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BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

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

REGULAR COMMISSION MEETING
OPEN MEETING

Hearing Room 2C
Federal Energy Regulatory
Commission
888 First Street, N.E.
Washington, D.C.

Thursday, July 20, 2006
10:15 a.m.

1 APPEARANCES :

2 COMMISSIONERS PRESENT :

3 CHAIRMAN JOSEPH T. KELLIHER

4 COMMISSIONER NORA MEAD BROWNELL

5 COMMISSIONER SUEDEEN G. KELLY

6 SECRETARY MAGALIE R. SALAS

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18 ALSO PRESENT :

19 DAVID L. HOFFMAN, Reporter

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P R O C E E D I N G S

(10:15 a.m.)

CHAIRMAN KELLIHER: Good morning. If we can close the doors in the back, this open meeting of the Federal Energy Regulatory Commission will come to order to consider the matters which have been duly posted in accordance with the Government in the Sunshine Act for this time and place.

Please join us in the Pledge of Allegiance.

(Pledge of Allegiance recited.)

CHAIRMAN KELLIHER: We'll have to make sure that new Commissioners know something about the pause in the Pledge of Allegiance, so we start right.

This is actually a very important meeting of the Commission for two reasons: First of all, the business matters that we're going to deal with later on, but also, it is the last meeting of the current Commission, of this current three-person Commission.

It's Nora's last meeting here at the Commission, and I know there's a lot of interest in the new Commissioners, and there's -- I know some people have talked about what nicknames they should bear, the near Commissioners, and there have been different proposals.

We've never been given a nickname. No one has ever named the current Commission. One possibility comes to

1 mind.

2 COMMISSIONER BROWNELL: I'm getting nervous.

3 (Laughter.)

4 CHAIRMAN KELLIHER: There's a line in Henry V
5 where it says "We few, we happy few, we band of sisters." I
6 guess, in this case --

7 (Laughter.)

8 CHAIRMAN KELLIHER: So band of sisters would be
9 one possibility.

10 (Laughter.)

11 CHAIRMAN KELLIHER: I think maybe a better one is
12 just the few.

13 (Laughter.)

14 CHAIRMAN KELLIHER: We have accomplished a lot.
15 We've been a lean Commission, under-woman'd Commission, and
16 we've done a lot in the past year.

17 I want to thank my colleagues and I want to say a
18 few things about Nora. This is not intended to be a roast.

19 (Laughter.)

20 CHAIRMAN KELLIHER: I hope I will not be a
21 maudlin Irishman, but I want to first of all say that Nora
22 has been a very good Commissioner and a very good friend for
23 a long time, and I know I'm going to miss her.

24 Actually, I know I'm going to miss you more than
25 I anticipate, but one thing -- I was thinking about your

1 name. Nora is a very memorable name. I've actually known
2 three Noras in my life.

3 One is my maternal grandmother, Nora Noon. She
4 was an Irish immigrant. She was 13 of 16 children, came to
5 this country penniless, raised a family by herself. The
6 name, Nora, to me, has always meant strength, self-reliance,
7 and independence, because of my maternal grandmother.

8 For that reason, we gave our daughter the name,
9 Nora. She's the second Nora. And she is a very strong
10 individual, too, sometimes too strong. She is sometimes a
11 defiant young lady, but there must be something about the
12 name, Nora.

13 (Laughter.)

14 CHAIRMAN KELLIHER: For it means those things; it
15 means to me, strength, principally, but independence and
16 self-reliance.

17 The third Nora that I've had the privilege to
18 know is Nora Mead Brownell. You have all those same
19 qualities, so I think there is something, I think, to the
20 name, and it's really been a pleasure to serve with you.

21 And I said you were a very good Commissioner, a
22 great Commissioner. I know people will consider that
23 differently. I'm sure the Staff has some notion of what, in
24 their point of view, is a good Commissioner.

25 I'm sure people on the outside have some point of

1 view, but I just wanted to offer the perspective of a
2 colleague. What is a good Commissioner, from the point of
3 view of a colleague?

4 I think, first of all, you have to start off with
5 why do we have multi-member Commissions in the first place?
6 Why aren't these single-administrator agencies?

7 And I think it's because, clearly, Congress wants
8 a diversity of views to be brought to bear on important
9 regulatory matters. That's why we have a Commission.

10 So what does that mean? What qualities should a
11 Commissioner have? I think, first of all, they should have
12 strong, clear views on the policy matters that we are
13 deliberating. Nora clearly has strong, clear views.

14 You also need -- I think it's important for a
15 colleague not to be shy about expressing them. Nora has not
16 been accused of being shy of expressing her views. She
17 certainly meets that standard.

18 You also want someone who is going to lay down
19 their cards and just be very up front with their colleagues.
20 You have always done that.

21 You want someone, I think, who is willing to
22 compromise, but not desperate to compromise, someone who
23 recognizes that the end result matters, the policy matters,
24 the substance matters.

25 On a personal level, I think you want someone who

1 is not going to stab you in the back. That's a good quality
2 to have in a colleague.

3 (Laughter.)

4 CHAIRMAN KELLIHER: If Nora had an inclination to
5 stab someone, I think she'd walk right up to them, stare
6 them in the eye, and stab them right in the heart.

7 (Laughter.)

8 COMMISSIONER BROWNELL: And I have.

9 (Laughter.)

10 CHAIRMAN KELLIHER: And maybe do it a couple of
11 times.

12 (Laughter.)

13 CHAIRMAN KELLIHER: Also, on a personal level,
14 you want a colleague who is fun, and I don't think I've ever
15 known of another Commissioner that would go to an October
16 meeting dressed as a witch.

17 (Laughter.)

18 CHAIRMAN KELLIHER: So Nora has been the fun-est
19 Commissioner. It's been a pleasure to serve with you.

20 We have a gift we're going to give you to
21 commemorate your public service. I thought Suedeem should
22 have the opportunity to say something, and, unlike the name,
23 Nora, Suedeem is, I think -- I probably only have one
24 Suedeem that I will have the pleasure to know in my life.

25 (Laughter.)

1 CHAIRMAN KELLIHER: But do you have some
2 comments?

3 COMMISSIONER KELLY: Yes, I do. I thought that I
4 was going to give myself a challenge and try and come up
5 with the one attribute of Nora's that I most respect and
6 admire, both professionally and personally, so as I tried to
7 accomplish that, I was unable to.

8 So, I changed my own ground rules and now one
9 attribute, professionally and one personally, and,
10 professionally, I met Nora in New Mexico many years ago. It
11 seems like many years ago.

12 She was there doing outreach, and she was there
13 on a mission. That exemplifies the trait that I think most
14 defines Nora, and that I most appreciate.

15 She is action-oriented, she has a quick mind.
16 She wants to accomplish things.

17 She is very practical about what can be
18 accomplished, and when she figures it out, she goes after
19 it. I guess you could call her an entrepreneur; you could
20 call her a crusader; she's all of those and more.

21 She has the energy and the ability to accomplish
22 what she sets out to accomplish, and I just really
23 appreciated that, and I've learned a lot from you, Nora.

24 COMMISSIONER BROWNELL: Thank you.

25 COMMISSIONER KELLY: Personally, Nora was also my

1 first friend in Washington, D.C. That really exemplifies
2 what she's about: She's loyal, she is a loyal friend; she
3 is serious about her commitments to people.

4 She is very giving and generous. She makes time
5 in her life for her loved ones and her friends, and she
6 sacrifices to ensure their well being.

7 She has been my loyal friend, and, as Joe
8 mentioned, she has a good sense of humor, and so, in being
9 my loyal friend, she's also introduced to me rabble-rousing
10 good times.

11 (Laughter.)

12 COMMISSIONER KELLY: And I'm going to miss those;
13 I'm going to miss you very much, Nora. You've been a
14 wonderful friend and a wonderful colleague, and I know that
15 we'll continue to see each other, and I know that you'll
16 continue to contribute to this industry, and you'll continue
17 to be on a crusade, and I just wanted to give you a token of
18 my personal friendship and admiration.

19 COMMISSIONER BROWNELL: Thank you.

20 (Applause.)

21 COMMISSIONER BROWNELL: I feel like Queen for a
22 Day here.

23 CHAIRMAN KELLIHER: I'd like to present her with
24 her flags commemorating her public service here at FERC.

25 COMMISSIONER BROWNELL: Thank you.

1 (Applause.)

2 COMMISSIONER BROWNELL: We're going to do a
3 little song and dance here.

4 (Pause.)

5 This is very hard, and I'm going to break with my
6 longstanding tradition of shooting from the hip, and
7 actually read, so that I don't break down and weep.

8 It is very hard to say goodbye. You have been my
9 friends, my teachers, and, frankly, my backbone for five
10 years.

11 I'm so grateful for the hundreds of people --
12 probably thousands -- all over the country, who welcomed me
13 and enriched my life. I hope we will continue to enjoy our
14 friendship.

15 To the Staff of FERC, I can only say you're the
16 most under-recognized, under-appreciated and probably
17 underpaid staff in Washington.

18 Your knowledge, your work ethic, your sacrifices
19 for public service, enable the Agency to respond to an ever-
20 more complex world. You care about the customer and for
21 that, I thank you.

22 To my colleagues, past and present, I'm grateful
23 to have been part of a proud history of well-reasoned
24 decisions and customer protections.

25 While we have had different approaches, different

1 strategies, different ideas, I've never doubted for a moment
2 that our respect for each other would lead to a greater and
3 better outcome.

4 The economic and social well being of our
5 country, as you heard me say a thousand times, depends on
6 our ability to be innovative, collegial, and focus on the
7 people we serve.

8 Stability and integrity are and will be the
9 hallmarks of this Agency.

10 To my new colleagues, I wish you every success.
11 You bring to the FERC, unbelievable experience,
12 intelligence, and knowledge.

13 I know you will do well, and I hope that you
14 know, as you make the tough decisions, we will all be
15 supporting you.

16 For the past five years, I have had the luxury of
17 having two families, and there are no words to describe my
18 feelings for Team B. Jim, who started with me and explained
19 not only the world of pipelines, but the strange and arcane
20 world of the FERC.

21 He told me where the bodies were buried, and he
22 crafted dissents that, frankly, are beautiful to behold.

23 Jamie, whose intensity and passion for truth,
24 sustained us through the dark days of California refunds and
25 contract cases, even brought Patrick, her wonderful dog, to

1 help us grapple with SMD.

2 Mary, whose legal expertise is only surpassed by
3 her musical talent, coached us on everything from fish
4 ladders to tribal law to the bankruptcy code. She taught us
5 all that there is life outside FERC, and balance makes us
6 better people.

7 Mark joined us only briefly before he was swooped
8 up by the Senate, but he made heroic efforts to keep us
9 focused and organized.

10 Alas, we were un-trainable, but we are thankful
11 for his efforts.

12 (Laughter.)

13 COMMISSIONER BROWNELL: And Christine, whose
14 strategic thinking, analytical skills, and research, added
15 incredible depth to our team.

16 There's a bonus that when she wasn't delving into
17 the details, she sustained us with a lot of gourmet goodies.

18 May, the center of peace and tranquility, did
19 bring order to the chaos, an almost impossible task. She
20 has run my life with such efficiency for the last couple of
21 years, I'm not sure I can function without her.

22 Team B all shared three important traits that I
23 value: Intellectual curiosity, a passion for excellence,
24 and a sense of humor.

25 And, last, but not least, to my kids, who talked

1 me into accepting this appointment, I thank you for being
2 wiser ant, frankly, more generous than I was prepared to be.
3 Your strength and courage have sustained me.

4 You remind me often that it's good to want to
5 change the world, and, wherever I am, I will continue to
6 tilt at those windmills, because it's the right thing to do.

7 But in the meantime, for those who will wonder
8 where I'll be, I would like to read you this note from my
9 children. I didn't bring it down, but this is a real note
10 from Lexi, Peter and Sam, quote:

11 "We are glad we will see you in the next five
12 years, as much as the RTOs have seen you in the last five
13 years."

14 (Laughter.)

15 COMMISSIONER BROWNELL: That is where I plan to
16 be, seeing my children, and I'm glad they still want to see
17 me. Thank you.

18 (Applause.)

19 CHAIRMAN KELLIHER: Now, to business: Earlier
20 this week, electric utilities set record demand levels in
21 New England, New York, PJM, the Midwest ISO, California, and
22 ERCOT. Within a 24-hour period, record demand levels were
23 reached in seven regions of the United States at the same
24 time.

25 This kind of record demand occurring

1 simultaneously across most of the country, represents the
2 most severe test of our electric system since August of
3 2003, and, so far, we have passed the test.

4 While there were a few short, localized outages,
5 the bulk power system succeeded in meeting customer demand.
6 I want to congratulate the skill and dedication of the grid
7 operators and the utilities who kept the system running
8 under these unprecedented stresses.

9 I also want to congratulate the skill of the
10 generators who avoided unplanned outages at this critical
11 time.

12 The Commission and its Staff closely followed the
13 events of the last week, from two perspectives: Reliability
14 and markets.

15 The Office of Energy Markets and Reliability,
16 Division of Reliability, and the Office of Enforcement,
17 Division of Energy Market Oversight, were vigilant during
18 this period in monitoring activities on the transmission
19 side.

20 For example, we monitored both the fire that led
21 to the outage of a major transmission line from Manitoba to
22 Minnesota, and Monday morning's return to service at one of
23 the key ConEd cables serving Manhattan. That line returned
24 just when it was needed most, even though it was not
25 originally expected to return to service until sometime in

1 August.

2 The Commission monitors what is happening through
3 information and reports from utilities, system operators,
4 NERC, Commission Staff in California, and the Midwest ISO
5 and our Market Monitoring Center.

6 This process is supported by Order No. 659,
7 issued in May 2005, which requires public utilities to
8 report promptly, shortages and anticipated shortages of
9 electric energy and capacity which would affect the
10 reliability to serve their wholesale electric customers.

11 They must comply with this Rule by submitting and
12 electronic filing with the Division of Reliability. Without
13 question, during at time of soaring temperatures and stress
14 on the electric system, we must, and do, stay alert to what
15 is happening, to be prepared for any outage, and to watch
16 for any questionable market behavior.

17 Fortunately, the Energy Policy Act of 2005, gave
18 the Commission extensive new authority to police
19 manipulation of wholesale power in electric and gas markets,
20 and to punish bad players who might be tempted to take
21 advantage of a stressed system.

22 To that end, the Commission promulgated its anti-
23 manipulation rules in Order No. 670, earlier this year. Our
24 preliminary analysis of the current situation, however,
25 indicates that high prices were a function of normal supply

1 and demand.

2 Our authority to direct the electric utility
3 industry to operate in a certain way during such times, is
4 limited. For example, we do not have emergency authority to
5 order a utility to generate electricity or transmit energy
6 on the spot.

7 Also, we do not site generation facilities
8 necessary to assure adequate supply of electric energy.
9 That is a state responsibility.

10 Our authority to address issues that arise during
11 times of high demand and possible system failure, is, in the
12 first instance, focused on the bulk power system, and is
13 also largely prophylactic. That is, we must ensure there
14 are sound rules and compliance programs in place to
15 encourage a robust and well-functioning interstate
16 transmission grid, which, in turn, will facilitate keeping
17 supply and demand in balance and help avoid major outages
18 that adversely impact our country's citizens and economy.

19 There are really four elements to a reliable
20 electric system: First, we must have adequate electricity
21 supply. This is an area where both federal and state
22 regulatory have important roles to play.

23 Neither of us has complete authority in this
24 area, and it is necessary that we collaborate and develop
25 complementary approaches to assure an adequate electricity

1 supply. The Commission has acted to assure adequate
2 electricity supply.

3 One of the regions that had a close call this
4 week, was New England. The region had a close call because
5 it has not been adding generation to meet demand.

6 Last year, the total electricity supply in New
7 England rose by 11 megawatts. At the same time, during the
8 same period, demand rose 2,700 megawatts.

9 That is one reason New England came so close to a
10 blackout this week. The Commission acted last month to
11 assure adequate electricity supply in the region.

12 Our action was controversial, but the events of
13 this week show that we acted responsibly.

14 Second, you need a robust transmission grid.
15 Congress recognized that last year when it gave the
16 Commission new authority to site transmission facilities
17 under certain circumstances, and also, Congress encouraged
18 us to issue pricing reform rules to encourage greater
19 investment in transmission.

20 We've made a lot of progress in this area. Last
21 month we issued proposed rules governing transmission
22 siting, and today we will take action to finalize
23 transmission pricing reform rules to encourage investment.

24 Third, you need mandatory reliability standards,
25 backed by a strong enforcement regime. We take action today

1 to implement that step by certifying an electric reliability
2 organization. We will soon act to approve mandatory
3 reliability standards.

4 Fourth, you also need effective conservation.
5 When electric supply and demand are tight, conservation is
6 really the only tool that can make a difference in the short
7 term.

8 Just as we did last year with respect to natural
9 gas after the hurricanes, we encouraged states to adopt best
10 practices with respect to electricity conservation programs.

11 On today's agenda is a Staff report on electric
12 demand-side issues, and although demand-response initiatives
13 are not directly within FERC's authority, we were required
14 to prepare this report by EPAct 2005, and it's timeliness is
15 evident from our experience of the last few days.

16 It's critical to recognize the relationship
17 between infrastructure and price and reliability.
18 Infrastructure is generation and transmission, the ability
19 to generate electricity supply and move it to where it is
20 most needed.

21 If infrastructure is inadequate, the natural and
22 inevitable result will be higher prices and lower
23 reliability. The Commission recognizes this relationship,
24 and we will continue to work to strengthen our energy
25 infrastructure.

1 I'd like to take a moment to officially welcome
2 Phil Moler, John Wellinghoff, and Marc Spitzer to the
3 Commission. For the first time since August 2001, the
4 Commission will be operating at full capacity with five
5 sitting Commissioners.

6 All three new Commissioners were confirmed by the
7 United States Senate last Friday. This is actually an
8 exciting time for the Commission and being back to five will
9 be unusual for us.

10 Nora was the last person to be part of a five-
11 person Commission for a grand total of three months during
12 your service, three months in the summer of 2001.

13 I was asking Jim Hoecker, who is here with us,
14 when he had a five-person Commission, and I think it goes
15 back to '98 or '99. During a period of seven or eight
16 years, the Commission has had a five-person Commission for
17 three months.

18 Jim lived under a four-person Commission. Four
19 is the hardest number, because it has the annoying tendency
20 to divide evenly. There's some tendency about those even
21 numbers, so it's really a tribute to Pat that Pat was able
22 to accomplish so much with a four-person Commission.

23 We only divided evenly on relatively few things,
24 but we will soon be back to five. We look forward to
25 serving with our new colleagues.

1 Summer Interns: I understand that many of the
2 summer interns are here this morning, and I'd like to
3 acknowledge their presence. I think they're sitting in the
4 back. If you all could stand for a moment, I won't
5 embarrass you unnecessarily.

6 This year, we have 59 summer interns representing
7 33 universities from 18 states and the Commonwealth of
8 Puerto Rico.

9 Our intern program provides government sector
10 work experience, as well as an overview of the challenges
11 facing the energy industry. Several of our interns from
12 previous years have already joined the ranks of federal
13 service here at the Commission and are currently making
14 meaningful contributions to our work.

15 So I'm hopeful that many of you will consider the
16 value of pursuing public service later in your careers. I'm
17 impressed that some of you -- this is not the first
18 internship for some of you.

19 Some of you have already come back, so we're
20 already tempting you to consider public service. I just
21 want to remind you of the great Teddy Roosevelt quote: "Far
22 and away, the best prize in life is the opportunity to work
23 hard work at work worth doing."

24 You do have that here at the Commission. I see
25 Haley. Haley is one intern who's come back. She was here

1 two years ago. She was my shadow two years ago during the
2 Summer, so she must at least be considering public service.

3 But I really encourage you all to do so. I have
4 say that when I was your age, a long time ago, I never
5 thought I'd spend most of my career in public service, but I
6 have done so and have thoroughly enjoyed it. It's an
7 interesting life.

8 I just want to thank you for your work this
9 Summer.

10 Then let me turn to Suedeem.

11 COMMISSIONER KELLY: I'd also like to introduce a
12 Summer Intern. Unfortunately, we weren't able to get him to
13 come to FERC. He's at the Consumer Product Safety
14 Commission.

15 Robert, if you wouldn't mind standing up? This
16 is Robert Lyle, who is a friend of mine. Robert is a third-
17 year student at the University of New Mexico School of Law.
18 He's from El Paso.

19 New Mexico sometimes likes to claim El Paso as
20 part of New Mexico, but he informed me that he actually does
21 consider himself mostly a Texan.

22 (Laughter.)

23 COMMISSIONER KELLY: He is President of the
24 Association for Public Interest Law at the University of New
25 Mexico, and he's also President of the Phi Alpha Delta

1 Fraternity.

2 This has been his first visit to D.C. It's an
3 extended visit. He's at the General Counsel's Office of the
4 CPSC. I'm very pleased to say that he is enjoying public
5 service, and I hope that he continues to do that after he
6 graduates. Thanks for coming.

7 CHAIRMAN KELLIHER: Thanks for your work. You can
8 sit down.

9 (Laughter.)

10 CHAIRMAN KELLIHER: Next, the Energy Policy Act:
11 We're coming up to an anniversary. On August 8, it will be
12 the first anniversary of the Energy Policy Act of 2005.

13 The Act granted the Commission a number of new
14 regulatory authorities. It also imposed certain
15 requirements and deadlines on us, and, as of this morning,
16 the Commission has completed action on 20 separate duties
17 required of it under the Energy Policy Act of 2005.

18 So far, we have met or exceeded every deadline
19 imposed on the Commission in that law. Today we are poised
20 to complete action on two final rules, and to be briefed on
21 two studies that EAct requires must be completed by August
22 8, 2006.

23 The two regulations that are on the agenda for
24 today's meeting are: One, to provide transmission pricing
25 reform to encourage investment in transmission; and another

1 to facilitate planning for expansion of transmission
2 facilities to meet the needs of load-serving entities.

3 The Alaska Pipeline: On July 10th, the
4 Commission submitted to Congress, the second progress report
5 on the Alaska Pipeline, pursuant to Section 1810 of the
6 Energy Policy Act of 2005.

7 This report describes the events and progress
8 that have transpired since the Commission's first report on
9 February 1 of this year.

10 The report explained the urgency of completing
11 the next step towards the approval of an Alaska gas
12 pipeline, so that Alaska gas supplies can be part of the
13 solution to the nation's growing need for gas.

14 Gas buyers in the Lower 48, are more likely to
15 enter into long-term LNG contracts, if there is no
16 substantial progress on building an Alaska pipeline.

17 The longer an Alaska pipeline is delayed, the
18 more strength is gained by the proponents of LNG, who are
19 currently establishing long-term relationships and investing
20 billions of dollars in the infrastructure.

21 On July 12th, the Alaska Legislature began a
22 second special session to consider the fiscal terms for oil
23 and natural gas production from the North Slope.

24 For those of you who haven't looked at the
25 report, I think it's actually a very interesting report. I

1 really enjoyed reading it.

2 I think some of the findings are interesting. It
3 highlights the fact that the natural gas market in this
4 country has been changing significantly over time.

5 It used to be a U.S. market; it became a North
6 American market, but it is increasingly becoming a
7 international market. I think it's important that that's
8 something that the Alaska Legislature bears in mind as they
9 consider some of the proposals that are before them.

10 RTO Borders: At last month's meeting, I
11 announced that the Commission will be convening a technical
12 conference on regional transmission organization border
13 utility issues, specifically the issue of an electric
14 utility's ability to benefit from an RTO or independent
15 system operator's regional markets, while avoiding some or
16 all of the costs attributable to membership in the RTO or
17 ISO.

18 This conference has been postponed to allow the
19 new Commissioners an opportunity to weigh in on this issue
20 and to get more feedback from the RTOs and ISOs. This
21 conference will most likely take place early in 2007.

22 The Taum Sauk Hydro Project: I'd like to take a
23 minute to provide an update on what the Commission has been
24 doing with respect to the Taum Sauk incident.

25 As I have previously mentioned, teams of FERC

1 engineers have been investigating the dam breach of the Taum
2 Saulk Hydro Project in Lesterville, Missouri, since the dam
3 breach took place last December.

4 The independent panel of consultants we retained,
5 concluded that over-topping of the upper reservoir
6 embankment was due to the water level monitoring
7 instrumentation system coming lose from its supports and the
8 emergency backup system being incorrectly set too high and
9 failed its production role, enabling over-topping to occur.

10 Based on what was learned here, we're providing
11 additional guidance to dam owners on instrumentation and
12 monitoring programs. This includes training for project
13 operation and engineering personnel.

14 FERC Staff has designed an instrumentation
15 surveillance and monitoring training class for our
16 licensees, that should minimize the potential for another
17 Taum Saulk incident. Information on this project is
18 available on website, www.ferc.gov, on a web page dedicated
19 exclusively to the Taum Saulk dam breach incident.

20 EQR Reports: In Order 2001, the Commission
21 revised its public utility filing requirements to establish
22 the requirement for utilities and power marketers to file
23 electric quarterly reports, or EQRs, which are a summary of
24 the contractual terms and conditions in their agreements for
25 all jurisdictional services, and providing transaction

1 information for short- and long-term power sales during the
2 previous three-month period.

3 In a December 2005 Order, the Commission
4 announced that it would revoke the market-based rate
5 authority of eight utilities that had failed to file their
6 required EQR reports in 2005.

7 I am pleased to announce that our records show
8 that all companies with active market-based rate authority,
9 have filed their First Quarter EQRs for the first time. We
10 have something like 1200 companies that have market-based
11 rate authority, and this is the first time that we had all
12 1200 file their EQRs in a timely manner.

13 I think the practice we've developed over the
14 past year or so, of revocation upon untimely filings, must
15 be prompting timely filings.

16 I want to thank the companies for their diligence
17 in saving us the trouble of initiating revocation
18 proceedings.

19 A recap of discussions with utility and railroad
20 representatives: On June 15th, after our last open meeting,
21 the Commission met with electric utility and railroad
22 representatives to discuss railroad coal delivery matters
23 and their impact on markets and electric reliability.

24 We heard the concerns of several electric utility
25 companies and electric associations with respect to the

1 level of coal inventories at power stations and the reaction
2 of railroad companies.

3 The discussions have contributed to a better
4 understanding of this matter, in particular, as it may
5 implicate reliability of the electricity supply.

6 At present, the Commission is working with the
7 U.S. Energy Information Administration to obtain data on
8 individual utilities' stocks, and, after analyzing that
9 data, we will be in a better position to decide what, if
10 any, further steps we should take.

11 I'd like to provide a brief recap of the
12 reliability technical conference that occurred recently: On
13 July 6th, two weeks ago, the Commission held a technical
14 conference to hear oral comments about the preliminary Staff
15 assessment on the North American Electric Reliability
16 Council's proposed reliability standards.

17 The panelist provided perspectives on a range of
18 issues, including international coordination, the
19 effectiveness of the standards, the development and
20 prioritization of the work plan to address deficiencies, and
21 the enforceability of current standards.

22 The Commission's oversight role in the standards
23 development process, and key definitions such as bulk power
24 system, end users, owners, and operators.

25 In particular, I would like to note two main

1 themes that came out of this conference: First, there
2 really was strong support for the Commission's Staff to
3 quickly gear up and begin actively participating in the NERC
4 standards development process, in order to provide some
5 needed and useful guidance.

6 Two, most of the participants seemed to feel that
7 the Commission should not rush to outright approve all of
8 the 102 reliability standards.

9 There seems to be a recognition, a broad
10 recognition, that the Commission does not have the
11 discretion to approve proposed reliability standards that do
12 not meet the statutory test, and there seems to be a view
13 that there are a good number of standards that do not meet
14 the statutory test at this time.

15 The information presented and discussed at the
16 conference will help establish a record that will assist the
17 Commission in issuing a proposed Rule this Fall to approve
18 those reliability standards that meet the statutory test.

19 Let me briefly recap another action that took
20 place recently. The Commission Staff held a technical
21 conference on July 18th to discuss the April PUHCA II NOPR,
22 which is a notice of proposed rulemaking on financial
23 accounting, reporting, and records retention requirements
24 under the Public Utility Holding Company Act of 2005.

25 The purpose of this conference was to identify

1 the issues associated with the proposed Uniform System of
2 Accounts for Centralized Service Companies, the proposed
3 records retention requirements for holding companies and
4 service companies, and the revised Form No. 60.

5 Representatives from EEI, major utilities, state
6 commissions, and other interest groups participated in the
7 half-day conference, which focused, among other things, on
8 the need for a separate Uniform System of Accounts,
9 flexibility in accounting requirements, versus the benefits
10 of consistency and uniformity and the use of a structured
11 reporting format and the proposed effective date of the
12 rule.

13 The Commission intends to consider a final Rule
14 in this proceeding this Fall.

15 Finally, I would like to note that since the June
16 15th open meeting, the Commission has issued 98 Notational
17 Orders, which, if my math is correct, works out to be a four
18 a day, every day since the June 15th meeting.

19 Again, that's a high level of production, but I'd
20 like to call your attention to two of those Orders, and,
21 first of all, the ANR Order: Last month, as you know, the
22 Commission issued a Policy Statement with respect to gas
23 quality and interchangeability.

24 When we issued that, we divided it in the same
25 meeting, into five individual cases that were before us, so

1 we have not only issued the Policy Statement, we applied it
2 in those five Orders.

3 Since the June 15th meeting, we've also applied
4 it in the ANR Order. I think it's worth just a few comments
5 about ANR, to correct some misperceptions about the Policy
6 Statement itself:

7 In the ANR Pipeline Company Order, the Commission
8 approved a contested settlement that established a 15-degree
9 Fahrenheit safe harbor for the ANR system.

10 This case is significant, because it applies the
11 Commission's Policy Statement on Gas Quality and
12 Interchangeability. In ANR, the Commission clarifies two
13 important issues discussed in the Policy Statement:

14 First, it clarifies that the Commission is not
15 going to require a pipeline to adopt gas quality standards
16 based upon the worst-case downstream scenario, which, in
17 ANR, involved unheated farm taps and a few downstream
18 locations on MichCon's system.

19 While the Order required ANR to consider
20 operating conditions at its interconnections when setting
21 the safe harbor, the Order also states that downstreams are
22 responsible for the operating conditions on their systems.

23 Second, ANR clarifies that in developing gas
24 quality standards, pipelines and their customers must work
25 together to resolve disputes over gas quality, in a way that

1 recognizes shippers' and producers' safety and reliability
2 concerns, while maximizing access to natural gas supplies.

3 I mention these points of clarification, because
4 of a concern that the Policy Statement will be used to
5 require new pipeline and LNG facilities to conform to the
6 most restrictive existing tariff provisions for gas quality
7 and interchangeability on the pipelines to which they
8 directly interconnect.

9 While, of course, a shipper wanting to put gas on
10 a pipeline system will have to meet that pipeline's tariff
11 requirements, the Policy Statement emphasizes the importance
12 of maximizing supply consistent with safety and reliability.

13 To achieve this balance of interests, pipeline
14 tariff provisions need to be flexible, and any restriction
15 on gas supplies must be based on sound technical,
16 engineering, and scientific considerations.

17 The Policy Statement also provides that the
18 Commission will examine the circumstances in each individual
19 proceeding involving gas quality and interchangeability
20 issues, and will give appropriate weight to the gas quality
21 and interchangeability requirements of markets directly
22 served by the pipeline in question.

23 Another comment about Orders involving Enron:
24 I'd just like to note the steps that we took recently
25 involving Enron. Three weeks ago, the Commission approved a

1 settlement between Enron Power Marketing and the Commission
2 Trial Staff, resolving pending matters stemming from Enron's
3 activities during the 2000-2001 Western energy crisis, and
4 approved three other settlements involving contract
5 termination disputes between Enron and Valley Electric
6 Association of Nevada, the City of Santa Clara, and the
7 Metropolitan Water District of Southern California.

8 These settlements mark the most recent of two
9 dozen settlements, collectively valued at \$6.4 billion,
10 which the Commission has approved, stemming from the
11 California electricity crisis of 2000-2001.

12 The Commission took steps to protect the
13 procedural rights of non-settling parties that were not
14 affected by these settlements, and ensured that the Trial
15 Staff will continue as a participant in any ongoing Enron
16 proceedings.

17 Overall, the monetary considerations in these
18 proceedings represents a fair resolution of the disputes,
19 and is, therefore, in the public interest.

20 The Commission also exercised its exclusive
21 jurisdiction under Section 1290 of the Energy Policy Act of
22 2005, and found that the Snohomish Public Utility District
23 of Everett, Washington, is not obliged to pay a contract
24 termination fee to Enron.

25 The Commission denied Enron's termination claim,

1 based upon a finding that Enron's financial fraud induced
2 Snohomish to enter into the contract.

3 With that, I've covered a lot of ground in these
4 announcements, but I'd like to ask my colleagues if they
5 have comments in any of these areas or other areas, before
6 we turn to business.

7 COMMISSIONER KELLY: You've covered all the
8 ground, as far as I'm concerned.

9 COMMISSIONER BROWNELL: I, of course, have to say
10 something on the RTO Borders Technical Conference.

11 I was in the Midwest a couple of weeks ago. I
12 think it's not only financial free-riders, of whom there
13 are, unfortunately, far too many, but there are reliability
14 free-riders.

15 I think -- I hope you would take that up. They
16 are particularly concerned about their neighbors at TVA who
17 don't share the transparency that the RTOs share. I think,
18 whether or not the RTO model continues, whatever model
19 continues, I think everyone is a small or big player, needs
20 to have the tools to provide the information necessary for
21 both themselves, but also their neighbors.

22 I think that either is a conference unto itself,
23 or ought to be added to the list, because I think there are
24 serious ramifications on that.

25 In terms of reliability, I'll just say what I've

1 been saying for five years, actually, which is that I don't
2 think we have the luxury of doing business in the same old
3 way. I don't think we have the luxury of fill-in-the-
4 blanks; I don't think we have the luxury of five years to
5 get to a standard.

6 It's not really healthy for the industry at all,
7 and it's going to be very difficult to hold people
8 accountable, which may be somebody's motive. I don't know,
9 but I also think that we owe the customers a lot better with
10 a sense of urgency.

11 When I heard three to five years, I wanted to
12 jump over the table and scream. We've had 20, and I don't
13 think we've got 20 more.

14 As I said, I wouldn't want to be sitting in a
15 chair before an oversight committee, if the lights go out
16 and we're forced to say, well, we were working on that rule
17 and that will be a couple of years down the road.

18 Once, again, let the engineers do it. I'm
19 perfectly willing to accept their recommendations. This
20 shouldn't be about business strategy; this should be about a
21 standard of excellence that we have along way to go to
22 achieve.

23 CHAIRMAN KELLIHER: Madam Secretary, let's turn
24 to the consent agenda.

25 SECRETARY SALAS: Good morning, Mr. Chairman, and

1 good morning, Commissioners. Since the issuance of the
2 Sunshine Notice on July 13th, E-20 has been struck from
3 today's agenda.

4 Your consent agenda for this morning is as
5 follows: Electric Items - E-1, 7, 8, 10, 12, 13, 17, 18,
6 and 21.

7 Miscellaneous Items: M-1.

8 Gas Items: G-1, 2, and 3.

9 Hydro Items: H-1, 2, and 3.

10 Certificate Items: C-1, 2, 3, and 4.

11 Commissioner Kelly votes first this morning.

12 COMMISSIONER KELLY: Aye.

13 COMMISSIONER BROWNELL: Aye.

14 CHAIRMAN KELLIHER: Aye.

15 SECRETARY SALAS: The first item in the
16 discussion agenda for this morning, is A-4. This is a
17 presentation on the Joint Boards on Security-Constrained
18 Economic Dispatch. It is a presentation by Commissioner
19 Jimmy Ervin, from the North Carolina Utilities Commission;
20 Commissioner Kevin Wright, from the Illinois Commerce
21 Commission; and Paul Alfonso, former Commissioner of the
22 Massachusetts Department of Telecommunications and Energy.
23 And we have Mr. John Reese from the New York State Public
24 Service Commission.

25 CHAIRMAN KELLIHER: I'm tempted to ask Suedeen

1 some really tough questions.

2 (Laughter.)

3 COMMISSIONER KELLY: Go right ahead.

4 (Laughter.)

5 MR. ERVIN: I'm just glad she's decided who she
6 really appreciates.

7 CHAIRMAN KELLIHER: I want to make just some
8 brief comments, welcoming the panel. I want to welcome this
9 distinguished panel to the Commission.

10 The Energy Policy Act of 2005 charged the
11 Commission with convening Joint Boards with the states to
12 study the issue of security-constrained economic dispatch
13 and how it affects the reliability and affordability of
14 electricity in various market regions.

15 The Commission convened the Joint Boards for four
16 regions and designated a FERC Commissioner to chair each
17 Board, and, in turn, designated state commissioners to serve
18 as Vice Chairs.

19 I think, actually, that was probably the best
20 move we made. I think the Vice Chairs ended up doing most
21 of the work associated with the Joint Boards. I know that
22 is certainly true with the South Joint Board, and I want to
23 thank Jimmy for doing the lion's share of the work in recent
24 months.

25 With us this morning is Commissioner Jimmy Ervin

1 of North Carolina, Vice Chair of the Joint Board for the
2 South Region; Commissioner Suede Kelly, who chaired the
3 Joint Board for the West Region, and is filling in for her
4 Vice Chair, Commissioner Marsha Smith of Idaho, who could
5 not attend this meeting; former Commissioner Paul Alfonso of
6 Massachusetts, one of the Vice Chairs of the Northeast Joint
7 Board, and Commissioner Kevin Wright of Illinois, who is one
8 of the Vice Chairs of the Joint Board for the PJM/MISO
9 Region.

10 Chairman Bill Flynn of New York, the other Vice
11 Chair for the Northeast Joint Board; and Chairman Ken
12 Schisler of Maryland, the other Vice Chair of the PJM/MISO
13 Joint Board, could not be with us this morning.

14 I also want to recognize John Reese, a Senior
15 Policy Advisor to the Chairman, I believe, at the New York
16 Public Service Commission. Finally, I just want to
17 recognize that although I chair the Joint Board for the
18 South Region and Commissioner Kelly chaired the West Region,
19 Commissioner Brownell did double duty as chair of both the
20 Northeast Joint Board, as well as the PJM and MISO Joint
21 Board.

22 The Commission formed the four Joint Boards by an
23 Order issued in September of last year. Each Joint Board
24 then held on-the-record public meetings in November of 2005
25 and February of 2006, and took public comments.

1 The Energy Policy Act empowered the Joint Boards
2 to make recommendations regarding security-constrained
3 economic dispatch in their regions, and each Board has done
4 so.

5 The Joint Boards Vice Chairs and Commissioner
6 Kelly are here to present the findings and recommendations
7 of the Joint Boards. Before we do that, I want to give
8 great thanks to the Vice Chairs and all the state
9 representatives that served on the Joint Boards, for their
10 time and effort and participation in the meetings and in
11 preparing the reports.

12 We had every state in the Lower 48 represented on
13 the Boards, so there are too many folks to name right now,
14 but all their names do appear in the Joint Board reports.

15 I also want to thank the Commission Staff, in
16 particular, Bud Early, Sarah McKinley, Jignasa Gadani, Bill
17 Meroney, Tanh Luong, Harry Singh, and Larry Greenfield for
18 all their hard work.

19 The Energy Policy Act also requires the
20 Commission to report to Congress regarding the
21 recommendation of the Joint Boards. We must do so by August
22 7th. We will take today's discussions into account in
23 writing our report to Congress.

24 I must say this is an interesting experience.
25 Joint Boards are very uncommon here at FERC.

1 One reason we don't do them very often is that
2 the way the provision is written in the Federal Power Act, a
3 Joint Board typically, under the Federal Power Act
4 provision, cannot include any FERC members.

5 It's something that, from a FERC point of view,
6 is not the best instrument to establish a Joint Board that
7 is a federal or state joint board, but not a federal/state
8 joint board.

9 Congress wrote this particular Joint Board
10 differently, so that federal and state regulators could sit
11 together on a panel, so it's been a very interesting
12 experiment.

13 I think it was worthwhile. I think it's the kind
14 of thing we should consider for other issues where both
15 federal and state jurisdictions are implicated. We have a
16 very federalist scheme of electricity regulation in this
17 country, and I think a joint board is a way to recognize
18 that.

19 With that, unless Commissioner Brownell has some
20 comments, we can just turn to discussion of the Joint Board
21 reports. Why don't we start with Commissioner Kelly, and
22 then work down?

23 COMMISSIONER KELLY: Thank you. It's a pleasure
24 to address you, Mr. Chairman and Commissioner Brownell.

25 (Laughter.)

1 COMMISSIONER KELLY: It's also a pleasure to be
2 among colleagues from the past, and, Nora, you remember how
3 nice it was, how good it felt, to be among state regulators.
4 Well, it still feels great.

5 I'm here on behalf of Commissioner Martha Smith,
6 Chair of the Idaho Commission, who couldn't make it today.
7 I'd like to summarize the West Joint Board Report.

8 I would like to give you first, a little
9 background on how economic dispatch is conducted in the
10 West, and let you know what the general areas of agreement
11 were in the West, then just in brief summary, the seven
12 specific issues and recommendations that the Board members
13 agreed upon.

14 The West Joint Board comprised the western states
15 of -- and there are 13 of them -- Arizona, California,
16 Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, South
17 Dakota, Texas, Utah, Washington, and Wyoming.

18 The West has a long history of coordinated
19 regional dispatch and collaboration among utilities and
20 other market participants. For example, coordination in the
21 Northwest began around 40 years ago, to make best use of the
22 Northwest's water systems for both power and non-power uses.

23 Seasonal power flows occur across the region of
24 the West, because the Northwest load peaks during the
25 Winter, while the Southwest peaks during the Summer, so,

1 power flows north in the Winter and south in the Summer.

2 In addition, east-to-west flows occur because the
3 major population centers and loads are along the coast,
4 while the majority of the resources are in the Rockies or
5 even farther to the East.

6 For that reason, there's been an active wholesale
7 electricity market in the West for decades. Since 1977, the
8 WSPP has provided a platform for short-term transactions
9 throughout the Western Interconnection for economy, energy,
10 unit commitment, and firm sales or exchange services.

11 As you know, most of the economic dispatch in the
12 West, is performed on a cooperative, but decentralized
13 basis. The California ISO is the one part of the West with
14 a multi-utility market that is centrally organized and
15 dispatched.

16 There were two general areas of agreement among
17 the states in the West: First, the Joint Board members
18 generally believe that there should not be a one-size-fits-
19 all approach to the use of security-constrained economic
20 dispatch.

21 Differences in the resources and load conditions
22 among the areas in the West, and often differences in state
23 of local conditions within each area, are believed to be too
24 large to warrant recommending a single form for all areas.

25 Second, the focus of changes that might be made

1 to the current security-constrained economic dispatch
2 practices, should be at the state or local level. Regional
3 or sub-regional changes should be based on collaborative
4 efforts among utilities, other market participants, and
5 states, rather than on legislative or regulatory initiatives
6 at the federal level.

7 In short, the West agrees that it still likes to
8 be the individualists and pioneers that it's always been.

9 There are seven specific issues and
10 recommendations in the report. If I were to summarize them
11 into one sentence, it would be that the West is content with
12 the current economic dispatch practices, however, I do need
13 to point out that there is a dissent to that consensus from
14 Texas.

15 Texas would have preferred that the Board
16 recommend further study of whether regional dispatch by a
17 central, independent grid coordinator, would be beneficial.
18 Texas -- the Texas Commissioner has set out his views in a
19 separate document that's been placed in the Joint Board
20 record, and, of course, it's been informed by his own
21 experiences with ERCOT.

22 The seven issues or recommendations in the
23 report, relate to, first, independence. The Board
24 recommends that independent dispatch entities not be created
25 for their own sake, and does not recommend further analysis

1 at this time.

2 Transparency: The Board does not feel
3 transparency is sufficient, by itself, to justify the
4 creation of an independent dispatch entity.

5 Contract Dispatch: The Board recommends the use
6 of contractual commitments by IPPs to provide capacity
7 energy and ancillary services in a manner consistent with
8 the relevant load-serving entity's dispatch needs.

9 The Board encourages, but does not wish to
10 duplicate the efforts suggested by EPSA and EEI in the DOE
11 study for developing standard contractual language
12 addressing dispatchability and other issues.

13 Fourth, regarding import/export scheduling, the
14 Board recommends that WECC develop a standard West-wide
15 protocol to address the need for scheduling before, during,
16 and after the top of the hour, to address large hourly
17 schedule changes identified by the CAISO, as a problem for
18 their current dispatch efforts.

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1 Fifth, the control area of consolidation, the
2 Board recommends that the states individually and jointly
3 reference the states consider further consolidation of
4 control areas.

5 Sixth, the practical limitations of the dispatch.
6 The Board recommends that the definition of security-
7 constrained economic dispatch be flexible and broadened to
8 include other public policies values and physical and
9 operational constraints, as well as costs.

10 Then finally, regarding the DOE study
11 recommendations, the DOE had recommended in its Report to
12 Congress that several things be undertaken to review
13 dispatch practices, and standard contract terms, or two of
14 them.

15 The Board recommends that further study of
16 dispatch practices in the West not be pursued, and that any
17 pursuit of standard dispatch contract terms be on a
18 regional, rather than national basis.

19 Finally, regarding review of dispatch tools, the
20 Board generally supports refinement of technological tools
21 in general. The Board would recommend that the Department
22 of Energy study ways to improve the accuracy of forecasting,
23 to thereby improve economic dispatch and the savings that
24 could be achieved by it.

25 That, in a nutshell, is the view from the West.

1 CHAIRMAN KELLIHER: Thank you, Commissioner
2 Kelly. I understand Mr. Reese and former Commissioner
3 Afonso, you are going to give a joint presentation.

4 MR. REESE: We're doing a tag team. Thank you,
5 Mr. Chairman, Commissioners. On behalf of Chairman Flynn,
6 who was unable to be here today and sends his regrets, this
7 process included the states of Massachusetts, Connecticut,
8 Maine, New Hampshire, Rhode Island and Vermont, co-chaired
9 by Chairman Flynn and Commissioner Afonso, and chaired by
10 Commissioner Brownell.

11 Commissioner Brownell and her staff did an
12 excellent job in keeping us on track and moving the process
13 forward. I think I agree completely that it was a very
14 interesting process.

15 The states felt that there was good cooperation,
16 that there were lots of common interests, and that it should
17 serve as a model in the future, if not formally. If it
18 can't be done formally, than informally on issues. It is
19 something we look forward to working on in the future.

20 In the Northeast, the origin of security economic
21 dispatch was somewhat different. It was driven by the
22 blackouts and tight supply in the late 1960's and early
23 70's.

24 In the New York power pool and New England power
25 pool, they separately evolved security models to efficiently

1 dispatch generation, and they evolved over the 30 years
2 since their inception.

3 They transitioned into the competitive wholesale
4 markets in the Northeast, that eventually turned into the
5 New York ISO and ISO New England.

6 In working cooperatively with the two ISOs, which
7 we did in this process, it was estimated that nearly \$3
8 billion in savings have accrued through the use of security
9 constrained economic dispatch since its inception.

10 While those models and its usage have evolved
11 over the last 30 years, we did manage to find that there
12 were still some opportunities. We identified ten areas that
13 we received comments on and there were discussions amongst
14 the commissioners on.

15 Only in four of those areas do we actually have
16 specific recommendations for further action. With that,
17 I'll turn it over to Chairman Afonso.

18 MR. AFONSO: Thank you, Mr. Chairman, for
19 permitting me the emeritus status to appear before you
20 today. It's a real pleasure. A couple of thoughts. I
21 wanted to reflect in the great tradition of New York and New
22 England now closing the deal in this presentation.

23 (Laughter.)

24 MR. AFONSO: A couple of thoughts on the joint
25 board process, in fact. The jury was out when we started

1 this process, but it has been a very positive situation for
2 us, for several reasons.

3 One, it permitted the New England states to come
4 together in an organized fashion, to discuss these important
5 issues.

6 Secondly, the issue of one item that we had been
7 grappling with before, the uniform bid auction and peers
8 bid, I wanted to reflect a little bit on that.

9 There is general consensus that the system
10 manager is the best way to proceed, given all the facts and
11 their variables. However, there are colleagues who are
12 engaged in discussions on should we now reflect further on
13 it into the future.

14 In fact, we're open to that, with some
15 intellectual work, some data points, some studies. It is
16 always one, it has the ability to present that back, to
17 engage in that discussion.

18 But it's important to know that when it's all
19 said and done, as of today it's important that we do want to
20 maintain the same process that we have in terms of the
21 uniform bid option.

22 Another important point was transparency and the
23 ability on reporting back to the stakeholders in this
24 process. The reality was that it's a work in progress.
25 There's a lot of good things, many good things that have

1 been done in terms of the six months pricing and reporting
2 back.

3 There might be an opportunity to do that in a
4 quicker fashion, in fact, and the ISO, both in New England
5 and in New York, are committed to reviewing that
6 collaboratively.

7 Another important area that I want to emphasize,
8 and I heard you in your opening comments in an unrelated
9 matter emphasize, demand response. We definitely have seen
10 the importance demand response in any integrated strategy,
11 and that is the important point.

12 Any strategy going forward to solve and help our
13 communities on the energy situation when we get to these
14 peak days and these difficult type periods will be an
15 integrated one, which includes many solutions, demand
16 response being one of them.

17 In this report, you will see, and I won't belabor
18 it, but you will see an explicit recognition, both in New
19 York and New England, that demand response is part of the
20 solution, and is integrated in the analysis in dispatching,
21 and you'll see this in more detail, upon review of the
22 report.

23 Another item that was also important was in terms
24 of software. The resources dedicated to software in this
25 dispatch system is absolutely critical and important. So

1 it's steady as she goes when it comes to software. At
2 times, it does take a bit of time to get that right, and
3 collaboratively.

4 New York and New England have some of the most
5 advanced software in this area, as well as recognizing,
6 though it's explicitly in the report that in fact that will
7 become increasingly more efficient with time and resources
8 that need to be dedicated there.

9 Permit me in concluding, though, to thank my
10 colleague, Chairman Flynn, John Reese and his colleagues on
11 my staff who could not be here today, Ron LeConte and
12 Chairman Judson in my own agency back home.

13 It's been the privilege of public service to deal
14 with them, as all of you know. As well, let me take a point
15 of personal privilege from viewing C-SPAN -- I think that's
16 the term they use -- simply to say two additional things.

17 To thank you, Mr. Chairman, for your leadership
18 and your staff, and Commissioners Kelly and Brownell. We at
19 the state level, and I speak personally now but I know it's
20 a consensus for all of us at the state levels, have had an
21 important seat at this table. That has been extraordinary.

22 Let me just put a dot at the end of that
23 sentence. Shortly, we have seen together that these issues,
24 and you've spoken with great eloquence on this, that in fact
25 these issues have a state and federal component.

1 So we're grateful for that seat at the table, and
2 a final point to Commissioner Brownell. I was thinking what
3 I could say, and it really boils down to two words.

4 One could say many things, but two words, and
5 that's simply thank you for your friendship and leadership
6 here. You exemplify all that is good about public service,
7 so we will miss you.

8 But I look forward to the next chapter working
9 with you in that sense. Thank you for the opportunity to
10 serve on the Joint Board. Collectively, these
11 recommendations, I think, make it stronger in New England
12 and New York. That will get us through the summer and we'll
13 build upon a good base. Thank you.

14 CHAIRMAN KELLIHER: Jim, before I turn to you, I
15 want to recognize that your predecessor at the vice chair,
16 Mike Callahan, when the Joint Board was first established,
17 Mike Callahan of Mississippi was the vice chair of the South
18 Joint Board.

19 He served in that role until January, when he
20 left the Commission. Jimmy filled his shoes very admirably.
21 Paul had a baseball reference in his last comment, which I
22 won't take offense at.

23 But Jimmy was the closer, really, on the joint
24 South Board. So you're the Mariano Rivera on the South
25 Joint Board.

1 (Laughter.)

2 MR. AFONSO: Just a moment of your time, Mr.
3 Chairman. I held back, but had we held this open meeting
4 last week, the Sox would have been four games ahead.

5 (Laughter.)

6 MR. AFONSO: We are still half a game ahead, I
7 believe. So it's all about timing.

8 CHAIRMAN KELLIHER: I'll bring out Mr. Ervin.

9 MR. ERVIN: As perhaps the only New York Yankee
10 fan in North Carolina --

11 (Laughter.)

12 CHAIRMAN KELLIHER: You want us to stop the web
13 broadcast?

14 MR. ERVIN: Mr. Chairman, thank you for the
15 opportunity to come before you today, as you indicated, and
16 finish up the work that Michael Callahan started.

17 I want to deviate from script a little bit also
18 on behalf of my state colleagues and thank Nora for all that
19 she has done for us. I met Nora shortly after I took office
20 in 1999. She was already an exalted status and personage
21 within NARUC and I was just a lowly little Southern
22 commissioner.

23 But she went out of her way to be kind to me
24 during that time, and has been a good friend of mine ever
25 since. We have not always agreed on everything, but we've

1 had a good time.

2 I do want to thank her on behalf of my state
3 colleagues for all that she did, both as a Pennsylvania
4 commissioner and as a member of this body. We at NARUC will
5 hopefully recognize that in another way at a different time,
6 but I would be remiss if I didn't start off by saying that.

7 I also want to thank you, Mr. Chairman, and
8 particularly Bud Early, for all the patience that you've
9 shown with the South Joint Board and our work. I think it's
10 fair to say probably that the South may have been as defined
11 by the Commission's order the most diverse region that
12 formed a joint board.

13 We had an organized market in ERCOT, a day one
14 RTO in SPP and TBA, a federally-run utility. We have been a
15 large swath of tradition vertically integrated territory in
16 the deep South and South Atlantic.

17 I think one of our challenges was to perhaps do a
18 better job than we've done in the past, in understanding our
19 own region and our interests. I think it has been very
20 useful for me individually and for many of my colleagues to
21 have the opportunity that this process provided, to talk
22 indepth with our colleagues, who face different situations.

23 Our diversity made our discussions both perhaps
24 more difficult than they might have been in other areas, but
25 also I think in many ways more rewarding.

1 We were fortunate, I think, at the end to be able
2 to agree upon a fair amount of language that's reflected in
3 the Joint Board report. In drafting the report, we've
4 looked at what was our statutory charge.

5 It's set out in the Joint Board report and in
6 your orders, and I'm not going to summarize it. But the
7 first question that we asked ourselves was what is security-
8 constrained economic dispatch, and is it the appropriate way
9 to operate?

10 At the time that this particular provision of the
11 Energy Policy Act was adopted, at least when viewed from
12 afar, it appeared that there were proponents of a number of
13 different approaches to dispatch, and that what motivated
14 the inclusion of this provision, plus the equivalent
15 provision that require the DOE study of the same subject,
16 was a concern that perhaps we should be doing something
17 differently.

18 One of the first things that we asked ourselves
19 was what should we be doing? Our conclusion was, not
20 surprisingly, that in agreement with the other joint boards
21 and with the DOE report, security-constrained economic
22 dispatch is the proper manner to operate an electric system,
23 and that the utilities in our region, if they're not doing
24 that, they ought to be.

25 That ought to be fairly obvious, but given the

1 inclusion of that language in the bill, I thought it was
2 appropriate for us to at least address that question.

3 We did not look at the other forms of dispatch
4 that had been proposed, but it does seem to me that by
5 finding what we found, that there are some negative
6 inferences as to what might or might not be appropriate,
7 that one can draw from that finding.

8 Secondly, we concluded, given the diversity of
9 approaches within our region, consistently with the DOE's
10 findings, that there's no single way to correctly perform
11 security-constrained economic dispatch, but instead how
12 dispatch is conducted within a particular area can
13 appropriately vary, depending upon the industry structure
14 that's employed in that particular area.

15 As a result, even though you have a different
16 dispatch method in ERCOT and prospectively a different
17 dispatch method in SPP, and a third approach within the
18 tradition vertically integrated areas of our region.

19 All of these approaches, if properly conducted,
20 constitutes security-constrained economic dispatch. As a
21 result, we concluded that assuming that the practices that
22 were described to us were in fact being followed, that
23 security-constrained economic dispatch was being conducted
24 in the region.

25 The members of the Joint Board concluded that

1 state regulatory oversight of the utilities helps to ensure
2 that utilities do in fact dispatch in an economic fashion.
3 There were some disagreements that are reflected in the
4 Joint Board report, as to whether certain approaches did or
5 did not ensure a greater degree of transparency in the
6 dispatch process.

7 We did not reach an issue on one question that we
8 debated substantially among ourselves, which was whether
9 different approaches improved or lessened the odds that
10 dispatch would be done properly.

11 We did however state, and stated rather strongly,
12 that in the event that anyone had and was tending to show
13 that utilities in our region were not in fact following
14 security-constrained economic dispatch protocols, that we
15 hoped that folks would bring that our attention.

16 So that to the extent that we had the authority
17 at the state level or that you all had the authority to take
18 action at the federal level, you could do so.

19 With that kind of basic outline, we made a number
20 of more specific recommendations that addressed issues that
21 were brought before the Joint Board.

22 We recommended, first of all, that entities
23 within the Southeast give consideration to the establishment
24 of certain mechanisms that were discussed by various
25 participants in the Joint Board process, including an

1 expanded trading hub and energy broker system, or an
2 automated interchange matching systems, as long as these
3 mechanisms were voluntarily established, open to any market
4 participant that wished to avail itself of those processes,
5 sufficiently transparent to inspire confidence among market
6 participants, and produce cost-effective purchase and sales
7 opportunities that didn't create reliability or congestion
8 problems.

9 We agreed that an expanded regional dispatch
10 should not be involuntarily implemented now, but that market
11 participants and others should continue to investigate
12 alternatives that would reduce the cost and improve the
13 reliability of service for customers within the region.

14 We agreed that appropriate cost effective
15 improvements in the transparency within which the regional
16 transmission system is planned and operated, and the manner
17 in which congestion is managed, should be adopted.

18 But that the extent to which new institutions
19 should be created should depend on the circumstances; that
20 market participants should feel free to explore proposals
21 for the creation of new institutions; and that proposals for
22 the creation of such institutions should be handled
23 consistently with federal and state law to ensure that they
24 were cost-effective and served the public interest.

25 Despite some disagreement over whether the

1 subject of transmission expansion was within our charge, we
2 did agree that all regulated utilities have an obligation to
3 appropriately plan for the cost-effective expansion of the
4 system, and that issues relating to expansion of the system
5 should be resolved equitably and in a manner consistent with
6 the existing federal and state law.

7 We finally agreed that a considerable amount of
8 work on proposals for improving the planning and operation
9 of the system within the region is occurring, and that while
10 there were differences of opinion over the need for an
11 independent planning process, interested parties should
12 continue to explore such alternatives on a voluntary basis,
13 and that such proposals should be implemented if they are
14 cost-effective and obtain the required regulatory approvals.

15 I think all of that can be summarized by saying
16 in effect that while nothing persuaded us, that anything
17 ought to be involuntarily implemented, that everybody within
18 the region ought to keep an open mind on the theory that
19 improvements ought to be considered, if they were deemed
20 appropriate and legally valid.

21 I would echo in closing the comments that you
22 made and some of my other colleagues have made. I found
23 this process to be very helpful for a lot of reasons. I
24 think it facilitated a greater information-sharing at both
25 the state and between the states and the federal agencies

1 that were involved.

2 I think it helps, perhaps, you get a better sense
3 of where we were coming from. I think it helped us get a
4 better sense among ourselves of where we were each coming
5 from.

6 I hope we can find another occasion to use this
7 process in the future. I think a lot of us at the state
8 level, recognizing the problem that you pointed out in your
9 opening comments, and this is certainly something that we've
10 discussed before, would be amenable to supporting
11 modifications to the statute that would solve the problem
12 that you outlined.

13 I understand why that's a problem, and I think at
14 least speaking for myself personally, we'd be interested in
15 exploring ways that we can make this process more useful to
16 the FERC, because there are a series of things that I think
17 can be appropriately dealt with using this process.

18 I hope that you at your level and us at our level
19 will think about ways that we can make this a more useable
20 process, because I think it has value going forward.

21 CHAIRMAN KELLIHER: Jimmy, on that point, I just
22 wanted to note that last year after I became chairman, the
23 energy bill was still in conference. We actually proposed
24 that change, to change Section 209 to allow both federal and
25 state regulators to sit on joint boards.

1 There really wasn't opposition to it, but it was
2 an eleventh hour change and really, by that virtue alone or
3 by that aspect alone, it wasn't ultimately accepted.

4 But I think NARUC supported it when we proposed
5 it.

6 MR. ERVIN: That's what I was going to get ready
7 to say. Putting on my -- that question came up within
8 NARUC. While we don't have any formal policy, I did check
9 with various folks within the organization in anticipation
10 that it might come up.

11 My sense of the body at the time was that we
12 would be supportive of that. It would make the Section 209
13 joint boards more similar to the equivalent bodies on the
14 telecom side, and I think most people would agree those have
15 worked fairly well for the FCC.

16 We certainly would be amenable to continued
17 discussions of that.

18 CHAIRMAN KELLIHER: Why don't we hear from Kevin,
19 and then I want to make one other comment on that same
20 point. Kevin Wright.

21 MR. WRIGHT: Thank you, Chairman Kelliher,
22 Commissioner Brownell and Commissioner Kelly.

23 It's my pleasure to present on the PJM-MISO
24 region joint board for security-constrained economic
25 dispatch. Our joint board membership consisted of 22

1 commissioners and the joint board. Representation included
2 Delaware, District of Columbia, Illinois, Indiana, Iowa,
3 Kentucky, Maryland, Michigan, Minnesota, Missouri, Montana,
4 Nebraska, New Jersey, North Carolina, North Dakota, Ohio,
5 Pennsylvania, South Dakota, Tennessee, Virginia, West
6 Virginia and Wisconsin.

7 The province of Manitoba served as an observer.
8 Now that's diversity.

9 (Laughter.)

10 MR. WRIGHT: Several of our joint board members
11 that served on the PJM-MISO joint board also served or their
12 state commissions served as members of the South Joint Board
13 and the West Joint Board.

14 Our Joint Board was ably chaired by Commissioner
15 Brownell. Although at times I'm sure it was challenging, it
16 was like hurting cats on occasion, but she did a very fine
17 job.

18 The chairman from the Maryland Commission, Ken
19 Schisler and I, served as a co-vice chairs. The Joint Board
20 met in November of 2005 in Chicago and again in February of
21 2006 in Washington.

22 Data requests were issued by PJM Interconnection
23 and Midwest ISO in October 2005 and March 2006. Not all
24 Joint Board members agreed on all aspects of the Joint Board
25 report, or on all aspects of the recommendations. In

1 particular, a few Joint Board members expressed a belief
2 that some aspects of the recommendations may be outside the
3 narrow scope of the process of security-constrain economic
4 dispatch.

5 There were two partial dissents and several
6 concurring statements were attached to the report. The
7 report may be unexpectedly lengthy; however, I believe it is
8 a very thorough and comprehensive treatment of the Joint
9 Board's directives, and of the issues covered, which are
10 contained in our fully-developed record of our proceedings.

11 Overall, we found examples of benefits through
12 enhanced reliability and affordability, and value to
13 customers. From SCED as practiced in the PJM-MISO region,
14 we also found examples where continuing improvement and
15 vigilance is recommended.

16 The Joint Board developed 17 recommendations.
17 Those recommendations fall in four topic areas. SCED
18 benefits, analyzing costs and benefits; effects of RTO spot
19 markets on forward bilateral contracting; and reliability.

20 Number two, SCED scope, the common market between
21 PJM and MISO, cross-border trading transmission constraints
22 and geographic scope.

23 Third, transmission infrastructure. Transmission
24 planning processes, expansion obligations and cost
25 allocation.

1 And four, market-based SCED issues such as market
2 monitoring, marginal versus average loss of dispatch,
3 ancillary services and demand-side management and demand-
4 side response.

5 Of those topics, I think four themes emerged that
6 I'd like to bring to your attention. First would be
7 performance and monitoring. Performance, in that there
8 needs to be an ongoing demonstration of benefits from PJM
9 and Midwest ISO managed SCED, for sustaining market
10 participant and state regulatory confidence in the RTOs, and
11 then a clear benchmark to assist the degree to which
12 reliability and least cost objectives of optimal SCED, as
13 described in EPAct SCED definitions are being captured.

14 The monitoring part comes in, in that state
15 regulators need both market and operations data to confirm
16 that RTO-operated SCED is actually bringing the benefits to
17 consumers and to instill and underscore the confidence of
18 RTO operation markets, to improve transparency.

19 The second theme I think would be geographic
20 expansion of SCED operations, or alternatively, improved
21 coordination at the borders can improve efficiency and
22 potentially reduce costs.

23 The third theme is reduction in transmission
24 congestion through improved transmission planning.
25 Expansion and cost allocation is needed to address the

1 constraints under which SCED must operate.

2 Finally, demand response is an important element
3 of well-functioning markets, and all parties, including
4 state regulators and the RTOs, need to work together to
5 improve demand response.

6 In our report, you'll see a number of issues that
7 are also covered quite extensively. Some of the debate is
8 quite lively, dealing with facilitating forward contracting,
9 the upsides and downsides of using the single clearing price
10 auction approach versus pay as bid, bid-based versus cost-
11 based SCED, how real-time SCED and reliable operations are
12 linked.

13 In conclusion, like my colleagues, the PJM-MISO
14 Joint Board found this process to be very useful, useful in
15 collaborating among ourselves and collaborating with you.

16 I found my participation to be most rewarding.
17 Perhaps SCED is not the most interesting topic to have a
18 joint board process on, but as usual, Congress was wise to
19 propose the joint board process for this issue.

20 We all look forward to the report that the
21 Commission will send to Congress, and I know that there are
22 a number of other issues, as have been mentioned by my
23 colleagues, where I believe and those from the PJM-MISO
24 region also believe, could be taken up in this joint board
25 process or a like process.

1 I would encourage the Commission to build on the
2 success of the SCED joint boards, and to use that board
3 process more liberally on issues in the future.

4 Finally, we too would like to thank FERC staff
5 for their assistance and guidance, particularly in those
6 early stages. Again, if I can use the personal privilege
7 point as well, our real thanks for our Joint Board chairman,
8 Commissioner Brownell, particularly for those of us in the
9 organization of PJM states and the organization of MISO
10 states.

11 Commissioner Brownell has been someone we have
12 spent a great deal of time with on our issues in those
13 regions, someone we have always had a deep professional
14 respect and high personal regard for, in terms of her
15 leadership and candor, and helping to promote that dialogue
16 between federal and state jurisdictions.

17 We have always valued her wise counsel and her
18 frank advice. I know on a couple of occasions she has been
19 on the receiving end, because I have been the messenger, at
20 which we've expressed in very frank terms our feelings, that
21 sometimes weren't always pleasant toward this body.

22 However, she certainly handled that with utmost
23 grace and professionalism, with an eye toward problem-
24 solving. I think we did do that problem-solving. So again,
25 like my colleagues, thank you for your service. We at the

1 OMS and OPSI believe you have made a difference. We wish
2 you Godspeed. Thank you, Mr. Chairman.

3 CHAIRMAN KELLIHER: Nora, do you want to start
4 with questions or comments?

5 COMMISSIONER BROWNELL: You can start.

6 CHAIRMAN KELLIHER: I want to show you every
7 respect today.

8 (Laughter.)

9 COMMISSIONER BROWNELL: I appreciate that.

10 CHAIRMAN KELLIHER: First of all, let's talk
11 about transparency for a minute. One thing we talked about
12 at the South Joint Board in February was transparency in
13 pricing hubs.

14 We had a bit of a conversation about that.
15 That's one difference between the organized markets and the
16 other markets, is you really have good price transparency in
17 the organized markets.

18 But you can have it outside the organized
19 markets. In the West, for example, the West has pricing
20 hubs, Cobb, Mid-Columbia. There are a number of very good
21 pricing hubs in the West.

22 The same isn't really true in the South. You
23 don't really have the same kind of pricing hubs. You don't
24 have an organized market. You have less transparency. That
25 was something we talked about on that snowy day in February

1 a bit, and is captured a bit in the report.

2 One authority the Commission was given last year
3 in the Energy Policy Act is we can issue orders to assure
4 greater transparency in the wholesale power markets, as well
5 as transmission service, and at some point, the Commission
6 will have a technical conference and we'll hear ideas.

7 That's something perhaps you could participate in
8 or at least we could talk about it in advance of that
9 conference. If there are some steps we can take to assure
10 greater price transparency in the South, then they're worth
11 exploring, because there was no resistance to the notion of
12 greater price transparency.

13 There seemed to be a view that it does help
14 markets move along, but that's something we can work on down
15 the road. I just wanted to make sure that that was
16 something we can work on.

17 MR. ERVIN: Mr. Chairman, I think that's
18 reflected in the report. Maybe I didn't say it very well.
19 I was trying not to trespass on eternity, given your agenda.

20 But I do think that we, particularly in the
21 vertically integrated portion of the South, are beginning to
22 ask ourselves we've had a period where we've been sort of in
23 a reactive mode, and I think we're now to the point of
24 asking ourselves what is it that we could or should do, in
25 an affirmative manner, to address issues that we may have.

1 We're beginning that process. I think most of us
2 or all of us, as far as I know, are open to suggestion. But
3 I think we are just at the early stages of that. I do think
4 we would welcome such discussions, and we'd be happy to
5 participate in them, to the extent that you would find that
6 helpful.

7 CHAIRMAN KELLIHER: Great. I want to talk a
8 little bit about the instrument of a joint board. As we
9 talked about earlier, this one the feds were allowed to
10 participate. So it made it a better vehicle for us to
11 deliberate. In this case, just by the question that was
12 posed, it lent itself to regional joint boards.

13 But you can also have -- we can actually
14 establish an informal federal-state joint board, but we
15 couldn't right now establish a Section 209 FPA federal-state
16 joint board, assuming we want to establish a formal federal-
17 state joint board. We probably do have to amend the Federal
18 Power Act.

19 But if we do that, there are some issues that
20 aren't necessarily regional, where you could look at things
21 from a federal and state perspective. Like the next topic
22 of conversation is demand response.

23 That's something to me where most demand response
24 programs revolve around the retail consumer. They start
25 with the retail consumers. Federal issues are raised

1 because wholesale markets are clearly affected by the
2 existence or non-existence of effective demand response in
3 retail markets.

4 It might be possible. You could have a single
5 non-regional federal-state joint board to look at an issue
6 like demand response.

7 MR. ERVIN: Another one I would encourage you to
8 think about, and this is something that Kevin and I actually
9 talked about last week, is the whole issue of cost
10 allocation, because you bring certainly a component of the
11 cost of the transmission system that is recovered in
12 federally-established rates, and a portion, in some areas at
13 least, are recovered in state jurisdictional rates.

14 There's obviously a need not to get too far apart
15 on that subject as well. That's one that's occurred to me,
16 at least in my area, that I think would benefit from that
17 kind of approach.

18 COMMISSIONER BROWNELL: I just wanted to add -- I
19 don't want to interrupt you, but one of the things that I
20 would encourage people to think about is the informal
21 process. We've been talking a lot about seams. We actually
22 did, on an informal basis, a lot of seams work.

23 Then-Chairman Tom Welch and Chairman Flynn
24 brought together a group that was supported by our staff,
25 and they were able to broker a deal to deal with some

1 serious seams issues.

2 It was largely informal. They moved pretty
3 quickly, and it had a really positive resolution. So while
4 changing the statute may be desirable, I wouldn't
5 necessarily be wedded to that formal process.

6 I've looked at the FCC joint boards and while
7 they're certainly wonderful things, I think there are
8 perhaps more efficient and more surgical ways to go about
9 it.

10 I think, for example, what I noted in both of our
11 groups was the desire for incremental improvement. Even
12 though they're organized markets, even though SCED is the
13 modus operandi, there are ways we can do it better in small
14 tweaks.

15 I don't think that necessarily requires 26 states
16 sitting around the table. I think we need to empower some
17 leaders and maybe let them broker the deal, and just give
18 lots of technical support along the way.

19 Sometimes -- not sometimes, we love process. But
20 sometimes process doesn't get you where you need to go in a
21 timely way.

22 CHAIRMAN KELLIHER: We certainly can establish
23 informal federal-state joint boards currently.

24 COMMISSIONER BROWNELL: It's a good tool.

25 CHAIRMAN KELLIHER: Yes.

1 MR. AFONSO: If I might just add, a small measure
2 but one that I want to highlight, was the ability of each
3 commissioner designated. I think that was obviously very,
4 very helpful, and the process of coming through us is very,
5 very helpful.

6 That method of dealing with this issue,
7 permitting us to get a group together rather than coming to
8 Washington, as much as we enjoy coming to Washington, sent a
9 very good signal, and one that did not go unnoticed and was
10 very much appreciated. I would add that.

11 COMMISSIONER BROWNELL: Since you're hosting a
12 reunion and a dinner in the North End, that's great.

13 (Laughter.)

14 MR. AFONSO: Only because the Ritz and the Four
15 Seasons are unavailable.

16 CHAIRMAN KELLIHER: I just wanted to say
17 something about joint boards and what I think they can't do,
18 at least a Section 209 joint board.

19 I don't think the Commission can delegate
20 decisional authority to a state joint board or even a
21 federal-state joint board. If I were a state commissioner,
22 I don't know if I'd want that decisional authority.

23 This is something Jimmy and I have talked about,
24 regional regulation. In this country, regional regulation
25 has a very modest history, with a lot to be modest about.

1 It frankly hasn't really worked.

2 The example that comes to mind is low-level waste
3 compact siting. The law -- a federal law was enacted in
4 1980, to establish a process where states would form
5 compacts.

6 They would develop siting criteria. They would
7 apply them and would choose sites for low level waste
8 compacts. In the 25 years or quarter century since that law
9 was enacted, I think there are a total of zero low level
10 waste sites that have been developed. It puts states in a
11 very impossible situation.

12 I'm not trying to single out North Carolina, but
13 what happened, states formed compacts efficiently. They
14 developed very excellent siting criteria. They applied
15 them. A flag was put in the ground somewhere and I think
16 invariably the siting state reneged on its commitments under
17 the compact and lawsuits ensued.

18 North Carolina, there might have been a flag in
19 North Carolina, I think, through that process. I can't
20 remember.

21 MR. ERVIN: I don't either, but I think we
22 withdrew from the compact.

23 CHAIRMAN KELLIHER: I don't see how it would be
24 possible for a state regulator, who takes an oath of office
25 under state law, to protect consumers in that state and

1 uphold certain legal duties in that state, to also have a
2 second hat of looking out for some more abstract notion of
3 the region, and acting on behalf of that region.

4 I really think joint boards, if they're federal-
5 state, formal or informal, will work best if they
6 deliberate, they discuss, they recommend things to both
7 federal and state regulators, who then in turn can make
8 decisions.

9 I think if we somehow were to start delegating
10 things to regional joint boards, it wouldn't work well, in
11 part because it hasn't worked well in the past. That's, I
12 guess, an editorial comment.

13 Do you have any questions for Suedeem? It seems
14 a shame to miss this opportunity.

15 (Laughter.)

16 CHAIRMAN KELLIHER: Actually, staff has given us
17 some questions to ask you, but do we have any other
18 questions? Or Suedeem, do you have questions? Do you want
19 to ask your other panelists?

20 COMMISSIONER KELLY: I just want to say that I
21 thought the West was the most diverse group.

22 (Laughter.)

23 COMMISSIONER KELLY: With that, I want to thank
24 you all for your hard work, and I personally want to thank
25 Jimmy. I think this was an interesting experiment and we

1 should continue our discussion about whether we should
2 change the law and whether we should consider additional
3 joint boards.

4 Thank you very much for all your work. Now we've
5 solved pretty much all the problems of the world. We didn't
6 get into other issues.

7 SECRETARY SALAS: The next item for discussion is
8 A-5, a demand response report, and it is a presentation by
9 David Kathan, Norma McOmer, Aileen Roder, Carol White and
10 Eileen Merrigan.

11 MR. KATHAN: Good morning, Chairman Kelliher and
12 Commissioners Brownell and Kelly.

13 (Slide.)

14 MR. KATHAN: This presentation summarizes
15 Commission staff's assessment of a demand response and
16 advanced metering. With me at the table are several members
17 of the staff team, Norma McOmer of OMMR, Aileen Roder of
18 OGC, Carol White of the Office of Enforcement and Eileen
19 Merrigan, also from the Office of Enforcement.

20 The staff who contributed to this effort were
21 Michael Goldenberg of OGC, Michael Miller of the Office of
22 the Executive Director and our summer intern, Claudia Dazo.

23 This staff assessment is in response to Section
24 1252(e)(3) of the Energy Policy Act of 2005. EAct 2005
25 directed the Commission to assess several advanced metering

1 and demand response topics.

2 These included advanced metering penetration,
3 demand response programs, resource contribution from
4 programs, the role of demand response in retail response
5 planning and demand response regulatory barriers.

6 Based on this direction, staff examined demand
7 response throughout the United States, including non-
8 jurisdictional areas such as ERCOT, Hawaii and Alaska in
9 both retail and wholesale markets, and in private and
10 publicly-owned utilities.

11 We examined demand response for the wholesale and
12 for the retail perspective.

13 (Slide.)

14 MR. KATHAN: This report will be published by
15 August 7th. The primary conclusions we reached in this
16 effort were the following:

17 Demand response can play a key role in both the
18 wholesale and retail market. In wholesale markets, it can
19 introduce needed price responsiveness when wholesale prices
20 spike, and can help reduce the ability to exercise market
21 power.

22 In retail markets, demand response can assist
23 load-serving entities to hedge their positions, and meet
24 their load obligations at least cost.

25 Our research indicates that current demand

1 response capability or potential in most regions is between
2 three and seven percent of peak demand.

3 One region that is served by the Midwest
4 Reliability Organization in the NARUC region has the highest
5 capability, close to 20 percent of peak demand. We also
6 found that the penetration of enabling technologies such as
7 advanced metering was small.

8 (Slide.)

9 MR. KATHAN: In order to prepare this report,
10 Commission staff conducted several activities over the last
11 year, in Docket AD06-2, to receive comments. A technical
12 conference was held in January 2006, where we heard from 31
13 panelists and received a regional perspective.

14 We designed and implemented a survey of the level
15 of advanced metering and demand response in the United
16 States. Finally, we reviewed the literature and examined
17 regional transmission planning indepth.

18 (Slide.)

19 MR. KATHAN: I want to briefly describe our
20 survey before I talk about what we found. After reviewing
21 available data sources, staff determined that a
22 comprehensive database on metering did not exist. Data at
23 the demand response program level was also missing.

24 We hired Utilipoint International to conduct a
25 web-based survey. The survey we implemented was the first

1 of its kind, and will represent a baseline for future
2 deliberations.

3 We surveyed entities in 50 states. We surveyed
4 public and private utilities and regulated and unregulated
5 entities, including investor-owned utilities, municipal
6 utilities, rural electric cooperatives, power marketers,
7 state and federal power marketers, ISOs, RTOs and demand
8 response providers.

9 The voluntary survey went out to 3,365 entities
10 and we received an excellent response rate of 55 percent for
11 a voluntary survey. Certain groups, such as investor-owned
12 utilities, had response rates of over 80 percent.

13 We would like to thank EEI and NARUC especially
14 for coordination assistance in achieving such a high rate
15 amongst the investor-owned utilities.

16 (Slide.)

17 MR. KATHAN: To answer the question of
18 penetration of advanced metering, staff examined the uses of
19 metering and the available metering and communication
20 technologies.

21 Based on this review, staff chose to define
22 advanced metering as a metering system that records customer
23 consumption and possibly other parameters, hourly or more
24 frequently, and that provides for daily and mor frequent
25 transmittal of the measurements over a communication

1 network, or through a central collection point.

2 A key point in this definition is that it
3 includes the full advanced metering system, comprising
4 meters, communications and data management. This survey
5 indicates that advanced metering has a nationwide market
6 penetration of six percent, and that the penetration rate
7 varies by region.

8 Regions associated with a Reliability First and
9 SERC and NARUC regions have the highest penetration, close
10 to 14 percent. The remaining regions have lower penetration
11 than the national average.

12 (Slide.)

13 MR. KATHAN: To assist future state deliberations
14 on advanced metering, the survey requested data on advanced
15 metering at the state level.

16 The final report will provide estimates of market
17 penetration of advanced metering for all 50 states and the
18 District of Columbia. The top ten states are listed in this
19 table. Pennsylvania has the highest penetration of advanced
20 metering in the country.

21 What is also interesting about this list of
22 states is that advanced metering is in place throughout the
23 United States, in restructured and non-restructured states,
24 in rural states and in more urban states.

25 This suggests that advanced metering provides

1 value across a wide variety of utility characteristics and
2 customer types. I also wanted to indicate that advanced
3 metering varies by company type. Electric cooperatives show
4 the highest penetration rate, at about 13 percent, followed
5 by investor-owned utilities at close to six percent.

6 (Slide.)

7 MR. KATHAN: Turning to demand response,
8 Commission staff categorizes demand response into two
9 categories: time-based rates and incentive-based demand
10 response. The common features of both types are that they
11 are active customer responses to prices or incentive
12 payments.

13 The changes in electricity use are designed to be
14 short term, centered on critical hours during a day or a
15 year when demand is high or when reserve margins are low.

16 Time-based rates include three rate alternatives.
17 Time of use rates provide customers with a rate schedule
18 that varies by time period, broken into daily, peak and off-
19 peak blocks. It is the most prevalent form of time-based
20 rates.

21 Critical peak pricing is a relatively new variant
22 of time of use. The key difference is that a critical peak
23 period is added to the rate blocks, with a significantly
24 higher price which is invoked only a few days or hours a
25 year.

1 The timing of the critical peak period is based
2 on system needs or high wholesale prices. Programs at Gulf
3 Power Company and pilots in California find that critical
4 peak pricing can reduce peak demand with high customer
5 satisfaction.

6 Real-time pricing exposes customers to higher
7 hourly prices, typically based on real time day ahead
8 wholesale prices. About 50 entities currently offer real
9 time pricing, mostly to commercial and industrial customers.

10 (Slide.)

11 MR. KATHAN: There are six types of incentive-
12 based demand response programs that provide incentives or
13 direct payments to customers, to induce curtailments when
14 needed, usually for system reliability.

15 Direct load control involves remote control of
16 appliances such as thermostats, air conditioners or water
17 heaters. Interruptible or curtailable customers receive
18 discounted rates or credits when they curtail the
19 consumption when directed by their load-serving entity.

20 Demand bidding buyback programs allow customers
21 to bid load reductions into utility or ISO-RTO markets. If
22 their bids are accepted, they are obligated to curtail
23 emergency demand response programs, and pay customers to
24 curtail when directed. But they do not have an obligation
25 to curtail.

1 Capacity market programs provide capacity
2 payments to customers for their agreement to curtail when
3 directed. In ancillary services market programs, fast-
4 responding load reductions can provide spinning, non-
5 spinning and regulation services.

6 Note that the emergency demand response programs
7 and capacity market programs were invoked this past week in
8 the New York ISO and in California during the present heat
9 wave. There may be other regions, but those are the ones I
10 do know specifically about.

11 (Slide.)

12 MR. KATHAN: The result of the FERC survey
13 suggested about 37,500 megawatts of demand response
14 currently exist in the United States. The vast majority of
15 the demand response reported in the surveys are incentive-
16 based demand response.

17 Regions with the highest megawatt totals are
18 Reliability First and SERC. The regions with the highest
19 capability as a portion of their peak loads are the Midwest
20 Reliability Organization and the Florida Reliability
21 Coordinating Council.

22 This chart shows the source of capability varies
23 by region. Regions such as the Midwest Reliability
24 Organization, SERC and WECC have the largest industrial
25 demand response capability.

1 Other regions, such as Florida, have a very high
2 residential capability. Reliability First and the ERCOT
3 have high wholesale demand response levels, because of ISO-
4 sponsored demand response programs.

5 (Slide.)

6 MR. KATHAN: The report will also cover two
7 additional items.

8 The first, a response to the Congressional
9 request for the Commission to identify steps to ensure that
10 in regional transmission planning and operations, demand
11 resources are provided equitable treatment as quantifiable,
12 reliable resources.

13 The second is our discussion of regulatory
14 barriers to regular demand response.

15 Before I finish, I want to thank several
16 organizations that were very helpful in the implementation
17 of our survey and the collection of information, and in
18 particular were very appreciative of the help provided by
19 Patty Harper-Slabuszewicz of Utilipoint International; Chuck
20 Goldman of Lawrence Berkeley Labs; and Brendan Kirby of Oak
21 Ridge National Labs.

22 I would also like to thank Merritt, EEI, APP and
23 the National Rural Electric Cooperative Association and the
24 National Council on Electricity Policy Demand Response and
25 Advanced Metering Coalition, Mid-Atlantic Demand Response

1 Distributed Resources Institute, and representatives from
2 various ISOs and RTOs for their assistance during the
3 project.

4 With that, I conclude my comments.

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1 CHAIRMAN KELLIHER: Colleagues?

2 (No response.)

3 CHAIRMAN KELLIHER: I question the 37,500
4 megawatts of potential. That's the potential from the
5 current programs? That's not the grand potential, if demand
6 response had more penetration?

7 MR. KATHAN: Right. That is based on existing
8 demand response. This is what is reported in the survey, in
9 terms of how much is out there that could be used when
10 necessary.

11 CHAIRMAN KELLIHER: If you look at that broader
12 universe, if you had greater penetration, what's the big
13 potential? Which of these two kinds of categories, time-
14 based rates or incentive based demand response, has more
15 untapped potential? Is there one?

16 You've given us two broad categories, then three
17 subcategories under time-based rates, and six categories
18 under incentive-based demand response. I assume they're not
19 all -- they don't have the same untapped potential; that
20 some presumably have more untapped potential than the
21 others.

22 MR. KATHAN: A quick response would be, I
23 believe, the time-based rates' potential is bigger, probably
24 because the number of people on that type of program at this
25 point, is still small, so I think that is potentially a much

1 bigger potential, going forward.

2 In incentive-based, I would say that some of the
3 very innovative forms of perhaps direct flow control or some
4 of the critical peak pricing, has some strong potential, if
5 implemented well and designed such that customers -- are
6 friendly to customers, and it provides them the ability to
7 respond to automated responses.

8 COMMISSIONER BROWNELL: Direct load control is
9 what basically kept the lights on in Southwest Connecticut
10 last Summer.

11 MR. KATHAN: That is my understanding, is that
12 there are various programs that were put in place by ISO New
13 England, that did keep Southwest Connecticut online.

14 COMMISSIONER BROWNELL: And I think their
15 Commission has been pretty aggressive in terms of
16 encouraging, if not ordering certain programs in place.

17 MR. KATHAN: You're speaking about Connecticut?

18 COMMISSIONER BROWNELL: Yes.

19 MR. KATHAN: That is correct.

20 COMMISSIONER BROWNELL: I haven't heard their
21 Attorney General talk about demand response. I don't know
22 why.

23 CHAIRMAN KELLIHER: Did your survey look at
24 effectiveness of programs? Did you come across -- I'm not
25 saying programs in terms of this state's programs or that

1 state's programs, but in terms of categories, are there
2 certain programs that are not effective or less effective,
3 or that wasn't really the nature of your survey?

4 MR. KATHAN: It wasn't really the nature of our
5 survey. The closest we have to it is, we did ask how much
6 was used, but that's not the nature of how effective that
7 could be, the nature of what was the weather, what were the
8 system conditions, but we do have data on how much was in
9 2005, there was use of these programs.

10 COMMISSIONER KELLY: I loved your report. Thank
11 you very much. I think, after reading your report, it's
12 clear to me that the facts are that demand response is one
13 of the most significant issues facing the United States
14 today.

15 I say that for a couple of reasons: First, it
16 seems to have the biggest promise for reducing electric
17 costs in the United States. Interestingly, the New England
18 RTO recently issued a report that did a survey to find out
19 where could they most easily reduce electric costs for their
20 customers.

21 They found that if nothing is done with regard to
22 demand response, including efficiency, over the next ten
23 years, costs will rise by \$700 million for New Englanders.
24 However, if demand response and efficiency programs could be
25 implemented to reduce just five percent of the peak, they

1 could save from today's prices, \$600 million, so, I think
2 that we can't underestimate the significance of this issue
3 for prices.

4 Also, regarding reliability, I know that in your
5 report -- and it's something you didn't mention in your
6 presentation -- but in your report, you make it very clear
7 that demand response is a substitute for generation, that it
8 can serve as a local peaking resource, and assists in
9 resource adequacy, and it can also reduce the need for new
10 transmission expansion to bring generation to an area from
11 outside, or to address load-pocket issues.

12 So, demand response is another significant tool
13 available to us, if we could just implement it, for better
14 reliability.

15 Also, regarding the competitiveness of our
16 markets, one of the issues that is always going to be with
17 us, is that we have very little ability to store
18 electricity. I guess we have basically no ability to store
19 electricity, although I suppose you could look at hydro
20 power as a pretty good substitute for that.

21 But demand response, as you point out in the
22 report, also serves or can serve as an operating reserve or
23 supplemental reserve. The way I think of it, it's something
24 similar to storage; it's reverse storage, which provides the
25 opportunity to make our markets more competitive, if we

1 could have more of it and have it easily accessible.

2 I think it's also a significant issue for a
3 number of other reasons. The Edison Electric Institute's
4 incoming President, Jim Rogers, has stated that demand
5 response and electric efficiency, is going to be his number
6 one issue in the coming year.

7 I have heard a number of CEOs of utilities
8 recently talk about how important it is, and how utilities,
9 integrated utilities or all utilities, are potential
10 resources to promote more demand response. But, frankly,
11 the way they are currently structured, where they make their
12 money only if they sell electricity, they don't have
13 incentives in line with promoting more demand response.

14 And so a number of CEOs have begun to call for
15 more decoupling of revenues from purely selling electricity.
16 I think their calls make a lot of sense, so I think this is
17 going to be a big issue facing the country.

18 One other place where demand response can help,
19 is in our growing dependence on foreign gas. As we look at
20 the gas-producing areas, domestically, we see that
21 production is declining in many basins, and, to the extent
22 that it's holding stable or holding level, it's because
23 we've increased the amount of drilling, not because we have
24 untapped resources that we can now tap.

25 Hopefully we can develop our Alaska natural gas

1 to help us with that problem, but, over time, if our demand
2 for gas continues to increase at the rate it is, we're going
3 to have to match it with increasing dependence on foreign
4 gas, so, again, demand response is a tool to help us with
5 that problem.

6 Demand response cuts across all jurisdictions --
7 local, state, and federal. FERC does have jurisdiction over
8 areas where we could facilitate more demand response. You
9 have itemized a couple of them in your report.

10 For example, there are some RTOs that are engaged
11 in demand response efforts -- Bonneville Power
12 Administration, the Midwest ISO, and PJM. Now, New England
13 is embarking upon a program themselves to also do that.

14 We have jurisdiction over ISOs and RTOs, and they
15 seem to be ideally placed to initiate policies that will be
16 helpful for demand response consideration in markets, in
17 auction-based bid markets, as well as in transmission
18 planning. Our jurisdiction is directly over them at the
19 wholesale level, so I think it's important for us to
20 recognize that there are wholesale market designs that we
21 have jurisdiction over, that could evolve to be more
22 accommodating of demand participation.

23 Also in transmission planning, we have undertaken
24 efforts to foster transmission planning in those areas of
25 the country in connection with our 888 02 reform.

1 It may be that we should consider as one of our
2 goals for transmission planning, that it also include a
3 targeted attempt to evaluate demand response as an
4 alternative to generation and transmission.

5 I know that's not the easiest thing to
6 accomplish, but certainly regions and sub-regions have
7 embarked on that, and some of our RTOs have embarked on
8 that, so I think that we should consider exercising our
9 jurisdiction in that way.

10 Also, as you mentioned in your report,
11 insufficient market transparency and access to data, has
12 been a barrier to demand response. Congress has given us
13 the authority to look at transparency and to determine
14 whether or not more transparency is needed in certain
15 situations.

16 So we have jurisdiction in this area also, and we
17 have our own abilities to work with state regulators. I
18 think, as the Chairman has pointed out, through joint
19 federal/state boards or informal federal/state boards, that
20 we could coordinate our jurisdiction with the state
21 jurisdiction affecting demand response.

22 We certainly don't want to be at loggerheads with
23 each other, but I don't think that we want to not undertake
24 the initiatives that we could undertake, just because the
25 state also acts.

1 I agree that the state has jurisdiction at the
2 retail level, but certainly FERC has jurisdiction at the
3 wholesale level over certain aspects of demand response.

4 I appreciate your report. I'm glad that this is
5 being published soon, and I think that in response, we
6 should consider having a technical conference soon, to see
7 whether it would be fruitful for us to embark on some of the
8 initiatives to remove barriers that you've identified in
9 your report, to more demand response at the wholesale level.

10 COMMISSIONER BROWNELL: I agree, Suedeen. Since
11 I've been here, the only thing everyone agrees on, is that
12 we need more demand response.

13 I suspect that if we had done this survey five
14 years ago, we would see similar statistics, so I think we
15 need to do something to jump-start it, particularly as the
16 nation confronts significant under-investment in
17 infrastructure and increased demands. Solutions that may be
18 solved by transmission in the national siting, the national
19 corridors -- they're going to be a long time coming. This
20 ought to be part of the equation.

21 I was in Louisiana some time ago, and many of the
22 market participants were thinking about ways in which they
23 wanted to rebuild, and one of the issues was that they hoped
24 that the utility or the utilities -- in fact, if they're
25 redoing the metering, certainly use the most advanced

1 metering.

2 But I have a question, David. I'm thrilled that
3 Pennsylvania is one of the top ten states, but I don't see a
4 lot of programs or models in Pennsylvania, or, frankly,
5 anywhere, where that decoupling has taken place and they've
6 tied in the capacity to use their advanced meters, not only
7 to get communication, but to empower the customers by giving
8 them the communication really to buying decisions. Is that
9 true?

10 So that having the advanced metering penetration,
11 doesn't necessarily imply that they are being used to their
12 fullest capacity; isn't that right? I don't think 52
13 percent of Pennsylvanians have any kind of a time of use, or
14 they're utilizing that information.

15 MR. KATHAN: I would agree with that. That's my
16 understanding.

17 I believe how it's being used in Pennsylvania, is
18 largely for operational benefits having to do with outage
19 detection or meter-reading, et cetera.

20 But they have not taken that and translated that
21 into use, directly in demand response, as far as I know.

22 COMMISSIONER BROWNELL: Are there any states that
23 have, in fact, created rate designs that decouple and that
24 allow customers to effectively participate without putting
25 the utilities at risk in terms of recovering their costs.

1 MR. KATHAN: I don't have a full inventory, but I
2 do know that New York has been working hard on that specific
3 issue, and a recent rate case with ConEd, tried to address
4 that issue of revenue loss and how to provide sufficient
5 incentives.

6 CHAIRMAN KELLIHER: I thought Oregon had adopted
7 decoupling.

8 MR. KATHAN: Oregon is another one, yes.

9 CHAIRMAN KELLIHER: That was natural gas-powered,
10 but I think Oregon did something interesting.

11 COMMISSIONER KELLY: I believe California is
12 looking at it also.

13 COMMISSIONER BROWNELL: Looking. I think and I
14 hope -- and I talked to Jim Rogers and Diane Muntz about
15 this -- is that one of the things they will do, is create
16 some models, so that each state does not need to go through
17 the agony and expense of reinventing the wheel.

18 There are probably only so many variations on
19 this theme. I hope this isn't a case where everybody has to
20 be different. I think that would be, in and of itself,
21 hugely inefficient and wouldn't leverage any new
22 technologies.

23 The other thing is that I think the states really
24 need to consider, is how they can incent their companies to
25 deploy more technologies. The meters have come down

1 dramatically in price, and it would be a shame not to really
2 get to that empowered customer and use that wisely. So I'm
3 hoping there is more that we can do.

4 I think we can also provide some leadership, and
5 I think New York has been pretty effective at harmonizing
6 their retail and wholesale programs. That's something, I
7 think, that needs to have further work.

8 I think, Jimmy, you've got lots of work for the
9 Electricity Committee in this regard, but this is a great
10 report, and I want to thank David, who has spent more hours
11 than I'm sure he cared to, answering my questions about
12 demand response and really talking through some of the
13 issues.

14 And this was a Herculean effort. I am impressed,
15 given I know where you started and some of the difficulties.

16 I thank the participants.

17 A 55-percent response is pretty extraordinary.
18 For those who didn't, shame on you. We ought to publish a
19 list of names, so their states and Congress know who failed
20 to send in the survey. Thank you.

21 MR. KATHAN: I just want to make one response
22 about the incentives. There actually has been some good
23 work being done by the Mid-Atlantic Distributed Resources
24 Initiative, and if you go on their website, there are some
25 papers that are a good resource.

1 COMMISSIONER BROWNELL: Good, thanks.

2 CHAIRMAN KELLIHER: I want to thank David and the
3 rest of the Staff for what is an excellent product. Thank
4 you for your work.

5 Madam Secretary?

6 SECRETARY SALAS: Next for discussion, we will
7 have a joint presentation of Items E-5, North American
8 Electric Reliability Corporation, and E-6, Governors of
9 Arizona, California, Colorado, Montana, Nevada, New Mexico,
10 Oregon, Utah, Washington, and Wyoming.

11 This is a presentation by Bill Longenecker, Carol
12 Johnson, Christy Walsh, Roger Morie, Keith O'Neal, and David
13 Miller.

14 MR. LONGENECKER: Good morning, Mr. Chairman.

15 CHAIRMAN KELLIHER: Good afternoon, actually.

16 (Laughter.)

17 MR. LONGENECKER: My name is Bill Longenecker
18 with the Division of Reliability in the Office of Energy
19 Markets and Reliability. Joining me at the table are
20 Christy Walsh of the Office of General Counsel and the co-
21 lead of the ERO Certification Team, and Roger Morie of the
22 Office of Enforcement.

23 Other Certification Team members include Jonathan
24 First and Carol Johnson of the Office of General Counsel;
25 Kumar Agarawal, David Miller, Cynthia Pointer, Mary Agnes

1 Nimis, and Keith O'Neal, of the Office of Energy Markets and
2 Reliability, and Michelle Velos, Kristin McKeown, and Mark
3 Higgins of the Office of Enforcement; and Joe McClelland the
4 Director of Reliability is the sponsor of this Order.

5 Item E-5 is a Draft Order that would certify the
6 North American Electric Reliability Corporation, or NERC, as
7 the single electric reliability organization, or ERO for the
8 United States.

9 In accordance with Title XII of the Energy Policy
10 Act of 2005, new Section 215 of the Federal Power Act,
11 provides for a system of mandatory, enforceable reliability
12 standards for the nation's bulk power supply system.

13 Pursuant to Section 215 of the Federal Power Act,
14 NERC, as the certified electric reliability organization,
15 will be responsible for the development and enforcement of
16 the mandatory electric reliability standards, subject to
17 Commission oversight.

18 Thus, the Commission's certification of NERC as
19 the ERO, is an important step toward ensuring more reliable
20 electric service in the continental United States.

21 Because of the interconnected nature of the bulk
22 power system in North America, which extends into Canada and
23 Mexico, NERC is concurrently taking steps to be recognized
24 by the appropriate Canadian and Mexican authorities.

25 Under Section 215 of the Federal Power Act, NERC

1 may delegate its enforcement authority to regional
2 organizations called regional entities, pursuant to
3 individually-negotiated delegation agreements. These
4 delegation agreements are to be based upon the pro forma
5 delegation agreement submitted with NERC's ERO application.

6 A delegation agreement is effective, only if
7 approved by the Commission. NERC expects to file for
8 Commission approval delegation agreements executed with
9 prospective regional entities, later this year.

10 NERC has widespread support from the public
11 commenters, to be certified by the Commission as the ERO.
12 Many of these commenters, however, also recommended a number
13 of improvements.

14 The Draft Order agrees with several of the
15 recommendations and directs NERC, as the certified ERO, to
16 submit a compliance filing that incorporates these
17 improvements, within 90 days.

18 Notable among the requirements for the compliance
19 filing, NERC must specify more fully, its enforcement
20 process, and provide for meeting Commission-imposed
21 deadlines with respect to modifying a proposed reliability
22 standard or developing a new standard.

23 In addition, the Draft Certification Order
24 directs NERC to make a number of changes to its pro forma
25 delegation agreement. These changes should be included

1 within the individual delegation agreements that NERC
2 intends to negotiate with the prospective regional entities.

3 Finally, the Draft Certification Order provides
4 that when NERC submits its funding request, it should also
5 include details for funding of regional advisory bodies. As
6 will be discussed in a moment by Carol Johnson, in regard to
7 Item E-6, regional advisory bodies may be established by the
8 Governors of neighboring states, to advise the regional
9 entity, the ERO, and the Commission, on reliability matters.
10 Thank you.

11 MS. JOHNSON: Good afternoon, Mr. Chairman and
12 Commissioners. I'm Carol Johnson from the Office of General
13 Counsel. With me at the table, are Keith O'Neal, who is the
14 Team Leader, and David Miller from the Reliability Division
15 of the Office of Energy Markets and Reliability, and Kumar
16 Agarwal from the Policy Division of that office, is also on
17 the team.

18 E-6 is a Draft Order establishing the Western
19 Interconnection Regional Advisory Body, upon a petition of
20 ten of 11 states that have more than half of the electric
21 load served within the Western Interconnection.

22 EPAct 2005 directed the Commission to establish a
23 regional advisory body on the petition of at least two-
24 thirds of the states in a region that had more than half of
25 their electric load served within that region.

1 This petition meets that requirement. The bylaws
2 of the Western Interconnection Regional Advisory Body
3 provide that each of the 17 states and provinces that have
4 any portion of their load served in the Western
5 Interconnection, be invited to appoint a member to serve on
6 the Western Interconnection Regional Advisory Body.

7 The Draft Order recognizes that the statute
8 permits a regional advisory body to advise the Commission,
9 the Electric Reliability Organization, or a regional entity,
10 regarding the governance of an existing or proposed regional
11 entity within the same region, whether a proposed
12 reliability standard to apply within the region, or fees to
13 be assessed within the region, are just, reasonable, not
14 unduly discriminatory or preferential, and in the public
15 interest, and to perform any other responsibilities
16 requested by the Commission.

17 The Draft Order finds that the reasonable costs
18 of providing such advice and assistance, may be funded from
19 the fees collected under Section 215 of the Federal Power
20 Act, and directs that regional advisory bodies submit their
21 budget requests to the Electric Reliability Organization, to
22 be included as part of the overall electric reliability
23 organization budget.

24 We'd be happy to answer any questions you might
25 have. Thank you.

1 CHAIRMAN KELLIHER: Thank you. Commissioner
2 Brownell?

3 COMMISSIONER BROWNELL: Mr. Chairman --
4 (Laughter.)

5 CHAIRMAN KELLIHER: I will make some brief
6 comments. These are very important Orders, but the Staff
7 presentation has been very complete, so I won't tread
8 familiar or new ground.

9 I just want to make a few general comments,
10 though. The theme or the organizing principle of last
11 month's meeting was infrastructure.

12 We took a number of actions to strengthen the
13 energy infrastructure of both electric and gas, and, really,
14 reliability seems to be the theme or organizing principle of
15 this meeting, because of this action we're taking on the
16 ERO, but also the action we're taking on transmission
17 pricing a little bit later, and the discussion we just heard
18 on demand response.

19 Our timing has been inadvertent, but it's ended
20 up being impeccable, given this week's events.

21 Let me just make some general comments. I won't
22 repeat the description of the Orders. I think it was
23 complete, but, really, from my point of view, there's three
24 essential elements to have a strong reliability regime:

25 One is that it's critical that the Electric

1 Reliability Organization be a very strong organization.
2 That is now broadly recognized and accepted, more so than
3 perhaps a year ago, and we are poised to certify a strong
4 Electric Reliability Organization.

5 But that, by itself, isn't enough. We also need
6 mandatory reliability standards that meet the statutory test
7 in the Energy Policy Act of 2005. We've made a lot of
8 progress in that direction.

9 The preliminary assessment that the Staff
10 prepared and the Commission issued in May, really was a very
11 important piece of work. It was a very high quality piece
12 of work, and I think it identified some issues relating to
13 the proposed reliability standards, and we've been exploring
14 some flaws and categorical flaws in the proposed standards.

15 We had a technical conference two weeks ago to
16 walk through some of those issues, but we're moving ahead
17 towards action on proposed reliability standards.

18 Right now, we're looking to act in September to
19 propose to accept those reliability standards that meet the
20 statutory test.

21 But, third, we really obviously need strong and
22 consistent regional enforcement, and, the way the Energy
23 Policy Act was written, the statutory construct is that,
24 really, the first responder, if you will, on enforcement,
25 will be at the regional level, the regional entities.

1 The Commission does not yet have any of the
2 delegation agreements in front of us. I think that will
3 follow shortly upon certification of an ERO, or at least in
4 due course upon certification of an ERO.

5 But it's really critical that we have strong and
6 consistent regional enforcement of mandatory reliability
7 standards. If, in the end, we have metaphysically perfect
8 reliability standards, but enforcement is inconsistent, I
9 don't think we will have accomplished very much.

10 That's really an area where we're going to place
11 increased emphasis as we get the delegation agreements in
12 front of us.

13 Finally, with respect to the Western
14 Interconnection Regional Advisory Board, as Staff indicated,
15 we do find that the Board is consistent with the Energy
16 Policy Act of 2005, and approve it.

17 We allow for funding of the Regional Board
18 through the ERO budget, and we also do not bar the Western
19 Interconnection Regional Advisory Board from other
20 activities, but we do not provide for funding of those
21 activities that go beyond the scope of the Section 215(j)
22 provisions.

23 I want to commend the Staff for their excellent
24 work on this. The Commission is very much focused on having
25 in place, mandatory reliability standards and adequate

1 enforcement of those by next Summer, the Summer of 2007.

2 So, it was really critical that we act today on
3 the ERO certification. You have prepared this Order in a
4 timely manner, and I think it's made it very possible for us
5 to achieve our goal.

6 I think that the Order we're approving today, is
7 one of the most important things that we'll do all year. So
8 I just want to thank you for your work and I want to thank
9 Joe McClelland, our reliability czar, for everything that
10 he's done in recent months.

11 So, colleagues, any comments on the Order?

12 COMMISSIONER KELLY: I agree with you, Joe. Not
13 only did you do an excellent job, but you did a thorough
14 job, and I understand the amount of work that's been on your
15 plates, and appreciate the thoroughness with which you did
16 it, and your good humor, as well. Hopefully you can take
17 August off.

18 I am very pleased with all the calls that are in
19 this Order, and it's a very significant step on our road to
20 having better reliability in the electric grid, so thank you
21 very much.

22 CHAIRMAN KELLIHER: Last word on reliability?

23 COMMISSIONER BROWNELL: Here we go. Anyway, you
24 did a great job. I also want to thank Rick Sergel and the
25 Board at NERC, who I think have focused long and hard on

1 their new responsibilities and the need for their
2 independence.

3 I hope that independence is reflected at the
4 regional level, because I'm not entirely sure that you can
5 get the consistency and enforcement that you need, if you
6 have people with a vested interest, overseeing that.

7 I think that's going to be critical, both in the
8 delegation agreements, and as the entities look at their own
9 boards. I think that's going to be important.

10 I would simply say once again, having differences
11 for the luxury of differences, isn't in any sense good for
12 the industry or good for the customer.

13 So while that seems to be an irresistible urge, I
14 think it needs to be guided by engineering principles and
15 true regional differences, because that's going to make the
16 difference.

17 This is the most important thing, as far as I'm
18 concerned, in EPart. I've said it a thousand times, that I
19 think the challenge is going to be the ongoing
20 implementation issues and the oversight by this group.

21 As we heard the other day, I'm not sure they
22 heard you say 2007, so you need to say that about 50 more
23 times, but also that continued raising of the bar, I
24 appreciate.

25 I saw the filing, and I give you lots of credit

1 for being able to understand every nuance detail. This is
2 tough, but it's important work. Thank you very much.

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1 CHAIRMAN KELLIHER: Imagine if there had been
2 multiple filings for certification, what it would have been
3 like.

4 (Laughter.)

5 CHAIRMAN KELLIHER: Thank you very for your vote.

6 SECRETARY SALAS: Next for discussion we will
7 take up also a joint presentation of three items.

8 They are E-3, Promoting Transmission Investment
9 Through Pricing Reform, E-4, Allegheny Energy, Inc., and E-
10 15, American Electric Power Service Corporation. It is a
11 presentation by Jeffrey Hitchings, Roshini Thayaparan,
12 Rachel Spiker, Andre Goodson, Kurt Longo and Moon Paul.

13 MR. HITCHINGS: Good afternoon, Mr. Chairman,
14 Commissioner Kelly, Commissioner Brownell.

15 Seated next to me is Andre Goodson on the Final
16 Rule Team, and I'd like to mention our other team members on
17 the final rule include Sebastian Tiger from the Office of
18 Enforcement; Tina Hamm, Martin Kirkwood and Kimberly Bose
19 from the Office of General Counsel; Steny Majos, Stephen
20 Pointer, Deborah Ott and Paul Robb from the Office of Energy
21 Markets and Reliability.

22 The team members on E-4 and E-15 are also seated
23 at the table and will be making presentations on those
24 items. E-3 is a final rule that promotes transmission
25 investment with pricing reform, pursuant to the requirements

1 of the transmission infrastructure and transmission
2 producers in Section 1241 of the Energy Policy Act of 2005,
3 which adds a new section 219 to the Federal Power Act.

4 The draft final rule facilitates needed
5 investment that will ensure reliability and reduce the
6 consumer cost, followed by reducing transmission congestion.

7 The need for transmission investment is urgent.
8 Investment in transmission has dropped significantly in real
9 dollar terms over the past 30 years, while electricity load
10 using the grid more than doubled and congestion costs remain
11 significant in a number of markets.

12 By adopting the provisions of the November 2005
13 proposed rulemaking, this draft final rule will promote
14 increased capital investment by providing greater regulatory
15 certainty and procedural flexibility for applicants making
16 transmission investments.

17 The draft final rule identifies specific
18 incentives the Commission will allow when justified under
19 the context of individual declaratory orders or filings by
20 public utilities under Section 205 of the Federal Power Act.

21 The draft final rule permits an applicant to
22 tailor its proposed incentives to the type of transmission
23 investments being made, and requires the applicant to
24 demonstrate that its proposal ensures reliability or reduces
25 the cost of delivered power to customers by reducing

1 transmission congestion as required by the Energy Policy Act
2 of 2005.

3 The Commission will permit incentives only if the
4 incentive package as a whole results in a just and
5 reasonable rate.

6 The final draft rule provides procedural
7 flexibility, including the use of expedited declaratory
8 orders on permitted rate-making treatments, to help with
9 financing and up front regulatory certainty for project
10 investments.

11 As well, the draft final rule makes it clear that
12 not every incentive identified here will be necessary or
13 appropriate for every new transmission investment, and
14 approval of such incentives will be evaluated on a case-by-
15 case basis.

16 Today's draft final rule adopts a number of price
17 reforms, including an incentive rate of return on equity for
18 new investment by public utilities, all traditional
19 utilities and transcos; full recovery of prudently incurred
20 construction work in progress; full recovery prudently-
21 incurred pre-operations costs; full recovery of prudently-
22 incurred costs of abandoned facilities; use of hypothetical
23 capital structures; accumulated deferred income taxes for
24 transcos; adjustments to book value for transco sales and
25 purchases; accelerated depreciation; deferred cost recovery

1 for utilities with retail rate freezes; and a higher rate of
2 return on equity for utilities that join and are continuing
3 to be members of transmission organizations such as, but not
4 necessarily limited to RTOs or ISOs.

5 In addition, the draft final rule provides cost
6 recovery of prudently-incurred costs necessary to comply
7 with mandatory reliability standards, and prudently-incurred
8 costs related to infrastructure development in national
9 interest transmission corridors.

10 The draft final rule also requires public
11 utilities that are granted incentives to file an annual
12 reporting requirement, FERC 730, to allow the Commission to
13 track investment in project services and reasons for project
14 delays.

15 Staff will now present two other draft orders, E-
16 4 and E-15. These draft orders seek to apply the principles
17 set forth in the draft final rule to proposals for
18 transmission incentives on a case-by-case basis.

19 First, Roshini Thayaparan will give a brief
20 presentation on E-4, followed by Rachel Spiker's
21 presentation on E-15.

22 MS. THAYAPARAN: Good afternoon. My name is
23 Roshini Thayaparan from the Office of General Counsel. With
24 me at the table is Kurt Longo from the Office of Energy
25 Markets and Reliability.

1 Other team members that worked on Item E-4
2 include Kimberly Bose and Andre Goodson from the Office of
3 General Counsel, and Kevin Hiler, Tatyana Kromskaya and
4 Daniel Nowak from the Office of Energy Markets and
5 Reliability.

6 The draft order grants the foreign centers
7 requested by Allegheny Energy, Inc. and its affiliated
8 subsidiaries, Monongahela Power Company, Potomac Edison
9 Company and West Penn Power Company. Allegheny proposes to
10 construct a 500 kilovolt transmission line within the PJM
11 region.

12 They are amended by the regional transmission
13 expansion plan review, which was released by PJM in June.
14 The proposed line would extend from Southwestern
15 Pennsylvania to Virginia. The project has a targeted
16 completion date of 2011.

17 Preliminary cost estimates for Allegheny's
18 portion of the project and the upgrades are approximately
19 \$820 million. The draft order approves the four
20 transmission incentives sought by petitioners.

21 The draft order grants the petitioner a
22 declaratory order approving the incentive rates proposed by
23 Allegheny pursuant to existing authority under Section 205
24 of the Federal Power Act and consistent with the
25 Congressional direction set forth in new Section 219 of the

1 Federal Power Act.

2 The improved incentives include the following:
3 First, a return on equity set at the high end of the zone of
4 reasonableness; second, the option to timely recover the
5 cost of capital associated with construction work in
6 progress.

7 Third, the ability to expense and recover on a
8 current basis, pre-construction and pre-operating costs.
9 Fourth, the option to recover all prudently-incurred
10 development and construction costs if the project is
11 abandoned as a result of factors beyond the petitioner's
12 control.

13 The draft order also approves certain accounting
14 authority for the deferral for future recovery of such costs
15 not yet being recovered, plus related carrying costs.

16 Next, Rachel Spiker will give a presentation on
17 Item E-15.

18 MS. SPIKER: Good afternoon, Mr. Chairman. My
19 name is Rachel Spiker. Seated next to me is Moon Paul.
20 Other team members that have worked on Item E-15 are Jignasa
21 Godani, Daniel Nowak, Tatayana Kromskaya, Kevin Hiler and
22 Sebastian Tiger.

23 E-15 conditionally improves the three incentive
24 rates requested by AEP for a proposed new 765 kilovolt 550-
25 mile transmission line that would extend from west to east

1 cross the PJM region, from West Virginia to New Jersey.

2 AEP estimates that the proposed project and
3 associated facilities will cost \$3 billion to construct and
4 take eight years to complete.

5 The draft order grants the petition for a
6 declaratory order improving the incentive rates proposed by
7 AEP for the proposed project, pursuant to our existing
8 authority under the Federal Power Act, Section 205, and
9 consistent with Congress' direction, the new Federal Power
10 Act, Section 219, on the condition that the proposed project
11 is included as part of the PJM regional transmission
12 expansion plan.

13 The approved incentives include (a) return on
14 equity set at the high end of the zone of reasonableness;
15 the option to timely recover the costs of capital associated
16 with construction work in progress; and the ability to
17 expense and recover on a current basis the costs AEP incurs
18 during the peak construction and pre-operating period.

19 The draft order conditions approval of these
20 incentives on inclusion of AEP's proposed project in the PJM
21 regional transmission expansion plan.

22 This concludes our joint presentation. We're
23 pleased to answer any questions.

24 CHAIRMAN KELLIHER: Thank you very much.
25 Commissioner Brownell.

1 COMMISSIONER BROWNELL: Mr. Chairman.

2 CHAIRMAN KELLIHER: Do you want it?

3 COMMISSIONER BROWNELL: I'm saving this until
4 last.

5 CHAIRMAN KELLIHER: Commissioner Kelly.

6 COMMISSIONER KELLY: Okay. I looked at the
7 investment success stories, where investments in
8 transmission have actually been made, and regularly receive
9 returns on equity of 11 percent or more, at both the state
10 and federal levels.

11 What I see is that that investment is doing well,
12 and is receiving a good return. So when you look at it that
13 way, you see that the money that has been invested has been
14 both low risk and high return.

15 So I believe that there are plenty of investment
16 dollars that would love to flow into an investment like
17 that, frankly, even under our existing pricing policies.

18 However, we can't ignore the other facts. That
19 is, that as a nation, we now find ourselves with an
20 interstate transmission grid that often falls short of what
21 we need, because somehow those investment dollars have not
22 been tapped.

23 Investment in transmission should be robust. In
24 fact, investment in transmission should have been robust
25 over the last 20-year period, because there's always been

1 money out there looking for a low risk guaranteed return
2 investment.

3 Yet investment in transmission in the United
4 States clearly has not been robust. For the reasons I have
5 just laid out, I don't believe the problem lies on the
6 investor side.

7 Somehow, there are hurdles to getting that money
8 invested. We don't know exactly what they are. A number of
9 them probably exist related to fighting; perhaps some exist
10 related to the movement from full regulation to competition
11 in generation.

12 That's imposed uncertainties that have impeded
13 decisions to invest. I think that's one of the reasons why
14 this Commission struggled until the Energy Policy Act was
15 enacted last year, to reach agreement on a transmission
16 pricing policy.

17 It was the victim of one of those two-two votes
18 that Joe mentioned earlier on a four-person Commission.

19 With the passage of the Energy Act, Congress
20 directed us to pursue transmission pricing incentives.
21 That's what we're doing here. I hope that our federal
22 pricing policy turns out to be enough to solve the
23 transmission problem.

24 But I'm not sure that it is. In fact, my
25 experience indicates that the places where transmission

1 investment has been greatest over the past few years are
2 those places where the states have really exercised
3 leadership and ownership of the issue and made bold steps to
4 address it.

5 There are a couple of examples. For example,
6 Wisconsin, with its formation of the American Transmission
7 Company and more recently in the West, Western states have
8 taken steps to far more actively look at transmission and
9 transmission infrastructure development.

10 A number of state legislatures in the West have
11 created transmission authorities to finance, build and own
12 transmission just like other infrastructure that's needed
13 for the general public that's like roads and water systems.

14 State governments have been actively pursuing
15 more transmission investment in the West because of economic
16 development concerns, where they would like to produce their
17 resources that are in their states and convert it into
18 electricity and ship it to the load centers.

19 I want to commend those states for taking those
20 actions, and then look at our pricing policies and what
21 we're doing. We may in fact be the tail end of the dog
22 that's out there, getting more transmission infrastructure
23 built.

24 But given that, I am happy with this final rule
25 and I think we've done a good job of providing incentives

1 that we can give, providing a panoply of incentives that we
2 can give on a case-by-case basis.

3 I also want to say that I'm very enthusiastic
4 about both the AEP and Allegheny orders, because of huge
5 investments that those companies propose to make, and the
6 particular parts of the grid in which they propose to make
7 them.

8 They seem to me to be exactly the types of
9 transmission investment that this nation sorely needs.

10 COMMISSIONER BROWNELL: I think the Constitution
11 was written in less time and voted on than we've done this.
12 I think this is a thoughtful, albeit different from where we
13 started approach to providing a number of I'd really like to
14 think of it as financial tools to create financial
15 structures that will in fact attract capital.

16 We hope some of that private capital comes our
17 way. I think it is a tool. I think a couple of things as
18 we move forward need to be considered.

19 In some places, it's been suggested that the
20 under-investment is strategic, in that companies have
21 basically seen it in their best interest to have a fragile
22 transmission system in order to leverage their generation
23 assets.

24 I think at one point we talked about, and several
25 people here, suggested that we start looking at penalties.

1 This is not the appropriate place, but I think you might
2 want to look at if this doesn't work with the national
3 corridors, I think you need to look at why.

4 There is certainly an intersect with the
5 reliability regime that I think will make a difference. But
6 I'm hoping we can get to a point. I said the other day
7 we're monitoring a national grid in a national way so that
8 we can get real time information, because I think that's
9 going to inform a lot of decisions going forward, not the
10 least of which is planning.

11 I agree. I join you. Governor Friedenthal and
12 then-Governor Leavitt are my heroes. It took governors to
13 take the initiative to really get that project moving. If
14 we look at this closely, it does once again inform the kinds
15 of decisions that have to be made if we look at the enormous
16 amount of investment that's going to be required, having the
17 kind of tools to have it done but also making sure that the
18 planning process is robust enough to make the right
19 decisions.

20 I think those are all critically important. I
21 think this provides a series of tools. I hope the states
22 who have some concern that we're withdrawing FERC's candy
23 unnecessarily, will look at this and understand that this is
24 simply an addition to the way we traditionally do business.

25 In the dynamic marketplace and an industry that

1 will change whether it wants to or not, I think this kind of
2 a look is going to be more and more important. So I'm
3 pleased to support it and look forward to actually seeing
4 transmission get built.

5 COMMISSIONER KELLY: I was just going to say to
6 Nora's point about penalties, that was an issue that came up
7 in the course of comments.

8 I've agreed with Nora about that approach, but it
9 is not the time to look at penalties. There is the
10 possibility that in certain pricing regimes, one might want
11 to have performance standards.

12 I think Nora and I agree on that. It's difficult
13 in many of the rate incentive-based programs and
14 performance-based rate treatments that are out there. It is
15 sometimes very difficult to come up with meaningful
16 performance standards.

17 I think it's appropriate not to make that a
18 requirement of any incentive plan, but to keep the door open
19 should those be helpful, that we could include them.

20 CHAIRMAN KELLIHER: Thanks. Let me just follow
21 up really along the same lines. I agree with both my
22 colleagues that we have seen a sustained period of under-
23 investment in the transmission grid that really goes back
24 about 30 years. I think the 70's was the last sustained
25 period of robust investment.

1 There's multiple theories on why that under-
2 investment has occurred. There's always five or six
3 theories, two of which Congress seems to agree with.

4 One is siting, the lack of federal siting
5 authority. That's one theory on why the under-investment
6 has occurred, and it's simply very difficult to build major
7 transmission lines.

8 So Congress granted FERC some additional
9 transition siting authority and we've acted to implement it.

10 But another is pricing. There's a theory that
11 pricing policies didn't adequate incent investment.
12 Congress directed us to explore that and go through this
13 rulemaking.

14 I think what we've concluded in this final rule,
15 as staff has described, is that we're going to be more
16 flexible than we've been in the past. We're going to depart
17 from some of our past precedents.

18 But what we're not doing here, it's important to
19 understand what we're not doing, we're not raising returns
20 across the board. We're expressing a willingness to grant
21 higher returns, but that's not the only incentive that's
22 included in the final rule.

23 I think we're acting within our discretion under
24 the Federal Power Act. The courts have affirmed that the
25 Commission does have the legal authority to grant higher

1 returns in certain circumstances, and that was just affirmed
2 in the past two weeks, I believe, in New England.

3 But the final rule reflects that we have a legal
4 duty to protect transmission customers from unjust and
5 unreasonable rates. It's very clear in the final rule that
6 any incentive rates that are granted by the Commission will
7 be bounded by the zone of reasonableness.

8 They will be just and reasonable rates. The
9 burden is on the applicant for any incentive rate to justify
10 the incentive. In some cases, it might take the form of a
11 higher return. But it could be abandoned plant recovery or
12 CWIP.

13 So there's really a number of different incentive
14 rates that are provided for in the final rule as staff
15 described them. But the rule itself does not grant
16 incentive rates.

17 There has to be a subsequent application to seek
18 incentive rates, and the burden is on the applicant. Nora
19 alluded to the fact that this is something that literally
20 has taken much longer than it took to write the
21 Constitution, to write this final rule and its forebears.

22 I want to express my sympathy for everyone who
23 works on drafts of the final transmission pricing policy
24 statement. I express sympathy. That was a hard one.

25 But it's something we've been working on for more

1 than three years, and I am pleased that we're taking this
2 final action today, and I'm very pleased that we're taking
3 it with Commissioner Brownell as one of the few who's going
4 to vote on it.

5 Now with respect to the AEP and Allegheny orders,
6 as staff indicated we granted the petitions for a
7 declaratory order finding that the requested rate incentives
8 are just and reasonable, and I think our action really
9 clears the path for further development of these important
10 projects. But it doesn't constitute final Commission
11 action.

12 That would take place in future orders on
13 subsequent rate filings. I want to thank staff for their
14 work on this one. It's nice to put transmission pricing to
15 bed, and I'm ready to vote if my colleagues are.

16 COMMISSIONER KELLY: Aye.

17 COMMISSIONER BROWNELL: Aye.

18 CHAIRMAN KELLIHER: Aye. Thank you very much.

19 SECRETARY SALAS: The final item for discussion
20 this afternoon is E-2, long-term firm transmission rights in
21 organized electricity markets. It's a presentation by Jeff
22 Dennis, Bud Earley, Udi Helman, Roland Wentworth and Harry
23 Singh.

24 MR. DENNIS: Mr. Chairman, Commissioners, good
25 afternoon. My name is Jeff Dennis from the Office of

1 General Counsel. With me this morning are Bud Earley, Udi
2 Helman and Roland Wentworth from the Office of Energy
3 Markets and Reliability, and Harry Singh from the Office of
4 Enforcement.

5 E-2 is a draft final rule on long term
6 transmission rights in organized electricity markets. This
7 draft final rule is responsive to Section 1233 of the Energy
8 Policy Act of 2005, which adds a new Section 217 to the
9 Federal Power Act, concerning native load service
10 obligations.

11 New Section 217(b)(4) of the FPA requires the
12 Commission to exercise its authority in a manner that
13 facilitates the planning and expansion of transmission
14 facilities to meet the reasonable needs to load-serving
15 entities to satisfy their service obligations, and enable
16 load-serving entities to secure firm transmission rights on
17 a long-term basis, for a long term power supply arrangements
18 made or planned to meet their service obligations.

19 The Energy Policy Act requires the Commission to,
20 within one year of enactment, implement new Section
21 217(b)(4) by rule or order in transmission organizations
22 with organized electricity markets.

23 On February 2nd of this year, the Commission
24 issued a Notice of Proposed Rulemaking in this proceeding.
25 Generally, the NOPR proposed to require that transmission

1 organizations with organized electricity markets make long-
2 term firm transmission rights available to all market
3 participants consistent with eight proposed guidelines.

4 The draft final rule before you largely adopts
5 the flexible approach to developing long-term firm
6 transmission rates proposed in the NOPR, and specifically
7 the draft final rule requires transmission organizations
8 with organized electricity markets to make long-term firm
9 transmission rights available to all market participants.

10 The draft rule adopts seven guidelines for the
11 development of long-term firm transmission rights. These
12 guidelines are intended to provide flexibility to
13 transmission organizations and their stakeholders to develop
14 specific designs for long-term firm transmission rates that
15 will fit their prevailing market design and meet the needs
16 of load-serving entities in their region, while also
17 ensuring that those rights have certain fundamental
18 properties that are essential to satisfy the intent of
19 Congress in Section 217(b)(4) of the FPA.

20 Highlighting a few of the important features of
21 the draft final rule, particularly the guidelines, first,
22 the draft maintains proposed Guideline 2, which as proposed
23 in the NOPR, states that the financial coverage of long-term
24 firm transmission rights, once allocated or rewarded, may
25 not be modified during their term except in extraordinary

1 circumstances.

2 In other words, Guideline 2 requires that long-
3 term firm transmission rights be fully funded. The draft
4 preamble to the final rule contains some guidance on methods
5 for funding the rights in the event of a revenue shortfall.

6 Second, the draft final rule revises proposed
7 Guideline 5 in two ways. As proposed in the NOPR, Guideline
8 5 would have given load-serving entities with long-term
9 power supply arrangements priority to long-term firm
10 transmission rights over existing capacity.

11 The draft replaces this proposed preference with
12 a broader preference for load-serving entities vis-a-vis
13 non-load serving entities. Also, the draft adds language to
14 Guideline 5 to permit transmission organizations to place
15 reasonable limits on the amount of existing capacity they
16 will make available for long-term transmission rights.

17 Third, the draft final rule adopts proposed
18 Guideline 4 regarding the length of terms that transmission
19 organizations must offer for existing capacity, with
20 revisions to require that the transmission organizations
21 offer coverage for at least a ten-year period.

22 Transmission organizations have the flexibility
23 under this guideline to offer terms of other lengths to meet
24 the needs of load-serving entities with long-term power
25 supply arrangements.

1 Fourth, with regard to transmission system
2 planning and expansion and long-term firm transmission
3 rights, the draft final rule requires that each transmission
4 organization with an organized electricity market implement
5 planning and expansion procedures that will accommodate
6 long-term firm transmission rights once they are allocated
7 or rewarded, to ensure that such rights remain feasible over
8 their entire term.

9 Each transmission organization subject to the
10 rule is also required to make its planning and expansion
11 practices and procedures publicly available, including both
12 the actual plans and any underlying information used to
13 develop the plans.

14 The draft final rule also eliminates Guideline 8,
15 which stated that the allocation of long-term firm
16 transmission rights should balance adverse economic impact
17 between participants receiving and not receiving the right.

18 The comments received on this guideline indicated
19 that it could be misinterpreted to require longer-term firm
20 transmission rights proposals at a different or higher
21 standard than the just and reasonable standard of the FPA,
22 which neither the Commission nor Congress intended.

23 The draft final rule will become effective 30
24 days after publication in the Federal Register.
25 Transmission organizations subject to the final rule will be

1 required to submit compliance filings within 180 days after
2 the date of publication in the Federal Register.

3 Proposals to comply with the final rule must
4 satisfy each of the seven guidelines. We're available for
5 any questions you may have. Thank you.

6 CHAIRMAN KELLIHER: Thank you. Commissioner
7 Brownell.

8 COMMISSIONER BROWNELL: Mr. Chairman, I really
9 need you not to let me talk first.

10 (Laughter.)

11 CHAIRMAN KELLIHER: Commissioner Kelly.

12 COMMISSIONER KELLY: Thank you, Nora. I'm very
13 pleased with this rule. I want to thank staff for putting
14 together something that I anticipate is going to work very
15 well. That's almost surprising, given that this was
16 initially described as an almost futile attempt to try to
17 put a square peg into a round hole.

18 You've done an excellent job at it. One reason
19 that I'm encouraged that this will be feasible for ISOs and
20 RTOs in particular to implement, is because we have in fact
21 received a proposal by PJM, filed with us July 3rd, for a
22 long-term rights proposal very much along the lines of what
23 we issued today.

24 I also believe that to those entities that rely
25 on long-term power supply arrangements, particularly the

1 public utilities, will be able to maintain their business
2 model, which is of course a very valid business model.

3 As a result of this final rule, I'll be pleased
4 to vote for it.

5 CHAIRMAN KELLIHER: I'll be very brief. Staff
6 has done an excellent job on this one. This was, I think, a
7 difficult rulemaking, in part because the statutory language
8 was not perfectly clear.

9 (Laughter.)

10 CHAIRMAN KELLIHER: So that created difficulties.
11 Where ultimately our rule has to be some kind of model of
12 clarity, it's hard when at the starting point it is less
13 than ideal.

14 But I think the final rule does provide
15 appropriately regional flexibility in setting the terms of
16 rights. We do set a minimum term of ten years. I think
17 we've listened to the views of the transmission customers
18 that want long-term rights, that are concerned about
19 exposure on the hedged congestion costs.

20 So I think we've acted in a way that's consistent
21 with the statute. The rule will require some significant
22 changes in some of the RTO and ISO market rules.

23 That really can't be avoided, but I just want to
24 be very clear on one other point, that the final rule is
25 limited to regional transmission organizations and the

1 independent system organizations with organized electricity
2 markets.

3 It does not affect public utilities outside the RTO and ISO
4 regions.

5 But we're acting in a timely manner, consistent
6 with the statute, and I support the final rule.

7 COMMISSIONER BROWNELL: I too am going to be
8 short and sweet. I look forward to the implementation. I
9 think Bud Early and the team have done a great job of taking
10 a really amorphous concept and trying to put some meat on
11 the bones.

12 I think this is incredibly complex. I confess
13 that while I'm supporting the rule, I'm not completely
14 comfortable with all of the implementation and how this is
15 going to roll out.

16 I would also say that while we're imposing this
17 on organized markets, I would say that every transmission
18 entity, and I think we began to get this in OATT reform,
19 should make, and I'm reading from the presentation, its
20 planning and expansion practices and procedures publicly
21 available, including both actual plans and underlying
22 information to develop those plans.

23 That's what we ordered in SPP and Entergy, the
24 ICT to do, and the users group to oversee.

25 I would hope whatever the evolution of the

1 marketplace is, those are the kind of developments that are
2 not limited to organized markets. We can impose so much on
3 them that it has the opposite effect of what I think
4 Congress intended in 1992 and the previous commissions have
5 intended, which is to make this attractive and get
6 efficiencies.

7 So while there are many business models that
8 work, I think that having different business models with
9 different obligations and responsibilities kind of tilts the
10 playing field in a way that I'm not sure is in the best
11 interest.

12 I hope we continue to refine this and hope we
13 continue to look at processes in the unorganized markets to
14 hope that we have the transparency we talked about, the
15 reliability and that the customers are getting what they pay
16 for.

17 I'm quite convinced it is not happening
18 everywhere. Bud, we've given you, kind of like Judge
19 Brenner, some of the worst tasks in the world, but I support
20 the rule. Thank you.

21 CHAIRMAN KELLIHER: Shall we vote?

22 COMMISSIONER BROWNELL: Aye.

23 COMMISSIONER KELLY: Aye.

24 CHAIRMAN KELLIHER: Aye. Thank you very much.

25 COMMISSIONER BROWNELL: Thank you, team. It's

1 been real.

2 (Whereupon, at 1:00 p.m., the hearing in the
3 above-entitled matter was adjourned.)

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