

Energy, Infrastructure, Project and Asset Finance

Summary of FERC Meeting Agenda

October 2012

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Below are brief summaries of the agenda items for the Federal Energy Regulatory Commission's October 18, 2012 meeting, pursuant to the agenda as issued on October 11, 2012. Agenda items E-6, E-9, E-10, E-12 and G-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-1: Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities (Docket No. RM10-23-002)

On May 17, 2012, FERC issued Order No. 1000-A, its order on rehearing and clarification of its amendments to the transmission planning and cost-allocation requirements originally established in Order No. 890. In Order No. 1000-A, FERC rejected requests to eliminate or substantially modify its amendments, but did adopt several clarifications. The Organization of MISO States (OMS) filed a request for rehearing or clarification of Order No. 1000-A, arguing that FERC erred in suggesting that if a project is shown to have benefits under any one of the studied transmission planning scenarios, then it will be determined to have satisfied FERC's second cost-allocation principle (no matter the likelihood of that scenario). The MISO Transmission Owners also submitted a limited request for clarification, or in the alternative rehearing, arguing that FERC should not expand the definition of transmission facilities "selected in the regional transmission plan for purposes of cost-allocation" in Order No. 1000 and thereby change the Order No. 1000 right-of-first-refusal requirements. Oklahoma Gas and Electric Company filed a request for rehearing, arguing that FERC should reverse its finding that transmission providers must remove provisions in their tariffs and agreements that designate incumbent utilities to construct new transmission facilities. American Electric Power Service Corporation filed a request for clarification, requesting that FERC resolve ambiguities in the regional transmission planning processes and cost-allocation methodologies. Finally, the Transmission Access Policy Study Group filed a request for rehearing and clarification, arguing



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that clarifications the Commission made in Order No. 1000-A will unintentionally expand the ability of jurisdictional transmission providers to discriminate. Agenda item E-1 may be an order on the requests for clarification and/or rehearing of Order No. 1000-A.

E-2: Reliability Standards for Geomagnetic Disturbances (Docket No. RM12-22-000)

This is a new rulemaking docket.

E-3: Revisions to Reliability Standard for Transmission Vegetation Management (Docket No. RM12-4-000)

On December 21, 2011, the North American Electric Reliability Corporation (NERC) submitted a petition seeking approval of a new Reliability Standard for Transmission Vegetation Management (as well as associated Violation Risk Factors and Violation Severity Levels, definitions and an implementation plan). The proposed new Transmission Vegetation Management Reliability Standard includes results-based performance requirements in addition to documentation criteria. The US Department of Energy Pacific Northwest National Laboratory filed a report arguing that the standard the NERC proposes to use in the Reliability Standard to specify clearances between vegetation and power lines has not been shown to be appropriate in this context. Numerous parties filed comments on the report. Agenda item E-3 may be an order on NERC's proposed Reliability Standard.

E-4: Southwest Power Pool, Inc. (Docket Nos. ER12-1179-000, -001)

On February 29, 2012, as amended on May 15, 2012, the Southwest Power Pool, Inc. (SPP) filed tariff revisions to implement the SPP Integrated Marketplace. SPP designed the Integrated Marketplace to be consistent with the designs of the "Day 2" markets that have been implemented by other Regional Transmission Organizations, including having (a) a day-ahead energy and operating reserve market, (b) day-ahead and intra-day reliability unit commitment processes, (c) a real-time balancing market (which will replace the current Energy Imbalance Services market), (d) price-based operating reserve procurement co-optimized with energy, (e) a market for transmission congestion rights (including auction revenue rights), (f) consolidation into a single balancing authority operated by SPP (as opposed to the 16 current balancing authorities), and (7) a multi-day reliability assessment performed prior to the day-ahead market to manage the commitment of long-start resources. SPP anticipates that the Integrated Marketplace will start operating on March 1, 2014. Numerous parties intervened and filed comments in this proceeding. Agenda item E-4 may be an order on SPP's Integrated Marketplace filing.

E-5: Southwest Power Pool, Inc. (Docket No. ER12-550-000)

On December 5, 2011, SPP submitted revisions to its tariff as well as explanations of other tariff revisions in compliance with FERC's order of October 4, 2011 and Order Nos. 719 and 719-A. SPP proposed amendments to certain of its current Energy Imbalance Services market provisions, including changes to the definition of market participant, replacement of the term "variable demand response resource" and changes to the aggregators of retail customers (ARC) certification. Pursuant to FERC's direction, SPP also described its proposed modifications to certain of its demand – response baseline, measurement and verification methodologies (the tariff revisions that SPP committed to include in its Integrated Marketplace filing). In addition, SPP provided an explanation of some of its previously filed tariff revisions, including its resource plan requirement and its requirements for ARCs. Agenda item E-5 may be an order on SPP's compliance filing.

E-7: Southern California Edison Company (Docket No. ER12-2506-000)

On August 23, 2012, Southern California Edison Company (SCE) filed a Small Generator Interconnection Agreement (SGIA) between SCE, TA-Acacia, LLC (Acacia) and the California Independent System Operator Corporation (CAISO) in order to interconnect Acacia's proposed 20 MW solar generating facility to SCE's Antelope substation in California. The filed SGIA contains two changes from the *pro forma* SGIA, including additional terms that would apply if Acacia did not achieve commercial operation. Agenda item E-7 may be an order on SCE's filing.

E-8: Benjamin Riggs v. Rhode Island Public Utilities Commission (Docket No. EL12-100-000)

On August 22, 2012, Benjamin Riggs filed a complaint, pursuant to section 206 of the Federal Power Act, against the Rhode Island Public Utilities Commission (RI Commission), arguing that RI Commission's approval of a 20-year Power Purchase Agreement between Deepwater Wind Block Island, LLC (Deepwater Wind) and National Grid, as directed by the Rhode Island General Assembly, was a violation of the Federal Power Act and the Commerce Clause of the US Constitution. Deepwater Wind argued that FERC should dismiss the complaint for failure to identify any violations of statutory standards or regulatory requirements over which FERC has jurisdiction. The RI Commission also protested that Riggs failed to state a claim upon which relief may be granted, as well as argued that the Power Purchase Agreement is just and reasonable and in the public interest. Agenda item E-8 may be an order on the complaint.

E-11: Pepco Holdings, Inc. (Docket No. EL12-75-000)

On June 15, 2012, Pepco Holdings, Inc. (PHI), on behalf of its affiliates, filed a petition for limited waiver of FERC's affiliate transaction pricing rules for sales of non-power goods and services in order to use "at cost" pricing for a limited set of transactions. Those transactions would consist of when: (a) non-power services are provided by PHI's public utilities to PHI's centralized service company for the benefit of PHI's public utilities, (b) non-power goods and services in the form of general and administrative corporate services are provided by PHI's public utilities to PHI's centralized service company, and (c) non-power goods and services in the form of general and administrative corporate services are provided by PHI's public utilities to two real estate affiliates and other affiliates. PHI argued that "at cost" pricing of these transactions would not result in inappropriate cross-subsidization by customers of PHI's public utility subsidiaries. Agenda item E-11 may be an order on PHI's petition for limited waiver.

E-13: Duke Energy Corporation, Progress Energy, Inc. (Docket No. EC11-60-004), Carolina Power & Light Company (Docket Nos. ER12-1339-001, ER12-1340-001, ER12-1341-001), Duke Energy Carolinas, LLC (Docket No. ER12-1342-001)

On June 8, 2012, FERC issued an order accepting the market power mitigation measures compliance filing of Duke Energy Corporation (Duke Energy) and Progress Energy, Inc. (Progress Energy), conditioned on certain modifications to the mitigation proposal. FERC also accepted four related power sales agreements to serve as interim mitigation measures until the Duke Energy/Progress Energy transmission expansion projects, which are to serve as the permanent mitigation measures, are completed. On June 25, 2012, Duke Energy and Progress Energy notified FERC that they accepted FERC's revisions to the mitigation proposal and provided copies of the agreements for the construction of the transmission expansion projects. Carolina Power & Light Company and Duke Energy Carolinas, LLC also made compliance filings to implement changes to the four power sales agreements as required by FERC's June 8, 2012 order. Agenda item E-13 may be an order on the compliance filings.

E-14: Nevada Power Company (Docket Nos. ER11-3839-000,-001)

On June 20, 2011, Nevada Power Company (Nevada Power) submitted an unexecuted Amended and Restated Transmission Facilities Agreement between itself and PacifiCorp regarding the installation of a second transformer at Nevada Power's Harry Allen substation. Nevada Power and PacifiCorp disputed whether the

second installation constitutes a network upgrade of the Nevada Power transmission system for which PacifiCorp would be entitled to receive transmission service credits from Nevada Energy. On August 16, 2011, FERC accepted the unexecuted agreement, subject to refund, and established hearing and settlement judge procedures. Nevada Power and PacifiCorp reached a settlement resolving all issues in the proceeding. The Administrative Law Judge issued a certification of uncontested settlement on January 30, 2012, and FERC approved the settlement on October 12, 2012. Agenda item E-14 may be an order on the settlement agreement.

Miscellaneous

M-1: Filing of Privileged Materials and Answers to Motions (RM12-2-000)

On December 16, 2011, the Commission issued a Notice of Proposed Rulemaking (NOPR). The NOPR proposes revisions to rules and regulations relating to the filing of privileged material and answers to motions. Specifically, the revised rules and regulations would: (1) establish two categories for filing privileged material such that materials submitted subject to an ALJ protective order and certain forms may be submitted electronically; (2) provide for a single set of uniform procedures for filing privileged materials; (3) conform several regulations to ensure consistency and remove a significant paper filing requirement by allowing electronic filing of privileged documents; and (4) allow five days to respond to motions requesting an extension of time rather than the standard 15-day reply time currently allowed. Several parties submitted comments on the NOPR. Agenda item M-1 may be a Final Order on the NOPR.

Gas Items

G-2: Annual Charge Filing Procedures for Natural Gas Pipelines (Docket No. RM12-14-000)

Agenda item G-2 is a new rulemaking docket.

G-3: Filing, Indexing and Service Requirements for Oil Pipelines (Docket No. RM12-15-000)

Agenda item G-3 is a new rulemaking docket.

G-4: Revisions to Procedural Regulations Governing Transportation by Intrastate Pipelines (Docket No. RM12-17-000)

Agenda item G-4 is a new rulemaking docket.

Hydro Items

H-1: Valley Affordable Housing Corporation (Docket No. P-13944-002)

On July 18, 2012, FERC staff issued a notice denying intervenor status and a request to reopen the proceeding filed by Upper Blackstone Water Pollution Abatement District (District). The District had claimed it never received the required notice of the proposed Manville Hydroelectric Project (Project) by Valley Affordable Housing Corporation (Valley) under 18 C.F.R. § 4.32 and also claimed it had not received the required notice by the Commission under 16 U.S.C. § 797(f) so that it could participate in the preliminary permitting process. FERC staff denied intervenor status stating that because it issued the preliminary permit for the proposed Project to Valley more than 14 months ago, there was no open proceeding in which to intervene. Also, FERC Staff stated that Valley had not submitted any reports as of that date and, therefore, there was no pending proceeding whose record could be reopened, but noted that the District could e-subscribe to the docket. The District filed for rehearing claiming FERC's decision not to allow it to intervene is arbitrary and capricious, and an abuse of discretion. Agenda item H-1 may be an order on rehearing.

H-2: Alabama Power Corporation (Docket No. P-82-026)

On August 10, 2012, the Commission denied the motion to intervene out of time and request for rehearing filed by Pat Kelleher (Petitioner) of an order issued July 16, 2012, approving and modifying the compliance plan submitted in November 2011 by the licensee regarding Barrett's fish camp, which is part of the recreation plan of the Mitchell Hydroelectric Project, located on the Coosa River in Chilton and Coosa Counties, Alabama. The Commission denied the Petitioner's request stating that, first, the Petitioner was not a party to the proceeding and had no status to request rehearing and, second, the compliance filing was not the type of filing that would meet rehearing standards, that is, it did not constitute a material change in the plan of project development, in the terms and conditions of the license, or affect the rights of property owners in a manner not contemplated by the license. In denying intervenor status, the Commission found the Petitioner had not stated his interest in sufficient fact and detail to demonstrate that his participation is in the public interest. On August 23, 2012, Petitioner filed a motion to intervene stating Petitioner's interest in detail and a request for rehearing of the August 10 order. Agenda item H-2 may be an order on rehearing.

H-3: Cottonwood Hydro, LLC (Docket No. DI11-13-001)

On July 22, 2011, Cottonwood Hydro, LLC (Cottonwood) filed a Petition for Declaratory Order asking that the Commission find that the existing Cottonwood Hydro Project, located on Little Cottonwood Creek, in Salt Lake County, Utah, is exempt from licensing. On May 3, 2012, the Commission issued its order stating that because the project, specifically the penstock, will occupy lands of the United States, under Section 23(b)(1) of the Federal Power Act, a license is required. On June 1, 2012, Cottonwood filed for rehearing and stay of the July order. Agenda item H-3 may be an order on rehearing and/or stay.

Certificate Items

C-1: Texas Eastern Transmission, LP and Algonquin Gas Transmission, LLC (Docket No. CP11-56-001)

On May 21, 2012, the Commission issued an Order Issuing Certificates and Approving Abandonment for the New Jersey-New York Expansion Project (Project) which would provide up to 800,000 Dth/d of firm transportation service into the Borough of Manhattan, New York. The proposed Project requires the abandonment, replacement and construction of pipeline facilities in several counties in New York. Several parties filed for rehearing of the order and one party filed a request for stay. Agenda item C-1 may be an order on rehearing and/or the request for stay.

C-2: Elba Express Company, L.L.C. (Docket Nos. CP12-11-000,-001)

On October 31, 2011, as amended on May 3, 2012, Elba Express Company, L.L.C. (Elba Express) filed an application to amend a previous order authorizing it to construct and operate pipeline and compression facilities in Georgia and South Carolina. Elba Express requested authorization to change the location of an authorized compressor station from a site in Jenkins County, Georgia to a site in Hart County, Georgia. On October 12, 2012, the Commission issued its Order Amending Certificate. Agenda item C-2 may be an additional order on the amendment request.