

Energy, Infrastructure, Project and Asset Finance

# Summary of FERC Meeting Agenda

December 2011

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*Below are brief summaries of the agenda items for the Federal Energy Regulatory Commission's December 15, 2011 meeting, pursuant to the agenda as issued on December 8, 2011. Agenda items E-8, E-10, E-15, E-19, E-22, E-23 and G-2 have not been summarized, as they were omitted from the agenda*

## Administrative Items

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

This administrative item will address Agency Business Matters.

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

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

## Electric Items

### E-1: Duke Energy Corporation (Docket No. ER11-3306-000); Progress Energy, Inc. (Docket Nos. ER11-3307-000, ER12-115-000, ER12-116-000); Carolina Power & Light Company (Docket Nos. ER12-118-000, ER12-119-000); Florida Power Corporation (Docket No. ER12-120-000)

On April 4, 2011, Duke Energy Corporation (Duke Energy), on behalf of its subsidiary Duke Energy Carolinas, LLC (DEC), and Progress Energy, Inc. (Progress Energy), on behalf of its subsidiary Carolina Power & Light Company (d/b/a Progress Energy Carolinas, Inc. (PEC)), submitted a proposed Joint Dispatch Agreement for generation resources in connection with the proposed merger of Duke Energy and Progress Energy. Duke Energy and Progress Energy also submitted, in connection with the proposed merger, a joint Open Access Transmission Tariff (OATT), which would combine into a single OATT the currently separate OATTs of DEC, PEC and Florida Power Corporation (another subsidiary of Progress Energy, d/b/a Progress Energy Florida, Inc.). Duke Energy and Progress Energy filed e-Tariff-compliant versions of the filings and also submitted motions to consolidate the proceedings. Under the proposed merger, Progress Energy would become a wholly owned subsidiary of Duke Energy. On September 30, 2011, FERC conditionally approved the merger (see agenda item E-2). Agenda item E-1 may be an order on the Joint Dispatch Agreement and/or the OATT filings.



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.

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**E-2: Duke Energy Corporation; Progress Energy, Inc. (Docket No. EC11-60-001)**

On April 4, 2011, Duke Energy and Progress Energy submitted an application under section 203 of the FPA for the merger of the two companies, pursuant to which Progress Energy would become a wholly owned subsidiary of Duke Energy. On September 30, 2011, FERC issued an order conditionally approving the merger and imposing market power mitigation measures in response to screen failures in the horizontal market power analysis of the transaction. The proposed mitigation measures include the merged company joining a Regional Transmission Organization (RTO), having an independent coordinator of transmission, engaging in transmission upgrades, and/or pursuing generation divestiture and/or virtual divestiture. Duke Energy and Progress Energy and several other parties filed requests for rehearing. Agenda item E-2 may be an order on rehearing.

**E-3: Louisville Gas and Electric Company and Kentucky Utilities Company (Docket Nos. ER11-4396-000, EC98-2-000)**

On August 30, 2011, Louisville Gas and Electric Company (LG&E) and Kentucky Utilities (KU) submitted a request for TranServ International, Inc. (TranServ) to be appointed as the new Independent Transmission Organization (ITO) for their transmission systems. Southwest Power Pool, Inc. (SPP) is currently serving as LG&E's and KU's ITO, and TranServ would take over the ITO function when SPP's contract expires on August 31, 2012. TransServ, and its subcontractor MAPP COR, will assume most of the responsibilities that SPP, as the current ITO, performs (with the exception of certain NERC-mandated Balancing Authority functions that LG&E and KU will perform). FERC mandated that LG&E and KU use an ITO to run their transmission systems in connection with LG&E's and KU's decision to withdraw from the Midwest Independent Transmission System Operator, Inc. (MISO) and from conditions in previous mergers. Agenda item E-3 may be an order on the ITO request.

**E-4: Demand Response Compensation in Organized Wholesale Energy Markets (Docket No. RM10-17-001)**

On March 15, 2011, FERC issued Order No. 745, Demand Response Compensation in Organized Wholesale Energy Markets, to develop a framework for demand response as an alternative to generation in balancing supply and demand. In Order No. 745, FERC ruled that RTOs and ISOs have to pay demand response resources, when they are cost-effective as determined by the RTOs/ISOs net benefits test, the market

price for energy (i.e., the locational marginal price (LMP)). Under the net benefits tests, demand response resources will be cost-effective when the benefits to load from a reduced energy price (as a result of the participation of demand response) are greater than the costs of paying LMP to the demand response resources. The RTOs and ISOs were required to make compliance filings describing how they will comply with the directives in Order No. 745 (see agenda items E-5, E-6, E-7 and E-9). Numerous parties filed requests for rehearing of Order No. 745. Agenda item E-4 may be an order on rehearing.

**E-5: California Independent System Operator Corporation (Docket No. ER11-4100-000)**

On July 22, 2011, California Independent System Operator Corporation (CAISO) submitted its Order No. 745 compliance filing addressing its net benefits for demand response compensation, its measurement and verification provisions for demand response performance, and cost allocation for demand response resources. In terms of the net benefits test for determining the cost effectiveness of demand response, CAISO proposed to use two different supply curves for each month—one curve for on-peak and one curve for off-peak. CAISO also requested that it be permitted to retain its default load adjustment in order to ensure that demand response resources do not receive double payment for a single reduction in demand. In addition, CAISO seeks to maintain its current measurement and verification methodologies as well as provisions that apply to demand response. Agenda item E-5 may be an order on CAISO's compliance filing.

**E-6: Southwest Power Pool, Inc. (Docket No. ER11-4105-000)**

On July 22, 2011, SPP submitted its Order No. 745 compliance filing, stating that its existing OATT and Market Protocols are already consistent with or superior to the requirements in Order No. 745. SPP did not propose any changes to come into compliance with Order No. 745. SPP stated that demand response resources that comply with its dispatch instructions already receive the locational imbalance price, which is the market price all resources receive at all times for providing imbalance energy. In terms of cost allocation, SPP proposes to continue to use a load "gross-up," which involves calculating the total load at the settlement location where the demand response occurs as if the demand response did not occur and then billing the market participants, according to the adjusted load value, at that settlement location. Agenda item E-6 may be an order on SPP's compliance filing.

### **E-7: PJM Interconnection, L.L.C. (Docket No. ER11-4106-000)**

On July 22, 2011, PJM Interconnection, L.L.C. (PJM) submitted its Order No. 745 compliance filing. PJM proposes to modify its Market Rules to provide that demand reduction offers submitted in either its Day-Ahead or Real-Time Energy Markets and that satisfy PJM's net benefits test and follow dispatch signals from PJM's Office of the Interconnection will be compensated. For its Day-Ahead Market, PJM proposes to continue to apply its current rules to demand response resources. For the Real-Time Market, PJM revised its rules on Economic Load Response participation to provide rules on the minimum amount of required notice and information. Agenda item E-7 may be an order on PJM's compliance filing.

### **E-9: Midwest Independent Transmission System Operator, Inc. (Docket No. ER11-4337-000)**

On August 19, 2011, MISO submitted its Order No. 745 compliance filing that proposes to clear demand response offers in the Day-Ahead and Real-Time energy markets using the same methodology as for generation resources. MISO also detailed its net benefits analysis for determining a net benefits threshold that will apply to all demand response resources and its use of the North American Energy Standards Board (NAESB) measurement and verification standards. In terms of cost allocation, MISO proposed a bifurcated recovery methodology, with a portion of the demand response payment to be recovered through direct allocation to MISO Market Participants and the other portion to be recovered through zonal energy surcharges. Agenda item E-9 may be an order on MISO's compliance filing.

### **E-11: Midwest Independent Transmission System Operator, Inc. (Docket Nos. ER08-394-021, -022)**

On April 16, 2009, FERC issued an order rejecting requests for rehearing of its orders on MISO's proposed financial settlement provisions for its long-term resource adequacy and conditionally accepting MISO's compliance filing. MISO and the MISO Independent Market Monitor jointly requested rehearing of the condition in the order that MISO adopt mitigation measures for the voluntary capacity auction in the absence of any showing of market power. The Illinois Municipal Electric Agency also filed a request for rehearing regarding FERC's acceptance of MISO's Cost of New Entry for a new generator being built in MISO. MISO submitted a filing in compliance with the April 2009 order regarding the participation of load modifying resources in the voluntary capacity auction, which FERC conditionally accepted

on April 21, 2010. On December 8, 2010, MISO submitted a filing in compliance with the April 2010 order in which it proposed to retain, as its permanent mechanism, its Interim Mechanism currently in effect for load modifying resources to participate in the voluntary capacity auction. Agenda item E-11 may be on order on rehearing and/or MISO's compliance filing.

### **E-12: Midwest Independent Transmission System Operator, Inc. (Docket Nos. ER09-1049-000, -002, -003)**

On April 28, 2009, MISO submitted its compliance filing addressing market reforms required by FERC in Order No. 719. On October 2, 2009, it updated its compliance filing to address additional requirements in Order No. 719-A regarding facilitation of demand response. FERC issued an order on October 21, 2010 addressing the proposed reforms relating to RTO/ISO governance, but reserved judgment on the remainder of MISO's proposals for a later order. Agenda item E-12 may be an order addressing MISO's other market reform proposals.

### **E-13: Southern Cross Transmission LLC (Docket No. EL11-61-000)**

On September 6, 2011, Southern Cross Transmission LLC (Southern Cross) filed a petition for a declaratory order finding that it may (1) charge negotiated rates for the sale of transmission rights across its approximately 400-mile, bi-directional, high-voltage direct current transmission line that Southern Cross intends to build between ERCOT and the SERC reliability region (Southern Cross Project); and (2) pre-subscribe up to 1,500 MWs of capacity to anchor tenants. Agenda item E-13 may be an order on the petition.

### **E-14: Southern Cross Transmission LLC and Pattern Power Marketing LLC (Docket No. TX11-1-000)**

In conjunction with its petition for negotiated rate authority (see agenda item E-13), Southern Cross and its affiliate, Pattern Power Marketing LLC (Pattern), filed on September 6, 2011, a request that FERC issue: (1) an order under FPA Section 210 directing the City of Garland, Texas and its municipal utility, Garland Power & Light (Garland), to interconnect Garland's to-be-built transmission line in ERCOT with the Southern Cross Project; (2) an order under FPA Section 211 directing Oncor Electric Delivery Company LLC and CenterPoint Energy Houston Electric LLC to provide transmission service for power flows into or out of ERCOT via the Southern Cross Project; and (3) a declaration that granting the above requests would not cause any ERCOT entity to become a "public utility" under the FPA. Agenda item E-14 may be an order on the request.

**E-16: North American Electric Reliability Corporation (Docket No. RD11-12-000)**

On September 9, 2011, North American Electric Reliability Corporation (NERC) filed a petition for approval of EOP-001-0b and EOP-001-2b (Emergency Operations Planning), as well as related interpretations of certain requirements therein. Agenda item E-16 may be on order on NERC's petition.

**E-17: Southwest Power Pool, Inc. (Docket No. ER12-140-000)**

On October 20, 2011, SPP filed proposed revisions to its Tariff to implement a formula rate for transmission service by Kansas Power Pool, a nonjurisdictional municipal energy agency that will be a transmission owner in the Westar Energy, Inc. zone within SPP. Agenda item E-17 may be an order on SPP's filing.

**E-18: Midwest Independent Transmission System Operator, Inc.; Duke Energy Ohio, Inc.; and Duke Energy Kentucky, Inc. (Docket No. ER12-33-000)**

On October 5, 2011, MISO filed for FERC acceptance an Exit Fee Agreement with Duke Energy Ohio, Inc. and Duke Energy Kentucky, Inc., as well as several related rate schedules necessary to implement the Exit Fee Agreement. Agenda item E-18 may be an order on MISO's filing.

**E-20: Entergy Services, Inc. (Docket Nos. ER05-1065-011 and OA07-32-008)**

On April 3, 2009, Entergy Services, Inc. (Entergy) submitted revised Attachments C, D and E to its OATT as a compliance filing with regard to the requirements of Order No. 890 as well as certain orders approving Entergy's Independent Coordinator of Transmission. Agenda item E-20 may be an order on Entergy's filing.

**E-21: New York Independent System Operator, Inc. (Docket Nos. ER11-2224-007, -008)**

On April 4, 2011, FERC accepted a March 28, 2011 filing by the New York Independent System Operator, Inc. (NYISO) that maintained in effect the existing Installed Capacity (ICAP) Demand Curves for the 2010/2011 Capability Year beyond the April 30, 2011 termination date previously established in NYISO's tariff. On May 19, 2011, FERC reversed a prior order regarding the requirement that NYISO include property taxes in the cost of new entry for a proxy peaking unit used to establish the ICAP Demand Curve for the New York City capacity zone. Certain parties sought rehearing of both orders. Agenda item E-21 may be an order on rehearing.

**E-24: Gregory R. Swecker and Beverly F. Swecker v. Midland Power Cooperative and the State of Iowa (Docket No. EL11-39-001)**

On May 6, 2011, Gregory R. Swecker and Beverly F. Swecker (Petitioners) filed a Petition for Enforcement pursuant to Section 210(h)(2)(A) of the Public Utility Regulatory Policies Act of 1978 against Midland Power Cooperative (Midland) and the State of Iowa. On August 5, 2011, the Commission gave notice that it would not initiate an enforcement action and further stated that Petitioners could initiate an enforcement action in the appropriate court. Petitioners filed a request for reconsideration of the order, which FERC denied on October 11, 2011. On October 27, 2011, Petitioners notified the Commission that Midland had disconnected back-up power to Petitioner's Qualifying Facility and residence (based on nonpayment for services) and requested the Commission issue an order for reconnection. Agenda item E-24 may be an order related to the supplemental request.

**Miscellaneous Items**

**M-1: Filing of Privileged Materials and Answers to Motions (Docket No. RM12-2-000)**

This is a new rulemaking docket.

**Gas Items**

**G-1: Sea Robin Pipeline Company, LLC (Docket Nos. RP09-995-000; RP10-422-000)**

On August 31, 2009, Sea Robin Pipeline Company, LLC (Sea Robin) filed a Natural Gas Act limited Section 4 tariff filing in Docket No. RP09-995-000 to establish a Hurricane Surcharge to record and recover hurricane-related costs incurred as a result of any hurricane or tropical storm. FERC accepted and suspended the proposed tariff sheets to be effective March 1, 2010, subject to refund and the outcome of a hearing to consider certain issues raised by protests. On March 1, 2010, Sea Robin filed to increase the Hurricane Surcharge in Docket No. RP10-442-000. FERC accepted the proposed tariff sheets, to become effective October 1, 2010, subject to refund and the outcome of the hearing in Docket No. RP09-995-000, and consolidated the two proceedings. The hearing was held July 21 – 22, 2010 and the Administrative Law Judge issued an Initial Decision on December 13, 2010. Various parties filed Briefs on Exceptions to the Initial Decision. Agenda Item G-1 may be an order related to the Initial Decision.

**G-3: SFPP, L.P. (Docket Nos. IS08-390-004, -006)**

On June 30, 2008, SFPP, L.P. (SFPP) filed tariff revisions proposing cost-of-service rate increases for all petroleum products movements on SFPP's West Line. On July 29, 2008, FERC accepted and suspended SPFF's proposed rates to become effective August 1, 2008, subject to refund, and established hearing and settlement judge procedures. The hearing was held in June 2009, and the Presiding Administrative Law Judge issued the Initial Decision in December 2009. On February 17, 2011, FERC issued its opinion and order on initial decision directing SFPP to file revised rates consistent with the order and establishing deadlines for comments and reply comments on the revised rates. Several parties filed requests for rehearing of the February order and filed comments on the revised rates. Agenda item G-3 may be an order on rehearing and/or the revised rates filing.

**G-4: Northern Natural Gas Company (Docket Nos. RP11-2061-000, -001)**

On April 29, 2011, Northern Natural Gas Company (Northern) filed revised tariff sheets to increase the Market Area fuel percentage to be in effect for the winter season of November 1, 2011 through March 31, 2012, from 0.68 percent to 1.12 percent. FERC issued an order on June 16, 2011 accepting the tariff revisions and directing additional tariff revisions. A group of shippers filed a request for rehearing of the June order. Agenda item G-4 may be an order on rehearing.

**Hydro Items****H-1: Public Utility District No. 1 of Snohomish County, Washington (Docket No. P-2157-195)**

On September 2, 2011, the Director of the Office of Energy Projects issued an order issuing a new license for the Jackson Hydro Project which incorporated provisions of a Settlement Agreement reached by parties in the proceeding. Several parties requested rehearing of the order claiming it did not incorporate all of the provisions of the Settlement Agreement. Agenda item H-1 may be an order on rehearing.

**H-2: Appalachian Power Company (Docket No. P-2210-214)**

On August 24, 2011, FERC sent a letter to Appalachian Power Company (APC) discussing an allegation that APC is not complying with its license for the Smith Mountain Pumped Storage Project's shoreline management plan (SMP) by allowing the replacement/repair of docks at the Gangplank Condominiums complex. The letter summarized information received by APC and found that, based on that information, the docks were no longer subject to grandfathered exceptions to the SMP and, thus, were not permitted consistent with the SMP requirements. The letter required that APC file a plan and schedule to modify the existing docks to conform with the SMP requirements. APC filed a request for rehearing of the findings in the August letter and requested an extension of time to comply with the requirements set forth in the letter. On October 20, 2011, FERC denied rehearing but found the "50 percent rule" in the SMP regarding replacement and/or repair of docks to be ambiguous and, therefore, APC was not required to file plans to modify the docks to conform with the SMP, but APC was required to file for Commission approval a proposed amendment to the SMP clarifying the terms of the "50 percent rule." The Tri-County AEP Relicensing Committee requested rehearing of the October order. Agenda item H-2 may be an order on rehearing.

**Certificate Item****C-1: Transcontinental Gas Pipe Line Company, LLC (Docket No. CP11-4-001)**

On October 7, 2010, Transcontinental Gas Pipe Line Company, LLC (Transco) filed an application pursuant to Section 7(b) of the Natural Gas Act requesting an order approving Transco's abandonment of natural gas storage service and related firm transportation service provided to Atlanta Gas Light Company (AGL). On March 28, 2011, FERC issued an order granting the requested abandonment authority. AGL filed for rehearing of the March order. Agenda item C-1 may be an order on rehearing.

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