

Energy, Infrastructure, Project and Asset Finance

Summary of FERC Meeting Agenda

March 2011

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Below are brief summaries of the agenda items for the Federal Energy Regulatory Commission's March 17, 2011 meeting, pursuant to the agenda as issued on March 10, 2011. Agenda items E-2, E-11, G-1, C-1 and C-3 have not been summarized as they were omitted from the Commission's 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: Devon Power LLC (Docket No. ER03-563-066)

This proceeding involves a contested settlement reached in 2006 to implement a forward capacity market (FCM), which includes auction rates, in ISO New England. FERC's decision approving the settlement was appealed to the US Court of Appeals for the DC Circuit with regard to whether the Mobile-Sierra standard of review applies to parties challenging the settlement that were not signatories to the settlement. The DC Circuit held that the Mobile-Sierra standard of review did not apply to non-parties to the settlement agreement. The DC Circuit decision was then appealed to the Supreme Court, which reversed the DC Circuit decision and remanded back to the DC Circuit the question of whether to apply the Mobile-Sierra standard of review to FERC's review of the FCM auction rates. The DC Circuit in turn remanded the decision back to FERC to explain why the auction rates should receive the Mobile-Sierra standard of review if they are not to be considered contract rates arising out of the settlement agreement. Agenda item E-1 may be an order on remand.

E-3: North American Electric Reliability Corporation (Docket No. NP10-18-000)

On November 13, 2009, the North American Electric Reliability Corporation (NERC) issued a Notice of Penalty regarding Turlock Irrigation District (Turlock), based on a settlement agreement between Turlock and the Western Electricity Coordinating Council (WECC), for alleged violations of eight Reliability Standards. NERC imposed a US\$80,000 penalty. On February 26, 2010, on its own motion, FERC initiated a review of the Notice of Penalty,



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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with a focus on the violation of Reliability Standard FAC-003-1 R2 (which is related to an August 29, 2007 vegetation-caused outage of transmission facilities that caused a 270 MW firm load loss). FERC decided to evaluate whether violations of other Reliability Standards contributed to the August 29, 2007 loss of load and whether the penalty imposed on Turlock was sufficiently severe. Agenda item E-3 may be an order related to FERC's review of the Notice of Penalty.

E-4: Revision to Electric Reliability Organization Definition of Bulk Electric System (Docket No. RM09-18-001)

On November 18, 2010, FERC issued Order No. 743 directing NERC to revise the definition of "bulk electric system," which is used in determining which entities are subject to the Reliability Standards, in order to ensure that all facilities needed to operate an interconnected electric transmission network are included. FERC was especially concerned with eliminating the regional discretion that is currently incorporated into the definition and preserving a threshold for the inclusion of all facilities that operate at or above 100 kV (with defined exception criteria that would exclude certain facilities that are not needed for operating the interconnected transmission network). Numerous parties to the proceeding filed requests for rehearing or clarification of Order No. 743. Agenda item E-4 may be an order on rehearing or clarification.

E-5: Analysis of Horizontal Market Power under the Federal Power Act (Docket No. RM11-14-000)

This is a new rulemaking docket.

E-6: System Restoration Reliability Standards (Docket No. RM10-16-000)

On December 31, 2009, NERC submitted a petition requesting that FERC approve three revised Reliability Standards (EOP-001-1—Emergency Operations Planning, EOP-005-2—System Restoration from Blackstart Resources, and EOP-006-2—System Restoration Coordination) and approve a new definition of "Blackstart Resource" to be added to the NERC Glossary of Terms. NERC further requested approval to retire five existing Reliability Standards, as well as to remove the definition of "Blackstart Capability Plan" from the NERC Glossary of Terms. On November 18, 2010, FERC issued a Notice of Proposed Rulemaking (NOPR) concerning the revised Reliability Standards, which involve requirements regarding plans, facilities and personnel that would be prepared to enable system restoration using Blackstart Resources, and whether to direct NERC to make additional modifications to the Reliability Standards. Agenda item E-6 may be an order on the NOPR.

E-7: Planning Resource Adequacy Assessment Reliability Standard (Docket No. RM10-10-000)

On December 14, 2009, NERC submitted a petition requesting that FERC approve a new proposed Regional Reliability Standard (BAL-502-RFC-02—Planning Resource Adequacy Analysis, Assessment and Documentation) and four related definitions that would apply only to entities in the ReliabilityFirst Corporation (RFC) footprint. The proposed Regional Reliability Standard would require RFC planning coordinators to annually provide analysis, assessment and documentation regarding resource adequacy in the RFC footprint, as well as to utilize a "one day in ten year" loss of load criterion and to post load and resource capability in each area or transmission-constrained sub-area. On October 21, 2010, FERC issued a NOPR concerning the proposed Regional Reliability Standard. Agenda item E-7 may be an order on the NOPR.

E-8: Mandatory Reliability Standards for Interconnection Reliability Operating Limits (Docket No. RM10-15-000)

On December 31, 2009, NERC filed a petition requesting that the Commission approve proposed Reliability Standards IRO-008-1 (Reliability Coordinator Operational Analysis and Real-Time Assessments), IRO-009-1 (Reliability Coordinator Actions to Operate Within IROs) and IRO-010-1a (Reliability Coordinator Data Specification and Collection). NERC stated that these new Reliability Standards would address certain Commission directives in Order No. 693. NERC indicated that it found it necessary to retire, revise or modify certain requirements from several existing Reliability Standards. NERC also requested approval of new definitions for "Operational Planning Analysis" and "Real-time Assessment." On November 18, 2010, the Commission issued a NOPR in which it proposed approval of NERC's proposed new Reliability Standards and revisions to existing Reliability Standards. The Commission also proposed approval of the new definitions and that NERC be directed to modify its proposed definition of "Real-time Assessment." Agenda item E-8 may be an order addressing the NOPR.

E-9: Western Electric Coordinating Council Qualified Transfer Path Unscheduled Flow Relief Regional Reliability Standard (Docket No. RM09-19-000)

On June 17, 2009, NERC filed a petition requesting Commission approval proposed regional Reliability Standard IRO-006-WECC-1 and six associated definitions to be included in the NERC Glossary of Terms. NERC stated that the purpose of IRO-006-WECC-1 is to mitigate transmission overloads due to unscheduled flow on Qualified Transfer Paths. Under this regional Reliability Standard, reliability coordinators would be responsible

for initiating schedule curtailments and balancing authorities would be responsible for implementing the curtailments. On October 21, 2010, the Commission issued a NOPR in which it proposed approval of the new regional Reliability Standard. The Commission noted that depending on the responses to the NOPR, the Commission may direct WECC to modify the Reliability Standard. Agenda item E-9 may be an order addressing the NOPR.

E-10: North American Electric Reliability Corporation (Docket No. RR09-6-003)

On March 18, 2010, the Commission issued an order directing NERC to propose revisions to its Rules of Procedure governing its standards development process. On December 23, 2010, pursuant to the March order, NERC submitted a compliance filing which submitted for approval proposed several revisions to the NERC Standard Processes Manual as well as the formation of a Standards Oversight and Technology Committee and revisions and additions to NERC's Rules of Procedure. Agenda item E-10 may be an order addressing NERC's compliance filing.

E-12: California Independent System Operator Corporation (Docket No. ER11-2256-000)

On December 1, 2010, the California Independent System Operator Corporation (CAISO) filed amendments to its Fifth Replacement FERC Electric Tariff. The tariff amendments implement the Capacity Procurement Mechanism (CPM) to replace CAISO's expiring Interim CPM that permits CAISO to procure capacity to address a deficiency or supplement resource adequacy procurement by Load Serving Entities. Agenda item E-12 may be an order addressing CAISO's filing.

E-13: PJM Interconnection, L.L.C. (Docket No. EL08-47-006)

In a February 19, 2010 order addressing market power mitigation, the Commission concluded that, while PJM Interconnection L.L.C.'s (PJM) three pivotal supplier test is not unjust and unreasonable in general application, PJM should include opportunity costs as a component of costs for mitigated offer prices (default bids). On July 1, 2010, as supplemented on December 30, 2010, PJM filed revised sheets to Schedule 1 of the Amended and Restated Operating Agreement. (Operating Agreement) and the parallel provisions of Attachment K—Appendix of the PJM Open Access Transmission Tariff, as well as revisions to Schedule 2 of the Operating Agreement, in compliance with Commission orders, including the February order. Agenda item E-13 may be an order addressing PJM's compliance filings.

E-14: Idaho Wind Partners 1, LLC (Docket No. EL11-12-000)

On December 15, 2010, Idaho Wind Partners 1, LLC (Idaho Wind) filed a petition for declaratory order seeking a ruling concerning transactions whereby certain project company sellers would sell energy and renewable energy credits to a third-party offtaker with an instantaneous buy-back of the energy only (Proposed Transaction). Specifically, Idaho Wind requested that the Commission find that the Proposed Transaction (1) would not violate any of the Commission's anti-manipulation rules, and (2) would in no way result in the loss of small power producer qualifying facility (QF) status for any of the wind generation facilities owned by the Project Companies and would not disqualify the ultimate sale of electric power from the Project Companies to the local utility from being considered an avoided cost sale by a QF pursuant to the Public Utility Regulatory Policies Act of 1978, as amended. Agenda item E-14 may be an order addressing Idaho Wind's petition.

E-15: Southern California Edison Company (Docket No. EL10-1-001)

On December 17, 2009, FERC issued an order conditionally granting certain transmission rate incentives to Southern California Edison Company (SCE) for its proposed Eldorado-Ivanpah Transmission Project (EITP). SCE requested clarification, and several other entities requested rehearing or clarification. On October 29, 2010, FERC issued an order granting the rehearing request of the California Public Utilities Commission (CPUC) regarding return-on-equity incentives for the EITP. In the October order, FERC stated that all the other requests for rehearing and clarification would be addressed in a subsequent order. Agenda item E-15 may be an order addressing these additional requests.

E-16: Californians for Renewable Energy, Inc. v. Pacific Gas and Electric Company, Southern California Edison Company, San Diego Gas & Electric Company and the California Public Utilities Commission (Docket No. EL10-84-002)

On September 1, 2010, Californians for Renewable Energy, Inc. (CARE) filed a complaint with FERC alleging, among other things, that Pacific Gas and Electric Company (PG&E), SCE, San Diego Gas & Electric Company (SDG&E) and the CPUC are violating the Federal Power Act by approving contracts with rates for capacity and energy that exceed the utilities' avoided cost cap and usurping FERC's exclusive jurisdiction to determine the rates for wholesale sales of electricity. On January 28, 2011, FERC issued an order dismissing the complaint for failing to provide

any factual support for the allegations, contrary to Rule 206 of FERC's Rules of Practice and Procedure. On February 28, 2011, CARE filed a request for rehearing of the January order. On March 8, 2011, Solutions for Utilities, Inc. (Solutions) intervened in the proceeding and on March 11, 2011, filed a Petition for Enforcement pursuant to Section 210(h) of the Public Utility Regulatory Policies Act of 1978, as amended, alleging that the CPUC violated FERC's rules and regulations for interstate wholesale sales of electricity, and failed to stop PG&E, SCE and SDG&E from deliberately misleading renewable energy developers regarding interconnection to the electric grid, price to be paid to renewable generators and certain non-price terms when soliciting renewable energy. Agenda item E-16 may be an order regarding CARE's request for rehearing or Solutions' filings.

Gas Items

G-2: Ozark Gas Transmission, L.L.C. (Docket No. RP11-1495-002)

On February 15, 2011, Ozark Gas Transmission, L.L.C. (Ozark) filed a request for rehearing and clarification of FERC's January 28, 2011 order in this proceeding. The January 28 order concerned an earlier request filed by Ozark for clarification or rehearing of FERC's November 18, 2010 order finding that Ozark's existing rates may be unjust and unreasonable due to Ozark's possible substantial over-recovery of its cost of service and fuel and lost and unaccounted-for gas and initiating an investigation. Agenda item G-2 may be an order on rehearing and clarification.

G-3: Columbia Gulf Transmission Company (RP10-315-002)

On August 20, 2010, Columbia Gulf Transmission Company (CGTC) filed a request for rehearing asking FERC to reconsider a determination it made in a July 22, 2010 order in this proceeding concerning CGTC's proposed tariff revisions that would allow it to waive its gas quality specifications. Agenda item G-3 may be an order on rehearing.

G-4: Tesoro Refining and Marketing Company v. Calnev Pipe Line LLC (Docket No. OR07-7-000), America West Airlines, Inc. and US Airways, Inc., Chevron Products Company, Continental Airlines, Inc., Southwest Airlines Co. and Valero Marketing and Supply Company v. Calnev Pipe Line LLC (Docket No. OR07-18-000), ConocoPhillips Co. v. Calnev Pipe Line LLC (Docket No. OR07-19-000), BP West Coast Products, LLC v. Calnev Pipe Line LLC (Docket No. OR07-22-000), Tesoro Refining and Marketing Company v. Calnev Pipe Line LLC (Docket No. OR09-15-000), BP West Coast Products, LLC v. Calnev Pipe Line LLC (Docket No. OR09-20-000)

Tesoro Refining and Marketing Company, America West Airlines, Inc. and US Airways, Inc., Chevron Products Company, Continental Airlines, Inc., Southwest Airlines Co. and Valero Marketing and Supply Company, ConocoPhillips Co., BP West Coast Products, LLC, Tesoro Refining and Marketing Company, and BP West Coast Products, LLC all filed complaints against Calnev Pipe Line, L.L.C. (Calnev) challenging the justness and reasonableness of Calnev's rates charged for the transportation of oil in interstate commerce. Agenda item G-4 may be an order on the complaints.

Hydro Items

H-1: Erie Boulevard Hydropower, L.P. (Docket No. P-2539-061)

On May 17, 2010, Green Island Power Authority (Green Island) sought rehearing of an April 15, 2010 order denying Green Island party status in the proceeding and reinstating the hydroelectric license for the School Street Hydroelectric Project upon remand of an earlier decision by the US Court of Appeals for the Second Circuit. Agenda item H-1 may be an order on rehearing.

H-2: Portland General Electric Company (Docket No. P-2195-025)

Several parties sought rehearing and clarification of an order granting a new license for the Clackamas River Hydroelectric Project based on a settlement agreement among interested parties. The requests for rehearing primarily took issue with the length of the license term granted as well as the omission from the license of certain terms from the settlement agreement. Agenda item H-2 may be an order on rehearing.

**H-3: Southern California Edison Company
(Docket No. P-1390-063)**

On August 18, 2010, SCE submitted an application for a noncapacity amendment of license related to its Lundy Project in Mono County, California. Several parties protested or commented on the application. Agenda item H-3 may be an order on the application.

Certificate Items**C-2: Columbia Gas Transmission, LLC
(Docket No. CP10-492-000)**

On August 26, 2010, Columbia Gas Transmission, LLC (Columbia) filed an abbreviated application to construct and abandon certain facilities in association with its efforts to replace aging pipelines located in Pennsylvania and New York. An environmental assessment of the proposed project was issued on January 7, 2011. Agenda item C-2 may be an order on Columbia's application.

**C-4: Magnum Gas Storage, LLC and Magnum Solutions, LLC
(Docket No. CP10-22-000)**

On November 17, 2009, Magnum Gas Storage, LLC and Magnum Solutions, LLC (Magnum Entities) filed an application for a certificate of public convenience and necessity authorizing the construction and operation of a high-deliverability, multi-cycle salt cavern natural gas storage facility and connecting header pipeline to be located in Millard, Juab and Utah Counties, Utah. An environmental assessment of the proposed project was issued on November 23, 2010. Agenda item C-4 may be an order on Magnum Entities' application.

**C-5: Colorado Interstate Gas Company
(Docket No. CP10-486-000)**

On August 12, 2010, Colorado Interstate Gas Company (Colorado) filed an application for authorization to construct and operate air-blending facilities located in Douglas County, Colorado. Colorado also sought authorization to impose a surcharge for air-blending services from the station and filed related nonconforming service agreements. An environmental assessment of the proposed project was issued on January 5, 2011. Agenda item C-5 may be an order on Colorado's application.

