

Energy, Infrastructure, Project and Asset Finance

# Summary of FERC Meeting Agenda

June 2015

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*Below are brief summaries of the agenda items for the Federal Energy Regulatory Commission's June 18, 2015 meeting, pursuant to the agenda as issued on June 11, 2015. Agenda Items E-13 and E-18 have not been summarized as they were omitted from the agenda.*

## Administrative Items

### A-1: Docket No. AD02-1-000

This administrative docket addresses Agency Business Matters.

### A-2: Docket No. AD02-7-000

This administrative docket addresses Customer Matters, and Reliability, Security and Market Operations.

## Electric Items

### E-1: Midcontinent Independent System Operator, Inc.; Otter Tail Power Company v. Midcontinent Independent System Operator, Inc. (Docket Nos. ER14-2464-002, EL15-36-000).

On July 18, 2014, Midcontinent Independent System Operator, Inc. (MISO) submitted an unexecuted non-conforming Facilities Construction Agreement (FCA) among BorderWinds Energy, LLC (BorderWinds), Otter Tail Power Company (Otter Tail), and MISO. On December 12, 2014, the Commission issued an order conditionally accepting the agreement, subject to the removal of the proposed revisions that deviated from the *pro forma* FCA. The Commission found that MISO failed to meet its burden to justify the proposed non-conforming provisions. MISO and Otter Tail have requested rehearing and clarification of the Commission's December 12 order. Concurrently, under Docket EL15-36, on January 12, 2015 Otter Tail filed a complaint pursuant to Section 206 of the Federal Power Act (FPA) against MISO. The complaint seeks a Commission order (1) finding that the MISO Tariff is unjust and unreasonable to the extent the *pro forma* FCA does not permit a systems operator to elect to self-fund Network Upgrades; and (2) directing MISO to include a provision in the *pro forma* FCA permitting a systems operator to self-fund Network Upgrades. Agenda item E-1 may be an order on the requests for rehearing and clarification and/or Otter Tail's complaint against MISO.



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-2: Transmission Operations Reliability Standards and Interconnection Reliability Operations and Coordination Reliability Standards (Docket No. RM15-16-000).**

On March 18, 2015, the North American Electric Reliability Corporation (NERC) submitted a petition for Commission approval for nine proposed Reliability Standards that address coordinated efforts to plan and operate the Bulk Electric System reliably under normal and abnormal conditions. Agenda Item E-2 may be an order on the proposed Reliability Standards.

**E-3: Revisions to Emergency Operations Reliability Standards (Docket No. RM15-7-000); Revisions to Undervoltage Load Shedding Reliability Standards (Docket No. RM15-12-000); Revisions to the Definition of “Remedial Action Scheme” and Related Reliability Standards (Docket No. RM15-13-000).**

On December 29, 2014, NERC submitted a petition for Commission approval of Reliability Standard EOP-011-1 to address the effects of operating emergencies to ensure each Transmission Operator and Balancing Authority have developed operating plans to mitigate operating emergencies, and that those plans are coordinated within a Reliability Coordinator Area. On February 6, 2015, NERC submitted a petition for Commission approval of Reliability Standard PRC-010-1 to establish an integrated and coordinated approach to the design, evaluation, and reliable operation of the Undervoltage Load Shedding Program. On February 3, 2015, NERC submitted for Commission approval proposed revisions to the definition of the term “Remedial Action Scheme” in the *NERC Glossary of Terms Used in Reliability Standards* to ensure consistent classification of systems that are Remedial Action Schemes and application of Reliability Standards referencing the defined term. Agenda item E-3 may be an order on NERC’s petitions.

**E-4: Revised Exhibit Submission Requirements for Commission Hearings (Docket No. RM15-5-000).**

On March 19, 2015, the Commission issued a Notice of Proposed Rulemaking (NOPR) proposing to amend Rule 508 of the Commission’s Rules of Practice of Procedure, 18 C.F.R. § 385.508, to eliminate the requirement that participants in Commission trial-type evidentiary hearings must provide paper copies of all exhibits introduced as evidence. Agenda item E-4 may be an order on the NOPR.

**E-5: North American Electric Reliability Corporation (Docket No. RR15-8-000).**

On March 6, 2015, the North American Electric Reliability Corporation (NERC) submitted a request for Commission approval of proposed revisions to NERC’s Working Capital and Operating Reserve (WCOR) Policy. Agenda item E-5 may be an order on NERC’s WCOR Policy.

**E-6: Duke Energy Corporation and Progress Energy, Inc.; Carolina Power & Light Co. (Docket Nos. ER12-1338-001, ER12-1347-002).**

On June 8, 2012, the Commission issued an order conditionally accepting a Joint Dispatch Agreement (JDA), filed by Duke Energy Corporation (Duke Energy) and Progress Energy, Inc. (Progress Energy) on behalf of Duke Energy Carolinas, LLC (Duke Energy Carolinas) and Carolina Power & Light Company (CP&L), and a joint open access transmission tariff, filed by Duke Energy and Progress Energy on behalf of Duke Energy Carolinas, CP&L, and Florida Power Corporation (Florida Power), pursuant to section 205 of the Federal Power Act and Part 35 of the Commission’s regulations. On July 9, 2012, the City of Orangeburg, South Carolina (Orangeburg) requested rehearing of the Commission’s June 2012 order, alleging rate discrimination under the JDA. Agenda item E-6 may be an order on Orangeburg’s request for rehearing.

**E-7: PJM Interconnection, L.L.C. and Commonwealth Edison Company (Docket No. ER15-3-001).**

On November 28, 2014, the Commission issued an order accepting proposed PJM Open Access Transmission Tariff (Tariff) revisions authorizing Commonwealth Edison Company (ComEd) to begin assessing a Wholesale Distribution Charge (WDC) to Energy Vault, LLC (Energy Vault). On December 24, 2014, Energy Vault filed a motion to intervene out of time and protest to ComEd’s proposed Tariff revisions, in order to correct alleged material misrepresentations in ComEd’s proposal. On December 29, 2014, the Energy Storage Association (ESA) filed a request for rehearing of the Commission’s November 2014 order, arguing the Commission’s approval of WDC-related Tariff provisions appear to contravene precedent without addressing the established case law for the issue. On December 31, 2014, GlidePath Power LLC filed comments in support of Energy Vault’s protest and ESA’s rehearing request. On January 8, 2015, ComEd submitted an answer to Energy Vault’s protest and ESA’s rehearing request. In January and February 2015, Energy Vault, ESA, and ComEd filed numerous additional answers to each other’s answers. Agenda item E-7 may be an order on ESA’s request for rehearing.

**E-8: ISO New England Inc. (Docket No. ER15-1137-000).**

On February 27, 2015, ISO New England Inc. (ISO-NE) submitted its Forward Capacity Auction Results Filing (FCA Results Filing) for the ninth Forward Capacity Auction (FCA). The ISO-NE submitted the FCA Results Filing in compliance with Section III.13.8.2 of its Markets and Services Tariff (Tariff) pursuant to Section 205 of the Federal Power Act, and the ISO-NE requests that the Commission find that ISO-NE conducted the ninth FCA in accordance with its FERC-approved Tariff. In March and April 2015, numerous parties filed motions to intervene. On April 13, 2015, Utility Workers Union

of America Local 464 and Robert Clark (collectively, UWUA) filed a motion to intervene and protest challenging ISO-NE's FCA Results Filing based on UWUA's allegation of market manipulating behavior in the eighth FCA. On April 28, 2015, the New England Power Generators Association, Inc. (NEPGA) filed an answer to UWUA's April 2015 protest and on May 14, 2015, UWUA filed an answer to NEPGA's answer. Agenda item E-8 may be an order on the ISO-NE's FCA Results Filing.

**E-9: Southwest Power Pool, Inc. (Docket Nos. ER14-781-002, ER14-781-003).**

On June 13, 2014, the Commission issued an order conditionally accepting the Southwest Power Pool, Inc.'s (SPP) proposed revisions to the Generator Interconnection Procedures and pro forma Generator Interconnection Agreement in Attachment V of the SPP Open Access Transmission Tariff (Tariff). On July 14, 2014, E.ON Climate & Renewables North America LLC (ECRNA) filed a request for rehearing identifying numerous errors in the Commission's June 2014 order. Also on July 14, 2014, the American Wind Energy Association (AWEA) and the Wind Coalition (TWC) requested rehearing and clarification of the Commission's June 2014 order, seeking clarification that a withdrawing interconnection customer's non-refundable deposits will not be applied to an already funded network upgrade of a lower queued customer in the case that the costs of the network upgrade do not increase as a result of the higher queued customer's withdrawal. Further, on July 14, 2014, SPP submitted a compliance filing that included Tariff revisions consistent with the June 2014 order. On August 4, 2014, ECRNA, AWEA, and TWC filed comments addressing SPP's compliance filing and Tri Global Energy, LLC moved to intervene and protest the SPP compliance filing. Agenda Item E-9 may be an order on the requests for rehearing and SPP's compliance filing.

**E-10: Benjamin Riggs v. Rhode Island Public Utilities Commission (Docket No. EL15-61-000).**

On April 21, 2015, Benjamin Riggs (Riggs) filed a petition for enforcement, pursuant to section 210(h)(2) of the Public Utility Regulatory Policies Act of 1978 (PURPA), requesting the Commission to exercise its authority and initiate enforcement action against the Rhode Island Public Utilities Commission to ensure that PURPA regulations are properly and lawfully implemented. Riggs alleges that the Rhode Island Public Utility Commission on August 16, 2010, as directed by the Rhode Island General Assembly, approved a 20-year Purchase Power Agreement between Deepwater Wind Block Island, LLC and National Grid that appears to constitute a violation of the Federal Power Act and the Supremacy Clause of the U.S. Constitution. In May and June 2015, numerous parties filed motions to intervene, protest, and answer Riggs' petition. Agenda item E-10 may be an order on Riggs' petition for enforcement.

**E-11: Ameren Services Company (Docket No. EL14-46-000).**

On May 5, 2014, Ameren Services Company, on behalf of Union Electric Company d/b/a Ameren Missouri (collectively, Ameren) pursuant to section 207(a)(2) of the Commission's Rules of Practice and Procedure, 18 CFR 385.207(a)(2), filed a petition for declaratory order seeking the Commission's determination as to the appropriate rate to be charged for Midcontinent Independent System Operator, Inc.'s (MISO) provision of Network Integration Transmission Service to Ameren Missouri's load in the "Boot Heel" region of Missouri. In May and June 2014, MISO and Entergy Services, Inc., on behalf of Entergy Arkansas, Inc. (collectively, Entergy), protested Ameren's filing. On June 19, 2014, Ameren filed an answer to the protests of MISO and Entergy. Agenda item E-11 may be an order on Ameren's petition for declaratory order.

**E-12: Consolidated Edison Company of New York, Inc. v. PJM Interconnection, L.L.C. (Docket No. EL15-18-000), PJM Interconnection, L.L.C. (Docket Nos. ER14-972-001, ER14-972-002).**

On April 9, 2014, FERC issued an order conditionally accepting PJM Interconnection, L.L.C.'s (PJM) Tariff changes regarding cost responsibility assignments for 111 baseline upgrades contained in PJM's updated Regional Transmission Expansion Plan. The New York Public Service Commission, Consolidated Edison Company of New York, Inc. (Con Edison), and Vinden VFT, LLC filed requests for rehearing, arguing, in part, that the order misallocated upgrade costs to parties interconnected with PJM. PJM later submitted a compliance filing regarding certain assumptions made in its cost allocation methodology. On November 7, 2014, Con Edison filed a complaint against PJM, arguing that PJM failed to comply with its Tariff and overallocated more than US\$650 million in distribution factor (DFAX) costs to Con Edison for two Public Service Electric and Gas Corporation (PSE&G) transmission projects planned for northern New Jersey (the Bergen-Linden Corridor and the Sewaren Project). Agenda item E-12 may be an order on the requests for rehearing, compliance filing, and/or the complaint.

**E-14: Delta-Montrose Electric Association (Docket No. EL15-43-000).**

On February 9, 2015, Delta-Montrose Electric Association (DMEA) submitted a petition for declaratory order related to a qualifying hydroelectric facility (QF) that has asked to interconnect with DMEA. DMEA requested that FERC find Tri-State Generation and Transmission Association, Inc. (Tri-State) should be considered a public utility under Federal Power Act (FPA) section 201 since it retired all of its Rural Utilities Service debt and, as a result, the Tri-State-DMEA wholesale partial requirements contract should be subject to FPA sections 205 and 206. DMEA also asked FERC to find that DMEA's obligation to purchase power from a

QF supersede any conflicting provisions in the wholesale partial requirements contract and that DMEA and the QF can negotiate rates. In response, Tri-State argued that it does not qualify as a public utility under the FPA and FERC should decline to issue a declaratory order as this matter involves a contractual dispute between Tri-State and DMEA. Agenda item E-14 may be an order on the petition for declaratory order.

**E-15: City of Orangeburg, South Carolina (Docket No. EL09-63-000).**

On July 2, 2009, the City of Orangeburg, South Carolina (Orangeburg) submitted a petition for declaratory order requesting that FERC exempt the Orangeburg Department of Public Utilities and other affected electric utilities from a North Carolina Utilities Commission (NCUC) order that would lead to trapped costs for certain wholesale arrangements with Duke Energy Carolinas, LLC (Duke). In the alternative, Orangeburg requests that FERC determine that the NCUC order is preempted by FERC's exclusive jurisdiction over wholesale power sales and transmission. The NCUC responded that there was no basis for relief as its order at issue did not revise any rates, terms or conditions of the Duke-Orangeburg agreement or allocate any costs incurred by Duke under a FERC-approved rate or contract. Furthermore, Duke argued the issue was moot since the Duke-Orangeburg agreement had been terminated. Agenda item E-15 may be an order on the petition for declaratory order.

**E-16: PaTu Wind Farm, LLC v. Portland General Electric Company (Docket No. EL15-6-001), PaTu Wind Farm, LLC (Docket No. QF06-17-003).**

On January 22, 2015, FERC issued an order on a complaint by PaTu Wind Farm, LLC (PaTu) in which PaTu argued that Portland General Electric Company (PGE) improperly failed to provide the needed transmission services for PaTu to have a dynamic scheduling import into PGE's balancing authority area and refused to accept deliveries on a 15-minute schedule. FERC found that PGE may not refuse to accept PaTu's net output delivered to the PGE system, but that PaTu had not proven that PGE's merchant function and transmission function employees violated FERC's Standards of Conduct. FERC also left it to the Public Utility Commission of Oregon or an appropriate court to determine if PaTu should receive any monetary reparations. Both PaTu and PGE filed requests for rehearing of the FERC order. Agenda item E-16 may be an order on the requests for rehearing.

**E-17: Louisiana Public Service Commission v. Entergy Corporation; Entergy Services, Inc.; Entergy Louisiana, LLC; Entergy Arkansas, Inc.; Entergy New Orleans, Inc.; Entergy Mississippi, Inc.; Entergy Gulf States Louisiana, L.L.C.; and Entergy Texas, Inc. (Docket No. EL11-63-001).**

On January 19, 2012, FERC issued an order on the Louisiana Public Service Commission's (LaPSC) complaint regarding Entergy Corporation's allocation of the costs of transmission upgrades at the Ouachita Generating Station in Louisiana and the allocation of benefits from a settlement between Entergy Arkansas, Inc. and Union Pacific Corporation concerning the delivery of coal supplies to two generating units in Arkansas. In its order, FERC denied part of the claim and dismissed part of the claim as premature. LaPSC filed a request for rehearing and clarification. Agenda item E-17 may be an order on the request for rehearing and clarification.

**E-19: PJM Interconnection, LLC (Docket No. ER15-696-000).**

On November 20, 2014, the Commission, under FPA Section 206 ordered PJM to make a filing within 30 days that would either (1) revise the PJM Tariff to provide that a "resource owner will no longer receive reactive power capability payments after it has deactivated its unit and to clarify the treatment of reactive power capability payments for units transferred out of a fleet" or (2) "show cause why it should not be required to do so." PJM submitted its compliance filing on December 22, 2014. Agenda item E-19 may be an order on PJM's compliance filing.

**E-20: Arkansas Electric Cooperative Corporation; Mississippi Delta Energy Agency; Clarksdale Public Utilities Commission; Public Service Commission of Yazoo City; and Hoosier Energy Rural Electric Cooperative, Inc. v. ALLETE, Inc.; Ameren Illinois Company; Ameren Missouri; Ameren Transmission Company of Illinois; American Transmission Company LLC; Cleco Power LLC; Duke Energy Business Services, LLC; Entergy Arkansas, Inc.; Entergy Gulf States Louisiana, LLC; Entergy Louisiana, LLC; Entergy Mississippi, Inc.; Entergy New Orleans, Inc.; Entergy Texas, Inc.; Indianapolis Power & Light Company; International Transmission Company; ITC Midwest LLC; Michigan Electric Transmission Company, LLC; MidAmerican Energy Company; Montana-Dakota Utilities Co.; Northern Indiana Public Service Company; Northern States Power Company-Minnesota; Northern States Power Company-Wisconsin; Otter Tail Power Company; and Southern Indiana Gas & Electric Company (Docket No. EL15-45-000).**

On February 12, 2015, the above transmission customers (Joint Customers) filed a complaint seeking to reduce the base return on equity (ROE) used in the MISO Transmission Owners' and ATC's formula transmission rates. The complaint alleged that the current

MISO-wide ROE and the ATC ROE are excessive and should be reduced and that the Commission should set the base MISO-wide ROE no higher than 8.67 percent. Agenda item E-20 may be an order on the Joint Customers' complaint.

## Hydro Items

### H-1: Soldier Canyon Filter Plan (Docket No. CD15-18-001).

On January 23, 2015, Colorado Soldier Canyon Micro Hydro Facility filed a Notice of Intent to Construct a Qualifying Conduit Hydropower Facility (Notice of Intent) for the Soldier Canyon Micro Hydro Facility, proposed to be located near the city of Fort Collins in Larimer County, Colorado. On February 6, 2015, the Commission rejected the Notice of Intent. On March 31, 2014, the Commission granted rehearing for reconsideration of the February 6, 2014 letter order. Agenda item H-1 may be an order on the facility's motion for reconsideration.

### H-2: Turlock Irrigation District and Modesto Irrigation District (Docket No. P-14581-001).

On February 23, 2015, the National Oceanic and Atmospheric Administration's National Marine Fisheries Service (NMFS) filed a Notice of Study Dispute to initiate the FERC formal study dispute resolution process, under 18 C.F.R. §5.14, in the licensing proceeding for the Modesto and Turlock Irrigation Districts (Districts) La Grange Hydroelectric Project. On February 27, 2015, the Director of Hydropower Licensing, Office of Energy Projects, found that NMFS's Request 2 for the La Grange Project had already been afforded consideration in FERC's formal dispute resolution process and would not be considered by the Study Dispute Panel. On April 27, 2015 the Commission granted rehearing for further consideration of the February 27, 2015 letter order. Agenda item H-2 may be an order on the request for rehearing of the February 27, 2015 order.

### H-3: Kenai Hydro, LLC (Docket No. P-13212-004).

On January 28, 2015, Kenai Hydro, LLC (Kenai Hydro) applied for a ten-month extension of its successive preliminary permit for the proposed Grant Lake Project, which would be located on Grant Lake and Creek, near the town of Moose Pass, in Kenai Peninsula Borough, Alaska. In a February 27, 2015 letter order, the West Branch, Division of Hydropower Licensing, Office of Energy Projects denied Kenai Hydro's request. On April 27, 2015, the Commission granted rehearing for further consideration of the February 27, 2015 letter order. Agenda item H-3 may be an order on rehearing of the February 27, 2015 letter order.

## Certificate Items

### C-1: Natural Gas Pipeline Company of America, LLC (Docket No. CP14-548-00); Devon Gas Services, LP (Docket No. CP14-547-000).

On September 2, 2014, Devon Gas Services, L.P. (DGS) filed a petition requesting FERC issue an order declaring that certain natural gas pipeline facilities (Bridgeport Gathering Facilities) to be acquired by DGS from Natural Gas Pipeline Company of America, LLC perform a gathering function upon their abandonment, transfer, and sale, and, thus, will be exempt from the Commission's jurisdiction pursuant to NGA Section I(b). Agenda item C-1 may be an order on DGS's petition for declaratory order disclaiming jurisdiction.