

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

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8 ACTING SECRETARY LINWOOD A. WATSON, JR.

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12 ALSO PRESENT:

13 FRED SPRINGER

14 JOSHUA Z. ROKACH

15 DAVID HOFFMAN, Court Reporter

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1 PROCEEDINGS

2 (10:15 a.m.)

3 CHAIRMAN WOOD: Good morning. This open meeting
4 is the first open meeting of 2002 of the Federal Energy
5 Regulatory Commission. We will come together to consider
6 the items which have been posted in accordance with the
7 government in the Sunshine Act. Would you please join me in
8 the pledge to our flag?

9 (Pledge of Allegiance recited.)

10 CHAIRMAN WOOD: Good morning. I'd like to start
11 the meeting with a welcome. Also we'll go ahead and do the
12 Consent Agenda first. Bill?

13 ACTING SECRETARY WATSON: Good morning, sir. the
14 Consent Agenda E-3, E-6, 7 and 9, 11, 12, 14 and 15, E-17,
15 19 and 20. Then we have a late add, M-1, which was approved
16 by the Commission this morning. G-1, G-4, 5 and G-12, H-2,
17 4 and 5, C-1 and 2, 3, 4 and 6. Commissioner Breathitt is
18 dissenting on H-5. Commissioner Massey has a partial
19 dissent on E-14, and Chairman Wood will not be participating
20 in E-7 or E-12. And Commissioner Massey is first.

21 COMMISSIONER MASSEY: My partial dissent is
22 noted.

23 COMMISSIONER BREATHITT: I would dissent as
24 noted.

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COMMISSIONER BROWNELL: Aye.

1 CHAIRMAN WOOD: Aye. Item A-1, Agency
2 Administrative Matters. Actually, Kevin, get that paper we
3 discussed. I've got two announcements of interest, the
4 first of which is that yesterday the Commission posted for a
5 senior executive service vacancy announcement for a new
6 Office of Market Oversight and Investigation. I just wanted
7 to call attention to that.

8 We've talked a long time about the importance of
9 overseeing the agency's market operations in a high level
10 way. A lot of that goes on today at the agency, but have
11 long thought that it could benefit from being not only
12 consolidated with different areas that a do a lot of the
13 same thing, but build upon that, develop our skills in a new
14 way to reflect the new market realities, and also to elevate
15 it to the status of a full office within the Commission.
16 That needs to go through, of course, the usual posting, and
17 we'll hopefully get some very good candidates both inside
18 and outside the Commission, first to look at. But I
19 just wanted to announce that that is out there, and would
20 also like to announce that the last top level office that we
21 have posted for was the Office of Secretary when David
22 Boergers left.

23 It's my pleasure to announce today that I'm
24 appointing Magali Roman Salas as Secretary of the Federal

1 Energy Regulatory Commission. Magali is currently Secretary

1 of the Federal Communications Commission, and we had some
2 wonderful candidates for that job and really just had a
3 feast of riches. I look forward to Magali coming. She has
4 great leadership qualities, superb background. I view her
5 as a good agent of change and somebody that I think we'll
6 all enjoy working with here at the Commission. I wanted to
7 announce that today. She'll be starting between now and our
8 next open meeting.

9 The fun part now is we have new folks coming in,
10 and we have great giants leaving the Commission and going on
11 to make the world a better place, and would like to bring
12 those folks forward today. We had two big retirements in
13 the last couple of months and wanted to recognize them
14 today, the first of which is Mr. Fred Springer. I'll read
15 something for you, then come on up here. But why don't you
16 just come on up here anyway while I'm reading it.

17 The father of hydropower has gone on to other
18 fields to have progeny, but we love him here and want to
19 thank him for his almost 35 years of dedicated service. He
20 began his career as a civil engineer, which is a great
21 thing, project manager in March of 1970, just in time for
22 the first class of relicensing that was filed here back in
23 1969. Since that time, he has held supervisory and
24 managerial positions of increasing responsibility, rising to

1 Director of the Office of Hydropower Licensing in 1987. He

1 held that position for almost ten years, becoming the
2 longest lasting office director this Commission has had.

3 He is presently, until at least the first day of
4 this year I believe, was Director of Hydropower
5 Administration and Compliance in the Office of Energy
6 Projects. He was here to experience the gold rush of hydro
7 applications created by the tax incentives of PURPA. They
8 called it an avalanche then, but we would probably use a
9 different word since then. For example, in one year alone,
10 1,800 preliminary permit applications were filed to study
11 hydro sites, and we had tons of license and exemption
12 applications as well. And some people, in fact I think most
13 people that I've asked believe you actually processed them
14 all.

15 (Laughter.)

16 CHAIRMAN WOOD: You're one of the most
17 knowledgeable people we've ever had on hydropower, and the
18 industry, the customers of America and we here at the
19 Commission will miss you very much and wish you all the very
20 best, Fred.

21 (Applause.)

22 CHAIRMAN WOOD: Presented to Fred E. Springer,
23 who is hereby deemed an exemplar of public service for a
24 distinguished career in pursuit of the vision, mission and

1 values of the Federal Energy Regulatory Commission.

1 MR. SPRINGER: Thank you very much.

2 (Applause.)

3 CHAIRMAN WOOD: Almost as long as someone I have
4 known since I was a young pup here at the FERC, and I was so
5 very glad that I was doing gas instead of electric because I
6 didn't want to be facing his vicious claws if I was on the
7 other side of an issue from his boss, because he is
8 formidable, and I am of course talking about Josh Rokach.
9 Josh started in December of '74 here as a law clerk at the
10 old Federal Energy Administration and came to FERC in '79 in
11 the Solicitor's Office and defended ably with a few tales
12 that he just regaled us over with at breakfast as a trial
13 attorney in the Solicitor's Office.

14 He came in 1988 to Commissioner Trabant's office.
15 That's the context in which I first got to know Josh. In
16 1993, as Commissioner Trabant moved on, Josh did too and
17 went to the Office of General Counsel in the Electric Rates
18 Division, and then in '97 came to serve, in December of '97,
19 November '97 came to serve my predecessor, Curt, as
20 Commissioner and Chairman, and then last year was really in
21 charge of the terminators project to get the Commission back
22 up on Track II with a lot of the hard cases that everybody
23 said, well, we'll get caught up on the backlog. Let's do
24 the easy part of the backlog first.

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Well, Josh and team plugged into the hard part

1 and got a lot of orders up here today which probably,
2 because they're harder now, are at the old Solicitor's
3 Office going up the other track. But anyway, we just want
4 to thank Josh. He has now gone into private practice in the
5 past month and has again, like Fred, come back today to be
6 thanked and recognized for his years of service.

7 So, Josh, come on up. Because I'm giving you the
8 Career Service Award presented on the occasion of the
9 retirement of Joshua Z. Rokach in gratitude and recognition
10 of 27 years of dedicated service on behalf of this nation's
11 energy customers and the vision, mission and values of the
12 Federal Energy Regulatory Commission. Congratulations,
13 Josh.

14 (Applause.)

15 MR. ROKACH: Pat, I want to say if you had
16 advised Langdon in electric, he would not have been the
17 victim of my vicious claws, because Langdon and Trabant
18 would have seen the same thing.

19 (Laughter.)

20 MR. ROKACH: You would have convinced me.

21 (Applause.)

22 CHAIRMAN WOOD: That's the end of A-1 and A-2. I
23 don't believe we have any issues on A-2.

24 ACTING SECRETARY WATSON: E-1.

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MR. ROBINSON: Good morning. On January 8th, we

1 issued a notice for the Northeast Energy Infrastructure
2 Conference that we'll hold later this month. It's the
3 second conference in the series that we're holding to
4 explore the needs and the problems with energy
5 infrastructure in the country.

6 The conference is designed to provide a forum for
7 discussing those interests, those concerns and issues. The
8 agenda calls for the conference to open with opening remarks
9 by the Commission. We'll be holding it at the Hensley Park
10 Hotel in New York City on January 31st. After opening
11 remarks, we'll follow that up by a presentation on the
12 energy economics and present infrastructure in the
13 Northeast. We'll follow that up with two panels. The
14 experts will discuss what the energy needs are. Then
15 they'll discuss what barriers exist for developing
16 infrastructure to meet those needs.

17 We're trying to focus this conference on the
18 permitting, the construction and the financing of energy
19 projects so we can really keep sort of a nuts-and-bolts,
20 hands-on kind of conference in play.

21 Finally, after we've heard from those experts,
22 we'll have a forum where invited state and federal officials
23 will interact with the Commissioners on what we've learned
24 that day and hopefully add to the discussion that we've all

1 taken part in with the round robin panels that we had

1 earlier.

2 I'd like to mention one other thing about this
3 conference. It's been an effort by I think just about every
4 office at the Commission almost, the Office of Markets,
5 Tariffs and Rates, the Office of External Affairs, the
6 Chairman's office, the ED's office, the Office of General
7 Counsel and ourselves. There's been a significant amount of
8 cooperation among all the offices to make sure that we've
9 identified and brought in the right kind of panels to make
10 it as productive as possible for the Commission for that one
11 day in New York.

12 You have copies of the agenda in front of you,
13 and we've also provided copies of the agenda and the notice
14 of the conference. I think they're in the back of the room
15 here.

16 CHAIRMAN WOOD: Thank you, Mark. Any questions
17 for Mark?

18 (No response.)

19 CHAIRMAN WOOD: We look forward to that. It
20 looks like a good lineup. G-11.

21 ACTING SECRETARY WATSON: Green Canyon Pipeline
22 Company LLP, Sandra Elliot presenting.

23 MS. ELLIOT: Good morning. The draft order
24 denies Green Canyon's request for rehearing of the triennial

1 rate filing requirement imposed on Green Canyon in the

1 Commission letter order approving Green Canyon's petition to
2 continue its existing rate for NGPA Section 311
3 transportation service.

4 Green Canyon is an intrastate pipeline performing
5 intrastate transportation service under Section 311. Green
6 Canyon argues that since it is providing essentially the
7 same service as the Hinshaw Pipeline that transports gas
8 under Section 284.224 of the Commission's regulations, it
9 should be required to file only an informational filing
10 setting forth costs and throughput data like the triennial
11 filing required of Hinshaw Pipelines. The draft order
12 states that the Commission will require intrastate pipelines
13 performing Section 311 service pursuant to a rate determined
14 by the Commission to file a new petition for rate approval
15 every three years.

16 The order explains that the difference in
17 treatment as between intrastate pipelines and Hinshaw
18 Pipeline arises from the fact that while the NGPA governs
19 the Commission's regulation of the interstate service
20 performed by Hinshaw Pipelines, the NGPA governs the
21 Commission's regulation of intrastate service performed by
22 intrastate pipelines. The NGPA permits the Commission to
23 impose a three-year rate filing requirement, but the NGA
24 does not. The order finds that the triennial rate filing

1 requirement is necessary for intrastate pipelines as part of

1 the overall more light-handed regulation the Commission
2 affords interstate pipelines performing Section 311
3 transportation service.

4 Requiring periodic rate filings with the
5 Commission enables the Commission to assure Section 311
6 rates are fair and equitable for intrastate transportation.

7 Thank you.

8 COMMISSIONER BROWNELL: I was the person who
9 asked this to be called because I have some clarifying
10 questions. And the reasons for my questions is that
11 although these are governed by different laws and our
12 authority is somewhat different, I am concerned in the
13 interest of consistency, equity and efficiency that we are
14 applying different standards to different industry segments
15 that are essentially providing the same service. So that's
16 the basis for my question.

17 You suggest that NGPA permits, I think you used
18 the words "permits us to require three-year rate filings".
19 Does that in your interpretation mean we must require three-
20 year rate filings?

21 MR. HOWE: There's certainly no requirement that
22 we have to, but the NGPA has used the Commission's
23 conditioning authority different from what we have under the
24 NGA, so we can.

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COMMISSIONER BROWNELL: I'm having a hard time

1 reconciling the light regulation concept with a rate filing.
2 And I know that you have concluded that an information
3 filing is in fact more burdensome than a rate filing,
4 although the company differs. And in my experience, they
5 are very different in many cases. Is there anything that
6 we're accomplishing in terms of the public good by having
7 the differences between these two informational filings for
8 one industry segment and rate filings for another? What do
9 we gain here? What does the public gain?

10 MR. HOWE: The main thing that I can think of
11 that is gained by having the actual rate filing come in
12 every three years is that if the intrastate pipeline cannot
13 justify its current rate and its costs would only justify a
14 lower rate than the actual rate filing means that the rate
15 decrease would take effect immediately.

16 We might yet require further refunds, but we
17 would get the rate decrease into effect immediately, whereas
18 when an informational filing is made, then the decrease
19 cannot take place until the Commission has issued an order.

20 COMMISSIONER BROWNELL: Is it correct to suggest
21 -- and this had no protest -- but in a protested filing that
22 you would probably proceed to a settlement course, in which
23 case refunds could in fact be negotiated?

24 MR. HOWE: That's correct.

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COMMISSIONER BROWNELL: Is this an efficient use

1 of Staff time? There were, what, eight or nine or ten data
2 requests, I'm not sure which of the number. And this rate,
3 by the way, hasn't changed since 1995.

4 MR. CARLSON: To this company? Yes, that's true.
5 I think typically intrastate pipelines don't keep records
6 the same way that interstate pipelines do. They're not
7 required to. That's why I think our regulations don't
8 really specify any specific filing requirements to support a
9 rate. Yes, we will issue data requests in a typical case.
10 But we believe that's really the most efficient way of
11 proceeding. It doesn't require the companies to change
12 their recordkeeping to meet our regulations. And as you
13 suggest, most companies, in fact I would estimate 95 percent
14 of the cases or more, settle.

15 COMMISSIONER BROWNELL: My questions are
16 answered. I'm just not persuaded. I appreciate your
17 efforts. I'm just not persuaded that this is consistent
18 with at least my philosophy that says equity and consistency
19 is critical. And indeed, if we need to standardize some
20 recordkeeping, I think that would be probably a better use
21 of both company resources and make it easier for us to come
22 to some conclusion than data requests. So I will be
23 dissenting from this and hope that we'll just take a look at
24 this as a matter of policy.

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CHAIRMAN WOOD: I'm generally sympathetic, but I

1 think the thing that distinguished this case for me, Nora,
2 and has me on what the proposed order is here, is kind of my
3 general concern about offshore pipelines and their shippers
4 really being in much more of a monopoly situation than
5 perhaps many other intrastate pipes. And because there are
6 not many 311's that run offshore like this, as we've seen in
7 other cases, they're gathering and get out of it altogether
8 if they qualify. But this didn't seem like a big universe.

9 And to me, particularly in light of the court
10 decision yesterday, it would certainly -- I do have a
11 sympathy for the offshore shippers and want to make sure
12 that if there is a change that can make their gas more
13 economic and also compensate the pipeline for their fair
14 costs, i.e., a rate reduction in the offering, that maybe this
15 process that's set up here would allow that to happen in the
16 first place and also allow it to happen quicker if it's
17 merited.

18 So onshore, I'd probably make kind of a
19 distinction. But the order does not reflect that and in my
20 mind doesn't need to. But just so you know where I'm coming
21 from on that deal.

22 Other thoughts on Green Canyon?

23 COMMISSIONER MASSEY: I'm comfortable with the
24 order and will be voting for it.

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COMMISSIONER BREATHITT: I too support today's

1 order. In my view, nothing in the applicant's request for
2 rehearing gave me a compelling reason to depart from the
3 long-standing triennial rate filing requirement to allow
4 Green Canyon to instead make the informational filing.

5 I think further that the order does a good job of
6 explaining the evolution of our regulations for Hinshaw
7 Pipelines and Section 311 pipelines and does a good job
8 distinguishing between our regulations under the NGPA and
9 the NGA.

10 I also am unaware of any changed circumstances
11 that should require the Commission to revise its policies
12 and regulations governing 311 and Hinshaw Pipelines. And I
13 do support the argument that triennial requirement benefits
14 Section 311 customers by giving them the immediate benefit
15 of rate decreases, which I think is probably one of the best
16 compelling arguments for keeping this type of regulation for
17 311's. And I believe it's an appropriate mechanism for
18 Section 311 rate review.

19 ACTING SECRETARY WATSON: Can we vote?

20 COMMISSIONER MASSEY: Aye.

21 COMMISSIONER BREATHITT: Aye.

22 COMMISSIONER BROWNELL: No.

23 CHAIRMAN WOOD: Aye.

24 ACTING SECRETARY WATSON: That's it, sir.

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CHAIRMAN WOOD: Our previously announced closed

1 meeting is rendered moot because we've approved that item by
2 consent. So I want to note that. And also, Bill, thank you
3 for your duties as Secretary for the past several meetings.
4 We always appreciate your friendship and leadership.

5 ACTING SECRETARY WATSON: It's been a pleasure.

6 CHAIRMAN WOOD: Meeting adjourned.

7 (Whereupon, at 10:40 a.m. on Wednesday, January
8 16, 2002, the meeting was adjourned.)

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