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UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Commission Meeting

Open Public Meeting

Hearing Room 2C  
Federal Energy Regulatory  
Commission  
888 First Street NE  
Washington, DC

Thursday, November 18, 2010

The Commission met, pursuant to notice, at 10:05 a.m.

- JON WELLINGHOFF, Chairman
- PHILIP D. MOELLER, Commissioner
- MARC SPITZER, Commissioner
- JOHN R. NORRIS, Commissioner
- CHERYL A. LaFLEUR, Commissioner

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A G E N D A

Consent - Electric

E-3, E-4, E-5, E-6, E-7, E-8, E-9, E-10, E-11, E-12 and E-14

Consent - Gas

G-1 and G-2

Consent - Hydro

H-1, H-2, H-3, H-4 and H-5

Consent - Certificates

C-1, C-2, C-3 and C-4

Discussion Items

A-3, E-1, E-2, G-3 and G-4

Struck Items

None

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

2 CHAIRMAN WELLINGHOFF: This is the time and place  
3 that has been noticed for the open meeting of the Federal  
4 Energy Regulatory Commission to consider matters that have  
5 been duly posted in accordance with the Government in the  
6 Sunshine Act.

7 Please join me in the Pledge of Allegiance.

8 (Pledge of Allegiance)

9 CHAIRMAN WELLINGHOFF: Since our October 21st  
10 open meeting, we have had 59 location orders -- sounds like  
11 we've been slowing down a little bit, we have had in the 80s  
12 or 90s there or more sometime -- but I guess we've been busy  
13 doing a few other things, as you can see from our agenda  
14 today.

15 Before I get on to that agenda, I have a couple  
16 of personnel announcements and a presentation to make.  
17 First I want to announce is my general counsel is going to  
18 leave us soon, in December, Tom Sheets. It's going to be a  
19 loss that personally, he is going to be difficult because  
20 Tom is a great friend, and a great friend that has been a  
21 tremendous General Counsel in this agency.

22 So I have a little something for you, Tom, up  
23 here, if you'd come up.

24 I give Tom the FERC flag and the United States  
25 flag, so he hopefully will not forget us when he goes back

1 to Las Vegas and spends his time there.

2 (Presentation.)

3 (Applause)

4 COMMISSIONER SPITZER: Commissioner Norris and I  
5 wish Mr. Sheet's Ohio State football team the best of luck.

6 Next month.

7 (Laughter)

8 CHAIRMAN WELLINGHOFF: I only want to make one  
9 more announcement. Of course, we are soon to have a vacant  
10 General Counsel slot; I've made a selection for a new  
11 General Counsel. Our new General Counsel is going to be  
12 Michael Bardee.

13 (Applause)

14 CHAIRMAN WELLINGHOFF: We'll have no one who has  
15 the expertise in legal background in FERC that we'll have  
16 with Mr. Bardee, and I'm very, very happy and pleased to  
17 have him here.

18 Thank you, Michael, for accepting the position.  
19 I appreciate it.

20 So with that, Madam Secretary, I think if we can  
21 move to the consent agenda, please.

22 SECRETARY BOSE: Good morning, Mr. Chairman, good  
23 morning Commissioners. Since the issues of the Sunshine Act  
24 Notice on November 10th, 2010, no items have been struck  
25 from this morning's agenda.

1                   Your Consent Agenda is as follows:

2       Electric Items: E-3, E-4, E-5, E-6, E-7, E-8, E-9, E-10, E-  
3       11, E-12 and E-14.

4       Gas Items: G-1 and G-2.

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

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

7                   As required by law, Commissioner Moeller is not  
8       participating in Consent Item E-4.

9                   Also as to E-4, Chairman Wellinghoff is  
10       concurring with a separate statement. And Commissioner  
11       Norris is concurring with a separate statement.

12                   As to G-3 and G-4, Commissioner Moeller is  
13       concurring with a separate statement, and Commissioner  
14       Spitzer is concurring with a separate statement.

15                   With the exception of the items of G-3 and G-4,  
16       where a vote will be taken after the presentation and  
17       discussion of these items later in today's meeting, we will  
18       now take a vote on this morning's consent agenda, beginning  
19       with Commissioner LaFleur.

20                   COMMISSIONER LaFLEUR: I vote aye.

21                   SECRETARY: Commissioner Norris.

22                   COMMISSIONER NORRIS: Noting my concurrence on E-  
23       4, and also noting my strong concurrence on your accolades  
24       for Tom Sheets and your choice of a new General Counsel.

25                   SECRETARY: Duly noted.

1 Commissioner Moeller.

2 COMMISSIONER MOELLER: I'm noting my recusal in  
3 E-4 and my concurrences in G-3 and 4. I vote aye.

4 SECRETARY: Commissioner Spitzer.

5 COMMISSIONER SPITZER: Vote aye.

6 SECRETARY: And Chairman Wellinghoff.

7 CHAIRMAN WELLINGHOFF: Noting my concurrence in  
8 E-4, I vote aye.

9 SECRETARY: Thank you.

10 CHAIRMAN WELLINGHOFF: We go to the presentation,  
11 Madam Secretary.

12 SECRETARY: Yes, sir.

13 The first item for presentation and discussion  
14 this morning would be Item A-3. This is concerning the 2010  
15 Enforcement Report. There will be a presentations by Laura  
16 Chipkin from the Office of Enforcement. She's accompanied  
17 by Dan Mullen, Timothy Smith and Steven Reich, and Astrid  
18 Rapp, also from the Office of Enforcement.

19 PANEL: A-3 Report on Enforcement

20 MS. CHIPKIN: Good morning, Mr. Chairman and  
21 Commissioners. I am Laura Chipkin from the Division of  
22 Investigations in the Office of Enforcement. With me is  
23 Daniel Mullen, also from the Division of Investigations;  
24 Timothy Smith, Deputy Director of the Division of Audits;  
25 Steve Reich, Deputy Director of the Division of Energy

1 Market Oversight, and Astrid Rapp, also from the Division of  
2 Energy Market Oversight.

3 We would like to thank the hard work of many  
4 people in the Office of Enforcement, including Cristina  
5 Melendez and Ahuva Battams of the Division of  
6 Investigations; Teri Stasko of the Division of Audits; and  
7 Janel Burdick and Connie Caldwell of the Division of Market  
8 Oversight.

9 We also have a special thank you to Judy Eastwood  
10 of the Office of External Affairs for the wonderful  
11 graphics.

12 Today, the Office of Enforcement is releasing its  
13 Annual Report on Enforcement. The report provides the  
14 public and the regulated community with information on  
15 Enforcement staff activities in fiscal year 2010.

16 The report describes the nature of non-public  
17 Enforcement activities such as self-reported violations and  
18 investigations that were closed without any public  
19 enforcement action or civil penalties. The report also  
20 discusses the work of the Division of Audits in conducting  
21 various audits and related activity to ensure that  
22 jurisdictional companies comply with the Commission  
23 statutes, orders, rules, tariffs, and regulations.

24 Finally, the report discusses the oversight and  
25 surveillance work performed by the Division of Market

1 Oversight in administering data forms and monitoring  
2 compliance filing by industry participants, maintaining  
3 daily market intelligence, and examining market anomalies.

4 The priorities of the Office of Enforcement's  
5 three divisions have not changed since last year. We have  
6 focused and will continue to focus on matters involving 1)  
7 fraud and market manipulation; 2) serious violations of the  
8 reliability standards; 3) anticompetitive conduct; and 4)  
9 conduct that threatens transparency in regulated markets.

10 Fraud and market manipulation prevent significant  
11 risks to the markets overseen by the Commission and  
12 undermine the Commission's goal of assuring efficient energy  
13 services for consumers at a reasonable cost. Similarly,  
14 anticompetitive conduct and conduct that interferes with  
15 market transparency undermine confidence in the wholesale  
16 energy markets upon which the nation's consumers rely.

17 Serious violations of the reliability standards  
18 compromise the public interest by threatening the reliable  
19 and secure operation of the bulk power system. The Office  
20 of Enforcement will continue to give high priority to cases  
21 involving harm to the public or high risk to the bulk power  
22 system.

23 Turning to last year's accomplishments, let me  
24 begin with the Division of Investigations. Investigations  
25 has furthered efforts to achieve transparency and clarity

1 relating to its investigative process. For instance, the  
2 Commission's issuance of the Penalty Guidelines provides for  
3 more uniform penalties, bringing more certainty and  
4 promoting fairness by ensuring similar penalties for similar  
5 violations.

6 The Commission also provided for greater fairness  
7 in the enforcement program by issuing the Policy Statement  
8 on Disclosure of Exculpatory Materials, formalizing  
9 Enforcement staff's practice relating to exculpatory  
10 materials and adopting the requirements of Brady versus  
11 Maryland.

12 The Division of Investigations entered into six  
13 Commission-approved settlements, for a total of \$31 million  
14 in civil penalties and an additional \$280,000, plus  
15 interest, in disgorgement of unjust profits. Investigations  
16 staff also assisted in proceedings that resulted in a  
17 \$25 million disbursement from a disgorgement fund resulting  
18 from the settlement of a manipulation claim against Energy  
19 Transfer Partners in fiscal year 2009.

20 During fiscal year 2010, Investigations staff  
21 received 93 self-reports of violations, of which 54 were  
22 closed, opened 15 investigations, and closed 16  
23 investigations. The report includes data on these matters  
24 and illustrations of the nature of self-reports and the  
25 investigations that have been closed without action.

1                   Investigations staff continued its efforts to  
2 help ensure the reliability of the bulk power system through  
3 its review of approximately 1,300 violations in 190 Notices  
4 of Penalty filed by NERC pursuant to the Electric  
5 Reliability Organization's Compliance Monitoring and  
6 Enforcement Program.

7                   This year included review of two "Omnibus"  
8 filings with a total of 626 violations. Investigations also  
9 operates the Enforcement Hotline, which received 301  
10 complaints and inquiries and resolved 298 matters during  
11 this past year.

12                   The Division of Audit Staff completed 52 audits  
13 of public utilities and natural gas pipeline and storage  
14 companies last year. These 52 audits included: 25 audits of  
15 public utilities, natural gas pipeline and storage  
16 companies, and regional entities; 18 non-financial audits  
17 and 7 financial audits. These audits generated 210  
18 recommendations for corrective action and included  
19 \$4.1 million in monetary recoveries.

20                   The Division of Audits conducted notable audits  
21 of: Florida Reliability Coordinating Council; Texas  
22 Regional Entity; Western Electric Coordinating Council;  
23 Virginia Electric Power Company; and Entergy Corporation.  
24 Audit staff also addressed several significant accounting  
25 issues, including the International Financial Reporting

1 Standard and the Capitalization of Interest During  
2 Construction.

3 The Division of Energy Market Oversight continued  
4 its monitoring and analysis of the wholesale natural gas and  
5 electric power markets. In addition to the annual State of  
6 the Markets Report, and the Summer and Winter Market  
7 Assessments, Market Oversight provided a report summarizing  
8 the findings of a 30-month study of the competitive effects  
9 of removing the price cap for reassigned electric  
10 transmission capacity.

11 In addition, Market Oversight conducted numerous  
12 briefings to domestic and foreign delegations of regulators  
13 and industry participants. Last year, Market Oversight also  
14 accepted data submissions and evaluated compliance with the  
15 Commission's filing requirements.

16 A copy of the Annual Report is now available on  
17 the Commission's website. Thank you. That concludes my  
18 presentation. I would be please to respond to questions.

19 CHAIRMAN WELLINGHOFF: Thank you, Lauren, and I  
20 want to thank members of the team and all the individuals  
21 who participated in this Enforcement report. I couldn't be  
22 happier with the report; and this information I think is  
23 very important, not only for the Commission but also for the  
24 utilities that are under our jurisdiction that we oversee,  
25 and certainly members of the public and Congress.

1                   So thank you so much for the work.

2                   Colleagues, do any of you have questions or  
3                   comments?

4                   Commissioner Moeller.

5                   COMMISSIONER MOELLER: No questions, but just a  
6                   comment, congratulating the entire Office of Enforcement  
7                   under Norman Bay's leadership and his team. This is quite a  
8                   year of accomplishments that you just went through;  
9                   increasing the transparency and the fairness of our process,  
10                  we're firm but fair, and I have nothing but accolades, and I  
11                  hope the public will read the report. So thank you.

12                  Commissioner Spitzer.

13                  COMMISSIONER SPITZER: Thank you, Mr. Chairman.  
14                  The report is impressive and important reading. I think it  
15                  reflects a balance of competing interests and fairness and  
16                  equity to the regulated entities as well as an emphasis on  
17                  ratepayer protection, and an emphasis on compliance as well  
18                  as due process for those respondents who are subject to  
19                  proceedings.

20                  But there's an overarching issue here. As a  
21                  state regulator who assumed a position in the midst of the  
22                  Western energy crisis, and there have been occasional issues  
23                  arising; the 2003 failure, occasional price spikes in energy  
24                  commodities.

25                  The overarching issue is the faith and confidence

1 that the people of this country have in energy markets, and  
2 I think the report reflects that we've balanced competing  
3 interests of those who follow this issue, energy markets  
4 closely; on behalf of the industry and most importantly the  
5 ratepayers, should take a great degree of confidence from,  
6 that there's a policeman on the beat and that while no  
7 segment of industry or economy is perfect, the recent  
8 financial storm frankly left energy generally unscathed; and  
9 that's a credit to the industry as well as to the  
10 regulators; and the people of this country ought to have  
11 faith and confidence in energy markets.

12 I'm proud of the Department, and I thank you for  
13 your hard work.

14 CHAIRMAN WELLINGHOFF: Thank you, Commissioner  
15 Spitzer.

16 Commissioner Norris?

17 COMMISSIONER NORRIS: I just want to echo Phil  
18 and Mark's comments -- and good work. It's clear from this  
19 report we're fulfilling our mandate, and we're also  
20 providing valuable information to the regulated community  
21 and the public.

22 CHAIRMAN WELLINGHOFF: Commissioner LaFleur.

23 COMMISSIONER LaFLEUR: Well, just echoing the  
24 comments of my colleagues, I think the report has a lot of  
25 great information. I especially thought you did a good job

1 on all the reports of the self-reporting and things closed  
2 without a penalty that the public might otherwise have no  
3 visibility of that really is giving some useful guidance.

4 I just had one question which is, the report I  
5 think does a great job of looking retrospectively on fiscal  
6 10, and you talk a little bit about what you're continuing  
7 to focus on. Anything you could add on what you see as  
8 challenges in the coming year, or what we all can help on to  
9 make this go better?

10 MS. CHIPKIN: Thank you, Commissioner LaFleur.  
11 We do expect to continue to focus on the four priorities  
12 enumerated in the report; with the penalty guidelines  
13 effective this year; that will be a new challenge for us, to  
14 the extent our Director, Norman Bay, may add to what we see  
15 in the future.

16 COMMISSIONER NORRIS: I think you'll continue to  
17 see the Division of Investigations do some very interesting  
18 and important investigations, to see audits, continue to use  
19 risk-based audits to ensure compliance by regulated entities  
20 with the Commission's authorities, and to see market  
21 oversight continue to engage in robust, insightful market  
22 oversight and surveillance.

23 And I think you'll continue to see us emphasize  
24 transparency, because as several of the Commissioners have  
25 noted, I think that transparency is good for us; I think

1       it's good for the public, and I think it's good for the  
2       regulated community.

3                   COMMISSIONER LaFLEUR:  Thank you, Laura and  
4       Norman, for everyone.

5                   CHAIRMAN WELLINGHOFF:  Thank you, Commissioner  
6       LaFleur, and I want to just amplify a little bit on what  
7       Commissioner Spitzer said, and I want to personally thank  
8       Norman Bay for his leadership of his office, what he's done  
9       to make this office a really world-class enforcement office  
10      that I think is now making people believe and understand  
11      that the we really do have an enforcement mechanism in place  
12      that can make consumers feel secure about these organized  
13      markets.

14                   To the extent that there are many more people in  
15      the Western United States than I ever would have thought  
16      possible actually considering expanding markets into those  
17      areas.  In fact, I read someplace the other day that people  
18      in New Mexico were talking about markets --your whole area,  
19      Norman.  So they have a lot of confidence in you in New  
20      Mexico not only for your previous tenure there at the  
21      university but also for what you're doing here at FERC.  So  
22      I appreciate it very much.  Thank you, Norman.

23                   MR. BAY:  Mr. Chairman, if I could, I'd like to  
24      make one comment.

25                   CHAIRMAN WELLINGHOFF:  Certainly.

1                   MR. BAY: And that is that while I certainly  
2 appreciate the kind remarks, it's really not about me;  
3 rather it's about this incredibly talented, dedicated  
4 management team I have as well as the extraordinary staff in  
5 the Office of Enforcement. It's easy to look good when you  
6 have staff and a management team like the ones that the I  
7 do.

8                   CHAIRMAN WELLINGHOFF: Well, we're lucky to have  
9 you and all the people that work with you. Thank you,  
10 Norman.

11                   Thank you all, team. If we could go to our next  
12 discussion.

13                   SECRETARY: Before we moving on to the next  
14 presentation item, Mr. Chairman, I'd like to just make one  
15 announcement: During the Commission meeting, it's important  
16 to make sure all cell phones are turned off to eliminate the  
17 feedback through our microphones. Thank you.

18                   The next item for presentation and discussion is  
19 Item E-1, concerning a draft Notice of Proposed Rulemaking  
20 in Docket No. RM10-11-000. The presentation will be by Mk  
21 Shean from the Office of Energy Policy and Innovation.  
22 She's accompanied by Timothy Duggan from the Office of the  
23 General Counsel, Travis McGee from the Office of Energy  
24 Market Regulation, and Thanh Luong from the Office of  
25 Electric Reliability.

1 PANEL: E-1 Integration of Variable Energy Resources

2 MS. SHEAN: Good morning, Mr. Chairman,  
3 Commissioners.

4 CHAIRMAN WELLINGHOFF: Good morning.

5 MS. SHEAN: Item E-1 before you this morning is a  
6 Notice of Proposed Rulemaking to address the challenges  
7 associated with integrating variable energy resources.

8 I'd like to thank, if I could for just a moment,  
9 all the individuals who contributed to the design and  
10 drafting of this proposed rule: Arni Quinn, Erin Bloom,  
11 Michael McLoughlin, Jessica Cockrell, Ray Palmer and Becky  
12 Robinson of the Office of Energy and Policy Innovation.  
13 Travis McGee, John Yakabias, Kathleen Williams and Travis  
14 Allen from the Office of Energy Market Regulation. Bob  
15 Snow, Han Wong, and Sanja Baja from the Office of  
16 Electricity Reliability; and Andre Hilliard and Tim Duggin  
17 from the Office of General Counsel.

18 As used in the proposed rule, the term 'variable  
19 energy resources' refers to electric generating facilities  
20 that rely on an energy source that's renewable, that cannot  
21 be stored by the facility owner or operator, and that has a  
22 variability that is beyond the control of that facility  
23 owner or operator.

24 As was noted in your Notice of Inquiry issued in  
25 January of this year, the composition of the nation's

1 generation portfolio has and will continue to change.  
2 Specifically, there was an increasing number of VERs,  
3 Variable Energy Resources, primarily wind and solar  
4 resources, being connected to the interstate transmission  
5 system. In response to this development, the Commission  
6 has sought comment in the Notice of Inquiry on whether  
7 existing rules, regulations, tariffs or industry practices  
8 hinder the efficient integration of these resources. The  
9 Commission received significant response from the industry,  
10 stakeholders, and interested commenters.

11 In addition to the Commission staff's extensive  
12 review of these submitted comments, we have monitored  
13 ongoing industry studies that are examining the current and  
14 likely effects of integrating large numbers of VERs.

15 Recently, the Commission also has acted on  
16 several applications submitted by public utility  
17 transmission providers that have proposed solutions to  
18 integration of VERs in their individual transmission  
19 systems.

20 As a result of all of these efforts, the  
21 Commission has identified a number of reforms that are  
22 designed to address the issues confronting transmission  
23 providers and VERs, and to allow for the more efficient  
24 utilization of transmission, generation and non-generation  
25 resources to the benefit of all the customers.

1           The proposed rule has three basic reforms:

2           First, it requires public utility transmission  
3 providers to offer to all transmission customers the option  
4 of using intra-hourly transmission scheduling at 15-minute  
5 intervals.

6           Second, it incorporates a provision into the pro  
7 forma Large Generation Interconnection Agreement that  
8 provides for interconnection customers whose generating  
9 facilities are Investigate to submit to their transmission  
10 providers meteorological and operational data, to the extent  
11 that such data is needed by the transmission provider to  
12 develop and deploy power production forecasting tools.

13           And third, it adds a generic ancillary service  
14 rate schedule, for what has heretofore been a case-by-case  
15 process, through which transmission providers will offer  
16 generator regulation service to transmission customers,  
17 delivering energy from generators located within the  
18 transmission provider's balancing authority area.

19           From a broad perspective, the reforms proposed in  
20 E-1 are intended to remove barriers to the integration of  
21 VERs, and to ensure that the costs of services are just and  
22 reasonable. The proposed rule focuses on creating  
23 operational reforms that should equip the transmission  
24 providers with the tools and procedures to maintain system  
25 balance, a task that can be exacerbated by the variable

1 nature and characteristics of VERs, while reducing the need  
2 for those transmission providers to unnecessarily procure  
3 additional reserve products,

4 Commenters argued that transmission providers  
5 should be required to adopt operational reforms to mitigate  
6 the volume of regulation reserves that would be charged to  
7 VERs prior to charging VERs for such products. The Proposed  
8 Rule agrees, and accordingly proposes to require  
9 transmission providers to offer intra-hour scheduling and  
10 develop and deploy power production forecasting to mitigate  
11 the volume of generator regulation reserve necessary to  
12 maintain system balance, and to be charged to VERs.

13 The proposed rule does not address all of the  
14 issues that were explored in the Commission's Notice of  
15 Inquiry. In many instances, industry is already actively  
16 addressing and developing solutions to particular issues.  
17 The proposed rule acknowledges and supports such efforts by  
18 providing a foundational reform that can be implementing in  
19 the near term.

20 In other instances, the issues identified both in  
21 the Notice of Inquiry and in the resulting comments would  
22 benefit from further study and/or the development of  
23 solutions that would reflect the unique challenges of  
24 individual regions. Commission staff will continue to  
25 monitor and conduct outreach with the industry to stay

1 informed of developments.

2 Variable energy resources comprise an ever-  
3 increasing and significant percentage of new generation.  
4 Staff believes that the package of reforms included in E-1  
5 represents an important foundational step towards the  
6 integration of variable energy resources and will allow  
7 transmission providers a level of flexibility in crafting  
8 solutions to account for their unique characteristics and  
9 regional differences. Thank you.

10 CHAIRMAN WELLINGHOFF: Thank you very much, Mk.  
11 And I want to thank you and the Office of Energy Policy and  
12 Innovation for your leadership on this NOPR, and Jamie, for  
13 your leadership in that office. And also, I really want to  
14 commend all the other offices for the collaboration and  
15 coordination; the Office of General Counsel and the office  
16 of Electric Market Regulation and the Office of Electric  
17 Reliability; I think this is one of the great examples of  
18 the Commission working together collaboratively across  
19 offices, ensuring we can get in all the pieces that we need.

20 As the team indicated today, the Commission is  
21 proposing to require public utility transmission providers  
22 to offer a new ancillary service, generator regulation  
23 service, to transmission customers delivering numbering from  
24 a generator in a balancing area.

25 This service will provide the resources necessary

1 to continuously balance the system by following the moment-  
2 to-moment changes in generation output. We also propose to  
3 allow the transmission providers to recover the costs they  
4 incur in providing this ancillary service.

5 Transmission customers may purchase this service  
6 from the transmission provider or they may purchase the  
7 service from alternative means, and comparable arrangements,  
8 which may include the use of non-generation resources such  
9 as demand response, resources or other processes capable of  
10 providing the service.

11 But the proposed rule would also require changes  
12 in the way the transmission provider operates its system,  
13 that at this stage of the rulemaking we think, will help to  
14 minimize the costs of providing this service in the volume  
15 that customers may need to procure.

16 As the team outlined, transmission providers  
17 would be required to allow transmission customers to  
18 schedule transmission services in 15-minute intervals so  
19 that their schedule can be adjusted to reflect changes and  
20 forecast the customer's load and a generator's output. The  
21 proposed rule also allows for the transmission provider to  
22 develop and use more accurate forecasting of the variability  
23 of the power output of certain generators.

24 These changes are expected to help to operate the  
25 transmission system more efficiently and reliably, which

1 should contain the cost to customers of buying these  
2 transmission services.

3 I think that the changes also prepare the  
4 electric grid for the future. Many of the new power plants  
5 for which developers are seeking access to the transmission  
6 grid are wind and solar generators. The electric industry  
7 is preparing to manage the reliable integration of these  
8 variable energy resources as evidenced by the many studies  
9 and planning analyses that are under way.

10 Some older generating plants may be retired. The  
11 nation's auto and transportation industries are now moving  
12 towards electric vehicles that may place some new demands on  
13 the electric system. But those can be operated in ways that  
14 also help maintain a reliable grid, such as providing the  
15 ancillary services when parked for charging.

16 New industries are emerging that use electricity  
17 as a major input in their manufacturing processes, such as  
18 the use of nanotechnologies. The changes proposed here will  
19 help to manage the cost-effective integration of variable  
20 energy resources into the grid, and to meet the future other  
21 challenges in ways that maintains reliability of that grid.

22 Based on what we've heard so far, I think this  
23 proposal is a fair and balanced way to recognize the  
24 characteristics of different energy resources and the  
25 associated impacts on system operations. The cost of

1 managing the system with diverse generation plants will be  
2 identified, and transmission customers will know the rates  
3 that they will be charged for these reserves needed to  
4 balance the system when the power production of generators  
5 varies.

6 As I noted earlier, the operational practices  
7 that the proposed rule require will help to minimize these  
8 costs to all transmission customers.

9 The comments received in response to the Notice  
10 of Inquiry have produced many good ideas, which helped to  
11 forge the proposal we consider today. I look forward to the  
12 comments on the proposed rule and the discussion of  
13 improvements to that rule, and modifications that may be  
14 appropriate.

15 For these reasons, I support this proposed rule.

16 Colleagues? Comments?

17 Commissioner Moeller.

18 COMMISSIONER MOELLER: Thank you, Mr. Chairman.

19 I have a question for the team, but first a few comments.

20 We've introduced a new acronym to the world now -

21 -

22 (Laughter)

23 -- so whether that's good or bad, it's reality.

24 I have had the chance, over the last few weeks,  
25 to meet with regulators from around the world. The European

1 Union and the Asian Pacific countries. And with about the  
2 only exception of South Korea -- where they don't have much  
3 wind -- everybody is dealing with integration of wind. And  
4 I think many regulators from around the world are actually  
5 going to be looking to us as to how we approach this  
6 challenge; not an insurmountable challenge, but a challenge  
7 nonetheless. And I appreciate the team and all of those who  
8 submitted comments in helping us move toward solutions.

9 I think we also have to frankly thank the wind  
10 industry for bringing us some of the challenges that I think  
11 are solutions to those challenges, will improve markets.  
12 And throughout the comments, there was a common theme of  
13 wanting us to be appreciative of regional differences; and I  
14 think we did respond to that. And particularly in the West,  
15 there's the Joint Initiative, there's Bonneville's Wind  
16 Integration Team -- that are doing good work, we're not  
17 getting in the way of that.

18 But what's really transformative, I think, is our  
19 requirements for the intra-hour scheduling. And that's the  
20 question to Mk or whoever appropriate on your team: can you  
21 further describe some of the benefits in terms of bringing  
22 efficiency to the grid that expands beyond just the issue of  
23 VERs, through inter-hour scheduling?

24 MS. SHEAN: I think it's easy, when we think of  
25 inter-hour scheduling, to think about how it will help

1 someone like a VER who is variable in their output. But  
2 there are also other customers who will benefit, namely  
3 transmission customers who are delivering energy from an  
4 energy-constrained resource such as a flow limited hydro  
5 generator, and an emission-limited thermal generator, demand  
6 response, the energy storage resources that will be better  
7 able to schedule their transactions within those periods to  
8 reflect what actually is happening in their generator, and  
9 the constraints that they are facing.

10 So we believe that not only will this inter-hour  
11 scheduling help VERs, it will help all generation and non-  
12 generation resources.

13 COMMISSIONER MOELLER: Very good. Look forward  
14 to voting for this rule.

15 Thank you, Mr. Chairman.

16 CHAIRMAN WELLINGHOFF: Thank you, Commissioner  
17 Moeller.

18 Commissioner Norris?

19 COMMISSIONER NORRIS: I just follow up on what  
20 you said, Mr. Chairman; noting the presence of so many  
21 different offices, and I agree with you, it's an example of  
22 how we work together to resolve problems here. But it's  
23 also an example of the complexity that variable resources  
24 are in our energy mix, and it requires a number of different  
25 offices to help resolve those complexities.

1           So I think what we've done today in this order is  
2 a great first step, particularly on the side for making this  
3 as efficient as possible so that we recognize there are  
4 costs associated with variable resources; but making sure  
5 that we are minimizing those costs and they are as efficient  
6 as possible. And just and reasonable as possible.

7           We still are going to face challenges going  
8 forward on the reliability side, with vertical integration  
9 of variables, of resources, variable resources; but I think  
10 this is a good first step, to make sure that we're treating  
11 people as fairly as possible. And hopefully that opens  
12 doors for more renewable energies to come out of the system.

13           CHAIRMAN WELLINGHOFF: Thank you.

14           Commissioner Spitzer.

15           COMMISSIONER SPITZER: Thank you, Mr. Chairman.  
16 And I'm very appreciative of those who submitted comments in  
17 response to the Notice of Inquiry. Much improves our  
18 process when we have multiple comments.

19           Two facets of this I want to explore just very  
20 briefly. One, we have reduced or are proposing to reduce  
21 barriers to entry for renewable resources, and that although  
22 specific barriers are in this case wind, and the concrete  
23 proposals will provide greater access to wind, there are  
24 more generic benefits to competitive markets in general  
25 where barriers to entry are reduced; so that's good news for

1 ratepayers as well as good news for the environment.

2 And then finally, I think the most interesting  
3 facet of this, and a lot of it came from some of the  
4 comments, including those that were not adopted in the  
5 proposed rule, is the impact of technology on government  
6 regulation and how government respond to technological  
7 advances. Sometimes government is slow in responding, and I  
8 think we -- I'm very proud of FERC and the work you've done,  
9 in staying ahead of the curve, and showing that we're  
10 flexible.

11 And as the industry is embracing technology, we  
12 are showing alacrity in responding to these changes for the  
13 benefit of the ratepayers. So I thank you for your hard  
14 work on this.

15 CHAIRMAN WELLINGHOFF: Thank you, Commissioner  
16 Spitzer.

17 Commissioner LaFleur.

18 COMMISSIONER LaFLEUR: Thank you, Mr. Chairman.

19 I, too, would like to thank and congratulate the  
20 team. I know this is a cross-functional team that's been  
21 working together for a long time; did a lot of outreach  
22 across the country, and I think that really shows.

23 As Mk noted, today's rulemaking really reflects  
24 the increasing importance of variable energy resources in  
25 the nation's power supply mix; and the Commission has more

1 and more frequently confronted issues from different parts  
2 of the country on how either market rules or grid operations  
3 have to be adapted to the growth of variable energy  
4 resources. I've seen that even on my brief time with the  
5 Commission, and I think it's very appropriate that we're  
6 looking at a generic rule that hopefully will more  
7 efficiently and equitably address some of the issues while  
8 still reflecting regional differences.

9 From the 50,000 foot level, I think today's  
10 rulemaking really does two things. First, it calls on or  
11 proposes to adapt some of the market rules and grid rules to  
12 ensure just and reasonable treatment of variable energy  
13 resources, which as Mk noted, in some ways will help other  
14 people in the market as well. And that's the first thing it  
15 does.

16 But secondly, I think it places additional  
17 obligations on those variable energy resources themselves to  
18 ensure that their operation does not affect other resources  
19 in the market in an unjust or unreasonable manner. And I  
20 think this is a step that really reflects the maturation of  
21 variable energy resources. You know, to use the sports  
22 analogy, these aren't pilot projects; they're not pilot  
23 projects playing at the intramural level. Variable energy  
24 resources are playing at the varsity level now, and they  
25 have to play by varsity rules, and this is really a step to

1 integrate them in that system.

2 So I really look forward to the continuing  
3 comments on this, and continuing to work to update our rules  
4 to new technologies. Thank you.

5 CHAIRMAN WELLINGHOFF: Thank you, Commissioner  
6 LaFleur.

7 Madam Secretary, I think we're ready for the  
8 vote.

9 SECRETARY: The vote begins with Commissioner  
10 LaFleur.

11 COMMISSIONER LaFLEUR: I vote aye.

12 SECRETARY: Commissioner Norris?

13 COMMISSIONER NORRIS: Aye.

14 SECRETARY: Commissioner Moeller?

15 COMMISSIONER MOELLER: Aye.

16 SECRETARY: Commissioner Spitzer?

17 COMMISSIONER SPITZER: Vote aye.

18 SECRETARY: And Chairman Wellinghoff.

19 CHAIRMAN WELLINGHOFF: Vote aye.

20 Thank you again, team.

21 If we can have our next presentation, please.

22 SECRETARY: The next item for presentation and  
23 discussion this morning will be on Item E-2. This is  
24 concerning a draft final rule on revisions to the Electric  
25 Reliability Organization definition of 'bulk electric

1 system.'

2 The presentation will be by Patrick Boughan from  
3 the Office of Electric Reliability. He is accompanied by  
4 Robert Snow from the Office of Electric Reliability, and  
5 Mindi Sauter from the Office of General Counsel.

6 PANEL: E-2 Bulk Electric System

7 MR. BOUGHAN: Good morning, Mr. Chairman and  
8 Commissioners. I am Patrick Boughan from the Office of  
9 Electric Reliability. Helping me is Mindi Sauter from the  
10 Office of General Counsel, and Bob Snow from the Office of  
11 Electric Reliability.

12 In my presentation, I will address E-2, the draft  
13 final rule on Revisions to the Electric Reliability  
14 Organization definition of bulk electric system before you  
15 today.

16 The draft final rule identifies a significant  
17 concern with the ERO's current definition of the term 'bulk  
18 electric system.' Specifically, the current definition  
19 allows broad regional discretion in identifying the  
20 facilities necessary for operating an interconnected  
21 electric transmission network. Such discussion has led to  
22 inconsistencies across, from within regions and gaps in  
23 coverage of facilities subject to the reliability standards.  
24 The draft final rule will result in development of a revised  
25 definition of the term, 'bulk electric system' which will

1 help to ensure that the reliability standards cover all  
2 facilities necessary for the reliable operation of the  
3 interconnected electric transmission network.

4 This draft final rule directs the ERO to revise  
5 its definition of 'bulk electric system' through the ERO's  
6 reliability standards development process to address the  
7 issues identified by the Commission and ensure that the  
8 definition encompasses all facilities necessary for reliable  
9 operating an interconnected electric transmission network.

10 The draft final rule does not direct a specific  
11 approach to address the issues identified by the Commission.  
12 Rather, the draft final rule indicates that one way to  
13 accomplish these goals is to eliminate the discretion in the  
14 ERO's current definition, but maintain the bright-line  
15 threshold that includes all facilities operated at or above  
16 100 kV except defined radial facilities.

17 The draft final rule also proposes that the ERO  
18 develop an exemption process for excluding facilities that  
19 are not necessary, as well as for including those below 100  
20 kV that are necessary, for reliably operating the  
21 interconnected transmission network. The draft final rule  
22 provides the ERO with discretion in developing an exemption  
23 process, provided that the process is open and transparent,  
24 and based on an objective criteria.

25 The draft final rule also recognizes that the ERO

1       may develop an alternative proposal for addressing the  
2       Commission's concerns and provides guidance in that regard.  
3       The ERO would need to show, with a sufficient technical  
4       record, how any such alternative is as effective as, or more  
5       effective than, the Commission's proposed approach, and does  
6       not result in a reduction in reliability.

7               The draft final rule is a significant step  
8       towards improving the reliability of the grid and fulfilling  
9       the Commission's responsibilities under Section 215 of the  
10      Federal Power Act.

11             Thank you. This concludes our presentation.

12             CHAIRMAN WELLINGHOFF: Thank you, Patrick, and I  
13      want to thank members of the team for their hard work on  
14      this draft final rule.

15             The NERC term, 'bulk electric system' is  
16      currently a fundamental element of the mandatory reliability  
17      regime. As used by NERC, the term defines the universe of  
18      facilities to which the reliability standards apply.

19             I cannot overstate how important it is to define  
20      this term in a way that captures all elements of the grid  
21      that are necessary for operating an interconnected electric  
22      energy system network. If we do not require the right  
23      facilities to comply with the mandatory reliability  
24      standards, then we are not fulfilling the responsibility of  
25      Congress, that Congress entrusted us to protect the grid.

1           Given this importance, I'm very concerned that  
2           NERC's current definition of 'bulk electric system' allows  
3           the regions to define to whom they will apply reliability  
4           standards, without the ERO or Commission oversight.

5           First I want to note that most of the regions  
6           are, in my mind, directly implementing the general rule that  
7           reliability standards apply to those facilities that are 100  
8           kV or above. While recognizing that most of the NERC  
9           regions are appropriately complying, NERC's general 100 kV  
10          threshold is important to eliminate the discretion from  
11          NERC's definition. This discretion allows a single region  
12          to change the cadre of facilities that must be compliant  
13          with continent-wide reliability standards without any  
14          oversight and without a filing of regional difference of  
15          those standards of review by this Commission.

16          It is inappropriate to allow such discretion in  
17          the application of the term that defines the facilities  
18          subject to reliability standards.

19          This final rule is a further step in a process  
20          that began when NERC was certified as the ERO. At that time  
21          the Commission expressed concern about NERC's definition of  
22          the term, 'bulk electric system.' Since then we've had  
23          practical experience with how NERC and the regions have  
24          applied the term, and therefore the reliability standards.

25          To address the Commission's concerns, today's

1 order retains the requirement that NERC must revise its  
2 definition of the bulk electric system. However, based on  
3 industry comment, we're also allowing NERC to revise the  
4 definition through its reliability standards development  
5 process. I agree with the final rule that the best way to  
6 alleviate the Commission's concerns is to eliminate the  
7 regional discretion in the current definition; establish a  
8 bright-line threshold that includes all facilities operated  
9 at or above 100 kV except defined radial facilities.

10 However, I want to make clear that NERC may  
11 develop an alternative proposal for addressing the  
12 Commission's concerns with the present definition, with the  
13 understanding that any such alternative must be as effective  
14 as or more effective than the Commission's proposed  
15 approach.

16 I also want to emphasize that NERC's proposed  
17 solution may not result in a reduction in reliability. I  
18 think this order strikes the appropriate balance between  
19 clearly identifying the Commission's concerns about NERC's  
20 definition of the term 'bulk electric system' and allowing  
21 NERC to address the identified problems in a manner  
22 different than the one proposed by the Commission.

23 I want to thank the team for their hard work, and  
24 I'll look forward to reviewing NERC's filing addressing the  
25 issue. And I would support this order. Thank you.

1                   Comments. Commissioner Spitzer.

2                   COMMISSIONER SPITZER: Thank you.

3                   Mr. Chairman, this is a challenging case, both on  
4 the facts and the law, and I thank the team as well as my  
5 colleagues for their attention to this.

6                   I support today's order as a reasonable  
7 accommodation of the roles of the Commission and NERC in  
8 ensuring the reliable operation of the nation's transmission  
9 grid. Determining the proper definition of the bulk  
10 electric system is critical to attaining consistent and  
11 meaningful reliability standards.

12                  In today's order, the Commission delineates a  
13 proposal for a definition of the bulk electric system. Yet  
14 the order makes clear that NERC and the stakeholders are  
15 free to develop another definition as long as it meets  
16 certain criteria. Specifically, the order provides that  
17 NERC has quote, "the discretion to develop an alternative  
18 solution that is as effective as or superior to the  
19 Commission's proposed approach in addressing the identified  
20 technical and other concerns, and may not result in a  
21 reduction in reliability." Order at Paragraph 74.

22                  In addition, the Order maintains the right for  
23 regions to seek regional differences appropriate for their  
24 unique circumstances.

25                  I want to note today that the order differs from

1 the NOPR we issued in March with regard to the exemption  
2 process. Today's order does not call for the Commission to  
3 rule on each and every exemption that NERC or a regional  
4 entity may grant. Instead, the order grants to NERC and the  
5 stakeholders the opportunity to develop and implement an  
6 exemption process, and to the Commission a role in auditing  
7 the granting of the exemptions.

8 I recognize that some may maintain that the  
9 Commission has not achieved the proper balance between the  
10 respective roles of the Commission and NERC under Section  
11 215 of the Federal Power Act. I respectfully disagree. The  
12 Commission has been tasked by the Congress to ensure the  
13 reliable and safe operation of our nation's electric  
14 transmission grid. In today's order, the Commission  
15 fulfills that mission while still leaving to NERC and  
16 industry their own critical roles.

17 Again, I'd like to thank the team and thank my  
18 colleagues for working on this challenging order.

19 CHAIRMAN WELLINGHOFF: Commissioner Moeller?

20 COMMISSIONER MOELLER: Thank you, Mr. Chairman.

21 I think today's order really reflects a success  
22 story for our reliability staff. They identified the fact  
23 that regional differences in the definition were perhaps  
24 leading to some vulnerabilities in terms of reliability.  
25 And so I'm very happy to support the order; it was a process

1 where we have improved it. We haven't told specifically,  
2 NERC what to do; we've given some guidance, and I very much  
3 look forward to what they bring to us. Because the  
4 definition of the bulk electric system is absolutely key to  
5 the reliability of this country; and so I'm looking forward  
6 to the standards development process producing something  
7 that we can consider. Thank you.

8 CHAIRMAN WELLINGHOFF: Thank you, Commissioner  
9 Moeller.

10 Commissioner Norris?

11 COMMISSIONER NORRIS: Thank you.

12 I concur with what you all said, and I would just  
13 say -- let me focus on the exemption process, because I  
14 think that's important.

15 First of all, I should back up and say yes,  
16 should NERC adopt this proposal? And I think one of the key  
17 things I'll be looking at is what is the exemption process?  
18 It would be open, fair, transparent, and not overly  
19 burdensome to the entities. But I think we did -- most  
20 importantly, on that process in this order I think we  
21 addressed a concern of mine; that was that there's a  
22 transition period. When there's an exemption process to be  
23 proposed and adopted, and the entities aren't forced to  
24 incur compliance costs until they know whether they're  
25 within that, or outside of the exemption process.

1 Thank you.

2 COMMISSIONER LaFLEUR: Thank you. Echo what my  
3 colleagues have said; just want to really highlight a couple  
4 aspects of today's order.

5 Today's final rule, as has been noted, addresses  
6 a matter that the Commission has been concerned about since  
7 Order 693 was issued, which is the potential for significant  
8 gaps in reliability caused by the definition of 'bulk  
9 electric system' and the discretion of regions to change  
10 that definition.

11 The form of today's directive really adheres  
12 closely to Order 693 in which the Commission explained that  
13 directives to address a specific matter do not usurp or  
14 supplant NERC standards development process. As clarified  
15 in Order 693, Commission directives under Section 215(d)(5)  
16 of the Federal Power Act are intended to provide NERC with  
17 the guidance to understand the Commission's underlying  
18 concerns and the opportunity to address those concerns  
19 through the standards process.

20 I think that Commission staff has done an  
21 excellent job in the order outlining the Commission's  
22 technical concerns and policy concerns with the current  
23 definition of 'bulk electric system' in putting forth one  
24 proposed solution. However, rather than directing a  
25 specific change to the definition, the final rule requires

1 NERC to develop a revision that addresses those concerns.

2 Now the burden shifts to NERC, and under the  
3 paradigm discussed in Order 693 and followed in today's  
4 order, NERC has the obligation to address the Commission's  
5 concerns in a comprehensive fashion. Should NERC decide to  
6 propose an alternative approach, it must explain in detail,  
7 with a technical record sufficient for us to make an  
8 informed decision how that alternative approach addresses  
9 each of the Commission's concerns in a manner that's as  
10 effective in ensuring reliability.

11 I want to thank the folks from OGC and Other that  
12 worked on this order; obviously Mindi, Pat and Bob, but also  
13 Jonathan Furst, Bill Edwards, Mike Henry, Joe McClelland,  
14 Kumar Agurwal - and I guess everyone else that I was about  
15 to list is already sitting in front of me. Thank you.

16 CHAIRMAN WELLINGHOFF: Thank you, Commissioner  
17 LaFleur.

18 I think we're ready to vote, Madam Secretary.

19 SECRETARY: The vote begins with Commissioner  
20 LaFleur.

21 COMMISSIONER LaFLEUR: I vote aye.

22 SECRETARY: Commissioner Norris?

23 COMMISSIONER NORRIS: Aye.

24 SECRETARY: Commissioner Moeller?

25 COMMISSIONER MOELLER: Aye.

1 SECRETARY: Commissioner Spitzer?

2 COMMISSIONER SPITZER: Vote aye.

3 SECRETARY: And Chairman Wellinghoff.

4 CHAIRMAN WELLINGHOFF: I vote aye.

5 Thank you again.

6 SECRETARY: The last item for presentation and  
7 discussion will be on Items G-3 and G-4 together, concerning  
8 Docket No. RP11-1494-000 and Docket No. RP11-1495-000,  
9 respectively. There will be a presentation by Kerry Noone  
10 from the Office of Energy Market Regulation. He is  
11 accompanied by Nicholas Balistreri from the Office of Energy  
12 Market Regulation, and Richard Howe and Anna Fernandez from  
13 the Office of General Counsel.

14 PANEL: G-3 & G-4 Ozark Gas/Kinder Morgan

15 MR. NOONE: Good morning, Mr. Chairman and  
16 Commissioners.

17 CHAIRMAN WELLINGHOFF: Good morning.

18 MR. NOONE: My name is Kerry Noone, and I am with  
19 the Office of Energy Market Regulation. Joining me today is  
20 Richard Howe and Anna Fernandez with the Office of General  
21 Counsel, and Nicholas Balistreri of the Office of Energy  
22 Market Regulation.

23 It is the Commission's responsibility under the  
24 Natural Gas Act to ensure that rates charged by pipeline  
25 companies are just and reasonable, including taking actions

1 sua sponte under Section 5 to investigate existing rates and  
2 modify them if they are found to be unjust and unreasonable.

3 Exhibit staff conducted a review of the revenues  
4 and expenses of pipelines to determine whether they are  
5 charging just and reasonable rates. As part of the review,  
6 staff analyzed cost and revenue data that pipelines provided  
7 in their 2008 and 2009 Form 2s. Staff's review also  
8 considered other factors, including whether a pipeline's  
9 currently effective rates are the result of a settlement  
10 that either has a rate moratorium in effect or requires the  
11 pipeline to file a general section 4 rate case in the near  
12 future.

13 Additionally, staff looked at the level of  
14 infrastructure investments that a pipeline placed in service  
15 in 2009 and the level of additional estimated infrastructure  
16 investments that will be made since the 2009 Form 2 data may  
17 not fully reflect the effect of such investments on a  
18 pipeline's rates.

19 Based on our review, in the orders identified in  
20 G-3 and G-4, the Commission would initiate investigations  
21 pursuant to Section 5 of the Natural Gas Act to determine  
22 whether rates charged by Ozark Gas Transmission and Kinder  
23 Morgan Interstate Transmission are just and reasonable.

24 In determining that each of these pipelines may  
25 be over-recovering their costs of service, staff first

1       calculated a cost of service for each pipeline using Form 2  
2       cost of service data for years 2008 and 2009. Staff then  
3       determined what that pipeline's revenues were for those  
4       years. Staff used this information to estimate an earned  
5       return on equity for each pipeline for the calendar years  
6       2008 and 2009.

7               Our analysis indicates that Ozark Gas  
8       Transmission earned an estimated return on equity of 27.81  
9       percent in 2008, and 31.01 percent in 2009. These returns  
10       include revenues from the sales of shipper-supplied gas.

11              In the case of Kinder Morgan Gas Transmission, it  
12       earned an estimated return on equity of 27.10 percent in  
13       2009 and 29.25 percent in 2009. These returns include the  
14       value of over-recovered gas that Kinder Morgan retained from  
15       shippers. These returns lead staff to believe that these  
16       two pipelines are over-recovering their costs of service and  
17       may be charging rates that are no longer just and  
18       reasonable.

19              In addition, neither pipeline has an existing  
20       settlement with its customers that places a moratorium on  
21       its existing rates or requires it to file a new general  
22       Section 4 rate case in the future.

23              Accordingly, in these orders, the Commission  
24       would initiate an investigation pursuant to Section 5 of the  
25       Natural Gas Act into the rates charged, establish a hearing,

1 and require the pipeline to file a cost and revenue study  
2 within 75 days of the issuance date of that pipeline's  
3 order. In addition, the orders would establish a deadline  
4 for the administrative law judges to issue an initial  
5 decision.

6 Thank you. We would be happy to answer any  
7 questions you may have.

8 CHAIRMAN WELLINGHOFF: Thank you very much,  
9 Kerry. And I want to thank all the members of the team for  
10 this work.

11 A year ago this month, we initiated NG Section 5  
12 proceedings against several natural gas pipelines. Two of  
13 those proceedings have since resulted in uncontested  
14 settlements that provide significant benefits, such as  
15 reduced rates, reduced fuel retention factors; in one case,  
16 a revenue sharing arrangement with pipeline customers.

17 At the time the Commission initiated these  
18 investigations, I stated that the Commission's mission  
19 statement is straightforward: To assist consumers and  
20 obtain reliable, efficient and sustainable energy services  
21 at a reasonable cost. Consistent with that mission, staff  
22 has continued to analyze and consider Form 2 data that  
23 provides current market and cost information needed for  
24 regulatory oversight of natural gas pipeline rates and terms  
25 of service, and that facilities' meaningful assessments of

1 pipeline costs of service, and current rates.

2 After careful consideration of this information,  
3 it appears that Kinder Morgan Interstate Gas and Ozark Gas  
4 Transmission may be substantially over-recovering their cost  
5 of service. As a result, we're instituting Section 5  
6 proceedings to determine whether the rates charged by these  
7 pipelines are just and reasonable. The Commission  
8 understands that the review of Form 2 data is not the full  
9 story; it must be considered in conjunction with other  
10 factors, such as the costs of litigation, the level of  
11 infrastructure investments, and the existence of a rate  
12 moratorium or come back provisions.

13 However, an investigation will provide the  
14 Commission with an opportunity to hear the full story to  
15 ensure that consumers enjoy reliable, efficient and  
16 sustainable energy at a reasonable cost.

17 Furthermore, because the Commission lacks refund  
18 authority under Section 5, it's appropriate to expedite the  
19 resolution of these proceedings. And therefore, we direct in  
20 this order that an initial decision be issued within 47  
21 weeks of the designation of a presiding judge, consistent  
22 with the ALJ's Track II time frame for hearings. The  
23 expedited schedule is not intended to foreclose the  
24 pipeline, its customers, Commission litigation staff from  
25 reaching a reasonable settlement. So I support this order.

1 Questions, comments, colleagues?

2 Commissioner Spitzer.

3 COMMISSIONER SPITZER: Thank you, Mr. Chairman.

4 I've filed and will post concurrences on these  
5 two matters; just in essence elaborating on some of the  
6 observations I made last November. Clearly we're balancing  
7 two very important and competing interests, the first  
8 mandated by the Natural Gas Act in just, reasonable rates;  
9 and the second, also mandated by the Natural Gas Act but  
10 made more apparent by recent changes in production of  
11 natural gas in this country is inadequate return for the  
12 deployment of pipeline infrastructure.

13 And there's a subsidiary issue with regard to  
14 fuel and fuel retention practices, which is retaining an  
15 incentive for efficiency in pipeline operations, with also  
16 ensuring that there be not unreasonable profits from fuel  
17 revenues. So as the Chairman said, this is the beginning of  
18 the proceeding. We had settlements arising from the three  
19 cases brought in November of 2009, and we'll see where this  
20 takes us. But we are vigilant with regard to the just and  
21 reasonable rates; but also zealous in ensuring that we  
22 balance all competing interests and look forward to how  
23 these proceedings go.

24 CHAIRMAN WELLINGHOFF: Thank you, Commissioner  
25 Spitzer.

1           Anyone else?

2           We're ready to vote, then, I think, Madam  
3   Secretary.

4           SECRETARY: The vote begins -- I just want to  
5   make a note, we're voting on these items together.

6           The vote begins with Commissioner LaFleur.

7           COMMISSIONER LaFLEUR: I vote aye.

8           SECRETARY: Commissioner Norris?

9           COMMISSIONER NORRIS: Aye.

10          SECRETARY: Commissioner Moeller?

11          COMMISSIONER MOELLER: Aye, noting my written  
12   concurrences in each.

13          SECRETARY: Commissioner Spitzer?

14          COMMISSIONER SPITZER: Aye, noting my  
15   concurrences in both items.

16          SECRETARY: And Chairman Wellinghoff.

17          CHAIRMAN WELLINGHOFF: And I vote aye.

18          That completes our agenda items. Thank you for  
19   the presentation. There are two quick announcements,  
20   though, that Commissioner Moeller has.

21          COMMISSIONER MOELLER: Thank you, Mr. Chairman.

22          As most people here probably know, the five of us  
23   were down in Atlanta on Sunday morning for a noticed  
24   meeting; but I wish to congratulate our colleague from the  
25   State of Vermont, David Cohen, who presided over NARUC; I

1 think a very good year. He hands the gavel to Tony Clark of  
2 North Dakota, a very competent colleague. And also my  
3 friend Philip Jones from my home State of Washington has  
4 entered the leadership structure of NARUC. Congratulations  
5 to all, and I think they appreciated the time we spent with  
6 them in Atlanta.

7 And finally, I'd like to note today the service  
8 of Elaine Robinson. She's here every meeting, and she's  
9 retiring from the New York ISO after a career there of about  
10 ten years, about 30 years in the utility business. She'll  
11 stay on for a little while as a consultant to train her  
12 successor, Ray Stalter; but she's been extremely helpful to  
13 this Commission and my office, and I want to note her  
14 terrific career.

15 Congratulations, Elaine.

16 (Applause)

17 CHAIRMAN WELLINGHOFF: Anybody else have anything  
18 to come before the Commission?

19 If not, we're adjourned. (gavel)

20 (Whereupon, at 11:08 a.m., the meeting  
21 adjourned.)

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