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United States of America

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FEDERAL ENERGY REGULATORY COMMISSION

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1,023rd Commission Meeting

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Thursday, January 21st, 2016

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Commission Hearing Room

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888 First Street, Northeast

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Washington, D.C. 20426

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18 The Commission met in open session at 10:02 a.m. when

19 were present:

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NORMAN C. BAY, Chairman

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TONY CLARK, Commissioner

23

CHERYL LaFLEUR, Commissioner

24

COLETTE HONORABLE, Commissioner

25

REPORTED BY: Alexandria Kaan

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2 FERC STAFF:

3 NATHANIEL DAVIS, Secretary

4 JOE McCLELLAND, OEIS

5 MIKE BARDEE, OER

6 JAMIE SIMLER, OEMR

7 ANN MILES, OEP

8 LARRY PARKINSON, OE

9 ARNOLD QUINN, OEPI

10 MAX MINZNER, OGC

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12

13 PRESENTERS:

14 E-1 - Emma Nicholson, OEPI

15 Accompanied by Pamela Quinlan, OEMR, Benjamin Jarret,

16 OE, and Anne Marie Hirschberger, OGC

17

18 E-2 - Daniel Phillips, OER

19 Accompanied by Kevin Ryan, OGC

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21 G-1, G-2

22 G-3 & G-4 - Jamie Sarikas, OEMR

23 Accompanied by David Maranville, OGC, and Richard Howe,

24 OGC

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

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(10:04 a.m.)

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SECRETARY DAVIS: Good morning. The purpose of the Federal Energy Regulatory Commission's open meeting is for the Commission to consider the matters that have been duly posted in accordance with the government and the Sunshine Act. Members of the public are invited to observe, which includes attending, listening, and taking notes, but does not include participating in the meeting or addressing the Commission. Actions that purposefully interfere or attempt to interfere with the commencement or conducting of the meeting or inhibit the audience's ability to observe or listen to the meeting, including attempts by audience members to address the Commission while the meeting is in progress are not permitted. Any person engaging in such behavior will be asked to leave the building. Anyone who refuses to leave voluntarily will be escorted from the building.

Additionally, documents presented to the Chairman, Commissioners, or staff during the meeting will not become part of the official record of any Commission proceeding, nor will they require any further action by the Commission. If you wish to comment on an

1 ongoing proceeding before the Commission, please visit  
2 our website for more information. Thank you for your  
3 cooperation.

4 CHAIRMAN BAY: Good morning everybody. This  
5 is the time and place that has been noticed for the open  
6 meeting of the Federal Energy Regulatory Commission to  
7 consider the matters that have been duly posted in  
8 accordance with the government and the Sunshine Act.  
9 Please join me in the pledge of allegiance.

10 (Pledge of allegiance commences.)

11 CHAIRMAN BAY: Since the December 17th open  
12 meeting, the Commission has had a busy month and we've  
13 issued 88 notational orders since the December open  
14 meeting.

15 I have two announcements that I'd like to  
16 make. First, there's been a change among my advisors.  
17 Bob Kennedy has returned to the solicitor's office. He  
18 served with great distinction, was an outstanding  
19 advisor for me. He's returned to the solicitors. And  
20 in his stead Jeff Hadway (phonetic) is joining me. Jeff  
21 comes to my office from the Office of Enforcement where  
22 he was grand chief.

23 I'd also like to recognize another member of  
24 staff today, and that's Ted Gerard. Ted is the director  
25 of administrative litigation. Ted joined the Commission

1 in 2003; he was a supervisor in the Office of  
2 Enforcement; and in 2011 he became the director of OAL.  
3 He has served there with great distinction and  
4 dedication, developing a team of highly-skilled  
5 litigators and analysts who further the public interest  
6 on behalf of energy consumers across the United States.  
7 Ted will be retiring from public service in February,  
8 and for his many accomplishments and dedication in  
9 furthering the public interest, I am pleased to award  
10 him the Chairman's metal.

11 Ted, could you please come forward?

12 (Applause)

13 CHAIRMAN BAY: Colleagues, do you have any  
14 opening statements to make?

15 COMMISSIONER LaFLEUR: Yes, thank you,  
16 Mr. Chairman. I would also like to congratulate and  
17 extend the highest esteem to Ted. I know you've had a  
18 number of distinguished jobs around the Commission: If  
19 you go down to the little museum downstairs there's a  
20 big award on the wall that he won. But in my time here  
21 he has very effectively run the Office of Administrative  
22 Litigation. I was happy to get to know him much better  
23 during my time as Chair. And he's quietly and  
24 effectively done his job for the people of the United  
25 States, and we wish him and his family all the best.

1                   Secondly, I want to give a brief shout-out  
2 on a case that's not on discussion agenda, which is E-3.  
3 It's a significant order approving a settlement of the  
4 long-running seams dispute between MISO and SPP  
5 extending from the Entergy integration. It resolves  
6 numerous issues among SPP, MISO, and other parties, and  
7 I know it took a tremendous amount of work. So I want  
8 to thank parties that worked on it for many months and  
9 Chief Judge Cintron for overseeing the process. Thank  
10 you.

11                   CHAIRMAN BAY: Thank you, Cheryl.

12                   Tony?

13                   COMMISSIONER CLARK: Thank you,  
14 Mr. Chairman. I do have to say that I find it rather  
15 ironic that 24 hours before a very major winter storm  
16 here on the East Coast we have people protesting the  
17 very infrastructure that will keep them alive over the  
18 next 72 hours.

19                   Mr. Chairman, just a couple of  
20 announcements. First of all, I'm wearing the tie that I  
21 get to break out once a year, an annual tradition for  
22 the January meeting, our State won yet another National  
23 Football Title; that it's five in a row, so there's a  
24 ring for the thumb now. Congratulations.

25                   I do have an announcement to make, which is

1 this: I informed my colleagues and my staff, as many of  
2 you know my term is up this year on the Commission. And  
3 after discussing with my family over the holidays, we  
4 have decided to not seek another term on the Commission.  
5 It has been a wonderful run here and I've enjoyed the 12  
6 years prior to this on the North Dakota Commission and  
7 the number of years prior to that in state government.  
8 I've enjoyed it a lot but there comes a time when you  
9 just feel like it's time to do something else. In state  
10 legislature I just turned 23, so I've been in government  
11 a long time, I'm 44 now. But as the words of the  
12 immortal Montey Python, I'm for not dead yet.

13 (Laughter.)

14 The term of course runs through June and I  
15 may hang out a little bit longer depending on  
16 circumstances. So I look forward to being around  
17 awhile; I don't have any immediate plans to leave the  
18 Commission. But did want to give a head's up to folks  
19 who might be interested in perhaps seeking a seat and  
20 tell their parties, and my own staff just for planning  
21 purposes. It's a long process getting through  
22 nomination, confirmation, bidding the whole thing. In  
23 my case it was a rather smooth nomination, it took  
24 probably a year from when I first started expressing  
25 interest actually getting through. So a little bit of

1 head's up makes sense, so I thought I would announce  
2 today rather than playing coy for the next six months or  
3 so.

4                   With that -- glad I wrote it down -- Ted, I  
5 got this exciting announcement to make and I didn't want  
6 to forget you. Ted, thank you for all of the work  
7 you've done for the Commission and on behalf of  
8 ratepayers. The OAL is an office that sometimes is out  
9 of the limelight, and the reason for that is because it  
10 really is separate from the rest of the Commission  
11 because it's our advocacy staff, it litigates cases that  
12 come before our ALJ's. So sometimes it's purposefully a  
13 wall of separation between the Commission and the OAL.  
14 Ratepayers and consumers can understand that the work  
15 they do is very, very important because they really are  
16 there to represent the public interest in this ratepayer  
17 proceedings. He's done a wonderful job in representing  
18 this.

19                   CHAIRMAN BAY: Thank you, Tony.

20                   Let me just say that I personally am very  
21 sorry to hear the news that you won't be continuing for  
22 another term on the Commission. You've just been an  
23 amazing colleague. But I'm also pleased that we're  
24 going to have the opportunity to continue to work with  
25 you for some period of time and that at some point in

1 the future we'll have an opportunity to honor and to  
2 celebrate you and to roast you as well. But thank you.

3 (Laughter.)

4 COMMISSIONER CLARK: I would expect nothing  
5 less.

6 CHAIRMAN BAY: Colette?

7 COMMISSIONER HONORABLE: Thank you,  
8 Mr. Chairman. Good morning everyone. Let me begin by  
9 acknowledging Pat Kennedy, thanking him for service with  
10 the Chairman and now going back to the office where he  
11 will continue to serve with great distinction. And to  
12 welcome Jeff, welcome aboard. And to acknowledge Ted:  
13 It's been such a pleasure to work with you for even a  
14 brief period, and I have a special place in my heart for  
15 the folks at OAL. Because of the work they do, often  
16 thankless and unrecognized, but nonetheless as important  
17 as Tony referenced. Thank you for your service and I  
18 envy you in your new-found freedom and all of the trails  
19 you will explore and all the many exciting things you  
20 will do, you deserve it all.

21 So his been a year for me at FERC and I have  
22 an announcement. Following in the stead of my  
23 colleagues, I'm finally jumping into the foray of  
24 Twitter. So I think my first tweet or second or third  
25 will be about my deal colleague Tony. But my Twitter

1 account is @chonorableferc. Thank you Tony and Chairman  
2 Bay, you'll be among my first three followers.

3 I've worked with Tony for a number of years,  
4 I think since '07 when we were both state commissioners.  
5 And Tony is a very special and dear friend and I often  
6 tease that we'll never agree upon who our most favorite  
7 president would be. But we agree on the fact that this  
8 work is important and we agree on the fact that we come  
9 to it bringing our all. And it's been a pleasure to  
10 work with Tony from the time that he was a president and  
11 I believe I was your treasurer then and on his executive  
12 committee, and got to know his family and his wife and  
13 his lovely boys, and to be joined back at the hip now,  
14 we're suite mates. Being in the office and working with  
15 his team, it's really been an honor. And so I say to  
16 you congratulations, Tony, on an incredible run, not  
17 only here at FERC but serving the people of North  
18 Dakota. There couldn't be a greater fan up in North  
19 Dakota than me. And I look forward to working with you  
20 this year as well.

21 CHAIRMAN BAY: Thank you, Colette.

22 COMMISSIONER LaFLEUR: Well, just so I'm not  
23 reduced to expressing my thoughts only to the number of  
24 characters in Twitter, I also wanted to take a second to  
25 recognize Tony who has been a wonderful colleague and an

1 extraordinarily affective commissioner: From really the  
2 first day he walked in he handled everything with good  
3 judgment and aplomb and has just been a wonderful person  
4 to have. And we hope we'll have him around longer not  
5 just so we can beat up on him in a future meeting, but  
6 so he'll be here. Thank you.

7 CHAIRMAN BAY: Thank you, Cheryl.

8 Mr. Secretary, I think we're ready to  
9 proceed to the consent agenda.

10 SECRETARY DAVIS: Good morning, Mr. Chairman  
11 and good morning Commissioners. Since the issuance of  
12 the Sunshine Act notice on January 14th, 2015, no items  
13 have been struck from this morning's agenda.

14 Your consent agenda for this morning is as  
15 follows: Electric items E-3, E-3, E-4, E-5, E-6, E-7,  
16 E-8, E-10, and E-11. Miscellaneous items: M-1. Hydro  
17 item: H-1. Certificate item: C-2.

18 As required by law, Commissioner Honorable  
19 is not participating in consent items E-3, E-4, and E-5.  
20 As to E-3, Commissioner Clark is concurring with a  
21 separate statement.

22 We will now take a vote on this morning's  
23 consent agenda beginning with Commission Honorable.

24 COMMISSIONER HONORABLE: Thank you, Mr.  
25 Secretary. Noting my recusal in items E-3, E-4, and

1 E-5, I vote aye.

2 SECRETARY DAVIS: Commissioner Clark.

3 COMMISSIONER CLARK: Noting my separate  
4 concurrence, I vote aye.

5 SECRETARY DAVIS: Commissioner LaFleur.

6 COMMISSIONER LaFLEUR: I vote aye.

7 SECRETARY DAVIS: And Chairman Bay.

8 CHAIRMAN BAY: I vote aye.

9 SECRETARY DAVIS: The first presentation and  
10 discussion item for this morning is E-1, a draft order  
11 concerning offer caps in markets operated by regional  
12 transmission organizations and independent system  
13 operators and docket No. RM15-14-000. There will be a  
14 presentation by Emma Nicholson from the Office of Energy  
15 Policy and Innovation. She is accompanied by Pamela  
16 Quinlan from the Office of Energy Market Regulation,  
17 Benjamin Jarrett from the Office of Enforcement, and  
18 Anne Marie Hirschberger from the Office of the General  
19 Counsel.

20 MS. NICHOLSON: Thank you and good morning,  
21 Mr. Chairman and Commissioners. Item E-1 is a draft  
22 notice of proposed rulemaking addressing energy off  
23 caps. This draft NOPR is intended to further advance  
24 the Commission's price formation efforts. Other recent  
25 Commission actions on price formation include issuing a

1 NOPR about settlement intervals and shortage pricing in  
2 September 2015 and an order directing reports to obtain  
3 additional information about price formation topics in  
4 November of 2015.

5           The draft NOPR proposes to reform the offer  
6 cap in the day-ahead and real-time energy markets in  
7 regional transmission organizations and independent  
8 system operators. The proposal in the draft NOPR would  
9 advance two of the Commission's price formation goals.  
10 First, the proposal would result in clearing prices that  
11 better reflect the marginal cost of production. Second,  
12 the proposal would ensure that a resource could recoup  
13 its short-run marginal costs when those costs exceed the  
14 offer cap.

15           Presently, California, New England, the  
16 Mid-Continent ISO New York, and the Southwest Power Pool  
17 have a \$1,000 per megawatt hour cap on incremental  
18 energy offers. Pursuant to recent tariff provisions in  
19 PJM, PJM has a 2,000 megawatt hour cap on incremental  
20 energy offers.

21           Extreme weather in the polar vortex in the  
22 winter of 2013 and 2015 led to a significant rise in the  
23 price of natural gas which could have caused some  
24 resources to face short-run marginal costs in excess of  
25 the \$1,000 offer cap at the time. In that winter and

1 the two following winters the Commission has granted  
2 limited waivers and accepted tariff revisions in some  
3 RTO and ISO's to either raise their offer cap or permit  
4 cost recovery above their offer cap through uplift.

5           The existing offer caps in RTO and ISO's may  
6 be unjust and unreasonable for the following reasons:  
7 First, the offer cap may prevent from recouping its  
8 costs. Second, offer caps may suppress prices to a  
9 level below the marginal cost of production. Third, the  
10 offer caps may discourage a resource of costs above the  
11 offer cap from offering its supply to the RTO or ISO.  
12 Finally, the RTO or ISO may not be able to dispatch the  
13 most efficient set of resources when several resources  
14 with costs above the cap are unable to reflect those  
15 costs in their supply offers.

16           To remedy these problems and meet the  
17 Commission's price formation goals, the draft NOPR  
18 proposes to revise the offer cap on each resource's  
19 incremental energy offer. Under this proposal, the  
20 offer cap would be the higher of \$1,000 per megawatt  
21 hour or the resources verified cost-based incremental  
22 energy offer. The draft NOPR imposes three requirements  
23 on RTO's and ISO's. The first requirement is that a  
24 cost-based incremental offer above \$1,000 per megawatt  
25 hour would be eligible to set the clearing price.

1           The second requirement in this draft NOPR is  
2 that the market monitor or the RTO or ISO would verify  
3 cost-based incremental energy offers above \$1,000 before  
4 those offers could be used to calculate clearing prices.  
5 This verification process is intended to protect  
6 consumers and ensure they pay just and reasonable rates.  
7 If a resource's incremental energy offer above \$1,000 is  
8 not verified prior to the calculation of market clearing  
9 prices, that particular offer -- sorry, if the resources  
10 incremental energy offer above \$1,000 is not verified  
11 prior to the market clearing process, that particular  
12 offer could not be used to calculate clearing prices.  
13 Instead, that resource may be entitled to an uplift  
14 payment if its costs are verified after the fact.

15           The third requirement is that any resource,  
16 regardless of fuel type, would be eligible to submit a  
17 cost-based incremental energy offer above \$1,000 per  
18 megawatt hour. The draft NOPR proposes to make the  
19 change to the offer cap applicable to all RTO's and  
20 ISO's in order to avoid exacerbating seams issues.  
21 Otherwise, the offer caps in the different regions could  
22 result in power flows that reflect the difference in the  
23 offer cap as opposed to reliability needs or economics.  
24 The draft NOPR would permit regional variation in  
25 compliance by not prescribing the precise manner in

1 which an RTO or ISO must comply with the three  
2 requirements.

3           The draft NOPR seeks comment on the offer  
4 cap proposal. Among other things, the draft NOPR seeks  
5 comment on whether a hard cap, in addition to the  
6 proposed offer cap, is necessary. This additional hard  
7 cap would restrict any cost-based incremental energy  
8 offers above a certain level from being used to  
9 calculate clearing prices. The draft NOPR also seeks  
10 comment on what the level of any hard cap should be. We  
11 also seek comment on the implementation of the cost  
12 verification process and the applicability of this  
13 proposal to virtual transactions and imports.

14           Comments would be due 60 days after the  
15 draft NOPR's publication in the federal register.

16           Thank you. This concludes our presentation  
17 and we'd be happy to address any questions you may have.

18           CHAIRMAN BAY: Thank you, Emma, Pamela, and  
19 Anne Marie. And thank you to the full staff team for  
20 your continued hard work on the recent series of  
21 Commission actions related to price formation issues. I  
22 think that this is some of the most important work that  
23 we're doing, and I really appreciate what staff is doing  
24 here.

25           I have one question for the team, and that

1 is: Emma, whether you could explain why the NOPR does  
2 not propose to eliminate the \$1,000 price cap entirely?

3 MS. NICHOLSON: Thank you for your question,  
4 Mr. Chairman. The NOPR does not propose to eliminate  
5 the \$1,000 offer cap entirely, as you said, because we  
6 sought comment on the offer cap as part of the price  
7 formation proceeding and we also had a workshop to  
8 discuss, among other things, the offer cap, and heard  
9 that the \$1,000 per megawatt dollar offer cap played a  
10 back-staff role in mitigation. So under this proposal,  
11 while we seek to approve price formation, we also want  
12 to assure we have just and reasonable rates in markets,  
13 so we thought this proposal has a balance that would  
14 further price formation efforts that maintain the  
15 existing back-staff mitigation role that the \$1,000 cap  
16 currently plays, so.

17 CHAIRMAN BAY: Thank you, Emma.

18 Colleagues? Cheryl?

19 COMMISSIONER LaFLEUR: Thank you, Norman.  
20 Thank you all of you and to everyone on the team for  
21 your work on this order and the other price formation  
22 work. Obviously, the goal of our price formation  
23 efforts is to ensure that energy markets have accurate  
24 and transparent price signals to attract investment  
25 needed for reliability. I'm pleased to support today's

1 rule because I think it strikes a good balance, as Emma  
2 explained, between generally maintaining the \$1,000 cap  
3 but allowing higher offers that can be verified to set  
4 prices. Another advantage of the proposal is that it  
5 would result in more alignment between RTO's which will  
6 help the trading of energy across the seams.

7 I'm pleased we're taking this next step in  
8 our work. I know we have more to do on price formation.  
9 I look forward to getting the reports we'll be getting  
10 from the RTO's, and also a very robust set of comments,  
11 as we usually do, on this NOPR. Thank you.

12 CHAIRMAN BAY: Thank you, Cheryl.

13 Tony?

14 COMMISSIONER CLARK: Thank you, Mr. Chairman  
15 and thank you to the team and staff in our price  
16 formation efforts in the work we've been doing. This is  
17 a big step, actually; this has been one of the fairly  
18 highlighted issues that stakeholders, as we held  
19 technical conferences, talked about. This has been one  
20 that a lot has gone into, and a lot of thought. I do  
21 look forward to the comments we'll get back; we assume  
22 there will be quite a few of them on this particular  
23 issue for certain.

24 One question for the team is this: Some of  
25 these issues that we saw that caused the need for this

1 or spurred this particular rule tended to be issues that  
2 were primarily associated with some of the eastern  
3 RTO's. We had the NOPR that poses a number of changes  
4 that would apply across the various ISO regions. Could  
5 you talk a little bit case process in terms of a little  
6 bit broader rule-making solidifies applies to those  
7 regions?

8 MS. NICHOLSON: Certainly, and thank you for  
9 your question. We actually explain in the draft NOPR  
10 that seams issues was a significant motivation for the  
11 general applicability of this NOPR to ensure that we  
12 have efficient power flows across RTO's and ISO's. But  
13 while it is true historically that the prices above  
14 \$1,000 were observed in the Northeast, since none of us  
15 are fortunetellers we can't say that going forward. And  
16 we think this proposal is providing RTO's and ISO's to  
17 develop infrastructure to help them in the event that we  
18 directed a cost of \$1,000 to allow that certainly  
19 seemingly more likely in some markets than others.

20 Very good, thank you.

21 CHAIRMAN BAY: Thank you, Tony.

22 Colette?

23 COMMISSIONER HONORABLE: Thank you,  
24 Mr. Chairman. I'd like to thank the entire price  
25 formation team, thank you for your presentation this

1 morning, and thank all of the participants more broadly  
2 for their participation in the technical conference  
3 effort over the past year-plus. And although I wasn't  
4 here for some of those technical conference efforts,  
5 we've certainly seen the fruits of the efforts. So  
6 thank you for you're persistence and determination in  
7 seeing this through.

8           In today's notice of proposed rulemaking,  
9 the Commission is proposing to take important steps in  
10 my mind that would increase both confidence and  
11 transparency: Confidence by allowing generators to  
12 recover verified short-run marginal costs which I  
13 believe is critical to not only sustaining but  
14 encouraging confidence in the markets. We've  
15 experienced in the past, or some of the RTO's and ISO's  
16 have seen, generators who are unable to recover their  
17 costs through the offer caps that prevented cost  
18 recovery, particularly in the 2013-2014 winter season.  
19 And this NOPR would address this issue in a more  
20 permanent matter by recognizing that seams issues  
21 associated with one-off solutions needs to be addressed,  
22 and also provides the generators with confidence that  
23 they will be compensated for bringing these important  
24 resources to the market. I also see value in increasing  
25 transparency in our markets because the verification

1 requirement is crucial to giving everyone some idea  
2 about what to expect with regard to whether those prices  
3 will clear.

4           Emma, you touched on something that I think  
5 is at the heart of this NOPR, and that is consumer  
6 protection with regard to our mandates ensure just and  
7 reasonable prices in wholesale markets. This NOPR would  
8 propose to compensate resources only for offers  
9 reflecting legitimate and verified cost-based \$1,000 per  
10 megawatt hour, and in my mind this acts as a safety net.  
11 So therefore offers that are verified prior to market  
12 could be used to calculate L&P and those who can't be  
13 verified either will be compensated through uplift if  
14 the offer is verified after the fact, and if it can't be  
15 verified after the fact the consumers will not bare that  
16 cost. So thank you for referencing it, I think it's a  
17 very important portion of this NOPR. I look forward to  
18 hearing the comments, and thank you again.

19           CHAIRMAN BAY: Thank you, Colette.

20           Mr. Secretary.

21           SECRETARY DAVIS: The vote begins with  
22 Commissioner Honorable.

23           COMMISSIONER HONORABLE: Aye.

24           SECRETARY DAVIS: Commissioner Clark.

25           COMMISSIONER CLAR: Aye.

1                   SECRETARY DAVIS: Commissioner LaFleur.

2                   COMMISSIONER LaFLEUR: Aye.

3                   SECRETARY DAVIS: Chairman Bay.

4                   CHAIRMAN BAY: Aye.

5                   SECRETARY DAVIS: The next presentation and  
6 discussion item for this morning is E-2, a draft order  
7 concerning to revise critical infrastructure potential  
8 reliability standards in docket No. RM15-14-000. There  
9 will be a presentation by Daniel Phillips from the  
10 Office of Electric Reliability. He is accompanied by  
11 Kevin Ryan from the Office of the General Counsel.

12                   MR. PHILLIPS: Good morning, Mr. Chairman,  
13 Commissioners.

14                   Item E-2 is a draft final rule on the  
15 revisions or the version 5 Critical Infrastructure  
16 Protection, or CIP, reliability standards submitted by  
17 the North American Reliability Corporation. The draft  
18 final rule approves the proposed revisions to the CIP  
19 reliability standards, finding that the revisions are  
20 just, reasonable, not unduly discriminatory or  
21 preferential in the public interest. The draft final  
22 rule concludes that the revisions adequately address  
23 certain directives in order no. 791 by first eliminating  
24 the identify, assess, and correct in 17 provisions of  
25 the CIP Version 5 reliability standard requirements;

1 second, providing enhanced security controls for  
2 low-impact assets; third, providing controls to address  
3 the risks posed by transient electronic devices, for  
4 example thumb drives and laptop computers, used at  
5 medium- and high-impact cyber systems; and fourth,  
6 addressing in an equally effective or efficient manner  
7 the need for a NERC glossary definition for the term of  
8 "communication networks".

9           The draft final rule approves the  
10 implementation plan and affective dates for the  
11 reliability standard that were proposed by NERC that  
12 notes the Commission's willingness to consider a  
13 specific expedited proposal regarding these items to  
14 synchronize compliance deadlines with the Version 5 CIP  
15 compliance standards.

16           Pursuant to the Commission's authority under  
17 section 215(d)(5) of the Federal Power Act, the draft  
18 final rule adopts the proposals set forth in the notice  
19 of proposed rulemaking and directs NERC to first develop  
20 modifications to address the protection of transient  
21 electronic devices used at low impact BES cyber systems,  
22 tailored to the risk for these systems; second, develop  
23 modifications for CIP 6 to require protections for  
24 communication network components and data communicated  
25 between bulk electric system control centers tailored to

1 be commensurate to the risk posed to the bulk electric  
2 system; and, third, develop modifications to the  
3 definition for "low impact external routable  
4 connectivity". In addition, the draft final rule  
5 directs NERC to submit a study that assesses the  
6 effectiveness of the CIP Version 5 remote access  
7 controls, the risks posed by remote access-related  
8 threats and vulnerabilities, and any appropriate  
9 mitigating controls that could be considered to improve  
10 remote access protection.

11           The draft final rule does not address the  
12 supply chain risk management issues that were raised in  
13 the notice of proposed rulemaking. The Commission has  
14 scheduled a staff-led technical conference that will be  
15 held at FERC headquarters on January 28, 2016, to  
16 facilitate additional dialogue between concerned parties  
17 regarding the Commission's supply chain risk management  
18 proposal. The Commission will determine the appropriate  
19 course of action on this issue after reviewing the  
20 record from the technical conference.

21           This concludes our presentation. We will be  
22 happy to answer any questions you may have. Thank you.

23           CHAIRMAN BAY: Thank you, Daniel, and thank  
24 you, Kevin. My thanks also to all of your colleagues at  
25 the Office of Electric Reliability and the Office of

1 General Counsel who worked on this final rule.

2 I think there are a few key take-away's from  
3 this final rule. First, I think to highlight the  
4 continuing support in cyber security to the Commission,  
5 and we certainly appreciate NERC's efforts in this area.  
6 Second, that we continue to make a continued incremental  
7 progress to improve the standards in cyber security. We  
8 recognize that this will be an ongoing effort given the  
9 nature of the threat. So as a result, I'm pleased to  
10 support this final rule.

11 COMMISSIONER LaFLEUR: Thank you, Mr.  
12 Chairman, and thank you for calling the items. I'd also  
13 like to thank the team. As you said, I think protecting  
14 the bulk electric system from emerging cyber threats is  
15 among the most important work we do, and I also think it  
16 is among the most difficult work we do because the  
17 threats keep evolving so that standard keeps evolving.

18 As approved today, the CIP 5 standards will  
19 provide a level of cyber protection to all elements of  
20 the bulk electric system, but with that level of  
21 protection tailored to the risks posed by each element.  
22 While today's order directs NERC to develop  
23 modifications to certain parts of the standard, it gives  
24 NERC and the industry the flexibility to develop those  
25 modifications in a way that's appropriately tailored to

1 the risk, which I think is very important given the  
2 increasing focus on risk prioritization in everything  
3 NERC does. For all of us who work on the electric  
4 system, either directly or as a regulator, keeping the  
5 lights on is job 1. For most people it's something they  
6 only think about when they lose power or when they're  
7 getting ready for a storm, as is happening rather  
8 hysterically in D.C. right now. But for those who work  
9 to design the system and keep it running as a standard  
10 to keep it reliable and resilient, it's a continual  
11 effort. Today's standard in ensuring protection against  
12 cyber threats is a part of that effort, and I want to  
13 thank everyone who was involved in the standard for  
14 their continuing work. Thank you.

15 CHAIRMAN BAY: Thank you, Cheryl.

16 Tony?

17 COMMISSIONER CLARK: I think my colleagues  
18 have stated it well, so I won't belabor the point other  
19 than to thank the team for their work and communicate  
20 that I'm proud to support the order. Thanks.

21 CHAIRMAN BAY: Thank you, Tony.

22 Colette?

23 COMMISSIONER HONORABLE: Thank you,  
24 Mr. Chairman. I, too, would like to thank OER. And I  
25 also would like to thank NERC and all of the

1 stakeholders that participated in this effort. This has  
2 been an ongoing effort on the part of everyone and  
3 continues improvement of reliability standards in an  
4 area of increasing significance where emerging cyber  
5 threats are still being identified and understood. And  
6 this discussion today and the E-2 item that we'll issue  
7 today reflects retirement of a necessary standards,  
8 approval of new and revised standards, as well as  
9 increasement [sic] of existing standards. And in my  
10 mind all of these things represent steps in the right  
11 direction.

12                   For me, an important hallmark of this  
13 particular order is the protection of transient  
14 electronic devices and the protection of communications  
15 between control centers; I'm very pleased to see that.  
16 I'm very pleased also to see the input from the broader  
17 stakeholder community, which is why I support the  
18 decision to delay action on the supply chain risk  
19 management portion of this. I look forward to the  
20 technical conference on January 28 and a robust  
21 discussion for the work to continue afterward. I'd also  
22 like to thank NERC in advance for their work that they  
23 will undertake in conducting a steady, remote access  
24 protection in that standard. So thank you again.

25                   CHAIRMAN BAY: Thank you, Colette.

1 Mr. Secretary?

2 SECRETARY DAVIS: The vote begins with  
3 Commissioner Honorable.

4 COMMISSIONER HONORABLE: Aye.

5 SECRETARY DAVIS: Commissioner Clark.

6 COMMISSIONER CLARK: Aye.

7 SECRETARY DAVIS: Commissioner LaFleur.

8 COMMISSIONER LaFLEUR: I vote aye.

9 SECRETARY DAVIS: And Chairman Bay.

10 CHAIRMAN BAY: Aye.

11 SECRETARY DAVIS: The last presentation for  
12 discussion items for this morning are G-1, Columbia Gulf  
13 Transmission, LLC, docket no. RP6-302-000; G-2, Iroquois  
14 Gas Transmission System, L.P., docket no. RP16-301-000;  
15 G-3 Empire Pipeline, Inc., docket no. RP-16-300-000; and  
16 G-4, Tuscarora Gas Transmission Company, docket no.  
17 R016-299-000. There will be a presentation by James  
18 Sarikas from the Office of Energy Market Regulation. He  
19 is accompanied by David Maranville and Richard Howe from  
20 the Office of the General Counsel.

21 MR. SARIKAS: Good morning, Mr. Chairman and  
22 Commissioners. Items G-1 through G-4 are draft orders  
23 that initiate investigations pursuant to Section 5 of  
24 the Natural Gas Act to determine whether the rates  
25 charged by four interstate natural gas pipelines are

1 just and reasonable. The four pipelines are Columbia  
2 Gulf Transmission, L.L.C., Iroquois Gas Transmission  
3 System, LP, Empire Pipeline, Inc., and Tuscarora Gas  
4 Transmission Company.

5 By way of background, Order 636 eliminated  
6 the requirement for interstate natural gas pipelines to  
7 periodically file restated rates. Beginning in 2009 the  
8 Commission began a systematic and in-depth review of the  
9 cost and revenue information filed by large pipelines in  
10 form number 2. In 2011 staff expanded its Section 5  
11 analysis to also include cost and revenue information  
12 filed by smaller pipelines in form 2A. As a result of  
13 this analysis, in 2009 the Commission has initiated a  
14 total of 10 Section 5 proceedings to determine if the  
15 pipelines' revenue significantly exceed their annual  
16 cost of service such as those pipelines' existing  
17 transportation and storage rates may no longer be just  
18 and reasonable. Eight of those proceedings ended with  
19 settlement agreements and two of those proceedings were  
20 terminated.

21 In addition the Commission initiating NGA  
22 Section 5 actions to adjust pipeline's rates since 2009,  
23 pipelines themselves have initiated 29 NGA general  
24 Section 4 rate proceedings to adjust the rates, filed 19  
25 prepackaged settlements to adjust the rates, and filed

1 19 cost and revenue studies to give the Commission and  
2 interested entities an opportunity to examine the  
3 pipelines' rates.

4           As relevant to items G-1 through G-4,  
5 Commission staff conducted a review of all form 2 and  
6 form 2A's as submitted by interstate natural gas  
7 pipelines for calendar years 2013 and 2014. The review  
8 included an analysis of all of the revenues and expenses  
9 of the pipelines to determine whether the revenues were  
10 exceeding an estimated cost of service on a consistent  
11 basis. Staff's review also considered other factors,  
12 including whether pipeline's currently effective rates  
13 are the result of a settlement that either had a rate  
14 moratorium in effect or requires the pipeline to file a  
15 general Section 4 rate pay in the near future and in  
16 length of time since the pipeline last revised its  
17 rates. Additionally, staff looked at the level of  
18 infrastructure investments that pipeline placed into  
19 service in 2014 and the level of additional estimated  
20 infrastructure investments that will be made, as the  
21 2014 form 2 or form 2A data may not fully reflect the  
22 effect of such investments on a pipeline's rates.

23           Staff calculated a cost of service for each  
24 pipeline using form 2 or 2A cost of service data for the  
25 years 2013 and 2014. Staff then determined what the

1 pipeline's revenues were for those years. Staff used  
2 this information to estimate an earned return on equity  
3 for each pipeline for calendar years 2013 and 2014. Our  
4 analysis indicates that the first pipeline, Columbia  
5 Gulf, has a calculated return on equity for 2013 of 17.3  
6 percent and 18.2 percent for 2014. The second pipeline,  
7 Iroquois, has a calculated return on equity for 2014 of  
8 16.2 percent and 16.3 percent for 2014. The third  
9 pipeline, Empire, has a calculated return on equity for  
10 2014 of 15.8 percent and 20.2 percent for 2014. The  
11 fourth and final pipeline is Tuscarora, with a  
12 calculated return on equity of 2014 of 23.6 percent and  
13 24.9 percent for 2014.

14           These estimated level of returns leave staff  
15 to believe that these four pipelines are over-recovering  
16 their costs of service and may be charging rates that  
17 are no longer just and reasonable. In addition, none of  
18 these pipelines have an existing settlement with its  
19 customers that places a currently effective moratorium  
20 on existing rates, or requires it to file a new general  
21 Section 4 rate case in the future. Accordingly, these  
22 draft orders initiate investigations pursuant to Section  
23 5 in the Natural Gas Act into the rates charged,  
24 establishes the hearing, and requires each pipeline to  
25 file a cost and revenue study within 75 days of the

1 issuance date of that pipeline's order. In addition,  
2 each of the draft orders establishes a deadline for  
3 administrative law judges to issue an initial decision.

4 Thank you and we would be happy to answer  
5 any questions.

6 CHAIRMAN BAY: Thank you, Jim, David, and  
7 Richard. I appreciate the team's hard work for  
8 analyzing the form 2 and form 2A data. I believe this  
9 work is an important part in the Commission's  
10 responsibility under the NGA to ensure just and  
11 reasonable rates.

12 So I have one question for you, and that is  
13 this: How many pipelines did you evaluate during the  
14 course of your review and how does your analysis differ  
15 from the analysis performed by other groups, including  
16 the NGSA.

17 MR. SARIKAS: I believe the first step was  
18 to go through each area, and I believe there was a  
19 little over a 130 companies that have a tariff on file.  
20 We then removed those storage companies that have  
21 market-based rates. So I think our ultimate analysis  
22 was about 129 companies that had a tariff on file, was  
23 not market-based rates only; and we had form 2 or form  
24 2A information. I think NGSA does somewhere between 39  
25 and 40. I think another indicator is what we did is we

1 are just a few months behind coming up with our  
2 analysis. NGSAs study seems to be produced about maybe  
3 18 months after the most-recent calendar year. So I  
4 think our data is a little bit more up to date and more  
5 thorough. Thank you.

6 CHAIRMAN BAY: Thank you, Jim.

7 Colleagues, Cheryl?

8 COMMISSIONER LaFLEUR: Thank you,  
9 Mr. Chairman. I'd also like to thank the team for your  
10 work on these four orders, and thank staff for your  
11 regular, ongoing analysis of the rates charged by gas  
12 pipelines across the country even at times when we're  
13 not talking about it at public meetings. We really have  
14 a tremendous of gas-rate expertise sitting at that  
15 table, and even more in all the people collectively who  
16 work with you.

17 As the Nation's use of natural gas for  
18 direct consumer use for industrial processes and for  
19 increasingly electric generation continues to grow, it's  
20 essential that the rates charged for pipelines'  
21 expectation remain just a reasonable. Investigations,  
22 like you were initiating today, are an important part of  
23 that work. On a completely different note, I'll use my  
24 last time with the mic to say "Go Patriots".

25 CHAIRMAN BAY: Thank you, Cheryl.

1 Tony?

2 COMMISSIONER CLARK: Thank you. For the  
3 last probably year or two I had a number of stakeholders  
4 who'd come through my office who have asked from time to  
5 time: "Has the Commission quit doing Section 5 rate  
6 cases?" Because we've had a period where a number of  
7 them it had been a year or two since we had initiated a  
8 number of these rate cases. And I always tell them no,  
9 there hasn't been a policy change, that each year staff  
10 does review these rates for various reasons, there may  
11 be a year or two where staff choses not to pursue one.  
12 It could be for all those reasons that you talked about  
13 in your presentation today. But that we were actively  
14 engaged in this particular type of work. So of course  
15 we don't prejudge any of these cases that are being T'd  
16 up on your Section 5. I look forward to the record  
17 being developed and potentially coming to the  
18 Commission. But today just say thanks to the staff for  
19 your ongoing work. This particular area is so  
20 important, just and reasonable for natural gas  
21 consumers.

22 CHAIRMAN BAY: Thank you, Tony.

23 Colette?

24 COMMISSIONER HONORABLE: Thank you,  
25 Mr. Chairman. There's not much more I could add besides

1 my colleagues who actively thank you for your work here  
2 and your ongoing effort. This work is so important to  
3 be a check and balance on the process on the rates that  
4 are passed on to consumers. And really as a reminder  
5 that there is a role that we must play here. I want to  
6 thank you also for answering all of my many questions  
7 about this effort, going through this process. And I  
8 look forward to the review and what comes of it. Thanks  
9 so much.

10 CHAIRMAN BAY: Thank you, Colette.

11 Mr. Secretary.

12 SECRETARY DAVIS: The vote begins with  
13 Commissioner Honorable.

14 COMMISSIONER HONORABLE: Aye.

15 SECRETARY DAVIS: Commissioner Clark.

16 COMMISSIONER CLARK: Aye.

17 SECRETARY DAVIS: Commissioner LaFleur.

18 COMMISSIONER LaFLEUR: Aye.

19 SECRETARY DAVIS: And Chairman Bay.

20 CHAIRMAN BAY: Aye.

21 With that, this meeting is adjourned.

22 (Whereupon, at 10:52 a.m. on Thursday, January 21st,  
23 2016, the 1,023rd FERC Commission Meeting is adjourned.)

24

25