

Energy, Infrastructure, Project and Asset Finance

Summary of FERC Meeting Agenda

July 2010

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Below are brief summaries of the agenda items for the Federal Energy Regulatory Commission's July 15, 2010 meeting, pursuant to the agenda as issued on July 8, 2010. Agenda items E-7, E-14 and C-1 are not summarized as they were omitted from the July 8 agenda.

Administrative Items

A-1: (Docket No. AD02-1-000)

This administrative item will address Agency Administrative Matters.

A-2: (Docket No. AD02-7-000)

This administrative item will address Customer Matters, Reliability, Security and Market Operations.

A-3: (Docket No. AD10-15-000)

This administrative item will provide a Smart Grid Update.

Electric Items

E-1: California Public Utilities Commission (Docket No. EL10-64-000); Southern California Edison Company, Pacific Gas and Electric Company and San Diego Gas & Electric Company (Docket No. EL10-66-000)

On May 4, 2010, the Public Utilities Commission of the State of California (CPUC) filed a petition for declaratory order seeking a finding that its decisions implementing California's "Waste Heat and Carbon Emissions Reduction Act" (AB 1613) are not preempted by the Federal Power Act, the Public Utility Regulatory Policies Act or the Federal Energy Regulatory Commission's (the Commission) regulations. Under the CPUC's decisions, California investor-owned electric utilities must implement AB 1613 by offering standard contracts to eligible Combined Heat and Power (CHP) systems. On May 11, 2010, Southern California Edison Company, Pacific Gas and Electric Company and San Diego Gas & Electric Company also filed a petition for declaratory order seeking an opposite finding arguing that the CPUC is attempting to set prices for feed-in tariffs relating to CHP generating facilities with capacity of 20 MW or less. Agenda item E-1 may be an order addressing the petitions.



Each month, White & Case provides brief summaries of the agenda items for the Federal Energy Regulatory Commission's monthly meeting. For questions relating to any of these matters, please do not hesitate to contact any of the lawyers listed below.

Donna Attanasio
Partner
+ 1 202 626 3589
dattanasio@whitecase.com

Daniel Hagan
Partner
+ 1 202 626 6497
dhagan@whitecase.com

Earle O'Donnell
Partner
+ 1 202 626 3582
eodonnell@whitecase.com

White & Case LLP
701 Thirteenth Street, NW
Washington, DC 20005-3807
United States
+ 1 202 626 3600

**E-2: Southwest Power Pool, Inc.
(Docket No. ER10-1269-000)**

On May 17, 2010, Southwest Power Pool, Inc. (SPP) submitted tariff amendments to revise its Open Access Transmission Tariff (OATT) to incorporate a modified transmission planning process, the Integrated Transmission Plan, that SPP will use to determine its near- and long-term transmission needs to maintain reliability and provide economic benefits throughout the SPP region. A number of parties submitted protests arguing, among other things, that SPP's proposal lacks clarity and would lead to substantive and procedural irregularities. Agenda item E-2 may be an order related to SPP's proposed tariff revisions.

**E-3: North American Electric Reliability Corporation
(Docket No. RD10-13-000)**

On April 20, 2010, the North American Electric Reliability Corporation (NERC) filed a petition seeking approval for an interpretation of Requirement R1.1 in the Commission-approved NERC Reliability Standard CIP-006-2—Cyber Security—Physical Security of Critical Cyber Assets. In response to questions regarding, among other things, the use of the phrase “to control physical access” and whether an alternative security measure must be physical in nature, NERC proposed the following interpretation “[f]or Electronic Security Perimeter wiring external to a Physical Security Perimeter, the drafting team interprets the Requirement R1.1 as not limited to measures that are ‘physical in nature.’ The alternative measures may be physical or logical, on the condition that they provide security equivalent or better to a completely enclosed (‘six-wall’) border. Alternative physical control measures may include, but are not limited to, multiple physical-access control layers within a non-public, controlled space. Alternative logical control measures may include, but are not limited to, data encryption and/or circuit monitoring to detect unauthorized access or physical tampering.” Agenda item E-3 may be an order addressing the petition.

E-4: Mandatory Reliability Standards for the Calculation of Available Transfer Capability, Capacity Benefit Margins, Transmission Reliability; Margins, Total Transfer Capability and Existing Transmission Commitments; Mandatory Reliability Standards for the Bulk Power System (Docket No. RM08-19-003); Standards for Business Practices and Communication Protocols for Public Utilities (Docket No. RM05-5-019)

Order No. 729 approved and directed modifications to six Modeling, Data and Analysis (MOD) Reliability Standards submitted to the Commission for approval by NERC, and Order

No. 729-A directed certain further modifications to the MOD Reliability Standards and clarified the implementation timeline for these Reliability Standards. On June 4, 2010, several parties filed for clarification and/or rehearing of Order No. 729-A with regard to the Commission's finding that the effective date for the subject MOD Reliability Standard is January 1, 2011. Separately, Docket No. RM05-5-019 is a new subdocket relating to Order No. 676 (Standards for Business Practices and Communication Protocols for Public Utilities). Agenda item E-4 may be an order addressing the above items.

E-5: New York Independent System Operator, Inc. and New York Transmission Owners (Docket No. OA08-52-007)

On October 15, 2009, the Commission directed the New York Independent System Operator, Inc. (NYISO) and the New York Transmission Owners (NYTOs) to submit a compliance filing clarifying certain provisions of the NYISO OATT regarding transmission planning. On December 11, 2009, the NYISO and the NYTOs submitted revisions to Attachment Y of the NYISO's OATT in compliance with the Commission's October 15 order. Agenda item E-5 may be an order addressing the compliance filing.

E-6: South Carolina Electric & Gas Company (Docket Nos. ER10-1268-000; ER10-516-000 and ER10-855-000)

On December 29, 2009, South Carolina Electric & Gas Company (SCE&G) submitted revised tariff sheets changing the transmission rates under SCE&G's OATT to implement a cost-of-service formula for calculating the formula rates for certain transmission services under its OATT. The Commission accepted the proposed tariff sheets on February 26, 2010 and established hearing and settlement judge procedures. Separately, on March 10, 2010, SCE&G submitted an unexecuted revised Network Integration Transmission Service Agreement (NITSA) providing for transmission service to Central Electric Power Cooperative, Inc. at a new delivery point. The unexecuted NITSA was accepted and suspended for a nominal period in an order issued May 6, 2010. In the May 6 order, the Commission also established hearing and settlement judge procedures and consolidated SCE&G's filing with the proceeding relating to SCE&G's formula rates. On May 17, 2010, SCE&G submitted proposed revisions to its formula rate for transmission service to change the depreciation rates in that formula. In the May 17 filing, SCE&G stated that in late 2009, it completed a new depreciation study that produced more current depreciation numbers than the depreciation numbers in the December 29 filing. Agenda item E-6 may be an order addressing SCE&G's proposed tariff revisions and/or the unexecuted NITSA.

E-8: BG Dighton Power, LLC (Docket No. EG06-73-000); MASSPOWER (Docket No. EG98-79-000); Lake Road Generating Company, LP (Docket No. EG99-220-000)

On June 10, 2010, Dighton Power, LLC, MASSPOWER and Lake Road Generating Co., LP each submitted a Notice of Self-Recertification of Exempt Wholesale Generator Status. Agenda item E-8 may be an order on the self-recertifications.

E-9: ISO New England, Inc. (Docket No. ER10-1185-000)

On May 4, 2010, ISO-NE submitted an informational filing providing required data regarding the Forward Capacity Auction for the 2013-2014 Capacity Commitment Period. Agenda item E-9 may be an order on the informational filing.

E-10: California Independent System Operator Corporation (Docket No. ER10-765-000)

On February 16, 2010, as supplemented on May 17, 2010, the California Independent System Operator Corporation (CAISO) submitted amendments to its tariff in order to introduce Proxy Demand Resources (PDR), a new demand response product that is designed to reduce the barriers to the participation of demand response in the CAISO market. CAISO's filings are in response to Order No. 719, which called upon independent system operators (ISOs) to develop the capability to allow an aggregator of retail customers to bid, on behalf of its retail customers, demand response directly into the ISO organized markets, to the extent it complies with the applicable law and regulations concerning retail customers. CAISO seeks to implement the PDR amendments during the 2010 summer season. Numerous parties intervened in, commented on and/or protested the proceeding. Agenda item E-10 may be an order on CAISO's PDR filings.

E-11: ISO New England Inc. and New England Power Pool (Docket No. ER10-942-000)

On March 26, 2010, ISO New England Inc. (ISO-NE) and the New England Power Pool (NEPOOL) Participants Committee submitted amendments to the ISO-NE Financial Assurance Policy and the ISO-NE Billing Policy in order to try to limit NEPOOL's exposure in situations of a market participant's payment default, lessen the risk of nonpayment and support the liquidity of the markets. The amendments include: having twice weekly (instead of once weekly) settlement of certain charges; stopping market participants who do not serve retail load at government-established rates from using unsecured credit; when unsecured credit is used, reallocating default risks; separating the billing and collateralization of transmission charges from other ISO-NE charges; and strengthening the quality of the security that is actually provided. Numerous parties intervened in, commented on and/or protested the proceeding. Agenda item E-11 may be an order on the ISO-NE and NEPOOL filing.

E-12: New York Independent System Operator, Inc. (Docket No. ER07-521-009)

On April 16, 2008, the Commission conditionally accepted the NYISO's revisions to its OATT and Market Administration and Services Tariff to implement long-term transmission rights (LTTRs) in New York, as required by Order Nos. 681 and 681-A. On April 16, 2010, NYISO submitted a compliance filing, which contained an implementation plan under which NYISO would develop new tariff provisions and software systems to allow Load Serving Entities (LSEs) to obtain Fixed-Price Transmission Congestion Contracts between any Point of Injection (POI) and their Load Zones. This would allow LSEs to have new LTTRs for non-historic POI and Point of Withdrawals combinations. Agenda item E-12 may be an order on the NYISO implementation plan filing.

E-13: New York Independent System Operator, Inc. (Docket No. ER08-1281-004)

On January 12, 2010, NYISO submitted a *Report on Broader Regional Markets; Long-Term Solutions to Lake Erie Loop Flow*, in response to the Commission's orders requiring NYISO to develop a report on long-term comprehensive solutions to the loop flow problem that addressed such issues as interface pricing, congestion management, tariff revisions, the implementation status of and operating agreements for Ontario-Michigan Phase Angle Regulators (PARs), and the role for physical controls. The report was developed in cooperation with PJM Interconnection, L.L.C. (PJM), the Midwest Independent Transmission System Operator, the Ontario Independent Electric System Operator and the stakeholders of these ISOs/RTOs. To solve the Lake Erie loop flow problem, the report recommends market solutions (such as Buy-Through of Congestion, Congestion Management/Market-to-Market Coordination, Interface Pricing Revisions and Interregional Transaction Coordination), using PARs on the Ontario-Michigan border to better align power flows to schedules and using physical controls within the four different ISO/RTO regions. Agenda item E-13 may be an order on the NYISO report.

E-15: Virginia Electric and Power Company v. PJM Interconnection, L.L.C. (Docket No. EL10-69-000)

On May 25, 2010, the Virginia Electric and Power Company (Dominion) filed a complaint against PJM, claiming that PJM erroneously changed its 2010 load forecast model for the Dominion Zone within PJM (which is used to develop Reliability Pricing Model capacity charges for the 2010/2011 Delivery Year, which began June 1, 2010) and that this change would cause Dominion to suffer a significant financial impact. In its answer to Dominion's complaint, PJM agreed to revert back to its former method for forecasting Dominion loads and stated that it is planning to hire an independent consultant to help review its load

forecasting methodologies for the region and all of the Zones (instead of performing spot changes to the economic input as it did to the Dominion Zone). Agenda item E-15 may be an order on Dominion's complaint.

Gas Items

G-1: Portland Natural Gas Transmission System (Docket No. RP09-2-002)

Portland Natural Gas Transmission System (Portland) provides transportation services over facilities spanning from the US/Canadian border to an interconnection near Dracut, Massachusetts, and jointly owns and operates facilities from Westbrook, Maine to Dracut, Massachusetts with Maritimes & Northeast Pipeline, L.L.C. (Maritimes). Maritimes has a certificate of public convenience and necessity to construct its Phase IV Expansion Project, which is designed to provide additional capacity in New Brunswick, Canada. On October 29, 2008, the Commission issued an order concerning Portland's revised tariff sheets to implement an in-kind fuel tracker under section 4 of the Natural Gas Act. The Commission accepted and suspended Portland's tariffs sheets, subject to refunds and conditions. In a compliance filing, Portland proposed to institute an in-kind fuel surcharge to recover fuel that it claimed it would have to provide once Maritimes' Phase IV Expansion Project becomes operational. In a March 31, 2009 order on the compliance filing (and denying clarification and rehearing), the Commission ruled that Maritimes was not allowed to charge Portland or its shippers for fuel that is attributable to its Phase IV Expansion Project. Maritimes filed a request for rehearing of the Commission's March 31 order. Agenda item G-1 may be an order on rehearing.

G-2: Transcontinental Gas Pipe Line Corporation (Docket No. RP01-245-031)

On May 29, 2009, the Commission issued an order requiring Transcontinental Gas Pipe Line Corporation (Transco) to develop a billing methodology that imposes a single-usage and fuel charge, either to all gas scheduled to be delivered to the Station No. 85 pooling point, to all gas scheduled to be received from Station No. 85 or through another consistent billing method. In a February 18, 2010 order, the Commission accepted Transco's proposal to institute a single-usage fuel charge for all gas scheduled to be received from Station No. 85. Transco also requested a waiver of the Commission's regulations and its tariff concerning certain transactions that under the single-usage and fuel charge would receive transportation on the Zone 4 mainline without being assessed a Zone 4 transportation charge. The Commission did not grant the waiver in its February 18 order, and Transco filed a request for clarification or, in the alternative, rehearing. Florida Power Corporation also filed a request for clarification or, in the alternative, rehearing. Agenda item G-2 may be an order on clarification or rehearing.

G-3: Great Lakes Gas Transmission Limited Partnership (Docket No. RP10-149-000)

November 19, 2009, the Commission initiated an investigation in order to evaluate whether the rates charged by Great Lakes Gas Transmission Limited Partnership (Great Lakes) were just and reasonable. The Commission set the matter for hearing and ordered Great Lakes to file a cost and revenue study. An uncontested settlement agreement was reached among the participants in the settlement conference concerning, among other issues, rate modifications, revenue sharing between Great Lakes and qualifying shippers, the design of interruptible and overrun rates and the sharing of revenues from these rates, and the rolling in of costs from certain pipeline expansion projects. In addition, Great Lakes agreed to file a general rate case by November 1, 2013. Agenda item G-3 may be an order on the settlement

Hydro Items

H-1: York Haven Power Company, LLC (Docket No. P-1888-028)

On June 7, 2010, the Susquehanna River Basin Commission (SRBC) filed a request for rehearing of a May 6, 2010 delegated order rejecting SRBC's request that its study disputes be considered under the formal study dispute resolution process for the York Haven hydroelectric project. Agenda item H-1 may be an order on rehearing.

H-2: L.S. Starrett Company (Docket No. UL09-1-002)

On November 20, 2009, L.S. Starrett Company (Starrett) filed a motion to stay the October 21, 2009 order determining that Starrett's proposed Crescent Street Dam Project requires licensing under Part I of the Federal Power Act. Agenda item H-2 may be an order on Starrett's motion.

H-3: City of Tacoma, Washington (Docket Nos. P-460-033, -040 and -021)

On August 22, 2006, the US Court of Appeals for the District of Columbia Circuit remanded for further proceedings certain orders regarding the City of Tacoma's (Tacoma) hydroelectric license for the Cushman Hydroelectric Project. Further proceedings were held and a proposed settlement was filed on January 21, 2009. On January 26, 2009, Tacoma also filed an application to amend its license to construct a new powerhouse at the base of the Cushman Number 2 Dam. Agenda item H-3 may be an order on remand and/or the amendment application.

H-4: FPL Energy Maine Hydro LLC v. Great Lakes Hydro America, LLC and Rumford Falls Hydro LLC (Docket No. EL10-53-000)

On March 26, 2010, FPL Energy Maine Hydro LLC (FPL) filed a complaint against Great Lakes Hydro America, LLC (Great Lakes) and Rumford Falls Hydro LLC (Rumford) alleging that Great Lakes and Rumford had violated a provision of their licenses by obstructing FPL's efforts to allocate and recover costs associated with a remediation project intended to bring the Upper and Middle Dams into compliance with the Commission's safety regulations. Agenda item H-4 may be an order on the complaint.

H-5: Exelon Generation Company, LLC (Docket No. P-2355-014)

On June 4, 2010, the US Department of the Interior and the Commonwealth of Pennsylvania Department of Environmental Protection filed requests for rehearing of a May 5, 2010 delegated order making a formal dispute resolution determination regarding certain environmental issues with respect to the Muddy Run Pumped Storage Project. Agenda item H-5 may be an order on rehearing.

Certificate Items**C-2: TGGT Holdings, LLC (Docket No. CP10-73-000)**

On February 26, 2010, TGGT Holdings, LLC filed a request for declaratory order finding that its proposed expansion facilities are gathering facilities and therefore not subject to the Commission jurisdiction under the Natural Gas Act and that completion of its proposed facilities will not affect the jurisdictional status of its existing gathering facilities. Agenda item C-2 may be an order on the request for declaratory order.

C-3: Florida Gas Transmission Company, LLC and Transcontinental Gas Pipe Line Company, LLC (Docket Nos. CP09-455-000 and CP09-456-000)

On August 14, 2009, Florida Gas Transmission Company, LLC (Florida Gas) filed an abbreviated application for a certificate of public convenience and necessity to construct, install and operate certain lateral pipeline facilities, including a metering station and modification to a compressor facility, all located in Mobile County, Alabama. Florida Gas indicated that the project would provide an annual average of 342,610 MMBtu/day of additional firm transportation capacity. Also on August 14, 2009, Florida Gas and Transco filed a joint application for a certificate of public convenience and necessity permitting Transco to construct and operate the Pascagoula Expansion Project intended to transport gas from the Gulf Energy LNG terminal via the Gulf LNG Pipeline for delivery to interconnections with Florida Gas' and Transco's pipeline systems. Agenda item C-3 may be an order on the applications.

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