

Energy, Infrastructure, Project and Asset Finance

Summary of FERC Meeting Agenda

September 2012

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 September 20, 2012 meeting, pursuant to the agenda as issued on September 13, 2012. Agenda items E-1, E-8, E-11, E-15 and E-17 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.

Electric Items

E-2: Midwest Independent Transmission System Operator, Inc. (Docket No. ER12-1664-000)

On April 30, 2012, the Midwest Independent Transmission System Operator, Inc. ("MISO") made a compliance filing pursuant to FERC's October 20, 2011 order, "Frequency Regulation Compensation in the Organized Wholesale Power Markets" ("Order No. 755"). Order No. 755 directed ISOs and RTOs to amend their Open Access Transmission Tariffs to establish a revised compensation methodology governing the provision of frequency regulation service. MISO's compliance filing is designed to implement this compensation system and proposes certain other corresponding tariff revisions. MISO contemporaneously filed a motion for extension of time to implement the changes outlined in the compliance filing from October 29, 2012, as directed in Order No. 755, to December 17, 2012. Several parties intervened. Agenda item E-2 is likely an order on the compliance filing and request for extension of time.

E-3: California Independent System Operator Corporation (Docket No. ER12-1630-000)

On April 27, 2012, the California Independent System Operator Corporation ("CAISO") made a compliance filing pursuant to Order No. 755 noted in Item E-2 above. On June 8, 2012, FERC issued a deficiency notice, directing CAISO to file additional information. CAISO responded to the deficiency notice on July 6, 2012. Agenda item E-3 is likely an order on CAISO's proposed tariff amendments.



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

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
United States
+ 1 202 626 3600

E-4: Delegation of Authority Regarding Electric Reliability Organization's Budget, Delegation Agreement, and Policy and Procedure Filings (Docket No. RM12-20-000)

Agenda item E-4 is likely the establishment of a new rulemaking proceeding regarding North American Electric Reliability Corporation ("NERC") matters.

E-5: Regional Reliability Standard PRC-006-NPCC-1 – Automatic Underfrequency Load Shedding (Docket No. RM12-12-000)

On May 4, 2012, NERC filed a proposed regional reliability standard for the Northeast Power Coordinating Council region. In the petition, NERC stated that the purpose of the new standard, PRC-006-NPCC-1, is to "ensure[] the development of an effective automatic underfrequency load shedding (UFLS) program in order to preserve the security and integrity of the bulk power system during declining system frequency events in coordination with the NERC UFLS reliability standard characteristics." Agenda item E-5 is likely an order on the proposed standard.

E-6: North American Electric Reliability Corporation (Docket No. RC11-6-002)

On May 14, 2012, NERC made a compliance filing in response to a March 15, 2012 order conditionally accepting NERC's proposal to make informational filings in a Find, Fix, Track and Report spreadsheet format to remediate possible violations of Reliability Standards that pose minimal risk to bulk power system operations. Agenda item E-6 is likely an order on the compliance filing.

E-7: Southwest Power Pool, Inc. (Docket No. ER12-2289-000)

On July 23, 2012, Southwest Power Pool, Inc. ("SPP") submitted revisions to its Open Access Transmission Tariff to implement a cost-based transmission formula rate for SPP member The Empire District Electric Company ("Empire"). The proposed revisions are designed to update Empire's current rates for Network Integrated Transmission Service and Point-to-Point Transmission Service, and provide a rate for Scheduling, System Control and Dispatch Service. SPP requested an effective date of August 1, 2012 to implement the revisions. Agenda item E-7 is likely an order on the tariff filing.

E-9: Southwest Power Pool, Inc. (Docket No. ER12-2292-000)

On July 23, 2012, SPP filed proposed amendments to Attachment AE of its Open Access Transmission Tariff. The revisions are designed to facilitate the systematic, rather than manual, curtailment of Non-Dispatchable Resources in the SPP Energy

Imbalance Market during periods of congestion. SPP requested an effective date of October 15, 2012 for the amendments, and further asked that FERC rule on the filing within 60 days to allow SPP to prepare to implement the revisions. Agenda item E-9 is likely an order on SPP's proposed tariff amendments.

E-10: PPL Electric Utilities Corporation (Docket Nos. ER09-1148-000, -001)

On August 15, 2011, FERC issued an order accepting all but one provision of PPL Electric Utilities Corporation's ("PPL") May 14, 2010 informational filing detailing its 2010 Annual Update to its transmission rates based on its authorized formula rate. The August 15 Order also dismissed a formal challenge filed by the Eastern Pennsylvania Power Group Boroughs ("EPPG Boroughs"). In the August 15 Order, FERC directed PPL to offset certain insurance recoveries in its next true-up adjustment. EPPG Boroughs subsequently filed a request for rehearing, which FERC granted for further consideration on September 26, 2011. On May 13, 2011, PPL submitted its 2011 Annual Update, which EPPG Boroughs also challenged on December 7, 2011, and on May 11, 2012, PPL submitted its 2012 Annual Update. Agenda item E-10 may be an order on rehearing or on the subsequent Annual Update filings, including the most recent challenge by EPPG Boroughs.

E-12: Morgantown Energy Associates (Docket Nos. EL12-36-001, QF89-25-009); City of New Martinsville, West Virginia (Docket Nos. EL12-48-001, QF85-541-003)

On June 14, 2012, FERC granted a request for rehearing for further consideration of a Notice of Intent Not to Act and Declaratory Order issued April 24, 2012 in the proceedings. The proceedings pertain to a challenge of a decision by the Public Service Commission of West Virginia, which held that an electric utility that purchases electric energy and capacity under an electric energy purchase agreement with a qualifying facility owns the renewable energy credits associated with that electric energy. Agenda item E-12 may be an order on the rehearing requests.

E-13: Public Service Company of New Mexico ("PSC NM"), Power Network New Mexico, LLC ("PNNM") and New Mexico Renewable Energy Transmission Authority ("NM RETA") (Docket No. ER12-1699-000); PNNM and NM RETA (Docket No. ER12-1698-000)

On May 2, 2012, PSC NM, PNNM and NM RETA filed a request for a limited waiver of the PSC NM Open Access Transmission Tariff's requirements for obtaining transmission service to allow an adjustment of PSC NM's queue for long-term firm point-to-point transmission service. Also on May 2, 2012, PNNM and NM RETA filed an Application for Authorization to Sell Transmission Rights

at Negotiated Rates, Approval of Capacity Allocation, and Request for Waivers. The purpose of the filings is to facilitate the development of a 200-mile merchant transmission line to bring renewable energy to the Four Corners trading hub in New Mexico. Numerous parties filed comments and/or protests. Agenda item E-13 may be an order on the applications.

E-14: American Transmission Systems Inc. (Docket No. ER09-1589-001); FirstEnergy Service Company v. PJM Interconnection, L.L.C. (Docket No. EL10-6-001)

On February 11, 2010, FERC granted a motion for rehearing for further consideration of its order issued on December 17, 2009, in these proceedings. The proceedings pertain to the proposed withdrawal of American Transmission Systems Inc. from MISO and subsequent integration into PJM. On March 10, 2010, FERC issued an order partially addressing the requests for clarification and rehearing, and stating that other issues raised on rehearing would be addressed in a separate order. Agenda item E-14 may be an order addressing the issues raised on rehearing that were not addressed by the March 10 Order.

E-16: New York Independent System Operator, Inc. (Docket No. ER12-718-001)

On May 1, 2012, the New York Independent System Operator, Inc. ("NYISO") and PJM filed supplemental revisions to their Joint Operating Agreement and corresponding tariff changes to facilitate Market-to-Market Coordination. The May 1 filing also requested an extension of time to permit the revisions to take effect on January 15, 2013. Agenda item E-16 is likely an order on the proposed revisions.

E-18: PJM Interconnection, L.L.C. (Docket Nos. ER11-4628-000, -001, -002, -003)

On September 23, 2011, PJM filed revisions to its Open Access Transmission Tariff, the Amended and Restated Operating Agreement, and the Reliability Assurance Agreement Among Load-Serving Entities in the PJM Region to facilitate the participation of price-responsive demand at the wholesale level in PJM's forward capacity market and PJM's day-ahead and real-time energy markets. On December 14, 2011, FERC conditionally accepted the filing, subject to refund and the outcome of a technical conference, which was held on February 12, 2012. On May 14, 2012, FERC issued an order on the technical conference requiring PJM to submit four subsequent compliance filings. PJM submitted three compliance filings on July 13, 2012. Agenda item E-18 may be an order on the compliance filings.

E-19: Idaho Wind Partners 1, LLC (EL12-74-000)

On June 15, 2012, Idaho Wind Partners 1, LLC filed a request for a declaratory order and expedited action seeking a ruling that Idaho Power Company's proposal before the Idaho Public Utilities Commission to unilaterally curtail its purchases from qualifying facilities ("QFs") during "light loading" periods is a violation of the Public Utility Regulatory Policies Act to the extent it would curtail purchases from QFs with existing power purchase agreements that have fixed avoided cost rates. Numerous parties have intervened. Agenda item E-19 is likely an order addressing the requested declaratory order.

E-20: PPL Electric Utilities Corporation (Docket No. EL12-20-000)

On December 30, 2011, PPL filed a request for a declaratory order authorizing transmission rate incentives for a new 58-mile 230 kV transmission project. PPL stated that the project is necessary to address reliability violations in the northeast region of PPL's transmission service territory. Specifically, PPL Electric requested (1) a 100 basis point incentive adder to its base return on equity and (2) authorization for 100 percent prudently incurred construction work in progress to be included in the base rate. Several parties intervened and filed comments and/or protests. Agenda item E-20 is likely an order addressing the requested declaratory order.

E-21: Potomac-Appalachian Transmission Highline, LLC ("PATH") (Docket No. ER09-1256-000); Alison Haverty v. PATH (Docket No. EL12-79-000); Keryn Newman v. PATH (Docket No. EL12-85-000)

These proceedings pertain to PATH's annual formula rate updates. Individuals Alison Haverty and Keryn Newman filed formal complaints, *pro se*, alleging PATH improperly barred them from annual formula rate reviews by determining electricity consumers are not interested parties to the formula rate update proceedings and further alleged that PATH improperly calculated its formula rates. Agenda item E-21 is likely an order on the formula rate updates and complaints.

E-22: TC Ravenswood, LLC (Docket No. ER10-1359-001)

On October 27, 2010, FERC issued an order rejecting TC Ravenswood, LLC's ("Ravenswood") "Preferred" and "Alternate" versions of its proposed Minimum Oil Burn Service Cost of Service Recovery Rate Schedule implementing a Variable Cost of Service Recovery Rate. Ravenswood proposed to apply the proposed rate schedules when it procures and burns fuel oil delivered to its generation facility (in lieu of natural gas) when required to do so pursuant to New York State Reliability Council Local Reliability Rule I-R3. In rejecting the proposed rate schedules, FERC found

that the relevant service is a jurisdictional market service that comes under the exclusive purview of the NYISO tariff and that Ravenswood's proposed rate schedules would be duplicative since the NYISO tariff governs the rates that Ravenswood may charge. Ravenswood filed a timely request for rehearing. Agenda item E-22 may be an order on the request for rehearing.

E-23: Electricity Market Transparency Provisions of Section 220 of the Federal Power Act (Docket No. RM10-12-000)

After a Notice of Inquiry on whether FERC should broaden its oversight of transactions by market participants that are excluded from FERC jurisdiction under Federal Power Act ("FPA") section 205, on April 21, 2011, FERC issued a Notice of Proposed Rulemaking ("NOPR") to amend its regulations to require market participants that are excluded from FERC's jurisdiction under FPA section 205 and have more than a *de minimis* market presence to file Electric Quarterly Reports ("EQRs") with FERC. Under the proposed regulations, the EQR filing requirements would be extended to non-public utilities that have annual wholesale sales of more than four million MWh and to non-public utility balancing authorities that have annual wholesale sales of more than one million MWh. FERC also proposed other changes to the EQRs that would apply to all filers, including: (a) reporting the transaction date and time and the type of rate by which the price in the transaction was set (such as fixed price, formula, index, or RTO/ISO price), (b) stating whether the transaction was reported to an index publisher, (c) listing the broker or exchange used for the transaction, if applicable, and (d) providing electronic tag (e-Tag) ID data. Numerous parties filed comments in response to the NOPR. Agenda item E-23 may be an order on the NOPR.

E-24: J.P. Morgan Ventures Energy Corporation (Docket No. EL12-103-000)

This is a new docket.

Gas Items

G-1: Revisions to Page 700 of FERC Form No. 6 (Docket No. RM12-18-000)

This is a new rulemaking docket.

G-2: Texas Eastern Transmission, LP (Docket Nos. RP12-318-001, -002)

On February 16, 2012, FERC issued an order conditionally accepting Texas Eastern Transmission, LP's ("Texas Eastern") revised *pro forma* service agreements for its Rate Schedule FTS-5. FERC also directed Texas Eastern to file revisions to its tariff

regarding reservation charge credits when service is not provided due to a non-force majeure outage or to show cause why it should not be required to do so. Texas Eastern filed a timely request for rehearing, arguing that FERC has impermissibly placed the burden on Texas Eastern to justify tariff provisions that have already been found to be just and reasonable, with no change in circumstances that would render the provisions unjust and unreasonable.

On March 19, 2012, Texas Eastern filed its response to the show cause requirement. Texas Eastern argued that: (a) its reservation charge crediting provision was fully litigated in 1993 and that FERC has not established that the tariff provision was no longer just and reasonable, (b) FERC's policy would discourage prudent maintenance, and (c) there was no record evidence supporting a change in the reservation charge crediting provision. Agenda item G-2 may be an order on the request for rehearing and/or Texas Eastern's response to show cause.

G-3: Revision to Form No. 6 (Docket No. RM11-21-000)

On July 29, 2011, FERC issued an NOPR to amend the instructions on page 700 of FERC Form No. 6 (Annual Report of Oil Pipeline Companies) to instruct pipelines to report interstate-only barrel and barrel-mile data, and not a combination of interstate and intrastate throughput. FERC also proposed to require pipelines that reported combined interstate and intrastate data on page 700 of their 2010 FERC Form No. 6 to file a revised page 700 that contains only interstate data for 2009 and 2010. Several oil pipeline companies filed comments in response to the NOPR. Agenda item G-3 may be an order on the NOPR.

G-4: SFPP, L.P. (Docket Nos. IS09-437-000, IS10-572-000)

On February 10, 2011, the Presiding ALJ issued an Initial Decision regarding SFPP, L.P.'s ("SFPP") tariff filing to increase the costs and associated transportation rates of the East Line portion of its pipeline. SFPP had submitted the revised tariff provisions on July 31, 2009 and also filed, pursuant to FERC's annual rate indexing methodology for oil pipelines, interim rate tariff filings that decreased the rates on SFPP's East Line. In the Initial Decision, the ALJ found that SFPP did not meet its burden of proof to justify the majority of the components in the calculation of its cost-of-service-based rates. The ALJ also concluded that SFPP's income tax allowance resulted in an over-recovery for SFPP's investors. While the ALJ found that previous FERC decisions prevented a holding against SFPP concerning this matter, it directed SFPP to modify the income tax allowance and certain costs that flow from that calculation in SFPP's rates. Briefs on exceptions and briefs opposing exceptions to the Initial Decision have been filed. Agenda item G-4 may be an order on the Initial Decision.

Hydro Items

H-1: Public Utility District No. 2 of Grant County, Washington (Docket No. P-2114-248)

On February 10, 2012, the FERC Division of Hydropower Licensing issued an order modifying and approving, in part, amendments to articles of the Public Utility District No. 2 of Grant County's ("Grant PUD") license for the Priest Rapids and Wanapum dams on the mid-Columbia River in Washington State. FERC granted Grant PUD's request to incorporate the Crescent Bar Island recreation requirements into the Priest Rapids Recreation Resource Management Plan. FERC also updated the implementation timetable for the Priest Rapids Recreation Resource Management Plan. In addition, FERC denied other proposed amendments from Grant PUD, including a plan to permanently close the Priest Rapids Dam Picnic Area. Grant PUD and certain individuals filed requests for rehearing. Agenda item H-1 may be an order on the requests for rehearing.

H-2: Cascade Creek, LLC (Docket No. P-12495-006)

On January 30, 2012, FERC Division of Hydropower Licensing issued an order denying Cascade Creek, LLC's ("Cascade Creek") application for a third preliminary permit to study the feasibility of a hydroelectric project near Petersburg, Alaska. FERC found that Cascade Creek had not satisfied the heightened standard of due diligence and good faith that applies to an applicant that is seeking successive permits. FERC noted that Cascade Creek had more than six years to prepare an adequate license application, but it had yet to do so. FERC also terminated the Alternative Licensing Process ("ALP") for Cascade Creek based, in part, on concerns from numerous federal, state and private entities about Cascade Creek's implementation of the pre-filing consultation under the ALP. Cascade Creek filed for rehearing. Agenda item H-2 may be an order on the request for rehearing.

H-3: Turlock Irrigation District and Modesto Irrigation District (Docket No. P-2299-077)

On April 19, 2012, FERC issued an Order Clarifying Proceeding on Interim Conditions regarding the protection of fishery resources pending the relicensing of the Don Pedro Project on the main stem of the Tuolumne River in California. FERC ruled that since it had previously found that interim measures were not warranted and that the proceeding on interim measures did not lead to an agreement among the parties or a recommendation for FERC action, no final action was required in that proceeding. In addition, FERC stated that because some of the required studies were not complete and relicensing was pending, it was not feasible to start

a new proceeding on interim conditions. The US Department of Commerce National Oceanic and Atmospheric Administration's National Marine Fisheries Service filed a request for rehearing. Agenda item H-3 may be an order on the request for rehearing.

H-4: California Department of Water Resources and the City of Los Angeles (Docket No. P-2426-217)

On February 10, 2012, the FERC Division of Hydropower Administration and Compliance issued an order amending Article 52 and Exhibit S for the South SWP Hydroelectric Project on the California Aqueduct based on its inability to provide rainbow trout in Piru Creek below Pyramid Dam until the California Department of Fish and Game has conducted a pre-stocking evaluation. California Trout, Inc. and Friends of the River filed a request for rehearing. Agenda item H-4 may be an order on the request for rehearing.

H-5: Exelon Generation Company, LLC (Docket No. P-405-104)

On May 21, 2012, FERC staff issued a letter of determination regarding modifications to the study plan for Exelon Generation Company, LLC's Conowingo Hydroelectric Project. The Maryland Department of Natural Resources, Power Plant Research Program and the Maryland Department of the Environment (collectively, Maryland Agencies) filed a request for rehearing of the FERC staff letter. On July 18, 2012, FERC issued a notice rejecting the request for rehearing, finding that FERC has not yet issued any order in which parties may seek rehearing. The Maryland Agencies filed a request for rehearing of the July 18, 2012 letter, urging FERC to address the merits of its original request for rehearing. Agenda item H-5 may be an order on the request for rehearing.

H-6: Union Electric Company (Docket No. P-459-317)

On June 5, 2012, the FERC Office of Energy Projects issued an order amending the project boundaries of Union Electric Company's Osage Project on the Osage River in Missouri in order to eliminate excess land not needed for project purposes. As a result of the modification of the project boundaries, all private residences and commercial structures will be outside the project boundary. An individual filed a request for rehearing. Agenda item H-6 may be an order on the request for rehearing.

**H-7: Borough of Lehigh, Pennsylvania
(Docket No. P-12455-010)**

On June 22, 2012, the Borough of Lehigh, Pennsylvania (“Lehigh”) filed a Motion for Stay of License Pending Corps Action on Dam Safety. Lehigh seeks a stay of its license, or in the alternative the construction deadline, for its Beltville Hydroelectric Project for two years since the US Army Corps of Engineers determined that dam safety work is needed before it will approve the project design. Agenda item H-7 may be an order on the motion for a stay.

**H-8: East Texas Electric Cooperative, Inc.
(Docket No. P-12632-004)**

On August 26, 2011, the FERC Office of Energy Projects issued an original license to East Texas Electric Cooperative, Inc. (“East Texas”) to construct, operate and maintain the proposed 24 MW Lake Livingston Hydroelectric Project to be located on the Trinity River Authority of Texas’s (“TRA”) existing Lake Livingston dam on the Trinity River in southeastern Texas. The City of Houston, Texas (“Houston”) and TRA filed a joint request for rehearing and clarification, objecting to those parts of the Licensing Order that could impair Houston’s and TRA’s water rights or interfere with TRA’s operation of the Lake Livingston dam for its primary purpose. East Texas also filed a request for clarification and rehearing, arguing that certain provisions of the license could unnecessarily conflict with TRA’s ability to manage Lake Livingston. Agenda item H-8 may be an order on the requests for rehearing and clarification.

Certificate Items

C-1: Alliance Pipeline L.P. (Docket No. CP12-50-000)

On January 25, 2012, Alliance Pipeline L.P. (“Alliance”) filed an Abbreviated Application for a Certificate of Public Convenience and Necessity authorizing Alliance to construct, own, operate and maintain an approximately 79.3-mile-long natural gas pipeline lateral. The proposed facilities would extend from the tailgate of a gas processing plant near Tioga, North Dakota to an interconnection with an Alliance mainline near Sherwood, North Dakota. Alliance seeks to establish initial incremental recourse rates for firm, authorized overrun and interruptible transportation service on the proposed facilities. Alliance also submitted a non-conforming Firm Transportation Agreement between Alliance and Hess Corporation and tariff modifications involving a gas quality specification waiver and transportation services on the facilities. An environmental assessment of the project has been conducted. Agenda item C-1 may be an order on Alliance’s certificate application.