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BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

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IN THE MATTER OF: :
CONSENT MARKETS, TARIFFS AND RATES - ELECTRIC :
CONSENT MARKETS, TARIFFS AND RATES - GAS :
CONSENT ENERGY PROJECTS - MISCELLANEOUS :
CONSENT ENERGY PROJECTS - CERTIFICATES :
DISCUSSION ITEMS :
STRUCK ITEMS :
- - - - -x

930TH COMMISSION MEETING
OPEN SESSION

Commission Meeting Room
Federal Energy Regulatory
Commission
888 First Street, N.E.
Washington, D.C.

Thursday, February 21, 2008
10:05 p.m.

1 APPEARANCES:

2 COMMISSIONERS PRESENT:

3 CHAIRMAN JOSEPH T. KELLIHER (Presiding)

4 COMMISSIONER SUEDEEN G. KELLY

5 COMMISSIONER MARC SPITZER

6 COMMISSIONER PHILIP MOELLER

7 COMMISSIONER JON WELLINGHOFF

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P R O C E E D I N G S

(10:05 a.m.)

CHAIRMAN KELLIHER: Good morning. This open meeting of the Federal Energy Regulatory Commission will come to order to consider the matters that have been duly posted in accordance with the Government in the Sunshine Act for this time and place.

Please join us in the Pledge of Allegiance.

(Pledge of Allegiance recited.)

CHAIRMAN KELLIHER: I'd like to announce a few guests who are with us today, and Commissioner Moeller will have an announcement, as well.

But let me announce two of our Irish colleagues. We have two Irish guests. Tom Reeves is the Chairman of the Commission for Energy Regulation for the Republic of Ireland, and Eugene Coughlin is the Director of Operations in Electricity Markets at the CER.

Chairman Reeves has been head of the CER since its inception in 1999, and Chairman Reeves and Mr. Coughlin are spending a few days here with us at FERC to better understand how we monitor electricity markets, considering that the new cross-border wholesale electricity market between Northern Ireland and the Republic for the single electricity market, went live on November 1st of last year.

I want to acknowledge that I am an Irish-

1 American, and I still have family in Ireland, so I'm
2 impressed with the quality of their regulators, and I hope
3 we take good care of them over time.

4 Commissioner Kelly is Irish. Perhaps we have
5 some others. Do we have any other Irish friends?

6 (Laughter.)

7 CHAIRMAN KELLIHER: I'm not sure.

8 But they are here, in part, because they wanted
9 to see what the Government in the Sunshine produces. Their
10 meetings are not subject to a government in the sunshine
11 act, and I think they want to see our deliberations and how
12 does governance under the Sunshine Act, affect the quality
13 of deliberations.

14 I hope you're not frightened off by the way we do
15 things in the United States. I want to thank you gentlemen
16 for being here. I really enjoyed the discussions that we
17 had yesterday.

18 Commissioner Moeller?

19 COMMISSIONER MOELLER: Thank you, Mr. Chairman.
20 As most of you know, our colleagues at the state level, have
21 been in town all week, from NARUC, the National Association
22 of Regulatory Utility Commissioners, and from my home state
23 of Washington, I wish to introduce our Chairman, Mark
24 Sidrin.

25 He's a great guy. He's done a terrific job at

1 the Washington Utilities and Transportation Commission.
2 He's had a great career in public service, and I hope
3 everyone will welcome him. He's a fine public servant.

4 CHAIRMAN KELLIHER: Great. Mark, I think,
5 already knows what the Sunshine Act is about in Washington
6 State, but I guess we do things a little bit differently
7 here.

8 But I'm really glad you're here, just to see --

9 MR. SIDRIN: I'm only Irish for one day.

10 (Laughter.)

11 CHAIRMAN KELLIHER: With that, I'd like to note
12 that since the January 17th Open Meeting, FERC has issued 95
13 Notational Orders, which works out to be four a week,
14 roughly four a week, every day since last month's meeting.

15 I think that's a good level of production, and
16 some of those were complicated matters.

17 But before we turn to the Consent Agenda, I'd
18 just like to note that we have had a number of strikes since
19 the Sunshine Act Notice was issued last week, and Madam
20 Secretary will identify the strikes. But I'd just like to
21 point out that one of the strikes, in particular, E-7, we do
22 recognize the importance of that matter, and that we do
23 intend to act on E-7 in the near future.

24 With that, Madam Secretary, let's turn to the
25 Consent Agenda.

1 SECRETARY BOSE: Good morning, Mr. Chairman, good
2 morning, Commissioners.

3 CHAIRMAN KELLIHER: Sorry. Can you suspend for
4 just a minute? Does anyone else have any announcements, any
5 of my colleagues have any announcements?

6 (No response.)

7 CHAIRMAN KELLIHER: No? Great, why don't we
8 continue?

9 SECRETARY BOSE: Since the issuance of the
10 Sunshine Act Notice on February 14th, 2008, E-7, E-8, E-22,
11 H-5, C-8, and C-9, have been struck from this morning's
12 agenda.

13 Your Consent Agenda Items for this morning, are
14 as follows:

15 Electric Items: E-5, E-6, E-10, E-11, E-12, E-
16 13, E-15, E-16, E-17, E-18, E-19, E-20, E-21, E-23, E-24,
17 and E-25.

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

19 Hydro Items: H-1, H-2, H-3, H-4, and H-6.

20 Certificate Items: C-1, C-2, C-5, C-6, and C-7.

21 As required by law, Commissioner Spitzer is not
22 participating in Consent Item C-6. As to E-1, Commissioner
23 Kelly is concurring, in part, and dissenting, in part, with
24 a separate statement, and Commissioner Wellinghoff is
25 concurring, with a separate statement.

1 As to E-21, Commissioner Kelly is dissenting,
2 with a separate statement, and Commissioner Wellinghoff is
3 dissenting, with a separate statement.

4 As to E-24, Commissioner Wellinghoff is
5 dissenting, with a separate statement.

6 As to E-25, Commissioner Kelly is dissenting,
7 with a separate statement.

8 With the exception of E-1, where a vote will be
9 taken after the presentation and discussion, we will now
10 take a vote on the Consent Agenda Items, beginning with
11 Commissioner Wellinghoff.

12 COMMISSIONER WELLINGHOFF: I vote aye, with the
13 exception of the noted dissents of mine on E-21 and E-24.

14 SECRETARY BOSE: Commissioner Moeller?

15 COMMISSIONER MOELLER: Aye.

16 SECRETARY BOSE: Commissioner Spitzer?

17 COMMISSIONER SPITZER: I vote aye, with the
18 exception of the recusal in Item C-6.

19 SECRETARY BOSE: Commissioner Kelly?

20 COMMISSIONER KELLY: Aye, with the exception of
21 E-21 and E-25, in which I dissent.

22 SECRETARY BOSE: Chairman Kelliher?

23 CHAIRMAN KELLIHER: Aye.

24 SECRETARY BOSE: The first item for presentation
25 this morning, is E-1, concerning a Notice of Proposed

1 Rulemaking in Wholesale Competition in Regions With
2 Organized Electric Markets.

3 The presenters are David Kathan from the Office
4 of Energy Market Regulation, accompanied by Tina Ham, Noah
5 Monick from the Office of the General Counsel; Christopher
6 Thomas from the Office of Energy Market Regulation; and
7 Kathryn Kuhlen from the Office of Enforcement.

8 MR. KATHAN: Good morning, Chairman Kelliher and
9 Commissioners. My name is David Kathan, and I am with the
10 Office of Energy Market Regulation.

11 I am joined here today by Chris Thomas from the
12 same office, Kathryn Kuhlen from the Office of Enforcement,
13 and Tina Ham and Noah Monick from the Office of the General
14 Counsel.

15 This Draft Notice of Proposed Rulemaking, or
16 NOPR, is intended to improve the operation of wholesale
17 electric power markets and the regional transmission
18 organization, RTO, and Independent System Operator, ISO
19 regions.

20 This NOPR builds on and responds to comments
21 received on the Advance Notice of Proposed Rulemaking,
22 released in June 2007, and the Commission conferences on the
23 status of wholesale competition held earlier in 2007.

24 The Draft Order proposes reforms to improve the
25 operation of organized wholesale electric power markets.

1 The Draft Order makes proposals in four areas:
2 Demand Response; long-term power contracting; market
3 monitoring; and the responsiveness of RTOs and ISOs to
4 customers and other stakeholders.

5 The NOPR proposes several reforms to further
6 eliminate barriers to demand response in organized energy
7 markets, and ensure that demand response is treated
8 comparably to other resources.

9 The first reform would require RTOs and ISO to
10 accept bids from demand response resources in their markets,
11 for certain ancillary services comparable to other
12 resources.

13 The second would modify RTO and ISO tariffs to
14 eliminate, during a system emergency, a charge to a buyer in
15 the energy market, for voluntarily taking less electric
16 energy in the real-time market, than purchased in the day-
17 ahead market.

18 Third, it would require RTOs and ISOs to permit
19 aggregators of retail customers, to bid demand response on
20 behalf of retail customers, directly into the RTO- or ISO-
21 organized markets.

22 The Draft Order also proposes that RTOs and ISOs
23 modify the rules, as necessary, to allow the market clearing
24 price during periods of operating reserve shortage, to reach
25 a level that rebalances supply and demand, so as to maintain

1 reliability, while providing sufficient provision for
2 mitigating market power.

3 These proposals, if adopted, would ensure that
4 demand resources can participate directly and be treated
5 comparably to supply resources in the organized electric and
6 ancillary services market.

7 The order proposes to direct Staff to convene a
8 technical conference to consider demand response
9 participation in wholesale markets, and also proposes to
10 direct each RTO and ISO to assess and report on the barriers
11 to comparable treatment of demand resources and proposed
12 solutions and a timeline, within six months of a final rule.

13 Regarding long-term power contracting in
14 organized market regions, the Draft Order asks for comment
15 on a proposal to require ISOs and RTOs to dedicate a portion
16 of their websites for market participants to post offers to
17 buy or sell power on a long-term basis.

18 This proposal is designed to promote greater use
19 of long-term contracts through improving transparency among
20 market participants.

21 The proposed reforms with regard to market
22 monitoring, aim to strengthen the market monitoring function
23 in two principal ways: By enhancing the independence of
24 market monitors, and by increasing the transparency of their
25 monitoring activities.

1 The NOPR proposes to enhance the independence of
2 market monitors, by: One, having them report to the Board
3 of Directors of their RTO or ISO, rather than to management;
4 two, guaranteeing them adequate resources, access to market
5 data and personnel; and, three, removing them from market
6 mitigation, so that they may have complete independence in
7 their evaluations of market performance.

8 The NOPR also proposes ethics provisions for
9 market monitors, a broadening of the scope of reportable
10 violations, and tariff protocols for written referral of
11 violations to the Office of Enforcement, and, for market
12 design flaws, to the Office of Energy Market Regulation.

13 In the area of transparency, the NOPR proposes
14 that market monitors submit market evaluations and tariff
15 recommendations to the Commission, state commissions, and
16 other market participants.

17 It also proposes that market monitors submit
18 quarterly reports in addition to their Annual State of the
19 Market Reports.

20 In addition, we propose to reduce the time lag
21 for the release of offer and bid data, and to permit market
22 monitors to entertain tailored requests for market
23 information from state commissions.

24 The Draft NOPR proposes that each RTO and ISO
25 adopt criteria to ensure that their Boards are responsive to

1 the issues and concerns of all stakeholders and customers.
2 To do so, the Draft NOPR requires that each RTO and ISO,
3 demonstrate that its processes are inclusive, fairly balance
4 diverse interests and fairly represent minority interests.

5 The Draft NOPR also proposes additional
6 requirements to aid in ensuring responsiveness, and
7 encourages RTOs and ISOs to undertake further measures to
8 ensure that their management programs such as incentive
9 compensation plans for executive managers, incorporate
10 appropriate measures that include service delivery goals and
11 responsiveness to stakeholders and customers.

12 The Draft NOPR seeks comments from interested
13 parties on these proposals and the questions posed.
14 Comments are due 45 days from the publication in the Federal
15 Register.

16 This completes my presentation, and we would be
17 happy to answer any questions.

18 CHAIRMAN KELLIHER: Thank you, David. I want to
19 thank you for that presentation and I want to thank the
20 Staff for all their work on this Order.

21 I particularly want to thank my colleagues. This
22 has been a long proceeding. It began more than a year ago
23 on this Order we're approving today or are poised to approve
24 today.

25 It represents the hard work of all five Offices,

1 as well as the FERC Staff.

2 But today I think that David has very carefully
3 laid out the particulars of the Order, so I'm really going
4 to address more of the broader question of why are we doing
5 this; why did we begin this proceeding?

6 Today, FERC is taking an important step to
7 strengthen competition in the wholesale power markets in the
8 United States, and, as I said, we began this proceeding more
9 than a year ago.

10 It was something that was our initiative,
11 something we undertook, not something we began in response
12 to a complaint.

13 We began with a series of technical conferences
14 that took a hard look at FERC competition policy, and we
15 placed no limits on our comprehensive review. We examined
16 both wholesale market structures, both the organized market
17 structure that we're taking some action on today, as well
18 as the bilateral market structure.

19 We were open to any kind of proposal that
20 promised more effective competition in wholesale power
21 markets.

22 We did not start with the four reforms that we
23 are proposing today. These reforms represent the best ideas
24 that came out of the technical conferences we held last
25 Spring, as well as the comments on the Advanced Notice of

1 Proposed Rulemaking we approved last June.

2 These four reforms were produced by the record
3 and are supported by the record.

4 But why did we begin the competition proceeding a
5 year ago and why are we acting today?

6 We're acting because we recognize that
7 competition is national policy in wholesale power markets,
8 as reflected in three different federal laws enacted over
9 the past 25 years, and we're acting because we recognize
10 that FERC has a duty to improve the competitiveness of
11 wholesale power markets, and we have a duty to use the
12 regulatory tools that Congress has given us, to that end.

13 Now, the reforms we propose today, are only the
14 latest in a series of reforms that FERC has taken to promote
15 competition in wholesale power markets.

16 In the last year alone, we reformed our Open
17 Access Transmission Tariff to improve grid access by
18 competitors, and reformed our Market-Based Rate Program to
19 prevent the exercise of market power.

20 I emphasize that both of the major reforms, were
21 initiated by the Commission itself.

22 I believe competitive wholesale markets are
23 operating well, and that wholesale competition policy has
24 been a success.

25 Competition policy has assured the security of

1 the U.S. electricity supply at reasonable costs for 25
2 years, and I believe it represents the best means of
3 assuring security of U.S. electricity supplies going
4 forward, and the best means of meeting the climate change
5 challenge.

6 Now, competition policy, I emphasize, is not
7 deregulation, but, instead, it relies on a mixture of
8 competition and regulation.

9 I recognize that there is significant concern
10 about electricity price levels, but current electricity
11 prices are driven largely by the cost of fuel used to
12 generate electricity. The cost of natural gas and coal has
13 risen, resulting in upward pressure in electricity prices.

14 The uncertainty about climate change policy, the
15 prospect of changes in the climate change policy, have all
16 put significant upward pressure on electricity prices.

17 FERC is not complacent about the state of
18 wholesale power markets. We seek steady reform to
19 strengthen wholesale competition, encourage generation
20 entry, improve market access and grid access, to establish
21 good market rules, to prevent market power exercise and
22 market manipulation, to assure effective enforcement, to
23 improve market transparency, to provide contract certainty,
24 to reinforce the power grid, and to improve demand
25 response.

1 I think the competition proposed rule we approve
2 today, makes improvements in a number of these areas.

3 I just want to emphasize that the action we take
4 today, does not represent the last word on FERC competition
5 policy. We're prepared to act to strengthen competition,
6 and we'll act in individual regional markets; we'll act to
7 make improvements on a structural basis in both the
8 bilateral markets, as well as the organized markets; and
9 we'll act on a national basis.

10 So, this is the next big step we're taking at
11 FERC, but it's certainly not the last step. So I support
12 the Order, and I turn to my colleagues.

13 Commissioner Moeller?

14 COMMISSIONER MOELLER: Thank you, Mr. Chairman.
15 I, too, want to thank not only the team, for their
16 diligence, but we had over 100 parties filing comments for
17 this proceeding, and that takes a lot of time to read and go
18 through.

19 And as you alluded to, today's NOPR was shaped on
20 the comments we received from the Advance Notice of Proposed
21 Rulemaking, and today's -- and the Final Rule will be
22 further revised, based on the comments that we receive on
23 today's proposal.

24 I think it does bear mentioning, though, that of
25 the thousands of pages of pleadings submitted, I was

1 disappointed to learn that almost more resources, certainly
2 appear to have been spent criticizing the existing markets,
3 rather than proposing the solutions to market design
4 concerns.

5 However, a couple of entities -- the American
6 Forest and Paper Association and the Portland Cement
7 Association -- did offer proposals and we appreciate that
8 they took their time to present these proposals for our
9 attention, and we'll commit to study their feasibility.

10 This is just one of many actions we are
11 undertaking, to make sure that the organized markets
12 improve. For instance, there's a long-term contracting
13 forum that PJM has been undertaking, that we have been
14 involved with as well.

15 Obviously, some customers are frustrated, because
16 they are in a rising-cost environment, and I understand that
17 frustration, as well, and while supply and demand are
18 primary considerations of this condition, other
19 contributing factors, as the Chairman alluded to -- high
20 prices and fuel, also a decline in skilled tradesmen, cost
21 of capital, and other factors -- contribute to this rising-
22 cost environment, not just -- and it's not the energy market
23 structure that is causing this situation.

24 But I want to be clear that a well-functioning
25 competitive market will result in just and reasonable rates,

1 but not necessarily the lowest possible rate at every moment
2 in time. Consumers need to understand the difference in
3 that.

4 And while the competitive markets and the newer
5 capacity markets are under attack by parties who seek to
6 return to the old-fashioned cost of service, I ask for
7 continued patience and perseverance, as we transition to the
8 forward capacity markets.

9 I look around this room and I can see just about
10 everyone's old enough to remember the times in the
11 telecommunications industry prior to January 1, 1984, where
12 there no competitive pressures. That transition to a
13 competitive market in telecommunications, took a long time,
14 it wasn't easy, it was often painful, there were cost
15 shifts, consumers were confused, but I would admit -- I
16 would offer anyone to argue that that environment was better
17 than today's for both consumers and the options available.

18 But transition to competition takes time and hard
19 work, and that's part of what we're doing today.

20 Not all of the problems in competitive markets --
21 our focus today is not on problems in competitive markets.
22 They also exist in bilateral markets.

23 We hear from people in the renewable resource
24 arena, as well as demand response providers, who claim that
25 the lack of transparency in the non-organized markets,

1 actually serves as a barrier to entry.

2 Ultimately, those parties who are opposed to
3 competitive market design, may be surprised to discover that
4 the grass is not always greener on the other side.

5 As alluded to in the presentation, we spent a lot
6 of time on demand response, and today's proposal goes a long
7 way toward eliminating the barriers to participation in the
8 demand response in organized markets, and I'm a strong
9 supporter of this.

10 It's a good thing, but I believe that we should
11 not be providing either a preference or a subsidy to demand
12 response resources over traditional generation resources.

13 I, therefore, agree with the NOPR's position that
14 our goal, going forward, is to ensure comparable treatment
15 of all resources, whether they be generation or load
16 reduction.

17 Again, I think, with the hard work today -- and
18 this is part of the process -- we can make organized markets
19 run better, and, in the sense that consumers will benefit
20 from more efficient economic decisions, our economy, and the
21 energy sector will be better for it. Thank you, Mr.
22 Chairman.

23 CHAIRMAN KELLIHER: Thank you. Colleagues?
24 Commissioner Spitzer?

25 COMMISSIONER SPITZER: Thank you, Mr. Chairman.

1 As has been noted, Congress has made it very clear since the
2 1970s, that competition is the best means to ensure that
3 consumers are protected from unjust and unreasonable rates.

4 In the old world, regulatory infallibility was
5 the sole ratepayer protection. As with other goods and
6 services, market forces, combined with regulatory oversight,
7 ensure reasonable wholesale prices and adequate investment.

8 Optimal results are achieved through fair and
9 competitive markets.

10 Several years ago, this Commission embarked on
11 the creation of ISOs and RTOs as a means to achieve these
12 goals. Given that these entities are creatures of FERC, we
13 are particularly and appropriately solicitous of their
14 health.

15 In today's NOPR, the Commission proposes certain
16 changes to ensure the organized markets are efficient and
17 competitive.

18 First, I'm a strong supporter of demand
19 response. In proceedings in Arizona, we labored to achieve
20 effective demand response, and I'm very optimistic about the
21 opportunities for demand response in organized markets.
22 That needs to be and is a priority.

23 Consistent with the Advance Notice of Proposed
24 Rulemaking, issued several months ago, today's Order
25 proposes that demand resources be treated comparably to

1 other resources in these markets.

2 Comparability means that all resources are
3 treated fairly and that no resource receives a preference
4 above others. By proposing that we eliminate barriers to
5 comparable treatment of demand response, we seek to ensure
6 that the competitive market, rather than rigid and endless
7 command and control regulation, decides which type of
8 resource to deploy, when and how.

9 We also need to ensure that the correct price
10 signals are sent by the markets, so that we continue to
11 foster much needed investment in new generation, ancillary
12 services, energy efficiency, and demand response. And note
13 that I believe that energy efficiency and demand response,
14 are amenable to the concept of investment.

15 Therefore, we propose today that RTOs and ISOs
16 develop mechanisms -- such services by regulated entities,
17 are fairly compensated during shortage situations.

18 The proposed rule largely leaves it up to each
19 RTO and ISO, to determine which pricing mechanism best suits
20 the needs and requirements of their markets.

21 The proposal for such pricing mechanisms does not
22 leave consumers unprotected. First, by eliminating barriers
23 to comparable treatment of demand response, we allow
24 consumers to react to high prices, through their own buying
25 decisions.

1 But in addition to that protection, the NOPR
2 requires RTOs and ISOs to provide an adequate factual record
3 to demonstrate how the pricing mechanisms are designed to
4 protect consumers against the exercise of market power.

5 In addition, the NOPR makes clear that its
6 proposals are not the last word on eliminating barriers to
7 comparable treatment of demand response.

8 The NOPR proposes that, in addition to specific
9 proposals, RTOs and ISOs evaluate whether there are
10 additional and further mechanisms that we should adopt to
11 assure comparable treatment of demand resources.

12 In addition, the NOPR proposes mechanisms to
13 ensure that the processes that the RTOs and ISOs use to make
14 decisions, are more transparent and open to public input,
15 and that the management of RTOs and ISOs, are held
16 accountable for their actions and their decisions.

17 I'm also pleased to see that on the issue of
18 long-term contracting, we encourage RTOs and ISOs to hold
19 open forums on the impediments to long-term contracting,
20 similar to the ongoing forum being held within the PJM
21 Region.

22 Overall, I believe this Notice of Proposed
23 Rulemaking strikes the appropriate balance among and between
24 competing interests, to ensure that RTO and ISO markets
25 continue to operate in a competitive and fair manner. I

1 support the proceeding today and look forward to reviewing
2 the comments.

3 In addition, I'd like to join Commissioner
4 Moeller in making particular mention of -- in particular, I
5 would say, the American Forest and Paper Association
6 comments in this case.

7 So often, various parties inform us through their
8 papers, that the system is broken in one respect or another,
9 but then make no real suggestion on how to fix the alleged
10 problem.

11 It is difficult for a regulator to address a
12 problem when the filing party itself, has not proffered
13 meaningful solutions.

14 However, it was clear from their comments, that
15 American Forest not only thought through carefully, their
16 concerns, but also articulated a way that their concerns
17 could be resolved.

18 Today's Order does not adopt the American Forest
19 proposal, but does direct the Staff to convene a technical
20 conference to further evaluate the merits of their
21 arguments, and I very much look forward to doing so. Thank
22 you, Mr. Chairman.

23 CHAIRMAN KELLIHER: Colleagues? Commissioner
24 Kelly?

25 COMMISSIONER KELLY: Thank you, Joe. At the

1 outset, I would like to say that I agree with the Chairman
2 in his statement that competition in wholesale markets, as
3 well as the establishment of Independent System Operators,
4 really bodes well for our future improvement in the area of
5 security and our ability as a country, to respond to the
6 climate change problem.

7 I would like to add that I also believe that
8 wholesale competitive markets and Independent System
9 Operators, also are helping us integrate more renewables,
10 more efficiently and more broadly into our grid, and also is
11 helping us facilitate demand response around the country.

12 I think these are two very valuable additional
13 aspect of our competitive markets and our Independent System
14 Operators.

15 Overall, I am very pleased with this NOPR. There
16 are four areas, as the Chairman mentioned, that the NOPR
17 deals with.

18 I believe that, in this NOPR, we have done
19 everything that we possibly could do, with respect to
20 fostering long-term contracts.

21 In the other three areas of demand response,
22 market monitoring, and RTO responsiveness, I believe that
23 the NOPR shows that we have made significant additions to
24 the proposals made in the ANOPR, that I believe have truly
25 improved the ANOPR, and I'm very proud of them.

1 With respect to demand response, I'm hoping that
2 Commissioner Wellinghoff will talk with some specificity
3 about demand response, and so I'm not going to talk about
4 the specific additions that we've made.

5 But we have proposed a number of reforms to
6 eliminate barriers to demand response. In addition, I am
7 very pleased that the Commission announces here, that we are
8 also going to address additional efforts that we believe are
9 needed and that we can develop a record to support further
10 reforms to better facilitate the entry of demand response,
11 including having a technical conference soon, to consider
12 whether there are additional barriers to comparable
13 treatment of demand response, that have not previously been
14 identified.

15 Actually, Congress asked us to do that in the
16 legislation that it passed last December, to explore whether
17 there are potential solutions to eliminate these barriers,
18 and to address the somewhat thorny issue of the appropriate
19 compensation for demand response, as well as the need or the
20 ability to come up, across the country, with common terms,
21 practices, rules and procedures associated with demand
22 response.

23 I remain concerned, as I did with the
24 promulgation of the ANOPR, about the requirement that all
25 ISOs and RTOs engage in scarcity pricing or adopt scarcity

1 pricing. However, in this NOPR, as opposed to the ANOPR, we
2 do specify that any scarcity pricing proposal, must be
3 designed to protect consumers against the exercise of market
4 power.

5 Commissioner Spitzer mentioned that, and I think
6 that that is a significant, significant improvement.

7 I, myself, would also -- am concerned about the
8 implementation -- the timing of the implementation of
9 scarcity pricing. It's one thing to send a signal that
10 resources are scarce, and I believe in that, and I believe
11 that in a workably-competitive market, that's very
12 appropriate.

13 But if you implement that in a market where the
14 resources cannot respond, either because generation can't be
15 built quickly or because there are barriers to demand
16 response, if you allow the price signal to skyrocket,
17 without an ability to respond, I don't think that is a good
18 idea.

19 Having lived in California during the California
20 market meltdown, I experienced that that was not a good
21 idea. So, I think that timing is important, and we
22 shouldn't mandate scarcity pricing, without ensuring that
23 there is resource adequacy and without ensuring that the
24 barriers to demand response, have been eliminated, so that
25 demand response can respond.

1 And then, finally, I actually question why we're
2 doing this, because we already have scarcity pricing in
3 place in the real-time markets in PJM, in the New York ISO,
4 and in ISO New England.

5 We also have pending before us, a proposal from
6 the Midwest ISO for scarcity pricing, and when we approved
7 California's MRTU, in our release 1A, we ordered California
8 ISO to develop a scarcity pricing regime and to present it
9 to us.

10 So, frankly, only SPP has yet to propose a
11 scarcity pricing regime for the real-time market, and I
12 think they should be allowed to do that when they believe
13 the time is right for them, when they have a resource
14 adequacy plan in place, and when they have eliminated
15 barriers to demand response.

16 Regarding the market monitoring section, I think,
17 like the demand response section, we propose here, numerous
18 additions that I think strengthen market monitoring,
19 including a requirement that market monitors report to their
20 Boards and a requirement that the tariff provisions of each
21 RTO and ISO, specifically include provisions related to the
22 obligations and the responsibilities of market monitors. I
23 think that's a good way for us to move.

24 The one aspect of the market monitoring section
25 that I disagree with, is that we continue to propose that

1 market monitors not handle market mitigation.

2 The vast majority of commenters to our ANOPR,
3 opposed this proposal that we remove market monitors from
4 mitigation. I agree with their comments.

5 They maintain that this taking a market monitor
6 away from mitigation and giving mitigation back to the ISO,
7 creates an even greater conflict of interest.

8 Commenters have also stated that RTOs and ISOs
9 would be more heavily influenced than would a market monitor
10 by market participants upon whom it depends for its
11 existence.

12 I know that the majority are concerned that
13 somehow having a market monitor mitigate and propose
14 mitigation rules, is a conflict. I just simply don't agree.

15 On the responsiveness of RTOs and ISOs to
16 stakeholders and customers, again, we've added a number of
17 additional specific requirements aimed at enhancing the
18 responsiveness.

19 One of the things that we have also proposed, as
20 in the ANOPR, is to allow stakeholders to sit on the RTO and
21 ISO Boards. I continue to disagree with that, as a policy
22 matter.

23 I think that having an independent RTO and ISO
24 Board, is a cornerstone of our RTO and ISO policy. Indeed,
25 an ISO stands for an Independent System Operator.

1 Again, I had personal experience in California
2 when there was a stakeholder board, and I don't believe that
3 a stakeholder board runs this kind of an independent system,
4 as appropriately and as effectively as an independent board.

5 I understand the concern of stakeholders that the
6 board is not truly responsive to their needs. I think that
7 a better direction for addressing that concern, is by
8 focusing on an RTO mission statement, not by tinkering with
9 the independence of the board.

10 For-profit corporations respond to shareholders,
11 because responding to shareholders is part of its mission.
12 Its mission, in part, is to deliver a profit to its
13 shareholders.

14 I believe that RTOs' and ISOs' mission
15 statements could be better and more specifically crafted to
16 respond to the particular concerns that stakeholders feel
17 they're not responding to now, and I would propose that
18 that's a better way to have RTO and ISO responsiveness,
19 rather than by allowing for stakeholders to serve on the
20 board.

21 But with those few exceptions, I am very pleased
22 with the NOPR, and I do support it.

23 CHAIRMAN KELLIHER: Thank you. Commissioner
24 Wellinghoff?

25 COMMISSIONER WELLINGHOFF: Thank you, Mr.

1 Chairman. Is there anything left to say?

2 (Laughter.)

3 CHAIRMAN KELLIHER: Commissioner Kelly left you a
4 lot to say.

5 COMMISSIONER KELLY: I left you all the details.

6 COMMISSIONER WELLINGHOFF: Left me all the
7 detail.

8 (Laughter.)

9 COMMISSIONER WELLINGHOFF: Well, first, I would
10 like to thank David and his team for all the hard work
11 they've done on this NOPR. It was a difficult task to go
12 through this. And I also want to thank my colleagues and
13 their advisors, because we had a lot of work after the team
14 turned it over to us.

15 And I do want to thank the commenters, as well.
16 You know, from the commencement of our first technical
17 conference in this proceeding over a year ago, I think it's
18 been the goal to identify reforms that can be made to
19 optimize efficiency of organized wholesale markets for the
20 benefit of customers, and, ultimately, for the benefit of
21 consumers who pay the electric bills.

22 And I firmly believe that this NOPR marks an
23 important step in doing that, and I am pleased to support
24 it.

25 But I'd like to focus my remarks on a few areas

1 I'd like to draw attention to in this NOPR, and in that,
2 seek and encourage comments from the interested persons on
3 those particular areas.

4 I think that's one thing that we all need to
5 continue to repeat and recognize, that the work is not done,
6 that we want lots of people to look at this and provide us
7 back even more comments than we got before, so we can
8 continue to improve things.

9 The first area is demand response, that I'd like
10 to talk about. In this NOPR, the Commission highlights the
11 importance of demand response in organized markets.

12 The Commission states that demand response helps
13 reduce prices in competitive wholesale markets in several
14 ways, such as reducing generator market power and flattening
15 an area's load profile.

16 The Commission also recognizes that the need for
17 and focus on demand response, will continue to increase.

18 There are several notable proposals related to
19 demand response. One issue that I have encouraged comments
20 on, is the Commission's proposal to require each RTO and ISO
21 to accept bids from demand response resources, on a basis
22 comparable to any other resource, for ancillary services
23 that are acquired in a competitive bidding process.

24 The Commission states that this policy would
25 increase the competitiveness of ancillary service markets,

1 help reduce the price of ancillary services, and improve
2 reliability of the grid.

3 I'm interested in hearing from interested parties
4 and commenters, whether our proposals in this area, are
5 adequate to achieve the goals that we intend.

6 The Commission also states that we intend to
7 direct our Staff to convene a technical conference shortly
8 after we receive comments on the NOPR, to consider critical
9 issues related to demand response, such as appropriate
10 compensation, and this is one issue that I am very
11 interested in, because I think we have undervalued demand
12 response.

13 I think there are other areas where demand
14 response can, in fact, be attributed value, that it's not
15 now attributed value.

16 We also are seeking potential solutions to the
17 remaining barriers to comparable treatment of demand
18 response, and I think that's very important. We have to
19 treat it comparably, but we have to also recognize that it
20 has different characteristics than generators.

21 We've done that with respect to locational
22 constrained resources in the Order we issued in Tahatchapee,
23 and I think we need to continue to recognize that with
24 respect to demand response.

25 We also propose to require each RTO and ISO to

1 submit a study on these critical issues, within six months
2 of the issuance of the Final Rule in the proceeding. Those
3 studies would include proposed solutions, along with a
4 timeline for implementation.

5 I encourage interested parties to provide
6 comments on this approach, to identify particular issues or
7 areas that should be addressed in these RTO and ISO studies.

8 In addition, I strongly encourage interested
9 parties to comment on the Commission's proposal regarding
10 market rules that govern price formation during periods of
11 operating reserve shortage. That's a nice way to say
12 "scarcity pricing."

13 It's important to note that these are infrequent
14 periods when more resources, both generation and demand
15 resources, are needed to maintain reliable electric service
16 to consumers.

17 I appreciate the extensive comments we received
18 on the issue in the ANOPR. I believe that this proposal in
19 the NOPR, is a significant improvement in several respects,
20 over the discussion in the ANOPR.

21 Most notably, the Commission proposes to adopt a
22 requirement to ensure that the proposals for pricing during
23 periods of operating reserve shortages, are designed to
24 protect consumers against the exercise of market power, and
25 are supported by an adequate factual record.

1 More specifically, we propose that a primary
2 criterion for approving such pricing proposals, would be an
3 adequate record demonstrating that provisions existing for
4 mitigating market power and gaming behavior, including, but
5 not limited to the use of demand response to discipline
6 bidding behavior to competitive levels, during periods of
7 operating shortage, are in place.

8 I'm particularly interested in receiving comments
9 as to whether this and other criteria proposed in the NOPR,
10 are appropriate, and how the Commission should apply these
11 criteria, if we adopt them in the Final Rule, and whether
12 there are additional criteria that we should consider in
13 evaluating RTOs' and ISOs' proposals for pricing during
14 periods of operating reserve shortage.

15 Finally, I'd like to note that the Commission, in
16 this NOPR, is directing each RTO and ISO to provide a forum
17 for affected consumers to voice specific concerns, and also
18 to propose regional solutions about market designs, and, in
19 particular, including concerns as to the value to the
20 market, of significant changes to market rules.

21 We're also directing our Staff to convene a
22 technical conference on two proposals that were submitted in
23 comments in this proceeding, that were referred to earlier.
24 I endorse that, as well, the Paper Products Association and
25 the Cement Association's proposals.

1 I'm very interested in receiving and
2 investigating the specific proposals.

3 Through these and other steps taken in this NOPR,
4 it's my intention for the Commission to demonstrate how
5 seriously we take our statement that the proposals in this
6 NOPR, do not represent our final effort to enhance the
7 efficient functioning of competitive organized markets or
8 the benefits of consumers. Thank you very much.

9 CHAIRMAN KELLIHER: Thank you. Any other
10 comments, colleagues?

11 (No response.)

12 CHAIRMAN KELLIHER: No? Let's vote.

13 SECRETARY BOSE: The vote begins with
14 Commissioner Wellinghoff.

15 COMMISSIONER WELLINGHOFF: I vote aye.

16 SECRETARY BOSE: Commissioner Moeller?

17 COMMISSIONER MOELLER: Aye.

18 SECRETARY BOSE: Commissioner Spitzer?

19 COMMISSIONER SPITZER: I vote aye.

20 SECRETARY BOSE: Commissioner Kelly?

21 COMMISSIONER KELLY: Aye, with the exception of
22 my partial dissent and noting my concurrence.

23 SECRETARY BOSE: Chairman Kelliher?

24 CHAIRMAN KELLIHER: Aye.

25 SECRETARY BOSE: We will now have a joint

1 presentation of --

2 CHAIRMAN KELLIHER: And I want to thank the Staff
3 very much for their hard work.

4 SECRETARY BOSE: We're now going to have a joint
5 presentation on Items E-2, E-3, and E-4. This item is
6 concerning Matters Involving Section 203 of the Federal
7 Power Act.

8 The presenters are: Mosby Perrow, from the
9 Office of the General Counsel; accompanied by Carla
10 Urquhart, from the Office of the General Counsel; and David
11 Hunger and Valerie Gill, from the Office of Energy Market
12 Regulation.

13 MR. PERROW: Mr. Chairman and Commissioners, good
14 morning. My name is Mosby Perrow, and I'm with the Office
15 of the General Counsel. With me this morning, is Carla
16 Urquhart, also from the Office of the General Counsel, and
17 David Hunger and Valerie Gill, from the Office of Energy
18 Market Regulation, Stuart Fischer, from the Office of
19 Enforcement, Andrew Mosier, from the Office of Energy Market
20 Regulation, and Roshini Thayaparan, from the Office of the
21 General Counsel, also contributed to Items E-2, E-3, and E-
22 4.

23 These items are related actions that continue the
24 Commission's implementation of the Energy Policy Act of
25 2005. They are designed, both to ensure that ratepayers are

1 protected against unauthorized cross-subsidies by utilities
2 and their affiliates, and to accommodate greater investment
3 in the electric utility industry.

4 They are based on the Commission's experience
5 since amending its regulations under Section 203 of the
6 Federal Power Act, enacting new regulations under the Public
7 Utility Holding Company Act of 2005, as well as discussions
8 and written comments from two technical conferences held in
9 December of 2006 and March of 2007, on these issues.

10 Item E-2 is a Draft Final Rule that codifies
11 restrictions on affiliate transactions between franchised
12 public utilities that have captive customers or that own or
13 provide transmission service over jurisdictional
14 transmission facilities, and their market-regulated power
15 sales affiliates or non-utility affiliates.

16 These restrictions will supplement existing
17 restrictions that the Commission has in place to protect the
18 captive customers of franchised public utilities. The Draft
19 Rule strengthens the Commission's ability to protect
20 customers served by franchised public utilities, from
21 inappropriately subsidizing the market-regulated or non-
22 utility affiliates of franchised public utilities, or from
23 otherwise being financially harmed as a result of affiliate
24 transactions and activities.

25 The Draft Rule provides certainty to public

1 utilities and customers, with respect to the pricing
2 standard that must be applied to certain affiliate
3 transactions.

4 Item E-3 is a Draft Final Rule that codifies
5 certain limited blanket authorizations under Section 203 of
6 the Federal Power Act, that will help investment in the
7 electric utility industry, and, at the same time, ensure
8 that public utility customers are adequately protected from
9 any adverse effects of such transactions.

10 As proposed in the NOPR, the Rule would pre-
11 authorize a public utility to dispose of less than ten
12 percent of its voting securities to a public utility holding
13 company, but only if, after the disposition, the holding
14 company and any associate or affiliate companies, in the
15 aggregate, will own less than ten percent of that public
16 utility.

17 The rule adopts three additional blanket
18 authorizations under Section 203(a)(1), to parallel, for the
19 most part, existing blanket authorizations granted holding
20 companies under Section 203(a)(2).

21 In addition, the Rule grants a blanket
22 authorization under 203(a)(1), for the acquisition or
23 disposition of a jurisdictional contract where neither the
24 entity acquiring the contract, nor the entity transferring
25 the contract, has captive customers or owns or provides

1 transmission service over Commission-jurisdictional
2 facilities.

3 The contract does not convey control over the
4 operation of the generation or transmission facility. The
5 parties to the transaction, are neither associate nor
6 affiliate companies, and the acquirer is a public utility.

7 The Rule also provides clarifications about
8 certain of the existing blanket authorizations under Section
9 203.

10 Finally, Item E-4 is a Draft Order that
11 addresses requests for clarification and/or reconsideration
12 of the Commission's Section 203 Policy Statement.

13 The Supplemental Policy Statement issued in July
14 of 2007, provided additional guidance on the Commission's
15 implementation of its corporate review authority and adopted
16 policies to provide additional customer protections, as
17 needed, and to work in a complementary manner with the
18 states to protect customers.

19 In particular, the Supplemental Policy Statement
20 stated that in its review of a merger's potential effect on
21 competition, the Commission uses the merger-related change
22 in market concentration, only as a screen, and that, in its
23 analysis, it looks at and will continue to look at the
24 entire theory of the competitive harm potentially resulting
25 from the merger.

1 The Draft Order denies requests for
2 clarification and/or reconsideration of the Supplemental
3 Policy Statement.

4 That concludes the presentation, and the team
5 would be happy to answer any questions.

6 CHAIRMAN KELLIHER: Thank you very much. I think
7 that's actually a very excellent and succinct summary of
8 these Orders, because these Orders are complicated. If I
9 had had this summary, I would have been reading it a couple
10 of times over the past week and you would have saved me some
11 time.

12 (Laughter and discussion off the record.)

13 CHAIRMAN KELLIHER: You've done an excellent job
14 focusing on what we are poised to do, so I'm really going to
15 focus more on why we're doing it in the first place.

16 I'd just like to note that two and a half years
17 ago, Congress significantly expanded our merger and
18 corporate review authority. They largely codified our
19 merger test, but they did have an interesting change; they
20 made one change to our concept, our application of the
21 public interest determination that required us to make a
22 finding that a transaction will not result in cross-
23 subsidization of a non-utility associate company or the
24 pledge or encumbrance of utility assets for the benefit of
25 an associate company, unless such pledge or encumbrance is

1 in the public interest.

2 Now, it's clear that preventing cross-
3 subsidization is not a new responsibility for FERC; it's
4 been a core duty since the 1930s.

5 However, normally, we police cross-subsidies when
6 we review a rate, rather than at the point of a merger.

7 So, to that extent, the cross-subsidization
8 provisions of the Energy Policy Act, were new, charging us
9 with assuring mergers would not result in improper cross-
10 subsidization.

11 We've taken a number of steps to strengthen our
12 protection against cross-subsidization since the enactment
13 of EPCRA.

14 In our rulemaking implementing the revisions to
15 Section 203, we required merger applicants to demonstrate
16 that a proposed merger would not result in inappropriate
17 cross-subsidization, and we followed that action with a
18 package of Orders issued last July, to strengthen our
19 protections even more.

20 Now, cross-subsidization, however, is not -- is a
21 matter of concern to both -- it is a matter of concern to
22 both federal and state regulators, since, as a general
23 matter, the beneficiaries of cross-subsidization
24 protections, are both retail consumers and wholesale captive
25 consumers.

1 Knowing that, we've been careful in how we
2 exercise our authority, to avoid conflict with our state
3 colleagues, one of whom is present.

4 Most state commissions have authority to review
5 mergers of state-regulated utilities, and most state
6 commissions can impose so-called ring fencing or other
7 conditions designed to protect retail consumers.

8 We work closely with our state colleagues, as we
9 considered new safeguards against improper cross-
10 subsidization, and, in particular, we invited state
11 regulators from states with very strong protections, to
12 offer their views, namely, Commissioner Ray Baum from Oregon
13 and former Commissioner Robert Garvin or Bert Garvin, from
14 Wisconsin.

15 We also benefitted from the views of former
16 Michigan Public Service Commission Chairman, Steve Fetter,
17 and Commissioner Jimmy Ervin from North Carolina, and we
18 gave their views great weight on in our deliberations.

19 Our central focus is the potential for cross-
20 subsidization by wholesale customers, as a result of a
21 proposed merger. With our primary means of protecting
22 customers at the wholesale level through rate
23 determinations, we also must review whether additional
24 protections are needed in the context of a proposed merger.

25 If the answer is yes, the FERC policy is that we

1 will defer to state-imposed protections, if they are
2 sufficient to protect wholesale customers.

3 If state commissions do not have authority to
4 impose the necessary protections, or state-imposed
5 protections are not sufficient, we will act to fill any
6 regulatory gap.

7 If FERC were to take an expansive approach
8 towards implementation of the new cross-subsidization
9 provisions in Section 203, and adopt inflexible mandatory
10 federal standards, the result could be direct conflict with
11 our state colleagues.

12 So, recognizing that cross-subsidization is a
13 common concern to federal and state regulators, our approach
14 seeks to harmonize federal and state regulation in this
15 area.

16 In the package of Orders we approve today, we
17 leave in place, the Supplemental Merger Policy Statement
18 approved last Summer, but provide some additional
19 clarifications.

20 We also grant several additional blanket
21 authorizations for public utilities to engage in certain
22 corporate transactions where there is no potential to
23 adversely affect market power or rates, and no opportunity
24 for improper cross-subsidization.

25 And, finally, under our ratemaking authority, we

1 codify restrictions on non-power goods and services,
2 transactions between affiliates and captive customers and
3 non-regulated affiliates.

4 These Orders, this package of Orders, complete
5 our initial implementation of the rules governing future
6 FERC action on Section 203 transactions. They also expand
7 the Commission's use of our ratemaking authority to protect
8 against improper cross-subsidization on an ongoing basis.

9 So I think this is an important package of Orders
10 and I'm glad to support them. Colleagues? Jon?

11 COMMISSIONER WELLINGHOFF: Mr. Chairman, thank
12 you. Mr. Chairman, as I noted when the Commission
13 previously considered these matters initially, undue
14 affiliate preference can result in anticompetitive market
15 effects, and result in higher costs to consumers.

16 So, I'm pleased to support this package, as well,
17 including the two final rules, which protect consumers
18 against inappropriate cross-subsidization.

19 I think it's also fitting that we're enacting
20 these rules at a time when we're putting out our NOPR on
21 competition. I think it's a real package of protecting
22 consumers, and, again, I'd like to thank the Staff for your
23 work on this. Thank you.

24 CHAIRMAN KELLIHER: Thank you. Colleagues?
25 Commissioner Moeller?

1 COMMISSIONER MOELLER: Thank you, Mr. Chairman.
2 Last month, the five of us all submitted articles on
3 hydropower, to a hydropower publication, and I argued that
4 hydropower is glamorous and cool again.

5 I'm not sure anyone will ever say that merger
6 review authority is glamorous or cool.

7 (Laughter.)

8 COMMISSIONER MOELLER: But it is, nevertheless,
9 vitally important hard work by the team, and we had to, of
10 course, do what Congress asked us to do in these Orders, but
11 also balance the need for new investment, particularly in
12 the electricity sector, but also the interests of
13 consumers, and I think we've done that.

14 It is an extensive, but good product, and I look
15 forward to voting for it. Thank you, Mr. Chairman.

16 CHAIRMAN KELLIHER: Commissioner Kelly?

17 COMMISSIONER KELLY: Commissioner Moeller, thank
18 you very much for your "glamorous and cool" introduction,
19 because it was Mioko Ono who said that balance is beautiful.

20 Now, let's clarify that that's not Yoko Ono.

21 (Laughter.)

22 COMMISSIONER KELLY: But Mioko Ono. She's not
23 glamorous or cool, but she is the first-ranking bridge
24 designer in Japan, and so she knows about balance and beauty
25 and function.

1 And here, today, although we are not seeking to
2 be glamorous or cool, we are seeking to balance, and we're
3 trying to balance competing interests, and, at the same
4 time, build a bridge between those interests.

5 This process can be very difficult. Last July,
6 with the issuance of two NOPRs and our FPA Section 203
7 Supplemental Policy Statement, we tried to balance the
8 facilitation of investment in the utility industry, on the
9 one hand, with protecting customers, particularly captive
10 customers, on the other.

11 And this requires the blending of interests, so
12 that customers are protected, while industry is provided
13 with the certainty it needs regarding the scope of
14 Commission regulation in these areas.

15 Today, with these three Orders, I believe that we
16 take another good step towards achieving that balance, and
17 I'm pleased to support them.

18 CHAIRMAN KELLIHER: Thank you. Commissioner
19 Spitzer?

20 COMMISSIONER SPITZER: Thank you, Mr. Chairman.

21 I grew up as a child in the era of big
22 government, and then in the 1990s, we had the era of small
23 government, and I think now the voters of this country have
24 expressed a bipartisan interest in smart government, smart
25 and effective government, and that's what this package is

1 about.

2 You've recognized that there is a potential
3 regulatory gap that we are addressing in a way that is
4 respectful of state interests. At the Arizona Commission, I
5 was very interested in affiliate transactions.

6 The Constitution gave the Commission broad
7 authority and the Supreme Court affirmed that authority over
8 affiliate transactions.

9 I spent a lot of time working on those issues in
10 mergers. My team, my staff back there, felt -- I argued
11 that it was sexy, to use that word, to deal with these legal
12 issues. My team said, no, it's because Spitzer isn't
13 knowledgeable or interested in the weighted average cost of
14 capital, so that's why he's --

15 (Laughter.)

16 COMMISSIONER SPITZER: I choose to think it was
17 the interesting aspect of affiliate transactions, and I
18 recognized that the state commissions regularly deal in
19 these issues, and, in fact, it was ring fencing from great
20 state of Oregon, that has become a national model.

21 But at the same time, there is a regulatory gap;
22 there are captive ratepayers who need protections. Congress
23 intended that those protections be delivered by the Federal
24 Government, and we so act today, and, again, in a way that I
25 think is smart, is focused, is effective, and that is

1 consistent with our state colleagues, working as a team to
2 protect our mutual ratepayers.

3 And then I think the blanket authorizations is
4 incredibly important as a means to inject additional capital
5 and liquidity in an area that is extremely capital-intensive
6 and in great need of investment and financial liquidity.

7 So, we've got smart, effective regulation in
8 focusing our resources on the problem, and eliminating
9 government oversight where it is not necessary, and, in
10 fact, counterproductive, so I think it's a win/win, I'm
11 very pleased to support these Orders, and I think they are
12 reflective of smart government.

13 CHAIRMAN KELLIHER: Thank you. Let's vote.

14 SECRETARY BOSE: We will take a vote on these
15 items together, beginning with Commissioner Wellinghoff.

16 COMMISSIONER WELLINGHOFF: Aye.

17 SECRETARY BOSE: Commissioner Moeller?

18 COMMISSIONER MOELLER: Aye.

19 SECRETARY BOSE: Commissioner Spitzer?

20 COMMISSIONER SPITZER: Aye.

21 SECRETARY BOSE: Commissioner Kelly?

22 COMMISSIONER KELLY: Aye.

23 SECRETARY BOSE: And Chairman Kelliher.

24 CHAIRMAN KELLIHER: Aye.

25 I think we'll end with -- Commissioner Moeller

1 has a brief announcement.

2 COMMISSIONER MOELLER: Thank you, Mr. Chairman.

3 I just want to briefly say today that I want to
4 congratulate the progress of the Southwest Power Pool. SPP
5 is moving towards pricing rules that could be the best way
6 to get needed transmission built.

7 I visited on January 28th in Austin. I was an
8 observer at a meeting of SPP's Regional State Committee, and
9 at that meeting, a concept paper was adopted for economic
10 upgrades of the transmission network.

11 The basic approach for the concept paper, is to
12 adopt 100-percent postage-stamp pricing for economic
13 upgrades at 345 KV and above.

14 The thinking behind this approach, is that a 100-
15 percent postage-stamp pricing simply gets the needed
16 transmission built, better than any other cost allocation.

17 The SPP is now proceeding to develop proposed
18 tariff language, and I encourage the SPP, its Board of
19 Directors, to carefully consider the proposal, and I'm sure
20 that all of us as Commissioners, will be eager to hear what
21 they have to say on the matter.

22 I raise this today to alert other transmission
23 owners in the nation, that the methodologies to allocate the
24 cost of new transmission, are being considered in a way that
25 hopefully can both satisfy the needs of the transmission

1 owner and get the transmission built. I recommend that
2 stakeholders across the nation, take a look at SPP and their
3 plan, as a possible way forward.

4 While I am certainly not prejudging any policy of
5 the SPP, especially one that has not yet been put into
6 tariff language, I commend the SPP stakeholders and the RSC
7 at the SPP, for moving forward and trying to get needed
8 transmission built in that market.

9 Also, when I was there, I had the opportunity to
10 visit the ERCOT control room. It was very impressive. It
11 seems that ERCOT is well on its way to putting together a
12 well-functioning market, and I may have been one of the
13 first FERC Commissioners to visit their control room, and,
14 contrary to any jurisdictional issues, I was greeted warmly.

15 (Laughter.)

16 COMMISSIONER MOELLER: And I would recommend that
17 if you get the chance to visit, you do the same. Thank you,
18 Mr. Chairman.

19 CHAIRMAN KELLIHER: Thank you very much for that
20 statement. Colleagues, any other comments?

21 (No response.)

22 CHAIRMAN KELLIHER: No? Well, I think that's a
23 wrap, and I think we'll conclude this meeting. Thank you.

24 (Whereupon, at 11:10 a.m., the Open Meeting was
25 concluded.)