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

902ND COMMISSION MEETING

OPEN MEETING

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

Thursday, February 16, 2006
10:07 a.m.

APPEARANCES:

COMMISSIONERS PRESENT:

CHAIRMAN JOSEPH T. KELLIHER

COMMISSIONER NORA MEAD BROWNELL

COMMISSIONER SUEDEEN G. KELLY

SECRETARY MAGALIE R. SALAS

ALSO PRESENT:

JANE W. BEACH, Reporter

P R O C E E D I N G S

(10:07 a.m.)

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

Please join us in the Pledge of Allegiance.

(Pledge of Allegiance recited.)

CHAIRMAN KELLIHER: Thank you. We've located the gavel since my son was here at our last meeting; I got it back from him.

Let me start off by making a few announcements: First of all, the FERC-DOE Transmission Report, Section 1839 of the Energy Policy Act of 2005, requires the Secretary of Energy and the Commission to study and report to Congress on the steps that must be taken to establish a system to make available to all transmission system owners and RTOs within the Eastern and Western Interconnections, real-time information on the functional status of all transmission lines within such interconnections.

Additionally, Section 1839 directs the Commission to assess the technical means for implementing such transmission information systems, and identify the steps the Commission or Congress must take to require the implementation of a such a system.

This joint report was submitted to Congress on February 3rd, and it addressed whether technology provides a means to address deficiencies in the transmission monitoring system and to provide better information to all system operators.

The report also offered a technical evaluation of how a system could be established, if one is to be pursued.

The report merely described the steps necessary to establish and implement an Interconnection-wide monitoring system, and does not require the Commission to implement such a system.

Finally, the report acknowledges that a feasibility determination is necessary prior to any action to implement a real-time monitoring system, and that the implementation of such a system is beyond the scope of Congress's direction in Section 1839 of the Energy Policy Act of 2005.

And I just want to take the opportunity to thank DOE. We worked very closely with them, and I want to personally thank Kevin Colavar for expediting the report through the Department, and for the hard work of our colleagues at DOE.

Now, secondly, the Commission recently, on February 3rd, held a technical conference on matters raised by PJM Interconnection's proposed reliability pricing model, RPM. The conference was conducted by Commissioners and Staff, and consisted of a presentation by PJM regarding its current infrastructure and capacity market, and three panels addressing PJM's current capacity situation, PJM's proposal to address its capacity construct, and alternatives to PJM's proposal provided by market participants.

The technical conference provided a forum which allowed us to obtain information and to develop a record on these topics.

PJM market participants, including load-serving entities, transmission owners, and generators, provided their views, as did state representatives and state consumer advocates.

The conference was attended by a significant number of PJM parties, and provided an opportunity for extensive give-and-take of views among the Commissioners and all attendees, both panelists and audience members.

And we're now conducting the next phase of the process, and I believe the record is open till February 23rd on RPM. I think the record is still open, if there is still interest in submitting comments.

Another area: The Commission, earlier this week, held additional federal/state Joint Board meetings here in Washington, D.C., relating to security-constrained economic dispatch.

These are followup meetings to the November 2005 Joint Board meetings that were held in different parts of the country.

The Energy Policy Act of 2005 directed the Commission to convene Joint Boards to study the issue of security-constrained economic dispatch for the various market regions, and to consider issues relevant to what constitutes security-constrained economic dispatch, and how such a mode of operating affects or enhances the reliability and affordability of service, and to propose recommendations to the Commission.

Prior to this week's meetings, draft studies and recommendations were circulated among members of the Boards, the Joint Boards, and were made available to the public in notices we issued.

At this week's meetings, the Board members discussed the draft studies and recommendations, and, in some instances, identified the need for further information.

Now, based on these discussions, Joint Board members and their staffs will work together informally over the next few weeks to revise the draft studies and to achieve consensus on recommendations to the Commission.

The final Board recommendations are due to the Commission by May 2nd of this year, and after that point, we will consider the Board's recommendations in preparing our report to Congress, which is required to be submitted by August 8th of this year.

Now, the Commission recently -- turning to another area, the Commission recently initiated a process where the public may request and obtain informal Staff guidance in the form of No-Action Letters with respect to whether Commission Staff will recommend that the Commission take no enforcement action with respect to specific proposed transactions, practices, or situations that may raise issues relating to the standards of conduct for transmission providers, market behavior rules and market manipulation rules.

The No-Action Letter process is intended to assist regulated entities in seeking guidance on real-world application of these rules, regulations, and related Orders.

I would just like to note that on January 31st, the Commission issued its first No-Action Letter in response to a request made by Synergy. Based on the facts and representations made by Synergy, Staff did not recommend enforcement action against Synergy regarding the sharing of employees between Synergy's affiliates and its affiliates, Miami Fort Generation Unit 6, joint affiliate purchases of certain non-power goods and services for the affiliates, Miami Fort Generation Unit 6, and East Bend Generation

Station, and also whether Synergy needs to simultaneously make available to the public, the price of this jointly-purchased, non-power goods and services to supply the Miami Fort Unit 6 and East Bend Generation Station.

This No-Action Letter, like all No-Action Letters, will not bind the Commission and will not operate as agency action that is subject to rehearing or judicial review.

Information on No-Action Letters can be found on the Commission's website, www.ferc.gov.

Now, another area, the Natural Gas Basics Guide: Starting at the Commission's October 12th Conference on the State of Natural Gas Infrastructure, and at every regular Commission meeting thereafter, Staff has presented the Commission with detailed information regarding current market prices and analysis regarding those prices.

Along the same lines, the Commission has made available to the public, information on natural gas prices, in particular, by posting on our web page and making hard copies available, of a pamphlet entitled Gas Basics.

This pamphlet was developed to give the general public a better understanding of why natural gas prices are at their current levels.

Now, the second edition of this pamphlet -- do I have a copy of it? It's in the back of the room. The second edition of this pamphlet has been posted on our website, www.ferc.gov, in the Energy Supply and Demand Section, and copies of the pamphlet are available in the back of the room.

The Commission will continue to provide information on what has driven these prices and what the Commission is doing to monitor them, to be certain that they are not the result of manipulation or the exercise of market power.

Let me discuss very briefly, some notational -- first of all, the notational Orders that we've issued, some significant notational Orders that we've issued since the January open meeting:

Since the January 19th open meeting, the Commission has issued 90 notational Orders, including some significant Orders. First of all, let me just note the number. That's 90 notational Orders, and that's an average of -- if my math is right -- more than four a day, every day since the last open meeting.

I think that's pretty significant. We are doing an awful lot of our workload that way. It's a green blizzard of notationals here at the Commission. I think that's significant, four Orders a day, every day since the last January meeting.

COMMISSIONER BROWNELL: No wonder we're all tired and haggard.

(Laughter.)

CHAIRMAN KELLIHER: So I'm just going to highlight two of those Orders, though, and then ask my colleagues if they want to comment on those Orders or any other matters.

First of all, the Cost-Filing Order. On January 26th, the Commission issued an Order that we expect to bring the California refund proceeding significantly closer to completion.

In this Order, we acted on 23 filings in the proceeding in which power sellers sought to offset their refund obligations with the cost of serving the California markets during the 2000-2001 energy crisis.

The 23 cost filings were made because of the legal requirement that rates set by the Commission be just and reasonable, and not confiscatory.

The Commission's action in this Order demonstrates our commitment to expedite a fair resolution of the ongoing California refund proceeding.

I just want to comment that this has been a goal of the Commission for a number of months, to accelerate the California refund proceeding. It's not just -- it's a goal that is translated into action. We issued an August 8th Order to that end, and also this Order.

And I want to ask the Cost-Filing Order team to stand for a minute, and just recognize their work. The record in this -- to issue this one Order in January, the Commission Staff reviewed more than 20,000 pages of records, of documents, to analyze the cost filings that were put forward by sellers.

I note that Staff worked weekends, worked extremely long hours, and I just want to recognize their labor. I know that there probably was not a lot of glory in the cost-filing Order. It wasn't one of the most noted Orders that we issued, but it was a very significant Order and it was necessary if we're going to accelerate the California refunds, and I just want to thank you for you work. Thank you.

(Applause.)

CHAIRMAN KELLIHER: There was another notational that we've issued since January that I wanted to comment briefly on, and that was the Enron-Nevada Power settlement.

On January 25th, the Commission accepted a settlement agreement between Nevada Power and Sierra Pacific Power, with Enron, that resolves issues from the 2000-2001 Western energy crisis.

This settlement is yet another in a long line of settlements that the Commission has approved, that provide for greater legal and regulatory certainty surrounding the issues that arose from the crisis.

With that, colleagues, would you like to make any comments?

COMMISSIONER KELLY: Along the line of your thank you, Joe, I'd like just to take this opportunity to thank the participants that came to the PJM Technical Conference, and, just to give my impression that the meeting was exceedingly helpful, because the participants were very direct and forthcoming about their feelings on the issues.

There was, in fact, dialogue during that meeting, that I think was very valuable, and helped to cut through some of the emotion and get down to the nub of the concerns.

Also, I wanted to thank the Board members who came to the Joint Board meeting, the state Board members who came to the joint Board meeting that we held in Washington for the West, and I know that you all held yours for the rest of the country, for their dedication and interest in working jointly with FERC on the security-constrained economic dispatch order.

Then, with the leave of the Chair, I'd actually like to ask Nora if she would be willing to say a few words about Senator Coleman's hearing, at which you testified and ended up submitting testimony, and Susan testified, and maybe just a summary of the gist of the testimony that you presented there, and how you felt it was received.

COMMISSIONER BROWNELL: Thank you. Actually, Senator Coleman rescheduled his hearing, and I had completed my annual February visit to Minnesota at that point, and so Susan and Steve did the honors, but the feedback that I got was extraordinarily positive, and I thank them for doing probably a better job than I would have done.

So, Susan, we'll hand it over to you and Steve.

MS. COURT: Thank you, Commissioner. The hearing was held in St. Paul on the morning of this past Monday. There were three panels. The first panel was made up of local people, both homeowners and also representatives from the University.

The second panel was composed of public officials, a representative from the State Department of Commerce, and also from the State Public Utility Commission.

Steve and I, along with Jim Wells from GAO, comprised the third panel. The Senator's concern -- and only Senator Coleman was able to attend -- Senator Dayton was also scheduled to attend, but couldn't get out of Washington because of our snowstorm.

Senator Coleman's concern was the high natural gas prices and how those prices affect the consumer, especially, of course, his constituents. He was also concerned about any manipulation that was going on in the marketplace, and asked both GAO and Steve and me, whether we were vigilantly monitoring the market in that regard. Of course, we assured him that we were.

So, I think, overall, it was good that the Senator had a lot of questions that many people who are not involved in the everyday energy business and energy regulation as we are, would have, you know, some good basic questions about the structure of the natural gas markets and natural gas regulation.

So I think we were able to answer a lot of those questions. As of right now, there were no followup questions, so he seemed to be very grateful for our participation, and I think we learned a lot, too. We learned what some of his concerns were, including, for example, the differences between the United States and other parts of the world in the prices of natural gas, an wanted to understand those differences better. So we gave him as much information as we could, and, as I said, I think that, generally, I mean, it's a hard issue, and that is high natural gas prices and the effect on the end user.

COMMISSIONER KELLY: And, as to manipulation, Susan, it's my understanding that your testimony stated pretty clearly that we have been actively monitoring the markets, and, to date, we haven't seen any activity that's in the -- that is contrary to what you would expect from the market with the high gas prices.

MS. COURT: As we indicated in the testimony, it appears that the prices are a cause of natural drivers in the marketplace, but we also assured the Senator that we are watching this very carefully, and also indicated to him that, to the extent that we had an investigations going on, that those were non-public investigations, and he was very respectful of that.

But in -- both GAO and we testified that we had not -- there had been nothing in the public domain with respect to any manipulation. But, generally speaking, as I think Steve has indicated in his presentations and will talk about again today, that what we're seeing here is pretty much supply and demand. It's the natural workings of the market with supply and demand, and as was so apparent with what we saw after the two hurricanes hit.

Likewise, what we have experienced with this -- well, I can't even call it a Winter. I think it's either a late Fall or early Spring that we've been having. So, you know, I think -- and he understood that. I mean, so we did give him some very basic information about that.

COMMISSIONER KELLY: Thank you.

COMMISSIONER BROWNELL: A quick comment: I'm delighted that we're seeing the first No-Action Letter, and I appreciate the work that everyone did over the last couple of years, in responding to concerns that Suedeen and I heard on the road. We'll take further action today, I think, to make the rules clearer, so that we can achieve our goal of compliance, which ultimately is the most important thing that we can do.

I'm also delighted to see the settlement of Nevada Power and Enron. There are many sides to this very sad and tragic Shakespearean tale that is the meltdown of the California market.

I don't think anyone will be entirely satisfied, but getting to settlements brings the certainty that allows the Company, I think, a secure place in the financial markets and allows them to go on with their business.

I want to thank my colleagues at the state commissions in Missouri and Minnesota, who hosted Pat Clarey and I for visits. They are intensely engaged in the development of the MISO markets.

I think we're really making progress. There are certainly outstanding issues that we're going to continue to work, go back out there in a month or so, and work through some of those issues with them.

But it's an impressive group of people. It was 55 when we were there; it was pretty nice, so it was a really good job.

And last, but not least, the education that we're doing on providing information on gas markets, I think is critically important. This hits everybody in very painful ways, and so the more we can say and do, I think the better off we all are.

New York State and the competitive suppliers in New York -- I just got some material this morning and I meant to bring it down -- are also doing a terrific job, and I would encourage everyone to go to their websites and take a look at the material they are providing.

The New York Commission has led an aggressive campaign with a lot of television activity, as well, as written material, but they have resisted the urge to do those stick-em-in-the-envelope brochures that I've never met anyone who read, so I think we need to communicate in new ways.

I think people are doing a very good job under an incredibly difficult situation that isn't going away anytime soon.

CHAIRMAN KELLIHER: I just want to make a further comment on the No-Action Letter, and just to be clear that the Commission did that because the leadership of my colleagues. They both went to Chicago and they came back saying, we need to initiate a No-Action Letter process.

I didn't go to Chicago, but you were very persuasive and persistent, and we not only have done it, but it seems to be working; at least it worked on the first outing.

I think that shows, now that we have new civil penalty authority, that it's very fair of us to have done that, because it allows an opportunity for people, for regulated entities who are subject to our penalty authority, to seek clarification of the rules, so that those of them who are interested in complying, will be able to do that.

Anyway, it happened because of your leadership, and I just want to recognize that.

COMMISSIONER KELLY: Thank you.

COMMISSIONER BROWNELL: Persistence is our middle name.

(Laughter.)

CHAIRMAN KELLIHER: I would also like to follow up on Suedeen's comments about RPM. That was actually a lot more productive than I thought it would be, and I have been under the impression that RPM meetings were somewhat like the old adage about Irish social events, that they were reported -- the first line in any newspaper about an Irish social event was "among the injured were..."

(Laughter.)

CHAIRMAN KELLIHER: And I thought that was the nature of RPM meetings, but actually it was very productive and no one was injured, so it was a good meeting.

(Laughter.)

COMMISSIONER BROWNELL: I'm not sure everyone shares that view, but --

(Laughter.)

CHAIRMAN KELLIHER: Well, why don't we turn to the discussion agenda. Madam Secretary?

SECRETARY SALAS: Good morning, Mr. Chairman, and good morning, Commissioners. Mr. Chairman, you will be happy to know that since the issuance of the Sunshine Notice on February the 9th, only one item was struck from the agenda, and that was C-2.

Your consent agenda for this morning is as follows: Electric Items - E-5, 6, 7, 8, 9, 10, 11, 14, 15, 16, and 17.

Gas Items: G-2, 3, 4, 5, 6, and 7.

Hydro Items: H-1, 2, 3, 4, 5, 6, 7, and 8.

Certificates: C-1.

On G-5, Commissioner Brownell is dissenting, with a separate statement; Commissioner Brownell votes first this morning.

COMMISSIONER BROWNELL: Aye, noting my dissent on G-5.

COMMISSIONER KELLY: Aye.

CHAIRMAN KELLIHER: Aye.

SECRETARY SALAS: And the first item for discussion this morning is A-3. This is the Energy Market

Update. It is a presentation by Steve Harvey and Jeff Wright.

MR. HARVEY: Good morning, Mr. Chairman, Commissioner Brownell, Commissioner Kelly. I'd like to review U.S. energy market conditions as we near the end of the 2005-2006 heating season, review prospects for the gas market, and finally spend a little time discussing recent staff research of electric generation investment patterns in 2005. At that point, Jeff Wright will take over to discuss LNG activity and storage and pipeline infrastructure investment efforts.

Since we last reviewed natural gas market conditions on January 19th, prices for gas in the United States have continued to moderate, dropping to about $7.30 per billion British thermal units or MMBtu in trading yesterday for gas delivered today at Henry Hub, Louisiana. That price represents less than half of what it was at its recent high during a period of post-hurricane cold weather last December 13th. The last time we saw a price this low was in trading on July 1st, 2005.

The current price is about a dollar lower than in mid-February 2005 -- I'm sorry, the current price is about a dollar higher than mid-February 2005.

The price differences between the eastern and western parts of the United States that I pointed out in December have largely disappeared. These differences were related both to facilities outages and to the location of disrupted Gulf production that tends to be better connected to the east. With the continued improvement in Gulf production and prevailing market conditions I will discuss next, the market rationale for east/west differences appears to be gone.

The weather in January was extraordinary. There is no other word for it. January was the warmest in the full 112 years tracked by the National Oceanic and Atmospheric Administration or NOAA. Temperatures averaged 8.5 degrees above norms. This map, produced by NOAA, shows how widespread the warm weather was. Fifteen states in the northern plains, great lakes and midwest -- shown in red on the map -- had their warmest January in 112 years. NOAA identified an additional 26 states as above average, shown in orange. The coolest state in January was Arizona, which nevertheless had its 21st warmest January in 112 years.

NOAA scientists estimate that residential energy needs in January were 20 percent less than under normal temperatures. Consistent with that estimate, figures released by the Federal Reserve yesterday indicate that natural gas deliveries fell 15 percent from December to January.

This record --

CHAIRMAN KELLIHER: Excuse me, one question. Does that, all by itself, does that mean that weather compensated or more than compensated for the loss of offshore Gulf production?

MR. HARVEY: At this point, over time, that's pretty much true.

CHAIRMAN KELLIHER: Thanks.

MR. HARVEY: This record warm spell followed the ninth warmest November and a roughly average December. In all, this winter's extraordinary weather and the resulting weak energy demand has resulted in gas market conditions we certainly could not have predicted in the fall.

For example, storage inventories for natural gas last week reached above the previous five-year range, and actually, in fact, reached above the range for the last 12 years. Inventories last week were 649 billion cubic feet or Bcf above the five-year average; almost 38 percent above the average. Today's report a few minutes ago of 102 Bcf withdrawal was right about at expectations resulting in continued high inventories going forward.

Instead of being short of supply, the industry now faces the task of getting enough gas out of storage by the end of March, considered the end of the heating season. For physical operations reasons, inventories for most storage facilities have to fall to certain levels to maintain their integrity. As of today even historically strong withdrawals for the rest of the season could easily result in record high inventories on April 1st.

This is a remarkable story. After starting the winter in a strong inventory position but with real concerns as to the availability of supply from the Gulf for the winter, our literally 1-in-100 chance warm weather has resulted in a current surplus of gas inventory. We bet, as a country, on mild weather and we hit the jackpot.

I noted last month the kink in withdrawals you can see on the graph in mid-December, where the red line had been moving down the middle of the five-year range but then appeared to turn and now has reached slightly above the band, above the five-year range. At that time, we observed less gas being withdrawn from storage per heating degree day than we've seen in the past. We now think that there are three basic reasons for this.

First, as I've already indicated, the weather for the last week of December and through January was so mild that it didn't function like a winter month, more like a shoulder period or a mild fall or spring month. Consequently, demand was reduced even more than a less extreme variation of temperature would predict.

Second, reductions in demand may have been the result of decisions by customers to change their behavior, what I'll call a demand response. We've noticed anecdotal evidence of a demand response to the high prices of the early winter in the form of more attention to, for example, lowering thermostats and taking other energy-saving actions. Almost certainly, high November and December gas bills changed customer behaviors. In addition, the Department of Energy and many state and local authorities have made significant efforts this winter to encourage conservation.

Third, high prices are likely to have had a supply effect as well. Evidence for a supply response is also anecdotal but compelling. For example, rig counts surged recently to record highs not seen since the early 1980s.

More directly, Bentek Energy, consultants who follow pipeline flow information closely, released a report last week titled "Gas Market Fundamentals" that reports their insights into supply trends. To quote their findings, continental U.S. production is dramatically responding to the current high price environment. Basins having the greatest increases are Ft. Worth at 17 percent, Uinta-Piceance at 16 percent, East Texas at 11 percent, Arkla at 10 percent, Raton at 9 percent, and Wind River at 6 percent. Were it not for the hurricanes, U.S. production would have increased by 2.7 percent over 2004.

The basins Bentek identifies as showing growth are significantly smaller than the Gulf coast production, but their combined effects are material. Storage inventories are the most immediate signal we receive of supply/demand balance issues in U.S. natural gas markets. However, storage inventories do not identify the relative contributions of what forces are at play. They could be demand or supply related or both. When the Energy Information Administration's detailed statistics on consumption and production patterns are compiled and released later this year, we will study them to detail the relative influences of supply and demand responses.

Several factors appear to be influencing where the U.S. natural gas markets are likely to head next. The first is the history of extreme weather disruptions in the recent past -- hurricanes and mild winter weather -- resulting in an initially strong storage position. The second may be long-lived responses to historical and future prices by customers and producers. A last set of drivers at play include expectations about the price of oil and the possible effects of summer weather. Remember that last summer was warmer than average and that oil prices are still rather high, just recently creeping below the $60 a barrel range. Last month I showed how high oil prices create something of a floor for gas prices. At this point, we are watching to see whether that floor will hold in the face of extremely high storage inventories and possible demand and supply responses to price.

One way of assessing current expectations of energy prices is to examine futures prices. Futures are in no sense a predictor of future prices because futures prices include other forms of value than just expected supply and demand. Still, their patterns reflect current expectations of buyers, sellers and others interested in energy markets. Currently, futures are indicating an expectation that prices today are about as low as they're likely to be for the remainder of the decade. Winter futures prices are in the $10 per MMBtu range, while summer futures -- including this summer -- are higher than the current spot price.

One reason for the expected continued strength in future gas prices may be the increasing demand for natural gas in electric generation. The Edison Electric Institute's data regarding U.S. generation over the year in 2005 is graphed here in blue and compared to the five-year historic range shaded in yellow. With hot summer temperatures, we see that 2005 electric generation was often higher last year than in the previous five years.

In addition, while overall electric generation was up, generation from natural gas grew even more. According to available full-year data from the EIA for the five years ending in 2004, the overall increase in electric generation grew at an average of 1.5 percent per year, while electric generation from natural gas increased at an average rate of 5.1 percent per year for the same period. Another summer of strong electric demand growth for natural gas like last year may be a factor in current futures prices.

This relationship between electric and gas markets is becoming increasingly important. Consequently, as we consider this important relationship and begin to look forward to next summer, I'd like to shift the focus a little and review some recent information developed by Staff looking at generation investment trends.

To develop these generation addition figures, Staff used data from a variety of sources including the EIA, Platts' POWERdat, the American Wind Energy Association and the various RTOs and ISOs. Staff verified all the figures from various sources in the assessment and eliminated any that it could not verify. As a result estimates will differ. EIA reports 13 gigawatts of additions, less than the Staff analysis. Platts reports more, about 19 gigawatts. In addition, Staff figures do not take account of retirements or repowerings. However, Staff's methodology is consistent across the analysis presented.

According to our study, additions to U.S. generation capacity in 2005 totaled approximately 17 gigawatts, down 25 percent from the prior year and down 75 percent from 2002. 2002 saw the most generation additions in U.S. history. So to put 2005 additions into a larger context, though lower than the previous five years, 17 gigawatts represented more generation added than in 14 of the previous 20 years. Current plans indicate that additions in 2006 are likely to be roughly half the 2005 level.

Several trends were interesting. The first is that the generation additions were slightly more diversified in 2005, with 84 percent burning gas as opposed to 96 percent in 2004. Coal remained steady at 2 percent and wind increased significantly from 1 percent in 2004 to 14 percent in 2005. The wind increases were certainly related to the extension of federal tax credits and the expansion of state fuel diversity initiatives. Clearly gas is and likely will continue to be a dominant fuel for new generation for some time. Although there has been increased discussion of coal and nuclear generation in the recent past, the lead times for these investments are long and generation using these fuels did not make big showings in 2005.

This graph shows both the geographic diversity and the ownership breakdown of generation investments. Let's start with geography. The biggest area for investment was the southeast, mainly in Florida, which faces some congestion. California and the midwest not only saw relatively high levels of investment, but also showed substantial increases over 2004 levels, with California investment more than tripling and midwest investment almost doubling. New England had no additions we could identify and PJMs were small, mainly renewables.

I should note that the Staff analysis and PJM differ on the timing of one 750 megawatt plant. We counted it in 2004, as has EIA. PJM counts it in 2005.

Overall, about one third of all additions appear to have been made in areas that are constrained and face transmission congestion, particularly California, Wisconsin and downstate New York.

The breakdown of investors is also of interest. In total, municipals and cooperatives added a little less than 4 gigawatts, just slightly less than in 2004. Investor-owned utilities, identified as IOUs on the graph, added 7 gigawatts of the capacity in 2005, almost tripling their 2004 investments. Their affiliates added a little over 2 gigawatts, a little more than a third of what they added in 2004.

Finally, independent power producers, shown as IPPs on the graph, added more than 4 gigawatts, down from over 7 gigawatts in 2004.

Geographically, there were differing patterns. In the southwest, for example, virtually all generation added was by munis, co-ops and investor-owned utilities. The most investment by independents was in California, the southwest, Texas, or ERCOT, and the midwest. We expect generation additions to decline again in 2006 and an increasing proportion of development efforts to focus on baseload coal and nuclear as well as in renewables. Regional trends in investment and trends in investor types are not so clear.

And with that, I'd like to turn it over to Jeff.

MR. WRIGHT: Thank you, Steve. Good morning, Chairman and Commissioners.

At the last Commission meeting, I gave a preliminary recap of US LNG activity in 2005. Since that time, the Office of Fossil Energy at the Department of Energy has finalized the LNG information for 2005. DOE reports that during 2005 the United States imported 275 cargoes of LNG totaling 631.3 billion cubic feet. This is a 3 percent reduction in LNG imports from 2004 levels. LNG supplied about 3 percent of the U.S. gas supply, assuming total 2005 demand of 22 Tcf. The weighted average price per MMBtu for the imported LNG was $7.82, which compares favorably with the Henry Hub price, which averaged $9 per MMBtu for 2005, according to the Energy Information Administration.

About 70 percent, or almost 430 Bcf of LNG, came from Trinidad, our largest supplier. Approximately 62 Bcf originated in Algeria and 50 Bcf was imported from Egypt.

These three countries accounted for 86 percent of the 2005 LNG imports to the United States.

The busiest U.S. regasification terminal was the Cove Point facility in Maryland, which received 222 Bcf or 35 percent of the total imported LNG. And it should be noted all of the volumes it received were under short-term authorization. The least active terminal was the offshore Gulf Gateway which, after opening in March 2005, received only two cargoes.

Let me explain that the Office of Fossil Energy at the Department of Energy approves LNG imports either on a long-term basis, that is, greater than two years, or on a short-term basis. Short-term authorizations are blanket authorizations which do not require a contract to be provided. However, the length of the contract underlying the authorization, whether short- or long-term, is not necessarily relevant to whether LNG shipments are required under the contract to be delivered to the United States. Just because a supplier has a long-term contract providing access to a terminal to import LNG does not mean they are necessarily committed to using that terminal if the economic value of the cargo is higher elsewhere.

For example, in January of this year, long-term contractholder BP diverted a cargo that originated in Trinidad to Japan. The cargo was initially destined to Cove

Point, but went to Japan because of a rumored $13 per MMBtu price from Kendai Electric, higher than prices available in the United States. Because of the mild weather and relatively low prices in January that Steve just discussed, receipts of LNG in the U.S. reached their lowest monthly level since April 2003.

In 2005, nearly 70 percent of the LNG imports into the United States were under DOE's short-term blanket authorizations and for the last three months of 2005 -- the period when DOE began tracking spot deliveries -- 27 percent of U.S. LNG imports were spot deliveries.

In 2005, the Commission authorized five LNG regasification terminals with a combined 6.4 billion cubic feet per day of deliverability. Four of these terminals would be located in the state of Texas. Construction on 9.2 Bcf per day of deliverability is currently happening at five sites. The first three sites listed on this slide, as well as the Cameron LNG site in Louisiana and the Freeport site in Texas.

On February 1st service commenced at the expanded facilities at the existing Elba Island facility in Georgia. Besides substantially increasing its storage capacity, Elba Island's maximum sendout capability nearly doubled, to over 1.2 billion cubic feet per day. Elba Island's latest expansion proposal, which will increase its deliverability by another 1 Bcf per day, is now in the prefiling phase at the Commission.

To complement this increase in LNG sendout capacity, the Commission has been taking actions on other gas projects necessary to support downstream delivery of the additional gas supply. In 2005, the Commission approved 20 major pipeline projects totaling 870 miles of pipe with an associated capacity of about 12.3 billion cubic feet per day. 7.5 billion cubic feet per day of this capacity is linked to facilities to take regasified LNG away from the approved terminals.

The Commission also proved nine storage projects in 2005 with a total storage capacity of about 110 billion cubic feet and daily deliverability of 3.2 billion cubic feet. Four of those projects were in the Gulf area, ostensibly to store regasified LNG. These four projects accounted for one-half of the approved capacity and two-thirds of the daily deliverability.

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

COMMISSIONER KELLY: I had one question related to the current additions in generation and its likely impact on the investment in transmission. Is it fair to conclude that with lower generation additions expected in 2006 that we will see investment by IOUs in transmission instead? And

I ask that question in large part because we have learned of more and more proposals for large-scale long-haul transmission lines.

MR. HARVEY: I had hoped to be able to come up with some figures on transmission for today. It turns out we really need the Form One information in order to do a thorough job of that, which means it will be a couple of months before we can do that in any kind of conclusive sort of way. I mean, anecdotally, yes, we've heard those same sorts of proposals as well and, of course, looking back at 2005 wouldn't necessarily pick up some of the new projects as we go forward.

COMMISSIONER KELLY: Thanks, Steve.

COMMISSIONER BROWNELL: Somewhere that I now can't find you said that storage numbers are an indicator of the supply and demand balance. But you did not mean to suggest that over the long haul we have overcome the potential supply shortages in this country, particularly in New England, is that -- I just want to be sure.

MR. HARVEY: That would be absolutely correct. One of the -- to speak to New England, which I think is an area of a lot of concern to a lot of us with regard to these supply issues, there was never so far this winter and it's getting awfully late in the winter to see it, there was never a lot of stress on the system in New England because of the weather patterns that we saw. And so the differences in prices in New England versus down in the Gulf that typically can get quite large, in the order of $10, $15 when New England is under stress, it was never under stress and so we never saw anything close to that in terms of prices. That will make it a very different looking year than the ones that we've seen in the past.

So no, I -- this isn't -- really what I talked about I think is a fairly short-term view. It does reflect some of the cyclical nature of these prices in terms of investment signals and demand being very seasonally oriented and very weather-related oriented. We've just, interestingly enough, gone through a very major shock to the supply system, followed immediately by sort of a major shock to the demand system, and that results as it turns out in immediately a fairly heavily supplied position.

COMMISSIONER BROWNELL: You also talked about rig counts going up dramatically, and I remember 2000, in fact, where there was just this extraordinary increase, and as soon as prices dropped, there was an extraordinary decrease, so that's not something to be relied on, necessarily, in the long term.

In the basins that you talked about that increased production in response, largely, to price, those are basins that probably -- that isn't sustainable over a long period of time; is that correct, or give me a picture of what that might look like.

MR. HARVEY: The technologies are changing, and this was one of the questions we spoke with folks at Vintech to try to understand what they had come up with.

And their method of analysis, really, is to look at the flows on the pipelines and to see those kinds of patterns. I had hoped, in that process, to be able to say more about the demand side than we can, based on that information.

But there was a fairly clear signal on the supply side. At least their initial impressions were that, given some of the changes in technology, some of those wells are actually producing more like older wells than they had been in the past.

It's very early to come up with any conclusion that way, but, you know, as we expect, given a fairly sustained period of time of higher prices than we'd seen in the past, the technologies do change, they do change in ways that change those dynamics.

So, it's early to say. I would have said a month or two ago, no, you know, these wells are not -- these are in-fill wells and they are not going to be as productive, but it's not completely clear that that's true at this point, interestingly and positively enough.

COMMISSIONER BROWNELL: Yeah. I have a bunch of question on the slide at page 10, but maybe I'll save those for another day, because this a very telling picture about the state of a lot of different things in the marketplace, one of which is a commentary on competitive markets, a commentary on what happens when you mitigate prices, when I look at PJM and New England.

But I think I'd like to explore that a little more, if we could, because there's a lot behind that. Thank you.

CHAIRMAN KELLIHER: I just have one question. There was actually some interesting analysis in The Desk a few weeks ago -- I guess that's an advertisement for The Desk -- but it was pointing out that weather has been mild, not just in January, not just in half of December or November, but going back really a few years, and that it has fundamentally masked how tight the supply-and-demand balance is in gas, and that we have been lucky, not just for month or six weeks or two and a half months, but really for two to three years, and that we can't be lucky forever, and relying on mild weather is not a viable strategy, ongoing.

But, anyway, it was interesting, just pointing out that we've been luck for really a period of time and that prices have been artificially low, arguably, given how tight the balance is, because of weather. It seemed to have saved us this Winter, in particular.

MS. COURT: People make up markets and tend to think that their most recent experience will apply forever and ever and ever, so we tend to assume we have to have hurricanes in the Gulf again this summer, because we had them in the last couple of years. We have to have warm Winters, all of those sorts of things, and your point is an extremely good one; we don't have to have those sorts of things.

We had an extremely cold Winter in 2002-2003, that resulted in a lot of tightness toward the end of that. Last Summer was the first one where we had seen really warm weather during the Summer, and so we -- a lot of the infrastructure within energy, is inherently designed to help give us insurance in relatively extreme cases.

And so it would be absolutely wrong to simply say, well, because we had a warm Winter this last Winter, we're going to always have warm Winters and we don't have to worry about it in the same way. It could be a completely different story, and, in fact, globally, it was a completely different story.

Europe was going through bitterly cold weather at the time we were having very, very warm weather, and, in a certain thing, that was a good thing for the LNG trade, because that made more LNG available, given the desperate human needs that they had in Europe at the time.

But you're absolutely right; you can't just assume that what our recent experience is, is going to be applicable in the future. We've got to prepare for more extreme conditions and be ready for those.

CHAIRMAN KELLIHER: All right, thank you.

COMMISSIONER KELLY: I was going to say that, along those lines, I was heartened to hear you say that reductions in demand may have been the result of decisions by customers to change their behavior, or what you would call a demand response.

I know that we don't yet have hard evidence of that, but we do have anecdotal evidence. I think that the combined response by state, local, and federal governments to real fear and concern, probably had a lot to play in having people hear the message that prices were going up, supply was constrained.

I hope that we keep that effort up this Summer, even as we see a temporary, I suspect, drop in the cost of gas, so that we don't get ourselves into a situation this Summer like we were last Winter.

COMMISSIONER BROWNELL: Could I just point out one thing that amplifies what both of you said? The European weather patterns and the LNG response to that, should remind all of us that commodity markets are now global with gas more than it was, and coal, and that the stresses that we see and the competition that we see from other parts of the world, is only going to increase.

We tend to have this narrow view of the world that says all supply will come to us, because we use more of it than anybody else, and that is certainly changing as countries like China become more industrialized and the Europeans have an opposite weather condition than we do.

That, too, is a new stress, I think, or a growing stress on the system, that in many cases is unrecognized.

CHAIRMAN KELLIHER: Thanks very much for your presentation.

SECRETARY SALAS: Next on the discussion agenda, we will be taking up four items together that pertain to Market Behavior Rules. They are E-4, Investigation of Terms and Conditions of Public Utility Market-Based Rate

Authorizations; G-1, Amendments to Codes of Conduct for Unbundled Sales Service and for Persons Holding Blanket Marketing Certificates; and Compliance for Public Utility Market-Based Rate Authorization Holders; and M-3, Revisions to Record Retention Requirements for Unbundled Sales Service for Persons Holding Blanket Marketing Certificates and Public Utility Market-Based Rate Authorization Holders.

And this is a presentation by Mark Higgins and Christopher Wilson.

MR. HIGGINS: Good morning, Mr. Chairman and Commissioners. I am Mark Higgins from the Office of Market Oversight and Investigations. With me today is Chris Wilson from the Office of General Counsel.

I would also like to acknowledge Team Lead Ted Gerarden of the Office of Market Oversight and Investigations, and Frank Karabetsos of the Office of General Counsel, who are unable to be present today.

In November of 2003, the Commission issued the Market Behavior Rules to fill a void in the regulation of market-based sales activity. The Market Behavior Rules, particularly Market Behavior Rule 2, applicable to market-based rate sales of electricity and its counterpart in Part 284 of the Commission's Regulations applicable to certain natural gas sales, provided the Commission with a tool to prevent manipulation in the wholesale markets subject to the jurisdiction of the Commission.

As part of the Energy Policy Act of 2005, Congress granted the Commission new anti-manipulation authority, and with the issuance of Order No. 670 last month, the Commission implemented new anti-manipulation regulations.

In so doing, the Commission took an important step toward providing regulatory certainty to market participants, while assuring that customers are properly safeguarded from acts of market manipulation.

In 2005, the Commission sought comment on the proposed repeal of Market Behavior Rule 2 and the analogous gas regulation. The Commission also sought comment on whether the remaining Market Behavior Rules and analogous gas regulations, should be repealed, once the aspects of the Rules were incorporated into the Commission's Regulations.

The four draft Orders before you, Items E-4, G-1, M-2, and M-3, complete the process of revamping the electrical and natural gas Market Behavior Rules in light of the new Anti-Manipulation Rule.

These actions are intended to bring clarity and certainty to the industry on the scope and application of the new Anti-Manipulation Rules and the conduct the Commission expects of participants in wholesale markets subject to its jurisdiction.

Item E-4 is an Order under Section 206 of the Federal Power Act to rescind Market Behavior Rules 2 and 6. Market Behavior Rule 2 has been supplanted by the Commission's new Anti-Manipulation Regulations, and its recision is consistent with Congress's intent in giving the Commission broad anti-manipulation authority.

Market Behavior Rule 6 can be rescinded because its regulatory purpose is captured in sellers' market-based rate codes of conduct, the Commission's Standards of Conduct, and the new Anti-Manipulation Rule.

Item G-1 mirrors Item E-4 for rules pertaining to natural gas transactions subject to the jurisdiction of the Commission, removing those parts of Sections 284.288 and 284.403 prohibiting market manipulation.

Item M-2 is a Final Rule to be made effective upon publication in the Federal Register. This Order will codify, without substantive change, Market Behavior Rules 1, 3, 4, and 5, and a new Subpart H of the Commission's Part 35 Regulations.

These Rules deal with electric market-based rate sellers' obligations in organized markets, information accuracy, price reporting, and record retention.

Because there is no substantive change in regulation from existing Market Behavior Rules 1, 3, 4, and 5, and because the Rules have been subject to extensive comment, these Rules can be codified without delay.

The parallel Rules applicable to natural gas sales, are already in Part 284 of the Commission's Regulations.

Finally, Item M-3 is a Notice of Proposed Rulemaking proposing to extend the existing record retention requirement related to market-based electric and natural gas transactions, from three to five years.

The Notice of Proposed Rulemaking seeks comment on whether such an extension is appropriate to conform with the five-year statute of limitations that applies when the Commission seeks civil penalties for a violation of the anti-manipulation regulations.

I'd be pleased to respond to any questions.

CHAIRMAN KELLIHER: I wanted to make some comments on these Orders and my reasons for supporting them, just speaking for myself. First of all, I want say that these Orders are very good quality Orders. I want to commend you and the rest of the team.

I especially liked the footnotes; they were very, very extensive and persuasive, I thought, but these are very well written Orders, and I think they explain our reasons well.

Let me just explain my reasons, in particular, and what I think the effect of the Rules are. As Staff indicated, last month, the Commission issued final rules proscribing manipulation in wholesale power and natural gas markets, and we acted quickly to implement the new anti-manipulation authority granted to us by Congress in the Energy Policy Act of 2005.

Now, in light of our adoption of the Anti-Manipulation Final Rule, today the Commission issues a package of Orders concerning the Market Behavior Rules that make conforming changes to wholesale power, market-based rate tariffs and authorizations, and to pipeline sales and gas blanket certificate authorizations.

Now, specifically, E-4 and M-2 rescind Rules 2 and 6 from wholesale power market-based rate tariffs and authorizations; removes Rules 1, 3, 4, and 5 from those tariffs, and codified them, with no substantive changes, into Part 35 of the Commission's Regulations under the Federal Power Act.

This codification of Rules 1, 3, 4, and 5, as Staff indicated, will be an instant Final Rule effective upon publication in the Federal Register.

G-1 removes the natural gas analog of Rule 2 from the Commission's Regulations regarding pipeline sales and gas certificates, and, finally, M-3 is a Notice of Proposed Rulemaking to extend the current three-year record retention requirement of Rule 5 and its gas-side equivalent of five years, matching the five year statute of limitations for violations subject to civil penalties under the Anti-Manipulation Rule -- well, actually not just limited to the Anti-Manipulation Rule, the statute of limitations.

But to the extent there was clarity in the Market Behavior Rules, that clarity is carried over into the Anti-Manipulation Rules and the Rules the Commission is issuing today.

Now, we take this action to reduce regulatory uncertainty and to assure that all market participants are held to the same standard, and to provide clarity to persons subject to our Rules and Regulations and also subject to civil penalties.

Now, this proceeding began last November when the Commission proposed to rescind the Market Behavior Rules, once we issued Final Rules implementing the anti-manipulation authority granted by Congress in the Energy Policy Act of 2005.

And we explained that rescinding the Market Behavior Rules is consistent with Congressional intent in the Energy Policy Act of 2005, which provided the Commission with explicit anti-manipulation authority. The Market Behavior Rules have been challenged in Court, and relying on our explicit anti-manipulation authority, was deemed to be the better course.

Now, by its terms, the Energy Policy Act of 2005 did reverse or repeal the Market Behavior Rules. But it's also apparent that the new law did not ratify them, either.

Congress knows how to ratify regulatory policy, particularly when that policy is threatened by legal challenge. Congress did not do that in this instance, and, instead, specifically directed the Commission to issue a different regulatory -- to rely on a different regulatory model than the Market Behavior Rules to police manipulation.

That led to adoption of the Anti-Manipulation Final Rule.

Now, it's clear that Congress gave the Commission discretion with respect to reform or repeal of the Market Behavior Rules, and, after careful review of the comments, we exercised that discretion.

The package rescinds Market Behavior Rule 2, since it's clearly covered by the Anti-Manipulation Rule. In my view, having two general anti-manipulation rules applying to two different universes of sellers, two different scopes of transactions, and with two different intent standards, would result in significant regulatory uncertainty, without offering any additional protection for customers.

And having two sets of anti-manipulation rules barring the same behavior, does not offer more protection to customers.

Now, the package also rescinds Market Behavior Rule 6, since it merely restates and obligation that a market-based rate seller adhere to the Code of Conduct and Standards of Conduct, and for that reason, we determined Rule 6 to be redundant, and rescinded it.

Now, with respect to the other Market Behavior Rules, the Commission concluded that there is some benefit to retaining their requirements and incorporating them into the Commission's Regulations, and the scope and applicability of those Rules is unchanged.

So, I support the package. It's a little bit complicated to get from Point A to Point B in this package, but I think the end result is the right one, so I support the Orders, and commend the Staff for their hard work.

Colleagues?

COMMISSIONER BROWNELL: It's hard to add to commentary that opens with great footnotes, Joe.

(Laughter.)

COMMISSIONER BROWNELL: I'm just going to associate myself with your remarks, and I'm happy to support the Orders, although I'm thinking, you know, we often have fundraisers for the daycare center, and I was thinking maybe a lunch date with you reading aloud, the footnotes, would go for some big bucks, so I think you ought to throw that into the equation this year.

COMMISSIONER KELLY: I would like to talk a little bit about the Orders' recision of Market Behavior Rule 2, specifically Market Behavior Rule 2(a) through (d), which contained a list of specifically-prohibited activities, such as wash trading; transactions predicated on submitting false information; transactions that create and relieve artificial congestion and collusion for the purpose of market manipulation.

Today's Order does not retain this specific list of prohibited actions, because they are all activities that are prohibited under our new anti-manipulation regulations, and are subject to sanctions and remedial actions by the Commission.

Also, our Order recognizes that a list of specifically-prohibited -- specific prohibited activities, could not be all-inclusive, but the lack of such a list, I want to stress, does not dilute the reach of our new Anti-Manipulation Rule.

The Commission may, as it gains experience with our Anti-Manipulation Rule, amplify the Regulations to at some point add a specific list of prohibited conduct, such as the SEC has done with respect to Rule 10(b)(5).

But I think it's appropriate that we didn't have a specific list at this point in time, because it could lead to the conclusion that these are the only thing that are prohibited. Although I agree with the determination not to include a list, I met not too long ago with market monitors from the RTOs and the ISOs, and they stressed that having such lists is helpful and instructive to them in their work.

They explained that being able to provide examples of the types of behaviors that are prohibited, is helpful. Therefore, I wanted to note that our Commission Staff is working on resources and information that will be posted on our website in the near future, to help provide guidelines on the types of behavior that will be prohibited under our new regulations, similar to the package of online resources that Commission Staff has already prepared to assist transmission providers in complying with the Standards of Conduct and Codes of Conduct.

I want to thank Staff for taking on this extra chore, and note that it is consistent with our interest in fostering compliance. Thank you, Mark and Chris.

CHAIRMAN KELLIHER: Great. Shall we vote?

COMMISSIONER BROWNELL: Aye.

COMMISSIONER KELLY: Aye.

CHAIRMAN KELLIHER: Aye. Thank you.

SECRETARY SALAS: Next for discussion, we will be taking up E-12 and E-13. They are both related to Electric Quarterly Reports and Related Dockets, and it is a presentation by Steven Reich and Gary Cohen.

MR. REICH: Good morning, Mr. Chairman and Commissioners. I'm Steve Reich with the Office of Market Oversight and Investigations. With me today is Gary Cohen from the Office of General Counsel.

Other members of Staff who contributed to these agenda items are: Michelle Reaux, Mark Blazejowski, Christie Kim, Brenda Devine, and Sam Berrios.

The draft Orders in E-12 and E-13 on today's agenda involve companies that have failed to file electric quarterly reports. E-12 notifies six companies which have not filed their third quarter 2005 EQRs, that the Commission will revoke their market-based rate authority if they do not file within 15 days of the issuance of the Order.

If the companies fail to comply, the Order further directs the Secretary to issue a notice at the end of the 15-day period, identifying the company whose market-based rates have been revoked.

Also in E-12, failure to file EQR data timely, establishes a basis for the Commission to institute and investigation under Section 206 of the Federal Power Act, to determine appropriate refunds, in the event these companies continue to make wholesale sales at market-based rates.

E-13 revokes the market-based rate authority of eight companies that have not filed their EQRs in over a year. These companies were given notice of the Commission's intent in a December 22nd, 2005 Order.

We would be pleased to respond to any questions about these items.

CHAIRMAN KELLIHER: Thank you. First of all, thank you for that presentation and for these Orders. I want to make a few comments on these Orders.

Now, under the Commission's market-based rate test, public utilities authorized to charge market-based rates, are required to submit electric quarterly reports summarizing contractual terms and conditions in their wholesale power sales during the preceding three-month period.

Under Order 2001, filing of an electric quarterly report is a condition of market-based rate authorization. Now, electric quarterly reports are necessary to satisfy the filed rate requirements of Section 205 of the Federal Power Act, and they are also necessary to meet the conditions of market-based rate authorization itself.

Now, as I have said before, market-based rate authorization is a privilege and not a right, and if conditions for market-based rate authorization are not satisfied, the Commission will revoke authorization.

We've done that in the past for failure to submit triennial market analysis, as well as for failure to submit electric quarterly reports. Now, as Staff indicated, in E-13, the Commission revokes the market-based rate authorization of eight companies that failed to file electric quarterly reports.

In an Order issued on December 22nd of last year, the Commission notified the companies that they were delinquent in satisfying the filing requirement, and had 15 days to comply, and none of these companies subsequently filed -- satisfied their filing requirements, and for that reason, we revoke their authorization to charge market-based rates.

In E-12, the Commission notifies six companies that they are similarly delinquent in their filing of electric quarterly reports and that their market-based rate authorizations will be revoked unless they also satisfy the filing requirement within 15 days.

The failure of these companies to file their electric quarterly reports, was determined as a result of Commission Staff review, and I want to commend the Commission Staff for their vigilance in conducting these reviews.

There are 1200 companies that have market-based rate authorization, currently, and every three months, we get about 1200 -- close to 1200, not exactly -- electric quarterly reports.

And if there was no glory in issuing the cost-filing Order that I discussed earlier, there's even less glory in reviewing electric quarterly report filings. So, I know it's a lot of work, with, again, more than a thousand filings, so I want to commend Staff for being so careful in their review, and for identifying these delinquent companies.

I'd like to ask any Staff who work on the EQRs, to stand up and be recognized. Thank you very much; we really appreciate it.

(Applause.)

COMMISSIONER BROWNELL: Can I assume that these companies are effectively out of business? I'm just confused as to why people continue to fail to file what are mandates? So can I assume these were, you know, kind of like small companies that are no longer with us, or what's your take?

MR. REICH: Commissioner, in most cases these companies are out of business. In one of the cases, Mountain View, one of the eight companies on E-13, they were effectively barred last year from making market-based sales, but there was no mention in that order of their market-based rate authorization, which had been issued two previous owners before. And so that is one exception.

COMMISSIONER BROWNELL: Okay, but maybe then the burden is on us to say we're barring you from making market-based sales and, therefore, you don't have to -- I mean, it seems odd that we would do that and then gig them for not filing when we told them they couldn't make the sales they'd have to file for, if I'm understanding you.

CHAIRMAN KELLIHER: Was the bar on market-based rate sales an aspect of the acquisition of the Mountain View project?

MR. REICH: The bar on market-based rate sales was part of the order, yes.

CHAIRMAN KELLIHER: Okay. You're right. That seems logical.

COMMISSIONER KELLY: I just wanted to set the record straight for the Staff who work on electronic quarterly reports and cost filings that although the public may not see the glory in your work, we do.

(Laughter.)

COMMISSIONER KELLY: I wanted to talk about the fact that these orders implement an important aspect of our statutory obligation to oversee market-based rate sellers and specifically the Federal Power Act requires a rate on file so that the Commission can ensure that jurisdictional rates are just and reasonable. For approved market-based rate sellers, the rate on file requirement is met through these electric quarterly reports which summarize the contractual terms and conditions for all jurisdictional services and provide transaction information, including rates, for sales made during the quarter. So even if no sales are made during a quarter, the electric quarterly report must be filed to provide this information to us. Otherwise, our statutorily-mandated oversight of the seller would be impaired. These orders apply to certain market-based rate sellers who have whether knowingly or otherwise violated the EQR requirements and, thus, their statutory obligations to maintain the rates on file.

In E-12 we notify one group of such entities that they are in violation of these requirements and that the Commission will revoke their market-based rate authority if they do not cure the violations within 15 days of the issuance of the order.

The order in E-13 represents the next step in this process for a different group of entities. These are ones who have failed to respond to an earlier order similar to the one that we issue in E-12 and will now lose their market-based rate authority accordingly.

And I think that these actions by the Commission are required by statute and represent a fair and appropriate process for enforcement of the EQR requirements and the Federal Power Act and I support that.

CHAIRMAN KELLIHER: Great. Shall we vote?

COMMISSIONER BROWNELL: Aye.

COMMISSIONER KELLY: Aye.

CHAIRMAN KELLIHER: Aye.

Thank you. And thanks again to the EQR Staff.

COMMISSIONER BROWNELL: We love them and Team B uses them all the time. So we do appreciate them.

SECRETARY SALAS: And our final item for discussion this morning is M-1. This is procedures for disposition of contested audit matters. It's a presentation by John Kroeger, Mark Klose and Chris Wilson.

MR. KROEGER: Good morning, Mr. Chairman and

Commissioners. I am John Kroeger from the Office of Market Oversight and Investigations. With me today is Chris Wilson of the Office of General Counsel and Mark Klose from the Financial Audit Branch of OMOI.

On October 20th, 2005 the Commission issued a Notice of Proposed Rulemaking to apply existing procedures for challenging Commission Staff's financial audit findings and proposed remedies to other kinds of Commission audits, including operational audits. Current regulations provide subjects of financial audits an opportunity to challenge the findings and proposed remedies that appear in a final audit report. In such cases, the audited person can select a paper hearing or trial-type hearing to resolve a dispute.

The final rule before you would extend this opportunity to additional audit subjects, in particular, those subject to operational audits. Operational audits include audits to determine compliance with the Commission's standards of conduct and open-access transmission tariffs, among other Commission requirements. The enhanced procedures contained in the draft final rule would increase the due process available to persons subject to a broader range of audits. However, the draft final rule does not apply to the audits conducted pursuant to part 39 of the Commission's regulations that the Commission authorized in the rules concerning certification of the electric reliability organization on February 2nd, 2006 in Order Number 672.

Under the draft final rule, an audited person may state in writing its disagreement with one or more findings or proposed remedies contained in the draft audit report. At the time the Commission issues an order on the merits with respect to the nondisputed portions of the final audit report, the Commission would note but not rule upon the disputed findings or proposed remedies. The audited person would have 30 days to decide to challenge the disputed findings or proposed remedies through its choice of a paper hearing or a trial-type hearing as long as there is a material issue of fact in dispute that would require a trial-type proceeding. The Commission would then establish a briefing schedule or in appropriate cases refer the matter to the Chief Administrative Law Judge for a trial-type hearing. An audited person who chooses a paper hearing may later request a trial-type hearing if new issues are raised by an intervenor.

The draft final rule also addresses a number of issues raised by commenters regarding Commission Staff audits. The draft final rule addresses these comments to provide greater clarity to the Commission's enforcement program. For example, in response to comments expressing some confusion about the audit process, the draft final rule discusses issues regarding cooperation by audited persons and the differences between investigations and audits.

We would be pleased to respond to any questions.

PRESIDING JUDGE: Thanks. I just want to make some comments about my reasons for supporting this rule. As Staff indicated, currently the Commission conducts two kinds of audits: financial audits designed to ensure compliance with the Commission's accounting regulations and operational audits that determine compliance with various regulatory requirements, including code of conduct, standards of conduct and, more recently, the anti-manipulation rule.

With the enactment of the Energy Policy Act of 2005, the consequences for violating the Commission's requirements are more significant. The law grants the Commission the authority to impose civil penalties of up to $1 million per day per violation. As a result, the final rule grants audited persons additional due process rights by allowing them to file briefs or request an adjudicatory hearing to challenge audit matters before the Commission makes the final decision on the merits. Those are due process rights that the subjects of financial audits currently enjoy.

Now the Commission's enforcement policy is oriented around firm but fair enforcement and given the importance of operational audits and the greater consequences for violating the Commission's requirements, it seems appropriate that we afford regulated companies additional rights to challenge preliminary audit findings and we do so for reasons of fundamental fairness. So I support the order.

Colleagues?

COMMISSIONER BROWNELL: I do as well. I think, taken in the entirety, clarifying rules, the no-action letter, extending the same due process rights to these kinds of audits can give the industry greater assurance and confidence that those who choose to work hard at compliance will be rewarded. And we will hold ourselves accountable, because I think that becomes increasingly important as we have more penalty authority and as our responsibilities in these kinds of markets become more important than ever before. So I think this is a good order and I'm pleased to support it.

COMMISSIONER KELLY: Since Congress gave us additional penalty authority, we have talked about our commitment to firm but fair enforcement. And this rule is yet another step in our efforts to ensure firm but fair enforcement by advancing the due process rights of all audited persons by providing an effective process for them to challenge Staff audit findings. And as we noted in the rule, the Commission has long provided similar due process protections to parties subject to financial audits. So it's appropriate, it seems to me, to formalize and extend those protections to other audits that we conduct.

In addition to providing more options and more due process for audited persons, what I also like about this rule is that it preserves an audited person's ability to continue to work informally with the Staff audit team, so that both sides understand the facts and the issues and perhaps come to a resolution in areas of disagreement or perhaps narrow the list of disputed findings or proposed remedies, thus avoiding unwarranted or unnecessary enforcement actions. So in short, I believe that this rule benefits everyone and I'm pleased to vote for it today.

CHAIRMAN KELLIHER: Great. Shall we?

COMMISSIONER BROWNELL: Aye.

COMMISSIONER KELLY: Aye.

CHAIRMAN KELLIHER: Aye.

Thank you very much. That's a wrap.

(Whereupon, at 11:30 a.m., the Commission meeting was concluded.)