

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

- - - - -x
IN THE MATTER OF: : Docket Number:
TO REVIEW COST SUBMITTALS : AD04-9-005
BY FEDERAL AGENCIES FOR :
ADMINISTERING PART I OF :
FEDERAL POWER ACT :
- - - - -x

Hearing Room 1
Federal Energy Regulatory
Commission
888 First Street, N.E.
Washington, D.C.

Tuesday, April 26, 2005

The above-entitled matter came on for technical
conference, pursuant to notice, at 10:15 a.m., Anton Porter,
presiding.

1 APPEARANCES OF PANEL MEMBERS:

2 ANTON PORTER, Director

3 TROY COLE, Acting Director

4 FANNIE KINGSBERRY, Division of Financial Services

5 BENJAMIN HOOD, Division of Financial Services

6 JOHN CLEMENTS, Office of the General Counsel

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

P R O C E E D I N G S

(10:15 a.m.)

1
2
3 MR. PORTER: Let's go ahead and get started. My
4 secretary is making copies of the slides of the
5 presentation, but I want to push ahead and get into some of
6 the work here.

7 (Slide.)

8 First of all I would like to welcome you to the
9 Commission. I know this issue has been out there for a
10 pretty long time, and we're all anxious to push ahead and
11 get to work.

12 (Slide.)

13 I would like to introduce myself for those of you
14 who I have not met. My name is Anton Porter. I'm the
15 Director of the Division of Financial Services. My
16 organization is responsible for issuing the Annual Charge.

17 To my left is Fannie Kingsberry. She is the
18 person mainly responsible for generating, actually doing the
19 work to generate those assessments from our assessment
20 systems. She does most of the analytical review. She's
21 probably the key point person most of you dealt with when
22 having issues with Annual Charges, and are happy to have
23 Fannie here.

24 Next to Fannie is our Acting Director of Budget,
25 Troy Cole. Troy is here in his capacity as an Annual

1 Charges cost preparation expert. He prepares the actual
2 costs which are then submitted to Fannie on which, the costs
3 on which we base the assessments.

4 And also working there, working the slides with
5 us, last but not least, is Benjamin Hood. He works with
6 Fannie on my staff on issuing the Charges.

7 (Slide.)

8 I want to start by stepping back through what we
9 sort of spoke about at the technical conference back in
10 July, going through the actual form. And to get into a
11 little bit, obviously, first and foremost why we are here.
12 Before we start, we take that step back we're here today to
13 discuss currently the status of our--we've been receiving
14 cost submissions since the latter part of 2004, and
15 continuously receive information as we request it, and
16 obviously get feedback from the licensees regarding what
17 currently is out there. I'm assuming everyone's had an
18 opportunity to go out and look at what's been filed in E-
19 Library in terms of the submissions, and to get your
20 feedback on what has been provided in terms of submissions
21 and the related supporting analyses.

22 But as I said previously, in taking a step back I
23 want to talk about the guidance that we follow in terms of
24 compounding our own costs and in the guidance we would
25 expect the other agencies to use in compiling their costs.

1 (Slide.)

2 Our keystone documents are OMB Circular A-25.
3 It's the governance and policy concerning assessment of User
4 Charges.

5 Then finally, our statement of Federal Financial
6 Accounting Standards, it is the Government Financial
7 Standard which governs how we recognize a report cost.
8 These documents give very direct guidance to the compilation
9 of costs.

10 (Slide.)

11 One of the many purposes of A-25 is to establish
12 a government-wide policy for fees for Government services.
13 It is used uniformly by all Federal agencies. The main gist
14 of it is, if an agency provides a fee for a special benefit,
15 that fee should be supported, or should be based on, or the
16 idea behind it is Full Cost recovery for the Government, as
17 you will see in the next slide. But I just wanted to give
18 you, via this slide, some general information regarding the
19 purpose of A-25.

20 (Slide.)

21 Here's the general policy. You can clearly see
22 that a user charge will be assessed against each individual
23 entity, any user of a special benefit. Next slide, please.

24 (Slide.)

25 A special benefit--accrual of a special benefit

1 is recognized whenever a direct service, or in this case
2 with the FPA-related responsibilities of the Federal
3 agencies, a license, a hydro power license, would support
4 the special benefit in this case.

5 (Slide.)

6 The guidance goes on further to state that our
7 charges should be based on the Full Cost of services to the
8 Government, recovery of that amount.

9 (Slide.)

10 It goes on also to lay out components of Full
11 Costs. This basically is the underlying framework for the
12 agency costs and middle forms where you had your direct and
13 indirect personal costs, and your other direct and indirect
14 costs. We designed that form with A-25 solely in mind.

15 (Slide.)

16 Next, the Statement of Federal Accounting
17 Standards. There are five fundamental principles associated
18 with this standard that relate to the accumulation and
19 assignment of costs. Once again it just goes on to echo
20 what is stated in A-25, Full Cost Recovery for any Special
21 Benefit provided by a Government entity.

22 (Slide.)

23 Just borrowing some of the language here directly
24 from Standard 4, going into:

25 "The full cost of an output." Defining that.

1 And in this case, as I said, the concurrence of license for,
2 to the hydro power licensees, the benefit associated with
3 that, the recovery of that cost.

4 (Slide.)

5 Once again, further definition of what are the
6 components of Direct and Indirect Costs. Next slide, Ben.

7 (Slide.)

8 And here we have the Agency Cost Middle Form
9 which, as I said, is borrowed and built solely from that
10 guidance, separating Direct Costs, Indirect Costs. We asked
11 for the information also on an FTE basis, Full-Time
12 Equivalent basis. FTE--and I think I have it in a later
13 slide, Ben--

14 (Slide.)

15 --is defined as compensable hours for an annual
16 year. We've broken it down here to give you the
17 calculation: 80 hours per Federal pay period x 26 Federal
18 pay periods = 2,080 hours.

19 One FTE would be equivalent to that.

20 (Slide.)

21 What we have asked, in addition to the new form
22 that was approved last summer, and I think we--this is a new
23 requirement, given this reporting--I think in the past the
24 other agencies made this data available, and you all could
25 go in and request via FOIAs the information, but we wanted

1 the agencies to provide this information directly to us in
2 support of the costs that they provided via their cost
3 submittal forms.

4 (Slide.)

5 We would then use that as part of an overall
6 review process, as well as make that information public to
7 all of you now to come in to have this technical conference
8 to discuss the sufficiency of the cost reports, as well as
9 the related supporting analyses.

10 (Slide.)

11 As part of our overall review in looking at these
12 costs and determining which costs are substantiated,
13 obviously we're looking for the completed cost submission
14 forms. It's important to have that information. It allows
15 us to look at information from a trend analysis standpoint,
16 when we look at salaries from year to year, when we look at
17 travel costs from year to year. When also look at the
18 number of FTEs employed to accomplish those tasks. So the
19 form itself contains critical information.

20 Most importantly, in addition to submitting the
21 form we're looking to have the actual cost accounting
22 reports, any analysis that these entities perform in
23 compiling the reports.

24 Cost accounting reports obviously would lend
25 credence to the fact that they have a cost accounting system

1 which produces or does direct assignment of costs, which
2 would be very beneficial in reporting this information.

3 Analysis. If there are any sort of allocations
4 that are performed in assigning those costs, we want to see
5 the logic behind those analyses, and I'm sure you're
6 interested in those as well.

7 And then last and foremost, the signed
8 Certification Statements. It's an old requirement, but
9 still we want someone with responsibility within those
10 agencies to attest to the information. But that will not be
11 the only basis that we will rely on to deem those costs as
12 supported.

13 (Slide.)

14 In terms of--back up, Ben, sorry.

15 (Slide.)

16 In terms of criteria we use in reviewing these,
17 obviously as I said the complete cost submission forms; the
18 cost accounting reports and analysis which support the
19 reported totals. We want to see the direct assignment of
20 cost, and we want to understand the assumptions made in
21 terms of allocating over a, if it's an agency policy we want
22 to get to the individual components that are listed on the
23 report.

24 So the actual fact that the analysis supports the
25 numbers provided and the totals is critical to our review.

1 Then finally, as I said, other statistical
2 analysis. We're looking at trend data. We want to look at
3 changes in FTEs and sort of look at that in comparison with
4 work the Commission has performed over a similar period of
5 time, and to develop trends and analysis, a model so to
6 speak, that will guide further questions and investigation
7 that we need to conduct with the agencies.

8 We're looking for those outliers, those things
9 that seem to be out of the norm, and we're asking the
10 agencies, after completing that analysis, to provide us with
11 more information.

12 I think we're a little out of order.

13 (Slide.)

14 Ben, go on to the next slide.

15 (Slide.)

16 Now this brings us to the actual costs that were
17 submitted, and we want to get into a discussion with regard
18 to those.

19 I would like at this point for us to exchange
20 information openly. What I have is a slide that basically
21 summarizes what our findings are, our preliminary findings
22 are for each individual agency or bureau within that agency,
23 giving the total dollar amount reported for the period, and
24 a general comment regarding the support we've received to
25 date.

1 This is exactly the point where, as I said
2 before, I would like to get comment from all of you
3 regarding your findings as well based on the reviews of the
4 information that was submitted.

5 The first up is the Department of Interior, the
6 Bureau of Indian Affairs. Indian Affairs did complete Cost
7 Submittal Forms for each of the years that we requested
8 data. The total cost reported from FY '98 through '04
9 totalled \$10.6 million.

10 We found that they did not provide support that
11 we'd like to see to verify these numbers. What we did
12 receive was a breakout of their individual operating
13 centers, but nothing in terms of what made up the actual
14 salary dollars, and what made up the actual travel dollars,
15 as well.

16 MR. SENSIBA: And that was only for one year for
17 the FY 2004?

18 MR. PORTER: Right.

19 MR. SENSIBA: For all of the years before that,
20 it was just your form?

21 MR. PORTER: You're right. You're right.

22 MR. WHITTAKER: Anton?

23 MR. PORTER: Yes.

24 MR. WHITTAKER: John Whittaker. In terms of
25 CBIA, a large component of those "other" expenses, or

1 contracts that they've intervened in, do we have any
2 information on who those contracts were with, and the amount
3 of each of those contracts?

4 MR. PORTER: We don't have that specific
5 information. And that's why we made the overall comment in
6 terms of not only salary dollars but travel dollars. Also,
7 their indirect. We don't have enough support to
8 substantiate the numbers that are reported.

9 We would like to see more detailed analysis and
10 support provided, and we will be in contact, and have been
11 in contact, to get that information.

12 MR. WHITTAKER: Thank you.

13 MR. PORTER: But currently as it stands with BIA,
14 \$10.6 in costs, we don't feel adequate support has been
15 provided for any of the \$10.6. Yes.

16 MR. SWIGER: Mike Swiger. This is going to
17 probably be a generic question that applies to a lot of the
18 agencies, but just to raise it now, you said you'll be in
19 contact to get the information. If you do get additional
20 information from the agencies, will that go on the web site?

21 MR. PORTER: Everything we receive, we will make
22 public. In terms of additional information, analysis that
23 we, additional analysis that we plan to conduct in looking
24 at, as I said, sort of trend analysis, we plan to publish
25 that as well.

1 MR. BARTHOLOMOT: What's the Commission's
2 inclination? I'm sort of shocked. I haven't been diving
3 into this issue as heavily as other folks here at the table,
4 but to have an agency knowing that the D.C. Circuit said we
5 need a little bit more justification here, the Commission
6 has a role here, the Commission is acknowledging that, but
7 to have them submit a document saying 'hand us ten and a
8 half million dollars' and provide no substantiation, and
9 then not to show today, I find very troubling, personally.

10 Would the Commission be inclined not to pass
11 these through to licensees if they don't come forward with
12 some more information?

13 MR. PORTER: Ultimate end game as stated in the,
14 I believe it was the last Order which addressed the
15 rehearing request, if costs are not substantiated--

16 MR. CLEMENTS: If they file the certification
17 that the costs are presumptively reasonable, but the policy
18 is that the licensees, or indeed anyone else with an
19 interest, could raise questions as to the validity of the
20 figures they've submitted, whether the accounting is correct
21 or whether the costs, although correctly accounted for are
22 nonetheless unreasonable, but the burden to get that, to
23 make that showing, that initial showing, rests with the
24 licensees. And that is one of the reasons we are focusing
25 on trying to get better analyses from the other Federal

1 agencies, better cost support, so that the licensees do have
2 a legitimate opportunity to get in there and find out what
3 they're being charged for.

4 MR. BARTHOLOMOT: My initial reaction to that is
5 that feels very upside down to pass along ten and a half
6 million dollars, and this is just one agency out of a
7 number, without substantiation from the agency and say it's
8 up to the licensees to find grounds to challenge. I find
9 that shocking. I mean, that's going to electric ratepayers
10 and customers nationwide as a Federal charge, but with no
11 foundation, and I am just shocked at that.

12 And we have the dilemma, as I understand it, of
13 the OFHR as having been told for the past several years
14 worth of bills, and so people are looking to the possibility
15 of a massive amount of bucks coming through.

16 If I were FERC, I'd be telling them: Look, we've
17 got a fiscal responsibility to the public here. If you want
18 to get those charges in, you've got to give us more. I
19 would hold firm to that.

20 MR. CLEMENTS: The Orders say what they say.

21 MR. FINKELSTEIN: This is Ben Finkelstein. We
22 are continuing our conversation over what the Orders say--

23 MR. CLEMENTS: I thought that panel was over.

24 (Laughter.)

25 MR. FINKELSTEIN: --but the Orders clearly say

1 that the costs that are certified "and documented" will be
2 deemed substantiated.

3 And if there's no documentation, I don't think
4 there's any ambiguity in the Order. And also, the Orders
5 are clear that the purpose of this technical conference is
6 for the agency, resource agencies, to explain what they did.
7 And I think I'm not saying that there's no utility in us
8 having a dialogue with the Commission about it, but that was
9 not--the purpose of this meeting was for the agencies to
10 come and substantiate.

11 MR. CLEMENTS: As they well know.

12 MR. FINKELSTEIN: As they well know. And I think
13 that, you know, I think that there are--the statute does
14 require that the Commission find the costs to be reasonable.
15 And I think that the Commission had some recognition that
16 the licensees should have an opportunity to confront these
17 things before the bills came out, and I would echo what
18 Henri said, only except that, given the length of my
19 involvement in the process I'm not surprised, but I do
20 continue to be disturbed.

21 MR. WHITTAKER: Maybe we should clarify for the
22 record that there are no representatives from any of the
23 agencies here today, just to make sure.

24 MR. CLEMENTS: I think that's a fair statement.

25 MR. BARTHOLOMOT: Could I ask one other question?

1 MR. CLEMENTS: Sure.

2 MR. BARTHOLOMOT: How does that ten million over
3 a six-year period compare with periods before that? Does
4 this look like an area where BIA is coming in and saying,
5 oh, this gives us a chance to get some dollars?

6 MR. PORTER: This submission is higher than
7 previous submissions.

8 MR. BARTHOLOMOT: Do you know if it's
9 substantially?

10 MR. PORTER: It is substantially higher than
11 previous submissions. And I think in previous years the
12 guidance was difference. We did not ask for Indirects.

13 MR. FINKELSTEIN: Is there any breakout--I guess,
14 could you be a little clearer in terms of what kind of
15 substantiation the Commission requested?

16 There was a lot of discussion at the technical
17 conference last July about asking, for instance, for a clear
18 breakout between licensed projects and exempted projects,
19 and I see that we do see that for instance in some of the
20 materials from the Department of Fish and Wildlife.

21 MR. PORTER: Right.

22 MR. FINKELSTEIN: But you don't see it in other
23 places. And I'm wondering whether that was something they
24 offered on their own accord, or was that requested of
25 everyone and provided only by some.

1 MR. PORTER: That specific information was
2 provided of their own accord. What we did was provide
3 guidance in terms of what is required via A-25 in FFAS 4 in
4 terms of documentations.

5 All of these entities use different cost
6 accounting systems. Some may employ a cost allocation
7 process to cover all of what each entity does. We left the
8 requirements general. But there is no uncertainty in what
9 the A-25 User Charges Policy is, that any cost or any fee
10 that an agency sets, they must have firm documentation for.

11 And in our Guidance, we mention specifically cost
12 accounting reports. We mention specifically cost allocation
13 analysis.

14 Yes?

15 MR. SWIGER: You mention that you're in contact
16 with BIA, and I guess as we go through these maybe this will
17 also be a recurring theme. Is that via telephone? Or is
18 there correspondence? Is there anything that's going to go
19 in the record as far as correspondence back and--well, you
20 said anything they provide will go in?

21 MR. PORTER: Right.

22 MR. SWIGER: But are your contacts by telephone?

23 MR. PORTER: Primarily now they have been by
24 telephone. We sent out a written request to attend--two
25 written requests, one via e-mail; one via a letter--to

1 invite them to the conference.

2 We have been conducting and requesting additional
3 information via telephone on a lot of these requests. It
4 took quite a long period of time for the costs to flow in.
5 There were extensions requested, and we granted extensions.
6 And a lot of this information we've had only for a
7 relatively short period of time, and we feel we need to
8 conduct further analysis, as well.

9 MR. FINKELSTEIN: Anton, can those extension
10 requests and Orders be put on the web site?

11 MR. PORTER: Sure.

12 MR. FINKELSTEIN: They're not visible at this
13 point.

14 MR. PORTER: Sure.

15 MR. CLEMENTS: If they're on paper. But I
16 wouldn't think there's any need to record telephone
17 conversations and that kind of thing.

18 MR. FINKELSTEIN: Well I guess it depends on
19 whether they're part of a record.

20 MR. CLEMENTS: Well I think the record is
21 whatever goes into the record here. I think it is a
22 predetermined--there is no predetermination of what the
23 record consists of here except the submissions that they
24 make.

25 MR. FINKELSTEIN: Well, I guess who's the

1 decision maker in this matter?

2 MR. CLEMENTS: Well I guess the Commission is.
3 What I'm trying to suggest is, I don't want to do anything
4 that would reduce the incentive for the agencies to speak
5 freely with Anton and go back and forth, and put actual data
6 and analyses into the record.

7 If they feel like every time they talk to Anton
8 it will go into a public record, I think they will be even
9 less perhaps inclined to cooperate with this process than
10 they are now. So I'm just concerned about that.

11 MR. FINKELSTEIN: Well, I understand that concern
12 and I think there's a countervailing concern about ex parte
13 that we need to at least understand what the ground rules
14 are. If we understand what the ground rules are, then we
15 can talk about what the ground rules should be.

16 MR. CLEMENTS: We're trying to get them to
17 cooperate.

18 MR. WHITTAKER: Maybe at some point, Anton, if
19 he's making requests and eventually the agencies don't
20 provide him what what he's asked for, he could submit some
21 kind of memo to the formal record to explain his attempts to
22 get the information from agencies and their failure or
23 nonfailure to respond to that.

24 MR. CLEMENTS: We'll think about that.

25 MR. PORTER: We will move on to the next bureau

1 within Interior.

2 (Slide.)

3 MR. SWIGER: I mean, I'm sorry, I mean
4 procedurally, you know, we have, and sort of other people
5 do, too, have a number of questions based on the information
6 that was provided.

7 What you're saying is right now you don't have
8 supporting information. So is it fair to assume that if we
9 have detailed questions about where did this amount of money
10 come from, or how was this allocated, that FERC at the
11 present time is not in a position to answer those kind of
12 questions?

13 MR. CLEMENTS: Yes.

14 MR. SWIGER: Okay. So we're going to hold those
15 questions, and I'm not sure what we're holding them for. Is
16 there going to be an opportunity to--

17 MR. PORTER: Well, can the questions be--can the
18 questions be--and, John, if this is appropriate--can the
19 questions be provided in writing, and they're something we
20 can follow up with the other agencies with?

21 MR. CLEMENTS: Sure.

22 MR. PORTER: I mean, that was the purpose of us
23 meeting here today, and I regret that they aren't here, but
24 I don't want the process to stall. I would like to hear the
25 issues. I would like to have those issues documented, if

1 you feel comfortable providing that documentation, and I
2 would be more than happy to pass that on to the other
3 Federal agencies.

4 MR. FINKELSTEIN: Well I guess my difficulty is
5 that we had a final Order last October that was troubling to
6 us in a number of respects. I had to calm myself down after
7 reading that there had been no comments on the form at the
8 technical conference last July.

9 And there were a number of exchanges among some
10 of the attorneys who were involved in this. And part of the
11 reason that we decided to not go back to the D.C. Circuit
12 for a Mandamus, which frankly I think we would have had a
13 decent shot at getting, was that we had 'okay, at least we
14 have something. We have a December 31, 2004, deadline for
15 submission of costs with substantiation, and a Commission
16 Order saying that if there are not substantiated costs
17 submitted by December 31, 2004, they will be disallowed.'

18 And we said, basically, we think we'll do okay
19 under that. And we feel as though, you know, what we
20 thought we had in a final Commission Order that we decided
21 not to take to the court based on what I'm hearing may be
22 taken away.

23 MR. CLEMENTS: Comment noted.

24 (Pause.)

25 MR. PORTER: On to BLM, we received completed

1 Cost Submittal Forms from BLM. The total cost reported from
2 the entity for FY 98-04 was \$4.5 million--well, it's \$4.5
3 million.

4 BLM provided limited analysis indicating the
5 costing methodology and the basis for their Indirect Cost
6 allocations. There was reference made to the allocation of
7 overhead, and there was some descriptive information at the
8 bottom related to the fact that they used activity based
9 costing, and they pointed to specific responsibility
10 segments.

11 There wasn't a clear tie-in in terms of the
12 numbers reported, however. I didn't see a lot in the way of
13 what was direct support in terms of the actual salary and
14 benefit dollars. And if there was an activity-based costing
15 system employed, I would like to see the activities that
16 were at the basis of those cost pools, and that wasn't
17 provided.

18 MR. SENSIBA: I have a question about BLM, just
19 maybe a clarification when you say 'provided limited
20 analyses,' according to what we received on BLM, the only
21 thing they provided for all years except fiscal year 2003
22 was the FERC required form, and the certification.

23 MR. PORTER: At the bottom of the form, wasn't
24 there an explanation of the allocation process that they
25 employed that they said there were activity-based costs?

1 They used the activity-based costing methodology?

2 MR. SENSIBA: There was some notation at the
3 bottom of those forms, but as far as breaking out what those
4 costs were and having any kind of, as I would read it,
5 detailed cost accounting report--

6 MR. PORTER: We're in agreement. We're in
7 agreement.

8 MR. SENSIBA: There was a three-page chart for
9 2003.

10 MR. PORTER: We would agree.

11 MR. SENSIBA: Okay.

12 MR. PORTER: I just wanted to indicate that they
13 made a reference to the costing methodology that they
14 employed indicating some support for the analysis. But, the
15 underlying activity-based costing reports, the explanations
16 of the related cost pools, and the tracking of those
17 activities was not included.

18 MR. BARTHOLOMOT: If you had to describe what the
19 Commission would like to see in these as a way of giving you
20 a sense of, yes, these are legitimate charges, and a clearer
21 understanding of what they are, at which point licensees can
22 maybe raise questions that are more focused, what would you
23 want to see beyond what is in FERC Form?

24 MR. PORTER: In a perfect world, I would like to
25 see a report generated from an automated financial system

1 which segregates the costs according to the requirements of
2 the form. Absent that sort of automated system, what I
3 would like to see is a very detailed analysis of an entire
4 cost pool and how that cost pool is allocated.

5 And I would like very descriptive information
6 concerning the basis of those individual allocations.

7 MR. FINKELSTEIN: Would you say that any of the
8 submissions that you received from any of the agencies met
9 that model? Certainly some came closer to the mark than
10 others, but I think it would help us around this room, and
11 maybe would help the resource agencies.

12 MR. PORTER: I feel certain agencies came close
13 to the mark, as you said. I feel that what was provided by,
14 I think it was the Bureau of Reclamation, in terms of
15 individual time sheets, time data, you could trace back to
16 employees that was broken out in terms of their travel
17 costs; they explained the allocation of overhead; I thought
18 that was a good example.

19 But we're talking \$300,000 in cost.

20 I thought the Forest Service for 2003 and 2004
21 provided what I considered to be very detailed analysis with
22 cost accounting reports which supported their numbers. The
23 numbers could be flowed directly to coding within their
24 system, and it looks like they did a good job in noticing
25 that they had the requirement to provide this information

1 annually and designed the system around that.

2 MR. CLEMENTS: Can we step back just a bit,
3 Anton. Is it fair to say--I hope it is--that you're
4 speaking based on what I'll call 'preliminary analysis'--

5 MR. PORTER: Yes.

6 MR. CLEMENTS: --and that nothing you say here
7 reflects a final conclusion by--

8 MR. PORTER: Right.

9 MR. CLEMENTS: --the Commission as to the
10 reasonableness of these costs--

11 MR. PORTER: Right.

12 MR. CLEMENTS: --and whether they've been
13 supported?

14 MR. PORTER: Right, right.

15 MR. CLEMENTS: We'll get to that point.

16 MR. PORTER: Right.

17 MR. CLEMENTS: And the input from the licensees,
18 to the extent they're able to raise, you know, questions
19 about the reasonableness of the costs in the accounting, and
20 will inform the Commission's decision, but no decisions
21 about those things have been made yet.

22 MR. BARTHOLOMOT: What do you see as the process
23 from here to there?

24 MR. CLEMENTS: I would like to get through this,
25 and then when we get to the end talk about where we go from

1 here.

2 MR. BARTHOLOMOT: Well, it informs how much I
3 feel like I need to dive into this stuff blow by blow now.
4 Frankly, the first time I've been on a conference call with
5 pile of our members expressing some concern about this was
6 last week and learned that 30 years' worth of OAs have been
7 held in abeyance, and people have a lot of uncertainty about
8 what's coming at them.

9 We're at a stage in the electric utility industry
10 where we can't easily accommodate surprise new slugs of cost
11 coming at people, and it's a very difficult time for
12 companies. And this is an area that's catching the
13 attention of --

14 MR. CLEMENTS: Henri, there's nothing new here.
15 These gentlemen have been dogging--

16 MR. BARTHOLOMOT: I understand that--

17 MR. CLEMENTS: --this issue for the last five or
18 six years.

19 MR. BARTHOLOMOT: I'm just trying to convey to
20 you, there may not be anything new but there is one thing
21 new. And that is, a sense of growing interest and concern
22 among the EEI membership on this issue. That's new. And if
23 they're concerned, I'm concerned, and we will be.

24 All I'm trying to say is it would help--and
25 forgive me if I need help in bringing me up the learning

1 curve for things that are already decided and past water
2 under a bridge--but when I see this sort of first opening
3 few pages, I find it very disconcerting.

4 What I'm really asking is are you suggesting
5 there will be a process, but I think this starts--and this
6 is what I was asking Anton--with what's the Commission
7 Staff's mindset at least in approaching the agency. It's
8 helpful to know that at least. I don't need to understand
9 the detail of it, but conceptually we're looking for
10 something that I as a layperson would be looking for, which
11 is you've got to show us more. And I hope that "more"
12 ultimately is a firm foundation to both show that these are
13 accurate costs as part of the concern around the industry
14 table. Also, that enough detail is provided so that the
15 people receiving bills will have an honest ability to
16 question them based on, you know, oh, this doesn't tell us
17 anything, but more--so when I say "the process," it would
18 help as we're talking about these to know at least
19 conceptually what the Commission may have in mind.

20 I know there are questions about we've got fiscal
21 '98 through '04 on the table here, as well as three of those
22 years are years where people have already received bills for
23 OFA charges, although some of them have contested them, and
24 there's uncertainty what's going on with those three years.

25 MR. FINKELSTEIN: Two of them are years where

1 refunds have been ordered, and the amount of those refunds
2 is expressly at risk.

3 MR. CLEMENTS: Which are all fine points, but I
4 still don't think we need to jump ahead and say what we're
5 going to do next until we just get through these cost
6 submissions. Soon enough, we'll be there.

7 MR. SWIGER: Could we just put in a placeholder
8 that, after we talk about the process and what's going to
9 happen next, if we decide based on that that this is our
10 best and only opportunity to raise a bunch of specific
11 questions that we could go back through and talk about each
12 agency? And maybe that's not what we'll conclude, but I
13 think that was--I had the same concern that I raised
14 earlier, is we've got a bunch of questions. Do we hold
15 those for some later step in the process? Or do we have to
16 get them out on the table now?

17 So can we just put a placeholder there?

18 MR. CLEMENTS: I think that's fair.

19 MR. SWIGER: Okay. Thanks.

20 MR. PORTER: I can move on to the next Bureau,
21 Ben.

22 (Slide.)

23 As stated before, Bureau of Reclamation to me
24 provided what would come close to, if not is, what we would
25 expect to see from the other federal agencies. There was

1 detailed cost accounting. There was even individual time
2 sheet data for all of the costs provided. The number,
3 though, is relatively small in comparison to the other
4 Bureaus, but I just wanted to let you know the current
5 status of that review.

6 MR. BARTHOLOMOT: Could you just in a sentence
7 say a little more what kind of cost accounting reports, sort
8 of what you said, a breakdown of where these costs went?

9 MR. PORTER: It's a breakdown of the labor. It
10 listed actual employees. They may have even had some
11 project data, if I recall correctly. But it listed the
12 components, the individual tie-ins, or details of each of
13 the areas listed on the cost reporting form.

14 MR. BARTHOLOMOT: By, when you say "project
15 information," by say hydro projects?

16 MR. PORTER: Yes. Any more issues to raise?

17 (No response.)

18 (Pause.)

19 MR. SWIGER: Well one general question I guess we
20 had was: I understand for fiscal '98 and '99, they had a
21 lot of pages of computer generated support, but then a
22 statement that information is not available on the actual
23 amount of time devoted to hydro during this period.

24 MR. PORTER: Is that related to--

25 MR. SWIGER: The Park Service.

1 MR. PORTER: --Reclamation?

2 MR. SWIGER: Oh, I'm sorry. I thought we were on
3 Park Service.

4 MR. PORTER: No.

5 MR. SWIGER: I thought somebody mentioned Park
6 Service. I'm sorry.

7 MR. PORTER: Let's move on.

8 (Slide.)

9 Now we're on Park Service.

10 (Laughter.)

11 MR. PORTER: Completed the cost submittal forms.
12 Costs totalling \$3.7 million. There, with the Park Service,
13 there was an allocation, a cost accumulation and assignment
14 process used to calculate the costs.

15 They took, for instance for '98 and '99, the
16 point you made, there wasn't an actual I guess ability for
17 them, or at least the way they presented it, to determine
18 the actual amount of time for those periods.

19 They did some sort of proration where they took
20 10 percent of the costs and then split FTEs out accordingly
21 and costs out accordingly as well.

22 Hence, the statement here. There was some
23 analysis, but once again we didn't see information from a
24 specific cost accounting system. What we may have, and what
25 we're going to follow up with in terms of more questions, is

1 some of the assumptions surrounding the analysis in their
2 assignment process.

3 There were some things relative to that. If you
4 look at what they submitted, they came up with an average--
5 they came with a cost per FTE based on, I think there was a
6 guidance document that they submitted that explained the
7 process that they used, and we had some questions concerning
8 the process and the initial estimate, and then how that
9 estimate becomes actual.

10 MR. WHITTAKER: Did they supply an explanation
11 for why they didn't submit cost data for FY '98, FY '99, and
12 FY 2000 back four or five years ago when they were asked to?

13 MR. PORTER: No, they didn't.

14 MR. BARTHOLOMOT: Did you get a sense of the
15 approach they're using as one that they've developed in the
16 more recent years there, or not?

17 MR. PORTER: I can't speak to that.

18 (Slide.)

19 Let's move on. Fish and Wildlife Service:
20 Completed Cost Submittal Forms. The largest component so
21 far of Total Agency Costs, they did not provide sufficient
22 analysis of data to support costs. We didn't see much in
23 the way of cost accounting reports.

24 We saw some things related to estimations of
25 time, but I didn't glean any information in terms of actual

1 dollars contributed to FPA-related costs.

2 It looks like they tried to allocate based on
3 some sort of estimate, but once again there wasn't enough
4 from my perspective tangibly to say that costs were
5 supported.

6 MR. SWIGER: I think nobody around the table will
7 argue with that.

8 (Laughter.)

9 MR. PORTER: Let's move forward.

10 (Slide.)

11 MR. BARTHOLOMOT: I would just observe the huge
12 dollar amount there.

13 MR. SWIGER: Anton?

14 MR. PORTER: Yes.

15 MR. SWIGER: I'm sorry, before you move forward
16 you didn't have a slide on the Solicitor's Office of
17 Interior.

18 MR. PORTER: You're right. The Solicitor's
19 Office, and there's an Office of Economic Compliance. The
20 Solicitor's Office submitted some general information. It's
21 something we missed in our initial agenda, but there was
22 some costs--some support submitted for the costs for the
23 Solicitor's Office. There was a detailed breakout for staff
24 time.

25 There are still some questions that we have

1 concerning additional information regarding those
2 submissions.

3 The same thing would apply for the Policy Office,
4 as well. They provided similar data, but there are
5 additional questions regarding support.

6 The amounts are substantially large. We have
7 \$143,000 for 2004 for Policy Office. For the Solicitor's
8 Office, we're looking at \$392,000 for 2004; \$420,000 for
9 2003; it looks like \$550,000 for 2002.

10 MR. BARTHOLOMOT: That's fine for me, unless
11 anyone wants you to go further into more detail. That's
12 what we're looking at over a six-year period.

13 MR. PORTER: Right.

14 MR. BARTHOLOMOT: I didn't need the entire six
15 years, but it appears as though we're looking at something
16 like maybe \$5- or \$6 million between the two offices over
17 that time period?

18 MR. PORTER: Right. It was an oversight on our
19 part to include in the presentation, but we have those costs
20 and we have looked at those, and show that there's
21 additional support and questions that we have regarding
22 those.

23 (Slide.)

24 Forest Service. They've only completed
25 submittals for forms for '03 and '04. Total costs reported

1 for the periods in question, '98 through '04, almost \$50
2 million, \$49.5 million.

3 They provided detailed support for the FY '03 and
4 '04 submissions only. They have a cost accounting system
5 which lays this information out. It was broken down for
6 each category on the form, but their '98 to '02 they simply
7 resubmitted what they submitted in past years, and the
8 requirement for the new form wasn't met, as well as
9 providing additional support wasn't there.

10 (Slide.)

11 Department of Commerce, National Marine
12 Fisheries, submitted the Cost Submittal Forms. They did not
13 provide FTE data. Total costs reported for the period, \$6.2
14 million. And they did not provide support for any of the
15 reported costs. They simply provided the forms, absent the
16 FTE data.

17 MR. WHITTAKER: From what I saw on the FERC web
18 site, there are only one-page sheets for FY '99, 2000, and
19 2004. Is that consistent with what you have?

20 MR. PORTER: 2003 was supplied.

21 MR. WHITTAKER: The certification page says it's
22 certified for all these years, but there were only three of
23 the fiscal years.

24 MR. PORTER: '99, 2000--you're correct. We'll
25 follow up with the folks to make sure that they were filed.

1 I thought they had submitted everything.

2 MR. WHITTAKER: And I had one question on this.
3 When you look at NMF's breakdown of costs, they'll have
4 their subtotal, which is the direct costs, and then they
5 have their indirect costs which are overhead added to that.
6 But when you look at some of the numbers they have in
7 overhead, it's astonishing.

8 For example on FY 2000, they have a total direct
9 cost of \$349,000. Then they add overhead of \$284,000 of
10 that, which is an 81 percent overhead factor, which I would
11 question.

12 MR. PORTER: It is high, no doubt.

13 MR. FINKELSTEIN: And likewise '99. For 2004 it
14 comes down a bit.

15 MR. WHITTAKER: Yes. For '99 it's 82.69 percent
16 overhead rate.

17 MR. PORTER: Agreed.

18 MR. FINKELSTEIN: And we don't have the years in
19 the middle.

20 MR. PORTER: Agreed. Any more comments on what
21 we have here?

22 MR. FINKELSTEIN: I guess a question. John, do
23 you know whether Chairman Wood has replied yet to the letter
24 from NOAA?

25 MR. CLEMENTS: Yes, he has. I don't know why

1 it's not in E-Library yet, but it will get there.

2 MR. FINKELSTEIN: You don't have anything with
3 you?

4 MR. CLEMENTS: I have a draft upstairs, but I
5 can't show you the draft.

6 MR. BARTHOLOMOT: Do you recall the gist of the
7 response?

8 MR. CLEMENTS: Yes. Yes, the Chairman was not
9 overly sympathetic to their concerns.

10 MR. FINKELSTEIN: Do you remember the specific
11 response to the suggestion that a rulemaking might be in
12 order?

13 MR. CLEMENTS: It was not adopted.

14 MR. WHITTAKER: John, I had a question for you,
15 and this kind of goes to the point that Ben raised.

16 Who makes the decision about whether you want to
17 force agencies to live or die on what they submitted by the
18 deadlines that the Commission established in its last
19 Orders, or allow them an opportunity through follow-up
20 questions to them for them to supplement the stuff that they
21 already submitted?

22 I mean it seems to me that's a policy decision
23 the Commission has to make in terms of we asked for the
24 information, we gave them an opportunity to provide it; they
25 provided it. And that's it. And they have to live with

1 what they provided.

2 As opposed to, give them repeated opportunities
3 to supplement the previous submittals?

4 Did someone make a policy decision in that regard
5 in terms of on that issue?

6 MR. CLEMENTS: Well I think it's safe to say that
7 a decision was made to waive this first application of that
8 policy decision at least in this the first instance of its
9 application.

10 You know, whether the Commission takes a more
11 hard line on the timing of these submissions in the future,
12 but, you know, I can't tell you; but this is the first time
13 the Commission is acting under this new policy, so I think
14 it's fair to say we're trying to be sufficiently flexible to
15 make it work but we understand the licensees concerns about
16 when is it going to be over and how is it going to come out
17 as a result of those decisions.

18 MR. SWIGER: Are you prepared to talk about a
19 schedule of next steps now, the way you envision this
20 happening next, and roughly when?

21 MR. CLEMENTS: I'd like to talk to Anton off the
22 record, if we could go off the record for like five or ten
23 minutes, and then we can go outside and think about this
24 again.

25 MR. BARTHOLOMOT: Again, being new to this--

1 THE REPORTER: Are we off the record now?

2 MR. CLEMENTS: Not until Henri stops.

3 MR. BARTHOLOMOT: Just an observation as a
4 thought, and this issue may again be one that is past the
5 point of discussion, but we adopted two cats last September
6 and we're trying to train them to do certain things and not
7 to do certain things, and we found that reinforcing that is
8 a way of getting them to change the behavior.

9 Well the Commission has made it clear that they
10 want certain justifications from the agencies, and have
11 invited participation and, failing that, it seems to me that
12 one way of getting them to come aboard would be to say:
13 Fine. These six years? We'll deal with them. Lack of
14 justifications--

15 MR. FINKELSTEIN: Seven years.

16 MR. BARTHOLOMOT: --seven years, and now we
17 really do mean what we're saying. And if you want to talk,
18 let's talk.

19 So it's just an observation. It may be that
20 some, some fairly--in what may be the direction of the
21 Chairman is moving in for NOAA, approach to things, we
22 really do mean what we're saying here of fairness, and
23 moving ahead, but not passing along unsubstantiated costs;
24 but, rather, deflecting those and saying we will start with
25 fiscal '05.

1 MR. CLEMENTS: Well just before we go off the
2 record, I will observe that working with these other Federal
3 agencies is a lot like herding cats.

4 (Laughter.)

5 MR. BARTHOLOMOT: Yes, that's why I reached for
6 the analogy.

7 MR. CLEMENTS: Thank you. Ten minutes.

8 (Discussion off the record.)

9 MR. CLEMENTS: Here is what we think we need to
10 do here. What we plan to do is go back to these agencies
11 after this conference with a letter explaining to them where
12 we believe that the presumption of reasonableness has been
13 sufficiently questioned that they need to do more to support
14 the reasonableness of their costs. And we will be specific,
15 as specific as we can possibly make it, and give them one
16 further opportunity to remedy those deficiencies within a
17 time certain.

18 And if they don't do it, then we will issue an
19 annual charge bill which excludes those costs that they
20 haven't supported and that we are not therefore able to find
21 are reasonable.

22 Before we do that, and before we leave here today
23 in order to make sure that you had, you know, a sufficient
24 opportunity to question the presumption of reasonableness
25 wherever you can, we would like to get back to where Mike

1 was, which was: Can we go through more specificity and
2 detail so that you can get those things into the public
3 record here.

4 MR. WHITTAKER: John, a procedural question.
5 When you say you're going to issue an Annual Charge Bill
6 after all this process is over, is that going to be the
7 Annual Charge Bill you're going to issue in June, July, or
8 August for your normal cycle, and that bill is going to
9 include all of the other Federal agency charges for the last
10 three years where you haven't assessed those?

11 I'm trying to understand, is it going to be one
12 large assessment for Other Federal Agency charges in the
13 upcoming bill?

14 MR. PORTER: We haven't determined yet if we're
15 going to include everything on this next bill, which would
16 be out in the July/August time frame, or if we would
17 possibly stagger.

18 Just an example--don't hold me to this--but just
19 as an example, of maybe billing out for '04 costs. And then
20 at a subsequent point next year, capturing the FY '98 to
21 '03.

22 You know, what we'd like to do is similar to what
23 we tried to do in 2002 in terms of, if we were to go this
24 route, to give the licensees an idea of the impact and
25 appropriately plan a new bill-out at some point after that.

1 MR. FINKELSTEIN: I guess depending on how much
2 you allow and how much you disallow, you might want to look
3 at something like the spread year technique that was used
4 when the Commission switched from estimated--from prior-year
5 to current-year Annual Charges. So you picked up an extra
6 year, and it was spread out over a three-year period, or
7 something.

8 I don't think we know enough to know whether that
9 would be appropriate. And I think it would certainly be
10 useful to have a further discussion here, but your
11 suggestion to the Agencies explaining where the presumption
12 of reasonableness has not been met to me lends itself, you
13 know, after an additional opportunity for the Agencies, for
14 the Commission to publish a notice of costs where the
15 Commission finds that the presumption has been met, and
16 provide maybe a technical conference, maybe an opportunity
17 for, certainly an opportunity for written comment, maybe
18 both, to allow the licensees to--I mean, you don't want to
19 make us waste time, and you don't want to waste your own
20 time going through attacks on agency submissions that you've
21 already determined are insufficient.

22 But if the Commission makes that sort of
23 preliminary finding, and the record on E-Library or whatever
24 includes all of the information upon which you have based
25 your preliminary finding, and the licensees have an

1 opportunity to file comments on that before the bills go
2 out, that strikes me as something, you know, you could at
3 least say passes at least minimal due process there.

4 MR. BARTHOLOMOT: I would support your thought
5 about giving folks notice. I mean one thing is just the
6 practical reality that our companies work on budgets and are
7 looking a year ahead. And even though the '03 and '04 OFA
8 charges have been deferred so they may be able to do some
9 kind of estimating, it's all a guess. And giving them some
10 additional lead time would certainly be helpful. So I would
11 support that.

12 MR. FINKELSTEIN: Right. And for my process we
13 would know what numbers we were talking about, and we could
14 comment intelligently on that issue, as well.

15 MR. WHITTAKER: I suppose one other thing we've
16 got to worry about, now that I think about is, the
17 Commission has to make clear at some point when a challenge
18 of the assessment is appropriate. I.e., is it only when we
19 actually get the Annual Charge Bills? Or are we going to
20 have some process where you're going to identify all the
21 charges that are going to be imposed?

22 Is that the triggering event for challenging that
23 to go up to the Court of Appeals? Or is it only when the
24 Annual Charge Bills eventually come out?

25 So I think that needs to be clear.

1 MR. FINKELSTEIN: Yes. I think the Commission
2 did set out a process last year that was fairly clear, but I
3 think that it's also clear that we're not in that process.
4 So rather than argue about the last process, I think a
5 Commission Order laying out--basically a new Order saying,
6 okay, you know, we're not where we thought we would be.
7 We've extended the December deadline. Here's how we intend
8 to proceed from here on out.

9 I think that that would be extremely helpful.

10 In terms of John's comments, I think certainly
11 our reading of the City of Tacoma case is that the
12 Commission's finding of what costs are reasonable ought to
13 be something distinct from the Annual Charge Bills because
14 it's not--I mean, the Annual Charge Bills are--there's
15 nothing about the finding of reasonable costs that's
16 specific to any project or any bill, I recognize, and so
17 there's an illogic there.

18 The difficulty--and I don't know--and I recognize
19 it's a difficulty and I don't know what the solution is--is
20 that if a bill is paid and is not appealed, and if the
21 Commission doesn't put any reservation in the bill, then
22 it's a final bill and it's locked.

23 So it may be that you can't separate the appeals
24 from the bills. I'm not sure. But one thing I think we
25 need to talk about, we may need to talk about that today in

1 terms of once you figure out what the agency charges are for
2 every year, how that's going to be dealt with in terms of
3 bills for past years that are locked in because they weren't
4 appealed versus bills for past years that were appealed.

5 MR. CLEMENTS: Well if you didn't appeal, you're
6 stuck.

7 MR. FINKELSTEIN: Well, either stuck or--I mean
8 it depends on whether it goes down or up. The answer might
9 be different for different years. And it might be different
10 for--

11 MR. CLEMENTS: Well, it's final. Let's put it
12 that way.

13 MR. FINKELSTEIN: Okay. So that's--all right, so
14 that in terms of figuring out if there are credits, or there
15 are, let's say for a year like 2001, and we don't know a
16 priori whether there's going to be an additional billing or
17 a further credit for the 2001 OFA charges.

18 Whoever didn't appeal their bill for that year is
19 not going to get any boost or any deficit?

20 MR. CLEMENTS: Yes.

21 MR. WHITTAKER: Then, John, let me have a follow-
22 up question on that. What you normally do is divide the pie
23 of other federal agency charges among the licensees pursuant
24 to a formula.

25 And if there were more charges, therefore there

1 would be more costs and therefore more charges and the pie
2 would normally get larger and the slices would get slightly
3 larger for everyone.

4 If there are additional charges here, you don't
5 propose to heap all the additional costs that normally would
6 be spread among all the licensees, including those who
7 didn't appeal, and put them only on those licensees who have
8 non-final bills because they appealed those bills?

9 MR. CLEMENTS: That's what I think. What do you
10 think?

11 MR. PORTER: That's something we probably need to
12 discuss further, but I mean I see the issue.

13 MR. FINKELSTEIN: Oh, boy, then the handling of
14 the '96 and the '97 appeals was wrong because we did not
15 get--the licensees who filed those appeals did not get back
16 every dollar that was knocked out. The Commission retained
17 most of the--the Commission retained the undocumented costs
18 for every licensee that didn't appeal.

19 You spread it pro rata and then you figure out
20 who gets it and who doesn't.

21 MR. SWIGER: And with the interim--

22 MR. CLEMENTS: And that may be what we do again.
23 I was just--that was just, you know, what was my first
24 thought about what is the right way to do it. But not being
25 an accountant--

1 MR. FINKELSTEIN: Well, imagine a world where
2 only one licensee appeals the annual charges on the OFA.
3 You know, would they get--under a non pro rata theory, you
4 know, they would either get a massive windfall or a
5 walloping if it went the other way. That can't be right.
6 Or maybe it can. I don't know.

7 MR. WHITTAKER: Because there's only
8 approximately 250 licensees who challenged their Annual
9 Charge Bills out of the thousands of licensees. That's a
10 significant issue.

11 MR. FINKELSTEIN: Part of it is you can't tell
12 from the web site which licensees challenge their bills
13 because some--an appeal is filed with the Executive Director
14 and not with the Commission. Therefore I don't know how you
15 all are tracking it internally, some people will carbon copy
16 the Secretary just so that there's something we can see, but
17 it's got to be a logistical job just for you folks.

18 MR. CLEMENTS: Don't look at me. Look at him.

19 MR. FINKELSTEIN: I'm not looking at you.
20 Frankly, I might look at somebody to change that rule to
21 have appeals of bills filed with the Secretary just so that
22 you can get them into a paper tracking system that
23 functions.

24 I mean, the fact that all of these agency cost
25 submissions that were filed in November and December, and we

1 don't see them until--they aren't filed in the Secretary's
2 office until March 31, and they don't show up on the web
3 site until April 5 or April 6, you know, that's not the
4 best, and certainly not the best from our perspective for
5 people outside the agency. I can't speak for how it works
6 for people inside the agency, but I can imagine.

7 MR. PORTER: That's something we'll have to look
8 further into, because I thought that although they're filed
9 with the Executive Director--

10 MS. KINGSBERRY: You would have to know was
11 filing, but they get filed--

12 MR. PORTER: Eventually, yes. Send them to the
13 Secretary's office and they're recorded, and they should be
14 on E-Library and listed by project.

15 MS. KINGSBERRY: You just have to know who they
16 are.

17 MR. FINKELSTEIN: Well I know for my clients.
18 And I know that it's been an issue in the past years, that
19 there have been rehearing requests that said there was a
20 mismatch between people who filed protests and people who
21 got refunds, but I am just saying in terms of coming up with
22 a process that works smoothly that that is something you
23 might want to look at.

24 MR. SWIGER: Several questions, comments I guess
25 on the next steps. And one is actually on--well, it is a

1 next step.

2 You don't have a slide on the Army Corps. As far
3 as we can tell, they didn't submit any costs. Are you in
4 communication with them, as well? Or have they indicated
5 that they're not going to submit anything?

6 MR. PORTER: They have indicated that they are
7 not going to submit. They feel that they don't have those
8 costs. But they submitted in prior years, and we haven't
9 received sufficient justification as to why they feel they
10 don't.

11 We would like to follow up with them.

12 MR. SWIGER: So will they be a recipient of one
13 of these last-chance letters?

14 MR. PORTER: Yes.

15 MR. SWIGER: But right now, you don't expect that
16 you would get anything more from them as far as you know?

17 MR. PORTER: Yes. It would be hard to say.

18 MR. WHITTAKER: In that instance, then, would you
19 go back to what they submitted previously?

20 MR. PORTER: No.

21 MR. WHITTAKER: That's all--All that's off the
22 board?

23 MR. PORTER: It's off the board. We understand
24 the process as it lays out now the costs that are currently
25 on the table as submitted, or once we go back and they

1 submit and they get those documented, that those are the
2 costs that we are considering.

3 MR. FINKELSTEIN: And the same would be true for
4 other Federal agencies that don't show up here at all?
5 Because I mean there are some others that do have--that do
6 get involved in FERC proceedings from time to time but have
7 never been among the ones that are named in the Commission's
8 Orders and Surveys.

9 MR. PORTER: Right. EPA being one?

10 MR. FINKELSTEIN: EPA being probably the foremost
11 example.

12 MR. SWIGER: Not to give you any ideas--

13 MR. FINKELSTEIN: No, but the same thought that,
14 you know, if it's not here, it's not--

15 MR. SWIGER: My second question about next steps
16 is for I believe--Chuck will correct me--three of the years,
17 or maybe it's four, we have pending appeals of the bills.

18 MR. SENSIBA: Five, '98, '99, 2000, 2001, and
19 2002.

20 MR. SWIGER: Yes.

21 MR. FINKELSTEIN: Right. Three years where there
22 are pending appeals, and then two years where there are
23 pending appeals but FERC has given refunds based on the
24 certification theory that did not fully address those bills.

25 MR. PORTER: Right. In '98 and '99 you've

1 received partial refunds.

2 MR. SWIGER: Right. And then there are three
3 years of appeals following that on which there were--

4 MR. WHITTAKER: I believe there were two.

5 MR. FINKELSTEIN: Two.

6 MR. SWIGER: No, three. 2000, 2001, and 2002.

7 MR. FINKELSTEIN: No, not 2002.

8 MR. SWIGER: Why not?

9 MR. WHITTAKER: Because FERC's 2002 bill, they
10 gave estimates of--

11 MR. FINKELSTEIN: We're talking FERC bill years,
12 not agency years.

13 MR. SWIGER: So in any event, as to the years
14 where people have filed appeals, and there are appeals
15 pending before the Commission that involve these
16 recertifications, is the Commission going to issue some sort
17 of an Order on the appeal adjudicating those appeals and
18 explaining the basis for why it included certain costs, or
19 did not include certain costs?

20 Or are we just going to see new bills in June, or
21 July, or August, or whenever that don't contain any
22 explanation and don't adjudicate those appeals?

23 MR. CLEMENTS: I think with respect to any
24 pending appeal that, just as a matter of law, we have to
25 provide some kind of explanation of why we're doing what

1 we're doing in adjudicating the appeal, however we handle
2 it.

3 We have to determine a reasonableness of the
4 cost. The court was perfectly clear. You can't do that
5 without some kind of explanation.

6 MR. FINKELSTEIN: I think the point Mike is
7 addressing may be different--

8 MR. SWIGER: No, it's not. That's part of my
9 question. Then you can ask your questions.

10 MR. FINKELSTEIN: I'm sorry. Okay.

11 MR. SWIGER: Then as to--which leads into the
12 next question. As to the--and this is I guess similar to
13 some things that Ben and Henri have been saying--as to the
14 last two years, I believe, where the Commission didn't
15 actually issue OFA charges but has held them in abeyance,
16 and therefore there are not pending appeals, is the
17 Commission in issuing the charges going to give any
18 explanation for why it's including certain charges and not
19 including other charges?

20 Or is it just going to issue a bill which we will
21 then appeal because we don't understand why certain charges
22 were included and certain ones not included?

23 (FERC Staff confers.)

24 (Pause.)

25 MR. CLEMENTS: Yes, we think we have an

1 obligation to explain these bills when they're issued.

2 MR. SWIGER: Okay, and that leads me to my next
3 question, or maybe it's a suggestion, and again may be
4 similar to some things that Ben was saying.

5 This presentation today that you all have given
6 has been very helpful, and I personally appreciate it very
7 much. You have indicated that you are asking the agencies
8 for whatever additional supporting data they may have.

9 Now they may or may not come up with additional
10 data. If they do come up with additional data, then do you,
11 again because of the need to go back to them--

12 MR. PORTER: Do you mean additional e-data in
13 terms of the increase in the number?

14 MR. SWIGER: No.

15 MR. PORTER: Or additional just in terms of
16 support--

17 MR. SWIGER: Supporting data, right. Because of
18 the need--this whole process has been sort of drug out a
19 little bit more than maybe you expected it would be at the
20 beginning, more than the Commission anticipated it would be,
21 would it make sense to have a follow up technical conference
22 after you got that data but before you issue the bills in
23 which we had an opportunity to again go through this again
24 so that if we had questions on that additional data we could
25 ask them? Or, again, do you just anticipate issuing the

1 bill based on the additional information and then whatever
2 questions, issues, or problems we have we'll just raise them
3 as part of our appeals?

4 MR. CLEMENTS: I'd prefer not to give an answer
5 on that--

6 THE REPORTER: I'm sorry, I can't hear you.

7 MR. CLEMENTS: Maybe that's the idea.

8 (Laughter.)

9 MR. CLEMENTS: I'd like to defer answering that
10 question because I can imagine in my own mind a couple of
11 different scenarios where the licensees get an opportunity,
12 either before or after the bill is issued, possibly in the
13 context of, you know, the appeal to raise additional
14 questions or provide additional challenges.

15 I'm just trying to, in my own mind, balance the
16 need for finality in getting these things out with your need
17 to have an opportunity to question on the presumption in a
18 way that looks fair to any reviewing court.

19 MR. SWIGER: Right. I guess it's more an issue
20 of, you know, sort of who gets the last word before the
21 bills come out. Is it the agencies who get the last word?
22 Or do we get the last opportunity to raise questions? Or
23 even, conceivably, to get them in the room. That's
24 probably, you know, naive.

25 MR. CLEMENTS: It's not only who gets the last

1 word, but how they get to give the last word.

2 MR. SWIGER: Before the bills are issued?

3 MR. CLEMENTS: Right. Because the Commission has
4 said positive things about evidentiary hearings in this
5 context. I'm not saying that's where we're going--

6 MR. SWIGER: Right.

7 MR. CLEMENTS: --it's just we have a lot to think
8 about because we're crafting something brand-new here.A

9 MR. SWIGER: And that's one reason I raised it,
10 just for you to think about it.

11 MR. FINKELSTEIN: Well of course, I mean the
12 Commission said what it said about evidentiary hearings
13 based on the premise that the agencies would appear at the
14 technical conference in order to clear up misconceptions.

15 So while you're certainly right that the
16 Commission said what it said, once again the way the facts
17 have played out do not mesh with that.

18 So I would think that the Commission would at
19 least revisit that in terms of the context here.

20 MR. CLEMENTS: It may or may not change the
21 result. I just can't answer here.

22 MR. FINKELSTEIN: Absolutely. I just wanted to
23 make the observation that the premise upon which no
24 evidentiary hearings rested isn't playing out yet.

25 MR. CLEMENTS: Well actually if you look at the

1 Order on Rehearing of the Order on Remand, we were thinking
2 at least at that time in terms of possibility of evidentiary
3 hearings following the bills.

4 MR. FINKELSTEIN: Even then, it was we hope we
5 can do it with technical conferences.

6 MR. CLEMENTS: Okay, I'm not arguing with you.
7 I'm just trying to--

8 MR. FINKELSTEIN: No, that's correct.

9 MR. CLEMENTS: --have it clear.

10 MR. FINKELSTEIN: You are correct. But that also
11 would envision a technical--because we had filed in our
12 Application For A Rehearing of The Remand Order basically
13 that the agency should be required to come to a technical
14 conference to defend, or their costs would not be
15 substantiated.

16 And the Commission did not--they sort of went
17 half with us on appeal. They didn't say the agency would be
18 required to attend, but they said there would be a
19 conference in which the agencies would have the opportunity,
20 and it was sort of an unstated premise that the agencies
21 would attend, which some of us assumed was counter-factual
22 but there was no sense in filing for reconsideration to
23 argue about a prediction.

24 I do want to reiterate that I think it would be
25 both a sound process and a fair process for the licensees at

1 some point to be informed: These are the costs as to which
2 the Commission believes that a presumption of reasonableness
3 has been established.

4 And then the licensees can file--can have, either
5 with a technical conference or with written comments, you
6 know can focus on the costs that are the ones that are
7 really in play. And I think that would be a process that
8 would be helpful and useful.

9 In terms of the procedure, it is complicated
10 because this is one of the few areas where you still have an
11 appeal from Staff action process. The appeals that are
12 pending are appeals to the Executive Director. Then when
13 the Executive Director acts, then you file not rehearing
14 with FERC but you file an appeal from Staff action with FERC
15 under the present regulations.

16 So if the bills that come out--let's say the
17 bills that come out this year include credits and purport to
18 be the action of the Executive Director on the appeals for
19 past years, but are also the 2004 bills.

20 Then the question is: Is the process another
21 appeal to the Executive Director, because this is the 2004
22 bill? Or I think it would make a lot more sense for the
23 Commission, given the peculiarities of this case at least,
24 if the Commission would allow direct appeals to the
25 Commission and basically put everything on the same layer.

1 The Commission did the same sort of thing when it
2 set the 1997 and 1996 appeals for hearing. The 1996 appeals
3 had been denied by the Executive Director and were pending
4 before the Commission on appeal.

5 The 1997 appeals hadn't been acted upon yet by
6 the Executive Director.

7 When the Commission set the 1996 appeals for
8 hearing, it consolidated the 1997 appeals even though the
9 Executive Director hadn't acted. So it was sort of a
10 rationalization of the process.

11 And I would hope that the Commission will
12 consider a similar sort of rationalization here where you
13 would have a bill, presumably the bills issued this year
14 will incorporate some sort of action on past years' appeals.

15 MR. CLEMENTS: We too are concerned with
16 administrative efficiency.

17 MR. FINKELSTEIN: I mean the less confusion--
18 clear instructions I think would benefit everyone because we
19 wouldn't waste time figuring out what to do, and arguing
20 amongst ourselves.

21 And if you all could figure out how you all would
22 prefer to have it, up front, then, you know, we'll do what
23 you want and you'll have what you want and we won't be
24 confused. So that is a plea.

25 MR. CLEMENTS: Duly noted.

1 Have we gotten to the end of your questions, or
2 was that an interlude?

3 MR. SWIGER: No, you did get to the end of the
4 questions. I guess, though, the answer raises one more
5 question, which is: Since this might be the only
6 opportunity that we have, and if there is not another
7 technical conference following up on the agency supporting
8 documentation that they file in response to your letters,
9 then it seems like we probably need to go through and raise
10 the questions that we have based on the information that we
11 have. Or, alternatively, if it would be easier for you, and
12 if you would prefer, we could do that by letter. We could
13 do it in writing as a follow-up to this.

14 We're fine to do it either way. It's just how
15 you would like to handle it.

16 MR. PORTER: If you would like to present them
17 orally today, obviously we'd be willing to listen. But I
18 would think, just so we could communicate your concerns
19 clearly to the other federal agencies, that I would prefer
20 you record your issues in writing and get that to us.
21 Because then we are sure to pass that information on.

22 MR. SWIGER: What would the timing be?

23 MR. CLEMENTS: I think that makes sense, but if
24 we're deferring our next communication with the OFAs then we
25 need to set some kind of a time line for these folks to get

1 their next round of paper in.

2 MR. FINKELSTEIN: Well I think it would be
3 helpful to have a little bit of a conversation about I guess
4 that 2003-2004 Forest Service, or the BUREC, the ones you're
5 considering to be well documented, or in the neighborhood,
6 if we can discuss those now then maybe we can reach a
7 clearer understanding of where the Staff and the Licensees
8 are seeing eye to eye, or not, which I guess is where the
9 bookmark was.

10 MR. CLEMENTS: It works for me. We can do both.

11 MR. PORTER: Well I'm looking at, let's look at
12 '04, Forest Service. The actual cost submission form is
13 supported by, first and foremost, as a distribution by their
14 individual regions, costs attributable to those regions.

15 That is supported then by a breakout of, first,
16 of their indirect cost analyses where they go through the
17 various regional forests and calculate costs. You see a
18 clear flow in itemization per individual forest-related
19 costs.

20 MR. WHITTAKER: Anton?

21 MR. PORTER: Yes?

22 MR. WHITTAKER: While we're on that page, can you
23 interpret this for me? For example, just the first line,
24 Region R-1, the Beaverhead Deer Lodge National Forest?

25 MR. PORTER: Um-hmm.

1 MR. WHITTAKER: They're saying their total
2 program direct costs--this is total program for the Forest
3 Service in that National Forest--is \$268,000. And they're
4 saying their total cost recovery, direct costs, are
5 \$267,000. That's their statement of what their total direct
6 costs regarding part one, administration charges, are? Is
7 that what that column is supposed to be?

8 MR. PORTER: Sorry, I lost you.

9 MR. WHITTAKER: Just on the first page. This is
10 on their--

11 MR. PORTER: Okay. Yes.

12 MR. WHITTAKER: I'm just trying to get an idea of
13 what these different columns mean. For example on the first
14 one, the Beaverhead Deer Lodge National Forest, they have a
15 total program direct cost of \$268,672. Do you see that?

16 MR. PORTER: Um-hmm.

17 MR. WHITTAKER: And then they have total cost
18 recovery, direct cost, two sixty-seven. Is it your
19 interpretation that the two sixty-seven represents the
20 portion of the \$268,000--

21 MR. PORTER: Yes, when we looked at that, that
22 was the breakout, yes. Yes.

23 MR. WHITTAKER: Okay. And then the same thing
24 for the indirect costs. For total indirect costs for that
25 Forest, and then the final call is the part one cost portion

1 of it?

2 MR. PORTER: Right.

3 MR. WHITTAKER: Okay. Next you'll see
4 individual, it looks like they're doing sort of job costing,
5 and you'll see individual support per region per fiscal year
6 for the various costs--personnel comps and benefits rollout.
7 There's mention, they even itemize and capture related
8 travel, military and transportation costs. And it goes on
9 to support the entire balance of what's supported. It is a
10 very detailed level per their individual regions.

11 By far, in terms of an automated system in
12 providing some of the information we're looking for, this
13 does a good job in doing that.

14 MR. BARTHOLOMOT: Is this comparable to what the
15 Commission itself would produce in assessing its own annual
16 charges?

17 MR. PORTER: We have a labor cost system that
18 essentially does the same thing, yes.

19 MR. CLEMENTS: Which is presumptively reasonable.

20 (Laughter.)

21 MR. BARTHOLOMOT: One other question. When you
22 see printouts like this, I'm not an accountant or financial
23 expert, but they in one sense give you a sense that they're
24 at least divided into hoppers and so forth. What it doesn't
25 tell you is are they fairly putting the right allocation of

1 hours and dollars into those hoppers in the process that
2 leads to that statement.

3 Is there anything the Commission is doing, or any
4 signals you're sending that deal with that issue? In other
5 words, diving a little bit--if you were being audited,
6 especially post Sarbanes-Oxley, people are looking at the
7 regularity of the system as well as the final outputs.

8 Are you all trying at least, not necessarily in a
9 Sarbanes-Oxley Big Four auditing way, but some way to dive
10 behind them?

11 MR. PORTER: One of the things we've discussed,
12 and it was based on getting enough information that will
13 support it, is trend analysis; looking at costs in
14 comparison to our own. You know, seeing certain spikes and
15 changes per each individual year. And seeing workload that
16 would more than likely coincide with the Commission.

17 There are things that we're looking at from that
18 standpoint to sort of look at those things. If things look
19 sort of out of step, if it's an outlier to the trend, it's
20 an area of additional questions and investigation that we
21 would ask the other agency to submit additional information
22 on.

23 But it's hard for us to tell. You know, we
24 assume given the fact that they've designed the system to
25 capture this information, that without actually knowing,

1 going to the agency and conducting a full-scale audit, with
2 a 100 percent certainty of accuracy, no. But it appears
3 reasonable.

4 MR. CLEMENTS: It's an open question as to how
5 much depth we need to go into the other agency's accounting
6 in order to support our reasonableness determination.

7 MR. BARTHOLOMOT: Yes, and that's fair. Partly
8 what I'm looking at, again, is if I were the person
9 receiving the bill. I get an electric bill at home. I do
10 the same thing, especially the first few times a new system
11 is in place, or a new rate design is in place, or I'm in a
12 new house. I'm going to police those enough to say I
13 understand what is going on here, and I'm comfortable.

14 And what I'm really asking is, will the
15 Commission--because you all are experts at managing these in
16 a regular way, and we're trying to get to some comparable
17 degree of regularity with the other agencies. Is it
18 possible, if they haven't already done that, to ask for at
19 least a bit of explanation? Can you tell us, you know, in a
20 couple of pages how it is the costs get into these hoppers?
21 So not only are you seeing a statement that looks well
22 enough hopped and in enough detail to give you some
23 indicia of reliability, but also a sense that, yes, the
24 process behind it--you know, if an agency said to me, we've
25 got 50 people here at headquarters working hydro, and just

1 as any other consulting firm, or law firm, or whatever, when
2 they are billing time to hydro work, because they do six
3 other things, too, they keep track of those and that goes
4 into this system and capture it as FTEs and turn into
5 dollars, then if I were in your shoes, if I were in the
6 licensee's shoes, I'd say, okay, I'm comfortable that
7 there's some regularity with the mechanism used to generate
8 the statements.

9 If you get zero statements, then everything looks
10 really unsupported. If you get good statements, then I'm
11 three-quarters of the way saying, okay, this feels okay.
12 But I'm still going to pick up the phone and call Verizon,
13 or Dominion, or whomever gives me a bill and I'm going to
14 say the first time something new is looking at me, what is
15 this and how did you get there?

16 That's all I'm asking. Because it goes back to
17 the processing. Especially with three years' worth of
18 charges coming at folks, the more you can give a sense that,
19 in advance, this has been really vetted and we're holding
20 them to a pretty good standard here, and they've given us
21 information that says, yeah, they're meeting it. Then I
22 think you're going to bring people with you.

23 The less we have that, the more people are going
24 to be going, this doesn't feel just and fair with due
25 process and it's not well founded.

1 MR. CLEMENTS: Our oversight techniques are
2 evolving.

3 MR. BARTHOLOMOT: Okay. That's why I'm offering
4 the suggestion. I don't think it would be--I don't know,
5 I'm not the accountant, but just knowing as a lay person if
6 all you presented me with was this level of detail and no
7 sense of regularity about the process leading to it, I would
8 say you had gotten half of it, but where's that other half?

9 If they are able to produce this level of detail,
10 I would hope the answer would be it's through a fairly
11 regular process. But I would just be careful in assuming
12 that when we don't know, necessarily--you know, they may be
13 taking an arbitrary percent. It could be, you know, let's
14 just take 1.5 percent of whatever our FTEs here at
15 headquarters are doing. We're just going to assume that.
16 Then they break it down into nice little hoppers and you
17 say, hmm, it looks reasonable, but the rationale or the
18 methodology is broken.

19 I am just encouraging you to press them just a
20 little further and say: Can you tell us just in a couple of
21 friendly pages of narrative the process you used to get to
22 there? And are you tracking specifically allocation of
23 individual employees' times on these things? And how are
24 you deciding something is hydro and what is not? Especially
25 if it is policy in the general counsel's level and they have

1 multiple things in their hoppers.

2 You know, is there a regular function going on
3 there?

4 MR. WHITTAKER: Anton, this is just a question on
5 some of these sheets where it says "services provided" they
6 have a "job code description" of what it is?

7 MR. PORTER: Um-hmm.

8 MR. WHITTAKER: Some of these are pretty self-
9 evident that they're FERC hydro-related, but some of them
10 aren't. Some of them have some name that I'm not familiar
11 with. So how can you know or verify that this is really
12 part one admin cost, as opposed to something else?

13 MR. PORTER: Well it is that I have taken the
14 assumption that, based on related job codes, that they're
15 related to FERC relicensing. I'm looking at some of them.
16 We can follow up with questions in terms of, you know,
17 things that we can't identify or relate to a project. We
18 can follow up with questions just to have them clarify
19 specifically what those codes are.

20 MR. WHITTAKER: And kind of a related question.
21 In terms of the hours they spend working on some project and
22 some identification here, for example they have one job code
23 here "FERC El Dorado" and it says they spent 1936 hours on
24 that effort during the fiscal year.

25 Is FERC looking at the reasonableness of them

1 spending 1936 hours on this particular project, as opposed
2 to maybe they spent 1500 too many hours on this project and
3 they are just wasting their time, or having extra people
4 sitting around?

5 MR. PORTER: No.

6 MR. WHITTAKER: So whatever they submit as hours,
7 you're going to accept?

8 MR. PORTER: If they can support their numbers in
9 terms of the overall numbers provided in the Costs
10 Submission Form, we'll look at FTEs, but I don't know if I'm
11 prepared to make that sort of judgment.

12 That may be, you know, I can't speak to, you
13 know, what they're doing. I mean, 1900 hours may be five
14 employees working, engaged for a period of time. There's no
15 way, you know, that I can speak to that.

16 We can question things that look--you know, and
17 one of the things you're going to do, obviously, is once we
18 go back, you know, to point to those specific points. And
19 we'll definitely pass that information along, and maybe
20 incorporate it in our review process.

21 MR. CLEMENTS: You have to make practical
22 decisions about how much we can go into depth on each line.

23 MR. WHITTAKER: Do we know the person's name who
24 did this work? Are we asking for those persons names?

25 MR. FINKELSTEIN: Well, if they were here at the

1 technical conference.

2 (Pause.)

3 To keep going here on the Forest Service for a
4 moment, on their first page here after their certification
5 they have Costs for overall things--I guess this is for FY
6 '04--and their "other" line, which totals \$468,891 for FY
7 2004, down below they talk about "other direct costs
8 including materials and supplies, printing and reproduction,
9 other services, and rent and communications and utilities."

10 Now I haven't really, to be honest with you,
11 really looked at all this, but did they provide actual
12 documentation of how they came up with the \$468,000?

13 MR. PORTER: These are the other services in the
14 Job Costing Codes.

15 MR. FINKELSTEIN: Oh, okay.

16 MR. PORTER: We'd have to go through and look at
17 every one--

18 MR. FINKELSTEIN: But you don't know what those
19 "other services" are?

20 MR. PORTER: I mean, they indicate that's what
21 they are.

22 MR. FINKELSTEIN: They may appear in each one of
23 these, but--

24 MR. PORTER: Right, right.

25 MR. FINKELSTEIN: And you can add them up and it

1 comes to this amount, but you don't know what each of those
2 items means when a line it says "other services."

3 MR. PORTER: Right.

4 MR. WHITTAKER: Do they have, for the Forest
5 Service, do you know if they have a set amount for, a set
6 percentage for overhead, and how they calculate that?

7 MR. PORTER: I am not sure. I thought it was one
8 of the questions that I had talked to staff about that we
9 needed to follow up on. Generally most of them, most of the
10 agencies apply--they have departmental guidance which
11 applies a standard overhead rate, and that was one of the
12 things that was lacking.

13 MR. WHITTAKER: I don't have anything else.

14 MR. FINKELSTEIN: I think in connection with
15 that, it would certainly be helpful to us to--and again I
16 understand John's concern about some amount of screening--
17 but the correspondence between FERC and the agency in terms
18 of what information you're looking for for substantiation,
19 or the letters we've been talking about that would go out to
20 the agencies saying, you know, we don't think you've met the
21 presumption yet, and here's what we need to see. Or maybe,
22 and I don't know if there is, but maybe we think you may
23 have narrowly met the presumption, but we'd still like to
24 see this additional materials. You know, the more of that
25 that takes place in a transparent way, the better we

1 Licensees can understand what's going on.

2 And as Henri said, the more comfort we can take
3 that the process is working, if in fact comfort is
4 warranted; or the less comfort we can take if it's not
5 working; but in any event, I think more transparency would
6 certainly increase the usefulness.

7 MR. CLEMENTS: Noted.

8 MR. BARTHOLOMOT: I don't know if I'll be so bold
9 as to say, I don't know if you'd want to float a draft of
10 the last-chance letter for input, but it would sure be nice.

11 MR. CLEMENTS: That is a long shot.

12 (Laughter.)

13 MR. WHITTAKER: So I guess you need to establish
14 a deadline for us to submit our written comments on this set
15 of documents.

16 MR. CLEMENTS: Yes, we do. It's more I think
17 kind of where Anton wants to go from here.

18 MR. PORTER: I am willing to work with you all.
19 I mean, what is reasonable for you all to get something in?
20 Two weeks? A week? Two weeks?

21 MR. WHITTAKER: Two weeks, yes.

22 MR. PORTER: So two weeks from today?

23 MR. WHITTAKER: Okay. And who do we direct this
24 to? Anton? Or the Secretary's Office?

25 MR. PORTER: Shall we make it through the

1 Secretary so it's part of the record?

2 MR. CLEMENTS: I think that's a good idea.

3 MR. BARTHOLOMOT: Is that just for those who have
4 more details? Is it better to do this round of detailed
5 comments now, or after we see the next round?

6 MR. WHITTAKER: We want to get our input in so
7 they can--

8 MR. CLEMENTS: They want to influence our follow-
9 up.

10 MR. FINKELSTEIN: I wouldn't see this as a
11 substitute for some sort of a follow-up session between the
12 time that the Commission determines which costs are
13 presumptively reasonable and when the bills go out.

14 MR. CLEMENTS: We understand that.

15 MR. FINKELSTEIN: And to the extent that the
16 timing pressures are such that you need to squeeze it here
17 in order to get the other, I frankly would rather see it
18 squeezed here. You know, if tradeoffs need to be made.

19 MR. BARTHOLOMOT: If we stick with two weeks,
20 does that give an opportunity for that sort of second
21 comment?

22 MR. FINKELSTEIN: We'd like a chance to put in
23 our comments when they're going to have the most effect, and
24 I think that would be after we're given a preliminary
25 determination of what costs are out there. You know, which

1 would both allow us to give comments on the reasonableness
2 of the costs, the documentation, and also allow us to give
3 comments on, depending on the magnitude, whether they ought
4 to be billed at once or spread out, or all those things that
5 you could have some feedback on before you get the bills
6 out, which I don't think I'm in a position to give you now.

7 (Pause.)

8 MR. WHITTAKER: But we'll still send these
9 letters in by the 10th? That's fair enough.

10 MR. CLEMENTS: I wish we had won that court case.

11 (Laughter.)

12 MR. WHITTAKER: John, one further question. In
13 response to Mike's questions, you said you'll probably be
14 issuing an order addressing the pending appeals and all the
15 past years. And you would probably be issuing an order
16 giving some kind of explanation before you issued the bills
17 for the last two fiscal years where other federal agency
18 charges were not included in the bills.

19 Do you envision that's going to be one master
20 order? And what's the timing of that order vis-a-vis the
21 charge bills coming out later this year?

22 MR. FINKELSTEIN: And let me add the question
23 whether that would be a FERC Order or an Executive Director
24 Order?

25 MR. CLEMENTS: Well what I was going to come back

1 with to John is, I don't know exactly the format we're going
2 to do all this in, but the point I was trying to make is
3 that we understand that we have an obligation to explain our
4 decisions. We make the decisions and explain them.

5 Then within that broad framework, we will try to
6 do what's right by everybody.

7 MR. FINKELSTEIN: And as I say, the clearer you
8 could be about the path for subsequent action--

9 MR. CLEMENTS: Yes, I understand.

10 MR. FINKELSTEIN: --you know, whether or not it
11 involves a waiver of regulations for the case, you can
12 figure out something that makes sense and clearly
13 communicate it, and then we can all proceed accordingly.
14 And that would be better than the alternative.

15 MR. BARTHOLOMOT: I would like to express
16 appreciation for what you're trying to do here. I know
17 there's been some pressure from the folks having to pay the
18 bills, and there is uncertainty about what is going on, but
19 what you are trying to do is provide some regularity to the
20 system that hasn't really had it. And it's a fair bit of
21 work.

22 It is important, I think, that we get it right
23 because you'll see the downside result if we don't. We'll
24 end up with appeals, and appeals, and such uncertainty that
25 you're dealing with the realty of it.

1 So I just want to say: Stay the course. Let's
2 get this thing right, and regularized, and it will redound
3 to your benefit, the licensee's benefit, and the other
4 agencies. They'll be on firmer ground, and the next
5 generations will not have to do this again if we get it
6 right now. So just thank you for what you're trying to
7 do.

8 MR. FINKELSTEIN: I'll second that. I think,
9 while I certainly didn't get everything that I wanted from
10 the session last July, I think I can see things in here that
11 came from that session last July, and I think they were
12 constructive and I hope that this meeting will prove to have
13 been constructive as well. I thank you all for your hard
14 work and your time.

15 MR. PORTER: Well, thank you.

16 MR. SWIGER: Anton, will this Power Point be
17 included in the transcript?

18 MR. PORTER: I can put it out on the web. I can
19 put it out on the web, or in the transcript. We can do
20 both.

21 MR. CLEMENTS: Will the transcripts be in the E-
22 Library?

23 MR. PORTER: Yes.

24 MR. CLEMENTS: As a matter of course?

25 MR. PORTER: Yes.

1 MR. CLEMENTS: I don't know.

2 MR. PORTER: We did with the other.

3 MR. FINKELSTEIN: They go up like seven days
4 after the fact. There was some confusion. They July one, I
5 think it eventually went up, but it originally didn't have
6 the docket number on it, so we had some trouble finding it,
7 but it was there.

8 MR. WHITTAKER: So the transcript will get in
9 there in about a week or so?

10 MR. PORTER: Yes. All right, thank you.

11 (Many participants reply, "Thank you.")

12 (Whereupon, at 12:15 p.m., Tuesday, April 26,
13 2005, the technical conference in the above-entitled matter
14 was adjourned.)

15

16

17

18

19

20

21

22

23

24

25