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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

928TH COMMISSION MEETING
OPEN SESSION

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

Thursday, January 17, 2008
10:06 a.m.

1 APPEARANCES:

2 COMMISSIONERS PRESENT:

3 CHAIRMAN JOSEPH T. KELLIHER (Presiding)

4 COMMISSIONER SUEDEEN G. KELLY

5 COMMISSIONER MARC SPITZER

6 COMMISSIONER PHILIP MOELLER

7 COMMISSIONER JON WELLINGHOFF

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P R O C E E D I N G S

(10:06 a.m.)

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

Please join us in the Pledge of Allegiance.

(Pledge of Allegiance recited.)

CHAIRMAN KELLIHER: We have a number of short announcements before we turn to the business matters. I think we'll start with a couple of staff announcements.

I have a change in my office, namely, Diane Harley is a new secretary in my office. She's helping our office operate smoothly, and she just joined us, I think, on January 2nd or 3rd, and I want to welcome Diane.

Then I think Suedeen has an announcement.

COMMISSIONER KELLY: Yes, I'm sad to say that Maria Vouras, my assistant, who has been with me since I became a Commissioner, is leaving my office and going to another office at FERC. She'll be in the Market Monitoring Branch of the Office of Enforcement.

I just wanted to publicly share how much I have enjoyed working with Maria and to say what a wonderful lawyer and person she is, and how much I'm going to miss

1 her.

2 But the good news is that Aileen Roeder, who has
3 been in the Office of General Counsel, has agreed to come
4 and work for me in the slot that Maria leaves open. So, I'm
5 very pleased to have Aileen, and I know the Office of the
6 General Counsel is very sad to see her go. Thank you.

7 CHAIRMAN KELLIHER: Aileen, do you want to stand,
8 so that we can embarrass you?

9 (Applause.)

10 CHAIRMAN KELLIHER: And I just want to say that
11 it was a pleasure to work with Maria, but I am very
12 impressed with your hire, Aileen, because she did a great
13 job on ETP, and Cindy speaks volumes of great praise for
14 her. You chose very well.

15 And, secondly, I want to give an award to a FERC
16 Staffer, namely, Bill Longnecker. He is working as a Senior
17 Policy Analyst for Reliability in the Office of Electric
18 Reliability, and he's been with the Commission since it was
19 the Federal Power Commission, which is a real honor.

20 We just celebrated the 30th birthday of FERC, but
21 Bill joined the Agency when it held its prior name. He is a
22 graduate of the University of Maryland, with a B.S. in
23 Economics and a Master's in Administrative Science from
24 Johns Hopkins.

25 He's worked on electric power issues since he's

1 been with the Commission. I'm not sure if you did it at the
2 very beginning, but I think you worked on electricity before
3 electricity was really cool at FERC.

4 (Laughter.)

5 CHAIRMAN KELLIHER: In the days when we were a
6 gas agency, notwithstanding our name, the Federal Power
7 Commission. So you have more foresight than others, but you
8 worked in the Office of Electric Power Regulation, the
9 Office of Markets, Tariffs, and Rates, and now the Office of
10 Electric Reliability.

11 Bill was instrumental in developing Order 672,
12 the Rules Governing the Certification of Electric
13 Reliability Organizations; also the Orders regarding
14 regional entity delegations, and also the review and
15 establishment of Reliability Standards.

16 And one thing I think is very impressive about
17 FERC and is different from other federal agencies, is the
18 mix of staff. We have real veterans at FERC; we also have
19 very young staff members, and we have people in the middle.

20 I think that mix is a real strength of the
21 Commission, and Bill is one of the veterans, and I think
22 that makes the organization much stronger. If we had only
23 veterans, maybe we wouldn't be so strong, but if we had only
24 people with relatively short experience, we wouldn't be a
25 very strong organization, so that mix really helps.

1 And Bill is exactly the kind of talent we needed
2 at the Agency, and he really does reflect the best qualities
3 of public service. I'm very happy to give him the Exemplar
4 of Public Service Award today, and just ask my colleagues if
5 they want to disagree with me on anything I've said.

6 (Laughter.)

7 CHAIRMAN KELLIHER: Or just say they agree, or
8 elaborate in any way they want.

9 COMMISSIONER KELLY: I never disagree with you,
10 Mr. Chairman.

11 Bill, thank you very much for your service. It
12 was Aristotle who said "excellence is not an act but a
13 habit," and you're excellent.

14 You've been excellent at FERC. I understand that
15 you are also very highly regarded by the people you work
16 with, as a person. We're very lucky to have had your
17 service here, and to have had your habit of excellence.
18 Thank you.

19 CHAIRMAN KELLIHER: Colleagues, any comments?

20 (No response.)

21 CHAIRMAN KELLIHER: And I want to thank Joe, Joe
22 McClelland, for recommending Bill for this Award. I think
23 it was exactly on the mark, so I want to thank Joe, as well.

24 So, with that, why don't we present Bill with his
25 award. Bill?

1 (Presentation made; applause.)

2 CHAIRMAN KELLIHER: With that, I would like to
3 turn to our colleague, Commissioner Moeller. He has a very
4 good comment he'd like to make towards our community. Bill?

5 COMMISSIONER MOELLER: Thank you, Mr. Chairman.
6 You can judge later, whether it's very good or not.

7 This is, relatively, an arcane area in the world
8 of FERC, but, nevertheless, one that I thought it was worth
9 talking about for a couple of minutes.

10 We've been noticing for some time now, an
11 inconsistency between settlement agreements accepted by the
12 Commission, and the explanatory statements which are
13 intended to describe those settlement agreements.

14 In fact, on a few occasions, we've noticed that
15 the settlement agreement failed to be explicit in the
16 settlement agreement itself, about the standard of review.

17 So, instead, some parties describe their standard
18 review in the explanatory statement. On those occasions, I
19 have drafted concurring opinions, which say that the
20 standard of review they intend to apply to change in the
21 settlement agreement, must match the standard of review set
22 forth in the explanatory statement.

23 An explanatory statement does not control the
24 terms of a settlement agreement, and, in the event of a
25 conflict, I will rely on the terms of the settlement

1 agreement itself, not the explanatory statement, in
2 determining such applicable standard of review.

3 I asked for some time today, because just
4 yesterday, the Commission issued an Order where the standard
5 of review in the settlement agreement, was actually in
6 conflict with the standard described in the explanatory
7 statement.

8 In fact, the explanatory statement said it was a
9 public-interest standard, but the settlement agreement
10 itself, was a just-and-reasonable standard.

11 We addressed this relative obvious drafting error
12 correctly, by holding the parties to the terms of the
13 settlement agreement, but the error shouldn't have happened
14 in the first place. We've seen it repeatedly, despite my
15 concurrences pointing it out.

16 So I asked for some time to publicly point this
17 out, so that we don't have the inconsistencies, and,
18 frankly, it doesn't waste the time of the Staff in
19 correcting those. Thank you, Mr. Chairman.

20 CHAIRMAN KELLIHER: Very well stated.
21 Colleagues, any other comments before we turn to the Consent
22 Agenda.

23 (No response.)

24 CHAIRMAN KELLIHER: Madam Secretary, let's turn
25 to the Consent Agenda.

1 SECRETARY BOSE: Good morning, Mr. Chairman; good
2 morning, Commissioners.

3 Since the issuance of the Sunshine Notice --

4 CHAIRMAN KELLIHER: I'm sorry, my usual -- I like
5 to say this number, before we turn to the Consent Agenda.

6 (Laughter.)

7 CHAIRMAN KELLIHER: It would bother me all day,
8 if I didn't.

9 (Laughter.)

10 CHAIRMAN KELLIHER: So, I'd like to note that
11 since the December 20th Open Meeting, we've issued 47
12 Notational Orders, so during the holidays, the Federal
13 Government continued to function effectively.

14 So why don't we now turn to the Consent Agenda?

15 (Laughter.)

16 SECRETARY BOSE: Since the issuance of the
17 Sunshine Notice Act Notice on January 10th, 2008, no items
18 have been struck from this morning's agenda.

19 Your Consent Agenda for this morning is as
20 follows: Electric Items - E-4, E-5, E-7, E-8, E-10, E-11,
21 E-12, E-14, and E-15.

22 Miscellaneous Item: M-1.

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

24 Certificate Items: C-1.

25 As to E-5, Commissioner Kelly is dissenting, in

1 part, with a separate statement, and Commissioner
2 Wellinghoff is dissenting, with a separate statement.

3 We will now take a vote on the Consent Agenda
4 Items, beginning with Commissioner Wellinghoff.

5 COMMISSIONER WELLINGHOFF: With the exception of
6 my dissent in E-5, I vote aye.

7 SECRETARY BOSE: Commissioner Moeller?

8 COMMISSIONER MOELLER: Aye.

9 SECRETARY BOSE: Commissioner Spitzer?

10 COMMISSIONER SPITZER: Aye.

11 SECRETARY BOSE: Commissioner Kelly?

12 COMMISSIONER KELLY: Aye, with the exception of
13 my dissent in E-5.

14 SECRETARY BOSE: Chairman Kelliher?

15 CHAIRMAN KELLIHER: Aye.

16 SECRETARY BOSE: We'll move on to the discussion
17 items. The first item for presentation this morning, is E-
18 2, concerning the Draft Rulemaking on the Mandatory
19 Reliability Standards of Critical Infrastructure Protection.

20 A presentation will be given by Regis Binder,
21 from the Office of Electric Reliability. He is accompanied
22 by Jan Bargaen, from the Office of Electric Reliability, and
23 Jonathan First, Gary Cohen, and Christy Walsh, from the
24 Office of the General Counsel.

25 MR. BINDER: Good morning Mr. Chairman and

1 Commissioners. My name is Regis Binder and I am from the
2 Office of Electric Reliability. Joining me at the table
3 today, are Jan Bargaen, the Team Lead from the Office of
4 Electric Reliability; Jonathan First, Gary Cohen, and
5 Christy Walsh, from the Office of the General Counsel.

6 In addition to the group at the table with me,
7 the following Commission Staff contributed to the rulemaking
8 that resulted in the Draft Order offered for your
9 consideration as Item E-2 on today's agenda: Randy
10 Blanchette, Dan Bogle, Ted Franks, Sharon Mayers, Mike
11 Peters, and James Stetson, from the Office of Electric
12 Reliability; S. L. Higginbottom, and Paul Silverman, from
13 the Office of the General Counsel; Mark Higgins, Kristin
14 McKeown, Roger Morie, and Todd Mullins, from the Office of
15 Enforcement; and Michael Miller, from the Office of the
16 Executive Director.

17 Today's Draft Order would approve eight new
18 mandatory Critical Infrastructure Protection (CIP)
19 Reliability Standards to protect the nation's bulk power
20 system against potential disruptions from cybersecurity
21 breaches.

22 These CIP Reliability Standards require certain
23 users, owners, and operators of the bulk power system, to
24 establish policies, plans, and procedures to safeguard
25 physical and electronic access to control systems; to train

1 personnel on security matters; to report security incidents;
2 and to be prepared to recover for a cyber incident.

3 The CIP Reliability Standards represent a
4 significant effort by the electric industry, that culminated
5 in the filing by the North American Electric Reliability
6 Corporation, in its role as the Electric Reliability
7 Organization, ERO, for Commission approval under Section 215
8 of the Federal Power Act.

9 The Draft Order also would direct the ERO to
10 develop modifications to these CIP reliability standards,
11 using the ERO Reliability Standards development process.

12 The major areas identified for modification,
13 include: Increased oversight of which facilities are to be
14 protected; increased oversight of permitted exceptions to
15 specific requirements of the Standards; and increased
16 reporting to the Commission.

17 The Draft Order also calls for the ERO to develop
18 modifications to tighten the technical requirements of the
19 Standards, and to provide more guidance to assist
20 responsible entities in their compliance efforts.

21 Cybersecurity is a relatively new challenge for
22 the electric industry. It is only in recent years that the
23 control systems for the electric grid, have grown away from
24 the traditional stand-alone environment and towards the
25 external information technology infrastructure.

1 The bulk power control systems have become
2 increasingly connected to both the corporate computing
3 environment and to the external world. Access is the key to
4 a successful cyber attack.

5 The CIP reliability standards address both
6 physical and electronic security measures, to control access
7 and protect the nation's bulk power system.

8 The Draft Order achieves a reasonable balance
9 between the recognized need for flexibility and the
10 competing need for clear guidance and direction for entities
11 that must comply with the Standards.

12 Thus, the Draft Order avoids a one-size-fits-all
13 approach, so that the CIP Reliability Standards will provide
14 room to tailor solutions in an environment where systems
15 vary greatly in architecture, technology, and risk profile.

16 However, the Draft Order would require the ERO to
17 develop modifications or guidance documents on certain
18 matters, to provide sufficient specificity to ensure that
19 entities that must comply with the CIP Reliability
20 Standards, have adequate direction and will successfully
21 implement security requirements.

22 This concludes our presentation, and we would be
23 happy to respond to any questions that you may have. Thank
24 you.

25 CHAIRMAN KELLIHER: Great, thank you very much.

1 First of all, I really want to commend the team
2 for this Order. I think it's a very well written Order, and
3 you went through a very extensive record.

4 The record in this proceeding, exceeds 1200
5 pages, and comes on the heels of the preliminary assessment
6 that the Staff developed back in December of 2006, so we
7 were really very deliberate in our approach, and I think
8 this is a first-rate Order, so I commend you for that.

9 I just want to make some general comments,
10 though, about cybersecurity. Basically what we're doing
11 today, is, we're approving the proposed cybersecurity
12 standards, because they will improve reliability of the bulk
13 power system and they meet the statutory standard.

14 But we also conclude that there's a need to
15 strengthen these standards, and we invoke our authority
16 under Section 215(d)(5) of the Energy Policy Act of 2005,
17 and direct the Electric Reliability Organization to submit
18 to the Commission, proposed modifications that we think are
19 necessary to strengthen the Reliability Standards and
20 improve our defenses against breaches of cybersecurity.

21 It's important to understand that the Reliability
22 Standards provisions in the Energy Policy Act, were designed
23 to limit our vulnerability to the kind of reliability
24 threats that have been posed in the past, that have caused
25 major regional blackouts in the past.

1 For example, one common feature of the past
2 regional blackouts, was poor vegetation management. And the
3 Reliability Standards provisions that we approved last year,
4 were directed at addressing that kind of threat, as well as
5 similar threats.

6 And making voluntary standards mandatory and
7 enforceable, has already improved compliance.

8 But cybersecurity really is a different kind of
9 threat. This threat is a conscious threat posed by a single
10 hacker, or perhaps an organized group, that may be
11 intentionally and deliberately trying to disrupt the grid.

12 And our decisions today, I think, reflect an
13 understanding of the nature of the grid, that the U.S. has
14 more than 500 owners of the transmission system, but these
15 are not 500 walled cities; they are interconnected; they're
16 really a latticework, and we have large regional machines.

17 I think that informs our decisions on issues such
18 as the acceptance of risk concept. I think our Order shows
19 that FERC will act to assure cybersecurity of the
20 transmission grid to the full extent of our legal authority,
21 and that the statutory process for establishing
22 cybersecurity standards, does have challenges.

23 But we're working with the established process,
24 and I think that's reflected in our Order today.

25 I just want to be very clear that FERC is

1 committed to assuring reliability of the bulk power system,
2 and guarding against cybersecurity threats. So I certainly
3 support the Order.

4 Colleagues? Commissioner Wellinghoff?

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

7 I think this is a very important Order. We have
8 electronic technologies today that utilize the Internet, and
9 that have opened unparalleled opportunities for
10 communication, for interconnectivity, and for efficient
11 operation of the electric grid, and we really want to move
12 rapidly ahead with those technologies.

13 But all those technologies are vulnerable to the
14 threats never before confronted by the electric industry,
15 our nation, and the world. These threats move and change
16 quickly, and are easily adapted and have one objective, and
17 that is to cripple our electric system.

18 But with these CIP Standards we adopt today, this
19 Final Rule looks at these threats straight in the eye and
20 establishes strong and practical protections for our system,
21 so we can move forward with these types of new, innovative
22 technologies.

23 So, with that, I really want to thank NERC and
24 its stakeholders for the efforts and expertise devoted to
25 developing these Standards. I also want to thank the Staff

1 team for their thorough assessment of the proposed
2 standards, and for their recommendations for modifications
3 to make the standards stronger for protecting consumers.

4 As a result of this work, we can move forward
5 with confidence in investing in our electric infrastructure
6 and to invest smartly in providing consumers with reliable,
7 efficiently-delivered electricity for their homes and
8 businesses.

9 I call upon the industry to move diligently and
10 expeditiously in implementing these standards we approve
11 today, and I also ask them to continue to assess and
12 incorporate best practices into the ongoing Reliability
13 Standards development process, so that we can constantly
14 meet the changing cybersecurity threats. Thank you.

15 CHAIRMAN KELLIHER: Thank you very much.
16 Colleagues? Commissioner Moeller?

17 COMMISSIONER MOELLER: Thank you, Mr. Chairman.
18 This may not be the most glamorous thing that we do at the
19 Agency, and, yet, it is undoubtedly one of the most
20 important, because it is in the category of anticipating
21 future problems and dealing with them.

22 I also commend the team for the Order, but I have
23 a couple of questions, if this is an appropriate time.

24 Regis, your quote from the presentation is -- you
25 noted that bulk power control systems have become

1 increasingly connected to both the corporate computing
2 environment and to the external world, and that access is
3 the key to any successful cyber attack.

4 We all know that. Similar to the debate we had
5 years ago now on the Y2K transition and the
6 interconnectedness of the utility system, the simple answer
7 to this is, should we have a disconnected or a more
8 disconnected bulk power system, as a way to secure ourselves
9 against a cyber attack? Your thoughts on that?

10 MR. BINDER: I think that in some cases, it may
11 be appropriate to reduce the amount of communications that
12 are vulnerable to attack, but not generally.

13 The increased communications and automation that
14 has occurred on the bulk power system, has resulted in more
15 efficiency, greater efficiency, and more, you know,
16 reliability for the system, also.

17 I think, just without being very careful about
18 disconnecting communications, we could lose the
19 functionality that we've gained in recent years. So, it's
20 really a case-by-case, I think, question to be examined.

21 In the Draft Order, we've tried to make sure that
22 the industry has the tools that it needs to make those
23 decisions, of course, with the appropriate oversight.

24 In the first instance, those decisions will be
25 made at the utility level.

1 COMMISSIONER MOELLER: Do you foresee a
2 possibility that in adopting these standards, though, we
3 could be promoting less interconnectivity?

4 MR. BINDER: I don't think so. You know, the
5 standards are designed to require appropriate protections
6 for the communications, not to stop the communications.

7 You know, the electric industry has always had to
8 deal with the natural disasters that have hindered the
9 operability of the bulk power system, and also in a lot of
10 cases, the communications associated with the bulk power
11 system.

12 The industry has had to work around it; they've
13 had to find a way, and they're very good at finding a way to
14 ensure the reliability of the system, despite these
15 difficulties.

16 To the extent that there is some loss of
17 communications, because of the standards, I think the
18 industry will be able to work around that, too.

19 COMMISSIONER MOELLER: Well, there are always
20 unintended consequences, some positive, some negative, to
21 whatever we do, and I guess I'd like your assurance that
22 you'll kind of be following this general issue, as these
23 Orders are implemented, so that whether it promotes or
24 discourages interconnectivity, and whether there are some
25 kind of tradeoffs there, that we'll be following it

1 throughout the years.

2 MR. BINDER: Absolutely, Commissioner. The Staff
3 will be looking at the reports. We have several reports
4 that are necessary or required as a result of this Draft
5 Order, and also we'll definitely be keeping a close watch on
6 the choices that industry makes to maintain the reliability
7 and improve the reliability of the bulk power system.

8 COMMISSIONER MOELLER: Very good, thank you.

9 CHAIRMAN KELLIHER: Commissioner Kelly?

10 COMMISSIONER KELLY: I'd just like to say that I
11 agree with -- and I guess we all do, since we're signing on
12 to this Order -- the proposals that Staff presented to us to
13 tighten up some of the exceptions that were originally
14 provided for in the CIP Reliability Standards.

15 And I was going to ask you, Regis, if you could
16 focus in on those and explain, just generally, why we think
17 it's important that exceptions to the Reliability Rule, be
18 fewer, as few as possible?

19 MR. BINDER: Well, of course, the Rules that are
20 established in the standards, are, you know, designed to
21 tighten the vulnerabilities, reduce the vulnerabilities, or,
22 hopefully, do away with the vulnerabilities in the cyber
23 assets.

24 But we realize -- and the comments were very
25 voluminous, convincing us that there are needs for

1 exceptions. There are a lot of different type of equipment
2 out there. Some of it is relatively old and wasn't designed
3 or manufactured in an era of cyber vulnerabilities, but
4 they're being asked to operate them in today's environment.

5 There are also, as we just discussed, issues
6 about losing functionality, so there will always be a need
7 for exceptions, but in the Draft Order, we try to allow for
8 those exceptions and those judgments to take place, but with
9 the appropriate oversight.

10 COMMISSIONER KELLY: Well, I have been impressed
11 by your approach to it and by the expertise that the Staff
12 has developed under Joe McClelland's leadership, and I want
13 to commend you for your thoughtfulness in recommending
14 changes to these standards, and for your diligence in
15 looking at them with a fine-tooth comb.

16 I think it's a very well written and
17 comprehensive Order, and an historic step in the process of
18 putting in place, the most effective electric Reliability
19 Standards.

20 I know that NERC is developing a compliance plan
21 for setting milestones for the industry for compliance with
22 these standards, and, I think, together, the standards and
23 the implementation plan, are putting us on a road to a much
24 more secure bulk power system. Thank you.

25 CHAIRMAN KELLIHER: Thank you. Commissioner

1 Spitzer?

2 COMMISSIONER SPITZER: Thank you, Mr. Chairman.
3 I'm very appreciative of the Staff in this matter, since the
4 technical aspects are complex and technically challenging,
5 and then the temporal aspect of changes in technology,
6 impose a complexity on top of a complexity, and so working
7 this, was a challenge, and I very much appreciate that.

8 I think my colleagues have pointed out the
9 further challenge in the inconsistency with the concept that
10 the architecture was designed to be open, originally, so
11 that neighboring systems could communicate, and that now we
12 have the challenge to secure what had originally been
13 established as open.

14 Commissioner Wellinghoff pointed out the benefits
15 of the open architecture. We want to secure the system
16 without losing those benefits, and those are among the many
17 competing interests.

18 This is another -- a further challenge is that
19 one-size-fits-all is necessary, because you can't have a
20 weakest link; you're only as strong as your weakest link,
21 and the weak link could be the method to cause the entire
22 grid to be affected by an attack.

23 At the same time, the Rules provide for
24 flexibility for case-by-case variations. It's just our hope
25 to elevate the weakest link, to make the weakest link more

1 secure in compliance with the rule.

2 The deletion of the business judgment and
3 acceptance of risk language, are, we think, appropriate, and
4 I agree with those. I agree with the requirement of
5 external review of what constitutes a cyber asset.

6 And as a recognition of the comments provided,
7 accept the possibility of technical infeasibility, but,
8 again, as my colleagues have pointed out, we need to pursue
9 this and monitor it over time, to make sure that we're
10 having the system as secure as possible.

11 I'd suppose, to conclude, this Commission should
12 be very proud of the efforts of all the stakeholders and
13 NERC and the Staff, in prudently but swiftly establishing
14 requirements to protect assets from cyber attacks.

15 This really is preservation of our way of life.
16 There is much more to be done in this area, and I would
17 expect NERC and the industry to continue to work with Staff
18 to relentlessly evaluate what can reasonably be done to
19 protect the bulk power system from cyber threats.

20 Again, I'd repeat my commendation for the Staff
21 for their hard work in producing a document that balances
22 the many and varied competing interests in a very complex
23 area that's very technical, but, nevertheless, critical to
24 the future of this country. Thank you.

25 CHAIRMAN KELLIHER: Thank you. Colleagues, shall

1 we vote? 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: Chairman Kelliher?

12 CHAIRMAN KELLIHER: Aye.

13 SECRETARY BOSE: The next item for presentation
14 this morning, is E-3, concerning Duquesne Light Company, in
15 Docket Number ER08-194-000.

16 There will be a presentation by Michael Isimbabi,
17 from the Office of Energy Market Regulation, and he is
18 accompanied by Dave Mead and Debbie Ott from the Office of
19 Energy Markets and Regulation.

20 MR. ISIMBABI: Good morning, Mr. Chairman and
21 Commissioners. My name is Michael Isimbabi, and I'm from
22 the Office of Energy Markets Regulation.

23 With me at the table, are David Mead and Deborah
24 Ott, also from the Office of Energy Markets Regulation.

25 E-3 is a Draft Order on a request by the Duquesne

1 Light Company for Commission approval of its conditional
2 withdrawal from PJM Interconnection. Duquesne is a PJM
3 transmission owner and also a PJM load-serving entity.

4 In its filing, Duquesne requests that the
5 Commission approve its withdrawal from PJM, effective May
6 31, 2008.

7 Duquesne states that upon its withdrawal from
8 PJM, it intends to join the Midwest ISO.

9 Duquesne attaches three conditions to its
10 withdrawal request: Duquesne's first condition relates to
11 PJM's capacity market construct, commonly referred to as the
12 Reliability Pricing Model or RPM.

13 Duquesne states that it intends to withdraw from
14 PJM, if the Commission considers and resolves to Duquesne's
15 satisfaction, Duquesne's liability for RPM capacity charges
16 under the PJM Reliability Assurance Agreement.

17 Specifically, Duquesne requests a finding that
18 its RPM cost liability is limited to committed RPM supplies
19 that would actually be delivered while Duquesne remains a
20 member of PJM.

21 Duquesne, therefore, requests that it not be held
22 liable for two of the three RPM auctions held to date by
23 PJM, covering capacity commitments through 2010.

24 Instead, Duquesne asserts that its RPM liability
25 should be limited to the capacity commitments attributable

1 to PJM's first RPM option, covering deliveries through May
2 31, 2008, that is, the date of Duquesne's proposed
3 withdrawal.

4 Duquesne also requests that the Commission
5 relieve Duquesne from its obligations to participate in two
6 RPM auctions scheduled to be held prior to Duquesne's
7 proposed withdrawal.

8 These auctions are scheduled for January and May
9 of 2008.

10 Duquesne states that its intent to withdraw from
11 PJM on the date specified in its filing, that is, on May 31,
12 2008, is also conditioned on the Midwest Independent
13 Transmission System Operator's implementation of centralized
14 balancing by June 1, 2008.

15 The Midwest ISO's balancing authority proposal is
16 currently pending before the Commission. Duquesne states
17 that if the Midwest ISO has not implemented centralized
18 balancing by June 1, Duquesne reserves the right to delay
19 its withdrawal from PJM.

20 Alternatively, Duquesne states that it may choose
21 to propose in a future filing, an alternative balancing
22 authority arrangement for the Duquesne Zone, such as
23 utilizing the services of an existing Midwest ISO member
24 capable of performing these services.

25 The third condition attached to Duquesne's

1 withdrawal request, concerns its obligation to submit
2 replacement arrangements covering its migration from PJM to
3 the Midwest ISO.

4 Duquesne states that to accomplish this
5 objective, an integration filing will be made by the Midwest
6 ISO. Duquesne also states that upon its integration into
7 the Midwest ISO, the Duquesne Zone, as it now exists within
8 PJM, will become a separate zone within the Midwest ISO.

9 Duquesne states that it is now completing
10 negotiations with the Midwest ISO to finalize a timeline,
11 terms, and conditions applicable to this integration.

12 The Draft Order finds that Duquesne will satisfy
13 the withdrawal requirements of the PJM Transmission Owners
14 Agreement, subject to conditions:

15 First, the Draft Order finds that Duquesne's
16 withdrawal from the Transmission Owners Agreement, will
17 require the Commission's review and approval of Duquesne's
18 proposed replacement arrangements, a submittal that is not
19 before the Commission at this time.

20 The Draft Order also finds that Duquesne has not
21 sufficiently addressed certain of the issues raised by its
22 filing, including the full extent of its remaining
23 transmission function obligations.

24 The Draft Order requires Duquesne to address
25 these obligations in a filing to be made within 45 days of

1 the date of the Commission's Order.

2 The Draft Order also finds that Duquesne will
3 satisfy the withdrawal requirements of the PJM Reliability
4 Assurance Agreement, subject to conditions.

5 The Reliability Assurance Agreement is an
6 agreement between PJM and its load-serving entities. The
7 Draft Order finds that Duquesne will be permitted to
8 withdraw from this agreement, subject to the completion of
9 its Reliability Assurance Agreement obligations.

10 The Draft Order finds that these obligations
11 include, among other things: Duquesne's payment of RPM
12 capacity charges attributable to all RPM auctions in which
13 Duquesne's load forecasts are included, including PJM's
14 upcoming January 2008 auction.

15 However, the Draft Order grants Duquesne's
16 request to omit the load in its zone from the May 2008
17 auction, provided that Duquesne files with PJM and the
18 Commission, by February 1, 2008, a written notice confirming
19 its commitment to withdraw from PJM, prior to the delivery
20 year applicable to the May 2008 auction.

21 Finally, the Draft Order clarifies that
22 Duquesne's withdrawal from PJM, will have the effect of
23 removing the Duquesne Zone, in its entirety, from PJM, such
24 that all other load-serving entities in the Duquesne Zone,
25 will also be removed from the May 2008 auction, should

1 Duquesne elect to withdraw.

2 This concludes our presentation. We'll be happy
3 to respond to any questions that you might have. Thank you.

4 CHAIRMAN KELLIHER: Thank you very much, thank
5 you for that presentation. I really want to commend the
6 Staff for the quality of this Order.

7 This Order deals with some very complicated
8 issues, and it was developed very quickly, I think, given
9 the nature of the issues, so I want to commend the Staff for
10 the Order.

11 And I think this Order shows that the Commission
12 does allow RTO members to exercise tariff and contractual
13 rights to withdraw from RTOs, and I think that's consistent
14 with Commission policy that promotes voluntary RTO
15 formation.

16 If RTOs are voluntary, then it stands to reason
17 that members must have some ability to withdraw, and if it's
18 voluntary in, it should be voluntary out.

19 But I do observe that other voluntary
20 organizations operate a little bit differently; that, for
21 example, membership in the Mafia is voluntary --

22 (Laughter.)

23 CHAIRMAN KELLIHER: -- but there are highly
24 imperfect withdrawal rights.

25 (Laughter.)

1 CHAIRMAN KELLIHER: And so we are being much --
2 very fair here, I think --

3 (Laughter.)

4 CHAIRMAN KELLIHER: -- appropriately, but even
5 though we do allow members to exercise their rights, we do
6 hold them to their obligations.

7 And that's what we're doing here today. We hold
8 Duquesne to its tariff obligations though the January 2008
9 RPM auction, and we find that it's unfair to shift these
10 obligations onto other PJM members.

11 Duquesne is a small PJM member; they have
12 relatively small load and relatively small transmission
13 system in the PJM system, but that really doesn't make the
14 withdrawal issues any less complex.

15 Here we're making some preliminary decisions, but
16 we are also leaving other complex issues for resolution in
17 future Orders.

18 So I do support the Order and I commend the
19 Staff.

20 Colleagues? Commissioner Kelly?

21 COMMISSIONER KELLY: Thank you. Well, as you
22 state, Joe, this Order is really not simply a matter of
23 allowing Duquesne to withdraw from PJM.

24 Duquesne is both a transmission owner and a load-
25 serving entity within PJM, and it's a party to different

1 agreements, and, as such, there are several complex issues
2 to consider, and I thank Staff for their help and assistance
3 in enabling us to do a careful job of examining these
4 issues.

5 The prophet Mohammed, said, trust in God, but tie
6 up your camels.

7 (Laughter.)

8 COMMISSIONER KELLY: And I think that the PJM
9 transmission owners, when they got together, trusted in each
10 other to form PJM, but they also knew it was important to
11 tie up their camels, or, in this case, their transmission
12 assets.

13 And they did that in a very comprehensive and
14 effective way, through these agreements that they entered
15 into. Some of these agreements didn't anticipate some of
16 the precise obligations that these PJM transmission owners
17 and load-serving entities would, in the ensuing years, come
18 to take on.

19 And so what the Commission has been asked to do
20 here, is to look at those agreements and interpret exactly
21 what obligations apply at exactly what point in time.

22 In this Order, we do not agree with Duquesne's
23 interpretation of their obligations, and I think that our
24 Order today is correct in setting the obligation for
25 participation in the former capacity market at the time that

1 the -- that Duquesne and the other transmission owners
2 nominate their loads to be served.

3 If we don't uphold that obligation, then we, in
4 effect, allow the other transmission owners' assets to be
5 impinged upon.

6 These other market participants make economic
7 decisions with respect to the forward capacity market,
8 based, in part, on a reliance on those nominations of those
9 numbers.

10 And they make their economic decisions and they
11 rely and they pledge their economic assets, and I agree with
12 this Order, that it's important that Duquesne and all
13 transmission owners, be held to account for those decisions.

14 I also wanted to mention that there is an issue
15 of Duquesne's obligations with respect to cost that has been
16 allocated as part of the regional transmission planning
17 process. I believe that in this Order, we appropriately and
18 sensibly acknowledge that the record on this subject, is not
19 fully developed, and that we need more information before
20 making a determination with respect to those costs.

21 Finally, I note that, in requiring Duquesne to
22 uphold its commitments, we do direct PJM to undertake
23 efforts that permit Duquesne to use the capacity it has
24 acquired in the forward capacity market, to satisfy
25 reliability requirements elsewhere, in MISO, for example, if

1 they choose to move there.

2 So I am pleased to vote in support of this Order,
3 and I want to thank the team once again for the hard work
4 that you've done.

5 CHAIRMAN KELLIHER: Thank you. Colleagues?
6 Commissioner Spitzer?

7 COMMISSIONER SPITZER: Thank you, Mr. Chairman.

8 This is an interesting and challenging matter,
9 and, at first blush, it poses a temporal issue: Which comes
10 first, the chicken or the egg?

11 Which comes first? The right to depart an
12 organization, or the fixing of the obligations of the
13 departing party?

14 I think the Order correctly says that there's a
15 parallel path for these two, and they must proceed in
16 tandem.

17 A few observations: First, in today's Order, the
18 Commission reinforces the policy that membership in ISOs and
19 RTOs, is voluntary.

20 Secondly, as the saying goes, membership has its
21 privileges, but also obligations.

22 Today's Order reasonably requires Duquesne, if it
23 still chooses to leave PJM, to fulfill the obligations it
24 incurred as a member of PJM.

25 Because RTOs and ISOs are voluntary, I don't

1 believe we should erect any barriers to departure, and
2 today's Order does not do so.

3 Requiring a departing entity to pay its full bill
4 on the way out the door, is not a barrier, but is
5 fulfillment of an obligation to which the member has already
6 agreed.

7 Then, finally, the Order requires the parties to
8 negotiate a means to allow Duquesne to mitigate some of the
9 cost of its obligations, without shifting them to PJM or
10 other market participants, and without creating any
11 transmission or reliability problems.

12 I do not believe we should -- it should be our
13 policy to go out of our way to cut corners or ignore a
14 member's obligations, simply to make it easy to depart an
15 RTO or ISO, but I do support mechanisms that would and could
16 result in a win/win situation for both the departing member
17 and any remaining market participants.

18 Since my colleagues made some colorful analogies
19 --

20 CHAIRMAN KELLIHER: Are you going to bring up the
21 Communist International again?

22 (Laughter.)

23 COMMISSIONER SPITZER: In reading some of the
24 pleadings, some of the opposition -- I think the opposition
25 raised very valid points, but some of the pleadings, taken

1 to their extreme, would create the situation -- the Eagle's
2 song, Hotel California -- I'm showing my age.

3 (Laughter.)

4 COMMISSIONER SPITZER: You can check out anytime
5 you like, but you can never leave?

6 (Laughter.)

7 COMMISSIONER SPITZER: And I think the principle
8 established in this Order -- that's before your time,
9 Commissioner.

10 (Laughter.)

11 COMMISSIONER SPITZER: The principle established
12 here, is, if you don't trash the room and you pay your bill,
13 then you can leave.

14 (Laughter.)

15 COMMISSIONER KELLY: You mean you can't slip out
16 the back, Jack?

17 (Laughter.)

18 COMMISSIONER SPITZER: That's right.

19 CHAIRMAN KELLIHER: Commissioner Wellinghoff?

20 COMMISSIONER WELLINGHOFF: Thank you, Mr.

21 Chairman. I agree with all the remarks of my fellow
22 colleagues.

23 I support the Order and I don't have anything
24 specific with respect to comment, other than to say that I
25 think it is a very balanced Order, and, in fact, does, as

1 Commissioner Spitzer has said here, somewhat colorfully,
2 that it allows benefits to be given to those who believe
3 that there are other places that they better fit in, but, in
4 doing so, they have to ensure that they're not going to
5 leave any dirty laundry behind.

6 So I think we've taken care of that, and I'd like
7 to commend Mr. Isimbabi and his wonderfully lyrical name,
8 and his team, for the work on this. I think the Staff did
9 an excellent job on this. Thank you.

10 CHAIRMAN KELLIHER: Thank you. Commissioner
11 Moeller?

12 COMMISSIONER MOELLER: Thank you, Mr. Chairman.
13 I will not talk of any hotel or other analogies, but just to
14 remind us all, I think most of us were caught by surprise
15 last Summer, when Duquesne announced its decision to
16 withdraw from PJM.

17 We recognized that the first series of the RPM
18 auctions in 20067 resulted in prices that were significantly
19 higher than PJM's projected forecasts, but I was still
20 disappointed by Duquesne's decision not to give the RPM
21 Model a second chance, so to speak.

22 My long-term goal is to continue to foster RTOs
23 that attract market participants. And as mentioned in the
24 Staff presentation and by some of my colleagues, our
25 decision to grant approval for Duquesne's withdrawal, is

1 subject to a host of conditions and a future filing.

2 Notably, the Order also finds that Duquesne must
3 pay capacity charges that are attributable to all RPM
4 auctions in which its load forecasts are included.

5 And while that may not be ideal from Duquesne's
6 perspective, it appears to be the best outcome, in view of
7 Duquesne's contractual obligations to PJM.

8 Ultimately, this process of moving from one RTO
9 to another, may prove to be a long and time-consuming
10 process, but today's Order will help that process, and I,
11 too, commend the team for putting this together, as you
12 noted, Mr. Chairman, on relatively short notice. Thank you.

13 CHAIRMAN KELLIHER: Thank you. I want to thank
14 all of my colleagues. These are really new issues for this
15 Commission to deal with. It's the first time we have dealt
16 with an RTO withdrawal issue, and these issues are complex,
17 but the offices work very well together, and I think we're
18 really of the same mind.

19 So I thank my colleagues, and I thank
20 Commissioner Kelly wins the award. That quote was great.

21 (Laughter.)

22 CHAIRMAN KELLIHER: And I might try to recycle it
23 after a couple of months. So, thank you very much.

24 I want to thank the Staff again for this Order.
25 So why don't we vote?

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

3 COMMISSIONER WELLINGHOFF: I vote aye.

4 SECRETARY BOSE: Commissioner Moeller?

5 COMMISSIONER MOELLER: Aye.

6 SECRETARY BOSE: Commissioner Spitzer?

7 COMMISSIONER SPITZER: Aye.

8 SECRETARY BOSE: Commissioner Kelly?

9 COMMISSIONER KELLY: Aye.

10 SECRETARY BOSE: Chairman Kelliher?

11 CHAIRMAN KELLIHER: Aye. There being no other
12 business pending before the Commission, this meeting is
13 adjourned. Thank you.

14 (Whereupon, at 10:54 a.m., the Open Meeting was
15 concluded.)

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