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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 - MISCELLANEOUS :
CONSENT ENERGY PROJECTS - CERTIFICATES :
DISCUSSION ITEMS :
STRUCK ITEMS :
- - - - -x

912TH COMMISSION MEETING
OPEN MEETING

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

Thursday, January 18, 2007
10:06 a.m.

1 APPEARANCES:

2 COMMISSIONERS PRESENT:

3 CHAIRMAN JOSEPH T. KELLIHER

4 COMMISSIONER SUEDEEN G. KELLY

5 COMMISSIONER MARC SPITZER

6 COMMISSIONER PHILIP MOELLER

7 COMMISSIONER JON WELLINGHOFF

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9 SECRETARY MAGALIE R. SALAS

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21 ALSO PRESENT:

22 JANE W. BEACH, Reporter

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

2 (10:06 a.m.)

3 CHAIRMAN KELLIHER: Good morning. Please take
4 your seats, please close the door.

5 This open meeting of -- please end your
6 conversations or take them out to the hall.

7 This open meeting of the Federal Energy
8 Regulatory Commission will come to order to consider the
9 matters which have been duly posted in accordance with the
10 Government in the Sunshine Act for this time and place.

11 Please join us in the Pledge of Allegiance.

12 (Pledge of Allegiance recited.)

13 CHAIRMAN KELLIHER: This meeting is actually a
14 very important meeting. I think I usually say that before
15 our meetings, and it is generally true; it's particularly
16 true today, because of the enforcement actions that we're
17 about to take.

18 I have to say that it has been a long time
19 coming. I personally have argued in favor of the Commission
20 being given civil penalty authority, for nearly ten years, I
21 think, starting in March of 1998.

22 Andy Black and I were working together on the
23 Energy and Commerce Committee, and I was a Committee
24 Counsel, and, as Committee Counsel, I thought the Commission
25 needed civil penalty authority.

1 As an advisor to Secretary Abraham, I thought the
2 Commission needed civil penalty authority. As Chairman,
3 during Conference, I argued in favor of us getting civil
4 penalty authority, and now we have it and we're poised to
5 use it.

6 So, it's been a long time coming, and I look
7 forward to our actions and discussion later today.

8 So, it is an important meeting. We're exercising
9 our authority for the very first time. Congress gave us the
10 tools and we're using them.

11 So there's another enforcement aspect to today's
12 meeting, and that's the Standard of Conduct actions, where
13 we are responding to the court decision and taking some
14 appropriate actions.

15 So, enforcement really is the headline of the
16 day. The Commission is taking a number of important
17 enforcement actions.

18 Before I go further, I want to make a couple
19 brief announcements. I particularly want to recognize a
20 Nigerian delegation that is visiting.

21 We have a number of distinguished guests,
22 Senators and members of the Nigerian Senate Committee on
23 Gas, who are visiting FERC today, and I understand that the
24 Committee is considering how to regulate gas operations in
25 Nigeria, starting with devising a gas transportation

1 network, licensing construction, and overseeing pricing, to
2 avoid priced-fixing, and regulation of entities engaged in
3 gas-related activities to avoid unduly preferential
4 treatment of affiliates.

5 And I understand that you've also been visiting
6 Texas during your trip here, so you've actually visited two
7 countries during your stay here in North America.

8 (Laughter.)

9 CHAIRMAN KELLIHER: I want to welcome you, and I
10 hope that we've met your needs and been supportive.

11 I also want to recognize some Commission Staff
12 who are retiring. We're losing some of our best. I want to
13 recognize Phil Nicholson of the Office of Energy Markets and
14 Reliability, for his career in public service.

15 Phil has had a career of 35 with the Federal
16 Government. He began with the Atomic Energy Commission and
17 later on, it's successor agency, the Nuclear Regulatory
18 Commission, and joined the Commission, FERC, in 1984.

19 During this period, he has generally focused in
20 the area of corporate regulation, particular mergers and
21 major asset dispositions.

22 He worked on the 1996 Merger Policy Statement, a
23 very fine piece of work that we still rely on, as well as
24 Order 669, to help the Commission implement its new Federal
25 Power Act authority.

1 And he has focused generally on our missions
2 regarding competition and competitive markets, something
3 that is still timely.

4 So, I want to thank Phil for his service and I
5 want to present him with the Career Service Award. Phil?

6 (Award presented; applause.)

7 CHAIRMAN KELLIHER: I also want to present an
8 award to Don Chamblee, namely, the Chairman's Exemplar, the
9 Public Service Award.

10 Don also is a long-term public servant. He has
11 worked for the Federal Government for 34 years, for both
12 Congress and the Commission, and in the last quarter
13 century, he has worked for the Commission.

14 Before then, he had a distinguished career on
15 Capitol Hill with Senator Proxmire of Wisconsin. And Don,
16 during his service in the Office of External Affairs, has
17 quietly earned the confidence and trust of Congressional
18 staff; he earned my trust when I was a Congressional
19 staffer, as well, which is one reason he's continued to
20 perform good service here while I've been here.

21 (Laughter.)

22 CHAIRMAN KELLIHER: And during his time at OEI,
23 as both Commissioner and Chairman, I just want to say that I
24 always was impressed with Don's willingness to speak
25 honestly. Sometimes there's the temptation to tell people

1 what they want to hear, but Don has always very forthrightly
2 said what he actually thought, even when he thought it might
3 not be what I want to hear.

4 And I tell him that I have appreciated his honest
5 advice and his counsel. He has performed admirably over the
6 years. He's shown the highest level of competence and
7 integrity, so, for that reason, I want to present him with
8 the Exemplar of the Public Service Award. Don?

9 (Applause.)

10 CHAIRMAN KELLIHER: Don, if you could just stand
11 awkwardly for a moment, I think John wants to say something.

12 COMMISSIONER WELLINGHOFF: Don, I would like to
13 thank you personally for all the help and assistance you
14 provided for my nomination and confirmation process, thank
15 you, thank you very much.

16 COMMISSIONER MOELLER: Same here.

17 (Laughter.)

18 CHAIRMAN KELLIHER: I think working on three
19 nominees at one time, probably encouraged retirement for
20 Don.

21 (Laughter and discussion off the record.)

22 CHAIRMAN KELLIHER: Now, with Don's retirement, I
23 also want to announce a recent hire. We've hired John
24 Peshke to handle Senate affairs and to work in the Office of
25 External Affairs. John is a long-time veteran of the

1 Senate, and for someone who is a creature of the House, the
2 ways of the Senate are always a mystery, and I'm sure John
3 will help me. John, could you stand up for a moment?

4 John has worked in the Senate in a number of
5 capacities. He has a unique combination; he knows the
6 institution of the Senate, but he also knows our issues, and
7 I think that's exactly what we needed.

8 When I became Chairman, I really wanted to
9 improve our relationship with the Congress, both the House
10 and the Senate, and I think that hiring Andy and John,
11 really show that commitment.

12 Carol, if you will stand up, too, Carol Conners,
13 I have known since 1985, I think, so Carol will continue to
14 perform good service on the House side. She and I are more
15 House creatures, so she will help me there. John will
16 really be the lead in the Senate, so I think we're well
17 positioned to continue to improve our relationship with
18 Congress.

19 I just want to thank John for joining us. I am
20 very grateful you took the job. Thank you.

21 Now, with that, I think Phil, Commissioner
22 Moeller, had an announcement.

23 COMMISSIONER MOELLER: Yes, thank you, Mr.
24 Chairman. I've added a member to my staff, in addition to
25 my assistants Jason Stanek and Jignasa Gadani, I've added

1 Patricia Hurt. If Patricia will stand, she just recently
2 came from the Department of Justice, but she spent some time
3 here at FERC, in the Administrative Law Judges Office, so
4 please welcome Patricia.

5 (Applause.)

6 CHAIRMAN KELLIHER: Thank you. Now, with that, I
7 would just like to note, as I usually do, how many
8 notationals we've approved since the last meeting, and I
9 have to say that I'm shocked with the number. The number is
10 44; we've approved 44 notationals since the last meeting.

11 I don't know what the advisors have been doing
12 over the holidays, but the number surprises me, but we
13 continue to -- I don't think a backlog is developing. The
14 number is surprising, but the backlog number is not
15 increasing, so I just -- I know the green blizzard is
16 troublesome, and some of those notationals were difficult
17 and thick ones, so I'm very grateful for the hard work of my
18 colleagues and the advisors.

19 Now, with that, I just wanted to make one brief
20 mention of something that's going to occur out of the usual
21 order. We're going to have some discussion after the last
22 vote today. Usually, after the last vote, there's a quick
23 gavel, and today, we'll have a bit of a slow gavel, because
24 we'll hear a presentation from the Office of Enforcement on
25 our new approach towards the Market Oversight Web Page and

1 how we are really translating the State of the Markets
2 Report of old, into something that I think is newer and a
3 bit more useful to both ourselves and the regulated
4 community.

5 So, don't -- for those of you watching on the
6 website, don't sign off after the last vote, because we do
7 have something interesting after that.

8 With that, I don't think we have any notationals
9 that anyone has posed to discuss, so why don't we turn to
10 the consent agenda. Madam Secretary?

11 SECRETARY SALAS: Sure. Good morning, Mr.
12 Chairman and good morning, Commissioners. Since the
13 issuance of the Sunshine Notice on January the 11th, H-1 was
14 struck from the agenda.

15 Your consent agenda for this morning, is as
16 follows: Electric Items - E-1, 2, 3, 4, 5, 6, 7, 8, 9, 12,
17 and 14.

18 Gas Items: G-1, 2, 3, and 4.

19 Hydro Items: H-2 and 3.

20 Certificates: C-1.

21 As required by law, Commissioner Moeller is not
22 participating in the following items on the consent agenda:
23 E-1, E-2, E-3, and E-4.

24 Specific votes for some of the items on the
25 consent agenda, are as follows: E-3, Commissioner Kelly

1 concurring, with a separate statement, and Commissioner
2 Wellinghoff concurring, with a separate statement; E-4,
3 Commissioner Kelly concurring, with a separate statement,
4 and Commissioner Wellinghoff concurring, in part, and
5 dissenting, in part, with a separate statement.

6 Now we can record the votes. Commissioner
7 Wellinghoff?

8 COMMISSIONER MOELLER: I vote to approve, with
9 the notation of my concurrence in E-3 and my concurrence, in
10 part, and dissent, in part, on E-4.

11 SECRETARY SALAS: Commissioner Moeller?

12 COMMISSIONER MOELLER: Aye, with the exception of
13 the items I'm recused from.

14 SECRETARY SALAS: Commissioner Spitzer?

15 COMMISSIONER SPITZER: I vote aye.

16 SECRETARY SALAS: Commissioner Kelly?

17 COMMISSIONER KELLY: Aye, noting my concurrences
18 in E-3 and E-4.

19 SECRETARY SALAS: Chairman Kelliher.

20 CHAIRMAN KELLIHER: Aye.

21 SECRETARY SALAS: The first item on the
22 discussion agenda, is M-3. This is Northwestern
23 Corporation, SCANA Corporation, Entergy Services, Pacifcorp,
24 and NRG Energy, and it is a presentation by Bob Pease and
25 Lee Ann Watson from the Office of Enforcement.

1 MR. PEASE: Good morning, Mr. Chairman and
2 Commissioners. My name is Robert Pease, and I'm the
3 Director of Investigations in the Office of Enforcement.

4 With me at the table, is Lee Ann Watson, Deputy
5 Director of the Division of Investigations; behind us are
6 other Staff members whom I will introduce at the end of this
7 presentation.

8 Lee Ann and I are here to present Stipulation and
9 Consent Agreements that the Office of Enforcement has
10 reached with five electric companies: Pacificorp, SCANA
11 Corporation, Entergy Services, Northwestern Energy, and NRG
12 Energy, Inc.

13 These settlements represent the first exercise of
14 the enhanced civil penalty authority Congress granted the
15 Commission under the Energy Policy Act of 2005.

16 Together, the settlements call for \$22.5 million
17 in civil penalties. They involve tariff, rule, standards of
18 conduct, and business practice standards violations.

19 In reaching the terms of these settlements, Staff
20 was guided by the mandate set forth in the Federal Power Act
21 and in the Commission's Policy Statement on Enforcement,
22 which was issued a little over a year ago to implement the
23 Commission's enhanced penalty authority.

24 The statute requires that the penalties take into
25 account, the seriousness of the violations and the company's

1 efforts to remedy them in a timely manner. In weighing
2 these elements, we look to the detailed factors spelled out
3 in the Policy Statement, which include such matters as
4 whether the violations caused harm; whether the violations
5 resulted in manipulation or deceit; whether the company has
6 a history of violations; whether senior management was
7 involved; whether the company has a compliance program; and
8 whether the company took prompt action to address the
9 violations.

10 In brief, the main features of the settlements
11 are as follows: PacifiCorp agreed to pay a \$10 million
12 civil penalty in settlement of 329 post-August 8, 2005
13 tariff violations, all of which involved the misuse of
14 network transmission service to facilitate off-system sales.

15 Additionally, PacifiCorp voluntarily paid
16 \$884,000 to network transmission customers for foregone
17 transmission revenues, and has made internal accounting
18 transfers of its point-to-point revenues from its merchant
19 function, to its transmission function.

20 These violations arose under prior ownership and
21 the new owner has committed to preventing any reoccurrences.

22 SCANA Corporation agreed to pay a \$9 million
23 civil penalty; \$1.4 million in disgorgement of profits, and
24 \$400,000 to retail ratepayers for foregone transmission
25 revenues, in settlement of 49 post-August 8, 2005 tariff

1 violations involving the misuse of network transmission
2 service to facilitate off-system sales.

3 Entergy agreed to pay a \$2 million civil penalty
4 in settlement of voluminous tariff and regulation violations
5 involving the processing of transmission service requests,
6 including the failure to post required information on OASIS.

7 In addition, it has agreed to contribute \$1
8 million to the Nike Energy Green Schools for New Orleans
9 Partnership, which will build energy-efficient green schools
10 to replace schools devastated by Hurricane Katrina.

11 The inclusion of this feature into the settlement
12 package is unusual, if not unique, and represents a
13 recognition of the extraordinary challenges presented by
14 that natural disaster.

15 Northwestern Energy agreed to pay a \$1 million
16 civil penalty in settlement of 39 post-August 8, 2005 tariff
17 and business practice standards violations involving the
18 failure to act on certain transmission requests within 30
19 days.

20 Finally, NRG Energy agreed to pay a \$500,000
21 civil penalty in settlement of four tariff and rule
22 violations involving the misrepresentation of a generating
23 unit's availability. Although misrepresentation is a
24 serious matter, our investigation disclosed in this case,
25 that the violations related to an isolated incident that was

1 a decision of a single employee, and was contrary to NRG's
2 practices and protocols.

3 In addition to these payments, all five companies
4 have agreed to compliance plans designed to ensure the
5 tariff and rule requirements that were violated, will be
6 correctly followed in the future.

7 Four of these investigations were triggered by
8 self-reports from the company, and the fifth by a Hotline
9 complaint.

10 Importantly, since the effective date of the
11 Enforcement Policy Statement, the Commission has received
12 over 40 self-reports. The vast majority of these have been
13 resolved without the imposition of penalties, and many
14 without investigations.

15 And in the self-reported settlements before the
16 Commission today, the dollar amounts Staff sought, were
17 considerably less than they would have been, had the
18 companies not self-reported.

19 Staff believes that the settlements reached in
20 these investigations represent fair and equitable
21 resolutions of the violations involved, and we present them
22 to you for your consideration.

23 I would like to introduce the Staff members who
24 worked on these investigations, and ask them to please
25 stand. On Pacificorp: Marty Ramirez, Mark Higgins, Ted

1 Gerarden, Arnie Quinn, and Jesse Halpern.

2 On SCANA: Kathryn Kuhlen, Arnie Quinn, and Jesse
3 Halpern, and David Tobenkin, who could not be here today,
4 also worked extensively on this investigation.

5 On Entergy Services: Todd Mullins, Deme Anas,
6 Helen Shepherd, Gene Grace, and Eric Hsieh, who is now with
7 the Office of Energy Markets and Reliability.

8 On Northwestern Energy: Roger Morie, Kathryn
9 Kuhlen, and Arnie Quinn. We also received assistance from
10 Gary Cohen and Dave Withnell from the Office of General
11 Counsel, and Marv Rosenberg, who recently retired from OMER,
12 also contributed significantly to this investigation.

13 And on NRG, we have Mary Kipp, Young Yoo, and
14 Julia Tuzun. I would like to personally thank Staff for
15 their hard work on these cases. We would be pleased to
16 respond to any questions you may have. Thank you.

17 CHAIRMAN KELLIHER: Thank you for that
18 presentation. I do want to commend you and the Staff for
19 their fine work on these settlements, as well as other
20 investigations that are underway.

21 Let me just make some general comments about the
22 settlements, not to go through the details of the
23 settlements, since you've presented those, but really what I
24 think the significance of the settlements are, and what
25 broad principles people on the outside can draw from them.

1 As I indicated earlier, this is the first
2 exercise of our new civil penalty authority. The Commission
3 has had civil penalty authority in other areas like hydro,
4 that we exercised recently in Ameren, but we have new civil
5 penalty authority that Congress gave us in 2005, and this
6 where we're exercising them in the first instance.

7 And all of the violations that we are settling
8 today, involve ante -- they follow enactment of the Energy
9 Policy Act of 2005. When the law was enacted, one of the
10 first decisions we made, was not to seek to impose civil
11 penalties on violations that preceded the Act. For due
12 process reasons, we thought that would be unfair, since
13 people would not have been on notice that violations might
14 be subject to civil penalties.

15 So, when the law was enacted, we immediately
16 began a number of investigations and continued
17 investigations that actually predated the law. And these
18 actions today are the fruit of those investigations.

19 Now, we moved quickly to implement our new
20 authority, and one of the first actions we took, was a very
21 significant one, and I want to make sure people don't lose
22 sight of it. It's the Enforcement Policy Statement that we
23 adopted in October of 2005.

24 That Enforcement Policy Statement has guided all
25 the settlements we're entering into today, and our actions

1 are consistent with the Policy Statement. I think it's
2 important that people realize that, that analytical approach
3 that we laid out in the Policy Statement, is the way we
4 derive settlement figures and the way we pursue civil
5 penalties.

6 The actions that we're taking, are fully
7 consistent with the Policy Statement and actually were
8 guided by the Policy Statement. We've been very deliberate
9 in the way we've approached this first use, this first
10 exercise of our civil penalty authority, and it's not
11 inadvertent that we're actually acting on five settlements
12 at one time.

13 We thought that doing so, would provide greater
14 clarity, greater regulatory certainty towards the regulated
15 community, and customers, as to how the Commission will
16 approach enforcement.

17 And we also had -- took this action in an open
18 meeting, so that we would have a fuller discussion from
19 Staff on how Staff approaches these investigations, as well
20 as the Commission itself, could discuss our philosophy on
21 enforcement and how we will proceed.

22 Now, I anticipate that there will be a great deal
23 of interest in the actions we're taking today, and I just
24 want to walk through some of the lessons, some of the
25 principles that I think, on the outside, people should draw

1 from these settlements that we are acting on today.

2 Now, first of all, none of these settlements
3 impose maximum penalties, but all of the settlements involve
4 some level of civil penalties.

5 To me, the lesson there is that it doesn't -- no
6 one should draw the lesson that the Commission will not seek
7 to impose maximum penalties.

8 What they should realize, is that we will apply
9 the Enforcement Policy Statement, we will seek to impose
10 civil penalties, if one or more of the factors listed in the
11 Policy Statement, call for maximum penalties, for example,
12 where the harm is very significant, or where there is
13 complicity of senior management in the violation, or where
14 the company obstructs the investigation.

15 By the same measure, we may not always impose
16 civil penalties. Each of these settlements today involve
17 some civil penalty, but that does not mean that all
18 violations will result in the imposition of civil penalties.

19 As Staff indicated, we've had over 40 self-
20 reports in the past year, and many of these have been
21 resolved without the imposition of civil penalties.

22 I think another broad principle that people
23 should recognize, is that regulated companies receive credit
24 for self-reporting violations. Again, that's fully
25 consistent with the Enforcement Policy Statement.

1 Four of the five companies today self-reported
2 their violations, and all these companies received
3 substantial credit for self-reporting. As Staff indicated,
4 the violations would have resulted in -- Staff would have
5 recommended much higher penalty levels, if there hadn't been
6 self-reports in these instances.

7 I want to point out, though, that the credit for
8 self-reporting will diminish, if a regulated company -- at
9 least in my view, speaking for myself, I think it should
10 diminish, if a regulated company does not make a strong
11 commitment to compliance in the future.

12 Now, if a company self-reports violations and
13 subsequently does not develop a strong compliance culture
14 and continues to commit violations, I would expect that the
15 credit for self-report would diminish over time and that
16 civil penalties would escalate. To me, that should not come
17 as a surprise.

18 Now, these settlements also demonstrate that the
19 Commission is aggressively enforcing the Open Access
20 Transmission Tariff. You know, in the past, there has
21 sometimes been a perception that the Commission assumes
22 compliance with the OATT, but does not assure compliance
23 with the OATT.

24 Here today, three of the settlements today, and
25 the three that involve the largest civil penalty amounts,

1 all involve allegations of violations of the Open Access
2 Transmission Tariff, so we are aggressively enforcing the
3 OATT.

4 Now, the Commission expects regulated companies
5 to make a commitment to compliance, and we will use our
6 civil penalty to that end. Again, that is no surprise; that
7 is exactly what we said more than a year ago in the
8 Enforcement Policy Statement, and that's reflected in our
9 Orders today.

10 In the case of Pacificorp, we saw a change in
11 management. When Mid-American acquired Pacificorp from
12 Scottish Power, I want to recognize that Mid-American
13 immediately demonstrated a strong commitment to compliance,
14 quickly took corrective action, self-reported the violations
15 that occurred before the acquisition, fully cooperated with
16 our investigation, and agreed to a settlement with the
17 Commission.

18 In short, Pacificorp reflected a different
19 compliance culture after the Mid-American acquisition, and
20 demonstrated a new-found commitment to compliance.

21 I think the Entergy settlement, in particular,
22 also has an important message. That settlement resolved
23 several investigations involving violations of a number of
24 Commission Rules, Orders, and tariffs, but none of these
25 violations appear to be intentional.

1 There was no or minimal profit to Entergy --
2 there was no profit to Entergy, based on our investigation,
3 and minimal harm was caused. Nonetheless, the Commission
4 imposed a civil penalty.

5 To its credit, Entergy self-reported many of
6 these violations and they received appropriate credit for
7 self-reporting. And they are taking other steps to
8 strengthen their compliance culture.

9 To me, the Entergy settlement stands for the
10 proposition that if a regulated company has a weak
11 compliance culture, commits violations, even inadvertently,
12 a civil penalty is appropriate, even if the violations were
13 not intentional, even if there was no profit, and even if
14 there is no or minimal harm.

15 Further, if a regulated company persists in a
16 weak compliance culture, I would expect that civil penalties
17 would escalate in the future.

18 And while all the settlements that we announced
19 today involve electric utilities, no one should conclude
20 that our investigations are limited to electricity matters.
21 Our investigations, our ongoing investigations, extend to
22 all areas of our regulatory authority.

23 Now, before enactment of the Energy Policy Act of
24 2005, the Commission really could not fairly be described as
25 an enforcement agency, at least in my view, and I think

1 that's changed fundamentally, and I think the actions today
2 show that.

3 We were given new enforcement responsibilities to
4 prevent manipulation of electricity and gas markets, and
5 also to assure reliability. I think we are now an
6 enforcement agency capable of very effective oversight, and
7 I think our actions today show that, and I think we also are
8 on the way to becoming a preeminent enforcement agency.

9 I want to commend the Office of Enforcement for
10 the quality of its work in recent months. Its
11 investigations have been thorough and complete.

12 While we will always be willing to enter into
13 settlements, the Staff also always prepares for litigation.
14 Just last month, the Commission issued a Statement of
15 Administrative Policy regarding the process for assessing
16 civil penalties.

17 As we explain there, while we still prefer to
18 negotiate settlements of alleged violations, we are always
19 prepared to litigate, and we issued that Statement to assist
20 the public and the regulated community to understand the
21 process, in the event there is litigation.

22 I particularly want to commend Bob Pease and Lee
23 Ann Watson, and all of the Staff members who were introduced
24 earlier, and on behalf of myself and my colleagues, I just
25 want to thank you for your dedication, your commitment, and

1 your hard work.

2 I also want to recognize Susan Court. I know you
3 don't like to be recognized sometimes, but you want your
4 Staff to be recognized. But I think you have made a very
5 substantial change in the Office of Enforcement since you
6 came in, and I think you -- I just want to personally thank
7 you and openly thank you for the changes that you've
8 effected.

9 MS. COURT: Thank you. It's been a privilege.

10 CHAIRMAN KELLIHER: Now, as a final note -- and
11 this is a bit of a digression, but I think it's helpful to
12 answer some concerns in another area. Although these
13 settlements do not bear on reliability standards, I think
14 there are implications for future enforcement of reliability
15 standards.

16 I just want to recognize that there's concern
17 about the Commission's approach towards enforcement, about
18 some who may be governed by mandatory reliability standards,
19 who are outside our normal regulatory jurisdiction.

20 I've heard concerns that the Commission will
21 reflexively seek to impose maximum penalties for all
22 reliability violations. I think today's settlements and the
23 actions we have taken with respect to some of the other
24 self-reports that were resolved without imposition of civil
25 penalties, should put those concerns to rest.

1 I think the actions today and the actions
2 resolving some of the other self-reports, show that we will
3 exercise appropriate prosecutorial discretion and will
4 allocate our enforcement resources to the most serious
5 violations, and we would expect the same from any regional
6 entity that received delegated enforcement authority, as
7 well as the electric reliability organization.

8 Minor violations may be resolved without
9 imposition of a civil penalty, most violations will likely
10 be resolved through settlements, and most violations that
11 might be more significant, might be resolved through
12 imposition of a civil penalty, and maximum penalties will
13 likely be reserved for those reliability violations that
14 cause serious harm or are especially egregious, that
15 otherwise meet the factors that are laid out in the
16 enforcement policy statement.

17 So, with that, I realize that was a longer
18 statement than perhaps I normally might engage in, but I
19 think this is important with our first exercise of civil
20 penalty authority, at least to fully lay out my approach.

21 With that, colleagues? John?

22 COMMISSIONER WELLINGHOFF: Thank you, Mr.
23 Chairman. I just have just a few short comments.

24 First, I would also like to commend you, Susan,
25 and your entire staff. I mean, it's --

1 MS. COURT: It's a great staff.

2 COMMISSIONER WELLINGHOFF: It is a remarkable
3 effort. Enforcement is never fun for the enforcer or the
4 enforcee, but it's something that's absolutely necessary and
5 it's something that I think, as you say, Mr. Chairman, that
6 shows that this Commission is on its way to demonstrating to
7 those under our jurisdiction, that we are fully capable of
8 enforcing the laws that are under our jurisdiction and our
9 responsibility to oversee.

10 Two notes: On the self-report, I would agree
11 with you that I think self-reporting is a good mechanism, a
12 good mechanism to encourage companies to come in and provide
13 information to the Office of Enforcement, and it is notable
14 that four of these five enforcement actions were self-
15 reports.

16 I would, however, from my perspective -- the
17 credit would fall off rather quickly after the first self-
18 report. You know, it's like running into the knife five
19 times, you know, at the second or third self-report, I would
20 think that, you know, any credit for that, would be
21 diminished substantially.

22 But I do think it's good that we've had, I guess,
23 approximately 40 actions of self-report where there have not
24 been assessments of penalties. That demonstrates to
25 companies that they can self-report and do not have to

1 necessarily suffer penalties and that it's something that
2 they should be encouraged to do.

3 I think another thing to note, however, is that
4 one of the five was from a Hotline complaint.

5 CHAIRMAN KELLIHER: Yes.

6 COMMISSIONER WELLINGHOFF: And I think the
7 Hotlines are very important and something that we should
8 emphasize; that independent parties out there can feel free
9 to contact us, and we will take action, and we will take
10 action that can result in enforcement.

11 I think that's a very important thing to know.

12 CHAIRMAN KELLIHER: I agree.

13 COMMISSIONER WELLINGHOFF: Thank you.

14 Colleagues? Mark?

15 COMMISSIONER SPITZER: Thank you, Mr. Chairman.
16 I'm going to be a little bit repetitive of my colleague's
17 comments, with which I associate, but given the importance
18 and significance of enforcement, I hope for your indulgence.

19 I have a general statement and then a specific
20 one on the Entergy matter. First, generally, today this
21 Commission imposes penalties for the first time under the
22 new authority granted to the FERC by Congress.

23 These settlements embody fair resolutions to the
24 five cases, based upon the unique facts of each case. The
25 Office of Enforcement has achieved settlement agreements

1 with each respondent, based upon the criteria elucidated in
2 the policy announcement made last year.

3 I, too, wish to join in thanking the Office of
4 Enforcement and Susan and her staff, for their hard work and
5 for the successful resolution of these five cases.

6 The Policy Statement informs the regulated
7 community of the applicable standards. While today's
8 decisions afford some notice about how the Commission will
9 enforce its new authority, I would caution the regulated
10 community not to rely too heavily on these five cases, and
11 emphasize that the agreements reached in each settlement,
12 are case-specific.

13 The Commission believes in firm, but fair
14 enforcement, and these settlements adhere to that standard.

15 It is highly informative that there have been
16 over 40 self-reports by companies, the majority of which
17 have resulted in the Commission either not pursuing an
18 investigation, or declining to impose any penalty at all.

19 I would submit that the resolutions of these
20 cases, are further proof of the Commission's commitment to
21 firm but fair enforcement.

22 This is the first time the Commission has
23 formally acted under its new authority. I too, wish to
24 briefly highlight the factors I will personally focus on in
25 enforcement cases.

1 Those factors include whether the company self-
2 reported; whether senior management knew or should have
3 known of the infractions; and what proactive and reactive
4 steps were taken, including the level of cooperation by FERC
5 Staff, the harm inflicted on the marketplace and consumers,
6 and the scienter of those involved.

7 Finally, I remain a proponent of settlements when
8 the result is just and reasonable, however, I remain
9 committed to the belief that if the settlement offer is
10 insufficient from the respondent, or if there is a principal
11 reason not to settle, then a trial is not only necessary,
12 but appropriate.

13 Finally, I join in my colleagues' view that a
14 self-report is mitigation, but I hate to use a religious
15 term, but it is not absolution.

16 (Laughter.)

17 COMMISSIONER SPITZER: We don't have the
18 authority to absolve, in any event.

19 Mr. Chairman, with regard to the Entergy matter,
20 I support the settlement as a fair and just resolution of
21 this case, however, I have two concerns: First, based upon
22 my experience, a charitable contribution is not appropriate
23 as a component of a civil or criminal settlement with a
24 government agency.

25 Government agencies should not be in the business

1 of picking and choosing among many worthwhile charities.
2 Government should not vest the imprimatur of civil approval
3 upon any specific tax-exempt entity, nor can Government
4 vouch for the effectiveness of efficacy of any specific
5 501(c)(3) organization, oversee the legality of its
6 operations, nor ensure its tax-exempt status will not be
7 revoked, post hoc.

8 Finally, the history of charitable contributions
9 depicts an empowerment of individual citizens to pursue
10 worthwhile objectives through undetached generosity, which
11 is sort of a tax law term of art. Using the settlement
12 process to pick a charity and to quantify the amount of the
13 donation, under the guise of government civil penalty
14 authority, is offensive.

15 I would point out, though, that as stated in the
16 Order, as well as in the settlement, there are certain
17 unique cases, specific effects underlying the particular
18 charitable contribution that I think are appropriate in this
19 instance, but I would hope it would not be subject to
20 repetition.

21 Secondly, the corporate culture that tolerates
22 the repeated transgressions over a long period of time, is
23 disturbing. While I will weigh and balance many factors in
24 enforcement cases, generally, I will particularly focus on
25 whether the corporate climate encourages compliance, or

1 whether it ignores behavior that results in a pattern and
2 practice of misconduct.

3 Although I ultimately agree that the fine in this
4 case is reasonable, I did frankly ponder a higher penalty
5 amount, because of the conduct and the customs in this
6 matter. It is my hope that the respondent recognizes its
7 mistakes, and I expect it to implement changes to prevent
8 recurrence. Thank you, Mr. Chairman.

9 CHAIRMAN KELLIHER: Thank you. Colleagues?
10 Phil?

11 COMMISSIONER MOELLER: Mr. Chairman, I will be
12 repetitive, as well. I will thank the Office of Enforcement
13 and the Staff for the hard work, and also, to some extent,
14 the companies that agreed to cooperate in the settlement
15 process.

16 I, too, will emphasize the value of cooperation
17 and settlements. The fact that we had 40 self-reports, is
18 indicative of the fact that we don't have that many
19 penalties consequent to those numbers of self-reports.

20 Similarly, there are differences in the range of
21 penalties involved here, and I think that should be noted,
22 that it depends on the degree of violation, and, again, the
23 degree of cooperation.

24 So I will add my voice to what my colleagues have
25 already said, and, similarly, I'll add my concerns, shared

1 with Commission Spitzer, about penalties funding
2 contributions to charitable causes. It makes me a little
3 uncomfortable, but, in this case, it was an extraordinary
4 circumstance. Thank you.

5 COMMISSIONER KELLY: I'd like to start with the
6 charitable contribution issue, and add my opinion. I agree
7 with Commissioner Spitzer and Commissioner Moeller, that a
8 corporation can make a charitable contribution at any time.
9 This charitable contribution was supposedly made in addition
10 to a penalty that would have otherwise been levied.

11 I agree with Commissioner Spitzer that government
12 should not be in the business of blessing any charitable
13 organization or preferring one or another.

14 A violation of the law is a violation of the law.
15 It is a wrong; it is and should be viewed negatively.

16 A contribution to a charity is a good thing, and
17 it should be viewed positively. It's inappropriate for the
18 government to allow or appear to condone the joining of
19 these two actions, so my personal position is that we should
20 not accept or encourage charitable contributions as part of
21 our settlements.

22 Indeed, we should encourage corporations to make
23 charitable contributions, but out of their hearts.

24 As has been mentioned, these settlements
25 represent our first exercise of expanded civil penalty

1 authority, and I believe that looking at these settlements
2 as a whole, will provide guidance on how the Commission will
3 assess penalties under its expanded civil penalty authority,
4 and I'd like to comment on that:

5 Commissioner Spitzer mentioned the factors that
6 we look at in assessing penalties, and, indeed, those are
7 the factors that were laid out in our October 2005 Policy
8 Statement.

9 I'd like to focus on one of those, and that is
10 harm. If you look at the range of penalties that have been
11 paid in this group of settlements, it's consistent with the
12 range of harm that was levied on customers and on the
13 market.

14 For example, NRG agreed to a \$500,000 civil
15 penalty. That arose out of a misrepresentation by an NRG
16 employee about the availability of a generating unit.

17 Then that violated the Commission's market
18 behavior rules and the ISO New England tariff, however, the
19 unavailability of the unit had no effect on customers or the
20 market, because ISO New England never called upon the unit
21 for reliability.

22 In addition, NRG did not profit from this
23 violation, because the ISO New England did not pay NRG the
24 fixed costs NRG would have otherwise collected when it
25 learned that the unit was, in fact, unavailable, and that's

1 consistent with the relatively small penalty.

2 In summary, NRG's violations did not result in
3 harm to customers or the market.

4 By contrast, Pacificorp's improper use of network
5 transmission service and violations of our standards of
6 conduct rules, which, actually, I should note, arose under
7 previous ownership of the Company, did result in harm to
8 customers and harm to the market.

9 Similarly, the SCANA settlement involves alleged
10 misuse of network transmission service, which disadvantages
11 SCANA's merchant function's competitiveness in the market,
12 and, therefore, can have a harmful effect on the market.

13 Pacificorp did not derive significant
14 quantifiable financial benefit from its violations, however,
15 its practices did provide its merchant function with
16 benefits in the form of added certainty and convenience at
17 the expense of the merchant function's competitors.

18 By using network transmission service instead of
19 point-to-point service, Pacificorp's merchant function could
20 avoid competing with unaffiliated transmission customers for
21 point-to-point service, forego designating specific points
22 of receipt and delivery for off-system sales, and prevent
23 curtailments or denials of service by the transmission
24 function.

25 Pacificorp's practices resulted in underpayments

1 to its wholesale customers, which Pacificorp has voluntarily
2 paid to those customers. Such practices may not have had an
3 easily-quantifiable or significant impact on the market, but
4 they nevertheless could have a harmful effect on the market.

5 A transmission provider treating its merchant
6 function more favorably than its merchant function's
7 competitors, can negatively impact the competitiveness,
8 transparency, and proper function of open-access-to-
9 transmission markets, which is one of the central tenets of
10 the energy policy that Congress has entrusted to us for
11 enforcement.

12 I believe that Pacificorp, which, as I mentioned,
13 is now under new ownership, and SCANA, which both self-
14 reported the practices at issue, have evidenced a commitment
15 to preventing a reoccurrence of these types of practices
16 through their compliance plans, and I support these
17 settlements and the civil penalties assessed in these cases,
18 and I would like to add my thanks to Staff for their hard
19 work and their successful efforts in enforcement.

20 CHAIRMAN KELLIHER: Let me just respond to the
21 charitable issue: I generally agree. I think payments
22 should go to the U.S. Treasury, but that is not always how
23 the Commission has proceeded.

24 I think it was the Coral settlement or CLICO,
25 where there was a \$3 million or \$4 million penalty to LAHE

1 fund, and you and I both supported that settlement. So, 100
2 percent of the money went into some kind of charitable fund.

3 In Ameren, we supported \$5 million going towards
4 restoration and improvement of the land near the project,
5 and I thought that was appropriate.

6 I think that what we say in the Order, is that we
7 think this is a unique instance. I think "unique" isn't
8 necessarily singular; I think we all supported, all five of
9 us supported the approach on Ameren. That was not a
10 charitable fund. I think the government is disbursing the
11 money, but it's pretty similar to what we're doing today in
12 Entergy.

13 But, I agree, my strong preference would always
14 be that the money go to the U.S. Treasury, because it's hard
15 to finesse payment to the U.S. Treasury as something close
16 to a charitable contribution.

17 (Laughter.)

18 CHAIRMAN KELLIHER: So I agree with my
19 colleagues. It might be, I suppose, but --

20 COMMISSIONER KELLY: Well, I agree with you, Joe,
21 about the previous settlements and that we did support those
22 contributions, but those contributions to those charities,
23 were directly related to the harm that occurred, one to
24 consumers and one to the area that was impacted by the dam.

25 In this one, although certainly New Orleans and

1 the people of New Orleans have been damaged, it isn't
2 directly related to the misconduct.

3 CHAIRMAN KELLIHER: But I don't think there was a
4 relationship in Coral or CLICO, either, because the money
5 went to retail consumers to help pay for their bills, and I
6 don't think -- we don't regulate retail sales, so I don't
7 think there was actually a relationship in that case.

8 But I agree, I agree with what we say in the
9 Order, that it's something that's unique, and the question
10 is, is Hurricane Katrina -- and Rita -- is that unique
11 enough for us to allow an exception to our general policy?
12 I think it is, but I'm not sure how many unique instances
13 we'll have.

14 We all supported Entergy here. Hurricane Katrina
15 and Rita are unique. We all supported Ameren. Perhaps
16 that's the end of it. Perhaps there might be another
17 instance where we think a charitable contribution is
18 appropriate, but I agree; my strong preference would be that
19 the penalty is paid to the U.S. Treasury.

20 So, with that, are we prepared to vote?

21 SECRETARY SALAS: Mr. Chairman and Commissioners,
22 what I would like to do is take one vote for all the five
23 settlements. Is that agreeable with everybody?

24 CHAIRMAN KELLIHER: Yes.

25 SECRETARY SALAS: Okay. Commissioner

1 Wellinghoff?

2 CHAIRMAN KELLIHER: Wait just a minute. I think
3 that's agreeable. Is that agreeable, one vote for all five?

4 COMMISSIONERS: Yes.

5 CHAIRMAN KELLIHER: Yes.

6 SECRETARY SALAS: Commissioner Wellinghoff?

7 COMMISSIONER WELLINGHOFF: I vote aye.

8 SECRETARY SALAS: Commissioner Moeller?

9 COMMISSIONER MOELLER: Aye.

10 SECRETARY SALAS: Commissioner Spitzer?

11 COMMISSIONER SPITZER: Aye.

12 SECRETARY SALAS: Commissioner Kelly?

13 COMMISSIONER KELLY: Aye.

14 SECRETARY SALAS: Chairman Kelliher?

15 CHAIRMAN KELLIHER: Aye.

16 SECRETARY SALAS: The second item for discussion
17 is M-2, Standards of Conduct for Transmission Providers, and
18 this is a presentation by Eric Ciccoretti, Deme Anas, Stuart
19 Fischer, and Chris Wilson.

20 MR. CICCORETTI: Good morning, Mr. Chairman and
21 Commissioners. I'm Eric Ciccoretti from the Office of
22 Enforcement. With me today, are Deme Anas and Stuart
23 Fischer from the Office of Enforcement, and Chris Wilson
24 from the Office of General Counsel.

25 Other members of the Staff who contributed to

1 this agenda item are, from the Office of General Counsel,
2 Julia Lake; from the Office of Energy Markets and
3 Reliability, Ed Murrell and Dan Hedberg; and from the Office
4 of Enforcement, Scott Maloney, Louis Kramardi, and Kelly
5 Lozer.

6 Agenda Item M-2 is a Notice of Proposed
7 Rulemaking, NOPR, regarding the standards of conduct. It
8 would address primarily two issues:

9 First, the energy affiliate issue, that is, the
10 application of the standards of conduct to the relationship
11 between transmission providers and their energy affiliates;
12 and, second, the integrated resource planning issue, that
13 is, the relationship between electric utility transmission
14 providers and company personnel involved in integrated
15 resource planning and competitive solicitations.

16 There are two aspects to the energy affiliate
17 issue: The first aspect is for natural gas pipelines. The
18 draft proposal would make permanent, regulations promulgated
19 in the interim rule, which was issued by the Commission on
20 January 9, 2007.

21 Those regulations made the standards of conduct
22 inapplicable to the relationship between natural gas
23 pipeline transmission providers and their energy affiliates.
24 The interim rule responded to the decision of the U.S. Court
25 of Appeals for the District of Columbia Circuit in National

1 Fuel Gas Supply Corporation v. FERC, issued in November of
2 2006, where the Court vacated Order No. 2004, as applied to
3 natural gas pipelines.

4 Accordingly, the draft proposal would continue to
5 apply the standards of conduct to the relationship between
6 natural gas pipelines and their marketing affiliates, that
7 is, those affiliates whose business or function is selling
8 natural gas, but not to the energy affiliates of the natural
9 gas pipeline transmission providers.

10 The Court did not address whether the standards
11 of conduct should govern the relationship between electric
12 utility transmission providers and their energy affiliates,
13 which includes many more categories of affiliates, because
14 that relationship was not appealed to the Court.

15 The Commission would consider that second aspect
16 of the energy affiliate issue in the draft NOPR, by
17 soliciting comments from the public on whether the standards
18 of conduct should continue to apply to the relationship
19 between electric utility transmission providers and their
20 energy affiliates.

21 The draft NOPR also addresses integrated resource
22 planning, a topic featured at last year's technical
23 conference in Scottsdale, Arizona, and during Staff's
24 outreach with industry.

25 In this regard, the draft proposal lacks the

1 standards of conduct to facilitate efficient and accurate
2 integrated resource planning and competitive solicitations.

3 It would respond to the concern that the
4 standards of conduct can hinder proper consideration of non-
5 public transmission information in both integrated resource
6 planning and competitive solicitations.

7 Accordingly, the proposal would create two new
8 categories of employees: Planning employees and competitive
9 solicitation employees.

10 For the purpose of conducting state-mandated
11 integrated resource planning for bundled retail load,
12 planning employees would have access to non-public
13 transmission information and to transmission function
14 employees.

15 For the purpose of conducting competitive
16 solicitations for bundled retail load, competitive
17 solicitation employees would have similar access.

18 The draft NOPR would also do the following:
19 First, it would propose that the standards of conduct govern
20 the relationship of transmission providers and their
21 affiliated asset managers for both electric and gas
22 transmission providers.

23 Second, it would propose changes to the
24 requirements for written procedures for transmission
25 providers, including requiring transmission providers to

1 post the names of their chief compliance officers on their
2 OASIS or Internet website.

3 Finally, the NOPR would propose changes and seek
4 comments on issues raised on appeal in National Fuel, not
5 addressed by the Court, specifically: The application of
6 the standards of conduct to risk management employees and to
7 lawyers, the posting of a log of transmission providers'
8 discretionary acts, and the timing of compliance with the
9 standards of conduct of new transmission providers.

10 We would be pleased to respond to any questions.

11 CHAIRMAN KELLIHER: Thank you. I particularly
12 want to thank the Staff. You look actually fairly fresh
13 this morning.

14 (Laughter.)

15 CHAIRMAN KELLIHER: And you have worked very hard
16 in recent days, including last night, and I just really want
17 to thank you for your hard work.

18 I think it's important, given the interim rule
19 action last week, that I think it was important that we act
20 on the proposed rule today. It shows that we're following
21 through on the commitment we made in the interim rule, to
22 move forward on a final rule expeditiously.

23 So, with that, let me ask one of my colleagues if
24 they want to speak. John?

25 COMMISSIONER WELLINGHOFF: Thank you, Mr.

1 Chairman. I think it's important today that we issue a
2 Notice of Proposed Rulemaking to adopt standards of conduct
3 regulating and governing the relationship between natural
4 gas and electric transmission providers and their marketing
5 energy affiliates.

6 I also want to thank Staff. Those late nights
7 were very much appreciated. I know you put in a number of
8 them on this particular NOPR.

9 I think our statutory duty is clear here, that
10 is, to prevent transmission providers from wielding their
11 market power over transmission assets to give undue
12 preference in favor of their marketing affiliates over non-
13 affiliated marketers.

14 And that action can potentially adversely affect
15 competition and can result in consumers inappropriately
16 subsidizing the operation of unregulated marketing
17 affiliates.

18 The standards of conduct are an extremely
19 important tool in protecting customers from higher costs and
20 anti-competitive market effects that emanate from undue
21 affiliate preferences. Hopefully, these rules will, in
22 fact, stop that practice.

23 It is appropriate to review our current standards
24 of conduct regulations in light of the continuing change and
25 evolution of the natural gas and electric industries. There

1 is also a need to provide clearly delineated rules of the
2 road to transmission providers and their affiliates.

3 Among other issues, the NOPR addresses the need
4 for access to transmission information for the development
5 of integrated resource plans, IRPs, and the evaluation of
6 competitive solicitations, RFPs, conducted to fulfil an IRP
7 process.

8 As one who has assisted in the development of
9 IRPs and who has bid into RFPs, I'm aware of the need for
10 reliable transmission information and the potential
11 temptation to unduly favor an affiliate.

12 The NOPR proposes to exempt from transmission
13 information-sharing restrictions, those employees dedicated
14 to performing IRPs and competitive solicitations for bundled
15 retail loads.

16 The NOPR asks questions about the appropriate
17 scope of the exemption and whether or not further safeguards
18 are needed. I look forward to thoughtful comments from a
19 diverse range of parties on standards affecting the planning
20 process that I believe is fundamental to the development of
21 robust demand resources across this country. Thank you, Mr.
22 Chairman.

23 CHAIRMAN KELLIHER: Thank you. Mark?

24 COMMISSIONER SPITZER: Thank you, Mr. Chairman.

25 I, too, wish to thank you. Today is the enforcement day, I

1 guess, and particularly in light of the fact that our office
2 might have caused some additional work, I want to thank Mr.
3 Moot and his staff, as well as you, Susan, and your folks.

4 Today's Notice of Proposed Rulemaking solicits
5 comments on, among other things, whether the Commission
6 should revise its regulations to eliminate the definition of
7 "energy affiliate," as applied to the electric utility
8 industry under Order Number 2004.

9 In addition, the NOPR considers additional
10 flexibility for electric utilities to perform integrated
11 resource planning and competitive procurement, without
12 running afoul of Order 2004.

13 I support the issuance of today's NOPR. The
14 purpose of this NOPR is to generate real debate on these
15 important issues.

16 As in all matters, I approach this NOPR with an
17 open mind, and I am not now wedded to any particular
18 outcome.

19 Indeed, being committed to a certain outcome at
20 this point, would defeat the purpose of issuing the NOPR, in
21 the first instance, and, in my view, render the issuance of
22 this particular NOPR, as a meaningless exercise.

23 In this regard, I view today's NOPR as a
24 strawman, a starting point on which I would encourage the
25 public to focus comments. I envision an open and honest

1 discussion among commentators, Staff, and my colleagues, so
2 that the Commission will ultimately reach an informed,
3 equitable, and just and reasonable resolution of these
4 issues. Thank you.

5 CHAIRMAN KELLIHER: Thank you. Colleagues?
6 Phil?

7 COMMISSIONER MOELLER: Mr. Chairman and
8 colleagues, our decision today for this rulemaking,
9 acknowledges the fact that the Commission's existing
10 standards of conduct for electric transmission providers,
11 are in need of clarification and revision.

12 Unfortunately, actual experience with these
13 standards during the past few years, has informed us that
14 the implementation of Order No. 2004 has not been smooth,
15 resulting in confusion within the industry and unintended
16 consequences for the markets.

17 Since the goal of our standards of conduct
18 requirements is to prevent undue preference by ensuring a
19 level playing field between affiliates and non-affiliates,
20 we must make sure these regulations are clear in areas where
21 there is industry uncertainty, and to address the areas of
22 concern that were not addressed.

23 In the context of integrated resource planning, I
24 will pay close attention to standards that could inhibit the
25 development of markets and infrastructure by restricting the

1 sensible coordination between transmission and generation
2 planning.

3 However, even though the NOPR proposes to allow
4 for communications between resource and transmission
5 planners during the IRP process, I recognize that safeguards
6 must be in place to protect against affiliate abuse and
7 undue discrimination.

8 I expect that this proceeding will provide us
9 with an opportunity to adequately revise our regulations and
10 provide needed guidance regarding the standard of conduct
11 prohibition on the sharing of information and key personnel.

12 This is an important issue. It has real-world
13 implications, and I look forward to reviewing the comments
14 from interested parties in the months ahead. And it goes to
15 my philosophy of regulation, which is that we should have
16 regulations that make sense, that are enforceable, and that
17 we should regularly review them to see where they are
18 working and not working, and try to refine them for the
19 betterment.

20 So, similar to some of the other comments, I see
21 this as a broad and open invitation for people to tell us
22 what's working, what's not working, and how we can improve
23 it. Thank you.

24 CHAIRMAN KELLIHER: Great, thank you.
25 Commissioner Kelly?

1 COMMISSIONER KELLY: Thank you. The standards of
2 conduct were implemented for very important reasons: To
3 prevent transmission providers from exercising their market
4 power over transmission to give undue preference or unduly
5 discriminatory treatment in favor of their marketing
6 affiliates.

7 As we noted in Order 888 NOPR recently, there is
8 an inherent conflict of interest when the same corporate
9 family owns both generation and transmission, thus giving it
10 both the incentive and the opportunity to use its position
11 to discriminate against non-affiliated generation, and this
12 was the harm, the concern that the standards of conduct were
13 adopted to assuage.

14 But, of course, there is a down side to these
15 standards of conduct, also. They impose costs and they
16 impose inefficiencies on integrated utilities, and, in
17 addition, as Phil has noted, they have -- the compliance
18 with our standards of conduct has presented quite a few
19 difficulties for utilities and also for our enforcement
20 staff.

21 Because of the importance of these issues, the
22 Commission has not taken lightly, its responsibilities to
23 implement and enforce the standards of conduct, and, indeed,
24 over the past two years, the Commission has held two public
25 technical conferences and numerous outreach meetings with

1 industry participants, in an effort to understand industry
2 concerns in complying with the standards of conduct, as well
3 as state concerns in having integrated resource planning
4 occur, and, thus, to allow us to see what, if any, changes
5 should be made to the standards of conduct to make them more
6 efficient.

7 As we were reviewing the fruits of the outreach,
8 and in an instance of uncanny timing, the Court of Appeals
9 issued a decision in National Fuel, in which the Court ruled
10 on standards of conduct matters, which, quite frankly, had
11 not been the focus of our outreach.

12 I would also note for the public record, that in
13 reaching its decision, the Court of Appeals also agreed with
14 the dissent of then-Commissioner Joseph Kelliher, in
15 reaching its majority opinion.

16 CHAIRMAN KELLIHER: And Nora, Nora, too.

17 COMMISSIONER KELLY: And Nora, too.

18 However, the silver lining is that the National
19 Fuel decision now provides a forum for us to consider not
20 just the issues limited to that case, but an array of
21 important standard of conduct issues that affect both the
22 natural gas and the electric industries, including those
23 issues that were vetted through our outreach.

24 As I believe today's NOPR makes clear, any
25 changes to the existing standards of conduct should be made,

1 if, but only if the Commission is clearly convinced that the
2 changes are needed, and that such changes do not result in
3 unfair access to non-public transmission information on a
4 preferential basis, which was, of course, the point and is
5 the point of the standards of conduct.

6 Likewise, commenters must clearly and
7 convincingly provide support for their comments. It is not
8 enough to argue that the cost of compliance with the
9 standards of conduct are too high or that it is too
10 burdensome to have different standards of conduct for gas
11 and electric, or that it would simply be more efficient to
12 have one standard set of rules.

13 What's important, is to talk about the harm, both
14 actual instances of harm, as well as theoretical harm, but
15 the Court of Appeals has made very clear that it does not
16 look favorably upon just theoretical harm.

17 I can't emphasize this point enough: The
18 critical issue of concern for the Commission, is to ensure
19 that access to non-public information will not result in
20 obstacles to market access to the lowest cost power.

21 Needless to say, confidence will be undermined,
22 if some competitors have access to information that others
23 do not, and that such information is used at the expense of
24 a competitive bidding process.

25 In that vein, I'd like to highlight one issue set

1 forth in today's NOPR, that is particularly important to me.
2 We've proposed to add a new category of competitive
3 solicitation employees, who would be permitted to direct,
4 organize, and execute certain competitive solicitations in
5 order to help states facilitate their integrated resource
6 planning.

7 Under this proposal, these employees could obtain
8 non-public information from the transmission provider, to
9 the extent needed to evaluate bids or proposals responsive
10 to a competitive solicitation.

11 I believe that the proposal we make today, is
12 appropriately balanced, and I invite commenters to consider
13 not only its benefits -- and we invite commenters to
14 consider not only its benefits, but some of the potential
15 specific down sides.

16 I also have been involved in the representation
17 of clients in competitive solicitations, and I have, in
18 addition, heard from states over the years, that this type
19 of employee could use information from a transmission
20 provider to design an RFP that specifically favors an
21 affiliate.

22 I think that these are legitimate concerns, and I
23 think that the NOPR adequately reflects an approach to
24 handling these concerns.

25 However, I look forward to hearing from

1 commenters on how the designing of contracts by competitive
2 solicitation employees really works and whether information
3 from transmission providers to these employees, could be
4 used in a discriminatory manner.

5 It would be helpful to hear from industry,
6 whether our existing standards of conduct, along with the
7 protections that we provide in this proposal, will -- are
8 appropriate, and if they reduce the administrative burden
9 enough.

10 I would also be interested in knowing whether it
11 makes sense to encourage, if not require that some of the
12 information be made public at an appropriate point.

13 I believe that today's NOPR takes an appropriate
14 go-slow approach; that it asks the right questions, and that
15 it seeks the right answers.

16 I genuinely seek an open and honest process that
17 will result in standards of conduct that are more effective
18 and efficient. It is a difficult area in which to legislate
19 and regulate. We took a good stab at it -- actually, we
20 didn't, but the previous Commission took a good stab at it
21 in 2004, but I think it's time to revisit it and decide,
22 were the right calls made?

23 Finally, at the risk of sounding redundant with
24 my other colleagues, I have to express my heartfelt thanks
25 to the Staff that worked on the standards of conduct and to

1 the staffs of my fellow Commissioners who worked on the
2 standards of conduct. I know that you have put in a lot of
3 time, and I know that some of my concerns also caused you to
4 put in a lot of time, and I appreciate your hard work and
5 your good humor. Thank you.

6 CHAIRMAN KELLIHER: Thank you. I want to make
7 some comments, as well, and this statement will be a little
8 longer than my usual, as well.

9 I find it hard to talk about the standards of
10 conduct. The rule is so complex that it's hard to make
11 simple statements about it, so what I'm really going to
12 emphasize, is trying to explain what we're doing today, what
13 we're not doing, and also what we might do in the future,
14 depending on the strength of the comments we receive.

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1 As Commissioner Kelly puts it, at this phase the
2 proposed rule is really informed by a number of things.
3 It's certainly a response to National Fuel, but it's also a
4 response to the technical conferences that we held in
5 Phoenix, as well as -- Chicago? I can't remember the
6 locations.

7 MS. COURT: There was also one in Houston.

8 CHAIRMAN KELLIHER: Three, yes. Okay.

9 So we had three technical conferences and this is
10 following through on those because we had a very useful
11 discussion in Phoenix last year, as well as responding to
12 National Fuel. So we have different drivers behind this
13 proposed rule which, again, makes it a little bit
14 complicated to follow.

15 But to me the proposed rule has three important
16 elements. First, we propose to make permanent the revisions
17 to the rule reflected in last week's interim rule with
18 respect to natural gas pipelines. In this regard, we are
19 not suggesting a new factual or theoretical basis for
20 application of the expansive standards of conduct rule to
21 nonmarketing affiliates of natural gas pipelines. That was
22 a question that the court left open in National Fuel; they
23 said that we could attempt to support application of the
24 expanded rule to natural gas pipelines. We declined to take
25 them up on the invitation.

1 Second, we seek comment on the scope of
2 application of the rule to electric utilities. That's not
3 something we're compelled to do by National Fuel. It's a
4 question we don't have to ask, but I think we're duty bound
5 to ask that question.

6 And then finally, we propose changes to
7 facilitate state-mandated integrated resource planning and
8 competitive solicitations. But that's not something that's
9 related to National Fuel, that's really more consistent with
10 the discussion we held in Phoenix last year. But I think
11 the first two actions are clearly in response to National
12 Fuel, and the third one is really a follow through on the
13 Phoenix technical conference.

14 I think, as everyone knows, in National Fuel the
15 D.C. Circuit concluded that the Commission's promulgation of
16 the standards of conduct rule in Order 2004 -- quote -- "did
17 not reflect recent decisionmaking" and was -- quote --
18 "arbitrary and capricious as it applied to natural gas
19 pipelines."

20 Now the justification that the Commission
21 advanced in Order 2004 for the expansion of the rule beyond
22 marketing affiliates to include energy affiliates or
23 nonmarketing affiliates was both an asserted theoretical
24 threat of undue preference, as well as a claimed record of
25 abuse. But the court found that -- quote -- "FERC here has

1 provided no evidence of a real problem" and -- quote --
2 "Order 2004 does not include a single example of abuse by
3 nonmarketing affiliates." Now instead the court found that
4 the record of abuse appeared to be limited to marketing
5 affiliates. And the court further found that "the
6 Commission advanced no strong theoretical basis for
7 expanding the scope of rule beyond marketing affiliates to
8 encompass nonmarketing affiliates."

9 Now in my view, in short, what the court found
10 was that expansion of the standards of conduct rule beyond
11 marketing affiliates was fatally flawed in its formation.
12 The court's conclusions, however, were limited to
13 application of the standards of conduct rule to natural gas
14 pipelines for the simple reason that electrical utilities
15 did not seek judicial review of the rule.

16 However, the reality is that the Commission
17 offered no more substantial basis for expanding the scope of
18 the rule on electric utilities than it did on natural gas
19 pipelines. There appears to be no factual record justifying
20 expansion, and the Commission advanced no strong theoretical
21 argument. To me, that suggests that the rule may be
22 arbitrary and capricious as it applies to electric
23 utilities.

24 Now the court in National Fuel indicated that the
25 Commission could seek to justify, as I indicated earlier --

1 could seek to justify expansion of the expanded scope for
2 the standards of conduct rule on natural gas pipelines if we
3 could provide new record evidence or a compelling
4 theoretical argument. Now we declined to do so today.

5 Now the question, to me, turns to whether we
6 should seek to revise the standards of conduct rule as it
7 applies to electric utilities. We are under no obligation
8 to do so, but I really think we have to ask the question,
9 and we do so in the proposed rule.

10 Now if there was no more record evidence of abuse
11 involving electric utility nonmarketing affiliates than
12 there was for pipeline affiliates, to me the unavoidable
13 conclusion appears to be the foundation of the expanded
14 standards of conduct rule is fundamentally flawed. However,
15 since there was no judicial challenge to the rule in this
16 respect, we do have the discretion to enforce a rule that
17 may be arbitrary and capricious in its formation. And I,
18 for one, do not know why we would choose to do so.

19 Now to my mind, the threshold question before us
20 is whether a new foundation can be provided for application
21 of the expanded standard of conduct rule to electric
22 utilities or whether the scope of the rule should be
23 narrowed to conform to what we're proposing today for
24 natural gas pipelines. A new foundation, a strong
25 foundation can be provided for application of the expanded

1 standards of conduct rule on electric utilities, then
2 perhaps we should retain the rule.

3 However, if we conclude that there is not new
4 record evidence of abuse involving nonmarketing affiliates
5 and there is no compelling theoretical argument, then I
6 believe we should narrow the scope of application to
7 marketing affiliates, where it was before Order 2004. There
8 was record evidence supporting application of the rules to
9 marketing affiliates, as well as a strong theoretical basis.

10 Also, to be clear, I don't rule out the
11 possibility that theoretical threat only would suffice to
12 justify application of the expanded standard of conduct rule
13 on electric utilities if the theoretical argument is
14 compelling. The structure of the natural gas pipeline and
15 electric utility industries are very different, so I don't
16 rule out the prospect that a compelling theoretical argument
17 can be fashioned.

18 Now the actual purpose of the expanded
19 application of the rule is to prevent undue discrimination
20 of preference, the question really is whether the rule does
21 so effectively. If the rule does not achieve its stated
22 purpose, it's ineffective, no matter how laudable that
23 purpose may be, and it offers little or no public benefit.

24 Now the court in National Fuel expressed concern
25 about the burden of the rule on vertical integration. I

1 agree with my colleague though that the mere fact that
2 regulation imposes some burden is certainly not dispositive;
3 really all regulation imposes some kind of burden on the
4 regulated community. So the fact that there's some burden
5 is, I don't think, terribly surprising.

6 But the court stated that the Commission cannot
7 impede vertical integration without adequate justification.
8 That's really the question. Not whether there's a burden.
9 It would be nice to know the level of burden on the
10 regulated community, but the fact there is some burden is
11 not dispositive. The question really is whether there is
12 adequate justification for the burden.

13 Now in the issuance of Order 2004, the Commission
14 recognized the importance of consistency in application of
15 the rules to natural gas pipelines and electric utilities.
16 One of the rationales for Order 2004 was establishing
17 consistency between application of the rules to natural gas
18 pipelines and electric utilities formerly subject to
19 disparate rules. Now in my view this consideration still
20 exists.

21 Now beyond the burdens imposed by Order 2004 on
22 the regulated community, there's also the administrative
23 burdens on the Commission itself presented by the rule,
24 something my colleagues have recognized. Order 2004 is an
25 admittedly difficult rule to administer and accounts for a

1 significant amount of our enforcement resources, and
2 inconsistency in approach between the electric and the gas
3 rules will make an already complicated rule even more
4 complex.

5 Since Order 2004 was adopted, the Congress has
6 given us new duties to enforce reliability and
7 antimanipulation rules in both the power and gas markets.
8 While our enforcement resources are growing, they are finite
9 and we face competing demands on those resources. We have
10 new enforcement missions.

11 How shall we allocate our enforcement resources:
12 preventing market manipulation, enforcing reliability rules,
13 or policing an expansive standards of conduct rule? I
14 respectfully submit that enforcing reliability rules and
15 preventing market manipulation are really higher duties.

16 Now on integrated resource planning, we are
17 responding to the discussions in Phoenix and we're
18 addressing an issue that predates Order 2004; it existed
19 under the earlier version of the rules. I think that when I
20 referred to it in the beginning of my statement, I said I'm
21 going to talk about what we did, what we didn't do and what
22 we might do, and this would be in the might do category. I
23 think we certainly will do something with respect to
24 integrated resource planning, but the question is what will
25 the scope of this exemption be, what will the scope of the

1 exemption be for integrated resource planning and
2 competitive solicitation.

3 This is one of those areas where I think the
4 record will control the Commission's approach. We I think
5 are resolved to try to accommodate state-mandated integrated
6 resource planning. The question is really what exactly our
7 approach should be and how broad, for now, should this
8 exemption be? And I think the public comments will really
9 be very important to the Commission and I think we'll rely
10 on them.

11 I think in the earlier matter, what should the
12 scope of application of the rule be on electric utilities --
13 that's another area where the comments I think -- we should
14 be guided by the comments. And to me what will be important
15 is not the quantity of comments but really the quality of
16 comments. I hope people won't give us assertions, but
17 they'll give us strong arguments in both of those areas.

18 Now just in conclusion, with respect to IRP, I
19 recognize this is an area where we have to be careful.
20 There is always potential for undue discrimination and
21 preference in affiliate transactions, and the draft rule
22 today notes that in several places and seeks input on
23 whether the proposal strikes the right balance between
24 accommodating state-mandated integrated resource planning,
25 as well as discharging our responsibility to prevent undue

1 discrimination and preference.

2 I just want to emphasize that this is a proposed
3 rule, we've not made final determinations; those will come
4 at a later stage. I think there will be a final rule,
5 that's the promise that we made in the interim rule that we
6 issued last week. So sometimes a proposed rule does not
7 advance to a final rule stage, but I think this is a
8 proposed rule that will advance to the final rule stage and
9 we have to in actually pretty due course.

10 We do seek comments in some of these areas and I
11 do encourage parties who have an interest in this to give us
12 very high-quality comments, because we are -- I think we
13 will rely on the record as we answer some of the open
14 questions that are identified in the proposed rule.

15 So with that, I think we've been careful, I think
16 it's a good proposed rule, and look forward to seeing the
17 comments.

18 Any other remarks, colleagues, or shall we vote?

19 (No response.)

20 CHAIRMAN KELLIHER: Let's vote.

21 SECRETARY SALAS: Commissioner Wellinghoff?

22 COMMISSIONER WELLINGHOFF: I vote aye.

23 SECRETARY SALAS: Commissioner Moeller?

24 COMMISSIONER MOELLER: Aye.

25 SECRETARY SALAS: Commissioner Spitzer?

1 COMMISSIONER SPITZER: Aye.

2 SECRETARY SALAS: Commissioner Kelly?

3 COMMISSIONER KELLY: Aye.

4 SECRETARY SALAS: Chairman Kelliher?

5 CHAIRMAN KELLIHER: Aye.

6 SECRETARY SALAS: And, as the Chairman mentioned
7 at the beginning of the meeting, the last item this morning
8 is A-3. And under A-3 we have a market oversight webpage
9 demonstration, and it is a presentation by Steve Harvey and
10 Keith Collins from the Office of Enforcement.

11 CHAIRMAN KELLIHER: Anyone watching the webpage
12 or in the room who loved the state of the markets report,
13 you should continue to watch this presentation. If anyone's
14 missing it, you should watch this presentation.

15 MR. HARVEY: Mr. Chairman, Commissioners, it's my
16 great pleasure to present to you today an enhancement to the
17 Commission's website designed to provide greater access for
18 interested members of the public to the kinds of information
19 we use to monitor and oversee jurisdictional natural gas and
20 electric markets. The site will serve as a repository for
21 Commission analytic work, as well as for regular updates of
22 market data focused on price and volumetric trends. In that
23 way, it will continue to grow and develop as a reflection of
24 our work as energy markets change over time.

25 Keith Collins, who here with me at the table

1 today, led the effort to pull together this inaugural
2 version of the website, an effort that involved virtually
3 every employee in the Division of Energy Market Oversight in
4 the Office of Enforcement, as well as strong support from
5 the Office of External Affairs and the Office of the
6 Executive Director. Unfortunately there are too many of
7 them to thank them all by name this morning, but this effort
8 would not have been achieved without their help.

9 As you'll see in a moment when I switch to the
10 site itself, this initial version already has an extensive
11 amount of energy market data, certainly enough to give
12 interested stakeholders, regulators and members of the
13 public a lot of the context they need to assess the
14 functioning of these important markets. In effect, the site
15 gives everyone visibility into a subset of the data we use
16 to assess energy markets on a regular basis.

17 For the very interested market participant, the
18 site cannot and will not duplicate daily engagement in
19 market activity or reading the trade press. However, for
20 those persons interested in larger energy market trends and
21 related policy issues, we hope the site will become a must
22 stop on the Internet.

23 The best way to explain the site is to work
24 through it, so now we're going to do something
25 technologically a little different for the Commission

1 meeting room, I think, and we're going to switch to the live
2 ferc.gov site on the monitors here in the meeting room and
3 for those who are watching through the webcast.

4 When you start at ferc.gov, the most important
5 change that you'll see is at the top of the main Commission
6 site menu, where there's now a blue button with market
7 oversight on it. Pressing that button moves you to the new
8 market oversight section of the ferc.gov website.

9 What you'll see there is the navigation across
10 the top is the same as all ferc.gov pages, but you see a map
11 with 10 electric regions, a map with five natural gas
12 regions, a set of buttons along the bottom of five other
13 markets and other market information areas, and then along
14 the left are green buttons, which is a set of alternate
15 navigation I'll discuss in a minute.

16 But to start, let's go with the map on electric
17 markets and look at one region in detail. Why don't we
18 start with the northwest?

19 The first thing you see on the northwest page is
20 a map identifying the region, showing the region and showing
21 key pricing points, in this case, Mid-Columbia and the
22 California-Oregon Border, or what we call COB sometimes.

23 On the right, you'll see a gray menu, which is a
24 jumping off area for discussions of particular interest in
25 every region. And let's go ahead and click on geography and

1 jump down to the geography section.

2 One of the challenges of going to a live web site
3 is that the monitors in here might make it a little hard to
4 read from a distance. I apologize for that. But we wanted
5 to show you that this is in fact available and accessible to
6 folks right now, even as we speak.

7 Under geography, there's a short discussion that
8 features the states that are involved in the region, the
9 reliability region and the balancing authority relative to
10 that region. So in this case, we also have further links to
11 a NERC regions map and a subregions and balancing authority
12 maps for the Western Electricity Coordinating Council, or
13 WECC.

14 Below that is a section for RTO or ISO
15 information. In this case, there is no RTO or ISO.

16 Below that, generation supply. This shows some
17 historical facts regarding fuel use, capacity, and reserves
18 availability.

19 Below that is a section on demand, historical
20 peaks and growth. In this case, it's updated only through
21 2005 because the data is available for WECC in that area
22 only through 2005 at this point.

23 One of the changes in terms of how we're
24 communicating is that we'll move the best data that we can
25 get as we can get it, and in some cases that's more delayed

1 and in other cases it isn't, and I'll show you some less-
2 delayed information here in a moment.

3 The next section is prices, focusing on annual
4 averages over several years.

5 Below that is something we call interconnection
6 seams, and that really focuses on flows in and out of the
7 region into other regions.

8 And at the bottom we have, in this particular
9 case, two short discussions: one titled "BPA in the
10 Marketplace," explaining the importance of the Bonneville
11 Power Authority to supply across this particular region.
12 And the other discussion quickly a severe heat wave that was
13 characteristic and we'll see evidence of it in several cases
14 back in the summer of 2006.

15 So at this point, I want to move back up on the
16 page to an area that, as you see it, you'll understand why
17 we call it the slider. This is in effect a menu of a set of
18 graphs and charts that should be useful and we hope are
19 useful to understanding these regions. Many of these charts
20 -- well, these charts will all be updated regularly, in many
21 cases on a monthly basis, which will bring the information
22 available to folks visiting the website to a much quicker
23 refresh than we've seen before in our -- as the Chairman was
24 mentioning, in our state of the market reports and then some
25 of the other reports.

1 If you start at left on the slider, we have a
2 chart of the volumes and certain financial products that are
3 relevant to electricity in the region. The next one is a
4 table of annual supply and demand statistics. And then the
5 third is a graph of prices in the region, and let's go ahead
6 and open that one up and look at it.

7 This is that graph. It will be updated monthly.
8 It provides day-ahead peak-hour prices at key points within
9 the region, again Mid-Columbia and COB. And in this case,
10 we've also added NP-15 in California to give a little bit of
11 additional context.

12 The graph itself runs from 2005 to 2006. That
13 will change over time. As we move forward in time, we will
14 roll off the past and into the future. So we've got a small
15 inset graph as well that looks at prices on average over a
16 longer period of time for folks who are interested in
17 longer-term trends.

18 I'd point out the graph itself shows a couple of
19 interesting things about electricity, particularly in the
20 northwest over the last year. You see very, very low prices
21 this last spring, spring of 2006, due to abundant hydro
22 conditions. And that disappeared as we went into the
23 summer, as it does in the northwest, and then you see a
24 very, very high price over a very short period of time
25 related to the peaks that we saw last summer, the peak due

1 to heat waves. That then falls back off again, and you see
2 it drop a little bit and then through the rest of the year
3 into the winter where it firms up a bit, and that's very
4 characteristic -- and we'll see that here in a minute or two
5 -- of natural gas prices for the rest of the year. In
6 effect, what you see is a switch from hydroelectricity being
7 at the margin in a number of these cases in the spring into
8 strong electricity demand in the summer into very natural-
9 gas-driven electric prices for the rest of the year.

10 And this is a little bit what I mean by trying to
11 communicate and understand through these kind of graphs the
12 context of what's going on in these markets, that it's not
13 necessarily a mystery and if we can help put together some
14 of those pieces for folks who are interested, we hope that
15 that can be helpful.

16 If we go back then to the slider and move the
17 slider all the way to the right, what you see is another
18 graph that's very similar but just has more regional prices
19 for a little bit more context.

20 The next two graphs are very specific to this
21 region, and they are stream flow both at the Dalles and then
22 for the Pacific Northwest as a whole -- obviously, as I
23 pointed out, important in the spring. And then at the very
24 end is another price table that gives you a sense of sort of
25 annual average prices.

1 Now if we back up to the main oversight page for
2 a minute, let's do a real quick contrast with a different
3 electricity area, let's look at New York for just a second.
4 When we go to New York, the page is very, very similarly
5 designed. What you'd note though is that the map looks a
6 little bit different. Because New York spot markets are
7 managed by an ISO, we see a map of the regions of the ISO in
8 New York. That will become important as we look at some of
9 the pricing in a minute.

10 And in the jumping off area, let's go ahead and
11 jump to RTO/ISO, which was not populated in the other case.
12 And what you get is a short description of the ISO market,
13 along with notes about relevant bilateral and financial
14 energy markets as well, how they sort of all fit together
15 and we would expect them to behave together.

16 So now if we come back up again to the slider, we
17 see a similar set of slides. But if you move over to the
18 RTO prices slide and click on that for a second, again, in a
19 region with RTOs, we have a slightly different set of
20 information. Again an inset that looks at prices over the
21 longer period of time, and then prices by these different
22 regions within the New York ISO.

23 What you can see very, very quickly here is a
24 similar set of high prices related to the heat waves this
25 summer and then you see prices dropping back and having a

1 very similar pattern to what you actually saw in the
2 northwest, which is very much driven by natural gas prices
3 and natural gas functioning at the margin in these markets.

4 So even though it's a different region and even
5 though this region is designed for folks in a different part
6 of the country to look at it, you can begin to see
7 relationships across the country for how these energy
8 markets worked together.

9 If we go back to the slider and move to the
10 right, I'll just point out quickly there are three other
11 pictures -- we won't open them up to look at them, but these
12 are related to capacity markets in the New York ISO for the
13 city, for Long Island, and for the rest of the state that
14 shows capacity markets and prices over the last year or two.
15 This is the kind of information that wouldn't have been
16 available in the northwest just as the hydroelectric
17 information in the northwest region is relevant in New York.
18 So once again, the attempt is to create a regional landing
19 space where people can come and look at things that are most
20 relevant to their own particular interests.

21 All right. Let's move back up to the oversight
22 page again, and let's look at gas and, for a little
23 geographical variety, why don't we go to the southeast in
24 this particular case. The page on the southeast is designed
25 -- it looks a great deal again like the electric pages; a

1 lot of standardization there. But it does deal a little bit
2 differently with a couple of issues. The key pricing
3 points in the region are mainly interstate pipeline defined
4 points that have indices, published indices related around
5 them. We've also added one facilities point that isn't a
6 market point per se, and that is Elba Island, which will be
7 important in understanding the flows in a region to look at
8 LNG import capabilities.

9 The jumping off area is about the same. Let's go
10 ahead and click on market description and I'll talk quickly
11 through what we've got here. We start in this case with a
12 market description, a quick description of supply and demand
13 in the region at the high level. The next section,
14 geography, details the states in the region. Major trading
15 hubs list those points we talked about on the map. Storage
16 discusses storage capacity relative to the area, so specific
17 to the geographic region as it plays in that region.
18 Demand, under that, describes demand characteristics in the
19 region. Production, under that, describes local production
20 issues, in this case, the southeast isn't a large producer
21 in the United States, and you can see that comparison, that
22 relative comparison of its production to the rest of the
23 U.S.

24 Below that prices, again focusing on annual
25 averages, high-level prices with highs and lows during the

1 period of time. Below that, pipeline flows, we can develop
2 annual average gas movements again on interstate pipelines
3 where we have some information about that.

4 Imports and exports focuses on flows in and out
5 of the region, particularly the Elba Island LNG.

6 And at the bottom, a couple of stories -- again,
7 we call them focal points -- in this case looking at prices
8 into Florida, which in the course of 2006 were relatively
9 higher compared to the rest of the country than they have
10 been in the past for a variety of reasons. And, not
11 unrelated, some evidence on the increased deliveries of gas
12 into Florida over the last year. And then finally a small
13 story talking about LNG volumes which increased into Elba
14 Island over 2006 compared to 2005.

15 If we move up to the slider, similarly to the
16 electric case, we start with a graph of financial, relevant
17 financial products to the region. But let's click on the
18 next one, which is a graph of spot prices in the region. In
19 that case, what we've got is day-ahead spot prices for the
20 southeast. It will also be updated monthly. It includes
21 major regional pricing points.

22 It also includes along the bottom a calculation
23 of basis or the difference of those prices back to Henry
24 Hub. That gives us a sort of geographical dispersion for
25 natural gas prices.

1 Again, an inset that looks over longer periods of
2 time.

3 If you look at this graph, what you can see
4 fairly clearly through 2005 is that increase in price that
5 we saw in the summer of 2005 going into the hurricanes, the
6 collapse of that price coming into 2006 with the very, very
7 warm winter and the very mild early part of the year.
8 Again, you see increases in the summer relative to electric
9 generation during the peak period of the summer and then
10 dropping off into the fall in a pattern that looks very much
11 like the electricity pattern we saw the last part of 2006 in
12 the west and in New York. These markets have a tendency to
13 be related to each other, and I hope this is one chance to
14 show how they relate to each other in a pretty clear way.

15 Let's go back to the slider, and we'll move it
16 all the way to the right. I won't go through the other
17 charts. They deal with several things, including trading
18 volumes, charts of projects that are being worked on from
19 information collected from the Office of Energy Projects
20 here at the Commission.

21 There's a set of tables elaborating average
22 prices, demand, supply, storage, regional storage, the like,
23 and on the far right is in fact a graph similar to the graph
24 that we all see from EIA regularly of regional storage
25 balances as well. That's more delayed information because

1 it takes time to get the regional breakdown, but we've again
2 pulled what we can out.

3 Overall, we hope collecting this kind of
4 information about regional markets together in one place
5 will allow interested producers, consumers, regulators and
6 others to go to one place and get a lot of contextual
7 information to help them understand and make decisions about
8 energy.

9 Now if we can pull back up again to the main
10 market oversight page -- I'm doing the quick tour of some of
11 thing -- let's look at oil for a second to give you one
12 sense of another market and the discussion in another
13 market.

14 There's only one graph in oil, and if we can open
15 that graph up. This is a sort of relationship of gas prices
16 to oil prices. I'll focus on the graph on the bottom where
17 you can see in the reddish line natural gas wholesale prices
18 in the New York City and then sort of golden line low sulfur
19 resid prices into New York City.

20 This is an interesting picture because it is not
21 at all a typical set of relationships from what we've seen.
22 We've reported a little bit of this to you before. What you
23 see in March is the gas price dropping below the low sulfur
24 resid price, which usually operates as a floor for gas
25 prices. You see it staying below most of the summer, with

1 the brief exception during the most intense heat, and then
2 only coming back and sort of joining when we got into late
3 October. And then in fact very late in the year you begin
4 to see the gas price dropping off again.

5 This helps explain a little bit some of the
6 relations we are seeing where we've seen a lot of oil
7 generation being displaced at places like New York because
8 of natural gas because of the relative weakness of gas
9 prices to oil prices. It may not seem like \$6.50 for gas is
10 cheap, but compared to where oil prices have been it has
11 been in fact cheap and we've seen that play through the
12 marketplace then in terms of behavior in many places.

13 Now if we go back for one last quick pass on the
14 left from the market oversight page back to the navigation
15 on the left, the first button is labeled state of the
16 markets. As the Chairman pointed out, in many ways the most
17 compelling and, to me, the most interesting parts of the
18 documents we produced as state of the markets in the past
19 have been the graphics of some of these regional price and
20 volumetric activity. The website in large part replaces
21 that and updates it on a more timely basis, which should
22 allow for people to get greater use out of basically the
23 same information or very similar sorts of information.

24 We do have links here to the two past state of
25 the markets in PDF form, so they're available to folks. And

1 we're hoping here fairly soon to have an assessment of 2006,
2 which will be in some kind of a document form, not the way
3 it used to look because it will be sitting on top of this
4 website that will take up a lot of that value in this case.

5 If you press the next button, go to reports and
6 analyses, this is going to be a convenient place to collect
7 reports as we do them throughout the course of the year. We
8 have two new ones in here. The bottom of the two actually
9 is a natural gas summary for 2005 into 2006. It's actually
10 more of an annotated bibliography of previous presentations
11 about natural gas with some convenient links for folks. We
12 wanted to put something in there, but we won't be really
13 ready to do new material on natural gas until the end of
14 this heating season as a more appropriate time to look at
15 that.

16 On the first one though, and let's go ahead and
17 click into the first one. It is an electric market summary
18 for the summer of 2006. It's a short paper. It looks at
19 several things. There are two I think important and
20 distinctive observations that I would point out.

21 One is, because of the widespread heat that we
22 saw briefly during the summer, we set new peak records
23 across the country, a great deal of stress on the electric
24 system as far as peaks were concerned. Interestingly
25 enough, I believe the latest EIA numbers -- we don't discuss

1 it here -- show though that overall generation was not up
2 for the year 2006 over 2005. So it was very peak oriented.

3 The other observation though we have in here was
4 how much more natural gas was burned for electric generation
5 during the course of the summer. And this makes sense,
6 given the investment trends of the last couple of years, and
7 it also makes sense given the relatively low price of
8 natural gas vis-a-vis other fuels, particularly oil, last
9 summer.

10 So I would invite anyone visiting the website --
11 certainly over the next couple of days, but at any time to
12 look at this assessment and they can see sort of our summary
13 of what was going on last summer we felt like in the
14 electric area.

15 If we'll back up then again, we can quickly look,
16 market snapshots is a place where we will collect the
17 presentations that we do make about energy markets here at
18 the Commission. We keep those presentations in script so
19 people can use that if it's helpful to them in their
20 thinking and it's an easy way to do it.

21 I'll just point out -- we won't click into them -
22 - the electric power markets, the natural gas markets and
23 the other markets below that are just different ways of
24 navigating to the same regions that we talked about before.

25 I think I did shoot by the market snapshots part.

1 The market views is one of the discussions we have in here.
2 The market snapshots will be collections of these graphs
3 that will allow people to take a national view as opposed to
4 a regional view. We don't want people stuck only being able
5 to look at their region. We want them to be able to look
6 across the board.

7 We've used similar reports in the past as
8 discussion material for meetings that we have regularly with
9 state regulatory staff to discuss national activities, and
10 we want to continue to be able to produce that and continue
11 to have that communication with them in an effective way.

12 Just to finish up at the bottom left is an area
13 called current highlights. That's a place where we can in
14 effect headline new developments that we've made so that
15 people coming to the site can see what's new. If they're
16 visiting regularly, the two things we have right now are
17 linked to the feedback system that we've got so that we can
18 get people giving us suggestions about what to do into the
19 press release at this point for the new site.

20 And then the last thing I would sort of point out
21 on the site if you move up to the top right is the RSS news
22 feed. This will allow interested folks to subscribe and to
23 have us send to them updates as we make changes on the site
24 as we update graphics, so that they don't have to just come
25 and check us out all the time. If they're interested, they

1 can look for the changes that they care about as well. All
2 of it really designed to make an enormous amount of
3 information about market activity more accessible to those
4 people who are really interested in it.

5 So in summary I'd say we're excited about this
6 opportunity for using the ferc.gov website to increase the
7 amount of available information about energy markets and we
8 hope to use it to create a broader context that will allow
9 more interested people to get to know these markets better
10 than they have in the past.

11 Keith and I thank you, and we'd be pleased to
12 answer any questions that you have.

13 CHAIRMAN KELLIHER: No question, I just have a
14 statement really just about why we're doing this. I really
15 liked the old state of the markets report, but there was so
16 much in it, there was so much information in it that it took
17 a while -- it was a prodigious undertaking to write and
18 sometimes the data wouldn't be highly current.

19 And what we're doing here is making a living
20 state of the markets report, if you will. The data will be
21 more current. People who are interested in discrete market
22 information will find that that information is presented on
23 a more current basis. I think it actually will be easier
24 for people who are not interested in the whole state of the
25 markets report at any given point in time to get more

1 current information that will actually be more easily
2 presented to them.

3 So that's what we're doing. I think it's a
4 living state of the markets report. I think it will help us
5 and I think it will help the outside -- the public and it
6 shows our commitment to market oversight. An important part
7 of the job is market oversight and I think this will give a
8 clue as to the degree of attention we give to market
9 oversight at the Commission.

10 John, do you have a comment?

11 COMMISSIONER WELLINGHOFF: I just have a few
12 couple of questions. Steve, this is great. I just think
13 this is wonderful. I want to commend you and your staff
14 and, as you know, I'm a real aficionado of data and love to
15 see more and more data that we can produce for the public
16 and for our use and for the use of state regulators as well.
17 And I hope -- are you going to have a counter on your market
18 oversight page to know how many hits you get to determine --
19

20 MR. HARVEY: We are. We're checking -- the page
21 actually went live last night and we immediately started --
22 we didn't expect anyone to be looking for it until just now,
23 but we will be counting, because we want to see it -- I
24 mean, I don't think this site's ever going to be competitive
25 with big commercial sites doing other things, nor should it

1 be. It's really a resource. But we do hope it will be used
2 by the people who are really interested in these issues.

3 COMMISSIONER WELLINGHOFF: Well, and in that
4 regard I was interested in your comments on using some of
5 the national data to show, I guess, state commission staff.
6 Did you have any opportunity to talk to either the state
7 commissions or the staffs about data that they might want to
8 see on the site that might be useful to them?

9 MR. HARVEY: We have, for some time, met on a
10 monthly basis with two sets of state commission staffs. And
11 every month what we would do is produce a report -- really
12 what you see in this as the market snapshot report, with a
13 little bit of additional information. We have to be careful
14 that we're not giving away people's information in the wrong
15 places.

16 But we've been using that to discuss regional
17 issues. We've gotten a lot of feedback about things that
18 those state regulatory staff are interested in and it's
19 really helped inform us to get that feedback about what
20 issues they're concerned about. So to me that's a very
21 valuable part of it.

22 We're hoping that this will allow us to sort of
23 rationalize a couple of the different reports we've been
24 managing into one coherent place and that will allow us also
25 to really enhance that interaction with the state regulatory

1 staff in the regions.

2 COMMISSIONER WELLINGHOFF: Well, and as much as I
3 think this is wonderful, I'm always going to be pushing for
4 more. Is there any thought that it might be possible to
5 make even more current the data -- and I'm thinking, for
6 example, you're going to update it every month, is that your
7 thought right now?

8 MR. HARVEY: That's our -- or a lot of it.

9 COMMISSIONER WELLINGHOFF: And I'm thinking like
10 for example in the summer when things are changing rapidly
11 with peak loads and so forth, I mean, I think like weekly
12 updates would be probably even more useful. Is there any
13 possibility of even going to that more current level of --

14 MR. HARVEY: The website itself -- you have to
15 kind of echo a point the Chairman made. I mean, the last
16 state of the markets report -- which I was very proud of, I
17 think our staff did a fabulous job -- but it didn't come out
18 until June of the next year. And so inherently in that
19 process -- it was a beautiful thing and well edited, but it
20 was kind of out of the cycle of actual interest.

21 With the website and with these RSS feeds and
22 with some of the other features we've built in, this can be
23 used as a tool of the Commission. And to the extent that we
24 see things changing that we feel like we need to have
25 observations in the public and not duplicating what you-all

1 do at all but to get that information out, this is a very
2 convenient tool to allow us to do that and that's an
3 appropriate thing.

4 So it's a lot of flexibility we didn't have
5 before to get sort of good information in the people's hands
6 quickly. Having said that, I'm not sure I want to commit to
7 updating more frequently --

8 COMMISSIONER WELLINGHOFF: I understand, that's a
9 lot of work. I understand that.

10 CHAIRMAN KELLIHER: Let's take it under
11 advisement though might be something we should do.

12 COMMISSIONER WELLINGHOFF: I'm just thinking of
13 peak periods it might be something --

14 CHAIRMAN KELLIHER: I mean, this was an exciting
15 summer and next summer may be as well.

16 Colleagues, any comments?

17 COMMISSIONER KELLY: Steve and Keith -- I didn't
18 mean to interrupt.

19 I was listening this morning to National Public
20 Radio and they had the market report on and one of the big
21 news items was Apple's rising stock prices and Steve Jobs'
22 rising status in the computer technology. And they said,
23 not surprisingly, I guess, that it was primarily due to the
24 sale of Ipods last year. Apple sold 22.6 million, one for
25 every person in the country of Texas --

1 (Laughter.)

2 COMMISSIONER KELLY: And I thought of you, Steve
3 Harvey. And this is our Ipod. And I look forward to using
4 it when I'm on the Stairmaster.

5 (Laughter.)

6 COMMISSIONER KELLY: But it really is
7 revolutionary. I don't think that we should underestimate
8 what's happened here or underemphasize the importance of the
9 work that you've done. You've put it in a media that is
10 accessible to everyone.

11 I don't know what happens to other people with
12 their state of the markets report, but I take it and then I
13 pull pages out that are useful and they go into a speech and
14 they go with me to Minneapolis and then I have a state of
15 the markets report with missing pages and it gathers dust or
16 it gets lost and I can't look at it when I'm on the
17 Stairmaster. So I appreciate this.

18 And I think one of the other things to comment on
19 is that one of the significant ways that regulators regulate
20 is by providing information and then empowering consumers,
21 competitors, people in the industry to take the action that
22 they need to take. And that's what we're doing here. And
23 we're also showing the world what those people in market
24 oversight do every day. And I appreciate the work that
25 you've gone to, I think it will be a great benefit and I

1 suspect this time next year we'll probably be able to report
2 that there have been 22.6 million hits on the site.

3 MR. HARVEY: I don't know about that.

4 COMMISSIONER KELLY: It may be close.

5 MR. HARVEY: Unless it's just me.

6 (Laughter.)

7 CHAIRMAN KELLIHER: Any other comments?

8 (No response.)

9 CHAIRMAN KELLIHER: Well, thank you, colleagues.
10 Good piece of work today. Thank you.

11 (Whereupon, at 11:53 a.m., the open session was
12 concluded.)

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