

Energy, Infrastructure, Project and Asset Finance

Summary of FERC Meeting Agenda

January 2012

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Below are brief summaries of the agenda items for the Federal Energy Regulatory Commission's January 19, 2012, meeting, pursuant to the agenda as issued on January 12, 2012. Agenda items E-6, E-10 and E-11 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-1: ISO New England, Inc. and New England Power Pool Participants Committee (Docket Nos. ER10-787-005, EL10-50-003, EL10-57-003), New England Power Generators Association v. ISO New England Inc. (Docket No. EL10-787-006), PSEG Energy Resources & Trade LLC, PSEG Power Connecticut LLC, NRG Power Marketing LLC, Connecticut Jet Power LLC, Devon Power LLC, Middletown Power LLC, Montville Power LLC, Norwalk Power LLC and Somerset Power LLC v. ISO New England Inc. (Docket Nos. EL10-50-004, EL10-57-004, EL10-787-007, EL10-50-005, EL10-57-005)

This proceeding involves the ISO New England Inc.'s (ISO-NE) Forward Capacity Market (FCM). On April 13, 2011, FERC issued an Order on Paper Hearing and Order on Rehearing regarding design issues in ISO-NE's FCM. On May 13, 2011, ISO-NE submitted a compliance filing with a schedule for filing its market rules in compliance with the April 13, 2011, order to have the changes become effective for the eighth Forward Capacity Auction (FCA) (i.e., by June 2013). ISO-NE's proposed revisions to the FCM, in compliance with the April 13, 2011, order, include changes in the identification of Out of Market Resources and the Alternative Price Rule, elimination of the use of Cost of New Entry in the market, elimination of the auction floor price, implementation of a new market power mitigation process (i.e., the Minimum Offer Price Rule) and changes to the modeling of capacity zones. On August 22, 2011, ISO-NE submitted a compliance filing noting that all of the revisions, with the exception of modeling for all eight energy zones in the capacity market, would be able to be implemented in time for the seventh FCA after a two-stage



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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implementation process. Parties filed requests for rehearing and/or clarification of the April 13, 2011, order. Agenda item E-1 may be an order on the rehearing and/or clarification requests and/or the compliance filings.

E-2: Southwest Power Pool, Inc. (Docket No. ER11-4105-000)

On July 22, 2011, the Southwest Power Pool, Inc. (SPP) submitted its Order No. 745 (Final Rule on Demand Response Compensation in Organized Wholesale Energy Markets) compliance filing, arguing that its existing OATT and Market Protocols are already consistent with or superior to the requirements in Order No. 745. SPP did not propose any changes to come into compliance with Order No. 745. SPP stated that demand response resources that comply with its dispatch instructions already receive the locational imbalance price, which is the market price all resources receive at all times for providing imbalance energy. In terms of cost allocation, SPP proposes to continue to use a load "gross-up," which involves calculating the total load at the settlement location where the demand response occurs as if the demand response did not occur and then billing the market participants, according to the adjusted load value, at that settlement location. Agenda item E-2 may be an order on SPP's compliance filing.

E-3: ISO New England Inc. (Docket Nos. ER11-4336-000, -001, -002, -003)

On August 19, 2011, as amended on December 22, 2011, ISO-NE submitted its Order No. 745 compliance filing. ISO-NE proposed a two-step compliance process under which it would implement an initial transition period set of demand response compensation rules on June 1, 2012, and then replace those rules with rules that would fully integrate demand resources into the ISO-NE market as of June 1, 2016. Under ISO-NE's current tariff, the demand response energy market provisions in ISO-NE are only effective through May 31, 2012, so the initial transition rules would replace these expiring rules. According to the proposed second set of rules, Demand Reduction Offers will be treated the same as Supply Offers from generation and both will be used as part of ISO-NE's security-constrained economic dispatch system. Demand response providers would be able to submit Demand Reduction Offers and specify operating parameters for their resources in both the day-ahead and real-time markets. Demand response performance will be measured at the retail delivery points and cost for demand response will be allocated on an hourly basis proportionally to Real-Time Load Obligation on a system-wide basis. Agenda item E-3 may be an order on ISO-NE's compliance filing.

E-4: New York Independent System Operator, Inc. (Docket No. ER11-4338-000)

On August 19, 2011, the New York Independent System Operator, Inc. (NYISO) submitted its Order No. 745 compliance filing. NYISO's compliance filing would affect its demand response program for the Day-Ahead Market, as NYISO does not currently have a demand response program for the Real-Time Market. NYISO proposed a net benefits test that uses a single supply curve based on data from weekday hours HB 13 through HB 19 only and that would generate one price for all hours of the day. NYISO did not propose any substantive changes to its basic demand response cost allocation methodology (which allocates the costs of demand reduction to Transmission Customers on the basis of their Load Ratio Shares, taking into account historical patterns of congestion on the New York State Transmission System). NYISO also submitted revisions to its methodology for calculating a demand response resource's baseline load and added provisions for demand response verification. Agenda item E-4 may be an order on NYISO's compliance filing.

E-5: 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), PJM Interconnection, L.L.C. (Dockets 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, and

whether Duquesne was 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 submitted briefs on the issues. Agenda item E-5 may be an order on the issues referred to FERC by the court.

E-7: Interpretation of Protection System Reliability Standard (Docket No. RM10-5-000)

On November 17, 2009, the North American Electric Reliability Corporation (NERC) submitted a petition seeking FERC approval for an interpretation of Reliability Standard PRC-005-1 R1 – Transmission and Generation Protection System Maintenance and Testing. The interpretation addresses the range of devices that must be included in a protection system maintenance and testing program. On December 16, 2010, FERC issued a Notice of Proposed Rulemaking (NOPR) in which it proposed to accept NERC's proposed interpretation. FERC also proposed to direct NERC to develop modifications to PRC-005-1 to address certain gaps in the current protection system maintenance and testing standard. Agenda item E-7 may be an order on the NOPR.

E-8: North American Electric Reliability Corporation (Docket No. RD11-13-000)

On March 30, 2011, NERC submitted a petition for FERC approval of a modification to the definition of "Protection System" contained in the FERC-approved Glossary of Terms used in NERC Reliability Standards. The amended definition intends to clearly identify the essential elements that form a Protection System. Agenda item E-8 may be an order on NERC's petition.

E-9: Public Service Commission of South Carolina and the South Carolina Office of Regulatory Staff (Docket No. EL11-62-000)

On September 1, 2011, the Public Service Commission of South Carolina and the South Carolina Office of Regulatory Staff (South Carolina Petitioners) filed a petition requesting the establishment of a joint board to study the impact of Environmental Protection Agency (EPA) proposed regulations on the reliability and affordability of electricity in South Carolina. The South Carolina Petitioners also requested that FERC consider broadening the scope of the board to consider the impact of EPA's proposed regulations throughout the southeast United States. On November 30, 2011, FERC held a technical conference on reliability issues. Agenda item E-9 may be an order on the South Carolina Petitioners' request.

E-12: MidAmerican Energy Company (Docket No. ER09-823-000)

On March 9, 2009, MidAmerican Energy Company (MidAmerican) filed an unexecuted Large Generator Interconnection Agreement (LGIA) between itself and Clipper Windpower Development Company Inc. (Clipper) relating to the interconnection of Clipper's proposed 50 MW Victory II wind farm. MidAmerican requested that FERC determine that certain facility improvements are not "Network Upgrades" eligible for revenue crediting under the LGIA. On July 30, 2009, FERC accepted and suspended the LGIA, and set for hearing issues of material fact regarding the proposed upgrades. The parties thereafter reached a settlement agreement resolving all issues in the proceeding, which was certified to FERC on September 27, 2011. Agenda item E-12 may be an order on the proposed settlement.

E-13: 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. EL11-63-000)

On September 14, 2011, the Louisiana Public Service Commission (LPSC) filed a complaint against Entergy Corporation and its operating subsidiaries (Entergy) seeking a determination from FERC that Entergy's allocation of the costs for required transmission upgrades associated with the Ouachita Generating Station to Entergy Louisiana LLC is unjust, unreasonable and unduly discriminatory. Agenda item E-13 may be an order on the LPSC's complaint.

E-14: Entergy Services, Inc., (Docket No. ER11-3657-000), Mississippi Delta Energy Agency, Clarksdale Public Utilities Commission, Public Service Commission of Yazoo City, Arkansas Electric Cooperative Corporation and South Mississippi Electric Power Association v. Entergy Services, Inc. (Docket No. EL11-64-000)

On May 27, 2011, as supplemented on September 26, 2011, Entergy Services, Inc. (ESI) filed on behalf of Entergy's operating subsidiaries an annual rate update of charges under Entergy's OATT for the twelve months beginning June 2011, reflecting updates to the data inputs to the operating subsidiaries' formula rate (Annual Update Filing). On September 26, 2011, The Mississippi Delta Energy Agency, Clarksdale Public Utilities Commission of the City of Clarksdale, Mississippi, Public Service Commission of Yazoo City of the City of Yazoo City, Mississippi, Arkansas Electric Cooperative Corporation and South Mississippi Electric Power Association (Petitioners) filed a complaint against ESI alleging that ESI did not properly implement the Entergy

formula rate in the Annual Update Filing. Petitioners also requested that their complaint docket be consolidated with the Annual Update Filing docket. Agenda item E-14 may be an order regarding the complaint and motion to consolidate.

E-15: PJM Interconnection, L.L.C. (Docket Nos. ER11-12-001, ER11-3445-000)

On March 30, 2011, FERC issued an order accepting, subject to a compliance filing, PJM's revisions to its Amended and Restated Operating Agreement and Attachment K of its OATT to incorporate certain definitions associated with the elimination from the PJM marginal loss calculation model all lower voltage facilities that PJM does not control or operate for congestion or reliability, in addition to generator step-up transformers that are metered on the high side that the market participant requested be removed from such loss calculation. A party sought rehearing or clarification of the March 30 order, and on April 27, 2011, PJM submitted its compliance filing. Agenda item E-15 may be on order on rehearing or clarification and/or PJM's compliance filing.

E-16: Ameren Services Company, Northern Indiana Public Service Company v. Midwest Independent Transmission System Operator, Inc. (Docket No. EL07-86-018), Great Lakes Utilities, Indiana Municipal Power Agency, Missouri Joint Municipal Electric Utility Commission, Missouri River Energy Services, Prairie Power, Inc., Southern Minnesota Municipal Power Agency, Wisconsin Public Power Inc. v. Midwest Independent Transmission System Operator, Inc. (Docket No. EL07-08-018) and Wabash Valley Power Association, Inc. v. Midwest Independent Transmission System Operator, Inc. (Docket No. EL07-92-018)

Three groups of utilities filed complaints against MISO in 2007 regarding MISO's allocation of revenue sufficiency guarantee (RSG) charges among different classes of market participants. The complaints were set for paper hearing, but the paper hearing was held in abeyance to give MISO time to develop a new proposal for the allocation of RSG charges going forward. MISO submitted a proposal for the redesign of future RSG allocations, which was accepted in part and rejected in part by FERC on August 30, 2010. On April 7, 2011, FERC granted clarification and rehearing in part of the August 30 order. On May 9, 2011, SESCO Enterprises LLC, Energy Endeavors LP and JPTC, LLC (Financial Marketers) filed a notice that on April 1, 2011, MISO began imposing RSG charges on virtual demand bids and alleged that such allocation of RSG charges was inconsistent with the requirements of the April 7 order. In the alternative, the Financial Marketers requested rehearing of the April 7 order. Agenda item E-16 may be an order on rehearing and/or clarification.

E-17: Louisiana Public Service Commission v. Entergy Corporation, Entergy Services, Inc., Entergy Louisiana, LLC, Entergy Arkansas, Inc., Entergy Mississippi, Inc., Entergy New Orleans, Inc., Entergy Gulf States Louisiana, LLC and Entergy Texas, Inc. (Docket No. EL11-57-000)

On August 4, 2011, as amended and supplemented on September 16, 2011, the LPSC filed a complaint with FERC seeking a ruling that costs related to the cancellation of the Little Gypsy Repowering Project (which was cancelled as a result of changed economic conditions) should be assigned permanently among all the Entergy Operating Companies now (regardless of future changes in the membership of the Entergy System Agreement or changes in costs and loads). Entergy Arkansas, Inc. (Entergy Arkansas) and Entergy Mississippi, Inc. (Entergy Mississippi) have submitted withdrawal notices to terminate their participation in the Entergy System Agreement. In the alternative, LPSC requested that the costs related to the cancellation should be included in the Entergy System's Service Schedule MSS-3 bandwidth. Agenda item E-17 may be an order on LPSC's complaint.

Miscellaneous Items

M-1: Technical Corrections to Commission Regulations (Docket No. RM11-30-000)

This is a new rulemaking docket.

Gas Items

G-1: Storage Reporting Requirements of Interstate and Intrastate Natural Gas Companies (Docket No. RM11-4-000)

On December 16, 2010, FERC issued a Notice of Inquiry (NOI) seeking comments on whether it should revise its regulations to require both interstate and intrastate natural gas pipelines to file a semi-annual report on storage activities. Numerous parties filed comments. Agenda item G-1 may be an order regarding the NOI.

G-2: Kenai Pipe Line Company, Tesoro Alaska Company and Tesoro Logistics Operations, LLC (Docket No. OR11-21-000)

On September 1, 2011, Kenai Pipe Line Company (KPL), Tesoro Alaska Company (Tesoro Alaska) and Tesoro Logistics Operations, LLC (TLO) (collectively, Tesoro) filed a Request for Jurisdictional Determination, or, in the Alternative, Temporary Waiver of Tariff Filing and Reporting Requirements, asking FERC to find that two crude oil pipelines and several crude oil and refined products spur lines that are part of Tesoro's internal refinery operation are not subject to FERC's jurisdiction under the Interstate Commerce Act.

Tesoro alleged that the facilities at issue are part of its internal refinery operations, and therefore non-jurisdictional. Union Oil Company of California, Chevron Products Company and Hilcorp Alaska, LLC filed a protest, explaining that they rely on certain of the facilities at issue to conduct their own operations. Agenda item G-2 may be an order on the request.

G-3: ETC Tiger Pipeline, LLC (Docket Nos. RP11-1432-000, -001)

On October 25, 2010, ETC Tiger Pipeline, LLC (ETC) filed two revised sections of its FERC Gas Tariff consisting of ETC's proposed new Filed Agreements volume and certain non-conforming firm and interruptible service agreements. ETC made the filing in compliance with conditions attached to its certificate of public convenience and necessity authorizing ETC to construct and operate an approximately 175-mile natural gas pipeline and associated facilities with a firm design capacity of up to 2 billion cubic feet per day beginning near Carthage, Texas, and having a terminus near Delhi, Louisiana. Several parties intervened, and Shell Energy North America (U.S.), L.P. (Shell) and Encana Marketing (USA) Inc. (Encana) filed protests, each objecting to ETC's proposed effective dates of filed agreements affecting their respective interests as contrary to the contract language of such agreements. On November 30, 2010, FERC issued an order accepting ETC's filing, and granting an effective date of the later of December 1, 2010 or the in-service date of the project. FERC stated that it would issue a separate ruling on the contract disputes. On December 30, 2010, Shell and Encana filed requests for rehearing of the November 30 order, alleging the granted effective dates for their agreements were in error. Agenda item G-3 may be an order on rehearing.

Hydro Items

H-1: James B. Boyd and Janet A. Boyd (Docket No. P-7269-029)

On September 7, 2011, American Rivers, Inc. (ARI) filed a request for rehearing of an order issued August 8, 2011, in which FERC granted an application to terminate the hydro license of Boyd Hydro, LLC by implied surrender. ARI objected to the order, alleging that it improperly allows the hydro project to be abandoned without requiring any conditions under Part I of the Federal Power Act to avoid or mitigate adverse impacts on the Umatilla River on which the project is located. Agenda item H-1 may be an order on rehearing.

Certificate Items

C-C-1: Golden Triangle Storage, Inc. (Docket No. CP11-531-000)

On August 5, 2011, Golden Triangle Storage, Inc. (Golden) filed an application for a certificate of public convenience and necessity authorizing it to construct, own and operate two new salt dome storage caverns and related facilities. Golden explained that the new facilities would allow it to expand the working gas capacity of the Golden Triangle Storage Project located in Jefferson County, Texas. Golden also requested authorization to extend its market-based rate authorization to include services rendered from the proposed expansion. Agenda item C-1 may be an order on the application.

C-2: Kern River Gas Transmission Company (Docket No. CP11-46-000)

This docket pertains to the National Environmental Policy Act (NEPA) requirements related to Kern River Gas Transmission Company's (Kern) proposed Mountain Pass Lateral Project and expansion of the existing Molycorp Minerals LLC Mountain Pass mining site in San Bernardino County, California. Kern River filed reports and responses to environmental data requests, and an Environmental Assessment was issued on September 30, 2011, in this proceeding. Agenda item C-2 may be a decision related to the Environmental Assessment or NEPA process.

