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Before the  
FEDERAL ENERGY REGULATORY COMMISSION  
972nd Open Commission Meeting  
Thursday, July 21, 2011  
Hearing room 2C  
888 First Street, N.E.  
Washington, D.C.

The Commission met, pursuant to notice, at 10:56  
a.m., when were present:

COMMISSIONERS:

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

FERC STAFF:

- NATHANIEL J. DAVIS, SR., Deputy Secretary
- MICHAEL BARDEE, General Counsel
- DAVID MORENOFF, Office of the General Counsel
- NORMAN BAY, OE
- JIM PEDERSON, Chief of Staff
- BERNE MOSLEY
- MICHAEL McLAUGHLIN, OEP
- JOSEPH McCLELLAND, OEMR
- JAMIE SIMLER, OEPI

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

(11:08 a.m.)

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2  
3 CHAIRMAN WELLINGHOFF: Let's get started,  
4 everyone. Good morning. Sorry we're a little late here.

5 COMMISSIONER MOELLER: Mr. Chairman, I think  
6 we're waiting for John.

7 CHAIRMAN WELLINGHOFF: Oh, I'm sorry. I saw John  
8 and then he disappeared. We're waiting for John. We're  
9 waiting for Commissioner Norris. We will wait.

10 (Laughter.)

11 CHAIRMAN WELLINGHOFF: Here we go. I saw you,  
12 then you got up and left, John. I thought maybe you were  
13 going to get the beer.

14 (Laughter.)

15 CHAIRMAN WELLINGHOFF: I figured if we waited any  
16 longer I'd have to buy the beer. So I apologize.

17 This is the time and place that has been noticed  
18 for the open meeting of the Federal Energy Regulatory  
19 Commission to consider matters that have been duly posted in  
20 accordance with the Government in the Sunshine Act. Please  
21 join us for the Pledge of Allegiance.

22 (Pledge of Allegiance recited.)

23 CHAIRMAN WELLINGHOFF: Well I do have a few  
24 announcements this morning before we get started. I would  
25 like to first recognize my son, Jules, who is joining us

1 here this morning. Thank you for coming, Jules.

2 Also I would like to acknowledge the fact that  
3 the FERC softball team beat the Justice Department 18 to 4.

4 (Laughter.)

5 CHAIRMAN WELLINGHOFF: I thought that was pretty  
6 good. Absolutely.

7 Colleagues, any announcements, anyone?

8 (No response.)

9 CHAIRMAN WELLINGHOFF: No? Okay, if not we also  
10 have a substitute for Kim, Kim's Deputy, Nat. Nat, if we  
11 could start with the Consent Agenda, please.

12 DEPUTY SECRETARY DAVIS: Before I make the  
13 announcements, just a reminder to everyone to please turn  
14 off your electronic devices.

15 Good morning, Mr. Chairman, and good morning,  
16 Commissioners. Since the issuance of the Sunshine Act  
17 Notice of July 14th, 2011, Items E-5 and M-1 have been  
18 struck from this morning's agenda. Your Consent Agenda for  
19 this morning is as follows:

20 Electric Items: E-3, E-10, E-11, and E-13.

21 Gas Items: G-1 and G-2.

22 Hydro Items: H-1, H-2, and H-3.

23 Certificate Item: C-2.

24 On E-6, Commissioner Moeller is dissenting in  
25 part with a separate statement. With the exception of E-6

1 where the vote will be taken after the presentation of that  
2 item, we will now take a vote on this morning's Consent  
3 Agenda, items beginning with Commissioner LaFleur.

4 COMMISSIONER LaFLEUR: Thank you. I vote aye.

5 DEPUTY SECRETARY DAVIS: Commissioner Norris.

6 COMMISSIONER NORRIS: Aye.

7 DEPUTY SECRETARY DAVIS: Commissioner Moeller.

8 COMMISSIONER MOELLER: Aye.

9 DEPUTY SECRETARY DAVIS: Commissioner Spitzer.

10 COMMISSIONER SPITZER: Votes aye.

11 DEPUTY SECRETARY DAVIS: Chairman Wellinghoff.

12 CHAIRMAN WELLINGHOFF: I vote aye.

13 Thank you, Nat. If we could now please move to  
14 the Discussion Agenda.

15 DEPUTY SECRETARY DAVIS: The presentation and  
16 discussion for this morning will be Item E-6, Transmission  
17 Planning and Cost Allocation by Transmission-Ownning and  
18 Operating Public Utilities.

19 The presenters are Shiv Mani from the Office of  
20 Energy Policy and Innovation, and John Cohen from the Office  
21 of the General Counsel.

22 MR. MANI: Good morning, Chairman Wellinghoff and  
23 Commissioners:

24 The draft Final Rule on Transmission Planning and  
25 Cost Allocation by Transmission Ownning and Operating Public

1 Utilities reforms the Commission's electric transmission  
2 planning and cost allocation requirements for public utility  
3 transmission providers.

4 On June 17, 2010, the Commission issued a Notice  
5 of Proposed Rulemaking seeking comment on potential changes  
6 to its transmission planning and cost allocation  
7 requirements. Industry participants and other stakeholders  
8 provided extensive comment in response to the Notice of  
9 Proposed Rulemaking.

10 The Commission received over 180 initial  
11 comments, and over 65 reply comments. These comments were  
12 valuable in informing the determinations made in this draft  
13 Final Rule.

14 Building on the reforms of Order No. 890, this  
15 draft Final Rule would adopt a number of additional  
16 requirements with respect to transmission planning processes  
17 and cost allocation methods.

18 The draft Final Rule would establish three  
19 requirements for transmission planning:

20 First, it would require each public utility  
21 transmission provider to participate in a regional  
22 transmission planning process that satisfies the  
23 transmission planning principles of Order No. 890 and  
24 produces a single regional transmission plan.

25 Second, it would require local and regional

1 transmission planning processes to consider transmission  
2 needs driven by public policy requirements established by  
3 state or federal laws or regulations.

4 And third, it would require public utility  
5 transmission providers in each pair of neighboring  
6 transmission planning regions to coordinate in order to  
7 determine if there are more efficient or cost-effective  
8 solutions to the transmission needs of the two regions.

9 The draft Final Rule would also establish three  
10 requirements for transmission cost allocation:

11 First, it would require each public utility  
12 transmission provider to participate in a regional  
13 transmission planning process that has a regional cost  
14 allocation method for new transmission facilities selected  
15 in a regional transmission plan for purposes of cost  
16 allocation. The method must satisfy six regional cost  
17 allocation principles.

18 Second, it would require public utility  
19 transmission providers in neighboring transmission planning  
20 regions to have a common interregional cost allocation  
21 method for new interregional transmission facilities that  
22 both regions determine to be more efficient or cost-  
23 effective. The method must satisfy six similar  
24 interregional cost allocation principles.

25 And third, it would allow participant funding of

1 new transmission facilities, but not as the regional or  
2 interregional cost allocation method.

3 Further, the draft Final Rule concludes that  
4 leaving federal rights of first refusal in place for  
5 transmission facilities that are selected in a regional  
6 transmission plan for purposes of cost allocation can result  
7 in rates for Commission-jurisdictional services that are  
8 unjust and unreasonable, or otherwise result in undue  
9 discrimination by public utility transmission providers.

10 Thus, the draft Final Rule would require public  
11 utility transmission providers to remove from Commission-  
12 approved tariffs and agreements any federal right-of-first-  
13 refusal with respect to these facilities, subject to four  
14 limitations:

15 First, this requirement would not apply to a  
16 transmission facility that is not selected in a regional  
17 transmission plan for purposes of cost allocation.

18 Second, it would not apply to upgrades to  
19 transmission facilities such as tower change-outs or  
20 reconductoring.

21 Third, it would allow--but not require--public  
22 utility transmission providers in a transmission planning  
23 region to use competitive bidding to solicit transmission  
24 projects or project developers.

25 And fourth, nothing in this requirement affects

1 state or local laws or regulations regarding the  
2 construction of transmission facilities, including but not  
3 limited to authority over siting or permitting of  
4 transmission facilities.

5 In addition, the draft Final Rule recognizes  
6 that incumbent transmission providers may rely on regional  
7 transmission facilities to satisfy their reliability needs  
8 or service obligations.

9 The draft Final Rule would require each public  
10 utility transmission provider to amend its tariff to require  
11 re-evaluation of the regional transmission plan to determine  
12 if delays in the development of a transmission facility  
13 require evaluation of alternative solutions, including those  
14 proposed by the incumbent, to ensure incumbent transmission  
15 providers can meet reliability needs or service obligations.

16 Compliance:

17 All public utility transmission providers would  
18 be required to make compliance filings with the Commission  
19 within twelve months of the effective date of the Final  
20 Rule, except that compliance filings for interregional  
21 transmission coordination and interregional cost allocation  
22 would be required within eighteen months of the effective  
23 date.

24 This completes my presentation. I would like to  
25 conclude by noting that many staff from our two offices, as

1 well as the Office of Energy Market Regulation, and the  
2 Office of Electric Reliability, contributed to the  
3 development of this draft Final Rule.

4 I would like to thank the following staff members  
5 for all their hard work in completing this document:

6 From the Office of Energy Policy and Innovation  
7 we have David Borden, Jessica Cockrell, Ryan Irwin, David  
8 Mead, and Valerie Teeter.

9 From the Office of the General Counsel:  
10 Jennifer Amerkhail, Michael Haddad, Melissa Nimit, Noha  
11 Sidhom, Paul Silverman, and Christina Switzer.

12 From the Office of Energy Market Regulation:  
13 Jesse Hensley, Christopher Thomas, and Zeny Magos.

14 From the Office of Electric Reliability: Syed  
15 Ahmad, Sedina Eric, and Jacob Lucas.

16 From the Office of Energy Projects: Tyrone  
17 Williams.

18 John and I would be happy to answer any  
19 questions.

20 CHAIRMAN WELLINGHOFF: Shiv, John, thank you very  
21 much, and thank you to the entire team for your dedication,  
22 persistence, patience, and creative thinking over the many  
23 months to draft this Rule for the Commission's  
24 consideration.

25 I also want to thank your executive team:

1 Michael Bardee, David Morenoff, Maria Farnella from the OGC,  
2 and Jamie Simler, and Mason Emmett from OPI; Michael  
3 McLaughlin, Anna Cochran from OEMR for their outstanding  
4 leadership on this important project.

5 The Final Rule will profoundly affect the  
6 development of our Nation's transmission system in coming  
7 decades. And thank you to the almost 200 commenters who  
8 provided us with information on the challenges facing the  
9 electric industry, and your advice on the best ways these  
10 challenges should be addressed.

11 I thank my colleagues for thought-provoking  
12 discussion of the issues presented here. Commissioners  
13 Spitzer, Moeller, and I were relatively new to the  
14 Commission when we issued Order No. 890 upon which this  
15 Final Rule builds. However, as I monitored the  
16 implementation, recognized that the changes in the electric  
17 industry over the ensuing plus-four years necessitated  
18 additional reformation to transmission planning and cost  
19 allocation to reflect new demands placed on the Nation's  
20 transmission system.

21 The key driver of the action we consider today in  
22 this Final Rule is reliable transmission service at just and  
23 reasonable rates. NERC projects in its 2010 Long-Term  
24 Reliability Assessment that approximately 60 percent of all  
25 new resources expected to be added to the bulk power system

1 by 2019 will be new wind and solar resources.

2 Strengthening and expanding the system for  
3 reliable integration of these resources will require  
4 significant investment in transmission. In the decade  
5 ending in 2019, NERC expects a 9 percent increase in circuit  
6 miles of transmission will be added, with significantly  
7 higher percentage increases in new circuit miles in the WECC  
8 region, the Southwest, New England, and parts of the  
9 Southeast.

10 Of the total miles of additional bulk power  
11 transmission, 50 percent will be needed for reliability. An  
12 additional 27 percent will be needed to integrate variable  
13 and renewable generation across North America. The  
14 remainder is for the integration of hydro, fossil fuel, and  
15 nuclear generation, and to reduce congestion which can lower  
16 the delivered cost of power to consumers.

17 As the Final Rule notes, the existing  
18 transmission system was not built to accommodate this  
19 shifting generation fleet. Another emerging factor is  
20 increasing interest by developers of transmission projects  
21 to focus on innovative solutions to transmission needs,  
22 independent of generation and retail distribution  
23 businesses.

24 With these new factors in play, it is critical  
25 that transmission planners seek the most efficient and cost-

1 effective means to meet the needs of their region.  
2 Transmission providers have in place the foundations for  
3 effective planning through their Commission-approved Order  
4 No. 890 planning processes. However, our monitoring of the  
5 implementation of these planning processes, conduct of  
6 technical conferences across the country, and numerous  
7 comments received in this rulemaking proceeding indicate  
8 that there remain gaps that must be filled if the  
9 transmission system is going to be efficiently and  
10 effectively addressed, and the trends and challenges that  
11 were appearing on the horizon when 890 was issued will be  
12 fulfilled.

13 It is essential that the Commission's  
14 transmission planning and cost allocation requirements are  
15 adequate to support more efficient and cost-effective  
16 decisions moving forward. The enhancement to those  
17 procedures that we require today will promote efficient and  
18 cost-effective transmission planning, and the fair  
19 allocation of costs for new transmission facilities.

20 These changes will provide consumers with greater  
21 access to efficient, low-cost electricity. The staff has  
22 ably summarized the decision we are making in this Final  
23 Rule, but I would briefly like to discuss four areas:

24 First, as I mentioned earlier, the mix of  
25 generation resources seeking to use the transmission system

1 is changing. These changes result from the resource mixes  
2 chosen by regions which in part reflect public policy  
3 requirements such as renewable portfolio standards  
4 established by states. This Rule will facilitate  
5 identification of transmission needs driven by a region's  
6 public policy requirements and consideration of efficient  
7 and cost-effective transmission solutions to meet those  
8 needs. I should point out that the enhanced transmission  
9 planning which we will require today is not for one type of  
10 technology versus the other, but it is technology neutral.

11 Second, the Rule establishes principles for  
12 allocating the costs of new transmission facilities selected  
13 in the regional transmission plan for purposes of cost  
14 allocation. Among those principles are that costs must be  
15 allocated at least roughly commensurate with estimated  
16 benefits. Those that receive no benefits should not be  
17 allocated costs, and no costs should be allocated outside a  
18 region unless the other region agrees.

19 Third, the Rule requires development of  
20 procedures in the planning process to re-evaluate the  
21 regional transmission plan if delays in development of a  
22 transmission facility in the regional plan for cost  
23 allocation purposes may affect the incumbent transmission  
24 provider's ability to reliably meet service needs and  
25 obligations. This provision is designed to ensure that the

1 procedures are in place to address problems that may result  
2 from a delay of transmission facilities before those delays  
3 affect reliable operation of the system and reliable  
4 service. Such delays could range from those related to  
5 siting and permitting, to decisions by incumbent providers  
6 or emerging developers not to proceed with a project.

7 Finally, we are not requiring a one-size-fits-all  
8 approach to fulfilling the requirements we establish in the  
9 Final Rule, but instead expect each region to fashion its  
10 procedures and processes to fit its needs. Our staff will  
11 be available to answer questions and provide assistance. I  
12 look forward to reviewing the compliance filings.

13 So for these reasons, I will vote for the Final  
14 Rule. Thank you.

15 Colleagues? Commissioner Moeller?

16 COMMISSIONER MOELLER: Thank you, Mr. Chairman.  
17 First I would like to also express thanks to the enormous  
18 amount of work that the staff and all of us and our advisers  
19 have undertaken over the last year-plus, particularly the  
20 last couple of months, on this issue.

21 A couple of questions for the team. You alluded  
22 to the six cost allocation principles that would apply both  
23 to regional and interregional planning and cost allocation.  
24 Can you elaborate on those, please?

25 MR. COHEN: Sure. The six cost allocation

1 principles are intended to provide guidance to the  
2 transmission providers in the regions in developing their  
3 cost allocation methods.

4 And Chairman Wellinghoff touched on a couple of  
5 them just a few minutes ago, but in general they are  
6 designed to ensure that costs are allocated roughly  
7 commensurate with benefits received by an entity; that those  
8 who do not benefit do not pay; that projects with positive  
9 net-benefits are not excluded because of unrealistic  
10 cost/benefit determinations.

11 They are also designed to ensure that costs are  
12 not allocated outside of a region unless the other region  
13 agrees. The principles also provide for transparency and  
14 cost allocation determinations, and also allow for different  
15 cost allocation methods for different types of transmission  
16 facilities.

17 COMMISSIONER MOELLER: Very good. Given that  
18 people probably will not be able to read this Rule for a few  
19 hours, hopefully that gives them a little better idea of  
20 what is coming.

21 Generally speaking, you went through some of the  
22 exceptions to the right-of-first-refusal: local projects,  
23 upgrades, long lines. Would it be fair to say that, given  
24 that, an overwhelming majority of the transmission projects  
25 in any regional plan will continue to retain their existing

1 right-of-first-refusal notwithstanding today's rule?

2 MR. COHEN: That's possible in any given region,  
3 but it depends on factors that are unknown today. As you  
4 know, the right-of-first-refusal is not eliminated for  
5 upgrades, and the Final Rule also doesn't affect projects  
6 that are already approved in regional transmission plans.

7 So for other projects, the regional planning  
8 process will help determine which projects are eligible for  
9 regional cost allocation. And given that, the answer to  
10 your question depends on how each region implements the  
11 flexibility that is provided by the final rule.

12 COMMISSIONER MOELLER: That's a good answer.

13 (Laughter.)

14 COMMISSIONER MOELLER: Well thank you, and thank  
15 you for the presentation. I think it is particularly  
16 relevant that we are talking about this today when we hear  
17 that PJM is forecasting a peak load of 156,000 megawatts,  
18 and obviously the necessity of a vibrant transmission system  
19 to deliver power when people's life and safety are really at  
20 stake on hot days like this.

21 I think anyone who has followed the Commission  
22 knows that I have tried to be a stalwart supporter of a  
23 vibrant transmission grid because it gives us too much  
24 optionality on where we go as a Nation. And there is a lot  
25 in this Rule that I fully support, and I appreciate what it

1 does.

2 I think it is important to point out a couple of  
3 things that it does not do.

4 For one thing, it doesn't address the whole  
5 issues of siting and the fact that it takes too long and it  
6 is way too expensive to site transmission in this country  
7 right now.

8 As alluded to in the presentation, it doesn't  
9 address any state laws that may inhibit the competition of  
10 transmission.

11 And it does not address the fact that in many  
12 cases it is federal agencies that we have no control over  
13 that are thwarting transmission, and we look to Susquehanna  
14 Roseland and the delays that the Park Service is putting on  
15 there that costs literally hundreds of millions of dollars  
16 per year for consumers in New Jersey and Pennsylvania.

17 These are all issues that need to be addressed if  
18 we want this Nation to really build out its transmission  
19 grid. But a couple of areas where I think the Rule could  
20 have gone better:

21 One would be, I would have preferred that there  
22 would be a specific right of an incumbent to deal with  
23 reliability projects within its footprint when they were  
24 NERC-mandated upgrades. And that again would have been my  
25 preference.

1           The second area has to do with the fact that we  
2 want to make sure that a right-of-first-refusal is not a  
3 right to forever not build a project. And my preference  
4 would have been if this Rule would have taken that on. We  
5 could have taken on a lot of the smaller projects that may  
6 not be as glamorous but still cost consumers hundreds of  
7 millions of dollars a year in congestion costs.

8           But with that, my partial dissent, I  
9 enthusiastically support the rest of this Rule and  
10 appreciate all the efforts that you, Mr. Chairman, and the  
11 rest of us in this building, and outside of the building,  
12 have put into it. Thank you.

13           CHAIRMAN WELLINGHOFF: Thank you, Phil. I  
14 appreciate it. Marc?

15           COMMISSIONER SPITZER: Thank you very much,  
16 Mr. Chairman. And I want to join my colleagues in adding  
17 thanks to the team for their extraordinary efforts on this  
18 rule, and I appreciate their long hours and hard work. And  
19 I appreciate Commissioner LaFleur's contribution of the  
20 transmission towers.

21           (Laughter.)

22           COMMISSIONER SPITZER: I point out that the  
23 siting process on the dias was quite expeditious.

24           (Laughter.)

25           COMMISSIONER SPITZER: No objection from the

1 NIMBYs up on the dias here.

2 The Chairman already pointed this out, but it is  
3 I think appropriate that we hammer home the concept that  
4 this Commission's statutory mandate is to ensure reliable  
5 wholesale electric service is provided at just and  
6 reasonable rates.

7 And throughout my tenure at this Commission, I  
8 have worked to meet the statutory mission through the  
9 metaphor of my oft-cited three-legged stool: Markets,  
10 infrastructure, and rule of law.

11 I support this rule because it meets this  
12 standard. The bulk transmission system is integral to the  
13 infrastructure leg of the stool. Under the status quo, the  
14 only thing certain about transmission planning and cost  
15 allocation is uncertainty. Uncertainty is contrary to the  
16 rule of law and impairs the financing of capital-intensive  
17 transmission projects to the detriment of U.S. ratepayers.

18 Accordingly, the Commission today adopts up-front  
19 process and certainty. Among other things, the Rule  
20 requires that a region's stakeholders come together to  
21 determine, ex-ante, what they believe are appropriate  
22 transmission planning and cost allocation rules.

23 While I recognize there are legitimate  
24 differences of opinion on transmission planning cost  
25 allocation, the grid should no longer be plagued by

1       piecemeal, ad hoc, facility-by-facility determinations.  
2       Rules that provide certainty and clarity up front on a  
3       regional basis will engender much-needed investment in  
4       transmission, which in turn benefits our Nation's  
5       consumers.

6               The Rule also requires that local and regional  
7       transmission planning processes consider transmission needs  
8       driven by public policy requirements. Moreover, the rules  
9       require neighboring regions to coordinate the plans they  
10      have adopted.

11             I would observe that the Rule leaves to the  
12      stakeholders in the first instance to determine what is best  
13      for their region. Today's Rule adopts a framework through  
14      which regions, with open participation from all  
15      stakeholders, determine what best fits their needs.

16             The Rule does not mandate a uniform approach  
17      nationwide. In other words, the Rule does not require  
18      interconnection-wide planning or cost allocation. Instead,  
19      the Rule allows for regional differences in transmission  
20      planning and cost allocation. The Rule provides a sound  
21      basis for financial as well as public support for  
22      electricity infrastructure.

23             With regard to the market leg of the stool, the  
24      Rule advances just and reasonable rates through greater  
25      participation in the transmission planning process. This is

1 achieved in part through expansion of the Order No. 890  
2 Local Planning Principles to the regional planning process.  
3 Market principles are also advanced by ensuring an  
4 opportunity for more transmission projects to be considered  
5 in the transmission planning process.

6 The Rule finds that a federal right-of-first-  
7 refusal in Commission-jurisdictional tariffs and agreements  
8 undermines the potential for most cost-effective or  
9 efficient transmission solutions to regional needs, and  
10 therefore requires the removal of those ROFRs with certain  
11 exceptions.

12 The unleashing of competitive forces will help  
13 ensure just and reasonable rates. The Commission is serious  
14 about getting transmission built. FERC-jurisdictional  
15 tariffs and agreements should not permit a barrier to entry  
16 of an entity that demonstrates that it has the financial and  
17 technical expertise to construct, own, operate, and maintain  
18 transmission facilities.

19 The Commission only seeks to give a fair chance  
20 to all eligible developers as another means to support  
21 competition to the benefit of ratepayers.

22 I note that the Commission is not preempting any  
23 state or local law or regulation that establishes a right-  
24 of-first-refusal. A Notice of Proposed Rulemaking that led  
25 to today's Rule received considerable attention from a

1 numerous and broad array of stakeholders.

2 I have learned from and appreciate their  
3 comments. We listened, and on certain issues crafted  
4 significant departures from the original proposal. However,  
5 given the magnitude of this Order and its complexity, I urge  
6 all to read the Rule carefully before passing judgment on  
7 what we have done today.

8 The Rule strikes the proper balance between  
9 competing interests to the ultimate benefit of consumers.  
10 Again, I thank the team and my personal advisers for their  
11 hard work on this Rule.

12 Thank you, Mr. Chairman.

13 CHAIRMAN WELLINGHOFF: Thank you, Marc.  
14 Commissioner Norris?

15 COMMISSIONER NORRIS: Thank you, Mr. Chairman.

16 I will echo everyone else's accolades and thank  
17 you, everyone, who put so much work into this. Since I have  
18 been on the Commission, this is probably the most  
19 significant action we have taken. And I recognize now the  
20 roller coaster we put staff on when it comes to something  
21 like this as the negotiations move forward. So I appreciate  
22 you handling those highs and lows and coming out with what I  
23 think today is a great Order. I also thank all the  
24 stakeholders, as well, and all the commenters who helped to  
25 provide guidance and invested a lot of your time and energy

1 in this, as well.

2 So who would have thought that figuring out how  
3 to plan and pay for something could be so difficult,  
4 especially in Washington, D.C.

5 (Laughter.)

6 COMMISSIONER NORRIS: But it's nice to know that  
7 we ended up grappling with it here at the FERC. You know,  
8 it reminds me of the proverb: He who fails to plan plans to  
9 fail. I think of that as we issue this rulemaking today,  
10 and think that we have managed to address that proverb with  
11 this plan, and this rulemaking on planning today.

12 You know, in looking over--if you read some or  
13 all of the nearly 200 comments that we received in this  
14 rulemaking, there are a lot of folks who obviously had a lot  
15 of different opinions on how to plan. Some even maybe  
16 thought we shouldn't plan at all, and even some thought  
17 that, well, you can plan but don't figure out how to pay for  
18 it.

19 So I am glad we grappled with all of those  
20 elements in this Order. I think I am 100 percent convinced  
21 that we are doing the right thing here today. We may not  
22 have 100 percent of the answers, and going forward on  
23 compliance is going to be critically important, but I think  
24 we have taken action today that moves America forward to, if  
25 you will, construct a modern electrical system that can

1       serve the needs of our consumers, industry, and this  
2       country.

3                You know last year, this past year, I had worked  
4       with my staff to come up with a vision or a mission  
5       statement for my office. And that is, our mission is: To  
6       work every day to help retool and rebuild our energy machine  
7       so that we transition to a sustainable energy system in the  
8       most efficient way possible.

9                And I believe that is what we are doing here  
10       today with this Rule. I am glad you led with the  
11       reliability issue, Mr. Chairman, because I think that is the  
12       hallmark to what we have accomplished with this rulemaking.

13               For America to be competitive in the global  
14       economy we obviously have to have an electric system and a  
15       transmission grid that efficiently interconnects consumers  
16       with the energy sources. It must be well designed, and it  
17       must be well planned with the future in mind. It doesn't  
18       have to be bulletproof or gold-plated, as some people may  
19       accuse us sometimes of going too far, but I do think it has  
20       to be solid.

21               And our current system today, while I give kudos  
22       to the folks in our industry for keeping the lights on, it  
23       is clear to me that our system today was not designed to do  
24       what we are expecting it to do today and in the future,  
25       which means we have got to rebuild and retool our

1 transmission grid and our electric system.

2 But this, what's often described as the largest  
3 machine in the world, which is being asked to do so much  
4 more than it was intended to do, sometimes I feel fortunate  
5 that the lights stay on, sometimes on a wing and a prayer.  
6 On the farm we used to take pliers and bailing wire to keep  
7 machinery going as long as possible, but that is just not  
8 what we need to do in the future with our electric  
9 transmission grid, when so much is dependent upon a stable  
10 flow of power.

11 And I just picked up at NARUC last week, this  
12 past week I guess, I didn't realize that the average age of  
13 our substation transformers is 42 years old. And we have  
14 powerline poles and crossbars out there nearly 100 years old  
15 that we're dependent upon for subsecond incremental  
16 balancing.

17 So I think we have made a move today to move  
18 forward to modernize our grid in the most cost-effective and  
19 efficient way possible. One of the outcomes of that is to  
20 enable our country to capitalize on the tremendous  
21 opportunities for renewable resources in this country--be it  
22 wind, solar, hydro, geothermal, or others that are being  
23 developed or yet to be developed.

24 These are near- or zero energy costs for our  
25 noble energy resources, and for us to not plan for the

1 future to capitalize on that would be foolish. And I think  
2 that is one of the elements of this today, is how to  
3 capitalize on those and how to integrate them reliably in  
4 our system, which is what excites me about this plan today.

5 We have over 30 states now and many local  
6 communities who have enacted public policy goals and  
7 requirements to increase energy efficiency, demand-side  
8 resources, renewable energy, and I am particularly pleased  
9 that we have empowered those states and communities to be  
10 able to meet those goals and requirements through the  
11 principles established in this Order today.

12 Another one of the hallmarks I believe with this  
13 Order is our continuing to move forward on competition in  
14 this industry. Even if we go back to EPAC-92 and '05,  
15 Congress has been on this path, we've been on this path with  
16 888, 890, 2000, and the many orders and rulemakings in  
17 between; that we've charged a course for competition in this  
18 electric sector. And the innovations and efficiencies that  
19 will result from increased competition will serve consumers  
20 and our Nation's economy greatly going forward.

21 I am also pleased that we have provided for  
22 competition in the design, planning, building, and ownership  
23 of transmission through the right-of-first-refusal changes  
24 that we have made in this Order.

25 Two more hallmarks: One is, I think we have

1       responded to many concerns, and I believe this Rule provides  
2       significant flexibility and regional choice, which I think  
3       is essential, as there are certainly differences across this  
4       country. But as long as, particularly on the cost  
5       allocation guidelines or principles we set out with cost  
6       causation and beneficiary pays, we empower regions to come  
7       up with the best proposals that work within those  
8       parameters. So I think flexibility and regional choice is a  
9       hallmark of this rulemaking.

10               And we enable folks to maximize the efficiency of  
11       their transmission grid. We provide for transparency, which  
12       I think is critically important in the planning process.  
13       And we empower states and communities to achieve their  
14       goals.

15               Now the devil is in the details of any plan. Mr.  
16       Chairman, I was going to request that you see if Borders  
17       could put this on Books on Tape for everyone--

18               (Laughter.)

19               COMMISSIONER NORRIS: --during the August recess,  
20       but that plan is shot now.

21               CHAIRMAN WELLINGHOFF: Right.

22               COMMISSIONER NORRIS: But this rulemaking is the  
23       beginning, I believe, of an effort for a cost-effective and  
24       efficient electric system for our country.

25               The success, however, of this effort will be

1 largely determined I believe in the compliance process. So  
2 I ask everyone here, and everyone out there, to fully  
3 engage. Recognizing this is going to be complex and  
4 difficult, but we are going to need everyone engaged in the  
5 compliance process and following through to make the  
6 outcomes we envision for this rulemaking achievable.

7 Finally, one more planning quote. Alan Lake, an  
8 author, said, "Planning is bring the future into the present  
9 so that you can do something about it now." And if I were  
10 to think of what future I want to bring into the present  
11 that we're doing something about now, it comes in many of  
12 the things we've all talked about today: competition,  
13 innovation, technological discoveries, and solutions to our  
14 energy situation, energy independence, a safer and cleaner  
15 environment, and maximizing the cost effectiveness of all  
16 those efforts going forward. Recognizing that there are  
17 regional and interregional solutions that can help us  
18 achieve all of those.

19 That is what I believe we are moving forward with  
20 today, is looking into the future, where we have to go in  
21 this country, and bringing it into the present to enable us  
22 to be competitive, to benefit consumers, to benefit the  
23 environment through rulemakings and leadership like you, Mr.  
24 Chairman, and everyone else has provided here today.

25 So thank you again for your work and everyone's

1 effort on this.

2 CHAIRMAN WELLINGHOFF: Thank you very much, John.  
3 Commissioner LaFleur.

4 COMMISSIONER LaFLEUR: Thank you, Mr. Chairman.

5 I too would like to thank the entire team for  
6 their tremendous work on this Rule. I would also like to  
7 thank my own wonderful team of advisers and all our  
8 colleagues on the 11th Floor.

9 Finally, I would like to thank my husband for  
10 giving me these transmission towers for Christmas last year.

11 (Laughter.)

12 COMMISSIONER LaFLEUR: And for providing a prop.  
13 I won't even comment what kind of a geek is happy to get  
14 transmission towers for a Christmas gift.

15 (Laughter.)

16 COMMISSIONER LaFLEUR: I will just add a few  
17 thoughts to the observations of my colleagues, and I will  
18 post a slightly fuller statement online.

19 As I've frequently observed, I believe that our  
20 Nation has historically under-invested in electric  
21 transmission, particularly high-voltage interstate  
22 transmission. An important precursor to building  
23 transmission is determining what will be built, who will  
24 build it, and who will pay for it, the subjects we address  
25 today in the final rule.

1           New transmission is needed for at least three  
2 reasons:

3           First, to strengthen reliability. The primary  
4 obligation of the electric industry and the primary  
5 obligation of those of us who regulate it is to keep the  
6 lights on.

7           Second, new transmission is needed to make  
8 markets work and reduce costs to customers.

9           Finally, transmission is needed to connect new  
10 energy resources, including those needed to satisfy state  
11 and federal public policy requirements.

12           Today the Commission acts to ensure that  
13 transmission providers meet our Nation's transmission needs  
14 with the most efficient and cost-effective solutions  
15 available. The reforms required by the Final Rule are  
16 consistent with our statutory responsibility to ensure just,  
17 reasonable, and nondiscriminatory rates; and consistent with  
18 judiciary precedent, including the requirement that any  
19 costs allocated be at least roughly commensurate with  
20 benefits.

21           For me one of the most difficult decisions in the  
22 Final Rule was the decision to curtail the federal right-of-  
23 first-refusal for transmission projects. And in considering  
24 the fate of the ROFR over the last few months, I couldn't  
25 help but be struck by the fact that, while the Commission

1 was wrestling with rights-of-first-refusal, the NFL was  
2 wrestling with rights-of-first-refusal for football players.  
3 That was in the sports pages. And I understand that, like  
4 us, the NFL is going to take a vote on their ROFR solution  
5 today, and I wouldn't like to have a fall without football,  
6 so I'm happy about that.

7 But on a much more serious note, after much  
8 careful thought I support our decision today to eliminate  
9 the right-of-first-refusal for regional transmission  
10 projects. It is imperative that we invest in the right  
11 transmission for customers, for putting up facilities that  
12 will last for decades into the future. Allowing both  
13 incumbents and nonincumbents the ability to propose projects  
14 will help make that happen.

15 I note that the Final Rule opens up the planning  
16 process, but rejects the proposed structure in the NOPR that  
17 would have guaranteed project sponsors retain project rights  
18 for a defined period of time. That was widely viewed as  
19 unworkable by commenters, and we heard you.

20 One critical issue is reconciling the benefits to  
21 customers from competition in transmission with the need to  
22 ensure that incumbents can meet their core reliability  
23 obligations to customers. The Final Rule seeks to protect  
24 that reliability obligation in three ways:

25 First, the Final Rule does not eliminate any

1 rights-of-first-refusal for upgrades to existing  
2 transmission facilities or on existing rights of way, or for  
3 facilities that are not selected in a regional transmission  
4 plan for cost allocation.

5 Second, incumbents may submit projects, including  
6 those located entirely within retail distribution service  
7 territory, for consideration in the regional plan for  
8 purposes of cost allocation if they have regional benefits,  
9 and may highlight their unique strengths and experience in  
10 support of those projects.

11 Finally, and very importantly, the Final Rule  
12 requires adoption of a backstop mechanism to ensure that  
13 delays in the development of a regional facility will not  
14 prevent incumbents from complying with reliability and  
15 service obligations. Specifically, the Final Rule requires  
16 each transmission provider to amend its Open Access  
17 Transmission Tariff to require re-evaluation of the regional  
18 transmission plan to determine if delays in the development  
19 of a transmission facility require the evaluation of  
20 alternative solutions, including those proposed by  
21 incumbents, to ensure that incumbents can meet reliability  
22 and service obligations.

23 As my colleagues have observed, there is still  
24 much work to be done on compliance. The Final Rule sets out  
25 general principles and gives transmission providers and

1 regional planners considerable discretion in how to satisfy  
2 them. I am pleased that Commission staff will hold  
3 informational conferences to help entities on compliance,  
4 and my staff and I will do so as well.

5 Finally, I do think it is important to note that  
6 the Final Rule does not write on a blank slate. I remember  
7 very well standing at a printer watching Order No. 888 print  
8 off, page by page, and wondering what it said, and how  
9 profound it was going to be. I feel honored to be part of  
10 the Commission as we build on the important requirements of  
11 Orders 888 and 890, and on the hard work of transmission  
12 providers across the country.

13 Thank you.

14 CHAIRMAN WELLINGHOFF: Thank you, Cheryl.

15 Colleagues?

16 (No response.)

17 CHAIRMAN WELLINGHOFF: Nat, I think we are ready  
18 to vote.

19 DEPUTY SECRETARY DAVIS: All right, we will now  
20 take a vote on this item, beginning Commissioner LaFleur.

21 COMMISSIONER LaFLEUR: I vote aye.

22 DEPUTY SECRETARY DAVIS: Commissioner Norris.

23 COMMISSIONER NORRIS: Aye.

24 DEPUTY SECRETARY DAVIS: Commissioner Moeller.

25 COMMISSIONER MOELLER: Noting my partial dissent,

1 I vote aye.

2 DEPUTY SECRETARY DAVIS: Commissioner Spitzer.

3 COMMISSIONER SPITZER: Votes aye.

4 DEPUTY SECRETARY DAVIS: And Chairman  
5 Wellinghoff.

6 CHAIRMAN WELLINGHOFF: I vote aye.

7 Thank you all. And I've got one more matter  
8 before we adjourn. I want to recognize and thank our  
9 potential future FERC employees, our intern class. If we  
10 could have our intern class for the summer stand up, please.

11 (Interns stand.)

12 CHAIRMAN WELLINGHOFF: Thank you all for the work  
13 you have done for us.

14 (Applause.)

15 CHAIRMAN WELLINGHOFF: And with that, this  
16 meeting is adjourned. Thank you.

17 (Whereupon, at 11:40 a.m., Thursday, July 21,  
18 2011, the 972nd open meeting of the FERC Commissioners was  
19 adjourned.)

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