

Energy, Infrastructure, Project and Asset Finance

Summary of FERC Meeting Agenda

February 2012

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Below are brief summaries of the agenda items for the Federal Energy Regulatory Commission's February 16, 2012 meeting, pursuant to the agenda as issued on February 9, 2012. Agenda item E-1 has not been summarized as it was 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-2: Analysis of Horizontal Market Power Under the Federal Power Act (Docket No. RM11-14-000)

On March 17, 2011, FERC issued a Notice of Inquiry ("NOI") regarding whether it should revise its approach for evaluating horizontal market power concerns under Federal Power Act ("FPA") section 203 to incorporate the Department of Justice's ("DOJ") and Federal Trade Commission's ("FTC") Horizontal Merger Guidelines issued on August 19, 2010 ("2010 Guidelines"). FERC currently follows the DOJ's and FTC's previous Horizontal Merger Guidelines that were issued in 1992. In addition, FERC solicited comments on the impact the 2010 Guidelines should have on FERC's horizontal market power analysis in its electric market-based rate program. Agenda item E-2 may be an order on the NOI.

E-3: Frequency Regulation Compensation in the Organized Wholesale Power Markets (Docket Nos. RM11-7-001, AD10-11-001)

On October 20, 2011, FERC issued a Final Rule revising, pursuant to FPA section 206, its regulations on frequency regulation compensation in the organized wholesale power markets. In the Final Rule, FERC established a new two-part compensation method for frequency regulation service. Under the first part of the method, all cleared resources receive a uniform capacity payment (which incorporates opportunity costs) for standing ready to provide frequency regulation service. Then, under the second part, each resource receives a market-based performance payment, which captures performance accuracy.

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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Southern California Edison Company filed a request for clarification or rehearing arguing that a performance payment is not appropriate in all contexts and that clearing prices should only be uniform within a region. Agenda item E-3 may be an order on clarification or rehearing.

E-4: North American Electric Reliability Corporation (Docket Nos. RC11-6-000, RC12-1-000, RC12-2-000, RC12-6-000, RC12-7-000)

On September 30, 2011, the North American Electric Reliability Corporation ("NERC") submitted a petition requesting approval of a new enforcement mechanism for dealing with possible violations that pose lesser risks to the bulk power system. For these lesser risk issues, NERC will present them to FERC as Remediated Issues in a Find, Fix, Track and Report ("FFT") spreadsheet submitted to FERC in a monthly informational filing. NERC will submit more serious risk violations as part of a Spreadsheet Notice of Penalty or a Full Notice of Penalty. NERC submitted FFT reports on September 30, 2011, October 31, 2011, November 30, 2011, December 30, 2011 and January 31, 2012. Agenda item E-4 may be an order on NERC's new enforcement mechanism.

E-5: OREG 1, Inc., OREG 2, Inc., OREG 3, Inc. and OREG 4, Inc. (Docket Nos. EL11-22-001, QF11-115-002, QF11-116-002, QF11-117-002, QF11-118-002, QF11-119-002, QF11-120-002, QF11-121-002, Q11-122-002, QF11-123-002, QF11-124-002)

OREG 1, Inc., OREG 2, Inc., OREG 3, Inc. and OREG 4, Inc. ("OREG Entities") submitted a petition for declaratory order requesting limited waivers of the small power production qualifying facility ("QF") filing requirements for its periods of noncompliance prior to the filing of QF self-certifications. The OREG Entities, wholly owned subsidiaries of Ormat Technologies, Inc., own and operate ten waste heat recovery generation QFs. And, while the QFs commenced service between July 22, 2006 and August 5, 2010, the OREG Entities did not file their QF self-certifications, as required by Order No. 671, until January 25, 2011. FERC granted the requested waivers only to the extent that the waivers would grant most of the exemptions from the FPA, the Public Utility Holding Company Act of 2005 and state laws, but denied the waivers that would have granted them exemption from sections 205 and 206 of the FPA. FERC also ordered the OREG Entities to make time-value refunds for its periods of noncompliance with FPA section 205. The OREG Entities filed a request for rehearing or reconsideration, arguing against the imposition of a refund obligation. Agenda item E-5 may be an order on rehearing or reconsideration.

E-6: Duquesne Light Company (Docket Nos. ER08-194-000, -001, -002, -003, -004); Midwest Independent Transmission System Operator, Inc. and Duquesne Light Company (Docket Nos. ER08-1235-000, -001, ER08-1309-000, ER08-1370-000); PJM Interconnection, L.L.C. (Docket Nos. ER08-1339-000, -001, -002, ER08-1345-000, -001, -002)

On November 8, 2007, Duquesne Light Company ("Duquesne") requested approval from FERC to withdraw from PJM Interconnection, L.L.C. ("PJM"), conditioned on Duquesne joining the Midwest Independent Transmission System Operator, Inc. ("MISO"). FERC conditionally approved the request, but required Duquesne to satisfy any contractual requirements for withdrawal that it had with PJM. Duquesne submitted its membership application, a membership fee and a signed MISO Transmission Owners Agreement to MISO. MISO's Board of Directors voted to approve Duquesne's membership on August 21, 2008. Subsequent to that date, Duquesne reached a settlement agreement with PJM to remain a member of PJM for an additional five years. In December 2008, Duquesne and PJM filed the settlement agreement with FERC and sought to withdraw from FERC's consideration Duquesne's prior request to withdraw from PJM and join MISO. In January 2009, FERC approved the settlement agreement over MISO's objections. MISO filed an action in the US District Court for the Southern District of Indiana, alleging breach of contract and promissory estoppel. Duquesne filed a motion to stay and requested that the Court refer the breach of contract claim to FERC. The Court granted the motion to stay in July 2010 and ordered MISO to obtain FERC's opinion regarding whether Duquesne had a binding commitment to MISO, was Duquesne obligated to pay a withdrawal fee and, if so, what would be a just and reasonable fee. Pursuant to a June 16, 2011 order establishing briefing procedures, the parties have submitted briefs on the issues. Agenda item E-6 may be an order on the issues referred to FERC by the Court.

E-7: California Independent System Operator Corporation (Docket Nos. ER11-3616-000, -001, -002)

On May 20, 2011, as supplemented on September 21, 2011 and December 19, 2011, the California Independent System Operator Corporation ("CAISO") submitted tariff amendments to implement the Reliability Demand Response Resource Product. These revisions will allow for retail emergency-triggered demand response programs, such as interruptible, air conditioning and agricultural pumping load programs, to participate in the CAISO market. The tariff amendments are the product of a settlement agreement, approved by the California Public Utilities Commission, between CAISO, California's investor-owned utilities and other interested parties regarding emergency-triggered demand

response resources made available under California's state retail demand response programs. Agenda item E-7 may be an order on CAISO's tariff amendments.

E-8: California Independent System Operator Corporation (Docket Nos. ER11-2256-000, -002)

CAISO filed tariff amendments to implement the Capacity Procurement Mechanism ("CPM") and changes to certain of its exceptional dispatch tariff provisions. On March 17, 2011, FERC issued an order accepting and suspending CAISO's proposed tariff revisions on CPM compensation and exceptional dispatch mitigation, effective April 1, 2011, subject to refund and further order by FERC. FERC also conditionally accepted the remaining parts of CAISO's CPM proposal. The Independent Energy Producers Association filed a request for rehearing and motion for clarification. FERC convened a technical conference on CPM's compensation methodology and exceptional dispatch mitigation provisions. On December 23, 2011, CAISO filed an Offer of Settlement, which is supported or not opposed by all parties to the proceeding, to resolve all the outstanding issues. The Offer of Settlement requests that FERC issue an order accepting the Offer of Settlement without modification or condition and that CAISO will then submit a compliance filing to incorporate the revised tariff provisions into its tariff. Agenda item E-8 may be an order on rehearing and clarification and/or the Offer of Settlement.

E-9: US Department of Energy, Portsmouth/Paducah Project Office (Docket No. RC08-5-001)

On July 21, 2008, FERC issued an order upholding NERC's decision to include the US Department of Energy, Portsmouth/Paducah Project Office ("DOE/PPPO") as Transmission Owner, Transmission Operator and Distribution Provider on the NERC Compliance Registry. FERC remanded to NERC the question of whether DOE/PPPO was properly registered as a Load-Serving Entity ("LSE") on the Compliance Registry. On October 6, 2008, NERC filed a petition affirming the decision to register DOE/PPPO as an LSE on the Compliance Registry. DOE/PPPO objected to NERC's decision. Agenda item E-9 may be an order on NERC's filing.

E-10: Potomac-Appalachian Transmission Highline, LLC (Docket Nos. ER08-386-001, -002)

This matter stems from Potomac-Appalachian Transmission Highline, LLC's ("PATH") request for acceptance of revised tariff sheets to be included in the PJM Open Access Transmission Tariff, which PATH filed on December 28, 2007. The revisions would implement a transmission cost-of-service formula rate and incentive rate authorizations for PATH's proposed new high-voltage

transmission line and related facilities. FERC generally accepted the requested incentives and set the proposed formula rate for hearing and settlement procedures in an order issued on February 29, 2008. The parties filed a settlement, which FERC approved on November 19, 2010. In that order, FERC found that there were material issues of fact regarding the appropriate proxy group to be used in a discounted cash flow analysis for determining a base Return on Equity ("ROE"). FERC set the determination of the base ROE for hearing and settlement and directed the hearing judge to use the median of a selected proxy group to determine the base ROE. PATH filed a request for rehearing on December 20, 2010, asking FERC to reconsider its directive to the hearing judge. FERC granted rehearing for further consideration on January 18, 2011 in sub-docket 002. On November 7, 2011, the Settlement Judge in sub-docket 001 certified an uncontested settlement to FERC resolving all issues that were set for hearing in this proceeding. FERC issued an order on November 8, 2011 terminating settlement proceedings and cancelling the hearing that was set for this matter. Agenda item E-10 may be an order on the settlement agreement.

E-11: Puget Sound Energy, Inc. (Docket No. EL10-71-000)

On June 4, 2010, Puget Sound Energy, Inc. ("PSE") filed a Request for Declaratory Order finding that locational exchanges of power are not transmission transactions that may only be undertaken pursuant to an Open Access Transmission Tariff. PSE defined locational exchanges as: "a pair of simultaneously arranged wholesale power transactions between the same counterparties in which party A sells electricity to party B at one location, and party B sells the same volume of electricity to party A at a different location with the same delivery period, but not necessarily at the same price." On February 17, 2011, FERC issued an order stating that it would defer action regarding the Petition pending the outcome of a contemporaneous NOI FERC issued on the matter in Docket No. RM11-9-000. Agenda item E-11 may be an order on PSE's request. See also agenda item E-12 below.

E-12: Locational Exchanges of Wholesale Electric Power (Docket No. RM11-9-000)

Following PSE's Petition for Declaratory Order asking FERC to find that locational exchanges of power are not transmission transactions in Docket No. EL10-71-000 (see agenda item E-11 above), FERC issued an NOI on the matter. Specifically, FERC asked for comments regarding the circumstances under which locational exchanges of electric power should be permitted generically and circumstances in which FERC should consider such transactions on a case-by-case basis. Several parties intervened and submitted comments. Agenda Item E-12 may be a final order stemming from the NOI.

Gas Items

G-1: Standards for Business Practices for Interstate Natural Gas Pipeline (RM96-1-037)

On March 4, 2011, the North American Energy Standards Board (“NAESB”) filed a report notifying FERC that Version 2.0 of the NAESB Wholesale Gas Quadrant (“WGQ”) standards were ratified and subsequently published on February 10, 2011. The report also provided a summary of NAESB’s activities regarding the adoption of NAESB WGQ Version 2.0 from October 2009 to January 2011 and an overview of ongoing work on NAESB’s Standards for Business Practice. Agenda item G-1 may be a decision on NAESB WGQ Version 2.0.

G-2: High Island Offshore System, L.L.C. (Docket Nos. RP09-487-000; RP10-307-000)

On March 31, 2009, High Island Offshore System, L.L.C. (“HIOS”) filed revised tariff sheets to its FERC Gas Tariff in Docket No. RP09-487-000. The tariff sheets comprised a general rate case under section 4 of the Natural Gas Act. FERC accepted and suspended the tariff sheets on April 30, 2009, subject to the outcome of the rate case proceeding established in this docket. On April 29, 2011, FERC issued an order approving an uncontested settlement agreement resolving all issues in HIOS’s rate case except for certain issues regarding a proposed storm event surcharge tracker mechanism which HIOS asked FERC to reserve for determination.

On January 12, 2010, HIOS filed a notice with FERC in Docket No. RP10-307-000 indicating that it believes certain Service Agreements filed by HIOS’s parent company in 2002 were mischaracterized as negotiated rate contracts and to disavow them as such. Rather, HIOS states that recent review indicates that the contracts were discounted rates.

Agenda item G-2 may be a determination on the reserved storm event surcharge tracker mechanism in HIOS’s tariff and on HIOS’s assertion that the service agreements at issue in RP10-307-000 are discounted rates.

G-3: Chevron Products Company v. SFPP, L.P. (Docket No. OR12-1-000); ConocoPhillips Company v. SFPP, L.P. (Docket No. OR12-2-000); Tesoro Refining and Marketing Company v. SFPP, L.P. (Docket No. OR12-3-000)

Each of Chevron Products Company, ConocoPhillips Company, and Tesoro Refining and Marketing Company (collectively, “Complainants”) filed a complaint against SFPP, L.P. (“SFPP”) claiming SFPP’s increases in ceiling rates for its service under

certain of its tariffs are unlawful. Specifically, the Complainants allege that the increased ceiling levels would allow for future rate increases that are so substantially in excess of the cost increases incurred by SFPP that such rates would be unjust and unreasonable. SFPP filed an answer to the complaints on October 25, 2011, arguing the complaints should be dismissed, or at least held in abeyance pending the outcome of other SFPP tariff proceedings. Agenda item G-3 may be an order on the complaints.

Hydro Items

H-1: Marseilles Land and Water Company (Docket No. P-13351-002)

On January 17, 2012, the Marseilles Land and Water Company (“Marseilles”) filed a Request for Clarification and Rehearing of FERC’s order issuing Marseilles an original license for the Marseilles Lock and Dam Hydroelectric Project (the “Project”). Specifically, Marseilles claimed that FERC’s directive that Marseilles must compensate the US for the “utilization of surplus water or water power from a government dam” does not correctly reflect the contract between Marseilles and the US Army Corps of Engineers (“Corps”), the owner and operator of the Project. Marseilles requested FERC to delete the provision, or in the alternative, to issue rehearing on the matter. The Corps filed a Motion to Intervene supported by a memorandum stating that it believes it is entitled to the fee under Section 10(e)(1) of the FPA, which provides that FERC shall fix a reasonable annual charge for use of dams owned by the United States. Agenda item H-1 may be an order on clarification and rehearing.

H-2: Commissioners of Public Works of the City of Spartanburg, South Carolina (Docket No. P-4632-035)

On January 23, 2012, the Commissioners of Public Works of the City of Spartanburg, South Carolina (“Spartanburg Water”) filed a Request for Clarification and Motion for Extension of Time or Rehearing of a December 22, 2011 order accepting Spartanburg Water’s application to surrender its license for the Clifton Mills No. 1 hydroelectric project. Specifically, Spartanburg Water seeks clarification on the number of signs it is required to post and the extent of the area in which it must remove debris. Agenda item H-2 may be an order on Spartanburg Water’s request.

