

1 APPEARANCES:

2 COMMISSIONERS PRESENT:

3 CHAIRMAN PAT WOOD, III, Presiding

4 COMMISSIONER LINDA KEY BREATHITT

5 COMMISSIONER NORA MEAD BROWNELL

6 COMMISSIONER WILLIAM L. MASSEY

7 SECRETARY MAGALIE ROMAN SALAS

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| 1 | APPEARANCES (CONTINUED): |
| 2 | ELIZABETH ZERBY |
| 3 | ROBERT PETROCELLI |
| 4 | INGRID OLSON |
| 5 | SHEILA HERNANDEZ |
| 6 | JOHN WOOD |
| 7 | AL FRANCESE |
| 8 | LORI TSANG |
| 9 | HELEN MANCKE |
| 10 | STEVEN POINTER |
| 11 | MARILYN RAND |
| 12 | MARK HEGERLE |
| 13 | JASON STANEK |
| 14 | TONY INGRAM |
| 15 | RAHIM AMERKHAIL |
| 16 | OLGA KOLOTUSHKINA |
| 17 | JOHN MC PHERSON |
| 18 | DEBORAH OTT |
| 19 | KEVIN HUYLER |
| 20 | MICHELLE SPRINGER |
| 21 | DANIEL NOWAK |
| 22 | SAMUEL HIGGINBOTTOM |
| 23 | STEVE RODGERS |
| 24 | THANH LUONG |

1 ALSO PRESENT: DAVID L. HOFFMAN, Court Reporter

1 struck items are as follows: E-1, E-2, E-5, E-7, E-21, E-

1 33, H-1, H-3, and C-9.

2 Your consent agenda for this morning is as

3 follows: E-3, E-4, E-6, E-8, E-9, E-10, E-11, E-13, E-16,

4 E-17, E-20, E-22, E-23, E-25, E-26, E-27, E-28, E-29, E-31,

5 E-32, E-34, E-36, E-37, E-40, E-41, E-42, E-45, and E-47;

6 Gas Items G-1, G-2, G-3, G-4, G-5, G-6, G-7, G-9, G-10, G-

7 11, G-13, G-14, G-15, G-16, G-17, G-18, G-20, G-22, G-23, G-

8 25, G-26, G-27, and G-28; Hydro, H-2, and H-5; Certificates,

9 C-1, C-2, C-5, C-6, C-7, C-8, and C-10.

10 The specific votes for some of these items are as

11 follows: E-6, Commissioner Brownell recused; E-42,

12 Commissioner Brownell dissenting with a separate statement;

13 E-45, Chairman Wood concurring with a separate statement; G-

14 27, Commissioner Brownell concurring with a separate

15 statement, and Commissioner Massey votes first this morning.

16 COMMISSIONER MASSEY: Madam Secretary, I think

17 there is an Order on which I am concurring, as well, and

18 that is E-43.

19 SECRETARY SALAS: This is a discussion item. You

20 will have an opportunity to address that, Commissioner.

21 COMMISSIONER MASSEY: All right. So, my vote is

22 aye.

23 COMMISSIONER BREATHITT: Aye. I have some

24 separate statements, too, but I guess those will come later.

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CHAIRMAN WOOD: In the discussions.

1 SECRETARY SALAS: Duly noted.

2 COMMISSIONER BREATHITT: Aye, noting the recusal
3 on E-6, the dissent on E-42, and the concurring statement on
4 G-27.

5 CHAIRMAN WOOD: Aye, with concurrence on E-45, as
6 noted.

7 SECRETARY SALAS: The first item for discussion
8 this morning is G-12, Express Pipeline LLC, with a
9 presentation by Harris Wood, Andrew Lyon, and Mike
10 McLaughlin.

11 MR. WOOD: Good morning, Mr. Chairman,
12 Commissioners. This case involves a proposed cancellation
13 of two joint oil pipeline tariffs for the transportation of
14 crude oil and syn-crude from the U.S.-Canadian international
15 boundary to Salt Lake City, Utah.

16 The carriers participating in the joint tariffs
17 are Express Pipeline, Frontier Pipeline, Anshutz Ranch East
18 Pipeline and Chevron Pipeline.

19 The agreement, which has governed the joint rates
20 terminates as of June 1, 2002. Shippers who are oil
21 refiners located in the Salt Lake City area object to the
22 cancellation.

23 The Order accepts the proposed cancellation and
24 the joint rates, because shippers will still be able to

1 transport petroleum on the existing through-route from the

1 Canadian border to Salt Lake City under local rates of the
2 individual carriers, subject to the jurisdiction of this
3 Commission.

4 CHAIRMAN WOOD: The only reason I called this up
5 is because of that important point that Mr. Wood just raised
6 in this presentation about the fact that the shippers will
7 still be able to get the service under the local,
8 uncommitted rates.

9 That's referenced on pages 4 and 5 of the order
10 in Footnote 8, in fact, that the sum of those local and
11 committed rates is lower than the rate that's being
12 withdrawn here by the Company today. And so I would be open
13 to changing my approval of this, if, in fact, our review of
14 the tariffs is incorrect.

15 But the Commission Staff had reviewed the
16 applicable tariffs and files for light crude for these
17 different terms of service, and, in fact, in the cases
18 reviewed, found that the rates were lower under the rates
19 that will still stay in place.

20 So, I would be -- I want to point out why I'm
21 fine with that order, because, in the fact, the customers
22 have adequate protections under the rates that are on file
23 at the Commission. And I support the Order.

24 COMMISSIONER MASSEY: Aye.

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COMMISSIONER BREATHITT: Aye.

1 COMMISSIONER BROWNELL: Aye.

2 CHAIRMAN WOOD: Aye.

3 SECRETARY SALAS: The second item for discussion
4 this morning is G-19, El Paso Natural Gas Company, with a
5 presentation by Elizabeth Zerby, Robert Petrocelli, and
6 Ingrid Olson.

7 MS. ZERBY: Good morning, Mr. Chairman,
8 Commissioners. My name is Elizabeth Zerby, and with me are
9 Robert Petrocelli and Ingrid Olson.

10 The draft Order before you resolves issues in
11 four non-consolidated proceedings, all of which concern
12 capacity allocation on El Paso Natural Gas Company's system.

13 The draft order finds, pursuant to Section 5 of
14 the Natural Gas Act, that the application of El Paso's
15 current capacity allocation methodology is unjust and
16 unreasonable, and adversely affects the public interest,
17 because parties with firm transportation contracts are not
18 receiving the firm service for which they are paying.

19 The draft Order directs that full-requirements
20 contract shippers on El Paso be converted to service under
21 contract demand or CD contracts, effective November 1, 2002.

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23 The draft Order provides the parties with a short
24 period of time to reach an agreement as to the full-

1 requirements customer entitlements under their new CD

1 contracts.

2 By August 1, 2002, El Paso must report to the
3 Commission, whether the parties have been able to reach an
4 agreement. If the parties cannot agree as to the
5 appropriate CD entitlements, the Commission will determine
6 the appropriate CD levels.

7 The draft Order conditionally requires El Paso to
8 solicit and accept turnbacks of existing CD entitlements in
9 a capacity rationalization process, and expects El Paso to
10 follow through in its commitment to seek authorization and
11 to place in service, it's Line 200 Power Project.

12 Small shippers will be permitted to retain full
13 requirements service under El Paso's Rate Schedule FT-2, as
14 long as their requirements remain less than 10,000
15 decatherms.

16 Additionally, the draft Order requires an
17 assignment of primary receipt rights to all shippers, and
18 allows El Paso to increase the number of pooling points on
19 its system from six to eight. The draft Order further
20 directs El Paso to pay demand charge credits if it is unable
21 to schedule firm service for reasons other than force
22 majeure.

23 Together, these measures will resolve the current
24 uncertainty on El Paso's system, will assure that firm

1 shippers receive the firm service to which they are

1 entitled, and will establish the proper market incentives
2 for expansion of the infrastructure. This concludes my
3 presentation.

4 COMMISSIONER BREATHITT: Elizabeth, can you
5 repeat the part on the power-up that you read; just repeat
6 that part?

7 MS. ZERBY: The draft Order conditionally
8 requires El Paso to solicit and accept turnbacks of existing
9 CD entitlements in the capacity rationalization process, and
10 expects El Paso to follow through in its commitment to seek
11 authorization and to place in service, its Line 2000 Power
12 Project.

13 CHAIRMAN WOOD: Any thoughts?

14 COMMISSIONER MASSEY: I think this is a bold and
15 courageous, yet necessary step to impose rationality on a
16 system of capacity allocation that has become unjust and
17 unreasonable.

18 Over the past few years, we find that the El Paso
19 capacity allocation system is no longer tenable, given the
20 changes that have taken place on its system since the 1996
21 settlement.

22 We direct a pipeline to convert its full-
23 requirements contracts to CD contracts, with specified
24 maximum daily quantities or MDQs, and to assign specific

1 receipt-point rights. We preserve the status quo for small

1 FR customers taking service under El Paso's FT-2 rate
2 schedule.

3 I agree with all of these conclusions. Over
4 time, the demands and needs and the take of the FR customers
5 has grown rather dramatically, and the CD customers find
6 that although they have paid for capacity, they don't always
7 get to ship the gas that they believe they are entitled to
8 ship.

9 They are being crowded out on the system by the
10 FR customers. The whole situation needs an overhaul.

11 Those of you who have followed the Commission's
12 actions on this over the past couple of years know that the
13 Commission has been very concerned about this. We had a
14 proceeding here, more than one public proceeding, I'm sure,
15 but a proceeding that I participated in, and the other
16 Commissioners participated in within the last couple of
17 months, in which we attempted to come to grips with this.

18 It's always difficult to set aside a settlement.
19 The Commission prefers settlements, but this was a ten-year
20 settlement, and it seems clear to me that over time, the
21 terms of the settlement simply have become unreasonable and
22 have to be changed in order for the El Paso system to
23 operate fairly.

24 So, I might have taken a different approach with

1 respect to a couple of points in this Order, but I agree

1 strongly with the thrust of the Order. I think the El Paso
2 allocation system is broken and has to be fixed.

3 This Order doesn't mince words. It firmly points
4 all the parties in the direction that the Commission wants
5 them to go, and it has my full support.

6 And I want to commend Staff for their hard work
7 on this. This has been a bear of a case, and will continue
8 to be a bear of a case. You've all worked long and hard and
9 given us very professional advice along the way. Thank you.

10 COMMISSIONER BREATHITT: I would actually echo
11 Commissioner Massey's commendation of the Staff. I think
12 this is an order that is both surgical and Solomon-like. I
13 think it does do a very fine job of recognizing the
14 individual needs of the various contract holders,
15 particularly the small, full-requirements customers.

16 I would just suggest that the outcome here, I
17 think, does respect the realities of the growth situation,
18 while trying to respect the customers and the obligations
19 that the CD customers are owed.

20 I would suggest that it also speaks, Mr.
21 Chairman, to your continued reminder that infrastructure,
22 infrastructure, infrastructure, and planning, planning,
23 planning, is critical.

24 I think this is a good example of how, within a

1 pretty narrow window here, it got ahead of us, and it

1 shouldn't have gotten ahead of us, so we need to act now,
2 because there is obviously continued growth.

3 I hope this is a good example of why we needed to
4 focus on infrastructure and forward planning in a way that
5 responds to regional and local needs that we haven't done
6 before. So thank you, and good job.

7 COMMISSIONER BREATHITT: I am a little amazed,
8 but not surprised that the Commission was able to bring
9 together four very thorny non-consolidated proceedings into
10 one. And once it reached the level of attention that it did
11 with Staff and with us, how quickly.

12 That was the part where I said I'm amazed, but
13 not surprised, because I know we can do that. But how
14 quickly after we had -- after we scheduled the technical
15 conference and not so quickly after that, that we were able
16 to resolve this hopefully.

17 Let me ask -- and I think I know the answer, but
18 I want to ask -- what does this do to the settlement?

19 MR. PETROCELLI: The remainder of the settlement
20 is preserved, including the risk-sharing mechanism, and all
21 other parts of the settlement.

22 COMMISSIONER BREATHITT: That is, I think, one of
23 the beauties of this result, is that it does keep the
24 settlement intact for those years that are remaining in

1 that.

1 Elizabeth, when you re-read the part about the
2 power-up, you said that we expect El Paso to finish or
3 complete the power-up project. How? Can you say more about
4 that in terms of our expectations or what you have heard?

5 I know we talked about that quite a lot at the
6 technical conference.

7 MS. ZERBY: Yes, at the technical conference, El
8 Paso indicated that it was willing to submit an application
9 and pursue the power-up project.

10 And so this Order would expect that they would
11 follow through on that commitment.

12 COMMISSIONER BREATHITT: Good. And the language
13 in the order is fairly strong in that regard. Good.

14 Well, I am very pleased and agree with the
15 statements of my colleagues and applaud your efforts and the
16 efforts of all the parties in the case, because they have
17 been striving very hard through numerous discussions to get
18 to this result as well, so thank you.

19 CHAIRMAN WOOD: I think I echo all three of you.
20 I do want to say that one of the benefits of having had the
21 conference that we had six or eight weeks ago with the
22 parties was a few edits that we made to the approach that
23 was recommended. And I think it's wise, in something of
24 this nature, to consult with the affected before we go in

1 and change a settlement.

1 I do think your word is good -- surgical -- it
2 preserves a settlement; it goes in and takes the capacity
3 allocation issue, which is the kernel of what is not working
4 well, and says we're going to fix it. And it does so in, I
5 think, a very adult way.

6 One of the things that I think was wise here is
7 that it left in the parties' hands, how the divvying up will
8 happen, and basically says you've got a pipeline capacity,
9 including, I think, the power-up project of this much.
10 Subtract out the FT-2, small customers, the CD customers,
11 and you've got some capacity left.

12 That slug of capacity is what we've got to divvy
13 up here among the FR customers. Let those adults sit around
14 the table and divvy that up.

15 To the extent that there is some need for further
16 capacity there, one of the heartening things of the April
17 30th data requests from the parties, was that it looks like
18 there's enough potential give-back, in fact, maybe more than
19 we need, from the CD shippers to more than make up for what
20 the summer and winter demands of the FT-1 customers are.

21 I think the seasonalization of that was clearly
22 an important part of what we're doing here. Even within the
23 FT class, the east-of-California shippers, there's some
24 summer peaking and some winter peaking there that's real

1 important, and actually is a key to maybe the ultimate

1 success here, rather than having to pick the 12/12/01 system
2 peak as the allocator or the 2001 non-coincident peak as the
3 allocator.

4 We actually might get something that allocates to
5 the parties, what it is they're going to need to serve their
6 customers, and on a going-forward basis, it gives the
7 pipeline the incentive to construct ahead of the curve, as
8 all the other pipelines in the country have under the 636
9 framework.

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1 I think there's some hard work left to do, but I think it's
2 put in the hands of the people who have to do it. As
3 opposed to us having to divvy that up, what we've set forth
4 here is a process to heal a wound in the nation's energy
5 infrastructure and I'm thinking that the surgical team was
6 top notch and appreciate the hard work of the Staff and look
7 forward to now the hard work of the parties to bring the
8 patient out of the hospital and put him back on the street.

9 So let's get it done. And I support the order.

10 COMMISSIONER MASSEY: Aye.

11 COMMISSIONER BREATHITT: Aye.

12 COMMISSIONER BROWNELL: Aye.

13 CHAIRMAN WOOD: Aye.

14 SECRETARY SALAS: The next item for discussion is
15 C-3, Iroquois Gas Transmission System, with a presentation
16 by Sheila Hernandez and Al Francese.

17 MS. HERNANDEZ: Good morning, Chairman Wood,
18 Commissioners. C-3 addresses an application filed by
19 Iroquois Gas Transmission System to construct and operate a
20 second 10,000 horsepower compressor unit at its existing
21 Athens compressor station located in the town of Athens,
22 Green County, New York.

23 The additional compression will allow Iroquois to
24 deliver up to 70,000 decatherms of natural gas per day to

1 fuel Athens Generating Company's new 1,080 megawatt electric

1 power generating plant currently under construction in the
2 town of Athens. The draft order issues a certificate
3 subject to certain conditions designed to protect the
4 environment. In addition, the draft order finds that the
5 proposal will provide substantial public benefits with
6 minimal adverse impact.

7 The new Athens generating electric plant will
8 require test gas this fall and is scheduled to commence
9 commercial operation in August 2003. The electricity
10 generated by the plant will provide additional needed
11 electricity to the eastern portion of New York State and
12 will provide relief from transmission constraints on the
13 west to east transmission lines between Utica and Albany,
14 New York.

15 This concludes my presentation. Thank you.

16 CHAIRMAN WOOD: I support the order and thank you
17 for calling forth the issues on issuing certificates to
18 point out the importance of infrastructure. This one covers
19 both our agendas, electricity and gas. It was handled in a
20 good manner, and I support the order.

21 COMMISSIONER MASSEY: Aye.

22 COMMISSIONER BREATHITT: Aye.

23 COMMISSIONER BROWNELL: Aye.

24 CHAIRMAN WOOD: Aye.

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SECRETARY SALAS: The next item is C-4, Colorado

1 Interstate Gas Company, with a presentation by John Wood and
2 Lori Tsang.

3 CHAIRMAN WOOD: A bunch of Woods today.

4 MR. WOOD: Good morning, Chairman Wood and
5 Commissioners. C-4 addresses an application filed by
6 Colorado Interstate Gas Company to construct and operate 54
7 miles of 16-inch and 20-inch diameter pipeline loop on its
8 main line in Colorado and Oklahoma.

9 The new \$22 million facilities will provide up to
10 45,000 decatherms per day of firm transportation capacity
11 for three producer marketers from the Raton Basin production
12 area in Colorado and New Mexico to interconnect with six
13 interstate pipelines which serve Midwestern and Western
14 markets.

15 The draft order finds that the proposed expansion
16 is in the public interest, because it will increase the
17 availability of Raton Basin gas and will provide producers
18 in the Raton Basins an outlet for their gas supplies and
19 greater access to the interstate pipeline grid.

20 The Raton Basin production area is a
21 strategically located active and growing supply area. The
22 draft order also includes certain conditions designed to
23 protect the environment.

24 This concludes my presentation.

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CHAIRMAN WOOD: Thank you, John. Any comments?

1 (No response.)

2 CHAIRMAN WOOD: The order looks good to me.

3 COMMISSIONER MASSEY: Aye.

4 COMMISSIONER BREATHITT: Aye.

5 COMMISSIONER BROWNELL: Aye.

6 CHAIRMAN WOOD: Aye.

7 SECRETARY SALAS: The next item is E-12, Midwest

8 Independent Transmission System Operator, with a

9 presentation by Helen Mancke, Steven Pointer, Marilyn Rand

10 and Mark Hegerle.

11 MS. MANCKE: Good morning, Chairman,

12 Commissioners, ladies and gentlemen. My name is Helen

13 Mancke. Seated with me at the table are Steven Pointer,

14 Marilyn Rand and Mark Hegerle. The draft order presented

15 for discussion concerns two documents submitted by the

16 Midwest ISO which are related to its planned consolidation

17 with the Southwest Power Pool. The documents include:

18 1. A revised agreement of transmission

19 facilities owners to organize the Midwest ISO, which is

20 intended to incorporate SPP members into the Midwest ISO SPP

21 surviving entity, referred to as the Resulting Company; and

22 2. A proposed interim resulting company open

23 access transmission tariff, or OATT, which appends the

24 existing SPP OATT to the existing Midwest ISO OATT.

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The draft order does the following:

1 Conditionally accepts for filing the revised the
2 Midwest ISO agreement and resulting company OATT to become
3 effective on the day after the closing of the Midwest ISO
4 SPP consolidation;

5 Directs the Midwest ISO to submit a formal
6 consolidated Resulting Company OATT by November 1st, 2002;

7 Directs the Midwest ISO and jurisdictional
8 transmission owning members of SPP to file a Section 203
9 application for Commission approval to acquire and/or
10 dispose of jurisdictional facilities;

11 Directs the Midwest ISO to submit a Section 204
12 application for approval to assume SPP's outstanding debt,
13 and directs jurisdictional transmission owning members of
14 SPP, except American Electric Power Company, to submit a
15 compliance filing within 30 days from the date of the draft
16 order detailing their plans for RTO participation and the
17 timing of their respective Section 203 applications.

18 In according with AEP's previous commitment as a
19 condition of its merger with Central and Southwest
20 Corporation to join an RTO with which it directly
21 interconnects, the draft directs AEP to file an explanation
22 as to why AEP subsidiaries located in SPP should not be
23 required to join the resulting company.

24 As stated in the draft order, the revised Midwest

1 ISO agreement and Resulting Company OATT as modified will

1 not adversely affect the Midwest ISO's RTO status and indeed
2 will benefit the public by increasing the scope of the
3 Midwest ISO and enhancing the competitiveness of the power
4 generation market and reliability in the region.

5 The draft order also notes the Commission's
6 concern regarding the pricing of inter-RTO transactions.

7 The draft order indicates that rate pancaking and
8 transaction fees for inter-RTO transactions do not
9 facilitate efficient operation of markets and may affect
10 decisions on which RTO to join, and thus encourages the
11 Midwest ISO to address these concerns when it files the
12 single consolidated Resulting Company OATT.

13 Here now to talk more about inter-RTO charges is
14 Mark Hegerle.

15 MR. HEGERLE: Good morning, all. As Helen said,
16 I'm Mark Hegerle. I'm with the Standard Market Design team,
17 and I looked at this order from that perspective. One of
18 the things in this order that highlights is a potential
19 barrier to contiguous RTO formation, namely the transmission
20 charges for transactions that cross RTO borders might lead
21 some utilities to choose an RTO other than where they're
22 naturally situated just to avoid those fees.

23 If you could put the slides up, please. They're
24 coming.

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(Slide.)

1 MR. HEGERLE: I note on this slide up here with
2 some references to marbled and swiss cheese what we're
3 trying to avoid here is a rate design that would prevent
4 utilities from forming around natural markets and promoting
5 reliability.

6 Next slide, please.

7 (Slide.)

8 Here's a sort of pictorial example of what I'm
9 talking about. Here you've got RTO A on the left and RTO B.
10 You're assuming of course that there's going to be trade
11 back and forth. In this example, the generation around an A
12 is 110 gigawatts and the load is 100. And in B, there's a
13 generation of 90 and a load of 100, such that about 10
14 gigawatts of power over the years transfer from A to B.

15 Currently you would pay a transaction charge for
16 every transaction across those borders, and we've been
17 looking at SMD. What we're trying to figure out is that the
18 right result? Do we really want to go that way? What is
19 the net effect of that?

20 Here, like I said, there's 10 gigawatts that end
21 up going from A to B. Perhaps there's other ways that we
22 can price those gigawatts in order to avoid the barrier that
23 I mentioned.

24 In April we put out an options paper for SMD.

1 One of the questions we looked at there was exactly this:

1 How we price transfers from one RTO to the other. Some of
2 the examples -- if you can move to the next slide, please.

3 (Slide.)

4 Some of the examples is the per transaction
5 charge that kind of exists today, whether that's the access
6 charge the full amount or some lesser amount. Another
7 example might be that you would just not charge for that
8 transfer and those dollars would be recovered from the, in
9 this instance, A's ratepayers instead.

10 Another example might be that you would have no
11 direct charge on each transaction, but at the end of the
12 year, you might consider how many megawatts or gigawatts
13 went from one RTO to the other and have the recipient pay
14 back a portion of those dollars since they benefitted from
15 that transmission service. And my example earlier is 10
16 gigawatts that went from A to B. So perhaps RTO B might end
17 up paying some load ratio share charge for the amount, for
18 the 10 gigawatts that came across the border, so that the
19 load in A wouldn't be subsidizing the load in B.

20 Next slide, please.

21 (Slide.)

22 As I said earlier, the SMD principle that I
23 really would like to highlight is the SMD pricing policy
24 would consider the impact of transmission rates on the

1 decisions to join an RTO. What we'd prefer is for the RTO

1 choice to be driven by natural markets and reliability, not
2 just the rates and charges. You know, while there's many
3 factors in what RTO a utility might want to join, such as a
4 business model or that one market might be more mature than
5 another -- I'm certain there's plenty of other ones as well.
6 But that rates is one area where the Commission can help.
7 We can knock down those barriers. We can work with the
8 utilities to come up with some kind of a pricing plan that
9 would be workable for the utilities and the RTO to ensure
10 cost recovery.

11 If you'll go to the last slide, please.

12 (Slide.)

13 Again, the result we're trying to avoid here is a
14 choice of RTO driven by transaction fees. And this little
15 picture of the small circle, RTO A is the transmitting
16 utility. It's far to the west in the RTO, yet it may choose
17 to join RTO B because a number of its transactions that
18 leave the system end up in RTO B and it doesn't want to have
19 pay both RTO A and RTO B a transmission charge to get those
20 electrons over there. It may just make the deals too
21 uneconomic.

22 So that's the problem we're trying to highlight,
23 and just wanted to let you know that we're considering that
24 and looking into how we can solve that problem. That's all

1 for my presentation.

1 CHAIRMAN WOOD: One other result to avoid I
2 suppose would be one I think Ricky Biddle, our frequent
3 visitor from the Arkansas Electric Co-op who is concerned
4 about being on a seam kind of wherever it gets divvied up
5 through the state of Arkansas. And you could have a utility
6 who's right next to a seam, and this is true everywhere that
7 there's a seam. I remember this from my second day at work
8 here with you all. We had the seams conference here, and
9 they talked about a lot of issues. But when you kind of cut
10 to the chase, it was about the money issue. And we had not
11 really focused on that publicly, and I was wanting to use
12 the related but not directly applicable issue in the Midwest
13 ISO SPP order to get this issue out for us to talk about.

14 But the seam issue, if you're at a seam and your
15 traffic goes back and forth and you're paying really
16 basically a full rate for each of the two zones that you're
17 neighboring tends to I think severely disadvantage those
18 customers, and I think there are a couple of ways to avoid
19 that. I was interested with the diversified comments on the
20 SMD options paper that we put out in early April that
21 parties gave some good thoughts to these different
22 questions. And I think it's very timely that we start
23 talking about it, I mean really timely, probably more than
24 waiting for the final adoption of the rule.

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I look at the participant funding issue, which is

1 a small subset of this, actually just focused on new
2 generators, but the concept is the same. I mean, if you've
3 got, for instance in Louisiana where I know the issues of
4 interest, a lot of generators building and a concern by our
5 colleagues on the Louisiana Commission that their Louisiana
6 customers, ratepayers, are going to be paying for a lot of
7 transmission that ultimately is benefitting somebody outside
8 of Louisiana.

9 And their solution to that is to therefore put
10 the cost of new transmission construction on the individual
11 generator. That's one approach. I don't necessarily
12 support that, but I think that the problem needs a more
13 balanced fix. But probably just license putting all the
14 transmission charges for whoever is building the
15 transmission when in fact transmission is becoming very de-
16 linked from the local load being served.

17 Transmission is becoming more and more the
18 interstate highway, and there are beneficiaries all along
19 the grid, not just those of the utility who built it. And I
20 think recognizing that in some fashion, I tend to think that
21 looking at it on an annual basis so you do really capture
22 the overall annual flows as opposed to individual, you know,
23 one-time shot transactions, might be a wiser approach. I
24 think there's a diversity of comments on that, and we'd

1 welcome some further thought.

1 But the participant funding issue is one, as we
2 will talk about later in New England and New York. The
3 issue about removing the export fee as they call it or the
4 through charge I believe as it's called in MISO, and how
5 those revenues get made up for is very critical to resolve.
6 I think it's more critical today than it was a week ago in
7 light of the strange turn of events in the Midwest with
8 parties' selections on Tuesday of this week.

9 I do think when we look at our gas analogy as we
10 are often called to do, 858 capacity for upstream use. It's
11 another pipeline. It's how the gas is actually attached and
12 delivered to the ultimate customer. That cost is not borne
13 by the shippers on that upstream pipeline, it's borne by the
14 customer. The load who ultimately benefits from getting
15 access to these bottom markets. I think that's a good
16 analogy.

17 I look forward to parties' feedback on that. And
18 we've gotten quite a bit already in the RMO 112 docket, but
19 I do think we cannot delay acting on this. We can't expect,
20 for example, in this case, MISO to come back in with a fix
21 that in fact would require some cost to be shifted to PJM
22 because they're actually importing, you know, there's a net
23 flow toward PJM from MISO. And I think that requires us who
24 are at the top of both of those pyramids -- or at the top of

1 that pyramid to make the call that there needs to be some

1 inter-RTO rate equity there. And I think we probably in
2 light of last weeks events ought to move on that sooner
3 rather than later. We need to engage on the issue with you
4 all and see what your thoughts are.

5 COMMISSIONER BROWNELL: Pat, I thank you for kind
6 of externalizing this problem which has been rumbling
7 around, we all knew, but not recognizing I think the
8 critical nature of it in the decisionmaking process. I for
9 one, given events of the last couple of weeks as well as the
10 last couple of months, am really worried that we have gotten
11 away from RTOs that are based on natural markets and
12 reliability underlined five times, and we are focusing on
13 some I think solvable but somewhat parochial needs.

14 I think that we certainly want to preserve
15 companies in whole. We don't want to do damage to anyone.
16 But I would certainly endorse solving this problem sooner
17 rather than later, not waiting for SMD, particularly if
18 people are making decisions that are not based on the
19 criteria exactly that we want to see. And I would emphasize
20 to the market participants that I think we are all concerned
21 that RTO formation be done for the right reasons and to
22 bring benefit to a market, not to any individual segment of
23 the market.

24 So I would be all for kind of taking a stab at

1 this sooner and moving it along so we can bring some

1 rational decisionmaking to the process.

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1 COMMISSIONER MASSEY: I appreciate the points
2 both of my colleagues have raised. I think the issue of
3 pricing is an issue that we need to grapple with sooner
4 rather than later because it keeps arising in a lot of
5 different contexts. The disconnect does seem to incentivize
6 behavior that may or may not be in the public interest. I
7 wanted to put a somewhat different slant on it although it's
8 related to the discussion that we've been having.

9 I've been following, with great interest, and
10 this is on the scope and configuration primarily in the
11 midwest, the points at which the Midwest ISO and PJM will
12 abut each other. This is the geographic area of the former
13 alliance companies. This area continues to evolve according
14 to the idiosyncratic desires of the transmission owners and
15 in a way that does not necessarily respect this Commission's
16 often-stated concerns for appropriate RTO scope and
17 configuration, and if those concerns are not respected, the
18 end result will be poorly configured swiss cheese, marble
19 cheese, whatever you want to call it, RTOs, RTOs where
20 members are not even contiguous with one another and that,
21 it seems to me, will be strange indeed.

22 There are recent indications and AEP,
23 Commonwealth, and Illinois Power plan to move to the east
24 and join PJM. I have a lot of respect for the PJM market.

1 That's not the point of this. But there are indications

1 that First Energy, which is to the east somewhat of AEP and
2 Illinois Power, plans to move to the west and join the
3 Midwest ISO. I really wonder whether this sort of fruit
4 basket turnover in the midwest that we're experiencing yet
5 again two-and-a-half years after Order Number 2000, is going
6 to end up with a result that is in the public interest.
7 Perhaps it will. I hope it does. But I wonder whether we
8 will end up with not but two poorly-configured RTOs that
9 have tentacles stretching in various directions, RTOs where
10 the members are not contiguous.

11 I'm concerned with the seams that may result from
12 this kind of configuration. This point has been raised by
13 others, and I'm even more concerned with perhaps a
14 squandered opportunity to improve efficient and reliable
15 system operation in that region. So what's my point? I
16 would put a somewhat different slant on this. I think that
17 the Commission should clearly express its expectations to
18 transmission owners regarding appropriate RTO scope and
19 configuration in the Midwest and elsewhere. It's now two-
20 and-a-half years since we issued Order Number 2000. I think
21 it's time to make the tough choices that actually laid the
22 framework for markets that work. I know my colleagues agree
23 on that point. We may disagree somewhat on how to get there
24 but let me just express this concern about I would call it a

1 fruit basket turnover in the Midwest and my concern that

1 without Commission guidance on this point, we may end up
2 with not just one poorly-configured RTO but two of them, and
3 I do not want to see that.

4 CHAIRMAN WOOD: What would be the vehicle, in
5 your mind?

6 COMMISSIONER MASSEY: Truthfully I think
7 virtually any order that comes along that is relevant to
8 that region in which the Commission could say this is the
9 scope and configuration that we think makes some sense for
10 that region of the country. This a scope and configuration
11 that we think will support good markets. This is a scope
12 that is consistent with reliability concerns, loop flow
13 concerns and so forth, and just lay it out and let people
14 comment on it.

15 I have an open mind about the vehicles that we
16 use to express that concern. I think resolving the issue
17 that you're talking about relating to transmission pricing
18 is also a piece of the puzzle, and we need to get on with
19 doing that too, I agree with you on that. But I am
20 concerned that the parties, the marketplace needs more
21 Commission guidance on what we think is appropriate for this
22 region in terms of scope.

23 CHAIRMAN WOOD: I can't agree more. We will
24 explore how best to do that and welcome your ideas or

1 anybody else's.

1 COMMISSIONER BREATHITT: I would like to direct
2 my comments to the case-in-chief which is Order E12. There
3 are parts of my colleagues' statements that I very much
4 agree with. However, I will be dissenting in part because I
5 believe this order goes too far in encouraging the Midwest
6 ISO to address an issue that I don't think is ripe, nor do I
7 think it's really within the scope of the major initiatives
8 that the MISO is attempting to bring to fruition. The MISO
9 is the only RTO that the Commission has approved to date.
10 Yet today's order states that the Commission is concerned
11 about pricing of inter-RTO transactions, so I am unclear to
12 which other RTOs the order refers, I guess to all the
13 proposed RTOs in the country.

14 I am also surprised that today's order proposes
15 fixes for inter-RTO pricing before the Commission has an
16 understanding of the depth of the issue. And I agree with
17 the Chairman that this pricing issue is very complex and
18 complicated. More importantly, I believe the Commission
19 needs to maintain focus on the important and controversial
20 issues of cost shifts within RTOs. I don't think that we
21 should dilute the efforts of the Midwest RTO as it's
22 forming, and it's attempting to address the cost shifts
23 within the MISO footprint as the boundaries may yet be
24 expanding again.

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I do further understand that this issue is one,

1 as we heard in the presentation that is being addressed in
2 our standard market design efforts. I totally support
3 dealing with this issue in a generic manner once the issue
4 becomes ripe, rather than in this case-specific method when
5 we have only one RTO. So for these reasons I will be
6 dissenting in part. Pat, I heard your very sensible
7 comments that you wanted to bring this up in this case
8 because it was one before us that we could begin discussing
9 this. I don't disagree with discussing this; I just didn't
10 think we should add another layers of something so complex
11 to ask the MISO to do at this point in time, so I'm not
12 disagreeing with the fact that we need to look at these
13 pricing issues between RTOs. I just don't think that the
14 standard market design was the better place to do that.

15 CHAIRMAN WOOD: I think that's fair. I just
16 didn't like how people could pick sides based on not what's
17 good for transmission and market but what's good for their
18 supposedly unbundled generation. We're kind of running out
19 of time if we want these markets to be in place to bring
20 some benefits to customers. And I know a lot of the state
21 commissions out there, I've gotten a few calls in the past
22 couple days with regard to these taking-sides issues. Some
23 state commissioners out there, whom we've worked very
24 closely with, getting as far as we've gotten in the Midwest

1 are very concerned about this. And you're right, pricing is

1 part of it.

2 Loop flows, reliability, I mean, this map of
3 where PJM expanded and MISO plus SPP could end up. There's
4 no way that loop flows are internalized in that. Marble is
5 probably the best answer and then when reliability issues
6 come into play in the coordination between PJM and MISO on
7 reliability, you know, I'm glad they're talking about a
8 common market but quite frankly the issues that are being
9 dealt with in the common market discussions that we're
10 getting updates on very frequently from SPP, PJM and MISO,
11 are going to have to expand to a much greater level if the
12 footprints for basic reliability and dispatch are going to
13 look like this map here.

14 Noted and a fair point, it was a point raised by
15 protesters here about the continued use of license plate in
16 the SPP and MISO as between them, and as we mentioned in the
17 Alliance Order a month ago that gave rise to a lot of this
18 that these issues really between rate zones whether we call
19 them inter-RTO or inter-License Plate, it's all the same
20 issue. Do we really keep the costs where the transmission
21 owners live or do we try to keep the costs on the loads who
22 are benefitting from having access to the broadly expanded
23 market. I would certainly opt in regard to the latter of
24 those options, but we will pursue it as expeditiously as

1 possible. In whatever forms we think it will certainly be

1 in he SMD but I think it may raise its ugly head a little
2 earlier than that and I think we just need to be prepared
3 for it.

4 Anything else on the MISO Order E-12?

5 (No response.)

6 COMMISSIONER MASSEY: Aye.

7 COMMISSIONER BREATHITT: Aye with dissent in
8 part.

9 COMMISSIONER BROWNELL: Aye.

10 CHAIRMAN WOOD: Aye.

11 SECRETARY SALAS: The next item for discussion is
12 E-14 Midwest Independent Transmission System Operator, a
13 different Docket Number ERO-2108003. There's a presentation
14 by Jason Stanck, Tony Ingram, Rahim Amerkhail.

15 MR. STANCK: Good morning, Mr. Chairman,
16 Commissioners. On January 17th, the Midwest ISO complied
17 with an order by this Commission to submit its contract for
18 market monitoring services in order to determine whether its
19 terms could possibly interfere with the market monitor's
20 ability to independently monitor and provide objective
21 information about the Midwest ISO's conduct, market rules
22 and procedures.

23 Under this contract, the Midwest ISO Alliance
24 participates in the Southwest Power Pool to retain the

1 services of Potomac Economics to serve as their independent

1 market monitor. This draft order rejects the compliance
2 filing and directs the Midwest ISO to renegotiate and file a
3 revised contract which contains little more than the
4 compensation and termination provisions and defers, in all
5 other respects, to the terms of the market monitoring plan
6 that has already been approved. The draft order also
7 provides guidance regarding the following issues raised by
8 the current contract.

9 First, as filed, the contract provides that
10 Midwest ISO can terminate the contract or modify the scope
11 of work provided for under the contract without prior
12 Commission approval. The draft order directs that the
13 revised contract make proposed termination or modification
14 subject to prior Commission approval.

15 Second, the contract was negotiated and executed
16 under different circumstances and those now present at the
17 time the Alliance participants and SPP became parties were
18 parties to this contract. However, circumstances have
19 changed and the draft order finds that the revised contract
20 should only be between the Midwest ISO and Potomac
21 Economics. Additionally, the draft order directs Midwest
22 ISO to modify its market monitoring plan to require the
23 market monitor to notify this Commission immediately upon
24 determining that it has detected a significant market

1 problem that may require further investigation or action by

1 this Commission. Thank you.

2 COMMISSIONER BROWNELL: I appreciate the work the
3 Staff has done in identifying and making recommendations
4 about what I think are critical issues. We've reminded
5 quite eloquently, I think, by the Northeast Commissioners in
6 the phone call of the importance of independence of all of
7 the processes but particularly market monitoring from the
8 stakeholders themselves. I think that the public is looking
9 to this Commission to hold itself and the ISO RTOs
10 accountable for their behavior. And I think it's important
11 for the market participants to remember that in fact we are
12 imbuing these organizations with enormous authority but
13 ultimately they are accountable to this Agency as we are
14 accountable to the public. I think that you've crystallized
15 some important issues and I hope on a going forward basis,
16 as we learn more we are really going to focus on these
17 issues to be certain that we're preserving the integrity of
18 the independence. I think we've already commented on the
19 timeliness of reporting to this Commission and the
20 importance. And as we gear up in a significant way our own
21 market monitoring group and have closer relationships, I
22 think it's very important to keep that timeliness in front
23 of us. The market will not wait for six months or a year
24 for us to respond. We will not wait for six months or a

1 year to find out about problems. Thanks.

1 COMMISSIONER BREATHITT: Nora, I believe you were
2 one of the first Commissioners, when you first came here,
3 you were very early on saying how important it was. At a
4 public meeting you said how important it was for the
5 Commission to get the market monitoring reports directly,
6 and I see this as a real indication that that's what we're
7 going to be doing. I think that was last summer. I am
8 going to be concurring on this order what for some of you
9 may be an arcane reason but I think it's important market to
10 talk about. So I'm going to do that.

11 My comments today relate only to the issue of
12 directing the Midwest ISO to make further adjustments to
13 their market monitoring plan. As I fully support the call
14 on the retention agreement with Potomac Economics in this
15 order, so I'm concurring on the issue of further adjustments
16 to the market monitoring plan because I believe that this is
17 the inappropriate forum to instruct the MISO to make these
18 changes. But before I explain that, I want to preface my
19 remarks with a strong endorsement of the requirement imposed
20 in this order that the MISO market monitor report
21 immediately to the Commission when it finds indications of
22 significant market problems or any matter that my require
23 further investigation. The Commission needs to have a
24 strong connection to the RTO and ISO market monitors.

1 Recent events have proven that we need this information

1 contemporaneously with the market monitor's discovery of
2 problems. But on the issue I'm concurring today, I am doing
3 so because I don't agree that this order on compliance is
4 the proper vehicle to impose a new requirement. Rather, I
5 believe the Commission should instruct the MISO through our
6 action on the rehearing requests pending in the MISO RTO
7 issued on December 20th of last year. I believe that's the
8 proper forum for addressing changes to the Midwest ISO's
9 market monitoring plan. The rehearing of that order is
10 still pending despite the fact that on February 19th, we
11 indicated in a tolling order that the Commission anticipated
12 action by April 1. I believe that the market monitoring
13 plan should not be addressed in isolation when there's still
14 a lot of difficult issues pending in the Midwest ISO's RTO
15 proposal such as the rate issues, cost shifting issues, and
16 many others. Those are still left hanging.

17 Further, I note that until we resolve those
18 issues pending in rehearing, the transmission owners that
19 have pledged to join the MISO are left with continuing
20 uncertainty about their RTO plans with respect to rates and
21 other issues. So that was my reason for concurring on this
22 order. It's rather arcane but I felt it was important to
23 make that comment.

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1 CHAIRMAN WOOD: I think I want just to follow up
2 on, Nora, your thought on the importance the role of the MMU
3 here. We did have a really good and deep conversation with
4 the New England Commissioners, the New York Commissioners,
5 this week, and got the followon thought piece from Chairman
6 Dworkin from Vermont, talking about independence issues,
7 governance, and the like.

8 I was really struck. We've been grappling with
9 this issue about, well, is the MMU part of the RTO? Are
10 they outside the RTO? Do they monitor the market? Do they
11 monitor the RTO itself?

12 And I thought his layout here was actually worth
13 sharing publicly, and I wanted to put it out there with my
14 endorsement behind it, that an independent board that is
15 independent of market participants and an MMU that is
16 similarly independent of market participants, have
17 essentially the same mission, which is to make sure that the
18 market works for the benefit of all.

19 This is a quote from his paper: "While there may
20 be a need to have an entity overseeing whether the RTO is
21 doing a good job of operating the markets, applying the
22 market rules, and relying on a reliable and efficient
23 system, this function can best be performed by FERC."

24 Discussion has clearly pointed this toward what

1 Bill Hederman and his shop will be doing in the near future.

1 We, in fact, have the ultimate authority over the RTO and
2 over the wholesale markets under the Federal Power Act.

3 Then he goes on to say: Creating an intermediary
4 entity outside the RTO, which shares authority over the
5 markets with the RTO, and which, like the RTO, answers
6 directly to FERC, is not likely to add any benefit to the
7 system now used in this case by the New England ISO. In
8 fact, having such an intermediary agency may well cause the
9 kind of balkanization and gridlock that currently exists in
10 NEPOOL.

11 Having one, semi-autonomous entity answerable to
12 the independent board, and also to FERC in the sense of
13 filing its reports to us, as was indicated here and as Linda
14 pointed out in her remarks, will insure that market
15 monitoring and mitigation rules are developed and
16 implemented, free from the influence of market participants,
17 and free of the Operations Division of the ISO, while
18 maintaining an efficient market monitoring and mitigation
19 system.

20 I think that's a nuance that we had not really
21 explored. If you get the independence of the board, and you
22 get it set up, as we had talked about for long before I got
23 here, to be truly independent, then having an MMU that
24 works, and answers to that board that resides in the

1 organization, or is farmed in from the outside, but is on

1 their payroll, is paid for with their fees, is not such a
2 problem, as I think we've been bouncing back and forth in
3 the white paper.

4 And not expanding their duties to say the RTO is
5 running well, but make that a very clear responsibility of
6 us, is the RTO, on a macro basis, doing its job to
7 administer the markets, is probably logical way to allocate
8 the responsibilities for making sure this works well on the
9 granular level to the front line at the MMU, at the RTO, and
10 on the broader basis with the RTO and its rules, arts and
11 practices consistent with just and reasonable market-based
12 rates.

13 That would be our responsibility, and I think
14 it's becoming clearer and clearer to me that, you know, the
15 core issue is, is it independent? If you get a yes-answer
16 to that question, then a lot of rational allocations of who
17 does what can fall pretty fast.

18 I think that certainly those issues were raised a
19 lot in the periphery of this Order, but helpfully, in the
20 discussions that we had earlier this week with Mike and
21 others in the Northeast.

22 COMMISSIONER BREATHITT: Pat, I'd go one step
23 further. As we explore this, and having learned, I think,
24 more about governance and the importance of governance,

1 given what's happened in the markets, and the lack of

1 confidence, I think that we're all challenged with managing
2 -- and I think Bill pointed that out quite eloquently
3 several weeks ago.

4 I think we should ask our market monitoring team
5 or staff group to develop what I would call -- and you've
6 heard me say this -- an RTO report card. What are the five
7 to ten characteristics that we're going to look at to
8 determine whether markets are successful or not?

9 I think that we should give a public grade on the
10 individual characteristics and then an overall grade,
11 because I think it would ensure not only the continued
12 independence, but I think it would give the public a greater
13 degree of confidence they're holding people accountable.

14 I think it would help us; I think it would help
15 the RTOs know when they're doing a good job and when they
16 need to work on issues. It would help with allocation of
17 resources and costs that we're all concerned about.

18 I would really like to see us pursue that. It
19 may not be a perfect record or way to track performance, but
20 I believe that unless you have performance measures, you
21 don't have people reaching as high as they can reach.

22 And, I think, given the debate we've had over
23 what are the incentives for not-for-profit, I think this
24 would be one set of incentives. But I'd like to see us look

1 at that model. It certainly has worked to improve

1 performance in the corporate world, and I don't think
2 there's any reason it wouldn't work here.

3 More importantly, I think we owe it to the public
4 to give them some assurances and some demonstrations that
5 what we are doing is working, and when it's not, we're going
6 to fix it.

7 CHAIRMAN WOOD: I know from talking to Bill
8 Hederman about some of the details of OMOIs that are being
9 fleshed out to share with the Staff, that one of the work
10 products from that group will be a quarterly report on
11 wholesale market health for both electric and gas.

12 I don't know if you have anything to add on that,
13 Bill, but I think that certainly that lines up pretty well
14 with the desire here that we have some objective, benchmark-
15 able measures that are applicable to our own performance in
16 monitoring markets, and that of the RTO in administering
17 them, and make them happen.

18 MR. HEDERMAN: I just concur that we see
19 performance metrics as critical. What we measure is what
20 people will be focusing on.

21 We intend to take stab at that, and I'm sure it
22 will be a work in progress and will need a lot of input,
23 both from the Commission and from others.

24 COMMISSIONER MASSEY: If I could just add

1 something here, I think that the Commission is staking a lot

1 of the future, Bill Hederman, on the success of your unit as
2 an early warning system for us in understanding what's going
3 on in markets.

4 And I know you're trying to staff-up
5 professionally and get really good people who have a hunger
6 to understand the in's and out's of markets. I see you
7 working very closely as a team with the market monitoring
8 units that are on the ground as part of the RTOS.

9 Fundamentally, what the Agency wants from that
10 team is market monitoring, early warnings, and reports that
11 are credible and reliable and fast, so that we can move
12 quickly when there is a problem.

13 So I'm glad you're here. You have a somewhat
14 impossible task, frankly, because --

15 MR. HEDERMAN: I've been hearing that a lot.

16 COMMISSIONER MASSEY: Because our expectations of
17 the miracles you work are high. But I think this has been a
18 useful discussion on market monitoring. It is a critical
19 aspect of our programs, going forward.

20 CHAIRMAN WOOD: Okay.

21 COMMISSIONER MASSEY: Aye.

22 COMMISSIONER BREATHITT: Aye.

23 COMMISSIONER BROWNELL: Aye.

24 CHAIRMAN WOOD: Aye.

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SECRETARY SALAS: The next item for discussion

1 this morning is E-43, State of California, with a
2 presentation by Jonathan Fuerst.

3 MR. FUERST: Good morning, Chairman and
4 Commissioners. E-43 addresses a complaint filed by the
5 Attorney General of California against power marketers and
6 other public utility sellers that sold energy and ancillary
7 services into the California ISO and PX markets, as well as
8 those making sales to the California Department of Water
9 Resources.

10 The complaint alleges that the requirement of
11 Section 205(c) of the Federal Power Act, that all rates must
12 be filed with the Commission, is not satisfied by the
13 market-based rate schedules filed by the sellers, coupled
14 with Commission-required reporting of market-based sales and
15 quarterly transaction reports.

16 The complaint also alleges that the quarterly
17 reports actually filed by power marketers that makes sales
18 in the California markets, do not contain transaction-
19 specific information, as required by Section 205(c) of the
20 FPA and the Commission's reporting requirements.

21 The Order denies the complaint with respect to
22 the allegation that the Commission's market-based rate
23 filing requirements violate Section 205(c) of the FPA as a
24 matter of law.

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With respect to the allegation that power

1 marketers' quarterly reports are not in compliance with the
2 Commission's reporting requirements, the Order directs
3 public utility sellers who make short-term sales at market-
4 based rates to the California Department of Water Resources,
5 or into the PX or ISO markets since October 2, 2000, and
6 have not filed quarterly reports that contain transaction-
7 specific information, to file new quarterly transaction
8 reports for the period October 2, 2000, forward.

9 The Order denies the California Attorney
10 General's request for other remedies. Thank you. This
11 concludes my presentation.

12 CHAIRMAN WOOD: Thank you.

13 COMMISSIONER MASSEY: I called this case for
14 discussion, and I appreciate the presentation. As the
15 presenter has said, the Order denies in most respects, this
16 complaint that our regulatory regime governing market-based
17 rates violates the Federal Power Act requirement that rates
18 must be on file.

19 This regime has three major components: First,
20 finding that a seller does not have market power; second, a
21 general tariff that allows the seller to charge market-based
22 rates; and, third, quarterly transaction reports filed by
23 the seller.

24 The Order finds that this program, as a whole,

1 satisfies the requirements of the Federal Power Act, as

1 interpreted in various court decisions.

2 I agree with the findings made in today's Order,
3 and will be voting for it, with a concurrence to say that
4 aspects of our market-based pricing policy still need
5 attention, in my judgment, and to the extent that this is
6 Mr. Lockyear's point, in part, in filing this complaint, I
7 agree with him.

8 MR. FUERST: We must ensure that the markets in
9 which we allow market-based pricing are truly competitive;
10 that the sellers that we allow to charge market-based rates,
11 don't have market power and can't manipulate the market.

12 This, in my judgment, is the fundamental bedrock
13 factor in our market-based pricing regime. I understand
14 that competitive markets require market-based pricing, and I
15 support that. But if those markets are to bring benefits to
16 customers, sellers must not be able to control the prices.

17 We've made progress in this area. We have a
18 supply margin assessment, which replaces the old hub-and-
19 spoke analysis, and this is an improvement that I have
20 supported, but we still must do more.

21 Point two is, we need market rules that remove
22 the incentives for manipulation, and that prohibit abusive
23 behavior and sham transactions. Our Staff must pursue and
24 complete its ongoing investigation into what went on in the

1 western markets during 2000 and 2001, so that we can learn

1 exactly what behavior occurred, and adopt measures to
2 prevent any bad behavior in the future.

3 Our Standard Market Design Initiative has the
4 promise of promoting good markets with a low probability of
5 being abused, and I support our Chairman's often-stated
6 commitment to pursue the standard market design aggressively
7 and I will support him with that program.

8 We discussed a few minutes ago, the need for
9 aggressive market monitoring, and we're making progress in
10 that area, too, with Bill Hederman's new office. And with
11 our evolving policies with respect to the RTO market
12 monitoring units, we need effective, up-front market
13 mitigation measures, measure that will prevent withholding
14 and artificial price runups.

15 As we saw in California, electricity prices can
16 soar quickly, and we have to prevent price runups that are
17 unwarranted. In another case on today's agenda that we will
18 also discuss, we approve revisions to the New York ISO's
19 automated mitigation procedures, AMP.

20 In my judgment, this is an excellent example of
21 the kind of up-front mitigation program that we need in all
22 markets, and where abuses occur, we must impose meaningful
23 sanctions. We must have refund protection in place for
24 consumers in all markets, so that they don't pay rates that

1 are unjust and unreasonable.

1 The Commission proposed such a refund condition
2 last Fall, and we have received industry comment on it. We
3 discussed it at length at a Commission meeting a few weeks
4 ago.

5 It is my view that we should move as quickly as
6 we possibly can to make this condition effective, and it's
7 no secret that I continue to favor a refund condition that
8 applies even to RTO-ISO markets.

9 I also would prefer a condition that is triggered
10 either by bad behavior or by a dysfunctional market. For
11 the dysfunctional market test, I may be the only
12 Commissioner supports that, but I want to state it again for
13 the record, in any event.

14 So while I agree with the basic legal calls made
15 in today's Order, I believe that these aspects of our
16 market-based pricing program need continuing attention.

17 I think the Commission, under Chairman Wood's
18 leadership, is moving in the right direction in virtually
19 all respects. All of these changes that I mentioned, and
20 perhaps others, will be needed to bring the benefits of
21 competition to customers, and to ensure that they pay only
22 reasonable rates.

23 To the extent that Attorney General Lockyear
24 makes this point that our program needs some work, I agree

1 with him. So, for these reasons, I will concur in today's

1 Order.

2 CHAIRMAN WOOD: I think the only thing I would
3 add is, I thought that when this complaint came in, it was
4 actually one of the better-styled legal issues raised about
5 an important issue that I have seen in a long time.

6 I do think that the legal analysis and outcomes
7 were correct in this Order, and, Bill, actually I share your
8 general response to the nudge, as it were, to get the policy
9 in shape. I appreciate the kind thought.

10 I want to add for the record, where we are on a
11 number of these things: The replacement for hub-and-spoke,
12 the SMA, has been processed as we have laid it out.

13 There are an increasing number of companies,
14 either in their final review or in their initial review,
15 that are failing the test -- not an overwhelming number, but
16 the number is getting bigger.

17 We indicated in, I think, December or so, when
18 this was adopted on rehearing, that we would stay the
19 implementation of the remedy to the people who fail the SMA
20 screen, until we had a technical conference. And I was
21 discussing with Dan and Cindy earlier this week, that that
22 would probably be a useful thing to have, once people see
23 what the proposed market mitigation measures and the SMD
24 will be. So I would expect that pretty soon after Labor Day

1 we may want to look toward that technical conference, with

1 people being informed about where we are on the broader SMD

2 issues as to that.

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1 SMD, of course, we're looking at the end of July for that as
2 well, and with market monitoring getting the OMLS shop up
3 and staffed in its breadth by the end of the summer,
4 increasing through the next month our ties into the RTO
5 Market Monitoring Units.

6 I've received a suggestion today that as they're
7 doing their annual reports, which is all I think two of the
8 three eastern ISOs have issued those in the past month, that
9 we might invite them in June meetings to come here and share
10 their findings with us and have a dialogue with the market
11 monitors in the existing structured markets and then set the
12 template to tie back to the earlier order, Nora, that you
13 raised, to set forth a much more direct involved partnership
14 relationship with the RTOs and with their market monitors.
15 Because in fact, RTOs are an extension, as are ISOs an
16 extension of FERC's federal power authority, Federal Power
17 Act authority, we need to make sure that that connection is
18 more than just lip service.

19 I think we will see that in the next month, the
20 market monitors as they can, come to the Commission and
21 share with us directly their concerns and their thoughts
22 about these issues. And as to the 206 refund order, we'll
23 keep talking. We haven't really picked it up since the last
24 meeting, but I agree with you that's worth pursuing, and

1 certainly the ongoing investigation that I reported recently

1 to Congress on that we'll talk about later is of course a
2 very key educational development for us, among other things,
3 to make sure we understand how markets might have incentives
4 in there for manipulation and make sure that we understand
5 those and remove those.

6 So there's a bit going on, and I appreciate our
7 constant attention as an agency toward getting this toward
8 the point of maturity where we can be much more confident
9 than we are today that these are working to benefit
10 customers both in the short and in the long term. So I will
11 support the order as well.

12 COMMISSIONER MASSEY: Aye with a concurrence.

13 COMMISSIONER BREATHITT: Aye.

14 COMMISSIONER BROWNELL: Aye.

15 CHAIRMAN WOOD: Aye.

16 SECRETARY SALAS: The next item for discussion is
17 E-44, New York Independent System Operator, with a
18 presentation by John McPherson, Michelle Springer, Kevin
19 Huyler, Stan Wolf and Deborah Ott.

20 MR. McPHERSON: Good morning, Mr. Chairman. Good
21 morning, Commissioners. This order approves a set of market
22 mitigation measures for the New York ISO market that are
23 intended to allow competitive bidding and encourage
24 sufficient entry while protecting customers in times and

1 places where market power arises.

1 In it's November 27, 2001 orders, the Commission
2 directed NYISO to file a comprehensive mitigation proposal.
3 In doing so, the Commission noted that NYISO had several
4 mitigation measures either in place or proposed, which
5 included market mitigation measures, in-city mitigation
6 measures and automated mitigation procedures referred to as
7 AMP. The Commission directed that the measures fully fit
8 together in a way that adequately addresses market power
9 problems while avoiding unnecessary mitigation. The
10 Commission urged strong collaboration with ISO New England
11 and PJM.

12 On March 20th, 2002, NYISO filed its
13 comprehensive mitigation plan, proposing a number of
14 modifications to the market mitigation measures in place.

15 Proposed changes include:

16 Refinements to the AMP for the day ahead market;
17 Implementation of limited exemption for the
18 lowest reference level for new generation.

19 With respect to AMP measures, changes are:

20 A minimum capacity exemption that would eliminate
21 mitigation of capacity too small to represent the exercise
22 of market power;

23 Additional computer runs to the scheduling
24 software to limit mitigation to specific zones and hours;

1 levels;

2 Automated mitigation of minimum generation and
3 startup bids.

4 With respect to NYISO's proposal for in-city
5 mitigation, all in-city mitigation would be brought under
6 the same mitigation methodology as the balance of the state.
7 To address local power issues in New York City, thresholds
8 for in-city would be lower than the balance of the state
9 when constraints are in place.

10 Until NYISO can complete and test software
11 modifications for in-city AMP or automated mitigation
12 procedures, it will continue to use the Con Ed local
13 mitigation measures with minor revisions.

14 NYISO, in answer to specific requirements of the
15 November 27th order, states that:

16 AMP will not be a barrier to market entry;
17 NYISO will apply mitigation to must-run units
18 using a fundamentally similar method to that used in PJM and
19 ISO New England;

20 The NYISO has consulted with both PJM and ISO New
21 England in its approach to market mitigation and will
22 continue to work towards a common approach to the question
23 of mitigation.

24 In summation, NYISO did not propose to change

1 many of the existing market mitigation measures that protect

1 consumers from the exercise of market power. NYISO will
2 maintain all current price and bid caps. The proposed
3 modifications to AMP are intended to provide better and more
4 selective process which would provide automated mitigation
5 for NYISO's in-city markets as is current in place in the
6 balance of the state.

7 This order accepts ISO's comprehensive mitigation
8 plan, subject to the outcome of the Standard Market Design
9 NOPR with only minor revisions.

10 And this concludes our presentation.

11 COMMISSIONER BROWNELL: I have some questions if
12 you wouldn't mind. We were very clear in that order about
13 the consultation with PJM in New England. We were talking
14 about new software. Do we know that that investment is
15 going to be of value when indeed New York, New England and
16 PJM resolve some of these issues and come to a common market
17 monitoring design, or is that going to be stranded cost?
18 And how much money is that software going to cost?

19 MR. McPHERSON: As to the cost issues, we really
20 have no numbers. As to whether or not there is stranded
21 investment, I think I'd like to refer that to Deborah Ott
22 who is with the Standard Market Design team and maybe she
23 can respond to whether or not these measures would be more
24 or less consistent with what possibly will come out in the

1 Standard Market Design.

1 COMMISSIONER BROWNELL: Well maybe you could also
2 comment on the level of conversation that took place with
3 New England and PJM as they've developed this plan. They
4 acknowledge that they did it. Do you have any comments from
5 the others that it happened, that they're comfortable with
6 this, it is consistent with what was done on a common market
7 monitoring approach?

8 MR. McPHERSON: In this filing I don't believe we
9 have comments from PJM or ISO New England on that particular
10 subject. They do state that they're in an ongoing
11 conversation with both to help resolve all of the issues
12 regarding seams issues between the ISOs and in particular
13 formation of an RTO in the Northeast.

14 COMMISSIONER BROWNELL: I was part of those
15 ongoing conversations five years ago.

16 MS. OTT: I'm not certain, Commissioner, that I
17 would have a specific answer to your question about the cost
18 that New York may be incurring in revising its AMP
19 procedures. I really don't have any information about that.

20 COMMISSIONER BROWNELL: Just a couple of more
21 questions. This applies to the entire New York ISO market.
22 Do we think that market power issues are the same outside of
23 New York City as they are in New York? It would seem that
24 that would not be the case.

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MR. McPHERSON: This particular proposal has

1 specific changes to address mitigation in city. It uses a
2 market-driven mechanism to look at when there are potentials
3 for market power through the constraints in the transmission
4 system and addresses that through lower mitigation
5 thresholds to try to capture those times when there is
6 actually a potential and when there is not. In-city
7 mitigation will be the same as the rest of New York. So it
8 will allow markets to operate more or less normally when
9 there's not a need for mitigation.

10 COMMISSIONER BROWNELL: In the exemption of the
11 50 megawatt units, I would think that within New York City
12 itself a 50 megawatt unit at a time of high demand and
13 constraint might in fact be able to mitigate marketers. Am
14 I incorrect? And I'm asking because I don't know.

15 MR. McPHERSON: No, you certainly are correct in
16 that. And the 50 megawatt exemption only applies to the
17 automated mitigation procedures which run in the day ahead
18 market. The same bid would be subject to mitigation under
19 the market mitigation procedures, albeit 24 hours later.

20 COMMISSIONER BROWNELL: And we're convinced that
21 the statement I think that you made in the presentation that
22 this pulling in does not serve as a barrier to entry and
23 indeed will I hope encourage the further development of
24 competitive markets so market forces begin to replace

1 mitigation measures? You're pretty comfortable that that

1 statement is accurate?

2 MR. McPHERSON: I'm quite comfortable that NYISO
3 has offered sufficient alternatives in establishing the
4 references prices for new generation such that it will not
5 be a barrier to entry.

6 COMMISSIONER BROWNELL: Good. Thank you.

7 CHAIRMAN WOOD: The AMP applied statewide in the
8 past. How often -- do we have any data about how often it
9 was triggered?

10 MR. McPHERSON: In the 2001 period there were
11 approximately four days in the balance of state outside of
12 New York City when the AMP -- or when mitigation was in
13 place. I can't honestly tell you whether that was through
14 the AMP or through the market mitigation measures.

15 CHAIRMAN WOOD: So there were four days in the
16 last calendar year when prices were --

17 MR. McPHERSON: Approximately 16 hours out of
18 those four days, so fairly limited.

19 CHAIRMAN WOOD: One of the things that I do like
20 about this, it sets to me a kind of common sense template,
21 because this clearly will be back as the question to Debbie
22 indicated. This will be back before us front and center in
23 two other cases this summer, the SMD rulemaking and in the
24 California mitigation measures as well, or Western

1 mitigation measures.

1 An idea that I like here is that along the
2 electric competition highway we've got narrow guard rails
3 for areas like New York City and what was it, upper
4 Wisconsin? Wisconsin, upper Michigan and others in the
5 country where they just are needing transmission and the
6 inability to build other things just tremendous inability to
7 have a more competitive market, structurally competitive
8 market. But you do have narrow guard rails for those more
9 dangerous roads.

10 And that out in the places where conditions don't
11 require such caution you have relatively much wider guard
12 rails on the competitive highway. But the New York AMP
13 which I will confess I haven't been a big fan of mostly
14 because I didn't understand it until I was forced to really
15 look at it more deeply over the past month or so with this
16 filing, in effect does have the virtue of print certainty,
17 that people know, yes, it is an algorithm that has some
18 complexity and that's fair, but it's up front.

19 Bill, you reported out in your comments on E-43,
20 you had the certainty thing is something the investor in the
21 power plant wants to have, but it's also of benefit to the
22 customer for having a market that, you know, where it's not
23 competitive won't go out of control. And so I'm open to
24 being persuaded there's a better way, and I think we need to

1 probably do that in the next 60 days before we lay down a

1 rule, a proposed rule.

2 But this certainly is one that has been tested
3 and tried, and I've heard from a number, prior to this
4 filing of course, I've heard from a number of people that I
5 wouldn't have expected to have heard from that they think
6 that this actually is a pretty decent tool that does not
7 disincen new investment.

8 So I'd keep an eye on these things, but I do
9 think that they put forth a good proposal here, and I think
10 the approach that this order takes toward it is good and
11 sends I think a positive signal to everybody about how we
12 are balancing the need to have good markets for customers
13 but good markets for suppliers as well. And I think if we
14 keep doing this, we'll be in good shape.

15 COMMISSIONER BROWNELL: Pat, I would just say
16 that I think we need to keep our eye on it very closely and
17 make sure it's doing what we intended it to do. I think,
18 you know, five years from now we don't want to be dependent
19 on this, we want to be dependent on markets or in certain
20 areas like New York City it's going to be awfully tough to
21 create a market. But I just don't want to over-rely on
22 these kinds of tools without measuring ourselves about how
23 we're ultimately going to wean ourselves if indeed weaning
24 ourselves is appropriate.

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COMMISSIONER MASSEY: I want to weigh in here. I

1 really like this AMP program, because it is up front, it is
2 objective. The market participants understand what the
3 standards are. As I understand, there are three thresholds
4 that must be met before the mitigation kicks in. Am I
5 correct?

6 First the procedures are activated only if the
7 prices in an area will exceed \$150 per megawatt hour.
8 That's number one, correct?

9 Secondly, the bids will be considered for
10 mitigation only if they are more than 300 percent or \$100
11 above the bidder's reference level, whichever is lower. Is
12 that correct? That's the second standard that has to be
13 met.

14 And the third standard is that the bids would
15 mitigated only if the bid will result in an increase in the
16 market price of 200 percent or \$100, whichever is lower. Am
17 I correct in that respect? And so if all three of these
18 thresholds are exceeded, the bids will be mitigated to the
19 bidder's reference level in the day ahead market.

20 This is a good plan I think because it's ex ante
21 first of all. We are seeing first-hand the huge difficult
22 in resolving these issues of just and reasonable prices
23 after the fact in a big refund case. We'd like to avoid
24 that if possible. A clear reasonable mitigation tool that

1 prevents the unwarranted price increases in the first place

1 I think is a very good idea.

2 Secondly, this also serves as a structural
3 screen. These market impact thresholds are likely to be
4 exceeded only if there are structural conditions that would
5 allow withholding.

6 And third, as I understand this program, our
7 experience so far indicates that it has not triggered
8 mitigation unnecessarily during last summer in the highest
9 load periods where prices were close to the \$1,000 bid cap
10 due to shortages the AMP did not trigger any mitigation,
11 because the three thresholds were not met.

12 It is an objective standard. We've heard
13 complaints about perhaps mitigation that would be too vague
14 to be understood by market participants, and I think we
15 should move away from that. I think we ought to take a very
16 serious look at this in the Standard Market Design, and I
17 wanted to raise that point as well. Perhaps someday we can
18 move away from mitigation programs like this, but I think we
19 need to move cautiously, and this is a plan that seems to be
20 working pretty well, and I think we ought to take a very
21 close look at it in the context of our Standard Market
22 Design.

23 COMMISSIONER BREATHITT: I have a few comments on
24 this too, because I think it's a very important order and

1 one we're getting out in a timely manner.

1 This order, as we've heard, does approve filings
2 in which the NYISO proposed a comprehensive market power
3 mitigation plan for New York. New York presently has
4 several mitigation measures in place, including market
5 mitigation measures in city for New York City itself and the
6 automated mitigation procedures, or AMP.

7 The instant filings were required in November to
8 ensure that these fit together to address market power while
9 avoiding unnecessary mitigation. The NYISO has proposed a
10 number of modifications to its existing programs in order to
11 comply to our directive from November the 27th. The
12 modifications to the AMP I believe will provide for a more
13 selective process for mitigation by the use of additional
14 computer runs to reduce the times and locations where
15 mitigation is implemented.

16 And overall, I believe that the revised
17 mitigation procedures are especially appropriate in today's
18 environment. The development of competitive markets and
19 industry restructuring are concepts that are being viewed in
20 a different light in the post-Enron world. The phrase
21 "lighter-handed regulation" is something that we have talked
22 about a lot over the past decade. However, as we've
23 discussed several times in the last month, we are going
24 through an unprecedented lack of confidence in energy

1 markets as we learn more and more about bad trading

1 practices and other things.

2 I think the Commission is certainly striving for
3 ways to promote competition and the goals of lighter-handed
4 regulation, but we're a lot more focused on market
5 monitoring, on oversight and enforcement and achieving
6 standard market designs across the country that work. And I
7 believe that it's then and only then that we can begin to
8 talk about lighter-handed regulation again and easing market
9 power mitigation measures such as the ones that we are
10 approving today in the NYISO's compliance filings.

11 I agree with statements that my colleagues have
12 made that we do need to look at ways down the road that we
13 can begin to lift some of these measures because we have
14 very liquid and competitive markets in place that will allow
15 us to do so. But now is not the day. Perhaps in a few
16 years to come.

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1 CHAIRMAN WOOD: Amen to that, competition first
2 and deregulation later. Any more? Good work everybody.
3 Thank you. I know it was a quick timeline. Thank you very
4 much.

5 COMMISSIONER MASSEY: Aye.

6 COMMISSIONER BREATHITT: Aye.

7 COMMISSIONER BROWNELL: Aye.

8 CHAIRMAN WOOD: Aye. Thanks.

9 VOICE: I just want to know if there is a
10 representative from Duke Energy for this meeting. There's a
11 woman behind you, sir.

12 SECRETARY SALAS: The next item for discussion
13 this morning is E-46, East Texas Electric Cooperative, Inc.

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15 CHAIRMAN WOOD: The reason I asked for this --
16 and I understand that we don't have a majority vote for
17 either conclusion here -- was just to lay out -- I do think
18 it's important for people who have been sitting waiting for
19 an Order for four years, to know why they're not going to
20 get one.

21 I was of the mindset that this case and perhaps
22 others in the future, provide a good opportunity for us to
23 start making it clearer as to what transmission is. We've
24 got transmission, a definition of transmission that has six

1 or seven subparts.

1 Sometime we delegate the analysis of those to
2 state commissions, who having been at one, we sure as hell
3 don't want to do anything with one part, much less six. But
4 we rely on that for jurisdictional determination.

5 We have different approaches for rate
6 determination. We have an item we've already approved on
7 consent, a determination as to whether we need to comply
8 with 888 or not to grant waivers for that. And we have yet
9 other analysis, as we saw on the MISO orders on this agenda,
10 about what facilities are under the control of an RTO.

11 It just seems to me that there is a crying cause
12 for moving to RTOs to have a very bright line as to what
13 facilities, dollars, and people are on the
14 transmission/RTO/FERC-regulated side of the fence, and what
15 aren't.

16 Reading through the ID that underlies this
17 proposed Order here made it clear to me, you know, that if
18 you have got to wait four years to get determinations like
19 this, as to whether this is really creditable transmission
20 or not, we ain't going to get there.

21 And I think it's fair, the response from you all,
22 that think that this really isn't the time or place to do
23 that. But I'm kind of losing opportunities as to when that
24 might be.

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Maybe that's another thing that we dump into the

1 all-famous SMD rulemaking, and I'm sure Alice will dissolve
2 into a pool of sweat.

3 (Laughter.)

4 CHAIRMAN WOOD: But we do need to make it pretty
5 simple. We can do it on voltage; we can do it something
6 else, but, you know, six-part tests that take four years to
7 get an analysis done, aren't acceptable to me, and I'm open
8 to better solutions.

9 It just needs to be standard, and it needs to be
10 simple, and we need to kind of decide pretty quickly, how to
11 get on with determining what's transmission and what's in
12 our jurisdiction and what's in our rate authority and what's
13 not.

14 COMMISSIONER BROWNELL: Pat, as one of the people
15 who didn't quite agree with you on this one --

16 (Laughter.)

17 COMMISSIONER BROWNELL: Let me tell you that I
18 couldn't agree with you more. I think, you know, it's
19 unclear, it's confusing; it's clear that it's confusing to
20 us. My concern was that I didn't think the way we were
21 getting there worked.

22 I didn't think that the definition was clear
23 enough. We didn't get to that bright line, at least in a
24 way that I could understand. I'd be happy to do this in any

1 vehicle in a relatively short period of time.

1 I'd like to have kind of a focused discussion
2 with staff, to be very specific, because my concern is that
3 we were going from complicated to gray. Having done that a
4 lot, the solution when we didn't want to deal with an issue
5 we made it gray, and it's kind of worse than when we
6 started. I agree where with where you want to go. I could
7 get there tomorrow. This discussion didn't get us there.

8 CHAIRMAN WOOD: That's fair.

9 COMMISSIONER BREATHITT: I'll chime in and say
10 that I was pretty comfortable with the initial decision of
11 the Judge, but I will certainly, when this comes up again,
12 look at it with an open mind, and maybe in a larger context.

13 But at this point in time, I was pretty
14 comfortable with the ID.

15 COMMISSIONER MASSEY: Well, Mr. Chairman, I'm the
16 only one that loves you on this one.

17 (Laughter.)

18 COMMISSIONER BROWNELL: It's a scary thought.

19 (Laughter.)

20 COMMISSIONER MASSEY: I was going to vote with
21 you on this, but there was a two/two split.

22 I agree with the thrust of your comments. We
23 would like to see more certainty in this area. As well,
24 over the years, I have been frustrated by our decisionmaking

1 process with respect to credits for transmission facilities

1 that are contributed to the network and whether we have a
2 consistent policy in that area.

3 So I have an open mind about how we deal with
4 this. We'll work with you to come up with a new generic
5 policy, if that's what you'd like to do.

6 CHAIRMAN WOOD: I would. Our plate is very full,
7 but as soon as we see the broccoli, we'll put this on the
8 plate.

9 (Laughter.)

10 CHAIRMAN WOOD: I have kids that like broccoli.
11 You have to clean out the plate before you get to dessert.
12 That's a mom-thing, you know. And this is no dessert.

13 (Laughter.)

14 CHAIRMAN WOOD: We'll pass the item till further
15 consideration. All right, A-1, nothing -- oh, there is, I'm
16 sorry. Go ahead.

17 SECRETARY SALAS: Mr. Chairman, the first item of
18 your administrative agenda this morning is A-1. This is a
19 update on the Federal Energy Regulatory Records Information
20 System or FERRIS. We will have a brief presentation by the
21 Commission's Chief Information Officer, Fernanda Young.

22 MS. YOUNG: Good morning, Chairman and
23 Commissioners. I would just like to give a quick update on
24 what happened to FERRIS. We are today providing training

1 with the Internet.

1 We have received a very large number of requests
2 to use this type of training before we go into production.
3 To be able to accommodate 135 requests, which we couldn't do
4 before production, we have added more sessions, and we are
5 going to push production off a week to accommodate the
6 public, to provide them the service they have requested.

7 It's important to note that we are almost in
8 production. When it comes to publishing issuances, we're
9 publishing the new issuances in the old system and the new
10 system.

11 Last Friday, the old system decided to sort of
12 retire too early, and we had to switch people to the new
13 system. Everything is up, but it is important to know that
14 next Monday, anybody can go to the new FERRIS and use
15 anything that has to do with issuances.

16 When it comes to submission, it's too costly to
17 have two systems, but we have decided to push production to
18 accommodate the public and provide training that they have
19 requested via the Internet. We are very popular for this
20 type of training recently. That's it. Any questions?

21 (No response.)

22 CHAIRMAN WOOD: Thanks, Fernanda.

23 SECRETARY SALAS: The next item on your
24 administrative agenda this morning is A-3, Northeast RTO

1 developments, with a presentation by Steve Rodgers and Thanh

1 Luong.

2 MR. LUONG: Good afternoon, Mr. Chairman and
3 Commissioners.

4 (Slide.)

5 MR. LUONG: Today our presentation will have two
6 parts: In the first part, I will summarize the actual data
7 and the exchange that we requested from the two ISOs in the
8 Northeast, and the data that was requested by Commissioner
9 Palmer, and in the second part, Steve will talk about the
10 presentation, the update of the Northeast RTO development.

11 (Slide.)

12 MR. LUONG: Before I go to the data, the first
13 thing I will show you is the physical interconnection in the
14 Northeast. This is the map of the Northeast, and when you
15 look at the Northeast, ISO New England is connected to
16 Canada, to New Brunswick, and also connected to Hydro
17 Quebec.

18 ISO New England is connected to the New York ISO.
19 When you look at the New York ISO, you will see that it is
20 connected to Canada, PJM, New York, and New England. On the
21 slide you will see that it is also connected to Hydro
22 Quebec.

23 This is a map of the PJM interconnection that we
24 got before the PJM-West, so to show that it is connecting to

1 First Energy and then to New York, but if you look at the

1 current situation right now, the interconnection will show
2 that the PJM system will connect to AEP, First Energy, and
3 Virginia Power.

4 Next slide, please.

5 (Slide.)

6 MR. LUONG: This is the data that we collected
7 from the ISO, showing the actual interchange of the years
8 2000 and 2001. If you look at the ISO New England, it is a
9 net import region, imported from Canada and from New York.

10 And if you look at Uniform 2000 and 2001, and if
11 you look at the New York ISO, New York ISO is also a net
12 importer. It's imported from Canada and PJM, and it's
13 exported to New England ISO.

14 And if you look at PJM, PJM is also a net import
15 region. It's imported from the Midwest and exported to New
16 York ISO.

17 Based on the data that we looked at during the
18 summertime, based on the data that we received, most of the
19 ISOs in the U.S. depend very heavily on the imports from
20 outside. That means, for New England, New England will
21 receive very little from new York during the summertime.

22 New York will receive very little from PJM in the
23 summertime, but they still depend heavily on Canada, and PJM
24 still depends heavily on the Midwest. Next slide, please.

1

(Slide.)

1 MR. LUONG: These slides will show you the
2 estimated transfer capability on those interconnections.
3 You look at the New York ISO, and the transfer capability
4 from Canada, and ISO New England to New York ISO are more
5 than doubled, and on the capability from PJM, and if you
6 look at PJM's system, PJM had more capability to import from
7 the Midwest and from the New York ISO. New England, they
8 just had to import from the Midwest.

9 Next, we'll turn to Steve, so Steve will update
10 the RTO Northeast developments.

11 (Slide.)

12 MR. RODGERS: Good afternoon, Mr. Chairman and
13 Commissioners.

14 The first thing I'd like to do is just briefly
15 touch upon the highlights at the highest level of the cost-
16 benefit analysis that was released on May 14th by the New
17 York ISO and ISO New England.

18 I would mention at the outset that although the
19 document, the cost-benefit study itself that you have been
20 provided, has "CONFIDENTIAL" stamped all over it, I have
21 been assured by representatives of the New York ISO and ISO
22 New England that we are allowed to talk about that freely
23 and to talk about the data therein, so I have checked on
24 that.

1

I want to mention that the first result that we

1 see is significant savings of about \$220 million in the year
2 2005, that are estimated for New York, and about \$150
3 million in 2010 for New York in the study.

4 Most of the savings that are generated -- let me
5 clarify that that of \$250 million, \$150 million is for the
6 entire region, New York and New England. Most of those
7 savings are related to the elimination of export fees, the
8 elimination of seams problems between the ISOs, and then
9 standardized markets.

10 In terms of the intra-regional breakdown of the
11 results, New York fairs relatively better in a two-way RTO
12 than does New England.

13 (Slide.)

14 MR. RODGERS: New York enjoys annual savings of
15 \$282 million in 2005, \$147 million in 2010, while New
16 England's costs are projected to increase slightly in the
17 year 2005, and a small increase in savings in the year 2010.

18 18

19 The study also takes a look at a three-way RTO
20 and assesses costs and benefits, a three-way RTO that
21 includes PJM in New York is an even bigger winner in that
22 arrangement, while New England's and PJM's costs increase.

23 I wanted to mention, as well, that there were
24 several sensitivity runs that were done in the study.

1

(Slide.)

1 MR. RODGERS: One of them shows that if fuel
2 prices are significantly higher than projected, then the
3 benefits to New England will be significantly higher than
4 projected. Lastly, in terms of environmental issues, the
5 study finds that the impacts are very small, relative to the
6 total emissions.

7 (Slide.)

8 MR. RODGERS: Let me next turn your attention to
9 this past Tuesday's FERC-State Regional RTO Panel that was
10 held with Commissioners from New York and New England. I'll
11 briefly touch upon the highlights of what I saw that came
12 out of that meeting.

13 There seemed to be very strong consensus among
14 the New England Commissioners on the questions of
15 governance, board independence, and there was general
16 consensus on the market monitoring issues. But there was a
17 lack of consensus on the proper RTO footprint in terms of
18 how large an RTO should be in the Northeast.

19 The majority of the New England Commissioners
20 felt that there was no justification at this time to proceed
21 with a large Northeast RTO; that, in their view, large would
22 be New York and New England. But there was a minority view
23 among the New England Commissioners that either took no
24 opinion on that question, or that felt that a New York-New

1 England RTO was appropriate.

1 There was also general consensus among the
2 states, New York and New England, that good market rules,
3 resolution of seams issues, are more important than, and
4 should precede the formation of an RTO in the Northeast.

5 (Slide.)

6 MR. RODGERS: Going into a little bit of detail
7 on the New England Commissioners' views on governance and
8 board independence, there was a document that was referred
9 to by the Chairman in an earlier discussion this morning.
10 That document is a NECPUC document that Chairman Dworkin
11 referred to in our meeting the other day.

12 I'm informed that that document is publicly
13 available on the Maine Public Service Commission's website
14 for anyone who would like to view that.

15 That document goes into some detail about
16 governance and board independence, and mentions the critical
17 need that the New England Commissioners feel that the RTO-
18 ISO board should be completely independent of market
19 participants and draw all of their authority from FERC.

20 The board selection process should be more
21 transparent with greater accountability at FERC. And there
22 were specific proposals in the document that Sherman Dworkin
23 has provided, specific proposals for board member selection
24 and reelection that would involve FERC being the ultimate

1 arbiter of who goes onto an RTO board.

1 (Slide.)

2 MR. RODGERS: On the market monitoring question,
3 there was general consensus and interest among the New York
4 and New England Commissioners that there was a need -- that
5 they were interested in getting more involved in this issue,
6 and they were interested in better information-sharing
7 between FERC, other federal agencies, and the state
8 regulators.

9 The document provided by Chairman Dworkin
10 indicated that the MMU should be independent of market
11 participants and ISO operation divisions.

12 The MMU should report to an independent RTO
13 board, and the MMU would be able to make 205 filings to
14 propose market monitoring and mitigation plans and rules.

15 There was also some interest among the New
16 England Commissioners to have a regional authority that
17 would help coordinate transmission planning and generation
18 siting decisions for a region, either including all of New
19 England or a portion of New England.

20 The feeling was that an entity more local than
21 FERC should be responsible for that, but that it should be
22 an entity that is larger and takes into account the
23 interests of more than just an individual state.

24 24

1

25

1 (Slide.)

2 There was a general impression among the New York
3 and New England Commissioners that seams resolution have
4 suffered because of the ISO's aggressive work on filing
5 efforts. The states generally feel that fixing flawed
6 market rules and seams should be the focus of the ISOs at
7 this time ahead of RTO development.

8 (Slide.)

9 Then the last slide, the proposed specific action
10 points that the states had for us in the meeting the other
11 day that the FERC should relax pressure on the ISOs to make
12 and RTO filing imminently and there should be a greater
13 opportunity for state input before any RTO filing is made
14 with FERC.

15 Secondly, a primary focus of FERC should be to
16 reach decisions on standard market design resolution of
17 seams and governance instead of on RTO formation.

18 Finally, the Commission should require
19 Northeastern ISOs to promptly identify their seams problems
20 and then we should hold them accountable through regular
21 progress reports to ensure that they are resolving these
22 problems. I would note there that Chairman Maureen Helmer
23 of New York even went to so far as to say we should consider
24 intervening if the ISOs are not moving quickly enough and

1 impose some kind of binding ADR procedure upon ISOs that are

1 not moving quickly enough to resolve seams problems. That
2 concludes Staff's presentation on the Northeast
3 developments. Are there any questions or comments?

4 COMMISSIONER BROWNELL: Question. Then a couple
5 of comments. Did the cost benefit study, remind me, I'm
6 sorry, did the cost benefit study make any attempt to
7 measure the benefits of regional planning? Did it look at
8 reliability in any significant way?

9 MR. RODGERS: I don't believe that it did
10 quantify that.

11 COMMISSIONER BROWNELL: Well, I think we've
12 acknowledged that we appreciated the Northeast
13 Commissioners' thoughtful approach to this and I for one in
14 both looking at the transactions the market transactions and
15 hearing their comments, would actually like Staff to begin
16 asking the three ISOs -- I don't think we should limit it
17 given the amount of transaction between PJM and the others
18 to identify the seams that exist and come in here. I'd love
19 to see it as soon as our next public meeting because it's
20 pretty clear that a lot of money that consumers shouldn't be
21 paying is being wasted in the slowness to deal with these,
22 and so I'd like to propose that to my colleagues. But I
23 think that the New England Commissioners were on target in
24 asking us to prioritize certain issues and I think we should

1 begin work on governance, we're well informed by their

1 paper, and I think we're certainly going to take that up.

2 I'm not sure that these are all mutually
3 exclusive, however. I'm not sure I heard unanimity on the
4 delaying of RTO formation. I think what the New England
5 Commissioners seem to be saying is we need some assurance on
6 these other issues so they're incorporated into that
7 formation. I'm not convinced that we need to stop work on
8 RTO formation while we deal with these other things. That
9 we really ought to be disciplined enough to be able to
10 manage more than one issue at a time, and I think it's a
11 question of our focusing the participants' attention on the
12 priority issues.

13 CHAIRMAN WOOD: I would certainly be amenable if
14 you all are to getting the three Northeastern ISOs to
15 identify, with specificity, the remaining seams problems
16 that are not resolved. This is coming up on the year
17 anniversary of the seams conference, and actually start the
18 timetable and resolution of that. But I think by the
19 following meeting that would be real useful to kind of keep
20 it accountable.

21 We're going to either get there through SMD,
22 through RTO formation, or through narrow management of the
23 seams but we're going to get there, and I think we've just
24 got to say that, you know, every time there's a delay in

1 getting closure or inadequate closure for whatever reason,

1 we're going to create another front to open it up and get
2 the problem resolved. Call us the Energizer Bunny or
3 whatever you want but we're going to get these seams issues
4 addressed one way or the other. And I think our colleagues
5 in the Northeast gave us some very sage guidance on that,
6 and I was actually very humbled by that call, how much
7 wisdom there is out there that we need to just continually
8 tap into and let it make us better.

9 I agree. I think we can move in parallel but I
10 do think nudging this to the front of the parallel paths is
11 worth doing now because it has not been done, and should be
12 doable because there are issues they've been talking about
13 for a couple of years up there now and it should not be hard
14 to identify. It may be harder to agree as to how we get to
15 closure but we need to know where we're needed.

16 These rate issues or NERC issues or whatever need
17 to be resolved and what we need to know is what's going to
18 be expected of us to do in resolving those seams as opposed
19 to just talking about them, you know, and pushing it off for
20 another year.

21 COMMISSIONER BROWNELL: Let me remind you that
22 it's been five years since the MOU was signed, so it's not
23 two years, it's five. Maureen Helmer and I we're getting
24 old together on those discussions.

1

MR. RODGERS: Mr. Chairman, just to clarify,

1 would you propose that the ISOs when they come in for this
2 presentation that they should propose to the Commission a
3 time table for resolving these issues.

4 CHAIRMAN WOOD: Hopefully they can agree to it
5 because it's going to require each of them to resolve them.

6 If all three agree that we're going to deal with the
7 planning issue, the reliability issue this way, the rate
8 issue, you know, on this time table, you know, and lay that
9 out, then we know where Staff support from FERC can be
10 useful and where we can tap into the states, and we can
11 basically say this is the closure for these items. It might
12 make, quite frankly, compliance with the ultimate SMD Rule
13 quite easy for those three if we get a lot of this stuff
14 dealt with through the seams issue now. We heard a pretty
15 clear cry for some FERC leadership and I want to step up to
16 the challenge.

17 COMMISSIONER BREATHITT: We also had accomplished
18 I think quite a lot on seams agreements with the ERCA in the
19 Midwest. The ERCA went so far as to propose a super
20 regional rate which all has been superceded now by other
21 events, but the Commission recognized, and a lot of effort
22 and time and money was expended in the whole effort in the
23 Midwest through the ERCA so I think there may be some things
24 that we can learn from that. I don't know if any of the

1 elements of that can be resurrected with respect to the

1 Midwest but there was an awful lot of work done through I
2 think it must have gone on for three or four months with
3 respect to the ERCA in the Midwest. So there's examples
4 there of elements that might still be able to be resurrected
5 in the Midwest or maybe can be used elsewhere.

6 COMMISSIONER MASSEY: I would just like to be
7 clear for the record. The fact that we are pursuing seams
8 management here, and I think we should as quickly as
9 possible, but the fact that we're doing that from my
10 perspective does not mean that the concept of some sort of
11 merger is off the table forever. I don't agree with that
12 and I haven't reached that conclusion, so I agree with going
13 forward as proposed with respect to dealing with the seams
14 issues but I have not reached a conclusion that any sort of
15 merger in the Northeast is a bad idea and should not be
16 pursued.

17 CHAIRMAN WOOD: I clearly am not there either. I
18 know there's been a discussion that the two come together
19 but quite frankly we need to still talk about the three as
20 being a coherent market. Whether the organization may be in
21 different regions has yet to be decided. But the coherence,
22 whether there's a seam between New York and PJM because
23 they're two organizations ultimately or not, that seam needs
24 to be eliminated throughout the Eastern Interconnect. So

1 the template we set here goes forward but I think the

1 organizational issues to me are where they were before we
2 opened our mouths today. But we just got a new task for
3 them. In fact, I think in working in this focused specific
4 format that doesn't talk about what's going to happen in
5 2005, but it's going to talk about what happens in 2002,
6 that actually may facilitate those organizational mergers
7 better than we have done before. So I think it may actually
8 work.

9 COMMISSIONER BROWNELL: I not only agree, and I
10 thank you for doling it out because we don't want to send a
11 mixed message, I think it will not only facilitate, it may
12 focus the debate on the right issues that we're doing this
13 because the market dictates it and because reliability
14 dictates it, not because social issues dictate it.

15 MR. RODGERS: Just to affirm that, in the meeting
16 we had with the states the other day, there were one or two
17 of the state Commissioners who did feel exactly as you've
18 said, that we should forge ahead with development of an RTO
19 in the Northeast as soon as possible, and that would help
20 facilitate resolution of a lot of these issues. I think
21 Commissioner Tom Welch was one of those people, as I recall,
22 that made that point.

23 CHAIRMAN WOOD: What we want to include, in light
24 of the events of the last week, wouldn't we want to include

1 the MISO in that discussion as well, since it is clear there

1 will be a seam certainly with the Canadians and with PJM in
2 that regard. Let's put the inquiry out to all four. I
3 guess that's North America.

4 COMMISSIONER MASSEY: I think that's a good idea
5 because it's following up on the concerns that I raised
6 earlier. We'll get the thoughts of the institutions out
7 there about what's going to work and what isn't going to
8 work.

9 (Pause.)

10 CHAIRMAN WOOD: Let's set that up for, what's the
11 next one, June 12th if that works for the affected parties.
12 Please strongly encourage them to please make it work.

13 (Laughter.)

14 CHAIRMAN WOOD: Children's graduations and all
15 that stuff kind of tromp over what we're doing but other
16 than that, I do want to get the affected parties in this
17 geography to the table so we can talk about not only these
18 specific issues but quite frankly I think we do need to rope
19 back in the configuration issues in the Midwest that we
20 talked about before. And we might, after we do our public
21 business, take a quick break and then have a little open
22 forum here where we have some frank discussions about how to
23 get this thing off dead center because it's right in the
24 middle of dead center right now.

1

MR. RODGERS: We'll be happy to do that.

1 CHAIRMAN WOOD: Thank you.

2 COMMISSIONER BROWNELL: It's only an excuse for
3 mother.

4 CHAIRMAN WOOD: Okey doke. Anything else on that
5 item? Any more thoughts on the conference call the other
6 day?

7 (No response.)

8 CHAIRMAN WOOD: They're a good bunch to work
9 with. Okey doke. We will adjourn this meeting and begin
10 our closed session in Hearing Room 5 as announced in about
11 1:30. Meeting adjourned.

12 (Whereupon, at 12:35 p.m., the hearing was
13 adjourned, to resume in closed session in Hearing Room 5 at
14 1:30 p.m.)

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