

Energy, Infrastructure, Project and Asset Finance

Summary of FERC Meeting Agenda

November 2011

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Below are brief summaries of the agenda items for the Federal Energy Regulatory Commission's November 17, 2011 meeting, pursuant to the agenda as issued on November 10, 2011. Agenda item C-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.

A-4: (Docket No. AD07-13-004)

This administrative item is the 2011 Report on Enforcement.

Electric Items

E-1: PJM Interconnection, L.L.C. and Trans-Allegheny Interstate Line Company (Docket No. ER11-4574-000)

On September 20, 2011, Trans-Allegheny Interstate Line Company (TrAILCo) filed revisions to Attachment H-18 of the PJM Interconnection, L.L.C. (PJM) Open Access Transmission Tariff (OATT) that modify the statement of its annual transmission revenue requirement to reflect additional PJM zones in which TrAILCo might build transmission facilities. Agenda item E-1 may be an order on TrAILCo's filing.

E-2: Nebraska Public Power District and Southwest Power Pool Regional Entity (Docket No. RR11-1-002)

In March 2011, Nebraska Public Power District (NPPD) and Southwest Power Pool Regional Entity (SPP RE) filed separate petitions for review of a decision by the North American Electric Reliability Corporation (NERC) denying NPPD's and other entities' request to transfer their compliance registrations from the Midwest Reliability Organization to SPP RE. The Commission denied the petitions on July 21, 2011. Both NPPD and SPP RE filed requests for rehearing of the July 21 order. Agenda item E-2 may be an order on 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:

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E-3: California Independent System Operator Corporation (Docket Nos. ER11-3616-000, -001)

On May 20, 2011, as supplemented on September 21, 2011, the California Independent System Operator Corporation (CAISO) filed revisions to its tariff that would permit reliability demand response resources to participate in the CAISO markets. Agenda item E-3 may be an order on CAISO's proposed tariff revisions.

E-4: North American Electric Reliability Corporation (Docket No. RD11-3-000)

On January 28, 2011, NERC filed a petition for approval of a revised Reliability Standard FAC-013-2 (Assessment of Transfer Capability for the Near-Term Transmission Planning Horizon) as well as approval of related new defined terms and implementation items. Agenda item E-4 may be an order on NERC's petition.

E-5: North American Electric Reliability Corporation (Docket No. RD11-10-000)

On June 15, 2011, NERC filed a petition for approval of a revised Reliability Standard, FAC-008-3 (Facility Ratings), and related implementation items. Agenda item E-5 may be an order on NERC's petition.

E-6: Cedar Creek Wind Energy, LLC (Docket No. RC11-1-001); Milford Wind Corridor Phase I, LLC (Docket No. RC11-2-001)

On October 27, 2010, Cedar Creek Wind Energy, LLC (Cedar Creek) and Milford Wind Corridor Phase I, LLC (Milford) separately appealed NERC's decision that Cedar Creek and Milford should be registered for purposes of compliance with Reliability Standards as transmission owners and transmission operators. On June 16, 2011, the Commission denied both appeals and required NERC to work with Cedar Creek and Milford to develop and submit for the Commission's review a list of transmission owner and transmission operator Reliability Standards that apply to Cedar Creek and Milford. NERC has not yet submitted the required list for review, but several parties sought rehearing of the June 16 order. Agenda item E-6 may be an order on rehearing.

E-7: Northeast Transmission Development, LLC (Docket No. EL11-33-001)

On April 6, 2011, Northeast Transmission Development, LLC (NTD) filed a petition for a declaratory order requesting approval of various transmission rate incentives for two proposed transmission projects, the Liberty East Project and the Kanawha Project. On June 16, 2011, the Commission issued an order conditionally

granting all of the requested transmission rate incentives except one, subject to PJM including the Liberty East Project and Kanawha Project as economic enhancements in the Regional Transmission Expansion Plan (RTEP) through its regional planning process. The Commission rejected NTD's request for use of a forward-looking formula rate subject to true-up. Certain parties requested clarification of the June 16 order. Agenda item E-7 may be an order on clarification.

E-8: Duke Energy Ohio, Inc. (Docket No. EL11-58-000)

On August 5, 2011, Duke Energy Ohio, Inc. (Duke) filed a petition for a declaratory order finding that payment of dividends associated with its accounting for the merger between Duke Energy Corporation and Cinergy Corporation does not violate Section 305(a) of the Federal Power Act. Agenda item E-8 may be an order on Duke's petition.

E-9: Entergy Services, Inc. (Docket Nos. ER05-1065-011, OA7-32-008)

On April 3, 2009, Entergy Services, Inc. (Entergy), on behalf of Entergy Arkansas, Inc., Entergy Gulf States Louisiana, LLC, Entergy Louisiana, LLC, Entergy Mississippi, Inc., Entergy New Orleans, Inc., and Entergy Texas, Inc., submitted revisions to its OATT, pursuant to Sections 205 and 206 of the Federal Power Act, as part of its compliance with Order No. 890 and FERC's orders approving Entergy's Independent Coordinator of Transmission. Entergy's proposed amendments include changes to its methodology to assess available transfer capability, its methodology for completing a system impact study and its transmission service request criteria. Numerous parties filed protests to Entergy's proposed revisions to its OATT. Agenda item E-9 may be an order on Entergy's filing.

E-10: Westar Energy, Inc. (Docket Nos. ER09-1273-002, -004)

On March 18, 2010, FERC issued an order conditionally accepting Westar Energy, Inc.'s (Westar) proposed amendments to its pro forma Balancing Area Service Agreement and Schedule 3A, Generation Regulation and Frequency Response Service. The American Wind Energy Association (AWEA) and the Wind Coalition filed a request for rehearing, requesting that FERC establish hearing and settlement judge procedures for Westar's proposed integration charge. FERC ruled that the request for rehearing was untimely filed and rejected the request. AWEA and the Wind Coalition filed a request for rehearing challenging this denial. Agenda item E-10 may be an order on rehearing.

**E-11: PJM Interconnection, L.L.C.
(Docket Nos. ER11-2875-001, -002), PJM Power
Providers Group v. PJM Interconnection, L.L.C.
(Docket No. EL11-20-001)**

On April 12, 2011, FERC issued an order conditionally accepting PJM's proposed revisions to its OATT that are designed to update its Minimum Offer Price Rule (MOPR) (which is PJM's existing capacity procurement minimum offer price mechanism). FERC also addressed some issues and rejected, without prejudice, others in a complaint filed by the PJM Power Providers Group that charged that the MOPR is ineffective in deterring buyer market power, especially in view of initiatives in New Jersey and Maryland to support new generation entry. Numerous parties filed requests for rehearing. On May 12, 2011, PJM filed a compliance filing in accordance with the April 12 order. Numerous parties filed comments in response to the compliance filing. On July 28, 2011, FERC held a technical conference regarding PJM's MOPR and resources designated as self-supply. Agenda item E-11 may be an order on rehearing.

**E-12: California Independent System Operator
Corporation (Docket Nos. ER10-1706-001, -002)**

On August 31, 2010, FERC issued an order accepting in part and rejecting in part proposed revisions to CAISO's tariff relating to the interconnection requirements for large asynchronous generators (primarily wind and solar photovoltaic resources). CAISO filed a request for rehearing, arguing that the order arbitrarily discriminates against synchronous generating facilities and increases risks to the grid. On September 30, 2010, CAISO submitted a compliance filing in accordance with the August 31 order. Agenda item E-12 may be an order on rehearing.

**E-13: North American Electric Reliability Corporation
(Docket No. RR11-5-000)**

On June 13, 2011, NERC submitted a petition seeking approval of amendments to the NERC Rules of Procedure regarding the Election Procedure for Members of NERC Standards Committee and the Registered Ballot Body Criteria. The proposed changes to the election procedures primarily involve having the Chair and Vice Chair of the Standards Committee be non-voting members, imposing more eligibility criteria on the Canadian representative on the Standards Committee, and updating the process for filling vacancies on the Standards Committee. NERC also proposed to reincorporate the Registered Ballot Body Criteria, with certain modifications, into the NERC Rules of Procedure. Agenda item E-13 may be an order on NERC's filing.

E-14: Nevada Power Company (Docket No. ER11-4215-000)

On August 3, 2011, Nevada Power Company filed a request for cancellation of an Interconnection Agreement with Utah Associated Municipal Power Systems (UAMPS), dated June 17, 1991 (and effective on November 19, 2011). UAMPS filed comments, arguing that the Interconnection Agreement should not be cancelled unless UAMPS is provided with equivalent protection against significant loss of load in case of an outage of the Sigurd-Red Butte-Harry Allen Line. Agenda item E-14 may be an order on the request for cancellation.

Gas Items

**G-1: Bidding by Affiliates in Open Seasons for Pipeline
Capacity (Docket No. RM11-15-000)**

On April 7, 2011, FERC issued a Notice of Proposed Rulemaking regarding proposed revisions to its affiliate restrictions in its interstate natural gas pipelines regulations. The revisions would prohibit multiple affiliates of the same entity from bidding in a pipeline capacity open season in which the pipeline may allocate capacity on a pro rata basis, unless each affiliate has an independent business reason for doing so. In addition, if more than one affiliate participates in the open season, those affiliates may not release any of the capacity that they obtained pursuant to their pro rata allocation to any affiliate (or allow any affiliate to obtain the use of the capacity in any other way). Agenda item G-1 may be an order on the Notice of Proposed Rulemaking.

**G-2: Bear Creek Storage Company L.L.C.
(Docket No. RP12-121-000)**

This is a new docket involving the rates of an interstate natural gas storage company.

G-3: MIGC LLC (Docket No. RP12-122-000)

This is a new docket involving the rates of an interstate natural gas pipeline company.

G-4: ANR Storage Company (Docket No. RP12-123-000)

This is a new docket involving the rates of an interstate natural gas storage company.

Hydro Items

H-1: Annual Charges for Use of Government Lands (Docket No. RM11-6-000)

On February 17, 2011, FERC filed a Notice of Inquiry seeking public comment on how best to calculate rental rates for hydropower projects that use government lands. Hydropower projects must compensate the government for using federal lands by paying an annual fee. FERC solicited suggestions for a formula to calculate the annual fee that would be administratively practical and not impose substantial costs on FERC, would apply uniformly to all hydropower licensees, and would reasonably reflect accurate land values. Agenda item H-1 may be a rulemaking related to the Notice of Inquiry.

H-2: FirstLight Hydro Generating Company (Docket No. P-2576-151)

On October 20, 2011, Candlewood Lake Authority filed a Motion for Clarification and Request for Rehearing of a September 23, 2011 Order in which FERC approved a request made by FirstLight Power Resources LLC to modify the nuisance plant monitoring plan (NPMP) to address the discovery of invasive zebra mussels and limit the spread of the infestation. The motion alleged that it was premature for FERC to issue an order modifying the NPMP without first consulting with Technical Advisory Committee members and other stakeholders. Agenda item H-2 may be an order on clarification and/or rehearing.

H-3: Duke Energy Carolinas, LLC (Docket No. P-2601-015)

On October 20, 2011, Ms. Paulette Smart, a member of the Eastern Band of the Cherokee Indians, filed a Request for Rehearing of a September 20, 2011 notice denying her motion to intervene and rejecting her request for rehearing of FERC's Order Issuing Subsequent License for the Bryson Hydroelectric Project. Ms. Smart states that she filed the motion after she learned that the proposed project boundary encroached upon her land and the property interest of the Eastern Band of Cherokee Indians. Agenda item H-3 may be an order on rehearing.

H-4: The Nevada Hydro Company, Inc. (Docket No. P-11858-004)

On August 11, 2011, Shell Energy North America (US), LP and Nevada Hydro Company, Inc. filed separate requests for rehearing of a July 12, 2011 delegated order of the Office of Energy Projects

dismissing a license application for proposed Lake Elsinore Advanced Pumped Storage Project (LEAPS) in Southern California. The requests both allege that the order mistakenly assumed that the co-applicants for the LEAPS license would not comply with the terms of the license because they disagree over certain interconnection issues. Agenda item H-4 may be an order on rehearing.

Certificate Items

C-2: Dominion Transmission, Inc. (Docket No. CP11-493-000)

On May 27, 2011, Dominion Transmission, Inc. filed an Abbreviated Application for a Certificate of Public Convenience and Necessity authorizing it to revise the active boundary and establish a protective boundary for the Woodhull Storage Pool located in Steuben County, New York. Agenda item C-2 may be an order on the Application.

C-3: Texas Eastern Transmission, LP (Docket Nos. CP11-67-000, -001)

On January 25, 2011, as amended on June 13, 2011, Texas Eastern Transmission, LP filed an Abbreviated Application for a Certificate of Public Convenience and Necessity and for Related Authorizations and Order Approving Abandonment regarding its proposed Texas Eastern Appalachia to Market 2012 Expansion Project. Agenda item C-3 may be an order on the Application.

C-4: Tennessee Gas Pipeline Company (Docket No. CP11-36-001)

On August 24, 2011, FERC issued an order authorizing Tennessee Gas Pipeline Company (TGPC) to construct, install, operate and maintain a new 2,000 horsepower compressor station (Project) which would enable it to provide incremental firm transportation service for Bay State Gas Company and The Berkshire Gas Company (Berkshire). The order also generally approved the precedent agreements for service among the parties, but it rejected a provision that would require TGPC to deliver gas to Berkshire at a minimum pressure of 200 psi because it would provide rights not available to all shippers. On September 12, 2011 TGPC filed a request for clarification or rehearing regarding limited aspects of the order. First, TGPC sought clarification that its FERC Gas Tariff permits it to negotiate minimum delivery pressures with its shippers and second that the Project may have until November 1, 2012 to place the Project facilities in service. Agenda item C-4 may be an order on clarification and/or rehearing