Justin Campbell, Charles Reeder, and Melissa Lozano.

5 MR. PEDERSON: Good morning. This morning, we
6 will be providing a recap of a number of market-based rate
7 Orders that the Commission has issued over the past year or
8 so.

9 Since that time, the Commission has made
10 significant strides in reexamining a number of its market-
11 based rate policies, and, in particular, how the Commission
12 evaluates generation market power for the purposes of
13 granting market-based rate authority.

14 In addition, the Commission has issued a final
15 rule with respect to market-based rate change status
16 requirements, and on this agenda, addresses overdue
17 triennial review filings.

18 First, let's start with the Commission's
19 responsibility. The Commission has a responsibility under
20 the Federal Power Act to ensure that jurisdictional rates in
21 wholesale markets are just and reasonable.

22 The Commission's responsibility is to ensure that
23 sellers not charge unjust and unreasonable wholesale rates,
24 and that the market structures and market rules governing
25 public utility sellers and affecting the wholesale rates of

1 such public utility sellers, do not result in wholesale
2 rates that are unjust, unreasonable, unduly discriminatory,
3 or preferential.

4 Where there is a competitive market, the
5 Commission may rely on market-based rates in lieu of cost-
6 of-service regulation to ensure that rates satisfy this
7 requirement.

8 Consistent with Commission precedent, the
9 Commission authorized sales of electric energy at market-
10 based rates, only if the seller and its affiliates do not
11 have, or have adequately mitigated market power in
12 generation, transmission, and cannot erect other barriers to
13 entry by potential competitors.

14 The Commission also considers whether there is
15 evidence of affiliate abuse or reciprocal dealing. In the
16 April 14th, 2004 Order, the Commission replaced the previous
17 generation market power test, and, instead, adopted the new
18 interim generation market power screens.

19 These new screens consist of two indicative
20 screens for assessing generation market power: An
21 uncommitted pivotal supplier screen, and an uncommitted
22 wholesale market share screen.

23 The Commission also modified the mitigation
24 previously announced in an earlier order.

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1 In the May 13, 2003 order, the Commission
2 addressed procedures for implementing the new generation
3 market power analysis and mitigation policy announcing the
4 April 14th, 2004 order. In the July 8th, 2004 order, the
5 Commission denied rehearing and provided clarification on
6 several aspects of the April 14th order.

7 The April 14th, 2004 order adopted a two-step
8 approach in evaluating whether a utility has market power
9 and generation. The first step is for the applicants to
10 submit an analysis based on the indicative screens.
11 Generally, if an applicant passes the screens and there's no
12 evidence to the contrary, the applicant is deemed to satisfy
13 the Commission's market-based rate standard as it applies to
14 the generation of market power.

15 However, if the applicant fails either of the
16 indicative screens, then there are several procedural
17 options available. In this instance, the applicant may then
18 present evidence to rebut the presumption of market power by
19 filing a delivered price test, which is a more robust market
20 power study, filing alternative evidence such as actual
21 historical sales data to show that it doesn't have market
22 power, or filing a mitigation proposal tailored to its
23 particular circumstances that would eliminate the ability to
24 exercise market power and/or informing the Commission that
25 it will adopt the default cost-based rates as discussed in

1 the April 14th, 2004 order and submit cost support for such
2 rates.

3 Before the Commission considers the delivered-
4 price test, the applicant must be found to have failed one
5 of the two indicative screens or so concede. Accordingly,
6 the delivered-price test will be considered as an
7 alternative study to support the grant of market-based rate
8 authority. In all cases, the applicant or intervenors may
9 present evidence such as historical wholesale sales data to
10 support whether the applicant does or does not possess
11 market power.

12 To date, and including this agenda, the
13 Commission has issued initial orders on about 80 percent of
14 the backlog of triennial review filings. We estimate that
15 as of the June 15th agenda, the Commission will have had
16 before it initial orders on about 92 percent of the backlog
17 triennials, and the June 30th agenda should put us around
18 the 95 percent mark.

19 In the current fiscal year, which began October
20 1, 2004, we have processed about 800 market-based rate
21 dockets in total. These include new requests for market-
22 based rate authorization, new triennial review filings,
23 triennial review filings listed on the May 13th
24 implementation order, tariff changes, changes in status
25 filings, tariff cancellation, and the various amendments to

1 those filings.

2 Staff has reviewed about 150 generation market
3 power analysis. This number only includes the studies that
4 the Commission has already acted on, and do not include
5 studies involving the delivered price test or alternative
6 studies based on historical data.

7 To date, there have been a number of IOUs pass
8 the indicative screens without using an RTO-wide geographic
9 market, and the Commission has issued an order finding that
10 they satisfied the Commission's standards for market-based
11 rate authority. They are Avista Corporation, Consolidated
12 Water Power, Consumers Energy, Idaho Power, Portland
13 General, and Puget Sound Energy.

14 With respect to Consumers Energy, the Commission
15 approved its market-based rate triennial review based on the
16 mex control area prior to the start of the Midwest ISO day
17 two market.

18 In the case of Puget, on December 20th, 2004, the
19 Commission instituted a Section 206 proceeding because,
20 among other things, Puget had provided an incomplete
21 simultaneous transmission import capability study. However,
22 by order issued April 13th, 2005, the Commission found that
23 based on additional information provided Puget satisfies the
24 Commission's standard for market-based rate authority.
25 Accordingly, the Commission accepted Puget's triennial

1 review filing and terminated the 206 proceeding.

2 On this agenda, the Commission grants initial
3 market-based rate authority for three utilities, accepts 11
4 triennial review filings, conditionally accepts two
5 triennial review filings, and initiates a Section 206
6 proceeding with regard to five triennial review filings.
7 Four of the 206 proceedings are the result of generation
8 screen failures, and two of these also include transmission
9 market power issues. One Section 206 proceeding is focused
10 on affiliate abuse only.

11 Based on this presentation so far, it may seem
12 like we've concentrated exclusively on the new screens and
13 the generation of market power in particular. However,
14 that's not the case. First, the Commission's review of
15 triennial market power filings -- triennial review market
16 power filings include an analysis of not only generation
17 market power but also vertical or transmission market power.
18 As part of those filings, the Commission also analyzes other
19 barriers to entry in affiliate abuse and reciprocal dealing.
20 In addition, the Commission has conducted five publicly-
21 noticed technical conferences in connection with the generic
22 market-based rulemaking in Docket Number RM04-7.

23 The five technical conferences break down like
24 this: three were on affiliate abuse, including competitive
25 procurement -- I'm including the recent conference with

1 NARUC that was held in Chicago -- and one conference was
2 dedicated to generation market power, one conference was
3 dedicated to barriers to entry and transmission. We have
4 received volumes of comments from participants in those
5 conferences and other interested parties. In addition to
6 the RM04-7 technical conferences, the Commission has held
7 several publicly-noticed technical conferences regarding
8 triennial review filings.

9 The Commission has issued several significant
10 orders in regard to affiliate abuse. In particular, the
11 Commission has stated that all affiliate long-term power
12 purchase agreements, whether market- or cost-based, must
13 meet the Edgar standard. Edgar provides three examples of
14 how to show the lack of affiliate abuse: head to head
15 competition, price evidence of what non-affiliates pay, and
16 benchmark price evidence such as an index. In addition, the
17 Commission has provided four non-mandatory guidelines for
18 reviewing requests for proposals, or RFPs. They are
19 transparency, product definition, evaluation criteria, and
20 oversight by an independent third party.

21 In the Allegheny order, the Commission stated
22 that the underlying principle when evaluating an RFP is that
23 no affiliate should receive undue preference during any
24 stage of the RFP. The Commission also set for hearing a
25 case where an affiliate was selected under an RFP that

1 didn't meet the Allegheny guidelines for independent third-
2 party oversight. With no third-party oversight, the
3 applicant could have eliminated non-affiliate bidders based
4 on credit.

5 Lastly on this topic, in the Public Service
6 Electric and Gas Company, the Commission approved an
7 affiliate sale based on the applicants participation in a
8 state-wide auction bidding process, finding that the RFP met
9 the Allegheny guidelines.

10 On February 10th, 2005, the Commission issued a
11 final rule regarding changes in status. The final rule,
12 among other things, adopted uniform standards on all market-
13 based rate sellers by eliminating the option to delay
14 reporting changes in status until the submission of a
15 triennial review or file a triennial review in lieu of
16 reporting a change in status as they occur.

17 The order also specifically refers to control of
18 generation or transmission facilities as a trigger which
19 could result in an obligation to make a change in status
20 filing. It provides guidance on the characteristics that
21 the Commission relies on in granting market-based rate
22 authority in the form, content, and timing of change of
23 status filings.

24 With respect to E-84 that was voted out on this
25 agenda, the Commission announces its policy with respect to

1 entities that have failed to comply with the conditions
2 under which the Commission granted them market-based rate
3 authority, in particular, the requirement to submit an
4 updated market power analysis -- which I've been referring
5 to as a triennial review filing. The order, which is on
6 today's consent agenda, states that as a condition of
7 receiving market-based rate authority, the Commission
8 requires market-based rate sellers to submit an updated
9 market power analysis every three years to allow the
10 Commission to evaluate the reasonableness of their charges
11 and to provide for on-going monitoring of their ability to
12 exercise market power.

13 In the absence of an updated market power
14 analysis, the Commission cannot exercise its statutory duty
15 to ensure that market-based rates are just and reasonable
16 and that market-based rate sellers continue to lack the
17 potential to exercise market power so that market forces are
18 in fact determining the price.

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1 Accordingly, the Commission notifies the public
2 utilities identified in that Order, that their market-based
3 rate authority will be revoked, unless they submit an
4 updated market power analysis within 60 days of issuance of
5 the Order, and provide satisfactory support for why they
6 should not be required to do so.

7 In addition, for the protection of customers, the
8 Order establishes a refund effective date, pursuant to the
9 provisions of Section 206 of the Federal Power Act.

10 The Order also states that in the event that any
11 of the market-based rate sellers included in the Order have
12 already filed an updated or revised market power analysis in
13 compliance with the Commission's requirements, and it is not
14 currently due to file, its inclusion is inadvertent.

15 The Order directs any such market-based rate
16 seller, within 30 days, to identify itself and the docket
17 number in which it last filed an updated market power
18 analysis.

19 That concludes our presentation, and we are
20 available for any questions.

21 CHAIRMAN WOOD: How many companies were in that
22 basket Order that we just voted out?

23 MR. PEDERSON: I think there was a little over
24 200.

25 COMMISSIONER KELLIHER: Thank you, Mr. Chairman.

1 I want to make some comments on that basket Order that we
2 just approved.

3 So, since we approved it, I'll be post-judging
4 the Order, not prejudging it.

5 (Laughter.)

6 COMMISSIONER KELLIHER: I mean, at the last
7 meeting, we discussed this problem, that there's a
8 persistent problem of late filing of triennial market
9 analysis, and as we discussed at the last meeting, I think
10 the Commission has to take firm action to prevent this
11 problem and correct it.

12 I want to commend the Staff for quickly
13 identifying the number of delinquent public utilities that
14 have not made these filings and for drafting this Order. I
15 think it's pretty quick action in one three-week cycle.

16 And it is disturbing, the length of the list.
17 There are over 200 companies that are currently late in
18 filing their market-based rate market analysis, and in some
19 cases, they should have filed back in '97, and, in one case,
20 in 1993.

21 So that is, I think, worthy of us taking action,
22 and I do support the Order.

23 I think what we're doing here is sending a clear
24 message, that if a public utility is late filing its
25 triennial market analysis, the Commission will initiate a

1 206 investigation, will set a refund effective date, and
2 they will be exposed to disgorgement.

3 I hope that that will encourage timely
4 submissions, and I also hope that in the future, when and if
5 -- hopefully we won't, but it may be a "when" -- we have
6 future late filers, that the Commission automatically takes
7 the same course, that we initiate 206, set a refund
8 effective date, expose them to possible disgorgement of
9 profits, and that we do that immediately and regulatory.

10 I do think this is an issue that we have to
11 address in the rulemaking, and that there are a couple of
12 options, and we have to make sure that we're legally sound
13 on these options, but one option is to perhaps sunset
14 market-base rate authorizations, so that on a fixed date, it
15 expires, and they revert to cost-based rates.

16 And, you know, we could perhaps set, almost like
17 in the hydro area and other areas where there's a license
18 that expires on a certain date, we set a point in time, a
19 year beforehand, where they have to make this filing. That
20 gives us enough time to act.

21 Or, alternatively, we could do what we're doing
22 today, which is immediately initiate a 206 proceeding and
23 address it in that manner.

24 So, anyway, I'm happy to cast that vote, and I
25 think it's good policy.

1 CHAIRMAN WOOD: Ditto. Nora? It's not much to
2 ask for a privilege of that nature, because not only do you
3 have the ability to charge flexible rates at the market, but
4 the filing requirements are substantially less regulatory
5 than you would have if you were doing a cost-based rate
6 where you would file a contract and get it approved, kind of
7 the old world type, which we've moved a lot away from.

8 And it is a significant impediment on commerce to
9 have to do it the traditional cost-of-service way, so it's
10 not just -- I know that in this market where cost-based
11 rates actually look good, compared to market rates, which is
12 kind of why we did this, because, you know, markets should
13 drive down and squeeze the margins and create the efficient
14 provider, but, you know, in this day and age, the cost-based
15 rate may not look so bad for a company.

16 But it's not just the rate level; it's the
17 process that's required to actually make a sale and a
18 transaction under that tariff, and there's no flexibility in
19 many cases to discount that rate to meet market needs.

20 So, it's a good thing to do; it's good government
21 at work.

22 Thanks for the review of where we've gone with
23 this. This was one, certainly when you and I got here,
24 Nora, that was -- we didn't realize until actually we delved
25 deep into the California issues and the Western issues,

1 just, you know, how, quite frankly, ill-equipped we were to
2 do this job right.

3 And, you know, developing an oversight and
4 enforcement function that is much, much better than we had
5 before, and now looking at these in a much more methodical,
6 economically consistent manner, I think is based on good
7 policy and not on just desired outcomes, but, you know, who
8 meets the criteria for contestable markets.

9 That is how this should be done; that's how the
10 courts have not, wholesale, allowed this to be deregulated
11 as much as gas has been done. We still have to work within
12 the construct of the '35 Act, and I think this is very
13 consistent with that, and I am not at all concerned that a
14 court reviewing our program, much as the Lockyear Court,
15 which was not necessarily the friendliest opinion we got in
16 the past several years, did acknowledge that this program
17 was legally sound for what we do. It's just that we had to
18 do what we said we were going to do, and actually keep our
19 eyes open on the market.

20 So, thanks for the historical review, and thanks
21 for -- I know it's just the six of y'all setting up here,
22 but I know it's a whole team of folks that -- I was talking
23 to Justin the other day, and, you know, there are a lot of
24 folks here that do a lot of hard work, and I appreciate all
25 of their efforts and y'all's leadership of that good effort.

1

2 MR. LARCAMP: They look pretty rested, too, don't
3 they?

4 (Laughter.)

5 (Discussion off the record.)

6 CHAIRMAN WOOD: All right let's vote -- no, we
7 did vote. Okay, that's easy. Move on.

8 (Discussion off the record.)

9 SECRETARY SALAS: The next item for discussion is
10 E-44, Florida Power Corporation, a presentation by Arnie
11 Quinn, George Billison, and Elliott Wessler.

12 We also have in our team this morning, Brian
13 Craig and Elizabeth Taylor.

14 MR. QUINN: Good morning. My name is Arnie
15 Quinn, with supervision from Beth Taylor and Brian Craig,
16 Elliott Wessler and I conducted operational audits of
17 Progress Energy's operating companies, Florida Power
18 Corporation and Carolina Power and Light.

19 Because the Company's marketing functions are
20 consolidated at the corporate level, audit staff considered
21 this a unified audit and prepared a single audit report.

22 Our audit report contains seven Code of Conduct
23 findings, five Standard of Conduct findings, and a total of
24 seven OASIS posting findings.

25 I'd like to start by highlighting two of the Code

1 of Conduct findings: The first Code of Conduct finding
2 arises from a series of meetings that were held to address
3 the marketing strategies of the operating companies and the
4 affiliated power marketers.

5 Audit staff believes that these meetings were
6 inconsistent with the requirement that the operating
7 companies and the affiliated power marketers, operate
8 independently to the maximum extent practicable.

9 The second Code of Conduct finding arises from
10 the fact that Progress Energy is unable to provide evidence
11 that the affiliated power marketers paid the higher of cost
12 or market value for brokering services provided by the
13 operating companies, as required by the Code of Conduct.

14 Audit staff recommends that the affiliated power
15 marketers pay \$100,000 to the operating companies for
16 services already provided.

17 We believe the Code of Conduct findings described
18 in the audit report, are due, in part, to two factors:
19 First, the operating company's trading group and the
20 affiliated power marketer's trading group, belong to the
21 same business unit.

22 We believe this reporting structure was not
23 conducive to independent operations that are required by the
24 Code of Conduct. In response to our concern and as part of
25 a larger corporate restructuring, the two trading groups are

1 now part of different business units.

2 Second, the Company has filed as many as eight
3 different versions of the Code of Conduct. We see the lack
4 of uniformity as contributing to the Code of Conduct issues
5 we have identified, and we recommend that the Company refile
6 its Codes so that they are uniform and contain explicit
7 definitions of market information and shared employees.

8 Next, I'd like to highlight two of the Standards
9 of Conduct findings in the report. The first finding
10 involves daily meetings between the wholesale merchant
11 function and the transmission group that were designed to
12 discuss the commitment.

13 We did not find any instances when inappropriate
14 information was actually exchanged, however, we think these
15 meetings are conducive to off-OASIS transfers of
16 transmission information.

17 The second Standards of Conduct finding involves
18 hourly phone calls between an hourly trader and a generation
19 dispatcher who sits on the transmission control floor.

20 Again, we did not find any instances where
21 inappropriate information was exchanged, though we believe
22 that these calls are also conducive to off-OASIS transfers
23 of information.

24 We recommend that the Company find alternative
25 method to distribute the appropriate operational information

1 discussed during these meetings.

2 This concludes our discussion of the audit
3 report. George Billison will now discuss the Order that
4 approves the audit.

5 MR. BILLISON: Good morning. I'm George Billison
6 with OMOI's Division of Enforcement. In order to resolve
7 the audit, Progress Energy has agreed to implement all of
8 the corrective actions recommended in the audit report; that
9 within 30 days, its affiliated power marketers will refile
10 their Codes of Conduct, so that they are uniform, and that
11 the Company will send e-mails to all of its employees,
12 reporting the audit report findings.

13 Progress Energy has also agreed to refund or
14 credit a total of \$6.5 million to ratepayers. None of that
15 \$6.5 million will be recoverable through any regulated
16 rates, but \$5.4 million of that will go to retail ratepayers
17 through a fuel adjustment charge mechanism; \$1 million will
18 be allocated to wholesale customers, and, in addition,
19 Progress Energy will return to its native load customers,
20 the sum of \$100,000, implemented through a fuel adjustment
21 charge mechanism, to reflect the amount of brokering
22 services provided by the affiliated power marketers, but not
23 paid for by them.

24 The proposed Order approves the audit report in
25 its entirety, without modification, directs Progress Energy

1 to implement the corrective actions recommended in the audit
2 report, to file an implementation plan, and to submit
3 quarterly reports of its implementation activities; and
4 directs Progress Energy to implement the procedural remedies
5 and to make the refunds or credits that I previously
6 described.

7 This concludes my presentation. Thank you.

8 CHAIRMAN WOOD: Thank you, George and Arnie.
9 Commissioners?

10 COMMISSIONER KELLIHER: I support the Order, and
11 I want to commend Staff for successfully reaching a
12 settlement on this, on this matter. I think the settlement
13 is the correct approach to resolve these compliance issues.

14 As Staff indicated, through the audit, the
15 Commission identified a number of compliance problems,
16 particularly with respect to Code of Conduct, Standards of
17 Conduct, and OASIS requirements.

18 But there also was no evidence of any harm to the
19 market or any -- to my understanding, no evidence of any
20 intent to engage in market manipulation or affiliate abuse.

21 Now, the Commission recently held a technical
22 conference in Chicago. I did not participate, but some of
23 my colleagues did.

24 And there was a lot of discussion at that
25 conference about what the Commission should do in the face

1 of lesser violations of the Standards of Conduct Rules.

2 I'm not trying to characterize these compliance
3 issues as lesser, but there was a general question in
4 Chicago of what will the Commission do in the case of lesser
5 Standards of Conduct violations.

6 Now, I think it's clear that when there are
7 Standards of Conduct violations that are a part of a
8 manipulative scheme, the Commission should look at
9 disgorgement of profits; the Commission should look at
10 revocation of market-based rate authority.

11 But, you know, hypothetically, when there are
12 lesser violations, what should the Commission do? I mean, I
13 think that in a perfect, world, what we should do is, impose
14 a civil penalty.

15 Our problem is, Congress hasn't given us that
16 authority. That's sometimes, hypothetically and in the face
17 of lesser violations -- we have a hard choice between doing
18 nothing or imposing what may be a disproportionate penalty
19 for a lesser violation of the rules.

20 And that's a problem that's not a great choice.

21

22

23

24

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1 Now a settlement may not sometimes view the proxy
2 of civil penalties. When we're successful in actually
3 entering into one -- we have done so here. But it would be
4 better if Congress amended the Federal Power Act and gave us
5 greater authority to impose civil penalties. The pending
6 energy legislation, the bipartisan energy legislation in the
7 Senate does that, and I want to commend Senator Domenici and
8 Senator Bingaman for supporting that proposal. To my
9 knowledge, that has not been a controversial aspect of the
10 legislation, so I'm going to infer from that that Congress
11 may tend to agree that we need this authority. It may be
12 that it just hasn't been noticed until this point, so maybe
13 I'll --

14 COMMISSIONER BROWNELL: Good try. Good try.

15 COMMISSIONER KELLIHER: I just want to say I
16 support the order. I'm glad we entered into a settlement
17 and I think it's actually impressive the settlements we
18 enter into, notwithstanding our limited civil penalty
19 authority. So I do commend the Staff for their hard work.

20 COMMISSIONER KELLY: Thank you, Joe. I agree
21 with your comments and I appreciate your talking about the
22 energy bill and maybe we can get some movement on that.

23 I also appreciate your audit efforts. I think
24 one thing that's become clear to me over the last several
25 months is that without your audit efforts we wouldn't have

1 the kind of compliance with standards of conduct that we
2 seem to be getting. In fact, it's almost shocking to me
3 that companies the size of the company that we're talking
4 about today, for example, and sophistication continue with
5 practices and structures that prevent inappropriate sharing
6 of information. Perhaps that's continued because we don't
7 have penalty authority. Perhaps it continues because it's
8 not deemed to be important, and that's very surprising. I
9 think that our continued auditing and the highlighting of
10 these cases and settlements in public forums like this will
11 let everyone in the industry know that we're serious about
12 maintaining a competitive market and having an even playing
13 field for everyone.

14 In this particular case, we didn't have civil
15 penalty authority, and since the payment that the company
16 has agreed to pay is going back to the ratepayers, perhaps
17 it ended up with a silver lining. So I support the order
18 and I thank you for your work.

19 COMMISSIONER BROWNELL: I, too, support the order
20 but I'm glad you referenced the conference we had in Chicago
21 where I think we all learned a lot about some steps that we
22 could take internally to make our compliance efforts more
23 effective. I think that Sudeen announced that we would be
24 working with an internal cross-functional group to address
25 the concerns that were expressed and some really good, I

1 think, substantive recommendations. So it wasn't people
2 whining, it was people offering solutions. I'm sure Bill
3 and his staff are developing a work plan to address some of
4 the issues that were raised, many of which were very
5 specific. Our goal is compliance. It's great that we get
6 settlements, but frankly I'd feel better if we had 100
7 percent compliance and I think then the industry and its
8 customers would be better served for that.

9 So I'm excited to move forward. There have been
10 massive changes in the industry, a lot of new rules, I
11 think, given what we confronted after the market meltdown,
12 but I think we need to continue the work and get more and
13 more improvement and a better dialogue to understand kind of
14 where people need our help in doing a better job.

15 CHAIRMAN WOOD: I don't think these are the
16 lesser, and I'm glad Joe pointed that out. I mean, this is
17 really outside of the western issues, which kind of
18 preoccupied the first half of my time here. This is one of
19 the more troubling instances of non-compliance. I am glad -
20 - Joe, as you are -- that this did not spill over and have
21 implications such as we did find in the west. So that's
22 good that that was staunch. And I do think it's part of
23 having a very well-equipped and active audit team and an
24 effective enforcement team to do this job, that we're able
25 to do this. And I appreciate that this is out there.

1 I would like to put an addendum on Joe's request.
2 We have repeatedly asked for the corresponding amendments to
3 the Natural Gas Act and have not seen those appear in
4 statute for some unexplained reason, but we do oversee both
5 industries and these type of issues exist in both. Because
6 we have network-related industries in the same companies as
7 competitive -- in fact, in some cases, very competitive
8 industries under the same corporate umbrella. That's fine.
9 But the reason we have a code of conduct is to make sure
10 that there are not dollar benefits given from the regulated
11 company to create a supercompetitor that's at some
12 competitive advantage to other people in the market who are
13 not affiliated with the network-regulated industry.

14 And the standards of conduct, which I always --
15 and it took me a little while to figure out why we called
16 them two different things, but they're two sides of the same
17 coin. The code of conduct is don't give dollar benefits to
18 your unregulated affiliate and the standard of conduct is
19 don't give employee sharing and information benefits to your
20 unregulated affiliate. Both of those things are an anathema
21 to a competitive market working well.

22 And I'm very pleased when I hear back from both
23 this conference and from meetings with CEOs and others that
24 say well these certain types of business things don't really
25 work because of the affiliate rules. Well they shouldn't

1 work. You shouldn't create a supercompetitor because you
2 own a regulated utility. A regulated utility should do its
3 job of providing good, dependable delivery service for its
4 customers and the competitive utility should provide the
5 innovation and the best price and the most, you know,
6 whether it's gas or electric, the best service to customers.
7 And so that's why these things matter. That's why they will
8 always matter as long as we have a competitive company and a
9 regulated company under the same umbrella. Which, again, is
10 the way it is, it's legal here, but we've got to also look
11 after the broader genus, so we can only do so when we have
12 good staff to do it. So good on 'ya.

13 I should add as closing on this one -- I'm not
14 sure that this series of concerns that we've raised here in
15 this audit and settlement would have happened had progress
16 been in an RTO and had the transparency -- the RTO that they
17 had promised to be in.

18 So anyway, time to vote.

19 COMMISSIONER KELLIHER: Aye.

20 COMMISSIONER KELLY: Aye.

21 COMMISSIONER BROWNELL: Aye.

22 CHAIRMAN WOOD: Aye.

23 SECRETARY SALAS: Next on our discussion agenda
24 this morning is a joint presentation of eight items which
25 are an outgrowth of the analysis carried out by the

1 Commission's Information Assessment Team, and they are as
2 follows: E-2, Generator Run Status Information, E-3,
3 Information Requirements for Available Transfer Capability,
4 E-45, Electronic Filing of Interlocking Positions, E-46,
5 Modifications of Nuclear Plant Decommissioning Trust Fund
6 Guidelines, E-47, Electronic Filing of the Application for
7 Authorization for the Issuance of Securities or Assumption
8 of Liabilities, G-12, Modification of Natural Gas Reporting
9 Regulations, G-13, Revision of FERC Form Number 73, and H-3,
10 Modification of Hydro Power Procedural Regulations. And
11 this is a presentation by Patricia Morris, Mike Miller, Ed
12 Fowlkes, Joe Lynch, and Michelle Veloso.

13 MS. MORRIS: Good morning, Mr. Chairman and
14 Commissioners. It's a pleasure to be here this morning. In
15 addition to the individuals Madam Secretary has named Sam
16 Barrios, William Blaum, and Nicole Wilson are present here
17 today for our team.

18 We're presenting today the work of the
19 Commission's FERC Information Assessment Team, otherwise
20 known as FIAT. FIAT is an interoffice team directed by the
21 Chairman to propose ways to reduce the reporting burden on
22 industry through the elimination, reduction, streamlining,
23 or reformatting of current collections and propose what new
24 information the Commission needs to promote greater market
25 transparency in the electricity markets.

1 On March 2nd, the team presented its final
2 recommendations to the Commission. To implement these
3 recommendations, the team has prepared six rules involving
4 changes to nine existing collections that streamline the
5 filings, update filing methodologies, or reduce the amount
6 of information that must be submitted to the Commission.

7 The team recommends electronic filing for several
8 collections in keeping with the mandates of the Government
9 Paperwork Elimination Act. In all, the changes result in a
10 savings to filers of over 2700 burden hours or nearly
11 \$141,000 annually. In addition, the team has prepared two
12 Notices of Inquiry for comment regarding new information
13 necessary to promote greater transparency in electricity
14 markets. This information, added to the information that
15 the Commission already has access to, will help bridge the
16 gap of information needs in the dynamic evolving electricity
17 markets.

18 MR. MILLER: The first item is E-45. It's a
19 Notice of Proposed Rulemaking that contains three FERC data
20 collections: FERC 520, which is the application for
21 authority to hold interlocking positions, FERC 566, which is
22 the annual report of the utilities 20 largest purchases, and
23 FERC Form 561, the annual report of interlocking positions.
24 Together these collections help the Commission ensure that
25 there are no potential conflicts of interest among public

1 utility officers and their directors. E-45 proposes the
2 electronic filing of this information. This filing method
3 will enable the Commission to better use the information
4 filed in these related filing.

5 The second item is E-46 and it's a final rule
6 concerning nuclear plant decommissioning trust fund reports.
7 These reports are filed annually by public utilities owning
8 nuclear power generating plants. The final rule clarifies
9 that public utilities must file only summary data concerning
10 sales and purchase transactions instead of the detailed
11 transaction information currently filed with the Commission.
12 The draft final rule requires public utilities to continue
13 to maintain internal records of the individual transactions
14 until after decommissioning has been completed, and any
15 excess collections are distributed in a manner that the
16 Commission determines. The Nuclear Regulatory Commission
17 has concurred with this proposal.

18 The next item is E-47. It's also a draft final
19 rule and it requires electronic filing of the application of
20 related reports for the authorization of issuance of
21 securities or the assumption of liabilities. The Commission
22 currently requires hard-copy filing of this information,
23 even though filers initially prepare it in electronic
24 format. This change converts the filing of this information
25 to a one-step operation. In addition, converting this

1 filing to electronic format facilitates the Commission's
2 analysis of this data.

3 MR. FOWLKES: The next item is G-12, which is the
4 Notice of Proposed Rulemaking concerning two collections.
5 The first collection, FERC 576, the report of natural gas
6 service interruption, notifies the Commission of serious
7 interruptions of service to any wholesale customer involving
8 facilities certificated by the Commission, while the second
9 form, FERC 588, emergency natural gas sale, transportation,
10 and exchange transactions, collects information that permits
11 the Commission to determine whether an emergency gas sale,
12 transportation, or exchange qualifies for an exemption.

13 The Commission proposes electronic filing for
14 both collections. This draft order also standardizes the
15 filing formats. Since the submitted information includes
16 the description and location of pipeline facilities, G-12
17 seeks comment on placing this information under critical
18 energy infrastructure information protection.

19 Next, G-13 is a draft final rule concerning Form
20 73, oil pipelines service life data. This form collects
21 information on the service life of pipelines that Staff uses
22 for depreciation rate determinations. G-13 provides filers
23 the option of using an Excel spreadsheet. This change makes
24 it easier to use this information. The order also
25 streamlines the filing instructions by removing outmoded

1 filing methods and eliminates the submission of data
2 elements no longer used.

3 H-3 is a draft final rule amending the Commission
4 regulations on the contents of an application for a
5 preliminary permit to study a proposed hydropower plant.
6 The rule removes the requirement that the applicant provide
7 information regarding the intended market for the power to
8 be generated and certain related information concerning use
9 of the power by the applicant. This information is not
10 necessary for the evaluation of a preliminary permit.
11 Continuing is Mr. Joseph Lynch.

12 MR. LYNCH: Good morning.

13 E-2 is a notice of inquiry seeking comment on the
14 need to access generator run status information from public
15 utility generators on a confidential basis. Generator run
16 status includes information on the commitment, operating
17 performance, and capability of generating units connected to
18 the electric transmission system. Access to generator run
19 status information would allow the Commission to better
20 oversee markets by ensuring that generation resources are
21 represented accurately and would allow the Commission to
22 promptly monitor and investigate market abuses and
23 discriminatory actions. Access to this information would
24 allow the Commission to identify patterns of strategic
25 behavior, monitor for undue discrimination or preference in

1 the dispatch of generation resources, and better assess the
2 validity of complaints. This information, added to the
3 information that the Commission already has access to, will
4 help to complete the picture of the electricity markets.

5 MS. VELOSA: E-3 is a notice of inquiry seeking
6 comment on information requirements for available transfer
7 capability, or ATC. ATC is a measure of unused transmission
8 that a transmission provider can offer for sale on OASIS.
9 Market participants have complained that variations in the
10 way ATC is calculated provide opportunities for undue
11 discrimination and create obstacles to doing business.
12 NERC's long-term ATC task force report provides useful
13 guidance on how to achieve an industry-wide methodology for
14 calculating ATC. The report makes a number of
15 recommendations that would help in standardizing and
16 coordinating ATC. The draft order states that the task
17 force report is a good start toward refining and
18 standardizing ATC calculations. The Commission seeks
19 industry comment on, among other things, the advisability of
20 revising and standardizing ATC and related components and
21 the recommendations in the task force report.

22 MS. MORRIS: This concludes our presentation.

23 CHAIRMAN WOOD: Well this is a process issue.
24 Thank you. This project has been something we've been
25 working on kind of in my office with the team here and its

1 folks from, as you see, every one of our offices here and
2 the other folks represent all of the nine offices of the
3 Commission in some regard. But to really take a
4 comprehensive look at what began as a GAO report, which is
5 quite critical of the Commission's capabilities to oversee
6 the market back in 2002, when that report came out. The
7 findings with which I largely agree and wrote back to the
8 Congress that I did, and so that was an impetus here. Of
9 course, a number of steps have been taken other than what
10 we're looking at here today, but that was an impetus to
11 really try to get our capabilities up.

12 Our capabilities are two things: personnel,
13 which really we've got the office leaders here in charge of
14 doing that, and the information. And so we've got to have
15 good information and we've got to have it in a usable
16 format. So the movement that we've done on a broad thing
17 toward electronically-accessible information -- which
18 Mugawee has talked about at other meetings and Tom Hurlahee
19 talks about frequently at senior staff. It's certainly
20 broader than just market oversight, that the ability to
21 really oversee markets is directly related to our ability to
22 harness the technology and use the information that we get
23 in a meaningful manner.

24 Getting in on -- and Nora, I know you've been
25 very thoughtful in how we're getting the EQR information and

1 what we're doing with that. I know you all visited about
2 that with Joe and his staff a lot, taking that
3 comprehensively and saying let's get information that is
4 meaningful, let's get the right information, let's quit
5 getting information we no longer need -- which we have a few
6 items here that do that as well and I really -- I know
7 you'll carry that flame brightly to make sure that we
8 continue to prune the garden because we've got now 60-some
9 years of regulation and we've always pruned the garden.

10 But it's also important in this day and age to be
11 brave enough to ask for information that we don't get that
12 we think we should have. And I think the item that Ms.
13 Lynch talked about is certainly the one here that I think
14 has the potential to be some extremely meaningful
15 information. I'm very cognizant of the fact that the
16 industry has not wanted that to be publicly-available
17 information -- although we know from some of our vendors you
18 can pretty much get that from -- it's advertised in the
19 public from certain vendors that we subscribe to.

20 But it is useful information but it's
21 appropriate, I think, to keep that confidential inside the
22 Commission. And we have capability under the law and under
23 this proposed regulation -- or under the proposed NOI, to do
24 so. So I'm real hopeful that this will lead to an enhanced
25 capability to oversee the markets in real-time and thereby

1 provide the needed confidence and support to the broad
2 market, to the market participants and the customers, that
3 the rules are being adhered to fairly by everybody.

4 COMMISSIONER BROWNELL: Thank you for recognizing
5 my never-ending quest to reduce the amount of information
6 that we collect. And I'm glad that we're collecting the
7 savings, both financially and in human resources. Are we
8 collecting the same information for information that we have
9 requested under kind of our new quest, do we have any idea
10 about the calculations, what it's costing people in the new
11 information that we're providing -- we're asking for?

12 MS. MORRIS: Once we determine which information
13 data elements to collect, we'll have a better handle on
14 that. So at this point, with just an NOI stage, we really
15 don't have a feel for that.

16 COMMISSIONER BROWNELL: So that talks about
17 these, but in the additional information we've requested in
18 the past, we haven't calculated what the cost of that is,
19 where we are?

20 MR. MILLER: Commissioner, our total cost for all
21 of our data collection is \$143 million.

22 COMMISSIONER BROWNELL: Okay. Great. Maybe we
23 can get a breakdown of that over time.

24 I agree, having lived through the hideousness of
25 the last 3-1/2 years on the issue of market transparency,

1 but I have some questions about E-2. Is it appropriate for
2 us to collect it? How much information is that? What will
3 we do with it? How will we manage it? Or is it enough to
4 create a template and standardize the information so that we
5 can get it quickly if we need it?

6 Having kind of looked at some of our data
7 collection issues and the struggles we have in terms of
8 accuracy in auditing and getting the support that we need to
9 slice and dice the data, I just want to be sure -- and would
10 like comments as part of this -- about exactly, you know,
11 what does that data look like, what is the volume, and then
12 I'd like our Staff to tell us how we will manage that. I
13 also am not convinced that, as long as we have access to it
14 in a way that we can understand it and use it quickly, I
15 don't necessarily know that we have to collect it.

16 So it's an interesting exploration and I
17 appreciate the effort and I agree that market transparency
18 will be served by having the information or having access to
19 it. But there's a distinction in my mind.

20 CHAIRMAN WOOD: If we didn't have to maintain the
21 confidentiality -- which, again, I think is actually a fair
22 request on behalf of the industry -- I think it could be
23 handled much differently. There could be much more of an
24 industry enforcement here. But this does require action on
25 our part and a role and I think your questions in that

1 regard are fair to ask that Bill and ROI, who will be the
2 primary users of this data, will answer for us. But that's
3 certainly something I think parties, in the responses to
4 NOI, should point out their concerns.

5 In fact, I think it would be easier just to have
6 this be put on the webpage -- I don't think it would, but it
7 might be easier to put it on the webpage and let that just
8 be a reporting requirement where it doesn't require us to do
9 it. I think there are enough concerns about
10 confidentiality, about whether a plan is operating at 100
11 percent, 80 percent, 50 percent of it's going to be turned
12 off, that those type of things tend to be things that a
13 company would not want to be broadly available.

14 COMMISSIONER BROWNELL: Well I wasn't suggesting
15 actually they be broadly available. I was suggesting that
16 is the -- I was asking the question, actually, is there an
17 alternative to saying very specifically -- and making sure
18 people understand it -- this is the information we want,
19 this is the format in which we expect to find it, and this
20 is the program we're going to use to slice and dice it, and
21 we want that available at a moment's notice. I mean,
22 industries do that all the time. Home Mortgage Disclosure
23 Act that's required by the Federal Reserve -- well it's
24 actually required by everybody -- is huge volumes of data
25 that are maintained in the banks, submitted annually, but

1 frankly at any given moment you have to be able to slice and
2 dice it at the location.

3 I just want to be sure that we're not biting off
4 more than we can chew and therefore not getting what we need
5 to have. And so I think there's a where does it get
6 collected, how does it get collected, what's the best way to
7 accomplish the goal, which I certainly support and agree
8 with.

9 CHAIRMAN WOOD: Well you know that's actually a
10 good thought. It's what we did on the nuclear reporting
11 rule. It's like saying keep your data this way --

12 COMMISSIONER BROWNELL: Yeah.

13 CHAIRMAN WOOD: -- and just give us the top sheet
14 once a year -- is that how the rule goes on that? That may
15 be an approach for data in general. I mean, it's how we ask
16 people to keep their annual FERC accounts. Keep 'em this
17 way but just give us the quarterly report or the annual
18 report.

19 COMMISSIONER BROWNELL: And be able to swoop in
20 and produce it, you know, if there's a question that's
21 raised where we want to look at some trend data over time.
22 We ought to define the ways in which we also intend to use
23 it so that whatever format its kept in and whatever program
24 support it has, both in hardware and software, we know how
25 we're going to want to use that. So we don't have huge

1 volumes of information, whether it's here or there, that we
2 then can't use because we never kind of figured out the
3 questions we wanted to ask. That may change over time.
4 It's the classic IT directive which is the more clear you
5 are up front, the better the output is and so I just -- it's
6 a bit complex issue.

7 The other comment I would have is E-3 -- I don't
8 often commend NERC. I certainly commend them on the task
9 force report because it's always been a mystery to me is why
10 this is not information that's standardized in terms of
11 calculation of ATC. I don't understand why the methodology
12 isn't the methodology -- I'm sure I'll learn pretty quickly.
13 But it is kind of confusing, once again, when we have issues
14 of market transparency on the transmission system usage,
15 that this seems to me to be very critical. So this is good
16 work.

17 COMMISSIONER KELLY: I wanted to also highlight
18 E-3. I think that we have had many complaints about the
19 lack of standardization across the companies on how to
20 calculate available transmission capacity, as well as
21 available flow-gate capacity. And it does seem strange that
22 there isn't an acceptable standardized way. I'm hoping that
23 there is.

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1 That reminds me of my recent experience at home
2 where my college daughter has returned recently with all of
3 the things from her dorm room.

4 And we've had a similar discussion of, isn't
5 there some way to standardize how you handle this material?
6 And we did agree on the fact that a hanger is an acceptable
7 way.

8 (Laughter.)

9 So I suspect that there is something like a
10 hanger with that ATC calculation.

11 COMMISSIONER BROWNELL: Offsite storage, too,
12 helps.

13 (Laughter.)

14 (Discussion off the record.)

15 COMMISSIONER KELLIHER: I just want to pick up on
16 Sudeen and Nora's comments about E-3, that this is an area
17 where there has been a lot of complaints by transmission
18 customers over the year, that a number of the key OASIS
19 terms are not defined, and that the methodology is not
20 consistent.

21 And it's appropriate, after the number of years
22 that have passed, that we really move toward standardization
23 of both the definition and the methodology. So, I support
24 all of the Orders, but particularly E-3.

25 COMMISSIONER KELLY: I did want to also add that

1 in E-45, the Interlocking Directorate one, we are going to -
2 -

3 CHAIRMAN WOOD: Was this Sudeen?

4 COMMISSIONER KELLY: I knew that it would be
5 receptive audience here. We are going to provide the needed
6 software. Now, how often does Government do something like
7 that?

8 CHAIRMAN WOOD: More and more.

9 COMMISSIONER BROWNELL: Just make sure it works.
10 (Discussion off the record.)

11 CHAIRMAN WOOD: Let's vote.

12 COMMISSIONER KELLY: Aye.

13 COMMISSIONER BROWNELL: Aye.

14 COMMISSIONER KELLIHER: Aye.

15 CHAIRMAN WOOD: Aye.

16 SECRETARY SALAS: Next for discussion is E-1.

17 This is Interconnections for Wind Energy, and it's a
18 presentation by Bruce Poole, Kumar Agarwal, LaChelle Brooks,
19 and Jeff Dennis.

20 MR. POOLE: Mr. Chairman and Commissioners, good
21 morning. My name is Bruce Poole. I'm from the Office of
22 Markets, Tariffs, and Rates, and with me today are Kumar
23 Agarwal and LaChelle Brooks, also from OMTR, and Jeff Dennis
24 from the Office of General Counsel.

25 Before we begin, I want to acknowledge the hard

1 work of Patrick Rooney and Mike Miller, who are not at the
2 table, as well as our team sponsors, Kevin Kelly and Jan
3 McPherson.

4 E-1 is the Draft Final Rule on Interconnection
5 for Wind Energy. The Draft Final Rule contains a set of
6 technical requirements and procedures for the
7 interconnection of wind plants that are larger than 20
8 megawatts.

9 The Draft Final Rule would require that public
10 utilities append the requirements and procedures as an
11 Appendix G to both the Large Generator Interconnection
12 Agreement and Large Generator Interconnection Procedures
13 included in their open access transmission tariffs.

14 The technical requirements and procedures in the
15 Draft Rule would supplement the requirements of Order No.
16 2003. All of the requirements of Order 2003 would continue
17 to apply to the large wind plants, except for the provisions
18 of this wind interconnection rule would substitute or where
19 wind plants have been exempted.

20 To give you some background, in Order 2003, the
21 Commission adopted standard procedures for the
22 interconnection of large generating facilities and a
23 standard generator interconnection agreement. It requires
24 public utilities that own, operate, or control facilities
25 for transmitting electric energy in interstate commerce, to

1 file revised open access tariffs containing these standard
2 provisions.

3 These apply when providing interconnection
4 service to all generating facilities with a capacity of more
5 than 20 megawatts. On rehearing in Order No. 2003A, the
6 Commission recognized that the standard procedures and
7 agreements were designed around the needs of large
8 traditional generating facilities, and that wind plants
9 might find that a specific requirement is inappropriate for
10 the wind technology, so that a different approach is needed.

11 Accordingly, the Commission provided that certain
12 features of the standard interconnection agreement regarding
13 power system stabilizers, interconnection facility
14 construction, and power factor design, would not apply to
15 wind generators.

16 Further, the Commission noted that there might be
17 other requirements that would not suit wind generators, and
18 to accommodate this, the Commission added to the large
19 generator interconnection rule, a blank Appendix G as a
20 placeholder for requirements specific to such technologies
21 to be developed at a later time.

22 The standard technical requirements and
23 procedures for the Draft Final Rule before you, are designed
24 for the unique characteristics of large wind plants. For
25 example, wind plants are generally made up of several small

1 induction wind generators laid out on a large area and
2 connected through a medium-voltage collector system that is
3 connected to the low-voltage side of a step-up transformer.

4 The Draft also recognizes that the plants are
5 increasing in size and are making up a larger percentage of
6 the total capacity on some transmission systems.

7 Specifically, the Final Rule would set forth
8 special technical requirements in three areas: Low voltage
9 ride-through capability; power factor design criteria; and
10 supervisory control and data acquisition, or SCADA.

11 Importantly, and differing somewhat from the
12 proposed rule, the low-voltage ride-through and power factor
13 requirements in the Draft Final Rule, would apply to a wind
14 plant, only if the transmission provider's system impact
15 study shows that the requirements are needed for safety or
16 reliability of the transmission system.

17 If shown to be necessary in the system impact
18 study, the low-voltage ride-through provisions in the Final
19 Draft Rule would require the wind plant to demonstrate the
20 ability to remain online during voltage disturbances on the
21 grid.

22 Again, if shown, as necessary in the system
23 impact study, the wind plant would be required to maintain
24 the .95 leading to .95 lagging power factor standard
25 established for all the large generators in Order No. 2003.

1 The SCADA requirements in the Draft Final Rule,
2 would apply to all wind plant interconnections. It would
3 require wind plants to possess SCADA capability, but it
4 leaves to a separate agreement between the wind plant and
5 the transmission provider, the specific information and
6 control capability to be included.

7 Additionally, the Draft Final Rule contains
8 special procedures to be appended to the large generation
9 interconnection procedures, because wind plants have unique
10 characteristics. The Draft sets forth a specific procedure
11 that would allow a wind plant interconnection customer to
12 complete the interconnection request form depicting the wind
13 plant as an equivalent single generator.

14 Once completing the interconnection request in
15 this manner, the wind plant interconnection customer would
16 be allowed to enter the que and receive the base case data
17 as provided for in Order No. 2003.

18 With this equivalent generator data, the wind
19 plant would complete the feasibility study. The
20 interconnection customer would be required to provide
21 detailed design specifications, no later than six months
22 after submission of the interconnection request.

23 Differing from the proposed Rule, the Draft Final
24 Rule would defer the effectiveness of the low-voltage ride-
25 through, power factor, and SCADA requirements for half a

1 year. Specifically, these requirements would apply only to
2 agreements signed, filed with the Commission in unexecuted
3 form, or filed in non-conforming agreements, on or after
4 January 1, 2006, or the date six months after publication of
5 the Final Rule in the Federal Register, whichever comes
6 later.

7 The specific procedures for completing the
8 interconnection request, however, would apply, beginning on
9 the effective date of the Final Rule, which is 60 days after
10 the date of the publication in the Federal Register.

11 Kumar, LaChelle, Jeff, and I are available to
12 answer any questions you may have. Thank you.

13 CHAIRMAN WOOD: Thank you, Bruce. Thank y'all
14 very much. Good work. Any comments from the Commissioners?

15 COMMISSIONER BROWNELL: I just want to thank you,
16 because I think that you addressed in this, the very
17 specific recommendations that the Wind Association and the
18 wind practitioners had, particularly low-voltage.

19 I think the queuing issue is important, and I
20 think that the flexibility that doesn't force them to make
21 hardware technology choices earlier in the game, giving them
22 the opportunity, I think, to plan more effectively for what
23 the situation calls for, is terrific.

24 I'm wearing my windmill today to celebrate this
25 Rule, which I think we've been working on almost since like

1 an hour after -- so, Allison should be celebrating
2 somewhere, we hope, but thank you.

3 COMMISSIONER KELLY: I agree with Nora. I think
4 we did a very good job in this Rule, of initiating a
5 standard agreement that will help wind generators, because
6 they will know what to expect in advance.

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1 Also I think we did a good job of balancing the
2 characteristics of the wind technology with the transmission
3 providers' needs to protect the timelines in its queuing
4 process. By the proposal that we've adopted, we allow the
5 wind generator to come in initially with preliminary specs
6 and, within six months -- give them six months to come in
7 with final specs. And that is really necessary, because the
8 wind generators are so different. The physical
9 configuration often consists of hundreds of wind turbines in
10 remote areas, frequently. The layout can extend for several
11 miles. And by allowing this approach of giving the general
12 specs for the project but not requiring the generator to
13 come up with the final layout until six months after they've
14 initially applied, I think it provides a good balance.

15 The transition period issue I know is very
16 important for the industry. They need to have advanced
17 knowledge and time to work on the technology that's going to
18 be required and put their plans in place. I'm glad that we
19 were able to do that and accommodate those concerns. But
20 also while those are delayed and there's a transition period
21 on that, the procedural requirements are going to be in
22 effect 60 days after publication in the Federal Register,
23 and I think that also helps with certainty to have those
24 procedural requirements in place sooner rather than later
25 that then have the transition for the technology side of it.

1 CHAIRMAN WOOD: I think this wraps up -- the
2 interconnection team was really one of the very first teams.
3 We've had you all working around the clock and folks
4 dropping and rising again. Nora did a little reminder here
5 of the Irish prayer: may the wind always be at your back.
6 The wind was at your back. This wraps up really the LGIA
7 complete, right? I mean, we've got rehearing, I think, next
8 meeting.

9 And then I should add since we've asked this fine
10 working team and a few others to pull together the small
11 generator interconnection. So we've got basically from a
12 microwatt to, you know, a nuclear power plant built in a
13 standardized generation interconnection format and this
14 could not have happened without you all. It's not just the
15 policy issues but as we saw, particularly on this, it's
16 really the technical issues that you have to drill down deep
17 in to understand, recognize that just because a transmission
18 owner wants it doesn't make it a discriminatory practice,
19 it's a good engineering practice, a lot of these things that
20 we require.

21 But we've also been able to -- I think, in my
22 assessment, and from what I hear back from people that are
23 trying to live under this rule, these sets of rules -- is
24 that we have tried to weed out what are just either, you
25 know, lack of concern for the interconnecting customer or,

1 you know, overt attempts to try to discriminate against them
2 because, you know, in generation yourself, separate those
3 things out which we want to prevent from legitimate and
4 important reliability concerns. And that's a tough valley
5 to walk through and I appreciate, again, you all's policy
6 analysis but more importantly your engineering reality check
7 on all these things.

8 And these rules will be tested and I think over
9 time they'll have to be amended one way or the other but
10 it's important to have them down there for both the small --
11 as you all did, importantly for all the small generation
12 last week and, as we're wrapping up now here, for all forms
13 of large generation as well.

14 COMMISSIONER KELLY: And we can expect some more
15 initiatives from FERC on the wind front, because I think
16 today is the last day for comments on our NOPR on the
17 imbalance. So hopefully we can get something out before you
18 leave, Pat.

19 CHAIRMAN WOOD: I think that one is going to be
20 on the July meeting.

21 COMMISSIONER BROWNELL: No, we're not meeting in
22 July.

23 (Laughter.)

24 CHAIRMAN WOOD: I'll be sweating in 100 degree
25 heat.

1 COMMISSIONER KELLY: Maybe you'll have a little
2 wind.

3 COMMISSIONER BROWNELL: You know, one of the
4 things maybe though we ought to consider -- Sudeen makes a
5 good point. We are going to have changes -- and I think as
6 new technologies -- I will never quit banging this drum --
7 come on-line, we're going to have to find some kind of a
8 faster mechanism I think to look at issues. Maybe it
9 behooves the manufacturers, maybe, you know, we could work
10 with DOE, who really supported the new technology that I
11 talked about earlier.

12 But we need to kind of not be able to have to
13 spend a year, two year or three years, because I think we'll
14 put a chill in the marketplace. So maybe that's something
15 we could talk about in September.

16 COMMISSIONER KELLIHER: At our next meeting.

17 CHAIRMAN WOOD: All right. Anything else on this
18 one?

19 (No response.)

20 CHAIRMAN WOOD: Good.

21 COMMISSIONER KELLIHER: Aye.

22 COMMISSIONER BROWNELL: Aye.

23 COMMISSIONER KELLY: Aye.

24 CHAIRMAN WOOD: Aye.

25 SECRETARY SALAS: Next for discussion we have

1 another joint presentation. This time it's E-4, Accounting
2 and Financial Reporting for Public Utilities, Including
3 RTOs, and E-57, Tax Deduction for Manufacturing Activities
4 Under the American Jobs Creation Act of 2004. And this is a
5 presentation by Lodie White, Mark Klose, Julie Kuhns, and
6 Brandon Johnson.

7 MS. WHITE: Good morning, Mr. Chairman and
8 Commissioners. I'm Lodie White. Sitting with me are Mark
9 Klose, Julie Kuhns, and Brandon Johnson. I'd also like to
10 acknowledge other team members not at the table: Melissa
11 Lord, Brian Holmes, and John Okrak from the Office of
12 Markets, Tariffs, and Rates.

13 E-4 is a Draft Notice of Proposed Rulemaking that
14 amends Part 101 of the Commission's regulations to revise
15 the uniform system of accounts and quarterly and annual
16 financial reporting forms for public utilities and
17 licensees, including RTOs. The draft order proposes to
18 update the US of A to accommodate the restructuring changes
19 that are occurring in the electric industry due to the
20 availability of open access transmission service and
21 increasing competition on wholesale bulk power markets.

22 These proposed revisions are in response to the
23 comments received from the Commission's notice of inquiry in
24 Docket Number RM04-12. The objective is to provide sound
25 and uniform accounting and financial reporting for

1 transactions and events affecting public utilities,
2 including RTOs and ISOs.

3 The proposed accounts and changes to the
4 Commission's quarterly and annual financial reports will add
5 visibility and uniformity to the accounting and financial
6 reporting for assets purchased, expenses incurred, and
7 revenues collected by public utilities, including RTOs, for
8 activities related to operating the transmission system.
9 These accounting and financial reporting updates will allow
10 for greater comparability for the cost of activities
11 affecting RTOs, including better disclosure for the cost of
12 providing market-related activities and transmission service
13 to its members.

14 Specifically, this proposed rulemaking will add a
15 new asset function expressly for RTOs to record the cost of
16 their computer hardware, software, and communications
17 equipment. It will also add a new regional market expense
18 function for RTOs to record the cost of performing regional
19 market activities. These market activities include the
20 facilitation of the day-ahead and real-time markets, the
21 capacity and transmission rights markets, and other
22 developing markets.

23 In addition, this proposed rulemaking creates new
24 asset accounts for traditional public utilities to record
25 the cost of computer hardware, software, and communications

1 equipment used in their transmission function. It also
2 provides new expense accounts for traditional public
3 utilities to record their share of RTO operational costs.
4 These new accounts will help provide cost comparability
5 among these entities.

6 This proposed rulemaking also creates new
7 accounts for RTOs in traditional public utilities to record
8 the cost of expenses for performing transmission and
9 generation interconnection studies. The proposal includes
10 new schedules in the FERC annual and quarterly financial
11 reports that will provide greater details concerning
12 transmission service and generation interconnection study
13 activities performed by RTOs, as well as traditional public
14 utilities. It will also create a new schedule in the
15 quarterly and annual reports to provide details concerning
16 the types of costs that traditional public utilities are
17 currently recording in the purchase power expense accounts.

18 While the notice of inquiry requested comments on
19 a broad range of RTO-related matters, including cost
20 oversight and management issues, the NOPR before the
21 Commission today focuses only on accounting and financial
22 reporting. The cost oversight and management issues raised
23 in the notice of inquiry are beyond the scope of this
24 proposed rulemaking.

25 In conclusion, the proposed changes to the

1 Commission's accounting and financial reporting requirements
2 will lead to improvements in the cost recovery practices by
3 providing details concerning the costs of RTO activities and
4 provide increased assurance that the expenditures are
5 legitimate and reasonable cost of providing service to its
6 members.

7 In another financial matter, E-57 provides
8 guidance on the Commission's ratemaking policy with respect
9 to the tax deduction for manufacturing activities, or TDMA,
10 in Section 102 of the Americans Jobs Creation Act of 2004.
11 The TDMA provides for a deduction for income attributable to
12 certain domestic production activities, including income
13 from the sale of electricity and natural gas produced in the
14 United States. The TDMA will have ratemaking implications
15 for public utilities that make jurisdictional sales of
16 electricity at cost-based stated rates or cost-based formula
17 rates, but not for jurisdictional natural gas pipelines.

18 This concludes our presentation on E-4 and E-57.
19 Thank you.

20 CHAIRMAN WOOD: Thank you, Lodie. Any comments,
21 questions?

22 COMMISSIONER KELLY: I'm pleased that we are
23 issuing this proposed rule. I'd like to emphasize that the
24 notice of inquiry originally asked not only about accounting
25 issues but about RTO and ISO cost oversight issues. And in

1 reviewing the comments that we've received in response to
2 the NOI, the comments were heavily weighted towards RTO cost
3 oversight issues, and that seems to be a concern that
4 remains and is felt by a broad cross-section of participants
5 in the industry. And I just wanted to make clear that even
6 though we've chosen to focus on this draft NOPR only on the
7 accounting side, the cost oversight issues are still on the
8 table and I look forward to working with my colleagues and
9 with Commission Staff to move forward on that front as well.

10 I think that this is a good first step, because
11 the accounting issues do need to be fully understood in
12 order for the other issues to be better understood. So I
13 think this NOPR will get us closer to being able to
14 effectively address the cost oversight issue in the near
15 future.

16 COMMISSIONER KELLIHER: I just wanted to
17 associate myself with Sudeen's comments. I do support the
18 order but, like Sudeen, it's focusing really on the
19 accounting aspect rather than accountability or oversight.
20 And the Commission has heard a lot of complaints about RTO
21 costs, particularly over the last year. I do think the NOPR
22 shows the Commission is listening to the complaints and
23 acting in response to that. And I do think the NOPR will
24 provide greater price transparency and that that
25 transparency may result in greater accountability by RTOs,

1 but there may be a limit to what could be accomplished
2 through transparency pure and simple. But I do view the
3 NOPR as the first step in the direction of greater RTO cost
4 accountability and we may have to take a few tracks in the
5 future to fulfill our statutory duty to assure that public
6 utility rates -- in this case, RTO rates -- are just and
7 reasonable. Henceforth, the order.

8 COMMISSIONER BROWNELL: I agree with both of you,
9 eloquently put. Don't have much to add. Acknowledge, in
10 fact, that oversight has been a huge issue. Congress is
11 clearly talking about addressing that and giving us some
12 responsibility, which I fully support. But I will say that
13 I do hope this gives us, as Sudeen mentioned, the basis of
14 kind of fact-based discussions. There've been a lot of
15 statements made that have not been able to be substantiated
16 -- which has been enormously frustrating for all of us. And
17 I think it will be interesting to see how quickly we can get
18 our arms around what's real and what's not and begin to have
19 a pretty focused discussion with the RTOs and some of their
20 utility members about what we're seeing and what we need to
21 do about that.

22 I think one of the issues is also the way RTOs
23 have developed -- God forbid the lack of standardization --
24 and the voluntary nature of RTO development, which caused a
25 lot of delays and compromises along the way of certainly --

1 as the Gestalt study said contributed to costs. So when we
2 look at it, we need to look at it in the totality and I
3 think we're beginning to get the tools to do that.

4 CHAIRMAN WOOD: And the reason why this
5 particular tool is necessary is a lot of what an RTO does is
6 the same type of stuff that when we hear about the mergers -
7 - everyone says we get all these great savings by merging
8 two companies, the synergies -- we're going to give some of
9 them back to ratepayers and otherwise make these mergers
10 look attractive to the marketplace. When you're taking 10,
11 40, 3 control areas that have historically provided a lot of
12 the NERC-based reliability functions and putting them under
13 a, quite frankly, more well equipped and more sophisticated
14 and more regional approach, look you're going to save money.
15 But you've got to track that first. And so what's important
16 about this rule is that it breaks down the type of
17 reliability based and transmission service based and market
18 function based costs that are being performed today by RTOs
19 that do a lot of things, but also ask that the public
20 utilities that comprise the RTO footprint also track other
21 costs.

22 So that an important -- two things can be done
23 here: one, and this is one the state regulators have told
24 me they care about, make sure they're not paying for
25 something twice. So if you've got a nice big, you know,

1 well equipped control room in Carmel, why are all these
2 other utilities doing the same thing in their area. Are you
3 getting value from having two sets of reliability when
4 really all the shots are being called in, you know, one of
5 the MISO offices, for example.

6 And then importantly tracking the costs so that
7 these oversight functions can be meaningful to the customer.
8 They can say Aha, we're getting this and it looks like
9 they're spending this much in MISO and this much in PJM and
10 out in California they're doing it this way. It's, I think,
11 a helpful way for these boards or these CEOs and these
12 customers that are so involved in the RTO policies -- can
13 really look at and get a market check on what these costs
14 are across the country. It's hard to do it under the
15 current system that has such broad accounts. I have learned
16 in my career that he who -- or she who masters accounting
17 masters the universe. And I think this can give the FERC a
18 tool that it has not used as well in the past with this
19 particular part of our market. So please conquer.

20 COMMISSIONER BROWNELL: I won't be controlling
21 the universe on that basis.

22 COMMISSIONER KELLIHER: Can I make one comment on
23 that?

24 CHAIRMAN WOOD: Absolutely.

25 COMMISSIONER KELLIHER: I just want to say I

1 agree with you that the NOPR is necessary. It's probably
2 not sufficient to assure cost accountability, but it is
3 necessary. And I agree with Nora's comments that there's a
4 perception that RTO costs are perhaps uncontrolled -- in
5 some quarters, there's the perception that RTO costs are not
6 controlled. And this NOPR will allow us to compare RTO
7 costs from one to the next. And it's probably more true
8 that some RTOs are doing a better job of assuring cost
9 accountability than others. We can't prove that now, but
10 with NOPR we'll be able to, and I think that will be
11 helpful.

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1 COMMISSIONER KELLY: I think, along that line,
2 Joe, it will show us how the costs change, if they do change
3 as an RTO matures.

4 We have some very new ones, an incipient one, and
5 a rather mature one, so we'll be able to take a look at
6 whether, as they mature, their incremental costs decrease or
7 not.

8 COMMISSIONER BROWNELL: Actually, Sudeen, that's
9 a great point. In the grand discussion and allegations that
10 have been made, we've forgotten that in a couple of cases,
11 these things developed over 20 years.

12 We don't know what those original costs were,
13 candidly. They've kind of been buried along the way in the
14 case of one RTO that got a building for a dollar.

15 There's a whole lot of things, and so then you
16 have, of course, MISO and the California ISO that did not
17 grow from power pools, do not have 20 years of costs that
18 will never be retrieved, so I think this is basically on a
19 forward-looking basis. I'm not sure we're ever going to be
20 able to accurately determine kind of what happened.

21 On the other hand, with the development of a new
22 market design in California, with the development of MISO,
23 and hopefully with the ongoing development of SPP, we ought
24 to be able to get a better handle on what it means to start
25 anew.

1 CHAIRMAN WOOD: I just always fall back on my
2 experience with ERCOT, but we did, before I came up here,
3 simultaneous rate cases on all the transmission owners to
4 get them ready for the new market.

5 We did that, mindful of what ERCOT's duties were
6 going to be. We were allowed, under statute, to do as
7 forward-looking test year, which was a wonderful gift,
8 actually.

9 But for every dollar that the ISO's costs went
10 up, the overall cost to the customers in that state, went
11 down by about \$4 or \$5, somewhere between \$4 and \$5, because
12 we avoided the duplication.

13 And actually we were able to do that under the
14 old FERC accounts. The nice thing about this is that the
15 Texans have to follow this one, too, because the statute
16 requires a FERC account, so you can't regulate ERCOT,
17 Larcamp, just in case you forgot.

18 (Laughter.)

19 CHAIRMAN WOOD: We were able, under at least the
20 county rules at the time, to get that kind of savings.
21 Again, I think that's going to have to be something that the
22 state regulators take the lead on, because they establish
23 those retail rates that have so much of those costs in
24 there.

25 But, you know, again, I think it's not good for

1 customers to be paying for something twice, when they're
2 getting a good job of it by paying for it once.

3 COMMISSIONER BROWNELL: And Diane Lunz is the new
4 president of NARUC, who is the former chair of the
5 Accounting Committee at NARUC, and has been talking about
6 this for years. So, I would hope that she will continue her
7 leadership and really drive this down to each and every
8 state and how they do look at things like the double-dipping
9 issue.

10 CHAIRMAN WOOD: All right, folks, we've got a
11 good step forward. Then we should mention the other rule,
12 too, which is actually responding to a -- and the posture of
13 that, Lodi, is what, the E?

14 COMMISSIONER KELLY: Fifty-seven.

15 CHAIRMAN WOOD: E-57 is a guidance Order, okay,
16 and it reflects a tax reduction that was given to some
17 industries we regulate, last October, so that's -- our job
18 is passing that on through to the customer, so that's good.

19 All right, let's vote.

20 COMMISSIONER KELLIHER: Aye.

21 COMMISSIONER KELLY: Aye.

22 COMMISSIONER BROWNELL: Aye.

23 CHAIRMAN WOOD: Aye.

24 SECRETARY SALAS: Next for discussion is E-5.

25 This is Market Monitoring Units in Regional Transmission

1 Organizations and Independent System Operators. Lodi gets
2 to do this second presentation, together with Ted Gerarden
3 and Dean White.

4 CHAIRMAN WOOD: There's one who hasn't slept.

5 (Laughter.)

6 (Discussion off the record.)

7 MS. WHITE: Good morning again, Mr. Chairman and
8 Commissioners. I'm Lodi White from the Office of General
9 Counsel. Sitting with me, are Ted Gerarden and Dean White
10 from the Office of Market Oversight and Investigations.

11 E-5 is a Draft Policy Statement that provides
12 guidance on the role of market monitoring units or MMUs that
13 are associated with ISOs and RTOs.

14 MMUs perform an important role in assisting the
15 Commission in enhancing the competitiveness of ISO and RTO
16 markets. Competitive markets benefit customers by assuring
17 that prices properly reflect supply and demand conditions.

18 MMUs are tasked with monitoring organized
19 wholesale markets by identifying effective market rules,
20 identifying potential anticompetitive behavior by market
21 participants, and providing the comprehensive market
22 analysis that's critical for informed policy decisionmaking.

23 The policy statement provides guidance on the
24 coordinated roles and responsibilities of the Commission and
25 the MMUs, and establishes protocols by which MMUs should

1 make referrals to the Commission for investigation of tariff
2 violations or market behavior rule violations that the
3 Commission enforces. This concludes our presentation.
4 Thank you.

5 CHAIRMAN WOOD: Thank you, Lodi. Commissioners?

6 COMMISSIONER KELLY: Well, thank you, Pat, for
7 putting this on the agenda. I know it was one -- an
8 additional item to add to your hundred days, and I
9 appreciate your doing it, because I think that this policy
10 statement is an important step in the Commission's efforts
11 to provide guidance on the role of market monitors, as well
12 as to establish protocols on interaction between the market
13 monitors and the Commission.

14 As the competitive markets have evolved, so has
15 the Commission's understanding of market monitors'
16 functions, and I personally consider it a priority to
17 continue the Commission's efforts to clarify our
18 understanding of the market monitors' role within the
19 competitive market framework.

20 For example, we are receiving comments in
21 response to our notice on the role of market monitors, ISOs,
22 and RTOs, in establishing and using reference prices, and I
23 believe the Commission should address that issue, as well as
24 several other issues that I'd like to see us consider,
25 including how to further structure the reporting by the

1 market monitors to the Commission, the degree of
2 independence needed by the market monitors to effectively
3 perform their responsibilities in ISO and RTO markets, and
4 the most timely and effective way for market monitors, ISOs,
5 and RTOs, to interact with the Commission.

6 So, I appreciate this policy statement and I
7 support it.

8 CHAIRMAN WOOD: Thank you, Sudeen.

9 COMMISSIONER KELLIHER: I support the policy
10 statement, as well, and, like Sudeen, I think it's helpful
11 and that it provides greater clarity with respect to
12 Commission policy related -- with respect to the
13 Commission's relationship with MMUs and the role of MMUs
14 within the organized markets.

15 I think the policy statement is pretty careful to
16 describe a role for the MMUs, that conforms with the laws on
17 delegation of federal authority. I've talked about the U.S.
18 Telecom decision many times, but the U.S. Telecom decision
19 laid out that law very clearly.

20 We cannot delegate, absent express authorization
21 from Congress, to non-federal persons, and MMUs certainly
22 fall under that category.

23 But I think that the policy statement is careful
24 in that respect, and it does respect the limits of
25 delegation.

1 Now, I think it's also important to recognize
2 that in most cases, MMUs are external. There are some
3 internal MMUs, and in some cases, there's both. Some have
4 both an internal and external MMU, but that's relevant, too,
5 because tariff administration -- the tariff holder has
6 certain duties, and so there are some things that we can
7 authorize the tariff holder to do.

8 We can authorize them to collect penalties for
9 objectively-identifiable behavior, but when there's an MMU
10 that's external to that RTO, I don't see really how we can
11 allow the MMU that's not part of the public utility, to
12 collect those penalties.

13 I think we're careful in that respect here in the
14 policy statement.

15 Now, I think the role laid out for an MMU in the
16 policy statement, is a very important one, and I think that
17 in light of the decision in EPSA, the EPSA case last year,
18 we have to be careful in defining our relationship with
19 MMUs.

20 We have to respect the limits and I think we've
21 done that here. So I do support the Order, and I think it's
22 a good one.

23 CHAIRMAN WOOD: Thanks for bringing up the EPSA
24 case, Joe, because there have been, at least in some
25 conferences and speeches that I've been at recently, still

1 some concern that this role is not well defined. So this
2 statement should help in that regard to put some context
3 around how we view and how we have always, honestly, viewed
4 our relationship with the MMUs.

5 What that case was about, was, quite frankly, our
6 ability to go beyond what we do today and talk about pending
7 enforcement issues with them after there are filed
8 complaints.

9 And I think the courts actually pushed us back,
10 as appropriate. I wish we had not been able to -- well,
11 whatever; it is what it is.

12 But what this statement actually does, I think,
13 is write the contours of the relationship that is ongoing.
14 That's not necessarily a relationship between us and the
15 MMU, but the role that they have in the universe.

16 As Joe points out, we've got internal and
17 external MMUs, and they do have different functions. We've
18 got to see, actually over the last two meetings, a nice
19 array of really good talent that I think focused very
20 heavily on the first two bullets of the four bullets.

21 I should just say that the four bullets that we
22 say the valuable task that they perform are: One, to
23 identify effective market rules and recommend proposed rule
24 changes to the ISO that promote wholesale competition and
25 efficient behavior; two, to review and report on performance

1 of wholesale markets in achieving customer benefits, which
2 is what we had the last few meetings here; to provide
3 support for the ISO/RTO in the administration of Commission-
4 approved tariff provisions related to the markets
5 administered by the ISO/RTO; and, fourth, to identify
6 instances in which a market participant's behavior may
7 require investigation.

8 And then there's an appendix laid to this thing,
9 that has a specific protocol that we want the MMUs to use in
10 referring matters to the Commission, so that that's clear.

11 This doesn't address all of the other issues. I
12 know that the MMUs may have expected this to do more. Quite
13 frankly, I'm glad it doesn't, because I think that
14 relationship is, again, evolving, and as I asked Bill
15 Hederman yesterday, he says I don't know what we would say
16 on some of these specific issues yet.

17 So that ought to play out in the laboratory of
18 the RTO world over the coming years as we learn what to do.
19 But I think this does represent what four of us that, quite
20 frankly, look at these things a little bit differently,
21 think are important and ought to be commemorated here.

22 I hope they can be used to build upon what is an
23 identified, but undefined requirement of Order 2000. It
24 was, as those who wrote that Order, put that at the end, and
25 wisely so put there, but it didn't have a lot of product

1 development, as I think congestion management and loop flows
2 and all those other issues that are an important part of
3 Order 2000, were, but this market monitoring and market
4 mitigation, as well, did not have a lot of definition.

5 And so it's time to start putting some definition
6 on that part of Order 2000, and I think this policy
7 statement does that. So, thank you for your leadership.
8 Derrick, thank you for providing some leadership here at the
9 end, as well, and we're ready to vote.

10 COMMISSIONER BROWNELL: Could I just add
11 something to what you said? And that is, I certainly agree
12 with all my colleagues. As you articulated the four major
13 responsibilities, I just want everyone to focus on what I
14 think is a larger view of the world than market monitors are
15 typically seen in, both our own and others.

16 There's been huge emphasis on their role in
17 mitigation and in enforcement, and in chasing down market
18 anomalies, and less so in what I think is an important
19 constructive role, which is to look at the market rules
20 before, during, and after they are implemented, and begin to
21 see where those are working and where those are not, and
22 have -- we've had some recent instances -- pretty quickly
23 kind of figure out where the holes are and what you need to
24 do.

25 I think that's important. I think look forward

1 at trends, what are we seeing in the marketplace, is
2 important, so that both the regional planning process and we
3 can begin to look at the impact of how the market is working
4 on investment and things like that. I think that's nicely
5 developed here.

6 Third, I think it's important to note that this
7 really points out, I think, what Joe has mentioned on more
8 than one occasion, and that we've all been working on, is
9 the responsibility of the market monitor to effect change,
10 ought to be articulated in the tariff.

11 The rules need to be articulated in the tariff.
12 This is not an ad hoc, as we go, gee, kind of saw it, didn't
13 like it, fixed it on the way. That does not contribute to a
14 market structure that is consistent, and certainly -- and,
15 frankly, fair.

16 So, I think this does address those issues, and,
17 as you say, while not specific in here's how you do your
18 job, I'm not sure that would be particularly helpful. I
19 think it says here are the parameters in which you work,
20 here are the expectations that we have of you, here are you
21 authorities clearly delineated, and here's how you relate to
22 us, who have a different set of authorities.

23 So, I'm quite pleased with it, and you're right,
24 it's a work in progress, but, I think, a good first step.

25 CHAIRMAN WOOD: It's good to do that.

1 COMMISSIONER KELLY: I think it was helpful,
2 Nora, to focus on that end, and it's significant that we
3 made that our first bullet, because the MMU's first job is
4 to walk the sidelines and watch the game, watch how the
5 players are playing.

6 They may be following the rules, but are the
7 rules working?

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1 We want to hear from them and they have been very
2 good in telling us that, and we need to continue that
3 relationship.

4 COMMISSIONER KELLIHER: Aye.

5 COMMISSIONER KELLY: Aye.

6 COMMISSIONER BROWNELL: Aye.

7 CHAIRMAN WOOD: Aye.

8 Thanks.

9 SECRETARY SALAS: Next for discussion is J-1,
10 Policy for Selective Discounting by Natural Gas Pipelines.
11 And it's a presentation by Ingrid Olson, Richard Howe, and
12 Wayne Guest.

13 MS. OLSON: Good morning, Mr. Chairman and
14 Commissioners.

15 G-1 addresses comments filed by the parties in
16 response to the Commission's notice of inquiry issued
17 November 22nd, 2004 in this proceeding. In the NOI, the
18 Commission asked parties to submit comments and respond to
19 specific inquiries regarding whether the Commission's
20 practice of permitting pipelines to adjust their ratemaking
21 throughput downward in rate cases to reflect discounts given
22 by pipelines for competitive reasons is appropriate when the
23 discount is given to meet competition from another natural
24 gas pipeline or gas on gas competition. The Commission also
25 sought comments on the impact of its policy on captive

1 customers and then what changes to the policy should be
2 considered to minimize impact on captive customers.

3 After reviewing the comments, the draft order
4 concludes that the Commission's current policy for selective
5 discounting for natural gas pipelines is an integral and
6 essential part of its policies further the goal of
7 developing a competitive natural gas transportation market.
8 The draft order also finds that in today's dynamic natural
9 gas market, any effort to discourage pipelines from offering
10 discounts to meet gas on gas competition would do more harm
11 than good.

12 The draft order further finds that the current
13 discount policy contains safeguards that protect captive
14 customers and that if there are circumstances on a
15 particular pipeline that warrant additional protection for
16 captive customers, those issues can be addressed in
17 individual rate cases.

18 The draft order also states that the Commission
19 takes seriously concerns raised in the comments over
20 noncompliance with the Commission's posting and reporting
21 requirements for discount transactions and will refer
22 allegations of noncompliance to OMOI for investigation, as
23 well as conduct audits as part of its on-going market
24 monitoring function.

25 The draft order concludes that the Commission's

1 current selective discounting policy should be retained and
2 the draft order terminates the rulemaking proceeding.

3 CHAIRMAN WOOD: Ingrid, thanks.

4 Any thoughts for the item here we've got on G-1?

5 COMMISSIONER BROWNELL: I'd be happy to make a
6 few comments because I am going to write a partial dissent
7 in this case. But I do want to reiterate that I agree with
8 the bulk of the order, that we should in fact keep our
9 policy on selective discounting. It's an integral and
10 essential part of the Commission's policies furthering the
11 goal of developing a competitive national natural gas
12 market, including a competitive gas transportation market.
13 And it's clear that there is pipeline on pipeline
14 competition in many parts of the country. That's one of the
15 reasons that we allow discounting.

16 I'm going to dissent partially because I would
17 have adopted the National Association of State Utility
18 Consumer Advocates' recommendation that we amend our current
19 regulations to require that pipelines post the reason for
20 providing each selective discount. I am convinced that it
21 could be done very efficiently and with little cost.
22 Pipelines already post information relating to discounts.
23 What they don't do is provide a reason for why the discount
24 was given.

25 I would have supported amending our regulations

1 to include that requirement by having, for example, a check-
2 off provision. I believe that that information would
3 provide greater transparency in the market, help the
4 Commission ensure that its policy behind selective
5 discounting is being followed, and ensure that selective
6 discounting is not unduly discriminatory.

7 CHAIRMAN WOOD: I will actually be concurring on
8 the same points you dissented on. I think the main
9 difference is I don't feel quite as strongly about it,
10 because I do think our regulations do require a posting of
11 the discount, that it be done and that it is auditable. And
12 so we agreed to kind of make this an auditable item here.
13 And that may be enough. I do think the check box would have
14 made it easier for our auditors to do this job much more
15 efficiently. But I think this may be something the
16 Commission would look at after we have some experience with
17 looking at these.

18 The broader issue -- and it's one that was
19 predicated by a commitment that the Commission made in Order
20 637 that it would look at -- which is actually didn't do and
21 we kind of dropped the ball and then we're faced with a
22 mandamus from a party that wanted us to look at this. So
23 we've started this docket about, I don't know, it says here
24 November, that seems about right. We were talking about it
25 in the late summer, but we got it done in November.

1 And I've just got a personal history with this
2 one. My first appearance as an attorney for a client before
3 this agency in 1990, the discount adjustment -- which was at
4 the time kind of a new item, it had been around about five
5 years; this was the first time in a rate case that these
6 were starting to be done. The Commission -- and I
7 understand now exactly why -- the Commission did not have
8 any established policy for how it was going to deal with the
9 discount adjustment. And the Commission has not done so
10 sense.

11 And I think that actually, even though it was
12 frustrating as a practitioner here to have no case law, it
13 is such a different reason -- there's so many different
14 reasons why discounts are given that it is really hard to
15 make a standardized policy on how it will be done other than
16 to say we'll look at it in a rate case. And the rate cases
17 always tend to settle -- in fact, I don't think they're
18 referred to here in the document -- tend to kind of settle
19 on an issue and the Commission does not have to spill a lot
20 of ink on any particular policy as to how the denominator
21 will be adjusted to reflect the fact that some of the
22 volumes were not flown through at a full rate but at a
23 partial rate. So we're trying to hit the balance there.

24 I do remain concerned as a general matter -- it's
25 not one that I would fix here, because you cannot fix this

1 generically, there are some things that cannot be
2 standardized -- yes, you heard me say it.

3 COMMISSIONER BROWNELL: Is that an echo from the
4 hall?

5 (Laughter.)

6 CHAIRMAN WOOD: But this one I have always
7 worried, in pipe on pipe competition, that the discount
8 that's given by one pipe to win the customer is going to be
9 paid for by the captive customers on the pipe that loses.
10 And so there's a winning customer who's happy in this
11 occasion but the pipeline who was not nimble enough to
12 procure the business is going to be able in the next rate
13 case to at least get some if not all that lost business made
14 up for by its captive customer. It doesn't have competitive
15 alternatives. That's a theoretical concern. We haven't
16 seen pipelines go into a death spiral over this issue. So I
17 think 15 years is a pretty good laboratory or time to
18 examine this thing. So I think this is the right outcome
19 for not only legal reasons, but good policy. I think this
20 is something that is not amenable to standardization as to
21 how the treatment would be done.

22 I think the policy has reaped some phenomenal
23 benefits for our country and I think it is appropriate and
24 timely to look at these important policy changes and affirm
25 them. If they're the right thing to do, then say so. And

1 that's what this order does. So I like it and I think it's
2 right to do and I will, for the reasons I mentioned, concur
3 on this point that Suedeen raised.

4 We'll vote.

5 COMMISSIONER KELLIHER: Aye.

6 COMMISSIONER KELLY: I dissent.

7 COMMISSIONER BROWNELL: Aye.

8 CHAIRMAN WOOD: Concur in part.

9 SECRETARY SALAS: Commissioner Kelly, was that
10 dissent in part --

11 COMMISSIONER KELLY: Yes.

12 SECRETARY SALAS: In part. Okay. Thank you.

13 The next item for discussion is H-7. This is
14 Portland General Electric Company and Confederated Tribes of
15 the Warm Springs Reservation of Oregon. It's a presentation
16 by Nicholas Jayjack, John Katz, and Ann Mile.

17 MR. JAYJACK: Good afternoon, Mr. Chairman and
18 Commissioners. I'm Nick Jayjack from the Office of Energy
19 Projects. With me here today are Ann Miles, also from
20 Energy Projects, and John Katz, from the Office of the
21 General Counsel.

22 Before you today is an order approving settlement
23 and issuing new license to co-applicants Portland General
24 Electric Company and the Confederated Tribes and Bands of
25 the Warm Springs Reservation of Oregon for the 367 megawatt

1 Pelton-Round Butte hydroelectric project which is located on
2 the Deschutes River near Madras, Oregon. The project is
3 situated in part on land under the supervision of three
4 separate federal agencies: the U.S. Forest Service, Bureau
5 of Land Management, and Bureau of Indian Affairs.

6 The new license includes most of the
7 environmental measures of a settlement agreement signed by
8 Portland General Electric, the Tribes, and the following 20
9 parties to the relicensing proceeding: U.S. Forest Service,
10 Bureau of Land Management, Bureau of Indian Affairs, U.S.
11 Fish and Wildlife Service, NOAA Fisheries, Oregon Department
12 of Environmental Quality, Oregon Department of Fish and
13 Wildlife, Oregon Water Resources Department, Oregon Parks
14 and Recreation Department, Deschutes County, Jefferson
15 County, City of Bend, City of Madras, City of Redmond, Evian
16 Water Company, American Rivers, the Native Fish Society,
17 Oregon Trout, Trout Unlimited, and Water Watch of Oregon.

18 The license conditions will provide many aquatic,
19 terrestrial, recreational and aesthetic enhancements for the
20 project area including, for the first time since the late
21 1960s, safe and efficient upstream and downstream anadromus
22 and resident fish passage past the project.

23 Other Commission staff who contributed to
24 processing the license application and preparing the
25 environmental impact statements include: Pat Wyslowsky,

1 Patty Leopard, Chuck Hall, Diane Rodman, Van Button, Nan
2 Allen, and Janet Oaklee.

3 That concludes our presentation. Thank you.

4 CHAIRMAN WOOD: Thank you.

5 Nora?

6 COMMISSIONER BROWNELL: I have a couple of
7 questions, and they're in light of my continued confusion
8 over what it is we reject and what it is we don't reject.
9 And I feel a little bit hypocritical personally in
10 encouraging people to come to settlements -- and this is a
11 whole bunch of people who settled with rather diverse
12 interests -- and then we reject certain provisions, and I
13 don't know why. So let me just be specific about two of
14 them and then get to a more general comment.

15 There are items recommended in the EIS, one of
16 which was the funding of the Jefferson County law
17 enforcement patrols of the project. The EIS seems to have
18 recommended this as a reasonable way of addressing
19 documented problems with recreational visitors to the
20 project. We seemed to have approved similar arrangements as
21 early as 1992 and as recently, in a PacificCorp settlement,
22 in the 90s.

23 Why did we reject this one? John?

24 MR. KATZ: As a general matter, we have usually
25 only accepted those types of conditions when they've been

1 subject to mandatory conditions. But, as you noted, there
2 are two cases in which --

3 COMMISSIONER BROWNELL: At least.

4 MR. KATZ: -- one of which was delegated --

5 COMMISSIONER BROWNELL: At least.

6 MR. KATZ: That we found.

7 COMMISSIONER BROWNELL: Okay.

8 MR. KATZ: One delegated case and one Commission
9 case where the Commission did accept that. Consistency,
10 unfortunately, with these huge settlements is not always
11 perfects. I think that the general policy that Staff was
12 trying to suggest here was that there are certain things
13 that are the Commission's job -- that the Commission
14 requires the licensee to do and there's certain things that
15 are the responsibility of other entities, and where those
16 things -- other responsibilities of other entities, the
17 Commission generally in the past has not required the
18 licensee to sponsor those.

19 So for example where local law enforcement is
20 needed, the Commission has, at least in the past, said look
21 that's kind of a trade-off because people come in and use
22 projects, they spend money in the project area, they may
23 stay at hotels, they may rent fishing equipment and so
24 forth, and so the cost that the local folks incur for law
25 enforcement are kind of a trade-off for that. And thus the

1 Commission has said -- and again the policy that's suggested
2 here -- is that there's nothing preventing the licensee from
3 reaching agreements with local law enforcement as to how
4 things might be funded, but that that's not strictly a
5 license function and so the Commission will not require, as
6 a matter of the license, the licensee to do that. As I
7 said, that doesn't mean that there can't be side agreements
8 reached on that point; and indeed, that's what we would
9 expect to occur in this case.

10 COMMISSIONER BROWNELL: In this case, though, and
11 in other cases, it seems -- or at least the parties in the
12 EIS seem to have made a direct connection to the project
13 itself. But we'll go on. And I gather -- and we'll discuss
14 the point of consistency, which is, I too share the concern
15 that the relicensing concern has become a big pinata for the
16 parties. I appreciate the efforts of a number of leaders in
17 the Senate to address that issue. We certainly have tried.

18 But the reality is I just -- once again, I can't
19 get to what we reject and what we don't reject because we're
20 not consistent. But let me talk about another one
21 recommended in the EIS, which is the funding of enhancements
22 at Forest Service managed sites outside the project
23 boundary. Which I think the EIS concluded, indeed, that
24 there was a boundary but that they were intermingled and it
25 was hard to distinguish between the two. The EIS

1 recommended that. We seem to have maybe also approved these
2 in settlements before.

3 MR. KATZ: Again, I'm not certain whether we've
4 approved -- other than mandatory conditions on this one, we
5 haven't thoroughly researched that. But the point I think -
6 - well a couple of points. Number one is that there is a
7 distinction between what's discussed in the EIS and what may
8 be recommended in the order in that the job of the EIS, as
9 Staff has sort of parsed it out, is not to make legal and
10 policy calls so much as to say what is or isn't good for the
11 environment. So there well may be things that would benefit
12 the environment indeed but may be beyond the Commission's
13 jurisdiction or contrary to some other law and so forth, and
14 that might not necessary get addressed in the EIS. The EIS
15 might restrict itself to saying yes indeed if this thing
16 happens that might be good for the environment and then,
17 when Staff sits down and pulls together the order and deals
18 with the Commissioners and their offices some cuts are made
19 as to whether -- even though something is good for the
20 environment, it might not necessarily be something the
21 Commission requires under the license.

22 Now the issue of recreational facilities, as you
23 mentioned, is a difficult one. And technical staff,
24 particularly, along with legal staff, tries to make the best
25 cuts we can on that. I think the general principle there is

1 that what the Commission has required in Section 2.7 of the
2 regulations, which is the policy statement on recreation and
3 subsequent cases, is that the public must be given full and
4 reasonable access to project lands and waters.

5 So what Commission Staff does when it looks at
6 things like this is to say okay what does the project need.
7 Now there may be some great things out there -- for example,
8 you may own a campground that's near the project that is
9 really nice, but if it's not necessary, in other words, if
10 there are other campgrounds there that provide recreation,
11 we won't necessarily require our licensee to exercise
12 eminent domain, take that private campground away from you,
13 and pull it with the project boundary.

14 Here we had an instance where there were certain
15 facilities that the parties did not want to be within the
16 project boundary, they suggested that they not be part of
17 the project, and yet at the same time they wanted the
18 licensee to both provide one term funds to enhance those and
19 to provide on-going O&M. And the thought behind keeping
20 that outside of the license was that if our licensee is
21 required to exercise continuing supervision over such a
22 thing such that we in turn are required to make sure the
23 licensee does that, then that should be something within the
24 project boundary. And indeed, if the parties had wanted
25 those things to be within the project boundary, the cut

1 might have been different.

2 But where folks are saying look we want the
3 licensee to pay the money on an on-going basis but we don't
4 want it subject to either the Commission's jurisdiction or
5 the licensee's jurisdiction, the sense was that it might be
6 a good thing to leave those things outside the license given
7 that the order finds that there are sufficient recreational
8 facilities in the absence of the facilities that you're
9 talking about.

10 COMMISSIONER BROWNELL: The licensee signed the
11 settlement, right?

12 MR. KATZ: Correct.

13 COMMISSIONER BROWNELL: So we're not telling them
14 to do something they didn't agree to do, would that be
15 correct?

16 MR. KATZ: I think we may in some instances; not
17 with regard to these particular measures.

18 COMMISSIONER BROWNELL: Did they file some
19 comment that said we were forced into doing this?

20 MR. KATZ: Oh no, certainly not.

21 COMMISSIONER BROWNELL: Okay. Thanks.

22 MR. KATZ: We were not party to this settlement
23 discussion --

24 COMMISSIONER BROWNELL: Another issue is kind of
25 what I thought was standard language and certainly seems to

1 be standard language in pipeline certifications that we
2 don't seem to be implementing here, and that is compliance
3 with local law. The licensee has agreed to comply with
4 Tribal natural resource management plan before conducting
5 ground-disturbing activities on the Warm Springs
6 Reservation. They have a certain authority on their own
7 reservation which I think we still recognize, is that
8 correct, that we recognize the authority, the sovereign --

9 MR. KATZ: Certainly I think we recognize all
10 local law enforcement.

11 COMMISSIONER BROWNELL: But we reject that, is
12 that -- is it because it's on tribal lands or -- why do we
13 reject that?

14 MR. KATZ: I defer to Nick if I don't get this
15 right, but I believe the reason that we didn't require the
16 licensee to comply with this tribal plan was that no one
17 knew what was in it. I mean, we didn't know what the
18 specific requirements were. And I think Staff requested
19 that that plan be filed with the Commission so then you
20 folks could make the policy cut of whether the things
21 required by that plan were indeed consistent with the public
22 interest and it wasn't filed here.

23 I don't think anything precludes in the future,
24 if the parties want to file that plan so that everybody
25 could take a look at it and see indeed whether what it

1 requires was appropriate, that they could then do that and
2 the Commission could consider amending the license to
3 require that. I think it was just a lack of knowledge.

4 COMMISSIONER BROWNELL: So historically we've
5 always required and read what these resource plans --
6 because this is not the first settlement in which this kind
7 of a reference has been made. So we have all these on file
8 and we've read all of them and understand that they are not
9 inconsistent with other laws or without our authority?

10 MR. KATZ: I think so as a general matter because
11 indeed we don't require licensees to necessarily defer to
12 whatever a state or local agency might require --

13 COMMISSIONER BROWNELL: No, I know, there has to
14 be consistency.

15 MR. KATZ: -- only to the extent it's consistent
16 with the license.

17 COMMISSIONER BROWNELL: We understand. That's
18 what the boilerplate language says.

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1 I don't think, in fact, if we went back on these
2 issues, we have been consistent. I don't think, in our
3 research, we found that all of these kinds of plans are on
4 file and have been reviewed.

5 As early as January of 2002, we talked -- Mr.
6 Katz, you were part of that conversation; Mark, you were, or
7 one your predecessors was -- about what are the guidelines
8 for what we will include and what we will not.

9 We had another conversation a year later, and
10 what we indicated was, that which was completely illegal, at
11 least my reading of the transcript -- and we'll share it
12 with you -- was what we didn't include. But other kinds of
13 things, we included, but then we kind of had a conversation
14 about, well, maybe we don't, maybe we're selective.

15 I find we're very selective and very unclear.
16 During the hydro relicensing rulemaking, we heard from a lot
17 of people. They really wanted some guidance from us, and I
18 thought we were going to get it in 2002 and 2003, and I
19 really will share with you, having been through this debate
20 before, that I think it's time.

21 We may not be able to put the definitive document
22 together, but we've been at this a long time, and I think it
23 is just irresponsible to let parties go through a lot of
24 settlement conversations, work very hard, and then to say,
25 well, you know, we're kind of not sure about these, but,

1 well, actually, over here, we like them and we don't like
2 them here.

3 We cannot have that kind of inconsistency, so I
4 would please ask that we ask the team to put together
5 something and look at it. We don't mind rejecting them,
6 absolutely reject the pinata effect, and maybe actually some
7 clear guidelines would help with that.

8 CHAIRMAN WOOD: I've heard your comments relayed
9 from pre-agenda last week, Nora, and actually I've asked the
10 Staff to make sure that before June 30, that we have gone
11 back. There are a lot of Orders that we don't see. This
12 would have been one.

13 But I wanted to call attention to the fact that
14 it's a nice broad settlement and all of that, but that's
15 kind of beside -- that we will have looked at all the
16 license conditions in settlements that we have rejected, and
17 just enumerate, take the first and say these are for your
18 consolidated purpose, the ones that we've said no to, so
19 that you know that we aren't going to go down this path, so
20 that don't try to negotiate those in there.

21 I think that would show what, to me, is the
22 reason when I passed consideration on voting on this today,
23 a concern that we're being inconsistent with even -- so I'd
24 like to, with y'all's forbearance, strike today's item for
25 further review by me on some of the concerns you raised

1 here.

2 I do worry that if -- I think that would solve
3 the problem. You acknowledged the pinata issue is --

4 COMMISSIONER BROWNELL: Huge issue.

5 CHAIRMAN WOOD: It is a huge issue.

6 COMMISSIONER BROWNELL: And I think we're part of
7 the problem.

8 CHAIRMAN WOOD: I don't know. I think we're
9 putting a retarding effect on it. I don't mind that we
10 retard that need to kind of grow and grow and get more out
11 of it, but it ought to be consistent, and so you raised the
12 concern that I don't know that I got a good answer to, that
13 I'd like to follow up.

14 I think we should be consistent and predictable,
15 and, you know, make those settlements come a whole lot
16 easier.

17 MR. KATZ: Mr. Chairman, if I might, I think
18 that's a good idea, and Staff is more than willing to
19 provide guidance in whatever form the Commission thinks it
20 would best be useful to the folks out there.

21 I just -- one thing that I think is worth of
22 note, is that where parties have asked that Commission Staff
23 participate in settlement discussions or review settlements
24 before they get filed, and give them an idea of what in
25 those settlements, might be problematical from the

1 Commission's viewpoint, we have never turned down such a
2 request, and I think that I don't know whether we're ever
3 had a request for a rehearing in an instance where the
4 parties requested that guidance and Staff gave it, that the
5 parties then felt as though they did not get appropriate
6 information.

7 And in this instance, for whatever reason, the
8 folks did not ask for Commission Staff to participate or
9 give them guidance, so sometimes you don't get the guidance
10 until later in the game than might otherwise be preferable.

11 COMMISSIONER BROWNELL: And, John, that was part
12 of the discussion in 2002 or 2003. I fully support that,
13 agree with it, but if I don't know what the guidance is and
14 I can't articulate it, I'm not sure how effective I can be.

15 I do think that articulating it in a clearly
16 understood, written set of guidelines, would actually, as
17 Pat indicated, help with that pinata effect, but it would
18 certainly help people who I assume are acting in good faith,
19 who reach an agreement, only to find that we can't support
20 it.

21 I'd rather have them take those things off the
22 table right away, or if they choose to negotiate it in a
23 side agreement, fine and dandy; that's their decision. I'd
24 like to have it filed as an addendum, which I indicated
25 before, which we don't necessarily approve, but we do see,

1 so that we can see what's happening in the industry.

2 But I think it's time.

3 MR. KATZ: Absolutely. Whatever will help us do
4 the job properly, is something we should do.

5 MR. ROBINSON: Just one other comment: There's
6 always been that tension between trying to encourage
7 settlements and the product that we get. We do put Staff
8 into those settlements where we can, even when we're not
9 asked. We offer, to make sure that we have that
10 opportunity.

11 In the guidance that we do give licensees in
12 relicensing, and this is always the same, it has always been
13 the same, and it's informed by the Commission's actions.

14 We ask them to make sure that they do the hard
15 work, that they identify the impacts of the project and the
16 mitigation necessary for those impacts, and not just cut a
17 deal where there's no record.

18 Basically, we want to make sure the Commissions
19 in a posture where when they get a settlement, it is
20 supported by the record that you require to take whatever
21 action that you're going to take, consistent with that
22 development and give it equal consideration of development
23 or nondevelopmental values.

24 That, sometimes, is the hardest thing for us to
25 do in settlements, because there's a tendency at times for

1 those people involved, just to say, well, we'll do this if
2 you do that. And they go off and they come out to a place
3 where when we look at it, we say, well, where's the record
4 to support that? And it's not there.

5 That's something that, as we go forward, trying
6 to develop a statement that we can provide people, we're
7 doing it now, but maybe it's time that the Commission says
8 it bluntly in some type of a document, so that it gets their
9 attention.

10 But that's where we generate these problems.

11 COMMISSIONER BROWNELL: Mark, once again, I'm not
12 disagreeing with the Staff involvement, your effort to
13 provide guidance, the need to have a record. I'm not
14 disagreeing with that at all.

15 In fact, I'm supporting that. I think perhaps we
16 would either get a better record if we wrote it down and
17 said this, because whatever message we're sending,
18 apparently it's not getting through.

19 We, ourselves, have been inconsistent in
20 delegated Orders, versus Orders that we have signed off on.
21 We're inconsistent with precedent, and people continue to
22 include things in settlements, that we cannot accept, so
23 that suggests to me that we have not been clear enough, or
24 people choose to ignore us, in which case, fine, you know,
25 we'll reject it out of hand.

1 I'm not saying that we necessarily include
2 everything that everybody wants, if it's not appropriate.
3 I'm simply saying that we have never defined clearly for me
4 -- perhaps I'm alone -- what's appropriate and what's not,
5 and, again, it has to have a record to support it.

6 So, we're in agreement; we just need to take this
7 to the next step.

8 CHAIRMAN WOOD: Joe?

9 COMMISSIONER KELLIHER: Let me just be clear that
10 on H-7, we're not voting on H-7?

11 CHAIRMAN WOOD: That's right.

12 COMMISSIONER KELLIHER: Okay. I have no comment
13 on H-7.

14 Let me make a general comment, though, about the
15 issue. I mean, this is an issue -- there is an Order -- I
16 can't remember the title of it, but there was a hydro
17 licensing Order that I voted on fairly early in my brief
18 career here, and we struck a provision from the settlement.

19 Now, that provision would have required us to
20 enforce some commitment that the Interior Department made,
21 against the Interior Department. Now, we struck it, I
22 think, for very good reasons, because we can't enforce a
23 settlement provision against a sister agency.

24 So, at first I thought, this is odd that we're
25 striking a settlement provision. But I thought Staff's

1 argument was very persuasive, but it's just not something
2 that we can legally enforce.

3 And I have had a number of discussions with the
4 Hydropower Reform Coalition and American Rivers, where they
5 have asked us to provide more clear guidance on the
6 boundaries of settlements. And I think that's something we
7 should be able to do, not what should be in a settlement,
8 but what can't be in a settlement.

9 COMMISSIONER BROWNELL: Exactly.

10 COMMISSIONER KELLIHER: And maybe it's just
11 compiling, as the Commission makes decisions and there's
12 delegated Orders issued, almost compiling them, much like, I
13 mean, other Orders like the merger policy statement where we
14 have a non-exclusive list of things that people could
15 include in a merger application.

16 We could have a non-exclusive list of things that
17 can be in a settlement, and we could add to it as time goes
18 by and as the Commission issues Orders. I don't know what
19 the right mechanism is, issuing advisory opinions or
20 delegated letters.

21 CHAIRMAN WOOD: Again, this is a commitment I
22 made, and quite frankly, I would like to make sure I fulfill
23 it before I get out of here, to give some clarity for these
24 folks that are trying --

25 COMMISSIONER KELLIHER: And it helps all the

1 parties, licensee and other stakeholders, and the only
2 people it might hurt, are the really clever people who would
3 know what we might reject down the road and make the things
4 that they know we ultimately can't enforce and won't
5 include.

6 I'm trying to think of who might be hurt by more
7 clarity in this area, and it's hard to come up with some
8 class of people you could sympathize with.

9 But I think the question is really, we seem to
10 all agree that we should provide more clear guidance on the
11 boundaries of settlements in the hydro area, and what really
12 can't be included in a Commission license, and it seems to
13 be more of a mechanical discussion of what's the best way to
14 provide that guidance.

15 CHAIRMAN WOOD: We will do that and we will do
16 that soon.

17 COMMISSIONER KELLY: I agree, and I think it's
18 important, the points that you made about focusing on what
19 we have rejected at settlements in the past.

20 We don't want to become so prescriptive that we
21 tie our own hands. We do have an independent responsibility
22 to review those settlements and not be a rubber stamp, and
23 to ensure that every provision complies with the public
24 interest standard of the statute.

25 So, we want to make sure that we retain that

1 responsibility, while at the same time, providing as much
2 guidance as we can.

3 CHAIRMAN WOOD: We will do that, and I will put
4 this item back on our agenda for one of the next meetings,
5 and with my thoughts on the points you raised, Nora.

6 COMMISSIONER BROWNELL: Great, thank you.

7 CHAIRMAN WOOD: Great.

8 COMMISSIONER BROWNELL: By the way, the lawyers
9 probably lose on this one. Sorry.

10 (Laughter.)

11 (Discussion off the record.)

12 CHAIRMAN WOOD: Thank you guys.

13 SECRETARY SALAS: And finally for discussion is
14 C-7. This is Regulations Governing the Conduct of Open
15 Seasons for Alaska Natural Gas Transmission projects. John
16 Katz is giving the presentation, and he's accompanied by
17 Richard Foley.

18 MR. KATZ: And John Carlson of OMTR.

19 SECRETARY SALAS: And John Carlson.

20 MR. KATZ: Let me shift gears abruptly here to
21 move to the Alaska Natural Gas Pipeline. I want to note
22 that in addition to John and Rich, primary workers on the
23 Order you have before you, include Rob Cupina of OEP and
24 Whit Holden, who is the primary drafter of this, as well as
25 the original rule, who is enjoying a well-earned day off,

1 which he has not had during this process.

2 On February 29th, the Commission issued Order
3 2005, which were rules for the conduct of open seasons under
4 the Alaska Natural Gas Pipeline Act, which Congress had
5 passed the prior Fall.

6 Before you, you have an Order on Rehearing of
7 those rules. The Order before you does not substantively
8 change the cuts in the first Order, but, rather, refine some
9 of them and clarify certain points, which I will briefly
10 outline for you.

11 The Order clarifies that should the Commission
12 find it necessary and in the public interest to do so, it
13 may require design changes to pipeline expansion proposals.

14 The original Order, Order 2005, provided a
15 process whereby after an open season was closed, late
16 bidders could, under certain circumstances, make bids to try
17 to ensure that folks who are perhaps not yet ready to bid in
18 an open season, did not get cut off from the ability to
19 utilize the pipeline.

20 This Order clarifies that such late bidders must
21 make a good-faith showing for why they couldn't have bid in
22 the open season as part of their late bid package.

23 With regard to the pre-review of open season
24 proposals, which the prior Order required, this Order
25 determines that there was a 30-day notice period that a

1 project proponent was required to give before the open
2 season commenced, and we realized on thinking about it
3 again, that since we had the pre-approval, that, in effect,
4 acted as notice of the open season proposal, so we could cut
5 the 30 days that we were requiring for the open season
6 proposal, and have it start running as of when they
7 requested pre-approval, so that cuts the process down from
8 210 days to 180 days.

9 The Order deals with the subject raised on
10 rehearing, which is the treatment of gas processing plants,
11 which may or may not be part of proposals by project
12 proponents. The Order doesn't deal with it in detail,
13 because we don't know what will happen until we get a
14 proposal on our doorsteps, but states that rates for any
15 processing plant services, must be separately stated, that
16 they can be included in an open season, but that users of a
17 pipeline can't be required to use a gas processing plant,
18 should they, for some reason, have pipeline-quality gas that
19 does not require processing or perhaps is processed
20 elsewhere.

21 The prior Order discussed open season bids being
22 subject to allocation and indicated that only those bids
23 that were pre-allocated, would be subject -- or only that
24 capacity that was subject to pre-allocation, would be
25 subject to a pro rata allocation later, if there was over-

1 subscription, and that capacity bid for during the open
2 season would not.

3 This Order clarifies that in the case where there
4 are no pre-subscription agreements at all, that if there
5 then is excess capacity bid for it during the season, that
6 then pro rata allocation would, indeed, apply.

7 The Order clarifies the requirement in the prior
8 Order with respect to the need for a separate entity to
9 conduct the open season, to the extent of indicating that
10 the heart of that is that there be independence from the
11 marketing and energy divisions of a proponent, but there
12 need not necessarily be a completely separated entity, so
13 long as the independence that we've talked about in our
14 other rules, is required.

15 We affirm our prior -- the Order confirms the
16 Commission's prior decision that there will be a presumption
17 of rolled-in pricing for an expansion, and basically
18 indicates that the Commission will look at the issue of
19 whether that results in subsidies, on a case-by-case basis.

20 To sum up, the Commission has done the job
21 Congress asked us to do here. The Commission has completed
22 the open season rulemaking and the moving forward to an
23 Alaska natural gas pipeline, is now up to the market. If
24 you have any questions, I would be happy to answer them.

25 CHAIRMAN WOOD: To a certain well-equipped

1 Governor, we hope to bring something to the Legislature up
2 there.

3 No, I'm thrilled to see this. Thank you again
4 for the quick turnaround or all of y'all. I think it's good
5 for everybody up there to know that our chapters are closed
6 on these issues, and, you know, how it's going to play out
7 for the future.

8 COMMISSIONER KELLY: I think it was very helpful
9 to have gone to Anchorage in December and to hold a hearing,
10 to get to see the countryside of Alaska where the pipeline
11 is going, get to hear from all of the participants, the
12 likely participants in the project, as well as the Governor
13 and the Legislature.

14 They are very concerned about this pipeline and
15 anxious to have one put in place to develop the gas
16 interests in Alaska. I hope that that happens.

17 Mr. Chairman, as one of your final acts, I'd like
18 to ask a favor and ask you to designate me as the FERC
19 representative that has to go up there and ensure that the
20 open season is conducted in accordance with our regulations,
21 as long as it's conducted in the summertime.

22 (Laughter.)

23 CHAIRMAN WOOD: So ordered, all right? You'll
24 probably have some company, though, in June. I know how
25 much you'd have in December, though.

1 COMMISSIONER BROWNELL: Not a lot.

2 CHAIRMAN WOOD: We've been there, done that. All
3 right, good, thank you. Let's vote.

4 COMMISSIONER KELLIHER: Aye.

5 COMMISSIONER KELLY: Aye.

6 COMMISSIONER BROWNELL: Aye.

7 CHAIRMAN WOOD: Aye.

8 And just a mention -- and I usually do this after
9 the consent agenda. There were a few struck items and I
10 would like to say that it's my hope that before the next
11 meeting, we move E-6, which is the transmission pricing
12 policy statement; E-21, E-32, E-55, and H-2, perhaps, among
13 others.

14 Thank you all for keeping the trains running on
15 time. Meeting adjourned.

16 (Whereupon, at 12:45 p.m., the open session was
17 concluded.)

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