

ClientAlert

Energy, Infrastructure and Project Finance

June 2012

Summary of FERC Meeting Agenda for June 21, 2012

Below are brief summaries of the agenda items for the Federal Energy Regulatory Commission's June 21, 2012 meeting, pursuant to the agenda as issued on June 14, 2012. Agenda items E-7, E-11, E-12, E-15, E-16, E-17, E-19, E-21, E-22, E-23, E-24, E-25, E-26 and H-1 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.

A-3: Unidentified Registered Entity, (Docket No. IN12-16-000)

This is a new investigation proceeding.

Electric Items

E-1: Revisions to Electric Quarterly Report Filing Process (Docket No. RM12-3-000)

This is a new rulemaking proceeding.

E-2: Third-Party Provision of Ancillary Services (Docket No. RM11-24-000); Accounting and Financial Reporting for New Electric Storage Technologies (Docket No. AD10-13-000)

On June 16, 2011, FERC issued a Notice of Inquiry soliciting comments on ways to facilitate the development of robust competitive markets for ancillary services from all resource types, with a focus on FERC's current policy requiring certain competitive ancillary services providers to demonstrate that they do not possess market power before being able to sell



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their services at market-based rates. FERC also sought comments on issues unique to storage devices, including how electric storage should be compensated for the full range of services it provides and transparency in the current accounting and reporting requirements as applied to electric storage. Numerous parties filed comments in response to the Notice of Inquiry. Agenda item E-2 may be an order related to the Notice of Inquiry.

E-3: Integration of Variable Energy Resources (Docket No. RM10-11-000)

After soliciting comments in a Notice of Inquiry, on November 18, 2010, FERC issued a Notice of Proposed Rulemaking designed to remove barriers to the integration of variable energy resources such as wind, solar and hydrokinetics. In the Notice of Proposed Rulemaking, FERC proposed to: “(1) require public utility transmission providers to offer intra-hourly scheduling [at 15-minute intervals]; (2) incorporate provisions into the pro forma Large Generator Interconnection Agreement requiring interconnection customers whose generating facilities are variable energy resources to provide meteorological and operational data to public utility transmission providers for the purpose of power production forecasting; and (3) add a generic ancillary service rate schedule through which public utility transmission providers will offer regulation service to transmission customers delivering energy from a generator located within the transmission provider’s balancing authority area.” By promoting greater scheduling accuracy, FERC hopes to decrease the amount of ancillary services that customers will need to supply or purchase. Numerous parties filed comments in response to the Notice of Proposed Rulemaking. Agenda item E-3 may be a Final Order in the proceeding.

E-4: Revisions to the Electric Reliability Organization Definition of Bulk Electric System and Rules of Procedure (Docket Nos. RM12-6-000, RM12-7-000)

On January 25, 2012, the North American Electric Reliability Corporation (NERC) submitted a Petition for Approval of a Revised Definition of “Bulk Electric System” as used in the Reliability Standards. NERC also submitted a petition with revisions to its Rules of Procedure for requesting and receiving exceptions from the proposed NERC definition of “Bulk Electric System.” Agenda item E-4 may be an order on NERC’s petitions.

E-5: PJM Interconnection, L.L.C. (Docket Nos. ER06-456-021, ER06-954-017, ER06-1271-016, ER07-424-012, EL07-57-007)

On November 19, 2009, FERC issued Opinion No. 503, an Order on Initial Decision concerning the allocation of transmission upgrade costs to Merchant Transmission Facilities in PJM Interconnection, L.L.C. (PJM). FERC largely approved PJM’s plan to allocate certain Regional Transmission Expansion Plan (RTEP) upgrade costs to Merchant Transmission Facilities with Firm Transmission Withdrawal Rights. Several parties requested rehearing of Opinion No. 503. Agenda item E-5 may be an order on rehearing.

E-6: PJM Interconnection, L.L.C. (Docket Nos. ER06-456-022, -023, ER06-954-018, -019, ER06-1271-017, -018, ER07-424-013, -014, EL07-57-008, -009, ER07-1186-002, -003, ER08-229-002, -003, ER08-1065-002, -003, ER09-497-003, -004, ER10-268-002, -003); PJM Transmission Owners (Docket Nos. ER06-880-017, -018)

On February 19, 2010, pursuant to Opinion No. 503, PJM submitted a compliance filing with revisions to its Open Access Transmission Tariff to include the methodology for assigning cost responsibility for transmission upgrades approved as part of PJM’s RTEP to Merchant Transmission Facilities (as well as other changes to its existing transmission upgrades cost responsibility assignments in light of this revised methodology). On May 14, 2010, PJM filed a refund report, which was required as a result of PJM recalculating the cost responsibility assignments for upgrades in PJM’s RTEP pursuant to its revised cost allocation methodology. Agenda item E-6 may be an order on PJM’s compliance filing and/or refund report.

E-8: North American Electric Reliability Corporation (Docket No. NP10-18-002)

On March 17, 2011, FERC issued an Order on Review of Notice of Penalty, concerning a US\$80,000 penalty imposed on Turlock Irrigation District (Turlock) pursuant to a settlement agreement between Turlock and the Western Electricity Coordinating Council (WECC), its Regional Entity. FERC affirmed the Notice of Penalty, but provided a list of principles that would guide its future determinations in reviewing Notices of Penalty. A group of trade associations filed a request for clarification and rehearing of the March order. The group expressed concerns about FERC’s statements on load shedding and harm from loss of load, size and nature of Registered Entity, cooperation versus self-reporting and documentation in support of settlement. Agenda item E-8 may be an order on clarification and rehearing.

E-9: Powerex Corp. v. United States Department of Energy, Western Area Power Administration—Sierra Nevada Region (Docket No. EL12-21-001)

On December 30, 2011, Powerex Corp. (Powerex) filed a complaint against the US Department of Energy, Western Area Power Administration (Western)—Sierra Nevada Region (WASN), arguing that WASN unlawfully and preferentially awarded long-term firm point-to-point transmission service on the California-Oregon Transmission Project to Morgan Stanley Capital Group Inc. (Morgan Stanley). FERC issued an order on March 15, 2012 denying the complaint, finding that there was no evidence of preferential treatment or undue discrimination by Western and that WASN and Morgan Stanley appropriately followed the procedures specified in Western's reciprocity tariff and conditional firm transmission service business practice. Powerex filed a request for rehearing of the March order. Agenda item E-9 may be an order on rehearing.

E-10: Astoria Generating Company, L.P., NRG Power Marketing LLC, Arthur Kill Power, LLC, Astoria Gas Turbine Power LLC, Dunkirk Power LLC, Huntley Power LLC, Oswego Harbor Power LLC and TC Ravenswood, LLC v. New York Independent System Operator, Inc. (Docket No. EL11-42-000)

On June 30, 2011, Astoria Generating Company, L.P., et al., filed a complaint against the New York Independent System Operator, Inc. (NYISO), arguing that NYISO had implemented its buyer-side market power provisions in a manner that violated its Market Administration and Control Area Services Tariff (Tariff). The complaint sought to force NYISO to establish ICAP Demand Curves at levels that, in the complainants' view, adequately value capacity and to establish rules to prevent prices in the New York City capacity market from being artificially suppressed by the exercise of market power (as a result of an influx of uneconomic entry into the market). In response, NYISO argued that the complainants have not met their burden of proof and that it is in compliance with FERC policy and all of its Tariff requirements. Agenda item E-10 may be an order on the complaint.

E-13: Southwest Power Pool, Inc. (Docket No. ER12-1600-000)

Exelon Generation Company, LLC (Exelon) owns 12 wind generation facilities in Texas that are interconnected to the Southwestern Public Service Company (SPS) system. Exelon notified the Southwest Power Pool, Inc. (SPP) that the wind facilities are qualifying facilities exercising their rights under the Public Utilities Regulatory Policies Act of 1978 (PURPA) to deliver all their net output to their host facility and that it does not intend to register the resources with SPP. In response, on April 24, 2012, SPP submitted an unexecuted Market Participant Service Agreement between SPP, as Transmission Provider, and Exelon, as Customer. SPP did not require Exelon to participate in the Energy

Imbalance Service (EIS) Market or pay any charges related to the EIS Market. SPS protested, arguing that FERC's acceptance of the Service Agreement will allow Exelon to avoid certain contractual obligations and harm SPS since SPP will impose EIS Market charges and credits to SPS on behalf of Exelon. Exelon supported the filing of the unexecuted Service Agreement, but proposed certain revisions to the Service Agreement to make it more appropriate to its situation. Agenda item E-13 may be an order on SPP's filing.

E-14: Louisiana Public Service Commission v. Entergy Corporation, Entergy Services, Inc., Entergy Louisiana, L.L.C., Entergy Arkansas, Inc., Entergy Mississippi, Inc., Entergy New Orleans, Inc., Entergy Gulf States Louisiana, LLC and Entergy Texas, Inc. (Docket No. EL09-61-001)

On December 9, 2010, an Administrative Law Judge (ALJ) issued an Initial Decision on a complaint by the Louisiana Public Service Commission (LPSC) regarding Entergy Arkansas, Inc.'s (EAI) sale of excess electric energy generated by low-cost generation facilities to various third parties that the LPSC argued were neither native load customers nor parties to the Entergy System Agreement (ESA). The LPSC argued that EAI's sales to unaffiliated third parties forced the Entergy System to generate additional power to meet its needs that was more expensive than the resources which were sold off-system. The Initial Decision found that EAI's off-system sales violated the ESA and that Entergy will be required to make refunds (which will be calculated by rerunning the Entergy IntraSystem Billing program with the assumption that the EAI energy sales were Joint Account Sales). The parties have filed Briefs on Exceptions and Briefs Opposing Exceptions to the Initial Decision. Agenda item E-14 may be an order on the Initial Decision.

E-18: Seminole Electric Cooperative, Inc. and Florida Municipal Power Agency v. Florida Power Corporation (Docket No. EL12-39-000)

On February 29, 2012, Seminole Electric Cooperative, Inc. (Seminole) and Florida Municipal Power Agency (FMPA) filed a complaint against Florida Power Corporation (FPC), arguing that FPC's return on equity (ROE) in its transmission formula rate (which is currently 10.8%) is unjust and unreasonable and should be replaced by an ROE of 9.02% (a number derived using a discounted cash flow analysis). The current ROE was accepted in 2007, and Seminole and FMPA claim that subsequent changes in market conditions have made that rate no longer just and reasonable. FPC argued that the complaint is procedurally deficient (claiming that the complaint was not served on the "affected regulated agencies" as required) and that Seminole and FMPA did not meet their burden of proof as they did not demonstrate that FPC's existing ROE is unjust and unreasonable. Agenda item E-18 may be an order on Seminole's and FMPA's complaint.

E-20: Interpretation of Protection System Reliability Standard (Docket No. RM10-5-001)

On February 3, 2012, FERC issued its Final Rule accepting NERC's interpretation of Requirement 1 of Reliability Standard PRC-005-1 (Transmission and Generation Protection System Maintenance and Testing). FERC also accepted, in part, NERC's commitment to address certain concerns with the Protection System Maintenance and Testing Reliability Standard within the Reliability Standard development process and directed NERC to address issues regarding reclosing relays within the reinitiated PRC-005 revisions. The National Rural Electric Cooperative Association submitted a limited request for clarification concerning certain statements in the Final Rule regarding evidence of record supporting the determination that maintenance and testing of reclosing relays be part of Reliability Standard PRC-005. Agenda item E-20 may be an order on clarification.

E-27: Puget Sound Energy, Inc. (Docket No. EL10-72-001)

On November 18, 2010, FERC issued an order denying Puget Sound Energy, Inc.'s (Puget) request for a declaratory order confirming that Puget had firm priority rights to use capacity on 53 miles of to-be-constructed 230 kV generator lead lines that will connect its planned multi-phase wind generation project to Bonneville Power Administration's integrated transmission system. FERC ruled that the relevant lead lines are governed by Puget's existing Open Access Transmission Tariff (Tariff). But, according to the terms of the Tariff, Puget is able to reserve transmission capacity over the lead lines for designated network resources to serve its reasonable forecasted native load requirements (and therefore it is unnecessary for FERC to confirm that Puget has firm priority rights to use the capacity on the lead lines). Puget filed a request for rehearing and clarification, arguing, inter alia, that FERC did not properly consider the fact that the lead lines do not interconnect with Puget's transmission system and that it is treating Puget's power supply group discriminatorily vis-à-vis unaffiliated generation developers. Agenda item E-27 may be an order on rehearing and clarification.

Gas Items

G-1: Equitrans, L.P. (Docket No. RP12-465-000)

On March 1, 2012, Equitrans, L.P. submitted its 2012 Annual Pipeline Safety Cost Tracker (PSCT) filing in order to update its PSCT surcharge for costs incurred during the 2011 calendar year. In a March 30, 2012 order, FERC accepted and suspended the tariff, subject to further review, and ordered Equitrans to respond to questions and provide supporting data that would provide to the Commission evidence that the proposed PSCT surcharge is just and reasonable. Equitrans submitted the requested data on April 19, 2012, and both Philadelphia Gas Works (PGW) and

Independent Oil & Gas Association of West Virginia, Inc. (IOGA) submitted comments in the proceeding. On June 12, 2012, Equitrans filed a Request to Defer Action explaining that it planned to meet with PGW and IOGA representatives to resolve contested issues, as well as meet with other parties impacted by any potential resolution of the proceeding. Equitrans stated that it would provide the Commission with an update on the progress of discussions by August 31, 2012. Agenda item G-1 may be a further order on the PSCT filing or the June request to defer action.

G-2: Shell Pipeline Company, LP (Docket No. OR12-11-000)

On March 30, 2012, Shell Pipeline Company, LP (Shell) filed a Petition for Declaratory Order requesting a Commission determination that proposed contract rates, service priority rights and prorated provisions for shippers, as set forth in the Transportation Service Agreement for Shell's proposed transportation service from Houston, Texas to Houma, Louisiana, among other destinations, are reasonable and non-discriminatory under the Interstate Commerce Act (the "Ho-Ho Reversal Project"). Shell also requested the Commission approve its Net Present Value methodology to allocate requests for contract capacity received during its open season for that service should the Ho-Ho Reversal Project become oversubscribed. Shell requested a decision by the end of July 2012. Agenda item G-2 may be an order on Shell's request.

G-3: TransColorado Gas Transmission Company LLC (Docket No. RP12-245-000)

On December 16, 2011, TransColorado Gas Transmission Company LLC (TransColorado) submitted a tariff filing with proposed reservation charge credits to be effective January 16, 2012. The filing was protested, and TransColorado filed an answer to the protests on January 5, 2012. On January 13, 2012, FERC issued an order accepting and suspending the tariff records, subject to refund and further Commission action, effective June 16, 2012, or such earlier date as the Commission may order. Agenda item G-3 may be a further order on the tariff filing.

Hydro Items

H-2: Percheron Power, LLC (Docket No. P-14208-001)

On May 31, 2011, Percheron Power, LLC (Percheron) submitted a Preliminary Permit Application for the Potholes East Canal water power project in Washington State, and on August 11, 2011, FERC issued its acceptance of the Preliminary Permit Application. In October 2011, the Grand Coulee Project Hydroelectric Authority (Grand Coulee) submitted a Notice of Intent to File Competing Application in Docket No. P-14316. FERC's notice of Grand Coulee's application stated that competing applications or

notices of intent for competing application had to be filed by October 9, 2011. No such filings were received by FERC, and it issued its Order Accepting Preliminary Permit on November 29, 2011. Percheron intervened and submitted comments in the Grand Coulee docket on January 27, 2012. On February 6, 2012, Percheron filed in the instant docket an Application for Exemption of Small Conduit Hydroelectric Facility for its project, which was rejected by FERC on February 14, 2012, stating “[b]ecause the prescribed intervention deadline for competing/development applications was October 7, 2011, [the] conduit exemption application must be rejected.” Percheron filed for reconsideration or rehearing or stay of the February order. Agenda item H-2 may be an order on Percheron’s rehearing, reconsideration or stay request.

H-3: PPL Montana, LLC (Docket No. P-2188-201)

On August 11, 2011, a landowner, Thomas J. Anderson, filed a formal Complaint against FERC and PPL Montana (PPL and together with FERC, Respondents) alleging that Respondents are not complying with the Order Issuing New License for the Madison-Missouri Hydroelectric Project and are in violation of the National Environmental Policy Act, the Fifth Amendment to the Constitution, the Endangered Species Act and the Clean Water Act. Anderson complained that both the Environmental Impact Statement and FERC’s order issued in 2000 commit that FERC and PPL will monitor and control shoreline erosion, yet in 2011, FERC stated through a letter order that neither it nor PPL has to monitor or control erosion on Lake Helena because the Project has no effect on Lake Helena, and PPL’s Shoreline Erosion Monitoring Plan need not address erosion at Lake Helena. Anderson stated that erosion continues on Lake Helena and argues that FERC and PPL are responsible for mitigation of the erosion problem. On January 10, 2012, FERC notified Anderson that his Complaint provided no new information that would cause it to change its findings. Anderson submitted a request for rehearing. Agenda item H-3 may be an order on rehearing.

Certificate Items

C-1: Caledonia Energy Partners, L.L.C. (Docket No. CP12-33-000)

On December 16, 2011, Caledonia Energy Partners, L.L.C. (Caledonia) submitted an Application for Certificate of Public Convenience and Necessity (CPCN) and Continuation of Market-Based Rates, and Motion to Vacate, in Part, Certification Authorization requesting that FERC grant it authority to update an existing natural gas storage facility, as well as vacate the certificate authority granted in 2008 in Docket No. CP08-52 to develop an adjacent field. Caledonia submitted

an Applicant Prepared Draft Environmental Assessment for its Delta Pressure–DP33 Project in January 2012, and FERC submitted its own Environmental Assessment in May 2012. Agenda item C-1 may be an order on Caledonia’s application.

C-2: Southern Natural Gas Company, L.L.C. (Docket No. CP12-4-000); High Point Gas Transmission, LLC (Docket No. CP12-9-000)

On October 7, 2011, Southern Natural Gas Company, L.L.C. (SNG) filed an Application for Abandonment by Sale of certain onshore facilities in Louisiana and offshore supply facilities located offshore Louisiana in the Gulf of Mexico. On October 13, 2011, High Point Gas Transmission, LLC (HPGT) filed an Application stating its intent to acquire, own and operate SNG’s facilities and requesting a blanket construction certificate, blanket transportation certificate, approval of its pro forma FERC Gas Tariff and waiver of the segmentation requirement. Many parties filed comments in support or protests of the applications. Agenda item C-2 may be an order on SNG and HPGT’s applications.

C-3: ANR Pipeline Company (Docket No. CP11-543-000); TC Offshore LLC (Docket No. CP11-544-000)

On September 1, 2011, ANR Pipeline Company (ANR) filed an Application for Abandonment by Sale of certain onshore facilities in Louisiana and Texas and offshore supply facilities located in state and federal waters offshore Louisiana and Texas in the Gulf of Mexico. Also on September 1, 2011, TC Offshore LLC (TCO) filed an Application for CPCN stating its intent to acquire, own and operate ANR’s facilities and requesting a blanket construction certificate and blanket transportation certificate. Many parties intervened and/or protested the applications, and both parties filed supplements and data responses to the original applications. Agenda item C-3 may be an order on ANR and TCO’s applications.

C-4: Trunkline Gas Company, LLC, Sea Robin Pipeline Company, LLC (Docket No. CP12-5-000)

On October 7, 2011, Trunkline Gas Company (TGC) and Sea Robin Pipeline Company, LLC (Sea Robin) filed a joint Abbreviated Application for an Order Permitting and Approving Transfer of Offshore Facilities and Issuing a CPCN to Acquire Offshore Facilities. Trunkline proposed to sell to Sea Robin certain offshore and onshore facilities located in Louisiana and Texas. Many parties intervened and/or protested the applications, and the parties filed supplements and data responses to the original application. Agenda item C-4 may be an order on TGC and Sea Robin’s application.

C-5: Columbia Gulf Transmission Company (Docket No. CP11-13-000); Texas Eastern Transmission, LP (Docket No. CP11-103-000)

In October 2010, Columbia Gulf Transmission Company (CGT) filed to abandon its obligation to provide transportation services through capacity it owns on various offshore facilities located in the Gulf of Mexico. In February 2011, Texas Eastern Transmission Company, LP (TETCO) filed a similar request to abandon its obligation to provide service on certain natural gas supply laterals and appurtenances located in federal waters offshore in the Gulf of Mexico near Louisiana. TETCO requested the Commission consider both applications in its determination as TETCO and CGT both own interests in the facilities that are the subject of both applications. Many parties intervened and/or protested the applications, and both parties filed supplements and data responses to the original applications. Agenda item C-5 may be an order on the applications.

C-6: Bluewater Gas Storage, LLC (Docket No. CP12-51-000)

On January 27, 2012, Bluewater Gas Storage, LLC (BGS) filed an Application for Section 3 Authorization and Presidential Permit in order to construct and operate new natural gas facilities to replace leased capacity with cross-border facilities that BGS will own. BGS stated that the new facilities will provide for the import and export of up to 300 MMcf/d of natural gas at the US-Canada border. BGS supplemented its application on several occasions by way of Informational Filings with FERC, and on May 15, 2012, the Environmental Assessment prepared for the project was submitted. Agenda item C-6 may be an order on BGS's application.

C-7: PetroLogistics Natural Gas Storage, LLC (Docket Nos. CP11-50-000, -001)

On December 14, 2010, PetroLogistics Natural Gas Storage, LLC (PetroLogistics) filed an abbreviated application requesting Commission authorization to construct, install, own, operate and maintain the Choctaw Hub Expansion Project at its existing natural gas storage facilities in Iberville Parish, Louisiana. The December application proposed placing two caverns into service. In January 2012, PetroLogistics amended its original application to remove one cavern from the proposed project due to the Department of Energy taking that cavern through its eminent domain rights. On March 15, 2012, the Environmental Assessment of the project was submitted to FERC. Agenda item C-7 may be an order on the application.

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