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10:10 a.m.

1 APPEARANCES:

2 COMMISSIONERS PRESENT:

3 CHAIRMAN PAT WOOD, III, Presiding

4 COMMISSIONER LINDA KEY BREATHITT

5 COMMISSIONER NORA MEAD BROWNELL

6 COMMISSIONER WILLIAM L. MASSEY

7 SECRETARY MAGALIE ROMAN SALAS

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10 ALSO PRESENT:

11 DAVID L. HOFFMAN, Court Reporter

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1 PROCEEDINGS

2 (10:10 a.m.)

3 CHAIRMAN WOOD: Good morning. Please join me in
4 the Pledge to the Flag.

5 (Pledge to the Flag recited.)

6 CHAIRMAN WOOD: We are back but the sound
7 probably isn't, and I want to say that we've got a couple
8 items on today's agenda but the largest part of the agenda
9 has actually been removed because there's already been
10 issued through notational voting. I want to thank the hard
11 work of Staff who prepared these items from the August break
12 of the formal Commission meeting to make sure this work goes
13 on and we have important decisions to render. They put a
14 lot of work in it in the interim, and I personally
15 appreciate that. And I think the parties appreciate that.

16 There are a couple here that were not scheduled
17 for today. I think primarily the big three orders I would
18 like to say I speak for all of us, we'd like to really use
19 those orders and use those compliance orders that we're not
20 tapering off of Order 2000 but they're really the
21 laboratories for us to explore what regional variation mean.
22 We talked about regional variations on the road trips that
23 our Staff has done a great job, and have gotten wonderful
24 feedback from the folks out in the field, whether they

1 totally agree with us or not, they appreciate the good work

1 Staff has done. But people have said there are variations,
2 regional variations, these orders on this docket are good
3 cases to really start exploring with, the filings in hand,
4 what regional variations would mean, and how those would be
5 calculated in order to make sure that a vibrant and
6 competitive wholesale market comes out of these orders.

7 As we said last October, there are two parallel.
8 The first track is the RTO filing that we're going forward
9 with. The second track is the rule. Those are not items
10 that come one from the other. They all happen at the same
11 time so that back and forth of the two dockets we now do
12 have a proposed rule that can help inform both the RTO
13 docket and help inform us as we move forward, as we move
14 forward with comment and feedback on the rules. I don't
15 anticipate that that will defer the ruling on these
16 important open meetings. But I do think it's important to
17 try to harmonize what we've said recently in our proposal
18 with the facts of the different filings that are before us.

19 I wanted to let the parties on the outside know
20 about why those items we had talked about in July did not
21 appear today.

22 Okey doke. Madame Secretary.

23 SECRETARY SALAS: Good morning, Mr. Chairman,
24 good morning, Commissioners. Mr. Chairman, if I may, for

1 the record I will list the following items that have been

1 struck from the agenda since the issuance of the Sunshine
2 orders on August 29th.

3 As the Chairman mentioned, the Commission has
4 already acted on the majority of these items through the
5 notation process. They are as follows:

6 E-13, E-14, E-18, E-24, E-27, E-29, E-34, E-35,
7 E-40, E-42, E-47, E-48, E-49, E-59, E-63, E-64, G-8, G-9,
8 G-10, G-28, C-3, C-6 and C-8.

9 We will now proceed with the discussion items.

10 Today, Commission Brownell will vote first. The first
11 discussion item on the agenda is M-1, Treatment of Critical
12 Infrastructure Information with a presentation by Susan
13 Court and Carol Johnson.

14 MS. COURT: Thank you. Good morning, Mr.
15 Chairman, Commissioners. The tragic events of a year ago
16 have brought us to the table today to present for your
17 consideration a Notice of Proposed Rulemaking on Critical
18 Energy Infrastructure Information. By way of background, a
19 month after 9/11, the Commission issued a policy statement
20 on previously public documents under which its Staff removed
21 from the Internet and the public reference room, documents
22 which contained such specificity on facilities that if, in
23 the wrong hands, could cause great harm to Americans and the
24 American economy. The Commission followed up on that policy

1 statement with a Notice of Inquiry issued in January. The

1 NOPR and the consideration today reflect the comments on
2 that NOI.

3 Since the issuance of the policy statement, the
4 Staff involved in handling these documents have focused on
5 two goals. First to protect the critical information,
6 second to ensure that persons needing the information to
7 participate meaningfully in Commission proceedings have had
8 access to the information. We believe we've accomplished
9 those goals in large part by carefully examining each of the
10 almost 300 requests and working closely with the requesters
11 and the companies. Many of the Staff members who worked and
12 were engaged in these efforts are here this morning and are
13 sitting behind me to my right and left and also around the
14 table.

15 Unfortunately, as we approach the first 9/11
16 anniversary, there still appears to be a need to protect
17 critical energy infrastructure information from getting into
18 the hands of terrorists. To that end, Staff has prepared
19 the NOPR before you today.

20 At this time, Carol Johnson, the project manager
21 for the rule, will explain what the document proposes.

22 MS. JOHNSON: Good morning, Mr. Chairman,
23 Commissioners. The draft notice of proposed rulemaking and
24 revised statement of policy proposes changes to the

1 Commission's regulations to formalize and revise the process

1 for submitting and requesting critical energy infrastructure
2 information. CEII, the original policy statement, covered
3 only information about licensed and certificated facilities.
4 The NOPR would extend non-public treatment to CEII relating
5 to proposed facilities as well.

6 At the same time, the NOPR would exclude from the
7 definition of CEII information that simply gives the
8 location of critical infrastructure facilities.

9 Accordingly, the NOPR goes further than the policy statement
10 on one hand but covers less on the other. The Freedom of
11 Information Act requires agencies to make records available
12 to the public unless the information falls within one of
13 several explicit exemptions to the FOIA. Therefore, the
14 NOPR proposes a definition of CEII that would explicitly
15 recognize that CEII only encompasses information that is
16 exempt from mandatory disclosure under the FOIA. The policy
17 statements directed requesters to use the FOIA procedures to
18 request CEII. The NOPR proposes an optional process for
19 requesters to use to obtain documents that might be exempt
20 from mandatory disclosure under FOIA.

21 There are several advantages to this alternative
22 process. First of all, it would possibly permit requesters
23 to obtain information that would not be released to them
24 under the FOIA. Secondly, it would allow the Commission to

1 consider a requester's need and intended use of the

1 information in making a decision in whether or not to
2 release the CEII. Thirdly, it would allow the Commission to
3 condition release of the information on a requester's
4 agreement to limit use and dissemination of the information.

5 The NOPR also proposes to create a new position of CEII
6 coordinator. The CEII coordinator would have delegated
7 authority to review requests for CEII, to make
8 determinations whether or not to release CEII to a
9 particular requester and to establish reasonable conditions
10 on the release of the CEII. Significantly, the CEII
11 coordinator's decision to withhold information would be a
12 final decision subject to rehearing by the Commission.

13 The NOPR would permit owners and operators of
14 facilities would get information about their own facilities
15 directly from Commission Staff without having to use either
16 the FOIA process or the alternative process proposed in the
17 NOPR. Representatives of owners and operators would be
18 directed to go back to the owners and operators themselves
19 to obtain CEII.

20 All other requesters would be able to seek CEII
21 through the alternative process by filing a request. The
22 request should include identifying information about the
23 requester, such as name and address and similar information
24 if they're requesting the information on behalf of someone

1 else. It also would include a statement of the requester's

1 need and intended use for the information and also a
2 statement of the requester's willingness to adhere to
3 limitations on use and disclosure of the information
4 requested.

5 Finally, the submitters of CEII would be given
6 notice and opportunity to comment whenever the Commission
7 receives a request for CEII that they have submitted. They
8 would also be given notice before the CEII coordinator
9 released any of the information they had submitted.

10 In brief, informed by our experience over the
11 past eleven months, the NOPR attempts to balance the need to
12 protect this critical information against the need to ensure
13 meaningful participation in Commission proceedings.

14 That concludes my presentation. Thank you.

15 CHAIRMAN WOOD: This is critical energy
16 infrastructure too. Thank you all for the hard work. I
17 appreciate the work through the summer and through the break
18 on getting this before the Commission into consideration.
19 It's important and timely in light of what we're
20 commemorating next week. I do admire how your division,
21 Carol, handled the 300 requests. It was a tremendous
22 administrative issue for us and I think it should be pointed
23 out the processed proposed here is one of administrative
24 efficiency, as well.

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So it's a tough balance but I think the core

1 point you make, Carol, is this is exempted information.
2 Anyway what we're doing is taking information that would
3 otherwise not be available and finding a way to make it
4 available. As you pointed out in your last comment, people
5 can participate meaningfully in Commission proceedings here.
6 I think that's a laudable goal. I think the process through
7 the NOI, to get a lot of feedback from the outside world was
8 useful so I look forward to seeing if anybody can do better
9 than this rule, but I hope we can give it a pretty quick
10 turnaround so we can establish the new process.

11 COMMISSIONER MASSEY: I have some questions.

12 Carol, you mentioned that a proposal with respect to the
13 location of the project, we would not block the disclosure
14 of that information. What do you mean by the location of a
15 project? Just the general location? Or are you talking
16 about maps and so forth?

17 MS. JOHNSON: Maps would be included in the
18 location information. We have a lot of maps that we took
19 off after September 11th, a lot of those would be, could be
20 put back into RIMS, public availability in RIMS to be
21 available to the public. There might be specific, if you
22 had very specific drawings that showed specific parts of a
23 facility, not just where the facility ran, something like
24 that could still be protected possibly, like maybe a shut

1 off valve or something like that, if the program office felt

1 like a particular element in a facility design was
2 particularly critical but just the location of the pipeline,
3 the location of the dam, the location of any other parts of
4 the facility would not be covered, even if it was a detailed
5 map.

6 COMMISSIONER MASSEY: What is the rationale for
7 that proposal?

8 MS. JOHNSON: I believe it's just that the public
9 has the need to know a lot of this information, fairly
10 specific information about where these facilities are.
11 Secondly, a lot of this information is available elsewhere
12 anyway. There are a lot of other maps that are out there
13 that are already available, USGS maps, and maps that are
14 sold by commercial vendors. So we felt like we weren't
15 really keeping much information out of the public domain
16 with it anyway.

17 COMMISSIONER MASSEY: Under FOIA, what are the
18 limitations on our ability to inquire into the purpose for a
19 request for information?

20 MS. JOHNSON: Under FOIA, you are really not
21 permitted.

22 COMMISSIONER MASSEY: Is that clear?

23 MS. JOHNSON: It's pretty clear under FOIA that
24 you don't look at the particular requester's need for the

1 information. That's one advantage to the new process as the

1 Chairman noted. We're taking information that we believe is
2 already exempt under FOIA so we believe it's protectable
3 under FOIA, but one thing that this process allows us to do
4 with information that is exempt is go ahead and then look at
5 what is your particular need. We can now consider your
6 particular need which we couldn't do in FOIA and may release
7 to someone who has a particular need for it outside the FOIA
8 process.

9 COMMISSIONER MASSEY: Suppose I'm a member of the
10 press and I want to write a story about a proposed project.
11 How does this rule deal with limitations on information that
12 might be applicable to me.

13 MS. JOHNSON: I think it will be difficult for
14 the press to obtain information that's exempt under FOIA
15 under this process because one of the things that a lot of
16 this is going to be triggered to is willingness to sign a
17 non-disclosure agreement. Assuming the press wants the
18 information for public disclosure, they're not going to
19 probably be willing to sign non-disclosure agreements but
20 again it's information that's exempt under FOIA anyway.
21 They wouldn't be entitled to it had they filed a FOIA
22 request either.

23 COMMISSIONER MASSEY: I look forward to the
24 comments that we get. I haven't reached any final

1 conclusions about this. I think Staff has done a workmen-

1 like job on a very complex balancing of considerations, and
2 so I hope members of the public and the industry will
3 participate vigorously in the debate over this proposal.

4 COMMISSIONER BROWNELL: Aye.

5 COMMISSIONER MASSEY: Aye.

6 COMMISSIONER BREATHITT: Aye.

7 CHAIRMAN WOOD: Aye.

8 SECRETARY SALAS: The second item for discussion
9 is New England Power Pool with a presentation by Grace
10 Goodman.

11 MS. GOODMAN: Good morning, Mr. Chairman,
12 Commissioners. EPI addresses several filings related to
13 NEPOOL's establishment of procedures for accommodating the
14 Transenergy Cross Sound Cable Merchant Transmission Project.
15 The Cross Sound Cable is an underwater, high voltage direct
16 current cable line connecting Connecticut and Long Island.
17 On June 1st, the Commission accepted NEPOOL's original
18 proposal except for two provisions which were deleted
19 without prejudice to NEPOOL refiling them.

20 NEPOOL refiled the provisions with the required
21 explanations. The first provision under question allows
22 Cross Sound Cable to have different reservation and
23 curtailment priorities than those contained in the NEPOOL
24 Tariff. The order accepts the provision and reminds parties

1 that any different priorities must be filed in a Section 205

1 filing accepted by the Commission before they may be
2 implemented.

3 The second provision provides that the Cross
4 Sound Cable merchant facilities do not fall within the Order
5 888 obligation to expand transmission capacity. In its
6 filing, NEPOOL provided several major reasons for its
7 proposal. For example, the Commission has already found
8 that the Cross Sound Cable project is not a traditional
9 utility because it has no generation, no service territory,
10 no native load, no obligation to serve, and no right to
11 recover any revenue requirement because it's not a
12 vertically integrated utility. NEPOOL contends that the
13 obligation to expand does not apply.

14 Second the Commission authorized Cross Sound
15 Cable to sell transmission rights at negotiated rates rather
16 than at regulated rates because Cross Sound Cable was not in
17 a position to exercise market power.

18 Finally, NEPOOL argues that an obligation to
19 expand could thwart Merchant's transmission. Cross Sound
20 Cable was sized based on its determination of market need
21 after an open season. The economics of the project are
22 driven by that determination. If Cross Sound Cable can be
23 compelled to expand, the fundamental economics of the
24 projects can be undercut.

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The order before you accepts the proposed tariff

1 sheets due to the unique circumstances of the Cross Sound
2 Cable project. However, the order notes that NEPOOL's
3 tariff will be subject to change pursuant to Section 206 of
4 the Federal Power Act if the Commission policy changes in
5 the future. Thank you.

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1 COMMISSIONER MASSEY: I called this item for
2 discussion to express some concern. This is an important
3 issue of first impression, whether a merchant's transmission
4 provider has an obligation to build transmission facilities.

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6 In accepting NEPOOL's proposed tariff revision,
7 today's Order finds that the participants in the Cross-Sound
8 Cable Projects do not have a building obligations. I'm not
9 yet ready to reach that conclusion. I would like the
10 benefit of a more thorough industry debate and more comment
11 before this Commission determines any sort of policy that
12 might be considered generic in this area.

13 Whether merchant transmission providers should
14 have expansion obligation, I think is a significant policy
15 question. This kind of transmission development has a great
16 deal of potential to be an important source of much-needed
17 additional transmission capacity, and we certainly know that
18 we need substantially more capacity.

19 In a bottom-line-driven merchant developers need
20 to know the extent of their obligations when they make their
21 investments. As Grace Goodman pointed out, they're not
22 holding themselves out to be utility-type service companies,
23 and if the merchant sector is to grow, we must avoid
24 needlessly imposing obligations that could scare away

1 development.

1 On the other hand, there are many aspects of the
2 transmission business that still have monopoly
3 characteristics, and an expansion obligation may be
4 appropriate in some instances.

5 In Order 888, the Commission required public
6 utility transmission providers to expand facilities, if
7 expansion is needed to accommodate service requests.

8 I think it's also true that under the Energy
9 Policy Act of 1992, there's an obligation to expand, if
10 necessary. Am I correct in that regard? Mr. Bardee?

11 MR. BARDEE: Yes.

12 COMMISSIONER MASSEY: That service obligation is
13 based on undue discrimination and comparability concerns.
14 Those concerns may not be present with merchant providers,
15 but I would ask the question, are there other bases for an
16 expansion obligation?

17 Can the control of some transmission facilities,
18 including rights of way, represent a barrier to entry? I
19 believe we should consider that. If so, shouldn't control
20 of entry barriers require an expansion obligation?

21 These are my basic concerns. I am not ready to
22 conclude that the record in this case is sufficient to
23 address them. Indeed, I'm not aware of much discussion of
24 the expansion obligation issue in the current industry

1 debate concerning the role of merchant transmission.

1 Thus, I'm not ready to reach any general or even
2 specific conclusions on this issue without the benefit of
3 more comment. I have proposed that the Commission solicit
4 comment in this docket and postpone, for a reasonable period
5 of time, deciding Cross-Sound Cable's expansion obligation.

6 I also have concerns specific to this case. In
7 the original Order in this matter, the Commission accepted
8 negotiated rates for transmission service over the project,
9 in significant part, on the grounds that the prices would be
10 capped by the cost of transmission expansion.

11 That Order observed, quote, "The expansion cost
12 cap is provided through the obligation of the New York ISO
13 and ISO New England or their successors, to expand
14 transmission at cost-based rates to meet new requests for
15 transmission service, including facilities to provide
16 service across Long Island Sound," unquote.

17 Given today's Order, it's not clear to me that
18 the cost-based expansion cap will be effective with respect
19 to expansion across Long Island Sound.

20 Today's Order finds that Cross-Sound Cable's
21 participation in NEPOOL will not broaden NEPOOL's
22 responsibilities to build an interconnection to a
23 neighboring region beyond its current scope.

24 Is NEPOOL's current scope measured as that prior

1 to the Cross-Sound Cable's integration into NEPOOL? If so,

1 does this mean that NEPOOL and its transmission-owning
2 members do not have an obligation to build an
3 interconnection across Long Island Sound to the neighboring
4 regions of the New York ISO?

5 My concern is that the transmission owners in
6 NEPOOL are the same transmission owners as in ISO New
7 England, who, our prior Order observed, have an obligation
8 to build across the Sound under certain circumstances. If,
9 according to today's order, they do not have an obligation
10 to build across Long Island Sound, and the Cross-Sound Cable
11 participants do not either, can we still rely on our cost-
12 based expansion cap?

13 Moreover, any transmission expansion across Long
14 Island Sound may require the facilitation of the Cross-Sound
15 Cable participants. It's not clear to me that additional
16 projects for cables under Long Island Sound will be
17 forthcoming, given the problems that Cross-Sound Cable had
18 in siting its project.

19 Yet, future market conditions could render
20 additional transfer capability as a vastly-superior means of
21 meeting load. Could it be possible that some of the Cross-
22 Sound Cable facilities such as equipment or sites, including
23 the cable trench, might be useful to other developers that
24 want to expand the capacity of Cross-Sound Cable?

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Could control of the Cross-Sound Cable facilities

1 be an entry barrier? Should Cross-Sound Cable at least be
2 obligated to facilitate or allow expansion of the Cross-
3 Sound Cable, if other developers want to do so?

4 Today's Order is silent on these issues, and I
5 think these questions are significant ones. As a result, I
6 believe that today's order leaves uncertain, the
7 effectiveness of an important safeguard against excessive
8 negotiated rates that our prior Order relied upon.

9 As I said, despite my concerns, I have an open
10 mind on whether a merchant transmission provider should have
11 an obligation to expand its facilities, or at least to not
12 stand in the way of an expansion by others. But I need a
13 better airing of the issues before I can reach this
14 conclusion.

15 Given that we will not be getting additional
16 comments in this docket, I would encourage parties to
17 comment on this issue. In our standard market design
18 docket, I feel as though I need the additional input, and
19 without this additional input, I will be dissenting, in
20 part, from the conclusions reached in today's Order on these
21 issues.

22 COMMISSIONER BROWNELL: I'm glad that Bill has
23 raised these issues, because I think that it points us in a
24 direction that, in fact, we haven't had expansive discussion

1 about. I like the idea of using the SMD docket.

1 My own preference is, rather than treat these
2 separately, we ought to treat these kinds of issues
3 generically. I think that without doing that, we create
4 uncertainty for an emerging market player and market segment
5 and may, in fact, kind of close down the opportunity for
6 merchant transmission companies to develop.

7 I'd like to really expand our discussion, but I'd
8 also like it to include what I think we envisioned, which is
9 that market dynamics will be such and the economic signals
10 will be clear enough that merchant transmission providers
11 and others will see opportunity and will not be forced into
12 business decisions, but, in fact, will see opportunity in
13 the business as it develops.

14 I think we don't want to forget that we're here
15 about creating markets, and, to the extent that market
16 dynamics and economic signals are correct, we should be
17 relying on those. And I don't want to lose sight of that.

18 I'm also concerned and would need kind of some
19 further thoughts on how we can put an obligation to serve on
20 a market segment that doesn't have the tools, in fact, that
21 vertically-integrated utilities have, to include, of course,
22 eminent domain.

23 I think the issues are important. I think we
24 need to explore them, but I think we need to explore them in

1 their entirety to also compare and contrast kind of what

1 opportunities are there for incumbents that are not there
2 for merchants in terms of those tools.

3 I think it's a very important issue, but I want
4 to make sure we ask all the questions, including whether we
5 are creating a model that does, in fact, allow the right
6 economic signals to be sent.

7 CHAIRMAN WOOD: My thought is that we take the
8 points you all have made and actually put out a specific
9 framing of the issue so parties can raise what I think were
10 a lot of good questions.

11 Cindy, I guess you put out an MOI. If, in these
12 dockets, we find -- I think we need, specifically in that
13 docket, having the provisions that you raised. You can
14 respond.

15 MS. MARLETTE: You could issue -- receive
16 comments in an MOI and then take those into account in
17 conjunction with the comments on the SMD.

18 You could specifically, I think, put out some
19 specific questions, supplemental questions to the NOPR.

20 We'll come up with a way of doing that. CHAIRMAN WOOD:

21 Let me just ask you a legal question: If they're in the
22 business of transmitting electrical power, are they a public
23 utility under the Power Act?

24 MS. MARLETTE: If they own or operate

1 transmission facilities used in interstate commerce.

1 CHAIRMAN WOOD: If there's an obligation to
2 expand in the Power Act, is that restricted in some way?

3 MS. MARLETTE: The obligation in Section 211,
4 which is your individual transmission request, the
5 Commission has the authority to order enlargement of
6 capacity, if necessary to meet the transmission. It's not
7 mandatory, but the Commission has the authority there.

8 The Commission asserted the authority in the
9 205/206 context, and they are just opposed to generic
10 obligations on all public utility transmission providers.

11 CHAIRMAN WOOD: So, Bill, the issue you had posed
12 before on the Order 888 related to exactly what?

13 COMMISSIONER MASSEY: Primarily the Order 888
14 obligation to expand was, I think, primarily related to the
15 issue of comparability. It was assumed to apply to
16 vertically-integrated companies that also owned generation.
17 Am I correct in that?

18 MS. MARLETTE: As written in 888, because 888
19 applies to any public utility that owns or controls or
20 operates transmission. It is not limited just to the
21 vertically-integrated. That obligation applies to all
22 transmitting utilities who are public utilities, unless the
23 Commission makes an exception as part of the 888 tariff
24 itself.

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COMMISSIONER MASSEY: What would be the

1 comparability rationale for an obligation to build imposed
2 on a merchant transmission provider? Would there be one?

3 MS. MARLETTE: I'm not sure if there would be.

4 CHAIRMAN WOOD: Why would the ownership of
5 generation matter?

6 COMMISSIONER MASSEY: Isn't that what the notion
7 of comparability is based upon in many respects?

8 MS. MARLETTE: The whole notion is that if I am
9 the transmission owner and I'm controlling the monopoly
10 aspect, I'm also in the generation business. That's how I
11 exert market power.

12 And when you have somebody who is not in the
13 generation business, they're not going to be able to do
14 that, but they may still have market power.

15 COMMISSIONER MASSEY: Sure. My own view is, if
16 the rationale is for the obligation to build is solely
17 comparability, if that's it, then the merchant provider does
18 not have that obligation.

19 But if the obligation to build is based upon
20 something broader than that, or ought to be based on
21 something broader than that, in this case, it's hard for
22 them to get this project sited, and they now have the
23 authority to build this project, dig a trench. I don't know
24 all the specifics of it, but they control certain

1 facilities.

1 My question is whether, if they had no obligation
2 to build and no obligation to at least facilitate someone
3 else building, could there be a barrier to entry? And I
4 don't know the answer to that question.

5 Would there be some other form of market power
6 that ought to cause us to consider an obligation to build in
7 these circumstances? I don't know the answer to that
8 question at this point.

9 CHAIRMAN WOOD: And you're concerned about
10 accepting it on kind of a case-specific basis, which I think
11 is where we've been talking about this Order, just saying it
12 applies to the CSC, only until we think more about it?

13 COMMISSIONER MASSEY: I haven't reached the
14 conclusion that there should be no obligation. And this
15 Order reaches the conclusion that the Cross-Sound Cable has
16 no obligation; that's my concern.

17 So I really appreciate your willingness to put
18 this out for comment. That's essentially what I want.

19 Unfortunately, as long as the Order reaches the
20 conclusion here that there's no obligation to build, I still
21 don't think I could vote for that aspect of it, but I really
22 appreciate your willingness to put these questions out.

23 CHAIRMAN WOOD: Let me ask a question about the
24 same Paragraph, 26, of the Order. There is another issue

1 that Bill raised in his question.

1 That was about the obligation of NEPOOL and/or
2 ISO New England to expand to an adjacent region outside of
3 ISO New England. We've kind of got a sentence there at the
4 end, saying we're not going to say what the answer is, but
5 whatever the answer is, this doesn't change it.

6 Haven't we, in fact, in that companion Order,
7 stated that there is an affirmative obligation to expand
8 beyond?

9 MR. BARDEE: I think that Order certainly lends
10 itself to that interpretation. That's probably the better
11 reading of it, the way Commissioner Massey interprets it.

12 NEPOOL, however, for whatever reasons -- and I'm
13 not clear, seems to think they don't have that kind of
14 obligation. Rather than resolve that issue, the Order is
15 written to reserve it for a case in which it's actually
16 squarely presented, and say that here all we're saying is
17 that the addition of Cross-Sound Cable into NEPOOL is not
18 going to expand whatever your duties are.

19 I think probably that if we were to decide that
20 question, my own opinion would probably be that NEPOOL still
21 has the obligation that seems to be in the first Cross-Sound
22 Cable order, but it seems safer to reserve that issue until
23 that has been decided.

24 COMMISSIONER BROWNELL: Aye.

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COMMISSIONER MASSEY: No, in part.

1 COMMISSIONER BREATHITT: Aye.

2 CHAIRMAN WOOD: Aye. Meeting adjourned.

3 (Whereupon, at 10:50, the open session of the
4 Commission meeting was adjourned, to proceed this same day
5 into closed session.)

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