Before the

FEDERAL ENERGY REGULATORY COMMISSION

987th Commission Meeting

Thursday, November 15, 2012

Hearing room 2C

888 First Street, N.E.

Washington, D.C.20426

The Commission met, pursuant to notice, at 10:03 a.m., when were present:

COMMISSIONERS:

JON WELLINGHOFF, Chairman

PHILIP MOELLER, Commissioner

JOHN NORRIS, Commissioner

CHERYL A. LaFLEUR, Commissioner

TONY CLARK, Commissioner

FERC STAFF:

KIMBERLY D. BOSE, Secretary

MICHAEL BARDEE, Director, OER

DAVID MORENOFF, Acting General Counsel

JIM PEDERSON, Chief of Staff

JEFF WRIGHT, Director, OEP

ANN COCHRANE, OEMR

JOSEPH McCLELLAND, Director, OEIS

FERC STAFF (Continued):

JAMIE SIMLER, Director, OEPI

NORMAN BAY, Director, OE

PRESENTERS:

A-3	RYAN JETT, Office of Enforcement
	ERIC PRIMOSCH, Office of Enforcement
	CHRISTOPHER ELLSWORTH, Office of Enforcement
	STEVE MICHALS, Office of Enforcement
A-4	GREGORY CAMPBELL, Office of Enforcement
	JUSTIN SHELLAWAY, OE
	STEPHEN WILLIAMS, OE
	JAMIE MARCOS, OE
	SUSAN POLLONAIS, OE
M-1	PAMELA SILVERSTEIN, OEPI
	ANNA FERNANDEZ, OGC
	ADAM BEDNARCZYK
E-3	DAVID BORDEN, OEPI
	ANDY WEINSTEIN, OGC

COURT REPORTER: Jane W. Beach, Ace-Federal Reporters, Inc.

P R O C E E D I N G S

(9:03 a.m.)

CHAIRMAN WELLINGHOFF: All right, if we could come to order, please. Good morning. This is the time and 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 join us for the Pledge of Allegiance.

(Pledge of Allegiance recited.)

CHAIRMAN WELLINGHOFF: Well, since our October meeting we have issued 64 Notational Orders, which is up from 60 the previous month.

Do we have any announcements this morning? Commissioner Moeller, you've got one, I think?

COMMISSIONER MOELLER: Thank you. I want to let everyone know that for the last month, or few weeks, we've had some help in our office from Kristy DeVoss. Kristy has been doing an outstanding job. She came from OMR Central. She's also a native of my home State of Washington State, and we're very happy that we were able to use her talents for awhile.

CHAIRMAN WELLINGHOFF: You've got a new Governor over there in Washington, too.

COMMISSIONER MOELLER: We do have a new Governor,

yes. I won't comment on that, though.

(Laughter.)

CHAIRMAN WELLINGHOFF: I know Jay. He's a friend of mine.

COMMISSIONER MOELLER: I know Jay, too, yes. I've known him a long time.

(Laughter.)

CHAIRMAN WELLINGHOFF: Commissioner LaFleur?

COMMISSIONER LaFLEUR: Well, similarly, I wanted to thank and recognize Colleen Ferrell, who is standing behind me--I had asked her to do that--who has been on detail in our office for approximately the last month covering for Kurt Longo, who is on paternity leave. Colleen comes from OMR-West, and she's jumped right in and really done an outstanding job. So I guess we have to thank OMR for giving up two of their best to the 11th floor this cycle. Thank you.

CHAIRMAN WELLINGHOFF: Great. Thank you.

Anybody else? Any announcements?

(No response.)

CHAIRMAN WELLINGHOFF: If not, Madam Secretary, I think we're ready on the Consent Agenda.

SECRETARY BOSE: Good morning, Mr. Chairman. Good morning, Commissioners.

Since the issuance of the Sunshine Act Notice on

November 8th, 2012, Items E-2, E-4, E-14, and E-15 have been struck from this morning's agenda. Your Consent Agenda is as follows:

Electric Items: E-1, E-5, E-8, E-9, E-10, and E-12.

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

Hydro Items: H-1 and H-2.

Certificate Items: C-1.

As required by law, Commissioner Clark is not participating in Consent and Discussion Items E-1, E-3, and M-1. We will now take a vote on this morning's Consent Agenda Items beginning with Commissioner Clark.

COMMISSIONER CLARK: Noting my recusal in E-1, I vote aye.

SECRETARY BOSE: Commissioner LaFleur.

COMMISSIONER LaFLEUR: I vote aye.

SECRETARY BOSE: Commissioner Norris.

COMMISSIONER NORRIS: Aye.

SECRETARY BOSE: Commissioner Moeller.

COMMISSIONER MOELLER: Aye.

SECRETARY BOSE: And Chairman Wellinghoff.

CHAIRMAN WELLINGHOFF: I vote aye.

We'll go to our Discussion Items, please, Madam Secretary.

SECRETARY BOSE: The first item for presentation

and discussion this morning will be on Item A-3 concerning the 2013 Winter Assessment. There will be a presentation by Ryan Jett and Eric Primosch from the Office of Enforcement. They are accompanied by Christopher Ellsworth and Steve Michals also from the Office of Enforcement. There will be a PowerPoint presentation for this item.

MR. PRIMOSCH: Good morning, Mr. Chairman, and Commissioners.

CHAIRMAN WELLINGHOFF: Good morning.

(A PowerPoint presentation follows:)

MR. PRIMOSCH: Today we are pleased to present the Office of Enforcement's Winter 2012-2013 Energy Market Assessment. The Winter Assessment is staff's opportunity to look ahead to the coming season and share our thoughts and expectations.

At this point, conditions going into the winter appear favorable. Current natural gas prices and winter forwards are the lowest we have seen in 10 years. The U.S. natural gas market is well supplied, with production at almost 40-year highs and inventories exceeding last year's record.

This should help keep natural gas prices relatively low into the winter, assuming normal winter weather, and also help moderate electric prices. Low natural gas prices for most of 2012 resulted in high usage

of natural gas to generate electricity, and staff expects power burn to remain high into the winter.

High power burn, coupled with high seasonal natural gas demand from residential and commercial customers, could lead to higher than usual winter peak demand. This may in turn cause congestion on some pipelines in the Northeast which could lead to higher than expected prices.

In this year's Winter Assessment we will take a slightly different approach from past formats by expanding our assessment to the New England market, which could see elevated prices if we experience a colder than normal winter or extended cold spells.

(Slide.)

In the last month, the National Weather Service temperature outlook for the coming winter changed dramatically. Previous forecasts indicated there was a high likelihood of above-normal temperatures in the Northeast from Maine to Tennessee, and Northwest to Montana; and normal to below-normal temperatures in the South.

This was typical of an El Nino winter forecast. A key variable in predicting winter weather is the occurrence of an El Nino--a warming of the water in the Pacific Ocean that generally brings wet winter weather to the South and warmer than normal temperatures to the

Northern Tier of the country.

However, over the last month Pacific Ocean water temperatures have cooled considerably, leading National Weather Service forecasters to discount completely the possibility of an El Nino this winter.

One result is the likelihood of colder weather in the Northeast. Another forecaster, Accuweather, calls for a wetter and possibly snowy winter for the Eastern Seaboard based on a weak- to nonexistent El Nino. In fact, the first winter storm hit the Northeast last week bringing cold weather and snow, causing natural gas prices in New England to double to nearly $8/MMBtu. This followed Hurricane Sandy which knocked out power to millions of customers in the Northeast and damaged local distribution gas lines on the New Jersey Shore.

(Slide.)

This slide shows that year-to-date natural gas prices throughout the U.S. are nearly half what they were in 2011. Through the end of October, the Henry Hub natural gas price averaged $2.64/MMBtu, 36 percent lower than last year.

The decline can be attributed to plentiful natural gas supply, high storage levels, and last year's mild winter. Inflation-adjusted natural gas gas prices haven't been this low since the early 1990s when natural gas prices were deregulated.

During much of 2012, regional gas prices traded in a tight range of $2/MMBtu in the Gulf Coast and the Rockies, to $3.50/MMBtu in the Northeast. The highest prices are in New England, New York, and Florida due to growing natural gas demand and pipeline bottlenecks.

The San Onofre nuclear outage in Southern California has resulted in the dispatch of more natural gas-fired generation and has elevated prices in the region. Staff expects regional gas prices to remain in this tight range through the winter, although there could be occasional regional price spikes due to cold weather events or pipeline outages.

(Slide.)

This table shows forward power and gas prices for key regional markets. Regional forward gas prices are the sum of the Henry Hub forward price plus the forward basis. Basis is a measure of regional price differences. Forward prices are a tool for consumers and producers to lock in winter prices to hedge against price volatility. They do not forecast winter spot prices and in general are not a good predictor of actual winter prices.

Based on forward prices from October 1, 2012, a marketer could lock in a price at the Henry Hub for January and February at a 10-year low of $3.77/MMBtu, 10 percent below the forward strip this time last year.

Consumers in the Northeast can lock in much lower natural gas prices than last year. As of October, the winter forward basis was only $2.82/MMBtu in New York, nearly half of last year's values. Record storage and continued growth in Marcellus Shale gas production contributed to this decline. This means that total forward prices in New York declined from $8.96/MMBtu last winter to $6.59/MMBtu for the upcoming winter.

Similarly, forward power prices for the winter are generally lower compared to last year. The Massachusetts Hub is 8 percent below last year's price, while PJM forwards are down 13 percent. The decline in power prices closely resembles the decline in natural gas prices because natural gas is typically the marginal, or the price-setting fuel in these regions.

In contrast, power forwards in the Northwest are 6 percent higher than last year due to lower than normal hydropower conditions and higher natural gas forward prices. In Southern California, the San Onofre Nuclear Power Plant outage has contributed to the rise in forward power prices there.

(Slide.)

This slide shows U.S. natural gas supply, including production, imports, and the amount of natural gas in storage as of November 8th. Overall supply is up almost

3 percent, driven by a 4 percent increase in production.

Most of the growth was in the Northeast which grew by 3.1 Bcf a day, or 63 percent, driven by strong growth in Marcellus Shale gas production. However, the rate of growth in the rest of the country has slowed, and dry natural gas production appears to have leveled off at around 63.5 Bcf a day in 2012--but still the highest production since the early 1970s. Shale gas now accounts for at least 34 percent of total U.S. natural gas production, up from 23 percent in 2010.

Offsetting some of the increase in production, LNG imports are down 53 percent over 2011, while imports from Canada are down about 5 percent. U.S. LNG imports continue to decline as U.S. natural gas prices are well below world gas prices.

For example, natural gas in the U.K. is four times more expensive than the Henry Hub. Imports from Canada are down because Canadian gas is less competitive than new Marcellus gas in the Northeast and other shale and rockies gas in Midwestern markets.

Storage is an important component of winter natural gas supply, and storage levels indicate the ability of the industry to meet peak winter demands. As of November 8th, 2012, U.S. working gas in storage set a new record at 9.92 Tcf. Storage withdrawals can contribute as much as 32

percent of U.S. gas supply on a peak winter day. The highest weekly storage withdrawal ever reported by the EIA is 274 Bcf--an average of 39 Bcf a day--while the highest total U.S. demand seen in a given winter day is 121 Bcf.

(Slide.)

This slide shows the major components of U.S. natural gas demand. Year-to-date natural gas demand is up 2.1 Bcf a day, nearly offsetting the increased supply mentioned earlier. This is a result of a 22 percent increase in natural gas burned by power generators primarily because of low natural gas gas prices.

Residential and commercial demand is down 13 percent due to last year's warm winter. Weather will be a main driver of natural gas demand this winter, and we will see a recovery in residential and commercial natural gas demand if there is a normal winter.

I will now turn to Ryan Jett who will discuss the New England Region.

MR. JETT: As you are aware, FERC recently conducted a series of gas-electric coordination technical conferences, and staff is working on next steps for the Commission to consider.

One of the regions highlighted in the conferences of particular concern was New England. Accordingly, we will focus on this market on the next two slides.

This map highlights New England natural gas supply option and pipeline constraint points. NOAA's current seasonal weather forecast for New England is highly uncertain. In the event of a colder than normal winter, or extended cold spells, New England could experience some tightening of supply.

In particular, New England could see high winter power burn which adds to winter peak demand from the non-power sectors. Combined with the likelihood of lower LNG imports compared to last year and high utilization of pipelines bringing Gulf Coast and Marcellus supply into the region, this could lead to price spikes.

Last winter, LNG imports contributed to 17 percent of total New England natural gas supply, and historically contributed 60 percent during peak winter days. New England has access to three LNG import facilities, two offshore and one in Boston Harbor.

The Neptune and Northeast Gateway Terminals, located offshore Boston, are unlikely to see deliveries this winter because of low natural gas prices. These offshore LNG terminals were specifically put into service to help alleviate problems associated with regional pipeline capacity constraints.

Imports into the third LNG terminal, Everett, in Boston Harbor are down 30 percent year-to-date. However,

Everett's operator expects to see adequate cargoes through the winter because they have long-term supply contracts. This should ensure that the Mystic Power Plant Units 8 and 9 receive enough gas to run throughout the winter, although sendout into the surrounding gas market may be less than previous years.

Another issue facing the region this winter is the steep decline in imports of LNG from the Canaport LNG Terminal, down 49 percent from last year due to low U.S. gas prices compared to Europe and Asia.

Also, production from the Sable Island Offshore Energy Project is down 55 percent from last year. Production at Sable Island has been on the decline for several years, and now supplies only 80 million cubic feet per day on average into New England, compared to 300 million in 2008.

An additional source of supply could be the Deep Panuke Offshore Energy Project if it meets its scheduled in-service date of December 2012. Initially, Deep Panuke is projected to send out 150-200 million cubic feet per day before ramping up to its full capacity of 300 million cubic feet per day. However, Deep Panuke has already missed two scheduled in-service deadlines over the years which introduces some uncertainty to the December in-service date.

In addition, the Northeast is a region with

pronounced dual summer/winter peaks in electricity consumption, with the risk of winter peaks increasing total gas demand. These issues could contribute to increased spot gas prices in the region in the event of a colder than normal winter or extended cold spells.

On the next slide we will discuss the impact pipeline constraints could have in New England on supply and spot natural gas prices.

(Slide.)

High utilization of pipelines into New England during winter can cause price volatility at regional trading hubs. Historically when pipeline gas flows spike due to cold weather, the result has been that regional spot prices spike between $12 and $14 per MMBtu over the Henry Hub.

Constraints can occur on both the Tennessee Gas Pipeline near Boston and along the Algonquin Transmission System. As an example, the graphic highlights flows versus peak design capacity through the Cromwell Compressor Station, one of the constraints along Algonquin located in central Connecticut.

The red line is the peak-day design capacity. The blue line represents the daily natural gas flows. The yellow line is the trend line showing that average flows have increased since late 2009. From the graphic you can see that the level of natural gas flows has grown over the

past two years, and last year--despite the very warm winter--gas flows frequently bumped up against capacity.

Constraints like this could result in price spikes for the system, given that we have seen a 7 percent growth in demand from power generators in 2012. If we have a cold winter in New England, residential and commercial demand will increase along with power demand potentially causing instances where there is a sustained flow above peak design capacity.

This may result in regional price volatility and tightness in supply, with a possibility of interruption to pipeline customers with interruptible service.

The most vulnerable pipeline customers are power plants with interruptible contracts. However, many of these plants could switch to backup fuel supplies if needed. All indications are that LDCs have adequate firm transportation capacity to meet their expected needs. Also, though imports of Canadian gas from western Canada are down substantially this year, they could ramp up if needed.

New England could experience some tightness and high prices in the event of extended cold periods. However, at the Gas-Electric Coordination Technical Conferences, pipelines and their customers stated that they were aware of the challenges facing the market and have begun to take some steps to improve reliability. For example, stocking up on

backup fuel and opening up communications between pipelines and their power customers.

This concludes the Winter 2012-2013 Energy Market Assessment. We are happy to answer any questions.

CHAIRMAN WELLINGHOFF: Thank you, Ryan and Eric, and the rest of the team. I appreciate your thorough work in the presentation of the Winter Assessment.

I've got just a couple of questions. One is, for some reason I wasn't aware of or hadn't heard of the Deep Panuke Offshore Energy Project. What is that?

MR. JETT: That is a new supply source located near Sable Island in Canada, and it's owned by Encana. So it's an offshore energy terminal, essentially.

CHAIRMAN WELLINGHOFF: It brings in LNG as a terminal?

MR. JETT: No, it's actually a--like--it's an example of traditional supply source, not LNG.

CHAIRMAN WELLINGHOFF: Oh, okay. Interesting.

And so, given the issues in New England with the constraints and so forth, I guess the simple question is: What is the solution? What is the best solution, I guess?

MR. ELLSWORTH: The best solution would probably be more pipelines into the area. But there are issues I think that may be handled on the next panel on gas-electric coordination that will maybe address some of those issues

with building pipelines up there.

We have talked with the Algonquin Pipeline. They have said that they are ready to build additional capacity into that area, but they really haven't been able to get customers lined up to take that capacity. So I think there's a number of perhaps market issues that need to be resolved to get this needed capacity into that market.

But the other issue is, more LNG would help, also, although prices are not incentivizing that right now.

CHAIRMAN WELLINGHOFF: So it's not an overall long-term capacity issue; it seems to be a peak-capacity issue, because they can't get enough customers over a sustained period to build--to support the capital to build a new pipeline?

MR. ELLSWORTH: Yes, that's correct. Because the new load is primarily coming from power generators, and traditionally they've been more peaking. Although they are now, you know, showing greater peaks in winter and in summer. So it's kind of becoming more, a little bit more baseloaded into the system. But essentially they have peaking requirements rather than long-term baseload requirements.

CHAIRMAN WELLINGHOFF: Okay. Other questions? Phil?

COMMISSIONER MOELLER: Thanks for the

presentation. I'm glad we do this a couple of times a year. And as we discuss the winter outlook, I want to jump back to what we talked about roughly six months ago going into the summer. And the conclusions that we drew from the summer outlook were that we really had concerns about three areas. We had concerns about Boston because of some unique characteristics of LNG coming into that market and some supply disruptions.

We had concerns about Texas, given what had happened the summer before. And we had concerns about Southern California with the outage of the SONGS unit. And it strikes me that Boston had a pretty tough time in late June when the storm came in. They made it, but they had some real issues on June 29th. And that feeds into our gas-electric discussion next.

MR. ELLSWORTH: Right.

COMMISSIONER MOELLER: Texas came through the summer okay, but they are now having serious discussions about resource adequacy in that market, a market that we don't regulate but one we have to be cognizant of.

And Southern California made it through kind of by the skin of their teeth, thanks to the early energizing Sunlink Power link, the major transmission line that came on ahead of schedule; but basically probably prevented a lot of blackouts, at least in the San Diego area. And of course

that issue ties into one of the other things we present today.

So I am just curious if you have any reactions on the context of preparing the winter assessment as to how we made it through the summer?

MR. MICHALS: Mr. Commissioner, circumstances going into this winter are similar to what we said for the summer assessment. ISO New England on the electric side in its winter assessment that it will have no issues with meeting the 2012-13 peak winter demand operating reserve requirements. However, in an extreme weather condition, or a contingency event, the regional natural gas grid could quickly diminish projected reserve margins on the electricity side.

Under normal conditions, staff believes that the load should be slightly reduced, or roughly flat from last winter. However, in an extreme weather conditions or a major contingency, if those were to occur, ISO New England has plans and procedures in place to afford the grid operator with some flexibility to address those issues. And that includes close communication with regional gas pipelines as required under Order 698. They have the ability to switch to oil and dual-fuel plants, and curtail exports and call on real-time demand/response and real-time emergency generation. And if needed, they can implement

voltage reductions.

In ERCOT, the region is expecting adequate supplies for this winter with reserves near 30 percent. Southern California, it's not a winter-peaking area typically with the milder weather in the winter. They should be fine for this winter there.

COMMISSIONER MOELLER: Any other observations on how we made it through the summer? Chris?

MR. ELLSWORTH: From a gas perspective, there was no particular issue, you know, for the summer.

COMMISSIONER MOELLER: Well hopefully we will have a similarly uneventful winter as we skated through that summer in better shape than I think maybe some of us were fearing. So thank you.

CHAIRMAN WELLINGHOFF: Thank you, Phil. John?

COMMISSIONER NORRIS: Thanks for your work on this. It is helpful to have these assessments, very helpful. And I also want to drawn attention to your information provided on SONGS, and not just that it's having an impact on forward power prices but also could have a serious impact on reliability.

I look forward to--I know CALISO is working on this issue and addressing it, and I look forward to us working with them to try and make sure that it's not just a forward power price issue, but to make sure it's not a

reliability issue out there as well.

You point out in the report that there is a dramatic increase in supply. There's also an increase in demand. I presume a lot of that is reflective of the price of natural gas.

At what point does gas stop producing at $3 and throw this all up in the air?

MR. PRIMOSCH: That is a tough question to answer, but--

COMMISSIONER NORRIS: I know. I was hoping you could give us the answer.

(Laughter.)

MR. PRIMOSCH: I mean, if we saw producers reduce supply and we didn't see a similar demand reduction, prices could rise in the short term. However, there are 2,000 uncompleted wells ready to be fracked, and the cost to bring those wells on line differ by producing basin. And if gas prices were to rise, some of those wells would start back up and increase supply.

And again, as long as NGL prices remain high, producers will continue to drill for those NGLs and retrieve the associated gas that comes with that drilling.

COMMISSIONER NORRIS: So same base gas still, huh? It does concern me. We're building a whole lot of-- it's great, all this gas news is great news, but we're

building a whole lot of business and infrastructure based on a price that I hope will sustain the production levels. And that's my biggest concern.

Chris, you mentioned the Algonquin passline--gas line, and their exceeding of daily flows. What--I didn't catch what you said you had talked to them about, but what are the options going forward for the pipeline for when they're exceeding these daily gas flows, or when peak capacity is exceeded, short of obviously building new pipe. That's probably the ultimate way.

MR. ELLSWORTH: Right. And they have procedures in place to handle that, and they do handle that on a regular basis, and have already issued operating flow orders this winter telling IG customers that they may be curtailed. And that's the first thing that they will do, is if they reach capacity and they have no more capacity available, they will curtail their Interruptible customers.

As long as there is not an outage on the pipeline, it should never come to a point where they're curtailing their Firm customers, although they will tell their Firm customers to remain within their contractual limits. So there will be less flexibility in terms of that.

Then there is also Order 698 where power plants will provide their OD loads to Algonquin so they can better manage their operations during a cold spell. I think

that--is there anything I'm missing there you think, Ryan?

MR. JETT: Or, as mentioned earlier, if they have backup fuel they could switch to a backup fuel. And they usually give them notice that they expect cold weather, and the pipeline will be a tight supply situation through an OFO or a Critical Notice.

MR. ELLSWORTH: That's true. So if they interrupt their power customers, usually the power customers have some backup fuel capability and can go on to maybe fuel oil. But that is going to probably have an impact on power prices within the market when that happens.

COMMISSIONER NORRIS: That's a reaction by--

MR. ELLSWORTH: Yes, that's a reaction by--that's right. But basically the three things that we've talked about are the things the pipeline can do to address that.

COMMISSIONER NORRIS: Well I'm glad you brought up the unique issues facing New England, and we'll probably get into a little bit more of that in the next topics. So thanks.

CHAIRMAN WELLINGHOFF: Thank you, John. Cheryl?

COMMISSIONER LaFLEUR: Well thank you very much for that excellent report, and thank you for focusing on New England. It certainly highlights the importance of the other item we have on the agenda for gas-electric coordination.

I have a couple of questions. First, focusing on New England could you comment on the ability of the LNG import terminals to ramp up in real time or in near term, since we have so much under-utilized LNG import capacity, if we see price spikes? Is that the kind of things where they can ramp up and take deliveries they weren't planning on?

MR. JETT: Yes, they could do that but I believe the turnaround time is about seven days. So unless there's a cargo offshore waiting to take advantage of some price spikes, other than Everett which has, as we stated, long-term contractual agreements, it would be difficult to be there waiting.

COMMISSIONER LaFLEUR: So it's a seven-day option, not--

MR. JETT: For Trinidad.

MR. ELLSWORTH: Well, yes, from wherever. It takes time to secure an LNG cargo and bring it in under those kinds of circumstances.

And the two offshore terminals in Boston, they were built for that purpose--

COMMISSIONER LaFLEUR: Yes.

MR. ELLSWORTH: --that they would park it, or moor an LNG at those terminals and discharge into the New England market as needed. But prices have been so low in that market compared to the rest of the world that they

haven't sent LNG cargo there I don't think in at least a year, maybe two years. Maybe two years or so.

The other thing is, an LNG terminal can send out of storage but the storage tanks I think at Canaport and Everett are not particular full, or for winter.

COMMISSIONER LaFLEUR: Another thing to think about. Thinking not just of New England but more generally, I wonder if you can comment on what are the biggest down-side risk factors around your projection? And what shall we be looking at in real-time as we go through the winter? What are the metrics, or the facts we should be keeping our eye on to see how it's going?

MR. JETT: The biggest factor is going to be the weather. If it ends up being colder than has been forecasted, an increased hot power gen, pipeline freeze-offs that could occur in the desert southwest, the lack of LNG availability in New England is an issue as we highlighted. And then you just have--storage actually is in really good shape now, but if we do have an extremely cold winter and a sustained period and they start to draw on it, it's going to fill the pipelines up as we said and then could cause some constraints.

COMMISSIONER LaFLEUR: Thank you, very much. Steve?

MR. MICHALS: I would just add from a staff

oversight of the markets and monitoring perspective, we are very focused on supply/demand fundamentals and so we, in particular with the increased amount of natural gas usage in the power sector, are focusing on that coordination interface and all those factors, whether it be LNG input to the grid, or power plant draw from the grid, the pricing effects were continually probing into the various indicators that give us insight into how much stress is being placed on the system, and therefore what kind of market effects come from that.

COMMISSIONER LaFLEUR: Thank you, very much.

CHAIRMAN WELLINGHOFF: Thank you, Cheryl. Tony?

COMMISSIONER CLARK: Thanks to the whole team for the assessment. I enjoyed reading through it.

I think my question is substantially similar to Commissioner Norris's, or maybe a little bit more specific on one particular issue, which is the bane of the natural gas industry, at least from a consumer perspective and the perspective of regulators who have to make decisions about assets based on fuel prices, has been its historic volatility. That is, the very low prices beget high prices; and vice versa.

There has been a good deal of discussion within the industry about failed gas producing and ENP companies switching over to the liquid side of things because the

price spreads between gas and liquids are so extreme right now. And I'm curious to what degree is that a reality that it's happening? And what could that mean on a going forward basis with regard to the supply/demand basics and price?

I'm just curious if you have any general thoughts on that.

MR. ELLSWORTH: We have a few thoughts on it. The high supply that we've seen over the past few years led to kind of very low prices, so low that, while all prices, liquids prices have continue to remain high as you observed. It has resulted in producers shifting their resources from drilling gas wells, dry gas wells, over to oil and natural gas liquid wells.

And that I think accounts for some of the slowdown in production growth that we've seen this year. So you've had a situation where the low gas prices have resulted in that kind of small cutback--or actually quite a lot of drop in the gas-directed rig counts, and a small cutback in production.

But the low gas prices have also resulted in a 22 percent increase in consumption from power generators, and so that has helped to increase prices more recently. So you've had flat gas production. You've had growing demand. And that has helped to increase prices.

So you're right, you're getting these cycles set

up that will probably continue as markets equilibrate. But, you know, over the long run the U.S. has a huge gas resource base. And I think part of the problem for producers is to find new markets for their gas so that they can--so that they can mitigate some of these tendencies for the market to become over-supplied.

And so they're looking at, you know, they're looking at new power gen, particularly with replacing announced call retirements. They're looking at LNG exports. They're looking at new industrials, petrochemicals and things like that as added sources of demand that they expect will help kind of stabilize prices somewhat.

But I think you've always had those cycles in a commodity business. But the long-term outlook is very good.

COMMISSIONER CLARK: Thanks. And just as a general observation, as you've seen these really remarkable supplies coming online and the cost advantage that that's providing to American consumers and manufacturing and industry, I think it does point to an enormous debt of gratitude that consumers and the economy owe states like Pennsylvania, and West Virginia, and Oklahoma, and Texas, and Arkansas--

COMMISSIONER LaFLEUR: And North Dakota.

COMMISSIONER CLARK: --and North Dakota who's a liquid place first, but--

(Laughter.)

COMMISSIONER CLARK: But we'll give ourselves a little pat on the back on that one, too. It really is a remarkable advantage that has come to this country at a time when it probably needed it, and is a bright spot in an otherwise fairly gloomy economy.

Thank you.

CHAIRMAN WELLINGHOFF: Thank you, Tony.

Again, thank you, gentlemen, for the presentation. I appreciate all the information and work you have put into this. Thank you.

Kim, I think we are ready for our next presentation, please.

SECRETARY BOSE: Thank you, Mr. Chairman.

The next item for presentation and discussion will be on Item A-4 concerning the 2012 Enforcement Report. There will be a presentation by Gregory Campbell from the Office of Enforcement, and he is accompanied by Justin Shellaway, Stephen Williams, Jamie Marcos, and Susan Polonais from the Office of Enforcement.

MR. CAMPBELL: Good morning, Mr. Chairman and Commissioners.

CHAIRMAN WELLINGHOFF: Good morning.

MR. CAMPBELL: Today the Office of Enforcement is releasing its Annual Report on Enforcement. The Report

provides the public with information on Enforcement staff activities in fiscal year 2012.

The Report describes both public and nonpublic Enforcement activities, including Commission-approved settlements, investigations, and self-reports closed without enforcement action or sanctions.

The Report also discusses Enforcement's audits to ensure that jurisdictional companies comply with the Commission's statutes, orders, rules, tariffs, and regulations.

Finally, the Report discusses the market oversight, surveillance, and analysis work performed by Enforcement to assess the competitiveness and efficiency of wholesale energy markets and to apply quantitative analysis and technical expertise to market behavior and anomalies.

The priorities of the Office of Enforcement have not changed since last year. We have focused on and will continue to focus on matters involving fraud and market manipulation; serious violations of the reliability standards; anticompetitive conduct; and conduct that threatens transparency in regulated markets.

Fraud and market manipulation present a significant risk to the markets overseen by the Commission and undermine the Commission's goals of assuring efficient energy services for consumers at a reasonable cost.

In fiscal year 2012, a significant percentage of the investigations opened involved allegations of market manipulation or false statements. Similarly, anticompetitive conduct and conduct that interferes with market transparency undermine confidence in wholesale energy markets upon which the Nation's consumers rely.

Serious violations of the reliability standards compromise the public interest by threatening the reliable and secure operation of the bulk power system. The Office of Enforcement will continue to give high priority to these matters.

Turning to last year's accomplishments, let me begin with the Division of Investigations. The Division of Investigations entered into nine Commission-approved settlement agreements last year, assessing total civil penalties of $148 million and disgorging $119 million, plus interest, in unjust profits.

Of the nine settlements, three involved violations of the Commission's Anti-Manipulation Rule, and three involved violations of Natural Gas Open Access rules. The remaining three settlements involved violations concerning Market-Based Rate Authority, Open-Access Transmission Tariffs, and the Reliability Standards.

In one of the settlements, Enforcement staff resolved two investigations of Constellation Energy

Commodities Group, finding that the entity violated the Commission's Anti-Manipulation Rule and the Commission's Accuracy in Reporting Rule. In the settlement, the company agreed to pay $135 million in civil penalties, and disgorge $110 million in unjust profits. This civil penalty represents the largest penalty assessed by the Commission to date.

Enforcement staff also built upon its previous experience in conducting electric reliability related inquiries, completing two separate inquiries into the causes of bulk power system-related electric outages in New England and in Arizona and in California.

In conducting these inquiries, Enforcement staff worked closely with the staff from the Office of Electric Reliability and NERC to issue reports and make recommendations to help prevent recurrence of the outages.

In addition to the 9 settlements, staff resolved another 12 investigations with no enforcement action, or through Orders to Show Cause. Staff opened 16 investigations, 13 of which concern allegations of market manipulation or false statements to the Commission or to RTOs and ISOs.

Continuing its role in the Commission's oversight of the NERC Notices of Penalty, Enforcement staff reviewed in conjunction with staff from the Office of the General

Counsel and the Office of Electric Reliability 771 potential or confirmed violations of the Reliability Standards in 45 filed Notices of Penalty.

Staff also began receiving possible violations that pose lesser risk to the bulk power system via NERC's Find, Fix & Track Report. Staff reviewed another 707 possible violations in 12 FFT reports last year. Staff received 89 self-reports last fiscal year, closing 49 after review with no further action, and received and addressed 185 Hotline calls or inquiries.

Enforcement staff also completed 44 audits in the last year. These audits addressed financial and non-financial issues, generating almost 400 recommendations for corrective actions and directing over $5.8 million in refunds. Staff also continued to work with the Office of Electric Reliability, overseeing the audits conducted by the Regional Entities and enforce the Reliability Standards.

Enforcement staff continued to monitor wholesale natural gas and electric markets to identify market anomalies, inadequate or flawed market rules, and potentially improper behavior.

In addition to presenting the annual State of the Markets Report and Seasonal Market and Reliability Assessments, Enforcement staff released its Energy Primer, a comprehensive overview of natural gas and electric markets

with detail on specific market segments.

Finally, the Office of Enforcement created a new division in 2012, the Division of Analytics and Surveillance. Since its inception, Analytics and Surveillance has steadily increased its surveillance capabilities.

In fiscal year 2012, the Commission issued Order Nos. 760 and 768 that will greatly enhance its ability to conduct surveillance of the electric markets. The Division's analysts, including economists, former traders, and other technical professionals, also continue to work closely with attorneys in the Division of Investigations as part of the investigative team, particularly in investigations dealing with market manipulation.

A copy of the Annual Report is now available on the Commission's website. This concludes Enforcement's presentation and we are happy to answer any questions you may have.

CHAIRMAN WELLINGHOFF: Thank you, Greg. And I want to thank all your colleagues for their work on the information you've provided us today.

I really want to thank the entire Office of Enforcement for its work of addressing reliability and market issues. Your efforts help to preserve the competitiveness and efficiency of the wholesale energy

markets, which is essential to the Commission's missions of ensuring that rates charged to the competitive markets are just and reasonable.

You have been responsive to addressing new threats, as well as adapting to new approaches such as NERC's FFT process to quickly resolve lesser risks to reliability.

Furthermore, you continue to conduct investigations, audits, and market analysis and market oversight in a thorough, fair, and extremely professional manner. You have my total support in your efforts, and again I want to thank you all.

I also want to comment on one item of the disgorgement of some of the profits that are going to good use. I found out at the NARUC Convention recently that both New York and PJM have decided to use part of that money for a consumer advocate representative in PJM and in New York.

So with that, comments? Question? Colleagues? Phil?

COMMISSIONER MOELLER: Mr. Chairman, I think it is important to point out that was actually an issue I was going to raise that in the Constellation settlement the decision to send those funds to those sources were the decision of the Judge, and not of the Commission.

CHAIRMAN WELLINGHOFF: Right.

COMMISSIONER MOELLER: It was portrayed in the trade press as if it was a Commission decision. It was--

CHAIRMAN WELLINGHOFF: And also decisions made by the stakeholders there that the Judge facilitated, really. It wasn't dictated by--

COMMISSIONER MOELLER: But again, not a Commission decision.

CHAIRMAN WELLINGHOFF: Exactly.

COMMISSIONER MOELLER: I commend this continued effort to give annual reports. I appreciate all the work you did, and what Norman Bay has done to open up in a more transparent fashion our Enforcement Division so that, particularly there are the examples in the report of reports that were made, and then the decision behind them to not pursue an investigation. And that's what we've been struggling with over the last few years, is giving guidance to the industry as to what we pursue and what we don't pursue, with the challenge that when there are self-reports or other types of investigations, the entity that did not do a harm, or at least a harm that was worthy of further investigation, that they're not thrilled about getting their identity out there.

And so we're dealing with an issue there of trying to provide transparency, but protecting the entities that still have to justify their actions.

So thank you for the report. I'm sure it will be read by many once it's released.

A question--and I don't know if it goes to the team, or to Norman, but something that is a little off of the report's subject area, but we've had a number of high-profile Enforcement cases that we won't talk the specifics of today. One of my takeaways is that there seem to be a few individuals who have created an enormous amount of issues, and the behavior of particularly a few people has caused a lot of alleged harm. And it strikes me that if we can find a way to get rid of some specific individuals in this trading, we could possibly take away a lot of what we have to deal with on a constant basis related to allegations of market manipulation.

And that's not a model we have here. But it's one I wanted your thoughts on in terms of going after individual traders, perhaps in a model closer to some of our other enforcement agencies, and what they would entail, and whether it's worth further discussion.

Justin, are you ready to answer that?

MR. SHELLAWAY: Yes, thank you.

We agree, obviously, with the position of the Commission that it is important to look at individuals, and we've been pursuing individuals, as you know, in several cases that have come out recently.

We think it's a good and useful idea to be thinking more about the individuals who are pursuing the kind of conduct that we're concerned about in these markets, and we would be very interested in working with you and the other Commissioners in determining whether we might address the conduct at a different stage in the proceedings in the way you're talking about.

COMMISSIONER MOELLER: Thank you. Thank you, Mr. Chairman.

CHAIRMAN WELLINGHOFF: Thank you, Phil. John, do you have anything?

COMMISSIONER NORRIS: Just thanks for the report. But more importantly, thanks for the work you are doing. I think you are really having an impact on the market and on our system working fairly and openly. So thanks for all the work of the Office of Enforcement, and thanks for your leadership with the development of the Office of Analytics and Surveillance, Mr. Chairman, and Norm.

I think knowledge is certainly power in this industry, and if we have knowledge and information we can make sure that there are safeguards in place for the integrity of the markets. So I am glad that we have started that up under your leadership. Thanks.

CHAIRMAN WELLINGHOFF: Thank you, John. Cheryl?

COMMISSIONER LaFLEUR: Well thank you, very much,

for the report and for all of the work that you do. I feel like a commercial, but I always say this. This report should really be required reading for folks who do business before the Commission and are trading in the energy markets. Because it's the best possible way to see what the things you're seeing over the course of the year, and what you see happening in the cases.

I have one question. One of the things I grapple with, I think we grapple with as regulators, in a lot of aspects of our work is when to do things case-by-case and when to proceed generically. And I try to look at things like this report, and others, to stay alert to trends that are happening in cases that we're seeing again and again.

Could you comment, based on the growing work of the Office, if there are any trends that you're seeing in your enforcement work, either in market manipulation, or in reliability, that you think might indicate that there's a need for more policy guidance from the Commission?

MR. SHELLAWAY: Well it's been difficult to say so far whether there have been any specific trends that would lead us to additional policy guidance itself.

As you know, the programs for pursuing reliability and for pursuing our enforcement authority after Order 670 and the Anti-Manipulation Rules is still fairly young. We're still trying to identify those trends. And

there may be a time in the future where such policy guidance might be appropriate; we certainly would wish to continue to consider it. But at this point, the way the cases have developed is they're very fact-specific, and it's very difficult from just a few cases to point to any specific trends. But we would like to continue to consider it in the future.

COMMISSIONER LaFLEUR: Well thank you. Thank you for thinking about it. I guess what strikes me is that these Enforcement cases are very, very labor intensive and take months, and months, and months to go after. And if there's something we can say, hey, wait a minute, don't do this; and put out a policy statement or something, maybe we'll save the next case from happening.

MR. SHELLAWAY: I could comment further, if you'd like. I mean we do think it's worth considering, certainly, whether there should be additional policy guidance at some point. We would say probably not at this point, for several reasons.

We are guided by the precedent of the Commission on this. First of all, in its rulemaking precedent from Order 670 which promulgated the Anti-Manipulation Rule, which gave a good deal of guidance to the industry about what is fraud, and what kind of behavior we're concerned about, but it declined to give specific examples that might

limit the scope of the rule.

However, of course, the Commission has given a great deal of precedent and guidance after in its individual orders dealing with specific instances of misconduct, in its orders to show cause, in its fully litigated matters, as well as in its settlement orders. And we think in future investigations that will continue.

So we also think the approach so far has been consistent with the broad statutory authority that Congress gave us, which was of course modeled after what the SEC anti-manipulation authority is. And the SEC's anti-manipulation authority has given us a great deal of guidance, as well.

As you know, there are many decades of precedent that have built up under the SEC's authority. And the Commission has said in Order 670 that it will consider that authority as it is appropriate to our markets. So that gives us a body to draw upon.

COMMISSIONER LaFLEUR: Well thank you. And I think that underscores the importance of people looking at the orders to show cause in the individual cases when they come out for guidance, and again the report which reports on some of the things that never led to an order.

MR. SHELLAWAY: I would just add that as markets continue to change, and the ways in which the instruments

that are developed change, from our perspective it is useful to have a rule in place that is prepared for these new changes that come along in the market.

CHAIRMAN WELLINGHOFF: Thank you, Cheryl. Tony?

COMMISSIONER CLARK: I too would like to add my support and encouragement to the Office of Enforcement. I thank the Chairman for your leadership, and Norman Bay, as well, for your leadership.

I am relatively new to the Commission, but I have a fair amount of time put on the State Commission, so I have a particular appreciation for what some of the activities that you do mean to end-use customers who actually write the bills at the end of the month, or are expecting the lights to stay on on a day-to-day basis.

And the work that you do is tremendously important. And in that regard, while I am as sensitive as anyone on the limitations of federal power, I also understand that there are certain things that only the Federal Government can do well. And the type of work that you're doing with regard to anti-manipulation, reliability, so on and so forth, I think is an example of not only an entirely appropriate use of the Federal Government but one in which it has tremendous benefit to the consumers of this country. So thanks for the work you're doing. I enjoyed the report and look forward to continuing to work with you.

CHAIRMAN WELLINGHOFF: Thank you, Tony.

And thank you again, all, for the presentation. I appreciate it, and the work that you're doing.

Madam Secretary, our next presentation, please.

SECRETARY BOSE: The next Item for presentation and discussion will be on Item M-1 concerning a Draft Order on the Coordination Between Natural Gas and Electricity Markets in Docket No. AD12-12-000. There will be a presentation by Pamela Silberstein from the Office of Energy Policy and Innovation. She is accompanied by Anna Fernandez from the Office of the General Counsel, and Adam Bednarczyk from the Office of Energy Market Regulation.

MS. SILBERSTEIN: Good morning.

CHAIRMAN WELLINGHOFF: Good morning.

MS. SILBERSTEIN: Item M-1 is a draft order on coordination between the natural gas and electric power industries.

This proposed action is in response to information that was gathered at the five regional conferences held in August of this year which focused upon each region's perspective on gas-electric coordination and interdependency. In brief, the draft Order directs staff to convene two technical conferences, directs RTOs and ISOs to report progress to the Commission, and directs staff to report progress on regional efforts.

The two technical conferences directed in the draft Order will further explore two issues that were discussed in all of the regions. The first technical conference will focus on barriers to effective communications between the natural gas and electric power industries.

To provide guidance in advance of the conference as the industries enter the winter heating season, the draft Order briefly discusses the applicability of the Standards of Conduct regulations to communications between natural gas pipelines and electric transmission operators.

The draft Order also notes the methods available to seek guidance from the Commission on permissible communications. The purpose of the technical conference will be to gather additional information regarding the specific communications issues of concern to industry, and to identify areas where additional policy guidance may be appropriate.

The second technical conference will address concerns with natural gas and electric power scheduling. Concerns regarding scheduling the harmonization of the gas and electric days, pipeline capacity release, efficient utilization of existing pipeline capacity, and other matters were brought up in almost every region during the August conferences. The draft Order concludes that a separate

technical conference is warranted to focus on these matters.

In addition to directing staff to convene two technical conferences, the draft Order also directs each RTO and ISO to appear before the Commission on May 16, 2013, to report on its experiences during the 2013 winter and early spring seasons, and again on October 17, 2013, to report on the 2013 summer and early fall seasons.

The draft Order also directs staff to report to the Commission on the natural gas and electric industries' coordination activities at least once each quarter for 2013 and 2014.

Concurrently with the draft Order, the Commission today is releasing to the public the Staff Report on Gas-Electric Technical Conferences. In it, each of the five regional technical conferences held during the month of August is summarized and ongoing regional efforts on gas-electric coordination are highlighted. The Staff Report will be posted on the Commission's website.

This concludes my presentation.

CHAIRMAN WELLINGHOFF: Thank you, Pamela, and Anna, and Adam. And I want to thank all the members of the larger team that spent your summer talking to industry participants and regulators about gas-electric coordination throughout the United States.

In bringing together participants from various sectors in each region, the Commission heard about their various concerns, but also about best-practices and initiatives already underway to address issues related to gas-electric coordination.

Specifically, NISO noted that several combined gas-electric utilities, along with certain pipelines within its area, recently ran a useful tabletop exercise. And ERCOT offered to host further tabletop exercises.

The Northwest Mutual Assistance Agreement aids coordination between the utilities, including pipelines, LDCs, combined utilities, as well as electric-only utilities during gas-related emergency situations by maintaining updated emergency contact information, holding semi-annual planning meetings, and conducting periodic emergency exercises for utilities.

In Florida, the Florida Reliability Coordinating Council created a Fuel Reliability Working Group that oversees a regional Fuel Reliability Forum that studies the interdependencies of fuel availability and electric reliability and supports coordinated regional responses to fuel issues and emergencies.

MISO recently formed a task force to work on general gas-electric coordination issues. PJM is working with MISO, ISO New England, Ontario, and also MISO on a

comprehensive study regarding gas-electric infrastructure, including planned generation retirements, new transmission lines, new pipe, and new pipelines for the next 5 to 10 years.

The California ISO implemented tariff revisions to allow for improved communications regarding outages between pipelines and gas-fired generators. And ISO New England is considering several tariff provisions to facilitate increased usage of gas-fired plants in its markets.

These region-specific endeavors, whether undertaken by the RTOs or independently by market participants, showed the initiative and creativity that can be employed to address the region-specific challenges that arise related to gas-electric coordination.

As the Commission conducts additional technical conferences, I look forward to hearing more about how entities have considered these issues on a regional basis, as well as their thoughts on how to craft solutions to resolve these issues.

Thank you.

Colleagues? Phil?

COMMISSIONER MOELLER: Well thank you, Mr. Chairman. And thank you to the entire team that spent a lot of time on this, putting the Order together. I think we

have an excellent Order and an excellent approach toward keeping this issue in front of us, and the member entities, and the public who it affects.

You know I have been concerned about this issue for a couple of years. The trend lines are pretty clear. We're going to be using more gas to make electricity. Some people have concerns about the price volatility aspects of that. I am less concerned about the price impacts, but more concerned about the reliability impacts, because it's a bit of a shift from going from types of fuel that can be more easily stored to those where you're dependent on a pipeline. Not insurmountable issues, but ones we should be addressing.

And throughout the country, as we have talked to people about this, they have come here or we've gone out to their turf, they mantra was pretty consistent: FERC, stay on this. Please provide the leadership. We're making some progress at the regional level, but we need you to stay on us and to keep the discussions and the momentum going. And I think the Order today does that.

I would hope that the industry--and that's a pretty wide-ranging term--looks at the Order. As Pam mentioned, there's discussion as to the issues of communication and standards of conduct, and we kind of put it, it's really more than standards of conduct because

that's a relatively limited phrase in our world. Regardless of whether there's a problem of communication between entities, usually when there's a supply crunch, there's a perception that some people can't talk. And that perception can be a reality, and we want to get to the bottom of whether it is a problem or not, and doing it as soon as possible. So that if there are issues this heating season, people being afraid to pick up the phone will not prevent some other more widespread outage.

And then the issues of the second technical conference related to more converging of these markets is something that needs to be looked at. We've been told to be very cautious about that, and I respect that caution; and yet again the trend lines are pretty clear. And if there are ways to make the existing markets more efficient through better alignment of the trading days, that's something we at least ought to consider, recognizing that it's going to cost some money.

But I am very happy with the effort and the attention that you gave this, Mr. Chairman, and I look forward to supporting it.

CHAIRMAN WELLINGHOFF: Thank you, Phil. John?

COMMISSIONER NORRIS: Thank you. I look forward to supporting this, as well. My biggest takeaway from these regional conferences--and thanks for your work on all of

those--is that the vast majority of this are regional issues and regional problems that I think each region will grapple with what they need to do to face their challenges, taking into account their prevailing market structures of those regions.

But I think we did identify some, a few common issues that will be useful to assign to these technical conferences and keep an eye on going forward. Both Jon and Phil have already mentioned them, so I won't reiterate. I would just say that my overarching goal here is that we make sure we maximize the efficiency of the system; that the last question to ask is: What new pipe needs to get built? Recognizing we're going to need some new pipelines built because of the increased dependency on generation, and the increased utilization of this readily available resources in gas.

But the first question has to be: How do we maximize our existing infrastructure? And then, what other cost-effective solutions on the demand side can enter into play here so that we make sure that we, if you will, approach this in a stack order of the most efficient utilization of our resources to produce a sustainable energy system at the most reasonable price for consumers.

And so that's what I'm keeping an eye on going forward, how we increase communication, change scheduling

practices, what have you, so that we maximize the existing resource first. And, with the recognition that we're going to need some new pipelines, and let's make sure we don't build them until we know for sure that that's a necessary investment for consumers to bear.

Thanks.

CHAIRMAN WELLINGHOFF: Thank you, John. Cheryl?

COMMISSIONER LaFLEUR: Well thank you. I would also like to thank the team, the large team, and all the folks who commented in response to the questions that we put out and participated in the tech conferences.

I appreciate my colleagues giving such a priority to this topic. We find ourselves with a situation where the two markets we regulate, or two of the markets we regulate, electricity and gas, both critically important to customers, and both investing a lot of money right now in building themselves out, and I think both have benefitted from strong regulation from this Commission. Yet they find themselves with completely different methods of attracting investment, different market structures, different operating days, and at times those can work at cross-purposes as they both work to serve customers.

One of the things we grapple with is which things should be done, as Tony said, on a state or regional level, and what requires a federal solution. And I think what we

learned at the tech conferences is that a lot of this really varies by region because of geography, because of infrastructure, and because of the different fuel mix.

My own region of New England seems to be leading the pack. Someone called it the canary in the coal mine in terms of the time sensitivity and acuteness of the issue, and I also think they are near the top of the pack in being advanced in proposing solutions to evolve the electricity markets to build in more fuel security. And I encourage the efforts that ISO New England and all of the stakeholders, the state regulators, and so forth, are putting in on that.

What this Order reflects is that we'll be closely monitoring those efforts, and looking to support the regions as they need to make evolution. And I expect we will be seeing a lot from several of the regions over the coming months.

But we did find two big issues. One related to communications, the standards of conduct that came up in every single tech conference; but in some cases not in a focused way. There was an issue, but nobody could put their finger on what it was. And I hope this next technical conference we can really bore in on the issue. If there is something that is in the Commission's regulations, or in our attention to discrimination that is impairing the best

communications to get the most out of the pipelines and the infrastructure, we should deal with that.

And the second is to begin to walk into the issue of gas-electric harmonization. Not an easy one, but definitely something that came up in every single conference and is worth more attention. And it can't be done on a regional level because pipelines don't work that way.

So I just want to underscore something that was in the report, for people to look at the guidance on what we're saying right now on the Standards of Conduct. And especially to reach out in real time if there are issues, to take advantage of the Commission's Compliance Help Desk, or to reach out to others at the Commission if there are issues so we can make sure we get through the winter well.

Thank you, very much.

CHAIRMAN WELLINGHOFF: That's a good suggestion. Thank you, Cheryl. Tony?

COMMISSIONER CLARK: Well thanks to the team for its work. I enjoyed the technical conferences. I learned an awful lot about a very important topic, but alas there are some underlying dockets in here that apparently trigger my one-year recusal period. So I won't be able to vote today, but thanks for all your work.

CHAIRMAN WELLINGHOFF: Thank you, Tony.

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

M-1.

SECRETARY BOSE: I will be calling for Commissioner Clark's vote so he can say that on the record. The vote begins with Commissioner Clark.

COMMISSIONER CLARK: I'm recused.

SECRETARY BOSE: Commissioner LaFleur.

COMMISSIONER LaFLEUR: I vote aye.

SECRETARY BOSE: Commissioner Norris.

COMMISSIONER NORRIS: Aye.

SECRETARY BOSE: Commissioner Moeller.

COMMISSIONER MOELLER: Aye.

CHAIRMAN WELLINGHOFF: And Chairman Wellinghoff.

CHAIRMAN WELLINGHOFF: I vote aye.

Let's move on then to the presentation of E-3.

SECRETARY BOSE: And the last item for presentation and discussion this morning will be on Item E-3 concerning a Draft Policy Statement entitled "Promoting Transmission Investment Through Pricing Reform" in Docket No. RM11-26-000.

There will be a presentation by David Borden. He's from the Office of Energy Policy and Innovation. And he is accompanied by Andy Weinstein from the Office of the General Counsel.

MR. BORDEN: Good morning, Chairman Wellinghoff.

CHAIRMAN WELLINGHOFF: Good morning, Chairman

Wellinghoff and Commissioners.

The Draft Policy Statement on the Commission's electric transmission incentive policies provides guidance regarding the evaluation of applications for electric transmission incentives under Section 219 of the Federal Power Act, enacted as part of the Energy Policy Act of 2005.

Section 219 requires that the Commission, by rule, establish incentive-based rate treatments to encourage investment in transmission infrastructure. In 2006, the Commission implemented this statutory requirement by issuing Order No. 679 and 679-A which established the Commission's current transmission incentives regulations and policies. I will refer to those rulemaking orders together as Order No. 679.

After applying these policies for five years, the Commission issued a Notice of Inquiry in May 2011 to seek comment on the scope and implementation of our incentive policies.

The Commission has now carefully considered approximately 1,500 pages of comments received in response to the Notice of Inquiry. Based on these comments and the Commission's experience evaluating over 85 incentive applications in the past 6 years, the Draft Policy Statement states that the Commission has now determined it is appropriate to provide additional guidance and clarity with

respect to certain aspects of its Order No. 679 transmission incentive policies.

The Draft Policy Statement refines the Commission's incentives policies in five ways:

First, the Commission would no longer rely on the distinction between routine and non-routine projects for determining eligibility for incentives, and it would instead rely more directly on the requirements of Order No.l 679. These requirements focus on a project's demonstrable risks and challenges.

Second, the Commission would expect an applicant for incentives under Order No. 679 to take all reasonable steps to mitigate risks, including through the use of one or more risk-reducing incentives--such as recovery of 100 percent of Construction Work in Progress, recovery of 100 percent of Pre-Commercial Costs as an expense or as a Regulatory Asset; and recovery of 100 percent of Prudently Incurred Costs of transmission facilities that are abandoned for reasons beyond the applicant's control--before seeking an incentive return on equity for an remaining risks and challenges of a project.

Third, the Commission expects that an applicant seeking an incentive return on equity based on a project's risks and challenges to support its application with showings of the project's remaining risks and challenges.

The Draft Policy Statement provides examples of the types of projects that the Commission believes may merit an incentive return on equity based on a project's risks and challenges.

Fourth, the Draft Policy Statement clarifies that the Commission would consider transmission projects that apply an advanced technology as indicative of the type of project facing risks and challenges that may merit an incentive return on equity. Thus, the Commission would consider deployment of advanced technologies as part of the overall nexus analysis established in Order No. 679, and would no longer consider requests under Order No. 679 for a stand-alone incentive return on equity based on an applicant's utilization of an advanced technology.

Fifth, the Draft Policy Statement states that the Commission expects an applicant for incentives under Order No. 679 to commit to limiting the application of an incentive return on equity based on a project's risks and challenges to a cost estimate. The Draft Policy Statement also states that the Commission does not intend to be prescriptive as to how applicants might structure this commitment.

In closing, the Draft Policy Statement provides that the Commission would continue to review and assess its transmission incentives policies and take steps as needed to

enhance the transparency of its incentives policies and their impacts on customers. This Draft Policy Statement would apply to all incentives applications received after today.

This concludes my presentation.

CHAIRMAN WELLINGHOFF: Thank you, David and Andy. I also want to thank Julie Simon of OEPI for her efforts in helping product this Policy Statement. I also would like to thank my colleagues, and particularly Commissioners Norris and LaFleur, who really took the lead on crafting this Policy Statement.

The Policy Statement clarifies the principles set out in Order No. 679 in terms of how certain rate treatments can encourage increased investment in transmission and development while reducing rate shock and minimizing risks for customers.

It also provides that an incentive ROE may be available depending upon a range of factors, including whether alternatives to projects have been or will be considered in either a relevant transmission planning process or another appropriate forum in order to identify the demonstrable consumer benefits of the proposed project and its role in promoting a more efficient, reliable, and cost-effective transmission system.

This complements the Commission's issuance of

Order No. 1000. While the two policy initiatives do not directly overlap, together they will facilitate more efficient and cost-effective transmission solutions.

It is for these reasons I support this policy statement.

Colleagues? phil?

COMMISSIONER MOELLER: Thank you, Mr. Chairman. I think most people who follow this issue pretty closely are aware that I've tried to promote transmission investment while I've been here. It continues to be the area of our jurisdiction, although somewhat tortured because of a lack of siting ability on the federal level, one that gives us the most optionality, gives us the best benefits economically from a reliability perspective, and from arguably a public policy perspective from some of the new resources that have come on.

I think one only has to look at just about any specific transmission project, but some specifically like the Sunrise Power Link to see that the benefits of transmission are not only obvious but profound. In that case, Southern California didn't expect to have their nuclear unit out. And without that power link being energized ahead of time, it would have been a pretty tough summer in San Diego; if you look to the Susquehanna-Roseland line and the drama that they continue to face in

getting a project that continues to cost New Jersey ratepayers $200 million a year for its lack of being in the grid, to show that transmission continues to be an area that needs investment.

I hope that this Policy Statement will provide the clarity to continue this as the type of investment that entities see worthy. I would like to particularly point people to the third of the five items that was discussed by David, and that is the details really matter.

We expect applicants to put in a very detailed analysis as to the challenges that they are facing in a particular project, and why those challenges and those details should result, if applicable, to some kind of an incentive.

I again hope that this clarifies the air and does not send any kind of a negative message, but rather a positive message for our continued need as a Nation for major investments in our transmission system.

Thank you.

CHAIRMAN WELLINGHOFF: Thank you, Phil. John?

COMMISSIONER NORRIS: Thank you, Mr. Chairman.

Thanks, staff, for your report today. I want to start first of all with thanks to my three personal advisors, Jeff, and Aileen, and Sean, who ever since my separate statement concurring in PATH two years ago this

month--maybe even before that, but certainly since that--have spent many, many hours around my conference table seeing me pull my hair out on this issue and figuring out what the right path forward is, and helping me through that.

We have had many people in this room probably sit around my conference table, and people from around this country sit around my conference table over the last couple of years, hours at a time, talking to this issue. And I have certainly met with people at NARUC and conferences around this country a lot in the last couple of years on this very issue.

It is amazing I think when you talk about either paying folks a lot of money, or receiving a lot of money, it gets a lot of people interested. And we've certainly seen a lot of interest and strong opinions on this issue of our incentive-rate policy.

Thank you all, staff, for your work in helping us get to this point today. But as my statement said two years ago in the PATH Order, it is a struggle to find the right balance and provide a clear rationale for why we are awarding incentives to particular projects.

It was a struggle for me back then, and hopefully today will provide a little more clarity in answering that question. It is clear, as you said, Phil, to me that we

need significant investment in transmission infrastructure in this country, and I hope this Order today helps further that effort, and other things we do, like Order 1000, like the Policy Statement on Merchant Transmission Lines, and a number of other initiatives that we're doing here at FERC.

In fact, I was just down in Tennessee yesterday speaking to the Southeast about how to get access to clean and renewable energy. Now I didn't really imagine a year ago, or two years ago, I'd be traveling to the Southeast about--which none of their states have an RPS--about how can they get access to the most efficiently priced and produced renewable energy, largely wind from the Great Plains to the Southwest, clear up into your home State, Tony, but it was encouraging to me that they were in my mind taking just a baseline economic approach to this.

They weren't driven by any kind of in-state renewable requirement. But how do we get to the most efficiently priced and produced renewable energy in this country? And transmission is critical to that. The need that Congress identified in 2005, which is the impetus for this incentive-rate directive to us, is as great today in mind, even though we've built a lot of transmission in this country in the last six years since that 2005 Policy Act, it is still needed today.

So the question is, you know, obviously if we

need to get more transmission built we can just throw more money at it. That will get it built. But it goes to a broader responsibility we have here at FERC. And that is, a matter of fairness, or as the statute directs us, to be just and reasonable.

And how do we find sufficient--how do we get a sufficient level of investment, but also be fair to the ratepayers and consumers? I think today's Policy Statement is an example of that balancing act right here for you all to see.

I think it is also an example of the value of five Commissioners bringing different viewpoints to the table and working together to find solutions that are in balance. That's code for "I didn't get everything I wanted in this Policy Statement"--

(Laughter.)

COMMISSIONER NORRIS: But there's probably good value in the fact that we have five different viewpoints, and find balance in what is fair and reasonable, and what gets the transmission built.

So not only for myself, but I think no one will probably see everything they wanted to see, or get every concern they expressed addressed in this Policy Statement today, but I think it provides better clarity to what we are looking for, a greater sense of purpose, and the objectives

we are trying to achieve ultimately, trying in my mind to continue to build a transmission grid that provides consumers the most efficiently priced energy that's sustainable energy for the long haul.

And this incentive policy is a viable tool to do that. It is clear that we will place a great deal of emphasis going forward on reducing risk first, and perhaps raise the bar for some ROE incentives to be able to show--as you just pointed out, Phil--very detailed, how your project does a number of potential things that we believe are worthy of incentives.

Do you save consumers money?

Do you reduce congestion?

Do you provide access to those rich, renewable resources we have in this country that to date haven't been able to get access to the market, that diversifies our fuel source and cleans the energy supply?

Or do you take a risk on new technologies that helps build the grid of the future, not a replica of the past?

We know we're going to be replacing a lot of aged infrastructure in this country moving forward. I hope we use this incentive policy, and you use this incentive policy, to take us to the cutting edge of utilizing these resources we have in the most efficient way possible.

So I am pleased with our action on this issue today. Hopefully it provides some clarity in what we're trying to accomplish.

I was also encouraged at NARUC this past weekend, not just this issue but your on your leadership on the distributed generation discussion, that that holds great promise; our discussion on non-transmission alternatives, and demand-side management and what that means for creating a sustainable energy future in the most efficient way possible. But still at its core I think this transmission build that we need to accomplish many objectives to support this electric system we have in this country.

Transmission is still at the core of that. And we by all means want to encourage further transmission development, but use this incentive policy to take us into the future. And that means we're looking for you, the builders and investors of this transmission system, to help be creative and innovative about how we do that. And hopefully we will reward you for taking that action.

So I'm not sure what we will do with all our free time now, Sean, and Jeff and Aileen--

(Laughter.)

COMMISSIONER NORRIS: --but I guess there's a little bit of Order 1000 compliance coming up.

CHAIRMAN WELLINGHOFF: Yes, there will be a few

things.

COMMISSIONER NORRIS: Seams issues. And I'm sure there will be plenty to take up that space.

CHAIRMAN WELLINGHOFF: We will keep you busy, John.

COMMISSIONER NORRIS: Yes. But thank you all for your work on this, and I look forward to implementing this and getting transmission built.

CHAIRMAN WELLINGHOFF: Thank you, John. Cheryl?

COMMISSIONER LaFLEUR: Well thank you. I too would like to thank my colleagues, and all of our staffs, and the staff in the Office of Energy Policy Innovation that worked on this for months to try to find the common ground around this table on this issue.

It was well worth the effort I think because one of the most important jobs at this Commission is helping to rebuild and strengthen the Nation's transmission grid, to promote reliability, make markets work better, and connect new power sources.

As I've said before, I strongly support incentive regulation and performance-based ratemaking, because in my experience I know it works. But as I've also said before, that doesn't really matter whether I strongly support it because it's required of us by Congress in our enabling statute. And we do follow our laws.

As with--however, it's also our responsibility in that same law to make sure that rates are just and reasonable, and that requires making sure we balance the benefits of transmission we are incentivizing with what it's costing customers.

Now as I think John Norris alluded to maybe, this Policy Statement is a little bit of a Rorschach test in that we each see different patterns of the things that emerge from the words, but I think there's much that we all agree on. And a couple of things I would like to highlight in particular:

The Policy Statement follows on the case-by-case adjudication of incentives that we set out in Order No. 679. And it makes clear that we are going to continue to apply the nexus test, requiring a nexus between the incentives sought and the risks and challenges, but apply that test with more rigor and no longer use the routine/nonroutine analysis that was set out in Baltimore Gas & Electric, but carefully consider the specific risks and challenges of each application.

Another thing from Order No. 679 that the Policy Statement re-emphasizes is that we will carefully apply the total package of incentives and look to use the risk-reducing incentives first, which in many cases do the whole job of helping the project get built, and reduce risk before

we then reward that risk potentially with a higher ROE.

The Policy Statement attempts to set out examples of some of the things that might still have residual risk that might require a higher ROE. Those still include reliability projects if they can make the specific showings of risks and challenges.

And finally, where an ROE incentive is awarded, it should be limited to a defined cost estimate unless you come back before the Commission as further explained in the Policy Statement.

I agree with doing this as a Policy Statement. It's been a long time coming. I hope it gives some guidance to the folks who are building transmission. And we will continue to work as hard as we can to make the right balance as we go forward and try to apply this and continue to learn from our experience in what we see happening.

Thank you all, very much.

CHAIRMAN WELLINGHOFF: Thank you, Cheryl. Tony, you're recused on this one, as well? Is that correct?

COMMISSIONER CLARK: I am recused. So for all those FERC watchers out there who are waiting for me to stick my head out of the rate-incentive foxhole--

(Laughter.)

COMMISSIONER CLARK: --they'll have to wait a little bit longer.

CHAIRMAN WELLINGHOFF: All right. Thank you, Tony.

Madam Secretary, I think we're ready to vote on E-3, please.

SECRETARY BOSE: The vote begins with Commissioner Clark.

COMMISSIONER CLARK: I'm recused.

SECRETARY BOSE: Commissioner LaFleur.

COMMISSIONER LaFLEUR: I vote aye.

SECRETARY BOSE: Commissioner Norris.

COMMISSIONER NORRIS: Aye.

SECRETARY BOSE: Commissioner Moeller.

COMMISSIONER MOELLER: Aye.

SECRETARY BOSE: And Chairman Wellinghoff.

CHAIRMAN WELLINGHOFF: I vote aye.

With that, if there's nothing further to come before us, we're adjourned.

(Whereupon, at 11:32 a.m., November 15, 2012, the 987th meeting of the FERC Commissioners was adjourned.)