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UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

CONSENT ELECTRIC, CONSENT GAS,
CONSENT HYDRO, CONSENT CERTIFICATES,
DISCUSSION ITEMS, STRUCK ITEMS

1059th COMMISSION MEETING
Thursday, September 19, 2019
Commission Meeting Room
Federal Energy Regulatory Commission
888 First Street, NE
Washington, D.C. 20426

1 The Commission met in open session at 10:08 a.m.,
2 when were present:

3 CHAIRMAN NEIL CHATTERJEE

4 COMMISSIONER RICHARD GLICK

5 COMMISSIONER BERNARD McNAMEE

6 SECRETARY KIMBERLY D. BOSE

7

8 Agenda Items:

9 Consent-Electric

10 E-2, E-3, E-4, E-5, E-6. E-7 E-8, E-9, E-10, E-11, E-13,
11 E-14, E-15, E-16, E-17, E-18, E-20, E-21, E-22, E-23, and
12 E-25

13

14 Consent-Gas

15 G-1

16

17 Consent-Hydro

18 H-1, H-2, H-3, H-4 and H-5

19

20 Consent-Certificates

21 C-1, and C-2

22

23 Discussion Items

24 E-1

25

1 Struck Items

2 None

3

4

5 Commissioner Recusals and Statements for September 19, 2019

6 E-1 Commissioner Glick dissenting in part with a
7 separate statement

8 H-2 - Commissioner Glick dissenting in part and
9 concurring in part with a separate statement

10 H-3- Commissioner Glick dissenting with a separate
11 statement

12 H-4 Commissioner Glick dissenting with a separate
13 statement

14 C-1 Commissioner Glick dissenting with a separate
15 statement

16 C-2 Commissioner Glick dissenting with a separate
17 statement

18

19 Discussion and/or Presentations

20 E-1 - Presentation by Joshua Kirstein (OGC) accompanied
21 by Larry Greenfield (OGC), Matthew Estes (OGC), Helen
22 Shepherd (OEMR) and Stanley Wolf (OEPI)

23

24 Struck Items

25 None

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

2 (10:08 a.m.)

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

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

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

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

21 Additionally, documents presented to the
22 Chairman, Commissioners, or staff during the meeting will
23 not become part of the official record of any Commission
24 proceeding, nor will they require further action by the
25 Commission. If you wish to comment on an ongoing proceeding

1 before the Commission, please visit our website for more
2 information.

3 Thank you for your cooperation.

4 (Pause.)

5 Good morning, Mr. Chairman. Good morning,
6 Commissioners. This is the time and the place that has been
7 noticed for the open meeting of the Federal Energy
8 Regulatory Commission to consider the matters that have been
9 duly posted by the Commission.

10 Please join us in the Pledge of Allegiance.

11 (Pledge of Allegiance recited.)

12 SECRETARY BOSE: Commissioners, since the July
13 open meeting the Commission has issued 114 notational
14 orders.

15 Thank you, Mr. Chairman.

16 CHAIRMAN CHATTERJEE: Welcome everyone back after
17 August. And, again, the reason for the difficulty in
18 working the microphone is that we have a newly renovated
19 Commission hearing room, which I think looks rather nice.
20 And so I want to thank the team that worked to get the room
21 operational and ready for this meeting.

22 I also want to say, lest anyone think that the
23 Commission was on recess during August, as the Secretary
24 noted we processed 114 Notational Orders.

25 I want to particularly thank the Secretary's

1 office for their tremendous work. This is the third
2 consecutive August that they have had to work diligently
3 throughout the month. If you recall, in August of 2017 we
4 had just restored a quorum. In August of 2018, Commissioner
5 Powelson departed, and this year we had the departure of
6 Commissioner LaFleur. So I again really want to thank the
7 Secretary and your entire team for your tremendous work--not
8 just in August, but always.

9 I have a few preliminary matters before I turn to
10 the items on today's agenda.

11 First, I would like to welcome Angelo
12 Mastrogiacono to my team. Angelo joined us--did I say that
13 right? Okay, thank you. I've been practicing all morning.

14 (Laughter.)

15 CHAIRMAN CHATTERJEE: Angelo joined us on detail
16 as a technical advisor at the beginning of August, and has
17 already been a huge asset. He is a FERC veteran, having
18 worked for six years in the Office of Energy Market
19 Regulation on some of the most complex market issues that we
20 have tackled. He has an MBA from the University of
21 Pittsburgh where he also studied economics and mathematics
22 as an undergraduate.

23 So thank you, Angelo, for your willingness to
24 serve in this new role. And thanks also to Anna and Jette
25 in OEMR for facilitating.

1 I would also like to formally announce an
2 internal reorganization. Specifically, we have realigned
3 some of the functions that previously were housed in the
4 Office of Enforcement, to enable OE to focus on its core
5 mission: Continuing oversight of market activities,
6 investigations, and audits.

7 Compliance and market surveillance functions will
8 remain in the Office of Enforcement. But some
9 policy-related functions, such as broadly assessing market
10 trends, will be transferred to FERC's Office of Energy
11 Policy and Innovation. Similarly, some data management
12 support functions will be transferred to the newly created
13 Data Governance Division within the Office of the Executive
14 Director.

15 This reorganization makes a lot of sense, and it
16 will create efficiencies and more effectively align staff
17 resources and functions. Importantly, OE will maintain all
18 of the resources it needs to comprehensively address market
19 oversight and compliance.

20 Now, turning to the agenda.

21 I am extremely pleased that we are taking action
22 on Item E-1 to modernize our regulations under the Public
23 Utility Regulatory Policies Act of 1978, or PURPA.

24 As most of you in this room know, updating our
25 PURPA regulations has been one of my top priorities since

1 coming to the Commission two years ago. I made a commitment
2 to tackle this difficult issue, ensuring that our
3 regulations reflect today's markets rather than the energy
4 landscape of the seventies. Our action today is truly
5 significant, and I am looking forward to talking more about
6 exactly what it means after the staff presentation later
7 this morning.

8 I also want to highlight Items C-1 and C-2. The
9 Cheyenne Connector is a major pipeline project to move
10 600,000 decatherms per day of natural gas from Colorado to
11 markets in the Midwest and Gulf Coast.

12 Another project on today's agenda, Eagle LNG,
13 plans to focus on small and mid-sized shipments to help
14 islands in the Caribbean access U.S. gas.

15 As we take action on these significant projects,
16 I want people to understand the thought and efforts that the
17 Commission has put into ensuring that we consider the
18 concerns of affected landowners.

19 I am cognizant of the timing and fairness
20 concerns that sometimes arise in infrastructure cases
21 implicating landowner rights, and I am committed to doing
22 all we can to improve our processes at FERC on this front.
23 That is why I have directed a revision of the Commission's
24 process on certain requests for rehearing of Section 7
25 certificates.

1 Our objective is simple. We want to ensure that
2 landowners are afforded a judicially appealable rehearing
3 order as quickly as possible. To accomplish this, I have
4 worked with the Office of General Counsel to refine our
5 staff process to prioritize the narrow set of rehearing
6 requests involving landowner rights. For these cases, we
7 have established a target of issuing rehearing orders within
8 30 days and avoiding, to the extent practicable, the use of
9 tolling orders.

10 I am confident that with this reallocation of
11 staff resources we can substantially reduce the time we take
12 to issue rehearing orders in these critical cases.

13 Additionally, when I testified before the House
14 Energy and Commerce Committee in June, I reinforced my
15 commitment to landowners as well as my intention to improve
16 the transparency of our process.

17 Making information more accessible to landowners
18 affected by natural gas projects is and will continue to be
19 a key objective of mine during my tenure at the Commission.

20 Historically, information about the review
21 process and how landowners can engage with FERC or
22 participate in the process has been scattered across FERC's
23 website, but difficult to locate.

24 To improve accessibility, we now have an updated
25 FERC.gov homepage, including a prominent button labeled

1 specifically for landowners affected by natural gas
2 projects.

3 This button takes affected landowners to a new
4 webpage with the information that is most relevant to them.
5 It provides common landowner inquiry information condensed
6 in one location with FAQs and links to more detailed
7 information. For example, the site includes information on
8 how individuals can participate in the review process, how
9 to resolve environmental concerns during construction, and
10 how to best utilize FERC's Landowner Helpline.

11 This is a first step in a continuous process of
12 making information better available for landowners.

13 That concludes my opening remarks, and I will now
14 turn it over to my colleagues for any additional opening
15 statements or announcements that they may have.

16 Commissioner Glick?

17 COMMISSIONER GLICK: Thank you, Mr. Chairman. I
18 appreciate the new room and the new lights. It's nice in
19 here.

20 I just wanted to start out with some happy news.
21 First, I want to welcome back Erica Hough from maternity
22 leave. She has been gone a couple of months, and not much
23 has happened since then. But Erica's Baby Clara is almost
24 five months old now. She is doing great, and so is her mom,
25 obviously, and we are very glad to have Erica back in the

1 office.

2 Unfortunately, with Erica coming back to the
3 office, we are going to be losing Gretchen Kersha, who has
4 been on detail from the Office of General Counsel, and I
5 want to thank the General Counsel for allowing her to come
6 to our office. Gretchen last year was detailed to our
7 office when Matt Christensen was on paternity leave, and
8 she, surprisingly, after seeing the craziness in our office
9 last year, came back for another tour of duty this summer
10 when Erica was on maternity leave. And it was, I think,
11 probably crazier than it was last year, so thank you very
12 much, Gretchen. Your work was outstanding and helpful and
13 we look forward to working with you when you go back to the
14 Office of General Counsel.

15 I also want to wish Adrian Bowman, my Executive
16 Assistant, a happy birthday today. Today is her birthday.
17 We are going to celebrate a little bit later.

18 And then I wanted to take--before talking about a
19 couple of dissents I might have--

20 (Laughter.)

21 COMMISSIONER GLICK: I wanted to take a second,
22 though, and talk about the announcement that the Chairman
23 just made about moving some of the functions of the Division
24 of Energy Market Oversight from our Office of Enforcement to
25 the Office of Energy Policy and Innovation.

1 As the Chairman well knows, I have been quite
2 critical of some of the things we have done on enforcement.
3 I don't think we are being as aggressive as we should be in
4 certain cases. But having said that, I have read a couple
5 of articles the last couple of days suggesting that somehow
6 this is some sort of conspiracy, that this is going to
7 defang the Office of Enforcement.

8 I do not think that is the case at all. It
9 sounds to me like it is just a simple matter of
10 administrative efficiency, trying to move things around a
11 little bit to make them function a little bit better. You
12 know, if I thought there was something nefarious going on, I
13 think the Chairman knows, and Commissioner McNamee knows, I
14 would not be shy to talk about it.

15 So I just wanted to say that I do think this is a
16 legitimate proposal and I look forward to seeing how it is
17 implemented.

18 Now to the dissents. I do have a couple today.
19 I am going to talk about PURPA later on when it is
20 presented, but I just wanted to start with a couple of the
21 GAFs, Orders. Chairman Chatterjee mentioned both C-1 and
22 C-2, which I am dissenting on both today.

23 In C-1, the Commission is issuing certificates to
24 a couple of natural gas pipeline facilities located in
25 Colorado. And C-2 involves a Section 3 certificate with

1 regard to a
2 LNG export facility in Jacksonville, Florida.

3 I am not going to go into the same arguments I
4 did before. Everyone knows that I am kind of concerned the
5 Commission continues to refuse to assess the significance of
6 the greenhouse gas emissions associated with projects, and I
7 think that violates both our requirements under NEPA and the
8 Natural Gas Act.

9 I am also concerned, though, because I think the
10 Commission now appears to have begun to systematically
11 scrubbing climate change language from our orders. I
12 supported a previous order in which the Commission
13 encouraged a project developer to do what it can voluntarily
14 to reduce greenhouse gas emissions, and also voluntarily
15 participate, if it wanted to, in EPA programs aimed at
16 reducing emissions.

17 But now in an equal LNG where EPA raised similar-
18 -requested a similar set of actions, or similar guidance, we
19 have decided not to do that. We have eliminated essentially
20 our language that we had before, and I am concerned about
21 that because at the very least if we are going to change our
22 approach, or just take a different approach when EPA asks us
23 to take a look at greenhouse gas, I think we should talk
24 about it open in the public and not make edits to an order.
25 But I think that is something we are going to have to work

1 on on a going-forward basis.

2 I also want to briefly address the subject of
3 mitigation. As I previously discussed, I think it is
4 important to the extent that a particular project has
5 significant greenhouse gas emissions that we try to mitigate
6 the emissions associated with that particular project, just
7 like we mitigate a number of other environmental impacts
8 associated with these projects.

9 And Commissioner McNamee made an interesting
10 argument. He pointed out that I alluded to, during our last
11 Commission meeting, he pointed out that I alluded to the
12 fact that FERC often requires mitigation of wetlands'
13 impacts associated with a project. And Commission McNamee
14 pointed out that, yes, we do that, but arguably Congress has
15 provided some statutory authority for us to do that with
16 regard to the wetlands mitigation project. All true.

17 But I want back and did a little research, and
18 there's a lot of other conditions that we impose that aren't
19 statutorily based. It's not like Congress has essentially
20 authorize us to address certain issues with regard to
21 vegetation, or soil, or noise, for instance. And so I think
22 we need to go back and take a look at this issue a little
23 bit.

24 You know, the Natural Gas Act gives us very broad
25 authority to issue conditions, and we do so. The reason we

1 issue conditions is because a project has to be in the
2 public interest, and if we think there are some impacts
3 going on we actually should actually try to address those
4 impacts through mitigation activities. And I think that
5 makes sense.

6 What I don't understand is why we continue to
7 treat greenhouse gas emissions completely differently than
8 all other environmental impacts. You know, if you took the
9 logic of the argument here, that we should only mitigate
10 something when Congress authorizes us to mitigate it, I
11 think you've got to go back and look at all our other
12 orders. I mentioned we issue a lot of orders where
13 Congress--on conditioning authority where we haven't
14 actually--we don't have actually specific, we can't point to
15 specific statutory authority with regard to those particular
16 conditions.

17 So by that logic, I think we would have to go
18 back and open up all of our previous certificate orders and
19 suggest, oh, we have to go back and say where did Congress
20 authorize us to do that, where did Congress not authorize us
21 to issue those conditions? And if those conditions can't be
22 issued, are the projects then in the public interest? That
23 would be, obviously, an administrative nightmare. I'm not
24 suggesting we do that. I just think that we need to go back
25 and take a look at what Congress told us through the Natural

1 Gas Act, and what's the authority we have with regard to
2 conditioning, and the fact that we have to use our
3 conditioning authority to make findings that a project is in
4 the public interest. I think that is important on a
5 going-forward basis.

6 Now turning to a couple of other items on the
7 agenda that I am also going to be dissenting on, or
8 partially dissenting on, in Eagle Cress, which is H-3, the
9 Commission denies rehearing of its earlier decision to deny
10 the National Parks and Conservation Association the ability
11 to intervene in a proceeding in which the Commission decided
12 to extend the license of a particular hydro project.

13 And actually, I just want you to know, I actually
14 supported, or would have supported the decision, or do
15 support the decision to extend the license. I think in this
16 case the licensee made a good-faith argument as to why the
17 license term should be extended, or at least the time to
18 start construction should be extended. But we denied the
19 Park and Conservation Association's intervention motion in
20 this particular proceeding because essentially the
21 Commission is arguing these are ministerial acts that people
22 shouldn't have the ability to contest them in the
23 proceeding. And I don't really think that makes a lot of
24 sense. It's not ministerial to decide to extend the
25 construction terms. There are certainly going to be

1 impacts. And I think people that feel like they're affected
2 should be able to--and do intervene in time, and they have
3 legitimate arguments, we should consider them.

4 We could still disagree, and we could still at
5 the end of the day extend the license, which I would have
6 done, but in this case I am troubled by the Commission's
7 decision to decide not to move forward--or to not allow the
8 party to participate in this particular proceeding.

9 And then on H-2, I'm actually going to be
10 concurring in part and dissenting in part on that. And
11 that's the Cheyenne Hydro Project, I should talk about, in
12 North Carolina. And this actually has to do with the
13 situation with regard to the North Carolina Department of
14 Environmental Quality's ability to issue, or to impose
15 conditions pursuant to the Clean Water Act, Section 401 of
16 the Clean Water Act.

17 As everyone knows, this issue has been before the
18 Commission both in terms of hydro projects and also in terms
19 of natural gas certificate projects. And I think, my
20 personal view is that the D.C. Circuit spoke in Hoopa
21 Valley, and that we need to follow the D.C. Circuit's rule
22 with regard to a situation where an applicant doesn't make a
23 major modification to a application for a 401 permit, but
24 for whatever reason resubmits a new one, or does some sort
25 of agreement with the state, or whatever. It seems to me

1 what the court is telling us in that particular case is that
2 we cannot--we can't waive the one-year requirement,
3 essentially. Essentially, if the state doesn't act within
4 one year, the state doesn't have the ability to act pursuant
5 to Section 401.

6 But in this particular case, I think the
7 Commission attempts--in the Order, the Commission attempts
8 to go further than that. And the Commission essentially is
9 arguing in this particular Order that the state actually
10 even waives its ability to issue a 401 certificate if the
11 applicant makes a material modification, makes a substantial
12 change in its application.

13 But think about what that really is saying to
14 applicants. Well, then on day one you submit an application
15 and you know that you've got 365 days. And then, you know,
16 180 days into it you submit an--you revise your application,
17 which contains a whole bunch of different information and a
18 whole bunch of requests, and so on. And then the state only
19 has 180 days to look at it. Or even worse, what if you do
20 that nine months into the process?

21 What the logic of the Commission's order is, is
22 that at one year the state is out of luck no matter what.
23 And I just don't think that's what Hoopa Valley says, and I
24 don't think we should be allowing that--allowing applicants
25 to do that.

1 Finally, I want to talk just briefly about
2 affected systems. This is an order that we are issuing
3 under E-2, and it addresses EDF Renewables' complaint
4 against PJM, MISO, and SPP concerning affected systems'
5 coordination.

6 In today's order, I really appreciate it. I
7 think it takes a meaningful step forward by remedying a lack
8 of transparency in the PJM, MISO, and SPP tariffs.

9 Interconnection rules play a key role in ensuring
10 that generation can access the market and in enhancing
11 competition. Coordination among neighboring transmission
12 systems is an increasingly significant aspect of the
13 interconnection process, particularly for neighboring
14 markets with critical seams.

15 Requiring a greater level of transparency ensures
16 that all stakeholders, especially interconnection customers,
17 know and understand the rules. I am pleased that we are
18 acting to improve transparency with regard to affected
19 systems coordination in MISO, SPP, and PJM. I am
20 disappointed that when we held the technical conference on
21 the subject back in April of 2018, we didn't create--or
22 develop a sufficient enough record to enable the Commission
23 to consider whether we should expand these transparency
24 requirements to other RTOs and ISOs around the country.

25 I hope we can do that in the near future, because

1 I think this order is very much a step in the right
2 direction. And hopefully, if there are similar concerns or
3 issues that need to be addressed in other parts of the
4 country, that we do so.

5 With that, I thank you, Mr. Chairman.

6 CHAIRMAN CHATTERJEE: Commissioner McNamee.

7 COMMISSIONER McNAMEE: Thank you, Mr. Chairman.

8 I will also be talking about PURPA later on when we have the
9 panel up.

10 A couple of observations I wanted to make in
11 terms of some of the issues that have come before us,
12 including some of the dissents that Commissioner Glick has
13 discussed.

14 I also won't engage in a long discussion about
15 greenhouse gases, because we both have articulated many of
16 our positions, but it is worth restating that we do consider
17 the issue of greenhouse gases seriously. We do take our
18 responsibilities under the Natural Gas Act and NEPA very
19 seriously and consider the issues.

20 However, our consideration of those issues are
21 clearly guided by our authority under the Natural Gas Act,
22 not by what we would desire to have happen, not what our
23 policy preferences are, but instead what are we required to
24 do.

25 And that gets into also the issue of mitigation.

1 The point is that mitigation is not something that just can
2 happen. It's something that takes a requirement. And as
3 Congress--or, rather, as the Supreme Court has said,
4 Congress doesn't hide elephants in mouse holes. Doing
5 vegetation management along a line is something that
6 consistently happens when you do any project, and it's
7 directly related to the line itself.

8 When you're talking about something like
9 mitigation of greenhouse gases, that goes far beyond what is
10 in our inherent authority or in the expertise that has been
11 provided by other agencies when we establish mitigation
12 requirements.

13 Furthermore, Congress has tried 23 times to
14 establish some sort of either carbon tax or regulation of
15 carbon, and they have been unable to decide how or what to
16 do. And it's not in our purview as an independent agency
17 with no independent authority to come up with a new process
18 for doing so.

19 I also want to touch base on an issue that
20 Commissioner Glick also dissented on, and that was in the
21 Cheyenne Interconnector. And one of the concerns he
22 mentions in his dissent is that we didn't take an
23 alternative that was proposed seriously. And that was the
24 Colorado Interstate Gas Company alternative.

25 Under the EA, we did consider all alternatives.

1 But under NEPA, we are not required to pick any particular
2 alternative. NEPA doesn't require a particular result. But
3 something is very important as we consider what happened in
4 that case.

5 There was no Section 7 application for the
6 alternative for us to consider. The Natural Gas Act is not
7 a command and control statute, and it doesn't allow us to
8 coerce the shippers who didn't sign up for a nonexistent
9 project to sign up for that nonexistent project.

10 And so I want to reemphasize that we considered
11 all the issues in C-1 for the Cheyenne Interconnector, and
12 our decision was based on the facts in the record and our
13 authority.

14 I think with that, I will just stop. So thank
15 you, Mr. Chairman.

16 CHAIRMAN CHATTERJEE: Thank you, Commissioner
17 McNamee.

18 I want to start just by echoing Commissioner
19 Glick's welcome back to Erica following her maternity leave.
20 Erica, congratulations to you and your family on your new
21 addition. I have it on good authority that you may well win
22 the hotly contested Glick Office Cutest Baby Competition,
23 although I would like an addendum or a waiver to enter my
24 dog, my newly acquired dog--

25 (Laughter.)

1 CHAIRMAN CHATTERJEE: --into that competition.

2 With that, Madam Secretary, we are ready to go to
3 the Consent Agenda.

4 SECRETARY BOSE: Thank you, Mr. Chairman.

5 Since the issuance of the Sunshine Act Notice on
6 September 12th, 2019, no items have been struck from this
7 morning's agenda. Your Consent Agenda is as follows:

8 Electric Items: E-2, E-3, E-4, E-5, E-6, E-7,
9 E-8, E-9, E-10, E-11, E-13, E-14, E-15, E-16, E-17, E-18,
10 E-20, E-21, E-22, E-23, and E-25.

11 Gas Items: G-1.

12 Hydro Items: H-1, H-2, H-3, H-4, and H-5.

13 Certificate Items: C-1 and C-2.

14 As to E-1, Commissioner Glick is dissenting in
15 part with a separate statement. As to H-2, Commissioner
16 Glick is dissenting in part and concurring in part with a
17 separate statement. As to H-3, Commissioner Glick is
18 dissenting with a separate statement. As to H-4,
19 Commissioner Glick is dissenting with a separate statement.
20 As to C-1, Commissioner Glick is dissenting with a separate
21 statement. And as to C-2, Commissioner Glick is dissenting
22 with a separate statement.

23 With the exception of E-1, where a vote will be
24 taken after the presentation and discussion of that item
25 later in the meeting, we are now ready to take a vote on

1 this morning's Consent Agenda.

2 The vote begins with Commissioner McNamee.

3 COMMISSIONER McNAMEE: I vote aye.

4 SECRETARY BOSE: Commissioner Glick.

5 COMMISSIONER GLICK: Do I have to go through what
6 I'm dissenting on? Noting my dissents in C-1, C-2, H-3, and
7 H-4, and noting my partial concurrence and partial dissent
8 on H-2, I vote aye.

9 SECRETARY BOSE: And Chairman Chatterjee.

10 CHAIRMAN CHATTERJEE: Aye.

11 SECRETARY BOSE: We are now ready to move on to
12 the presentation and discussion portion of the meeting, Mr.
13 Chairman. The presentation and discussion item for this
14 morning is E-1, a Draft Notice of Proposed Rulemaking
15 concerning Qualifying Facility Rates and Requirements.

16 There will be a presentation by Joshua Kirstein
17 from the Office of the General Counsel. He is accompanied
18 by Larry Greenfield and Matthew Estes from the Office of the
19 General Counsel. Helen Shepherd from the Office of Energy
20 Market Regulation. And Stan Wolf, from the Office of Energy
21 Policy and Innovation.

22 MR. KIRSTEIN: Good morning, Mr. Chairman and
23 Commissioners, E-1 is a draft notice of proposed rulemaking,
24 NOPR. This draft NOPR proposes to revise the Commission's
25 regulations implementing sections 201 and 210 of the Public

1 Utility Regulatory Policies Act of 1978, PURPA. This draft
2 NOPR incorporates the record of the 2016 technical
3 conference addressing issues involving PURPA's
4 implementation.

5 PURPA was enacted as part of a legislative
6 package intended to reduce the country's dependence on
7 fossil fuels by providing incentives to encourage the
8 development of qualifying facilities, or "QFs." QFs are
9 either small power production facilities, which are
10 typically renewable generation resources that largely do not
11 rely on fossil fuels, or cogeneration facilities, which make
12 more efficient use of fossil fuels.

13 Circumstances have changed since the Commission
14 first implemented PURPA in 1980. Advances in technology and
15 the discovery of new natural gas reserves have resulted in
16 plentiful supplies of relatively inexpensive natural gas.

17 Unlike in 1980 when the electric industry was
18 made up principally of vertically integrated utilities,
19 today the electric industry provides open access
20 transmission. And there are vibrant wholesale electric
21 markets in much of the country where independent generators
22 can sell their power at competitive prices. In addition,
23 federal and state programs provide further incentives for
24 the development of renewable resources.

25 Given changes in the energy industry since 1980,

1 this draft NOPR proposes to revise the Commission's PURPA
2 Regulations to permit states more flexibility to rely on
3 competitive prices in setting QF rates and to make certain
4 other changes to address implementation issues that have
5 arisen over the years. This draft NOPR includes a number of
6 changes, including the following:

7 First, the draft NOPR proposes to grant state
8 regulatory authorities the flexibility to require that
9 energy rates--but not capacity rates--in QF power sales
10 contracts, and other legally enforceable obligations vary
11 in accordance with changes in the purchasing utility's
12 avoided costs at the time the energy is delivered.

13 Second, the draft NOPR proposes to grant states
14 the flexibility to set "as available" QF energy rates based
15 on market factors or, at the state's discretion, to continue
16 setting QF rates under the existing PURPA Regulations.

17 Third, the draft NOPR proposes to replace the
18 "one-mile rule" for determining whether generation
19 facilities should be considered to be part of single
20 facility. The draft NOPR proposes a tiered approach under
21 which facilities one mile or less apart would be treated as
22 the same facility. Facilities more than one mile but less
23 than 10 miles apart would be presumed to be different
24 facilities, which could be rebutted, and facilities 10 or
25 more miles apart would be treated as separate facilities.

1 Fourth, the draft NOPR proposes to revise the
2 Commission's regulations implementing PURPA Section 210(m)
3 to reduce the rebuttable presumption threshold for small
4 power production facilities--but not cogeneration
5 facilities--from 20 megawatts to 1 megawatt. This proposed
6 change recognizes that competitive markets have matured
7 since the Commission first implemented Section 210(m) of
8 PURPA and the mechanics of participation in such markets
9 are improved and better understood. For cogeneration
10 facilities, the 20 megawatt presumption would remain.

11 Fifth, the draft NOPR proposes to clarify that a
12 QF is entitled to a contract or a legally enforceable
13 obligation when it is able to demonstrate commercial
14 viability and financial commitment to construct its facility
15 pursuant to objective and reasonable criteria determined by
16 the state.

17 Finally, the draft NOPR proposes to allow a party
18 to protest a self-certification or self-recertification of a
19 QF without being required to file a separate petition for a
20 declaratory order and to pay the associated filing fee.

21 The draft NOPR seeks comment on these proposed
22 reforms 60 days from the date of its publication in the
23 Federal Register.

24 We are happy to answer any questions. Thank you.

25 CHAIRMAN CHATTERJEE: Thank you all for that

1 excellent presentation, and to the whole team for your
2 careful and diligent work on this important item.

3 As I mentioned earlier today, reforming the
4 Commission's PURPA Regulations has been one of my top
5 priorities since joining the Commission.

6 It is an understatement to say that the energy
7 landscape in this country has changed drastically since the
8 Commission implemented its PURPA Regulations in 1990. PURPA
9 was enacted during a time of energy scarcity, with the goal
10 of preserving what we thought to be dwindling supplies of
11 natural gas and oil by promoting more efficient and
12 alternative energy technologies.

13 Today we have ample supplies of domestic natural
14 gas and the prices of renewable energy technologies continue
15 to fall. While the Energy Policy Act of 2005 made some
16 discrete changes to PURPA, the statute still requires that
17 we update our regulations "from time to time."

18 And given everything that has changed over the
19 last 40 years, I think now is precisely the right time to
20 take a comprehensive look at our regulations, which is what
21 we are doing today.

22 I have been clear that I want to reform our
23 regulations in a way that not only meets our statutory
24 obligations to encourage QF development, but also protects
25 consumers and preserves competition. I think the suite of

1 reforms that the team has laid out today accomplishes that
2 goal.

3 Before I get to my questions, I would like to
4 take a moment to recognize that the process of reviewing our
5 PURPA Regulations was one that was started under former
6 Chairman Kevin McIntyre. Chairman McIntyre believed that it
7 was important for agencies to take a fresh look at their
8 regulations from time to time to see what's working and
9 what's not.

10 When I took over as Chairman,. I vowed to
11 continue pushing forward on the initiatives that Kevin had
12 started and the issuance of today's NOPR is an important
13 part of fulfilling that commitment. If Kevin could be with
14 us today, I know he would be deeply thankful for the
15 tireless efforts of everyone on staff and those on the 11th
16 floor that made this NOPR possible.

17 With that, I have a few questions for the team.

18 PURPA requires that the Commission's regulations
19 encourage development of cogeneration and small power
20 production facilities. Do the regulations, when revised as
21 proposed today, continue to do that? Also, how will the
22 additional flexibility that we are providing for states help
23 meet the other statutory mandate of keeping rates for QF
24 purchases as just and reasonable to consumers?

25 MR. GREENFIELD: Let me answer that, if I may.

1 Yes, the team believes that the proposed rules do continue
2 to encourage QFs. Today the regulations encourage QF
3 development by, among other things, providing a QF
4 self-certification process, requiring electric utilities to
5 interconnect with QFs, requiring electric utilities to sell
6 backup and maintenance power to QFs, and relieving most QFs
7 from the Commission regulation under Sections 205 and 206 of
8 the FPA. And the NOPR leaves all of those rules in place.

9 The new regulations would allow a state, at its
10 discretion, to set a variable energy rate in QF sales
11 contracts. The record indicates that states have been
12 reluctant to permit long-term contracts with fixed energy
13 rates. Allowing states to set variable energy rates may
14 result in longer term contracts that could facilitate
15 financing.

16 The proposed regulations also require states to
17 establish objective and reasonable standards for QFs to
18 obtain a legally enforceable obligation, or LEO, for the
19 purchase of their power. This should help provide more
20 certainty as to when a utility's obligation to purchase
21 begins.

22 Although the proposed rules would provide states
23 with more flexibility in how to determine an avoided cost,
24 the rule would continue to provide that a QF be paid at
25 avoided cost rate as contemplated by Congress.

1 As for states meeting their statutory mandate
2 that the rates for QF purchases be just and reasonable to
3 consumers, the proposed rule helps states do that in two
4 ways.

5 First, they allow the states the flexibility to
6 set QF rates based on competitive market forces, which
7 should result in a rate that more closely tracks a utility's
8 avoided cost. And thus, a rate that is just and reasonable
9 to consumers.

10 Second, when the Commission adopted the current
11 PURPA Regulations, the Commission acknowledged that a fixed
12 avoided cost rate might differ from a purchasing utility's
13 avoided cost at some points in time, but the Commission
14 believes that over time any over or under estimations in the
15 rate would balance out. The NOPR explains the Commission's
16 prior beliefs that the avoided cost rate would balance out
17 over time may no longer be valid. Therefore, the NOPR
18 proposes to provide states with the flexibility to set QF
19 energy rates that vary over the life of a contract. This
20 should allow QF rates to reflect avoided costs more
21 accurately, and thereby minimizing expenses when the avoided
22 cost rate would differ from the purchasing utility's actual
23 avoided cost.

24 CHAIRMAN CHATTERJEE: Thank you for that, Larry.

25 The NOPR proposes to reduce the threshold for

1 terminating the mandatory purchase obligation in RTOs from
2 20 megawatts to 1 megawatt, but proposes to apply this
3 change only to small power production--not cogeneration.

4 Could you talk a little bit more about why
5 cogeneration is differently situated and so it does not make
6 sense to apply this change to them?

7 MR. GREENFIELD: Certainly. The NOPR
8 acknowledges that there is a fundamental difference between
9 small power production facilities and cogenerators. Unlike
10 small power production facilities, which are constructed
11 solely to produce and sell electricity, and whose business
12 is focused on the sale of electricity, new cogeneration
13 facilities are statutorily required to show that they are
14 intended primarily to provide heat for an industrial,
15 commercial, residential, or an institutional process,
16 rather than fundamentally for sale to an electric utility.

17 Consequently, because the production and sale of
18 electricity is a biproduct of these processes, owners of new
19 cogen facilities likely would not be as familiar with energy
20 markets or the technical requirements and the processes for
21 such sales.

22 Retention of the existing 20 megawatt level for
23 the presumption of access to the markets, therefore, would
24 be appropriate for cogeneration facilities, given their
25 different circumstance.

1 CHAIRMAN CHATTERJEE: That's extremely helpful.

2 Thank you.

3 And finally, one of the things I have appreciated
4 about working on this issue is the thoughtful engagement of
5 a number of parties. Awhile back, NARUC proposed that the
6 Commission clarify how a state could conduct a competitive
7 solicitation to satisfy PURPA Section 210(m)(1)C standard
8 for termination of a utility's obligation to purchase from
9 QFs.

10 Could you talk a little bit about whether and how
11 the NOPR addresses that proposal?

12 MR. GREENFIELD; Yeah. There may indeed be some
13 merit to the NARUC proposal. In fact, the NOPR states that
14 a properly structured proposal along the lines proposed by
15 NARUC potentially could satisfy the statutory requirements
16 under PURPA Section 210(m)(1)C. And, that the Commission
17 would consider such proposals on a case-by-case basis.

18 Therefore, although the NOPR does not propose
19 additional criteria, a utility or utilities--that a utility
20 or utilities may rely upon to satisfy PURPA 210(m)(1)C, the
21 NOPR seeks comments on any factors along the lines of the
22 NARUC proposal that would be useful in considering how a
23 utility or utilities could satisfy PURPA 210(m)(1)C.

24 CHAIRMAN CHATTERJEE: Thank you. And thank you
25 again to the team. That concludes my questions and I will

1 turn it over to my colleagues, starting with Commissioner
2 Glick.

3 COMMISSIONER GLICK: Thank you, Mr. Chairman, and
4 thanks to the staff for the presentation, but also for their
5 hard work. I know this wasn't easy and it took a long time.

6 There are certain provisions in the NOPR that I
7 do support, and that's why I'm going to be just dissenting
8 in part and concurring in part, or actually just dissenting
9 in part to this particular proposal. And I'm partially
10 dissenting in large part because I think a significant
11 number of proposals in the NOPR are not necessarily
12 permitted under the statute. I think they really represent
13 an attempt to administratively gut the statute.

14 And, you know, we hear comments all the time--we
15 heard some more this morning--but all the time that we need
16 to act humbly as a regulator. You know, we're not supposed
17 to substitute our judgment for the judgment of Congress, and
18 we administer the statutes.

19 And Commissioner McNamee repeated a little bit
20 today, but I want to quote him from the July meeting,
21 because I thought he made a lot of sense. He said, quote,
22 "We must look at the powers we have and not try to
23 aggrandize ourselves, not try to take what we think is a
24 problem and take that and use our statutes to achieve the
25 ends that we would like. We can only achieve the ends that

1 Congress provides us to do."

2 And he said something very similar earlier today,
3 as well. And I think that is a good point. And that is
4 exactly what is going on here. All you have to do is, when
5 you see the NOPR and you read in the preamble, a likely
6 discussion of how things have changed. And Chairman
7 Chatterjee mentioned it, too, the oil prices are much
8 different; the oil supplies are much different. Renewable
9 energy is much different. There's now other programs that
10 subsidize renewable energy. Renewable energy is actually
11 more competitive than it used to be with technological
12 development.

13 All that is true, and we certainly need to take
14 that into account. On the other hand, that doesn't give us
15 an excuse for standing in the place of Congress in terms of
16 making a judgment about this particular statute.

17 And, you know, if we were today all sitting
18 around a table trying to draft PURPA 2019, we might all have
19 a different--we might do it much differently since things
20 have changed. But that is for Congress to address, and
21 Congress did a little bit in 2005.

22 You know, my son was in 4th grade last year, and
23 they learned that the Executive Branch is supposed to
24 administer the statutes, and the Legislative Branch actually
25 drafts the statutes. Sometimes I think we need a little bit

1 of a refresher course here.

2 And Commissioner McNamee again mentioned earlier
3 that the reason we couldn't address--or mitigate greenhouse
4 gas emissions in pipelines was because 23 times Congress had
5 apparently considered greenhouse gas proposals--proposals to
6 limit greenhouse gas emissions, and on 23 occasions Congress
7 rejected that.

8 Well, let's look at PURPA. Since 2005, the last
9 time Congress significantly amended PURPA, numerous,
10 numerous proposals have been made in the House and the
11 Senate to amend PURPA significantly, and none of them have
12 passed. So therefore what are we doing here?

13 We are deciding, well, it's our job to gut PURPA
14 because Congress couldn't do it legislatively. You know, as
15 I mentioned, there are some reforms in the NOPR that think
16 make a lot of sense, but again, we are not allowed to stand
17 in the way, or get in the way of Congress's thinking on this
18 just because industry hasn't had a good experience with the
19 statute in certain states, or because certain members of
20 Congress are frustrated that they haven't been able to
21 achieve it legislatively so they ask Commissioners to do it
22 for them.

23 That is not our system of government, and that is
24 not really appropriate in this particular case.

25 Now as Chairman Chatterjee knows, Commissioner

1 LaFleur and I made a very good-faith effort to put forward a
2 compromise proposal during the discussions on PURPA, and I
3 want to thank the Chairman and his team for giving us the
4 time and for talking it through with us.

5 Unfortunately, the decision was made to go in a
6 different way. So that is really unfortunate in a lot of
7 ways. You hear the term a lot, sometimes I get sick of it,
8 but people say the Commission speaks best when it speaks
9 with a single voice, and I think in some ways it is true on
10 major policy issues, and I think we had an opportunity to do
11 that here and we didn't do that.

12 I would say, just in reference, and it was
13 mentioned earlier about the NARUC proposal, and I've talked
14 about it a little bit. I do think if you look at the
15 statute, the NARUC proposal needs to be fleshed out a little
16 bit, and the proposal also submitted by the Solar Energy
17 Industry Association, to use the competitive process
18 essentially to allow the use of the 210(m) process, so to
19 speak, to allow utilities to get out from under the PURPA
20 requirement if they have a really competitive solicitation
21 process, or a process independently administered and truly
22 competitive and so on. And we would have to flesh out the
23 details on that, and hopefully we will do that. But it
24 strikes me that that is what we should be doing here.

25 We should be ensuring that nobody is treated

1 differently; that utilities aren't treated differently than
2 QF developers. Because that was really what Congress's
3 intent was when it enacted PURPA in 1978, and I think that
4 is still the intent on the books today.

5 Congress did have a chance to repeal the statute
6 in 2005. Instead, it decided to go forward and just say
7 we'll treat--we'll allow companies to get out from under
8 PURPA to the extent there are sufficiently competitive
9 markets available for QF developers or project developers.
10 And I think that's certainly what I think the spirit of the
11 NARUC proposal is.

12 So hopefully we can flesh that out a little bit.
13 You know, we have had a long time. We could have had some
14 technical conferences. I'm hoping that we do have technical
15 conferences to consider the NARUC proposal. I think we need
16 great more of a record on that issue, and a whole bunch of
17 other issues in this particular proceeding before we move
18 forward with a final rule.

19 But I am hopeful that when people submit comments
20 that we will be able to figure out a little bit better what
21 we need to do on a going-forward basis.

22 So thank you very much, Mr. Chairman.

23 CHAIRMAN CHATTERJEE: Commissioner McNamee.

24 COMMISSIONER McNAMEE: Still learning the new
25 mike. Today the Commission has taken an important step

1 towards updating the PURPA regulations for the benefit of
2 the American consumer. Congress enacted PURPA in 1978 to
3 promote electric competition, conserve natural gas,
4 encourage the use of renewable resources, and provide
5 opportunities for cogeneration facilities.

6 And it is worth recalling, as we've discussed a
7 little bit already, that PURPA was enacted 40 years ago to
8 help address a severe energy crisis that was facing America.
9 Particularly the concern that America was running out of oil and
10 natural gas. But how times have changed.

11 American ingenuity, with people like George
12 Mitchell, a Texas, who combined hydraulic fracturing with
13 directional drilling, along with some help from the U.S.
14 Department of Energy Research, helped to usher in the
15 American energy renaissance.

16 As a result, according to the U.S. Information--
17 Energy Administration in 2019, "Annual Energy Outlook," in
18 2020, for the first time in almost 70 years, the United
19 States will become a net energy exporter.

20 I also think it is appropriate to reflect in our
21 regulations that the great transformation we have witnessed
22 in the energy sector. Not only is natural gas production,
23 natural gas-fired electric generation, at an all-time high,
24 but so is electricity generated from renewables. And it now
25 represents almost 20 percent of U.S. total electric

1 generation.

2 Furthermore, PURPA opened up the door for
3 competition in electric generation by requiring utilities to
4 purchase energy from independent renewable energy resources
5 and cogen facilities. And, with the enactment of the Energy
6 Policy Act of 1992, establishing open access for electricity
7 transmission, which also led to FERC Order 888, we have seen
8 the development of wholesale electric competition with
9 two-thirds of Americans being served by RTOs or ISOs.

10 Furthermore, as part of the Energy Policy Act of
11 2005, Congress amended PURPA's Section 210(m) to recognize
12 that PURPA's requirements should take into account the
13 success of competition in wholesale markets. And, in the
14 original statute Congress authorized and recognized that
15 circumstances could change and directed us to revise our
16 PURPA regulations from time to time.

17 Recognizing these changes in circumstances, the
18 Commission's statutory obligations, it is appropriate for
19 the Commission that it is proposing to update its PURPA
20 regulations at this time.

21 The changes that the Commission is proposing
22 through this Notice of Proposed Rulemaking are designed to
23 protect consumers, while also encouraging the development of
24 alternative generation and cogeneration facilities.

25 To achieve these ends, the proposed rules will

1 provide state utility regulators more flexibility to rely on
2 market pricing when determining the rate state utilities pay
3 for qualifying facilities under PURPA, and provide more
4 transparency to interested stakeholders and extend the
5 benefits of competition to a greater number of consumers.

6 And I want to say that I'm very grateful and
7 happy to hear that Commissioner Glick agrees that we should
8 only do what Congress directs us to do, and not what we
9 would like to do. And that is one thing that is very
10 important to focus on. What did Congress direct us to do in
11 PURPA?

12 Congress directed us to ensure for giving
13 opportunities and encouragement for renewable generation; to
14 make sure that we protect consumers; and to consider our
15 regulations from time to time. They specifically said that.
16 And that is what we are doing.

17 It is important to recognize that everything that
18 we are proposing here is consistent with what the statute
19 provided. And Commissioner Glick makes a point about the
20 difference between greenhouse gas and the fact that Congress
21 didn't pass it, and that Congress has not passed changes in
22 PURPA.

23 The fundamental difference there is that
24 Congress, when they were trying to make changes to PURPA,
25 were trying to address specific regulations that we were

1 directed to implement. And so we are considering specific
2 factors and direction pursuant to our statutory authority in
3 making those changes in our regulations.

4 The difference with greenhouse gases is the fact
5 that it is the new regime that would be created out of whole
6 cloth by an independent agency with no expertise to deal
7 with it. So there is a fundamental difference.

8 And I think it is good to hear that we both agree
9 that we as a Commission only have the power that Congress
10 gives us.

11 I look forward to hearing the proposals from the
12 individuals and parties that will file on this, because this
13 is a proposed rulemaking. And I think it is important to
14 recognize that we as a Commission--I'm confident all three
15 of us--will be paying attention to what people say about it,
16 because that is the purpose of the NOPR process under the
17 APA, to give us the opportunity to put something out there
18 for people to consider, but also to get the reaction to it
19 and to consider whether we need to make Tweets.

20 One other thing I want to say, and I probably
21 should have said this at the beginning. And that is, I
22 truly appreciate the hard work of the staff. When something
23 as complicated as this is put together, it is sometimes easy
24 to say, well, there's the document. But the hard work, the
25 hours of work, the number of people in this building who

1 have worked so hard to help us make these decisions and do
2 this proposal, are really the unsung heroes. And that is
3 what makes the FERC staff so exceptional, and I want to
4 thank you all for doing that, and for everybody that works
5 with you.

6 And with that, I have no individual questions.
7 Thank you.

8 SECRETARY BOSE: We are now ready to take a vote
9 on this item. The vote begins with Commissioner McNamee.

10 COMMISSIONER McNAMEE: I vote aye.

11 SECRETARY BOSE: Commissioner Glick.

12 COMMISSIONER GLICK: I dissent in part.

13 SECRETARY BOSE: And Chairman Chatterjee.

14 CHAIRMAN CHATTERJEE: I vote aye.

15 SECRETARY BOSE: That's our last item for
16 discussion and presentation this morning, Mr. Chairman.

17 CHAIRMAN CHATTERJEE: Thank you. With that,
18 unless my colleagues have any additional comments that they
19 would like to make?

20 (No response.)

21 CHAIRMAN CHATTERJEE: This meeting is adjourned.
22 Thank you.

23 (Whereupon, at 11:01 a.m., Thursday, September
24 19, 2019, the open meeting of the Commissioners of the
25 United States Federal Energy Regulatory Commission was

1 adjourned.)

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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 1059th Commission Meeting

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16 Docket No.:

17 Place: Washington, DC

18 Date: Thursday, September 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 Larry Flowers

25 Official Reporter