BEFORE THE

FEDERAL ENERGY REGULATORY COMMISSION

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IN THE MATTER OF: :

CONSENT MARKETS, TARIFFS AND RATES - ELECTRIC :

CONSENT MARKETS, TARIFFS AND RATES - GAS :

CONSENT ENERGY PROJECTS - MISCELLANEOUS :

CONSENT ENERGY PROJECTS - CERTIFICATES :

DISCUSSION ITEMS :

STRUCK ITEMS :

- -x

952ND COMMISSION MEETING

OPEN SESSION

Commission Meeting Room

Federal Energy Regulatory Commission

888 First Street, N.E.

Washington, D.C.

Thursday, November 19, 2009

10:14 a.m.

APPEARANCES:

COMMISSIONERS PRESENT:

CHAIRMAN JON WELLINGHOFF (Presiding)

COMMISSIONER SUEDEEN G. KELLY

COMMISSIONER MARC SPITZER

COMMISSIONER PHILIP MOELLER

P R O C E E D I N G S

(10:14 a.m.)

CHAIRMAN WELLINGHOFF: Good morning all. I apologize for us being a little late, but we had a vote that we had to go find, so we got that done.

This is almost the time and the place that has been noticed for the Open Meeting of the Federal Energy Regulatory Commission, to consider matters that have been duly posted in accordance with the Government in the Sunshine Act.

Please all join me for the Pledge of Allegiance.

(Pledge of Allegiance recited.)

CHAIRMAN WELLINGHOFF: Since the October 15th meeting, we have issued 80 Notational Orders.

We have a few announcements this morning, before we get to our Agenda Items to vote. Phil, were you going to do the hydro?

COMMISSIONER MOELLER: I'm happy to do so, Mr. Chairman, if you wish.

CHAIRMAN WELLINGHOFF: Sure, please.

COMMISSIONER MOELLER: I appreciate your support of this, but there will be a Commissioner-led Technical Conference that we will be holding on December 2nd in the afternoon, from 1:00 to 5:00 p.m., here in the meeting room. We'll specifically focus on small hydropower development in the United States. It may sound small, but it has a big future.

Specifically, we intend to discuss the Commission's program for granting licenses and five-megawatt and conduit exemptions for conventional hydropower projects.

The Conference will also provide an opportunity for industry, state and federal agencies, tribes, and other stakeholders, to express their views and suggestions for processing applications for small hydropower projects.

Of course, I'd like to invite all of you in the audience here and listening at home, to attend. Please see notices for more information, and, again, Mr. Chairman, I appreciate your support of the hydropower industry, of course, as I hail from the Pacific Northwest.

CHAIRMAN WELLINGHOFF: I'm going to make every effort to be there. I'm looking forward to it, Phil, thank you.

I also want to give a reminder notice on the Draft Action Plan Technical Plan for Demand Response. That's taking place at 1:00 p.m., in this room this afternoon.

Staff will seek information on the overall approach to and the scope of the National Action Plan for Demand Response that's proposed, and a discussion draft that was issued on October 28th. Written comments can be submitted to that Draft Plan, if you can't make it to the meeting today.

The meeting will go on this afternoon and tomorrow morning, as well. Written comments can be submitted through December 4th. I encourage everyone to attend that Technical Conference. I think it's very important.

My final matter I want to go into before we vote, is, I want to thank the Staff for the hard work and dedication on an Notational Order that we issued.

On Friday, the Commission cleared 564 enforcement cases submitted in an omnibus filing by the North American Electric Reliability Corporation, the Commission's approved reliability organization.

NERC's filing was the largest ever submitted to the Commission's E-Library system, totalling over 28,000 pages. Review of this filing was a Herculean effort on the part of 62 Staff, members of the Office of Enforcement, the Office of Electric Reliability, the Office of General Counsel, the Executive Director's Office. I think we took some from the janitorial staff.

(Laughter.)

CHAIRMAN WELLINGHOFF: We had everybody --

(Laughter.)

CHAIRMAN WELLINGHOFF: -- working on these 564

Orders. These Staff members worked tirelessly to review each of the violations within the 30-day timeline provided by the Federal Power Act. Without their efforts, the Commission could not have helped clear the backlog of these NERC penalty items.

I also want to acknowledge the Staff in charge of the Commission's e-filing process. With the omnibus filing, NERC made 142 electronic filings and included a total of over 1,000 files.

NERC made all the filings between 10:20 a.m. and 5:40 p.m., an average of one filing every three minutes. There was not a single problem during the entire e-filing process, so I want to thank the team and I want to thank everybody for the work on this. Thank you.

Madam Secretary, if we could move to the Consent Agenda, please?

SECRETARY BOSE: Good morning, Mr. Chairman, good morning, Commissioners. Since the issuance of the Sunshine Act Notice on November 12th, 2009, the Commission issued a Notice of Change in Meeting on November 18, 2009, adding Docket Numbers RP10-147-000, RP10-148-000, and RP10-149-000, as Items G-3, G-4, and G-5, respectively.

And Item Nos, E-4 and H-5 have been struck from this morning's Agenda.

Your Consent Agenda is as follows:

Electric Items: E-2, E-3, E-5, E-6, E-7, E-9, E-12, E-13, E-15, E-16, E-17, E-18, E-19, E-20, E-22, E-23, E-24, E-25, E-26, E-27, E-28, E-29, E-30, E-31, and E-32.

Gas Items: G-1 and G-2.

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

Certificate Items: C-2, C-3, C-4, C-5, and C-6.

As required by law Commissioner Spitzer is not participating in Consent Item E-22.

As to E-30, Commissioner Kelly is dissenting, in part, with a separate statement.

As to C-2, Commissioner Spitzer is dissenting, in part, with a separate statement.

As to C-3, Commissioner Spitzer is concurring, in part, with a separate statement.

As to G-3, Commissioner Spitzer is concurring, with a separate statement.

As to G-4, Commissioner Spitzer is concurring, with a separate statement.

And as to G-5, Commissioner Spitzer is concurring, with a separate statement.

With the exception of the items G-3, G-4, and G-5, where a vote will be taken after the presentation and discussion of these items, we will now take a vote on this morning's Consent Agenda.

The vote begins with Commissioner Moeller.

COMMISSIONER MOELLER: Aye.

SECRETARY BOSE: Commissioner Spitzer?

COMMISSIONER SPITZER: Thank you. Noting my recusal in E-22; my dissent in C-2 and my concurring statement in C-3, I vote aye.

SECRETARY BOSE: Commissioner Kelly?

COMMISSIONER KELLY: With the exception of my dissent in E-30, I vote aye.

SECRETARY BOSE: Chairman Wellinghoff.

CHAIRMAN WELLINGHOFF: I vote aye.

SECRETARY BOSE: The first item for presentation this morning, is A-3, concerning the Winter Energy Market Assessment of 2009 through 2010. There will be a presentation by Steven Reich from the Office of Enforcement. He is accompanied by Chris Ellsworth from the Office of Enforcement.

MR. REICH: Mr. Chairman and Commissioners, today I'm pleased to present the Office of Enforcement's Winter 2009-2010 Energy Market Assessment.

Before I begin, I would like to thank Ray James and Jeff Wright of the Office of Energy Projects, who provided invaluable assistance in the preparation of this review.

The Winter Assessment is Staff's annual opportunity to share observations about natural gas, electric, and other energy markets as we enter the Winter.

Heading into the Winter, the prospects for natural gas markets, are looking better for consumers than they have in many years. Gas prices are moderate, storage is full, and supplies are plentiful.

Before discussing the Winter Outlook, I'd like to do a quick review of the market conditions this summer, that have led us to this point. This summer was exciting, in that in many parts of the country, summer gas and power prices fell to their lowest levels since 2001.

The spot price of gas at Henry Hub, hit eight-year lows, closing at $1.83 per MmBtu, on September 4th. Prices have moved upward in the last two months, as technical factors and the influence of passive investment in financial markets, put upward pressure on physical and financial gas prices.

Nonetheless, gas prices are still the lowest we've seen in recent years. During the summer, weather was mild over the eastern third of the country, no hurricanes threatened gas supply, California wildfires caused few disruptions of electric generation or transmission.

Even when weather reached extremes, such as during a few days in mid-August in the Northeast, or in late July and mid-August in the Northwest, historic system peaks were never threatened. The only place where the system was stressed in that way, was ERCOT, where, between July 8th and July 16th, load exceeded the previous peak by less than two percent.

During that time, electric prices did increase, but there were no reports on reliability issues, and ERCOT did not turn to its reliability-based demand-response providers for assistance.

In spite of low gas prices, gas production remained strong. During most of the year, production has been running ahead of last year's rates.

Gas production has plateaued in 2009, but has not declined, as many analysts expected at the beginning of the year. A falloff in drilling has resulted in production declines in expensive, low-yield conventional gas reservoirs, but this has been offset by accelerated drilling for high-yield shale gas and increased well productivity.

A decline in September production was related to well shut-ins due to low prices and scheduled pipeline maintenance.

The economics of shutting-in shale production, is less penal than that of conventional wells or coalbed methane, and, anecdotally, many additional wells are ready to pour gas into the pipeline network, waiting for their final connection.

While the short-term production picture is one of finding equilibrium after prices peaked and collapsed during the last two years, the long-term storage is one of abundance. In June, the Potential Gas Committee, an independent group that develops biennial assessments of gas resources, raised its estimate to over two quadrillion cubic feet, one-third more than its previous level, and almost 100 years of gas production at current consumption levels.

The large increase is almost entirely due to improvements in our ability to harvest gas from shale and get it to markets at a reasonable cost. For example, not only are we successfully getting more than double last year's supply from the Haynesville Shale in Louisiana, but producers are also beginning to successfully tap into the Mid-Bossier Shale that lies just above it.

As we have indicated before, gas production is becoming more like mining and manufacturing, with a higher probability of production from each well drilled. The environment, this environment, should have profound effects on the traditional boom-and-bust cycle of gas production.

In addition to domestic production, we have averaged 1.2 billion cubic feet per day of LNG into the natural gas system in 2009. Although this is 19 percent higher than last year, it is considerably below the predictions of earlier in the year.

Plentiful domestic gas supplies, rebounding demand in Europe and Asia, and extended supply outages in Algeria, Nigeria, and Norway, have moderated demand for additional tanker loads on our shores.

I will also note that one key source of supply has declined. Net Canadian pipeline imports are down 15 percent, largely displaced by domestic supply and LNG.

With production outpacing demand, gas has to go into storage. This year, we breezed past previous years' highs.

At the traditional close of the injection season, October 31st, there was 3788 Bcf of gas in storage, seven percent more than at any time in the past, and 186 Bcf of new storage capacity has been opened over the past two years, but even with this new capacity, U.S. storage fields were 98-percent full on November 1st.

Storage is so full that some pipelines have imposed limits on the amount of gas that can be injected, and, in some instances, they have asked interruptible capacity holders to make withdrawals.

Gas is not the only energy source with record high inventories. U.S. coal stockpiles have broken all records, reaching 198 million tons or 73 days of stocks available during the summer.

Northeast and Midwest markets will benefit from new infrastructure this winter, that provide greater options for sourcing and transporting gas.

East Coast and Midwestern consumers have traditionally relied on Gulf Coast and Canadian imports for gas supply. Through new pipelines and LNG terminals, they now have access to supplies from the Rockies, and expanded access to gas from Appalachia and global LNG.

With 3.8 Bcf per day of new northeastern pipeline capacity and LNG supply, we should see lower bases and price volatility this winter. Last year, the Northeast added 1.7 Bcf per day, and we saw significantly less price volatility, even though the winter was colder than normal and demand was slightly up.

1.8 Bcf of the new gas service is attributable to the extension of the Rockies Express Pipeline, which is beginning service to Clarington, Ohio, this month. When REX reached Lebanon, Ohio, last spring, natural gas from the Rockies gained greater access to eastern markets.

Lowering prices for East Coast consumers and raising prices for Rockies producers, the price difference between the Rockies and Appalachia, has declined from as much as $1.80 per MmBtu, before REX East entered service, to 30 to 35 cents per MmBtu, in August.

Early indications in forward prices are that the prices will converge further as REX reaches full utilization. Eastern and western gas markets are becoming coupled.

I would also note that not all pipeline expansions have occurred in the Northeast. New pipeline capacity has been added to bring new sources of shale gas from Texas and Louisiana to market.

The pipeline capacity has had the market effect of breaking down longstanding price differences between market hubs in the two states, and reducing dependence on gas from the Gulf of Mexico that can be disrupted in the event of a hurricane.

The robust outlook for production, the lack of hurricane-related supply disruptions during the summer, competitive prices for LNG on the global markets, storage crammed to capacity, and new pipeline capacity in key areas, all contribute to an outlook for moderate prices to consumers this winter.

At the end of October, I could have purchased fixed-price supply of gas for this winter at $5.12 at Henry Hub. Last year, that same supply would have cost $7.15.

Unlike the spot price of gas, the winter forward price has remained relatively steady during most of this year.

Let me emphasize two points right now: First, when severe weather occurs this winter, the price of gas will spike, however, all things being equal, those spikes are likely to be less severe than they otherwise would have been in the past.

Second, gas that has already been purchased by LDCs for this winter, was bought at spring and summer prices. Nothing that happens this winter, will change that.

We estimate the price, on average, of gas put into storage this year, was around $3.45 per MmBtu, compared to $9.84 last year.

As always, weather is the key wild card going into the winter. This chart shows NOAA's outlook.

NOAA is predicting below-average temperatures in the Mid-Atlantic and Southeast, with an equal chance of temperatures being colder or warmer than usual in the Northeast, Ohio Valley, and California. Warmer-than-normal temperatures are forecast for the West, outside California.

Other weather forecasts are producing generally colder-than-normal temperatures and snowy conditions after the New Year for the Eastern Seaboard.

Once again, colder-than-normal weather brings spikes in demand and prices, but we expect the price spikes to be moderated by gas from production, LNG, and storage, and the availability of new pipeline and storage capacity.

The South and West are forecast to be wetter than average, with normal precipitation levels along the East Coast and the Midwest. Drier-than-normal conditions are forecast in the Pacific Northwest and the Ohio Valley.

Another wild card for gas prices this winter, is the widening spread between the prices of gas and oil. Last December, oil and gas prices reached parity. In the last nine months, oil prices recovered, while gas prices fell.

In September, oil was five times the price of gas; in forward contracts, this spread has narrowed going into the winter, but not sufficiently to erase the clear price advantage of gas over oil.

Traditionally, the price of oil has acted as a release valve to hold down the spot price of gas. If gas prices got too high, demand would decline, as larger users switched to oil.

Environmental regulations, local reliability rules, and new plant construction, has made the switch-over effect, less pronounced, nevertheless, it still exists.

As the current price differential moves deeper into the winter, gas prices would need to rise steeply, to create incentives to switch. The forward prices indicate some expectation of that possibility.

This price relationship, then, will help determine, not only how much oil-fired generation is used this winter, but also will help determine gas and electricity prices, as it gets colder.

I will now turn to the outlook for winter electric prices. Forward winter prices range from seven to 24 percent lower than winter forward prices at this time last year.

These declines mostly follow forward natural gas prices. Another contributing factor is likely expectations for lower electricity consumption.

According to data from the Energy Information Administration, for the first six months of the year, electricity sales to retail customers, were down five percent. In the Midwest, where the price decrease is the greatest, the MISO Market Monitor has also identified the increased availability of wind power, as a key factor in the price decline.

Regionally, electric prices are highest in the Northeast, consistent with the Northeast typically having the highest winter gas prices. The West Coast has traditionally benefitted from lower natural gas prices than the East Coast.

Changing conditions have changed this price relationship. As I indicated earlier, the REX Pipeline has resulted in the significant convergence of gas prices in the Rockies, relative to the rest of the country.

Also, the price from of gas from western Canada, has moved upward, due to the declining gas production and the falling Dollar.

These relatively higher western gas prices, are reflected in the gas forwards in January and February.

That concludes this presentation and we'll be happy to answer any questions.

CHAIRMAN WELLINGHOFF: Steven and Christopher, thank you very much. I want to thank you and your team for what is really an outstanding presentation, and, I think, a remarkable story, as well.

I've got a couple of questions and comments. First of all, if I take your presentation, in whole, it appears that what you're saying, is, the supply of gas has increased significantly; deliverability has increased significantly, and we're enjoying the benefits of that.

We're enjoying the benefits of lower prices and also less price volatility. Is that a fair summary?

MR. REICH: That's a fair summary.

CHAIRMAN WELLINGHOFF: Okay, and, again, it is a remarkable story. You now talk about 100 years of gas production at current consumption levels, that's available.

I remember, in 1975, when I was at the Public Utilities Commission of Nevada, they were talking about we only have 15 years of gas left, so it's quite a story, to see that we have at least 100 years left.

Could you explain for me -- you made one comment that I was not familiar with, this particular effect, the economics of -- on page 4 of the presentation, the economics of shutting in shale production, is less penal than that of conventional wells or coalbed methane; could you explain why that is?

MR. REICH: Yes, certainly. The difference is that, traditionally, with coalbed methane, there is a significant de-watering effect that has -- that creates a problem that, if you shut in coalbed methane for any significant period of time, you have to re-de-water the well when you start it over again.

By doing that, you are facing the problem of, if you've already reduced the major amount of gas from that coalbed methane well, because the production declines are fairly steep off coalbed methane, you risk not -- the well becoming uneconomic.

On the other hand, with shale production, what shale producers have been finding, is that if you shut in the shale, actually, you benefit from the fact that you're building up pressure in the well, and while there may be some issues with restarting the well, you actually gained some additional -- you haven't lost the production or you haven't lost the production from the shale well.

In conventional resources, generally what has happened, is, when you shut in the well, you don't get a major impact in terms of additional pressure, so the production remains about the same.

So, if you don't produce gas tomorrow, the gas that isn't produced tomorrow, is gas that you'll produce one additional day down the road.

CHAIRMAN WELLINGHOFF: Right.

MR. REICH: With shale wells, the gas that you don't produce tomorrow, you'll produce some of that the next day, because the pressure has increased, so you will have increased the amount of gas coming out when you turn the well back on.

CHAIRMAN WELLINGHOFF: That's very interesting, thank you.

And your discussion about the Eastern and Western gas markets being coupled -- and I assume that's because we have more deliverability across the country, with more pipelines?

MR. REICH: Correct, correct.

CHAIRMAN WELLINGHOFF: Think what we could do with more transmission lines; we could --

(Laughter.)

CHAIRMAN WELLINGHOFF: We could do the same thing with electricity, which would be a wonderful thing, as well.

And, going to electricity, I was very interested in your statement that the MISO Market Monitors were indicating the increased availability of wind power as a key factor in the decline of prices in MISO. That's a very interesting comment, I think, that we all ought to note, that wind prices are actually driving -- wind is driving prices down in MISO. I thought that was fascinating.

Well, thank you very much. Colleagues, any questions for our team? Suedeen?

COMMISSIONER KELLY: I have a few, thanks.

Thank you, Steve and Chris. Do you have a sense of what percentage of gas the LDCs have already purchased at spring and summer prices, for winter?

MR. ELLSWORTH: We've just seen anecdotal information for some of the Northeast utilities, and looks maybe around -- they've hedged -- well, they're saying they've hedged maybe round about maybe 60 percent of their expected consumption, going into the winter.

Now, when I say "hedged," that doesn't necessarily mean on the futures market, but also they're calling "hedged," gas they have in storage.

COMMISSIONER KELLY: So it would be $3.45 per MmBtu, average price of gas put into storage, that will be a substantial chunk of the gas that's actually delivered and consumed?

MR. ELLSWORTH: Yes, that's correct.

COMMISSIONER KELLY: Then, could I ask you to drill down a little bit more on LNG? Are you seeing that there is -- that the import of LNG, is different, depending on the region?

For example, how about the Canadian, Canaport facility, is that importing yet, do you know? Or maybe Jeff knows.

MR. ELLSWORTH: The Canadian Canaport terminal has probably been one of the best performing terminals in North America. It's been consistently getting a cargo roughly twice a month since it opened. That's about six Bcf a month that it's been receiving, and it's been sending out that gas into the New England market.

COMMISSIONER KELLY: Does that mean that that gas is coming in at a market price that is enabling it to go into the New England market?

MR. ELLSWORTH: Yeah, yes, that's correct. Most of our supplies come from Trinidad.

MR. REICH: And that's an important point. Getting beyond just the long-term contract gas that we're getting in the LNG facilities, LNG is no different than the domestically-produced supplies and the Canadian supplies delivered to the market.

And so gas that is delivered to the Northeast, New England through the Canaport facility, can compete on prices in that area, that are somewhat higher, although, with the lower base differentials, not as much higher in the past as gas delivered into the Gulf Coast.

COMMISSIONER KELLY: And that would include the Everett facility, too, in Boston?

MR. REICH: Correct.

MR. ELLSWORTH: Yeah, that's correct, and also Elba Island gets LNG under a long-term contract.

COMMISSIONER KELLY: And are these prices competitive, because they're from the Trinidad-Tobago market, as opposed to the Transatlantic or the Pacific Basin market, or are they competitive, because they've negotiated long-term contracts at a different point in time?

MR. ELLSWORTH: A lot of it is competitive, because they have long-term contracts, particularly into Elba Island and Everett, and that isn't necessarily coming from Trinidad; it is coming from North Africa and West Africa and places like that, and some of it is coming in from Norway.

But it can still come in at a profit, given current prices. Now, that's not to say they couldn't get a higher price elsewhere, but particularly in Elba Island and Everett, they're under contract to bring that LNG in.

COMMISSIONER KELLY: And that's a different pricing structure than exists, say, with the terminals on the Gulf?

MR. ELLSWORTH: Well, they have it under kind of a long-term contract to receive it there. In the Gulf, they don't -- a lot of those LNG terminals don't have supply lined up like Everett and Elba do, or even Canaport.

COMMISSIONER KELLY: Thank you. Then I just have a couple of questions regarding shale gas production.

Are you seeing shale gas production occur yet in Appalachia?

MR. ELLSWORTH: Yes, we're seeing some in Marsalas. I don't have the numbers on me, but we're certainly seeing that, and that's a big growth area, is the Marsalas in Appalachia.

COMMISSIONER KELLY: And are we seeing any applications -- maybe this is more of a question for Jeff -- are we seeing any applications for infrastructure, new infrastructure, connected with Marsalas Shale development, at this point?

MR. WRIGHT: You're right, spot-on there. We are -- I would say that Texas Eastern's Northern Bridge Project, which recently went into service, is transporting some Marsalas Shale gas, but we are seeing more coming on file, and the potential is kind of like, you know, potential tsunami of applications to move, not only shale gas, but also that REX East gas with markets in the Mid-Atlantic and Northeast.

COMMISSIONER KELLY: In the Mid-Atlantic and

Northeast?

MR. WRIGHT: Yes.

COMMISSIONER KELLY: So, what do you anticipate happening to -- or do you anticipate that production having an impact on price in the Mid-Atlantic and Northeast? Do you think you're going to see different -- a different kind of decoupling of price from the East to the West, because of the Marsalas, or are they going to be receiving a sort of national market price.

MR. REICH: Off the top of my head, I my initial guess would be that the producers of the Marsalas Shale will be price-takers and they'll be receiving the national market price. Increased supply, though, anywhere then will affect the price, generally, everywhere.

COMMISSIONER KELLY: But it sounds to me that this is a good development for the consumers in New England, that, for the first time, they're closer -- for the first time in a long time, they're closer to a domestic source of gas supply. Is that correct or not?

MR. WRIGHT: Well, I think they've always had a domestic source, in the sense it came from the Gulf. They'll have increased opportunities at a closer, say, less of a transportation rate, to get it to market, and maybe I'll also throw in that there's shale gas that's from the Southeast that's finding a home in storage, a lot, but they are going to need to find an eventual market, and I think you might even see more of an increase in supply to the Northeast and Mid-Atlantic regions, from the Southeast shales, as well as the Marsalas developing.

COMMISSIONER KELLY: Thank you.

CHAIRMAN WELLINGHOFF: Thank you, Suedeen. Phil?

COMMISSIONER MOELLER: Thank you, Mr. Chairman. I have just one question.

You've kind of alluded to it, Steve, but to what extent are you concerned about conventional wells being shut in, given the lower prices of the past year?

MR. ELLSWORTH: I think -- and Steve did allude to this in terms of, I think, shale gas being less penal than other wells -- I think, certainly, conventional gas have been shut in, and perhaps -- and that is because a lot of gas wells were drilled when prices -- last year, when prices were $12 or $13 a million Btu, and they were low-yield wells and those are the -- and those low-yield wells are the wells that account for the fall in drilling that we've seen before in the rig count as people stopped drilling those types of gas wells.

So I think, certainly, some of those will likely be shut in, because they're just not economic under current gas prices.

COMMISSIONER MOELLER: And I'm sensing you're not too concerned, given the dramatic upswing in production from shale resources.

MR. ELLSWORTH: That's right, because, as I think Steve said in the presentation, there's likely some decline going on in those high-yield wells, but that's been more than offset by the growth in the shale gas.

COMMISSIONER MOELLER: Thank you.

MR. ELLSWORTH: And cheaper conventional wells.

COMMISSIONER MOELLER: I guess I'd take a couple of messages away from the excellent report of good news from the consumers' perspective. The first is that these are markets, and we've seen them go up and we've seen them go down, and we, as a nation, as consumers, are benefitting from that over the next period to which they stay low, but there will be a time when they go up again, and we should be ready for that.

But if we put in the adequate infrastructure, through pipelines and storage and other opportunities, hopefully we will moderate those price swings that give the right incentives to producers to continue to produce and consumers to enjoy stable and, hopefully, affordable prices.

The second, I guess, lesson I'd take from this, is that as policymakers, whether we're regulators or legislators, or in other aspects of the industry, we have to be careful, because we couldn't have imagined this bountiful shale production, even a few years ago, and, yet it has completely changed, not only the domestic market, but, arguably, it's had effects on the international market, as well.

So we must be careful not to overly prescribe the future when we are making plans for it.

Mr. Chairman?

CHAIRMAN WELLINGHOFF: Thank you, Phil. Marc?

COMMISSIONER SPITZER: Thank you, Mr. Chairman. You know, this is clearly good news for U.S. consumers in this report, and, I think, vindication of the policies that FERC has undertaken, and, frankly, authorized by Congress, going back a long number of years.

The Chairman referred to the sort of dire circumstances of the 1970s, regarding natural gas. You had the Fuel Use Act, and, even as recent as 2002, the National Petroleum Council's view of gas production in the United States, was quite dire and somber and it was of great concern to federal and state regulators.

But if you look at what has transpired, now we have gas distribution companies across the country filing with state commissions, to reduce rates, as a consequence of the markets operating.

And the shale production was a consequence of the market signals that were sent, and you had technological innovation of the production of shale gas, horizontal drilling, and the probability rate for new wells, has reached the 90-percent figure, and this production is maintained, even in the face of declining prices, is a testament to the innovation.

You also have infrastructure, as my colleagues have all noted, and that didn't happen by accident; it happened by virtue of the FERC's regulatory support for infrastructure, consisting of pipe capacity, storage, and LNG terminals, so we hedged our bets.

It's also a hedge against supply disruptions such as the hurricanes that caused price spikes back in 2005. We now have a much broader base of production, storage, and transportation, and this was all in the face, in 2008, of very difficult financial markets, where a number of sectors of the U.S. economy had difficulty accessing capital.

I think that's a testament to the innovation of the sector, suppliers, through the distribution companies, and including the intermediate pipeline, all stages of the supply chain acted in concert and with the regulatory support of this Commission.

And as the Chairman noted, there is a potential analogy to electricity, and I think that is a helpful analogy to try and achieve the same degree of innovation, supply, and, ultimately, price reductions to consumers, from the gas sector to the electric sector.

I think, as Commission Kelly -- I thank you for your questions on LNG, which, again, are a hedge against potential supply disruptions that -- back in Arizona, we had $15 gas when Katrina hit, but the potential for LNG is a great hedge on potential supply disruptions, so I think this is a success story.

It's a potential analogy, and, most importantly, it's good news for U.S. energy consumers, at a time when, in a challenging economy, we're desperately looking for good news.

So I thank you and thank the Chairman for calling this item.

CHAIRMAN WELLINGHOFF: Thank you, Commissioner Spitzer. Again, I want to thank the team for its excellent presentation. Thank you all.

The next presentation, please?

SECRETARY BOSE: The next presentation this morning is E-1, concerning Entergy Services, Incorporated, in Docket Number ER09-636-000. There will be a presentation by Amy Demetry from the Office of Energy Market Regulation. She is accompanied by John Cohen from the Office of the General Counsel.

MS. DEMETRY: Good morning, Mr. Chairman and Commissioners. Item E-1 before you today, is a Draft Order that accepts Entergy's Notice of Cancellation, allowing two of its operating companies, Entergy Arkansas and Entergy Mississippi, to withdraw from the Entergy System Agreement, upon the expiration of the 96-month notice period provided for in the System Agreement.

The System Agreement is a Commission-accepted rate schedule that governs, among other things, the allocation of certain costs associated with the integrated operations of the Entergy System.

In December 2005, Entergy Arkansas notified the other operating companies of its intent to withdraw from the System Agreement, effective 96 months after that date, or December, 2013. Similarly, in November 2007, Entergy Mississippi gave its notice, with its withdrawal effective 96 months after that date, or November 2015.

Both Entergy Arkansas and Entergy Mississippi, have given the proper notice of withdrawal under the System Agreement. The Draft Order finds that other than the 96-month notice requirement, the System Agreement does not contain any restrictions on an operating company's ability to withdraw, nor does it place any further conditions on withdrawal or continuing obligations after withdrawal, on the departing operating companies.

The Draft Order notes that Entergy has an obligation to ensure that any future operating arrangements for both the remaining and departing operating companies, are just and reasonable.

With the acceptance of these Notices of Cancellation regarding the System Agreement, the Draft Order states that the Commission expects Entergy and all interested parties, to move forward and develop the details of any successor arrangements.

The Draft Order encourages Entergy to make its Section 205 filing for the post-2013 arrangements, as soon as possible, in order for the Commission to review any replacement arrangements, prior to the withdrawal.

Thank you, and we are ready to answer any questions.

CHAIRMAN WELLINGHOFF: Thank you, Amy and John. I want to thank your team for all the hard work on this Order.

Our action today will allow Entergy and any interested party, to engage in meaningful negotiations for successor arrangements to the System Agreement, to be in effect prior to the withdrawal of Entergy Arkansas and Entergy Mississippi.

This Order resolves a key Entergy System issue that will inform the cost/benefit analysis evaluating the future of the Entergy Operating Companies, once Entergy's current Independent Coordinator of Transmission Agreement with SPP, expires.

I would also like to note that Entergy's retail regulators are in the process of forming a regional state committee to provide input on issues important to the region.

This group will be instrumental in evaluating issues involving the future operations of the Entergy System, including such issues as evaluating RTO membership and/or enhanced ITC arrangements. Such decisions will be inextricably linked to discussions surrounding the successor arrangement.

Finally, this Order gives the parties guidance, so that the operating companies can engage in long-term generation planning and procurement decisions, with more certainty.

For these reasons, I support this Order. Colleagues, comments? Phil?

COMMISSIONER MOELLER: Thank you, Amy. Can you explain a little bit, why consumers are protected by the just-and-reasonable standard?

MR. COHEN: I'll take this. When Entergy files its successor arrangements, they'll be noticed and consumers will have the opportunity to intervene and file a protest, where they can describe any concerns that they have.

Then when the Commission reviews the filing, it will take those concerns into consideration, all of the other facts and impacts on non-parties, in determining whether to accept the agreements.

COMMISSIONER MOELLER: Well, given the complexity of this situation and the fact that we'll decide whether the new arrangement is just and reasonable, it seems to make sense that there will be some intensive settlement discussions that would be involved here.

Is that what you anticipate?

MS. DEMETRY: We anticipate that now that the threshold question has been answered, that there are no longer no continuing obligations, we feel that this will be a good jump-start for the parties to get together and move forward on whatever the future is going to hold four years from now.

COMMISSIONER MOELLER: Very good, thank you for your answers. I look forward to supporting the Order.

CHAIRMAN WELLINGHOFF: Thank you, Phil.

COMMISSIONER SPITZER: Mr. Chairman, I just would like to add that this is a complicated case with a long history, and at heart, we had a contract issue, and I appreciate the thoroughness of the Order, the scholarliness of the Order, in analyzing the contract issue and yet reflecting on the voices of the protesting parties and dealing with their issues at the same time, adhering to the rule of law, and so I think this is the correct result in this case.

CHAIRMAN WELLINGHOFF: Suedeen? No? Thank you again. Madam Secretary, if we can vote on the Order?

SECRETARY BOSE: Yes, the vote begins with Commissioner Moeller.

COMMISSIONER MOELLER: Aye.

SECRETARY BOSE: Commissioner Spitzer?

COMMISSIONER SPITZER: Aye.

SECRETARY BOSE: Commissioner Kelly?

COMMISSIONER KELLY: Aye.

SECRETARY BOSE: Chairman Wellinghoff?

CHAIRMAN WELLINGHOFF: Aye.

Let's have the next presentation, please.

SECRETARY BOSE: The next Item this morning, is for G-3, G-4, and G-5, together. They are concerning Docket Numbers RP10-147-000, RP10-148-000, and RP10-149-000.

The presentation will be by Kerry Noone from the Office of Energy Market Regulation, and he is accompanied by Richard Howe, from the Office of the General Counsel.

CHAIRMAN WELLINGHOFF: Madam Secretary, before we start our presentation, I'd like to recognize one of our colleagues, Sherman Elliott, who is in the audience, from Illinois, Commissioner Elliott.

I also would like to send out congratulations to

David Cohen, from Vermont, who is now the new President of NARUC, and, of course, Fred Butler was the former President. We all just came back from the NARUC convention.

Kerry, go ahead.

MR. NOONE: Good morning, Mr. Chairman Wellinghoff and Commissioners. My name is Kerry Noone, and I'm with the Office of Energy Market Regulation. Joining me today, is Richard Howe with the Office of General Counsel.

Other team members that worked on these Orders, are: Anna Fernandez of the General Counsel's Office, Michael Strzelecki, and Nicholas Balustrary of the Office of Energy Markets and Regulation, and William Murrell from the Office of Energy Policy and Innovation.

It's the Commission's responsibility under the Natural Gas Act, to ensure that rates charged by pipeline companies, are just and reasonable, including taking actions, sua sponte, under Section 5, to investigate existing rates and modify them, if they are found to be unjust and unreasonable.

Commission Staff conducted a review of the revenues and expenses of various pipelines, to determine whether they are charging just and reasonable rates.

As part of the review, Staff analyzed cost and revenue data that pipelines provided in their Form 2s for the year 2008. Staff's review also considered other factors, including whether a pipeline's currently-effective rates, are the result of a settlement that either has a rate moratorium in effect, or requires the pipeline to file a general Section 4 rate case in the near future.

Additionally, the Staff looked at the level of infrastructure investments that a pipeline placed in service in 2008, and the level of additional estimated infrastructure investments that will be made.

Since the 2008 Form 2 data may not fully reflect the effect of such investments on a pipeline's rates, based on our review, in the Orders identified in G-4 through G-5, the Commission would initiate investigations pursuant to Section 5 of the Natural Gas Act, to determine whether the rates charged by three specific pipeline companies, are just and reasonable.

The three pipelines are: Natural Gas Pipeline Company of America, Northern Natural Gas Company, and Great Lakes Gas Transmission Limited Partnership.

In determining that each of these pipelines may be over-recovering their cost of service, Staff first calculated a cost of service for each pipeline, using Form 2 cost-of-service data for 2008. Staff then determined what that pipeline's revenues were for 2008.

Staff used this information to estimate an earned return on equity for each pipeline for the calendar year 2008.

Our analysis indicates that Natural Gas Pipeline Company of America, earned an estimated return on equity of 24.5 percent and that is over-recovering on the fuel gas used on its system. In the case of Northern Natural Gas Company, it earned an estimated return on equity of 24.36 percent, and Great Lakes Gas Transmission Limited Partnership, earned an estimated return on equity of 20.83 percent.

These returns led Staff to believe that these three pipelines are over-recovering their cost of service and may be charging rates that are no longer just and reasonable.

In addition, none of these pipelines have existing settlements with their customers, that place a moratorium on existing rates or require them to file a new Section 4 rate case in the future.

Accordingly, in these Orders, the Commission would initiate an investigation pursuant to Section 5 of the Natural Gas Act, into the rates charged, establish a hearing, and require the pipeline to file a cost and revenue study within 45 days of the issuance date of that pipeline's Order.

In addition, the Orders would establish a deadline for the Administrative Law Judges to issue an Initial Decision. Thank you. We are happy to answer any questions you may have.

CHAIRMAN WELLINGHOFF: Thank you, Kerry and Richard. Again, I want to thank your team for the fine analysis that led to these Orders, and the Orders themselves. We appreciate it very much.

Our Mission Statement is straightforward: To assist consumers in obtaining reliable, efficient, and sustainable energy services at a reasonable cost.

In March of 2008, the Commission revised the Form 2 required of interstate pipelines, to better reflect the current market and cost information needed for regulatory oversight of rates and terms of service.

The changes were intended to better facilitate the ability to make a meaningful assessment of the pipelines' cost of service and current rates. In April of 2009, the pipelines filed revised Form 2s for this purpose.

We have reviewed those filings, and analysis and consideration of the Form 2 data, was an important starting point for any Commission action under Section 5.

However, the review of the Form 2 data, is not the full story, and must be considered in conjunction with other factors such as costs, the risk of litigation, the level of infrastructure investments, and the existence of a rate moratorium or comeback provisions.

After careful consideration of this information, it appears that Natural Gas Pipeline of America, Northern Natural Gas, and Great Lakes, may be substantially over-recovering their cost of service.

As a result, we're instituting Section 5 proceedings to determine whether the rates charged by these pipelines, are, in fact, just and reasonable.

Because the Commission lacks refund authority under Section 5, it's appropriate to expedite the resolution of these proceedings, therefore, we direct that the initial decisions be issued within 47 weeks of the designation of a Presiding Judge, consistent with the ALJ's Track II timeframe for hearings.

The expedited schedule is not intended to foreclose the pipeline, its customers, and Commission Litigation Staff, from reaching a reasonable settlement. It is for these reasons that I support these Orders.

Colleagues, comments? Discussion?

COMMISSIONER SPITZER: Thank you, Mr. Chairman. I agree with these Orders, although I note that these proceedings under Section 5 of the Natural Gas Act, are not lightly undertaken. I'll be posting a concurring statement, reflecting some of my views, but let me just say that, as is often the case, the obligation of government, is to balance competing interests, and we will do so in this case, based on the Natural Gas Act, balancing the competing interests of the various parties.

I think it is fair to say that if you look at the history of Order 636, the good news that we had earlier this morning, would not have been forthcoming, and that Order 636 has survived the test of time and ushered in a new era of competition and markets and infrastructure in Natural Gas.

However, there is the overriding requirement, as has been noted, to protect consumers, and that the rates charged by the pipelines cannot exceed just and reasonable rates, and that is the basis for these proceedings.

I certainly agree with the Chairman, that the Form 2 overhaul, gave rise to information necessary to protect consumers, and that's to our benefit.

The only points I would further make, are to understand these proceedings in the context of the entire industry; that, ultimately, the judicial process will make a determination. This is not meant to deter investment in new pipeline capacity, but merely to ensure just and reasonable rates, and there is, in the cost of service formula, the nexus between costs and rates that are reflected in the Form 2.

Then, finally, I do -- although we're not invoking Commission Rule 603 in terms of settlement discussions, it goes without saying that the parties are free, even within the very limited timeframe, to engage in settlement discussions that may also reach a just and reasonable result, without unnecessary litigation expense or uncertainty.

And that is certainly an option, as the supporter of ADR -- and FERC has long supported ADR -- that is available to the parties, including the Staff, at their request.

Thank you, Mr. Chairman.

CHAIRMAN WELLINGHOFF: Thank you, Commissioner Spitzer. Commissioner Moeller?

COMMISSIONER MOELLER: Thank you, Mr. Chairman. I have a couple of questions.

Kerry, you mentioned in your presentation, that you thoroughly reviewed the Pipelines' revenues and expenses, to determine the justness and reasonableness of the rates. Can you reiterate, please, a little bit on the factors that you considered?

MR. NOONE: Well, we looked at the revenues and the expenses and generated the cost of service that you normally would in a rate proceeding.

The information showed that for these three pipelines, the rates of return were well above what the Commission has authorized, historically. These pipes are not under a moratorium, nor do they have any requirement to file to change their existing rates in the future.

We also looked at some pipes that, if they had significant investment infrastructure made, those, we, quite frankly, couldn't quantify some of the impact on the cost of service, so we did not make any further recommendation as far as looking at the rates of those specific pipelines.

COMMISSIONER MOELLER: I guess I have a couple more questions. I'm really looking for affirmation from either you or Richard.

This was a thoroughly researched recommendation, from everything I'm picking up, and I want to make sure that I'm hearing that from you, as well.

MR. NOONE: I would say, yes, I'm comfortable with the recommendations.

COMMISSIONER MOELLER: And the thoroughness of it?

MR. NOONE: Yes.

COMMISSIONER MOELLER: Okay. You are aware of the need, kind of as Commissioner Spitzer alluded to, that we have to balance things here. We need to balance a pipeline's ability to attract capital, and yet balance that with customers getting a just and reasonable rate, and it seems clear to me that, at least by defining the timeframe in which a decision is being made, that we will be adding to that certainty.

And I guess I want you affirmation of that, too.

MR. HOWE: We certainly took that concern into account in making these recommendations. I mean, that was one reason we looked at, is there a rate moratorium in effect?

If the customers and the pipeline had recently settled rates, we wouldn't disturb that. And I think it's also significant to note that this is an investigation into the pipeline's recourse rates.

Many recent expansions have been done, pursuant to the Negotiated Rate Program. Negotiated rates are a way for pipelines and the shippers participating in an expansion, to get rate certainty as to what rates will be charged over time for service on the expansion.

And this investigation would not affect negotiated rates.

COMMISSIONER MOELLER: Thank you, thank you both. I have confidence in the Staff's recommendation and I'll support the Orders.

It's not a decision I take lightly. I'm mindful that, in terms of the research we did, the Commission has not had a Section 5 hearing, sua sponte, to reduce rates, since, we believe, 1989, several years prior to 636.

That said, our action today is significant, and the pipelines and their customers, should have every confidence, knowing that our Staff experts will be prepared to move forward with these proceedings in the most professional manner. Thank you, Mr. Chairman.

CHAIRMAN WELLINGHOFF: Thank you, Commissioner Moeller. Commissioner Kelly?

COMMISSIONER KELLY: I'd like to thank Staff for the work that they've done over many months.

The recently-updated FERC Form 2 has provided a significant amount of additional information to us and to you, about pipelines, and you've reviewed that information, and that's what we expect to have happen.

We don't impose reporting requirements on regulated entities, just for the sake of gathering more data, but this action that you recommend today, shows that we actually reviewed the data that we get in response to our requests for it.

And I also want to thank you for the very balanced approach. I call it a four-step process that you took, in recommending these cases to us, and I appreciate, Richard, that you emphasized that this has only to do with recourse rates, not with negotiated rates.

You started with the universe of pipelines and calculated or estimated what the rate of returns were to be, or likely to be, and from that information, you saw that there were a number, a significant number of pipelines that were earning or appeared to be earning very high rates of return on equity.

But then you went through additional careful steps: You excluded from your recommendations to us, any pipeline that was earning rates under a settlement or the settlement provided for a moratorium on those rates, or in the situations where pipelines are going to be coming under Section 4 in the near future, those pipelines aren't in this recommendation.

And you also excluded from your recommendations, any pipelines that are adding infrastructure investments in 2008, that the current information might not capture, and not only did you not stop there, you went to look at estimated infrastructure investments that will be made.

So, I just want to commend you for the very careful and thoughtful analysis that you went through. I think that in these three cases, there is concern that there's substantial over-recovery, and I think that the Commission is doing the right thing by looking into it.

It doesn't mean that that's what the ultimate finding will be, but I think that this is an important part of our job, and I support the Orders.

CHAIRMAN WELLINGHOFF: Thank you, Commissioner Kelly, and thank you, team, for your work on this.

Madam Secretary, I think we're ready to vote.

SECRETARY BOSE: We'll take a vote on these items together, beginning with Commissioner Moeller.

COMMISSIONER MOELLER: Aye.

SECRETARY BOSE: Commissioner Spitzer?

COMMISSIONER SPITZER: Aye, noting my concurring statements.

SECRETARY BOSE: Commissioner Kelly?

COMMISSIONER KELLY: Aye.

SECRETARY BOSE: And Chairman Wellinghoff?

CHAIRMAN WELLINGHOFF: Aye.

If there is nothing else to come before the Commission, we're adjourned.

(Whereupon, at 11:17 a.m., the Open Meeting was adjourned.)