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UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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- CONSENT -- ELECTRIC :
- CONSENT -- GAS :
- CONSENT -- HYDRO :
- CONSENT -- CERTIFICATES :
- DISCUSSION ITEMS :
- STRUCK ITEMS :

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1,062ND COMMISSION MEETING

Thursday, December 19, 2019
Commission Meeting Room
Federal Energy Regulatory Commission
888 First Street, NE
Washington, DC 20426

The Commission met in open session at 10:10
a.m., when were present:

- CHAIRMAN NEIL CHATTERJEE
- COMMISSIONER RICHARD GLICK
- COMMISSIONER BERNARD MCNAMEE

1 Agenda Items:

2 Consent -- Electric

3 E-1, E-5, E-6, E-7, E-8, E-9, E-10, E-11, E-12,

4 E-13, E-14, E-15, E-16, E-17, E-18, E-19, E-20, E-21, E-22,

5 E-23, E-24, E-25, E-26, E-27, and E-28

6

7 Consent -- Gas

8 G-1, G-2 and G-3

9

10 Consent -- Hydro

11 H-1 and H-2

12

13 Consent -- Certificates

14 C-1, C-2, C-3, C-4, C-5 and C-6

15

16 Discussion Items

17 None

18

19 Struck Items

20 None

21 Commissioner Statements for December 19, 2019

22 E-1 -- Commissioner Glick dissenting with a

23 separate statement

24 E-13 -- Commissioner McNamee concurring with a

25 separate statement

1 E-15 -- Commissioner Glick dissenting with a
2 separate statement

3 E-18 -- Commissioner Glick dissenting with a
4 separate statement

5 H-2 -- Commissioner Glick dissenting in part
6 with a separate statement

7 C-3 -- Commissioner Glick dissenting in part
8 with a separate statement

9 C-3 -- Commissioner McNamee concurring with a
10 separate statement

11 C-4 -- Commissioner Glick dissenting in part
12 with a separate statement

13 C-4 -- Commissioner McNamee concurring with a
14 separate statement

15 C-5 -- Commissioner Glick dissenting in part
16 with a separate statement

17 C-5 -- Commissioner McNamee concurring with a
18 separate statement

19 C-6 -- Commissioner Glick dissenting in part
20 with a separate statement

21 C-6 -- Commissioner McNamee concurring with a
22 separate statement

23 Struck Items

24 None

25

P R O C E E D I N G S

(10:20 a.m.)

SECURITY PERSON: Ladies and gentlemen, please give your attention to the Secretary of the Commission.

SECRETARY BOSE: Thank you. The purpose of the Federal Energy Regulatory Commission's open meeting is for the Commission to consider the matters that have been duly posted in accordance with The Government In The Sunshine Act.

Members of the public are invited to observe, which includes attending, listening, and taking notes, but does not include participating in the meeting or addressing the Commission.

Actions that purposely interfere or attempt to interfere with the commencement or conducting of the meeting, or inhibit the audience's ability to observe or listen to the meeting, including attempts by the audience members to address the Commission while the meeting is in progress, are not permitted.

Any persons engaging in such behavior will be asked to leave the building. Anyone who refuses to leave voluntarily, will be escorted from the building.

Additionally, documents presented to the Chairman, Commissioners, or staff during the meeting will not become part of the official record of any Commission

1 proceeding, nor will they require further action by the
2 Commission.

3 If you wish to comment on an ongoing proceeding
4 before the Commission, please visit our website for more
5 information. Thank you for your cooperation.

6 CHAIRMAN CHATTERJEE: Madam Secretary, we are
7 ready to begin.

8 SECRETARY BOSE: Good morning, Mr. Chairman. Good
9 morning, Commissioners.

10 This is the time and place that has been noticed
11 for the open meeting of the Federal Energy Regulatory
12 Commission to consider the matters that have been duly
13 posted by the Commission. Please join us in the Pledge of
14 Allegiance.

15 (Pledge of Allegiance recited.)

16 SECRETARY BOSE: Commissioners, since the
17 November open meeting, the Commission has issued 54
18 Notational Orders.

19 Thank you, Mr. Chairman.

20 CHAIRMAN CHATTERJEE: Thank you, Madam Secretary,
21 and good morning to everyone. We have a full agenda today,
22 but I'd like to start by recognizing that this is the last
23 Commission meeting of what has been a very productive year.

24 Before we move on to today's action-packed
25 agenda, I'd like to take a moment to recap some of the

1 significant work the Commission has done just in the last
2 year.

3 First and foremost, this Commission has been at
4 the vanguard of connecting U.S. gas with global demand.

5 Following the breakthrough framework established
6 earlier this year, we've approved 11 LNG facilities with a
7 total of 22 BcF/day of export capacity.

8 Building on our efforts to ensure that new LNG
9 applications are reviewed quickly and to enable American gas
10 to compete in global markets, we've also created a new LNG
11 Division and are in the process of establishing a Houston
12 field office. This will help us draw talent right in the
13 heart of America.

14 As of today, we've also approved 954 miles of
15 pipeline connecting low-cost gas to American homes and
16 businesses across the country. And we're certificating four
17 new pipeline projects today.

18 But not only did we revolutionize the global
19 landscape for natural gas in 2019, we also took significant
20 measures to improve the competitiveness of our electricity
21 markets and build out the grid of the future.

22 At our September open meeting, this Commission
23 proposed the first comprehensive overhaul of PURPA in more
24 than three decades to help better align this outdated law
25 with our modern energy landscape.

1 We've also taken major strides in breaking down
2 barriers for energy storage. In fact, with our approval of
3 New York ISO's compliance filing in E-13 today, we will have
4 acted in all six of the RTO's compliance dockets. More work
5 lies ahead, of course, but I want to take this moment to
6 acknowledge the exceptional progress we've made on this
7 front and the great work of staff that got us here.

8 In addition, with our actions on rehearing and
9 compliance with Order No. 845, we've taken major steps to
10 improve the interconnection process for both developers and
11 utilities. Today, in Items E-5 through E-12, we act on yet
12 another set of compliance filings. With these items, we
13 have now acted on a total of 14 compliance filings,
14 including two RTOs: MISO and PJM. These orders will improve
15 the interconnection process in ways that will benefit both
16 interconnection customers and transmission providers. I
17 want to commend staff for their hard work.

18 Commission staff also hosted two very productive
19 technical workshops on ambient adjusted transmission line
20 ratings and grid enhancing technologies. I understand that
21 both of these workshops were extremely productive, and I
22 look forward to building on that good work in the New Year.

23 All of this important work has significant
24 implications for our partners in the public and private
25 sectors. That is why this Commission has reaffirmed our

1 commitment to forming new relationships with government and
2 industry and strengthening collaboration among pre-existing
3 contacts.

4 FERC is an incredible agency with world-class
5 staff, but the responsibility for overseeing our Nation's
6 energy infrastructure is one that is shared with others in
7 both the public and private sectors. To that end:

8 In October, we hosted the first-ever Envision
9 Forum in my home State of Kentucky. My goal was to bring
10 policymakers out of the D.C. bubble to a place that has been
11 ground zero for the energy transition. This was an
12 incredibly successful dialogue between diverse sets of
13 people, and one that I hope continues to foster
14 collaborative engagement going forward.

15 We also joined forces with our Federal partners
16 at events like the Security Investments Technical Conference
17 we hosted in March of this year. This tech conference
18 brought together experts from across the Federal Government,
19 states, and industry to discuss how we could work
20 collectively to build a more secure grid.

21 And the Commission continued to work with our
22 Federal partners at the Transportation Security
23 Administration to strengthen oversight to natural gas
24 pipeline cyber security.

25 Our efforts have paid dividends and, as announced

1 just the other day, TSA has really stepped up to the
2 challenge, recently adding 24 new inspectors to its pipeline
3 security programs and completing more than 80 security
4 reviews during 2019.

5 In particular, I'd like to thank my friend TSA
6 Administrator David Pekoske for his dedication to tackling
7 this important issue and continued collaboration with us at
8 FERC.

9 The Commission's collaborative efforts haven't
10 stopped there. We also convened parties to address the
11 recent propane issues in the upper Midwest by initiating an
12 alternative dispute resolution process that brought FERC and
13 stakeholders to the table to develop a common solution to a
14 challenging situation.

15 And last but not least, the Commission has made
16 substantial progress this year to improve the transparency
17 of our actions, to engage the public and stakeholders in our
18 processes, and to share our experiences and best practices
19 with those around the world who see FERC as the leader in
20 energy market regulation.

21 Here's what I mean:

22 We've expanded our public outreach to include a
23 monthly newsletter, the FERC Insight, which is sent to
24 nearly 1,000 subscribers each month. If you haven't
25 already, I'd highly encourage you to sign up.

1 We've conducted briefings for our state
2 regulatory colleagues on major FERC actions and on regional
3 and state-specific matters upon request.

4 I've testified at two Congressional hearings, and
5 on October 10th we held our biennial FERC 101 Session that
6 attracted 110 Congressional staff members for discussions on
7 such issues as natural gas and hydropower facilities,
8 electric reliability, and cyber security.

9 We hosted visitors from 85 foreign countries,
10 convened numerous briefings and video conferences with
11 foreign counterparts, signed four new Memoranda of
12 Understanding with Australian, Indian, and Singaporean
13 regulators and with the Ontario system operator.

14 We also engaged in multilateral and bilateral
15 engagements including the U.S.-India Gas Task Force, and the
16 U.S.-India Strategic Energy Partnership, and we began a
17 collaboration with the Director General of Energy in the EU
18 on cybersecurity standards and best practices.

19 All of this represents significant steps forward
20 for the Commission and for America's role as an energy
21 leader.

22 As we reflect on all we have accomplished in
23 2019, we recognize there is a great deal more to be done and
24 I look forward to working with my colleagues in 2020 to
25 continue the Commission's important work.

1 To build off my earlier point about the
2 importance of collaboration with our international
3 counterparts, I especially want to highlight a trip I
4 recently made to Central and Eastern Europe earlier this
5 month.

6 I was invited by the Central and Eastern European
7 regulators to come to the region and visit the regulatory
8 authorities in four countries: Austria, Poland, the Czech
9 Republic, and Hungary. While there, I had productive
10 meetings with each of my regulatory counterparts on issues
11 ranging from expanding the use of LNG in the region to U.S.
12 experiences with energy markets and cybersecurity. My
13 colleagues at these regulatory authorities are all members
14 of the Energy Regulators Regional Association, a very
15 successful forum for the exchange of information relevant to
16 energy regulation in the region.

17 Exchanging information and experiences across
18 national and regional boundaries allows us to build strong
19 partnerships and facilitate ongoing communication about the
20 status of energy infrastructure and energy markets. One of
21 my biggest take-away from the trip was how engaged and
22 interested these regulators are in U.S. energy policy. They
23 are eager to work with and learn from us.

24 Personally, one of the most interesting portions
25 of the trip were two conversations I had with my

1 counterparts in Austria and the Czech Republic. Both
2 regulators asked about my ethnic heritage and noted that
3 only in America could a son of Indian immigrants rise to the
4 position of Chairman of FERC. It was an eye-opening
5 reminder for me of the great respect and admiration that our
6 allies abroad have for our Nation.

7 We often take for granted how blessed we are to
8 be the energy capital of the world, and to have such
9 incredible and unique opportunities to follow our individual
10 passions, making our dreams a reality. It was a reminder I
11 will not soon forget and one that I think is worth sharing,
12 especially at this holiday season.

13 Now turning to another recent action that bears
14 highlighting:

15 Yesterday my colleagues and I sent a letter to
16 Chairman Ajit Pai at the FCC regarding the agency's proposed
17 Rulemaking on the 6 gigahertz spectrum.

18 For those of you who don't have the pleasure of
19 following both FERC and FCC rulemakings, the FCC has
20 proposed to open up the 6 Ghz band for unlicensed use. Many
21 utilities throughout the United States use this band to
22 operate transmission and generation facilities as well as
23 protective relaying devices.

24 Given the potential impact to utilities, my
25 colleagues and I urged the FCC to carefully consider the

1 comments regarding electric reliability and strongly
2 consider additional testing before implementing the rule.

3 As we said in the letter, we understand the
4 complexities posed by assessing cross-dependencies between
5 areas of critical infrastructure, so FERC staff stands
6 ready, willing, and able to help if needed.

7 On today's agenda, the Commission is approving
8 four projects to provide gas to residential, commercial, and
9 industrial customers, and generation facilities in Delaware,
10 Maryland, Ohio, Pennsylvania, and Massachusetts.

11 We're also approving two projects that will
12 improve the efficiency and safety of existing
13 infrastructure. I'd like to take a moment here to reflect
14 on how important these projects are to people's lives.

15 I see many of the letters people send us on these
16 projects. They're looking for natural gas to help them
17 expand commercial operations, lower their energy costs, and
18 supply home heating for residential customers. And I also
19 see the letters from people concerned with safety and
20 environmental impacts. I want everyone to know that the
21 Commissioners and Commission staff take their concerns
22 seriously and fully evaluate proposed projects with the
23 public in mind.

24 I'd also like to take one brief moment to
25 highlight an Order we issued last month and that is of great

1 importance to me.

2 The Return on Equity for electric transmission is
3 vital to attracting investment in needed facilities. I'm
4 glad that at our November open meeting we addressed the
5 Return on Equity for the MISO Transmission Owners in a
6 much-anticipated Order based on the record in that case.

7 Ensuring an appropriate Return on Equity is a
8 central part of the Commission's statutory responsibilities.
9 I am committed to that task, including reviewing carefully
10 both requests for rehearing that may be filed in the MISO
11 Transmission Owners case, and the record in our pending
12 Notice of Inquiry on this issue.

13 Now moving on to an item of particular
14 significance on today's agenda:

15 I am very pleased that we are taking action today
16 on Item E-1 to establish just and reasonable rules for the
17 PJM capacity market.

18 I want to start by acknowledging the tireless
19 efforts of the staff team. You all have done absolutely
20 remarkable work bringing unmatched skill and dedication to
21 help us navigate the complex issues in this case. I am
22 deeply grateful for your efforts.

23 Before I get into the specifics, I want to
24 emphasize that the reasoning behind our action is simple:
25 PJM's organized capacity market is the mechanism for

1 ensuring resource adequacy at just and reasonable rates. It
2 is our obligation to safeguard the competitiveness of that
3 market.

4 I believe -- fundamentally -- that competition
5 works. Our goal is to ensure that the markets remain
6 competitive by establishing a level playing field and being
7 resource neutral. In this way, we can help promote
8 competition that will benefit consumers. That is why today
9 we direct a replacement rate that will help enhance the
10 competitiveness of the PJM capacity market.

11 This Order builds upon a key finding that the
12 Commission made in our June 2018 Order. At that time, we
13 found that an expanded MOPR with limited exceptions would
14 serve to protect PJM's capacity market from the
15 price-suppressive effects of out-of-market support.

16 While keeping the existing MOPR, which applies to
17 all new gas-fired resources, we also expand the MOPR,
18 building on the MOPR-Ex proposal from PJM's April 2018
19 filing to address the market-distorting effects of state
20 subsidies for new and existing resources.

21 Though the Order expands the application of the
22 MOPR, the Order provides important exemptions. These
23 exemptions include:

24 Existing renewable resources that are
25 participating in renewable portfolio programs;

1 Existing demand response, energy efficiency, and
2 storage resources;

3 Existing self-supply resources; and

4 Competitive resources that do not receive state
5 subsidies. This encompasses all resources that do not
6 receive a state subsidy, including unsubsidized renewable
7 resources.

8 New and existing suppliers that do not qualify
9 for any of these exemptions may seek unit-specific
10 exemptions, enabling them to place a bid based on their
11 individualized costs.

12 These exemptions recognize that investment
13 decisions were guided by the Commission's prior affirmative
14 guidance that these resources need not be subject to review.
15 So we effectively grandfather these existing resources.
16 Going forward, all new resources that receive a state
17 subsidy will be subject to review under the expanded MOPR.

18 As for next steps, we asked PJM to come back to
19 us on compliance in 90 days, and we also asked PJM to
20 provide an updated timetable for when it proposes to conduct
21 the 2019 base residual auction and let us know how
22 implementation of these rules will affect the 2020 auction.

23 Overall, this replacement rate is intended to be
24 a tool to prevent the growing presence of state subsidies
25 from suppressing prices in the PJM capacity market. Our

1 action ensures that competition -- competition, rather than
2 out-of-market actions -- determines capacity market
3 outcomes.

4 I just want to share a couple of final thoughts
5 before I turn it over to my colleagues.

6 First, we're not reinventing the wheel here. The
7 replacement rate we adopt today -- an expanded MOPR --
8 shares some DNA with the MOPR-Ex proposal, though we've made
9 certain modifications based on the record to establish a
10 workable and just and reasonable path forward.

11 My colleague's dissent says we are not fostering
12 true competition, but that's just a rhetorical flourish in
13 my view. The choice we have before us whether or not we
14 allow increasing state subsidies to undermine the
15 competitive capacity market. The majority today says no.
16 Today, the Commission is acting to protect the market from
17 those subsidies and establish a just and reasonable
18 replacement rate based on competition through a transparent
19 and fair market process.

20 Second, it's worth noting that the Order is very
21 frank. We acknowledge that we cannot solve every potential
22 issue facing PJM's capacity market. Rather, we focus on
23 addressing the problem squarely presented in the Calpine
24 complaint and in PJM's April 2018 rate proposal -- namely,
25 price distortion from out-of-market state subsidies.

1 Furthermore, the expanded MOPR only applies to
2 resources that receive state subsidies. Federal subsidies
3 will not cause a resource to be subject to the MOPR.

4 And finally, I want to be clear. I recognize,
5 respect, and support states' exclusive authority to make
6 choices about the types of generational resources that serve
7 their communities. And nothing in this Order prohibit them
8 from exercising their jurisdiction over generation
9 decisions. But there can be no question that those choices
10 affect the wholesale markets that we oversee.

11 It is our responsibility to make sometimes
12 difficult decisions to ensure that the PJM capacity market
13 works, and that the actions of one state do not negatively
14 impact the competitive wholesale market.

15 My role -- our role -- is to protect the
16 effectiveness of Commission-regulated organized markets. If
17 we can do that, we can continue to ensure that the benefits
18 of competition flow to consumers.

19 With that, I will conclude my remarks and turn to
20 my colleagues for any additional opening statements or
21 announcements they may have.

22 Starting with Commissioner Glick.

23 COMMISSIONER GLICK: Thank you very much, Mr.
24 Chairman. I didn't want to disappoint people, because I've
25 got a few things to say, and I know people want to get out

1 to deal with the holidays and so on, but I guess we've
2 already taken up enough time. But I do have a few other
3 items to talk about. Actually, I have gas certificate order
4 I want to briefly talk about, and hopefully it will take a
5 few minutes, but it might take a few minutes more than
6 that. But let's get to that right now.

7 First of all, I want to start off on the Gas
8 Certificate Orders that the Chairman referenced. I'm going
9 to be dissenting on four of those orders, C-3, C-4, C-5, and
10 C-6, in large part, and I'm not going to belabor the point
11 for the same arguments I've made in the past, that the
12 Commission is not following the instructions of the courts,
13 the D.C. Circuit in particular, in terms of our obligation
14 to examine the significance of the greenhouse gas emissions
15 associated with the project, including reasonable
16 foreseeable downstream emissions.

17 So again, I'm not going to belabor that point. I
18 do want to note that Commissioner McNamee has some very well
19 written concurrences on these particular four Orders, and I
20 would commend everybody to read them because, again, they're
21 well written. But I think there is a provision in there,
22 there's some language in there, that to me is pretty
23 startling and makes a startling assertion.

24 Essentially, as I read the concurrences, they are
25 making the argument that the Natural Gas Act does not give

1 the Commission the authority to deny a permit, or maybe I
2 should say a certificate application, based on downstream
3 environmental impacts.

4 Now people can have different opinions about
5 that, and you can maybe look at the Natural Gas Act and try
6 to discern what it means, but the D.C. Circuit already told
7 us this. In Sable Trail, that's exactly what the court
8 said. The court said: You can, the Commission could deny a
9 project based on its downstream greenhouse gas emissions
10 associated with that particular pipeline project.

11 So, you know, again I think you can have a
12 difference of opinion on it, but I think either we're going
13 to follow the courts, or we're not. And I think that issue
14 needs to be explored further. I choose to follow the
15 courts, and I'm going to keep on dissenting to the extent
16 that the Commission is not following the courts, and it's
17 pretty clear we are continuing to ignore what the D.C.
18 Circuit is telling us.

19 Now maybe what is most notable is, actually I'm
20 going to be voting for C-1 and C-2 today. And in both cases
21 we're talking about facility upgrades where there's no
22 incremental greenhouse gas emissions associated with the
23 operation of the project, or downstream emissions associated
24 with the project. And so it's pretty simple to do the math.
25 They just have very minimal, or de minimis amount of

1 greenhouse gas emission associated with construction, and
2 zero emissions associated with, again, the operation of the
3 project or downstream impacts, then there's no
4 significance. It's pretty simple. We can do that.

5 All we have to do is assess the significance.
6 That's what the courts are telling us to do. And so when we
7 do that, I'm going to vote yes, to the extent that we follow
8 our requirements.

9 Now moving on, I am going to be dissenting in
10 E-18, which is a big of a complicated order denying
11 rehearing of an Order the Commission issued last year in
12 which we reversed course and subsequently allowed
13 transmission owners in MISO, and affected system operators
14 associated with MISO, to essentially unilaterally decide
15 whether they're going to fund network upgrades.

16 Now this case has had a very long, storied
17 history. I think back in 2015 the Commission determined
18 that -- and MISO in particular, that transmission owners
19 should not have that unilateral right to assess or to
20 determine whether they were going to fund a network upgrade
21 that's essentially up to the generator.

22 The D.C. Circuit vacated that Commission -- the
23 2015 Commission decision last year. And so after the court
24 vacated the order, the court basically said our reasoning
25 wasn't sufficient. We needed to go back to the drawing

1 board and consider our reason.

2 We simply just reversed course and said, no,
3 we're going to give the transmission owner and MISO the
4 unilateral right to determine, or fund network upgrades.
5 And I think we actually had the legal authority to do that.
6 I actually voted for the order.

7 But in that order we also extended that
8 particular line of reasoning to another -- to a couple of
9 other categories of network upgrades that we hadn't done
10 before. And, not to belabor the point on the legal issues
11 too much, but Section 206 of the Federal Power Act requires
12 that we engage in reasoned decision-making. If we're going
13 to extend the order, we have to find that it's just and
14 reasonable to do so.

15 But the reason I'm voting -- I'm changing my vote
16 on rehearing is because I think the rehearing applicants or
17 protesters suggested, and rightly so, that we didn't do what
18 the court essentially asked us to do, which is to determine
19 whether our original reasoning to look further into the
20 record and determine whether our original reasoning was
21 sufficient or not. And that's of concern.

22 Now in this particular case, I think one of the
23 reasons that you might be concerned about, or worried about
24 allowing transmission owners to unilaterally decide whether
25 to fund network upgrades is because in a lot of cases,

1 especially in MISO, those transmission owners also own
2 generation. And to the extent that -- and the Commission
3 has expressed over the years concern that if a transmission
4 owner owns generation, they might try to engage in
5 discriminatory pricing practices in order to discriminate
6 against the independent generator and obviously favor their
7 own generator through the network upgrade process.

8 And so I think at the very least we need to
9 reconsider this particular issue. I'm not saying that I
10 would vote one way or the other at the end of the day to
11 make a case whether to restore our old position, but I think
12 we're definitely violating the requirements of Section 206,
13 and also of what the court told us to do, by not examining
14 the justness and reasonableness of this approach. So I'm
15 going to be dissenting on that particular order as well.

16 As I understand it, there's about -- but the
17 order does what I just said it did, but also this particular
18 rehearing order also adds another wrinkle to this whole
19 particular issue. And that is, we're now saying of all the
20 contracts that were signed back under our original policy
21 going back to 2015, we're now going to allow the
22 transmission owners in each of those cases to go back and
23 decide whether they want to go back, to the extent they
24 didn't already unilaterally -- to the extent they didn't
25 already fund the network upgrades, they're going to have

1 that decision on their own. They're no longer reliant on
2 the generator, essentially, to tell them they can do that.

3 And that's a real concern to me. So we have 100
4 contracts, about, that I think are impacted here. And these
5 contracts were signed. The generator signed them under one
6 set of conditions that the Commission announced in 2015, and
7 all of a sudden the conditions have changed four years
8 later, and I it can have some serious impacts in terms of
9 the investment decisions that they made and the cost of the
10 particular upgrades and how they fund them and so on.

11 So again I think we really need to look at the
12 justness and reasonableness of what we're doing here. We
13 need to engage and look at the record and determine is this
14 really the right approach or not. I have some significant
15 concerns about this, and I'm going to be, as I said before,
16 dissenting on that.

17 I'm also going to be dissenting on H-2,
18 essentially because I disagree with the Commission's
19 decision here. The Commission decided to deny several
20 motions to intervene, and it's a simple proceeding regarding
21 a termination of a hydro license. And I'm concerned because
22 we're setting a pattern here. The Commission did this a
23 little while back in the Eagle Crest Order.

24 Essentially we're saying, where stakeholders have
25 an interest in a hydro proceeding -- after the licensing

1 proceeding, but something else is going on, whether we're
2 extending the time for starting construction, or in this
3 particular case whether we're granting, or deciding to
4 terminate a particular license, we're saying stakeholders
5 don't have the right to intervene in that process even
6 though they have a legitimate concern about what the
7 Commission may be doing and what conditions the Commission
8 may be imposing.

9 And I'm not really sure why we're doing this. It
10 seems to me that there's maybe two reasons, one of which we
11 don't want to really be bothered by having applicants in the
12 process and having to address their arguments.

13 And secondly, I think maybe we don't -- if we
14 don't grant them the right of intervention, then they don't
15 have the ability to go to court and appeal the decision that
16 the Commission makes. And to me that's not necessarily the
17 way the Federal Power Act was established and the judicial
18 review provision was established in the Federal Power Act,
19 and I have some significant concerns about this.

20 It's even more strange to me that in both Eagle
21 Crest and in this particular case we're actually, after we
22 say we're denying interventions, we're still addressing some
23 of the issues that these parties raised already. So it
24 wouldn't really hurt us to grant intervention and allow
25 them, to the extent that they want to, to challenge it.

1 But, again, I think we're trying to evade
2 judicial review, and I think that is a troubling precedent
3 that we're setting here.

4 I'm going to be dissenting also on E-15. And
5 this one is a bit of a complicated issue in some respects.
6 That particular -- in this particular order the Commission
7 is permitting Duke to continue, including the costs in its
8 allowance for funds used during construction, the AFUDC
9 account, associated with the cybersecurity program. Even
10 though some of the elements of this particular program have
11 already or will be deployed before the entire cybersecurity
12 project that Duke has undertaken is going to be complete.

13 And I know these kind of accounting issues are
14 particularly boring, and that's an understatement in this
15 particular case --

16 (Laughter.)

17 COMMISSIONER GLICK: -- but it actually is very
18 important. It's important for consumers the way we treat
19 these things. And we've had a long-standing policy -- it's
20 my understanding we've had a long-standing policy that
21 utilities can only include project investments in AFUDC to
22 the extent that the project is not yet ready for service, or
23 not ready to be placed in service. And in this particular
24 case -- but our policy has said once it's ready to be placed
25 in service, you take it out of the AFUDC account and

1 include it in the rate base.

2 In this particular case, we're saying well, it's
3 cybersecurity, we like cybersecurity investments, I like
4 cybersecurity investments, too, but we're going to treat it
5 differently. And we're going to say even though some of the
6 components of that project are ready to be placed into
7 service, we're going to ignore it. We're going to let you
8 continue to put it in AFUDC.

9 And then you might ask why does that really
10 matter? What difference does AFUDC or rate base? The
11 reason is because the utility gets to earn more money on it.
12 The consumers pay more money the longer the asset is in the
13 AFUDC account, as opposed to the rate base.

14 And so I think, again, we're creating some bad
15 precedent here. Now there's a footnote that was added that
16 I think could be somewhat helpful, but I don't really read
17 it as such. Essentially the footnote suggests the
18 Commission can later on disallow these extra costs
19 associated with the AFUDC account and disallow Duke from
20 recovering those costs, to the extent we determine that
21 Duke's program wasn't consistent with our AFUDC policy. But
22 to me that's a little circular logic because in this
23 particular order we're saying it is consistent with our
24 AFUDC policy.

25 So I'm not really sure we can go back and address

1 this particular issue. I think once the die is cast,
2 essentially once we vote out this order. So I have concerns
3 with this particular issue. I hope in the future that we
4 can take a little closer look.

5 If we're going to change our policy, that's one
6 thing. But if we're going to say we're keeping our AFUDC
7 policy but on the other hand we're saying we're going to
8 ignore what's in our AFUDC policy -- which is very clear,
9 again, it's very clear. It says if some of the components
10 are ready to be placed in service, you take it out of AFUDC
11 right then. So I think we're -- I'm really concerned about
12 the precedent that we're setting here, Mr. Chairman.

13 Last but not least, I am going to make a few
14 comments on an Order that Chairman Chatterjee mentioned,
15 E-1, the PJM MOPR Order.

16 This has been an interesting saga, this whole
17 process here. There have been a lot of twists and turns.
18 More than 500 days have elapsed since -- actually it's 508
19 days since the Commission first issued the PJM MOPR Order
20 setting this whole process up.

21 And essentially in that particular Order the
22 Commission found the PJM capacity market to be unjust and
23 unreasonable. We provided very vague guidance on a
24 potential remedy. And we gave PJM a very short time to
25 submit a solution.

1 And at the time, Commission LaFleur I think
2 adequately characterized it, or appropriate characterized
3 it. She said the Commission Order was an act of regulatory
4 hubris. So now, we issued this Order on October 2nd, 2018.
5 We said we're taking care of this Order. Then, it's been
6 well more than a year ago -- or I should say, we issued the
7 Order in June. PJM submitted its proposal on October 2nd.
8 And then after that, what has the Commission done? What
9 have we heard? Crickets. Nothing. This has been going on
10 for a really long time.

11 And what we've done is created I think a great
12 disservice to the 65 million consumers in the PJM Region,
13 the 13 states and the District of Columbia. PJM itself, all
14 the other stakeholders associated with this process, as I
15 understand PJM has had to cancel or delay its auction
16 processes for a while now. I think the Commission issued an
17 order associated with that, as well.

18 And all we've done is create regulatory
19 uncertainty, regulatory uncertainty, and more regulatory
20 uncertainty. So, you know, we were on Capitol Hill I think
21 in the summer, earlier this summer at the House Energy and
22 Commerce Committee, all the Commissioners testified and
23 Commissioner LaFleur was there as well. And we were asked a
24 lot about this. Members of Congress were concerned that we
25 weren't sending out the appropriate signals. And someone

1 asked what they thought we should do. And I said, I quoted
2 my old boss, Senator Bumpers, who when he was talking about
3 a recession, he said: We need to do something, even if it's
4 the wrong thing.

5 So I said, with regard to PJM, we need to do
6 something, even if it's the wrong thing. Well, Mr.
7 Chairman, Commissioner McNamee, you guys have exceeded my
8 wildest expectations.

9 (Laughter.)

10 COMMISSIONER GLICK: This is definitely the wrong
11 thing. And today's Order, I think -- you know, I mentioned
12 the regulatory hubris that Commissioner LaFleur had
13 referenced, I think we're doubling down on that. And I want
14 to make several points about this particular Order.

15 First of all, the breadth of the Order. It's
16 very hard to get a handle on the breadth. I've read the
17 Order several times. My advisors have read it probably more
18 than that. And the Order very broadly defines the term
19 "state subsidy." It requires all generation receiving state
20 subsidies, as the Chairman mentioned, except those that are
21 exempt, they have to bid into the capacity markets and
22 administratively determine higher prices than they would
23 otherwise bid. That's what a MOPR is, right?

24 But the subsidy definition is extremely broad.
25 First of all, as we read it, RGGI, the Regional Greenhouse

1 Gas Initiative that some northeastern states are members of,
2 and I think several other PJM states are thinking of
3 joining, would definitely qualify as a state subsidy and be
4 subject to the MOPR. So utilities in those states would --
5 all their generation that all benefit from the RGGI price,
6 would have to be subject to the MOPR.

7 And then let's think about public power. All
8 public power, municipal utilities and co-ops, they
9 self-supply their generation needs. Under the Commission's
10 Order, those particular assets are subject to the MOPR.
11 Now, yes, again, the Chairman mentioned that existing
12 assets, to the extent those existing assets I think clear
13 the capacity auction prior to the Order, in those particular
14 cases then the exemption does apply.

15 But from now on, every single time a municipal
16 utility or electric co-op in the PJM region decides to build
17 a generating facility, that facility would be subject to the
18 MOPR. This blows up the entire business model, as I
19 understand it, of MUNIs and co-ops in the country.

20 And then let's take a look at New Jersey. And I
21 don't know if I can get into this, that I can explain well
22 the specifics of the New Jersey, they have some sort of
23 auction process on their own, but the way we read the Order
24 every single generating facility in New Jersey will be
25 deemed to be subject to the MOPR. Essentially, the

1 Independent Market Monitor will tell every single generating
2 facility in New Jersey what it has to bid into in the
3 capacity markets.

4 But we're giving PJM -- don't worry about it.
5 We're giving them 90 days to come up with a compliance, to
6 figure out what the subsidy definition means, and what
7 implications it has throughout the region. They have 90
8 days to comply. And what could go wrong with that?

9 Second, we have to look at the cost. The Order
10 does not even at all look at the cost impact on consumers of
11 this particular Order. Now we're dealing with price
12 suppression, so, yeah, we want to raise prices. Now you
13 could argue whether that's just and reasonable. We
14 certainly have an argument about that.

15 But I asked my team of advisors to essentially do
16 a conservative estimate, a back-of-the-envelope estimate
17 based on their understanding, and we're still trying to
18 figure a lot of the details out, but based on their
19 understanding of how much this is going to raise capacity
20 prices. And, again, it is a very conservative estimate, but
21 we assume about
22 \$2.4 billion per year in increased capacity cost, or
23 consumer capacity cost, in the PJM market in the early
24 years. It's going to increase as time goes on over the
25 years.

1 And that doesn't even take into account the fact
2 that some states are going to continue with their state
3 public policy programs, even though some of their state
4 policy preferred generation might not clear in the capacity
5 markets. So we're going to have a lot of even more excess
6 capacity than we do today, and that is going to add onto the
7 cost for consumers, as well.

8 But we're not counting that in our calculation.
9 So we're saying at least \$2.4 billion extra for consumers.
10 For what? What's the problem in PJM? They already have a
11 lot of excess capacity. They don't need any more capacity.
12 What are we trying to achieve here?

13 And interestingly enough, you know, as I
14 mentioned before, we are requiring an administratively
15 determined price, a minimum price, but there's going to be a
16 lot of opportunities pursuant to this whole approach for
17 generators to manipulate the prices.

18 If you are not MOPRed, or if you're not MOPRed a
19 lot compared to some of your other competitors, you're going
20 to increase our bid up to the level of everyone else's MOPR.
21 So we are going to essentially manipulate the market there.
22 But there's nothing in this Order that says that we're going
23 to give the Independent Market Monitor or PJM or anybody
24 else any additional authority to ensure that you're not
25 manipulating the market. We're just worried about making

1 sure we're having a price floor and not a price cap.

2 Third, and we have talked about this in the past,
3 this is definitely a direct attack. I know the Chairman
4 addressed this in his comments. It is a direct attack on
5 state electric generation resource decision-making. The
6 Federal Power Act is very clear. States have authority over
7 resource decision-making over generating facilities, not
8 FERC.

9 Now, yes, it's true that the state can still have
10 the state policy, but what we're doing here, and we're doing
11 it on purpose, we're making it very difficult for
12 state-preferred generation to clear in the capacity market.

13 Now the majority is going to argue that we're not
14 overturning state policy. That's not the intent here.
15 That's not what MOPRs do. The Feds can continue to pursue
16 their policies. But what's interesting here is that the
17 Order does not subject the MOPR to Federal incentives. And
18 we could argue whether that's arbitrary and capricious. I
19 certainly think it is. But the reason that the Order uses
20 for not assessing the MOPR to Federal policies is we don't
21 have the legal authority -- FERC as an agency doesn't have
22 the legal authority to overturn or nullify what Congress is
23 doing in terms of policymaking.

24 But so we're saying on the one hand these type of
25 MOPRs, they don't nullify state policies. But when we're

1 talking about Federal policies, oh, yeah, they nullify
2 Federal policies. That is completely hypocritical and
3 inconsistent.

4 So we are in fact, I think if you follow the
5 majority's reasoning, we are in fact nullifying state
6 policies. And, you know, in the previous PJM Order -- and I
7 didn't vote for it, admittedly, I was very critical of it,
8 as you might recall -- but in the previous PJM Order that we
9 issued last year, we at least tried at the very least to
10 accommodate state policy preferences by including an FRR in
11 the, a particular FRR approach, so we would allow states and
12 their utilities to say we're going to take -- if this
13 particular generation asset is preferred by the state, we're
14 going to take it out of the capacity market. You're going
15 to take the equivalent load out with it, as well, and you're
16 going to be able to address it that way.

17 Well this particular Order today eliminates that
18 completely. So there is no FRR alternative anymore. So we
19 are not at all attempting to accommodate state policy
20 preferences.

21 Now fourth, I've spent some time trying to figure
22 out what's really going on here? What's the crux of the
23 Commission's Order? When you read it thoroughly, it's
24 pretty clear that there's a preference for existing
25 generation versus new generation. Or, when you really think

1 about it some more, it's a preference to maintain the status
2 quo and stunt the transition to the clean energy future
3 that states are pursuing, and that consumers are pursuing.

4 Now as the Chairman mentioned, there are
5 exemptions. For instance, there's an exemption for
6 renewable energy, for existing renewable energy, subject to
7 state RPS programs. And that's true.

8 So as I understand it, there's about 5,000
9 megawatts of renewables in PJM right now, 5,000 megawatt
10 capacity of renewables in PJM, wind and solar primarily, and
11 most of those, if not all of those facilities, are going to
12 be exempt from the MOPR.

13 But what they don't tell you is that there are
14 another 38,000 of new renewable facilities that haven't been
15 built yet that won't be exempt from the MOPR. So, yeah,
16 we're exempting 5,000 but let's try to stunt or prevent the
17 next 38,000 megawatts from being developed.

18 And my colleagues also note that the MOPR applies
19 to all state subsidy, and it does. It's not just
20 renewables, it's not just nuclear power that we talk about a
21 lot, it applies to a whole bunch of other programs. For
22 instance, coal, the coal program in Ohio. But that also
23 misses the point. The vast majority of PJM states are
24 moving forward with cleaner energy programs. So, yeah, if
25 you're going to build new coal, you're going to be subject a

1 MOPR. But if you are existing coal, as I understand at
2 least, that was built pursuant to a self-supply program, and
3 a lot of coal in the region I think was build pursuant to
4 self-supply program, that coal is going to be exempt from
5 the MOPR.

6 So again, we're looking at new versus old. And
7 obviously if we increase capacity prices, which this Order
8 does by at least \$2 billion a year, probably more, what
9 we're doing is we're going to keep the existing capacity
10 online longer because it might be uneconomic tomorrow but
11 it's not going to be uneconomic anymore once you raise the
12 capacity prices.

13 So again, the more you keep existing uneconomic,
14 unneeded, unwanted generation online, you're not going to
15 build the new generation. And the Order establishes two
16 different pricing mechanisms, too, and I think this is
17 really key, and this is hard. There's so much in this
18 Order, I really urge everyone, when it is published, to read
19 it and spend a lot of time with it. Unfortunately, it's
20 going to be during the Christmas Holidays.

21 But it's an extremely interesting set of
22 provisions. There's an extremely interesting set of
23 provisions in there, one of which is that we provide a
24 different pricing mechanism for existing generation and new
25 generation.

1 For existing generation, we're essentially
2 setting a MOPR at a lower amount than for new generation.
3 So if you're an existing facility and you're subject to the
4 MOPR, you're going to bid in at a certain price. But when
5 you have a new facility, you're going to have to bid it at a
6 higher price. They're going to make you do it,
7 administratively make you do it.

8 And that doesn't make a lot of sense to me. But
9 again what it's trying to do is it's trying to stump the
10 development of new generation. Everything in this
11 particular Order, if you go through from the beginning to
12 the end, it's all aimed at new generation. And again,
13 what's the new generation? What are the states trying to
14 achieve around the country? They are clean energy goals,
15 and dramatically reducing greenhouse gas emissions. And
16 they're enacting laws and policies to try to do that.

17 But, again, we're trying to stop that here. Now
18 some people don't like this trend and have been promoting
19 schemes under the guise that somehow FERC needs to restore
20 the integrity of our wholesale markets, to try to block the
21 state's efforts and stunt the speed at which the generation
22 mix is becoming cleaner.

23 Now I had lunch a couple of months ago with a
24 pretty good energy attorney in town that was an appointee
25 during the George H.W. Bush Administration, and he kept on

1 telling me how we have this deep state out there, that
2 there's a deep state of folks trying to undermine the rule
3 of law, undermine Congress, undermine the President,
4 undermine everyone else. You know, we've heard all those
5 conspiracy theories and I kind of hate even talking about
6 that because they are really kind of ridiculous, but the
7 more I got to thinking about it, I thought, you know, if you
8 do believe in the deep state theory, if you do believe
9 unelected bureaucrats are trying to change laws, trying to
10 change laws or court decisions or whatever, this Commission
11 has a pretty good track record on that.

12 So we have a number of unelected Commissioners
13 seeking to overturn actions of other branches of Government.
14 We don't like state clean energy policies, so let's use the
15 MOPR to prevent them from being effective. We're
16 frustrated that Congress has decided to -- has not been able
17 to repeal PURPA, so what are going to do? Let's issue a
18 rulemaking which guts the statute.

19 We don't like what the D.C. Circuit told us to do
20 in greenhouse gases? Let's just say the D.C. Circuit is
21 wrong and we don't agree with it, and let's take it to the
22 Supreme Court. That's exactly what we're doing here, time
23 and time again. It's getting a little frustrating.

24 That's not what we're sent up here to do. When
25 we were all in this room taking our oath, we were told to

1 uphold all the laws, not just some of e laws. And I think
2 we're not doing our duty today.

3 Now finally on this issue, I do want to talk
4 about -- and I think we need to consider what the broader
5 ramifications of what we're doing here are. Since our order
6 last year in the PJM MOPR, and also on the New England MOPR
7 proceeding, states have, we've seen it time and time again,
8 states have just expressed growing concern and frustration
9 with where FERC is headed with all of this.

10 And the states are concerned about their
11 historical role over resource decision-making. Now we have
12 the New York PFC that has already established a resource
13 adequacy proceeding in which it's considering taking back
14 resource adequacy from the New York ISO because of their
15 concerns about FERC over-reach.

16 We have Commissioners at least from two states, I
17 think it's New Jersey and Illinois, who have suggested that,
18 given where FERC is going on this, maybe they should require
19 the utilities to get out from under PJM.

20 And the other day I had a conversation with a
21 commissioner -- I don't want to give away their identity --
22 but the commissioner was saying that their state was not
23 interested at all in working with other states in some sort
24 of carbon pricing mechanism that might be included in an RTO
25 because if they did that FERC would have jurisdiction and

1 screw it up.

2 And I couldn't really blame him for that, given
3 what we -- Given our track record, I can't really blame him.
4 Now this morning, or the other day, maybe yesterday, I read
5 a story about Jason Stanek who used to be an advisor here,
6 used to be a staffer here, a very smart guy who is now the
7 Chairman of the Maryland Public Service Commission. And he
8 said that these MOPR orders might be the beginning of the
9 end for capacity markets.

10 And I think that very well may be true. Now you
11 could argue whether that's a good thing or a bad thing. Now
12 the Chairman mentioned a number of occasions the issue of
13 competition, that all we're trying to do here is promote
14 competition. Are we really trying to do that?

15 Again, when you read the Order and think about
16 that a little bit, we're administratively fixing all the
17 prices. And we're going to tell each particular generator
18 what they can bid in at, at least the floor of what they can
19 bid in at. That's competition?

20 That's not competition. Now what's ironic about
21 this is that I think tomorrow is the anniversary -- I think
22 it's tomorrow, maybe it's Saturday -- is the anniversary of
23 Order 2000, which established some ground rules for RTOs and
24 regions working together. And it's been an enormous
25 success. We've had really a lot of good results from RTOs.

1 We've had regional coordination, improved reliability,
2 improved resilience, certainly lower costs, competitive
3 markets, and so on.

4 And then we're issuing this Order? What are we
5 telling the states? What are we telling market
6 participants? That we're not going to have competition
7 anymore, where just going to have somebody sitting in an
8 office in Valley Forge, Pennsylvania, or somebody else tell
9 everybody what they're going to bid in?

10 That's not competition. That's actually taking
11 the adverse impacts of cost-of-service ratemaking without
12 any of the benefits.

13 So, again, I would urge everyone to read the
14 Order when it comes out, but all I would say is, and I know
15 this is going to be a very long proceeding, this isn't going
16 to be the 90 days, this is going to take a very long and
17 there's going to be a lot of suits, a lot of litigation both
18 here at the Commission but also in the courts about what
19 this all means, what the definition of "subsidy" means,
20 what's in, what's out, and so on.

21 But all I'm saying is there's got to be a better
22 way than what we're trying to do today.

23 Now I want to finally conclude with a different
24 subject, and that's PURPA. I did mention it briefly
25 earlier. But I know that the -- I think it was a couple of

1 weeks ago the Commission's comment period concluded on our
2 Notice of Proposed Rulemaking regarding the Public Utility
3 Regulatory Policies Act.

4 I haven't had the opportunity to go through all
5 of the comments in the record, but I've gone through some of
6 them already. And I think it is worth noting that there are
7 a lot of parties that have suggested that our record is
8 lacking. It is not sufficient to do some of the things that
9 the Commission is proposing to do in the NOPR.

10 And that includes several Members of Congress,
11 and a Commissioner from the Federal Trade Commission also
12 made that particular point as well.

13 So, Mr. Chairman, I think it might be
14 appropriate, given the concerns that have been raised, for
15 this Commission to hold a technical conference on some of
16 these matters. Now I know we did hold a technical
17 conference back in 2016, the Commission did. I actually sat
18 in the audience there, pursuant to when I was a
19 Congressional staffer and had an interest in the issue, but
20 that particular technical conference was very narrowly
21 focused. And the Commission has proposed things that no one
22 was really talking about back then, and so I certainly think
23 the record is lacking on some of the pieces of the NOPR.

24 So I would hope that at some point, before we
25 move forward with the NOPR, we can at least hold a technical

1 conference and maybe have another comment session about that
2 to be able to fully explore whether what we're doing is
3 permitted by law and the right policy, as well.

4 So thank you very much, Mr. Chairman.

5 CHAIRMAN CHATTERJEE: Commissioner McNamee.

6 COMMISSIONER McNAMEE: Thank you, Mr. Chairman.

7 The first thing I want to do is acknowledge, you
8 know, the Commission was ranked as among the best mid-sized
9 Federal Agencies to work at, and was first in this past
10 year. You know, it's something that says, not just about
11 FERC as an agency, but about the people that work here.

12 I see how hard the people, the staff, everybody
13 here, how hard they work. And yet they say this is a great
14 place to work. And I think there's a relationship between
15 that. The work here is interesting. The people are
16 dedicated. They know their co-workers are dedicated.

17 And so, Mr. Chairman, Commissioner Glick, I just
18 want to say thank you to all the staff for what you do and
19 for making this place a great place to work, because that
20 ranking only became what you all do. And I think that's a
21 great credit to everybody in this building.

22 In order not to prolong this very long, I will
23 just touch on a few of the issues. As has become tradition
24 of the Commissioner Glick/Commissioner McNamee Show, I'll
25 touch on a few of the things that Commissioner Glick has

1 talked about.

2 First of all, the issue on AFUDC that's in the
3 Order dealing with Duke's request for cybersecurity, I think
4 all three of us agree how important cybersecurity is in
5 order to ensure the security of the grid, and that it is a
6 growing threat.

7 And as we also know, and I am definitely not a
8 regulatory accountant, but I have had some familiarity with
9 it, one thing I do know is that often in order to book AFUDC
10 the internal accountants at a utility or the auditors need
11 to know that, you know, are they authorized to book AFUDC
12 for an investment, if something is not clear, especially
13 when there's something new like cybersecurity.

14 And in this case, the presentation that Duke
15 makes is that we have to do a variety of investments in
16 three different areas, and that it really isn't going to
17 come together unless it's all there used and useful
18 together.

19 And so on that representation, we are not
20 changing our policy on the AFUDC. At least in my opinion, I
21 believe the Order makes that clear. We are acknowledging
22 the special circumstances that the new world of
23 cybersecurity issues brings, and is trying to give some
24 regulatory opportunities to Duke in order to make these
25 investments.

1 But as we also make clear, and Commissioner Glick
2 acknowledges in one of the footnotes, Footnote 81 in our
3 Order, that such investments still are going to have to be
4 consistent with Commission practice, and that they're going
5 to be subject to AFUDC compliance review.

6 So I would disagree with my colleague. I do
7 think these are incredibly complicated issues, but I don't
8 think we're changing policy. I think what we're trying to
9 do is recognize the challenges that cybersecurity brings in
10 terms of utility investment, and trying to make sure that
11 our current rules and practice are able to accommodate those
12 and, you know, I do not think that this is a carte blanc to
13 the utilities.

14 I will note, but no need to go into great detail
15 about it, on E-13 I am issuing my short concurrence. This
16 is on compliance on energy storage. I continue to believe
17 that energy storage is something that's going to be a great
18 benefit to the grid. As we'll recall, back in Order 841A
19 that I filed a partial dissent because I did not think that
20 the Commission had the authority to dictate how that storage
21 be allowed that was behind the meter on the distribution
22 system to participate in the wholesale market, and so I
23 merely restate that aspect. But I agree on the compliance
24 issues.

25 Because everybody has heard these stories before

1 and it's not as interesting as the standard Christmas
2 stories on the certificates, I am issuing the concurrence
3 similar to what I did in the El Paso case in our last
4 Commission hearing, and explaining my position on a variety
5 of issues particularly -- and I want to touch on this -- is
6 what is our role in being able to make determinations about
7 downstream use in upstream development of natural gas?

8 And Commissioner Glick makes the point that I'm
9 trying to deny the decision of the court, particularly in
10 Sable Trail. It is clear in my concurrence I recognize
11 Sable Trail as binding precedent. And hence, my discussions
12 have been in the concurrence because I do believe that we
13 don't have that authority to deny an application under the
14 NGA because of the downstream emission or the upstream
15 development of natural gas.

16 However, the analysis that we make in our court
17 order, the binding order, makes it clear that we considered
18 and calculated and considered the specific emissions from
19 the generation facilities that take place, which are the
20 downstream emissions from the facility -- from the natural
21 gas pipeline to the facility.

22 So far from saying that we do not have to comply,
23 I agree we should have to comply. However, I do disagree
24 with Commissioner Glick that what the court said under those
25 specific circumstances, along with some dicta in Burkhead,

1 means that we have all brand-new regulatory authority to
2 start regulating upstream and downstream natural gas
3 development and use.

4 And so that's what's very important. And then of
5 course there's the discussion about how do we measure
6 significance? Do we have the expertise? And I'm sure we'll
7 be going back and forth on those issues for quite a while
8 until further action.

9 The next thing, and this goes to the order that
10 all three of us have taken a significant amount of time with
11 the regulatory community who has taken a lot of time, and
12 that is the Calpine Order.

13 I fundamentally believe that competition works,
14 and that markets are the best way to set prices and allocate
15 resources. And I believe that the creation of the electric
16 markets like PJM is one of the great accomplishments that
17 has taken place between Congress, the Commission, and in
18 particular the PJM participants.

19 It is also clear that when the PJM -- when the
20 states joined PJM and the participating generators, it was
21 based on a premise that all resources would be able to
22 compete on a level playing field.

23 Over the years, the Commission and the courts
24 have seen constant complaints about out-of-market subsidies
25 distorting the market and undermining the regulatory

1 compact. Some have claimed that our order is going to
2 undermine PJM.

3 To the contrary, I think our order seeks to
4 preserve the interstate electric market by making sure that
5 they remain competitive and fair. Our goal is to ensure
6 that the markets are competitive by establishing a level
7 playing field and being resource neutral. And it is in this
8 way that we can help promote competition that will benefit
9 consumers in the long run.

10 That is why today we direct this replacement rate
11 that will help enhance the competitiveness of the PJM
12 capacity market. And despite what I would say is really the
13 rhetoric of the dissent, this is not going to destroy PJM.
14 In fact, it is only focusing on a piece of PJM's market, and
15 that is the capacity market.

16 This order is building on key findings that took
17 place in the June 2018 order which, admittedly, was before I
18 was here but I've studied closely. I think that what's
19 important is that when we look at these issues, is that this
20 is focusing on a narrow area, and that is the capacity
21 markets. Are they structured? And are they providing just
22 and reasonable rates?

23 And I think it's really important to focus on a
24 key point that Commissioner Glick has made. I believe the
25 telling flaw in his analysis is the accusation that the

1 Commission's order is meant to prop up uneconomic resources.
2 Yet at the same time, he's arguing that the only way we can
3 change to a clean energy economy is by making sure that
4 uneconomic or supposedly uneconomic renewable resources are
5 subsidized.

6 I don't believe that. I think PJM's capacity
7 market was designed in order to provide a level playing
8 field so all resources can compete based on what their
9 actual costs are.

10 Commissioner Glick asserts that, well, everything
11 is now going to be MOPR'd and it's going to -- and that we
12 have an artificially high price floor. But we also have a
13 unit-specific exemption which allows any unit that even
14 receives a subsidy from the state-favored industries
15 demonstrate that their costs are competitive.

16 Likewise, if you take a competitive exemption,
17 you don't have to -- you're not going to be subject to the
18 MOPR. So we are trying to preserve the opportunity for all
19 resources to compete. And I fundamentally believe, and I
20 know that I read it in the clips almost every day, and I
21 believe it, that renewable energy is becoming more and more
22 competitive; that it can compete on its own; and that I
23 believe that they will be able to compete.

24 Now something else that's important I think to
25 recognize: that nothing in what we're doing impacts the

1 ability of these resources subsidized or not to be able to
2 compete in the energy markets or the ancillary markets.
3 They are still allowed to compete. They're not subject.

4 But let's remember, the capacity market was
5 designed to deal with what economists call "the missing
6 money problem." That somehow the energy market,
7 particularly, maybe the ancillary a bit, were not providing
8 sufficient revenue to make sure that there was resource
9 adequacy. And so we created the capacity markets.

10 Now we see that certain subsidies from the states
11 are being used in order to access the capacity markets.
12 Well that's having a price suppressive effect. The issue is
13 that all resources ought to be able to compete, and they
14 ought to be able to compete on a level playing field.

15 But to say that we are trying to prop up one
16 resource so another one can compete, but to compete only if
17 they have subsidies, doesn't make much sense.

18 Now another issue that I think is vitally
19 important, and I think reasonable minds can disagree, and I
20 think that this is an issue that is really one that has to
21 be struggled with at one level, but on another level can be
22 quite simple. That is, I think Commissioner Glick and I
23 fundamentally agree that the states have the authority to
24 make decisions over the facilities used in generation. In
25 fact, it's very clearly spelled out in Section 201(b)(1) of

1 the Federal Power Act.

2 But the point is that we have authority over
3 wholesale rates. That's also very clear in the Federal
4 Power Act. And when generation facilities sell power in
5 interstate commerce for resale, then it's subject to our
6 authority.

7 And of course when we used to have vertically
8 integrated utilities that were directly regulated by state
9 utility commissions on a cost-of-service basis, it wasn't an
10 issue that we still regulated to a certain extent the
11 wholesale power rates. There was a different construct.

12 But when we entered into this market of trying to
13 establish RTOs and ISOs to allow competition, we got rid of
14 the cost-of-service ratemaking for those units and tried to
15 make -- just let everybody bid in. But the only way it
16 would work, and the only way it would be just and
17 reasonable, and the only way it would not be discriminatory,
18 is to make sure that everybody got to participate in this
19 level playing field.

20 And that's what we created when we established
21 the capacity markets, and actually the energy markets as
22 well. And so what we've seen over time is that, since those
23 creations there have been state policy decisions that have
24 decided we want to have certain types of generation
25 resources.

1 And as you know, the way that most RPF programs
2 are designed, they're not focused on the capacity per se,
3 they're focused on the percentages of generation. And so
4 states are making decisions to meet those markets, to meet
5 those types of generation goals they're going to subsidize
6 on the capacity side to make sure certain capacity gets
7 built.

8 That's fine. They can do that. And under this
9 order they'll still be able to do it. But the fundamental
10 issue is: They'll have to compete on a even playing field.
11 And, that the market will choose what's the right price.
12 The competitive market will choose what's the right price,
13 not individual units getting subsidies.

14 Now one thing that is a criticism is supposedly -
15 - and I think it's correct as a philosophical view -- is
16 that Federal subsidies also have price suppressive effects.
17 I absolutely agree with that. But recognizing that Congress
18 is aware of what it does in the other Acts that it enacts,
19 it has decided that it is appropriate to have Federal
20 subsidies in order to promote certain resources. Congress
21 has the authority to make that decision, and we are going to
22 honor that decision.

23 Now I think it's also important to think about
24 the phrasing that we talk about; that supposedly we are
25 going to artificially increase capacity prices. But I think

1 the flip of that is what's happening right now, is that we
2 have state subsidies artificially suppressing prices.
3 That's not a competitive market.

4 Our goal is to have just and reasonable rates, to
5 make sure that those who choose to participate in these
6 markets all play by the same rules. And that is
7 fundamentally important to making sure that these markets
8 survive.

9 I think it is also important to think about
10 what's happening. You're now having this situation where,
11 because there's been price suppressive support, now states
12 are saying, well, we need to have additional subsidies. And
13 you're having now states chasing the subsidies. Who can
14 provide more subsidies? And the problem is, that
15 fundamentally going to undermine the competitive markets.

16 There's no problem with states making the
17 decision that they want to change the way they want to get
18 energy in their states, but if they want to participate in
19 the energy -- or actually the capacity markets here, but
20 ultimately in the PJM markets, everybody's got to play by
21 the same rules. And that's particularly important when you
22 have a situation like in PJM where we have 13 states and the
23 District of Columbia all trying to have access to these
24 resources.

25 It's a wonderful thing, and it has had great

1 benefits for customers, but those benefits will not be able
2 to continue in the long run if you have parochial interests
3 that are going to be distorting the market. And so this
4 order attempts to address that.

5 And so I think it is very important that our
6 analysis be dealt not on hyperbole, not on the desire to
7 score points, but rather to think about what are the
8 problems? What are we trying to solve? And, to try and be
9 able to address the issues that are before us. And what is
10 the premise by which people participate, the generators, the
11 states, the customers all participate in PJM?

12 Creating that foundation is the most important
13 thing we can do. Because that ensures that the decisions we
14 make are resource neutral, are being made to ensure that
15 competition takes place not policy preferences of any of the
16 three of us. And I believe that's fundamentally important
17 to making sure that we do our job, that we carry out our
18 directive as desired by Congress, and to ensure, as
19 Commissioner Glick asserts, that the deep state of unelected
20 bureaucrats like the three of us do not undermine the
21 directives that Congress has given us. Thank you.

22 CHAIRMAN CHATTERJEE: Thank you, Commissioners.

23 Madam Secretary, if we could please move to the
24 items on the Discussion Agenda.

25 SECRETARY BOSE: Thank you, Mr. Chairman.

1 Since the issuance of the Sunshine Act Notice on
2 December 12th, 2019, no items have been struck from this
3 meeting's agenda.

4 The Electric Items are: E-1, E-5, E-6, E-7, E-8,
5 E-9, E-10, E-11, E-12, E-13, E-14, E-15, E-16, E-17, E-18,
6 E-19, E-20, E-21, E-22, E-23, E-24, E-25, E-26, E-27, and
7 E-28.

8 Gas Items: G-1, G-2, and E-3.

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

10 Certificate Items: C-1, C-2, C-3, C-4, C-5, and
11 C-6.

12 As to E-1, Commissioner Glick is dissenting with
13 a separate statement.

14 As to E-13, Commissioner McNamee is concurring
15 with a separate statement.

16 And to E-15, Commissioner Glick is dissenting
17 with a separate statement. And to E-18, Commissioner Glick
18 is dissenting with a separate statement. As to H-2,
19 Commissioner Glick is dissenting in part with a separate
20 statement. As to C-3, Commissioner Glick is dissenting in
21 part with a separate statement. And Commissioner
22 McNamee is concurring with a separate statement.

23 As to C-4, Commissioner Glick is dissenting in
24 part with a separate statement. And Commissioner McNamee is
25 concurring with a separate statement. As to C-5,

1 Commissioner Glick is dissenting in part with a separate
2 statement. And Commissioner McNamee is concurring with a
3 separate statement. As to C-6, Commissioner Glick is
4 dissenting in part with a separate statement. And
5 Commissioner McNamee is concurring with a separate
6 statement.

7 Mr. Chairman, we are now ready to take a vote on
8 this morning's Consent Agenda. The vote begins with
9 Commissioner McNamee.

10 COMMISSIONER McNAMEE: I vote aye on all items
11 except E-13, in which I'm also issuing a separate statement;
12 C-3, in which I'm issuing a separate statement; C-4, with a
13 separate statement; C-5, with a separate statement; and C-6
14 with a separate statement.

15 SECRETARY BOSE: Commissioner Glick.

16 COMMISSIONER GLICK: Noting my dissents in E-1,
17 E-15, and E-18; and my partial dissents in C-3, C-4, C-5,
18 C-6, and H-2, I vote aye.

19 SECRETARY BOSE: And Chairman Chatterjee.

20 CHAIRMAN CHATTERJEE: I vote aye.

21 SECRETARY BOSE: Mr. Chairman that concludes our
22 Consent Agenda for this morning. There are no discussion
23 and presentation items.

24 CHAIRMAN CHATTERJEE: Thank you, Madam Secretary.

25

1 Before we close, I'd like to take a moment to
2 thank the team in the Office of Energy Projects who work
3 tirelessly to facilitate potential to the Nation through the
4 review of natural gas and hydropower infrastructure
5 proposals and to minimize risks to the public associated
6 with FERC jurisdictional energy infrastructure.

7 They serve the Commission and their country by
8 ensuring that we remain the energy capital of the world with
9 little fanfare or acknowledgment. As we recognize the
10 Commission's many accomplishments in 2019, it is necessary
11 to recognize their role in the good work that we have done.

12 I also want to take a moment to thank the Office
13 of the Secretary. While many of us will find time to rest
14 with our loved ones over the holidays, the team in OSEC will
15 be working to ensure we meet our statutory timelines. The
16 work does not stop for them, and I am grateful for the
17 sacrifices they make for the Commission and the country to
18 ensure that orders are processed through year's end.

19 In this same vein, I want to recognize and thank
20 all of FERC staff for their dedication, diligence, and
21 excellence. These are some of the most skilled
22 professionals in the energy community and they have devoted
23 their lives in service to their country by working at FERC.

24 It is due to their commitment to our work that,
25 as Commissioner McNamee referenced, the Commission has been

1 voted as the number one best place to work amongst mid-sized
2 Federal agencies for 2019. FERC ranked first amongst 23
3 mid-sized Federal agencies in work-life balance, training
4 and development, and effective supervisory leadership.

5 FERC, which over the past several years has
6 ranked among the top five mid-sized Federal agencies on the
7 annual survey, was also honored for excellence in the
8 subcomponent category which rates offices in the Federal
9 Government.

10 FERC's Office of General Counsel as ranked number
11 two, and FERC's office of the Executive Director was ranked
12 number four. I would like to personally recognize General
13 Counsel James Danly and Executive Director Anton Porter and
14 their staff for their leadership and excellence.

15 I want to thank the Partnership for Public
16 Service and all FERC employees for naming FERC the best
17 place to work.

18 In that same spirit, I want to acknowledge that
19 the 2019 Combined Federal Campaign will conclude on January
20 12th. This is my third campaign since joining FERC, and I
21 continue to be impressed with the level of involvement and
22 generosity of Commission employees.

23 This year FERC's dollar goal is \$390,000. FERC's
24 annual participation in the Combined Federal Campaign
25 historically runs two to three times that of our peers at

1 other government agencies. And I believe once again we will
2 have a record-breaking year for both participation and
3 dollars raised.

4 On a more somber note, because we have such
5 wonderful employees here at FERC, that make it especially
6 hard when we lose one of our own. Two weeks ago, Kathy
7 Neiman of OEMR passed away unexpectedly. Kathy had been
8 with the Commission for over 40 years, and was an important
9 part of OEMR's East Division and a familiar face all around
10 the building. I know my colleagues will have more to say
11 about Kathy, but on behalf of everyone here at the agency, I
12 want to extend our condolences to Kathy's family at this
13 difficult time.

14 Unfortunately, Kathy's passing wasn't the only
15 loss to the FERC community. We also learned that Giles
16 Jackson passed away on Monday, December 9th. Giles had been
17 part of our LMD Service Source Family for over 28 years, and
18 will be sorely missed. Many in the Commission had the
19 opportunity to work with Giles as he literally was the guy
20 responsible for fixing everything. If you locked your keys
21 in your drawer, if you needed help getting something hung in
22 your office, if you needed paper towels, for 28-plus years
23 Giles was there to fulfill every need of the wonderful staff
24 here at the Commission. And our thoughts and prayers go out
25 to his family during this difficult time.

1 Finally, I would like to wish everyone a safe and
2 wonderful holiday season with your loved ones. We have
3 accomplished a great deal here at the Commission in 2019,
4 and I look forward to all that is ahead of us in 2020.

5 With that, I will turn it over to my colleagues
6 for any comments they may have.

7 COMMISSIONER GLICK: Thank you, Mr. Chairman. I
8 just want to first reiterate what you said about Kathy
9 Neiman. As I understand, she spent a long time in OEMR
10 East, knowing the people in OEMR and some of the folks on my
11 staff, and they had really amazing things to say about Kathy
12 and the great work that she did. She was really the glue
13 that kept the OEMR East office together. And as I
14 understand it, she knew everything, almost all the details
15 about every proceeding, and that's a lot of proceedings in
16 OEMR East. So she's a loss for the agency, but also I
17 wanted to join the Chairman in sending out our thoughts to
18 her family as well.

19 I also want to just pick up where the Chairman
20 left off with regard to staff, because I wanted to say
21 something about that. It is, every day for the three of us,
22 a privilege and an honor to work with folks here. I think
23 over the last couple of weeks leading up to this Commission
24 meeting I think we didn't need a reminder, but we knew that
25 if we wanted a reminder as to how hard everyone in this

1 Commission works, and the amount of work that it took to get
2 to where we were today, was just incredible.

3 And we have a lot of tired people, a lot of tired
4 people on my team and I'm sure the other teams as well. And
5 I just am thankful every day as I come to the Commission
6 that I get to work with them, and how amazing they are, and
7 I mean just the amount of hours and time they spend, the
8 families and sick children and all that, it's just
9 incredible.

10 So I want to thank everyone here, again, all the
11 Commission staff, for being here, but also for sticking with
12 us. And sometimes we don't make life easy, but we
13 appreciate the time you spend with us.

14 COMMISSIONER McNAMEE: I just want to express my
15 condolences. It's interesting, the people that we talk
16 about, the people who pass away, who have been here for 40
17 years, 28 years, and that is a testament to this place.
18 It's probably one of the reasons it's one of the best places
19 to work, because people like to work here. People like the
20 people they work with, and we are so very fortunate, as I
21 said earlier, to have all of you.

22 But we should, especially in this time, consider
23 our colleagues who are also our friends and the loss that
24 their families have had with the loss. And, you know, it's
25 supposed to be a joyful time and it's a sad time for some

1 people, and we remember them positively and joyfully.

2 Thank you.

3 SECRETARY BOSE: Yes, Mr. Chairman, thank you for
4 noticing me. I want to call for Commissioner McNamee's vote
5 again just to make sure that we're voting aye on the Consent
6 Agenda.

7 So, Commissioner McNamee, do you mind voting
8 again on the Consent Agenda?

9 COMMISSIONER McNAMEE: I vote aye on all the
10 issues on the Consent Agenda. And I just note my separate
11 statements. Do you need me to go through them again?

12 GENERAL COUNSEL: No.

13 SECRETARY BOSE: From the General Counsel,
14 himself.

15 (Laughter.)

16 CHAIRMAN CHATTERJEE: This concludes our meeting.
17 Happy holidays, everyone.

18 (Whereupon, at 11:48 a.m., Thursday, December 19,
19 2019, the meeting of the Commissioners of the United States
20 Federal Energy Commission was adjourned.)

21

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25

1 CERTIFICATE OF OFFICIAL REPORTER

2

3 This is to certify that the attached proceeding
4 before the FEDERAL ENERGY REGULATORY COMMISSION in the
5 Matter of:

6 Name of Proceeding:

7 1062nd Commission Meeting

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16 Docket No.:

17 Place: Washington, DC

18 Date: Thursday, December 19, 2019

19 were held as herein appears, and that this is the original
20 transcript thereof for the file of the Federal Energy
21 Regulatory Commission, and is a full correct transcription
22 of the proceedings.

23

24 Gaynell Catherine

25 Official Reporter