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BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

- - - - -x
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

916TH COMMISSION MEETING
OPEN MEETING

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

Thursday, March 15, 2007
10:10 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 DAVID L. HOFFMAN, Reporter

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P R O C E E D I N G S

(10:10 a.m.)

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

Please join us in the Pledge of Allegiance.

(Pledge of Allegiance recited.)

CHAIRMAN KELLIHER: Before we get to the business matters, I wanted to make a few announcements and give some awards, but let me start with some announcements about Staff changes.

Recently, Magalie Salas retired from federal service, the Commission's Secretary. I just want to honor her long service with the Federal Government. She served both here at FERC, as well as at the FCC.

I want to commend her for her service and wish her the best. I have named a new Secretary, and that will be Kimberly Bose. Kimberly, can you stand up, please?

Kimberly is a Supervising Attorney in the Office of General Counsel. She will assume the position next month. I talked with Kimberly about my view of the Commission.

We do have a product; we have a legal product.

1 Kim has been involved as an attorney and a reviewing
2 attorney, so she has been involved in product development
3 over time.

4 She has a different role now. She was more kind
5 of in the R&D phase of our product.

6 (Laughter.)

7 CHAIRMAN KELLIHER: Now she's more the
8 distribution phase, I suppose. But it's important that
9 Commission Orders have a very high level of quality control,
10 and that there also be very impressive time limits in our
11 issuances.

12 Kim knows that. She's going to talk to my
13 colleagues about possible changes that we can make. I just
14 want to thank her for taking the position.

15 I also want to recognize Phyllis Posey. Phyllis
16 is the new Deputy Secretary. She is a veteran of the
17 Secretary's Office, a 19-year veteran of the Secretary's
18 Office, so she's back in the saddle in the Secretary's
19 Office. She's the Deputy Secretary and she will serve as
20 Acting Secretary until Kim assumes her new responsibilities.

21 I just want to thank both Kim and Phyllis for
22 helping us out and agreeing to these new roles.

23 I also want to make a comment about Judge
24 Brenner. Today, I think, about ten minutes ago, the
25 Governor of Maryland has announced that he will appoint our

1 Deputy Chief ALJ, Lawrence Brenner, to be a Commissioner at
2 the Maryland Public Service Commission.

3 Last year, the new Governor announced that he
4 wanted to nominate or appoint professionals to the Maryland
5 Public Service Commission, and he has certainly done that
6 with this appointment.

7 Judge Brenner is a complete professional and he
8 will do a fine job with the Maryland Commission. I will
9 miss him. I think he's one of our best Judges, and he's
10 been, in recent years, the Henry Kissinger of capacity
11 markets here at FERC.

12 (Laughter.)

13 CHAIRMAN KELLIHER: We'll have to find a new
14 Henry Kissinger to help us out in capacity market proposals.
15 I just want to now turn to some awards.

16 I'd like to grant three very well deserved awards
17 to FERC Staff. They actually do not know that they're going
18 to receive these awards, so this is a bit of a surprise, so
19 we have a little bit of drama here this morning at FERC.

20 (Laughter.)

21 CHAIRMAN KELLIHER: It's the Ides of March, so
22 it's good to know it's this kind of drama and not scary
23 drama. The first two recipients are receiving a new award,
24 the Chairman's Gold Medal, that is awarded to FERC Staff who
25 demonstrate outstanding leadership, and the third is

1 receiving the Exemplar of Public Service Award, which is the
2 Commission's highest public service award.

3 I just want to emphasize that the Gold Medal, the
4 leadership medal, is today being granted to senior Staff
5 members, but any member of the FERC Staff who demonstrates
6 outstanding leadership, is eligible for this award.

7 I just want to make some brief comments about
8 these three individuals, then turn to my colleagues and see
9 if they want to make some comments, and then I'll ask the
10 recipients to come up, one-by-one, for some photos and
11 handshakes.

12 Let me start with Cindy Marlette.

13 (Laughter.)

14 CHAIRMAN KELLIHER: Cindy, of course, led our
15 efforts on implementation of the Energy Policy Act of 2005.
16 The Energy Policy Act, really, was the most significant
17 change in the laws we have administered since the New Deal,
18 and she led the effort toward smooth implementation of this
19 new law.

20 When the law was enacted -- and I remember a host
21 of important decisions that the Commission had to make -- it
22 was significant to the task we were assigned. It really
23 covered the full range of the Commission's Program Offices --
24 -- OGC, OEP, the former OMTR, and the former OMOI.

25 It was important to have one individual charged

1 with overseeing the implementation of what was really a
2 cross-cutting effort. There was really only one person at
3 the Commission who could do that, and that was Cindy.

4 Cindy had worked closely with Congress on the
5 development of the law, particularly on the electricity
6 side, so I asked Cindy to assume this role, to develop an
7 implementation plan, and to also identify any timelines that
8 may not be attainable.

9 I have to admit that I thought you'd come back
10 and say that some were unattainable, but you came back and
11 said they all could be attained; it wouldn't be easy, and
12 you developed a really impressive implementation plan,
13 working with the Program Office Directors.

14 That plan really was like a train timetable.
15 There were multiple actions that had to occur every week,
16 and you not only developed the plan, but you executed the
17 plan.

18 I think the fact that we implemented the Energy
19 Policy Act in such a timely manner, reflects very well upon
20 the Commission. As everyone knows, we met all the
21 deadlines, and we actually beat a few, but as fewer people
22 know, there have been actually very few court challenges to
23 the EPAct actions.

24 I think that's something that is striking and
25 worth noting, and, and I think, in large part, it's due to

1 the way we implemented it, and Cindy was the General in
2 charge of our EAct implementation. I just want to
3 recognize her leadership.

4 The next recipient is Susan Court. One of the
5 biggest -- don't be sad. You should be happy.

6 One of the biggest changes in the Energy Policy
7 Act of 2005, was in our role in enforcement, our enforcement
8 role. Really for the first time, the Commission was given
9 the enforcement tools that we needed to police electricity
10 and gas markets.

11 I thought there was a need to make some changes
12 to former OMOI and a need to focus its mission on our new
13 enforcement responsibility. There was a lot of talent in
14 OMOI, but I think that talent needed to be reorganized,
15 refocused, and rededicated and there was a need for new
16 leadership of the Office.

17 I chose Susan Court as the Director of OMOI,
18 because of her management skills, her leadership abilities,
19 and her substantive knowledge in the laws we administer.

20 I think she's done an outstanding job at the
21 Office of Enforcement. It wasn't just a question of
22 changing the name. That was a very obvious sign. It's
23 still a French name. It's OOE, versus OMOI.

24 (Laughter.)

25 CHAIRMAN KELLIHER: It still wasn't just changing

1 the name. It's a fundamental organizational decision of the
2 Office, so it could better discharge its new
3 responsibilities.

4 I think the results show it and the settlements
5 we've approved very recently, are the fruit of the
6 investigations that have occurred under Susan's watch. I
7 think it's clear at this point, that the Office of
8 Enforcement needs more resources, and I think Susan is the
9 perfect person to help manage the growth of that Office.

10 I know some people, when they think of Susan,
11 they think of Order 636, but when I think of Susan, I think
12 of enforcement, and I just want to say that I'm very
13 grateful for you accepting the role, and for just how
14 superbly you've led the Office since you've come back to us
15 from Ireland.

16 The third recipient is Shelton Cannon. I thought
17 I'd add a little drama here.

18 (Laughter.)

19 CHAIRMAN KELLIHER: Shelton Cannon, I'm pleased
20 to give Shelton Cannon the Exemplar of Public Service Award,
21 but I have to admit that I'm surprised that he doesn't
22 already have it.

23 I think it's something that you've earned many
24 times, and I think many of the recent Chairmen could have
25 given it to you, given you the award, and, I think, to some

1 extent, you're probably the Martin Scorsese of FERC.

2 (Laughter.)

3 CHAIRMAN KELLIHER: When it comes the Exemplar
4 Award, you haven't earned it for Raging Bull and Taxi
5 Driver, but I'll give it to you for the way you've managed
6 OMTR and OEMR for the past year and a half, particularly the
7 way you've worked with Joe McClellan in the Reliability
8 Office.

9 You've been a FERC Employee for 25 years, you've
10 served in a lot of different capacities, you've been
11 steadily entrusted with greater responsibilities. I've
12 always been impressed with your quiet dedication and your
13 leadership at the Office, and the very thoughtful approach
14 you take and the quality of your advice.

15 You've earned respect from me, my colleagues, and
16 the Commission Staff. You certainly deserve the Award, and
17 I just want to point out that these three individuals are
18 model public servants. They reflect the best qualities of
19 FERC, namely, dedication, zeal, integrity, and intelligence,
20 and it's an honor to serve with you three.

21 With that, I'd like to turn to my colleagues to
22 see if there are any comments they would like to make.
23 Hopefully, you don't disagree with anything I've said.

24 (Laughter.)

25 CHAIRMAN KELLIHER: Jon?

1 COMMISSIONER WELLNGHOFF: Thank you, Joe. I have
2 a couple of comments.

3 Even though I've been here only eight months,
4 I've got stories about each one of these individuals.

5 I was at a conference when I first came to FERC,
6 and went actually to a workshop over at the Library of
7 Congress. At that workshop, there were a number of Hill
8 staffers there, and they were asked to comment on the
9 implementation of the 2005 EPAct.

10 They talked initially about all the requirements
11 of EPAct and everything that had to be done, and they said,
12 you know, I keep getting these faxes every day from this
13 agency, who will remain unnamed, that cannot seem to make
14 the deadlines.

15 And this other Hill staffer leaned over and said,
16 but FERC's made every one of them. I thought to myself,
17 Cindy Marlette. That really made me proud to be a new
18 Commissioner at FERC, to note that we had hit all of our
19 deadlines.

20 Susan, I'm very glad that you're our top cop. I
21 think enforcement is the essential part of our agency. I
22 know that when I first met you, I thought, this is the woman
23 to be the enforcer.

24 (Laughter.)

25 COMMISSIONER WELLNGHOFF: I think you're very

1 well deserving of this Award. Shelton, when I first came to
2 FERC, prior to being a Commissioner, I actually came to
3 prepare for my confirmation hearings.

4 I remember the ride that you and I had out to the
5 airport together. It was one of the first times I ever had
6 the opportunity to sit down and spend any time with a FERC
7 Staffer. I remember Shelton's passion and his depth of
8 knowledge, and his understanding and enthusiasm for FERC,
9 and, I thought to myself, this is the right place for me.

10 So, thank you all; I want to thank you all very
11 much. You're very well deserving of these awards.

12 CHAIRMAN KELLIHER: Thank you, Jon. Colleagues?
13 Marc?

14 COMMISSIONER SPITZER: Thank you, Mr. Chairman.
15 I like the idea of the random awards; it's a good thing.
16 Have a good hair day.

17 (Laughter.)

18 COMMISSIONER SPITZER: It's very important.

19 So, you know, I was asked how I was enjoying
20 things, back in my hometown, by the Arizona colleagues, and
21 I used this old Hubert Humphrey line, "the happy warrior."
22 He used to say, "I'm pleased as punch," and that really
23 encapsulated it in terms of not only being satisfied with
24 the technical output, but the manner in which the entire
25 Staff, but, particularly the three individuals awarded

1 today, conduct themselves with a wonderful attitude that is
2 optimistic, even when circumstances are trying.

3 Following Commissioner Wellinghoff, just very
4 brief anecdotes: Enforcement is -- you've got to be the
5 Darth Vader, right?

6 (Laughter.)

7 CHAIRMAN KELLIHER: She's wearing black, too.

8 (Laughter.)

9 COMMISSIONER SPITZER: And yet to conduct
10 yourself in a way within the building, and, again, in a very
11 positive manner, to show that you take pride in our mandate
12 now with regard to enforcement of the law of the United
13 States.

14 That's an undertaking that requires gravitas, but
15 also good humor in the conduct of your business, and I
16 appreciate that very much, and the meetings you've had to
17 keep me apprised of developments, is also important.

18 Shelton, I think it was my first day that you
19 showed me how to get to the train station.

20 (Laughter.)

21 COMMISSIONER SPITZER: Which was, after the
22 restroom, the next most important thing, is, how to get
23 home.

24 (Laughter.)

25 COMMISSIONER SPITZER: And we just had a -- I was

1 brand new, and, you know, it's always nerve-wracking, the
2 first day on the job, and since then, I've enjoyed working
3 with your team and yourself, particularly, in mastering some
4 very difficult and new concepts, and your industry and
5 effort is appreciated.

6 Cindy, you know, the worst client you can
7 possibly have, is a lawyer.

8 (Laughter.)

9 COMMISSIONER SPITZER: And so she was very
10 patient with me, and, you know, all the hours we spent on
11 Mobil-Sierra and those cases, and really the whole array of
12 issues that come -- legal issues that come before us, and
13 very patient, and patience is an understated and often
14 under-appreciated virtue, and I appreciate the patience
15 you've shown our team and your conscientious diligence.

16 I would just second all the comments with regard
17 to the huge volume of work the snake was able to swallow
18 intact, a couple of eggs in this process, that a lot of
19 folks didn't think, frankly, could be done.

20 And it was done and done well, and done very
21 conscientiously and agree and wholeheartedly support the
22 Awards.

23 CHAIRMAN KELLIHER: Colleagues? Commissioner
24 Kelly?

25 COMMISSIONER KELLY: Thank you, Joe. Cindy, I

1 just want to thank you for everything that you have given to
2 the Commission and to me, personally.

3 I met Cindy about ten years ago in 1996. Was
4 that your first trip to New Mexico? And she's been a fan of
5 New Mexico ever since, but she helped me organize a
6 conference when I was editor of the Natural Resources
7 Journal on Electricity Restructuring.

8 And she was the acknowledged expert at FERC, and
9 she knew all the players in the field, and put together a
10 great conference that has been valuable to this day.

11 Cindy also helped me personally during my
12 confirmation process. I really believed that my success in
13 going through that process, was due to Cindy's efforts.
14 She knows everything about every law that FERC enforces.

15 And I also want to thank you for assigning Maria
16 Vouras to work with me also, who I, soon thereafter, took
17 from you, and has been my trusted advisor since I've been a
18 Commissioner.

19 One of the things that impressed me about Cindy,
20 was also what I learned when I was on the Hill, and that is
21 that she is highly regarded by all people I have ever talked
22 to there on both sides of the aisle, as a true professional
23 and someone who is and outstanding lawyer, as well as a good
24 lobbyist.

25 Susan, I have gotten to know since I've come to

1 FERC. She is amazing in the breadth of her knowledge and
2 experience.

3 When I arrived here, Susan was head of the Office
4 of General Law. Then you went on to be Chief of Staff for
5 Pat Wood.

6 Then she was a woman with portfolio to Europe,
7 and she -- I can say personally, I was in Amsterdam earlier
8 this week for an international conference on gas issues,
9 which I know is something near and dear to Susan's heart,
10 and they know here there.

11 In fact, a number of people did, and one man came
12 up to me and said, the woman who heads up your agency.

13 (Laughter.)

14 COMMISSIONER KELLY: Well, I immediately thought
15 he meant Nora Brownell.

16 (Laughter.)

17 COMMISSIONER KELLY: No, no, no, Ms. Court, Ms.
18 Court. I said, you're right, she heads up our agency. So,
19 she truly --

20 (Laughter.)

21 COMMISSIONER KELLY: And now she does, in fact,
22 so, thank you, Susan, for being willing to stay at FERC and
23 to continue to share your expertise with us.

24 And Shelton, I did a little research on the
25 Exemplar of Public Service Award, and I didn't realize how

1 rare it is to be awarded that. There are only about 50
2 people in the history of this Agency, who have achieved that
3 Award.

4 And not only do you get the award, but your name
5 will be engraved on a brass plaque in the history room of
6 FERC, and so I think all future generations will also know
7 that --

8 (Laughter.)

9 COMMISSIONER KELLY: -- that you have received
10 that award, so it is, indeed, quite a high honor. Shelton
11 is a happy warrior, but maybe some people don't know that he
12 is also an exemplary runner, and we're recruiting you,
13 Shelton, for our team that runs in the Congressional
14 Challenge Race for the beginning of May, so I hope you've
15 been staying in running shape, because we need you there.

16 (Laughter.)

17 COMMISSIONER KELLY: I think think that the other
18 thing that can be said about all of these three people, not
19 only that they have been dedicated to the service of FERC,
20 but also that they are true professionals.

21 And that's really saying a lot in an organization
22 like FERC, where the pressures are intense, where there are
23 deadlines and a demand to deliver every day.

24 We have at least eight decisions, I think, on
25 average, go out from FERC's Offices, every day, and these

1 are the people who are responsible for having us accomplish
2 that. They deal with a lot of pressure from various
3 constituency groups who think differently about issues, not
4 the least of which are the five people sitting right at this
5 table, and they handle it all with grace and
6 professionalism, and this would not be the same place, if
7 you weren't here. So, my thanks to you.

8 CHAIRMAN KELLIHER: Commissioner Moeller?

9 COMMISSIONER MOELLER: Thank you, Mr. Chairman.
10 There's not a whole lot to add, but I will certainly endorse
11 the comments of all of you so far.

12 And what's nice, is that we, I think, as new
13 Commissioners, have had our expectations, which were already
14 high, exceeded by the quality of people here at the
15 Commission. The three people being honored today, are
16 leaders of this Agency, and yet, as you alluded to, Mr.
17 Chairman, although the focus is on what they're doing now,
18 they have had distinguished careers doing a variety of
19 different things that have helped the energy consumers of
20 this nation.

21 So, it's truly an honor to help honor their
22 careers today and it's my pleasure to serve with all of you.
23 Thank you.

24 CHAIRMAN KELLIHER: Thank you, Phil. Why don't we
25 ask Cindy to come up first? We'll get some photos and

1 handshakes with all my colleagues, then Susan, then Shelton.
2 Cindy?

3 (Applause and Awards presented.)

4 CHAIRMAN KELLIHER: Before we turn to the Consent
5 Agenda, I'd just like to note that since the February 15th
6 Open Meeting, the Commission has issued 57 Notational
7 Orders. Madam Secretary, let's turn to the Consent Agenda.

8 ACTING SECRETARY POSEY: Good morning, Mr.
9 Chairman and good morning, Commissioners. Since the
10 issuance of the Sunshine Notice on March 8th, no items have
11 been struck from this morning's agenda.

12 Before we proceed with the Consent Agenda, it
13 needs to be noted that the Commission voted to waive the
14 provisions of the Government in the Sunshine Act, 5 USC
15 Section 552(b)(e)(i) to permit the following docket numbers
16 to be amended for Item C-4, and they are: Docket Number
17 CP06-448-000, Natural Gas Pipeline Company of America, and
18 Docket Number CP06-449-000, Kinder Morgan Louisiana
19 Pipeline, LLC. This notice was issued on March 13th.

20 Your Consent Agenda for this morning, is as
21 follows: Electric Items - E-1, E-4, E-5, E-6, E-7, E-8, E-
22 10, E-12, E-14, E-15, E-16, E-17, E-18, and E-19.

23 The Gas Items are: G-1, G-2, G-3, and G-5.

24 Hydro Items are: H-1, H-2, and H-3.

25 Certificate Items: C-2, C-3, C-4, and C-6.

1 As required by law, Commissioner Moeller is not
2 participating in the following items: E-1, E-2, E-3, E-4,
3 E-17, and E-19.

4 As to E-14 on the Consent Agenda, Commissioner
5 Moeller is concurring, with a separate statement. Now we
6 will take a vote on the consent items, starting with
7 Commissioner Wellinghoff.

8 COMMISSIONER WELLNGHOFF: I vote aye.

9 ACTING SECRETARY POSEY: Commissioner Moeller?

10 COMMISSIONER MOELLER: Aye, with the exception of
11 those that I have been recused from.

12 ACTING SECRETARY POSEY: Commissioner Spitzer?

13 COMMISSIONER SPITZER: Aye.

14 ACTING SECRETARY POSEY: Commissioner Kelly?

15 COMMISSIONER KELLY: Aye.

16 ACTING SECRETARY POSEY: Chairman Kelliher?

17 CHAIRMAN KELLIHER: Aye.

18 And I believe at this point, Commissioner Moeller
19 wanted to make a comment about E-14. Go ahead.

20 COMMISSIONER MOELLER: I'm concurring on E-14.

21 This has to do with Astoria Energy and the New York ISO.

22 You'll see in my concurring statement, some relatively stern
23 language, but I want people to remember that what I'm trying
24 to get at here, is that we want more generation for New York
25 City.

1 This was the biggest plant to come online in New
2 York in 205 years, and there were some problems with the
3 capacity market. I think there's some blame that needs to
4 be shared, not just with Astoria, but also with the ISO and
5 ConEd, because of the details of the case.

6 And, ultimately, I think the tariff probably
7 needs to be changed so that it reflects what's not there
8 now, which is details related to capacity for new
9 generation. Again, what I want emphasize here, is the fact
10 that we need more generation for that area, for New York
11 City, specifically, and I think some changes, as reflected
12 in my statement, will help result in that ultimate goal.

13 CHAIRMAN KELLIHER: Thank you. Madam Secretary,
14 why don't we proceed with the discussion agenda?

15 ACTING SECRETARY POSEY: The first item on the
16 discussion agenda this morning, is E-13. This is Mandatory
17 Reliability Standards for the Bulk Power System. It is a
18 presentation by Jonathan First, Office of the General
19 Counsel, and Robert Snow, Office of Energy, Markets, and
20 Reliability.

21 MR. FIRST: Good morning. My name is Jonathan
22 First, with the Office of General Counsel, and, with me, is
23 Robert Snow of the Division of Reliability within the Office
24 of Energy, Markets, and Reliability.

25 The entire team of OGC, OEMR, and Office of

1 Enforcement Staff, have participated in preparing the Final
2 Rule, which is shown on the slide on the TV screen.

3 (Slides.)

4 MR. FIRST: Item E-13 is a Draft Final Rule
5 titled Mandatory Reliability Standards for the Bulk Power
6 System. As indicated by the title, the Final Rule
7 establishes mandatory and enforceable reliability standards
8 for the nation's bulk power system.

9 Consistent with the Notice of Proposed
10 Rulemaking, the Draft Final Rule approves 83 of the 107
11 Reliability Standards submitted to the Commission by the
12 North American Electric Reliability Corporation, or NERC, in
13 its role as the certified electric reliability organization.

14 The Draft Final Rule finds that these 83
15 Reliability Standards meet the legal criteria for approval
16 set forth in Section 215 of the Federal Power Act and Part
17 39 of the Commission's Regulations.

18 However, although the Draft Final Rule finds that
19 it is in the public interest to make these Reliability
20 Standards mandatory and enforceable, it also finds that much
21 work remains to be done.

22 Therefore, as a separate action pursuant to
23 Section 215(d)(5) of the FPA, the Draft Final Rule requires
24 the ERO to submit improvements to 56 of the 83 Reliability
25 Standards that are being approved as mandatory and

1 enforceable.

2 The remaining 24 Reliability Standards will
3 remain pending at the Commission until further information
4 is provided.

5 The Draft Final Rule provides that a proposed
6 modification to Reliability Standards will not become
7 effective until approved by the Commission.

8 In addition, the ERO is required to post each
9 Commission-approved Reliability Standard on its website, to
10 assure easy public access to the Reliability Standards.

11 Regarding the issue of identifying the entities
12 and facilities that must comply with the approved
13 Reliability Standards, the Draft Final Rule accepts the
14 ERO's definition of "bulk electric system," instead of the
15 proposed approach discussed in the NOPR.

16 The Draft Final Rule explains that, although the
17 statutory definition of "bulk power system" is more
18 expansive, adopting the ERO's terminology at this juncture,
19 will provide greater certainty regarding the scope of
20 facilities subject to the Mandatory Reliability Standards.

21 However, the Draft Final Rule indicates that the
22 Commission will likely revisit this issue in a future
23 proceeding, and as a first step towards understanding the
24 current reach of the Reliability Standards, directs the ERO
25 to submit a complete set of regional definitions of "bulk

1 electric system," and a list of critical facilities
2 identified by the regions.

3 In a similar vein, to provide greater certainty
4 regarding the identification of entities responsible for
5 compliance with Mandatory Reliability Standards, the Draft
6 Final Rule approves the ERO's Compliance Registry process as
7 an appropriate approach.

8 This process includes the registration of
9 applicable entities, based on registry criteria developed by
10 the ERO. What is appropriate for the ERO, a future regional
11 entity, or the Commission to take prospective enforcement
12 action against an entity that is not identified in the
13 Compliance Registry, the Draft Final Rule concludes that
14 monetary penalties should not be assessed against an entity
15 not on the registry.

16 The Draft Final Rule rejects the idea of not
17 enforcing the Reliability Standards through penalties for a
18 transition period, and, instead, directs the ERO and the
19 future regional entities, to focus their resources on the
20 most serious violations during an initial period through
21 December 31st, 2007.

22 The ERO and future regional entities are directed
23 to exercise enforcement discretion with regard to all
24 applicable users, owner, and operators of the bulk power
25 system, and not just those new to the reliability scheme, as

1 proposed in the NOPR.

2 This approach will allow the ERO, regional
3 entities, and others, to ensure that this compliance
4 monitoring and enforcement process, works as intended and
5 that all entities have time to implement the new processes.

6 Now, Robert Snow will discuss some other aspects
7 of the Draft Final Rule.

8 MR. SNOW: Thank you, Jonathan. The technical
9 review of these standards began with the Staff preliminary
10 assessment. Over the course of the development of this
11 Final Rule, Staff held more than two dozen outreach
12 meetings, reviewed approximately 3,000 pages of comments,
13 and convened three technical conferences.

14 These efforts helped inform the recommendations
15 of the Draft Final Rule. As Jonathan stated, the Draft
16 Final Rule approves 83 Standards that are ripe for review,
17 and remands 24, awaiting the regional entities and the ERO
18 to fill in missing and incomplete requirements, measures,
19 and levels of noncompliance.

20 The Draft Final Rule relies on the factors
21 identified in Order 672, to determine whether the standard
22 is in the public interest. For example, a standard might be
23 designed to achieve a specific reliability goal, contain a
24 technically sound method to achieve that goal, achieve a
25 reliability goal in an effective and efficient manner, and

1 cannot be the lowest common denominator to identify a few.

2 The Energy Policy Act of 2005 and the
3 implementing regulations require reliable operation of the
4 bulk electric system. That is, the system must be operated
5 with thermal, voltage, and stability limits, so that
6 instability or uncontrolled separation or cascading
7 failures, will not occur.

8 The Reliability Standards that are approved in
9 the Draft Final Rule, represent the considerable work of the
10 industry and are a sound basis for beginning the
11 implementation of Mandatory Reliability Standards to protect
12 the reliability of the bulk power system.

13 However, considerable work lies ahead. As stated
14 by NERC in comments to the Staff preliminary assessment,
15 these Reliability Standards are a good start, but can be
16 improved to achieve technical excellence.

17 In this regard, the Draft Final Rule provides
18 direction on a standard-by-standard basis, for 56 standards
19 to the ERO and industry for improving the standards to
20 achieve greater efficiency, clarity, and consistency.

21 The direction was guided by the many
22 communications we had with commenters and marks the
23 beginning of a process to improve and safeguard the
24 reliability of the nation's bulk power system.

25 This concludes our presentation, and we would be

1 happy to respond to any questions you might have. Thank
2 you.

3 CHAIRMAN KELLIHER: Thank you very much for that
4 presentation. I wanted to start off by commending the Staff
5 for their superb effort in this Final Rule. We, the
6 Commission, laid out the goal, about a year ago, of getting
7 Mandatory Reliability Standards in place by the summer of
8 2007.

9 That was a goal that was relatively easy for the
10 Commission to lay out, but it took a lot more than that for
11 the Staff to actually accomplish and to meet that deadline.

12 But I think it was important to meet that
13 deadline, because to have standards to come into place in
14 the middle of the summer, wouldn't quite make as much sense,
15 so we laid out the summer of 2007 goal, and, as you point
16 out, the record in this proceeding is about 3,000 pages.

17 And a lot of that record is actually fairly
18 recent, the most recent round of comments, so that, in
19 particular, going through the latest round of comments and
20 coming in with a Rule that I think reflects certainly
21 reasoned decisionmaking and very high quality analysis on
22 behalf of Staff, I think you should be commended, both you
23 and the other members of the team.

24 So, let me start there, and let me make some
25 comments on the substance of what we're doing today.

1 Today, the Commission is establishing Mandatory
2 Reliability Standards for the bulk power system, and,
3 beginning this summer, compliance with Reliability Standards
4 will no longer be voluntary; it will be mandatory.

5 I just want to begin by commending Congress for
6 enacting the reliability provisions of the Energy Policy Act
7 of 2005. That was a very significant change in the law and
8 it reflects a view that the Commission has certainly held
9 for some time, that relying on voluntary compliance, was no
10 longer tenable, that that was insufficient to ensure
11 reliability of the bulk power system.

12 And it was certainly true in the August 2003
13 blackout, where some of the causes of that blackout were
14 violations of voluntary Reliability Standards. In fact,
15 most -- I think all of the major regional blackouts, going
16 back 20 years, have been caused, at least in part, by
17 violations of voluntary Reliability Standards.

18 So, I think Congress acted appropriately and gave
19 us authority to establish and ultimately enforce Reliability
20 Standards.

21 Now, if you look at how do we really assure the
22 reliability of the bulk power system, I think there are
23 three elements to it: First of all, it's certifying an
24 electric reliability organization, and that's something we
25 did last summer.

1 The second step is actually establishing the
2 Mandatory Reliability Standards, and that's the step we're
3 taking today.

4 The third step, though, will be enforcing those
5 standards. The mere establishment of Reliability Standards,
6 even metaphysically perfect standards, by itself, won't be
7 sufficient. We actually have to have effective enforcement
8 of those standards.

9 Now, under the regulatory regime established by
10 Congress, the Commission is authorized to approve the
11 delegation of enforcement authority to the electric
12 reliability organization and regional entities.

13 And it will ultimately be the regional entities
14 that will bear the initial burden of reliability
15 enforcement.

16 But the Commission does retain ultimate
17 responsibility for enforcement of Mandatory Reliability
18 Standards and we must retain some independent enforcement
19 ability.

20 Now, in the Draft Final Rule, where approve 83
21 Mandatory Reliability Standards, we also invoke Section
22 215(d)(5) and direct the Electric Reliability Organization
23 to improve 56 reliability standards in coming years.

24 I think this approach, approving proposed
25 Mandatory Reliability Standards that meet the statutory

1 test, while acting to strengthen over time, assures that we
2 will have Mandatory Reliability Standards in place as soon
3 as possible, while steadily strengthening them.

4 The Final Rule does make a number of significant
5 changes to the proposed Rule, which Staff have reviewed.
6 I'll just mention a few of them:

7 First, the Commission does agree to adopt the
8 definition of "bulk electric system" proposed by the
9 Electric Reliability Organization and supported by various
10 parties.

11 We also, with respect to applicability of the
12 standards to small entities, we accepted the proposal to
13 rely on the Registry, the Compliance Registry.

14 Now, this will clarify the universe of entities
15 that are subject to enforceable Reliability Standards, and
16 it will assure due process and provide notice. It will also
17 have the practical effect of exempting many small entities.

18 However, the Commission does not grant the
19 request for a trial period, and, I think, for good reasons.
20 It's true that most commenters supported a trial period,
21 and, granting the trial period would certainly be the
22 popular course.

23 But the Commission really has a unique
24 perspective and a unique role in this area. Only the
25 Commission is charged with protecting the public interest in

1 this with respect to reliability.

2 To meet protecting the public interest, means
3 establishing strong Reliability Standards and providing for
4 effective enforcement.

5 Congress has given us a duty to establish and
6 enforce Reliability Standards, in order to avoid future
7 blackouts. And as a necessary part of that duty, we must
8 promote a culture of compliance.

9 Now, in my view, allowing a trial period, which
10 would effectively postpone enforcement of Mandatory
11 Reliability Standards, is just simply inconsistent with that
12 duty.

13 Now, at the same time, we recognize that the
14 primary burden of enforcing Reliability Standards, will
15 likely fall to the regional entities. We also recognize the
16 limits on the enforcement resources available to the
17 regional entities, as well as the Electric Reliability
18 Organization, and, for that reason, we directed the Electric
19 Reliability Organization and any regional entities that
20 receive delegated enforcement authority, to concentrate
21 their enforcement resources on the most serious violations
22 during an initial period.

23 We expect that the Electric Reliability
24 Organization and the regional entities, will use
25 prosecutorial discretion, as the Commission itself does.

1 Now, in my view, the actions we've taken
2 regarding applicability of the Mandatory Reliability
3 Standards, have gone a long way to address the concerns of
4 the advocates of a trial period.

5 Now, finally, as we're taking another important
6 step on implementation of the Energy Policy Act of 2005, I
7 think it's important to recognize what EAct did with
8 respect to reliability and what it did not do, because there
9 is certainly confusion on that score.

10 There was evident confusion last summer, as our
11 country set new records for power demand in eight regions of
12 the country.

13 The Energy Policy Act of 2005, did not outlaw
14 blackouts. It also did not grant the Commission plenary
15 power to take any action it saw fit to prevent blackouts.

16 What it did do, was provide for Mandatory
17 Reliability Standards, backed by new enforcement powers
18 granted to the Commission.

19 The Commission was authorized to establish and
20 enforce Reliability Standards, and that's exactly what we're
21 doing today.

22 Now, it's important that we act today to
23 establish Mandatory Reliability Standards. Last summer, we
24 set new record power demand levels in eight regions of the
25 country. Last summer represented the greatest challenge to

1 reliability of the bulk power system since the August 2003
2 blackout, and we certainly don't know what this summer holds
3 in store for us.

4 But with our action today, the U.S. is better
5 prepared to meet reliability challenges this summer, and I'm
6 happy to vote for the rule.

7 Colleagues?

8 COMMISSIONER WELLNGHOFF: Thank you, Mr.
9 Chairman. First, I also would like to commend the Staff,
10 Jonathan and Robert and all your team, for you very hard
11 work on what is a remarkable effort here. It's very much
12 appreciated.

13 The development of Mandatory Reliability
14 Standards is certainly one of the most important
15 responsibilities placed on this Commission by EPAct 2005.

16 The Final Rule we vote on today, that I support,
17 sets out clear rules of the road to provide for the reliable
18 operation of the bulk power system.

19 We received comments from many parties on the
20 NOPR that we issued in October. The NOPR included proposals
21 to allow demand resources to be used to comply with several
22 reliability standards.

23 Many of the commenters supported those proposals,
24 but some raised concerns concerning technical feasibility of
25 demand resources.

1 I appreciate all the comments we received, and
2 they helped me and were an important factor in my
3 deliberations.

4 In this Final Rule, demand resources will be
5 allowed to be used to comply with Reliability Standards
6 governing contingency reserves, reactive power, emergencies,
7 and planning the reliable bulk power system.

8 We also make clear in the Final Rule, that demand
9 resources must be technically capable of providing the
10 functions required by a reliability standard.

11 The ERO will develop the process for determining
12 technical capability through its Reliability Standards
13 development process.

14 There, of course, is much work to be done. I
15 encourage those who are interested in fully integrating
16 demand resources and to maintaining reliability of our bulk
17 power system, to lend your expertise and time to the
18 standards development process.

19 The work ahead is not limited to Reliability
20 Standards, however. Ensuring reliability, as well as
21 reducing congestion and enhancing competition, necessitates
22 the complete integration of demand resources and efficiency
23 into the electric power grid and power markets that we
24 operate.

25 We cannot simply build our way out of those

1 problems, as I've said before; we must spend smartly, we
2 must spend efficiently, and we need to promote demand
3 response alternatives.

4 We must promote investment in efficient
5 transmission facilities and state-of-the-art transmission
6 technologies, as well as facilitate demand response
7 distributed generation renewables, in order to begin to
8 solve our nation's problems.

9 CHAIRMAN KELLIHER: Thank you. Marc?

10 COMMISSIONER SPITZER: Mr. Chairman, thank you
11 very much. Today, this Commission acts to improve the
12 reliability of the electric grid.

13 In my view, this is a seminal accomplishment in
14 the history of our electric industry.

15 I do not suggest we rival Franklin, Faraday, and
16 Edison, in historic significance, but this is a major step
17 in assuring Americans that their Government has acted and
18 will act to ensure the bulk power system is used and
19 operated reliably.

20 The Final Rule approved today, reflects the
21 Commission's careful consideration of comments on the
22 proposed rulemaking. For example, at the urging of certain
23 commentators, the Final Rule adopts the Compliance Registry
24 process proposed by the ERO, which should help small
25 entities in their compliance with the reliability

1 requirements.

2 This rulemaking is a careful balancing of
3 competing interests, and from businesses to homeowners, from
4 children charging iPods to elderly in nursing homes,
5 Americans will not tolerate interruptions in the lifeblood
6 of electricity, particularly where even momentary outages
7 affect so many, including owners, operators, and users not
8 responsible for the outage.

9 With the potential for so much harm, reliable
10 operation of the grid is the industry's job one.

11 However, owners, operators, and users, are
12 entitled to due process and are accorded such in this Final
13 Rule.

14 I was trained as a lawyer that due process means
15 notice and a meaningful opportunity to be heard. The Final
16 Rule carefully balances these competing interests.

17 I particularly note the discussion of enforcement
18 issues in this Final Rule, in Paragraphs 250 to 257.

19 As noted, the Final Rule approves 83 of 107
20 proposed standards, and also requires the ERO to submit
21 significant improvements to 56 of the 83 reliability
22 standards that are being approved today.

23 The other 24 standards will remain pending at the
24 Commission until further information is provided.

25 Therefore, the issuance of the Final Rule is an important

1 first step, but not the final word on a public/private
2 partnership to ensure reliable electricity for America's
3 consumers.

4 I thank the Staff for its hard work and for the
5 commentators that submitted very thoughtful remarks that
6 made this Final Rule a better work product, and I proudly
7 support today's final rule.

8 CHAIRMAN KELLIHER: Great. Colleagues?
9 Commissioner Moeller?

10 COMMISSIONER MOELLER: Thank you, Mr. Chairman.
11 I, too, want to thank the Staff and Jonathan and Robert for
12 the presentation and for your big team effort in this.

13 It may not be the most glamorous issue that we
14 have, and yet it is so key to what we do and our integrity
15 in terms of our role in the bulk power system.

16 In our strategic plan, in fact, the Commission's
17 vision is to provide abundant and reliable energy in a fair
18 and competitive market, and this Rule goes toward that.

19 And the history if this, you know, is really a
20 culmination of over 40 years, with origins, probably, in the
21 '65 blackout in the Northeast, that then followed, as I
22 recall, by a blackout in '77. We had a big blackout in the
23 West in the summer of '96, and that really put everybody on
24 notice.

25 And there was major legislative drafting efforts,

1 as I recall, in the spring of '98. As you know, I worked on
2 legislation in the U.S. Senate, and we passed it unanimously
3 in the summer of 2000, but it was never adopted until 2005,
4 but, in the meantime, we had the blackout of 2003, and it
5 kind of surprised people who were stuck on roller coasters,
6 didn't storm Washington, D.C. to make sure something was
7 done prior to 2005.

8 (Laughter.)

9 COMMISSIONER MOELLER: But this is a -- it's not
10 necessarily the first step; it's certainly not the last
11 step, but it's a major step toward getting these rules in
12 place, enforceable, mandatory, by this summer, and I think
13 the two Commissioners to my immediate right made a great
14 step in making sure that that could happen by making it a
15 priority, prior to the arrival of the three of us.

16 So it's a continuing process. I'll be watching
17 it closely. Again, I want to emphasize my thanks for the
18 enormous effort of not only our Staff, but, as mentioned by
19 Commissioner Spitzer, the number of people who commented on
20 this. I'll be continuing to watch it, and I'm proud to
21 support this Final Rule.

22 CHAIRMAN KELLIHER: Thank you. Commissioner
23 Kelly?

24 COMMISSIONER KELLY: Thank you, Joe. Following
25 the August 14th 2003 blackout, which affected significant

1 parts of the Midwest, as well as the Northeastern part of
2 the United States, and our neighbors in Canada, and impacted
3 an estimated 50 million people, the Joint United States-
4 Canada Task Force, of which FERC was an active member, found
5 that the blackout was caused by several entities violating
6 NERC's then-effective policies and reliability standards.

7 The Joint Task Force identified the need for
8 legislation to make Reliability Standards mandatory and
9 enforceable, with penalties for noncompliance and
10 particularly Reliability Standards to help prevent
11 blackouts.

12 With today's Final Rule, we are approving the
13 first set of mandatory and enforceable Reliability Standards
14 under the authority provided to us by Congress in the Energy
15 Policy Act of 2005.

16 Today's Rule marks the official departure from
17 this country's previous system of voluntary compliance with
18 reliability policies and standards within the electric
19 industry, to a system of mandatory, enforceable standards
20 for the industry.

21 I do want to, though, at this point, to
22 acknowledge the leadership of the Western Electricity
23 Coordinating Council, the one reliability council in the
24 country that pioneered the beginning of mandatory standards
25 through their practice of encouraging utilities to agree to

1 mandatory standards by contract and enforceable.

2 I would also like to thank the Commission Staff
3 for their hard work on this thorough, final rule. This is
4 it, and this is two sides to the page and single-spaced, so,
5 not that paper means everything, but in this case, this is
6 dense paper.

7 The Staff has sifted through voluminous comments
8 submitted in response to the NOPR in this proceeding, and
9 has worked very hard at balancing the divergent views
10 expressed in those comments.

11 I'd also like to thank the commenters. We had
12 very many of them, and they submitted thoughtful comments on
13 our notice, and they helped us in the determinations that we
14 have made in this Final Rule.

15 There are two points that I'd like to make about
16 the Rule itself: First, a point that Joe mentioned, concern
17 about the new requirements and our enforcement program and
18 whether utilities are going to be able to get up to speed
19 and concern about what our enforcement policy would be.

20 The Commission believes that the goal should be
21 to ensure that at the outset, the ERO and the regional
22 entities, can assess a monetary penalty in a situation
23 where, for example, an entity's noncompliance puts bulk
24 power system reliability at risk.

25 Requiring the ERO and regional entities to focus

1 on the most serious violations, as Joe mentioned, will allow
2 the industry time to adapt to the new regime, while also
3 protecting bulk power system reliability by allowing a
4 regional entity to take an enforcement action against an
5 entity whose violation causes a significant disturbance.

6 Our approach strikes, I believe, a reasonable
7 balance in ensuring that the ERO and regional entities, will
8 be able to enforce Mandatory Reliability Standards in a
9 timely manner, while still allowing owners and operators of
10 the bulk power system time to acquaint themselves with the
11 new requirements and enforcement program.

12 In addition, our approach ensures that all users,
13 owners, and operators of the bulk power system, take
14 seriously, mandatory, enforceable, Reliability Standards at
15 the earliest opportunity, and before the 2007 summer peak
16 season.

17 The other point that I'd like to make about this
18 Rule, is that it is not a static process; it's a dynamic
19 process. We frequently think of the passage of a rule or
20 the passage of a statute, as the culmination of a process
21 and that the next step is implementation.

22 Well, it's true in this case, that the next step
23 is implementation, but that's not all. The ERO is going to
24 continue to work to modify and develop, through their
25 reliability standard development process, standards that

1 improve and evolve.

2 I think that you can think of it more as a birth,
3 rather than a culmination. With the Triple Crown soon upon
4 us, I think it's appropriate to think of this as the birth
5 of a thoroughbred colt.

6 We have a thoroughbred animal that we've given
7 birth to here. It's a bit frisky, it's a bit young, and it
8 will take the next two years to develop into a thoroughbred
9 racing animal.

10 And, after that, it will not be finished; it will
11 continue to improve and to be dynamic and as we noted in the
12 Final Rule, any modification to a reliability standard,
13 including a modification that responds to Commission
14 directives, will be developed and fully vetted through the
15 process.

16 This will allow the ERO to consider all the
17 participants' views on how best to modify a standard and
18 will also allow the ERO to take into account, the
19 international nature of the reliability standards and
20 incorporate any modifications requested by our neighbors,
21 Canada and Mexico.

22 I am very pleased with the product that the Staff
23 has produced, I'm pleased with the response of the industry,
24 and I'm happy to vote for this rule.

25 CHAIRMAN KELLIHER: Thank you. I will say that I

1 love your birthing analogy, and last year, I think when we
2 were at the proposed rule stage, I talked about how what we
3 were trying to do, dealing with 102 standards, was like we
4 were trying to deliver a 102-pound baby, and I notice you
5 and Nora both winced when I used that analogy.

6 (Laughter.)

7 CHAIRMAN KELLIHER: But I liked your birthing
8 analogy today.

9 COMMISSIONER KELLY: Thank you, Joe.

10 CHAIRMAN KELLIHER: It's less painful sounding.

11 (Laughter.)

12 COMMISSIONER KELLY: You inspired me.

13 (Laughter.)

14 CHAIRMAN KELLIHER: Well, with that, why don't we
15 vote?

16 ACTING SECRETARY POSEY: We will now take a vote,
17 starting with Commissioner Wellinghoff.

18 COMMISSIONER WELLNGHOFF: Aye.

19 ACTING SECRETARY POSEY: Commissioner Moeller?

20 COMMISSIONER MOELLER: Aye.

21 ACTING SECRETARY POSEY: Commissioner Spitzer?

22 COMMISSIONER SPITZER: Aye.

23 SECRETARY POSEY: Commissioner Kelly?

24 COMMISSIONER KELLY: Aye.

25 ACTING SECRETARY POSEY: Chairman Kelliher?

1 CHAIRMAN KELLIHER: Aye.

2 ACTING SECRETARY POSEY: The last items for
3 discussion this morning are E-2 and 3, together. This is a
4 Midwest Independent System Transmission System Operator Cost
5 Allocation, and it's a presentation by Roshini Thayaparan of
6 the Office of the General Counsel; Eli Massey, Office of
7 Energy Markets and Reliability; Russell Fairbanks, Office of
8 Energy Markets and Reliability.

9 MS. THAYAPARAN: Mr. Chairman and Commissioners,
10 good morning. My name is Roshini Thayaparan, and I'm with
11 the Office of the General Counsel.

12 With me this morning are Eli Massey and Russell
13 Fairbanks from the Office of Energy Markets and Reliability;
14 Elizabeth Rylander, from the Office of the General Counsel;
15 as well as Patrick Clarey, Michael Donnini, Jessie Hensley,
16 Laurel Hyde, and Christopher Miller from the Office of
17 Energy Markets and Reliability, also contributed to Items E-
18 2 and E-3.

19 These related cases involve another step toward
20 the development of a comprehensive transmission cost
21 allocation and pricing mechanism for the Midwest ISO region.

22 The Midwest ISO has been working with its
23 stakeholders and the Organization of MISO States, through
24 its regional expansion criteria and benefits or RECB Task
25 Force, to develop a cost allocation methodology for new

1 projects.

2 Item E-3 involves the Midwest ISO's initial
3 transmission cost allocation methodology for new projects,
4 including baseline reliability projects, generator
5 interconnection, and requests for transmission service,
6 based on the outcome of the Midwest ISO's RECB-1 stakeholder
7 process.

8 Following an April 2006 technical conference, the
9 Commission found, in a November 29, 2006 Order, that the
10 Midwest ISO's proposed methodology for cost allocation for
11 high-voltage, baseline reliability projects, was just and
12 reasonable.

13 That cost allocation is a 20-percent postage
14 stamp and an 80-percent subregional cost allocation for
15 reliability projects meeting certain threshold criteria.

16 Item E-3 denies requests for rehearing of the
17 November 29th Order and affirms the Commission's acceptance
18 of the 20-percent/80-percent split.

19 It also clarifies that the 20-percent/80-percent
20 split is an initial step towards regional cost-sharing in
21 the Midwest ISO region, and states that this finding does
22 not prejudice the appropriate level of regional cost-sharing
23 for the Midwest ISO's post-transition period.

24 The Draft Order further clarifies that the
25 Midwest ISO should include a comprehensive explanation of

1 all of its cost allocation methodologies in the post-
2 transition period rate design to be made in August 2007.

3 Item E-2 involves the Midwest ISO's proposed cost
4 allocation methodology for regionally-beneficial projects
5 which are new economic upgrades that meet specific threshold
6 criteria.

7 Under its weighted gain, no loss proposal, the
8 Midwest ISO seeks to ensure that proposed economic projects
9 will have a regional benefit and that the cost of any such
10 projects are borne by those entities that benefit from the
11 proposed upgrade.

12 For a proposed economic project to qualify for
13 cost-sharing, it must satisfy two benefits tests: First,
14 the Midwest ISO proposes a weighted projection of production
15 cost savings and reductions in LMPs to calculate project
16 benefits.

17 Second, the Midwest ISO proposes applying these
18 benefits to a sliding scale of benefits/cost ratio, such
19 that projects scheduled to be constructed relatively soon,
20 need to demonstrate fewer project benefits than projects
21 scheduled to be built farther in the future.

22 A proposed project must also meet three
23 qualifying tests, to be designated a regionally-beneficial
24 project, and therefore qualify for cost-sharing.

25 The project must, first, cost more than \$5

1 million; second, involve facilities with voltages of 345 KV
2 or higher; and, third, not be determined to be a baseline
3 reliability project or a new transmission access project.

4 If the project meets these three additional
5 tests, then it is determined to be a regionally-beneficial
6 project, and, therefore, eligible for the cost allocation.

7 According to the proposed cost allocation
8 methodology for regionally-beneficial projects, 20 percent
9 of the project costs will be allocated to all Midwest ISO
10 customers, and 80 percent will be allocated among entities
11 in three geographic subregions -- West, Central, and East --
12 on a license plate basis, based on the beneficiary
13 analysis.

14 The proposed methodology provides for a deviation
15 from this cost allocation methodology, when the calculated
16 benefits to any one of the three subregions, either in terms
17 of the production cost benefit or the LMP energy cost
18 benefit, are negative.

19 Item E-2 conditionally accepts the Midwest ISO's
20 proposal for the cost allocation methodology for regionally-
21 beneficial projects.

22 The Draft Order finds the Midwest ISO's proposal,
23 as conditioned, is a just and reasonable proposal for the
24 allocation of costs associated with economic-based
25 transmission investments.

1 The Draft Order also finds that the proposal is
2 consistent with the principles articulated in Order No. 890,
3 the Commission's Final Rule on OATT reform, as well as prior
4 cases, that the beneficiaries of the proposed upgrades, have
5 a responsibility to contribute towards the cost of those
6 projects.

7 The Draft Order requires, however, specific
8 revisions to ensure that beneficiaries of transmission
9 upgrades, are allocated a proportional cost of the new
10 expansions.

11 For example, with regard to the no-loss analysis,
12 the Draft Order directs the Midwest ISO to use the net
13 production cost and LMP energy costs of projected benefits,
14 so that projects with an overall projected regional benefit,
15 are not excluded from cost-sharing.

16 The Draft Order also directs a series of annual
17 reports to help the Commission, the Organization of MISO
18 States, and stakeholders, to analyze the effectiveness of
19 the proposed transmission expansion cost recovery plans.

20 The November 29 Order already directed the
21 Midwest ISO to report in August 2007, on the effectiveness
22 of the cost-sharing methodology accepted therein, for new
23 facilities.

24 The Draft Order directs the Midwest ISO to
25 discuss in that report, how all of the cost allocation

1 methodologies established in both the RECB-1 and RECB-2
2 proceedings, relate to the methodology that the Midwest ISO
3 will submit for allocating the cost of existing projects in
4 August 2007.

5 The Draft Order also directs the Midwest ISO to
6 make subsequent reports in August 2008 and August 2009, that
7 analyze the effectiveness of all of the transmission
8 expansion cost allocation methodologies.

9 This concludes our presentation, and we would be
10 happy to respond to any questions you may have. Thank you.

11 CHAIRMAN KELLIHER: Great, thank you. I want to
12 thank you for that presentation, and thank the Staff for
13 their work on these Orders. They're very complicated, but I
14 commend you for your work.

15 Now, today, the Commission is approving important
16 Orders clarifying the cost allocation for both reliability
17 and economic transmission projects in the Midwest ISO
18 region.

19 This action is significant and removes an
20 obstacle to increased transmission investment in the
21 Midwest.

22 There are various challenges to development of a
23 robust power grid, including siting, pricing, planning, and
24 cost allocation, and the Commission is acting on all fronts.

25 Last Fall, we issued a Final Rule on pricing and

1 a Final Rule on siting. Just last month, we issued the OATT
2 Reform Final Rule that made some significant improvements to
3 planning, to regional transmission planning.

4 But cost allocation is perhaps the most difficult
5 challenge to increased investment in the grid, and failure
6 to resolve cost allocation issues, will retard badly needed
7 investment, regardless of our success at addressing siting,
8 pricing, and planning.

9 Now, there are two basic approaches to cost
10 allocation: One is to determine cost allocation on a
11 project-by-project basis, and that can lead to
12 administrative litigation of each and every proposed
13 project.

14 Now, under this approach, investments will not be
15 made, until there's a final determination on cost
16 allocation, and actually, depending on the final outcome,
17 the investment may actually never be made.

18 Now, the other approach is to establish a general
19 rule that allocates costs in a manner that closely
20 approximates usage and benefits of a class of transmission
21 projects. A general rule provides regulatory certainty
22 necessary to speed investments.

23 Now, the Commission has demonstrated regional
24 flexibility in its approach towards transmission cost
25 allocation. With our action today, we've approved three

1 different approaches towards cost allocation in three
2 different regions, namely, New England, the Southwest Power
3 Pool, and the Midwest ISO.

4 Now, we have approved different approaches, for a
5 number of reasons: The United States does not have a
6 national power grid; we have regional grids and there are
7 significant differences among those regions.

8 Regional flexibility is consistent with the
9 nature of the grid. Regional flexibility is also consistent
10 with the legal standard by which we review cost allocation
11 proposals.

12 Under the Federal Power Act, we are required to
13 approve a tariff filing, if we determine it to be just and
14 reasonable. There may be other approaches that are also
15 just and reasonable, but we cannot substitute a preferred
16 approach, if the applicant's approach is just and
17 reasonable.

18 And we accept the possibility that there's more
19 than one just and reasonable way to allocate costs.

20 Now, I want to emphasize that for a cost
21 allocation proposal to be deemed just and reasonable, it
22 must also be supported by the record. We find the cost
23 allocation approach proposed by Midwest ISO, to be supported
24 by the record.

25 Now, to the extent usage changes over time, that

1 may warrant further review of the postage-stamp allocation
2 here.

3 Now, the general rule proposed by Midwest ISO and
4 approved by the Commission, fairly allocates the cost of new
5 transmission projects, in a manner that closely approximates
6 projected usage and benefits.

7 The only way to more closely approximate usage
8 and benefits, would be to evaluate each proposed project and
9 determine cost allocation project-by- project through
10 administrative litigation.

11 Now, that approach may result in a more perfect
12 determination of usage and benefits, but at a great cost.
13 The cost would be major delays in future transmission
14 investment, caused by the lack of a general rule and
15 providing regulatory certainty, and, on balance, I think
16 it's better to establish that general rule and start
17 strengthening the grid, sooner, rather than later.

18 My hope is that today's Orders will clear the way
19 for major investments in the Midwest ISO power grid, and I
20 support the Order.

21 Colleagues? Commissioner Kelly?

22 COMMISSIONER KELLY: Thanks, Joe. I agree with
23 you absolutely. It is key to getting transmission built,
24 that cost allocation schemes be developed in advance, so
25 that we don't have to fight about that on a project-by-

1 project basis.

2 And I want to thank the Midwest ISO, the
3 Organization of MISO States, and the participants in the
4 proceedings, that have worked very hard on coming up with
5 allocation schemes that deal both with cost allocation of
6 reliability projects, as well as cost allocation of economic
7 projects.

8 I'd like to talk about the cost allocation of
9 reliability projects first, which is E-3 on our Agenda.

10 Last year, we received MISO's filing of the 80/20
11 proposal, or, as we call it, the 80/20 split for cost
12 allocation of reliability projects.

13 The Commission set it for a technical conference
14 to explore the issues associated with the proposal, to only
15 socialize 20 percent of the cost of new transmission
16 facilities across the entire MISO footprint.

17 I believe that transmission facilities are not
18 only key to reliability, but they are the medium that
19 permits adequate competition in generation.

20 And my personal feeling when we set this to the
21 tech conference, based on that fact, was that a higher level
22 of socialization was probably desirable, because of the
23 national public interest in healthy competition in
24 generation.

25 In other words, it's better to spend a little

1 more on transmission, if it will spawn larger savings in
2 generation. However, the tech conference and the filed
3 comments made it clear that there was not record support for
4 a higher regional number, and I believe that it would have
5 been counterproductive to try to force a number in this kind
6 of a situation.

7 Furthermore, as the Order in the E-2 case
8 explains, if the goal is to get sufficient transmission
9 built, then there is little point in attempting to force
10 cost allocation schemes on regional players. In particular,
11 given their pivotal role in siting transmission facilities,
12 we must give due consideration to the cost allocation views
13 of affected states and state authorities, so long as those
14 views are just and reasonable.

15 Accordingly, last year, we accepted Midwest ISO's
16 proposal for reliability projects, based on the 80/20 split,
17 although we have required MISO to monitor the effects of
18 this proposal and report back to us to ensure that this cost
19 allocation is actually working to get transmission built.

20 The Order that we issue today in E-3, addresses
21 requests for rehearing of our Order from last year, and I
22 support our decision to keep our initial decision intact.

23 MISO has also committed to address the open
24 question of cost allocation for economic upgrades, and the
25 Order in E-2 addresses that filing.

1 Cost allocation for economic upgrades introduces
2 a whole new level of difficulty over and above reliability
3 upgrades.

4 I believe that the slightly-modified proposal
5 that we propose to accept in this Order, addresses these
6 additional concerns appropriately.

7 Beneficiaries will be identified in a rational
8 manner, and those who will experience net benefits from an
9 upgrade, will share appropriately in its cost.

10 The biggest concern that I have had with
11 beneficiary-pays proposals, is that usually the
12 determination of benefits of an upgrade, is, frankly,
13 artificially narrowed to the point where we often have a
14 true free-rider problem; that is, one set of customers who
15 will benefit from an upgrade, escapes cost responsibility,
16 while another set of customers has to pay for the entire
17 project, even though they do not receive all the benefits of
18 it.

19 However, I believe the approach adopted here,
20 will provide an appropriately robust determination of
21 beneficiaries, and thus an appropriate allocation of costs.
22 Certainly, that's true as an initial matter.

23 As the annual reports required by this Order are
24 prepared and discussed each year, I look forward to seeing
25 what lessons we have learned, and, what, if any changes, are

1 deemed appropriate.

2 For example, I noted with interest, the proposals
3 by some commenters in this case, including the Organization
4 of MISO States, that because today's economic upgrades will
5 likely be needed for reliability at some point in the
6 future, maybe the lower socialization levels applied under
7 this proposal, should be limited to some initial period,
8 like five years, and then remaining costs could be spread
9 wider thereafter.

10 While we did not find enough support in the
11 record to adopt that proposal here, it seems to me to still
12 hold merit.

13 For example, generators making poor siting
14 decisions that require an economic transmission upgrade,
15 would still need to pay proportionally more of the cost of
16 that upgrade, than others, but if the very existence of this
17 new line, leads to more loads or generators locating in the
18 area over time, and the line ultimately becomes beneficial
19 to others or needed for reliability, then maybe it would be
20 appropriate for any remaining un-depreciated rate base to be
21 spread more widely in the future, which brings me back to my
22 earlier point: Society will be best served by building
23 enough transmission to ensure adequate competition in
24 generation.

25 Appropriate and fair cost allocation for both

1 reliability and economic projects, is the best way for us to
2 encourage this outcome, and, therefore, I am pleased to vote
3 for both E-2 and E-3.

4 CHAIRMAN KELLIHER: Thank you. Jon?

5 COMMISSIONER WELLNGHOFF: Thank you, Mr.
6 Chairman.

7 I do want to commend the Staff team.
8 Transmission cost allocation is not an easy area in any
9 regard. Thank you all for your hard work on this.

10 In these proceedings, MISO has proposed
11 methodologies that would allow for regional allocation of a
12 portion of the costs associated with new transmission
13 projects to meet MISO's criteria for baseline reliability
14 projects or regionally-beneficial projects.

15 It's important, I believe, to recognize that the
16 development of transmission facilities may benefit a wide
17 range of customers and that many types of benefits may
18 warrant consideration in evaluating a project's impact.

19 Where a project has widespread benefits, it is
20 appropriate for costs associated with that project to be
21 allocated broadly, as well. Today's Orders accept MISO's
22 initial effort to implement that principle.

23 We also acknowledge that the views of state
24 authorities are particularly important to our consideration
25 of regional cost allocation proposals.

1 In addition, we recognize the importance of
2 MISO's stakeholder process, and we encourage MISO to provide
3 stakeholders with the opportunity to express views on
4 overall proposals that MISO plans to bring forward to this
5 Commission.

6 And we emphasize that we expect stakeholders to
7 make good-faith efforts to reach consensus.

8 Finally, today's Orders require MISO to submit
9 reports that will help MISO, states, and other stakeholders,
10 and this Commission, to evaluate MISO's cost allocation
11 methodologies.

12 These reports will provide the basis for
13 potential future changes to MISO's approach. For these
14 reasons, I am pleased to support today's Orders.

15 CHAIRMAN KELLIHER: Thank you. Commissioner
16 Spitzer?

17 COMMISSIONER SPITZER: Thank you, Mr. Chairman.
18 I filed a concurring opinion, very brief, on a couple of
19 points, and I want to add some oral comments, if I may.

20 I think great things are happening in America's
21 heartland. We have the Midwest ISO and the MISO States and
22 the stakeholder groups addressing a very vast issue.

23 There's a lot of money on the table here, as well
24 as historic and geographic challenges to cost allocation.

25 And the stakes are significant in terms of

1 dollars for each jurisdiction and each region, but the
2 ultimate goal is to produce the transmission in order to
3 have a reliable system, as well as have the various
4 subregions within the Midwest, share in the economic and
5 environmental benefits of access to generation.

6 And the Midwest ISO has, in conducting the
7 stakeholder process, achieved a huge amount of success in
8 generating discussion and ultimately some degree of
9 consensus.

10 The two points I raise, are: First, I am
11 respectful of the stakeholder process, and I think the law
12 compels a degree of respect for the stakeholder process.

13 But in order for that process to work, there must
14 be an articulation of viewpoints to produce an actual
15 consensus.

16 In bilateral negotiations, there is often an
17 incentive to keep your cards close to the vest, so as not to
18 bargain against yourself.

19 That theory breaks down in a stakeholder
20 consensus process, that the parties need to articulate
21 views.

22 I think there was evidence in the record to
23 justify the conclusion in this Order and I am proud to
24 support it, but in future iterations of this process, I
25 would hope that the stakeholders would be more forthcoming

1 in expressing their views, so we actually could have a
2 stated consensus that is voted on. I think that would
3 improve the process.

4 Secondly, at Paragraph 173, there is a discussion
5 of this demarcation between economic and reliability, and I
6 always felt that there was a degree of artificiality
7 inherent in that.

8 Virtually all transmission projects that are of
9 major significance, embody both. And there is a concern of
10 mine that a labeling of a project as an economic project or
11 economic upgrade, could ultimately become a red herring and
12 generate unnecessary and inappropriate opposition in a
13 siting context.

14 I do feel that the Commission's resolution of
15 this matter at Paragraphs 181 and 182, is an appropriate
16 resolution, but I note that in different contexts, an
17 arbitrary distinction or delineation between economic and
18 reliability upgrades, could be counterproductive.

19 But, on the whole, this is a good work product.
20 I support the Order. I think it's well founded, based in
21 the record.

22 I appreciate the contribution of the
23 jurisdictions.

24 Again, great things are happening in the Midwest.
25 The Midwest ISO is taking off. They've done an awful lot in

1 recent history. They're not as important as the Big Ten, as
2 an organization in the Midwest.

3 (Laughter.)

4 COMMISSIONER SPITZER: I think I have to mention
5 March Madness. Commissioner Kelly made the race horse
6 analogy, and I have the shameful admission that my
7 university was not invited, but we look with enthusiasm upon
8 the future deliberations of the Midwest ISO and the
9 stakeholders. I'm pleased to support the Order.

10 CHAIRMAN KELLIHER: Thanks. With that, I think
11 we're ready to vote. Let's vote.

12 ACTING SECRETARY POSEY: As to Item E-2 on the
13 discussion agenda, Commissioner Spitzer is concurring, with
14 a separate statement.

15 Now we will vote for both items together,
16 starting with Commissioner Wellinghoff.

17 COMMISSIONER WELLNGHOFF: Aye.

18 ACTING SECRETARY POSEY: Commissioner Moeller?

19 COMMISSIONER MOELLER: Recused.

20 ACTING SECRETARY POSEY: Commissioner Spitzer?

21 COMMISSIONER SPITZER: Aye, with a concurring
22 statement.

23 ACTING SECRETARY POSEY: Commissioner Kelly?

24 COMMISSIONER KELLY: Aye.

25 ACTING SECRETARY POSEY: Chairman Kelliher?

1 CHAIRMAN KELLIHER: Aye.

2 COMMISSIONER KELLY: Could I note that my
3 university did make it.

4 (Laughter and discussion off the record.)

5 CHAIRMAN KELLIHER: With that, I think, with no
6 other business, I want to commend the Secretary, the Acting
7 Secretary, for a fine performance today.

8 I want to thank my colleagues for a good piece of
9 work today. Thank you.

10 (Whereupon, at 11:25, the Open Meeting was
11 adjourned.)

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