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BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

- - - - -x
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

943RD COMMISSION MEETING
OPEN SESSION

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

Thursday, January 15, 2009
10:09 a.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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1 943rd OPEN COMMISSION MEETING

2 (10:09 a.m.)

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

8 To help with the Pledge of Allegiance I have
9 asked my son, Aden, who helped me in my very first meeting
10 as Chairman, to assist.

11 Aden, can you come up? He is much taller than he
12 was three-and-a-half years ago.

13 (Laughter.)

14 (Pledge of Allegiance recited.)

15 CHAIRMAN KELLIHER: I want to thank Aden for his
16 help and--this is going to be somewhat of a family event--
17 Nora brought the gavel down. She likes to do that. I guess
18 it's the power of the gavel that is attractive to her, but
19 Nora brought the gavel down and she might help me vote later
20 on in the meeting.

21 (Laughter.)

22 CHAIRMAN KELLIHER: And of course Karen is here,
23 and my parents, Joe and Joan Kelliher, and little Damien is
24 here. Damien has a nice jacket on, and Nora said that he
25 looked like a businessman. And he countered with:

1 No, I look like a FERC Chairman.

2 (Laughter.)

3 CHAIRMAN KELLIHER: So in a few minutes I am
4 going to grant some awards to very deserving staff, but I
5 thought I would make some general comments about my service
6 here as I move to step down as Chairman.

7 This is my 39th meeting as Chairman, and mine and
8 Suede's 61st meeting since joining the Commission in
9 November 2003. I think those are pretty important numbers.
10 I think it is also appropriate that my last meeting as
11 Chairman take place on the Ides of January.

12 But my comments and my remarks are going to be
13 full of historical references mostly because I love history
14 and I think some of the Commission staff--I'm not sure how
15 many--like history, and I thought I would make my remarks
16 chock full of them to satisfy them because the next Chairman
17 actually might not like history at all.

18 (Laughter.)

19 CHAIRMAN KELLIHER: So I ask for some indulgence.

20 The job of Chairman and the job of Commissioner
21 really does have unusual power and responsibility. By its
22 own terms, it is intended to be temporary. The Romans used
23 to have an expression "gloria est transitu," all glory is
24 fleeting. So it is supposed to be temporary, and I do step
25 down entirely satisfied with the work of the Commission over

1 the last three-and-a-half years.

2 We have covered an awful lot of ground over that
3 period. We implemented the Energy Policy Act of 2005, the
4 largest expansion of agency power since the New Deal. We
5 did so smoothly and on time.

6 We pursued steady reforms of Commission policy,
7 not because those policies were broken but because there was
8 room for improvement.

9 We reformed the Agency's approach toward its
10 economic regulation and infrastructure missions, and we
11 defined how the Commission will discharge its new
12 enforcement mission.

13 We also defined how the Agency will discharge its
14 new reliability mission. And we maintained the focus on
15 infrastructure expansion, doing so more quietly than some
16 perceived.

17 During my Chairmanship we've approved 7,400 miles
18 of natural gas pipeline additions. We authorized 9 new LNG
19 import terminals, and 5 expansions; and increased LNG import
20 capacity by 500 percent, or at least authorized a 500
21 percent expansion. We have also encouraged the largest
22 expansion in gas storage in 20 years.

23 But we also launched a lot of major policy
24 initiatives. We acted to prevent undue discrimination in
25 transmission service through Open Access Transmission Tariff

1 reform. We strengthened our power grid through transmission
2 investment policy, mandatory regional planning, and
3 implementation of a new Federal siting rule, helping to
4 produce a doubling of grid investment.

5 We promoted competition in wholesale power
6 markets through targeted reforms to improve demand response,
7 and encouraged greater entry during periods of peak demand.

8 We clarified and formalized FERC policies with
9 respect to market monitoring. We provide firm but fair
10 enforcement of FERC Rules through new policies that
11 encourage strong compliance, corporate compliance programs,
12 and limiting maximum penalties to the most serious offenses
13 and allowing the regulated community to seek guidance
14 without hazard.

15 We exercised our new civil penalty authority
16 through approval of settlements totalling \$66 million in
17 penalties, and litigation involving \$467 million.

18 We assured grid reliability by certifying an
19 Electric Reliability organization, adopting mandatory
20 Reliability Standards, and establishing an Enforcement
21 regime.

22 We prevented exercise of market power in
23 electricity markets by merger policy reform and market-based
24 rate policy reform.

25 We acted to prohibit market manipulation of

1 electricity and gas markets through new anti-manipulation
2 rules.

3 We also strengthened the Gas Pipeline Network by
4 reforms to the Blanket Certificate Program, and changes to
5 the composition of Proxy Groups.

6 We reduced gas price volatility, or acted to
7 reduce gas price volatility through storage pricing reform
8 and new transparency rules.

9 We encouraged more efficient use of pipeline
10 capacity through a form of capacity release rules, and we
11 supported development of new hydrokinetics technology by
12 establishing a new Pilot License.

13 And we further promoted hydropower settlements
14 through a Settlement Policy Statement that provided
15 important regulatory guidance to licensees. We also made
16 structural changes to the agency, establishing an Office of
17 Enforcement dedicated to enforcement of FERC requirements
18 and market oversight and investigations, and a new Office of
19 Electric Reliability to review proposed mandatory
20 reliability standards, steadily improve those standards, and
21 oversee national and regional reliability organizations.

22 I think that is a record to be proud of, for all
23 of us to be proud of. I frankly don't consider myself a,
24 quote, "activist" Chairman, but I think this period was
25 marked by a very high level of activity. Since I became

1 Chairman the Commission issued over 4,500 Orders. We also
2 issued 58 Final Rules, and I think we are poised to approve
3 a 59th today.

4 I am particularly proud, and maybe strangely
5 proud, of the Final Rules because I think those will guide
6 Commission decisions in the future. To put that 58 Final
7 Rules in context, since 1996 the Commission has issued a
8 total of 117 Final Rules. So half of the Rules issued over
9 the past 12 years were issued in the past 3-1/2.

10 And of course many of those Rules were related to
11 implementation of the Energy Policy Act, but many of them
12 were discretionary and things we pursued on our own
13 initiative.

14 We have also improved our standing in Congress,
15 strengthened our relationships with State regulators, and
16 improved our record in the courts. And these are all
17 important. Some of our harshest Congressional critics back
18 during the California and Western power crisis are now some
19 of our strongest allies.

20 And States, we have a very strong relationship
21 with our State regulators, but we both recognize that the
22 complete absence of tension is not the norm. We are going
23 to have disagreements, but I think the disagreements are
24 civil.

25 And we have improved our record in the courts. I

1 think that is in part because we are issuing a better
2 product, a more consistent product, and one that is more
3 legally defensible. I will go through some more numbers
4 here. I like numbers, obviously, or I wouldn't be quoting
5 so many.

6 But since I became Chairman we have had 75 wins
7 in the court, 19 split decisions, partial remands, and 15
8 losses. And just as a footnote, I did dissent from two of
9 the losses, so those are--

10 (Laughter.)

11 CHAIRMAN KELLIHER: So it is hard to really put
12 those in the right category. But if you take those in
13 aggregate and you take the split decisions, divide them
14 evenly, put them equally into win and loss columns, FERC has
15 won 77.5 percent of the time over my Chairmanship. But more
16 importantly, the trend line is up.

17 Specifically, FERC won 64 to 67 percent of the
18 time between 2003 and 2005; 76 percent of the time in 2006;
19 79.5 percent of the time in 2007; and 80 percent, slightly
20 more than 80 percent of the time in 2008.

21 I have been saying "we" because these are
22 accomplishments of the Commission, not the Chairman. They
23 are the successes of the Commission, the Chairman, and the
24 Commissioners working together supported by an able and
25 dedicated staff.

1 These are accomplishments of both the current
2 Commission and its predecessor, what we call the En Cien
3 Regime, or Marc Spitzer calls the En Cien Regime, composed
4 of myself, Commissioner Kelly, and Nora Brownell.

5 Some Commissions have nicknames. There was the
6 Dream Team some time ago. I tried to give the En Cien
7 Regime a nickname at the very end, but because we were so
8 productive--there were only three of us, and we did so much
9 work, I thought "The Few" was probably the best nickname for
10 the old Commission.

11 (Laughter.)

12 CHAIRMAN KELLIHER: And the new Commission, I
13 guess I'll leave the current Commission to choose their own
14 nickname, perhaps after I leave.

15 (Laughter.)

16 CHAIRMAN KELLIHER: But I think it is important
17 to recognize that the Chairman is not a single
18 administrator. The job of the Chairman is to present an
19 agenda to his or her colleagues and to work collaboratively
20 with them. In a perfect world the result would be a steady
21 stream of unanimous votes, and at FERC we mostly have
22 unanimous votes, but to some extent we disagree. But those
23 disagreements are always honorable, and to some extent they
24 should be expected.

25 FERC and other multi-member commissions are not

1 single administrator agencies for a reason. It is because
2 Congress wants diverse views to bear on important matters
3 that we are responsible for, and diverse views will not
4 always reach consensus, but we certainly try.

5 The Chairman does get too much credit when things
6 go well,k and too much blame when things don't go so well,
7 but that is sort of the nature of the job and I am lucky
8 that I've enjoyed more good times than bad.

9 Shortly after I became Chairman I was asked:
10 What's the biggest difference between being Commissioner and
11 Chairman? And I replied that all the mean letters that used
12 to be sent to Pat Wood are now addressed to me.

13 (Laughter.)

14 CHAIRMAN KELLIHER: And soon they will be
15 addressed to someone else. Now some level of criticism of
16 Commission actions is inevitable if we are doing our jobs
17 properly. We have to make difficult decisions and base
18 those decisions on facts and on a record; others would
19 prefer that we merely follow public opinion.

20 But I think to do so would be a dereliction of
21 duty. One of my favorite quotes is Edmund Burke. I have
22 used it before, and I will use it one more time, but Edmund
23 Burke described the duty of a legislator, and I think his
24 advice applies equally to the duty of a regulator or other
25 government officials. But Burke, explaining to voters on

1 how a legislator should discharge his duties, said, quote:

2 "His unbiased opinion, his mature judgment, his
3 enlightened conscience, he ought not to sacrifice to you, to
4 any man, or any set of men living. Your representative owes
5 you not industry only but his judgment, and he betrays
6 instead of serving you if he sacrifices it to your opinion."

7 And that is how I've proceeded as Commissioner
8 and Chairman, and I think our job is to exercise our
9 collective judgment even when we know our decisions will be
10 unpopular. I think criticism of the Commission is to be
11 expected, and at some level I think criticism is healthy and
12 I invite continued criticism of the agency after I step down
13 as Chairman.

14 (Laughter.)

15 CHAIRMAN KELLIHER: I expect that to continue.
16 But I think I want to reassure the critics that the honest
17 critic will get a fair hearing at FERC; that we do examine
18 your arguments; and that we are open to persuasion that
19 we're wrong and we might change our minds, but we won't
20 always agree with you. But I think the demagogues should
21 really expect little comfort here because the Commission
22 tends to shrug off demagogues.

23 I personally do not expect that I will have a
24 legacy. I think this country is much better at remembering
25 villains than public servants, so--and Charles de Gaulle

1 once said--I love this quote--he said: Cemeteries were full
2 of indispensable men. So I operate under no illusion about
3 my importance.

4 I think the Commission will continue to function
5 efficiently with my departure. Commissioner Kelly and I
6 have been part of three, four, and five-member Commissions,
7 and all three functioned well.

8 I do want to have a word to the senior staff. I
9 do think one of the best management books ever written was
10 Machiavelli's The Prince. I know that might sound odd, but
11 it really I think describes the relationship between a
12 prince, or a Commissioner, and a Chairman, and senior staff
13 very well. I'll let you have one quote from The Prince:

14 A good prince ought to choose the wise men in his
15 state and give to them only the liberty of speaking the
16 truth to him. He ought to question them upon everything and
17 listen to their opinions and afterwards form his own
18 conclusions. With these counselors, separately and
19 collectively, he ought to carry himself in such a way that
20 each of them such know that the more freely he shall speak
21 the more he shall be preferred. He should then pursue the
22 thing resolved on and be steadfast in his resolutions.

23 And I think that is exactly what we should expect
24 and we do get from the FERC senior staff. I have also
25 described FERC senior staff as core commanders. This is one

1 of those historical moments in my remarks here.

2 In my first off-site, I took the senior staff to
3 the Sharpsburg Battlefield and we looked at The Sunken Road,
4 because that's where the Irish Brigade attacked, and if
5 you're Irish you have to go to battlefields where the Irish
6 Brigade fought. But we when to Burnside's Bridge, which was
7 the more important part of the message. In the Battle of
8 Sharpsburg General McClelland was the Union Commander, and
9 he did a terrible job. He really should have destroyed
10 Lee's Army. He outnumbered Lee's Army two to one. Lee's
11 Army had its back to the Potomac River and really couldn't
12 cross the river well.

13 But McClelland forfeited control of the
14 battlefield. He really didn't have any kind of plan of
15 execution, and he didn't give his core commanders any kind
16 of direction. But one of his core commanders, General
17 Burnside, at one point had about 11,000 men across a bridge
18 that now bears his name--kind of to his ever-lasting
19 shame--and he was confronted by about 600 Confederates.

20 He waited until General McClelland gave him a
21 specific instruction to cross the river and attack the
22 Confederate Right Flank before he would move. So he had
23 11,000 men against 600, and he took no initiative. And I
24 told the senior staff that, look, I won't be General
25 McClelland. I'll give you some general direction, and we

1 will have some kind of plan, but I think it is important
2 that you show initiative, and I will never fault you for
3 showing too much initiative; more, than you show too
4 little.

5 But Joe [McClelland] has persisted, and he wants
6 to know which core commander he is--

7 (Laughter.)

8 CHAIRMAN KELLIHER: --and he and I both have
9 linear minds--

10 (Laughter.)

11 CHAIRMAN KELLIHER: --so I've really been giving
12 it a lot of thought and I'm going to offer you two
13 suggestions, and I'll let you choose which one you're most
14 like.

15 They're both from the Eastern Armies, because I'm
16 more familiar with them, but one is General John Gordon, who
17 was Lee's last Corps Commander, and you're the last core
18 commander that I named on a permanent basis in a new office,
19 but John Gordon was the Commander of the Confederate 2nd
20 Corps. Look up his biography and you will see that it is a
21 compliment, but he was a commander of a--he actually was
22 commander of the brigade that defended the Sunken Road at
23 Sharpsburg and did so very well. He later on became a
24 Division Commander, and then was a Corps Commander, Lee's
25 last Corps Commander, and he was responsible for Lee's last

1 attack at Fort Stedman.

2 But there's also a Union General, John Gibbon who
3 really is equally worthy. He was the Commander of the Iron
4 Brigade in the Army in the Potomac, and he fought very well
5 and bravely at Gettysburg, and he was one of Grant's--I
6 think he was Grant's last Corps Commander, and he made the
7 key breakthrough at the Battle of Petersburg. So he was the
8 Commander of the 14th Corps. So those are both compliments.
9 But you wanted to know, and so I figured I would tell you.

10 (Laughter.)

11 CHAIRMAN KELLIHER: Really, I think the best
12 compliment I've gotten in a long time--well I get
13 compliments every once in awhile--but the best compliment I
14 received recently was last week by a member of the senior
15 staff who said, quote, "We felt like you were one of us."
16 And I consider that very high praise.

17 I would like to say a word to the broader staff,
18 to the general staff, that I am proud to have been your
19 Chairman for three-and-a-half years. To paraphrase General
20 Lee in his farewell address to his army:

21 I recognize your arduous service during this
22 period, and admire your constancy and devotion to the public
23 interest, and I hope you will take with you the satisfaction
24 that proceeds from the consciousness of a duty faithfully
25 performed. I am very indebted to the staff for their hard

1 work and dedication. I don't know all of you by name, but
2 if you approach me down the road and say "I worked for you
3 when you were Chairman of FERC," you will have my
4 friendship.

5 Our children really grew up here at FERC. Aden
6 was 5 years old when he helped me give the Pledge of
7 Allegiance, and now he is 10. Nora was 3. She wasn't quite
8 4 years old, and now she is having her 9th birthday this
9 month. And Damien wasn't even born when I arrived here. He
10 was born shortly after I became Chairman.

11 And actually anticipating this day, about a year
12 and a half ago I broke the news to Aden and nora. I sat
13 down with them and said, broke the news to them that Dad
14 would not always be the FERC Chairman. And they were
15 genuinely shocked.

16 (Laughter.)

17 CHAIRMAN KELLIHER: They said--which makes sense,
18 given the context--but they said: Why not? And I said that
19 there's going to be a Presidential election and that there
20 would be a new President, regardless of the outcome, and
21 that new President might want someone else to be Chairman.
22 And their answer was: Well, why would he?

23 (Laughter.)

24 CHAIRMAN KELLIHER: And I said that Presidents
25 like to pick people that they know to be chairmen and

1 secretaries of agencies. And their last question was
2 interesting. They said:

3 Well will this person do a better job?

4 (Laughter.)

5 CHAIRMAN KELLIHER: And I said: Well, I don't
6 know about that.

7 (Laughter.)

8 CHAIRMAN KELLIHER: But they will be different,
9 but not necessarily better or worse.

10 It has been an honor to be FERC Chairman, and I
11 have been a happy regulator. I love the job. It has been a
12 particular privilege to be Chairman at this point in time.
13 I would like to thank President Bush for giving me this
14 opportunity to serve the public, and I would like to thank
15 my wife, Karen, for her indulgence and for supporting my
16 desire to serve.

17 And when a successor is named, I will work
18 closely with my successor to assure a smooth transition, and
19 I will freely offer my candid views and advice. Any advice
20 I offer will remain between my successor and myself. There
21 are many challenges facing the agency, and it is important
22 that there be a smooth transition and that the agency
23 continue to operate well.

24 I do think FERC is in good hands. I think the
25 Commissioners are some of the finest Commissioners that have

1 ever served the agency, and I think the Commission is served
2 by a superb and dedicated staff.

3 So to me this is a happy day with mixed emotions,
4 though. So thank you. It's really been a joy working with
5 all of you. Thank you.

6 (Applause and standing ovation.)

7 COMMISSIONER KELLY: I would like to exercise my
8 prerogative, if my colleagues will allow me to, as Joe's
9 colleague who has served the longest with him.

10 I have enjoyed having Joe serve as Chair. I have
11 looked to him for leadership, and I am pleased that he has
12 been the leader of FERC. Although I do have to confess in
13 my private moments I sometimes think of myself as "the
14 ranking member."

15 (Laughter.)

16 COMMISSIONER KELLY: The philosopher Schopenhauer
17 once said that the first 40 years of a man's life are the
18 text. The rest is commentary.

19 In your case, Joe, the themes, the lessons, and
20 the accomplishments are already written large. Indeed, many
21 of them are published, and FERC readers around the world can
22 read them.

23 You have much to celebrate on this your final
24 Commission meeting as Chair. I have appreciated working
25 with you very much. There are so many things about you that

1 I appreciate. I can't catalogue them all here right now
2 because the meeting would go on for way too long, but just
3 to state a few:

4 Your calmness. Storms blow over FERC regularly,
5 not just in January, and having the man at the helm be calm
6 helps all of us do our work and stay focused on our mission.

7 How professional you are. I couldn't help but
8 note that you mentioned that Nora might help you with your
9 vote. I'd like to say for the record that Joe has never let
10 me help with his vote.

11 (Laughter.)

12 COMMISSIONER KELLY: I've tried.

13 (Laughter.)

14 COMMISSIONER KELLY: Your intelligence. You are
15 one of the smartest people that I have ever met. Not that I
16 ever contemplated trying to spin you or push you into a
17 position, but if I ever had that thought I knew I could
18 never accomplish it because you knew what you were doing and
19 you informed yourself, and you understood the pros and the
20 cons and the implications before you made a decision, and I
21 can't tell you how much I appreciate that, and how valuable
22 that is to the American people that you serve.

23 You are punctual. That might seem like a small
24 thing, but to a woman who has lived in New Mexico for 25
25 years, being reintroduced to that concept--

1 (Laughter.)

2 COMMISSIONER KELLY: --has been very valuable to
3 me. I remember our first technical conference and you said,
4 well, each of us will have 10 minutes. And I said: Well,
5 in New Mexico we get to use as much time as we want.

6 And you said: Well, you aren't in New Mexico.

7 (Laughter.)

8 COMMISSIONER KELLY: So thank you for that.
9 That's been a very hard lesson to learn.

10 And, you're funny. I've quite enjoyed your droll
11 sense of humor. I didn't realize that the Civil War and
12 military history could be so funny.

13 (Laughter.)

14 COMMISSIONER KELLY: It's such a wonderful gift
15 you have, and it is so valuable in helping to keep us
16 working collaboratively, that ability to break the tension
17 with a comment that makes us realize that sometimes life
18 isn't as serious as it might seem that it is.

19 I have read that a toast is not supposed to just
20 be about the years, but is supposed to be about the things
21 that happened during them. Well there's an old Irish toast
22 that I know, and I know that it does just that. And as a
23 Kelly to a Kelliher, I thought that I would offer it to you:

24 May you live all the days of your life.

25 For five years here, especially your years as

1 Chairman, that is exactly what you have done here, Joe, and
2 that is what you have helped all of FERC to do: to do our
3 best, to try our hardest, to make the most of the work that
4 we do here.

5 Now it is time to say farewell to you as Chair,
6 and I would like to offer a wish for your future happiness:

7 May you continue to live all the days of your
8 life. May your next job be as rewarding for you as your
9 work here as been for us. If it is, you will be happy
10 indeed. Cheers!

11 (Applause.)

12 COMMISSIONER MOELLER: I guess I can't pass up
13 the opportunity, either. Mr. Chairman, you and I go back
14 to our Hill days together, you on the House side and I on
15 the Senate, and we had a very good relationship from there
16 at that time and it has continued through today.

17 I will echo many of the sentiments of
18 Commissioner Kelly. Your calmness, your sense of
19 leadership. I personally thank you for public service,
20 because, although there is a little bit of glamor involved,
21 there is also a lot of sacrifice and that particularly falls
22 on your family.

23 How nice to have your parents here today. You
24 must be quite proud of your son.

25 With that, I just hope that some time in your

1 future that you might be able to be teaching some Civil War
2 history, because to me that is clearly something that you
3 were meant to do at some point in your life because of your
4 passion involved.

5 But this agency, you are leaving it in good hands
6 because of your stewardship here, and I thank you,
7 similarly, not only for your service but for your
8 friendship, and thank you for the fine job you did.

9 CHAIRMAN KELLIHER: Thank you. Colleagues?
10 Commissioner Wellinghoff?

11 COMMISSIONER WELLINGHOFF: Thank you, Mr.
12 Chairman. I have a speech here with a lot of Civil War
13 analogies--

14 (Laughter.)

15 COMMISSIONER WELLINGHOFF: But I'm not going to
16 use it.

17 (Laughter.)

18 COMMISSIONER WELLINGHOFF: I would second all the
19 things that Commissioner Kelly stated with respect to all
20 the things we appreciate about you, and I would add one to
21 that. I know I told you this story; I'd like to tell it to
22 everybody.

23 I was at the University of Vermont Law School
24 last summer and had the opportunity to run into your old
25 administrative law professor at AU there when we were at a

1 reception, and we were talking about you, and he said: Yes,
2 Joe Kelliher was the best administrative law student that I
3 ever had.

4 Well, I appreciate your scholarship, and I
5 appreciate how you apply that scholarship to your job here.
6 Your ability to explain these cases when we sit down in our
7 one-on-ones and discuss them is something that has been very
8 helpful to me, and very useful to me, and I appreciate that
9 very much. You are a scholar's scholar with respect to
10 administrative law.

11 CHAIRMAN KELLIHER: Thank you, Jon.

12 Commissoria.

13 COMMISSIONER SPITZER: Thank you, Mr. Chairman.

14 I kind of like "Commissoria,"--

15 (Laughter.)

16 COMMISSIONER SPITZER: You mentioned Machiavelli,
17 and he did--he was of course brilliant, but he did end up in
18 a little bit of trouble--

19 (Laughter.)

20 COMMISSIONER SPITZER: --in a prison cell in
21 Florence. So it's better to be the chief than the
22 suppliant sometimes.

23 I thought about writing something out here in
24 advance and was maybe laboring under the misapprehension
25 that you would change your mind--

1 (Laughter.)

2 COMMISSIONER SPITZER: --so I never did, but I
3 will more or less speak from the heart and these little
4 scribbled notes.

5 You know, one of the benefits--and there are many
6 benefits--of being in politics during my life oddly is to
7 attend funerals. In that business you go to a lot of
8 funerals. And if there is service to the United States
9 Armed Forces there will be a flag on the casket. Otherwise,
10 other than that, there is the same--the funerals are the
11 same.

12 There is no discussion of personal wealth or
13 possessions. Instead, there will be discussion of the
14 deceased in terms of what he or she did for her family, for
15 her profession, and for her community and country. And that
16 is the legacy of us all, and particularly salient today.

17 There is a convergence of policy and personality,
18 and oftentimes it is difficult to separate those two. In
19 terms of the policy, we had a unique circumstance with
20 energy in this country where there was an enormous gap
21 between the business and economics of energy and the legal
22 structure. And slowly the legal structure has caught up
23 with business and economics, and this occurred during your
24 tenure here at FERC.

25 We had the Western energy crisis that you

1 discussed. We had the blackout in the Northeast, and this
2 gave rise to a number of policy changes by Congress that
3 this agency had to implement. These were challenging,
4 difficult, time consuming, and yet very important such that
5 deadlines were imposed by Congress and FERC met every
6 deadline in every case. And more important that the text of
7 the orders was the fact that because of the Western crisis
8 and other events and the blackout, there has been a loss of
9 the public's faith and confidence not blaming FERC or any
10 specific agency, but a lack of the public's faith and
11 confidence in the energy system. And that, in my judgment,
12 has been restored in great measure due to your leadership.

13 I would absolutely agree that the relationship
14 between the States and the Federal Government has markedly
15 improved, and this is part of that restoration of faith and
16 confidence.

17 On the personality side, if you look at your
18 credentials, you were born to do this job. I remember
19 preparing for my confirmation hearing in 2006 and I came
20 across these law review articles. I said, holy cow, this
21 guy's been writing law review articles on this stuff going
22 back 15 years. And that is impressive. But what's more
23 impressive is what I learned when I was a young tax lawyer.
24 We were adverse to the IRS, but my boss was a former chief
25 counsel, and he said: Government has to cut square corners.

1 Government is not like other litigants in cases. Government
2 has to do the right thing.

3 And you have always done the right thing. You
4 have listened. We have not always agreed, as you point out,
5 but where there are disagreements they are done on an
6 academic cerebral manner, and many times you have
7 accommodated my concerns and questions as you have of all of
8 our colleagues. And that ability not just to listen but
9 accommodate other viewpoints is very rare, and is consistent
10 with that attribute of cutting square corners and doing the
11 right thing.

12 And that is easy to say; hard to do. They always
13 talk about, in government, do the right thing and let the
14 politics take care of itself. But that has been absolutely
15 the case ever since I've come to this agency, and it is a
16 hallmark of your leadership. I have run in a bunch of
17 elections and served in a number of capacities, and for 27
18 years was on the opposite side from the United States
19 Government, and in all of my career in these areas I have
20 never encountered someone who more fulfills the term "public
21 servant" than Chairman Joe Kelliher.

22 CHAIRMAN KELLIHER: Thank you.

23 (Applause.)

24 CHAIRMAN KELLIHER: I want to thank all of my
25 colleagues. I hold you in extremely high regard, so your

1 comments really mean quite a lot to me. Thank you.

2 Why don't we turn to some awards. I want to
3 apologize to staff for having to share the stage with me
4 today, but I will be leaving this stage soon so I want to
5 make sure you get your awards before I do that.

6 I want to give awards to some very worthy
7 Commission staff, both some of the program staff, senior
8 staff in the program offices as well as my personal staff.

9 But why don't we start with Kevin Kelly. Kevin
10 Kelly is the Director of Policy Analysis and Rulemakings
11 within the Office of Electric Market Regulation, and he has
12 been a major contributor and architect behind every major
13 electric policy initiative of the Commission since he joined
14 the agency in 1994, from Order 888 to the Commission's
15 recent Competition Order, and everything in between.

16 Kevin is a very thoughtful and superb policy
17 analyst. He also is a NARUC devotee. He is, kind of to
18 some, the face of FERC at NARUC meetings, and he has played
19 a very important role in improving our relationship with our
20 state colleagues.

21 Kevin is the kind of person who stands out
22 without trying to stand out. He just stands out really from
23 the quality of his judgment and his advice. But Kevin
24 certainly deserves the Exemplar of the Public Service Award.
25 I should have clarified. I'm going to talk about everyone,

1 and then we will ask you to come up one by one like we did
2 at the last meeting.

3 Kevin previously also was Associate Director of
4 the National Regulatory Research Institute. He was a DOE
5 official where he was Director of the Office of Electricity,
6 Coal, Nuclear, and Renewable Energy Policy. So he is a
7 dedicated public servant both at FERC and at DOE, and I
8 believe he certainly deserves the Exemplar of the Public
9 Service Award.

10 Next is Ed Murrell. Ed is Kevin's deputy in the
11 Policy Analysis and Rulemakings Division and has been since
12 2006. Ed has really been to Gas Policy what Kevin has been
13 to Electricity Policy. So there is kind of a yin and yang
14 relationship, I guess, between the two of you.

15 Ed's roots go very deep. He has been a major
16 contributor to every major gas initiative coming out of the
17 Commission, and I personally have learned quite a lot from
18 your memos on fuel retention, on capacity release, and other
19 areas. So you have helped educate me on gas policy.

20 Ed started at the Commission back in 1979 in the
21 former Office of Pipeline Producer Regulation, and so he has
22 played a major role in our policy statement on MLPs, and to
23 revisions to the Proxy Group. So Ed has been a long-
24 standing public servant, and is also deserving of the
25 Exemplary of the Public Service Award.

1 Now I would like to talk about some of my
2 personal staff. I have another Machiavelli quote here, but
3 it is my last Machiavelli quote. Machiavelli had advice on
4 staff, and he made a comment that: The choice of staff is
5 of no little importance to a prince, and they are good or
6 not according to the discrimination of the prince. The
7 first opinion which one forms of a prince and of his
8 understanding is by observing the men he has around him.
9 When they are capable and faithful, the prince may always be
10 considered wise because he has known how to recognize the
11 capable and keep them faithful. But when they are
12 otherwise, one cannot form a good opinion of the prince for
13 the prime error which he made was in choosing them.

14 And so I really think that is something that I
15 have borne in mind. I think that quote really speaks more
16 to our selection of personal staff than anything else, and I
17 want to thank my personal staff for their skill and
18 dedication. I recognize they were capable and somehow
19 managed to keep them faithful, and I think for some reason
20 some people might have considered me wise.

21 Our office has a certain personality. I think
22 institutions have personalities, and offices have
23 personalities, and I think our personal office personality
24 is that we are a calm, hardworking office. Suedeenn talked
25 about calmness, but I think that is the personality of our

1 whole office. We are calm and hardworking.

2 It has been a pleasure to work with my personal
3 staff. Len and Nils in particular. They have been work me
4 since the beginning, December of 2003, and they have helped
5 me through 61 meetings and helped me cast nearly 6,600
6 votes. If you ask the question: What is a good attorney-
7 advisor? I think a good attorney-advisor represents a
8 Commissioner or a Chairman and negotiates on their behalf.
9 It really works best if they know the mind of the Chairman
10 or the Commissioner and can speak authoritatively.

11 I think it is clear that my attorney-advisors
12 know my mind and have been able to do that, in part from our
13 long-standing experience together. I think the role of the
14 personal staff in the Chairman's office is different, and I
15 think that is heavier responsibility.

16 Len and Nils have certainly managed that
17 transition very well. This is maybe my last military
18 reference, but at the end of a successful military campaign
19 it was customary for the commanding general to give awards
20 to the aides-de-camp on his personal staff, and I thought I
21 would follow that tradition today.

22 Let me talk about Len first. Len was my first
23 attorney-advisor. I didn't properly credit him as being my
24 first--where's Len? Where are you?

25 (Laughter.)

1 CHAIRMAN KELLIHER: But Len is a dedicated public
2 servant. He has worked for the Federal Government since
3 1985, so you are now in your 24th years of Federal Service.
4 Like me he is a Federal alumnus of the Department of Energy.
5 He worked in the White House, and he has been at FERC since
6 2001. Len has handled a really tremendous workload and
7 handled it with grace and without complaint.

8 And because Len is a big music fan, I am going to
9 describe him as Len is the hardest-working man in show
10 business.

11 (Laughter.)

12 CHAIRMAN KELLIHER: He is the James Brown of
13 FERC.

14 (Laughter.)

15 CHAIRMAN KELLIHER: Without any of the arrests,
16 or problems with the police.

17 (Laughter.)

18 CHAIRMAN KELLIHER: But Len certainly deserves
19 the Exemplar of The Public Service Award.

20 Let me turn to Nils. Nils of course is part of
21 that West Virginia clique here at FERC. He is a dedicated
22 public servant. He has been at FERC--you're in your 19th
23 year? Or you're beginning your 19th year at FERC.

24 The way we've arranged our office from the
25 beginning is that we had two attorney-advisors who worked on

1 electricity and one who does everything else, and that is
2 Nils. Nils handles everything else at the Commission, and
3 he has done so amazingly well.

4 I have called him my sensate. He's been my
5 sensate on projects in gas policy, and he is a good teacher.
6 He has patiently taught me for the past five years on gas
7 policy and projects.

8 Nils is patient and thoughtful and a true
9 gentleman. He also has the ability to quietly handle a
10 large workload, and I think he is very deserving of the
11 Exemplar Award.

12 Now Maria Farianella is the newest of my
13 attorney-advisors. She joined me in August 2007. I think
14 she is a brilliant lawyer, and she practiced for more than
15 10 years in private practice before joining the agency. And
16 she stepped right in, walked right in to the Chairman's
17 office and started handling a very heavy workload.

18 Maria I think has performed very well since
19 joining my staff and has shown a lot of leadership in the
20 Chairman's office. Maria also went to the same law school
21 as Cindy, John Moot, and myself. We all went to the
22 American University Washington College of Law, but because
23 of Maria's leadership I have decided to give her the
24 Chairman's Medal for Leadership.

25 Now two more. Larry Gasteiger. Now Larry kind

1 of fits into more than one world. Where is Larry? Larry's
2 right over there. Okay. Larry's back in the bearded Ymir
3 look--

4 (Laughter.)

5 CHAIRMAN KELLIHER: --that only Jamie can define
6 successfully, although Shelton's beardless now, but he'll be
7 back soon.

8 (Laughter.)

9 CHAIRMAN KELLIHER: But Larry is currently the
10 Director of the Division of Tariffs and Market Development
11 East in the Office of Electric Market Regulation and has
12 been so since August 2006. Prior to that he served in my
13 office from January 2004, almost the beginning, through
14 January 2006, including the period where I shifted from
15 being Commissioner to Chairman.

16 Larry was an attorney-advisor on my staff and
17 really did a superb job, particularly in the transition from
18 Commissioner to Chairman's office. Larry has also worked in
19 the Solicitor's Office at the Commission, and Larry also has
20 a rule nicknamed after him, the Gasteiger Rule, which was
21 the first Final Rule, Order 663, requiring that on Rehearing
22 that we have the Statement of Issues and Rehearing Orders,
23 and that was a suggestion that Larry made and I thought it
24 was an excellent idea. We issued an Instant Final Rule, and
25 I guess if you always remember your first attorney-advisor,

1 you remember your first Final Rule, and Larry should bear
2 the name of Order 663.

3 But Larry also showed the same capacity. He was
4 calm, could handle a tremendous workload, and a very nice
5 man to be around, and I consider all my personal staff to be
6 friends. But Larry deserves the Exemplar, not just for his
7 service to me as the Commissioner and Chairman but also to
8 his service at EMIR and the Solicitor's office, and at the
9 Commodity Futures Trading Commission. So Larry has been a
10 dedicated public servant.

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1 The last one is a surprise, certainly to the
2 recipient, and that's Jean Womack. Jean Womack has been
3 one of the hardest working members of my staff. She often
4 works seven days a week, and she is very efficient and nice,
5 and that is a rare combination. Usually, if you're one,
6 you're not the other.

7 (Laughter.)

8 CHAIRMAN KELLIHER: But Jean is both. Jean has
9 helped me. As soon as she came to my office, she made me a
10 more efficient Chairman. I was able to use my time to the
11 best advantage, I never had to worry that I would be
12 stranded somewhere without a return flight, that I wouldn't
13 have a hotel reservation, that I'd have meetings double-
14 booked, but Jean very much simplified my life and allowed me
15 to avoid distractions and focus entirely on what I love most
16 about the job, and that's making good public policy, or at
17 least attempting to do so.

18 I think, for that reason, I am really honored to
19 give Jean the Merit Award for Exceptional Service.

20 So, with that, I just turn to my colleagues, to
21 see if anyone wants to make comments. Don't feel obliged
22 to. You can comment on some or all of these.

23 (Laughter.)

24 CHAIRMAN KELLIHER: Jon?

25 COMMISSIONER WELLINGHOFF: I would first like to

1 comment on Kevin Kelly, the silverback of policy for FERC.
2 Kevin, I have appreciated all that you've done and all that
3 you continue to do in the area of policy, and, of course,
4 Ed, as well.

5 I appreciate very much, in the gas area and in
6 gas policy -- Larry, I want to say, you know, that the
7 briefings you have given me, have been exemplary and the
8 Exemplar Award is what you should be getting, and I do
9 appreciate all the work that you're doing here at FERC.

10 Mr. Chairman, with respect to your staff, they
11 are very calm and efficient.

12 (Laughter.)

13 COMMISSIONER WELLINGHOFF: Extremely calm and
14 efficient, and I have appreciated working with all of them.

15 CHAIRMAN KELLIHER: You scared them this morning.

16 (Laughter.)

17 COMMISSIONER WELLINGHOFF: We had a little scare
18 this morning. We did that to tell them how much we
19 appreciate them.

20 And I think Maria has added to the calmness, by
21 bringing in her yoga.

22 (Laughter.)

23 COMMISSIONER WELLINGHOFF: So it's even gotten
24 calmer with Maria. But I do appreciate the efficiency and
25 professionalism of your staff, and have enjoyed working with

1 all of them.

2 CHAIRMAN KELLIHER: Thank you. Colleagues?
3 Commissioner Moeller?

4 COMMISSIONER MOELLER: Thank you, Mr. Chairman.
5 I'm going to use first names on all these bases. Kevin, Ed,
6 and Larry epitomize great public service, and if the rest of
7 the Federal Government had individuals like these, this
8 government would just be incredibly efficient and well run.
9 I admire their work and their personalities, greatly.

10 And then on your personal staff, all of them,
11 Len, Nils, Maria, Jean, just delightful people to work with,
12 interesting people, and you chose well. Thank you for
13 awarding them these honors.

14 CHAIRMAN KELLIHER: Thank you.

15 CHAIRMAN KELLIHER: Commissario?

16 COMMISSIONER SPITZER: Thank you, Mr. Chairman.
17 Kevin, I'm not sure how well known it is inside the
18 building, how well regarded he is for his presentations at
19 NARUC, to the state commissioners, and his representation of
20 this Commission around the country, is simply outstanding,
21 very well regarded, and, as well, his treatment of his
22 employees and his team.

23 Chris Bailey, my confidential assistant, worked
24 for Kevin, and from time to time, she'll be perhaps very
25 effusive in her praise of Kevin as a boss.

1 (Laughter.)

2 COMMISSIONER SPITZER: And I will say, what am I?
3 Chopped liver?

4 And it's good to treat subordinates with such
5 dignity, and that's appreciated.

6 Ed, you know, he's got a great job, because he
7 gets to spend an awful lot of time on MLPs.

8 (Laughter.)

9 COMMISSIONER SPITZER: Which is a sexy topic, and
10 I wish I could spend more.

11 But the quality of the briefings on that and
12 other areas, is very appreciated. Larry, you know, he comes
13 down to our team's office all the time, and we really
14 appreciate his openness and promptness in addressing
15 questions that we have.

16 And, Mr. Chairman, with regard to your personal
17 staff, I know Jeanie was arranging visits for me, you know,
18 from when I was in Arizona, and you call Washington, D.C.,
19 and the phone isn't always answered, but when you call
20 Jeanie, the phone is answered and the issues are dealt with
21 and resolved and all the travel arrangements are done very
22 well.

23 I'm still appreciative of this, and then, coming
24 in as a new Commissioner, particularly when I had not yet
25 built up my team, the openness of your personal staff, made

1 my job easier and contributed to a good exchange of views
2 and ultimately made good public policy. And, as you
3 recognized earlier, the team is greater than the sum of the
4 parts, and that's certainly true of your personal staff, and
5 all these awards are very well deserved.

6 CHAIRMAN KELLIHER: Thank you. Commissioner
7 Kelly?

8 COMMISSIONER KELLY: Yes, I've known Kevin since
9 the 1980s. I am very pleased that I have finally been able
10 to get to work with him.

11 When I met him, he was working for a state
12 regulatory commission, and I was on the New Mexico
13 Commission and I tried to convince him to move to Santa Fe.
14 It wasn't successful. You won, Kevin, and I moved to D.C.

15 (Laughter.)

16 COMMISSIONER KELLY: So it's been a pleasure to
17 work with you, and you and Ed, combined, really exemplify
18 the creativity and the expertise of our Policy Section, and
19 thank you very much for all the work that you do for us.

20 Larry has moved from the 11th floor to EMR and
21 OGC, and has become an excellent manager. I asked my staff
22 about working with Larry, and they said, when you were on
23 the 11th floor, you were great to work with, but that your
24 true calling is as a manager.

25 You give Staff plenty of room to work and develop

1 solutions on their own, but you're always there with
2 guidance, as needed. People respect you and they love
3 working for you.

4 And your staff, Mr. Chairman, I think Maria's
5 second job as a yoga teacher, is a metaphor for your staff.

6 (Laughter.)

7 COMMISSIONER KELLY: Very strong, but flexible.

8 (Laughter.)

9 COMMISSIONER KELLY: And, again, I asked my
10 staff, how is it been working with the Chairman's advisors,
11 and they had only good things to say, even Elizabeth.

12 (Laughter.)

13 COMMISSIONER KELLY: My advisor, Elizabeth, is
14 married to Joe's advisory -- close to married, sorry.

15 (Laughter.)

16 COMMISSIONER KELLY: And the other comment was
17 that Joe's advisors are like the E.F. Hutton of advisors;
18 when they talk, people listen.

19 They're very deserving of the awards.

20 CHAIRMAN KELLIHER: thank you very much. I just
21 want to thank Shontay and Diane. Shontay has been with me
22 almost from the beginning, and, really, has just been a
23 superb addition to the office, and, really, I'm very
24 grateful for all your work.

25 Diane is a fairly new addition to our staff, but

1 she's fit in very well. She's very efficient, very
2 hardworking, and calm, so I want to thank you, as well.

3 But why don't we give out some of these awards,
4 and why don't we start with Kevin Kelly? Kevin, please come
5 up.

6 Congratulations.

7 (Presentation made; applause.)

8 CHAIRMAN KELLIHER: Ed, why don't you come up,
9 please.

10 (Presentation made; applause.)

11 CHAIRMAN KELLIHER: And let's see, now, Len Tao.
12 Len?

13 (Presentation made; applause.)

14 CHAIRMAN KELLIHER: Now, let's go with Nils.
15 Nils, congratulations.

16 (Presentation made; applause.)

17 CHAIRMAN KELLIHER: And Maria, congratulations.

18 (Presentation made; applause.)

19 CHAIRMAN KELLIHER: And now Larry; Larry,
20 congratulations.

21 (Presentation made; applause.)

22 CHAIRMAN KELLIHER: And Jean, come on up.

23 (Presentation made; applause.)

24 CHAIRMAN KELLIHER: Okay, let's turn to
25 business.

1 COMMISSIONER MOELLER: Mr. Chairman?

2 CHAIRMAN KELLIHER: Yes, sir?

3 COMMISSIONER MOELLER: I have an announcement, as
4 well. With some mixed emotion, I announce a change and
5 transition in my office.

6 Leaving my office, returning to the Office of
7 General Counsel, will be Attorney Advisor Jignasa Gadani.
8 She has served me incredibly well as a great public servant,
9 since I came on the Commission.

10 I'd give her my own Exemplar Award, if I had one.

11 (Laughter.)

12 COMMISSIONER MOELLER: But it will be our loss
13 and the gain of OGC, and, on the flip side, it will be the
14 Policy Office's loss under Kevin, but our gain to have
15 Jennifer Shipley come onboard and join our office to do
16 Western issues. She's well known for her expertise,
17 particularly in the California market, and I hope people
18 will avail themselves of my advisors, as I have an open door
19 policy. Thank you, Mr. Chairman.

20 (Applause.)

21 CHAIRMAN KELLIHER: Thank you, Phil. Any other
22 announcements? No?

23 Before we turn to the Consent Agenda, I'd just
24 like to note that since the December 18th Open Meeting, the
25 Commission has issued 83 Notational Orders, so that's about

1 20 a week, and I think that's about four a day, since the
2 December meeting, so that's still a good amount of work.

3 Madam Secretary, let's turn to the Consent
4 Agenda.

5 SECRETARY BOSE: Good morning, Mr. Chairman, good
6 morning, Commissioners. Since the issuance of the Sunshine
7 Act Notice on January 8, 2009, E-11 and C-4 have been
8 stricken from this morning's agenda.

9 Your Consent Agenda for this morning, is as
10 follows: Electric Items - E-5, E-6, E-7, E-8, E-13, E-15,
11 E-16, E-18, E-19, E-20, E-21, E-22, E-23, E-24, E-25, E-26,
12 E-27, and E-28.

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

14 Hydro Items: H-1 and H-2.

15 Certificate Items: C-1, C-2, C-3, and C-5.

16 As to E-16, Commissioner Kelly is dissenting, in
17 part, with a separate statement, and Commissioner
18 Wellinghoff is dissenting, in part, with a separate
19 statement.

20 As to E-20, Commissioner Kelly is dissenting,
21 with a separate statement, and Commissioner Wellinghoff is
22 dissenting, with a separate statement.

23 As to E-22, Commissioner Kelly and Commissioner
24 Wellinghoff, are concurring, in part, with a joint separate
25 statement.

1 As E-25, Commissioner Kelly is dissenting, in
2 part, with a separate statement; Commissioner Moeller is
3 concurring, with a separate statement; and Commissioner
4 Wellinghoff is dissenting, with a separate statement.

5 As to E-28, Commissioner Kelly and Commissioner
6 Wellinghoff, are concurring, in part, and dissenting, in
7 part, with a joint separate statement.

8 As to G-2, Commissioner Spitzer is dissenting,
9 with a separate statement, and Commissioner Moeller is
10 dissenting, with a separate statement.

11 As to G-3, Commissioner Spitzer is dissenting,
12 with a separate statement, and Commissioner Moeller is
13 dissenting, with a separate statement.

14 As to G-4, Commissioner Spitzer is dissenting,
15 with a separate statement, and Commissioner Moeller is
16 dissenting, with a separate statement.

17 As to C-1, Commissioner Wellinghoff is
18 dissenting, with a separate statement, and as to C-2,
19 Commissioner Wellinghoff is dissenting, with a separate
20 statement.

21 We will now take a vote on the Consent Agenda
22 Items for this morning, beginning with Commissioner
23 Wellinghoff.

24 COMMISSIONER WELLINGHOFF: Yes, with the
25 notation of my concurrence, in part, on E-22; my

1 concurrence on E-28; and with the exception of my dissent,
2 in part, on E-16; my dissent on E-20; my dissent on E-25;
3 and my dissent on C-1; my dissent on C-2, I vote aye.

4 SECRETARY BOSE: Commissioner Moeller?

5 COMMISSIONER MOELLER: I vote aye, noting my
6 concurrence in E-25 and my dissents in G-2, G-3, and G-4.

7 SECRETARY BOSE: Commissioner Spitzer?

8 COMMISSIONER SPITZER: I vote aye, noting my
9 dissents in G-2, G-3, and G-4.

10 SECRETARY BOSE: Commissioner Kelly?

11 COMMISSIONER KELLY: With the exception of my
12 dissents in E-16, 20, 25, and 28, I vote aye.

13 SECRETARY BOSE: Chairman Kelliher?

14 CHAIRMAN KELLIHER: Aye.

15 SECRETARY BOSE: We will now move on to the
16 discussion and presentation items for this morning. The
17 first item is E-1.

18 It's concerning a Draft Order, Guidance Order on
19 Compliance Audits Conducted by the Electric Reliability
20 Organization and Regional Entities.

21 There will be a presentation by Roger Morie of
22 the Office of Enforcement, and he is accompanied by Bryan
23 Craig from the Office of Enforcement, and Mark Hegerle from
24 the Office of Energy Market Regulation.

25 MR. MORIE: Good morning, Mr. Chairman and

1 Commissioners. In addition to Mark and Bryan, two other
2 people who worked on the Order that we're presenting today,
3 are Arnie Quinn of the Office of Enforcement, and Jonathan
4 First of the Office of the General Counsel.

5 Staff recommends that the Commission issue Item
6 E-1, which is a Draft Guidance Order on Compliance Audits
7 conducted by the Electric Reliability Organization and
8 Regional Entities.

9 This Order is based on observations of the Office
10 of Enforcement and Office of Electric Reliability staff,
11 about audits that the North American Electric Reliability
12 Corporation and regional entities conducted in 2008, into
13 compliance by registered entities with Commission-approved
14 reliability standards.

15 The Commission has authority to approve
16 procedures for these compliance audits, pursuant to Section
17 215 of the Federal Power Act.

18 In the Draft Order, the Commission provides the
19 following guidance -- and these are in bullets, really:

20 When NERC leads a compliance audit in the place
21 of a regional entity, NERC staff, not the regional entity
22 staff, should control the audit.

23 Audit training should include skills in
24 interviewing and evaluating evidence.

25 NERC should make sure audit team requests for

1 information are as consistent as possible among the regional
2 entities.

3 Audit teams should allot sufficient time for pre-
4 audit preparation and review.

5 Compliance audit teams should not base
6 determinations about compliance, on the level of possible
7 penalties or other sanctions that could be applied.

8 NERC and regional entities should be as
9 consistent as possible about documentation needed to show
10 compliance.

11 Compliance auditors should assess the registered
12 entity's reliability standards compliance program,
13 consistent with the Commission's recent Compliance Policy
14 Statement.

15 Compliance auditors should proactively notify
16 registered entities of matters that may develop into
17 violations.

18 This Draft Order is intended to improve the
19 consistency of reliability compliance audits, and,
20 ultimately, to increase compliance with reliability
21 standards.

22 We are now ready to answer any questions you may
23 have on the Draft Order.

24 CHAIRMAN KELLIHER: Thank you. I'm getting my
25 youngest advisory to counsel me.

1 (Laughter.)

2 CHAIRMAN KELLIHER: I don't have any questions,
3 but I have comments.

4 Oh, no.

5 (Laughter.)

6 CHAIRMAN KELLIHER: Here, can you switch legs?
7 Thank you.

8 (Laughter.)

9 CHAIRMAN KELLIHER: And it's funny how many
10 times, after a meeting, people comment on the Staff and
11 viewers, that they actually -- FERC looks like a family-
12 friendly place to work.

13 (Laughter.)

14 CHAIRMAN KELLIHER: So, let me make some
15 comments.

16 I think this Order is a useful Order, and I think
17 this Order provides important guidance to the Electric
18 Reliability Organization and regional reliability entities,
19 in the conduct of enforcement audits related to compliance
20 with mandatory reliability standards.

21 And if you start off, you look at how we're going
22 to conduct enforcement of reliability standards. It's a
23 different scheme than we have in other contexts.

24 The reliability enforcement scheme is
25 complicated. It involves not just FERC, not just NERC, but

1 eight regional entities, and enforcement is a new
2 responsibility to NERC and the regional entities.

3 Only one of the regional entities has any kind of
4 experience with enforcement, and that's WECC, operating
5 under a contract model.

6 But if you start off looking at what's FERC's
7 responsibility, FERC not only sets mandatory reliability
8 standards, but we're ultimately responsible for enforcement.

9 FERC reviews the enforcement decisions made by
10 NERC and the regional entities, and has discretion to
11 conduct its own investigations, as well as take over NERC or
12 regional entity investigation.

13 FERC works closely with NERC and the regional
14 entities in the area of reliability enforcement, conducting
15 joint audits and investigations, and I think this approach
16 is leading to effective enforcement.

17 But FERC has more experience on how to conduct
18 investigations, than NERC and the regional entities, and
19 they, in turn, probably have a superior understanding of the
20 system operations in a particular region.

21 Now, in my view, NERC and the regional entities
22 are dedicated to effective enforcement of reliability
23 standards. I do think the regulated community is doing
24 their level best to comply.

25 But in order to achieve effective enforcement of

1 reliability standards, it's important that we have
2 consistency in the general approach, the general enforcement
3 approach by these various entities, and that greater
4 consistency, I think, will also benefit the regulated
5 community.

6 To achieve greater consistency, I think it's
7 going to be necessary for FERC to provide guidance to NERC
8 and the regional entities, from time to time, through
9 Guidance Orders and other vehicles.

10 And I think this Guidance Order does provide
11 important advice and guidance to the NERC and the regional
12 entities, that should improve the consistency of audits.

13 Colleagues? Commissioner Wellinghoff?

14 COMMISSIONER WELLINGHOFF: I just wanted to echo
15 that I do think the consistency is extremely important; that
16 we can't have inconsistent enforcement.

17 I think this Order provides that kind of
18 guidance, and I want to thank the Staff for their work on
19 this Order.

20 It provides that type of guidance that I think is
21 essential to let NERC know and the regional entities know,
22 and NERC to help communicate that to them, how we're going
23 to view these audit procedures in the future and how we
24 expect them to be done in the future.

25 I think this Guidance Order does certainly expect

1 that, in fact, it will be followed in that way. So, if we
2 can do that, I think putting that consistency into the
3 process, is going to benefit everybody. Thank you.

4 CHAIRMAN KELLIHER: Commissario?

5 COMMISSIONER SPITZER: Thank you, Mr. Chairman.
6 Compliance audits are a major activity for the NERC and the
7 regional entities, and these efforts are an essential
8 component of ensuring compliance with and standardization
9 and implementation of the reliability standards.

10 As reported in the 2008 Staff Report on
11 Enforcement, Staff from the Office of Enforcement and the
12 Office of Electric Reliability, participated as observers in
13 several compliance audits that the NERC and regional
14 entities conducted during Fiscal Year 2008.

15 At the conclusion of the audits, Staff met with
16 the audit team members to share ideas about the audit
17 processes, methods, and techniques.

18 Today we formalize the guidance given to NERC and
19 regional entities, so all users, owners, and operators of
20 the bulk electric system have this additional guidance.

21 During my tenure on the Commission, we have heard
22 repeated requests that the Commission provide guidance as to
23 how the Commission approaches enforcement and compliance
24 matters. This Guidance Order is intended to provide this
25 kind of additional information.

1 I therefore support the Commission's enforcement
2 reliability programs and commend our Staff for their hard
3 work on audit practices.

4 CHAIRMAN KELLIHER: Thank you. Commissioner
5 Kelly?

6 COMMISSIONER KELLY: This Order synthesizes a lot
7 of work that's been undertaken, not only by our FERC audit
8 staff, but also by NERC and the regional entities, and you
9 condensed it into a concise and usable form, and I want to
10 thank you for all the work you've done on this. I think it
11 will be very valuable.

12 CHAIRMAN KELLIHER: Commissioner Moeller?

13 COMMISSIONER MOELLER: Thank you, Mr. Chairman.
14 I think it's easy for us to forget what a massive
15 undertaking mandatory reliability standards has been.

16 I'm sure Mr. McClelland doesn't think -- doesn't
17 forget that.

18 (Laughter.)

19 COMMISSIONER MOELLER: But, coming from the West,
20 I'm often reminded about the fact that this effort has taken
21 in so many entities that were previously what we consider
22 non-jurisdictional, and they still have a lot of questions,
23 because this is a program that's still really in its
24 infancy.

25 So I have a few questions about audits that are

1 meant to hopefully inform the community out there, as to how
2 this is going. So, with the Staff's indulgence, I just have
3 three or four.

4 Roger and Mark and maybe Bryan, how many audits
5 has NERC conducted so far?

6 MR. HEGERLE: Well, over the first year and a
7 half since the standards became effective, the number is
8 over 400 at this point, that they have conducted.

9 COMMISSIONER MOELLER: Okay, and have they found
10 major violations?

11 MR. HEGERLE: They have found a variety of
12 violations, some serious and some not so serious. Of the
13 131 violations that have made it to us in the form of Notice
14 of Penalty, 30 percent of those came from audits, so the
15 audit program is effective in finding violations.

16 COMMISSIONER MOELLER: What about a backlog?

17 MR. HEGERLE: There's a backlog in terms of the
18 audits themselves, in the sense that to complete an audit,
19 you have to complete an audit report, which shows the
20 findings of that audit.

21 We've seen on the NERC website, posting of 189 of
22 those 400 or so audits, so they've gotten through about half
23 of those.

24 Now, in all fairness, of course, some have
25 occurred later in the year, so they haven't completed them,

1 but there is some work to be caught up.

2 There's a lot of work yet to be caught up with
3 respect to the alleged violations. You know, we've seen
4 something on the order of almost 1,800, as of October 31st,
5 1,800 violations -- alleged violations.

6 Now, many of those, or a chunk of those, at
7 least, will be dismissed as unfounded, but, nonetheless,
8 many will have to go through the process. We've only seen
9 131 violations make it to our doors, so there's a lot to do.

10 The recent Order on the NERC budget for 2009,
11 highlighted that and encouraged NERC to seek additional
12 staff, if necessary, additional funding and staff to attack
13 that backlog, and NERC has taken some steps to do so, in
14 terms of reorganizing their staff to get some folks focused
15 solely on audits, some folks solely focusing on the
16 investigations, and actually some folks focused solely on
17 the backlog itself.

18 They've got a plan in place to try to get caught
19 up on their backlog by the end of July of this year.

20 COMMISSIONER MOELLER: And you have relative
21 confidence that that will happen?

22 MR. HEGERLE: Well, I think, if they hire the
23 staff that they need, they can get it done.

24 COMMISSIONER MOELLER: That's a whole other
25 subject, yes.

1 MR. HEGERLE: Those folks are hard to find, as we
2 know, here, to get good folks in.

3 COMMISSIONER MOELLER: Yes, there's a lot of
4 competition for those people.

5 MR. HEGERLE: That's right.

6 COMMISSIONER MOELLER: The regional entities,
7 they conduct audits as well. Is that worth explaining?

8 MR. HEGERLE: Well, yeah, to be clear, it is NERC
9 that oversees the entire program, obviously. The regional
10 entities conduct the vast majority of the audits, so you
11 have eight different companies, separate corporations, that
12 do the work, and NERC oversees it.

13 NERC will participate in some of those audits.
14 For instance, four of the regional entities have reliability
15 jurisdictional functions, like, they might be the
16 reliability coordinator, for instance, so NERC has done the
17 audit for SPP, for instance, and for WECC, because you can't
18 have the regional entity audit itself.

19 So they participate in some, and, like FERC
20 Staff, NERC staff has participated as observers in quite a
21 few of the regional entities' audits, so they are seeing it,
22 they're seeing how it's being done, and they've got a plan
23 to try to make sure these are done consistently.

24 COMMISSIONER MOELLER: Well, I know you've been
25 working hard, the three of you, the team, and NERC staff, as

1 well, and I appreciate the statement. I think we edited it
2 a little bit over the last couple of weeks, and I think it's
3 a little clearer now, so, again, I appreciate the work and
4 am looking forward to the backlog being resolved. Thank
5 you, Mr. Chairman.

6 CHAIRMAN KELLIHER: Thank you. Any other
7 comments?

8 (No response.)

9 CHAIRMAN KELLIHER: No? Let's vote.

10 SECRETARY BOSE: The vote begins with
11 Commissioner Wellinghoff.

12 COMMISSIONER WELLINGHOFF: I vote aye.

13 SECRETARY BOSE: Commissioner Moeller?

14 COMMISSIONER MOELLER: Aye.

15 SECRETARY BOSE: Commissioner Spitzer?

16 COMMISSIONER SPITZER: Aye.

17 SECRETARY BOSE: Commissioner Kelly?

18 COMMISSIONER KELLY: Aye.

19 SECRETARY BOSE: And Chairman Kelliher?

20 CHAIRMAN KELLIHER: Aye.

21 SECRETARY BOSE: The next item for presentation
22 and discussion this morning, is G-1, involving Kern River
23 Gas Transmission Company, in Docket Number RP04-274-000.

24 There will be a presentation by Richard Howe from
25 the Office of the General Counsel, and he is accompanied by

1 John Carlson from the Office of Energy Market Regulation.

2 MR. HOWE: Good morning, Mr. Chairman and
3 Commissioners. Last April, the Commission established a
4 paper hearing to determine Kern River Gas Transmission
5 Company's return on equity, consistent with the Commission's
6 revised policy concerning the composition of the proxy group
7 used to determine the returns on equity of natural gas
8 pipelines.

9 In September, after all the parties had
10 submitted their pleadings in the paper hearing, Kern River
11 filed a settlement of this rate case.

12 Two parties, BP Energy Company and Southwest Gas,
13 opposed the settlement, arguing, among other things, that
14 the 12.50 percent return on equity embedded in the
15 settlement, is too high.

16 The Commission's Trial Staff also opposes the
17 settlement.

18 The G-1 Draft Order addresses both the paper
19 hearing and the contested settlement. The Draft Order
20 holds, based on the paper hearing record, that Kern River's
21 return on equity, should be 11.55 percent.

22 The Draft Order finds that two corporations and
23 three master limited partnerships, are sufficiently
24 comparable to Kern River, to be included in the proxy group.

25 The Draft Order also determines the return on

1 equity of each of the proxy firms, using the discounted
2 cashflow methodology, which was set forth in last April's
3 proxy group policy statement.

4 The Draft Order concludes that Kern River is a
5 pipeline of average risk, and, therefore, its return on
6 equity should be set at the median of the proxy group
7 returns, which is 11.55 percent.

8 The Draft Order holds that the higher 12.50
9 percent return on equity embedded in the proposed settlement
10 rates, renders the settlement rates unjust and unreasonable.

11 The Draft Order finds that the parties
12 supporting the settlement, have not shown that the
13 settlement provides sufficient offsetting benefits to
14 justify imposing on the contesting parties, settlement rates
15 reflecting an excessive return on equity.

16 Therefore, because the settlement provides that
17 contesting parties may not be severed, the Draft Order
18 rejects the settlement, rather than approving it for the
19 consenting parties, while severing the contesting parties.

20 Finally, the Draft Order generally denies BP's
21 Request for Rehearing concerning certain non-return-on-
22 equity issues related to Kern River's levelized rates.

23 This concludes the Staff's presentation, and we
24 would be happy to answer any questions you may have.

25 CHAIRMAN KELLIHER: Thank you very much for that

1 presentation. As you just indicated, in this Order, we're
2 applying our policy statement governing the composition of
3 the proxy groups for determination of returns on equity for
4 natural gas and oil pipelines, in the first instance.

5 Here, we do establish a proxy group composed of
6 three MLPs, two corporations, and using that proxy group,
7 using Kern River's relative risk, it produces a just and
8 reasonable rate of 11.55 percent for returns.

9 But we're presented with a settlement that sets a
10 higher rate of 12.5 percent, and, under our trailblazer
11 test, we cannot approve the settlement, because we cannot
12 find that the 12.5 percent return is just and reasonable.

13 And it's important to remember why we revised our
14 policy in the first place. Our purpose in revising the
15 composition of the proxy group, was not to produce higher
16 returns; it was to reflect the reality that the structure of
17 the pipeline sector had changed, and that a proxy group
18 should reflect the reality of the sector itself, and that
19 as MLPs became more and more a part of the pipeline sector,
20 it seemed necessary that MLPs be included in the proxy
21 group. That was also the strong indication from the courts.

22 In this Order, I think it's clear we've been
23 careful in our approach, both towards establishing a new
24 policy and establishing -- and apply it here, and we did not
25 revise our policies to produce higher returns, and that

1 certainly is borne out by the disposition of this Order.

2 So I support the Order. Colleagues?

3 Commissioner Wellinghoff?

4 COMMISSIONER WELLINGHOFF: Thank you, Mr.
5 Chairman.

6 I'd like to make two points: One is, I don't
7 think that this Commission should lightly overturn a
8 settlement. I think that only under very unusual
9 circumstances, should we do so.

10 However, this settlement was, in fact, opposed by
11 our Trial Staff, so I don't consider it to be much of a
12 settlement, number one.

13 Number two, I think it's also important for us to
14 be consistent with respect to our approach to return on
15 equity, and we're doing that, in fact, here in this case, by
16 overturning the settlement.

17 So, with that, I support the Order.

18 CHAIRMAN KELLIHER: Colleagues? Commissioner
19 Kelly?

20 COMMISSIONER KELLY: Well, Congress has created
21 MLPs with the goal of getting infrastructure built. There's
22 been a clear trend in the industry towards their use in
23 building pipelines.

24 I believe that our actions here today, properly
25 reflect that trend. In this Final Order, we do not depart

1 from our traditional ratemaking analysis; we continue to
2 apply the tried and true DCF Model, which has been upheld by
3 the Court as an appropriate means of establishing ROEs.

4 At the same time, we've worked to find a
5 reasonable means of incorporating this type of corporate
6 structure into our ratemaking process, and I think that the
7 Order demonstrates that we're flexible and capable of
8 ensuring that our traditional ratemaking process reflects
9 facts on the ground.

10 We recognize here, there's been an unmistakable
11 trend toward MLPs in the pipeline industry, and it's
12 appropriate and time for our traditional ratemaking process
13 to recognize that trend.

14 I want to thank Staff for the hard work that they
15 did on this case, and I support the Order.

16 CHAIRMAN KELLIHER: Commissario?

17 COMMISSIONER SPITZER: Mr. Chairman, first, the
18 acorn falls not far from the tree with regard to your
19 children and their excellent behavior.

20 (Laughter.)

21 COMMISSIONER SPITZER: Orders and matters
22 involving taxation, have caused adults to melt down.

23 (Laughter.)

24 COMMISSIONER SPITZER: And this is an important
25 Order. It is significant, in that it articulates Commission

1 policy on natural gas infrastructure and applies such policy
2 in a discrete case.

3 I appreciate this well written document for its
4 analysis of the settlement agreement before the Commission,
5 the historical treatment of several complex and contentious
6 issues, and the more prosaic balancing of competing
7 interests between pipeline investors and shippers.

8 This Order, in my judgment, reaches the correct
9 conclusions on all counts.

10 FERC policy accommodates the business reality
11 that pipeline investment now takes the form of tax-efficient
12 enterprises.

13 The distinct but related questions of income tax
14 allowance, inclusion of Subchapter (k) entities in the DCF
15 proxy group, are finally laid to rest.

16 Equally significant, our analysis in this Order,
17 establishes that the Commission will rigorously examine the
18 facts of each case, including proposed settlements, to
19 protect the interests of pipeline shippers.

20 For the foregoing reasons, I support the Order.

21 CHAIRMAN KELLIHER: Thank you. Commissioner
22 Moeller?

23 COMMISSIONER MOELLER: Thank you, Mr. Chairman.
24 I think back to Commissioner Spitzer and I spending time in
25 the MLP policy statement technical conference, and perhaps

1 it's because we've worked on tax issues -- of course, a
2 complete career, in your case, not so much in mine -- of our
3 interest.

4 But I'll really commend people to read this Order
5 and wish thank the team, not only Mr. Carlson and Mr. Howe,
6 but Mr. Petrocelli, Mr. Witte, and Mr. Robinson.

7 I'm guessing I know the authors were, but I would
8 commend all of our younger Order writers to look to,
9 particularly Mr. Howe and Mr. Robinson, for the quality of
10 writing, particularly on such a topic.

11 This is an outstandingly well written Order and
12 it's worth people's perusal. I will support it.

13 CHAIRMAN KELLIHER: Thank you. Any other
14 comments?

15 (No response.)

16 CHAIRMAN KELLIHER: Let's vote.

17 SECRETARY BOSE: The vote begins with
18 Commissioner Wellinghoff.

19 COMMISSIONER WELLINGHOFF: I vote aye.

20 SECRETARY BOSE: Commissioner Moeller?

21 COMMISSIONER MOELLER: Aye.

22 SECRETARY BOSE: Commissioner Spitzer?

23 COMMISSIONER SPITZER: Aye.

24 SECRETARY BOSE: Commissioner Kelly?

25 SECRETARY BOSE: Chairman Kelliher?

1 CHAIRMAN KELLIHER: Aye.

2 Any other business?

3 (No response.)

4 CHAIRMAN KELLIHER: No?

5 (No response.)

6 CHAIRMAN KELLIHER: Nora, can you help me with
7 this? It's really heavy? You ready?

8 (Gavel sounds.)

9 CHAIRMAN KELLIHER: Good job, thank you. This
10 meeting is adjourned.

11 (Applause.)

12 (Whereupon, at 11:30 a.m., the Open Meeting was
13 concluded.)

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