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Before the
FEDERAL ENERGY REGULATORY COMMISSION
1006th Commission Meeting
Thursday, June 19, 2014
Hearing room 2C
888 First Street, N.E.
Washington, D.C.20426

The Commission met in open session, pursuant to
notice, at 10:17 a.m., when were present:

COMMISSIONERS:

- CHERYL A. LaFLEUR, Acting Chairwoman
- PHILIP MOELLER, Commissioner
- JOHN NORRIS, Commissioner
- TONY CLARK, Commissioner

FERC STAFF:

- KIMBERLY D. BOSE, Secretary
- JEFF WRIGHT, Director, OEP
- MICHAEL McLAUGHLIN, Director, OEMR
- MICHAEL BARDEE, Director, OER
- JOSEPH McCLELLAND, Director, OEIS
- DAVID MORENOFF, Acting General Counsel
- JAMIE SIMLER, Director, OEPI
- NORMAN BAY, Director, OE

1 Discussion Items:

2 E-4 & E-5:

3 PRESENTERS:

4 JENNIFER SHIPLEY, OEMR and

5 BETHANY DUKES, OGC

6 ACCOMPANIED BY: POLO SOTO, OEPI

7 PATRICIA SCHAUB, OE

8 BAHRAM BARAZESH, OER

9 E-6:

10 PRESENTERS:

11 BYRON CORUM, OEMR

12 ACCOMPANIED BY:

13 JOE CHOLKA, OEMR

14 DEBRA IRWIN, OEMR

15 JAMIE CHABINSKY, OGC

16 CAROL JOHNSON, OGC

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1 Discussion Items (Continued):

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3 E-7, E-8, E-9, E-10, E-11, E-12 & E-24:

4 PRESENTERS:

5 NICHOLAS GLADD, OGC

6 ACCOMPANIED BY:

7 SUSANNA EHRLICH, OGC

8 LARRY GREENFIELD, OGC

9 RICHARD HOWE, OGC

10 REBECCA BLITSTEIN, OGC

11 SCOTT EVERNHAM, OEMR

12 DAN NOWAK, OEMR

13 A-3:

14 PRESENTERS:

15 MARY CAIN, OEP

16 ACCOMPANIED BY:

17 EMMA NICHOLSON, OEPI

18 BOB HELLRICH-DAWSON, OEPI

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23 COURT REPORTER: Jane W. Beach, Ace-Federal Reporters, Inc.

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P R O C E E D I N G S

(10:17 a.m.)

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3 ACTING CHAIRWOMAN LaFLEUR: Well good morning,
4 everyone. Sorry to get started a little late.

5 This is the time, almost, and the place that's
6 been noticed for the open meeting of the Federal Energy
7 Regulatory Commission to consider matters that duly posted
8 in accordance with the Government in the Sunshine Act--and I
9 forgot to do this [banging the gavel].

10 Okay, please join us in the Pledge of Allegiance.

11 (Pledge of Allegiance recited.)

12 ACTING CHAIRWOMAN LaFLEUR: Well it has been
13 another busy month here at FERC, it seems like in several
14 respects, including that we issued 77 Notational Orders
15 since the May Open Meeting.

16 I have a couple of administrative announcements
17 this morning. First, I want to take a couple of minutes to
18 acknowledge that we have with us, at least in part, in the
19 room our summer 2014 intern class. We had a very small
20 group last year because of the sequestration and all that.
21 We are happy to be able to resume our intern program this
22 year. We have 30 interns from 29 different colleges and
23 universities across 16 states. And they are working in 7
24 offices across FERC.

25 We hope that will give them a good experience

1 and, most of all, incentivize them to come and make their
2 life in the energy field.

3 I want to specifically call out Joe LoPresti who
4 is an intern in my office this summer, who is at Princeton
5 University joining us, subsidized by the Princeton
6 Internships In Civic Service Program.

7 So I would like to ask all the interns in the
8 room to stand and be recognized.

9 (Interns stand.)

10 (Applause.)

11 ACTING CHAIRWOMAN LaFLEUR:

12 The Chairman. Thank you.

13 Next I want to say that a couple of days ago, on
14 Monday, June 16th, the Commission launched a new home page
15 for its website. What we tried to do--I know change is hard
16 in any kind of web thing, but we tried to put the things
17 that are most frequently clicked on more accessible, closer
18 to when you first get on the website, and give greater
19 prominence to things that change--like the schedule, and so
20 forth, as opposed to things that are static.

21 So we hope you will find it easier to find what
22 you are looking for, and we want to thank Diane Bernier,
23 Jeneane Said, and Judy Eastwood, who worked on the redesign.

24 While we are talking about the website, just
25 posted this morning is the quarterly gas-electric update,

1 which I commend to your attention.

2 Finally, before we turn to the agenda, I want to
3 take a moment to recognize a Commission employee who will be
4 retiring, unfortunately, shortly from the Commission:

5 Lauren O'Donnell.

6 Lauren started her career at FERC in 1979 as a
7 staff geologist in the Pipeline office, and after 35 years
8 in many positions--we have a long agenda, so I won't list
9 them all--she is now the Division Director in the Office of
10 Energy Projects, Gas, Environment, and Engineering.

11 Among the things that she has accomplished, she
12 established the first Gas Outreach Program for the
13 Commission between 2000 and 2004; presided at stakeholder
14 workshops across the country speaking to agencies, industry,
15 property owners, Tribes, and environmental groups.

16 She helped set up the pre-filing process that we
17 now rely on for all of our gas pipeline work. And she has
18 been a leader in recruiting and developing talent to take
19 the Commission forward, and really leave her area a better
20 place than when she came.

21 So for all of that, I would like to call Lauren
22 forward to accept The Chairman's Exemplar of Public Service
23 [Award].

24 (Applause and standing ovation.)

25 ACTING CHAIRWOMAN LaFLEUR: Turning to the

1 agenda, we have a rather heavy agenda this morning. You pay
2 the same whether you go to a short movie or a long movie.

3 (Laughter.)

4 ACTING CHAIRWOMAN LaFLEUR: So today you get to
5 see a longer feature. I want to thank my colleagues and all
6 their advisors and all the staff for all the work that went
7 into the Orders that we are voting out today.

8 Before I turn to my colleagues, we have several
9 items on the discussion agenda, but I just want to highlight
10 a couple that are not on the discussion agenda that I think
11 are significant.

12 We are issuing Orders finalizing three more
13 reliability standards, including a new GMD standard on
14 operating procedures, which was done quite promptly in
15 response to our requirement. And an Order on the Cameron
16 LNG facility. The Order No. 1000 compliance filing for much
17 of the Southeast. And several hydro matters, including a
18 really interesting pump storage that uses abandoned mines,
19 which I guess is a new phenomenon in pump storage, rather
20 than reservoirs.

21 So I just wanted to call out those cases before
22 we turn to the others.

23 Colleagues, opening remarks?

24 COMMISSIONER CLARK: Madam Chair, thanks. Good
25 morning, and welcome. The only thing I was going to point

1 out, I think I made history this last month here, so I am
2 going to talk it up.

3 (Laughter.)

4 COMMISSIONER CLARK: I believe I am now the FERC
5 Commissioner to have an official FERC Twitter account, which
6 I know is rather exciting for all of you in the audience.

7 (Laughter.)

8 COMMISSIONER CLARK: So I looked up the stats.
9 Apparently FERC as an agency has, as of this morning, 6,492
10 followers. I was curious what other regulatory
11 commissioners across the Federal Government have. Ashed Pia
12 at the FCC has 4,057. As of this morning, I have 181.

13 (Laughter.)

14 COMMISSIONER CLARK: So--

15 ACTING CHAIRWOMAN LaFLEUR: So far.

16 COMMISSIONER CLARK: --there's upward mobility,
17 which is the upside. The downside is I have so few that if
18 any of you join me at tonyclarkferc--

19 (Laughter.)

20 COMMISSIONER CLARK: --I'll know if you drop me
21 later.

22 (Laughter.)

23 COMMISSIONER CLARK: So thank you.

24 COMMISSIONER MOELLER: Well I do want to note
25 that I do have a Twitter account, but I have never Tweeted,

1 and I have a total of 3 followers.

2 (Laughter.)

3 ACTING CHAIRWOMAN LaFLEUR: Okay, Madam

4 Secretary, we will move to the Consent Agenda.

5 SECRETARY BOSE: Good morning, Madam Chairman;

6 good morning, Commissioners:

7 Since the issuance of the Sunshine Act notice on
8 June 12th, 2014, Item E-16 has been struck from this
9 morning's agenda. Your Consent Agenda for this morning is
10 as follows:

11 Electric Items: E-3, E-17, E-18, E-19, E-20,
12 E-21, E-22, E-23, E-25, and E-26.

13 Miscellaneous Items: M-1.

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

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

17 Certificate Items: C-1, C-2, and C-3.

18 As to E-3, Commissioner Norris is dissenting in
19 part with a separate statement. As to E-7, Commissioner
20 Norris is dissenting in part with a separate statement.

21 With the exception of E-7 where a vote will be
22 taken after the discussion and presentation of that item
23 later in the meeting, we will now take a vote on this
24 morning's Consent Agenda.

25 And the vote begins with Commissioner Clark.

1 COMMISSIONER CLARK: I vote yes.

2 SECRETARY BOSE: Commissioner Norris.

3 COMMISSIONER NORRIS: Noting my partial dissent
4 on E-3, I vote yes.

5 SECRETARY BOSE: And E-7?

6 COMMISSIONER NORRIS: And also, yes, and E-7,
7 yes.

8 SECRETARY BOSE: Thank you. Commissioner
9 Moeller?

10 COMMISSIONER MOELLER: Aye.

11 SECRETARY BOSE: And Chairman LaFleur.

12 ACTING CHAIRWOMAN LaFLEUR: Aye.

13 SECRETARY BOSE: The first item?

14 ACTING CHAIRWOMAN LaFLEUR: Thank you. Go to the
15 Discussion Agenda.

16 SECRETARY BOSE: Thank you. The first item for
17 discussion this morning will be a joint presentation on
18 Items E-4 and E-5 concerning the California Independent
19 System Operator Corporation in Docket No. ER14-1386-000, and
20 PacifiCorp Docket No. ER14-1578-000, respectively.

21 There will be a presentation by Jennifer Shipley
22 from the Office of Energy Market Regulation, and Bethany
23 Dukes from the Office of the General Counsel. They are
24 accompanied by Polo Soto from the Office of Energy Policy
25 and Innovation; Patricia Schaub from the Office of

1 Enforcement; and Bahram Barazesh from the Office of Electric
2 Reliability.

3 MS. SHIPLEY: Thank you.

4 Good morning, Acting Chairman and Commissioners.
5 Besides those sitting with me at the table, I would like to
6 recognize the rest of the team that worked on the EIM Tariff
7 filings. If those present could please stand: Laura
8 Switzer, Dave Reesh, Saeed Farrokhpay, Monica Taba, Maury
9 Kruth, Leslie Kerr, Brian Bak, Bahaa Seireg, Thanh Luong,
10 and Brandon Wozniak.

11 E-4 is a draft order conditionally accepting
12 proposed revisions to the tariff filed by the California
13 Independent System Operator Corporation, or CAISO, to
14 provide market participants in other balancing authority
15 areas the opportunity to participate in the real-time market
16 that CAISO currently operates in its own balancing authority
17 area.

18 Under this proposal, entities outside CAISO may
19 sign service agreements that allow them to participate in
20 CAISO's real-time market to satisfy their imbalance energy
21 obligations.

22 Participation in the EIM is voluntary, and there
23 is no exit fee for leaving the market. As proposed, CAISO
24 would not assume operational control over the transmission
25 facilities. Moreover, CAISO and any EIM entities such as

1 PacifiCorp will each retain their current NERC-registered
2 reliability obligations.

3 The draft order largely accepts CAISO's proposed
4 tariff revisions, but requires certain modifications to the
5 proposal.

6 For example, the draft order rejects CAISO's
7 proposal to vest its Board of Governors with discretion as
8 to whether market power mitigation at the interties is
9 implemented in the future.

10 The draft order finds that real-time local market
11 power mitigation on EIM interties affects clearing prices in
12 the EIM, and whether or not such mitigation is implemented
13 should be subject to Commission review and approval.

14 The draft order also directs CAISO to make
15 informational filings regarding the presence of structural
16 market power in PacifiCorp's balancing authority areas due
17 to intertie transmission limits.

18 In addition, while the draft order accepts
19 CAISO's proposal to permit each EIM participating resource
20 to include a separate bid adder--bid component to cover
21 California's greenhouse gas, or GHG, regulation costs, the
22 draft order directs CAISO to submit a future compliance
23 filing.

24 The draft order would--and actually I guess since
25 you voted, it's no longer a "draft order,"--the Order

1 requires CAISO a cost-based GHG bid adder and a specific
2 mechanism, or flag, that would allow participating EIM
3 resources to preclude themselves from being dispatched to
4 serve imbalances in the CAISO balancing area.

5 I now turn the presentation over to Bethany Dukes
6 who will discuss E-5.

7 MS. DUKES: E-5 is an order conditionally
8 accepting in part and rejecting in part proposed tariff
9 revisions filed by PacifiCorp in order for PacifiCorp to
10 participate in the EIM being created by CAISO.

11 PacifiCorp's proposed tariff revisions are
12 intended to work in parallel with the tariff revisions
13 proposed by CAISO, and conditionally accepted by the order
14 in Item E-4. PacifiCorp operates two balancing authority
15 areas, PacifiCorp West and PacifiCorp East. As proposed,
16 both would be the initial participants in the EIM.

17 The proposed tariff amendments include a new
18 Attachment T, which covers the roles and responsibilities of
19 PacifiCorp and its customers under the EIM, and revisions to
20 Schedule 1 to allocate EIM-related administrative costs
21 charged by CAISO.

22 The order accepts the proposed tariff amendments,
23 in part, subject to conditions, and rejects certain
24 components of the proposal.

25 Under PacifiCorp's proposal, PacifiCorp's

1 transmission customers can elect to bid into the EIM or
2 continue to serve their load as they do today--either
3 through self-supply of generation, or bilateral energy
4 purchases.

5 While transmission and generator interconnection
6 customers who do not participate in the EIM will continue to
7 take service under Schedules 4 and 9 of PacifiCorp's tariff,
8 PacifiCorp proposes to use the locational marginal prices
9 resulting from the EIM to settle Schedule 4 and 9 imbalance
10 for those customers.

11 The order accepts this proposed pricing structure
12 as just and reasonable, and an accurate reflection of
13 PacifiCorp's costs of providing imbalance service.

14 The draft order also conditionally accepts
15 PacifiCorp's proposal to facilitate EIM transfers between
16 its balancing authority areas and CAISO via firm
17 transmission rights voluntarily offered by transmission
18 customers, but rejects PacifiCorp's proposal to include the
19 requirements for scheduling and using these transmission
20 rights in a business practice manual.

21 The draft order finds that PacifiCorp's plan to
22 utilize firm transmission rights voluntarily offered by its
23 marketing division--and transmission customer--does not
24 appear to violate the pro forma Open Access Transmission
25 Tariff.

1 However, the order finds the details of the
2 voluntary transfer and of any such future transactions
3 affect the rates, terms, and conditions of Commission-
4 jurisdictional service and must therefore be included in the
5 filed tariff.

6 Finally, the draft order rejects PacifiCorp's
7 proposal to require that generating resources that are
8 internal to PacifiCorp's balancing authority areas must
9 secure transmission service from PacifiCorp, in excess of
10 any transmission service that they already reserve as a
11 PacifiCorp transmission customer, to participate in the EIM.

12 The draft order finds that this proposal would
13 result in a double charge to load located in PacifiCorp, and
14 is in conflict with the proposal by CAISO to use reciprocal
15 transmission rates for the EIM.

16 CAISO and PacifiCorp propose to commence
17 operation of the EIM on October 1, 2014.

18 This concludes our presentation. We are happy to
19 answer any questions you may have.

20 ACTING CHAIRWOMAN LaFLEUR: Well thank you,
21 Jennifer, and Bethany, and thank you to the whole team that
22 worked on this.

23 I think it is an exciting milestone because it is
24 an innovative proposal to allow a large region to get some
25 of the benefits of being in a market, in what has

1 traditionally been a bilateral market region of the country.
2 I think it has the potential to help customers by enhancing
3 reliability, allowing them to better handle all the growing
4 renewable resources, and ensuring more efficient dispatch.

5 In addition, it is scalable. We know NV Energy
6 is already looking at joining the EIM, and it is something
7 scalable for the region.

8 I know that before there's been a lot of--I've
9 gotten so many reports from Jennifer over the last couple of
10 years on this, but there was a study done on potential cost
11 savings for customers that could be achieved through
12 the EIM.

13 Could you tell us a little bit about the results
14 of the study? What are the expected savings?

15 MS. SHIPLEY: Yeah. They had actually
16 commissioned a study, and it found that overall there would
17 be potential benefits in the range from \$21 million to
18 \$129 million.

19 ACTING CHAIRWOMAN LaFLEUR: Annually?

20 MS. SHIPLEY: Yes, sorry, annually.

21 ACTING CHAIRWOMAN LaFLEUR: Thank you.

22 Commissioner Moeller, this is more in your area
23 of the country out there.

24 COMMISSIONER MOELLER: Well I appreciate that. I
25 want to commend all the parties that have worked so hard

1 over the last few years on this effort. Certainly CAISO and
2 PacifiCorp, and obviously the staff, and Jennifer has
3 obviously put a lot of time into it, along with your team.

4 This is, as you noted, Cheryl, about saving a lot
5 of money for consumers. Some would say that that study was
6 actually a little bit on the conservative side. In addition
7 to enhancing reliability and making sure that the variable
8 resources which are growing in the West are better managed
9 in a system that is somewhat challenging, given its shape,
10 the amount of size, the doughnut hole that we always deal
11 with in the West. This is all part of the effort to deliver
12 benefits to consumers.

13 I know we will be watching it very closely up
14 until it goes live in October, and afterwards. We obviously
15 want it to be successful, and again thank you to the wide
16 range of people who have worked on an effort to improve
17 consumers' ability to consume lower-priced energy and that
18 it will be more reliable. Congratulations.

19 ACTING CHAIRWOMAN LaFLEUR: Well thank you. I
20 purposely kept my remarks short to leave time, and you
21 thanked a lot of important people. Thank you.

22 Commissioner Norris?

23 COMMISSIONER NORRIS: Thank you. And I add my
24 thanks as well, Jennifer and the team, for your hard work on
25 this. I think it represents a real step forward towards a

1 more efficient and effective grid.

2 I also want to recognize--you [Commissioner
3 Moeller] started on this track, so I recognize also the
4 others in the West, the public utilities commission EIM
5 working group. They provided great leadership on this. A
6 number of individuals did a yeoman's job. I would call them
7 out for my congratulations, but that's usually because of
8 the future leadership in the West, so I will refrain from
9 that.

10 Also, the Northwest Power Pool members who have
11 been working hard to implement this Energy Imbalance Market
12 in the West. And as you have noted, the system is
13 dramatically changing in the West with the need for
14 integration of more and more wind and solar and intermittent
15 resources. It calls for change.

16 And with 38 balancing authorities independently
17 managing the grid and integration of these resources, this
18 creates the opportunity for a lot of inefficiencies that
19 we're moving forward on correcting today.

20 So this isn't an effort to push those 38
21 balancing authorities into an RTO West, but it is I think a
22 belief that the system can be operated more efficiently.
23 It's a great step forward. And I also think it invites
24 other folks, as you noted Acting Chair LaFleur, that more
25 people hopefully will join this as they see the benefits

1 this can provide for reliability and for consumers.

2 So I am just pleased that when I made my first
3 trip out West several years ago, and this was being
4 discussed, I was like, it's not going to happen in my
5 lifetime.

6 (Laughter.)

7 COMMISSIONER NORRIS: But PacifiCorp, and CAISO,
8 and those state commissioners that really pushed for this
9 because they recognized the benefits this can provide have
10 made great headway in overcoming obstacles and helping
11 people see the benefits to this.

12 So thank you for your effort to assist in that.

13 ACTING CHAIRWOMAN LaFLEUR: Thank you.

14 Commissioner Clark?

15 COMMISSIONER CLARK: And I would echo the
16 comments of all of my colleagues. This really is a step
17 forward, and thanks for all the work that the team has put
18 together, and all of the folks out West who have been
19 working so hard on it.

20 One issue that I just raise is something that was
21 mentioned in the staff presentation, which I think is at
22 least a little bit of a caution sign that we should at least
23 be aware of as we think about the West and how it is going
24 to operate into the future. It is not a criticism of this
25 Order at all, or of the EIM at all, because I think it is an

1 absolutely appropriate recognition. But it is the issue
2 that the staff had raised about this kind of two-step
3 process, as I understand it, that at least as initially as
4 the EIM opens there's going to be an ability to recognize
5 noncost adder in recognition of the California GHG
6 requirements, so that resources can choose to not
7 participate. And later on mechanisms will be developed to
8 effectively flag those resources so they don't participate
9 in the market and don't incur some of the regulatory and
10 bureaucracy burdens that those resources are concerned about
11 if they are implicated in the California GHG regime.

12 The mechanisms, while they are very important and
13 while I support them in terms of recognizing them in the
14 tariff, I do think they highlight the potential for things
15 like this, like the California GHG regulations, as they may
16 be being promulgated to restrain interstate trade in a way
17 that might deny some of the benefits of an EIM to citizens
18 of a particular state.

19 It can segment markets in ways that they maybe
20 otherwise would not be segmented, and limit the potential
21 resource diversity that might otherwise be available in a
22 broader regional market.

23 So it is not a criticism of the Order, but I
24 think it should be at least a little bit of a yield sign to
25 folks as we implement state-by-state policies and

1 potentially in an era of expanding EPA-GHG regulations, more
2 state-by-state policies coming forward as we see some of the
3 state implementation plans that will be implemented.

4 It shows the impact that can happen on broader
5 regional markets, if you're having to segment it because of
6 rules that divide state lines. So, anyway, thank you for
7 all your work and I look forward to seeing the EIM move
8 forward.

9 ACTING CHAIRWOMAN LaFLEUR: Well thank you very
10 much. I believe we're ready for the vote.

11 SECRETARY BOSE: And, Jennifer, you were correct
12 in calling it a "draft order" until now.

13 MS. SHIPLEY: Okay.

14 (Laughter.)

15 SECRETARY BOSE: We will vote on these items
16 jointly. The vote begins with Commissioner Clark.

17 COMMISSIONER CLARK: Aye.

18 SECRETARY BOSE: Commissioner Norris.

19 COMMISSIONER NORRIS: Aye.

20 SECRETARY BOSE: Commissioner Moeller.

21 COMMISSIONER MOELLER: Aye.

22 SECRETARY BOSE: And Chairman LaFleur.

23 ACTING CHAIRWOMAN LaFLEUR: Aye.

24 SECRETARY BOSE: The next item?

25 ACTING CHAIRWOMAN LaFLEUR: Thank you.

1 SECRETARY BOSE: For discussion and presentation
2 will be on Item E-6 concerning refinements to policies and
3 procedures for market-based rates for wholesale sales of
4 electric energy, capacity, and ancillary services for public
5 utilities.

6 There will be a presentation by Byron Corum from
7 the Office of Energy Market Regulation. He is accompanied
8 by Joe Cholka and Debra Irwin from the Office of Energy
9 Market Regulation. And Jamie Chabinsky and Carol Johnson
10 from the Office of the General Counsel.

11 MR. CORUM: Good morning, Acting Chairman LaFleur
12 and Commissioners:

13 E-6 is a draft Notice of Proposed Rulemaking
14 proposing to revise some of the Commission's regulations
15 governing the market-based rate authorization for wholesale
16 sales of electric energy, capacity, and ancillary services
17 by public utilities.

18 In 2007, the Commission issued Order No. 697
19 which codified the market-based rate regulations. Since
20 that time, the Commission has processed numerous market-
21 based rate filings and has determined that in some
22 circumstances the regulatory burdens may outweigh the
23 benefits.

24 The draft NOPR proposes certain clarifications
25 and changes to the Commission's market-based rate program in

1 order to enhance and improve the processes and procedures.
2 The clarifications and changes proposed in the draft NOPR
3 primarily concern what information market-based rate sellers
4 report to the Commission, and now they report it.

5 The proposals are intended to ease regulatory
6 burdens while continuing to ensure that the standards for
7 market-based rate sales of electric energy, capacity, and
8 ancillary services result in sales that are just and
9 reasonable.

10 Typically, a market-based rate filing consists of
11 a new request for market-based rate authorization, an
12 updated market power analysis, or a notice of change in
13 status.

14 The Commission, when analyzing these filings,
15 considers whether the seller and its affiliates have, or
16 have adequately mitigated, horizontal and vertical market
17 power.

18 To assess horizontal market power, the Commission
19 utilizes two indicative screens: the pivotal supplier
20 screen; and the wholesale market share screen.

21 The draft NOPR proposes to reduce burden by
22 allowing sellers in regional transmission organization or
23 independent system operator markets to address horizontal
24 market power in a streamlined manner that would not involve
25 the submission of the indicative screens if the seller

1 relies on Commission-approved monitoring and mitigation to
2 prevent the exercise of market power.

3 Additionally, the draft NOPR clarifies that where
4 all generation capacity owned or controlled by sellers and
5 their affiliates in the relevant balancing authority area--
6 including first-tier balancing authority areas or markets--
7 is fully committed, sellers may explain that their capacity
8 is fully committed in lieu of submitting indicative screens
9 as part of their horizontal market power analysis.

10 The draft NOPR also proposes to reduce burden
11 with respect to vertical market power by removing the
12 requirement that market-based rate sellers file quarterly
13 land acquisition reports and provide information on their
14 control of sites for development of new generation
15 capacity.

16 Additionally, the draft NOPR proposes several
17 other changes to the reporting requirements. For example,
18 it proposes to redefine the default relevant geographic
19 market used to analyze market power for an independent power
20 producer with generation capacity located in a generation-
21 only balancing authority area.

22 The draft NOPR also proposes certain changes for
23 preparing and submitting the indicative screens, asset
24 appendices, and SIL submittals required for certain market-
25 based rate filings.

1 For example, the draft NOPR proposes to add rows
2 to the indicative screens so that the screens will include
3 information about a seller's remote generation capacity.
4 The draft NOPR further proposes to require that the
5 indicative screens and asset appendices be filed in a
6 workable electronic spreadsheet format.

7 The draft NOPR also proposes that sellers report
8 long-term firm purchases of capacity and/or energy in their
9 indicative screens and asset appendices if the seller has an
10 associated long-term firm transmission reservation.

11 Finally, the draft NOPR proposes other
12 refinements and clarifications to the market-based rate
13 program. These include a 100 megawatt threshold for
14 reporting new affiliations and clarifying the distinction in
15 determining the seller category status for power producers
16 and power marketers.

17 This concludes the presentation on E-6. Thank
18 you, and the team would be happy to answer any questions.

19 ACTING CHAIRWOMAN LaFLEUR: Well thank you so
20 much, Byron and team. As you will all find, if you go to
21 read this, this is a very dense and detailed Order. I mean,
22 the team really did an awesome job going through years of
23 MBR filings and looking at what are the things that are
24 working, or not working, and that can be tweaked to make
25 them better, and put a lot into this proposed new rule.

1 And we really hope we get a lot of comment on it
2 from the people who are making the filings and looking at
3 the screens and to see whether we got it right.

4 As regulators, one of our jobs is to be alert to
5 trends that we see, and if we vote out long order after long
6 order reaching the same result and applying the same tests
7 and never finding any variance in the outcome, we have to
8 say is this adding value? Can we do this in a better way?

9 And I think this draft order is an example of
10 that. Hopefully it will streamline the process. It's
11 really not intended to change the bar whether people get MBR
12 or not, we're trying to still assure just and reasonable
13 rates but in a more streamlined way for us and for the
14 people who participate.

15 I am interested if--I'm always interested in the
16 numbers--if the team could explain how many market-based
17 rate applications and triennials we have approved in the last
18 six years? I know you spent a lot of time going through
19 them.

20 MS. IRWIN: Yes, we can answer that question.
21 With regard to initial applications, during the past six
22 years the Commission has approved approximately 1,000
23 applications for market-based rates. And when we look at
24 the trend over that same time period, we found that on
25 average the number of applications processed each year has

1 increased by about 33 percent annually.

2 MR. CHOLKA: And in terms of triennials, which is
3 our Category 2 sellers, which they file every three years,
4 it was about 250 filed in the last year; and about 66
5 percent of those studied the RTOs. There's also the change-
6 in-status filings, but I don't have those numbers with me.
7 I can supply them later, if you'd like.

8 ACTING CHAIRWOMAN LaFLEUR: Well thank you. I
9 mean this is obviously a pretty high-volume part of our
10 operation. It seems like I've voted out a lot of MBR
11 orders, and with the change in the EVISTA policy and we see
12 more people trying to get MBR authority for ancillary
13 services in the West, which they need related to our last
14 discussion of balancing variable energy in the West, we will
15 see more and more I expect.

16 So thank you very much, and I will turn it over
17 to Commissioner Moeller.

18 COMMISSIONER MOELLER: Thank you, Cheryl. I too
19 thank the team, and it does seem like we've voted on 1,000
20 of those over the last few years.

21 (Laughter.)

22 COMMISSIONER MOELLER: But obviously I commend
23 this to the public to comment on. We will look forward to
24 these comments. But this is I think an exercise in good
25 government, and what government actually should do a lot

1 more of, which is: you put a policy in place. After a few
2 years, let's take a look at it and see what's working, where
3 it needs to be tweaked, where the regulatory burdens can be
4 lessened where it makes sense, changed where it makes sense.
5 And although it may not be the most glamorous order that we
6 vote out either this year or today, this is good government
7 and I look forward, again, to the comments that will be
8 submitted to the NOPR.

9 COMMISSIONER NORRIS: Thanks. I couldn't agree
10 more. This is a great example of government. We continue
11 to push the energy industry to be more efficient, and look
12 for innovative ways to make changes. This is government
13 looking at our system and finding ways to reduce
14 administrative burdens that ultimately benefits the
15 consumers and the economy in general.

16 So, yes, it's not sexy but it's darned important.
17 So thanks for doing it.

18 ACTING CHAIRWOMAN LaFLEUR: Thank you.
19 Commissioner Clark?

20 COMMISSIONER CLARK: I concur with my colleagues.
21 Thanks to the team for your efforts, and I look forward to
22 hearing from industry and other interested stakeholders as
23 they comment on the proposal.

24 ACTING CHAIRWOMAN LaFLEUR: Well thank you, very
25 much.

1 Madam Secretary?

2 SECRETARY BOSE: We will now take a vote on this
3 item, and the vote begins with Commissioner Clark.

4 COMMISSIONER CLARK: Aye.

5 SECRETARY BOSE: Commissioner Norris?

6 COMMISSIONER NORRIS: Aye.

7 SECRETARY BOSE: Commissioner Moeller?

8 COMMISSIONER MOELLER: Aye.

9 SECRETARY BOSE: And Chairman LaFleur.

10 ACTING CHAIRWOMAN LaFLEUR: Aye. Thank you.

11 SECRETARY BOSE: The next item for discussion and
12 joint presentation will be on Items E-7, E-8, E-9, E-10,
13 E-11, E-12, and E-24, concerning matters regarding Return on
14 Equity. There will be a presentation by Nicholas Gladd from
15 the Office of the General Counsel. He is accompanied by
16 Scott Everngam from the Office of Energy Market Regulation;
17 Larry Greenfield and Richard Howe from the Office of the
18 General Counsel; Dan Nowak from the Office of Energy Market
19 Regulation; and Susan Ehrlich and Rebecca Blitstein from the
20 Office of the General Counsel.

21 MR. GLADD: Good morning, Madam Chairman and
22 Commissioners:

23 E-7 is a draft order affirming in part and
24 reversing in part an Initial Decision concerning the New
25 England Transmission Owners' base return on equity as

1 provided for in the ISO New England tariff.

2 The draft order changes the Commission's approach
3 to determining the base return on equity for public
4 utilities, applies this approach to the facts of this
5 proceeding, and institutes a paper hearing to allow the
6 participants an opportunity to submit evidence on a limited
7 issue concerning the application of this approach in this
8 proceeding.

9 Historically in public utility rate cases, the
10 Commission has used a one-step discounted cash flow
11 methodology to determine a public utility's base return on
12 equity.

13 The draft order changes the Commission's approach
14 by adopting for public utilities the two-step discounted
15 cash flow methodology that the Commission uses to determine
16 the return on equity for natural gas pipelines and oil
17 pipelines.

18 The difference between the one-step and two-step
19 discounted cash flow methodologies is that the one-step
20 methodology relies on short-term growth rates, whereas the
21 two-step methodology incorporates both a short-term and a
22 long-term growth rate estimate.

23 In natural gas and oil pipeline cases, the
24 Commission uses gross domestic product, or GDP, as the long-
25 term growth rate estimate.

1 The draft order applies the two-step discounted
2 cash flow methodology to this proceeding, tentatively using
3 GDP as the long-term growth rate estimate, but directs a
4 paper hearing to allow participants to present evidence on
5 the appropriate long-term growth rate to use in applying the
6 two-step discounted cash flow methodology in this case.

7 Further, while the Commission typically places
8 the base return on equity at the central tendency of the
9 zone of reasonableness produced by a discounted cash flow
10 analysis, the draft order finds, based on the record in this
11 proceeding--including the existence of unusual capital
12 market conditions--that placement of the base return on
13 equity halfway between the midpoint of the zone of
14 reasonableness and the top of that zone results in a just
15 and reasonable rate.

16 Applying this analysis, and subject to the long-
17 term growth rate set for hearing, the draft order
18 tentatively finds that a just and reasonable base return on
19 equity for the New England Transmission Owners is 10.57
20 percent.

21 The draft order also eliminates the Commission's
22 past practice of using U.S. Treasury bond yields to make a
23 final adjustment to a public utility's base return on equity
24 to reflect changes in capital market conditions after the
25 close of the record in a hearing proceeding.

1 The draft order explains that there is not
2 necessarily a lone-to-one correlation between U.S. Treasury
3 bond yields and public utility returns on equity.

4 The draft order, instead, allows participants in
5 a rate case to present at their hearing the most recent
6 financial data available at the time of the hearing,
7 including post-test period financial data then available.

8 This approach ensures that all participants have
9 an opportunity to present evidence and arguments concerning
10 the financial data used to determine the public utility's
11 return on equity, while allowing the return on equity to be
12 based on the most recent financial data available at the
13 time of the hearing, consistent with the due process rights
14 of the participants.

15 Finally, the draft order indicates that a
16 utility's total ROE will still be capped at the upper end of
17 the revised zone.

18 Items E-8, E-9, E-10, E-11, and E-12 are draft
19 orders setting for hearing and settlement judge procedures
20 other complaints challenging public utilities' base return
21 on equity. Those draft orders indicate that the Commission
22 expects the evidence and any DCF analyses presented by the
23 participants in these other proceedings be guided by our
24 decision in E-7.

25 Item E-24 is a draft order reversing a prior

1 Commission decision on remand from the United States Court
2 of Appeals for the D.C. Circuit involving an Order in which
3 the Commission made a U.S. Treasury bond-based post-hearing
4 adjustment to Southern California Edison Company's return on
5 equity.

6 As in E-7, the draft order in E-24 explains that
7 the Commission is changing its practice in public utility
8 cases to no longer make post-hearing adjustments to the
9 return on equity based on changes in U.S. Treasury bond
10 yields.

11 Accordingly, the draft order reverses the
12 Commission's previous decision to make such an adjustment to
13 Southern California Edison Company's return on equity.

14 Thank you. We are happy to answer any questions
15 you might have.

16 ACTING CHAIRWOMAN LaFLEUR: Well thank you, very
17 much, to all of you. I think this is an important Order.
18 We are sitting here in the middle of--well, it's not the
19 middle of summer even though it feels like the middle of
20 summer--but it is summer. And back in the fall and winter I
21 think each of my colleagues individually publicly emphasized
22 the importance of our putting our shoulder to the wheel and
23 working on these cases.

24 When I became Acting Chairman, I said it was a
25 very high priority to see if we could work on this body of

1 cases. The goals that I established at that time were that
2 any resolution had to be fair both to customers and
3 investors; any changes be principled and sustainable; and
4 that whatever we do represents a consensus of the
5 Commission.

6 While we did not achieve unanimous agreement on
7 all points--we did on most points--and I believe we have met
8 those goals.

9 Back around Christmas time, I asked each of my
10 Commissioners to contribute one of their hardworking
11 advisors, on top of everything else, to serve on a team to
12 see if we could reach consensus on this. And I will let
13 them thank their own, but I do want to call out Kurt Longo
14 from my office who has spent a tremendous amount of time on
15 this in the last seven months.

16 And all the people at the table, but especially
17 Martin Kirkwood for this leadership. And you don't change
18 precedent unless you really understand what it was before.
19 So we called on the so-called "Three Wise Men," Richard
20 Howe, Larry Greenfield, and Dan Nowak, to make sure that we
21 really understood DCF, because it is not something we do
22 lightly, to change something that has been done since 2000.

23 What today's Order does is adopts a revised
24 methodology for determining the ROE for Commission
25 jurisdictional electric utilities. And what we tried to do,

1 with the help of all of you and many others--it takes a
2 village--was really to make sure we were considering the
3 consumer interest as well as the need for investment
4 certainty, to try to achieve both of those.

5 And I am going to post a statement, but I just
6 want to make a couple of comments. I think that the revised
7 DCF methodology is really good for customers, because it
8 narrows the zone of reasonableness and will help us get away
9 from this system we've been in where we have to look at, in
10 one case, ROEs from 6 to 17 and figure out where we are in
11 the zone, and whether they're the right proxies, and
12 different ROEs for different companies--you know, high and
13 low.

14 This will hopefully cap ROEs to a narrower zone,
15 which will mean that for some people who have had high
16 incentives, high ROE incentives, will bring you down to the
17 top of the zone, but I think that is appropriate and gives a
18 much more stable and predictable, hopefully, outcome through
19 a methodology that has worked very well for the gas and oil
20 cases we have done for a long time.

21 In 2000 when the Commission looked at this
22 before, they didn't feel that the electric structure was
23 mature enough and stable enough with the new markets to go
24 to this system, but we've made the decision as a group that
25 we are now.

1 And in addition, where we eliminate the practice
2 of post-hearing adjustments, it allows the ROE to be
3 reflective of the most recent financial data on the record
4 in the hearing as we did in this one case that had been
5 through hearing, and provide all parties the opportunity to
6 present evidence and argument on those appropriate financial
7 data.

8 I think where we really tried to make sure that
9 the Order, when we applied the new methodology, still
10 provided a just and reasonable return on investment with so
11 much transmission that we need in the country, was in our
12 decision to reflect the anomalous capital market conditions
13 and interest rates that we have been seeing. And it is
14 something we struggled with a great deal:

15 What is the best way to reflect those anomalous
16 conditions? And I think we ultimately chose a very honest
17 and a transparent way to do that, to directly apply our
18 precedent in Hope and Bluefield. And in this case, on the
19 record we had in this case, allow an ROE in the upper end of
20 the new tighter range. And that will be looked at in other
21 cases based on the record in that case.

22 I am hopeful that this case provides appropriate
23 guidance so the big backlog of cases can begin to work
24 toward resolution.

25 I just want to say, you know, I say all the time,

1 I tell my staff till they glaze over when I say the words,
2 that we're going through a big change in resource mix in the
3 country, with all the growth in renewables, the change in
4 fuel utilization, the new environmental rules, and we're
5 going to be needing a lot of transmission. And hopefully
6 today's Order will work with the policy statement on
7 incentives we voted out a couple of years ago, and most of
8 all Order No. 1000 on Planning Transmission to help us build
9 the transmission that we need.

10 And with that, I have two questions for the team.
11 I wondered, I know it's set out in the long Order, if you
12 could explain what were the factors you looked at to support
13 placing ROE in the top half of the zone of reasonableness on
14 this record? Nic?

15 MR. GLADD: Certainly. There are four main
16 factors supporting that finding:

17 The first is, as mentioned in the presentation,
18 the record in this proceeding does indicate that capital
19 market conditions were unusual.

20 Second, the record has multiple alternative
21 methodologies in it for analyzing ROE. And each of those
22 indicates that our mid-point of our zone of reasonableness
23 is lower than those methodologies.

24 Third, the record indicates that state commission
25 ROEs are above the mid-point produced by our analysis, while

1 also indicating that the interstate transmission development
2 is riskier than state regulated distribution.

3 And lastly, in the past when the Commission has
4 decided that it is appropriate to go above the mid-point of
5 zone of reasonableness, it has done so by using the halfway
6 point between mid-point and the top.

7 ACTING CHAIRWOMAN LaFLEUR: Well thank you. So
8 it was premised on the record in this case, in specific?

9 MR. GLADD: Yes.

10 ACTING CHAIRWOMAN LaFLEUR: Thank you. I would
11 also like to ask sort of, on the other hand how, when you
12 looked at the revised methodology and the new zone of
13 reasonableness, how you determined, or if you could
14 summarize why we found that revised methodology ensures that
15 ROEs continue to be just and reasonable?

16 MR. GLADD: Well the incorporation of the long-
17 term growth rate into the estimate is, in addition to being
18 more consistent with the underlying theory of the DCF model,
19 it also helps normalize the distortions that may occur by
20 looking only at short-term growth rates.

21 In addition, the new DCF methodology uses a
22 simplified version of the short-term growth rate estimate,
23 and overall as you mentioned this methodology should produce
24 a narrower zone of reasonableness, which is consistent with
25 the fact that different firms in a regulated industry should

1 not have ordinarily widely varying profitability.

2 Further, the DCF approach here uses proxy group
3 screening very similar to that the Commission has used in
4 the past to ensure that the proxy group companies are
5 comparable to those of the target utility.

6 ACTING CHAIRWOMAN LaFLEUR: Thank you, very much.
7 In my excitement to call out the Three Wise Men, I neglected
8 to mention Scott and Nic, who did a lot of heavy lifting
9 here, and Rebecca and Susanna for your work on the SoCal
10 Edison remand.

11 And with that, I will turn it over to
12 Commissioner Moeller.

13 COMMISSIONER MOELLER: Well thank you, Acting
14 Chair LaFleur. I think the good news is that there's almost
15 universal recognition that we need more transmission in this
16 country, whether it's to reduce prices due to economic
17 congestion, increase the reliability as you noted in a time
18 when we're going through an extraordinary change in our
19 resource mix, or to provide access to remote-location
20 variable resources--our code, of course, for renewable
21 sources that are usually located far from load.

22 The challenge has been how do we balance that in
23 order to attract the right amount of investment, but also
24 make sure the consumers are not paying too much?

25 Because of a number of reasons, over the last few

1 years we have kind of slid into this morass where we had a
2 lot of uncertainty and a lot of pending cases related to
3 these returns. And extraordinary economic times,
4 unprecedented monetary policy, a variety of reasons have
5 caused it, but it's time for us to get out. And it is a
6 testament to your leadership that you made this a priority,
7 and the process was such--I don't think it's well understood
8 on the outside--where we each assigned a member of our staff
9 to work on this with the team.

10 It basically was a second full-time job. In my
11 case it was Jason Stanick, but it was a team effort in our
12 office. I particularly want to also call out the Three Wise
13 Men. That's the term we've used as well: Larry, Dan,
14 Richard. The rest of the folks at the table. Nic, for
15 leading the effort; Scott; SoCal Edison folks, also Doug
16 Green on trial staff was very helpful, and Martin Kirkwood
17 was the facilitator of what we termed the "Tiger Team" that
18 worked on this I'm sure in at least 35 meetings. Very, very
19 detailed spreadsheets, numbers, and we hoped to get a
20 consensus; we didn't quite get it.

21 But that's the process that we worked through.
22 But I am convinced that this is a good balance where we
23 provide the certainty, adequate returns for the investment
24 community, but not too high for consumers. By adopting the
25 gas-oil DCF model, we actually lower the top of the zone

1 without raising the bottom.

2 It is also important to point out, related to
3 this Order, that nothing precludes participants in those
4 other proceedings that we're setting for hearing today from
5 developing a record in those cases supporting a different
6 point in the range of reasonableness. And that shouldn't be
7 forgotten as we move forward.

8 And again, we could have delayed this, but I
9 think it is time to make a decision and move on. Because
10 uncertainty is not good at this time for promoting these
11 kind of needed investments when we're going through an
12 extraordinary transition where transmission will help guide
13 us through it.

14 Again, thank you for an extraordinary effort by a
15 lot of people, and I think we're moving forward today.

16 ACTING CHAIRWOMAN LaFLEUR: Thank you.

17 Commissioner Norris?

18 COMMISSIONER NORRIS: Thank you.

19 Let me also add my thanks to you, Acting Chair
20 LaFleur, for both your own recognition and your
21 responsiveness to the rest of us that this had been
22 languishing too long and needed leadership to get moving.
23 And so I greatly appreciate your efforts to do that. And
24 today's decision reflects that.

25 I thank the staff, as well. And everyone at the

1 table, everyone behind you, the folks behind us here,
2 including Sean Bennett from my staff, and Andy who spent a
3 fair amount of time in circles discussing this as well. So
4 it has consumed a lot of folks' time because of the
5 importance of it.

6 This to me is the heart of what are our
7 responsibilities here: establishing just and reasonable
8 rates. That is core to our job. But it has taken too long,
9 which also makes it extremely difficult for me to sit here
10 today and advocate that it probably should have taken just a
11 little bit longer. And reasonable minds can differ, and I
12 recognize that.

13 But I think what it does reflect is, we all were
14 concerned that even with this new DCF formula that the ROE
15 that it yielded may not be adequate to attract the level of
16 investment in transmission that we need.

17 Getting transmission ROEs right is critically
18 important, because we do need--I think there's joint
19 recognition that we do need additional transmission.
20 Replacing the aging infrastructure and new transmission in
21 this country for reliability reasons, for competitive market
22 reasons, to reduce congestion that benefits consumers, and
23 to reach renewable resources in this country that we have.

24 And there's also been some discussion today about
25 the state ROEs and what's the contrast. Well, I admit it is

1 getting more challenging on the distribution level that
2 states regulate because of the growth of distributed
3 generation, because of the political and regulatory
4 difficulties with deploying smart meters and smart grid.
5 There's greater risk occurring in that space, too. But I
6 still generally agree that this is tougher.

7 But getting it right, again, is the challenge. I
8 oftentimes--It's been 10 years ago when I started
9 regulating, my role as a regulator--I oftentimes struggle
10 with people who say that our job is to make sure that
11 electricity is reliable and affordable.

12 Affordable is policy. This is about getting the
13 costs right. And I think we are making headway. In fact,
14 particularly on the external costs, full allocation of the
15 costs for our system, and we should always be pushing for
16 efficiency, and I think competition and the innovation it
17 creates is critical towards that.

18 Clearing out the cobwebs and complacency you get
19 with regulation, and the protection of incumbents helps push
20 us forward on a more efficient system that benefits the
21 economy and the consumers in general. But the real question
22 I think that separates this is separating what is needed
23 versus what is wanted. And all parties certainly come to
24 the table with what they want.

25 Our task is to find out what is needed. Again,

1 there's much discussion about the rate that this DCF would
2 yield, and it does represent a dramatic decrease, it truly
3 does. And my gut, and I believe my colleagues feel as well,
4 that the DCF yield in this case was concerning.

5 Take all the formulas, all the analysis, all the
6 methods you want. At the end of the day, it probably comes
7 down to a gut, is this going to work or not? And in setting
8 the ROE, I think you search for a number that is sufficient
9 to make sure you have the investment level needed to build
10 the infrastructure you need for a reliable and efficient
11 grid, essentially meeting the Hope and Bluefield
12 requirements.

13 How do I approach it? You can't go below that
14 number, the number that is needed to attract sufficient
15 investment because if you do it doesn't occur. If anything,
16 you have to err slightly above it to make sure the
17 investment gets made.

18 But you have to know that every increment higher
19 you go than is needed, it tilts the balance and impacts our
20 economy, it impacts businesses, and most importantly it
21 affects people's lives.

22 I think today's decision does that, tilts the
23 balance too far. There will clearly be celebrating in the
24 corporate boardrooms of the Northeastern utilities today.
25 They got what they wanted. They got what they asked for.

1 I agree more was necessary, given the unique
2 capital markets and the transmission elements that are
3 needed, but low yields on investments aren't just unique to
4 the utility industry. There are a lot of seniors in this
5 country trying to get by on what their conservative
6 investments make to add to their Social Security, but they
7 will be paying the bill for how much we increase the rate
8 that utilities receive.

9 Erring on a sufficient ROE, and the number in
10 this case going above what the DCF yields, I think is
11 warranted. But I believe this is more than is necessary,
12 and even more significantly than the number itself is the
13 concerning precedent that this new mid-point of the upper
14 half of the range of reasonableness is justified.

15 The utilities won the decision here today because
16 they got what they wanted. But I can't say they won the
17 argument, because we don't know what the argument was for
18 this new decision point and this adjustment.

19 There are only two incidents in the past where we
20 have used the mid-point of the upper half of the range over
21 a decade ago, and in my mind they're inapplicable to the
22 determination in this case. In some cases, what a utility
23 asks for is the appropriate amount, but they should bear the
24 burden of justifying that.

25 We have several more ROE pending cases. I plead

1 to the parties in those cases to make your full arguments.
2 If this Commission determines that an adjustment in the DCF
3 ROE number yielded is necessary, what's the justification
4 for how that number should be adjusted?

5 I am pleased that we added a footnote in today's
6 Order that also calls that to the parties' attention in
7 those future Orders. I just wish we could have had the
8 parties to this party--to this case have that same
9 opportunity.

10 Thanks.

11 ACTING CHAIRWOMAN LaFLEUR: Thank you,
12 Commissioner Norris. Commissioner Clark?

13 COMMISSIONER CLARK: Well first off, thanks to
14 the team that put so much effort into this. We couldn't--I
15 don't think we ever were able to really signal it to the
16 outside, because we don't talk about pending cases of
17 course, but within the office we knew that there was
18 effectively a SWAT team that had been assigned, thanks,
19 Chairman LaFleur, to your leadership, and thank you for
20 that.

21 To begin to move some of these cases and be able
22 to make some decisions, because they really had backlogged
23 for too long, so thanks to all of you internally, and then
24 specifically, myself, thanks to Nick Tackett who was my lead
25 advisor on this issue and served on the team and put a lot

1 of effort into it, as well.

2 This really is kind of the bread and butter of
3 what the Commission does. We spend a lot of time on some of
4 the cutting edge market design issues these days, and some
5 of the new responsibilities the Commission has undertaken in
6 recent years, but ROE and traditional rate cases really is
7 the bread and butter of what the Commission does.

8 In the two years now, just over two years, that
9 I've been on the Commission I have probably had more people
10 visit me generically on the, on the concept of ROE--not the
11 specific cases, of course, which we can't--but on the issue
12 of ROE, than maybe any other topic. And it comes from all
13 different quarters, from consumer advocates, some state
14 commissioners, transmission-dependent utilities who are
15 concerned about the upper end of what was being granted in
16 ROEs and concerned about the upper end, from incumbent
17 utility companies who describe the capital decisionmaking
18 process that will happen in the boardroom if federal ROEs
19 crater significantly below state ROEs and what that means
20 for transmission development, from independent transmission
21 companies, and merchant companies who explain the inherent
22 risk that's involved with developing interstate transmission
23 line that don't exist with other projects that other
24 utilities deal with.

25 And then from members of the investment community

1 who spoke of the importance of adequate long-term and stable
2 signals with regard to ROEs and what that means for what
3 investors are willing to put into transmission.

4 And all of it boiled down to really one of three
5 issues:

6 One, either ROE is too high;

7 Number two, there's a reality if you strictly
8 look at the DCF right now that it was going to crater ROEs
9 on the other end, potentially;

10 And then the instability in the ROE model itself.

11 And I think that this Order is a holistic and
12 balanced way to approach and address each of those key
13 issues that stakeholders have been bringing to us over the
14 last several years.

15 As my colleagues have indicated, by moving to the
16 gas and oil DCF model, but reaffirming the basic
17 appropriateness of DCF itself and moving to that iteration
18 of the model, it does narrow the band so that you don't have
19 as much concern about the upper end of the band, and the
20 wild swings that can take place within that zone of
21 reasonableness.

22 The inputs to it make it a more stable, long-term
23 model for ensuring the stability of the ROE itself, which is
24 important to all the stakeholders who came in. And it
25 addresses this issue of the cratering of ROEs that can

1 happen below other investments that utilities could make,
2 that the Commission cannot be oblivious to when we make our
3 decisions.

4 With regard to this issue of not just using the
5 mid-point of the midpoint, as opposed to using the mid-point
6 between the midpoint and the upper end of the range, I was
7 entirely comfortable with it, and I think it is the
8 appropriate thing to do.

9 There is nothing magic about the mid-point
10 designation itself. It just had come about through a series
11 of a number of cases. But we have to be cognizant of what
12 is happening in the greater investment community. And
13 really, there's a very specific record that's built here
14 that justifies the need to hit this upper mid-point range.
15 And it is based on what we've sometimes talked about in our
16 office as a three-legged stool.

17 There are other conditions that are going on
18 right now that we have to take into account. And if we
19 didn't, it would in fact violate the principles of Hope and
20 Bluefield that we should be applying.

21 Number one, other models that are out there which
22 are legitimate models, not one that the Commission has ever
23 adopted, but are certainly indicators that we should at
24 least take into consideration, like the risk premium
25 analysis, the CAP-M model, the Expected Rate of Return

1 Model, all of those things yield a rate that's higher than
2 our traditional mid-point.

3 So that tells us that the traditional DCF was the
4 outlier. There's something we should pay attention to. If
5 we looked at state-authorized ROEs, not that we're dependent
6 on them, but they're an indicator. And you look at that.
7 And there again, the FERC model was showing lower ROEs than
8 the states were granting, which can lead to outcomes that we
9 didn't wish to have happen.

10 A third indicator are these anomalous conditions
11 that exist in the marketplace, with long-term Fed
12 intervention, and low Treasury yields.

13 So you put the whole package together and it was
14 something that I didn't believe that as a Commission we
15 could ignore. And so by taking it into consideration, it
16 allows us to come up with a just and reasonable rate that
17 more fits within the context of what is happening in the
18 world at large.

19 So I think it is a good result. Again, Chairman,
20 thank you for your leadership. Thank you to my fellow
21 Commissioners and their teams, as well, for all the effort
22 that they put into it because it has been significant.

23 Thanks.

24 ACTING CHAIRWOMAN LaFLEUR: Commissioner Moeller?

25 COMMISSIONER MOELLER: Yes, I forgot to mention,

1 it kind of plays on what Tony said, but the uncertainty
2 we're facing here is we're in a strange time. If you look
3 at the dot graph from the Federal Reserve meeting this week,
4 and there's a lot of--this is the Fed, and there's a lot of
5 different opinion as to where inflation is going. And some
6 people are thinking it's going to be pretty high pretty
7 quick; some others don't. But we're in an uncertain period.

8 And I think we can respectfully disagree. I
9 don't see this as a win for the utilities today. I thought,
10 you know, I would like to see the number go a little higher,
11 but we came up with this, this model, and nevertheless
12 everybody worked together very hard to come up with
13 something and we'll see where it goes.

14 ACTING CHAIRWOMAN LaFLEUR: Thank you.

15 Madam Secretary, we're ready for the vote.

16 SECRETARY BOSE: Madam Chairman, we will be
17 taking a vote on this together, all the items, and the vote
18 begins with Commissioner Clark.

19 COMMISSIONER CLARK: Aye.

20 SECRETARY BOSE: Commissioner Norris?

21 COMMISSIONER NORRIS: Noting my dissent, partial
22 dissent on E-7, aye.

23 SECRETARY BOSE: Commissioner Moeller?

24 COMMISSIONER MOELLER: Aye.

25 SECRETARY BOSE: And Chairman LaFleur?

1 ACTING CHAIRWOMAN LaFLEUR: Aye.

2 Thank you, all.

3 SECRETARY BOSE: The last item for discussion and
4 presentation this morning is Item A-3, concerning price
5 formation in energy and ancillary services markets operated
6 by Regional Transmission Organizations and Independent
7 System Operators.

8 There will be a presentation by Mary Cain from
9 the Office of Energy Policy and Innovation. She is
10 accompanied by Emma Nicholson and Bob Hellrich-Dawson from
11 the Office of Energy Policy and Innovation.

12 MS. CAIN: Good morning, Acting Chairman and
13 Commissioners:

14 We are pleased to have the opportunity today to
15 discuss a staff initiative regarding price formation in the
16 energy and ancillary services markets operated by the
17 Regional Transmission Organizations, or RTOs, and
18 Independent System Operators, or ISOs.

19 Ideally, the locational prices in the energy and
20 ancillary services markets would reflect the true marginal
21 cost of production, taking into account all system
22 constraints.

23 In reality, however, a number of technical and
24 operational considerations make price formation in RTOs and
25 ISOs challenging. For example, technical limitations in the

1 market software prevent RTOs and ISOs from fully modeling
2 and pricing all of the system's physical constraints such as
3 voltage constraints and individual generator operational
4 constraints.

5 While these limitations are to some extent
6 inherent in the complexity of the electric system, staff
7 believes it is worth exploring whether there may be
8 opportunities for RTOs and ISOs to improve their energy and
9 ancillary services price formation processes.

10 At the September 25th, 2013, technical conference
11 on capacity markets, and more recently at the April 1st,
12 2014, technical conference on market performance during the
13 past winter, some market participants expressed concerns
14 about price formation and suggested that the Commission
15 evaluate whether the RTOs and ISOs operate the energy and
16 ancillary services markets in a way that produces accurate
17 price signals.

18 Thus, the Commission will be issuing a notice
19 initiating a proceeding in Docket No. AD14-14-000 and notice
20 of staff workshops as necessary to facilitate a discussion
21 with RTOs and ISOs, and their stakeholders, on the existing
22 market rules and operational practices related to the
23 following topics:

24 Use of uplift payments;

25 Offer price mitigation;

1 Scarcity and shortage pricing; and
2 Unpriced operator actions.

3 We anticipate that the first workshop, in September, will
4 explore the topic of Uplift in detail, while also providing
5 an opportunity to begin a discussion on the scope of
6 remaining topics.

7 Additional workshops will be announced in the
8 coming months on the other price formation topics. To the
9 extent practicable, staff papers and/or analysis related to
10 these topics to help guide the workshop discussions may be
11 released.

12 The focus of these workshops will be a fact and
13 experience-based exploration of the economic and operational
14 nature of any price formation concern. We will provide the
15 Commission with status reports.

16 Thank you, and we are available to answer any
17 questions you have.

18 ACTING CHAIRWOMAN LaFLEUR: Well thank you, very
19 much, Mary, and Emma, and Bob. We have heard from a Moeller
20 alum today with Jennifer, and now we have a LaFleur alum.

21 The fact that we put this on the agenda today
22 when we already had such a heavy agenda I think shows the
23 importance that we collectively attach to this staff-led
24 effort.

25 It has already been remarked a few times today

1 that it is a critical time for our competitive markets. We
2 are making a lot of changes in how we make our electricity,
3 and going from a period of surplus when the market started,
4 and for many years to an investment cycle, and so it is
5 important that our markets send the right price signals, the
6 just and reasonable price signals for new investment, for
7 retirement, for sustaining existing generation, whatever is
8 needed to keep the lights on, to keep reliability, and to
9 let the markets find the most efficient price.

10 We have done a lot of work and a lot of talking
11 about capacity markets lately. They seem to be a constant
12 subject. But one of the themes at the September conference
13 that just about everyone said is you can't look at them in
14 isolation. They have to be considered in connection with
15 energy and ancillary services markets.

16 And we all know that the ancillary services
17 markets in particular are really growing in importance as
18 they're used to balance variable generation and other
19 resources that are not baseload.

20 So I think this is an important project. I look
21 forward to the staff work. I thank Jamie for bringing this
22 project forward and leading it, and am very excited to--look
23 forward to the workshop in September.

24 Colleagues?

25 COMMISSIONER MOELLER: Well thank you, Cheryl.

1 I'm glad we are undertaking this. I have one I guess
2 observation that I'd like to turn into a question for the
3 team related to one aspect of this. And that is, we are
4 going to be spending a fair amount of time this year dealing
5 with the unintended consequences of some price caps that
6 affected markets during the polar vortex events. And it is
7 going to be contentious, and long, and we'll see where it
8 goes. But I want to assume we're going to have another
9 winter like the last one, even though hopefully we won't,
10 and in that case is there enough urgency behind the issue of
11 looking at scarcity pricing, price caps, so that we could
12 perhaps address it before next winter? Or not"?

13 (Pause.)

14 (Laughter.)

15 MS. SMILER: Commissioner, I assume you want to
16 hear from me?

17 ACTING CHAIRWOMAN LaFLEUR: Out of the bullpen
18 comes Jamie.

19 (Laughter.)

20 MS. SMILER: Right. So we have, you know, a very
21 sophisticated, highly talented team focused on all of these
22 issues. We think that we've come up with a schedule that
23 makes sense.

24 We understand the urgency to deal with the issues
25 you mentioned before the summer. Realistically, though, I

1 doubt we get there. We can do a lot of work on our end. We
2 can talk with the RTOs and the market participants, but the
3 reality of actually getting something probably through this
4 Commission with very thoughtful industry comment and in
5 place before this winter, probably is fairly unlikely. But
6 if you've any bright ideas, we're all ears.

7 (Laughter.)

8 COMMISSIONER MOELLER: Well thank you for that
9 response, Jamie, and we'll be working on it, all of us and
10 the industry and let's go.

11 ACTING CHAIRWOMAN LaFLEUR: I would just add that
12 this effort is not going on in isolation. So we always
13 struggle with when do you do things generically and take a
14 broad look, and when do you deal with the cases?

15 We do have filings in from RTOs already about
16 scarcity pricing and so forth. Those are on their own
17 timetable. But this is a step back in looking broadly. So
18 it's not as if nothing will happen by next winter.

19 Commissioner Norris?

20 COMMISSIONER NORRIS: Thanks. Let me just add my
21 thanks for your work on this in wading into these incredibly
22 technical and extraordinarily important issues. You know,
23 you talk about Uplift payments, and Scarcity pricing, and
24 operator mitigation, and operator actions that affect
25 prices, and you lose sight of the fact that we're talking

1 about openly competitive free-marketplaces here.

2 So--which started back last fall with our
3 technical conference on capacity markets. The struggle is
4 to get these right with the resource mix changing, and polar
5 vortex, and all the obstacles we face. These markets really
6 got to send the right price signals if we are going to get
7 the kind, and the type, and the quality, and the quantity of
8 resources we need.

9 So thanks for this important work, and I look
10 forward to being a part of it and following it. Thanks.

11 ACTING CHAIRWOMAN LaFLEUR: Thank you.
12 Commissioner Clark?

13 COMMISSIONER CLARK: Thanks. And I really
14 appreciate the effort that is going to be put into this.
15 The issue of proper price formation is one of the most
16 important that the Commission can address in the markets
17 that we have. And the issue of urgency is a really
18 important one that I think Phil brought forward.

19 I harken back to a conversation that I had with a
20 market participant, and I thought it was right on, and it
21 was helpful to me in terms of framing some of these issues
22 for the Commission, in which he said: You know, sometimes,
23 he says, I feel like we live in two worlds sometimes where
24 the FERC world is kind of an academic one and we have nice
25 discussions about proper economic theory and all those sorts

1 of things, and those of us who lived on the ground through
2 this past winter, especially some of the folks who had to
3 deal with these Uplift payments, he said, it's like our
4 house is burning down now and we need to take a look at
5 exactly why what happened happened, with some of the issues
6 related to shortage pricing, and Uplift payments, and
7 Uneconomic Dispatch, and things that got put into Uplift
8 that really caused a major concern this winter.

9 And as we said, we hope it does not happen again.
10 So I appreciate the effort. I think it is exactly the right
11 thing to be doing, and I look forward to all the resources
12 that will go into it.

13 One quick question, which will be in terms of
14 what we hope to get out of the tech conferences itself and
15 moving forward, is there--do you think there will be an
16 opportunity to learn best practices region to region, and
17 that might be able to be efficiently put into place? Is
18 that one of the goals of this?

19 MS. CAIN: I think one of the goals of the tech
20 conference is to hear from the RTOs and the market
21 participants in the different regions about the different
22 ways that different RTOs have come up with to address some
23 of these issues, and perhaps identify some best practices.

24 COMMISSIONER CLARK: Great. So I hope everyone
25 will have on their thinking caps, and I know you will, in

1 the comments we'll be receiving about things that seem to be
2 working, and we hear a lot about things that aren't working
3 so well. But solutions will be a big part of it.

4 So thanks for all you're doing.

5 ACTING CHAIRWOMAN LaFLEUR: Well thank you very
6 much. And with that, this meeting is adjourned.

7 (Whereupon, at 11:29 a.m., Thursday, June 19,
8 2014, the 1006th Commission meeting of the Federal Energy
9 Regulatory Commission Commissioners was adjourned.)

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