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BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

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

938TH COMMISSION MEETING
OPEN SESSION

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

Thursday, September 18, 2008
10:10 a.m.

1 APPEARANCES:

2 COMMISSIONERS PRESENT:

3 CHAIRMAN JOSEPH T. KELLIHER (Presiding)

4 COMMISSIONER SUEDEEN G. KELLY

5 COMMISSIONER MARC SPITZER

6 COMMISSIONER PHILIP MOELLER

7 COMMISSIONER JON WELLINGHOFF

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P R O C E E D I N G S

(10:10 a.m.)

CHAIRMAN KELLIHER: Good morning. This open meeting of the Federal Energy Regulatory Commission will come to order to consider the matters that 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: I have some brief opening comments before we get to the consent agenda.

First, just about some of the financial turmoil that we're seeing. Of course, many of these companies are heavily involved in electricity and gas trading, and some of the turmoil that these companies are experiencing, and there's a very live prospect of a number of urgent Section 203 filings coming before the Commission.

That's something we saw earlier in the year, with J.P. Morgan and Bear Stearns, and the Commission, I think, in that case, demonstrated an understanding of the seriousness of the current situation and our ability to act quickly when faced with these urgent filings.

But we are monitoring the situation. The Commission is ready to act.

We've actually experienced this situation before.

1 Enron in 2001, the Fall of 2001, was, I think, the number
2 one gas marketer and the number three power marketer -- that
3 might be reversed, but they were number one and three, as a
4 marketer, and they complete disappeared from the scene, and
5 the industry managed that sudden disappearance very well.

6 So, I think we might have to do some of our quick
7 work that we did earlier in the year, more than once, coming
8 up.

9 Now, we also have other turmoil, natural turmoil
10 with the recent hurricanes, both Hurricane Gustav and Ike,
11 and we've seen millions of Americans lose power, and many
12 are still out of power. In both cases, there was
13 significant damage to both the transmission and the
14 distribution systems.

15 Hurricane Ike, in particular, had a greater
16 impact on, certainly, at least Texas, than Hurricanes
17 Katrina and Rita, and very significant damage to
18 transmission lines and to towers in both instances.

19 And restoration in the wake of Hurricane Gustav,
20 has been proceeding well. Ninety-four percent of the
21 transmission lines have been restored, and that all but one
22 of the generating stations have returned to service. At the
23 height of the efforts, the restoration efforts, after
24 Hurricane Gustav, there were 15,000 workers dedicated to
25 restoration, and I think that really shows the way the

1 industry responds to these events.

2 I'd love to know how many different logos there
3 were on the trucks restoring in the wake of Hurricane
4 Gustav.

5 But Hurricane Ike had a very big impact, and it
6 really penetrated deep inside the country. It covered four
7 different regional markets: It covered ERCOT, the
8 Southeast, SPP, and MISO, where there were very significant
9 outages in MISO.

10 Altogether 35 electric utilities and eight large
11 coops experienced very large losses, and millions of
12 Americans lost power.

13 The restoration here, it's only in the first
14 weeks, and it's proceeding -- we haven't seen restoration as
15 quickly as in the wake of Hurricane Gustav, and that our own
16 Pat Wood, at least as of yesterday, didn't have power at his
17 home in Houston. He had very minor damage to his family's
18 home in Houston, but some of his relatives experienced much
19 more significant losses.

20 But I just want to commend the utilities for the
21 way they've responded, and wish them the best in their
22 restoration efforts.

23 And now I'd like to turn to a more pleasant
24 subject, and, namely, give some awards, to very well
25 deserving Commission Staff. I don't know a great way to

1 segue from hurricanes to Commission Staff awards, so we'll
2 just have an abrupt segue, maybe now, for something
3 completely different, we can look at Staff awards.

4 I just want to give the Exemplar Award to four
5 very deserving FERC Staff, who really are, as the Award
6 suggests, exemplars of public service. They are long-term
7 Commission employees, truly dedicated employees, and have
8 done great service in the past.

9 We're giving them awards now, in part, to inspire
10 them to even greater efforts in the future. I don't want
11 these awards to be seen as gold watches. I think they're to
12 honor someone's service, and to hopefully wed them even more
13 deeply to the Commission and to continue their good work.

14 Let's start with Debbie Leahy. Debbie Leahy is
15 in the Office of the General Counsel, and she's been there
16 for 12 years, since 1994. Debbie has handled really some of
17 the most difficult regulatory policy issues at the
18 Commission, since she's arrived here.

19 And sometimes I think we all have our crosses to
20 bear, but Debbie's borne some of the heavier crosses since
21 she's been here.

22 One of the first things she worked on, was
23 stranded cost recovery and Order 888. That certainly was a
24 heavy cross.

25 She has been steadily promoted since she's been

1 here, and has really done an excellent job working with
2 young attorneys, and emphasizing the importance that the
3 Commission have really high quality and well reasoned
4 Orders.

5 She's been, particularly, a leader in the market-
6 based rate program, and that is probably a heavier cross
7 than the stranded cost recovery in 888, because it's lasted
8 longer and there's so many entities that are affected.

9 But she has led a team of attorneys on market-
10 based rate Orders. She played a very significant role in
11 Order 697, which was the first time the Commission took the
12 market-rate based policy that it had developed through
13 individual cases, and actually put into the Commission's
14 Rules and formalized it and established greater
15 consistency.

16 Debbie has since become Deputy Associate General
17 Counsel for Energy Markets, and she has lead
18 responsibilities, important responsibilities in matters
19 regarding Section 203 of the Federal Power Act, Section 204,
20 and PUCHA.

21 So, Debbie, I just want to say that you have
22 certainly earned this award. Where is she? Great, come on
23 up, please.

24 Colleagues, do you have any comments you'd like
25 to make? Jon?

1 COMMISSIONER WELLINGHOFF: Well, just let me say
2 that, Joe, you've picked out four gurus here to make these
3 awards to, and I think Debbie's the guru of market-based
4 rate issues, and really has done some superlative work in
5 that area.

6 She's smart, a hard worker, and, really, we
7 couldn't have a better person working for us.

8 CHAIRMAN KELLIHER: Thank you. Colleagues?
9 Commissioner Kelly?

10 COMMISSIONER KELLY: I'd just like to add my own
11 personal experience. I met with Debbie on one of those very
12 difficult market-based rate cases, just earlier this week,
13 Debbie and her team.

14 And it was most impressive to see, not only what
15 she knows about the issue, because she has a comprehensive,
16 all-encompassing knowledge of all of the competing policies,
17 but the team that she put together.

18 (Laughter.)

19 CHAIRMAN KELLIHER: Hey, Debbie, why don't you
20 stand up, so the camera -- thank you, we'll embarrass you
21 more.

22 (Laughter.)

23 COMMISSIONER KELLY: Thank you, Debbie, you're
24 the star.

25 And she is, and she put together a terrific team

1 that worked well together, and, also, she has passed on her
2 knowledge, so that her knowledge is helping the other staff
3 members of FERC carry on in her tradition. I can't think of
4 a better person to get the award.

5 CHAIRMAN KELLIHER: Thank you. Colleagues?
6 Commissioner Spitzer?

7 COMMISSIONER SPITZER: Thank you, Mr. Chairman.
8 I've solicited the views of my team, who were OGC alums, as
9 well as my own perspective, and, you know, from my time in
10 the private sector, in a law firm, I observed that often the
11 best lawyers were not particularly good managers.

12 And then sometimes the managers were not always
13 outstanding lawyers, and here we have someone who is not
14 only an outstanding attorney, but a wonderful manager of our
15 personnel, and we're very appreciative and applaud this
16 award.

17 CHAIRMAN KELLIHER: Thank you. Commissioner
18 Moeller?

19 COMMISSIONER MOELLER: Thank you, Mr. Chairman.
20 Debbie's a great example of someone -- we have many people
21 here at this Agency who just remain calm, cool, and
22 collected, despite the enormous pressures of the issues, and
23 that's something I, too, appreciate about her.

24 CHAIRMAN KELLIHER: Thank you. Debbie, why don't
25 you come up and get your award?

1 (Presentation made; applause.)

2 CHAIRMAN KELLIHER: All the candidates today are
3 lawyers, but I don't want the non-lawyers on the Staff to
4 think they're being forgotten. We're just kind of doing
5 these in clusters for the next few months.

6 Next is Larry Greenfield. Larry has been a
7 mainstay of the Commission Staff since August 1979, so
8 nearly 30 years. He began as a law clerk in the Office of
9 Administrative Law Judges, and was a trial attorney and
10 joined the advisory staff in 1988, and has been working --
11 he joined as a supervisor attorney in the Electric Rate and
12 Corporate Regulation area of OGC.

13 He also has assumed steadily increasing
14 responsibilities later as an Assistant General Counsel and
15 currently as Deputy Associate General Counsel for Energy
16 Markets, and he has very broad responsibilities.

17 Larry is also kind of our de facto historian at
18 FERC. When I had my particular interest or maybe peculiar
19 interest in interlocking directorates a few years ago when I
20 was a Commissioner, Larry was just thrilled at the
21 interest.

22 (Laughter.)

23 CHAIRMAN KELLIHER: It's a relative obscure part
24 of the Federal Power Act, and he told me all about the
25 legislative history on that provision and what led up to it,

1 and with great love of just how the statute was written and
2 what led to the statute.

3 I consider him kind of the honorary and unpaid
4 historian of FERC, but his real responsibility goes well
5 beyond his position on the organization chart.

6 Larry is known on the FERC Staff as Mr.
7 Electric. Just as he apprenticed me in Section 305 of the
8 Federal Power Act, I've already lost my understanding.

9 (Laughter.)

10 CHAIRMAN KELLIHER: Larry is very interested in
11 just teaching people about the statutes that we're charged
12 with administering.

13 There's often a line outside of his office,
14 composed of attorneys and trial staff wanting to consult
15 with him, and I think he's the master of the files, the
16 files of the statutory history of the Federal Power Act, so
17 if you want to read the 70-year old committee reports that
18 led to our, at least our organic act, Larry's the master of
19 those files.

20 He's also a resident expert on the Mobil Sierra
21 Doctrine and the accounting and reporting requirements for
22 public utilities. Larry is also one of the most personable
23 of FERC Staff. He loves history, or at least he pretends
24 to, when we have conversations about it.

25 (Laughter.)

1 CHAIRMAN KELLIHER: So I always enjoy working
2 with Larry, and I think the respect I feel for him, is
3 broadly felt on the Commission Staff.

4 Colleagues? Jon?

5 COMMISSIONER WELLINGHOFF: When I think of Larry
6 and his background, I think of him as the guru of procedure.
7 When my staff needs to figure out how to do something and
8 how to get something done, Larry's the person to go to, and
9 because of his knowledge of how things operated in the past,
10 he can work through the process and get things done.

11 We really appreciate Larry very much. Thank you,
12 Larry.

13 CHAIRMAN KELLIHER: Colleagues? Commissioner
14 Kelly?

15 COMMISSIONER KELLY: Larry also enjoys his work
16 and he makes the workplace, a place that other people want
17 to be in. His enthusiasm for what he does, is contagious,
18 and he also -- well, he has a lot of informal titles.

19 As Joe mentioned, another informal title, the
20 resident poet of FERC. He's very well known and highly
21 regarded, particularly among staff, for his unwavering
22 practice of sending the Thursday filing memos up with a
23 particularly engaging poem, and I understand that you have
24 been relieved of that duty most recently. At least all my
25 staffers are very sad.

1 (Laughter.)

2 COMMISSIONER KELLY: They don't have their
3 monthly Thursday poem. Maybe you could put that back on
4 your list of things to do. Thank you, Larry, for the
5 service that you've given us. You certainly deserve this
6 award.

7 CHAIRMAN KELLIHER: Commissioner Moeller?

8 COMMISSIONER MOELLER: Mr. Chairman, you were
9 quite eloquent and articulate in describing the attributes
10 of Larry, but, in addition to him being talented, you noted
11 at the end that he's just a really nice guy, and I think
12 that's something we all appreciate with the pressures of
13 this job.

14 CHAIRMAN KELLIHER: Commissario?

15 COMMISSIONER SPITZER: Mr. Chairman, the term,
16 "professor," has been applied and I've heard that several
17 times with Larry. As I said, I went to a law firm out of
18 school, and the saying is that the people who get Cs, are
19 the lawyers; the Bs, students and the judges, and the A
20 students are the professors, so I think "professor" is a
21 great term, because Larry certainly is an A.

22 CHAIRMAN KELLIHER: Thank you. Larry, why don't
23 you come up and get your award?

24 (Presentation made; applause.)

25 CHAIRMAN KELLIHER: Next is Richard Howe.

1 Richard, I've already embarrassed in the past, by saying
2 he's one of my favorite Order-writers.

3 When I arrived here, that's when I needed the
4 most education, and I have been educated by Richard to
5 Orders over the years. Sometimes when I just go home and I
6 sit in my nice reading chair and have a glass of wine and I
7 read my Richard Howe capacity release Order --

8 (Laughter.)

9 CHAIRMAN KELLIHER: Whenever I read his Orders, I
10 think of Bob Solomon. Bob's next, of course, but I think
11 when I read the Orders, I have my glass of wine, and I'm
12 nodding, one of my thoughts is, of course, are we going to
13 win in court when we're challenged?

14 Unusually, those Orders are so well reasoned, I'm
15 always extremely confident that we're going to prevail.

16 Richard has been the go-to person on gas rates
17 and transportation issues at the Commission. He joined FERC
18 in July of 1980, so he's been here for 27 years. He worked
19 extensively on the Order 500 series on pipeline take-or-pay
20 issues, and, as I said, he's had a major role in capacity
21 release and a very significant role in our MLP policy
22 changes.

23 I think he's an excellent writer. I'm always
24 educated and enjoy reading his Orders. I'm a big fan of
25 Richard's.

1 He is a model public servant. Colleagues? Jon?

2 COMMISSIONER WELLINGHOFF: As you've said
3 already, he's the guru of gas regs. Richard certainly is
4 that.

5 I also have enjoyed reading his Orders, although
6 I don't usually take them with a glass of wine, maybe a
7 couple of beers.

8 (Laughter.)

9 COMMISSIONER WELLINGHOFF: I really appreciate
10 having Richard here, and having that expertise on gas.

11 CHAIRMAN KELLIHER: Commissioner Kelly?

12 COMMISSIONER KELLY: Richard is just invaluable.
13 I called a couple of his colleagues, to get some feel from
14 them, about how people feel about Richard, and the first
15 quote was, he's just the best.

16 The second one was, it would be really nice to
17 call him. We've been very lucky to have him at FERC and to
18 have him stay with us for his career. I hope he never
19 retires.

20 CHAIRMAN KELLIHER: Commissioner Moeller?

21 COMMISSIONER MOELLER: My understanding is that
22 he's a mentor to younger lawyers here, particularly in
23 writing skills. His writing skills, as you have noted, are
24 legendary, and all I would do, is suggest that if anybody
25 wants to read about master limited partnerships, he made it

1 sound interesting.

2 It's a deserving award, indeed.

3 CHAIRMAN KELLIHER: Thank you. Commissioner
4 Spitzer?

5 COMMISSIONER SPITZER: Thank you, Mr. Chairman.
6 Commissioner Moeller alluded to the master limited
7 partnership issue. We had a number of meetings and this
8 gentleman had to put up with my obsession with Subchapter J,
9 and with all those meetings we had, and then, of course, the
10 litigation in other areas.

11 He is deserving of this award, if nothing else,
12 for putting up with my issues. I congratulate him. Thank
13 you.

14 CHAIRMAN KELLIHER: Thank you very much.
15 Richard?

16 (Presentation made; applause.)

17 CHAIRMAN KELLIHER: Finally, as I just alluded
18 to, we have Bob Solomon. Bob joined the Commission in 1988.
19 Is that correct, that you came here to the Solicitor's
20 Office and that was your first stop at FERC? I didn't
21 realize that.

22 So you came here from private practice and joined
23 the Solicitor's Office in 1988. He served in the Office of
24 the General Counsel, as Deputy Assistant General Counsel,
25 largely on electricity matters, and was an advisor to

1 Commissioner Bailey, an advisor to Chairman Hebert.

2 So, he moved around a bit within the Commission,
3 always moving upward. That's not to suggest you're a
4 problem employee.

5 (Laughter.)

6 CHAIRMAN KELLIHER: And he's been in the
7 Solicitor's Office since 2001, he became the Solicitor in
8 January of 2006. I was very happy that you accepted that
9 position.

10 I'm not really a baseball fan, but I do track our
11 scorecard from time to time, and how we're doing, but since
12 Bob became Solicitor, FERC has won over three quarters of
13 the court appeals that go to a final decision, and,
14 significantly, our numbers have been increasing over time.

15 We've won 76 percent of the time in 2006; 79.5
16 percent in 2007, and so far, 80 percent of the time this
17 year, so the trend line is in the right direction.

18 Bob's father, of course, was the General Counsel
19 of the Federal Power Commission in the 1960s, so he was born
20 for the job, perhaps. I just want to emphasize that I want
21 to give Bob the proper credit for this track record, but
22 also point out that one reason that Bob has had the success
23 and has been able to have the success, is that the quality
24 of the Orders that he and other lawyers in the Solicitor's
25 Office have to defend, I think has been improving over time,

1 due to the effects of the FERC Staff, including the lawyers
2 that were previously recognized.

3 If you look at the question of how is the
4 Commission successful in courts, it really does start with
5 the Order-writer, as the Order-writer is reviewing the
6 comments and beginning our first step towards reasoned
7 decisionmaking, the supervisor reviewing the Order-writers
8 job. We're trying to give you a better hand to deal with in
9 the courts, and I hope we're successful in that.

10 It ultimately then comes to the Commission. It's
11 dedicated to reasoned decisionmaking, following the law, and
12 recognizing the limits of our legal authority.

13 I think this Commission certainly plays that
14 role, so I just want to commend Bob for his success. I've
15 run out of awards to give you, so this is my last award for
16 you. I gave you the Chairman's Medal last year, and now
17 you're getting the Exemplar, so I'm out of awards, but I
18 hope this one's enough of an incentive for you to keep on
19 with your efforts.

20 Colleagues?

21 COMMISSIONER WELLINGHOFF: I could give Bob the
22 guru designation for a lot of things, but I think I'll give
23 him the guru designation for diplomacy, in the sense that he
24 is extremely patient with the five of us, who sometimes have
25 disparate views on how an appeal should be approached.

1 (Laughter.)

2 COMMISSIONER WELLINGHOFF: Nevertheless, he's
3 able to then present a unified approach to the courts. He
4 does a marvelous job. Thank you, Bob.

5 CHAIRMAN KELLIHER: Commissioner Kelly?

6 COMMISSIONER KELLY: I would echo Jon's remarks.
7 Also, as you noted, Joe, Bob has been at FERC and he's done
8 it all and he's done it all very well.

9 As Solicitor, the morale in the office couldn't
10 be higher. They work together exceedingly well, and I think
11 that also contributes to our high win rate.

12 I understand, Bob, that although your son is an
13 engineer, your two daughters have yet to decide what their
14 careers are going to be, so I am hoping that you encourage
15 them to go to law school and come to FERC and continue that
16 Solomon family legacy that we have so benefitted from.
17 Thank you.

18 CHAIRMAN KELLIHER: Thank you. Commissioner
19 Moeller?

20 COMMISSIONER MOELLER: Thank you, Mr. Chairman.
21 I look forward to my regular briefings with Mr. Solomon.
22 They're always insightful, and I get to listen to his dry
23 wit come out as well, particularly when I recall where we
24 toasted a particular victory in our office. That was a
25 special time.

1 This is, again, a very deserving award.

2 CHAIRMAN KELLIHER: Commissioner Spitzer?

3 COMMISSIONER SPITZER: Mr. Chairman, as you know,
4 federal law grants to federal agencies, quite a bit of
5 authority over the citizens of this country. I guess the
6 them with the four lawyers, culminating with our Solicitor,
7 is the importance of government agencies properly and
8 correctly articulating the law to those who are acknowledged
9 to follow the law. Where government fails to do so or there
10 is confusion as to the law, adverse circumstances obtain.

11 That is extraordinarily important. I am very
12 honored to be a member of an agency that not only has a good
13 record at the appellate level, but has done much to restore
14 the public's faith and confidence in energy markets and our
15 system of delivery of wholesale energy to the people of this
16 country.

17 On a less ebullient theme, the first time Mr.
18 Solomon came into my office, shortly after I had come to
19 FERC, I always look people very carefully in the eye, and he
20 almost came to tears when he noticed that the Washington
21 Senators -- Mr. Solomon is a big baseball fan, and that's a
22 good thing, in my book.

23 CHAIRMAN KELLIHER: Thank you. I just want to
24 pick up on the comments that Commissioner Spitzer and
25 Commissioner Kelly just made. Commissioner earlier said

1 that lawyers sometimes are not good managers, and Bob is one
2 of the few that is both.

3 You're a very good leader, and the success we've
4 had, is a personal success, but also reflects your
5 leadership of the Solicitor's Office. I just want to
6 commend that, and why don't you come up and receive your
7 award.

8 (Presentation made; applause.)

9 CHAIRMAN KELLIHER: One reason I wanted to give
10 Bob this award today, is that I'm hoping you'll do your best
11 work next Wednesday, so good luck there.

12 Before we turn to business, I just want to
13 observe that we have some special guests today, namely, two
14 Commissioners from Clatsop County in Oregon, namely Jeff
15 Hazen and Van Samuelson. If you could stand up please,
16 we'll just recognize you.

17 (Applause.)

18 CHAIRMAN KELLIHER: I just want to thank you for
19 taking the trouble to come here from Oregon and to consider
20 what actions we're soon to take with respect to the Bradwood
21 Project. Thank you for the special attention.

22 Before we turn to the consent agenda, I want to
23 recognize Commissioner Moeller to make a statement after the
24 consent vote, but since the July 17th open meeting,
25 otherwise known as John Moot day here at the Commission, the

1 Commission has issued 165 Notational Orders, so we did a lot
2 of work over the past two months.

3 With that, Madam Secretary, let's turn t the
4 consent agenda.

5 SECRETARY BOSE: Thank you, and good morning, Mr.
6 Chairman, good morning, Commissioners. Since the issuance
7 of the Sunshine Act Notice on September 11th, E-1, E-4, E-
8 11, and E-12, have been struck from this morning's agenda.

9 Your consent agenda for this morning, is as
10 follows: Electric Items - E-2, E-3, E-5, E-6, E-7, E-8, E-
11 9, E-10, E-13, E-14, E-15, E-16, E-17, E-19, E-20, E-22, E-
12 24, E-25, E-26, E-27, E-28, E-29, E-30, and E-31.

13 Miscellaneous Items: M-1.

14 Gas Items: G-2 and G-3.

15 Hydro Items: H-1, H-2, H-3, H-4, H-5, H-6, and
16 H-7.

17 As a matter of law, Commissioner Spitzer is not
18 participating in E-31. As to C-1, Commissioner Wellinghoff
19 is dissenting, with a separate statement. With the
20 exception of C-1, where a vote will be taken after
21 presentation and discussion of this item, we will now take a
22 vote on this morning's consent agenda, beginning with
23 Commissioner Wellinghoff.

24 COMMISSIONER WELLINGHOFF: I vote aye.

25 SECRETARY BOSE: Commissioner Moeller?

1 COMMISSIONER MOELLER: Aye.

2 SECRETARY BOSE: Commissioner Spitzer?

3 COMMISSIONER SPITZER: I vote aye, with the
4 exception of Item E-31, on which I have a recusal.

5 SECRETARY BOSE: Commissioner Kelly?

6 COMMISSIONER KELLY: Aye.

7 SECRETARY BOSE: Chairman Kelliher?

8 CHAIRMAN KELLIHER: Aye.

9 SECRETARY BOSE: Our first item --

10 CHAIRMAN KELLIHER: Commissioner Moeller has a
11 statement on E-31.

12 COMMISSIONER MOELLER: Thank you, Mr. Chairman.
13 Along with hospitals, highways, and airports, electric
14 transmission lines are often part of our infrastructure that
15 people have a mixed reaction to.

16 They certainly enjoy using these facilities as
17 enhancing the quality of life, but they don't want to look
18 at them or live near them. Thanks for the chance to say a
19 few words on Item E-31, which is responding to the New York
20 Regional Interconnect's petition seeking incentive-rate
21 treatment for the proposed high-voltage transmission line.

22 It is estimated to cost approximately \$2
23 billion. It's substantial in its magnitude, as it involves
24 constructing a 190-mile direct current line that will
25 traverse dozens of municipalities across Upstate New York.

1 The significant regulatory risk that this line
2 would encounter, as well as the risks associated with siting
3 the line on private lands, are factors that should be
4 considered before reaching our decision to support the
5 conditional approval of incentive-rate treatment for this
6 project.

7 Although we've not always been unanimous in our
8 support for incentives on transmission projects, I should
9 recognize that this Order gained the support of all the
10 voting Commissioners.

11 Again, I stress that their proposal is both
12 ambitious and fraught with risks, and in light of the
13 circumstances presented in its application, I believe that
14 the particular incentives that we are conditionally
15 approving -- RTO membership, TRANSCO formation, advanced
16 technologies -- will all achieve the purposes of the Federal
17 Power Act Section 219.

18 I've stated previously, hopefully on a regular
19 basis, that people identify me with that out country needs
20 to play some serious catch-up in the building of
21 transmission infrastructure that is needed to deliver
22 reliable and reasonably priced power to markets.

23 Providing incentives to the utilities, which is
24 authorized by Congress, has proven to be an effective way to
25 encourage utilities to invest their dollars in new

1 transmission infrastructure.

2 We've seen the number of public utilities seeking
3 this rate treatment, increase lately, and while I continue
4 to judge the merits of each request on a case-by-case basis,
5 consistent with the statute and our policies, I'd like to
6 emphasize my personal belief that our ability to provide
7 incentives, has spurred needed investment in transmission.

8 I appreciate the time.

9 CHAIRMAN KELLIHER: Thank you, Commissioner
10 Moeller. Commissioner Kelly?

11 COMMISSIONER KELLY: I'm also pleased to support
12 incentive-rate treatment for this project. Particularly
13 important, is the combination of NYRI status as an
14 independent transmission company that is undertaking this
15 project of its own volition and expense, as well as the size
16 of the investment this independent company is undertaking,
17 estimated to be approximately \$2 billion, as well as the
18 location of the project, which would connect upstate to
19 downstate New York.

20 I'd also very much like to thank my colleagues
21 for their input and their cooperation in crafting this
22 Order. I would hope this project and our efforts in
23 addressing it, can serve as a model for us in future
24 proceedings.

25 Some might observe that it would take a unique

1 project to bring us to consensus. Well, I'm not sure this
2 is necessarily true. The NYRI project is, indeed, a unique
3 project. It promises substantial reliability benefits, as
4 well as substantial cost savings to consumers, because of
5 decreases in congestion and related costs, and also should
6 help improve the competitiveness of the markets.

7 I am pleased to vote for this Order.

8 CHAIRMAN KELLIHER: Thank you. Any other
9 comments?

10 (No response.)

11 CHAIRMAN KELLIHER: Madam Secretary, let's move
12 to the items on the Discussion agenda.

13 SECRETARY BOSE: The first item for presentation
14 and discussion this morning, is G-1, concerning a Draft
15 Order on Rehearing and Clarification, addressing certain
16 transparency provisions of Section 23 of the Natural Gas
17 Act.

18 There will be a presentation by Gabe Sterling
19 from the Office of Enforcement. He is accompanied by
20 Matthew Hunter and Chris Peterson from the Office of
21 Enforcement.

22 (Slides.)

23 MR. STERLING: Good morning, Mr. Chairman and
24 Commissioners. My name is Gabe Sterling, and with me today,
25 is Matthew Hunter and Chris Peterson. We're with the Office

1 of Enforcement.

2 G-1 is a Draft Order on Rehearing and
3 Clarification of Order Number 704, the Final Rule adopting
4 FERC From No. 552, an annual reporting requirement for
5 certain gas market participants.

6 This reporting requirement has its genesis in the
7 Energy Policy Act of 2005, which added Section 23 of the
8 Natural Gas Act, authorizing the Commission to facilitate
9 price transparency in the wholesale natural gas markets.

10 The Draft Order addresses the Request for
11 Rehearing or Clarification of Order Number 704, as well as
12 the comments received during and following two technical
13 conferences that Staff held with potential filers of From
14 No. 552.

15 The Draft Order largely affirms Order Number 704,
16 while granting rehearing and clarification on a number of
17 subjects.

18 The Draft Order reiterates that the data sought
19 by From No. 552, is volumetric data regarding physical
20 natural gas transactions that utilize, contribute to or
21 could contribute to natural gas price indices.

22 Additionally, both purchase and sales data should
23 be reported.

24 The Draft Order narrows the scope of
25 respondents, by excluding certain data that must be

1 reported, and reduces the filing burden on many respondents
2 who must submit Form No. 552.

3 First, the Draft Order provides that only
4 physical natural gas transactions must be reported.
5 Financial transactions should not be reported.

6 Second, respondents that do not hold a blanket
7 certificate, qualify for an exemption from Form No. 552, if
8 their natural gas transactions are de minimis.

9 Market participants will qualify for the de
10 minimis exemption, if both their annual reportable sales are
11 less than 2.2 million MmBtu, and their annual reportable
12 purchases are less than 2.2 million MmBtu.

13 Third, while the Draft Order qualifies that end-
14 use transactions are generally subject to reporting on Form
15 No. 552, traditional retail transactions at the local
16 distribution company level, are not subject to reporting.

17 Fourth, the Draft Order provides that
18 respondents need not distinguish between transactions, based
19 upon location. This modification is consistent with the
20 Commission's 2003 Policy Statement on index price reporting,
21 and compliance should be less burdensome for respondents.

22 Form No. 552 is to be filed by May 1, 2009, for
23 calendar year 2008 data, and each May 1 thereafter for the
24 preceding calendar year's data. The Draft Order proposes a
25 one-year safe harbor for respondents submitting calendar

1 year 2008 data.

2 Respondents will benefit from a rebuttable
3 presumption that the data provided by May 1, 2009, is
4 accurate and provided in good faith.

5 The Draft Order contains a number of additional
6 technical clarifications. At this time, I'd like to thank
7 the many individuals who contributed to the creation of
8 Order Number 704-A: Arnie Quinn, Jerry Peterson, David
9 Langenfelder, Michele Veloso, and Michelle Rio of the Office
10 of Enforcement, who were vital to the production of this
11 Order. This concludes Staff's presentation, and we'd be
12 happy to answer any questions you may have regarding the
13 Order.

14 CHAIRMAN KELLIHER: Thank you very much, thank
15 you for the presentation. I want to thank Staff for working
16 on this Order and for producing a high quality Order.

17 We don't normally have a presentation on a
18 rehearing Order, but this is a little unusual in that we
19 made some notable changes from the Final Rule, and also this
20 Final Rule, as modified today, does apply to a universe that
21 extends a little bit outside our traditional domain. It
22 extends to the universe of market participants, rather than,
23 quote, natural gas companies.

24 But this is an important action. We're using
25 discretionary authority that Congress gave us in 2005, to

1 require a very broad universe of market participants to
2 provide information to improve transparency in wholesale
3 natural gas markets.

4 The focus here today on this proceeding, is
5 particularly improving confidence in price integrity, in
6 that the Rehearing Order improves the transparency of
7 wholesale natural gas price formation, by requiring the
8 reporting of certain physical natural gas transactions that
9 are important to the formation of index prices.

10 The index price have really become a critical
11 part of wholesale natural gas markets, and they have had
12 widespread and varying use.

13 This is really our first exercise of the
14 transparency authority granted to us by Congress. That is
15 discretionary authority. We weren't required to act or --
16 you know, unlike some of the other EPAct provisions, we were
17 given no deadline for action to use our transparency
18 authority, and we were careful in how we used it.

19 We had extensive outreach, looking at what kind
20 of information would be useful to the markets, what kind of
21 information would improve transparency, and also balancing
22 regulatory burden.

23 And I think it's significant that even after the
24 issuance of the Final Rule, the Commission held two
25 technical conferences on certain aspects of these reporting

1 requirements, and that's unusual to have such a level of
2 outreach, even after a Final Rule.

3 But it's significant that none of the rehearing
4 requests argued that the Rule is unnecessary; instead, the
5 rehearing requests really sought -- they focused on the need
6 for particular information, and also the burden on producing
7 that information.

8 We made a number of significant changes that will
9 reduce the burden on market participants, while still
10 achieving our ends of improving transparency.

11 But the reporting requirement does extend beyond
12 the universe of natural gas companies, as defined by the
13 Natural Gas Act, to buyers and sellers that might not
14 otherwise be subject to the Commission's jurisdiction, and I
15 think doing so, is fully consistent with Section 23 of the
16 Natural Gas Act, as added by the Energy Policy Act of 2005.

17 But this is not the only exercise of our new
18 transparency authority. We have a proposed rule that was
19 issued last December, that would use our transparency
20 authority to improve information about flows of natural gas
21 across interstate and other natural gas pipelines.

22 Even in the future, I think the Commission is
23 prepared to use this authority if we can identify sound ways
24 to improve transparency in natural gas markets.

25 So, I think it's an important action we're taking

1 today, and I wanted to highlight it. Colleagues?
2 Commissioner Moeller?

3 COMMISSIONER MOELLER: Thank you, Mr. Chairman.
4 I have a question for Mr. Sterling, first.

5 Can you explain a little bit, why we kept the 2.2
6 MmBtu threshold? There was some discussion that that may be
7 too low.

8 MR. STERLING: Mr. Commissioner, I think that the
9 answer to your question is contained within the four corners
10 of the Order. I wanted to highlight the fact that the
11 number of comments we received on that particular subject --
12 I mean, the number of rehearing requests we received on
13 that subject, were actually pretty low, compared to the
14 interest that we had in the proceeding.

15 The 2.2 number is one that that Commission
16 approved in Order 704, originally. It hasn't changed in
17 this Order.

18 We believe that, at least initially, the 2.2
19 million MmBtu number, will satisfactorily collect
20 information from significant players in the wholesale
21 natural gas markets, while leaving truly de minimis players
22 in those markets, without having to report.

23 COMMISSIONER MOELLER: Thank you. I'll make a
24 couple of comments: It's easy to forget now, the amount of
25 controversy that really was swirling around this large

1 subject.

2 Just within the last couple of years, people,
3 rightly or wrongly, have essentially lost some confidence in
4 the indexes, and I think, because of this effort and this
5 Rule and our extensive outreach that you alluded to, with
6 even technical conferences after the Rule was issued, has
7 restored a lot of confidence.

8 I'm looking forward to getting the next year's
9 reporting data, and I think that will bolster confidence in
10 these index prices, which are a foundation of market
11 activity.

12 So I congratulate the Staff on the hard work and
13 I will continue to look at this, if it needs any changes.

14 CHAIRMAN KELLIHER: Thank you. Colleagues?
15 Commissioner Kelly?

16 COMMISSIONER KELLY: I think the issuance of this
17 Order today, couldn't be more timely. On Tuesday of this
18 week, the Wall Street Journal ran an article by David
19 Geffen, and the headline was about the subprime mortgage
20 turmoil, Bear Stearns, Lehman Brothers show how the lack of
21 transparency has hurt investors.

22 And in his article, Mr. Geffen observes that the
23 dislocations that have occurred in the marketplace, mostly
24 have resulted from a lack of transparency.

25 He says : "The lack of complete information has

1 eroded investors' trust, which is why each successive
2 attempt by authorities to bandage a wound and proclaim the
3 system intact, has resulted in less hope and more cynicism
4 in the market."

5 And that, frankly, is the thinking behind our
6 Order today. We know that for a competitive market to
7 function well, buyers must have sufficient information to
8 evaluate competing products.

9 Sometimes the markets for information don't
10 function well, for a variety of reasons.

11 What we have attempted to do in this proceeding,
12 is look at the market for information in the physical
13 natural gas market, and we found that information supply is
14 somewhat wanting. We've taken, as Staff has explained, a
15 very careful and well researched look into what information
16 is necessary.

17 In this Order, we conclude that certain
18 additional information has to be provided, and we don't
19 believe that it's unduly expensive.

20 I believe that the provisions that we enact
21 today, will ensure the integrity of the wholesale physical
22 natural gas market and promote competition within them, by
23 facilitating better price transparency, and I support this
24 Order and I thank Staff for their hard work.

25 CHAIRMAN KELLIHER: Thank you. Commissioner

1 Wellinghoff?

2 COMMISSIONER WELLINGHOFF: Yes, Mr. Chairman, I
3 support this Order, as well. I don't have any remarks
4 beyond those that you've already made, but I would like to
5 thank Staff for their hard work. Thank you.

6 CHAIRMAN KELLIHER: Commissioner Spitzer?

7 COMMISSIONER SPITZER: Thank you, Mr. Chairman.
8 "Sunlight is the best disinfectant," said Supreme Court
9 Justice Brandeis, and this quote refers to the benefits of
10 openness and transparency.

11 Today we issue a Final Rule that provides
12 sunlight to markets for sale, purchase of physical gas in
13 interstate commerce. This Order clarifies the scope of the
14 rule and which transactions must be reported.

15 Submission of FERC Form Number 552, will provide
16 the public with sunlight on the buyers and sellers of more
17 than a de minimis volume of natural gas.

18 Such disclosure will reveal market participants
19 that significant impact wholesale markets. I believe this
20 was Congress's intent in EPAct 2005, and, therefore, I
21 support this Order as a move towards maintaining the
22 public's confidence in natural gas markets. Thank you.

23 CHAIRMAN KELLIHER: Shall we vote? Are there any
24 other comments?

25 (No response.)

1 CHAIRMAN KELLIHER: No? Let's vote.

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

4 COMMISSIONER WELLINGHOFF: I vote 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 last item for discussion
14 this morning, is C-1, concerning Bradwood Landing, LLC, in
15 Docket Number CP06-365-000, et al.

16 There will be a presentation by Lauren O'Donnell
17 from the Office of Energy Projects, and she is accompanied
18 by Berne Mosely from the Office of Energy Projects and Susie
19 Holmes from the Office of the General Counsel.

20 MS. O'DONNELL: Good morning, Chairman Kelliher
21 and Commissioners. The Draft Order in Item C-1, authorizes
22 the construction of the Bradwood Project, consisting of an
23 LNG import terminal proposed by Bradwood Landing, LLC, and a
24 sendout pipeline proposed by Northern Star Energy, LLC.

25 The facilities would be located in Clatsop and

1 Columbia Counties, Oregon, and Cowlitz County, Washington.

2 As described in the Draft Order, Bradwood Landing
3 is authorized to construct an LNG import terminal that would
4 be used to store and vaporize up to 1.3 billion cubic feet a
5 day of LNG.

6 The terminal facilities would include a single
7 marine berth, capable of accepting current-size and future
8 generation LNG carriers, two LNG storage tanks capable of
9 storing a total of 320,000 cubic meters, seven vaporizers,
10 as well as other infrastructure and support systems.

11 The Draft Order also authorizes Northern Star to
12 construct and operate a 36.3 mile long sendout pipeline from
13 the LNG terminal, consisting of 30"- and 36"-diameter pipe.

14 Bradwood Landing anticipates receiving up to 125
15 LNG carriers per year.

16 As shown on this map, the Bradwood Landing LNG
17 terminal site is located on the Columbia River, 38 miles
18 upstream of its mouth. The transit route of the LNG
19 vessels, is denoted by the purple line.

20 The Northern Star Pipeline, shown in blue, would
21 deliver gas from the LNG terminal, to Georgia Pacific's
22 Wauna paper mill, located near Wauna, Oregon, and to
23 Portland General Electric's Beaver power plant located near
24 Port Westward, Oregon.

25 In addition, the Northern Star Pipeline would

1 interconnect with Northwest Natural Gas Company's intrastate
2 pipeline system and Northwest Pipeline Corporation's
3 interstate system.

4 The Staff's analysis of the Bradwood Project
5 began with the initiation of the prefiling process on
6 February 23, 2005. Bradwood Landing and Norther Star filed
7 their applications 15 months later on June 5th, 2006. Staff
8 issued the Draft Environmental Impact Statement or EIS, on
9 August 17, 2007.

10 During the environmental review period, there
11 were numerous opportunities for federal, state, and local
12 agencies and the public to participate in the process.

13 This included dialogues with Staff at scoping
14 meetings, interagency meetings, site visits that were
15 noticed for public participation, and meetings to take
16 comments on the Draft EIS.

17 In response to the concerns expressed by the
18 public and elected officials, Staff held additional scoping
19 and Draft EIS comment meetings in the project area.

20 In addition, the comment period on the Draft EIS,
21 was extended from the normal 45 days, to 120 days, because
22 of the Columbia River's unique aquatic issues.

23 The Final EIS was issued on June 6, 2008, and
24 addressed 1,827 individual comments received on the Draft
25 EIS.

1 As required by the National Environmental Policy
2 Act, the EIS identified a full range of alternatives,
3 including renewable energy resources, various pipeline
4 system alternatives, and 12 other potential LNG terminal
5 sites.

6 Each alternative was evaluated to determine
7 whether it was technically feasible, could provide
8 comparable volumes of natural gas to Washington and Oregon,
9 and, most importantly, whether it offered a significant
10 environmental advantage over the Bradwood Project.

11 None of the alternatives were found to meet all
12 the stated criteria and the objectives of the Bradwood
13 Project.

14 The Final EIS evaluated the Bradwood Project,
15 using the Commission's high standards for engineering and
16 safety, and analyzed appropriate mitigation to avoid or
17 lessen environmental impacts.

18 The Draft Order adopts the recommendations of the
19 EIS, and includes 109 environmental conditions that must be
20 implemented in order to ensure that the project results in
21 limited adverse environmental impacts.

22 Among the issues addressed by the conditions, are
23 seismic and geologic hazards, impact on wetlands, crossing
24 of water bodies, clearing of forests, and impacts on
25 threatened and endangered species, including salmon.

1 Of the 109 conditions, 75 require that Bradwood
2 Landing and Northern Star, provide further site-specific
3 information to the Commission, for review and approval prior
4 to construction.

5 Neither construction nor operation of the
6 facilities, will be allowed to commence until all of the
7 applicable conditions have been satisfied.

8 As part of its application, Bradwood Landing
9 provided a front-end engineering design for the proposed
10 project. This information was reviewed by Staff engineers
11 and consultants, to assess the engineering design, safety
12 concepts, and the projected operational reliability of the
13 project.

14 As the Commission has done with each of the other
15 LNG terminals that have been recently approved, this Order
16 contains numerous conditions to ensure that appropriate
17 features and modifications would be incorporated into the
18 facility design to enhance the safety and operability of the
19 facility.

20 Of the 53 safety-related conditions for this
21 project, eight concern issues which must be addressed prior
22 to any site preparation; 31 concern modifications that must
23 be made prior to construction; and six must be completed
24 prior to commissioning of the terminal.

25 At each step in the process, the Director of the

1 Office of Energy Projects will ensure that these conditions
2 are met before the facility is allowed to move to the next
3 phase.

4 In addition, there are eight conditions that
5 place requirements on the terminal operator for the life of
6 the facility.

7 In conjunction with the Commission's review of
8 the Bradwood Project, the Coast Guard Captain of Port
9 reviewed the proposal's effect on the safety and security of
10 the Columbia River.

11 The Coast Guard's Waterway Suitability Report
12 identified 22 risk mitigation measures that are necessary to
13 make the waterway suitable for LNG vessel traffic.

14 These risk mitigation measures include safety and
15 security zone requirements, vessel traffic management and
16 information systems, tug escorts, navigational aids,
17 security boardings, waterway monitoring, shoreline patrols,
18 and vessel escorts.

19 To ensure compliance with these and other
20 measures, the Coast Guard may deem necessary, the Draft
21 Order contains a requirement that throughout the life of
22 this facility, Bradwood Landing must ensure that the
23 facility and any LNG vessel transiting to and from the
24 facility, comply with all requirements set forth by the
25 Coast Guard Captain of the Port.

1 I would like to emphasize that the Commission
2 Staff conducted an exhaustive review in the EIS. Over a
3 period of 42 months, an interdisciplinary team of Commission
4 Staff scientists and analysts, worked to arrive at the
5 Draft Order that is before you today.

6 This work included the review of over 50,000
7 pages in the public record. The EIS consisted of 2,089
8 pages.

9 The Draft Order adopts the conclusion in the EIS,
10 that the Bradwood Project, with the successful
11 implementation of the mitigation proposed by the Applicants
12 and required by the Order, would result in limited adverse
13 environmental impact.

14 Further, the Draft Order finds that the Bradwood
15 Project can be constructed and operated in a safe and secure
16 manner, and emphasizes that the Commission will only allow
17 construction to proceed after a thorough review of each
18 phase of the process.

19 That concludes my presentation. The full Project
20 Team is available to answer any questions. Thank you.

21 CHAIRMAN KELLIHER: Thank you very much. I want
22 to thank Staff for their work on this project, which, as we
23 said, goes back 42 months now, so this is the 42nd month of
24 review.

25 I just want to thank you for the quality of the

1 presentation and for all your work up to this point.

2 Today, the Commission authorizes the Bradwood
3 Landing Liquefied Natural Gas Project in Oregon. We do so
4 because we find that the project, as conditioned by the
5 Agency, meets our high safety standards and will have only a
6 limited adverse environmental impact.

7 We also certificate the related pipeline
8 facilities. It's important to understand that in our review
9 of the proposed LNG import project, FERC focuses principally
10 on safety, environmental, and engineering considerations.

11 The Order includes 109 conditions to assure
12 safety and mitigate environmental impacts.

13 We do find the project is needed to meet rising
14 energy demand in the Pacific Northwest, however, and our
15 need finding is consistent with longstanding FERC practice
16 under the Natural Gas Act, as well as is consistent with the
17 Natural Environmental Policy Act of 1969.

18 I personally believe that subordinating need to
19 safety considerations, is sound public policy, but when FERC
20 applies its high safety standards, we have more than two
21 options of approving a project, as proposed, or rejecting a
22 project, as proposed. We can also condition a project.

23 I think the number of conditions in this
24 project, shows how attendant we are to safety and
25 environmental considerations. There are 109 conditions,

1 which is actually a pretty significant number, compared to
2 prior projects, so that the Commission is prepared to
3 aggressively use our conditioning authority to make sure
4 that those high safety standards are met.

5 There certainly has been no rush to judgment in
6 our review of this project. Staff indicated that the review
7 began 42 months ago.

8 People have had ample opportunity for public
9 comment and will have had a longer comment period for the
10 Draft Environmental Impact Statement than other LNG
11 projects.

12 The record for our decision is very substantial,
13 exceeding 50,000 pages, so I think that here we're taking a
14 sound decision that is based on science and the facts. We
15 do have a very strong record to support the Commission's
16 decision today.

17 Colleagues? Commissioner Kelly?

18 COMMISSIONER KELLY: Today's Order is the
19 culmination of a very transparent and a very extensive
20 process, in which we have carefully considered the thousands
21 of comments received from individuals and entities, and we
22 have, indeed, adopted many of their recommendations in the
23 109 conditions and mitigation provisions that are in
24 today's Order.

25 I want to personally express my appreciation for

1 their involvement in this process. I want to thank Staff
2 for developing a very comprehensive analysis and factual
3 record that enabled me to make an informed decision.

4 In issuing our Order today, the Commission
5 fulfills its role as defined by Congress in the Natural Gas
6 Act, and we conclude that the Bradwood Landing Project is
7 consistent with the public interest under Natural Gas Act
8 Section 3.

9 Although our primary job is done with this Order,
10 Oregon and Washington still have an important role to play
11 in the siting of the Bradwood Landing LNG project, as they
12 have had for the last three years.

13 I want to recognize the Clatsop County
14 Commissioners who are with us today, and I want to
15 recognize their efforts to make the best decisions that they
16 can with respect to their statutory responsibilities. Like
17 our job, yours is not an easy one, either.

18 Again, thanks to Staff, and I will be ready to
19 vote this Order out.

20 CHAIRMAN KELLIHER: Thank you. Commissioner
21 Moeller?

22 COMMISSIONER MOELLER: Thank you, Mr. Chairman.
23 I have an extensive written statement that I'll post.
24 They've been handed out as well.

25 But as the first member of this Commission from

1 the Pacific Northwest, this Order has special significance
2 to me.

3 First, it's important for people to understand
4 what we're not doing today. We're not granting final
5 approval for the construction and operation of Bradwood
6 Landing.

7 Approval for construction, will only be given,
8 once the extensive list of conditions are met, that Staff
9 has already gone through, with 75 of them before
10 construction, another six before operation, and, of course,
11 we can require the submission of additional information, if
12 we find it's necessary.

13 There are state and federal permits that still
14 need to be granted. We're in the middle of a baseball game,
15 the middle innings, if that's the appropriate analogy.

16 But the primary consideration of us considering
17 something like this, at least in my mind and in that of my
18 colleagues, I presume, as well, is health and safety.

19 Obviously, there are risk to every industry, but
20 the American people probably just aren't as familiar with
21 LNG, because it's largely unseen, although we have it, even
22 in the Northwest.

23 There are five LNG storage facilities that people
24 probably aren't aware of, but because there isn't an import
25 facility, it doesn't have the same kind of exposure.

1 I believe that the record shows that this
2 facility can be operated safely. It's also important.

3 If you haven't been to the Northwest, the
4 Columbia River is a transportation avenue. Hundreds of
5 ships transport cargo, including things such as gasoline,
6 every day.

7 The second issue is whether we need the gas, and,
8 in the Northwest, we really have comparatively a weak gas
9 infrastructure, because it's the last part of the country
10 that received natural gas.

11 The economy, if you haven't been there, is
12 booming. I think it will continue to do so and energy
13 consumption will continue to rise.

14 The region has basically been a leader on energy
15 efficiency already, though a lot more needs to be done.

16 It's essentially ruled out nuclear and coal
17 power, and it's turning more and more to renewables,
18 particularly wind. Wind is booming in the Northwest.
19 That's a good story, but we need gas to firm and shape that
20 wind.

21 That is a reality that is becoming increasingly
22 obvious to the operators of the system.

23 So, if we've established the need, the question
24 is, where does the gas come from? The Northwest has very
25 little gas of its own, in terms of native production.

1 The traditional supplier is western Canada.
2 Those supplies are dwindling, number one, because they're
3 running out; number two, because they're using it
4 increasingly in the Alberta tar sands area for more
5 petroleum exploration.

6 So, we need gas from every source available, and
7 this is one of them, and I think there are plenty of leaders
8 from the Northwest who will verify that.

9 I believe that this is part of the diversity and
10 balance of a sound energy policy, and, ultimately, it's
11 uncertain whether this facility will be built. The market
12 will help decide it, and we'll help decide it, related to
13 the conditions that we impose.

14 With that, that's a decision that I'm proud to
15 make today. Thank you, Mr. Chairman.

16 COMMISSIONER SPITZER: Thank you, Mr. Chairman.
17 Staff has worked long and hard on this matter.

18 The parties and intervenors have spent a lot of
19 effort, and I know all five Commissioners have spent a great
20 deal of time and effort.

21 I wish to make a statement on two issues, one
22 safety and the other programmatic EIS in the Northwest.

23 First, safety: The primary obligation of
24 government is to protect the health, welfare, and safety of
25 its citizens. The hurricanes left millions of Americans

1 without utilities this month. We know that reliable energy
2 is essential to our health, welfare, and safety.

3 This Commission is challenged to secure energy
4 supplies at just and reasonable rates. This mission
5 includes developing adequate infrastructure to support these
6 new supplies.

7 The Commission's task in siting necessary
8 infrastructure, is daunting. During the 16 years I've been
9 in government, first in Arizona and now at the federal
10 level, communities have opposed the siting of energy
11 infrastructure.

12 This opposition is universal, increasingly
13 strident and consistent, regardless of the size of the
14 proposed project.

15 At times, it seems as if there is no proposed
16 energy project of any size, anywhere, that is free from
17 opposition.

18 There is a significant concern about the
19 adequacy of natural gas supply, overall price levels and
20 price volatility in the United States, importation of LNG is
21 one means to offset shortfalls or disruptions such as now in
22 the Gulf in North American natural gas production.

23 There is no major manufacturing process without
24 safety risks. Indeed, projects with less or zero social
25 utility, operate with greater or actual safety hazards than

1 LNG terminals.

2 The LNG industry has an excellent record of
3 safety. Over the last 45 years, no member of the public has
4 been harmed in an LNG-related incident in the U.S. Over the
5 same period, however, hundreds of thousands have lost their
6 lives in transportation incidents unrelated to the United
7 States energy security.

8 Whether in a liquid or in its gaseous state, LNG
9 is safe. Moreover, the Environmental Impact Statement in
10 this case, includes conditions for safe operation.

11 The technology of discharge and regasification of
12 LNG, the safety record and historical operations of LNG
13 terminals in North America, and, most importantly, the
14 record in this case and the conditions attached to this
15 Order, address and mitigate issues of safety related to
16 this project.

17 Next, the programmatic EIS in the Northwest,
18 unlike unproductive and, in my view, inaccurate political
19 histrionics that occurred in other parts of the country in
20 opposition to energy infrastructure, I've read the pleadings
21 and comments in opposition to Bradwood and I found them
22 productive, thoughtful, and civil, which are attributes
23 consistent with the traditions of the western United States,
24 particularly the Pacific Northwest.

25 Our Staff conducted a thorough review of the

1 environmental safety and other issues, and the Order
2 properly determines that the Bradwood Project is required by
3 the public convenience and necessity.

4 I also recognize, however, that since 1967, no
5 LNG facility has been built over the opposition of the local
6 community. This is true because the Coastal Zone Management
7 Act, gives states an effective veto over LNG projects,
8 notwithstanding FERC certification.

9 Consequently, LNG opponents could declare
10 victory, even after FERC approval, if they are assured that
11 an LNG terminal will never be built by state withholding of
12 CCMA concurrence.

13 Failure to build any new LNG terminals on the
14 East or West Coast of the United States, regardless of the
15 need for energy or the safety of the project, is not in the
16 public interest.

17 In this regard, I am particularly attentive to
18 letters from the Governor of the State of Oregon. The
19 Governor raised issues relating to the adequacy of our
20 environmental and safety review of this project.

21 He also requested a programmatic or regional
22 analysis of all of the proposed LNG terminals for Oregon and
23 the interstate natural gas pipelines purported to address
24 increasing demand for natural gas in the Pacific Northwest.

25 The Commission's environmental review, includes

1 an examination of alternatives, however, the Commission
2 declined to conduct a programmatic EIS for Bradwood. Such
3 review would require modification to our NEPA compliance
4 policy.

5 Moreover, I have reservations regarding the
6 Governor's proposal. For example, although state utility
7 commissions may be able to compel regulated electric
8 utilities to construct necessary generation, transmission,
9 and distribution facilities, this Commission has no power to
10 compel the winner of the programmatic EIS to build and
11 operate an LNG terminal.

12 However, I very much respect the Governor for
13 representing his constituents and seeking to end the present
14 gridlock between federal and state governments that prevent
15 FERC-approved LNG projects from being built.

16 Our goal is conduct thorough, comprehensive, and
17 meaningful scrutiny of LNG applications, and as part of our
18 ongoing review and our regulatory responsibilities, I pledge
19 to seriously consider the Governor's regional review
20 concept.

21 As the Commission continues to grapple with the
22 lack of construction of LNG projects on the East and West
23 Coasts, the Natural Gas Act requires FERC to consider the
24 four corners of each application, independently, and to make
25 our decision, based upon the substantial evidence presented

1 in the record.

2 Bradwood meets this legal test. Further, the law
3 does not permit us to deny a certificate, based on
4 speculation that a potentially less controversial solution
5 to the drastic problem of natural gas supply, will arise,
6 be financed, certificated, state-approved, constructed, and
7 then successfully operated.

8 That is not the law. The record in this
9 proceeding indicates the project is in compliance with the
10 Natural Gas Act, and I therefore support the project. Thank
11 you.

12 CHAIRMAN KELLIHER: Thank you. Commissioner
13 Wellinghoff?

14 COMMISSIONER WELLINGHOFF: Thank you, Mr.
15 Chairman.

16 First, I want to thank the Office of Energy
17 Projects for all their hard work and efforts in this very
18 long, 42-month process to get to where we are today.

19 I have spent a good deal of time on this
20 particular project myself. I read the Draft EIS, I read the
21 Final EIS, I read all the comments to the Final EIS, I read
22 the transcripts of the meetings.

23 I also spent two days in Oregon, meeting with
24 individuals there, talking about generic issues related to
25 alternatives, primarily, and also to environmental issues in

1 Oregon.

2 Based upon that analysis, I determined that there
3 are reasonable alternatives to the Bradwood Project, to
4 serve the projected needs of the Pacific Northwest, that are
5 more efficient, more reliable, and more environmentally
6 preferable.

7 That included actually looking at the one issue
8 that Commissioner Moeller mentioned, and that is the need
9 for gas to firm and shape wind. In fact, in the last week,
10 I have had an opportunity to look into that issue in some
11 detail.

12 I believe that there are far better alternatives
13 to supply to provide support for wind integration in the
14 Northwest, than building new gas power plants. I met most
15 recently with Steve Wright, the head of EPA.

16 He raised the combination of better regional grid
17 operation and cooperation across regions, and demand
18 response, as less expensive and superior options to building
19 more natural gas plants.

20 I also met with Rob Graham of the American Wind
21 Association yesterday, and he confirmed that conclusion.

22 That would end up with less cost for consumers
23 and better environmental solutions. For these reasons, I
24 have concluded that the Bradwood Project is not in the
25 public interest, and I will vote against the project.

1 I have a 14-page dissent, and I also have a
2 statement that contains the substance of that dissent,
3 posted on my website. Thank you.

4 CHAIRMAN KELLIHER: Colleagues, any other
5 comments? Commissioner Moeller?

6 COMMISSIONER MOELLER: Mr. Chairman and my good
7 friend from Nevada, it's fair to say, though, that Mr.
8 Wright did not come out on either side of the Bradwood
9 Landing project, just in case anyone was to allude to that.

10 COMMISSIONER WELLINGHOFF: I didn't mean to imply
11 that. He simply said that as far as building more gas,
12 versus having regional grid operation improvements,
13 cooperation across regions, and demand response, that was a
14 superior option to building gas plants for the shaping and
15 the firming of wind.

16 COMMISSIONER MOELLER: All right, as I think we
17 will find out in the near future, the Northwest is blessed
18 with abundant wind supplies, but it is having increasing and
19 manageable operational challenges of which gas certainly is
20 an alternative that will allow the debate to continue.

21 CHAIRMAN KELLIHER: Thank you. This is an area
22 where the Commission is not of one mind. That's why there
23 are five of us. We don't always agree and this one of those
24 cases, but I want to thank my colleagues for working so hard
25 on this Order, in good faith. We have honest

1 disagreements, but let's vote.

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

4 COMMISSIONER WELLINGHOFF: I vote no.

5 SECRETARY BOSE: Commissioner Moeller?

6 COMMISSIONER MOELLER: Aye.

7 SECRETARY BOSE: Commissioner Spitzer?

8 COMMISSIONER SPITZER: I vote aye.

9 SECRETARY BOSE: Commissioner Kelly?

10 COMMISSIONER KELLY: Aye.

11 SECRETARY BOSE: Chairman Kelliher?

12 CHAIRMAN KELLIHER: Aye.

13 Thank you. I think Commissioner Spitzer has a
14 comment he'd like to make.

15 COMMISSIONER SPITZER: Yes, Mr. Chairman. As you
16 know, there have been a number of collaboratives between
17 FERC and NARUC, the state regulatory body. Commissioner
18 Wellinghoff has one on demand response, and I know, with
19 Commissioner Kelly on the smart grid.

20 We have issues in the Competitive Procurement
21 Task Force, which deals with the very difficult issue of --
22 in uncertain markets with uncertain regulation, particularly
23 governing greenhouse gases, how state commissions, working
24 in partnership with the Federal Government, adequately
25 supply new electricity to the consumers of America.

1 The draft report of the collaborative is out and
2 posted on the website. We have received a lot of comments.
3 I look forward to comments of my colleagues and those who
4 may be watching. Feel free to get on the FERC website to
5 post comments, and we look forward to further discussions,
6 specifically at the next NARUC meeting in New Orleans in
7 November. Thank you.

8 CHAIRMAN KELLIHER: With that, I thank my
9 colleagues, I thank the Staff, and this meeting is
10 adjourned.

11 (Whereupon, at 11:20 a.m., the meeting was
12 adjourned.)

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