

BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

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IN THE MATTER OF: :

CONSENT ELECTRIC ITEMS :

CONSENT MISCELLANEOUS ITEMS :

CONSENT GAS ITEMS :

CONSENT HYDRO ITEMS :

CONSENT CERTIFICATES :

DISCUSSION ITEMS :

STRUCK ITEMS :

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813TH COMMISSION MEETING

OPEN MEETING

Commission Meeting Room

Federal Energy Regulatory

Commission

888 First Street, N.E.

Washington, D.C.

Wednesday, December 18, 2002

10:30 a.m.

APPEARANCES:

COMMISSIONERS PRESENT:

CHAIRMAN PAT WOOD, III, Presiding

COMMISSIONER NORA MEAD BROWNELL

COMMISSIONER WILLIAM L. MASSEY (BY PHONE)

SECRETARY MAGALIE ROMAN SALAS

ALSO PRESENT:

DAVID L. HOFFMAN, Court Reporter

P R O C E E D I N G S

(10:05 a.m.)

CHAIRMAN WOOD: This meeting of the Federal Energy Regulatory Commission will come to order to consider the matters which have been duly posted in accordance with the Government in the Sunshine Act for this time and place.

Before we have our Pledge to the Flag, I would like to ask that after the Pledge, to ask everyone to remain standing for a moment of silence. We lost one of our own since our last meeting, together. John Peuser, from OMTR, a Pennsylvania native, was lost in a car accident this last week, and was buried last night in Bowie.

Since I have been back here at FERC, that's the first employee we've lost here. I know that a lot of his colleagues miss him already. He's been an economist in OMTR since OMTR was formed back in 2000, and leaves behind his wife, Mimi and his four-year old daughter, Olivia. We'd like to, again, after the Pledge, ask you to remain standing for a moment in honor of John Peuser. Please join me in the Pledge to the Flag.

(Pledge of Allegiance recited and moment of silence observed.)

CHAIRMAN WOOD: Thank you. I'd like to say that our colleague, Bill Massey, is joining us by telephone.

Bill, can you hear us?

COMMISSIONER MASSEY (Via telephone): Yes, I can hear you well.

CHAIRMAN WOOD: Bill is recovering from successful ear surgery that he had on December 13th. I understand, Bill, that you are doing well, but they advise you to stay close to home until they give you the thumbs up; is that right?

COMMISSIONER MASSEY: That's exactly right.

CHAIRMAN WOOD: We are going to, before we go to the consent agenda -- we have, I guess, in some regards, happy news for the people who are retiring, but for those of us who are going to miss them, some sad news.

I would like to recognize, first of all, that from OMTR, John Imami and Jerry O'Connor will be leaving us in the near future, one of our true veterans, although, to look at the fact that this man has not a line on his face, he is leaving us, as well, from the Office of Energy Projects. A long-time FERC hand, Randy Mathura, who served as Director of the Pipeline Certificates in the Division of Environmental Engineering Review Branch, he's been here for 37 years at the Commission. I remember him well from my first tour of duty here. Where is Randy? There you are.

From my first tour of duty ten years ago, he gets the hard diplomatic tasks, because he's got exceptional interpersonal skills, a lot of poise, very good background

on our statutes and regulations, and the institutional knowledge of pipeline construction and regulation in this country, and has been an excellent manager during a number of organizational transitions over the past couple of decades, and has been, according to all who worked for him, that I have been able to ascertain, a fair and demanding supervisor who personifies leadership and leading by doing.

I appreciate the many good years, Randy, that you gave to this Commission and to this country. We'll miss you very much.

We've got a little plaque for you, so why don't you come forward? Exemplar of public service, presented to Randolph Mathura, deemed an exemplar of public service for a distinguished career in pursuit of the vision, mission, and values of the Federal Energy Regulatory Commission.

(Applause.)

CHAIRMAN WOOD: I guess all good things do come in pairs. And the next one is a heck of a good pair. I will recognize each of them separately, although I think that all of us like the fact that they're both here and that we're going to miss both Charle Ward, Charleton C. Ward, as she's officially called, and Lynwood A. (Bill) Watson, as they also go into retirement early next year.

I want to first of all say something about Bill:

He definitely prefers to go by his nickname, Bill. As one

whose last name is Wood, I think Linwood has a nice ring to it, but I'll recognize your honor.

He began his federal service in '74 at the Atomic Energy Commission, has a Bachelor's in Business Administration. He signed on at FERC here in 1979 with the Office of the Executive Director, and completed his Master's in Public Administration in the early '80s. For the past 14 years he's been in leadership roles in the Office of the Secretary, currently as Deputy Secretary, where he has demonstrated unquestioned loyalty and commitment to the goals of this Commission and to achieving of excellence in all the important work of coordina*ting the many, many things that the Secretary's Office does to hold this agency together.

I remember, again, from 12 years ago when I first got here, on a personal level, you made me feel so welcome here, and I think you have that type of impact with everybody you work with. Your calm demeanor and your efficiency and your effective leadership in this agency will be sorely missed.

We just want to wish you and Charlene, who I'll mention in just a second, all the best. Why don't you come forward. We've got a Career Service Award for you, presented on the occasion of your retirement: In gratitude and recognition of 30 years of dedicated service on behalf

of this nation's energy customers, and the FERC.

(Applause.)

CHAIRMAN WOOD: This one is way too young to retire. Where are you, Charle? There you are.

Charle has been here 28 years and eight months in government service, working in the Office of General Counsel, most recently, and, I think, by all of our estimation, doing a fantastic job, developing the ATMS activities, tracking management system, which has brought a lot of efficiency to the agency. It's the unheralded things -- I think between the two of you, between the management of all the dockets for our General Counsel, and the Deputy Secretary's role -- boy, you all better hope you get your orders in in January.

(Laughter.)

CHAIRMAN WOOD: She started in '74 with the Federal Energy Office, came to FERC in '80, and came to OGC in '87, and she's been a wonderful help and a great friend to many here. I know from all your colleagues as well, Charle, you will be sorely missed. I think I speak for the OGC leadership sitting here at the table that if there's anything I can do to kind of keep you around, let me know.

Charle, we have a Career Service Award for you as well, presented to you on the occasion of your retirement, in gratitude and recognition of the 28 years of dedicated

service to the nation's energy customers and to the FERC, so
come on up.

(Applause.)

CHAIRMAN WOOD: Send us a postcard from Bora
Bora. Madam Secretary, the consent agenda.

SECRETARY SALAS: Good morning, Mr. Chairman, and
good morning, Commissioners. Before I go into the consent
agenda for this morning, let me mention the items that have
been stricken from the agenda after the issuance of the
Sunshine Notice on December 11th.

They are as follows: E-8, E-9, E-13, E-16, E-21,
E-24, E-36, E-46, E-47; G-6, G-36, and C-2.

Your consent agenda for this morning is as
follows: Electric E-11, E-14, E-15, E-17, E-18, E-19, E-20,
E-22, E-25, E-26, E-27, E-28, E-29, E-30, E-31, E-32, E-33,
E-37, E-39, E-40, E-41, E-43, E-49, E-50, E-51, E-52, E-55,
E-58, E-59, E-60, and E-61.

Miscellaneous: M-1, M-2.

Gas: G-3, G-4, G-5, G-7, G-8, G-9, G-13, G-14,
G-16, G-17, G-18, G-19, G-20, G-25, G-26, G-29, G-30, G-31,
G-32, G-34, G-35, G-38, G-39, G-40, G-41, G-44, G-45, G-46,
G-47, G-59, and G-60.

Hydro: H-1, H-3, and H-5.

Certificates: C-3, C-4, C-5, C-6, C-7, C-9, C-
10, and C-11.

The specific votes for some of these items are as follows: G-38, Commissioner Brownell, dissenting, in part, with a separate statement; G-44, Commissioner Brownell concurring with a separate statement; G-45, Commissioner Brownell concurring with a separate statement, and Commissioner Brownell votes first this morning.

COMMISSIONER BROWNELL: I vote aye, noting my dissent on G-38 and my concurrence on G-44 and G-45, my dissent, in part, on G-38.

CHAIRMAN WOOD: Bill?

COMMISSIONER MASSEY: I vote aye on all of these items.

CHAIRMAN WOOD: I vote aye, as well. As to the struck items, it is our intention to move notationally, in the very near future, on E-21 and E-36, at a minimum, and on perhaps others as well.

In that basket of items with the final Order No. 637, Natural Gas Compliance Filings, in our business plan, we included a goal of completing initial orders on all pending Order No. 637 compliance filings by December 31st of this year.

With the approval the Draft Order for Midwestern's Order 637 filing, we have met this objective. I do note there are issues raised in El Paso's Order 637 that are being considered in conjunction with the capacity

allocation issues case. So that one is actually not out.

To reach this goal, we have issued approximately 70 initial Orders on compliance in 637 since January of this year. Implementation of these orders by interstate pipeline companies will enhance competition in the gas industry by providing shippers with enhanced flexibility to schedule and utilize the firm capacity they hold on interstate pipelines.

I think it is appropriate to recognize that these just don't happen; a lot of people make them happen. If you'll bear with me, I'd like to recognize a number of people on our staff who contributed to the successful accomplishment of this major business plan goal: Joseph Athey, Julia Berndt, Ezra Bilgehan, Leonard Burton, John Carlson, Bob Catlin, Horatio Cipkus, Paula Crinkleton, Sharon Dameron, Sandy Delude, Joseph Dewey, James Eason, Pat Ely, Sandy Elliott, David Fairburg, Rodell Fields, Jonathan First, Robert Flanders, Jackson Fray, Gregory Gayney, Karen Giblin, Michael Goldenberg, Grace Goodman, Steven Grinke, Wayne Guest, Frank Gurley, Mike Henry, William Howard, Richard Howe, Laurel Hyde, Ray James, Carolyn Jones, Laura Kane, Frank Karabetsos, Robert Keegan, Scott Kogis, Michael Lacey, Mary Lafave, Julia Lake, Lynn Lichtenstein, Lou Lieb, Robert Lippert, Melissa Lord, Debbie Lowe, Jennifer Lucas, Janice Luna, Andrew Lyon, Robert Machuga, Gary Marenholtz, Russell Mamone, Valerie Martin, Douglas Mayas, Irene

McAllister, Robert McLean, John Meiberger, Kay Morris, Penny Murrell, Fred Ni, Carrie Noone, Jerry O'Connor, Ingrid Olson, Julie Parsons, Keith Pierce, Mark Pool, John Rogers, Peter Roidakas, Karen Schaeffer, Pam Seely, Bob Sheldon, Jack Silberman, Frank Sparber, Rachel Spiker, Jason Stannick, Donna Stratton, Michael Strzelecki, David Tischman, Catherine Waldbauer, Christine Walker, Laura Welch, Ken Witt, Harris Wood, Erica Yanoff, Mark Zindel, and Liz Zurbe.

These folks -- and I hope no others --

(Laughter.)

CHAIRMAN WOOD: But if so, I'll be around at the Christmas party tomorrow -- contributed a lot to the successful achievement of Order 637 compliance. I do observe that we do still have rehearing, but I do think it's a wonderful effort for our Commission to hold faith with what the prior Commission did in implementing an order consistent with the spirit of those who adopted the Order, so I want to thank the Staff for their hard work on all that.

SECRETARY SALAS: Mr. Chairman and Commissioners, if I may, I want to make a note about the item just adopted on consent E-40.

This item directs filers to file their electric quarterly report using the new EQR software. The Commission

would like to announce that we have scheduled a live demonstration of this software for this Friday, December 20 at 10:00 in Room 3M3 for anyone who is interested in seeing the new EQR software.

In addition, we will have Web-X demos over the Internet on Friday afternoon at 3:30, and again on Monday, December 30 at 11:00.

Those people who are interested in participating in these Web-X demos should e-mail Barbara Burke at ferc.gov to register. We will also be taking a Web-X demo for people to download from the Commission's website. The tape demo, we expect to be available by Friday.

As usual, if you have any questions about my announcement, you can also call the Office of the Secretary at 202-502-8400. Thank you, Mr. Chairman.

CHAIRMAN WOOD: Thank you, Madam Secretary. We'll go forward with our items today, then.

SECRETARY SALAS: The first item in the discussion agenda is a joint presentation of Items C-1, Hackberry LNG Terminal LOC, and C-2, CMS Trunkline LNG with a presentation by Richard Foley. He will be accompanied at the table by Robert Machuga, Robert Christian, Chris Zerby, and Randy Mathura.

Mr. Chairman, I understand that the presenters for C-1 are delayed at this time. Could we skip over to the

G presentations?

This will be a joint presentation of the following items: G-49, Williams Gas Pipeline Central; G-50, Williams Gas Pipeline Central; G-51, Panhandle Eastern Pipeline Company; G-52, Burlington Resources Oil and Gas Company; G-53, KN Interstate Gas Transmission Company; G-54, INC Global Operations, Inc.; G-56, Colorado Interstate Gas Company; G-57, Northern Natural Gas Company; and G-58, Northern Natural Gas Company.

This will be a presentation by John Wynn. He's accompanied at the table by Ellen Schall, Mark Poole, and I believe that is it for this morning -- and Richard Howe.

MR. WYNN: Good morning, Mr. Chairman and Commissioners. My name is John Wynn. As mentioned, the team members with me today are Ellen Schall, Richard Howe, and Mark Poole.

The Natural Gas Policy Act of 1978 made first sales of natural gas subject to a set of price ceilings. Producers, however, could legally be reimbursed by their pipeline purchasers for state severance taxes the producers paid on gas they sold as an add-on to the applicable maximum lawful price.

Pipelines could then pass the tax reimbursement costs along to their customers as a purchased gas cost. In 1993, following a court remand in 1988, the Commission ruled

that Kansas's ad valorem tax does not qualify as a reimbursable severance tax under Section 110 of the NGPA.

Accordingly, on December 1, 1993, the Commission ordered producers to make refunds to the pipeline purchasers for the period from June 1988 forward. To the extent that ad valorem tax reimbursements resulted in a producer collecting amounts in excess of the applicable maximum lawful price, the pipelines were then required to flow the refunds through to their customers.

In 1996, the Court of Appeals affirmed the Commission, but held that refunds were due from October of 1983, the year the reimbursement was challenged, and the Commission, in September, 1997, required producers to refund amounts that exceeded the applicable maximum lawful price for the period from October 1983 through June 1988.

Since then, various settlements have been reached and the interstate pipelines have filed the required refund reports for five years. According to the pipeline refund reports, there are, however, approximately 126 producers that still owe refunds for the 1983 through 1988 period, and approximately 32 producers that still owe refunds for the 1988 through 1993 period.

The Orders before you, Items G-49 through G-54, and G-56 through G-58, provide paths for resolving these outstanding producer refund liability cases, and where

appropriate, recovery of refunds.

The G-49 Order addresses refunds still due for the 1988 through 1993 period owed to Williams. This Order ceases the Commission's refund collection efforts with respect to these refunds.

With respect to the G-50 through G-54 Orders, where the amount of the refund due is in dispute, the producer's refund liability is to be set for hearing in order to resolve the outstanding issues and determine the proper refund amount that must be paid by producers to the pipelines.

In the G-56 and G-57 Orders, the producers are ordered to pay identified refunds. If they pay within 30 days or make arrangements to pay within 30 days, they can receive refund relief equivalent to the relief they would have received under the otherwise applicable Commission-approved pipeline settlements.

The G-58 Order gives notice that the Commission is ceasing its refund collection efforts with respect to producers that cannot be found; that are dissolved, that are without an identifiable successor, or the producer's refund liability would have been fully extinguished under the terms of the applicable Commission-approved pipeline settlement, had the producer entered into that settlement. Thank you.

CHAIRMAN WOOD: Some complain about how slow the California refund cases are going.

These are a significant legal and process battle that this Commission has engaged in since long before I was here the first time. I'm very pleased to see Staff take the leadership in getting down all the way to the nuts and bolts of all these various claims with various types and identities of producers and find a proper way to just get these resolved.

If that means going to a litigation case, let's get it done. If it means cutting your losses and zeroing the balance out, we've all dealt at some stage with debt collection in our life and recognize that high nineties on a percentage is pretty achievable but 100 percent is never achievable. So I appreciate the effort to pull all these together and I think it's a good day to get these out of here.

COMMISSIONER BROWNELL: Consistent with the spirit of the season, I would say amen and hallelujah.

(Laughter.)

CHAIRMAN WOOD: Bill, any thoughts?

COMMISSIONER MASSEY: I have a question of Staff. Having been at the Commission during a lot of this period of time where these cases kept coming up, as I recall, there were several hundred million dollars in dispute. And as I

understand the matters before us, we are ceasing collection efforts by the Commission on just a very small percentage of that amount. Can some member of Staff clarify?

MR. POOLE: Commissioner Massey, this is Marc Poole. The original refund estimate of what was owed was up around \$338 million. The settlement efforts by Rick Miles, ADR team, managed to eliminate some of that, and a lot of it was paid.

So although we don't have a number in front of us right now for the total amount that was a paid, a large chunk of that \$338 million was in fact paid to the pipelines, and the pipelines have been reporting the flow through of those refunds for the past five years as they have come in.

The current figure for what is left is about \$104 million total.

COMMISSIONER MASSEY: In a couple of these cases that are before us now, we have determined to cease collection efforts with respect to certain producers. Can you tell me again why we are choosing to cease those efforts?

MR. POOLE: Well, the efforts are being ceased on producers whose refund liabilities -- in one instance where the refund liabilities would not exceed the threshold for complete relief under the settlements, had the producers

entered into those settlements.

Others we're ceasing refund collection efforts because the producers are either bankrupt, or if it's a corporation, the pipeline has indicated it's a dissolved corporation, or individuals are deceased.

COMMISSIONER MASSEY: And as I understand it, we started out with several hundred million dollars owed and a lot of that has been paid, and a number of these cases are set for hearing to determine actual amounts, the amount that we are choosing not to pursue because the producers would be bankrupt and so forth is \$5 to \$6 million. Am I correct?

MR. POOLE: That's correct. Out of what is being disposed of through these orders, about \$88 million is going to be set for hearing. About \$9 million is going to be the group where we are going to offer the producers the equivalent relief they would have received under the settlement, and about \$5 million and change is going to be the cease collection efforts order.

COMMISSIONER MASSEY: Okay. We're not wiping out this liability. We're just deciding as a Commission not to spend our valuable resources pursuing collection efforts as a Commission?

MR. POOLE: That's correct.

COMMISSIONER MASSEY: But could private parties continue to pursue those efforts?

MR. POOLE: Yes they could.

COMMISSIONER MASSEY: All right. Thank you, Mr. Chairman. These orders have my full support.

CHAIRMAN WOOD: They do mine as well. Nora? That makes three of us. Let's just formally vote it.

COMMISSIONER BROWNELL: Aye.

COMMISSIONER MASSEY: Aye.

CHAIRMAN WOOD: Aye. Thank you all very much.

SECRETARY SALAS: The next item is the joint presentation of Items C-1, Hackberry LNG Terminal LLC, and C-2, CMS Trunkline LNG. The presentation is by Richard Foley. He will be accompanied by Robert MacHuga, Robert Christin, Cris Zerby and Randy Mathura.

MR. FOLEY: We have a slide presentation to give you if that's ready, please.

(Slide.)

Good morning, Chairman and Commissioners. Our group here at the table is presenting two items concerning liquefied natural gas or LNG. Much bigger teams of Staff members worked on these two cases. Since the result of one of these cases is to announce a different Commission policy concerning LNG, we're going to share some background information with you about the Commission's experience with LNG.

LNG is not new to the Commission. The FERC's and

FPC's experience with LNG goes back more than 30 years. Next slide, please.

(Slide.)

There are five existing LNG import terminals under the Commission's jurisdiction. As shown here, the existing import terminals are in Massachusetts, Maryland, Georgia, Louisiana and Puerto Rico, which is off the map on the page there.

The one in Massachusetts has been in a nearly continuous operation for most of this time, and the one in Puerto Rico was placed in service in the year 2000. Three other LNG import terminals in Maryland, Georgia and Louisiana were originally used for pipeline system supplies and were idle for many years. However, the one in Louisiana was reactivated in 1989 for spot cargoes.

In the past three years, the Commission approved proposals to reactivate and/or expand the three LNG import terminals in Maryland, Georgia and Louisiana, as well as the one in Massachusetts. The Commission approved the reactivation of the LNG terminals in Maryland and Georgia in the year 2000, 2001 respectively. A few weeks ago, the Commission issued a preliminary determination for an expansion of the one in Georgia. Today you are acting on a final order for the expansion of the existing LNG terminal in Louisiana. This Item Number C-2, CMS Trunkline LNG.

Next slide, please.

(Slide.)

Also recently, the Commission held a Natural Gas Markets Conference and looked at its role in LNG regulation, among other issues. The notice for the conference stated that the Commission believed it was time to reexamine its existing policy in light of changes that have occurred in the gas industry since imported LNG first began its role in the natural gas market more than 30 years ago.

The Commission said it wanted to explore regulatory goals that remove unnecessary barriers to the development of LNG facilities and supply as a major source of natural gas to meet forecasted future demand.

At the conference, representatives of the energy industry argued that the Commission's open access requirements were having the unintended effect of potentially deferring investment in new LNG facilities in the United States.

Participants at the conference argued that investors in the full supply chain of LNG projects needed to assure access to terminal capacity, that this could not occur under the open season bidding and the timing that many foreign governments would not approve LNG export projects without clear and certain access to markets. No one at the conference or in subsequent written comments challenged this

view.

The energy industry has also reactivated its interest in LNG. Next slide, please.

(Slide.)

There are few applications for proposals for LNG terminals for LNG source projects pending with the Commission. Today, in addition to approving the expansion of the existing LNG import terminal in Louisiana, the Commission has before it a draft order for a preliminary determination for a second new LNG import terminal in Louisiana, Item Number C-1, Hackberry LNG Terminal LLC.

Next slide, please.

(Slide.)

Shown on the next map, there are many possible sites the energy industry has identified for locations of new LNG import terminals. No applications for these have been filed with the Commission yet.

The Commission's current open access policy establishes that jurisdictional capacity used to transport natural gas is made available under Commission approved transportation rates, the terms of standard transportation contracts, and the Commission approved tariff.

All the commentators at the Natural Gas Market Conference stated that this policy discourages the development of LNG import terminals in the United States.

Next slide, please.

(Slide.)

This diagram depicts where the open access transfer point for LNG could be, depending on how the Commission chooses to regulate the commercial activities of an LNG import terminal. The diagram, just to explain, is a ship and dock, the tanks that would be at the terminal, and then coming across to where the tailgate of the plant would be and hooked into the pipeline grid.

Under the current policy, the open access transfer point is at Point A, where all potential -- where the dock and the ship and the liquid enters the system. Under this policy, all potential buyers of LNG have the opportunity to secure access to unloading, storage and vaporization functions that the LNG terminal performs under the terms of a Commission approved open access tariff.

The draft order in Item C-1, Hackberry LNG, announces a new policy of moving the open access transfer point to Point B, the tailgate of the plant. Under this new policy, the services of LNG import terminal would be governed by private contracts between terminal operator and LNG suppliers. At the same time, all potential buyers of LNG would be able to buy revaporized LNG at the tailgate of the terminal, and the revaporized LNG would enter the interstate natural gas pipeline grid under the terms of

standard transportation contracts and Commission approved tariffs.

Under this new policy, the Commission would be treating an LNG terminal as the functional equivalent of a production facility, because all the cost consequences of delivering pipeline quality natural gas are borne solely by the producer and the processor of natural gas, or in this case, the LNG importer and the LNG terminal operator.

Next slide, please.

(Slide.)

We mentioned there were several terminals, and we're talking now trying to narrow it down, and unfortunately cast off Puerto Rico for a moment. The three mainline terminals that are now in service have a capacity of 530 Bcf per year. The LNG terminal in Maryland is starting reactivation and construction, and with today's approval of Item Number C-2 for Trunkline, the expansion of the existing terminal in Louisiana will be underway. Thus, in the near future there will be an increase of available LNG import capacity to 870 Bcf per year.

Further, given last month's preliminary determination and the PD for today's Item Number C-1 up to 1,545 Bcf per year of available LNG import capacity could be ready in the mid-term future.

Finally, not all of the possible sites for LNG

terminals now being considered by the energy industry will be constructed. But the eventual construction of some of them would make much more LNG capacity available in the future.

Next slide, please.

(Slide.)

To summarize, the new policy approach for LNG import terminals provide the following benefits:

It would stimulate the energy industry to develop new LNG import terminals;

It would increase access for the United States to worldwide natural gas supplies; and

It could accommodate various business models, while at the same time, the new policy ensures competitive commodity prices in the United States, reserves open access transportation on the interstate natural gas pipeline grid.

This concludes our presentation.

CHAIRMAN WOOD: Thank you very much. Nora?

COMMISSIONER BROWNELL: I appreciate the Staff's report. We've heard a lot about the potential of LNG in the last just six or seven months and I think gotten a better understanding of the very complex economic formula that's needed to make it work.

And so I think it's more than appropriate that we consider this change in policy, because I think that LNG

will play an important niche role as we gain more reliance on gas in our marketplace.

So I'm excited. I think it opens up, as you said, kind of worldwide access in a way that we haven't considered before.

And I also want to note that I think that the Cove Point experience was illustrative of how we can work together with other agencies and address the safety issues which I think remain a concern of some of the public, and so I would encourage our Staff to be ready to answer those questions, because I'm quite confident that indeed this is an important but safe alternative that will add value for all customers.

I'm pleased with the report. I'm pleased with the work you've done, and I'll be supporting this change in policy, because I think it represents kind of a whole new opportunity.

CHAIRMAN WOOD: Thank you, Nora. Bill, do you have anything to?

COMMISSIONER MASSEY: Yes. I have publicly expressed some reservations about eliminating our open access policy with respect to LNG facilities, because I had seen these facilities as facilities that provided a gateway to the U.S. market, and the agency had as a core value the principle of open access.

And so I wanted to hear a debate over whether that principle should apply here. And as was pointed out by Staff, we held a conference on natural gas issues and gave proponents and opponents equal opportunity to come in and state their case. And I think Staff correctly pointed out that no person expressed concern at that conference about moving away from an open access policy, nor in follow-up comments since the conference has anyone objected.

That's point one. Point two is, if you look at these facilities, you can, it seems to me, rationally conclude that the LNG facility itself is more akin to a production facility than it is to a natural gas pipeline facility. And we don't regulate, generally speaking, production facilities.

So I am comfortable with this change in policy, and would make point three to echo Nora's comments, and that is, that we want to encourage participation of LNG in U.S. markets. It's a valuable resource and I believe this change of policy will provide a catalyst for new LNG production facilities and am also supporting this change in policy on that basis.

Thank you, Mr. Chairman. I will be voting for these orders.

CHAIRMAN WOOD: Thank you, Bill. One thing I would like to add in addition. I second Bill and Nora's

comments on this as well and particularly, Nora, your observation that the jurisdiction issues, one, the public perception about safety, which I do think is at some variance with the actual issues are. In other words the public is more worried about the safety of this issue than the science would dictate. But nonetheless, those have to be addressed as if they were real.

I think that one of the things that is evident from looking at the other items that came up in the gas conference is we're going to need gas from outside the 48 states to fuel our future in an economical and reliable manner.

LNG is one, and Canada/Alaska is the other. And I think everything that we laid the groundwork for at this front end of the decade will hopefully yield some fruit at the late end of the decade. And I think this is one, I think like you, Bill, I quite frankly didn't come to this job to remove open access. I came to squeeze it into areas where it's not getting a whole lot of light right now, which fortunately is not much in this industry.

But I think we've got to be pragmatic about what that policy really means and listen to people's business plans, listen to their regulatory concerns, listen to the issues that come up as I think was pointed out with foreign governments when they're issuing licenses or permits for

exports of their natural resources to our country.

So I think this was balanced. I think the law permits it, which is certainly the threshold issue. Under Section 3, which is the authority that we use to permit these facilities in these two orders today, there is a lot more flexibility for the Commission to condition approval than the more I think straitjacketed Section 7 that we usually use to permit, and in fact are using in this order to permit the downstream pipeline facility.

So I would just like to cite from the order:

For the reasons discussed below, we believe that a change in policy is warranted and that a different form of regulation will better serve the public interest than the traditional open access approach that we have applied previously to LNG import facilities.

Specifically, we will grant Hackberry authority to provide LNG terminaling services to Dynegy Marketing at the rates, terms and conditions mutually agreed to by these parties, subject to the condition that Hackberry file its contract with its affiliated customer prior to the commencement of the construction of the LNG terminal facility. However, we will not require Hackberry to offer open access service or

maintain a tariff or rate schedule for its terminaling service.

Our decision to adopt a less intrusive degree of regulation here does not affect our jurisdiction in this case. Section 3 of the Natural Gas Act reserves for the Commission the ability to make such supplemental order in the premises as it may find necessary or appropriate. We will use such authority in the future if we receive complaints of undue discrimination or other anticompetitive behavior.

I think this is actually consistent with the more nuanced arguments that we heard at the conference here in October that people wanted to go to the policy but we couldn't quite find anybody who said they wanted us to go all the way to it. They wanted a little bit more case-by-case approach, and I think that that's certainly a nice conservative approach to take, and I think one that this order reflects here.

So I look forward to continuing the debate with each other and our Staff and the industry to see if in the resolution of the fine tuning here we get the policy right.

But I'm pleased this soon after our public conference and the comments that we received on it that we had the opportunity to announce a new policy in the context

of pending investment. And I should say pending investment about an hour from where I grew up, so, I am pleased to support the orders as well.

COMMISSIONER BROWNELL: Aye.

COMMISSIONER MASSEY: Aye.

CHAIRMAN WOOD: Aye. Thank you all very much.

COMMISSIONER BROWNELL: Great chart, by the way.

CHAIRMAN WOOD: Very good.

SECRETARY SALAS: The next items for discussion is also a joint presentation, E-1, Grid America Participants; E-2, Midwest Independent Transmission System Operator; E-3, Midwest Independent Transmission System Operator also; and E-4, TransLink Development Company, with a presentation by Jesse Hensley, accompanied by Penny Murrell, Michael Donnini, Julie Bernt, Melissa Lord, Michael McLaughlin and Andre Goodson.

MR. HENSLEY: Good morning, Mr. Chairman and Commissioners. My name is Jesse Hensley. My presentation involves E-1, 2, 3 and 4, which are interrelated orders that significantly increase the size and scope of the Midwest ISO and further the development of viable, for-profit transmission companies that operate under the Midwest ISO.

Today's orders when fully implemented next year will significantly increase the Midwest ISO's footprint and allow customers one-stop shopping for service under a single

tariff covering all or parts of 19 Midwestern states and one Canadian province.

I'll briefly describe some of the main points of each order. E-1 conditionally accepts for filing a proposal by Amiant, First Energy, Nipsco and National Grid to form an independent transmission company named Grid America under the Midwest ISO.

This order accepts and makes effective, subject to refund and future filings, four related agreements for the formation of Grid America. These agreements are;

An Appendix I, Independent Transmission Company Agreement between Grid America participants and the Midwest ISO;

A master agreement detailing the corporate structure of Grid America;

A limited liability company agreement of Grid America; and

An operation agreement by and among Grid America companies and Grid America.

Additionally, this order finds that National Grid is independent and can serve as the managing member of Grid America.

E-2 is an order which accepts with minor modifications revisions to the Midwest ISO OATT to generically provide for independent transmission company

participation within the Midwest ISO footprint.

E-3 conditionally accepts for filing the combined OATT and transmission owners agreement of the Midwest ISO and the Southwest Power Pool upon the consummation of their business combination. This order sets certain limited matters for settlement judge procedures.

Finally, E-4 accepts as modified TransLink schedules under the Midwest ISO OATT for service on the TransLink transmission system. This order nominally suspends proposed schedules to become effective December 24th, 2002, subject to refund and settlement judge procedures.

This concludes my presentation. Thank you.

CHAIRMAN WOOD: Thank you. Nora?

COMMISSIONER BROWNELL: This is I think a suite of orders that further moves the potential for competitive energy markets forward in the Midwest.

I'm pleased that we accommodate different business models, and I understand there is as we evolve in these markets, some concern about the roles of ITCs and some of the models we're seeing, but I think it's too early to preclude any individual business model at this point, and I'm glad that we haven't done that.

At the same time, I'm glad that we have agreed that we will be informed by the experience of the

marketplace and be evaluating different functions and roles and responsibilities that specifically ITCs will play. I think that's appropriate. I think our oversight is appropriate, but I do think that we have an extraordinary opportunity to restructure the energy markets, and MISO and the Midwest through their leadership is really providing us that opportunity in a way that brings that value to customers that we're looking for.

So I appreciate the hard work that the Staff has done in putting it together, and I'm pleased that the SPP MISO order is complete and we'll be moving forward on that.

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CHAIRMAN WOOD: Bill, any thoughts?

COMMISSIONER MASSEY: I will be supporting these orders, but writing a separate concurrence to underscore some of my thinking about the appropriate role for the Independent Transmission Company within an RTO and operating under a standard market design regime.

I will write separately on those points, but will be voting for these Orders.

CHAIRMAN WOOD: As will I. I had the opportunity to attend these in Carmel, Indiana last Wednesday and Thursday, the day before the stakeholders all meet and discuss the agenda, and then the Board meets the next morning to actually go through the agenda and have their input.

I was very pleased to see, in the context of a growing operation -- and certainly the issues, the SPP people were there, although there are still some issues remaining with getting the two-thirds of the votes needed to actually merge the two organizations.

I was -- I won't say alarmed, but concerned that the logs aren't rolling on that just yet, as far as they need to be, and I'm concerned that, quite frankly, SPP will leave something on the table because there is a year-end requirement to make the bill happen.

Nonetheless, I think that the TransLink people

were there. There was a discussion with folks out in the far Northwest of the MISO footprint with a group called Crescent Moon, who are some of a number of nonjurisdictional entities that would like to affiliate with MISO as well, so there is a lot of good activity there.

In the meantime, they're keeping the lights on.

The operation room was certainly similar to the ones we've seen in PJM California, ERCOT, and New England, as well. So, I was pleased with the nature of the development with the independents, and active involvement of a very bright Board.

That's always a refreshing experience, as you and I have experienced before, Nora.

And I think, quite frankly, having seen that and then came back and reread all of these orders again, I really think what we do here is a very strong affirmation to the bold directions that MISO is taking to create order out of chaos.

I think there is a very fertile environment out there now for further growth. I committed that we would get some FERC staff presence on the ground at Carmel, permanently, as we have done in California, more for the market development side, but eventually certainly we'd morph into marketing monitoring as well.

But it's important to really support them in that

effort on a real-time basis, not just in these large Orders.

As to the Grid America issues, I think, day one, it's important to get things up and going. I do share both of your, I think, different concerns about where that leads today, too, seeing how the groups work together, kind of face-to-face.

We will be asked to break some ties on down the road as we integrate the ITC under the umbrella, without question, but I do sense that we may be worrying about this more in the abstract than it will ever be in the real world, because there is basically one efficient, low-cost way to do the integration.

I don't know what it is, looking at it today, but I do have very strong confidence in the ability of the Board, the stakeholders, and the leadership of the staff out at MISO to make those determinations. I think we'll be involved along the way.

I did encourage strongly, and they have in their own timetable, a commitment to get to their day two market by December of 03, which is a year from now. I do hope that our ITC that we approve here and the one that we grant rehearing on with TransLink, will be up and operational, but the overall MISO is moving quite aggressively towards an implementation timetable of their day two market by December of 03 and integrating with PJM on the common market

interface by October of 04.

I have committed on our behalf, that as far as regulatory issues, that we would stay engaged, so that we're not any sort of obstacle on their timetable, and that, in fact, we help support it. So I hope we can deliver on that, because I do think, quite frankly, that that has got a lot of promise for the entire country to show how various retail regulatory regimes and various competitive commercial interests can work together, as we've seen, certainly on this coast, to achieve workable competitive markets that bring benefits to customers.

I think this is actually a very substantive package. You folks over here, I've seen you traipsing up and down in my office and out of our assistance offices for the past month, getting this package together. But what you're doing makes a lot of difference, and please know from the folk that were out there banging on me -- and, of course, I threw up the ex parte law; don't talk to me about that -- that they appreciate very much, how well and how fast FERC gives them feedback and responses and the necessary rulings so they can move forward.

That doesn't happen without your late nights and long hours and time away from your families, so thank you very much for all the hard work.

COMMISSIONER BROWNELL: Can I just add -- because

I think it's a lesson learned for all us, that one of the great successes that has allowed MISO to move forward as the first RTO and move forward quickly, is the very fine stakeholder process and the true leadership of the state commissions in the Midwest.

I would suggest that as other RTOs develop, that they might want to look at the Midwest to look for examples of how stakeholder processes can be successful, the kinds of issues that they deal with, and talk to the state commissioners and kind of learn from how they worked together to address their concerns.

CHAIRMAN WOOD: After the Board concluded their meeting, I think there were about seven state commissioners that come in for the Board, on and off. Susan Lefall was there and Dave Swann and others.

We sat down for about a two and a half hour roundtable with me and seven of them to talk through MISO issues, to talk through, not any -- of course, they were on these cases, but to talk through the SMD, kind of how that's going to play out as we go forward, and got some really good feedback that I will kind of plug back into you and Bill soon.

But I was very -- you're right on the money. That is a batch of commissioners, some of whom have retail open states. Some of them have retail closed states, but

they recognize that the common interest bonds are so strong that they have to make it work.

As we have said from day one, that has been a very successful management exercise on behalf of the MISO staff and the state commissioners to kind of work through and make those very supportive issues, but also make sure that their concerns are understood and felt.

Again, that model is one I just would love to see go national, because it is really constructive, very low on rhetoric and very high on substance.

COMMISSIONER BROWNELL: Aye.

COMMISSIONER MASSEY: Aye.

CHAIRMAN WOOD: And I vote aye on all four Orders as well.

COMMISSIONER BROWNELL: I'm noting my concurrence, excuse me.

CHAIRMAN WOOD: Thank you all again.

SECRETARY SALAS: The next item for discussion this morning is E-5, Avista Corporation, with a presentation by Andre Goodson.

MR. GOODSON: The Draft Rehearing Order grants, in part, and denies, in part, request for rehearing of the September 18 Order that addressed the Stage II filing of the Applicant's proposal to form RTO West.

Among other things, with respect to the

transmission operating agreement, the Draft Order accepts Applicant's commitment to provide a list of the specific provisions of the operating agreement that are essential to meeting members' legal obligations or affect their ability to participate in the RTO and an explanation of why these provision are essential.

Once the Commission has this list of operating agreement provisions and the RTO West tariff, it will allow for comments on the provisions and it will make a decision at that time.

With respect to the issue of facilities, the Draft Order clarifies that the information, as outlined in Applicant's rehearing request, will provide an acceptable level of detail, and that the September 18 Order's directive does not include information on facilities that are used exclusively for local distribution of power to retail customers.

The Draft Order reserves judgment on the issue of which facilities must be included in RTO West, pending receipt of this additional information.

With respect to elements of the RTO West proposal that the Commission has already approved in prior Orders, the Draft Order recognizes that substantial time and effort have been put into developing solutions to market design issues confronting the Pacific Northwest.

The Draft Order clarifies that the Commission does not intend to revisit those prior approvals upon issuance of the standard market design final rule, however, if the Seams Steering Group process identifies seams, the Commission will consider recommendations developed by the Seams Steering Group. That concludes our presentation.

COMMISSIONER BROWNELL: I hope this brings some confidence to the market participants about how we view the importance of decisions that we have made, but as we have asked the SSGWI Group in the West to identify market elements in each of the three RTOs, and then identify seams, and I hope, and I think this Order recognizes the important role that they will play.

Once again, I would caution that we need to approach any changes with discipline, with focus, and with the clear understanding of the implications for the developments that have already taken place.

Further, I would suggest that the work that they are doing and have begun quite successfully in identifying the specific design elements in the three RTOs, will go a long way, perhaps, towards addressing seams issues before they even become issues.

I applaud their work. I know they share our sense of urgency and the responsibility that we have made a commitment that unnecessary and unsupported changes will not

occur. We cannot afford to go backwards in the development of these RTOs, particularly with the hard work that has been done to date.

CHAIRMAN WOOD: Bill, any thoughts?

COMMISSIONER MASSEY: Yes, I agree with all of the policy conclusions here, but I am still unwilling to state that certain conclusions will not be revisited when our standard market design rule is finalized.

I must confess to having a somewhat visceral reaction against tying the Commission's hands in that way.

I haven't been able yet to get past that objection.

I have written separately to make that point to other Orders, and I will be writing a short, but partial dissent to make this point again. But I agree with the policy calls made in this Order, and it otherwise has my support.

CHAIRMAN WOOD: Thank you, Bill. At some level, I sympathize. I do think what we're doing here is, in fact, what we said we would do.

The SMD Order said we would do last October of 01, when we did the parallel track, that we would move forward with laying forth the principles and the details in the SMD rulemaking more broadly and continue to process the RTO dockets alongside those in forming each one by the other.

I do think this really is yet another indication that we meant what we said, because we are talking about such important issues as export rate design, the transmission planning and expansion process, how transmission rights will be treated, what the transition of the license plate rate period is, how the facilities will be determined, to be either in or out of the RTO.

I think that on a number of these, we can go ahead and make the cuts, knowing really what our SMD principles are. Quite frankly, as we were digesting the comments on those issue that have come in with the first round of comments on SMD, we are learning a lot, but, quite frankly, the core principles about transition periods and things like that, I don't need to wait till the Spring to know where I'm going on those things.

And I'm, quite frankly, having looked at the first batch of comments, I haven't heard much to change it on some of these core issues. In fact, when we come in with a strong filing like we have continued to characterize the RTO West filing to be, those folks really are ahead of the ball; they're ahead of the rule implementing the principles in a real-world way.

I do think that in our give-and-take with them, through our staff, through ourselves -- and I know, Nora, you were out there this week a couple of times speaking with

folks out there.

I read with gratitude, a speech that the head of this effort, working for BPA, made to the group that you spoke to, that I would characterize as pragmatic and supportive of the general direction, but very clear about what it is they need to make this work.

Quite frankly, that's the most beneficial thing we can get from anybody, is be very clear with us, particularly proponents that are putting together negotiated package deals like the RTO West deal was. Tell us what it is exactly that you want us to do and why.

We kick back here, I think, on one item or maybe two, to give some -- I'm thinking of the West Connector, actually. We say something wasn't explained. The Applicants here and the other parties were very clear on rehearing, what they wanted that they did not get in the first Order, that they need to make it work.

I think this was a very -- it is in some legal way, inefficient to have this long-term negotiation on paper, but, quite frankly, it does lead to a very firm unambiguous Order that I hope the Applicants perceive this one to be today.

So I think it's good work. It's not surprising. You folks have been cranking out what I call top quality work since I got here, but this one does, I think, a lot of

good to again set the mark for what RTOs need to look like and what they need to do in the country.

I want to continue to offer our staff support and our personal support for the effort that's taking place with RTO West in its territory.

COMMISSIONER BROWNELL: You mentioned earlier about the growing relationship with Canada. Among the other trips I made last week was a wonderful visit with the market participants in Vancouver, who have been working hard on RTO West, and see even greater potential for a wonderful trade relationship that has historically been important, but I think will have greater importance in the future.

CHAIRMAN WOOD: Great, Ambassador Brownell.

COMMISSIONER BROWNELL: Tired Brownell.

CHAIRMAN WOOD: Bill, anything else before we vote?

COMMISSIONER MASSEY: I'm ready to vote.

CHAIRMAN WOOD: Nora?

COMMISSIONER BROWNELL: Aye.

COMMISSIONER MASSEY: No, in part.

CHAIRMAN WOOD: Aye.

SECRETARY SALAS: The next item for discussion this morning is E-6, Arizona Public Service Company, with a presentation by Gene Grace.

MR. GRACE: This Draft Order grants and denies

requests for clarification and rehearing of the Commission's Declaratory Order, in which the Commission provided guidance on whether Applicant's proposals to form an RTO, WestConnect satisfied the Commission's requirements for RTO status under Order No. 2000.

As with the RTO West Order, this Order clarifies.

It is not the Commission's intent to overturn in the final standard market design rule, prior decisions that were made in this docket.

The Order reiterates the importance of WestConnect's participation in the Seams Steering Group of the Western Interconnection, and states that the Commission's approval of any individual RTO market design solution is based on the Commission's expectation that the parties will continue to identify and work towards the successful resolution of any resulting seams issues.

This Order also addresses various other issues.

It states that further filings are required to move WestConnect from a conceptual proposal to a Commission-approved RTO, and directs Applicants to demonstrate that their proposal for the auction of physical transmission rights is transparent and not subject to manipulation.

Thanks.

COMMISSIONER BROWNELL: I am nearly losing my voice now, so I'm going to be quick. I'm just pleased that the WestConnect participants and the Commissioners in the Southwest are actively participating in the SSGWI process. That's important.

That's important and critical to the development of Western market designs that work for everyone, and recognize that while we may end up with three RTOs, we nevertheless have fundamentally one market.

CHAIRMAN WOOD: Sheldon, do you want to kind of give us an update on what is going on with this SSGWI process? I know you've been involved in keeping up with that for the Commission.

MR. CANNON: Awhile back, we issued a notice postponing the conference we were scheduled to have in Portland and sort of anointed the SSGWI group to concentrate on some of these seams issues that will be confronting each of the three RTOs.

They have been working very hard. They posted on their website, sort of a side-by-side of where they are on major market design elements in terms of WestConnect, RTO West, and the California ISO.

They are working very closely with CREPC to try to, wherever possible, include state input. CREPC is very careful. They don't want -- the ultimately will be called

upon to make calls with regard to these individual filings that will come before the state commissions, so they are in somewhat of an advisory state, if you will, and are not committing in terms of their individual states, whether they are for or against any particular design element. But they are working very closely with the SSGWI Group.

SSGWI is also working very hard to open up the process to make sure that it is a very open and fully participatory process. They are on schedule to provide the Commission -- sort of to fill out the rest of the matrix, if you will, with additional columns in January, which will suggest whether for any particular market design element, there is a need to standardize the approach across all three RTOs for that particular element, or whether, for a particular element, they're going to go in slightly different directions, but will develop some seams arrangement to deal with whatever seams come out of having three different approaches.

They are also going to be providing us in January with a timetable and milestones of how they intend to resolve any particular seams that have been identified. Again, it gives me a lot of comfort in terms of the approvals we are granting today, that people are looking at issues from a broader perspective, and making sure what is developed in each of the three individual RTOs will make

sense from a Western Interconnection perspective.

CHAIRMAN WOOD: Thank you, Sheldon. Bill, any thoughts?

COMMISSIONER MASSEY: Yes. I want to commend the Seams Group out west. I think that's important work.

I agree with Sheldon that the success of this group will give all of us more comfort that the western market, which we all know operates as one big machine, in any event, can actually function efficiently over time.

I would be thrilled if someday there were a single RTO for the entire Western Interconnection. I don't know whether that will ever be achieved or not.

I'm pleased with the work of the various groups that has gone on thus far to form three RTOs. I think we should do everything we can to eliminate the seams among them.

With respect to this particular Order, I think it's a fine Order, and I will be -- save one issue, and that is the same issue I raised with respect to RTO West. I still object to the Commission making a commitment not to revisit certain issues when we finalize our SMD rule.

Other than writing a partial dissent, to make that point, I think this is a fine Order.

CHAIRMAN WOOD: As do I. I really don't have a lot to add. I do think Gene pointed out that there was an

issue about how the physical rights' method of congestion management actually may have some potential market power or physical withholding issues that we're certainly very sensitive to out in the western markets, as we are everywhere, of course.

But it is the one region of the country, quite frankly, remaining, that has expressed some preference for a physical rights model. I do think that that clearly is a very important item for the SSGWI folks.

I should point out that SSGWI is Seams Steering Group, Western Interconnection and is opening up to stakeholders. Is it fair to characterize it that way, Sheldon?

CREPC is the regional state officials, either state commissioners or others in their energy regulatory world in the various states and provinces.

MR. CANNON: That's correct. Indeed, CREPC is sort of a forum, if you will, that exists among the state regulators in the west to talk about issues, again, more in the abstract, so they're not really committing on behalf of their particular state.

But it's a very good forum for discussing the same types of issues from a state regulatory perspective that SSGWI is considering from the regulated perspective.

CHAIRMAN WOOD: So it's my hope that that group

really will look at this congestion management issue pronto and either come to a consensus among the three RTOs out there, or I guess kick it back up to us.

But, you know, I do think we cannot waiver in our resolve to get these issues sorted out, not just talk about them, but talk about them with the smart people and the right people, and make the cuts and get them implemented.

I think we cannot afford -- the patient is not discharged from the hospital yet out there. I do think we need to do everything possible to get the right exercise and fitness regime in place, and SSGWI seems to me to be the best fitness trainer we could hire. I'm about done with that analogy.

(Laughter.)

MR. CANNON: They are working very hard, and they have five working groups within SSGWI, focused on different issues. And, I should add that one more part of the deliverable they'll be bringing to us in January is going to be sort of a prioritization and sequencing of these issues so that they work through them in a coherent way.

CHAIRMAN WOOD: Have we discussed with them, the potential of them coming to our next open meeting in January to visit about that plan that they will file the week before?

MR. CANNON: I have raised that. We have not

agreed on the specifics of exactly how to orchestrate that, but I think they are very interested in coming and getting feedback from you all directly in terms of the progress that they have made, and the progress they intend to make.

CHAIRMAN WOOD: I'll leave that up to you to schedule that. We'd certainly be very interested in sitting down after our next open meeting in public, and having that discussion or getting a presentation updated on that.

MR. CANNON: We'll make sure that happens.

COMMISSIONER BROWNELL: Aye.

COMMISSIONER MASSEY: No, in part.

CHAIRMAN WOOD: Aye. Thank you all.

SECRETARY SALAS: The next item for discussion is E-10, PJM Interconnection NLC, with a presentation by Val Martin, accompanied by Katherine Waldbauer, Mike Goldenberg, Daniel Nowak, and Alice Fernandez.

MS. MARTIN: Good morning, Chairman, Commissioners, ladies and gentlemen. The draft before you grants rehearing of the RTO Order which found that PJM lacked sufficient independence and scope to qualify as an RTO. Additionally, it rules on PJM's compliance filing.

In the RTO Order, the Commission directed PJM to expand membership on the Reliability Committee to include more market participants, and concluded that in order to successfully address seams issues in the Northeast, the

three existing ISOs combine to form a single RTO. In this Order, the Commission grants PJM RTO status because it is expanding its scope to the West and South, and revises its tariff to expand membership on the Reliability Committee.

The Commission also requires PJM to explain how its planning process will identify expansions needed to support competition, encourages the establishment of a working group to specifically address seams issues, requires PJM to harmonize capacity benefit margin rules across different regions, and encourages PJM to work more on eliminating seams in neighboring regions to the north and south.

This Order is in the public interest because it will enable PJM to begin operation as a full RTO, thus providing a more efficient market for transmission and energy. This concludes our presentation, thank you.

COMMISSIONER BROWNELL: Congratulations to PJM on being the second RTO. I think it's a wonderful milestone that we are making progress.

There are a couple of issues, though, that I would encourage the PJM participants to take very seriously. The first is the seams issues.

We've been dancing around this ever since I've been a state commissioner, and I think the participants, particularly PJM, are just obligated to focus the energy

it's going to take, and the resources it's going to take to resolve this once and for all. It's problem that isn't going away. It's probably getting worse.

It has, I think, caused some issues throughout the Northeast. I hope that's a priority. I have a question about some reliability issues.

We asked PJM to work with NERC to address some reliability issues. Has that work been completed?

MS. MARTIN: PJM and MISO have made preliminary progress. They are continuing to work with NERC to address the reliability concerns that were identified in the July 31st Order, the Alliance Order, so those coordinating ATC calculations and parallel flows, they have been working towards coordinating their emergency procedures like TLR operations transmission and loading relief and coordinating their outage schedules and maintenance schedules.

That's essentially what they've done thus far.

COMMISSIONER BROWNELL: So they are working towards these. That's always an interesting phrase. Have they set any deadlines for themselves that you know of?

MS. MARTIN: Not that I know of. They do have a series of dates in November. They did start emergency procedures. There are also some other dates that I have. I don't have the formula.

COMMISSIONER BROWNELL: Maybe you could ask them,

or we could ask them to update that.

One of the things we asked for a couple of times was updated timelines, with the original timelines included, so we could see what slippage there was. I'm also interested in the commentary in the Order on planning. It is important to have an independent planning process that addresses economic, as well as liability issues.

We've seen a growing number of constraints within the PJM system, and if the economic signals are right and the planning is right, we should see some investment to address some of those issues.

I congratulate PJM, but remind them that there are some provisions in this Order that need to be addressed and need to be addressed expeditiously, I hope.

CHAIRMAN WOOD: Bill, any thoughts?

COMMISSIONER MASSEY: This Order has my full support, and I would like to congratulate the transmission owners and other market participants that are now part of PJM, for all of their hard work in morphing from an ISO into an RTO.

I think I'm correct that in all of the transmission owners who participate in PJM, or have indicated that they will, that PJM will, I think, almost double in size to roughly 150,000 megawatts of generation within its footprint; am I correct about that?

MS. MARTIN: There is an issue with Illinois Power, so I believe that the megawatt number that you cited would probably be closer to 71,000 megawatts.

MS. FERNANDEZ: When they get all the additions, it's closer to about 150,000, you're correct. Illinois Power is a relatively small portion of the load. The 150,000 would include the projected load from a number of the parties that are planning to join PJM and have recently filed, I thin, in the last week or so, to join.

COMMISSIONER MASSEY: So it's a significant achievement to create a very large energy market like this. Not only that, but PJM and Midwest ISO are committed to ultimately a single dispatch for both regions, so this is a very significant step along the road to large, vibrant electricity markets in these regions of the country.

This Order has my full support.

CHAIRMAN WOOD: It has mine as well, Bill. Nora, I appreciate the effort that has gone into responding to our Order last summer to PJM and the changes that have been made since that time.

I do think one of the most significant ones is the one, Bill, you just referred to. That is the joint common integrated energy market between MISO and PJM.

I think, quite frankly, one of the top items on our 03 agenda is going to be, from our perspective, to

monitor and cajole and encourage and do whatever possible to make sure that they meet that October 04 date. That is a critical piece of my comfort with the odd configuration issues that we swallowed hard and voted for in July of this year, between the western border of PJM and the eastern border of MISO.

In that configuration there, they had the electrical configuration, not to mention the geographical configuration that is, at best, jagged.

I think an important issue for me, in addition to the firm participation of NERC, as Nora's questions discussed, is the actual integration of the computer interfaces across that broad territory, and, as necessary, the business rules to support that.

So I just want to say publicly and to us internally, that we will put this as really probably one of the top electric items for our agenda in 03 and 04, of course, as it is being implemented, is to keep MISO and PJM on the timetable and keep it a very high focus for our Commission to make sure that the promises of that energy market and the multiple billions of dollars in savings that I think even a relatively conservative cost-benefit study showed are in the offing for the midwestern markets get achieved soon, because the customers are paying the costs now and they need to get the benefits now, too.

That was my message to the PJM Board, whom I met with two weeks ago, to MISO, who I saw last week. But they are the birds in the hand and so I will be going after every bush. We want to make sure that the ones in the hand are well fed and well tended.

So I think this is a good day, quite frankly, for the whole broad RTO agenda. We've got another one that we will deal with, notationally, in New England, but this is very good and I'm very proud of the work they've done and encourage them to take care of the remaining items here in the turnaround time we set forth in the Order, so I will vote for it as well.

COMMISSIONER BROWNELL: Aye.

COMMISSIONER MASSEY: Aye.

CHAIRMAN WOOD: Aye.

SECRETARY SALAS: The next item for discussion this morning is E-12, Proposed Pricing Policy for Transmission Independence, with a presentation by Kimberly Bose, accompanied by Michael McLaughlin, Michael Donnini, Steven Pointer, and Andre Goodson.

MS. BOSE: Good morning.

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In an order concerning the Midwest ISO's return on equity issued on September 23rd, 2002, the Commission stated that it would be clarifying its incentive rate policy in the near future with concrete statements of the behavior and the performance it wished to incentivize.

Staff initially worked to prepare a proposed pricing policy statement that considers the appropriate incentives geared toward an RTO's level of independence. Staff is now considering whether, and if so, how to expand that effort to include appropriate incentives for certain types of performance such as infrastructure investment. Such considerations will involve, among other things, the range of incentives for RTO formation and the types of monetary incentives for new infrastructure investment.

Such an effort also will further the goals of the Commission's strategic plan by promoting sufficient infrastructure and competitive energy markets. Staff is working to present such a proposal for your consideration in the near future.

This concludes our presentation.

CHAIRMAN WOOD: Thanks, Kim. The proposed policy statement here is one that started I guess in this last cycle as one focused strictly on transmission independence. And I think clearly joining an RTO is kind of the first step up the staircase. But I guess the platform on the stop of

the staircase is the truly independent transmission company that does not have generation or load-serving cousins, affiliate responsibilities, kinds of inventories, and there may well be some steps in between.

I think what we're looking at certainly in that regard is something along the lines of what we did in MISO for joining -- transferring operational control to an independent entity and then a greater return on equity incentive to be given to those companies that are in fact are truly independent of not just operational control but actual fee simple title of the company or its assets to an independent party.

I think that is a noteworthy goal. I support it. And I think quite frankly we would have voted this out today for public comment had we not been also I think rightly focused, as I know, Nora, you and Bill both have been since I've been here, focused on the need to corral the new technologies that are out there as we look at, for example, how difficult it is in a state like Connecticut to get infrastructure built and a state like California to get new right-of-way granted for transmission expansion, that we've got to be a whole lot smarter with the rights-of-way that we've got today.

And you and I and Bill all see parading through our offices on a very frequent basis folks who have the new

technologies or who are talking about them or have invested in it or are using it, and we need to basically say from a regulator's kind of foot down on the table, this is something that we value.

This is something that we want to encourage and incentivize, not just acquiesce, but strongly encourage, because quite frankly, it's only by being smarter that we're going to be able to keep this grid at the level that it needs to be to serve the nation's energy needs.

So this policy statement, which started as an incentives for independence will be, and I expect that we'll be working on it between now and the January meeting, and it will probably be the main item on our January meeting I think, is looking at the incentives needed to not just be independent but get the right kind of grid built for America.

And I think that does deserve some thinking time, and I look forward to our interplay over the next couple of weeks as we think about how that ought to look.

COMMISSIONER BROWNELL: I'd just like to add that I'm really excited and grateful for the thoughtfulness with which both you, Mr. Chairman, and Commissioner Massey have given this. Because in my view -- and we're often asked why are we structuring. Well, when we look at the fragility of the existing grid and we look at the lack of investment in

New technologies that one would expect in a restructured market, I think focusing on rewarding the right things is critically important.

We talk about restructuring markets for efficiencies, but in my opinion, the real benefit is you see a proliferation of new technologies, new technologies that I don't even think we've begun to think about.

So we want a smart grid, we want a functional grid. We want to leverage the existing assets given the barriers that you enumerated. And I'm anxious to get this out, but I think some more think time will make us be sure that we're sending the right signals.

And I also just want to add before we close that today we've seen in presentations many of the same Staff, and I want to thank before we end, the entire Staff of the FERC who's probably worked harder this year than ever before, will probably work even harder next year.

But the substance that they deliver when they deal with multiple tasking is just incredibly impressive. So multiple comments here, but I'm really excited about getting this policy out and I look forward to the next meeting.

CHAIRMAN WOOD: Bill, any thoughts?

COMMISSIONER MASSEY: Yes. I think from our private discussions among the Commissioners and

Commissioners' offices, it's very clear that we're all of a common mind on the policy direction in which we are moving here with this proposed policy statement.

We want to incentivize independence for merchant interest and we want to incentivize capacity expansions on the transmission grid, expansions that can actually be achieved without huge fights over right-of-way and so forth, expansions that rely on some of the new technologies that are available now.

And I share the comments of my colleagues on this. I think it's an exciting policy direction, and I am confident that we can reach agreement on a proposed policy statement to put out for comment in the very near future.

CHAIRMAN WOOD: Great. Well, we will look forward to having this in our next meeting hopefully for voting it out, and I want to thank y'all in advance for all the work you're going to do as well as what you've already done.

Thanks.

SECRETARY SALAS: And the final item for discussion this morning is A-3. A-3 is a report on a workshop between the Commission's Office of Market Oversight and Investigations and the Regional Market Monitoring Units.

This is a presentation by Steve Harvey, accompanied by Charles Whitmore, Laurel Hyde and Dennis

O'Keefe.

CHAIRMAN WOOD: Why don't you all wait just a second? Nora will be right back.

(Pause.)

CHAIRMAN WOOD: Back on the record. Gentlemen, welcome. And ladies.

MR. HARVEY: Good morning. Two weeks ago, OMOI held two days of meetings with existing and developing market monitors in order to coordinate our efforts more effectively moving into the future.

(Slide.)

Several people on the Commission Staff helped us achieve success in those meetings. Three of them are here with me at the table today, but four others I'd like to mention are Connie Lawston, Saida Shaalan, Bill Meroney and George Godding, all of whom helped success in this process.

I guess we don't have slides. That's all right. The focus of the meeting was to strengthen our relationships with the market monitors by focusing concretely on how we should work together as we moved into the future.

Existing market monitors who participated presented their plans, they researched and presented certain possible standard metrics for consideration, and they participated actively in discussions as we went through the day.

But also representatives from developing market monitoring units spoke as well of their plans and participated in discussions.

There were five working sessions, each of which produced results. In one of them, we worked together to draft a joint mission statement explaining the purpose of our work together to, and I'd like to quote, "to provide the vigilant and fair oversight of wholesale electricity markets needed to ensure that customers and market participants receive competitive and just and reasonable electric prices". And we have provided you a draft of that statement.

In the second, we revised an extensive standard market monitoring plan outline. In the third, we discussed day-to-day interactions related to market oversight, and in fact received a number of to do's to follow up over the next few months, including specific contact names, regular meeting schedules and developing a few communication protocols so that we can work together effectively into the future.

In a fourth we discussed coordination and investigations, including giving the market monitoring units a better understanding of how we handle investigations and the confidentiality associated with that, and exploring some ideas about how we can coordinate more closely in the

future.

And finally we, in an extensive set of discussions, we discussed potential standardized metrics for measuring the performance of these markets and sorted them out initially at least into three categories:

Those we believed that can be documented and implemented in the standard way quickly;

Those that will require more effort to develop a standardized methodology going forward; and then third

Those that may be difficult to develop standardized methodologies and for which we'll need to require significant documentation for the assumptions being made in order for them to be useful across the country.

I'd like to finally point out three different areas among the many issues that a meeting like this raises, among the many efforts that it raises, three areas that we wanted to particularly underscore.

One was the acknowledgement of the need and the efforts that we'll be dedicating to coordinating our work into the standard market design effort, which we believe it supports, this kind of work supports quite effectively, but we need to make sure that that happens.

Second, dealing with a set of ex parte communication issues as we look at closer coordination and oversight and investigation.

And then third, and related, the need to really clarify the meaning and practice of independence of the market monitors from other market participants to allow us to work closely and effectively as we go forward.

That's our presentation.

CHAIRMAN WOOD: I had the opportunity I think as you did to drop by to see the turnout and to talk to the folks that were there, and I was very pleased with that and I'm pleased also quite frankly, and I think I see Angelie Shifrin's face on this when I think about this issue, but we have needed since their onset a place for these folks who are on the front line in all the markets in the country to have a place where they plug back in here that they call home, and what y'all provided that day in that third floor conference room was the home, and that is exactly one of the big things I had hoped that we would accomplish when we set up OMOI.

Because we do a lot of work on our own, but importantly, we are the support group for the front line market monitors around the country. And the steps that were initiated at that meeting that I think over time will yield plenty of great fruit is some sort of common approach to looking at markets. Because there were a lot of good, smart people in that room from the different regions from the country.

And I think one of the things that I hope we can do, both through that effort and through our ongoing SMD/RTO efforts, is to really move toward a common approach toward monitoring these markets.

I don't want to have one region of the country be known as the punitive region and one region be known as the lax region. I want them all to be appropriately balanced and effective at overseeing markets in ways that benefit the customers in the short term but incentivize the investment in the long term, because this is a critical role.

It's a pivotal part of the SMD/RTO vision is that this market oversight responsibility is toothsome, it works, it's balanced and it's very interactive with each other and with us.

We don't have that yet, and we've got to get there so that we don't have a repeat of what happened out West.

But your demeanor, the way you all handled it, the way the interactivity worked with the groups was exactly what I had hoped for, and I'm really proud of that first effort and look forward to many, many more both here and maybe out on the road.

I think it's important for people to see not just the insiders, but it's important for the industry and regulators and elected officials and customers to see what

it is you folks do. So it might be useful at some stage to take that public and just have your meeting be open for anybody to look in on. Do it the same way, but do it in a way that lots of people look in every now and again.

I think it was very well done. I do look forward. They gave us a pretty good list of items that we need to do to help support their effort from reforming our ex parte rules to I think a long list -- not a long list, but there are about four good punch items on there, and I do expect that we'll proceed on those in an appropriately aggressive timetable.

But keep up the good work. I do think it's important to, you know, acknowledge where we need fixing on our end, and I think y'all did a pretty frank job of that, because we don't know all the answers. But I think the people in that room collectively do, and it's just that harnessing that we'll do.

So, good job.

COMMISSIONER BROWNELL: I couldn't be more eloquent than that other than to say that I think the spirit of cooperation is critically important. And as we move to restructure markets, I think that the subtext of many of the messages, particularly from the Northwest, is the lack of credibility of our ability to monitor markets and respond quickly.

So I think that we need to earn the confidence of the different regions, and I think you made a great step towards achieving that goal. And I think the development of metrics so everybody knows how we're going to hold ourselves accountable and the markets accountable is probably a very important ingredient.

As you know, I've been harping on that for a year, so I'm thrilled that it made the list.

Thank you.

CHAIRMAN WOOD: Report Card Brownell we call her.

All right.

COMMISSIONER BROWNELL: Because I burned all my own.

(Laughter.)

CHAIRMAN WOOD: All right, gang. Thanks. We will adjourn this meeting now and take up the closed meeting in Hearing Room 6 at one o'clock sharp.

(Whereupon, at 12:00 p.m. on Wednesday, December 18, 2002, the Open Commission Meeting adjourned.)