

FERC

Meeting Agenda Summary

In this issue...

- Electric Items
 - Gas Items
 - Hydro Items
 - Certificate Items
-

16 October 2018

Authors: Daniel Hagan, Jane E. Rueger

Below are brief summaries of the agenda items for the Federal Energy Regulatory Commission's October 18, 2018 meeting, pursuant to the agenda as issued on October 11, 2018. Item E-6 has not been summarized due to omission from the agenda.

Electric

E-1 – Supply Chain Risk Management Reliability Standards (Docket No. RM17-13-000). On September 26, 2017, the North American Electric Reliability Corporation (NERC) submitted a petition to the Commission for approval of proposed Reliability Standards CIP-013-1 (Cyber Security – Supply Chain Risk Management), CIP-005-6 (Cyber Security – Electronic Security Perimeter(s)), and CIP010-3 (Cyber Security – Configuration Change Management and Vulnerability Assessments). NERC states in its petition that the proposed Reliability Standards address the Commission's directives from Order No. 829 to develop new or modified Reliability Standards that address supply chain cybersecurity risk management for industrial control system hardware, software, and computing and networking services associated with Bulk Electric System operations. NERC's petition also seeks Commission approval of the associated Implementation Plan, Violation Risk Factors and Violation Severity Levels, and the retirement of currently-effective Reliability Standards CIP-005-5 and CIP-010-2, which are superseded by proposed Reliability Standards CIP-005-6 and CIP-010-3, respectively. On January 18, 2018, the Commission issued a notice of proposed rulemaking (NOPR) proposing to approve NERC's proposed Reliability Standards and also proposing that NERC develop and submit certain modifications to the supply chain risk management Reliability Standards. Agenda item E-1 may be an order on NERC's petition and the NOPR.

E-2 – Martha Coakley, Attorney General of the Commonwealth of Massachusetts; Connecticut Public Utilities Regulatory Authority; Massachusetts Department of Public Utilities; New Hampshire Public Utilities Commission; Connecticut Office of Consumer Counsel; Maine Office of the Public Advocate; George Jepsen, Connecticut Attorney General; New Hampshire Office of Consumer Advocate; Rhode Island Division of Public Utilities and Carriers; Vermont Department of Public Service; Massachusetts

Municipal Wholesale Electric Company; Associated Industries of Massachusetts; The Energy Consortium; Power Options, Inc.; and the Industrial Energy Consumers Group v. Bangor Hydro-Electric Company; Central Maine Power Company; New England Power Company; New Hampshire Transmission LLC; NSTAR Electric and Gas Corporation; Northeast Utilities Service Company; The United Illuminating Company; Until Energy Systems, Inc.; Fitchburg Gas and Electric Light Company; and Vermont Transco, LLC (Docket Nos. EL11-66-001, EL11-66-004, EL11-66-005); ENE (Environment Northeast); The Greater Boston Real Estate Board; National Consumer Law Center; and NEPOOL Industrial Customer Coalition v. Bangor Hydro-Electric Company; Central Maine Power Company; New England Power Company; New Hampshire Transmission LLC; NSTAR Electric Company; Northeast Utilities Service Company; The United Illuminating Company; Until Energy Systems, Inc.; Fitchburg Gas and Electric Light Company; and Vermont Transco, LLC (Docket Nos. EL13-33-000, EL13-33-002); Attorney General of the Commonwealth of Massachusetts; Connecticut Public Utilities Regulatory Authority; Massachusetts Municipal Wholesale Electric Company; New Hampshire Electric Cooperative, Inc.; Massachusetts Department of Public Utilities; New Hampshire Public Utilities Commission; George Jepsen, Attorney General of the State of Connecticut; Connecticut Office of Consumer Counsel; Maine Office of the Public Advocate; New Hampshire Office of the Consumer Advocate; Rhode Island Division of Public Utilities and Carriers; Vermont Department of Public Service; Associated Industries of Massachusetts; The Energy Consortium; Power Options, Inc.; Western Massachusetts Industrial Group; Environment Northeast; National Consumer Law Center; Greater Boston Real Estate Board; and Industrial Energy Consumer Group v. Bangor Hydro-Electric Company; Central Maine Power Company; New England Power Company; New Hampshire Transmission LLC; Northeast Utilities Service Company, on behalf of its operating company affiliates: The Connecticut Light and Power Company, Western Massachusetts Electric Company, and Public Service Company of New Hampshire; NSTAR Electric Company; The United Illuminating Company; Until Energy Systems, Inc.; Fitchburg Gas and Electric Light Company; and Vermont Transco, LLC (Docket No. EL14-86-000); Belmont Municipal Light Department; Braintree Electric Light Department; Concord Municipal Light Plant; Georgetown Municipal Light Department; Groveland Electric Light Department; Hingham Municipal Lighting Plant; Littleton Electric Light & Water Department; Middleborough Gas & Electric Department; Middleton Electric Light Department; Reading Municipal Light Department; Rowley Municipal Lighting Plant; Taunton Municipal Lighting Plant; and Wellesley Municipal Light Plant v. Central Maine Power Company, Emera Maine, Eversource Energy Service Company and its operating company affiliates: The Connecticut Light and Power Company, Western Massachusetts Electric Company, Public Service Company of New Hampshire, and NSTAR Electric Company; New England Power Company; New Hampshire Transmission LLC; The United Illuminating Company; Fitchburg Gas and Electric Light Company; and Vermont Transco, LLC (Docket Nos. EL16-64-000 EL16-64-002).

On September 30, 2011 in Docket No. EL-66-000, Martha Coakley, Attorney General of the Commonwealth of Massachusetts, *et al.* filed the first of four complaints under section 206 of the Federal Power Act (Coakley Complaint) alleging that the 11.14% base return on equity (ROE) used in the revenue requirement formula rate for the New England transmission-owning utilities (NETOs) operating in the footprint of ISO New England, Inc. (ISO-NE) was unjust and unreasonable. The complainants in the four proceedings included other state attorneys general, state public utility commissions, state consumer advocates, and certain transmission customers. On June 19, 2014, after hearing and settlement judge procedures, the Commission issued Opinion No. 531, its order on the Coakley Complaint initial decision. The Commission subsequently issued Opinion No. 531-A, which found 10.57% as the just and reasonable base ROE for the NETOs and that the maximum ROE could not exceed 11.74%. On March 3, 2015, the Commission issued Opinion No. 531-B, which denied rehearing of Opinion Nos. 531 and 531-A. The NETOs and certain transmission customers petitioned the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) for review of Opinion Nos. 531 *et seq.* On April 14, 2017, the D.C. Circuit issued its decision in *Emera Maine v. FERC*, which vacated the Commission's orders in Opinion Nos. 531 *et seq.* related to the NETOs' ROE and remanded the case to the Commission for further proceedings consistent with its opinion. The Commission's order on the remand is still pending.

On June 5, 2017, the NETOs made a compliance filing to reinstate their former Commission-allowed ROEs, which were lowered pursuant to the since-vacated Commission orders in Opinion Nos. 531 *et seq.* On October 6, 2017, the Commission issued an order rejecting the NETOs' compliance filing and directed the NETOs to continue

collecting their ROEs currently on file, subject to a future Commission order (October 2017 Order). On November 6, 2017, the NETOs requested rehearing of the Commission's October 2017 Order. In their request for rehearing, the NETOs argued that the Commission erred in concluding that the decision of the D.C. Circuit in *Emera Maine v. FERC* did not restore the NETOs' transmission rates under ISO-NE's open access transmission tariff to the rate in effect prior to Opinion No. 531. The Commission's order on rehearing is still pending.

During the pendency of the Coakley proceedings, three other complaints were filed at the Commission also alleging that the NETOs' then-effective ROE was unjust and unreasonable. These complaints were filed on December, 27, 2012 in Docket No. EL13-33-000, July 31, 2014 in Docket No. EL14-86-000, and April 29, 2016 in Docket No. EL16-64-000. Extensive hearing and settlement judge procedures were conducted for these complaint proceedings over the ensuing years and Commission review of the initial decisions issued in these proceedings is still pending. Agenda item E-2 may be an order related to the D.C. Circuit remand from *Emera Maine v. FERC*, the NETOs' request for rehearing of the October 2017 Order, and/or the other outstanding complaint proceedings related to the NETOs' ROE in ISO-NE.

E-3 – Consumers Energy Company; Interstate Power and Light Company; Midwest Municipal Transmission Group; Missouri River Energy Services; Southern Minnesota Municipal Power Agency; and WPPI Energy v. International Transmission Company; ITC Midwest, LLC; and Michigan Electric Transmission Company (Docket No. EL18-140-000). On April 20, 2018, Consumers Energy *et al.* filed a complaint pursuant to Section 206 of the Federal Power Act (FPA) against International Transmission Company, Michigan Electric Transmission Company, and ITC Midwest, LLC, challenging that the “independence adder” collected by the three transmission companies was no longer just and reasonable. Agenda item E-3 may be an order on the complaint.

E-4 – 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, L.L.C.; and Entergy Texas, Inc. (Docket No. EL09-61-004). On July 27, 2017, the presiding Administrative Law Judge issued an Initial Opinion in the remand proceeding of Docket No. EL09-61 concerning the complaint filed by the Louisiana Public Service Commission (LPSC) pursuant to Section 206 of the FPA alleging that Entergy violated the terms of the Entergy System Agreement by making sales of low-cost System energy on behalf of Entergy Arkansas, Inc. to third parties from 2000 – 2009. Agenda item E-4 may be an order on the initial decision.

E-5 – Northern American Electric Reliability Corporation (Docket No. RR18-9-000). On August 24, 2018, the North American Electric Reliability Corporation (NERC) submitted, pursuant to its obligations under 18 CFR § 39.4, a request for the approval of the 2019 Business Plans and Budgets of NERC, the seven Regional Entities, and the Western Interconnection Regional Advisory Body. Agenda item E-5 may be an order addressing the Business Plans and Budgets.

E-6 – Omitted

E-7 – Southern California Edison Company (Docket No. ER18-156-002). On October 25, 2017, Southern California Edison (SCE) filed, pursuant to section 205 of the FPA, an amended Large Generator Interconnection Agreement (LGIA) between AltaGas, the CAISO, and SCE. The amended LGIA set forth the terms by which the Sonoran Project, a solar photovoltaic facility being developed by AltaGas, will connect to the SCE transmission system and receive Full Capacity Deliverability Service. On November 15, 2017, EDF Renewables (EDFR) filed a protest to the amended LGIA filing asserting that the terms of the LGIA were not just and reasonable, were unduly discriminatory and preferential, and violated the Commercial Viability Criteria terms of the CAISO Tariff. EDFR requested that the LGIA be rejected by the Commission or further amended to convert the Sonoran Project from Full Capacity Deliverability Status to Energy-Only Deliverability Status. On December 18, 2017, the Commission issued a deficiency letter requiring SCE to provide additional information about the amended LGIA. SCE and the CAISO submitted a joint response to the deficiency letter. EDFR, SCE, and CAISO then exchanged comments and answers to the response. On March 16, 2018, the Commission, finding that the filing raised material issues of fact that could not be resolved based on the record, accepted the amended LGIA to be made effective December 25, 2017, subject to refund, and established hearing and settlement judge procedures. Between April 11, 2018 and July 11, 2018 six settlement conferences were convened before Judge Patricia Hurt. On August 10, 2018,

EDFR, AltaGas, SCE, and CAISO submitted a settlement agreement. The uncontested settlement agreement provides, *inter alia*, that the settling parties agree: 1) that the Sonoran Project has complied with all applicable requirements of the CAISO Tariff and should be accepted by the Commission as-filed, 2) to establish a study process whereby EDFR and CAISO deliverability studies for the Palen and Desert Harvest Projects will be conducted to determine whether a conversion of a portion of the Sonoran Project to Energy Only Deliverability Status is required to provide EDFR's Palen or Desert Harvest Projects with an aggregate 250 MW of Full Capacity Deliverability Status prior to completion of CAISO's West-of-Devers transmission upgrades, and 3) that AltaGas will convert up to 250 MW of the Sonoran Project to Energy-Only Deliverability Status as needed based on the study results. Agenda item E-7 may be an order addressing the settlement agreement.

E-8 – Ameren Illinois Company (Docket No. ER16-1169-002). On March 14, 2016, Ameren Illinois Company (Ameren) submitted to FERC an annual informational formula rate update and true-up, pursuant to attachment O of the Midcontinent Independent System Operator, Inc.'s Open Access Transmission, Energy and Operating Reserve Markets Tariff. Southwestern Electric Cooperative, Inc. (SWEC) and Southern Illinois Power Cooperative, Inc. (SIPC) filed Informal and Formal Challenges to Ameren's filing, arguing that Ameren assigned income tax amounts related to Contributions in Aid of Construction (CIAC) to the incorrect account. On September 22, 2016, FERC issued an order denying a Formal Challenge submitted by SWEC and SIPC that rejected their arguments concerning the CIAC, and SWEC requested clarification. In response to SWEC's request for clarification, on January 18, 2018, FERC issued an Order that addressed treatment of the tax gross-up of CIAC in relation to the Annual Transmission Revenue Requirement (ATRR). On February 2, 2018, Ameren filed a request for clarification, or in the alternative, rehearing, concerning tax amounts associated with CIAC, and on March 20, 2018, FERC issued an order granting rehearing for further consideration. Agenda item E-8 may be an order concerning tax amounts associated with CIAC.

E-9 – Southwest Power Pool, Inc. (Docket No. ER18-1632-001). On May 15, 2018, Southwest Power Pool, Inc. (SPP) filed proposed revisions to its Open Access Transmission Tariff (Tariff) to implement a maintenance cost component to mitigated Start-Up offers and mitigated No-Load Offers. On July 12, 2018, SPP submitted an amendment to proposed Section 3.5 of Attachment AF of the Tariff to remove a reference to definition and formulas, requested that the comment period for the July 12 filing be limited to one day, and requested that FERC accept the May 15 filing and July 12 amendment no later than July 16, 2018. Agenda item E-9 may be an order accepting SPP's proposed Tariff revisions.

Gas

G-1 – BP Products North America Inc. v. Sunoco Pipeline L.P. (Docket No. OR15-25-000). On April 30, 2015, BP Products North America Inc. (BP) filed a Complaint against Sunoco Pipeline L.P. (Sunoco), seeking to remedy prior actions by Sunoco. BP alleges that Sunoco revised the terms of executed agreements and the prorationing policy for its pipeline operating from Michigan to Ohio, ultimately creating a new class of shippers for existing pipeline capacity that discriminated against certain shippers, including BP. On July 31, 2015, the Commission set the matter for hearing. The Administrative Law Judge (ALJ) presided over a hearing from November 15, 2016 through November 22, 2016 on the matter and issued an Initial Decision on May 26, 2017, finding that Sunoco discriminated unduly against BP in granting preference to certain shippers, and that BP was entitled to relief (including the payment of damages from Sunoco totaling \$13,139,249, plus interest). On July 26, 2017, all parties filed their respective Briefs on Exceptions; on September 18, 2017, the parties then submitted Briefs Opposing Exceptions. Agenda item G-1 may be an order pertaining to the various Briefs on and Opposing Exceptions filed following the issuance of the Initial Decision.

Hydro

H-1 – Boyce Hydro Power, LLC (Docket Nos. P-10808-062, P-10808-063). On September 10, 2018, the Commission issued an order revoking the license for the Edenville Project pending action on rehearing and judicial review. The order thereby revoked the Project license 15 days following issuance and required that Boyce Hydro Power, LLC (BHP) permanently disable the generating equipment and furnish documentation indicating as such. On September 17, 2018, BHP filed an Emergency Motion for Stay, asserting that, if not stayed, the order will result in irreparable financial hardship. In addition, BHP states that a potential solution — proximate lake

association members evaluating whether to acquire and continue operation of the Edenville Project — may be reached if the Stay is maintained. Agenda item H-1 may be an order on the Emergency Motion for Stay as requested by BHP.

Certificates

C-1 – National Grid LNG LLC (Docket No. CP16-121-000). On April 1, 2016, National Grid LNG LLC (NGLNG) submitted an Abbreviated Application for a Certificate of Public Convenience and Necessity (CPCN) under Section 7(c) of the Natural Gas Act. NGLNG seeks Commission authorization to construct, own, and operate liquefaction facilities (the Fields Point Liquefaction Project) at its existing LNG storage facility located in Providence, Rhode Island. The Commission issued the Environmental Assessment on June 25, 2018, finding that the project would not pose a significant impact to the environment provided that NGLNG adhered to the included mitigation measures. Agenda item C-1 may be an order on the CPCN application as filed by NGLNG.

White & Case LLP
701 Thirteenth Street, NW
Washington, District of Columbia 20005-3807
United States

T +1 202 626 3600

In this publication, White & Case means the international legal practice comprising White & Case LLP, a New York State registered limited liability partnership, White & Case LLP, a limited liability partnership incorporated under English law and all other affiliated partnerships, companies and entities.

This publication is prepared for the general information of our clients and other interested persons. It is not, and does not attempt to be, comprehensive in nature. Due to the general nature of its content, it should not be regarded as legal advice.