

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

BEFORE THE

FEDERAL ENERGY REGULATORY COMMISSION

- - - - - x

In the matter of: :

TECHNICAL CONFERENCE ON : Docket Number

PRIORITY RIGHTS TO NEW : AD11-11-000

PARTICIPANT-FUNDED :

TRANSMISSION :

- - - - - x

Commission Meeting Room

Federal Energy Regulatory Commission

888 First Street, Northeast

Washington, D.C. 20426

Tuesday, March 15, 2011

The technical conference was convened, pursuant  
to notice, at 9:33 a.m.

FERC STAFF:

MK SHEAN (Presiding)

JAMIE SIMLER

MASON EMNETT

ARNIE QUINN

DAVID MORENOFF

CHRIS WILSON

ANDREA HILLIARD

HADAS KOZLOWSKI

1       FERC STAFF (Continued):  
2       ANNA COCHRAN  
3       MICHAEL McLAUGHLIN  
4       STEVE RODGERS  
5       BOB PETROCELLI  
6       JOHN CARLSON  
7       THANH LUONG  
8       BECKY ROBINSON  
9       CHAIRMAN JON WELLINGHOFF  
10      COMMISSIONER MARC SPITZER  
11      COMMISSIONER PHILIP MOELLER  
12      COMMISSIONER JOHN NORRIS  
13      COMMISSIONER CHERYL A. LaFLEUR  
14  
15      PANEL ONE:  
16      STEPHEN CONANT                   TERRY J. WOLF  
17      DAVID G. GATES                   CYNTHIA MARLETTE  
18      MICHAEL SKELLY                   DAVID RASKIN  
19      ROBERT van BEERS                 TYSON UTT  
20      KENNETH HOUSTON  
21      PANEL TWO:  
22      BRADLEY W. OACHS                 JOEL NEWTON  
23      TOM DeBOER                       RICHARD M. LORENZO  
24      ADAM WENNER                      KURT ADAMS  
25      KRIS ZADLO

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

2 (9:33 a.m.)

3 MS. SHEAN: Good morning. I'd like to welcome  
4 you this morning to the FERC Technical Conference on  
5 Priority Rights for New Participant-Funded Transmission.  
6 I've been impressed over the last few weeks as we've been  
7 putting this together with the level of interest in this  
8 subject for this technical conference.

9 The purpose of this technical conference today is  
10 to discuss issues relating to the ownership of and priority  
11 rights to new transmission delivery in the interconnection  
12 facilities. Transmission rights and responsibilities are  
13 governed by Order 888 and 890, which assures open access and  
14 non-discriminatory treatment for transmission customers.

15 Interconnection generating facilities, as you  
16 know, is also governed by Order 2003, which standardized the  
17 agreements and procedures related to interconnection and  
18 generating facilities. The industry, the electric power  
19 industry, is undergoing changes and evolving, with both new  
20 types of resources, renewable energy and demand and storage,  
21 and new development, ownership, operational and financing  
22 structures.

23 Today, the purpose is to discuss issues related  
24 to these new transmission structures and business models in  
25 some detail, and explore possible flexibilities and/or

1 reforms to accommodate these new structures. We realize  
2 that in addition to our panelists, that many of you in the  
3 audience desire to comment on these matters, and we will be  
4 issuing a Notice of Comment.

5 I'm going to stop at this point and ask the  
6 Chairman, Mr. Wellinghoff, and Commissioner Spitzer and  
7 Commissioner Moeller if --

8 (Laughter.)

9 MS. SHEAN: If they have some comments they wish  
10 to make.

11 CHAIRMAN WELLINGHOFF: Thank you. I don't have  
12 any other specific comments. I think you framed it very  
13 well, that we have new business structures here and new  
14 opportunities to look at how to ensure that we have a  
15 regulatory structure in place to enable these kinds of  
16 infrastructures to be built and go forward.

17 So I'm very anxious to listen to the panel this  
18 morning. I want to thank all the panelists this morning and  
19 this afternoon that have made the time to come here and  
20 prepare testimony and present us with their views, and we're  
21 very interested and anxious to hear what you have to say.  
22 Thank you very much.

23 COMMISSIONER SPITZER: Thank you, Mr. Chairman.  
24 I too thank everyone for participating in this area. This  
25 is one of those areas where the facts of the particular

1 cases and the temporal changes since 1996 are interesting.  
2 The legal issues are interesting, and as a consequence, the  
3 cases that we've adjudicated to date are challenging,  
4 complex and interesting.

5 So this topic is ripe for discussion. I look  
6 forward to the discussion and appreciate all your  
7 participation. Thank you.

8 COMMISSIONER MOELLER: MK, you know I'm obsessed  
9 with transmission. Why are you surprised up here? Thanks  
10 also. I'll echo it from the Chairman and Commissioner  
11 Spitzer for the effort people put into this, the people who  
12 are here, the staff who arranged it. I think this shows  
13 that we are creative in our approach, in trying to get new  
14 transmission built.

15 There are some challenges that arise, but we're  
16 trying to deal with them, and that we have the adequate  
17 authority to be flexible, in making sure that this needed  
18 infrastructure gets built. That's what the -- hopefully the  
19 questions that are posed today will be answered in a manner  
20 that helps us move forward. Thanks for putting this all  
21 together.

22 MS. SHEAN: Thank you. As I mentioned, we will  
23 be having comments in this docket. We will be issuing a  
24 notice for additional comments, and we expect to have a 30-  
25 day comment period subsequent to this technical conference,

1 and we'd encourage you to respond to that notice.

2 The notice for this technical conference did list  
3 a number of proceedings that are currently pending before  
4 the Commission, or within their rehearing period, out of an  
5 abundance of caution, with respect to the Commission's rules  
6 governing off the record communication.

7 Because the issues discussed at today's  
8 conference may be relevant to or touch upon issues in those  
9 list of proceedings, the notice intended to provide parties  
10 to those individual proceedings, a reasonable prior notice  
11 and opportunity to be present for any such conversations.

12 However, inclusion of the individual proceedings  
13 should not be read to invite comments specifically to those  
14 cases. In fact, we're going to ask the Commission staff and  
15 the participants to make every effort to avoid discussing  
16 specific facts and merits of individual proceedings. I'd  
17 appreciate it if we could adhere to that.

18 The first panel is seated. Welcome, and I'd like  
19 to recognize Steve Conant.

20 MR. CONANT: Thank you very much. My name is  
21 Stephen Conant. I am Senior Vice President with Anbaric  
22 Transmission, an independent transmission development  
23 company with offices in Wakefield, Massachusetts. Thank you  
24 for the opportunity to provide my brief comments on this  
25 timely topic.

1           Specifically, I would like to address the case of  
2 independent merchant transmission, and how it can be used to  
3 connect location-constrained resources to market. As I  
4 mentioned, Anbaric is an independent transmission company.  
5 We have no interest in being in the generation business.

6           Meanwhile, I understand there are a few here in  
7 the generation business who have no interest in being in the  
8 transmission business. Maybe we have the making of what  
9 could be a beautiful friendship.

10           The interdependency of transmission and  
11 generation has never been more apparent than in the case of  
12 how we build transmission to serve location-constrained  
13 resources. These resources are often distant from load, but  
14 in many cases may be a fairly short distance from the  
15 integrated grid.

16           The particulars of relatively low capacity  
17 factors of wind generation, as opposed to fossil or nuclear  
18 plants, present special challenges. With wind and solar,  
19 it's not as simple as it is with the coal and nuclear plant  
20 to build a generator lead line, and roll the cost of  
21 transmission in with the overall cost of the plant.

22           With the coal and nuclear plant, the transmission  
23 line and capacity are available at the same time. The  
24 generator builds the generator lead line with the same  
25 capacity as the capacity of the plant. From the outset,

1       there's no need to determine how excess capacity in the line  
2       is accommodated.

3                To serve the full generating potential of remote  
4       wind or solar resources, or the solar resource area, is not  
5       as simple. For wind, the lead lines are ideally sized to  
6       accommodate the full capacity of a region when the wind is  
7       blowing, but all the capacity is not developed at once.

8                In the areas that may cover tens of square miles,  
9       there may be more than one generation developer who may want  
10      to access the line. New problems call for new approaches.  
11      I'd like to make a few suggestions.

12               First, let's let generation developers build  
13      generation, and let transmission developers build  
14      transmission. The two groups need not and perhaps should  
15      not be affiliated with one another. Instead of a wind  
16      generation developer going through the contortionist  
17      exercise of demonstrating that the megawatts of its wind  
18      farms in a location-constrained area magically add up to the  
19      size of a transmission line it's building to get the first  
20      megawatt to market.

21               In order to avoid the need to file an OATT or be  
22      designated as a transmission owner, why not acknowledge the  
23      reality and establish a construct where the transmission  
24      developer builds the line, and all the generation developer  
25      needs to worry about is building the wind or solar farm.

1           The concept I put forward here is that of a  
2 merchant generator lead line, where multiple generators, not  
3 necessarily affiliated, use one radial line to get to the  
4 integrated transmission system. Here, I'm talking about  
5 calibrated regulation with a structured approach. It  
6 addresses one way radial lines whose sole purpose is to  
7 connect to an ISO-RTO transmission system.

8           It can be structured such that an anchor customer  
9 or customers, up to 75 percent of the line's capacity if  
10 needed for finance, can finance the initial construction of  
11 the radial line. Rates to use the line would be negotiated,  
12 and would decline as additional generation is added. Open  
13 seasons would be held for the remaining capacity of at least  
14 25 percent.

15           The point of interconnection for all the  
16 generators is where the radial line hits the integrated RTO-  
17 ISO transmission system. Interconnection to the RTO-ISO and  
18 upgrades required would be for the initial generator.  
19 Additional generators would be studied at the RTO-ISO  
20 interconnection point on an incremental basis, as they are  
21 added to the radial line.

22           Multi-party interconnection agreements with the  
23 ISO-RTO would be entered amongst the generator, merchant  
24 generator lead line owner, RTO-ISO, and the interconnecting  
25 transmission owner. The RTO and ISO would have operating

1 control over the line in determining scheduling and  
2 curtailment at the point of interconnection.

3 So what are the benefits to this approach? I see  
4 at least seven. First, it allows wind and solar generation  
5 developers to stick to what they do best, develop  
6 generation. Second, it facilitates the financing of radial  
7 lead lines needed to bring location-constrained resources to  
8 market. Third, it is efficient without excessive regulation  
9 or administrative overhead.

10 Fourth, RTO-ISO network upgrades are built as  
11 needed and when needed, on an incremental basis. Sixth, it  
12 uses existing RTO-ISO OATT processes, and finally, this  
13 calibrated regulatory approach combines existing Commission  
14 policies and precedent into an efficient hole.

15 The new approach is simple, transparent, cost-  
16 effective and financeable, while also providing open access  
17 and encouraging full use of radial lines by multiple  
18 unaffiliated generators. I thank you for your time, and  
19 would be happy to take questions.

20 MS. SHEAN: Thank you, Steve. I think we're  
21 going to hold questions until the end of this, okay, with  
22 everyone. Then there will be hopefully some questions and  
23 discussion between panel members. Thank you. I'd like to  
24 next recognize Terry Wolf.

25 MR. WOLF: Good morning. I'm Terry Wolf, Manager

1 of Transmission Services for Missouri River Energy Services,  
2 a municipal joint action agency serving 60 municipal  
3 communities in Iowa, Minnesota, North Dakota and South  
4 Dakota. I'm speaking on behalf of Missouri River and TAPS,  
5 an association of transmission-dependent electric utilities  
6 in more than 30 states.

7 Missouri River and TAPS strongly support open  
8 access and mechanisms to create the robust regional grid  
9 required for competitive generation markets. We want to  
10 make sure the right transmission is being built to meet  
11 regional needs. Neither under nor over-built, we see a  
12 tension between these objectives and the merchant models  
13 that are the focus of today's conference.

14 For example, stand-alone, single purpose merchant  
15 transmission projects that are funded by subscribers, who  
16 secure party rights of access in that project. Especially  
17 where a stand-alone merchant line is an AC line, we have  
18 concerns about the impact of such projects on the regional  
19 transmission development and the generation markets.

20 We urge the Commission to consider the following  
21 objectives in developing policies on merchant transmission  
22 lines. First, we need to maximize the open access at non-  
23 pancaked rates. In other words, as much available capacity  
24 as possible, as early as possible, should be placed under an  
25 OATT, and preferably an existing transmission provider's

1 OATT, rather than a stand-alone OATT for a merchant project.

2 While there may be some benefits to merchant  
3 transmission that is not rolled into the rate base, the  
4 Commission should be aware that stand-alone merchant  
5 projects can create barriers to the competitive markets by  
6 increasing pancaking and complicating transactions.

7 In the upper Midwest, we've experienced those  
8 significant hurdles created by fragmented ownership. If you  
9 look back to the 1990's, our region was a patchwork of  
10 transmission owners. These transactions required  
11 coordinating complex contract path arrangements with  
12 multiple entities and payment of multiple pancakes.

13 In the Midwest, we like to make a joke about that  
14 and call that a short stack or a tall stack of pancakes.  
15 We're trying to avoid that in the future. Even under  
16 issuance of Order 888, the situation made access to  
17 competitive generation both complicated and expensive.

18 It was the formation of MISO that addressed much  
19 of the problems by enabling access to many transmission  
20 owners' facilities through a single OATT at non-pancaked  
21 transmission rates. The Commission should not sacrifice or  
22 erode open access to broader competitive markets through  
23 decisions designed to spur individual participant-funded  
24 projects.

25 We're concerned that the proliferation of single

1 purpose merchant transmission facilities will turn back the  
2 clock to the bad old days, reducing effective access to  
3 markets and recreating structures that produce problems that  
4 will be hard to solve in the future.

5           Given the difficulty and cost of expanding  
6 transmission, we need to be concerned about putting in place  
7 structures that create an exclusive or near-exclusive  
8 access, resulting in market power over a transmission path  
9 that may become an essential means to accessing the market.  
10 Affiliation enhances this incentive and the opportunity to  
11 stifle competition and restrict access.

12           Second, we need to maximize the ability to get  
13 transmission projects sited, to ensure we build the projects  
14 that provide the most bang for our siting buck. The  
15 challenge moving forward isn't just how to get lines built;  
16 it's how to get the right lines built. The transmission  
17 projects built should be right-sized and integrated into  
18 regional plans.

19           We are concerned that sponsor-funded merchant  
20 projects won't be, but instead will be sized simply to meet  
21 the needs of the priority rights holders. The merchant  
22 developer has a financial incentive to build and undersized  
23 line to ensure the line is fully subscribed, or even  
24 undersize that line. Priority rights in a merchant line are  
25 more valuable if the flow gates affected by the line are

1 still congested after the upgrade is constructed.

2 In addition, merchant transmission development  
3 will tend to result in single purpose facilities that miss  
4 crucial opportunities. A transmission should serve multiple  
5 purposes where possible. In general, a merchant  
6 transmission developer will lack the incentive to design its  
7 project to address all those needs.

8 Participant-funded merchant projects will seek to  
9 justify upgrades based on private benefits to specified  
10 market participants, make the difficult state siting process  
11 even harder because siting approvals typically require  
12 public benefits. State regulators and the public have  
13 limited appetites for approving and siting major new  
14 transmission lines.

15 Once a merchant project is built, land owner  
16 regulator siting fatigue may prevent the construction of  
17 additional lines or expansions needed to serve regional  
18 needs. In addition, or in fact merchant development can  
19 create a new constituency that opposes transmission  
20 development.

21 These problems have real world implications for  
22 the grid expansion choices. Missouri River is a joint owner  
23 in the Brookings Project, one of the Cap X 2020 projects  
24 planned by a group of 11 utilities. While the line was  
25 being studied, an alternative sponsor-funded line was

1 proposed with almost identical end points. Both projects  
2 were designed to transmit wind from Southwest Minnesota to  
3 Midwest load centers, but only Brookings was designed to  
4 serve regional needs and local needs, to make the best use  
5 of the corridor.

6 This multi-purpose design, together with an  
7 inclusive joint ownership structure, with fostering the  
8 support of the regional LLCs, greatly facilitated the siting  
9 process. Thank you for the opportunity to participate in  
10 the panel, and I look forward to your questions.

11 MS. SHEAN: Thank you, Terry. I'd like to  
12 recognize David Gates.

13 MR. GATES: Good morning and thank you for  
14 allowing us to be here and make comments today. My name's  
15 David Gates. I'm Vice President of Wholesale Operations for  
16 Northwestern Energy.

17 The Commission has asked panelists to consider  
18 whether non-incumbent independent transmission developers  
19 should be allowed flexibility in the allocation of priority  
20 rights to the use of transmission facilities, and if so, how  
21 much flexibility.

22 Northwestern Energy respectfully suggests that  
23 the business structure of the entity proposing the new or  
24 expanded development should not be the gating issue with  
25 regard to effective expansion of the grid or priority rights

1 to transmission use. Rather, open access transmission  
2 tariff and other policy reforms that allow any type of  
3 developer, whether independent or a traditional utility, an  
4 opportunity to provide transmission service on a non-  
5 discriminatory basis should be pursued.

6 Limiting or prioritizing such development only to  
7 independent transmission developers would be by itself a  
8 form of discrimination. Of even more paramount concern is  
9 the potential erosion to the reliability of the bulk  
10 electric system if further balkanization of the system is  
11 pursued.

12 Many of the reforms that the Commission has  
13 entertained, such as open seasons, anchor tenants and cost-  
14 based versus negotiated rates, have been discussed primarily  
15 in individual orders on independent developers' projects.  
16 Northwestern Energy has been a participant with its MISTY  
17 and Collector system in that process.

18 Northwestern suggests that a third section of the  
19 OATT, perhaps titled "transmission service," applicable to  
20 all types of developers, traditional and non-traditional be  
21 developed, which would clearly identify policies and  
22 procedures for development of transmission facilities that  
23 are not for traditional load service.

24 Section 3 of the OATT could address transmission  
25 development for export lines, and transmission collection

1 systems. In the West, and particularly in Northwestern's  
2 footprint, there is significant potential new variable  
3 generation development that must be collected through new  
4 transmission facilities, and exported again, likely on new  
5 transmission facilities to other distant markets.

6 The third section of the OATT would outline the  
7 requirements for projects to perform from start to finish,  
8 open seasons, describe how anchor tenants can be utilized  
9 and to what extent in the development of these facilities  
10 that are not for load service in the balancing authority in  
11 which they would reside.

12 Section 3 of the OATT could also allow either  
13 cost-based or negotiated rate authority with appropriate  
14 criteria defined for each. For example, it could be  
15 acceptable to allow cost-based rates, but allow negotiation  
16 of contract term and quantities in order to offer  
17 flexibility to customers, and assurance of reasonable cost  
18 recovery for a period of time for developers.

19 Rules for setting rates purely on a market or  
20 bidding basis should also be included in the reforms and  
21 included in a new Section 3 in the OATT. This new section  
22 should also describe the responsibility for ancillary  
23 services associated with transmission service.

24 Section 3 should also recognize and establish  
25 rules around the obligation for doing non-commercial or

1 ancillary services that are integral to the reliable  
2 delivery under this section, but also maintain the  
3 reliability of service to customers served under Sections 1  
4 and Section 2 of the OATT.

5 So the rights to develop transmission and  
6 obligations to provide associated ancillary services do not  
7 get out of balance, i.e., the merchant or independent  
8 entity, with the right to develop transmission, but the  
9 traditional utility with the obligation to provide ancillary  
10 services.

11 Section 3 of the OATT should require transmission  
12 services and all required ancillary services to be made  
13 available by the same transmission developer, or that in the  
14 alternative, that if the obligation to provide such  
15 ancillary services falls to the traditional provider of  
16 these services and not the independent, then it's critical  
17 to assure that those with the obligation to provide aren't  
18 unduly burdened with additional costs, risks, exposure to  
19 sanctions or penalty caused by third parties.

20 Section 3 of the OATT should be structured such  
21 that the customers requiring the transmission service pay  
22 for the service, if you have participant funding, and that  
23 the costs not shift to network customers otherwise not  
24 utilizing this new transmission lines.

25 In summary, Northwestern Energy strongly feels

1 that reforms are required to promote the development of  
2 transmission facilities, and that service is not for  
3 traditional load service. We have referred to this as  
4 export or export collection transmission. Northwestern also  
5 respectfully submits to the Commission that the business  
6 structure of the developer proposing such transmission  
7 should not limit the ability to develop and build this type  
8 of transmission facility.

9 Policy reforms and an additional section to the  
10 OATT could clearly be a vehicle to lay out the rules of the  
11 road, for all potential developers, and one transmission  
12 developer should not be given priority over another. Thank  
13 you for the opportunity to comment.

14 MS. SHEAN: Thank you, and we now recognize Cindy  
15 Marlette.

16 MS. MARLETTE: Hi. I want to thank the  
17 Commissioners and Commission staff for the opportunity to be  
18 here today on behalf of the Western Independent Transmission  
19 Group. Today, both independent and merchant transmission  
20 developers are anxious to build new transmission,  
21 particularly facilities that are needed to move renewable  
22 power to load centers.

23 However, WITG believes that some of the  
24 Commission's policies may be hindering that development.  
25 Much of the transmission needed today is more complicated to

1 develop and riskier than it was in prior years, when  
2 incumbent traditional utilities were building in their  
3 service territories.

4 Transmission needs to be built to move location-  
5 constrained generation across long distances, across  
6 multiple service territories, and the Commission's policies  
7 need to adapt to recognize these difficulties. WITG members  
8 have come to realize two primary impediments.

9 First, in the organized markets of the ISOs and  
10 RTOs, there is unequal treatment between independent  
11 incumbent transmission owners and -- I'm sorry, between  
12 incumbent transmission owners and independent developers,  
13 both in the transmission planning process itself and in the  
14 right of first refusal contained in existing transmission  
15 tariffs.

16 This gives incumbent transmission providers a  
17 priority in building new transmission lines. I realize  
18 those issues are pending in a rulemaking docket, so I'll  
19 reserve further comment on them.

20 However, the second major impediment is in the  
21 non-organized markets, in other words, the markets outside  
22 the RTOs and ISOs. In these markets, independent developers  
23 do not have access to the traditional cost recovery models  
24 that incumbent developers have.

25 This is the situation in most of the Western

1 Electric Coordinating Council. There is no pre-existing set  
2 of cost of service customers from whom to recover the costs  
3 of building a new transmission line, no rate-based funding  
4 and there's no opportunity to recover prudently incurred  
5 abandonment costs.

6 Building transmission projects in these  
7 circumstances is not only expensive, but it represents a  
8 merry-go-round or chicken and egg problem when it comes to  
9 financing and cost recovery. That merry-go-round, which is  
10 not so merry, has three parts. First, most independent  
11 transmission companies need creditworthy firm commitments  
12 from generators in order to obtain construction financing  
13 for a project.

14 Second, most generators will not provide a firm  
15 commitment until after they have a purchase power agreement  
16 from a load-serving entity. But many load-serving entities  
17 or most will not award a purchase power agreement to a  
18 generator unless the generator already has firm transmission  
19 rights.

20 WITG does not believe there is a one-size-fits-  
21 all solution to the impediments identified. However, the  
22 Commission should allow independent and merchant  
23 transmission developers in appropriate circumstances to  
24 negotiate with anchor tenants for up to 100 percent of the  
25 rights to transmission capacity on a new transmission line.

1                   While the Commission has allowed anchor tenants  
2                   to reserve up to 50 percent of capacity, its precedent is  
3                   unclear as to whether it is willing to consider higher  
4                   percentages. The need to increase the anchor tenant  
5                   percentage is driven by the significant development risks of  
6                   long-line projects, siting, permitting, land acquisition and  
7                   multiple regulatory jurisdictions.

8                   In light of the development risks, independent  
9                   projects may need up to 75 to 80 percent of contract cover  
10                  in order to satisfy lenders. Further, lenders may want  
11                  several anchor tenants in order to spread risks. Without  
12                  flexibility on the anchor tenant rights to capacity, it  
13                  simply may not be possible in many situations to build  
14                  projects.

15                 A second recommendation is that the Commission  
16                 encourage traditional incumbent transmission providers to  
17                 partner with independent developers in building new long-  
18                 distance transmission lines. This would help address the  
19                 financing problems I identified, the lack of a rate-based  
20                 cost of service mechanism through which to recover costs of  
21                 construction.

22                 Because the risks associated with these lines are  
23                 much higher than most lines within traditional utility  
24                 service territories, and thus would merit a higher rate of  
25                 return within the range of reasonable returns, traditional

1 incumbent utilities may be willing to join partnerships if  
2 the Commission encouraged them to do so. The Commission  
3 should also encourage incumbents to contract for capacity on  
4 new merchant lines, where the economics makes sense.

5 In summary, WITG asks the Commission to consider  
6 greater regulatory flexibility to accommodate independent  
7 and merchant transmission projects. Thank you again for the  
8 opportunity to be here today, and WITG members would be  
9 happy to provide additional information for the record, if  
10 it would help the Commission address these important issues.  
11 Thank you.

12 MS. SHEAN: Thank you, Cindy. I'd like to  
13 recognize Michael Skelly.

14 MR. SKELLY: Thank you very much. Thanks to the  
15 Commissioners and staff for putting this together. Clean  
16 Line Energy, we appreciate the opportunity to make comments  
17 today. Our company, we do one thing and one thing only.  
18 We're developing a series of four high voltage DC lines, all  
19 of which would transport 3,500 megawatts of wind energy  
20 across distances of 500 miles plus.

21 We believe quite strongly, based on our  
22 experience in the wind industry over many years, that the  
23 cost of wind will come down. There's a lot, there's a huge  
24 resource in the center part of the country of wind energy  
25 that costs in the neighborhood of three cents with the

1 production tax cut. We believe that it's cost-effective to  
2 move that energy to markets, and we believe that high  
3 voltage DC has the potential to really revolutionize the  
4 delivery of renewables to market.

5 We see other countries around the world that are  
6 working with, that have the same challenge in moving a lot  
7 of energy a long distance, and high voltage DC is a big part  
8 of the solution. So with respect to the discussion today,  
9 the big challenge that we're trying to work out here is we  
10 have a very complex three actor problem, and each of the  
11 actors under the sort of current paradigm must act quite  
12 independently.

13 So we have generators, we have transmission  
14 developers and then we have load. The projects that are  
15 going to connect these three are very large and substantial  
16 and will cost up to a couple of billion dollars each. So  
17 the traditional mechanism to work through this is to require  
18 credit arrangements amongst the different parties.

19 But that becomes very difficult when you have to  
20 work through all the different development challenges, which  
21 have already been mentioned, and just the dollars involved.  
22 You're also dealing with a situation where wind energy  
23 developers are in a very capital-intensive business. Lots  
24 of entities from banks to parties purchasing their power to  
25 turbine their energy, they all want a little piece of a wind

1 developer's balance sheet.

2           So there's not a lot left over for the credit  
3 that transmission developers will need from generators, in  
4 order to finance our projects. On the receiving end of  
5 transmission lines of this nature, as has already been  
6 pointed out, those parties are reluctant to move forward to  
7 make commitments to projects, without full visibility on the  
8 generation source and all the development issues being fully  
9 vetted.

10           So this three actor problem is very complex. We  
11 believe that it would be very helpful in the development of  
12 these projects if FERC can see fit to reduce some of the  
13 barriers to partnership, either between the developers of  
14 generation or load, and then we can at least begin to  
15 whittle the three actor problem down to two actors or  
16 perhaps two and a half actors. That will do a lot in terms  
17 of reducing the overall complexity of the project.

18           The other issue that we'd like to comment on is  
19 with respect to some of the interconnection rules that one  
20 has to deal with, as you put together both independent  
21 transmission projects and especially high voltage DC. We  
22 have connection requirements on both what we call the  
23 windward side of our projects and the delivery side of the  
24 projects.

25           In many parts of the country, the only mechanism

1 to deal with those is the standard interconnection queue.  
2 Well, on the windward side of projects, you have to have a  
3 tie-in to the underlying AC system, and there are in just  
4 about all the markets and elsewhere, there's no mechanism in  
5 place to govern the rules around interconnecting on the  
6 windward side in order to move energy to market.

7 So we would suggest that FERC take a look at this  
8 issue, and help the different RTOs come up with mechanisms  
9 to adequately address that, and create transparency. We're  
10 not, we do not believe, we believe very strongly in a  
11 disciplined queue process, with consequences for folks in  
12 the queue who are not moving their projects forward.

13 But at the same time, the generation queue is not  
14 really designed, in terms of siting requirements and  
15 permitting requirements, it's not really designed to fit the  
16 requirements of transmission. Thank you very much for the  
17 opportunity to comment, and we look forward to any questions  
18 that you may have.

19 MS. SHEAN: Thank you, Michael. I'd like to  
20 recognize Dave Raskin.

21 MR. RASKIN: Thank you very much for inviting me  
22 today. I'm offering comments from the perspective of  
23 someone who's represented several transmission project  
24 developers, who do not propose to recover the costs of their  
25 projects from captive customers, pursuant to a FERC-approved

1 cost allocation mechanism.

2 These projects are grounded in beneficiary pays  
3 principles, because the projects can go forward only if the  
4 developer can demonstrate sufficient value to the  
5 marketplace, to cause someone with sufficient credit to  
6 volunteer to pay for the facilities.

7 The Commission should be favorably disposed  
8 towards these projects, because they represent  
9 entrepreneurial activity in the marketplace, and provide an  
10 alternative to transmission expansions by traditional  
11 providers that are funded by captive customers, and which  
12 raise difficult issues over cost responsibility.

13 I'm here to ask the Commission to be more  
14 flexible to the developers of these projects. My primary  
15 concern over Commission policy on access involves what I  
16 perceive to be an over-reliance on generic rules, under the  
17 broad rubric of open access, as a substitute for a factual  
18 analysis of whether actual undue discrimination exists in  
19 granting rights to transmission capacity on an independent  
20 developer's project.

21 I'm proposing to the Commission be less  
22 prescriptive in circumstances where no one has made a  
23 factual showing that they are the victim of undue  
24 discrimination; that the Commission be willing to analyze  
25 the facts presented in those cases where undue

1 discrimination is alleged; and that the Commission recognize  
2 that decisions made in order to make a transmission project  
3 economically successful, which my two predecessor speakers  
4 pointed out is a very difficult undertaking. Even if they  
5 do not treat every potential user equally, it may not  
6 constitute undue discrimination.

7           The Commission's open access rules were based on  
8 findings made in Order 888 regarding the incentives and  
9 behavior of incumbent transmission owners who recovered the  
10 costs of their transmission facilities from captive  
11 customers, and who typically owned generation or have other  
12 merchant interests in their transmission service area.

13           These findings, however, do not apply to the  
14 activities of a transmission project developer, who does not  
15 own existing transmission facilities and therefore has no  
16 market power, has no captive customers who will be asked to  
17 pay for the proposed project, and may have no affiliate  
18 generation or marketing interests that could be affected by  
19 its access decisions.

20           It is, of course, possible that such a  
21 transmission developer would have reasons for engaging in  
22 undue discrimination in assigning capacity rights and  
23 negotiating deals for a transmission. But the incentive for  
24 it to do so is quite obscure in most cases, and usually, if  
25 not always different from those discussed in Order No. 888.

1           The Commission's open access remedy applicable to  
2 existing transmission providers further reduces the need and  
3 justification for generic limitations on the flexibility  
4 afforded to these independent developers.

5           Because of open access, an eligible customer has  
6 the option of asking the existing transmission provider to  
7 interconnect and to provide transmission service, and if  
8 insufficient capacity exists on the provider system, to  
9 direct the provider to determine the incremental cost to  
10 satisfy the request.

11           In addition, independent transmission developers  
12 face potential competition from other developers, who may  
13 wish to promote competing projects. They also face siting  
14 proceedings, in which projects are often rejected or  
15 modified, based on a number of considerations, including the  
16 existence of alternatives.

17           As prior speakers have pointed out, the nature of  
18 these projects makes them very difficult to put together.  
19 They require bringing together producers, transmitters and  
20 buyers, either load-serving entities or other buyers. But  
21 the key is that there needs to be someone providing dollars  
22 to the transaction, that has sufficient credit to finance  
23 both the transmission and in most cases the generation as  
24 well.

25           That is no mean feat, and for that reason, the

1 Commission should be affording people putting these projects  
2 together as much flexibility as possible.

3 In contrast with participant-funded projects that  
4 utilize cost-based transmission rates, project developers  
5 who seek negotiated or market-based rates should expect  
6 greater up front scrutiny, because the Commission has to  
7 make competition findings to support the grant of market-  
8 based rates.

9 However, I urge the Commission to recognize that  
10 the developers of these merchant projects face huge hurdles  
11 in identifying and signing up creditworthy, long-term  
12 transmission customers who can support the financing of  
13 their projects. This is very tough market, and in my  
14 experience, cases where developers can truly dictate price  
15 to their customers are rare or non-existent.

16 The Commission should provide developers of  
17 merchant projects as much flexibility as it can, because the  
18 developers need this flexibility in order for their projects  
19 to succeed. In the event that a merchant developer earns a  
20 return that exceeds a typical regulated return, it will be  
21 the result of voluntary decisions of customers who choose to  
22 buy transmission service, and the developer will have earned  
23 the hard way its return as a fair risk premium. Thank you  
24 very much.

25 MS. SHEAN: Thank you, David. I'd like to

1 recognize Robert van Beers.

2 MR. VAN BEERS: Thank you very much. Ladies and  
3 gentleman, thank you for inviting us to the panel today.  
4 Tunbridge is very pleased to be part of this discussion, and  
5 thanks you for the opportunity to put our comments before  
6 you. Copies of my comments are also available at the back  
7 of the room or I'd be happy to send them by email to anyone  
8 who'd like to receive them.

9 As an independent transmission developer and  
10 perhaps as one of those in the vanguard with one of our  
11 projects now in construction, we'd like to reiterate that we  
12 are fully committed to fair, open and transparent access to  
13 transmission. There's nothing about being an independent  
14 transmission developer that gets in the way of that  
15 priority.

16 I'd like to make four points, if I may today.  
17 Firstly, and I think some of the earlier panelists have  
18 alluded to this in various forms as well, we believe it  
19 might be wise for the Commission not to be focused too much  
20 on very prescriptive, very rigid, very precise guidelines in  
21 what anchorship or participation might involve.

22 And we say that not because we're going to be  
23 angling for a particular structure, but rather the structure  
24 that we will be angling for in the next year or so on our  
25 subsequent projects will be the result of a constant tension

1       between what the financial markets will finance, what our  
2       shippers are looking for, what the costs of the project are,  
3       what the environmental constraints might be for the  
4       development of the project, and quite frankly in advance, we  
5       have no idea what will be practical and what is achievable.

6               I can tell you this. Independent transmission is  
7       a tough business, and if the regulator's going to put a set  
8       hurdle at the far end, I can tell you that finding  
9       development capital to get to that end will be extremely  
10      difficult.

11             The second point I'd like to make is that we  
12      believe that latecomers, that is, those who are not anchor  
13      tenants who have stepped up to the plate at the very  
14      beginning, should get a different deal than those who step  
15      up first. As I've made the point to many of my colleagues,  
16      sometimes it feels, as I deal with developers as though I'm  
17      dealing with penguins on an ice flow. We have to see which  
18      one gets nudged into the water first.

19             If there isn't a reason to jump in, why would  
20      you? If you know you're going to get the same deal by  
21      waiting, why wouldn't you wait? I think this is actually a  
22      rather significant barrier, in particularly in the area in  
23      which we're involved, for renewable generators to step off  
24      the curb, take some risk, make an investment and step  
25      forward to get some transmission built.

1           Thirdly, we believe that the FERC needs to  
2 understand that we are completely aligned with many of the  
3 sentiments of the earlier participants, in terms of quote-  
4 unquote "right-sizing projects." As an independent  
5 transmission developer, we have zero incentive to leave any  
6 real opportunity on the table, and push it aside and develop  
7 a suboptimal project.

8           We have every incentive and every desire to build  
9 a project that's optimal. Deciding what's optimal, however,  
10 is a little bit in the eye of the beholder. Our perspective  
11 is it makes sense only if there's someone prepared to put a  
12 balance sheet behind that risk. So right-sizing a project  
13 can't mean including all the what if, we wish, could we  
14 dream about potentials of the future.

15           It has to be who's prepared to step up, who sees  
16 value in that capacity and can that get financed. So asking  
17 an independent transmission developer to put hundreds of  
18 megawatts of spare capacity into a project for which nobody  
19 is prepared to take any risk but the independent  
20 transmission developer is expected to finance it and take  
21 the risk on their own balance sheet, is in our view  
22 impractical.

23           My final point would be one I think that's been  
24 reiterated a number of times by the other panelists as well.  
25 We are deeply desirous of building an industry where

1 incumbents and independents work together collaboratively.  
2 It's been a struggle on our part for a number of years to  
3 find partners, and it hasn't worked. We'll continue that  
4 struggle and we're sincere in that struggle, but we think  
5 that the FERC could play a very useful role in nudging both  
6 independents and incumbents closer together.

7 Because the long term nature of this industry  
8 will be where incumbents have tremendous operational and  
9 planning and market knowledge advantages, and the  
10 independents have access to capital, have a nimbleness and  
11 have a closeness to the customers that can make projects  
12 happen. I think working together, they can get a lot  
13 further than they could working independently.

14 Those are my comments and I'll answer any  
15 questions in my presentation. Thank you.

16 MS. SHEAN: Thank you. I'd like to recognize  
17 Tyson Utt.

18 MR. UTT: Good morning. My name is Tyson Utt.  
19 I'm a Project Development Manager with Horizon Wind Energy.  
20 Horizon Wind develops, constructs, owns and operates wind  
21 farms across the country. Today, we've developed 3,600  
22 megawatts of wind farms and are currently operating 2,400  
23 megawatts in various regions across the country.

24 As an owner and operator of wind generation  
25 facilities, transmission is recognizably a critical

1 component of our business, to be able to connect our  
2 facilities to the market. But with our core business being  
3 the development, construction, ownership and operation of  
4 those connection facilities, we're not seeking to own and  
5 operate transmission lines.

6 But rather as a customer, we're incentivized to  
7 try and work with independent transmission developers,  
8 whether incumbent utilities, whether it be government  
9 agencies or some of the regional transmission organizations,  
10 to try and find innovative solutions to bring more  
11 transmission to market, that will in turn enable more  
12 development of wind projects.

13 That being the case, we're grateful for the  
14 Commission taking a look, and its efforts in looking at the  
15 present models that are in the market, but also those that  
16 are evolving as the dynamics of the market change. So as  
17 the only generator on the panel I believe, you might think I  
18 intended to sign up for the second discussion regarding gen  
19 lead lines.

20 But I'm actually here to try and offer a little  
21 bit of the customer's perspective in this discussion, and  
22 the importance of priority rights for those customers that  
23 are going to take more risk in these projects. In our  
24 experience, we have seen that customers like Horizon are  
25 willing to step up and provide reasonable amounts of risk

1 and reasonable amounts of capital to realize some of these  
2 transmission projects.

3 In my experience, it would point more towards  
4 some of the BPA open season process in their regional  
5 transmission planning, or TransCanada's Zephyr Line, to name  
6 a few. But in most of those cases, while there might be a  
7 level of known generation development occurring, it's the  
8 transmission developer that soliciting the involvement of  
9 the generators for those projects.

10 In those cases, you would have the larger pool of  
11 developers as well that might be willing at that stage to  
12 step up and participate in an open season. What I'd like to  
13 outline briefly today is the circumstance under which the  
14 generator is the one that's soliciting the involvement of  
15 the transmission developers, whether that be utility or  
16 independently owned.

17 In this example, it could still be numerous  
18 project generation developers active in the new geographic  
19 or transmission constrained to market, with maybe one who is  
20 willing and is able to step up and act as a first mover. In  
21 doing so, it is inherently taking on more risk in a project,  
22 and making that market available to further expansion,  
23 whether its own project phases or subsequent projects with  
24 competitors.

25 Historically, that first mover would have to rely

1 on being able to build its own gen lead line, or perhaps  
2 wait for a critical mass of developers for there to be a  
3 successful open season in that market. But in this model,  
4 the generation developer solicits the involvement of the  
5 transmission owner, acts as an anchor tenant in that case,  
6 and then allows for the unaffiliated merchant transmission  
7 line developer to develop, construct, own and operate the  
8 transmission line that is their business model, and is not  
9 ours as a generator.

10 This enables them to take and share in the risk  
11 of the project, and enable the line to be built. But the  
12 first mover in this case also carries a larger portion of a  
13 risk in a project than would typically be seen in other  
14 cases.

15 So for this model to be feasible, one of the  
16 things we do need to recognize is the fact that as a first  
17 mover, you're taking more risk. You're likely investing  
18 more capital and at the same time there should be resulting  
19 benefits for that action. We believe that limited but  
20 meaningful priority rights for those first movers is  
21 appropriate.

22 As mentioned before, those that are spending more  
23 capital and allocating more risk to these projects should  
24 have some of the benefits that could be fleshed out in  
25 mechanisms, whether that be different types of transmission

1 service, and if it's firm or non-firm service, capacity  
2 allocation or rights of refusal for additional capacity,  
3 preferred rights for customers that take more risk in those  
4 projects, or within the dispatch priority alignment.

5 We also agree with some of the earlier statements  
6 made by the panel in terms of the right-sizing of projects,  
7 to facilitate not just first movers but also subsequent  
8 projects as well.

9 So in conclusion, the point I guess I would like  
10 to make is that whether or not a participant-funded  
11 transmission line is solicited by the transmission  
12 developer, or whether it's solicited by the generation  
13 developer, the regulations and the policies should be  
14 flexible enough to accommodate this type of business model,  
15 and recognize the up front risk and up front capital to that  
16 generation first mover is allocating to the project.

17 We definitely are appreciative of the opportunity  
18 to come and speak today, and look forward to answering  
19 questions. Thank you.

20 MS. SHEAN: Thank you. Finally, I'd like to  
21 recognize Kenneth Houston.

22 MR. HOUSTON: Good morning. Thank you for the  
23 opportunity to speak today. My name is Kenneth Houston,  
24 Director of Transmission for PacifiCorp. I'd like to speak  
25 with you today about two things. First, our long-suffering

1 efforts to upsize our Energy Gateway project, and secondly,  
2 some regulatory concerns we believe are barriers to upsizing  
3 these type transmission projects.

4 Firstly, our Energy Gateway project. The project  
5 was announced in May 2007. Basically, it's 2,000 miles of  
6 new 500 kV transmission overlaying our existing transmission  
7 network. The project starts in Eastern Wyoming, travels  
8 through Idaho and terminates in Southern Oregon. Also,  
9 there's another segment that starts in Eastern Wyoming and  
10 runs into Southern Utah.

11 The project was designed for network customer  
12 load needs, long term needs to provide for their load  
13 growth, meet renewable requirements and to provide flexible  
14 renewable options for the long term. Of note, the project  
15 is being built. The first segment, the Populist to Terminal  
16 project was placed in service in November of 2010. The  
17 second segment, the Mona Ochre (ph) segment in Utah, is  
18 scheduled to begin construction in May 2011.

19 Energy Gateway is not a small project. As I  
20 mentioned, it's 500 kV circuits designed for 1,500 megawatts  
21 each. Of note, after posting the project and announcing the  
22 project publicly, we received 39 queue requests on our OATT  
23 for 4,900 megawatts of capacity.

24 After looking at all these requests, we  
25 determined that we could meet most of the requests by doing

1 a group study overlaying the requests across our system. We  
2 double-circuited the entire segment, and again we could meet  
3 most of these requests.

4 The costs of such a project would add \$4 billion  
5 to the project. Given the costs and risks, we sought FERC  
6 guidance into some unique non-conforming contract terms we  
7 thought necessary to speak those risks to key customers.  
8 Just briefly, some of those contract terms were the capacity  
9 would be trued up after the ratings were complete. Again,  
10 the project had not gone through the rating study yet.

11 Obviously, credit requirements were required of  
12 our customers. The entire group was required to sign  
13 commitments, so that we had a fully-subscribed project and  
14 we reserved the right to reprice contract awards. And the  
15 contract price for customers offered a true-up after  
16 permitting was complete.

17 Again, we really didn't know the exact price, so  
18 we required a true-up after some additional work was  
19 completed. We did offer customers three pricing options. A  
20 20-year incremental price, a five-year incremental price,  
21 and 20 year price that would obligate customers to buy down  
22 to get an embedded rate. Our thought there was to fully  
23 recover the cost increment from these customer groups. One  
24 customer actively negotiated with us at length. However,  
25 none ultimately signed in the initial group. We did receive

1 a second round of queue requests. Again, no takers, again  
2 representing Cynthia's unpleasant merry-go-round to some  
3 extent.

4 During the queue response process, we did seek  
5 out equity partners initially in an effort backfill any  
6 capacity the queue customers would ultimately decline.  
7 Since those customers have declined, obviously to fill up  
8 and double-size the project as initially planned.

9 Unfortunately, our cost and schedule requirements  
10 and customers' business models don't seem to fit very well.  
11 So to date, none have accepted those offers. Final efforts  
12 to upsize the project, where we actually proposed language  
13 into the 2009 Recovery and Investment Act, providing  
14 backstop funding by the government for any capacity not  
15 subscribed in the upsized project, that language was chosen  
16 not to be included in the bill. In spite of our good faith  
17 efforts, we have yet to find a way to upsize the project.

18 Now to some regulatory concerns we have. It  
19 appears that the project itself, from planning to  
20 completion, will take at least 12 years from start to  
21 finish, primarily due to the long permitting time lines that  
22 we're seeing. We typically do a ten-year planning cycle.  
23 That's inadequate. So we need to look out 20 years, and to  
24 make sure that capacity is available when needed.

25 We are seeking priority access for these future

1 network load needs in a project, and one outcome we fear  
2 greatly is these queue customers will come back and grab the  
3 capacity away once the line's completed, and we won't have  
4 it available to meet our network load needs. We do need  
5 clear guidance from the Commission on the rollover  
6 restrictions for these queue customers, so we can withhold  
7 priority rights for capacity constructed for network load  
8 needs.

9 We also face state uncertainty. The Populist  
10 Terminal project has been included in several state rate  
11 cases. It is impossible to build a project at full capacity  
12 when you're building segments across a five year time line.  
13 As such, the Populist Terminal project is not at its full  
14 rating until the other segments of Gateway are completed.

15 We recently received a state rate case ruling in  
16 February that defers earnings on a portion of the Populist  
17 Terminal project until the project is fully used and useful  
18 and fully available to its capacity. This ruling is a  
19 marker to upsize projects at your own risk, even when you're  
20 building it for load projects.

21 Therefore, it reinforces our view that it's very  
22 risky to build projects for applicant-funded lines when the  
23 applicants are not willing to put up their funds up front.  
24 In conclusion, what are we asking today? We're asking the  
25 Commission to confirm and define the requirements, so we can

1 have priority rights for our future network load service  
2 needs out 20 years, for projects of this nature.

3 One of the big risks for projects and for our own  
4 needs and for developers is the schedule risks. Recognizing  
5 the Commission is not the permitting agency for these type  
6 lines, any help you can have to shorten that time window  
7 while still providing a robust public process would be very  
8 welcome indeed.

9 Finally, cost recovery. These projects are  
10 expensive and we need certainty on cost recovery. That's  
11 all I have today.

12 MS. SHEAN: Thank you, Kenneth. I would like to  
13 mention that for those of you in the audience who have  
14 questions, Becky Robinson and Pearson Steckland (ph) will be  
15 glad to take questions and funnel them up, and we'll see  
16 that they get asked. So if you have questions, pass them to  
17 either of those two parties.

18 Chairman Wellinghoff, do you have comments or  
19 questions?

20 CHAIRMAN WELLINGHOFF: I just have one area I  
21 want to explore, and Cindy, I think you mentioned, and I  
22 think some of the other panelists did as well, asking that  
23 the Commission encourage more collaboration between the  
24 independents and the incumbents. But nobody had any  
25 specific suggestions.

1           So if anybody has any specific ideas of how we  
2           can do that best, or what kinds of things, what things we  
3           can put in place? Do we have regulatory changes we could  
4           make, incentives we could put forward? What are some of the  
5           specifics we could do to actually encourage more  
6           collaboration there?

7           MR. VAN BEERS: Well, if I may jump forward, I'm  
8           not trying to hog the limelight, but I think that one of the  
9           struggles we've had is I think that incumbents are  
10          interested in some of the projects we want to do, see merit  
11          in it, are concerned about several things.

12          Putting up any of their balance sheet and drawing  
13          us into regulatory scrutiny, in terms of what they're  
14          putting up, I think, is one concern. I think they would  
15          like the ability to invest in projects and take capacity in  
16          merchant projects, and then be able to market that capacity  
17          without it going into their OATT and being subject to the  
18          same cap on returns and rates.

19          Having taken the merchant risk alongside us,  
20          that's not a very attractive proposition for them. I'd  
21          suggest those are probably two of the fundamental issues.

22          MR. SKELLY: I think that to the extent that  
23          requirements around how much of the capacity has to be  
24          available, that would be helpful. So if we were able to  
25          fully subscribe a line with anchor tenants, who might

1 participate in development, might not, but would step  
2 forward and commit early on to the project up to 100 percent  
3 of the capacity, that would help resolve some of the  
4 challenges around getting projects ready to go.

5 MR. WOLF: Excuse me. You know, one of the  
6 things that we see is the value in potentially bringing  
7 parties together would be for the parties to participate in  
8 a robust transmission planning process. Really facilitates  
9 an exchange of information and trying to utilize a project  
10 to meet multiple needs.

11 For example, if a transmission provider has a  
12 load-serving need and there's a generation outlet need, you  
13 can couple those and potentially share some of the risk and  
14 expenses. So again, collaborative planning in advance is  
15 one of the things that we see would greatly aid in that.

16 I don't know, you know, from our perspective, I  
17 don't know that tenant, a 100 percent anchor tenant provides  
18 that. Perhaps again a robust transmission planning that  
19 allows for other parties to participate in that process,  
20 again to meet multiple needs is what we see.

21 MR. GATES: From an IOU's perspective, I'd also  
22 submit that, excuse me, that some of the affiliated  
23 transaction issues, when you try and build transmission  
24 within your own footprint, becomes an issue and something  
25 the Commission might consider as an area to provide more

1 flexibility.

2 MS. MARLETTE: The only additional thing I was  
3 going to say, which I think is now probably echoing what  
4 you've heard already, is I think it's key that the  
5 Commission require an inclusive planning process, and that  
6 independent merchant projects be considered as part of that.  
7 No one is looking for a preference to build. We want the  
8 right projects built, the most efficient projects built by  
9 whomever. But at least have it be a fair playing field.

10 The Commission can encourage or simply encourage,  
11 or it can offer regulatory incentives. As I had mentioned,  
12 I think if incumbents participate, they deserve to have the  
13 risk of these types of projects reflected and have a higher,  
14 within the range of reasonable returns, a higher return for  
15 participating.

16 MR. VAN BEERS: You know, Chairman Wellinghoff,  
17 if I may just add one comment. You know, it's often the  
18 case that if -- I think seeing from a regulator's  
19 perspective, that if you were to permit incumbents to invest  
20 in an independent, as a regulator I'd be concerned about  
21 cherry-picking. Which projects are they going to do on rate  
22 base and which are they not.

23 On the independent projects that we are backing  
24 are projects built for renewables and for export from the  
25 state, and consequently the local regulator of utilities

1 would not fund those lines. And so I think that's a clear  
2 delineation, that we would love the incumbent to partner  
3 with us on those projects, and share in the benefits  
4 financially and in the risks, of being involved in  
5 independent transmission, without it dragging us into the  
6 regulatory regime of the incumbent.

7 I think there's a good argument for that. This  
8 is not a line that the incumbent regulator would permit,  
9 because it's built to move power out of the regulatory  
10 watershed.

11 MR. HOUSTON: If I could offer a comment. We've  
12 actually worked through two jointly-constructed projects  
13 with our neighbors, and the terms of those agreements are  
14 very difficult to negotiate. So once you get through the  
15 commercial terms and reach agreement, now you've got to  
16 decide who's going to go turn the bolts and wash the  
17 insulators and who's going to pay for all that hard work.

18 Those are very difficult agreements to get  
19 through. We've done it. The last one we filed, we have an  
20 intervenor opposing that. We appreciate the Commission not  
21 taking heed to those arguments and approving that filing. So  
22 again, when you see those type agreements, give them a  
23 little extra thought and push aside those interventions.  
24 We'd appreciate that.

25 (Laughter.)

1           MR. RASKIN: Yes, I'll weigh in. I guess I  
2 disagree somewhat with others. First of all, I don't think  
3 participant-funded projects should be subject to the  
4 planning process. The principle reason for a planning  
5 process is to determine whether lines are needed and  
6 justified, to be paid for by captive customers. These are  
7 projects that are being paid for by the marketplace.

8           So I think that's one of the advantages that  
9 independent developers have, is their only -- they should  
10 only be in the planning process to the extent of  
11 demonstrating that they can be interconnected reliably,  
12 because captive customers aren't paying. That's number one.

13           Number two, I'm a little bit uncomfortable with  
14 the idea of partnering being incumbents and independents.  
15 These are two somewhat different markets, and I think one of  
16 the benefits of independent transmission is that it's an  
17 alternative in circumstances where state regulators don't  
18 want to pay, don't want captive customers to pay for a line,  
19 or there's no mechanism in place to get cost recovery.

20           I know you're trying to fix that, but I suspect  
21 that's going to be long and difficult birthing process. So  
22 I see them as two different markets, and I think we're  
23 better off keeping them separate, rather than asking the two  
24 to collaborate. The collaboration should only be in  
25 connection with ensuring that the independents can get

1 reliably interconnected.

2 CHAIRMAN WELLINGHOFF: Thank you. That's all I  
3 have.

4 MR. WOLF: Thank you. Again, you know, our  
5 concern is that there's really a potential for lost  
6 opportunity here if there isn't collaboration done on the  
7 front end. You know, we've had -- in Cap X, we've had  
8 instances where there was a generation entity that was  
9 looking to do a project that was nearly parallel to a  
10 project we were planning, the Brookings project.

11 Ultimately, you know, our concerns were as a  
12 project, you know, as the incumbent utility if you will, and  
13 again, we're also a load-serving entity, was the concern  
14 that without collaboration, without understanding the  
15 broader needs, there's really severe consequences without  
16 considering those things.

17 You've got really regulatory fatigue, landowner  
18 fatigue in common corridors. Without collaboration, there's  
19 really, we think, a great risk of losing that public  
20 interest, you know, losing that momentum to complete a  
21 needed project. While parties may think that you can  
22 complete a project and they don't interfere, they do. They  
23 do compete for the public interest, the public good and  
24 dollars do mean something in the end to us.

25 MS. SHEAN: My apologies. I'd like to recognize

1 Commissioner LaFleur and Commissioner Norris have just  
2 joined us. Did you have a statement you wish to make,  
3 Commissioner LaFleur?

4 COMMISSIONER LAFLEUR: No. I didn't have a  
5 statement. I just wasn't able to be here earlier, but  
6 wanted to hear the discourse. Thank you, MK.

7 MS. SHEAN: You're welcome. Commissioner Norris?

8 COMMISSIONER NORRIS: Same thing.

9 (Laughter.)

10 MS. SHEAN: Okay. I'm going to lead off with a  
11 question and then I'm going to open it up to the rest of the  
12 panel. But we've been talking a lot about right-sizing.  
13 That seems to be something that keeps coming up, and  
14 historically we've said that open season process is one of  
15 the processes we see as helping with the right-sizing  
16 question, and I want to kind of put it to the panel,  
17 especially David, Cynthia and Robert, how do you see --

18 Is the open season process effective at getting  
19 the right-sizing of a project? And if not -- if so, why,  
20 and if not, are there other mechanisms that should be used  
21 to help right-size the project, because I think there is a  
22 concern with not just the project itself, but the corridor,  
23 which has been mentioned by a number of your panelists and  
24 the public interest to right-sizing the project. David?

25 MR. GATES: I'll take a first stab at that. The

1 open season process is helpful to right-sizing, but I think  
2 it gets back to a comment that Mr. van Beers made, is that  
3 nobody can afford to over-build a project.

4 The customers can't afford to pay the tariff that  
5 would be required under a cost of service rate for unused  
6 capacity, because the utility or the independent that would  
7 be constructing the facility needs to, has their own set of  
8 bankers to answer to, and thus wouldn't be able to fund that  
9 on speculation, if it's of any size.

10 So we, in conjunction with others, tried to  
11 propose a capacity bill that would allow someone else,  
12 perhaps the government or somebody, to step in and help take  
13 care of that extra capacity that might be necessary on a  
14 project for a short-term period, to help foster the  
15 Commission's efforts and policy efforts to get to a more  
16 merchant model or build capacity so markets could work for  
17 transmission.

18 But it's fundamentally the same issue. New  
19 transmission is more costly than embedded transmission, and  
20 customers, generators and others are really kind of  
21 unwilling to pay for that unused capacity.

22 MR. RASKIN: As part of the flexibility I'm  
23 asking for, I would like to strongly urge you to stop  
24 thinking about right-sizing in connection with participant-  
25 funded independent transmission projects. Right-sizing is

1 for the world of regulated transmission projects,  
2 constructed through a planning process in which the idea is  
3 to make sure that you get a reliable and efficient system.

4 The developers of these projects are trying to  
5 create projects that are financeable, and that put together  
6 buyers and sellers. It may be that those projects shouldn't  
7 go forward, because they're undersized, and it makes more  
8 sense to build something that captive customers pay, and we  
9 may have disputes like that coming from the Commission.

10 But I really feel very strongly that there is no  
11 right size for these projects. There's a project that's  
12 financeable and there's a project that's not, and there are  
13 alternative regulated mechanisms in place. I would also  
14 point out to you that under your open access tariff, if a  
15 transmission provider can't provide transmission service out  
16 of its existing system, the remedy is that the transmission  
17 provider does a system study and determines the incremental  
18 cost to upgrade its system to provide that transmission  
19 service request.

20 That's the rule. It's been the rule since 1996.  
21 You don't look at right-sizing. In fact, if a utility came  
22 back and said I could build for \$50 million an upgrade to  
23 provide this transmission service, but I don't think that's  
24 right-sizing. I want you to pay for the \$500 million  
25 upgrade that's going to take me ten years to do, because

1 it's the right size to build.

2 My guess is that you guys would toss that  
3 transmission provider out. I would certainly advise him  
4 that he was going to get tossed out. So I think that this  
5 question of right-sizing is one that ought to be addressed  
6 in your rulemaking on planning processes, and you ought to  
7 get it out. These are entrepreneurs trying to build  
8 projects.

9 Let them build them. They've got to go through a  
10 siting process. They face potential competition from  
11 others. They face a form of competition from regulated  
12 transmission, and they've got to get sited. So I just think  
13 it's wrong-headed to be worrying about that in this context.

14 MR. VAN BEERS: I find it very interesting in the  
15 industry -- I'm sorry. I find it very interesting in the  
16 industry that the right-sizing issues keeps popping up,  
17 because instinctively I'm inclined to agree with my  
18 colleague, Dave Raskin here.

19 But it does strike me that over and over again we  
20 see participants seeking to build projects which, from the  
21 traditional utility's perspective, would be right-sized, and  
22 they're the large projects that typically go much greater  
23 distances. They're a larger technology. They have to serve  
24 several thousand megawatts, and from our perspective alone,  
25 I would say this: Trying to line up several hundred miles

1 or possibly a thousand miles of landowners, let alone  
2 governors and environmental regulators, is a gargantuan  
3 task.

4 Trying to find enough shippers to make several  
5 thousand megawatts of a single project financeable is not  
6 only a financial challenge that's huge; it's also a  
7 sequencing challenge, because you're talking about  
8 developers who are not mature and are not ready, and don't  
9 have the capacity on the ground.

10 Who's ready to go first? If you think my  
11 penguins in the ice flow are a problem, try and do it for  
12 3,000 megawatts. Then there's the issue of well, what are  
13 you doing with 3,000 megawatts that suddenly arrives on the  
14 in-service date in one market? What does that do to prices?  
15 Who's going to sign a long-term offtake agreement, fully  
16 expecting that some huge pipeline is going to come gushing  
17 electricity into the market at a certain date in the future?

18 I know what I'm signing. I'm signing I'll take  
19 it for free, because I expect the market to plummet when  
20 that line goes in service. So the quote-unquote "right-size  
21 projects," I think, have a number of inherent barriers to  
22 getting done. So it may look neat and tidy to start talking  
23 about an interstate analogy about building lines across the  
24 country. But unless the federal government wants to take  
25 those risks on its own balance sheet, I don't see how they

1 work for an independent developer.

2 MR. QUINN: Can I ask a follow-up questions with  
3 the last statement you made? Excuse me. It sounded, if I  
4 twist it, purposely to make it sound provocative, that you  
5 just said we should make sure we let you size a line so that  
6 the wholesale electric price isn't unduly depressed when  
7 that line comes into service.

8 It sounds a little like the transmission  
9 developer should be the mechanism for the generation  
10 developers on the other side, to manage the amount of  
11 generation that can get to market. That sounds a little bit  
12 like the thing that we traditionally worry about, which is  
13 the transmission provider being the natural monopoly,  
14 limiting access to wholesale markets. So can you respond to  
15 that?

16 MR. VAN BEERS: I think -- go ahead, David.

17 MR. RASKIN: I think the role of an independent  
18 transmission provider is to develop projects that are  
19 financeable, which means that they can go out and find  
20 people who are willing to pay for their project in the  
21 marketplace, for whatever reason.

22 It is the role of incumbent transmission  
23 providers and the planning process you're putting in place,  
24 to make sure that we develop a right size to transmission  
25 system. I'm suggesting to you that if you lay the latter

1 onto the former group of people, you're going to make it  
2 almost impossible for the former group of people to build  
3 anything.

4 Where you should be focusing is what are your  
5 rules for planning and upgrading the transmission system  
6 that's paid for by captive customers, so that it's right-  
7 sized. If you want to have this separate market of  
8 independent project developers successful out there, they  
9 can't be worried about this.

10 Not that they should be thinking about  
11 suppressing or not suppressing. Their job is to develop  
12 projects that are financeable. So I see these as two  
13 separate markets, and I understand that it would be best if  
14 we had everybody in a kumbaya moment working together. But  
15 the world doesn't work that way.

16 What we have is a separate, alternative funding  
17 mechanism going on here, that is fundamentally market-based.  
18 I think those people should not be managing right-sizing or  
19 wrong-sizing, shouldn't be managing prices. That's the job  
20 of the plant, the regulated transmission.

21 MR. QUINN: Okay.

22 MR. RASKIN: That's just the way I see it. It's  
23 the only way I see that this world is going to work.

24 MR. VAN BEERS: Let me just comment a little  
25 about it. I think the similar sort of point. Imagine that

1 we here felt that we needed to build a two or three thousand  
2 megawatt pipeline for energy to move a few hundred miles,  
3 because that was right-sized, and imagine, quite  
4 realistically, that it would take this many participants  
5 around the table to make that work, and each of you is a  
6 developer of a new generation facility.

7           If I were the developer, I'd worry about the  
8 sequencing and the creditworthiness of each and every one of  
9 you. That's a separate problem. The problem I'd have to  
10 worry about is none of you are going to be creditworthy if  
11 you're all simultaneously going to the market that this line  
12 will sink into, and every single one of you is going to  
13 knock on the doors of the same load, peddling each of you  
14 your 200 megawatts.

15           If you were the buyer, what do you think you're  
16 going to do? Your docket's full every day for weeks, taking  
17 meetings with people who are trying to push 200 megawatts at  
18 you. They're all telling you the same in-service date.  
19 They're all coming down the same line. None of them is  
20 going to get a robust enough offtake agreement so that they  
21 can come back to me, the developer, and say look, I've got a  
22 hard contract. It's securitizable. That's my credit  
23 standard. I'm signing up for transmission for 20 or 30  
24 years.

25           They're all going to come back and say you know

1       what?  It's a terrible market.  I can't do my project.  
2       Whereas individually they will be great projects.  But  
3       trying to do 20 or 30 of them simultaneously in one mega-  
4       project is a non-starter.

5                 MS. SHEAN:  David first and then Michael.

6                 MR. GATES:  Just two comments quickly.  It's been  
7       our experience that most of the generator-developers will  
8       not be exposing themselves to a merchant market.  They'll  
9       have a long-term offtake before they'll be willing to commit  
10      to a project.  That may be to Mr. van Beers point; it may be  
11      part of the issue, is the credit and availability of  
12      capital.

13                The only other comment I'd make is that while we  
14      would like to see transmission make an argument that  
15      independents are independent from IOUs or the grid, the  
16      physics are that we will have to have, they are  
17      interconnected, they need to be playing together, the  
18      reliability of the system and who pays for those ancillary  
19      costs are an important part of this discussion, because  
20      without that discussion, those costs get borne by native  
21      load customers and existing generators, or existing  
22      transmission system operators.  So I'd like us to keep that  
23      in mind as well.

24                MS. SHEAN:  Michael, and then Jim.

25                MR. SKELLY:  Well, I just wanted to comment a

1 little bit on the notion that, you know, you can't do really  
2 big projects because you're going to flood the market and so  
3 on. If we're going to get to where we want to be with  
4 respect to where we want energy in this country, we have to  
5 do big projects.

6 One of the things that any transmission developer  
7 is going to think about is if you do inject a certain amount  
8 of energy at a certain spot, what does it do to that LMP?  
9 If it destroys the LMP, it's going to reduce the value of  
10 the transmission project, so you might not develop that  
11 particular project.

12 So you always want to have an end point which can  
13 support the introduction of a large volume of new energy. I  
14 completely agree that there is a challenge. There's a huge  
15 challenge of herding cats or penguins or any mammal you  
16 like. So it will be a big challenge. But it is something  
17 that we have to do, and I do think that there's cause for  
18 optimism in terms of some of the experiences around the  
19 country.

20 In ERCOT, several thousand megawatts got built in  
21 a single year. Now transmission now has to catch up with  
22 that, so that, you know, that egg got ahead of the chicken a  
23 little bit on that. But it will catch up. Transmission is  
24 getting built in ERCOT and those projects will now do better  
25 than they're doing right now.

1           So it is sort of a messy process, but you can do  
2 a lot, and we believe, in any event, that these mechanisms  
3 can come together. We will likely need a stronger pull, in  
4 terms of overall market demand. I think that it's pretty  
5 clear that the direction of the country is toward this type  
6 of energy, and we'll need more momentum in that direction,  
7 but that the overall trend is certainly that way.

8           It will be, it is a very complicated challenge to  
9 get all these folks together. But I think it'd doable.

10           MS. SHEAN: Can I quickly take a comment from  
11 Steve?

12           MR. CONANT: Thank you. I'm not sure it's really  
13 right-sizing the line, but what you're really saying is  
14 oversizing the line beyond that first generator. Because if  
15 you're in a resource-constrained area, there's more  
16 megawatts than there are individual farms, for example, and  
17 we've seen examples where a generation developer will  
18 provide a line that's essentially oversized for that first  
19 farm.

20           They're getting that financed. I'm presuming the  
21 financing isn't dependent on those other projects and all  
22 the permitting risks that goes onto that. There's also a  
23 limited right-of-way, let's be serious. So it makes sense  
24 if rather than build a 115 or 230, if you can have a  
25 corridor, the incremental cost and the incremental need for

1 right-of-way to effectively oversize for that first line is  
2 really what you want to do.

3 The question then is how do you bring other folks  
4 onto that line, and what is the impact of that. I'm  
5 presuming again that that first, getting that first megawatt  
6 to market from the generator is going to absorb the cost,  
7 which is going to be higher. But as you bring other folks  
8 on, they can then pay down the cost of that additional line.

9 It might be the folks who don't want to have the  
10 first mover status that was referenced earlier, and if they  
11 get a different rate. But I think it's when you're saying  
12 right-sized, it's really a little bit bigger than what's  
13 needed for that first initial mover.

14 MS. SHEAN: Thank you. David.

15 MR. EMNETT: Actually, I'm going to jump in,  
16 because I want to continue this conversation, and I think  
17 David's going to take us in a different direction. I want  
18 to follow up on -- Stephen, in your opening remarks, you  
19 were proposing something that sounded to me a lot like the  
20 Grasslands project, of lining up, which I think answers  
21 Robert's question.

22 If you line up load generation and transmission,  
23 you connect the dots at the point when everyone understands  
24 the size of the project and the need on the other line, and  
25 the Commission provided some guidance in that proceeding.

1           I guess I wanted to follow up and in the context  
2 of being an independent developer who is providing service  
3 at cost-based rates, the Commission has tried to provide  
4 some guidance, and in what way is that insufficient?  
5 Obviously, Dave's going to have a point of view on this,  
6 since it was his project.

7           But if others, and for those that aren't familiar  
8 with the Grasslands project, it was essentially this, the  
9 connecting of the dots, and the transmission developer  
10 working through an affiliate to align the generation, size  
11 the transmission and deliver it to load.

12           We provided some guidance, and if there's concern  
13 about the inflexibility of the Commission's policies on that  
14 issue, because it's a common theme that's run through  
15 several statements, that without the need developed at the  
16 end of the line, then you can't properly size the  
17 transmission, and unless the generator is signed with LSEs,  
18 you don't know what that need is.

19           That's a market issue that the market is going to  
20 have to figure out, but in what ways could our policies  
21 support? So I guess we could start with Steve and then  
22 we'll go to Dave, because it was part of Steve's opening  
23 remarks.

24           MR. CONANT: You've mentioned cost-based rates.  
25 We're looking at negotiated rates in what we're proposing

1 right?

2 MR. EMNETT: I suppose it could be either cost-  
3 based or negotiated.

4 MR. CONANT: Yes. Again, I think the key is  
5 these need to be financed, and I think Cynthia laid it out  
6 very clearly in terms of the steps it has to go through, in  
7 order to get something built, which is you need a market,  
8 you need a customer, and you need to have somebody that's  
9 going to finance it with a creditworthy entity.

10 So the first group of megawatts, you need to get  
11 that customer lined up, get the line sized. But again, if  
12 there's more resources in the area that can be served by  
13 that initial customer, then you should size the line  
14 appropriately. I don't think you need to have them all  
15 lined up specifically.

16 A number of times you see where they're  
17 affiliated. I'm saying they don't necessarily need to be  
18 affiliated. They could be somebody else seeking access. If  
19 you've got a large area, you're going to have more than one  
20 developer, and then how do you accommodate that. What we're  
21 saying is they don't necessarily have to be affiliated.  
22 They could be unaffiliated, and then we provide an open  
23 season.

24 But for that initial number of megawatts, you do  
25 need to have either participant-funded or a customer base up

1 to 75 percent that can finance that initial line. That's  
2 creditworthy. It gets that line initially started. Not  
3 sure if that answers the question.

4 MR. EMNETT: In my mind it begins to blend  
5 models, but maybe that's not a bad thing. Dave.

6 MR. GATES: Yes. I know this is hard, but if a  
7 line gets sized so that, such that one potential shipper  
8 can't get on, and the developer tries to find a way to  
9 fairly allocate the capacity of the smaller size, I'd argue  
10 there's no undue discrimination.

11 He has sized it the way he has because he's got  
12 an economic need to fill the line up and make sure that he's  
13 maximized the economics, and Grasslands was a carefully  
14 developed project which involved the capacity factor use of  
15 the line, the location of the generation. It all mattered  
16 to the economics.

17 If on the other hand, someone came in and said I  
18 got excluded for no good reason, or he undersized the line  
19 and he gave all the capacity to this guy; I'm right next  
20 door, he should have made a share, you've got then a factual  
21 argument of whether or not a good one from the shipper's  
22 standpoint, of whether there was actually undue  
23 discrimination.

24 I'm not suggesting that you shouldn't analyze and  
25 remedy undue discrimination. I'm saying that saying you

1 have to do an open season up front, getting into whether or  
2 not the line is right-sized, let the developer, who's  
3 working in a separate market again from the regulated  
4 transmission, let them do their thing.

5 They've got FERC counsel. They realize they  
6 don't play by the rules. Their project's going to get  
7 stopped for a year or two in a 206 proceeding. But take  
8 the rules off on the front end and let them make a  
9 financeable project. One possibility is if the line is  
10 undersized and there are other people who want it, and it  
11 benefits ratepayers, perhaps that's a circumstance where  
12 partners, it gets put in the planning process, and the line  
13 is partially funded by captive customers, and it's partially  
14 a participant-funded line.

15 I can't imagine that Grasslands isn't working  
16 very closely, for example, with Northwestern on this, to  
17 coordinate what they're doing. So all I'm suggesting is  
18 don't put constraints in on the front end. You've got the  
19 authority under 206, if people misbehave. These guys don't  
20 have incentives to misbehave.

21 Let them go put -- don't decide in Washington  
22 what rules they should do to put together a financeable  
23 project. Let them put together a financeable project,  
24 recognizing that you have an obligation, which you will  
25 exercise, to remedy undue discrimination. Recognize that

1           there are a lot of options to this guy's project out there.

2                       So I'm really just asking for less regulation at  
3           the front end, and more opportunity for people to structure  
4           their projects, given the realities of this marketplace.  
5           That's all.

6                       MR. VAN BEERS:   Sorry, Jim.   May I just echo the  
7           comment?   I won't take us off in a different direction.   One  
8           of the things that makes us nervous at Tunbridge is we are  
9           constantly by developers seeking prospective transmission.  
10          Gee, we're thinking of doing this and could we get that.  
11          The difficulty is many of them are really a little more than  
12          a dream, okay.   Two guys and a laptop is a pejorative term  
13          around our office, okay.

14                      And that's what it is.   They may not even have an  
15          anemometer.   They may or may not have an option on the  
16          electric.   I mean they're so immature, and our concern is we  
17          scrupulously take notes, at least phone them and we sent  
18          them a package and we responded, because we want to be sure  
19          that we don't have someone jump out of the weeds five years  
20          later and say "Hey, I asked for transmission capacity and  
21          you didn't give it to me.   You went and got in bed right  
22          away with so and so and so and so."

23                      But there are for us so many proxies that we look  
24          at as proxies for creditworthiness, and they have a balance  
25          sheet.   Do they actually have land?   Do they have an eye on

1 an offtake agreement? Do they have an eye on a financing  
2 agreement for their turbines? You know, we ask 20 such  
3 questions before we get serious with a counter-party.

4 One of the concerns we've got well, what does  
5 right-sizing mean? Does it mean I have to include  
6 everybody's dream? It can't mean that, because they're not  
7 financeable.

8 MS. SIMLER: So I've got a follow-up question,  
9 and Dave, I take your point about trying to have more  
10 regulatory flexibility on the front end, and deal with  
11 complaints on the back end. So it's a two-part question.

12 One is, is that realistic? If a project, you  
13 know, if it's sized for a certain number of customers and  
14 the project gets started and someone comes along the line,  
15 down the road and complains just when you've got permitting  
16 and siting and everything were linked, they come in and  
17 complain. Is the position going to be we're too far down  
18 the road. It can't be done. Transmission investment is  
19 lumpy, and therefore we have to proceed anyway?

20 That's the first part of my question, and I'd  
21 like to hear realistically whether it's really a viable  
22 option to have a project change midstream, and then second  
23 of all, if your answer to that is "no," what can we do in  
24 terms of transparency up front? If people, if all these  
25 developers have best practices for credits and for how to

1 make sure any customers of the transmission line are  
2 reasonably notified, maybe there's an opportunity for  
3 something there that would give the Commission some  
4 certainty that customers aren't going to be coming in after  
5 the fact.

6 MR. RASKIN: Very good question. My answer is  
7 facts matter. So if somebody shows up late and this thing  
8 was widely advertised, that they're looking for shippers and  
9 they're open to talk to everybody, and this guy didn't show  
10 up, and the project gets put together and all of a sudden,  
11 six months later, he's decided he wants on and he wants the  
12 project to stop dead in its track to bring him in, to me  
13 that's a fact pattern that says the discrimination is not  
14 undue.

15 Take the exact same set of facts, except this guy  
16 really truly didn't know about it, and the transmission  
17 developer didn't go out and make a reasonable effort to  
18 identify people. He was sitting there waiting. So he's not  
19 just somebody who shows up late. Different set of facts.  
20 That may be undue discrimination.

21 If adding this guy on is going to minimally slow  
22 down the project, right, but allow another two or three  
23 hundred megawatts of wind to come on, that matters. If it's  
24 going to kill the project and screw up the economics,  
25 because you've got to go from 230 kV to a much wider right-

1 of-way, resubmit your siting applications, changes all of  
2 the economics upside down, that matters.

3 It's messy, but I'm suggesting these are  
4 entrepreneurs and developers in a tough market. Let them  
5 figure out what they have to do with FERC counsel sitting  
6 next to them saying "If you do that, you're at risk of a 206  
7 complaint. Let's figure out how to make this work," that's  
8 a much better way for these projects to be put together,  
9 than a lot of very narrow rules that are too broad to cover  
10 every situation. Is it perfect? It is not perfect.

11 MS. SIMLER: Sure. But picking up on that again,  
12 and going back to my two-part question, you know, what would  
13 be the downside of putting some meat for transparency  
14 purposes on how you go about your business? I'm not saying  
15 that it would be a laundry list that you'd have to meet  
16 everything, but to give guidance to customers, so that  
17 there's a better appreciation, because we don't have, at  
18 least to my knowledge, rules on what is required for an open  
19 season.

20 You know, folks come in, like I think in Chinook  
21 and Zephyr, and provided us information on the record about  
22 how they conducted that. But if you're kind of sitting here  
23 in the dark, you don't know what is going on out there, and  
24 that part of this conference was for you all to help share  
25 with us, you know, why some of these concerns that we have

1 are being addressed by the marketplace.

2 So then which leads me to the next question, the  
3 question of what transparency can you bring to that? So  
4 sorry Dave, to put you back on the spot.

5 MR. RASKIN: I'm trying to think through, Jamie,  
6 in my mind whether transparency is necessary and appropriate  
7 in circumstances where every single one of these deals is  
8 different, and every single one of these deals has its own  
9 dynamics. The economics are different, and these are people  
10 who are trying to build projects in circumstances where  
11 they're not asking captive customers to pay for it.

12 So my initial reaction is how much do you need to  
13 know up front to allow people to put these very difficult  
14 transactions together. So I don't want to say you're wrong  
15 or right. I want to think about it. But I'm not convinced  
16 that you need a lot of up front transparency.

17 I am convinced that establishing a single set of  
18 open season rules and try and put people in is not a good  
19 idea, and you're shaking your head, so you agree with me.

20 (Laughter.)

21 MS. SIMLER: I'm agreeing, but that wasn't my  
22 question.

23 (Simultaneous discussion.)

24 MS. SIMLER: Regulatory criteria for an open  
25 season.

1                   MR. RASKIN: I also think what we need to  
2 recognize, that the regulated alternative exists there.  
3 This guy who you're worried about being left out, I wonder  
4 what it cost for him to have gone to the -- and get a  
5 regulated project built. And also whether or not if you  
6 leave somebody out, you're ever going to get your project  
7 sited anyway.

8                   So I think there are a lot of things going on out  
9 there that probably provide the kind of protections you're  
10 seeking, and that Section 206 is what you need.

11                  MR. VAN BEERS: This is probably, David, where  
12 you and I part ways, because I think fundamentally, we view  
13 transmission as a business that operates in the public  
14 trust. The most fundamental reality about transmission is  
15 it crosses hundreds of landowners' properties, and they need  
16 to be convinced, not only because some regulator said so,  
17 but also because they can see it in the economy around them,  
18 that this is a publicly needed project, and it serves some  
19 public benefit.

20                  I think we need to be very careful about cutting  
21 a deal and then saying see, it's commercial and now I'm  
22 coming across. I mean to me, that's a fundamental reality,  
23 that we have to be aligned with our landowners. If we can't  
24 stand up in a little rotary club meeting in the smallest  
25 town and say look, this project is good for your state or

1 your locality because, and it can't just be my bottom line.

2 MR. RASKIN: I don't disagree with that at all.  
3 I was talking about economic regulation here in Washington,  
4 and what amount of transparency is needed so that FERC can  
5 see the process it's going through. I may be wrong about  
6 this, but my initial reaction is I'm not sure you need a  
7 whole lot here on that.

8 MR. VAN BEERS: I think Jamie's going in a useful  
9 direction, which is what kind of direction for openness and  
10 transparency can be useful. I mean in our particular  
11 situation, I don't know if it applies to you, we'll post  
12 things on our OASIS. We assume that prospective developers  
13 poke around on the OASIS every now and again.

14 MR. RASKIN: Yes, yes.

15 MR. VAN BEERS: That may not be a fair  
16 assumption. But I think our rebuttal to an aggrieved  
17 developer three years later would be look, if you're such a  
18 doofus that you don't even look at an OASIS, what do you  
19 expect me to do?

20 MS. SIMLER: Put me in the doofus camp. I  
21 haven't looked at the OASIS.

22 (Laughter.)

23 MR. EMNETT: Well, and I guess if I could ask  
24 others to kind of follow up on this point, because there's  
25 another common theme of greater flexibility, well you know,

1 Dave's point of greater flexibility to allow a project to  
2 move forward. The Commission's tried to move in the  
3 direction of greater flexibility for merchant projects.  
4 There are requirements like the open season and the  
5 latecomer issue.

6 And kind of a common theme we're hearing is, you  
7 know, consider relaxing those. But I mean I guess, can you  
8 help us a little bit more? You know, the open season, like  
9 Jamie said, there isn't a heck of a lot of specificity out  
10 there. The concept is that there's transparency around the  
11 development of the project. So they're serious people that  
12 are interested in coming forward, you know, they have an  
13 opportunity to do so.

14 The latecomer issue, it seems to me that the  
15 folks that are participating as an anchor tenant, they have  
16 a significant benefit in essentially designing the project  
17 for their need, and that that is a distinguishing factor  
18 between the Anchor tenant and the folks that come along  
19 afterwards. Is there more that's needed to be provided, you  
20 know, essentially kind of what can we do to build on our  
21 existing model?

22 MR. WOLF: I don't know if I'm going to answer  
23 your question directly, but I would like to respond to David  
24 and support the other individual on the end. You know, to  
25 us, transparency is primary. You have to have that

1 transparency; otherwise, you're going to lose that public  
2 trust. You know, routing transmission lines is a very  
3 sensitive issue for the landowners. You can't get more  
4 personal than really the taking of somebody's land, to use  
5 it for transmission siting.

6 Without that transparency and that public trust,  
7 you really lose the opportunity not only potentially for  
8 that project, but for the next one that will come, and there  
9 will be a next one that will come. So again, it's really a  
10 cooperation amongst the parties, you know, the landowners,  
11 the regulators, the customers, the ratepayers, to really  
12 accomplish those things. So again, transparency is primary  
13 for us.

14 MR. GATES: I might just springboard off of that.  
15 Siting will become the issue, and many states have  
16 certificates of need or public interest that have to be met  
17 when you build a transmission line, whether it be an  
18 independent or one for a regulated utility.

19 Those borders, state borders sometimes get very  
20 parochial, and looking at need between state boundaries  
21 becomes kind of problematic for the siting folks. The other  
22 thing I would add on the open season process, and maybe we  
23 all would say the same thing. Northwestern has attempted a  
24 couple of open seasons, has two that are open right now.

25 Providing some kind of meaningful engagement,

1 financial contribution, some kind of stake in the game by  
2 participants in open seasons, or people in your Generation Q  
3 is important, because what we've seen, and you're all aware  
4 of this, is a lot of Q camping, where until they're all in,  
5 they're all in until there's a financial commitment, and  
6 then they're all gone, and then they come back in.

7 We've tried to design our open season such that  
8 there is a set amount of participation or financial  
9 commitment by folks much probably less than what some of the  
10 independents would do. But I think we both have those kind  
11 of issues and some rules that would be supported by FERC on  
12 open season, if you will. Section 3 of an OATT for us would  
13 be very helpful.

14 MR. SKELLY: Just a comment with respect to, you  
15 know, how do we optimize the cost of all of this, and I  
16 think one of the -- if you say all right, you can only sell,  
17 you know, you can do anchor tenants for 65 percent of the  
18 capacity and the other 35 percent has to be open. So the  
19 first penguins get the 65 percent, and it's priced  
20 accordingly, and the next ones get 35 percent.

21 Effectively, what you're saying is all right, if  
22 you're developing a transmission line, you need to create an  
23 option available to late penguins at the same terms as the  
24 first penguins, and that when if you go to build a project  
25 and you can only count on, when you break ground, you can

1       only count on certainty, revenue certainty around 65 percent  
2       of the cost, then you're going to price that accordingly.

3               Your lender will only lend you accordingly, and  
4       your equity provider will say okay, that's fine. But we now  
5       need to price the transmission capacity at a higher level.  
6       Then you end up trying to structure an agreement with  
7       developers that says okay, well if we get more customers  
8       further down the road, we will bring down the cost of your  
9       transmission, which I think we just saw with the PacifiCorp  
10      example that we heard about, that that doesn't really work  
11      so well, because developers say well, I can't afford to pay  
12      for the 35 percent that may or may not show up.

13             So if one of the important considerations here is  
14      how do we get the cost of transmission down as low as we  
15      possibly can? Then let's think about the requirements of  
16      filling up a line with as great a certainty as possible, in  
17      order to get the cost down. I think that's an important  
18      part of what we need to be thinking about as well.

19             MS. SHEAN: That actually leads into the next,  
20      what I would like to discuss broadly for a few moments.  
21      Cynthia mentioned anchor customers, and the need to have  
22      more flexibility perhaps in the anchor customer requirements  
23      for specific purposes in cases.

24             Could you give us some more detail as to what you  
25      see those specific purposes and cases being, or can we talk

1 for a moment about the whole anchor customer issue?

2 MR. SKELLY: So I think the case is that the more  
3 lines can be subscribed, the more fully you can subscribe  
4 the line up front, then you don't have uncertainty around  
5 any of the sales. So that will bring down the cost. Does  
6 that answer your question?

7 MS. SHEAN: Well, are you saying that should  
8 apply to any application that came in?

9 MR. SKELLY: I think the -- I like the  
10 distinction that David has drawn between independents who  
11 are essentially risking their own development capital, and  
12 incumbents who are looking to somebody else to pay the  
13 development and subsequent costs, because, and this also, I  
14 think, ties in with right-sizing.

15 Because what right-sizing means is go create an  
16 option for somebody else to do that, and then you've got to  
17 figure out who's going to pay for that optionality. So I  
18 think that -- am I getting to your question here?

19 MR. MORENOFF: Michael?

20 MR. SKELLY: Yes, yes.

21 MR. MORENOFF: Can I jump in with a related  
22 question on something you said? In some of the Commission's  
23 efforts to have greater flexibility with respect to the  
24 development of transmission, the Commission has  
25 distinguished in some respects between merchant transmission

1 developers with negotiated rate authority, and other  
2 independents who are seeking cost-based recovery?

3 MR. SKELLY: Right.

4 MR. MORENOFF: I think that some of the speakers  
5 today have used merchant and independent as though the two  
6 phrases are interchangeable, and I think some have focused  
7 very much on kind of the common problems that would face  
8 anyone who is not an incumbent developer.

9 MR. SKELLY: Right.

10 MR. MORENOFF: But given that the Commission does  
11 have sort of separate lines of precedent in some respects,  
12 distinguishing merchants from other independents, I'd be  
13 interested to hear if people think that that distinction is  
14 useful in some ways, or whether if the common problems  
15 really kind overhaul those --

16 MR. SKELLY: Yes. I think that's a great point,  
17 and perhaps it comes back to the -- and a lot of these  
18 things sort of tie together. So if you have to right-size,  
19 then you're creating optionality. If you can only sell up  
20 to 70 percent of your capacity, then you're creating  
21 optionality. So it goes to the question of who's paying for  
22 that optionality, and if you're a merchant, then you've got  
23 to pay for the optionality, or you've got to charge your  
24 first penguins for the optionality.

25 If you're an incumbent or some other party that

1 relies on recovery, then there's a rate base or some other  
2 group of folks who are paying for that optionality. So I  
3 think it's a very, it's a good distinction that you're  
4 drawing, and so to the extent that if you're, if it's our  
5 dollars that are at risk, it doesn't seem fair that we have  
6 to go create low cost options for folks who may be late to  
7 the party.

8 MS. SHEAN: David.

9 MR. GATES: Yes. I just one point of  
10 clarification, that as an IOU, our dollars are at risk as  
11 well. We don't have, nor would we ask our native load  
12 customers to sponsor or pay for some of our transmission  
13 development that's for export. So the distinction that  
14 maybe was being drawn, that there's some form of recovery  
15 inherent to IOUs for transmission development isn't always  
16 accurate.

17 MR. SKELLY: Right. That's a good point. I  
18 agree with that.

19 MR. RASKIN: I just, so that I'm not  
20 misunderstood, what I'm suggesting is that there is --  
21 you're putting in place, trying to put in place a robust  
22 planning regime for regulated transmission, okay, and the  
23 object of that regime is to make sure that we have a  
24 reliable and efficient transmission system, and that would  
25 be paid for primarily for customers under cost allocation

1 rules that, Lord willing and the creek don't rise, you will  
2 be able to develop.

3 I think that in effect, I see that as the  
4 backstop, the regulated backstop, and these folks are in a  
5 niche, trying to see if they can bring more value through  
6 participant-funded transmission. David, on your question --  
7 so you know, it may be quarterly reports or something like  
8 that is a good idea, Jamie, just as long as we give people  
9 flexibility. I just want to get an opportunity to succeed.  
10 That's really nothing more than that.

11 David, on your question, you've got to make  
12 findings, competition findings to grant market-based rates.  
13 Anyone who seeks market-based rates here, you know,  
14 regardless, has to go in and make that case. But I think  
15 once I make that case, just like a generator with market-  
16 based rates, I'd rather see you give them more flexibility.  
17 That's just my opinion. I don't have tremendous problems,  
18 because I think you guys have really done a good job on  
19 merchant transmission. But --

20 MR. MORENOFF: David, but am I right? You just  
21 described sort of three categories, that the independent  
22 who's going to be doing participant funding rather than  
23 wanting to seek cost allocation through an allocation to  
24 captive customers, would have different issues from both the  
25 development seeking from captive customers and from the

1 merchant seeking negotiated rate authority?

2 MR. RASKIN: I think that participant funding and  
3 merchant are different, only that you've got to make  
4 competition findings on one to satisfy the Federal Power  
5 Act.

6 MS. SHEAN: Mike.

7 MR. McLAUGHLIN: If I may, earlier on there was a  
8 discussion about our generator interconnection policies. I  
9 think it was alluded to that there was a need for  
10 comparable, I'll call them comparable or potentially new  
11 rules relative to transmission interconnection OATTs. I'd  
12 like to hear a little bit more about that. I think Mr.  
13 Skelly brought that up, and I think Mr. Raskin brought that  
14 up.

15 MR. SKELLY: So the -- let me just give you an  
16 example. So one of our projects originates in the Oklahoma  
17 Panhandle and would terminate at the TVA system in Memphis,  
18 and due to the nature of how high voltage DC technology  
19 works, you need to tie into the AC grid on what we call the  
20 windward side, and it's not so much that you're drawing  
21 power from there, but you're relying on ancillary services  
22 in the form of voltage support for the DC converter  
23 stations. In some RTOs, there's a process that governs  
24 that and talks about it. In most, there is not.

25 So you go and apply for the set of services, but

1       there's no sort of process, so it all gets made up on the  
2       fly, and similarly when you -- in some areas of the country  
3       when you apply to connect a line, a DC line for a delivery  
4       point, in PJM, for example, there is a transmission queue  
5       process that you go through that works. Another is in the  
6       country, there's no such process.

7                So it would be helpful if there were clarity  
8       around those, so that for example, if I'm not mistaken at  
9       MISO, there you would apply to be in the generation queue,  
10      because that's the queue that's available. But then the  
11      requirements to stay in the queue are around site control,  
12      which it's hard to demonstrate early on site control over  
13      600 miles of right-of-way early in the process.

14               So I think there's a willingness amongst the  
15      parties out there to tackle this issue. If one believes, as  
16      we obviously do, that the DC lines will be part of the mix  
17      going forward, it would be helpful to everybody involved at  
18      the RTO level, developers, etcetera, if there were rules  
19      that were drawn up around the specific requirements of high  
20      voltage DC lines.

21               MR. WILSON: Dave, I think what I'm getting from  
22      your suggestion is sort of a bifurcated system, where you  
23      know, you've got one group, you know, that could take  
24      advantage of opportunities and you'd need flexibility to  
25      take full advantage of those opportunities. Then on the

1 other hand, we've got sort of the, you know, traditional  
2 tried and true, you know, OATT obligations to expand and all  
3 that.

4 I get that you need flexibility in order for this  
5 part to work. What I'm just sort of wrestling with, and I  
6 think the concern came from down at that end, is how the two  
7 line up. Is there potential for, you know, reliability?  
8 You've got sort of just folks off in separate worlds doing  
9 their own thing, and we want to make sure that there's going  
10 to be a consistent sensible resolution that comes out of  
11 that, and that there is a sensibly developed grid.

12 I just, the concern was raised, I think, earlier  
13 on at that end of the table, and I'd like to get sort of  
14 your thoughts on how we make sure that there's no total  
15 disconnects or inconsistencies or problems.

16 MR. RASKIN: Yes. One of the problems, as I've  
17 made to a client, was that the words "Northern Pass  
18 Transmission" wouldn't cross my mouth today, but they're  
19 going to. That is a case where basically you said that the  
20 Northern Pass Line was subject to the New England planning  
21 process, to the extent of ensuring the same reliability  
22 interconnection that would apply to any other project. I  
23 think that is the right way to go.

24 The problem with it now is that outside of the  
25 RTOs, the planning processes are kind of, to use a Yiddish

1 expression, "unga paska." (ph) It means they're different  
2 and you can't get your arms around them. But I think that's  
3 the right way to go to ensure that, you know, a project.

4 Now I think the harder question is suppose that  
5 out of a planning process comes a transmission line that is  
6 designed to do the same thing that the independent project  
7 developer is trying to do, and one's captive customers and  
8 then you've got this guy going out there. That was not the  
9 subject of this, so I haven't thought about how to resolve  
10 it, but you'll get your chance, and we'll be back providing  
11 comments on it.

12 But I think that's a hard question, and I don't  
13 know the answer to it.

14 MR. WILSON: Bob, did you have any thoughts on  
15 it?

16 MR. VAN BEERS: No, I wouldn't add to that.

17 MS. SHEAN: Steve.

18 MR. RODGERS: I just had an observation on a  
19 comment or several comments earlier regarding why the  
20 Commission hasn't done more to incentivize or encourage  
21 joint IOU independent projects, and I think in the Western  
22 Interconnect there have been several examples where there  
23 are success stories in that regard, or at least positive  
24 signals from the Commission on those kinds of projects, and  
25 in particular the PRIN REC (ph) PG&E effort to build the

1 Atlantic Path 15 project.

2 I think also the Citizens Energy, San Diego Gas  
3 and Electric, Sunrise Powerlink project, the Commission's  
4 had favorable things to say on. Then lastly, outside of an  
5 ISO-RTO footprint in WITG, we've got the NV Energy-LS Power  
6 Great Basin project that the Commission has given some  
7 preliminary approvals to.

8 So I think there's models out there for people to  
9 use that want to do those kind of IOU independent projects.  
10 But I've heard a couple of the commenters mention that they  
11 didn't think there would be any need for any special  
12 preference for independent projects, but at the same time,  
13 some of the commenters or some commenters were talking about  
14 the Commission providing flexibility for a 100 percent  
15 anchor shipper.

16 So I'm wondering if -- is that the same kind of  
17 flexibility that we should be giving to incumbent  
18 transmission developers?

19 MR. GATES: Yes.

20 (Laughter.)

21 MR. VAN BEERS: My answer is yes. I would agree  
22 with Dave, frankly. I don't know why we need to have a  
23 tilted field in that respect. I mean I think if an  
24 incumbent is putting their own capital at risk, there's no  
25 cross-subsidy from a captive rate base and they want to do

1 an independent project, I don't know why they shouldn't be  
2 able to do it.

3 MR. WILSON: Well, wouldn't that result  
4 potentially in a transmission build-out that would have no  
5 open access attached to for all new projects?

6 MR. VAN BEERS: It might potentially do that.  
7 But again, the issue is, you know, I think this goes a  
8 little bit to Jamie's earlier line of questioning, which is,  
9 you know, what degree of transparency is there?

10 And as for projects, and I don't want to drag  
11 Dave Gates into this, but the kind of project he's looking  
12 at, the Mountain States transmission interconnect, that's a  
13 for-export project. It's not one that would likely get past  
14 the local regulator as serving the local rate base.

15 So it makes perfect sense that you would do that  
16 of the rate base and on a competitive basis. In my view, if  
17 he's open and transparent and competitive in soliciting bids  
18 from shippers, he should be prepared to go and permitted to  
19 go ahead with doing that.

20 MR. RODGERS: And a question I had for you, Mr.  
21 van Beers, although I'd welcome others' thoughts on this  
22 too, actually a two-part question. It seems that the MNTL  
23 project is a relative success story in terms of the projects  
24 now halfway built. The line is, you know, doing well in  
25 terms of subscription on the line and seems to be moving

1 ahead.

2 So I was wondering if you could share with us  
3 what have been the keys to your success in getting this far.  
4 Then secondly, I know that a challenge that the MNTL  
5 developers faced in that project was who would provide the  
6 ancillary services for the transmission, because MNTL itself  
7 had no generation resources to provide those services.

8 You, as I understand it, arranged a special deal  
9 with Northwestern and also some of the wind developers on  
10 the line, to provide ancillary services. So I was wondering  
11 if you could explain that, and then also talk about the  
12 implications of generator-only BAA multiplication, if that  
13 kind of model was replicated in other parts of the country.

14 MR. VAN BEERS: Sounds to me, Steve, like you've  
15 got a couple of questions. How many hours do I have to  
16 respond? I'm gratified that you look at the MNTL as a great  
17 success. If you shared life under the hood, it wouldn't  
18 have felt like that. It's been a tremendously difficult  
19 process. I can't overstate that enough, a tremendously  
20 difficult process to make this project succeed.

21 Quite frankly, if we had appreciated even a  
22 fraction of the difficulty, we would never have proceeded at  
23 the start, and I'm saying that very honestly. We've stuck  
24 to it for a variety of reasons, but stubbornness would be  
25 the predominant one.

1           You know, the financing is kind of the key thing,  
2           the linchpin to make it all work, and we had the tremendous  
3           success in getting all of our permits at the end of 2008,  
4           precisely at the moment when Wall Street just basically up  
5           stakes and left. The credit crisis robbed us of every  
6           opportunity to finance the project, notwithstanding the fact  
7           that we had commitment letters to finance the project.

8           We were fortunate that the stimulus bill stepped  
9           up, and there was a transmission infrastructure program  
10          established at Western Area Power, and they have financed  
11          the project. But quite frankly, without that, I don't know  
12          how this project would have become financed. The difficulty  
13          with an international project is you have non-synchronous  
14          permits.

15          So for example, we have permits from the Canadian  
16          National Energy Board that expire every nine months. We  
17          have had, I think, four extensions to our permit, waiting  
18          for a Presidential permit and waiting for a Montana permit.  
19          So you know, you have this tremendous difficulty, let alone  
20          the fact that your shippers are constantly moving and  
21          shucking and jiving on their credit responsibilities as they  
22          struggle with their offtake and their turbine financing and  
23          so forth.

24          I invited your Chairman, and I extend the  
25          invitation to anyone from FERC, to please reach out to us,

1 and if you'd like a couple of days tour to explore from  
2 start to finish the various aspects of what has worked and  
3 has not worked in our company, we'd be more than prepared,  
4 more than delighted, frankly, to host you, and have that  
5 examination.

6 I think there are a tremendous amount, number of  
7 lessons to be learned from how we get along with incumbents  
8 or haven't, both on the Canadian and the U.S. side, of how  
9 we've engaged in planning, the kind of organization we  
10 built, the financing we've attracted, the shippers we've  
11 worked with, the design we've had to optimize, the cost  
12 structure we've struggled with, the landowner issues.

13 I think each of them is in its own way somewhat  
14 unique. I don't know that there's a single silver bullet to  
15 say here's how you make this successful. I would come back  
16 to stubbornness, though. You had a second question. I  
17 think it was on ancillary services.

18 MR. RODGERS: Yes.

19 MR. VAN BEERS: We on the U.S. side of the line  
20 are in the balancing authority of Northwestern Energy, and  
21 Northwestern Energy would notionally be providing all the  
22 ancillary services to the line. One of our shippers,  
23 however, has actually established themselves as an  
24 independent balancing authority for the purposes of  
25 providing their own ancillary services for regulating

1       reserve in particular.

2                   It's been tremendously challenging, and I know  
3       that Dave Gates made some comments earlier about needing to  
4       segregate the provision of ancillary services, so as not to  
5       provide a burden to his rate-regulated customers, and I  
6       think we're very sympathetic to that problem. I think it's  
7       particularly acute in the West; there's a very tight market  
8       for ancillary services.

9                   I think that is a continuing challenge for the  
10       development of markets out there. I think there are other  
11       challenges as well, ranging from a balkanization of the RPS  
12       standards and so forth or other barriers to renewable  
13       development. But certainly a very tight and a liquid market  
14       in ancillaries is a real problem.

15                   MR. MORENOFF: Recognizing that this is a bit  
16       like the question Arnie asked earlier, that maybe a  
17       twisting. The observation that Steve made on one of his  
18       previous questions, described a scenario in which Steve  
19       hypothesizes that we might wind up with a build-up of a grid  
20       that would result in there being effectively no open access  
21       with respect to those new facilities.

22                   I would characterize the response from the panel  
23       as somewhere between silent and a shrug of "yes, well maybe,  
24       but so what?" Given the sort of foundational premise that  
25       the Commission has placed on open access, I guess I wanted

1 to return to that question and say is that a fair  
2 characterization, and should the Commission be concerned  
3 about that possible future?

4 MR. VAN BEERS: Just speaking from our  
5 perspective, I don't think that's really a fair  
6 characterization. I can see how you rhetorically could get  
7 to that point, but I don't think that's really a fair  
8 characterization.

9 I would say, and I also think that David Raskin  
10 has said similar things, permit us to see that, to explore  
11 what is possible in terms of financing, and the tensions  
12 that go into certainty and creditworthiness, and the extent  
13 of anchorship or support required, so that we can get  
14 something off the ground.

15 If you look at the MNTL project, for example, we  
16 really have financed the project on only half the capacity,  
17 you know. The unique circumstances of that project are not  
18 necessarily going to hold for us on our future project. I  
19 don't know what conditions will hold.

20 So we would simply say hold us to a standard of  
21 fairness and openness and transparency and competitiveness,  
22 but don't lay a "it must be 60, 70, 80, 90," whatever the  
23 threshold number is that is magic, because I don't know what  
24 can work. I simply don't know. We believe, and I think  
25 your colleague's questioning went to that, how do we know

1       that it is widely known and openly available to all  
2       participants to step up in the initial development of the  
3       project? We think that's important.

4               We also think that our obligation to serve or to  
5       build, rather, in the future is an important one, and you  
6       know, some of the discussion around right-sizing seems to be  
7       going on in the abstract. One of the constraints we face,  
8       it's a very real constraint, is well, we interconnect  
9       somewhere. What's the congestion there? How big could you  
10      build?

11              I mean if I could look at, you know, where we're  
12      looking and building in Montana, there's potentially 12,000  
13      or so megawatts of wind that could be developed. There's no  
14      way to move 12,000 megawatts through BPA. Get real. So you  
15      start looking at what you can build to size to the next  
16      system. That's certainly one of the constraints.

17              But do you look at ways to give yourself  
18      flexibility in the future? Absolutely. You know, would we  
19      look at building structures that might take a second circuit  
20      or that could be reconducted, or do we look at possibly  
21      obtaining a slightly wider right-of-way that might rebuild  
22      the line at some point in the future, or do you look at  
23      twinning a line with an incumbent IOU. Absolutely.

24              So I think, you know, as an independent  
25      transmission developer, we're always looking for ways to

1 grow the business. It's the nature of the beast.

2 MS. SHEAN: Terry.

3 MR. WOLF: I was not one of them that was  
4 shrugging and suggesting that that was acceptable to us. As  
5 a member of TAPS, again, our interest is open and  
6 transparent transmission access, and we, you know, we  
7 certainly are not supportive of that type of a process, and  
8 again would encourage, to the extent possible, you know,  
9 processes under an OATT structure that allows for again  
10 transparent access to the grid.

11 MR. RASKIN: A couple of things. Open access is  
12 a big vessel into which a lot can be poured. My position is  
13 it is synonymous with no undue discrimination, and you make  
14 generic findings with respect to a particular kind of  
15 discrimination, appropriately upheld by the courts. I'm not  
16 suggesting it be undermined.

17 I also am not opposed to the idea that once an  
18 independent developer builds a line, that it has to file an  
19 OATT. If there's transmission capacity on that line, be  
20 subject to the same OATT requirements as somebody else,  
21 because you know, including expanding, because if they get  
22 financing for it, they should be "I'm good with that." They  
23 ought to want to.

24 So I don't think it's fair to characterize my  
25 position, at least, as being in any way opposed to or trying

1 to limit open access, trying to define open access and then  
2 find a way to make this work within that context.

3 MS. MARLETTE: Hi David. I have a history with  
4 open access, so I'm very partial to it. But having said  
5 that, I don't think anyone, I don't think here, is proposing  
6 balkanization of the transmission grid or undermining the  
7 principles of Order 888, open access.

8 I would echo what David Raskin said. I think you  
9 have to look here at the fact that the independents and  
10 merchants who want to develop, want to do so on a fair  
11 basis. They are not similarly situated to incumbent  
12 transmission utilities. They don't represent the same  
13 problems that underlay Order 888 concerns.

14 When we crafted the concept of comparability in  
15 1996, it was a new interpretation of what constitutes undue  
16 discrimination. The Commission was very concerned about  
17 incumbents, many of whom had very high cost generation at  
18 the time, using their transmission systems to exercise  
19 market power and shut other people out of the markets and so  
20 on and so forth.

21 Independents do not have those incentives.  
22 Granted, if they are affiliated with a traditional utility,  
23 then the Commission has the obligation. It's a red flag.  
24 It needs to look at it and make sure there is no problem.  
25 But I think the Commission is at a critical point here,

1 where it's going to have to balance does it want some of  
2 these projects to be built. Is it going to recognize the  
3 risk and practicalities of financing them, and I think it  
4 has to look at, and again this is echoing some of what David  
5 said.

6 The Federal Power Act prohibits undue  
7 discrimination, undue preference. It doesn't, it does not  
8 prohibit all discrimination or preference. If customers,  
9 anchor shippers are not, they are not similarly situated to  
10 other types of customers, they're coming in up front with  
11 their money, willing to invest, and I think when a  
12 Commission has a reasoned basis to treat people differently,  
13 to allow greater flexibility, it can do so under the statute  
14 if it makes the appropriate findings.

15 I do think flexibility is -- and I'm sorry to go  
16 on here -- regarding transparency, clearly that has been a  
17 concern since 1996. But I don't think the Commission, if  
18 we're going to have the independent merchant projects  
19 developed, can come up with a regulatory straight jacket  
20 regarding transparency and open seasons. Perhaps there's  
21 some middle ground, and I haven't talked to all the WITG  
22 members on this, but sometimes the Commission can come up  
23 with principles that can be applied, that doesn't constitute  
24 a regulatory straight jacket and balances what we're trying  
25 to do here. I think it can be done but it's not easy.

1                   MR. GATES: I might just add that maybe what  
2 we're talking about in common here is that for new  
3 transmission, the rules ought to be a little more relaxed,  
4 such that you can get a bill -- once you have a transmission  
5 facility in place, you have the highway, the rules of the  
6 road. The OATTs need to be consistent and apply.

7                   But I'd also suggest that if we're going to do  
8 that for an independent merchant transmission, we should  
9 allow those same kind of open season flexibilities and  
10 things for incumbents, because the idea is to get  
11 transmission built. It's not really, it shouldn't really be  
12 about who builds it, just that we get more capacity built.  
13 So I'd encourage you to think of that as well.

14                  MR. CONANT: I would just add in our business we  
15 would call that -- that's a good problem to have, that we've  
16 got more customers than we need. So we certainly want to  
17 grow our business, and we're not looking to keep, freeze  
18 anybody out. They do have to be creditworthy and I think  
19 maybe some guidelines in terms of the open season. I think  
20 I'm always hesitant in front of a regulatory body to talk  
21 about putting some meat on the bones.

22                  But to be too prescriptive, I think we need to  
23 have some flexibility there, and a lot depends on what the  
24 particulars in the situation are. So rather than be too  
25 prescriptive, just to get the concept across of what you're

1 looking for, and I think Dave's on undue discrimination. We  
2 want to get the initial line built, and let's not throw the  
3 baby out with the bathwater, in terms of not getting  
4 anything done. Let's look at the particulars, and those are  
5 going to be changed on each case, I think. Thanks.

6 MS. SHEAN: We've talked, excuse me for my voice,  
7 we've talked this morning. I think we've heard that the  
8 development process is very similar for the incumbent, who  
9 is not doing a rate-based activity as it is for a total  
10 independent. I mean if you're doing a development process,  
11 as he said, it's a development process.

12 We've been talking this morning about the need  
13 for more flexibility as to how much we could have for an up-  
14 front commitment on an anchor shipper. What we haven't  
15 really explored, and I'd like to spend just the law few  
16 minutes exploring, is the whom, the issue of what if the  
17 anchor customer is an affiliate of the transmission  
18 development or the developer, and does that, should that  
19 have any bearing on their ability to be the anchor customer.  
20 Cindy, you mentioned affiliate. Can you lead off?

21 MS. MARLETTE: I think any time you see the word  
22 "affiliate," at least in my regulatory history, that's a red  
23 flag. It's a red flag, but it doesn't mean no. I think the  
24 Commission needs to look carefully, but I don't think it  
25 should preclude situations involving affiliates. The

1 question is was it a fair process, which of course takes you  
2 back to your transparency.

3 But the utility or the transmission entity who's  
4 building the project is subject to the Federal Power Act.  
5 They've got to make sure, to the best of their ability,  
6 given the circumstances, that they have a fair process.  
7 Again, I think the Commission possibly could come up with  
8 some guidelines.

9 I know we're not supposed to talk about pending  
10 cases, but in the NU-Winstar (ph) case, for example, the  
11 participant-funded approach there, where you have a process  
12 that allows 100 percent participation, you can come up, I  
13 think, with situation, which the Commission has to analyze  
14 carefully, where it is acceptable to have some affiliation.

15 MR. GATES: I would agree that affiliation  
16 shouldn't be the benchmark, and I think we talked about that  
17 before you got both regulated and merchants that are trying  
18 to build transmission. If a combination of those things, as  
19 Steve points out in the West, we have had some success  
20 stories with that, can work. I think the Commission ought  
21 to appropriately evaluate that and ask if there really is,  
22 if there's some kind of affiliate issue there, because what  
23 we're all trying to do is expand the grid.

24 So you know, it's not -- in the early cases where  
25 perhaps somebody was trying to protect some generation value

1 or something like that. This is about providing more  
2 capacity, and I think we need to give ourselves some freedom  
3 to think through that, looking forward as opposed to  
4 backwards.

5 MR. VAN BEERS: Well, the fundamental challenge,  
6 MK, is we're not building enough wires, and I think if we're  
7 going to get hyperactive or break out in hives every time  
8 the word "affiliate" jumps up, we're going to stop ourselves  
9 from doing projects that need to get done.

10 I think the FERC rightly and aggressively should  
11 make sure that rate, that captive ratepayers aren't getting  
12 stuck with costs that they shouldn't be taking on, and  
13 that's the fundamental issue. Are we cross-subsidizing here  
14 and putting the costs on the captive rate base, and  
15 gathering the rewards on an unregulated basis?

16 I don't think that's our intent or our desire, or  
17 the design of what we would propose when we're looking for  
18 joint ventures with incumbent investor-owned utilities.  
19 That's the FERC's job, make sure that the rate base doesn't  
20 get stuck with costs that it shouldn't get stuck with. But  
21 whether you get there on an ex-post facto examination of  
22 what was done, or you prescribe a particular process for  
23 getting there almost doesn't matter.

24 From our perspective, that isn't the intent.  
25 That isn't the nature of the game. The nature of the game

1 is get transmission done, and quite frankly we're spending  
2 decades getting it done. We need to be able to get it done  
3 in years, okay.

4 MR. HOUSTON: One of the things we would like to  
5 see is what are the rules and requirements that we can use  
6 to protect our network load's priority access to these type  
7 lines. We spent four years beating the bushes, responding  
8 to queue requests, trying to find others who would build a  
9 bigger project, and they have not stepped forward.

10 One of the worst outcomes we would face is if we  
11 build the line and we lose that capacity to a challenge, and  
12 it's not there for our future network load requirements.  
13 That's a bad outcome, and that's a disincentive to bill even  
14 for network load, which is what we all would not like.

15 MR. RASKIN: I agree with Cindy. I think if it's  
16 an affiliate involved in one of these projects, you guys  
17 need to take a real hard look.

18 MS. SHEAN: Michael.

19 MR. EMNETT: At the risk of putting you on the  
20 spot Tyson, you know, from the generator customer  
21 perspective, do you have any concerns either on this  
22 affiliate issue or just generally with what you've heard?  
23 Do things resonate with you? Do you have concerns?

24 MR. UTT: Well, I do think that there needs to be  
25 parity between both cases, and again Horizon, with our

1 wholly-owned subsidiary companies that hold these wind farm  
2 assets, as qualifying facilities with an EWG status, we  
3 prescriptively are not able to own transmission.

4           So I think if we would look for cases where there  
5 is no advantage in an affiliate case for generators in our  
6 shoes. And again, kind of recognizing the fact that, you  
7 know, a common hurdle here is just the level to which there  
8 will be generators ready to participate in these projects,  
9 and it's kind of a common theme as to whether or not there's  
10 a critical mass available to do that.

11           I think what we're trying to offer, the case  
12 where in lieu of a line needing to have been built otherwise  
13 as a gen lead line, what about those generators that are  
14 first movers, and soliciting the involvement, transmission  
15 developers that would be unaffiliated.

16           Yet that generator, because they are taking that  
17 risk, they are that penguin, I guess, as Bob pointed out,  
18 that there would be some fair level of priority rights or  
19 incentives for them to take those risks.

20           MS. SHEAN: Chris, do you have one short question  
21 --

22           MR. WILSON: I have what I hope is a short, quick  
23 procedural kind of question. We heard on the one extreme,  
24 you know, OATT provisions laying out with specificity what  
25 kinds of things would and wouldn't work, and on the other

1 hand, I think we had sort of a, you know, do it on a case by  
2 case, look at all the facts and circumstances.

3 In the middle, I heard a suggestion for some  
4 guiding principles. I'd just be interested to go down the  
5 line and have everyone just sort of maybe give some sense of  
6 what would be your preferred approach, or if there's a  
7 fourth one that we didn't discuss. Start over here.

8 MR. CONANT: I would say that Dave's, the no  
9 undue discrimination is certainly a clear guideline in terms  
10 of access and OATT principles.

11 MR. WILSON: Clear principles?

12 MR. WOLF: Yes.

13 MR. GATES: I'd probably be a little more middle  
14 of the road. I think there needs to be flexibility to get  
15 it built, but we have to make sure that all of the  
16 reliability and other aspects of new transmission are taken  
17 into account.

18 MS. MARLETTE: Flexibility and guiding  
19 principles, and one of those principles would be you don't  
20 harm reliability.

21 MR. SKELLY: Ditto.

22 MR. RASKIN: Yes. Undue discrimination, case by  
23 case if necessary, and I think interconnection reliability  
24 is crucial.

25 MR. VAN BEERS: Well, I've been beating you

1 around the head with this for an hour, so I'll say it again.  
2 Some flexibility absolutely, but we're perfectly happy to  
3 engage on discussion with the FERC as to what the principles  
4 are.

5 MR. UTT: The principles ought to flexible  
6 because Horizon could find ourselves on either side of the  
7 equation, whether first mover or subsequent mover.

8 MR. HOUSTON: If I'm the tie breaker, can I have  
9 a count?

10 (Laughter.)

11 MR. HOUSTON: I think these projects are very  
12 difficult to build, and some flexibility is essential. If  
13 you try to apply a one-size-fits-all, you're going to, by  
14 its very nature, eliminate a lot of projects. So  
15 flexibility.

16 MS. SHEAN: Thank you very much. Before we break  
17 for lunch, comments and questions from the Commissioners?

18 COMMISSIONER LAFLEUR: Thank you very much.

19 MS. SHEAN: I'd like to thank the panel this  
20 morning.

21 VOICES: Thank you.

22 (Applause.)

23 MS. SHEAN: We are going to break for lunch and  
24 be back here.

25 (Whereupon, at 11:53 a.m., a luncheon recess was

1 taken.)

2

1 A F T E R N O O N S E S S I O N

2 1:04 p.m.

3 MS. SHEAN: Welcome back to the continuation of  
4 the FERC Technical Conference on Priority Rights to New  
5 Participant-Funded Transmission. This afternoon, the  
6 panelists will focus on issues pertaining to the  
7 interconnection of generating facilities to the transmission  
8 system.

9 As with this morning's panel, we have seen that  
10 new ownership, development and operational structures and  
11 business models for interconnection have evolved, with the  
12 evolving nature of the electric generating portfolio,  
13 particularly with regards to location-constrained resources.

14 We wish to explore the nature, this afternoon, of  
15 these interconnecting lines, often referred to as gen lead  
16 lines or gen tie lines, and the possibility of flexibility  
17 and/or reform to the Commission's application of open access  
18 principles to such lines.

19 As mentioned this morning, in addition to today's  
20 proceeding, there will be an opportunity to submit written  
21 comments in this docket. We will issue a notice outlining  
22 the process and the time for those written comments to be  
23 due. Also as mentioned this morning, the notices for this  
24 technical conference listed a number of proceedings that are  
25 currently pending before the Commission, or are still within

1 the rehearing period. Out of an abundance of caution with  
2 respect to the Commission's rule governing off the record  
3 communication, because the issues in these proceedings may  
4 be relevant to or touch on issues in the list of  
5 proceedings, the notices were intended to provide parties to  
6 those individual proceedings the opportunity to be present,  
7 and to listen to the conversations that we are conducting.

8 However, the inclusion of the individual  
9 proceedings should not be read to invite comments  
10 specifically on those cases. More to the point, Commission  
11 staff and the panelists should make every effort to avoid  
12 discussing the specific facts or merits of those individuals  
13 proceedings that are before us or within their rehearing  
14 period.

15 The panel is present, so let's begin. I'd like  
16 to start by recognizing Bradley Oachs.

17 MR. OACHS: Good afternoon. I'm Brad Oachs,  
18 Chief Operating Officer at Minnesota Power. I am pleased to  
19 be part of the FERC Technical Conference panel discussion  
20 today on priority rights to new participant-funded  
21 transmission.

22 Minnesota Power is an operating division of  
23 Elite, Incorporated. We provide electric service to 146,000  
24 residential and commercial customers, with a peak load of  
25 1,800 megawatts in central and northeastern Minnesota. Our

1 utility operations are unique and have 17 industrial  
2 customers, primarily taconite mining, but also wood products  
3 and pipeline companies account for just over 50 percent of  
4 our total revenues.

5 Minnesota has a renewable portfolio standard  
6 requiring 25 percent renewable generation for our customers  
7 by 2025. In addition to meeting the renewable standard,  
8 Minnesota Power's current generating fleet is primarily  
9 coal-fired, and we are focused on transforming our fleet to  
10 be more fuel diverse and less carbon-dependent.

11 The transmission has already begun, as we have  
12 initiated an innovative series of moves to refunctionalize  
13 assets that currently support coal-based generation, to  
14 support wind generation in the future. Our first move was  
15 to purchase in late 2009 an existing 465 mile high voltage  
16 direct current line that runs from western North Dakota to  
17 northeastern Minnesota.

18 That HVDC line currently delivers electricity  
19 from a lignite coal-fired generating station. However, in  
20 2013, once a new 345 kV transmission line is built in North  
21 Dakota, the line will phase from delivery of coal generation  
22 to wind generation as we develop premium wind resources in  
23 western North Dakota.

24 Minnesota Power is a member of the Midwest ISO,  
25 and the Midwest ISO administers our interconnection and

1 transmission services, including those involving the HVDC  
2 line. As we develop wind generation in North Dakota, we  
3 rely on established transmission interconnection procedures  
4 that allow us to extend transmission facilities to our wind  
5 generation sites.

6 We have existing interconnection agreements for  
7 approximately 600 megawatts of wind. By the end of 2012, we  
8 plan to have about 200 megawatts of wind generation  
9 operating in North Dakota. The energy delivery facilities  
10 that we have constructed, currently consisting of a 22-mile,  
11 230 kV radial generator lead line, anticipates further  
12 development, wind development in the area.

13 But our actual wind development plans, phased in  
14 over the next several years, as we strive to develop in a  
15 timely and cost-effective manner wind resources to meet by  
16 2025 renewable energy requirements in Minnesota. And to the  
17 extent our plans may change, we need to ensure that the  
18 capacity in the generator lead line remains tied to each  
19 planned project in the event the project is transferred to  
20 another party.

21 To support our long-range development plans to  
22 meet the needs of our customers, we need clear rules that  
23 allow us to build facilities in advance of wind generation  
24 development, and to know with certainty that our rights to  
25 interconnect and use those facilities would not be overtaken

1 by someone else.

2 We have interconnection agreements in place that  
3 reflect our expectations, and we ask that the Commission's  
4 policy ensure that the underlying economic expectations of  
5 project developers, including rights to generator outlet  
6 facilities are preserved. Thanks.

7 MS. SHEAN: Thank you, Brad. I'd next like to  
8 recognize Joel Newton.

9 MR. NEWTON: Thank you. Very soon, three of  
10 NextEra's affiliates will have open access tariffs on file.  
11 NextEra urges the Commission to revisit its policy that  
12 assumes the obligations in the same pro forma OATT used by  
13 Southern Company, Entergy and FPL, is suitable for radial  
14 lines, subject to the tie line owner justifying each  
15 deviation from the pro forma.

16 Rather than starting from the pro forma and  
17 granting case by case waivers, which of course runs the risk  
18 of inconsistent decision-making, the Commission should start  
19 with a blank slate and adopt a slimmed-down radial OATT.  
20 This tariff would account for the limited services that are  
21 available, and be based on principles of comparability in  
22 the competitive marketplace.

23 Looking back, when the Commission adopted Order  
24 888, its clear focus was on traditional vertically  
25 integrated utilities. In particular, after finding that

1 some utilities had denied comparable access to new  
2 independent generators and network transmission users, the  
3 Commission adopted standard terms and conditions for network  
4 and point to point service, and ancillary services.

5           However, many of these same terms make little  
6 sense for radial tie lines. First, a single circuit tie  
7 line has little in common with an integrated system.  
8 Technically, all that's available at any time is conditional  
9 firm or non-firm service. This is because under the NERC  
10 standards, total transfer capability must be calculated by  
11 taking  $N$  minus one into account.

12           In the case of a single circuit radial line, the  
13 loss of a line itself is the  $N$  minus one criteria, because  
14 there's no redundancy. Accordingly, TTC by definition is  
15 zero, and then because TCC is zero, ATC, CBM and TRM also  
16 are zero. The Commission has accepted that a radial tie  
17 line cannot provide network service or most ancillary  
18 services.

19           In addition, unless the tie line owner is a  
20 control area operator, and few are today, it is specifically  
21 prohibited under Schedule 1 of the OATT from providing  
22 scheduling and dispatch service. I note that this was an  
23 issue that was subject to some confusion in the Sagebrush  
24 proceeding, and I can raise my hand as the cause, and it  
25 would be helpful, I think, for the Commission to clarify

1 that the interconnecting transmission provider or balancing  
2 authority be required to provide this service.

3 While the Commission has accepted case by case  
4 deviations, I want to highlight two others. Transmission is  
5 inherently chunky, and few developers plan to use 100  
6 percent of a tie line's capacity, because line losses become  
7 increasingly costly. They increase exponentially. When the  
8 line is fully loaded, losses can approach ten percent or  
9 more.

10 Radial tie lines are not being constructed in  
11 order to interconnect generation to the line's thermal  
12 limits, but instead are built as part of the economic  
13 decisions associated with a particular project. Some  
14 lenders, in fact, have begun requiring incremental losses to  
15 be applied to the incremental generation.

16 The Commission's policy, however, requires the  
17 use of average losses. This policy actually can result in  
18 undue preference for third parties. For example, if a third  
19 party and an affiliated generator are bidding in the same  
20 RFP, applying average losses may well advantage the third  
21 party over the affiliate, who must assume incremental  
22 losses.

23 The Commission's policies should focus on  
24 comparability. Following a third party request, we suggest  
25 that a radial line/tie line owner be required to designate

1 the use of average or incremental losses for all new  
2 interconnected generation. Many also might be surprised  
3 that tie line owners must meet the Attachment K planning  
4 requirements.

5 Attachment K assumes that a transmission provider  
6 owns a system, yet it's hard to imagine how a single circuit  
7 transmission line, radial transmission line is a system.  
8 Instead, the Commission should direct -- I'm sorry. A tie  
9 line owner is simply in no position to plan isolated  
10 expansions.

11 Instead, the Commission should direct the tie  
12 line owner to participate in the interconnecting  
13 transmission provider's Attachment K process, and direct the  
14 transmission provider to consider whether the radial tie  
15 line should be further integrated into its system. Such a  
16 required coordination may well result in a more efficient  
17 use of the entire transmission grid.

18 Finally, the adoption of a slimmed down radial  
19 OATT would save the Commission's limited resources,  
20 company's resources, and would give third parties greater  
21 certainty. However, requiring their OATT to be filed within  
22 60 days after receiving a request should be reconsidered.  
23 All that is needed initially is a transmission rate and loss  
24 factor, along with the commencement of studies.

25 The 60-day requirement, however, mandates an

1 administrative process. The Sagebrush OATT proceeding  
2 provides important lessons. After the Commission issued  
3 orders on the initial filing, every hearing request and two  
4 compliance filings, there's no interconnection customer.  
5 All Sagebrush ever received was a single letter with  
6 absolutely no follow-up.

7 The Commission's implementing regulations  
8 certainly can require rules to be followed, information to  
9 be provided, and a tariff to be submitted after a third  
10 party has committed to taking service. I've also in my  
11 written comments that were submitted yesterday included some  
12 discussion on priority rights and thoughts. My time, I  
13 believe, is over, so I'll be happy to address them in  
14 questions. Thank you.

15 MS. SHEAN: Thank you, Joel. Tom.

16 MR. DeBOER: Good afternoon. I'm Tom DeBoer with  
17 Puget Sound Energy. Just to get my biases firmly on the  
18 table, Puget is a fully traditional integrated utility  
19 located in Washington state. We have a transmission  
20 provider that operates under an OATT and an OASIS. So we're  
21 the old school model. So that's where I'm coming from.

22 I'm going to probably disagree immediately with  
23 my fellow panelists on the tack they're taking. We're  
24 taking a proposal a different route, that an OATT isn't  
25 required at all, and I'll get to that here towards the end.

1 An OATT isn't required.

2 As the name implies, generator tie lines connect  
3 generation facilities to the integrated grid. They are  
4 radial in nature. They flow one way from the generator to  
5 the integrated system. They are under the OATT. It will  
6 almost always be classified as interconnection facilities  
7 that are paid for by the interconnection customer. They are  
8 also designated as sole use facilities under the terms of  
9 the OATT.

10 The OATT also expressly states that the  
11 interconnection facilities do not include any distribution  
12 upgrades or network upgrades. All that is laid out firmly  
13 in the OATT. Under the OATT, there are two types of  
14 interconnection facilities: Those operated by the  
15 interconnection customer, called the interconnection  
16 customer interconnection facilities, and those operated by  
17 the transmission provider, the transmission provider  
18 interconnection facilities.

19 That both of these are not, are considered  
20 interconnection facilities. They're not transmission  
21 facilities under the OATT, and that's really where the  
22 difference that I'm going to focus in on. It's that  
23 difference between how those two types of interconnection  
24 facilities are treated under the large generator  
25 interconnection agreement, where we have the ultimate issue

1 here, and where we think we can get to a simple solution  
2 that satisfies at least us.

3 Section 9.9.2 of the large generator  
4 interconnection agreement provides that it -- provides  
5 guidance on when a third party wants to interconnect to a  
6 generator tie line or an interconnection facility. However,  
7 it only covers if it's a transmission provider  
8 interconnection facility. It doesn't address the opposite  
9 of it being the transmission customer interconnection  
10 facility.

11 So under that 9.9.2, if a third party wants to  
12 interconnect and it's a transmission customer  
13 interconnection facility, those parties will negotiate an  
14 agreement on how to share the pro rata share of the costs,  
15 and that's all covered under Section 9.9.2. Those  
16 facilities are not required to be posted on the transmission  
17 provider's OASIS as a path. It is treated as  
18 interconnection facilities.

19 Section 9.9.2 does not address if these generator  
20 tie lines are considered transmission customer  
21 interconnection facilities, and there's all of these recent  
22 line of FERC cases that try to address that, by imposing the  
23 obligation to file an OATT if you get a transmission request  
24 or an interconnection request.

25 FERC's recent rulings have required the OATT

1       govern third party requests and priority rights for a  
2       portion of the facilities classified as interconnection  
3       customer operated facilities, is where the difference lies.  
4       So what we're proposing here is that we don't believe there  
5       should be a difference between these two.

6                 That classification is somewhat arbitrary,  
7       depending on where you want to classify it as a transmission  
8       provider or an interconnection customer transmission  
9       facility.

10                We think you could easily accomplish getting out  
11       of these OATT obligations by simply modifying Section 9.9.2  
12       to make it clear that that section applies to all  
13       interconnection facilities, whether they're a transmission  
14       provider or a transmission customer, and that's what we  
15       would propose as a way of solving these generator tie line  
16       issues. Thank you.

17                MS. SHEAN: Thank you, Tom. Richard?

18                MR. LORENZO: Thank you, and I'd like to thank  
19       you for the opportunity to talk about these issues. I come  
20       at this problem thinking about what's the best way, what's  
21       the best way for the Commission to encourage the development  
22       of new renewable and other types of generation.

23                The problem develops especially with wind and  
24       solar generation, because in many cases, they are far from  
25       load and need longer generation interconnections that the

1 traditional transmission provider either is unable,  
2 unwilling, unable to do it in a timely fashion. Nothing  
3 against traditional transmission providers; they have their  
4 own problems that they have to reach. They're not being  
5 evil people. It's just they can't meet the schedule that is  
6 necessary for the renewable developer.

7 To the renewable developer elects to build the  
8 interconnection facility itself. It could be a mile, it  
9 could be 90 miles, it would be 190 miles long in that way.  
10 Under the Commission's rules as now in effect, if a request  
11 for use of that service comes in, this pure play generator  
12 morphs into a transmission provider.

13 In our opinion, in my opinion, that is a  
14 discouragement for being that first developer. He doesn't  
15 want to build a transmission line, the interconnection, the  
16 generator lead in order to become a transmission provider in  
17 that sense, and in fact are -- it is in fact a policy at war  
18 with itself, because it is now discouraging transmission  
19 interconnections instead and new development, instead of  
20 encouraging them.

21 I come back to the first principles for the open  
22 access tariff, and I think I may touch upon some that has  
23 been touched on before, is that the open access tariff was  
24 developed to address undue discrimination of traditional  
25 integrated utilities, you know, the incumbent transmission

1 providers.

2           These were local monopolies that had the ability  
3 to prevent competitors from entering the system. FERC is  
4 now applying a good portion of that open access policy to  
5 activities outside the original scope and purpose of 888 and  
6 its progeny. As Justice Stevens has said in dissent in the  
7 NRG case, "a reasonable principle extended beyond its  
8 foundations becomes bad law." I think that may be happening  
9 here.

10           This policy developed to address a distinct  
11 problem of undue discrimination by incumbent transmission  
12 providers should not automatically be applied to radial  
13 lines that interconnect, for the sole purpose to  
14 interconnect generators to the grid. Indeed, one could say  
15 there would be a rush to be second in any such situation.

16           My mother used to say that the early bird may get  
17 the worm, but the second mouse gets the cheese. I think  
18 you're encouraging the second mouse here, trying to trap the  
19 first one to be a transmission provider, encouraging him and  
20 forcing that first developer who wants, you know, he's like  
21 Wal-Mart. He wants to sell these shoes and not those shoes.

22           But you're forcing him to sell a whole array of  
23 shoes, which diverts capital, management attention away from  
24 his primary goal, which is to develop new forms of  
25 generation around the country.

1           So I have a proposal, which is that FERC should  
2 really lightly regulate radial transmission lines, and I  
3 have some standards that I would propose would go on, that  
4 if the primary purpose of the wire is to serve just as a  
5 generator lead, if the wire is not owned by affiliates of  
6 traditional transmission, incumbent transmission providers,  
7 and if the wire is used only to interconnect with the grid,  
8 i.e., it's not serving a load along its way and somehow more  
9 purpose.

10           FERC maybe should leave that alone. What does  
11 this mean to the next developer who comes along? Well, the  
12 next developer has the same choice as the first one. He can  
13 always interconnect using the incumbent transmission  
14 provider. That's the incumbent transmission provider still  
15 has that obligation.

16           That obligation then therefore mitigates any  
17 market power that the first developer who built the wire may  
18 have or be perceived to have. Now we need an exception. If  
19 it's demonstrated that in fact there is significant market  
20 power, the first developer, well then the rule should be  
21 different, if you know, that was the last transmission  
22 corridor in an area, for example.

23           So what the second developer can either use the  
24 incumbent transmission provider, the traditional developer.  
25 He can negotiate with the existing line, or he can build his

1 own line. This is the same choice that faced the first  
2 developer. Indeed, one could turn undue discrimination on  
3 its head and say you're unduly discriminating against the  
4 first developer by forcing it to serve all the subsequent  
5 developers that come along in that area.

6 I believe that this would, this type of process,  
7 and my time is up, would be the best way to encourage  
8 primary goal, encourage new renewable development in the  
9 United States. Thank you.

10 MS. SHEAN: Thank you, Richard. Adam Wenner.

11 MR. WENNER: Hi. I'm Adam Wenner. I'm actually  
12 speaking not on behalf of a client or not even on behalf of  
13 my firm, but on behalf of myself, which I felt would give me  
14 freedom but doesn't give me as much as I thought. But we  
15 won't go there.

16 As others have pointed out, I think the  
17 Commission's current policy on gen tie lines can be  
18 characterized as "no good deed goes unpunished." At the  
19 heart of the Commission's policy is a prohibition on banking  
20 of unused transmission capacity until the line owner and no  
21 one else wants to use it.

22 We've talked about mammals before and even on  
23 this panel, I talk about insects. If you look at Aesop's  
24 fable of the ant, who worked hard all summer to store food  
25 for the winter, the lazy grasshopper, who chirped and

1 played. We normally regard storing for future needs to be a  
2 good thing. Well, as Rich pointed out, you do the opposite  
3 when you punish people who've planned for the future by  
4 building more capacity than they might need immediately.

5 I do recognize, however, that when it comes to  
6 transmission, and this is a point that I haven't heard very  
7 much today, there is a more than one to one benefit of  
8 building larger lines, because transfer capacity increases  
9 exponentially as the voltage increases. In addition, and  
10 this point was made, the required rights of way for larger  
11 or higher voltages are less than for several smaller  
12 projects.

13 So there are economies of scale and environmental  
14 benefits to building larger, higher voltage lines when that  
15 can be done. Certainly, as has been pointed out, state  
16 permitting agencies are not likely to be thrilled with  
17 having lots of transmission corridors used when one might  
18 suffice.

19 The current, Commission's current policy also  
20 encourages suboptimal behavior by developers. Under the  
21 specific pre-existing plans test, tie line owners are  
22 permitted to bank capacity if they have such plans. Well, a  
23 rational developer, faced with that test, is going to  
24 expedite its permitting, its scheduling, and everything else  
25 that might be done to show, to create a paper trail that it

1 has specific plans, when that's not -- when that's  
2 suboptimal.

3           Phasing is normally something, it's done for  
4 rational reasons. You want to see how the first project  
5 works. You may need the rate of return from the first to  
6 develop the second. So if you force phasing to encourage at  
7 a higher than projected, than economic rate, you're  
8 artificially inducing suboptimal behavior.

9           Moreover, under the current system, developers  
10 have to spend 24,000 bucks to get a declaratory order, and  
11 if the proceeding's contested, hundreds of thousands of  
12 dollars to establish just what the rights are. As Cindy  
13 Marlette pointed out, there also is a disconnect between  
14 utilities, the benefits they get for transmission lines of  
15 CWIP, recovery of 100 percent of the cost of abandoned  
16 plant, and of course they have eminent domain versus non-  
17 incumbent utilities who get none of that.

18           So here is a proposal. One option the Commission  
19 could adopt is the what I call "speak now or forever hold  
20 your peace until the next development cycle" approach, where  
21 a gen tie developer would provide public notice that it  
22 plans to build a line. Others who want to participate in  
23 the line could say so, and there would be a good faith  
24 obligation, as under the car note, to expand the line to do  
25 that.

1           However, only those who put some skin the game,  
2           financially commit to paying for their share of the  
3           expansion, would be allowed to play. If they don't, people  
4           who sit on the sideline and don't commit financially would  
5           have no right to access this capacity until the next  
6           planning cycle, whether it's three years or five years or  
7           ten years, as technology appropriate.

8           One other point, and I will save some for the  
9           discussion. When it does come to the price that you pay for  
10          buying in, use of a traditional utility-type rate of return  
11          is simply inappropriate. It fails to recognize the true  
12          risks that a developer takes.

13          You get none of those coverages if the project  
14          fails. Your capital structure may be completely different.  
15          There's a thousand things that can go wrong in the  
16          development of not only your transmission project, but your  
17          generation project, which is going to cause you to abandon  
18          it.

19          So if you make it to the goal line, you should be  
20          rewarded for the much greater risk you've taken. On the  
21          other hand, you don't want to have a rate case every time  
22          you do this. I suggest that the Commission establish a  
23          default rate of return for buy-ins for gen tie lines.  
24          That's the points I wanted to make. I'd be happy to follow  
25          up, and there is an website for an article I just wrote on

1 this topic.

2 MS. SHEAN: Thank you, Adam. Kurt Adams.

3 MR. ADAMS: Thank you. Thanks. Kurt Adams. I'm  
4 the Chief Development Officer and Executive Vice President  
5 at First Wind. The vantage point that I would like to bring  
6 today, as one who actually builds generator leads of  
7 significant length, and who has to raise capital to invest  
8 in them.

9 I am a former FERC lawyer. By the way, Adam's  
10 the only FERC lawyer I've ever heard who expressed sympathy  
11 at legal bills at FERC.

12 (Laughter.)

13 MR. WENNER: That's why I didn't speak for my  
14 firm.

15 MR. ADAMS: My former lawyer, Richard Lorenzo,  
16 never made that statement, and as a former regulator. But  
17 primarily, you know, my job today is raising capital and  
18 getting generator lead lines built, and that's what we do  
19 for a living. We have two in operation serving -- the  
20 combination of the two will serve somewhere in the  
21 neighborhood of, when they're all done, 1,100, 1,200  
22 megawatts, and then we have two in development.

23 Sometimes we have three in development on a good  
24 day. On a bad day, we don't have three in development, and  
25 that's the development business. Your first question about

1 what makes it unique, from my perspective, there are some  
2 engineering issues that make them unique, or at least  
3 distinct from rate-based transmission.

4 But the primary difference is we're raising the  
5 capital and we're spending our money. You know, we're  
6 spending investor money and putting it in the ground to  
7 generate a return. That's all at risk. We don't have  
8 ratepayers that we can point to or a FERC policy that we  
9 could point to to recover transmission costs for deals that  
10 don't go.

11 So for instance, we're working on one deal right  
12 now. We're \$13 million into it and we haven't filed a  
13 permit yet. For a company our size, that's real money. I  
14 mean that's real money. I mean not for Joel's company, but  
15 for our company it's a lot. You know, so that's the primary  
16 distinction.

17 My experience working with the Commission on the  
18 Milford order and then watching the Commission since then is  
19 I think the staff and the Commissioners get the tension. I  
20 don't get a sense that the Commissioners or the staff are  
21 mistaking generator lead lines for transmission facilities.  
22 In the Milford order, it's very clear that there is a nod to  
23 something for open access, but we don't want to drive a  
24 company like us all the way to be a transmission owner.

25 I get that, and I respect that the Commission

1 understands that. But the two caveats that I'd like to just  
2 put out there though, in terms of implications, and then in  
3 terms of a showing, to your two primary questions. The  
4 implications for us of having to file a tariff, we are a  
5 180-person company.

6 We have right now about 700 megawatts in  
7 operation or construction, and we are going to be building a  
8 lot over the next two years. Even so, it's highly likely  
9 that our core company will not increase in number of people.

10 So what that means is if you say file a tariff,  
11 you know, we're conscientious. We want to do it right.  
12 We've got to hire a whole bunch of people. We've got to put  
13 new risk management policies in place. We have to build all  
14 that, and all that costs real money.

15 The issue for us is always what is the public  
16 value for that? What is the public value? With regard to  
17 open access, IPPs should be very, very reluctant to poke too  
18 many holes in a policy that has been a foundation to our  
19 industry. Anybody who lived through the litigation in the  
20 90's and the early 2000's around interconnections, and  
21 around the early days of 888 being implemented on the IPP  
22 side, which is what I was, Order 888 was our lifeblood.

23 So those of us that are building generator leads  
24 now need to be a little conscious about what it is we are  
25 doing when we start eroding this very important principle.

1 So we need to do it mindfully. So in terms of the bigger  
2 issues for us, and we talked about this in the order, there  
3 are a few issues in Order 888 that make us nervous.

4 The one that makes me the most nervous is having  
5 to spend our capital, which we have to work really hard to  
6 raise, to build a transmission facility or upgrade our  
7 transmission facility for our competitor. Notwithstanding  
8 that, the Milford order makes it clear that other people  
9 have to pay us.

10 Sometimes there's a significant period of time  
11 when we write the check and we get paid, and on our side of  
12 the business, that can be a very long walk, and it can be  
13 lots of opportunities that we have to give up in the  
14 interim.

15 And then in terms of a showing, I love this  
16 question, because if you turn to a developer, the guys that  
17 I work with now every day, and you say, you know, is your  
18 deal going to happen, they're convinced their deal's going  
19 to happen until at least two years after all the money's  
20 dried up, they've lost the permit and the land's gone. I  
21 mean that's the nature of the people in our business.

22 We're very optimistic people, in the face of  
23 profound adversity in fact every day. So when you have this  
24 conversation, you know, there are some independent metrics  
25 that you put down. But I would submit a very simple tool,

1 which is anybody who wants to intervene and use the capacity  
2 on the line, which bear in mind in Milford we said fine, and  
3 I understand why. The policy for open access is important.

4 But anybody who wants to intervene has to have  
5 done at least as much as the developer who owns the line.  
6 So it's not going to be a bright line test. That's not what  
7 I would propose. It would not be particularly clean.

8 But if we have the land, we're halfway into  
9 permitting, we've built the line, we've spent \$5 million and  
10 somebody has an idea in Met Tower, and they intervene and  
11 they require us to wrap into this regulatory framework, well  
12 that seems to us to be a little unbalanced. Thank you so  
13 much for the invitation.

14 MS. SHEAN: Thank you, Kurt. And finally, Chris  
15 Zadlo.

16 MR. ZADLO: Well thank you, good afternoon.  
17 Thank you for letting me speak today. My name's Chris  
18 Zadlo. I'm the Vice President of Regulatory Affairs and  
19 Transmission for Invenergy. I'm also the co-chair of ALIA's  
20 (ph) transmission committee, and I'm also the IPP  
21 representative on the NERC planning committee.

22 Invenergy is a privately-held company that owns  
23 2,200 megawatts of thermal generation. We've also  
24 developed, constructed or have under contract over 3,500  
25 megawatts of wind generation. Wind facilities can be remote

1 from existing infrastructure, or sometimes the transmission  
2 infrastructure itself is insufficient, requiring us to build  
3 long gen tie lines.

4 We construct gen tie lines out of necessity. It  
5 is not a business we want to be in. It takes a lot of  
6 effort. Without the ability of eminent domain, working with  
7 many land owners, parcel by parcel, we cobble together a gen  
8 tie line. It takes a lot of effort.

9 A relatively small investment in a tie line can  
10 unleash very large wind development, and that development  
11 happens in stages. You just can't magically construct the  
12 whole thing at one time. So there needs to be an  
13 understanding that there is a phase development for the  
14 generating facility on the other side.

15 What I would ask is the Commission to consider  
16 providing relief from the full standards of open access  
17 policies and regulations, understanding that we are not  
18 transmission owners. We are not set up to effectively  
19 administer the OATT, OASIS, code of conducts, uniform system  
20 of accounts, Attachment K. We just don't have anybody in  
21 the company to do this.

22 If you require that, that requires additional  
23 administrative expense, which in turn raises the cost of  
24 power. We have to somehow recoup that, and that's how it  
25 happens.

1           So what I would propose, and I think some of the  
2 other panelists, is you know, maybe creating OATT-like,  
3 something that's very simple, clear, with simple rules and  
4 policies, tailored narrowly to gen tie line owners,  
5 something that would be, you know, less filling for us and  
6 taste great for the Commission.

7           (Laughter.)

8           MR. ZADLO: So again, going down this route of  
9 filing petitions for FERC for a declaratory order involves  
10 expense, uncertainty. I'll just put all this out there.  
11 You know, maybe there should be some safe harbor provisions.  
12 Maybe a gen tie line of a certain length is exempt, ten  
13 miles. I don't know, 20 miles. Maybe there should be also  
14 policies in place for an exclusivity period.

15           You know, you construct this, you have a certain  
16 period of time that you can do whatever you want with this  
17 line. I mean we are financially incented to maximize the  
18 value of these gen tie lines. We're not going to build a  
19 big line just because.

20           Upon the expiration of the exclusivity period,  
21 yes, okay. The developer needs to make some sort of  
22 demonstration, an interconnection agreement, land  
23 agreements. I think that's reasonable. However, there  
24 should be flexibility. Business plans do change.  
25 Regulatory regimes change. Environmental permits change.

1 So there needs to be flexibility built into the process.

2 Other things to keep in mind. You know, what  
3 happens when a third party does request service? Like I  
4 said, we're not set up as a utility. Are we going to be  
5 doing a full-blown rate case for this tie line, or should  
6 you have a simplified process similar to the IPP reactive  
7 tariff filings, where you adopt the ROE of the  
8 interconnecting utility, things to simplify our lives.

9 And also consider losses. This is my engineer's  
10 hat. The line is always oversized. It's because of the  
11 non-linear effect of losses. So there's always excess  
12 capacity, but you never want to operate your line at its  
13 maximum. So this issue of average versus incremental is a  
14 very big one, because we have to self-supply that energy,  
15 and it's self-supplied by a renewable resource.

16 So the ability to do incremental losses, as  
17 opposed to average, would be very important to us. That  
18 concludes my initial comments. Looking forward to the  
19 questions.

20 MS. SHEAN: Thank you, Chris. I want to note  
21 that Commissioner Moeller, do you have comments or  
22 questions?

23 COMMISSIONER MOELLER: No thank you.

24 MR. McLAUGHLIN: I have just I guess what may be  
25 an obvious question, but someone, one of the panelists said

1 that they were -- a number of them basically implied that  
2 they're really in the generation business.

3 I think someone said that there was really no  
4 lead line business. Well, I'm curious why you're building  
5 gen tie lines, and not going through the generator  
6 interconnection process of the utility? Why are you  
7 entering that business model if you -- I didn't think you  
8 had to do that?

9 MR. ZADLO: Well, that's actually a simple  
10 question. Because we can do it quicker, faster and cheaper  
11 than the utility.

12 MR. McLAUGHLIN: But isn't that then -- you're  
13 entering the transmission business, and you seem to own it.

14 MR. ZADLO: Well, it's out of necessity. If we  
15 had to wait for the utility to build a gen tie line, I'd be  
16 out of business. I'd never get my generating facility off  
17 the ground. The other thing is because this is a directly  
18 assigned cost, okay, the utility has no incentive to manage  
19 costs. It's just a passthrough to us.

20 Whereas for us, when we construct these  
21 facilities, every dollar saved is a dollar earned. So we  
22 have certainty on the cost, certainty on timing. Our costs,  
23 and when I say "costs," I'm talking about half to a third of  
24 what the utility can charge, and that's because we can  
25 leverage our construction of generating facility, which is

1 much larger, right? We can leverage that to get a better  
2 price on the tie line, okay.

3 Then we can also control a schedule. You know,  
4 we can built these gen tie lines in nine months to a year,  
5 whereas a utility is going to be extremely conservative and  
6 want 18 months to two years of notice. I mean I would love,  
7 I would love to go to the utility and say "build it."

8 MR. NEWTON: Mike, I think I agree with  
9 everything that Chris just said, and I don't think from  
10 NextEra's position that when we are building tie lines, and  
11 we've built some long ones, because the wind, where the wind  
12 resources are located it's not necessarily close to where  
13 the load or the grid was built out to.

14 But we're not looking at it as a business itself.  
15 It's really ancillary to the construction of the generator  
16 itself. When you think through the Commission's EWG orders,  
17 both for transmission-only EWGs, and for generators that own  
18 their own long tie lines, the underlying concept that the  
19 Commission has adopted is one where it is part of the whole.

20 It really is part of the generator, and I think  
21 in my comments I said that why do we build them? Well, it  
22 makes sense economically to take into account the total  
23 amount of dollars that are going into the tie line with the  
24 facility, and the PPA that's going to be with that as well.  
25 So it's not -- I think that the ancillary portion is the way

1 I would think about it, as opposed to an independent  
2 business, which I took from the question itself.

3 MS. SHEAN: Tom.

4 MR. DeBOER: I would just add that these, you  
5 know, our interconnection facilities are not transmission  
6 facilities. So there really is no way to force the  
7 transmission provider to build them. They can choose to  
8 build them or you can negotiate for them to build them. But  
9 they aren't required to do that under the OATT, and most of  
10 them wouldn't want to.

11 I mean we have an example where we were  
12 interconnecting to Bonneville, and they don't want these  
13 little radial lines. So we can't force them to do it.

14 MS. SHEAN: Richard.

15 MR. LORENZO: I was going to say 888, as Kurt  
16 points out, created or helped create the whole independent  
17 power market that exists in the United States today, and  
18 those folks are making economically efficient decisions.  
19 They look at the world and they way it's more economically  
20 efficient if I build the tie line myself.

21 I mean I think you should have a little faith  
22 that they're making the right decision in that place, and  
23 then go back to what we should all be doing here, is how do  
24 we encourage more development. If the economically  
25 efficient decision from the generators, from the independent

1 generator's position is to build itself, that should be  
2 prime on FERC's directive to how do we encourage that.

3 MS. SHEAN: Kurt.

4 MR. ADAMS: Thanks. I'm real excited. I haven't  
5 had an opportunity to be lawyerly and pedantic in a couple  
6 of years, and I'm about to launch.

7 (Laughter.)

8 MR. ADAMS: One of the things that FERC does a  
9 little bit differently than the state regulatory agencies is  
10 FERC looks to the steel on the structure in the ground to  
11 determine whether something is transmission, you know, the  
12 seven part test, and there's a lot of jurisprudence about  
13 that.

14 But if you go back to where most state  
15 commissions are, which is it looks back to the essence of  
16 utility regulation, the real test about whether or not  
17 something was a public utility was whether or not it had a  
18 public use. The thing about our generator leads is there's  
19 really no intention for a public use. We want to get from  
20 Point A to Point B in the most cost-effective and rapid way  
21 that we possibly can.

22 For us, you know, and I think we talked about  
23 this in the Milford order, 115 kV line that we built in  
24 Maine, 38 miles, the first mud on the boots to  
25 electrification was under two years, which is pretty fast

1 and very difficult to do in a regulated context.

2 So if you look at why we do things, we're not  
3 doing it to be in the public business. We're not doing it  
4 for public use. That's the essence of public utility law  
5 and what we regulate and what we don't.

6 MS. SHEAN: Steve, do you have a question?

7 MR. RODGERS: Thanks. First of all, a comment.  
8 Several of the commenters or panelists mentioned the desire  
9 of FERC adopting some kind of a OATT-like, and I think Joel  
10 had some specific examples of what might go in that. I  
11 think Adam and Kurt might have had other examples.

12 But I'd encourage commenters, when they come in  
13 with written comments, to give us as much specificity as  
14 they could, in terms of what a OATT-like might look like for  
15 a gen tie owner.

16 A question for you, Kurt. You mentioned, Kurt,  
17 that one of the big challenges that gen tie owners face is  
18 having to upgrade their facility for a competitor, and isn't  
19 that the same challenge that incumbent utilities face, and  
20 is the reason why they also were not interested, sometimes,  
21 in hooking up competitors.

22 So if we were to adopt that as a principle for  
23 excusing gen tie owners for having to hook up competitors,  
24 wouldn't the same thing apply for incumbents?

25 MR. ADAMS: So there are two, and I'm sorry if I

1 wasn't clear. There are two separate points there, and one  
2 of them is open access, which in the sort of good old days  
3 of the 90's or 2000's, we heard utilities talk a lot about  
4 why they should not make their transmission systems open.

5 The second is deploying capital to upgrade the  
6 system for them, which is a requirement of the 888 order.  
7 My point about not being required to do that was with regard  
8 to deploying capital.

9 For a company like us, and I don't want to speak  
10 for anybody else up here, but for IPPs generally, capital,  
11 our lifeblood, it's hard to come by. Very hard to come by  
12 now. When we deploy it, we have a lot of expectations and  
13 we need to get it done. We really don't have the resources  
14 as an industry to withstand folks having access to our  
15 capital, even for a short time. So that's just one point.

16 On the issue of open access, the first one may  
17 not be in line with all the rest of the IPPs. You know, we  
18 have said consistently that to the extent our plans leave  
19 transmission capacity open and we can otherwise be held  
20 harmless, there is an overriding public policy on open  
21 access that we understand.

22 My qualifier, which is fairly general, but I'm  
23 happy to make it more specific in written comments, is  
24 anybody who wants to use our line that we build with our  
25 risk capital, and is going to remove capacity that we have

1 plans for, ought to have, at the very least, the very least,  
2 developed plans at least as developed as ours.

3 Because what we see in the marketplace is a  
4 really opportunistic grab for transmission capacity, and  
5 I'll give you one example. We were approached, in one of  
6 our lines in development, we were approached by somebody who  
7 asked us if they could share a piece of the line. We said  
8 you know, okay.

9 We could probably figure out how to do this, but  
10 you need to put your capital in now with us, and they talked  
11 to us for about two weeks. They said you know what? We're  
12 going to wait until you're energized, and then we're just  
13 going to make a service request.

14 They were very blunt about it. It's the law.  
15 But for us, that is, you know, that sort of speaks to one of  
16 the failures of the policy that I think Joel was getting to  
17 while he was making his comments.

18 MR. RODGERS: One other question I had on a  
19 different line of thought was if Commission policy requires  
20 an IPP that has built a gen tie facility to have a note on  
21 file, because someone has asked for service on it, what are  
22 the implications on that for the generation developer in  
23 terms of its exempt wholesale generator status, its  
24 responsibilities to NERC, and also its financing  
25 arrangements?

1                   Now we've heard anecdotally that there are  
2 effects in these areas, but I don't think I've heard too  
3 much from the panel today about what those effects are.

4                   MR. ADAMS: If you don't mind, just from the  
5 business perspective, and I'll turn it over to the guys who  
6 actually work for a living now, we have a very real  
7 experience with refinancing our projects and the itinerant  
8 generator leads, in having banks have heart failure over  
9 what happens if we lose EWG status.

10                  From my perspective, where I sit now in the  
11 energy business, it's deal friction and it's tremendous deal  
12 friction. A lot of lawyers will try to figure out  
13 structures and ways to make it work. The primary -- I'll  
14 tell you. The primary issues that we hear about is, you  
15 know, the PUHCA reporting requirements, you know, where does  
16 that go if you wind up becoming an EWG?

17                  How far up does it go? How can you wrap that  
18 risk for all of your streams of ownership of the line, and  
19 bear in mind, we have forms of equity called tax equity,  
20 which can look like that, look like equity. Maybe they're  
21 wrapped into PUHCA, maybe they're not. These lawyers get  
22 paid an awful lot of money to give you their opinion.

23                  The deal friction is really substantial. On the  
24 line by line items, I'd like to actually give you written  
25 comments, if you're really interested. Here are folks that

1 actually know the law better than I do.

2 MS. SHEAN: Joel.

3 MR. NEWTON: Yes. I think the financing part is  
4 very important, because at least many of our generators and  
5 their ancillary lines are already financed, and the lenders  
6 on the EWG issues. I've gotten to the point where when I  
7 think about PUHCA these days, it's a books and records  
8 requirement. It's not the end of the world as it used to  
9 be.

10 But the lenders don't get that at all. It's  
11 great, and their counsel often -- well, I'll ask Adam to  
12 close his ears -- often don't have -- some of the New York  
13 lawyers, at least, don't necessarily think like FERC  
14 lawyers. So we're dealing with difficult issues with people  
15 who are very nervous in the current environment.

16 As to EWG status, since we'll soon be facing it I  
17 suppose, we would hope that, you know, the Commission has in  
18 other cases found that there are certain things that are  
19 ancillary to providing the service. Here you have a  
20 situation, though, where you're going to get paid for it in  
21 some way. That's the Commission's rules, and yet if it's  
22 not deemed to be ancillary with the payment, are we supposed  
23 to then get paid and give up the money that we're being paid  
24 for the service that otherwise we don't want to be  
25 providing?

1           There's a lot of EWG law that will need to be  
2           straightened out, and I don't know that a specific case has  
3           yet come before the Commission. You may be seeing one soon.  
4           On NERC issues, you certainly have the TOP standards that,  
5           in the case that's before you now. You know, the question  
6           is are you a transmission owner, which some people agree,  
7           and we submitted comments that, you know, we understand  
8           that, and a TOP.

9           We have one line where we are a TOP because of  
10          its size, in Texas. We didn't challenge that. But it's  
11          very difficult, and as a large generator with a very large  
12          utility, with a lot of operating O&M employees behind it,  
13          perhaps NextEra can get their arms around things that  
14          smaller developers can't.

15          So we probably come at these issues a little bit  
16          differently. But the TOP standards are challenging.  
17          They're technical, and the risk in the regions is high.

18          MR. ZADLO: Just to point out another thing, is  
19          what happens when this third party requester makes a request  
20          and then decides to drop out? You've incurred this cost.  
21          You know, it's 60 days. You have to file something. You  
22          have to develop a tariff, this, that. Then you go through  
23          the process and you say, they say "Naah, thanks but no  
24          thanks."

25          You don't have a rate base to assign this

1 administrative legal burden that you just incurred. It goes  
2 right against the project. Something else to consider.

3 MS. SHEAN: Tom, did you have --

4 MR. WENNER: I just had a quick one. On the EWG,  
5 actually I don't think the test is not whether or not you  
6 get paid for the ancillary service that you, activity you  
7 may engage in. So I think the Commission certainly could  
8 say you can -- by providing service to others, you're not  
9 going to violate your exclusively engaged in --

10 MR. NEWTON: That's true. I think the PPL order,  
11 that was addressed, and I think you're saying that.

12 MR. WENNER: So you guys can solve that one for  
13 us.

14 MR. LORENZO: Hopefully the bankers listen to it,  
15 because they're always looking for a way to get 25 more  
16 basis points out of you.

17 (Laughter.)

18 MS. SHEAN: Mason.

19 MR. EMNETT: Well, if I could follow up on that,  
20 it seems like most folks on this panel share a view that  
21 interconnection facilities or gen tie lines are going to be  
22 easy to see, to distinguish between what's interconnection  
23 and what's transmission.

24 But imagine that you're in a situation where  
25 you've got multiple project companies developing the

1 generation, and you have a separate LLC developing the gen  
2 tie line to connect the output of the various LLCs. Does  
3 that now become a transmission line? How should this  
4 Commission think about a separate corporate entity providing  
5 a transmission service delivering electrons for its  
6 affiliates?

7 MR. LORENZO: I would maintain that as long as  
8 it's interconnecting, bringing load to the integrated grid,  
9 that it's a gen tie line. Whether it's one unit or ten  
10 units and however it's interconnected. There are no loads  
11 on the system, and consequently all of the power, except for  
12 station service when needed, all of the energy is then  
13 flowing into the integrated grid.

14 In that situation, you have generator leads  
15 basically. I think of it sometimes as gathering, even  
16 though they'd be big gathering lines.

17 MR. EMNETT: I mean this discussion is why we're  
18 having two panels today, you know, one of the emergent  
19 independent development and gen tie lines. In our mind, I  
20 think it becomes more difficult to separate those two. So  
21 if other folks have thoughts on how we can separate them.

22 MS. SHEAN: Tom.

23 MR. DeBOER: Well, I mean I think there is a  
24 point where it may convert. I mean I can imagine a  
25 circumstance, I mean we look at it, as I describe it in my

1 opening comments, these are flow one way, generator to the  
2 grid, radial.

3 It doesn't matter how many generators you connect  
4 to that. Now you may, if you had a third party provider  
5 that had the generator lead line, if it wasn't the  
6 generator, if it wasn't an interconnection facility, you  
7 actually had someone else providing that service, maybe that  
8 would be.

9 I mean that would be an independent transmission  
10 service provider. I would think they would have to file an  
11 OATT and be like any other transmission provider. But I  
12 think --

13 MR. QUINN: Yes, I think there might be a  
14 business model between those two, so there's the business  
15 model that says the generator owner, by itself, builds a  
16 lead line to get to the grid.

17 There's a third party that builds that same lead  
18 line, and in the business model Mason was describing was  
19 five generation owners are building wind farms. They  
20 collectively put together an LLC, and that LLC owns the  
21 interconnection facility. It still sounds like exactly the  
22 same kind of line you're describing, Tom.

23 There's generation on the one hand. It  
24 interconnects to an integrated grid at the other end. But I  
25 think there's people on the first panel whose business model

1 is to be that LLC in the middle of all those five generators  
2 and farms at the other end. So how do we distinguish, you  
3 know, when does it morph into a transmission provider from  
4 being interconnection facilities?

5 MS. SIMLER: Or do we distinguish?

6 MR. NEWTON: I think it's a hard -- I'm sorry.

7 MR. QUINN: No, go ahead.

8 MR. NEWTON: I think it's a hard issue to  
9 distinguish, because by default, however, whatever line you  
10 draw, people will then just create the business model around  
11 it. You know, we have -- the Commission has addressed this  
12 issue in the Sagebrush case. I mean there's a situation  
13 where years back, SoCal Edison didn't want to build, and a  
14 group of wind owners got together and built a 46-mile line.

15 They all have partners. The partners had rights  
16 for the -- that accrue to the affiliated generators. Our  
17 Peteslogan (ph) line that's now before the Commission is  
18 similar, although it simply is affiliates of all affiliates  
19 of NextEra that own individual generators, and we set it up  
20 as a transmission-only EWG, for the very purpose, and maybe  
21 this is the real key distinction, if there is one, what is  
22 the underlying purpose?

23 If the purpose is solely to bring energy to the  
24 grid, and not to be doing anything else other than providing  
25 that service to either affiliated or unaffiliated parties,

1 then it seems to me that it's almost a form without a  
2 distinction.

3           They should be deemed to be an EWG because that  
4 line, but for the existence of that line, be it owned by the  
5 generator or a third party, the wind power of renewable  
6 energy would not, would be unable to reach the grid, and  
7 that's why it's being formed.

8           MR. WENNER: There eis a line of cases you might  
9 look to that's been used in another context. I think it's  
10 the McLaughlin -- I can get the cite, test that was used in  
11 some Southern California Edison Company cases, where they  
12 said well gee, there's actually a third category of  
13 facilities that's not part of the network integrated grid  
14 and it's not interconnection. It's where it's on the  
15 utility side of the point of interconnection, but still does  
16 a radial purpose.

17           So those cases might offer a good line for  
18 distinguishing between a gen tie and a non-gen tie  
19 situation.

20           MR. EMNETT: I guess the difficulty that I'm  
21 having is that that's all still transmission. I mean it's  
22 all still in the open access bucket. It doesn't address the  
23 concern that we're hearing, that the lines -- so for  
24 example, the Sagebrush, you know, the treatment of that  
25 facility has been essentially that you must provide open

1 access service over it, and that's --

2 MR. NEWTON: Not by choice.

3 MR. EMNETT: And that's the question. If it's  
4 not by choice, to Jamie's point of should we distinguish, is  
5 there something that is not working about the policy? If so  
6 what, and how do we fix it?

7 MR. ADAMS: I mean so the purpose of regulation  
8 it to provide fair access to a public resource, right? If  
9 you have five entities who are going to engage and build to  
10 a line together, it's consenting adults, you know what I  
11 mean? So who are you really trying to protect? I mean if I  
12 do a deal with Invenergy and FPL, you know, I think we can  
13 probably work out a commercial arrangement.

14 I think the issue becomes excess capacity, and  
15 where you deal with open access on excess capacity.  
16 Everything else, what Joel said is right, or Adam what says  
17 is right. There is a form over substance argument. The  
18 main PUC, that brilliant body not far from here, actually  
19 issued a decision not long ago, dealing with exactly this  
20 issue, or close to this issue, and they basically said we're  
21 going to look at the substance, not the form. They're going  
22 to look at the upstream ownership.

23 If the upstream ownership looks like it's not,  
24 and there's nobody holding itself out for a public purpose,  
25 then you know what? It probably is not a public utility

1 that we are going to choose to regulate.

2 That seems to me to apply, whether it's a single  
3 company, whether it's four project companies and a gen lead  
4 co, or whether it's several. The fact of the matter is  
5 these people are willing to deploy capital to move renewable  
6 resources to market, usually faster, better and cheaper than  
7 the incumbent, for whatever reason.

8 That's the activity you don't want to regulate  
9 but you want to expedite, and to require regulation of the  
10 consenting adults would seem to dampen that investment.

11 MR. LORENZO: It's an economic efficiency  
12 argument again, coming back to it. We've created a market  
13 of independent actors. They come together and say this is  
14 the most economically efficient way to bring power or bring  
15 energy to market. We should be encouraging that, subject to  
16 the antitrust laws. I mean always subject to, you know,  
17 market power considerations and antitrust laws, in a way  
18 that I haven't fully thought through. But I'll just put  
19 that bucket aside, that if you --

20 But still, we should be deferring to what the  
21 market considers to be the economically efficient solution.

22 MR. WENNER: But that's where I'll just jump --  
23 oh, go ahead with your question first.

24 MS. KOZLOWSKI: Isn't often the economically  
25 efficient solution to expand an existing line, rather than

1 force a third party that wants to use that area to build a  
2 separate line with a new right-of-way --

3 MR. LORENZO: Only if you believe in centralized  
4 planning. I mean that's a centralized planning solution to  
5 say I know better than the market, and I'm going to force  
6 someone to build a line. In the short run, for a particular  
7 line that may be true. But I think in the long run, you're  
8 going to reduce overall economic efficiency by not having  
9 independent actors act on their best behalf, without having  
10 to go to a centralized organization to determine what the  
11 "right solution" is.

12 So that's where I differ a little bit from that  
13 position. But that's where my "speak now or forever hold  
14 your peace" approach would come in, because you couldn't sit  
15 on the sidelines and wait until the line's built, and then  
16 say "gee, I'd like to have you loop it," and you know, start  
17 providing service.

18 There would be notice given at the outset.  
19 Anybody wants to go in on this line put up your money, put  
20 real securitized money in, and again, assuming there's not  
21 constraints like a 230 kV line can be permitted, but a 500  
22 kV line can't, assuming that's not the case, then either  
23 you're in or you're out, and it would -- you wouldn't have  
24 to go through the exercise, because it would be done on day  
25 one.

1 MS. SHEAN: Joel.

2 MR. NEWTON: Just to disagree with Adam for a  
3 minute --

4 (Laughter.)

5 MR. NEWTON: While I think Adam's proposal may be  
6 appropriate for a really long line, such as the ones that  
7 First Wind has built, or and Kurt you can certainly pipe in  
8 there. But longer lines that are intended to have multiple  
9 parties interconnect. That's the business model.

10 The wind business today, it's very competitive,  
11 and when we're putting together a project, we have people  
12 going door to door and trying to convince people to sign up  
13 auctions, for us to be able to put up a turbine or turbines  
14 on their property. Often at the same time, and we certainly  
15 hit this in a case a year or so ago with Res Americas (ph),  
16 it was found that, you know, we both were going to the same  
17 doors, and we're all trying to compete.

18 If we have some idea that I want to hold up my  
19 hand and have, let everybody know where we are, that simply  
20 is going to invite every other developer who thinks they  
21 could either get some business or mess somebody else's  
22 business up by telling them where they're doing the  
23 business. I just would suggest that you need to think about  
24 your model through how competition in the wind business is  
25 currently occurring, and the business models are being

1 built. Thanks.

2 MS. SHEAN: Kurt, did you have a comment on that,  
3 and then David.

4 MR. ADAMS: I'm thinking better of it.

5 MR. WILSON: I wanted to follow up on the first,  
6 you know, speak now or forever hold your peace suggestion,  
7 because one of the things I was hearing this morning is, you  
8 know, you might not want to make an infinitely large size  
9 project, because you might create a price at the other end.  
10 Is that a concern at all, if you were to just allow all  
11 comers to jump on the line from the get-go, under the "speak  
12 now or forever hold your peace" model?

13 MR. WENNER: That's an interesting theory. I'm  
14 not sure I have thought through how that actually works, to  
15 be honest, you know, how -- you have a transmission owner  
16 wanting to -- you know, he's not in the generation business.  
17 But so I'd pass on a response to the question.

18 MS. SHEAN: David, did you have a question?

19 MR. MORENOFF: Picking up on something Richard  
20 had said, in your opening statement, you had noted that as a  
21 general matter, there should be light-handed regulation with  
22 respect to generator lead lines. That certainly is  
23 consistent with the sort of longer-term view of economic  
24 efficiency that you were describing.

25 In the opening statement, you also had at least

1 the possibility of an exception, where there would be a  
2 market power situation. For instance, there really isn't  
3 another corridor, so that the next person coming doesn't  
4 really have the option of going to the interconnecting  
5 utility.

6 If the Commission were to sort of be moving  
7 forward with that kind of approach, how would you recommend  
8 that we identify the situations where that exception would  
9 be applicable?

10 MR. LORENZO: I would think the second or the  
11 next developer, the excluded developer or developers would  
12 have to come and bring a case to the Commission and show it.  
13 I would assume that the marketplace was open and there was  
14 competition available, and it would have to -- I think it  
15 would have to be a significant showing, because again, you  
16 always have the backstop of the transmission, the incumbent  
17 transmission provider that has to interconnect in some way,  
18 with eminent domain authority, etcetera.

19 So I would think at some point if a developer,  
20 and again, I'm not totally formed, but I would just keep  
21 that as an exception. If a developer came along and said  
22 this was the last transmission corridor outside of Boston,  
23 for lack of a better term, then yes maybe there has to be an  
24 exception there in that way. The next developer comes in  
25 and makes some sort of market power showing to the

1 Commission and you say no, sorry. You're the first mouse,  
2 you know.

3 MR. WENNER: I mean could I throw out one other  
4 comment? As I mentioned, I think the permitting agencies  
5 are also going to -- they're going to be aware of this,  
6 whether it's the state siting authority or if it's a federal  
7 land. They're going to have their own views, so maybe it's  
8 something that the Commission doesn't have to worry about as  
9 much.

10 MR. EMNETT: But that's all later in the process.  
11 So there would be a potential redefining of the size of the  
12 line a year into your development process, when you're  
13 finally at the siting stage, after you've signed up the size  
14 of your generation and the -- I guess I'm just not seeing  
15 how that would work.

16 MR. WENNER: Well, forget the Commission's  
17 involvement. This would or wouldn't happen when people go  
18 for their permits. Company A comes in and says I want to  
19 build a line, and Company B comes in and says gee, I want a  
20 line too. You know, the Forest Service or the state  
21 certificating agency will have a say in that, whether or not  
22 there's Commission involvement.

23 MR. EMNETT: Right. But as we think about what,  
24 what are ways that FERC can provide guidance and comfort to  
25 developers on this issue, and say we are able to come up

1 with some sort of rule that's essentially a safe harbor.  
2 Then folks will want to design their processes to fit within  
3 that safe harbor. I'm just not seeing the way that we come  
4 up with something on this issue.

5 It's kind of like the open season. Well, the  
6 other side of the open season coin. At what stage do you  
7 have it to give yourself the comfort?

8 MR. WENNER: Is it the market power test or is  
9 that where we're going?

10 MR. LORENZO: A safe harbor test.

11 MR. WENNER: Or the safe harbor. I'm not sure  
12 where you're --

13 MR. EMNETT: Well, I guess I'm thinking of it  
14 from, you know, if I put myself in Joel's shoes, and he's  
15 trying to go out and develop a project and the associated  
16 gen lead line to deliver it to the market that he's  
17 targeting, he's going to want some sort of comfort, to the  
18 extent that he can kind of set aside capacity for his own  
19 use, so other folks that come along, you know. He's taken  
20 care of, and he can accommodate them up to a certain point,  
21 but you know beyond that, he knows it's going to be  
22 difficult.

23 If we're pegging that difficulty to some sort of  
24 siting process that is using an essentially restricted  
25 corridor, you're going to have your notions of that. But

1       it's going to be pretty far along in your process before you  
2       find that out.  If that becomes at the point at which we  
3       give you safe harbor, I mean it's just a chicken and egg.

4                I don't know how Joel feels comfort moving  
5       forward on a project, unless he takes everything to siting  
6       first and then comes back.

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1           MR. ADAMS: My caution about this whole sort of  
2 discussion is, when you're sitting in the seat actually  
3 deciding what to build there are a lot of variables that go  
4 into the decision. And at some point you need to call the  
5 ball. Because a decision on a single-pull 115 kV versus a  
6 double-pull 345 kV has implications in your right-of-way,  
7 has implications in your permitting process, has  
8 implications--you could not even begin to fathom the number  
9 of things that that impacts.

10           And you have to make that decision probably about  
11 a year before anybody knows you are going to build a wind  
12 farm in order to put everything in place.

13           So my trouble with Adam's sort of structure is,  
14 you know, when you do the window, speak now or forever hold  
15 your peace, the problem is that by that point we already  
16 know what we are going to build. And to go back and acquire  
17 new right-of-way, to redo the interconnection--I mean, one  
18 of the things we didn't talk about, which is not  
19 insignificant, is you can build things and operate them at  
20 different levels depending on the interconnection  
21 transmission capacity at your point of interconnection. And  
22 that can cut both ways.

23           So the trouble that I have with it is, having sat  
24 in the seat and made the decision, 115 or 345, double-pull  
25 or single-pull, to have to stop that process and open that

1 up for a whole new set of variables, it is mind-numbing.  
2 And it would definitely cool your heels on how you do  
3 business, for sure.

4 I mean, it's hard enough the way it is. And to  
5 just sort of put a fine point on that, we had to put  
6 together 130 landowners without eminent domain for a 38-mile  
7 line. Door to door. And, you know, we had nothing to offer  
8 but love. You know--

9 (Laughter.)

10 MR. ADAMS: --I mean it was like nothing. And  
11 it's really, really hard to do. That's part of the reason  
12 why other developers who don't have the resources to do it  
13 want to hop on our lines, because it takes a big investment  
14 to do that.

15 MR. QUINN: Just as a follow up on that point,  
16 given that there are limited right-of-ways, and it is a lot  
17 of work, is it economically efficient to do that more than  
18 one time?

19 MR. ADAMS: So that is a really cool question,  
20 because I think the coolest underlying question that's  
21 lurking is what is the most economically efficient way to  
22 build transmission? And you know, for all of its flaws, the  
23 KREZ process, it actually went through that analysis. And  
24 from an outsider's perspective, they got it pretty well.

25 But unless the FERC is prepared to do a KREZ

1 process in every single region in the country where there's  
2 renewable energy and is willing to stop renewable  
3 development until that gets done, I think you have a hard  
4 time actually doing the most economically efficient thing.

5 So what the market is doing now is saying, all  
6 right, we've got these hard constraints. These incumbent  
7 utilities, they're good. You know, we do business with them  
8 every day. But, you know, serving us not their core  
9 business. Building a 58-mile generator lead is not what  
10 puts food on their table every day. We've got to do that  
11 ourselves.

12 You're not going to solve that problem with  
13 something like the KREZ. And you may wind up with a  
14 slightly less economically efficient model, where you have  
15 two transmission lines running next to each other, but the  
16 renewable resources you're bringing to market that much  
17 faster, that much more cost-effectively, has a  
18 counterbalancing effect.

19 It's going to take somebody a lot smarter to  
20 weigh that, but I would submit to you that a 115 kV line  
21 getting built within two years to deliver renewable energy  
22 to the market versus a 345 that might take 5 years to get  
23 built, there's a lot of value there. There really is.

24 MS. SHEAN: Mike.

25 MR. McLAUGHLIN: Kris, if I could follow up on

1       your point, if you could help me where are policies in  
2       Milford, in that chain of cases, breaking down for you,  
3       then? Because I thought our line of cases says that you  
4       could go forward; you could build your gen lead line; you  
5       could have priority access for your planned generation as  
6       it's planned to come on. So you could reserve the space at  
7       the sequences your generation was coming on line over the  
8       next 5, 10 years, whatever that time frame is, and it was  
9       just that any excess capacity that was on that line while  
10      you weren't using it, should be made available for other  
11      generators in the region that could connect your line to  
12      avoid building that second line any sooner than we needed to  
13      build it.

14                   And I'm not sure where that model is breaking  
15      down for you.

16                   MR. ADAMS: I didn't say that it was.

17                   MR. McLAUGHLIN: Okay, so really all you're--

18                   MR. ADAMS: In fact, I want to be grateful, just  
19      a moment.

20                   (Laughter.)

21                   MR. ADAMS: I came here frequently as a litigant  
22      and often lost, and often got humiliated. The Milford Order  
23      was a good outcome for us, and we are grateful for the  
24      outcome. And we think it is also the right decision.

25                   What I would submit to you, thought, is in the

1 subsequent cases there are some things that do give us  
2 pause. And one of them is, we didn't really solve the 'what  
3 does the intervening interconnector have to show?'

4 We solved what we had to show. We solved, you  
5 know, basically what we needed to solve for today. But can  
6 a guy with an idea and a met tower trump one of our projects  
7 because we hit a delay in permitting? I don't think so.  
8 But if I'm a litigant on the other side, I might take a shot  
9 at it.

10 So I think that what the Milford Order does, in  
11 my view it's a very good start. I know there are some folks  
12 that are less enamored with it. I think it is actually a  
13 pretty good start in balancing the public policy interests.  
14 But there are some pieces that are left open that I think  
15 the Staff is rightly wondering how to resolve. And one of  
16 them is, you know, okay a tariff does need to get filed;  
17 what really is the obligation of this IPP that somebody like  
18 us, or Invenergy, what really is the obligation?

19 And I think we've got to solve some of that  
20 stuff. If not now, probably within the next year or so,  
21 because there's more and more--let's put it this way.  
22 There's more demand for transmission that is getting built  
23 by utilities or by us every day.

24 MR. McLAUGHLIN: So just to follow up, so it's  
25 really more the call or the request that we clarify those

1 rights in the establishment of kind of a simplified or  
2 streamlined OATT would have the clarity of what you're  
3 looking for?

4 MR. ADAMS: I would--you know, just sort of  
5 administrative law 101, you know, the Commission has done a  
6 very good job doing things in Orders. It's done a good job  
7 in doing things by Rules. It's done a good job by doing  
8 things by Tariffs. The tool that the Commission chooses to  
9 use certainly is beyond me to talk about, but I think that  
10 there are certain areas.

11 There is one throw-away line--not "throw-away  
12 line," there are no throw-away lines--there's one line at  
13 the end of our Order which when I read it I had one of these  
14 sort of apoplectic moments because I didn't know how to  
15 apply it. It says: If anybody ever--if you ever choose to  
16 get rid of some capacity at the end, you've got to do some  
17 type of public process.

18 And so I'm thinking: What's that look like? I  
19 have no idea.

20 So there are some questions in the Order that we  
21 have to--ultimately business will wind up having to resolve.  
22 If you can do that in one Order, or a Rule, I mean I'm sure  
23 Joel and Richard and Adam have some views on what you should  
24 do, but the clarity is good. Clarity is good.

25 The core, our core point is, there are people

1 investing capital to drive a public policy agenda:  
2 Renewable resources to the market more cost-effectively and  
3 more quickly than traditional means.

4           Whatever you do, maintain what is keeping  
5 investors engaged with that business model because it's  
6 getting stuff built.

7           MS. SHEAN: Kris?

8           MR. ZADLO: Yes. Just to build on that theme,  
9 when you go to financing the banks are comfortable with  
10 certain things. They're comfortable with you filing for EWG  
11 for market-based rate authority. But when it comes to  
12 filing a declaratory order, they're uncomfortable with that.

13           So if you could create a clearer process,  
14 streamlined, that will get us--it will make our lives much  
15 more easier when we go for financing.

16           MS. SHEAN: Joel.

17           MR. NEWTON: I would like to make two points,  
18 first on what Mike was discussing on the Milford Order, and  
19 really the priority rights I believe is what you were  
20 getting at at the every end that was created in Milford.

21           You know, that was basically coming in for a  
22 declaratory order for the existence of preexisting plans,  
23 milestones, and progress, is sort of the way I sum it up.  
24 And it struck me that we have created a test, the Commission  
25 has created a test that is substantially greater for a tie-

1 line owner that admittedly, and I'll say at least in our  
2 case the efficiency of the line for third parties isn't in  
3 our mind; it isn't as efficient and doesn't work for the  
4 generating project we're trying to put up; but that said, we  
5 are looking at chunky development.

6 I know there have been proposals saying we have--  
7 and of course a lot of this has been submitted  
8 confidentially where people have said, you know, we have  
9 these milestones, and we have this project is going on X  
10 day, Y date, everything is set in stone, I would suggest  
11 that unless those project owners actually have an RFP and a  
12 PPA, I should say, they're not getting built.

13 They can tell the Commission whatever they're  
14 doing, but in reality that's how projects are getting built  
15 today. You're going to need to the PPA. A project owner  
16 puts up a line that has excess capacity and is desiring to  
17 put another project on it. And rather than having to come  
18 to the Commission, I submit that the Commission should  
19 consider giving a period of time over which the generation  
20 project owner has to develop that project.

21 Say, in our mind it's--you know, we put up a line  
22 5 to 7 years. We expect to have all the capacity on it.  
23 This to me is really the equivalent of what the Commission  
24 did in 888 with allowing native--with allowing network, the  
25 transmission provider to reserve network service for their

1 customers.

2 The key was: Does the transmission provider  
3 have--is it consistent with the reasonably forecasted growth  
4 of its network load? It can reserve that capacity. It  
5 doesn't have to come to the Commission for a declaratory  
6 order asking can we please build it? And can we please save  
7 it?

8 This is really the difference. I mean, yes, that  
9 is native load, and what we're doing is generation, but it's  
10 the same intent. It was built by us for the intention of  
11 putting in new transmission. So all of a sudden you have  
12 the issue that I think Kurt and others have raised that it  
13 almost is: We build it. Now somebody can race to say I  
14 want to get a PPA and we'll just use your line? It creates  
15 a lot of friction.

16 NextEra doesn't take the position that we can  
17 hoard capacity, and that that should be hoarded for a  
18 period--"hoarding" is a bad word.

19 (Laughter.)

20 MR. NEWTON: Let me strike that from the record,  
21 please.

22 NextEra believes that, you know, we have not come  
23 here saying the Open Access Tariff policies are wrong,  
24 forget about it, what are you thinking? TX-2.11 is the only  
25 way to go. We understand the Commission has other policy

1 goals to make certain things are processed efficiently.

2 We are seeking that same efficiency, but believe  
3 that if we are constructing the transmission, we are going  
4 out in development, we're sinking our capital, we should  
5 have a period of time where expectations can be met.

6 And the current policy which requires us to come  
7 in and try to justify everything up front doesn't make all  
8 the sense in the world.

9 MR. WENNER: I just want to clarify one thing for  
10 my former client, still, Richard--

11 (Laughter.)

12 MR. WENNER: I endorse 100 percent Joel's  
13 approach that there should be an automatic protection  
14 period, a permitted banking period. It's only if the  
15 Commission were not to go that way and were to say, well, we  
16 are going to allow some sort of obligation to expand, then  
17 the second-best option in my view would be to get it done  
18 and get out of the way and not leave developers subject to  
19 someone coming in at year one, or year three and saying,  
20 expand now to meet my requirements.

21 MS. KOZLOWSKI: For those of you who won't want  
22 the obligation to expand, what do you want to do about  
23 Section 2.10 and 2.11? As he mentioned, I mean there is an  
24 opportunity for people to come in from the outside and ask  
25 the Commission to direct interconnection and transmission.

1 And whatever we might want to waive under 888, we can't  
2 waive those provisions.

3 MR. ADAMS: So you were looking at me when you  
4 said "for those of you"--

5 (Laughter.)

6 MS. KOZLOWSKI: I was looking at Adam--

7 MR. ADAMS: You know, I don't have an objection  
8 to expanding the line to accommodate somebody else. I  
9 really don't. And I think that there's a strong public  
10 policy reason around economic efficiency and Open Access  
11 where I can see the argument.

12 I just don't want to have to deploy our capital  
13 to do it. That is the issue for us. The big issue for us  
14 is, if you've got a customer you can fit on on top of our X  
15 megawatts that we have planned and we're diligently  
16 executing, fine, just don't make us spend our capital.  
17 Don't cost us any money, and let us execute our business  
18 plan.

19 And, you know, I don't think that that is too  
20 much to ask. And these guys, other developers, they have  
21 access to capital just like us; they should go get it.

22 MS. SHEAN: Kris, did you have a comment on that?

23 MR. ZADLO: Yes, and just maybe to step back a  
24 little bit and to echo what Kurt said, I think I don't have  
25 a problem expanding our line once we're finished with our

1       phased construction of our project.

2                   And here's the issue: That line ends some place,  
3       and that is the place where I'm doing my marketing effort.  
4       And it may take some time. PPAs are very scarce, very  
5       difficult to come by, and it takes a lot of marketing effort  
6       to get into a PPA.

7                   So if I build this gen tie-line with multiple  
8       phases, I'm out there actively marketing. And what happens  
9       when, oh, you know, my friend Kurt here from First Wind  
10      submits a request on my line. He's there competing with me,  
11      and I have no period of exclusivity to market my power. You  
12      know, a project that I've gone out there, taken on  
13      considerable risk to build and construct. I've planned  
14      multiple phases. And I don't even have an opportunity to  
15      market the power for some period of time.

16                  But to your point, once I'm done, I'm done. And  
17      if I'm operating, sure, as long as I'm held harmless, or  
18      whole, on my costs, I could always expand the line.

19                  MR. LORENZO: Two points on that.

20                  One is, your question assumes that all generator  
21      ties are transmission subject to 2.10 and 2.11, and I would  
22      question that, necessarily, whether that--I know it could be  
23      the Commission's point of view, but the Commission could  
24      easily--well, it just assumes that.

25                  The second is, 2.10 and 2.11 are in some ways

1 much more difficult than sending Kurt a letter saying I want  
2 part of your line. If 2.10 and 2.11 apply, then let  
3 somebody come in here and demonstrate that they're ready,  
4 willing, and able to go in that way. I think, given the  
5 difficulties imposed by 2.10, it would probably be less  
6 expensive for the new developer to build its own line, go to  
7 the transmission provider, or work out a deal than come in  
8 here.

9 MS. SHEAN: Bradley, did you have a comment?

10 MR. OACHS: Yes. I guess our view on the  
11 expansion of a line, for us the key thing is to make sure  
12 that the plans that we have in place, the interconnection  
13 agreements we have in place with their milestones, make sure  
14 that isn't compromised. But as to an additional entity  
15 having interest in an expansion line, we certainly would be  
16 willing to entertain that.

17 So it's just part of the ALJ process and the  
18 9.9.2.

19 MS. SIMLER: Can I ask a follow up to that?  
20 Well, I heard that you all don't want that as part of the  
21 process of when you're out developing your wind. So like  
22 there's no open season here for you all, correct? That  
23 undermines the business model?

24 MR. ADAMS: Well--

25 MS. SIMLER: I'm sorry, someone was saying "uh"?

1 Kris--Kurt?

2 MR. ADAMS: It also belies a state of  
3 organization that is not in existence in most developers.

4 (Laughter.)

5 MS. SIMLER: I got that sense, but I was not  
6 going to say that. Okay, I just wanted to be clear when you  
7 made the comment about back to 9.9.2, you weren't going  
8 further.

9 MS. SHEAN: Steve?

10 MR. RODGERS: Thank you.

11 I just had a follow-up question for Adam. You  
12 mentioned earlier that only those who have skin in the game  
13 and are willing to put money up front to develop a gen tie  
14 facility should have access to it, or rights to it, until  
15 what you called the "next planning cycle." And I think you  
16 defined that as a Commission-established, technology-  
17 specific period.

18 What were you thinking of regarding this planning  
19 cycle? Or what would this technology-specific period be  
20 associated with?

21 MR. WENNER: Again, this would be in the  
22 situation where the Commission has not adopted the--you get  
23 the line for your exclusive use for awhile, for a period,  
24 although actually it would be relevant--basically in a NOPR  
25 the Commission might say, look, we need to have a fallback

1 rule that says for geothermal, if it's a geothermal project,  
2 you're going to get 10 years as the planning cycle. For  
3 solar you're going to get 5. For wind, you're going to get  
4 5. Just something that could be used as a default to  
5 represent the planning cycle over which you would get the  
6 right not to offer access to others.

7 MR. RODGERS: And so in that situation, taking  
8 the wind example, so if the wind developer had not fully  
9 used up its capacity within that 5-year period, then it  
10 would have to open it up then to anybody else who wanted to  
11 use it?

12 MR. WENNER: Yes, that's how it would work. In  
13 other words, you get protection for the planning cycle  
14 period where you would not have to prove your specific--you  
15 wouldn't have to satisfy the Sagebrush test. But then  
16 afterwards, it would open up.

17 MR. RODGERS: I open this question up to anybody  
18 on the panel. When someone builds a gen-tie line, don't  
19 they typically have firm, specific plans for how they were  
20 going to use that line?

21 And while I appreciate that they may not be ready  
22 to load the line up to its full capacity on day one and may  
23 need to load it up over time, wouldn't you have specific  
24 plans already in place that you could use to demonstrate  
25 your need for the full capacity of the line eventually?

1                   And I'm just wondering why that is so burdensome  
2                   to come in, even if you don't want to come in for a petition  
3                   for declaratory order and just want to proceed with your  
4                   project, if you've got the evidence, you've got lots of  
5                   documentation in case anybody does ask for access and try to  
6                   kick you off your own line, if you've got the proof, you've  
7                   got the proof.

8                   MS. SHEAN: Tom?

9                   MR. DeBOER: I would say, you know, from a  
10                  regulated utility standpoint, yes. I mean, we would have to  
11                  have that in order to get recovery from our retail  
12                  ratepayers in a state proceeding. So we have to.

13                  I don't know how the merchants do that, but we  
14                  do.

15                  MS. SHEAN: Joel.

16                  MR. NEWTON: Steve, we of course take the risk.  
17                  So in part, yes, and in part, no. If we are--if we have a  
18                  project that is going to be a 2011 project, and we are  
19                  actually trying to get one project on in 2011, another on in  
20                  2012, and we can fit another project on there but it may be  
21                  a '13 or '14 project, I think Kris would agree that the  
22                  world is happening now and not in 2 to 3 years. And we know  
23                  that we will be looking for leases and other things for that  
24                  region because we have plans and we know that we can--we  
25                  have obviously gone through interconnection studies. We

1 know what can occur on the transmission owner's system. And  
2 we have plans to immediately put things on.

3 But the latter stages of that line, I mean I'm  
4 speaking for myself, Steve, I can't really--I don't have a  
5 full understanding of how all the projects work, but I can  
6 pretty much assure you that it's not every project that has  
7 plans all the way down.

8 Now could we tell you that, yes, we have a plan  
9 that, within the next 3 to 5 years we're going to try to  
10 site another facility here? Sure. But it may also be  
11 subject, if we're not in an RTO where there's not a market,  
12 it may well be subject to being able to get a PPA for that  
13 energy. Because there's not a market and it wouldn't make  
14 sense otherwise.

15 MR. ADAMS: The answer for the first one would be  
16 'yes.' We are not in the business where we can afford to  
17 allocate capital to something that we don't have a high  
18 visibility to use. But you may find with developers with  
19 different business models, and that may be the difference  
20 between us and FPL.

21 MR. NEWTON: Just to clarify, presumably if we  
22 have one or two plants coming on it's made sense with the  
23 RFP that's there, and you don't know what an RFP is going to  
24 look like. The prices of wind energy have certainly not  
25 increased over the last five years.

1                   MR. ZADLO:  When you construct these very large,  
2 multi-phased facilities, you do go in with a plan.  But the  
3 question here is:  What is acceptable to FERC as far as a  
4 demonstration?

5                   Because on the first part, I mean your first  
6 phase you could show construction drawings.  And as you keep  
7 going, phase two you could show maybe land, or equipment.  
8 And as you get through all of the phases, the last phase is  
9 probably the least amount of development work that you've  
10 done, because you're focused on the first phase.

11                  MR. RODGERS:  So would a possible solution then  
12 be for the Commission to provide more specificity in terms  
13 of how developers would satisfy us--

14                  MR. ZADLO:  Yes.

15                  MR. RODGERS:  --in terms of their plans?

16                  MR. ZADLO:  That would be very helpful.

17                  MR. NEWTON:  Yes, I would concur.  And I think  
18 the issue that needs to be addressed is sort of the latter  
19 part of the test, which is by milestones for construction of  
20 the generation, and material progress towards meeting those  
21 milestones.

22                  I think that that's really, when you're looking  
23 at a phased generator, that's really the catch phrase:  How  
24 are we showing the material progress when it's something  
25 that we're intending to do several years down the road?

1 MS. SHEAN: Tom?

2 MR. DeBOER: I would agree some more detail on  
3 how to prove your milestones would be helpful, but also the  
4 process. I mean, it's been pointed out by several panelists  
5 that, you know, filing a petition to determine is cumbersome  
6 both for FERC and for the party. And if we were to go down  
7 the route that we've suggested, that these are  
8 interconnection facilities that you would go--if you wanted  
9 to interconnect, you would go to the gen-tie owner and  
10 negotiate a deal, that would be part of that discussion:

11 Okay, how much do you have available?

12 And if you disagreed on what was available, that  
13 you could have that fight as part of the dispute over the  
14 interconnection. You wouldn't have to do it in advance.

15 MR. McLAUGHLIN: On this last point, Joel and  
16 others, it would be helpful if you could kind of lay out, at  
17 least in your views and your comments you're going to be  
18 filing, what type of information you think would be  
19 appropriate to reserve--basically to reserve space on your  
20 project.

21 MR. QUINN: Can I ask a follow up question? I  
22 have heard Brad and Tom talk about this as interconnection  
23 facilities, not transmission facilities. Pretty much  
24 everything we have talked about so far is in the context of  
25 these being transmission facilities governed ultimately by

1 some sort of OATT, and we've talked about what that OATT  
2 would look like.

3 I guess I would like to get a sense from the rest  
4 of the panelists whether they thought the model that Tom and  
5 Brad have articulated, which is these don't even fall under  
6 the OATT, they're just under the LGIA/LGIP.

7 Is that a viable model? And if it's a viable  
8 model, then the other thing we've been talking a lot about,  
9 at least we've been a little curious about, is how do you  
10 right-size all these projects? If the LGIA/LGIP is a decent  
11 model, how do you get kind of right-size issues integrated  
12 into the LGIA/LGIP process?

13 (Pause.)

14 (Laughter.)

15 MR. QUINN: Well, let's start with the first  
16 question.

17 (Laughter.)

18 MR. QUINN: So is it viable for us to go in a  
19 different direction, which is what I heard Tom articulate,  
20 and I think I heard Brad discuss Section 9.9.2 of the LGI,  
21 is it viable for us at this point to say these set of  
22 projects that we're discussing so far, we could consider  
23 these just interconnection facilities and think about  
24 whether there are reforms needed to the interconnection  
25 agreement and interconnection process to get all of this

1 stuff done?

2 MR. LORENZO: Yes. I think that could be a  
3 viable--I'm thinking about it for the first time here, but I  
4 think that could be a viable way to go. Maybe specify in  
5 the LGIA procedures what these things would be when they're  
6 owned by the--they're not owned by the transmission  
7 provider, the incumbent transmission provider.

8 And in fact you can incorporate into that  
9 whatever the OATT-light that Joel was talking about, or any  
10 requirements that you might want to put in there. There may  
11 be no reason--it may be very light. In my point of view, it  
12 can be very light. One radial line from a generator to the  
13 interconnection point should be lightly, lightly regulated  
14 in that way.

15 MR. NEWTON: I will share Rick's that I have not  
16 really thought about this concept much before people brought  
17 it up today. It well may be a viable model, and it is a 180  
18 from where the Commission's been in the last few years,  
19 obviously.

20 It seems to me that we would have to think about  
21 the third party seeking to interconnect as being an  
22 interconnection customer of the transmission provider, and  
23 not an interconnection customer of the owner of the gen-tie.  
24 Because in fact, if that is the study that is going to have  
25 to be done, at this point we've created a situation where

1 simply seeking an OATT request or an interconnection request  
2 with a gen-tie isn't sufficient. Because the gen-tie may  
3 well have plenty of access, or some access, but the TO  
4 that's really the key may not.

5 So I think that that would have to be the  
6 starting point. From there you get into planning issues,  
7 and also who has the requirement to build. Or pay for the  
8 building. And you still get into the same priority right  
9 issues that I think we were discussing earlier.

10 But I think that that's the way to try to loop it  
11 together. And again it would be a way of bringing both the  
12 gen-tie owner and the actual transmission planner together  
13 in the same room, as opposed to really bifurcating these  
14 issues as we have today.

15 MS. SHEAN: Tom.

16 MR. DeBOER: To maybe just expound on the  
17 Minnesota Power proposal to use 9.9.2--

18 (Laughter.)

19 MR. DeBOER: Just kidding. I think he's exactly  
20 right. I mean, ultimately you have a transmission provider  
21 out there that, you know, if you're the first, if you're the  
22 generator with a tie line, you have connected to a  
23 transmission provider and you have an LGIA with them. And  
24 that's where this provision would go, and as it currently  
25 requires, if it's a transmission provider interconnection

1 facilities.

2 So if another one wanted to interconnect into  
3 that tie line, yes, they would come talk to the owner of  
4 that line, the generator. You would work out a deal to sell  
5 the excess capacity. The requirement to build additional  
6 capacity is a question--I'm going to have to talk to my FERC  
7 lawyer, and we'll address that in our comments, hopefully--  
8 won't we, Gary?

9 (Laughter.)

10 MR. DeBOER: But you're ultimately going to have  
11 to go to the transmission provider, as well. So it may be a  
12 three-way LGIA with a transmission provider and the  
13 generator, but ultimately you will have to go there.

14 Whether they have--I mean, obviously they have  
15 the capacity, because me as the generator, I already have an  
16 LGIA. The transmission provider has already built to  
17 accommodate the capacity that I want. Any additional  
18 capacity would be a different story, obviously.

19 MR. NEWTON: Can I get a real quick barbs from  
20 the two people next to me? You know, when we look at this  
21 type of model, what it would also invite is the transmission  
22 provider to look to see whether looping the existing gen-tie  
23 into its own system can potentially pay for that  
24 transmission that now is part of the network grid would make  
25 sense.

1 (Laughter.)

2 MR. NEWTON: That's where I'll get my barbs from  
3 both sides. But it is a piece that's being left out, and  
4 it's being left out at the planning process that I noted in  
5 my comments, by saying that a gen-tie should have its own  
6 Attachment K process.

7 If we really are looking for an efficient use of  
8 the grid, we're going to try to tie these pieces together  
9 ultimately and have to determine how best to pay for it, or  
10 divide the payments for it.

11 MS. SHEAN: Kurt, did you have a comment?

12 MR. ADAMS: Just very briefly. We did think  
13 about that approach, actually, before we filed the Milford  
14 Order, but our view was, you know, the battleship was going  
15 this way, and it's easier to work within the context there  
16 than to try to turn the battleship.

17 So--and we did think about it extensively. I'm  
18 happy to provide comments, if you're interested. But at the  
19 end of the day, you really wind up in some of the same place  
20 with some of the issues. And that's just sort of where you  
21 land.

22 The other thing I'll tell you is: How is it  
23 really different than an interconnection facility? You  
24 know, our litigation position is these are interconnection  
25 facilities. That's my story and I'm sticking to it. But if

1 one of the criteria is to be discrete, you know, my vision  
2 of discrete is anything my mother will never find out about.

3 (Laughter.)

4 MR. ADAMS: And an 88-mile 345 kV transmission  
5 line, it's just really hard to say with a straight face that  
6 that's a discrete interconnection facility. You know, don't  
7 get me wrong. We're going to do it. But it's hard. And  
8 when you get to those lengths, you do start looking an awful  
9 lot like something else. And you just can't deny that fact  
10 for very long.

11 MS. SHEAN: Kris?

12 MR. ZADLO: I think roping in the transmission  
13 owner on the other end is an important aspect of this. The  
14 analysis on our side of a third party interconnecting to a  
15 radial line is fairly simple. But by having the  
16 transmission owner involved in the--the transmission owner  
17 at the other end is going to have to do a study. And by  
18 roping him in up front, you kind of take us from being the  
19 middle man. Because someone submits a request to us, then  
20 we're going to have to talk to the TO, it's a third party  
21 affected system. They're going to have to get involved one  
22 way or the other. And if they're involved up front, it will  
23 make the process much smoother. Because the analysis on our  
24 line, on our portion, is very simple. It's arithmetic.

25 But on the other end, it is a network analysis,

1 which is much more complex.

2 MS. SHEAN: Thahn.

3 MR. LUONG: Yes. I had a question about  
4 reliability in terms of maintenance and operation of the  
5 long line tie-line. Do you prefer the transmission provider  
6 to maintain it and operate it? In terms of generator  
7 reliability, sometimes there's management and things like  
8 that. So who will take care of maintenance of the line?

9 MR. DeBOER: You'll have to contract someone to  
10 take care of the line, whether it's a third-party provider  
11 to do the O&M. Under any scenario you're going to have  
12 someone doing the O&M on the line. So I would think--I  
13 mean, we do that currently with some of our lines. We just  
14 have a third-party provider that does the O&M.

15 MR. LUONG: But in terms of reliability  
16 standards, someone has to take responsibility for that. I  
17 know you contract it out, but do you have a preference?

18 MR. NEWTON: Yes, this has been an issue that  
19 we've run into. And we do all of our--we do not contract  
20 out any. NextEra is a big company. We can do this. But we  
21 ran into a situation where one of our lines was being  
22 considered to be made a TOP. It wasn't a big line. And the  
23 region withdrew the proposal ultimately, but we went to try  
24 to work something out with the transmission owner and the  
25 response was: Well, you can sell it to us. And then we'll

1 charge you back at the 20 percent. And it's like why are we  
2 paying them for something that we can do ourselves? But  
3 that's the response.

4 The other thing we've run into in both  
5 reliability areas as well as issues in the Open Access  
6 Tariff is where we need to get into an agreement with the  
7 interconnecting transmission provider. It's a very, very  
8 difficult letter to ever get. And if you can't get the  
9 letter, when you have a jointly owned facility, or a  
10 facility that's in the gray area, then you have to take the  
11 responsibility yourself obviously for the reliability of  
12 that element.

13 But it is not a simple matter of contracting out,  
14 and it is providing--I think for particularly some of the  
15 mid-sized and smaller owners, some real difficult issues  
16 that they'll face.

17 MR. ZADLO: That tie-line is our single point of  
18 interconnect to the outside world. We are extremely  
19 financially motivated to make sure that that line has the  
20 highest reliability possible. Because if that line goes  
21 down, we're down and we're not generating revenue.

22 MR. ADAMS: And our lenders are even more  
23 motivated.

24 (Laughter.)

25 MS. SHEAN: I have a short follow-on

1 clarification question, and then David.

2 We've been talking a lot about the generator  
3 owner and its tie-line. Do any of you on the panel see any  
4 difference between--and actually Mason talked about what if  
5 the tie-line wasn't owned by the generator but was owned by  
6 a third party; this is kind of a further piece of that--is  
7 there any differentiation in your mind whether the  
8 generators that are connecting are all co-owners of the  
9 line, or are affiliates of the line? Are those one and the  
10 same? Does it matter who the people at the end of the line  
11 are with regards to making an interconnection and having  
12 priorities? Any thoughts as to whether they have to be co-  
13 owners? Or can they be affiliates, or best friends?

14 MR. ADAMS: You've got your finger on the  
15 trigger, Joel.

16 MR. NEWTON: Yes, I set it up.

17 (Laughter.)

18 MS. SHEAN: Richard?

19 MR. LORENZO: You know, the way some of these  
20 projects are put together, one of our clients, I mean each  
21 project may have different investors, different partners.  
22 They're all LLCs. And they may choose to own. Some of the  
23 owners of the wind farms may choose to own the tie-line.  
24 Some may choose not to own the tie-line. They may all be  
25 managed by a single company, or they may not all be managed

1 by a single company but be managed by different entities.

2 So it is sort of like what happens behind the  
3 curtain in The Wizard of Oz. You know, you have all these  
4 different companies, different investors, different partners  
5 who are joining together in one. And I think you can't--you  
6 can't make a rule that would base it on who the partners  
7 were, or who the owners were, the investors in each of the  
8 individual companies, because that's not the way the  
9 business is done.

10 MR. WENNER: Let me share one other reason why  
11 you shouldn't differentiate in that way.

12 Actually, as Mason may recall, I've spoken with  
13 him several times on the question of when you have one LGIA  
14 for a big project, but it ends up being used by several  
15 phases of the project. That's something hopefully the  
16 Commission will straighten out one day, because you risk  
17 losing your spot in the queue if it's entity LLC-B rather  
18 than LLC-A, which as its name in the queue.

19 But in any case, in some instances this has been  
20 solved by having a separate entity own the interconnection  
21 even under the LGIA, and you would not want to treat that  
22 arrangement differently just because it's a separate owner  
23 than the generation project owner.

24 So I would say don't make form dominate over  
25 substance. If it's a gen-tie physics' arrangement, continue

1 to treat it that way.

2 MS. SHEAN: Joel, did you have a comment?

3 MR. NEWTON: No.

4 MS. SHEAN: And, David, did you have a question?

5 (No response.)

6 MS. SHEAN: Other questions?

7 (No response.)

8 MS. SHEAN: Commissioners?

9 (No response.)

10 MS. SHEAN: Well I would like to thank the  
11 panelists for this afternoon.

12 (Applause.)

13 MS. SHEAN: This concludes our conference.

14 (Whereupon, at 2:52 p.m., Tuesday, March 15,  
15 2011, the technical conference in the above-entitled matter  
16 was adjourned.)

17

18

19

20

21

22

23

24