



APPEARANCES:

COMMISSIONERS PRESENT:

CHAIRMAN PAT WOOD, III, Presiding

COMMISSIONER LINDA KEY BREATHITT

COMMISSIONER NORA MEAD BROWNELL

COMMISSIONER WILLIAM L. MASSEY

SECRETARY DAVID P. BOERGERS

ALSO PRESENT:

JANE W. BEACH, Court Reporter

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

(10:20 a.m.)

CHAIRMAN WOOD: Okay, this open meeting of the Federal Energy Regulatory Commission will come to order to consider matters which have been posted in accordance with the Government In The Sunshine Act for this time and place.

We will start with the Pledge to the Flag.

(Pledge to the Flag.)

CHAIRMAN WOOD: Mr. Boergers.

SECRETARY BOERGERS: Thank you.

Good morning, Mr. Chairman and Commissioners. On the consent agenda today are E-7 through E-9, E-11 through E-14, E-17, E-19, E-20, E-24 through E-26, E-28, E-29, E-31, E-37 through E-40, E-43, E-45, E-46, and E-48; G-3, G-5, G-7 through G-11, G-14, and G-15; H-1 and H-3 through H-6; C-1 through C-3, C-5 and C-6. On E-25 and E-48, Chairman Wood is not participating.

Commissioner Massey votes first.

COMMISSIONER MASSEY: Aye.

COMMISSIONER BROWNELL: Aye.

COMMISSIONER BREATHITT: Aye.

CHAIRMAN WOOD: Aye.

SECRETARY BOERGERS: The first item for discussion this morning, A-1, is a report that you have

asked for, Mr. Chairman, on electronic filing. And you asked me to present it, which I will.

Before I talk about electronic filing, however, I would like to mention a couple of things about the mail, the Postal mail situation.

The Postal Service stopped delivering mail to the Commission on October 17th because of the events that occurred in town here and the closing of the Brentwood Postal Facility.

There were no deliveries mailed by the Postal Service to the Commission from Thursday, October 18th, through Friday, October 26th.

Postal deliveries resumed on Monday, October 29th. Since then, daily service has continued. However, the volume of the mail since that time has been significantly lower than it was before October 17th.

In addition, it is my understanding that the Postal Service has retained some of the mail from the Brentwood Facility in order to cleanse or sanitize the mail before delivery to its various destinations, including the Commission.

When that will occur, we don't know. And how much of that embargoed mail was addressed to the Commission here we don't know.

I would like to point out, however, that during

that entire period we continued to receive mail that was delivered through the various overnight private services. We continued to receive mail from messengers, and we continued to receive electronic filing.

So that brings me to the electronic filing report that you asked for, and if we could have the first slide up on the screens.

(Slide.)

The Commission authorized electronic filing in Order 619, RM 00-12. The goal of electronic filing is to reduce the amount of paper that must be filed along with the associated costs, and also to help make information available to the public more quickly and efficiently.

We began to accept electronic filings on November 1st, 2000. Initially we accepted only comments and protests. Could we go to the next slide now.

(Slide.)

On March 12, 2001, we expanded electronic filing to include motions to intervene and rulemaking comments and responses to those filings.

In June we received our 1000th electronic filing, and in October we received our 2000th electronic filing.

Now in the next day or two I will be issuing another notice which will further expand the types of

documents we will accept via e-filing beginning next Monday, November 12th.

This upgrade in electronic filing will also include improved reliability because we will have an alternative site to use if our main web page is down. Could I have the next slide.

(Slide.)

I guess we're at that slide. Thank you.

As of today, about 37 percent of the documents filed at the Commission can be filed electronically. As of next Monday, November 12th, that will increase to about 45 percent, including for the first time requests for rehearing, any sorts of motions, and comments on settlements.

Basically what we have left in the remainder--you can go to the next slide--

(Slide.)

What we have left in the 50-plus percent that is not yet available for electronic filing are the various types of applications that are filed here at the Commission: hydro applications, certificates, et cetera. You can go to the next slide now.

(Slide.)

Last month in October, 30 percent of the qualified documents were filed electronically. That is,

of all the documents that were eligible or able to be filed electronically during that month, 30 percent were so filed.

The average from June through September was 17 percent. So although we are making progress in increasing the load of electronic filing, we still have a long way to go. We want the public to know that electronic filing saves paper, it saves time, and it saves money.

(Slide.)

Electronic filers receive an instant acknowledgement via e-mail of the receipt of their filing from the Commission. The e-mail contains a link to the filing document which the filer can then check to see if it is correct, and they can also use the link or the e-mail to send it to others.

(Slide.)

So let me close by noting that participation thus far in our e-filing has been across the board: regulated entities, law firms, individuals, federal agencies, environmental groups, associations of all kinds have utilized this process.

We have received some very positive feedback, and we intend to continue improving the process. We encourage everyone to use it, and I know you are very interested in this process, Mr. Chairman.

Thank you.

CHAIRMAN WOOD: David, what obstacles or what--I mean we see the reasons why people should e-file. Do we know why they are not e-filing?

SECRETARY BOERGERS: To some extent it may be just the tradition that they prefer to put things in the mail. We have a help desk for people who are having problems with going through the process.

Actually I can give the number for that. It is 202-208-0258. That is a help number for anybody who is trying to make an electronic filing and is having trouble.

Perhaps it may be just the fact that some people do not know about it.

CHAIRMAN WOOD: Less billable hours if you actually send it in electronically?

SECRETARY BOERGERS: I wouldn't ascribe that motive.

CHAIRMAN WOOD: Okay, that was me saying that not you.

In my last job, we actually made it mandatory that anything over 10 pages was required to be e-filed. And if we need to do that as an incentive to get there, I just think the bad events of the last month have made it all that more imperative and give us an opportunity to make

it a public health issue, but to me it has always been a cost efficiency issue that ultimately these costs are always borne usually by somebody paying a utility bill. And it would sure be nice if we could just consider my ears open and those of my colleagues to any improvements that folks on the outside suggest.

I would ask you and Fernanda, David, to be the front line on hearing what people need in the way of making this an easier process for them. If there are incentives that we can provide, FERC is pretty good at that, doing the old-world path to the new-world path, and I am sure we can think of ways to make the new-world path more attractive like giving you a couple of extra hours to file, or something like that.

But I think the 30 percent certainly is an improvement over the 17 percent of the summer, but this is a federal agency, and this is the 21st Century. We ought to be, that number ought to be 5 percent that do not file, and those being perhaps the pro se or the individual landowners who do not really have the electronic means.

But when I look at the group on your last slide of people that do business with us, regulated entities, law firms, associations, environmental groups, municipalities, state/local/federal agencies, that is a lot of the paper that we do so.

And those people are all certainly web-enabled and electronically capable, and I would expect that whatever we need to read from them it is a whole lot easier reading if it comes in that way.

So I would be interested to hear what obstacles exist as a process matter from the industry, and from these other folks that do business here at this Agency, and see what we can do to accommodate that to make it very user friendly here.

COMMISSIONER BROWNELL: Pat, I would like to suggest that for those who typically are not as enfranchised with big budgets for billable hours, that the Office of External Affairs do a really aggressive outreach to make sure that in fact the state commissions, the NSUCA, the other kinds of associations, are aware of this.

And that I would secondly like to suggest that we have an 800 number on the help desk so that people don't have to pay a fee to figure out how to do it.

CHAIRMAN WOOD: Could we make our newly adopted Customer Service 800 number an option?

SECRETARY BOERGERS: I believe we can do that. We will check into it.

CHAIRMAN WOOD: Make one of the options there for people who need help on filing a document at the Commission.

That would be great.

Thank you for the update.

SECRETARY BOERGERS: One thing I would like to mention is that in the Commission's Initial Rulemaking Order on this process, the Commission did state that it was aware that at certain times technological difficulties could result in delays of last-minute filings, and the Commission authorized the Secretary to waive the regulations under appropriate circumstances.

So people who are filing on the last day, as often occurs, near 5:00 o'clock, if they run into those kinds of difficulties, should be aware that there is provision to allow filing the next day.

What occurs right now is that if somebody files electronically after 5:00 p.m., it is logged in as if it were filed at 8:30 the next morning.

CHAIRMAN WOOD: Okey-doke. We will speak on that again in the future.

Thank you, David.

SECRETARY BOERGERS: The next item for discussion is E-1, and Dan Larcamp was a presentation.

MR. LARCAMP: Good morning. I feel like I'm back doing QF cases. It feels pretty good.

(Laughter.)

MR. LARCAMP: At the last Commission meeting, the

Commission, pursuant to Commissioner Brownell's request, asked Staff to consider how it might be organized to pursue a more regional approach to create a more structured process for working with the states and the state commissions.

Since that time, Cindy Marlette, Mark Robinson, Tom Hurlahee, Kevin Caden and I and our staffs have had discussions on this item, and we recommend to the Commission that there be a new division created within the Office of External Affairs to handle these responsibilities.

As a preliminary matter, I think we all agree that we need to improve our communication efforts with the states and state commissions. While all of our organizations engage in extensive outreach efforts, I think we agree that this communication can be better coordinated and that we need to communicate our existing efforts in terms of external communications in a more aggressive fashion.

It is not so much getting credit for what we do as making sure that people are aware of our existing external communication efforts so that they are not in the dark about the very extensive efforts that our staffs engage in communicating with external parties.

With respect to staffing requirements, we all

agree I believe that to do this right requires a commitment of resources targeted at this particular area.

We believe that the specifics in terms of how many perhaps need further discussion with the Commission before we can move forward on that, but candidly it requires the full time efforts of at least several people as we move forward on this effort.

We have not agreed whether these positions need to all be externally filled, or whether some of these positions can be filled with people within our existing organizations.

Probably somewhere between those two extremes is where we may end up. I think we do agree that, to the extent people are moving into a new organizational structure to work full time on communication with states and state commissions that we need to make sure that we are not duplicating those efforts within our own organizations as we have people that are assigned full time to doing that.

So I think that just requires us to take a look at what we have people doing once we get this new effort up and running.

In any event, I think we recognized that our technical and legal staffs from particularly projects in OGC and Markets will be needed to support this enhanced

communication effort as we go forward.

There may also from time to time be need for assistance from the CIO's office or from the ED's office, and I believe that Staff is committed to making sure that these staffing resource issues are in fact fully funded as we go forward to make this communication effort successful.

How we structure this in terms of regional participation is a challenging issue for the Commission. We considered four alternatives.

One was to focus this around our existing regional offices, which are primarily a hydro electric determination right now.

Another option that we considered was contemplated RTO regions.

A third issue was the NERC Reliability Regions.

And the fourth was the NARUC Regional Organizations.

I think that for the longer term we are in agreement that the best solution at this point based upon our discussions appears to be the NARUC Regional Organizations.

However, the most pressing issue vis-a-vis the states that we are facing across the country right now concerns regional transmission organizations, and we believe

that improved federal-state partnership in that area, as we heard in RTO week, is a very pressing matter.

Since I think we all agree that it will take some time before we can implement determinations and an expanded OEA, and the need for improved communication with the states and state commissions on RTO issues, is current and pressing, we suggest that the state-ferc RTO panels that the Commission has been talking about be chosen from the states that have been participating in the regional RTO efforts.

For example, if the Commission moves forward with a Midwest FERC-State RTO Panel, we believe that that panel should reflect membership from the states that have been involved in the MISO and the Alliance cases to date, since that reflects the interest of the state commissions. And it may not completely line up with the existing NARUC organizations.

As you are aware, OGC has communicated options to you about how we could proceed with the RTO panels under the requirements of the APA and our Ex Parte Rules, and I think Cindy wanted to say a few words on that.

After that, I would be happy to take any questions you might have. Thank you.

MS. MARLETTE: We gave you all a memorandum which listed a number of options for dealing with our Ex Parte

restrictions on communications with state commissions who are parties to our proceedings.

What we would propose to you is a version of option five. Under that, under our current Ex Parte Regulations, it provides that the Commission may by order modify any provision of the Ex Parte Rules as it applies to all or part of a proceeding to the extent permitted by law.

So what we would propose to do is to draft an order for you which would permit communications, off-the-record communications, with states who are parties to the RTO proceedings but have a transcript of those communications placed into the record so that all parties would be aware of the comments and would be able to react and give us input to those.

We will hopefully have that for you either at the end of today or tomorrow. We think that meets the Administrative Procedures Act requirements of fundamental due process and fairness to all the parties.

So that would hopefully help jumpstart the RTO panels, and then we can deal with the broader Ex Parte issues associated with this new function in OEA at a later time.

CHAIRMAN WOOD: Thank you, Dan and Cindy both, for the work ya'all did to convert Nora's good suggestion

into an actionable plan for us here.

I guess I want to open it up, Nora, Bill, Linda,  
for any thoughts ya'all might have.

COMMISSIONER BREATHITT: I believe that creating  
a more structured process for working with the state  
commissions will provide benefits not only to the states but  
to us at FERC.

Getting the involvement of these key stakeholders  
should facilitate and enhance the development of key policy  
objectives which I hope are shared, that there are policy  
objectives that are not only ours but are shared by the  
states in most instances.

How we divine those and how we end up coming to  
agreement on those will probably be some of the tougher  
assignments that these panels do, but RTO is certainly one  
of them.

However, I think we must be cognizant that any  
partnerships be done within the bounds of our Ex Parte  
rules, and does not create just another layer of  
bureaucracy. And I believe that such partnerships can be  
formed that addresses these concerns.

There are a number of areas where it will be  
beneficial to have a working relationship with the state  
commissions besides RTOs, and Commissioner Brownell listed  
at the last meeting a number of the areas that could

benefit from a strengthening of the FERC-state relationships, such as providing generic advice on key rulemakings, developing more robust demand-side response mechanisms, and establishing effective market monitoring procedures.

The energy markets are evolving very rapidly, and it is imperative that regulatory bodies have a better understanding of each other's goals and concerns.

More direct communication with the state commissions on key issues can provide a value for all stakeholders, and I thank Commissioner Brownell for her leadership on this issue.

COMMISSIONER BROWNELL: Thanks. I in turn need to thank the Staff whose lives I made entirely miserable in the last two weeks to develop this plan, and to frankly push the envelope and be creative, and I appreciate their tolerance and some really good ideas.

I would just like to make a couple of points:

In order for these to work, I think it will be critical that we and the state commissioners stay focused on very specific issues; that we are, as we did in RTO week, dealing with issues of substance. Because there are a lot of questions out there that I think need further work, and I really commend the Midwest Commissioners for I think bringing some very specific ideas to us. And I think that

we can spread that throughout the regions.

Secondly, I need to emphasize that, while we all have day jobs, it is going to be important for the state commissioners themselves to participate. These are not, as we heard during RTO week, issues that can be delegated to staff.

And while I know the staffs of the state commissions will be wonderful resources for all of us, I think for this to be meaningful and successful it is going to take an extra commitment.

Thirdly, I want to remember that flexibility I think is the hallmark of new markets and how we are all transforming ourselves. So I appreciate, Dan, your comment that we will start organizing around the RTO regions because I think those are the most pressing issues.

What we do not want to do is the typical regulatory responses, have something that gets etched in stone and that we never change. And I think those were some of the comments that we got during the development of this, is let's be realistic and let's be flexible in ways that we haven't had before.

So I am excited about this. I can't wait to get started. I think it will change the dynamic, and hopefully enhance the debate in a way that we can move forward consistent with the vision of this Commission.

COMMISSIONER MASSEY: Thank you for the presentations.

I just want the record to reflect the fact that state commissions have for years participated aggressively and extensively and considerably in our proceedings, and we pay attention to what they say, and we always have.

So I think this effort is designed to take a Commission that already listens and provide a structure for even better communication. And so I support that.

With respect to the RTO processes' aspect of this, creating panels to get more input on RTO design, the Commission has decided to take this step and to receive more input, and to have more process.

I will again state what I have stated before, and at the risk of sounding like a broken record, but it is my opinion: We have had a lot of process on RTO development, and we are going to have more process. But all good things have to come to an end at some point, and I hope the end is near.

So as we get more input and have more process, I would encourage the Commission, my colleagues, and I have discussed it with each of them, and I think we are all in substantial agreement that we want to have this extra process. We want to define clear goals and issues, and get the kind of input that we need as quickly as we can and move

forward.

COMMISSIONER BROWNELL: Perhaps, Bill, I agree with you in absolute substance that we cannot prolong this agony forever. But rather than putting it as the-end-is-near, perhaps the beginning of actual RTOs will be at hand.

CHAIRMAN WOOD: Yes, I tend to agree.

I was just writing a note to Linda, but I will just tell the world: Bill, your good crankiness always makes what we all agree to do look so moderate.

(Laughter.)

CHAIRMAN WOOD: I appreciate being a book to your bookend, so thank you.

COMMISSIONER MASSEY: Did you just compliment me?

(Laughter.)

CHAIRMAN WOOD: You get the paperclip award.  
Yes.

COMMISSIONER MASSEY: Well thank you for that compliment.

(Laughter.)

CHAIRMAN WOOD: I think, having been one most recently, I do think that the steps taken here, were I still a commissioner back on my state's commission, I would view these as very substantive outreach that moves state commissions from a party that can litigate before this

commission to one that really is an adviser and a corroborator with these efforts to make energy markets work better for the Nation's customers.

And I do think the proposal to work within our existing Ex Parte Rules but take advantage of a specifically envisioned exception to those rules be done, and I would support that coming up on notational vote as soon as possible, Cindy, pursuant to your recommendation.

And as to Dan's issue, I think I sense concurrence and I will move forward then on the administrative side to make happen the inclusion of a specific division of the Office of External Affairs that will be focused directly on state relations, state communication, and state coordination of the various issues that we have all talked about needing or wanting input from the states for. And we can move forward on that pretty quickly.

As to the last point Bill raised, I do agree. I think our consultation effort needs to be done in the context of wrapping up a long, open docket or set of dockets. And so I would, although we don't have language before us at this time, I would like to ask that our staffs sit down and work with the agency staff on drafting some specific questions that we do want input from the

state commissioners in the various RTO broad regions that we have kind of sketched out already to ask for some direct feedback from them about, okay, here is where we are. What is your advice about how we close these dockets out? And I think we can put a pretty quick time frame on that.

I do know from talking to Commissioner Sfonda, when I reported back to him what we talked about in RTO week, that he thought if we asked the number of questions about the open dockets that we have dealing with the Midwestern States' issues that they could get back some feedback to the Commission in a series of, he said, three weeks. So I will hold him to that, because I do want to get moving on those dockets before Christmas.

I think we can move also with the Northeast and the Southeast reports as appropriate probably in January, give those folks a little more time, but really keep the focus on that being a matter of weeks not months. Because I do share Bill's sense of need to get going here, because this is only the first step of several that need to take place to get RTOs up and going.

So we can make that our first effort of many of an ongoing relationship with the state panels. So I guess I would like to ask for your concurrence with adoption of Dan and Cindy's recommendation. And we will get a specific

order that we will vote on on Cindy's issue later.

COMMISSIONER BREATHITT: Do you want us to say--

CHAIRMAN WOOD: Aye or nay.

COMMISSIONER MASSEY: I crankily concur.

(Laughter.)

COMMISSIONER BROWNELL: I enthusiastically endorse.

COMMISSIONER BREATHITT: I happily, let's see-- you concurred, you endorsed--accept.

CHAIRMAN WOOD: So you did A, C, E, so I...

COMMISSIONER BROWNELL: Just Say Yes.

(Laughter.)

CHAIRMAN WOOD: I just say yes.

All right, E-2.

SECRETARY BOERGERS: E-2 is the next item, and I don't believe there is a presentation on this one.

CHAIRMAN WOOD: I have offered to give the presentation.

In the context of our RM docket that was the caption for RTO week, we discussed at our meeting last week after our kind of open discussion of market structure issues, that we would attempt to put out a procedural order giving some guidance on how we are in fact going to close out these dockets and handle the RTO week issues.

And so before us is a short but I think punchy

order that lays out for the public and the industry what in fact we are doing.

The Commission intends to complete this RTO effort on two parallel tracks.

The first track will be to resolve issues relating to the geographical scope and governance of qualifying RTOs across the Nation. We will address these in the pending RT dockets following our consultation with the state commissioners that we just discussed.

The second track to complete the RTO effort will be in the Transmission Tariff and Market Design Rulemaking in this RM 01-12 docket. That was our follow-on to RTO week, and we have set up for vigorous back-and-forth between staff and industry and interested parties a place on our web page for parties to have a continuing dialogue about these issues before we actually publish a NOPR.

I believe that this NOPR and the ultimate rule that we adopt would help address business and process issues that are needed for the organizations that we are going to work on in the RT dockets to actually fulfill the functions and characteristics of Order 2000 so we actually do get the cow out of the barn.

In the fulfillment of these objectives, we in this Order lay out a number of RTO functions and other activities which are viewed to be necessary to enable a

vibrant and efficient wholesale market that we have heard from a number of parties, and we want to ask really before we move beyond the questioning phase, we want to invite comments in this docket to anybody that has other ways that the wholesale market activities might be fulfilled.

This is certainly in the context of what we have already done in Order 2000, but we want to, before we take off, ask one last time in the context of broad market design issues some specific questions.

So those are in this Order, as well. We do commemorate in this Order pretty much what we just talked about, about the importance of state participation and the regional panel structure.

We also mentioned the unique additional outreach efforts, including but not limited to investor representatives to better understand some of the financing issues that have been raised in a number of dockets and at the rulemaking and at the RTO week.

We have also committed in this Order to do cost/benefit studies, as we said to our colleagues at the states during RTO week. And the Order notes that we have established a working group with state commissioner participation to work with our staff and with the study consultant to frame these analyses so that the issues up front really are framed right and we don't have a debate at

the end, as I see going on in other cost/benefit study efforts across the country about how valid the study is. So we are trying to get a valid, and appropriate, and objective study up front that will really I think benefit our efforts and provide some support or refutation for the need for RTOs.

Finally, the standardization of market rules, which we recently announced in the Notice of Proposed Rulemaking initiation in this particular docket, will be I think the heart of a lot of our efforts to complete the reformation of Open Access Tariffs and standardize the market design where appropriate to do so.

I look forward to, again as I think we need during RTO week, getting our sleeves rolled up in the efforts, and this Order in fact reflects that in RTO weeks we did hear a lot of things going on there that have a lot of potential for standardization, and I think we got some clear points about where standardization may not be as helpful as we might have thought.

This Order on guidance indicated that the first phase of the rulemaking will be NOPR to be published in January--I'm sorry, the Generation Interconnection was also mentioned here. We didn't put a date on the NPRM for market design effort.

The NPRM for standardizing generation interconnection was also mentioned in here, indicating that

the NOPR will be issued in January, and that we will also do a second phase on the pricing issues in April of 2002 to address some really critical issues that a number of parties have raised.

And finally, this Order indicates on a time-line function that RTO development is in very different stages in various parts of the country and it is not possible for all RTOs to be in operation by the December 15th deadline of Order 2000, and that therefore we intend to address in our future orders the establishment of a progressive but appropriately measured time-line for continuing the RTO progress in each general region.

The Commission is particularly cognizant of the critical importance of keeping parties focused on performing RTO functions now, while positioning for future, more regional integration later on. So making sure that we keep our eye on the present while we plan for the future.

It makes particular note that information systems are very difficult and challenging to coordinate and are very important to get right before they go live.

Finally, in conclusion, the Order states that this effort to create a seamless national energy electricity marketplace is similar to that led by this Commission in the natural gas industry a decade ago, and for that reason calls upon interested parties to commit the necessary time and

resources to a thorough but expedient completion of the industry transition.

I appreciate the very hard efforts of our staff, senior leadership, and front-line staff to provide some framework for this Order.

I appreciate my colleagues and their staffs working on it until just before this meeting, and I think it is a good first effort to put some context for the efforts that we will aggressively undertake in the coming weeks and months, and I support its approval.

COMMISSIONER MASSEY: I would like to commend Chairman Wood for laying this Order before us. I would like to call attention to the fact that it is only six pages long, but it is very meaty and touches on a lot of topics.

And so each of you ought to get a copy of it, because it is a very important Order that provides a lot of context for how the Commission intends to move forward.

It is obvious to all of you in this room and in the TV audience that we have a lot of balls in the air as they apply to RTO development and related issues, from interconnection to standardization of market rules, to getting the RTOs up and running within a reasonable period of time. And how are we going to get the additional input that we have concluded that we need?

And so it deals with all of these issues and

provides the necessary context, and I think it will be helpful to the industry and to state commissions in understanding how we intend to proceed.

Three points in particular:

It reiterates that we intend to get this done. I like the tone of this document in that respect; it leaves no doubt about it, that we intend to get these RTOs form and in a very timely fashion.

Number two, it deals very briefly with I call it the so-called slicing-and-dicing issue: are there functions, wholesale market functions or activities, that can be divided in a different way than we have contemplated? Before there was a fair amount of discussion about this during RTO week. Are there certain functions that ought to be performed by particular kinds of entities and performed in a particular way? So we ask for more comment on that point.

And point number three, we state very clearly that we intend to move forward to standardized market rules as appropriate, and I strongly support that effort as well.

So I commend this Order to all of you.

COMMISSIONER BROWNELL: It is hard to follow someone who is not only cranky but eloquent, but I have a couple of points that I would just like to emphasize.

This was important for me, and I appreciate the

work that you did, and in fact that everyone did, but, Pat, you took the leadership, because I think it allows for a rational business planning process to move forward.

I think it recognizes that we cannot afford to make these decisions iteratively and then wait until the end to see if the pieces fit together. I think that has in fact been a risk both at the way we were proceeding, and indeed what I have seen in some of the states.

So I think that while this represents an enormous amount of work for not only our staff and the intervenors, but it does allow for planning, it does allow for that end game, and it does allow for us to look at the piece and how the whole is coming together.

So I am really pleased. It helped me kind of focus my energies. I think we do have to recognize the integrated nature of the market and not making decisions on various pieces in isolation--tempting, but very, very risky.

It also I think allows, while it does represent an enormous amount of work, people cannot say I could not allocate the resources because I did not know what you were going to do.

And I think that we have recognized that that is a critical issue particularly for state commissions, but other intervenors who do not have the resources that the big players have.

I also want to just remind everyone of a conversation we had while we were out West. That is, we are going to be much more aggressive about using alternative mechanisms for having meetings, including satellite feeds and audio streaming and things like that, to allow greater participation in these processes as we move forward.

So, thanks. I am feeling much more comfortable than I did two weeks ago. Although I know I am not going to get a life back for a couple of years, it is okay. And I agree, if we are voting.

COMMISSIONER BREATHITT: Well I am pleased to support the Order we are issuing today. The Order does intend to provide guidance as well as a roadmap for future Commission action on Order 2000 implementation.

We have been engaged in much public discussion about how we should proceed to significantly and successfully implement RTOs, and we have established several initiatives in this regard.

This document gathers into one place an overview of our various RTO initiatives and implementation policies, and I hope this will provide some clarity to the process. It is an important Order, as Commissioner Massey stated earlier.

The aspect of the Order that engaged most of my attention deals with the appropriate role of independent

transmission companies, or Transcos. During RTO week we heard many views, some of which indicated support for a separate kind of organization apart from the independent transmission company, to perform certain RTO functions.

Today's Order invites public comment on the allocation of wholesale market activities which signals that the Commission has not made up its mind on that issue.

I am able to support this aspect of the Order because it also acknowledges something that I consider to be very important. Order 2000 contemplated that some independent transmission organizations might develop stand-alone RTOs.

In recent weeks there has been a lot of speculation about the Commission's commitment to the Transco model, and I would like to emphasize that, while I am willing to consider alternative ideas such as umbrella organizations, I do not want to adopt any policy that would foreclose the possibility of a stand-alone independent transmission company as an RTO.

I believe that independent transmission companies can provide innovation, as well as some sorely needed investment in transmission facilities.

Proposals for independent transmission companies have taken many different forms, and in my view they are best dealt with on a case-by-case basis.

So I look forward to the comments on the allocation of RTO functions, bearing in mind the importance the Commission places on independence and governance. And I would almost like to read that one more time, but I don't think I need to. Governance and independence are key to this Commission, and I hope that all of what I have said is placed in that context.

So I support this Order and I am happy that we are voting it out today. I would like to thank my colleagues for their hard work on it. All four of us worked very hard on this Order in the last, not only the last few hours before this meeting, but yesterday and days preceding that.

CHAIRMAN WOOD: Amen to that.

Cindy, let me ask you a process question in light of the points we have asked parties to respond to on what Bill calls the slicing and dicing issue.

On page 3 of the Order it says: The Commission will be seeking comments on other ways wholesale market activities might be fulfilled.

Where is the process by which interested parties could do that?

MS. MARLETTE: We left that somewhat vague in here because this lead docket number is on the intended rulemaking on tariff design and market design, which will

apply not just to RTOs but to other public utilities.

And we thought we would, in some of the other specific RTO dockets, try to get comments from parties in those dockets as they pertain to the specific proceedings rather than in this to-be-issued rulemaking.

CHAIRMAN WOOD: So would we issue a supplemental order in those RT dockets and say in light of this part of this Order, you are invited to respond by X date?

MS. MARLETTE: Right. I think that would be a good option. That way you get the parties focusing on their specific regions.

The other place in this particular Order, it does say we intend to ask the state commissions for their views on how to slice and dice. And we can do that in the letters that we will be sending to the state commissioners. I think that would be a good forum.

CHAIRMAN WOOD: Okay, anything else?

(No response.)

CHAIRMAN WOOD: Thank you all again for the nice work, and let's vote.

COMMISSIONER MASSEY: Aye.

COMMISSIONER BROWNELL: Aye.

COMMISSIONER BREATHITT: Aye.

CHAIRMAN WOOD: Aye.

SECRETARY BOERGERS: The next item for discussion

is E-21, and again I don't believe there is a presentation on this item. It is the City of Alma, Michigan.

CHAIRMAN WOOD: I asked for it, and I asked for it because I was concerned about the argument that Consumers Energy said that it did not have the opportunity to mitigate with regard to the distribution system assets.

I am comfortable, as the Order states, that they in fact had the opportunity to do so. And therefore I have nothing to add that the Order didn't do, so I would recommend its approval.

Vote?

COMMISSIONER MASSEY: Aye.

COMMISSIONER BREATHITT: Aye.

COMMISSIONER BROWNELL: Aye.

CHAIRMAN WOOD: Aye.

SECRETARY BOERGERS: The next item for discussion is E-49, and there is a Staff presentation by Jignasa Gadani.

MS. GADANI: Good morning. My name is Jignasa Gadani, and Annette Marsden is my colleague on this Order.

This Order directs the California ISO to enforce the credit-worthiness requirements of its tariff, and the Commission's prior orders, and rejects the proposed Amendment No. 40 to modify the billing and settlement procedures under the ISO's tariff.

The Order is partly in response to a motion filed by generators asking the Commission to enforce the credit-worthiness requirements of the ISO's tariff.

The draft before you directs the ISO to enforce its billing and settlement procedures under its tariff to invoice California's Department of Water Resources for all the ISO transactions it entered into on behalf of SoCal Edison and PG&E within 15 days from the date of this Order.

And, three, to file a report with the Commission within 15 days from the date of this Order indicating overdue amounts from DWR, and a schedule for payment of those overdue amounts within three months of the date of this Order.

This Order will help the ISO's customers by ensuring timely payment of the ISO's energy suppliers.

Thank you.

CHAIRMAN WOOD: Thank you, Ms. Gadani.

Any questions or thoughts?

COMMISSIONER MASSEY: Yes. This Order attempts to address a very serious problem in the California ISO market.

Generators that sell into the ISO market are not being paid for their services. Compounding the problem is the fact that the generators are required to sell into the ISO market by the Commission's Must-Offer Condition

established as a key part of our mitigation program for the dysfunctional California market.

The fundamental basis of commercial activity is that sellers are paid for their services. The fact that they are not is completely untenable. It is right for the Commission to aggressively address this problem.

Pursuant to the ISO's tariff, all buyers in its market must be credit worthy. Two of the major utilities in California, however, do not meet the credit worthiness requirements, and the California Department of Water Resources, or DWR, is serving as the credit worthy party backing the purchases of these utilities.

But DWR has not been paying the bills for purchases in the ISO market. The claimed reason is that there is no established mechanism to do so. The Order resolves this in a straightforward way by explaining that the ISO should directly invoice DWR per its status as a scheduling coordinator.

The Order says that if the ISO fails to do this within 15 days it is a violation of the tariff and of our credit worthiness Orders that justify the Commission going to court to seek injunctive relief under the Federal Power Act.

I support this kind of aggressive Commission action to ensure that generators are paid. The Order goes

further, however. It says that if the ISO does not provide a credit worthy party to back the transactions of the non-credit worthy utilities, the must-offer requirement set out in our Mitigation Orders of this summer will no longer apply.

I cannot support this provision of today's Order and will dissent in part on that basis. The must-offer requirement is a critical part of the mitigation program the Commission put in place this summer, finding the program necessary to ensure just and reasonable rates in California's dysfunctional electricity market.

We were clear that the mitigation conditions are to remain in place until September of 2002.

While the Western markets are behaving right now, we cannot be assured that this will continue. In fact, I give the must-offer requirement a lot of the credit for the reasonable prices.

The Commission has made no finding that some or all of the California mitigation program is now unnecessary. Indeed, our pronouncements declare emphatically that all of the mitigation program is necessary until next September.

I do agree, however, that the current untenable situation must be resolved quickly. My disagreement with the Order is that I would stick to a more direct approach.

The Order instructs the ISO, among other things,

to invoice DWR within 15 days for all transactions it entered into on behalf of the non-credit worthy utilities.

I would give this approach a chance to work, perhaps including a requirement that the ISO indicate to us within five days that it will comply.

We should then pursue remedial action such as injunctive relief if the ISO does not respond positively. We should explore any other direct approaches to ensuring that the suppliers get paid.

I strongly urge the ISO and DWR to resolve this situation and to pay the bills, but I cannot support lifting a key component of the mitigation program that a mere four months ago the Commission found necessary to ensure just and reasonable prices.

I want us to find a solution which includes both a must-offer until September of 2002 and a must-be-paid requirement. Therefore, I will write separately and respectfully dissent in part from today's Order.

Thank you, Mr. Chairman.

CHAIRMAN WOOD: Thank you, Bill.

I guess just as a thought about that, and I understand your point because I do like you share the sentiment that the must-offer requirement really did, at least as far as things other than Acts of God, did do a lot to bring the needed generation to keep the price in a

rational zone since we acted in June.

I do view that it is part of the puzzle. I think the one way to get the cake and eat it too is have the ISO do what we have told them to do now for the third time. And I think I have every expectation that that will be in fact what happens.

So I am open to thinking about this later, but it was a critical part of my vote at my very first vote with you all when I was sitting over there, that the if-then was if you're always online and made available you will get paid, and the fact that we've got delinquencies that would make a credit reporting agency blanche out there I think it is time for us to basically say the stakes are very high and it is time to get it fixed.

I understand your concerns, but I do think this might actually result in the outcome we all desire. So I will support the Order as drafted.

COMMISSIONER BREATHITT: I do appreciate Commissioner Massey's comments. He has been through this California energy crisis for the long haul, as I have, but I am comfortable with the Order.

I think we need to start addressing the grave financial difficulties that have resulted and are still resulting from the California energy crisis, and I will be voting aye.

SECRETARY BOERGERS: Time for a vote?

COMMISSIONER MASSEY: No.

COMMISSIONER BROWNELL: Aye.

COMMISSIONER BREATHITT: Aye.

CHAIRMAN WOOD: Aye.

SECRETARY BOERGERS: The next item on the agenda for discussion is G-13, with a presentation by Jack Silverman from OGC.

MR. SILVERMAN: Mr. Chairman, Commissioners, this proceeding involves the Trans-Alaska Pipeline System's Quality Bank. The Quality Bank is necessary because the streams coming down on the system are of different quality, and the Quality Bank is designed to compensate the shippers that put in the higher quality oil and requires the payment by those who put in the lesser quality.

In 1993, the Commission adopted a contested settlement which changed the method of valuing the oil from gravity to a distillation method. Under the distillation method there are various cuts that are made in the oil which are valued.

The Commission's Order was appealed, and subsequently we have had three court remands on Commission Orders which adopted contested settlements.

The Order before you sets all the issues for a concurrent hearing with the Regulatory Commission of Alaska

which has jurisdiction over the intrastate shipments on TAPS. That has been the procedure that the Commission has followed in all the prior TAPS proceedings.

That concludes my presentation.

CHAIRMAN WOOD: Thank you.

I would add also that the Order states in the same paragraph that, unlike the prior proceedings, we do here envision that the Alaska Administrative Law Judge and the FERC Administrative Law Judge would be permitted to confer on matters of substance and on procedure, and are encouraged, although not required, to endeavor toward a joint decision so that we really don't have the jurisdictions being pitted against each other as I think they were--I'm looking at Andy and smiling because he and I were both here as much younger men when this came through the first time, and I guess there are a few of those cases around that never go away.

Hopefully with this effort, perhaps--which I should add in the spirit of the day is another good effort of joint state-federal cooperation--we can hopefully get to closure on this matter that affects a lot of different companies. So I support the Order.

COMMISSIONER BREATHITT: I have a short comment to make.

In the Order that we establish hearing procedures

today to do, we are consolidating the remaining issues involving the method that we use to value certain products in the oil stream from the Trans-Alaska Pipeline System that we call TAPS.

These issues are also pending, as the Chairman just said, before the Regulatory Commission of Alaska. And with the agreement of the Alaska Commission, we are directing that a concurrent hearing be held with them, as has been done in prior TAPS evidentiary hearings.

These issues have been pending before the Commission for years, and the parties need to come to an agreement which can finally result in sorely needed resolution of the remaining issues.

So I am glad that we are dealing with this today.

Thank you.

SECRETARY BOERGERS: Could we have a vote?

COMMISSIONER MASSEY: Aye.

COMMISSIONER BROWNELL: Aye.

COMMISSIONER BREATHITT: Aye.

CHAIRMAN WOOD: Aye.

SECRETARY BOERGERS: And the last item for discussion today is H-2, which involves a hydro licensing status workshop. And Tim Welch has a presentation.

MR. WELCH: Good morning everyone. I am here just to announce our scheduled hydro licensing status

workshop that we are going to be having next month here in Washington.

Before I start, I would just like to introduce some of my peers who also worked on our planning team. To my right is Elizabeth Molloy from the Office of General Counsel. To my left, Alan Mitchnick from OEP. And also Tom Dean from OEP. I also recognize the leadership of Tom DeWitt and Ann Miles who were also parts of our team.

Do we have our first slide?

(Slide.)

We have identified 51 hydroelectric applications that have been before the Commission for five years or more. So in an effort to sort of find ways to creatively remove some of the procedural impediments and roadblocks that have precluded us or the Commission from moving forward on some of these license applications, we have decided to have this workshop with a primary effort to engage resource agencies, stakeholders, and applicants in sort of a brainstorming session and a discussion about, like I said, coming up with ways that we can sort of move some of these older cases forward.

(Slide.)

Giving you a little timeline here, of course today, November 7th, we're announcing the workshop. Tomorrow we will be issuing public notices, press releases,

and invitations to some of the participants of the workshop.

And of course the workshop itself will be on December 10th here in Washington. And, if necessary, we have scheduled another day, December 11th, to finish up any of the unfinished business.

(Slide.)

Now the goals of the workshop, as I said, are to review and discuss hydroelectric licensing applications that have been pending here at the Commission for five years or more, and to identify some of the unresolved issues that are causing these projects to be here, and determine where we go from here. And, most importantly, having some sort of an agreement or consensus with some of the other parties involved of who exactly is going to take the next step in order to move these things along.

And the last bullet, probably one of the more important ones, is that this workshop will focus on solutions.

I just want to emphasize to everyone that this is not any kind of an effort to point fingers, or have a blaming session, this is exactly what it says. This is a workshop. We are hoping that it is going to be a roll-your-sleeves up, brain-storming, how-can-we-move-forward type of thing. I can't emphasize that enough.

(Slide.)

Just to give you just a little idea of where some of these projects are located, they are located in four regions of the country. You see sort of New York, New England, the Midwest--primarily Wisconsin, and then California, and then the Northwest in Oregon and Washington.

(Slide.)

Now a further breakdown here just shows that most of these 51 projects are located in New York State, and that is by sheer volume of the number of projects that we regulate in New York, with 8 projects each in California and Washington State, two states where there are some fairly complex issues involving water rights and endangered species.

(Slide.)

Now as far as how long some of these projects have been before the Commission, you can see the bulk of the 51, 37 in fact were filed between 1990 and 1994. And this is probably the remnants of the class of '93, the 157 applications that we received in 1991. So a lot of these are left over from that, and because they have some fairly complex issues.

(Slide.)

Now just to give you a little flavor of what are some of the issues that we might be talking about that we

are sort of identifying as impediments, the bulk of the projects, 26 in fact, involve lack of a state water quality certificate.

There are sort of two aspects to this. First, the state certifying agency just simply has not issued the water quality certificate, or they may have denied the certificate and the proceeding is in some sort of a lengthy appeal process.

Now 9 of the 51 are involved or have been involved in settlements where parties have specifically asked the Commission to wait on the proceeding while they try to have settlement negotiations to work out some of these issues.

Five of the 51 are what we are calling the application has been amended after it's been filed with the Commission. Either there is a new applicant, or there has been some sort of a major change in the project that has caused the Commission Staff to sort of have to begin the analysis all over again.

And then we have 11 in other categories. That includes things like Endangered Species consultation, and additional information requests where there may be studies going on where the Staff needs some key pieces of information that weren't included in the original application.

(Slide.)

So who will be our participants?

First of all, the federal agencies that are involved in the hydroelectric licensing process: the Fish & Wildlife Service; the Forest Service; the National Marine Fisheries Service most notably. Of course states agencies are mostly fish and game agencies and some of the water qualifying agencies. Indian Tribes that might be affected. Of course the applicants themselves. Nongovernmental organizations such as American Rivers that are very involved with a lot of the licensing of projects. And of course we are inviting you all as well. And the general public.

So as far as getting the word out, today is sort of our little kickoff with the announcement at today's Commission meeting.

As I said earlier, we will be having a press release. There will be extensive information that's posted on the FERC web site. We will be issuing tomorrow public notices to all the intervenors and parties that are involved with all of these 51 license applications. And we are going to be sending specific letters out to federal and state agencies, officials, applicants, Tribes, and NGOs.

(Slide.)

Now we will be having our workshop right here in the Commission meeting room. And I think you can appreciate

the fact that, when we're talking about 51 license applications, that involves a lot of people, a lot of agencies, a lot of individuals, a lot of stakeholders. So we didn't want people to get the impression that everybody has to jump on a plane and get to Washington, D.C., as soon as possible, so we tried to make an effort to provide as many avenues for participation as we possibly could.

So we are going to be having a video conference set up in all of our regional offices. We are going to have teleconferencing. We are trying to get like 50 to 100 telephone lines set up. We're going to have the big bat phone out here, and that type of thing.

Of course we will be using our video/audio streaming like we're using here at the Commission meeting. And we will have a stenographer here for a written transcript for those who may not be able to participate. And we will also be inviting written comments, as well.

(Slide.)

So just to give you an idea of how we think the agenda will go, we will have of course the requisite welcome and introductions. Then, setting forth the goals and the ground rules of the workshops.

Then we will probably have a very simple sort of a status of some of the pending applications using some of

the slides that I just showed you.

And then we are going to be having a project discussion. And we are going to discuss each project, one by one, so we are going to be discussing all 51 projects. And we are going to group them by state.

So that if, say for example, there are some folks either on the phone or here in Washington from New York State, you know, they can sort of come forward and discuss all the projects in their state rather than having to come back and forth.

At the end we will kind of summarize the meetings, and we will summarize the options and agreements for moving forward. And then there will probably be some closing remarks.

(Slide.)

Now zeroing in on the project discussion itself, exactly how that is going to work, we will probably begin by the OEP staff person that is probably the project manager giving some sort of a presentation. And we are going to make individual slides of each project. And that will have information in two categories.

It is going to have background information: where the project is located, what river, how many megawatts it is. And then we are going to have an area of next steps, the steps that we have identified as being necessary in

order--that have to happen before these applications can move forward.

So once we have given the background information to sort of set the stage, then the brainstorming will begin with all of these agency folks and applicants, and coming up, as I said, with creative solutions and hopefully getting people to make commitments on exactly how we can get things moving forward. So we will have probably a protracted discussion there.

And then hopefully at the end we will summarize and have strict options for how these things are going to proceed.

(Slide.)

So as far as follow-up, you know obviously all the commitments that are made, including commitments by FERC Staff, we expect follow-ups on the agreements and the next steps that we agreed to at the workshop.

In the next bullet, in order to ensure a degree of accountability here, we already plan on having another workshop next year.

That's all I have. I would be happy to entertain any questions.

CHAIRMAN WOOD: Tim, I want to thank you and the team for putting together such a thoughtful game plan for doing what we can within the limits of our statutory

authority to really try to get to decisions one way or the other on these older projects here at the Commission.

I think it is one of the black eyes we carry, and I know some of it is not--most of it really isn't to do with us. But to the extent it is to do with what we collectively can do with the other parties that care a lot about these applications and licenses, I think will really serve the public interest.

So I look forward to this event. It can go a lot of ways, and I think that is what makes doing this job a little bit of fun. So I look forward to sinking my teeth into some hydroelectric matters, because I know we have been focused elsewhere in my short tenure here on the Commission and look forward to jumping in with both feet here.

CHAIRMAN WOOD: Okey-doke, let 'er roll.

MR. WELCH: Thanks everybody.

CHAIRMAN WOOD: And that is all--

SECRETARY BOERGERS: That concludes our agenda for today.

CHAIRMAN WOOD: --for today. Meeting adjourned.

(Whereupon, at 11:30 a.m., Wednesday, November 7, 2001, the Commission meeting was adjourned.)