

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

941ST COMMISSION MEETING

OPEN SESSION

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

Thursday, November 20, 2008

10:10 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 P R O C E E D I N G S

2 (10:10 a.m.)

3 CHAIRMAN KELLIHER: Good morning.

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

9 (Pledge of Allegiance recited.)

10 CHAIRMAN KELLIHER: We're going to start this  
11 meeting with staff awards, which has kind of been our recent  
12 tradition. Someone told me recently they watched the FERC  
13 meeting just to see the staff awards, to see who on the  
14 staff's going to get an award, then they click off.

15 (Laughter.)

16 CHAIRMAN KELLIHER: We want to get that person  
17 back to work, so why don't we go to our staff awards. Where  
18 is my cheat sheet? Here it is.

19 Today we're focusing on the Office of Energy  
20 Projects and their staff. We have an interesting  
21 theological debate at FERC as to which is more important: do  
22 markets serve infrastructure or does infrastructure serve  
23 markets. It's probably going to be a continuing discussion.

24 Today the focus is on infrastructure, but that's  
25 not to the derogation of our market mission as well. We

1 know them both, we need them both, we do them both, and we  
2 know markets don't work very well with a weak  
3 infrastructure.

4 So the Office of Energy Projects -- really,  
5 they've done tremendous good work for many years. I said  
6 before, our natural gas markets in this country really are  
7 beautiful, and that's actually not hyperbole. I think it's  
8 in part because of the fantastic infrastructure we have and  
9 the great efficiency of the Office of Energy Projects.

10 Our electricity markets are pretty. I'm not sure  
11 I'd say they're beautiful.

12 (Laughter.)

13 CHAIRMAN KELLIHER: They're getting more  
14 attractive as we're developing infrastructure to a further  
15 extent.

16 I just want to commend Mark Robinson and the  
17 leadership that he has in the office. It isn't usually  
18 front and center at our open meetings. A lot of it happens  
19 between open meetings and notationals. But I commend Mark  
20 and his leadership, and the strong leadership beneath him.

21 I want to start off with Rob Cupina, who's  
22 directly beneath Mark. I want to give Rob the Chairman's  
23 Medal, the Leadership Medal. Rob has also previously gotten  
24 the Exemplar Medal.

25 Rob currently is the principle deputy director of

1 the Office of Energy Projects. He has a master's in public  
2 administration from George Mason University, and he's one of  
3 those veterans who started before FERC was FERC. He joined  
4 the Federal Power Commission in 1973, working gas producer  
5 and pipeline regulation, and he's played a critical role in  
6 infrastructure initiatives for many years.

7 Rob's also the proud father of a son serving his  
8 country in Afghanistan, and the grandfather of two little  
9 boys. Rob has been a great leader here for many years, and  
10 he certainly deserves this award. He's shown a lot of quiet  
11 leadership in the Office of Energy Projects and at FERC.

12 Colleagues, any comments? Jon.

13 COMMISSIONER WELLINGHOFF: First, I also want to  
14 commend Mark and his group and all they do with respect to  
15 infrastructure. I think with some of the things I'm hearing  
16 up on the Hill, Mark's going to become much, much more  
17 important here.

18 (Laughter.)

19 COMMISSIONER WELLINGHOFF: An opportunity to even  
20 do greater things.

21 With respect to Rob, I have to say that in  
22 addition to all he does here at FERC at his job, he is my  
23 personal inspiration, because every day he's in the gym.

24 (Laughter.)

25 COMMISSIONER WELLINGHOFF: If I don't get down

1       there, I feel bad, because Rob's down there working out, and  
2       he takes the same dedication to his job. I think this is a  
3       great award, and I want to congratulate him.

4                   CHAIRMAN KELLIHER:  Colleagues?  Commissioner  
5       Kelly?

6                   COMMISSIONER KELLY:  As is my wont, I like to ask  
7       around for people who have worked with those who are being  
8       given awards.  It doesn't matter who you ask:  there's  
9       nothing but praise, both professionally and personally, for  
10      Rob.  We're really lucky to have him on the staff, and I  
11      hope you stay for another -- how many years was it?

12                   (Laughter.)

13                   CHAIRMAN KELLIHER:  1973?  That's a stretch.

14                   COMMISSIONER KELLY:  Another 30 at least.

15                   CHAIRMAN KELLIHER:  Colleagues?  Commissioner  
16      Moeller.

17                   COMMISSIONER MOELLER:  Thank you, Mr. Chairman.

18                   One thing about Rob, he's such a pleasant  
19      personality -- and I don't know how you keep that optimism,  
20      given how many people he probably makes angry throughout the  
21      industry.

22                   (Laughter.)

23                   COMMISSIONER MOELLER:  But I particularly  
24      appreciate that he keeps me informed of hydro delegating  
25      orders in the Pacific Northwest and the California area.

1 Again, I appreciate his hard work and his great disposition.

2 CHAIRMAN KELLIHER: Thank you. Commissario?

3 COMMISSIONER SPITZER: Thank you, Mr. Chairman.

4 Rob has that institutional memory that's so  
5 important and very valuable. He also knows a lot about a  
6 lot of different areas of FERC, and that's extremely  
7 helpful. Certainly the hydro experience and expertise is a  
8 godsend.

9 And then, just a brief story. About six months  
10 ago, there was a little event over at the Department of  
11 Transportation, and I was there because I know Secretary  
12 Mary Peters from my days in Arizona. He was over there. He  
13 took time out of his day to visit and give respects to a  
14 sister federal agency, and talk to those folks. It's the  
15 type of above-and-beyond performance that is so well noted  
16 and very appreciated up here.

17 CHAIRMAN KELLIHER: Rob, congratulations.

18 (Applause.)

19 MR. CUPINA: I just want to say: in the gym  
20 every day doesn't mean all day.

21 (Laughter.)

22 CHAIRMAN KELLIHER: It is true -- the Office of  
23 Energy Projects leadership tend to be very fit people.

24 (Laughter.)

25 CHAIRMAN KELLIHER: The market guys tend to have

1 beards, except for Jamie, and energy projects guys are  
2 hitting the gym. I don't know why.

3 (Laughter.)

4 CHAIRMAN KELLIHER: Next is Jeff Wright. Jeff is  
5 the deputy director of the Office of Energy Projects, and  
6 he joined FERC in 1979, which I have to say surprised me.  
7 I'd never have guessed that you've been here since 1979, to  
8 be honest.

9 But you've been here since 1979, focusing on  
10 infrastructure, analyzing applications for gas pipelines,  
11 underground storage, LNG facilities. Jeff has a bachelors  
12 in economics from the College of William and Mary, and a  
13 masters from the University of Maryland, and he's the father  
14 of two daughters; one just started college and one's in high  
15 school. So he'll be working for a long time to pay for  
16 their education.

17 (Laughter.)

18 CHAIRMAN KELLIHER: Jeff has been a terrific  
19 leader, and he really does deserve the Exemplar of Public  
20 Service award.

21 Colleagues? Commissioner Kelly?

22 COMMISSIONER KELLY: Jeff also has a wonderful  
23 sense of humor. I have enjoyed him, and so have my staff.  
24 I heard about that trip to the west to see those hydro  
25 facilities.

1                   He's our offices go-to guy. He knows everything  
2 about everything that the Office of Energy Projects does,  
3 and is always helpful and quite unflappable. Thanks, Jeff,  
4 for all your help.

5                   CHAIRMAN KELLIHER: Colleagues? Commissioner  
6 Moeller.

7                   COMMISSIONER MOELLER: Similar to Rob, his  
8 personality is one that is consistently pleasant. Again,  
9 dealing with I'm sure even more angry people than Rob has to  
10 deal with. So we also appreciate the deep knowledge, and a  
11 deserving award. Glad you're doing this, Mr. Chairman.

12                  CHAIRMAN KELLIHER: Jon?

13                  COMMISSIONER WELLINGHOFF: I'd just like to join  
14 with my colleagues and congratulate Jeff. It's remarkable,  
15 and to Mark's credit, to be able to hold on to these people  
16 and have people of such high quality and caliber. Thank  
17 you.

18                  CHAIRMAN KELLIHER: Marc?

19                  COMMISSIONER SPITZER: The fact that Jeff went to  
20 Quartzite, Arizona in July, which is a town that's got some  
21 eccentricities and some radical folks both ways -- for that,  
22 plus the scorpions that infest that place; it's also known  
23 for the scorpion infestation -- you deserve this just for  
24 that.

25                               (Laughter.)

1                   CHAIRMAN KELLIHER: Congratulations, Jeff.

2                   (Applause.)

3                   CHAIRMAN KELLIHER: Next is Ann Miles. Ann holds  
4 a masters degree in resource management from the University  
5 of Maryland. She is a 22-year veteran here at the  
6 Commission, and started as an outdoor recreation planner. I  
7 didn't realize that. Interesting.

8                   She's currently director of the Hydropower  
9 Licensing Office in the Office of Energy Projects. That  
10 position of course is responsible for reviewing applications  
11 to construct or operate or relicense non-federal hydropower  
12 projects throughout the United States. I think there's 1600  
13 of these projects in the United States, so it's really a big  
14 responsibility.

15                   In particular, Ann is one of the leaders of our  
16 effort over the past year to develop the Hydrokinetic Pilot  
17 Project license, which is something that I've admitted  
18 excitement about, and I think others among the Commissioners  
19 have admitted excitement: that we could take a 1920 law and  
20 interpret it to promote development of technology that no  
21 one could have conceived of 90 years ago.

22                   I think it shows a lot of creativity on the part  
23 of FERC staff. We wanted to be able to do that, have pilot  
24 projects and demonstration projects, and Ann, working with  
25 others on the staff, developed this concept that is really

1 working well. In fact, it's the only thing I'm aware of  
2 that Parade Magazine has written about FERC.

3 (Laughter.)

4 CHAIRMAN KELLIHER: A blurb about these projects,  
5 and I have to say I was surprised. You don't usually read  
6 about FERC in Parade Magazine.

7 But I want to thank Ann for working with the team  
8 to develop this pilot project license. I think it speaks  
9 very well of the staff and the agency's creativity. You  
10 certainly deserve the Chairman's Medal for leadership.

11 Colleagues? Commissioner Kelly.

12 COMMISSIONER KELLY: There is no one else, at  
13 FERC or outside of FERC, that knows more about the hydro  
14 licensing process. The nature of that licensing process  
15 requires a lot of coordination extensively among the  
16 stakeholders and across agencies, and brings remarkable  
17 qualities to that. That's what has enabled us to have the  
18 success that we've had.

19 She knows everything, she's diplomatic, and she's  
20 overall very nice. That niceness overlies a strong  
21 leadership style, and nerves of steel. You certainly  
22 deserve this award.

23 CHAIRMAN KELLIHER: Commissioner Moeller?

24 COMMISSIONER MOELLER: One of the things I'd like  
25 to highlight is Ann's dedication. People don't realize we

1 have about 2500 hydro projects in the country, split among  
2 five offices. But the high-profile ones are in the west. I  
3 know Ann travels a lot as one of our representatives, one of  
4 the faces of the federal government, of FERC, and she'll  
5 talk at hydro conferences -- she's there, or she'll have one  
6 of her staff there.

7 I think it's a real testament to the dedication  
8 of her efforts here to essentially put on a good  
9 representative face of this agency. I'm glad you're giving  
10 her an award.

11 CHAIRMAN KELLIHER: Colleagues? Commissioner  
12 Wellinghoff.

13 COMMISSIONER WELLINGHOFF: I'll tell you -- we  
14 got very excited about hydro connects in our office as well,  
15 the hydro connect projects. I talked to David and Jim in my  
16 office, and we decided to write a law review article on it  
17 for the Energy Bar Association. We all agreed to do that,  
18 and we looked at each other -- well, what do we do? And we  
19 said, well, we call in Ann Miles.

20 (Laughter.)

21 COMMISSIONER WELLINGHOFF: We had Ann come up,  
22 who gave us enough detail to write a good article. But I'll  
23 tell you, without Ann and without her ability to work on the  
24 hydrokinetic licensing process and move that process  
25 forward, we wouldn't be where we are today in this new,

1       evolving field. I really want to personally thank her for  
2       that.

3                   CHAIRMAN KELLIHER: Commissioner Spitzer?

4                   COMMISSIONER SPITZER: Thank you.

5                   The feedback I received from my team, and from  
6       folks out west, is extremely positive in several respects.  
7       First, the knowledge, the fact that she leads these tour  
8       guide groups and has a real knowledge and appreciation of  
9       the west that is noted by folks across the country. She is  
10      quiet but forceful in a competent way, and that is very well  
11      appreciated and a testament to her ability. We thank her  
12      for her service.

13                  CHAIRMAN KELLIHER: Ann, congratulations.

14                  (Applause.)

15                  CHAIRMAN KELLIHER: Last today is Hossein Ildari.  
16      Hossein joined the Commission 30 years ago as a civil  
17      engineer. He currently serves as the deputy director of  
18      hydropower administration and compliance in the Office of  
19      Energy Projects. That's tasked with licensing exemptions  
20      and permits to protect and enhance the beneficial use of  
21      hydroprojects.

22                  I think in shorthand, that's about safety. Once  
23      we license a project, our focus turns to compliance with  
24      requirements and the focus on safety. And that's a mission  
25      of the Commission that's not frequently recognized.

1           The dam safety program was established 40 years  
2 ago. We don't really think of ourselves as a safety agency,  
3 but we are with respect to hydropower projects for 40 years.  
4 That will be the focus of our hydropower conference next  
5 month.

6           Hossein is a leader in this area. He works  
7 closely with the hydropower community, and is known for  
8 delivering a strong compliance message with a soft touch.  
9 He has shown tremendous leadership, and certainly deserves  
10 the Chairman's Leadership Medal.

11           Colleagues? Commissioner Kelly.

12           COMMISSIONER KELLY: I agree with you, Joe, that  
13 we don't hear about the Office of Compliance in the Office  
14 of Energy Projects very much. That's testimony to Hossein's  
15 success. He was instrumental in developing our hydropower  
16 compliance project, and it's been quite a success, and it's  
17 a huge project. We have over 1600 hydropower projects under  
18 our jurisdiction, and the fact that rarely does a safety  
19 problem with them hit the press is testament to how good the  
20 project has been under your leadership.

21           Whenever I ask people in your office, what's the  
22 defining characteristic, they said: he's a consummate  
23 professional. Thank you so much for your service to FERC,  
24 and congratulations on your award.

25           CHAIRMAN KELLIHER: Commissioner Moeller?

1                   COMMISSIONER MOELLER: I'll also mention, again  
2                   on the disposition side, he's always pleasant, low-key, but  
3                   that's the ideal safety characteristic. That's a job that  
4                   never ends, and I think it's especially appropriate for him  
5                   to be given the award today.

6                   CHAIRMAN KELLIHER: Jon?

7                   COMMISSIONER WELLINGHOFF: Dam safety is really a  
8                   critical area, and I'm so glad we've had somebody who has  
9                   done it so well over such a long period of time. Thank you.

10                  CHAIRMAN KELLIHER: Commissioner Spitzer?

11                  COMMISSIONER SPITZER: The protection of the  
12                  health, welfare and safety of the people of this country is  
13                  a most noble and high mission, and that's why we're giving  
14                  this award. We appreciate your service.

15                  CHAIRMAN KELLIHER: Congratulations, Hossein.

16                  (Applause.)

17                  CHAIRMAN KELLIHER: I just want to emphasize to  
18                  the person who said they watched the awards only, these  
19                  awards are not gold watches. They're intended to inspire  
20                  even greater efforts on the part of FERC staff going  
21                  forward.

22                  (Laughter.)

23                  CHAIRMAN KELLIHER: I'm glad that we talked about  
24                  hydro safety today, because the Commission program is very  
25                  strong in that area, and we're really the gold standard, and

1 other programs are compared to us. So that's a particular  
2 area I'm glad we raised with that.

3 Those watching the awards can turn off. Let me  
4 just note, with respect to notational orders, since the  
5 October 6 open meeting, the Commission has issued 107  
6 notational orders. That's 25 a week, or five a day every  
7 day since the last open meeting. So we do an awful lot of  
8 work in between open meetings. Last month was no exception.

9 Madam Secretary, let's turn to the consent  
10 agenda.

11 SECRETARY BOSE: Good morning, Mr. Chairman, good  
12 morning, Commissioners. Since the issuance of the Sunshine  
13 Act notice on November 13, 2008, E-6, E-21 and E-22 have  
14 been struck from this morning's agenda.

15 The consent agenda for this morning is as  
16 follows: electric items, E-1, E-2, E-4, E-5, E-7, E-8, E-9,  
17 E-11, E-12, E-14, E-16, E-17 and E-20.

18 Gas items: G-2, G-3, G-4, G-5 and G-6.

19 Hydro items: H-1, H-2, H-3, H-4 and H-5.

20 Certificate item: C-1.

21 As required by law, Commissioner Spitzer is not  
22 participating in consent item E-9, and Commissioner Moeller  
23 is not participating in consent item E-12. As to E-12,  
24 Commissioner Kelly and Commissioner Wellinghoff are  
25 concurring in part with a joint separate statement.

1                   We'll now take a vote on this morning's agenda,  
2 beginning with Commissioner Wellinghoff.

3                   COMMISSIONER WELLINGHOFF: I vote aye, with a  
4 notation of my concurrence in E-12.

5                   SECRETARY BOSE: Commissioner Moeller?

6                   COMMISSIONER MOELLER: Aye, noting my recusal in  
7 E-12.

8                   SECRETARY BOSE: Commissioner Spitzer?

9                   COMMISSIONER SPITZER: I vote aye, noting that  
10 I'm not participating in E-9.

11                   SECRETARY BOSE: Commissioner Kelly?

12                   COMMISSIONER KELLY: Aye, noting my concurrence  
13 in E-12.

14                   SECRETARY BOSE: Chairman Kelliher?

15                   CHAIRMAN KELLIHER: Aye.

16                   Now we'll turn to the discussion agenda.

17                   SECRETARY BOSE: Thank you.

18                   The first item for presentation this morning is  
19 the Office of Enforcement 2008 staff report. There will be  
20 a presentation by Jamie Jordan from the Office of  
21 Enforcement.

22                   MS. JORDAN: Good morning, Mr. Chairman and  
23 Commissioners.

24                   In May of this year, the Commission directed the  
25 Office of Enforcement to produce an annual report at the end

1 of each fiscal year, similar to the one released in November  
2 2007. As directed, on November 6, 2008, the Office of  
3 Enforcement released its 2008 report on enforcement.

4 Overall, the statistics in this report  
5 demonstrate a significant increase in the number and  
6 complexity of the self-reports received and investigations  
7 conducted by the Office. The number of self-reports of  
8 violations more than doubled in the past fiscal year,  
9 increasing from 31 in fiscal year 2007 to 68 in fiscal year  
10 2008. This increase likely reflects improved compliance and  
11 auditing procedures on the part of industry, and the  
12 Commission's frequently-stated intention to reduce or even  
13 eliminate penalties if violations are self-reported. As in  
14 fiscal year 2007, the majority of these self-reports  
15 involved the Commission's natural gas pipeline capacity  
16 release requirements.

17 In addition, the Office of Enforcement opened 48  
18 investigations in 2008, as compared to 35 in 2007. The  
19 report also noted some emerging trends in investigations.  
20 Among them is an increase in the number of investigations  
21 involving allegations of market manipulation, which rose  
22 from 12 to 20.

23 There is also a large increase in the number of  
24 RTO/ISO market monitoring unit referrals. In fiscal year  
25 2007, the Office received only two such referrals, and in

1 2008 it received 15.

2 Another trend is a rise in the number of  
3 investigations into allegations that entities violated the  
4 Commission's regulations that require market-based rate  
5 power sellers to provide accurate, factual and complete  
6 information and communication with the Commission or  
7 Commission-approved entities.

8 Finally, the report notes that 2008 marked the  
9 first time that enforcement staff has opened investigations  
10 into allegations of violations of the reliability standards  
11 that took effect in June 2007.

12 The report further reflects the closing of self-  
13 reports and investigations without the imposition of  
14 sanctions where the facts and circumstances so warrant. For  
15 example, the report notes that the 68 self-reports received  
16 in 2008, staff closed 25 of them after an initial review  
17 without opening an investigation, and three more were closed  
18 without consideration of penalties after an investigation.

19 Likewise, staff closed 22 investigations in 2008,  
20 eight of which had findings of violations, but no sanctions,  
21 and seven of which had no findings of violations.

22 To provide additional guidance to the industry,  
23 the report introduced two new sections that provide short,  
24 unnamed narratives about the self-reported and investigated  
25 matters that were closed with no action. These narratives

1 provide as much detail as possible while also preserving the  
2 non-public nature of these matters. They also explain the  
3 facts that contributed to staff's determination that these  
4 matters did not warrant the Commission's considerations or  
5 sanctions, despite the findings of violations.

6 The information in the report demonstrates that  
7 the Commission continues to use its penalty authority to  
8 remedy violations and promote compliance where appropriate.  
9 In fiscal year 2008, the Commission approved seven  
10 settlement agreements for a total of \$19.95 million in civil  
11 penalties. In two of these seven settlements, the  
12 Commission required the companies to establish stronger,  
13 more effective compliance programs.

14 Next, the report provides an overview of the  
15 audit activities of the Office. In fiscal year 2008, audit  
16 staff completed 60 audits of public utilities and natural  
17 gas pipeline storage companies, 39 of which were classified  
18 as financial audits and 21 that, among other things,  
19 addressed open access transmission tariffs, interconnection  
20 rules, gas tariffs, website postings, standards of conduct,  
21 and the Commission's own regulations.

22 Audit staff also worked with the Commission's  
23 Office of Electric Reliability in eight regional entities,  
24 audits of users, owners and operators of the bulk power  
25 system. These audits resulted in 156 recommendations for

1 corrective action, and include \$1 million in recoveries from  
2 accounting and billing adjustments, and \$8.7 million in  
3 reductions to utility plans. They also included  
4 implementation of compliance plans to insure regulated  
5 entities adhere to Commission policies and procedures.  
6 Staff tracks all audit recommendations to insure that they  
7 are ultimately implemented.

8 This concludes my presentation. Thanks.

9 CHAIRMAN KELLIHER: Thank you for that  
10 presentation, and I want to thank the Office of Enforcement  
11 for distributing the report. I think it is of great value  
12 both to the regulated community and the general public. I  
13 thank Commissioner Moeller, whose staff made the  
14 presentation and issued the report, a week ago or ten days  
15 ago. Commissioner Moeller thought it would be useful to  
16 have a presentation that emphasized some of the conclusions  
17 of the report.

18 This is nominally a statistical report, but  
19 there's a lot more than numbers in the report. I think it  
20 does offer important guidance to the regulated community on  
21 Commission enforcement policy and procedures. It also does  
22 speak to the general public, and I think it reassures the  
23 public that the Commission is a watchdog, and we're focused  
24 on effective enforcement.

25 Just some of the conclusions of the report, or

1 findings of the report, are first that the number of  
2 investigations have increased from 35 to 48 from fiscal year  
3 2007 to 2008. There's increased emphasis on market  
4 manipulation. In 2007, about a third of investigations were  
5 market manipulation, and nearly half in 2008 in terms of the  
6 new investigations. And also, reliability investigations  
7 have begun for the first time.

8 I think that the report also demonstrates pretty  
9 convincingly that our program is characterized by fairness.  
10 We provide a lot of information about the investigation and  
11 self-reports that have either been settled or closed with no  
12 civil penalty. I think the case studies are very helpful.  
13 We provide case studies of particular self-reports and  
14 investigations describing the kinds of violations that were  
15 self-reported or investigated that were resolved without a  
16 civil penalty. I think those case studies will be very  
17 helpful to the regulated community.

18 And I think we appropriately redacted the  
19 identification of the companies, and I think the report  
20 demonstrates with better clarity the relationship between  
21 the market monitors. In the past, there's been confusion as  
22 to what the role of the market monitor is. Are they a cop?  
23 Do they have an enforcement role? Can they enforce  
24 Commission rules?

25 I think the group clarified that through the

1 enforcement rulemaking. They are not cops, and enforcement  
2 is a necessary governmental role. That's the duty of the  
3 Commission, but market monitors can help us discharge that  
4 responsibility through referrals, since that clarity in the  
5 respective roles of the market monitor and the Commission  
6 has led to the increase of the number of referrals from two  
7 to 15.

8 I think the report is important, in that it does  
9 speak to the regulated community. But it also should  
10 reassure the general public.

11 Commissioner Moeller?

12 COMMISSIONER MOELLER: Mr. Chairman, I'll go  
13 last.

14 (Laughter.)

15 CHAIRMAN KELLIHER: Commissioner Kelly?

16 COMMISSIONER KELLY: I'd be happy to let you have  
17 the final word on this case.

18 (Laughter.)

19 COMMISSIONER KELLY: Thank you, Jamie, for your  
20 report. It's been three short years since Congress enhanced  
21 our authority with respect to, and with the hope of,  
22 promoting more compliance with the energy legislation that  
23 is under FERC's jurisdiction to implement.

24 I think when the members of Congress get to read  
25 this report, they'll be very pleased with the progress, not

1       only the progress that FERC has made, but the progress the  
2       industry has made. I think the report speaks loudly for the  
3       emphasis on compliance that has been put on by the regulated  
4       community.

5                Jamie noted that a number of our settlements have  
6       also involved commitments to establish significant and  
7       effective compliance programs. I think that the report also  
8       sheds a lot of light on the manner in which we'll exercise  
9       our authority. I know that that's been very important to  
10      the regulated community. We vowed to do that after the  
11      technical conference, and we're keeping our promise, and  
12      we'll keep it up.

13               Thank you to Jamie and the rest of your staff for  
14      the work that you've done.

15               CHAIRMAN KELLIHER: Thank you.

16               Colleagues? Commissioner Wellinghoff.

17               COMMISSIONER WELLINGHOFF: Thank you, Joe. I  
18      don't mind not going last.

19               (Laughter.)

20               COMMISSIONER WELLINGHOFF: I think there are some  
21      interesting things in this report, Jamie, the Office of  
22      Enforcement -- Susan, I want to thank you for the report.  
23      One is that over 60 percent of the increase in cases have  
24      been in the area of market manipulation. I think it shows  
25      that we are actively working in that area, trying to protect

1 consumers, and I think that's a good thing. And also the  
2 number of self-reports I think is very interesting, and the  
3 fact that I think the industry is understanding that they  
4 can self-report. That's a useful thing for them to do, and  
5 they can come in here and expect to be treated in a fair  
6 manner. I think that helps the industry work much better  
7 and benefits the consumer.

8 With that I want to thank you for the report.

9 CHAIRMAN KELLIHER: Commissario?

10 COMMISSIONER SPITZER: I guess I go now.

11 (Laughter.)

12 COMMISSIONER SPITZER: I have a more formal  
13 statement that I'll post, but I agree with all my  
14 colleagues, and would suggest that the law and the  
15 Commission hold regulated companies to high standards. And  
16 this report reflects the high standards that the Commission  
17 and the Office of Enforcement have taken, which is extremely  
18 appreciated.

19 In terms of the transparency of the Commission  
20 process consistent with confidentiality, we have statistical  
21 and summary data regarding rulemaking, self-reports,  
22 investigations and audits, as well as the summaries that  
23 give a lot of information to the regulated community -- and  
24 I agree with the Chairman, also to the general public.  
25 Because both are valuable: the regulated community to

1 establish that the Commission's goal is one of compliance,  
2 not of imposing sanctions. And the ultimate objective is  
3 not to impose penalties, but to maintain compliance with the  
4 law of the United States.

5 Secondly, to the general public, so the public  
6 can have faith and confidence in the energy markets in this  
7 country is increasingly important in an era where  
8 increasingly, energy takes a large chunk out of people's  
9 earnings. It is vital that they know that energy markets  
10 are being run fairly in respect to the industry, the general  
11 public and how this Commission conducts its business.

12 I'm very proud of this report, and would commend  
13 it to all those interested in what we're doing. It's a  
14 vital function of this Commission. I agree with the  
15 Chairman that Commissioner Moeller having this as a  
16 separate discussion was extremely valuable. Thank you for  
17 that.

18 CHAIRMAN KELLIHER: Commissioner Moeller.

19 COMMISSIONER MOELLER: Thank you, Mr. Chairman.  
20 Thank you, Jamie, for an excellent report.

21 I have a few questions, again with the motivation  
22 that the more transparent we are, the more likely we are to  
23 get higher levels of compliance. If some of these are to be  
24 answered by someone else, I would fully expect that.

25 But what should the community that's subject to

1 our enforcement kind of take away from this report?

2 MS. COURT: Commissioner, I think the community,  
3 as your colleagues have indicated, should take away that we  
4 are very attentive to be fair, in the sense that we look at  
5 all the facts. We take into account the Commission's  
6 policies, we take into account the Commission's resources,  
7 and try to come down at the right place as to what we  
8 pursue in an investigation, for example.

9 What we focus on in an audit, and that we try to  
10 get, to use sort of a slang term, the most bang for our  
11 buck in the use of the Commission's enforcement resources.  
12 It's not an easy process, because we regulate 4700  
13 companies. The regulations fill the Title 18 of the Code  
14 of Federal Regulations, plus thousands of orders that we do  
15 every year. It's a huge job.

16 So what we try to do, I think, in the Office of  
17 Enforcement, and using the Commission's resources as  
18 efficiently as possible, is to balance all those various  
19 factors. I hope that that comes out of this report. I hope  
20 that what the industries which we regulate, the public which  
21 we serve, learn from this report that the staff is  
22 dedicated, and that it's dedicated to doing the right thing  
23 and doing it in the best way possible.

24 COMMISSIONER MOELLER: Speaking of resources,  
25 then, how do you prioritize resources, given that immense

1 amount of, wide array of regulations?

2 MS. COURT: We allocate the resources in several  
3 ways. We look first at what the Commission's priorities  
4 are, and the Commission's priorities, of course, are set by  
5 its policies, and insuring that the public is well-served.

6 Put another way, we look at those areas where the  
7 greatest harm could occur, and the greatest harm to the  
8 public could occur. So as Commissioner Wellinghoff pointed  
9 out, the increase in the number of investigations into  
10 market manipulation, as the Commission itself recognized in  
11 the compliance policy statement in the revised policy  
12 statement from May, market manipulation is one of its  
13 greatest concerns. So we naturally look to those types of  
14 allegations.

15 Likewise the Commission has focused on  
16 reliability, a new responsibility which is only three and a  
17 half years old. And with our colleagues in the Office of  
18 Electric Reliability, we have pursued both investigations  
19 and audits. One investigation is publicly known, and four  
20 audits are publicly known, plus we have participated in  
21 eight what we call observation audits. So that's also a  
22 very important aspect of our allocation of resources --  
23 market manipulation, and then also reliability.

24 I think the awards this morning indicate there  
25 are divisions and offices here at the FERC that are

1 dedicated to compliance, for example in the area of  
2 hydropower compliance -- not only Mark's headquarters staff,  
3 but also the staff in the regions look to the safety of the  
4 dams which the hydropower projects would relicense. In  
5 those areas the Office of Enforcement has a lesser role,  
6 because there is already a staff in place that is dedicated  
7 to a daily review of regulations that apply to those dams  
8 and the safety of those dams. The same is true for LNG  
9 facilities, which are our two major safety responsibilities.

10 So in allocating resources --

11 COMMISSIONER MOELLER: They're not your  
12 resources.

13 MS. COURT: They're not our resources. Not that  
14 we are not involved in a violation, for example. The Taum  
15 Sauk investigation was one that we conducted jointly with  
16 the Office of Energy Projects.

17 But from an allocation of resources perspective,  
18 we would focus more, for example, on market manipulation and  
19 reliability, because we know that Mark's staff is working  
20 with Compliance with respect to hydropower and dam safety  
21 regulations.

22 We also of course respond to the allegations that  
23 come to our attention informally through the enforcement hot  
24 line, which is celebrating its 20th anniversary this year,  
25 and also of course referrals from the market monitors. As

1 Jamie indicated, we've had a significant increase in the  
2 referrals from market monitors.

3 In Order 719, which the Commission just issued  
4 about a month ago, the Commission reinforced the role of the  
5 market monitors vis-a-vis the Office of Enforcement, and  
6 directed the market monitors in the six organized markets to  
7 refer any concerns they might have, any possible violations  
8 of the RTO rules and the market manipulation rules to the  
9 Office of Enforcement. That would be another extremely  
10 important area of the office's allocation of resources.

11 COMMISSIONER MOELLER: I'm glad you brought up  
12 reliability, because that is going to be a growing area  
13 throughout this agency and throughout the nation where  
14 Enforcement will have a role.

15 Should NERC or the regional entities come up with  
16 something like the equivalent of our May policy statement?

17 MS. COURT: Commissioner, they actually do have  
18 something akin to that. They have the sanction guidelines,  
19 which are a part of the NERC rules of procedure which the  
20 Commission has approved in the 90-plus orders that we've  
21 issued in the area of reliability.

22 In addition to that, the Commission has  
23 specifically directed NERC and the eight regional entities  
24 to take into account the Commission's policy statement. The  
25 revised policy statement on May 15, I think, is the

1           operative one, as well as the compliance policy statement.  
2           The Commission has directed NERC and the REs to take into  
3           account all those policies laid out by the Commission.

4                        So I think in a sense that we've done that, and  
5           through the approval of the sanction guidelines.

6                        COMMISSIONER MOELLER:   Mr. McClelland, would you  
7           agree with that?

8                        MR. McCLELLAND:   Yes.

9                        (Laughter.)

10                      MR. McCLELLAND:   I think Susan said it very well.

11                      (Laughter.)

12                      COMMISSIONER MOELLER:   I just have two more  
13           questions.

14                      The first is, I think the community that we  
15           enforce against, they're always looking for more context as  
16           to when we don't take action.  I think you've got a couple  
17           of good examples in here.  But have you had any luck talking  
18           to those entities where it does not result in a penalty that  
19           we can better tell the story by giving those examples of,  
20           "Here's a violation, but it did not result in penalties?"

21

22

23

24

25

1 MS. COURT: As you know, as Jamie indicated and  
2 as the report indicates, and, as the Chairman pointed out in  
3 his initial remarks, we are always walking a tightrope  
4 between maintaining the confidentiality of information, yet  
5 giving the public as much information as possible.

6 Any investigation raises that issue, to start  
7 with. One of the things, though, the Commission has done  
8 recently, that I think goes along those lines, is the  
9 Southern Central Star Order, which was issued shortly after  
10 the last closed meeting, where the Commission identified,  
11 through an audit of the company, an area of noncompliance,  
12 which the Commission indicated that it would not subject the  
13 company to penalties, but pointed out that it was a very  
14 serious matter and that it would put the whole pipeline  
15 industry on notice.

16 I think that when the Commission says that, it  
17 has the most impact, when it indicates, when it has chosen  
18 not to impose a penalty, but telling other similarly  
19 situated companies that it perhaps would not tolerate such  
20 conduct in the future.

21 So, that's kind of a stark example of telling a  
22 story where we did not impose a penalty. I think that the  
23 Enforcement Staff, because it includes, of course, audits  
24 and investigations, as well as oversight and administration,  
25 will always be looking at those types of cases, which might

1 be a good vehicle to allow the Commission to convey to the  
2 companies it regulates, what it considers to be very serious  
3 matters, but for which there are not penalties.

4 I think two other examples of that, by the way,  
5 are the two reports that the Commission accepted, but did  
6 not necessarily approve, but accepted with respect to two  
7 investigations into market manipulation; one into the New  
8 York ICAP market and the other with respect to the FERs in  
9 the complaint filed by D.C. Energy against HQ Energy.

10 Those reports also give a lot of insight into the  
11 investigative process, to specific facts and specific  
12 companies. I think I would point all those examples out to  
13 the public and to the industry and the companies we  
14 regulate, for insight into the investigative process.

15 COMMISSIONER MOELLER: Thank you for  
16 highlighting that. That is, I think, what people are trying  
17 to get, particularly Southern, is a good example. It put  
18 the industry on notice that this is no longer acceptable,  
19 and those are the right kinds of signals.

20 My last question is sort of on model compliance  
21 programs. We've talked about this a little bit.

22 A friend of ours, John Moot, recently wrote an  
23 article basically saying that the industry should come  
24 together on a model compliance program, versus FERC, because  
25 if we were to do it, it might be too tough.

1           The flip side is, if the industry does it, it  
2           could be too lax. So that's going to be a tension that, if  
3           they come up with one, we're going to have to consider.  
4           What are your thoughts on that?

5           MS. COURT: My thoughts, of course, are the ones  
6           reflected recently in the Commission's Policy Statement,  
7           which does stand, in large part, for the proposition that  
8           one size doesn't fit all.

9           That has been a struggle that we have all faced,  
10          Staff and the Commissioners, in trying to advise the  
11          industries and the companies we regulate, as to what makes a  
12          good compliance program.

13          All these companies are of different sizes,  
14          different shapes; some publicly owned, some privately owned,  
15          publicly invested, so, as far as what the perfect program  
16          is, I think that as we conduct investigations and we conduct  
17          audits, as directed by the Commission in that Policy  
18          Statement, Enforcement Staff will be looking at these  
19          programs, and, I think, incrementally, we will, Staff and  
20          then others throughout the Commission, will learn more and  
21          more about what does work and what doesn't work.

22          That's sort of an inductive way of approaching  
23          this, as opposed to coming up with some particular  
24          guidelines beyond what we've already laid out in that policy  
25          statement as to what is a good compliance program.

1           I think it's probably going to be a convergence  
2 of the two; it's going to be the top and bottom that are  
3 going to meet together at some point, and probably sometime  
4 in the next year, and that is, we've already laid out these  
5 principles in the Policy Statement.

6           We will be investigating companies and auditing  
7 companies. In those audited investigations, we will be  
8 looking at their compliance programs, not just whether they  
9 have a compliance culture, which was a large part of the  
10 original Policy Statement in October 05, but what are they  
11 actually doing?

12           We, the Staff, will be able to inform the  
13 Commission as to what actually works and doesn't work.  
14 We'll take the principles that the Commission has laid out  
15 in the Policy Statement, we'll compare the two and I think  
16 we'll gain a lot from that, that we will then be able to  
17 share with the public and the regulated industries.

18           I don't have the magic answer for you on this  
19 one, Commissioner, but that's where we are. I think, right  
20 now, we're not quite there yet.

21           COMMISSIONER MOELLER: It's good news, because  
22 it's progress in terms of giving people guidance as to what  
23 works and what doesn't. I want to thank you and the Staff  
24 for putting this report out, Jamie. Thank you for the  
25 report, and the buzz kill is now over.

1 (Laughter.)

2 CHAIRMAN KELLIHER: I don't know if this is going  
3 to be an annual report, something the Commission has  
4 required, so this is the first annual report, and there will  
5 be others.

6 MS. COURT: We actually even put it in the same  
7 docket number of the first report, so that we actually  
8 talked about this, how we were going to docket this report.

9 That way, we will have one docket number and  
10 every year it will be another number, so that the public can  
11 go to one place and find all the reports.

12 CHAIRMAN KELLIHER: Thank you very much. Thank  
13 you, Jamie.

14 SECRETARY BOSE: The next item is a presentation  
15 and discussion this morning of E-18 and E-19, in Docket  
16 Numbers PL09-2-000 and EC08-91-000, respectively.

17 There will be a presentation by Paul Silverman  
18 from the Office of General Counsel, and Eric Olesh from the  
19 Office of Energy Market Regulation.

20 They will be accompanied by Andrew Mosier and  
21 Roland Lafferty, from the Office of Energy Market  
22 Regulation.

23 MR. SILVERMAN: Good morning Chairman Kelliher  
24 and Commissioners. The Draft Order in E-18, clarifies when  
25 a holding company that has received a waiver or exemption

1 under the Commission's Public Utility Holding Company Act of  
2 2005 regulations, must notify the Commission of a material  
3 change in facts.

4 The Commission's regulations under PUHCA 2005,  
5 established books and records access requirements, as well  
6 as accounting, record retention, and reporting requirements.  
7 The regulations also provide for exemptions from and  
8 waivers of some or all of these requirements.

9 Persons that receive an exemption or waiver, must  
10 notify the Commission of material changes in facts that may  
11 affect the exemption or waiver, and do so within 30 days of  
12 the change.

13 However, the regulations do not further specify  
14 when a notification is required. The Draft Order clarifies  
15 one type of change in fact that should in all cases be the  
16 subject of a notification.

17 If a holding company that possesses an exemption  
18 or a waiver, acquires ten percent or more of the voting  
19 securities of an additional public utility company or  
20 holding company, it should file a notification of material  
21 change in facts.

22 The filing should be made, whether or not a  
23 change has occurred with respect to the basis on which the  
24 exemption or waiver was granted. This is because the  
25 filings also serve an informational purpose, and the

1 addition of a new subsidiary company that is a public  
2 utility company or holding company, represents a material  
3 fact, which should be reported to the Commission.

4 The Draft Order requires holding companies that  
5 have experienced a change of this type, since the time of  
6 the exemption or waiver was granted, to file a notification  
7 of change in material facts within 45 days of the date the  
8 Order is published in the Federal Register.

9 MR. OLESH: Thank you, Paul. Chairman and  
10 Commissioners, the Draft Order in E-19, clarifies an aspect  
11 of the Commission's jurisdiction under the purchase,  
12 acquire, take any security clause of FPA Section 203(a)(2).

13 This provision requires public utility holding  
14 companies to obtain Commission approval before purchasing,  
15 acquiring, or taking any security of a transmitting utility,  
16 electric utility company, or holding company that includes a  
17 transmitting utility or electric utility company, if the  
18 security has a value in excess of \$10 million.

19 The Draft Order denies a request filed by Horizon  
20 Asset Management, for a disclaimer of jurisdiction under  
21 Section 203(a)(2) of the Federal Power Act with respect to  
22 investments in public utility company securities.

23 Horizon is an investment advisor whose primary  
24 business is the management and direction of separately-  
25 managed accounts. The Draft Order finds that Horizon is a

1 public utility holding company that purchases, acquires, or  
2 takes securities for purposes of Section 203(a)(2), with  
3 respect to investments in public utility company securities  
4 on behalf of its accountholders.

5 The Draft Order grants, subject to certain  
6 conditions, Horizon's alternative request for blanket  
7 authorization under Section 203(a)(2), to acquire voting  
8 securities of less than ten percent for any individual  
9 investor account and less than 20 percent cumulatively for  
10 Horizon and any of its affiliates, in public utility  
11 companies or public utility holding companies, for a period  
12 of three years.

13 The Draft Order also denies Horizon's request for  
14 retroactive approval of Horizon's holdings in excess of ten  
15 percent of the voting shares of Reliant, Sierra Pacific, and  
16 Aquila, but, in light of the Commission's previous lack of  
17 clarity regarding the interpretation of the scope of Section  
18 203(a)(2), the Draft Order determines not to impose  
19 sanctions for Horizon's failure to file for prior approval  
20 of these acquisitions of securities.

21 In recognition of the fact that not all  
22 investment entities like Horizon, or holding companies, may  
23 have been aware of this interpretation of the Commission's  
24 jurisdiction, under the "purchase, acquire, or take any  
25 security" clause of Section 203(a)(2), the Draft Order

1 allows any holding companies similar to Horizon, to file  
2 within 90 days of the date of publication of this Order in  
3 the Federal Register, an application requesting  
4 authorization to engage in the acquisitions of securities.

5 After that time, the failure to make a timely  
6 filing, may result in sanctions. This completes our  
7 presentation, and we'd be happy to take any questions.

8 CHAIRMAN KELLIHER: Thank you very much fo that  
9 presentation. These are complicated Orders.

10 It took more time than I usually need to read  
11 Commission Orders, to understand them, so this is a complex  
12 area.

13 Today, the Commission, as the Staff has  
14 described, is approving two Orders related to the  
15 acquisition of securities by public utility holding  
16 companies. One Order clarifies our Federal Power Act  
17 jurisdiction over the acquisition of securities by certain  
18 financial investment advisors that are also public utility  
19 holding companies.

20 The other Order clarifies one of our filing  
21 requirements under the Public Utility Holding Company Act of  
22 2005, regarding the obligation of holding companies to file  
23 change of status notices with the Commission.

24 Under Section 203(a)(2) of the Federal Power Act,  
25 certain holding companies are required to obtain prior

1 approval of the Commission, before they, quote, "purchase,  
2 acquire, or take any security," end quote, with a value  
3 exceeding \$10 million in a transmitting utility, electric  
4 utility company, or a holding company in a holding company  
5 system that includes a transmitting utility or an electric  
6 utility company.

7 A holding company, in turn, is a company that  
8 directly or indirectly owns, controls, or holds with power  
9 to vote, ten percent or more of the voting securities of a  
10 public utility company or holding company of a public  
11 utility company.

12 So, in the Horizon Order, we find that an  
13 investment advisor holding company such as Horizon, just  
14 obtain Commission authorization prior to acquiring  
15 additional utility securities.

16 In particular, we clarify in Horizon, the  
17 Commission's jurisdiction under the "purchase, acquire, or  
18 take any security" clause of Section 203(a)(2).

19 This is a matter of first impression, since the  
20 Commission has not previously addressed the meaning of this  
21 clause, and this clause was added only by the Energy Policy  
22 Act of 2005. We specifically consider the circumstance in  
23 which a financial investment advisor itself, is not a  
24 security accountholder.

25 The security accountholders have delegated the

1 power to vote securities, to the investment advisor, and the  
2 investment advisor defers to another entity to actually vote  
3 the securities, but reserves the right to override the  
4 recommendations of that entity.

5 So, the investment advisor retains the ability to  
6 vote the securities, and, arguably, the control of the  
7 securities.

8 We interpret the statutory language in Section  
9 203(a)(2) as sufficiently broad to allow FERC to adequately  
10 protect customers of public utility companies and  
11 transmitting utilities in these circumstances. To do  
12 otherwise, might permit investment holding companies to  
13 exercise control over public utility companies or other  
14 holding companies, without having sufficient regulatory  
15 protections in place.

16 Although we deny Horizon's request for a  
17 disclaimer of jurisdiction, we do grant it a blanket  
18 authorization for acquisitions of voting securities of any  
19 transmitting utility, electric utility company, or public  
20 utility holding company that includes a transmitting utility  
21 or electric utility company, but subject to certain  
22 conditions.

23 Horizon is pre-authorized to hold such voting  
24 securities, only if such holdings are less than ten percent  
25 in any individual investor account, and less than 20 percent

1           cumulatively for Horizon and any affiliated entities.

2                       These ownership limits that we establish, are  
3 similar to those established by the Commission in other  
4 contexts. In Horizon, we find that Horizon violated Section  
5 203(a)(2) of the Federal Power Act, by purchasing securities  
6 without prior Commission approval.

7                       We decline the request to grant retroactive  
8 approval, however, because the Commission has not previously  
9 interpreted the scope of the "purchase, acquire, or take any  
10 security" clause, we decline to impose civil penalties on  
11 Horizon.

12                      We are clarifying our statutory interpretation of  
13 this particular aspect of Section 203(a)(2), for the first  
14 time and recognize that similar investment advisor holding  
15 companies may have purchased securities without prior  
16 Commission approval.

17                      This Order constitutes notice that we consider  
18 these types of transactions to be jurisdictional, however,  
19 in order to give the regulated community an opportunity to  
20 come into compliance, the Order allows similarly investment  
21 advisor holding companies, 90 days to make filings and come  
22 into compliance.

23                      In the PUHCA clarification Order, we clarify that  
24 holding companies that have an exemption from or waiver of  
25 requirements under PUHCA 2005, have an obligation to notify

1 the Commission, if they obtain the power to vote ten  
2 percent or more of the voting securities of any additional  
3 public utility companies or holding companies, even if the  
4 basis for their exemption or waiver, has not changed.

5 Commission regulations require notification of  
6 material changes in facts that may affect an exemption or  
7 waiver, but our regulations are not clear on this particular  
8 issue.

9 Also, similarly, because we recognize that  
10 holding companies with exemptions or waivers, may not have  
11 been interpreting our regulations to require such filings,  
12 the Order allows all such companies, 45 days to make filings  
13 and come into compliance.

14 We expect compliance with our regulatory  
15 requirements, but here we are providing clarity in this area  
16 for the first time and believe it is appropriate to give  
17 companies an opportunity to come into compliance.

18 So, I do support both Orders. Colleagues?  
19 Commissioner Wellinghoff?

20 COMMISSIONER WELLINGHOFF: Thank you, Mr.  
21 Chairman.

22 As you indicated, these Orders clarify the  
23 Commission's understanding of two measures that Congress  
24 enacted as part of the EPAct 2005; that is PUHCA 2005 and  
25 Section 203(a)(2) of the Federal Power Act.

1                   These Orders do recognize that the repeal of  
2                   PUHCA 1935 and the enactment of PUHCA 2005, were intended to  
3                   remove certain barriers to investment in the electric  
4                   industry. However, we also emphasize that the Commission  
5                   simultaneously added Section 203(a)(2) of the Federal Power  
6                   Act, in order to provide adequate federal oversight of  
7                   certain holding company transactions.

8                   These goals are important and I believe they're  
9                   consistent with each other. Taking both goals into account,  
10                  we reject Horizon Asset Management's request for the  
11                  Commission disclaimers with respect to its investment in  
12                  public utility holding company securities.

13                  We find that to disclaim this jurisdiction over  
14                  the type of investment activities engaged in by Horizon or  
15                  similar investment advisors like Horizon, or holding  
16                  companies, would allow those entities to exercise control  
17                  over public utility companies or transmitting utilities in a  
18                  way that may harm energy consumers.

19                  Thus, I support these Orders and I'd like to  
20                  thank the team for their fine work in this matter.

21                  CHAIRMAN KELLIHER: Thank you. Colleagues?  
22                  Commissioner Kelly?

23                  COMMISSIONER KELLY: I think, as Chairman  
24                  Kelliher's remarks made clear, the Public Utility Holding  
25                  Company Act of 2005, can become complex quickly. On the

1 other hand, these Orders are pretty straightforward, and I  
2 think the public will be interested in reading them, because  
3 they provide clarity to the industry and affected parties  
4 with respect to these regulations.

5           Importantly, both of these Orders provide  
6 affected parties an ample opportunity to comply with the  
7 provisions of PUHCA. E-18, in particular, is very concise.  
8 We issue it here in the interest of clarity and I'm  
9 particularly pleased with its brevity. It's short, but to  
10 the point.

11           It plainly states that parties need to notify the  
12 Commission of material changes in fact, under specified  
13 circumstances. I think that the Order will ensure that our  
14 regulations are apparent and understood, while leaving no  
15 question as to how parties finding themselves in similar  
16 circumstances in the future, are to comply.

17           E-191, the Horizon Asset Management case,  
18 provides, as Eric explained, guidance to the industry  
19 regarding our jurisdiction under the phrase, "purchase,  
20 acquire, or take any security" clause of PUHCA.

21           This provides certainty that I believe will  
22 benefit both the Commission and the industry in making it  
23 easier to follow the law and making it easier for the  
24 Commission to carry out our duties under the Federal Power  
25 Act.

1           I would also encourage companies that are still  
2           unsure as to whether particular securities or provisions  
3           fall under Section 203(a) of the Act, to come in and seek a  
4           determination from the Commission, as these Orders  
5           illustrate we are very interested and desire to provide  
6           transparent signals to the industry.

7           These Orders will benefit the Commission and the  
8           industry by ensuring that companies can plan for their  
9           future, particularly in these uncertain credit times, with  
10          more certainty.

11          I am pleased to support them.

12          CHAIRMAN KELLIHER: Thank you. Colleagues?  
13          Commissioner Spitzer?

14          COMMISSIONER SPITZER: Thank you, Mr. Chairman.  
15          I thank the Staff for the presentation on these two  
16          important and complex issues.

17          We're balancing competing interests. There is a  
18          need for investment in the energy sector, and, at the same  
19          time, there's an equal need, in fact, an overriding need for  
20          public notice and for regulatory oversight.

21          I want to take a brief moment to highlight how  
22          these cases reinforce our principal enforcement goal, which  
23          is to establish clear goals and ensure compliance.

24          E-18 would clarify that holding companies that  
25          have received an exemption or waiver of certain Commission

1 books and records requirements, but become a holding  
2 company with respect to an additional public utility or  
3 public utility holding company, must inform the Commission  
4 of this material change in fact.

5 In E-19, we provide guidance on how we mean the  
6 "purchase, acquire, or take any security" clause of Section  
7 203(a)(2) of the Federal Power Act.

8 Because these Orders for the first time provide  
9 guidance on these issues, the Commission provides an  
10 opportunity to the industry, to bring themselves into  
11 compliance by providing grace periods. We seek to ensure  
12 compliance for our Section 203 requirements, and the  
13 industry should take a close look at these Orders, to ensure  
14 that they conform to these interpretations.

15 The entities are now on full notice that the  
16 failure to make a timely filing during these grace periods,  
17 may result in subjecting the entity in question to  
18 sanctions.

19 Finally, I want to reiterate that there are  
20 several mechanisms by which one can receive guidance from  
21 the Commission and Staff. These options include:  
22 Declaratory Orders, Action Letters, General Counsel Opinion  
23 Letters, accounting interpretations, the Enforcement  
24 Hotline, the recently-created help desk, prefiling  
25 meetings, and other informal contacts with Staff.

1 I would encourage companies to make use of  
2 appropriate Commission resources as part of their compliance  
3 efforts.

4 Again, I'd like to thank the Staff and say that I  
5 support this Order.

6 CHAIRMAN KELLIHER: Commissioner Moeller?

7 COMMISSIONER MOELLER: I have a question for the  
8 team. Do you have any idea how many other entities are out  
9 there, like Horizon?

10 MR. OLESH: I think there's in the area of 12,000  
11 investment advisors in the United States, but the investment  
12 advisors with the capacity to make an investment the size of  
13 Horizon, is much lower, in the area of a couple of hundred.

14 COMMISSIONER MOELLER: Thank you. Thanks to the  
15 team for putting this together. It's a little hard to say  
16 anything new and original after those statements, so I guess  
17 I'll endorse most of the themes.

18 But I do think Commissioner Wellinghoff and the  
19 Chairman, as well, said that we're reacting to what Congress  
20 told us to do. PUHCA 1935 was repealed and replaced with  
21 PUHCA 2005, and I think this Commission has done a great job  
22 of issuing Policy Statements, Orders, a variety of  
23 mechanisms to give guidance.

24 I am particularly happy with what we're doing  
25 with Horizon, in telling people that you're on notice now

1 that you have 90 days to come to us.

2 As Commissioner Spitzer pointed out, the Help  
3 Desk is a newly-created entity in the Office of Enforcement,  
4 and people should take advantage of it, and I think they  
5 have.

6 But we are responding to what Congress told us to  
7 do, trying to increase investment, but ultimately protect  
8 ratepayers. I'm happy to vote for these Orders. Thanks  
9 again to the team.

10 CHAIRMAN KELLIHER: Any other questions or  
11 comments, colleagues?

12 (No response.)

13 CHAIRMAN KELLIHER: Let's vote.

14 SECRETARY BOSE: We'll take a vote on these items  
15 together, beginning with 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 next item for presentation

1 and discussion this morning, is G-1, concerning a Draft  
2 Final Rule implementing the Commission's authority under  
3 Section 23 of the Natural Gas Act.

4 The presentation will be given by Gabriel  
5 Sterling from the Office of Enforcement, and he is  
6 accompanied by Chris Ellsworth from the Office of  
7 Enforcement.

8 MR. STERLING: Good morning, Mr. Chairman and  
9 Commissioners. My name is Gabriel Sterling. With me today,  
10 is Chris Ellsworth. We're with the Office of Enforcement.

11 G-1 is a Draft Final Rule implementing the  
12 Commission's authority under Section 23 of the Natural Gas  
13 Act. As that section was added by the Energy Policy Act of  
14 2005, the Rule facilitates transparency in markets for the  
15 sale and transportation of natural gas in interstate  
16 commerce, by requiring major non-interstate pipelines to  
17 post scheduling data on publicly-accessible Internet  
18 websites.

19 Interstate pipelines will be required to post  
20 data regarding no-notice service, into the scheduling data  
21 that they already post.

22 The Draft Final Rule reflects substantial public  
23 participation in this proceeding, including Notices of  
24 Proposed Rulemaking, a technical conference, and 74 written  
25 comments. In light of these comments, the proposed rule

1 adopts a number of significant changes from the proposals  
2 set forth in the most recent NOPR.

3 By way of background, information currently  
4 provided by interstate pipelines, presents an incomplete  
5 picture of the daily supply-and-demand fundamentals that  
6 underlie U.S. natural gas markets.

7 There is little public information about  
8 transportation availability and volumes scheduled on major  
9 systems outside of the grid traditionally regulated by the  
10 Commission.

11 Interstate and major non-interstate pipeline  
12 infrastructure, however, are functionally interconnected.  
13 The lack of scheduling information on non-interstate  
14 pipelines, means that there is limited transparency on large  
15 portions of the U.S. pipeline system.

16 The proposed Rule applies to two types of  
17 entities: Major non-interstate pipelines and interstate  
18 pipelines.

19 The draft regulations define major non-  
20 interstate pipelines as pipelines that are not natural gas  
21 companies under the NGA, and that deliver more than 15  
22 million MmBtu pre year of natural gas, measured in average  
23 deliveries over the previous three years.

24 Major non-interstate pipelines must post daily  
25 scheduled flow information for each receipt and delivery

1 point with a designed capacity of 15,000 MmBTu per day or  
2 greater.

3 The Final Rule does not require a posting of  
4 actual flows or posting by segments, two types of postings  
5 contemplated by the more recent NOPR. This will  
6 substantially reduce compliance costs for companies, while  
7 achieving the transparency goals articulated in the NOPR.

8 The Final Rule will also exempt from posting,  
9 three types of entities that could otherwise fall under the  
10 definition of major non-interstate pipelines: Pipelines  
11 that lie entirely upstream of a processing, treatment, or  
12 dehydration plant; pipelines that deliver more than 95  
13 percent of their volumes to retail customers; and storage  
14 providers.

15 Regarding interstate pipelines, the Rule requires  
16 them to post information regarding volumes of no-notice  
17 flows. These postings will provide a more accurate picture  
18 of peak day flows at receipt and delivery points.

19 Interstate pipelines must comply with the new  
20 posting requirements no later than 60 days following  
21 publication of the Order in the Federal Register.

22 Major non-interstate pipelines must comply with  
23 these new regulations, no later than 150 days following  
24 publication.

25 At this time, I'd like to thank the many

1 individuals who were vital in the production of this Final  
2 Rule: Curtis Peterson, Artie Quinn, Jerry Peterson, Michele  
3 Rhio, Steve Riche, and Eric Ciceretti.

4 This concludes Staff's presentation and we'll be  
5 happy to answer any questions you may have.

6 CHAIRMAN KELLIHER: I want to thank Staff for its  
7 presentation and also for the work on the Final Rule.

8 We're issuing a Final Rule that will improve the  
9 transparency of wholesale natural gas markets in the United  
10 States, by requiring the dissemination of greater  
11 information about natural gas flows through the pipeline  
12 network.

13 This is an exercise of some of the authority  
14 given to us by the Energy Policy Act of 2005, namely, the  
15 transparency provisions added to the Natural Gas Act.

16 It's significant that this authority is  
17 discretionary. We are not required to act, we're not  
18 required to take any particular action, but under the  
19 transparency provisions of the Energy Policy Act, we are  
20 authorized but not required to act.

21 We've been careful in our approach, and I want to  
22 commend the outreach efforts by the Office of Enforcement.  
23 They held extensive meetings, more than 35 meetings, I  
24 think, with market participants, just asking the simple  
25 question, what information would market participants like to

1 see, what market principles would they like to see to  
2 provide greater confidence in natural gas markets?

3 As we moved toward a Final Rule, we very  
4 carefully weighed the burdens of transparency requirements  
5 on market participants. That's reflected in the Final Rule  
6 today, because we have significantly adjusted the types of  
7 information that must be disclosed by pipelines, measurably  
8 reducing the regulatory burden of the Rule.

9 This is our second exercise of our new  
10 transparency authority with respect to wholesale natural gas  
11 markets.

12 Last December, we issued a Final Rule that would  
13 improve price transparency of wholesale natural gas markets,  
14 provide more information about price formation, and improve  
15 confidence in price integrity.

16 The Energy Policy Act of 2005, did also provide  
17 FERC with authority to improve the transparency of wholesale  
18 power markets, discretionary authority that we have not yet  
19 exercised.

20 But it's important to recognize that our  
21 transparency authority, both as added to the Natural Gas Act  
22 and the Federal Power Act, extends to a much broader  
23 universe than our traditional regulated community.

24 We are authorized in those two separate  
25 provisions, to collect information from market

1 participants, rather than the more narrow classes, the more  
2 traditional classes of natural gas companies and public  
3 utilities.

4 The Final Rule, I think, very adequately  
5 explains our interpretation of the statutory provisions in  
6 this area.

7 Currently, there are no other transparency  
8 provisions pending before the Agency, so this is our second  
9 exercise of this authority. We don't have a third in the  
10 wings, but FERC does remain willing to use its authority in  
11 the future, if it determines that there is a need for  
12 greater transparency in wholesale natural gas or wholesale  
13 power markets.

14 I think this is a good rule and a good action.  
15 Colleagues? Commissioner Kelly?

16 COMMISSIONER KELLY: The market for the purchase  
17 and sale of natural gas is a competitive market, but we all  
18 know that sometimes competitive markets don't always provide  
19 the information or all the information that is needed to  
20 ensure its continued competitiveness.

21 In those cases, the job falls to the regulator to  
22 determine what information should be required by a  
23 regulator. That's what we've done here.

24 We've worked for about 11 months to determine  
25 what information is necessary to enhance the competitiveness

1 of the natural gas market, that the market isn't providing,  
2 and what information can be provided in a cost-effective  
3 way.

4 We don't want to put undue burdens on the  
5 industry, but we want the information that's necessary to  
6 make this a well-run market to be out there.

7 I believe that today's Final Rule has achieved  
8 that appropriate goal, and, importantly, achieved three  
9 significant objectives: It provides a more complete picture  
10 of supply-and-demand fundamentals to improve market  
11 participants' ability to price physical natural gas  
12 transactions; it provides a better view of the effects on  
13 infrastructure, industry, and the economy as a whole when  
14 the natural gas delivery system is disturbed; and it will  
15 allow us, as well as market participants, to identify and  
16 remedy potentially manipulative activity.

17 Equally important, in my view, the Final Rule  
18 acts to strike an appropriate balance of cost and benefit,  
19 by ensuring a more cost-effective and efficient means for  
20 the posting of interstate and non-interstate pipeline flow  
21 data.

22 Today's Final Rule will promote more confidence  
23 in our country's natural gas markets, by providing the data  
24 to ensure that reported market prices accurately reflect the  
25 interplay of legitimate market forces.

1                   I want to thank Staff for its hard work over this  
2 past year, as well as all the stakeholders who participated  
3 in the process and helped shape this important ruling.

4                   I am pleased to vote for it. Thank you.

5                   CHAIRMAN KELLIHER: Colleagues? Commissioner  
6 Moeller?

7                   COMMISSIONER MOELLER: Thank you, Mr. Chairman.  
8 I have a quick question for the team. One of the key  
9 changes in the reporting threshold was raised. Can you talk  
10 a little bit about how we came to that decision?

11                   MR. STERLING: Yes, sir. The reporting  
12 threshold for major non-interstate pipelines, was raised  
13 from the proposed 10 million MmBtu annual threshold, to 15  
14 million MmBtu, and I think the answer lies in precisely what  
15 the Chairman mentioned and Commissioner Kelly mentioned,  
16 which is the question of balance, a balance between burden  
17 and the information that we feel is necessary in order to  
18 go ahead and enhance transparency in the market.

19                   Looking closely at the pipelines that would be  
20 required to report under the 15 million MmBtu standard,  
21 before we captured the universe of pipelines that  
22 contributed most directly and most thoroughly to price  
23 formation in the interstate markets, they interconnect with  
24 the hubs, which are very important for price determination,  
25 and we feel like the universe that we've captured, is

1       adequate.

2                   If we extended the universe, perhaps we would  
3       capture more information, but at a cost. The cost would be  
4       the burden of imposing the obligation upon smaller  
5       pipelines.

6                   COMMISSIONER MOELLER: We're getting about 75  
7       percent of the market under this?

8                   MR. ELLSWORTH: Yes, that's quite correct; it's  
9       about 75 percent, although I should add that in certain  
10      markets, particularly in producing states, and also  
11      California, we will get substantially more than that 76  
12      percent, so we'll get coverage in areas where we don't have  
13      much coverage.

14                  COMMISSIONER MOELLER: I do want to thank the  
15      team for this effort, because I think we started talking  
16      about this about 19 months ago, in April of 07. People were  
17      saying then that the point was to get real transparency.

18                  Both the Chairman and Commissioner Kelly said  
19      that it may be easy to forget, as things have died down a  
20      little bit, the controversy over the lack of transparency  
21      and the fact that we've taken some actions to, I think,  
22      improve the confidence of what's being reported.

23                  Obviously, this is a major step in that  
24      direction. I think we met our objectives and I appreciate  
25      that fact that we did change the reporting threshold, based

1 on the reaction we had from the regulated community.

2 I'm confident this will allow us, as  
3 Commissioner Kelly said, to better understand the  
4 fundamentals of supply and demand, and it gives us a lot  
5 more insight into the markets, particularly in the Southwest  
6 and California.

7 And in that sense, if we include Texas in there,  
8 we get to see more about the Barnett Shale development, how  
9 that will affect, potentially, again, supply and demand of  
10 gas.

11 So I'm happy to vote for this Rule today, and  
12 appreciate the long and extensive effort of the Staff to get  
13 us where we are today.

14 CHAIRMAN KELLIHER: Thank you. Colleagues?  
15 Commission Spitzer?

16 COMMISSIONER SPITZER: Thank you, Mr. Chairman.  
17 I quoted Justice Brandeis in a prior iteration of this,  
18 saying "sunlight is the best disinfectant."

19 A further quote I'd make, is, "knowledge is  
20 power," as well as information. This process has been long.  
21 The results have evolved and there were changes which were  
22 based upon participants in the docket.

23 I think that reflects good government, that the  
24 Commission did incorporate changes we thought to be in the  
25 interest of balancing the competing interests that have been

1 noted.

2 There are administrative burdens on industry and  
3 there are benefits to the dissemination of price information  
4 and volumes that reflect the market.

5 So we've worked very hard to carefully balance  
6 those competing interests. We issue a Final Rule today that  
7 provides sunlight and increases price transparency in the  
8 interstate natural gas markets, by providing information  
9 about the supply and demand fundamentals of those markets.

10 We make the Rule applicable to major non-  
11 interstate pipelines, as well as to ensure that there is  
12 price transparency throughout the entire system of natural  
13 gas. I believe this was Congress's intent when it enacted  
14 EPAct 05.

15 I support this Order. While discretionary, it's  
16 very consistent with Congressional intent, and I thank,  
17 again, the team for its hard work.

18 CHAIRMAN KELLIHER: Commissioner Wellinghoff?

19 COMMISSIONER WELLINGHOFF: Thank you, Mr.  
20 Chairman. You know, in real estate, they say "location,  
21 location, location." I say, in energy markets,  
22 transparency, transparency, transparency.

23 We have to have transparency to ensure that these  
24 markets remain fair and efficient. Fair and efficient  
25 markets will produce just and reasonable rates for

1 consumers.

2 I support this Rule and thank the team for your  
3 work.

4 CHAIRMAN KELLIHER: Any other comments?

5 (No response.)

6 CHAIRMAN KELLIHER: Let's vote.

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

9 COMMISSIONER WELLINGHOFF: I vote aye.

10 SECRETARY BOSE: Commissioner Moeller?

11 COMMISSIONER MOELLER: Aye.

12 SECRETARY BOSE: Commissioner Spitzer?

13 COMMISSIONER SPITZER: Aye.

14 SECRETARY BOSE: Commissioner Kelly?

15 COMMISSIONER KELLY: Aye.

16 SECRETARY BOSE: Chairman Kelliher?

17 CHAIRMAN KELLIHER: Aye.

18 SECRETARY BOSE: The last item for discussion and  
19 presentation this morning, is G-7, concerning fuel retention  
20 practices of natural gas companies. There will be a  
21 presentation by Ed Murrell from the Office of Energy Market  
22 Regulation, accompanied by Richard Howe and Anna Fernandez  
23 from the Office of the General Counsel.

24 MR. MURRELL: Good morning, Chairman Kelliher,  
25 Commissioners. Item G-7 is a Draft Notice terminating the

1 Commission's inquiry into the fuel retention practices of  
2 natural gas companies.

3 The Commission issued a Notice of Inquiry on  
4 September 30, 2007, seeking comments on whether the  
5 Commission should change its current policy governing fuel  
6 retained in-kind from transportation and storage shippers.

7 As the Commission noted then, current policy  
8 allows an interstate pipeline to either charge a fixed rate  
9 or to use a tracker mechanism to recover in-kind fuel,

10 The Commission also noted in that inquiry, that  
11 pipelines choosing to use a tracker mechanism to recover  
12 fuel costs, would also be required to include a mechanism to  
13 true up any over- or under-recovery of costs, absent  
14 agreements otherwise, by all interested parties.

15 Comments were filed by 32 interested parties.  
16 Shippers and end users generally supported requiring each  
17 interstate pipeline to use a tracker and a true-up  
18 mechanism. Pipelines, on the other hand, argued that there  
19 is no need for a change in the Commission's policy.

20 On the subject of incentive mechanisms, there was  
21 general support for the concept, but parties tended to  
22 suggest that incentive mechanisms should be considered on a  
23 case-by-case basis.

24 Today's Draft Notice terminating the proceeding,  
25 finds that shippers' requests to impose a tracker with a

1 true-up on every pipeline, would be difficult to justify  
2 under the requirements of Section 5 of the Natural Gas Act.

3 The record in this proceeding does not provide a  
4 solid basis to act generically under Section 5, however,  
5 today's Draft Order observes that Section 5 shipper  
6 complaints have resulted in significantly reduced fuel  
7 charges on some pipelines and notes that if a shipper  
8 believes that a particular pipeline is over-recovering its  
9 fuel costs, it should file a complaint.

10 Shippers may be better able to initiate such  
11 complaints in the future. Since the changes to pipeline  
12 financial forms were finalized in Order No. 710 in June of  
13 this year, on the subject of incentive mechanisms, case-by-  
14 case action is the method that many commenters suggested  
15 would provide the appropriate forum for moving those types  
16 of devices forward.

17 The Draft Notice notes the Commission's recent  
18 Order in a Texas Gas Transmission case, where a proposal for  
19 a three-year experiment was recently for technical  
20 conference proceedings, as an example of the case-by-case  
21 approach.

22 This concludes Staff's presentation and we would  
23 be happy to answer any questions.

24 CHAIRMAN KELLIHER: Thank you very much for your  
25 presentation. This is another very well written natural gas

1 Order and I thank you for that.

2 I just have a brief comment. Let me start by  
3 praising Commissioner Moeller for stressing that we hear a  
4 discussion of this Order. I'm glad for the suggestion and I  
5 think it was a good one.

6 Let me just make some brief comments. As Staff  
7 indicated, we are terminating this proceeding. We find  
8 there is no basis for generic proceedings with respect to  
9 fuel retention, and I certainly agree with that.

10 I think the argument that somehow fuel charges  
11 inherently violate the Natural Gas Act, are somehow  
12 inherently unjust and unreasonable, is unsupported, and, I  
13 personally think, insupportable, so I think this is the  
14 right outcome.

15 One argument advanced by shippers in favor of the  
16 generic proceeding, is Section 5, the arguably inadequate  
17 remedy offered by Section 5, they, in effect, are suggesting  
18 that we should move around Section 5, but the courts have  
19 held in Public Service Company of New York, that the  
20 Commission may not order pipelines to make Section 4 filings  
21 in order to avoid the insufficient protection afforded by  
22 Section 5, i.e., to avoid its procedural constraints.

23 And I agree that there are inadequacies in  
24 Section 5. The prospective relief offered by Section 5, I  
25 think there is a good argument that that is inadequate, but

1 the Commission only has the tools that Congress has given  
2 us, and we have to apply Section 5 as it's written, not as  
3 we might prefer it to be written.

4 In the past, on the power side, Section 5 is very  
5 different from Section 206. Section 206 provides for a  
6 refund effective date. It's keyed on the date of the  
7 complaint.

8 In Section 5, of course, the refund effective  
9 date is prospective. For years, I have supported reform of  
10 Section 5, to have it be consistent with Section 206 of the  
11 Federal Power Act. I really think, for those who are  
12 concerned about the inadequate remedy offered by Section 5,  
13 I think the focus is legislation. Congress has to rewrite  
14 the law.

15 Until then, I think we have to apply Section 5,  
16 as written, and we can't try to circumvent that, so I think  
17 we're achieving the right outcome here.

18 Colleagues? Commissioner Moeller?

19 COMMISSIONER MOELLER: Thank you, Mr. Chairman,  
20 for allowing the team to present this item. It was  
21 difficult to terminate this NOI, because there were good  
22 arguments on each side.

23 Thank you, Anna, for the Order, as well. It's  
24 well written.

25 We do have pipelines using very different ways of

1 accounting for this fuel, and, ultimately, I was convinced  
2 that a case-by-case basis is probably the best way to go  
3 about it.

4 But as Mr. Murrell pointed out, our Texas Gas  
5 situation potentially has an innovative way of sharing the  
6 benefits of increased efficiency, and I would hope that  
7 pipelines and shippers can get together and emphasize or  
8 create new ways of developing trackers that exactly do what  
9 we are trying to do in that case.

10 As the Chairman alluded to, there's always a  
11 chance for shippers who believe they are overcharged, to  
12 file a Section 5 complaint, but, of course, in many of the  
13 comments, the shippers pointed out that it's either too  
14 difficult and it can be extremely expensive and it's just  
15 prospective.

16 So, Mr. Chairman, I would agree with your  
17 comments that Section 206 and Section 5 should be  
18 consistent. It's Congress's responsibility where it's in  
19 their realm to change the law, to provide consistency.

20 That would benefit natural gas consumers, and,  
21 again, thank you for bringing this up.

22 CHAIRMAN KELLIHER: Colleagues? Commissioner  
23 Wellinghoff?

24 COMMISSIONER WELLINGHOFF: Thank you, Mr.  
25 Chairman. I'd echo what Commissioner Moeller just said and

1       what you said, Mr. Chairman. I would support a statutory  
2       change to reforming Section 5 to make it consistent with  
3       Section 206 of the Federal Power Act.

4               I think it's absolutely necessary. I don't think  
5       there is any public policy reason that I can think of, for  
6       it to be different.

7               So, I think that's one thing that I hope the  
8       Congress will consider, but with respect to this particular  
9       Order, I am personally very concerned about the issue of  
10      efficiency on these pipelines and was concerned about  
11      dropping this NOI, but believe that through a case-by-case  
12      evaluation, we can receive, I think, innovative proposals  
13      from pipelines to share in the costs and benefits of  
14      improving pipeline efficiency in ways that will reduce  
15      pipeline fuel use to deliver natural gas.

16              I think that we can do that, and I think the  
17      case-by-case basis is one where we can show that there are  
18      multiple mechanisms to do that and to that in a flexible way  
19      to accommodate different pipeline requirements and different  
20      shipper requirements of those pipelines, to be able to work  
21      out agreements with the pipelines to make those pipelines  
22      more efficient.

23              I support this Order. Thank you very much.

24              CHAIRMAN KELLIHER: Colleagues? Commissioner  
25      Spitzer?

1                   COMMISSIONER SPITZER: Thank you, Mr. Chairman.  
2 This is a very interesting docket, and complex, and we were  
3 very well informed by the parties to this case.

4                   Ultimately, the decision came down, in my view,  
5 to whether there should be a mandatory generic effort, and,  
6 given the new economics in the gas pipeline industry and the  
7 competition arising of unique methods through negotiated  
8 settlements, I felt that trying to put a round peg in a  
9 square hole, was not the best way to achieve the objectives  
10 of fairness to the shippers and energy efficiency.

11                   That is really the ultimate purpose of all of  
12 this. The energy efficiency aspect of this was achieved  
13 through case-by-case proceedings, given the wide geographic,  
14 economic, and physical differences among the pipelines and  
15 the supply basins across the country.

16                   I will say, as a tax lawyer, the idea of having  
17 found a lot of things over the years, the idea of a  
18 prospective refund mechanism, offends my sensibilities, and,  
19 therefore, I will associate myself with all my colleagues,  
20 that a change in the law really, in addition to accounting  
21 for the time value of money, which, it seems to me, would be  
22 a very intuitive concept.

23                   Symmetry with the Federal Power Act, is  
24 something that is appropriate, and, again, rather than a  
25 round peg in a square hole, we seek innovative ways that

1 shippers are working with pipelines to achieve energy  
2 efficiency and discrete tariffs.

3 The ultimate remedy, hopefully, will be made more  
4 available by the United States Congress. I think this  
5 method, in a very difficult case, a very complex case, is  
6 the best way of resolving the matter, so I support the Order  
7 and thank the team.

8 CHAIRMAN KELLIHER: Commissioner Kelly?

9 COMMISSIONER KELLY: Thank you, Mr. Chairman. I  
10 don't have any comment on this Order.

11 CHAIRMAN KELLIHER: Thank you very much. No  
12 other comments? Let's vote.

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

15 COMMISSIONER WELLINGHOFF: I'll 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. Commissioner Moeller?

24 COMMISSIONER MOELLER: Thank you, Mr. Chairman.

25 I misspoke earlier when I referenced the Help Desk. It is,

1 of course, run by the General Counsel. Thank you.

2 CHAIRMAN KELLIHER: Any other comments?

3 (No response.)

4 CHAIRMAN KELLIHER: With that, this meeting is  
5 adjourned.

6 (Whereupon, at 11:45 a.m., the open meeting was  
7 concluded.)

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25