

Energy, Infrastructure, Project and Asset Finance

Summary of FERC Meeting Agenda

June 2011

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Below are brief summaries of the agenda items for the Federal Energy Regulatory Commission's June 16, 2011 meeting, pursuant to the agenda as issued on June 9, 2011. Agenda items E-1 through E-6, E-8, E-13, E-14, H-1 and C-2 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-7: Pacific Gas and Electric Company, San Diego Gas & Electric Company, Southern California Edison Company (Docket No. QM11-2-000)

On March 18, 2011, Pacific Gas and Electric Company, San Diego Gas & Electric Company, and Southern California Edison Company (collectively, California IOUs) filed an application to terminate the Public Utility Regulatory Policies Act (PURPA) purchase obligation for qualifying facilities (QFs) greater than 20 MW. The California IOUs requested that FERC, in accordance with section 210(m) of PURPA, terminate their obligation to enter into new purchase obligations to buy electric energy and capacity from QFs (cogeneration or small power production facilities) that have net capacity in excess of 20 MW. The California IOUs argue that they meet the requirements for termination of the purchase obligation since the QFs in their service territories possess nondiscriminatory access to wholesale markets for the sale of capacity and electric energy that meet FERC's standards. A number of protests and comments were filed in the docket. Agenda item E-7 may be an order on the California IOU's application.

E-9: Third-Party Provision of Ancillary Services (Docket No. RM11-24-000), Accounting and Financial Reporting for New Electric Storage Technologies (Docket No. AD10-13-000)

On June 11, 2010, FERC's Office of Energy Policy and Innovation issued a request for comments regarding options for categorizing and compensating non-traditional electric



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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storage technologies, with a particular focus on developing rate policies to accommodate the flexibility of storage. FERC noted that storage technologies (such as flywheels and chemical batteries) have reached technological maturity and are undergoing pilot programs, but that FERC's accounting and financial reporting regulations do not currently include classifications for this new storage technology. Numerous parties filed comments in the docket. Agenda item E-9 may be an order on FERC's request for comments and/or on the new rulemaking docket.

E-10: Cedar Creek Wind Energy, LLC (Docket No. RC11-1-000); Milford Wind Corridor Phase I, LLC (Docket No. RC11-2-000)

On October 27, 2010, Cedar Creek Wind Energy, LLC (Cedar Creek) and Milford Wind Corridor Phase I, LLC (Milford) submitted separate appeals to FERC seeking to overturn determinations by the NERC Board of Trustees that Cedar Creek and Milford be included in the NERC Compliance Registry as Transmission Owners and Transmission Operators. Cedar Creek and Milford are both Generation Owners and Generator Operators under the NERC Compliance Registry, who argue that the only transmission facilities they possess are radial transmission lines necessary to connect their generation facilities to the grid. NERC responded that its decision was based on Cedar Creek's transmission line being 72 miles long and rated at 230 kV and Milford's transmission line being 88 miles long and rated 345 kV, which qualifies them as integrated transmission facilities. Agenda item E-10 may be an order on the appeals.

E-11: Moussa I. Kourouma d/b/a Quntum Energy LLC (Docket No. IN11-2-000)

On February 14, 2011, FERC issued an Order to Show Cause and Notice of Proposed Penalty (of US\$50,000) to Moussa I. Kourouma d/b/a Quntum Energy LLC (Quntum), concerning Kourouma's alleged violation of FPA section 35.41(b) by deliberately submitting misleading information and omitting material facts about his sole ownership of Quntum in communications with FERC and PJM Interconnection L.L.C. (PJM). FERC's Office of Enforcement charges that Kourouma used the name of his baby daughter and of an acquaintance (who had no involvement with Quntum) in his communications with FERC and PJM on behalf of Quntum in order to avoid a non-compete clause he had with his former employer, Energy Endeavors LP. Kourouma argued that no harm to the market occurred as a result of Quntum's activities and that at the time he was not aware of the relevant FERC rules or the potential penalties. Agenda item E-11 may be an order on FERC's Order to Show Cause.

E-12: Credit Reforms in Organized Wholesale Electric Markets (Docket No. RM10-13-002)

On January 21, 2010, the Commission issued a Notice of Proposed Rulemaking proposing reforms relating to credit requirements in organized wholesale markets. One of these reforms was to "revise its regulations to require that each RTO and ISO include in the credit provisions of its tariff revisions to reduce the extension of unsecured credit to no more than US\$50 million per market participant." The Commission also sought comment on "whether there should be a further aggregate cap to cover an entire corporate family (e.g., holding company, subsidiaries, associates, and affiliates) and also whether the cap should be different for markets of different sizes." On October 21, 2010, the Commission issued Order No. 741 adopting an unsecured credit cap of US\$50 million per market participant and a US\$100 million cap for all entities within a corporate family. On February 17, 2011, the Commission issued Order No. 741-A reducing the US\$100 million corporate family cap to US\$50 million. Several parties sought rehearing of Order No. 741-A requesting that the Commission re-institute the US\$100 million unsecured credit cap for a corporate family, from Order No. 741, and allow the RTO and ISO stakeholder process to determine if additional limits are needed for market participants that pose risks to the markets. Agenda item E-12 may be an order addressing the requests for rehearing.

E-15: Central Maine Power Company and Maine Public Service Company (Docket No. EL08-77-002)

On July 18, 2008, Central Maine Power Company (CMP) and Maine Public Service Company (MPS) filed a petition for declaratory order seeking transmission rate incentives, including incentives related to recovery of prudently incurred costs if the project were to be abandoned, for the Maine Power Connection transmission project. In November 2008, the Commission issued an order granting the petition (November 2008 Order), including the request for abandonment authority. In a November 2009 order (November 2009 Order), the Commission indicated that it considered the abandonment authority granted to CMP and MPS in the November 2008 Order to have been conditional upon certain subsequent events rather than effective as of the date of the November 2008 Order. On December 18, 2009, CMP and MPS filed a request for clarification, or in the alternative, rehearing of the Commission's statement in the November 2009 Order regarding conditions on the abandonment incentive granted in the November 2008 Order. Agenda item E-15 may be an order addressing the request for clarification or rehearing.

E-16: Midwest Independent Transmission System Operator, Inc. v. PJM Interconnection, L.L.C. and PJM Interconnection L.L.C. v. Midwest Independent Transmission System Operator, Inc.
(Docket Nos. EL10-45-000, et al.)

On March 9, 2010, Midwest Independent Transmission System Operator, Inc. (MISO) filed two separate complaints against PJM. MISO alleged that PJM failed to initiate the market-to-market redispatch provisions of the Joint Operating Agreement (JOA) between MISO and PJM. MISO sought at least US\$5 million from PJM for underpayments for one of the alleged failures and requested that the Commission order PJM to follow the subject JOA provisions as MISO interprets them. MISO also alleged that PJM miscalculated charges to it for market-to-market settlements made from 2005-2009 under the congestion management provisions of the JOA; MISO sought approximately US\$130 million plus interest to correct for resultant net underpayments from PJM. On April 12, 2010, PJM filed a complaint against MISO, alleging that MISO improperly used substitute flowgates in redispatch procedures and market-to-market settlements under the JOA; PJM sought recovery of approximately US\$25 million in alleged overpayments and a cease-and-desist order prohibiting MISO from using substitute flowgates in market-to-market coordination under the JOA. On January 4, 2011, a partially contested settlement was filed. Agenda item E-16 may be an order addressing the settlement and/or the complaints.

E-17: Northeast Transmission Development, LLC
(Docket No. EL11-33-000)

On April 7, 2011, Northeast Transmission Development, LLC (Northeast Transmission) filed a petition in which it requested that the Commission issue a declaratory order authorizing rate incentives and treatments for two market efficiency projects, Liberty East Project and Kanawha Project, which Northeast Transmission has proposed to PJM for inclusion in the 2010 PJM Regional Transmission Expansion Plan (RTEP). Specifically, Northeast Transmission requested that the Commission grant the following incentive rates related to each of the projects, effective June 6, 2011: (1) deferred recovery of pre-commercial costs through creation of a regulatory asset; (2) full recovery of prudently incurred costs if the project is abandoned after inclusion in the PJM RTEP for reasons beyond Northeast Transmission's control; (3) a return on equity (ROE) adder of 50 basis points for participating in an RTO, contingent on Northeast Transmission's ROE being within the zone of reasonableness with the RTO adder included; and (4) a 30-year depreciable life when it submits its Section 205 filings seeking cost recovery. The rate incentives would be contingent on PJM's approval of each project and are also subject to the Commission ultimately approving rates for each project pursuant to future Section 205 filings. Agenda item E-17 may be an order on the petition for declaratory order.

E-18: Public Service Company of New Mexico
(Docket No. EC05-29-002)

On December 23, 2004, PNM Resources (PNM) sought FERC authorization for its acquisition of Texas-New Mexico Company, offering, among other things, to establish an independent market monitor and market monitoring plan. FERC's order authorizing the transaction also required PNM to file semi-annual planning reports regarding progress on a consolidated transmission plan for the Southwest. On July 9, 2010, PNM filed a request with FERC to remove the market monitoring plan and semi-annual planning report requirement. Agenda item E-18 may be an order on PNM's request.

E-19: Duquesne Light Company, et al.
(Docket Nos. ER08-194-000, et al.)

On January 29, 2009, FERC accepted a settlement agreement permitting Duquesne Light Company (Duquesne) to withdraw its prior application to terminate its membership in PJM and join MISO. On October 12, 2010, MISO filed a motion regarding a complaint it filed in the US District Court of the Southern District of Indiana (District Court) seeking compensation for breach of contract by Duquesne. The District Court granted Duquesne's request for a stay of the case pending FERC issuing its opinion of whether a breach of contract occurred and if so, what a just and reasonable exit fee would be. MISO stated that on August 13, 2010, the District Court ordered MISO to file its motion seeking FERC's opinion on this issue. Agenda item E-19 may be an order responding to MISO's motion.

Gas Items

G-1: Northwest Pipeline GP (Docket No. RP11-59-001)

On November 12, 2010, FERC accepted Northwest Pipeline GP's (Northwest) updated list of non-conforming agreements in its tariff, subject to a compliance filing explaining (1) Northwest's authority to offer non-conforming provisions in a posting of available capacity, (2) what non-conforming provisions were offered to participants in Northwest's open season, (3) the reason for non-conforming provisions offered in the open season, (4) whether the non-conforming provisions in certain service agreements were limited to those offered in the open season, and (5) why the non-conforming provisions in an affiliate's service agreement do not present a substantial risk of undue discrimination. On December 10, 2010, Northwest filed its compliance filing. Agenda item G-1 may be an order on Northwest's compliance filing.

Hydro Items

H-2: Northern Lights, Inc. (Docket No. P-2594-014)

On May 10, 2011, Northern Lights, Inc. (NLI) filed a request for rehearing of FERC's April 14, 2011 order issuing a new 30-year license authorizing NLI to continue operation and maintenance of the Lake Creek Hydroelectric Project (Hydroelectric Project No. 2594) (Lake Creek Project). The Lake Creek Project is a 4.5 MW project located on Lake Creek in Lincoln County, Montana. NLI filed the rehearing request asking that FERC grant a 50-year license rather than a 30-year license, arguing that all of the stakeholders desire a 50-year license term and that the longer term would help offset the considerable resources the small facility must expend in the relicensing process. Agenda item H-2 may be an order on rehearing.

Certificate Items

C-1: Dominion Transmission, Inc. (Docket No. CP10-448-000)

On June 1, 2010, Dominion Transmission, Inc. (DTI) filed, as supplemented, an abbreviated application for a Certificate of Public Convenience and Necessity to construct, install, own, operate and maintain facilities under Section 7(c) of the Natural Gas Act, as amended, and Part 157 of FERC's regulations. The facilities, collectively known as the Appalachian Gateway Project, will consist of certain pipeline and compression facilities in West Virginia and Pennsylvania. Several parties submitted comments in this docket. Agenda item C-1 may be an order regarding DTI's application.

C-3: Turtle Bayou Gas Storage Company, LLC (Docket No. CP10-481-000)

On June 6, 2010, Turtle Bayou Gas Storage Company, LLC (Turtle Bayou) filed an application for a Certificate of Public Convenience and Necessity to construct, own and maintain facilities under Section 7(c) of the Natural Gas Act, as amended, and Part 157 of FERC's regulations. The proposed project comprises a high-deliverability natural gas salt dome storage cavern designed to provide approximately 12 Bcf of working natural gas capacity and a header pipeline to accommodate the receipt, injection, storage and subsequent withdrawal of natural gas for redelivery in interstate commerce. The project will be located at the Moss Bluff Salt Dome storage facility in Chambers and Liberty Counties in Texas. Several parties intervened in this docket, and FERC has issued several data requests, pursuant to which Turtle Bayou has filed supplemental information. Agenda item C-3 may be an order regarding Turtle Bayou's application.