

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

- - - - -x
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

939TH COMMISSION MEETING

OPEN SESSION

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

Thursday, October 16, 2008
10:00 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

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 PROCEEDINGS

2 (10:06 a.m.)

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

8 (Pledge of Allegiance to the Flag recited.)

9 CHAIRMAN KELLIHER: We have a couple of items to
10 discuss before we turn to business, but why don't we start
11 with an introduction, or introductions, plural.
12 Commissioner Moeller?

13 COMMISSIONER MOELLER: Thank you, Mr. Chairman.
14 I guess everyone else, with maybe the exception of
15 Commissioner Kelly, has brought in their family or their
16 pets over the last few months--

17 (Laughter.)

18 COMMISSIONER MOELLER: --so I thought it was
19 appropriate that I do the same: 18-month-old Philip and
20 Caroline are here, and appreciate people being nice to them.
21 If I was ever in a meeting where I was slightly comatose
22 over the last year-and-a-half, now you know why.

23 (Laughter.)

24 COMMISSIONER MOELLER: Here they are.

25 (Applause.)

1 COMMISSIONER MOELLER: I will add that my wife,
2 Elizabeth, and our Nanny Jesse Fereno are here, as well, and
3 obviously it is a whole package together.

4 (Laughter.)

5 CHAIRMAN KELLIHER: Great. I have to admit, I
6 probably can remember your children's birthday better than
7 my own because there is a Civil War connection.

8 (Laughter.)

9 CHAIRMAN KELLIHER: April 9th is when Lee
10 surrendered, so I will always remember your children's birth
11 date.

12 Let me turn to Commissioner Wellinghoff. He has
13 a statement to make.

14 COMMISSIONER WELLINGHOFF: Thank you,
15 Mr. Chairman. Yes, I just wanted to thank my fellow
16 Commissioners for holding the fort on Tuesday on the
17 Transmission Barriers Workshop. I was sorry I could not
18 attend.

19 I had a long-standing commitment to actually make
20 a presentation at the Solar Power '08 Conference in San
21 Diego, and I did that. So while you were discussing
22 transmission during that day, I was in fact giving a
23 presentation on transmission to the assembled 20,000 people
24 there--there were actually about a thousand people in my
25 particular session--but what was most interesting to me was

1 that the big topic for them was transmission; that in fact
2 for the concentrating solar power systems, large central
3 solar power systems which they have already identified
4 through a process in California called "RETI," Renewable
5 Energy Transmission Initiative, 65 gigawatts, 65,000
6 megawatts of solar, they are very concerned about the issue
7 of transmission and its ability to deliver the solar to load
8 centers. So it was very appropriate that we were doing that
9 Transmission Barriers Conference and I am sorry I could not
10 attend, but I will be reading the transcript and looking at
11 the material.

12 Thank you.

13 CHAIRMAN KELLIHER: Thank you.

14 Before we turn to business, I have a couple of
15 staff awards that I would like to make today. I think they
16 are a surprise, so that adds more drama to the awards.

17 Today I want to recognize the superb work of the
18 Office of Enforcement and give awards to some of the leaders
19 of the Enforcement program who have had a leadership role
20 over the past three years.

21 To me, the accomplishments of the FERC
22 Enforcement Program have been very impressive. The leaders
23 of this office, under the direction of Susan Court, took an
24 Enforcement Program that was focused on identifying
25 violations of certificates, tariffs, and hydro licenses and

1 refocused it on market manipulation, market power exercise,
2 and reliability standards. And that was no small
3 undertaking. But the Enforcement staff managed this shift
4 so easily that I think the size of the undertaking was
5 diminished.

6 The Office of Enforcement is a very strong
7 office. It has an excellent mix of proven leadership,
8 veteran Commission staff, staff that are new to the
9 Commission but experienced in other fields, and young but
10 talented staff.

11 Once Congress gave us this new enforcement
12 authority three years ago, we immediately began to use it,
13 opening a large number of investigations.

14 The Commission clearly is dedicated to firm but
15 fair enforcement, and I think that is demonstrated and
16 reflected in the way Enforcement staff have conducted
17 themselves. But at the same time we have been conducting a
18 lot of investigations we have also been working on the
19 development of Enforcement policy, and that was reflected in
20 the November 2007 Enforcement Police Conference, the May
21 2008 package of Enforcement reforms, the July 2008
22 Compliance Conference, as well as our actions today.

23 The Commission is clearly dedicated to continuous
24 reform and steady improvement in Enforcement policy as well
25 as other areas.

1 I just want to say that I am proud of the work of
2 the Office of Enforcement. I know how hard the Enforcement
3 staff work, and I think your labors reflect very well on me
4 as well as my colleagues, the Commissioners, and I am very
5 grateful for everything you have accomplished.

6 Let me start with Anna Cochrane. Anna Cochrane
7 is the Deputy Director of the Office of Enforcement. I am
8 pleased to give her the Exemplar of Public Service Award.
9 Anna has been in public service for most of her career,
10 which spans more than 25 years in the energy sector alone.
11 She has done two tours of duty here at FERC.

12 In her first tour she worked at the Office of
13 Pipeline and Producer Regulation, and later for Commissioner
14 Traban and she returned to FERC at the Office of Market
15 Tariffs and Regulation, and all of its progeny, but she
16 later joined the Office of Enforcement as Deputy in 2006
17 where she served with distinction.

18 Where is Anna? Okay, great. Good. The camera
19 is on her, good.

20 (Laughter.)

21 CHAIRMAN KELLIHER: One of the goals when I
22 became Chairman was to better integrate the skills and
23 talents of the OMOI and later Office of Enforcement staff
24 into the work of the other offices, the other line offices,
25 and also into the decision making of the agency.

1 I am pleased to say I think now the Office of
2 Enforcement is fully integrated into the work of the
3 Commission and works very closely with the line offices.
4 Anna has had lead responsibility for that integration
5 effort, which I consider to have been a great success. Anna
6 is also a Hoya. We are both Hoyas, and I think she is very
7 proud to see that Georgetown has reclaimed its proper
8 standing in the universe of college basketball.

9 I live close to the campus and a T-shirt that I
10 see on campus from time to time is that now we have respect;
11 next, is fear.

12 (Laughter.)

13 CHAIRMAN KELLIHER: So that could be the motto of
14 the Office of Enforcement, as well.

15 (Laughter.)

16 CHAIRMAN KELLIHER: But it is what Georgetown is
17 pursuing. So, Anna, I am really pleased to give the
18 Exemplar of Public Service Award, and I would just like to
19 turn to my colleagues for any comments they might have.

20 Commissioner Kelly?

21 COMMISSIONER KELLY: I would like to add that
22 Anna, in addition to being a Hoya fan, is a very
23 accomplished horsewoman and has a number of horses. Also,
24 she is a mom. And she is somebody that I have looked up to
25 since I have been here. I have been pleased to work with

1 her in her various capacities, and am very glad that she is
2 working at Enforcement now with Susan at the helm.

3 CHAIRMAN KELLIHER: Colleagues? Commissioner
4 Wellinghoff?

5 COMMISSIONER WELLINGHOFF: I just think Anna's
6 broad experience at the Commission helps with the fairness
7 aspect of it in understanding the broad mission of the
8 Commission and what she does here. I didn't know she was a
9 horsewoman, and that even gives her a higher status in my
10 mind as well.

11 (Laughter.)

12 COMMISSIONER WELLINGHOFF: So congratulations.

13 CHAIRMAN KELLIHER: Commissioner Spitzer?

14 COMMISSIONER SPITZER: Thank you, Mr. Chairman.
15 I am very pleased by this, and you hit all the right points
16 with the judgment that Enforcement is critical. It is
17 absolutely essential that the public have faith and
18 confidence in the markets, and Congress entrusted us with
19 quite a responsibility that had to be created not
20 necessarily from whole cloth but with a new set of
21 responsibilities.

22 I have enjoyed working with Anna. The cases are
23 very complex. They are novel, by definition, and I
24 appreciate your patience in working with my team and I, and
25 frankly all our colleagues, in uncharted waters and

1 navigating those in a way with a lot of cooperation with my
2 office and with the others, and I appreciate that.

3 CHAIRMAN KELLIHER: Commissioner Moeller.

4 COMMISSIONER MOELLER: I believe someone in
5 Enforcement should have that description made of them that
6 they are polite but firm. I would say that Anna is not only
7 polite but pleasant and firm, and that is the kind of image
8 we want: someone who is respectful but very pleasant and
9 takes their job seriously. I appreciate the fact that you
10 are giving her this award.

11 CHAIRMAN KELLIHER: Anna, why don't you come up?

12 (Applause.)

13 (The Chairman presents Exemplar of Public Service
14 Award to Anna Cochrane.)

15 CHAIRMAN KELLIHER: I would also like to
16 recognize Bob Pease. Bob is the Director of the Division of
17 Investigations at the Office of Enforcement. The camera can
18 shift to him, if you like.

19 I am pleased to give Bob the Chairman's Executive
20 Leadership Award. Bob has worked on Enforcement since he
21 joined FERC when it was formerly--initially the Enforcement
22 Program was part of the Office of General Counsel. It was
23 later in OMOI. Now in the Office of Enforcement.

24 Bob has been the leader of our Investigations
25 efforts since the establishment of OMOI. That leadership

1 role has been critical, and the success of our
2 Investigations effort has reflected very well on the
3 Commission.

4 Bob has played a key role in negotiating major
5 Enforcement settlements approved by the Commission, but one
6 of Bob's greatest accomplishments is helping to assemble
7 very talented and dedicated Investigations staff.

8 As I indicated earlier, I have complete
9 confidence in the staff of the Office of Investigations and
10 their fine work, but I think the success of the group
11 reflects on the leader of the group. Namely, Bob Pease.

12 Bob, though, I have to say, is a Duke fan, a Duke
13 college basketball fan I understand, which from a Hoya's
14 point of view is not great--

15 (Laughter.)

16 CHAIRMAN KELLIHER: --but nonetheless putting
17 that to the side, I think you definitely deserve this award.
18 You have shown a lot of leadership and I am grateful for
19 your efforts.

20 Colleagues? Commissioner Kelly?

21 COMMISSIONER KELLY: I would like to add to that.
22 As Joe reminded me, we have been here now five years and Bob
23 has been indispensable to me over those five years. When we
24 first came, we were still working on the--well, I guess we
25 probably still are--the California investigation, and Bob

1 has been instrumental in helping settle that litigation and
2 conducting it with integrity and honor and a good face for
3 FERC.

4 I have relied on him for these five years, and I
5 am very pleased that he has continued to work at the Office
6 of Enforcement, and he certainly deserves this award.

7 CHAIRMAN KELLIHER: Colleagues? Commissioner
8 Wellinghoff?

9 COMMISSIONER WELLINGHOFF: Bob is a tough cop but
10 a fair cop, I think he exemplifies, as I see Bob, and he has
11 done nothing but wonderful service for this Commission and I
12 am pleased to work with him. Thank you.

13 CHAIRMAN KELLIHER: Commissioner Spitzer?

14 COMMISSIONER SPITZER: Thank you, Mr. Chairman.
15 I don't like to do basketball any more than the Chairman
16 does, but--

17 (Laughter.)

18 COMMISSIONER SPITZER: --I would like to focus on
19 the undergraduate experience of Mr. Pease, a Dickinson
20 College graduate, one of the oldest independent colleges,
21 founded in 1773, on the other side of the Susquehanna River,
22 and that was west in those days.

23 And continuing with the Civil War--I know you
24 have an interest in that--at one point two-thirds of the
25 government was controlled by Dickinson College graduates.

1 Unfortunately, perhaps not the best results, of Roger Brook
2 Taney, Chief Justice, who had a very fractured Court in the
3 issuance of the Dred Scott Decision, which is not the
4 Supreme Court's best hour, and the President was James
5 Buchanan from Lancaster, Pennsylvania, who dithered until
6 the beginning of the Civil War. So Mr. Pease has done a lot
7 better than Roger Brook Taney--

8 (Laughter.)

9 COMMISSIONER SPITZER: --or James Buchanan. My
10 tenure we'll leave for others to decide, but I absolutely
11 concur in this award and congratulate Bob for his service to
12 the people of the United States.

13 CHAIRMAN KELLIHER: Commissioner Moeller.

14 COMMISSIONER MOELLER: Thank you, Mr. Chairman.
15 It would seem that Bob perhaps should have been a Georgetown
16 Hoya or a Yale Eli, because to me he is a real Bulldog, and
17 I think his tenaciousness serves the Commission well. And
18 his wife works for the CFTC. So I am sure there are some
19 very interesting dinnertime table--

20 (Laughter.)

21 COMMISSIONER MOELLER: --conversations, but I am
22 glad you are giving him this award.

23 CHAIRMAN KELLIHER: Thank you. Bob, why don't
24 you come up.

25 (Applause.)

1 (The Chairman presents the Chairman's Executive
2 Leadership Award to Mr. Pease.)

3 CHAIRMAN KELLIHER: And finally, I would like to
4 present the Exemplar of the Public Service Award to Lee Ann
5 Watson, the Deputy Director of the Division of
6 Investigations.

7 Lee Ann, in my opinion, is one of the most worthy
8 recipients of this award since its inception in 1998 in that
9 her dedication to public service is really unsurpassed at
10 the Commission. I won't say it surpasses others, but I
11 think it is unsurpassed.

12 This is at an agency with a reputation for hard
13 work, and very high-quality work. Lee Ann joined us in 2002
14 from private practice, but she came here with 24 years of
15 legal experience, 20 years as litigation partner and 4 years
16 as an Assistant Counsel at the Department of Justice.

17 I think she really does reflect the strength of
18 the Office of Enforcement staff, that mixture of talented
19 staff that make a superb team. Lee Ann has brought her
20 experience to bear on the development of major enforcement
21 initiatives:

22 The Original Policy Statement from October 2005;
23 The Antimanipulation Rules;
24 The Revised Enforcement Policy Statement; and
25 The Compliance Policy Statement that we will

1 consider later today.

2 I think Lee Ann has been a major part of our
3 success, and I am tempted to say she is an indispensable
4 part of our organization but then she would really be in a
5 great negotiating position for bonuses.

6 (Laughter.)

7 CHAIRMAN KELLIHER: So I will imply that without
8 actually saying it. But Lee Ann is also one of the hardest
9 working Commission employees. Her car is frequently the
10 first one in in the morning and one of the last to leave.
11 She works so hard she makes me feel like a slacker.

12 So she is an Indiana fan. You went to Indiana as
13 an undergraduate, so she has her own loyalties in college
14 basketball and is an enthusiast. So these are actually a
15 rare sports analogies and references for me. I am usually
16 trying to work in a Civil War angle whenever I can, so I am
17 outside of my sweet spot, but Lee Ann is an Indiana fan and
18 I won't hold that against her either, but she has really
19 been--it's been a pleasure to work with her ever since I've
20 arrived her. Suedeen and I arrived here in 2003, and it has
21 really been a pleasure to work with you.

22 Colleagues? Commissioner Kelly?

23 COMMISSIONER KELLY: Thank you. Yes, well, Lee
24 Ann may have left private practice but she didn't leave the
25 work ethic of private practice. She certainly brought it

1 with her.

2 I asked in the Office of Enforcement for comments
3 about Lee Ann and working with her, and uniformly they were
4 superb. She is a role model for the staff, and she is a
5 role model for us.

6 I feel very comfortable knowing that she is at
7 the helm there, and is cool and calm and knows everything
8 you need to know. She definitely deserves this award.

9 CHAIRMAN KELLIHER: Colleagues? Commissioner
10 Wellinghoff?

11 COMMISSIONER WELLINGHOFF: Well you know people
12 ask me often why I like working at the Commission. My first
13 response is because I get to work with very smart people.
14 And when I say that, Lee Ann's face is the one that comes up
15 most often. She is a very, very, very smart woman and she
16 does an exemplar job. She is a very good attorney. She
17 deserves this award.

18 CHAIRMAN KELLIHER: Colleagues? Commissioner
19 Spitzer?

20 COMMISSIONER SPITZER: Thank you, Mr. Chairman.
21 You alluded to the private sector experience, which is very
22 important. At the same time, it is difficult sometimes to
23 manage the transition. Not everybody can do it. And we
24 appreciate that.

25 We also appreciate the issue of temperament. I

1 learned from being on the other side of the table from the
2 Federal Government for many years. The temperament of an
3 auditor is different than that of a litigator, and it is
4 often--we had an organization that performed by and large
5 for many years accounting functions and auditing functions,
6 and to move into a new area of Enforcement required a change
7 in temperament, but yet embodied the concept that in the
8 government you've got to cut square corners. You have to do
9 the right thing if we are going to expect those that we
10 regulate also to do the right thing, and that is very
11 important. And Lee Ann exemplifies those character traits
12 and those talents and abilities.

13 CHAIRMAN KELLIHER: Commissioner Moeller?

14 COMMISSIONER MOELLER: Thank you, Mr. Chairman.
15 I think it has been alluded to already but the word
16 "dedication" is the first one that comes to mind when I
17 think of or hear about Lee Ann. Because, as you noted, she
18 is probably the most dedicated employee of this agency, in
19 addition to doing her job well.

20 She doesn't just come from Indiana. She's from
21 basketball royalty, as I believe her father was head coach
22 for Indiana, and that is about as high up as you can get.

23 (Laughter.)

24 COMMISSIONER MOELLER: So I'm glad you made this
25 choice.

1 CHAIRMAN KELLIHER: Thank you very much. Lee
2 Ann, why don't you come up, please.

3 (Appause.)

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 (Award given; applause.)

2 CHAIRMAN KELLIHER: Great. Why don't we turn to
3 the business, but before we turn the Consent Agenda, why
4 don't we start with the usual reference of how many
5 Notational Orders we've approved since the last meeting.

6 Since the September 18th Open Meeting, the
7 Commission has approved 74 Notational Orders, so we've done
8 a lot of business in between meetings.

9 Madam Secretary, why don't we now turn to the
10 Consent Agenda?

11 SECRETARY BOSE: Thank you. Good morning, Mr.
12 Chairman, good morning Commissioners.

13 Since the issuance of the Sunshine Act Notice on
14 October 9th, 2008, E-6, E-15, and E-28 have been struck from
15 this morning's Agenda.

16 Your Consent Agenda for this morning, is as
17 follows:

18 E-2, E-3, E-4, E-5, E-7, E-8, E-9, E-14, E-16, E-
19 17, E-18, E-19, E-20, E-21, E-22, E-23, E-24, E-25, E-26, E-
20 27, E-29, E-31, E-33, E-34, E-35, and E-36.

21 Miscellaneous Items: M-2.

22 Gas Items: G-1.

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

24 Certificate Items: C-1.

25 Commissioner Moeller is not participating in

1 Consent Item E-31. As required by law, Commissioner Moeller
2 is not participating in Consent Items E-8, E-34, and E-35.

3 As to E-1, Commissioner Kelly is concurring, in
4 part, and dissenting, in part, with a separate statement.

5 As to E-26, Commissioner Kelly is concurring, in
6 part, and dissenting, in part, with a separate statement,
7 and Commissioner Wellinghoff is dissenting, in part, with a
8 separate statement.

9 As to E-27, Commissioner Kelly is concurring, in
10 part, with a separate statement.

11 As to E-31, Commissioner Kelly is concurring,
12 with a separate statement, and Commissioner Wellinghoff is
13 concurring, with a separate statement.

14 As to E-34, Commissioner Wellinghoff is
15 dissenting, in part, with a separate statement.

16 As to M-3, Commissioner Moeller is concurring,
17 with a separate statement.

18 With the exception of E-1 and M-3, where a vote
19 will be taken after the presentation and discussion of these
20 items, we will now take a vote on this morning's Consent
21 Agenda.

22 The vote begins with Commissioner Wellinghoff.

23 COMMISSIONER WELLINGHOFF: With the notation of
24 my dissent, in part, on E-26, my concurrence of E-31, and my
25 dissent, in part, on E-34, I vote aye.

1 SECRETARY BOSE: Commissioner Moeller?

2 COMMISSIONER MOELLER: Noting my concurrence --

3 CHAIRMAN KELLIHER: Excuse me, Madam Secretary.

4 Did you say that we'd have votes after E-1 and M-3, only,
5 not after M-1 and E-10, or we're going to have separate
6 votes after all of them?

7 SECRETARY BOSE: We will.

8 CHAIRMAN KELLIHER: Yes.

9 SECRETARY BOSE: And the reason why I didn't
10 mention those, Mr. Chairman, is because those were not part
11 of the statement discussion above, only E-1 and M-3.

12 CHAIRMAN KELLIHER: Okay.

13 SECRETARY BOSE: Okay?

14 CHAIRMAN KELLIHER: Okay, thank you, sorry.

15 SECRETARY BOSE: Commissioner Moeller?

16 COMMISSIONER MOELLER: Noting my concurrence and
17 recusals, I vote aye.

18 SECRETARY BOSE: Commissioner Spitzer?

19 COMMISSIONER SPITZER: I vote aye.

20 SECRETARY BOSE: Commissioner Kelly?

21 COMMISSIONER KELLY: With the exception of my
22 dissent, in part, on E-26, I vote aye.

23 SECRETARY BOSE: And Chairman Kelliher?

24 CHAIRMAN KELLIHER: Aye. Why don't we turn to
25 the discussion agenda.

1 SECRETARY BOSE: Thank you. The first item for
2 presentation, is A-3, concerning the Winter Energy Market
3 Assessment for 2008 through 2009. There will be a
4 PowerPoint presentation by Arnie Quinn from the Office of
5 Enforcement.

6 He is accompanied by Christopher Ellsworth from
7 the Office of Enforcement, and Jeff Wright from the Office
8 of Energy Projects.

9 (Slides.)

10 MR. QUINN: Mr. Chairman and Commissioners, I'm
11 pleased to present the Office of Enforcement's Winter 2008-
12 2009 Winter Assessment.

13 I am here with Chris Ellsworth, a senior member
14 of the Office of Enforcement, and Jeff Wright of the Office
15 of Energy Projects.

16 The Winter Assessment is Staff's annual
17 opportunity to share observations about natural gas,
18 electric, and other energy markets, as we enter the winter
19 heating season.

20 The prospects for natural gas markets this
21 winter, are looking better than they were just a few months
22 ago at the beginning of the Summer.

23 Both gas and oil prices rose to unprecedented
24 levels early this year, setting the market up for what might
25 have been unprecedented winter prices. However, since the

1 height of the market in early July, prices have receded
2 considerably.

3 As we enter the winter, gas in storage is above
4 the five-year average; the National Weather Service is
5 forecasting a relatively mild winter weather, and natural
6 gas production is robust.

7 After I discuss the large swing in natural gas
8 and oil prices we have experienced this year, I will address
9 each of the key issues driving our winter outlook.

10 This chart compares next-day spot and natural gas
11 prices traded at Henry Hub, Louisiana, reported by Platt's
12 in 2008 and 2007, and also shows the 2003 to 2007 range of
13 prices, separating out the effects of Hurricanes Rita and
14 Katrina.

15 Henry Hub spot prices, so far this year, have
16 averaged almost \$9.58 per MmBtu, up about \$2.62 per MmBtu
17 from last year. Natural Gas prices at the Henry Hub, broke
18 out of the five-year range during the first half of 2008,
19 peaking at \$13.32 per MmBtu on July 3rd.

20 Since then, spot natural gas prices have
21 returned to the five-year normal range.

22 Domestic natural gas fundamentals contributed to
23 some of the run-up in natural gas prices. U.S. gas storage
24 in April 2008, was considerably lower than in 2007 and 2006.

25 In addition, June heat contributed to the peak in

1 gas prices, however, the June heat gave way to crueler July
2 and August, so that summer power burn was down six percent,
3 compared to the levels last year.

4 That said, since at least mid-2007, a range of
5 commodities, including corn and gold, have experienced
6 pronounced price increases. As you can see from this chart,
7 natural gas prices have tracked other commodity prices since
8 at least mid-2007.

9 It's likely that the dramatic rise in natural gas
10 prices, was related, in part, to a general rise in commodity
11 prices.

12 Despite large swings in gas and oil prices, the
13 winter outlook for gas prices at Transco's Zone 6, New York,
14 is strikingly similar to the outlook the market had last
15 year at this time.

16 I'll note that the four prices for Henry Hub, are
17 slightly lower than last year's forward prices. The fact
18 that the Northeast prices are slightly higher, can be
19 attributed risk-premium-related congestion concerns.

20 Forward prices are similar, inventories are at
21 healthy levels, and the winter weather outlook is similar to
22 last year, with the Climate Prediction Center at NOAA,
23 calling for a warmer than normal winter.

24 A key difference from last year, is the higher
25 growth in domestic gas production, which, through July, has

1 increased nine percent, compared to 2007. This growth is
2 tempered somewhat by falling gas imports.

3 Before I move on, it's important to note that
4 most LDCs likely purchased gas for this winter over the
5 course of the year, therefore, the recent drop in natural
6 gas prices, will not be fully realized by most retail
7 ratepayers.

8 The amount of gas in storage in November, is a
9 key benchmark of the gas industry's ability to flexibly
10 respond to changes in winter weather.

11 At this point, it appears that the U.S. will have
12 sufficient gas in storage to meet winter demand.

13 In April, the beginning of the injection season,
14 inventories were below last year's levels, but almost in the
15 middle of the five-year range.

16 Moderate gas demand, due to moderate heat in July
17 and August, coupled with general growth in gas supply, has
18 allowed storage gas to recover to 87-percent full.

19 At current injection rates, storage could almost
20 reach capacity of 3,789 Bcf by November. Substantially full
21 storage, will go a long way toward protecting the country
22 from supply disruptions and prolonged high prices, assuming
23 normal to warmer than normal winter weather.

24 Weather is one of the most important factors that
25 influence winter energy markets. NOAA released the weather

1 outlook for the December through February period, on
2 September 18th, and it calls for a generally milder than
3 normal winter, yet slightly colder than last winter.

4 The map on this slide, indicates that much of the
5 country has at least a 40-percent chance of warmer than
6 normal weather, though the Northeast is projected to
7 experience near normal winter temperatures. This weather
8 outlook is similar to the one that NOAA issued last year at
9 this time.

10 It bears noting that some weather forecasters
11 have alternative views. For example, AccuWeather and WSI
12 have reported a greater likelihood of a colder than normal
13 winter, especially in the Northeast U.S.

14 Along with storage inventories and weather, we
15 believe the growth in domestic natural gas production this
16 year, should have significant influences on prices this
17 winter.

18 This slide shows that the U.S. is in the midst of
19 a second year of robust production growth. Production grew
20 almost nine percent through the first seven months of 2008,
21 and the EIA estimates that lower 48 gas production for the
22 entire year, will likely rise by seven percent, compared to
23 four percent for 2007.

24 A September dip in production, due to Hurricanes
25 Ike and Gustav, removed over 200 Bcf of cumulative gas

1 production, and I'll discuss where the gas increase is
2 coming from, shortly.

3 These supply gains have been partially offset by
4 declines in imports of LNG and pipeline supplies from
5 Canada.

6 Expectations for growth in winter gas demand, are
7 not quite as robust as the growth in supply.

8 Several factors have the potential to slow
9 demand: As discussed earlier, NOAA currently forecasts a
10 warmer than normal winter for most of the country.

11 Any slowdown in economic activity, would erode
12 some of the growth in demand. That said, other market
13 fundamentals, may also influence gas use.

14 Gas is currently cheaper than heating oil,
15 residual fuel oil, and, in some places, even coal. This
16 could put upward pressure on gas needs, if these
17 relationships persist.

18 So far this year, analysts report increased
19 industrial use, despite higher spot prices. Overall, EIA's
20 latest short-term energy outlook indicates a modest gain of
21 900 MMcf per day or 1.3 percent for U.S. gas use this
22 winter, compared to last winter.

23 A wildcard in the supply/demand balance, is LNG
24 imports, which fell substantially this year, compared to
25 last. I'll note that the outlook is very dynamic and recent

1 news has changed some of our expectations.

2 This slide shows sendout from U.S. LNG import
3 terminals, superimposed on a representative gas prices in
4 Europe and Asia. EIA estimates that LNG imports in the
5 U.S., will average about 1 Bcf per day this winter, or about
6 what the U.S. has imported, on average, so far in 2008.

7 Moreover, the chart underscores that forward
8 prices in the U.S., are lower than in competing markets, and
9 this is affecting LNG cargo expectations.

10 That said, spot LNG prices in Asia, recently came
11 down into parity with Europe, at around \$14 an MmBtu. Asia
12 prices seem to have dropped along with oil prices.

13 I'll note that U.S. LNG imports have remained
14 steady through terminals that rely on long-term supply
15 contracts and when diversion economics are no favorable.

16 LNG will likely play a significant role in the
17 future U.S. gas picture, and add supply flexibility to the
18 grid, and 5.9 Bcf per day of new LNG regasification
19 terminals, including Costa Azul, Sabine Pass, Freeport, and
20 Northeast Gateway, were added this year.

21 A new 1 Bcf per day terminal is expected to be
22 completed this winter in New Brunswick, Canada, which can
23 deliver natural gas to New England, via the expanded
24 Maritimes and Northeast Pipeline.

25 Lastly, global liquefaction capacity may

1 increase by over 5 Bcf per day, or 24 percent during 2009,
2 providing more potential supplies to the U.S. and other
3 competing markets.

4 Most of the recent growth in gas production has
5 come from unconventional gas sources. The U.S. conventional
6 gas production fell 24 percent between 1998 and 2000, from
7 37 Bcf per day to 28.5 Bcf per day.

8 Just over half of U.S. daily gas production, can
9 now be considered to come from conventional sources,
10 compared to 72 percent ten years ago.

11 Gas production from unconventional gas sources --
12 shale, tight sands, coal bed methane, and deep gas -- grew
13 at an average rate of 6.4 percent between 1998 and 2007,
14 from 14 Bcf per day, to 25 Bcf per day, and could soon
15 become the dominant source of gas production in the U.S.

16 The pace of unconventional gas production, has
17 quickenened in the past two years, with gas shale showing the
18 most rapid rate of growth. Between 2005 and 2007, U.S. gas
19 shale production doubled from 1.8 Bcf per day to 3.8 Bcf
20 per day.

21 Also during this time period, tight sands
22 production rose 11 percent, and coal bed methane rose four
23 percent.

24 The most prolific gas shale basin is the Barnett
25 Shale, with production from new bases such as Haynesville

1 and Fayetteville, just beginning to ramp up.

2 New basins such as the Marcellus shale in
3 Appalachia, are also under development, and could show
4 similar production growth to other gas shale basins in
5 coming years.

6 While both oil and gas prices have fallen from
7 their midyear highs, natural gas prices remain well below
8 heating oil prices, on a per-MmBtu basis. This slide
9 illustrates that on a British Thermal Unit equivalent basis,
10 recent spot and current futures prices for gas, are well
11 below oil prices.

12 Forward market prices now show that delivered gas
13 at Transco Zone 6, New York, average about \$10.50 per MmBtu,
14 representing about a \$10 per MmBtu discount to heating oil.

15 This disparity in prices, is affecting homeowner
16 heating oil decisions. Wachovia Research reports that
17 NStar, which serves natural gas customers in Massachusetts,
18 noted that inquires about converting to natural gas from
19 oil, were five times higher than they were during the first
20 five months of 2008.

21 At NiSource subsidiary, Bay State Gas, also
22 serving Massachusetts, conversion requests were up 97
23 percent for the same time periods. On Long Island, National
24 Grid indicates that 12,000 homeowners have contacted it
25 about switching to gas during the first seven months of 2008

1 -- more than double a year earlier.

2 Finally, I will address the outlook for winter
3 electric prices. Other than the Northeast, forward electric
4 prices for the coming winter, are between eight percent and
5 13 percent lower, compared to winter forward prices at this
6 time last year.

7 Forward electric prices in the Northeast, are up
8 to six percent higher than last year. The fall in forward
9 electric prices over most of the country, more or less
10 matches expectations for lower natural gas prices at the
11 Henry Hub.

12 The increase in electric forwards in the
13 Northeast, matches the increase in Northeast forward gas
14 prices discussed earlier.

15 The high basis last year in the Northeast, would
16 appear to be influencing the expectations for Northeast
17 basis this coming winter.

18 Last winter basis at Transco Zone 6, averaged
19 \$2.76 from November 2007 to March 2008, 83 cents higher than
20 the previous year, and the highest ever winter basis we've
21 ever seen.

22 Northeast gas prices were more volatile than last
23 winter, than any other winter. We saw 28 instances of basis
24 greater than \$5, double the number of instances from the
25 2006/2007 winter.

1 Finally, forward prices from New York, are also
2 likely influenced by the fact that fuel oil will be on the
3 margin for part of the time.

4 This completes my presentation, and we're happy
5 to answer any questions you have.

6 CHAIRMAN KELLIHER: Thank you. I appreciate your
7 presentation.

8 I had one question -- I have a couple of
9 questions, and will then turn to my colleagues.

10 But with the lower current gas prices, how is
11 that affecting exploration and production activity? Has the
12 rig count changed over the past six months, as gas prices
13 have fallen?

14 MR. QUINN: In the last several weeks, a number
15 of exploration and production companies have announced that
16 they're reducing their capital expenditures.

17 Almost all attribute that to lower gas prices,
18 though the change in financial conditions recently, probably
19 has something to do with that.

20 Our understanding is that the break-even point
21 for these unconventional gas places, probably is in the
22 \$6.50 to \$7 range, which is where gas prices are right about
23 now.

24 That's a very loose number, and no one has a
25 really good handle on it, so, what we're experiencing now,

1 should actually be a good experience to getting a better
2 handle on exactly how much can be produced at those price
3 levels.

4 CHAIRMAN KELLIHER: How do the estimates of what
5 are potential unconventional gas reserves are, compared to,
6 say, Alaska gas reserves?

7 MR. QUINN: Chris?

8 MR. ELLSWORTH: In terms of -- I believe that our
9 unconventional gas reserves, the last reserves done or
10 resource base estimates done for unconventional gas, were
11 done a couple of years ago by the Potential Gas Committee.

12 And it is felt that maybe those underestimate the
13 potential resources there, with all the exploration that's
14 taken place over the past couple of years. PGC will be
15 coming out with a new estimate, which is expected to show
16 much larger resource estimates.

17 But I would say that the unconventional gas
18 resources are generally thought to be larger than the Alaska
19 gas resources, or the Alaska gas, at the wellhead, is of
20 course, the much cheaper gas to extract.

21 CHAIRMAN KELLIHER: Is it comparable or is it
22 multiples larger than Alaska resources?

23 MR. ELLSWORTH: I wouldn't like to say at this
24 point, but we're looking at possibly 500 or 600 Tcf of
25 resources, unconventional gas resources, so I wouldn't like

1 to say that they are larger than.

2 MR. QUINN: Most of the published ranges for the
3 gas shales, are broad. You know, I mean, they can, you
4 know, be a factor of ten from the low end to the high end.

5 So, at this point, I don't think we have a great
6 sense.

7 MR. ROBINSON: That number compares to 35 Tcf in
8 Alaska, and that's if you bring in Ft. Thompson, which is
9 questionable as to whether that is going to happen or not.

10 CHAIRMAN KELLIHER: Okay, thank you.

11 MR. ROBINSON: So that will give you some feel
12 for the 35 versus 600.

13 CHAIRMAN KELLIHER: Right. Thanks. And one
14 slide that puzzled me, was the gas prices tracking other
15 commodity prices.

16 So, that, combined with what you said earlier --
17 later, about oil prices, suggests that there's a greater
18 relationship between natural gas and other commodity prices,
19 than between gas and oil?

20 MR. QUINN: I don't know that I would say that
21 there was a general increase in commodity prices across both
22 the energy sector and non-energy sector.

23 So you see agricultural commodities like corn,
24 that showed basically the same kind of price increase that
25 you saw in crude and natural gas.

1 So, crude and natural gas are still tracking each
2 other, but natural gas has actually fallen faster than crude
3 has, since the peak of the market.

4 But it doesn't seem to be isolated, just to the
5 energy sector.

6 CHAIRMAN KELLIHER: Good. And just one last
7 point; that if our focus is, in part, on this winter, you're
8 saying, generally good news, good, high-level domestic
9 production, there's a lot of gas in storage. It might be
10 more expensive gas than was purchased in recent months,
11 rather than reflecting current prices, but in terms of the
12 winter outlook, we're in a good position?

13 MR. QUINN: We look to be in good position.

14 CHAIRMAN KELLIHER: Great. Colleagues?
15 Commissioner Wellinghoff?

16 COMMISSIONER WELLINGHOFF: Just one question, and
17 we all know the massive increase in reserve estimates on the
18 unconventional gas, the shales in this country, but I had
19 some gentlemen in from the Alberta Energy Board, and we were
20 talking about Canada, and I know -- I've been looking at
21 Canada over the last four or five years and looking at
22 declines in Canadian gas.

23 But they were seeming to indicate that in,
24 potentially, Alberta, but even more in British Columbia,
25 there may be some huge gas shale plays there.

1 Do you have any information on that at all?

2 MR. ELLSWORTH: Yes, I understand that there are
3 huge reserves there, that haven't been tapped, as such, yet.

4 The Canadian rig count has actually been
5 declining, even though the U.S. rig count has been going up.

6 And that's attributed, by a lot of producers, to
7 changes in royalty rates within Alberta, so it seems to be
8 specific fiscal issues going on there.

9 The other thing with Canada, is that a lot of the
10 gas is used -- is being used to produce oil shale up there,
11 but in terms of unconventional gas, there is supposed to be
12 an enormous amount of unconventional gas up there that waits
13 to be tapped.

14 MR. QUINN: For Alberta, we've heard that to get
15 a significant increase in the rig count, they would need
16 about \$9 per MmBtu for gas prices.

17 COMMISSIONER WELLINGHOFF: Thank you.

18 CHAIRMAN KELLIHER: Great, thank you.

19 Colleagues? Commissioner Kelly?

20 COMMISSIONER KELLY: Your Slide 3, spot gas
21 prices, is pretty striking. And I know that you said,
22 Arnie, that some of those, some of that price increase
23 appears to be related to domestic natural gas fundamentals.

24 But the average price, which you said was up
25 \$2.62 per MmBtu, as I calculate it, about a 37 or 38 percent

1 increase.

2 MR. QUINN: That's right.

3 COMMISSIONER KELLY: That's really significant,
4 and you also said that although storage was down, compared
5 to the last two years, still, it is in the mid range of five
6 years, and, as I understand it, pretty well above normal.

7 MR. QUINN: Right.

8 COMMISSIONER KELLY: So we had adequate storage,
9 apparently; we've seen increased production and we've seen
10 moderate demand, so why do we have this big price increase?
11 Maybe you can tell the rest of the world.

12 MR. QUINN: I'm not sure I want to be that
13 person.

14 (Laughter.)

15 COMMISSIONER KELLY: And I do understand that
16 you're seeing what it seems related to, or similar to, is
17 what's been happening in the commodities markets. Is that
18 the answer?

19 MR. QUINN: I think that is at least part of the
20 answer. The other thing I think we should point out, is
21 that while U.S. gas prices were very high, we're not alone
22 in the world.

23 If you look at our LNG graph where we show the
24 U.S., the UK's national balancing point, and then Asian, at
25 least LNG prices, we're on the low end, even for most of the

1 year.

2 Even when we popped out in July, we were still
3 pretty close to on par with the UK's national balancing
4 point.

5 So, there is something going on on a global
6 basis, and I think at least part of that has to do with the
7 general run-up in commodity prices, but it can't have been
8 all just U.S. domestic market fundamentals.

9 COMMISSIONER KELLY: And since we've seen the
10 crisis in the financial sector this month, and it appears
11 that there's also an impact -- or that the commodities
12 market is also responding to that, is the overall volume of
13 trading in the commodities market, down significantly, or is
14 it just price?

15 MR. QUINN: For general commodities? I don't
16 know that we have a view of what general commodities's
17 financials are. I think our understanding is that there has
18 been money pulled out of, for instance, the Goldman Sachs
19 Commodity Index.

20 On the natural gas side, we have been talking to
21 market participants, to see whether they're seeing a
22 decrease in trading on the physical and the financial side.
23 We looked at exchanges like ICE, and you can't see a
24 noticeable decrease in activity on ICE, that you can
25 distinguish from normal seasonal change in the volume of

1 trading.

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 We are hearing from market participants, that, on
2 the bilateral basis, there is some reduced level of
3 trading, but where they have kind of a strong sense of how
4 much that is, or we have, you know, really good data to back
5 that up. I don't think we're at that point yet.

6 COMMISSIONER KELLY: Okay, thank you. I had a
7 question also about where gas is on the margin, relative to
8 coal.

9 Do you know which markets, which electricity
10 markets that's occurring in? I understand, to some extent,
11 it's in the Southeast.

12 MR. QUINN: It's definitely in the Southeast. In
13 the Southeast, we understand that for everything but coal
14 plants running Powder River Basin coal, that even efficient
15 coal plants are pretty close to parity with combined-cycle
16 gas plants.

17 That also seems to be the case in the Mid-
18 Atlantic, in the PJM Region, so in the last roughly six
19 weeks, coal and gas seem to be pretty close to parity in
20 PJM.

21 COMMISSIONER KELLY: Do you see that effect in
22 EIA's latest short-term outlook for gas use this winter?
23 Has their number calculated the increased demand for gas; do
24 you know?

25 MR. ELLSWORTH: I'm not sure of that, but I don't

1 believe that is the case.

2 COMMISSIONER KELLY: Do we know if the increased
3 demand for gas from the switch in gas being on the margin
4 more versus coal, is going to significantly increase demand?

5 MR. QUINN: Well, I think, partly, we have to
6 understand that they are very close to parity, and coal
7 prices have gone down in the last couple of weeks.

8 So, I don't know that we've got a stable
9 equilibrium, where coal and gas are going to be switching --
10 have switched, so I think in some sense, we've got to let
11 the commodity prices settle out a little bit before we know
12 exactly which view of the world we're living in.

13 COMMISSIONER KELLY: Okay, thank you. I just
14 have one last question, and this is probably for you, Jeff.
15 As we see development in the Marcellus Shale in Appalachia,
16 are we also seeing infrastructure implications in our pre-
17 filings?

18 MR. WRIGHT: I would say you've seen a large
19 indication in the Barnett, the Haynesville, the Arkansas
20 area, in general, in terms of the plays.

21 We still have numerous pre-filings there. We've
22 also approved numerous pipelines. In fact, a large amount
23 of the pipelines that went into service in this last year,
24 are serving the shale regions of the Southeast.

25 Now, going up the coast, as you get the

1 Marcellus, we're seeing that it's an interesting mix of
2 activity. We've seen a lot of activity trying to take the
3 Rex gas, trying to -- a little one-upmanship in who's going
4 to be there first.

5 But, combined with that, we've heard of a lot of
6 drilling activity in the Marcellus Shale. Now, I don't want
7 to say we've seen a lot of pipeline activity yet, but we
8 have had indications and there have been announcements of
9 major interstate companies wanting to site pipelines to
10 take gas from the Marcellus to the Northeast markets.

11 So, I would expect we're going to have a ramp-up
12 in our pre-filings and, ultimately, our applications, to be
13 considered for that.

14 COMMISSIONER KELLY: And the Marcellus Shale runs
15 along the Appalachians?

16 MR. WRIGHT: Roughly all of West Virginia,
17 through western Pennsylvania, into New York, western New
18 York.

19 COMMISSIONER KELLY: Thank you.

20 CHAIRMAN KELLIHER: Thank you. Commissioner
21 Moeller?

22 COMMISSIONER MOELLER: Thank you, Mr. Chairman.
23 I have a couple of questions, but, first, going back to that
24 last point or a couple of points before, this issue of gas
25 and coal being in the margin, is one of the more significant

1 developments we've seen, probably, in the last year.

2 And I don't think it should be lost on people,
3 that, from a larger policy perspective, if we're becoming
4 more and more dependent on natural gas, that has to
5 influence our decisionmaking, both in terms of the
6 infrastructure we have in this country, and the policies
7 that allow us to access it.

8 And if you have any comments on that, I'll allow
9 you to.

10 (No response; laughter.)

11 COMMISSIONER MOELLER: Oh, come on.

12 (Laughter.)

13 MR. QUINN: Again, I think we need to appreciate
14 that coal prices have actually gone up dramatically in the
15 last year, as well, and that they did not decline at the
16 same time that natural gas prices did, at least at the same
17 level.

18 They have, in the last couple of weeks, started
19 to do that, so I don't think we know for sure, you know,
20 where we are in terms of switching.

21 But it certainly does provide another source of
22 demand for natural gas.

23 Production has been robust. I mean, growth in
24 production is, you know, seven to nine percent, so there is
25 a lot of extra natural gas out there.

1 But this is certainly something to watch. I
2 think the other thing to watch on the coal switching, is how
3 this works in the RTOs, as you move coal plants into kind of
4 the mid part of the stack.

5 Are they designed to run there for shorter time
6 periods? If the ISOs have to dispatch them for longer
7 periods of time, does that show up in charges like uplift,
8 or will it just show up in LMP?

9 So that's, I think, another element of this that
10 we're watching, is to determine how the RTOs are responding
11 to this, now that the pattern is starting to have a little
12 history behind it.

13 COMMISSIONER MOELLER: Although it's not just in
14 RTO regions.

15 MR. QUINN: That's correct, that's correct.

16 COMMISSIONER MOELLER: Chris, Jeff, any other
17 observations?

18 MR. ELLSWORTH: I was just going to say that the
19 coal market in the U.S., coal prices in the U.S., seem to be
20 more and more influenced by events outside the U.S.,
21 particularly demand from developing economies.

22 So that could serve to keep coal prices up,
23 depending on how those economies go over the next few years,
24 so may tend to keep that relationship that's just shown up
25 in the past few months over the summer.

1 MR. WRIGHT: I would just reinforce, probably,
2 what Chris and Arnie have said before, that on the other
3 side, the delicate balance is what is the tipping price for
4 producing this?

5 You know, if it gets below a certain level, it
6 may not be profitable for the E&P companies to go after this
7 source, and we'll see some fluctuation in prices, again,
8 before everything settles out.

9 COMMISSIONER MOELLER: Well, I'm glad you're on
10 the job, keeping track of this.

11 Two quick questions: First, on Slide 9, LNG, I
12 want to make sure that it's clear that we're still getting,
13 on average, about a billion cubic feet per day imported.

14 If you were able to project the forward part of
15 the graph, out farther, what would you see?

16 MR. QUINN: For sendout from LNG? Well, our
17 understanding is that EIA is saying one -- continues to be
18 at that level through the winter, but there's also
19 discussion that as additional liquefaction capacity comes
20 online, starting in 2009, and now that Asian prices have
21 fallen to about parity with Europe, that there will just be
22 more opportunities for the U.S. to get spot cargoes.

23 At this point, except for Elba Island and
24 Everett, most LNG terminals in the U.S., kind of -- their
25 business model is to find spot LNG cargoes, and so that's

1 the market that we're competing for.

2 COMMISSIONER MOELLER: Okay.

3 MR. QUINN: As more of those supplies become
4 available, there's more chance that we'll get some of those
5 cargoes. We're also closer, physically, certainly to
6 Trinidad and Tobago, so that we don't have to get all the
7 way down to where Europe's prices are, because you can make
8 the trip in a shorter time period.

9 So I think there's hope that market conditions
10 are favorable for more LNG, starting in probably the second
11 quarter of 2009.

12 COMMISSIONER MOELLER: Okay, thank you.

13 MR. WRIGHT: Commissioner, I just want to point
14 out one more thing.

15 COMMISSIONER MOELLER: Yes.

16 MR. WRIGHT: If you go past the one year where we
17 are going to have a tremendous increase, if you go out to
18 2012, there's going to be even more significant increases in
19 liquefaction, and we could be close to doubling the world's
20 capacity for liquefaction by 2012.

21 COMMISSIONER MOELLER: Presumably, then, we would
22 receive more, if there's more of market of supply?

23 MR. WRIGHT: Presumably, yes.

24 MR. ROBINSON: At that point, it's not just a
25 market-driven function. You turn those units on, you don't

1 turn them off. That gas has to go somewhere.

2 We're fortunate in this country, that we have a
3 place to put it, so I think the ultimate result, almost
4 irrespective of the pricing that now controls where diverted
5 cargoes go, it's going to be, where do we put this stuff?

6 COMMISSIONER MOELLER: Okay.

7 MR. ROBINSON: And the U.S. is where we can put
8 it.

9 COMMISSIONER MOELLER: Very good, thank you.
10 Finally, on Slide 12, power prices over the winter, you kind
11 of described what was happening, but not necessarily a lot
12 of discussion as to why, other than the fact that it's going
13 to be warmer and presumably demand is going to be down.

14 Do you have any more elaboration on that slide?

15 MR. QUINN: Just in terms of why we're going to
16 see lower forward prices for the winter?

17 COMMISSIONER MOELLER: Yes.

18 MR. QUINN: I think that seems to be tied
19 basically directly to the forward gas prices. And we've
20 moved now into a range where gas prices are falling, and
21 it's all the things we've said: We have robust production
22 in gas right now; we are looking at a warmer winter, at
23 least for a good part of the country, and we're in very good
24 position, storage-wise.

25 So, I mean, the fundamentals all suggest that gas

1 prices, at these levels, are about right.

2 COMMISSIONER MOELLER: Thank you.

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

5 COMMISSIONER SPITZER: Thank you, Mr. Chairman.
6 A question that derives from Slide 4, the commodity prices
7 tracking:

8 I noticed this morning, a large drop in the price
9 of copper, which appeared to have slid with oil and other
10 commodities going, not necessarily specifics of global
11 supply or demand for copper, per se, but illustrating the
12 point that the commodities are trading in tandem across
13 industry segments.

14 Have you been able to identify a variable that's
15 most relevant to rise and fall in the tandem commodity
16 prices?

17 Historically, it had been projections of economic
18 growth or decline in growth, that triggered commodity
19 prices, either rising or falling.

20 Another theory was, with the rise of the hedge
21 funds, you had the real estate segment, which, obviously,
22 declined, starting in 06; equities began a decline; debt
23 instruments declined, so these entities with large amounts
24 of cash to deploy, the theory was, went into the
25 commodities markets in 07, because that was the only place

1 that they saw a return.

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 Have you been able to identify which variable is
2 predominant in the economic growth or deployment of cash,
3 choosing among various sectors of the economy?

4 MR. QUINN: I don't think we have anything other
5 than the same kind of trade press that you are reading, that
6 there is just a movement of money into commodity indexes.
7 We don't have any evidence of that separate from the trade
8 press that we're reading.

9 And while the commodity prices are tracking
10 together, we have done some statistical analysis of the
11 patterns. The hypothesis was that there was in fact some
12 kind of equilibrium relationship between all of these things
13 that we could identify statistically and then point to a
14 date and time that started, and that would give us an idea
15 of, okay, what was the event that took place when these
16 things statistically were moving together in what looked
17 like an equilibrium basis?

18 In fact, it doesn't seem--while they move
19 together, we can't move to the next statement that they seem
20 to be generated by the same equilibrium phenomenon, the same
21 unifying market element.

22 So the answer is: We don't have anything to
23 point to specifically.

24 COMMISSIONER SPITZER: Okay, and again repeating
25 some of the materials in the trade press, Commissioner Kelly

1 looked at slide three in the rise of gas spot prices,
2 information suggests that it was a flight of capital to the
3 commodities sector that had a lot to do with that increase,
4 as opposed to organic supply and demand within natural gas.

5 The question I guess arises: Assuming,
6 hopefully, we have a floor in equities or in real estate and
7 capital will return to those sectors, would that cause a
8 concomitant drop in prices as capital would leave the
9 commodities sector for other sectors?

10 MR. QUINN: To the extent that you have financial
11 players in the commodity markets, in fact it seems at least
12 possible that part of what we are seeing is that as equities
13 have gotten into trouble those financial institutions just
14 needed money. And one place to get money was to liquidate
15 their commodities position.

16 So one reason to take money out of commodities in
17 fact was because you needed to put it in to cover margins
18 on your other positions. So if we get to kind of a steady
19 basis for equities, the need to liquidate further your
20 commodities holdings goes away.

21 So I don't think it is clear that you necessarily
22 get flows one way or the other if equities level out.

23 COMMISSIONER SPITZER: Is it fair to say that
24 stability in other sectors would create stability in
25 commodities? And the converse, would instability in real

1 estate and equity debt holdings create more instability or
2 volatility in commodity prices than would otherwise be the
3 case?

4 MR. QUINN: That seems fair.

5 COMMISSIONER SPITZER: Okay. And then really
6 more of an observation. It has been alluded to by my
7 colleagues. The markets have sent signals in terms of
8 natural gas supply and led to the nonconventional
9 exploration and production, and that is what we would want,
10 but in addition to the regular market signals and
11 competitive price signals that either increase or reduce
12 production through the markets, there is a role for
13 government.

14 Absent governmental support for infrastructure,
15 those market signals would not be effective and gas would
16 not get into the markets. And I think this Commission has
17 been very diligent in terms of interstate gas pipelines,
18 storage facilities, infrastructure generally in the
19 certificate process, and that it is essential that
20 government continue to work to make sure that the markets
21 are in fact able to accommodate the price signals that are
22 sent.

23 Thank you.

24 CHAIRMAN KELLIHER: Thank you. Colleagues, any
25 other comments or questions on the presentation?

1 (No response.)

2 CHAIRMAN KELLIHER: No? I want to thank the
3 staff very much for your presentation. We appreciate it.
4 Thank you.

5 SECRETARY BOSE: The next item for presentation
6 and discussion is E-1, a Draft Final Rule Addressing
7 Competition In Regions With Organized Markets. There will
8 be a presentation by Russell Profozich from the Office of
9 Energy Market Regulation. He is accompanied by Christopher
10 Thomas from the Office of Energy Market Regulation, Tina Ham
11 and Noah Monick from the Office of the General Counsel, and
12 Kathryn Kuhlen from the Office of Enforcement.

13 MR. PROFOZICH: Good morning, Chairman Kelliher
14 and Commissioners. My name is Russ Profozich. I am with
15 the Office of Energy Market Regulation. Joining me today
16 are Chris Thomas from the same office, Tina Ham and Noah
17 Monick from the Office of General Counsel, and Kathryn
18 Kuhlen from the Office of Enforcement.

19 This Draft Final Rule, Competition In Regions
20 With Organized Markets, is a result of a process initiated
21 in February 2007 with the first of three public conferences.
22 These conferences, which addressed issues regarding
23 competition in the RTO and ISO regions, produced
24 considerable input from and discussion with market
25 participants and stakeholders.

1 Based on this input, the Commission issued an
2 Advanced Notice of Proposed Rulemaking, and later a Notice
3 of Proposed Rulemaking, which proposed reforms that were
4 designed to improve wholesale competition in regions with
5 organized markets.

6 This Draft Final Rule complements other
7 Commission actions to address wholesale electric power
8 market issues.

9 This Draft Final Rule now implements reforms in
10 four areas that are designed to improve the operation of
11 organized wholesale electric power markets. These areas are:

12 Demand response, including the area of market
13 price during periods of operating reserves shortage;

14 Long-term power contracting;

15 Market monitoring policies and practices; and

16 Responsiveness of RTOs and ISOs to the customers
17 and other stakeholders.

18 In the area of demand response, each RTO and ISO
19 is required to accept bids in its markets for ancillary
20 services from technically capable demand response resources
21 as it does for other resources unless this is not permitted
22 by the laws or regulations of the relevant electric retail
23 regulatory authority.

24 It eliminate certain charges to buyers in the
25 energy market for voluntarily reducing consumption during a

1 system emergency.

2 It permits an aggregator of retail demand
3 response to bid the combined demand response directly into
4 organized markets, unless this is not permitted by the laws
5 or regulations of the relevant electric retail regulatory
6 authority.

7 It allows the market price to more accurately
8 reflect the value of energy during a period of operating
9 reserves shortage while providing for market power
10 mitigation.

11 And to assess and report on remaining barriers to
12 comparable treatment of demand response resources in its
13 organized market.

14 With regard to long-term power contracting, each
15 RTO and ISO is required to dedicate a portion of its web
16 site for market participants to post offers to buy or sell
17 power on a long-term basis.

18 To strengthen market monitoring, each RTO and ISO
19 is required:

20 To increase the independence of the RTO or ISO
21 Market Monitoring Unit, or MMU, by requiring the MMU to
22 report to the ETO or ISO board, rather than to the
23 management;

24 Require the RTO or ISO to provide the MMU with
25 access to data, resources, and personnel needed to perform

1 its duties;

2 Define the expanded functions of the MMU in its
3 tariff;

4 Clarity the role of the MMU in market mitigation;

5 Remove the MMU from tariff administration; and

6 Require ethics standards for MMUs and their
7 employees.

8 Each RTO and ISO also is required:

9 To enhance information sharing by the MMU by
10 requiring the MMU to make quarterly reports in addition to
11 its annual state of the market report, and expand the
12 recipients of these reports;

13 Require regular conferences among the MMU and
14 Commission staff, the RTO or ISO, and with interested state
15 commissions, state attorneys general, and market
16 participants;

17 Establish procedures for the MMU to share
18 information with state commissions; and

19 Reduce the time lag for release of offer and bid
20 data by the RTO or ISO.

21 In the area of Improving Responsiveness to
22 Customers and Stakeholders, each RTO and ISO is required to:

23 Ensure that it is responsive to the needs of its
24 customers and other stakeholders by providing them some form
25 of direct access to the RTO or ISO board of directors and by

1 posting a mission statement or organization charter on its
2 web site.

3 This Final Rule will take effect 60 days after
4 publication in the Federal Register. Each RTO or ISO is
5 encouraged to consult with its customers and other
6 stakeholders and is required to make a compliance filing
7 that explains its plans to achieve compliance or how its
8 existing practices comply with this Final Rule.

9 This compliance filing is due six months after
10 the Final Rule becomes effective.

11 That completes my presentation. We would be
12 happy to answer any questions.

13 CHAIRMAN KELLIHER: Thank you very much. I
14 really want to thank you for your presentation. I think it
15 was very thorough, and I really want to thank the entire
16 team that worked on this Order.

17 The action we are taking today really started
18 February 27th, 2007. We had a conference on the state of
19 wholesale competition, and we really started with a blank
20 slate. We asked for ideas from everyone who had an interest
21 in the subject on what we could do to make wholesale markets
22 more competitive.

23 We issued an ANOPR, a Proposed Rule, and now a
24 Final Rule. So it has been a major undertaking and I am
25 really grateful to all the staff who have worked on this

1 effort.

2 I think the action we are taking today is an
3 important step in the Commission's long-standing efforts to
4 promote more effective competition in wholesale power
5 markets, but it is important to start at the starting point:
6 that competition is national policy with respect to
7 wholesale power markets, and it has been so for 25 years.

8 That competition, it is also important to note,
9 has always been bipartisan. If you look at the roots of
10 competition policy on the electricity side, it is rooted in
11 three federal laws that have been enacted over the past 25
12 years. Two were signed into law by Republican Presidents,
13 one by a Democratic President; two were written by
14 Democratic Congresses, and one by a Republican Congress.

15 And every U.S. President since Jimmy Carter has
16 either embraced or accepted competition as the basis for
17 wholesale electricity regulation in the United States.

18 We are in the midst of a very interesting
19 election, and energy has played a very large role in this
20 election. I have to say, it is somewhat of a surprise to
21 me. I did not anticipate energy would be such a focus of
22 this election.

23 Both candidates have found time to talk about
24 clean coal policy, and climate change policy, and nuclear
25 energy policy, and even hydrokinetics came up in the past

1 week, something of another FERC area.

2 Gasoline prices of course. But one subject that
3 has not come up is competition, whether competition is the
4 correct policy for the U.S. Government at the Federal level.
5 I think frankly I am going to be hopeful, I think it is not
6 because they haven't noticed that there are wholesale
7 electricity markets. I think it is because they view it as
8 settled national policy.

9 But from our point of view, it is settled
10 national policy. It is the law. And I think we also--or at
11 least I believe it is the correct policy for this country.
12 But since it is settled policy, our duty is clear, and that
13 is to promote more effective wholesale competition and to
14 seek steady improvement in wholesale power markets.

15 The Rule that we are approving today does make a
16 number of significant reforms. The staff have detailed the
17 nature of those reforms, but I just wanted to explain a
18 little bit on why, at least from my point of view, why we
19 are taking the actions we are taking today, not what we are
20 doing but really why we are doing it.

21 Let's start with demand response. It is clear
22 that one weakness of U.S. electricity markets, compared to
23 PURPA competition, is the lack of effective demand response
24 which results in greater price volatility and higher average
25 prices.

1 To that end, the Final Rule makes a number of
2 important reforms designed to improve demand response in
3 wholesale power markets.

4 The Final Rule also recognizes that some of the
5 existing market rules that do not allow prices to rise
6 during periods of supply shortages are unjust and
7 unreasonable; that those prices, those market rules can
8 impede demand response, can harm reliability, can discourage
9 new entry to both demand response and generation resources,
10 and block innovation.

11 But it is important to note that the pricing
12 reforms that we have proposed today that we adopt today do
13 not relax market mitigation. That each of the pricing
14 reforms we propose include specific mitigation.

15 With respect to long-term contracts, the
16 Commission's Final Rule reflects a view that there is no
17 fundamental problem or barrier with respect to long-term
18 contracting in wholesale power markets, either inside the
19 organized markets or in the bilateral markets.

20 I think it is clear that buyers can get long-term
21 contracts if they are so inclined, albeit perhaps at higher
22 prices than they might prefer, but the Final Rule does
23 include posting requirements to improve transparency in
24 long-term contracting.

25 The market monitoring reforms are also important.

1 For the first time the Commission defines the role of market
2 monitors in our regulations, which will provide for greater
3 consistency in market monitoring in different regions of the
4 country.

5 The Final Rule also clarifies the role of the
6 market monitor and the Commission, the respective roles of
7 the market monitor and the Commission, in enforcement.

8 We also take care to guarantee that market
9 monitors have sufficient independence to perform their
10 roles.

11 The Rule also addresses issues and concerns
12 regarding RTO accountability and responsiveness. We direct
13 that RTOs and ISOs establish some form of direct access to
14 their boards of directors. That is in order to assure that
15 the RTO boards are responsive to the concerns of both
16 members and customers.

17 But I do want to say, my personal opinion is that
18 Regional Transmission Organizations and Independent System
19 Operators have made a lot of progress, have made major
20 progress in this area already.

21 So to me those are the reasons why, at least from
22 my point of view, I have supported the reforms that we are
23 poised to address today. They really represent the best
24 ideas that came out of a process that began with a blank
25 piece of paper in February of 2007.

1 One issue that comes up from time to time is
2 whether the Commission is investigating wholesale power
3 markets. I think there is somewhat of a misunderstanding on
4 this subject.

5 The Commission actually is continually
6 investigating wholesale power markets in that we meet every
7 day at 9:30 and we look at the movement of wholesale power
8 prices over the preceding 24 hours. So we may not have
9 approved a formal investigation under the rubric of Section
10 206 of the Federal Power Act, because requests have
11 generally been unsupported, but that does not mean we are
12 not investigating wholesale power markets. We are
13 continually investigating them.

14 And the fact that we undertook this effort, not
15 on complaint but on our own motion, shows that we are
16 dedicated to constant improvement in wholesale power
17 markets.

18 The actions we take today are limited to the
19 organized markets, to the Regional Transmission
20 Organizations, and to the Independent System Operators.
21 That reflects the differences in the nature of those two
22 kinds of wholesale power markets.

23 It does not reflect a view that there are--that
24 there's perfect competition in bilateral markets certainly.
25 We have taken other actions to improve competition in the

1 bilateral markets, mostly important the reform of the Open
2 Access Transmission Tariff, as well as the Market-Based Rate
3 Final Rule.

4 I view this Final Rule as an important step
5 towards more perfect competition in the organized wholesale
6 power markets, but it represents only the latest in a series
7 of actions that the Commission has taken to improve
8 wholesale competition.

9 So I am glad to support the Final Rule. I thank
10 the staff for their efforts, and I turn to my colleagues.
11 Commissioner Wellinghoff.

12 COMMISSIONER WELLINGHOFF: Thank you, Mr.
13 Chairman.

14 Today we advance the competitive functioning of
15 our wholesale electric markets for the benefit of consumers.
16 When I joined the Commission a little more than two years
17 ago, I stated my belief that demand response, together with
18 energy efficiency, was this country's primary untapped
19 energy resource.

20 Demand response, if properly implemented, can
21 mitigate market volatility, eliminate price spikes, improve
22 resource adequacy, alleviate congestion, and improve
23 reliability.

24 I said then that we needed to develop the demand
25 side or markets to make them more competitive. I outlined

1 five main areas in which the Commission can help realize the
2 potential of demand response:

3 Open the markets to demand response;

4 Remove the market barriers;

5 Align demand response objectives with customer
6 financial interests;

7 Encourage the most efficient technologies; and

8 Work in close collaboration with the states.

9 We have made important strides in each of these
10 areas. Our actions has resulted in demand resources taking
11 an active role in maintaining reliability, efficiently
12 providing transmission service, and planning the
13 transmission infrastructure of the future.

14 We have established the principal that where
15 demand resources are capable of providing a function needed
16 for efficient, reliable electricity service, demand
17 resources should be given access and comparable treatment.

18 Today in this Final Rule we make another
19 important advancement by providing for bidding by demand
20 response resources in RTO ancillary service markets and
21 increasing access for aggregators of demand response.

22 The Rule also requires each RTO to make a
23 compliance filing that will advise us to build a record on
24 consumer protection and market barriers to integration of
25 demand resources into wholesale electric markets.

1 There is still much more to do in reforming
2 competitive markets to improve the opportunity for demand
3 resource participation. This is not the last step we will
4 take. Indeed, the report that we direct in the Final Rule
5 will be a roadmap for future action and continued progress.

6 Each RTO is to engage with its stakeholders and
7 file a report within six months of the effective date of the
8 Final Rule on remaining barriers to comparable treatment of
9 demand response resources in organized markets.

10 The report must propose solutions to removing
11 remaining barriers and a timeline for implementation. The
12 report must also identify significant minority views, and we
13 require an assessment by the independent market monitor as
14 well.

15 I know that participation in RTO stakeholder
16 processes requires consumers to invest time and resources,
17 but the next six months provides an unprecedented
18 opportunity to examine the RTO market structure from bottom
19 to top, to identify and find solutions for remaining
20 barriers and undue discrimination towards participation of
21 demand response resources in RTO markets.

22 When good ideas do not receive majority report
23 support, we expect to see them in a minority report. We all
24 know that our country is in very difficult times. We need a
25 clear policy that our energy resources are put to best use,

1 and that we put the best energy resources to use.

2 I urge all who have a stake in a reliable and
3 efficient RTO market to participate in this effort, to bring
4 our ideas to the table, and to work for solutions. We need
5 to redouble our efforts to bring all forms of distributed
6 resources into the market: demand response, energy
7 efficiency, wind, geothermal, solar, combined heat and
8 power, hydrokinetics, storage including plug-in hybrid
9 electric vehicles.

10 We need to design, build, and operate the
11 intelligent backbone transmission system to optimize the use
12 of these resources.

13 I want to thank the team for your fine work on
14 this rulemaking, and I will vote to adopt this Final Rule
15 and look forward to working with my colleagues to take the
16 next steps to improve the functioning of our electric
17 markets. Thank you.

18 CHAIRMAN KELLIHER: Thank you. Colleagues?
19 Commissioner Moeller?

20 COMMISSIONER MOELLER: Thank you, Mr. Chairman.

21 It has been more than 18 months since we embarked
22 on this quest. I guess we are at our final destination
23 today, and I will not repeat the points in the presentation
24 of what is in the Final Rule, but I am pleased to support
25 it.

1 However, largely this Final Rule is about demand
2 response. Yes, there are other important elements, and I
3 fully support this. It is a set of resources that we need.
4 We do not have any choice. We are going to need demand
5 response. We are going to need energy efficiency to get us
6 through this shoulder period. But I also want to point out
7 that we still need a physical grid. And my top priority is
8 going to be to get more transmission built so that we can
9 enable even demand response products to be delivered through
10 markets.

11 It is also important to point out, as I think has
12 been implicit but maybe not explicit, that demand resources,
13 demand response, are better suited and better marketed in
14 organized markets than in bilateral markets. And so it is
15 another case where our focus has been on organized markets,
16 perhaps maybe even to the detriment of the potential in
17 other markets.

18 I need to acknowledge Commissioner Wellinghoff
19 and his leadership, and his advisors, in their unwavering
20 support for the importance of demand resources, their
21 careful attention to how we define these terms that are very
22 important as we go forward.

23 I do support today's Rule and the hard work of
24 the team over the last 18 months, sometimes at very late
25 notice, but they all came through.

1 And a final note is that we have heard a lot less
2 criticism of competitive markets as natural gas prices have
3 declined. And so again I think that should point us to the
4 direction of supporting policies that allow more gas into
5 our markets to be both produced domestically and imported
6 from other sources. Thank you, Mr. Chairman.

7 CHAIRMAN KELLIHER: Thank you. Commissioner
8 Spitzer?

9 COMMISSIONER SPITZER: Thank you, Mr. Chairman.
10 The presentation was extraordinarily thorough, and I would
11 align myself with those remarks, a very accurate description
12 of the Final Rule, as well as those of my colleagues.

13 I have a statement in more detail that I will
14 post, but I just want to highlight a few issues and give
15 some thoughts.

16 First, academics have spent a lot of ink on the
17 financial sector recently, and specifically have dredged up
18 materials from earlier in the last century on the
19 difficulty of government coming to grips with changes in the
20 economy and changes in the markets.

21 Right now we are at a point where government is
22 trying to come to grips with changes in global financial
23 markets. It illustrates a true challenge to government.

24 The RTOs and ISOs have had to deal with these
25 challenges. And although there is criticism--the origin of

1 the Rule must be very clearly understood as not a criticism
2 of the organized markets, but an effort to embark on this
3 challenge of dealing with changed circumstances, and to make
4 the organized markets better.

5 Now all of we Commissioners have been to the RTO
6 board meetings around the country. We have met with the
7 stakeholder groups, and I think the RTOs have been very
8 attentive, and it really should give rise to praise more
9 than criticism of their efforts to deal with these changed
10 circumstances and accommodate the changes, and this final
11 rule should be taken in that regard to make the changes the
12 government needs to make to enhance these organized markets,
13 enhance competition; this coexistence between regulation and
14 competition is essential.

15 I want to thank my colleagues for working on this
16 with us. I have learned a lot. Some, and particularly in
17 the Spitzer household, think I can be stubborn and reluctant
18 to change my mind, but in discussions with Commissioner
19 Wellinghoff on a particularly complex and controversial
20 issue I reconsidered my position. And I think that is good
21 discussion, and good government.

22 In the areas of demand response, market
23 monitoring, long-term contracts, and RTO governance and
24 responsiveness, I really think we have struck the right
25 chord. It was a collaborative effort by those who

1 participated in all the iterations of the rulemaking, by my
2 colleagues again, by their offices, and finally by the staff
3 for its hard work. Their work is greatly appreciated by our
4 team, and for these reasons I support this Order.

5 CHAIRMAN KELLIHER: Thank you. Commissioner
6 Kelly?

7 COMMISSIONER KELLY: Well I agree with you, Joe,
8 that competition in electricity has been and remains a
9 national bipartisan policy. It began 30 years ago this year
10 with the enactment of the Public Utility Regulatory Policies
11 Act, and I am very pleased that FERC is continuing its
12 effort to improve the organized competitive markets with
13 this Order.

14 I want to thank Joe for his leadership in making
15 this happen. I also want to thank the team for all of your
16 effort. It has been a long process, but the long process
17 has been worthwhile.

18 We have made some truly important decisions
19 today, and I support most of them. In particular, we have
20 taken significant steps to evolve the market for demand
21 response.

22 Commissioner Wellinghoff has enumerated what
23 those are, and so I will not repeat them. I also agree with
24 the Final Rule's direction to each RTO and ISO to
25 demonstrate its responsiveness to stakeholders and customers

1 with the Commission evaluating each filing based upon
2 inclusiveness, fairness in balancing interests,
3 representation of minority positions, and ongoing
4 responsiveness.

5 I also believe that it is appropriate to require
6 each RTO and ISO to include a tariff provision that commits
7 to providing market monitoring units, MMUs, with the data,
8 the resources, and the personnel necessary to carry out
9 their functions.

10 There are a couple of policy calls that I think
11 we got wrong on this Order. I might mention them. I
12 continue to be troubled by the Final Rule's directive to
13 each RTO and ISO to make a compliance filing to propose
14 necessary reforms to allow for scarcity pricing by modifying
15 market power mitigation rules during emergencies, such as
16 raising energy supply caps and demand bids.

17 While the Final Rule makes substantial efforts to
18 address market power associated with scarcity pricing, and
19 to ensure that there is an adequate record regarding any
20 scarcity pricing proposal, and I am pleased by that, it
21 doesn't alleviate a fundamental concern regarding the very
22 real impacts on customers associated with scarcity pricing
23 proposals.

24 I continue to believe that, absent the necessary
25 demand response infrastructure and pricing signals to give

1 consumers the ability to respond to higher prices, it is not
2 responsible to allow energy supply bid caps and demand bid
3 caps to rise without regard to the impacts on consumers.

4 It is not that scarcity pricing is wrong.
5 Indeed, it can be a good thing. But timing is everything.
6 I am hopeful that the ISOs in complying with this section of
7 the Final Rule will devise a scarcity pricing proposal that
8 provides enough lead time so that the demand response
9 infrastructure and pricing signals can be developed so as to
10 allow consumers to truly take advantage of that.

11 I also have difficulty with the Final Rule's
12 decision to promote responsiveness of RTOs and ISOs by
13 allowing them to adopt hybrid boards with stakeholder
14 members.

15 This kind of hybrid board will jeopardize the
16 independence of an RTO and ISO. I understand that customers
17 are interested in having RTOs and ISOs be more responsive to
18 them, but I don't think that this is the right solution to
19 the problem.

20 And finally I am concerned about the issue of
21 MMUs being removed from tariff administration and
22 mitigation. I note that a large number and variety of
23 commenters on our NOPR were also concerned about this.

24 The Final Rule does not ignore these concerns,
25 and it does make changes to the NOPR proposal by drawing a

1 distinction between RTOs and ISOs that have a single MMU and
2 those that have hybrid MMUs with both an external and
3 internal market monitor. And I think this change is a good
4 one.

5 Under it, an RTO and ISO may allow its MMU,
6 whether it is a single MMU or a hybrid MMU, to perform
7 retrospective mitigation. However, only an RTO and an ISO
8 with both an internal and external MMU may allow its
9 internal MMU to continue to perform prospective mitigation.

10 I do not agree that there is an underlying
11 problem that counsels against allowing internal MMUs to
12 perform prospective mitigation. The ISO New England
13 commented, and I agree with them, that it disagrees with the
14 proposition that an MMU's performance of mitigation
15 functions compromises its independence or distracts an MMU
16 from its core function.

17 While the Final Rule has evolved in a positive
18 way on this issue, I believe it continues to be an answer in
19 search of a problem. But these concerns of mine are
20 relatively small in comparison to the positive policy
21 changes that we enact today, and with those exceptions I am
22 very pleased to vote for this Order.

23 CHAIRMAN KELLIHER: Thanks. Any other comments,
24 colleagues?

25 (No response.)

1 CHAIRMAN KELLIHER: No? Let's vote.

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

4 COMMISSIONER WELLINGHOFF: 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 with a dissent in part.

11 SECRETARY BOSE: And Chairman Kelliher.

12 CHAIRMAN KELLIHER: Aye.

13 SECRETARY BOSE: The next item for discussion and
14 presentation this morning is M-3. That is a Draft Policy
15 Statement Providing Guidance on Certain Compliance
16 Practices. There will be a presentation by Ted Gerarden
17 from the Office of Enforcement.

18 MR. GERARDEN: Good morning, Mr. Chairman, and
19 Commissioners. I am Ted Gerarden from the Office of
20 Enforcement.

21 Agenda Item M-3 is a draft Policy Statement that
22 provides additional guidance to the public on the importance
23 of good compliance practices by entities that are subject to
24 the Commission's regulatory requirements.

25 The Statement draws upon the Commission's

1 experience in utilizing the enhanced civil penalty authority
2 and upon the dialogue at the staff workshop on compliance
3 held July 8, 2008. This Policy Statement supplements the
4 Revised Policy Statement on Enforcement issued May 15, 2008,
5 and underscores the Commission's central goal of achieving
6 compliance.

7 The Commission has consistently emphasized the
8 importance of good compliance practices. In the 2005 Policy
9 Statement on Enforcement the Commission encouraged companies
10 to develop a culture of compliance and said that credit
11 would be provided in determining penalties if the company
12 had an effective compliance program.

13 In the Revised Policy Statement earlier this year
14 the Commission listed several actions that are indicative of
15 a strong compliance culture, and said that if a company in
16 violation is found to have poor compliance practices, a
17 condition of settlement may be a requirement to develop a
18 comprehensive compliance program.

19 The present Policy Statement takes additional
20 steps to encourage companies to be proactive and aggressive
21 in adopting better internal compliance practices.

22 First, the Policy Statement describes key factors
23 related to effective compliance that the Commission will
24 take into account in determining appropriate sanctions for
25 violations.

1 Second, the Commission explains the benefit to
2 companies that embrace strong and effective compliance
3 practices by stating that if a company has taken the
4 initiative to adopt a strong compliance program but
5 nonetheless has a violation, the Commission may reduce or
6 even eliminate the civil penalty that otherwise would be
7 imposed for the violation.

8 The four factors that characterize vigorous and
9 effective compliance programs are:

10 First, active engagement and leadership by senior
11 management;

12 Second, preventive measures appropriate to the
13 circumstances of the company that are effective in practice;

14 Third, prompt detection of problems, cessation of
15 misconduct, and the reporting of a violation; and

16 Fourth, remediation of the misconduct.

17 Where a company's conduct shows that it has
18 embraced these key elements of effective compliance and
19 acted accordingly when a violation nonetheless occurs, the
20 Commission will in most cases provide substantial credit.

21 There is no magic formula for an effective
22 compliance program. The Commission previously said that "no
23 one size fits all" and again in this Policy Statement makes
24 clear that each entity must determine the best approach to
25 compliance given all the relevant factors, such as the size

1 of the company, the nature and extent of its operations that
2 are subject to Commission requirements.

3 Good compliance programs can be resource
4 intensive. Regardless of how companies approach their
5 compliance activities, the Commission will consider the end
6 result--whether the compliance program worked as it should.

7 With respect to the credit provided for effective
8 compliance practices, the Commission retains discretion to
9 apply all appropriate sanctions, including a civil penalty,
10 depending on all the circumstances of a violation.

11 However, the Policy Statement provides that for
12 violations that are not serious--that is, that do not
13 involve significant harm, risk of significant harm, or
14 damage to the integrity of the Commission's regulatory
15 program, and where the company has demonstrated all four
16 elements of effective compliance practices--the Commission
17 may reduce the civil penalty that would otherwise apply, or
18 even eliminate the penalty.

19 That concludes my presentation. I would be
20 pleased to respond to questions.

21 CHAIRMAN KELLIHER: Thank you very much for that
22 presentation, Ted. I have been wondering which Civil War
23 general do you remind me of? I really like your beard.

24 (Laughter.)

25 CHAIRMAN KELLIHER: So that was a distraction

1 because I was trying to stick to your written presentation.

2 OFF-MICROPHONE SPEAKER: (Inaudible)

3 CHAIRMAN KELLIHER: Yes, well, that's one who
4 won. Someone who was really brave and tall, certainly. Let
5 me get to the business at hand.

6 I am really pleased that we are taking this
7 action today in issuing this Order. I really think it is a
8 very significant step that we are taking in the development
9 of our Enforcement policy.

10 The purpose of the Policy Statement, it is clear,
11 is to encourage the regulated companies and others who are
12 subject to our rules to develop rigorous compliance programs
13 that will minimize the potential for violations of our
14 regulatory requirements in the future.

15 It is because the central object of our whole
16 entire Enforcement Program is achieving maximum compliance
17 with our regulatory requirements. We also recognize that we
18 are unlikely to achieve that goal, to meet that goal, unless
19 the companies subject to our jurisdiction, and others, make
20 a commitment to compliance.

21 If they do make that commitment, if they do
22 develop strong compliance programs, the natural results
23 should be a decrease in violations over time, and really
24 importantly a decrease in the significant violations that
25 might otherwise occur. So from my point of view, promoting

1 strong compliance programs is clearly in the public
2 interest.

3 And it follows naturally on what we did in May.
4 In May we approved a package of Orders to make some
5 significant reforms to our Enforcement Program, but we
6 clarified that the most important considerations for us as
7 we develop penalty amounts, determine penalty amounts, is
8 the seriousness of the violation, and also the company's
9 commitment to compliance.

10 So we actually have an obligation to provide
11 guidance on what does that mean? What do we consider
12 "serious violations"? And today, really importantly, what
13 do we consider represents a "commitment to compliance"? So
14 we are taking that step. We are trying to provide further
15 guidance on what we believe constitutes an effective
16 compliance program.

17 Ted discussed the elements, the core elements of
18 what we think an effective or a model compliance program
19 are. I just want to offer my views on why these elements
20 are significant.

21 One is the role of senior management. That is
22 important because a compliance program can really be a
23 beautiful thing on paper, but one question is: Does that
24 program actually govern how a company or another entity
25 operates? And the involvement of senior management, the

1 role of senior management, can be critical to determining
2 whether it is a paper program or whether actually it is a
3 live program and it actually guides how an organization
4 operates.

5 Because it is clear that ultimate responsibility
6 for compliance rests with senior management, and it is
7 essential that senior management accept that responsibility
8 and instill a culture of compliance.

9 A second element, as Ted noted, is a model
10 compliance program has to include effective preventive
11 measures to ensure compliance. And again that is important
12 to make sure that a program doesn't exist only on paper, but
13 it actually does guide an organization.

14 Systematic preventive measures such as careful
15 hiring, training, accountability, and supervision can
16 demonstrate that a paper program really, truly guides an
17 organization.

18 The third elements is that an effective
19 compliance program must involve prompt detection, cessation,
20 and reporting of violations. What is important here is that
21 it have a systemic approach, and that there be controls in
22 place, that violations aren't stumbled upon accidentally,
23 but that violations are discovered through internal auditing
24 and supervision.

25 And self-reporting is a necessary element of an

1 effective compliance program, but self-reporting all by
2 itself does not represent a commitment to effective
3 compliance. We also recognize that if a company does make a
4 commitment to compliance, the natural result may be an
5 increase in the reporting of violations as a company that
6 has made a commitment to compliance self-reports violations
7 that were previously not identified or not disclosed.

8 The fourth element though is remediation; that an
9 effective compliance program does not just self-report, but
10 actually acts to remediate violations. And that I think is
11 critical.

12 The most vital consideration from my point of
13 view in this areas is whether a company, after it's
14 identified violations and reports violations, whether it
15 examines its controls to determine if new or modified
16 controls are needed to prevent a recurrence.

17 They may determine that there are no changes
18 necessary in their controls, but they have to at least ask
19 the--to me it's important that they ask the question and
20 they examine their controls to determine their adequacy.

21 We also recognize that even companies and
22 entities that do develop model compliance programs and
23 effective compliance programs, there still will be
24 violations, and that is why we are providing clarity here on
25 to what extent we will provide credits to companies that

1 develop strong compliance programs but nonetheless still
2 engage in violations.

3 I don't think we will get to a state where there
4 is an absence of violations of our regulatory requirements,
5 even if the entire regulated community makes a commitment to
6 develop effective compliance programs, but we are holding
7 out the prospect of a full credit for penalties if an
8 organization, if a company or organization develops a model
9 compliance program and there's a violation, there is the
10 prospect of a full credit.

11 The one exception though is in the category of
12 "serious violations." But I think it is clear that what we
13 are doing today, holding out the prospect of penalty credits
14 in order to encourage companies to make a commitment to
15 model compliance programs that is in the public interest
16 because it will help us achieve higher compliance with the
17 regulatory requirements, and it should benefit customers and
18 markets over time.

19 There is, as I said there's a limitation on the
20 prospect of a full penalty credit, and that is in the area
21 of serious violations. Serious violations are violations
22 that involve significant harm, that run the risk of
23 significant harm, or damage the integrity of the
24 Commission's regulatory program.

25 Serious violations from my point of view would

1 certainly include market manipulation, attempts at market
2 manipulation, and the most serious reliability violations.
3 But I also do not think it is practical for the Commission
4 to define the total universe of regulatory requirements
5 whose violation would be eligible for full-penalty credits.

6 I also think it is important that this Policy
7 Statement was developed after studying the practices of
8 other regulatory agencies, as well as studying academic
9 literature on corporate compliance programs. I think we
10 have more citations to law review articles in this policy
11 statement than I've seen in any Commission Order that I've
12 read in quite awhile.

13 I think that shows that we took a thoughtful
14 approach to this area. We wanted to develop best practices
15 from an agency's point of view in Enforcement policy, and so
16 we have been students recently on how other agencies address
17 this very same question: How do you promote commitment to
18 compliance within a regulated community?

19
20
21
22
23
24
25

1 I think this is a major step, and I'm proud to
2 take it. I am happy to have worked with my colleagues and
3 staff to this end.

4 Colleagues? Commissioner Wellinghoff?

5 COMMISSIONER WELLINGHOFF: Thank you, Joe. Ted,
6 thank you for a very comprehensive presentation, and thank
7 you and the Office of Enforcement, for you work on this
8 policy statement. I appreciate it very much.

9 And I think, you know, that no magic formula is
10 the key here. I mean, I think those entities that we
11 regulate, have to understand that we can't give them the
12 formula, but here, we can, and, I think, do two things:

13 I think, number one, what's important what's
14 important in this Policy Statement, is that we have
15 preserved our flexibility and we have to do that in our
16 enforcement activities, on the one hand.

17 But, on the other hand, I think what we've done,
18 is, we have given some clear guidelines to those entities
19 that we regulate, that they can mitigate the impact of our
20 potential enforcement actions, by putting together, a
21 comprehensive policy of compliance, and meeting the four
22 principles that are set forth in that policy.

23 So, doing that, there may be no magic formula,
24 but they can get substantial credit, and I think if they get
25 that, they understand that, that they should read this

1 policy and try to incorporate it as much as they can, into
2 their actions. Thank you.

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

5 COMMISSIONER KELLY: In my view, there is no
6 surprise in this Order. Nothing's startling or unexpected.

7 It's based on the simple and common-sense premise
8 that companies that develop and carry out rigorous
9 compliance programs, are less likely to engage in
10 misconduct.

11 And if, in spite of all best efforts,
12 violations, nevertheless, occur, penalties may be reduced or
13 even eliminated, particularly if the company immediately
14 acknowledges them, takes steps to end them and restore
15 injured parties.

16 Of course, the converse is equally true and
17 equally self-evident: An inadequate compliance program will
18 likely result in more violations, perhaps more serious
19 violations, and we will likely not be as flexible or
20 forgiving in determining appropriate penalties, because that
21 would not be appropriate.

22 This Order reflects the fact that there is no
23 one-size-fits-all approach for companies to build strong
24 compliance programs. As we noted, market participants are
25 in the best position to develop the optimum mix of measures

1 for creating, as Howard Friedman with Deloitte & Touche and
2 one of the participants in our July workshop said, "an
3 operating environment where you have no compliance
4 surprises."

5 Effective compliance programs aren't created
6 overnight; we understand that they require a significant
7 investment in time and effort.

8 Today's Order reiterates our commitment to
9 continue to provide guidance, holding more workshops, if
10 necessary, to ensure that a culture of compliance is
11 standard operating procedure.

12 Thanks to you, Ted, and to the rest of your team,
13 for all the work that you have done on this important Order.
14 I appreciate it.

15 CHAIRMAN KELLIHER: Colleagues? Commissioner
16 Spitzer?

17 COMMISSIONER SPITZER: Thank you, Mr. Chairman.
18 I have a more erudite item that I'll post.

19 Let me just make a -- I know this terrifies my
20 team when I tell stories.

21 (Laughter.)

22 COMMISSIONER SPITZER: But I'll persist, because
23 compliance is a state of mind, and it's obviously our goal
24 here in government, that regulated entities comply with the
25 law of the United States.

1 As a very young lawyer, I received a call. There
2 was a business in Phoenix, a metalworking shop, that
3 employed about 25 folks, and they were padlocking the
4 business.

5 So I had to drive down to IRS. And this -- I'm
6 going to show how old I am. This was before cell phones.

7 So I was not fully apprised in the premises of
8 this case and was informed by an agent that I had know for
9 awhile, that the company had gone through four different
10 lawyers before me, and had continually failed to withhold
11 federal taxes and file federal employment tax returns.

12 And I spent about four hours down at IRS,
13 ultimately succeeded in getting the padlock removed, two-
14 percent threatening to go to Federal Court, because I was a
15 young lawyer and wanted to get experience in Federal Court.

16 (Laughter.)

17 COMMISSIONER SPITZER: And 98 percent of the
18 time, frankly, throwing myself on the mercy of the IRS.

19 (Laughter.)

20 COMMISSIONER SPITZER: And when I returned to the
21 company's business, the padlock had been removed and they
22 started working again.

23 I discussed the issue of compliance very
24 vigorously, and said, you know, you had four prior lawyers -
25 - I know those guys. They didn't tell you that you needed

1 to file returns and pay taxes?

2 They said, oh, they did. I said, what's
3 different now? They said, we believe you.

4 (Laughter.)

5 COMMISSIONER SPITZER: The light had gone on
6 somehow. And it was this state of mind.

7 CHAIRMAN KELLIHER: Maybe they believed the
8 padlock.

9 (Laughter.)

10 COMMISSIONER SPITZER: I prefer to think of it as
11 my --

12 (Laughter.)

13 COMMISSIONER SPITZER: However, it derives,
14 whether from the padlock or from the lawyer articulating the
15 need, or subsequent -- we got an accountant in and we helped
16 them with their work, and the guy still -- when I left for
17 Washington, he still wanted to send me copies.

18 I said, I want copies of every return.

19 (Laughter.).

20 COMMISSIONER SPITZER: For 22 years, they've been
21 sending copies of the returns.

22 (Laughter.)

23 COMMISSIONER SPITZER: Even long after I'd -- it
24 was that state of mind that is key, and government has to
25 work in tandem with professionals and the regulated

1 community to achieve the state of mind that comply with the
2 law.

3 I think this is a major help. Thank you.

4 CHAIRMAN KELLIHER: Thank you. Commissioner
5 Moeller?

6 COMMISSIONER MOELLER: Thank you, Mr. Chairman.
7 Ted, thank you for the description of the rule -- or the
8 Policy Statement.

9 To me, there has been some confusion over what's
10 a compliance program? What's a compliance plan? What's a
11 compliance report? Can you elaborate on the definitions?

12 MR. GERARDEN: Certainly. A compliance plan,
13 reflects the efforts of a company with which Enforcement
14 Staff has been engaged, to comply with the Commission's
15 Orders or requirements.

16 For instance, in a settlement context, we will
17 include, normally, a compliance reporting requirement
18 that's related to the violation that occurred and the
19 company's obligation to show staff that it has come into
20 compliance and stayed in compliance.

21 They also arise in the context of audits, which
22 have found areas of noncompliance that the company must
23 correct.

24 In these situations, the company is reporting
25 back to the Staff on its efforts, so it may be appropriate

1 to consider a compliance plan in that context, compliance
2 reporting.

3 They are normally in effect for a specific period
4 of time, for instance, one or two years. Frequently,
5 settlements will include a provision that has a one-year,
6 two semiannual compliance reports, that can be extended for
7 a second year, at Staff's option, depending on how they go.

8 They're non-public. If the result of the
9 reports, is that the company is not complying with the
10 requirements, that they may lead to further investigation or
11 further audit activity.

12 They are very case-specific, and they are focused
13 on the specific violations that are dealt with there.

14 Now, by contrast, compliance programs, these are
15 efforts of a company to put in place, measures that ensure
16 the company generally is in compliance with the Commission's
17 statutes the Commission administers, and the Commission's
18 rules and regulations and Orders.

19 It may have nothing to do at all with an
20 investigation or an audit. And there are many instances in
21 which companies have developed compliance programs for
22 particular reasons, for instance, in response to the
23 Commission's Standards of Conduct, or in another context,
24 Sarbanes-Oxley requirements, have caused many companies to
25 put compliance programs in place.

1 This Policy Statement reinforces what the
2 Commission has said before and is emphasizing now about the
3 importance of a company having a compliance program that
4 looks across the company's exposure to Commission
5 requirements.

6 And a compliance program can lead to the
7 appropriate culture of compliance at a company. You know,
8 it keeps the company out of trouble and turns our
9 Enforcement Staff into the Maytag Repairman.

10 In one respect, as I mentioned in the Revised
11 Policy Statement, the Commission made a reference that, if a
12 company does not have a compliance program, that a condition
13 of a settlement, depending on the circumstances, that it
14 may be appropriate to have as a condition of settlement,
15 that the company make a certain commitment to developing an
16 appropriate compliance program.

17 But I think the compliance program is a
18 comprehensive approach and one where the company has to
19 determine what its exposure is, what its resources are, how
20 best to go about it, is very different from the compliance
21 reporting that's associated with specific violations, and is
22 sometimes also called a "compliance plan," in that context.

23 COMMISSIONER MOELLER: Okay. I'll get back to
24 programs in a moment.

25 In one of the footnotes in the Policy

1 Statement, we talk about, and I'll read from it: "In
2 addition, at the time we issued the Revised Policy
3 Statement, we also reviewed the various mechanisms by which
4 those seeking assistance on compliance issues, can obtain
5 guidance from the Commission or our Staff. These options
6 include Declaratory Orders, No-Action Letter Requests,
7 General Counsel Opinion Letters, accounting
8 interpretations, the Enforcement Hotline, the recently-
9 created Help Desk, pre-filing meetings, and other informal
10 contacts with staff."

11 Now, I asked if you could give us a little
12 rundown as to how many of those options, entities have taken
13 advantage of, maybe over the last couple of years. This is
14 not a blind question to you.

15 (Laughter.)

16 MR. GERARDEN: Of all of those options for
17 Commission Staff guidance that the Commission discussed in
18 the May Order, some of them, the Office of Enforcement deals
19 with directly; many of them are dealt with by Office of
20 General Counsel, and it's probably appropriate for the
21 Office of General Counsel to discuss the ones that they deal
22 with.

23 The Enforcement Hotline, of course, has been in
24 existence for many, many years, and in fiscal 2007, we
25 received 420 calls to the Enforcement Hotline.

1 In fiscal 2008, that increased to 490.

2 COMMISSIONER MOELLER: Those can range from very,
3 very minor things to major things.

4 MR. GERARDEN: It's a very wide range. Also, the
5 Office of Enforcement is involved in accounting
6 interpretations, and accounting advice is one of the other
7 Staff advice areas that was mentioned.

8 In the last two fiscal years, there have been two
9 formal accounting interpretations issued. There are also,
10 very frequently, requests for approval of the Chief
11 Accountant, and those are literally hundreds of dockets in
12 which there is an action by the Chief Accountant.

13 But in terms of the accounting interpretation
14 guidance, there have been two in the last two fiscal years.

15 But I think I probably should ask the Office of
16 General Counsel to comment on the other sources of Staff
17 guidance that they are more familiar with.

18 MS. MARLETTE: I can give you some of them. From
19 our new Help Desk, which went live in mid-June, we've had
20 168 inquiries so far.

21 Twenty of those were accounting. I think that
22 was the standout area.

23 So we're getting about 40 per month. We have a
24 spike of 55 in August, and roughly two-thirds of those have
25 to do with compliance issues.

1 So, GC Opinion Letters, only one in the last
2 year, which went out on August 9th. Declaratory Orders,
3 we've had 29 in 08, and this is the calendar year.

4 We had 34 requests in 07, and I don't have
5 issuance versus requests.

6 Did you talk about NALs? The No-Action Letters,
7 we've issued four so far in 2008; we had four in 2007, so
8 that's been about the same.

9 COMMISSIONER MOELLER: Okay. So, if an entity
10 came to us with a compliance program and wanted our
11 reaction, what would we do?

12 MR. GERARDEN: Well, we have, in a few
13 instances, in the course of an investigation, talked with
14 companies about steps they've taken to address the violation
15 that occurred.

16 There, it's more focused on the problem that was
17 uncovered and how they're responding to it.

18 Sometimes, companies have shared with us, for
19 instance, a training -- set of training slides that they've
20 used to educate staff.

21 We have not had a situation in which a company
22 has come in with a general, across-the-board compliance
23 program, at least in my experience.

24 It's awkward, because it's difficult to put Staff
25 or the Commission in the position of setting out what

1 specific requirements ought to be in place for any company.

2 The Policy Statement has spoken in terms of the
3 need of the company to address its situation, whether it be
4 a small company, large company; it could be a large company
5 that has only a very small amount of its activity that would
6 be subject to FERC requirements.

7 And if a company comes in with a paper plan and
8 says -- you know, a very nicely presented package, it
9 doesn't necessarily mean that, in practice, it will be well
10 executed.

11 And from an enforcement perspective, we're very
12 interested in knowing, you know, how did the rubber meet the
13 road? Was senior management really engaged, were they
14 constantly reminding their employees of the importance of
15 following all the steps that are in there? Were they
16 followed? Do they have some kind of periodic review or
17 internal audit of the processes, to make sure they're
18 working? Do they test to see, take samples of transactions,
19 to find out if they're being handled properly?

20 And only if you look to see the activities, as
21 the company engages in its ongoing work, can you determine
22 whether they really have created effective compliance
23 practices or not.

24 So, our preference is to look at the situation as
25 it's implemented by the company, as opposed to a proposed or

1 hypothetical approach.

2 COMMISSIONER MOELLER: That makes sense, but
3 there is somewhat of an analogous situation with the pre-
4 filing process with energy projects.

5 I mean, people -- every project is unique. You
6 don't know exactly what's going to happen, until it's
7 implemented, and it seems like, obviously, everything's
8 going to be on a case-by-case basis, but it would seem to me
9 that guidance would still be an option that, without any
10 commitment as to how the rest of the Commission is going to
11 handle it or react to it, something that if someone is
12 asking us for, we could, I think, in good duty, provide.

13 But there's no need to for you to respond to
14 that. I'm putting you on the spot there.

15 I support this Policy Statement. I think it's a
16 good move. I think it should have gone further, in terms of
17 compliance programs.

18 And let me describe to you, July 8th, as I was
19 sitting, I think, by myself, on the kiddy table, every seat
20 was filled. The overflow room was packed, and people were
21 here clambering, craving guidance from this Commission on
22 our enforcement program. I've never seen anything like it.

23 Afterwards, people said, that was a good
24 conference, we learned things from what we heard from the
25 panelists speaking to each other, but what we really didn't

1 get, was anything from the Commission or the Commission
2 Staff, as to how to move forward.

3 So, that's -- again, this is a step in the right
4 direction, but I wish it would have gone further, in terms
5 of some type of a model compliance program. Maybe there has
6 to be a range of them, but I believe it's our duty to give
7 guidance to the entities that we regulate, so that if
8 they're subject to penalties, they have to know what they
9 have to do to avoid penalties.

10 And that's generally my philosophy on it. I'm
11 glad we're moving forward with it, and I appreciate the hard
12 work of the Staff in putting it together. There were a
13 number of edits.

14 And I'll be pleased to support it with a
15 concurrence.

16 CHAIRMAN KELLIHER: Sure. And I just want to
17 respond briefly. I do think the action we're taking today,
18 was informed by the July conference. I think the July
19 conference followed on the May package and led to what we're
20 doing today.

21 But I just want to be clear that I think it would
22 be very difficult for us to go further, as you propose,
23 because we regulate something like 4700 entities. Some
24 might be a small municipal utilities, that are only a subset
25 of our reliability requirements, and others would be

1 Sempra, which is a pipeline.

2 They own power plants, they're a wholesale power
3 seller. There's a utility. You know, they do almost
4 everything except oil pipelines and maybe a hydro license.

5 So the scope of regulatory requirements that
6 would apply to a Sempra, are vast; the scope of requirements
7 that apply to a small muny or an industrial, would be very
8 small.

9 I think it's hard to come up with a model plan
10 that would equally fit those two entities, and there might
11 actually be more diversity in that universe. It's just that
12 it's a large universe, but it's so diverse.

13 Is it possible to come up with a plan that could
14 fit such a wide -- it's not so much that it's a large
15 universe; it's that it's very diverse, the nature of the
16 companies we regulate, are so different that I'm just not
17 convinced at this point that we can provide an outline of a
18 compliance plan that would fit that whole universe.

19 But I think you raise a very legitimate issue.
20 To me, the answer isn't clear at this time.

21 Colleagues, any other comments?

22 (No response.)

23 CHAIRMAN KELLIHER: No? Let's vote.

24 SECRETARY BOSE: The vote begins with
25 Commissioner Wellinghoff.

1 COMMISSIONER WELLINGHOFF: I vote aye.

2 SECRETARY BOSE: Commissioner Moeller?

3 COMMISSIONER MOELLER: Aye, noting my
4 concurrence.

5 SECRETARY BOSE: Commissioner Spitzer?

6 COMMISSIONER SPITZER: Aye.

7 SECRETARY BOSE: Commissioner Kelly?

8 COMMISSIONER KELLY: Aye.

9 SECRETARY BOSE: Chairman Kelliher?

10 CHAIRMAN KELLIHER: Aye.

11 SECRETARY BOSE: The next item for presentation
12 and discussion this morning, is M-1, concerning a Draft
13 Final Rule on Standards of Conduct for Transmission
14 Providers.

15 There will be a presentation by Kathryn Kuhlen
16 from the Office of Enforcement. She is accompanied by Jamie
17 Jordan from the Office of Enforcement.

18 MS. KUHLEN: Good morning, Mr. Chairman and
19 Commissioners. We're presenting the Draft Final Rule for
20 the Standards of Conduct for Transmission Providers, which
21 represents the culmination of a lengthy process that began
22 in 2006.

23 In that year, the United States Court of Appeals
24 for the D.C. Circuit, vacated, with respect to the gas
25 industry, the version of the standards that had been adopted

1 in Order Number 2004.

2 Following that ruling, the Commission put into
3 place, interim standards and issued a Notice of Proposed
4 Rulemaking to address the Court's concerns.

5 After receiving extensive comments on the NOPR,
6 the Commission determined that a new direction was needed.

7 As second Notice of Proposed Rulemaking was
8 issued in March of this year, which proposed to refocus the
9 standards on the areas in which there is the greatest
10 potential for affiliate abuse.

11 The NOPR proposals eliminated the concept of
12 energy affiliates and returned to the employee functional
13 approach that predated Order Number 2004, which limits the
14 prohibited recipients of transmission function information,
15 to those employees actually engaged in marketing.

16 This approach received overwhelming support from
17 all industry sectors, including gas and electric providers,
18 state commissions, and public interest groups.

19 The Draft Final Rule carries forward, this
20 approach, and also responds to a number of requests for
21 adjustments and clarifications.

22 "Transmission functions," is defined as the day-
23 to-day operation of the transmission system. The definition
24 of "marketing functions," is restricted to sales and not
25 purchases, and clarification has been provided on the

1 question of when and if a supervisor becomes a marketing
2 function employee.

3 The entire Part 358 of Title XVIII of the Code of
4 Federal Regulations, has been revamped to make the rules
5 clearer and to eliminate duplication with posting
6 requirements covered elsewhere in the Commission's
7 regulations.

8 We would be pleased to respond to any questions
9 you may have.

10 CHAIRMAN KELLIHER: Thank you very much for your
11 presentation. Commissioner Kelly and I were just kidding,
12 that we are approaching our fifth year anniversary here, and
13 one of our first votes, I think, in January or February of
14 04, was the Rehearing Order on the Standards of Conduct
15 Rule.

16 But we didn't actually vote on the Final Rule.
17 That was a couple weeks before we got here, but we had to
18 vote on the Rehearing Order, and that was a pleasure.

19 (Laughter.)

20 CHAIRMAN KELLIHER: So, we've been working on the
21 Standards of Conduct Rule for five years, and I guess we'll
22 have one more Rehearing Order in front of us, perhaps.

23 But I think this -- I really thank the Staff for
24 their hard work on this, and a Final Rule that had two
25 proposed Rules leading up to it, you know, is a prodigious

1 piece of work.

2 But I think our action today really shows --
3 sends important signals to the regulated community. I
4 think, first of all, it shows that we are committed to
5 fairness in our enforcement program.

6 And I think that's really shown by the fact that
7 by the very simple fact that we changed the Rule that
8 applies to the electricity sector. There was no challenge
9 from the electricity sector, and we actually had the liberty
10 to continue to enforce the former Rule to the electricity
11 sector.

12 But we considered that and realized that there
13 was no more legal or actual basis for the Rule, as it
14 applied to the electricity sector, than applied to the
15 natural gas sector, and that it really would have been an
16 abuse, if we done that, if we had continued to apply the
17 Rule.

18 So, we undertook what ended up being a very hard
19 task.

20 Another step that I think really -- that's an
21 important signal that we're sending today with this action,
22 is our commitment to facilitating compliance.

23 This Rule has been a very difficult Rule, I'm
24 sure, for the Enforcement Staff, for the Commission Staff,
25 to enforce. It's also been very difficult for the industry

1 to comply with.

2 I think that our commitment there is really shown
3 by the fact that we issued a second NOPR, that, a year ago,
4 we were poised to issue a Final Rule, but taking another
5 hard look at it in the final stages of drafting that Rule,
6 we realized we were introducing new complexities into an
7 area that already had a wealth of complexities.

8 And so we took a step back and realized there was
9 a much better approach and issued the second NOPR, and now
10 we're acting on a Final Rule.

11 So it has cost us about a year in time, but I
12 think we're ending up with a much better Rule and one that
13 will be much easier for us to enforce and much easier for
14 the industry to comply with.

15

16

17

18

19

20

21

22

23

24

25

1 It's been very difficult to get this Rule right,
2 because of the nature of the Rule. Essentially, what we're
3 trying to do, is identify those relationships between a
4 marketing affiliate and a transmission provider, that run
5 the greatest risk of undue discrimination and preference,
6 and then we subject those relationships to prophylactic
7 rules designed to reduce that risk.

8 And if we're imposing a prophylactic Rule, I
9 think it's appropriate that it should be limited to areas
10 where there is a high risk of affiliate abuse.

11 It's also important to recognize that the
12 Standards of Conduct Rule does not define the full scope of
13 the Commission's authority to prevent undue discrimination
14 and preference under Section 206 of the Federal Power Act
15 and Section 5 of the Gas Act.

16 The Final Rule is limited to those areas where
17 there's the greatest abuse, and to the extent allegations of
18 undue discrimination and preference are raised that fall
19 outside the Standards of Conduct Rule, we have a legal duty
20 to address those, either on our own motion or on complaint.

21 Now, I think the Final Rule is a good Rule, and I
22 think it will help the Commission discharge its statutory
23 duty to prevent undue discrimination and preference.

24 In my personal view, a good Rule established by a
25 regulatory body, has a sound public policy purpose and

1 actually achieves or furthers that purpose. It is
2 reasonably tailored to that end, and does not impose undue
3 burdens on the regulated community.

4 It's also capable of effective enforcement and
5 facilitates compliance. It also is important that that Rule
6 be within the legal authority of an agency. That's always
7 an important consideration.

8 (Laughter.)

9 CHAIRMAN KELLIHER: But in my view, if you apply
10 that test to this Standards of Conduct Rule, I think it does
11 meet that test. I think it is a good Rule.

12 I think the previous Standards of Conduct Rule
13 certainly fell short, and the Court seemed to believe that.

14 So, it's with a great personal satisfaction that
15 five years into our time here together, we get to vote again
16 on the Standards of Conduct Rule, but I think this one is
17 going to withstand any kind of judicial review, I hope.

18 So, Commissioner Kelly?

19 COMMISSIONER KELLY: Those Standards of Conduct
20 that were finalized before we came, under Order Number 2004,
21 were motivated by good intentions, and I'm not saying that
22 they paved the road to hell.

23 (Laughter.)

24 COMMISSIONER KELLY: But I will say that they
25 have proven unreasonably difficult, both to comply with and

1 to enforce.

2 I fully support today's effort to reform the
3 Standards of Conduct, to provide industry with certainty in
4 terms of what they need to do to comply, while also ensuring
5 that the standards focus on the areas where there is the
6 greatest potential for affiliate abuse.

7 We do return to the employee functional approach
8 that was in Orders 497 and 889, with some additions to
9 facilitate industry compliance and Commission enforcement,
10 and, I, likewise, will be pleased to vote for this.

11 CHAIRMAN KELLIHER: Colleagues? Commissioner
12 Wellinghoff?

13 COMMISSIONER WELLINGHOFF: Thank you, Mr.
14 Chairman. I want to thank Kathryn, Jamie, and the Office of
15 Enforcement for their work on this, and thank you for your
16 presentation.

17 I think the most important thing about this
18 Standards of Conduct Rule, is the fact that we recognized
19 we're going down the wrong road, and we listened to our
20 constituents, and ultimately turned the boat around and
21 we're now going to put in place, I think, something that
22 will be enforceable and something that will work for
23 everyone.

24 I'm pleased to vote for the Rule, as well.

25 CHAIRMAN KELLIHER: Thank you. Commissioner

1 Spitzer?

2 COMMISSIONER SPITZER: Thank you, Mr. Chairman.
3 This issue came upon my radar screen when I was in Arizona.
4 There was a conference in Scottsdale.

5 There were some Arizona utilities that had
6 issues, and the Commission and industry have been grappling
7 with this issue for quite some time.

8 Obviously, 04 was the seminal date, and
9 significant resources have been expended by industry and the
10 Commission in an attempt to facilitate compliance.

11 Nevertheless, despite all those efforts,
12 confusion and questions regarding the Standards of Conduct
13 were made.

14 Instead of simply tweaking the new program, under
15 the Chairman's leadership, the Commission undertook a
16 comprehensive review of the policies underlying the
17 Standards of Conduct.

18 Today's Final Rule reflects the best elements of
19 the Standards originally adopted for gas in 1988, the
20 electric industry in 1996, but also includes elements that
21 worked well in Order 2004.

22 This revised approach will benefit consumers by
23 facilitating compliance and enforcement of meaningful rules.
24 I thank those entities that provided feedback to the
25 Commission on these issues, through comments to the NOPR,

1 and at the enforcement workshops.

2 I learned myself, a great deal from this
3 information, and these efforts have led to a better Rule.

4 I thank Staff for their hard work on this matter
5 and I'm pleased to support this Order.

6 CHAIRMAN KELLIHER: Thank you. Commissioner
7 Moeller?

8 COMMISSIONER MOELLER: Thank you, Mr. Chairman.
9 I'll post a longer statement, but I, too, add my thanks to
10 the Staff, since we did do a major U-turn on this effort,
11 and it took a lot of work in response to that.

12 I think my philosophy, hopefully, is clear in
13 terms of regulation. I think we should provide clear Rules
14 to the industry and then vigorously, vigorously enforce
15 them.

16 And I think that this Rule does, is, it
17 clarifies things, as it's been called a little bit back to
18 the future, so that the employee functionality approach is
19 one that hopefully should work better.

20 I'm convinced that consumers will still be
21 protected by this.

22 A couple of thoughts: One is, I know there will
23 be always some concern from entities that are transmission-
24 dependent, but I believe, again, this will work.

25 And if you combine it with our efforts in 890,

1 for more transparent and open transmission planning, I think
2 that also should allay some of those fears.

3 Finally, as Commissioner Spitzer alluded to, we
4 had a lot of concerns from western states, and how the
5 existing Rules, prior to this Rule, affected integrated
6 resource planning, and how it hampered those efforts.

7 And so this is in a partial response to many of
8 our colleagues at state commissions throughout the West,
9 asking for a more manageable way to plan for the future, and
10 I'm proud to support the Rule today.

11 CHAIRMAN KELLIHER: Any other comments?

12 (No response.)

13 CHAIRMAN KELLIHER: Let's vote.

14 SECRETARY BOSE: The vote begins with
15 Commissioner Wellinghoff.

16 COMMISSIONER WELLINGHOFF: I vote aye.

17 SECRETARY BOSE: Commissioner Moeller?

18 COMMISSIONER MOELLER: Aye.

19 SECRETARY BOSE: Commissioner Spitzer?

20 COMMISSIONER SPITZER: Aye.

21 SECRETARY BOSE: Commissioner Kelly?

22 COMMISSIONER KELLY: Aye.

23 SECRETARY BOSE: Chairman Kelliher?

24 CHAIRMAN KELLIHER: Aye.

25 SECRETARY BOSE: The last item for presentation

1 and discussion this morning, is E-10, concerning Southwest
2 Power Pool, in Docket Number ER08-1419-000. There will be a
3 presentation by Sarah Willyard from the Office of Energy
4 Market Regulation, and she is accompanied by John Rodgers,
5 from the Office of Energy Market Regulation.

6 MS. WILLYARD: Good afternoon, Mr. Chairman and
7 Commissioners. I am Sarah Willyard from the Office of
8 Energy Market Regulation. With me at the table, is John
9 Rodgers, also from the Office of Energy Market Regulation.

10 We present to you, Item E-10, the Draft Order on
11 Southwest Power Pool's or SPP's Balanced Portfolio Proposal.

12 In this proposal, SPP has amended its open-access
13 transmission tariff to establish a process for including a
14 balanced portfolio of economic upgrades into the SPP
15 transmission expansion plan and to adopt a regional postage
16 stamp design for recovering of the costs of such upgrades.

17 Over the past two years, the Cost Allocation
18 Working Group of the SPP Regional State Committee, has
19 worked with SPP stakeholders to develop this proposal, which
20 has garnered nearly universal stakeholder support.

21 The Draft Order largely accepts SPP's proposal,
22 requiring only minor modifications.

23 The Draft Order concludes that SPP's proposal is
24 an important step, as it promotes investment in new
25 transmission facilities, reduces congestion, integrates

1 efficient new resources, and accommodates new and growing
2 loads.

3 Under its proposal, SPP will evaluate a group or
4 portfolio of economic upgrades to be included in its
5 transmission expansion plan, rather than evaluate the
6 benefits of individual economic upgrades.

7 SPP states that this approach is more likely to
8 result in benefits to the entire system, than a project-by-
9 project approach, and it will alleviate potential disputes
10 that may arise if the construction of a single project
11 benefits one zone but not others.

12 SPP will identify economic upgrades to be
13 included in a potential balanced portfolio through its
14 annual transmission planning process and by soliciting
15 stakeholder input.

16 To be included in the initial phase of planning
17 for a balanced portfolio, an economic upgrade must include a
18 345 KV or higher facility.

19 Once a potential balanced portfolio of economic
20 upgrades has been identified, SPP will use an adjusted
21 production cost/benefits metric to conduct a cost/benefit
22 analysis of the portfolio for each SPP zone.

23 If the benefits of the portfolio meet or exceed
24 the costs in each zone, then the portfolio is balanced.

25 If a portfolio is not balanced, SPP has a

1 reallocation mechanism in its proposal, to ensure that all
2 zones benefit from the balanced portfolio and no zone will
3 be disadvantaged.

4 The Draft Order accepts the proposal, subject to
5 the conditions and rejects the request to require SPP to
6 revise its cost/benefit analysis.

7 Specifically, the Draft Order requires SPP to
8 submit a compliance filing to ensure that stakeholders have
9 data to verify cost/benefit metrics.

10 In addition, the Draft Order directs SPP to
11 clarify that costs incurred by transmission owners or zones
12 from third-party impacts, are included among the factors
13 affecting the revenue requirement associated with economic
14 upgrades.

15 Once a potential balanced portfolio has been
16 approved by the SPP Market and Operation Policy Committee
17 and by the SPP Board of Directors, it will be included in
18 the SPP transmission expansion plan and 100 percent of the
19 revenue requirement for the balanced portfolio, will be
20 recovered through SPP's postage-stamp-based regionwide
21 charge, which will be assessed to all SPP load.

22 The Draft Order accepts SPP's proposed cost
23 allocation methodology for a balanced portfolio. This
24 concludes Staff's presentation and we'd be happy to answer
25 any questions that you have regarding the Draft Order.

1 CHAIRMAN KELLIHER: Great, thank you. I want to
2 thank you for your presentation and your work on this Order.

3 Commissioner Moeller was the one who asked that
4 we have a presentation on this, so why don't we start with
5 Phil.

6 COMMISSIONER MOELLER: Thank you, Mr. Chairman,
7 and, thank you, Sarah and John, as well.

8 You know, sometimes I think SPP gets a little bit
9 forgotten about, because of the newest and the smallest, but
10 there are a lot of good things happening down there, and
11 John, you and I were down there in late January for the
12 Board meetings, where, essentially, this was first
13 presented.

14 I'm wondering if this balanced portfolio concept
15 can be applied to resolve the cost allocation deadlocks in
16 other RTOs. What are your thoughts?

17 MR. RODGERS: Staff would hope that other regions
18 could look at this and adopt something similar to resolve
19 those conflicts. I think one notable feature here, that
20 they had in a balanced portfolio, was some built-in
21 flexibility.

22 For example, the initial threshold is 345 KV, to
23 be included in a portfolio, but there are provisions to
24 allow lower-voltage facilities, if necessary to achieve a
25 balance.

1 One other aspect in the balanced portfolio, in
2 bringing the proposal here, was that SPP had the states
3 represented through its RSC and the stakeholders altogether
4 on the front end, which garnered a lot of support for the
5 ultimate proposal.

6 COMMISSIONER MOELLER: That was remarkable, to
7 kind of see in action, and I guess I commend the leadership
8 of the RSC for making that happen, as well.

9 Could we cite this Order as a FERC action that's
10 an attempt to remove barriers to transmission investment?

11 MR. RODGERS: Yes.

12 (Laughter.)

13 COMMISSIONER MOELLER: Good.

14 (Laughter.)

15 COMMISSIONER MOELLER: And that's what I wanted
16 to hear.

17 MR. CANNON: Objection, leading the witness.

18 (Laughter.)

19 MR. CANNON: If I could just add to your first
20 question, Commissioner, I think this is a very innovative
21 approach to what is an incredibly difficult issue
22 confronting lots of RTOs across the country.

23 As you mention, one advantage SPP has, is its
24 relatively small size. The idea of getting the people
25 together and working out these types of compromises, in

1 terms of how you go about balancing a portfolio and how you
2 come up with a way that everybody feels like they're a
3 winner, is somewhat easier for an RTO with a footprint the
4 size of SPP's, than it is, let's say, for Midwest ISO where
5 you've got 15 states and a Canadian province.

6 But, that said, we are very much pointing other
7 RTOs to what we view as sort of success stories. I think
8 this very much is a success story and something which ought
9 to hopefully serve as a model for other RTOs.

10 COMMISSIONER MOELLER: Thank you, Sheldon. I
11 agree; it's innovative, it appears to be setting the stage
12 for great success. It's an area that has diverse resources,
13 but can certainly capture a lot of renewable resources, and
14 ultimately we'll get more transmission built, which is why
15 I'm appreciative of the Chairman for letting us talk about
16 it today.

17 CHAIRMAN KELLIHER: Commissioner Kelly?

18 COMMISSIONER KELLY: Well, I also am very happy
19 to support this Order and I think it's particularly timely,
20 given our recent conference examining barriers to
21 transmission.

22 And while SPP filed the proposal, I'd like to
23 make clear that it originated from within the SPP Regional
24 State Committee, and was developed over the course of two
25 years in the stakeholder process.

1 Also, it received overwhelming stakeholder and
2 state commission support, and I'd like to take this
3 opportunity to commend the Regional State Committee, SPP and
4 SPP's stakeholders, for presenting an imaginative approach
5 to economic planning and transmission cost allocation.

6 In its most recent transmission expansion plan,
7 SPP stated that it would like to see additional transmission
8 installed in order to achieve more cost-effective
9 operations.

10 The balanced portfolio proposal will certainly
11 contribute to achieving that goal.

12 It's a thoughtful and comprehensive plan and
13 possesses several noteworthy qualities: First, the
14 structure of each balanced portfolio of economic upgrades,
15 ensures that the benefits that accrue to each SPP zone,
16 exceeds the cost.

17 And, importantly, the proposal affords SPP
18 sufficient flexibility to reconfigure a portfolio to ensure
19 balance.

20 Second, the process outlined here, will expedite
21 the study process and ultimately reduce time to
22 construction. By considering an array of projects
23 simultaneously, rather than individually, the portfolio
24 approach will not only avoid disputes surrounding individual
25 upgrades that do not produce benefits to all SPP zones, but

1 also the need to restudy projects affected by the addition
2 of new projects to the expansion plan, and we have seen
3 that approach starting to take hold with interconnections.

4 Finally, the proposal provides for 100 percent
5 cost regionalization of the transmission projects, which we
6 have seen has been very helpful in promoting transmission
7 construction where it's been implemented.

8 Overall, I believe this proposal reflects a very
9 sharp understanding of the challenges of getting large
10 regional-scale economic projects built, and that's more and
11 more the goal in our regions today.

12 I expect that this innovative and forward-
13 thinking approach to economic planning and cost allocation,
14 will facilitate a rapid buildout of transmission. I suspect
15 that a successful progression through one balanced portfolio
16 cycle, will provide a clear and unambiguous signal to the
17 investment community that SPP's economic process is
18 reliable.

19 This week, the Commission convened a technical
20 conference on barriers to transmission investment, and we've
21 heard a lot of ideas regarding what the Commission can do to
22 further transmission, and we're committed to doing all that
23 we can, but it's gratifying to know that in this case, SPP
24 is out in front of us. I'm very pleased to vote for this
25 Order and thank you, Phil, for calling it for discussion.

1 replicable everywhere, but SPP and its stakeholders have,
2 from whole cloth, created a political constituency for
3 transmission that is desperately needed to benefit
4 customers, and I'm very pleased to support this Order.

5 CHAIRMAN KELLIHER: Commissioner Wellinghoff?

6 COMMISSIONER WELLINGHOFF: Phil, your statement
7 that there's a lot of good stuff going on down in SPP that
8 never gets out, reminds me of a story my second mother-in-
9 law used to tell about Texas.

10 (Laughter.)

11 COMMISSIONER WELLINGHOFF: She used to say, you
12 know, there must be an awful lot of good people in Texas,
13 because none of them ever got out.

14 (Laughter.)

15 COMMISSIONER WELLINGHOFF: She was from New
16 Mexico.

17 (Laughter.)

18 COMMISSIONER WELLINGHOFF: But, you know, we are
19 getting the story out on this, which is good, and this is
20 really being driven by wind.

21 A lot of people don't realize that there is more
22 wind penetration in SPP -- I think they're going to be up to
23 20 percent pretty soon -- than anyplace in the country, and
24 so they've got to build the transmission to get the wind
25 out, and I think we're going to see what SPP is doing here,

1 as we get more wind penetration throughout the Midwest, and
2 also in California, I think it's going to be a model that
3 other RTOs and ISO are going to look at. I'm pleased to
4 vote for this Order, and I do want to commend the
5 stakeholders and the management of SPP for their fine work
6 here.

7 CHAIRMAN KELLIHER: And I agree. I think SPP is
8 doing a good job on a number of fronts, and this is one,
9 and, as Commissioner Kelly said, the Regional State
10 Committee and SPP deserve a lot of credit for bringing this
11 proposal before us.

12 It does has broad support, but it also seems like
13 it will work, and sometimes you don't get both of those in
14 the same filing. It's also -- this filing addresses one of
15 the most difficult issues we have to deal with and that is
16 regional cost allocation.

17 And it is a barrier, as a general matter, to
18 development of transmission in this country. We've
19 addressed regional cost allocation in a number of regions.
20 We've taken different approaches, because the grid is
21 different in different regions of the country.

22 But the importance of a general rule on regional
23 cost allocation, is that it avoids litigation, prolonged
24 litigation over the particular benefits and costs of a
25 particular project.

1 And I think the approach here, is somewhat of an
2 elegant approach, and it cuts through the Gordian Knot of
3 regional cost allocation through the portfolio approach.

4 SPP and the Regional State Committee looked at
5 the equity considerations, and they really came up with an
6 approach where you could address regional cost allocation in
7 a workable way, resolving the equity considerations.

8 So, I think it's a good filing, and I'm glad you
9 suggested we discuss it, and I am prepared to vote for it.

10 Any other comments, colleagues?

11 (No response.)

12 CHAIRMAN KELLIHER: No? Let's vote.

13 SECRETARY BOSE: The vote begins with
14 Commissioner Wellinghoff.

15 COMMISSIONER WELLINGHOFF: I vote aye.

16 SECRETARY BOSE: Commissioner Moeller?

17 COMMISSIONER MOELLER: Aye.

18 SECRETARY BOSE: Commissioner Spitzer?

19 COMMISSIONER SPITZER: Aye.

20 SECRETARY BOSE: Commissioner Kelly?

21 COMMISSIONER KELLY: Aye.

22 SECRETARY BOSE: Chairman Kelliher?

23 CHAIRMAN KELLIHER: Aye.

24 With that, the meeting is adjourned. Thank you
25 very much, colleagues and Staff. I think we did a lot of

1 work today, some of which we discussed, not all of which we
2 discussed. Thank you.

3 (Whereupon, at 12:36 p.m., the Open Meeting was
4 adjourned.)

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25