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BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION

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IN THE MATTER OF: :  
CONSENT MARKETS, TARIFFS AND RATES - ELECTRIC :  
CONSENT MARKETS, TARIFFS AND RATES - GAS :  
CONSENT ENERGY PROJECTS - HYDRO :  
CONSENT ENERGY PROJECTS - CERTIFICATES :  
DISCUSSION ITEMS :  
STRUCK ITEMS :  
- - - - -x

900TH COMMISSION MEETING  
OPEN MEETING

Hearing Room 2C  
Federal Energy Regulatory  
Commission  
888 First Street, N.E.  
Washington, D.C.  
  
Thursday, January 19, 2006  
10:10 a.m.

1 APPEARANCES:

2 COMMISSIONERS PRESENT:

3 CHAIRMAN JOSEPH T. KELLIHER

4 COMMISSIONER NORA MEAD BROWNELL

5 COMMISSIONER SUEDEEN G. KELLY

6 SECRETARY MAGALIE R. SALAS

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18 ALSO PRESENT:

19 DAVID L. HOFFMAN, Reporter

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

2 (10:10 a.m.)

3 CHAIRMAN KELLIHER: This open meeting of the  
4 Federal Energy Regulatory Commission will come to order to  
5 consider the matters that have been duly posted in  
6 accordance with the Government in the Sunshine Act for this  
7 time and place.

8 Please join us in the Pledge of Allegiance.

9 (Pledge of Allegiance recited.)

10 CHAIRMAN KELLIHER: Before we start, I would like  
11 to acknowledge that Mayor Lambert is here from the City of  
12 Fall River. I want to thank him for being here, and for his  
13 continued interest in that proceeding, the Weavers Cove  
14 proceeding.

15 I want to start with some announcements: First  
16 of all, I'd like to begin by announcing that Larry Gasteiger  
17 of my staff, will be leaving my personal staff on February  
18 3rd, to assume the position of Deputy Associate General  
19 Counsel in the Office of General Counsel.

20 Larry has really served remarkably well in my  
21 office. I think he's done a great job, and I have every  
22 confidence that he will perform as well in the Office of  
23 General Counsel.

24 I know our coffee consumption will drop  
25 dramatically in the Chairman's Office.

1 (Laughter.)

2 CHAIRMAN KELLIHER: But I'll try to pick up on my  
3 end and maybe David can help, to. To replace Larry, I have  
4 hired David Dardis, formerly an attorney. Why don't you  
5 stand up, David.

6 He was with Hunton and Williams and will join my  
7 personal staff. David is an experienced FERC practitioner  
8 who has focused on the electric industry structure,  
9 including development of regional energy markets,  
10 transmission rate design, and regulatory approvals for  
11 business arrangements of investor-owned utilities.

12 David will be a valuable addition to my personal  
13 staff. Thank you.

14 I'd also like to mention that the Commission will  
15 be holding a special meeting on February 2nd at 10:00 a.m.,  
16 limited to considering items relating to the Energy Policy  
17 Act of 2005. As observers of the Commission know, we're  
18 committed to meeting all of our EAct implementation  
19 deadlines and obligations on time, and this special meeting  
20 will help the Commission assure that outcome.

21 I would like to remind our audience that you can  
22 track implementation of our responsibilities under EAct by  
23 clicking on the EAct link on our home page, [www.ferc.gov](http://www.ferc.gov).

24 I'd also like to announce another meeting next  
25 Wednesday, January 25th, at 9:00 a.m. The Commission will

1 convene a technical conference on demand response and  
2 advanced metering, regarding issues raised by EPAct 2005,  
3 Section 1252(e)(3).

4 Pursuant to EPAct 2005, the Commission is  
5 preparing a report, by appropriate region, that assesses  
6 demand-response resources, including those available from  
7 all consumer classes. In order to provide a forum for  
8 discussion of these issues, the Technical Conference will be  
9 held to gather additional data and to receive further public  
10 comment on these issues that we will address in the report.

11 Members of the public are invited to attend and  
12 anyone with Internet access who desires to view this event,  
13 can do so by going to our website, again, [www.ferc.gov](http://www.ferc.gov), and  
14 locating the webcast link on our home page.

15 In other EPAct news, the Commission will be  
16 holding additional Joint Board Meetings on February 12th and  
17 13th, here in Washington at the Hyatt Regency Hotel, in  
18 conjunction with the Winter NARUC meeting. These meetings  
19 are followups to our November Joint Board meetings, which  
20 were conducted to study the issue of security-constrained  
21 economic dispatch for the various market regions, to  
22 consider issues relevant to what constitutes security-  
23 constrained economic dispatch, and how such a mode of  
24 operating affects or enhances the reliability and  
25 affordability of service, and to discuss recommendations to

1 the Commission.

2 We have also created a web page on our website,  
3 dedicated to Joint Boards, and will allow interested  
4 individuals, further opportunity to track Joint Board-  
5 related activities and announcements.

6 Another Technical Conference the Commission is  
7 holding on February 3rd at 10:00 a.m. will be a Technical  
8 Conference on matters raised by PJM's proposed reliability  
9 pricing model, the RPM proposal.

10 The Conference will consist of panels addressing  
11 the PJM markets and the proposal to provide incentives for  
12 infrastructure investments in its capacity market system.  
13 This Technical Conference is intended to provide a forum  
14 through which the Commission will obtain information and  
15 develop a record on these topics.

16 Members of the public are invited to attend, and  
17 anyone with Internet access, can view the event through our  
18 website.

19 Since the December meeting, the Commission has  
20 issued 92 notational Orders, including some very significant  
21 Orders. We continue to do a lot of our business by  
22 notational Orders, since we moved to monthly open meetings.

23 Let me just review briefly, some of the more  
24 significant notational Orders: First of all, the Merger  
25 Rule -- last month, the Commission issued a final rule

1 implementing the electric company merger and acquisition  
2 provisions of EPOA 2005.

3 This is a very important rule. EPOA granted the  
4 Commission new regulatory tools, including strengthening the  
5 Agency's ability to review transfers of generation  
6 facilities and clarifying our authority to review holding  
7 company mergers and acquisitions.

8 By expanding our review of generation transfers,  
9 the final rule will improve the Commission's ability to  
10 prevent the exercise of generation market power. In the  
11 Energy Policy Act, Congress largely ratified the merger test  
12 the Commission had previously applied, but also required  
13 that the Commission make certain cross-subsidization  
14 findings.

15 The final Merger and Acquisition Rule does allow  
16 badly needed investment in generation and transmission  
17 facilities. I'd like to point out that the Commission  
18 issued this final rule before the statutory deadline.

19 Up to this point, we have either met or exceeded  
20 every statutory deadline that Congress has set for us. This  
21 was one that we exceeded.

22 I just want to thank the Commission Staff who  
23 worked on this rule. I think it was a very well done job,  
24 and, again, we did it well and we did it early.

25 Now, the notational Order relating to the Mirant

1 plant, earlier this month, the Commission issued an Order  
2 under Section 207 of the Federal Power Act, directing PJM  
3 and Pepco to develop and implement a comprehensive plan to  
4 preserve the reliability of the Washington, D.C. area.

5 This action was taken in response to a complaint  
6 filed by the District of Columbia Public Service Commission.  
7 This action complements an emergency order issued by  
8 Secretary of Energy Bodman last month, that directed the  
9 Mirant Potomac River Station to operate, as needed, to meet  
10 demand of key transmission lines serving the District of  
11 Columbia that are out of service.

12 I want to commend Secretary Bodman for that  
13 emergency order. DOE's emergency order addresses the near-  
14 term reliability concerns caused by the Mirant plant  
15 closure. The Commission's action was designed to ensure an  
16 effective long-term solution that maintains a reliable and  
17 sound electric power grid in the Washington, D.C. region.

18 For those of you who are Federal Power Act  
19 historians, this action represents the Commission's first  
20 use of its authority under Section 207 of the Federal Power  
21 Act.

22 Another notational that I'd like to remark on  
23 briefly, is the Reliant settlement. Last month, the  
24 Commission accepted a broad settlement between the  
25 California Parties, the Commission Staff, and Reliant

1 Energy, valued at \$512 million.

2 This settlement marks another significant  
3 milestone in bringing close to the 2000-2001 western energy  
4 crisis. The Commission's view is that settlements are in  
5 the best interests of all parties, and I congratulate the  
6 hard work of the Commission Staff in helping to reach this  
7 settlement.

8 With this settlement, the total value of  
9 settlements the Commission has accepted or helped realize,  
10 stemming from the western energy crisis, now exceeds \$6  
11 billion. I think this settlement shows the wisdom of the  
12 Commission's policy encouraging settlements.

13 Now, I'd like to ask my colleagues if they have  
14 any comments on some of the notational Orders or anything  
15 else I have mentioned up to this point.

16 COMMISSIONER KELLY: Just regarding the merger  
17 rule, which I do support, but I'd like to note that at the  
18 Technical Conference that we announced, that we would have,  
19 by the end of the year -- we will look again at the  
20 appropriateness of, for example, the blanket authorizations,  
21 which were granted in our merger rule.

22 We will particularly look at whether additional  
23 steps are needed to protect against cross-subsidizations and  
24 pledges or encumbrances of utility assets.

25 CHAIRMAN KELLIHER: Before we turn to the consent

1 agenda, I'd like to point out that since the Sunshine Act  
2 Notice was issued last week, we've had a grand total of two  
3 strikes in the Orders that were Sunshine'd last week. I  
4 think that's a tribute to my colleagues, their staffs, and  
5 the Commission Staff for ensuring that we get the job done  
6 when it comes to these Orders.

7 It helps keep things moving along when we have  
8 relatively few strikes.

9 Madam Secretary, let's now turn to the consent  
10 agenda.

11 SECRETARY SALAS: Good morning, Mr. Chairman, and  
12 good morning, Commissioners. Happy 2006 to all of you.

13 As the Chairman just mentioned, since the  
14 issuance of the Sunshine Notice on January 12th, E-2 and E-5  
15 have been struck from the agenda.

16 Your consent agenda for this morning is as  
17 follows: Electric Items - E-7, E-8, and E-12;

18 Gas Items: G-1, 2, and 3.

19 Hydro Items: H-1, 2, 3, 4, and 5.

20 Certificates: C-3 and C-4.

21 As to H-2, Commissioner Brownell is concurring,  
22 with a separate statement; and Commissioner Brownell votes  
23 first this morning.

24 COMMISSIONER BROWNELL: Aye, noting my  
25 concurrence on H-2.

1                   COMMISSIONER KELLY: Aye, with the exception of  
2 my dissent in C-1.

3                   CHAIRMAN KELLIHER: Aye.

4                   SECRETARY SALAS: I note for the record that C-1  
5 will be a discussion item. The first item for discussion on  
6 your agenda this morning is A-3, the Energy Market Update.  
7 In this case, this is a Winter 2005-2006 natural gas market  
8 update.

9                   It is a presentation by Steve Harvey and Jeff  
10 Wright. Steve is from our Office of Market Oversight and  
11 Investigations, and Jeff Wright from our Office of Energy  
12 Projects.

13                   MR. HARVEY: Good morning, Mr. Chairman and  
14 Commissioners I'd like to bring you up to date on conditions  
15 in U.S. natural gas markets, now that we've completed  
16 December and have a fairly good idea about January.

17                   After I review several market drivers, Jeff will  
18 give you an update on LNG, and, when he is finished, we'll  
19 welcome your questions.

20                   After the 9th warmest November in 111 years,  
21 December, on average, looked much more like its history, by  
22 starting cold and ending warm. The first several weeks of  
23 January have continued the extraordinary mild trend. At  
24 this point, it appears that January will wind up much warmer  
25 than average.

1                   This extended period of mild temperatures from  
2 late December through the next week or two, has had a  
3 significant effect on natural gas prices.

4                   (Slide.)

5                   MR. HARVEY: This graph shows how prices have  
6 risen and fallen this Winter, based on weather. After price  
7 peaks due to Hurricanes Katrina and Rita, and brief early  
8 cold in late October, prices sagged into the relatively warm  
9 November.

10                   Prices peaked above \$15 per million British  
11 Thermal Units or MmBtu, again, during a significant cold  
12 period in early December, only to drop with the current  
13 warmer-than-normal temperature trend.

14                   Today, prices range around the country from lows  
15 in the mid- to low 47 range, to as high as the mid-\$9.  
16 Trading at Henry Hub, Louisiana, for next-day delivery,  
17 averaged \$8.86 per MmBtu yesterday, and, this morning,  
18 appeared down in the lower \$8 range.

19                   This kind of price behavior is consistent with  
20 our earlier presentations, in that prices are directly  
21 related to weather-based demand.

22                   (Slide.)s

23                   MR. HARVEY: Other statistics reflect the warmer-  
24 than-normal Winter we are experiencing, as well. This is a  
25 graph of storage inventories, contrasted to last year, and

1 the historical range, with the year shown in red.

2 The Energy Information Administration's report  
3 two weeks ago, actually indicated a net injection into U.S.  
4 storage, which is very unusual for late December.

5 That and the last week's report, creates the kink  
6 you can see in the red line. In large part, that kink is  
7 due to the unseasonably warm weather, though there does seem  
8 to be something else going on as well.

9 We've noted also, a lower level of withdrawal for  
10 every degree of cold weather this winter. We're trying to  
11 determine whether this effect is related to supply or demand  
12 issues, primarily, and plan to report in more detail next  
13 month.

14 (Slide.)

15 MR. HARVEY: Turning to gas supplies, progress  
16 continues in returning Gulf production, slowing somewhat in  
17 the last month or so. The blue area is the level of shut-in  
18 gas from offshore, as reported by the Minerals Management  
19 Service. It's now at about 1.8 billion Bcf per day.

20 This graph, unlike previous ones I've shown you,  
21 also adds the orange area that represents shut-in gas  
22 onshore in Louisiana, as reported by the Louisiana  
23 Department of Natural Resources.

24 Shut-in onshore Louisiana gas, which was reported  
25 as totalling as much as two Bcf a day immediately after

1 Hurricane Rita, is now down to a little less than .6 Bcf a  
2 day. Today, using data from these two sources, a little  
3 less than 2.4 Bcf per day is not flowing, due to the  
4 hurricanes.

5 Given the weather conditions this Winter, supply,  
6 overall, appears to be adequate for U.S. needs through the  
7 Winter, though prices could still spike on cold weather, and  
8 local deliveries could be affected by local factors.

9 (Slide.)

10 MR. HARVEY: Again, prices are down from their  
11 post-hurricane highs, to something under \$9 per MmBtu at  
12 Henry Hub. Why, given the relatively high levels of storage  
13 available and the extremely mild Winter, haven't prices  
14 fallen further?

15 One answer is oil prices. Let's look at New  
16 York, where there's a lot of information about competing  
17 fuels. This graphs shows wholesale gas prices at New York,  
18 compared both to heating oil and low-sulfur residual oil or  
19 resid.

20 We've noted, over time, that gas prices in New  
21 York tend to move in the channel between these two fuels,  
22 except when there's real scarcity in gas supplies, when gas  
23 prices can rise above heating oil for short periods.

24 That happened in cold weather in early December,  
25 but prices are now down at the lower end of the

1 relationship. At current resid prices, it's unlikely that  
2 gas can fall much further this Winter.

3 The graph shows that they've met their effective  
4 floor in New York. The exact nature of these relationships  
5 is different around the country, but oil does seem to have a  
6 strong influence on gas prices, and does seem to have  
7 provided a floor at a little bit below \$9, and, actually,  
8 this morning, something closer probably to \$8 per MmBtu.

9 I can conceive of a situation where this ultimate  
10 fuel floor would not hold, and gas prices could plunge, if  
11 so much inventory was still in storage at the end of the  
12 Winter that physical operations required its owners to  
13 remove it, no matter what the price.

14 This condition seems unlikely, unless current  
15 warm weather conditions remain through February.

16 Before handing the presentation over to Jeff, I'd  
17 like to speak to the observations I made last time about the  
18 East-West divide in prices. Subsequent to the hurricanes,  
19 we saw prices diverge more between the Eastern and Western  
20 United States.

21 This graph shows the daily difference in prices  
22 between Henry Hub, representing the East, and Northern  
23 California's PG&E city gate price. As a result of both  
24 hurricanes Katrina and Rita, we saw the California price  
25 fall, relative to Henry Hub.

1                   Immediately before Hurricane Rita, prices were  
2 almost \$4 per MmBtu apart. This difference has come back to  
3 the below-\$1 level we saw earlier this year. Not all the  
4 geographic price relationships we track, are back to pre-  
5 hurricane levels, but they do seem to be trending in that  
6 direction.

7                   Jeff will now update you on LNG issues.

8                   (Slide.)

9                   MR. WRIGHT: Good morning. I'd like to start by  
10 giving a preliminary recap of U.S. LNG activity in 2005.  
11 Based on preliminary estimates by the U.S. Waterborne LNG  
12 report, the U.S. imported about 630 Bcf of LNG in 2005,  
13 which is down from the 653 Bcf level we imported in 2004.

14                   Over 70 percent of the LNG imports have come from  
15 Trinidad, and Algeria has been our second largest supplier.  
16 However, with the commencement of liquefaction in Egypt in  
17 mid-2005, that country has now become our second largest  
18 supplier in recent months.

19                   The Office of Fossil Energy at the Department of  
20 Energy began tracking spot deliveries of LNG to the U.S. in  
21 October of 2005. In the month of October, the U.S. received  
22 seven spot cargoes, totalling 20.4 billion cubic feet. This  
23 accounted for 34 percent of our nearly 60 Bcf of LNG  
24 deliveries received in October.

25                   In November, the U.S. received five spot cargoes

1 totalling 14.6 Bcf. This was 25 percent of total November  
2 LNG imports of about 58 Bcf.

3 World liquefaction, specifically in the Atlantic  
4 Basin, increased recently with the startup of the Fifth  
5 Train or production plant in Nigeria. The first shipment  
6 from the Fourth Train in Nigeria, which began production in  
7 November of 2005, is scheduled to be delivered to Trunkline  
8 LNG's Lake Charles facility this month.

9 Nigeria LNG states that it will be shipping about  
10 one Bcf per day to the U.S. markets when its Sixth Train  
11 comes online in the year 2007.

12 In addition, the fourth production train has  
13 commenced operations in Trinidad, with the first cargo  
14 destined for the United Kingdom. This new production  
15 facility increases the export capacity of the Trinidad  
16 facility by the equivalent of approximately .6 billion cubic  
17 feet per day.

18 In the U.S. regasification activity is  
19 continually proceeding. Five new regasification terminals  
20 are under construction in the U.S.: The Cameron facility,  
21 owned by Sempra, the Corpus Christi Cheniere facility, the  
22 Sabine Pass Cheniere facility, the Golden Pass facility  
23 owned by ExxonMobil, and Cheniere's Freeport facility.

24 The total sendout capacity of these terminals is  
25 9.2 billion cubic feet per day. Also, expansions of the

1 Cameron, Sabine Pass, and Freeport Terminals, have been  
2 proposed.

3 This would add an additional 5.1 billion cubic  
4 feet per day of sendout capacity. There's also activity at  
5 existing regasification facilities. Next month, Southern  
6 LNG's Elba Island facility will increase its daily  
7 deliverability by one-half Bcf per day.

8 In the Spring, Trunkline LNG's Lake Charles  
9 facility will increase its deliverability by .6 billion  
10 cubic feet per day. In the short term, we will see U.S.  
11 regasification capacity increase by a little more than 1.1  
12 billion cubic feet per day.

13 We've also seen continued early development  
14 activity. Elba Island has already announced another  
15 expansion of its terminal, which will increase its  
16 deliverability by .9 Bcf per day.

17 In conjunction with this expansion, El Paso  
18 Corporation, Southern LNG's parent, plans to construct a new  
19 pipeline from the Elba Island facility to increase access to  
20 markets in the Southeast and Eastern U.S.

21 The Commission has recently approved pre-filing  
22 status for a potential LNG facility in Maine, Quoddy Bay  
23 LNG, near the Canadian border, and another potential  
24 terminal in this same area, Down East LNG, has recently  
25 asked for pre-filing status, as well.

1                   Finally, AES Corporation has just announced its  
2                   intention to conduct a new LNG terminal in Baltimore,  
3                   Maryland, in the Sparrow's Point industrial area. That  
4                   terminal would have the capacity to send out up to 1.5  
5                   billion cubic feet per day.

6                   That concludes our presentation. Steve and I  
7                   would be happy to answer any questions you might have.

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1                   CHAIRMAN KELLIHER: I just have one question for  
2 Steve. Right after the hurricanes there was a lot of  
3 speculation about demand destruction -- what the level of  
4 demand destruction might be. Is there any assessment now on  
5 what it has been? There's been some discussion in the trade  
6 press that it's been less than expected, in part, because  
7 some of the industrial facilities in the Gulf didn't resume  
8 operation, so that dampened demand. Is the jury in on what  
9 the demand destruction was?

10                   MR. HARVEY: The jury isn't quite in yet I would  
11 say. Again, information on consumption patterns is  
12 particularly difficult to get. I talked a little bit about  
13 how storage withdrawals seems to even be a little lower than  
14 you would expect. Given the weather, suggest something that  
15 could either be supply or could be demand destruction  
16 oriented.

17                   What we're trying to do right now, in order to  
18 deal with that, is look at pipeline slows and see if we can  
19 kind of break that down geographically. I would say right  
20 now we don't have a strong sense yet. That's one of the  
21 things I hope in a month to be able to come back and be a  
22 lot clearer on, though it is possible that some of the  
23 patterns are consistent with some industrial demand along  
24 the Gulf, particularly petrochemicals -- things like that  
25 having been hit a little bit, not necessarily so much across

1 the rest of the country as this sort of broad response to  
2 price. But, again, it's very early and I don't want to  
3 commit myself too much to it. So we've been able to look at  
4 the data. We have a lot of pipeline flow data and that's  
5 where we're trying to start in terms of sorting it out.

6 CHAIRMAN KELLIHER: I just want to thank you.  
7 These presentations are very helpful and I'm glad that we do  
8 it in a public setting because I think it really helps  
9 people in the market and consumers, state regulators  
10 understand some of the facts that are governing gas markets  
11 this winter.

12 Thank you for your presentations.

13 COMMISSIONER BROWNELL: Steve, on page 4, you  
14 talked about the kink and that there's something else going  
15 on and the relationship between a lower level for every  
16 degree of cold weather does seem to be holding up. Is that  
17 people being sufficiently educated in reducing their demand?  
18 Is that somehow kind of the reflection of the difference  
19 between 55 degrees and 54 degrees is not as great as the  
20 difference between 32 and 31? Help me understand that?

21 MR. HARVEY: That's what we're trying to sort  
22 out. Very clearly weather is extraordinary right now.

23 COMMISSIONER BROWNELL: We're very thankful,  
24 particularly our friends in New England.

25 MR. HARVEY: Absolutely. It looks like it will

1 largely continue that way for the next two weeks. I looked  
2 at heating degree days, waited for gas customers for the  
3 first two weeks of January as published by NOAA. At 66  
4 percent of normal, it's very likely that January will turn  
5 out to be an extraordinarily warm month historically. When  
6 we get to the end of it, and I'll be able to report on that,  
7 some of that kink -- some of that fact that we're not  
8 withdrawing nearly what we were is literally just related to  
9 the weather. In terms of that, we have been asking the  
10 question, compared to the past, is it sort of the same  
11 relationship and some of it may be what pointed out, which  
12 is it gets so warm. Those relationships don't make sense.  
13 It's just such a strange period in a certain sense in terms  
14 of the climate. So we're trying to sort that out versus  
15 what looks like it might be really different patterns in  
16 predominately industrial areas and other places to see if we  
17 can get a handle on that. That's why we're really getting  
18 the middle of the pipeline flow information that tries to  
19 describe that. Right now I don't have a good answer, but  
20 that is kind of the research agenda we've got going into the  
21 next month.

22 COMMISSIONER BROWNELL: It might be useful to  
23 work with AGA and maybe some of the industrial associations.  
24 We could learn a lot about demand response that could help  
25 us as we go forward if that's going to be an important

1 ingredient in both the gas and electricity markets. See if  
2 we're learning anything from retail customers or big users  
3 because it also will help the states who have been pretty  
4 aggressive in terms of consumer education. I'd like to see  
5 if we could figure that out on a more discreet level.

6 MR. HARVEY: That's why it's an interesting  
7 result. It may be evidence of a real demand response, but  
8 I'm hesitant to go there yet.

9 COMMISSIONER BROWNELL: I understand. I just  
10 don't want to limit the way we look, although we're clear  
11 that we don't do retail business. We're a wholesale  
12 operation here.

13 Jeff, on LNG, you frequently hear and read that  
14 existing facilities are under utilized. You hear that the  
15 Europe spot prices are so high that we're competing there.  
16 Is it that some of that used capacity that we don't have  
17 enough long-term contracts because this is basically, in  
18 some cases, a new product. What's going on in terms of  
19 under utilization? And then speak please to the ongoing  
20 pressure we see from high prices in Europe and ultimately  
21 Japan, I'm assuming, and China.

22 MR. WRIGHT: Yes. One item you could attribute  
23 it to long-term contracts and the fact that some long-term  
24 contracts are running out. Some need to be executed for  
25 that capacity, but probably a bigger thing is still the

1 supply needs to catch up with the demand. It's kind of a  
2 demand-driven situation where the industrialized countries  
3 are requiring LNG and the supplier, the liquefaction needs  
4 to really catch up with the demand.

5 Like I think I've spoken a couple of times  
6 before, once we see more liquefaction come on the next two  
7 to three to four years, hopefully, we'll see an easing of  
8 the situation and see more, I will say, even distribution of  
9 the supply. As countries such as Spain and Japan cannot  
10 outbid for the limited supplies, there will be more supply  
11 open to the entire market.

12 COMMISSIONER BROWNELL: Thank you.

13 MR. WRIGHT: I don't know if I addressed your  
14 last --

15 COMMISSIONER BROWNELL: Kind of. I need to think  
16 it through.

17 MR. WRIGHT: We looked at one of the resources --  
18 we had landed price around Henry Hub or in the Henry Hub  
19 area. Like Steve said, is probably in the low eights. I  
20 think the landed price in Spain was something like around  
21 \$12. Japan \$17. That's what we're still working against.

22 MR. ROBINSON: One thing I'd like to add to that.  
23 When you're looking at the current situation, you have to  
24 kind of separate that from what we're going to be getting  
25 into when new plants come online. The current situation

1 consists of one plant that has a long history and  
2 relationships of supply of LNG into it and that's Everett.  
3 The other three are more recently in the game, so to speak.  
4 They're looking to find cargoes where they can. There's  
5 really three classes of contracts. We're talking long-term  
6 contracts here. We're talking supply and not price  
7 contracts. You have the spot that they do. You have two-  
8 to three-year contracts and then you have some longer term  
9 contracts for supply.

10 The new plants coming online our hope is that  
11 they'll do longer term contracts -- at least two to three  
12 years or longer term -- for supply again, not price that  
13 will cover about 75 percent of their vaporization capacity.  
14 Right now we're running about 50 percent on average for all  
15 four plants. We'd like to think that will increase as  
16 people bring new plants online with new liquefaction coming  
17 in being more dedicated to those terminals. So it's hard to  
18 look right now and project into the 2008 to 2010 timeframe  
19 as to what the utilization of those plants is going to be  
20 that come online in those periods.

21 COMMISSIONER BROWNELL: That does answer my  
22 question. So those who are concluding that that 50 percent  
23 is a factor means we don't really need anymore capacity is  
24 erroneous.

25 MR. ROBINSON: That just reflects the current

1 state of affairs for the existing plants and the types of  
2 contracts they have for supply now. It would be highly --  
3 it would be almost unthinkable for somebody to commit the  
4 types of resources to build a new terminal now not having a  
5 supply contract in place that would satisfy at least 50  
6 percent of their vaporization capacity. We're thinking it  
7 will probably end up more like 75 percent. You're always  
8 going to have more vaporization worldwide than you have  
9 liquefaction. It's just the facts of the economics of that  
10 whole train of events.

11 Over time, I think that 2 to 1 ratio, which exist  
12 right now worldwide, will start to shrink. Hopefully, the  
13 new terminals that come into place will be leading the way  
14 in that shrinkage.

15 COMMISSIONER BROWNELL: Good. Thank you.

16 CHAIRMAN KELLIHER: Mark, you don't expect the  
17 ratio ever to be 1 to 1 liquefaction to regasification?

18 MR. ROBINSON: No. I personally think we're sort  
19 at the sort of a new world kind of market setting up on the  
20 back of LNG. We don't know exactly where it's going to go.  
21 But, if you just look at the fundamentals of what the costs  
22 are for the LNG train, the terminal is such a small end of  
23 the tail on that dog that there's going to have options.  
24 People with liquefaction are going to have options to go to  
25 the market that gives them the best for their commodity. So

1 I think you're always going to see some difference between  
2 those two.

3 CHAIRMAN KELLIHER: The terminal is 10 percent?

4 MR. ROBINSON: About 10 percent of the whole  
5 deal.

6 COMMISSIONER KELLY: Mark, do we have information  
7 on the contracts that are entered into by the owners of the  
8 LNG terminals and the users or is that confidential  
9 information?

10 MR. ROBINSON: I can't answer that. Maybe Jeff  
11 can answer that. The knowledge I have is basically coming  
12 from the discussions we have with people and what I've read  
13 about this type of a problem that's going on, not just here  
14 but worldwide.

15 MR. WRIGHT: To import authorization for LNG,  
16 there's two ways to do it. With fossil energy at DOE, you  
17 either do it under a blanket certificate, which is for two  
18 years or less, which you do not have to file a contract with  
19 them for. And then anything over two years they do require  
20 a contract be filed. I guess in certain instances we can  
21 see what we could get from DOE fossil energy.

22 COMMISSIONER KELLY: Based on that data, of the  
23 terminals that are in existence, do we know how much of that  
24 regas capacity is connected with a supply contract? I  
25 assume Dstrigas is. All of it is.

1           MR. WRIGHT:  Pretty much.  But they do buy on the  
2 spot market.  They do buy short term to fill in various  
3 gaps they have, but you can track through.  Fossil energy  
4 puts out a monthly report and track the contracts -- who the  
5 contracts are with, who their suppliers are.

6           COMMISSIONER KELLY:  I think it would be helpful  
7 for us to know how much of the sendout capacity is actually  
8 linked to supply contracts -- if we can track that  
9 information.

10           Maybe, Steve, you haven't done this yet, but in  
11 the event you have I'll ask the question.  We expect that  
12 production in the Gulf -- that a certain portion of  
13 production in the Gulf will never be brought back online.  
14 Obviously, even before Katrina supplies were tight in  
15 relation to demand, looking at the national picture,  
16 including imports -- LNG imports, Canadian imports, where do  
17 you expect that shortfall to be made up from and where do  
18 you expect supply to come from to meet the continuing growth  
19 and demand?

20           MR. HARVEY:  There are different answers from the  
21 very short term to the very long term.  On the very short  
22 term, at these price levels -- the sort of low \$8 level, the  
23 forward prices, the futures prices indicate that this is the  
24 low for a while.  That, in effect, the higher prices in the  
25 winter are gone.  Prices actually in the futures market go

1 up from the summer, from this point, into the mid-\$9 range  
2 and do next winter about \$11 at Henry Hub. The same thing  
3 happens next year -- that sort of \$9 range for the summer.  
4 So, in effect, what that's saying is that right now we're  
5 probably, at least the market view would be that we're in a  
6 period of excess relative to where we think we'll be in the  
7 future. I think that \$9 in the summer and \$11 in the winter  
8 for the next couple of years reflects that notion that there  
9 really is scarcity.

10 In the longer term sense, even if, based on  
11 extraordinary weather, we're sort of in a market that's very  
12 low right now. That does raise these questions about where  
13 we are relative to today.

14 In preparation for today I looked at the recovery  
15 in the Gulf versus, for example, INGAA's report immediately  
16 after the hurricanes that created a sort of best case, sort  
17 of expected case and a worst case scenario. This is much  
18 more consistent with the best case scenario in terms of  
19 recovery at this point. But there's a point where some of  
20 this will not recover. It will really be gone.

21 On the other hand, what we've also seen in the  
22 short period is increased Canadian imports, increased net  
23 imports, other than LNG and including LNG, when prices were  
24 high when it was cold. Now during the last couple of weeks  
25 when the price has gotten very low, a lot less LNG, a lot

1 less imports for Canada. That's a good thing. I'm not sure  
2 we would know what to do with the gas right now if we had it  
3 in the system, but the steady states suggest scarcity for  
4 the next few years. That then comes off over time. It then  
5 begins to slowly drop again and I would suspect that has to  
6 do with expectations of increased LNG, some drilling in  
7 certain areas. There are some good supply stories out there  
8 right now.

9 The shale around Fort Worth and Dallas in Texas  
10 is clearly beginning to produce a great deal. That's  
11 beginning to enter the market. That's one of the reasons or  
12 possibility of the difference the East and the West. It's  
13 sort of designed to handle Midwest and sort of, in effect,  
14 competing with Rockies' gas as well. But, in the end, it  
15 really looks like, I think, expectations, over time, as much  
16 supply development as possible and increasing influence of  
17 LNG over the long term.

18 COMMISSIONER KELLY: Do we see increasing supply  
19 out of the Rockies?

20 MR. HARVEY: Yes. Right now what you really see  
21 is relatively lower prices in the Rockies because of  
22 capacity constraints -- getting out of there. That's  
23 something markets show very clearly that when it's  
24 constrained, and we're seeing that differential right now a  
25 lot. So it's clearly healthy supply there. There's clearly

1 healthy supply there relative to the capacity to get it out  
2 to attract other markets. I think as time goes on I would  
3 expect that to change as well and improved capacity coming  
4 out of there to increase that price.

5 COMMISSIONER KELLY: Thank you.

6 MR. WRIGHT: I would just throw in from an  
7 infrastructure side we've seen with the Rockies express  
8 pipeline, which would come all the way from northeastern  
9 Colorado all the way out to Ohio carrying anywhere up to 2  
10 Bcf per day. And then, in conjunction with that, El Paso  
11 has proposed to build basically a pipeline to connect its  
12 Rocky area or western pipelines with its eastern pipelines  
13 to get more supply up to 1 1/2 Bcf per day to the East.

14 COMMISSIONER KELLY: Are those in pre-filing?

15 MR. WRIGHT: The Rockies Express is in pre-file.  
16 What El Paso calls its continental connector is not yet in  
17 pre-filing, but it has been publicly announced.

18 COMMISSIONER KELLY: Have we heard of any  
19 activity, say, in response to our order that we issued not  
20 too long ago allowing for some exemptions to our regulations  
21 -- suspension of our regulations to allow more  
22 infrastructure to be built? Have we heard of or seen any  
23 construction activity in response to that?

24 MR. WRIGHT: I can't say I've heard of any since  
25 the last time we presented them.

1 COMMISSIONER KELLY: Mark?

2 MR. ROBINSON: That's correct.

3 COMMISSIONER KELLY: Thank you.

4 CHAIRMAN KELLIHER: Thank you very much. Very  
5 good presentation.

6 SECRETARY SALAS: Next for discussion is M1 --  
7 the prohibition of energy market manipulation rulemaking  
8 proceeding. It is a presentation by Mark Higgins, Ted  
9 Gerarden, Chris Wilson, and Frank Karabetsos.

10 CHAIRMAN KELLIHER: As staff are coming up, I'd  
11 like to recognize a couple of congressional staff who are in  
12 attendance -- Marian Sabagian, majority counsel for oil and  
13 gas from my --, the House Energy and Commerce Committee. I  
14 guess she's observing our EPAct implementation here. I  
15 don't know if our process is reassuring or unnerving, but  
16 this is how we do it.

17 (Laughter.)

18 CHAIRMAN KELLIHER: Bruno Freitas with  
19 Congressman Barney Frank, who I assume is here not for EPAct  
20 implementation, but for Weaver's Cove. But thank you for  
21 being here.

22 We also have some other alumni here. Linda  
23 Breathitt and Vicky Bailey. Any other alumni in the  
24 audience?

25 (No response.)

1                   CHAIRMAN KELLIHER: Thank you both for being  
2 here. I won't speculate why you're here, but thank you for  
3 being here.

4                   (Laughter.)

5                   CHAIRMAN KELLIHER: Why don't we begin? Thank  
6 you.

7                   MR. HIGGINS: Good morning Mr. Chairman,  
8 Commissioners. I'm Mark Higgins from the Office of Market  
9 Oversight and Investigations. With me today are Ted  
10 Gerarden from the Office of Market Oversight and  
11 Investigation; Chris Wilson and Frank Karabetsos from the  
12 Office of General Counsel.

13                   On October 20, 2005, the Commission issued a  
14 notice of proposed rulemaking to implement the prohibition  
15 on energy market manipulation of the Energy Policy Act of  
16 2005. In EAct 2005, Congress added Section 4(a) to the  
17 Natural Gas Act and Section 222 to the Federal Power Act.  
18 These sections prohibit any entity from the use or  
19 employment of any manipulative or deceptive device or  
20 contrivance as those terms are used in Section 10(b) of the  
21 Securities and Exchange Act of 1934 in the connection with  
22 the purchase or sale of natural gas, electric energy or  
23 transportation or transmission services subject to the  
24 jurisdiction of the Commission.

25                   Consistent with Congress modeling the new

1 sections of NGA and FPA on Section 10(b) of the Exchange  
2 Act, the final rule before you is modeled on SEC rule  
3 10(b)(5). Commentors generally supported this approach,  
4 although they suggested various changes be made. The issues  
5 raised by commentors do not require substantive changes to  
6 the proposed rule because the preamble to the final rule  
7 deals with these issues and provides clarity and guidance as  
8 to how the rule will operate.

9 For example, the preamble makes clear that  
10 nothing in the final rule should be construed as creating an  
11 affirmative duty of disclosure. Consistent with  
12 congressional intent, the scope of the application of the  
13 final rule is not limited to FERC jurisdictional entities.  
14 Instead, the final rule is a catch-all provision applying to  
15 any entity that perpetrates a fraud with the requisite  
16 scienter in connection with the purchase or a sale of  
17 natural gas or electric energy or transportation or  
18 transmission subject to the jurisdiction of the Commission.  
19 The final rule gives the Commission an important tool to  
20 ensure that markets subject to its jurisdiction are well-  
21 functioning.

22 We'd be pleased to respond to any questions.

23

24

25

1                   CHAIRMAN KELLIHER: Thank you. As you indicated,  
2 today the Commission issues final rules to prevent market  
3 manipulation in wholesale power and gas markets and in  
4 transmission and transportation services.

5                   In the Energy Policy Act of 2005, Congress  
6 established an express prohibition of manipulation in  
7 connection with the purchase or sale of wholesale power or  
8 natural gas, as well as transmission or transportation  
9 services.

10                  Congress also authorized the Commission to issue  
11 rules to implement the prohibition of market manipulation,  
12 and, today, we do just that.

13                  In my view, this is one of the most important and  
14 challenging provisions of the Energy Policy Act. I really  
15 think it will fundamentally change the way the Commission  
16 reviews markets.

17                  Congress gave us this authority out of  
18 recognition that wholesale power and gas markets have  
19 changed dramatically since the 1930s. While our legal duty  
20 today remains the same as it was in the '30s, protecting the  
21 wholesale power and gas customer, we needed different  
22 regulatory tools to discharge that duty.

23                  The Commission acted quickly to exercise this new  
24 authority in response to the high natural gas prices that  
25 ensued in the weeks of Hurricanes Katrina and Rita. The

1 significant loss of gas supply produced higher prices, but  
2 the Commission acted to ensure that prices did not go  
3 higher, still, because of market manipulation.

4 We have been careful in our approach in this  
5 exercise of this new authority. Congress told us to adopt  
6 the statutory model in Section 10(b) of the Securities and  
7 Exchange Act of 1934, and that's just what we did.

8 We studied that model and how the SEC has  
9 implemented it over the years, and adapted it where  
10 necessary to meet our legal structure.

11 We also studied the anti-manipulation provisions  
12 in commodities law, which are also modeled on the Securities  
13 and Exchange Act of 1934.

14 Our anti-manipulation final rule is closely  
15 modeled on SEC rules implementing Section 10(b) of the  
16 Exchange Act. This approach should provide benefits to  
17 regulated entities, since there is a substantial body at  
18 present, and applying the comparable language in the '34  
19 Act.

20 Under the final rule, it shall be unlawful for  
21 any entity, directly or indirectly, in connection with the  
22 purchase or sale of electric energy or transmission services  
23 subject to the jurisdiction of the Commission, or the  
24 purchase or sale of natural gas or transportation service  
25 subject to the jurisdiction of the Commission, to use or

1 employ any device, scheme, or artifice to defraud, make  
2 material false statements, or omit material facts or engage  
3 in any act, practice, or course of business that operate or  
4 would operate as a fraud or deceit upon any person.

5 Consistent with the Energy Policy Act of 2005,  
6 these rules apply to any entity, not just public utilities  
7 and natural gas companies. The anti-manipulation rules will  
8 apply to entities that are not otherwise jurisdictional to  
9 the Commission, such as government utilities and other  
10 market participants.

11 To be violation of the new rules, however, such  
12 an entity must act with the requisite intent, and the fraud  
13 or deceit must be in connection with a transaction subject  
14 to the jurisdiction of the Commission, that is, the entity  
15 must effect a jurisdictional transaction.

16 The anti-manipulation final rule is also  
17 consistent with SEC precedent with respect to the intent  
18 standard. We adopt the scienter requirement, which is an  
19 intent to deceive or manipulate, or reckless action.

20 The Commission has another set of rules designed  
21 to prevent manipulation in wholesale power and gas market:  
22 the market behavior rules. In November, the Commission  
23 initiated a rulemaking to consider repealing these rules in  
24 favor of the new anti-manipulation final rule that we set  
25 today.

1                   This proceeding is ongoing, and we have received  
2 many comments reflecting a wide range of views. There  
3 apparently is a new-found affection for the market behavior  
4 rules in some quarters.

5                   (Laughter.)

6                   CHAIRMAN KELLIHER: Perhaps it's a question of  
7 preferring the devil you barely know.

8                   (Laughter.)

9                   CHAIRMAN KELLIHER: It's my hope to take final  
10 action on the market behavior rule proceeding very soon.  
11 To the extent the market behavior rules offer some  
12 regulatory certainty, it's our intent to incorporate that  
13 certainty into enforcement of the anti-manipulation final  
14 rule.

15                   In the meantime, the final rule we are issuing  
16 today, makes it plain that the Commission will not seek  
17 duplicative sanctions for the same conduct, in the event  
18 that conduct violates both the anti-manipulation final rule  
19 and the market behavior rules.

20                   I recognize that the final rules we issue today,  
21 do not provide an exhaustive laundry list of which  
22 transactions are consistent and inconsistent with the final  
23 rule. To some extent, that's unavoidable.

24                   Fraud is a very fact-intensive determination, and  
25 manipulation is a very fact-intensive determination.

1                   The Energy Policy Act of 2005 granted the  
2 Commission significant civil penalty authority, comparable  
3 to that enjoyed by other federal economic regulatory bodies.

4                   Previously, the Commission had virtually no  
5 penalty authority. We appreciate that we have to exercise  
6 our civil penalty authority carefully, and we accept the  
7 burden of greater efforts to assure that our rules are  
8 clear.

9                   That will make it easier for regulated entities  
10 to assure compliance, and make it easier for the Commission  
11 to identify violations.

12                   The Commission is committed to providing a high  
13 degree of regulatory certainty in this area. We have  
14 initiated a No-Action Letter process where parties can  
15 request the views of Commission legal and enforcement staff  
16 on whether a proposed transaction or practice is consistent  
17 with the anti-manipulation final rule.

18                   This also will provide industry with  
19 significantly greater regulatory certainty than exists  
20 today. We have issued an Enforcement Policy Statement,  
21 which uses our penalty authority in a manner designed to  
22 encourage compliance.

23                   We have also issued proposed rules to expand the  
24 procedural rights of companies subject to operational  
25 audits.

1                   Finally, to facilitate compliance, we have made  
2                   available through our website, materials, a package of  
3                   information on the audit process, and frequently-asked  
4                   questions about the standards of conduct. For those who  
5                   seek to comply with our rules, we're trying to make it  
6                   easier for you.

7                   A final note: The anti-manipulation final rule  
8                   will be effective upon publication in the Federal Register,  
9                   which should occur next week. Just as we acted quickly in  
10                  response to the hurricanes to ensure higher gas prices were  
11                  not the result of market manipulation, we decided to put  
12                  these new rules into effect as quickly as the law allows.

13                  These rules are backed by our enhanced  
14                  enforcement and civil penalty authority. I just want to  
15                  thank Staff for their excellent work on this rule.

16                  This is one of the products of EPAct that I'm  
17                  most proud of, this final rule we're approving today. I  
18                  think you've done truly excellent work. I think you did  
19                  very thoughtful analysis of SEC precedent, which was really  
20                  the starting point of this effort.

21                  You also did very quick work. I want to commend  
22                  you for that.

23                  Obviously, I support the final rule and am happy  
24                  to vote for it. Colleagues?

25                  COMMISSIONER BROWNELL: For me, this represents

1 kind of the conclusion of a series of actions that I think  
2 does bring clarity and certainty to the marketplace. Out of  
3 frustration several years ago, having spent most of my  
4 career here trying to mop up California and figure out what  
5 went on, I said, it's awfully hard to find sinners without  
6 the Ten Commandments.

7 One of my children called me and said that I  
8 sounded like a lunatic.

9 (Laughter.)

10 COMMISSIONER BROWNELL: The bottom line is, the  
11 rules were not clear. I think that the series of actions  
12 we're taking, including this one today, hopefully will make  
13 it easier and more attractive for people to comply, and, I  
14 think, more importantly, in this time of high gas prices,  
15 when the first response is to say there's got to be market  
16 manipulation, I hope that we have gone a long way to  
17 restoring our credibility, both with Congress and with the  
18 customers who are paying the bill.

19 I think that was one of the tragedies, one of the  
20 many, of the market meltdown in Enron. I think that with  
21 the best of intentions and a lot of hard work with this  
22 Staff, we were not armed with the tools that we needed in  
23 order to effectively get the job done.

24 I would also say that with the new opportunities  
25 for civil penalties, that brings enormous responsibility.

1 While I think the headline factor is more powerful than the  
2 penalty factor, in both cases, I think that we need to be  
3 sure there is due process and a full understanding.

4 I think the other actions you referenced,  
5 certainly help that, so I'm pleased to support this Order.  
6 While it doesn't give the exhaustive list of possible  
7 transgressions, I think it sets the parameters very clearly.

8 Businesses, trading businesses, particularly, are  
9 dynamic. There will never be an exhaustive list, and it  
10 would be inappropriate for us to develop one, because the  
11 market would change faster than we could, as we certainly  
12 discovered too many times.

13 But I think this is a great effort. I really do  
14 appreciate the hard work you've done. Thank you.

15 COMMISSIONER KELLY: As we move to pass this  
16 final rule, I think it's appropriate to observe that  
17 Congress, which gave us this authority, has really  
18 emphasized how important it is to the American public, that  
19 the energy markets work well, that they work fairly, and  
20 that they work efficiently.

21 I think it's also appropriate to observe that  
22 Congress has placed a lot of confidence in FERC, because  
23 this anti-manipulation provision is exceedingly broad and  
24 covers any entity that undertakes a transaction in  
25 connection with one of our jurisdictionally-regulated

1 services or products.

2 That is quite a precedent in Congress's  
3 relationship with FERC. It has extended our jurisdiction  
4 beyond just the regular entities that we regulate, to any  
5 entity playing in the market.

6 I know that the Commissioners are humbled by that  
7 confidence, and we take that obligation very seriously.

8 I agree with the final rule's approach of  
9 implementing what Congress suggested, and that is that we  
10 follow the SEC Rule 10(b)(5) approach and language. We've  
11 done just that.

12 I understand that there is a concern that the  
13 Commission give regulatory certainty, and, I think, as Joe  
14 has outlined, that we have done as much as we can do to  
15 provide certainty about how the rule will be enforced.

16 Our No-Action Letter process, our enforcement  
17 policy, our web-based process of explaining how we do  
18 audits, and I also wanted to add, with our new Enforcement  
19 Chief, Susan Court, we really have a terrific resource here  
20 for the industry.

21 She is exceedingly knowledgeable, she has a vast  
22 breadth of legal knowledge, she has good administrative and  
23 management skills, and she is open and she listens and she's  
24 available, and she's made herself exceedingly available to  
25 the industry to answer questions as they come up.

1                   I appreciate your work, Susan, and I think it's  
2 clear that we're committed to firm, but very fair  
3 enforcement. I think this rule goes a long way to  
4 underscoring that. Thank you all very much.

5                   CHAIRMAN KELLIHER: Shall we vote?

6                   COMMISSIONER BROWNELL: I support the rule.

7                   COMMISSIONER KELLY: Aye.

8                   CHAIRMAN KELLIHER: Aye. Thank you very much.

9                   SECRETARY SALAS: Next for discussion is E-3,  
10 PURPA Section 210(m), Regulations Applicable to Small Power  
11 Production and Cogeneration Facilities. It's a presentation  
12 by Giuseppe Fina, Deborah Wyrick, Dan Hedberg, S.L.  
13 Higginbottom, Marka Shaw, and Paul Singh.

14                   MR. FINA: Good morning. E-3 is a Notice of  
15 Proposed Rulemaking. This NOPR proposes to amend the  
16 Commission's regulations, specifically 18 CFR Section  
17 292.303, to implement Section 1253(a) of EPAct 2005, which  
18 adds Section 210(m) to the Public Utility Regulatory  
19 Policies Act of 1978, also known as PURPA.

20                   Section 210(m) provides for termination of the  
21 requirements that a utility must purchase power from QFs and  
22 must sell power to QFs, upon a finding that the utility is a  
23 member of a market that satisfies certain specified  
24 competitive criteria.

25                   Most significantly, the NOPR proposes to find

1 that electric utilities that are members of the Midwest ISO,  
2 PJM, ISO New England, and New York ISO, would meet the  
3 requirements for relief from the mandatory purchase  
4 obligation. This is because, number one, RTOs administer  
5 day-ahead and real-time markets and bilateral long-term  
6 contracts for the sale of capacity and electric energy which  
7 are available to participants, including QFs, in these  
8 markets.

9 Number two, these entities are Commission-  
10 approved ISOs or RTOs that provide non-discriminatory open  
11 access transmission services and independently administer  
12 auction-based wholesale markets for day-ahead and real-time  
13 energy sales.

14 In addition, the NOPR finds that QFs have  
15 nondiscriminatory access to these markets. The NOPR  
16 proposes that requests for relief from the obligation to  
17 purchase QF power, followed by other utilities in other  
18 markets, would be evaluated on a case-by-case basis.

19 This NOPR also discusses what criteria would be  
20 applied in deciding the case-by-case determinations. In  
21 addition, the NOPR proposes that there be a rebuttable  
22 presumption that nondiscriminatory access may be provided  
23 through an open access transmission tariff in compliance  
24 with the pro forma OATT or Commission-approved reciprocity  
25 tariff. Thank you.

1                   CHAIRMAN KELLIHER: Thank you for your  
2 presentation. I have to say that Giuseppe is a much more  
3 elegant name than Joseph.

4                   (Laughter.)

5                   CHAIRMAN KELLIHER: I might have to change my  
6 name.

7                   Now, I'm going to make some comments on this  
8 provision. This is actually a pretty complicated part of  
9 EAct, so I will speak at some length, just to explain at  
10 least my views on this proposed rule.

11                   Today the Commission issues proposed rules to  
12 implement provisions of the Energy Policy Act of 2005,  
13 regarding termination of the mandatory purchase obligation  
14 in Section 210 of the Public Utility Regulatory Policies Act  
15 of 1978.

16                   Under the new Section 210(m) of PURPA, electric  
17 utilities may apply to the Commission for relief from the  
18 mandatory purchase obligation on a service territory-wide  
19 basis, and the Commission may terminate the purchase  
20 obligation, if it makes certain findings.

21                   The statutory scheme adopted by Congress is a  
22 complicated one. The proposed rules seek to provide as much  
23 clarity and certainty as possible, given the statutory  
24 language.

25                   Under the Energy Policy Act, the Commission may

1 terminate the mandatory purchase obligation, if it finds, in  
2 effect, that there is a sufficiently competitive market for  
3 a qualifying facility to sell its power.

4 Essentially, Congress directed the Commission to  
5 make determinations about the competitiveness of three types  
6 of wholesale markets: One, day-two RTO markets; two, day-  
7 one RTO and ISO markets; and, three, other wholesale  
8 markets.

9 The statutory findings required, vary, depending  
10 on the nature of the wholesale market. As we discussed in  
11 the proposed rules, many of these determinations will have  
12 to be made on a case-by-case basis, however, there are  
13 certain findings that can be made generically, and thereby  
14 reduced the administrative burden of handing each request  
15 individually.

16 The proposed rule finds that electric utilities  
17 that are members of day-two markets in the Midwest ISO, PJM,  
18 ISO New England, and the New York ISO, meet the requirements  
19 for relief from the mandatory purchase obligation, because  
20 these RTOs administer day-ahead and real-time markets and  
21 bilateral long-term contracts for the sale of capacity and  
22 electric energy are available to qualifying facilities in  
23 these markets.

24 Effectively, the Commission is pre-approving  
25 termination of the mandatory purchase obligation in these

1 areas, and electric utilities in these regions would only  
2 have to make certain compliance filings in day-one regions.

3 The proposed rules finds that the transmission  
4 and interconnection services provided by Cal ISO and SPP,  
5 meet the statutory standard, because these entities are  
6 Commission-approved RTOs or ISOs that provide  
7 nondiscriminatory open access transmission services under an  
8 open access transmission tariff.

9 Electric utilities in these regions would have to  
10 show that they are members of these organizations. They  
11 would also have to show that qualifying facilities in these  
12 regions, have a "meaningful opportunity," a term used in the  
13 statute, to sell energy and capacity as defined in the  
14 Energy Policy Act, which appears to require a case-by-case  
15 approach.

16 With respect to other wholesale markets, the  
17 statutory language is not clear on its face. I don't mean  
18 any offense to Mariam or her colleagues, but language allows  
19 the Commission to terminate the mandatory purchase  
20 obligation in these wholesale markets, if the sale of energy  
21 and capacity is, quote, "at a minimum, of comparable  
22 competitive quality," close quotes, as the other wholesale  
23 markets.

24 We interpret this language-by-reference, to the  
25 statutory language governing the other wholesale markets, to

1 require nondiscriminatory access to transmission and  
2 interconnection services and competitive short-term and  
3 long-term energy and capacity markets.

4 The provisions here appear to require a case-by-  
5 case approach, but the Commission seeks comment on whether  
6 we can make generic findings that would narrow the scope of  
7 issues to be addressed in these case-by-case determinations.

8 For example, the Commission proposes that the  
9 OATT and reciprocity tariffs are sufficient to assure  
10 nondiscriminatory access by a qualifying facility to  
11 transmission services. We also propose that an organized  
12 procurement process would demonstrate access to competitive  
13 short-term and long-term energy and capacity markets.

14 We are not imposing any particular form of  
15 competitive solicitation on electric utilities, and we seek  
16 comment on other means of demonstrating market access by  
17 qualifying facilities.

18 The approach we're taking is based on a faithful  
19 reading of the statutory language, a goal of providing  
20 regulatory certainty, and a desire to minimize  
21 administrative burdens.

22 We're able to effectively pre-approve termination  
23 of the PURPA mandatory purchase obligations in some regions,  
24 because the statute permits it. We rely on case-by-case  
25 determinations in other regions, because we think the

1 statute requires it.

2           The Commission has a continuing duty under PURPA  
3 to have in place such rules as are necessary to encourage  
4 cogeneration and small power production. We believe this  
5 proposed rule is consistent with that duty, as well as our  
6 responsibility under the Energy Policy Act, and I support  
7 the proposed rule.

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1                   COMMISSIONER BROWNELL: I don't have a whole lot  
2 more to say, Joe.

3                   (Laughter.)

4                   COMMISSIONER BROWNELL: You did a great job. In  
5 fact, if I have to explain this to anybody, I'm just taking  
6 your notes.

7                   (Laughter.)

8                   COMMISSIONER BROWNELL: I just want to emphasize  
9 that the proposed rule does protect existing rights, because  
10 I think -- I know we got that from Staff.

11                   It's pretty important to make that clear. PURPA,  
12 in 1978, was a great idea. The world has changed, and it's  
13 time that the rules changed as well. I am very supportive  
14 of this Order.

15                   COMMISSIONER KELLY: You did cover all the bases.

16                   (Laughter.)

17                   COMMISSIONER KELLY: Except one little one: We  
18 did have some commenters that sought to have us set aside  
19 certain categories of QFs, on the grounds that certain  
20 categories may lack access to the RTO/ISO markets.

21                   I just wanted to point out that in our NOPR, we  
22 have called that question and asked for your comments on  
23 that, whether there are any such categories. I think this  
24 is an appropriate occasion to talk about the values that  
25 PURPA has, given the country.

1           I think it was an exceedingly successful  
2 Congressional initiative, almost 30 years ago, and I'd like  
3 to note some of those successes: First, PURPA is the  
4 statute that established that competition could occur in  
5 wholesale electricity markets, that it can work, and that it  
6 can benefit consumers.

7           Secondly, PURPA has benefitted the people of the  
8 country by encouraging the construction of efficient and  
9 environmentally-friendly power production.

10           Third, PURPA has, indeed, stimulated renewable-  
11 based technology. For example, the cost of wind produced  
12 from the first windmills in California, often the State to  
13 adopt new initiatives, cost about 37.5 cents 25 years ago.

14           Today, the production from wind, because of the  
15 technology advances, is less than three cents. That's a  
16 stunning achievement.

17           PURPA established that there is significant value  
18 to distributed generation. There is not only an efficiency  
19 value, but also a reliability value.

20           Finally, PURPA allowed American businesses to  
21 achieve efficiency, particularly through their ability to  
22 use cogeneration projects to help the efficiency in their  
23 own businesses and increase their competitiveness,  
24 nationally and worldwide.

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1                   I think PURPA is a success story, a tremendous  
2 success story. The fact that there are markets today in  
3 place in much of the country, that can take those  
4 generators' output and buy and sell it in a competitive  
5 market is a tremendous accomplishment, and I do support this  
6 rule.

7                   CHAIRMAN KELLIHER: Why don't we vote?

8                   COMMISSIONER BROWNELL: Aye.

9                   COMMISSIONER KELLY: Aye.

10                  CHAIRMAN KELLIHER: Aye. Thank you to the Staff.

11                  SECRETARY SALAS: As the final item on the  
12 discussion agenda, we will have two presentations, as  
13 follows: The first one pertains to C-1, Weavers Cove  
14 Energy, LLC, and it will be a presentation by Joseph  
15 O'Malley, Chris Zerby, Rich McGuire, and Joseph Dooley.

16                  The second presentation pertains to C-2, KeySpan  
17 LNG, LLP, a presentation by Joel Arneson, Chris Zerby, and  
18 David Swearingen.

19                  MR. O'MALLEY: I'm Joseph O'Malley, representing  
20 the Office of General Counsel. Joining me on C-1 will be  
21 Chris Zerby and Rich McGuire of the Office of Energy  
22 Projects, and Joseph W. Daily of the Office of Markets and  
23 Reliability.

24                  Item C-1 is a draft Order on Rehearing of an  
25 Order the Commission ordered on July 15, 2005. In the July

1 15 Order, the Commission granted Weavers Cove Energy,  
2 authority under Section 3 of the Natural Gas Act, to site,  
3 construct, and operate a liquified natural gas terminal in  
4 Fall River, Massachusetts.

5 The Order also granted authority under Section  
6 7(c) of the NGA, to Mill River, to construct and operate two  
7 short, lateral pipelines from the proposed Weavers Cove LNG  
8 facility, to two separate interconnects with interstate  
9 pipeline facilities of Algonquin Gas Transmission Company.

10 The Commission found that the proposed facilities  
11 will promote the public interest by increasing the  
12 availability of natural gas supplies in the New England  
13 market, that the facilities can be operated safely, and that  
14 the facilities will have limited environmental impact.

15 Before any construction can begin, however,  
16 Weavers Cove must satisfy a number of safety and  
17 environmental conditions set forth in the July 15 Order.  
18 Timely requests for rehearing and/or clarification of the  
19 July 15 Order were filed separately by Weavers Cove; the  
20 Conservation Law Foundation; Shell Oil Products U.S.;  
21 KeySpan Delivery Companies; Michael L. Miazza; the City of  
22 Fall River, Massachusetts; the Attorney General of the  
23 Commonwealth of Massachusetts; the Attorney General of the  
24 State of Rhode Island; and the Massachusetts Energy  
25 Facilities Siting Board, which jointly filed a request for

1 rehearing.

2           Fall River and Mr. Miazza assert that the  
3 Commission should deny the project, based upon recent  
4 legislation that prohibits demolition of the Old Brightman  
5 Street Bridge over the Taunton River.

6           The draft Order acknowledges that if the existing  
7 Brightman Street Bridge is not removed, as has been  
8 planned, the large LNG vessels described in the application,  
9 will not be able to access the proposed terminal site in  
10 Fall River. However, the draft Order finds it would be  
11 premature to find at this time that the project is moot.

12           The draft Order also addresses arguments  
13 regarding safety and environmental considerations. The  
14 draft Order examines these concerns, some of which are  
15 highly technical in nature, but confirms the Commission's  
16 findings in the July 15 Order, that the project can be  
17 constructed and operated in a safe, secure, and  
18 environmentally acceptable manner.

19           This concludes my presentation.

20           MR. ARNESON: My name is Joel Arneson. With me  
21 on Item C-2 is David Swearingen and Chris Zerby. KeySpan  
22 and BG LNG Services filed a timely joint request for  
23 rehearing of the July 5th, 2005 Order in KeySpan.

24           The July 5th Order denied a proposal by KeySpan  
25 to site, construct, and operate an LNG import terminal under

1 Section 3 of the Natural Gas Act, by converting an existing  
2 LNG storage facility in Providence, Rhode Island, to an  
3 import terminal.

4 The July 5th Order also denied a related proposal  
5 by Algonquin Gas Transmission to construct and operate a  
6 pipeline under Section 3 to connect KeySpan's proposed  
7 import terminal to Algonquin's mainline facilities.

8 Item C-2 denies rehearing, finding that it is not  
9 in the public interest under Section 3 to authorize the  
10 construction of an import terminal where some of the  
11 component parts do not meet the current federal safety  
12 standards required of all other new LNG import facilities.

13 Item C-2 also finds that the Commission did not  
14 depart from precedent in treating KeySpan's proposals  
15 differently from proposals in other construction cases  
16 involving LNG import terminals.

17 Finally, Item C-2 finds that to conditionally  
18 authorize this project, KeySpan would need to propose to  
19 upgrade its existing LNG facilities in conjunction with the  
20 construction proposed here, and proposed alternative service  
21 arrangements for its customers for the time period the  
22 existing facilities are out of service.

23 Thus, Item C-2 finds that the Commission did not  
24 err by failing to issue a conditional authorization, as in  
25 Weavers Cove. This finding is without prejudice to

1 KeySpan's filing an amended application addressing these  
2 issues.

3 CHAIRMAN KELLIHER: Thank you very much. I will  
4 make some comments on these two Orders.

5 Today the Commission acts on rehearing on two  
6 proposed liquified natural gas import projects, Weavers Cove  
7 and the KeySpan projects.

8 With few exceptions, we denied the requests for  
9 rehearing from the project developers and others. The  
10 Commission's primary role in reviewing LNG import  
11 authorizations, is to assure public safety.

12 The Commission has high safety standards, and  
13 rigorously applies them in its project reviews. In the case  
14 of Weavers Cove, the Commission imposed 44 conditions  
15 designed to improve the safety and security of the project.

16 Because of these conditions, the project we  
17 approved was safer than the application that was submitted.  
18 With these conditions, the Weavers Cove project meets our  
19 high safety standards, and, for that reason, we authorize  
20 it.

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1                   CHAIRMAN KELLIHER: By contract, we do not  
2 authorize the Key Span project because it does not meet our  
3 safety standards. The existing project facilities do not  
4 comply current LNG safety standards, specifically, the power  
5 site is undersized. The thermal radiation and thermal vapor  
6 exclusion zones extend offsite and the existing tank may not  
7 comply with current seismic standards.

8                   In Weaver's Cove, various arguments were raised  
9 on rehearing that are addressed in the order. Some parties  
10 argued that the recent highway law compelled the Commission  
11 to dismiss the authorization, to revoke the authorization as  
12 moot. Since the Commission's authorization was condition on  
13 removal of the bridge, we declined to revoke authorization.

14                   There are also concerns about whether operation  
15 of Weaver's Cove would impair operations of a Navy lab  
16 operating a research and development facility for testing  
17 and evaluating submarines, unmanned underwater devices and  
18 other systems associated with under seas warfare. The Navy  
19 lab was concerned that these Coast Guard safety and security  
20 zones will negatively impact its in-water testing. The  
21 Coast Guard is responsible for the safety of LNG shipments  
22 and will address these concerns as part of its safety and  
23 security review.

24                   More over, the Coast Guard has explained to the  
25 Commission that it expects it can coordinate LNG vessel

1 movement and enforcement of safety and security zones in a  
2 manner that will have little or no impact on Navy lab  
3 operations. Navy lab operations have co-existed and are  
4 currently performed with no apparent impact from other  
5 commercial traffic in the vicinity of the current testing  
6 area.

7 In fact, the Navy lab has just made a filing with  
8 the Commission that acknowledges its concerns have been  
9 addressed through its dealings with the Coast Guard and it has  
10 filed with the Commission to withdraw its rehearing request.

11 We denied Key Span and BG LNG Services' joint  
12 request for a rehearing as well as other rehearing requests.  
13 We also denied their request for conditional authorization  
14 of the project for various reasons. Among them are the  
15 consistent representations by the project developer that  
16 additional authorization was impossible from both a  
17 practical and economic standpoint.

18 For example, in order to meet current seismic  
19 standards for storage tanks, Key Span would have to take the  
20 existing tank out of service for at least three heating  
21 seasons. Key Span has stated that that was legally and  
22 contractually impossible.

23 To conditionally authorize the project, the  
24 Commission would have to determine, among other things, that  
25 it's in the public interest to take the existing facilities

1 out of service and reduce the region's gas storage capacity  
2 for at least three heating seasons.

3 Now a proposal to upgrade Key Span's existing LNG  
4 facilities in conjunction with construction of the  
5 facilities proposed in the instant application would  
6 constitute a significantly different project than that which  
7 the Commission has reviewed. Any said proposal would have  
8 to be reviewed by the Commission. And, for these reasons,  
9 while we're denying the request for conditional  
10 authorization of the project, we do so without prejudice to  
11 Key Span filing an amended application addressing these  
12 issues.

13 I want to emphasize that the actions we take  
14 today demonstrates our commitment to high safety standards.  
15 New England is facing a winter of very high natural gas  
16 prices. The region sorely needs additional gas supplies and  
17 a stronger energy infrastructure. Both of these projects  
18 are needed, yet we approved only one -- the one that meets  
19 our high safety standards and I support both orders, if we  
20 will vote on them in sequence

21 My colleagues, do you have comments?

22 COMMISSIONER BROWNELL: I'm glad that you  
23 emphasize that our first priority is safety. Maybe for the  
24 edification of those who are concerned that we do not make  
25 that our first priority.

1                   Either Mark, you or one of the team members, can  
2                   just give us a description of how many people are on these  
3                   teams. What do they look at? How long does it take? What  
4                   is their continued involvement in terms of evaluating  
5                   whether conditions are met? How long are they on site when  
6                   something is actually built? Because we don't simply  
7                   approve these and walk away and hope that everybody followed  
8                   our directions.

9                   MR. ROBINSON: I think I can remember about three  
10                  of those questions.

11                  (Laughter.)

12                  MR. ROBINSON: I'd Rich, Chris and David, in  
13                  particular, to chime in. I know we try to do it very  
14                  efficiently. It usually takes about a year of working with  
15                  an applicant prior to us even receiving an application.  
16                  And, with all the other agencies involved, including all the  
17                  agencies that are concerned with safety, both state and  
18                  federal agencies like the Coast Guard, and like the state  
19                  DEPs, typically, who get involved with this as well.

20                  Once we have an application, it's usually about  
21                  another year of very public discussion about what the  
22                  concerns would be -- everything from traffic flow around the  
23                  area to certainly the people who are located nearby -- what  
24                  protective measures need to be in place, what the flow of  
25                  the LNG is, what type of weather conditions might affect

1 vapor cloud movement, heat fluxes. The level of technical  
2 analysis that goes into this is, I think, astonishing and we  
3 do take probably about two years to do it with not only this  
4 staff, which is numerous -- and they can give you the exact  
5 numbers, but more importantly, it brings in the staffs of a  
6 number of other agencies that work just as hard as we do.

7 LNG is not just regulated by FERC in terms of  
8 safety. It's regulated by FERC, the Coast Guard and the  
9 Department of Transportation. All three of us, in a very  
10 coordinated fashion, bring our expertise to bear to make  
11 sure that no stone is left unturned and that all issues are  
12 addressed and mitigated measures are put in place. Or, as  
13 here, we make recommendations to the Commission that  
14 projects not go forward. That's sort of an overview. I  
15 don't know if you all want to add anything to that.

16 Chris?

17 MR. ZERBY: I'll just briefly go over what we do  
18 after an order is issued.

19 Again, we have a team that reviews the project  
20 pre-certificate. We have a consultant that comes in and  
21 does a detailed engineering review and that's what ends up  
22 with the 40 some odd conditions that were attached to this  
23 related to the safety and engineering of the site. After an  
24 order is issued and we grant clearance to start  
25 construction, we review the various conditions. What we've

1 approved is really called "front and engineering design."  
2 It's above a preliminary design, but it's not a final  
3 design. The company then goes into a final design mode and  
4 we follow that all the way through as they get various  
5 pieces of equipment into final design and start  
6 constructions. The conditions are set up that we have  
7 clearances that are required along the way.

8 Prior to initial site construction, the final  
9 design for pieces of equipment, commissioning pieces of  
10 equipment and finally the authorization to commence  
11 construction. We're on site at least once every eight weeks  
12 or more frequently as needed and we bring in the company's  
13 engineers for design issues and we work closely with the  
14 Department of Transportation regional personnel, but also do  
15 site inspections. Sometimes we do them jointly and other  
16 times we do them individually.

17 COMMISSIONER BROWNELL: Is there any similar  
18 technical environmental coordinated review of, for example,  
19 the transportation of chemicals through our ports or on our  
20 highways? Is there anything quite as public and  
21 comprehensive for similarly situated transportation of kind  
22 of challenging commodities?

23 MR. ZERBY: Well, from the Marine transportation  
24 end, the Coast Guard certainly looks at all products. LNG  
25 is just say one of many different fuels, commodities and

1 chemicals, and they have a security system that's laid out  
2 to look at all things. Under the Marine Transportation  
3 Security Act, both from a safety and security standpoint,  
4 from the facility and like the terminal itself, which the  
5 Commission authorized, I'm not aware of any public or agency  
6 review as detailed as what we did.

7 Clearly, propane facilities are built outside of  
8 our jurisdiction and they require state or local permits.  
9 I'm not aware of a federal agency that does what we do for  
10 similar types of products.

11 COMMISSIONER BROWNELL: Thank you.

12 MR. ROBINSON: I think, in short, the answer is  
13 no.

14 COMMISSIONER BROWNELL: Thank you.

15 COMMISSIONER KELLY: I support the order in the  
16 Key Span case. In July we concluded that it was not in the  
17 public interest to authorize construction of an import  
18 terminal where the components didn't meet the current  
19 federal safety standards. I agree with that. The order on  
20 rehearing states that the Commission believes that its  
21 holding is correct because it's based on the need to  
22 maintain the very impressive safety record of the LNG  
23 industry and the reasonable responsible steps that we take  
24 to ensure safety in determining whether an LNG import  
25 terminal is in the public interest.

1                   But I would also like to agree with Joe that, to  
2                   the extent Key Span is interested in amending its  
3                   application to propose an expansion that would meet all our  
4                   current safety standards, I would invite Key Span to do that  
5                   and encourage them, in fact.

6                   There is a need for more natural gas in New  
7                   England, but I do dissent in the Weaver's Cove decision that  
8                   we will issue today. I'd like to explain my dissent.

9                   Under the facts and circumstances in the Weaver's  
10                  Cove case, I continue to believe that it would not be in the  
11                  public interest under NGA, Section 3, to authorize siting,  
12                  construction and operation of the Weaver's Cove LNG facility  
13                  because there are reasonable alternatives to this project  
14                  for meeting New England's growing demand for natural gas.  
15                  Given this, on balance, the safety, environmental and  
16                  socioeconomic concerns raised with respect to this project,  
17                  in my mind, outweigh the benefit of the additional natural  
18                  gas supplies it would provide.

19                  A few specifics regarding alternatives, through  
20                  pipe and truck, Weaver's Cove would transport up to 800 Mmcf  
21                  per day of natural gas to the northeast market by 2010 or  
22                  after. The final Environmental Impact Statement concludes  
23                  that no alternative projects would be able to meet all of  
24                  the objectives of the Weaver's Cove project since those  
25                  projects would not be able to provide a new source of

1 imported LNG for the New England peak shaving market.  
2 However, I believe that there are numerous gas  
3 infrastructure projects proposed to serve the New England  
4 region that do represent reasonable alternatives to the  
5 Weaver's Cove facility.

6 For example, both the Canaport LNG import  
7 facility in New Brunswick and the Bearhead LNG import  
8 facility in Nova Scotia are under construction. They  
9 anticipate being in operation by 2008. These construction  
10 would tie directly into the Maritimes Northeast pipeline  
11 which already serves New England. The designed through put  
12 capacity for Bearhead LNG is 1 Bcf per day. Additional  
13 storage tanks could be added in the future in order to  
14 increase peak sendout capacity to as much as 1 1/2 Bcf per  
15 day.

16 The initial capacity of the Canaport LNG facility  
17 is also 1 Bcf per day. Together these LNG facilities could  
18 yield up to 2 Bcf per day of gas, which is nearly half the  
19 current peak daily usage of gas in New England. That data  
20 is based on the 2005 report from the New England Governors  
21 Association.

22 In addition, Maritimes Northeast Pipeline have  
23 submitted a pre-filing application with this Commission  
24 proposing to expand its existing pipeline and to add new  
25 compressor stations in Maine and Massachusetts. This would

1 triple Maritimes Northeast's pipeline capacity and allow the  
2 pipeline to transport gas from the two Canadian LNG  
3 terminals. In fact, Maritimes Northeast Pipeline has  
4 already entered into agreements to transport 1.563 Bcf per  
5 day from these terminals. This represent 36 percent of New  
6 England's normal peak day gas usage.

7 In addition, Neptune LNG and Accelerate Energy,  
8 LLC have proposed to build ports off the shores of  
9 Massachusetts that would provide a new source of LNG into  
10 the New England area. Neptune LNG would have a peak  
11 capacity of 750. It will be owned by Suez, which also owns  
12 the Distrigas facility, thus, seemingly it could be operated  
13 synergistically with the Distrigas facility. Accelerate  
14 Energy, LLC's northeast Gateway project would have a  
15 baseload capacity of 400 Mmcf per day and a peak capacity of  
16 800 Mmcf per day, and these applications are currently being  
17 reviewed by the Coast Guard.

18 I do believe that there remain significant  
19 unresolved safety issues such as the potential hazard to the  
20 people located along the passageway during the transit to  
21 the terminal and while the vessels are docked and unloading  
22 cargo. The lack of adequate emergency resources and the  
23 need for evacuation within a short time interval in the  
24 event of an LNG cargo release presents serious obstacles to  
25 creating a viable emergency response plan and evacuation

1 plan.

2 I also continue to believe that this project  
3 would have significant adverse environmental impacts due to  
4 dredging and LNG ship ballasting. The project would require  
5 the dredging of up to 2.6 million cubic yards of sediment  
6 from the Mount Hope Bay and Taunton River and the turning  
7 basin to enable LNG ships to transit, dock and turn in the  
8 Taunton River. The dredging would disturb about 191 acres  
9 of river and bay bed. At this time it remains uncertain how  
10 Weaver's Cove will dispose of the contaminated dredge  
11 sediment from the river and the bay.

12 In addition, the proposed project would have  
13 adverse effects on important spawning and juvenile  
14 development habitat for fish species. I also think the  
15 project will have adverse socioeconomic impacts the affected  
16 communities as a result of temporary bridge closures and  
17 delays due the LNG vessel transit.

18 I do not believe that my assessment of these  
19 concerns differs much from my colleagues. I think it is the  
20 way that we view them. And, on balance, given that there  
21 are reasonable alternatives, and given these concerns, I  
22 conclude, contrary to my colleagues, that authorization of  
23 this facility is not in the public interest. Therefore, I  
24 respectfully dissent.

25 CHAIRMAN KELLIHER: Shall we vote on C-1.

1 SECRETARY SALAS: C-1.

2 COMMISSIONER BROWNELL: Aye.

3 COMMISSIONER KELLY: No.

4 CHAIRMAN KELLIHER: Aye.

5 SECRETARY SALAS: C-2?

6 COMMISSIONER BROWNELL: Aye.

7 COMMISSIONER KELLY: Aye.

8 CHAIRMAN KELLIHER: Aye.

9 Any other business?

10 (No response.)

11 CHAIRMAN KELLIHER: With that, we're adjourned.

12 Thank you.

13 (Whereupon, at 11:35 p.m., the above-entitled  
14 matter was concluded.)

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