

Energy, Infrastructure, Project and Asset Finance

Summary of FERC Meeting Agenda

December 2012

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Below are brief summaries of the agenda items for the Federal Energy Regulatory Commission's December 20, 2012 meeting, pursuant to the agenda as issued on December 13, 2012. Agenda items E-6, E-10, E-18, E-19, E-20, E-21 and E-23 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: Integration of Variable Energy Resources (Docket No. RM10-11-001)

On June 22, 2012, the Commission issued Order No. 764, a Final Rule intended to remove barriers to the integration of variable energy resources by requiring each public utility transmission provider to offer intra-hourly transmission scheduling and to incorporate provisions into the *pro forma* Large Generator Interconnection Agreement requiring interconnection customers whose generating facilities are variable energy resources to provide meteorological and forced outage data to the public utility transmission provider for the purpose of power production forecasting. Several parties filed for rehearing and/or clarification of the Final Rule. In addition, on October 19, 2012, the Edison Electric Institute filed a request for an extension of time until November 12, 2013, to comply with the requirements of Order No. 764. Agenda item E-1 may be an order on rehearing and/or clarification and/or an order on the request to extend the period for compliance filings.

E-2: Iberdrola Renewables, LLC, PacifiCorp, NextEra Energy Resources, LLC, Invenergy Wind North America LLC, and Horizon Wind Energy LLC v. Bonneville Power Administration (Docket No. EL11-44-001)

On December 7, 2011, the Commission issued an order addressing a complaint filed by Iberdrola Renewables, LLC, PacifiCorp, NextEra Energy Resources, LLC, Invenergy Wind North America LLC, and Horizon Wind Energy LLC (collectively, Petitioners), owners of wind facilities in the Pacific Northwest against Bonneville Power Administration (BPA).



Each month, White & Case provides brief summaries of the agenda items for the Federal Energy Regulatory Commission's monthly meeting.

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Petitioners alleged that BPA used its transmission market power to curtail wind generators in an unduly discriminatory manner in order to protect its preferred power customer base from costs it does not consider socially optimal. In the December 2011 order, the Commission invoked its Federal Power Act section 211A authority and directed BPA to file tariff revisions to allow for transmission service on terms and conditions comparable to those under which BPA provides transmission service to itself and that are not unduly discriminatory or preferential. The Commission also ordered BPA to revise its environmental redispatch curtailment policies and to submit those revisions to the Commission as part of its open access transmission tariff (OATT). Many parties filed for rehearing and/or clarification of the December 2011 order. Agenda item E-2 may be an order on rehearing and/or clarification.

E-3: Iberdrola Renewables, LLC, PacifiCorp, NextEra Energy Resources, LLC, Invenergy Wind North America LLC, and Horizon Wind Energy LLC v. Bonneville Power Administration (Docket No. EL11-44-002)

On March 6, 2012, BPA filed a compliance filing with *pro forma* tariff sheets in accordance with the Commission's order as discussed above in E-2. Many parties filed protests and/or comments in the proceeding. Agenda item E-3 may be an order on BPA's compliance filing.

E-4: Availability of e-Tag Information to Commission Staff (Docket No. RM11-12-000)

On April 21, 2011, the Commission issued a Notice of Proposed Rulemaking (NOPR) to amend its regulations to require the North American Electric Reliability Corporation (NERC) to make available to Commission staff the complete electronic tags (e-Tags) used to schedule the transmission of electric power interchange transactions in wholesale markets. The Commission proposed to require NERC to provide access to e-Tags, rather than requiring individual market participants to provide such access, so as to avoid imposing the burden on market participants of submitting e-Tags with both NERC and the Commission. Many parties filed comments on the NOPR. Agenda item E-4 may be a final rule on the subject.

E-5: Revisions to Electric Reliability Organization (Docket No. RM12-6-000); Definition of Bulk Electric System and Rules of Procedure (Docket No. RM12-7-000)

On June 22, 2012, the Commission issued an NOPR proposing to approve a modification to the currently effective definition of "bulk electric system" developed by NERC. The revised definition of "bulk electric system" removed language allowing for regional discretion in the currently effective bulk electric system definition. The revised definition established a bright-line threshold to include all facilities operated at or above 100 kV. The modified definition

also identified specific categories of facilities and configurations as inclusions and exclusions to provide clarity in the definition of "bulk electric system." The Commission also proposed to approve: (1) NERC's contemporaneously filed revisions to its Rules of Procedure (ROP) which creates an exception procedure to add elements to, or remove elements from, the definition of "bulk electric system" on a case-by-case basis; (2) NERC's proposed form entitled "Detailed Information to Support an Exception Request" that entities will use to support requests for exception from the "bulk electric system" definition; and (3) NERC's proposed implementation plan for the revised "bulk electric system" definition. Many parties filed comments in the proceedings. Agenda item E-6 may be a final rule stemming from the NOPR.

E-7: North American Electric Reliability Corporation (Docket No. RR12-8-000)

On May 7, 2012, NERC submitted proposed revisions to its ROP, including revisions to Sections 300, 400, 600, 1000, 1400 and 1700 and to Appendices 2, 4B, 4C and 5B, and the deletion of Appendices 3C and 6. The proposed revisions are based on a review of the ROP that was conducted to identify improvements to the underlying processes reflected in the ROP based on the experience to date of NERC and the Regional Entities to further implement actions identified in 2009 in NERC's *Three-Year ERO Performance Assessment Report*, to eliminate internal inconsistencies, and to make other improvements and clarifications identified by the review teams. Agenda item E-7 may be an order on NERC's petition.

E-8: North American Electric Reliability Corporation (Docket No. NP11-238-001)

On July 28, 2011, NERC submitted a Notice of Penalty filing to the Commission, assessing a US\$19,500 penalty against the Southwestern Power Administration (SWPA) for violations of certain Reliability Standards under section 215(e) of the Federal Power Act (FPA). The US Department of Energy (DOE), together with SWPA, an organizational entity within DOE, filed a request for review of the Notice of Penalty on August 26, 2011. DOE/SWPA asked the Commission to find that NERC has no authority to assess a monetary penalty against a federal agency under FPA section 215 and to dismiss the Notice of Penalty against SWPA. On July 19, 2012, the Commission issued an order finding that section 215 of the FPA authorizes the imposition of a monetary penalty against a federal agency for violation of a mandatory Reliability Standard and allowing the US\$19,500 penalty as assessed by NERC to go into effect. Several parties requested rehearing of the July order. Agenda item E-8 may be an order on rehearing.

E-9: Regional Reliability Standard PRC-006-SERC-01- Automatic Underfrequency Load Shedding Requirements (Docket No. RM12-9-000)

On February 1, 2012, NERC submitted a petition for approval of regional Reliability Standard PRC-006-SERC-01 (Automatic Underfrequency Load Shedding Requirements). Following that petition, on July 19, 2012, FERC issued an NOPR on the proposed regional Reliability Standard. The purpose of PRC-006-SERC-01 is to ensure that automatic underfrequency load shedding protection schemes designed by planning coordinators and implemented by applicable distribution providers and transmission owners in the SERC Reliability Corporation Region are coordinated to effectively mitigate the consequences of an underfrequency event. The NOPR also proposed to approve the related violation risk factors, with one modification, and violation severity levels, implementation plan and effective date proposed by NERC. Agenda item E-9 may be a final order stemming from the NOPR.

E-11: Southwest Power Pool, Inc. (Docket No. ER13-178-000)

On October 24, 2012, Southwest Power Pool, Inc. (SPP) submitted revisions to its OATT to incorporate an updated transmission line loss factor for Westar Energy, Inc. (Westar) accepted by the Commission on March 30, 2012 in Docket No. ER12-909-000. In the March order, the Commission accepted Westar's updated loss factor for filing, and suspended it for five months, to become effective September 1, 2012, subject to refund and set the matter for hearing and settlement judge procedures. Westar requested SPP to submit tariff revisions effective September 1, 2012 to incorporate the updated loss factor into Attachment M of the SPP. Agenda item E-11 may be an order on SPP's filing.

E-12: City of Colton, California (Docket No. ER13-207-000)

On October 26, 2012, the City of Colton, California (Colton) submitted its initial Transmission Owner (TO) Tariff, including its proposed Transmission Revenue Requirement (TRR) for approval. Effective January 1, 2013, Colton will become a Participating TO in the California Independent System Operator Corporation (CAISO) and will transfer to CAISO's operational control certain capacity entitlements on transmission facilities within the Western Interconnection. Colton requested an effective date of January 1, 2013. Agenda item E-12 may be an order on Colton's proposed TO Tariff and TRR.

E-13: California Independent System Operator Corporation (Docket No. ER13-168-000)

On October 22, 2012, CAISO submitted an amendment to the Interconnected Balancing Authority Area Operating Agreement (Amended IBAAOA) between CAISO and the Western Area

Power Administration—Desert Southwest Region (Western-DSR). CAISO submitted the amendment in order to revise the contractual arrangement to reflect the planned transition of Valley Electric Association, Inc. from the Nevada Power Company balancing authority area to the CAISO balancing authority area. CAISO requested an effective date of January 3, 2013, the planned transition date. Agenda item E-13 may be an order on CAISO's proposed amendment.

E-14: California Independent System Operator Corporation (Docket No. ER13-218-000)

On October 26, 2012, CAISO submitted an amendment to its tariff to provide a one-time opportunity for all customers in CAISO's interconnection queue that entered the *queue prior to cluster five* to downsize their projects (generator project downsizing tariff amendment). CAISO stated that the generator project downsizing tariff amendment is responsive to numerous requests from affected interconnection customers. Agenda item E-14 may be an order on CAISO's proposed tariff amendment.

E-15: California Independent System Operator Corporation (Docket No. ER13-219-000)

On October 29, 2012, CAISO submitted an amendment to its tariff to include greenhouse gas compliance costs in the calculations set forth in the CAISO tariff for determining resource commitment costs (start-up and minimum load costs), default energy bids (bids used in the automated local market power mitigation process), and generated bids (bids generated on behalf of resource adequacy resources and as otherwise specified in the CAISO tariff). CAISO requested an effective date of January 1, 2013, so that the amendments go into effect on the same date that the California Air Resources Board plans to implement its new cap-and-trade program for greenhouse gas emissions. Agenda item E-15 may be an order on CAISO's proposed tariff amendment.

E-16: Valley Electric Association, Inc. (ER13-49-000)

On October 9, 2012, Valley Electric filed a TRR and TO Tariff seeking FERC's acceptance and authorized effective date of January 3, 2012. Agenda item E-16 is likely an order on Valley Electric's request.

E-17: FirstEnergy Corp. and American Transmission Systems, Incorporated (EC12-119-000)

On July 16, 2012, FirstEnergy Generation Corp. and American Transmission Systems, Incorporated (ATSI) filed an application under section 203 of the Federal Power Act for authorization for FirstEnergy Corp. to transfer certain generation assets to ATSI. The purpose of the transfer is for ATSI to be able to convert the assets to synchronous condensers to support its transmission system. Agenda item E-17 is likely an order on the application.

E-22: Avalon Wind, LLC, Avalon Wind 2, LLC, Catalina Solar, LLC, Catalina Solar 2, LLC, Pacific Wind Lessee, LLC, Pacific Wind 2, LLC, Valentine Solar, LLC, and EDF Renewables Development, Inc. (Docket No. EL12-109-000)

On September 27, 2012, Avalon Wind, LLC, Avalon Wind 2, LLC, Catalina Solar, LLC, Catalina Solar 2, LLC, Pacific Wind Lessee, LLC, Pacific Wind 2, LLC, Valentine Solar, LLC, and EDF Renewables Development, Inc. (Petitioners) filed a Petition for Declaratory Order asking the Commission to confirm their priority rights to firm transmission on the Antelope Valley Line, consisting of two 230 kV generation tie-lines. Petitioners state that they are all affiliates that are funding and will co-own the Antelope Valley Line for several generation projects in various stages of development. Agenda item E-22 is likely an order on the Petition.

Gas Items

G-1: Northern Natural Gas Company (Docket Nos. RP11-2061-002,-003)

On January 17, 2012, Northern Natural Gas Company (Northern) filed a proposed revised FERC Gas Tariff, Sixth Revised Volume No. 1 in sub-docket 002 to revise provisions regarding reservation charge credits in compliance with an earlier FERC order in the proceeding. At the same time, Northern filed for rehearing of FERC's order in sub-docket 003, stating that FERC erred in directing Northern to revise its reservation charge crediting procedures in force majeure situations. Agenda item G-1 is likely an order on rehearing and on the compliance filing.

G-2: Gulf Crossing Pipeline Company, LLC (Docket No. RP12-814-000)

On June 20, 2012, Gulf Crossing Pipeline Company, LLC (GCPC) filed proposed modifications to its FERC NGA Gas Tariff, Seventh Revised Volume No. 1 related to demand charge crediting. GCPC stated the revisions provide for demand charge credits to customers during periods of force majeure and maintenance activities consistent with FERC's policies. FERC issued an order on July 31, 2012 accepting the proposed tariff and suspending its effectiveness until January 1, 2013. FERC stated, however, that it would wait to make a final determination in the proceeding until the parties to the proceeding had the opportunity to respond to GCPC's answer to the parties' initial comments. Agenda item G-2 may be a final order on the Petition.

G-3: Texas Gas Transmission, LLC (Docket No. RP12-820-000)

On June 28, 2012, Texas Gas Transmission, LLC (TGT) filed proposed modifications to its FERC NGA Gas Tariff, Fourth Revised Volume No. 1 related to demand charge crediting. TGT stated the

revisions provide for demand charge credits to customers during periods of force majeure and maintenance activities consistent with FERC's policies. FERC issued an order on July 31, 2012 accepting the proposed tariff and suspending its effectiveness until January 1, 2013. FERC stated, however, that it would wait to make a final determination in the proceeding until the parties to the proceeding had the opportunity to respond to TGT's answer to the parties' initial comments. Agenda item G-3 may be a final order on the Petition.

G-4: Gulf South Pipeline Company, LP (Docket No. RP12-813-000)

On June 20, 2012, Gulf South Pipeline Company, LP (Gulf) filed proposed modifications to its FERC NGA Gas Tariff, Seventh Revised Volume No. 1 related to demand charge crediting. Gulf stated the revisions provide for demand charge credits to customers during periods of force majeure and maintenance activities consistent with FERC's policies. FERC issued an order on July 31, 2012 accepting the proposed tariff and suspending its effectiveness until January 1, 2013. FERC stated, however, that it would wait to make a final determination in the proceeding until the parties to the proceeding had the opportunity to respond to Gulf's answer to the parties' initial comments. Agenda item G-4 may be a final order on the Petition.

G-5: Enbridge Pipelines (Southern Lights) LLC (Docket No. OR12-27-000)

On September 17, 2012, Enbridge Pipelines (Southern Lights) LLC (Enbridge) filed a Petition for Declaratory Order asking FERC to confirm the validity of Enbridge's right of first offer for committed capacity on the Southern Lights Pipeline, as stated in its Southern Lights Transportation Service Agreement. Enbridge stated that it planned to commence an open season for the capacity but was facing certain competing claims to the capacity. Agenda item G-5 is likely an order on the Petition.

Hydro Items

H-1: Lock 14 Hydro Partners, LLC (Docket No. P-13213-004); Lock 12 Hydro Partners, LLC (P-13214-004)

On September 6, 2012, Lock 14 Hydro Partners, LLC (Lock 14) and Lock 12 Hydro Partners, LLC (Lock 12) (collectively, Lock) filed for rehearing of FERC Staff's August 8, 2012 letter order rejecting as "patently deficient" Lock's applications for authorization to develop their respective hydroelectric projects on the Kentucky River. Lock acknowledged the applications were deficient, but averred that they could "promptly remedy those deficiencies" and therefore they did not warrant rejection. Agenda item H-1 is likely an order on rehearing.

**H-2: Utah Independent Power, Inc.
(Docket No. P-14354-001)**

On October 23, 2012, Canyonlands Watershed Council, Grand Canyon Trust and Living Rivers: Colorado Riverkeeper (Appellants) filed an administrative appeal of FERC's order issuing a preliminary permit to Utah Independent Power (UIP) for the Long Canyon Pumped Storage Project. Appellants state that the permit is impermissible because it allows UIP to conduct feasibility studies for three years on public lands administered by the Bureau of Land Management and the Moab Resource Management Plan in contravention of the rules of those agencies. Agenda item H-2 is likely an order on rehearing.

H-3: Hudson River-Black River Regulating District, Erie Boulevard Hydropower, L.P., Curtis Palmer Hydroelectric Co., South Glens Falls Limited Partnership, et al., Northern Electric Power Co., et al., Fort Miller Associates, Stillwater Hydro Associates, New York State Electric & Gas Corp., Albany Engineering Corporation, and Green Island Power Co. (Docket No. HB81-09-2-002)

On August 30, 2012, Erie Boulevard Hydropower, L.P. (Erie) filed for rehearing of a July 31, 2012 order determining headwater benefits in the Hudson River Basin in this proceeding. Erie argued that FERC should modify the order, including its determination of future headwater benefits assessments, in light of a second FERC order issued August 17, 2012 granting another project (the Green Island Project No. 13) additional installed and hydraulic capacities. Agenda item H-3 is likely an order on rehearing.

Certificate Items

C-1: Revisions to the Auxiliary Installations, Replacement Facilities, and Siting and Maintenance Regulations (RM12-11-000)

On April 2, 2012, the Interstate Natural Gas Association of America (INGAA) filed a petition claiming that FERC has attempted to improperly make substantive changes to the meaning of 18 CFR § 2.55 through informal processes by applying the right-of-way provisions of section 2.55 to both "installations" and "replacement facilities" when they should only apply to installations, and requesting that the Commission adhere to its existing regulations. On May 5, 2012, the MidAmerican Energy Pipeline Group intervened and filed comments in support of INGAA's Petition. Agenda item C-1 is likely an order on the petition.

**C-2: Brian Hamilton v. El Paso Natural Gas Company
(Docket No. CP12-25-000)**

On December 1, 2011, Brian Hamilton, a farmer, filed a complaint against El Paso Natural Gas Company (El Paso) alleging violations of the Commission's and the Pipeline and Hazardous Materials Safety Administration's regulations in connection with certain actions El Paso took in the course of operating and maintaining two interstate pipelines located on Mr. Hamilton's land. For example, Mr. Hamilton alleges that El Paso did not follow applicable regulations governing the proper method of lowering an interstate gas pipeline and consequently created a dangerous risk of explosion. El Paso filed a Motion to Dismiss on December 14, 2011, stating the alleged violations should be dismissed due to lack of jurisdiction, res judicata, and the statute of limitations. On February 16, 2012, FERC staff filed a Field Inspection Report, finding that "no instances of noncompliance could be conclusively determined...but some minor problem areas were observed." Agenda item C-2 may be an order on the complaint and/or motion to dismiss.

**C-3: Dominion Transmission, Inc.
(Docket No. CP12-72-000)**

On February 17, 2012, Dominion Transmission, Inc. (DTI) submitted an Abbreviated Application for a Certificate of Public Convenience and Necessity to construct, own, operate and maintain the Allegheny Storage Project (Project). The proposed Project would span Maryland, Ohio, Pennsylvania and West Virginia and would include 125,000 Dth/d of natural gas storage service and 125,000 Dth/d of transportation service to three of DTI's customers. Agenda item C-3 may be an order on the application.