

Energy, Infrastructure, Project and Asset Finance

Summary of FERC Meeting Agenda

July 2011

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Below are brief summaries of the agenda items for the Federal Energy Regulatory Commission's July 21, 2011 meeting, pursuant to the agenda as issued on July 14, 2011. Agenda items E-1, E-2, E-4, E-7, E-8, E-9, E-12 and C-1 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-3: Southwest Power Pool, Inc. (Docket No. ER10-1269-001)

On July 15, 2010, FERC issued an order conditionally accepting, subject to a compliance filing, revisions to Southwest Power Pool, Inc.'s (SPP) Open Access Transmission Tariff (OATT) to institute a modified transmission planning process for SPP. This new planning process, termed the Integrated Transmission Plan, has 20-year assessments (which will focus on high-voltage facilities 300 kV and above), 10-year assessments (which will focus on facilities rated at 100 kV to 300 kV), and near-term assessments (which will focus on immediate reliability needs and complying with North American Electric Reliability Corporation (NERC) Reliability Standards). FERC found that SPP's new planning process is consistent with the transmission planning principles described in Order No. 890. Numerous parties filed for rehearing and/or clarification of the July 2010 order. Agenda item E-3 may be an order on rehearing and/or clarification.

E-5: California Independent System Operator Corporation (Docket Nos. ER10-1401-001, ER10-2191-001, ER11-2705-000, ER11-2705-001), Green Energy Express LLC and 21st Century Transmission Holdings, LLC (Docket No. EL10-76-001)

On December 16, 2010, FERC issued an order conditionally accepting, with certain modification, proposed revisions to the California Independent System Operator Corporation's (CAISO) planning process, termed the revised transmission



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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planning process (RTPP). The RTPP includes a new policy-driven category of network transmission facilities that consists of projects that CAISO determines are needed to meet certain state and federal requirements (e.g., renewable portfolio standards). In addition, the RTPP introduced competitive solicitation for all transmission developers to bid to build and own policy- and economically-driven transmission projects. FERC found that the RTPP is consistent with Order No. 890. In the December 2010 order, FERC also ruled on Green Energy Express LLC and 21st Century Transmission Holdings, LLC's petition for declaratory order regarding CAISO's interpretation of Large Generator Interconnection Procedure-related network upgrades and location-constrained resource interconnection facilities. Numerous parties filed for rehearing and/or clarification of the December 2010 order. On January 19, 2011, as amended on January 20, 2011, CAISO submitted its compliance filing. Agenda item E-5 may be an order on rehearing and/or clarification and/or an order on the compliance filing.

E-6: Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities (Docket No. RM10-23-000)

On June 17, 2010, FERC issued a Notice of Proposed Rulemaking discussing proposed amendments to its transmission planning and cost allocation requirements established in Order No. 890. With respect to transmission cost allocation, FERC proposes to: (1) allow for local and regional planning processes to consider public policy requirements (both federal and state) when determining transmission needs, (2) improve coordination between neighboring transmission planning regions for interregional facilities (i.e., facilitate the handling of seams issues), and (3) remove a right of first refusal for incumbent transmission providers from FERC-approved tariffs or agreements. In terms of cost allocation, FERC proposes to implement closer ties between the transmission planning process and cost allocation and to establish new cost allocation principles that will apply to intraregional and interregional transmission facilities. Agenda item E-6 may be FERC's Final Rule in the proceeding.

E-10: Nebraska Public Power District (Docket No. RR11-1-000), Southwest Power Pool Regional Entity (Docket No. RR11-1-001)

On March 18, 2011, the Nebraska Public Power District (NPDD) petitioned for review of the NERC Board of Trustees' decision to deny NPDD's request to transfer its compliance registration from the Midwest Reliability Organization (MRO) to the Southwest Power Pool Regional Entity (SPP RE). NPPD argued that it did not even receive a written explanation of NERC's decision. SPP RE,

on March 31, 2011, also petitioned for review of NERC's decision to deny NPPD's transfer request, as well as NERC's denial of the transfer requests of the City of Grand Island, Nebraska, the City of Hastings, Nebraska and the Omaha Public Power District to switch their compliance registration from MRO to SPP RE. In response, MRO and NERC argued that the NERC Board of Trustees acted reasonably and according to FERC's guidance. Agenda item E-10 may be an order on the petitions for review.

E-11: Black Oak Energy, L.L.C., EPIC Merchant Energy, L.P. and SESCO Enterprises, L.L.C. v. PJM Interconnection, L.L.C. (Docket Nos. EL08-14-003, EL08-14-004, EL08-14-005, EL08-14-006, EL08-14-007)

This proceeding involves a complaint of certain financial marketers regarding provisions in PJM Interconnection, L.L.C.'s (PJM) Tariff dealing with the collection and allocation of marginal transmission line loss revenues. On October 16, 2008 and February 24, 2009, FERC issued orders finding that PJM had not adequately justified its method of distributing collected marginal line losses and directed that PJM develop a proper method to distribute the marginal line losses in an equitable manner among all parties (even those that do not serve load) that support the fixed cost of the transmission system, or to explain how its existing provisions were just and reasonable. On March 26, 2009, PJM submitted a compliance filing with proposed revisions to its Tariff and its amended and restated operating agreement, which FERC accepted, subject to a compliance filing, in an order issued on September 17, 2009. Two requests for rehearing of the September 2009 order were filed. PJM submitted its compliance filing on October 19, 2009 and its refund report on March 1, 2010. On April 15, 2010, FERC issued an order denying the rehearing requests and accepting the compliance filing and ordering an additional refund report. Two parties filed for rehearing or clarification of the April 2010 order. PJM filed its second refund report on June 1, 2010, which was challenged by Integrys Energy Services, Inc., DC Energy, LLC and American Electric Power Service Corporation. Agenda item E-11 may be an order on the requests for rehearing or clarification of FERC's April 2010 order and/or PJM's June 2010 refund report.

E-13: EPIC Merchant Energy NJ/PA, L.P., SESCO Enterprises, L.L.C., and Coaltrain Energy L.P. v. PJM Interconnection, L.L.C. (Docket No. EL10-40-001)

On February 1, 2010, EPIC Merchant Energy NJ/PA, L.P., SESCO Enterprises, L.L.C. and Coaltrain Energy L.P. (collectively, Financial Marketers) submitted a complaint to FERC challenging the allocation of transmission line loss charges and the distribution of transmission line loss surpluses under PJM's Tariff as unjust, unreasonable and unduly discriminatory. On May 10, 2010,

FERC issued an order dismissing the complaint, finding that the complaint was only seeking to relitigate issues already decided in Docket No. EL08-14 (see Agenda item E-11 above). The Financial Marketers filed a request for rehearing of the May 2011 order. Agenda item E-13 may be an order on the request for rehearing.

Miscellaneous

M-1: Revisions to Forms, Statements and Reporting Requirements for Natural Gas Pipelines (Docket No. RM07-9-004)

On March 21, 2008, FERC issued Order No. 710, as modified by Order No. 710-A, in which it revised its financial forms, statements and reports for natural gas companies in its Form Nos. 2, 2-A, and 3-Q. According to FERC, the changes are intended to capture current market and cost information relevant to interstate natural gas pipelines and their customers. On January 20, 2011, FERC issued Order No. 710-B, in which it ordered functionalized fuel data and the amount of fuel waived (as discounted or reduced according to a negotiated rate agreement) to be included on pages 521a through 521a of Form Nos. 2, 2-A, and 3-Q. The Interstate Natural Gas Association of America filed a request for rehearing and clarification. Agenda item M-1 may be an order on rehearing and clarification.

Gas Items

G-1: Tennessee Gas Pipeline Company (Docket No. RP11-1484-001)

On November 1, 2010, Tennessee Gas Pipeline Company (Tennessee) filed, under section 4 of the Natural Gas Act, a revised tariff record in order to amend its tariff to only prohibit routine, non-emergency maintenance during periods of peak demand (whereas its current tariff only allows for routine maintenance between May 1 and November 1) and to change its maintenance outage notification period from 15 days to as soon as reasonably practicable, but at least five days prior to the scheduled activity. On December 1, 2010, FERC issued an order accepting the tariff record, effective December 2, 2010. Numerous parties filed for rehearing and/or clarification. Agenda item G-1 may be an order on rehearing and/or clarification.

G-2: Kern River Gas Transmission Company (Docket No. RP04-274-023)

This proceeding involves Kern River Gas Transmission Company's (Kern River) initial step-down rates for Period Two (the period from the expiration of the firm Shippers' initial 15-year contracts to the end of Kern River's depreciable rates) as part of Kern River's levelized ratemaking framework for service on its Original

System and subsequent Expansions. On April 14, 2011, the Presiding Administrative Law Judge issued an Initial Decision on the matter. Briefs on exceptions and briefs opposing exceptions were filed by numerous parties. Agenda item G-2 may be an order on the Initial Decision.

Hydro Items

H-1: City of Spearfish, South Dakota (Docket No. P-12775-002)

On April 21, 2011, FERC issued an order granting an Original License (Major Project) for the City of Spearfish, South Dakota (Spearfish) to operate and maintain the existing, unlicensed 4 MW Spearfish Hydro Electric Project No. 12775 in Lawrence County, South Dakota on 57.23 acres of federal land. The project, originally constructed by Homestead Mining Company, has been in operation since 1912 and was transferred to Spearhead in 2004. ACTion for the Environment, a South Dakota organization whose members live and fish in the area, filed a request for rehearing, opposing the issuance of the license. Agenda item H-1 may be an order on rehearing.

H-2: Alabama Power Company (Docket No. P-2165-029)

On June 5, 2009, as supplemented on August 6, 2009 and June 23, 2010, Alabama Power Company (Alabama Power), as the licensee for the Warrior River Project, filed an application to permit non-project uses of project lands and waters related to the development of a proposed marina within the project boundary of the Smith Lake development in Cullman County, Alabama. The Office of Energy Project has prepared an Environmental Assessment for the marina project. Numerous parties have filed comments in protest. Agenda item H-2 may be an order on the application.

H-3: Erie Boulevard Hydropower, L.P. (Docket No. P-2539-064)

On April 15, 2010, FERC issued an order on remand from a decision of the Second Circuit Court of Appeals, reinstating the new 2007 license for the School Street Project No. 2539 on the Mohawk River in Albany and Saratoga Counties in New York. Green Island Power Authority (Green Island) filed a request for rehearing of the April 2010 order, which was denied by FERC in an order issued on March 17, 2011. Green Power filed a limited request for rehearing of the March 2011 order concerning FERC's denial of certain motions by Green Island to lodge evidence and the introduction of new evidence prepared by FERC Staff. Agenda item H-3 may be an order on rehearing.

Certificate Items

C-2: Equitrans, L.P. (Docket No. CP11-68-000)

On January 27, 2011, as supplemented, Equitrans, L.P. (Equitrans) submitted, under section 7 of the Natural Gas Act, an application for a Certificate of Public Convenience and Necessity for the construction of its Sunrise Project (consisting of both pipeline and compression facilities in West Virginia and Pennsylvania). The Sunrise Project will comprise both new facilities and upgrades to existing facilities and have tie-ins with Texas Eastern Transmission, LP, Dominion Transmission, Inc. and Equitrans' existing Mainline Transmission System. Agenda item C-2 may be an order on the application.