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UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION
CONSENT ELECTRIC,
CONSENT GAS, CONSENT HYDRO,
CONSENT CERTIFICATES, STRUCK ITEMS

1068th COMMISSION MEETING
TELEPHONIC CONFERENCE

Thursday, June 18, 2020
Conference Room
Ace-Federal Reporters, Inc.
555 12th Street, N.W.
Suite 630-A
Washington, D.C. 20004

The Commission met in open session at 10:00
a.m., when were present:

- CHAIRMAN NEIL CHATTERJEE
- COMMISSIONER RICHARD GLICK
- COMMISSIONER BERNARD McNAMEE
- COMMISSIONER JAMES DANLY
- SECRETARY KIMBERLY D. BOSE

1 Agenda Items:

2 Consent-Electric

3 E-1, E-2, E-3, E-4, E-5, E-8, E-11, E-12, E-13, E-14, E-16,

4 E-17, E-19, E-20, E-21, E-22, E-26, E-27, and E-28

5

6 Consent-Gas

7 G-1, G-2, G-3 and G-4

8

9 Consent-Hydro

10 H-1, H-2, and H-3

11

12 Consent-Certificates

13 C-1, C-2, C-3, C-4, C-5, C-7, and C-9

14

15 Struck Items

16 E-15

17

18

19 Commissioner Statements for June 18, 2020

20 E-8 - Commissioner Glick dissenting with a separate

21 statement

22 E-19 - Commissioner McNamee concurring with a separate

23 statement

24 C-1 - Commissioner Glick dissenting in part with a separate

25 statement

1 C-1 - Commissioner McNamee concurring with a separate
2 statement

3 C-2 - Commissioner Glick dissent in part with a separate
4 statement

5 C-2 - Commissioner McNamee concurring with a separate
6 statement

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

9 C-6 - Commissioner Glick dissenting in part with a separate
10 statement

11 C-6 - Commissioner McNamee concurring with a separate
12 statement

13 C-7 - Commissioner Glick dissenting in part with a separate
14 statement

15 C-7 - Commissioner McNamee concurring with a separate
16 statement

17 C-9 - Commissioner Glick dissenting in part with a separate
18 statement

19 C-9 - Commissioner McNamee concurring with a separate
20 statement

21

22 Struck Items

23 E-15

24

25

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

2 (10:00 a.m.)

3 (This open meeting is being held by
4 teleconference.)

5 CHAIRMAN CHATTERJEE: Good morning, everybody.
6 Actually, I would like to turn it over to the Secretary to
7 kick off the meeting.

8 SECRETARY BOSE: Thank you for gaveling us in,
9 Mr. Chairman.

10 CHAIRMAN CHATTERJEE: Well I haven't gaveled us
11 in yet. I was waiting for you to read the statement
12 regarding public participation.

13 SECRETARY BOSE: Sorry. I didn't know that we
14 were reading that.

15 CHAIRMAN CHATTERJEE: I didn't either. It's on
16 my script.

17 SECRETARY BOSE: Just a minute, please.

18 CHAIRMAN CHATTERJEE: I guess we can forego this,
19 since we are on the phone. And I can just go ahead and
20 gavel us in?

21 SECRETARY BOSE: Yes, please. Thank you.

22 CHAIRMAN CHATTERJEE: Okay. Madam Secretary, we
23 are ready to begin.

24 SECRETARY BOSE: Good morning, Mr. Chairman, and
25 good morning, Commissioners. This is the time and the place

1 that has been noticed for the open meeting of the Federal
2 Energy Regulatory Commission to consider the matters that
3 have been duly posted by the Commission,

4 Please join me in the Pledge of Allegiance.

5 (Pledge Allegiance is recited by all.)

6 SECRETARY BOSE: Commissioners, since the May
7 open meeting the Commission has issued 53 Notational Orders.

8 Thank you, Mr. Chairman.

9 CHAIRMAN CHATTERJEE: Thank you, Madam
10 Secretary, and good morning to everyone. Before we begin, I
11 need to take a moment to address the events that have
12 occurred over the last few weeks in our country.

13 Recent acts of brutality, hate, and even murder
14 have painfully and clearly demonstrated the manner in which
15 racism continues to blight our society. Over half a century
16 has passed since the Civil Rights Act became law, and yet it
17 is deeply troubling that too often our Black communities
18 continue to face disparate treatment, and our Nation is
19 still struggling under the immense weight of racism.

20 During these troubling times, I have reflected on
21 my experience at the historic Selma Pilgrimage earlier this
22 year. As Americans, we have a flawed past and it is very
23 clear we have more work to do decades later.

24 As a parent I have grappled with explaining these
25 events to my children, while praying they will be part of a

1 more accepting and socially responsible future. I am also
2 cognizant of the impact this has on our FERC community.

3 I want to assure you of this: We at FERC has a
4 common goal to keep our workplace free from prejudice and
5 harassment in all its heinous forms. I am proud to be part
6 of an agency that strives to create and protect a diverse
7 and inclusive workforce.

8 And given these recent events, I am committed to
9 work even harder to assure Commission employees they will be
10 safe from racism and discrimination in their work
11 environment.

12 To this end, in addition to our existing
13 policies, I have worked with agency leaders and developed a
14 comprehensive approach focused on providing FERC employees
15 with this assurance.

16 This approach initiates additional dialogue among
17 Commission employees via focus groups and facilitated
18 training. These discussions will be absolutely essential in
19 gaining employee perceptions regarding the presence of
20 diversity, inclusiveness, and discrimination within our
21 ranks.

22 In direct response to the feedback gleaned from
23 these interactions, the Commission will formulate and
24 implement actions to augment its current effort to promote a
25 diverse and healthy workforce culture.

1 I am looking forward to engaging in this
2 important process. I am confident the collective efforts of
3 the FERC workforce will help us maintain a safe and
4 inclusive environment for all employees.

5 I would like to take a moment now to make two
6 personnel announcements. First, I would like to announce
7 Mittal Desai's selection as the Commission's new Chief
8 Information Officer. Mittal, a graduate of Virginia Tech,
9 is an experienced IT leader who has served FERC well in his
10 current position and during his earlier career here as
11 Deputy Chief Information Security Officer and Chief
12 Information Security Officer.

13 As so much of our work is now being performed
14 virtually, IT is more crucial than ever as the Commission
15 carries out its mission. We will all benefit from Mittal's
16 talent and strong leadership, and I appreciate his
17 willingness to take on this important new role.

18 I would also like to announce that Mary
19 O'Driscoll has been named Acting Deputy Director of the
20 Office of External Affairs. Mary has been OEA's Director of
21 Media Relations for 13 years. During her time at FERC, she
22 has led the effort to improve how we explain the
23 Commission's activities, policies, and procedures to the
24 public by focusing on plain language and working to expand
25 the media team to incorporate the Internet and digital

1 media, including social media, video production, and the
2 Open Access Podcast.

3 She came to FERC after 20 years as a report,
4 covering the Commission and Congress. She also has been a
5 communications professional on Capitol Hill, and for the
6 natural gas pipeline industry, and she started in her career
7 as a reporter for newspapers in Arizona, New Mexico, and
8 Nevada.

9 Please join me in congratulating Mittal and Mary.

10 In other exciting news, I am pleased to share
11 that the ferc.gov website has been redesigned, and the new
12 site will be debuted later this month. We hope the new
13 Commission website will be easy to use, accessible, and
14 importantly mobile friendly.

15 Thank you to everyone in the Office of External
16 Affairs, IT, and the Program offices for their hard work on
17 this project. We look forward to seeing the final product.

18 Moving to today's agenda, I would like to first
19 highlight Item G-1, which is a notice of inquiry regarding
20 the proposed Index level used to determine annual changes to
21 oil pipeline rates. This inquiry is a key aspect of our
22 regulation of oil pipelines.

23 Every five years, the Commission reexamines Index
24 level in order to establish new rate ceiling levels. The
25 NOI, which is the first step in the process, invites

1 comments regarding the Commission's proposal, and any
2 alternative methodologies for calculating the Index level.

3 These comments also could address issues such as
4 whether the Commission should reflect the effects of cost of
5 service policy changes calculations of the Index level. I
6 note that the proposal does not include the effects of the
7 return on equity policy change we announced last month,
8 because page 700 data reflecting that policy change has not
9 yet been filed.

10 However, as I mentioned last month, pipelines
11 will have an opportunity to file updated ROE data for
12 consideration in this five-year Index review. I would like
13 to highlight that this proposal is subject to change based
14 upon the updated page 700 data for 2019, and other potential
15 adjustments as supported by the record in this proceeding.

16 The Commission will select a final Index level at
17 the conclusion of this proceeding. Thank you to the team
18 for their outstanding efforts in this proceeding.

19 I would like to turn now to Items E-1, E-2, and
20 E-3, three draft orders on the Commission's investigations
21 into the justness and reasonableness of ISO New England,
22 PJM, and SPP's implementation of their Immediate Need
23 Reliability Project Exemptions.

24 In today's orders, the Commission finds that the
25 existing criteria for Immediate Need Reliability Project

1 Exemptions appropriate maintain the balance between
2 reliability and competition, and ensure that the exemptions
3 are only used in limited circumstances.

4 Items E-1 and E-3 terminate the investigations
5 into ISO New England and SPP, finding that the two RTOs have
6 demonstrated that they remain in compliance with the
7 existing criteria, and that the record does not support a
8 finding that the two RTOs' tariffs are unjust, unreasonable,
9 or unduly discriminatory or preferential.

10 However, Item E-2 finds that PJM's implementation
11 of its Immediate Need Reliability Project Exemption is
12 inconsistent with the existing criteria and is therefore
13 unjust and unreasonable.

14 Accordingly, the Commission directs PJM to submit
15 a compliance filing to revise its operating agreement to
16 fully and more transparently implement the Commission's
17 existing criteria.

18 In my view, this Order underscores the importance
19 that transparency and stakeholder participation plays in
20 ensuring reliability and promoting competition.

21 A lot of hard work went into these Orders, and I
22 would like to thank the team for their great work.

23 Next, I would like to highlight Item E-5. This
24 NOI seeks comments on whether certain subcategories from the
25 NIST cybersecurity framework are adequately addressed by the

1 six reliability standards. These subcategories relate to
2 data security, the identification and analysis of anomalous
3 activity, and the mitigation of cybersecurity events.

4 The NOI also seeks comment on the potential risk
5 of a coordinated cyber attack on geographically distributed
6 comments, as well as whether Commission action would be
7 appropriate to address that risk.

8 Turning to a related matter today, Commission
9 staff will be issuing a white paper on cybersecurity
10 incentives. The white paper proposes two approaches the
11 Commission could consider to incentivize cybersecurity
12 investments that go above and beyond what is required by the
13 SIP Reliability Standards.

14 Under the first approach, the Commission could
15 provide an ROE incentive to utilities that voluntarily apply
16 the SIP requirements for medium- or high-impact systems to
17 low-impact systems.

18 Under the second approach, the Commission could
19 provide utility an ROE incentive to utilities that implement
20 certain security controls included in the NIST Cybersecurity
21 Framework.

22 The white paper seeks comment on both approaches,
23 how they could be implemented, and the level of incentives
24 necessary to materially incent cybersecurity investments.
25 Considered together, these two items highlight the

1 importance of continued examination of the SIP Reliability
2 Standard, and the potential for voluntary actions that could
3 complement mandatory requirements and further improve the
4 electric industry's cybersecurity posture.

5 Thanks to the teams for their efforts on these
6 important matters.

7 I would also like to note two technical
8 conferences that the Commission recently announced. First,
9 today we have announced a staff-led technical conference on
10 transmission infrastructure necessary to enable offshore
11 wind generation.

12 Specifically, we are hosting a discussion about
13 the Commission's existing transmission interconnection and
14 merchant transmission facility frameworks in order to
15 explore how those frameworks accommodate the anticipated
16 growth in offshore wind generation.

17 From my perspective, it is important that we have
18 a broad conversation and better understand potential ways
19 that our rules and policies could be improved so that we can
20 continue to enable efficient and effective transmission
21 infrastructure into the future.

22 I look forward to that discussion which is
23 scheduled to take place on October 27th.

24 And second, yesterday we announced that on
25 September 30th we will be hosting a Commissioner-led

1 technical conference to have a forward-looking conversation
2 about carbon pricing mechanisms in FERC jurisdictional
3 wholesale electricity markets. We are convening this
4 discussion in response to a petition filed by a diverse
5 coalition that ranged from the Natural Gas Supply
6 Association to the American Wind Energy Association, and
7 which drew strong support from a wide array of stakeholders.

8 When such a broad group of voices ask the
9 Commission to convene an exchange of ideas, I think it is
10 important that we do so. I am looking forward to the
11 conference and discussion in September.

12 Finally, I also wanted to note that we will
13 shortly be issuing an additional notice detailing the
14 panelists we have invited to speak at the virtual
15 Commissioner-led technical conference we will be holding on
16 July 8th and 9th to explore the ongoing effects the
17 COVID-19 emergency is having on various segments of the
18 United States energy industry.

19 We have a great lineup of experts on these
20 issues, and I am looking forward to the timely and important
21 discussions that we will have.

22 With that, I will conclude my remarks and turn
23 back to my colleagues for any additional opening statements
24 or announcements they may have, beginning with Commissioner
25 Glick.

1 COMMISSIONER GLICK: Thank you, Mr. Chairman. I
2 first want to associate myself with your remarks about the
3 recent killings that took place in Minnesota, Kentucky, and
4 Georgia, the protests that followed, and the dialogue that
5 has ensued.

6 You know, as is the tradition is that at the
7 beginning of every Commission meeting we just recited the
8 Pledge of Allegiance. I am sure each of us has recited the
9 Pledge hundreds, if not thousands, of times. And it has
10 probably gotten to the point where we say the words but we
11 are not really listening to what they mean. But it is
12 important for us to give some thought to the final clause,
13 "with Liberty and Justice for all."

14 The fact is that for a good number of people in
15 this country, particularly African Americans and other
16 minority groups, justice remains the goal but not a fact. I
17 think back to 2008 when this country elected our first
18 African American President. There was such hope that we
19 were finally on the path to healing the racial divisions
20 that have torn apart this country from its inception. But
21 it didn't take long before it became clear that one election
22 wasn't going to be a panacea.

23 There were horrific things that some people said
24 about President Obama, and numerous incidents around the
25 country that demonstrated that we still have a long way to

1 go.

2 And 12 years later, after another round of tragic
3 deaths, we ask ourselves again when will Black Lives Matter
4 choose to be a rallying cry and instead be a creed by which
5 we all live?

6 This subject is especially timely as tomorrow is
7 Juneteenth, which celebrates the end of slavery. Juneteenth
8 should serve as a time for reflection, action, and hope, and
9 not let this moment fade from our memories.

10 We all as individuals and as members of
11 organizations such as the Commission need to think about
12 what we can do to achieve what the Pledge of Allegiance says
13 this country is all about.

14 I've spoken with Chairman Chatterjee about this
15 issue on several occasions and know how strongly he feels
16 about the need for progress. And as the Chairman mentioned,
17 he is working on a series of measures designed to help us
18 move in the right direction. I want to commend the Chairman
19 for this, because I know it comes from his heart. And I
20 want to let him know that I will do whatever I can to help
21 him.

22 On to the more mundane world of FERC, I want to
23 address the rule the Commission issued last week that
24 prohibits the Commission, on a going-forward basis, from
25 permitting a pipeline company to begin construction of a

1 project before the Commission acts on a rehearing of a
2 certificate of public convenience and necessity.

3 Landowners and other impacted parties have argued
4 for years how problematic it is that the Commission can
5 approve a certificate, enabling the pipeline company to take
6 lands through eminent domain, and eventually to begin
7 construction, before project opponents can even have their
8 day in court.

9 This is because, as soon as the Commission grants
10 a certificate, the certificate holder can immediately pursue
11 to court to condemn property, but the landowners can't
12 appeal the Commission decision until it acts on rehearing.

13 Judge Mollette, in a concurring opinion in the
14 Allegheny Defense Project case, aptly referred to this
15 unfair process as Kafkaesque. In the aftermath of Judge
16 Mollette's concurrence, Chairman Chatterjee announced that
17 the Commission would try its best when landowners requested
18 rehearing to issue a hearing orders within the statutorily
19 required 30 days, rather than issue a tolling order.

20 And the Commission has been doing a somewhat
21 better job of acting on a rehearing request more quickly,
22 although still missing in many cases the 30-day target.

23 Thereafter, the D.C. Circuit agreed to hear the
24 Allegheny case en banc to further consider Judge Mollette's
25 concerns that landowners were not being treated fairly

1 because, one, a pipeline company could take their land via
2 eminent domain; and two, a pipeline company could construct
3 a project all before the landowner even could challenge the
4 project in court if the Commission failed to act in a timely
5 manner.

6 The court heard oral argument in this case on
7 April 27th but has yet to rule.

8 That brings us to the issuance of the Final Rule,
9 to which I dissented in part and concurred in part. I do
10 believe the Order is a step in the right direction because
11 it addressed one of the two concerns outlined by Judge
12 Mollette. The Commission might permit construction to start
13 on a pipeline project before a party could challenge the
14 certificate in court, but I also dissented because the Order
15 did nothing to address the fact that, as Judge Mollette
16 pointed out, the pipeline developers, once they have a
17 certificate, can go to court and take property that isn't
18 theirs via eminent domain.

19 It seems to me that if you are going to try to
20 treat landowners fairly, you would want to ensure that they
21 can go to court to challenge the Commission's decision
22 before they have their land taken from them.

23 The only possible argument for continuing to
24 enable condemnation via eminent domain before the
25 Commission's decision can be appealed, is there can be times

1 when a pipeline developer may need access to land to conduct
2 surveys to enable other agencies to properly assess the
3 potential impacts of the project before it moves forward.
4 That is why my partial dissent outlines the compromise
5 proposal that would have preemptively stayed a certificate
6 until the Commission acted on a rehearing.

7 Pipeline developers would have been able to come
8 in and ask for, on a case-by-case basis, to not stay its
9 finding of public convenience and necessity, if eminent
10 domain is necessary, to keep the regulatory process moving.
11 But unfortunately the Commission chose to ignore eminent
12 domain entirely.

13 Now you might ask, why is it so important? Will
14 landowners be able to eventually have their day in court and
15 get their land back if they prevail? Well, no. Take, for
16 example, the Spire Pipeline in Illinois and Missouri. Let's
17 consider what happened to landowners there.

18 The Commission issued an Order approving the
19 project on August 3rd, 2018, by a 3 to 2 vote. Commissioner
20 LaFleur and I voted no because the project was entirely
21 unnecessary. Less than two weeks later, Spire filed its
22 first condemnation actions in both Missouri and Illinois
23 District Courts.

24 Less than four months later, both courts issues
25 orders allowing the company to take 230 acres. And that was

1 just the start. In total, the company used eminent domain
2 to acquire more than one-third of the land needed for the
3 project. And that doesn't even include the landowners that
4 contend they were threatened by Spire to allow the company
5 access, and were told that if they didn't comply Spire would
6 reroute the project to go through their houses and use
7 eminent domain.

8 Meanwhile, the company built the project to begin
9 operation. And then, even days after authorizing the
10 project to be placed into service, 15 months after issuing
11 the certificate of public convenience and necessity, the
12 Commission finally found itself able to issue an order
13 denying rehearing.

14 Spire's certificate is only now before the
15 appellate court. In the meantime, a number of landowners
16 argue that the company has flooded their land and caused
17 agricultural destruction during construction, and these
18 issues have not been fixed.

19 Even Kafka could not have imagined such a
20 Kafkaesque result.

21 So I hope the Commission will take the next step
22 and finally resolve this unfair process once and for all.

23 Now with regard to today's Orders, I will be
24 dissenting or partially dissenting on seven of the Orders on
25 today's agenda. First, I am dissenting on E-8. In this

1 Order, the Commission is approving ISO New England's
2 proposal to make payments to generators to incentivize them
3 to have fuel on site during very cold days. There is a lot
4 wrong with this proposal.

5 What is most disturbing is that it is expected to
6 cost consumers an additional \$300 million without much, if
7 any, benefits. The substantial portion of these payments
8 will go to nuclear, coal, and certain hydro-powered
9 generators that won't even have to lift a finger because
10 they will have the fuel onsite anyway.

11 If you truly care about fuel security, you
12 wouldn't waste consumers' money on payments that won't do
13 anything to improve fuel security. Unfortunately, that is
14 exactly what this Order does.

15 Furthermore, after we have been lectured by the
16 Chairman over the last several months about the sanctity of
17 markets, the Commission today abandons any market principles
18 that might actually have had, and chosen instead to make
19 consumers pay an administratively established price
20 generators that bears no relation to the fuel security needs
21 of the region or the value of these generators -- or the
22 value these generators are or are not providing to the
23 region.

24 The one constant in our recent orders is that the
25 Commission will always choose the option that funnels more

1 money to generators, whether it is justified or not. There
2 was already a market mechanism in place designed to ensure
3 the generators in New England are available when needed. It
4 is called "Pay For Performance."

5 If ISO New England doesn't think Pay For
6 Performance is sufficiently working, then let's hear a
7 proposal to fix that program, not create another unnecessary
8 subsidy.

9 I will also be partially dissenting on Chick's
10 Natural Gas Pipeline Orders being issued today. I am not
11 going to go into each individual Order in detail, but
12 suffice it to say that the Commission continues to make the
13 same mistake by refusing to consider the significance of
14 each project's reasonably foreseeable greenhouse gas
15 emissions on climate change, as the D.C. Circuit said we
16 must.

17 As I have said before, examining the significance
18 of the impacts associated with a project's greenhouse gas
19 emissions doesn't necessarily predetermine the fate of the
20 project. There are a number of options.

21 First, you could take a look at the project's
22 emissions and determine that they aren't significant. But
23 if you do find that the emissions are significant, you can
24 conclude that the benefits of the project outweigh the
25 adverse impacts. Or if you don't find the benefits exceed

1 the impacts, you could require that the project's greenhouse
2 gas emissions be mitigated. This isn't rocket science. We
3 require mitigation of project impacts all the time.

4 Now Commissioner McNamee's concurrence continues
5 to argue that somehow the Commission is prohibited from
6 mitigating greenhouse gas emissions because Congress hasn't
7 yet enacted legislation limiting these emissions. I have to
8 say that I am puzzled by this argument.

9 The Commission is required to ensure that a
10 project receiving a certificate is in the public interest.
11 And this is bolstered by conditioning authority that comes
12 directly from the Natural Gas Act. The Commission has
13 consistently employed a broad approach to mitigating the
14 potential impacts of a project through the conditions
15 contained in these Orders.

16 Moreover, the courts have told us repeatedly that
17 climate change is relevant to the Commission's public
18 interest analysis under the Natural Gas Act. If an issue is
19 relevant to our public interest analysis, of course it can
20 address it through mitigation before approving the project.

21 I know Commissioner McNamee disagrees with those
22 cases, but they are the law which we are supposed to be
23 bound by. In any case, we often impose mitigation
24 requirements for impacts when Congress hasn't spoken.

25 For instance, when the Commission approved the

1 Jordan Cove LNG project, all three of my colleagues voted to
2 require the company to take action to mitigate the impacts
3 from an expected housing shortage in the region. I didn't
4 hear anyone say we can't do this; Congress hasn't addressed
5 this. Why is climate change different? That is of course a
6 rhetorical question.

7 One can point out, as Commissioner McNamee does,
8 that numerous bills proposed to establish greenhouse gas
9 emission limits in Congress have failed. But does that make
10 the impacts of these emissions on climate change any less
11 real? Twenty-three states, plus Washington, D.C., have
12 already acted to establish greenhouse gas emission limits.
13 If we are going to take Congress's inaction into account, we
14 also need to respect what the states are telling us.

15 Climate change is an issue that directly bears on
16 the public interest.

17 I also want to briefly discuss E-5, which the
18 Chairman referenced earlier, which is Notice of Inquiry
19 asking whether the Commission should seek to further bolster
20 the NERC's SIP standards to enhance the cybersecurity of the
21 grid. Some of the questions included in the NOI asked
22 whether certainly SIP standards should be applied to
23 low-impact facilities.

24 At the same time, as the Chairman announced, the
25 Commission is today issuing a staff white paper asking

1 whether we should provide additional incentive to promote
2 greater cybersecurity, including incentivizing low-impact
3 cyber systems to meet SIP requirements for medium- and
4 high-impact cyber systems.

5 I will be interested in reviewing the comments in
6 response to the NOI, as well as the white paper, especially
7 on the questions of if these are the right approaches to
8 promote best practices in cybersecurity; whether we need
9 incentives to encourage such investments; or if SIP
10 standards should be expanded to include lower impact cyber
11 systems.

12 And finally, the Commission today is denying the
13 complaint filed by Embarek and the transmissions tariffs as
14 unjust and unreasonable. And I agree with that decision,
15 because Embarek did not satisfy its burden pursuant to
16 section 202 and 206 in the federal power act. But I want to
17 highlight important questions that warrant further
18 investigation.

19 Today, primarily in the East, they are more
20 determined than ever to facilitate development of a
21 significant amount, of offshore wind generated capacity.
22 As for the transformed transmission projects, where the
23 transmission is built in anticipation of generation, may be
24 the most efficient approach for accommodating the growth of
25 offshore wind.

1 I commend Chairman Chatterjee for noticing a
2 technical conference to explore whether existing RTO/ISO
3 frameworks can accommodate this anticipated growth, and I
4 look forward to digging into these issues with relevant
5 stakeholders later this year.

6 Thank you, Mr. Chairman.

7 CHAIRMAN CHATTERJEE: Thank you. Commissioner
8 McNamee?

9 COMMISSIONER McNAMEE: Thank you, Mr. Chairman.
10 Like my colleagues, I think it is appropriate for us to
11 reflect about the challenges the country has been having,
12 and the anger, frustration, and sorrow that so many people,
13 especially in the African American community and other
14 minority communities, have been suffering.

15 As has been noted by my colleagues, Juneteenth is
16 tomorrow. And having grown up in Texas, I always remember
17 this as a holiday and as a discussion. I always thought it
18 was something very interesting, the fact that the
19 Emancipation Proclamation only made it to Texas and to the
20 states that were two-and-a-half years after it was issued by
21 President Lincoln.

22 I think that delay, the fact that we recall
23 Juneteenth and its growing recognition as a holiday, is
24 appropriate because it is a certain metaphor for the
25 challenges that we as a Nation have. Recognition that we

1 aspire to ideals that are very important, that recognize
2 that, as President Lincoln said, that we are a continent, a
3 new Nation conceived in liberty, and dedicated to the
4 proposition that all men are created equal. But, that that
5 is not always being fulfilled.

6 And we are constantly reminded that every day we
7 must strive to do more. And I think it is worth noting in
8 the Gettysburg Address something that makes it clear for all
9 of us, something that we should think about. He said at the
10 end of it:

11 "It is rather for us to be here dedicated to the
12 great task remaining before us; that from these hallowed
13 dead we take increased devotion to that cause for which they
14 gave their last full measure of devotion; that we here
15 highly resolve that these dead men shall not have died in
16 vain; that this Nation shall have a new birth of freedom,
17 and the government by the people" -- or "the government of
18 the people, by the people, and for the people shall not
19 perish from the earth."

20 I commend the Chairman for trying to address
21 issues and making sure that we as a Commission live up to
22 our ideals as a Nation. And I know that something that all
23 of us, not just as a matter of policy, not just as a matter
24 of government, but as individuals we have an obligation to
25 reflect on how we treat each other, and to treat each other

1 better.

2 So that is probably the most important thing I
3 will say today. I also want to comment on a few other
4 things.

5 First of all, I want to talk about some personnel
6 changes I have on my team. First of all, Carolyn Clark, my
7 senior legal advisor, will be joining Commissioner Danly as
8 a legal advisor for natural gas and oil projects. As many
9 of you know, Carolyn will be leaving for maternity leave in
10 the near future, and I am very happy that Commissioner Danly
11 has asked Carolyn to join his team in the interim.

12 Carolyn has a great legal mind and is a diligent
13 worker, and I am grateful for all of her hard work and the
14 sound advice she has provided me. I am confident that she
15 will continue her great work for Commissioner Danly and FERC
16 as a whole.

17 I am also pleased to announce that Megan McComb
18 has joined my team as an advisor, and she will now be
19 focused in helping me on natural gas and certificate project
20 issues, as well as oil pipeline issues. Megan was
21 previously an energy industry analyst with the Office of
22 Administrative Litigation where she focused on natural gas
23 and oil pipeline rate and tariff issues.

24 Megan began her career at FERC in 2004 as a
25 testifying witness on a variety of natural gas, electric,

1 and oil and gas pipelines. Megan graduated from the
2 University of Florida in 2003 with a degree in economics,
3 and later from Johns Hopkins University with a Masters in
4 International Public Policy with a focus on Energy.

5 So I am grateful to Carolyn for all she did, and
6 I am excited and appreciate all the work that Megan is doing
7 and will do in the future.

8 Now on some of the items, as the Chairman
9 mentioned, we will be issuing G-1, which is the Oil Index
10 proceeding notice, and am looking forward to hearing from
11 the parties about that. This is an important proceeding
12 that helps ensure that we have, consistent with the 1992
13 Policy Act, that we are providing flexibility and reduced
14 regulation and efficiency in oil pipeline rates. And I
15 look forward to seeing how this proceeding plays out.

16 I also want to mention on E-19 and the technical
17 conference related to offshore wind, I think that the fact
18 that we are going to be having a technical conference on how
19 to develop offshore wind and the transmission issues
20 involved with it is very important. I think that ensuring
21 that we think about the issues in trying to ensure that
22 there are efficiencies and addressing various issues that
23 come with that, from financing to other things, is going to
24 be very important and I will look forward to seeing how that
25 develops, as well.

1 Next, it is no surprise that on natural gas
2 certificate issues I will be concurring in a number of the
3 certificate items. The continuing discussion between
4 Commissioner Glick and myself in terms of his dissents and
5 my concurrences continue. And I think that nothing has
6 changed in my view that the Natural Gas Act and NEPA do not
7 provide the Commission with the authority to deny -- deny a
8 pipeline based on the upstream development or the downstream
9 use of natural gas.

10 And as I talk through in my concurrences, my
11 colleagues seem to use an over-expansive view of the term
12 "public interest" in order to achieve his policy goals;
13 whereas, I make clear that the term used in Section 7 of the
14 Natural Gas Act is "the public convenience and necessity,"
15 and that cabins what the public interest can be. And, that
16 we also cannot take what is -- go beyond what the court has
17 actually said in Sable Trail, which I agree is binding, and
18 hence I support our Orders and believe they're consistent
19 with the direction of the court in Sable Trail. But we also
20 cannot take the dicta that is used in Berkhead in order to
21 expand our jurisdiction.

22 I think it's also clear that it is important to
23 think about -- about what our authority is; that we as an
24 energy regulator not an environmental regulator cannot
25 suddenly take onto ourselves powers that we do not have. In

1 particular, the desire to regulate greenhouse gases.

2 Because Congress has tried over 70 times in the
3 last 15 or 20 years in order to regulate greenhouse gases
4 and has not done so, it does not mean that now the
5 Commission should be filling the gap. In fact, Congress has
6 directed one federal agency to deal with their emissions,
7 and that is the Environmental Protection Agency. And they
8 have not established standards, and we should not be taking
9 that role because of any frustration of any particular
10 Commissioner or others that Congress has not acted, or that
11 the EPA has not taken on the activity.

12 We have neither the authority nor the expertise
13 to do so. And it is very important that, as an energy
14 regulator, that we look at what the organic statutes say,
15 what the statutes empowering us say, and follow them; and,
16 that we follow what the statutes say and what the courts
17 say. And I am confident that we are doing so in those
18 activities.

19 So I look forward to the continuing debate
20 between Commissioner Glick and I, and the public in general,
21 because these are very important issues and I think it is
22 healthy that there is a debate on them because it is
23 important to understanding our jurisdiction, our authority,
24 and to making sure that we carry out our mission. And that
25 is something that I think is very important. And that even

1 when there are debates, I think all of us can agree upon.

2 Finally, I just want to comment about, there has
3 been some interest about what my future will be. And since
4 my announcement in January 2020 at the Commission meeting
5 then, I stated that I would not be seeking reappointment to
6 the Commission. And as I stated back then, I said I will
7 serve through the end of my term, or later as permitted, and
8 if needed.

9 My term officially ends June 30th, 2020. The
10 current rules allow me to serve until my replacement is
11 confirmed, or the end of the current Congress. As there are
12 many important issues confronting the Commission, the energy
13 sector, and the country, I intend to continue serving as a
14 Commissioner for the foreseeable future. The challenges
15 facing the energy sector during the economic crisis caused
16 by the coronavirus pandemic have been unprecedented, and the
17 appropriate handling of these challenges has been vital to
18 the provision of safe and reliable energy in the United
19 States.

20 The efforts by the regulated community and the
21 FERC community to manage this crisis has been remarkable. I
22 am also impressed by how the Commission has continued to
23 function and produce exemplary work even when we work
24 remotely.

25 This has been a great credit to the employees of

1 the Commission and the planning and preparation by our
2 Executive Director Anton Porter, and to the Executive IT
3 team as a whole.

4 It remains an honor to serve as a Commissioner,
5 and I look forward to continuing to contribute to the work
6 of the Commission. Of course I will continue to seek and
7 secure future employment, and I will follow all the
8 applicable ethics rules to recuse myself from matters as
9 necessary.

10 I am certain that whatever I do next, I will look
11 back at my time with the Commission with pride and be
12 grateful for the opportunity to have worked with so many
13 interesting issues, and with so many smart and dedicated
14 people.

15 Thank you, Mr. Chairman.

16 CHAIRMAN CHATTERJEE: Thank you. Commissioner
17 Danly.

18 COMMISSIONER DANLY: Thank you, Mr. Chairman. I
19 appreciate my colleagues' comments this morning, and I have
20 only one thing that I want to raise, which is a point about
21 the instant Final Rule.

22 So it is true that the Commission did not go the
23 extra step of seeking to stay the effectiveness of the
24 certificates as to eminent domain proceedings, and there is
25 a good reason why. It is because it is far from certain

1 that the Commission has the power to stay the effectiveness
2 of those certificates for the purpose of seeking eminent
3 domain.

4 The eminent domain proceeding, Section 7(h), is a
5 separate jurisdictional grant from Congress to the District
6 Courts, and in thinking about this I commend the attention
7 of anybody who is interested in the issue to conduct a close
8 reading of the dissent in that case, which rightly points to
9 a handful of district court cases supporting the position
10 that such a characterization of our certificates'
11 effectiveness could work to stop eminent domain
12 proceedings.

13 But in fact, I actually am not convinced that
14 that's true because there are appellate court decisions that
15 cut in the opposite direction, or at least very strongly
16 suggest that it wouldn't work.

17 First, we have Borden Town, which says, in what I
18 think is fairly unequivocal language, that Section (h)
19 contains no condition precedent to the exercise of domain
20 for a certificate holder other than that they have tried and
21 failed to get the property by other means.

22 And then even more persuasively, there's
23 Midcoast, which says that the Commission doesn't have the
24 power to deny a certificate holder once they hold the
25 certificate, the power of eminent domain. That is a fairly

1 strong declaration of what the Commission's abilities are to
2 invade the district court's jurisdiction, which is a
3 separate jurisdictional grant for separate proceedings, all
4 of which are conditioned solely upon the issuance of the
5 certificate, which once the holder has following our public
6 convenience and necessity determination is sufficient for
7 the proceedings to move apace.

8 So I think that at the very least it is an open
9 question. And while I, and all of the Commissioners are
10 certainly sure of Commissioner Glick's concerns about the
11 consequences to landowners, that does not in itself
12 encourage us to ignore the limitations on our powers.

13 So I do commend in both cases the people who are
14 interested take a look at the language in both Midcoast and
15 Borden Town.

16 Other than that, I have no further comments.
17 Thank you.

18 CHAIRMAN CHATTERJEE: Thank you, Commissioner
19 Danly. If I could prompt you for a moment, do you have any
20 personnel announcements that you care to make this morning?

21 COMMISSIONER DANLY: Thank you, Mr. Chairman. I
22 do. They're in front of me on my notes, but I got so
23 wrapped up in my enthusiasm for the case law that I
24 completely forgot.

25 I want to welcome Carolyn, as Commissioner

1 McNamee mentioned. She is now a legal advisor in my office.
2 I've worked with Carolyn now for two years when I was
3 General Counsel and she worked for Kevin and then Bernie. I
4 am delighted to have her in the office. And we look forward
5 to working with her.

6 And also Paul White, who has joined as a legal
7 advisor. I worked with him for years in the past, and he is
8 going to be working on electric items with Matt.

9 So thank you, Mr. Chairman. I really appreciate
10 you saving me from that terrible misstep there (laughing).

11 CHAIRMAN CHATTERJEE: You're welcome, sir.
12 Thank you for your remarks.

13 I also just want to take a moment to both welcome
14 Megan to the McNamee staff, and Paul to the Danly staff. I
15 look forward to working with both of you all as we continue
16 to address the Commission's business. And I also want to
17 congratulate Kalen for moving from Commissioner McNamee's
18 office to Commissioner Danly's office. I think it is the
19 most significant trade or transaction that has taken place
20 during this quarantine period, even more significant than
21 Tom Brady's move from New England to Tampa Bay.

22 With that, Madam Secretary, we are ready to go to
23 the Consent Agenda.

24 SECRETARY BOSE: Thank you, Mr. Chairman.

25 Since the issuance of the Sunshine Act Notice on

1 June 11th, 2020, Item E-15 has been struck from this
2 morning's agenda. Your Consent Agenda is as follows:

3 Electric Items: E-1, E-2, E-3, E-4, E-5, E-8,
4 E-11, E-12, E-13, E-14, E-16, E-17, E-19, E-20, E-21, E-22,
5 E-26, E-27, and E-28.

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

7 Hydro Items: H-1, H-2, and H-3.

8 Certificate Items: C-1, C-2, C-3, C-4, C-5, C-6,
9 C-7, and C-9.

10 As to E-8, Commissioner Glick is dissenting with
11 a separate statement. As to E-19, Commissioner McNamee is
12 concurring with a separate statement. As to C-1,
13 Commissioner Glick is dissenting in part with a separate
14 statement, and Commissioner McNamee is concurring with a
15 separate statement. As to C-2, Commissioner Glick is
16 dissenting in part with a separate statement, and
17 Commissioner McNamee is concurring with a separate
18 statement. As to C-3, Commissioner Glick is dissenting in
19 part with a separate statement. As to C-6, Commissioner
20 Glick is dissenting in part with a separate statement, and
21 Commissioner McNamee is concurring with a separate
22 statement. As to C-7, Commissioner Glick is dissenting in
23 part with a separate statement, and Commissioner McNamee is
24 concurring with a separate statement. And as to C-9,
25 Commissioner Glick is dissenting in part with a separate

1 statement, and Commissioner McNamee is concurrent with a
2 separate statement.

3 We are now ready to take a vote on this morning's
4 Consent Agenda. The vote begins with Commissioner Danly.

5 COMMISSIONER DANLY: I vote aye.

6 SECRETARY BOSE: Commissioner McNamee.

7 COMMISSIONER McNAMEE: I vote aye on all items,
8 and my concurrences in E-19, C-1, C-2, C-6, C-7, and C-9.

9 SECRETARY BOSE: Thank you. Commissioner Glick.

10 COMMISSIONER GLICK: Noting my dissent in E-8 and
11 my partial dissents in C-1, C-2, C-3, C-6, C-7, and C-9, I
12 vote aye.

13 SECRETARY BOSE: Thank you, Commissioner, And,
14 Mr. Chairman.

15 CHAIRMAN CHATTERJEE: I vote aye.

16 SECRETARY BOSE: Mr. Chairman, there are no
17 discussion or presentation items for this morning.

18 CHAIRMAN CHATTERJEE: Thank you, Commissioners,
19 and Madam Secretary.

20 Before we close, I would like to take a moment to
21 welcome the 2020 class of summer interns that joined the
22 Commission in the last month. This summer we have 33
23 interns and volunteers joining the Commission virtually.
24 Our talented group includes students in both undergraduate
25 and graduate programs. Our interns are working remotely in

1 different time zones ranging from Boise, Idaho, to
2 Sacramento, California.

3 Our group includes world travelers, linguists,
4 and so much more. Although I know it is an unconventional
5 internship being virtual, we all hope that you have a
6 fulfilling experience here at FERC. Thank you for spending
7 the summer with us. We are grateful to your service to the
8 Commission and to the country.

9 And before we conclude, Madam Secretary, I would
10 like to turn it over to my colleagues for any closing
11 comments they may have.

12 SECRETARY BOSE: Certainly.

13 CHAIRMAN CHATTERJEE: Starting with Commissioner
14 Glick.

15 COMMISSIONER GLICK: I don't have any additional
16 comments, thank you, Mr. Chairman.

17 CHAIRMAN CHATTERJEE: Commissioner McNamee?

18 COMMISSIONER McNAMEE: No comments, Mr. Chairman.

19 CHAIRMAN CHATTERJEE: Commissioner Danly?

20 COMMISSIONER DANLY: Nothing, Mr. Chairman.

21 Thank you.

22 CHAIRMAN CHATTERJEE: Thank you all. With that,
23 this meeting is adjourned.

24 (Whereupon, at 10:49 a.m., Thursday, June 18,
25 2020, the meeting of the Commissioners of the United States

1 Federal Energy Regulatory Commission was adjourned.)

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CERTIFICATE OF OFFICIAL REPORTER

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

Name of Proceeding:
1068th Commission Meeting

Docket No.:
Place: Washington, DC
Date: Thursday, June 18, 2020

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

LARRY FLOWERS
Official Reporter