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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

942ND COMMISSION MEETING

OPEN SESSION

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

Thursday, December 18, 2008

10:08 a.m.

1 APPEARANCES:

2 COMMISSIONERS PRESENT:

3 CHAIRMAN JOSEPH T. KELLIHER (Presiding)

4 COMMISSIONER SUEDEEN G. KELLY

5 COMMISSIONER MARC SPITZER

6 COMMISSIONER PHILIP MOELLER

7 COMMISSIONER JON WELLINGHOFF

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

2 (10:08 a.m.)

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

8 (Pledge recited.)

9 CHAIRMAN KELLIHER: Anyone here or watching on
10 television can see there is a pile of awards here on the
11 side, so we will get to that in just a minute, but I thought
12 we would start with some introductions.

13 My family is going to be here shortly, but they
14 are not quite here yet, and I understand Phil has some
15 introductions he would like to make.

16 COMMISSIONER MOELLER: Thank you, Mr. Chairman.
17 First I would like to introduce my sister, Ann Marie
18 Moeller, and my Mom, Phyllis Emelie Moeller, in the front
19 row.

20 (Applause.)

21 COMMISSIONER MOELLER: I'm very happy they could
22 be here. Thank you for allowing me that introduction. And
23 over the last month, my office has been helped out by
24 Jennifer Shipley who is somewhat legendary for her extensive
25 knowledge particularly of Western issues, and it has been a

1 delight to have her. Jennifer.

2 (Applause.)

3 COMMISSIONER MOELLER: Thank you, Mr. Chairman.

4 CHAIRMAN KELLIHER: And your family members will
5 see the U.S. Government acting live. They will see live
6 energy regulation right in front of you.

7 (Laughter.)

8 CHAIRMAN KELLIHER: It's going to be very
9 exciting.

10 (Laughter.)

11 CHAIRMAN KELLIHER: Any other introductions?
12 Colleagues? Marc?

13 COMMISSIONER SPITZER: Well a number of people
14 have inquired not about me or my wife or my son, but about
15 Filibuster.

16 (Laughter.)

17 COMMISSIONER SPITZER: Filibuster is in today.
18 She did express a preference for being over at the FCC.

19 (Laughter.)

20 COMMISSIONER SPITZER: She's actually resting in
21 her office. It's her 16th birthday, and she will be
22 available to greet her constituents at the cocktail
23 party--or the office party.

24 (Laughter.)

25 CHAIRMAN KELLIHER: Well when my family makes

1 their dramatic entrance, I will introduce them as well, but
2 why don't we start working on the pile of awards here.

3 We are going to proceed a little bit differently
4 because of the number. I am going to talk about all of the
5 recipients in one statement, and then turn to my colleagues,
6 and then I will ask the recipients to come up one by one for
7 the photos. So I will talk about all eight--that's eight--
8 and then we will turn to my colleagues, and then for photos.

9 So let's start at the beginning. The first two I
10 really regret that I should have talked about them last
11 month and I regret that. We try to package these things,
12 but sometimes I fall into the habit of thinking in terms of
13 office rather than function, and last month it was a paean
14 to infrastructure; it was really celebrating our
15 infrastructure mission. But there are two other folks who
16 work on the infrastructure mission who have shown a lot of
17 leadership that I should have talked about last month but I
18 didn't because they are on OGC.

19 Let me start with Jacqueline Holmes. Jacqueline
20 is from the University of Texas Law School. She had a
21 variety of experiences at the State Public Utility
22 Commission of Texas. I actually didn't appreciate the roles
23 that she served there. She was an ALJ, General Counsel, and
24 a Special Counsel.

25 She has been at FERC since 1988, and she really

1 has worked on infrastructure ever since 1988 in different
2 roles and steadily more important roles and areas of more
3 responsibility. So she has been as dedicated to the
4 infrastructure mission at FERC as OEP, and so she is part of
5 the infrastructure leadership core here.

6 She is also a devoted sports fan, although having
7 grown up in New Jersey and gone to Georgetown I don't know
8 anything about college football, so I can't really translate
9 the significance of your interests--

10 (Laughter.)

11 CHAIRMAN KELLIHER: --but she's a wonderful
12 employee here at FERC and has shown great leadership, and is
13 also a very nice person. So it is something we see here at
14 FERC. She see super-efficiency combined in a very nice
15 personality.

16 So my general question for Jacqueline, is: Is
17 she Jacqueline today, or is she Suzy today? She is
18 mysterious, and she alternates names.

19 We turn next to John Katz. John went to Duke
20 University Law School, but being a Georgetown graduate
21 that's a negative, so you start off in a hole, I suppose--

22 (Laughter.)

23 CHAIRMAN KELLIHER: --but you have worked here
24 since 1980, and you have some Enforcement DNA. You worked
25 as a trial attorney in Enforcement. You worked in private

1 practice for awhile, but you've been back at FERC since 1992
2 also in areas of steadily rising responsibility.

3 In your second stint at FERC you have been
4 dedicated to the infrastructure mission, as well. And I
5 should have mentioned titles.

6 Jacqueline/Suzy is currently the Associate
7 General Counsel for Energy Projects. And John is the Deputy
8 Associate General Counsel for Energy Projects. So they are
9 both part of the infrastructure team here at FERC. And both
10 of them are getting the Exemplar of Public Service Award.

11 Next is Roger Morie. Shifting missions now, we
12 are in the Enforcement block of recipients now. Roger
13 Morie, Roger is a graduate of Columbia University Law School
14 and he has been with the Commission since 1978. So he has
15 been with the Commission for more than 30 years. He had his
16 30th anniversary in August. And he served in the original
17 Office of Enforcement, later the Office of General Counsel,
18 and now back in the Office of Enforcement.

19 So he has Enforcement DNA, and he is in exactly
20 the right position now. He is currently really our leader
21 on Reliability enforcement in the Office of Enforcement, and
22 he has played a key role in Reliability ever since we were
23 given the new responsibilities under the Energy Policy Act
24 of 2005. And he also has an incredible institutional memory
25 with tremendous recall of Orders that go back to 1978.

1 So Roger really is a model public servant, and we
2 are lucky to have him, and he certainly has earned the
3 Exemplar of Public Service Award.

4 Next is Ted Gearden. Ted is, happily, a graduate
5 of Georgetown University Law School--

6 (Laughter.)

7 CHAIRMAN KELLIHER: --and he has had a variety of
8 experiences in both the private and the public sector. So
9 his career has been an intellectual feast of different roles
10 in the private and public sector.

11 He worked with the Department of Energy, which is
12 my alma mater as well; the D.C. Corporation Counsel; the
13 FERC Solicitor's Office; and he was the Director of the
14 Office of the Consumer Advocate at the Postal Rate
15 Commission, which I didn't realize.

16 Ted returned to the Commission in 2003 and he was
17 promoted to a Branch Chief position in the Division of
18 Investigations, a position he currently holds. And he has
19 been one of the primary authors of the Commission's Policy
20 Statements on Enforcement.

21 Ted is also a very efficient person and a very
22 likeable person. Last time when we were talking about which
23 Civil War General he most reminds me of, I think it is
24 Daniel Harvey Hill, who was a Confederate General, who was--
25 he was actually a really unpleasant man--

1 (Laughter.)

2 CHAIRMAN KELLIHER: --so I'm trying to find a
3 different model for you. But Ted is also receiving the
4 Exemplar of Public Service Award.

5 Next is Todd Mullins. I hope I haven't gotten my
6 awards confused. Next is Todd Mullins. Todd is a proud
7 graduate--he is part of the West Virginia mafia here at
8 FERC, and I didn't realize that until I was reading this
9 information, that we have different strains and different
10 clicks here at FERC--not really "clicks"; that sounds like
11 high school--

12 (Laughter.)

13 CHAIRMAN KELLIHER: --let's call them "mafias."

14 (Laughter.)

15 CHAIRMAN KELLIHER: We have a Las Vegas group,
16 and we have a West Virginia group, and I'm not sure which
17 one is tougher--

18 (Laughter.)

19 CHAIRMAN KELLIHER: --but Todd is part of the
20 West Virginia contingent here at FERC. He graduated from
21 the University of West Virginia, and he got his J.D. from
22 George Washington University, and he served in private
23 practice for 17 years and was a partner in a private law
24 firm specializing in complex litigation.

25 He joined the Office of Enforcement in May of

1 2006, and immediately has assumed a leadership role as one
2 of the Division of Investigation's Branch Leaders. Todd has
3 been a superb mentor to help train our young attorneys, and
4 he has really exactly the right kind of experience to help
5 the Office of Enforcement at this time.

6 It is another sign of one of the strengths of the
7 Commission, as I've said many times, of having a blend of
8 experience. People are veteran government employees, people
9 with interesting experiences on the outside, and people with
10 different ranges of experience, veterans and also promising
11 young employees. And that mix really is a great source of
12 strength for the Commission.

13 Todd has been the lead prosecutor in the Amaranth
14 Litigation, as well as in some of our Reliability
15 investigations, and Todd is getting the Chairman's Gold
16 Medal For Leadership, and he certainly has earned it.

17 Next is Kathryn Kuhlen. Kathryn graduated number
18 one in her class at John Marshall Law School, which I didn't
19 realize, and she has served as a public defender in Cook
20 County. She was a partner in private practice in New
21 Mexico, representing the largest investor-owned utility in
22 the State, and she joined the Office of Enforcement in 2005.
23 She has also been a leader in the Office of Enforcement,
24 handling some of our highest profile investigations.

25 She served as the primary author of the recent

1 Standards of Conduct Rulemaking, which was certainly a test
2 of your writing abilities. To translate Standards of
3 Conduct into something readable and pleasant is a challenge.
4 And she was one of the primary authors of the recent
5 Competition Final Rule.

6 Kathryn is an accomplished author outside of FERC
7 and she has won awards for her original screenplays. I just
8 want to--where is Kathryn--I just want to tell you that I
9 have one of your movies on my NetFlix list. I have--I'll
10 give you a promotion. I have Soldiers of God on my Netflix
11 list. It's a movie about the Crusades, so I am looking
12 forward--I might watch that over the holidays, actually.

13 (Laughter.)

14 CHAIRMAN KELLIHER: Kathryn teaches a course on
15 screen writing. So sometimes when I see an Order that I
16 think could be written better, I think of Kathryn, I think
17 we need a script doctor to work on this Order.

18 (Laughter.)

19 CHAIRMAN KELLIHER: Kathryn is going to be
20 getting the Chairman's Gold Medal for Leadership.

21 And the last two are Kim Bose. Kim serves as the
22 Secretary of the Commission, of course, and she joined the
23 Commission 21 years ago as a legal intern, then as an
24 advisory attorney, then a managing attorney, getting
25 steadily greater responsibility, and she now of course is

1 Secretary of the Commission, and she is one of the public
2 faces of the agency.

3 Kim has made--Kim has done a tremendous job in
4 the Secretary's office. One of the things we have been
5 trying to do in recent years is have more flat production in
6 the Orders that the Commission produces to do more work
7 notationally so that we kind of have a steady stream of
8 production, and that helps the Order-writers I think develop
9 and give high-quality Orders to the Commission and helps the
10 Secretary's office have flat production going out.

11 But sometimes in order to achieve that the Office
12 of the Secretary works very long hours and works over the
13 weekend, which we know of course from past experience, and
14 Kim has been instrumental in the development and
15 implementation of new Notices, and new products that the
16 Commission offers, including E-mail notifications to alert
17 E-subscribers.

18 She received her Law Degree from Howard
19 University here in D.C. And of course I can't resist the
20 Civil War angle, that Howard University of course is named
21 at a Union General, Oliver O. Howard, who was a very fine
22 man but not a very good General.

23 (Laughter.)

24 CHAIRMAN KELLIHER: And Kim and her husband have
25 a daughter and two sons, and Kim enjoys--I didn't realize

1 that you are a big fan of the New Jersey Shore. Are you
2 from New Jersey?

3 SECRETARY BOSE: My husband is.

4 CHAIRMAN KELLIHER: Okay, because I'm from New
5 Jersey and I used to go to the New Jersey Shore, as well.
6 So I commend you on your choice of areas.

7 (Laughter.)

8 CHAIRMAN KELLIHER: And Kim will be receiving the
9 Exemplar of Public Service Award, and she has certainly
10 earned it, and you are really a superb Secretary of the
11 Commission.

12 And finally, Heidi Hedberg. Heidi is the
13 Deputy--where is Heidi? There she is. Heidi is the Deputy
14 Executive Director of the Commission, and she manages the
15 day-to-day operations of the Executive Director's Office,
16 including an operating budget of \$100 million, and oversees
17 a 357-person Federal and contractor work force.

18 She received a Bachelor of Psychology from the
19 University of Northern Iowa, and she relies on that
20 regularly--

21 (Laughter.)

22 CHAIRMAN KELLIHER: --in her dealings with Tom
23 Herlihy--

24 (Laughter.)

25 CHAIRMAN KELLIHER: --and other senior staff.

1 And I would hate to ask you for a profile of me, so I won't.

2 (Laughter.)

3 CHAIRMAN KELLIHER: But Heidi joined the
4 Commission 25 years ago as an Assistant to the Executive
5 Director. Before she became the Deputy, she was an HR
6 Specialist, an Administrative Officer, and her major
7 accomplishments in her role as Deputy is that the Commission
8 was the first small agency to produce a Human Capital Plan.
9 The Commission was the first agency in the U.S. Government
10 to receive full certification for SES Performance Systems,
11 which allows the Commission to pay competitive salaries and
12 to recruit and retain critical staff, which is vital to the
13 smooth operation of the agency and our ability to attract
14 the talent that we need to perform well.

15 And the Commission was one of the first agencies
16 in the U.S. Government to fully implement new security cards
17 on time. And Heidi enjoys spending time with her husband,
18 Dan--Dan was in the front row; where'd he go?--Dan, Dan
19 Hedberg, of course, and their dog Rudy at their house at the
20 beach.

21 I want to welcome Dan back and congratulate
22 Heidi. And Heidi will be getting Exemplar of Public Service
23 Award, as will Kim.

24 So with that, let me turn to my colleagues, and
25 my colleagues are free to talk about some or all of these

1 fantastic individuals.

2 Jon.

3 COMMISSIONER WELLINGHOFF: Mr. Chairman, thank
4 you. I think everybody knows my passion for efficiency, so
5 I want to commend you on the efficiency with which you made
6 these announcements, but I also want to emphasize to all the
7 people that you have made awards to that the efficiency with
8 which you have made the announcements does not diminish the
9 importance or significance of how deserved these awards are.
10 And I really do appreciate all of you and the work that you
11 have done and thank you all very much.

12 Thank you.

13 CHAIRMAN KELLIHER: Colleagues? Commissioner
14 Moeller.

15 COMMISSIONER MOELLER: Thank you, Mr. Chairman.
16 I will echo your comments, as well. These are eight great
17 individuals who represent this industry well internally and
18 externally.

19 Jacqueline and John see me every week on Hydro
20 issues. I appreciate that. John of course is a father of
21 twins, that I appreciate; and Suzy is a great hockey fan who
22 I see at the games.

23 Roger and Ted are solid. They are the kind of
24 people who get the work done--maybe not want the spotlight,
25 but again represent this industry well.

1 Todd, another father of twins, I appreciate.
2 Kathryn, the great writing. Kim, I can't imagine a more
3 pleasant person to work with, on my left. And Heidy, I
4 just, after 25 years, I just didn't realize they hired
5 children back then.

6 (Laughter.)

7 COMMISSIONER MOELLER: Apparently, they did.
8 Good choices, Mr. Chairman.

9 CHAIRMAN KELLIHER: Thank you. Colleagues?
10 Commissioner Spitzer?

11 COMMISSIONER SPITZER: Thank you, Mr. Chairman.
12 Everywhere I go around the country, and in fact recently to
13 receive an award on behalf of FERC in Switzerland, I hear
14 about the quality of the people in this institution, and I
15 do remark upon that in my speeches as well. It is just an
16 absolute pleasure to have such a well-regarded institution
17 that I'm able to represent.

18 The individuals--and being mindful of time, I
19 will just make a few comments. The Enforcement was created
20 very recently, and it is a difficult thing for any type of
21 operation to spring forth new, but particularly from
22 government. And in my dealings with Ted--and Todd you can
23 tell is a litigator. I mean, I was kind of mediocre in my
24 career. Todd is the type of guy you can tell he would want
25 to try a car accident case.

1 (Laughter.)

2 COMMISSIONER SPITZER: Or a red-light case. And
3 that's the type of attitude that we have that we need and is
4 just a wonderful thing.

5 On Reliability, Roger is just so valuable to my
6 team. John in Hydro. Suzy, my people tell me, I'm a
7 baseball fan, we've got a baseball fan as well as hockey
8 with tickets to the Nationals. That's a great thing.

9 Kim again as a public face of the Commission is
10 wonderful. Heidy, I came to FERC I guess somewhat suddenly
11 in July, and Heidy worked with the team at the Arizona
12 Commission to assure that there was no gap in health
13 coverage, and particularly with a son with asthma that was
14 important, and she stayed very, very late on the 21st of
15 July, very late, to by E-mail take in all the applications
16 and get everything done. That was service above and beyond,
17 and I reflective of the high caliber of the people who are
18 very deserving of these awards, and the people who represent
19 the FERC, of which we are all very proud.

20 CHAIRMAN KELLIHER: Commissioner Kelly?

21 COMMISSIONER KELLY: Thank you, Joe. Most of
22 these people I have worked with for five years, and I am
23 just so appreciative that they are here and they are so
24 deserving of these awards.

25 To just briefly touch on what I know about each

1 of them individually, Suzy is intellectually curious and
2 that is wonderful to have in a lawyer. She is open minded,
3 and she is always thinking about the question and coming up
4 with the answers. Also, she is from El Paso, and I have
5 decided that it's time for me to start putting together the
6 new Mexico mafia--

7 (Laughter.)

8 COMMISSIONER KELLY: --not to be outdone by the
9 West Virginians, and El Paso is right on the border, so I am
10 claiming her.

11 (Laughter.)

12 COMMISSIONER KELLY: Also, Suzy, I also call you
13 Suzy. I like that name. My mother calls me Suzy, the only
14 person in the world who does--

15 (Laughter.)

16 COMMISSIONER KELLY: --so I enjoy calling you
17 Suzy and I'm going to keep doing that.

18 John Katz is totally unflappable. I think that
19 probably is because he has not only twin boys, but a third
20 boy. And we really appreciate that particularly in the
21 Hydro area where it sometimes can get very personal.

22 Roger Morie knows the answer to any question you
23 might ask him.

24 Kathryn Kuhlen is definitely part of the New
25 Mexico mafia. I have known Kathryn for 20-plus years. We

1 practiced energy law together in Albuquerque, and I
2 personally take credit for her being here.

3 (Laughter.)

4 COMMISSIONER KELLY: Actually, that's true. It
5 was 2005 and she was in Los Angeles working on her screen
6 plays, very successfully as Joe mentioned, and she said,
7 well, I'm thinking maybe I'm coming back to D.C., where she
8 had been living before, and I said, well, hey, you've got to
9 come and apply to FERC and talk to Enforcement. And they
10 loved her. They hired her. And we are all very lucky
11 because of it.

12 Todd Mullins is so impressive. He has so much
13 knowledge, and he is so patient in how he conveys it to us
14 who really need to learn what he knows.

15 Ted Gearden is--I'm claiming Ted as part of the
16 New Mexico mafia, too, because he is best friends with my
17 husband at Georgetown. He is also an avid bicyclist.

18 And Heidi Hedberg is just the quintessential
19 professional.

20 Kim Bose certainly is due the Exemplar Award.
21 Kim is an exemplar, and she always takes the time to ask you
22 how you are and she actually listens to the answer.

23 Thank you, Mr. Chairman.

24 CHAIRMAN KELLIHER: Thank you. I understand
25 Roger Morie's wife, Lynette, is here, is attending. Can we

1 embarrass her for a moment? There she is. Thank you.

2 And one thing I forgot to mention about Kim in
3 the Office of the Secretary, a good example of how hard they
4 work is this last Saturday they came in to FERC to issue an
5 Order for the installation of the first Hydro kinetic
6 project in the United States, because there was a concern
7 about ice floes interrupting installation. So they came in
8 on a Saturday with--I understand with no objection? Or mild
9 objection?

10 (Laughter.)

11 CHAIRMAN KELLIHER: No objection. And that is
12 not uncommon for the Secretary's office to do that.

13 So with that, why don't we proceed to the awards.
14 Let's start with Jacqueline Holmes. I'm going to call you
15 Jacqueline because that's what it says here on the award.
16 Jacqueline, come on up, please.

17 (Applause.)

18 (Award presented to Jacqueline Holmes.)

19 CHAIRMAN KELLIHER: Next is John Katz.

20 (Applause.)

21 (Award presented to John Katz.)

22 CHAIRMAN KELLIHER: Next Roger Morie. Roger?

23 (Applause.)

24 (Award presented to Roger Morie.)

25 CHAIRMAN KELLIHER: And next is Ted Gearden.

1 Ted?

2 (Applause.)

3 (Award presented to Ted Gearden.)

4 CHAIRMAN KELLIHER: Next is Todd Mullins. Todd?

5 (Applause.)

6 (Award presented to Todd Mullins.)

7 CHAIRMAN KELLIHER: Next is Kathryn.

8 (Applause.)

9 (Award presented to Kathryn Kuhlen.)

10 CHAIRMAN KELLIHER: Next is Kim Bose. A short
11 walk for Kim.

12 (Applause.)

13 (Award presented to Secretary Bose.)

14 CHAIRMAN KELLIHER: And lastly, Heidi. Heidi?

15 (Applause.)

16 (Award presented to Heidi Hedberg.)

17 CHAIRMAN KELLIHER: Okay. My family has made a
18 dramatic entrance, so let me introduce them. My father, Joe
19 Kelliher. Dad, if you could stand up, we'll embarrass you
20 slightly.

21 (Applause.)

22 CHAIRMAN KELLIHER: And my mother, Joan Kelliher.

23 (Applause.)

24 CHAIRMAN KELLIHER: And my child bride, Karen
25 Kelliher.

1 (Laughter and applause.)

2 CHAIRMAN KELLIHER: And that's Damien. Damien,
3 hi.

4 (Applause.)

5 CHAIRMAN KELLIHER: That's Damien with one of his
6 Bionicals. He got some new Bionicals. And then Aden.
7 Aden, can you stand up, please?

8 (Applause.)

9 CHAIRMAN KELLIHER: And then Nora, the other
10 woman in my life. Nora Kelliher.

11 (Applause.)

12 CHAIRMAN KELLIHER: Any other introductions?

13 (No response.)

14 CHAIRMAN KELLIHER: No? Then let's turn to
15 business. Notational orders. I would like to note that
16 since the November 20th Open Meeting the Commission has
17 issued 70 notational orders, 70 notational orders.

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

20 SECRETARY BOSE: Good morning, Mr. Chairman, and
21 good morning, Commissioners.

22 Since the issuance of the Sunshine Act Notice on
23 December 11th, 2008, E-17, H-3, and H-4 have been struck
24 from this morning's agenda.

25 Your Consent Agenda for this morning is as

1 follows:

2 Electric Items: E-2, E-5, E-7, E-8, E-9, E-10,
3 E-11, E-12, E-14, E-15, E-18, E-19, E-20, E-22, E-23, E-26,
4 E-27, E-29, E-30, E-31, E-33, E-34, E-35, E-36, E-37, E-38,
5 E-39, and E-40.

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

7 Hydro Items: H-1 and H-2.

8 Certificate Items: C-1 and C-2.

9 As required by law, Commissioner Spitzer is not
10 participating in Consent Item E-27, and Commissioner Moeller
11 is not participating in Consent Items E-31 and E-36.

12 As to E-5, Commissioner Kelly is concurring in
13 part and dissenting in part with a separate statement.
14 Commission Moeller is dissenting in part with a separate
15 statement. And Commissioner Wellinghoff is dissenting in
16 part with a separate statement.

17 As to E-36, Commissioner Kelly is dissenting in
18 part with a separate statement; and Commissioner Moeller is
19 concurring with a separate statement.

20 As to E-29, Commissioner Kelly and Commissioner
21 Wellinghoff are dissenting in part with a Joint Separate
22 Statement.

23 As to E-31, Commissioner Kelly and Commissioner
24 Wellinghoff are concurring in part with a Joint Separate
25 Statement.

1 As to E-39, Commissioner Kelly and Commissioner
2 Wellinghoff are concurring with a Joint Separate Statement.

3 With the exception of E-6 which I just mentioned
4 above as having a statement, where a vote will be taken
5 after the presentation and discussion of that item, we will
6 now take a vote on this morning's Consent Agenda Items,
7 beginning with Commissioner Wellinghoff.

8 COMMISSIONER WELLINGHOFF: With the notation of
9 my dissent in part on E-5, my dissent in part on E-29, and
10 my concurrences on E-31 and E-39, I vote aye.

11 SECRETARY BOSE: Commissioner Moeller.

12 COMMISSIONER MOELLER: Noting my recusal in E-31
13 and E-36, as well as my dissent in part on E-5, I vote aye.

14 SECRETARY BOSE: Commissioner Spitzer.

15 COMMISSIONER SPITZER: With the exception of my
16 recusal on E-27, I vote aye.

17 SECRETARY BOSE: Commissioner Kelly.

18 COMMISSIONER KELLY: With the exception of my
19 dissents in E-5 and E-29, I vote aye.

20 SECRETARY BOSE: And Chairman Kelliher.

21 CHAIRMAN KELLIHER: Aye.

22 SECRETARY BOSE: We will now move on to the
23 discussion items for this morning.

24 The first item for presentation is E-1. E-1
25 concerns certain Long-Term Bilateral Contracts in Docket No.

1 EL02-28-006. There will be a presentation by Christopher
2 Demko from the Office of the General Counsel. He is
3 accompanied by Helen Shepherd and Jennifer Wolfson from the
4 Office of Energy Market Regulation.

5 COMMISSIONER MOELLER: Mr. Chairman, before we go
6 to the to the discussion item on E-1, I want to note just a
7 couple of things.

8 First is again what you referenced earlier, while
9 we still have the attention of our good friends in the press
10 corps, the fact that we did approve the Hastings Project,
11 the first hydrokinetic project in the United States over the
12 last few days.

13 I would also like to point out to those people
14 interested in building more transmission my partial dissent
15 in Commonwealth Edison last week and also of my statement
16 today in E-5. Thank you.

17 CHAIRMAN KELLIHER: Thank you.

18 Colleagues, any other comments?

19 (No response.)

20 CHAIRMAN KELLIHER: No? Let's turn to the
21 discussion. Thank you.

22 MR. DEMKO: Good morning, Mr. Chairman,
23 Commissioners--

24 CHAIRMAN KELLIHER: Is your microphone on?

25 MR. DEMKO: Now is it?

1 CHAIRMAN KELLIHER: Yes, sir. Thank you.

2 MR. DEMKO: Good morning, Mr. Chairman,
3 Commissioners:

4 I am Christopher Demko from the Office of General
5 Counsel. Joining me at the table for this presentation are
6 Jennifer Wolfson and Helen Shepherd from the Office of
7 Energy Market Regulation.

8 I would also like to take this opportunity to
9 thank Mary Morton for her invaluable contribution to this
10 effort. She is currently out on medical leave and we are
11 certainly all thinking of her.

12 This Draft Order establishes a paper hearing on
13 the two issues remanded to the Commission by the Supreme
14 Court. Also, the Draft Order holds the hearing in abeyance
15 to provide the parties time to explore the possibility of
16 settling their disputes.

17 This matter concerns long-term bilateral
18 contracts that were entered into during the period of spot
19 market dysfunction in the West in 2000 and 2001.

20 There are three buyers involved in this matter:
21 NV Energy, which was formerly Nevada Power Company and
22 Sierra Pacific Power Company; Golden State Water Company,
23 formerly Southern California Water Company; and Public
24 Utility District No. 1 Snohomish County, Washington.

25 The buyers in the contracts at issue have filed

1 complaints with the Commission seeking modification of their
2 contracts between late 2001 and early 2002. The crux of the
3 complaints was that the dysfunctional spot markets tainted
4 the long-term markets and thus the long-term contracts
5 signed during the period of market dysfunction require
6 modification.

7 These matters were consolidated and set for
8 hearing. The Commission affirmed the Administrative Law
9 Judge's findings that the Mobile Sierra presumption applied
10 to these contracts and was not met.

11 The buyers appealed the matter to the Ninth
12 Circuit, and the Ninth Circuit found that the Commission
13 should not have applied the Mobile Sierra presumption; and
14 also found that the Commission misapplied that
15 presumption.

16 The Supreme Court disagreed with the Ninth
17 Circuit's findings but did remand the matter to the
18 Commission for amplification and clarification of two
19 issues.

20 The first issue concerns allegations of unlawful
21 activity by certain sellers in the dysfunctional spot
22 market; and whether, if unlawful market activity by a
23 particular seller is demonstrated, there is a causal
24 connection between that seller's activity and its contract
25 negotiations. Such a finding would preclude the application

1 of the Mobile Sierra presumption.

2 If the Mobile Sierra presumption does apply to a
3 particular contract, the second issue concerns the
4 comparison of the contract rates to the rates available once
5 the spot market was no longer dysfunctional, and how the
6 Commission should evaluate any burden imposed by those
7 contracts.

8 The Draft Order directs the parties to
9 participate in a paper hearing in which they may submit
10 briefs and evidence on the specific issues remanded by the
11 Supreme Court.

12 Also the Draft Order holds in abeyance the paper
13 hearings to allow the parties to pursue settlement. The
14 recent filings submitted by numerous parties indicate a
15 willingness to participate in settlement discussions, and
16 the Commission's Dispute Resolution Services Office has been
17 in contact with the parties. Holding the paper hearing in
18 abeyance should encourage those discussions.

19 We would be pleased to answer any questions that
20 you may have.

21 CHAIRMAN KELLIHER: Thank you very much. I want
22 to thank you for that presentation, and I thank the staff
23 for their work on this Order.

24 I think this is an important Order, and today of
25 course as you've just outlined we are acting on remand from

1 the Supreme Court and the Ninth Circuit to establish a
2 procedure to reopen the record to determine whether
3 contracts entered into during and after the time of the
4 California Western power crisis should be modified. I think
5 this Order takes an important step towards final resolution
6 of the power crisis.

7 In Morgan Stanley the Supreme Court reversed the
8 Ninth Circuit decision in Snohomish on various grounds,
9 clarifying that there is only one statutory standard under
10 the Federal Power Act for reviewing wholesale power rates:
11 the Just and Reasonable Standard.

12 Morgan Stanley held that Mobile and Sierra did
13 not create an extra statutory standard for review of
14 contract rates. Instead, those cases defined what it means
15 for a contract rate to satisfy the Just and Reasonable
16 Standard. Unless the parties expressly provide otherwise, a
17 mutually agreed upon contract rate is presumed Just and
18 Reasonable unless it seriously harms the public interest.

19 The Supreme Court also rejected the Ninth
20 Circuit's holding that Mobile Sierra presumption operates
21 differently depending on whether a challenge is brought by a
22 buyer or a seller.

23 The Supreme Court did agree with the Ninth
24 Circuit on other Mobile Sierra issues such as the Default
25 Standard. However, the Supreme Court remanded the case to

1 the Commission for further considerations of whether the
2 contracts at issue impose an excessive burden on consumers
3 down the line, and whether any seller under a particular
4 contract entered into engaged in unlawful activities that
5 directly affected the specific contract negotiations,
6 thereby limiting the presumption that the contract was
7 reasonable when entered into.

8 And the hearing we are establishing today is
9 focused exactly on those issues.

10 Under the hearings, if the buyer is unable to
11 overcome the presumption of reasonableness with respect to a
12 contract in this case, then it must demonstrate that the
13 contract imposes an excessive burden on consumers.

14 We establish a paper hearing to explore these
15 issues because there already is an extensive and voluminous
16 record, and we think a paper hearing is necessary though to
17 supplement that record. We believe there is no need for a
18 trial-type hearing and that a paper hearing offers the
19 greatest administrative efficiency.

20 That consideration is not insignificant since the
21 events that will be examined occurred years ago, and most of
22 the contracts in question have already run their full term.
23 If we had elected for a trial-type hearing, that would have
24 foreclosed final resolution until more than a decade after
25 the wholesale transactions were entered into.

1 The Commission does encourage settlement here,
2 and I think the Order that we are about to issue encourages
3 settlement of these long-standing disputes.

4 With that, I do support the Order. Colleagues?
5 Commissioner Kelly?

6 COMMISSIONER KELLY: Thank you, Joe.

7 I also appreciate the team's efforts on this
8 Order on remand from the Supreme Court. The case obviously
9 has a long history. It has also been contentious and the
10 parties have waited many years for it to work its way
11 through the courts.

12 Today the matter is back before us, and I am
13 pleased that the Commission is acting both promptly and
14 judiciously to follow the Supreme Court's Opinion.

15 I think it is very important that, while the
16 Commission is setting a paper hearing on the issues which
17 the Court instructed us to amplify and clarify, we are
18 holding that hearing in abeyance in order to give parties
19 the time necessary to settle any disputes that they can
20 settle.

21 I take heart in the fact that numerous parties
22 have requested settlement procedures, and I am hopeful that
23 the parties will be able to resolve the issue. If they
24 can't, then we will.

25 Thank you.

1 CHAIRMAN KELLIHER: Thank you. Colleagues?
2 Commissioner Wellinghoff?

3 COMMISSIONER WELLINGHOFF: Thank you, Joe.

4 I want to thank the team, too, for their work on
5 this. I do believe that, even though we do have a
6 voluminous record, that it is important to supplement the
7 record. I am glad we are asking for the paper hearing for
8 additional information to determine whether or not there's
9 any additional redress for consumers, and that we can in
10 fact review this in the context of the Morgan Stanley
11 decision of the Supreme Court.

12 But as my colleague, Commissioner Kelly, said:
13 We do really encourage that there be settlement here. And
14 we also encourage the parties to take advantage of the
15 resources that the Commission has with respect to
16 settlement. We have excellent resources here to assist in
17 settlement, and so I hope they take full advantage of those
18 resources and do in fact reach a settlement in this case.

19 Thank you. With that, I support the Order.

20 CHAIRMAN KELLIHER: Thank you. Colleagues?
21 Commissioner Moeller?

22 COMMISSIONER MOELLER: Thank you, Mr. Chairman.
23 I will send thanks to Chris and the team, as well. This of
24 course is about contracts that were signed in 2000 and 2001
25 before any of us joined the Commission, but we were probably

1 all affected by it in one way or another.

2 I am hoping that today's action is the beginning
3 of the end of this journey. I too will encourage the
4 parties to settle, but nevertheless they have one final
5 opportunity to make their case before this Commission and I
6 hope that they will use their strategies well and that we
7 can look forward to the day when we can finally close the
8 remaining dockets in this proceeding, Mr. Chairman.

9 CHAIRMAN KELLIHER: Thank you. Commissioner
10 Spitzer.

11 COMMISSIONER SPITZER: Thank you, Mr. Chairman.

12 I agree with the statement of the case and the
13 description of the Supreme Court decision by the staff and
14 by the Chairman; I agree with that.

15 There's a lot of history here. Commissioner
16 Moeller stated that everyone was affected, and during the
17 events in question I was representing the ratepayers of
18 Arizona and we were, as with the entire Western
19 Interconnection, deeply affected by this.

20 It is important that these cases be resolved on
21 the merits with justice. It is also very important that
22 closure be brought. As in any maelstrom, closure is
23 significant to all sides. I would agree with the
24 observation that settlement resources at the Commission, and
25 particularly the Dispute Resolution Service, is a great

1 resource, and those parties wishing to avail themselves of
2 that should do so.

3 But again, we want to move quickly because these
4 matters have been pending for quite some time, to bring
5 closure, but at the same time justice for all parties. And
6 I thank the team for working so hard on this.

7 CHAIRMAN KELLIHER: Thank you. Let's vote.

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

10 COMMISSIONER WELLINGHOFF: I vote aye.

11 SECRETARY BOSE: Commissioner Moeller.

12 COMMISSIONER MOELLER: Aye.

13 SECRETARY BOSE: Commissioner Spitzer.

14 COMMISSIONER SPITZER: Aye.

15 SECRETARY BOSE: Commissioner Kelly.

16 COMMISSIONER KELLY: Aye.

17 SECRETARY BOSE: And Chairman Kelliher.

18 CHAIRMAN KELLIHER: Aye.

19 SECRETARY BOSE: The next item for presentation
20 and discussion this morning, there are two, are E-6 and E-
21 24. They are involving Southern Company Services in Docket
22 Nos. RC08-001-001, and ER96-780-020.

23 There will be a presentation by Marek Smigielski
24 from the Office of Energy Market Regulation, and Mariana
25 Cruz from the Office of the General Counsel. He is

1 accompanied by David Hunger from the Office of Energy Market
2 Regulation, and Carol Johnson from the Office of the General
3 Counsel.

4 MR. SMIGIELSKI: Good morning, Mr. Chairman, and
5 Commissioners:

6 E-6 and E-24 involve two recent filings by
7 Southern Company Services, acting as agents for Southern
8 Companies.

9 The Draft Order in E-6 conditionally approves
10 Southern Companies' proposal to amend their Market-Based
11 Rate Tariff to institute an auction process for certain
12 transactions in the Southern Balancing Authority Areas.

13 The Draft Order provides that if Southern
14 Companies agree to conditions the Commission has imposed on
15 the auction proposal, it would provide the Commission with a
16 sufficient basis to find that Southern Companies have
17 mitigated their potential generation market power within the
18 Southern Balancing Authority Area.

19 E-6 recognizes Southern's proposal as a
20 significant step forward and commends Southern for
21 undertaking this initiative. The Draft Order finds that the
22 auction proposal appears sound and accepts the proposed
23 Tariff changes conditioned upon clarifications regarding the
24 authority of the Independent Auction Monitor, and upon the
25 auction being opened up to other sellers within 12 months.

1 In particular, Southern Companies must ensure
2 that the Independent Auction Monitor is authorized to:

3 (1) Verify Southern Companies' Available Capacity
4 calculations;

5 (2) Confirm that any transmission service
6 necessary to accommodate a purchase under the auction is not
7 unreasonably withheld; and

8 (3) Independently file reports with the
9 Commission regarding the auction process.

10 The Draft Order requires that the Independent
11 Auction Monitor provide annual reports to the Commission
12 regarding the functioning of the auctions and specifies
13 information to be provided in those reports.

14 In addition, the Draft Order specifies that the
15 Auction Administrator and the Independent Auction Manager
16 Monitor must have confidential access to each other.

17 The Draft Order in E-6 gives Southern Companies
18 30 days to:

19 (1) Inform the Commission of whether and how they
20 plan to proceed with revising their auction proposal based
21 on the findings and conditions provided in the Order;

22 (2) Propose an Independent Auction Monitor for
23 Commission approval; and

24 (3) Submit a copy of the proposed contract
25 between Southern Companies and the Independent Auction

1 Monitor.

2 MS. CRUZ: Good morning. E-24 addresses the
3 updated Market Power Analysis filed by Southern Companies on
4 August 29th, 2008. Because the mitigation proposal in E-6
5 deals with the Southern Balancing Authority Area, E-24 only
6 addresses Southern Companies' potential market power as it
7 relates to the Southern Balancing Authority Area. The
8 remaining balancing authority areas for Southern Companies'
9 first-tier markets will be addressed in a subsequent order.

10 Southern Companies' updated Market Power Analysis
11 for the Southern Balancing Authority Area shows that
12 Southern Companies pass the pivotal supplier screen but fail
13 the market share screen in all seasons, creating a
14 rebuttable presumption that they possess horizontal market
15 power.

16 The Draft Order in E-24 notes that Southern
17 Companies submitted the auction proposal addressed in E-6 in
18 order to mitigate any perceived generation market power in
19 the Southern Balancing Authority Area and that E-6 has
20 directed a compliance filing notifying the Commission
21 whether Southern Companies will revise the auction based on
22 the conditions established by the Commission in E-6.

23 The Draft Order in E-26 states that if Southern
24 Companies revise the auction proposal in accordance with the
25 Commission's conditions, the Commission will conclude that

1 the auctions adequately mitigate any horizontal market power
2 Southern Companies may have in the Southern Balancing
3 Authority Area.

4 The team would be happy to answer any questions
5 that you may have.

6 CHAIRMAN KELLIHER: Thank you very much. I want
7 to thank the team for all their work on this Order. It has
8 taken a lot of work in recent days, but I just want to thank
9 you. I think it is a very high quality Order, and I am
10 grateful for your efforts.

11 I think this is an important Order, particular
12 E-6. Today the Commission is approving an energy auction
13 process proposed by Southern Companies that includes a must-
14 offer obligation on day-ahead and hourly auctions and
15 independent monitoring of the auction.

16 I think this Order is an important step towards
17 strengthening wholesale competition in the Southeast, and it
18 has the potential to both prevent the exercise of market
19 power as well as greatly improve price transparency in the
20 Southeast.

21 As we have said many times before, the U.S. has
22 different kinds of wholesale power markets. Some regions of
23 the country have Regional Transmission Organizations with
24 organized wholesale power markets. Other regions such as
25 the Southeast are structured around bilateral wholesale

1 markets.

2 It has always been my view that each of these
3 different wholesale markets can achieve effective
4 competition. It has been our approach in both the RTO
5 Regions, the Organized Markets, as well as the Bilateral
6 Markets, to achieve steady improvements, to achieve
7 incremental progress, and move towards more perfect
8 competition, but to do so in a way that is respectful of the
9 differences between these regional markets.

10 Sometimes these incremental reforms will involve
11 generic changes such as the Open Access Transmission Tariff
12 in Orders Nos. 888 and 890. Sometimes reforms will be more
13 focused and apply only to a particular regional market. But
14 the goal is the same: to make steady reforms and
15 incremental improvements to wholesale markets and make them
16 more competitive.

17 I think the Order that we are approving today is
18 no small step. It represents a major change in the
19 Southeast Wholesale Power Market by establishing a short-
20 term power market platform and much-needed price
21 transparency.

22 We conditionally approve the auction process
23 proposed by Southern Companies to require third-party
24 participation. In their filing, Southern Companies
25 indicated that they are willing to expand the auction to

1 include sellers other than Southern and we are accepting
2 their proposal based on a commitment to expand the
3 auction.

4 We also provide additional guidance regarding
5 other refinements with respect to the auction monitor that
6 need to be adopted in order for the Commission to find that
7 Southern Companies have fully mitigated any potential to
8 exercise market power in their home control area.

9 I particularly want to commend Southern Companies
10 for making this filing. I think this filing represents a
11 very creative solution that holds great promise for
12 effectively mitigating any potential generation market
13 power, and will improve wholesale market transparency in the
14 Southeast, while building on the bilateral wholesale market
15 structure that currently exists.

16 I hope the guidance we provide today will
17 encourage Southern Companies to continue developing this
18 platform for wholesale electricity trading, and I think it
19 is a proposal that holds great promise.

20 I particularly want to commend Commissioner
21 Wellinghoff for his leadership in working on this Order. I
22 think you played a very good role in this, and I thank you
23 for bringing this Order home.

24 Colleagues? Commissioner Wellinghoff?

25 COMMISSIONER WELLINGHOFF: Thank you,

1 Mr. Chairman.

2 CHAIRMAN KELLIHER: Microphone, Jon?

3 COMMISSIONER WELLINGHOFF: Thank you,
4 Mr. Chairman.

5 Today we consider Southern Companies' proposal to
6 commit to offer their available capacity into an auction for
7 Hour-Ahead and Day-Ahead sales of electricity. Southern's
8 offers will be based on their cost and an Independent
9 Auction Monitor would oversee the process.

10 I also commend Southern for proposing this
11 approach. For the Commission to accept this approach,
12 however, Southern needs to make two commitments. As
13 indicated by the staff, the Commission is placing two very
14 important conditions on our acceptance of Southern's
15 filing.

16 I will vote to accept Southern's proposal with
17 those conditions that will serve to benefit and protect
18 consumers.

19 First, the opportunity for suppliers, in addition
20 to Southern Companies, to offer to sell power; and the
21 strong oversight of the auction and associated transmission
22 by an Independent Auction Monitor.

23 I believe that this is a significant step forward
24 for consumers in Southern's Balancing Area. The Must-Offer
25 provision will provide more short-term purchase options for

1 municipal, cooperative, and other wholesale customers in the
2 region and their consumers.

3 These offers will be based on Southern's cost of
4 providing the service posted for all to see, and the
5 resulting sales will be reported to a Pricing Index and
6 through the Commission's Electric Quarterly Reports.

7 As alternative suppliers enter the auction
8 process providing competition to Southern's Generation,
9 prices will be pushed to competitive levels. The auction
10 offers increased liquidity in the region and price
11 transparency for customers to make purchasing decisions.

12 Oversight and reporting to the Commission by
13 Independent Auction Monitor will ensure that the auction
14 process is implemented and working as intended. The
15 expanded duties of the Independent Auction Monitor will
16 further provide for reporting to the Commission the auction
17 process is not meeting that standard.

18 With that, I am happy to vote in support of the
19 Order and I thank the team for all your hard work on this.
20 Thank you.

21 CHAIRMAN KELLIHER: Thank you, Jon. Colleagues?
22 Any takers? Commissioner Moeller.

23 COMMISSIONER MOELLER: Thank you, Mr. Chairman.
24 I associate my remarks with yours and Commissioner
25 Wellinghoff's.

1 I want to thank all the Commission's offices for
2 working pretty hard on making sure this Order could come
3 together by this meeting. Only time will tell if this
4 proposal will actually work to get more effective wholesale
5 competition in the Southern Territory, but I certainly
6 commend them as well for this innovative approach.

7 In this conditional approval of their approach it
8 is important to note there have been wholesale markets in
9 the Southeast for over 100 years, but they have been more
10 limited in nature. And we hope that they become much more
11 vibrant and with many more entrants and players.

12 It is a step in the right direction. The reality
13 is that there is a perception that Southern has market
14 power, whether it is true or not, and that is the real
15 reason why this auction has been proposed. And even though
16 the auction and these Orders do not decide whether Southern
17 has market power, they have designed the auction to help
18 assure us that they will not be able to exercise market
19 power by withholding power.

20 Specifically, the auction is designed to ensure
21 that all available capacity is sold into the market, and
22 that the Independent Auction Monitor will oversee the
23 process.

24 Again, I congratulate the innovative thinking
25 that went into it, and the work of the Commissioners, and

1 particularly their staff to make sure this Order came
2 together.

3 CHAIRMAN KELLIHER: Colleagues? Commissioner
4 Kelly?

5 COMMISSIONER KELLY: I also would like to thank
6 the team. This team has worked exceptionally hard on this
7 item, and my staff in particular I know has posed several
8 rounds of questions extending very late into the process of
9 decision making, and the team has demonstrated remarkable
10 patients and flexibility in responding. So it is a
11 heartfelt thank you from my office.

12 In this case, Southern offers an innovative
13 proposal to mitigate any market power it might have in the
14 Balancing Authority Area.

15 Now it is innovative because, rather than propose
16 mitigated cost-based rates that would govern short- and mid-
17 term sales in the bilateral market from its various units--
18 which is the usual type of mitigation we see in situations
19 like this--Southern Companies proposes to establish an
20 auction market, and obviously overseen by an Independent
21 Auction Monitor and an Auction Administrator.

22 More specifically, it proposes to set up a single
23 clearing price bid-based auction market with cost-based
24 offer caps applicable to each of the units that it would bid
25 into the market.

1 Further, it proposes to impose a must-offer
2 obligation on itself. That is, it would obligate itself to
3 bid all of its available capacity into the day-ahead and
4 hour-ahead auctions. And I believe that such an auction
5 market holds great promise for the Southeast for increasing
6 price discovery, price transparency, and liquidity in the
7 Southern Bilateral Markets.

8 Now the Commission today accepts this proposal as
9 long as Southern Companies agrees to some enhancements to
10 their proposal. These enhancements are primarily to:

11 (1) Include third-party participation in these
12 markets within a year; and

13 (2) Increase the role and the responsibility of
14 the Independent Auction Monitor.

15 And I agree with the Commission's decision on
16 those two points. I do dissent in part from this Order, and
17 my concern is with the cost-based offer cap.

18 Southern Company proposes that each unit that
19 bids into the auction market, each of its units that bids
20 in, would have an offer cap that would be limited by the
21 incremental cost of the unit plus 10 percent, plus a demand
22 charge of \$21.43 per megawatt hour.

23 It is the demand charge that I have a concern
24 about. This is the first time we have seen a demand charge
25 added to a cost-based offer cap in an auction market.

1 Typically if a generator is mitigated, it is mitigated at
2 incremental cost plus 10 percent.

3 And the question that I have--and I don't have an
4 answer to, and that is why I am dissenting here--is that the
5 record is unclear as to why a demand charge on an offer cap
6 in a cost-based mitigated offer makes sense.

7 The record is unclear as to how much this demand
8 charge contributes to each unit's fixed or capacity cost.
9 In Order 697 we said that the default is incremental cost
10 plus 10 percent.

11 Now we didn't rule out the ability of a mitigated
12 seller to have a contribution to fixed or capacity cost. We
13 said we will look at it on a case-by-case basis. Having a
14 single clearing price auction ensures that many of the units
15 that are bid in will get the clearing price which will
16 provide contribution to fixed or capacity costs.

17 So I am concerned that having the demand charge
18 in there in addition to the single clearing price auction
19 approach might provide for duplicative recovery--might be
20 duplicative and might provide for excess rates.

21 I also have an unanswered question about the
22 impact of a demand charge on the desired goal of price
23 discovery. Does it make the price discovery less clear?
24 And I don't know the answer to that.

25 I think that my dissent flows from the fact that

1 I am a veteran of the meltdown of the California Electricity
2 Market. I was at the California ISO in 2000 when it melted
3 down, and I believe that the meltdown was due in part to
4 market rules, and inappropriate market rules.

5 So I think I am particularly sensitive to the
6 considered design of market rules. And in this case, I am
7 just concerned that we do not have sufficient evidence to
8 justify this aspect of the market design, and we should not
9 approve it.

10 That having been said, I otherwise support the
11 approach. I support--I commend Southern for being
12 innovative, and I agree with the changes that the Commission
13 has added to their proposal.

14 Thank you, Mr. Chairman.

15 CHAIRMAN KELLIHER: Thank you. Commissario.

16 COMMISSIONER SPITZER: Thank you, Mr. Chairman.

17 A few observations:

18 First, in terms of the parties to this matter,
19 Southern Company could have chosen to be obdurate, dug in
20 its heels and litigate; some of the protesters and
21 intervenors in the proceeding could have been negative, and
22 in fact many of the filings were extremely positive; and the
23 Commission could have been obdurate as well and rejected the
24 Order, and that is not the case. I think that is good
25 government.

1 This is a result that probably would not spring
2 from the mind of an economist full-blown, or would not be
3 written tabula rasa by regulators, but as the Chairman
4 mentioned it is reflective of the unique nature of this
5 region of the country and is respectful of local
6 considerations and the considerations of the states, and I
7 think that is significant. I also think that is good
8 government.

9 A major aspect of this is the third-party
10 participation in the auctions. And it is my view that--and
11 I am certainly respectful of the issue raised with regard to
12 Demand Charge, but my view is that that issue is
13 substantially mitigated by the participation of third
14 parties. And then the Market Monitor enhanced authorities
15 as well in my view adequately resolve, with continued
16 oversight, the question of market power.

17 The issue of long-term contracts has arisen, and
18 increasingly there are expressions throughout the country of
19 interest from all sides--from ratepayer groups, from
20 wholesale purchasers, as well as independent power producers
21 who in a very turbulent economic environment are looking for
22 the investment resources in order to construct
23 infrastructure, and this I think will incent further long-
24 term contracts and will further infrastructure. It will
25 develop infrastructure by independent power as well as by

1 COMMISSIONER MOELLER: I vote aye, noting a
2 concurrent statement on E-6.

3 SECRETARY BOSE: Commissioner Spitzer.

4 COMMISSIONER SPITZER: I vote aye.

5 SECRETARY BOSE: Commissioner Kelly.

6 COMMISSIONER KELLY: I dissent in part.

7 SECRETARY BOSE: And Chairman Kelliher.

8 CHAIRMAN KELLIHER: Aye.

9 SECRETARY BOSE: The next item for presentation
10 and discussion this morning--

11 CHAIRMAN KELLIHER: Thank the team.

12 SECRETARY BOSE: --there are four: E-3, E-4, E-
13 13, and E-32, concerning certain Draft Orders addressing the
14 Midwest ISO's Ancillary Services Market and other
15 procedures.

16 The presentation will be given by Jeffrey
17 Hitchings from the Office of Energy Market Regulation. He
18 is accompanied by Christie DeVoss from the Office of Energy
19 Market Regulation, Mini Kaur from the Office of the General
20 Counsel, and Syed Ahmad from the Office of Electric
21 Reliability.

22 MR. HITCHINGS: Good morning, Mr. Chairman, and
23 Commissioners:

24 Today the Commission will be voting on a package
25 of Draft Orders that enable the start of the Midwest ISO

1 Ancillary Services Market and revise market rules and other
2 procedures to accommodate the new market.

3 As the Commission stated in its Initial Order
4 accepting the Midwest ISO's proposal, the Ancillary Services
5 Market will minimize overall production costs in the Midwest
6 ISO markets by coordinating the market-based procurement of
7 energy and operating reserves.

8 The Commission also noted that the Midwest ISO's
9 Ancillary Services Market proposal incorporates the best
10 features that have worked successfully in other regional
11 transmission organizations and Independent System
12 Organizations such as the New York ISO, the PJM
13 Interconnection, and ISO New England.

14 Therefore, the Commission conditionally accepted
15 Midwest ISO's Ancillary Services Market proposal subject to
16 certain compliance filings which are before the Commission
17 today.

18 Most significant of the Draft Orders is E-3 that
19 authorizes the start of the Midwest ISO Ancillary Services
20 Market on January 6, 2009. The Commission's authorization
21 is based on the Midwest ISO's successful completion of the
22 Commission's market start requirements.

23 These include: Certification of the Midwest ISO
24 as the Balancing Authority for the Midwest ISO Region by the
25 North American Electric Reliability Corporation, Readiness

1 Certification by the Independent Readiness Advisory, and
2 submittal of a Reversion Plan.

3 To ensure a smooth market start, the Draft Order
4 accepts the Midwest ISO's plan to limit the applicability of
5 scarcity pricing to situations of true scarcity and to cap
6 the regulating reserve price at the cost of a peak generator
7 during periods of short-term or transitory scarcity.

8 The Draft Order also accepts the Midwest ISO's
9 proposal to share ramp capability among energy and reserve
10 products similar to procedures used by other Independent
11 System Operators.

12 Also of note, E-4 is a Draft Order which
13 conditionally accepts procedures proposed by the Midwest ISO
14 to incorporate a new technology--stored energy resources--as
15 a provider of reserve products in the Ancillary Services
16 Market.

17 Stored Energy Resources utilize a fly-wheel
18 battery technology that uses recycled energy from the grid
19 in order to follow moment-by-moment changes in demand and
20 frequency.

21 When generated power exceeds load, the fly-wheel
22 technology absorbs excess energy. When load increases, the
23 fly-wheel returns energy to the grid. These resources will
24 be integrated into the Midwest ISO Ancillary Services Market
25 in June 2009.

1 Thank you. The team would be glad to answer any
2 questions.

3 CHAIRMAN KELLIHER: Thank you. Nora is helping
4 me with the microphone. You're doing very well, I have to
5 say. Thank you for your assistance.

6 I just have a very short statement.

7 This Order is similar to Southern in that in both
8 cases we are making changes. We are taking steps to improve
9 wholesale competition in two totally different markets: the
10 Southeast and Midwest ISO. So I think these are important
11 Orders, and I think they not only will improve wholesale
12 competition in the Midwest ISO but they also should enhance
13 reliability and allow for greater demand response in the
14 region.

15 I want to commend the Midwest ISO for putting
16 this proposal before us. I particularly want to commend the
17 leadership of Graham Edwards and note that his retirement of
18 MISO, I will miss him personally. I have enjoyed working
19 with him, and express my confidence in John Bear. So I
20 think Midwest ISO is in strong hands, and they put forward
21 an interesting and creative proposal here, and I think this
22 is an important package of Orders.

23 Colleagues? Commissioner Moeller.

24 COMMISSIONER MOELLER: I really just have a
25 number of questions about this Order.

1 I would first commend Mr. Hitchings and his team.
2 The word I get is that there was extraordinary work involved
3 in getting this Order together. So the way you smile, I
4 know it is true.

5 (Laughter.)

6 COMMISSIONER MOELLER: Well do you think it is
7 going to start on time?

8 MS. DeVOSS: Yes, we do. The cause of the delay
9 was a short-term scarcity of regulating reserves that was
10 observed during operational testing, but the Draft Order in
11 E-3 proposes measures to address that scarcity. And those
12 measures have also undergone extensive operational testing
13 since the delay. So we are confident that the market should
14 start on January 6th as scheduled.

15 COMMISSIONER MOELLER: It is adequately tested?
16 It's ready to go January 6th?

17 MS. DeVOSS: We think so.

18 COMMISSIONER MOELLER: All right.

19 (Laughter.)

20 COMMISSIONER MOELLER: I guess what we really
21 didn't talk about is how consumers can benefit from this.
22 Any observations on that?

23 MR. HITCHINGS: Well basically we think this
24 market will enhance competition; that you are going to have
25 a simultaneous cooptimization that is going to ensure that

1 the least-cost resources across the region are going to be
2 utilized.

3 There is going to be a minimizing of production
4 costs. There is going to be increased participation of
5 demand resources, new technology resources, and the fact
6 that now the Midwest ISO is going to be the sole balancing
7 authority for the entire region is going to enhance
8 reliability. So we think there are quite a few benefits.

9 COMMISSIONER MOELLER: How about the difference
10 between this ASM market and others?

11 MS. DeVOSS: The Midwest ISO will be the largest
12 organized Ancillary Services Market in the country. Among
13 other things, and unlike other markets, the Midwest ISO will
14 redefine its reserve zones on a quarterly basis, and that
15 will help them to reflect patterns of transmission
16 congestion, and also the availability of reserves.

17 But before they submitted their proposal, Midwest
18 ISO underwent an extensive process to examine other
19 Ancillary Services Markets, and so by and large its market
20 design is very similar to those that have already been
21 approved by the Commission.

22 COMMISSIONER MOELLER: Very good.

23 Fly-wheel technology. Can you tell us a little
24 bit more about? How much it costs? Where else it is being
25 deployed? And your confidence with how it will be

1 integrated into this market in June of '09?

2 MR. HITCHINGS: Right. The technology, boiled
3 down to the basics, essentially it is a fly-wheel energy
4 storage system. It basically takes energy from the utility
5 grid and it stores it in a high-density rotating fly-wheel.
6 Basically it's a mechanical battery. It spins very quickly.
7 It's over 20,000 rpm. The technology that Beacon Energy--
8 I'm sorry, Beacon Power is proposing here, it's basically a
9 matrix of about 200 fly-wheels, high speed, 25 kwh
10 fly-wheels essentially providing about 20 megawatts of
11 capability to cycle in/cycle off type of a thing.

12 This technology is being utilized. It's been put
13 in in California, New York. The New York ISO is integrating
14 it into its ISO. We expect other ISOs are going to be doing
15 the same thing.

16 In terms of cost, we don't have information in
17 our record in terms of what the costs are. We understand it
18 is a fairly low-cost technology. So that is all I can
19 really say.

20 COMMISSIONER MOELLER: All right. Well we will
21 watch it develop, then.

22 MR. HITCHINGS: Right.

23 COMMISSIONER MOELLER: Hopefully not on the fly,
24 but--

25 (Lots of oohs.)

1 COMMISSIONER MOELLER: I finally want to
2 associate my thoughts with the remarks of the Chairman, both
3 in missing Mr. Edwards as he moves on, and the confidence
4 that I have in John Bear who will be taking the lead of MISO
5 in the next few months. I am happy to support this set of
6 Orders.

7 CHAIRMAN KELLIHER: Commissioner Wellinghoff.

8 COMMISSIONER WELLINGHOFF: Thank you,
9 Mr. Chairman. I want to say to the team, Merry Christmas
10 and Happy Holidays. I know that you've spent a lot of time
11 with my team on this Order, and I appreciate all the hard
12 work and the interaction that you did on this, and thank you
13 very much for working through the issues and getting this
14 Order together. I really do appreciate it.

15 I think that ancillary Services Markets are one
16 of the most important markets that we are creating with
17 respect to wholesale organized markets from the standpoint
18 of not only all the things and benefits that the team
19 already talked about, but I think the potential ultimately
20 to save consumers costs by a fully integrated in the demand
21 side into those markets, which would include things like
22 storage, and demand response, things that could in fact
23 alleviate the need for peak generation, or reduce that need
24 substantially, and also make our generation fleet much more
25 efficient so it wouldn't in fact have to provide these

1 Ancillary Services. By providing these Ancillary Services,
2 our generation fleet is in fact much less efficient than it
3 could be.

4 So, you know, I want to commend the team. I want
5 to commend MISO for putting this together, this new
6 technology, such as storage is critical, and as far as
7 costs, the nice thing about it, it's a market. So it
8 doesn't matter what the costs are. If they make it in the
9 market, they can put a business plan to sell into this
10 market, you know, they're going to sell into the market and
11 that's going to be great, as will I think a lot of other
12 technologies.

13 That's why creating these markets allows
14 entrepreneurs to do these things, to in fact come forward
15 with new ideas. I had a couple of companies in my office
16 the other day with a whole array of ways to control loads
17 with respect to consumer end uses that were really very
18 innovative that could in fact play in these types of
19 markets.

20 So I encourage MISO to continue to reduce
21 barriers to demand/response and other advanced technologies
22 to come into these markets. And again I commend the team
23 and I look forward to voting for this order. Thank you.

24 CHAIRMAN KELLIHER: Commissioner Kelly.

25 COMMISSIONER KELLY: Just two aspects of the

1 Order I wanted to highlight.

2 I agree with the commendations that the Chairman
3 and Commissioner Moeller and Commissioner Wellinghoff have
4 given to the staff, and also to MISO for the great job they
5 have done in presenting this to us.

6 I am particularly pleased that we accept MISO's
7 proposal to reduce the existing regulating reserve demand
8 curve price of \$1000 per megawatt hour to more accurately
9 reflect the economic value of regulating reserves during
10 shortages, and I note that the market monitor supports this
11 proposal.

12 I believe this Tariff revision provides an
13 important balance between ensuring that resources are priced
14 appropriately during scarcity conditions, while not unduly
15 burdening consumers who have to pay for them.

16 I also wanted to note my support for the role
17 that Stored Energy Resources will have in the Ancillary
18 Services Market. Obviously they are important resources,
19 and I in particular support the decision to allow them to
20 provide contingency reserves as well as regulating
21 reserves.

22 And again, thanks to this team for leading the
23 efforts. I am very pleased to vote for the Order.

24 CHAIRMAN KELLIHER: Thank you. Commissario.

25 COMMISSIONER SPITZER: Thank you, Mr. Chairman.

1 I do suppose this is a fitting swan song for
2 Graham Edwards. They will miss his accent in northern
3 Indiana, not being indigenous, and we congratulate MISO as
4 well as all those who worked on this Order, particularly the
5 innovation is impressive to me.

6 You have ideas that often percolate for quite
7 some time, and then bear fruit, and Beacon was the entity
8 largely on the fly-wheel that's been discussed. This is a
9 concept that's been around for awhile. In fact, there was a
10 mad scientist in Phoenix who ultimately worked with Arizona
11 Public Service in Maricopa County and installed fly-wheels
12 at the Madison Street Jail in downtown Phoenix back when I
13 was in the Legislature.

14 I have not been to the jail--

15 (Laughter.)

16 COMMISSIONER SPITZER: --and I don't think I want
17 to go, but I am told that the fly-wheel is still there, and
18 it provided some rate support as well as some efficiencies,
19 and now we have it gone commercial and, as Commissioner
20 Wellinghoff pointed out, the market will ultimately be the
21 test, but it took an entity to come to the Commission to
22 move the process forward, and I think that is very good. So
23 I am thankful for the team.

24 We greatly await this market. MISO is a vast
25 undertaking. Its size and complexity dwarfs some of the

1 other tighter power pools, and it is I think extremely
2 important for FERC to take ownership and cooperate with all
3 the parties to establish to the public the benefits of
4 organized markets when organized markets work well.

5 There are benefits for reliability. There are
6 ultimate benefits to the ratepayers, and there are benefits
7 to technology that can bear fruit in other regions of the
8 country. So I am hopeful that this is not the end of the
9 story but the beginning of the story, and I am very pleased
10 to support this Order.

11 CHAIRMAN KELLIHER: Thank you. Any other
12 comments?

13 (No response.)

14 CHAIRMAN KELLIHER: No? Let's vote.

15 SECRETARY BOSE: Again we will take a vote on
16 these items together, beginning with Commissioner
17 Wellinghoff.

18 COMMISSIONER WELLINGHOFF: I vote aye.

19 SECRETARY BOSE: Commissioner Moeller.

20 COMMISSIONER MOELLER: Aye.

21 SECRETARY BOSE: Commissioner Spitzer.

22 COMMISSIONER SPITZER: Aye.

23 SECRETARY BOSE: Commissioner Kelly.

24 COMMISSIONER KELLY: Aye.

25 SECRETARY BOSE: And Chairman Kelliher.

1 CHAIRMAN KELLIHER: Aye. Any other comments,
2 colleagues?

3 (No response.)

4 CHAIRMAN KELLIHER: No? Well I am hoping to get
5 an important photo here. One of my favorite mementoes of
6 being here was the picture of Ben and I gaveling a meeting
7 closed, and I thought I need a picture of my own children
8 gaveling the meeting closed. So Nora is going to help me
9 today.

10 Can you grab that [the gavel]? Let's do it
11 together so it's official. Ready? This meeting is
12 adjourned. Thanks.

13 (Applause.)

14 (Whereupon, at 11:25 a.m., Thursday, December 18,
15 2008, the open meeting of the Commission was adjourned.)

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