

Energy, Infrastructure, Project and Asset Finance

# Summary of FERC Meeting Agenda

October 2013

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*Below are brief summaries of the agenda items for the Federal Energy Regulatory Commission's October 17, 2013 meeting, pursuant to the agenda as issued on October 10, 2013. Agenda items A-3, E-3, E-8 and E-10 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.

### A-4: Docket No. AD12-12-000

This administrative item will address Coordination Between Natural Gas and Electricity Markets.

### A-5: Docket No. AD06-3-000

This administrative item is the Market Update.

## Electric Items

### E-1: Council of the City of New Orleans, Louisiana, Mississippi Public Service Commission, Arkansas Public Service Commission, Docket No. EL13-43-000

On January 22, 2013, the Council of the City of New Orleans, the Mississippi Public Service Commission, the Arkansas Public Service Commission, the Louisiana Public Service Commission and the Public Utilities Commission of Texas (collectively, the PSCs) submitted a petition for declaratory order requesting that FERC issue a declaratory order regarding whether the proposed avoided cost methodology of Entergy Services, Inc., (ESI), on behalf of its subsidiary operating companies, satisfies the requirements of the Public Utility Regulatory Policies Act (PURPA) and that FERC provide guidance on any modifications that would be needed to ensure PURPA compliance. Numerous parties filed comments on the proceeding. Agenda item E-1 may be an order on the petition for declaratory order.



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

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**E-2: Transmission Planning Reliability Standard, Docket No. RM12-1-000; Modification of Transmission Planning Reliability Standards, Docket No. RM13-9-000**

On May 16, 2013, FERC issued a Supplemental Notice of Proposed Rulemaking (NOPR) proposing to approve Reliability Standard TPL-001-4, which contains changes to the requirements and processes for planned load shed in the event of a single contingency (including a modified provision to allow a transmission planner to plan for non-consequential load loss). Proposed Reliability Standard TPL-001-4 supersedes proposed Reliability Standard TPL-001-2, which the North American Electric Reliability Corporation (NERC) previously filed but that FERC found to be vague and unenforceable with regard to planned non-consequential load loss. NERC, the International Transmission Company and MISO filed comments in response to the Supplemental NOPR. Agenda item E-2 may be an order on the Supplemental NOPR.

**E-4: PPL Electric Utilities Corporation, Docket Nos. QM13-2-000, QM13-2-001**

On May 17, 2013, as supplemented on May 24, 2013 and amended on July 19, 2013, PPL Electric Utilities Corporation (PPL Electric) filed an application under PURPA section 210(m) to terminate its obligation under PURPA to enter into a new contract or obligation for the purchase of electric energy and capacity from a recently self-certified QF owned by IPS Power Engineering (IPS). Although PPL Electric has already been relieved of its obligation to purchase energy and capacity from QFs in excess of 20 MW the IPS QF is under 20 MW net. PPL Electric argued that IPS's QF has non-discriminatory access to the markets administered by PJM Interconnection, L.L.C. (PJM). IPS filed an answer arguing that PPL Electric did not carry its burden of proof to show that IPS has sufficient non-discriminatory access to wholesale markets. Agenda item E-4 may be an order on PPL Electric's application.

**E-5: Green Mountain Power Corporation, Docket Nos. TS04-277-001, -002; Central Vermont Public Service Corporation, Docket No. TS07-4-000**

On April 25, 2007, Central Vermont Public Service Corporation (Central Vermont) filed a request for partial exemption from the separate operations requirements and information sharing provisions of the Standards of Conduct for Transmission Providers. Central Vermont argued that it only has control over limited and discrete transmission facilities that are not part of the integrated transmission grid and that its control is subject to the authority of ISO New England (ISO NE) and cannot be used to adversely affect any current or potential transmission customer. As a result of the merger with Central Vermont, Green Mountain Power Corporation (Green Mountain) notified FERC on July 27, 2012 and supplemented

on May 2, 2013 of a material change in facts upon which FERC relied on granting Green Mountain's existing complete waiver of the Standards of Conduct (issued on November 26, 2004) and requested a continued waiver of the Standards of Conduct. Agenda item E-5 may be an order on the Standards of Conduct filings.

**E-6: Midwest Independent Transmission System Operator, Inc., Docket Nos. ER12-678-001, -002, -003**

On August 31, 2012, FERC issued an order conditionally accepting MISO's proposal to allocate a greater proportion of Revenue Sufficiency Guarantee (RSG) costs associated with resources committed for voltage and local reliability (VLR) requirements to the load in the Local Balancing Authority (LBA) area that is deemed to benefit from those commitments. WPPI Energy submitted a request for rehearing concerning the application of the VLR RSG cost-allocation proposal to remote loads pseudo-tied from one LBA area to another LBA area in which local constraints cause VLR RSG costs. On October 1, 2012, MISO submitted a filing in compliance with FERC's August 31, 2012 order containing proposed Tariff revisions on the VLR Commitment definition, cost-allocation and mitigation. On October 16, 2012, MISO submitted another compliance filing with clean-up revisions to certain Tariff sections on VLR Commitments. Agenda item E-6 may be an order on rehearing and/or the compliance filings.

**E-7: City of Holland, Michigan Board of Public Works, Docket No. RC11-5-001**

On April 19, 2012, FERC issued an order denying the appeal of the City of Holland, Michigan Board of Public Works (Holland) from NERC's decision to register Holland as a transmission owner (TO) and transmission operator (TOP). FERC found that Holland did not qualify for the radial facility exemption from the definition of the bulk electric system and that Holland failed to demonstrate that its system is not material to the reliability of the interconnected transmission system. Holland filed a request for rehearing, arguing that FERC's order violated FPA section 215 by regulating facilities used in the local distribution of electric energy and that FERC's finding that Holland's distribution system is not functionally radial was contrary to the evidence presented. Holland also argued that its internal generation is irrelevant for determining Holland's NERC registration and that FERC erred in finding that Holland has a material impact on the bulk electric system and that the NERC registration was needed to avoid a gap in reliability. Agenda item E-7 may be an order on the rehearing request.

**E-9: Chehalis Power Generating, L.P., Docket No. ER05-1056-007**

This appears to be a new subdocket. On January 14, 2013, TNA Merchant Projects, Inc. (TNA Merchant) (the successor-in-interest to Chehalis Power Generating LLC (Chehalis)) filed a petition for

review of certain FERC orders in the DC Circuit Court of Appeals (Case No. 13-1008). The FERC orders at issue found that TNA Merchant should have filed an interconnection agreement between Chehalis and Bonneville Power Administration (BPA) as a rate schedule for the supply of reactive power (even though it did not contain monetary charges for reactive power service) and that a later rate schedule filed by Chehalis therefore qualified as a rate change (not an initial rate filing as TNA Merchant contends). Agenda item E-9 may be an order related to this proceeding.

**E-11: Delmarva Power & Light Company, Docket Nos. ER05-515-000, ER09-1158-000**

This proceeding involves Delmarva Power & Light Company's (Delmarva) Annual Transmission Revenue Requirement (ATTR). Pursuant to an order issued on April 19, 2006 approving an uncontested settlement, Delmarva is required to annually file an "Informational Filing" setting forth its recalculated ATTR for the upcoming rate year. Delmarva submitted its 2012 Informational Filing on May 15, 2012. That filing was challenged by Delaware Municipal Electric Corporation. Also, on May 15, 2013, Delmarva submitted its 2013 Informational Filing in Docket No. ER09-1158. Agenda item E-11 may be an order on Delmarva's Informational Filings.

**E-12: Entergy Services, Inc., Docket No. ER07-956-004**

On June 2, 2012, Entergy Services, Inc. (ESI) filed for clarification or rehearing of Opinion No. 505-A as it relates to the treatment of Accumulated Deferred Income Taxes (ADIT) associated with Net Operating Losses. Opinion No. 505-A established a ratio for determining the amount of Net Operating Loss ADIT that is to be functionalized in the Bandwidth Calculation. ESI requested that the Commission clarify how that ratio was established or, in the alternative, grant rehearing and revise the ratio used. Agenda item E-12 may be an order on rehearing and/or clarification.

**E-13: Entergy Services, Inc., Docket No. ER07-956-006**

This proceeding involves the Entergy Operating Companies' annual bandwidth filing that determined the bandwidth payments and receipts made in 2007 to roughly equalize system production costs among the Entergy Operating Companies in 2006. On June 2, 2012, ESI, as agent and on behalf of the Entergy Operating Companies, filed for rehearing of one aspect of a May 7, 2012 order that required Entergy to include interest on the recalculated bandwidth payment and receipt amounts. Agenda item E-13 may be an order on rehearing.

**E-14: Entergy Services, Inc., Docket No. ER09-1224-003**

This docket relates to Entergy's bandwidth formula contained in Service Schedule MSS-3 of the Entergy System Agreement. On June 6, 2012, the Louisiana Public Service Commission (LPSC)

filed for rehearing and clarification of Opinion No. 518, Order on Initial Decision, as it relates to several issues. In Opinion No. 518, the Commission found moot the issue of the treatment of interruptible load in the Bandwidth Calculation based upon rulings in another order issued in EL07-52. The LPSC claims that the rulings in the EL07-52 order govern the 2007 and 2008 Bandwidth Calculation filings, but not the 2009 Bandwidth Calculation filing, which is the subject of this docket; and therefore, the issue of the treatment of interruptible load in the Bandwidth Calculation for the 2009 filing must be addressed or explained why it is moot. Regarding Casualty Loss ADIT, the LPSC requests clarification by the Commission that Entergy must apply the same treatment to Casualty Loss ADIT as is applied to ADIT related to Net Operating Losses (NOL). The LPSC also asks that the Commission clarify that its ruling which allows the inclusion of Casualty Loss ADIT in the Bandwidth Calculation is effective prospectively from the date of Opinion No. 518, that is, with the 2012 bandwidth case. The LPSC stated that Entergy has not previously included Casualty Loss ADIT in its Bandwidth Calculation filings, and therefore it requests assurance that Entergy cannot now retroactively include Casualty Loss ADIT in previous filings. The LPSC rehearing request also states that Opinion No. 518 denies consumers the ability to recoup unjust and unreasonable costs in bandwidth cases and that permitting out-of-period costs and non-existent costs to enter the Bandwidth Calculation was unjust and unreasonable and requests the Commission reconsider its findings in those areas. Agenda item E-14 may be an order on rehearing and/or clarification.

**E-15: Entergy Services, Inc., Docket No. ER09-1224-004**

On July 6, 2012, ESI, on behalf of Entergy, submitted a Compliance Filing in accordance with Opinion No. 518. The Compliance Filing purports to address the issues of (i) the ADIT associated with NOL Carry-forward balances recorded in FERC Account No. 190 and (ii) Casualty Loss recorded in Account No. 282 to be properly included in its Bandwidth Calculation. The LPSC filed a protest of the Compliance Filing. Agenda item E-15 may be an order on Entergy's Compliance Filing.

**E-16: Entergy Services, Inc., Docket No. ER10-1350-004**

This docket also relates to Entergy's Bandwidth Calculation filings. In May 2010, Entergy filed its fourth annual bandwidth filing in accordance with the directives in Opinion Nos. 480 and 480-A. On July 23, 2010, the Commission issued an order that accepted and suspended the proposed rates and established hearing and settlement judge proceedings to address the issue of whether Entergy's actual calendar year 2009 formula inputs were correctly applied in the Bandwidth Calculation. The LPSC filed for rehearing with regard to the limited scope of the hearing, that is, year 2009 only. The LPSC stated that the ruling whereby only 2009 bandwidth inputs would be examined is contrary to

previous bandwidth rulings in which parties had the opportunity to address the prudence and reasonableness of all cost inputs in the formula. Agenda item E-16 may be an order on rehearing.

**E-17: Midcontinent Independent System Operator, Inc., Docket No. ER13-1074-001**

On May 10, 2013, FERC issued an Order Accepting Notice of Termination of the Generator Interconnection Agreement (GIA) among Otter Tail Power Company (Otter Tail) as Transmission Owner, Ellerth Wind LLC (Ellerth) as Interconnection Customer and MISO as Transmission Provider, effective May 11, 2013. In its request to cancel the GIA, MISO had claimed, among other things, that Ellerth was in breach and default under the GIA for its failure to meet milestones set forth in the GIA and had not taken any steps to cure the breach or the default. Ellerth filed for rehearing stating that it had on multiple occasions attempted to discuss alternatives for avoiding the breach and curing the default, but that MISO refused to discuss any alternatives. Agenda item E-17 may be an order on rehearing.

**Gas Items**

**G-1: Tennessee Gas Pipeline Company, LLC, Docket Nos. RP12-514-000, -001, RP11-1566-013, RP11-2066-002**

On March 23, 2012, in Docket No. RP12-514-000, Tennessee Gas Pipeline Company, LLC (TGPC) submitted Scheduling Priority *pro forma* Tariff records to revise TGPC's secondary in-the-path scheduling priority in accordance with the Stipulation and Agreement approved by the Commission in TGPC's section 4 rate case in Docket No. RP11-1566. Many parties filed protests in the RP12-514 proceeding, and on January 17, 2013, the Commission issued an Order Establishing Technical Conference to discuss the issues and concerns raised by TGPC's proposal. The Technical Conference was held in April 2013, and many parties filed comments stemming from the technical conference. Additionally, on April 19, 2012, the Commission issued an Order Clarifying, Granting in Part, and Denying in Part, Requests for Rehearing and Conditionally Accepting and Rejecting Tariff Records submitted by TGPC in Docket Nos. RP11-1566 and RP11-2066 seeking to increase transportation and storage rates and to revise certain non-rate provisions in its Tariff. Rehearing of certain findings in the April 2012 Order was requested by several parties. Agenda item G-1 may be an order on rehearing and/or clarification in the dockets.

**G-2: El Paso Natural Gas Company, Docket No. RP10-1398-000**

This proceeding involves a proposed rate increase for existing services and changes to certain terms and conditions of service filed by El Paso Natural Gas Company (EPNG) on September 30, 2010. On June 18, 2012, the Administrative Law Judge issued his Initial Decision in the proceeding. Many parties filed briefs on exceptions and briefs opposing exceptions. Agenda item G-2 may be an order on the Initial Decision.

**G-3: Chesapeake Energy Marketing, Inc. v. Midcontinent Express Pipeline, LLC, Docket No. RP13-1080-000**

On July 17, 2013, Chesapeake Energy Marketing, Inc. (CEMI) filed a complaint against Midcontinent Express Pipeline, LLC (MEP) alleging that MEP has denied CEMI reservation charge credits due under MEP's FERC Gas Tariff (Tariff) during a period where MEP could not provide service to CEMI from CEMI's primary receipt points to its delivery points under a service agreement for firm transportation service. CEMI also requested that in the event the Commission determines such credits are not required under MEP's Tariff language MEP be required to modify its tariff to be compliant with current Commission policy on reservation charge credits. Agenda item G-3 may be on order on CEMI's complaint.

**G-4: St. Paul Park Refining Co. LLC v. Enbridge Pipelines (North Dakota) LLC, Docket No. OR13-28-000**

On July 25, 2013, St. Paul Park Refining Co. LLC filed a complaint against Enbridge Pipelines (North Dakota) LLC alleging that a 2008 Settlement Agreement regarding the Phase 6 Project is no longer fair and reasonable based on current conditions and that the cost-of-service based surcharge derived from the Settlement Agreement no longer has any regulatory basis. Agenda item G-4 may be an order on the complaint.

**G-5: Kern River Gas Transmission Company, Docket No. RP04-274-030**

On March 25, 2013, Kern River Gas Transmission Company (Kern River) filed for clarification of one issue in Opinion No. 486-F. Kern River stated that it had requested clarification that the findings in Opinion No. 486-E, specifically, P 143, did not bar Kern River from seeking recovery *in a future rate case* of regulatory asset/liability amounts related to differences between actual book depreciation on its gross plant in service (including assets acquired after 2004) and the approved levelized depreciation. Kern River stated that Opinion No. 486-F was silent as to the issue and requested the Commission clarify the record. In the event the Commission disagrees with Kern River, Kern River requested rehearing of that aspect of Opinion No. 486-F. Agenda item G-5 may be an order on clarification and/or rehearing.

**G-6: CHS Inc., Federal Express Corporation, GROWMARK, Inc., HWRT Oil Company, MFA Oil Company, Southwest Airlines Co., United Airlines, Inc. and UPS Fuel Services, Inc. v. EnterpriseTE Products Pipeline Company, LLC, Docket No. OR13-25-000; Chevron Products Company v. EnterpriseTE Products Pipeline Company, LLC, Docket No. OR13-26-000**

These proceedings involve two complaints filed against EnterpriseTE Products Pipeline Company, LLC (EnterpriseTEPPCO) regarding the lawfulness of EnterpriseTEPPCO's FERC Tariff No. 55.28.0 wherein EnterpriseTEPPCO will no longer accept nominations for the transportation of jet fuel or distillates, which the Complainants allege violates the terms of a previously approved settlement agreement. Agenda item G-6 may be an order on the complaints.

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