

Energy, Infrastructure and Project Finance

Summary of FERC Meeting Agenda

January 2011

In This Issue...

- Administrative Items
- Electric Items
- Multi-Industry Item
- Hydro Items
- Certificate Items

Below are brief summaries of the agenda items for the Federal Energy Regulatory Commission's January 20, 2011 meeting, pursuant to the agenda as issued on January 13, 2011. Agenda items E-3, E-9 and E-10 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 be a discussion on RTO/ISO Performance Metrics.

A-2: (Docket No. AD02-7-000)

This administrative item will address Customer Matters, Reliability, Security and Market Operations.

A-3: (Docket No. AD11-8-000)

This administrative item will address Frequency Response Metrics to Assess Requirements for Reliable Integration of Variable Renewable Generation.

Electric Items

E-1: Market-Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities (Docket No. RM04-7-009)

On March 9, 2009, as amended on October 28, 2009, the Compliance Working Group (CWG) submitted a request for clarification of FERC's affiliate restrictions to certain types of employees. On April 15, 2010, FERC issued an order concluding that employees who determine the timing of scheduled outages or who engage in economic dispatch, fuel procurement or resource planning cannot be shared by a utility and affiliate that are subject to affiliate restrictions. On May 18, 2010, Edison Electric Institute (EEI) filed a motion for stay or rescission or, if the Commission does not stay or rescind the April order, request for rehearing of the April order. EEI argued that the April order rulings are too broad and inconsistent with past Commission pronouncements. Agenda item E-1 may be an order on the motion for stay or rescission and/or the request for rehearing.



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-2: Market-Based Rate Affiliate Restrictions
(Docket No. RM10-20-000)**

On April 15, 2010, the Commission issued a Notice of Proposed Rulemaking (NOPR) proposing to revise its regulations governing market-based rates for public utilities pursuant to Section 205 of the Federal Power Act (FPA). Specifically, the Commission proposed to clarify that employees who determine the timing of scheduled outages or that engage in economic dispatch, fuel procurement or resource planning may not be shared under the market-based rate affiliate restrictions codified in Order No. 697. Agenda item E-2 may be an order addressing the NOPR.

**E-4: Transmission Relay Loadability Reliability Standard
(Docket No. RM08-13-001)**

On March 18, 2010, the Commission issued Order No. 733 approving, subject to modification, Reliability Standard PRC-023-1 (Transmission Relay Loadability). On April 19, 2010, several parties, including NERC, filed requests for rehearing or clarification of Order No. 733. Agenda item E-4 may be an order addressing the requests for rehearing and/or clarification.

**E-5: PacifiCorp
(Docket Nos. ER11-2170-000, ER09-408-002, -003)**

On May 8, 2008, PacifiCorp received from Columbia Energy Partners (CEP Funding, LLC's (CEP) parent company), twelve requests of 25 MW each for Long-Term Firm Point-to-Point Transmission Service on its Midpoint to Summer Lake Line. In August 2008, PacifiCorp performed a System Impact Study (SIS) and found that there was insufficient available capacity on the Midpoint to Summer Lake Line to accommodate CEP's requests for Firm Point-to-Point Service. Thereafter, PacifiCorp was able to offer CEP conditional firm service based on a seasonal number of curtailable hours. On December 12, 2008, PacifiCorp, upon the request of CEP, filed the twelve unexecuted agreements for conditional firm transmission service with curtailable hours conditions, designated as Service Agreement Nos. 516 through 527 under PacifiCorp's Open Access Transmission Tariff (OATT). On December 4, 2009, the Commission conditionally accepted for filing the twelve unexecuted Curtailable Hours Agreements subject to submission of a timely compliance filing by PacifiCorp, with service commencement dates including December 1, 2010, December 1, 2011 and December 1, 2012. The parties worked with the Commission's Dispute Resolution Service to reach a mutual resolution of their remaining issues. On November 23, 2010, PacifiCorp filed a Service Agreement for Conditional Long-Term Firm Point-to-Point Transmission Service between PacifiCorp and CEP, which resolved all outstanding issues among the parties, and a related Notice of Cancellation for the twelve unexecuted service agreements for 25 MW each. Agenda item E-5 may be an order addressing the Service Agreement.

**E-6: American Electric Power Service Corporation
(Docket No. ER11-2183-000)**

On November 24, 2010, pursuant to a Deficiency Letter issued on November 19, 2010, American Electric Power Service Corporation (AEPSC), on behalf of Columbus Southern Power Company (CSPCo) and Ohio Power Company (OPCo) (collectively, the AEP Ohio Companies), resubmitted tariff records that were originally submitted as OPCo and CSPCo rate schedules. The new tariff records are formula rate templates under which each of the AEP Ohio Companies will calculate their respective capacity costs (Capacity Compensation Formula) under Section D.8 of Schedule 8.1 of PJM Interconnection L.L.C.'s Reliability Assurance Agreement. AEPSC proposed that the AEP Ohio Companies recover capacity costs calculated pursuant to these Capacity Compensation Formulas from Competitive Retail Electric Service Providers in Ohio, a retail choice state. Agenda item E-6 may be related to the resubmitted tariff records.

**E-7: Hudson Transmission Partners, LLC
(Docket No. ER10-1281-001)**

On May 19, 2010, Hudson Transmission Partners, LLC (HTP) submitted a request for FERC to grant it a limited waiver of PJM Interconnection, L.L.C.'s (PJM) deadline for the posting of deferred security until October 31, 2010. PJM had notified HTP that it was obligated to post US\$172 million in deferred security by May 25, 2010 for its 673 MW merchant transmission interconnection project between New York and New Jersey or have its interconnection request terminated. On May 25, 2010, FERC granted the waiver, finding that the delay would not cause harm to other parties in the PJM interconnection queue. Cavallo Cross Hudson Management Company, LLC, a developer of a proposed 700 MW cable between New York and New Jersey, filed a request for rehearing. Agenda item E-7 may be an order on rehearing.

E-8: PJM Interconnection, L.L.C. and Carolina Power & Light Company (Docket Nos. ER10-713-001, -002)

On February 2, 2010, PJM and Carolina Power & Light Company, d/b/a Progress Energy Carolinas (Carolina Power), submitted an Amended and Restated Joint Operating Agreement (JOA), which provides for the management and coordination of congestion between PJM and the Carolina Power eastern balancing authority area as well as certain pricing refinements and make whole provisions. On May 28, 2010, FERC conditionally accepted the JOA and suspended it for a nominal period to be effective June 1, 2010, subject to refund. On June 28, 2010, PJM and Carolina Power submitted a compliance filing, as directed, which contained additional information on their proposed congestion management process. Also on June 28, 2010, the North Carolina Electric Membership Corporation submitted a request for clarification or rehearing of the May order. Agenda item E-8 may be an order on the compliance filing and/or the request for clarification/rehearing.

E-11: North American Electric Reliability Corporation (Docket Nos. RD10-6-000, RD09-7-002)

On December 18, 2009, NERC submitted a petition to FERC for approval of Violation Severity Level (VSL) and Violation Risk Factor (VRF) assignments for certain Critical Infrastructure Protection (CIP) Version 2 Reliability Standards. In addition, on December 29, 2009, NERC submitted a compliance filing in response to an earlier September 30, 2009 FERC order concerning the CIP Reliability Standards. NERC further filed a series of Version 3 CIP Reliability Standards, a revised Implementation Plan regarding Newly Identified Critical Cyber Assets and Newly Registered Entities, an Implementation Plan regarding the Version 3 CIP Reliability Standards and an updated timetable for addressing FERC's other directives. In a March 31, 2010 order, FERC approved the modified CIP Reliability Standards and the revised Implementation Plan for Newly Identified Critical Cyber Assets and Newly Registered Entities, but rejected the Implementation Plan regarding the Version 3 CIP Reliability Standards. Agenda item E-11 may be an order on the VSL/VRF assignments and/or an order on the compliance filing.

E-12: NorthWestern Corporation (Docket No. OA07-110-003)

On April 10, 2008, as modified on August 29, 2008, NorthWestern Corporation (NorthWestern) submitted, under Section 206 of the FPA and as required by FERC's Order No. 890, proposed revised Attachments C and K to its OATT for its South Dakota transmission system. On July 16, 2009, FERC issued an order accepting the filing, but mandating that NorthWestern make certain modifications to its OATT. NorthWestern filed a request for rehearing, arguing that as its South Dakota transmission system is small (only serving six customers), it should be able to rely on procedures that have already been established and implemented by the Mid-Continent Area Power Pool (instead of having to implement its own procedures under its OATT). Agenda item E-12 may be an order on rehearing.

E-13: California Public Utilities Commission (Docket No. EL10-64-002), Southern California Edison Company, Pacific Gas and Electric Company, San Diego Gas & Electric Company (Docket No. EL10-66-002)

In response to separate petitions for declaratory orders filed by the California Public Utilities Commission (CPUC) and by Pacific Gas and Electric Company, Southern California Edison Company and San Diego Gas & Electric Company (collectively, California Utilities), on July 15, 2010, FERC issued an order in which it found the CPUC's decision to require the California Utilities to provide a certain price to combined heat and power facilities (of up to 20 MW) that satisfied certain energy efficiency and environmental requirements was not, as long as the CPUC program met certain requirements, preempted by the FPA, the Public Utility Regulatory

Policies Act (PURPA) or FERC's regulations. On October 21, 2010, FERC issued an order granting CPUC's request for clarification of the July order. In response to the October 21 clarification order, the EEI submitted a request for rehearing concerning FERC's guidance to the CPUC regarding avoided costs under PURPA. The California Utilities also filed a request for rehearing concerning avoided cost issues. Agenda item E-13 may be an order on rehearing.

E-14: Southern California Edison Company (Docket No. ER11-2178-000)

On November 23, 2010, Southern California Edison Company (SCE) filed revisions to its Transmission Owner Tariff implementing FERC's Incentives Orders that authorized SCE to recover 100 percent of Construction Work in Progress (CWIP) for three transmission projects in its transmission rate base through SCE's existing CWIP Ratemaking Mechanism. The three projects are the Eldorado-Ivanpah Transmission Project, for which FERC approved certain rate incentives on October 29, 2010 in Docket Nos. EL10-1-001, -002, the Lugo-Pisgah Transmission Project and the Red Bluff Substation Project, for which FERC also approved certain rate incentives on October 29, 2010 in Docket No. EL10-81-000. Agenda item E-14 may be an order on SCE's tariff filing.

E-15: Southern California Edison Company (Docket No. ER11-2177-000); California Independent System Operator Corporation (Docket No. ER11-2369-000)

On November 23, 2010, SCE filed a Standard Large Generator Interconnection Agreement (LGIA) among SCE, Granite Wind, LLC (GW) and the California Independent System Operator Corporation (CAISO). Subsequently, on December 14, 2010, CAISO also filed the LGIA to have it accepted as a non-conforming service agreement of CAISO and to enter it into CAISO's eTariff system consistent with SCE's filing. The LGIA is non-conforming because SCE agreed to finance certain reliability network and distribution upgrades necessary to interconnect GW's 60 MW wind project on the condition FERC authorizes SCE to collect 100 percent of the prudently incurred costs for these facilities in the event the project is abandoned due to circumstances out of SCE's control. SCE's financing is also made contingent upon GW's achievement of certain project development milestones. Agenda item E-15 may be an order regarding the LGIA.

E-16: PJM Interconnection, L.L.C. (Docket No. ER11-2074-000)

On November 10, 2010, PJM submitted a compliance filing pursuant to an August 12, 2010 order issued in Docket No. ER09-1063-003 which required PJM to modify certain provisions in Attachment K of its OATT, Schedule 1 of its Amended and Restated Operating Agreement (Operating Agreement), and

Attachments M and DD of the OATT. The August order stemmed from earlier compliance filings made by PJM to comply with FERC's directives in Order No. 719. Agenda item E-16 may be an order regarding PJM's compliance filing.

E-17: Public Service Company of New Hampshire (Docket No. QM10-4-004)

On May 14, 2010, the Public Service Company of New Hampshire (PSCNH) filed for clarification and/or rehearing of certain paragraphs in FERC's April 15, 2010 order granting in part and denying in part PSCNH's application to terminate its mandatory purchase obligation pursuant to Section 210(m) of PURPA for all Qualifying Facilities. Agenda item E-17 may be an order on clarification and/or rehearing.

Multi-Industry Item

M-1: Revisions to Forms, Statements and Reporting Requirements for Natural Gas Pipelines (Docket No. RM07-9-003)

On June 17, 2010, FERC issued a NOPR in which it proposed to revise certain financial reporting forms required to be filed by natural gas companies (FERC Form Nos. 2, 2-A and 3-Q) to include in those forms functionalized fuel data and the amount of fuel waived, discounted or reduced as part of a negotiated rate agreement. Agenda item M-1 may be an order on the NOPR.

Hydro Items

H-1: Claverack Creek, LLC (Docket No. P-13653-001)

On November 30, 2010, FERC issued an order cancelling Claverack Creek, LLC's (Claverack) preliminary permit because it had failed to submit a progress report required by the order issuing the preliminary permit. On December 29, 2010, Claverack filed a request for rehearing of the November order. Agenda item H-1 may be an order on rehearing.

H-2: AER NY-Gen, LLC, Eagle Creek Hydro Power, LLC, Eagle Creek Water Resources, LLC and Eagle Creek Land Resources, LLC (Docket No. P-10482-105)

On November 18, 2010, FERC denied a request to transfer the hydroelectric license for the Swinging Bridge Project No. 10482 from AER NY-Gen, LLC (AER) to Eagle Creek Hydro Power, LLC, Eagle Creek Water Resources, LLC and Eagle Creek Land Resources, LLC (Eagle Creek Entities). On December 9, 2010, AER filed a request for rehearing of the November order, and the Eagle Creek Entities filed a request for rehearing of the November order on December 16, 2010. Agenda item H-2 may be an order on rehearing.

Certificate Items

C-1: Cameron LNG, LLC (Docket No. CP10-496-000)

On September 3, 2010, Cameron LNG, LLC filed an application to amend authorizations under Section 3 of the Natural Gas Act (NGA) in order to permit it to operate its existing LNG terminal for the additional purpose of providing liquefied natural gas export services. Agenda item C-1 may be an order on the application.

C-2: Central New York Oil and Gas Company, LLC (Docket No. CP10-194-000)

On April 27, 2010, Central New York Oil and Gas Company, LLC (CNYOG) filed an abbreviated application under Section 7(c) of the NGA for a certificate of public convenience and necessity to construct and operate compression and appurtenant facilities in order to increase the throughput on its existing facilities. CNYOG also requested authorization to provide Firm Wheeling Service at negotiated rates, subject to a cost-based recourse rate alternative. Agenda item C-2 may be an order regarding CNYOG's application.

C-3: Golden Triangle Storage, Inc. (Docket No. CP07-414-002)

On August 4, 2010, FERC issued an order authorizing Golden Triangle Storage, Inc. (GTS) to amend its tariff, subject to certain conditions, associated with construction and operation of a natural gas storage facility near Beaumont, Texas. On September 3, 2010, GTS filed a request for rehearing of certain of the conditions imposed in the August order. Agenda item C-3 may be an order on rehearing.

C-4: Golden Pass Pipeline LLC (Docket No. CP11-34-000)

On November 16, 2010, Golden Pass Pipeline LLC filed an application for revised initial transportation rates on its interstate pipeline. Agenda item C-4 may be an order on the application.

