

Energy, Infrastructure, Project and Asset Finance

Summary of FERC Meeting Agenda

January 2013

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Below are brief summaries of the agenda items for the Federal Energy Regulatory Commission's January 17, 2013 meeting, pursuant to the agenda as issued on January 10, 2013. Agenda items E-4, E-9 and C-1 have not been summarized as they were omitted from the Commission's 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: Small Generator Interconnection Agreements and Procedures (Docket No. RM13-2-000)

This appears to be a new rulemaking docket.

E-2: Allocation of Capacity on New Merchant Transmission Projects and New Cost-Based Participant-Funded Transmission Projects (Docket No. AD12-9-000), Priority Rights to New Participant-Funded Transmission (Docket No. AD11-11-000)

On July 19, 2012, FERC issued and solicited comment on a Proposed Policy Statement, in which it proposes to allow developers of new merchant transmission projects and new non-incumbent, cost-based participant-funded transmission projects to negotiate directly with a subset of customers on key terms and conditions for procuring capacity. Project developers would have to broadly solicit interest in the project from potential customers (with the selection of customers based on not unduly discriminatory or preferential criteria) and submit a report to FERC detailing the solicitation, selection and negotiation process. FERC proposes to allow project developers to allocate up to 100 percent of the project's capacity through these bilateral negotiations. In advance of the issuance of the Proposed Policy Statement, the Commission held a technical conference and issued a notice of inquiry (NOI) regarding issues related to the ownership of and priority access rights to new transmission projects. Numerous comments were filed in response to the Proposed Policy Statement and NOI. Agenda item E-2 may be an order on the Proposed Policy Statement.



Each month, White & Case provides brief summaries of the agenda items for the Federal Energy Regulatory Commission's monthly meeting.

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**E-3: NextEra Energy Resources, LLC;
Peetz Logan Interconnect, LLC; and PWEC, LLC
(Docket No. EL11-46-000)**

On June 20, 2011, NextEra Energy Resources, LLC (NextEra) and two of its indirect subsidiaries, Peetz Logan Interconnect, LLC (PLI) and PWEC, LLC (PWEC) filed a petition for declaratory order seeking the Commission's authorization for PWEC to have priority rights to the capacity on a 78.2-mile, 230 kV radial transmission line constructed by PLI to interconnect other wind facilities owned by NextEra to the Public Service Company of Colorado's transmission system. Arion Energy, LLC (Arion Energy), which has an interest in a nearby proposed wind facility, submitted an interconnection request for the relevant line in March 2010. Arion Energy challenged whether PWEC's project was sufficiently far along in the development process to qualify for priority rights on the transmission line. Agenda item E-3 may be an order on the petition for declaratory order.

**E-5: Peetz Logan Interconnect, LLC
(Docket Nos. ER11-2970-001, ER11-2970-002)**

On August 2, 2011, FERC issued an order conditionally accepting in part and rejecting in part PLI's Open Access Transmission Tariff (OATT), which was filed in response to a request for a third-party interconnection and transmission services over PLI's 78.2-mile, 230 kV radial transmission line. On September 2, 2011, PLI submitted a compliance filing containing FERC-ordered revisions to its OATT, including deletion of a provision regarding the priority transmission rights of its affiliates and replacement with the pro forma tariff provision (accompanied by a note that the provision is subject to the outcome of Docket No. EL11-46-000). On September 14, 2011, PLI submitted an additional compliance filing regarding the FERC-ordered revisions to its Attachment C- Methodology to Access Available Transfer Capability and Conditional Transmission Services of its OATT. Agenda item E-5 may be an order on PLI's compliance filings.

**E-6: Rail Splitter Wind Farm, LLC v. Ameren Services
Company and Midwest Independent Transmission System
Operator, Inc. (Docket No. EL12-11-000)**

On November 23, 2011, Rail Splitter Wind Farm, LLC (Rail Splitter) filed a complaint against Ameren Services Company (Ameren) and Midwest Independent System Operator, Inc. (MISO) in order to obtain refunds of the monthly carrying charge assessed by Ameren under the Facilities Service Agreement between Rail Splitter and Ameren. The contested monthly carrying charge is a result of Ameren's election under Option 1 of Attachment FF of the MISO Open Access Transmission, Energy and Operating Reserve Markets Tariff (MISO Tariff), which governs the treatment of costs associated with generator interconnection network upgrades. Ameren elected to recover network upgrade costs initially funded by Rail Splitter.

As FERC has since found the relevant MISO Tariff provision to be unjust, unreasonable and unduly discriminatory (effective March 22, 2011), Rail Splitter requested that Ameren's application of the carrying charge under the Facilities Service Agreement also be found to be unjust, unreasonable and unduly discriminatory and for FERC to order a refund. In response, Ameren argued that there is no basis for undoing a contractually permitted choice under the Facilities Services Agreement that was made prior to March 22, 2011 in conformity with the MISO Tariff in effect at that time. Agenda item E-6 may be an order on Rail Splitter's complaint.

**E-7: Interstate Power and Light Company v. ITC Midwest, LLC
(Docket No. EL12-104-000)**

On September 14, 2012, Interstate Power and Light Company (IPL) filed a complaint against ITC Midwest, LLC (ITCM) to obtain a change in a provision in Attachment FF of the MISO Tariff (which allows generator interconnection service customers of ITCM to recover from ITCM up to 100 percent of their reimbursable interconnected-related network upgrade costs), charging that it is unjust, unreasonable and unduly discriminatory in its application to IPL and its customers. IPL argues that it would not bear these extra costs under the version of Attachment FF of the MISO Tariff that applies in most other MISO pricing zones. In response, ITCM emphasized that FERC accepted ITCM's methodology, even though it would result in different costs within the MISO pricing zones, and that IPL's complaint is a collateral attack on the FERC order accepting ITCM's methodology. ITCM also argued that its Attachment FF remains just and reasonable. Agenda item E-7 may be an order on IPL's complaint.

**E-8: E.ON Climate & Renewables North America v.
Midwest Independent Transmission System Operator, Inc.
(Docket Nos. EL11-30-001, ER12-451-000)**

On October 20, 2011, FERC issued an order granting the complaint of the Midwest Generation Development Group, finding that Option 1 of Attachment FF of the MISO Tariff is unjust, unreasonable and unduly discriminatory and directing the removal of Option 1 of Attachment FF from the MISO Tariff, effective March 22, 2011. The Organization of MISO States filed a request for rehearing, arguing that FERC's order eliminating Option 1 would unfairly shift costs to, and burden, other customers and is inconsistent with basic causation principles. The MISO Transmission Owners filed a separate request for clarification and rehearing, also arguing that the elimination of Option 1 would shift costs to other ratepayers and that Option 1 had not been exercised by MISO Transmission Owners in an unjust, unreasonable, unduly discriminatory or preferential manner. The MISO Transmission Owners also sought for FERC to clarify that its decision to eliminate Option 1 would not affect any agreement between a MISO Transmission Owner and an Interconnection Customer where the parties agreed to use

Option 1 that was approved by FERC prior to March 22, 2011. On November 21, 2011, MISO submitted a compliance filing removing Option 1 from Attachment FF of its Tariff. Agenda item E-8 may be an order on the requests for rehearing and/or clarification and/or on MISO's compliance filing.

E-10: Blue Summit Wind, LLC (Docket No. EL13-17-000)

On November 6, 2012, Blue Summit Wind, LLC (BSW) filed a Petition for Declaratory Order and Request for Expedited Action asking FERC to disclaim jurisdiction over certain interconnection facilities that deliver power from a 135.4 MW wind generating facility located in the SPP Region to an interconnection point in the Electric Liability Council of Texas (ERCOT). The interconnection point is located on the transmission system of American Electric Power Company, Inc. and Electric Transmission Texas, LLC. BSW also requested that FERC disclaim jurisdiction over the transmission and sales of energy over the interconnection facilities and electric utilities located in ERCOT. BSW contends that FERC has disclaimed jurisdiction in similar circumstances. The Public Utility Commission of Texas (PUCT) filed comments in support of BSW's Petition, providing additional details regarding the facilities at issue. Agenda item E-10 is likely an order on the Petition.

E-11: Electric Transmission Texas, LLC (Docket No. EL13-18-000)

On November 7, 2012, Electric Transmission Texas, LLC (ETT) filed a Petition for Declaratory Order and Request for Expedited Action asking FERC to disclaim jurisdiction over transmission lines that it will own and operate and to disclaim jurisdiction of transmission and energy sales over such facilities. ETT states that the lines will be constructed within ERCOT pursuant to the Texas Competitive Renewable Energy Zone (CREZ) program and states that FERC has disclaimed jurisdiction over similar CREZ lines. The PUCT filed comments in support of ETT's Petition, but asked FERC to delay action pending further activity in Docket No. EL13-17-000 regarding BSW's Petition for a disclaimer of jurisdiction. Agenda item E-11 is likely an order on the Petition.

E-12: Hess Corporation v. PJM Interconnection, LLC (Docket No. EL12-7-000)

On October 26, 2011, Hess Corporation (Hess) filed a Petition for Declaratory Order or, in the Alternative, Complaint against PJM Interconnection, LLC (PJM) and Request for Expedited Treatment. In the Petition, Hess asked the Commission to find that PJM's OATT will allow PJM to make minor adjustments to two phase angle regulators (PARs) in order to model an interconnection request for Hess's proposed 625 MW gas-fired Newark Energy Center (NEC) generating facility. Hess explains that the PAR

adjustments would eliminate approximately US\$68.5 million in anticipated network upgrade costs for NEC's interconnection. If FERC finds that the adjustment is not permissible under PJM's OATT, then Hess requests a finding that the OATT is unduly discriminatory and preferential, and must be revised. Several parties intervened and filed comments or a protest in this proceeding. On February 13, 2012 Hess filed a Renewed Request for Expedited Treatment. Agenda item E-12 is likely an order on the Petition.

E-13: North American Natural Resources, Inc. v. PJM Interconnection, LLC, American Electric Power Service Corp., and Indiana Michigan Power Co., Inc. (Docket No. EL13-10-000)

On October 2, 2012, North American Natural Resources Inc. (NANR) filed a Complaint and a request for Fast Track Processing against PJM Interconnection, LLC American Electric Power Service Corporation (AEP), and its wholly owned subsidiary, Indiana Michigan Power Co., Inc. (IMP). The Complaint relates to the allocation of interconnection costs that AEP charged to NANR for the interconnection of certain hydro facilities, which NANR alleges were imprudent and unreasonable. Agenda item E-13 may be an order on the Complaint.

Gas Item

G-1: Tennessee Gas Pipeline Company, LLC (Docket No. RP12-514-000)

On March 23, 2012, Tennessee Gas Pipeline Company, LLC (TGP) filed pro forma records to its FERC Gas Tariff to revise its secondary in-the-path scheduling priority procedures. The proposed revisions would create two new scheduling priority categories. The filing was submitted in compliance with an earlier order on a Settlement Agreement resolving TGP's proposed rate changes. Several parties intervened and filed comments or protests. Agenda item G-1 is likely an order on TGP's filing.

Hydro Items

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

On February 17, 2011, FERC issued an NOI seeking comments on its methodology for assessing annual charges for the use of government lands. The NOI was issued in response to an earlier ruling of the Court of Appeals for the District of Columbia advising FERC that it must seek notice and comment on its procedures for calculating the rental rates for public land per the Administrative Procedure Act. Several parties filed comments. Agenda item H-1 may be an order related to the NOI or otherwise terminating the proceeding.

H-2 Calleguas Municipal Water District (Docket No. P-14404-001)

On October 24, 2012, the Calleguas Municipal Water District (CMWD) filed a Request for Rehearing of an earlier order in which FERC granted CMWD's Grandsen Hydroelectric Generating Station project an Exemption from Licensing (Conduit). CMWD specifically requested revision to the requirement that it must attenuate all sources of noise adjacent to vegetation to less than 60 decibels (described as the level of a normal conversation) to protect potential gnatcatcher habitats. CMWD stated that this requirement makes the project infeasible and explained that it is working with the Fish and Wildlife Service to find appropriate alternatives. FERC granted the request for rehearing for further consideration on November 26, 2012. Agenda item H-2 is likely an order on the Request for Rehearing.

Certificate Item

C-2 The Gas Company, LLC (Docket No. CP12-498-000)

On August 9, 2012, The Gas Company, LLC (TGC) filed an Application for authorization to operate facilities falling within the definition of an LNG terminal designed to convey LNG from the Continental US to Hawaii. Several parties, including the Hawaii Public Utilities Commission and the Hawaii Department of Transportation, intervened in this proceeding. FERC staff filed an Environmental Assessment Report for the project on November 28, 2012. Agenda item C-2 may be an order on TGC's application.