



U.S. Department of Energy
Office of Inspector General
Office of Program Review
and Special Inquiries

Special Inquiry

Federal Energy Regulatory
Commission Communications

DOE/IG-0610

June 2003

June 27, 2003

SUBJECT: Federal Energy Regulatory Commission Communications

FROM: Gregory H. Friedman (signed)
Inspector General

BACKGROUND

The Office of Inspector General (OIG) conducted an inquiry concerning a telephone conference call allegedly held by Chairman Wood and Commissioner Brownell of the Federal Energy Regulatory Commission (Commission) with a number of Wall Street representatives. Senators Joseph Lieberman and Maria Cantwell asked the OIG to review this matter, citing media reports suggesting that Chairman Wood and Commissioner Brownell had discussed pending contract cases during the call. At issue in these cases is whether certain parties should be granted relief from multi-billion dollar power supply contracts executed during the Western energy crisis of 2000-2001.¹

The media accounts cited by the Senators reported that the commissioners may have indicated how they intended to vote on the contract cases. The Senators asked the OIG to determine, in part: whether the call took place; the contents of the call; the participants in the call; and whether the call violated any Commission procedural rules.

Following these published accounts, a number of the parties to the contract cases complained about the March 26, 2003, conference call, in filings before the Commission. In one instance, a complaint was filed in Federal court.

RESULTS OF INQUIRY

During our inquiry, we:

- Did not identify evidence, based on the available record, substantiating the allegation that the conduct or contents of the call violated any Commission procedural rules;
- Confirmed that the conference call took place on March 26, 2003, and identified and interviewed the three Commission participants: Chairman Wood, Commissioner Brownell, and another senior Commission official;

¹ In a statement issued on June 25, 2003, Chairman Wood announced:

“[T]oday we consider orders in a number of different cases regarding some aspect of power contract reformation. Acting on the evidence and analysis compiled by our Administrative Law Judges in four Western cases, we find that the records do not support requests to modify or abrogate contracts entered into during the Western Energy crisis... I acknowledge that we do not rule with unanimity among the Commissioners on these contracts.”

- Confirmed that the conference call was held in a limited access forum to which only selected parties were invited, although we learned that other Wall Street representatives were included by some invitees;
- Confirmed that Chairman Wood and Commissioner Brownell commented on the pending contract cases during the call, but that Chairman Wood and Commissioner Brownell asserted that they only repeated comments made earlier that day on the record during the Commission's March 26, 2003, open meeting. Moreover, Chairman Wood and Commissioner Brownell stated that the call was held as part of a larger Commission outreach strategy intended to enhance public understanding of Commission activities;
- Identified and interviewed many, but not all, of the participants, because the Commission did not record the identities of those present on the call. None of the 17 Wall Street representatives we interviewed who participated stated that Chairman Wood or Commissioner Brownell explicitly indicated, during the conference call, how they intended to vote on the contract cases;
- Found, based on the information available to us, that the conference call on March 26, 2003, was not recorded nor was a transcription made. Therefore, other than the results of our interviews and record reviews, there was no way of confirming, with certainty, the complete nature and contents of the conversation; and,
- Developed several recommendations the Commission should consider in an effort to promote greater public confidence in the fairness of Commission proceedings. In this vein, we identified additional comments by Commissioner Brownell concerning the contract cases, made in a separate conference call on March 28, 2003, which we believe the Commission should also consider when evaluating our recommendations.

OBSERVATIONS

On April 23, 2003, the Commission issued an Order responding to motions filed by some of the parties to the contract cases, which in part sought the recusal of Chairman Wood and Commissioner Brownell for alleged violations of Commission procedural rules resulting from the March 26, 2003, conference call. In that Order, the Commission cited a previous unrelated case involving alleged improper communications by Commission staff. In that case, a federal appellate court reiterated that "informal contacts between agencies and the public are the 'bread and butter' of the process of administration and are completely appropriate so long as they do not frustrate judicial review or raise serious questions of fairness."

Under the circumstances at issue here, and given the sensitivity of the matters involved, it was understandable that the March 26, 2003, conference call would be controversial, and that it could give rise to serious questions of fairness, including, in particular, the appearance that certain interest groups were receiving preferential treatment. Although

the Commission released a written summary of the matters discussed during the March 26, 2003, conference call, it was released almost one month after the call took place and only in response to the current controversy, was revised once after its initial release, and the revision both added to and modified the account of Commissioner Brownell's statements regarding the contract cases. We were advised by the author of these summaries, however, that the first version was issued before Commissioner Brownell had the opportunity to submit her comments. These changes are detailed in the body of our report.

The current controversy may also be resolved, ultimately, by the Federal judiciary. Regardless of the outcome of any such litigation, we believe that the Commission can take additional steps to ensure public confidence in Commission proceedings and avoid what appear to be serious questions of fairness by a number of the parties.

RECOMMENDATIONS

Consequently, while we recognize the Commission's desire to engage in public outreach, we recommend that the Commission carefully consider whether the conduct or contents of communications such as those at issue here expose Commission decision-making to avoidable legal challenge or needless controversy. To the extent the Commission intends to continue engaging in such communications in the future, we believe the Commission should carefully consider whether:

- (1) Such communications should be tape-recorded or concurrently transcribed, and otherwise made available to the public as soon as possible;
- (2) The identities and affiliations of the participants in such communications should be recorded; and,
- (3) Other steps should be taken to promote public confidence in Commission proceedings, including, for example, a practice of inviting members of the media or the general public to participate.

Finally, we recommend that the Commission review the transcript of Commissioner Brownell's comments at the March 28, 2003, conference call, when evaluating our recommendations.

Additional details are provided in the attached report of inquiry, as well as in the accompanying appendices.

Attachment

cc: Chairman and Members of the Federal Energy Regulatory Commission

U.S. DEPARTMENT OF ENERGY
OFFICE OF INSPECTOR GENERAL
OFFICE OF PROGRAM REVIEW AND SPECIAL INQUIRIES

SPECIAL INQUIRY

FEDERAL ENERGY REGULATORY COMMISSION COMMUNICATIONS

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RESULTS OF INQUIRY

Position of Chairman Wood and Commissioner Brownell

Chairman Wood and Commissioner Brownell advised that their motivation in holding the March 26, 2003, conference call, was to help the Wall Street representatives understand what actions the Commission was contemplating, and in particular, to avoid confusion or misinterpretation of these events. Both stated that the conference call was part of a larger Commission outreach effort, which also included communications with other concerned parties, such as state bodies, the Congress, and other segments of the public.

During our inquiry, we reviewed published media accounts of the March 26, 2003, conference call. For example, one of these articles reported as follows:

“According to analysts from Schwab Capital Markets, Lehman Bros., Prudential, and Morgan Stanley, Brownell said she and Wood would vote to uphold the contracts while the three-member commission’s only Democrat would vote to abrogate the deals.”

“One analyst, who requested anonymity for fear of being subpoenaed in the event that Brownell did violate FERC’s ex-parte communication rules, said Brownell said ‘point-blank’ that she wanted the analysts to convey the message to investors that the long-term electricity contracts would not be abrogated.”

“‘She told us how she and Wood were going to vote on the contracts and that Wall Street should know,’ the New York-based analyst said. ‘There’s been a lot of uncertainty surrounding these contracts and the stocks of these companies have been performing poorly because of it. But now that we know for sure how the commission is going to vote on the contracts the stocks are performing a little better.’”

Commissioner Brownell denied making these statements. Chairman Wood and Commissioner Brownell both denied that they explicitly advised the conference call participants how they would vote on the contract cases. Both denied that they, or any other conference call participant, engaged in any improper communication.

Chairman Wood and Commissioner Brownell denied that their comments during the conference call reflected any improper pre-judgments of the contract cases. Both told us that they only made statements during the conference call that were consistent with, and did not go beyond, the statements they made earlier that same day, during the Commission’s open meeting, which was held on the record, and subject to prior notice of its occurrence pursuant to the Government in the Sunshine Act. Both stated that during the open meeting, they discussed the contract cases, as did the Commission’s third current member, William Massey. Our review of the open meeting transcript confirmed that they also emphasized that there was additional evidence to review and that the Commission had not yet voted on the cases. Examples of such statements may be found in Appendix D of this report.

Commission Legal Officials

We were told that the decision to conduct the conference call was not cleared, in advance, by the Commission's Office of General Counsel, although a senior Commission legal adviser we interviewed offered the opinion that there was no requirement to do so. This official had been told informally that the conference call was to take place, and saw no reason for it not to have taken place.

We were advised by a senior Commission official in the Office of General Counsel that there was no requirement to place a summary of the conference call in the public files of the Commission or in the decisional record of the contract cases, because no violation of Commission rules had taken place requiring such a remedy. We also confirmed that the Office of the Secretary of the Commission was not consulted in the determination to publish the summaries, but a senior official in that office advised that the Office of General Counsel is generally responsible for opining on such matters rather than the Office of the Secretary. We were advised by a number of Commission officials that the Commission released the summaries not out of a belief that there had been a procedural violation, but rather, simply in order to allay any concerns about the contents of the conference call, in light of the controversy that ensued. The senior official we interviewed in the Office of the Secretary advised us that this was a "prudent" thing to do.

In any event, our inquiry disclosed that the Commission's summary was released almost one month after the call took place and only in response to the current controversy, was revised once after its initial release, and the revised summary included the following additional sentence, which is relevant to the current controversy:

"Commissioner Brownell stated she believed in the sanity [sic] of contracts and judicial precedent on the Mobile Sierra Doctrine warrants applying the public interest standard."

The revised summary also reworded the sentence immediately following the above sentence. The original version stated:

"Commissioner Brownell said that while the Commission is still reviewing evidence in the contract cases that it was her opinion, based on the conversation from the bench today, that at this point in time she was probably the most fervent in her view that what she has looked at so far would not cause her to abrogate contracts."

The revised summary modified this sentence to read as follows:

"Commissioner Brownell further stated that while the Commission is still uncovering and reviewing new evidence in the contract cases that it was her opinion, based on a wealth of information about these contracts and on the conversation from the bench today, that at this point in time she was probably the most fervent in her view that what she has looked at so far would not cause her to abrogate contracts."

We were advised by the author of these summaries, however, that the first version was issued before Commissioner Brownell had the opportunity to submit her comments.

Participant Interviews

According to Commission records we reviewed, representatives of numerous different companies were invited to participate in the conference call. The senior Commission official who participated in the conference call along with the two commissioners, advised that he and his staff were responsible for arranging the call. This official indicated that he and his staff generally invited Wall Street representatives to participate who had also previously participated in a January 2003, “capital availability” conference sponsored by the Commission.

The senior Commission official advised that Chairman Wood and Commissioner Brownell each made remarks, and then non-Commission participants were allowed to ask questions, as set forth in the Commission’s revised summary. The senior Commission official acknowledged that the call required a password to gain entry to it, but that this was simply a logistical matter. According to this official, he and his staff had arranged for only 20 telephone lines, and so there was a practical limit on the number of participants.

We were able to interview 17 Wall Street representatives who acknowledged participating in some or all of the conference call. Nine of these had been invited by the Commission. Two of the participants we interviewed represented an affiliate of Morgan Stanley, the parent company of a direct party to one of the contract cases. Moreover, another participant had filed a statement on behalf of at least one of the parties to the contract cases. In this statement, he detailed what he viewed as the potential negative “consequences” of a Commission decision to not uphold the contracts.²

None of the 17 Wall Street representatives we interviewed who participated stated that Chairman Wood or Commissioner Brownell explicitly indicated, during the conference call, how they would vote on the contract cases. Nevertheless, each of these participants had different impressions of what was said during the call. One reported that Commissioner Brownell stated that she and Chairman Wood would “defend” the contracts. Commissioner Brownell denied making this statement, and Chairman Wood stated that he was not present for all of Commissioner Brownell’s statements.

We reviewed copies of handwritten notes taken during the conference call by a number of the Wall Street participants. In three of these sets of notes, the note taker wrote “2-1 vote,” or words to that effect. Consequently, we asked these note takers whether their

² When presented with this information, a senior Commission legal official asserted that the participant may have also filed a similar statement on behalf of other parties to the contract cases, but that in any event, such an action was not of concern so long as nothing improper was communicated during the conference call. In other words, and according to this official, the fact that some of the participants in the conference call were affiliated with interested parties did not, in and of itself, result in any violation of Commission rules.

written records meant, in fact, that they had heard a Commissioner or Commission official forecast the votes of the Commission on the contract cases, during the conference call. These individuals all generally replied that their written records of the conference call simply conveyed their understanding of how the Commissioners were inclined to vote based on all of the statements made that day, including during the open meeting and a subsequent press conference. According to a number of these participants, an individual who was generally knowledgeable of Commission practice, and who had monitored the Commission events of March 26, 2003, could generally assume how the Commission was likely to vote in the future on the contract cases.

A list of the companies whose representatives we were able to identify as participants and interview is set forth in Appendix B of this report, along with a list of those companies whose representatives were invited to participate.

We were advised by a number of the Commission officials we interviewed that the March 26, 2003, conference call was not the first or only communication with Wall Street representatives. These officials identified the following additional instances³:

- February 20, 2003
- March 28, 2003

The February 20, 2003, conference call was initiated by the Commission via an electronic mail message, which read: [In an “ongoing effort to promote outreach to the financial community, Commission Chairman Pat Wood would like to invite you to participate in a teleconference...”] According to a senior Commission official the call included discussions of decisions made that day during the Commission's open meeting. Commission officials were unable to provide us with a written summary or other record of the contents of this call.

March 28, 2003, Conference Call

The March 28, 2003, call was hosted by a Wall Street firm and Commissioner Brownell was invited to participate. Approximately 100 representatives participated in the call, and the Commission’s March 26th open meeting was discussed. Commissioner Brownell confirmed that she and two Commission legal advisers participated, in order to further explain what had transpired during the March 26, 2003, open meeting. We were able to obtain a written transcript of this call because the Wall Street host had it recorded. According to this transcript, Commissioner Brownell made the following statements:

“The second thing we did and probably the most important thing we did was talk about the long term contracts. We did not issue orders primarily because given the work that has to be done in developing that, we needed more time. But we will be issuing orders within the next few weeks if not at the next meeting. The three of us came at it from slightly different directions. But two of us -- the Chairman and myself -- I think quite clearly indicted that we believe the public interest standard should in fact prevail. And

³ Commission representatives were unable to provide information or documentation regarding all of the calls which may have occurred between the Commission and Wall Street representatives.

based on our analysis of the totality of the circumstances that we saw no reason to abrogate those contracts.”

“Commissioner Massey did not say no but he indicated, I think, quite strongly that he approaches it from a very different angle and believes that just and reasonable should apply. And indeed that some if not all of the contracts should be abrogated.”

* * * * *

“It’s not final until we actually vote. I mean that's just one of those technicalities. I don't see any reason to believe that any of us are going to change our minds. I certainly know that I've read all there is to read and I'm not at the point of changing my mind. And I haven't heard anybody else say that either.”⁴

When presented with these statements, Commissioner Brownell advised that she was simply reflecting the fact that many in the audience did not understand Commission rules, to the extent that the Commission had not yet voted, that the Commission had to vote in order to take official action, and that she had read all of the evidence presented to her to that date. If additional evidence was presented, she stated that she would review it. In that context, Commissioner Brownell denied engaging in any improper communication.

* * *

Based on our inquiry, we have developed a number of recommendations, which we have set forth in the transmittal memorandum to this report.

⁴ We did not authenticate this transcript. Although we attempted to review it, the recording of this call was no longer available.

APPENDIX A

SCOPE AND METHODOLOGY

We conducted this special inquiry from April 28, 2003, to June 10, 2003.

During our inquiry, we:

- Interviewed the three Commission officials as well as 17 of the Wall Street representatives who participated in the conference call;
- Reviewed pertinent Commission procedural rules, including the Administrative Procedure Act and the Government in the Sunshine Act, as well as pertinent case law;
- Discussed these matters with two senior Commission legal officials;
- Reviewed a number of Commission records, including transcripts of the March 26, 2003, open meeting, as well as the press conference held by all three commissioners that same day. These records also included certain motions and other pleadings filed by a number of the parties to the contract cases, as well as the initial and revised summaries of the conference call later prepared by the Commission;
- Reviewed the contents of handwritten notes, taken by a number of the Wall Street representatives during some or all of these Commission events, copies of which were provided voluntarily to the Office of Inspector General;
- Reviewed published summaries, prepared by a number of the Wall Street representatives, concerning the Commission events of March 26, 2003;
- Reviewed a transcript of a March 28, 2003, conference call hosted by a Wall Street representative and attended by Commissioner Brownell; and
- Attempted to determine whether any participant had tape-recorded the conference call. None of the conference call participants we interviewed indicated that they had tape-recorded the call, nor could they, or we, identify anyone who had done so.

APPENDIX B

MARCH 26, 2003, COMMISSION CONFERENCE CALL

WALL STREET REPRESENTATIVES INVITED TO PARTICIPATE BY THE COMMISSION:

- Merrill Lynch
- Goldman Sachs
- Morgan Stanley
- Lehman Brothers
- Fitch Ratings
- Standard and Poor
- Schwab Capital Markets
- Credit Lyonnais, S.A.
- Barbnnet
- TIAA
- Prudential Securities, Inc.
- Washington Research/Prudential
- Moodys
- UBSW
- Glenrock Associates LLC
- Duquesne Capital Management

WALL STREET REPRESENTATIVES IDENTIFIED AS PARTICIPANTS AND INTERVIEWED BY THE OIG:

- Fitch Ratings
- Lehman Brothers
- Duquesne Capital Management
- Merrill Lynch
- Howard Weil (Legg Mason)
- Morgan Stanley
- Moodys
- Credit Lyonnais, S.A.
- Prudential Securities, Inc.
- Standard & Poor
- Goldman Sachs
- Schwab Capital Markets

Attachment C

Summary of Events relating to the FERC conference call with the investment community on 3-26-03. Prepared by Kevin F.Cadden, Director, Office of External affairs. (Revised)

On March 26, 2003 Chairman Pat Wood, Commissioner Nora Mead Brownell and I participated in a conference call at approximately 4:08pm EST with the investment community to report on and answer questions regarding our open meeting earlier in the day.

The conference call was arranged, at my direction, by Paula Felt who works in the Office of External Affairs. The invitees included mostly those who had participated in the FERC's capital availability forum earlier in the year. According to our records, we had asked the conference call operator to arrange for 20 lines. The leader name was provided as Pat Wood and the passcode was given as Cadden.

The call began with Chairman Wood summarizing the events of the day. Shortly after the Chairman started to speak we began to hear loud background noise: music, car horns, people talking etc. We paused. The noise abated for a moment, and as the Chairman began to speak again, the background noise started up. I asked that the people on the call to mute their phones. This did not work, as we continued to hear the background noise. One participant suggested that I get the operator on the phone and ask her to mute everyone other than the person who was speaking. Another person suggested that if we ever do this in the future, we should ask assistance of another organization that does these types of calls all the time. I told all of the participants to hang up and then dial in again. When I dialed in again, I told the conference operator to mute everyone else on the call. In addition, I told her to activate a system whereby the participants could ask questions after we were finished speaking. As a result of these technical difficulties, the call actually began at approximately 4:20 EST

Chairman Wood once again began to speak. He told the participants what was discussed at open meeting, what was decided at open meeting and what work remained to be done. He said that the open meeting began with a staff presentation from Don Gelinis, the team leader of the staff report entitled "Final Report on Price Manipulation in Western Energy Markets". The Chairman stated that as a result of the Gelinis investigation the Commission issued show cause orders against Enron, Reliant and BP Energy. He said it was possible that other show cause orders may be issued in the future based upon the Commission's review of the applicable tariff provisions and of additional evidence, and the response thereto, which were filed with the Commission the previous week.

The Chairman then reported on the California refund proceeding. The Chairman said that the Commission voted to change the gas proxy price in the California refund proceeding. He said that the Commission generally accepted a staff recommendation on the gas proxy price that was included in the Gelinis report. The Chairman also referenced the Gelinis interim report released in August of 2002.

The Chairman then said that while the Commission took no action today, they did discuss the contract abrogation cases. The Chairman reported that, based on the conversation that took place on the bench today, that it was unlikely that the agency would reach a unanimous result on these cases. The Chairman went on to say that the agency is still looking at the additional evidence that was submitted on March 3rd and the responses thereto filed March 20th. He said the Commission did not take official action.

Upon completion of the Chairman's opening statement, the Chairman's secretary, Margaret Nelson, knocked on the door of the library. Pat went to the door, spoke with Margie, and whispered to Nora and me that he had to take a phone call from a member of the U.S. Senate.

Commissioner Brownell picked up the conversation and began to talk more about the Gelinas report. She said that while staff had recommended that the Commission issue more show cause orders, the Commission was not sure whether the behaviors outlined in the report were a violation of the CAISO tariff. She reported that Commissioners had agreed orally at the meeting to give parties the opportunity to comment on this issue. Commissioner Brownell stated she believed in the sanity of contracts and judicial precedent on the Mobile Sierra Doctrine warrants applying the public interest standard. Commissioner Brownell further stated that while the Commission is still uncovering and reviewing new evidence in the contract cases that it was her opinion, based on a wealth of information about these contracts and the conversation from the bench today, that at this point in time she was probably the most fervent in her view that what she has looked at so far would not cause her to abrogate contracts. At this point in time I asked the operator to begin the questions.

The first question asked was how much additional money California was owed as a result of our decision in the refund proceeding. I answered this question. I said that while the commissioners did not have an exact number, I had told the press earlier in the day that I estimated an additional \$1.5 billion dollars. I also explained that suppliers to the CAISO and PX were owed \$3 billion, primarily PX collateral from PG&E bankruptcy claims.

Commissioner Brownell was asked what impact, if any, would the staff report, have on the Williams settlement. She responded that she understood there would be no impact.

Another question asked about the refund timeline. Commissioner Brownell said that parties will be given forty days to respond to our order and that she anticipated that refund amounts would be finalized sometime in the summer.

Another question asked about additional show cause orders. Commissioner Brownell reiterated that the Commission was giving the parties an opportunity to comment on Chapter VI of the staff report for the purpose of telling us whether the anomalous behaviors discussed in this Chapter VI were a violation of the tariff.

Chairman Wood came back into the room. He was asked a question about what happens

to a company which loses market based rate authority and what the geographic scope of the show cause is. Chairman Wood responded that we would have to do a cost of service rate case. In addition, he said that the order did not make any statement about the geographic scope.

We thanked people for participating and the call ended at approximately 5:00pm.

I listened to the discussion at the open meeting, the press conference and the conference call with the investment community. At no time did I hear the Chairman or Commissioner Brownell say anything substantively different in any of those three meetings. In addition, I attempted to reach everyone on the conference call to ascertain if a tape of the call existed so that it could be included in the record. Unfortunately, none of the people who I spoke with taped the call.

APPENDIX D

COMMISSIONER STATEMENTS AT MARCH 26, 2003, OPEN MEETING

The transcript of the Commission's March 26, 2003, open meeting reveals the following statements, which we have excerpted from the record. They are not intended to capture the full extent of the Commissioners' public deliberations at the open meeting concerning the contract cases:

[COMMISSIONER BROWNELL]: "This is not an easy day. The [contract cases] present a common issue, whether in fact it is appropriate for this Commission to abrogate contracts in light of the dysfunctions of the western spot power markets during 2000 and 2001."

* * * * *

"I have been clear in my prior statements about the belief in the sanctity of contracts and I've stated previously that I believe the judicial precedent on the Mobil Sierra Doctrine warrants applying the public interest standards to contract abrogation unless there is specific language in the contract that invites the Commission to apply a lower standard."

"Three Administrative Law judges assigned to these cases have all unequivocally agreed. Therefore the question in these cases now is not whether the contract rates are unjust and unreasonably high but whether the public interest standard demands that they be changed, and I struggle with that question."

* * * * *

"A trial has been held in each one of these four cases so although we are still uncovering new information about the causes of the crisis, we already have a wealth of information about these contracts. Under normal circumstances, given complainant[s'] failure to demonstrate that any of the contracts would have a tangible adverse effect on ratepayers or would significantly undermine their own financial health, I would not abrogate any of these contracts. In fact, the evidence presented in these cases demonstrates the contrary."

* * * * *

"I'm open to the process. I think that in the interest of equity, I was persuaded by [one of the parties'] timeliness and some of the arguments, . . . I am unpersuaded to consider abrogating any of the other contracts."

Chairman Wood also made statements at the open meeting concerning the contract cases, including the following:

[CHAIRMAN WOOD]: “ I think, largely, I am more consonant, [Commissioner Brownell], with your view than with [Commissioner Massey’s] on this more broadly. I would like to lay out publicly how I get there.”

* * * * *

“In this weighing of the issues, I cannot get to a point, based on what I’ve seen –and I’ve seen a lot of this in this particular case – I cannot, in weighing that totality there, determine that the contracts should be reformed or abrogated. I think even considering probably that very big issue about the linkage between the spot market and the long-term market, that was raised in the [Commission staff report on Western power market manipulation], that does not offset the other factors in weighing the public interest that would urge me to abrogate these contracts.”

“So that’s where I am today. I know we do have more evidence to review in the 100-day discovery, and I’m fine with that, but we spent a lot of time on this, and I do appreciate that we all come at it from different history and different perspectives, but I have to say here I do think that having these contracts maintained where they are appropriate, is consistent with the law, and consistent with the record that has been developed for us.”

Excerpts from Commissioner Massey’s statements made during the open meeting follow:

[COMMISSIONER MASSEY]: “But let me say that I believe – and I’m still looking at all the facts of all of these cases – but I am persuaded by [the Commission staff report on Western power market manipulation] that there was a correlation between spot prices, certainly a correlation, as Commissioner Brownell points out, spot-to-spot. Spot in California certainly influenced spot in the Pacific Northwest.”

* * * * *

“...I don’t know whether I’ll apply the just and reasonable standard, or the public interest standard, but I believe that the public interest is well served by this Commission insisting that markets produce not only just and reasonable spot prices, mid-term prices, but also long-term prices.”

“I think markets need to believe that if that’s not going to be produced, that this Agency will step in and remedy it, otherwise, nobody is going to want to have markets for electricity.”

“That’s the way I feel about it. So those are the issues I’m going to take into account, as we finalize these cases.”