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FEDERAL ENERGY REGULATORY COMMISSION

STANDARDS OF CONDUCT CONFERENCE AND WORKSHOP

Scottsdale Plaza Resort
7200 N. Scottsdale Road
Scottsdale, Arizona
Friday, April 7, 2006
9:00 a.m.

REPORTED BY:

DONALD R. THACKER

1 APPEARANCES :

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JOSEPH T. KELLIHER, CHAIRMAN

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NORA MEAD BROWNELL, COMMISSIONER

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SUEDEEN G. KELLY, COMMISSIONER

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SUSAN J. COURT, DIRECTOR

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Office of Market Oversight & Investigations

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JEFF HATCH-MILLER, CHAIRMAN

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Arizona Corporation Commission

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DEMETRA ANAS

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LEE ANN WATSON

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P R O C E E D I N G S

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3 CHAIRMAN KELLIHER: Good morning. I would like
4 to start off by recognizing Jeff Hatch-Miller from the
5 Arizona Corporation Commission to welcome everybody here.

6 MR. HATCH-MILLER: Chairman Kelliher,
7 Commissioner Kelly, thank you for coming here. This topic
8 is incredibly important to Arizona, and, as you know, a
9 full understanding, I had a chance to talk to Mr. Blackburn
10 for a few minutes and I was just amazed at the degree of
11 technical expertise that is available on this panel, and I
12 thank you very much for joining us.

13 I wonder, for those of you who are here and live
14 in Arizona, good morning, for the rest of you if you are
15 here visiting the state, welcome to Arizona. This is
16 probably the best week of the year to be in Arizona, so I
17 know you are going to enjoy the conference and I want you
18 to take advantage of all of the knowledge that is available
19 to you here, but I also hope that you will get a chance to
20 go out and enjoy our beautiful state, enjoy the flowers on
21 cactus, to enjoy the 80-degree weather in the afternoon,
22 enjoy some time in the sun. So thank you for being here,
23 thank you for being a part of this event, and again,
24 Chairman, thank you again for having this conference.

25 CHAIRMAN KELLIHER: Thanks for starting the day

1 with that warm welcome, we appreciate it.

2 MR. HATCH-MILLER: And I hope you don't get
3 caught in any demonstrations later on today.

4 CHAIRMAN KELLIHER: I also want to welcome
5 everyone here today and I want to thank the presenters for
6 sharing a Friday with us here in Arizona. I want to thank
7 OMOI for organizing this meeting, soon to be Office of
8 Enforcement but currently OMOI. And I also want to thank
9 my colleagues, they attended the Chicago conference and
10 they encouraged that we have this conference, another
11 conference on the road. And Commissioner Kelly in
12 particular urged that we have one here in the southwest, so
13 that is why we are here today in large part.

14 I just want to say, I want to look at the crowd
15 and recognize that there is a pretty large crowd here, and
16 I want to infer from that that there is significant
17 interest in complying with the standards of conduct rules,
18 otherwise you would not be here. I think that is the
19 intent and purpose of this meeting frankly, to ensure
20 compliance with the conduct rules and also facilitate
21 compliance.

22 In these conferences we have held in the past
23 they have actually proved very effective and had tangible
24 results. If you look at the no action letter, I think is a
25 pretty clear byproduct of the Chicago meeting that the

1 Commission held, that is something my colleagues both urged
2 the Commission act on and we did so a few months ago. And
3 also the frequently asked questions that are posed on the
4 web site, I think that is also something you could say is a
5 byproduct of the Chicago conference and my colleagues
6 leadership.

7 So I think these meetings have proved effective,
8 we don't just talk, there is a product that comes out of
9 them, there is some policy of improvement and the
10 Commission's regulations as a result.

11 I just want to point out another thing that has
12 been ever changed since Chicago, the Energy Act of 2005.
13 That has substantially improved the Commission's capability
14 to enforce, given us civil penalty authority really for the
15 first time and think there is a reasonable question in the
16 regulated community about how we might go about exercising
17 that civil penalty authority. For example, will a
18 violation be subject to the maximum penalty, those kinds of
19 questions lead the Commission to adopt the enforcement
20 policy statement last fall and the central thrust of the
21 enforcement statement policy is very clear, it is to assure
22 compliance with the Commission's requirements, not just the
23 standards of conduct requirements but other requirements.
24 And it is also designed to encourage strong compliance
25 programs at companies. And if those compliance programs

1 ever developed, there is -- that will be taken into account
2 when the Commission does impose civil penalties.

3 Now, there also is a, I want to be clear that
4 the Commission, with our new enforcement penalty authority,
5 we acknowledge that we have a responsibility to be very
6 clear in our requirements, that if the regulated community
7 is subject to a penalty of up to a million dollars per day
8 per violation then how to comply with the Commission's
9 requirements has to be subjected to the greatest extent
10 possible. That is one of the reasons we are here, as well
11 as frequently questions, so we are trying to help the
12 regulated community.

13 There is an ample temptation on the part of a
14 regulator to actually prefer shades of gray, to maintain
15 your discretion to some extent, to be flexible down the
16 road, but it seems shades of gray are fundamentally unfair
17 when the regulated community is looking at very significant
18 civil penalties so we are trying to eliminate the gray,
19 trying to reduce the gray and you can help us do that
20 today.

21 Now, another thing that is changed over the past
22 year is with the enactment of the Energy Policy Act that
23 the scope of our enforcement authority has been expanded.
24 We not only enforce the standards of conduct requirements
25 but we now have very significant responsibilities as far as

1 reliability standards and to enforce the manipulation
2 rules. Those are very significant responsibilities. To
3 some extent that competes with enforcement of the standards
4 of conduct requirements, Commission has limited resources
5 and we have to allocate our resources in the enforcement
6 area.

7 I want to acknowledge that Susan Court, the new
8 head of OMOI, has in recent months developed a plan to
9 reorganize the office, to expand our enforcement resources,
10 so that we don't have to make hard choices among
11 enforcement responsibilities. I just want to thank Susan
12 for developing the reorganization plan. I think it is a
13 very strong plan that clearly will strengthen our
14 enforcement capability in both standards of conduct area
15 and other areas.

16 With that I would just like to turn to my
17 colleagues and ask if they have any comments they'd like to
18 make.

19 COMMISSIONER BROWNELL: Very quickly I think it
20 is an enormously positive sign that we have a room full of
21 people to talk about standards of conduct that has
22 attracted this many folks, but it is a little bit scary,
23 too, because I think it illustrates just how different the
24 world is today than it was five years ago when I arrived at
25 the Commission. And I would like everyone to focus on that

1 because for all the challenges of the standards of conduct
2 both from your perspective and candidly from our
3 perspective to get it right, what it has done I think is
4 begin to rebuild the credibility of an industry and a
5 regulatory body that was sorely tarnished in the aftermath
6 of Enron and a number of other revelations of wrongdoing.
7 And in an era of high prices, the mode suspicion is that
8 there is manipulation in the marketplace, we get
9 congressional inquiries all the time, and I think having
10 standards of conduct in place, having strong and very clear
11 enforcement rules and structures actually helps the
12 industry and helps us respond on industry's behalf that we
13 are in fact ensuring that the behaviors that we see are not
14 influencing prices and customers in an unfortunate way.

15 So I think it is important we get it right, and
16 one other thing that the Chairman mentioned which is that
17 there are outcomes of these hearings, I think that is
18 critically important to focus on. Once you have been
19 through a congressional oversight hearing you can't be
20 insulted, so if you don't agree with what we have done or
21 if you actually don't understand what we have done, it is
22 very important that you make yourselves clear. At our
23 first conference in Houston, people said we were afraid to
24 say anything. Well, we are in this together and I think
25 that the result that we have already seen are the

1 consequences of really good serious practitioners helping
2 us fine tune and become more surgical.

3 So I would hope that you will be responsible in
4 your remarks. Now there is a lot of things people don't
5 like and I always have the rule no whining, but I think
6 that there is a difference between whining and informing
7 and I hope that you will continue to do that, because that
8 is important. Thank you.

9 COMMISSIONER KELLY: Thank you, I would just
10 like to add to those comments to say that the Commission's
11 first goal with the standards of conduct is compliance, and
12 I appreciate your attendance here and I am glad that we as
13 the Commission could come to another part of the country,
14 and I hope that we will continue to do that on an annual
15 basis as long as we need to to get the standards of conduct
16 correct. To get them right, to get them so that they work
17 for you and they work for us.

18 But our first goal is compliance, we are also
19 committed to fair and firm enforcement, but we think that
20 through these conferences we can help you comply and you
21 can help us learn whether or not we need to make any
22 changes in them. So I am looking forward to today's
23 presentation and I appreciate your being here.

24 MS. COURT: Good morning, everyone. My role at
25 this time is to review the format for today's conference.

1 I am going to be sort of the conference cop. There will be
2 four panels this morning and two this afternoon. The
3 panelists on the first three panels are members of the
4 industry and members of the bar who will share their
5 thoughts and experiences with respect to the particular
6 topic, the independent functioning planning requirements,
7 resource planning and information sharing. The fourth
8 panel will be composed of commission staff members, who
9 will respond to questions submitted by noon today in
10 writing. You may give your questions if you have any
11 questions that you have on your mind right now or questions
12 that come up during the course of this morning's panels
13 that you would like to pose to the staff at the fourth
14 panel and last panel of the day. Just write them on a
15 piece of paper and there are pads in the back of the room.
16 I think most of you probably have pads with you, just write
17 them on a piece of paper and give them to any member of the
18 staff. And the members of the staff have blue tags, name
19 tags on. Also there are two staff members who are staffing
20 the table outside, and you can give your questions to them
21 as well.

22 So would the staff members who are here, up
23 here, and there are Julia and Stuart, do you want to stand,
24 you can give your questions to them, or as I said to the
25 ladies who are staffing the table outside.

1 Now, during the first three panels, time
2 permitting, members of the audience may share their views
3 and experiences on these topics and for that purpose there
4 is a microphone, just one microphone here in the front of
5 the room. We might want to move it back a little bit if
6 that would be more convenient, and so we ask that you come
7 to this microphone, state your name, and the court reporter
8 would also appreciate if you would write your name on a
9 piece of paper and give it to him so that he has the
10 spelling correct.

11 Each of the panels will be moderated by a staff
12 member who will be primarily responsible for keeping that
13 panel on time, and then I will also serve as sort of to
14 help keep the panels moving.

15 There is a gentleman at the back of the room who
16 is taking care of the audio aspects of the conference, and
17 we have an agreement that if people can't hear, if he can't
18 hear, that is the important thing, if he can't hear then he
19 is going to wave his hand and then I will interrupt and
20 make sure that people are speaking up.

21 This conference is actually being heard through
22 the FERC audio web streaming capabilities. It is not being
23 recorded, video reported but it is being audio reported.

24 We also have a court stenographer, there will be
25 a transcript available after the conference. You know the

1 routine with the FERC, you can purchase that transcript for
2 about two weeks you can purchase it, but after that period
3 it will be posted on -- in the eLibrary so you can have
4 access to it then for nothing. But if you want it right
5 away, then you can purchase it from the company. And all
6 that information is in, how you do that is in the notice.

7 The last thing I would like to mention is to
8 turn cell phones off. And I am going to do that myself
9 right now, so if you have cell phones I think it would be
10 very much appreciated if you could turn those off so that
11 the panelists aren't interrupted with all kinds of musical
12 tunes.

13 So we are actually -- staff provided 45 minutes
14 for the introductory remarks. We apparently thought our
15 client was going to be a lot more long-winded than they
16 turned out to be. No, I am not going to do a song and
17 dance here at the meeting, thank you very much.

18 MS. BROWNELL: Extra points for people who talk
19 fast and get us out of here, it is cold and rainy in
20 Washington.

21 MS. COURT: We had provided an hour for each of
22 the panel and a break this morning between the first two
23 panels, so we will try to stay on that schedule, and that
24 way we might have a little bit more time for lunch so that
25 you can enjoy this beautiful Arizona weather.

1 So with that I would like to turn the program
2 over to LeeAnn Watson who is going to moderate the first
3 panel and they will do the introductions of that panel.

4 MS. WATSON: Thank you. This is the panel on
5 independent functioning requirements and I think as all of
6 you know independent functioning is one of the primary
7 principles on which the standards of conduct were founded,
8 and are set forth in 358.4 of the regulations.

9 In its simplest terms the independent
10 functioning requirements except in emergency circumstances
11 requires employees engage in transmission functions
12 separately and independently from the employees of its
13 energy and marketing affiliates. There are of course
14 exceptions to that general rule and those are stated in the
15 regulations. The rule in this and exceptions is not always
16 the easiest to implement, however, it may be simple in its
17 literal terms but implementation as now is not always the
18 easiest. Our panels today will address their experiences
19 and views of the requirements of independent functioning
20 and give us real world practice tips, we hope, and also are
21 going to express their concerns and views where they
22 believe clarification and/or changes may be necessary.

23 We are very lucky today to have a group of
24 panelists sitting here with me who represent a cross
25 section of the industry. We have got outside, inside

1 counsel and representatives for both the gas industry as
2 well as the power side sector. And I will introduce them
3 in the order in which they are going to speak.

4 Going to my left we have Thomas Blackburn, a
5 partner with Bruder, Gentile & Marcoux. Tom Blackburn has
6 been a partner for some time, practiced energy for over 25
7 years, representing clients before FERC, with particular
8 emphasis on the transition to operations under the
9 independent system operators, open access transmission,
10 deregulation and competition issues of electric utilities.
11 Prior to going into the private sector, he was with FERC
12 from 1979 to '87.

13 And next to come is Kathy Patton. Kathy
14 joined -- is the deputy general counsel of Allegheny
15 Energy. She joined Allegheny in November 2003, oversees
16 legal matters for Allegheny's three regulated electric
17 utilities. She serves as the company's chief compliance
18 officer. Before joining Allegheny she served as a senior
19 vice president, general counsel and secretary for Illinois
20 Power Company. And prior to that, Kathy was in private
21 practice in Washington, D.C.

22 Janice Alperin is the vice president associate
23 general counsel of El Paso Corporation. El Paso, as most
24 of you know, owns North America's largest natural pipeline
25 system which includes among others Southern Natural Gas

1 Company and El Paso Natural Gas Company.

2 Janice is El Paso's representative in
3 Washington, D.C. She spends a good part of her time
4 working on regulatory requirements and also provides legal
5 advice to the company with respect to Order Number 2004.

6 Prior to going to the private sector, she spent
7 five years litigating bankruptcy in commercial cases for
8 the Justice Department and prior to that five years
9 litigating oil price and allocation cases for the
10 Department of Energy.

11 And finally, Doug Smith, who is a member of the
12 law firm of Van Ness Feldman. Doug regularly represents
13 clients in connection with FERC rule-making and policy
14 matters including implementation of the Energy Policy Act
15 of 2005 on standards of conduct, audits, and
16 investigations, and assists clients for training and
17 compliance programs.

18 Prior to joining FERC -- I am sorry, prior to
19 joining Van Ness Feldman, Doug was general counsel for FERC
20 from '97 to 2001. And prior to that Doug was deputy
21 general counsel of energy policy at the Department of
22 Energy.

23 Currently he also serves on the board of
24 directors of EBA and teaches at American University Law
25 School.

1 So with that we will start with Tom.

2 MR. BLACKBURN: Thank you, LeeAnn, I appreciate
3 the opportunity to be here.

4 I would like to start with just a brief comment
5 on Chairman Kelliher's earlier remarks on eliminating the
6 gray. As I have talked with folks in the industry over the
7 last couple of years, one message has come to me really
8 clearly and that is the importance of doing exactly what
9 you said, eliminating the gray. It has practically become
10 a mantra as we sit around and talk about it. Clear
11 standards consistently enforced has to be the way this
12 goes. The industry needs it so they know exactly what to
13 do. And if we can get to that objective I think everybody
14 will be very well served.

15 What I would like to talk about today is the
16 conflict between the performance of executive functions and
17 the separation of functions, rules of the standards of
18 conduct. This has been the single biggest issue I have had
19 to deal with in my relationships with my clients on the
20 standards of conduct. It has affected every single one of
21 the clients and every one of them has had serious
22 discussions with me on this issue.

23 The problem is this: The standards of conduct
24 permit transmission providers to share their senior
25 officers and directors with, between the transmission

1 providers and the marketing and energy affiliates, provided
2 they are not transmission employees. The transmission
3 function, employees, on the other hand, are persons who
4 direct, organize or carry out transmission-related
5 operations.

6 Now, the definition of transmission function
7 employee includes, as I said, not only the persons who
8 direct -- who carry out the functions, but those who direct
9 it and organize it and that has been interpreted to mean
10 the immediate supervisors or superiors of the persons who
11 are actually carrying out the functions. So in fact there
12 has to be a layer of separation between the person who
13 performs a transmission function and the chair officer or
14 director.

15 Now, the Commission has held that even the
16 occasional performance of transmission functions means a
17 person, a transmission employee. For instance, back under
18 889 an order was issued that indicated that an officer who
19 signed one percent of the power sales contracts was a
20 transmission function employee. The Commission has
21 reaffirmed this principle in the Cinergy case in 2005.

22 Now, the difficulty is many, and I would say
23 most if not all utilities require officers and directors to
24 execute large contracts. It is a critical function of
25 their performance of the governance of the utility that

1 they do that. When you have contracts above a certain
2 size, and that is universal among the industry.

3 If a corporate officer executes a power sales
4 contract not only he but his immediate superior is a
5 marketing employee and cannot be a share officer under the
6 regulations.

7 Now, while the FERC has indicated that it does
8 not intend standards to interfere with corporate
9 governance, in fact this particular requirement does
10 directly interfere. I will tell you I had a huge
11 discussion with a client who asked me, who told me the
12 following, I have a \$500 million 20-year power sales
13 contract. If I as an officer of the company cannot execute
14 that contract, how can I perform my functions and satisfy
15 my fiduciary duty to the company? He was a shared officer.
16 The problem is not with \$500 million contract, it is with
17 smaller contracts as well. And the problem is particularly
18 acute for small and mid-sized utilities.

19 In one instance that I am aware of, in fact this
20 is true in several instances, there may be only one
21 position between the manager of power sales and the CEO of
22 the company. Well, if the manager of power sales signs the
23 contract then his immediate supervisor cannot be a shared
24 employee, which means that the only shared employee in the
25 company may be the CEO. And if the vice president signs a

1 contract technically the CEO cannot be a shared employee.
2 This simply does not work in the corporate world.

3 There is a related issue having to do with
4 contract approval. When I tell people that the officer
5 cannot sign a contract, they say, well, can I have my
6 subordinate sign it and I approve it? Well, the answer is
7 maybe not, under the standards, and that is also a problem.

8 The Commission has never completely clarified
9 whether contract approval is a transmission or marketing
10 function but in Order 2004-A, there are indications that
11 the Commission considers contract approval also to be a
12 transmission or marketing function. Now if the shared
13 officer cannot even approve a contract or worse yet if a
14 board of directors cannot approve a major contract because
15 it violates a separation of functions, we have a very, very
16 difficult problem with respect to corporate governance.

17 If an officer can approve a contract but not
18 execute it, which is a possible interpretation of the
19 regulations, frankly it is difficult to understand the
20 distinction between approval and execution. If you can
21 say, yes, you may sign the contract or, no, I will sign the
22 contract myself, the distinction is simply not a very great
23 one.

24 There is a related issue I would like to talk
25 about as well with respect to senior officers and directors

1 and that has to do with approval of capital and operating
2 expenses. The Commission in Order 2004-A held that a CIO
3 or CFO may approve major capital expenditures without
4 becoming a transmission employee. There is a question in
5 this effort to eliminate gray what is major capital
6 expenditure versus a minor capital expenditure. There is
7 no hint as to what is appropriate, there also is nothing
8 said as to whether someone below the CEO may approve a
9 major capital expenditure. If it goes up to the CEO and
10 that is okay who is it that brings that major capital
11 expenditure to the CEO, the only person that could bring it
12 up would be a person who is not a shared officer and
13 director, which means that you are going to have somebody
14 bypass the intermediate levels it would seem to me if that
15 is going to work.

16 Related issue, when we asked the FERC staff
17 whether a senior officer who approves capital expenditures
18 also can approve operating expenditures the answer was: It
19 depends on the circumstances. Clear standards consistently
20 enforced doesn't, isn't consistent with depends on the
21 circumstances. And it is difficult to understand the
22 reasons, if there are any distinction also between approval
23 of capital expenditures and operating expenditures, it
24 doesn't seem to me to make a lot of sense to have a
25 distinction between the two.

1 The solution to the problem, I think, is that
2 the Commission should modify the standards to hold that
3 contract negotiation is a transmission function or a
4 merchant function. That is absolutely an appropriate
5 situation. But that the execution or ultimate approval of
6 contracts should be able to be performed by shared officers
7 and directors without making them transmission employees,
8 sorry, senior officers without having them eliminate their
9 role as shared officers and directors.

10 The Commission also could permit shared officers
11 and directors to approve capital expenditures and operating
12 expenditures provided they don't engage in the day-to-day
13 functions of marketing and transmission operating
14 functions. This will not cause the standards of conduct to
15 break down, the no conduit ruling will persist, and that
16 senior officer or director will not be permitted to pass
17 information from the one side of the house to the other,
18 but it will allow them to perform the functions that they
19 need to perform as officers of the company.

20 I would like to address for just a minute or so
21 one somewhat related issue and that has to do with the role
22 of support employees. And where we found it was most
23 clearly brought out had to do with the performance of rate
24 design and cost of service function. In Order 2004-C the
25 Commission held that transmission rate design, I am sorry,

1 transmission rate design functions may be a transmission
2 function. And the answers to frequent asked questions the
3 staff indicates transmission rate design is a transmission
4 function.

5 In many utilities the persons who do the cost of
6 service work are not line marketing personnel in that they
7 do not market power or energy and they don't engage in
8 transmission functions. It is frankly a different skill
9 set. The back of the room number cruncher who works
10 through the accounting numbers and figures out what the
11 utilities' cost of service is is not typically the person
12 who engages in the day-to-day marketing functions.

13 In smaller utilities the number of people who
14 have this capability is typically fairly limited and it is
15 not by any means a full-time job. The problem is if you
16 classify these folks as marketing people or transmission
17 people you need to have double the number of staff, you
18 cannot have the same person performing rate design or
19 transmission cost of service or power sales cost of service
20 work.

21 Here again, it seems that the solution to the
22 problem would be to classify the people who develop utility
23 revenue requirements and rate design as support personnel
24 so long as they don't engage in the actual transmission or
25 marketing sales or brokering functions. Now will this

1 cause again the standards of conduct to break down? I
2 don't think it will. In the first place revenue
3 requirement development is based on form one data, it is
4 all either public or soon to be public as soon as the
5 utility makes its rate filing, it is subject to challenge
6 by intervenors, it is subject to discovery. And the
7 Commission is always there to ensure that the rates are in
8 fact just and reasonable.

9 Rate design itself, which is the area that the
10 Commission spoke on most explicitly, is essentially a
11 nondiscretionary function. I think everybody in the room
12 knows exactly how everybody else does that rate design for
13 transmission rate. You take your cost of service, network
14 rate is divided by 12 CP -- that is the way everybody does
15 it, there is no way you are going to have preference with
16 respect to rate design.

17 This is also pretty much true with respect to
18 power sales as well. Almost nobody in the country uses
19 3 CP or 4 CP rate design anymore. A couple of folks use
20 1 CP but again the standard is 12 CP rate design. So the
21 opportunity to engage in preferential or discriminatory
22 behavior with respect to rate design is simply nonexistent.
23 If you maintain the no conduit rule of the standards of
24 conduct with respect to these persons, you can have them
25 qualified as support people and make sure that the

1 information they gain while designing rates for
2 transmission doesn't get over to the marketing side, and
3 vice versa, and you can again not have any adverse impact
4 on the standards of conduct.

5 Thanks very much.

6 MR. SMITH: LeeAnn, can I ask one clarifying
7 question before people forget what we just went through,
8 which is on the first argument about shared officers or
9 directors, one fact scenario is where you have a utility
10 and a related affiliate that share officers or directors
11 and I think the problem you might have is clear in that
12 case. Do you have the same problem even if there isn't an
13 affiliate?

14 MS. COURT: Doug, talk into the mic.

15 MR. SMITH: I was trying to figure out what
16 range of fact circumstances the shared officers or
17 directors problem comes up in, it clearly comes up when you
18 have a utility and an affiliate that share officers and
19 directors and you are trying to understand what they can
20 do. Do you have the same problem even if there isn't an
21 affiliate so that you have, I don't know if you would call
22 them shared, you have common officers and directors for a
23 single utility that are at the top of the pyramid managing
24 these two functions that are supposed to be independent.

25 MR. BLACKBURN: Yes, absolutely the problem

1 exists maybe there even to a greater extent because
2 sometimes with affiliates you may have different officers,
3 but the term "shared officers" applies to an officer who is
4 performing a supervisory function with respect to the
5 transmission side of the house and the marketing side of
6 the house. And there are going to be in many organizations
7 several officers who have that shared role, either directly
8 or as you go on up the corporate chain, and, yes, the
9 problem exists, it is very much a problem within a single
10 company.

11 COMMISSIONER KELLY: Tom, I had a question for
12 you. You said that you thought negotiations of those
13 contracts should stay with the marketing employee or the
14 transmission employee. Why?

15 MR. BLACKBURN: Because I think it is important
16 to maintain the separation of functions. And when you are
17 actually engaging in negotiation of contracts if you as an
18 employee know what is going on in transmission side of the
19 house, for instance, they may give you a benefit with
20 respect to your negotiation of the contract which could
21 adversely affect the folks with whom you are negotiating.
22 So those persons who have the day-to-day knowledge of what
23 is going on in the transmission side or the marketing side
24 of the house should not be shared employees if they are
25 doing day-to-day functions such as negotiation.

1 COMMISSIONER KELLY: So it is because it would
2 potentially upset the level playing field.

3 MR. BLACKBURN: That is correct.

4 COMMISSIONER KELLY: How about, doesn't that
5 same knowledge go up to the officer or director when they
6 act to approve or execute the contract?

7 MR. BLACKBURN: The officer and director will
8 have the knowledge, yes, but if the officer or director is
9 not in fact negotiating the contract, then the possibility
10 of adverse effect is much less.

11 COMMISSIONER KELLY: Thank you.

12 MS. WATSON: Kathy.

13 MS. PATTON: Good morning. Thank you for the
14 opportunity to present to you a number of issues faced by
15 the industry on the issue of independent functioning. Some
16 of these are issues I've had to deal with as a chief
17 compliance officer. I sent around an e-mail to others I
18 know in the industry and collected a few other issues.

19 As Tom mentioned, by far the most difficult
20 issue I and other compliance officers have to deal with is
21 the role of the shared senior officers. When a regular
22 employee asks you a question and you say no, they accept
23 your answer and follow it without question. In effect, "I
24 am chief compliance officer" and "I said" works. However,
25 when you tell a senior officer that he can't do what he

1 wants to do in the way he wants to do it, for some reason
2 the "I'm chief compliance officer" and "I said" response
3 doesn't quite have the same impact. Not to imply that
4 senior officers don't take compliance seriously and don't
5 want to comply, they absolutely do, but they actually
6 expect an explanation backed by legal analysis and FERC
7 precedent to support what you are telling them.

8 That is certainly an area we could use some help
9 from FERC. The regulations simply provide that
10 transmission providers are permitted to share with their
11 marketing or energy affiliates senior officers and
12 directors who are not transmission function employees. And
13 we can share transmission information with those shared
14 senior officers if they do not participate in directing,
15 organizing or executing transmission system operations or
16 marketing functions, or act as a conduit.

17 Same clarification is needed with respect to the
18 role of the shared senior officers, particularly more
19 explanation is needed to what is meant by directing,
20 organizing, or executing. There is virtually no discussion
21 on what exactly this means in Order 2004, and only a
22 handful of cases where this is discussed. Given the
23 potential for penalties up to \$1 million per day per
24 violation, the industry needs greater clarity as to what is
25 permitted in this area.

1 In the cases where the role of the shared senior
2 officer has been discussed, FERC has addressed two issues I
3 want to elaborate on today. The first is the execution of
4 contracts, and the second is access to real-time
5 information.

6 Tom Blackburn addressed some of the issues that
7 the industry continues to wrestle with concerning approval
8 and execution of the contracts, particularly those with
9 very large dollar values. I, too, believe there is an area
10 where further clarification is needed. It is also an area
11 that I believe FERC should reconsider. In almost all cases
12 the contract would already be committed to and fully
13 negotiated before the senior officer would be expected to
14 sign, thus the senior officer's signature is nothing more
15 than formality. In the case of Allegheny Power, for
16 example, we purchase power to serve retail customers in the
17 wholesale market pursuant to state-mandated RFPs. The
18 contracts are negotiated between Allegheny Power and the
19 market participants and in this example approved by the
20 Commission. The process is overseen by an independent
21 monitor, and price is the only factor considered in
22 selecting the winning bid. Thus, we have no ability to
23 negotiate the contract after the RFP is issued. However,
24 because the shared senior officer, including the CEO, can't
25 sign the contract, I have to go to the corporate board of

1 directors prior to Allegheny issuing the RFP to get a
2 resolution approving the contract and authority for the
3 manager of our electric supply group to sign the contract.
4 There needs to be an easier way to accomplish FERC goals
5 without interfering with corporate governance and permit
6 such senior officers to sign contracts of a certain dollar
7 value, provided they are not involved in actual negotiation
8 of the transaction.

9 With respect to access to real-time information,
10 in Order No. 2004 and in a number of cases, FERC appears to
11 have created a bright-line test indicating that access to
12 real-time transmission information means a shared officer
13 is engaged in directing, organizing or executing. First,
14 is not clear whether this rule applies to access to both
15 transmission information and generation information, and
16 some clarity there would be helpful.

17 Secondly, this is an area I believe FERC should
18 reconsider. I can remember in my previous life, before
19 Allegheny, when I was on the unregulated side of the
20 business, the company executives wanted to know real-time
21 about what our generation plants were doing, what our
22 processing plants were doing. It is not that they took
23 action on this information, it was simply that they were
24 the president or the CEO and they wanted to know what the
25 company was doing. It was more in the nature of we reached

1 a new production record today, great job. I see that a
2 particular plant is down, is there anything I should know
3 about this? Is it a monetary problem or is it something I
4 need to be prepared to spend a hundred million dollars. I
5 believed that shared senior officers in regulated
6 businesses should be able to have access to this same type
7 of information, provided they are not directing the
8 business based on this information and are not acting as a
9 conduit. Access to this type of information is fundamental
10 to the performance of an executive function.

11 Last area I want to address relates to the
12 definition of the transmission function employees. I would
13 note that Allegheny is currently undergoing an audit so I
14 am going a little bit out on a limb and I hope I don't get
15 any retribution here. I have been promised no retribution.
16 One of the debates I had with FERC staff in our audit was
17 whether certain employees were properly classified as
18 shared employees rather than transmission function
19 employees. As part of our implementation of Order 2004, we
20 went through all of our organization charts and job
21 descriptions and classified each employee according to FERC
22 categories: Transmission function employees, energy
23 affiliate employees, shared employees, shared officer,
24 et cetera. Where I had drawn the line with respect to
25 whether someone was a transmission function employee was

1 whether they were actually involved in the operation or
2 reliability functions of the transmission system or made
3 business decisions about the transmission system. Thus, we
4 classified engineers that were involved in transmission
5 planning as transmission function employees but did not
6 classify certain engineers that would, for example, design
7 a substation or transformer layout for both the
8 transmission and distribution system and generation
9 interconnection facilities as a transmission function
10 employee.

11 Similarly, I did not classify as transmission
12 function employees those that are involved in designing and
13 troubleshooting, metering or control devices or substations
14 or transformers. Yet, as part of the audit, even though
15 these employees do not perform actual transmission system
16 operations, I was told we needed to reclassify these
17 employees as transmission function employees.

18 We have reached a resolution that I'm satisfied
19 with as part of our audit, so I'm not complaining about
20 that, but there still remains some confusion in my mind as
21 well as others in the industry as to where exactly the line
22 should be drawn on who is and who is not a transmission
23 function employee. Imagine if you took a survey of all the
24 utilities, every one of us would draw the line at a
25 different point. We want to get it right and any clarity

1 that you can provide here would be helpful.

2 The last suggestion that I would like to make,
3 and this is separate from independent functioning, is that
4 FERC consider establishing some type of hotline where we
5 could call and ask questions on compliance issues, without
6 fear that we will then be turned over to enforcement for a
7 violation. This is particularly relevant in situations
8 where we are dealing with something in a gray area where we
9 don't know whether or not it is actually a violation. What
10 I am suggesting is a line where we could call and ask
11 question, and if we are told something is a violation, that
12 we are provided a safe harbor to actually fix the problem.
13 I am not suggesting that the violation would not otherwise
14 be discovered or self-reported to enforcement, and that the
15 safe harbor would not cover any past violation, only that
16 we give some safe harbor period to actually fix the
17 problem. This is just something to advance the interest of
18 all parties going forward.

19 Thank you, and I look forward to your questions.

20 MS. WATSON: Thank you, Kathy.

21 Janice.

22 MS. ALPERIN: Well, I must be the sole gas
23 person on this panel and I was thinking as I was listening,
24 boy, things are a little different on gas side. I don't
25 even know what 12 CP rate design is and I don't think I

1 want to know.

2 What I was going to do is go through a little
3 bit of a different tack and talk about what we did to
4 ensure compliance with the independent function
5 requirement, and I wanted to recommend to you all that on
6 our web site, and I am sure on other web sites we all have
7 procedures, implementation procedures up that describe in
8 even more detail what we did to assure compliance with the
9 rules. And I know it was helpful to me to look out there
10 and see what some other people had done as we were trying
11 to implement and as we had questions about what other
12 people do.

13 We have basically a very large pipeline system
14 and we have got a production group and we have got some
15 other little businesses as well. At the time we
16 implemented we had a lot of other businesses we have since
17 sold. Regulated unit and unregulated base unit and then we
18 had a service company that provided some shared services to
19 both.

20 We made sure that they were independently
21 functioning in separate ways. One was just physical
22 separation in our Houston office building which is where we
23 really have employees from all of the units. We actually
24 have people walking around with badges identifying them as
25 one of those three groups. And when they get into an

1 elevator they can only get on to the floors they belong on.
2 And we ask people to be sure that they look to see who else
3 is on their floors to make sure we don't have people not
4 escorted.

5 We also run our regulated and unregulated
6 businesses independently. There are different officer
7 slates for each of the unregulated and regulated
8 businesses. In fact, there is a different slate for shared
9 services with maybe a secretary or something like that
10 being shared.

11 At the parent level when we have board of
12 director meetings, some of our regulated and unregulated
13 employees may attend. For example, there is a presentation
14 we make sure that the folks know there is an unregulated
15 presentation matter going on. The same thing happens with
16 our executive committee meetings, we also reviewed all of
17 our corporate committees, corporate disclosure committee
18 and other committees to make sure we knew what each of
19 those groups, what each of those committees were doing, who
20 was on those committees and then wrote out procedures for
21 each of those committees to make sure that nobody would get
22 information they weren't supposed to get at those committee
23 meetings.

24 We did a similar review, Kathy talked about
25 going through all the employees. We went through all of

1 our shared service departments to make sure we knew what
2 they did, who they did it for and -- and there would be no
3 problem with independent function. They understand the
4 information they have on either side has to be secured in
5 case the computers go into lock mode when they are not
6 using it, things like that.

7 We also do have some pipeline departments that
8 actually do work for everybody in the company and we have
9 given them special training. We talk to them all the time,
10 we get questions from them all the time so I know they
11 understand the rules, but that would be things from people
12 who service the telephones, things like that. Of course we
13 trained all of our employees to make sure they all
14 understood the rules and that is actually a great backup
15 because as I said we get questions all the time on all the
16 application of all the rules, sometimes more than we want
17 to get. We are glad to get them because it shows that
18 people understand what the rules are and they know where
19 the gray areas are.

20 Where we have had questions about things where
21 we are worried that we didn't really know the answer we
22 have gone to staff several times to talk about those issues
23 and staff has been helpful. One of the issues we talked
24 about was an officer and director question that we got when
25 our pipeline CFO resigned. I was called and asked whether

1 we could appoint our chief accounting officer of the
2 El Paso Corporation as the CFO of the pipeline as well.
3 Again this is, as we have been talking about, it is a
4 pretty difficult area and the results say that you can
5 share senior officers and directors so long as they are not
6 engaged in activities for the pipeline that would make them
7 transmission function employees or engaged in activities
8 for the energy affiliate that would make them what I think
9 of as participating in the unregulated side. And as is
10 often the case, I know what the words say but I am not sure
11 what that means in terms of the practical application.

12 So the question was, A, could we place him in
13 both these positions and could he actually have both those
14 jobs and be effective in his role to any extent, was it
15 worth doing. And it was very important to our senior
16 management to do this, which was impressed upon me, but it
17 was also very important to them to reduce any risk of
18 regulatory noncompliance.

19 They spent a long time with us, the group
20 together, and we had long conversations about what we would
21 and would not do. And generally confirmed that the same
22 individual could be the chief accounting officer and the
23 CFO of the pipe so long as he limited his duties so he
24 didn't become a TFE. As I said, we kind of knew he could
25 do that, but his duties needed to be limited so he did not

1 participate actively in business affairs of pipeline energy
2 affiliates, more specifically and I hope I get this right
3 because we have had an audit and it is done so I don't want
4 to be opening up any new doors. They said that he couldn't
5 do what we thought was absolutely necessary to accomplish
6 the most important roles that he had, which was for the
7 pipeline. He could ensure that the financial and
8 accounting controls are in place and observed by the
9 pipelines, ensure that the books and records were correct,
10 and that all SEC filings and disclosures were correct,
11 because of course he would have to certify those. He could
12 attend pipeline meetings and provide advice on accounting
13 matters relating to the pipelines business including
14 providing some numbers, crunching support type of services,
15 but he cannot make policy or be a decision maker with
16 respect to the transmission matters and if there is
17 questions, what we have done is said if there is any
18 question if something is a transmission matter they have to
19 come back to CCO or one of our counsel and make sure we
20 know how we classify that.

21 Given all this, he does not sign
22 transmission-related contracts for the pipeline unless that
23 is precleared. We haven't done that and I would certainly
24 check before I do that. And he knows that he cannot be a
25 conduit of any customer or transmission information. As

1 chief accounting officer, he is also responsible for some
2 matters, overseeing what everybody in the entire
3 corporation does so he might be involved in some energy
4 affiliate meetings or activities with them so with respect
5 to the energy side controls are in place and observed by
6 all energy affiliates. And again all SEC disclosures for
7 which he is responsible are correct, but he cannot be
8 involved in normal or routine business activities at the
9 same time as he is the officer of the pipe.

10 In this regard staff cleared that they would be
11 looking at if there was frequent attendance at the meetings
12 of the energy affiliate that might signal to FERC in an
13 audit that he was acting as a conduit so they suggested
14 that the frequency of those meetings be limited or that we
15 be able to show in some fashion where we had an audit that
16 we had done to ensure that there was no violation of the
17 rules and what he was doing at those meetings was in line
18 with the things we talked about.

19 It also helped that there was a CEO at the
20 energy affiliate who reported to the president of that
21 business unit, and who also reported to the corporate CEO
22 who would be involved in the day-to-day operations. So
23 there was somebody taking care of that and this fellow
24 wouldn't need to be doing that.

25 We have gone ahead and implemented that, but I

1 would say with all of these issues on a day-to-day basis
2 sometimes it is a little cumbersome and because of these
3 rules, we certainly can't do everything we would like to do
4 but that is sort of life. And we may not be getting all
5 the benefits we could get if he could do more but we have
6 learned to live with that.

7 Another area where I think this is true and was
8 on the topic list so I thought I would add it is in the
9 area of risk management. In that area we are pretty
10 comfortable that you can use your risk management people to
11 do certain things, and you can advise them on how they
12 should evaluate risk and review overall risks, and maybe
13 make recommendations, take all the information they get
14 from the business unit and unregulated business units and
15 bring that up to the corporate officers to explain to them
16 what the overall risks of the corporation is.

17 But here is the problem, and that is we don't
18 know what senior management or we are afraid we know what
19 the senior management can do with all of this, because in
20 the orders it remained clear that there wasn't a lot
21 management could do with that information. For example, if
22 you across the board looked at all your risks in terms of
23 the gas that you were buying and purchasing, if you wanted
24 to hedge that for the corporation you really couldn't do it
25 but who could do the buying and selling. If your senior

1 officers and directors do it, they become either
2 transmission function employees or energy affiliates and
3 that is a problem for the holding company. And if you go
4 down and tell someone what to do, let's say at the energy
5 affiliate to go out and make this hedge, then you are
6 perhaps providing them information that they shouldn't have
7 that you got from the transmission function employees. So,
8 there is a problem with having effective use of risk
9 management for an overall corporation.

10 Now we feel like we have to do it in what our
11 guys call silos, you do risk management for each of the
12 business units but when taken together at they may actually
13 be working against each other.

14 And that is what I have.

15 MS. WATSON: Thanks, Janice.

16 Doug?

17 MR. SMITH: Thank you. It is a pleasure to be
18 here. I appreciated Chairman Kelliher's remarks about what
19 has changed since the last time a group like this got
20 together, the enacting of EPACT obviously and its penalties
21 and the subsequent FERC activity in terms of enforcement
22 policies and no action letters and audit reviews and all
23 those things I think are important changes in the
24 landscape. I guess I would note a couple of other at least
25 potentially important changes in the landscape that may

1 affect this and or future meetings.

2 Certainly EPACT had a lot of incentives in it
3 for various folks to build new infrastructure including
4 transmission infrastructure. And I think it will be
5 interesting to see how standards of conduct is or isn't a
6 problem that can or can't be worked around as people try to
7 invest in some of those projects, and I will talk about
8 that a little bit.

9 The other thing is it will be interesting to see
10 how the implementation of FERC related comes out if we have
11 standards of conduct for every necessary RCA or a PPA
12 member we might be in a much bigger room the next time we
13 get this group together so we will see if maybe in the next
14 year we will see if we have new companions for this
15 standards of conduct exercise.

16 I thought I would just list sort of four or five
17 issues that strike me as being areas of anxiety or
18 consternation or confusion that sort of arise out of the
19 work I do for various clients. First one is the civil
20 penalties which are obviously designed to create anxiety,
21 that is the whole point of having a civil penalty
22 provision. That is what you might describe as constructive
23 anxiety or -- and I guess I would say I think that it has
24 been very, in that was the design I would say it has been
25 very effective. But I would underline and underscore and

1 reinforce sort of the implication of that, again as
2 mentioned by Chairman Kelliher and others, that as outside
3 counsel when people are facing potential for these very
4 serious penalties they want clearances from either their
5 internal or external compliance officers or lawyers. And
6 when we turn to the various notebooks full of precedents
7 and rules and preambles and try to divine answers that
8 either aren't there or where there appear to be answers
9 that conflict with each other, that raises some
10 consternation in this new environment.

11 I think you and Tom and others have laid out
12 some of those and I will mention a couple of other ones.

13 I would say just as an observation to the
14 Commission that I think, even prior to the EPACT, option of
15 the civil enforcement, the civil penalties, my sense is for
16 the clients that I deal with at least, and I have every
17 reason to believe that this is widely shared, if I think
18 deregulated entities under the standards of conduct are
19 making tremendous efforts to try to comply with these
20 rules. It doesn't seem like there is an area where the
21 utilities are not paying attention, not trying to take it
22 seriously, so I would just offer that observation.

23 Okay, some specific issues. One is, and you are
24 going to have a whole panel on it next, is integrated
25 resource planning. And how when you are an electric

1 utility, typically in a nonrestructured area of the
2 country, and your state utility commission or commissions
3 expect you to do integrated resource planning and when they
4 talk about the integrated of the integrated resource
5 planning is exactly the integration that functional
6 independence is supposed to be pushing against, it is the
7 integration of the various resources and transmission and
8 generation resources that are available to provide the
9 power for at least the state regulated retail load.

10 It's, you know, I think there is an issue of
11 ambiguity and confusion about what the permissible strategy
12 or strategies are for organizing the people and sharing
13 information that is necessary to get that done. I guess
14 the principle, I don't want to steal the thunder of the
15 next group, I will let them talk about the details, I guess
16 the observation I would make about that is it is I think
17 most important that this integrated resource planning is,
18 it is a state regulator-driven process, that the regulators
19 have something they are trying to get out of that, an
20 answer they are trying to get out of that. And I think we
21 just need to make sure that the standards of conduct aren't
22 operating in a way that is either keeping that from
23 happening, which I think, my sense is that most people have
24 figured out some way of doing it. But in particular making
25 sure that it is not either overly burdensome or I think

1 most importantly, not somehow skewing the answers that are
2 coming out of the process, because of the way either the
3 organization can be done or the information can be shared.

4 Second, and maybe related issue, is I think
5 fascinatingly over the last six months there has been a
6 whole slew of discussion about very large long-line
7 transmission projects of various sorts. At least some of
8 them are long-line transmission projects that are designed
9 to build new generation someplace far away from load and
10 get it to load. So they have -- it is a particular version
11 or variation on the IRP problem.

12 These are very large, very long planning
13 horizons and, again it is not surprising to learn that
14 utilities aren't necessarily interested in building, you
15 know, investing X billions of dollars in the transmission
16 line if they don't know and understand how that fits with
17 the generation development that is supposed to happen at
18 the other end of the line, and making sure that again that
19 there aren't obstacles to having sensible discussions about
20 the necessarily interrelated generation and transmission
21 pieces of that, of those projects. I think it is going to
22 be an important issue.

23 You might ask, well, why, what is the confusion
24 about, why can't people do that? Well, I guess I, you
25 know, sort of looking at the, you know, my notebook of

1 materials here, if you start out to think about what in an
2 electric utility needs to be separated from the
3 transmission function, you know, sort of at the start it
4 was the wholesale merchant function. That is what, if you
5 isolated that you were okay. But there has been I would
6 say at least explicit or inferentially sort of erosion of
7 that and that the pool of people that might need to be
8 isolated from transmission gets bigger in a variety of
9 dimensions. First is what about procurement. If you are
10 procuring power for retail load is that a function that
11 needs to be isolated from the transmission function? And I
12 think that the first, that first got asked I believe in
13 some of the 889 rehearing orders and the statement was
14 said, well, if you are procuring for both wholesale and
15 retail native load that has to be segregated. Well, in
16 some ways that is the easy question. What happens if it is
17 just procurement for retail? How do you -- there are some
18 fact questions about how do you know whether you are
19 procuring for wholesale or retail? Is a procurement sort
20 of designated for one of the other?

21 Typically when people, when utilities are
22 procuring they are procuring for their retail load or for
23 their retail load they may well have pieces of these
24 purchases that are not needed at particular times and they
25 are going to have to be resold. So there is the

1 procurement piece. Then there is a question about
2 generation, does generation have to be isolated from
3 transmission. And there were some Qs and As in the FAQs
4 that were published, I forget when they were published,
5 sometime this winter, I believe, that suggested as well
6 that generation, that generation function was an energy
7 affiliate function, and would need to be segregated within
8 the utility. And a few Qs and As later the same point is
9 made about gas procurement for generation, for retail
10 native load and again the answer at least suggested that
11 gas procurement for generation for retail native load was
12 also an energy function that needed to be segregated. So I
13 guess the only point is when you are a utility trying to do
14 your long-term planning and it is not clear how big the box
15 is of the people that needs to be isolated from the
16 transmission function or transmission information that
17 leads to a lot of questions to inside for clients' offices
18 and outside lawyers about how to do things like engineered
19 resource plan.

20 And finally, switching topics slightly, I wanted
21 to just mention sort of put on the agenda, code of conduct
22 issues, because I think on standards of conduct were things
23 like shared officers and directors. Tom explained that
24 there are some issues there but at least there is a
25 construct that says you can share officers and directors

1 and they can get information, as long as they are
2 essentially nonoperating, they can get information subject
3 to a no conduit rule. At least some of the codes of
4 conduct don't seem to have the same arrangement.

5 They talk about shared support employees, and I
6 don't, I mean maybe one can creatively characterize an
7 officer or director as a support employee, although they
8 might not appreciate that, but if it helped them from a
9 regulatory point of view maybe they would appreciate it.
10 But anyway, I think there are -- there is a little bit of a
11 disconnect between the structures that have been worked
12 through in some detail to at least triad just most of the
13 issues on standards of conduct, some ways code of conduct
14 hasn't sort of caught up with that, and that also raises
15 issues.

16 I guess the other observation I would like is
17 that I get frequently new questions about this that I have
18 never thought about before, so I don't think the notion
19 that we are at the last of these meetings is probably, I
20 think that is wishful thinking. You know, for instance, we
21 had a client that asked the question, well, if you share an
22 employee between an energy affiliate and another affiliate
23 that is not an energy affiliate, does that make, does that
24 somehow taint the other affiliate so now they are both
25 energy affiliates? And I didn't know the answer to that

1 question and we will have to figure that out. I am not
2 sure there is an answer to that question. But the point is
3 there are new questions that come up all the time.

4 I want to express my appreciation in particular
5 to the FERC staff who both in the audit investigation
6 process and in the sort of more day-to-day guidance
7 clarification what does this mean context, I think are
8 enormously helpful and responsive. Sometimes they don't
9 come up with the answers we like and we fault them for
10 that, they of course blame the Commission for that, but --

11 MR. PEASE: You were doing good there.

12 MR. SMITH: But I just want to say I think sort
13 of observing where the Commission is I think the staff is
14 performing a very useful function in terms of being
15 available to people that have questions and at least trying
16 to help us work through them.

17 Thank you.

18 MS. WATSON: Thank you.

19 At this time I would like, and let's start with
20 the commissioners but then if anyone in the audience has
21 any questions or any comments that we would like to address
22 in light of the comments that have being made by the
23 panelists feel free to come up to the mic as we said
24 earlier and we will open it up for questions.

25 And while you are all running to the mic, I will

1 ask a question.

2 I am curious to ask the rest of the panel in
3 terms of a shared officers and directors which are
4 specifically allowed and if you are a shared officer or
5 director, and I think we have indicated this in one of our
6 FAQs on the web page, that means you can receive all types
7 of information. Kathy, I think you mentioned that you
8 could not give a shared officer or director real-time
9 information, and I guess I am curious as to whether Janice
10 and Tom, would you agree with that or have given different
11 advice or similar advice.

12 MR. BLACKBURN: I agree with Kathy on this
13 point. The Commission has been very clear that if an
14 officer gets real-time information he is no longer allowed
15 to be a shared officer because he is either a transmission
16 person or a merchant function.

17 MS. WATSON: Doug, do you concur?

18 MR. SMITH: I haven't been asked the question so
19 I don't have a view on the subject, but I think Tom's
20 analysis sounds right to me. It is not that you are saying
21 the shared person can't get the information, it is that if
22 you get the information you can't be shared.

23 MS. WATSON: Okay. I am also curious with
24 regard to advice that you all give your clients with
25 respect to the shared officers and directors. Do you tell

1 them there are certain things that they cannot do? I mean
2 how do you tell them where they are going to cross the
3 line, if you are able to do that, as opposed to when they
4 become executing, organizing and doing day-to-day activity,
5 as opposed to not doing that? I am sure you have gotten
6 that question, I am curious as to how you handle that.

7 MR. BLACKBURN: You are asking at what point do
8 they cross the line?

9 MS. WATSON: Right, how do you advise senior
10 officers who are shared what to do to make sure they don't
11 cross the line. Are you able to give them any guidelines,
12 any dos and don'ts, specifics, so that they don't become
13 day-to-day operating.

14 MR. BLACKBURN: We have given guidance and it
15 isn't always well received, but I, for instance, uniformly
16 say no officer who wants to, who has responsibility
17 oversight for both transmission and merchant may execute a
18 contract, no officer should approve a contract, no officer
19 should have card key access to the system control room, for
20 instance, because that would give him real-time access. No
21 officer or director should have real-time information on
22 the EMS on his computer. He has to be barred from having
23 that sort of information, so I get fairly specific as to
24 what an officer cannot have.

25 There is a point at which the officers will push

1 back and say I need this information, but so far, you know,
2 I try to tell them they have to have a hard line here, they
3 cannot get that information if they are going to have
4 responsibility for those sides of the house.

5 MS. PATTON: I agree with Tom, I do many of the
6 same things and I have as part of the kind of face-to-face
7 training of the officers go through all those same dos and
8 don'ts and have implemented procedures, for example, for
9 the president of the utility company, he won't sign a
10 contract unless it has my initials. Doesn't matter if it
11 has another lawyer in the company's initials on it, he
12 won't sign it unless he has my initials because he know
13 then he can sign it under the standards of conduct without
14 becoming a nonshared officer.

15 MS. WATSON: Let me just follow up on that,
16 Kathy, with regard to signing contracts. Do you have
17 procedures in place or again guidelines as to decide what
18 type of contract he can sign and what he cannot?

19 MS. PATTON: Yes, we apply to it kind of all the
20 things in the rules that kind of the energy affiliate
21 activities, any transaction for buying or selling power or
22 transportation or financial products related to those is
23 what we apply the rule to. For example, if it is a
24 contract with an accounting firm or something like that,
25 then he wouldn't, he could sign that kind of stuff.

1 MS. WATSON: Tom, did you have something else.

2 MR. BLACKBURN: I just wanted to bring up one
3 quick issue that keyed off on something Kathy had said
4 earlier on. She had suggested that you maybe need to set
5 dollar limits for contracts that officers are allowed to
6 sign without losing their shared status. I encourage the
7 Commission to be careful on that issue. I represent a
8 utility that has a peak load of 400 megawatts, that is two
9 percent of the largest utility I represent. If you impose
10 a dollar limit on a utility that fits one of those
11 utilities, it will not fit other utilities. It is very
12 hard to use a specific dollar figure.

13 MS. ANAS: That is the problem that we faced
14 over the past several years is we have tried to come up
15 with rules that address the 400 megawatt and the 4,000
16 megawatt type of companies, and it is a balance that I
17 guess we have to address in the future.

18 I also want to note -- go ahead, Kathy.

19 MS. PATTON: I was just saying it doesn't
20 necessarily have to be a specific dollar amount, in terms
21 of whatever the board of directors for a particular
22 company -- it doesn't necessarily have to be a specific
23 dollar amount, it could be just an adoption of whatever the
24 board of directors decides from a Sarbanes-Oxley
25 perspective is the proper amount for internal control that

1 varies from corporation to corporation. Sometimes it is
2 \$25 million and above has to go to the board, you know.
3 Some smaller companies it may be a million dollars that has
4 to go to the board, so you could match, just use whatever
5 the board of directors has decided in exercising their
6 fiduciary duties is the right and -- Deme, do you have
7 anything else?

8 MS. ANAS: I wanted to ask a question. Before
9 that I want to make clear in reference to Janice and Doug's
10 comments, when they said they called me and worked with my
11 team, just so everybody knows that we have a group of
12 people who got together and started putting this Rule
13 together, called a conduct implementation team. So, I
14 never give advice from me, Deme Anas, what we try to do is
15 get together with this team of people which is a mixture of
16 staff, a couple of them are here, Julia Lake, Stuart
17 Fischer, but we also have other staff from OGC and OEMR and
18 we all get together and discuss the issues. And where it
19 is appropriate and we think the Commission has either
20 spoken to or we can provide some informal guidance on what
21 might make particular circumstance work, we try and share
22 that knowledge. There are many times where, you know, we
23 also say this isn't something we can handle, it is
24 something that the Commission hasn't addressed. We can't
25 speak in lieu of the Commission, you have to come in and

1 either ask for a waiver or clarification or a no action
2 letter.

3 So I don't want either the commissioners here or
4 any of the industry thinking that we are creating law or
5 doing things inconsistent with the Commission's rules and
6 regulations. We try and provide sort of our guidance as we
7 can, into those who request them.

8 To go back to the officers and directors
9 question, which is something that we do get calls about and
10 asked, as Janice and Doug have both done. I am curious to
11 hear from Tom how he thinks that when you share officers
12 and directors where do you think the Commission should draw
13 the line? Is the focus of the rule to prevent the
14 marketing and energy affiliates from having an undue
15 preference? Where do you think those senior officers
16 roles, how far up can they go without giving, and have the
17 sharing of information, and fiduciary responsibility and
18 ideas that they have to, you know, to implement, I mean it
19 is going to be different for every company, but where do
20 you think it is fair for the affiliate, to the senior
21 officers and directors, vis-a-vis businesses that don't
22 have, that aren't affiliated and don't get access to
23 information. I am just interested in hearing your thoughts
24 on that.

25 MR. BLACKBURN: It seems to me that the bright

1 line should be the distinction between negotiation of
2 contracts and the ultimate approval. And I understand that
3 inevitably there is going to be a certain level of concern
4 at any level of the company, that there might be
5 preference, the results, but let's face it, even at the CEO
6 level the CEO will know things about transmission and about
7 marketing and he can give direction to his transmission or
8 his marketing side that one could say is based on the
9 information he has from the one side, without passing the
10 information. So you have that risk, even at the highest
11 level of the company.

12 But the Commission has decided that it will not
13 require corporate unbundling and will not require
14 divestiture of transmission. So the Commission is
15 accepting the principle that at some level of the company
16 you can have both transmission and marketing information
17 there and you can have people make decisions.

18 So for me then the issue is at what level does
19 the need for corporate oversight become attenuated and the
20 need to make sure that there isn't undue preference also
21 become attenuated so that they can meet at a spot where you
22 say here is the spot at which you can have a shared officer
23 and director with some control and here is the spot at
24 which you don't. For me that is the contract negotiation.
25 Because the people who get down and dirty on the details of

1 the contract are going to be the ones who would have the
2 possibility of skewing things. Once the contract is
3 negotiated if it goes up for signature, typically it is
4 going to be an up or down, occasionally it is going to be a
5 down, that says, no, this is not enough money, go fix it.
6 But that is an executive function, then you send it back
7 down the line and you tell the guy to do something
8 different. If that officer violates the rules in terms of
9 either passing information, and that is easily fixed, but
10 if he skews his answer because of what he knows that is a
11 problem I think you have to deal with in an enforcement
12 context if you find it. But it is also a problem that the
13 officer is going to be acutely aware of, and I will
14 guarantee you that if the line folks don't want to violate
15 the standards the senior officer don't want to violate the
16 standards either. So, for me, that is the spot.

17 MS. ANAS: Do you think this is really an issue
18 for power contracts or --

19 MR. BLACKBURN: Transmission contracts are
20 pretty routine, but this is for gas and --

21 MS. ANAS: Sometimes pipelines and utilities
22 enter into hundreds of different types of contracts. Kathy
23 was saying there are some contracts that her CEO will
24 execute without her being involved in the decision. On the
25 other hand, there is transmission contracts, there is power

1 contracts, there is risk, there is the whole breadth of
2 different types of contracts that I think we would have to
3 look at in order to make some sort of an accommodation or a
4 decision, because what we are looking at is the difference
5 really between transmission function and energy affiliate
6 function.

7 I seem to think without benefit of you all
8 correcting me is that transmission contracts are going to
9 be ones that the line people would be executing but it
10 would be the power contracts, commodity contracts, hedging
11 agreements, where it puts the energy affiliate at risk
12 which then puts the parent company at greater risk where
13 the signature has more difficulties. What's the cut?

14 MR. MOFFATT: I am Curt Moffatt and, LeeAnn, you
15 asked a question about how we counsel clients and some
16 answers we may divine from announcement, and I think for
17 the commissioners this might be useful to think of it as
18 you have your statutory responsibilities that is used under
19 the laws that you are charged to implement, and so do all
20 the corporate officers under the securities and exchange
21 laws and now Sarbanes-Oxley.

22 I think some of the interpretations which
23 contracts trigger being market affiliate come in direct
24 contacts, for example, when you are trying to structure
25 your credit and risk management, the requirements that the

1 actual execution be forced back down to the operating
2 subsidiary also presents direct conflicts to where the
3 board of directors' audit committee would prefer to see
4 checks and balances. And we have not known how to counsel
5 the client to reconcile those two separate and distinct
6 statutory responsibilities. And now because of million
7 dollars a day penalties even under Sarbanes-Oxley I think
8 often they have no choice, even though it may not be their
9 preferred structure for governance purposes, but to execute
10 by pushing it back down.

11 I urge that particularly the commissioners in
12 working with your staff that as you develop these policies,
13 put yourselves in the position of being an officer or
14 director of the parent corporation, and do you feel that
15 you need access to real-time data for the purposes of
16 managing your company, not for purposes of directing or
17 organizing the transmission function. And do you want to
18 have the operating subsidiary once again charged with
19 executing a hedge or risk strategy that your audit
20 committee has put in place to protect the shareholders. I
21 think that is helpful guidance that has helped me in
22 counseling clients to try to put myself in the position of
23 the person I am counseling and in their role within their
24 corporation.

25 And I am not so sure that that all comes through

1 in how we present the material to the Commission, or
2 perhaps how the Commission itself thinks about it. Thanks.

3 COMMISSIONER KELLY: Curt, before you leave, my
4 first question is how many, what kind of a contract are we
5 talking about that prevents this kind of conflict? Are
6 there just a few, only the really, really big ones.

7 MR. MOFFATT: The function I was just talking
8 about are hedge strategies trying to manage risks in a
9 corporation. They can be very frequent, depending upon the
10 types of businesses that the companies are involved in, and
11 even transmission providers themselves, particularly on the
12 gas side, you know, have some in their transmission
13 business that they need to manage for purpose of fuel,
14 purposes of other operational functions of gas on their
15 systems. I am not as familiar with how much of a
16 transmission provider side of the business on the power
17 side might have some type of hedge strategy, but there will
18 always be credit questions and gathering of data and
19 analysis of data for a transmission provider for someone
20 who wants significant amount of capacity on any type of
21 transmission provider, but something whether or not that
22 contract is creditworthy and whether the corporation is
23 comfortable with it. So there is a lot of contracts day in
24 and day out as Deme noted, great variety.

25 COMMISSIONER KELLY: If you were to make the

1 change, how do you accommodate the concern about the use of
2 information for competitive advantage?

3 MR. MOFFATT: Well, the change I am talking
4 about is understanding that corporate officers need to have
5 access to real-time information from time to time. And I
6 think also that corporations need to put in place checks
7 and balances that they see fit to protect their
8 shareholders and their business. Personally I think you
9 have to have a little bit more confidence in the corporate
10 boards and officers of major corporations and if they have
11 a rational explanation and they have adopted a strong
12 compliance program, respected your statement of policy on
13 it, that you focus in remedies and audits more on
14 prospective resolution as opposed to punishment for past
15 decisions. I think we have gone through an era in the past
16 where we did have some abuses and I think all markets
17 throughout time have periods of concern. But those should
18 not be, they should not dictate the rule, because I believe
19 markets are very efficient and I think what you have done
20 on open access, with the use of the Internet and the
21 web sites you have more price discovery, more real-time
22 data going back and forth, the opportunity for manipulation
23 abuse, you have done a great job in making it more
24 transparent, I just don't see that many examples.

25 What I worry about is that your rule swallows

1 up, you know, overwhelms the problem, and getting that
2 proportion and that judgment is the balance, it is tricky
3 for everyone, it is something we are all struggling with.

4 COMMISSIONER KELLY: Thank you.

5 MS. WATSON: One more question.

6 MR. RASKIN: Dave Raskin. There is no area
7 where I practice law where there is a greater number of
8 times I am asked the question and I don't have the answer,
9 and that is a real problem when you are talking about
10 corporate governance. A lot of times I will hear about a
11 company wanting to do something, a CEO sitting around with
12 the senior officers and talk about market strategy and they
13 want to get the right people together. And it is something
14 they need to do to run their company. And they ask me can
15 I do this, and every inch of my common sense of course says
16 you have to be able to do this, but could I look at your
17 standards and codes of conduct and give them a clean
18 opinion that you can and the answer is often no. So I am
19 heavily inclined in trying to do my job and they are trying
20 to comply, but they have to be able to do what they have to
21 do. And I am really just picking up on exactly what Curt
22 said, that the rules are very prophylactic and they are
23 somewhat unclear, and you need to be clearer of this
24 subject, senior management subject to a no conduit rule can
25 do the things they have to do to make corporate policy, to

1 make sure when they make investments they have all the
2 information they need and they can bring in the expertise
3 they need to make those decisions. And I really don't
4 think that interferes with what you are trying to do with
5 the standards of conduct, with is to make sure that the
6 people out in the marketplace don't have a favorable set of
7 information so that they can do deals that other people
8 can't.

9 So this is one where I think you have just drawn
10 the line a little bit too far. We are going to get this
11 exact same issue, we are going to get into the next panel,
12 IRP is where do you draw the line because of the natural
13 tension here.

14 MS. WATSON: Thank you. I think we have
15 exceeded this by a couple minutes, our 60 minutes.

16 MS. COURT: We have. Why don't we take a break
17 now for 15 minutes. It is 10:30 Phoenix time, and this is
18 your opportunity to write down any questions that you might
19 want the staff to respond to.

20 By the way, you do not have to put your name on
21 these questions, you can be anonymous, so please hand them
22 to any staff member.

23 (A recess was taken from 10:40 a.m. to
24 10:53 a.m.)

25 MS. ANAS: Before I introduce the panelists I

1 wanted to share with you some thoughts about integrated
2 resource planning vis-a-vis the standards of conduct. This
3 is one of the issues that really was not raised in the
4 proceeding for 2004, as a result the Commission hasn't had
5 a chance to formally address the issue.

6 Over the past several years some of you have
7 raised the issue with the standards of conduct
8 implementation team or in questions, in preparation for
9 some of our conferences, and we haven't really been able to
10 give you any advice or answers, because we can't speak
11 ahead of the Commission. So we included this issue at this
12 conference this year to really give the industry an
13 opportunity to share their experiences in complying with
14 the standards of conduct for integrated resource planning.
15 So we are kind of turning the tables for this panel, and we
16 want to be able to ask questions of this panel and any
17 other industry members who have had experience with IRP, we
18 are trying to get ourselves educated on this issue,
19 understand the extent of the problem, so we can think it
20 through and make decisions to move forward with this issue
21 and the Commission can have the benefit of your insight
22 today.

23 So I don't think the staff will give any answers
24 on IRP, so I hope everyone here gives everyone a better
25 understanding of the process.

1 Our first panelist is Donna Attanasio. She is a
2 partner at Dewey Ballantine working with energy clients on
3 a variety of transactional and regulatory matters including
4 working with clients on the standards of conduct.

5 Our second panelist is Tom DeBoer, who is
6 director of rates and regulatory affairs for Puget Sound
7 Energy located in the State of Washington. Primarily
8 responsible for federal and state regulatory activities and
9 compliance including standards of conduct. Before joining
10 Puget he spent about two years advising client about
11 regulatory-related matters.

12 Our final panelist is David Raskin at the D.C.
13 firm of Steptoe and Johnson. David practices in the
14 electric industry primarily focusing on the representation
15 of electric utility companies before the FERC and the NRC.
16 David also has helped with transmission service
17 transactions, as well as operation of generation
18 facilities.

19 MS. ATTANASIO: Thank you for having me here
20 today, I would like to thank the Commission and staff and
21 especially Deme for including me on this panel. This is a
22 very difficult issue. Clients began approaching us about
23 this even before the standards of conduct went into effect.
24 The reason for that of course is that integrated resource
25 planning and what I will discuss in a bit, procurement as

1 well, are state-regulated processes. So for the regulated
2 utilities who are concerned about this issue, the primary
3 problem that they were facing was the implementation of a
4 federal requirement that they felt might put them in a
5 position where they were not able to fulfill their state
6 requirements. And that is the crux of the issue that we
7 are talking about today.

8 What I wanted to talk a little bit about what
9 the problem is and some of the ways in which people have
10 been trying to comply underneath the standards of conduct
11 and where the gaps still are, what we are not able to do
12 today. And then at that point I am going to be turning it
13 over to Tom and to Dave who I think are going to focus a
14 little bit more on some of the problems they are seeing
15 specifically as well as some of the possible ways we can
16 solve the problem.

17 First of all, I am addressing a very narrow
18 group of people. I am talking about regulated vertically
19 integrated utilities. These, the problem that we are
20 dealing with is how you plan and acquire resources on a
21 long-term basis to meet your native retail load. I am not
22 addressing as Doug had suggested earlier sometimes
23 acquiring for retail or wholesale. That is not the focus
24 of the concern. What the utilities are concerned about is
25 that they have a specific requirement to go to their state

1 commissions and say: Here is how I am going to be meeting
2 my retail obligations.

3 Now it is true that every resource that you are
4 going to acquire for that purpose is also going to be used
5 for wholesale, because as a practical matter when you
6 acquire a resource for the purpose of meeting your retail
7 load, there will be times when it is not needed for that
8 purpose. Perhaps it is a plant that can't be shut down at
9 night, maybe it is something where it makes more sense to
10 buy, you know, 200 megawatt block but you are going to be
11 growing into it over time. So whenever you are looking at
12 a resource in order to meet a long-term retail need, you
13 are going to be looking at where does this resource fit in
14 the market and what is my overall cost of bringing this
15 resource into my rate base to serve my customers.

16 What I am concerned with today is integrated
17 resource planning in procurement, because what is happening
18 today in the market is that planning groups aren't simply
19 coming up in the abstract with a plan that says I could use
20 another 500 megawatts on the western side of my territory.
21 They are then going out to the market to say and how can I
22 get it? They have to take that plan and go forth and do
23 RFPs, try to find these resources. Maybe self building is
24 the option, but often you have get to that point after you
25 have gone out and tried to buy it either in the form of

1 unit purchase, maybe it is a block of power, maybe it is
2 actually acquiring a plant but you are going to the market
3 to find out what the markets can do for you and then you
4 are coming back and saying here is what is available, now
5 how is that going to alter my long-term plan. It is that
6 that is raising the problem, because the process of
7 planning and then doing that procurement means that you
8 have to interact with the market, not to sell power but to
9 buy power, to buy a long-term resource. And under the
10 existing definition for the -- definition of an energy
11 affiliate the transaction of buying power appears to put
12 you into that box.

13 So if we are a long-term planning and
14 procurement people doing this market testing of their ideas
15 then we are in a position where we may have precluded them
16 from also being able to get transmission information.

17 Why do they need transmission information? The
18 goal that these companies are trying to pursue is least
19 cost resource planning, what is the best deal for my rate
20 payers. Sometimes there is a trade-off between a
21 transmission investment and a generation investment. Maybe
22 making a purchase at this point on the system versus that
23 point in the system will also impact reliability and maybe
24 it will forego the need for another investment on the
25 transmission side.

1 Until you can have a dialogue between the people
2 who are doing the long-term planning and procurement on the
3 generation side and the people who are doing the
4 transmission planning, you don't get the information you
5 need to make that, those decisions, and define those types
6 of synergies that might make sense.

7 The other problem is that when you are looking
8 at a variety of resources and you do an RFP, you might get
9 back 40 different proposals. 20 people come in, each with
10 two proposals and you need to be able to narrow that down
11 to a group and then look at how will this particular group,
12 if I pick supplier A, B and C, what impact will that have
13 on the system in the overall cost as compared to A, B and
14 C. So again you need to get input from the transmission
15 people in order to be able to make those kinds of
16 decisions.

17 The other factor I would like to throw out
18 there, because I think this is very important when we talk
19 about how to solve the problem, is confidentiality. When
20 you are in an RFP mode your bidders don't want the public
21 to know who they are. And you don't want people
22 necessarily to know how big your short list is and who
23 precisely is in it, because the kinds of resources we are
24 generally talking about are long-term customized contracts,
25 for example, unit contingent power or long-term power

1 approaches. Maybe it is not contingent, maybe it is a
2 group of plans, but these are highly specialized contracts
3 and so right up until the end, unlike the situation Kathy
4 mentioned today, which I think is more typical in areas
5 where there has been more divestiture, it is not where you
6 are putting out a contract and saying price is the only
7 thing that is going to matter here. There is give and take
8 right up until the end, and there is people moving in and
9 out of that short list right up until the end. So if you
10 go through a public process and say I would like my
11 transmission provider to look at options A, B and C, well,
12 you have just told the world who is on your short list and
13 you have given those people an advantage in terms of
14 negotiating. And as the negotiator for your retail load
15 you want to get the best deal you can, so you want to make
16 sure there is enough people that are staying in play and
17 able to, that you are able to negotiate with to get that
18 deal.

19 I would like to talk a little bit about what
20 people have been trying to do and why some of those things
21 aren't working. One of the obvious things as well as take
22 the people and put them in a silo, they can get
23 transmission information, they can get generation
24 information and they will come up with a plan. As I
25 indicated earlier, though, one of the things that we need

1 to do these days in order to satisfy state commissions is
2 to go back to the market and say what is, what can the
3 market do for me. So it isn't very practical to view these
4 people purely as just planners. If we try to develop plans
5 in isolation in the market and in isolation from the
6 decision makers who are going to have to say, yes, I will
7 make this investment, I will make this generation approach,
8 then we end up with a theoretical plan, we don't have a
9 plan that has been bought into by the people who actually
10 need to implement it. So the silo doesn't really work.

11 What we are seeing is the more typical result,
12 it is the generation side that is trying to do the
13 planning, taking into account whatever public transmission
14 information is out there. They are perhaps making public
15 inquiries, either using the OASIS, maybe they, for example,
16 in the Excel energy case the Commission approved a process,
17 exceptional large generator and procedures that allowed
18 load to preserve a place in the queue and say here is a
19 cluster of resources that I would like to have studied,
20 that again is a way in which you can publically get
21 information and in that case get information about how
22 different resources options would interact with one
23 another. But again, you have lost the potential for
24 confidentiality and you have also, you still don't have a
25 mechanism that allows the transmission provider to express

1 their preferences. You are not enabling those transmission
2 providers to say, you know, transmission provider to say
3 there is this cost between this entity and that cost. Now,
4 we can't really say we would like to do this because if you
5 do that, we would have to solve this other problem, so you
6 don't have that interaction, the part that is really
7 integrated in the integrated resource plan.

8 The other problem with asking your bidders to
9 come forth and provide the transmission information, go
10 out, get their studies and bring them back is the cost. A
11 lot of the procurement that is going on for these days is
12 for renewable resources and often very small providers.
13 When you tell them before they even know they are going to
14 make it to your short list they have got to go out and get
15 to your queue, put down their deposit and do the studies
16 and it is a huge cost expenditure for them, and we all know
17 that there are people in your transmission planning groups
18 that if you could just sit down and say here is the kinds
19 of possibilities I have, what do you think makes sense, you
20 can get a kind of rule of thumb from somebody who is a
21 knowledgeable transmission planner but we can't do that
22 today under these standards of conduct.

23 One of the things I would like to emphasize is
24 what we are talking about here is a state-regulated
25 process. The concern under the standards of conduct is you

1 don't want to have your affiliated entity sit down with a
2 transmission planner and get information that would enable
3 them, for example, to build something that would compete
4 with the market and give them that edge, to allow them an
5 inappropriate market advantage. But that is not what we
6 are talking about here, because we are talking about
7 building to meet retail load, we are talking about
8 long-term resources. This isn't the kinds of transmission
9 information that you would be able to act on next week or
10 next month to say, oh, you know, there is going to be a
11 change three months from now, I am going to act on that.
12 We are talking about something longer term. And it is the
13 kind of information that you are going to then go to your
14 state commissions with, so the state commissions are still
15 there as a safeguard. The standards of conduct aren't the
16 only thing that are protecting the market.

17 And so if you have to go to your state
18 commission and say, here is the resources that I would like
19 to acquire, then you have a public process. Once you come
20 up with the combination of transmission and generation
21 investments that make sense, you have a public forum in
22 which they will be aired and vetted.

23 So what I think is required is that we look at
24 finding ways in which we can enlarge the exception from
25 what an energy affiliate is that allows transmission

1 planning and procurement, I am sorry, integrated
2 transmission and generation and planning and procurement to
3 go forward with an exception for the kinds of information
4 that can be shared with this group that is the type of
5 information necessary to come up with that kind of a plan
6 and it is one that has an overlay of state oversight, and
7 so that steps into helper form the control that we are
8 concerned about in protecting the market.

9 With that I am going to stop and turn it over to
10 Tom and Dave who are going to go to another level.

11 MR. DeBOER: Thank you. I agree with all of
12 Donna's comments. I want to talk about -- today, my job is
13 to talk about the specifics of one utility that is going
14 through this exercise right now and the problems we are
15 facing, but before I do that I just want to point out that
16 we, I and I think Dave will get to this in more detail,
17 have to disagree with the previous panel on contract notion
18 of making merchant, when it comes to long-term procurement,
19 that is what was the problem, there can't be a merchant
20 that can't get access to transmission on the long term.
21 Dave will expand on that more but that is really a problem.

22 So for Puget, which is a medium size utility in
23 Washington State, we have a little over a million electric
24 customers, about 700,000 natural gas customers. Washington
25 is not a reorganized state or, we are a vertically

1 integrated utility. We don't have an RTO or ISO. We are
2 in a very traditionally regulated state. We are also in a
3 very fast growing area, about two percent per year growth.
4 We are also losing some of our resources at a much faster
5 rate so our load and resource balance is rapidly getting
6 out of whack. By 2013 we are going to have about 1300
7 megawatt shortage. So we are going to be constantly
8 preparing resources for now and forever looks like right
9 now.

10 When you look at the process we have to operate
11 under, the State of Washington has an IRP we have to go
12 through every two years regulated by our state commission.
13 The document comes out that is about this thick. We file
14 it and it is approved by the commission and we have a
15 planning group that does that. If the result of the least
16 cost planning or integrated resource planning, it just
17 changed names earlier this month, is that we need
18 resources, which we do, then we are required to within 90
19 days file an RFP with our state commission. It has got
20 contracts, contracts in it, all the details of what we are
21 looking for, all the bid documents and those sorts of
22 things are all in that and they are approved by our
23 commission and those are sent out for bid.

24 Once we get that back, then it goes to our
25 resource acquisition group which starts to go through the

1 list of bidders that we got in, and that is really where we
2 get into the big problem. And that is what we are in right
3 now. Our most recent least cost plan that was filed in
4 April 2005 we just got our RFP bids back in February. We
5 are now sorting through those. We got a total of 48
6 separate bidders with 120 proposals. Imagine trying to
7 evaluate that many without having any transmission
8 information. Particularly when you look at our service
9 territory, we are fairly compact. We don't have a lot of
10 transmission, less than a thousand miles of transmission,
11 230 and below. We rely on bondable power for the bulk of
12 our high voltage transmission.

13 So you have got a very complicated area, Seattle
14 City light right in the middle of our -- we have got
15 Snohomish, so it's a very complicated transmission area.
16 And so what we end up doing, and I am the chief compliance
17 officer so I have told the way we are organized is our
18 planning group is about three or four people, and they are
19 classified currently as merchants. Our resource
20 acquisition group has probably 15 people in it, and they
21 are also classified as merchants.

22 And so they don't have access to any
23 transmission information other than making a formal OASIS
24 request, and that is what I have told them they will have
25 to do in order to get any transmission information. And

1 they have done that, but it is very cumbersome as you can
2 imagine. It is very difficult to have any conversation
3 when you are doing anything over the web when it is not a
4 real-time conversation.

5 Now, on the integrated resource plan itself it
6 is a very high level, it is looking out 20 years. That is
7 fairly simple to do without really detailed transmission
8 information. It is really when you get to the RFP stage
9 when you run into the problem and really need to have
10 access, to have an interactive conversation with the
11 transmission group on a real-time basis.

12 So those are some of the challenges that we are
13 facing. We are going to be doing this every two years, in
14 a continuous mode. You finish one IRP, you are already
15 started with the next. One time waiver or partial waiver
16 just isn't workable so it has got to be a more permanent
17 fix in order for us to to acquire the resources we need
18 over the next 20 years.

19 MR. RASKIN: I am going to do two things, one
20 make a few policy legal points and then propose a solution
21 or at least the elements of a solution to you to consider
22 as we move forward.

23 I think my colleagues as well as Doug Smith laid
24 out the problem for you clearly. The first policy point I
25 would make is that there is a natural and inherent tension

1 between your standards of conduct and integrated resource
2 planning. The standards of conduct are based on an
3 industry model which says transmission will be separated
4 from generation and power supply. And the power supply
5 will be accommodated and handled in a marketplace.

6 Integrated resource planning says we are going
7 to bring those various functions together in one place and
8 try and come up with the least cost plan. So at an extreme
9 level these two are very different visions of how the
10 industry should operate. And that I think is the heart of
11 the problem that you are facing here.

12 At the same time I don't think that you are
13 putting in place a regime under standards of conduct which
14 allows IRP to take place in a meaningful and realistic
15 fashion, is inconsistent with competition, and I think
16 there are two reasons why that is the case. The first is
17 that integrated resource planning has nothing to do with
18 short-term markets. The commissions use one year typically
19 to distinguish between short and long term. Planners are
20 not looking at what is going on in the marketplace today,
21 tomorrow, next week, next month. It may be a slight input
22 but we are really in a different realm of what they are
23 looking for. They are looking at long term. Therefore,
24 there is no reason why it should interfere on your wanting
25 to keep separate people who are engaging in short-term

1 purchases and sales and people who are watching
2 transmission syncs in real-time and taking care of that.
3 So that is point number one.

4 Point number two is that the IRP model is a
5 competitive model. The essence of IRP right now is that a
6 utility is supposed to look at its purchase generation
7 options from existing generation resources, purchase
8 generation from new resources, demand side options, and
9 self build options. And they are supposed to -- as well as
10 transmission options, I might add, and they are supposed to
11 be looked at in integrated fashion. But the lowest cost,
12 including the competitive resources, is supposed to be
13 chosen, and it is an open process in front of state
14 commissions. So that it is not something that is
15 necessarily inconsistent even with long-term competition.
16 Some people might say it is the best way to do long-term
17 competition, because it allows for an integrated analysis
18 of the best competitive options.

19 My third point I will make, and other people
20 have made it as well, and that is how a utility goes about
21 procuring new sources. And I think it is not just
22 vertically integrated utilities, I think we are going to
23 start seeing a little bit of a change even in the states
24 that have adopted restructuring and they are going to move
25 in the direction of using something closer to resource

1 planning going forward. It is a state decision, and some
2 states may favor self build options more than you would
3 like them to, but I think under the law that is their
4 choice. It may not be consistent with the vision that this
5 agency has, but I think it ultimately, how a utility goes
6 out and meets its retail load and the process it uses to do
7 that is a state decision. And I think that you have some
8 responsibility to allow that process to go forward in
9 accordance with what the states want.

10 In preparing for my comments I went back and
11 reread Orders 2004-A, B, C and D as I thought they might
12 affect this issue. And this is the one time I am going to
13 whine, Nora.

14 COMMISSIONER BROWNELL: There is a price, my
15 boy.

16 MR. RASKIN: I understand, I have paid it many
17 times.

18 It is just not clear. As I get out of those
19 arduous orders as to what can and cannot be done by
20 utilities serving retail load, I see a lot of ambivalence.
21 I see an agency not sure where it wants to end up and is
22 schizophrenic. And if you try as a lawyer to make a
23 logical progression to this is what I can do and this is
24 what I can't do, you just can't do it. So you have some
25 work to do in this area, and I think it was clearer under

1 Order 889, for example, than it is now.

2 Which gets me to a proposed solution which I
3 will tell you some people I have discussed this with say it
4 will do it, some are not sure, so I am out on a limb a
5 little bit here, but I think this at least moves us in the
6 direction of allowing integrated resource planning to take
7 place.

8 Order 889 took a more functional approach to how
9 you divide up who can talk to whom and who has to be
10 separated. And the basic model of Order 889 was that the
11 people who do wholesale sales, even if they also do
12 purchases, but if they do both purchases and sales, those
13 people are in a merchant function, and they are separated
14 from the people who are in the transmission function.
15 Okay?

16 If you had a group within the utility that only
17 does purchases on behalf of the retail load but no sales,
18 that was not merchant function. So under the Order 889
19 standards of conduct it was possible, I think, to create a
20 group within a utility whose responsibility was long-term
21 resource planning and procurement including RFPs who had no
22 responsibility for wholesale sales whatsoever, and they
23 were not considered merchants. And those people, because
24 they were not considered merchant, we call them shared
25 employees, whatever name we want to give them, were free to

1 interact with the transmission group and get information
2 that they needed in real-time or whatever else about what
3 the impacts of their various decisions would have on the
4 transmission system and how it would affect the
5 transmission planning and have the kind of interactive
6 dialogue that Donna and Tom have talked about. And it also
7 allowed them to sit down and talk with the people who were
8 in the wholesale sales business and who also may have been
9 purchasing short term for the utility to understand how
10 their resource decisions would interact with what the
11 utility is doing and what their position is in the
12 wholesale market. And they are subject to a no conduit
13 rule, so that the transmission information that they get
14 never gets to the wholesale merchant group.

15 I think that has been muddied, and I think most
16 of the people I talk to, it is certainly my reading, it is
17 not clear that you can do that anymore under the Order 2004
18 standards of conduct. And I think that if we knew that we
19 had a group that could do IRP, and it was not merchants,
20 and it was subjected to a no conduit rule but was free to
21 interact with both transmission and wholesale marketing in
22 order to make the best decisions which would result in plan
23 or an RFP that is public, I think that that would solve a
24 lot of the problem here.

25 And so I think we are not asking necessarily for

1 anything bold or new or imaginative, but just go on back to
2 889 and think about how it affected electric utilities
3 which have a huge number of functions in them which aren't
4 wholesale merchant, and I think we will get there.

5 Thank you.

6 MS. ANAS: I have some questions, because this
7 is an area that people have brought to my attention several
8 times.

9 When that combined group -- when, taking Dave's
10 proposal, if that combined IRP group is only performing
11 planning functions, and you are saying under your concept
12 it would have access to transmission information and
13 basically be able to coordinate with the wholesale merchant
14 function and come into the market and procure, how does
15 that relate to the individuals who would be submitting bids
16 in the RFP process? Can you just describe, not just for me
17 but for everybody so that we have a better understanding.
18 Would those be the same individuals, would it be a
19 different group of people? Because then those folks have
20 an inherent advantage, if they are the same individuals,
21 who are putting the RFP bid in, then I don't understand how
22 you can say that they don't have an inherent advantage.

23 MR. RASKIN: Now I think you have got to the
24 heart of the problem right away, well done. I think that
25 if these people are affiliates bidding they are separated

1 under the code of conduct, so they get no information, so
2 if an affiliate is bidding into this RFP they have to be
3 treated the same way as nonaffiliates are treated, okay?
4 So that I don't think is an issue.

5 The issue comes up when a utility wants to
6 consider self build options as a competitive option to
7 buying from a third party in the marketplace. And I think
8 that the answer to that is that if the end result is an
9 open IRP process where the costs and benefits of the
10 options have all been considered based on all of the
11 analysis, and if the state commission is willing to approve
12 self build over a competitive purchase, I think this
13 Commission just has to let that happen. It may not be your
14 vision of how the industry should be, but I just think that
15 is ultimately a state matter.

16 And that is the heart of the issue here. It is
17 the way utilities, if they can, and how they can, consider
18 the self build option and whether the procurement group,
19 the planning group, that is literally developing that self
20 build option can have all of the information that is needed
21 to consider in competition with the others.

22 MS. ANAS: I mean would one, as Susan said we
23 really want free discussion here so I encourage others to
24 also come up and add their ideas. I am thinking sort of
25 off the cuff here, would one option be to have a separate

1 group be the group that submits the bid to the IRP group?
2 Within a utility, to put in some sort of an island, to
3 borrow I think one of the words Doug used, to have some
4 that were agents, because the standards of conduct really
5 relate to providing fair access to transmission, that is
6 really our goal into those transmission markets, but if
7 they are getting preferential access to transmission
8 information when they are putting together that bid, then I
9 think they have an unfair advantage. And this is me, I
10 can't state for those guys, unfair advantage to getting
11 access to that transmission because of the information.

12 MR. RASKIN: So I, to restate your proposal, it
13 would be that the people who put the self build option in
14 front of the planning group do so blind to real-time
15 transmission information to the same extent as the people
16 out in the marketplace, and then the people who are
17 evaluating the options are the ones who would get the free
18 and open access to the information. I think that is a
19 reasonable proposal.

20 MS. ANAS: State your name for our court
21 reporter.

22 MS. LESH: I am Pamela Lesh from Portland
23 General Electric. I just want to know another practice
24 that we have used, we are very similar to Puget Sound
25 Energy, we are a small utility, we have a growing load, we

1 have a very large net short position currently and we will
2 be doing a lot of procurement. Our commission is very
3 concerned about self build options, let me put it that way,
4 they very much favor an active wholesale market and want to
5 participate in that. So if we are to consider a self build
6 option in our process we do a couple of things. One, the
7 proposal for that option all of the cost information has to
8 be put together in the same format that the ICP uses, given
9 to the staff of the commission before we receive any bids.
10 So we have some things together that we can't change once
11 we see all of the other information, that then can be used
12 to check us later on.

13 Second we used what we call an independent
14 observer during our last RFP process, this was a firm and
15 primarily one person who came in, oversaw the construction
16 of the RFP, saw the opening of the bids, checked our
17 process of evaluating the bids including how we evaluated
18 the transmission proposals because we did ask bidders to
19 make transmission proposals. And I want, you know, it was
20 very much a problem for some of these bidders to tell us
21 anything that was useful and meaningful on transmission.
22 But the independent observer was there and then produced a
23 report that was filed with the commission at the end of the
24 process, talking about everything that he had seen along
25 the way. And frankly some of the scoring that when the

1 independent observer scored our team score, they would
2 reconcile differences and we changed some things based on
3 the independent observer's advice. They were very
4 knowledgeable and helpful throughout the process.

5 That is the only way I think I would tell you
6 that a utility would be comfortable bringing to include in
7 rates self build project, the risk is facing a disallowance
8 is a strong motivation to not have taken unfair advantage.
9 And that really is, that is the risk we face, that is the
10 flip side of the state's choice is that the state actually
11 also has control over its dollars and our recovery of all
12 of the resources we spend.

13 COMMISSIONER KELLY: Pamela, who comes up with
14 the RFP, does the utility itself come up with the RFP?

15 MS. LESH: Yes, we develop it then we file it
16 and it goes through a process itself just looking at what
17 are the criteria we have laid out, and the information we
18 are asking for. And the commission takes a comment on it,
19 typically you are required to hold at least one bidder
20 conference but often there are more than that that occur,
21 so that the bidders can interact to make suggestions that
22 is how they want to bring things forward, then the
23 commission says okay, this is good to go and we start the
24 process.

25 COMMISSIONER KELLY: Then would that eliminate

1 concerns that the utility has slanted the RFP to favor
2 itself?

3 MS. LESH: I think that certainly is what is
4 much discussed in our process is that people wanted to make
5 sure that didn't happen. The staff of our commission was
6 very involved in what we did, again from that standpoint,
7 because they are operating under their commission's wishes
8 that frankly we not do the self build unless we have to.

9 And I want to comment on self build, and I think
10 Tom mentioned this a little bit, a level we are seeing --
11 we are seeing turnkey proposals, that is not really self
12 build but we would own at the end of the day. And I don't,
13 there may be a difference there in how you want to think
14 about it, but I need to be clear that it is really both
15 things. And I expect in the future to see even more
16 turnkey proposals as the expertise of developing a sight
17 and getting it all together gets more, engineering firms,
18 this is their living so they do it very well.

19 COMMISSIONER KELLY: Was that a problem within
20 the utility to make public the information from the
21 generation and the transmission sides?

22 MS. LESH: The evaluation of the bids --

23 COMMISSIONER KELLY: No, I mean going in to the
24 RFP process.

25 MS. LESH: Going into the RFP process I agree

1 with Tom, the IRP plan itself and our action plan, which
2 was a set of generic resources, so much fairly short,
3 five-year contracts, so much in a combined cycle combustion
4 turbulence, so much in a renewable technology, that is very
5 high level and really did not require much in the way of
6 transmission information. It was the procurement side, and
7 in the cycling back, all of the proposals at some point,
8 ones that aren't screened out are just clear losers go into
9 a portfolio process where we say if we put this together
10 with this, this and this what does it get you. And for
11 that not having transmission information makes it very
12 difficult.

13 COMMISSIONER KELLY: In the developing of the
14 RFP was that a problem with that information being made
15 public?

16 MS. LESH: No, no, we just asked people to
17 deliver to our service department.

18 COMMISSIONER BROWNELL: How long has the process
19 been in place?

20 MS. LESH: This one that I was describing to
21 you, the commission has -- the IRP requirement has been in
22 place since '88, but Oregon went through a period from
23 about '95 through 2001 where we didn't need any resources
24 and the state thought it was going into restructuring so
25 not much happened. We brought forward our IRP under the

1 old rules and also our RFP under a 1991 policy guidance
2 order. The commission is presently working at reissuing a
3 new set of IRP guidelines and RFP guidelines, but we worked
4 off of the old rules and then just discussions of the
5 parties and the commission as we went through this process,
6 and it started in about 2002 and we finished up in 2004.

7 COMMISSIONER BROWNELL: So how many projects
8 have actually been through the RFP process as you described
9 and what are the outcomes? How many ended up being self
10 build, how many built by others, how many turnkey projects?

11 MS. LES: Good question. We ended up with a
12 self build combined cycle plant with a number of market
13 pass-through purchases to fairly long-term energy
14 purchases. One is plant specific, one is not. A long-term
15 wind purchase, and are presently about to assign a turnkey
16 wind project that has been brought to us. So a real mix of
17 resources emerged out of that. Some of those have already
18 been through our regulatory rates process, others are
19 coming up in the next year.

20 COMMISSIONER BROWNELL: It is interesting and I
21 think worth a look. This is, I appreciate the comments to
22 the panel, here is where I struggle. One, you said nobody
23 wants to go in with a rate case. Well, in fact, if you
24 look at some of the comments to Wall Street, many of the
25 companies are in using their growth strategy is in fact

1 putting into the rate base.

2 Secondly, you don't always have commissions who
3 don't want the self build, so the inclination I would
4 suspect in any kind of a process would be to figure out how
5 to make sure the self build option owns one, that is a
6 concern.

7 And then the third concern is we have seen and
8 appreciate and respect the states' desire to have IRP, but
9 we have seen some very odd distortions of the outcome, and
10 so IRP in and of itself might be a good thing. How it is
11 done, how costs are really looked at, frankly are a little
12 bit concerning, as well as the inclination to have an
13 ability to always win, in some states, some states have
14 figured out who make that happen, maybe some considerations
15 are where the utility always won the self build option
16 because they weren't, as it turns out, including land cost
17 and everybody else was. It took five years to figure that
18 out.

19 So those are the kinds of things I am concerned
20 about, as well as this access to information. I am sorry,
21 I would like to believe it is not an issue. It is.

22 MS. ANAS: This seems to be, the issue we have
23 heard about seems to be in a couple of states in the west
24 and the south. Is there anyone here who could ballpark how
25 many utilities would affect?

1 My last recollection is that there are about a
2 hundred electric utilities subjected to the standards of
3 conduct. Anybody have an idea as to how many are facing
4 this issue?

5 MR. RASKIN: I don't, but I will say that I
6 think the number is going to grow because I think even in
7 the states that have restructured, as supply gets tight and
8 prices get really high, the states are going to want to
9 come in and take over the procurement process more and more
10 and they are going to move in the direction of an IRP
11 process. I think California is a good example of that
12 already, and I suspect places like Maryland, for example,
13 where they are pretty unhappy about the way things are
14 going, so I would expect it to grow.

15 Let me respond to Commissioner Brownell, there
16 is no doubt in my mind that there are people out there who
17 will, with money at stake, will do the wrong thing. I
18 think one of the ultimate questions you have to ask is on
19 the procurement side whose regulatory responsibility is it?
20 If a state decides that they want the utility to self build
21 and it is a process that they are in charge of and they are
22 reviewing we have to ask to what extent does the FERC want
23 to interfere with that process? I am not going to give you
24 the answer but I think that is a big part of the question.

25 COMMISSIONER BROWNELL: Can I comment on that

1 because I don't want to have 4,000 letters from states -- I
2 think the states can do this, if they want self build, that
3 is fine. I don't claim -- I just suggest that we all have
4 a responsibility to the customer, and if we see no malice
5 in the marketplace where because of abuse of our standards
6 or frankly simply common sense where the customer isn't
7 getting the best deal, I think we have an obligation to at
8 least from our perspective have rules in place that deal
9 with that and to also share our observations with our state
10 colleagues. And we do, and we work with them, and it is a
11 very tough issue. But I have got to tell you, when I look
12 at a state that has an IRP planning process that has
13 managed to build no transmission so is fundamentally an
14 island and the only generation to the customer is the very
15 expensive utility-owned generation, I have got to wonder
16 about both the rules and the openness and transparency of
17 the process. More importantly is that the kind of planning
18 we want to do for customers, having them get the most
19 expensive service with the environmental consequences.
20 That is what we are concerned with and I think states are,
21 so I don't want any letters.

22 MS. ATTANASIO: I recognize very much the
23 concern that you are talking about and certainly we have
24 seen a variety of results across the country, but there are
25 a number of states, I think California is actually a very

1 good example where you not only have an ISO that is
2 overseeing the transmission side, you have a very active
3 state commission, you have independent evaluators
4 participating in the bids, could the Commission think about
5 ways in which it becomes the comment on the person coming
6 to you for the exception or the expansion but if you gave
7 us some space to say here is what we are looking for, if
8 you can show us that you have got this kind of process you
9 can get this kind of exception. You know, again I think
10 people are reluctant to come forward unless they have some
11 idea of what you might consider in the realm of a safe
12 harbor, but if you can provide us with guidance that says
13 okay, you can be -- you know, these people, you can have
14 this kinds of structure, they won't be energy affiliates,
15 they can have this kind of transmission information if you
16 can show that X, Y, Z, then that might be the kind of
17 things that would give people room to build.

18 COMMISSIONER BROWNELL: That is a good idea, and
19 then when we do that in the states that don't have it,
20 disagree with us, you can defend us. On the record. Big
21 bold print.

22 MS. ANAS: To follow up on what Donna said, are
23 there any states that really have mandated IRP where we
24 have successful active RTOs? And if so, how do those
25 utilities, since I know you guys aren't in that, I am going

1 to open this up to any of the audience members who might be
2 able to answer our question, in the state, I will use
3 Maryland for an example, indicate we are maybe moving
4 towards an IRP process, the transmission expansion issue
5 would be dealt by BJM, so how would you visualize or
6 anticipate that working in Maryland?

7 MR. RASKIN: First of all, I think the best
8 answer to your question is California, because I think it
9 is not an RTO but an active ISO which manages the
10 transmission grid and they do have mandatory IRP. If
11 anybody tries to build option in California over a
12 competitor I am sure there are more than a few people who
13 would come in and protect the consumer in that particular
14 state.

15 I think it is -- but it is very hard to do it
16 where there is an RTO because there has to be some
17 interaction between the RTO and procurement function doing
18 the IRP, and I think that has been a problem getting
19 information and responses from the RTOs themselves about
20 what differing resource options have on what impact they
21 have on the system so it is one of the issues that need to
22 be worked through.

23 MR. DeBOER: At our western compliance officer
24 meeting yesterday we have utilities from Washington,
25 Oregon, California, Arizona, did I leave anybody out? I

1 asked that question, you know, does an RTO, ISO help, and I
2 got an emphatic no from all the California utilities.

3 MS. ANAS: Any of those California utilities
4 want to share that with us?

5 Honestly, the point of this is really to educate
6 us and to give us an understanding and so I think if
7 anybody is willing to share that it would be helpful for us
8 to hear.

9 COMMISSIONER BROWNELL: I am going to California
10 and I am going to ask. I will be there Monday.

11 MS. ANAS: Thank you. Okay.

12 MS. COURT: Deme, we are about -- we are just
13 pretty much on schedule here, so you don't are have to
14 trickle anything down any farther.

15 We were able to start a little early on the
16 panel and so I think it is probably appropriate that we end
17 a little bit ahead of time as far as lunch is concerned.
18 So it is a quarter to 12:00 right now and we will resume
19 again at 1:30. So, you have an hour and 45 minutes for
20 lunch, and you have 15 minutes left if you have any
21 questions that you would like to submit to staff.

22 So please give us your questions in writing.
23 Thank you.

24 (The lunch recess was taken from 11:45 a.m. to
25 1:30 p.m.)

1 MR. PEASE: I would like to commend all of you
2 for coming back inside, that dedication is noted by staff
3 and we appreciate it. My wife is out by the pool having
4 margaritas so let's get going.

5 Our third panel is on information sharing
6 prohibitions and dos and don'ts, where permissible
7 communications, communications nominating scheduling and
8 other issues such as our expert panel will be addressing.

9 On our panel here today we have Kesh McVey, who
10 since 2004 has been the chief compliance officer for
11 Bonneville Power Administration in Portland. Ms. McVey has
12 previously worked as a lawyer in Bonneville's in-house
13 counsel and in transmission administration.

14 Sherry Nelson is currently compliance officer
15 for the Williams Companies. Sherry's job
16 responsibilities for Williams include director of business
17 development, director of operations for Williams Gas
18 Pipeline Central, director of power development for
19 Williams Power and manager of gas supply for Northwest
20 Pipeline.

21 Mike Sweeney is a partner in the energy practice
22 group of Hunton & Williams. Mike is a resident of the
23 Washington, D.C. office and his practice focuses on matters
24 before the Commission. He represents traditional
25 utilities, independent power producers, energy marketers

1 and financial institutions.

2 In recent years some practice of Mike's practice
3 have been focused in on compliance and enforcement-related
4 issues. I am having trouble reading Mike's handwriting
5 here. Relating to standards of conduct issues and in
6 particular issues related to compliance and implementation
7 of the policies of 2005.

8 As you can see we have a distinguished panel
9 here and I am going to turn it over to the panel for
10 presentation and then we will have question and answer
11 session.

12 MS. McVEY: Thank you. Can everyone hear me?

13 Looks like it. I want to give you a background,
14 a little bit about Bonneville Power Administration and then
15 talk about administration access issues generally, and then
16 Sherry and Mike will address some specific situations they
17 have bounded.

18 Bonneville, we are funded by our rate payers.
19 Founded in 1937. We supply power to 45 percent of the
20 entire Pacific Northwest. We own 75 percent of the Pacific
21 Northwest transmission and that is over 15,000 miles.
22 High-voltage DC intertie to California. We have a 300,000
23 square mile service area covering Washington, Oregon, Idaho
24 and Western Montana and we have 3.5 billion in revenue.

25 Our customers are primarily publicly owned

1 utilities, PUDs under the federal statutes. We market the
2 six regional IOUs. Some direct services, primarily
3 aluminum companies. And then we have secondary sales into
4 California and southwest markets.

5 We functionally separated our two primary
6 business lines and power transmission completely. We
7 created two separate shared service support organizations.
8 And in hindsight now it went well beyond what FERC's
9 direction was.

10 The pros, it was a quick fix and met the
11 Commission's regulations and requirements. It allowed
12 economy in the business unit, but the cons in hindsight is
13 that it created functional redundancies and a lot of upper
14 pressures on our customer rates.

15 As I said, they developed into this individual
16 distinct information systems and processes, they duplicated
17 the functions and created confusion for customers. I know
18 that is one thing that happens in a lot of the marketing
19 side, they created negative impacts on reliability, so
20 business lines began using different assumptions on how
21 they modeled load, and that created reliability impacts
22 that weren't realized until they were pushed into the
23 real-time. Bottom line, our business, like many of your
24 other utilities, just stopped communicating with each
25 other. It was an excuse not to communicate, they said the

1 rules forbid it and they stopped sharing all information.

2 So over the last few years it has been a large
3 effort at Bonneville to reexamine how we conduct our
4 business, consistent with the standards of conduct. We
5 have had a challenge for our customers that want us to
6 change, they want us to reexamine how we conduct our
7 business and consolidate our functions where possible while
8 still following the rules and improving customer service.

9 At the same time we have had passage in the fall
10 and the federal government has said follow Sarbanes-Oxley,
11 but we have our own requirements out of OMB, and also
12 continue to meet the business need from transmission
13 designations to shared designations and then the key to
14 that was how do you put the appropriate information and
15 controls in place.

16 So with that preference I want to walk you
17 through the process of how we went through analyzing this
18 information access.

19 So in each case we have to identify the business
20 process, we evaluated the various rules, activities that
21 were in that process, and then once we identified the roles
22 we looked at the information flow to each one of those
23 parties or groups of people. And when we are looking at
24 the information flows we look at the inputs and outputs.
25 The inputs were what information requirements does the

1 business unit have? What is the classification of that
2 information? Is it transmission, customer market
3 information? Is it subject to any of the exceptions like
4 their own transaction voluntary consent, generation,
5 critical operations. And if it was transmission
6 information and it was not subject to consent then they
7 could not have the information. But we had really clear
8 controls, so as opposed to having the business units not
9 talk to each other we had a very thoughtful analysis as to
10 what could be and couldn't be shared.

11 We did the same thing, we had to do for the
12 outputs of information so, what information does the
13 organization produce? Is it going to be transmission,
14 customer or market information? Is it subject to an
15 exception? Is the information going to be shared on a
16 comparable basis if it is an output that is an important
17 factor that has to be considered in some business
18 processes. And again, if it is transmission information
19 and not subject to consent then we needed to develop the
20 internal controls to ensure that the information was not
21 improperly communicated.

22 How we designed those internal controls fell
23 into a few different areas. First of all, there was
24 information sharing controls actually put into the business
25 line service level agreement so, as we are going through

1 these process improvements in these select areas, you know,
2 I have made a push to make sure they actually go into
3 people's position descriptions and what their matrix and
4 performance is based on.

5 Also the position controls actually went into
6 the software/hardware systems, so how we design these
7 controls to remind employees how information is supposed to
8 be shared that they work with.

9 And then the last thing that I felt pretty
10 strongly to include is in the manager's description the
11 manager has the responsibility for communicating to his
12 employees the requirements for sharing the information that
13 his group came in contact with, his or her manager. So
14 although I have the responsibility for providing overall
15 training, as you know, every case and scenario is slightly
16 different when you go to apply it in the business unit and
17 the manager has to have that responsibility to be able to
18 translate that general training into the specific needs of
19 his group.

20 So we are not done, I mean I always joke when I
21 hear about somebody's compliance problem because it is a
22 continuous improvement effort, right, there is always
23 something that you could work on, but there are some
24 success factors in this two-year project we have been on.
25 I think one thing that made a difference this time is

1 rather than the culture of compliance being the driver, the
2 business need was the driver, the need was to get more
3 efficient, the need was to find a way to meet the
4 regulations, put strong controls in place but nevertheless,
5 make the customer needs.

6 The other big change was the big cultural change
7 for the organization whose prior compliance culture was not
8 providing information to anyone. So said another way, I
9 think most business units felt like I am following the
10 rules if I don't tell them anything, and that doesn't work.

11 So not telling them anything creates a lot of
12 problems, a lot of problems with the business operations
13 and a lot of problems with the rules because then the rules
14 get blamed for something that they were not intended to
15 cover.

16 And then the last thing is the improved
17 information flows have actually resulted in improved
18 compliance controls. So when the old rule was, you know, I
19 won't talk to anyone, then we didn't really talk about the
20 controls that were in place, because the rule was we just
21 won't talk with anyone. Whereas if you have to go through
22 the steps and identify how you are going to share
23 information that allows you the opportunity to really
24 evaluate what information they were talking about and how
25 you can meet the rules and share that information and put

1 appropriate controls in place. So that is Bonneville's
2 experience.

3 MS. NELSON: Well, Williams, we went through an
4 extensive training program with our employees to make sure
5 they understood what were permissible communications, and
6 actually for our existing contracts that our energy
7 affiliates have on our interstate pipelines we don't
8 require any independent augmentation, actually our systems
9 are set up with our interstate pipelines that our
10 nominations are scheduling confirmations they are all
11 electronic, so there is very little conversation that takes
12 place. If the energy affiliate employee is experiencing
13 system problems where the system is not taking the
14 nomination or something like that, you know, they will call
15 up the interstate pipeline employee and ask them about
16 that, but as a normal rule all of that is done
17 electronically so there is not a constant conversation flow
18 between the interstate pipeline and the energy affiliates
19 in regards to the existing contracts for which they have
20 capacity on or interstate product.

21 What is interesting for any new business that an
22 energy affiliate may want to approach the pipeline for
23 subscription and service we ask them to contact legal and
24 that we make sure that there is not any inappropriate
25 disclosure of nonpublic exposure of any nonpublic pipeline

1 or customer information.

2 And, we do this because we want do make sure
3 that the discussions are appropriate, and if you are
4 talking about, it is interesting because there is a gray
5 area from the standpoint if there is specific request for
6 transportation service, we know under the rules that there
7 doesn't have to be a contemporaneous disclosure of that
8 information that is exchanged but there are often meetings
9 that the energy affiliate may want to have with the bottom
10 line partner prior to though because the affiliate pipeline
11 may be one of several pipelines in an area that they could
12 subscribe for service on. And so that is why it is
13 important for regulatory compliance and it is important for
14 legal to be aware of those meetings so that we can
15 participate in them. We can also do a training session
16 with those people that are going to be involved so that
17 they understand what information may be disclosed and what
18 information may be posted immediately after that meeting or
19 prior to that meeting, for, you know, for those folks to
20 meet and for those discussions to take place.

21 So that is real important, the energy affiliates
22 find it frustrating at times, yes, I think they probably
23 do, because we are going to us to compete with any
24 nonaffiliate, and we don't have to go through though steps
25 but we understand that is a necessary safeguard under 2004.

1 We did have a specific transportation request
2 that an affiliate did make on our pipeline that was really
3 a very unique situation. They handled the or they make the
4 transportation request for another energy affiliate that
5 actually produces or develops the production in a certain
6 area of the United States, so when the one energy affiliate
7 made the request for transportation services on the
8 interstate pipeline we knew that those discussions could
9 take place. But the question came up, one interview
10 affiliate wanted to be able to share with the other
11 interview affiliate what was going on because it was their
12 production that was going to be moving under the
13 transportation arrangement, but we wanted to make sure we
14 weren't going to be in violation of 2004. So we actually
15 talked to the implementation team and said, you know, can
16 they have this discussion. We outlined the facts that the
17 one interview affiliate was, you know, the producing arm of
18 the company and the other energy was the one who was
19 actually going to hold the transportation capacity. In
20 that situation it was determined that, yes, they could
21 share that information, but we did go through that process
22 to make sure we weren't going to be running afoul of 2004.

23 So there are situations that occur in the
24 business where we would go to staff and ask for
25 clarification just to make sure we understand the rules and

1 that those discussions and that information is proper.

2 We have had some interesting situations just in
3 a practical standpoint occur. One is that e-mails, when we
4 are talking about, you know, what information can be
5 disclosed to an energy affiliate employee, we have had a
6 situation where you have got, you know, the names and the
7 Outlook directory, you may have a common last name, and
8 someone gets the wrong name in the Outlook directory and
9 the e-mail goes to, from a pipeline employee to an energy
10 affiliate employee. Lots of training has occurred so that
11 when that happens we have the energy affiliate employee
12 calling up someone in compliance saying I have an e-mail,
13 comes from a pipeline employee, would you please come get
14 it off my computer. And, you know, if we are not down
15 there in about three minutes, we get another call, when are
16 you coming? Which is good, it shows that the training is
17 working and we go down and, you know, we will remove it
18 from the computer.

19 Because of that situation I would presume that
20 that problem is not common just to Williams, where that has
21 occurred, we have done some practical things to help
22 minimize the risk of that occurring in the future. One is
23 for every energy affiliate employee in the Outlook
24 directory we have parens after their last name that has
25 what do they work for, so it will be the names of our

1 energy affiliate company or else it will say energy
2 affiliate.

3 Second we have created for our gas line
4 employees the default address list, removed all of the
5 energy affiliate employees from the directory.

6 And you might say, well, does that mean that
7 they can't send an e-mail to an energy affiliate employee,
8 no, it doesn't mean that at all but what it means is they
9 have to go through another step in order to be able to
10 select that name from that address list so that again it
11 minimizes the list of someone getting a wrong name by
12 mistake.

13 Now, in those instances where e-mail has gone to
14 the wrong hands and it is actually been opened, and we have
15 had that occur, we have then made the posting out on the
16 pipeline's Internet web site under disclosure section, and
17 that information is either posted in its entirety or
18 summary of that information is posted.

19 Now, in one situation where we had it occur not
20 too long ago we actually called the implementation team and
21 visited with them because we said, the information that was
22 contained in the e-mail contains both nonpublic information
23 as well as that which is already in the public domain. So
24 the information that we are going to post is a following,
25 and we actually then provided to Deme and the

1 implementation team that information that we were actually,
2 that we actually posted on the pipeline's web site. And to
3 get their concurrence with that, you know, the information
4 that was posted was the appropriate information.

5 So when in doubt, you know, we have posted the
6 information. If we think that part of the information is
7 in the public domain we have not included that, so we have
8 also sought out that clarification from staff.

9 We have had some other situations that have
10 occurred that I just want to make you guys aware of because
11 it is a situation where either we became aware of something
12 or we sought clarification from staff, if there are any
13 questions in our mind, as to the information that was
14 conveyed to an energy affiliate employee.

15 One was that there was a project originally
16 developed by one of Williams' energy affiliate companies
17 that was transferred to one of our interstate pipelines due
18 to a concern that the facility was going to be deemed to be
19 a jurisdictional facility. Staff was contacted about how
20 the information could be communicated from the energy
21 affiliate to the pipeline without running afoul of 2004.
22 Staff did provide guidance and Williams proceeded
23 accordingly with the transfer of the asset.

24 Then we had another situation which this
25 happened after the fact where Williams made a disclosure to

1 OMOI concerning an energy affiliate employee that had
2 provided right-of-way services and they had been
3 transferred to our interstate pipeline because that same
4 employee was going to be talking to the same land owners
5 because of the right-of-way needed for their own project.

6 Williams was able to document that the energy
7 affiliate employee did not have any access to the
8 information that the employee did not originally have as a
9 result of it being their project to to begin with, and
10 affidavit was provided that evidenced that, and we were
11 able to show that the employee once it came to the
12 attention of regulatory compliance and legal, that employee
13 was removed from the project immediately and a pipeline
14 employee will be finishing the project.

15 So there are some instances where we have
16 discovered information we wish that wouldn't have happened
17 and we have made the disclosure, been able to provide the
18 documentation that no independent nonpublic pipe
19 information had been disclosed or public information and
20 then we have been able to provide that documentation to
21 staff and been able to close that situation out.

22 One of the other things, and I agree with the
23 prior comments that compliance is a very fluid process,
24 each day you are finding a better way to monitor, you are
25 finding a better way to implement plans and safeguards,

1 whether it is hardware issues, software issues. But we
2 also did have a situation where we were migrating data from
3 one server to another. There was a question about a period
4 of time when the security was compromised and whether that
5 server contained any nonpublic pipe information. We were
6 able to go through a very painstaking retrieval of
7 information to make that determination that yes, there was
8 pipeline data on that server, but, no, the energy
9 affiliates weren't able to see it because other layers for
10 security was in place so that the energy affiliates could
11 not access that information. But we did make that
12 disclosure to staff, made them aware of the situation and
13 were able to provide independent documentation and answer
14 the questions they had with regard to that particular
15 incident. But I really do think training is the key
16 element of this. When you are sitting down, online
17 training module is a great place to start but I truly
18 believe it is just a starting point. You have got to get
19 education with especially the people that are on the
20 commercial side, for both the energy affiliates and for the
21 pipelines in the case of Williams, to be able to educate
22 them as to what they can and cannot share, because I agree,
23 a lot of employees I think when they are in doubt it is
24 just the answer is no, you can't have that information.
25 And that is the wrong message, too, and I think it is then

1 them saying regulatory compliance told me I could, and I
2 have heard that a lot and so they will call and I will say
3 when did I say that? Well, that is what I thought you
4 said, so it is a matter of really trying to open up
5 communication so they understand what information can,
6 because I don't think anyone wants the sky falling business
7 for an affiliate be able to get on the pipes but to
8 understand what the rules will allow. And that is very
9 critical and that is why I think the small group training
10 or face-to-face training with your commercial folks is
11 critical in regard to that. You get smarter in regards to
12 how you are going to segment that information from an
13 electronic standpoint, and there is new products out there,
14 systems from an It security standpoint, that is critical
15 also, to have, you know, have proactive IT group that is
16 constantly looking out for a better way to make sure that
17 information is being protected.

18 Lastly I think the upper management of the
19 company from the CEO down has to set the culture in regards
20 to how serious we are going to take compliance. For the
21 last few years, and Williams' blueprint for success, the
22 CEO, Steven J. Malcolm, has indicated at the top of the
23 list that Williams will relentlessly pursue 100 percent
24 compliance with all laws, rules and regulations. And I
25 think that is critical for that mood or tone to be set at

1 the top and then for it to filtrate through the whole
2 organization.

3 But again it is very, very important for people
4 to understand what information can and cannot be shared,
5 and for them to keep regulatory compliance in the loop in
6 regard to projects they may be thinking about. We have
7 that happened today where the pipeline is looking at a
8 particular expansion in an area or whether it is the energy
9 affiliate looking for opportunities, they will call us and
10 say, hey, we want to visit with the pipeline about, you
11 know, a new project, and here are the particulars about it.
12 So that we can make sure that we have got regulatory
13 compliance or someone from legal there to make sure that
14 they are monitoring the meeting and that there is not any
15 inappropriate disclosure as they go through that meeting,
16 you know, that will perhaps result in new business for
17 Williams.

18 MR. SWEENEY: I just wanted to first take the
19 opportunity to thank the commissioners and Bob and Deme. I
20 appreciate it very much and I am happy to participate. I
21 attended the prior two technical conferences, the first one
22 in Houston for 2004 and last year in Chicago and found them
23 from my perspective to be very helpful to think about and
24 work through issues to advise clients. And what I noticed
25 this year is there is the amount of sophistication or the

1 degree of sophistication that to how people are approaching
2 these issues has really jumped, I mean we are beyond just
3 what are the definitions and we are talking about, I mean
4 people are raising issues today about how do you dovetail
5 corporate governance into compliance with the regulatory
6 perspective. And that is a long way from where everyone
7 was in Houston, which is very interesting.

8 One of the things that I think that I, or let me
9 step back for a second.

10 I think it is important to say that the
11 standards of conduct remain an important priority to
12 everyone, but in light of the Commission's expanded
13 authority, recently expanded authority to police and punish
14 objectionable compact under EPACT 2005, it has been my
15 experience that with clients that folks aren't just looking
16 at compliance with the standards in a vacuum, they are
17 looking at when we comply with the standards of conduct
18 what other rules, particularly with the Commission, I am
19 focusing on the Commission, what other policies, rules, you
20 know, come into play, how do we handle the issues. And
21 what I would like to speak about today is day-to-day issues
22 that work with people, to address their real-time issues,
23 that regard information sharing. And the first set of
24 issues really fall into a gray area between companies and
25 RTOs.

1 Let me explain, because what I want to bring up
2 is certainly by no means to be interpreted as any antiRTO
3 or anything like that. The point is there are certain
4 issues that come up if as far as communications in
5 real-time operations where there is potential to have
6 information disclosed by an RTO how does a company that
7 hears it specially on the merchant side, how do you
8 respond, and there is a number of ways to react and just I
9 will share with you my experiences of ways that I work with
10 people to think through this.

11 The first example that I would like to bring up
12 is a situation where we were working with some folks and
13 there was a reliability issue and a generator redispatch
14 was called, and an RTO transmission person called the
15 redispatch, called over to the company, to the generation
16 dispatcher, who by the way was organizationally housed
17 within a marketing place. In the course of giving the
18 dispatch order rather than saying loop plan X up or down in
19 a certain manner, they provided the reason for the
20 dispatch. It was inadvertent, but nonetheless the
21 information became public, the question came up, well, what
22 do we do? You can, you know, we sat down and thought of
23 the issue and you can read the rules. RTOs are exempt from
24 the standards of conduct. If you read the disclosure rules
25 it is the transmission provider employees who discloses the

1 posting obligation. So this is still how do you handle
2 this issue because the cat is out of the bag, the elephant
3 is in the room, how do you want to look at it because there
4 is nonpublic transmission information out there.

5 One of the steps that we decided to take was,
6 one of the first questions we asked, well, what did you do
7 with the information. And the information was taken was
8 not acted upon so, that was good first step, because the
9 suggestion would be as far as the dos and don'ts if a
10 situation like this occurs, you are going to need to
11 document this. You are going to want to have some trail to
12 show in at a later date an after-the-fact review is taking
13 place that if this occurred and you don't technically have
14 a posting obligation that you noted it that it happened,
15 you notified the chief compliance officer, and then
16 documented during that sometime period what you did. So at
17 least you can make a showing that you didn't act in a
18 manner that would disadvantage other competitors due to
19 this disclosure.

20 Another step we did, or another thing we looked
21 at when we were handling this issue was to start thinking
22 about how to handle these types of situations and other
23 similar situations sort of on a prospective basis, to, one,
24 train both employees on generation dispatch side about how
25 to handle it and create the paper trail. Notifying the

1 CCO, working with the CCO about going forward. How to
2 handle this if this happens on numerous occasions whether
3 it is talking to the RTO or notifying the Commission.

4 At the same time if there is a situation we
5 related to it where a disclosure, similar disclosure
6 occurred and it was a three-way conversation where I had
7 the company transmission people on the phone, the
8 additional disclosure came from the RTO employee and then
9 someone commented on it, and one of the things we worked
10 with the folks at the company is to discuss in how to
11 handle was just because some information has been disclosed
12 by an entity that technically is not subject to these rules
13 doesn't open the door for a free-for-all discussion about
14 it. So in those instances if a company employee commented
15 on it that would be posted and were posted. And when you
16 look at these issues you can say, well, you take -- you
17 take the problem, it is not our problem. As I said
18 earlier, let RTO deal with it, but after EPACT and Order
19 670 it just, the heightened sensitivity of what happens
20 later in the markets I think companies are, at least we are
21 advising companies to be proactive, think ahead and
22 document or put whatever controls or protocols in place so
23 you can show at a later date that you didn't take advantage
24 of this information even if it didn't have technically
25 posting obligations you did post it. I think that is just

1 some going-forward protection trying to be a little ahead
2 of the curve about how to handle issues like that.

3 Another issue that comes up or questions I get
4 frequently deal with local transmission issues. And what I
5 am talking about here is the gap between where, you know,
6 this is for someone who is within an RTO structure, where
7 the RTO handles a certain voltage and above and all major
8 transmission requests and obviously handles all major
9 issues relating to administration and the provision of open
10 access transmission service. But when you have local
11 issues a lot of times what we found if there is a very gray
12 area or blurred line about who has the expertise and
13 frankly the resources to deal with this. And this, the
14 issue most frequently came up in a context where there was
15 a company serving say a large industrial customer and the
16 company, the utility, was the load serving entity within
17 that utility was the transmission customer, buying the
18 service under the tariff and their power sales customer
19 wanted a significant change in the way they were served.
20 By then that related to a change in their type of
21 transmission service that they were procuring, it's a live
22 request for transmission service.

23 There was never a lot of clarity about who do
24 you talk to. Our experience was that the RTO was
25 unresponsive but they took the view this is really a local

1 issue where there is local expertise, they are more focused
2 in handling regional issues. What we ended up doing is
3 making sure that, you know, trying to structure this as
4 much as the transmission specific is under the exemption
5 for transmission specific request, it is live request for
6 transmission service and you are really changing that
7 specific request, having the CCO or delegee present to
8 document the conversation, keep the conversations very
9 narrow so it strictly relates to that request that you are
10 going to change particular service. In this case it was a
11 network issue so there is going to be a change to network
12 operating to be filed. But trying to comply not only with
13 the letter but the spirit. And I think you have to know
14 what the spirit of the rules are.

15 And that comes to a another comment I would like
16 to read in these examples. I think going forward it might
17 be helpful assuming the RTOs have not been subject to the
18 standards of conduct that there is some guidance either
19 provided by the Commission or minimal, just on those
20 issues, because after listening to the circumstances there
21 was, it was inadvertent, there wasn't any attempt to pass
22 information to a former colleague, but if it happens with
23 one, inadvertently in a large regional area, it happens
24 multiple times with different companies. And no one is
25 suggesting through changes of rules would provide maybe the

1 guidelines. At a very high level that is conversation that
2 is happening day to day that might be helpful and from my
3 perspective personally when you are representing folks you
4 don't want clients to bear any more risk than they have to,
5 especially when there is a million dollars per occurrence
6 out there if something goes wrong. So, we want them from a
7 counseling perspective we are saying be careful, document,
8 make sure there is a trail, don't trade on the information.
9 If there is a real systemic problem, we will get in touch
10 with the Commission or the RTO itself will try to correct
11 that.

12 And also just for purposes of full disclosure,
13 no one is suggesting and my comments don't suggest sloppy
14 operations. I am saying this is just a tough situation to
15 deal with.

16 But we don't want at a later date to ever have,
17 you know, a situation where you can't show what happened or
18 you can't bring back accurately the set of facts to show
19 that you tried to handle this in as good faith and
20 compliant manner as possible.

21 The last item I would like to address and it is
22 sort of been touched on by other panels, by the first panel
23 on independent functioning and IRP, but we have done a lot
24 of work with folks recently just to restructure the
25 regulatory affairs function, because it has been my

1 experience and probably a lot of people here when 889 came
2 out and then post Enron, pre Order 2004 and the time the
3 rule was issued, as markets developed in companies,
4 businesses developed it seemed, for example, that they
5 documented, they staffed up on both the transmission side
6 as far as analysts and people who can provide policy
7 advice. And these comments may now go to drafting comments
8 or testimony or developing policy positions. So there is a
9 complete break and it was a bit redundant, it wasn't
10 efficient. And as the industry has changed there has been
11 a need for, for example, transmission expertise, meaning
12 policy expertise, not operating expertise or day-to-day
13 information expertise, to handle issues because the
14 companies' businesses have changed, business model has
15 changed for energy affiliates or to develop an enterprise
16 view when you have a utility or pipeline in a marketing
17 affiliate and have a competing business model, how do you
18 rectify it and make a recommendation to management to file
19 comments in a proceeding.

20 So what we have done, or at least suggested is
21 taking the people who have the true policy understanding
22 that work with issues at the commission, from the beginning
23 to put them in a shared service position like regulatory
24 affairs and just have the raw information that they need to
25 evaluate the policy position of what they would recommend

1 to the company come up to them. They are bound by the no
2 comment rule, so they are not going to talk across the
3 function, but they still are in the position to process
4 this information, have requisite expertise to recommend to
5 their management this is the way as an enterprise we would
6 like to go.

7 And that is the sum of my comments.

8 MR. PEASE: Thank you.

9 We appreciate your comments, of all the
10 panelists.

11 I will start with the question to the panelists,
12 an issue that we have come across in a number of our
13 operating for standards of conduct, and it concerns the
14 situation where the transmission provider has frequent
15 meetings with the energy generation personnel for whatever
16 reason is not disclosed.

17 Sherry, did you want to start?

18 MS. NELSON: Well, if you recall most everything
19 in regard to, you know, nomination scheduling, business
20 that is being done electronically, so there is not the
21 frequency of the meetings that maybe in the past would have
22 occurred. And anything that is new business or if they
23 want to talk about potential service, either the energy
24 affiliate or the pipeline are contacting legal and
25 regulatory compliance so that we are aware of the meetings.

1 We can do a refresher training for those folks and we can
2 also have someone there that is going to be a good note
3 taker and be able to document what information was there,
4 whether disclosure of inappropriate information or if we
5 think we want to publish the information on the web site
6 prior to the meeting so they won't run into that issue we
7 have also done that.

8 MR. SWEENEY: One of the things we have tried to
9 do is with regards to sharing the information at meetings,
10 especially senior meetings is sent senior officers,
11 directors, what transmission is, I think the further you
12 get away from it and the harder it is I think for them to
13 get their arms around, it is budget information that I need
14 presented by a certain person, really the type of
15 information that, you know, the Commission is talking
16 about, and it is. So one of the things we have tried to do
17 is by sensitizing them to the scope of information or at
18 least as best we can define it, they -- then they have
19 responded by restructuring how they do some of their
20 business and how they do their meetings. So what might
21 have been a joint meeting is no longer a joint meeting and
22 then at the joint meeting that information is no longer
23 brought up. And then the same safeguards that Sherry
24 talked about, CCO or delegee taking notes and keeping a
25 record of that is helpful, and it has been very

1 constructive.

2 MR. PEASE: How often do you train your
3 employees and what triggers, if any, do you have that would
4 indicate it is time for review training?

5 MS. NELSON: Well, at Williams we do the online
6 training once a year and we go in and refresh the
7 questions, you know, at the end of the training module.
8 Then we also have small group training for both our energy
9 affiliates and our pipeline groups and we pretty much focus
10 on the having frequency of interaction between the energy
11 affiliates and pipeline. That is the first group we will
12 focus on. Then we will pick up other groups. We have
13 started doing some small group training out in the field
14 where they may have operations or close to one of our
15 energy affiliates. So it is really as we get into it we
16 are seeing more of a need to make sure we have got that
17 small group training, we even do small group training for
18 our outside contractors, if we have got an outsource
19 provider, you know, we have done small group training in
20 Houston in our case, Salt Lake and Tulsa, to make sure they
21 understand why it is important they understand the
22 information can't be shared with our energy affiliate
23 employee so that is a real critical function.

24 MS. McVEY: At Bonneville in addition to the
25 basic training, one of the things that we have provided to

1 all employees is a very simplified version of the rules,
2 which I have coined the handy pocket guide to the standards
3 of conducts. And it literally is a pocket guide, that
4 distills the basic principles of independent function, FOIA
5 Act, and that is available to all employees including field
6 employees that provides at least basics. It also points to
7 the internal web site which contains information on
8 procedures that may impact them. So we have standard
9 voluntary consent procedures or it is showing meeting logs,
10 so rather than going to meetings and taking notes I request
11 employees that are scheduling joint meetings they have the
12 burden to let me know and assure that there is not going to
13 be any unposted transmission information communicated in
14 those meetings.

15 MR. SWEENEY: We recommend generally that
16 companies do annual training, once a year. Number one we
17 recommend they take a look at compliance for the year and
18 making any changes going forward. At that time that they
19 also do some form of ongoing training. A lot of the
20 companies, for example, on the electric side with EEI
21 training initially there is a shorter version of that, at
22 the same time we have been asked to come in and actually do
23 function specific training. The example I just gave on
24 dispatch is one of them. There has been other times when I
25 have been asked to come in and say here is an issue, we

1 want to make sure someone is clear about this and come in
2 and sit down and that is on an as-needed basis, but it is
3 fairly regular with some of the folks we work with.
4 Sometimes it is consistently walking them through why and
5 why it makes sense for them to understand their prior
6 training.

7 MR. PEASE: Anyone from the audience want to ask
8 questions now?

9 There is one more, do you do any internal audits
10 to determine if information is being improperly shared
11 particularly with respect to IT systems?

12 MS. NELSON: Well, at Williams we have a system
13 review. It is at least done annually and usually with more
14 frequency than that, to make sure that there is not any
15 inappropriate employee that might have access to what we
16 have deemed to be any application system or database that
17 would contain any pipeline or customer information, whether
18 that is public or nonpublic. We have classified that and
19 those are the application systems and databases that are to
20 be segmented or not available to any of the energy
21 affiliate employees.

22 MR. PEASE: Do you do periodic testing of it.

23 MS. NELSON: Yes.

24 MR. SANFORD: Dan Sanford. I am with American
25 Transmission Company. I had three quick questions.

1 First to Keshmira, first of all do you have a
2 copy of the handy pocket guide and is it copyrighted?

3 MS. McVEY: No, it is not copyrighted but maybe
4 I should go into the consulting business, and I can make
5 that available to you.

6 MR. SANFORD: Would appreciate it very much.

7 Secondly you elaborated on some facts on joint
8 right-of-way, and I didn't quite understand how that
9 related to the standards of conduct unless it was some
10 planning or future activity. Could you elaborate a little
11 more?

12 MS. NELSON: Sure. The project was originally
13 one of our energy affiliate projects but because the nature
14 of the project was that we felt it was going to be deemed
15 to be a jurisdictional facility, that project was actually
16 taken over by one of our transmission providers. And one
17 of the energy affiliate employees that had been involved in
18 the acquisition of the right-of-way when it was originally
19 the energy affiliate project had continued to visit with
20 some of those landowners, in regard to the right-of-way
21 needed for the overall project, they will continue to deal
22 with those same right-of-way landowners because of the
23 needed right-of-way for their own project on the energy
24 affiliate signed now interstate pipeline employee will be
25 acquiring the right-of-way for the overall project.

1 MR. BLACKBURN: Tom Blackburn. I had a question
2 about the, what I consider to be one of the most gray areas
3 with respect to information sharing, that has to do with
4 the opportunity for informal communication between the
5 merchants and the transmission side. Everybody knows you
6 train, everybody knows that you fix your IT so that nobody
7 can see the EMS if you are on the merchant side, but there
8 is a real question when folks from the transmission and the
9 merchant business are housed in the same building as to how
10 do you help ensure, aside from training, that there are not
11 communications that occur?

12 I can give examples for instance if you are
13 paranoid enough you can require that folks have different
14 lunch hours or that you segregate them in different sides
15 of the lunchroom. I had a client ask me whether merchant
16 and transmission people could go in the same corporate jet
17 to a midwest ISO meeting. I answered no, not without the
18 compliance officer. But you can take a commercial jet and
19 sit on different sides.

20 The question is how do you folks handle that and
21 what level of paranoia or concern, let's put it a different
22 way, do you have with respect to those informal
23 communications?

24 MS. McVEY: I will consider that a softball to
25 the exact question. I figure there are so many

1 opportunities to work on compliance and see continuous
2 improvement that those are the ones I say let's use some
3 common sense to our employees. We are fortunate enough
4 that we have separate locations for the most part and it is
5 probably a lot more difficult for utilities that just have
6 one building. But I think there are some other cues that
7 you can tell clients to call, for example besides your
8 culture of compliance, signage is very cheap, you know, you
9 run some color copies off a color printer and hang it up
10 and remind people that this is important and to not
11 disclose transmission information or if there is
12 transmission information in the area put signage that there
13 is transmission information in the area and it needs to be
14 curtailed.

15 So that is maybe one easy way to deal with the
16 paranoia and I know that is a similar thing that is done
17 for critical and sensitive information, so you can put it
18 right next to the same sign, you know.

19 COMMISSIONER KELLY: Tom, when you were
20 discussing the behavior this seems to imply I was thinking
21 perhaps you were talking about the FERC commissioners and
22 how we behave in light of the Sunshine Act. And we always
23 take our corporate compliance officer with us whenever we
24 fly on the same plane together or even eat lunch together.

25 MR. BLACKBURN: I have one quick comment. I had

1 a client who told me that a person on the merchant side had
2 become engaged to a person on the transmission side, and
3 what should they do. I was feeling cranky that day and I
4 asked them how did they meet in the first place?

5 COMMISSIONER KELLY: I have run into the same
6 problem, myself, actually.

7 MS. FRANCES: Patty Frances, I work for Southern
8 Natural Gas, El Paso. I understand, we understand that
9 2004 was written so that you didn't disclose transmission
10 data to the energy affiliate but I was just wondering how
11 you all had dealt with situations where for legitimate
12 reasons, not really project development, just business
13 reasons the energy affiliate was giving the pipeline
14 company or transmission company information, and just
15 assuming there is no discussions, just assume for purposes
16 of the question that there is no discussion about that
17 information and further this is more information sharing,
18 do you prohibit the information going the other way in your
19 organizations or --

20 MS. McVEY: No, we don't. But I think there is
21 a couple controls you can put in place to demonstrate
22 compliance. So one control would be is I always ask that
23 question, so how did you guys meet, how are you going to
24 communicate, is it going to be in person. And you use the
25 joint meeting law, is there going to be an e-mail then that

1 is great. If it is from generation to dispatch those lines
2 are always recorded lines, they have been at Bonneville for
3 years so should somebody see them then we go through all of
4 those hours of tapes of information and review that so it
5 is on a recorded line.

6 But at this point in time there is a business
7 need, especially from gas, the transition in electrical
8 energy side for the generators to provide critical
9 information to the transmission dispatchers so they can
10 operate the system.

11 MS. FRANCES: I was thinking more in my specific
12 example is well log data or production data where the
13 production company is giving pipeline information, and we
14 are discussing, we are just getting that information.
15 Anyway --

16 MS. ANAS: What is the purpose of the production
17 company giving its production information to the pipeline?

18 MS. FRANCES: We have a storage field and we
19 are -- in order to ensure the integrity of the storage
20 field, we have to, you know, look at also what is going on
21 in the production end and we don't talk about that, we just
22 sort of need to look at that information, so --

23 MS. ANAS: So they are interconnected.

24 MS. FRANCES: The reservoir, I don't think
25 interconnected would be the right word, reservoir is the

1 same reservoir, that has been forever since, you know, the
2 dawn of time. We didn't do that, we didn't interconnect
3 those.

4 MS. ANAS: Interstate transmission and
5 nonregulated --

6 MS. FRANCES: There is a storage reservoir where
7 we built our storage reservoir and it was certificated by
8 the Commission. I just was sort of interested in --

9 MS. COURT: Ladies and gentlemen, we are now at
10 a minute or so before 2:30 and I think that what we will
11 do, you know, is take our -- a break at this time. If you
12 could come back very promptly, so that we can start the
13 fourth panel which is the putting staff on the spot panel,
14 I know that you all want that, be here for that, please
15 come back no later -- we will start promptly at 2:45.
16 Thank you.

17 (A recess was taken from 2:28 p.m. to 2:47 p.m.)

18 MS. COURT: The fourth panel is a new feature to
19 these conferences. This is sort of put the staff on the
20 spot feature, also known as a Q and A period where the
21 questions have been submitted ahead of time. Some of the
22 questions were actually submitted in writing over the last
23 several weeks, and others were submitted this morning.

24 Staff has endeavored to answer as many of these
25 questions as possible, and likewise will endeavor to cover

1 as many of the questions asked in the hour that we have.

2 Let me just make a couple notes here. There was
3 some overlaps in the questions, some duplications, same
4 questions or very closely the same question, so that if you
5 don't hear the exact wording of your own question, we try
6 to eliminate duplication and redundancy, so we are not
7 going to just repeat variations, very close variations on
8 the same theme.

9 We will not address certain questions that were
10 submitted and let me tell you why. Some of the questions
11 submitted just simply did not have enough detail in them
12 for us to give a meaningful answer. In other words, there
13 were too many unanswered questions for the staff to be able
14 to give a meaningful response.

15 There were also some that were, involved IRP and
16 for the reasons that Deme mentioned this morning, we are
17 not going to address those.

18 And finally, there were questions involving
19 issues that went beyond compliance with the standards of
20 conduct, questions that involved other proceedings pending
21 at the FERC. And as you know, even though we do have one
22 absentee right now, we do have our full Commission with us,
23 we have a forum of the Commission. As a consequence, we
24 had to notice this meeting under the government Sunshine
25 Act, so for those questions that went beyond this

1 proceeding itself, this particular RM docket we are not
2 going to address those questions because of a forum of the
3 Commission being present.

4 Let me also mention that the questions received
5 will not be listed on the FERC.gov as a separate list of
6 questions. What we will do with these questions is inform
7 revisions to the FAQs that are already on the Internet.

8 The format for this panel will be as follows:
9 The FERC staff who are seated at the other table will both
10 read and then respond to the questions, and they have, we
11 have a sort of an order in which those will be given.

12 We are going to start off with the questions
13 that were submitted this morning, and then go to the
14 questions that were submitted in writing ahead of time.

15 The staff panel you know, in part anyway,
16 because they have served as moderators for the previous
17 panels. Bob Pease, LeeAnn Watson and Deme Anas. And also
18 all of them are from the Office of Market Oversight and
19 Investigations. Stuart Fischer from OMOI is at the table
20 as well and Julia Lake from the Office of General Counsel.

21 I wanted to mention also that the general
22 counsel is here today, he was sitting up in front and I am
23 not sure where he escaped to. He didn't wear a tie so we
24 didn't let him sit up here. So in any event -- and he is
25 not here so I got to say that, so you can all tell him I

1 made fun of him after the fact.

2 As I said, the staff will take turns now and I
3 think, Bob, are you going to start off?

4 MR. PEASE: Yes.

5 MS. WATSON: I might add one thing, understand
6 that the answers that we are giving are all consensus of
7 staff including the people at the table as well as some
8 people back in D.C., so don't kill the messenger, we are
9 just reading the answer that is the consensus of staff.

10 MR. PEASE: And of course these are staff
11 opinions, not opinions of the Commission.

12 All right, we are going to try to answer some of
13 these questions as succinctly as we can and others will
14 have longer answers.

15 Question number one: In light of homeland
16 security, should transmission outages be posted behind
17 digital certificates on OASIS?

18 The answer is yes.

19 Question number two: One interpretation
20 frequently asked question 21/24 is that the electric
21 distribution company or division is an energy affiliate if
22 it is part of a vertically integrated company that owns
23 generation and makes all system sales in a nonretail access
24 state. Is this a correct interpretation?

25 Yes.

1 MS. WATSON: Question three: Is there a
2 distinction between a, quote, shared senior officer,
3 unquote, and a, quote, shared officer, i.e., who is not
4 senior, unquote?

5 The answer is yes. To the extent that senior is
6 actually in our regulation at 358.4(a)(4), it talks about
7 shared senior officers and I think that is a distinction,
8 again depending upon your company and size, you are going
9 to have to make the determination as to what senior means
10 but there is a reason for having senior in that regulation.

11 Next question: Can a company purchase gas for
12 its own operational needs so that it can generate
13 electricity for its own operational needs without becoming
14 an affiliate?

15 The answer is no, and that is in the regulations
16 also at 358.3(d)(6)(4).

17 Your enforcement policy statement encourages
18 self-reporting yet to date there is no sign that
19 self-reporting has helped lessen the severity of penalty or
20 remedy. Can you give any comfort to companies that want to
21 self-report, yet are concerned that they are just setting
22 themselves up for an enforcement action? Would you
23 consider an amnesty period for companies to self-report
24 without consequences or triggering any enforcement action?

25 Well, the answer is there have been many

1 self-reports and I think there are several people in this
2 room who are aware of some self-reports that have been
3 made. It is true there haven't been any published
4 decisions about the self-reports today. We are taking very
5 seriously our enforcement policy statement that speaks in
6 terms of the self-reports being a mitigating factor as it
7 relates to penalties. It does not, however, relate to
8 mitigating remedies.

9 I think I can speak to say that for many of the
10 self-reports we have some have been closed out and there
11 are others pending investigation. We cannot give an
12 amnesty for a self-report, per se, and I think that is it.

13 MS. ANAS: The answers are short today but when
14 we put them on the web site we will put the explanations
15 and the rationale as appropriate to supplement additional
16 guidance.

17 The standards of conduct preclude a single -- do
18 standards of conduct preclude a single point of contact
19 within a company for all matters related to reliability
20 compliance?

21 Under the standards of conduct, Section 358.43,
22 assumes that reliability is a part of a transmission
23 function, so to the extent that the single point of contact
24 is engaging in transmission reliability activities there
25 could be single point of contact, but -- that is it.

1 In situations involving transmission outages or
2 developing system constraints which effectively limit
3 operation of specific generation facilities, can the
4 transmission provider talk directly with personnel at the
5 generation facility?

6 The answer is yes. I think the Commission
7 created an exception specifically discussing the need for
8 interconnecting facilities to be able to communicate to
9 opposites in the systems. So the answer is yes.

10 The follow-up question to this is: Is the
11 interchange if the same information is posted on the OASIS?

12 The answer doesn't change because they are
13 allowed to have the communications.

14 The next question was: Does the interchange of
15 the transmission change if the provider is independent?

16 And no, that doesn't change the answer.

17 MR. FISCHER: All right. Next question is:
18 Assume a transmission provider with a small staff is a
19 subsidiary of a much larger company with substantial
20 corporate staff including a credit department. How much
21 involvement in the corporate shared credit department have
22 in this transmission provide -- sorry -- how much
23 involvement can the corporate transmission provider have in
24 the department's credit decisions?

25 The question doesn't specifically mention energy

1 affiliates here, but to the extent we are talking about a
2 transmission credit department which would be dealing with
3 both the transmission provider and a marketing and energy
4 affiliate, the Commission said in Order 2004-A that is
5 able, the Commission -- excuse me, that -- risk
6 management -- excuse me -- you are -- general credit policy
7 decisions are able to be made but when it comes down to
8 decisions on specific customers that information is not
9 permitted to be shared. That is in paragraphs 153 and 154
10 and of 2004-A. An example is listed in paragraph 154 and
11 that is that the risk management employee can communicate
12 to the marketing or energy affiliate as needed by
13 nonaffiliated financial rating entities, however, the risk
14 management function employee is prohibited from telling the
15 marketing or energy affiliate that that company -- because
16 it hasn't paid its transmission fees, and the distinction
17 is subtle but important.

18 The next question is: Assuming once again a
19 transmission provider with a small staff is part of a much
20 larger organization, can a single unit within the corporate
21 parent conduct hedging transactions on behalf of affiliated
22 transmission providers, energy affiliates?

23 And the answer is no, that would be
24 impermissible sharing because it would provide an advantage
25 to the affiliates.

1 MS. LAKE: The first question is: To what
2 extent can an energy affiliate and a transmission provider
3 work together on a joint project and each contributing
4 employees, including transmission function employees, to A,
5 evaluate, and B, work on the project as it develops? For
6 example, a parent company is interested in developing a
7 project that is nonjurisdictional, in other words, it is
8 not gas or electricity-related. No subsidiary has yet been
9 formed. The parent company needs expertise of both the
10 energy affiliates and the transmission provider to evaluate
11 the project. Can transmission function employees and
12 energy affiliate employees evaluate the feasibility for the
13 project? Can they develop and/or work on the project if it
14 goes forward?

15 The answer to this question is, if it is a
16 nonjurisdictional project it is outside our purview. And
17 there is no problem, but you have got to be careful, there
18 is no sharing of transmission information as they prepare
19 the project.

20 The second question is: In Section 358.4(a)(3),
21 the regulations prohibits an employee of an energy
22 affiliate from conducting transmission functions for the
23 transmission provider, yet, Section 358.4(b)(3)(iii)
24 requires the transmission provider to post the name and the
25 organizational structure of an employee of an energy

1 affiliate who is engaged in transmission functions for the
2 transmission provider. Why did the Commission require such
3 posting when it prohibits this activity? Are there
4 exceptions to 358.4(a)(3) when an employee of the energy
5 affiliate can engage in transmission functions for the
6 transmission provider?

7 And the answer to the question about this
8 distinction is that the Section 258.4(b)(3)(iii) that
9 recognizes or provides for the situation where the
10 Commission has granted a partial waiver of the standards of
11 conduct, and to the extent that the company is authorized
12 to do this kind of an activity they are required to post
13 it.

14 Bob, would you like to pick up at this point?

15 MR. PEASE: Actually you are up with question on
16 the independent function.

17 MS. LAKE: I guess I start then. In the written
18 questions that were submitted prior to this meeting it was,
19 one of the questions was would FERC staff state in the
20 answers to frequently asked questions at number 21, page
21 14, that shared officers and directors who do not carry out
22 transmission functions or energy affiliates functions may
23 receive all types of information so long as they observe
24 the no conduit rule? Can you please confirm that under
25 Order No. 2004 there indeed is no information including

1 transmission or merchant-related information including
2 real-time transmission or merchant-related information,
3 that shared senior officers and directors cannot receive,
4 provided that they scrupulously abide by the no conduit
5 rule?

6 Section 358.4(a)(5) of the Commission's
7 regulations state that a transmission provider may share
8 transmission information covered by the information act of
9 the disclosure prohibition with its shared senior officers
10 and directors provided that they do not participate in
11 directing, organizing, or executing transmission system
12 operations or marketing functions or act as a conduit to
13 share such information with marketing or energy affiliates.
14 So long as the shared senior officers and directors do not
15 participate in the directing, organizing or directing the
16 transmission operations or marketing functions and so long
17 as they observe the no conduit rule there are no limits to
18 the types of information that can be shared.

19 The second part to the written question, they
20 ask: Are there any types of shared senior officers or
21 directors to whom the above statement regarding all types
22 of information and Section 358.4(a)(5) do not apply? If
23 so, which shared senior officers and directors and why?

24 The answer is no. Again the key is that the
25 shared senior officers and directors do not participate in

1 directing, organizing or executing transition system
2 operations or marketing functions. In fact, if they
3 participate in such functions, the senior officers and
4 directors are not permitted to be shared under the
5 standards of conduct. This same rule would apply equally
6 to shared senior officers and directors of parent or
7 holding companies.

8 MR. PEASE: Now we are going to deal with
9 questions concerning I guess the contract issue that we
10 discussed quite a bit this morning.

11 Can senior officers in parent holding company of
12 a transmission provider provide guidance regarding the
13 major contracts? Example they gave was \$100 million but
14 where the purchase or sales or sale of electricity or
15 natural gas. Two, participate in the negotiations
16 regarding the major contract for purchase or sale of
17 electricity or natural gas. Three, approve-disapprove,
18 suggest modifications regarding the major contract for the
19 purchase or sale of electricity or natural gas?

20 The answer is in Section 358.4(a)95),
21 Commission's regulations, transmissions may share
22 transmission information with its senior shared officers
23 and directors provided they do not participate directly in
24 organizing or executing transmission systems or operations
25 or marketing functions or act as a conduit to share such

1 information with the marketing or energy affiliate. And
2 the above examples providing guidance regarding the major
3 contract for the purchase or sale of electricity or natural
4 gas and the approval or disapproval or suggesting
5 modifications regarding the tentative deal for the major
6 contract for the purchase or sale of electricity or natural
7 gas would be permitted, however, participating in the
8 actual negotiations of the contract would be considered a
9 directing or organizing function as would providing routine
10 guidance on contracts. Shared officer or director could
11 provide overall parameters to the negotiators but could not
12 be directly involved in the negotiations.

13 MS. ANAS: The meaning of "tariff
14 administration" as used in Question 20 of FERC staff's 2005
15 answers to frequently asked questions on the web site is
16 unclear. If tariff administration for a particular company
17 does not involve the exercise of discretion, for example, a
18 change to or submitting, for example, non FERC tariffs, why
19 should activities be considered involved in the planning
20 and carrying out of transmission operations? These would
21 appear to be more similar to shared services activities
22 subject to the no conduit rule.

23 And our response is that in Alcoa Power
24 Generating, which is a case that the Commission addressed
25 in 2004, the Commission described administering tariffs as

1 establishing rates of service as well as the terms of
2 service for the transmission of electricity or the
3 transportation of natural gas, including operating
4 conditions. And in Order No. 2004-C, the Commission agreed
5 to take a look at employees involved in tariff
6 administration on a case-by-case basis. That was at
7 paragraph 31 of 2004-C, an energy affiliate could have
8 substantial advantage if it had foreknowledge of tariff
9 change by a transmission provider and if such employees
10 were shared tariff provisions could be more likely to be
11 developed with an eye towards providing advantage to the
12 energy affiliate.

13 As a result, except for employees involved in
14 the process that fall under the shared support services
15 exception, such as those doing secretarial or clerical work
16 regarding filings, the functions should not be shared.

17 Regarding the question as to whether the
18 prohibition includes administering non FERC tariffs, the
19 independent functioning requirements of the standards of
20 conduct only apply to FERC jurisdictional tariffs.
21 However, it should be noted that to the extent that the
22 sharing of nonpublic interstate transmission and customer
23 information is involved, relating to a nonjurisdictional
24 tariff the prohibition on sharing such information under
25 the standards of conduct remain applicable.

1 MR. FISCHER: One of the written ones that I
2 missed the last time around: When do the Order 2004
3 regulations become effective for a new unaffiliated gas
4 pipeline? Can the regulations be phased?

5 And the answer is in paragraph 237 of Order No.
6 2004-A, the Commission said that a new transmission
7 provider should take the appropriate steps to comply with
8 the standards of conduct as soon as practicable. However,
9 the Commission noted that some aspects don't have, wouldn't
10 have a meaningful applicability until the company has been
11 staffed and begins to perform transmission functions.

12 MS. ANAS: In some integrated electric companies
13 all generation marketing decisions are made only by the
14 company's marketing affiliate employees. In these cases
15 generation plant operators do not make any sale or resale
16 of electric energy nor do these employees decide which
17 generators to dispatch or sell off system. Instead all
18 sales and marketing decisions are made by the company's
19 separate marketing unit.

20 Similarly, in other organizations that have
21 hydro facilities the generation plant operators have
22 extremely little, if any, latitude to vary generation.
23 Under this structure it appears that the generation plant
24 operators do not fall within the definition of the
25 standards of conducted for marketing sales or brokering; is

1 this correct?

2 In Order Number 2004 the Commission rejected the
3 functional approach for the independent functioning
4 requirement. That was at paragraphs 88 to 94. The
5 Commission stated that it did not believe that a functional
6 approach whereby the separation was determined by the
7 functions of the employees as opposed to the entity for
8 which they worked was workable. Accordingly, if generation
9 operations are part of the market affiliate the employees
10 in those operations are subject to the standards of conduct
11 with regards to receiving information from the transmission
12 provider. Generation employees are not governed by the
13 shared services or maintenance and field employee exception
14 to the standards of conduct. The Commission has considered
15 and approved exemption requests for using such a functional
16 approach where the requesting parties shows that such an
17 approach is workable.

18 Again, see the Alcoa Power Generating case, 108
19 FERC 61, 243, regarding an exemption request by Kinder
20 Morgan.

21 MS. WATSON: Does the standard in
22 Section 358.4(5), which states that a shared senior officer
23 or director may not participate in operating or marketing
24 functions mean that there must be at least the one
25 intervening level of management separating the shared

1 senior officer or director from the day-to-day employees
2 engaged in transmission system operations or marketing
3 functions, energy affiliate functions?

4 And the answer is no. The standards of conduct
5 do not require creating an intervening layer of management
6 separating the shared senior officer or director from the
7 day-to-day management employees engaged in transmission
8 system operations or marketing functions.

9 MS. COURT: The staff will stay around for a
10 little bit afterwards, although I would prefer doing
11 everything so everybody can hear what we are saying as
12 opposed to doing it off line.

13 Where were you, LeeAnn?

14 MS. WATSON: For Sarbanes-Oxley "effective
15 corporate controls" purposes, a Transmission Provider
16 desires to establish limited delegations of authority so
17 contracts creating large financial obligations, for example
18 \$2 million or more, require senior executive level
19 approval. May a transmission provider establish procedures
20 where a transmission function employee executes such high
21 dollar transmission-related agreements on behalf of the
22 transmission function and a shared officer or director also
23 execute the agreement on behalf of the transmission
24 provider, legal entity for corporate governance purposes
25 without the shared officer or director losing his or her

1 shared status?

2 The answer is that these procedures described
3 above seem to be acceptable, as they do not appear to
4 constitute day-to-day activities. And I would just
5 emphasize here that the example of \$2 million or more was
6 the example given in the question, that would of course
7 vary on a company-by-company basis.

8 MR. PEASE: Okay. We are going to turn to some
9 information sharing questions. Marketing and energy
10 affiliated employees. Section 358.5(a)(2) and 358.5(b)(1)
11 appear to permit the sharing of public information between
12 transmission employees and marketing and energy affiliates.
13 Is this an accurate interpretation of these regulations?

14 Yes. The transmission provider is allowed to
15 share. The information sharing prohibition is on
16 standards -- or the disclosure of nonpublic transmission or
17 customer information.

18 We only prohibit the disclosure of nonpublic
19 transportation customer information. If it is public
20 information, it can be disclosed.

21 Would it also be appropriate to marketing and
22 energy affiliated personnel concerning RTO, ISO, et cetera,
23 et cetera.

24 Yes. Provided that no nonpublic transmission or
25 customer information is provided to the energy or marketing

1 affiliate, disclosure of public information, yes, it is
2 perfectly permissible.

3 Next, how should 18 CFR Section 358.5(a)(2)
4 exception for information that is available to the general
5 public without restriction be interpreted? How should the
6 exception in 358.5(3)(b)(1) that is not -- from the OASIS
7 Internet web site be interpreted? It appears to allow
8 transmission employees to monitor market or energy
9 affiliates other than the OASIS Internet web site even
10 though it is not posted on the OASIS or Internet web site.
11 The information that is available to the general public
12 without restriction may always be disclosed. We have asked
13 this question four different ways, the answer is you may
14 disclose it, without restriction means without restriction.

15 MS. WATSON: You have paraphrased a very long
16 question that refers to Section 358.5(b)(5) which provides
17 certain exceptions to the prohibition on information
18 exchange, and at the end of this question they state that a
19 recent audit -- however, recent audit reports have
20 indicated that FERC is concerned in some situations
21 involving transfers of information between transmission
22 function employees and marketing and energy affiliates to
23 discriminate in favor of the marketing or energy
24 affiliates, other than the specific restrictions contained
25 in Section 358.5 has FERC adopted a policy

1 limiting transmission function employees and marketing or
2 energy employees?

3 The answer is no. FERC has not adopted any
4 policy outside of the regulations in Section 358.5 and the
5 Commission's interpretations of those regulations in
6 published orders.

7 To what extent are information flows between
8 transmission function employees for marketing and energy
9 affiliates and nonemergency situations limited or
10 prohibited? If limitations are intended, how are the above
11 described regulations to be interpreted?

12 In addition to the exceptions to the rules
13 mentioned in the original question, which I paraphrased
14 earlier, I guess I should start off with the only
15 limitations on information flow and the exceptions are
16 those that are set forth in Section 358.5(a) and (b).

17 MR. FISCHER: The preamble to the next question
18 says information flow prohibits the transmission provider
19 from disclosing to transmission affiliates but do not
20 prohibit the marketing or energy affiliate from disclosing
21 marketing information to transmission function employees.
22 Recent auditors reports -- to transmission function
23 employees could create opportunities or incentives for
24 transmission function employees discriminate in favor of
25 their marketing or energy affiliates. Has FERC adopted a

1 policy limiting or prohibiting certain types of information
2 flows from marketing and energy affiliate employees to
3 transmission function employees? If so, what is the basis
4 for this policy in the regulations?

5 The answer to that is no, there is no
6 prohibitions under the standards of conduct on marketing or
7 energy affiliate sharing information with the transmission
8 provider.

9 Subpart B to this question is: Are information
10 flows by marketing and energy affiliate employees to
11 transmission function employees concerning day-to-day
12 operation of the system in nonemergency situations
13 prohibited?

14 And the answer to that again is no under the
15 standards of conduct that there is no prohibition on a
16 marketing or energy affiliate sharing information with a
17 transmission provider.

18 MS. ANAS: The standards of conduct provide that
19 if an employee of the transmission provider discloses
20 information contrary to the requirements of
21 Section 358.5(b)(1) and (2), the information must be posted
22 on the OASIS. The posting of information relating to
23 Section 358.5(b)(1) seems reasonable, but the posting of
24 information pertaining to Section 358.5(b)(2), which would
25 be customer information, does not seem reasonable because

1 it doesn't provide even broader disclosure of the
2 transmission information.

3 In the event of a violation,
4 Section 358.5(b)(2), should regulations be interpreted as
5 requiring the posting of the fact of the disclosure but
6 not the violation itself.

7 How should the transmission provider handle an
8 inadvertent disclosure of transmission information that is
9 otherwise subject to CEII protection?

10 When there is an improper disclosure of
11 third-party customer information to an energy or marketing
12 affiliate, the staff has interpreted that opposing
13 requirements of Section 358.5(b)(3) are satisfied if the
14 transmission provider posts the fact of the disclosure, the
15 type of customer whose information was disclosed, if it was
16 an LCC or producer or generator, and the general type of
17 information that was disclosed, load data, expansion
18 information. The transmission provider need not post the
19 data that was disclosed because of the confidentiality
20 concerns expressed in this question.

21 MS. LAKE: The next question is, is
22 transmission-related accounting information such as
23 aggregated monthly expense and revenue information on an
24 income statement considered nonpublic information,
25 transmission information, that does not convey any

1 information about the transmission system or transmission
2 operations? If so, how can the information be reported at
3 a management meeting which marketing or energy affiliate
4 managers may attend or in a corporate report which is
5 distributed to all managers?

6 The answer is that aggregated accounting
7 information may be shared without violating the information
8 sharing prohibition of Section 358.5(b).

9 MS. ANAS: May Transmission Function employees
10 and employees who may be part of a Marketing Affiliate
11 unit, but who are not involved in sales or marketing,
12 (e.g., generation desk personnel) jointly participate in
13 black start training exercises that may include simulations
14 of transmission condition or hypothetical scenarios,
15 including scenarios developed using historical transmission
16 information?

17 While the Standards of Conduct do not contain an
18 exception for Black Start training exercises, the emergency
19 situation exception in Section 358.4(a)(2), indicates that
20 the standards of conduct are not meant to create a
21 situation in which system reliability will be compromised,
22 energy and marketing affiliated personnel that are not
23 involved in sales or marketing may participate in black
24 star training provided that they follow the no conduit
25 rule.

1 We also encourage them to remind those employees
2 that they must observe the no conduit rule at the beginning
3 of that training.

4 What information may training -- I am sorry.

5 What information may transmission personnel
6 provide to affiliated or nonaffiliated transmission
7 customers when a transmission outage affects their
8 facilities? For example, with a breaker failure, may
9 transmission personnel tell the customer about the outage?

10 Assuming that the transmission provider posts on
11 its OASIS that a line segment is out of service is there a
12 difference, whether the customer is a wholesale or retail
13 customer, to tell one customer and not all?

14 If the outage affects only one customer the
15 communication would fall under specific transaction
16 exception of Section 358.5(b)(8), and/or under the
17 exception relating to the information necessary to maintain
18 the operations of the transmission system in
19 Section 358.5(b)(8). If the outage affects more than one
20 customer, the information must be posted on OASIS. If
21 customers cannot access OASIS because of the outage, the
22 transmission provider must assure that all customers
23 receive the same information on a contemporaneous basis
24 through some alternative means.

25 MR. FISCHER: The next few questions relate to

1 training requirements. If all work performed by a
2 contractor is performed under the supervision of the
3 trained employee, does the contractor need to be trained?

4 And the answer is yes, if the contractor
5 conducts transmission system operations of reliability
6 functions, which would make a contractor, explicitly under
7 Section 359.3(j), or if the contractor has access to
8 transmission information or information concerning gas or
9 electric purchases, sales or marketing functions, then the
10 contractors are covered by training requirements, in
11 Sections 358.4(e) (5).

12 The next question is, well, what about
13 subcontractors?

14 And the answer is while subcontractors are not
15 specifically listed under the definition of transmission
16 function employees in Section 358.3(j), the coverage of
17 that section which includes employees, contractors,
18 consultants or agents, suggests that subcontractors are
19 intended to be included if they have access to transmission
20 information or information concerning gas or electric
21 purchases, sales or marketing functions.

22 And finally, on the training category, the
23 question is if a contractor retained by Utility A will have
24 access to transmission information, has received standards
25 of conduct training from another source, perhaps another

1 utility client, or from a third party, must Utility A also
2 train the contractor?

3 And the answer to that is yes, if the contractor
4 has access to nonpublic transmission or customer
5 information. And the reason is, the reason for that is
6 that Utility A may have a different organizational
7 structure than the entity with which the contractor held
8 his previous job, meaning that the contractor needs to know
9 to whom the nondisclosure requirements applied to regarding
10 Utility A who the contractor is now working for.

11 MS. LAKE: Well, I began the written questions
12 and I get to answer the last written question.

13 Is a regulated utility that purchases power and
14 to a limited extent sells power for balancing purposes and
15 trades in derivative for risk catching purposes in order to
16 serve its load considered an energy affiliate?

17 The answer is yes. The Commission ruled that
18 this was so with respect to local distribution companies in
19 Order Number 2004-C at paragraph 24. The Commission stated
20 that if the distribution function includes retail sales
21 functions, a retail sales function employee cannot engage
22 in any wholesale sales such as selling excess generation to
23 a nonretail customer without triggering energy affiliate
24 status. The Commission stated further that it is not
25 appropriate for an entity that participates in the

1 wholesale market to obtain an undue preference when
2 competing with nonaffiliates for transmission capacity.

3 MS. ANAS: Actually we have one more on a piece
4 of paper, so if that is okay I will answer that. The
5 question is: Does an affiliated company but not an energy
6 affiliate whose employees may perform support functions for
7 an energy affiliate and occasionally transmission provider
8 need to be identified on the transmission provider's web
9 site?

10 The question is a little vague, but just to the
11 point of giving some guidance, where a transmission
12 provider has employees that perform shared support
13 functions, the transmission provider should identify the
14 types of the shared functions or the shared services on the
15 organizational chart that contains the organizational
16 structure of the parent. The purpose here is transparency,
17 if they are performing some activities and the viewers
18 should be able to see the web site and ascertain the types
19 of functions that the company is sharing.

20 MS. COURT: Ladies and gentlemen, that concludes
21 our formal presentation of responses to the written
22 questions that were submitted ahead of time.

23 We still have a few minutes and I think if there
24 is some follow up -- sir, you had one.

25 MR. SANFORD: Dan Sanford with American

1 Transmission Company. It was comments that Deme made, I
2 just want to make certain that I understood.

3 I heard originally that a transmission provider
4 for reliability purposes may communicate with the generator
5 control function. And then I heard in one of the answers
6 that you read that if, however, that generator control
7 function is part of the marketing affiliate that that
8 communication cannot take place. If I misheard I just want
9 to clarify that.

10 MS. ANAS: The rules include the reliability
11 function as part of the transmission functioning. That is
12 sort of the first step that we looked at.

13 With respect to communications of the generation
14 function, there are exceptions in the information sharing
15 prohibitions. I think it is at (b)(8), where it talks
16 about the communications necessary between interconnecting
17 affiliates to run the systems. So I am not sure --

18 MR. SANFORD: I am alluding to the Commission's
19 February 13th rule with respect to nuclear plant where the
20 Commission specified a very deliberate path of
21 communication for reliability communication and that went
22 from the transmission function control to the nuclear
23 control room. In effect the words of the order say control
24 room with respect to the transmission function outage that
25 might necessitate some impact, and then subsequently from

1 there the transmission or the nuclear control room is then
2 able to talk to the marketing arm, but without disclosing
3 the transmission function.

4 MS. ANAS: Right.

5 MR. SANFORD: One of the comments you made
6 earlier was however, if the generation control function is
7 part of the marketer because it is housed within that
8 organization, then that communication can't take place.
9 And I just want to know if I misheard or if maybe I need to
10 pose a different question.

11 MS. ANAS: I think that there has to be
12 communications between the transmission control function
13 and the generation dispatch or control function to the
14 extent that they have to communicate, the extent of those
15 communications and what the generation employees
16 communicate to others, that they would not be able to
17 communicate, for example, to the marketing or energy
18 affiliated employees. We have to ramp down because this
19 line is down, they would say we have to ramp down by 50
20 megawatts. I think that we created those operational
21 exceptions with the intent of allowing interconnecting
22 companies to communicate, both the pipelines and the LTCs
23 and the utilities and the generators because they have to
24 run their businesses and keep lights on and the gas
25 flowing.

1 MS. COURT: We have a few more minutes.

2 Please identify.

3 MR. ALLEN: Bill Allen. This is a follow up of
4 the question on training subcontractors, and this maybe a
5 combination of the interpretation of training the agents
6 and the definition of transmission information. My concern
7 is the potential implications of having to train the entire
8 supply chain for construction activities. If we hire
9 subcontractors to build a pipeline or to build a
10 transmission line, are we then responsible for training,
11 you know, hundreds of potentially thousands of field
12 employees, material suppliers, just compounding on down the
13 line, or is -- could it be that the interpretation of the
14 transmission information would not include material
15 characteristics of the pipelines, more focus on what would
16 be I think considered commercially sensitive information?

17 MR. PEASE: As far as the question you are not
18 proposing that transmission information would be disclosed
19 to these contractors that are not involved in the
20 transmission aspect, they are the maintenance/construction
21 guys and we don't see any problem with that. So, no, those
22 maintenance/construction guys would not have to be trained.

23 MR. ALLEN: So the construction drawings that
24 show pipeline routes and sizing would not be considered
25 nonpublic transmission information?

1 MS. ANAS: I think it would be considered public
2 transmission information. Is that information not included
3 in your -- I mean I assume this is after your certificate
4 has been issued so that that, some of that information
5 would have already been made public through the certificate
6 proceedings, right?

7 MR. ALLEN: True, but certainly not the details
8 of the construction routing.

9 MS. ANAS: I think it is something to think
10 about, I have written it down, we have another half of us
11 that talk about these, and we will think it through and I
12 understand the implications that you are raising, and I
13 will try to post it on the FAQs.

14 MR. ALLEN: Just a general suggestion, the
15 standards of list items that are considered to be nonpublic
16 transmission information but it also says not limited to,
17 if the staff can provide some examples of what you would
18 consider information that is in general about transmissions
19 but, you know, for which you would not place the same level
20 of scrutiny.

21 MS. COURT: I think there was one other -- go
22 ahead, Tom.

23 MR. BLACKBURN: Tom Blackburn. Let me preface
24 the question by saying that I think that a great number of
25 the questions that the staff has answered today have been

1 very helpful in providing a way for utilities to comply
2 with the standards. I do have a question which I am almost
3 afraid to ask. In some instances there may be -- maybe I
4 shouldn't ask it, you are right, I have to ask it, I think
5 we have to ask this.

6 In some instances there may be some things which
7 were said today that could be interpreted as at least
8 putting a different gloss on statements that occur in the
9 orders, and I am wondering, since we have a staff
10 interpretation versus a Commission order, how are we
11 supposed to handle that in the near term?

12 MS. COURT: Well, let me take a crack at that.
13 Obviously the caveat from beginning of this session and
14 repeated -- beginning of the day and then also repeated
15 before this panel and also as reflected on the web site, is
16 that it is staff, I mean these are staff views, and many of
17 you who have been long-term FERC practitioners know what
18 that means, they are staff views. They can inform what you
19 do, they can inform what you advise your clients, but it is
20 not the Commission's meeting. If you want more specificity
21 and definition then you need to seek a petition for
22 declaratory order that would be the proper thing to do.

23 So -- and again, there is also, Commissioner
24 Kelly has pointed out, too, there is a no action letter
25 process as well that you can use. Tom's question I thought

1 was more on the interpretation, that is not necessarily
2 that you thought you had a client who was about to go
3 astray, but again the no action letter approach with great
4 specificity, you need specificity with that request but
5 again that too is staff advice, that is just the staff's
6 opinion on whether or not the staff would recommend an
7 enforcement action.

8 The frequently asked questions again are staff's
9 views as to the interpretation of the regulation and of the
10 Commission orders which promulgated those regulations.
11 The, you know, what staff attempts to do is make sure that
12 it is within, you know, if it is not necessarily in the
13 regulations, that the interpretations are informed by the
14 legislative history of those regulations and the
15 legislative history of the regulations is embodied in the
16 preambles to Order Number 2004-A, B and C. And also, for
17 example, the Alcoa decision which was mentioned earlier is
18 an entire body of law that has come about since the
19 issuance of the original order.

20 So, Tom, I don't have an easy answer for you, I
21 think you really know what the answer was, and so I am
22 basically just repeating, you know, if you want something
23 from the people here over to my left, and want their
24 opinion, as such, and it is only their opinion that forms
25 the law, then I think the best thing you should do is seek

1 a petition four declaratory order or to the extent we would
2 have any other type of proceeding in this regard, to
3 participate in this proceeding.

4 Oh, I pushed the microphone away, but I think it
5 is at this point that I would like to ask the chairman and
6 the commissioners if they have any final remarks. And on
7 my behalf I wanted to thank everybody who attended today,
8 and for your incredible attention throughout the day,
9 especially I notice that there is no windows here, so it is
10 sort of trying to make us think that there is no sun out
11 there. So, Mr. Chairman?

12 CHAIRMAN KELLIHER: I will be relatively brief,
13 and in part because I woke up at 1:30 in the morning local
14 time, I don't know why, but I want to thank all the panel
15 for participating today. I think their presentations were
16 very helpful, helpful to me certainly, and I think we had a
17 lot of expertise brought together today, and I want to
18 thank you for that.

19 I want to thank Susan for keeping the trains
20 rolling on time, very impressive, very efficient person.
21 In fact, we are two minutes ahead of time, that doesn't
22 happen in our technical conferences.

23 I think the meeting, the panel has raised some
24 hard issues and I think we should give them a hard look. I
25 think we want compliance to be as objective as possible and

1 reduce or eliminate the gray as I referred to this morning.
2 I don't think we are there yet with respect to the
3 standards of conduct rules. We heard one panelist this
4 morning saying that he gets more questions that he can't
5 answer on the standard of compliance, many questions than
6 any others. And he is experienced.

7 We have heard anecdotes about how types of staff
8 have to be formed to answer questions about standards of
9 conduct, and also compliance is sometimes the subject of
10 negotiation, and that is a little bit troublesome. It just
11 seems a rule where compliance is -- where negotiation is
12 short of compliance probably has some room for improvement.

13 And it doesn't seem to be a problem at all with
14 Commission staff, I have heard a lot of people come up to
15 me directly privately saying that they think the Commission
16 staff is very diligent in actually answering their
17 questions, and trying to help facilitate compliance, so
18 it's not a question of Commission staff, it is not a
19 question of our purpose in this area, but there may be a
20 problem with the rule itself and I think we should give it
21 a look.

22 Now, I am open to changes with respect to the
23 standards of conduct rule. The final rule was actually I
24 think about the last thing I didn't vote on at the
25 Commission that was presented to me on my first full day at

1 the Commission, and it was 200 something pages long and I
2 did not think I could cast an informed vote in about three
3 hours after receiving it, so I declined to vote on it so I
4 have a special interest in the standards of conduct rule
5 from that point of view.

6 Now, I think we should be open to changes of
7 conduct rules partly because we have new enforcement
8 responsibilities in other very important areas, reliability
9 and manipulation, and so I think we need to be efficient in
10 the way we enforce standards of conduct rules. I think we
11 need to provide greater clarity to the regulated community
12 and that will help them and help us. It will help the
13 regulated community because to the extent they are
14 interested in complying, it will be easier for them to do
15 so and it will help us in that it will be easier for us to
16 identify noncompliance. And we will be able to be more
17 efficient in the way we enforce the standards of conduct
18 rules and we will be able to dedicate more enforcement to
19 the other areas, reliability and manipulation areas.

20 So I think we have got a lot of things to chew
21 on from the meeting today and I think we should give a hard
22 look at some of the issues raised today.

23 That is about all I can muster, but I want to
24 thank everyone for spending their Friday here on standards
25 of conduct rule. I just want to ask my colleagues if they

1 have some comments?

2 Okay, well, I guess that is a wrap. No, I don't
3 have a gavel but --

4 MS. COURT: I can do it.

5 CHAIRMAN KELLIHER: Thank you for coming.

6 (Whereupon, at 3:45 p.m., the meeting was
7 adjourned.)

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