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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 - MISCELLANEOUS :
CONSENT ENERGY PROJECTS - CERTIFICATES :
DISCUSSION ITEMS :
STRUCK ITEMS :
- - - - -x

915TH COMMISSION MEETING
OPEN MEETING

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

Thursday, February 15, 2007
10:05 a.m.

1 APPEARANCES:

2 COMMISSIONERS PRESENT:

3 CHAIRMAN JOSEPH T. KELLIHER

4 COMMISSIONER SUEDEEN G. KELLY

5 COMMISSIONER MARC SPITZER

6 COMMISSIONER PHILIP MOELLER

7 COMMISSIONER JON WELLINGHOFF

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9 SECRETARY MAGALIE R. SALAS

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21 ALSO PRESENT:

22 DAVID L. HOFFMAN, Reporter

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

2 (10:05 a.m.)

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

8 (Pledge of Allegiance recited.)

9 CHAIRMAN KELLIHER: I have a couple of brief
10 opening remarks before we get to the main business of the
11 day, but let me first of all start with an award. I'd like
12 to give an award to Marv Rosenberg.

13 I'd like to recognize Marv Rosenberg of the
14 Office of Energy Markets and Reliability, for his career in
15 public service. Marv joined the Commission in November of
16 1984, after several years with the Federal Trade Commission,
17 and he recently retired at the end of last year.

18 Now, during his time here at the Commission, Marv
19 created the Generic Rate of Return Program, which was used
20 to set the profit target for a number of companies over
21 several years.

22 He's also known as Mr. OASIS. Marv was the
23 principal author of Order Number 889, and many following
24 Orders that established the Commission's requirements for an
25 electric transmission reservation system known as OASIS.

1 OASIS represents the Commission's first foray into the
2 Internet.

3 We do not claim to have invented the Internet --
4 (Laughter.)

5 CHAIRMAN KELLIHER: -- but we introduced OASIS
6 into the Internet.

7 Now, Marv worked continuously to improve the
8 technical requirements for OASIS, as well as on development
9 of other gas and electric business standards, working
10 closely with the Gas Industry Standards Board, and then at
11 its successor organization, the North American Energy
12 Standards Board, NAESB.

13 His work on behalf of the Agency has been
14 recognized by NAESB and its member companies, as well as by
15 his colleagues here at the Commission.

16 Marv, on behalf of the Commission, it's my
17 pleasure to present you with the Career Service Award and
18 to thank you for your service to the Commission and the
19 American people.

20 (Applause.)

21 CHAIRMAN KELLIHER: I'd like to make a brief
22 comment about the State of the Markets Report. Later today,
23 the Commission Staff will release the 2006 State of the
24 Markets Report on the oversight pages of the Commission
25 website that we initiated last month.

1 The Report summarizes the important natural gas
2 and electric trends over the last year, focusing on the
3 remarkable recovery of natural gas markets after Hurricanes
4 Katrina and Rita in late 2005, the resilience of the
5 electric system in the face of widespread heat waves last
6 Summer, and continuing long-term trends that affect electric
7 and gas market prices, volatility, and investment trends.

8 We believe the Report will be helpful to
9 summarizing recent market conditions for those interested in
10 the energy markets. Now, I'm pleased that we can make use
11 of the website for today's release of the State of the
12 Markets Report.

13 This is the first time that Staff has been able
14 to release it so quickly. In the past, the Report has
15 lagged by about six months.

16 Now, regarding use of the website over the past
17 months, since its launch, through Tuesday of this week, the
18 main oversight pages had received 4,667 hits, so I think
19 there's certainly an interest in the State of the Markets
20 Report, and I think that displaying it over the website, so
21 that it's really a real-time document, is of value to people
22 in the industry and to other customers.

23 Now, the overview report of last Summer's
24 electricity markets, has received almost 2,500 hits, so that
25 one aspect alone has had a lot of interest.

1 Now, I have received, and I know that Susan Court
2 and Steve Harvey have received much positive feedback for
3 the new website.

4 Also, I'd like to turn at this point to Mark
5 Spitzer to make some comments about a recent effort that the
6 Commission has taken to revive the Competitive Solicitation
7 Working Group that we've established with state regulators.
8 Mark?

9 COMMISSIONER SPITZER: Thank you, Mr. Chairman,
10 thank you very much.

11 I'm getting used to snow days. It's been awhile.
12 I guess we have one today.

13 I'll tell you what obviously concerns this
14 Commission and certainly state regulators and those
15 responsible for reliable electric service, is, where are we
16 going to get the generation to meet increasing demand, not
17 just in areas where there's enormous population growth, such
18 as the West, but areas where there is congestion, such as on
19 the East Coast, and simply to keep up with increasing
20 demand, per capita demand.

21 And there are many strategies for dealing with
22 this, but increasing the supply of generation is very
23 important, and as my colleagues know, the Competitive
24 Procurement Task Force had been dormant for some time, and
25 the Chairman directed that it be reinstated, and I thank

1 the Chairman for his confidence in me serving as the Federal
2 Coordinator on this.

3 This is an area where there is an overlap of
4 jurisdiction between federal and state regulators. There is
5 quite a bit of interest in this topic.

6 In addition to sleepless nights associated with
7 worrying about where the generation is going to come from,
8 who's going to build it, how it will connect to the grid,
9 there are concerns about the impact on ratepayers.

10 I look forward very much to working with
11 stakeholders. Specifically, I'll mention Georgia, Chairman
12 Stan Wise, and Arizona's Jeff Hatchmiller, and hopefully
13 this process will be one where we can ascertain best
14 practices, in order to develop a very robust competitive
15 solicitation.

16 It's interesting that on the day when we're
17 taking OATT reform, which was a very long process with
18 respect to transmission, that had, certainly, a number of
19 issues that bear on generation, I think it's appropriate
20 today to make just a few remarks and institute this, and
21 look forward to the participation here at the FERC, as well
22 as our colleagues throughout the country.

23 Thanks, Mr. Chairman.

24 CHAIRMAN KELLIHER: I just want to pick up on
25 some of your comments, just how -- the way the electricity

1 industry is regulated in this country, it's a federalist
2 scheme. FERC has important authorities; state regulators
3 have important authorities.

4 On issues like demand response, as well as
5 resource procurement, I mean, our authorities are imperfect,
6 but I believe state authorities also are imperfect, but
7 that's why I think there's a need for us to work closely
8 with our state regulators, so that if we have a common
9 policy direction we want to move in, I think if we have
10 these kind of working groups, we're more likely to
11 accomplish our common goals.

12 So I'm glad that you're going to serve in that
13 role.

14 I think we have one or two introductions.
15 Commissioner Moeller?

16 COMMISSIONER MOELLER: Thank you, Mr. Chairman.
17 My colleagues, Commissioners Spitzer and Wellinghoff had
18 this opportunity already, but this is my first chance to
19 introduce some of my family. My wife, Elizabeth, is here,
20 along with her sister from California.

21 (Applause.)

22 CHAIRMAN KELLIHER: Any other introductions,
23 colleagues?

24 (No response.)

25 CHAIRMAN KELLIHER: No, okay, well, then, I'd

1 just like to note that since the January 18th Open Meeting,
2 we have issued 55 Notational Orders, so we continue to be
3 very productive in between the Open Meetings.

4 Madam Secretary, let's now turn to the consent
5 agenda.

6 SECRETARY SALAS: Good morning, Mr. Chairman,
7 and, good morning, Commissioners. Since the issuance of the
8 Sunshine Notice on February the 8th, E-3, E-4, and E-6 were
9 struck from this morning's agenda.

10 Your consent agenda for this morning is as
11 follows: Electric Items - E-2, 5, 7, 8, 9, 10, 11, 12, 13,
12 14, 15, 16, and 17.

13 Miscellaneous Items: M-3.

14 Gas Items: G-1, 2, 3, 4, and 5.

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

16 Certificates: C-1, 2, 3, 4, and 5.

17 As required by law, Commissioner Moeller is not
18 participating in E-2 and E-5; and Commissioner Wellinghoff
19 is not participating in G-5.

20 As to C-1 on this consent agenda, Commissioner
21 Wellinghoff is dissenting, in part, with a separate
22 statement, and now we will take a vote, starting with
23 Commissioner Wellinghoff.

24 COMMISSIONER WELLINGHOFF: I vote aye, with the
25 recognition of my recusal on G-5 and my dissent on C-1.

1 SECRETARY SALAS: Commissioner Moeller?

2 COMMISSIONER MOELLER: Votes aye, with the
3 exception of E-2 and E-5.

4 SECRETARY SALAS: Commissioner Spitzer?

5 COMMISSIONER SPITZER: I vote aye.

6 SECRETARY SALAS: Commissioner Kelly?

7 COMMISSIONER KELLY: Aye.

8 SECRETARY SALAS: Chairman Kelliher?

9 CHAIRMAN KELLIHER: Aye.

10 SECRETARY SALAS: The first item on the
11 discussion agenda this morning, is E-1. This is Preventing
12 Undue Discrimination and Preference in Transmission
13 Services, and it is a presentation by Mason Emmett and Dan
14 Hedberg.

15 MR. EMNETT: Good morning, Mr. Chairman and
16 Commissioners. My name is Mason Emmett, from the Office of
17 General Counsel. With me at the table, is Dan Hedberg, from
18 the Office of Energy Markets and Reliability.

19 We present to you Item E-1, the Draft Final Rule
20 on Preventing Undue Discrimination and Preference in
21 Transmission Service.

22 I'd begin by describing the purpose and
23 applicability of the Draft Rule, along with reforms related
24 to the calculation of available transfer capability and
25 transmission system planning.

1 Dan will then describe additional reforms, more
2 specifically related to the services provided under the
3 Commission's pro forma OATT, the Open Access Transmission
4 Tariff.

5 The pro forma OATT was adopted over ten years ago
6 in the landmark Order Number 888. Order 888 required
7 transmission-owning public utilities to provide
8 nondiscriminatory open access to their transmission
9 facilities, fostering the development of greater competition
10 in wholesale power markets, by reducing barriers to entry in
11 the provision of transmission service.

12 Despite the Commission's efforts in Order 888,
13 it's become apparent over the years that the pro forma OATT
14 contains flaws that undermine realizing its core objective
15 of preventing undue discrimination.

16 Last Spring, the Commission proposed to remedy
17 these flaws through various reforms proposed in a Notice of
18 Proposed Rulemaking. The Draft Final Rule adopts a number
19 of these reforms.

20 Generally speaking, these reforms are intended to
21 achieve three goals: First, the Draft Final Rule seeks to
22 strengthen the pro forma OATT to ensure that it achieves its
23 original purpose of remedying undue discrimination.

24 Second, the Draft Final Rule provides greater
25 specificity regarding the requirements of the pro forma

1 OATT. This will reduce opportunities for the exercise of
2 undue discrimination, make undue discrimination easier to
3 detect, and facilitate the Commission's enforcement of the
4 tariff.

5 Finally, the Draft Final Rule increases
6 transparency in the rules applicable to planning and the use
7 of the transmission system.

8 The Draft Final Rule applies to all public
9 utility transmission providers, including Commission-
10 approved regional transmission organizations and independent
11 system operators.

12 Each transmission provider will therefore be
13 required to file revisions to their OATTs to conform to the
14 reformed pro forma tariff.

15 The Draft Final Rule establishes procedures for
16 making these filings, and provides an opportunity for
17 transmission providers to demonstrate that any deviations
18 from the pro forma tariff, are consistent with or superior
19 to the reformed tariff.

20 Turning to the reforms adopted in the Draft Final
21 Rule, the first significant action relates to available
22 transfer capability, or ATC.

23 The Draft Final Rule concludes that the
24 calculation of ATC, is one of the most critical functions
25 under the OATT, because it determines whether transmission

1 customers can access alternative power supplies. Despite
2 this, the existing pro forma OATT does not prescribe how ATC
3 should be calculated.

4 To date, the Commission has, instead, relied on
5 voluntary efforts by the industry to develop consistent
6 methods of ATC calculation.

7 The Draft Final Rule concludes that these
8 voluntary efforts have failed to achieve the consistency
9 necessary to ensure that transmission providers have
10 nondiscriminatory access to service.

11 The Draft Final Rule, therefore, requires
12 transmission providers to develop consistency in all ATC
13 calculation components and some data inputs and modeling
14 assumptions, as well as consistency in the exchange of ATC-
15 related data between transmission providers.

16 To achieve this consistency, public utilities are
17 directed to work with NERC, the North American Electric
18 Reliability Corporation, and NAESB, the North American
19 Energy Standards Board, to develop appropriate ATC-related
20 standards within nine months and 12 months of the Final
21 Rule, respectively.

22 The Draft Final Rule also increases the
23 transparency of ATC calculations. Each transmission
24 provider is directed to include in its OATT, the specific
25 ATC calculation methodology it uses.

1 Transmission providers are also directed to post
2 all data and models relevant to ATC calculations, on their
3 OASIS, the Open Access Same-Time Information System.

4 Finally, the Draft Rule establishes metrics by
5 which transmission providers must measure the approval and
6 denial of transmission service.

7 The Draft Final Rule concludes that these
8 reforms, taken together, will reduce the discretion of
9 transmission providers, and, along with it, opportunities
10 for discrimination in performing their OATT obligations.

11 The second major area of reform concerns
12 transmission planning. The Draft Final Rule concludes that
13 transmission planning is another critical function under the
14 pro forma OATT.

15 Participation in the planning process, allows
16 customers to consider and access new sources of energy.
17 Adequate planning also provides the opportunity to explore
18 the feasibility of non-transmission alternatives.

19 The existing pro forma OATT, however, provides
20 limited guidance regarding how transmission customers are
21 treated in the planning process, and provides them very
22 little information on how transmission plans are developed.

23 The Draft Final Rule remedies this deficiency by
24 requiring transmission providers to open their transmission
25 planning process to customers, coordinate with customers

1 regarding future system plans on a local and regional level,
2 and share necessary planning information with customers.

3 Specifically, transmission providers must
4 develop, in consultation with customers, neighboring
5 transmission providers, affected state authorities, and
6 other stakeholders, a planning process that satisfies nine
7 principles:

8 Coordination, openness, transparency, information
9 exchange, comparability, dispute resolution, regional
10 coordination, economic planning, and cost allocation.

11 Through these nine principles, the Draft Final
12 Rule requires transmission providers to develop a
13 coordinated and regional planning process that gets
14 customers and other stakeholders a seat at the planning
15 table.

16 Each transmission provider is directed to develop
17 its planning process within seven months of the Final Rule,
18 after coordinating with its neighbors and stakeholders.

19 The Draft Final Rule concludes that incorporating
20 these planning processes into each transmission provider's
21 OATT, will remove incentives that transmission providers may
22 have to discriminate in the development of transmission
23 plans.

24 Dan will now address specific reforms related to
25 the services provided under the pro forma OATT.

1 MR. HEDBERG: Good morning, Mr. Chairman and
2 Commissioners. One of the major reforms adopted in the
3 Draft Final Rule that will increase the efficient
4 utilization of transmission, involves changes to long-term,
5 firm, point-to-point transmission service.

6 The existing pro forma OATT allows a transmission
7 provider to deny a request for long-term, firm, point-to-
8 point service, if the request cannot be satisfied in as
9 little as one hour of the requested term.

10 This practice discourages the efficient use of
11 the existing grid, and precludes access to alternative power
12 supplies. To remedy this problem, the Draft Final Rule
13 requires a new conditional firm option be offered to
14 customers seeking long-term, firm, point-to-point
15 transmission service.

16 This conditional firm component for long-term,
17 firm, point-to-point service, requires that transmission
18 providers identify either defined system conditions or an
19 annual number of hours during which service will be
20 conditional and may be curtailed, and allows the customer to
21 choose which alternative best fits its needs.

22 The availability of this conditional firm option
23 for long-term, firm, point-to-point transmission service, is
24 particularly important to wind resources that provide
25 significant economic and environmental value, even if

1 curtailed under limited circumstances.

2 The Draft Final Rule also modifies the existing
3 redispatch obligation for transmission providers to evaluate
4 the provision of redispatch from their own resources, and
5 provide customers with information on the capabilities of
6 other generators to provide redispatch.

7 The duration of both the conditional firm and
8 redispatch service options, is limited to a time period over
9 which service can be reasonably provided, consistent with
10 reliability planning and the operation of the system, to
11 ensure that reliability to native load customers is
12 maintained.

13 With respect to the proposal submitted by the
14 Transparent Dispatch Advocates, the Draft Final Rule
15 declines to adopt the portions of the proposal that would
16 change the basic nature of the services provided under the
17 OATT, or otherwise establish new markets.

18 However, the Final Rule does provide a limited
19 posting requirement for redispatch information associated
20 with the transmission provider's current OATT obligations.

21 Another reform adopted in the Draft Final Rule,
22 involves the pricing of generator and energy imbalances.
23 This reform will benefit all generators, particularly clean-
24 energy intermittent resources such as wind generators and
25 any customer seeking access to these generators, by

1 requiring that such imbalance charges be related to the cost
2 of correcting the imbalance and exempting intermittent
3 resources from the highest of these imbalance charges.

4 This reform responds to concerns that existing
5 imbalance charges are excessive and no longer just and
6 reasonable and fail to account for the special circumstances
7 presented by intermittent resources.

8 The Draft Final Rule also eliminates a deterrent
9 to joint planning, by simplifying the process by which a
10 customer may receive credits for new customer-owned
11 facilities.

12 This reform will benefit customers by eliminating
13 the requirement that a customer can receive credits for any
14 new facilities it constructs, only if they are jointly
15 planned.

16 The revised requirement continues to require
17 customer facilities to meet an integration test in order to
18 receive credits, but presumes that test to be met, if it's
19 shown that such customer-owned facilities, if owned by the
20 transmission provider, would be eligible for inclusion in
21 the transmission provider's rates.

22 Another significant rate-relate reform adopted in
23 the Draft Final Rule, is eliminating the price cap for
24 reassignments of point-to-point transmission capacity by all
25 customers.

1 In place of that cap, the Draft Final Rule would
2 allow negotiated rates between the customer and its
3 assignee. The Draft Final Rule concludes that the cap on
4 the reassignment of point-to-point service, can be
5 eliminated, because it's not necessary to remedy market
6 power, and should facilitate the greater use of the grid in
7 an economical fashion.

8 The negotiated rates for capacity reassignments,
9 will be required to be posted on OASIS, and transmission
10 providers will be required to aggregate data on capacity
11 reassignments and submit such data on a quarterly basis to
12 allow monitoring of the secondary capacity market.

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1 MR. HEDBERG: The draft final rules also modifies
2 and approved several non-rate provisions of the pro-forma
3 OAT, based on our experience over the last ten years and
4 clarifies others that have proven ambiguous.

5 For example, we reform our rollover rights
6 policies to ensure that the rights and obligations of
7 rollover customers are consistent with the resulting
8 obligations of transmission providers, to plan and upgrade
9 the system to accommodate rollovers.

10 The draft final rule would revise the pro forma
11 tariff to extend the rollover right only to those customers
12 taking service of five years or longer, and require a
13 customer to give notice of its intent to renew the contract
14 at least one year prior to its expiration, rather than the
15 current 60 days.

16 In order to increase the efficient use of
17 existing capacity, the draft final rule also proposes to
18 change the reservation priority rules to give priority to
19 pre-confirmed transmission service requests for non-firm
20 service and short-term firm service submitted in the same
21 time period as non-firm requests.

22 The draft final rule also will strengthen
23 compliance and enforcement efforts by increasing the
24 transparency of pro forma OAT administration. The draft
25 final rule will increase the ability of customers and our

1 Office of Enforcement to detect undue discrimination.

2 The draft final rule also increases the clarity
3 of many other OAT requirements, thereby facilitating
4 compliance by transmission providers with our regulations.

5 We wish to thank the many members of staff that
6 have contributed to preparation of this draft final rule.
7 Considerable staff resources have been dedicated to
8 addressing the voluminous comments received in this
9 proceeding, so that the Commission can take prompt action on
10 this final rule.

11 The team includes representatives of the Office
12 of Energy Markets and Reliability, the Office of the General
13 Counsel and the Office of Enforcement. In recognition of
14 their hard work, we would like to ask the members of the OAT
15 reform team to stand at this time.

16 (Applause.)

17 MR. HEDBERG: Thank you all. This concludes
18 staff's presentation. We'd be happy to answer any questions
19 you may have.

20 CHAIRMAN KELLIHER: Thank you very much. I think
21 that description was excellent. I think it would be very
22 helpful to the regulated community as well as customers, to
23 give them their first taste of what this major new rule
24 accomplishes.

25 Let me begin by congratulating the OAT reform

1 team for their superb work throughout this rulemaking.
2 Thomas Hobbes once said that "Life is nasty, brutish and
3 short." That probably describes your life over the past
4 year with this effort.

5 (Laughter.)

6 CHAIRMAN KELLIHER: But altogether, the team was
7 charged with reviewing about 6,500 pages of detailed
8 comments from over 300 parties, identifying the major issues
9 that the Commission had to decide, proposing options for our
10 consideration, assisting and supporting our deliberations,
11 and drafting an order and tariff language making
12 comprehensive reforms.

13 I think the order is a very well-written order.
14 It's like a Russian novel a bit in terms of its length, but
15 it is actually a very well-written order. So don't be
16 discouraged by its size. It's worth a read.

17 Basically what you've done, you've done the hard,
18 unglamorous work of tariff reform. The OAT reform team,
19 and we get to give the pretty speeches at the open meeting.

20 But you've done really the hard, unglamorous
21 work over the past year and I'm deeply grateful for it, and
22 I thank you. I think people will see the product of the
23 effort when they actually read the Russian novel.

24 I want to praise the leadership of our general
25 counsel, John Moot, who probably doesn't want me to say

1 anything about him. But that's one reason I'm tempted to
2 say something.

3 At the beginning of this effort, I knew that John
4 was a brilliant lawyer. There's no question about that.
5 But really at the end, I see the way that he shepherded this
6 process through to fruition shows that he is also a talented
7 manager and a very able strategist.

8 I just think that the Commission is very ably
9 served by John as our general counsel. He's our general
10 counsel and I am in his debt. Also, I thank him. Let me
11 now turn to my pretty speech, or my attempted one.

12 The primary task of the Commission in the area of
13 electric regulation is clear. It's to guard the consumer
14 from exploitation by non-competitive electric power
15 companies. The action we take today is fully consistent
16 with that duty.

17 The primary goal of the OAT reform is to prevent
18 undue discrimination and preference in transmission service.
19 We have secondary goals as well, namely promoting
20 competition in wholesale power markets and strengthening the
21 interstate power grid.

22 Today, we conclude that the existing open access
23 transmission tariff provides an opportunity to engage in
24 undue discrimination and preference in transmission service,
25 and we act to prevent that undue discrimination and

1 preference.

2 When the Commission makes a finding of undue
3 discrimination and preference, we're required by law to act
4 to prevent it. We must act. We cannot allow undue
5 discrimination and preference to remain undisturbed.

6 The final rule prevents undue discrimination and
7 preference in a number of ways. First, it does so by
8 increasing the transparency of OAT administration. It will
9 now be possible to pry open the black box that has
10 frustrated transmission customer for so long.

11 The final rule prevents undue discrimination and
12 preference by eliminating the wide discretion that
13 transmission providers currently have in calculating
14 available transmission capability. This discretion is an
15 invitation to engage in undue discrimination, and we
16 eliminate that opportunity.

17 The final rule prevents undue discrimination by
18 providing an open, transparent and coordinated transmission
19 planning process, that will consider the needs of native
20 load customers and transmission customers as well as the
21 transmission providers.

22 The final rule prevents undue discrimination by
23 requiring that transmission providers offer conditional firm
24 transmission service, and by modifying their re-dispatch
25 obligations.

1 The final rule also makes a host of other
2 reforms, such as reforming our rollover right policy,
3 removing the price cap on reassigned capacity, granting our
4 priority to pre-confirmed requests for transmission service,
5 and providing greater clarity regarding wholesale contracts
6 that qualify as network resources.

7 The changes that we make will also facilitate
8 compliance. Recently, the Commission has taken significant
9 steps to enforce the OAT. In the past, there may have been
10 a perception that the Commission assumed compliance with the
11 OAT. That is no longer the case. We are actively engaged
12 in ensuring compliance and enforcing the OAT.

13 The final rule will facilitate compliance by
14 providing greater clarity. If we're going to enforce the
15 OAT, there is a burden on the Commission to be clear on the
16 requirements. Compliance cannot be elusive. There is a
17 burden on us to be clear in exactly what requirements we're
18 imposing.

19 Just as the wide discretion in ATC calculation
20 frustrated transmission customers, it also frustrated the
21 efforts of regulated companies to comply, and the
22 Commission's efforts to enforce.

23 The final rule rests on very strong legal
24 grounds. The rulemaking is based on our authority under
25 Section 206 of the Federal Power Act. The courts have

1 recognized that the Commission's remedial authority is at
2 its zenith when we act to prevent undue discrimination and
3 preference.

4 There are other goals as well to be accomplished
5 this final rule. The Commission guards consumers in a
6 number of different ways. One is by effective regulation,
7 and I think we're accomplishing that today. Another is by
8 promoting competition in wholesale power markets.

9 In my view, OAT reform will promote competition
10 in wholesale power markets as well as provide effective
11 regulation. A vital means of promoting effective
12 competition in wholesale power markets is open access
13 transmission.

14 The relationship between open access and
15 effective competition has long been recognized. Each of the
16 major three federal laws enacted in the past quarter century
17 have promoted open access in order to encourage the
18 development of competitive wholesale markets.

19 Competitive wholesale markets in this country do
20 face challenges. They certainly do face challenges, and the
21 OAT reform is not the solution to all these challenges, nor
22 was it intended to be.

23 But the OAT reform final rule will promote
24 competitive markets by preventing undue discrimination and
25 preference, and assuring a more perfect open access to the

1 interstate power grid. The OAT reform final rule also
2 strengthens the interstate grid itself.

3 The reality is that we do not have a national
4 grid but a series of regional grids. At the same time,
5 ownership of that grid is highly disaggregated.

6 The solution that we advance is strengthening
7 regional transmission planning. That should work to the
8 advantage of wholesale and transmission customers, but also
9 the transmission customers themselves.

10 Effective regional planning should make it easier
11 to address cost allocation issues, for example. We have
12 been careful in our approach to the final rule. We started
13 with a Notice of Inquiry that posed a host of questions. We
14 had a long period of outreach, leading up to the proposed
15 rule last May.

16 That outreach was critical in developing a
17 proposed rule that had a great deal of support when it was
18 issued, and has made it easier for us to act on a final rule
19 today.

20 The responses to the Notice of Inquiry and our
21 outreach showed that there was broad consensus around a few
22 points. One is that the Commission should build on the OAT,
23 not dismantle it. That's, I think, exactly what we're doing
24 today.

25 We began this reform process by praising the OAT

1 not by burying it, and the OAT reform final rule strengthens
2 the OAT and ensures that it achieves its original purpose,
3 reducing barriers to entry by limiting undue discrimination.

4 I also think this final OAT shows the Commission
5 at its best. OAT reform has been one of my top priorities
6 as chairman, but the final rule is a product of the entire
7 Commission, both the staff and the members of the
8 Commission.

9 OAT reform is actually the product of two
10 different commissions. The process began under the prior
11 commission when Nora, Suedeem and I proposed a Notice of
12 Inquiry on a proposed rule, both by unanimous votes.

13 I want to credit Nora. If she's watching over
14 the website, I want to credit her for her important role, in
15 both the Notice of Inquiry and the proposed rule.

16 As the OAT reform concludes under the current
17 Commission the same way it began: Through joint
18 deliberation, and what I think are unanimous votes.

19 Now the Commission, in my view, speaks the
20 loudest when it speaks with one voice, and today, I think we
21 speak with one voice and demonstrate a commitment to guard
22 the consumer from exploitation and discharge our legal duty
23 to prevent undue discrimination and preference.

24 I look forward to hearing the views of my
25 colleagues and I look forward to the vote. John.

1 COMMISSIONER WELLINGHOFF: Thank you. I have a
2 few comments. The first group I want to thank is the FERC
3 Print Shop.

4 (Laughter.)

5 COMMISSIONER WELLINGHOFF: This binder contains
6 the agenda items. This portion of the binder here is the
7 rule and it's printed double-sided. So the print shop put
8 in some overtime, putting in the redrafts of this rule.
9 They do need to be commended and thanked.

10 The other group that needs to be thanked are all
11 the people who took up the slack for all the people who
12 worked on the OAT rule. Obviously, we have a huge team who
13 works on this rule, but there are other people who actually
14 continue on with the duties of the Commission, and have
15 continued to function efficiently and in a timely manner on
16 other matters. Those people need to be commended as well.

17 I certainly do want to thank the team for their
18 countless hours in reviewing this voluminous record. Ask
19 Joe Gibbs the details of that, and conducting the extensive
20 outreach necessary and of course another rewriting of it.

21 I do want to single out John Moot. John, thank
22 you for guiding this rule through. You really are to be
23 commended. Mr. Chairman, I want to thank you.

24 When you came to this Commission in 2003, OAT
25 reform was your number one priority, and I really do think

1 you should be commended for your foresight and your
2 leadership in this area. Thank you very much.

3 Lastly, I would like to thank all the many
4 commenters, all the individuals who provided us comments on
5 this rule. I really could not have reached the conclusions
6 I did without all the assistance from many groups who
7 provided us with very timely and insightful comments
8 regarding the rule.

9 Order 888, I think, responded to a radical change
10 in the electric industry. Since the passage of the Federal
11 Power Act of 1935, the electric industry had evolved from an
12 industry characterized by self-contained transmission
13 systems covering a limited service area, to one witnessing
14 rapid expansion of independent power producers, and the
15 potential for broad markets and enhanced competition.

16 This change, I think, was in large part driven by
17 technological advancements. Since the issuance of Order No.
18 888, the electric industry has experienced another radical
19 transformation, again fueled in large part by technological
20 advancements and facilitated by Congressional and Commission
21 actions.

22 The electric industry now reflects a
23 significantly increased trade in bulk power markets, with
24 the transmission grid being more heavily used, and used in
25 new ways.

1 At the same time, there's been a decline in
2 investment to support these bulk power markets, and a
3 failure to aggressively encourage advanced technologies.
4 Together, those trends are threatening reliability and
5 causing billions of dollars in congestion costs, and
6 undermining competition.

7 But we cannot simply build our way out of these
8 problems. The industry has changed in the past, and no
9 doubt the change we will see in the future is primarily
10 technological. Therefore, we must spend smartly and we must
11 spend efficiently.

12 We most promote investment in efficient
13 transmission facilities, as well as facilitate demand
14 response, renewables and other technologies, in order to
15 begin to solve the nation's energy problems.

16 In EPact 2005, Congress emphasized many of these
17 same principles. In particular, Congress required the
18 Commission to promote reliable, economically efficient
19 transmission in bulk power markets by, among other things,
20 encouraging the deployment of advanced technologies.

21 Indeed, Congress provided us with the guidance as
22 to the types of technologies to encourage, including
23 flexible AC transmission systems, controllable loads such as
24 demand response, distributed generation such as combined
25 heat and power, photovoltaics, and enhanced power device

1 monitoring.

2 Today's final rule expressly recognizes that the
3 reforms of OAT we adopt today are consistent with the
4 policies and principles embodied in the 2005 EPact.
5 Therefore, it's particularly timely that we address our open
6 access rules for transmission service.

7 The Western Governors Association stated that
8 it's important to demonstrate that the existing grid is
9 being officially utilized to build the case for transmission
10 expansion. I agree. I view OAT reform as inextricably
11 related to efficient grid management.

12 There are a number of important aspects to this
13 rule. A number of them have been discussed by our staff as
14 well as by the Chairman, and I'm sure my colleagues will
15 discuss some as well.

16 I'd like to highlight a few of particular
17 interest to me and I think noteworthy. Many aspects of the
18 final rule will facilitate the participation and development
19 of renewable and demand resources.

20 With respect to demand resources, the reforms we
21 make to the pro forma OAT today put demand resources for the
22 first time on an equal footing with other resources, and
23 directly contribute to the reliability and efficient
24 operational expansion of the electric transmission system.

25 It provides that demand resources, distributed

1 generation and non-generation resources capable of providing
2 service may provide ancillary services such as reactive
3 supply of voltage control, regulation and frequency of
4 response, energy imbalances, separable reserves and
5 generator imbalances.

6 Further, we find that demand resources capable of
7 performing the needed functions should be permitted to
8 participate on a comparable basis in the open transmission
9 planning process.

10 We also provided a forum for stakeholders to come
11 forward with demand response project proposals that they
12 wish to have considered in the development of the
13 transmission plan.

14 The final rule also recognizes the intermittent
15 nature of renewable resources like wind. As a result of
16 that recognition, we have in the final rule established a
17 conditional firm option to firm point-to-point service that
18 will allow renewable resources greater access to the
19 transmission grid and at the same time make more efficient
20 use of existing grid capacity.

21 In addition, the final rule states that imbalance
22 charges "are to capture the special circumstances presented
23 by intermittent generators and their ability to precisely
24 forecast or control generation levels."

25 To sum up, removing undue discrimination in

1 transmission service and enhancing and expanding the grid
2 smartly will promote even more competitive markets at lower
3 costs to consumers.

4 As such, I intend to vote in favor of this rule.
5 Thank you.

6 CHAIRMAN KELLIHER: Phil.

7 COMMISSIONER MOELLER: Thank you, Mr. Chairman.
8 It's been ten years since the Commission undertook 888.
9 It's time, maybe overdue, that we take a good thorough look
10 at it.

11 First, I want to commend you, Commissioner Kelly
12 and former Commissioner Brownell for, as you outlined,
13 undertaking this effort first in 2005 and then earlier this
14 year, before we arrived.

15 As you heard me say before, it's part of good
16 government, which is taking a lookback on existing policies,
17 seeing what's working and where it can be improved.

18 This is an order that's really about squeezing
19 efficiencies out of the current system and promoting more
20 competitive wholesale markets. I think the order does an
21 excellent job of doing both.

22 For instance, on ATC calculations, it's worth
23 noting that none of our commenters argued for the status
24 quo. Everyone argued that the system needed clarification.

25 Similarly, as we go to what Commissioner

1 Wellinghoff mentioned, the condition form option is
2 something that will help renewables in this country and
3 probably was thought of as a relatively radical idea when it
4 was first promoted.

5 But now, I think, there's a general consensus
6 that it can work throughout the country. The regional
7 planning requirements are really quite significant, and will
8 put a bit of a burden on many entities. But they are
9 necessary and also overdue, as well as the compliance and
10 enforcement provisions that are necessary to make any type
11 of real work.

12 I do want to thank all the staff that have been
13 working on this for well over a year, probably a year and a
14 half. I want to get out of their way after this meeting is
15 over, because they deserve to celebrate.

16 So I too say thank you to all of you.
17 Ultimately, the order in my mind embodies the guiding
18 principles that I tried to outline in promoting reliability,
19 sending accurate market signals, and encouraging the
20 development of a needed energy infrastructure in the
21 country.

22 I am pleased that the final rule supports these
23 principles and moves us closer to open, competitive and
24 reliable wholesale markets. Thank you, Mr. Chairman.

25 CHAIRMAN KELLIHER: Commissioner Kelly.

1 COMMISSIONER KELLY: I'd like to also start by
2 thanking the staff for the tremendous work, the long nights,
3 the many weekends that they put into this effort. It's an
4 excellent effort, and we had 1,200 very well-written pages,
5 including the revised pro forma OAT. Thank you for your
6 heroic efforts. I know we're all grateful.

7 Yesterday was Valentine's Day, and I was talking
8 to my daughter, my youngest daughter who lives in New York
9 on the telephone, and she said "Well, what are you going to
10 do tomorrow mom?" Well, I have this open meeting.

11 Then I started talking about the OAT. I went on,
12 some of the exciting things about it that were happening,
13 and that we're going to have a party afterwards. There was
14 a pause. I finished. There was a pause, and she said "Mom,
15 I love you, but do you know that you are really a big
16 dweeb?"

17 (Laughter.)

18 COMMISSIONER KELLY: I guess I am really. She
19 said "Dweebs can be cool, but you really have to work hard
20 at it."

21 (Laughter.)

22 COMMISSIONER KELLY: She inspired me to re-write
23 my talking points. So I have tried to eliminate the dweeby
24 comments in my talking points, and just talk about the
25 really cool things about this OAT reform.

1 There are some cool things about this OAT reform
2 that I think will support the broad public interest goals of
3 the nation, the Congress, this Commission and state
4 authorities.

5 I'd like to mention four really cool things. For
6 the states, changes that the new OAT requirements bring
7 regarding coordinated, open and transparent transmission
8 planning, will give state authorities new tools and
9 information resources of great value to them, as they work
10 to ensure that the needs of their states are met, emerging
11 players in the industry, and we have them.

12 These regional planning processes can provide a
13 platform not only for the existing energy players like
14 traditional generators and traditional transmission
15 solutions, but also the emerging players in the industry
16 like renewable generators and demand response resources to
17 be thoughtfully considered by decision-makers in each
18 region.

19 Given the great challenges that face our nation
20 on energy issues, the more people we have thinking about
21 those issues and making plans accordingly, the better off we
22 all are.

23 Imbalance charges. I'd like to just mention
24 briefly the positive effects, that I expect that we will see
25 from revising the OAT imbalance charge structure.

1 The old imbalance charge structure was developed
2 in a different world, where the integrated utilities
3 primarily operated their own control areas with their own
4 generation, and without much intermittent generation.

5 They were not greatly impacted by imbalance
6 charges. They handled them through inadvertent interchange
7 provisions that allowed energy to be returned in kind.

8 However, profound changes have taken place in the
9 industry, and the old imbalance charge structure has been
10 shown to be particularly hard on the newer industry
11 participants, like intermittent resources that have been
12 added to the nation's generation suite in recent years.

13 The changes that we are making to the imbalance
14 charge structure, in order to address undue discrimination,
15 will also properly reflect the intermittent nature of this
16 new and very important source of energy. I think it's very
17 cool that we are taking steps to better integrate wind and
18 other intermittent resources into the grid.

19 Finally, conditional firm. I'm very pleased
20 about the new form of point-to-point transmission service
21 known as conditional firm service. Interestingly, I think
22 it should be called "conditioned firm."

23 I know the word "conditional firm," the phrase
24 conditional firm has grown up in the industry, because
25 there's nothing conditional about it. It's firm service

1 with conditions.

2 This changed point-to-point service will permit a
3 more efficient use of the grid, without causing any
4 degradation to existing uses of the grid. That can only to
5 be to everyone's benefit, including transmission providers
6 themselves, load-serving entities and other users of the
7 grid like renewable resources.

8 It really helps open up the existing grid to more
9 use. There are many other very good features contained in
10 this rule. But the more I go on, the more dweeby it will
11 get.

12 So I think I'd just like to wrap up by saying
13 that I'm very pleased to vote for the final rule. I believe
14 it embodies an appropriate set of balanced policies, and it
15 will protect open, non-discriminatory and full access to the
16 transmission grid, to the benefit of all.

17 I also want to sincerely thank Joe for
18 recognizing the need for this effort, and championing it
19 before it was ever cool, even before he became Chairman.

20 When you proposed it, I supported the idea. But
21 the original vision was Joe's, and I think it is undeniably
22 one of the most important things we have done since taking
23 these jobs.

24 I appreciate very much being able to participate
25 on it with you and with my fellow Commissioners and with

1 Commission staff. Thanks.

2 CHAIRMAN KELLIHER: Mark.

3 COMMISSIONER SPITZER: Thank you, Mr. Chairman.
4 I don't have the same story as Commissioner Kelly. When I
5 was contemplating what to say, my son was either sledding or
6 consuming stale candy hearts.

7 (Laughter.)

8 COMMISSIONER SPITZER: The Chairman alluded to
9 Thomas Hobbes, who was a door pessimistic
10 theologian/philosopher. I'm more into the John Locke school
11 of optimism. I think we should be very optimistic.

12 This Commission and American consumers of
13 electricity should be more optimistic about this order. I
14 recall the Chairman, in one of his very first speaking
15 engagements as chairman, addressing the issue of OAT reform
16 in a conference, when I was the Arizona commissioner.

17 I recall the document landed on my desk, and to
18 save paper, Commissioner Wellinghoff, I entered it on the
19 computer. It was long and thin when it was NOPR, and I gave
20 some thought to the complexity of the underlying subject
21 matter.

22 My full speech will be posted on the Internet.
23 I'll dispense with reading that this morning and simply hit
24 some of the high points.

25 The competing issues to be balanced or interests

1 to be balanced are competition and open access, with the
2 transmission owners being able to serve native load.

3 In cogitating on opening up the transmission, I
4 analogized to the Telephone Act, which was adopted by
5 Congress in 1996, the same year of the original OAT.

6 One of the utility executives I spoke with in the
7 course of dealing with telecom described his desire to have
8 competition, but at the same time suggesting that regulators
9 recognize that it is an unnatural act -- that was his term
10 of art -- in describing how a natural monopoly was to be
11 opened up for competition.

12 It is unnatural to expect very fierce competitors
13 to cooperate with the same piece of copper wire or fiber or
14 high voltage transmission line.

15 Recognizing Commissioner Wellinghoff's justified
16 statements regarding technology, it was technology that
17 broke down the copper wire as the natural monopoly in
18 telecommunications. Now you have Internet, you have
19 wireless and you have many other elements of competition.

20 It will be a slower process for high voltage
21 transmission to lose its status as a natural monopoly. But
22 the complexity of this order that the staff grappled with
23 and the commentators argued over is recognition of this
24 tension and this unnatural act.

25 However, this order is very important and I want

1 to briefly highlight four areas where I feel it's important.
2 Notwithstanding the complexity, this order is a major
3 advance.

4 First, infrastructure. It is critical to siting
5 and infrastructure that the existing transmission lines be
6 used efficiently. Inefficient of existing transmission is
7 problematic on many grounds, including economic and
8 environmental. But it totally unacceptable to those who are
9 burdened by proposed transmission projects.

10 I think we will see the ability to deal with some
11 of the objections to transmission siting when we are able to
12 say, with a straight face, we are using our existing assets
13 in the most efficient manner possible.

14 Secondly with regard to renewable resources, I
15 think this order today is the most pro-renewable order that
16 this agency has ever delivered. We recognize the unique and
17 intermittent nature of some of the renewable resources that
18 are being offered by entrepreneurs and developers around the
19 country.

20 The wind and solar resources pose unique
21 challenges, we recognize, to the pro forma OAT, and in many,
22 many respects, as already stated by my colleagues, they are
23 major advances in renewable generation.

24 In terms of competition, I would agree with the
25 Chairman that it's important that pro-competitive

1 initiatives be well-founded in law, so we do not have legal
2 challenges and we can have stability within the regulatory
3 framework.

4 Competition is good for consumers, it's good for
5 the environment. It also happens to be the law of the
6 United States, and I think the revisions to the final tariff
7 advance the interests of competition, consistent with the
8 other competing interests that I've discussed.

9 Then I would agree that the planning process for
10 transmission is very exciting. I've seen a transmission
11 process in the Southwest that was very open, inclusive and
12 generated consensus, not only for the long-term plan but in
13 terms of the micro-details of siting transmission that I
14 already said is difficult, even in the best of
15 circumstances.

16 Transmission siting is difficult and the
17 transmission siting process, planning process undertaken in
18 this order, will substantially aid both competition in terms
19 of opening up the process as well as siting.

20 I cannot tell you how many times I've heard right
21 across the country, objections to proposed projects.

22

23

24

25

1 Well, the company just wants to build this
2 transmission line to make money, we've heard that, or,
3 another objection is, well, this transmission line doesn't
4 benefit we in X-county, because the people in Y county are
5 deriving the benefit.

6 When you open up the process and the sunlight
7 comes in, it is an amazing disinfectant. It will open up
8 the views of those in an entire region, to recognize that
9 there are connections that a failure of reliability in
10 County-X, has negative consequences, even on those to whom
11 the transmission line is proposed to be sited.

12 I think that is very valuable, and the positive
13 impacts in discrete state transmission siting cases, will be
14 felt for many years to come.

15 I, too, would like to join my colleagues in
16 thanking all those at the FERC, as well as the commentators
17 who participated in this very arduous and complex process.
18 In addition, the policy advisors to the Commissioners, I
19 know, put in many hours. Many have had to delve into
20 electricity from hydro or natural gas, and have had to step
21 up or step down, but I thank them for participating in this.

22 This, historically, is, in some degree, a
23 culmination of a ten-year process, but given the FERC's
24 enforcement power, I think it will be ongoing. I know the
25 Chairman likes historical analogies, and El Alamein was the

1 end of the beginning, and this is the beginning of the end.

2 CHAIRMAN KELLIHER: I just want to thank my
3 colleagues for all their comments. With that, if there's no
4 one else seeking to supplement their comments, why don't we
5 vote?

6 SECRETARY SALAS: Commissioner Wellinghoff?

7 COMMISSIONER WELLINGHOFF: I vote aye.

8 SECRETARY SALAS: Commissioner Moeller?

9 COMMISSIONER MOELLER: Aye.

10 SECRETARY SALAS: Commissioner Spitzer?

11 COMMISSIONER SPITZER: Aye.

12 SECRETARY SALAS: Commissioner Kelly?

13 COMMISSIONER KELLY: Aye.

14 SECRETARY SALAS: Chairman Kelliher?

15 CHAIRMAN KELLIHER: Aye.

16 SECRETARY SALAS: The second item for discussion
17 this morning is H-1, Preliminary Permits for Instream New
18 Technology Hydropower Projects. It's a presentation by
19 William Guey-Lee and John Katz.

20 MR. KATZ: Good morning, Mr. Chairman and
21 Commissioners. The Commission has seen a great deal of
22 interest in recent years with respect to new technologies
23 that may provide the nation with power from wave current and
24 instream projects.

25 In response to that, the Commission held a

1 technical conference last December 6th, to discuss these
2 technologies and get some idea of where they were headed,
3 what obstacles there were to them, and what the Commission
4 could do to help spur such development.

5 As a result of that conference, the Commission
6 today has before it, a Draft Order with respect to one
7 aspect of those technologies, and that is preliminary
8 permits, which are issued under Part I of the Federal Power
9 Act.

10 At the conference, the Commission heard some
11 concerns about ways in which preliminary permits might help
12 or hinder the development of these new technologies, and
13 this Draft Order is intended to be a response to that.

14 The Draft Order presents a Notice of Inquiry,
15 which gives three options for how the Commission can deal
16 with preliminary permits for these types of new
17 technologies: First, the Commission could choose to
18 continue its standard preliminary permit practice, which is
19 to give preliminary permit applications a moderate degree of
20 scrutiny and essentially grant them with relatively little
21 fanfare.

22 The second model proposed in the NOI, is a
23 strict-scrutiny model, under which the Commission would more
24 carefully examine proposed preliminary permits for these
25 types of projects, particularly with respect to their

1 geographic scope. That would respond to concerns we heard
2 at the technical conference about the possibility of site-
3 banking.

4 Further, during the terms of these preliminary
5 permits under this strict-scrutiny approach, the Commission
6 would carefully examine the progress made by those holding
7 the preliminary permits, with the view toward encouraging
8 them to take the steps they need in order to develop a
9 license application at the end of their permit term, and
10 with the possibility of retracting the preliminary permits,
11 if sufficient progress is not made.

12 The third option discussed in the NOI, is not
13 issuing preliminary permits at all for this type of project,
14 perhaps in recognition that they are different and that a
15 different regulatory regime in the preliminary permit arena,
16 might be best suited to them.

17 In addition, the NOI adopts for -- states that
18 the Commission is adopting during the interim, the pendency
19 of this proceeding, Option No. 2, the stricter scrutiny
20 approach. It is not a final decision by the Commission,
21 but, rather, it is something that the Commission is going to
22 do in the interim while it receives comments and takes
23 action in the NOI.

24 In addition to the discussion of preliminary
25 permits, the NOI also notes that the Commission has heard

1 some comment about the Commission's licensing procedures and
2 whether there are methods for streamlining those licensing
3 procedures that might aid in the development of new
4 technology.

5 The NOI does not reach any conclusions on that
6 subject, but, rather, notes that the Commission is going to
7 be open to hearing suggestions on that subject, and that the
8 Commission will at some point in the future, hold a
9 technical conference with respect to that notion.

10 If the Commission now will -- I will now turn the
11 presentation over to William Guey-Lee of OEP, who is going
12 to give the Commission some background on the numbers and
13 types of preliminary permit applications we've been
14 receiving.

15 MR. GUEY-LEE: Thank you, John. Good morning,
16 Mr. Chairman and Commissioners. I want to provide a quick
17 overview of where we are on the ocean preliminary permit
18 program and some details of OEP's administration under the
19 interim policy as proposed in the Notice of Inquiry.

20 (Slide.)

21 MR. GUEY-LEE: The first slide shows the
22 locations where permits have been issued. OEP has issued 11
23 permits. These are mostly located off the coast of Florida,
24 and one each in San Francisco Bay, Puget Sound, and East
25 River, New York.

1 As the Commission is aware, the project located
2 in the East River, was the subject of a Commission Order,
3 the Verdant Decision, which authorized the permittee to
4 perform onsite, in-the-water testing of new-technology
5 generating units and not be in conflict with the Federal
6 Power Act.

7 (Slide.)

8 MR. GUEY-LEE: The next slide shows the locations
9 of permit applications that are pending before the
10 Commission. As you can see, they are concentrated in the
11 New England and Northeast United States, in Cook Inlet,
12 Alaska, and in the Northwest U.S. and Puget Sound, and off
13 the coast of Oregon.

14 (Slide.)

15 MR. GUEY-LEE: The next slide shows the power
16 potential of these applications. There are more than 40
17 pending permit applications for permits. These
18 applications, including the issue permits, represent a
19 potential of almost 5,000 megawatts of energy to be
20 developed.

21 (Slide.)

22 MR. GUEY-LEE: As the next slide indicates, and
23 as John Katz said earlier, under the Commission's interim
24 policy for processing pending permits for new ocean and
25 tidal energy projects, OEP will apply strict scrutiny to

1 these applications.

2 First, Staff will review the proposed project
3 boundaries, to see if it is appropriately sized. If not
4 Staff will request applicants to reconsider the size of the
5 project boundaries.

6 Further, we will also request, where appropriate
7 and if the applicant has not provided earlier, information
8 concerning its ability to carry out the project and any
9 specific details of the technology they propose.

10 Staff will have this information available before
11 making any decisions on the applications.

12 (Slide.)

13 MR. GUEY-LEE: The next slide shows, in brief,
14 what we will do to monitor a permittee's activities, once a
15 permit is issued, to ensure that progress is being made
16 toward the development of these new technologies.

17 First, we will ask for a schedule of activities
18 from the permittee, that will lead to the filing of an
19 application for license. We will also review very closely,
20 the six-month progress reports that are required to be
21 filed.

22 If the permittee doesn't adhere to its schedule
23 of activities or if the progress reports don't show
24 sufficient progress, the Staff proposes to cancel the
25 permit.

1 Permits are issued for a term of 36 months, to
2 allow the applicant to study the feasibility of their
3 proposal, while maintaining its right of application -- its
4 right of priority of application for license under the
5 Federal Power Act.

6 While under a permit, a permittee can conduct
7 studies and other activities, including: Obtaining
8 financing for studies and development; computing cost
9 estimates; doing site-specific studies like mapping the
10 bottom of ocean or bay; measuring currents and waves; and
11 environmental studies such as effects on fisheries,
12 navigation, and recreation.

13 The permittee should also consult with federal
14 and state agencies and nongovernmental organizations.

15 OEP's role in the Commission is to oversee the
16 development of this new technology, from the permit
17 application to permit issuance, through the prefiling
18 license application process, and ultimately through the
19 licensing process leading to a Commission decision on the
20 application.

21 Thank you, and this concludes this presentation,
22 and I guess we will welcome any questions.

23 CHAIRMAN KELLIHER: Why don't I turn to
24 Commissioner Moeller?

25 COMMISSIONER MOELLER: Thank you, Mr. Chairman.

1 I think most people realize that hydropower in this country
2 produces about nine to ten percent of our total consumption
3 -- or total generation, rather, and consumption, and this
4 technology, this range of new technologies, could
5 potentially exceed that current amount of generation, and so
6 it has, I think, generated in itself, a lot of enthusiasm
7 throughout the country, particularly in coastal states, but,
8 in my home state of Washington, there's a lot of enthusiasm
9 for these new technologies.

10 We need to explore how these technologies can fit
11 within our national energy framework, how we can better the
12 regulatory process in this, and I think this is a good --
13 great effort, actually, in promoting that.

14 I also realize we have to balance certain things
15 with the development of new technologies, and environmental,
16 financial, safety considerations are all important, but I
17 wouldn't want those to dampen the enthusiasm or the
18 potential in this.

19 I appreciate both of you outlining what's in this
20 proposal. I hope that we can continue to get all kinds of
21 comments, and interested parties taking a lot of -- giving a
22 lot of attention to what we're undertaking here.

23 I did push for the possibility of a technical
24 conference again, and I appreciate the support of the
25 Chairman and my fellow Commissioners, that sometime in the

1 future, maybe after we get a little information on the tidal
2 projects that is out in the waters of my home state of
3 Washington, we can further explore the potential here.

4 Again, I go back to my home state where the
5 voters passed a renewable portfolio standard last Fall, that
6 is relatively aggressive. This is a suite of technologies
7 that can help meet that need -- not immediately; it's going
8 to be a little while, but, again, it has potential, and I
9 want to encourage that, and I appreciate all the effort of
10 the Staff to make this happen, and I hope they're not
11 disappointed that a hydro guy is pushing them a little bit,
12 but I appreciate the support for further review of these
13 technologies, with the hope that they will be commercially
14 feasible and developed where appropriate.

15 Mr. Chairman, thank you.

16 CHAIRMAN KELLIHER: Jon?

17 COMMISSIONER WELLINGHOFF: Thank you, Mr.
18 Chairman. I'm very pleased to support this NOI and these
19 new hydropower technologies.

20 It's very exciting that we have potentially 5,000
21 megawatts, just in the permits and the applications here, of
22 total capacity in this new renewable technology.

23 What's even more interesting, I think, and has a
24 lot of import for the potential of this technology, is that
25 it appears that a lot of it is located in areas that are

1 close to load centers. We've got it in the Puget Sound area
2 in the Northwest; San Francisco Bay; we've got one in the
3 East River.

4 To the extent that we can, in fact, develop
5 technologies in load centers, it's going to take pressure
6 off our transmission systems, so it's really a very exciting
7 technology from that perspective, as well, and, I think, it
8 needs to be supported.

9 And I think the other interesting thing is, you
10 know, the experience that we will gain through this NOI and
11 through, ultimately, the rules that we implement under it,
12 may be transferable to small hydrotechnologies, as well, and
13 we're getting a lot more interest in developing small hydro.

14 So, I'm looking forward to moving forward with
15 it. Thank you.

16 CHAIRMAN KELLIHER: Thanks. Colleagues?

17 COMMISSIONER KELLY: The preliminary permit
18 process has been in law and in our regulations for many,
19 many years -- what, a hundred?

20 CHAIRMAN KELLIHER: Not that long.

21 (Laughter.)

22 COMMISSIONER KELLY: Not that long?

23 But it was developed in the context of permitting
24 traditional hydro facilities. And what's interesting to me,
25 is that in all of the years -- perhaps not a hundred -- that

1 we've been permitting traditional hydro facilities and
2 following this process, we haven't had a site-banking
3 problem.

4 But we are confronting that problem today, with
5 the many requests we have pending before us -- I believe
6 there's about 45 at the moment -- for permits, preliminary
7 permits for wave current and instream applications.

8 And I'd like to take this opportunity to
9 recognize Mark Robinson and his staff for recognizing the
10 problem and for taking this initiative to present this
11 concern to the public, and to ask the question, is there a
12 way that we can be doing this permitting process better?

13 Tidal and wave power technologies are on the
14 brink of becoming genuine competitive sources of power, and
15 as more and more states, as Phil mentioned, place a reliance
16 on -- a growing reliance on renewable power for meeting
17 their energy needs, marine power from tides and waves is
18 being closely looked at as one avenue for meeting those
19 needs.

20 And it's still an infant industry, but it's
21 starting to grow, and it's growing fast. In addition to the
22 45 or so pending applications we have, we have already
23 issued 11 permits.

24 I believe that today's NOI and the corresponding
25 interim policy statement, takes just the right balanced

1 approach for moving forward in processing these permit
2 applications, while at the same time recognizing that as a
3 developing industry, the Commission has a responsibility to
4 all stakeholders to ensure that we process the applications
5 in an efficient way.

6 At our tech conference on these new technologies,
7 that we held last December, we heard from many interested
8 parties on how the Commission can best implement these types
9 of preliminary permit applications, and we discussed the
10 distinct environmental, economic, and procedural issues
11 potentially involved with these types of projects.

12 I think that today's NOI accurately represents
13 these key issues, and asks the right questions to assist us
14 in taking the appropriate next steps.

15 We are fortunate at FERC here to have a role in
16 cutting-edge technology that could lead to cleaner and
17 renewable energy, and it's an exciting time, and I
18 appreciate the public's input -- I will appreciate the
19 public's input to us on the best way to proceed.

20 CHAIRMAN KELLIHER: Thanks. I will make a few
21 comments and then turn to Mark and see if he wants to join
22 us.

23 I agree with my colleagues. We held a technical
24 conference in December and I enjoyed that. Normally at the
25 hydro conference in December, we look at the -- what we call

1 the "old dogs," affectionately, in the building, and why
2 hasn't the Escondido Project been licensed and things like
3 that.

4 (Laughter.)

5 CHAIRMAN KELLIHER: And December was interesting.
6 We were looking at new technologies and looking at to what
7 extent does our regulatory process pose burdens to these new
8 technologies, and what can we do to promote their
9 development?

10 So we had a technical conference. We wanted to
11 learn more about these technologies, new technologies that
12 utilize ocean waves, tides, and currents from free-flowing
13 rivers.

14 The purpose was to learn more about those
15 technologies, but also develop prudent next steps in our
16 regulation of these technologies. I think that today we
17 take an important next step.

18 We learned in December that these new
19 technologies do have very significant potential, but we also
20 learned that they have some significant challenges relating
21 to reliability, environmental and safety implications, and
22 commercial viability.

23 I know we've seen a lot of interest in these
24 technologies over the past year, a lot of interest in the
25 mainstream media, but also interest reflected in the

1 applications that we're seeing here at the Commission.

2 As my colleagues have noted, we've had more than
3 40 preliminary permits since last March alone, and we have
4 issued 11 permits; three for projects in New York,
5 Washington, and California, and eight for projects off the
6 coast of Florida.

7 And we have had our first license application, so
8 just judging from what's coming in the door, there's a lot
9 of interest in developing these technologies.

10 Now, a lot of the discussion at the technical
11 conference, focused on the regulatory processes that may
12 affect the viability of this new industry and participants
13 had differing views on this score.

14 Some participants really wanted the -- some
15 participants believed that the Commission's preliminary
16 permit process, doesn't fit these new technologies; others
17 wanted the Commission to expeditiously grant all
18 applications for preliminary permits, as well as future
19 applications, and some proposed that we grant permits, but
20 that we shorten the terms from 36 months to 18 months, and
21 others were concerned about possible site-banking by permit-
22 holders who, arguably, from the point of view of the people
23 with the concerns about site-banking, may have no interest
24 in actual project development.

25

1 I agree with my colleagues, that the policy we're
2 taking today balances these concerns. That was part of the
3 call we heard at the December meeting. People wanted us to
4 act on the permanent applications.

5 But we're also adopted an interim policy. We're
6 also seeking views on alternative approaches. In our new
7 policy, we propose to grant the preliminary permanent
8 applications to meet our rules, but subject then to strict
9 scrutiny.

10 If we determine that a permanent holder is not
11 actively pursuing Project X development and is not preparing
12 for a license application, we may cancel the preliminary
13 permit.

14 In our view, the interim policy supports
15 continued development of these new technology while guarding
16 against site banking. I think our action today, announcing
17 an interim policy while seeking comment and alternative
18 approaches shows that we're dedicated to demonstrating
19 regulatory flexibility with respect to developing these
20 promising technologies.

21 I agree. I think we struck the right balance.
22 Mark, comments?

23 COMMISSIONER SPITZER: Mr. Chairman, thank you.
24 We are involved in a new area of technology, and one that
25 has entrepreneurs proposing capital advancements. It's

1 important that there be legal and regulatory certainty.
2 That was the thrust of the comments from my review of the
3 transcript.

4 I can't claim Arizona as being a question of
5 title. But one of the issues that did jump out at me took
6 me back to law school in Michigan, which is a Great Lakes
7 state, so there are water resources in the Great Lakes and I
8 took a class on the Law of the Sea.

9 What intrigued me was that was back in 1981. The
10 Law of the Sea, the class I had, was completely irrelevant
11 to the current Law of the Sea, and the fights over
12 fisheries. A lot of the disputes were the extent to which
13 jurisdictional sovereignty extends beyond navigable waters.

14 How far out beyond the navigable waters the
15 dolphin trade, fisheries and the lake. Here the legitimate
16 concern is one of site banking, which does invoke the Law of
17 the Sea. To what extent does this Commission even have
18 jurisdiction consistent with international law or treaties?

19 In many cases, there are treaties that deal with
20 issues of Law of the Sea. It's extremely complicated. I
21 think it's very prudent for this Commission to proceed
22 lightly, but at the same time go forward.

23 We do not want to discourage those who are
24 proposing to invest in this area, as my colleagues have
25 pointed out.

1 It is a vast, truly unlimited potential for
2 generation of energy, where missteps can have very
3 significant consequences. I'm pleased that we're taking the
4 time to do it right.

5 CHAIRMAN KELLIHER: Shall we vote?

6 MS. SALAS: Commissioner Wellinghoff?

7 COMMISSIONER WELLINGHOFF: I vote aye.

8 MS. SALAS: Commissioner Moeller?

9 COMMISSIONER MOELLER: Aye.

10 MS. SALAS: Commissioner Spitzer?

11 COMMISSIONER SPITZER: Aye.

12 MS. SALAS: Commissioner Kelly?

13 COMMISSIONER KELLY: Aye.

14 MS. SALAS: Mr. Chairman?

15 CHAIRMAN KELLIHER: Aye.

16 MS. SALAS: To continue our discussion agenda
17 this morning, we have a joint presentation of C-6, Gulf LNG
18 Energy LSC and C-7, Mississippi LNG. It was a presentation
19 by Elizabeth Anklem, Todd Ruhkamp, John Wisniewski, Van
20 Button, Sandra Delude and Jane O'Malley.

21 MS. ANKLEM: Good morning Chairman Kelliher and
22 Commissioners. My name is Elizabeth Anklem. With me are
23 Todd Roucamp, John Wisnensky and Van Button from the Office
24 of Energy Projects, Sandra Delutte and Jay O'Malley from the
25 Office of General Counsel.

1 We'd like to begin our presentation on Items C-6
2 and C-7 before you today with a brief review of Commission-
3 authorized LNG projects in the United States. Currently,
4 there are five operating LNG terminals.

5 (Slide.)

6 MS. ANKLEM: Which have a combined capability of
7 delivering 5.8 Bcf per day of natural gas to market.

8 (Slide.)

9 MS. ANKLEM: There are an additional four LNG
10 terminalis currently under construction, and one under
11 expansion, which have a combined potential of delivering an
12 additional 9.8 Bcf per day of natural gas.

13 (Slide.)

14 MS. ANKLEM: The Commission has previously
15 authorized another seven LNG terminals and two expansions,
16 totaling 16.7 Bcf per day of additional natural gas
17 capacity.

18 (Slide.)

19 MS. ANKLEM: The draft orders in C-6 and in C-7
20 authorize the construction of two proposed LNG import
21 terminals, to be located in Jackson County, Mississippi, in
22 the Bayou Casotte area of the Port of Pascagoula.

23 The authorization of these two terminals brings
24 an additional 3.1 Bcf per day of natural gas and the number
25 of LNG projects to 18.

1 (Slide.)

2 MS. ANKLEM: In C-6, Gulf LNG Energy is
3 authorized to site and construct an LNG import terminal to
4 be used to import, store and vaporize up to 1.5 Bcf per day
5 of LNG.

6 Some of the key facilities to be constructed
7 include an LNG marine terminal, with a turning basin and one
8 protected berth, two storage tanks capable of storing a
9 total of 320,000 cubic meters of LNG, LNG vaporization and
10 send-out facilities as well as other infrastructure and
11 support systems.

12 The vaporized LNG will reach the interstate grid
13 via two interconnections to interstate pipelines. The
14 gasified LNG can be delivered directly to the
15 interconnections, or if it does not meet the gas quality
16 specifications of the downstream pipelines, through an
17 interconnection with a BP-owned gas processing plant and
18 then to the interconnections.

19 (Slide.)

20 MS. ANKLEM: In C-7, Bayou Casotte Energy, a sub-
21 D area of Chevron USA, Incorporated, is authorized to site
22 and construct an LNG import terminal next to an existing
23 Chevron oil refinery, to be used to import, store and
24 vaporize up to 1.6 Bcf per day of LNG.

25 The vaporized LNG will reach the interstate grid

1 through interconnections with five interstate pipelines.
2 Some of the facilities to be constructed include LNG
3 unloading facilities, three full containing LNG storage
4 tanks capable of storing a total of 480,000 cubic meters of
5 LNG, vapor handling facilities and intermediate fluid and
6 vaporization system, and a natural gas liquid extraction
7 facility to process any gas that does not meet the gas
8 quality specifications of the interconnecting pipelines.

9 Together, the two projects will be able to
10 provide up to 3.1 Bcf per day of natural gas to the
11 interstate grid of the Southeastern United States, and we
12 would be pleased to respond to any questions you may have.

13 CHAIRMAN KELLIHER: Any questions, colleagues,
14 comments?

15 (No response.)

16 CHAIRMAN KELLIHER: I'll make some general
17 comments really not about these particular projects but
18 further comments about gas markets and gas infrastructure.

19 First of all, with respect to markets, we
20 frequently talk about the U.S. natural gas market and I
21 think that is a little bit misleading. We actually don't
22 have a U.S. natural gas market. We have a North American
23 gas market because we've been dependent on Canadian natural
24 gas supplies for a long time.

25 But we're looking at a pretty fundamental change

1 in the North American gas market because North American
2 natural gas supply is no longer sufficient to meet North
3 American gas demand. So that is true even with the
4 development of the Alaska natural gas pipeline.

5 Now that means the U.S. gas market is a North
6 American market, and that North American market is
7 increasingly becoming part of a natural gas market.

8 I think there's a lot of implications to that,
9 some of which we can appreciate, some of which we can guess
10 at, but some of which we probably don't know at this point.

11 There's a lot of significant concern in the U.S.
12 about adequacy of natural gas supply, overall price levels
13 and price volatility. If you look at it in the context of
14 our gas market, it's becoming more international, not just
15 North American but more international.

16 There are a couple of actions we can take to
17 ensure adequate supply and reduced price volatility. We can
18 increase gas supply, expanding LNG import capacity. That's
19 what we're doing today.

20 We can increase gas storage capacity, which
21 serves as a physical hedge. I think that's something the
22 Commission is acting on. That's what helped to drive the
23 final rule in gas pricing reform that we adopted a few
24 months ago.

25 We can also act to ensure greater price

1 transparency. We're exploring how to use our EPact
2 authority. We had a technical conference last fall on that
3 very question, and will probably act very soon to start
4 deploying the EPact authority with respect to price
5 transparency. We can also police gas markets by enforcing
6 the anti-manipulation rule.

7 I think the Commission has a very good record in
8 all these areas. It's also very important to recognize the
9 relationship between infrastructure and supply and
10 infrastructure and price.

11 What is infrastructure? Infrastructure is the
12 ability to produce energy supply and move it to where it is
13 most needed. If energy infrastructure is inadequate, the
14 very predictable result and maybe the inevitable result is
15 higher prices and greater price volatility.

16 Now I'm not going to go too far down that road.
17 I'm not going to try to suggest or argue that all proposed
18 energy infrastructure projects should always be approved.
19 But I think the opposite is true.

20 Uniform opposition to energy infrastructure
21 proposals does come at a cost in the form of higher costs
22 and greater price volatility. I don't think that is
23 necessarily understood, broadly understood.

24 That's why I took the opportunity in this order
25 to repeat it, and I'm going to keep on repeating it.

1 Hopefully, it will become more understood.

2 But the orders themselves, I support the orders.

3 I just wanted to take that time to make comments.

4 Colleagues? Mark?

5 COMMISSIONER SPITZER: Thank you, Mr. Chairman.

6 I would agree with your comments. I have some that are

7 general in nature and also some that relate to these

8 specific cases before us.

9 There's been grave concern with regard to natural
10 gas, going back to 2001. It is approximately that time that
11 natural gas started tracking oil, crude oil in terms of
12 price. I think it was reported only a few years before
13 that.

14 The market became a global market for natural gas
15 as opposed to simply national or some regional markets.
16 Those days are gone. NARUC offered a study that discussed
17 not only the need for infrastructure but a multi-level
18 approach to dealing with natural gas, including LNG but also
19 including storage pipeline capacity, conservation and other
20 techniques.

21 But it is very clear that upward pressure on
22 natural gas prices at the wholesale level are a concern, and
23 the concern leads over to the electric sector as well.

24 So not only in natural gas but the associated
25 cost of electric generation are driven by the laws of supply

1 and demand. The Commission has both a Congressional and an
2 internal mandate with regard to natural gas supply,
3 including infrastructure.

4 Also, the Commission has a mandate with regard to
5 the safe and reliable operation of safety at natural gas
6 facilities. Today, the FERC proposed both mandates, the
7 certification of LNG, clean energy projects and the Casotte
8 Landing LNG project located in Jackson County, Mississippi.

9 As certificated, the projects will provide needed
10 additional natural gas supply to wholesale and end use
11 customers in the Southeastern United States.

12 In consideration of the public safety concerns
13 regarding energy projects, and as part of the fulfillment of
14 its environmental mandate, the Commission also consulted
15 with the Coast Guard, the entity ultimately responsible for
16 the approval of a site-specific safety and security plan, to
17 ensure that the Commission's draft and final environmental
18 impact statements considered all relevant safety issues.

19 Among other things, the reports evaluated the
20 impact of an LNG cargo tank breach that included a risk to
21 the public from accidental causes was negligible at both
22 facilities.

23 In any event, the Coast Guard states that there
24 is sufficient capability within the port community
25 responsible, to carefully manage the safety and security

1 risks of these projects.

2 For these reasons, I proudly support these two
3 orders.

4 CHAIRMAN KELLIHER: Commissioner Kelly.

5 COMMISSIONER KELLY: Again, I want to thank staff
6 for their hard work in processing LNG applications. I'm not
7 sure everyone appreciates the enormous amount of time and
8 effort that goes into them.

9 I'd just like to focus on that. From pre-filing
10 to actual Commission authorization, these are labor-
11 intensive processes. I have been uniformly impressed with
12 the thorough reviews that staff has undertaken to help the
13 Commission make informed decisions.

14 Today's orders approving two new onshore LNG
15 terminals are no exception. These terminals could supply
16 approximately three and a half billion cubic feet of natural
17 gas a day.

18 As usual, the Commission has had the benefit of
19 thorough environmental, security and safety analysis
20 conducted by you, in cooperation with the Coast Guard and
21 other agencies, that ultimately have resulted in our
22 decision here to authorize these terminals.

23 Of course, not all requests for Section 3
24 authorizations have been or will be processed as smoothly as
25 the two voted out today. These are for LNG terminals in the

1 Gulf area. People in the Gulf have grown up with energy
2 infrastructure, including infrastructure related to the oil
3 and gas industry around them.

4 It's a way of life. However, there are areas
5 other than the Gulf where LNG terminals are being proposed,
6 and areas, the East coast and the West coast, where the
7 population has not had the experience of having this kind of
8 infrastructure in their back yard.

9 It may be that some have uniform opposition to
10 energy infrastructure, but there are many people who are not
11 familiar with this kind of infrastructure and who are
12 concerned about it, and who raise very valid concerns that I
13 empathize with about the environmental aspects of LNG, the
14 security and the safety.

15 What I want to stress is that our staff is an
16 expert, probably one of the world's experts in all of these
17 areas, that you are fastidious in your assessment and your
18 analysis. I feel that I can always count on your
19 professionalism and your thorough analyses to guide our
20 decision-making.

21 So thank you for your hard work, and with that,
22 I'm pleased to vote out this order.

23 CHAIRMAN KELLIHER: John?

24 COMMISSIONER WELLINGHOFF: Thank you, Mr.

25 Chairman. Just a few short comments. I'm going to vote in

1 support of this order, and I'm supportive because I think
2 the staff did a very good job with respect to the issues
3 before us, the environmental and safety issues.

4 Which it goes without saying, we have to be very
5 careful with respect to these projects of this magnitude,
6 projects that can be of great public concern.

7 But there is another area. Not to give you an
8 additional job that I don't think was covered in this order,
9 but I think it was too late for me to interject my interest
10 in that, and that of course is the area of efficiency.

11 I think with respect to these projects, we should
12 look at issues of whether or not they're being constructed
13 as efficiently as possible. For example, there are LNG
14 projects, the one over here in Maryland that I visited, that
15 uses waste heat recovery to do revaporization. That's one
16 way to make a project more efficient.

17 Other things to look at with respect to LNG
18 projects would be the potential to co-locate gas generation.
19 It's sort of like a mine mouth coal plant. You've got the
20 gas there, number one. But what you also have there that's
21 very advantageous to the power plant, the fact that you have
22 waste cooling.

23 You have a lot of cooling which goes off that can
24 go into a power plant, and be used for the make-up air to
25 keep that power plant at a very efficient level.

1 I would hope that the staff in the future, in
2 evaluating projects in an appropriate time sequence, could
3 look at the efficiencies of these projects and how
4 efficiently they're being constructed, to ensure that those
5 projects that do go in are utilizing as alternatives the
6 most efficient technologies possible. Thank you.

7 CHAIRMAN KELLIHER: Phil?

8 COMMISSIONER MOELLER: Mr. Chairman, I'll quickly
9 note that LNG facilities are just a part of our range of
10 options of how we address these high prices, similar to what
11 your comments were.

12 Domestic supply, hopefully the pipeline from
13 Alaska if appropriate, more efficiency as part of the mix
14 and more storage. It's one of a complicated set of options
15 and policies we have to try and encourage, to increase
16 supply and from our perspective, at some point, reduce
17 prices. Thank you.

18 CHAIRMAN KELLIHER: Let's vote.

19 MS. SALAS: This is a vote for both items at the
20 same time. Commissioner Wellinghoff?

21 COMMISSIONER WELLINGHOFF: I vote aye.

22 MS. SALAS: Commissioner Moeller?

23 COMMISSIONER MOELLER: Aye.

24 MS. SALAS: Commissioner Spitzer?

25 COMMISSIONER SPITZER: Aye.

1 MS. SALAS: Commissioner Kelly?

2 COMMISSIONER KELLY: Aye.

3 MS. SALAS: Chairman Kelliher?

4 CHAIRMAN KELLIHER: Aye.

5 MS. SALAS: The final item for discussion this
6 morning is another joint presentation. This is M-1,
7 assessment of information requirements for FERC financial
8 forms and N-2, compliance with financial forms filing
9 requirements.

10 It's a presentation by Jane Stelck and Michelle
11 Veloso.

12 MS. STELK: Good morning, Mr. Chairman,
13 Commissioners. My name is Jane Stelk. I'm an attorney in
14 the Office of Enforcement. With me is Michelle Valosa,
15 Chief of the Forms Administration and Data Branch of
16 Enforcement.

17 We have two items to present this morning. I
18 will briefly discuss the first, M-1. Ms. Valosa will
19 summarize M-2.

20 I'd also like to note that M-3, which was just
21 voted out on the consent agenda this morning, is related to
22 M-1 and M-2. That order eliminated the ability of companies
23 to electronically file certain financial forms, to mark any
24 data as privileged.

25 Item M-1 is a draft Notice of Inquiry, seeking

1 comments on the need for changes or revisions to the
2 financial information reported on FERC Form 1, 1-F, 2, 2-A,
3 3-Q, 6 and 6-Q. Those are the Commission's quarterly and
4 annual financial reports for electric utilities, natural gas
5 pipeline companies and oil pipeline companies.

6 Specifically, the draft NOI seeks comments on
7 whether these financial forms provide sufficient information
8 to the public to permit an evaluation of the filer's
9 jurisdictional rates, and whether these forms should
10 otherwise be modified to improve their usefulness.

11 The draft NOI follows informal meetings that were
12 held last fall by the Office of Enforcement, with both
13 filers and users of Forms 1 and 2, seeking their views on
14 whether and what changes may be needed in the forms, what
15 additional information might be sought, and how burdensome
16 those changes might be.

17 The comments and information we've received as a
18 result of the outreach meetings reinforce the significance
19 of this data to the Commission, and to the public who depend
20 almost solely on the data reported when they elect to file a
21 complaint under Section 5 of the NGA or Section 206 of the
22 FPA.

23 This notice provides all persons with an
24 opportunity to formally address these issues. Comments are
25 due 30 days after the order is published in the Federal

1 Register.

2 MS. VALOSO: Good morning Mr. Chairman and
3 Commissioners. M-2 is a draft order to show cause for
4 compliance with the form filing requirements.

5 Since the issuance of the Sunshine notice, one
6 company, Interstate Storage and Pipeline Corporation filed
7 the 6-Q quarterly report and therefore we have removed them
8 from the order.

9 The draft order directs delinquent filers of
10 Forms 2-A, 3-Q, 6-Q and the CPA certification required for
11 filers of FERC Form Nos. 1, 1-F, 2 and 2-A, to show cause
12 within 30 days of the date of the order's issuance why they
13 are not in compliance with the Commission's regulations.

14 The draft order follows a compliance review
15 conducted by the Office of Enforcement. OE initiated the
16 compliance review in April 2006 when the office assumed
17 responsibility for the Commission's financial forms.

18 Through this effort, OE staff was able to reduce
19 the number of delinquent filers from over 140 to the 14
20 companies subject to the draft show cause order. The main
21 objective of this draft order is to put companies on notice
22 that the Commission will not tolerate failure to file the
23 required financial forms on time.

24 The draft order provides 30 days for delinquent
25 filers to make the requisite filings, requires entities who

1 filed the information previously to show proof that they are
2 in compliance, and requires all other entities listed in the
3 order to show cause why the filing was not made, or why they
4 believe they are not required to file.

5 At this time, I would like to thank Vic
6 Hunnicutt, Brandy Devine, Krista Kim and Sam Berriam for
7 their work on this order. This concludes our presentation.
8 We're happy to take any questions.

9 CHAIRMAN KELLIHER: Thank you. At the December
10 open meeting, I discussed the Commission's review of the
11 adequacy of Form 2 data. I reviewed the outreach conducted
12 by the Office of Enforcement in the preceding months, and
13 the adequacy of both Form 1 and Form 2 data, and discussed
14 the importance of Form 2 data to Section 5 complaints
15 regarding natural gas rates.

16 I also promised that the Commission would follow
17 through on the outreach effort and act to ensure the
18 adequacy of Form 2 data. That's what we're doing here
19 today.

20 As I've stated before, it's essential that
21 complainants have access to public information that proves
22 to be a sufficient basis for a complaint. In a Section 5
23 proceeding under the Natural Gas Act, the complainant has
24 the burden of proof.

25 It's necessary that they have access to the

1 information that they need to meet that burden. Form 2
2 provides public information on gas rates. In all
3 likelihood, a Section 5 complaint would be based on Form 2
4 data. In some cases, pipelines have challenged Section 5
5 complaints based on Form 2 data, arguing that Form 2 data is
6 an insufficient basis for a Section 5 complaint.

7 In my view, it is absolutely necessary that Form
8 2 data prove to be a sufficient basis for Section 5
9 complaints. The time has come to review Form 2 and ensure
10 that it provides the data that complainants need. If Form 2
11 is inadequate in any respect, we must strengthen it.

12 However, the need for reliable and complete
13 financial data arises not only in the context of natural gas
14 regulation, but in other subject matter areas. For that
15 reason, today we issue a Notice of Inquiry into the need for
16 changes or revisions to Forms 1, 2, 3-Q, 6 and I'm sure I'm
17 missing a number of forms in between there.

18 But if the Commission determines changes to our
19 financial forms are necessary or appropriate, the next step
20 would be a proposed rule.

21 With respect to the show cause order, we direct
22 14 regulated companies to show cause why they have failed to
23 comply with the requirement to file certain financial forms.
24 Compliance with these forms is important because of the
25 timely collection of current and accurate financial data is

1 necessary for the Commission to carry out its regulatory
2 responsibilities pertaining to the electric utility, natural
3 gas and oil pipeline industries.

4 These requirements are imposed under our
5 authority, the Federal Power Act, the Natural Gas Act,
6 Interstate Commerce Act and violations of the FPA and NGA
7 filing requirements are subject to civil penalties.

8 The show cause order is similar to the action
9 we've taken to enforce the requirements of wholesale power
10 market-based reauthorizations. Just as we now traditionally
11 enforce the requirement to file triennial market analysis
12 and electronic quarterly reports, we now vigorously enforce
13 the requirement to file financial forms.

14 Taken together, these actions demonstrate the
15 importance the Commission places in having timely, public
16 and complete financial information about the companies that
17 we regulate. I support the orders. Colleagues, comments?
18 Commissioner Kelly.

19 COMMISSIONER KELLY: Just sort of to review, our
20 tidal wave power technology is inherently cool. LNG
21 technology is pretty darn cool. OAT reform, if you look at
22 it from a different angle, is cool. Financial forms, I've
23 tried.

24 (Laughter.)

25 COMMISSIONER KELLY: And looked at them from

1 every single angle, and I have to admit I couldn't find
2 anything really cool about it.

3 But my advisor Maria did say that there is one
4 thing that is cool about it. It will allow customers of
5 jurisdictional utilities and pipelines, state commissions
6 and the public, to monitor rates and, as we've seen, file
7 complaints if necessary to seek to reduce the rates.

8 We've heard in recent years from customers that
9 the information provided on these forms should be expanded
10 or improved. In fact, in 2005, in a settlement proceeding
11 involving Dominion Transmission Pipeline, several of its
12 shippers expressed general concern about the adequacy of our
13 form, in allowing interested parties to perform an accurate
14 review of pipeline rates.

15 I actually concurred in that case, and suggested
16 that we look into our forms. However, the Office of
17 Enforcement was already looking into it, and have started
18 outreach on FERC Forms 1 and 2 and is undertaking the
19 inquiry into the need for any changes or addition to the
20 financial information that's reported in those Forms 1 and
21 2, as well as 6.

22 I hope that we can perform periodic review of
23 these forms, to determine on a regular basis that they are
24 actually keeping up with the needs in the industry, and in
25 the Commission, to provide us with the right kind of data.

1 So even though it's hard to say it's cool, it's
2 very, very important. I thank staff for their hard work on
3 it.

4 CHAIRMAN KELLIHER: But it's necessary for us to
5 protect the consumer, and I think that's always cool.

6 (Laughter.)

7 CHAIRMAN KELLIHER: I'm going to have to say. I
8 think these are cool orders.

9 (Laughter.)

10 CHAIRMAN KELLIHER: Phil?

11 COMMISSIONER MOELLER: Mr. Chairman, I'm pleased
12 to support this decision as well, to examine whether we
13 should be modifying the reporting requirements on these
14 comment forms, particularly Forms 1 and 2.

15 The last few months, I've had the opportunity to
16 meet with a number of folks, particularly gas producers and
17 other pipeline customers. They've expressed a loud chorus
18 of frustration with the quality of information contained on
19 Form 2 annual reports.

20 And because many, of course, people rely on this,
21 as Commissioner Kelly said, as the primary source of
22 evaluating the adequacy of cost-based rates, it's important
23 for us to examine whether improvements can be made to the
24 forms.

25 Ultimately, it's an issue of good governance and

1 the Commission fulfilling its oversight responsibility to
2 collect information that is both meaningful and useful to
3 the industry, its customers and the regulators.

4 Today's inquiry poses a number of those
5 questions. We seek responses and we encourage all
6 interested parties to comment on our inquiry. I hope people
7 will share their thoughts and concerns. Thank you.

8 CHAIRMAN KELLIHER: Thank you. John?

9 COMMISSIONER WELLINGHOFF: Mr. Chairman, thank
10 you. I want to let you know that when I started as a
11 consumer advocate, and I found FERC Form 1, I thought it was
12 the coolest thing I ever saw.

13 (Laughter.)

14 COMMISSIONER KELLY: You're a dweeb, John.

15 (Laughter.)

16 COMMISSIONER WELLINGHOFF: That's what my family
17 tells me. I'm glad to know that others have the same family
18 problems. But it was in cross-examination of certain Nevada
19 utility executives using FERC Form 1, so I have a great deal
20 of fondness for that particular form.

21 I think it's a great thing we're doing here
22 today, to see what else we can provide for our use and for
23 the public's use with respect to information.

24 In fact, we found out there were certain things
25 that used to be required in Form 1, among which were

1 information on advanced metering that is not now. But we
2 hope people will consider it should be put back in.

3 I'm very much looking forward to voting in favor
4 of these orders.

5 CHAIRMAN KELLIHER: Thank you. Mark?

6 COMMISSIONER SPITZER: Mr. Chairman, I must say I
7 was disturbed when hearing from gas consumers, their views,
8 their own concerns with the form and particularly you, Mr.
9 Chairman, alluded to it, the argument by the pipeline that
10 the complaint under Form 1 did not state a cause of action,
11 because the information contained in a federally-mandated
12 form was inadequate.

13 That's a circular conundrum that is unacceptable
14 in cost of service regulation. I was speechless when I
15 heard that, frankly. Only later did I come up with a close
16 analogy, which is I heard an individual who in defending a
17 failure to file a tax return, criminal complaint by the
18 Justice Department, made a defense on Fifth Amendment
19 grounds of self-incrimination, that his four prior returns
20 were not even filed at all. Therefore, how could he be
21 giving a false return?

22 I haven't figured out anything other than the
23 adequacy of that line being used as a defense in an action
24 under the Natural Gas Act, and I'm hopeful that we'll move
25 forward with changes that make this Form M-1 more reliable.

1 The customers are being cheated. Whether they
2 choose to file a complaint or not, it's important that the
3 customers know where they stand and we need better
4 information.

5 I'd also point out the companion order, M-2, is
6 an order to show cause that redirects the Commission's
7 emphasis on compliance with the tools and regulations.
8 That's paramount.

9 In this order, we direct identified entities to
10 show cause, why they have failed to comply with the
11 requirements to file financial forms. This order indicates
12 the Commission takes its regulatory compliance serious, and
13 those that fail to comply with its regulations will be
14 required to account for their failures.

15 CHAIRMAN KELLIHER: Great. Any other comments?

16 (No response.)

17 CHAIRMAN KELLIHER: Let's vote.

18 MS. SALAS: Again, we will vote for both items
19 together. Commissioner Wellinghoff?

20 COMMISSIONER WELLINGHOFF: I vote aye.

21 MS. SALAS: Commissioner Moeller?

22 COMMISSIONER MOELLER: Aye.

23 MS. SALAS: Commissioner Spitzer?

24 COMMISSIONER SPITZER: Aye.

25 MS. SALAS: Commissioner Kelly?

1 COMMISSIONER KELLY: Aye.

2 MS. SALAS: Chairman Kelliher?

3 CHAIRMAN KELLIHER: Aye. If there's no other
4 business, this meeting is over.

5 (Whereupon, at 11:50 a.m., the meeting was
6 adjourned.)

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