

Energy, Infrastructure, Project and Asset Finance

Summary of FERC Meeting Agenda

February 2011

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Below are brief summaries of the agenda items for the Federal Energy Regulatory Commission's February 17, 2011 meeting, pursuant to the agenda as issued on February 10, 2011.

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: Devon Power, LLC (Docket No. ER03-563-066)

On March 6, 2006, a broad group of the parties in this proceeding submitted a settlement agreement (Settlement Agreement) that established the Forward Capacity Market (FCM) in ISO New England, Inc. The Settlement Agreement provided, among other things, that the prices from FCM auctions could not be changed unless required by the public interest under the *Mobile-Sierra* standard of review, and FERC approved the Settlement Agreement on June 16, 2006. The decision was ultimately appealed to the United States Court of Appeals for the District of Columbia Circuit (DC Circuit) with regard to the application of the *Mobile-Sierra* standard of review, and the DC Circuit remanded the decision to FERC, finding that FERC must adjudicate a challenge to prices from FCM auctions under the just and reasonable standard of review. In an order issued January 15, 2009, FERC again approved the Settlement Agreement but required the settling parties to revise the applicable standard of review consistent with the DC Circuit's ruling. On February 17, 2009, the settling parties submitted a report in compliance with the January 15 order which was accepted by FERC on April 14, 2009. In the meantime, however, the DC Circuit's decision was taken on appeal to the US Supreme Court, and the Supreme Court reversed the DC Circuit's ruling. On November 5, 2010, the DC Circuit remanded the proceedings to FERC for further consideration. Agenda item E-1 may be an order in response to the remand.



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: Puget Sound Energy, Inc. (Docket No. EL10-71-000)

On June 4, 2010, Puget Sound Energy, Inc. (Puget) filed an application for a declaratory order finding that two types of locational exchanges of power are not transmission transactions to be undertaken pursuant to an Open Access Transmission Tariff (OATT), but rather are wholesale power sales transactions. Agenda item E-2 may be a declaratory order responding to Puget's application.

E-3: Locational Exchanges of Wholesale Electric Power (Docket No. RM11-9-000)

This is a new rulemaking docket that may involve issues raised by the Puget application described in Agenda item E-2.

E-4: Frequency Regulation Compensation in the Organized Wholesale Power Markets (Docket Nos. RM11-7-000 and AD10-11-000)

On May 26, 2010, FERC held a technical conference under Docket No. AD10-11-000 regarding issues relating to frequency regulation compensation in organized wholesale power markets. Numerous parties submitted comments with regard to the technical conference. Docket No. RM11-7-000 is a new rulemaking docket regarding frequency regulation compensation in organized wholesale power markets. Agenda item E-4 may be a Notice of Proposed Rulemaking.

E-5: Demand Response Compensation in Organized Wholesale Energy Markets (Docket No. RM10-17-000)

On March 18, 2010, as supplemented August 2, 2010, FERC issued a Notice of Proposed Rulemaking (NOPR) proposing to require Independent System Operators and Regional Transmission Organizations with tariff provisions permitting participation of demand response resources in the wholesale energy markets to pay such demand response resources the market price of energy during all hours. Numerous parties submitted comments, and a technical conference was held on September 13, 2010. Agenda item E-5 may be a rulemaking on this issue.

E-6: Credit Reforms in Organized Wholesale Electric Markets (Docket No. RM10-13-001)

On October 21, 2010, FERC issued Order No. 741 adopting certain reforms to the credit policies of the organized wholesale electric power markets. Numerous parties sought rehearing of Order No. 741. Agenda item E-6 may be an order on rehearing.

E-7: Transmission Relay Loadability Reliability Standard (Docket No. RM08-13-001)

On March 18, 2010, FERC issued Order No. 733 approving a Transmission Relay Loadability Reliability Standard (PRC-023-1) developed by NERC and which applies to transmission owners, generator owners and distribution providers with load-responsive phase protection systems. Several parties requested rehearing or clarification of Order No. 733 claiming aspects of the order are arbitrary or capricious or overly prescriptive. Agenda item E-7 may be an order on clarification and/or rehearing.

E-8: Mandatory Reliability Standards for the Calculation of Available Transfer Capability, Capacity Benefit Margins, Transmission Reliability Margins, Total Transfer Capability, and Existing Transmission Commitments and Mandatory Reliability Standards for the Bulk-Power System (Docket No. RM08-19-004)

On December 1, 2010, NERC submitted a compliance filing in response to Paragraph 274 of Order No. 729. The filing addressed proposed Violation Risk Factors and Violation Severity Levels for certain Available Transfer Capability Reliability Standards. Agenda item E-8 may be an order on the compliance filing.

E-9: Southern California Edison Company (Docket No. ER11-2411-000); California Independent System Operator Corporation (Docket No. ER11-2572-000)

Southern California Edison Company (SCE) and the California Independent System Operator Corporation (CAISO) filed a Large Generator Interconnection Agreement (LGIA) among SCE, CAISO and AV Solar Ranch 1, LLC (AV) on December 20, 2010 and December 29, 2010, respectively. The LGIA was entered into in response to AV's request to interconnect a 250 MW solar photovoltaic generating facility to one of SCE's substations in order to transmit energy and/or ancillary services to the grid controlled by CAISO. A few of SCE's current customers protested the LGIA, claiming the LGIA raises concerns of unreasonable costs and cost causation issues with respect to the designation of "network upgrade" costs. Agenda item E-9 may be an order addressing the LGIA.

E-10: Southern California Edison Company (Docket No. ER11-2455-000); California Independent System Operator Corporation (Docket No. ER11-2451-000)

On December 21, 2010, both SCE and CAISO filed an LGIA among SCE, CAISO and Palen Solar II, LLC (Palen). The LGIA was entered into in response to Palen's request to interconnect a 500 MW solar thermal generating facility to one of SCE's planned substations in order to transmit energy and/or ancillary services to the grid controlled by CAISO. A few of SCE's current

customers protested the LGIA, claiming the LGIA raises concerns of unreasonable costs and cost causation issues with respect to the designation of “network upgrade” costs. Agenda item E-10 may be an order addressing the LGIA.

**E-11: Chehalis Power Generating, L.P.
(Docket No. ER05-1056-005)**

On October 20, 2010, TNA Merchant Projects, Inc. (TNA) filed a motion to substitute itself for Chehalis Power Generating, L.P. (Chehalis) in this rate proceeding and for FERC to require repayment of refunds in a proceeding remanded from the DC Circuit. The motion stems from a March 31, 2005 rate schedule filing by Chehalis. Chehalis identified the rates as “initial rates” for service to the Bonneville Power Administration (BPA). In the course of the proceeding, FERC approved the rates, but determined that the rates were in fact “changed rates” and ordered Chehalis to issue a refund to BPA. Upon judicial review, the DC Circuit remanded the matter to FERC for its statutory interpretation of “initial” and “changed” rates. TNA claimed in its October 20 motion that FERC cannot provide a reasonable explanation as to why the rate was a “changed rate” and therefore had no legal authority to order Chehalis to pay BPA a refund. Accordingly, TNA stated the refund should be returned. Agenda item E-11 may be an order on TNA’s motion and/or an order on remand.

E-12: Midwest Independent Transmission System Operator, Inc. (Docket No. ER10-2869-000)

On September 22, 2010, as amended on December 20, 2010, the Midwest Independent Transmission System Operator, Inc. (MISO) submitted proposed revisions to Section 19.1 of Module B of its Open Access Transmission, Energy and Operating Reserve Markets Tariff. According to MISO, the revisions are intended to offer an additional Firm Transmission Service study option in order to support the export of excess generation from MISO to an external border by making the review process more efficient. Under the proposed revisions, MISO would use an annual study to pre-certify drive-out paths for reviewing transmission service requests for out-service to neighboring systems. Agenda item E-12 may be an order on MISO’s filing.

E-13: ISO New England, Inc. (Docket No. ER11-2427-000)

On December 21, 2010, as amended on December 23, 2010, ISO New England, Inc. (ISO-NE) and the New England Power Pool (NEPOOL) Participants Committee submitted proposed revisions to the Peak Energy Rent (PER) feature in ISO-NE’s Forward Capacity Market. The proposed revisions would change the characteristics of the PER Proxy Unit to reflect the higher of the daily price of oil or gas (instead of the lower of those two

prices) in order to increase the PER Strike Price (which is used to trigger the PER mechanism). The proposed revisions also include changes in the methodology regarding how the PER Strike Price is used to calculate monthly PER deductions from capacity payments. Agenda item E-13 may be an order on ISO-NE and NEPOOL’s filing.

E-14: Alta Wind I, LLC; Alta Wind II, LLC; Alta Wind III, LLC; Alta Wind IV, LLC; Alta Wind V, LLC; Alta Wind VI, LLC; Alta Wind VII, LLC; Alta Wind VIII, LLC; Alta Windpower Development, LLC; TGP Development Company, LLC (Docket No. EL10-62-000)

On April 23, 2010, Alta Wind I, LLC, Alta Wind II, LLC, Alta Wind III, LLC, Alta Wind IV, LLC, Alta Wind V, LLC, Alta Wind VI, LLC, Alta Wind VII, LLC, Alta Wind VIII, LLC, Alta Windpower Development, LLC and TGP Development Company, LLC (Alta Entities) submitted a Petition for Declaratory Order and Request for Waivers requesting that FERC confirm the Alta Entities’ priority to firm transmission rights to the full capacity of three transmission lines they are building to interconnect their renewable generation projects near Mojave, California to the transmission grid. Agenda item E-14 may be an order on the petition for declaratory order.

Gas Items

G-1: Portland Natural Gas Transmission System (Docket No. RP08-306-000)

FERC previously issued a Certificate of Public Convenience and Necessity for Portland Natural Gas Transmission System (PNGTS) to construct and operate over 240 miles of interstate pipelines from the Canadian border at Pittsburg, New Hampshire into Massachusetts and approval to construct and operate import facilities on the Canada/United States border that would connect with facilities in Canada operated by Trans-Quebec & Maritimes Pipeline, Inc. On April 1, 2008, PNGTS submitted a Natural Gas Act section 4 rate increase filing seeking to increase its FT recourse rate by approximately 6 percent (based on the risk on its system from unsubscribed capacity) and to use a depreciation rate of 2 percent (or higher) for transmission. FERC accepted and suspended the tariff sheets until September 1, 2008, subject to refund, and set issues for hearing. On December 24, 2009, the Administrative Law Judge issued an Initial Decision in the proceeding. Parties to the proceeding have submitted briefs on exceptions and briefs opposing exceptions on the Initial Decision. PNGTS has also filed a motion for FERC to take official notice of a Standard & Poors report downgrading PNGTS’s corporate credit rating. Agenda item G-1 may be an order on the Initial Decision or on the motion to take official notice.

G-2: SFPP, L.P. (Docket No. IS08-390-002)

On June 30, 2008, SFPP, L.P. (SFPP) filed a proposed tariff with FERC requesting rate increases for services on SFPP's West Line between Watson Station in Los Angeles, California and Phoenix, Arizona, with a proposed effective date of August 1, 2008. FERC accepted and suspended the proposed tariff sheets, subject to refund, and set the issue for hearing. On December 2, 2009, the Administrative Law Judge issued an Initial Decision. Parties to the proceeding have submitted briefs on exceptions and briefs opposing exceptions on the Initial Decision. Agenda item G-2 may be an order on the Initial Decision.

Hydro Items

H-1: Annual Charges for Use of Government Lands (Docket No. RM11-6-000)

In January 2009, FERC informed hydropower licensees that due to a revision to the US Forest Service (Forest Service) fee schedule, the annual federal land use charges (Annual Charges) would substantially increase for many licensees. Several licensees challenged the 2009 update to the Annual Charges before the DC Circuit, arguing that FERC was required to undertake notice and comment on the update before imposing the charges. The DC Circuit granted their petition and vacated the 2009 update, requiring FERC to undertake a notice-and-comment rulemaking. Agenda item H-1 may be a proposed rulemaking on this issue.

H-2: Appalachian Power Company (Docket No. P-2210-209)

On November 10, 2010, the Commission issued an order denying Appalachian Power Company's (Appalachian) request for authorization for a variance to allow a non-project use of project lands and waters and for a variance under the shoreline management plan for its Smith Mountain Pumped Storage Project. Such authorization would have allowed a private property owner, Robert W. Frie, to construct a dock on his property. Mr. Frie filed a request for rehearing of the November order. On January 7, 2011, the Commission issued an order denying Mr. Frie's request for rehearing noting that the request for rehearing was impermissible as Mr. Frie was not a party to the proceeding. On January 28, 2011, Mr. Frie filed a motion to intervene out-of-time and a request for rehearing of the November and January orders. Mr. Frie argued, among other things, that Appalachian improperly classified his shoreline as Conservation-Environmental. Agenda item H-2 may be an order addressing the motion to intervene out-of-time and/or the request for rehearing.

H-3: Appalachian Power Company (Docket No. P-2210-206)

On May 24, 2010, Jody and Polly Lyons (petitioners) initiated a compliance proceeding involving Appalachian's Smith Mountain Pumped Storage Project No. 2210, located on the headwaters of the Roanoke River, in Bedford, Campbell, Franklin and Pittsylvania Counties, Virginia. The compliance proceeding related to a dock the petitioners constructed on their property. On August 16, 2010, Commission staff issued a letter finding that the licensee was in compliance with the terms of its license. On October 14, 2010, petitioners filed a request for rehearing (August Letter). On October 15, 2010, the petitioners filed a request that the Commission transform the August Letter into a "final agency action." On November 12, 2010, the Commission issued a notice rejecting the request for rehearing noting that the request for rehearing was untimely (November Notice). On December 10, 2010, the petitioners filed a request for rehearing of the November Notice arguing that it was not clear that the August Letter was a "final agency action." Agenda item H-3 may be an order addressing the request for rehearing.

H-4: Pine Creek Mine, LLC (Docket No. P-12532-003); Bishop Paiute Tribe (Docket No. 13317-001); KC LLC (Docket No. P-13689-001)

On March 3, 2008, Pine Creek Mine, LLC (Pine Creek) filed a preliminary permit application, pursuant to section 4(f) of the Federal Power Act, to study the feasibility of the Pine Creek Mine Hydroelectric Project No. 12532-002, to be located in the Inyo National Forest on lands managed by the Forest Service in Inyo County, California. On November 3, 2008, the Bishop Paiute Tribe (Bishop) filed a competing preliminary permit application to study the feasibility of the Bishop Paiute Hydropower Project No. 13317-000. On March 25, 2010, KC LLC (KC) also filed a competing preliminary permit application for the Bishop Tungsten Processing Facility Hydro Project No. 13689-000. In an order issued December 6, 2010, the Commission issued a successive preliminary permit to Pine Creek, denied the Tribe's competing application and dismissed KC's late-filed competing application. KC and Bishop filed requests for rehearing arguing that a preliminary permit should have been granted to Bishop upon full consideration of its P-13317 application, and the P-12532-002 application should have been deemed inferior in the evaluation of the competing applications in accordance with 18 C.F.R. § 4.37 rules of preference among competing applications. Agenda item H-4 may be an order addressing the requests for rehearing.

Certificate Items

C-1: Tennessee Gas Pipeline Company (Docket No. CP10-485-000)

On August 12, 2010, Tennessee Gas Pipeline Company (Tennessee) filed an application requesting authorization to abandon its ownership interest in certain Texas onshore and offshore supply facilities and dedicated capacity in the Central Texas Gathering System (CTGS) which extends from Transcontinental Gas Pipe Line Company's (Transco) main line in Wharton County, Texas, to production fields in offshore Texas in the Gulf of Mexico. Tennessee argued that no shipper currently uses the Project Central Texas Loop Facilities or the Project Galveston 391/393 Facilities for firm or interruptible transportation services. Tennessee also argued that the proposed abandonment will facilitate the economic and operational efficiency of Tennessee's mainline transmission system by eliminating an estimated US\$912,000 of annual operation and maintenance expenses. Several parties intervened and three parties, Helis Oil & Gas Company, L.L.C. (Helis), Tecpetrol Operating LLC (Tecpetrol) and Transco, protested the application. Helis and Tecpetrol also sought emergency relief in the form of the issuance of an order requiring Tennessee to immediately recommence transportation service on the facilities in question pending the issuance of a final order in this proceeding. Helis and Tecpetrol argued that Tennessee abrogated its certificated service obligation by discontinuing service to all affected CTGS shippers and producers, effective June 1, 2010. Transco filed a protest arguing that Tennessee's request is premature, will create a contract dispute among the Facilities' co-owners and has not been shown to be in the public interest. Agenda item C-1 may be an order addressing the application and protests.