

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 :
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927TH COMMISSION MEETING
OPEN SESSION

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

Thursday, December 20, 2007
10:15 a.m.

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APPEARANCES:

COMMI SSI ONERS PRESENT:

CHAIRMAN JOSEPH T. KELLI HER (Presi di ng)

COMMI SSI ONER SUEDEEN G. KELLY

COMMI SSI ONER MARC SPI TZER

COMMI SSI ONER PHI LI P MOELLER

COMMI SSI ONER JON WELLINGHOFF

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P R O C E E D I N G S

(10:15 a.m.)

CHAIRMAN KELLIHER: Good morning. This open meeting of the Federal Energy Regulatory Commission will come to order to consider the matters that have been duly posted in accordance with the Government in the Sunshine Act for this time and Place. I've asked a special guest to help me with the Pledge of Allegiance, but I'll do the words, right? That was our deal, I think.

Please join us in the Pledge of Allegiance.

(Pledge of Allegiance recited.)

CHAIRMAN KELLIHER: I'm going to get some assistance this morning, not in voting, though. I will do the voting myself.

(Laughter.)

CHAIRMAN KELLIHER: But let me start, really, with the top news. I guess the most obvious news is that last night, Commissioner Wellinghoff and I were reconfirmed by the Senate. I think that provides important stability here at the Commission as we deal with a lot important challenges, and as we exercise some of our new regulatory authority.

And I want to thank the President for renominating me, and I want to thank the Senate for acting quickly on my nomination.

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1 I say "quickly, because I have -- everything is
2 relative, of course, and --

3 (Laughter.)

4 CHAIRMAN KELLIHER: Based on my last experience,
5 this action was actually very swift. Four years ago, I
6 waited at the alter for Suedeem Kelly.

7 (Laughter.)

8 CHAIRMAN KELLIHER: This year, I walked up the
9 aisle with Jon Wellinghoff.

10 (Laughter.)

11 CHAIRMAN KELLIHER: And we haven't quite figured
12 out who was the bride and who was the groom.

13 (Laughter.)

14 CHAIRMAN KELLIHER: But that can just remain an
15 open question.

16 (Laughter.)

17 CHAIRMAN KELLIHER: My first nomination actually
18 set the record for the longest nomination at FERC -- 752
19 days. And this year, Jon, I have to believe, set the record
20 for the shortest nomination -- eight days.

21 (Laughter.)

22 CHAIRMAN KELLIHER: So we'll probably each stay
23 in the record books, and if we accomplish nothing else,
24 we'll each have that to claim to.

25 (Laughter.)

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1 CHAIRMAN KELLIHER: There's an expression that
2 victory has a hundred fathers; and defeat is an orphan. I
3 know I have many people to thank, but I just want really
4 single out three people for special thanks: First of all,
5 is my wife, Karen, because I asked for her blessing to
6 continue doing a job that I truly love, and she readily
7 agreed.

8 It was only after she gave her blessing, she
9 asked, so when would your new term end?

10 (Laughter.)

11 CHAIRMAN KELLIHER: And I could tell, when I said
12 2012, that she paused and probably realized she should have
13 asked that question before she gave her blessing.

14 And I also want to thank the General of my
15 effort, Andy Black. Andy, can you stand up? I knew Andy as
16 the General of my renomination. I really could just focus
17 on doing my job and trusting him to handle renomination and
18 involve me as necessary.

19 So he has made it possible for me to be an
20 effective Chairman in recent months. I also want to finally
21 thank John Pesche. Andy and I -- John, can you stand up?

22 Andy and I are both creatures of the House, and
23 the Senate is a mysterious and frightening place to House
24 people.

25 (Laughter.)

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1 CHAIRMAN KELLIHER: And so John was my Sherpa in
2 the Senate, and I always try to work in a military reference
3 in a meeting, so I'll try to do it now, that John was, you
4 know, in effect, in command of the Tank Division, the
5 spearhead, rolling through France, and, I would say,
6 eastward through France, not westward. Let me make sure I'm
7 getting the right reference.

8 (Laughter.)

9 CHAIRMAN KELLIHER: But John really was the point
10 person and did a superb job. And you could tell how
11 respected he is in the Senate and how ably he did his job
12 this year.

13 But I do think confirmation of two incumbents is
14 very significant, because, here at FERC, we have difficult
15 jobs and we have to make difficult decisions that are not
16 always popular, but that making sometimes unpopular
17 decisions, is our duty.

18 And I really -- I think a lot about Edmund Burke,
19 and I really like the way Edmund Burke described the basic
20 duty of a legislator. And he explained -- and I think it's
21 equally applicable to regulators.

22 Burke believed that a legislator is supposed to
23 exercise his or her best judgment on behalf the people, and
24 to make the correct decision, but not necessarily the most
25 popular decision.

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1 And he had one great quote that I really live by.
2 In this case, he's referring to legislators, but he said,
3 Burke said, quote, "Your representatives owes you, not his
4 industry only, but his judgment, and he betrays, instead of
5 serving you, if he sacrifices it to your opinion."

6 I really think that's the way I've approached the
7 job as FERC Chairman, and I think that's the way I'll
8 continue in this role. I also think it actually is kind of
9 a rare event for an incumbent Chairman to be confirmed,
10 because sometimes the collective weight of the decisions
11 that we have to make, takes its toll.

12 But I think reconfirmation shows that Congress
13 recognizes the job that we do, is essentially nonpartisan,
14 and that we're dedicated to guarding the consumer, to
15 promoting effective competition in wholesale power and gas
16 markets, and developing a strong energy infrastructure.

17 And I really think reconfirmation is a vote of
18 confidence in the sound public policy that's produced by
19 this Agency. And to that extent, I owe a great deal of
20 thanks to the Commission Staff.

21 I recognize that not all the wisdom in FERC
22 Orders, drips off the pen of the Chairman and
23 Commissioners, and that in most cases, it emerges from the
24 expertise of the Commission Staff, and we exercise the
25 wisdom, not to erase it, so,

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1 So, I really thank the Commission Staff. With
2 that, I'd like to turn to Commissioner 411, and ask for his
3 comments.

4 (Laughter.)

5 COMMISSIONER WELLINGHOFF: I got a good number.

6 (Laughter.)

7 COMMISSIONER WELLINGHOFF: That's good, Joe,
8 thank you. I appreciate that.

9 You know, in this hearing process, even though I
10 went through it initially with Commissioner Moeller, I do
11 have to say, Joe, that I thought of another analogy. I
12 thought of, instead, the movie, "Twins," with Arnold
13 Schwarzenegger and Danny Devito.

14 (Laughter.)

15 COMMISSIONER WELLINGHOFF: But, unfortunately, I
16 realized very quickly that I'd have to play Danny Devito.

17 (Laughter.)

18 COMMISSIONER WELLINGHOFF: Since I'm shorter than
19 you and I'm a Democrat.

20 (Laughter.)

21 COMMISSIONER WELLINGHOFF: But I'm glad the
22 process is over. I do certainly want to thank Senator Reid
23 and the President for having the faith to renominate me and
24 have me reconfirmed.

25 I also want to thank some people here. I want to

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1 thank, first, my staff, Jim Peterson, David Mornoff, and
2 Marybeth Tighe, because I couldn't have gotten the answers
3 to the questions out, and I needed to get them out at the
4 time I got it out, without these people, so I really do owe
5 a great debt of gratitude to my staff.

6 I also want to thank Andy Black and John Pesche.
7 They really were superb in their bird-dogging this on a
8 minute-by-minute basis.

9 I also want to thank John Moot for all that he's
10 done to help me here, and, of course, the whole Staff, as
11 well. Thank you.

12 CHAIRMAN KELLIHER: Thank you. And I wanted to
13 introduce my family. My parents are here today. If you
14 could stand up, mom and dad. That's my father, Joseph
15 Kelliher; my mother, Joan Kelliher, here today.

16 (Applause.)

17 CHAIRMAN KELLIHER: And you can see, obviously,
18 my daughter, Nora -- our daughter, Nora.

19 (Laughter.)

20 CHAIRMAN KELLIHER: And Karen, if you could stand
21 up, Karen is here with our son, Ayden.

22 (Applause.)

23 CHAIRMAN KELLIHER: Can you stand up, Ayden, and
24 little Damien. But, Damien, you can stay in your chair, and
25 little Damien --

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1 (Laughter and applause.)

2 CHAIRMAN KELLIHER: I just want to thank them for
3 coming today. And I think there's one of my colleagues that
4 has a family member that I think he wants to introduce as
5 well.

6 COMMISSIONER SPITZER: Thank you, Mr. Chairman.
7 I want to first congratulate you and Commissioner
8 Wellinghoff, both.

9 It's a tribute to your abilities, and, as you
10 mentioned, also, to the entire Commission, and it really has
11 been a team concept here that I've enjoyed very much.

12 You know, out in the hustings, you hear a lot of
13 negativity about politics, generally, and particularly,
14 Washington, D.C., and I think that a lot of that is for
15 theatrical effect, but this Commission is a collegial body
16 where the issues are important and complex enough so that,
17 really, the politics can be left at the door, and I've found
18 that to be the case.

19 And a bipartisan confirmation process is a good
20 thing, and it's a tribute to the Commission, and
21 Congratulations to both of you. I do see Ayden has got the
22 wave down.

23 (Laughter.)

24 COMMISSIONER SPITZER: I think you've got a
25 future in politics, young man.

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1 (Laughter.)

2 COMMISSIONER SPITZER: The representative of the
3 Spitzer family is Filibuster, our 15-year old -- she just
4 had a birthday -- 15-year old Pomeranian, who we got in
5 between my election and swearing in to the State Senate in
6 Arizona back in '92.

7 Filibuster will be greeting all of you and will
8 be able for photo ops at our party.

9 (Laughter.)

10 COMMISSIONER SPITZER: She's in training for the
11 Iditarod.

12 (Laughter.)

13 COMMISSIONER SPITZER: The Chairman likes
14 history, and we all are aware that Pomeranians are the
15 descendants of Icelandic sled dogs, and were popularized by
16 Queen Victoria.

17 Some stories that Filibuster tells, are of being
18 a --

19 (Laughter.)

20 COMMISSIONER SPITZER: -- a direct descendant of
21 Queen Victoria's favorite Pomeranian, Marco.

22 (Laughter.)

23 COMMISSIONER SPITZER: Who was Italian royalty.
24 Other times, she talks about her humble upbringing, born in
25 a trailer, in Chandler Heights, Arizona.

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1 ((Laughter.))

2 COMMISSIONER SPITZER: I leave it to you to
3 determine which is the correct origin, and look forward to
4 seeing you later today, those who are around, as does
5 Filibuster. Thank you.

6 CHAIRMAN KELLIHER: Any other colleagues have
7 family members present?

8 (Laughter.)

9 CHAIRMAN KELLIHER: Okay, with that, before we
10 turn to the Consent Agenda, I would just like to note that
11 since the October 15th Open Meeting, we've issued 75
12 notational orders.

13 Madam Secretary, let's turn to the Consent Agenda
14 -- oh, I'm sorry, before we do that, I forgot that I have
15 one announcement, an important announcement. I'm so elated
16 by being reconfirmed, that I forgot the important
17 announcement.

18 (Laughter.)

19 CHAIRMAN KELLIHER: I'd like to announce a number
20 of generic changes to FERC enforcement policy, that should
21 be of interest to both the regulated community, as well as
22 the public.

23 Last month, the Commission held an important
24 conference on enforcement policy. We explained our current
25 policy at some length, proposed possible changes, and

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1 invited ideas in return.

2 And, today, I'd like to announce our first
3 actions in response to the recent enforcement policy
4 conference.

5 We've taken a number of steps to provide even
6 greater due process to subjects of FERC enforcement
7 proceedings, than currently afforded. First, we addressed
8 the role of enforcement staff in civil penalty
9 adjudications.

10 Upon issuance of an Order to Show Cause, the
11 Commission will make non-decisional, all Office of
12 Enforcement investigative staff assigned to participate in
13 the remainder of the proceeding. This includes any further
14 paper hearing procedures, as well as trial-type hearing
15 procedures.

16 To that end, the Secretary's Office will issue a
17 notice listing the enforcement staff, that will be
18 designated as non-decisional, and separated from the
19 Commission and the advisory staff for the duration of the
20 proceeding.

21 Also, in future cases, when Commission Staff
22 completes its investigation, it will transmit to the
23 Commission, a report with recommended findings and
24 conclusions of fact and law, and the Commission will attach
25 the report to Show Cause Order to respond to the recommended

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1 findings.

2 The Commission itself will not make any
3 findings, preliminary or otherwise, at least until it has
4 considered the response.

5 In addition, at the point Commission enforcement
6 staff submits a report to the Commission, designated
7 enforcement staff will become non-decisional employees for
8 purposes of participating in the remainder of that
9 enforcement proceeding.

10 This is a change from the Commission's
11 longstanding practice in Show Cause Orders.

12 I want to emphasize that these are only our first
13 actions in response to the recent enforcement policy
14 conference, and we may make other changes in the future.

15 Also, I want to announce that these changes are
16 announced in Item G-3 on today's Consent Agenda, and are
17 effective immediately.

18 With that, Madam Secretary, let's now turn to the
19 Consent Agenda.

20 SECRETARY BOSE: Good morning, Mr. Chairman, good
21 morning, Commissioners. Since the issuance of the Sunshine
22 Act Notice on December 13th, 2007, M-1 has been struck from
23 this morning's agenda.

24 Your Consent Agenda for this morning, is as
25 follows:

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1 Electric Items: E-3, E-4, E-5, E-6, E-7, E-8, E-
2 10, E-11, E-12, E-14, E-15, E-18, E-20, E-22, and E-23.

3 Miscellaneous Items: M-2.

4 Gas Items: G-3, G-4, G-7, G-8, G-9, and G-10.

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

6 Certificate Items: C-1, C-2, and C-5.

7 As required by law, Commissioner Spitzer is not
8 participating in Consent Items G-4 and G-7. As to E-5,
9 Commissioner Kelly is concurring, with a separate statement.

10 As to E-12, Commissioner Kelly is dissenting, in
11 part, with a separate statement; and Commissioner
12 Wellinghoff is dissenting, in part, with a separate
13 statement.

14 As to E-18, Commissioners Kelly and Wellinghoff,
15 are concurring jointly, with a separate statement.

16 We will now take a vote on this morning's Consent
17 Agenda Items, beginning with Commissioner Wellinghoff.

18 COMMISSIONER WELLINGHOFF: I vote aye, with the
19 notation of my exception of the dissent, in part, on E-12,
20 and the concurrence on E-18.

21 SECRETARY BOSE: Commissioner Moeller?

22 COMMISSIONER MOELLER: Votes aye.

23 SECRETARY BOSE: Commissioner Spitzer?

24 COMMISSIONER SPITZER: I vote aye, with the
25 exception of the recusals in G-4 and G-7.

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1 SECRETARY BOSE: Commissioner Kelly?

2 COMMISSIONER KELLY: I vote aye, with the
3 exception of E-12, in which I partially dissent, and noting
4 my concurrence in E-5 and my joint concurrence with
5 Commissioner Wellinghoff in E-18.

6 SECRETARY BOSE: And Chairman Kelliher?

7 CHAIRMAN KELLIHER: Aye.

8 SECRETARY BOSE: We'll now move to the
9 discussion items this morning. The first item for
10 presentation, is E-1, concerning a rehearing of Order Number
11 890, Preventing Undue Discrimination and Preference in
12 Transmission Service.

13 There will be a presentation by Mason Emmett,
14 from the Office of the General Counsel. He is accompanied
15 by Dan Hedberg, from the Office of Energy Markets
16 Regulation.

17 MR. EMNETT: Good morning, Mr. Chairman and
18 Commissioners.

19 We present to you, Item E-1, the Draft Order on
20 Rehearing, Clarification of Order 890.

21 Order 890 adopted a number of reforms to the
22 Commission's pro forma Open Access Transmission Tariff, or
23 OATT. The Draft Order largely affirms those reforms,
24 granting limited rehearing clarification to ensure that the
25 reforms achieve their intended purpose.

1 At the outset, the Draft Order rejects arguments
2 that the action is not needed to limit remaining
3 opportunities for undue discrimination under the pro forma
4 OATT.

5 The Draft Order concludes that the Commission's
6 action in Order 890, benefits transmission customers by
7 eliminating potential discrimination in the provision of
8 transmission service, and benefits transmission providers by
9 providing more clarity regarding the requirements of the pro
10 forma OATT previously left open to interpretation.

11 A central reform adopted on Order 890, involves
12 the calculation of available transfer capability, or ATC.
13 In Order 890, the Commission directed public utilities,
14 working through the North American Electric Reliability
15 Council and the North American Energy Standards Board, to
16 develop standards to achieve the consistent and transparent
17 calculation of ATC.

18 The Draft Rehearing Order affirms that
19 requirement. Transmission providers will, therefore,
20 continue their work through the NERC and NAESB process to
21 develop consistent standards to govern ATC calculation, and,
22 in the interim, have updated their OATTs to document their
23 current methodologies for calculating ATC.

24 Another key area of reform, involves
25 transmission planning. In Order 890, the Commission

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1 required transmission providers to open their transmission
2 planning process to customers, coordinate with customers
3 regarding future system plans, on both a regional and local
4 level, and share necessary planning information with
5 customers. The Draft Order affirms this obligation.

6 Following two rounds of regional technical
7 conferences administered by Staff, transmission providers
8 recently submitted compliance filings addressing the nine
9 planning principles affirmed in the Order, review of which
10 will allow the Commission to ensure that the planning-
11 related reforms of Order 890, are fully implemented.

12 Reforms to the term and conditions of service
13 provided under the OATT, are also affirmed. Instead of
14 denying a long-term request for point-to-point service,
15 because service is unavailable for as little as one hour of
16 service, Order 890 required transmission providers to
17 consider the availability of a modified form of planning
18 redispach or a new conditional firm option to accommodate
19 the request.

20 The Draft Order rejects requests to eliminate or
21 otherwise limit the obligation to offer these services.

22 The tiered approach for calculating energy and
23 generator imbalance charges, is also retained, although
24 rehearing is granted regarding the pricing of imbalances.

25 The Draft Order revises the pro forma OATT to

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1 base imbalance charges on the last ten megawatts dispatched
2 by the transmission provider, for any purpose, rather than
3 last ten megawatts dispatched to serve native load.

4 In addition, the Draft Order clarifies the
5 particular circumstances under which the transmission
6 provider must offer generator imbalance service.

7 The Draft Order affirms the decision to lift the
8 price cap on reassignments of transmission capacity and
9 grants rehearing to limit the time period during which
10 reassignments may occur above the cap.

11 In Order 890, the Commission directed Staff to
12 prepare a report on the development of the secondary market,
13 after monitoring two years of transaction data regarding
14 reassignments.

15 The Draft Order provides that, upon
16 consideration of the Staff report, the Commission will
17 determine whether it is appropriate to continue to allow
18 further reassignments of capacity above the price cap.

19 The Draft Order also clarifies requirements under
20 the pro forma OATT regarding the designation and un-
21 designation of network resources.

22 The Draft Order affirms the obligation to
23 identify the source control area for off-system power
24 purchases designated as network resources, and clarifies
25 that the Commission did not intend in Order 890, to modify

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1 the requirements for designating on-system system sales.

2 Reforms related to the minimum lead time for un-
3 designated network resources, continue to be deferred,
4 pending a further Order in the proceeding.

5 In closing, I'd like to thank the many members of
6 our Office and the Office of Electric Reliability and Office
7 of Enforcement, that have contributed to the preparation of
8 this Draft Order.

9 Many of our team members have literally worked
10 for years on the issues addressed in these Orders, from the
11 Notice of Proposed Rulemaking that initiated the proceeding,
12 to the issuance of Order 890, and to the preparation of this
13 Draft Order on Rehearing. We thank them for this effort.

14 This concludes Staff's presentation. We'd be
15 happy to answer any questions that you may have regarding
16 the Draft Order.

17 CHAIRMAN KELLIHER: Thank you very much. First
18 of all, I really want to praise the Staff for their hard
19 work throughout this process. This process really began in
20 earnest, two years ago, and in September of 2005, we issued
21 the Notice of Inquiry on OATT reform, and, here we are
22 taking the final step.

23 This action does represent the final step to
24 reform the landmark Open Access Rules established by the
25 Commission ten years ago. Now, to me, this Rule is

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1 important, because it's really pursuing three different
2 policy goals that are all equally important:

3 First, it seeks to eliminate the potential for
4 undue discrimination and preference in transmission service.
5 And a primary task of the Commission, historically, with
6 respect to electricity regulation, is to guard the consumer
7 from exploitation, and I think this tariff really -- it
8 should eliminate the remaining potential for undue
9 discrimination and preference; at least that's our hope.

10 Second of all, it seeks to promote effective
11 competition in wholesale power markets. The power grid is
12 the interstate highway system for wholesale power sales, and
13 by providing more perfect access to the grid, we should
14 promote competition in regional power markets.

15 Our third goal is to strengthen the grid itself.
16 I think the regional transmission provisions are very
17 important. The nature of the grid is regional in nature,
18 but we have very fractured ownership. We have more than 500
19 owners of eight or ten power grids, and I think planning
20 should reflect the reality of the grid.

21 The grid is regional; planning should also have a
22 regional scope. I think the regional planning provisions
23 will help address some of the cost allocation issues that
24 have been so difficult, and should help spur investment.

25 But, in the end, perfect access to a constrained

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1 grid, is not an ideal situation. I think we have to
2 continue our efforts to encourage investment in the grid.

3 I think we have seen a lot of success. We've
4 seen progress in the right direction in recent years.

5 Overall transmission levels and transmission
6 investment levels, have doubled since 2002, but I think they
7 are still not at the levels we need to assure reliability of
8 the bulk power system, as well as support -- as well
9 establish -- support competitive markets.

10 So I think we're -- I think some of success, some
11 of the increase in investment, is due to Commission policies
12 in recent years. I think we have to maintain those policies
13 and continue a strong track record of investment in the
14 grid.

15 So I think it's an important Order, and I'm glad
16 to support it, and I turn to my colleagues. Jon?

17 COMMISSIONER WELLINGHOFF: Thank you, Mr.
18 Chairman. I think the OATT reform measures that the
19 Commission's adopted in Order 890, mark an important step in
20 advancing and modernizing the core rule to the regulation of
21 our electric grid.

22 Among other changes, the Commission put demand
23 resources on equal footing with other resources in directly
24 contributing to reliability and efficient operation and
25 expansion of the electric transmission system.

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1 We also made several changes that recognize that
2 the intermittent nature of renewable resources like wind,
3 must be considered in the operation of the grid.

4 I'm pleased that the Commission is reaffirming
5 the fundamental reforms adopted in Order 890, and I'm also
6 pleased that in response to the Request for Rehearing, the
7 Commission is making useful clarifications on the subjects
8 and such items as rollover rights.

9 I'd like to commend our hardworking Staff that
10 poured through the numerous Requests for Rehearing that the
11 Commission received, and that developed this important
12 Order. Thank you, Mr. Chairman.

13 CHAIRMAN KELLIHER: Thank you. Colleagues?
14 Commissioner Moeller?

15 COMMISSIONER MOELLER: Thank you, Mr. Chairman.
16 It's easy to forget now that ten years later, Order 888 was
17 truly revolutionary, because it allowed consumers, at least
18 at the wholesale level, to have choices that they never had
19 before, and consumers benefit when they have choices.

20 I commend that Commission for putting in place,
21 something that has truly benefitted consumers throughout the
22 country. And I also commend you, Mr. Chairman, for, ten
23 years later, saying that we need to take a look at what's
24 working and what's not.

25 And my colleagues, and, of course, the hard work

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1 of the Staff, who, over the last couple of years, have
2 worked to make this a reality -- it's extensive, and it's
3 important, and it's making a lot of positive changes that
4 you and Commissioner Wellinghoff have referenced.

5 So, I'm quite proud to be supporting this Order.
6 I also want to commend the Staff for the hard work they did
7 in doing the road shows.

8 Now, for those of you who have not been on
9 Federal Government travel, it's not very easy.

10 (Laughter.)

11 COMMISSIONER MOELLER: It's efficient, let me put
12 it that way.

13 And our Staff went out, not once, but twice,
14 around the country, to get reaction to the regional
15 transmission planning requirement that is in this.

16 I do want to direct questions to Mason and Dan,
17 as to whether they can talk about that process and anything,
18 and maybe Kathleen wants to pitch in, too, but what you may
19 have learned, reactions you may have gotten from those road
20 shows, in terms of the new requirement.

21 MS. BARRON: If I may, Commissioner, I will
22 respond on behalf of the team, having traveled on the
23 Government's dime to many of those meetings.

24 I think, in general, Staff was pleased with how
25 much time and effort the transmission providers put into

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1 looking at the nine principles the Commission adopted in
2 890, at the Staff White Paper that was issued to help them,
3 and in really looking hard at what they could do to adapt
4 their existing mechanisms to make those principles come to
5 life in their tariffs.

6 It wasn't easy for them to think about how the
7 process would work and reduce it to tariff language, and
8 they worked real hard at that.

9 They also, in particular, spent a good deal of
10 time focusing on what was best for the individual
11 transmission providers to do, versus what would be best for
12 the regions to do.

13 We saw a lot of hard work on that front, as well.
14 The next step, of course, is for commenters to respond to
15 the many filings we received earlier this month, and toward
16 that end, I'll note this morning that the Secretary is going
17 to extend the deadline, so that comments will no longer be
18 due three days after Christmas.

19 (Laughter.)

20 MS. BARRON: But now, January 7th, we will expect
21 folks to respond and let us know what they thought about the
22 filings that came in earlier this month.

23 COMMISSIONER MOELLER: And so we will be
24 reacting to individual filings from now on, and we'll have a
25 ton of them to go through.

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1 MS. BARRON: We do have a fair number of them to
2 go through, yes.

3 COMMISSIONER MOELLER: All right, thank you.

4 One other question for the team, relates to --
5 you touched on it, Mason, briefly, but we did get a lot of
6 comments related to designation and un-designation of
7 network resources, and if you can maybe fill in a little
8 more context on that discussion, I think that would help the
9 people who are watching our action today.

10 MR. HEDBERG: I'll attempt to address your
11 question, Commissioner.

12 One of the major areas that we heard on
13 rehearing, was regarding the eligibility of on-system system
14 sales.

15 The eligibility of that as a designated network
16 resource, and comments made in 890, appear to cause some
17 confusion in the industry regarding the treatment of those
18 system sales, versus on-system seller's choice agreements.

19 In Order 890, the Commission clarified that a
20 customer may not designate as a network resource, a seller's
21 choice power purchase agreement that's sourced by generating
22 units internal to the transmission provider's control area,
23 because calculating ATC would be problematic, without
24 knowing the location of those generators.

25 However, concerns were raised on rehearing,

1 regarding the clarification provided in Order 890, as well
2 as concerns at the June 26th Technical Conference we had,
3 that the Commission's clarification would potentially
4 preclude the designation of on-system system sales, as
5 network resources.

6 So the Draft Order on Rehearing clarifies that
7 transmission providers may continue to consider system sales
8 as eligible for network resource status, so long as those
9 generators making up the system sales, have already been
10 designated as network resources by someone else, for
11 example, the transmission provider.

12 A lot of these system sales are provided out of
13 resources that the transmission provider has already
14 designated. So, in those instances, the transmission
15 provider already has the needed information regarding those
16 resources and it would not need to request further
17 information from those seeking to designate those system
18 sales as a resource.

19 On the other point of confusion, the system
20 seller's choice agreements, the Draft Order on Rehearing
21 affirms the findings from Order Number 890, that on-system
22 seller's choice agreements, generally do not provide enough
23 information to satisfy the requirements for network resource
24 designation, until such time as the source of power has been
25 identified.

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1 Mason already touched on a few items, such as the
2 identification of the control area. We had some parties,
3 notably utilities in the West, arguing that the Commission
4 should not require that in the pro forma tariff, because it
5 may not be applicable to their ATC calculation.

6 However, we are reaffirming in the Draft Order,
7 that that information continues to be required, however, we
8 note that parties who do not use that information in their
9 ATC calculations, can seek a variation from their pro forma
10 tariff and come in and make a Section 205 filing.

11 I'd note that the Commission has granted some of
12 those variations in previous Orders, such as the Puget Sound
13 Order earlier this year.

14 Another main area was on the un-designation
15 question. The Draft Order clarifies that portions of the
16 seller's individual network resources supporting the sale of
17 system power, do not have to be un-designated, as long as
18 the sale of the system power is, itself, designated as a
19 network resource by the buyer.

20 Another area of clarification, is the pro forma
21 OATT has been amended to clarify that network resources do
22 not have to be un-designated before they are used to support
23 provision of reserve energy under a Commission-approved
24 reserve-sharing agreement.

25 Lastly, the Commission continues to defer action

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1 on implementing the reforms adopted in Order Number 890,
2 regarding the minimum lead time for un-designation of
3 network resources, as established in the Commission's
4 September 7th Notice granting extension of the effective
5 date.

6 We had a number of parties have concerns about
7 the timing of that, so the Commission extended the
8 effectiveness of that particular reform.

9 COMMISSIONER MOELLER: I'm guessing that if
10 people didn't completely get that, they can go back to the
11 webcast.

12 (Laughter.)

13 COMMISSIONER MOELLER: Thank you for a thorough
14 explanation of that.

15 (Laughter.)

16 COMMISSIONER MOELLER: And that should
17 demonstrate the complexity of this issue --

18 (Laughter.)

19 COMMISSIONER MOELLER: To people who are
20 wondering what our dedicated Staff spends their time on.

21 (Laughter.)

22 COMMISSIONER MOELLER: Thank you, Dan. Finally,
23 there was some work to make sure that the issue of a limited
24 time period on the capacity release, that that issue be
25 worked out in the last couple days, and I know Staff worked

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1 hard for that, so thank you for that, as well. Mr.
2 Chairman?

3 CHAIRMAN KELLIHER: Thank you. Colleagues?
4 Commissioner Kelly?

5 COMMISSIONER KELLY: Well, first and foremost,
6 I'd like to thank the Staff that worked on this initiative,
7 for all of their hard work in crafting this Order, and in
8 patiently explaining the issues such as you just saw Dan do,
9 again and again, to the Commissioners and our Staff.

10 They are, indeed, complex, with a lot of detail,
11 and it's important for us to know the detail. And you've
12 been exceptionally helpful, I know, in the last few days,
13 also on very short notice.

14 I also want to thank my colleagues and their
15 staffs for their cooperation and willingness to consider our
16 views throughout this process.

17 I am pleased to see that this Order upholds many
18 of the reforms we undertook in the Final Rule, and I just
19 want to touch on three of them:

20 I think, most importantly, the Order upholds the
21 requirement that transmission providers develop an open and
22 transparent and regional planning process. To me, this is
23 one of the most promising regulatory advances for the
24 electric industry that I've seen during my tenure at FERC.

25 Our electric future is going to be more

1 geographically integrated than it ever has been. The public
2 and the electric industry, have significant goals for the
3 future: An increase in resource adequacy for more
4 generation; an increase in the reliability of our electric
5 grid; and expansion of renewables and demand response into
6 our electric industry, and improved competition in
7 wholesale markets.

8 These goals cannot be reached, unless we develop
9 a strong and robust transmission system that links our
10 generation and our generation alternatives, with load. And
11 that has to be regional.

12 The days of municipal boundaries for electric
13 systems, or even state boundaries for electric systems, are
14 behind us. And having this process, this mandatory planning
15 process that requires us to think and plan regionally, is
16 key to that development.

17 This Order also affirms our findings on
18 conditional firm, point-to-point service, which not only
19 provides for comparable treatment, but also enlarges service
20 options for customers, without compromising reliability.

21 This is going to be exceedingly helpful to the
22 integration of renewables into our grid, particularly those
23 renewables that are intermittent and can benefit from
24 conditional, firm, point-to-point service.

25 These new transmission service offerings will

1 expand the ability of the industry to use the grid.

2 And then, finally, I'd like to discuss capacity
3 reassignment and our decision to limit the period during
4 which reassignment may occur above the price caps.

5 I believe that today's Order adopts a more
6 measured and deliberate course of action than in the Final
7 Rule, and I'm very supportive of this approach.

8 As the team noted, Order 890(a) reconsiders an
9 aspect of our decision to remove the price caps on
10 reassignment transactions, and finds that it is more
11 appropriate to establish a period during which the
12 Commission will collect, aggregate, and study data on
13 reassignment transactions.

14 Very importantly, from my perspective, we will be
15 collecting price data during the study period. Two years
16 worth of data on reassignment transactions, should provide
17 us with the opportunity to determine that uncapped
18 reassignment prices reflect truly competitive conditions.

19 And, really, what this does, is give us a record,
20 and that record will serve as the basis for deciding whether
21 to extend the lifting of price caps for a longer period of
22 time.

23 I believe that's a critically important and a
24 constructive development from the Final Rule, and,
25 accordingly, I'm very pleased to vote in support of this

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1 Order.

2 CHAIRMAN KELLIHER: Thank you. Commissioner
3 Spitzer?

4 COMMISSIONER SPITZER: Thank you, Mr. Chairman.
5 You know, the interesting aspects of this Order,
6 as a general observation, a relatively small number of items
7 have been reconsidered from Order 890, and that, I think,
8 is, given the massive technical undertaking, reflective of
9 the time and effort that was put into the original Order,
10 and the fact that so many of these very difficult and
11 contentious technical issues, have been resolved, really is
12 a tribute to the process and to the effort that was put in
13 up front.

14 At the same time, the Commission took a hard look
15 at the matters that were raised, and did ultimately
16 reconsider items. I think that also is a sign that we will
17 take a hard look at our own actions and make revisions where
18 appropriate.

19 From a global point of view, nondiscriminatory
20 access to transmission, is central to competitive markets.
21 This Order is part of the matrix or the puzzle.

22 The other parts that my colleagues have alluded
23 to, are: The need for reliability and the need for enhanced
24 investment in transmission infrastructure, but this is a
25 critical component.

1 I'd also point out that the road shows that I've
2 been on -- a lot fewer than Staff -- reflect a high degree
3 of communication that is new and important.

4 It's not necessarily a negative observation that
5 in the old regime, not only was there not necessarily an
6 imperative to communicate outside of jurisdictions, but
7 within control areas. In the engineering sphere, there was
8 a natural reluctance to go beyond the engineer's control
9 center.

10 And that has really been -- the shades have come
11 from the eyes and people have found all across the country,
12 that communication on a whole range of issues, including
13 technical engineering matters, has been very beneficial.

14 I think we can claim a lot of credit, because
15 that process did start with the nine principles and the
16 articulation and the revisions of the fact that people were
17 brought to the table, not necessarily voluntarily, but it
18 has been a good result, and it's been positive and it's been
19 good for the customers and for the ratepayers of this
20 country, so I'm pleased to support the revisions, and thank
21 my colleagues and the Staff for their thoughtful efforts in
22 an area that is very complicated.

23 You can avert your eyes or you can roll up your
24 sleeves and do the work, and I really thank the Staff for
25 doing the hard work.

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1 CHAIRMAN KELLIHER: And I just have two short
2 comments at the end: One is, for those who are interested
3 in this Order, you are going to have to be patient, because
4 we have holiday parties at the Commission, and I have not
5 been Scrooge for the Secretary's Office, so the Secretary's
6 Office is actually going to be able to have a holiday party,
7 so you'll have to be a little bit patient to get the final
8 version of this Order.

9 Also, I would like to make just a personal
10 disclosure, that one of the hardest decisions I had on this,
11 was what number should the Order bear.

12 And John Moot knows that we spent a ridiculous
13 amount of time thinking about that.

14 (Laughter.)

15 CHAIRMAN KELLIHER: I've been going in strict
16 sequence, skipping over 666, of course.

17 (Laughter.)

18 CHAIRMAN KELLIHER: But, otherwise, going in
19 strict numerical sequence. But it seemed odd for a reform
20 to 888, to have a lower number, so it seemed to me that it
21 had to be a higher number.

22 I really toyed with 1066 for a long time.

23 (Laughter.)

24 CHAIRMAN KELLIHER: In part, for my father's
25 amusement, because we -- the Battle of Hastings is a

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1 favorite in the Kelli her household.

2 And everyone who is English, thought 1066 was a
3 great, great choice, but finally we stuck with 890, because
4 what we're doing here, is, we're building on 888; we're
5 honoring 888, and it seemed like that was the logical
6 course.

7 But, with that, I think we're ready to vote.

8 SECRETARY BOSE: The vote begins with
9 Commissioner Wellinghoff.

10 COMMISSIONER WELLINGHOFF: I vote aye.

11 SECRETARY BOSE: Commissioner Moeller?

12 COMMISSIONER MOELLER: Aye.

13 SECRETARY BOSE: Commissioner Spitzer?

14 COMMISSIONER SPITZER: Aye.

15 SECRETARY BOSE: Commissioner Kelly?

16 COMMISSIONER KELLY: Aye.

17 SECRETARY BOSE: And Chairman Kelli her?

18 CHAIRMAN KELLI HER: Aye.

19 SECRETARY BOSE: The next item for discussion
20 this morning, we have two, G-1 and G-2, concerning
21 Transparency Provisions of Section 23 of the Natural Gas
22 Act, and Pipeline Posting Requirements Under Section 23 of
23 the Natural Gas Act, respectively.

24 There will be a presentation by Eric Ciccoretta
25 from the Office of Enforcement, and he is accompanied by

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1 Steven Harvey from the Office of Enforcement.

2 MR. CICCORETTI: Good morning, Mr. Chairman and
3 Commissioners. My name is Eric Ciccoretti, and, joining me,
4 is Steve Harvey. We're both from the Office of Enforcement
5 and are here to present two Draft Orders, both based on the
6 Commission's transparency authority provided in the Energy
7 Policy Act of 2005.

8 Both Draft Orders have their roots in the
9 Commission's April 2007 Notice of Proposed Rulemaking.

10 At the outset, we want to thank the following
11 Staff members for their assistance on this transparency
12 initiative. From the Office of General Counsel, Chris
13 Wilson and Tina Ham; from the Office of Energy Projects,
14 Berne Mosley; from the Office of Energy Market Regulation,
15 Ed Murrell; and from the office of Enforcement, Charlie
16 Whitmore, Michelle Veloso, John Jenrich, Lee Choo, Chris
17 Peterson, Nikki Brisker, and Zeke Honeycutt.

18 Together, the annual reporting requirements set
19 forth in G-1, and the proposed pipeline posting requirement
20 set forth in G-2, would serve to provide greater
21 transparency to the physical natural gas markets, the annual
22 reporting requirement, by shedding light on the contracts
23 and transactions that underlie that market, the pipeline
24 posting requirement, by revealing more about the flows that
25 result from those transactions.

1 I'll start with Agenda Item G-1, the Draft Final
2 Rule. It would be the Commission's first exercise of
3 transparency authority under Section 23 of the Natural Gas
4 Act.

5 It requires market participants to file a new
6 form regarding their annual purchases and sales, Form 552.

7 The form will aid the Commission and market
8 observers in determining how price indices are formed and
9 used. The stated goal is not only to understand the
10 transactions used to form price indices; it is also to
11 understand how influential price indices are in valuation of
12 natural gas in U.S. wholesale markets.

13 In addition, the information reported, would
14 allow the Commission and other market observers, to answer
15 the question, how much volume is transacted in the physical
16 natural gas market?

17 The Draft Final Rule requires reporting by a
18 market participant, that is, by any buyer or seller of
19 physical natural gas, that either holds a blanket sales
20 certificate or buys or sells more than 2.2 million MmBtu of
21 wholesale physical natural gas annually.

22 On the form, a market participant must report
23 three categories of information: First, whether it holds a
24 blanket sales certificate; second, whether it reports
25 transaction prices to a price index publisher, and, if so,

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1 whether its reporting follows the Commission's policy for
2 reporting to price index publishers.

3 Third, a market participant must provide
4 information about the annual volume of physical natural gas
5 transactions, aggregated for the entire year and aggregated
6 nationally.

7 Form 552 is to be filed on May 1st of each
8 calendar year, starting May 1st, 2009, for the calendar year
9 2008.

10 I now turn to Agenda Item G-2. In this Notice of
11 Proposed Rulemaking, NOPR, the Commission proposes a daily
12 pipeline posting requirement, applicable to both interstate
13 pipelines, and certain major non-interstate pipelines.

14 The goal of the pipeline posting requirement, is
15 to obtain information on actual and scheduled flows that
16 affect the wholesale interstate market.

17 Both types of pipelines -- interstate and major
18 non-interstate -- would be required to post, on a daily
19 basis, capacity information, scheduled flow information, and
20 actual flow information.

21 The Draft NOPR before you, expands the proposal
22 set forth in the April NOPR, to include actual flows for
23 interstate pipelines. In the April NOPR, the Commission
24 sought comment on requiring posting of actual flow
25 information by interstate pipelines.

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1 The Commission would issue this NOPR in order to
2 solicit further comment on requiring actual flow information
3 from both interstate and non-interstate pipelines.

4 Further, the Draft NOPR revised the proposal from
5 the April NOPR, to require major non-interstate pipelines to
6 post scheduled flows. This change would make the posting
7 requirements for major non-interstate pipelines, similar to
8 the posting requirements proposed for interstate pipelines.

9 Also, for non-interstate pipelines, the Draft
10 NOPR would revise the proposal from the April NOPR, to make
11 clear that the pipeline posting proposal applies only to
12 major non-interstate pipelines, thereby capturing
13 information from those non-interstate pipelines that are of
14 significant size and make a significant contribution to
15 overall gas flows across the United States.

16 Together, the new Form 552 and the Draft NOPR,
17 would add substantial needed information about natural gas
18 markets, consistent with the transparency provisions of the
19 Energy Policy Act of 2005.

20 That concludes my presentation. Steve and I
21 welcome your questions.

22 CHAIRMAN KELLIHER: Thank you. I just want to
23 emphasize that I think that these are pretty important steps
24 we're taking. Congress gave us broad discretionary
25 authority two years ago, to assure greater transparency in

1 both power and gas markets, and this is our first use of
2 that authority. It is not our last use of that authority.

3 We will use it in the future, if we see a good
4 opportunity in either the gas or the power side. I think
5 the Final Rule is important. It will allow us to assess the
6 physical size of the wholesale gas market, the size of
7 physical wholesale gas markets.

8 It will allow us to assess the relative
9 importance of fixed-price transactions and index
10 transactions, as well as the relative size of traders.

11 The proposed Rule is important, as well.
12 Physical flows are very important in understanding gas
13 market operations.

14 I think that consistency in the kind of data
15 between both the interstates and the non-major-interstates -
16 - if I'm using our new term correctly -- non-major-
17 interstate pipelines, it's important to have some
18 consistency in that flow information.

19 So I think these are important steps we're
20 taking, but they are not necessarily the last use of our
21 authority.

22 Colleagues?

23 COMMISSIONER SPITZER: Thank you, Mr. Chairman.

24 Gas is obviously critical to consumers, both of
25 natural gas and electricity. I'm going to be posting maybe

1 some more learned comments from my Staff on these items, G-1
2 and G-2, but I think it's important --

3 And, particularly, G-1 does reflect in its text,
4 lingering concerns from, I guess, the bad old days of 0001,
5 that it is important that the public have faith and
6 confidence in wholesale markets.

7 This is designed to -- that is, both
8 symbolically and substantively, important; that we can't
9 have competitive wholesale markets without faith and
10 confidence of the consumers of this country.

11 Secondly, during the transparency conferences and
12 the filings that were received, there was some concern about
13 a burden on the industry. I think we've taken great pains
14 to balance the burden on those reporting, with the benefits
15 and the underlying statute and the Congressional intent
16 underlying that statute.

17 It's important, whether -- I've toyed with what
18 is the right term, whether it's symmetrical or obligations -
19 - the FERC has worked very hard for infrastructure in
20 natural gas, and we have worked very hard to assure pipeline
21 capacity has adequate returns and that we have the potential
22 for LNG terminals around the country, to improve the supply
23 of the commodity, consistent with our mandate to consider
24 environmental impacts and the impacts on the ratepayers.

25 But the symmetrical obligation of the industry,

1 is to work with us on this reporting, hopefully to avoid any
2 gratuitous burdens.

3 But it is those symmetrical obligations, I think,
4 that are part of this whole broad concept of natural gas
5 supply. And I think we've achieved that appropriate
6 balance, and those in the industry who retain concerns, I'd
7 urge them to consider the big picture and that their
8 symmetrical obligations are important, again for the purpose
9 of having the public have faith and confidence in natural
10 gas markets.

11 CHAIRMAN KELLIHER: Thank you. Commissioner
12 Wellinghoff?

13 COMMISSIONER WELLINGHOFF: Chairman Kelliher, I'd
14 just echo the remarks of Commissioner Spitzer. Natural gas
15 is an essential fuel and something that consumers in this
16 country rely on, and I think we're going to be relying on it
17 even more.

18 It's a relatively clean fossil fuel, and I think
19 we're going to be seeing more of it, especially in
20 distributive generation.

21 We have to ensure that there is competitiveness
22 in the natural gas markets, and I think transparency is an
23 essential aspect of that.

24 I think that the Final Rule here and the NOPR
25 that we're voting on today, that I support, will start going

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1 down that road to utilize our authority to ensure
2 transparency and ultimately to provide the confidence to
3 consumers in natural gas markets, that we need to ensure.

4 CHAIRMAN KELLIHER: Thank you. Colleagues?
5 Commissioner Moeller?

6 COMMISSIONER MOELLER: Mr. Chairman, earlier this
7 month, I was meeting with the American Public Gas
8 Association, and one of their Board members emphasized the
9 importance of transparency issues to them, and expressed a
10 little disappointment that we hadn't done anything since
11 the July Technical Conference.

12 Sometimes it takes us awhile to work through
13 issues on a Rule of this magnitude, but I'm happy today that
14 we're moving forward.

15 Eric gave a good summary of what the Rule is, but
16 the real-world consequences of the Final Rule, essentially
17 is that for the first time, a new FERC form will allow us to
18 estimate the annual size of the physical wholesale natural
19 gas market, with some exceptions for small players.

20 That will improve our understanding of index
21 pricing, and that should allow market participants to
22 evaluate their confidence in the formation of index prices,
23 and I'm confident that these new regulations will allow
24 that.

25 There will be a burden to prepare a once-a-year

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1 form, but I believe it will be outweighed by the benefits to
2 the market, and I look forward to reviewing the data for
3 calendar year 08, in, I believe, March of or mid-2009.

4 With respect to the daily posting NOPR, some
5 people are probably confused that one NOPR would lead to
6 another, but, ultimately, we had a lot of comments, we had
7 to consider them. The good news is that they'll be
8 incorporated into the new Notice of Proposed Rulemaking,
9 but, ultimately, daily posting requirements should give us a
10 better sense of the magnitude of transactions that occur in
11 the nation's natural gas markets, and that will allow us and
12 other market observers to have more confidence in the
13 system.

14 So I look forward to this process, as well. Mr.
15 Chairman, thank you.

16 CHAIRMAN KELLIHER: Thank you. Commissioner
17 Kelly?

18 COMMISSIONER KELLY: Thank you. Regulatory
19 reporting requirements frequently get a bad name, and,
20 rightfully so. The whole idea that a regulator is going to
21 impose reporting requirements, can strike fear in the hearts
22 of industry.

23 And I think that's because there's concern,
24 probably borne out through experience, that a lot of
25 regulatory reporting requirements, are make-work, that they

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1 ask for information that's already known, or they ask for
2 information that isn't going to be helpful.

3 I'm convinced that none of those concerns attach
4 to these Rules. By way of example, I'd like to ask Eric and
5 Steve, do we know today, what percentage of physical natural
6 gas transactions take place, relying on index prices? Do we
7 have that data?

8 MR. HARVEY: We actually don't, so we really
9 don't know the level of influence of those prices.

10 COMMISSIONER KELLY: Do we know the size of the
11 physical U.S. domestic gas market today?

12 MR. HARVEY: Not in the sense of the amount of
13 transactions that take place. One of the reasons we're kind
14 of going in two directions in these two pieces, is that you
15 can look at the physical market as this is how much that's
16 delivered. That's really what the NOPR is about,
17 understanding that in more detail.

18 And you can think about how much is transacted,
19 which is more than what's delivered, because there's buying
20 and selling through the process.

21 It's that picture that this form will help us get
22 a better sense of.

23 COMMISSIONER KELLY: And do we know how robust
24 the index prices are today?

25 MR. HARVEY: No, but this information should help

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1 us a great deal along those lines.

2 COMMISSIONER KELLY: Well, those things have
3 convinced me that this is really an exceedingly valuable
4 endeavor. This is the kind of information that natural gas
5 market participants rely on.

6 They need to know how robust the index is, and
7 regulators need to know that, too. So, thank you for your
8 efforts in coming up with a Rule that gives us information,
9 the gas industry -- not only gives us, regulators, but also
10 gives market participants, information that they need and
11 that they can use to make the gas market more competitive
12 and more efficient. Thank you.

13 CHAIRMAN KELLIHER: Thank you. With that, I
14 think we're ready to vote.

15 SECRETARY BOSE: We will take a vote on both of
16 these items together, G-1 and G-2. The vote begins with
17 Commissioner Wellinghoff.

18 COMMISSIONER WELLINGHOFF: I vote aye.

19 SECRETARY BOSE: Commissioner Moeller?

20 COMMISSIONER MOELLER: Aye.

21 SECRETARY BOSE: Commissioner Spitzer?

22 COMMISSIONER SPITZER: Aye.

23 SECRETARY BOSE: Commissioner Kelly?

24 COMMISSIONER KELLY: Aye.

25 SECRETARY BOSE: And Chairman Kelliher?

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1 CHAIRMAN KELLIHER: Aye.

2 SECRETARY BOSE: The last item for discussion
3 this morning, is H-1, concerning The Finavera Renewable
4 Ocean Energy LTD in Docket Number P-12751-00.

5 There will be a presentation by Nicholas Jayjack
6 from the Office of Energy Projects. He is accompanied by
7 Annie Blanchard and John Katz from the Office of General
8 Counsel, and Ann Miles from the Office of Energy Projects.

9 MR. JAYJACK: Good morning, Mr. Chairman and
10 Commissioners. The Draft Order before you today, issues an
11 original license to Finavera Renewables Ocean Energy to
12 construct and operate the one megawatt Makah Bay offshore
13 wave energy pilot project for a period of five years, after
14 which it must be removed.

15 This would be the first hydrokinetic
16 demonstration project licensed by the Commission. The
17 project would be located in the Pacific Ocean within Makah
18 Bay, about 1.9 nautical miles offshore of Clallum County,
19 Washington.

20 Finavera would generate electricity by using
21 four, 250-kilowatt wave energy conversion buoys called
22 aquabuoys.

23 Each aquabuoys would house a system of hoses
24 configured in a closed loop, filled with 1,850 gallons of
25 fresh water. The kinetic motion of the waves will cause the

1 fresh water within the hoses, to become pressurized, and the
2 pressurized water will be directed to a turbine and
3 associated generation unit.

4 Electricity generated by the aquabuoy, would be
5 delivered to a shore station by a 3.7 mile long submarine
6 transmission cable.

7 To protect against any potential environmental
8 impacts, the license contains a provision allowing the
9 Commission to shut down or remove the project, should it
10 find that operation unacceptably affects the environment or
11 public safety.

12 Some additional mitigation measures, include:
13 Monitoring noise levels and marine mammals to evaluate noise
14 effects and interactions with the buoys; developing an
15 anchoring plan for the underwater transmission cable, and
16 monitoring the cable to ensure the line is stationary and
17 free of entangled debris; assessing the intensity of
18 underwater electromagnetic field emissions; developing a
19 cultural resources management plan; and preparing navigation
20 and project safety plans to protect the public, project
21 works, and the environment, from collisions and entanglement
22 with in-water project facilities.

23 The license application for this project, was
24 developed using the Commission's alternative licensing
25 process and was filed on November 8, 2006, prior to the

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1 availability of Commission Staff's recently-announced
2 proposed licensing process for hydrokinetic pilot projects.

3 The license is being issued in just over one year
4 from application filing. As the Commission's first
5 conditioned hydrokinetic project, the Makah Bay Project
6 license requires that Finavera obtain all other
7 authorizations required under federal law, before it begins
8 project construction and installation.

9 However, Finavera may begin developing
10 environmental plans and other activities that do not require
11 project construction.

12 That concludes our presentation. We would be
13 happy to answer any questions you might have. Thank you.

14 CHAIRMAN KELLIHER: Thank you very much.
15 Commissioner Moeller, do you want to start?

16 COMMISSIONER MOELLER: Thank you, Mr. Chairman.
17 Today is truly an historic day, as we move forward with
18 essentially capturing the power of the moon.

19 Now, many of you are well aware of solar power
20 and other renewable resources, but, essentially, now we're
21 taking the gravitational power of the moon and capturing
22 that through waves, and we have a bright future ahead of us.

23 I'm excited about this, and I hope the rest of
24 the industry is, too. You only have to look back at the
25 lyrics of some of the Woody Guthrie songs from --

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1 (Laughter.)

2 COMMISSIONER MOELLER: -- from the WPA
3 projects, where, you know, he talked about the promise of
4 hydropower and roll on, Columbia, your power is turning the
5 darkness to dawn, and if I were to rewrite those lyrics, I
6 would say, roll on Pacifica, your waves are turning the
7 darkness to dawn, because there is really, truly great
8 potential here.

9 And as explained, we're not diving headlong into
10 this, irresponsibly. There are certainly many protections
11 that will allow for proper environmental monitoring and
12 making sure that the proper permits need to be obtained by
13 other entities, before this can go forward.

14 But, today, I'm excited to be a part of this.
15 How often in a career, are you really there to witness,
16 potentially, a new technology being unveiled?

17 I thank the Staff for their hard work, the timely
18 efforts to get this in right at about a year, and I look
19 forward to all of you visiting the great state of Washington
20 and Clallum County, the day when this is installed.

21 Just as a side note, you may think of Seattle and
22 the eastern suburbs as a place of great affluence, and it
23 is, but on the coastal areas, along with many parts of the
24 Pacific Coast, you know, they have not shared in the
25 affluence of other bigger times, and I look forward to the

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1 promise that this might have for local communities, as well.

2 Thank you, Mr. Chairman.

3 CHAIRMAN KELLIHER: All right, thank you very
4 much, Phil, very well stated. Jon?

5 COMMISSIONER WELLINGHOFF: Mr. Chairman, thank
6 you.

7 Commissioner Moeller, technology, renewables,
8 you're singing my song.

9 (Laughter.)

10 COMMISSIONER WELLINGHOFF: You're definitely
11 singing my song. Now, I'm enthusiastically in support of
12 this Order.

13 I also am in support of the conditioned Order
14 process that we're doing here. It's something we've done in
15 other projects and in a number of instances, and I think
16 it's completely appropriate here to have a conditioned
17 Order.

18 I think that will work very well for this
19 particular type of technology. Also, even though this
20 wasn't, in fact, done strictly under the pilot license
21 process that the Commission has developed, there's enough
22 aspects of this that, in essence, this is a first time, you
23 might say, a dry run, but I guess you'd have to say a wet
24 run for the pilot license process, which is, I think,
25 something that will serve us well with these types of

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1 technologies, to try these technologies out under that pilot
2 process and assure that they can, in fact, produce, as they
3 are represented, and do so in an environmentally reasonable
4 and rational way. I'm sure that will happen.

5 So I want to commend the entire Staff and Mark
6 Robinson and his office for everything that was done here.
7 It was really superb work. Thank you.

8 CHAIRMAN KELLIHER: Thank you, Jon.
9 Commissioner Spitzer?

10 COMMISSIONER SPITZER: Thank you, Mr. Chairman.
11 I come from a place that has a beach, but no ocean.

12 (Laughter.)

13 COMMISSIONER SPITZER: And I am excited as my
14 colleagues and Commissioner Moeller; not as articulate or
15 eloquent, but I also believe this is one of the most
16 significant matters to come before me during my tenure at
17 FERC.

18 This project, the Makah Bay Project, is both
19 symbolic and substantive. Today's action is a first careful
20 and yet bold step towards the future of renewable energy, so
21 the future is now.

22 I'd like to thank not only the developer, but all
23 those who intervened and provided comments in this matter,
24 including federal, Washington State, and Tribal governmental
25 entities, individuals, and non-governmental associations.

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1 Along with the Staff, they improved the quality
2 of this Order.

3 This Order balances the benefits of renewable
4 energy pilot projects with the protection of a host of
5 critical environmental interests. Indeed, at least eight
6 federal and state statutes are recognized herein, as well as
7 the obligations of the United States under a treaty with the
8 sovereign tribes.

9 Pages 18 through 24 of the Order, recite the
10 obligations of the developer to minimize and perhaps totally
11 eliminate any adverse impacts in the environment and
12 commercial fishing.

13 The Commission's review of these potential
14 impacts, has been thorough. None has been neglected, and we
15 have not permitted the benefits of the project to obscure
16 the need for the utmost regard for a unique ecosystem.

17 The Commission believes hydrokinetics will play
18 an essential role in providing reliable electricity to U.S.
19 consumers, in concert with the public policies underlying
20 state renewable energy standards.

21 While we believe Makah Bay holds great promise,
22 we carefully considered all aspects of its construction and
23 operation, and we imposed prudent, careful conditions to
24 ensure compliance with the totality of the public interest.
25 I, therefore, very proudly support this Order.

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1 CHAIRMAN KELLIHER: Thank you. I just want to
2 clarify for anyone watching through website, that those loud
3 noises were not from any of Marc's colleagues.

4 (Laughter.)

5 CHAIRMAN KELLIHER: But was from our two-year old
6 son. So we agree with Marc. We weren't protesting.

7 (Laughter.)

8 CHAIRMAN KELLIHER: Commissioner Kelly?

9 COMMISSIONER KELLY: Well, the physics of the
10 current, the tidal, and the wave technology that we're
11 seeing deployed today, have been known for hundreds of
12 years, and the technology itself has been worked on for
13 scores of years.

14 But, today, we truly are at the tipping point or
15 perhaps the spilling point of the deployment of this
16 technology. If you just look at the facts and figures at
17 our Commission, prior to 2004, we had not one application
18 for a preliminary permit or a license application for the
19 development of a hydrokinetic project.

20 Today, we have 88 issued and pending
21 applications for wave and tidal applications and an equal
22 number pending permits for in-river projects. I have always
23 known that the hallmark of this Commission, is its
24 commitment to meeting the ever-evolving challenges and
25 opportunities facing our various energy industries,

1 including the hydroelectric industry.

2 I'm pleased to support this Order, which makes
3 use of a conditioned license as an advancement to
4 accommodate the nature of this kind of technology. It is,
5 of course, although at its tipping point, an emerging
6 technology, and there are many questions to be answered
7 regarding its effectiveness.

8 Today's Order helps meet the twin goals of moving
9 forward the development of these new technologies, but doing
10 so in a manner that ensures that we are collecting the
11 information we need and that can be incorporated into future
12 projects. I'm very pleased to support this
13 order.

14 CHAIRMAN KELLIHER: Thank you. I particularly
15 want to commend the Staff. A year ago, there wasn't
16 something called a pilot project license at FERC; there
17 wasn't even something called a conditioned license,
18 available for hydro projects at FERC.

19 But following on the Hydro Conference from
20 December of 06, you know, I asked Staff -- coming out of
21 that, it was clear that the problem was -- what we needed to
22 do, was demonstrate these technologies. We needed pilot
23 projects. We needed demonstration projects.

24 And I asked the Staff, is there any way we can
25 come up with a license that's really tailored for that

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1 purpose? The Staff came up with a very excellent proposal
2 and here we are acting a year later and we're issuing our
3 first hydrokinetic license, we're issuing our first
4 conditioned hydro license, hydrokinetic license.

5 And it's not quite a pilot project license, but
6 it has many of the characteristics of it. So I think that's
7 really rapid action for a federal regulatory agency, and I
8 think that reflects very well on the Staff.

9 And I do want to commend our colleague,
10 Commissioner Moeller. He is a hydro guy, and I know that
11 the Staff very much likes it, when a Commissioner arrives
12 with an interest and enthusiasm for hydro, because it's
13 actually pretty rare that we have a --

14 (Laughter.)

15 CHAIRMAN KELLIHER: -- hydro Commissioner or
16 water Commissioner, so we're lucky to have you.

17 And I think this is a very good Order, and you
18 can probably sense the enthusiasm among all of us. So, I
19 support the Order, and I just want to emphasize just one
20 point on conditioned licenses. We've been very careful to
21 protect state authority with respect to conditioned
22 licenses. State authority is not diminished by the
23 conditioned license, and that's been clear, based on the
24 precedent on the gas side.

25 So I think it's a good Order, and I'm happy to

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1 support it. And without any other comments, let's vote.

2 SECRETARY BOSE: The vote begins with
3 Commissioner Wellinghoff.

4 COMMISSIONER WELLINGHOFF: I vote aye.

5 SECRETARY BOSE: Commissioner Moeller?

6 COMMISSIONER MOELLER: Aye.

7 SECRETARY BOSE: Commissioner Spitzer?

8 COMMISSIONER SPITZER: Aye.

9 SECRETARY BOSE: Commissioner Kelly?

10 COMMISSIONER KELLY: Aye.

11 SECRETARY BOSE: And Chairman Kelliher?

12 CHAIRMAN KELLIHER: Aye.

13 Any other business?

14 (No response.)

15 CHAIRMAN KELLIHER: Seeing none --

16 COMMISSIONER MOELLER: Mr. Chairman?

17 CHAIRMAN KELLIHER: Yes, sir?

18 COMMISSIONER MOELLER: Before the gavel goes
19 down, I want to commend the State of Kansas. I was out for
20 the second year in a row for the Kansas Transmission Summit,
21 particularly Representative Tom Sloan, who is trying to make
22 a difference in getting more transmission built in that
23 great state, particularly to capture the wind resources in
24 western Kansas and send them to markets that want to use
25 them.

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Before the gavel comes down, I, too, want to add my congratulations to you, Commissioner Wellinghoff. We're in a time where there are a lot of tough decisions to be made, and stability and leadership are valuable and having that to look forward to, I think, benefits all of us and the consumers in the country.

(Applause.)

CHAIRMAN KELLIHER: Thank you very much, thank you.

(Applause.)

CHAIRMAN KELLIHER: Now, Nora is going to help me adjourn the meeting.

Are you ready?

(Gavel sounds.)

CHAIRMAN KELLIHER: This meeting is adjourned.

(Whereupon, at 11:23 a.m., the meeting was adjourned.)