

P R O C E E D I N G S

(10:15 a.m.)

CHAIRMAN WOOD: Good morning. This open 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.

Please join me in the Pledge to our Flag.

(Pledge of Allegiance recited.)

CHAIRMAN WOOD: I would like to start the meeting with an announcement of some interest: Due to the request of both parties, both sides in the case of * our offices have agreed to hear oral argument in the CPUC vs. El Paso case, RP00-241 on Monday, December 2nd. An Order will follow.

Madam Secretary?

SECRETARY SALAS: Good morning, Mr. Chairman.
Good morning, Commissioners.

The Struck Items: Since the issuance of the Sunshine Notice on October 23rd, the items are as follows:
E-10, E-19, E-20, E-21, E-26, E-27, E-32, and H-10.

Your consent agenda for this morning is as follows: Electric - E-3, 4, 5, 6, 7, 8, 11, 12, 14, 16, 18, 22, 23, 24, 25, 28, 29, 30, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, and 43.

Gas Items - G2, 3, 4, 7, 8, 9, 10, 11, 12, 13,
14, 17, 19, 20, 21, 24, 26, 27, 28, 29, 30, 31, 33, 36, 37,
38, 39, and 40.

Hydro - H2, 4, 5, 6, and 7.

Certificates - C1, 2, 3, 5, 6, and 8.

Miscellaneous - M1.

The specific votes for these items are as
follows: E-18, Commissioner Massey concurring; G-28,
Commissioner Breathitt dissenting, in part, and Commissioner
Brownell votes first this morning.

COMMISSIONER BROWNELL: Aye.

COMMISSIONER MASSEY: Aye, with my concurrence,
as noted.

COMMISSIONER BREATHITT: Aye, with partial
dissent, as noted.

CHAIRMAN WOOD: Aye.

COMMISSIONER MASSEY: Mr. Chairman, I think H-10
was noted as having been struck from the agenda; is that
right?

SECRETARY SALAS: Yes, Commissioner.

COMMISSIONER MASSEY: I understand there is some
interest in leaving it on, at least for discussion purposes,
and if you'd rather do that, that's fine with me. Perhaps
there will be enough of a consensus to vote, but whatever
you'd like to do.

CHAIRMAN WOOD: We'll talk about that in the hydro section.

SECRETARY SALAS: Okay. The first item in the discussion agenda this morning is E-9, Midwest Independent Transmission System Operator.

COMMISSIONER BREATHITT: I asked to call this item, but I didn't ask for a presentation, but I wanted to explain why I called it.

The issue isn't of huge relevance to this case at hand, but there is an associated issue which was my reason for calling it. I will talk about that right now.

As I just mentioned, I called this item to raise an issue that is referred to in a fairly minor fashion in the Order. The issue is not one that directly relates to the compliance issues at hand.

So, the Staff gave it the appropriate treatment. I am looking at Staff, as I'm saying that, because I'm not disagreeing with that. But I wanted to use this case to illustrate a point, because it is relevant to the case-in-chief.

That is having to do, in a larger context, with a voluntary remand from the courts that the Commission has decided to ask for with respect to the issue of cost-trapping with administrative costs.

Cost-trapping, in the MISO context, is the

payment of the cost adder by the transmission owners, based on the total load, including bundled load and grandfathered contracts. Trapping of costs occurs when transmission owners can't recover those costs from bundled load because of retail rate freezes, or another reason could be because of grandfathered contracts that have not been able to be successfully renegotiated to allow cost recovery for these administrative admin cost adders.

The issue arose in Order 2000, and the requirement in that rulemaking that all load within the RTO be placed under the RTO tariff. And I voted for that and I agree with that.

I still believe that where RTOs are voluntarily formed or formed however, that all load, including bundled load and grandfathered contracts should be placed under the RTO tariff. That's not my issue.

I also believe that bundled load and grandfathered contracts do gain from the benefits of the formation of the RTO, and the cost causation principles would have them pay some of the administrative costs of the RTO. However, I note that the potential cost-trapping is an important issue that I admit I haven't fully resolved in my mind.

It was something that perhaps was not fully envisioned when we all decided that the public policy goals

should be to include all load for these adders. So I hope that there is some possible middle ground on this issue between the two extremes of allocating all these costs to the wholesale customers and allocating the costs to transmission owners where these costs might be trapped.

I know that my colleagues will give full consideration to the issue of cost-trapping when they take up the voluntary remand. That's really all I have to say on this. It was just to raise it in the context of this case.

CHAIRMAN WOOD: Great. Sounds good. Anything?

(No response.)

CHAIRMAN WOOD: Let's vote.

COMMISSIONER BROWNELL: Aye.

COMMISSIONER BREATHITT: Aye.

COMMISSIONER MASSEY: Aye.

CHAIRMAN WOOD: Aye.

SECRETARY SALAS: The next item in the discussion agenda this morning is E-31, Open Access Transmission Service and G-35, regulation of short-term natural gas transportation services, with a presentation by Richard Howe.

MR. HOWE: Good morning. The draft Order in G-35 addresses three issues concerning Order No. 637, remanded to the Commission by the Court of Appeals for the District of Columbia.

First, the Court remanded the issue of why the Commission continued the five-year term-matching cap for an existing customer's right of first refusal. On this issue, the draft Order removes the five-year term matching cap, finding that existing regulatory controls minimize the ability of pipelines to use their market power to force captive customers to enter into longer-term contracts than would be required in a competitive market.

Second, the Court remanded the issue of whether the Commission intended the ROFR that's set forth in its regulation to govern, regardless of any contrary provisions in the pipeline's tariff.

The draft Order clarifies that the Commission will interpret the right of first refusal provisions in the pipeline's tariff, consistent with the regulations, whenever possible, but where the tariff is contrary to the regulation, the tariff will control until the Commission modifies it under Section 5.

Finally, if the Court remanded the policy in Order No. 637, the pipelines must permit segmented transactions that include a forward haul and a backhaul to the same point, each of which is up to mainline contract demand.

The draft Order reaffirms this policy, but in order to implement the policy, the draft Order requires

pipelines to modify the terms and conditions of service in their tariffs to expressly permit forward hauls and backhauls to the same point.

The draft Order in E-31 addresses two issues on remand from the Court of Appeals for the D.C. Circuit concerning Order No. 888 on what a reasonable cap on contract extensions made for existing customers' right of first refusal would be, and the Commission's treatment of energy costs in the stranded cost and marketing option in Order No. 888.

On the first issue, the draft Order reaffirms the Commission's existing policy in Order No. 888 that there should be no limit on the length of contract extensions an existing customer must match when it exercises its right of first refusal.

This is consistent with the holding in the G-35 Order on a similar issue on remand of Order No. 637. With respect to the stranded cost marketing option, the draft Order finds that the Commission did not intend in Order No. 888, to allow departing customers that choose to buy and resell stranded power to receive a windfall at the utility's expense. Thank you.

CHAIRMAN WOOD: Thank you, Richard. I thought it was important for these two cases that they relate to significant initiatives of the Commission in the past decade

to have a Staff presentation. Linda, you might have a thought on the gas.

COMMISSIONER BREATHITT: I wanted to express during this presentation, that I am going to be dissenting on one part of the Order 637 remand with respect to forward hauls and backhauls.

Staff has put a lot of hard work into this Order on remand, and I thank all of you. I agree with most of the Order, however, I will be dissenting again on the decision to permit forward and backhauls to the same delivery point in excess of the shipper's contract demand.

I don't think that's a surprise to anyone who's been following this issue. The D.C. Circuit, as the Staff pointed out, remanded the issue to the Commission because we had not adequately explained why allowing forward hauls and backhauls to the same delivery point, why allowing forward hauls and backhauls to the same delivery point in excess of contract demand is not an unlawful contract modification.

The Order states that the Commission is making the necessary Section 5 findings to modify pipelines' tariffs to prevent forward hauls and backhauls to the same point.

The Order also states that it need not modify any term in an individual service agreement between pipelines and their shippers to accomplish this, since service

agreements incorporate the terms and conditions in their tariffs. I don't believe that the issue is that clear-cut.

As the Order states, contractual rights and obligations are the foundation of the relationship between the pipelines and their shippers, and they are really the underlying basis for filings before the Commission. Delivery-point rights are an important aspect of the contractual relationship.

The Order recognizes that the Commission is providing an additional right for firm shippers to use delivery points on a secondary basis. While I support increased flexibility for shippers, I don't believe that it is just and reasonable to expand these shippers without giving them the corresponding cost responsibility.

So I don't believe that has addressed that corresponding cost responsibility; therefore, I will be dissenting, in part.

CHAIRMAN WOOD: Anybody else?

COMMISSIONER MASSEY: On a different issue, the cap on the matching term for the right of first refusal, I was actually -- I was here during the promulgation of Order 888, and also 637, and it seems to me that -- and that issues arises in both cases.

And the Commission has been struggling with this question, obviously, for years. And the original concern, I

think, that led to a cap was -- particularly on the pipeline side, was twofold:

First of all, it had to do with market power by the pipeline, and, secondly, whether the pipeline affiliate might bid up the term for capacity to a level that was longer than you would see if you had a really good market.

I think I have stated that concern reasonably accurately. We now have this issue sent back to us, at least with respect to our pipeline agenda, two or three times by the Courts of Appeal.

We struggled with it in a case called -- involved with the net present value question. I think it was Tennessee Pipeline. That case went up to the Court of Appeals, once, maybe twice, and came back to us.

It seems to me that we're getting a message from the Courts that if we just choose a number -- five years, eight years, three years -- we don't seem to have a very good factual justification for any particular term limit that we choose.

It seems to me that we're getting a message from the Court that unless you can justify a particular conclusion here, perhaps you don't need a limitation at all, especially if you have other policies that would mitigate market power of the pipeline or of the affiliate.

You have the complaint process. If there seems

to be some abuse, parties can come in and file a complaint.

That's the approach that these Orders take. I won't say that I'm 100 percent confident about this, but it seems to be a message that we're getting from the Courts, and I'm willing to adopt this policy and see how it goes in its implementation.

CHAIRMAN WOOD: I think I would associate myself with those remarks, 100 percent. You get beat up enough by the Court, you finally just roll on those issues that you can't come up with a better answer for. This is probably a good example of that.

COMMISSIONER BREATHITT: I agree with those comments, too. I have some sympathy for caps, because there are recourse customers who sometimes lose out without that. But I was willing to vote for this for the same reasons that Bill, you articulated very well just now.

So, we're voting it out as a majority on that issue.

CHAIRMAN WOOD: Okay.

COMMISSIONER BROWNELL: I can't add to the eloquence, so I can just vote aye.

COMMISSIONER MASSEY: Aye.

COMMISSIONER BREATHITT: Aye, with my partial dissent on the forward haul-backhaul.

CHAIRMAN WOOD: And aye on both Orders. That was

for both, because they were both called up together.

SECRETARY SALAS: The next items in the discussion agenda are H8 and H9, both for Hydro Development Group, with a presentation by Monte TerHaar, accompanied by Ed Abrams and Al Francese.

MR. TerHAAR: Over the last one and a half years, we at Staff have been implementing various measures to reduce license processing time. Such measures have included multi-tasking on workloads and projects, once they are filed, so they are always kept moving in the process.

Another measure is to identify individual projects where we could streamline the schedule, based on the nature of the resource issues, the project complexity, and the stakeholder interest.

Finally, one of the most important measures is, we've really begun to see some of the benefits of our efforts to foster cooperative relationships with both state and federal resource agencies, as well as project stakeholders.

The Halesborough Followup Project represents just one success story in reducing processing times. We're very pleased to report that these two projects were completed in 22 months, and that we're going to be issuing a license prior to expiration of the original licenses.

I'd like to take just a very few moments here to

give you a brief review of the project's issues and how we accomplished this 22-month processing time, if we can get the first slide.

(Slide.)

MR. TerHAAR: The Halesborough Followup Projects are located on the Oswagochee River in the State of New York. The project consists of two developments, the Halesborough IV development and the VI development.

There are a total of five very small dams at these projects. There were two other facilities which we had to consider in our analysis.

This included the Halesborough VI Project, which was a project that was exempted, and, of course, the Island Branch Diversion Dam, which was a structure that was built in 1985, but was not licensed by the Commission.

Each of the projects are very small; they're under 1.5 megawatts, but as we have seen in the past, small projects can often take just as much time to process as many of the larger, more complex projects. There are always a dozen or more issues, which we address in our analysis, but I'd like to highlight just two of the principal issues here, and if we can get the second slide --

(Slide.)

MR. TerHAAR: The first issue is the Island Branch Diversion Dam as shown here. Island Branch Diversion

Dam was built in 1985, was not licensed by the Commission. Here we needed to find a way to ensure that minimum flows would always be provided at this dam.

The solution was to include this structure as part of the new relicensed Halesborough IV Project, and after negotiations with the Department of Interior, the New York Department of Environmental Conservation, and the Applicant, this solution was ultimately accepted by all parties. Can I get Slide 3, please?

(Slide.)

MR. TerHAAR: The second principal issue we addressed was enhancing recreation opportunities by providing canoe portage and boating passage, wherever possible at the five project dams.

Staff very much agreed that canoe portage was warranted, wherever we could provide it in both a safe and feasible manner, and we recommended portage at several of the project sites.

We did not recommend portages at sites where we believed that there were unsafe conditions. This particular slide is an example of an unsafe site, the project area where portage was not provided.

This is a site that is one of the bypass reaches of the projects. You will notice that the rapids, indeed, look to be very dangerous in this particular reach,

therefore, we didn't provide the portage.

Every project we work on seems to have its little public interest story. This particular project was no exception.

I had the opportunity of working with Betty Lou Bailey, who is a retired engineer. She represents the Adirondak Mountain Club in the State of New York. Betty Lou gets involved in many recreation issues in the State of New York.

She's a lady who is extremely dedicated to her calling, and in this case, Betty Lou made extraordinary efforts to provide us with comments in a timely fashion, and we were ultimately very pleased to see that she wrote us a letter supporting our final recreation measures for this project.

Finally, I'd just like to note two of the elements that we believe contributed to a quicker process, the first one being 401 water quality certification. A 401 water quality certificate was issued in just under one year for this project, which allowed us to proceed quickly.

And, second, both Interior and Commission staff expeditiously participated in the 10(J) negotiation process and came to immediate resolution on the issues, which were acceptable to all parties.

In closing, I'd just like to note that

Halesborough Followup represents just the tip of the iceberg in quick processing times. We have very many more projects in the pipeline that we expect to process in 24 months or less. With that, I just thank you for your attention. If either Ed or Al has any additional comments?

(No response.)

COMMISSIONER BROWNELL: Good presentation. It's good to be reminded that we can do this when the parties all agree. And I think this is a wonderful illustration, not only of terrific Staff work, but that groups who often have competing agendas can, indeed, when focused, resolve very complex issues, and that for these hydro projects, I think we all need to be reminded, serve so many masters that the challenges are enormous.

So I appreciate the work that you did, and certainly that Betty Lou did. Maybe she can come and teach us how to facilitate in other projects. Thank you.

COMMISSIONER MASSEY: I just wanted to thank you for all your hard work on these cases. It was a very good presentation.

CHAIRMAN WOOD: Ditto.

COMMISSIONER BREATHITT: I have to say ditto, too.

COMMISSIONER BROWNELL: Can I just ask one quick question? How was it that the water quality of the 401

certificate got done so quickly?

MR. TerHAAR: Well, there definitely was Staff effort involved in that, keeping in touch with the Department of Conservation and keeping it updated and apprised.

There were issues that they were struggling with in the water quality certificate, and there was a period when, you know, we kind of negotiated on ways to go and get to that issue quickly, so it didn't just happen. It wasn't part of their typical process.

COMMISSIONER BROWNELL: Any lessons to be learned that we could export to other projects in other states?

MR. TerHAAR: Be involved with the person who is charge of issuing that certificate. The more projects we work with and develop these relationships with these staff members -- and, quite frankly, we've been noticing that they're also under pressure, too, to get these out quicker, and we've been seeing an effort in that direction.

COMMISSIONER BROWNELL: Thanks.

20

21

22

23

24

25

CHAIRMAN WOOD: Thank you. Let's vote.

COMMISSIONER BROWNELL: Aye.

COMMISSIONER MASSEY: Aye.

COMMISSIONER BREATHITT: Aye.

CHAIRMAN WOOD: Aye.

SECRETARY SALAS: The next item, at Commissioner Massey's request, H-10, New York State Electric & Gas Corporation.

COMMISSIONER MASSEY: Actually, others wanted to leave this matter on the agenda, so I'll let others raise whatever points or concerns that they have.

CHAIRMAN WOOD: Do you all want to introduce it?

MR. LISTER: Good morning. My name is Lonnie Lister. I'm with the Office of Energy Projects, Division of Environmental and Engineering Review.

This is a proposal by New York State Electric & Gas Corporation to amend the license for its 38.74 megawatt Saranac River Hydroelectric Project by deleting from the project boundary of its Kents Falls development 101 acres of project land that would be sold to the county for expansion of its existing solid waste landfill.

The project is located in the town of Schuyler Falls, approximately seven miles west of the city of Plattsburg in Clinton County, New York.

On August 30th, 2002, Staff issued an

environmental assessment on the proposed land transfer. The EA found that approval of the proposed change in land rights and conveyance of lands from the Saranac River Hydroelectric Project would not constitute a major federal action significantly affecting the quality of the human environment.

The Staff recommended the adoption of certain measures that would mitigate any potential off-site effects from the landfill on the Saranac project.

There are two approaches that the Commission can take on this case. One is to grant the proposed land transfer and require certain additional mitigating measures, including preparation of an erosion control windborne debris control plan, a groundwater monitoring and coordination plan, and a revised recreation plan.

Another approach is to deny the proposed land transfer and defer consideration of the proposal to the broader context of the impending relicense proceeding.

COMMISSIONER BROWNELL: Is the parcel of land that they're talking about needed for any project purpose?

MR. LISTER: Our conclusion is that, no, it is not.

COMMISSIONER BROWNELL: And we did something similar a number of weeks ago I think when we removed a parcel from a project, a parcel I think owned by the Forest

Service, did we not? Based on the fact that it wasn't needed for any project purpose?

MR. LISTER: That's the general approach. I'm sorry I'm not familiar with that.

COMMISSIONER BROWNELL: That's okay. Tell me, now, there were I think a number of intervenors who originally objected to this, and they have withdrawn their objections I guess, based on the mitigation plans that have been proposed. Is that correct?

MR. LISTER: The town of Schuyler Falls initially filed comments opposing the project and then subsequently withdrew those protests. Other commentors filed comments agreeing with Staff's conclusions in the EA recommending some additional measures.

MS. SEIGEL: The Fish and Wildlife Service and the National Park Service also -- I'm sorry. My name is Jessica Seigel. I'm with OGC. The Fish and Wildlife Service and the National Park Service also initially -- well, the Fish and Wildlife Service initially opposed. The National Park Service came in later. But both agreed to the amendment of the license order if the measures in the EA were adopted.

COMMISSIONER BROWNELL: And this proposed landfill would in fact be overseen by the Department of Conservation or the appropriate state agency to ensure that

whatever mitigation was agreed to is implemented and there will be ongoing monitoring?

MR. LISTER: They have requirements.

COMMISSIONER BROWNELL: Landfills are never welcome in anyone's neighborhood, but I was persuaded by the record that it would be appropriate to approve this now.

And I also worry about deferring something to a licensing process that is already overly burdened with different agendas and different needs that have to be met. I'm not sure what purpose would be served in that regard. So I'm persuaded by approving this as proposed I think in Option A.

COMMISSIONER MASSEY: I've read the Department of Interior protest. And tell me, when does the relicensing come up on this project? Isn't it just a few years from now?

MR. LISTER: I have that.

MS. SEIGEL: 2004.

COMMISSIONER MASSEY: 2004. And the Department of Interior makes that point, that they were not consulted about this, that they don't have enough information about it.

And they also make the point, or it's in the record that the county has sufficient capacity to meet its needs at least for nine years, and there are some estimates

up to almost 26 years of landfill capacity that they already have access to. Am I accurate in that respect?

MR. LISTER: Yes. I believe it's nine years for the existing operation and 20-something years for the additional land that the county owns adjacent to the currently active parcel.

COMMISSIONER MASSEY: So they have nine years of existing capacity at least, and perhaps up to 26 years of existing capacity.

So it seemed to me that there was really no sense of urgency about this, because it is a proposal that would allow a landfill very close to the Saranac River. And so my own preference, based upon the record that is before us, would be to handle this during the normal relicensing process. And one of the orders that is before us takes that approach.

It's my understanding from my staff that all the environmental concerns about this have not been resolved at all. And so since they have not, it seemed to me that the more sensible solution, since we're coming up on the relicensing process in any event, would be to handle this issue there when it could receive a fuller consideration.

If there was a sense of urgency, if the county was running out of space, I might feel differently about it. But they're not. And so that was my preference. Actually,

I had struck this order to allow additional time to think about it and consider it and gather additional information. And actually, as I read the environmental assessment, there are a number of concerns expressed in it that I am not persuaded are fully resolved here.

The environmental assessment itself seemed to raise concern after concern after concern. It was the punchline that surprised me at the end, which is, well, this can all be taken care of. At this point in the debate, I don't see the sense of urgency about this. I don't know why we can't handle this during the normal relicensing process.

Does Staff care to comment on that point? Mark? Anyone?

MR. ROBINSON: During the course of a 50-year license, we have amendments and requests for changes that come in constantly. As we approach relicensing, we have sort of a sliding scale of whether or not we allow it to be part of relicensing or go ahead and try to treat it. The more significant the issue, the more likely we are to let it go to relicensing.

Looking at this and requests like this, it's the type of request that we typically treat as it sits at the time that it's requested. There didn't appear to be anything that would have this rise to a level to make it wait for relicensing.

I think it was significant that the Fish and Wildlife Service, part of the Department of Interior, once they saw our EA and the proposed mitigation measures that we had in that, concurred and said that they did not oppose going ahead with the landfill at this time.

COMMISSIONER MASSEY: Who opposes this? What parties?

MR. LISTER: I don't know that we have any remaining opposition. The initial commentators who opposed it I believe all agreed with the Staff's recommended mitigation measures.

MS. SEIGEL: New York Rivers United, which had filed jointly with American Rivers and Natural Heritage Institute, at the end of things, they said that they agreed with the recommendations in the EA, but they were uncertain as to whether we were proposing to do that as part of approving this and whether in the EA, it was talking about doing it as part of this proposed amendment, or doing it at relicensing.

They weren't really clear in their pleading that they were still opposing, but they were expressing that question.

COMMISSIONER MASSEY: Well, I still have concerns about it, I'll say that, whether all the parties are satisfied or not. And it's my understanding that some of

the parties may have begrudgingly agreed, so I will just state that I remain concerned about this, and I think at this point if I had to vote today, I would vote to handle this during the normal relicensing process where it can be handled more carefully.

There's no sense of urgency about this at all.

The county has nine years, perhaps as much as 26 years. So I don't see why we're not handling this during the normal relicensing process.

COMMISSIONER BREATHITT: Commissioner Massey, I share your concerns in this matter. I think -- I wanted to point that out to I guess explain why we are having this discussion. It seems to be a split decision. My preference would also be to not authorize the sale of the involved parcel of project land at this time.

One more fact that concerns me is that with the expansion of the land, there would be a requirement to clear 101 forested acres. That concerns me. The fact that this parcel is closer to the river concerns me. We are not talking about delaying the license. That is on track. It's slated for '04. We're at the end of '02 right now. This could easily be folded in and taken up in probably a process that is underway now.

I don't think that the environmental concerns in my mind are sufficient to not automatically defer to the

local government preference.

Another point is that we do have jurisdiction of the involved parcel. It's not a parcel of land that is without our jurisdiction. The other land that the local government owns, as Commissioner Massey states, does take the capacity of the landfill into the 25-26-year timeframe. So it's not that they don't have options.

If I were voting today, I would say that there is no harm and probably it is more prudent because the issues in my mind with the requirement to clear 101 acres of forest, that's in the EA, is that correct?

MR. LISTER: That's correct.

COMMISSIONER BREATHITT: And the closer proximity to the river. So I have some environmental concerns that are raised with doing this now.

CHAIRMAN WOOD: I appreciate the discussion. Sometimes on these cases that I've not been focusing on so intensely during the two-week cycle, I really like to talk about them, and even though we come to a two-two and see kind of what may be out there. Nora, you raised a question, and Lonnie didn't know the answer. I wonder if Mark or maybe, Rich, you do.

We had done something recently where we redefined the boundary. Do you remember what that was?

MR. ROBINSON: I don't remember the exact case.

but it's a very common thing for us to do to go in during the term of the license and reexamine whether or not lands are inside the boundary that are not being used for project purposes and then exclude them.

Most of those are delegated. It's rare that something like that reaches the Commission. But I don't know if anybody else remembers a recent -- Chris, do you remember a recent action?

MS. CHRISTIN: Nantahala Power Company where we excluded the land around the bypass reach, because we found it was not part of the --

MR. ROBINSON: And again, that's just an example of how that comes up during the course of a license. I don't have an estimate off the top of my head how many we do of those a year, but it's several.

COMMISSIONER MASSEY: But it's a 50-year license, correct? There's two more years left in the license term?

MR. ROBINSON: This one was granted in '80. It was like a 20-some-year license that we're involved with. It actually expires in 2006. The application would be filed in 2004.

COMMISSIONER MASSEY: The application will be filed in 2004. So there will be plenty of opportunity to deal with this. And again, I just ask the question, what's the sense of urgency about this?

MR. ROBINSON: I don't think we react to it in the sense of there's a sense of urgency. There is a request. We analyzed it. We determined the impacts associated with the request were not significant, and those that did remain could be mitigated, and I believe we did look at all the environmental effects. And therefore, we found no reason in our analysis not to proceed with it. It didn't seem to have some connection to relicensing and the broader issues that will come up overall. I think there are four or five developments in this project that we'll have to look at at that time.

This is an isolated 101-acre parcel some 500 feet from the river and the recreation that currently occurs along that river. After our analysis, we concluded it was appropriate to go ahead and grant it.

CHAIRMAN WOOD: In the Nantahala case, was there a proposed use, alternate use, that was being talked about? That's the problem I get in here. These guys were honest about what they were going to do, and then we basically get into a whole NEPA review of their proposed use that's outside where somebody could come in and say we don't need this. Then we say, you're right, you don't need this. And then they've still got the state taking care of the environmental issues.

My general thought, despite all the people who

think otherwise on our SMD initiative, we shouldn't tread where we don't need to be, and I think there is a sufficient agency, the New York State agency, to address the environmental concerns with projects like this.

I guess just based on what I've heard today, that would be the appropriate place to deal with that, because it doesn't kind of trigger an interstate commerce issue in my mind, much as a lot of the SMD issues do, for example.

I just hate to see somebody that comes in with a frank and honest reason for why they want to change something then throws us into federal NEPA review as opposed to leaving that with the other agencies.

So I don't know what our case history has been on doing that. But if we have done a lot of it in the past, then I guess I should just not worry about it. But that's one thing I've heard that kind of makes me a little concerned.

COMMISSIONER MASSEY: They probably felt like if they weren't straightforward and honest with us, we'd never trust them again, so they needed to tell us what was up. And I agree with them on that point.

CHAIRMAN WOOD: But should that trigger us doing a NEPA review?

COMMISSIONER MASSEY: Well, it's jurisdictional to the agency right now. It's part of the license. And so,

again, I haven't decided to reject this once and for all and to never let this happen. I just think -- I think it could get a closer look and a better look during the relicensing process, which is coming up in just a couple of years. When do they file, 2004? Is that right?

MR. ROBINSON: Yes.

COMMISSIONER MASSEY: So this project has been in existence since, at least this license, since 1980 or roughly then?

MR. ROBINSON: I believe the dams predate that. I don't know if anybody remembers the exact history of this, but my recollection is that it was licensed in around '80.

COMMISSIONER MASSEY: So around 1980. It's 22 years into the license. It's just a couple of years to go before the new application is filed. The county has at least nine years of available landfill capacity, perhaps up to 26 years.

I'm repeating myself, but I'm just reminding myself why I've come to the conclusion, the sensible conclusion, that we should delay this.

(Laughter.)

COMMISSIONER MASSEY: Actually, the more I talk about it, the more persuaded I am.

(Laughter.)

COMMISSIONER MASSEY: By my own rhetoric.

(Laughter.)

COMMISSIONER MASSEY: I'm just not persuading anyone else.

(Laughter.)

COMMISSIONER BREATHITT: I just have one more question. If we went with the southern expansion footprint, which is land that the applicant or the county owns, would that avoid having to clear 101 acres of forest?

MR. LISTER: I believe most of that land is forested also. It's somewhat smaller than 101 acres.

COMMISSIONER BREATHITT: Isn't there a gravel pit in that area?

MR. LISTER: I'd have to check. I'm not 100 percent sure about that.

COMMISSIONER BREATHITT: That was my understanding that a good part of that land was being used for a gravel pit, and that that might avoid --

MR. LISTER: I believe you're right, but not the entire parcel.

CHAIRMAN WOOD: We'll keep an eye on this one and maybe talk about it later. I appreciate the discussion. It's good to do these.

COMMISSIONER MASSEY: Don't you want to hear my speech one more time?

(Laughter.)

CHAIRMAN WOOD: Know when to hold 'em, know when to fold 'em.

COMMISSIONER MASSEY: That would be three times I would give my speech. That's right.

(Laughter.)

CHAIRMAN WOOD: Thank you all very much.

MS. SALAS: And the last item for discussion this morning is A-3, Midwest Energy Infrastructure Assessment, a presentation by Julia Tuzun, Meesha Bond and Raymond James.

MS. TUZUN: Good morning. I'm Julia Tuzun. With me are Meesha Bond and Raymond James. Today we're going to provide an overview of the gas, oil, electric and coal infrastructure in the Midwest.

May I have the next slide, please?

(Slide.)

For purposes of this assessment, the Midwest includes the four regions of ECAR, MAIN, MAPP and SPP. Geographically, this area comprises the 15 states shown on this slide and two Canadian provinces.

Ray will now summarize our assessment of the Midwest gas and oil infrastructure. When Ray finishes, I will summarize our generation and coal findings, and Meesha will summarize our findings on transmission. Ray?

MR. JAMES: Good morning. I will present an overview of the natural gas and oil infrastructure for the

Midwest. Can I have the first slide, please?

(Slide.)

What this slide represents is the gas facts for the year 2000 for the Midwest region. What I'd like to concentrate on first is the total gas consumption. Total gas consumption for the Midwest represents about 25 percent of the total U.S. consumption.

The largest users of natural gas in the Midwest were the residential customers and the industrial sectors. The residential is about 36 percent. The industrials is about 33 percent.

The smallest users of natural gas are the electric generators. This includes both nonutilities and utilities. They represent about 11 percent of the total consumption within the Midwest. However, the growth in electric generation between the periods of 1990 and 2000 is the highest among all these sectors. It represents about 29 percent of growth. What this shows is that the electric generators are using natural gas as the primary fuel.

However, because of the fact that only 11 percent of the total consumption within the Midwest is electric generation, the primary fuel that's being used by these electric generators is coal. And when Julia discusses the electric generation in coal, you'll get an understanding of how coal is prevalent in these electric generators.

While the consumption is only about 25 percent, the production part of the Midwest only represents 15 percent. The Midwest in 2000, it's 15 percent. In 2001, it decreases to 13 percent. What this tells us is that the Midwest is dependent upon outside deliveries of natural gas, particularly in the infrastructure sector and the Tennessee-owned storage. Those two numbers are representative.

If you take out the two states that we have included in the Midwest, Oklahoma and Kansas, that production level drops down to about 4 percent in 2000 and about 3 percent in 2001. So that's very dependent on outside deliveries for the infrastructure and dependency on storage.

Let me just address storage. The Midwest has the greatest amount of storage capacity, and that's what I mean base gas plus working gas in the United States. It's about 56 percent. The largest storage field capacity is in the states of Michigan and Illinois, with Michigan having the largest capacity.

With regard to Canadian gas, Canadian gas is delivered into the Midwest through two pipelines. The greatest amount is in two points which connect into the Northern Border system and into the Alliance system. In 2000, the net imports of Canadian gas, Midwest had 37 percent of the net imports of Canadian gas, and that's

increased to 42 percent in 2001.

As I mentioned, a large portion is to the Northern Border system and the Alliance system. What is unique about the Canadian import-export in the Midwest is that a portion of the Canadian gas is being reentered into Canada through the vector system. What is happening is that the Alliance pipeline, being what we call a wet pipeline that carries products, is being processed in the Chicago area, and the gas is now moving outside of the United States back into Canada, most likely into the Northeast again.

With regard to the pipeline infrastructure, most of the pipeline infrastructure that originates in Louisiana and Texas, or I should say Southeast and Texas, is what delivers gas into the Midwest.

If I can have the next slide, please.

(Slide.)

This slide represents the flow patterns into the Midwest. And as you can tell, a large portion of the flow patterns originate in the Southeast and in Texas. They go into the Midwest, but they also are redelivered, or a portion of that capacity is now going outside of the Midwest to the Northeast.

We have 20 major pipelines that serve the Midwest. When I say "major", I mean 24 inches or higher. They have -- the total pipeline capacity into the Midwest is

about 33.8 bcf per day. It decreased in 2001 to about 33.6 bcf per day. The main reason for the decrease was the trunkline abandonment and the conversion of part of their line to a product line.

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

Even with this decrease in capacity, we found that there is still adequate pipeline capacity to serve the Midwest. Go to the next slide, please.

(Slide.)

This slide represents the expansions that have been both certificated and pending that affect the Midwest. I'll concentrate on the first two bullets. The first bullet has certificated capacity five projects of about 1,914 Mmcf per day. Of this amount about 1,130 Mmcf per day is to move gas within the midwest into Wisconsin and from Wisconsin to Illinois. It represents two projects. Four hundred and sixty of this Mmcf per day is for electric generation, 324 Mmcf per day is to move gas from Colorado to Nebraska.

I'd like to highlight that portion of it because what you're seeing is facilities that are being placed to move gas from the Rockies into pipelines that ultimately go ahead into the Midwest but not necessarily deliver the gas in the Midwest because they may go into the Northeast.

The three pending projects -- I'm sorry, let me back up on the five certificates. The status of those is that three of them are under construction. One is in service and that would be the Trail Blazer and the one that serves one of the electric generation plants in Wisconsin has not started construction yet.

The three pending projects to a total of about

940 Mmcf per day, one project, the Williston Basin one would bring again Rockies' gas from Wyoming to Northern Border. One project is to meet new generation and requirements in Wisconsin and the last project is to move gas out of the Midwest into the State of North Carolina.

Again, I'd like to reemphasize that what we're having here is projects that are being constructed maybe in the Midwest. But the ultimate requirements are outside the Midwest. In summation of this slide, we're seeing that where there is a market there appears to be an infrastructure that's being proposed to meet that market. Some of the problems that may occur is if the new market or new generation market or the marketers decline new services, that could impact the pipeline's ability to come in for expansions. Next slide, please.

(Slide.)

This slide represents the pricing hubs in the Midwest. With the exception of the spike, you can tell that the pricings have been consistent. The price spike was caused by extreme cold weather in the Midwest and possibly in a large part of the country in December 2000. Can I have the next slide, please?

(Slide.)

This slide represents the Midwest oil infrastructure and I'm just going to go ahead and do a quick

summation. In 2000, fuel oil for electric utilities accounted for about ten percent of the total fuel oil consumed in the Midwest. Again, like natural gas, the largest fuel oil users are residentially industrial customers. Of the fuel oil for electric utilities, what we found was distillate fuel oil, which is fuel oil number two and number four, was used in a greater consumption than residual fuel oil which is fuel oil five and six. This kind of indicated that distillate fuel oil may have been used with cooperation with another fuel.

In reality what's happened is that distillate fuel oil is used in some cases for flame stabilization in coal-fired burners. Also too, the Midwest has a very large amount of small oil-fired peaking facilities. They're like one megawatts, two megawatts. They're spread over -- they're located particularly in Iowa. Iowa has a very large amount of these small units that use distillate fuel oil.

With that, I'm going to turn it over to Julia who will do the electric generation and coal. Thank you.

MS. TUZUN: Next slide.

(Slide.)

Thank you. The Midwest has more generation capacity than any other region in the United States. Of the regions, 255,000 megawatts of capacity, 62 percent is coal-fired. Next in prominence is gas-fired capacity followed by

nuclear. The Midwest also generates more electricity than any other region in the United States. If you look at the slide on the right hand side, the graph will show that again coal predominates but that this time it is followed by nuclear and then by gas.

Until recently, most of the region's generation and transmission facilities were owned by vertically-integrated utilities. However, this picture is changing as some of the larger utilities are turning control and ownership of their transmission facilities over to independent transmission companies or the Midwest Independent System Operator. Nearly all of the bulk power transactions are bilateral in the region with no central clearing site power exchange or central dispatch order.

Could I have the next slide?

(Slide.)

Of the four NERC regions in the Midwest, ECAR has the most electric capacity. It's approximately 44 percent of the total and it generates the most electricity. This is primarily because it is the most densely populated region. It has an established industrial base. The siting process in ECAR is relatively quick, ranging from two to nine months, and efficient with relatively few problems. Finally, there is an abundance of coal in the region in the State of West Virginia. The Midwest region and principally

ECAR is a significant exporter of energy to PJM and to DVA, as we will highlight later in the presentation. You will see that the reserve margins in the Midwestern region far exceed the required reserve margins by their reliability councils. The next slide.

(Slide.)

Over the five-year period ending 2001, electric capacity increased by eight percent, and electricity output by eleven percent. This slide highlights the fact that a substantial portion of that capacity is gas-fired, and that the increases in output have been mainly from nuclear. Next slide.

(Slide.)

Over the next two years, the Midwest plans to increase capacity by about 17 percent or basically about 44,000 megawatts. As in previous years, the bulk of the new additions will be gas-fired. Next slide.

(Slide.)

Over the next ten years, demand is expected to grow in the four regions that are shown on the graph by between 1.7 and 2.4 percent per year. When the projected demand is compared to the available resources, it appears that the Midwest will continue to have healthy reserve margins which, in most cases, far exceed the margins mandated by their reliability councils. As a result, as we

mentioned earlier, there is substantial energy for export into other regions. Next slide.

(Slide.)

MR. LARCAMP: This is an excellent slide coming up, I might note.

(Laughter.)

MS. TUZUN: Thanks, Dan. Coal is a primary fuel source in the Midwest. Three-quarters of the Midwest generation is coal-fired and nearly all of that coal that was consumed in the Midwest was consumed by electric utilities. West Virginia is the largest producer of coal in the United States, and the second -- wait a minute, let me back up.

(Laughter.)

MS. TUZUN: West Virginia is the largest producer of coal in the Midwest and it's the second largest producer of coal in the United States. One of the interesting things to note is that although the Midwest has ample supplies of coal, 41 percent of the coal that is used by the electric utilities in the Midwest, is imported from Wyoming. This is mainly because coal from Wyoming is cheaper and it's cleaner burning.

MR. LARCAMP: There is a railroad problem though.

(Laughter.)

MS. TUZUN: Meesha will now summarize the

transmission findings.

MS. BOND: Thank you. We're looking at the electric transmission infrastructure in the Midwest.

(Slide.)

We observe that congestion events have been increasing during the summer for the majority of the Midwest. Congestion events are referred to as TLRs, transmission loading relief procedures at level 2c and higher. TLRs are a NERC approved method to manage congestion on the Eastern Interconnection. We're looking at the number of congestion events through the summer. You can see that congestion is a serious issue in the Midwest. The number of congestion events in MAIN and MAPP have increased every summer and ECAR and MAIN experienced twice the number of congestion events in the summer than SPP. Next slide, please.

(Slide.)

The location of congestion events can vary from summer to winter. The direction of congestion in the Midwest can also vary because the temperature gradient between the Midwest and the Southeast. During the summer of 2000, the south was hotter than the north, resulting in north-to-south congestion. Next slide.

(Slide.)

The Midwest has several transmission projects

that will help alleviate congestion but there is not enough new transmission projects compared to the amount of congestion that we're seeing in the Midwest. One of the barriers to new transmission projects is the siting across multiple jurisdictions and the lack of price signals. The lack of price signals in the Midwest makes it difficult to assess the cost of congestion. RTOs will help locational marginal pricing, LMP, and in 2004 NESA will implement LMP. LMP will help highlight the costs of congestion and encourage appropriate projects to relieve the congestion. The right price signals will also encourage merchants to come and build transmission.

Now I'll turn the presentation back over to

Julia. Thank you.

(Slide.)

MS. TUZUN: On the next slide, we have a summary of our findings. In short they are, the Midwest has adequate pipeline capacity and storage capacity to meet market needs. The Midwest also has adequate electric generation capacity to meet current demand. The Midwest has an abundance of coal and nuclear generation which would tend to act as a stabilizing factor on prices. Finally, the price signals that are needed for transmission expansion currently do not exist but with the beginning of the Midwest ISO in 2004 we are hopeful with that and the implementation

of LMP that all of that will change.

That concludes our presentation. If we could have the next slide, please.

(Slide.)

On that slide, we have the list of the team members that worked and helped us to prepare this report. We would like for them to stand.

(Applause.)

MS. TUZUN: Thank you. Are there any questions?

CHAIRMAN WOOD: Thank you, Meesha, Julie and Raymond. This will be our initial presentation at the week-after-next's conference in Chicago, correct?

MS. TUZUN: That's right.

CHAIRMAN WOOD: We've come a long way in doing these and I appreciate the quality we have for them. I know you gave some additional back-up material to us to the source book for the presentation. I thought it was well done. It points out just how important all fuel mixes are in this country and how important it is to keep the country tied together so we can take advantage of seasonal changes. Were there any -- I guess in that final assessment and in light of last Friday's conference, were there any gas issues that came to mind? You pointed out a few, Ray, that appear to be met by pending pipeline projects. Is that sufficient, do you think, to meet the trajectory?

MR. JAMES: I would say yes. Some of the issues that came up in the Friday conference with regard to LNG or quality of service issues, you probably would have quality of service issues because you're dealing with pipeline infrastructure in general. LNG, there's no LNG terminals or anything of that nature in there.

Again, as it relates to quality of service issues, I would probably say yes, you may have those in the Midwest.

CHAIRMAN WOOD: I looked at the storage map that was in the backup materials here. Is the storage growing?

MR. JAMES: From looking at the EIA figures, it seems to be constant. I didn't see too much new growth in the storage part. The numbers go up and down but they're not that drastic. I do notice that I think it was on the Horizon projects, I think there are two storage projects on that slide. But that's only Horizon.

CHAIRMAN WOOD: Great. Any other thoughts? You can certainly explore these more in two weeks. Thank you all. We appreciate good work. This open meeting of FERC is adjourned.

(Whereupon, at 11:25 a.m., the open meeting of the FERC was adjourned.)