

BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION

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

932ND COMMISSION MEETING  
OPEN SESSION

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

Thursday, April 17, 2008  
10:00 a.m.

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APPEARANCES:

COMMISSIONERS PRESENT:

CHAIRMAN JOSEPH T. KELLIHER (Presiding)

COMMISSIONER SUEDEEN G. KELLY

COMMISSIONER MARC SPITZER

COMMISSIONER PHILIP MOELLER

COMMISSIONER JON WELLINGHOFF

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

(10:08 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: We have a couple of brief announcements before we get to business, and I'd like to start with a couple of awards, one of which is a surprise, to add to the dramatic impact of the award.

(Laughter.)

CHAIRMAN KELLIHER: The first one is Andy Black. Andy Black, of course, is the Director of the FERC Office of External Affairs, and I'm proud to give him the Chairman's Medal for Leadership.

Andy is a -- I'm a Civil War guy, and Andy's a Revolutionary War guy, and he has introduced me to General Washington, the virtues of George Washington.

But one thing that I -- there was a book, "1776", which really had a great description of Washington's relationship with Joseph Reed. Joseph Reed was a brilliant Philadelphia lawyer who ended up being Washington's Adjutant

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1 General .

2 And Washington, when he was appealing to Reed to  
3 work with him and help him, he just had this great letter,  
4 and he said, what I need most, is people who can think for  
5 me, not people who can just follow orders.

6 And that's what Joseph Reed did for General  
7 Washington, and Andy has done that for me, and he thinks for  
8 me better than I do sometimes, so I'm grateful for him.

9 He's been, I think, a really superb strategist  
10 and tactician here, dealing with the outside world,  
11 Congress, the media, and states, and he's been a very  
12 effective manager of the Office.

13 He is supremely organized, and I have to  
14 concede, I'm daunted by his organizational skills, and Andy  
15 has been one of our core commanders here at FERC since he  
16 arrived in November of 2006.

17 I have to say that I don't think the Office of  
18 External Affairs has ever been stronger than it is right  
19 now, and I think it's because Andy has recruited the right  
20 kind of talent, and made the right changes within the Office  
21 to make it very effective, more effective than ever.

22 And he's also taken a number of steps that are  
23 fully consistent with some of the goals we have here at the  
24 Commission, to strengthen our relationships with Congress  
25 and strengthen our relationships with the states.

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1           Andy recognizes the importance of maintaining  
2 public confidence in FERC, and by doing a good job, a  
3 continually better job in explaining our Orders, our very  
4 complicated Orders, to the general public.

5           So, I want to say it's been a pleasure. Andy and  
6 worked very closely together on the House side, ten years  
7 ago, and it's been a pleasure to work side-by-side again  
8 here at FERC. I'm just proud to give him this award.

9           I'd like to turn to my colleagues for any  
10 comments they might want to make. Jon?

11           COMMISSIONER WELLINGHOFF: Thank you, Joe. Well,  
12 I think the measure of a manager, isn't so much the manager,  
13 but the people that he surrounds himself with, and his  
14 staff, and I just want to thank Andy for hiring a top-  
15 quality staff of people that I enjoy working with every day.  
16 Thank you.

17           CHAIRMAN KELLIHER: Thank you. Phil?

18           COMMISSIONER MOELLER: Mr. Chairman, I go back  
19 with Andy to Hill days, and I don't think I have ever met  
20 anyone, at least in the Hill, or probably ever, who has such  
21 a combination of constantly good natured attitude and also  
22 combining that with competence, obviously knowing the  
23 issues, having to deal with several years of very  
24 challenging legislative packages, that eventually became  
25 law.

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1 But the frustration of that never seemed to get  
2 you down, Andy, and that will always impress me. Thank you.

3 CHAIRMAN KELLIHER: Commissioner Kelly?

4 COMMISSIONER KELLY: I would add that Andy hasn't  
5 been here all that long, but you wouldn't know it --

6 (Laughter.)

7 COMMISSIONER KELLY: -- because he came here and  
8 he was off running from the day he began, and he instituted  
9 helpful, significant changes in the Office, and I've heard  
10 nothing but good things -- and I would underscore what you  
11 said, Mr. Chairman -- from people on the Hill, both sides of  
12 the aisle, as well as state commissioners.

13 We are indebted to your expertise and your  
14 foresight, and thank you very much for being here, and don't  
15 leave anytime soon.

16 (Laughter.)

17 CHAIRMAN KELLIHER: Commissioner Spitzer?

18 COMMISSIONER SPITZER: Thank you, Mr. Chairman.  
19 First, I want to thank Mr. Black for introducing me to some  
20 additional southwestern cuisine in this town. I appreciated  
21 that.

22 Then, equally important, is the demeanor. It's  
23 often said that you're measured by how you treat ordinary  
24 people, not necessarily those important, with the additional  
25 proviso that you never know what people are going to

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1 ultimately achieve in life.

2 And it's also demonstrative of his demeanor.

3 Just one brief anecdote: A friend of my wife's daughter  
4 visited from Britain, and she was in high school, and she  
5 took a brief tour of the Commission. Andy, the way he  
6 treated her -- and we had a little sojourn at the National  
7 Press Club -- asking questions, entertaining her during the  
8 entirety of the trip, this high school student, was very  
9 impressive.

10 He did a little deft explaining. Her dad is a  
11 Major in the British Special Forces, and she was intrigued  
12 when she visited the Chairman's Office, with all the  
13 Napoleonic portraits of her dad's army being defeated.

14 (Laughter.)

15 COMMISSIONER SPITZER: And Mr. Black handled that  
16 with consummate grace and skill.

17 (Laughter.)

18 COMMISSIONER SPITZER: So it is a testament to  
19 his ability.

20 CHAIRMAN KELLIHER: Well, Andy, why don't you  
21 come up and let's give you your award.

22 (Presentation made; applause.)

23 CHAIRMAN KELLIHER: Now is the surprise. The  
24 other award is also the Chairman's Award for Leadership, and  
25 I'm proud to give it to Mike Bardee.

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1 (Laughter.)

2 CHAIRMAN KELLIHER: And Mike Bardee is really one  
3 of the pillars of this Agency. He has, you know, an ability  
4 to handle a tremendous workload, with grace, to consistently  
5 offer sound advice, and has a great ability to craft  
6 creative solutions.

7 I have never been disappointed with him, either  
8 as Chairman or as Commissioner. He has really very quiet  
9 and effective leadership, and he is incredibly calm.

10 I have to say that I have never seen Mike  
11 rattled, which is the main reason that this is a surprise  
12 announcement.

13 (Laughter.)

14 CHAIRMAN KELLIHER: So, Mike is really one of the  
15 men and women behind the curtain at FERC, that make this  
16 Agency great.

17 One of my goals as Chairman, and, I think, a  
18 common goal of all of us, is to improve the quality of our  
19 Orders. And Mike has played a huge role in that, because it  
20 isn't just the efforts of the solicitors; they have to have  
21 something that can be defended in court, and I think Mike is  
22 really attuned to the quality of the Orders we issues, and  
23 our Orders, I view them as essentially legal products,  
24 because if no one seeks judicial review, they're the law of  
25 the land, now backed by civil penalties, in many cases. If

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1 they are challenged, they're reviewed by lawyers.

2 So I view our product as legal, and Mike has  
3 really done a tremendous job improving the quality of our  
4 Orders.

5 I just want to thank him for being here at FERC.  
6 He's had a long and storied career, but I wanted to pull him  
7 out from behind the curtain, just for a few moments here  
8 this morning. Thank you very much, Mike.

9 Colleagues, comments? Jon?

10 COMMISSIONER WELLINGHOFF: I think Mike is one of  
11 those quiet people who does a superb job that you really  
12 don't often hear or see, and we really do need to recognize  
13 that with Mike, and, Mike, congratulations.

14 CHAIRMAN KELLIHER: Phil?

15 COMMISSIONER MOELLER: Thank you, Mr. Chairman.  
16 Yes, Mike's a legend throughout this Agency, and, I think,  
17 in the outside world, for his competence and his calm  
18 demeanor, as you noted.

19 I think that's the only time I've seen him  
20 rattled.

21 (Laughter.)

22 COMMISSIONER MOELLER: It's a great effort to  
23 recognize true competence and great public service.

24 CHAIRMAN KELLIHER: Thank you. Commissioner  
25 Kelly?

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1                   COMMISSIONER KELLY: Well, Mike never boasts.  
2                   That's probably an understatement. He has a superior mind  
3                   and an amazing grasp of the knowledge that exists in this  
4                   Agency, and he will never tell you what he knows or how much  
5                   he knows.

6                   Maybe it's the visit of the Pope, but one thing  
7                   that comes to mind, but one thing that comes to mind, is the  
8                   Sermon on the Mount, and Christ said something similar to  
9                   God bless the meek in spirit, for they shall inherit the  
10                  earth.

11                  And Mike has inherited the hearts and minds of  
12                  all of his colleagues here at FERC, including mine, and I  
13                  can't think of a better person to get this award. Thank  
14                  you.

15                  CHAIRMAN KELLIHER: Thank you. Commissioner  
16                  Spitzer?

17                  COMMISSIONER SPITZER: That's a tough act to  
18                  follow.

19                  (Laughter.)

20                  COMMISSIONER SPITZER: I should probably defer,  
21                  but just --

22                  (Laughter.)

23                  COMMISSIONER SPITZER: It's never stopped me  
24                  before.

25                  (Laughter.)

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1                   COMMISSIONER SPITZER: Being an inferior  
2 speaker.

3                   Mike, we're in the same train stop, so there is  
4 life in the burbs. He's a runner, and I think that maybe  
5 adds to his low tension level.

6                   I don't even think he was rattled today, in fact.

7                   CHAIRMAN KELLIHER: No, no.

8                   COMMISSIONER SPITZER: And you can never have too  
9 many good lawyers, and it's all been said, but we appreciate  
10 your public service, and thank you for your good legal  
11 advice.

12                   (Presentation made; applause.)

13                   CHAIRMAN KELLIHER: I should comment that Mike,  
14 earlier, was given the Exemplar of Public Service Award, so  
15 I've run out of awards for you.

16                   (Laughter.)

17                   CHAIRMAN KELLIHER: But I'm prepared to come up  
18 with new ones, if necessary, if that's what it takes to keep  
19 you here.

20                   Now, I think Commissioner Spitzer has an  
21 announcement regarding a change in his office.

22                   COMMISSIONER SPITZER: I do, I do. As you know,  
23 Phil Deon left and a replacement, a very able, outstandingly  
24 credentialed Roshini Thayaparan has joined my team. She has  
25 degrees from the University of Pennsylvania, from the London

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1 School of Economics, and from, Mr. Chairman, Georgetown  
2 University School of Law.

3 So I'd like to introduce Roshini Thayaparan, and  
4 welcome her to our team.

5 (Applause.)

6 CHAIRMAN KELLIHER: And before we turn to the  
7 Consent Agenda, I want to make a general comment. I  
8 referenced our track record in the courts, when I was  
9 talking about Mike, and I just wanted to make a brief  
10 comment about the success that we've had.

11 The Commission really has had a very impressive  
12 run recently, but it's a trend that goes back to 2005. In  
13 2005, if you look at the Commission's Orders, the  
14 disposition of the Commission's Orders by the courts, you  
15 can say there's wins, losses, and ties, a remand being a  
16 tie, a partial remand.

17 And if you take the remands, cut them in half and  
18 put them equally in win and loss columns, in 2005, we won 64  
19 percent of the time; in 2006, we won 73 percent of the time;  
20 and in 2007, we won 79 percent of the time, and, so far,  
21 we're above 80 percent in wins so far this year.

22 But there was one victory that I thought was  
23 particularly satisfying recently, and that was in the  
24 Duncan's Point case. In the Duncan's Point case, parties  
25 made a number of base allegations about Commission Staff,

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1 and they casually maligned Commission Staff.

2 And the Court reviewed those allegations, and  
3 found, quote, "These allegations find no support in the  
4 record. To the contrary, FERC acted professionally and gave  
5 petitioners ample notice and opportunity to participate in  
6 the proceedings, as the Commissioners acknowledged in their  
7 brief."

8 So there were a number of, I think, pretty vile  
9 allegations, and I find it very satisfying that the Court  
10 rejected them, completely exonerated the Commission Staff,  
11 and I want to thank the Staff in the Office of Energy  
12 Projects, for their endurance.

13 I mean, sometimes they have a difficult job.  
14 They hold most of the community meetings, and people have  
15 very strong opinions about some of these matters.

16 And that's fine, that's to be expected, but, in  
17 this case, I think people crossed the line, and the Court  
18 completely exonerated your Staff, and I find that  
19 satisfying, and I hope they do, as well.

20 MR. ROBINSON: Thank you. It's always nice to be  
21 considered professional by the courts.

22 (Laughter.)

23 CHAIRMAN KELLIHER: Yes.

24 MR. ROBINSON: We appreciate that finding.

25 CHAIRMAN KELLIHER: Now, with that, I'd just like

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1 to comment that since the March 20th Open Meeting, the  
2 Commission has issued 71 Notational Orders, so we continue  
3 to do a lot of our business in between meetings.

4 With that, Madam Secretary, let's turn to the  
5 Consent Agenda.

6 SECRETARY BOSE: Good morning, Mr. Chairman, good  
7 morning, Commissioners. Since the issuance of the Sunshine  
8 Act Notice on April 10th, 2008, M-1, M-2, and M-3, have been  
9 struck from this morning's Agenda.

10 Your Consent Agenda for this morning, is as  
11 follows: Electric Items - E-2, E-3, E-4, E-6, E-7, E-8, E-  
12 9, E-10, E-11, E-13, E-14, E-15, E-16, E-18, E-19, E-22, E-  
13 23, E-24, E-25, E-26, E-27, and E-28.

14 Miscellaneous Items: M-4 and M-5.

15 Gas Items: G-2, G-3, G-4, and G-5.

16 Hydro Items: H-2 and H-3.

17 Certificate Items: C-1.

18 As to E-1, Commissioner Kelly is concurring, with  
19 a separate statement; as to E-2, Commissioners Kelly and  
20 Wellinghoff, are concurring jointly, with a separate  
21 statement.

22 As to E-3, Commissioner Kelly is concurring with  
23 a separate statement, and Commissioner Wellinghoff is  
24 concurring, with a separate statement.

25 As to E-4, Commissioner Kelly is dissenting, in

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1 part, with a separate statement, and Commissioner  
2 Wellinghoff is dissenting, in part, with a separate  
3 statement.

4 As to E-6, Commissioner Kelly is concurring, in  
5 part, with a separate statement, and Commissioner  
6 Wellinghoff is concurring, in part, and dissenting, in part,  
7 with a separate statement.

8 As to E-7, Commissioners Kelly and Wellinghoff,  
9 dissenting in part, jointly, with a separate statement.

10 As to E-9, Commissioner Wellinghoff is  
11 concurring, with a separate statement.

12 With the exception of E-1, where a vote will be  
13 taken after the presentation and discussion of that item, we  
14 will now take a vote on this morning's Consent Agenda,  
15 beginning with Commissioner Wellinghoff.

16 COMMISSIONER WELLINGHOFF: I vote aye, with the  
17 notation of my concurrence in E-2, my concurrence in E-3, my  
18 dissent, in part, in E-4; my concurrence, in part, and  
19 dissent, in part, in E-6, my dissent, in part, in E-7, and  
20 my concurrence in E-9.

21 SECRETARY BOSE: Commissioner Moeller?

22 COMMISSIONER MOELLER: Aye.

23 SECRETARY BOSE: Commissioner Spitzer?

24 COMMISSIONER SPITZER: Aye.

25 SECRETARY BOSE: Commissioner Kelly?

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1                   COMMISSIONER KELLY: Aye, with the exception of  
2 two dissents, E-4 and E-7, noting my concurrences in E-2, 3,  
3 and 6.

4                   SECRETARY BOSE: And Chairman Kelliher?

5                   CHAIRMAN KELLIHER: Aye.

6                   I just want to make one brief comment about M-5,  
7 which we just approved, right? We just approved M-5.

8                   SECRETARY BOSE: Yes.

9                   CHAIRMAN KELLIHER: And M-5 is a Supplemental  
10 Notice of Proposed Rulemaking, proposing to adopt a set of  
11 standards governing the electronic filing of tariffs and  
12 tariff-related materials.

13                   And I really just want to make a point about the  
14 process that led up to this Order; that it really -- these  
15 standards are the product of, really, a unique collaboration  
16 between Commission Staff and the Electric and Gas Quadrants  
17 of the North American Energy Standards Board.

18                   This effort involved many volunteers from the  
19 electric, gas, and oil industries, as well as third-party  
20 software developers. There were 16 separate meetings in  
21 different cities across the country over the course of 24  
22 days, and some of which lasted very late into the evening.

23                   And I want to thank NAESB for its efforts in  
24 helping to organize this undertaking. I want to thank the  
25 many volunteers from the industry who worked on this effort,

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1 and I understand that at these meetings, there was an  
2 average of 61 people working on electronic filing and tariff  
3 matters.

4 I specifically want to recognize the Co-Chairs  
5 of the E-Tariff Committee, Jane Daley, from Arizona Public  
6 Service; Keith Sappenfield, from NCANA, and the Co-Chairs of  
7 the Technical Committee, Dirk Brooks from ISO New England  
8 and Christopher Berden from Williams Gas Pipeline, for  
9 their work on the project.

10 I also want to identify the Commission Staff who  
11 worked very closely on this effort, namely, Mike Goldenberg,  
12 Keith Pierce, Anthony Baracinni, George Godding, Andre  
13 Goodson, and our FERC outside contractor, Charlie Coleman.

14 So, I think the process here was interesting, and  
15 I suppose you could say that, to some extent, it was almost  
16 a reg-neg, but we are taking our action on the proposed  
17 rule, and I think a lot of effort -- we benefitted from a  
18 lot of effort from the outside, leading up to our action  
19 today.

20 Why don't we turn to the discussion agenda?

21 SECRETARY BOSE: The first item for presentation  
22 is E-1, concerning Market-Based Rates For Wholesale Electric  
23 Energy, Capacity, and Ancillary Services by Public  
24 Utilities.

25 This is a presentation by Elizabeth Arnold, from

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1 the Office of General Counsel, and Debra Dalton, from the  
2 Office of Energy Market Regulation, and they are accompanied  
3 by Jerry Pederson, from the Office of Energy Market  
4 Regulation; Debbie Leahy, from the Office of the General  
5 Counsel; Ryan Anderson and Mahmood Mirheydar, from the  
6 Office of Electric Reliability, and Melissa Mitchell, from  
7 the Office of the General Counsel.

8 MS. ARNOLD: Good morning, Mr. Chairman and  
9 Commissioners. My name is Elizabeth Arnold, and I'm in the  
10 Office of the General Counsel. Debra Dalton, from the  
11 Office of Electric Market Regulation, will present the  
12 second half of this presentation.

13 Joining us at the table are Deborah Leahy, Paige  
14 Bullard, and Melissa Mitchell, from the Office of the  
15 General Counsel, Jerry Pederson and Ryan Anderson, from the  
16 Office of Energy Market Regulation, and Mahmood Mirheydar,  
17 from the Office of Electric Reliability.

18 Before I begin the presentation, we would like to  
19 thank the numerous Staff members throughout the Agency, who  
20 have assisted in drafting E-1, including those from the  
21 Office of the General Counsel, the Office of Energy Market  
22 Regulation, the Office of Electric Reliability, and the  
23 Office of Enforcement, as well as the Secretary and her  
24 staff.

25 The Draft Rehearing Order in E-1, responds to a

1 number of Request for Rehearing and Clarification of Order  
2 Number 697, issued last June, which codified the standards  
3 for obtaining and retaining market-based rate authorization  
4 for sales of electric energy, capacity, and ancillary  
5 services.

6 The Draft Order reaffirms most of the  
7 determinations made in Order 697, and denies rehearing of  
8 those issues.

9 In Order 697, the Commission collapsed a four-  
10 pronged market power analysis, into a more traditional  
11 horizontal and vertical market power analysis, retaining the  
12 use of two indicative market power screens, an opportunity  
13 for a seller to present evidence to show that, despite a  
14 screen failure, it lacks market power, and requiring that  
15 rates be mitigated, if the seller has been found to or  
16 presumed to have market power.

17 In the Final Rule, the Commission retained its  
18 existing policies for addressing vertical market power, and  
19 codified affiliate restrictions in the Commission's  
20 regulations.

21 The Draft Order continues all of these core  
22 aspects of the Commission's market-based rate program and  
23 rejects arguments raised by Petitioners, challenging the  
24 Commission's authority to adopt market-based rates.

25 The Draft Order finds that the program complies

1 with the statutory and judicial standards for acceptable  
2 market-based rates.

3 The Rehearing Order affirms, in large part, the  
4 determinations made in Order 697, concerning the horizontal  
5 market power analysis, including the use of the 20-percent  
6 threshold for the indicative wholesale market power screen  
7 and the delivered price test or DPT, the use a 2500  
8 Hirschman-Herfindahl Index threshold for the DPT, and the  
9 use of the average peak native load as the native load proxy  
10 for the market share screen and DPT analysis.

11 The Order also affirms the Commission's  
12 determination to use a balancing authority area or the  
13 RTO/ISO region, as the default relevant geographic market,  
14 and the decision that where the Commission has made a  
15 specific finding that there is a submarket within an RTO or  
16 ISO, that submarket should be considered the default  
17 relevant geographic market.

18 However, the Order grants rehearing concerning  
19 the finding that Northern PSEG is a submarket within PJM.

20 Regarding the vertical market power analysis, the  
21 Draft Order affirms the Commission's determinations from the  
22 Final Rule. The Draft Order codifies in the regulations,  
23 that 18 CFR Section 35.36, a definition of "affiliate," for  
24 purposes of Order 697, based on the definition adopted in  
25 Order Number 707, regarding cross-subsidization restrictions

1 on affiliate transactions.

2 Further, the Order grants rehearing regarding the  
3 adoption of a two-way information-sharing restriction in 18  
4 CFR Section 35.39(d), finding, among other things, that a  
5 one-way information restriction is adequate to protect  
6 captive customers.

7 The Draft Order, for the most part, affirms the  
8 Final Rule's determinations concerning mitigation, including  
9 retaining the default mitigation and declining to impose a  
10 generic must-offer requirement.

11 The Draft Order also affirms the determination in  
12 Order 697, to create a category of market-based rate  
13 sellers, Category 1 Sellers, that are not required to  
14 automatically submit updated market power analyses, as well  
15 as the Commission's decision to adopt a regional filing  
16 process for updated market power analyses.

17 In response to concerns raised regarding the  
18 potential for Category 1 Sellers to exercise market power in  
19 load pockets or other transmission-constrained areas, the  
20 Draft Order explains that, to the extent that a Commission-  
21 identified submarket is under analysis, if the Commission  
22 determines, based on an analysis of indicative screens filed  
23 by other sellers, that there may be potential market power  
24 concerns with respect to any Category 1 Sellers in the  
25 relevant submarket, the Commission will, if appropriate,

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1 require an updated market power analysis to be filed by  
2 these Category 1 Sellers, and allow other parties to  
3 comment.

4 The Draft Order also provides clarifications  
5 regarding other aspects of the Final Rule, including  
6 addressing questions that have arise concerning the  
7 implementation process adopted in Order 697, and providing  
8 clarifications concerning the change in status reporting  
9 requirement.

10 MS. DALTON: I'll provide some additional details  
11 on a couple of items: First, in response to rehearing  
12 requests concerning the Commission's mitigation of long-term  
13 transactions, based on the result of a failure of a short-  
14 term indicative screen, the Order modifies the Commission's  
15 policy with respect to mitigation of long-term transactions,  
16 or transactions of one year or more in duration.

17 In this regard, the Commission will allow a  
18 mitigated seller to demonstrate, on a case-by-case basis,  
19 that it does not have market power with respect to a  
20 specific long-term contract.

21 In this regard, on a case-by-case basis, the  
22 mitigated seller must show that a buyer, under a long-term  
23 contract, has viable alternatives, including the entry of an  
24 appropriate amount of third-party, newly-constructed  
25 resources, during the relevant future period, as an

1 alternative to purchasing under the contract at issue.

2 Concerning the tariff provision adopted in the  
3 Final Rule for mitigated sellers that want to make market-  
4 based rate sales at the meter boundary between a balancing  
5 authority area in which the seller was found or presumed to  
6 have market power, and a balancing authority area in which  
7 the seller has market-based rate authority, after  
8 considering comments raised regarding the difficulty of  
9 determining and documenting whether the power sold is  
10 intended to serve load in the balancing authority area in  
11 which the seller has market power, the Draft Order revises  
12 the tariff language to eliminate the intent element.

13 In response to Requests for Clarification  
14 concerning existing mitigation in RTOs and ISOs, the Order  
15 adopts a rebuttable presumption that the existing  
16 Commission-approved RT0/ISO mitigation, is sufficient to  
17 address market power concerns in the RT0/ISO market,  
18 including mitigation applicable to RT0 and ISO submarkets.

19 However, Intervenors may challenge that  
20 presumption, and, depending on the nature of the evidence  
21 submitted by an Intervenor, the Draft Order states that the  
22 Commission will consider whether to institute a separate  
23 Section 206 proceeding that would be open to all interested  
24 entities, to investigate whether the existing RT0/ISO  
25 mitigation continues be just and reasonable, and, if not,

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1 how such mitigation should be revised.

2 This concludes Staff's presentation, and we'd be  
3 happy to answer any questions you may have.

4 CHAIRMAN KELLIHER: Great, thank you very much.  
5 I want to thank the team for working on this Order.

6 This rulemaking, I think, is the longest  
7 rulemaking that we've initiated since I've been Chairman.  
8 This started in May of 2006, with the proposed rule, and  
9 then the Final Rule was June of last year, I believe, June  
10 of 2007, so now we're in 2008 and we're acting on rehearing.

11 So I want to thank you for your work, and I'm  
12 glad -- you must be glad we're taking this action today, I  
13 suppose.

14 (Laughter.)

15 CHAIRMAN KELLIHER: Now, today, the Commission  
16 takes final action to reform its market-based rate rules to  
17 strengthen our regulatory program and prevent the exercise  
18 of market power in wholesale power sales, and is the final  
19 step in a process that began in May of 2006.

20 By preventing the exercise of market power, this  
21 Order will strengthen competitive wholesale power markets,  
22 particularly in the bilateral markets.

23 This Order reflects our commitment to continuous  
24 improvement in wholesale competition.

25 Now, the Commission has steadily strengthened its

1 market-based rate program in recent years, and FERC has made  
2 a series of important changes to the program, going back to  
3 2001. This rulemaking is only the latest reform, although,  
4 arguably, the most important.

5 It's critical that FERC has effective oversight  
6 over wholesale power markets, in order to guard the consumer  
7 from exploitation. I believe we have developed the capacity  
8 to effectively regulate competitive wholesale power markets.

9 This Rehearing Order makes one substantive change  
10 to the Final Rule issued last year, with regard to  
11 mitigation of long-term wholesale power sales by companies  
12 that have lost or surrendered their market-based rate  
13 authority.

14 There was some internal inconsistency in the  
15 Final Rule regarding mitigation of long-term sales. On the  
16 one hand, the Commission has long viewed long-term markets  
17 as competitive, yet the Final Rule would have imposed -- it  
18 did impose mitigation on long-term sales by companies that  
19 have lost or surrendered their market-based rate authority,  
20 although our market power test only measures market power in  
21 short-term markets.

22 It was necessary to address this internal  
23 inconsistency and we do so in the Rehearing Order.

24 To encourage more long-term contracts, and, at  
25 the same time, ensure that sellers do not exercise market

1 power, the Commission has revised its approach to allow  
2 sellers the opportunity to demonstrate that they do not have  
3 market power with respect to specific long-term contracts.

4 FERC has a duty to safeguard the consumer from  
5 exploitation, but we also have an interest in assuring the  
6 adequacy and the security of our electricity supply, at a  
7 reasonable cost.

8 Under the approach that we adopt today, we can  
9 fulfill both duties, so I certainly support the Order, and I  
10 thank the Staff for all their work on this.

11 Colleagues? Commissioner Wellinghoff?

12 COMMISSIONER WELLINGHOFF: Thank you, Mr.  
13 Chairman.

14 Again, thank you, team. This was a long and  
15 complex Order, and we had many commenters who had many  
16 divergent interests, and I appreciate you really working  
17 very hard to ensure that those interests were considered in  
18 this Order.

19 Competition in electricity markets provides many  
20 benefits for consumers, but, to preserve those benefits, we  
21 need the means to assess market power and to effectively  
22 mitigate it where it exists.

23 For the authority to sell at market-based rates,  
24 is a privilege and not a right. This rule preserves that  
25 privilege, with appropriate safeguards to ensure that

1 consumers have continued benefits.

2 Our market-based rate program is a key tool  
3 identifying market participants who have the potential to  
4 exercise market power, to the detriment of consumers.

5 Under our market-based rate regulations, we  
6 mitigate that potential where it exists, by limiting the  
7 entity's ability to sell at market-based rates.

8 In today's Order, we reaffirm our approach to  
9 analyzing the potential for market power and the consumer  
10 protections against its exercise.

11 We also expand our analysis in two ways that I  
12 think will assist us in identifying market power and in  
13 mitigating it: First, we'll consider, on a case-by-case  
14 basis, evidence of the expected future changes that should  
15 be taken into account in the snapshot-in-time approach that  
16 we have traditionally used.

17 The Commission will consider the sensitivity  
18 studies and will also consider countervailing evidence.

19 The second expansion is one that has been  
20 discussed, and that is examining the way we mitigate the  
21 potential exercise of market power in long-term contracting  
22 by sellers whose sales of electricity are mitigated, based  
23 on the failure of a predictive screen that is a snapshot of  
24 short-term market conditions.

25 On a case-by-case basis, the Commission will

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1 consider requests for contract-specific market-based rates,  
2 on a demonstration by the seller, that it does not have  
3 market power with respect to the specific long-term contract  
4 being filed.

5 The mitigated seller must show that a buyer under  
6 a long-term contract, had viable alternatives to purchasing  
7 from this seller, including purchasing from third-party  
8 suppliers who build new generating capacity or the buyer  
9 building it itself.

10 The burden is on the seller. We are not  
11 providing a safe harbor for mitigation for long-term sales.  
12 We will carefully examine the evidence presented by the  
13 seller and other interested parties, and we will deny  
14 authority to charge a market-based rate for a long-term  
15 contract, when the mitigated seller cannot meet its  
16 evidentiary burden. Thank you.

17 CHAIRMAN KELLIHER: Thank you. Colleagues? Any  
18 takers? Commissioner Spitzer?

19 COMMISSIONER SPITZER: Okay, thank you, Mr.  
20 Chairman. I'm going to post more definitive discussion, but  
21 I agree with your comments and associate with Commissioner  
22 Wellinghoff's.

23 It's important to understand the context of the  
24 market-based rate rule, which arises under the Commission's  
25 mandate for just and reasonable rates.

1           Although it is extremely complex and technical,  
2           and I thank the team and my colleagues and their staffs for  
3           delving into the complexities, it's not a sterile academic  
4           exercise. They are competing interests to be balanced, and  
5           it is very important to harken back to the logical and  
6           statutory basis for the rule itself, which is to protect  
7           consumers.

8           And, specifically, the long-term contract issue  
9           invokes these competing interests, and, ultimately, long-  
10          term contracts do benefit consumers. The sales will further  
11          foster future long-term contracts, which has been an  
12          important policy objective of the Commission, and, by  
13          allowing these long-term sales, the Commission contributes  
14          to better long-range planning.

15          And these sales will likely encourage the  
16          construction of generation and transmission facilities,  
17          which enhance the reliability function of the Commission  
18          that's now important. So, as noted, there are many  
19          procedural safeguards to protect ratepayers from market  
20          power, there will be a case-by-case analysis, there will be  
21          appropriate review of the facts and the law, but I think  
22          we've achieved, particularly in the area of long-term  
23          contracts, an appropriate balancing of rights of sellers,  
24          rights of buyers, competing interests, and I'm very pleased  
25          to support the Order and thank the team for its hard work.

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1 CHAIRMAN KELLIHER: Thank you. Commissioner  
2 Moeller?

3 COMMISSIONER MOELLER: Thank you, Mr. Chairman.  
4 I, too, will post a statement that, in time, probably  
5 repeats some of the points made earlier, but first, I want  
6 to thank the Staff and my fellow Commissioners for their  
7 assistance on a carefully considered Order that required a  
8 lot of balancing.

9 Essentially, the balance we're trying to  
10 undertake here, is to assure that long-term contracts are  
11 out there, so that we can encourage baseload generation  
12 development, and yet balance that with markets that don't  
13 have barriers to entry, so that we have the benefits of a  
14 competitive market, that this industry has been working  
15 towards for, really, the last 30 years.

16 So, in that sense, we adopt a case-by-case  
17 analysis, and I think that was the right call. I appreciate  
18 all the work that everyone put into this, and I think we've  
19 got a good product.

20 CHAIRMAN KELLIHER: Thank you. Commissioner  
21 Kelly?

22 COMMISSIONER KELLY: I also would like to thank  
23 the team for all the work that you've done. You've put  
24 together a terrific 400-page Order, and I really appreciate  
25 the patience and grace that you've shown in dealing with all

1 of our staffs, particularly over the last week.

2 Today's Order is another step in our efforts at  
3 the Commission, to establish the best possible standards  
4 governing sales of electric energy, capacity, and ancillary  
5 services at market-based rates.

6 It hasn't been an easy road and it hasn't been a  
7 short road. As the Chairman mentioned, the NOPR in this  
8 docket, was issued in May of 2006, but as the docket  
9 reflects, we've actually been engaged in this process, in  
10 cooperation with stakeholders and market participants, since  
11 2004.

12 I'm very pleased that the Rehearing Order upholds  
13 many of the determinations we made in Order Number 697,  
14 including our indicative screens and the delivered price  
15 test.

16 I would note that we have also granted rehearing  
17 or clarification in certain areas, such as permitting  
18 modifications to RT0/ISO mitigation measures, where  
19 warranted.

20 I'd also note that we haven't changed the  
21 regulatory text that specifies that the default mitigation,  
22 in the case of mitigated sellers entering into contracts of  
23 a year or longer, is selling at embedded costs, however, we  
24 do announce today, that we will entertain applications by  
25 mitigated sellers, to apply, on a case-by-case basis, to

1 sell under a one-year-or-longer-term contract at market-  
2 based rates.

3 My own view is that if executed properly, such a  
4 change could be a useful and productive means for spurring  
5 competition and long-term contracting. Ideally, we would  
6 apply an ordered, transparent, and predictable test to each  
7 application, one that would include an examination of  
8 structural barriers to entry, before we permitted market-  
9 based rates to be used.

10 We don't have a test like that yet, however, even  
11 without one, the case-by-case approach described in this  
12 Order, allows the Commission to examine these applications  
13 with the appropriate rigor.

14 For one, I would prefer such applications to  
15 include an identified buyer. With an identified buyer, any  
16 assessment of the application, is confined to a set of  
17 circumstances specific to the transaction.

18 However, if we have neither a specific test, nor  
19 an identified buyer, I worry that the Commission may end up  
20 granting a mitigated seller, blanket, more general-based  
21 rate authority for a particular area and period of time,  
22 which ultimately may impede competition.

23 I am hopeful that, with the help of interested  
24 parties and FERC-sponsored workshops, we will arrive at the  
25 appropriate test, sooner, rather than later. Thank you, Mr.

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1 Chairman.

2 CHAIRMAN KELLIHER: All right, thank you. Let's  
3 vote.

4 SECRETARY BOSE: The vote begins with  
5 Commissioner Wellinghoff.

6 COMMISSIONER WELLINGHOFF: I vote aye.

7 SECRETARY BOSE: Commissioner Moeller?

8 COMMISSIONER MOELLER: Aye.

9 SECRETARY BOSE: Commissioner Spitzer?

10 COMMISSIONER SPITZER: Aye.

11 SECRETARY BOSE: Commissioner Kelly?

12 COMMISSIONER KELLY: Aye.

13 SECRETARY BOSE: Chairman Kelliher?

14 CHAIRMAN KELLIHER: Aye.

15 SECRETARY BOSE: The next item for discussion and  
16 presentation this morning, is E-12, concerning Puget Energy,  
17 Incorporated, in Docket Number EC08-40-000.

18 There will be a presentation by Andrew McLain,  
19 from the Office of the General Counsel, and he is  
20 accompanied by Rich Benjamin, Valerie Gill, and David  
21 Hunger, from the Office of Energy Market Regulation.

22 MR. McLAIN: Good morning, Mr. Chairman and  
23 Commissioners. My name is Andrew McLain. I'm from the  
24 Office of the General Counsel. With me at the table is Rich  
25 Benjamin, David Hunger, and Valerie Gill, from the Office of

1 Energy Market Regulation.

2 E-12 is a Draft Order conditionally authorizing  
3 the merger of Puget Energy, Inc., and its public utility  
4 affiliates, with an investor consortium led by the Macquarie  
5 Group.

6 The Draft Order finds that the merger, valued at  
7 \$7.4 billion of total enterprise value, will not result in -  
8 - will not adversely affect competition, rates, or  
9 regulation, and will not result in the improper cross-  
10 subsidization of a non-utility associate company, or the  
11 pledge or encumbrance of utility assets for the benefit of  
12 an associate company.

13 The Draft Order therefore concludes that the  
14 transaction is consistent with the public interests under  
15 Section 203 of the Federal Power Act.

16 The Draft Order finds that the Applicants have  
17 shown that their combination of their generation assets,  
18 does not raise horizontal or vertical competitiveness issues  
19 in any relevant market.

20 The Applicant's generation does not overlap in  
21 any market. The Draft Order also finds that the Applicants  
22 hold harmless, commitment; provides adequate ratepayer  
23 protections, and such merger will not adversely affect  
24 wholesale rates.

25 Furthermore, the Draft Order finds that the

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1 acquisition will not have an effect on federal or state  
2 regulation, under the condition that the Applicants and any  
3 entities which acquire an interest pursuant to the blanket  
4 authorization in the Draft Order, are required to make books  
5 and records available for examination, if necessary, to the  
6 Commission and the respective state commissions.

7 With respect to the cross-subsidization  
8 analysis, the Draft Order notes that the Applicants made two  
9 principle ring-fencing commitments to the Washington  
10 Commission: First, within 90 days of the closing of the  
11 transaction, the Applicants will file a non-consolidation  
12 opinion with the Washington Commission, that concludes that  
13 the ring-fencing provisions are sufficient, such that a  
14 Bankruptcy Court would not order the substantive  
15 consolidation of the assets and liabilities of Puget Sound  
16 Energy, with those of Puget Energy, Inc. or its affiliates  
17 or subsidiaries.

18 Second, applicants propose in their application,  
19 that Puget Sound Energy will maintain separate books and  
20 records, agree to prohibitions against loans or pledges of  
21 utility assets to Puget Energy, Inc. or Puget Holdings,  
22 without approval from the Washington Commission, and  
23 generally hold Puget Sound Energy customers harmless from  
24 any business and financial risk exposures associated with  
25 Puget Energy, Inc., Puget Holdings, and other affiliates.

1           The Draft Order finds these commitments qualify  
2 this transaction for a safe harbor under the Supplemental  
3 Policy Statement, conditional upon Applicant submitting an  
4 informational filing in this docket within ten days of  
5 securing approval of the proposed ring-fencing provisions  
6 from the Washington Commission.

7           This concludes Staff's presentation, and we'd be  
8 happy to answer any questions.

9           CHAIRMAN KELLIHER: Thank you very much for that  
10 presentation.

11           As Staff indicated, we are today, conditionally  
12 approving the merger of Puget Energy, the holding company  
13 that owns Puget Sound Energy and other public utilities, and  
14 a number of investment firms, led by the Macquarie Group.

15           This Order demonstrates the Commission's  
16 approach to police improper cross-subsidization, as  
17 required by the Energy Policy Act of 2005. Cross-  
18 subsidization is not a new responsibility for the  
19 Commission; preventing cross-subsidization has been at the  
20 heart of our economic regulation since the 1930s.

21           Up to this point, we've policed cross-  
22 subsidies, primarily when we set rates, rather than at the  
23 point of a merger.

24           However, the Energy Policy Act of 2005, expanded  
25 the Commission's merger authority and gave us this new

1 responsibility to police improper cross-subsidization in the  
2 course of merger review.

3 We have been very careful in our exercise of this  
4 new authority and have taken a number of steps, a number of  
5 important steps, but it is important to recognize that a  
6 great variety of transactions are subject to Section 203 of  
7 the Federal Power Act and that certain types of  
8 transactions are unlikely to raise cross-subsidization  
9 concerns, for example, transactions not involving a  
10 franchised public utility with captive customers, or  
11 transactions involving the sale of assets between a public  
12 utility and a non-affiliate.

13 We have established safe harbors for these kinds  
14 of transactions, but other types of transactions do raise  
15 some risk of cross-subsidization. Both federal and state  
16 regulators have an interest in policing cross-subsidies, and  
17 the kind of transactions that entail potential cross-  
18 subsidization, would typically be subject to review by both  
19 federal and state regulators.

20 For that reason, we consulted closely with our  
21 state colleagues on the best way to police improper cross-  
22 subsidies. Our state colleagues actively participated in  
23 the development of our expanded merger authority, and urged  
24 us to refrain from taking a preemptive approach.

25 The reality is, as a general matter, there is

1 more than one way to prevent improper cross-subsidization.  
2 In our exercise of our new responsibility to police cross-  
3 subsidiaries in the course of merger review, we could have  
4 taken a preemptive approach, laying down a uniform federal  
5 rule on cross-subsidization that would override  
6 inconsistent state approaches.

7 Under this approach, some state merger  
8 conditions would be preempted, even if they would guard  
9 against improper cross-subsidization, just as effectively as  
10 the federal -- as a uniform federal rule.

11 Recognizing the common interest in policing  
12 improper cross-subsidization, that approach seemed wholly  
13 inappropriate, since it would produce unnecessary conflict  
14 between federal and state regulators, that did not advance  
15 the public interest.

16 Under our more flexible approach, we'll give a  
17 hard look to the merger conditions imposed by a state  
18 commission to protect consumers from improper cross-  
19 subsidization or encumbrance such as ring-fencing or other  
20 measures.

21 If we determine these conditions are sufficient  
22 to guard against improper cross-subsidization, FERC will not  
23 impose additional conditions, but where a state lacks  
24 authority to condition mergers, FERC will craft appropriate  
25 safeguards against improper cross-subsidization.

1           In this case, the Washington Utilities and  
2           Transportation Commission has strong ring-fencing  
3           requirements, and the Applicants have proposed ring-fencing  
4           commitments and other measures to insulate Puget Sound from  
5           any risk related to the financial activities of its  
6           affiliates, as a result of the transaction.

7           Under our approach, we will accept the  
8           conditions adopted by the Washington Commission, unless we  
9           find them inadequate. We reserve our authority to issue  
10          supplemental Orders, as appropriate, after reviewing the  
11          ring-fencing provisions adopted by the Washington  
12          Commission.

13          And I think our approach in this transaction,  
14          demonstrates the soundness of FERC's approach towards  
15          policing improper cross-subsidization, so I support the  
16          Order and turn to my colleagues. Commissioner Wellinghoff?

17          COMMISSIONER WELLINGHOFF: Yes, Mr. Chairman. I  
18          would endorse your statements and say that consumers  
19          certainly need to be protected in these merger proceedings,  
20          to ensure that there isn't cross-subsidization, but I think  
21          our approach is the correct one.

22          We recognized in our supplemental policy  
23          statement on 203, that the states have a role to play, and  
24          that that role can be one that we can review and determine  
25          if it, in fact, is adequate to protect consumers, and allow

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1 that state ring-fencing provision to be the one that  
2 operates effectively to protect those consumers.

3 And we also said that if we don't believe that it  
4 is effective, we still have additional authority beyond  
5 that, so I think we're absolutely taking the right approach  
6 here, and I want to thank the team on this, and I support  
7 this Order.

8 CHAIRMAN KELLIHER: Thank you. Colleagues, any  
9 other comments? Commissioner Moeller?

10 COMMISSIONER MOELLER: Thank you, Mr. Chairman.  
11 Well, I used to be a customer of this utility.

12 (Laughter.)

13 CHAIRMAN KELLIHER: A satisfied customer?

14 (Laughter.)

15 COMMISSIONER MOELLER: Well, once upon a time, it  
16 was Puget Sound Power and Washington Natural Gas, and it  
17 became Puget Energy, and when I was a legislative staffer,  
18 we worked on many energy bills, particularly the 1990 Model  
19 Conservation Standards and a 1993 bill that allowed the  
20 Company to securitize conservation investments -- the first  
21 one in the nation.

22 But, more importantly, I have probably several  
23 hundred friends back in the State of Washington, who are  
24 customers still, and so I've obviously looked at this with a  
25 great deal of concern for them, and I'll be happy to support

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1 it, particularly because we have very competent colleagues  
2 at the state level as Commissioner Phil Jones and Pat Oshie  
3 and the Chairman at the Washington Utilities Commission.

4 But the reality is that we're entering a period  
5 in a utility such as this -- they are facing a rising cost  
6 environment, they need a lot of investment in very critical  
7 infrastructure, transmission, generation, distribution, and  
8 this merger allows them access to that kind of capital.

9 And with the consumer protection provisions that  
10 are in here, deferred to action at the state level, I'm  
11 confident that consumers are protected in this critical  
12 rising cost environment. Thank you, Mr. Chairman.

13 CHAIRMAN KELLIHER: Thank you. Commissioner  
14 Spitzer?

15 COMMISSIONER SPITZER: Thank you, Mr. Chairman.  
16 This Order reflects the soundness and wisdom of the  
17 supplemental policy statement, and, clearly, we have  
18 articulated the challenge, which is to exercise authority,  
19 as mandated by Congress, and at the same time, show and  
20 reflect appropriate deference to sound decisions of the  
21 states.

22 As I noted during the consideration of the  
23 supplemental policy statement, I presided in Arizona, over a  
24 major transaction in which the Oregon ring-fencing standard  
25 was articulated as the gold standard for ring-fencing, and

1 it was very carefully vetted in testimony in the State of  
2 Oregon, which has an outstanding Commission, as well as in  
3 other states that considered merger transactions.

4 In the instant case, the Washington Utilities and  
5 Transportation Commission, has an outstanding reputation in  
6 the country, and it is, I think, an appropriate policy to  
7 defer, where the state exercises adequate safeguard of the  
8 ratepayer interests in terms of the transactions we  
9 recognize.

10 Particularly in the context of a potential  
11 bankruptcy proceeding, ring-fencing is necessary, and  
12 instead of doing the one-size-fits-all proscriptive,  
13 preemptive, as the Chairman noted, we provide appropriate  
14 deference and recognition of state interests, and this item  
15 reflects the cooperation between the FERC and state  
16 commissions that protect our mutual ratepayers, so I'm very  
17 pleased to support this Order.

18 CHAIRMAN KELLIHER: Thank you. Commissioner  
19 Kelly?

20 COMMISSIONER KELLY: Repeal of the Public Utility  
21 Holding Company Act of 1935, opened the door for new and  
22 different corporate combinations to become owners of public  
23 utilities, potentially, as Commissioner Moeller pointed out,  
24 providing needed investment to the utility industry.

25 Here we have evidence that that potential has

1 become a reality with the consortium of investors lead by  
2 the Macquarie Group.

3 In repealing PUCHA, Congress entertained  
4 concerns, and some of the concerns that were raised about  
5 the possibility of having new types of owners, were that  
6 perhaps utilities would become too complex to be effectively  
7 regulated. Business groups outside the utility industry  
8 worried that perhaps utilities could use their monopolies to  
9 provide electricity and natural gas service to unfairly  
10 compete in other businesses.

11 Consumers worried that utilities could become  
12 part of more risky financial structures.

13 In response to those concerns, the Applicants  
14 here have proposed their own ring-fencing provisions. I am  
15 pleased that in this Order, we recognize the importance of  
16 those provisions.

17 We not only defer to the State of Washington, but  
18 for the first time, in this Order, we condition our approval  
19 on the State of Washington adopting those ring-fencing  
20 provisions.

21 I think that we've taken the appropriate steps to  
22 show that we are concerned about cross-subsidization,  
23 including expressing that concern at the approval stage of  
24 mergers, and I am pleased to vote for this Order.

25 CHAIRMAN KELLIHER: All right, thank you. Let's

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1 vote.

2 SECRETARY BOSE: The vote begins with  
3 Commissioner Wellinghoff.

4 COMMISSIONER WELLINGHOFF: Aye.

5 SECRETARY BOSE: Commissioner Moeller?

6 COMMISSIONER MOELLER: Aye.

7 SECRETARY BOSE: Commissioner Spitzer?

8 COMMISSIONER SPITZER: Aye.

9 SECRETARY BOSE: Commissioner Kelly?

10 COMMISSIONER KELLY: Aye.

11 SECRETARY BOSE: And Chairman Kelliher?

12 CHAIRMAN KELLIHER: Aye.

13 SECRETARY BOSE: The next item for discussion  
14 this morning, is G-1, concerning the Policy Statement on the  
15 Composition of Proxy Groups for Determining Gas and Oil  
16 Pipeline Return on Equity.

17 There will be a presentation by Richard Howe,  
18 from the Office of the General Counsel, and he is  
19 accompanied by Penny Murrell, Justin Adder, and Michael  
20 Strzelecki, from the Office of Energy Market Regulation.

21 MR. HOWE: Good morning, Mr. Chairman and  
22 Commissioners. My name is Richard Howe, and I'm from the  
23 Office of General Counsel. With me today, are Penny  
24 Murrell, Justin Adder, and Michael Strzelecki, from the  
25 Office of Energy Market Regulation.

1 G-1 is a Draft Final Policy Statement addressing  
2 the composition of proxy groups for determining gas and oil  
3 pipeline return on equity, and, specifically, the issue of  
4 whether to include master limited partnerships or MLPs, in  
5 those proxy groups.

6 This proceeding began with the Commission's  
7 issuance of a proposed policy statement last July, and after  
8 the parties filed two rounds of comments on the proposed  
9 policy, the Commission requested additional comments on the  
10 issue of MLP growth rates and convened a technical  
11 conference to discuss the issue.

12 So, based on the extensive record thus  
13 developed, the Draft Policy Statement finds that MLPs should  
14 be included in both the gas and oil pipeline proxy groups.

15 MLPs are the only publicly-traded ownership form  
16 for oil pipelines, and more and more gas assets are being  
17 transferred to publicly-traded MLPs, whose business is  
18 narrowly focused on pipeline activities.

19 So, therefore, the Draft Policy Statement finds  
20 that inclusion of MLPs in the proxy groups, will make the  
21 proxy groups more representative of the business risks of  
22 the regulated gas and oil pipelines whose rates the  
23 Commission must determine.

24 The Draft Policy Statement also finds that  
25 including MLPs in the proxy group, is consistent with the

1 recent decision of the United States Court of Appeals for  
2 the District of Columbia Circuit, in Petal Gas Storage vs.  
3 FERC, which remanded two Commission Orders which had  
4 excluded MLPs from the proxy group, and emphasized the proxy  
5 groups must be risk-appropriate.

6 The Draft Policy Statement does not adopt the  
7 proposed policy statement's earnings cap on distributions  
8 included in the discounted cashflow analysis, because any  
9 such cap would be inconsistent with the basic structure of  
10 the DCF model.

11 Instead, the policy statement finds that  
12 differences between MLPs and corporations, including the  
13 MLP's lower growth prospects, due to their distributions in  
14 excess of earnings, are appropriately accounted for in the  
15 growth component of the DCF model.

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1           In its DCF model, the Commission estimates the  
2 growth of dividends based on a weighted average of short-  
3 term and long-term growth forecasts. The draft policy  
4 statement finds that the IBES five-year growth forecasts,  
5 which the Commission currently uses for the short-term  
6 growth forecast reflect the MLPs' lower growth prospects and  
7 accordingly the Commission will continue to use those  
8 forecasts for both corporations and MLPs.

9           The Commission currently uses the projected long-  
10 term gross domestic product, or GDP, as the long-term growth  
11 forecast for corporation pipelines.

12           However, based on the record the draft policy  
13 statement finds that the long-term growth projection for  
14 MLPs should be equal to 50 percent of projected long-term  
15 growth in GDP.

16           The policy statement explains that major  
17 investment houses project the long-term growth rates of MLPs  
18 to be significantly below the long-term growth of GDP.

19           Also, the policy statement finds that the long-  
20 term growth prospects of pipeline MLPs are less favorable  
21 than those owned by corporations because MLPs are more  
22 dependent on access to capital markets to maintain growth.

23           The draft policy statement retains the current  
24 weighting of two-thirds for the short-term growth forecast  
25 and one-third for the long-term growth forecast.

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1           Finally, the draft policy statement states that  
2           the Commission will apply its new policy in all currently  
3           pending and future proceedings where the return on equity  
4           issue has not been finally decided.

5           To that end, the orders in G-2 and G-4 establish  
6           paper hearings on the return on equity issues in cases  
7           involving Duke Energy Guadalupe Pipeline and Kern River Gas  
8           Transmission Company. The orders in C-1 and G-3 refer to  
9           the Petal Gas Storage and HIOS proceedings which were  
10          remanded by the D.C. Circuit to settlement judges.

11          We would be glad to address any questions the  
12          Commissioners may have.

13          CHAIRMAN KELLIHER: Thank you, very much. I want  
14          to thank the team for all their work on this Order. I think  
15          this is an extremely well-written Order, and I commend it to  
16          even the casual reader. If someone wants to understand the  
17          MLP issues, they could read this Order and I think it  
18          actually is an excellent description of the major issues and  
19          how we address them and how we work through them. So I  
20          commend the team for the quality of the Order.

21          This Order, as staff indicated, does indicate a  
22          significant change in Commission policy in that we will now  
23          allow Master Limited Partnerships to be included in a proxy  
24          group for calculation of returns under the Discounted Cash  
25          Flow Model for natural gas pipelines. We also clarify how

1 we will allow MLPs to be included in the oil pipeline proxy  
2 group.

3 I think this change is made in response to the  
4 structural changes that have occurred in both the natural  
5 gas and the oil pipeline sector in recent years. These  
6 structural changes have strained the Commission's prior  
7 approach towards proxy group composition to the breaking  
8 points.

9 Our policy change is born out of a practical  
10 recognition that the size of the proxy group used under our  
11 prior approach had shrunk dramatically, and the reality is  
12 that the natural gas pipeline sector has increasingly  
13 adopted the MLP structure.

14 The oil pipeline sector adopted that structure  
15 some years ago. And to insist on excluding MLPs from the  
16 natural gas pipeline proxy group in the face of these  
17 developments would seem to be perverse.

18 Moreover, shortly after we issued the Proposed  
19 Policy Statement last July the U.S. Court of Appeals for the  
20 D.C. Circuit in the Petal Gas Storage vacated and remanded  
21 our rulings in two earlier decisions where the Commission  
22 excluded MLPs from the proxy group.

23 The court emphasized that "proxy group  
24 arrangements must be risk appropriate" and that changes in  
25 the structure of the gas pipeline sector compelled reform in

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1 the Commission's traditional approach towards proxy group  
2 composition.

3 We have been careful in our approach. We have  
4 made a number of changes to the Proposed Policy Statement  
5 and those changes are supported by the record.

6 As staff indicated, we dropped our proposal to  
7 cap the cash distribution at reported earnings. We examined  
8 whether Gross Domestic Product is a fair measure of the  
9 long-term growth of MLPs. And we adopted the proposal  
10 advanced by the American Public Gas Association in terms of  
11 how to measure long-term growth projections for MLPs.

12 I think it is true that the MLP structure is a  
13 proven vehicle for investment in pipeline infrastructure,  
14 and I think the time has come for Commission policy to  
15 adjust to the structural changes that have occurred in both  
16 the natural gas and oil pipeline structure in recent years,  
17 and I think the approach we establish today is a sound one  
18 and I support the Policy Statement.

19 Colleagues? Commissioner Wellinghoff.

20 COMMISSIONER WELLINGHOFF: Mr. Chairman, I don't  
21 know if I could go so far as recommending this to the casual  
22 reader.

23 (Laughter.)

24 COMMISSIONER WELLINGHOFF: But I will say I do  
25 agree that our decision to include MLPs in the proxy group

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1 will make those proxy groups more representative of the  
2 business risks that the regulated firms are experiencing.

3 But I think it is also important to emphasize  
4 that the Commission is making no finding at this time as to  
5 the particular corporations or MLPs that should be included  
6 in any particular proceeding.

7 However, the Commission does direct the parties  
8 in the individual rate cases to provide as much information  
9 as possible regarding the business activities of each firm  
10 they propose to include in the proxy group, including their  
11 recent annual SEC filings and best of service analysis of  
12 the firm.

13 I would also urge the regulated firms whose rate  
14 of return is at issue to provide specific detailed analysis  
15 and information regarding the business risk they face when  
16 supporting their requested placement within a zone of  
17 reasonableness.

18 I particularly would like to see the views of  
19 experts from the financial community included in any  
20 filing.

21 And with that, I support this Policy Statement.  
22 Thank you.

23 CHAIRMAN KELLIHER: Colleagues? Commissioner  
24 Moeller.

25 COMMISSIONER MOELLER: Thank you, Mr. Chairman.

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1 For anyone who thinks that rate-making is always glamorous,  
2 they should read the record of this proceeding.

3 (Laughter.)

4 COMMISSIONER MOELLER: But nevertheless, this is  
5 a very significant action we are taking today because it can  
6 have long-term consequences on rate-making. Modifying any  
7 component of a rate case is a significant event.

8 The question of whether to include MLPs in proxy  
9 group has been considered by this Commission for more than a  
10 year now, and I want to thank all the interested parties who  
11 contributed to our analysis of the issue. It was very  
12 complex.

13 Especially I would like to thank the team--and  
14 particularly John Robinson, I don't see him, and Richard  
15 Howe for their significant contributions in this proceeding.

16 The development of this Policy Statement is a  
17 very good example of the due process afforded, and the due  
18 consideration given to an important issue that will have  
19 long-term impact on our rate-making policies.

20 We were well informed by the several rounds of  
21 comments that were filed, both before and after the January  
22 Technical Conference that both Commissioner Spitzer and I  
23 participated in.

24 And while we are adopting a new policy today, it  
25 should be made clear that whether you support or oppose the

1 inclusion of MLPs in the proxy group, master limited  
2 partnerships will not automatically be included as a matter  
3 of right.

4 Applicants must continue to vigorously defend  
5 their proxy companies, and I fully expect that shippers and,  
6 in many cases our Trial Staff, will challenge their  
7 inclusion based on the facts in the record.

8 I do have a question for Richard. Under the  
9 proposed policy statement that the Commission proposed to  
10 require a showing that the MLP had stable earnings over a  
11 multi-year period, can you explain what has come of that  
12 proposal?

13 MR. HOWE: Well the Policy Statement finds that  
14 the differences between MLPs and corporations should be  
15 accounted for in the growth component of the model rather  
16 than through capping the earnings.

17 So in that context we would consider the concerns  
18 about stability of earnings of a particular MLP would be  
19 reflected in the IBES growth projections, and therefore some  
20 general standardized requirements showing that stability of  
21 earnings would always have to be made as a necessary.

22 Now that said, in the individual cases when an  
23 MLP is proposed for inclusion in the proxy group the parties  
24 can raise issues that that MLP has unusual financial  
25 characteristics and should be excluded because it is not

1 representative.

2 So certainly issues of that stability of earnings  
3 can be raised in that context as the Policy Statement points  
4 out.

5 COMMISSIONER MOELLER: Thank you. And, Richard,  
6 your reputation for being an excellent writer has proven  
7 through in this Order as well. I will be happy to support  
8 it. It did take some fancy footwork for us to get where we  
9 are, but I think the effort, if it didn't pay dividends, at  
10 least it paid distribution.

11 (Laughter.)

12 CHAIRMAN KELLIHER: Commissioner Spitzer.

13 COMMISSIONER SPITZER: Thank you, Mr. Chairman.

14 When the Chairman alluded to casual readers of  
15 this proceeding, the famous words of Mr. T came to mind,  
16 "pity the fools."

17 (Laughter.)

18 COMMISSIONER SPITZER: First, obviously the  
19 bottom line, there's no cap on distributions. The IBES  
20 five-year growth will be the short-term component, and we've  
21 adopted 50 percent of the GDP as the long-term growth  
22 component, and there is of course the judicial safeguard of  
23 parties having their day in court on each specific  
24 proceeding.

25 Sometimes really complicated matters are very

1 important, and the challenge of delivery of natural gas to  
2 the customers of this country in light of the potential  
3 carbon constraints is a huge challenge in the context of  
4 establishing infrastructure and protecting ratepayer  
5 interests, the interests of the producers, the interests of  
6 the shippers, the interest of the consumers, and the  
7 interests of the pipeline applicants. It is an  
8 extraordinarily complex challenge.

9 I must say that in my career as a tax lawyer I  
10 had difficulty with Subchapter K cases, to put it mildly. It  
11 is one of the most difficult and challenging and complex  
12 sections of federal law, and there is a legal fiction in the  
13 Tax Code where you are trying to synchronize and harmonize  
14 treatment of pass-through entities with C Corporations where  
15 there is the incidence of double taxation at the entity  
16 level, or the shareholder level.

17 And to adopt economic principles, rate-making  
18 principles in the context of the distinctions between  
19 Subchapter K entities and Subchapter C corporations was  
20 challenging, and I thank very much the team that worked very  
21 hard on this and showed great inspiration and preservation.

22 I want to thank my colleagues, who hung through  
23 this. I have to say, Phil Dione who dearly departed to  
24 Tucson attended the technical conference referred to by  
25 Commissioner Moeller, and some laughed and said 'you drew

1 the short straw on this,' and he said: My boss cares about  
2 it. I'm sorry, what can I say?

3 (Laughter.)

4 COMMISSIONER SPITZER: The commentators, I  
5 oftentimes express, we express concern about on occasion  
6 comments, but in this case those who participated in this  
7 proceeding really deserve kudos.

8 My personal views on the cap on distribution  
9 modified based on the materials that we saw. I want to  
10 single out the testimony of APGA. The American Public Gas  
11 Association provided outstanding testimony on the global  
12 issue of MLP inclusion, and then on the more narrow  
13 technical issue of the long-term growth rate.

14 Their recommendations in fact are adopted in this  
15 Policy Statement and therefore will impact the law of the  
16 United States, and I think that is noteworthy.

17 Again, the complexity of natural gas delivery is  
18 daunting, and this I hope is one area where we have achieved  
19 some degree of regulatory certainty, along with the ability  
20 of parties in each particular case to make their case and  
21 get their hearing; but the concept of regulatory certainty  
22 is absolutely critical in an area that demands high levels  
23 of investment.

24 So I am very pleased with the work product, and  
25 am pleased with the process through which this Order was

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1 achieved, and I am pleased to support this Policy Statement.

2 Thank you.

3 CHAIRMAN KELLIHER: Thank you. Commissioner  
4 Kelly.

5 COMMISSIONER KELLY: I also would like to  
6 recognize and thank staff for their efforts over the last  
7 year. You have done an excellent job, from working on the  
8 drafting of the Proposed Policy Statement which we issued  
9 last July, through the technical conference that you held in  
10 January to today.

11 While I agree with Commissioner Wellinghoff that  
12 the casual reader is unlikely to pick up this document,  
13 those of us who must read it will find that this staff has  
14 made a complex issue with many moving parts very easy to  
15 understand. No small feat. The Commission is better for  
16 it, and thank you.

17 I am pleased to support today's Policy Statement  
18 on the composition of ROE proxy groups because we found a  
19 reasonable means of incorporating these partnerships into  
20 our rate-making processes.

21 Congress created MLPs with the goal of getting  
22 infrastructure built, and there has been a clear trend  
23 toward their use in the pipeline industry. Our Policy  
24 Statement today allows us to properly reflect this trend in  
25 our rate-making processes.

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1 I would like to highlight two important aspects  
2 of the statement. First, we do not depart from our  
3 traditional rate-making analysis. The Policy Statement  
4 relies on the tried and true DCF Model which has been upheld  
5 by the courts as an appropriate means of establishing ROEs.

6 We are not complicating our rate-making processes  
7 by adopting an intricate model, which I believe achieves our  
8 objective of regulatory certainty.

9 Second, the Policy Statement demonstrates that  
10 the Commission is flexible and capable of ensuring that our  
11 traditional rate-making analysis reflects facts on the  
12 ground. In this case, the reality is that there has been an  
13 unmistakable trend toward MLPs in the pipeline industry.  
14 It is time that our traditional rate-making processes  
15 recognize that.

16 While some might prefer to see the Commission  
17 change more quickly, I believe that in this case we are  
18 moving the Commission forward only after taking the views of  
19 all interested parties into account and engaging in  
20 meaningful deliberation.

21 I am pleased with the product that that has  
22 resulted in, and I am pleased to support this policy  
23 statement.

24 CHAIRMAN KELLIHER: Thank you. Let's vote.

25 SECRETARY BOSE: The vote begins with

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1 Commissioner Wellinghoff.

2 COMMISSIONER WELLINGHOFF: I vote aye.

3 SECRETARY BOSE: Commissioner Moeller.

4 COMMISSIONER MOELLER: Aye.

5 SECRETARY BOSE: Commissioner Spitzer.

6 COMMISSIONER SPITZER: Aye.

7 SECRETARY BOSE: Commissioner Kelly.

8 COMMISSIONER KELLY: Aye.

9 SECRETARY BOSE: And Chairman Kelliher.

10 CHAIRMAN KELLIHER: Aye.

11 SECRETARY BOSE: The last item for discussion  
12 this morning is H-1, concerning Public Utility District No.  
13 2 of Grant County, Washington, in Docket No. P-2114-116.  
14 There will be a presentation by Kim Nguyen of the Office of  
15 Energy Projects. She is accompanied by Jennifer Hill and  
16 Robert Easton from the Office of Energy Projects, and John  
17 Katz and Elizabeth Holloy from the office of the General  
18 Counsel.

19 MS. NGUYEN: Good morning, Mr. Chairman, and  
20 Commissioners.

21 The Draft Order in Item H-1 issues a new 44-year  
22 license to the Public Utility District No. 2 of Grant  
23 County, Washington, for the Priest Rapids Hydroelectric  
24 Project.

25 (Slide.)

1           The project is an integral part of the seven-dam  
2 mid-Columbia river Hydroelectric System which is the single  
3 largest coordinated hydroelectric system in the country at  
4 over 13,256 megawatts.

5           The first two dams are federal dams, while the  
6 next five are FERC-licensed.

7           The mid-Columbia River extends from the Grand  
8 Coulee Dam nearly 210 miles downstream to the Hanford Reach.  
9 The Hanford Reach which extends for 52 miles is immediately  
10 downstream of the Project and is the only free-flowing, non-  
11 tidal stretch of the Columbia River in the United States.  
12 This reach provides substantial spawning habitat for  
13 salmon.

14           (Slide.)

15           The Project has two developments, Wanapum and  
16 Priest Rapids, with integrated dams and powerhouses spanning  
17 the width of the Columbia River.

18           At 1,893 megawatts the project is the second  
19 largest in capacity under FERC license. The first is the  
20 Niagara Hydroelectric Project at 2,755 megawatts.

21           There are also two fish ladders at each dam and  
22 one downstream fish passage unit at Wanapum.

23           (Slide.)

24           The major issue for relicensing of the Project is  
25 addressing the effects on salmon and steel head species,

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1 including two that are listed as endangered under the  
2 Endangered Species Act. Chinook salmon, coho salmon,  
3 sockeye salmon, and steelhead are culturally and  
4 economically important fish in the region.

5 This draft license includes specific measures to:

6 Improve upstream and downstream salmon and  
7 steelhead passage facilities and operations;

8 Enhance hatchery facilities and increase stocking  
9 levels;

10 Perform habitat restoration projects;

11 Perform control programs for avian and fish  
12 predators of juvenile salmon and steelhead; and

13 Follow-up with monitoring to ensure the success  
14 and effectiveness of these programs.

15 (Slide.)

16 For other aquatic resources the draft license  
17 includes management plans for bull trout, white sturgeon,  
18 Pacific lamprey, and resident fish.

19 To address water quality the draft license  
20 requires implementation of a program to monitor water  
21 quality and improve total dissolved gas levels. Dissolved  
22 gases are important because saturation levels well in excess  
23 of 100 percent can cause gas bubble disease and mortality in  
24 fish.

25 (Slide.)

1 This draft license also includes measures for:  
2 Wildlife habitat improvements such as  
3 installation of waterfowl nesting platforms, raptor-proofing  
4 of transmission lines, and noxious weed control;

5 Evaluation protection and mitigation of nearly  
6 700 archeological sites and the protection of traditional  
7 cultural resources of the Wanapum Indians;

8 Recreational enhancements such as additional  
9 campsites, picnic areas, and trails; and

10 Provisions for shoreline management.

11 (Slide.)

12 In addition to the 1,893 megawatts of capacity  
13 from this project, there is a potential for significantly  
14 more hydro in the U.S. There is currently 96,000 megawatts  
15 of hydro capacity in the U.S. of which 54,000 megawatts are  
16 regulated by FERC.

17 (Slide.)

18 Potentially due to tax credits state renewable  
19 portfolio standards and the high cost of oil, we are seeing  
20 a trend of increasing numbers of applications and requests  
21 for pre-filing consultation for new hydropower development.  
22 A substantial amount of this new capacity would be from  
23 pumped storage projects.

24 Pending before FERC are applications for  
25 conventional projects and pumped storage projects that would

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1 increase the hydro capacity by 430 megawatts and 900  
2 megawatts respectively.

3 Original projects currently in pre-filing have  
4 the potential to add 448 megawatts from conventional hydro  
5 and 2,783 megawatts from pumped storage. In addition, over  
6 6,000 megawatts of capacity is being proposed from  
7 hydrokinetics projects. In total, over 10,000 megawatts of  
8 new hydropower is currently before the Commission. We have  
9 not seen this level of interest in more than a decade.

10 That concludes our presentation. We will be  
11 happy to answer any questions you may have.

12 CHAIRMAN KELLIHER: Great. Thank you very much.

13 We called the Priest Rapids Project for  
14 discussion in part to honor the Papal visit this week, I  
15 think--

16 (Laughter.)

17 CHAIRMAN KELLIHER: --but also, probably more  
18 importantly, to really show the rigor of the Commission's  
19 environmental review of these projects. I think it really  
20 shows our commitment to ensure comprehensive and balanced  
21 development. But also because Commissioner Moeller wanted  
22 to talk about it--

23 (Laughter.)

24 CHAIRMAN KELLIHER: --and this is sort of  
25 Washington State Day with Puget and Priest Rapids. So I

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1 think that probably exhausts about what I want to say.

2 (Laughter.)

3 CHAIRMAN KELLIHER: This one I will not recommend  
4 to the casual reader. It is exhaustive, but I think it  
5 shows the exhausting nature of our review. We are not quick  
6 in dealing with relicensing of projects, and it is because  
7 we take our time and there's a lot of information that we  
8 need to go through.

9 Commissioner Moeller.

10 COMMISSIONER MOELLER: Thank you, Mr. Chairman.  
11 I guess I won't also commend the reading of our Order to the  
12 casual interested listener, but I would encourage them to  
13 visit the great State of Washington, and specifically this  
14 project. It is a project I know well. I have probably  
15 driven by those dams a couple hundred times in my life.

16 Until you see them, you really cannot appreciate  
17 these fabulous, complex machines. But as with every other  
18 energy resource, there is balance involved. I think our  
19 Order deals with that quite appropriately.

20 Not only with the natural resources, but  
21 particularly important in the Pacific Northwest is  
22 protecting fish, both resident fish but especially  
23 anadromous fish. And again I think the Order is worth  
24 checking out for those people specifically interested in  
25 that to get a feel for the complex balance of this.

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1           John, I think some people are going to wonder why  
2 this is a 44-year license. Can you answer that question,  
3 please?

4           MR. KATZ: Certainly, Commissioner. I'll say as  
5 to the reading of the public, that it is a signal I think of  
6 the breadth of the Commission's interests and coverage of  
7 issues that we can satisfy those who are fascinated by DCF  
8 analysis and those who love reading about the life cycles of  
9 fish. We probably have a broad readership out there.

10           The reason the license term is set at 44 years  
11 for this particular license represents the intersection of  
12 two Commission policies on licensing. One is that under the  
13 statute the Commission may issue new or re-licenses for  
14 terms of 30 to 50 years. The Commission for a long time has  
15 had a policy of issuing licenses for either 30, 40, or 50  
16 years based on the amount of investment in both  
17 developmental assets and environmental measures over the  
18 course of a new license.

19           In this instance, the Draft Order recommends a  
20 44-year license term based on a moderate amount of those  
21 investments relative to the size of this project.

22           There is another Commission policy, however,  
23 that calls for, where possible, arranging licensing in a  
24 river basin to expire at the same time so that the  
25 Commission can consider all issues regarding related

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1 projects, projects that have environmental effects and  
2 developmental effects on each other at the same time.

3 When many of these projects were originally  
4 licensed, they came out seriatim, maybe 10, or 20, or 30  
5 years apart so the Commission could not do that. But over  
6 the last decade or so the Commission has tried to link up  
7 the projects as best it can. And while the Commission  
8 cannot predict what license term it will give to other  
9 related projects when they come in, the addition of the four  
10 years was kind of a best guess on our part to promote the  
11 ability to sync up licenses of other projects that will be  
12 relicensed in the next couple of years.

13 COMMISSIONER MOELLER: Very good. Thank you.  
14 Again, I am pleased to support this Order and I urge  
15 everyone to visit the great State of Washington and see  
16 these projects for themselves, Mr. Chairman.

17 CHAIRMAN KELLIHER: Commissioner Kelly.

18 COMMISSIONER KELLY: Thank you.

19 Well Commissioner Moeller's interest in this  
20 project is shared by my advisor, Elizabeth Blaug, who worked  
21 in the Office of Energy Projects before she joined my staff.  
22 Elizabeth brought to my attention some historical facts  
23 associated with this project that I in turn would like to  
24 share with you.

25 Over 50 years ago the Federal Power Commission

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1 issued the original license for this project. The first  
2 unit of the project, costing \$166 million, was to be  
3 financed via revenue bonds.

4           Apparently at that time the bonds were issued in  
5 \$1000 denominations. We know that because shortly after the  
6 project was approved, according to a July 9th, 1956, Time  
7 Magazine article, quote, "In a Wall Street office two shirt-  
8 sleeved Washington State wheat farmers tackled an heroic  
9 task in an historic cause. As Commissioners of Grant  
10 County's tiny Public Utility District No. 2, the farmers  
11 started signing their names 166,000 times on revenue bonds."

12           (Laughter.)

13           COMMISSIONER KELLY: The article went on to note  
14 that the project, which at the time was the Nation's third  
15 biggest hydro development, offered important public  
16 benefits, most notably abundant power to meet the needs of  
17 the blooming Northwest.

18           Fifty years later, while I am pretty sure 166,000  
19 signatures are no longer needed to facilitate project  
20 financing, I am sure that the project benefits continue.  
21 Priest Rapids, the second-biggest FERC-licensed project,  
22 seems to have something for everyone.

23           It provides a significant and dependable source  
24 of power for the Pacific Northwest and other Western  
25 States.

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1           Second, the requirements we incorporated in the  
2 license provide important protections for fish and wildlife,  
3 as well as enhanced recreational opportunities.

4           Third, despite the size of the project and the  
5 numerous stakeholders with varied interests involved in its  
6 re-licensing, the process resulted in two settlement  
7 agreements regarding fishery resources protections.

8           And finally, overall a project that most and  
9 perhaps all stakeholders support.

10           I would like to thank staff for their hard work  
11 because without your hard work we would not come to these  
12 kinds of agreements. I would like to thank Grant PUD and  
13 all stakeholders for working so cooperatively.

14           As staff has pointed out, there is a potential  
15 for significantly more hydro in the U.S. I would also like  
16 to echo the thoughts of my colleague, Commissioner  
17 Wellinghoff, who noted, as I noted, at the recent National  
18 Hydro Association's annual meeting that hydro power deserves  
19 as much attention as all other renewable energy resources.

20           Hydro is, as he so aptly put it, the great uncle  
21 of the renewables family. And I agree that the enormous  
22 potential for hydro power must continue to be tapped.

23           The Priest Rapids Project is a fine example of  
24 why this is so. The Project contributes to a diversified  
25 generation mix. It provides low-cost energy that displaces

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1 non-renewable fossil fuel generation. And it creates an  
2 environmental benefit by avoiding power plant emissions.

3 I don't know if the two shirt-sleeved Washington  
4 State wheat farmers from so long ago were thinking about  
5 greenhouse gas emissions, fish passages, or terrestrial and  
6 aquatic invasive species when they signed their names  
7 166,000 times, but I am confident they would be pleased to  
8 know what those 166,000 signatures have reaped.

9 I am pleased to vote out this Order.

10 CHAIRMAN KELLIHER: Colleagues? Commissioner  
11 Wellinghoff.

12 COMMISSIONER WELLINGHOFF: Thank you, Mr.  
13 Chairman.

14 Fortunately we have robo-signers now, so they can  
15 get those bonds out a little bit quicker. But as  
16 Commissioner Kelly noted, I had the great pleasure and honor  
17 to give the keynote to the National Hydro Association  
18 Conference here of about 400 people on Tuesday.

19 Through the course of preparing for that  
20 presentation, I gained a great deal more respect for the  
21 great uncle of renewables, hydro electric power. And I  
22 think this particular project exemplifies all the good  
23 things that we can do with hydro and how we need to continue  
24 to emphasize hydro and its important role that it is going  
25 to play in our ability to reduce greenhouse gas emissions.

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1           This particular project, although not part of  
2 this specific Order, but back in 2004 and 2005 we authorized  
3 upgrades to the project's 10 turbines that increased the  
4 output capacity by 138 megawatts.

5           I think staff's presentation on the 10,000  
6 megawatts before us hopefully supports my call to the  
7 National Hydro Association that they can double the hydro  
8 capacity in this country another 90,000 megawatts by 2030.  
9 I think we can achieve that goal. Certainly we are on the  
10 way to that goal, and I think our Energy Projects Office is  
11 up to the task of getting there.

12           So I definitely support this Order. Thank you.

13           CHAIRMAN KELLIHER: Thank you. Commissioner  
14 Spi tzer.

15           COMMISSIONER SPITZER: Thank you, Mr. Chairman.  
16 This Order is a testament to the proper pursuing of the  
17 process within the FERC, a very complex area. The policy  
18 benefits have been noted, but particularly in the context of  
19 environmental protections that require very granular concern  
20 of specific issues, respect of stakeholders and intervenors  
21 in the process, and an effort to achieve consensus reflects  
22 a very sound process. I would commend and congratulate  
23 projects, and all the staff for their work on this.

24           It is a challenge to balance competing interests,  
25 as we have learned. The interests of renewable energy and

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1 protecting the environment, but I look forward to many more  
2 endeavors in existing technologies as well as some new and  
3 exciting technologies in the area of hydro power.

4 My only contribution to the historical record  
5 would be the songs of the Guthries--

6 (Laughter.)

7 COMMISSIONER SPITZER: --from the 1930s that  
8 really, if you think back that was a time of the Great  
9 Depression. There was 20 percent unemployment throughout  
10 the country, and also in the Northwest, and there was a role  
11 of government to provide electricity to those who did not  
12 have it. And that is a testament to the courage of those  
13 pioneers in the 1930s and the new pioneers of today. So I  
14 am pleased to support this Order.

15 CHAIRMAN KELLIHER: Great. Thank you. Let's  
16 vote.

17 SECRETARY BOSE: The vote begins with  
18 Commissioner Wellinghoff.

19 COMMISSIONER WELLINGHOFF: I vote aye.

20 SECRETARY BOSE: Commissioner Moeller.

21 COMMISSIONER MOELLER: Aye.

22 SECRETARY BOSE: Commissioner Spitzer.

23 COMMISSIONER SPITZER: Aye.

24 SECRETARY BOSE: Commissioner Kelly.

25 COMMISSIONER KELLY: Aye.

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SECRETARY BOSE: And Chairman Kelliher.

CHAIRMAN KELLIHER: Aye.

Any other comments, announcements, colleagues?

(No response.)

CHAIRMAN KELLIHER: No? With that, we are  
adjourned. Thank you, very much.

(Whereupon, at 11:35 a.m., Thursday, April 17,  
2008, the meeting of the Commission was adjourned.)