

Energy, Infrastructure, Project and Asset Finance

# Summary of FERC Meeting Agenda

May 2011

## In This Issue...

- Administrative Items
- Electric Items
- Gas Items
- Hydro Items
- Certificate Items

Below are brief summaries of the agenda items for the Federal Energy Regulatory Commission's May 19, 2011 meeting, pursuant to the agenda as issued on May 12, 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.

A-3: (Docket No. AD05-9-001)

This administrative item will address the 2011 Summer Market Reliability Assessment.

## Electric Items

### E-1: Central Maine Power Company (Docket No. EL08-74-001)

Central Maine Power Company (CMP) sought, and in an October 20, 2008 order the Commission granted, certain rate incentives in connection with a transmission project known as the Maine Power Reliability Project (MPRP). On November 19, 2008, numerous parties, including the Maine Public Utilities Commission and Connecticut Department of Public Utility Control, sought rehearing of the October 20 order. Agenda item E-1 may be an order addressing the requests for rehearing.

### E-2: Central Maine Power Company (Docket Nos. ER09-938-001, -002, -003)

On April 1, 2009, CMP filed proposed revisions to certain rate formulas that are a part of ISO New England Inc.'s (ISO-NE) Open Access Transmission Tariff (Tariff) in connection with the MPRP. On August 7, 2009, the Commission issued an order accepting CMP's proposed amendments to the ISO-NE Tariff, but requiring certain compliance filings. On September 8, 2009, several parties submitted requests for rehearing. Also, on October 6, 2009, the required compliance filings were submitted. Agenda item E-2 may be an order addressing the requests for rehearing and/or the compliance 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:

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

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

Earle O'Donnell  
Partner, Washington, DC  
+ 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-3: New England Conference of Public Utilities Commissioners, Inc. v. Bangor Hydro-Electric Company, et al. (Docket No. EL08-69-001)**

On September 25, 2008, the Commission denied a complaint filed by the New England Conference of Public Utilities Commissioners, Inc. that alleged it is unjust and unreasonable for transmission owners in ISO-NE to apply the return on equity incentive authorized in Opinion No. 489 for transmission projects in ISO-NE's Regional Transmission Expansion Plan to project costs in excess of those estimated at the time the Commission granted the incentive. On October 24, 2008, numerous parties sought rehearing of the September 25 order. Agenda item E-3 may be an order addressing the requests for rehearing.

**E-4: Green Power Express LP (Docket Nos. ER09-681-000, -001)**

On February 9, 2009, Green Power Express LP (Green Power) filed tariff sheets including a formula rate, as well as protocols for updating the data to which the formula would apply, and requested approval of various incentives for the construction of a new 765 kV transmission line network between the Upper Great Plains and the Midwest. In an April 10, 2009 order, the Commission conditionally accepted the proposed tariff sheets for filing, summarily disposed of certain issues related to the tariff sheets, and set the remaining tariff sheet issues for hearing and settlement judge procedures. A number of parties filed requests for rehearing. On February 22, 2010, Green Power filed an Offer of Settlement (Settlement) addressing the remaining tariff sheet issues. Two parties voiced objections to the Settlement and on April 13, 2010, the settlement judge found that he did not have the authority to determine whether the Settlement was contested or uncontested and, therefore, on April 16, 2010, settlement proceedings were terminated. Agenda item E-4 may be an order on the Settlement and/or the requests for rehearing.

**E-5: Ameren Services Company (Docket No. EL10-80-000)**

On August 2, 2010, Ameren Services Company (Ameren) submitted a petition for declaratory order requesting that the Commission approve certain transmission rate incentives for its affiliates, including Ameren Transmission Company, in connection with the first phase of a multi-year transmission development initiative. Ameren stated that the first phase of the initiative will enhance the reliability of transmission in the Ameren zones of the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) footprint and beyond the Ameren zones, at a projected cost of US\$1.3 billion. Agenda item E-5 may be an order addressing the petition.

**E-6: Desert Southwest Power, LLC (Docket No. EL10-54-000)**

On March 30, 2010, Desert Southwest Power, LLC filed a petition for declaratory order authorizing certain transmission rate incentives for the Desert Southwest Transmission Project, a proposed 118-mile, 500 kV transmission line intended to bring new renewable and other energy from the desert area in eastern Riverside County, California, to load pocket areas in southern California. Agenda item E-6 may be an order addressing the petition.

**E-7: Atlantic Grid Operations A LLC, et al. (Docket No. EL11-13-000)**

On December 20, 2010, Atlantic Grid Operations A LLC, Atlantic Grid Operations B LLC, Atlantic Grid Operations C LLC, Atlantic Grid Operations D LLC and Atlantic Grid Operations E LLC (collectively, the AWC Companies) submitted a petition for declaratory order authorizing certain transmission rate incentives associated with their participation in the Atlantic Wind Connection project (the AWC Project). The AWC Project is a proposed high voltage direct current subsea offshore backbone transmission system to be constructed off the coasts of New Jersey, Delaware, Maryland and Virginia and to have interconnections with the existing land-based transmission system in each of those states. Agenda item E-7 may be an order addressing the petition.

**E-8: Central Transmission, LLC (Docket No. EL11-21-000)**

On February 8, 2011, Central Transmission, LLC (CTLLC) filed a petition for declaratory order authorizing various transmission rate incentives. CTLLC indicated that the rate incentives requested are contingent on the approval of CTLLC's transmission project in Illinois by PJM Interconnection, L.L.C. and subject to the Commission approving rates for the project pursuant to a future Federal Power Act (FPA) section 205 filing. Agenda item E-8 may be an order on the petition.

**E-9: Promoting Transmission Investment Through Pricing Reform (Docket No. RM11-26-000)**

This is a new rulemaking docket.

**E-10: Promoting a Competitive Market for Capacity Reassignment (Docket No. RM10-22-001)**

On September 20, 2009, the Commission issued Order No. 739, which permanently lifted price caps for transmission customers reassigning electric transmission capacity. Two parties filed requests for rehearing or clarification of Order No. 739, raising issues related to implementing the removal of the price caps in the Northwest. Agenda item E-10 may be an order on the requests for rehearing or clarification.

**E-11: ISO New England, Inc. (Docket No. ER11-3034-000)**

On March 8, 2011, as amended on May 6, 2011, ISO-NE submitted an informational filing for qualification in the Forward Capacity Market for the 2014-2015 Capacity Commitment Period. Agenda item E-11 may be an order addressing the informational filing.

**E-12: Southwest Power Pool, Inc. (Docket No. ER11-3154-000)**

On March 21, 2011, Southwest Power Pool, Inc. (SPP) submitted revisions to Appendix C of its *pro forma* Generation Interconnection Agreement. The proposed revisions would require wind-powered generation resources to be capable of reducing their output in increments of no more than 50 MW when required to do so for reliability purposes. Agenda item E-12 may be an order related to the tariff filing.

**E-13: California Independent System Operator Corporation (Docket No. ER11-2819-000)**

On February 1, 2011, California Independent System Operator Corporation (CAISO) filed a petition to waive sanctions for multiple scheduling coordinators (SCs) that made untimely amendments to their meter data. Unless waived, sanctions would be levied on the SCs per CAISO's FERC Electric Tariff. CAISO states that a waiver is justified for these filings because confusion was caused as the result of its implementing a new payment process. Agenda item E-13 may be an order related to CAISO's petition.

**E-14: SunZia Transmission, LLC (Docket No. EL11-24-000)**

On February 23, 2011, SunZia Transmission, LLC (SunZia) filed a revised petition for declaratory order asking the Commission to find that the following investors in the SunZia Southwest Transmission Project (SunZia Project) each own a portion of the SunZia Project capacity equal to its pro rata share of investment in the SunZia Project: Tucson Electric Power Company, SouthWestern Power Group (SWPG), ECP SunZia, LLC (EPC SunZia) and Shell WindEnergy Inc. (SWE). In addition, SunZia asked the Commission to declare that SWPG, ECP SunZia and SWE may pre-subscribe up to 50 percent of their pro rata shares of the SunZia Project to anchor customers through long-term firm-negotiated rate contracts. Finally, SunZia asked the Commission to find that electrical interconnection or transmission service requests with respect to the SunZia Project are premature until the SunZia Project attains certain milestones, such as licensing and determination of the resulting estimated costs that SunZia contends are necessary to process such requests. The revised petition follows an earlier petition that was filed by SunZia in Docket No. EL10-39-000 and denied by the Commission without prejudice to submission of a revised petition. Agenda item E-14 may be an order on the revised petition.

**E-15: OREG 1, Inc., OREG 2, Inc., OREG 3, Inc. and OREG 4, Inc. (Docket Nos. EL11-22-000, QF11-115-001, QF11-116-001, QF11-117-001, QF11-118-001, QF11-119-001, QF11-120-001, QF11-121-001, QF11-122-001, QF11-123-001, QF11-124-001)**

On February 14, 2011, OREG 1, Inc., OREG 2, Inc., OREG 3, Inc. and OREG 4, Inc. (collectively, the OREGs) filed a petition for declaratory order asking FERC for limited waivers from the filing requirements applicable to small power production facilities in 18 C.F.R. § 292.203(a)(3) with respect to 10 waste heat recovery generation plants. The OREGs explained that although the plants, which came on-line between 2006 and 2010, have always met the size and fuel use criteria to be classified as small power production facilities under the Public Utility Regulatory Policies Act of 1978 (PURPA), they did not certify the facilities as such until January 25, 2011. Therefore, the OREGs asked FERC to waive the certification requirements for each plant from the date each plant was placed into service through January 25, 2011. Agenda item E-15 may be an order on the petition.

**E-16: Solutions for Utilities, Inc. (Docket No. EL11-28-000)**

On March 18, 2011, Solutions for Utilities, Inc. (SFU) filed a petition for enforcement pursuant to Section 210(h) of PURPA, claiming that the California Public Utilities Commission (CPUC) orchestrated with certain large utilities in California to make the Feed-In-Tariff program in California dysfunctional through contract language that impeded participation and financing. SFU asked the Commission to enforce its PURPA regulations against the CPUC and requested associated damages. The CPUC as well as a coalition of California utilities filed motions to dismiss and protests of the petition. Agenda item E-16 may be an order relating to the petition.

**E-17: North American Electric Reliability Corporation (Docket No. RR08-4-005); Version Two Facilities Design, Connections and Maintenance Reliability Standards (Docket No. RM08-11-001)**

On April 20, 2009, the North American Electric Reliability Corporation (NERC) filed a request for clarification or rehearing of FERC's Order No. 722 approving Reliability Standards FAC-010-2, FAC-011-2 and FAC-014-2 and corresponding Violation Severity Levels (VSLs), once modified per the order. NERC's request for clarification or rehearing pertained to the Commission's instructions for modifications to the VSLs. Subsequently, on March 5, 2010, NERC made a compliance filing in Docket No. RR08-4-005 to address FERC's instructions regarding VSLs in Order No. 722. Agenda item E-17 may be an order related to the request for clarification or rehearing and/or the compliance filing.

**E-18: North American Electric Reliability Corporation  
(Docket No. RD10-8-000)**

On December 22, 2009, NERC filed a petition seeking approval of interpretations of certain sub-requirements of Reliability Standard CIP-006-2 – Physical Security of Critical Cyber Assets. Agenda item E-18 may be an order related to the interpretations.

**E-19: Interstate Power and Light Company v.  
ITC Midwest, LLC (Docket No. EL09-11-001)**

On May 5, 2009, Interstate Power and Light Company (IPL) filed a request for rehearing and motion to reopen the record in this proceeding. In an earlier order, FERC denied IPL's complaint against ITC Midwest, LLC (ITCM) seeking relief from ITCM's allegedly improper implementation of its formula rate for FERC-jurisdictional transmission service for 2009 forward. Agenda item E-19 may be an order on IPL's request and motion.

**E-20: Wolverine Power Supply Cooperative, Inc.  
(Docket No. ER10-978-001)**

This proceeding stems from a March 31, 2010 filing by Wolverine Power Supply Cooperative, Inc. (Wolverine) of its proposed FERC Electric Tariff, Original Volume No. 3 (Tariff) stating rates for its reactive supply service with a requested effective date of April 1, 2010. On May 28, 2010, FERC issued an order conditionally accepting the Tariff, subject to a compliance filing, and granted an effective date of June 1, 2010. On June 25, 2010, Wolverine filed a request for rehearing, arguing that the June 1, 2010 effective date unjustly denied it compensation. Agenda item E-20 may be an order on the request for rehearing.

**E-21: New York Independent System Operator, Inc.  
(Docket No. ER10-2220-003)**

This proceeding stems from a filing the New York Independent System Operator, Inc. made on August 13, 2010 requesting FERC's approval of revisions to its Market Administration and Control Area Services Tariff regarding market power mitigation measures applicable to Rest-of-State generators. FERC approved the tariff filing on October 12, 2010, pending a compliance filing. Several parties filed requests for rehearing of the October 12 order. Agenda item E-21 may be an order on the requests for rehearing.

## Gas Items

**G-1: Petal Gas Storage, LLC (Docket No. CP01-69-009)**

In August 2007, the DC Circuit Court of Appeals issued an order remanding a FERC decision concerning the composition of a proxy group for establishing rates of return on equity for Petal Gas Storage, L.L.C. (Petal) and the exact placement of Petal within the proxy group regarding risk. In response, on April 18, 2008, FERC issued an order establishing settlement judge procedures to see if the parties, as a result of changed circumstances and the passage of time, could reach a settlement on the issue. In September 2008, the settlement judge certified an uncontested offer of settlement that would resolve all of the pending issues. Agenda item G-1 may be an order on the settlement.

**G-2: Southern LNG Company, LLC  
(Docket No. RP10-829-000)**

In June 2010, Southern LNG Company, LLC (Southern LNG) submitted revised tariff sheets concerning modifications to certain gas quality and interchangeability provisions related to Southern LNG's liquefied natural gas import terminal in Elba Island, Georgia. On July 28, 2010, FERC issued an order accepting and suspending the proposed tariff sheets, subject to certain conditions and a technical conference that was held on September 14, 2010. On December 20, 2010, as amended, Southern LNG filed a settlement offer to resolve all outstanding issues in the proceeding. Numerous parties filed comments in support of the settlement. Agenda item G-2 may be an order on the settlement offer.

## Hydro Items

**H-1: Southern California Edison Company  
(Docket No. P-1390-064)**

On March 17, 2011, FERC issued an order on Southern California Edison Company's (SoCalEd) application to amend its project license for the Lundy Hydroelectric Project located on Mill Creek in Mono County, California. SoCalEd sought approval to install a high-density polyethylene pipeline within the earthen return ditch. Mono County filed a request for rehearing, challenging FERC's decision not to require an additional Environmental Impact Statement to analyze the impact of the return conveyance system and its failure to implement mitigation measures specified in the existing Environmental Assessment. Agenda item H-1 may be an order on rehearing.

## **H-2: KC LLC (Docket No. P-13090-001), Pine Creek Mine LLC (Docket No. P-13091-001)**

On December 20, 2007, KC LLC and Pine Creek Mine LLC (Pine Creek) filed competing applications, four minutes apart, at 8:31 a.m. and 8:35 a.m. respectively, to evaluate the feasibility of the Morgan Creek Hydroelectric Project to be located in the Inyo National Forest. On March 2, 2011, FERC issued an order granting a preliminary permit to KC LLC (and denying the application of Pine Creek). Since FERC Staff found that neither application was stronger than the other, FERC issued the preliminary permit to the first filed application (which it found to be KC LLC's). Pine Creek filed a request for rehearing of the FERC order, arguing that KC LLC's initial application was patently deficient, KC LLC's application was materially amended in March 2008 (and therefore should be considered filed as of that date), and that KC LLC's initial application was not the first filed (since both companies had messengers in line to file that day when FERC opened for business). Agenda item H-2 may be an order on the request for rehearing.

## **H-3: Bishop Tungsten Development LLC (Docket No. P-13163-001)**

In April 2008, as amended, Bishop Tungsten Development LLC (Bishop Tungsten) submitted an application requesting that FERC exempt its proposed 150 kW Pine Creek Water Discharge System Sites 1 and 2 Project, a small-conduit hydropower project in Inyo County, California, from the licensing requirements contained in Part I of the Federal Power Act. On March 2, 2011, FERC issued an order finding that the Project qualified for a conduit exemption and therefore is exempt from the Federal Power Act licensing requirements. KC LCC filed a request for rehearing, arguing that the Project does not meet the criteria for a conduit exemption since the conduit would be used to direct the discharge of groundwater from a mine (and not for the distribution of water for agricultural, municipal or industrial consumption as required). Agenda item H-3 may be an order on the request for rehearing.

## **H-4: Great River Hydropower, LLC, Mississippi River No. 21 Hydropower Company (Docket No. P-13637-002)**

In December 2009, Mississippi River No. 21 Hydropower Company (Mississippi Hydropower) submitted a preliminary permit application in order to study the feasibility of the Upper Mississippi River Lock and Dam No. 21 Hydroelectric Project. In July 2010, Great River Hydropower, LLC (Great River) also submitted an application in order to develop the same site. On February 17, 2011, FERC issued an order denying both applications, finding that there

had been misuse of the preference given to municipalities for the issuance of licenses and preliminary permits. The City of Quincy, Illinois, Mississippi Hydropower and Great River submitted an expedited request for rehearing, arguing that Mississippi Hydropower and Great River are wholly owned and controlled by the City of Quincy and, therefore, they had not misused the municipal preference. Agenda item H-4 may be an order on the request for rehearing.

## **H-5: Jonathan and Jayne Chase (Docket No. P-13381-002)**

On March 4, 2011, FERC issued a letter order dismissing Jonathan and Jayne Chase's application to exempt their small hydroelectric power project from the licensing requirements under Part I of the Federal Power Act. FERC found that the hydroelectric project did not qualify for the exemption since it would primarily use the gradient of the penstock to generate electricity (as opposing to use the "water power potential of an existing dam" as required). Jonathan and Jayne Chase filed a request for rehearing, arguing that FERC misinterpreted the requirement of "water power potential of an existing dam." Agenda item H-5 may be an order on the request for rehearing.

## **H-6: City of Tacoma, Washington (Docket No. P-460-043)**

On July 15, 2010, FERC issued an order on an offer of settlement filed by the City of Tacoma, Washington, designed to resolve all issues involving the relicensing of the 131 MW Cushman Hydroelectric Project, located in the North Fork of the Skokomish River in Mason County, Washington (including on lands within the Olympic National Forest and the Skokomish Indian Reservation). The settlement included provisions for the protection of the Skokomish Indian Reservation, facilities for fish passage and measures for fish and wildlife protection, and provisions for the City of Tacoma to construct a new 3.6 MW powerhouse in order to increase the Project's capacity to 134.6 MW. In its order, FERC accepted the settlement, extended the license expiration until June 30, 2048 and authorized the City of Tacoma to build the new powerhouse. In response, Gerald Richert and other ranchers in Skokomish Valley filed a request for rehearing, arguing that FERC's order would damage their property, and a motion to intervene out of time for the ranchers (besides Gerald Richert who was already a party to the proceeding). On September 8, 2010, FERC issued an order denying the late motion to intervene for the other ranchers and their part of the request for rehearing. The ranchers filed a motion for reconsideration of this decision. Agenda item H-6 may be an order on Gerald Richert's request for rehearing and/or on the ranchers' motion for reconsideration.

## Certificate Items

### C-1: Empire Pipeline, Inc. (Docket No. CP10-493-000)

In August 2010, as amended by subsequent data responses, Empire Pipeline, Inc. filed an application for a Certificate of Public Convenience and Necessity (CPCN) to construct and operate its Tioga County Extension Project (including a new 15-mile pipeline in New York and Pennsylvania) and for other authorization for certain abandonments. Agenda item C-1 may be an order on the application.

### C-2: Pine Prairie Energy Center, LLC (Docket No. CP11-1-000)

On October 4, 2010, as supplemented, Pine Prairie Energy Center, LLC (Pine Prairie) filed an abbreviated application to amend its CPCN (including to allow Pine Prairie to build two more natural gas storage caverns (each with a working gas capacity of 12 Bcf) and to increase the working gas capacity of four (out of five) of the existing natural gas storage caverns to 12 Bcf (from 10 Bcf)). In addition, Pine Prairie requested that FERC reaffirm Pine Prairie's market-based rate authority for its firm and interruptible storage and hub service and approve its proposed Cavern Integrity Monitoring Program. Agenda item C-2 may be an order on Pine Prairie's application.

### C-3: CALifornians for Renewable Energy, Inc. (CARE) v. Williams Northwest Pipeline (Docket No. CP10-5-001)

In October 2009, CALifornians for Renewable Energy, Inc. (CARE), on behalf of Mary Benafel (who was attorney-in-fact for her son Christian Berger), filed a complaint with FERC against Williams Northwest Pipeline (Northwest) claiming that, in 2007, Northwest built certain facilities on the Lane County, Oregon, property of Christian Berger without possessing the proper property rights or providing sufficient notice. CARE argued that this action violated the Fifth Amendment of the US Constitution, as well as various other federal laws. On December 3, 2010, FERC issued an order denying the complaint, finding that the relevant facilities were auxiliary facilities that did not need to have certificate authority to proceed or to provide landowner notification and that the property right issue (which involved the scope of a 1964 easement) was a question of contract interpretation for a court of appropriate jurisdiction. CARE filed a request for rehearing of the FERC order. Agenda item C-3 may be an order on the request for rehearing.