



## APPEARANCES:

## COMMISSIONERS PRESENT:

CHAIRMAN PAT WOOD, III, Presiding

COMMISSIONER LINDA KEY BREATHITT

COMMISSIONER NORA MEAD BROWNELL

COMMISSIONER WILLIAM L. MASSEY (By Telephone)

SECRETARY DAVID P. BOERGERS

## FEDERAL ENERGY REGULATORY COMMISSION STAFF:

JENNIFER SHEPPARD

## ALSO PRESENT:

GARY MARENHOLTZ

DAN LARCAMP

ROLAND WENTWORTH

JOHN CLEMENTS

JIGNASA GADANI

RAHIM AMERHAL

DAVID L. HOFFMAN, Court Reporter

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

(10:10 a.m.)

CHAIRMAN WOOD: Good morning, let's start the meeting with the pledge to the United States flag, please.

(Pledge of Allegiance recited.)

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

We'll start with Mr. Boergers and the consent agenda.

COMMISSIONER BREATHITT: May I make an announcement?

CHAIRMAN WOOD: I'm sorry, you did just ask me.

COMMISSIONER BREATHITT: It is my pleasure today to introduce a new member of my staff, Jennifer Sheppard, who has joined as one of my advisors. There you are, Jennifer. Thank you. Welcome aboard.

(Applause.)

COMMISSIONER BREATHITT: Jennifer worked in the Office of Markets, Tariffs and Rates in Rates West for the past several years, and before that was with LCRA in Austin, Texas, and has also held positions in the environmental area and welcome aboard. We're lucky to get you. Thank you.

CHAIRMAN WOOD: Thank you, Linda.

For the second time in his eight-year tenure, our colleague Bill is sick today with the flu and has to miss a public meeting. He might have been sick with the flu more than twice in eight years. That's almost superhuman, but he's missing this meeting. Well, he is superhuman. That's Bill. He's missing the meeting but is going to vote his vote on the consent agenda by phone, which is legal.

David, do you want to go ahead and do that?

SECRETARY BOERGERS: I will. On the consent agenda this morning are G-2 through G-14, G-16 through G-18, G-20, and G-21. On G-20, it's Option B. My understanding is that we're voting on E-6, E-7, E-10 through 14, E-16 through 20, and E-24, H-1, H-2, and H-5, and C-2 through C-9.

On G-6, Commissioner Brownell concurs and Commissioner Breathitt dissents in part. Commissioner Breathitt votes first.

COMMISSIONER BREATHITT: Aye with dissent as noted.

COMMISSIONER BROWNELL: I with concurrence as noted.

SECRETARY BOERGERS: Commissioner Massey via telephone.

COMMISSIONER MASSEY: Aye.

CHAIRMAN WOOD: Aye.

SECRETARY BOERGERS: The first item for discussion is G-1. Gary Marenholtz has a presentation for the Staff and I believe we want the Power Point Presentation displayed on the screens. Thank you.

MR. MARENHOLTZ: Good morning. I would like to discuss pipeline operation flow orders, why they are necessary to maintain service reliability and why the Commission is concerned about how they can be used to inhibit the development of efficient gas markets.

(Slide.)

The Commission has a number of important goals. The first is provision of reliable service by pipelines. It recognizes that OFOs are absolutely necessary at times to maintain service reliability and I will go over a definition of the OFOs in a moment.

That said, the Commission's initiatives promote greater competition through the series of open access orders as predicated on giving customers a maximum amount of flexibility consistent with maintaining service reliability. This requires minimizing the use of OFOs to those times when they are absolutely necessary.

Another important goal for the Commission is to provide shippers on the pipeline with more timely in balance information to stay in balance during these critical periods. Finally, another goal is to monitor the pipeline

activity. This is part of the Commission's effort to maintain a more active posture in seeing to it that gas markets develop in a competitive manner. The regular monitoring of pipeline OFO activity will help the Commission to identify cases where they are being abused and in cases where OFOs are necessary for service reliability to identify system constraint points that may need to be eased through infrastructure additions like the addition of new pipelines or compression facilities.

(Slide.)

CHAIRMAN WOOD: Up to now, has the OFO generally been a pretty clear trigger for pipelines to come in and expand their facilities to eliminate the need for the OFO?

MR. MARENHOLTZ: Not that I know of. I'll review the 637 initiatives that address OFOs. This is one thing to enhance market design rules, another thing the Commission has done is, like I just said, market monitoring. The staff will monitor the OFO activity. Finally, we will look at OFOs to determine where infrastructure additions are needed to be made.

(Slide.)

With that said, the remainder of the discussion I want to talk about the OFO definitions and how OFOs can be abused and what the Commission has done to minimize the issuance of OFOs.

(Slide.)

Pipelines issue OFOs when certain operational conditions obtain on their system that threaten reliable service. This includes things such as high line pack, high pressure, certain storage conditions, and under these conditions they are typically encountered during very cold days in the winter. There are certain imbalance conditions in the southern pipelines where there's over deliveries on the system that cause OFOs also.

During an OFO, shippers are typically confined to their primary receipt and delivery points and the open access orders, receipt and delivery point flexibility is absolutely essential in promoting competition, so there are costs to maintaining this reliability. That's why the Commission wants to minimize them.

(Slide.)

Another dimension of the OFO use is shippers need to stay in balance during OFOs. That is, they need to balance the amount of gas that they physically deliver with the amount they take off of the system. During an OFO, pipelines will typically tighten the tolerance penalty, for instance, from something like five percent to two percent, which is the net between the amount they put in and take off the system. And pipelines then will impose penalties for shippers that violate the strictures of the OFO. For

instance, we've seen penalties that are as high as \$25 to \$50 per decatherm and sometimes higher. Finally, storage delivery and withdrawal rates can be affected by an OFO.

(Slide.)

The Commission has addressed some of these concerns in Order Number 637. Many of the technical conferences that implemented higher imbalance in OFO penalties, shippers complained that OFOs have been abused. A number of the complaints that we heard were that OFOs were not well-defined. That is, given a particular set of operational circumstances, the pipeline had considerable latitude to declare any number of emergency orders from very severe to less severe, and it had shippers on the system perplexed.

Another complaint we heard was OFOs were applied to too large an area and the problem could have been addressed by a much more localized OFO. Another concern was that market affiliates were benefitting from an OFO, for instance, gaining inside information about when an OFO would take effect and would have a competitive advantage over other competitors on the system.

Another complaint was the information on OFOs was not given to shippers in a timely manner so that they weren't able to react in order to avoid the penalties. And finally there was concern that the level of the OFO

penalties were excessive and the pipelines had an incentive to issue too many because they got to retain the penalty revenues.

(Slide.)

In Order 637, the Commission has proffered a number of remedies. One is to have better definitions of OFOs. That should lead to a better tapering of the measures to fit the particular type of emergencies on the system. One thing we mentioned was perhaps a continuum of measures to address these sort of like we saw in California on the electric side, where they had different stage one, two, and three types to reserve margins, something like that. We're not requiring it but pipelines can consider doing that. It may be a little more difficult because there are a number of complex operational issues which make it less easy to tie down to something like one simple factor like a reserve margin.

Another remedy is that the pipelines have to notify shippers of an OFO in a timely manner. One thing we also mentioned was that pipelines can consider warning shippers about when an OFO might take effect if they don't come into balance on the system in a satisfactory period. A number of pipelines have issued these warnings, and we've found they are actually helping prevent the issuance of actual OFOs.

The other thing that 637 does is pipelines must now credit penalty revenues, and this should remove some of the incentive to unnecessarily declare OFOs and should help remove customer suspicion that they're being used as a profit center and the 637 proceedings now underway, we're also considering the penalty levels. One thing we're looking at is maybe tying the penalty level to a multiple of the gas commodity index. That will help deter any type of arbitrage activity that happens during critical periods.

Finally, an OFO activity report is required after an OFO event where the pipeline will explain in more detail than what they offer on EBB postings why the OFO was declared and lifted.

CHAIRMAN WOOD: Is that report made available to the Commission or the shippers?

MR. MARENHOLTZ: Both within something like ten days to two weeks. That's what we've been pushing for in the individual proceedings with this information.

(Slide.)

For our market monitoring staff, we're going to oversee OFO activity. We're going to have better information through better EBB postings, more thorough postings of the operational factors and these reports. And we want to stay on top of OFOs activity and see if there's any patterns to it to see if there's abuse. The Staff will

be able to call up individual parties, including the pipeline, to stay on top of the issue before it becomes too big of a problem. In that manner, we can act and not react, as we often do. And I think it could help assuage customer suspicions that they are being abused. And finally, when they are absolutely necessary, we can see where infrastructure additions are needed and this is absolutely essential for the long-run efficiency in the industry about where to add new capacity addition in the timing of these projects. It may be particularly a problem, given concerns recently about the ability of pipelines to accommodate new gas generation. If we see OFOs in those areas, we may need to look at construction or compression facilities to ease the constraints.

That concludes my presentation.

CHAIRMAN WOOD: I should have, Gary, a little bit of an intro. I guess one of my first meetings here this summer, this issue came up in one of the early 637 cases that we were doing, and I knew OFOs were actually a pretty significant problem when I worked here early in the nineties. I was actually pleased to see that the occurrence of them had decreased a number, and I was glad to get a good primer from Gary about what's gone on with 637. And I guess Linda is the one who was here during 637. You all really did hit a lot of pretty good issues at that time, and I look

forward to seeing these trickle through as we solidify. I think we've got another two on this agenda that we've gotten closure on on 637, so as those definitions get crisped up, I really do think that helps the shippers, particularly in time for the winter as we're coming up, so I'm glad we've got the capability to get the information in a timely manner and that the shippers most importantly get it in a timely manner and keep the gas grids going well this winter.

COMMISSIONER BREATHITT: I don't have too much different to say in addition to the presentation that was made, which was very good. Thank you. But I do believe that it is prudent to allow some time for the revisions to OFO procedures that we required in Order 637 to work. The 637 initiative requires pipelines to find a means to minimize the issuance of OFOs and to provide the data as to why OFOs are invoked or were invoked, and this transparency really should be valuable for both the shippers and the pipeline. The issue also seems to be one that is somewhat pipeline-specific since some pipelines never call OFOs.

Consequently, I would prefer an approach that allows time to determine if the 637 changes are working as hoped, and I think that's what we're doing. That was a large discussion when we were promulgating Order 637 and the goals of having the pipelines work with shippers to minimize the OFOs, and the penalties I think are a very good feature

of that. So I'm glad we're having this discussion.

CHAIRMAN WOOD: And we will have it again if we need it.

COMMISSIONER BROWNELL: Gary, thanks for the report. It was a good one. One of the things that you said struck me, and this is a point of clarification so we're all in agreement. That was that this represents kind of a new approach to market monitoring, which is that we're acting and not reacting. So I guess what I heard you say is, we've not necessarily seen a pattern of abuse. We are simply setting up the mechanisms by which we will know them quickly when we see them and be able to deal with them. We haven't necessarily seen a pattern of behavior recently that would suggest more vigorous pursuit. We are anticipating, is that correct?

MR. MARENHOLTZ: Right.

COMMISSIONER BROWNELL: And trying to be more rigorous in our responsibilities.

MR. MARENHOLTZ: That's true. The last cold winter we had was '95-'96 where a lot of these occurred that generated 637. What happened then is we scrambled to look at the EBBs so we reacted to it and a lot of people going around. We noticed that if we could stay on top of it, we might be able to anticipate some of these problems. Since then, there have been isolated instances of OFO activity.

It doesn't seem to be as big a problem as it was but then we've had cold spells but nothing as cold as the winter of '95-'96, so it looks like maybe shippers and pipelines are learning to stay in balance better and meet these critical periods, but the system hasn't been stressed as much as it was in '95-'96. So maybe an ounce of prevention is worth a pound of cure to stay on top of it, so that's why we're trying to get more information.

COMMISSIONER BROWNELL: I like the idea that we're also going to be able to have tools to identify where infrastructure is needed since that's so critical for competitive markets. Thanks.

CHAIRMAN WOOD: Thanks, Gary. That's all we need to do on that item.

SECRETARY BOERGERS: The next item for discussion is G-22. I don't believe there's a presentation.

CHAIRMAN WOOD: It's just me.

(Laughter.)

COMMISSIONER BROWNELL: Gee, how surprising.

CHAIRMAN WOOD: This is the posting that you wrote. Nora and I met with representatives from the American Public Gas Association. I believe, Linda, they were by to see you all and Bill I think in the same time frame. And one of the interesting discussions that came up during that meeting, and there was a nice follow-up letter

which I actually filed in this docket number for anybody in the public to reference, was a letter we were copied on by APGA's president, Bob Cave to the acting administrator of EIA.

The core of the discussion at that meeting and really that I've had with a number of parties since then, is what actual market data is available for the natural gas industry broadly. One of the things that AGA, which has done a great job of getting the storage data all these years, they had one little hiccup this summer, was it, and everybody went crazy. The fact that we're hanging our hat, we collectively, the broad gas industry, hangs our hat on this one data that comes out at 1:00 o'clock I think central, on Wednesday.

I was on the trading floor once, and there's just this collective intake of breath as the markets kind of get this little data, just kind of belches over the screens on everybody's desk. Then everybody looks real quick at that number, then runs and does all that. It's phenomenal how significant this one piece of data is because it's really the only good one out there.

The question that the APGA raised, as relatively small consumers of gas, I think they certainly have an interest in making sure that pricing does reflect something more than just some volatility based on the over importance

attributed to one data point. They suggested that the solution to that wasn't to eliminate the data point or to do anything with, you know, how APGA is handling a real good job of dealing with a tough data collection effort, but to broaden the number of data points that are available to the market on a periodic basis so that people make smart decisions based on a little bit more transparency of information.

So I didn't want to get a whole lot deeper into that. They had some suggestions in this letter to Ms. Hoechsler over at EIA that perhaps EIA should be collecting and disseminating in a timely fashion at least the following information, and they list five items; production, production capability, and the resulting effective utilization rate, basically meaning that if you've got 80 percent production, that's a little bit different signal than if you're kind of pushing it to the wall at 97 percent and the price is such and such. The third item was pipeline capacity, the fourth item was capacity of which pipelines are operating so their utilization rate. And then number five was end use data by customer class. I don't know if that's right or wrong, or if that's really our job or EIA's to do. But I would like to say, in light of what has happened in the gas markets with the volatility and reaction to that storage data when it had an error reported that one

week, it would behoove us and everybody to figure out a way to get more transparency of information.

I don't have any great thoughts, but I just wanted to let you know what I was thinking and let the folks out in the audience know, and hopefully we can come together and maybe get this out and move forward. Perhaps this may not be FERC's job to be the procurer of this information but a lot of it does fall under our ledger domain. We could certainly work with EIA or someone at the Department of Energy as well, but I think it's an issue that would certainly be of benefit to the market if there were the right data in it. And on the converse, if we're collecting data today just because we've always collected it and we don't need to because nobody is using it, I think that goes without saying, we ought to not be doing that.

But what the market needs from us and what else we need in our normal regulatory enterprise of the pipes and collect that and scrap anything else that we don't need. I think it's always healthy that we look at what the data is, but it's not a one-way exercise; sometimes you need more, sometimes you need less and I think we need to be smart enough to know what that is. I'm not smart enough alone to do that at all so I just want to start a discussion that can go on for as long as it takes to get the problem fixed.

That's about all I've got to say on that.

COMMISSIONER BROWNELL: And you remind me of that wonderful meeting, and I apologize. It was very productive. First of all, I commend the Public Gas Association because they've clearly been disciplined in what they are looking for. I'd like to maybe see if we could have an internal working group or a stakeholders group with EIA or DOE to maybe bring the various parties together to decide what it is we need and how we're going to use it because in a time of crisis the temptation is to in fact ask for every possible bit of information where it then comes in, sits on a shelf, and someone comes in later and says, does anyone actually do anything with that.

At the same time, you're right. This is a time when we need information, we need it quickly and regularly. I think the Gas Association themselves have said they don't want to be the single data point, and I commend them for that. But let's find a way that we can somehow coordinate all the groups who want to have a say here. Maybe we should actually let the Public Gas Association lead it since they were so disciplined in their list, and have something meaningful that does not put an undue burden on the participants but the outcome of which is we actually all learn something.

I don't know how we do that. Dan, maybe you want to comment?

MR. LARCAMP: I would just suggest that Staff, with its recommendations to the Commission, viz a viz the business plan, will have several items on their about information including both electric and gas reporting requirements on a prospective basis. This is certainly within the current staff thinking about what we need to be doing on information. The specifics with respect to the APGA may be a subset of that effort.

CHAIRMAN WOOD: Great. That's all I have on that one.

SECRETARY BOERGERS: The next item for discussion this morning is E-1, a discussion of generation interconnections by a Staff team. I believe the presentation is led by Roland Wentworth.

(Pause.)

MR. WENTWORTH: Good morning, Mr. Chairman, Commissioners. I'm Roland Wentworth. With me today are Jerry Peterson on my left, Pat Rooney on my right, and at the computer is Cordelia Shepherd.

The implementation of open access transmission service and the resulting rapid development of wholesale electricity markets has brought about a dramatic increase in interconnection requests by new generation developers including both traditional utilities and independent power producers. The interconnection of new generators is a

process that is costly and time-consuming. Concerns have been raised both by generation developers and transmission providers. Developers of new merchant generation have complained about delays, improper costs assignments, and transmission providers that are interested only in protecting their own generation from competition.

On the other hand, transmission providers contend that they and their customers should not be required to pay for system upgrades that would not be needed but for the new generator, and they complain that developers often fail to provide needed information about their projects, or change their projects after studies have begun.

While Order Number 888 sets forth open access principles, as they apply to transmission service, it does not directly address generator interconnections. The Commission has clarified that interconnection is an element of transmission service, that customers have the right to request interconnection separately from the delivery component of transmission service, and that interconnection must be offered under the terms of the pro forma tariff. Although a number of individual utilities and all of the ISOs have since filed explicit interconnection procedures, these procedures are not all the same, and many utilities have yet to make a filing.

Given the current state of affairs, there is now

a clear need for all transmission providers to have in place well-defined generation interconnection procedures that will encourage needed investment in transmission infrastructure, remove incentives for transmission providers to favor their own generation, and ease entry for competitors while ensuring efficient siting decisions.

To this end, the study team recommends that the Commission proceed according to the following two-step approach.

(Slide.)

In step one, the Commission could issue a NOPR with short turnaround that would address the need to standardize interconnection procedures, service agreements rights and product definitions. To expedite the process and focus the comments, the Commission could present a straw man proposal using perhaps a modified version of the ERCOT standard generation interconnection agreement and procedures for this purpose.

(Slide.)

Market participants would be encouraged to offer constructive modifications to the straw man with the goal of creating a final standard interconnection agreement and procedures.

(Slide.)

The rule would apply nationwide. However, the

Commission may entertain requests by RTOs and ISOs to propose modifications that reflect regional practice and benefit the market.

(Slide.)

We believe that the NOPR could be issued in about a month with comments due 30 days later, followed in 15 days by reply comments. The final rule for step one could be implemented 60 days after reply comments are received.

(Slide.)

In step two, the Commission would issue a second NOPR or perhaps a second phase of the step one NOPR that would address the assignment of cost responsibility for interconnections and associated system upgrades. The proposed rules would consider the effect of various cost responsibility rules on the incentives of generators and transmission providers to facilitate interconnections and to make efficient investment decisions. The goal in step two would be to resolve all cost-related issues including the generator as banker issue.

We believe that the entire process could be completed within six to nine months after issuing the step two proposed rules. If adopted, this two-step approach would quickly put in place standard procedures and an interconnection agreement that would expedite the interconnection process and level the playing field

nationwide while allowing extra time to resolve the more contentious issues of cost responsibility.

This concludes our presentation. The study team would be happy to answer your questions.

CHAIRMAN WOOD: Thank you all very much. Thinking about the cost part first, would it be useful to have some discussion with the same parties that we're asking for comments on the first part? It seems to me that the more you pry into people's feelings about this issue, it really does come down to a few items that I can remember from the ERCOT discussions being pretty salient, like liquidated damages and timetables and restrictions on studies and the role of the Commission in kind of riding herd on the process.

But when you get down to it, it's whose money, who's getting gigged, and how the people who are being asked to pay for it ultimately get their money back. I wonder if this process may not be a little bit more helpful to have an informal component with some pretty strict constraints around it time-wise, like maybe 45 to 60 days, with some strong Staff leadership where you sit down with the parties and talk about not only the ERCOT agreement straw man, but at the same time talk about what would a recommendation look like to publish as a NOPR on some of these cost issues that you've teed up there.

Is that a doable type thing? How will we efficiently pull together the parties that really do want to talk about both sides of this coin? Because I find it virtually impossible at this stage to talk to a member of the industry without them wanting to talk about both aspects of this together. I thought well, if that's what they want, maybe we ought to handle our process that way. So that's kind of a late thought here in the process.

Any feedback or thoughts about how that might be useful?

MR. WENTWORTH: Certainly there is always a problem when you try to separate very closely-related issues of the definition of what interconnection is from who bears the cost for that interconnection. The reason I guess we proposed the two step approach is we felt that the first step could be done fairly quickly and with relatively little controversy and get something out there in terms of standard procedures, a standard agreement that would speed up the process essentially of getting new generators on line.

It could be that without knowing all the cost consequences or where the Commission is finally going to be on cost responsibility that in fact this may not speed things up that much. That would be a piece of information that would be very useful if we could get a reading from the generators and transmission providers on that.

MR. LARCAMP: To the extent that the pricing cost responsibility issues are not resolved up front, there are about half a dozen to ten going through the EEI standard agreement that has been floating around town. There are about between six and ten additional provisions that are in the those agreements that need to be there if the Commission sticks with some version of direct assignment for the transmission system upgrade costs. There is an explicit reference in that document that many of those provisions go away to the extent that the Commission moves off the direct assignment approach for those upgraded facilities.

Having said that, I think there is a lot of similarity between the ERCOT standard interconnection procedure, what EEI and EPSA have put together, and it would be my hope that Staff could incent, cajole, whatever term you want to use, the parties themselves to moving forward, to coming up with a unified document. Certainly on the terms and conditions I think to be most effective now it needs to focus on individual transmission owners rather than, for example, what might be appropriate when you are in an operational RTO world because I think some of the issues are very different, perhaps including the cost responsibility and assignment issue in those operational circumstances than we have today.

But I do think that to the extent we can try and

forge a consensus through informal discussion that the Commission will be better informed and ultimately in a position to adopt something that is more workable or has a better understanding about what are the sources of disagreement than merely, you know, reams and reams and reams of paper. I think that we may be able to standardize through these discussions an awful lot and to focus sort of the key disagreements, perhaps encouraging the parties to develop pro/con pieces for the Commission so that very quickly the Commission can understand and appreciate what the rub on these issues are, make the decisions and move forward.

COMMISSIONER BREATHITT: I find the whole concept of doing an advance NOPR, which I haven't had the opportunity to proffer since I've been at the Commission, but I think that's a sound idea in this case as a reasonable approach to look at the contractual issues involved in developing more standardized interconnection agreements or IAs as we call them now.

I do view the development of interconnection procedures as separate from cost responsibility issues and I think they are two distinct issues that don't necessarily have to be addressed in tandem, although they could be. I mean, if it hangs up the development of coming up with interconnection protocols, I wouldn't want the fact that we

can't settle the costing issue to hold us up on that because I think that's a good goal in and of itself is coming up with these standards.

So I am supportive of putting a straw man out as a proposal on contractual issues and we'll see how we do on others. I think the goal of the first step would be to address both the generators specific concerns and also to address the transmission providers concerns as well. I think the ERCOT model has some good elements such as established time lines for action on the generators' parts and the transmission providers' parts and responsibilities. However, I think we also have to look at model agreements in other parts of the country which also may have good features, such as multiple product choices that PJM has and greater transparency on where interconnections may be done with shorter delays such as Commonwealth has on its Oasis site, and where there are no queues in ERCOT for example. Queues exist elsewhere and that needs to be sorted out because in some areas queues may be a good thing in terms of the competitive rush to get plants sited.

So I endorse the NOPR's goal of standardization and really was glad to see that in the Grid South Order, we did notice EPSA's filing to get the Commission to finally consider more standardized approaches to interconnections. And I welcome comments on how best to achieve this goal.

With respect to the cost responsibility for network upgrades, that is of utmost importance. Additional generation is needed in many regions of the country and how these costs are attributed is critical to ensuring fairness to ratepayers and making sure that most siting decisions are economically brought forth. There are a lot of factors associated with costs such as the difference between new pipeline construction versus new transmission construction, and which costs more.

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I think transmission construction from what I've heard is much more expensive than new pipeline construction, so siting closer to load pockets or your gas supply source versus closer to the delivery point is a consideration.

Also you have states with virtually no siting authority by their state commission or no siting board at all, so it's easy to get real estate in certain states and site in certain states. I know in Kentucky there are about 50 power plants in line to be built, 25 grandfathered before the governor's moratorium and 25 more waiting at the door of the environmental agencies. And there are no siting laws in Kentucky, so you have this occurrence now in the country of states where it's easy to site but the load may be much further away, so the cost of upgrading transmission may be more in a state like that.

So it needs to be -- we really do need to think through who pays and the fairness of all of that and whether or not it's easier to site nearer the production fields because that's where it's easier to get the gas supply and the transmission upgrade might entail miles and miles and miles of new construction or a new site closer to the load built, a lesser expensive pipeline.

So there are lots of things to think about as we do the cost approach to this, but I think it's time to do this, and I am glad that you have brought forth this

discussion today because we need to be considering all these or it'll be next year before we have new sound policies, well into next year before we have new sound policies in place.

CHAIRMAN WOOD: I'm thinking about a couple things in your thoughtful comments, Linda, and I think -- are you comfortable with kind of doing one and the other, or what are you thinking about that kind of process?

COMMISSIONER BROWNELL: I actually would prefer to split them in two, and I'll tell you why. That's where the baggage is.

CHAIRMAN WOOD: Let's get the easy win and knock it in and then duke it out after the second half.

COMMISSIONER BROWNELL: I like Dan's idea, too. Let's get the consensus where we can and put some options before us. We get paid the big bucks to make the tough decisions and we can do that. So where there's consensus, let's get there.

COMMISSIONER BREATHITT: I agree.

CHAIRMAN WOOD: The strawman process is something really we had to do out of necessity in Texas because we had to do forty-something rulemakings in about 18 months, so we got kind of the best idea in the shop out there and had everybody really work it down to three issues that they just couldn't resolve, almost all of which related to money. And

then the Commission made hopefully a fair, balanced and judicious cut, and when we put that out for comments, you got comments that were about that short. So the turnaround time on adopting the rule was that much shorter.

So it was administratively beneficial, but it also allowed parties to kind of bond through the process and really realize they've got a lot more in common than pushing them apart, which is a nice healthy thing that doesn't usually come out of a regulatory arena.

So I'm real comfortable with that process just as a general matter. I think this is an easy one to do it with. It may be a little bit of a culture change, but I think with our front line there twisting arms and taking names and helping facilitate, among other things, I call that strong arm tough love good friend, all right? You're all of the above. We are delegating this to you.

MR. LARCAMP: You won't insist that we wait on the formal strawman to initiate the discussions on the strawman, will you? My expectation is that we will probably want to have our first meeting here in Washington the week following RTO week, which is after next week.

COMMISSIONER BROWNELL: Unless RTO week goes into RTO month. You never know. Can I just add a couple of thoughts?

CHAIRMAN WOOD: I just gave him the strawman that

Mr. Wentworth and team have recommended, so it's printed from the ERCOT Web page. It is Texas specific, so caveats accepted. But -- and absolutely, if there's something better out there, use it. We just had the same folks. We got two cats. We're going to throw you in a burlap sack, and if you both live when you walk out, we'll adopt your agreement, and they did.

So you had the EPSA crowd, then the EEI crowd or their Texas equivalents in there duking it out. You mentioned Elcon yesterday. There were some industrial folks because of their interconnection needs when they're doing self-gen or cogen, which is useful. But everybody would be included in that, just like certainly the TOs and the generators are the ones right now. I'm sorry.

COMMISSIONER BROWNELL: That's okay. Also the Commission has done some work, so I think we ought to look at some of the best practices not only in the states but here. Let's not throw out what I know represents some really thoughtful work that you've already done. Please pay attention to those small, renewable projects. I'm not sure we need to treat every project the same. And what I've seen is that this is a real barrier to entry for many projects, but particularly for those thinly capitalized, smaller projects who seem to end up with the same expense loads that the larger projects, and it doesn't make any sense to me.

The other issue I think is that the queuing issue is complicated and not fully understood and really needs examination about whether that is successfully bringing projects or it creates some artificial barriers when people have financing in place and other people get delayed. So let's take a look at how that's being applied and the equity of that. But I'm excited. We're going to get this done.

COMMISSIONER BREATHITT: I think one of the good things about this particular initiative is that everybody's ready for this. The Commission's ready for it, the generators certainly are, and I think the transmission providers want better procedures so they don't get constantly bombarded with more inefficient ways to handle these interconnection requests. So I think everybody's ready for this, and I think that is a real positive note to start on.

CHAIRMAN WOOD: On the pricing issue, Linda, you raised some interesting issues there in thinking through kind of what task lies ahead. It seems like there are in my mind two steps. First of all is what gets allocated between the transmission owner and the generator. I think the Commission as I finally understood the policy over the past couple of months, and I think Consumers Power, is that the caption of the case? That is kind of the latest and greatest.

There's a general allocation of the cost of most costs. Certainly anything other than strictly local costs to the transmission owner. So my earliest advocacy for that, and I wrote my first concurrence that I wrote in my first week here has really come around.

I've been kind of educated by folks on the outside and on the inside. But as far as the kind of core cut between what is borne by all and what's borne by the local guy or by the generator, it seems to be pretty consistent with the world I'm from. So that allocation issue is step one.

The second issue has been how are those common costs recovered across all the users of the grid, or even the RTO, which I think is an issue you and I talked about. Those two things are kind of like two steps, but it's kind of hard to unravel them. But the license plate versus postage stamp versus distance sensitive which I talked to the CEO of a large transmission owner in the south and the concern you pointed out is very similar to the one they've raised.

I think he also testified on this yesterday with Joe Barton's committee. But you've got mileage-sensitive gas rates, so you want to be on the shortest possible gas line. But you've got kind of one-size-fits-all electric transmission rate. And so you really don't have a real

strong incentive to do what in the vertically integrated utility world, one of the benefits of that was that because the money all came out of the same pocket. That company tried to optimize the use of transmission and generation because they were all under the same umbrella and had the same goal, which was to get the best product to the customer at the lowest cost. At least we hope that's what regulation did.

With that decision now being made by two different companies, one of which is regulated and one of which is not, we have the potential to lose and we may already have lost some of that synergy. I'm pretty open if there's a better way of capturing that back. I don't know if you have to do that only through how you allocate rates or how you design rates for transmission.

If you have to go back to mileage distance-sensitive rates, it starts to bring back a lot of market power concerns for me, because by using distance-sensitive rates, you really do shrink the accessible market on an economic basis. That was my big reason for supporting a postage stamp rate within ERCOT. It really made ERCOT generation accessible to someone all the way across the pool, so wherever you were on the interconnection, you could get access to the transmission for the same rate.

Transmission congestion really does kind of come back in and

create that price differential.

There are other things that add to a customer's final delivered cost that reflect the fact that he's actually putting more stress on the system by buying from a wind generator who's intermittent, who's across the grid. There will be some accountants made for that. It may just not be in the way we allocate fixed transmission costs. He may get that in his losses or in his ancillary services or in his congestion management fees better if they're directly attributable to him or the customer or the generator or both.

There are a lot of interplaying issues here on the cost side. I want to stick to that aggressive timetable, but I think it's going to be a pretty key issue. But again, when you solve the money issue, everything else kind of gets settled pretty fast. I think this one's a big one, and I'm not shy about jumping into the battle, but I think we need to recognize that, quite frankly, if we resolve it, we probably will get a lot more buy in to the broader agenda.

So there's a second reason for this being early. One is to take the easy win, but two, to solve probably one of the more contentious issues out there, which is recovery of large investment that we all know is needed, and how to do that fairly and do it in a way that incentivizes good

behavior as far as investment in appropriate places and efficient use of everybody's money. If we get this one, we may have the rest of this agenda just slide right down the chute. And I didn't use an animal analogy there either.

(Laughter.)

COMMISSIONER BROWNELL: It depends on what your dreams are like.

CHAIRMAN WOOD: I've been sleeping a lot lately. He was up at 4:30 last night and so was Daddy. Well, we've got a game plan here. We've got a strawman to go with, and just for those of you who don't know me, ERCOT ain't the be-all, end-all. I think it is.

(Laughter.)

CHAIRMAN WOOD: But I know it isn't up here, so feel free to use your red pen on that contract a lot, because I didn't write it. I just voted on what people negotiated out.

MR. LARCAMP: Does that include the jurisdictional provision?

(Laughter.)

CHAIRMAN WOOD: Absolutely. For the record, that would be a no.

(Laughter.)

CHAIRMAN WOOD: But thank you for asking. Okay. Game plan is to go out with this. Do we need to formally

call it an ANOPR? Cindy?

MS. MARLETTE: I think you have a lot of latitude. You can call it a Notice of Intent to Initiate a Rulemaking Proceeding. But I think the point is to publicly put it out there so these guys can get to work on negotiating so we can play with the titles.

CHAIRMAN WOOD: If you've all got that up, put it up in a hardback notation. That would be fine, rather than wait for the next meeting, if you all get that so we can have a quick turnaround and publish what is the ultimate work product from that effort as ANOPR. And hopefully, that will be a pretty quick turnaround which we want to put forward in this presentation, and then the other aspect can start.

You're going to have the same parties in the room, you might as well, once you get this figured out, start talking to them offline about suggestions on how to deal with the cost issue. I know it's not traditional to do a cost issue in ANOPR, but I think we committed that we're going to, and that's a good way to get everybody's input and good thoughts about this.

But I would just encourage that that discussion be inclusive of not just the narrow issue that we deal with in Consumers Power and other cases about these dollars are attributed to the generator and these are going by the TO,

but talk about how costs are actually shared across the system and what kind of price signals get sent by this charge and by any other charges so that we could get good siting decisions made by the market. This does apply to all generators, right?

MR. LARCAMP: I think that would be Staff's intention, that anyone that's interconnecting to the interstate grid that's owned and operated or controlled by a public utility would be required to follow this interconnection procedure.

CHAIRMAN WOOD: Even if it's that public utility's corporate cousin or sub-unit or whatever?

MR. LARCAMP: That would certainly be my preference.

CHAIRMAN WOOD: Good. I just wanted to make sure about that. I would agree. Is that fine with you all? I thank the interconnection study team for your good work for the parties' interest.

The discussion items are going to be available on the Web page later today. Copies of those for people's interest, and we will vote the, you know, PR notationally so Bill has a chance to participate in that as well.

RTO Week?

SECRETARY BOERGERS: We've issued the notice with the names, and I'm sure it's on RIMS, et cetera. I believe

it's on the Web site.

CHAIRMAN WOOD: It's on the Web site? Okay. And like all the notices we issue, it's in RIMS and it's in CIPS too.

Before we go to the next posted item, we did strike Item E-2 relating to market-based rates. Bill isn't here today, but we're also just having a good internal debate about how to deal with this issue. It's pretty important, and I just wanted to say publicly that we're very committed to acting on this, but we're also talking a lot about it and making sure we're doing the right thing.

COMMISSIONER BREATHITT: Mr. Chairman, I am having a few misgivings about having signaled my support for the adoption of the new SMA screen that we informally adopted at our last meeting. The reason is because I have not learned anything in the past two weeks that gives me assurance that we really understand the ramifications of adding this new screen. So I just wanted to publicly say that and urge us all, the Staff and the Commissioners, to not move too hastily forward until we've had the opportunity to flesh out its details and how we're going to work it.

I guess my real opportunity, though, will be when we get our first applications of it and the backlog of cases that Staff has that they're anxious to get out. And then after that I guess the new applications for market-based

rates.

So that will be my opportunity to I guess publicly talk about it. But I just wanted to say that I hope that we spend as much time as we need to to make sure that we know how to do that and that it's done in a fair way.

CHAIRMAN WOOD: I couldn't agree more. I think in general my thought on discussion items is that we use those to give Staff our leanings and direction, but we really aren't committed until we sign the vote in its application to a particular case. So I look forward to those as well. Shelton or Cindy, do you all have any idea where we are in the process on either the triennial reviews or on new applications for market-based rate authority, where the new tests would be applied? Were we going to see some at our next meeting or subsequent meetings?

MS. MARLETTE: We do have a number pending. Given RTO Week, they may not be ready for the next meeting, but shortly thereafter.

CHAIRMAN WOOD: So we'll deal with that probably this calendar year. Okay. We'll take that up then.

SECRETARY BOERGERS: The next item for discussion is E-9. There's a presentation for the Staff by Rahim Amerhal.

MR. AMERHAL: My name is Rahim Amerhal. E-9 is a

draft opinion, an order addressing issues associated with the initial decision in Docket Number ER98-1438 et al addressing a separately briefed issue involving return on equity and addressing issues -- addressing from supplemental filings arising from the same proceeding regarding the initial decision. The draft opinions merely affirms the Presiding Judge on eight of the ten issues he dealt with and provides clarification regarding the remaining two issues.

Those issues are the appropriate form of the Midwest ISO cost adder and the conditions on the use of network service to serve bundled retail load during the transition period.

The draft opinion, one, directs Midwest ISO to place all loads under its open access tariff for purposes of calculating and applying the Midwest ISO cost adder. And two, affirms the transition period restrictions on use of network service to serve bundled retail load. Regarding the separately briefed ROE issue, the draft opinion rejects Midwest ISO's proposed 100 basis point adder to return on equity without prejudice to the filing of a new request consistent with the Commission's requirements for innovative rates.

Finally, the order addresses Midwest ISO's supplemental filings in various dockets which, one, revise the loss factors for transmission owner participants; two,

conform the Midwest ISO's open access tariff and owners' agreement with the requirements of Order 614; and three, modify the Midwest ISO's open access tariff and owners' agreement to, among other things, facilitate expanded membership in the Midwest ISO.

While Midwest ISO's status as an RTO is not before us in these dockets, the later filings addressed in the order address matters related to Midwest ISO's intent to comply with Order 2000. Action on the matters addressed in the draft opinion and order should facilitate Midwest ISO's goal of becoming operational on December 15, 2001.

This concludes my presentation. Thank you.

CHAIRMAN WOOD: Thank you, Rahim. Nora, Linda, any thoughts or questions?

COMMISSIONER BREATHITT: Yes. I support the order before us and would like to make a few comments about the rulings we are making today.

First, the order rejects the proposed 100 basis point adjustment to return on equity. But I would like to highlight the fact that this rejection is without prejudice. Two, the MISO's making a new rate filing to support an innovative rate proposal pursuant to the Commission's requirements for such proposals. The order further endorses the concept of innovative rates and pledges the Commission's commitment to give prompt consideration to an innovative

rate proposal by the Midwest ISO.

I endorse this approach because it gives the ISO flexibility to file a proposal that is constrained neither by a record that has become older. I think the record is -- how old is it?

MR. AMERHAL: To the extent there is a record on the ROE, it's from '98.

COMMISSIONER BREATHITT: Nor by the 100 basis point limitation on the amount of the ROE adjustment.

I would also like to comment on the decision to apply the cost adder to bundled retail load and grandfathered wholesale load. This is one determination on which I spent some extra time with Staff to become fully comfortable in light of our decision in '98 to accept their proposal not to place existing bundled retail load and grandfathered wholesale load under the MISO's tariff.

But in the intervening time, in the context of Order 2000 and RTO development, we have explicitly required that an RTO must be the only provider of transmission services over facilities under its control, a feature that I endorse. So the MISO's goal is to be up and running by December 15. And it is incumbent upon the Commission to provide as much certainty at this time as we can. And I believe the best guidance we can give the MISO at this time must be consistent with Order 2000 and with other RTO

rulings in order for the MISO to proceed as efficiently as possible.

But I'd like to note that the order grandfathers current rates for bundled load. The difference is that we include the adder for bundled load. Is that correct?

MR. AMERHAL: Yes, that's correct.

COMMISSIONER BREATHITT: Thank you.

CHAIRMAN WOOD: Thank you, Linda.

COMMISSIONER BROWNELL: This isn't limited to the study team, because it's a broader question that was brought up by this case. How much financial information do we have on existing ISOs or the RTOs' information? Are we getting regular reports? I know, for example, PJM files their quarterly reports, and all of them I'm sure give them to their boards on their Web site. But what do we know about the costs that are being incurred that are ultimately going to be passed onto ratepayers?

MR. CANNON: Just like any jurisdictional public utility, ISOs are required to file yearly Form 1 and are required to give us sort of the cost data associated with that. But that's pretty much it.

When they make an original filing, obviously we get into issues like this about what are the startup costs? Are they reasonable? That kind of thing, and who should bear those costs.

COMMISSIONER BROWNELL: I would like to see Staff make a recommendation to us about what kind of financial information we are getting and whether it is adequate so that when someone says to me, tell me that you are sure your oversight includes a reasonable review of costs, then I can say absolutely. I'm a little concerned that we don't have a handle on that, and I think it's important as we increasingly get those questions that we be able to confidently answer it.

As far as, you know, potentially having a burden on the company that's forming, I would argue that anyone with a business plan who is not keeping track of their budget probably ought not to be in business. So I don't view it as a burden and would hope that they would not either.

MR. INGRAM: Commissioner, if I could add with regard to the Midwest ISO's report, they have posted financial information on their Web site. We pulled some of it off. Some of it's kind of dated. One posting was dated November 15th, 2000. We have an idea with regard to them sort of where they are, but it would be good to follow up with some more formal requirements.

COMMISSIONER BROWNELL: I think that people have a reasonable right to expect that oversight of this includes some regular review of that. We've seen at least one

instance in the early formation of an ISO where costs were deemed to get out of hand. So let's really pay very close attention to this. Thank you.

CHAIRMAN WOOD: On that issue, which was Issue B in this case, the justness and reasonableness of the ISO cost adder. I'm trying to understand why even if you had a frozen retail rate, a 15-cent-per-megawatt-hour charge would not be offset by the cost that the utility is no longer performing that have been transferred to the MISO. It may not equal 15 cents. In fact, it probably should exceed 15 cents once you back in the other rates.

I just kind of wonder where do we ever kind of take on that argument that consolidating a lot of reliability planning operation, one-stop shopping, et cetera, et cetera functions that a utility has to perform pre-ISO, pre-RTO, those costs no longer are being incurred by the utility, or at least they're not being incurred to the extent that they used to be. I just want to state for the record, I don't buy into the argument that ISO costs are actually incremental to the overall costs of power going in these regions.

The point of it is that putting a lot of these functions into a single clearinghouse should drop the costs to everybody across the ISO or RTO. We addressed it well here. The parties are trying to sell that, fine. But I

wouldn't give any ground if we or our Commission Staff, if these ever go to litigation, or anybody else that's worried about the customer paying the bill, how to make sure that the corresponding costs come out of the existing utility's rates.

My experience in ERCOT shows that they come out five times as much as they go up on the ISO. We will do our cost benefit studies for RTO Week as needed, but it should be a no-brainer that you're consolidating functions that are being duplicated across multiple utilities and multiple control areas into a single officially run entity, costs savings ought to be pretty easy to make. So I support the conclusion on Issue B. I really support, as Linda explained, the core conclusion there is that it's consistent with how we have moved from when this case was filed to where we are in kind of the post-2000 world, and I think that the language in the order captures that beautifully, and I agree with you that that does that well and reflects where we are today.

The 100 basis points issue. I guess my only recommendation on that one, which I understand didn't really sell, but I want to at least lay it out anyway, was there had been a proposal here on a litigated record to go ahead and provide -- I do like the words "innovative rate requirement". Heck, it's just paying them for being

independent, which is what we want them to do anyway. So carrot, innovative rate requirement, whatever we're calling it, I would have said -- I would have approved it based on the pleadings in this case. But I would make it effective on the date that we find them an RTO.

I guess the only difference between the recommendation that's in the order and what I would suggest is really just it saves you a bunch of attorney fees of having to go through another filing again. But Linda, your point was a good one, and so I'm going to revise my earlier recommendation and agree with you on it, because time has changed. They may not be limited to 100 basis points. I think independence of the operation of this grid through what is I think with each day becoming a larger and larger organization, which is a very positive occurrence, is worth a risk premium adjustment. And I think this record here actually limits it to 100, and it limits it to kind of an old set of facts and arguments that quite frankly it may be worth making again. If somebody doesn't agree with us, then we've got a strong case as to why we did it. Thanks for your rationale. That actually helped me change my mind right up here, which is why this stuff is so fun.

Okay. Anything else?

(No response.)

CHAIRMAN WOOD: We're all done with that one.

What I'd like to do is I think we've got two other items today to enable Bill -- Bill pleaded to be included as a voter, and I was told by lawyers we can't just make him a yes vote. If we could put this in the hardback this afternoon and circulate that notationally with these other two items or three items on the agenda today, then rather than call for a vote now, we'll do that and issue those in the next day or so, if that's fine.

SECRETARY BOERGERS: The next item for discussion today is E-15. There's a Staff presentation by Jignasa Gadani.

MS. GADANI: Good morning. My name is Jignasa Gadani. This is Valerie Martin, my fellow team member. The item for discussion is an order on rehearing concerning Carolina Power and Light, the company's revisions to its open access transmission tariff energy imbalance provision.

The draft before you grants rehearing on the issue of whether it is appropriate to credit to transmission customers the revenues CP&L, the transmission provider, receives from energy imbalance penalties. In an earlier order by the Commission accepted the escalating imbalance penalties under Schedule 4, Ancillary Service, but the Commission did not require a crediting mechanism as requested by the intervenors.

In this order on rehearing, CP&L is required to

set up a mechanism to credit energy imbalance penalty revenues to nonoffending customers. This order follows the Commission policy adopted for gas pipelines in Order Number 637 and encourages the promotion of market-based energy imbalance solutions. Thank you.

CHAIRMAN WOOD: I'm fine with that conclusion and really wanted to call it separate today to announce, as I want to traditionally do, if we are announcing a change of policy, rather than just let that be something that our good friends in the press figure out over the next couple of days, that we actually announce to the world that we're doing it.

I am comfortable with this, that the electric imbalance penalties are treated much as we just heard from Gary Marenholtz's presentation on OFOs, that those penalties are credited back on the gas side to customers. And I think while there may not be perfect parity between the two agendas, to the extent that kind of basic shipper customer issues can be dealt with the same, I think that makes a lot of sense to me.

So I'm not persuaded that this is a huge problem or a big profit center or all those other arguments that some people make. But I think in the interest of parity, it should, on a going forward basis, be fixed. I don't want to see us go back into some kind of complicated deal about past

performance. I would just say make it simple and going forward, and then start booking these things appropriately going forward, and I think the order made sure that that was a prospective remedy, not something we go back to do in the past.

COMMISSIONER BROWNELL: I just wanted to say thanks to the Staff who worked over the weekend on a redraft when we rethought this issue and made you change. I also think it sends the right economic signals. It's not only the right thing to do, I think it sends the kind of signals we want to send. So thank you.

COMMISSIONER BREATHITT: I think the key issue in this proceeding is whether the penalty revenues received from energy imbalances should be flowed back to customers, and we've made that decision that it should, which is new. While the Commission has required crediting of imbalance penalty revenue for gas pipelines, the Commission has not to date explicitly required electric transmission providers to credit to customers revenues collected from energy imbalance penalties. And this order requires such crediting.

While I am supportive of the concept that penalties in excess of costs should flow back to customers, and my colleagues convinced me of that, I have concerns about how the mechanism will actually work. Today's order requires the penalty revenue to flow back to nonoffending

transmission customers. As there are complexities involved in determining who nonoffending customers are, I just wanted to be sure that this is the best method to flow back penalty revenues. And so I just wanted to raise that point here today. But I am willing to look at other reasonable approaches to address the crediting issue.

But the goal of returning penalty revenues to customers I think is a good one.

CHAIRMAN WOOD: Would you want to edit that thing to delete "nonoffending" and just say to credit energy imbalance penalty revenues to customers and then let them come back in with some mechanism that may include "nonoffending" or may not? Because I'm open. It does seem a bit --

MS. FERNANDEZ: One reason we've traditionally said nonoffending shippers, you have two parties you want to send incentives to. You want to send incentives to the shippers not to engage in behavior that's harmful to the system. And you want to set up the crediting mechanism so that a shipper that pays the penalties doesn't get all or most of it back so that you lose that incentive.

CHAIRMAN WOOD: Nonoffending on gas, Alice?

MS. FERNANDEZ: In Order 637 was that the preference was for nonoffending shippers. If that could be done easily. If it was something where the level of

penalties were so small that the amount that was going back to the offending shippers was so minor it really wouldn't affect those basic incentives, that could also be done.

That was why the preference for nonoffending shippers was put into 637.

COMMISSIONER BREATHITT: Do you have a nonoffending party today at one o'clock could be an offending party at three o'clock? So it's just the mechanism to figure it out that has to be crossed.

MS. FERNANDEZ: I think in this particular case, there's one shipper that may be the main one who would be incurring the penalties. So I think the intent here was to set it up so that shipper would not simply get the money back for a credit, and that it will be more widely dispersed so that you kept the true incentive nature of the penalty for that shipper to follow the rules.

CHAIRMAN WOOD: In that case, I'd rather the pipeline keep the money than to go back to who has caused the problems.

COMMISSIONER BREATHITT: Because this is precedent setting, it will be practiced on many, many transmission systems. So this case may be for one shipper, but the application will be across multiple transmission systems with multiple customers. So where this might have been an easy resolution to reach in CP&L, it may be more

difficult in other instances.

MS. MARTIN: I just wanted to clarify that while it only affects one shipper or a transmission customer, there are other transmission customers who dynamically scheduled their load so if they fail to dynamically schedule their load successfully, they would also be subject to any energy imbalance penalties also.

COMMISSIONER WOOD: Good. I think I share Linda's issue that there is something on the compliance filing that needs some flexibility here. I encourage the company and parties to do that so that it is administrable.

Okay. Ladies, thank you all very much. Brian, I think you're leaving us soon. I wish you all the best. We'll miss you.

SECRETARY BOERGERS: The next item for discussion is H-3. John Clements has a presentation for the Staff.

MR. CLEMENTS: Thank you. Good morning. H-3 is an order approving a settlement agreement and issuing a new license to Pacific Gas & Electric Company for the McColney River Project Number 137. The settlement is the result of a collaborative process that was assisted by the Commission Staff and it brings to close our longest running licensing proceeding.

The settlement has a lot of benefits. First, the project will continue to generate over 200 megawatts of low

cost power. There's a lot of environmental enhancements. There are stream flows, changes in the way those will be run, changes in reservoir management, increases in water quality provisions. There's also an adaptive management program for aquatic resources, and that's going to be managed by a multi-party ecological resources committee, which is composed principally of stakeholders who sign onto the settlement agreement.

There is going to be a fund for additional nonflow mitigation enhancement measures that may become necessary. There are wildlife protection measures. There are water quality and other environmental monitoring provisions, programs for that.

There are in addition flows for whitewater boating and new whitewater boating access facilities, and there are going to be substantial improvements to the existing recreational facilities at project impoundments. All these provisions are adopted and incorporated into the license document.

In addition, the Commission is adding reopener provisions on fish and wildlife, water quality and other items that will enable us to help make sure the project continues to be operated in the public interest over its 30-year life. Thank you.

CHAIRMAN WOOD: Thank you, John. And the 30

years starts today, right?

MR. CLEMENTS: It will start the first day of the month in which we issue the license, so it will be the first of the month.

CHAIRMAN WOOD: I was in the third grade when they filed this one, guys.

(Laughter.)

CHAIRMAN WOOD: I was thinking of all the things that have happened. I mean, this was pre-Donna Summer.

(Laughter.)

CHAIRMAN WOOD: That was my dating standard. Do you know Donna Summer? If the answer is yes, then I can go out. It was before Jimmy Carter. It was before Watergate. It was an early day.

I want to call to the attention one good paragraph on page 13 of this order. The Commission encourages settlement agreements that resolve licensing issues in the public interest. We commend the parties, the members of our Staff who assisted their discussions, for their successful effort to reach consensus on a broad range of issues involving the operation of this project to bring this lengthy proceeding to a close and to develop a sound framework for a continuing collaborative approach to the management of this project in the public interest.

It does -- one could point fingers about why

something takes 28 years, but when you read the order that we put out today, you realize that it is really a very, as there are in this country, pristine area with a lot of very intensely interested parties who want very different outcomes. And I do think that that is a recipe for a very intractable process.

I want to say publicly as I have gotten to work with you all and have gotten to know some of the people in our sister agencies just how difficult position we're in with a very meager bag of statutory carrots and sticks to work with. That this one got done at all was probably something short of a miracle, but not far from it. And I do want to thank you all who have done your efforts on making this work and people at the agencies and the company as well for kind of slugging it out.

I hope in my tenure I do get out to this project, because just reading the background of the project and all the lakes at this level -- and I can just imagine in my mind just what a nice place this is. But I'm glad that this project is done and look forward to voting it out so that the 30 years can start prospectively.

COMMISSIONER BREATHITT: Hear, hear.

COMMISSIONER BROWNELL: I'd just like to say I think we've made great progress in terms of how to collaborate and work with the stakeholders. The Staff has a

lot of recommendations as to our sister agencies. So hopefully this is the last 26-year-old case. No matter how young you were, Pat, you're not that young.

(Laughter.)

CHAIRMAN WOOD: The gray hairs are starting to stick out. Can we get, and it's not what I would call a one-week project, but within the next three weeks -- and Mark, maybe I'll focus this question on you -- can we get a list from in the most recent years what we've got pending here so we can in some public form sit down with the Commissioners? In fact, I committed to the Senate that I would do this shortly after coming to the Commission and have not done so yet. But would like to take these more intractable cases and get the people from the relevant resource agencies, either here or on the phone, sit down with us and just kind of work through why we're not where we need to be on these older cases and just try to put a bright spotlight on this to build our bridges through both the CEQ process that we're part of and the fact that we've got new agency heads here in town, to maybe try and thaw some of the ice on some of these proceedings.

But if we need to kind of get a fact-based first, if you all in the next few weeks to get that to me and my colleagues, that would give us something to start with.

MR. ROBINSON: We have such a list and it won't take us a couple of weeks. We'll get it to you.

Just a couple of quick comments. I want you to understand I was not here when this was filed in 1972; I've been here a long time but not quite that long.

(Laughter.)

MR. ROBINSON: Second, this project, as complicated as it was, also had a significant complication and I just want to put the spotlight on it for a second. It was sort of the poster child for the muni preference issue that affected projects back in the seventies. From '72 to essentially 1990, the Commission, the courts, and Congress, all three too whacks at that particular issue. And it went one direction, then another. And it took that period of time to get a handle on what happens to these projects at relicensing when a municipality wants to compete for it, so that was an issue that's behind this, and I was here during that, but not in '72.

CHAIRMAN WOOD: Good point. Thank you all very much.

SECRETARY BOERGERS: Perhaps I shouldn't say that, but I think I was here when that was filed working in hydro.

(Laughter.)

SECRETARY BOERGERS: Which is one of the reasons

I probably won't be here much longer.

(Laughter.)

SECRETARY BOERGERS: The last item today is C-1.

I don't believe there's a presentation on that.

CHAIRMAN WOOD: We do or we don't?

SECRETARY BOERGERS: No.

CHAIRMAN WOOD: I called this one separate. This was an application by East Tennessee to enhance its current pipeline facilities in Tennessee and Georgia to provide new gas transportation primarily to a gas-fired electric power plant in Georgia, and they have some incremental facilities and this certificate approves those largely. I was intrigued by one argument raised by our friends again at the American Public Gas Association in here which showed up being addressed on page 19 of the Order. And it raised a policy issue that I've kind of heard about kind of underneath a lot of discussions but never really thrown out there.

I wanted to just throw it out there today. I'm going to read from the Motion to Intervene In Protest of the APGA in this proceeding.

This application highlights an issue of industry-wide significance. The proliferation of pipeline construction projects developed to serve the large loads of newly constructed gas-fired electric generation plants,

without consideration of the impact of these projects on the nation's gas customers. During this time of skyrocketing natural gas prices, APGA questions the wisdom of certifying the construction of facilities like those here that are primarily for the purpose of providing transportation to new electric generating plants reliant on natural gas. Such development can only exacerbate the already serious gas pricing situation, thereby increasing the resultant financial distress now being experienced by natural gas consumers.

I'm kind of concerned at that approach. I don't think it is our job to question why anybody uses gas; I think it's our job to ensure that the market and the customer can talk to each other by use of a healthy and robust grid.

And just as I don't want to question the development of whether you use electric or natural gas to furnish heat for dryers as a residential customer, I don't want to indicate that electric generation by gas is a second class citizen in our energy universe.

And so while I appreciate the concerns that these folks raise here, I do think we need to kind of say, as this order quite firmly does on page 19, that the Commission has every confidence in the ability of this pipeline and others to add service for electric generation under terms and

conditions that protect other customers from undue discrimination or degradation of service. Further, it's the Commission's long-held view that the public is best served when gas prices are dictated by competitive markets balancing supply and demand, rather than by efforts to restrain the demand artificially.

I think this country made a very costly decision to determine that electric generation companies could not burn natural gas in the mid-seventies. That caused a lot of investment in nuclear power and in coal power, where it would probably have been the wise thing to do, what they did a decade later, which was get government out of the business of setting the price of natural gas and let the market find its own level, but because the government kind of decided who wins and who loses, way back in the seventies, we all ended up paying a whole lot more than we should have over the last 20 years.

I want to gently but firmly reject the kind of suggestion that we would have a regulatory choice to make and who wins and who loses. If you pay the money and you have a contract, I think the Commission's certificate policy has been pretty direct. These are business risks that are borne by the customers whether they're an LDC or a gas generator power plan or an industrial customer or whomever.

I'm comfortable with that state of affairs and

look forward to any feedback or discussion from staff or parties on ways to maybe ameliorate concerns that were raised by APGA, but I don't think one of the ways to do that is to say you therefore can't build a pipeline to a gas plant.

COMMISSIONER BROWNELL: Pat, I'm glad you highlighted that because it's an argument that has been made in various quarters. There isn't any evidence to suggest that one set of customers is in fact being disadvantaged. To the contrary, I think industry participants are looking at the different demands and different utilization patterns of the different kinds of customers and trying to plan accordingly. I've seen some pretty good work and heard some pretty good discussion, so I think we all need to work hard to make sure that those perhaps disparate treatment isn't happening, but also to tell people that in fact it isn't. So we don't raise the level of alarm that frequently isn't borne out by the facts.

CHAIRMAN WOOD: Okay. Anything else on that one?  
Linda?

(No response.)

CHAIRMAN WOOD: So we will vote those prior four items out notationally in the next day or so and in all other regards, you can have your lunch.

The meeting is adjourned.

(Whereupon, at 11:45 a.m., the meeting was  
adjourned.)