



## APPEARANCES:

## COMMISSIONERS PRESENT:

CHAIRMAN PAT WOOD, III, Presiding

COMMISSIONER LINDA KEY BREATHITT

COMMISSIONER WILLIAM L. MASSEY

COMMISSIONER NORA MEAD BROWNELL

ACTING SECRETARY LINWOOD A. WATSON, JR.

## ALSO PRESENT:

FRANK A. SMONSKEY, Court Reporter

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

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

Please join me in Pledge of Allegiance to our flag.

(Pledge of Allegiance.)

CHAIRMAN WOOD: Before we go into the substantive part of our agenda today, I want to make one announcement and one presentation.

The announcement is I have asked Cynthia Marlette and she has accepted the position of general counsel. She is no longer acting. She really does have it.

(Applause.)

CHAIRMAN WOOD: Cindy has been our friend for over 10 years and as well as a professional, and we value her sage counsel and advice, and she has long been an asset to this Commission.

And I think today's action merely commemorates what we have known all the time.

Thank you, Cindy, for being up to the challenge.

COMMISSIONER MASSEY: May I say something?

CHAIRMAN WOOD: You may say as much as you would like.

COMMISSIONER MASSEY: I commend you for an excellent choice.

I can't imagine a better choice for this job.

MS. MARLETTE: Thank you.

CHAIRMAN WOOD: Next is our presentation.

Today I want to recognize one of our outstanding managers here for his leadership in the markets, tariffs and rates section of OGC and for his contributions to the federal government over the past 10 years.

This person has worked tirelessly in overseeing OGC's preparation of Commission orders involving difficult substantive issues affecting the electric utility and natural gas industries.

Today I want to recognize him. That him is Michael Bardee.

(Applause.)

CHAIRMAN WOOD: Let me read it first.

With the chairman's exemplary public service award Mike's managerial skills and legal technical expertise as well as his ever calm demeanor and I-can-do attitude, late hours, persistence and dedication make a significant contribution to this agency and to this industry.

I thank him personally for it. I can't imagine anybody I could be with in middle of drafting the

California rehearing order with the wonderful staff that he works with on that and then pull off preparing last minute on demand testimony for me to Chairman Barton's committee last week.

He always does it with a smile and with such great professionalism.

It's an honor to work with you, Mike, and congratulations.

MR. BARDEE: Thank you.

(Applause, audience rising.)

COMMISSIONER MASSEY: Again, may I weigh in?

CHAIRMAN WOOD: Yes.

COMMISSIONER MASSEY: When I first came to the Commission Mike Bardee was my electric assistant for three years and he exhibited none of those characteristics in those three years. I just want to balance the record.

(Laughter.)

COMMISSIONER MASSEY: Congratulations, Mike.

CHAIRMAN WOOD: Okay.

We've got a big agenda today, I wanted to start with some kind of the theme of the agenda meeting.

While there are valid concerns about some of the industry players in light of the recent events, there also seems to be a lot of misinformation floating about in the industry.

I'm not here today nor would I ever be here to catalogue the errors of others, but I do believe a calm assessment of the fundamental underlying facts about various market potentials and about the bedrock industry is the most effective way to assess this industry.

As to the role that we at the Commission play in this vast energy industry, I want to make one thing here: The Commission's goal is to create a stable robust industry with adequate infrastructure to support the future needs of our Nation.

From a recent two-day visit to Wall Street and numerous conversations with both state commissioners legislators and industry leaders, the message is clear: FERC needs to give clarity and direction and to lead where it's appropriate. Today we are taking numerous steps to do just that.

First, we are bringing order out of the array of proposals in the Midwest to move forward in a cohesive way to create a single seamless market consistent with what the majority of state regulators recommended which also allows for a variety of transmission business plans.

We also clean up the bulk of major rate orders affecting California and the Western United States so that we can move forward with calculating any refunds owed and

provide greater rate certainty prospectively as well as calm the water.

We are also issuing an accounting NOPR, which despite many reports to the contrary, is and always has been a cleanup NOPR and does not propose sweeping changes.

However, we do ask the public input on whether some of FERC's accounting rules should be applied to previously unregulated parties, though historically we have been exempt from these accounting rules.

Today we also announce a delay in the implementation date for applicants who fail to pass the Commission's interim market base rate test so that we can consider fair and good comments as they are raised by an affected entity and hold a technical conference before finalizing any implementation details.

We also lay out our schedule in a strawman white paper for broad circulation with interested parties on the electric standardized market design proposed rule through the spring.

We also get an update on the industry practice on the streamlined balance approach to generation interconnection policy.

Also to support needed infrastructure in the Northeast, we are addressing two difficult gas certificate applications that will bring much needed gas and energy to

the region.

In one of these we urge affected persons to work with us and with their elected officials to reach a compromise on a small but highly organized reading of the line.

Finally, today, again on the infrastructure front, we begin our meeting, after the consent agenda, with a report on critical electric transmission constraints, which we discussed at the September open meetings.

So let's move on to business, Mr. Watson.

ACTING SECRETARY WATSON: Good morning.

CHAIRMAN WOOD: Good morning.

ACTING SECRETARY WATSON: I have the consent agenda.

E-3, 4, 5, 6 through 10, 11, 13, 14 and 15, 16, 16 through 20, 21, 22, 25, 26 through 28, 30, 31, 32, 35, 36, 39 and 40, 42, 43, 45, 46, 48 through 50, 51 and 53, 55, 56, 57, 58, 59, 61 and 62, 67, 68, 69 through 73, 74 through 76 and 78, 79. That's your electric.

Miscellaneous: M-2.

G: G-1, 2, 3, through 5, 7, 8, 9, 10 and 11, 14, 15 and 17.

Hydro: H-4 and 5.

Certificates: C-1 through C-5, C-7, C-14.

Commissioner Breathitt will have a partial

dissent on G-5, and Commissioner Massey will have a partial dissent on E-31 and a concurrence on E-56.

Commissioner Brownell is first.

COMMISSIONER BROWNELL: Aye.

COMMISSIONER MASSEY: I would like dissent and partially dissent and concurrence as noted.

CHAIRMAN WOOD: Normally E-66 is not in the consent agenda.

ACTING SECRETARY WATSON: I don't have that in the consent agenda.

CHAIRMAN WOOD: How about aye.

COMMISSIONER BROWNELL: Could I just add that I would be adding a concurrence on G-15?

ACTING SECRETARY WATSON: G-15.

COMMISSIONER BREATHITT: Are you ready, Mr. Watson, for me?

ACTING SECRETARY WATSON: Yes.

COMMISSIONER BREATHITT: I vote aye with the partial dissent noted in G-5, and I would like to also note for the secretary that I have a concurrence in E-18.

ACTING SECRETARY WATSON: A concurrence?

COMMISSIONER BREATHITT: Yes.

ACTING SECRETARY WATSON: You had a question about 66?

CHAIRMAN WOOD: It's struck, right?

ACTING SECRETARY WATSON: Yes.

CHAIRMAN WOOD: All right.

Ready to go?

ACTING SECRETARY WATSON: The first item is E-1,  
and the presenter is Scott Miller.

MR. MILLER: Good morning.

Today, this morning we are going to be presenting  
the our preliminary results of a study done initiated in  
September on transmission constraints across the country  
and their effect on the electric system and the electric  
market as well as some analysis that we've done on possible  
fixes to them.

May we have the presentation note, please?

First, I would like to introduce the team members  
who were really the folks who did the work on this. I'm  
merely the beneficiary of it as are you.

Thanh Luong who is no my left, Kumar Agarwal,  
Meesha Bond, Charles Faust, George Godding, Udi Helman, Ray  
Montini, Camilla Ng, Cynthia Pointer, Ron Rattey, Dean  
Wight and Bill Meroney who is to my left who was the team  
adviser.

Next slide, please.

First, we initiated the study at the request of  
one of the Commissioners in an attempt to provide some data  
and a point of reference on transmission congestion.

There has been a lot discussed about it but not much in the way of a study before the Commission.

I have to say that during this exercise we ran into a lot of data problems.

There are different ways in which congestion is measured across the electric grid.

There is the way congestion is measured in the Northeastern ISOs. There are curtailment events in the rest of the Eastern interconnect which we used data on and pricing differentials.

And in the West they use a completely different system, which made it difficult to provide an apples-to-apples comparison.

We also ran into some difficulties in getting some data from some of the folks such as WS&C in Newark and due to that we limited the amount of data that we requested to the summer months of 2000 and 2001. So this is representative of congestion during those periods.

And we recognize that there are some limitations to that, because while summer is the time when most of the congestion occurs because of line outages and generation being down from maintenance, there is significant transmission that can occur during the summer months.

Next slide.

The objective, of course, is to demonstrate what

effect congestion has on the system and on the market.

I think more than anything we want to stimulate a serious discussion, not only within the Commission but within the industry generally, about what are the effects and what can be done.

I think the bottom line is, and we will demonstrate that, even with a high estimated cost of transmission fixes to address this problem, and transmission upgrades are not the only way to deal with this.

Congestion management and RTOs and demand site response are others. But even if you posit a very high cost of initial investment to fix the problem, the effects, the results that they can have on the energy market can be profound.

Next slide.

The first point, and just as a general reference -- why does congestion happen?

In its most simple form it is because there is not enough transmission capacity to meet demand in a particular area and this happens for one of two reasons.

There is either not enough generation in a particular area to meet demands in that area, or there is too much generation -- this is generation competing to get across an interface to meet that demand and there is not

enough capacity.

However, it's important to note that congestion varies over time, and it's a function of how the system is operated, and as I pointed out it's operated differently depending on which interconnection you are in.

Next slide.

How did we calculate cost of congestion?

Basically, we took congestion rent, which is the price difference and different sides of the constraint, plus the replacement costs. That's the additional cost of the energy that would be generated needed to replace the energy that couldn't be imported.

As I said, there are data limitations, and we'll get into that in a little more illustrative detail later in the presentation, which we are trying to make as short as possible, given the size of the agenda.

I think also what we need to answer is what was our criteria for selecting certain lines.

Well, obviously those interfaces that were frequently constrain the most where there was significant price differences interfaces that had certain significant curtailments. It's particularly applicable in Eastern interconnect. It's not in RTOs. These are TRO events or hours of loading where it's as close as line's capacity, or hours of phase shift operation.

And these were not applied in all the areas because they were specific, they were region specific criteria and we applied them differently in each region to get the slide as you have in front of us, which is the map of the significant constraints points.

I would point out, in looking at the slide here and I have the bad habit of using a laser pointer, but you will note that path 15 is on there, which the one of the paths we use in our example, as well as the East Central congestion point in New York, which is frequently mentioned as a big congestion point.

But there are 16 points that are served, your top 16 in the summer of 2000-2001, and they have very cost implications, which we have tried to calculate.

Next slide.

I should point out that the fact that there no significant constraints in the Southeast is not necessarily because there isn't a tight capacity in the Southeast. It is just there isn't much wholesale activity in Southeast region. So you tend to not see much in the way of constraints for that reason.

Looking at the data, in the summer 2000-2001, there is significant difference between 2000 and 2001, and that goes to the issue of the fees.

These constraints occur at different times for

different reasons and for different load reasons, too.

But you will see in the year 2000 there are significant high congestion costs in East Central and New York as well as in Northeast of Boston in both years.

The path 15 issue in Central California is significant, but in 2001 not as significant. That has as much to do with the fact that the load was light in California relative to 2000, and there was plenty of capacity in the regions to meet the demand.

Interestingly, the Wyoming-Idaho interface with the Jim Bridger path was significantly constrained both years.

Just to linger on this for a couple of more moments, I think we need to point out that the effects can be quite large that aren't represented here.

The interface between western West Virginia and the Carolinas is frequently constrained and has the effect of a price differential of an increase in prices of some 88 percent at times.

The interface between ECAR and PJM is also frequently constrained and as a result in an increased differential of 66 percent between the two of them.

So these are real dollars that eventually go to be paid by customers, because they eventually show up in the retail bill to the extent that they are being served by

load that is in short-term markets that are congested.

Another point: Although the numbers seem to be fairly low in the Midwest, that needs to be clarified in that due to the data limitations we are only taking TRO events, and we were only taking replacement, the cost to replace the power for power that was curtailed, which is a very small amount.

In a congestion management scheme, that congestion rent would be priced over a much broader array of power. So it was a very small amount of power.

Also, the replacement costs can be somewhat hidden in the fact that most of the replacement comes from vertically integrated entities. So you don't really see what the price is.

I would also note the caveat with regard to Midwest ISO -- I mean not the Midwest ISO, the Midwest region in that this has a broader effect rather than price, and in that these TLR events have hidden costs which are difficult to calculate.

The short notice of the TLRs has a tendency of scaring people out of the short-term market. In other words, they are not able in the short-term market, even in the longer materiality market, they are not willing to take the transmission risk because the way TLRs are administered is that non-firm gets cut first, then firm, and then

finally native load.

We saw in a number of instances where public power in the upper Midwest was unable to get people to respond to proposals to supply them with power because people were unwilling to take the transmission risk. That obviously has an effect on the market.

But the question is now, I think, what to do to solve this problem.

Next slide.

One of the solutions, and I underline only one of the solutions, is to add transmission.

We've heard from a lot of folks that adding transmission is costly and that may not be the best yield, the best result for the consumer.

Taking into account a fairly ambitious scenario whereby transmission is added, investment is increased by 20 percent overall, \$12.5 billion in the aggregate, which is a very ambitious approach to transmission.

Because of the way that this transmission cost is reflected in the consumer's bill, which is averaged over many, many years, the added cost of this transmission since transmission only makes up about 6 percent of the average retail bill would actually add only pennies to the retail bill, which here is depicted using an average retail bill of 1,000 kilowatt hours.

You can see, if we go to the next slide, that if then you consider possible energy savings that may accrue to that, let's first say there is no increase and there is an increase in the transmission we discussed but no generator savings, again, pennies to the bill of the retail customer. But that's unlikely to happen given what we have just seen.

More likely there would be some reduction in the overall cost of generation and let's posit a 5 percent decrease in generator savings. Then actually the average retail bill falls.

Five percent is actually probably on the low side of where the decrease in cost for generation would go. Ten percent savings would be even higher, as you see in the bar to the far right of this presentation.

In conclusion, staff has identified a number of significant transmission constraints. As I said these do add costs to the end user, the customer.

I don't expect this to be the end of the debate, because the exact costs are difficult to quantify, but I would say that they are generally underestimated. So these are on the low side.

The cost to add new transmission, while people have talked about it being high when taken to the ultimate customer, really isn't that high, and the benefits of that

as well as some other approaches to manage congestion could be tremendous in terms of the effect on the customer's energy bill.

That conclude the presentation.

CHAIRMAN WOOD: Thank you, Scott.

Any thoughts or comments?

I know that the Department of Energy is doing their study. Can you tell us a little bit more about that?

MR. MILLER: Thanh Luong is actually working with Allison Silverstein on that. I'll actually ask Thanh to respond.

Thang, briefly why don't you address that?

MR. LUONG: Yes.

The DOE has a study, and they are using one of the models to try to identify the trend. The model is using the linear transmission rather than for the transmission approach. So it will combine with our result and with their result and come up with the final report sometime the end of this year.

CHAIRMAN WOOD: Good.

I think that will help in forming the debate quite a bit as to where the investment needs to focus.

COMMISSIONER BREATHITT: What model did you say they were using?

MR. LUONG: They are using one of the models from form TOEMS POEM.

COMMISSIONER BREATHITT: You can give me a briefing later on that one.

COMMISSIONER BROWNELL: I seems like a good thing being here today.

MR. MILLER: It's not as pleasant as it sounds.

MR. MERONEY: It's a great acronym but the underlying model I think is something like Policy Office Electricity Model. So that's a little less exciting.

COMMISSIONER BROWNELL: I have a couple questions about information gathering.

It would appear, if I heard you correctly, where we have ISOs that are up and running we are more confident in our information. So they are going forward. One of the responsibilities that we're counting on RTOs to perform is accurate assessments and better and consistent information. Is that correct?

MR. MILLER: Absolutely.

Any time you've got a RTO, the information is going to be consistent, quickly accessible and generally reliable.

Also with the congestion management scheme in place, which all the RTOs should have, the answers that you get in terms of cost congestion are much more railroad

reliable.

COMMISSIONER BROWNELL: The second question: You and I talked about modeling and looking forward, and it may be premature to do that particularly if information is not available from the RTOs.

You mentioned that in the Southeast you think you underestimated the potential because there really is very little wholesale activity. Did I hear that correctly?

MR. MILLER: Yes.

The Southeast is interesting because TVA in particular has an effect on how accessible the Southeast region is.

It's very difficult to get through TVA. So power tends to sort of flow around TVA, which tends to cause constraints by themselves.

Also due to the vertically integrated nature of the area, there just isn't that much wholesale activity down there.

COMMISSIONER BROWNELL: But did you take a look at, given the amount of investment in generation in that area, if the wholesale market develops as we all certainly hope that it will, what kind of potential constraint issues would they be confronted with there? Or is anyone in that region that you're aware of really looking at that?

MR. MILLER: I know that SURF has looked at it,

but I don't know that we -- our analysis really didn't look at that particular issue.

COMMISSIONER BROWNELL: Thanks.

COMMISSIONER MASSEY: Obviously, this Commission cannot site new transmission, although, as I said up on Capitol Hill several times, I think we need a legislative fix that will break the logjam in transmission siting, but until that happens, tell me in light of this study what do you think this Commission should do? In other words, what policy recommendations flow naturally from this study in your view, Scott, or anyone at the table?

MR. MILLER: Well, I will take a shot at it.

In my opinion the most helpful thing will be to push through on the RTO agenda as quickly as possible.

Congestion management will help rationalize a lot of this, but that doesn't solve the cost issues.

RTOs that have good demand site, the ability for demand to play is also crucial in this. But RTOs obviously can facilitate that.

But I think that there has to be some sort of method for back-stopping transmission investments that the market doesn't bring.

Again, I'm not selling a broken record, but short of legislation RTOs probably provide the best vehicle for that.

CHAIRMAN WOOD: Thank you.

I notice a number of people are in places where we already have RTOs.

Should we follow this up with a letter saying this is what we've got on transmission constraints? What do you do to address these or do you concur? What are you doing to address this? And what could we do to help and copy all the state commissions throughout the whole country.

MR. MILLER: That probably is not bad idea, because the East Central constraint has been known for some time, and it does have a tremendous effect on not just New York but New England as well.

CHAIRMAN WOOD: The infrastructure is a New York issue.

MR. MILLER: It's all farther upstate.

COMMISSIONER MASSEY: I notice the summer of 2000 congestion cost in the New York interface was \$724 million. That's real money.

For the summer of 2000 I, did a rough calculation. It looks like it's in the range \$1.1 billion total excess congestion cost.

MR. MILLER: Yes, the summer of 2000.

There has always been an anomaly.

We will, I'm sure, hear some howls and protest

about it and how we applied it.

But every summer is unique. Summer 2000 had Indian Point, which increased the congestion tremendously.

But you are right. It is a tremendous amount of money.

CHAIRMAN WOOD: Nice job, Scott and Luong the thank you very much.

Our next is E-2, which is the rulemaking 02-12 on standard market design for electricity.

We've got two items there. The presentations will by Alice Fernandez and Marvin Rosenberg.

MS. FERNANDEZ: Good morning.

Let me sort of give you -- let's see how we're going to work this out. I am going to give a brief presentation on the rulemaking proceedings and then Marv Rosenberg is going to be give presentation on other order that is on E-2 that's setting up or trying to get guidance on setting up a standard for organization.

Let's start with the presentation.

The first slide, as Scott did, I need sort of the first slide just to put the names of the number of people who are going to be working on the rulemaking as well as people who also participated in working in the staff concept paper that we are going to talk about a little bit later.

Next slide.

I think in talking about the rulemaking for the first step is sort of going over sort of reasons why this is an appropriate time to do it.

The basic objective of doing a rulemaking at this point is to get to a seamless national electric marketplace, to correct some problems that have been observed, and some of the those problems can be done through a rulemaking process.

One of the things that has also become clear just from looking at some of the issues is that there is a need to look at both the power market together with the transmission market in designing these, to get into some of the issue such as congestion that Scott talked about earlier.

Finally, one of the items that has become clear in a lot of the general discussion is that greater standardization in business practices and market design would help resolve a lot of the seamless issues and help competition in the electricity market.

In general, the basic plan for the notice of proposed rulemaking on the standard market design, there is an awful lot that was accomplished during our RTO Week, and there was also an awful lot that was accomplished through the work of the Electronic Scheduling Collaborative.

During RTO Week there seemed to be a lot of areas, and in the comments that we received afterwards, where there is general agreement on many of the elements that need to be put into a standard market design.

The Electronic Scheduling Collaborative also tried to do a lot of work on that. They identified a number of areas where they needed some guidance and decisions from the Commission before they could go further.

We've looked at their list, and I have incorporated those into the various issues that we are looking at. So hopefully we can give the guidance that is necessary.

One of the sort of key things that I picked up from the RTO Week was that there was a large sense that many of the market participants wanted the Commission to make some key decisions and that once there were key decisions made on the elements that the industry would be able to then work out many of the details and get into some of the standardized business practices.

Again that's an item that we are going to talk about a little later as the other orders are also really trying to help spur that approach.

In terms of the NOPR, this is basically just sort of a brief outline of the various issues that we anticipate

would be included in the NOPR.

I'm not going to talk about these in detail, because I'm trying to keep this short since this is going to be a long meeting.

We do have a staff paper which I will talk a little about later that I think lays them out in much more detail for people to see.

I would note that all of these are basically items that while we've organized them a little bit differently than RTO Week, they do touch on those subjects.

It was just in terms of coming up with the general outline for NOPR it seemed that we needed to do a little bit reorganizing. But we are touching on the items that came up in RTO Week and in the Electronics Scheduling Collaborative.

We have a rather ambitious time line for coming out with the rule.

The first step is the issuance of a staff concept paper, which I would note is a staff paper. The Commission has not voted it out. It will serve as somewhat of a strawman for a lot of later discussion.

In going through the various topics and the elements of the NOPR, many of the items staff has specific recommendations on what should be included.

There are other items where staff believes that there needs to more discussion before coming up with recommendations.

The staff paper I think is going to be available today to the public. And when people get a chance to look at it, I think it will start the strawman and will help with the discussions.

We are also planning on having a series of workshops, public meetings in January and February.

Tentatively what we are looking at is having technical conferences from January 22 through January 25 and also from February 4 through February 8.

We also are trying to set up something with NARUC.

The next step is that hopefully we'll reach consensus on many of the items as to what should be included in the Northeast proposed rulemaking and the issue in NOPR in March of 2000.

There will be additional opportunity for comment and for outreach workshops on the details once the notice of proposed rulemaking is issued. So if people have further issues with it, we have other opportunities for trying to work that out. However, we are trying to get this done before the summer break in July.

So it is a fairly tight schedule and very

ambitious schedule which we will endeavor to meet.

Just in terms of sort of the next step for the public to sort of put, since we have a lot of people who want to participate, as I said, we are looking at setting up the first sort of public workshops in January, probably January 22 through the 25th.

We also were thinking of setting up the week of February 4 through February 8.

NARUC has its winter meetings in Washington from I think it is February 10 through the 13th. We're trying to coordinate with them to set up a special meeting to give the state commissioners an opportunity to participate.

We also will be contacting sort of individual groups so that we'll have individual meetings that we can talk about the issues with them, staff talking with the industry, as well as in the large public conferences, and those we probably will try and start sometime in early January.

Sort of in conclusion, it is a very important rulemaking. In order to get it right, we will need an awful lot of help from the industry in terms of working out what the elements are that need to be in the rule, what elements need to be in the rule, what elements can be worked out through the industry collaborative process.

We are going to try to set up lots of ways for

people to give us their views and encouraging people to get together in various collaborative organizations and to reach a consensus.

With that, I turn it over to Marv who is going to talk about the standard-setting body.

MR. ROSENBERG: Good morning.

The order provides guidance for the industry on formation of an organization to develop wholesale electric industry business practice and communications standards.

Once the Commission's market-design principles are developed, business practice and communications standards will be needed as soon as possible to support competition in the wholesale electric market.

Both NAESB, which is a successor to GISB and NERC, has proposed to make proposals for an organization to develop these standards.

The industry is currently considering the merits of these alternative proposals.

To ensure sure that the standards can be developed in a timely manner, the order requests that industry agree on a single consensus industry-wide organization to develop these standards by March 15, 2002.

If the industry does not agree on a single organization by that date, the Commission will either choose an organization or institute a procedure to develop

the standards.

CHAIRMAN WOOD: Any thoughts?

COMMISSIONER BROWNELL: Let's get this done. We have important work before us. I can't believe we are even debating the who.

COMMISSIONER MASSEY: This staff paper on the market design NOPR will be issued or proposed to, is that right, to the public?

MR. ROSENBERG: Right.

COMMISSIONER MASSEY: As of today?

MR. ROSENBERG: I believe so.

COMMISSIONER MASSEY: I would like to comment the staff for this paper. I find a lot to like in it and can just say on a preliminary basis that I agree with the direction that you are headed.

Your recommendations for RTO markets, you know, real-time, the RTO has to cause to be operated a real-time balancing market where the market clears at locational marginal prices. There must be a day ahead market set up that also clears.

Generators can sell schedule or negotiate bilateral contracts. They don't have to participate in the day ahead market. There has to be a good planning process. There has to be a transmission market.

I like all of those features and am pleased that

staff is headed in that direction in designing this.

Obviously, no policy calls have been made yet, but I wanted to commend you and tell you that based upon what I've read so far, to me it looks like at least from the staff perspective with this strawman we're headed in the right direction, and I commend you for it.

With respect to the order on standardized business practices and communications protocols, this is a good order. It essentially says to the industry we want a single organization that accomplishes this goal of standardizing business practices and standardizing communication protocols, and such an organization should have the following characteristics: It's got to be independent. It's got to have a fair loading process, and so forth.

That's what the orders says, and it is says to the industry work this out and come back to us with a recommendation. That's a good approach, and it has my full support.

Thank you.

CHAIRMAN WOOD: Thank you, Bill.

Linda.

COMMISSIONER BREATHITT: We had RTO Week in October, and the next step which is really being clarified today is the move toward taking that information, turning

it into staff's thoughts from what we have learned that week and what we learned from the numerous comments that parties have shared with us.

I think that the staff's hard work on pulling all of that together and making some preliminary calls on some of it and just in terms of recommendations is a very good thing, because I think it will make the next round of discussions more productive if we have something to coalesce around.

The strawman ANOPR process -- I think we are going to hear about that later -- I think it's working well because we had a strawman for everyone to talk around. So this will be going in that direction.

The other thing that we talked about in RTO Week was what should an GISB-like organization do and what should the Commission do in terms of coming up with standards.

So I think we are beginning to clarify that a little bit today, too, by saying that we support the formation of a standards organization, and we point out that the GISB process has worked, and we express confidence in the industry being able to do the same thing for developing a consistent set of business protocols and communications standards.

And I agree with Alice that the time frames are

ambitious, but I think it's helpful to put those out there for something to work toward.

Nora is right. We need to keep our feet to the fire on this and see if we can meet those.

But the way I see it is we're going to ask GISB, the GISB-like organization to do, as Bill pointed out, business protocols and communications standards, and then the work that the Commission and the industry are going to do through the workshops in January and February, discussing around this strawman, will be coming up with the bigger calls for what really needs to be standardized across the Nation for transmission.

The one thing that I would like to point out for me my open question is: How much standardization do we need and how much do we want to leave to creativity and innovation?

So that's going to be something that I'm going to have an open mind about.

I've read some little white paper that said how cloned do they all need to be?

So I'm going to keep an open mind on that, and I'm sure we'll get a lot of comment during this process, but I think it has all been clarified for me now that there are two tracks, and I think it is going to in a great direction.

CHAIRMAN WOOD: Thanks for those thoughts everybody.

I enjoyed RTO Week like you all did and learned a lot and was actually pleased with the amount of the consensus that seemed to be garnered by what I considered to be pretty diverse group of people, but that was an educational informational exercise. It is time to convert that into an action plan.

And I thank, Alice, and your colleagues there at the table in working beyond for your leadership in giving us a concrete focus as to what we need to do.

A few process things from having been through this in that unregulated wholesale market that if you would like to throw in FERC jurisdiction me not included. I didn't take you on the other day on that issue yet, but I want to let you know I'm a big minded person.

But we have been through this before, and I do think the collaborative process is not only a good way to do it, it's the only way to do it.

I think there are no preordained right answers. I think the staff paper is a superb model that could well be what we come up with, but the point of putting this on paper is to save everybody the milling around time and get right to the discussion on what it is that we want these RTOs and these markets to do and what we want to look

like.

I enjoyed reading it several times. I think it got better with each iteration. It might get better yet still. I think that's why we want the eyes of 500 of our closest friends to look at it as well.

But I think the collaborative process built around an informed and attempt to be balanced strawman is clearly a model that works for doing something that's this broad and this impacting of the industry that we know and love.

I do think one suggestion for the interested parties here: Whether you are one that makes money in this or takes service from this industry, I would hope that what you choose to send to this effort, and they will be long hard days -- I can tell you -- and it is optimistic to think that it will all be done in those eight days, but could well cause little farm teams to form over here and do side work, and I think we've got to be ready for some structure and flexibility there.

But sending a suit to the mouth piece is not what this is about. In fact, I hope we don't have that anymore in this agency, period, unless they are doing an oral argument before the Commission in which case you want somebody with a nice suit and a real nice mouth piece.

What we're trying to do here is not contest the

case but rulemaking.

Sending the smartest people, particularly those that can think outside the box, that can step above their narrow pecuniary interest and focus what really will be good 10 years from now for this market so we don't have people reacting as the hysterics out in the world have done over the past two or three weeks, but that we set something that's so stable and so balanced that it can withstand a strong buffeting wind.

That's done when you bring people to the process who think of others than their own self-interest.

I'm looking at recruiting from people that think in the public interest.

I know it won't be perfect. That's why the balance is here and ultimately at the end of the day, it's our job to make the calls on it, but we can't do that on our own as well as we can with the help of everybody.

I include the Canadians in that effort. I read with a lot of interest yesterday that they are moving forward in their process to open not only the wholesale but retail competition, and it's important to make sure that our efforts synchronize with them.

So I know Al Shon got them on the circulation list, and I have had the opportunity since our last meeting to visit with the governmental and industry types in

Ottawa.

I think it's such an integral part of our market, I do want to make sure what we do here, while recognizing separate jurisdictions, is harmonious with where they are going.

I look forward to the innovative outcomes here and pronounce that the given NOPR is now underway.

On the other item, we do need to vote on the order, so I am also comfortable with that direction.

COMMISSIONER MASSEY: May I ask a question before we vote to anyone who wants to answer it?

The way I look at this is with respect to standard market design and standard tariff the Commission has to make those calls so that the standard business practices organization, standard communications protocol organization, will know how to fill in the blanks.

Do you agree with that?

MR. ROSENBERG: Yes. That's pretty much what we did in the gas industry.

COMMISSIONER MASSEY: Yes.

MR. ROSENBERG: And we find even now in NAESB if there is a policy decision to be made they really can't make it; the Commission has to do it. I think that's the right approach.

COMMISSIONER MASSEY: I note that the schedule

for the standardized market design is very ambitious.

However, it is important to get that in place and finalized, it seems to me, so that the NAESB-type organization can know how to fill in the blanks with hundreds of different compromises on business practices and communication protocols.

Do you agree with that?

MS. FERNANDEZ: I think the idea is that if the Commission makes a lot of difficult policy decisions that the experience the Commission has had on the gas side with NAESB is once the Commission makes sort of the key policy decision, it is much easier to work out a lot of details.

But that is very hard to standardize business practices if you don't know what the basic market design is supposed to be.

COMMISSIONER MASSEY: Yes, I agree with that.

MR. CANNON: Commissioner, I think a lot of the policy issues that you sought teed off in that presentation were actually deprived from one of the presentations that came out during RTO Week, which was from the Electronics Scheduling Collaborative, essentially with a plea that we've reached impasse on any of numbers of these issues and we need guidance on the following things in order to move forward.

COMMISSIONER MASSEY: Yes. Thank you.

CHAIRMAN WOOD: One of the reasons at the time I work as I do once we publish a rule, once we have proposed a rule in March that the standards board would be set up and operational and ready to go, because at that point while going from proposal to final rule, the back and forth of the nitty-gritty folks and the folks that are still responding to the policy cuts that we made ultimately in March would talk to each other and perhaps I've seen a few times where the policy cut might not have been a real religious policy cut. It just was a cut because you needed to make it.

You might change that based on the fact it might cost \$100 million more than some policy cut, and you don't necessarily get that back and forth in the upfront collaborative.

So the point of having those two tracks going parallel is to have the implementors talk to the policy folks before we go finally on the policy so that really is not going to be done until the second iteration in the fall sometime.

That's really urgent that we do get an authoritative body that's ready to work by Easter set up.

So I would support also the draft order to encourage the industry to continue its efforts.

I think those are moving in the right direction.

I just think we need, as Nora said, get there, and we give the parties sometime to finish up what they need to finish up to get there, but we'll be ready and we'll give them a big long workload out there come Easter.

So we look forward to the work between now and then.

COMMISSIONER BREATHITT: Aye.

COMMISSIONER MASSEY: Aye.

CHAIRMAN WOOD: Aye.

ACTING SECRETARY WATSON: The next item is E-12, PJM interconnections.

CHAIRMAN WOOD: I called that separately.

This was an order, a simple little order actually, that rejects a filing from PJM, to more or less integrate RTO, PJM and PJM West.

I just want to say it is denied here because of the provisions that are currently pending in other dockets, but I view this really as a procedural order only, and we want to see that effort move forward with all due haste.

So we will move forward on those other dockets in the very near future to get PJM and PJM West together.

I just wanted to say that my support of this two-page letter order is really a procedural issue, because we do support the underlying issues, and I think I speak for all of us in that regard.

Anybody else?

COMMISSIONER BREATHITT: Aye.

COMMISSIONER MASSEY: Aye.

COMMISSIONER BROWNELL: Aye.

CHAIRMAN WOOD: Aye.

ACTING SECRETARY WATSON: The next item is E-23, standardizing generator interconnection agreement and procedures.

Pat Rooney will be presenting.

MR. ROONEY: Good morning. Pat Rooney, the office of markets, tariffs and rates of the Commission's services.

The documents filed last Friday are work in progress. They reflect the hard work and dedication of all the people involved in that sometimes challenging legal proceeding.

They also reflect participants' commitment to filing a consensus document that serves the interests of all stakeholders.

We're confident that these participants will continue to build on the progress. We need today to resolve as many of the issues as possible.

Next slide.

As you recall the ANOPR was issued on October 25. It offers the ERCOT model, supplemented by best

practices as a straw man proposal. It also encourages interested persons to pursue a consensus.

Next slide.

With the exception of Thanksgiving week, meetings were held two or three days per week during November.

The meetings were facilitated by FERC's DRS staff and included plenary sections, private caucuses and drafting sessions.

The meetings were generally held at FERC, but they were also held in conjunction with the NARUC annual convention in Philadelphia on November 13.

They were also held November 27 and 28th in Denver in response to NARUC's request to hold some meetings west of the Mississippi.

The December meetings were primarily dedicated to drafting final documents.

Next.

The draft interconnection agreement and procedures document was filed on December 14 as required by the ANOPR.

The parties noted that while significant progress was made on the documents, they continued to be a work in progress.

The participants stated that they remain committed to continue working to achieve a final consensus

document.

And the participants requested an extension of time to January 11 to file a single consensus document and January 25 to file comments.

Next item.

Participants also requested that the Commission conduct public meetings on January 15 and 16 in order for parties to seek clarification and to comment on the final consensus docket.

Next slide.

On December 14, the Commission granted the participant's extension request and allowed them to file a completed document on January 11 and then for comments to be filed on January 25.

Next slide.

Staff believes that participants have made substantial progress that they are committed to completing the consensus document by January 11 and that a preliminary review of the December 14 document substantiate these observations.

Next.

Staff finds that the ANOPR process was essentially challenging for several reasons:

Amongst others things, it involved many parties with competing goals. It had a very tight time schedule,

and it is very resource intensive.

Next slide.

Finally, staff intends to conduct a 360 degree review of the ANOPR process shortly after January 25 to determine what worked well, what needs to be improved, and how to make best use of industry knowledge and resources in future advanced rulemakings.

That concludes our presentation.

CHAIRMAN WOOD: Any thoughts or questions for staff on this? Keep up the good work.

COMMISSIONER MASSEY: I would just like to say I'm really pleased with how this is proceeding.

This issue of standardizing the interconnection has been an issue that's near and dear to my heart for quite a while.

I am really pleased we are moving forward on this with other things in an ambitious time frame. I appreciate all your efforts and the efforts of all those in the industry that have pulled the laboring oar to get this done. I think it is very important.

MR. ROONEY: Thank you.

CHAIRMAN WOOD: The second aspect of this process is not after the contract then the money part.

Can you read remind me, Dan, what our schedule is on that issue?

MR. ROONEY: The Commission indicated I believe in April that it was intending on addressing pricing issues in a second effort to follow on the ANOPR on the terms of conditions the procedures in the agreement.

I have been asked many times about that statement the Commission made in the ANOPR process, and I have reiterated the Commission's challenge to us to proceed with negotiation of the terms and conditions and the procedures with the understanding that we are doing so with respect to our existing pricing precedent.

COMMISSIONER BROWNELL: I would just like to commend the staff for conducting the 360 assessment after the process.

But I would suggest that one of the things we ought to be evaluating both within the Commission and the industry participants is how much of the problem is due to the fact that we are transforming ourselves and doing business in a different way, and the industry participants need to do the same.

Consistent with what Pat said earlier, we have had many, many stakeholders say that we cannot have the luxury of time and the usual 15, 16 months to two years to get the decisions. We can be thoughtful in six months. We can be thoughtful in three months.

I just hope everyone would give honest feedback

but also start working on ways to engage that are different and gets smart people in a room and not people whose interests are best served by delaying.

CHAIRMAN WOOD: Amen to that.

Okay. Thank you guys very much.

ACTING SECRETARY WATSON: The next item is E-24, 29, 34, 41 and 51 presented by Joyce Kim, and Commission Brownell will be not be participating in E-24.

MS. KIM: Good morning.

I would like to introduce the team members sitting at the table with us: From the far left Joe Power, Patrick Clarey, Rahim Amerhail and Tony Ingram.

Mr. Chairman and Commissioners, today the Commission is acting on five interrelated orders intended to move the process forward in establishing an optimum site RTO in the Midwest and to support the establishment of a viable for-profit transmission company that will operate under a RTO umbrella.

In taking today's action these orders have made findings as to RTO structure that best serves the public interests in the Midwest.

Based on the record of these proceedings and taking into account the views of the majority of the Midwestern state commissions, these draft orders find that a Midwest ISO proposal most fully complies with the vision

and requirements of order number 2000, in particular the requirement that a RTO be of a such scope.

Today's five orders take the following specific steps.

One, approve the Midwest ISO as a RTO.

Two, approve the international transmission company's request to transfer operational control of its transmission facilities to the Midwest ISO and accept an agreement between International Transmission and Midwest ISO that would allow International Transmission to be an independent transmission company that would share certain RTO functions with Midwest ISO.

Three, preliminarily approve the disposition of International Transmission's facilities to an unaffiliated entity with no ownership interest in a market participant, thus facilitating a stand-alone transmission company under the Midwest ISO umbrella.

Four, conclude that an Alliance company which filed for approval as a separate RTO lacked sufficient scope to exist as a stand-alone RTO, but the draft order directs Alliance companies to explore how their business plan can be accommodated within the Midwest ISO.

And finally, grant in part and defer in part National Grid's request for a declaratory order that is not a participant and dismiss without prejudice Alliance

Company's business plan.

Thank you.

CHAIRMAN WOOD: Any thoughts?

COMMISSIONER MASSEY: Again, I thank staff for their hard work.

In my judgment these orders all move in the right direction and they have my full support.

When we sought additional input from the state commissions, the strong message -- it wasn't a totally unanimous message, but it was a very powerful message -- was that they want a single RTO in the Midwest, and we are heeding that advice, and moving forward accordingly.

So I think we make good judgments here. We are determining that we want a RTO in the Midwest truly of large scope and configuration, and it has been my position for quite sometime now that that is exactly the right thing to do.

It will be pro-competitive and pro-consumer, and I appreciate my colleagues' willingness to move forward and move in this direction.

Thank you.

COMMISSIONER BREATHITT: Just let me clarify that we are discussing as a group E-24, E-29, E-34, E-41 and E-54, the Alliance Midwest and ITC orders. Okay.

I want to comment on the Midwest ISO briefly on

Detroit Edison's ITC filings, the National Grid filing and the Alliance filing. So I'm going to do so all at onetime.

With respect to the Alliance companies, I'm issuing a dissent on that, and I would like to explain now what my reasoning is on that, and the dissent will look a lot like what I am about to say when it issues.

Since Alliance's application was submitted to the Commission two and a half years ago, I have supported that business model through affirmative votes in five orders applying the Order 2000 criteria to the proposal.

Based on the Commission's guidance and encouragement under Commissioner Wood's prior to two predecessors, the Alliance member companies have expended significant energy, time and expense in developing and implementing their proposal.

The Commission has also expended considerable resources in processing Alliance's application.

Today's order abruptly changes the landscape in the Midwest by concluding that Alliance lacks sufficient scope to exist as a stand-alone RTO and by directing the Alliance companies to explore how their business plan can be accommodated within the Midwest RTO.

I believe that Alliance has worked in good faith to satisfy the characteristics and functions established in

Order 2000.

Alliance tells us it could be operational in the first quarter of 2001 pending necessary FERC approvals.

By its own estimation, Alliance has expended approximately \$75 million in start-up cost. That's not pocket change, and that doesn't include their legal and regulatory expenses. I don't know what the amount of those expenses would increase that \$75 million to.

At the issuance of this order, these dollars will become stranded costs to be borne in part at least by ratepayers in the Midwest.

For the Commission now to find that Alliance does not satisfy the requirements of Order 2000 is an action of major consequence, I believe, and it is one that I am not ready to take.

I cannot in good conscience now say that those two and a half years of votes meant nothing and throw them out the window and that this business model at least with respect to Alliance becomes null and void.

The rehearing relies heavily on the comments of state commissions, which generally favor one RTO for the Midwest, and I recognize that.

That view is not unanimous, however, and I would like to highlight the comments of the Public Utilities Commission of Ohio which has offered constructive ideas for

the interim functioning of the cooperation agreement, the IRCA, to provide a meaningful platform upon which different RTO business models could operate seamlessly in the Midwest.

In addition Commissioners Critchler and Hurley of the Illinois Commission asserted that the Midwest is capable of supporting multiple RTOs provided that there are seamless agreements in place to ensure the smooth operation of the market.

I fully supported the ICRA and would have continued working with the parties using that seamless agreement which the Commission approved as a basis on which to allow the Alliance to function as one market.

The comments of the Ohio and Illinois commissioners and recent pleadings submitted by the Alliance companies proposed several avenues in this regard that I believe merit the Commission's consideration.

Commissioners Critchler and Hurley also observed that FERC allowed Illinois's three largest utilities to exit the Midwest ISO at the cost of \$60 million to join the Alliance ISO. So you add the 75 to the 60, and this is quite significant.

They point out that to force fit one RTO in the Midwest could cause more months of delay and cost more dollars.

I share these concerns and agree that it is counterproductive to require a single RTO in the Midwest after both the MISO and the Alliance have already invested so many resources to develop their operations based upon the preferences of their member companies.

In conclusion, I cannot participate in this sudden departure from the road map that I thought we drew in our prior Alliance orders.

In my view the Commission has not done all it could or should to allow Alliance to develop as a RTO and to co-exist with the MISO.

For this reason, I respectfully dissent and for now I will take comfort in the assurance that appears in the order and in the companion orders that the Commission's actions today should not be construed to prejudge other types of RTOs in other parts of the country, including a structure in which a for-profit transmission company could become a RTO.

With respect to National Grid's since it is linked to the Alliance order, I will be issuing a partial dissent on that, and the basis underlying the Commission's action in this order is the majority's conclusion that the Alliance companies lack sufficient size and scope to exist as a stand-alone RTO and the direction for the Alliance companies to explore how their business plan can be

accommodated within the MISO.

Therefore, for the reasons set forth I will issue a partial dissent on this order as well, but given the underlying circumstances, I agree with the majority that it is appropriate to provide guidance to National Grid.

In particular, I support the finding that National Grid is not a market participant with respect to its last resort sales and other obligations in New York and New England.

And finally, with respect to the Midwest ISO, I'm very pleased that the Commission is approving the Nation's first RTO and that it is the Midwest independent system operator. I guess we'll be calling that the MISO RTO now.

My first dealings with a regional grid at all were very early meetings forming the Midwest ISO while I was a state commissioner. It seems like a long time ago now. But it now becomes the Midwest RTO.

I support the orders on Detroit Edison's ITC, and I hope this signals that the Commission does believe in independent transmission companies, and I think that we do. I've heard my colleagues say so.

There's a lot of transmission activity going on in the Nation and ITCs coming in under Appendix I is a support of that.

So, the Midwest RTO and the Detroit Edison's ITC

are the positives coming from this group of orders, and I would like to end on a positive note.

Thank you.

CHAIRMAN WOOD: I think rather than have any negative note at all in this season, I would like to say these orders are what this Commission ought to be doing.

We have brought order out of an array of various an sundry efforts in the middle part of the country.

It was interesting on the state commissioners' phone calls to have staff from North Carolina calling someone in Wyoming, North Dakota down to Arkansas and Texas.

So it is a big swath of the country and very reassuring to me that not only the state commissioners but almost everybody commenting in all of these dockets supports the effort that we have made to build upon a collaborative process where collaboration has happened and use that to reflect a market model that will stand the test of time.

I, unlike you, have not come as encumbered with the past, and I understand your perspective on that and respect it, but I happen to disagree with it.

I think at this point in time before we do get markets up and going that where we can he eliminate seams, where we can just paper over them, because that seam when

you look at the map looks a lot like a drawing of my two-year old. It's not a straight line. It's not a very short seam. It's a very Byzantine winding seam that I think will have lasting impact if we don't do something on day one to paper it over.

I look forward to the Alliance's hopefully positive response to incorporate the bulk of what we have spent money on.

I don't accept that they are stranded today. They are stranded whenever it looks like they don't work, and if MISO has issues, I mean if there are potential to use within the MISO umbrella, for example, software on issues that have not been developed yet that Alliance has developed I would hope that that kind of discussion could happen.

I think the ITC pair of orders actually are probably the hidden big story today.

We have talked a lot about transco's over really since my early days as a Texas commissioner watching this debate from afar and wishing and hoping that we could have gotten through efforts back in my home state where you had a stand-alone transmission-only company.

This really is the first for us. It sets a great standard, I think, for what a gridco large transco because I think everybody's got different names for all these words

so I'll use them all so that they don't have the fraught meaning that everybody wants to try to depart from our words, that an independent transmission company, which is in lower case letters, is not only possible but very welcome.

I think that solves a lot of issues. In fact, this applicant is not yet to its ultimate owner so some of the issues are necessarily unresolved in that regard, but I think we gave in these orders some very strong guidance that you can move forward into a for-profit model in the context of a broad regional umbrella organization, such as MISO, and set up markets that work and set up a transmission business plan that will try capital.

It's very important to have that in light of what has happened in the past few weeks.

Unfortunately, the cloak is being flown over any transmission investment.

So we need to make sure that there are good vehicles out there, and I think today's order in that regard sends it forth.

I don't know the ultimate name of any ISO would be when you go from North Carolina to North Dakota down to Texas and Arkansas.

Those Midwestern folks on the phone call got pretty excited and talked to me about how we base the

calculation under the umbrella.

I think it's important. We can't probably have a single Eastern interconnection wide standardized market on everything, but certainly having a broad market on this reach in states that are both local and regional competition and those that have chosen not to have an open market administrator, market overseer intra structural planning organization that is broad and inclusive and collaborative is really a big, big plus.

I think it is a good Christmas gift to the Nation.

I wish we could have done it earlier, but I think we've got to take advantage of what we have gotten and call it a day.

So I'm pleased to support all orders enthusiastically and look forward to seeing the Alliance companies and National Grid come back with what I hope will be a good Appendix I plan or Appendix I type plan to work within the broad umbrella that we've waited for here today.

COMMISSIONER MASSEY: May I make one additional comment, please?

CHAIRMAN WOOD: Yes.

COMMISSIONER MASSEY: Since Commissioner Breathitt brought up precedents, I too have a voting

history with respect to these issues, and this not a change of position for me. This has been my preferred position forging a single RTO for the Midwest. That's been my position for quite sometime.

In fact, I dissented on an order issued on January 24, 2001, in which we sent the parties to mediation to negotiate a SIMS agreement, and my position was we should have sent them to negotiations to forge a single RTO for the region.

The reasons I laid out then are just as true now. So let me just say I wish we had done it a year ago but better late than never. These orders have my full support.

CHAIRMAN WOOD: Let's vote.

COMMISSIONER MASSEY: Aye.

COMMISSIONER BROWNELL: I'm recused on 24. I will be issuing a s concurrence on 29, and I vote aye on 34, 41 and 54, and I am pleased do so.

COMMISSIONER BREATHITT: I will vote -- let me see if I can get this right -- partial dissent on E-54, a dissent on E-24, and aye on all the others. Does that accurately reflect the items?

ACTING SECRETARY WATSON: You've covered them all.

CHAIRMAN WOOD: I vote aye on all five.

ACTING SECRETARY WATSON: The next item E-47, Len Tao presenting.

CHAIRMAN WOOD: We'll take a two-minute break.

(Recess.)

ACTING SECRETARY WATSON: Item E-47, Len Tao presenting.

MR. TAO: Good afternoon.

Mr. Chairman and Commissioners, E-47 is an order modifying the Western price mitigation methodology for the winter season.

This order arises from the October 29, 2001, technical conference in which parties suggested possible changes to the mitigation methodology that we have currently in place.

Today's order makes changes to the current methodology to aid in ensuring continued stability through the winter in California and the West.

Specifically, this order establishes a mitigating price starting point of \$108 but requires a recalculation of this price which is tied to fluctuations in gas prices.

The mitigation measures in this order will be effective through April 30, 2002, at that time when the current summer methodology will be reinstated.

Thank you.

CHAIRMAN WOOD: Comments, thoughts?

COMMISSIONER MASSEY: Well, I have spent several days trying to get comfortable with this order, but I have not been able to do so.

Staff briefed me on the rationale for the order and spent a lot of time with me, and I really appreciate that, Rich, and your presentation was clear, and I thank you very much.

The primary reason I'm dissenting is that I cannot conclude at this point that any adjustment to the current mitigation price method is necessary.

If a concern is that gas prices will rise above the current formula ceiling such that fossil generators will not offer into the market, I just would not expect this problem to arise under the projections over the next year.

Gas prices are reasonable now. I think yesterday in the energy markets report out West they were in the range of \$2.70, \$2.75, something like that, and actually I EIA I believe projects that gas prices will continue to trend lower over the next year. Am I correct in that?

MR. ARMSTRONG: We hope so.

COMMISSIONER MASSEY: Am I remembering what I read about RIA's projections correctly?

MR. ARMSTRONG: I think you are correct.

COMMISSIONER MASSEY: If the concern is that a

California reserve deficiency will trigger a lowering of the West-wide mitigating price due to current low gas prices and that that price will be too low to ensure that hydro-plant operators will sell into the market, it's just not clear to me why they would not sell? Prices over the West generally rise and fall together, and I just at this point have not been able to conclude that this is going to be a significant problem.

Number 2, my view is that our June 2001 mitigation plan for the West helped to restore the Commission's credibility as a tough but reasonable cop on the beat.

I am concerned that tinkering with the formula may also tinker with our credibility. I hope that does not happen, but I'm concerned about it.

The order unplugs the recalculation of the mitigated price from the reserve deficiency seen in California.

One of our concerns with the dysfunctional capital market was the ability of the sellers to exercise market power, especially when supplies are tight.

I do not agree that we should decouple the mitigated price from the reserve deficiency occurrence.

In addition, the order places a \$108 ceiling on the market when the current ceiling is \$92. And \$92 represents

85 percent of the \$108 ceiling.

That is what was specified in our June 2001 order. That was a compromise that was important to me, the 85 percent standard, and I'm not willing at this point to depart from it without a very compelling reason, which I don't find to exist here.

The current mitigated price reflects gas costs that were multiples of what they are now. As a result the current mitigated price is much higher than that which would result under current gas prices.

I believe that this has provided a strong incentive for sellers to do all they can to offer power to the market, to avoid a new reserve deficiency declaration and to avoid a re-calculation of this mitigated price.

This order removes that rather positive incentive to offer power into the marketplace.

Also the order in my judgment applies an asymmetric approach. The mitigated price will increase above \$108 with higher gas prices but it will not decrease with lower gas prices. The mitigated price will not fall below \$108 as gas prices trend lower.

I personally fail to see the logic in this. The existing approach that we have under our current policy is symmetrical and the mitigated price can either increase or decrease as gas prices increase or decrease.

Finally, my conclusion is that if actual problems do arise over the next few months with the formula I believe the agency is capable of stepping in very quickly to act to resolve them on a real-time basis, and that would be my preferred policy approach in this matter.

Thank you.

COMMISSIONER BREATHITT: The winner West-wide mitigation described in this order has my full support, and I believe the order adequately addresses the winter peaking concerns in the Northwest, which are not insignificant given that the hydro situation is still present, and by that I'm referring to the lower water levels given the drought. I don't think they are back up to their full levels.

Is that correct?

MR. ARMSTRONG: That's correct. Fairly recently the weather has turned around, but they are still below the normal level.

COMMISSIONER BREATHITT: Rich, let me ask you another question: Given that, is there still a need to import more power than would normally be needed for their winter peak because of their hydro situation?

MR. ARMSTRONG: Right now what they are trying to do is get their pondage up for use in going off the spring into the summer.

But I think as the order notes there are several other factors that are helping the situation in the West. There has been, like I said, good weather. The demand is down. Gas prices have stabilized. So I think right now everything is pretty normal.

COMMISSIONER BREATHITT: That's good.

MR. ARMSTRONG: Yes.

COMMISSIONER BREATHITT: But I do believe that this order addresses the winter peaking concerns in the Northwest, and I'm also pleased that the order addresses one other factor, and that's the continuation of the credit worthiness adder.

I point this out because I concurred on my support for a credit worthiness adder in this past summer in our last big California order before we took our August break, I think, on July 25.

And this order states that when all the past due amounts are paid to the parties the Commission will consider the removal of the 10 percent adder for credit risks. I like that part of the order.

Also I wanted to point out that payments are starting to occur, and I am encouraged about that and that full payment is expected in February.

Is that what we're hoping for?

MR. ARMSTRONG: Yes.

COMMISSIONER BREATHITT: So the order says that the Commission will consider removal of the 10 percent adder for credit risk.

So when we are able to do that, I would support looking at that adder again. But I will be voting yes on this order.

COMMISSIONER BROWNELL: I just have a couple quick comments.

I agree with Linda that I think this reflects the differences in the Northwest winter conditions, and that is why it comes up in May in order to reflect the change as summer comes. Is that correct?

MR. ARMSTRONG: Correct.

COMMISSIONER BROWNELL: I would also suggest in some ways I agree with you, Bill, that there certainly are concerns, but I guess my view is that mitigation generally is an imperfect art. I would not even try to call it art. It truly is not a science.

I think this reflects our best efforts to understand the differences in those markets. While it is not perfect, I think it is a better effort perhaps than we made before, and I guess history will tell.

I guess it's my hope that we are out of the mitigation business so we don't have to do this for a living and we can focus on letting the markets make these

decisions for us.

CHAIRMAN WOOD: I support the order.

COMMISSIONER BROWNELL: Aye.

COMMISSIONER MASSEY: No.

COMMISSIONER BREATHITT: Aye.

ACTING SECRETARY WATSON: Next item is E-65, San Diego Gas & Electric company, Elizabeth Arnold presenting.

MS. ARNOLD: Good morning.

I would just like to mention the names of the other team members who worked with me on this order: Here at the table are Ed Ristway, Maria Vouras, Holly Alpert. And also Andre Goodson, S.L. Higginbottom, Len Tao, Beth Pacella, Dave Withnell, Dennis Lane, Rich Armstrong and Anne Korkendal contributed to the order.

Since August 2000 the Commission has issued a series of major orders on problems experienced in the wholesale spot power markets in California.

These orders address mitigation of prices of power sold at wholesale, since centralized single price options spot markets out bid the California independent system operators and the California Power Exchange as well as mitigation prices of power sold at wholesale in bilateral markets in the Western system's coordinating council.

Today's order addresses request for a rehearing

of several of those orders, the substance of which represents the major steps taken by the Commission to modify the ISO market rules and to adjust the pricing mechanisms used in California and the West to ensure just and reasonable rates in Western markets.

In large part the order denies rehearing. On limited issues it grants rehearing or provides clarification.

First, the order excludes governmental entities and RUS financed cooperatives from price mitigation for lateral transactions outside of the ISO's spot markets and from the markets outside of California.

Second, the order eliminates the under scheduling penalty that was instituted in the December 15 order.

Third, this order provides an opportunity for marketers, low serving entities and hydro power units to submit evidence after the conclusion of a refund hearing.

Yet the refund methodology results in a total revenue shortfall for the transactions during the refund period.

In addition, the order requires the ISO to file a revised congestion management plan and a plan for the creation of a day ahead energy market in California, both of which are to be filed by May 1, 2002.

And finally, the order directs resumption of the

evidentiary provision before Administrative Law Judge Birchman and requires completion of those procedures as soon as practicable.

Thank you.

CHAIRMAN WOOD: Thank you, Elizabeth.

Any questions, thoughts or comments?

COMMISSIONER BROWNELL: I would just like to make a comment and maybe reserve some comments for later about the importance of California developing a congestion management plan.

I think that's critical to that market working, and whatever the staff can do and we can could to consult, urge, cajole, provide support for, I just want to express our willingness to do that. That's a critical component.

If we don't do that and get that in place nothing we do can be particularly effective. So I'm glad to see that. I think that's important.

COMMISSIONER MASSEY: This order is enormous, as you know better than I do, those of you who wrote it, but it makes literally scores and scores of policy calls.

The way I read it, it is basically steady as she goes with respect to the earlier decisions we made with respect to these proceedings.

As I understand it, this order wraps in our December 15, 2000 mitigation order, the April mitigation

order, the June 2001 mitigation order that implemented the 24-hour a day, seven-day a week price mitigation formula that we just discussed in the previous order and, finally, the order in July, or it may have been more than one order, dealing with how to calculate refunds.

Do I have it correct?

MS. ARNOLD: Just a minor clarification. The April order is not addressed here. The rehearing on the April order was resolved into the June order. The other order that was mentioned is the March 9 refund order.

COMMISSIONER MASSEY: Yes. All right.

Well, I was close to right. I knew you would clarify it if I was wrong. So I really appreciate that.

The way I read this it is basically steady as she goes. We have in place a good plan, and we reaffirm most of the scores and scores of policy calls that we have made, primarily in the June and July orders. That's the way I read it.

There are a lot of good things here. We basically reaffirm our previous orders, putting in place a procedure for refunds, and we basically reaffirm the refund formula. Is that largely true?

We reaffirm the requirement that most sellers in the WSCC offer all available power in spot markets. We reaffirm conditioning market based rate authority to

prevent anticompetitive behavior.

We reaffirm establishing price mitigation for all hours across the WSCC until September 2002 and make a number of other calls that we affirm what we had previously concluded. So I agree with 90 to 95 percent of this order.

There were issues along the way, however, with respect to the orders that we are rehearing today that I have dissented on previously and on many of those issues my position is still the same.

So I will be issuing a short partial dissent with respect to a number of issues.

For example, we continue to assert jurisdiction over governmental entities to require refunds for past periods, and I disagree with that call.

Some market participants asked us to use an assumed economic dispatch over the past periods because of their concern about that generation withholding did occur and if we based our refund calculations on actual dispatch it wouldn't take that into account.

So today's order continues to base refund calculations on the actual dispatch rather than assumed economic dispatch, and I disagree with that call.

I continue to disagree with the call that we made to use spot gas prices based on an index to calculate the

prices when actual gas costs are known and could be collateralized. That's the test I think we should use.

I disagree with the continuation of using the 10 percent credit worthiness adding the refund calculations.

I've stated that position previously. That's still my position.

I want to commend all of you for your hard work. This was a massive endeavor to put all these rehearings together into one order. It is well written and understandable, and I appreciate your efforts.

I will be issuing a partial dissent in this matter.

COMMISSIONER BREATHITT: That's all I can say right now.

It was a big order, and I agree with Bill. It is well written and it really did show a tremendous amount of hard work. Some of the California team has dispersed, and you very successfully put a new group together and wrote a great order.

I think Jennifer was on the California team for a while. Wasn't Mary Martin on the California team for a while? And we've got some good new talent up on the 11th floor. You did a great job.

For last year the Commission has worked incredibly hard to address the problems experienced in the

wholesale spot power markets in California and the rest of the western United States.

Chairman Wood and Commissioner Brownell came in at a critically important time when we were really issuing some very important orders in the summer, and their leadership there and today continues to be important to this effort.

In the nearly 75 orders issued since August 2000, Bill, you and I were there for all of them. That included the eight orders on rehearing addressed in this order.

And the Commission has adopted a measured approach to provide for market corrections and price mitigation, and we do, I believe, balance the need to protect customers from high prices in the short term with the need to ensure that power continues to flow and that incentives are provided to bring much needed power supply online for the longer term.

As Bill so aptly stated today's order stays the course with minor modifications, and you've mentioned what those are.

I wanted to ask if in the minor modification where we call for removing the application of mitigation to governmental entities transacting outside of the organized California market.

For my benefit, can I supplant the word public

power for governmental entity? Is that what we mean by governmental entity? Is it public power really that we mean?

MR. BARDEE: Public power would be included in governmental entity.

COMMISSIONER BREATHITT: Are there others?

MR. BARDEE: And you would have the government marketing agency that some might or might not consider to be public power.

COMMISSIONER BREATHITT: So it was some work that we've used to include public power, the power marketing authorities and largely those two kinds of groups?

MR. BARDEE: Right.

COMMISSIONER BREATHITT: So this order makes a change by removing them from the application of mitigation if they sell outside of California; is that correct?

MS. MARLETTE: Outside of the California ISO markets.

COMMISSIONER BREATHITT: Okay.

MS. MARLETTE: I think it is outside of the markets run by the ISO itself. So to the extent you are selling bilaterally in California we would remove it for them. It removes it for all bilateral sales.

COMMISSIONER BREATHITT: Okay.

The order also directs California ISO to submit a

new congestion management plan and a plan for creation of a day ahead market.

This order marks an important milestone in getting California and other Western markets back on track, and it has my full support. The deadline for lifting our mitigation plan is fast approaching. It ends September-- when in September, the 30th?

MS. ARNOLD: The 30th.

COMMISSIONER BREATHITT: Next year.

So the order provides finality to our mitigation plan and gives the parties notice that they have to come together to forge a new plan for proceeding after September 30, 2002.

And, Bill, in case you misconstrued my comment about Pat and Nora coming on board in an important time, you provided tremendous leadership throughout the whole California situation, and I would like to thank you for that.

CHAIRMAN WOOD: When I was changing the baby last night I found an earlier version of page 132 behind his crib. So I have been reading this one for a while. It is very well written.

It addresses a lot of very hard issues and I think does them thoughtfully and correctly.

I appreciate that on such matters of moment that

we have so little that we disagree on on this issue, and I only say that up here because I think it is important to the Western market to know that the ball is not moving again and we just want to make sure that this large book has no sequel, no movie rights either.

I appreciate the hard work of my colleagues as well and all of our staff on this one.

It's a good one to be done, and hopefully as the year closes out so do issues of concern out West. I hope we turn it to a more positive and proactive fix out there.

COMMISSIONER MASSEY: If I could ask a question, what is the Wood family policy on the important question of cloth versus plastic diapers? That's what we dealt with on page 132.

(Laughter.)

CHAIRMAN WOOD: Diapers all the way. It saves the water and energy. It just make the landfill problem.

Since I come from a coastal town and we have global warming and the thawing of the ice caps, we need as much landfill we can get. We're doing our part. How about that?

COMMISSIONER MASSEY: I'm really glad I asked.

COMMISSIONER BREATHITT: Well, I think they say you're not supposed to ask your question unless you know the answer.

CHAIRMAN WOOD: You're not supposed to answer.

COMMISSIONER BREATHITT: Save the questions for later. What can I say?

Aye.

COMMISSIONER MASSEY: No in part.

COMMISSIONER BROWNELL: Aye.

CHAIRMAN WOOD: Aye.

ACTING SECRETARY WATSON: The next item is E-77, RJM Interconnection LLC, Kathy Waldebauer presenting.

MS. WALDEBAUER: Good afternoon.

I quickly say the team working on this, and that team was Ellen Sholler and Michael Bardee from OGC and Alice Fernandez and Debby Ott from OTR, and we also had help from Cindy Court and Harold Johnson in general law.

On October 3, 2001, the Commission issued a show cause order as to whether two affiliates of Exxon Corporation, PECO Energy Company and Exxon Power Team, may have violated the FTA and the Commission's standards of conduct by sharing certain nonpublic information and/or improperly coordinating their actions with respect to transmission outages run by PECO.

On that same day, the Commission asked PJM to file a report on its oversight procedures for transmission outages to facilities degrades.

PJM has now reported to the Commission that as a

result of its review of its own procedures, it is implementing new procedures and/or seeks new authority in the following areas:

In the area of transmission outages, PJM has now implemented several changes to the way in which transmission owners schedule outages.

Most meaningfully, transmission owners must now schedule outages by the beginning of the month prior to the month in which the outage will occur, and if the owner seeks to schedule outages after that date, PJM now has the ability to require the owner to reschedule the outage based on its possible impact on congestion.

In the area of facility ratings, PJM now requires transmission owners to update the ratings of their facilities twice a year and to submit any other ratings changes to PJM as quickly as possible.

PJM also proposes to implement future measures, such as requiring transmission owners to provide PJM with detailed reasons for rating changes, and it also proposed to create an historical database of ratings to be used to benchmark ratings changes.

PJM further asks the Commission to clarify that PJM has the authority to reject or modify ratings and that PJM's ratings will prevail during the pendency of any dispute of a rating by a transmission owner.

Finally, PJM asks the Commission to establish that when the PJM market monitor is reviewing claims of undue discrimination transmission owners must provide information in a timely fashion if requested by the market monitor.

The draft order here requires PJM to file all these changes with the Commission and provides the requested clarification as to PJM's authority to reject or modify ratings.

As to the show cause proceedings regarding the Exxon affiliates, the draft order states that the record in this proceeding does not establish a violation of the FTA or the Commission's standards of conduct sufficient to warrant further enforcement proceedings and that Commission has determined that further procedures to explore potential violations by PICO or Power Team are not warranted or necessary.

PJM's changes will bring about greater transparency in transmission owner's decisions regarding rating and will thus improve PJM's oversight and reduce opportunities for the class of violations alleged in the show cause order. The draft order terminates the show cause proceeding.

COMMISSIONER BROWNELL: As to the changes that PJM has identified, will we be getting routine reports on

outages and degradings so that we can monitor in our market monitoring unit whether, in fact, what we've agreed upon is actually happening?

MS. WALBEBAUER: That is not in the draft order as it is now, no.

COMMISSIONER BROWNELL: I would like to recommend that -- I know this is a last minute addition -- but I think there are so much activity going on and so many changes being made, it's important we have some mechanisms to keep track of what is actually happening in terms of the implementation of what we have agreed to.

And because the transparency issue has become the critical one, I think I would like to have the assurance that we are communicating regularly about that.

I don't know how my colleagues feel, and I apology for throwing that out at the last minute.

CHAIRMAN WOOD: It is always okay until we vote on it.

The only issue would be we've got this order requires PJM to make filing consistent with their reports.

So maybe at the point when we accept the filing or dealing with the filing, we'll say, "Oh, by the way, we want this copied to our market oversight group." That's what we can do there or here.

COMMISSIONER BROWNELL: There is fine.

CHAIRMAN WOOD: Okay.

COMMISSIONER MASSEY: Some of these changes will be in the forms of proposals to us, proposed tariff amendments?

MS. WALDEBAUER: That's what we anticipate, yes.

COMMISSIONER MASSEY: Not to prejudge those, does this appear to be moving in the right direction in terms of changes in the tariff that would prevent any sort of market power abuse in the future with respect to these degradings?

MS. WALDEBAUER: Yes.

COMMISSIONER MASSEY: So he will wait.

Have those proposals been made before us?

MS. WALDEBAUER: PJM has not yet filed them with the Commission, no.

COMMISSIONER MASSEY: Okay.

With respect to the investigation we terminated it because we find that there is not sufficient evidence to move forward at this point?

MS. WALDEBAUER: That's correct.

COMMISSIONER MASSEY: I agree with all of that.

Thank you.

CHAIRMAN WOOD: Thank you all for that.

I appreciate the efforts that one of the more advanced markets has made to streamline its rules and

clarify its role in closing the door through which a transmission owner could advantage an affiliate.

I'm also comfortable with the response of the company on the show cause order that in my mind demonstrated that the cloud of the investigation should be timely removed.

I appreciate the efforts of both the company and the staff to address these issues in a straight-up manner, and that is the way this ought to work.

It is our job to also dismiss things when they are ready to be gone.

So I think this order, both with regard to the show cause issue and with regard to the global issues, is exactly what we need to do to advance wholesale competition. So I support it.

COMMISSIONER BROWNELL: Aye.

COMMISSIONER MASSEY: Aye.

COMMISSIONER BREATHITT: Aye.

CHAIRMAN WOOD: Aye.

MR. KLOSE: Good afternoon.

With me I have Julia Lake and Jim Guest.

This proposed rule is part of staff's ongoing efforts to address the developments in the financial accounting and reporting that affects the Commission regulated entity.

On August 10 of this year, the chief accountant issued interim guidance to jurisdictional entities on the accounting and reporting to the Commission for transactions related to financial accounting standards 115, 130 and 133.

This proposed rule represents the next step in that process. It proposes to establish new accounts to record certain types of transactions that are addressed by these pronouncements along with corresponding changes to the Commission's annual report Forms 1, 1-F, 2, 2-A and 6 filed by the jurisdictional entities.

For financial accounting standard number 115, the proposed rule would change the existing accounting requirements to permit certain investments in securities to reflect it at their fair value rather than historical cost.

For financial accounting standard number 130, the proposed rule would create a new section of stockholder's equity called other comprehensive income to reflect transactions that are properly classified to that section of equity rather than retained earnings or the capital stock accounts.

And for financial accounting standard number 133, the proposed rule would create new balance sheet accounts to record derivative assets, derivative liabilities and

related hedging activities.

The aim of these revisions is to provide consistency in accounting and reporting of the above-mentioned transactions, to provide regulatory certainty as to how these transactions are to be accounted and reported to the Commission, and to minimize differences between financial statements prepared for the Commission and those prepared for stockholders.

Finally, the proposed rule notes that the Commission has granted power marketers waivers from our accounting reporting requirements and blanket authorizations for all future issuance of securities under Part 34 of the regulations.

The proposed rule seeks comments on whether the Commission should continue in effect the existing waivers of our accounting and reporting requirements and the blanket authorizations under Part 34 for power marketers.

This conclude my presentation.

CHAIRMAN WOOD: Thank you.

COMMISSIONER BROWNELL: I just want to commend the staff.

I will be looking particularly visionary these days, given what's occurred in the last couple of months.

But I think the efforts that have been ongoing in the agency, and I want to underline, because you don't

produce a work of this substance overnight, or in response to certain conditions; you produce it because you thought about these issues.

I think the importance of consistency in accounting between and among various entities is critically important. Disclosure is obviously important and regulatory certainty is important.

So I just want to commend your work. I was impressed and pleasantly surprised to see this appear on the desk in such a timely manner.

Thank you and keep up the good work because I think there's a lot of questions that we are ourselves today. I hope you will try within the agency in helping us answer those questions.

COMMISSIONER MASSEY: Now, tell me how these rules change the reporting of derivative transactions? Can you put in layman's terms?

MR. KLOSE: Well, I think the problem that we were faced with was that under the Commission's existing uniform system of accounting for electric, gas and oil, there were no instructions.

So, because there were no instructions, it was really unclear how companies would show it to us and where we would find them, where we would see them or even how they would be measured.

These rulings in large part go with the same rules that they will be using to report to stockholders.

Because we are going to propose to create new accounts, we will visibly see the extent to which they have derivative assets or derivative liabilities, and the extent to which they have entered into hedging activities.

COMMISSIONER MASSEY: Are these rulings consistent with the FASB?

MR. KLOSE: Yes. Yes.

COMMISSIONER MASSEY: Are there new FASB rules last year?

MR. KLOSE: Yes. FASB is continually interpreting the rules or issuing new guidance, as well.

COMMISSIONER MASSEY: Is this a common practice of the agency when FASB comes out with new rules to look at them, see if they are appropriate for our accounting as well and for you to recommend to this agency that we apply them as well? Have we done that in the past?

MR. KLOSE: Yes, we have.

COMMISSIONER MASSEY: In that the normal thing that we do?

MR. KLOSE: Yes.

COMMISSIONER MASSEY: You are not sure?

MR. KLOSE: To the extent in some rare instances a rule may come out that may conflict with the Commission's

reporting needs, and then we would have to make certain adjustments.

COMMISSIONER MASSEY: Yes.

But to the extent that FASB attempts to keep up with changes in the industry with respect to the use of new or more cutting-edge instruments, this is essentially saying, "Well, we intend to apply those guidelines here as well for accounting purposes."

Am I correct?

MR. GUEST: As a general practice, generally we monitor the actions of the Financial Accounting Standard Board and try to keep our Commission accounting rules consistent with the FASB rules, differing for the most part only if the Commission needs information reported to it in a different way for carrying out its regulatory programs, mostly the ratemaking considerations.

COMMISSIONER MASSEY: Do these rules dealing with the issue of marketing these instruments to market, marking derivative instructions to market, if I'm right about that, can you give me a layman's explanation of what this does?

MR. KLOSE: What has happened in the past is that when a company enters into this trade agreements, whether you call them options, futures, forwards, whatever, they may have either been off the balance sheet or not reflected on the financial statements at all until the agreement

actually is settled, which could be sometime in the future.

COMMISSIONER MASSEY: It could be months or years in the future?

MR. KLOSE: Months or years, yes.

That created some concerns about amongst the users of the financial statements because they would like to know at the end of the year or at the end of a quarter what is your position with these instruments relative to the market?

If you were to close out your position today basically would you have huge losses or huge gains, rather than waiting possibly a month, or whenever these positions would close out. This is trying to give everybody the most up-to-date information possible.

COMMISSIONER MASSEY: With respect to the true value of these instruments over time so that you wouldn't wait until settlement to understand the value of the transaction, because it may have fluctuated up or down over the course of it.

MR. KLOSE: And those fluctuations would be shown in the financial statements.

COMMISSIONER MASSEY: Yes. Okay.

And the language you mentioned, the filings must reflect the fair value rather than historical cost, is that

where this standard is put forth?

MR. KLOSE: That is actually going to another standard, FAS 115. It's dealing with a slightly different type of security.

In certain instances, some companies create funds for various reasons to fund certain projects or certain things that are going to come up, and they will invest in securities.

The existing uniform system of accounts says if you buy a security you would record it at its original cost and you would no longer reflect or you would not reflect any changes in that value.

When FAS 115 came out back in, say, '94 the current thinking at that point was it would be better to show investors and everybody else what the current value of that security would be if you were to dispose of it on the open market.

So that is actually the fair value piece of what you are referring to. It is a little different than a derivative piece.

COMMISSIONER MASSEY: Yes.

On the issue of the questions we've asked, as I understand it there are -- I don't know how many there are -- Pat, you have used 1200 of these -- they are public utilities. You call them power marketers. They are public

utilities who are exempt from these rules because, generally speaking, they sell at market-based rates.

And these are rules primarily related to cost of service, are they not? Would that be an accurate statement?

MR. KLOSE: Yes. They would either assist you in determining cost-based rates to the extent that you could decide, for example, whether you want these amounts in the rates or out of the rates or however you want to treat them.

COMMISSIONER MASSEY: Yes.

So, historically, we have exempted these new entrants into the marketplace, and there are now 1200 of them. We exempted them because they were selling at market-based rates, and there were, theoretically, no ratepayer with no ratepayer money at risk with respect to whether they complied with our accounting rules or not.

Is that accurate, roughly an accurate statement?

MR. KLOSE: Yes.

COMMISSIONER MASSEY: You have to understand I did not do well in accounting in law school. So you are helping me a lot. You are giving me the best tutorial I've had in the past 30 years. So bear with me if you don't mind.

So, we have exempted them from the uniform system

of accounts and also from some other accounting rules that arise under -- what -- 204?

MR. KLOSE: Issuance of securities assumptions, of debt. There's a laundry list of waives we grant.

COMMISSIONER MASSEY: So what we are voting on today, I ask asked the question.

MR. KLOSE: Ask the question.

COMMISSIONER MASSEY: Does that exemption continue to make sense or should we reconsider it when we're looking for input?

MR. KLOSE: Looking for feedback.

COMMISSIONER MASSEY: When I was up Capitol Hill last week we got a number of questions about our rules, and this issue was raised, and Chairman Wood -- I think I'm remembering -- indicated that we would be asking this question, and I support this.

Thank you.

COMMISSIONER BREATHITT: This agenda item seems to have gotten quite a bit of pre-press coverage before it was even issued, probably as a result of our making reference to some FASB measures when we were up on Capitol Hill.

And if I'm time reading this incorrectly, please let me know. But I wanted to point out that this notice of proposed rulemaking doesn't seem to institute sweeping

changes to our accounting rules. Rather the proposal merely establishes more uniform accounting practices to recognize, as Bill just pointed out, the fair market value financial instruments.

Now notwithstanding the question that we ask at the end, I'm talking about what were the changes that we are proposing and not the question that we're asking.

The NOPR, as I understand it, was generated as the result of a guidance letter issued by our chief accountant, John Delaware, on August 10 of this year.

In essence, the proposal would require those utilities that filed the forms that you mentioned, the 1, the 2, the 6 and the A parts, to make conforming changes to their annual reports to reflect these four FASB pronouncements issued since 1993.

I think the letter says there was one issued in 1993, 1997 and 2001.

The rule, as I understand it, then revises our existing uniform system of accounts to provide entities with a means to reflect the fair market value of certain financial instruments, to provide consistency with the manner in which other financial statements are filed.

Is that accurate?

The derivative information will only be filed annually; is that correct?

MR. KLOSE: The derivative information would be part of all the information that's filed with us. Under our current filing requirement, yes, it is annually.

COMMISSIONER BREATHITT: So we will be obtaining a yearly snapshot of derivative positions of certain jurisdictional entities?

MR. KLOSE: That's correct.

COMMISSIONER BREATHITT: The way I'm reading this is that I don't believe that these entities are major players in the derivatives market.

The NOPR does pose the question, as I mentioned and as Bill did, as to whether marketers should also be required to file this annual data.

I do believe that these conforming changes are important and they make sense, and they are not intended to provide the Commission with the ability to actively monitor these derivative transactions, as I see it.

Tell me if you disagree with that statement.

MR. GUEST: I don't think I disagree with it.

If the NOPR were adopted it is intended to provide a place for the utilities to put these accounting measurements.

I think you are correct that we don't expect the traditional utilities to be big players in derivatives.

The experience has been that they probably have

been involved in derivatives, for the most part, to hedge variable interest rates securities or fixed-rate borrowings, but they really haven't been that big a player in the derivatives area.

COMMISSIONER BREATHITT: So is it the question that we are asking at the end if we decide to turn the question into a proposal do you think that's now that works in NORP, asking a question but not proposing anything new at this time? Would that be the area of this NOPR, the question that could provide the Commission with a newer ability to monitor derivatives?

MR. GUEST: It's possible. We really don't know what to expect to get in the way of comments back.

COMMISSIONER BREATHITT: That's all I have right now.

I think this is a good step, and I agree with the letter that went out, and I agree with the NOPR, and I think the question that we ask is a very important one, too.

So thank you.

COMMISSIONER BROWNELL: Derivatives are pretty complex instruments. It took me along time in the banking world to get that tutorial, and it happened about once a week.

They assumed some baggage, particularly in the

last couple of months.

So I don't want to leave people with the wrong impression. Utilities have typically not used derivatives and other hedging instruments because they haven't had to.

They have had very low-risk profile as they are very vertically integrated.

What one would assume that over time as the utilities themselves change that one would assume they will use a more sophisticated array of instruments, and the fact that they haven't should not be kind of assumed as a judgment one way or the other on power marketers versus utilities on how they manage their risk.

Is that correct?

MR. GUEST: I think so.

I think you point to one of the reasons why we are moving now to go ahead and clean up the accounting rules is because we think there could be more activity in this area and so let's get the rules straight now.

COMMISSIONER BROWNELL: Thanks.

CHAIRMAN WOOD: You have said all the things I wanted to.

I guess the clear way that I guess I would hope somebody would take this from this question is question being the last part of what we are doing in the ongoing work that has been highlighted and added in light of recent

events.

Is this agency in reporting requirements moving from a rate or a customer protection type role, which we had for years, to one of more providing counter-party investing information that they need to assess the credit worthness of a person with whom they are doing business.

You know, I'm very open to being told that's another agency's job to do, and I expect some people may well say that, and I can take that because I might be actually be in agreement with that.

But I do think we should be asking the question about what information, whether it is a lot or little or none at all, should be offered out there.

And I think interestingly I heard last week in New York that reporting this kind of information actually settled the market down. It's certainly not viewed as re-regulation, which I certainly do not view this question to lead to, but is meant to provide for transparency to the market.

If it's us to do that, fine. If it's the Securities and Exchange Commission should do that, fine. If it's the FTC to the extent they have jurisdiction, fine.

But it is timely to ask this question. I appreciate everybody for the timely vehicle for putting it

out there for comment.

COMMISSIONER BROWNELL: Aye.

COMMISSIONER MASSEY: Aye.

COMMISSIONER BREATHITT: Aye.

CHAIRMAN WOOD: Aye.

ACTING SECRETARY WATSON: For the next item we have Group, C-9, C-10 and C-11 with no presentation.

CHAIRMAN WOOD: It's my understanding on all issues relating to these items have been resolved. They make the cut. That's confirmed by my colleagues that's the case.

ACTING SECRETARY WATSON: Are they resolved? You need to vote.

COMMISSIONER BROWNELL: Aye.

COMMISSIONER MASSEY: Aye.

COMMISSIONER BREATHITT: Aye.

CHAIRMAN WOOD: Aye.

We'll do the hydro cases. Then we'll break for lunch and do the others.

COMMISSIONER: We're getting lunch?

CHAIRMAN WOOD: We're getting lunch. Then we'll we do the carryover.

ACTING SECRETARY WATSON: Chris Nygaard is presenting the hydro case.

MR. NYGAARD: H-2 and H-3 answer certain critical

procedural questions posed by two different licensees that have filed applications to relicense their hydroelectric projects but subsequently entered into settlement agreements that entail cessation of generation and removal of the projects in question.

Part I of the Federal Power Act, governing hydropower licensing, does not address some of the novel proposals that are being presented. The Commission has filled in some of the blanks through regulations. For example, if an incumbent license-holder, who enjoys a statutory preference at relicensing, gives notice that it intends to file a relicense application, but then does not do so, competition is reopened so that others may apply, without facing incumbent preference.

However, the Commission's regulations do not address the circumstances in H-2 and H-3, where an incumbent licensee filed relicense application, but then file a settlement agreement calling for the project to be shut down and removed. The Commission staff advised the parties of these two cases that it could not predict how the Commission would proceed in such a situation: For example, whether in the face of a potentially vanishing project, it would choose to reopen licensing competition; and whether the incumbent's relicense application would be dismissed because the incumbent now had a different

non-licensing proposal.

The fundamental findings of the draft orders before you are:

One, there is no statutory requirement to reopen competition in this situation, and indeed doing so would discourage settlement agreements; and.

Two, the incumbent's relicense application will be preserved pending the Commission's disposition of the settlement proposal.

The draft orders also address some related issues.

CHAIRMAN WOOD: Thank you, Chris.

The main reason I wanted to call separate these two cases is they were both in our discussions at the Hydro Conference last week as pending out of that would resolve some issue on letting these two, and there may be some others, but I know these two for sure go forward.

I am actually comfortable with the substantive cuts in the case, but I also wanted to call attention to the fact we're following through on due process issues that we talked about last week.

I appreciate your work to get this up.

So let's vote.

COMMISSIONER BROWNELL: Aye.

COMMISSIONER MASSEY: May I ask a question

please?

MR. NYGAARD: Yes.

COMMISSIONER MASSEY: Is this a new policy in these orders or is this just clarification of the policy?

MR. NYGAARD: I think this is the Commission's first occasion to think through some of the these statutory and regulatory requirements and implications of the constellation of facts we got in this case.

So to switch from one to another and, you know, analogous to the first situation where the incumbent said, yes, I am filing, and then doesn't, which people argue that then others who had stayed away do not face the incumbent tie-breaker preference, or whether as these drafts find it is an appropriate way to handle a settlement in the context of relicensing.

COMMISSIONER MASSEY: Yes.

Well, I think these are good orders. I support them. My vote is aye.

COMMISSIONER BREATHITT: Aye.

CHAIRMAN WOOD: Aye.

We will break for lunch and come back no earlier than 2 o'clock.

(Whereupon, at 1:10 p.m., the meeting was recessed, to be reconvened at 2:30 p.m. this same day.)

## AFTERNOON SESSION (2:30 p.m.)

CHAIRMAN WOOD: The Commission will go back on the record.

Mr. Watson.

ACTING SECRETARY WATSON: The next is item C-6, Millennium Pipeline Company, et al., Mike McGehee and Jennifer Kerrigan presenting.

CHAIRMAN WOOD: Before they go ahead, I would like to recognize a note from one of the affected areas around Mount Vernon.

We do have visitors here, and I want to recognize them and in particular recognize the elected officials who are here: Ms. Karen Monta, Steven D. Horton, and the counsel president, Ms. Linda D. Williams from the City of Mount Vernon.

I welcome you all for being here today.

Go ahead.

MR. MC GEHEE: Thank you.

Good afternoon, Mr. Chairman and Commissioners.

I am Mick McGehee and with me are Jennifer Kerrigan,, Joel Arneson, Nils Nichols and Rich Hoffmann.

Item No. C-6 is a proposal filled in December 1997 by Millennium Pipeline Company to construct and operate a 424 mile-long natural gas pipeline that would extend from an interconnection in Lake Erie at the

Canadian/U.S. border, through southern New York to a terminus in the City of Mount Vernon in Westchester County, New York.

In a related application, Columbia Gas Transmission Corporation proposes to abandon the majority of its Line A-5 mainline system in southern New York and convey to Millennium certain of its Line A-5 lateral facilities that would become part of the new Millennium pipeline system.

The proposed Millennium pipeline would have a capacity of 700,000 dekatherms per day and would be used to transport U.S. and Canadian gas to growth markets in the eastern United States beginning in November 2003.

Millennium has approximately 66 percent of its proposed capacity under long-term, firm contracts, Millennium's shippers have designated the delivery point in Mount Vernon in approximate for approximately one-half of the contracted for capacity, or approximately 230,550 dekatherms per day.

The draft order finds that the proposed facilities are in the public interest because they will provide fuel for needed electric generation, help relieve constraints on other area pipeline systems and accommodate anticipated long-term growth in northeastern energy markets.

In comments filed in support of Millennium's proposed project in July 2000, the Public Service commission of the State of New York states that the need for new pipeline capacity into New York City is critical because existing capacity is constrained.

The Public Service Commission states that New York City needs 300 megawatts of in-city gas-fired electric generation immediately and 200 megawatts each year thereafter to meet expected demand.

The processing of these proposals has been ongoing, open and public for almost four years. The staff conducted 14 public comment meetings during this time along the proposed route of the pipeline in New York.

The meetings were held between March 1998 and September 2001. These included five scoping meetings for the original project held in March 1998 in Northeast Pennsylvania, and Wellsville, Binghamton Port Jervis and Yonkers, New York.

Six draft environmental impact statement comment meetings were held in May 1999 in Mayville, Wellsville, Horseheads, Binghamton, Goshen and Yonkers, New York.

Additionally, we held a scoping meeting and a supplemental draft environmental impact statement comment meeting in Croton-on-Hudson in September 2000 and Ossining in April 2001. We held a final comment meeting on the

project in Mount Vernon, New York, on September 4, 2001.

The staff also conducted publicly announced site visits of the proposed route during the weeks we held public meetings. Also, numerous other field investigations were undertaken.

In response to these meetings, we received thousands of comment letters, representing various Federal agencies, elected officials, state agencies, county and municipal agencies, organizations and numerous individuals.

In April 1999, the draft environmental impact statement was issued. Among the commenters on the DEIS were the Public Service Commission of the State of New York and Consolidated Edison Company whose primary concern was the location of the pipeline within the ConEd powerline right-of-way in Westchester County.

In June 2000, Millennium filed an amendment to its pending certificate application that partially addressed this concern and reflected a new proposed route, designated the 9/9A Proposal, in Westchester County, New York.

A supplemental draft environmental impact statement that addressed the amended route and all related environmental issues was issued in March 2001.

The final environmental impact statement was

issued in October 2001.

We evaluated 15 possible system alternatives using varying combinations of the existing pipeline systems of Tennessee, Iroquois, Algonquin and Texas Eastern, or proposed expansions of these systems.

These system alternatives were identified mostly to minimize or avoid impacts associated with Lake Erie and Hudson River crossings, or to minimize overall environmental impact.

Although we have examined these alternatives in detail, including expansion of these existing pipeline systems both north and south of Lake Erie and from different directions into New York City, we have been unable to find an alternative that would not create similar disturbances to other locations, other landowners, and other environmentally sensitive areas in New York or neighboring states.

We found none of the system alternatives to be reasonable or practical for varying reasons, including the potential for at least equal or greater environmental impact, construction constraints, and the cost differential associated with the expansion that would affect the likelihood of the project ever being built.

We also evaluated nine major route alternatives and reviewed 26 route variations proposed by landowners and

17 line changes proposed by Millennium to address landowner concerns.

Of these, we agreed that Millennium should incorporate the 17 line changes and 14 of the variations. These line changes and route variations would reduce impacts on environmental resources or accommodate development plans.

The draft order concludes that the development and construction of pipeline facilities in congested and heavily populated areas such as the Northeast, in general, and the metropolitan New York area, in particular, present significant environmental challenges.

The draft order balances these considerations with the overriding responsibility to ensure adequate and timely energy infrastructure development for the Nation, particularly in large employment and population centers such as New York.

While there are potential impacts associated with the proposals, the draft order finds that the far greater risk would be for us to ignore or miscalculate the growing energy requirements of this region.

In addition, after lengthy and intensive study, we find that there is no preferable alternative to the Millennium proposal.

However, the draft order does not authorize

Millennium to construct its facilities through the City of Mount Vernon. It directs Millennium to negotiate with elected officials and interested parties and citizens in Mount Vernon and to work toward reaching an agreement on a route to an interconnection with Con'Ed's high pressure line.

Jennifer now has more detail on some of the numerous environmental challenges presented by this project.

MS. KERRIGAN: Good afternoon, Chairman Wood and Commissioners.

I'm Jennifer Kerrigan and I'm going to give an overview of the Millennium Pipeline Project in a Power Point presentation.

Our first slide shows the location of the Millennium Pipeline Project which extend from the interconnection at the U.S./Canadian border in Lake Erie, across the southern part of the state, to the terminus in Mount Vernon, New York.

As Mike indicated, we have had thousands of comment letters that have been filed about various aspects of this project, and all of them have been placed in the public record. This presentation will illustrate nine areas about which we received many comments or where unusual issues were raised.

To address project impacts, the order includes 16 environmental conditions and directions that Millennium must follow as it builds this project. Some of these are applied project-wide and others are location-specific. These conditions are listed in Appendix G of the proposed order.

The areas that I'll mention in this presentation are indicated by a blue dot or other marking on the maps shown on the screens, such as the blue dot that is in Lake Erie on this particular slide.

About 33 miles of the project would be constructed in the U.S. portion of Lake Erie.

Environmental issues associated with this construction include:

Turbidity, sedimentation and contaminant disturbance during construction; and impacts to the near shore environment.

The U.S. Army Corps of Engineers's Cold Regions Research and Engineering Laboratories, assisted us in analyzing Lake Erie issues. Its analysis verified the area of impact and that no additional testing was needed for contaminants.

To address issues related to construction across the bluffs at the shoreline, Millennium would use a horizontal directional drill. The drill would extend about

2,600 feet from the shoreline into the lake.

Since there would be no surface excavation, the HDD drill would avoid problems in the near shore area such as lake bluff instability, restoration problems due to the lake's high energy near the shore and direct impacts from trenching.

Another slide.

Around Ripley, New York, issues were raised regarding impacts on a unique agricultural area where grapes are grown. Alternatives developed by staff and commenters during scoping were evaluated and a preferred route was selected with input from the New York State Department of Agriculture and Market to minimize agricultural impacts.

Next slide.

In Cattaraugus County, county representatives and various commenters suggested changes to a portion of the route near a geologic feature known as Rock City. Pipeline construction in this area will create new utility right-of-way. The staff did not recommend to the Commission the county's alternatives since they were longer and, therefore, affected a greater amount of resources along the new right-of-way.

The next slide.

In western Broome County, several alternatives

and route variations developed by staff and commenters were evaluated. We were able to take advantage of another existing utility corridor where there would be fewer environmental concerns and developed a preferred route along it which also included recommendations from the New York State Department of Agriculture and Markets.

Next slide.

The Black Dirt Area in Orange County, New York, is another unique agricultural area with unusual peat soils. To minimize disruption and to ensure adequate restoration, a special site-specific plan was developed and the route modified with the assistance of the New York State Department of Agriculture and Markets.

Next slide.

Issues associated with the proposed Hudson River crossing within Haverstraw Bay include:

That this is an area that has been designated as Significant Coastal Fish and Wildlife Habitat within New York's Coastal Zone. Before the project is constructed, Millennium will need to obtain a final determination of consistency from the New York Department of State and must construct the project consistent with requirements of the New York Department of State.

Habitat for a federally endangered species, the shortnose sturgeon, is within Haverstraw Bay and this area

has been designated as essential fish habitat for seven fish by the Natural Marine Fish Service.

Continuing consultation with the Marine Fish Service is required regarding potential impact and mitigation, including any changes to project that might affect these resources.

Other Hudson River issues include turbidity, sedimentation and possible disturbance of contaminated sediments during construction.

Pursuant to its December 8, 1999 section 401 Water Quality Certificate, the New York State Department of Environmental Conservation evaluated the proposed crossing method and the issues to water quality and approved the proposed Hudson River crossing location and construction method.

Blasting may be required to complete the Hudson River crossing. The FEIS evaluated the crossing using the construction plan approved by the New York State Department of Environmental Conservation, which did not include blasting.

However, if blasting is required, a number of the environmental conditions attached to the order already anticipate changes to construction and require further review and approval.

We evaluated alternative crossing locations to

avoid crossing Haverstraw Bay.

One alternative crossing location is to the north of the proposed crossing at the existing Algonquin pipeline crossing.

Another alternative crossing location is to the south of the proposed crossing just to the north of the Tappan Zee Bridge.

Pipeline routing to both of these alternatives would move the project to areas that would have land use issues similar to those along the proposed route.

Therefore, they were not recommended.

Next slide.

The next map has blue lines which bracket the location of the amended route, which is called the 9/9A Proposal, in Westchester County. The ConEd Offset/Taconic Parkway alternative is approximately located along the upper half of this segment.

On June 28, 2000, Millennium filed its amendment application which changed about 25 miles of the project in Westchester County. A portion of the amended route would be constructed along the edge of U.S. Route 9 and State Routes 9A and 100. This change was made in response to concerns raised about electric reliability by the New York Public Service Commission and ConEd if the project were constructed and operated along about 23 miles of ConEd's

powerline corridor as originally proposed.

The 9/9A Proposal is still the proposed route in Westchester County.

Issues raised for the 9/9A Proposal include:

Traffic impacts, the route follows an evacuation route for the Indian Point nuclear facility, community disruption, use of park land and safety.

To address issues related to traffic, the evacuation route and community disruption along the portion of the 9/9A Proposal along the roadways, we recommend use of the ConEd Offset/Taconic Parkway alternative which follows an existing utility corridor and a highway with more workspace area.

To address disruption to portions of the project that are along or across trails and roadways, we have recommended that restoration of these areas begin immediately after the trench is backfilled and that Millennium coordinate with park authorities about restoring park land after construction.

Issues related to construction along the ConEd Offset/Taconic Parkway Alternative include:

Safety, impact on natural resource/education areas, such as the Jane E. Lytle Arboretum and Teatown Lake Reservation, and impacts to the New Croton Reservoir watershed, proximity to a school and dioxins.

The Public Service Commission of New York developed a memorandum of understanding, as supplemented, for the ConEd Offset/Taconic Parkway Alternative which is more rigorous than the U.S. Department of Transportation pipeline requirements. Public Service Commission equates it to the PSC's requirements for pipelines constructed in the most densely populated urban areas to minimize pipeline safety concerns.

To address other issues, the proposed order requires Millennium to develop site-specific plans for construction near and through the natural resource areas and the New Croton Reservoir watershed and to use construction and restoration procedures within the watershed that are consistent with the established procedures of the New York City Watershed Rules and Regulations as recommended by the New York City Department of Environmental Protection.

Commenters were concerned about the proximity of a school to the alternative route. School buildings are about 140 feet from the project centerline. If the pipeline were moved to the opposite side of the Parkway, it would be close to the ConEd powerlines and two additional schools and the Public Service Commission of New York has expressed some concern about moving the project any closer to the power lines.

Comments were filed about the possibility that dioxins or related contaminants might occur along the ConEd right-of-way and that they might be disturbed during blasting or other pipeline construction activities.

Staff analysis of the dioxin and herbicide testing performed by the Village of Croton-on-Hudson, and Millennium concluded that the samples that the collected were well below regulatory guidelines for cleanup. Therefore, we did not recommend any additional testing.

Next slide.

This has been significant recent controversy concerning the project in the City of Mount Vernon.

Issues raised concerning the proposed route include:

Alternative routes; project would be near a community resources such as a school, churches, community center, fire stations, 10-story apartment buildings and a community health center, and other issues which included safety, community disruption and impact on buried utility infrastructure.

To address these issues we have recommended that Millennium develop site-specific plans everywhere in Mount Vernon where in-street construction is required.

These plans should have well defined, best management procedures so that damage to existing utility

infrastructure is avoided.

Also, as required, project-wide, Millennium must immediately restore all road surfaces to minimize community disruption and construction time.

In case the existing utility infrastructure is damaged, Millennium must have repair crews and materials present on standby to enable any damaged utilities to be repaired immediately.

Millennium would also have to make alternative arrangements for residents who are affected by utility disruption if they can't be repaired that same day.

At least seven Commission staff members have conducted site visits to Mount Vernon to assess project impacts since the application was filed.

We have personally observed the area and have counted structures which we characterized as residential, or other, such as schools or churches. But some of the counted buildings may have mixed use since in some cases we were unable to determine all uses for building. For example, a building with a commercial use at street level may have apartments in upper floors.

Next slide.

This slide shows the proposed route in blue and the alternative routes. The beginning and ending of Alternatives A, B and C are the same, so the green line for

Alternative A overlaps all of the other alternatives in those locations. Alternative B is -- I believe that is gray -- I think it came out gray on the slide there -- and the segment where Alternative C differs from Alternative B is shown by the red line.

Next slide.

This table shows a comparison of houses, apartment buildings and commercial properties along the proposed route and Alternatives A, B and C. All of the alternatives have more buildings which are used for residential purposes and greater numbers of commercial properties than the proposed route. The alternative routes are all longer than the proposed route.

Moving the pipeline to other routes within the city, and extending into the Bronx in some cases, would result in longer routes that would affect greater numbers of residential buildings. Based on our analysis, we could not determine that any of these routes would be preferable to the proposed route.

Now I'll turn this presentation over to Mike McGehee who has additional comments about alternatives.

MR. MC GEHEE: Various parties have suggested moving the termination point of the pipeline from the City of Mount Vernon. However, Millennium's shippers have requested 230,550 dekatherms per day for service at the

proposed delivery point in Mount Vernon.

The draft order here today is an interim order that gives Millennium a certificate to construct a pipeline to the city limits of Mount Vernon.

The order asks Millennium to negotiate with elected officials and interested parties and citizens in Mount Vernon and to work toward reaching an agreement on a route to an interconnection with Consolidated Edison Company of New York, Inc.'s high pressure line.

At the end of 60 days, the order states the Commission will issue a final order authorizing Millennium to construct its pipeline, including a specific route to the termination point. An alternative route through Mount Vernon may require additional consideration under NEPA and other provisions of law.

CHAIRMAN WOOD: Thank you all for the presentation, and I thank staff over the last four years for their working with the applicant with numerous siting environmental routing and technical issues related to this application.

I think it's clear from reading it that there is a need in New York, just not only upstate but the city part of New York, for additional natural gas.

I think it becomes more and more difficult as years go forward to try to site these in a way that has

minimal impact.

I understand quite clearly that the law requires us to balance these competing needs together and try to arrive at a just outcome.

I think what this interim order does, quite frankly, is acknowledge that we're eight-ninths of the way there.

You look at the first eight areas on your Power Point presentation that we were able to work through a number of issues at these other locations, but we got to the end of the pipe here in Mount Vernon and quite frankly are left with some options that are difficult to pick from.

So we are going in this order ask for President Williams and as well as the other local leaders, and Senator Schumer has been very helpful in giving us frank assessments of this project throughout its history, and we're going to rely on his good graces and the good graces of his office and help from them to discuss among the people who will be directly affected by this, if there is an in fact a better way to get to the ConEd high pressure system than we have looked at here.

I think I would have hoped that this could have happened earlier, but putting an infrastructure through neighborhood is an emotional thing.

I did it in my last job. I've lived through it as citizen myself in my home town.

I think it behooves us to involve in a sufficient but accelerated process to see if there is, in fact, a better route than the one that is proposed on the green part of that map that we just looked at.

If there is one of these other alternatives out there that we have now looked at I think right now is really the time to come forward.

I know there are some folks here from Mount Vernon who would be greatly affected by this. Their local leaders, their school leaders are here as well.

We care a lot about getting this right. But I think we do acknowledge that it does need to be done in some regard connecting the points.

So this order does put it back to the local community to help us get the gas infrastructure into New York as we need to do but to do it in a way that is as respectful as we can possibly be about the local needs and the cultural needs of Mount Vernon.

So with that I would like to see if my colleagues have anything else to add.

COMMISSIONER BROWNELL: I just want to make a couple brief comments, and that is to welcome our friends from Mount Vernon on here.

You have shown real leadership and commitment in giving up jobs, family, holiday shopping and plans to come to make sure that we understand that your concerns are being heard. I can assure you they are.

I share I think with all of my colleagues the challenge of recognizing that there are serious energy needs throughout the New York community, and yet there are community and cultural needs as well.

I don't pretend to have all the magic answers. I think what we have our commitment to do is to make sure we are asking all the questions. We're exploring all the alternatives. We are ensuring that your needs are incorporated in terms of safety and site-specific plans to deal with the emergency that your needs are being met regardless of what route is ultimately chosen.

We will provide whatever support is necessary to get through the discussions, and we encourage all the participants to be as forthcoming and as thorough in providing information as they possibly can be, because I think when we make this decision we all want to be as satisfied as we can that we know all the facts that can be known at this point in time.

So I look forward to working with this staff, who have been working very hard, and my colleagues and the community representatives, to try and get to what is

ultimately perhaps not a perfect answer but is the best answer that we can come to, and with the assurances that the safety of the community is going to be first and foremost in whatever conclusion we come to.

Thank you.

COMMISSIONER MASSEY: I too want to welcome the representatives from the City of Mount Vernon's citizenry. We are honored to have you with us here today to witness Commission action in an area dealing with pipeline certificates that is frankly one of the most difficult and challenging things that we do as an agency -- how to balance all competing concerns and come to the right conclusion.

When we are faced with the task of approving a new pipeline, we have to grapple with the inherent tension between two policy forces, consideration of effects of construction on the environment, on the one hand, and the need for an infrastructure to meet the demand for energy on the other.

The National Environmental Policy Act, or NEPA, is our basic national charter and this agency's primary mandate for protecting the environment.

The purpose of this law is to ensure that environmental information is available to the public, to public officials and citizens before decisions are made and

before actions are taken and, in turn, that the views of the public are thoughtfully and carefully considered in the process of making a decision.

The NEPA term "environment" includes not only the natural and physical environment, such as the air, water, geography and geology, but the relationship that people have with their human environment, including the importance that agency decisions have on community institutions such as housing, schools, hospitals, municipal buildings and places of worship.

These institutions in a city or small town are more than valuable parcels of real estate. They are the part of the physical environment that provides services to its citizens, vehicles for social interaction and sources of civic pride and identity.

NEPA itself as well as the Council on Environmental Quality's regulations require that federal agencies, such as ours, consider what impact decisions will have on all of these aspects of the human environment.

I've read with great interest the comments of Mayor Davis, Reverend Moore, and others at the public meeting in September.

Their concern was that the civic and social fabric of Mount Vernon will be torn apart if this project is allowed to be built as planned, a pipeline route that

would be merely a few feet from Hamilton elementary school, Mount Vernon Hospital, city hall, Lester Towers, Grace House and the 105-year old greater Centennial Byzantine Church is in my judgment cause for concern. Today's order I believe respects that concern.

However, I want to be clear that the record as it exists today indicates that this pipeline is needed for the common good of providing additional energy to the Northeast and that the pipeline will likely have to interconnect with the facilities of Consolidated Edison.

I'm aware that Senator Schumer in particular had been working with local citizens and officials with Millennium and Consolidated Edison to find a better route for a pipeline, a route away from Oak Street and Seventh Avenue to a location that will have less impact on the heart of the city.

The order we are approving today will provide the City of Mount Vernon and its citizens with the opportunity to work toward a more acceptable solution.

I have no doubt that this opportunity for further negotiation on an acceptable route will be difficult and will involve sacrifices for all concerned, particularly for the citizens of this proud city.

However, great challenges can open the door for creative solutions, and I wish all of those concerns the

best in seeking a better alternate route.

In closing, I would like to just as staff outlined the critical language in the order, but I would like to just read it here so it is repeated, and I am quoting from the order.

"We will not authorize Millennium at this time to construct its facilities through the City of Mount Vernon New York. Rather we will ask Millennium to negotiate with elected officials and interested parties and citizens in Mount Vernon and to work toward reaching an agreement on a route to an interconnection with Consolidated Edison Company of New York's high pressure line.

"At the end of 60 days we will issue a final order authorizing Millennium to construct its pipeline, including a specific route to a termination point. An alternative route through Mount Vernon may require additional consideration under the National Environmental Policy Act and other provisions of law."

I will be voting for this order.

COMMISSIONER BREATHITT: My two colleagues who have gone before me have very eloquently stated my sentiments as well.

I too would like to welcome you to our Commission meeting, and I am very glad that you are here.

It hasn't been that often in my tenure at FERC that the gas pipeline certificates that we are authorized to approve or disapprove have risen to the level of having landowner interests such that you come here on -- whether you got here on buses or your own automobiles. We often here from you on pieces of paper and we heard a lot on pieces of paper in this project as well.

But you are here today to let us know in person that there are issues that have arisen with respect to this certificate that you are deeply concerned about and will affect your lives in Mount Vernon through the location of this pipeline.

I am very pleased that the order directs Millennium and the affected parties in Mount Vernon 60 days to work together to address the concerns raised, and I urge all of you to use these 60 days to come to an agreement if you can on the siting of the pipeline in Mount Vernon.

Millennium, in my opinion, has provided sufficient market support to demonstrate that there is a need for the pipeline to meet the growing demand for natural gas in the region.

The project, I believe, will increase the reliability of the entire region's infrastructure and offer an additional source of protection against outages of energy supply.

The Public Service Commission of New York has urged that we act quickly because of the critical need for new pipeline capacity, and the New York Commission maintains that the New York City area needs additional natural gas supplies.

It also state that the new generation must be within the city limits because they have an unique characteristic which is they have transmission constraints, and so the power plants have to be fired by natural gas.

However, as my colleagues have stated, we have to balance the need for the project against the adverse impacts on the environment and you as the landowners along the proposed route.

So we have come up with this result as a way to give all of you an opportunity to have direct input into this last piece of the project, and I am very hopeful that with your help and with the help of your elected officials, Senator Schumer and Senator Clinton, and members of the House of Representatives and the pipeline officials that that will be possible.

So I am voting on the project today that begins at Lake Erie to its crossing of the Hudson River to the terminus at Mount Vernon, but we hope that you, along with the others that I have just mentioned, will be able to within 60 days settle on the last final piece of that.

So I again thank you for coming and will conclude my remarks.

CHAIRMAN WOOD: Thank you very much.

Anything else?

COMMISSIONER BROWNELL: Aye.

COMMISSIONER BREATHITT: Aye.

COMMISSIONER MASSEY: Aye.

CHAIRMAN WOOD: Aye.

Thank you.

ACTING SECRETARY WATSON: The next item is C-12, LNG Limited Partnership. Maria Barrick presenting.

MS. BARRICK: Good afternoon.

With me are Rich Foley and Chris Zerby of the Office of Energy Projects.

C-12 is an order on rehearing. It affirms the Commission's decision on October 12 giving Cove Point certificate authority to reactivate and expand its liquefied natural gas import terminal in Calvert County, Maryland.

Giving Cove Point certificate authority raised concerns about the safety of the LNG import process, especially in view of the terrorist attack on September 11, and the fact that Cove Point is located three and a half miles from the Calvert Cliffs Nuclear Power Plant.

In order to gather further evidence with regard

to the security implications of the order, the Commission on its own motion convened a non-public conference. The Commission also gave parties the opportunity to file comments concerning security issues.

The conference was held on November 16. Over 60 interested persons in addition to staff attended. Those participating included representatives from the U.S. Coast Guard, the Department of Transportation, the Department of Energy, the FBI, the Nuclear Regulatory Commission, the Calvert Cliffs Nuclear Power Plant, the Maryland agencies and the Maryland People's Counsel. Also present were landowners and industry representatives.

At the meeting Commission staff discussed the safety and security issues. It considered when the environmental assessment of the project was prepared. Cove Point and the LNG shippers discussed the security procedures taken into account in building the LNG tanker, choosing crew members and transporting the LNG to port.

Coast Guard representatives explained that the Coast Guard has jurisdiction over the safety and security of LNG tankers when they enter the Chesapeake Bay until they dock. They described the Coast Guard's current safety regulations and how those may be expanded when the Coast Guard risk assessment for the Cove Point project.

Department of Transportation representatives

explained that DOT has jurisdiction over the security and environmental protection of the onshore LNG facilities as well as the Cove Point pipeline. They stated that DOT regularly inspect the Cove Point facility to make sure the security measures are in place and that DOT also requires Cove Point to coordinate with emergency personnel at the local, state and federal level.

They reported that in response to September 11, dot is working work with the Coast Guard concerning the Coast Guard's jurisdiction over marine loading and unloading facility. The DOT representatives also reported that DOT is in regular communication with Commission staff.

Representatives from the Nuclear Regulatory Commission described its regulatory oversight authority for the Calvert Cliffs Nuclear Power Plant and its procedures for determining the risks and possible hazards to that plant, including those that may be posed by LNG tankers.

FBI personnel described the FBI's current efforts to establish contacts with industry and other government agencies to avert future terrorist attacks.

The order before you concludes that government agencies have adequate security and safety measures currently in place. For this reason, the draft order, in addition to granting in part and denying in part requests

for rehearing, also affirms that approval of the Cove Point project is in the public interest.

CHAIRMAN WOOD: I wanted to say, of course, rehearing for Cove Point was appropriate whether it is safe for that area and for the Nation to have that terminal near, particularly the nuclear power plant but also to have it at all.

I think although security concerns have interestingly been already addressed and with the hypothetical potential for terrorism was already interestingly addressed back in July before we ever dreamed it would happen on our shores, I think it was good that we on our own motion acted to reopen the record to inquire and ensure for ourselves and for the public that there would be no security risks from the renewed or reopening of this LNG terminal.

Maria was laying out who all participated in the security oriented -- I don't know how to characterize that -- workshop that we held in this docket back in early November.

It was very helpful and in my evaluation of this that those other federal agencies charged with public safety and the good of the commonwealth for all of us that they signed up and stated very clearly their role and their belief that there was no significant safety threat to the

public or to the nuclear plant if there were an accident or attack upon the LNG facility or on ships transporting to the LNG facility.

And most reassuringly they reported what steps that they had actually taken, and I know we can't go through all that in a public format today, but that has been done, and I'm much more comfortable than I even thought I could have been based on that proceeding.

I appreciate the leadership that the staff showed to pull that together in a timely manner so that we could both assure ourselves this was being done thoroughly and correct and also keep the project time line as close to the original expectations as possible.

I think in light of what happened on September 11, it was our duty to reopen this case, and I appreciate the company and the interested parties, the local, state and federal officials that are involved in the safety helped us in doing that in a thoughtful and professional manner.

I'm pleased to support this order for rehearing for that reason.

COMMISSIONER BROWNELL: I would also vote aye.

COMMISSIONER MASSEY: I had a comment.

Let me ask a question. I think this is the appropriate question for a public forum.

Is it accurate that -- and if you can't answer it because it's confidential tell me -- but is it accurate to say that the officials who are directly involved in safety issues, office of pipeline safety, the FBI, the Coast Guard that's responsible for shipping facilities coming up through the bay were asked whether they were recommending any additional conditions to our certificate, and is it accurate to say that they recommended no additional conditions?

MR. CUPINE: Assuming we can respond to that, and I think we can, those questions were asked very directly, and the response was thank you very much for holding the forum, which you did, and we have our own authorities and we can take care of our own business, and they were very positive about that.

CHAIRMAN WOOD: Right.

But there were no recommendations to amend our certificate.

MR. CUPINE: No.

COMMISSIONER MASSEY: I think those questions were asked directly, and I am glad they were asked because I wanted to know and be enlightened by the response, and I'm glad we had this additional proceeding. I think it was the right thing to do.

I also believe that LNG is going to be critical

to our Nation's future energy infrastructure needs. So I will be voting for this order.

COMMISSIONER BROWNELL: I'll vote a second time.  
Aye.

CHAIRMAN WOOD: Aye.

COMMISSIONER MASSEY: Aye.

COMMISSIONER BREATHITT: Aye.

ACTING SECRETARY WATSON: The next item is A-1, administrative matters.

CHAIRMAN WOOD: OGC worked hard to get something that we borrowed from the FCC which is numbering our paragraphs in our Commission orders really so we can find things quickly and as we all use different word processing programs that we cannot worry about pagination and lines but know from paragraph to paragraph as we are doing and try to move into the 21st century in telecommunicating that we can work well.

So several orders on today's agenda had these numbers and we will increase the numbers at such time as procedures and software get --

COMMISSIONER BROWNELL: Where is the fun?

COMMISSIONER MASSEY: Mr. Chairman, could we get a slide presentation on this?

CHAIRMAN WOOD: No. That will have to be.

It is time to get into the holiday spirit. So we

are going to conclude this meeting now.

I'm going to say thanks to all the staff who worked their behinds off.

I understand from some of the old-timers that this is the first meeting that they have had around here as long as people can remember.

I appreciate the very hard work that so many hundreds of people did to make this happen, including the three of you all. Merry Christmas and a happy New Year.

Oh, E-38 is struck.

ACTING SECRETARY WATSON: Thank you.

(Whereupon, at 3:21 p.m., the meeting was concluded.)