

# Federal Energy Regulatory Commission

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Phone: 202-347-3700  
Fax: 202-737-3638  
Email: [info@acefederal.com](mailto:info@acefederal.com)  
Internet: [www.acefederal.com](http://www.acefederal.com)

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

926TH COMMISSION MEETING  
OPEN SESSION

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

Thursday, November 15, 2007  
10:07 a.m.

926th Open Commission Meeting  
November 15, 2007

1 APPEARANCES:

2 COMMISSIONERS PRESENT:

3 CHAIRMAN JOSEPH T. KELLIHER (Presiding)

4 COMMISSIONER SUEDEEN G. KELLY

5 COMMISSIONER MARC SPITZER

6 COMMISSIONER PHILIP MOELLER

7 COMMISSIONER JON WELLINGHOFF

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

2 (10:07 a.m.)

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

8 Please join us in the Pledge of Allegiance.

9 (Pledge of Allegiance recited.)

10 CHAIRMAN KELLIHER: I'm going to start off with  
11 just a brief comment about an upcoming meeting. On December  
12 11th, the Commission is going to hold a Technical Conference  
13 on the Queue. It's not the James Bond Q or the letter; it's  
14 the French word.

15 And I just want to commend Commissioner Kelly.  
16 This was Commissioner Kelly's idea. I have to say, I was  
17 struck at the interest in the Queue Conference at the NARUC  
18 meeting this week.

19 There were probably about a dozen state  
20 commissioners that came up to me and said they really were  
21 looking forward to it, and they were glad we were doing it.

22 So I want to thank you for the suggestion. This  
23 issue is important. It really came to light in the Midwest,  
24 where we're seeing tremendous interest in wind and a flood  
25 of wind interconnection Orders. It's a flood that MISO

1 didn't necessarily anticipate, and I don't fault them for  
2 that.

3 But the Queue issues do arise in other regions,  
4 and the Queue issues are a little bit different in other  
5 regions, so I'm glad we're doing it, and I think it's a good  
6 idea, and I just wanted to recognize you, my colleagues, if  
7 you want to make any comments about the Queue Conference.

8 COMMISSIONER KELLY: Thanks, Joe. I really  
9 appreciate that.

10 It came to my attention when I was preparing for  
11 a talk to the Wind Energy, that we have, just within the  
12 last year, frankly, unprecedented levels of renewable  
13 generation planned for our electric system.

14 Joe mentioned the increase in renewables in MISO.  
15 But also there's a very significant statistic -- a few  
16 statistics from California, that I wanted to mention,  
17 because I think it really puts into perspective, the big  
18 change that we're seeing.

19 On January 1st of 2006, California had -- the  
20 California ISO had 5,717 megawatts of renewables in their  
21 Queue. One year later, January 1st, 2007, that had  
22 increased by about 200 percent to 10,994 megawatts.

23 The next six months, the first six months of this  
24 year, that increased again by 300 percent. So there are now  
25 32,700 megawatts of renewables in California's Queue, and

1 19,000 of those are wind projects, and those are 78  
2 projects.

3 MISO's statistics are very similar. MISO  
4 currently has 51,000 megawatts of wind in their Queue,  
5 representing 224 projects.

6 And our old interconnection Queue process is the  
7 sequential study process, which, frankly, makes a lot of  
8 sense when you're talking about connecting traditional  
9 generation, as we were when we developed that process.

10 But, today, this Queue process makes it very  
11 difficult, particularly for renewables and particular for  
12 wind. Wind tends to have a short development timeline.  
13 There are pressures on wind to develop sooner, rather than  
14 later, because of the production tax credit, and because of  
15 the state RPS issues.

16 And these wind projects often need significant  
17 transmission expansion, and there frequently are multiple  
18 small, independent developments, and so there are multiple  
19 requests.

20 And we need a new process or an improved  
21 process, and, clearly, MISO and the Cal ISO, and, actually,  
22 Bonneville, understand that, and they have been working with  
23 their stakeholders to develop an improved process, and I  
24 thought that having a technical conference would be a good  
25 way to support their efforts, and also to focus a spotlight

1 on the problem and give some impetus to quicken the process  
2 to a solution.

3 So, thank you for agreeing to hold the Tech  
4 Conference.

5 CHAIRMAN KELLIHER: I look forward to it.

6 COMMISSIONER KELLY: Me, too.

7 CHAIRMAN KELLIHER: And there are different  
8 issues in different regions. In New England, the Queue  
9 issue there is, well, if you're selected in the forward  
10 capacity market, but you're relatively far back in the  
11 Queue, what happens?

12 So, there's a wind aspect to the Queue issues,  
13 but there's also the variation of that in New England.

14 COMMISSIONER KELLY: Right.

15 CHAIRMAN KELLIHER: So I think the conference is  
16 good. It's going to look at what's the nature the problem  
17 and what actions, if any, are required by the Commission.

18 So, colleagues? Jon?

19 COMMISSIONER WELLINGHOFF: Thank you, Joe. I do  
20 appreciate, Suedeen, you bringing this to the Chairman's  
21 attention, and moving forward with the workshop that we're  
22 going to have, the meeting we're going to have.

23 I think it's very important. It's a nationwide  
24 problem.

25 It came to my attention when I looked at the

1 ISO/RTO Council report last month. You know, talking about  
2 statistics, they indicate that there are 300,000 megawatts  
3 in the Queue; 300 gigawatts in the Queue, and 45 percent of  
4 that is wind.

5 And exactly as Suedeen has outlined, it presents  
6 great difficulties for wind to go through this traditional  
7 sequential Queue process and actually meet their deadlines  
8 for their PPAs for the RPSs.

9 I've also then, after reading that report, had  
10 contact with the members of the solar industry, and there  
11 are numerous new companies that are trying to move forward  
12 with very large concentrating solar projects in the  
13 Southwest.

14 And they're also having similar problems. In  
15 fact, I had a meeting over at DOE with the DOE managers of  
16 those solar programs there, and there were a number of the  
17 developers, who were very, very interested in our meeting,  
18 and so I've put them in contact with Ray Palmer, who is  
19 coordinating the meeting for us. Thank you very much for  
20 having this come forward.

21 CHAIRMAN KELLIHER: Colleagues? Phil?

22 COMMISSIONER MOELLER: This was a problem about  
23 seven or eight years ago throughout a lot of the country, as  
24 well, and then it eased off, but, thank you, Commissioner  
25 Kelly, for doing this.

1 By the way, Queue is spelled Q-U-E-U-E.

2 (Laughter.)

3 CHAIRMAN KELLIHER: Marc?

4 COMMISSIONER SPITZER: Well, it's not  
5 surprising, Mr. Chairman, that you received comments from  
6 state commissioners in support of this. We, in Arizona, had  
7 a couple of projects that did not get financed or  
8 constructed, because of these technical issues, and it's  
9 entirely appropriate for a Technical Conference to address  
10 those types of concerns.

11 As Commissioner Kelly pointed out, you have a lot  
12 of 12/31 year-end closing for financing and tax reasons, and  
13 it was a round peg in a square hole, in terms of the regular  
14 interconnection and siting process, at both the state and  
15 federal levels.

16 So I very much look forward to this, and to  
17 seeing solutions. I would agree that solutions are going to  
18 vary, based on region, geography, and other factors, so,  
19 again, this is a very appropriate and timely conference.

20 CHAIRMAN KELLIHER: Great, good. Before we turn  
21 to business, I just want to note how many notations we've  
22 issued since the last meeting, and we've issued 71  
23 Notational Orders since the last meeting, so, again, we do  
24 an awful lot of work in between the open meetings, and I  
25 think it helps us a great deal at the open meetings, to

1 focus on the bigger policy matters and to avoid strikes.

2 So I thank my colleagues and I thank the Staff,  
3 and I thank the advisors for doing so much work out of the  
4 public eye over the past month.

5 Madam Secretary, let's turn to the Consent  
6 Agenda.

7 SECRETARY BOSE: Good morning, Mr. Chairman, good  
8 morning, Commissioners. Since the issuance of the Sunshine  
9 Act Notice on November 8, 2007, E-12 and E-15 have been  
10 struck from this morning's agenda.

11 Your Consent Agenda Items for this morning, are  
12 as follows:

13 Electric Items: E-1, E-2, E-4, E-5, E-7, E-8, E-  
14 10, E-13, E-14, E-16, E-17, and E-18.

15 Gas Items: G-2, G-3, G-4, G-5, G-6, G-7, G-8,  
16 and G-9.

17 Hydro Items: H-1, H-2, H-3, H-4, and H-5.

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

19 Commissioner Kelly is not participating in  
20 Consent Item E-14.

21 As required by law, Commissioner Spitzer is not  
22 participating in Consent Items E-17 and C-4.

23 As to E-2, Commissioner Kelly is dissenting, with  
24 a separate statement; and Commissioner is dissenting, with a  
25 separate statement.

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

5           As to E-16, Commissioner Moeller is concurring,  
6 with a separate statement, and Commissioner Wellinghoff is  
7 concurring, with a separate statement.

8           Now, we will take a vote on this morning's  
9 Consent Agenda, beginning with Commissioner Wellinghoff.

10           COMMISSIONER WELLINGHOFF: Madam Secretary, did  
11 you indicate that E-3 is on the Consent Agenda, or not?

12           CHAIRMAN KELLIHER: That's a good point. It's  
13 not.

14           SECRETARY BOSE: No, I did not, thank you.

15           COMMISSIONER WELLINGHOFF: So it's not on the  
16 Consent Agenda?

17           SECRETARY BOSE: Well, it's going to be  
18 discussed.

19           COMMISSIONER WELLINGHOFF: So we're not voting on  
20 it now?

21           SECRETARY BOSE: No.

22           COMMISSIONER WELLINGHOFF: Okay, good.

23           SECRETARY BOSE: Thank you for that correction.

24           COMMISSIONER WELLINGHOFF: That's fine. With  
25 respect to the Consent Agenda, I vote aye, with the

1 exception of E-2, where I'm dissenting, and noting my  
2 concurrence on E-16.

3 SECRETARY BOSE: Commissioner Moeller?

4 COMMISSIONER MOELLER: I vote aye, with the  
5 concurrence on E-16.

6 SECRETARY BOSE: Commissioner Spitzer?

7 COMMISSIONER SPITZER: Madam Secretary, I vote  
8 aye, noting the recusals on Items E-17 and C-4.

9 SECRETARY BOSE: Commissioner Kelly?

10 COMMISSIONER KELLY: I vote aye, with the  
11 exception of E-2, in which I dissent, and I'm not  
12 participating in E-14.

13 SECRETARY BOSE: Chairman Kelliher.

14 CHAIRMAN KELLIHER: I vote aye.

15 SECRETARY BOSE: The first item for discussion  
16 and presentation this morning, is G-1, concerning a Draft  
17 Notice of Proposed Rulemaking for Promotion of a More  
18 Efficient Capacity Release Market.

19 There will be a presentation by David  
20 Maranville, from the Office of the General Counsel. He is  
21 accompanied by William Murrell from the Office of Energy  
22 Markets Regulation, Richard Howe and Bob McLean from the  
23 Office of the General Counsel.

24 MR. MARANVILLE: Good morning, Chairman  
25 Kelliher, Commissioners. My name is David Maranville. I'm

1 with the Office of the General Counsel.

2 Here at the table with me, are William Murrell,  
3 from the Office of Energy Market Regulation; Richard Howe,  
4 from the Office of the General Counsel, and Robert McLean,  
5 from the Office of the General Counsel.

6 The Draft Notice of Proposed Rulemaking in Docket  
7 Number RM08-1, proposes two major changes to the  
8 Commission's capacity release policies and regulations that  
9 are intended to promote more efficient capacity release  
10 markets:

11 First, the draft NOPR proposes to permanently  
12 lift the maximum rate ceiling on secondary capacity releases  
13 of one year or less. As proposed, the elimination of the  
14 maximum rate ceiling, does not apply to either long-term  
15 capacity releases of more than one year, nor does it apply  
16 to primary sales of capacity by interstate pipelines.

17 The second change the draft NOPR proposes, is to  
18 facilitate the use of asset management arrangements. In  
19 general, asset management arrangements entail prearranged  
20 capacity releases whereby a capacity-holder releases some or  
21 a portion of its capacity to an asset manager who agrees to  
22 supply the gas needs of the releasing shipper.

23 The first modification we propose in this area,  
24 is to exempt capacity releases from the time prohibition on  
25 tying any capacity to extraneous conditions.

1           The second change is to exempt capacity releases  
2 made as part of an asset management arrangement, from the  
3 bidding requirements set forth in Section 284.8 of the  
4 Commission Regulations.

5           The draft NOPR defines capacity releases that are  
6 made as part of an asset management arrangement, and thus  
7 will qualify for these exemptions, as any prearranged  
8 release that contains a condition that a releasing shipper  
9 may, on any day, call upon the replacement shipper to  
10 deliver to the releasing shipper, a volume of gas equal to  
11 the daily contract demand of the released transportation  
12 capacity.

13           The draft NOPR requests comments within 45 days  
14 of publication in the Federal Register. This concludes my  
15 presentation. I'll be happy to answer any questions you may  
16 have.

17           CHAIRMAN KELLIHER: Thank you very much. I  
18 appreciate the presentation and also the Order. I think  
19 this is a very high-quality Order that's well written, and  
20 so I thank the Staff for that.

21           Let me just make some general comments about this  
22 proposed rule. I think this is an important rule.

23           We're proposing a fundamental reform of our  
24 capacity release rules, which go back 15 years, so I think  
25 our action today is pretty significant. Our overall goal is

1 to improve the efficient use of the interstate natural gas  
2 pipeline network.

3 As Staff indicated, we're making two basic  
4 changes: We're removing the price cap for short-term  
5 capacity releases, and we're also taking some steps to  
6 facilitate asset management arrangements that are important  
7 to many gas utilities and others.

8 And, I think, the effect of our proposed rule,  
9 will be to provide shippers greater flexibility and increase  
10 their options in obtaining natural gas supplies.

11 Now, this capacity release program was  
12 established back in 1992, as part of the landmark natural  
13 gas pipeline restructuring in Order 636. What the  
14 Commission really sought to do at the time, was to maximize  
15 the availability of unbundled, firm transmission service, to  
16 all participants in the gas market, and it did so, because  
17 the Commission recognized that for gas shippers to have  
18 access to gas supplies at reasonable price, it was essential  
19 that they have meaningful access to the gas pipeline  
20 network.

21 And, as a result of the capacity release rules,  
22 shippers can purchase firm transportation service, either  
23 from a pipeline or from another shipper. I think the  
24 proposed rule here -- we've been very careful in our  
25 approach toward the proposed rule.

1           This process started with two petitions we  
2 received over a year ago, and we issued a -- in response to  
3 the petitions, we issued a Request for Comments on the  
4 current operation of our capacity release program, so we  
5 really took a hard look at our program, the overall program,  
6 not just within the bounds of the petitions themselves.

7           We considered whether any changes in the  
8 capacity release policies can be made to improve the  
9 efficiency of the natural gas market.

10           We received extensive comments, and our proposed  
11 rule is based on the record.

12           Now, the market for short-term capacity  
13 transportation services, has changed significantly since the  
14 capacity release rules were first established 15 years ago,  
15 and we believe the reforms that we propose today, can  
16 improve operation. Our capacity release rules provide  
17 shippers with greater flexibility and increased shipper  
18 options on how they obtain natural gas supplies.

19           I think this is an important proposal, and I look  
20 forward to voting for it.

21           Colleagues? Jon?

22           COMMISSIONER WELLINGHOFF: Thank you, Mr.  
23 Chairman. Mr. Chairman, I think we need to promote smart  
24 and efficient infrastructure investment. We need to  
25 accommodate wind, hydrokinetic energy, demand response

1 resources, distributed generation, as well as state-of-the-  
2 art transmission technologies.

3 I appreciate Commissioner Moeller's leadership in  
4 the area of hydrokinetics, but we also need to foster the  
5 efficient operation of existing infrastructure, both gas and  
6 electric. In regard to efficient operation, I agree with  
7 the concept that we must wring every ounce of energy out of  
8 our delivery systems.

9 And, for me, the goal of our actions today, in  
10 proposing to modify the capacity release program, is to  
11 maximize the use of that pipeline capacity.

12 Increasing the use of pipeline capacity, was also  
13 a primary goal of the Commission's prior experimental two-  
14 year program of removing rate ceilings for short-term  
15 capacity releases.

16 However, the data was inconclusive about the  
17 linkage between allowing prices to exceed the maximum tariff  
18 rate and the increase in the available short-term capacity.  
19 Today, in conjunction with removing the rate ceiling, we are  
20 making accommodation in our capacity release program, for  
21 asset management agreements to operate.

22 A vast majority of the commenters, assert that  
23 AMAs provide substantial benefits, including more load-  
24 responsive use of gas supply, greater liquidity, increased  
25 use of transportation capacity, cost effective procurement

1 vehicles for LDCs and other end users, and enhanced  
2 competition.

3           The American Gas Association, for example, notes  
4 that AMAs are an important mechanism used by LDCs to enhance  
5 the participation in the secondary market.

6           LDCs are not the only entities that may benefit  
7 from AMAs. As noted by the New Jersey Natural Gas Company,  
8 in addition to LDCs, there are many other types of large  
9 natural gas purchasers such as electric generation  
10 facilities and large gas process industrial users, who face  
11 similar challenges with managing and optimizing their  
12 natural gas portfolios.

13           We asked Staff to issue a report on the  
14 performance of the modified capacity release program, within  
15 six months, after two years of experience under the new  
16 rules that were proposed. My hope is that the data will  
17 show that the new rules will have fostered greater use of  
18 the interstate pipeline capacity and, in fact, improve  
19 efficiency in the use of this vital piece of this nation's  
20 infrastructure. Thank you.

21           CHAIRMAN KELLIHER: Thank you. Colleagues?  
22 Commissioner Kelly?

23           COMMISSIONER KELLY: Thank you, Joe. I agree  
24 with you that I think that what we've done today, is to  
25 propose changes that respond to how the market has developed

1 over the last 15 years, and I also believe that the changes  
2 we propose today, will significantly improve the efficiency  
3 of the marketplace, while at the same time, continuing to  
4 preserve the goals that our capacity release program has  
5 always sought to preserve, including ensuring that the  
6 program operates in a transparent manner, and allowing  
7 transfers of interstate pipeline capacity between shippers  
8 on a not-unduly-discriminatory basis.

9           What I'd like to focus on in my comments, is the  
10 proposed changes that apply to asset management agreements.  
11 What we really are doing here, is seeking to foster asset  
12 management agreements, to enable the benefits that come from  
13 that, to flow primarily to local distribution companies and  
14 their customers.

15           So one of the changes that we've proposed, is to  
16 provide a partial exemption for asset management agreements,  
17 from the Commission's regulations, that otherwise prohibit  
18 tying up capacity releases to extraneous conditions.

19           It's clear from all the comments that we've  
20 received in this rulemaking that asset management agreements  
21 provide significant benefits to market participants and the  
22 marketplace.

23           As Jon mentioned, they provide greater  
24 flexibility for firm shippers, greater liquidity in the  
25 market, more utilization of transportation capacity, and

1 greater overall market efficiencies.

2 So, our proposed partial exemption, would allow  
3 firm shippers to prearrange releases of capacity to an asset  
4 manager, along with upstream assets in gas purchase  
5 agreements, where the capacity being released, will be used  
6 to meet the releasing shipper's gas supply requirements.

7 We anticipate that these will primarily be used  
8 by local distribution companies to optimize their gas  
9 management and provide for meeting their firm requirements,  
10 at the same time, at those periods of time when they don't  
11 need their entire capacity on the pipeline, give them the  
12 flexibility to work with an asset manager to release that  
13 into the general market, so that others who want to use it  
14 on a short-term basis, can.

15 And the NOPR proposes a definition of asset  
16 management agreement releases that really strives to ensure  
17 that the releases are made as part of the bona fide asset  
18 management agreement, while still being flexible enough not  
19 to interfere with the development of efficient and  
20 beneficial agreements.

21 I would like to commend PG&E and Southwest Gas,  
22 as well as a group of gas marketers who undertook the effort  
23 to bring this issue to our attention, and persuaded us that  
24 it's time to look at our capacity release policy and modify  
25 it in the face of changes that have developed over the last

1 15 years.

2 CHAIRMAN KELLIHER: Thank you. Phil?

3 COMMISSIONER MOELLER: Thank you, Mr. Chairman.

4 I won't repeat many of the points you made in your  
5 statement, but as you said, it has been over a year since  
6 these petitions were filed, and I'm glad we're putting this  
7 out today. We have a couple of major changes.

8 There is the one we're more familiar with,  
9 regarding the fact that we're removing rate caps, but, as  
10 Commissioner Kelly noted, pretty significant proposal to try  
11 and enhance more efficient usage of the system, with  
12 portfolio managers.

13 I hope that the industry sees that we're being  
14 responsive to the changing needs of the interstate natural  
15 gas markets, and I want to extend thanks to the team -- I  
16 know they worked hard -- to everyone who filed comments, and  
17 those who will be filing comments in January. Thank you.

18 CHAIRMAN KELLIHER: Thank you. Commissioner  
19 Spitzer?

20 COMMISSIONER SPITZER: Thank you, Mr. Chairman.

21 I particularly appreciated in this rulemaking, the  
22 historical recitation at the beginning of the document. And  
23 it's important to look back.

24 I'm going to post a more detailed statement, but  
25 the overview incorporates the historical change since 1992,

1 and the importance of natural gas in our economy.

2           And these issues are, I think, of greater  
3 salience and importance to ratepayers. If you look at the  
4 dominance of natural gas as a fuel for incremental  
5 electricity generation, that only heightens the impact of  
6 gas supply on electricity prices, as well as gas prices for  
7 U.S. ratepayers.

8           And I'm very pleased that the Chairman and the  
9 Commission are attending to all aspects of the natural gas  
10 supply chain, and this is a very important component of that  
11 natural gas supply chain.

12           This proposed rulemaking endorses competition and  
13 innovation. I believe it will stimulate new infrastructure,  
14 while increasing the efficiency of existing storage and  
15 pipeline capacity.

16           My colleagues have already identified the main  
17 issues -- the permanent elimination on the cap for capacity  
18 release of less than a year, and the sanction and approval  
19 of asset management arrangements.

20           But I'd also like point out that we are  
21 retaining and, in fact, heightening the importance of  
22 transparency and public notice for natural gas  
23 transactions, and we're endeavoring to be vigilant to  
24 prevent discrimination, particularly with regard to  
25 marketers operating as a virtual pipeline.

1           In conclusion, I think this is a major step  
2 forward, particularly for natural gas LDCs, but for all U.S.  
3 ratepayers.

4           CHAIRMAN KELLIHER: Thank you.

5           COMMISSIONER MOELLER: Mr. Chairman, I have one  
6 question for the team.

7           If you could elaborate on why the NOPR does not  
8 remove the price ceiling for long-term capacity releases?

9           MR. MURRELL: Commissioner, the primary  
10 rationale for removing the price cap, is really focused on  
11 short-term price spikes, most typically occurring during  
12 Winter months. Examples that are illustrated in the draft  
13 NOPR itself, kind of give you a sense of how that looks over  
14 the course of a relatively shorter term of a year.

15           But you can see from the graphs that we provide  
16 there, that you're talking about events that occur sometimes  
17 only once a year for a very few number of days.

18           We felt that the shorter-term contracts, because  
19 they are directly linked into these quickly-evolving short-  
20 term market circumstances, provide the kind of response that  
21 will let the market work more flexibly and more efficiently.

22           We didn't see real linkage or connection with  
23 that purpose in terms of doing anything with longer-term  
24 contracts. But once we get this out on the street and  
25 people can react and comment on it, we may get comments that

1 we can consider during the rulemaking process.

2 After we move forward with some kind of a final  
3 rule and we get some experience, we get the two-year report  
4 or the two-and-a-half-year report, then we can evaluate, is  
5 there a logical next step that we should take in terms of  
6 the duration where we allow these kinds of flexible deals to  
7 take place.

8 COMMISSIONER MOELLER: Very good, thank you.

9 CHAIRMAN KELLIHER: Let me just ask a question,  
10 really in the same light. What's the rationale for not  
11 removing the price cap on releases by pipelines?

12 MR. MURRELL: We feel that there are connections  
13 between the notion of removing the price cap for pipeline  
14 primary capacity, and the incentive or motivation that any  
15 individual pipeline might have for expanding or building new  
16 infrastructure.

17 Our concern was that in a rapidly-expanding  
18 market, you could have circumstances where it was in the  
19 pipeline's financial best interests, not to build new  
20 infrastructure, if, by doing that, it was able to generate  
21 higher prices for its existing capacity.

22 We're not trying to cast aspersion on pipeline  
23 motivations, but in terms of just the economic incentives,  
24 we were concerned that that perverse incentive, might lead  
25 to exactly the wrong kind of results, in terms of developing

1 necessary infrastructure.

2 CHAIRMAN KELLIHER: Great, thank you. Any other  
3 comments or questions?

4 (No response.)

5 CHAIRMAN KELLIHER: Let's vote.

6 SECRETARY BOSE: The vote begins with  
7 Commissioner Wellinghoff.

8 COMMISSIONER WELLINGHOFF: I vote aye.

9 SECRETARY BOSE: Commissioner Moeller?

10 COMMISSIONER MOELLER: Aye.

11 SECRETARY BOSE: Commissioner Spitzer?

12 COMMISSIONER SPITZER: I vote aye.

13 SECRETARY BOSE: Commissioner Kelly?

14 COMMISSIONER KELLY: Aye.

15 SECRETARY BOSE: Chairman Kelliher?

16 CHAIRMAN KELLIHER: Aye.

17 SECRETARY BOSE: The next item for discussion  
18 this morning, is M-1, concerning a Draft Rulemaking  
19 Upgrading the Commission's E-Filing System.

20 There will be a presentation by Wilbur Miller,  
21 from the Office of the General Counsel. He is accompanied  
22 by Andrew Hinz and Brooks Carter, from the Office of the  
23 Executive Director.

24 MR. MILLER: Good morning, Mr. Chairman and  
25 Commissioners. My name is Wilbur Miller. I'm an attorney

1 with the Office of General Counsel. With me at the table  
2 this morning, are Brooks Carter and Andrew Hinz of the  
3 Office of the Executive Director.

4 M-1 is a draft Final Rule that would implement E-  
5 Filing 7.0, which is a significant upgrade to the  
6 Commission's electronic filing system.

7 This draft Rule would follow a Notice of  
8 Proposed Rulemaking that the Commission issued in July of  
9 this year. The draft Final Rule would expand the E-Filing  
10 system to include all documents currently filed at the  
11 Commission, with a few exceptions to be listed by the  
12 Secretary.

13 Currently, the system accepts only specific  
14 categories listed by the Secretary. Under this proposed  
15 expansion, documents not currently accepted, such as  
16 oversized documents like maps, privileged documents, and  
17 documents constituting critical energy infrastructure  
18 information, could be filed electronically.

19 The principal exceptions would be tariff  
20 filings, which could be the subject of a separate  
21 proceeding; certain forms, primarily ones that are already  
22 filed through the Commission's E-Forms system, and documents  
23 subject to Protective Orders.

24 Under this draft Order, E-Filing would remain an  
25 option, along with paper filing. The draft Rule would also

1 implement simple online forms for interventions and for  
2 comments filed in some proceedings.

3           These features are referred to in the draft as  
4 document lists, intervention, and quick comment. The user  
5 would simply fill out a few identification fields and then  
6 place comments or the basis for intervention in a comment  
7 filed.

8           Document list intervention would be available in  
9 all proceedings, quick comment would be available in  
10 proceedings with the prefix-P, which are hydropower projects  
11 proceedings; P-F, which are prefilings NEPA activities for  
12 proposed gas pipelines, and C-P, which are certificates for  
13 interstate natural gas pipelines.

14           These are the proceedings that produce the bulk  
15 of the comments that the Commission receives from members of  
16 the public who are not regular users of the Commission's  
17 online systems.

18           The quick comment feature could be expanded, if  
19 that appears to be appropriate, based on experience.

20           This rulemaking would not adopt a proposal made  
21 in the NOPR to move the Commission's filing deadline from  
22 5:00 p.m. to midnight.

23           The draft Final Rule also discusses some  
24 questions related to file formats and paper copies. The  
25 draft would direct the Secretary, before the expansion goes

1 into operation, to issue instructions on allowable formats  
2 and on requirements for paper copies of some electronically  
3 filed documents.

4 With respect to the latter, in some instances, it  
5 is not possible yet for Commission staff to make proper use  
6 of documents such as maps, by viewing them on-screen. It  
7 therefore will be necessary for the time being, for the  
8 Commission to receive paper copies of some electronically  
9 filed documents. This would be specified in the  
10 Secretary's instructions.

11 The need for such copies will be reduced over  
12 time and eventually eliminated.

13 The draft Rule would become effective 30 days  
14 from publication in the Federal Register. The E-Filing 7.0  
15 upgrade is currently expected to be ready to roll out in  
16 approximately mid-January.

17 As stated in the Draft Order, the Secretary would  
18 issue an announcement in advance of the upgrade going  
19 online. That concludes my presentation, and we'll be happy  
20 to answer any questions you may have.

21 CHAIRMAN KELLIHER: Thank you very much. I'm  
22 smiling, because this has been a very contentious  
23 proceeding.

24 (Laughter.)

25 CHAIRMAN KELLIHER: You wouldn't think that an

1 Order titled Filing Via the Internet, would have elicited  
2 the interest and the contention we've had in this.

3 The comments were interesting. We got even some  
4 poetry submitted to us.

5 (Laughter.)

6 CHAIRMAN KELLIHER: It wasn't very good poetry.

7 (Laughter.)

8 CHAIRMAN KELLIHER: And it might even be bad  
9 poetry, but we had poetic license by some of the commenters.  
10 I half expected that there would be demonstrators in the  
11 room with signs about midnight filing and the evils of  
12 midnight filing.

13 (Laughter.)

14 CHAIRMAN KELLIHER: And I think we should have  
15 considered alternative titles to this one. Instead of  
16 Filing by the Internet, we could have considered Two Seconds  
17 to Midnight, which would have been one option.

18 (Laughter.)

19 CHAIRMAN KELLIHER: Or Five O'Clock High.

20 (Laughter.)

21 CHAIRMAN KELLIHER: But I think Five O'Clock High  
22 ended up winning out, and I'm glad we reached consensus. We  
23 spent a lot of time internally, but I'm glad we reached  
24 consensus on this, and Five O'Clock High, it is.

25 Colleagues, questions or comments?

1           COMMISSIONER KELLY: I was going to start out by  
2 saying that for those in the audience who think this is a  
3 snoozer of a Rule, it's pretty exciting, but I think you've  
4 already dispelled the notion that this was a boring or is a  
5 boring Rule.

6           This is a Rule that benefits everyone. It  
7 simplifies for Commission participants, the ability to file  
8 and retrieve documents electronically, and it provides  
9 easier access to the Commission for people who are not as  
10 familiar with Commission proceedings, such as landowners who  
11 are involved -- often involved in energy construction  
12 projects.

13           And it has efficiency benefits and environmental  
14 benefits. It will reduce the burden on regulated entities,  
15 not to mention the Commission staff, making it easier for  
16 people to get involved in our proceedings. It will also  
17 save a considerable number of trees by greatly expanding  
18 the kinds of documents that now may be electronically filed.

19           In fact, Staff estimates that E-Filing 7.0 will  
20 now make eligible for e-filing, approximately 90 percent of  
21 the total documents that the Commission receives annually.  
22 And although it's voluntary, Staff anticipates that, at a  
23 minimum, we can expect our e-filings to double over last  
24 fiscal year.

25           I must admit that since I left the private

1 practice of law four years ago to come to the Commission, I  
2 have not thought much about the process for filing  
3 documents, thankfully so.

4 (Laughter.)

5 COMMISSIONER KELLY: But at the same time, the  
6 electronic system here at the Commission, is quite advanced.  
7 It's really a pleasure to work here, and it seemed maybe  
8 almost magic to be able to hit a key on my computer and  
9 retrieve any document filed at the Commission. That's much  
10 easier than Lexus-Nexus, or those other proprietary systems.

11 But it's not magic. The ability to file or  
12 retrieve documents so effortlessly, is a testament to our  
13 Staff's extraordinary dedication and hard work.

14 While many of us take for granted, the ability to  
15 electronically file or access documents, our Staff is  
16 quietly and efficiently working behind the scenes to enable  
17 us to do so.

18 And as I looked into the statistics, I realized  
19 that this is no small feat. In Fiscal Year 2007, the  
20 estimate is that 60,000 documents were filed in E-Library;  
21 almost 22,000 of those documents were received via the E-  
22 Filing system.

23 And these numbers don't even include the  
24 approximately 7,000 Electric Quarterly Reports that are  
25 filed annually via the EQR System.

1           There are so many dedicated Staff members who  
2 work on a daily basis to make this possible, that there  
3 could be a long list. But I would like to single out Brooks  
4 Carter, in particular.

5           Brooks is here with us today, and Brooks  
6 coordinates all of the documents received at the  
7 Commission, both paper and electronic, and he handles all of  
8 the issues associated with these tens of thousands of  
9 filings, not the least of which was the midnight filing  
10 issue, which was huge.

11           Clearly, this is an extraordinary portfolio, yet  
12 Brooks always performs at the highest level. Brooks has  
13 been at the Commission for a little over 30 years, and has  
14 been instrumental in E-Filing's inception, which occurred in  
15 2000, and its subsequent evolution.

16           I have heard from sources, that Dockets, in  
17 general, and E-Filing, in particular, would not be what it  
18 is today, without you, so I want to thank you personally,  
19 and say thank you to the team that worked on today's rule,  
20 which I'm confident will serve as a model for the Federal  
21 Government.

22           And with that, I'm very pleased to vote out this  
23 Order.

24           CHAIRMAN KELLIHER: Great. Colleagues? Jon?

25           COMMISSIONER WELLINGHOFF: I want to thank the

1 team and staff for their hard work on the E-Filing rule, but  
2 I'm still holding out for 8:00.

3 (Laughter.)

4 CHAIRMAN KELLIHER: Commissioner Spitzer?

5 COMMISSIONER SPITZER: Thank you. First, I  
6 appreciate the Chairman's good nature on the -- what he say,  
7 I guess, was the unfortunate resolution of the timing.

8 CHAIRMAN KELLIHER: I didn't suggest it was  
9 unfortunate.

10 (Laughter.)

11 COMMISSIONER SPITZER: One of the pleasures of  
12 this Commission, is the ability to have a good disagreement  
13 without being disagreeable. I've really appreciated that.

14 You know, the practice of law has changed so  
15 much. If you think that I'm not that old and I remember  
16 before even wordprocessors, you know, compiling documents.

17 And then I do remember standing in line to make a  
18 5:00 filing at the Clerk of the Superior Court, as a first-  
19 year associate, and I wore my three-piece suit and I had my  
20 stack of documents with the 15 original and 15 conformed  
21 copies, and I'd be badgered by people asking me to do the  
22 divorce that I had to politely decline.

23 Obviously, we've had a revolution in not only the  
24 practice of law, but in filings with federal, state, and  
25 local government agencies. And this is accommodating that.

1           Suedeem stole my thunder. I was going to say how  
2 this was pro-environment and we're saving billions of trees  
3 in the rain forest and elsewhere by this, and I'm  
4 appreciative that we're accommodating technology in a way  
5 that's very friendly.

6           Not all Washington agencies are known to be  
7 friendly to those outside of Washington, D.C., who have an  
8 interest, not only litigants, but those ordinary citizens  
9 who have an interest, and I'm really proud that FERC is  
10 continuing with the tradition of being a very receptive  
11 agency to people all over the country, not only those who  
12 practice in Washington, D.C.

13           And then a final thought that the one image that  
14 came to my mind with the midnight filing, was the people  
15 that would be checking their Blackberrys during kids' band  
16 concerts. I was reminded of this with my own son's  
17 interminable band concert the other night.

18           (Laughter.)

19           COMMISSIONER SPITZER: And now we can have the  
20 parents checking baseball scores instead of filings at the  
21 FERC.

22           (Laughter.)

23           COMMISSIONER SPITZER: I'm pleased to support  
24 this.

25           CHAIRMAN KELLIHER: Commissioner Moeller?

1           COMMISSIONER MOELLER: Thank you, Mr. Chairman.  
2 I was a little surprised that we didn't get more comments  
3 from the West Coast, asking for a little bit later time.

4           CHAIRMAN KELLIHER: Bonneville did.  
5           (Laughter.)

6           COMMISSIONER MOELLER: Well, there were two, as I  
7 recall.

8           (Laughter.)

9           COMMISSIONER KELLY: Not enough.

10          (Laughter.)

11          COMMISSIONER MOELLER: Not enough in this game.

12          But there are legions of associates of law firms,  
13 who will never know how much to thank us, by keeping it at  
14 5:00.

15          (Laughter.)

16          COMMISSIONER MOELLER: But that does lead me to a  
17 question to the team. I'm curious, with the 5:00, can you  
18 guess what percentage of our filings come in in that last  
19 hour?

20          MR. MILLER: It sort of depends on the  
21 proceeding.

22          COMMISSIONER MOELLER: Sure.

23          MR. MILLER: We have some days that are very  
24 heavy and other days that are maybe 100 filings, but we have  
25 received as many as 300 in one day. But if it's a

1 contentious proceeding, I would say probably 20 to 25  
2 percent might come in in the last hour.

3 COMMISSIONER MOELLER: My understanding, in  
4 talking to folks, was that that's your incentive to wait  
5 until the last few minutes, so that you don't give your  
6 arguments away.

7 And part of, I think, our concern about going to  
8 midnight, was that we would have people inefficiently  
9 sitting around waiting to hit the key at 11:55 or so, and so  
10 it does bring up the question of can we mask filings to  
11 encourage people to file earlier, and not discourage them  
12 from filing earlier in a way that would give their  
13 arguments away. Do you get where I'm going?

14 MR. MILLER: Yes. We have an acceptance  
15 process. When someone files, that filing is not  
16 immediately accessible to others, but only to the  
17 submitter. Now, the submitter may forward links to that  
18 filing and other people can get to it, but we still have an  
19 acceptance process.

20 A lot of times, if we get a huge number of  
21 filings, unless Staff has asked us to process those quickly,  
22 sometimes those 4:00 to 5:00 filings are not processed till  
23 the next morning. So, there are ways that we could manage  
24 that, but it would be a little bit more difficult.

25 COMMISSIONER MOELLER: Well, I guess I'd be

1 curious to hear from the industry as to whether that's  
2 something that we potentially could encourage, as a way to,  
3 again, make for a more efficient process and not give a  
4 disadvantage to someone who files earlier. Thank you.

5 I know you all worked hard, so I appreciate the  
6 effort.

7 MR. MILLER: If I may take a moment to respond to  
8 Commissioner Kelly's comments, I appreciate those, but  
9 without Andy working the huge number of hours that he works,  
10 and people like Melissa Ferebee, who's the Project Manager,  
11 keeping us on track, and the huge team that we have  
12 supporting E-Filing, E-Library, the Public Reference Room,  
13 Dockets and Registry, and the Records Center, neither I nor  
14 this program would be to first base.

15 So I have the honor to be the public face, but by  
16 no means am I responsible for most of this. It's a lot of  
17 the work of others. Thank you very much.

18 COMMISSIONER KELLY: Thank you.

19 CHAIRMAN KELLIHER: I want to make some brief  
20 remarks, not rebuttal remarks or anything.

21 (Laughter.)

22 CHAIRMAN KELLIHER: I want to explain, to me,  
23 what are the virtues of this Rule, and just a minor comment  
24 about midnight filings, since I've been out'd as the  
25 advocate of midnight filing.

1           But, first of all, I think there are three  
2 virtues to this Rule. I think that one is administrative  
3 efficiency. The more documents we receive electronically,  
4 it's easier for us to handle documents that are received  
5 electronically, rather than papers, so that's a virtue.

6           The second is openness. It's easier for people  
7 on the outside to access electronically-filed documents.  
8 They can access them faster.

9           But also it's more democratic, and I think that's  
10 one of the virtues of this Rule that Commissioner Kelly  
11 touched on. We want to make our process very accessible to  
12 citizens, because not everyone who is interested in FERC  
13 proceedings, is a FERC practitioner.

14           There are some people who care just about a hydro  
15 project, and they don't otherwise care about FERC and they  
16 never will. They care about the licensing of one hydro  
17 project or one LNG project, or a pipeline, and we want to  
18 make our process very accessible to them.

19           And that was really my primary interest in  
20 midnight. It was more for the person, the citizen that  
21 lives near a hydro project, they get home from work, and  
22 they can't really file at 2:00 in the afternoon, and to make  
23 it more accessible to them, to the average citizen.

24           Now, we didn't get a lot of average citizens'  
25 comments in our record, so their views aren't really

1 reflected in the record.

2 I'm also conscious that I'm the last Easterner on  
3 the Commission, and I wanted to stand up for the West Coast  
4 in their --

5 (Laughter.)

6 CHAIRMAN KELLIHER: -- in their ability to file  
7 later than 2:00 in the afternoon, but I bend to the will of  
8 the Western position, and --

9 (Laughter.)

10 CHAIRMAN KELLIHER: -- and I think it is a good  
11 outcome and we are a multi-member Commission for this kind  
12 of reason, and I submit to the majority.

13 COMMISSIONER KELLY: Well, Mr. Chairman,  
14 Westerners like to rise early.

15 (Laughter.)

16 COMMISSIONER KELLY: And get out on the ranch  
17 before the sun comes up, so they don't mind the earlier  
18 filing deadline.

19 One of the concerns that motivated me to not be a  
20 real proponent of midnight filing, was, as previously being  
21 a litigator -- not that I ever engaged in this kind of  
22 behavior, but some people would attempt to file on Friday at  
23 the last minute, so that they could start that response  
24 clock running over the weekend, to cut down on the  
25 respondent's time to respond.

1 COMMISSIONER SPITZER: I've heard that.

2 (Laughter.)

3 COMMISSIONER KELLY: Yes, I know you never did  
4 that, either. Friday midnight filings are not a good  
5 quality of life.

6 CHAIRMAN KELLIHER: Shall we vote?

7 SECRETARY BOSE: The vote begins with  
8 Commissioner Wellinghoff.

9 COMMISSIONER WELLINGHOFF: I vote aye.

10 SECRETARY BOSE: Commissioner Moeller?

11 COMMISSIONER MOELLER: Aye.

12 SECRETARY BOSE: Commissioner Spitzer?

13 COMMISSIONER SPITZER: Aye.

14 SECRETARY BOSE: Commissioner Kelly?

15 COMMISSIONER KELLY: Aye.

16 SECRETARY BOSE: Chairman Kelliher?

17 CHAIRMAN KELLIHER: Aye.

18 SECRETARY BOSE: The last item for discussion  
19 this morning, is E-3, concerning Southern California Edison,  
20 Its Petition for Declaratory Order Requesting Certain Rate-  
21 Sensitive Treatment.

22 There will be a presentation by Rachel Spiker  
23 from the Office of Energy Markets Regulation. She is  
24 accompanied by Tina Ham from the Office of the General  
25 Counsel, and Jennifer Shipley from the Office of Energy

1 Markets Regulation.

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1 MS. SPIKER: Good morning, Mr. Chairman,  
2 Commissioners:

3 My name is Rachael Spiker. With me at the table  
4 are Tina Ham and Jennifer Shipley.

5 E-3 is a Draft Order that grants Southern  
6 California Edison Company's Petition for A Declaratory Order  
7 requesting incentive rate treatments for its three proposed  
8 transmission projects pursuant to Orders Nos. 679 and 679A.

9 Southern California proposes to spend \$2.5  
10 billion in constructing the Devers-Palo Verde II project,  
11 the Tehachapi Transmission Project, and the Rancho Vista  
12 Substation Project.

13 In its petition, Southern California requests the  
14 following rate incentives:

15 A return on equity adder for new transmission  
16 investment of 150-basis points for the Devers-Palo Verde II  
17 and Tehachapi Projects and 100-basis points for the Rancho  
18 Vista Project.

19 Recovery of 100 percent of the cost of capital  
20 associated with the Construction Work in Progress.

21 Recovery of Southern California's abandonment  
22 costs for Devers-Palo Verde II and Segments 3 through 11 of  
23 the Tehachapi Project if these Projects, or a portion  
24 thereof, are cancelled due to factors beyond Southern  
25 California's control.

1           And a return on equity increase of 50-basis  
2 points for Southern California's participation in the  
3 California Independent System Operator Corporation.

4           The Draft Order finds that Southern California's  
5 projects meet the rebuttable presumption of eligibility for  
6 incentive rate treatment because they have been approved by  
7 a regional planning process that evaluated the projects for  
8 reliability and their impact on congestion.

9           The Draft Order also finds that Southern  
10 California Edison has satisfied the nexus requirement by  
11 demonstrating that the total package of incentives is  
12 tailored to address the risks or challenges faced by the  
13 company and grants the requested incentives with the  
14 adjustment to the requested return on equity incentives.

15           The Draft Order finds that Southern California's  
16 overall risk is reduced by the grant of Construction Work in  
17 Progress and abandoned plant cost incentives.

18           Therefore, the Draft Order reduces to 125-basis  
19 points the return on equity incentive for the Devers-Palo  
20 Verde II and the Tehachapi Projects and reduces to 75-basis  
21 points the incentive for the Rancho Vista Project.

22           The Draft Order also grants 50-basis points  
23 return on equity incentive for Southern California's  
24 continued participating in the California ISO.

25           This concludes my presentation. The team will be

1 happy to answer any questions you may have.

2 CHAIRMAN KELLIHER: Thank you very much. We  
3 really appreciate your work on this Order.

4 I have some comments really more about the  
5 general subject matter of transmission investment incentives  
6 rather than the Order, per se.

7 But first of all I just want to comment that the  
8 United States does not have a "third-world power grid."  
9 That phrase has really stuck in the minds of people, but I  
10 think it is incorrect.

11 We do have the most extensive bulk power system  
12 in the world. However, I do not think the United States has  
13 the bulk power system that it needs to assure reliability  
14 and to support competitive wholesale power markets.

15 I think really one of the main questions before  
16 the Commission right now is: How do we strengthen the grid?  
17 How do we develop the system that we need going forward?

18 I think the answer is probably not a single step  
19 that we can take to guarantee that outcome, and instead FERC  
20 is taking a number of different approaches that hopefully  
21 will achieve that end.

22 We are strengthening transmission planning  
23 through the regional planning requirements of Order 890.  
24 The grid is regional in nature, and planning should reflect  
25 the true nature of the bulk power system.

1           We also have established regional cost allocation  
2 rules in the organized markets to reduce uncertainty about  
3 recovery of investment in grid expansion. And we have  
4 adopted different approaches in different regions, and I  
5 think that is appropriate since there are significant  
6 differences in the physical nature and use of the regional  
7 power grids.

8           Congress also recognized the importance of  
9 expanding the transmission grid in the Energy Policy Act of  
10 2005 through adoption of the siting provisions, as well as  
11 the transmission incentives provisions.

12           We have implemented the new siting authority that  
13 Congress gave us two years ago, and we have been careful in  
14 our approach. We have implemented rules that are consistent  
15 with the view that states retain the primary responsibility  
16 for siting transmission, and that the FERC role is secondary  
17 and supplemental.

18           Now we have also granted incentives to make grid  
19 investment more attractive. We have granted a range of  
20 incentives, including allowing higher returns. Now to me  
21 it only stands to reason that higher returns will encourage  
22 greater levels of grid investment.

23           I think the Commission's approach has achieved  
24 great success in securing higher levels of transmission, and  
25 that approach has achieved great success in securing high

1 levels of investment in our natural gas pipeline network.

2 I do think FERC policies with respect to  
3 transmission are making a difference. Since 2002, grid  
4 investment in the United States has roughly doubled. We are  
5 seeing the kind of major backbone transmission projects  
6 proposed that haven't been put forward for 25 years.

7 I think these trends suggest the success of our  
8 current approach towards transmission. However while the  
9 level of transmission investment is much higher, it is still  
10 not at the levels that we need to assure grid reliability  
11 and support competitive regional power markets.

12 I think to some extent we are still playing  
13 catchup for a sustained period of under-investment that only  
14 recently came to an end. And I think the United States  
15 needs to achieve still higher levels of investment.

16 The Commission has struggled with its approach  
17 toward incentives for a number of years. We issued a  
18 proposed policy statement on transmission pricing incentives  
19 in January 2003. But the real purpose of that policy  
20 statement was encouraging Regional Transmission Organization  
21 membership, rather than investment. And I think some  
22 members of the Commission, including myself, really thought  
23 the focus should be in investment rather than RTO  
24 membership.

25 I think Congress helped. Congress helped focus

1 our efforts with the Transmission Incentives Provisions of  
2 the Energy Policy Act of 2005.

3 I think there is no doubt that the primary object  
4 of the Transmission Incentives Provisions of the Energy  
5 Policy Act is encouraging greater investment. But I  
6 acknowledge that encouraging deployment of transmission  
7 technologies is also a stated goal of Congress.

8 In the wake of the Energy Policy Act of 2005, the  
9 Commission was able to issue a Transmission Incentives Rule.  
10 We issued a Proposed Rule and a Final Rule unanimously under  
11 the prior Commission, and a Rehearing Order unanimously  
12 under the current Commission.

13 I thank my colleagues for working in good faith  
14 with me and with each other on the Rehearing Order. The  
15 projects before us today, both in this Order and also within  
16 E-6, seem just the kind of transmission improvements that  
17 Congress had in mind.

18 I think we should apply the test as defined in  
19 the Rehearing Order in our deliberations on Transmission  
20 Incentives and appreciate we can reach different conclusions  
21 as we apply that test in the Rehearing Order. But I think  
22 if we depart from the test that is defined in our own rules  
23 we undermine regulatory certainty.

24 Now despite our agreement on the Rehearing Order,  
25 there are still differences among the Commission on

1 Transmission Incentives. I think probably the greatest  
2 difference is the extent to which we should allow higher  
3 returns to encourage greater investment.

4 I think we all agree that there is a need for  
5 higher levels of transmission investment. I think there is  
6 some disagreement as to whether higher returns are necessary  
7 to secure that outcome. I personally think that we should  
8 consider allowing higher returns, and that we are probably  
9 unlikely to achieve the necessary levels of investment if we  
10 do not.

11 Now despite these differences, the Commission has  
12 worked in good faith on the Orders before us today, both  
13 this Order, E-6, and I forget the other E, the Pepco Order,  
14 but I think in the Orders that we deal with today our  
15 disposition is consistent with the Rules that the Commission  
16 adopted last year.

17 So I do support this Order as well as the other  
18 Orders.

19 Colleagues? Commissioner Kelly.

20 COMMISSIONER KELLY: Well thank you, Joe, and  
21 thank you for your elucidation of some of the difficulties  
22 inherent in trying to decide these cases. I know that all  
23 five of us struggle with this and with the evolution of  
24 incentive policy.

25 I would like to speak today about this case

1 because I concur in part in this case, and I dissent in  
2 part. And I would like to explain my take on this case.

3 This case involves three separate Southern  
4 California Edison transmission projects: The Devers-Palo  
5 Verde II line, a series of projects that together make up  
6 the Tehachapi Projects, and the Ranch Vista Substation.

7 I take a two-step approach in evaluating each  
8 project for incentives. The first step is really the  
9 threshold question:

10 Is the project one which qualifies for  
11 transmission incentives?

12 And then the second step, if the answer is 'yes,'  
13 is to try to determine what is the right combination of  
14 incentives for the project based on the incentives  
15 requested, and what risks the project faces.

16 In terms of these three projects that Southern  
17 California Edison proposes, Rancho Vista did not clear the  
18 threshold question for me. It strikes me as very much a  
19 routine project. By Southern California Edison's own  
20 admission it is needed primarily for load growth and may be  
21 required as early as 2009. And therefore I disagree with my  
22 colleagues on that one.

23 I do however agree with the majority that the  
24 Tehachapi and Devers Projects are eligible for incentives;  
25 that they do qualify. They are not routine. They provide

1 great public benefits, et cetera, et cetera.

2 I looked at those projects and asked: Well, what  
3 set of incentives are appropriate for these? Southern  
4 California Edison requested pre-granted abandonment  
5 authority, and 100 percent CWIP.

6 To me that makes a lot of sense for these  
7 projects in particular. They have long lead times, and  
8 construction has not begun on either of them. And there is  
9 regulatory uncertainty about how long they will take and,  
10 frankly, whether they are actually going to be completed--in  
11 particular the Devers case which is in litigation.

12 So therefore I thought that, I believed that  
13 granting CWIP and Pre-granted Abandonment is important and  
14 are incentives that are necessary to encourage the  
15 investment in those projects. I also believe that granting  
16 the 50-basis point adder for continued participation in the  
17 ISO is appropriate.

18 However, I don't believe that either project made  
19 a sufficient showing with the regard for need for return on  
20 equity adders. Thus, I dissent from Southern California  
21 Edison's request for 150-basis point adder.

22 The reason I dissent is that I believe that most  
23 of the risk associated with these projects, their long lead  
24 time and their regulatory uncertainty, is accounted for by  
25 granting 100 percent CWIP, and abandoned plant recovery.

1           It was not apparent to me from Southern  
2 California Edison's application how additional basis point  
3 adders to the ROE would encourage greater investment in  
4 these projects.

5           I believe that granting ROE adders is a very  
6 serious step and really should only be undertaken when the  
7 applicants had demonstrated that the project will not go  
8 forward without them, or that those are necessary to handle  
9 the risk.

10           I can't make that statement about either Devers  
11 or Tehachapi. It may be possible that that case can be  
12 made, but I didn't see it in the filings.

13           I seen incentive rate making as not primarily  
14 about the size or cost or voltage of the project. That is  
15 relevant, but the real issue is the need for incentives to  
16 encourage more investment.

17           I think that we hit the nail on the head in Order  
18 679A where we required applicants to demonstrate that the  
19 total package of incentives is tailored to address the  
20 demonstrable risks or challenges they face. In this case I  
21 conclude that Southern California Edison did not demonstrate  
22 that the package of incentives--in particular the ROE Adder  
23 of 150-basis points--is indeed tailored to the risks and  
24 challenges they face.

25           I respectfully dissent from that conclusion.

1 CHAIRMAN KELLIHER: Colleagues? Commissioner  
2 Moeller.

3 COMMISSIONER MOELLER: Thank you, Mr. Chairman.

4 I would argue that possibly the most important  
5 thing we are doing at the Commission right now is creating  
6 the kind of incentives that get transmission built. I think  
7 it is probably the number one infrastructure priority for  
8 this country. And so I am happy to support the Order.

9 It was also interesting that we talked about the  
10 Queue a little bit because of the fact that, although  
11 obviously the Queue problems are not directly associated  
12 with a lack of transmission, they are certainly related.  
13 And not all of those megawatts will probably be built, but  
14 more of them would be built and most of them are renewable  
15 to the extent that we have more transmission in the grid.

16 And you noted, Mr. Chairman, Congress wanted us  
17 to--they spoke and created incentives and asked us to have  
18 incentives that we followed through with in Order 679, and  
19 hopefully those have been reflected in more transmission  
20 being built.

21 In this particular case, I believe that SoCal  
22 Edison did support its request for 100 percent CWIP, 100  
23 percent Abandoned Plant, and ROE Adders as modified by us.  
24 And as we balance the factors in each case, it is important  
25 to remember the end goal. Which is: That transmission

1 investment does improve reliability of service, makes power  
2 transport more affordable, and helps deliver diverse sources  
3 of generation to consumers.

4 With that, I do have a couple of questions for  
5 the panel.

6 I wondered if they could describe how this  
7 request fits in with our earlier orders on Tehachapi related  
8 to financing for transmission facilities for location-  
9 constrained resources.

10 MS. SPIKER: Well in this particular case the  
11 facilities have been classified as transmission rather than  
12 generator interconnections. So those earlier orders would  
13 not be applicable.

14 CHAIRMAN KELLIHER: Because the facilities are  
15 different.

16 MS. SPIKER: Right. They've been redesigned as a  
17 transmission project and not an interconnection facility.

18 COMMISSIONER MOELLER: Very good.

19 How about the fact that this project will enhance  
20 the delivery of renewable resources? Does that get  
21 evaluated at all in the incentives?

22 MS. SPIKER: Primarily we look at the incentives  
23 in terms of the statutory requirements of Section 219. The  
24 Tehachapi project had fulfilled that through bringing on  
25 4500 megawatts of renewable resources that would reduce

1 congestion and ensure reliability.

2 COMMISSIONER MOELLER: So it's just a bonus to  
3 consumers.

4 MS. SPIKER: Exactly.

5 COMMISSIONER MOELLER: Very good. Thank you.

6 CHAIRMAN KELLIHER: Colleagues? Commissioner  
7 Spitzer.

8 COMMISSIONER SPITZER: Thank you, Mr. Chairman.  
9 My comments are going to be directed towards all the three  
10 incentive items, but with respect to specifically E-3: The  
11 Tehachapi thing is obviously of great interest to all the  
12 members. Lots of folks in Phoenix on their way to Disney  
13 Land make note of, even though it's not particularly  
14 interested in energy, the turbines. And maybe if we get a  
15 critical mass here and get a lot of wind, it will be the  
16 second Disney Land that people pull off the road and just  
17 spend time looking at the turbines.

18 My colleagues have already addressed the policy  
19 issue that the standard review of Just and Reasonable Rates  
20 is more of an art than a science, but Congress has spoken  
21 and Congress has delineated that this Agency takes specific  
22 actions, and we have acted on those without being a rubber  
23 stamp. I think we have had good discussion, good debate on  
24 these incentives, but we have certainly accommodated the  
25 declaration of Congress in the interests of Congress.

1 I believe the applicants in all three of these  
2 cases satisfy Section 2.19 of the Federal Power Act. They  
3 have established that these projects will enhance  
4 reliability and reduce the cost of power by reducing  
5 congestion. So there are benefits--there are tangible  
6 benefits to consumers attendant to the granting of these  
7 incentives.

8 I believe the applicants satisfy our nexus test  
9 by showing a rational connection between the incentives  
10 sought and the risks of the project. And then in these  
11 cases, the applicants have demonstrated the projects are not  
12 routine.

13 Again, there are benefits to the consumers:  
14 reliability, economic dispatch, and dispatch of renewable  
15 resources. Tehachapi is not the only project that lends  
16 itself to distribution of renewable resources.

17 The challenge of these cases is each is unique.  
18 Each case, each application stands on its own facts and  
19 requires unique analysis. So there is no cookie-cutter  
20 approach. That is the type of challenge that breeds  
21 discussion and debate here at the Commission, and I think  
22 that is appropriate. And I would like to think that as time  
23 evolves we will establish through repeated cases some  
24 precedent so that those in the industry, the regulated  
25 industry, can discern a pattern.

1           But again, that is somewhat in distinction with  
2 the fact that each case is different, and the challenge in  
3 asserting that the project is not routine and is unique is  
4 going to be a very fact-intensive inquiry.

5           Finally, I don't want to revisit the prior issue  
6 of filing, but--

7           CHAIRMAN KELLIHER: But you're going to anyway?  
8 (Laughter.)

9           COMMISSIONER MOELLER: --or timeliness, but our  
10 team got e-mails at 4:00 in the morning from the staff,  
11 which we appreciate. Those are internal. Those are good  
12 4:00 in the morning e-mails to make sure that we were happy  
13 with the work product, and I would like to thank you all for  
14 that effort. That really is above and beyond, and I  
15 particularly appreciate that.

16           CHAIRMAN KELLIHER: Jon.

17           COMMISSIONER WELLINGHOFF: Thank you, Joe.

18           I would like to commend the staff for their hard  
19 work in this case. I know it is difficult to weigh all the  
20 different aspects of it to come up with the proper numbers,  
21 but I am pleased to support and concur with today's Order  
22 that's granting transmission incentives to these worthwhile  
23 and innovative projects.

24           But I would like to briefly discuss why I believe  
25 that incentive ROE adders for transmission are appropriate

1 in this particular case.

2 In considering an incentive for an ROE adder in  
3 transmission I focus on encouraging investment decisions  
4 that are beyond upgrades simply required to meet a utility's  
5 service obligation or minimum standard of good utility  
6 practice. That is in fact why I have dissented in E-2. I  
7 thought E-2 was one of those instances.

8 Incentive adders should be more properly targeted  
9 to transmission investments that provide incremental  
10 benefits. Such incremental benefits include those that  
11 result from the deployment of best available technologies,  
12 increase operational and energy efficiency, enhance grid  
13 operations, and result in greater grid flexibility.

14 Such investments recognize that efficient  
15 transmission facilities and state-of-the-art transmission  
16 technologies are essential to solving our energy delivery  
17 problems.

18 Promoting such investments is also consistent  
19 with the Congressional directive set forth in Section 12.23  
20 of the 2005 EPAct. Investments for which Southern  
21 California Edison is seeking an ROE adder here reflects a  
22 commitment to those advance technologies.

23 For example, as part of the Devers-Palo Verde II  
24 project and the Tehachapi Project Southern California Edison  
25 plans to employ static VAR compensators and associated power

1 electronics that will improve network stability, among other  
2 benefits.

3 In addition, those projects will feature special  
4 protection systems that use fiber optic technologies to  
5 provide reliable, highspeed data communications between  
6 switching stations and allow monitoring systems to tripload  
7 in the event of outage contingencies.

8 It is also important, though, to incorporate into  
9 the consideration of transmission incentives in this case  
10 another incremental benefit associated with the Tehachapi  
11 Project.

12 Amid heightened concerns about climate change and  
13 dependence on foreign oil, it is essential that our country  
14 take steps to accelerate the integration of clean, reliable  
15 domestic renewable energy sources into our energy portfolio.  
16 Such resources, including wind and geothermal generation are  
17 usually found in economically developable quantities at  
18 disperse locations remote from load centers.

19 As a result of these characteristics, large-scale  
20 investments in transmission are often necessary to deliver  
21 renewable energy to market. The Tehachapi Project is such  
22 an investment as it will enable the interconnection of up to  
23 4500 megawatt dispersed wind resources for generation.

24 In light of the broad and substantial benefits  
25 associated with increasing the availability of renewable

1 resources, I believe it is appropriate for the Commission to  
2 provide investment incentives to this area.

3 For these reasons, I concur with today's Order.  
4 Thank you.

5 CHAIRMAN KELLIHER: Thank you. Any other  
6 comments?

7 (No response.)

8 CHAIRMAN KELLIHER: No? Let's vote.

9 SECRETARY BOSE: We will now take a vote, keeping  
10 in mind the separate statements noted at the beginning of  
11 the meeting, beginning with Commissioner Wellinghoff.

12 COMMISSIONER WELLINGHOFF: Yes, with my  
13 concurrence noted I vote aye.

14 SECRETARY BOSE: Commissioner Moeller.

15 COMMISSIONER MOELLER: Aye.

16 SECRETARY BOSE: Commissioner Spitzer.

17 COMMISSIONER SPITZER: Aye.

18 SECRETARY BOSE: Commissioner Kelly.

19 COMMISSIONER KELLY: I concur in part and dissent  
20 in part in accordance with my separate statement.

21 SECRETARY BOSE: And Chairman Kelliher.

22 CHAIRMAN KELLIHER: Aye.

23 Thank you. We're not quite done, though. We are  
24 going to have a--I knew I had to say that or I would  
25 probably have gaveled, but we are going to have a brief

1 discussion.

2 My colleagues have raised an interesting question  
3 in the wake of the Portland Conference on Hydrokinetic  
4 technologies. My colleagues have raised an issue regarding,  
5 in anticipation of commercial development of these  
6 technologies, is there a need for the Commission--I'm trying  
7 to express your question, but I'm going to let you express  
8 it yourself--but is there a need for the Commission to look  
9 at its rules in anticipation of commercial deployment of  
10 these technologies.

11 I think it is a good question. Why don't I let  
12 you all define the issue.

13 COMMISSIONER WELLINGHOFF: I think there may be  
14 one. It has come to our attention that the Interconnection  
15 Rules may potentially unduly discriminate against certain  
16 projects that use asynchronous generators.

17 Our current rules accommodate the specific  
18 characteristics of one such technology in that regard, wind,  
19 which is an asynchronous generating system. However, there  
20 are likely to be other technologies with similar  
21 characteristics. One example is the conference that  
22 Commissioner Moeller and I held out in October in Portland  
23 on Hydrokinetic Systems.

24 As it turns out, they in fact are also  
25 technologies that use a asynchronous system and have many

1 characteristics similar to wind in that regard.

2           So therefore there is a need to reassess our  
3 rules I believe to determine whether they should be expanded  
4 to accommodate the specific characteristics of these  
5 technologies, and such action to be warranted to prevent  
6 that differentiation between wind and those technologies and  
7 make them all consistent.

8           So I would ask that we consider whether to  
9 address this issue in a generic proceeding. Thank you, Mr.  
10 Chairman.

11           CHAIRMAN KELLIHER: Commissioner Moeller.

12           COMMISSIONER MOELLER: I want to commend  
13 Commissioner Wellinghoff for taking the lead on this issue.  
14 Again it is one that we are flagging so that it does not  
15 prevent the development of what is a new and exciting  
16 industry, but one that will need some assistance to get it  
17 off the ground so to speak.

18           So thank you for your consideration of our need  
19 to address the asynchronous issue.

20           CHAIRMAN KELLIHER: And I want to thank my  
21 colleagues for raising this issue. I thank Commissioner  
22 Kelly about the Queue Conference. And I think this is also  
23 a legitimate matter and I support these technologies. It is  
24 the one area of Commission activity where I publicly  
25 acknowledge excitement. And so I want to see these

1 technologies succeed. I want to see the potential  
2 developed. But I think we should start with a staff review  
3 to find the nature of the problem, and to consider some  
4 options on how we might proceed. Because I think we have a  
5 duty to engage in reasoned decision making and to gather  
6 facts, and then to decide what course of action is proper.

7           So why don't we do that. Why don't we gather  
8 facts and develop some options, and then staff can present  
9 those options to the Commission. And then we can decide  
10 together what the next step should be.

11           Commissioner Kelly.

12           COMMISSIONER KELLY: I would like to thank  
13 Commissioner Wellinghoff and Commissioner Moeller for their  
14 leadership on this issue. I support the initiative. I  
15 recall that when Joe and I were on the Commission that we  
16 did a similar thing with respect to wind generators.

17           We were helped greatly by the OWEA and NERC in  
18 looking into this issue, and balancing the need for ensuring  
19 that new technology--wind or asynchronous generation,  
20 hydrokinetic generation--can eliminate unnecessary obstacles  
21 to entry; at the same time, ensuring that the grid remains  
22 reliable.

23           So I anticipate that we will do something similar  
24 in this initiative, and I approve of it.

25           CHAIRMAN KELLIHER: Any other comments?

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1 (No response.)

2 CHAIRMAN KELLIHER: No? With that, I thank  
3 everyone for their work on this meeting, and I thank the  
4 staff for their hard work.

5 (Whereupon, at 11:19 a.m., Thursday, November 15,  
6 2007, the meeting of the Commission was adjourned.)

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