

# February 2012 Meeting Summaries

These are summaries of orders voted by the Federal Energy Regulatory Commission at its February 16, 2012 public meeting. The summaries are produced by FERC's Office of External Affairs and are intended to provide only a general synopsis of the orders. These are not intended as a substitute for the Commission's official orders. To determine the specific actions and the Commission's reasoning, please consult the individual orders when they are posted to FERC's eLibrary found at [www.ferc.gov](http://www.ferc.gov).

## G-1, Press Release

### **FERC reaffirms current policies and terminates a Notice of Inquiry**

**E-2, *Analysis of Horizontal Market Power Under the Federal Power Act***, Docket No. RM11-14-000. The order addresses comments received in response to a Notice of Inquiry (NOI) issued last year in Docket No. RM11-14-000. The NOI sought comment on whether the Commission should incorporate aspects of the revised horizontal merger guidelines issued by the Department of Justice and Federal Trade Commission into the Commission's analysis of horizontal market power under section 203 of the Federal Power Act (FPA) and its analysis of electric market-based rate filings under section 205 of the FPA. The order states that, after reviewing the comments received, the Commission has decided to retain its existing policies regarding the analysis of horizontal market power in these contexts. The order reaffirms current Commission policy and terminates the proceeding in Docket No. RM11-14-000.

### **FERC denies rehearing of Order No. 755**

**E-3, *Frequency Regulation Compensation in the Organized Wholesale Power Markets***, Docket Nos. RM11-7-001 and AD10-11-001. The order denies Southern California Edison Company's (SoCal Edison) request for rehearing of Order No. 755. That rule revised the Commission's regulations to require a two-part payment, including both a capacity payment and a performance payment, for frequency regulation service provided in organized wholesale electric markets, in order to ensure just and reasonable and not unduly discriminatory or preferential frequency regulation rates. SoCal Edison sought rehearing. The order denies rehearing, explaining first, that the performance payment should reflect the generator's response to the dispatcher's instructions and second, that using zones or pricing regions in developing the rates and payments was an issue to be

addressed case-by-case in the context of the individual ISOs' and RTOs' compliance filings.

### **FERC denies rehearing of time-value refund requirement**

**E-5**, *OREG 1, Inc., OREG 2, Inc., OREG 3, Inc., and OREG 4, Inc.*, Docket Nos. EL11-22-001, *et al.* This order denies rehearing of the Commission's May 19, 2011 order granting in part and denying in part waivers requested by OREG of the filing requirement for qualifying facility status set forth in section 292.203(a)(3) of the Commission's regulations. In the May 19 order, the Commission granted waiver of the filing requirement and, consistent with precedent, granted exemptions from the Federal Power Act (FPA), except exemption from FPA sections 205 and 206. The Commission then imposed a time-value refund requirement for the period during which OREG collected rates without having either made an FPA section 205 filing or received an exemption from that FPA section 205 filing requirement. OREG sought rehearing of the time-value refund requirement. The order denies rehearing of that requirement.

### **FERC establishes hearing and settlement procedures on a contract dispute**

**E-6**, *Duquesne Light Company and Midwest Independent Transmission System Operator, Inc.*, Docket No. ER08-194-000, *et al.* This order addresses a breach of contract claim originally filed by MISO against Duquesne in the United States District Court for the Southern District of Indiana (District Court). The District Court sought the Commission's guidance on three issues. The order provides guidance on the three issues, finding that (1) Duquesne's execution of the MISO Transmission Owners Agreement created a binding commitment to MISO, (2) Article Five of the MISO Transmission Owners' Agreement obligates Duquesne to pay an exit fee, and (3) hearing and settlement judge procedures are necessary to determine a just and reasonable exit fee under the circumstances of this case.

### **FERC rejects filing**

**E-7**, *California Independent System Operator Corp.*, Docket No. ER11-3616-000, *et al.* The order rejects a May 20, 2011 filing by the California Independent System Operator (CAISO) for its Reliability Demand Response Resource proposal that would enable retail emergency-triggered demand response programs to be integrated into CAISO's day-ahead and real-time energy markets. The order finds that CAISO's proposal does not comply with Commission Order No. 745, and therefore rejects it without prejudice to CAISO re-filing a proposal that is consistent with Order No. 745.

### **FERC accepts uncontested settlement filing**

**E-8**, *California Independent System Operator Corp.*, Docket Nos. ER11-2256-000 and ER11-2256-002. This order accepts an uncontested settlement resolving all outstanding issues related to California Independent System Operator's (CAISO) capacity procurement mechanism (CPM) and exceptional dispatch mitigation measures. Among other things, the settlement provides for a CPM price of \$67.50/kW-year for two years following the effective date of the settlement and an increase to \$70.88 for the next two years, as well as tariff revisions regarding the term and quantity of CPM designations resulting from exceptional dispatches. Under the settlement, the CPM and all revisions to other tariff sections necessary to implement the CPM will expire after 48 months. The settlement also provides for the continuation of the current exceptional dispatch mitigation provisions.

### **FERC accepts uncontested settlement, dismisses request for rehearing**

**E-10**, *Potomac-Appalachian Transmission Highline, LLC*, Docket No., ER08-386-001, *et al.* This letter order accepts an uncontested settlement between Potomac-Appalachian Transmission Highline, LLC (PATH) and various parties settling challenges to a filing to collect the revenue requirement for an interstate transmission project to be constructed by PATH.

### **FERC denies, in part, and grants, in part a petition for declaratory order**

**E-11**, *Puget Sound Energy, Inc.*, Docket No. EL10-71-000. The order denies, in part, and grants, in part, Puget's June 4, 2010 petition for declaratory order requesting the Commission find that locational exchanges of electric power are permissible wholesale power transactions and not transmission transactions subject to an Open Access Transmission Tariff. The order determines that, when a simultaneous exchange transaction (as defined in the order) involves the marketing function of a public utility transmission provider, the public utility must seek prior approval from the Commission if the transaction involves its affiliated transmission provider's system. The Commission grants Puget's petition, in part, with regard to all other simultaneous exchange transactions, which the Commission concludes do not require prior Commission approval beyond the necessary authorization under section 205 of the Federal Power Act for the sale for resale of electric energy.

### **FERC terminates a Notice of Inquiry**

**E-12**, *Notice Terminating Proceeding*, Docket No. RM11-9-000. The order terminates a Notice of Inquiry (NOI) that issued following Puget Sound Energy Inc.'s June 4, 2010 petition for declaratory order in Docket No. EL10-71-000

concerning the regulatory treatment of locational exchanges of wholesale electric power. The Commission sought comment as to the circumstances under which locational exchanges of wholesale electric power should be permitted generically and circumstances under which the Commission should consider locational exchanges of wholesale electric power on a case-by-case basis. The order concludes that there is no basis for continuing this proceeding through the initiation of a rulemaking process and, instead, addresses such issues in the contemporaneous order addressing Puget's petition in Docket No. EL10-71-000 (Feb. 16, 2012 Commission Agenda item E-11).

### **FERC rules on storm event tracker surcharge**

**G-2**, *High Island Offshore System, L.L.C.*, Docket No. RP09-487-000, *et al.* The order addresses an issue, related to the applicability of a storm event tracker surcharge (Storm Event Surcharge) to certain Rate Schedule FT-2 shippers, which was reserved for later resolution in the Commission's April 2011 approval of an uncontested settlement between HIOS and its shippers. Consistent with the Commission's analysis in its December 15, 2011 order in *Sea Robin Pipeline Co., LLC* (Docket No. RP09-995-000, *et al.*), the order finds that the Storm Event Surcharge is applicable to the Rate Schedule FT-2 shippers, including BP and ExxonMobil, on HIOS' system. The order also rules that HIOS' January 12, 2010 notification of reclassification of certain contracts from negotiated rate status to discount status did not change their status, and the service agreements and associated letter agreements continue to be negotiated rate agreements.

### **FERC dismisses complaints challenging SFPP's ceiling levels**

**G-3**, *Chevron Products Co. v. SFPP, L.P.*, *ConocoPhillips Co. v. SFPP, L.P.*, and *Tesoro Refining and Marketing Co. v. SFPP, L.P.*, Docket Nos. OR12-1-000, OR12-2-000, and OR12-3-000. This order dismisses three substantively identical complaints filed individually by Tesoro Refining and Marketing Company, Chevron Products Company, and ConocoPhillips Company (together, the Complainants) against SFPP, L.P. (SFPP). The complaints challenge the lawfulness of SFPP's ceiling levels. The order dismisses all three complaints because the Complainants are not aggrieved by SFPP's ceiling levels and the Complainants have not challenged SFPP's rates or its operations or practices.

### **FERC grants, in part, and denies, in part, a request for clarification and rehearing**

**H-1**, *Marseilles Land and Water Company*, Project No. 13351-002. The order grants, in part, the request by Marseilles Land and Water Company (Marseilles L&W) for clarification and rehearing of the December 15, 2011 order of the

Director, Office of Energy Projects, issuing an original license to Marseilles L&W to construct, operate, and maintain the proposed 10.26-megawatt Marseilles Lock and Dam Project, located at the U.S. Army Corps of Engineers' (Corps) Marseilles Lock and Dam, on the Illinois River in LaSalle County, Illinois.

On rehearing, Marseilles L&W objects to Article 201(2) of the license, which imposes federal dam use charges. Marseilles L&W asks the Commission to affirm its 2004 determination (on a license previously held but subsequently terminated for the same site) that such charges are not appropriate for this project, because the Commission cannot assess charges for the use of water or water rights to which the licensee holds a vested right under state law. This Commission agrees with the licensee and affirms the 2004 determination.

The order denies Marseilles L&W's request that the Commission delete standard license Article 24, which requires the licensee to furnish free power to the Corps for its navigation facilities. The Commission said, consistent with the statutory provision that Article 24 implements, the Corps has substantiated that the free power is "reasonably necessary to promote the present and future needs of navigation and consistent with the investment cost to the licensee."

### **FERC grants rehearing and clarification**

**H-2**, *Commissioners of Public Works of the City of Spartanburg, South Carolina*, Project No. 4632-035. The order grants rehearing and clarification, as requested by the Commissioners of Public Works of the City of Spartanburg, South Carolina, licensee of the 800-kilowatt Clifton Mill Project No. 1, located on the Pacolet River, in Spartanburg, South Carolina. The Commissioners seek rehearing of two minor issues in FERC's December 22, 2011 order accepting Spartanburg's application to surrender the project license.

As part of the surrender process, Spartanburg will remove the Tainter gates located at the project dam. The December 22 order requires the licensee to "install new signs on each pier [of the dam] . . . warning recreational boaters of the potential hazards of boating through the project's Tainter gate openings."

Spartanburg asks to place the signs above the piers because, among other reasons, they would be more visible. The order finds this request to be reasonable and revises the December 22 order.

Spartanburg also seeks clarification that the December 22 order does not require it to remove structures within the entire river stretch in the project boundary, but only in the area of the Tainter gates, including areas immediately upstream and downstream of the gates. The order finds Spartanburg's interpretation reasonable and grants the requested clarification.