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FEDERAL ENERGY REGULATORY COMMISSION **FACTS**

May 2011 Meeting Summaries

These are summaries of orders voted by the Federal Energy Regulatory Commission at its May 19, 2011, 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.

E-1 & E-3 through E-8 -- News Release

E-9 -- News Release

FERC denies rehearing and accepts compliance filings

E-2, *Central Maine Power Co.*, Docket No. ER09-938-001, *et al.* The Commission denies rehearing of a prior order's finding that Central Maine properly submitted as a unilateral filing proposed changes to the ISO New England Tariff Attachment F Implementation Rule (the revenue requirement formula) to allow recovery of a return on a previously-authorized CWIP; the Commission explained that this filing could be made unilaterally by Central Maine and did not need to be a joint filing by all of the transmission owners. The Commission also accepts Central Maine's compliance filing, finding that it satisfies the Commission's directive to provide an annual report of construction costs.

Order on rehearing and clarification

E-10, *Promoting a Competitive Market for Capacity Reassignments*, Docket No. RM10-22-001. Order No. 739 revised the *pro forma* OATT to lift the price cap for sales of reassigned electric transmission capacity beyond the end of a two-year study period. Bonneville has declined to adopt this revision. As a result, Powerex and Portland General Electric sought clarification or, in the alternative, rehearing of Order No. 739. They request that the Commission clarify, or find on rehearing, that certain rate schedules, approved by the Commission in separate proceedings, that have allowed Powerex, PGE, and other transmission customers within Bonneville Power Administration's service area to make reassignments of electric transmission capacity via bilateral sales at negotiated rates remain operative. In addition, Powerex seeks clarification on how opportunity costs should be calculated under the price cap provisions of Bonneville's OATT. The draft order denies the requests for rehearing and clarification as beyond the scope of this rulemaking proceeding.

FERC accepts informational filing and waives qualification deadline for certain resources

E-11, *ISO New England Inc.*, Docket No. ER11-3034-000. The order accepts the informational filing made by ISO-NE regarding the qualification of capacity resources to participate in the fifth Forward Capacity Auction, scheduled to begin on June 6, 2011, for the 2014-2015 Capacity Commitment Period. The order also grants a one-time waiver of the qualification deadline for certain resources so that they may submit additional information, given that possible flaws in the information exchange process between certain resources and the Independent Market Monitor may have resulted in incorrect market status designations.

FERC accepts a proposed amendment, denies request for certain curtailment requirements

E-12, *Southwest Power Pool, Inc.*, Docket No. ER11-3154-000. This order accepts a proposed amendment to Appendix C of SPP's *pro forma* Generator Interconnection Agreement to require that wind-powered generating facilities executing interconnection agreements after May 21, 2011, be capable of reducing generation output in increments of no more than 50 MW in five minute intervals, when required to curtail to protect the reliability of the transmission system. The order denies Western Farmers Electric Cooperative's request that the proposed curtailment requirements be applicable to existing wind generators.

FERC grants petition to waive certain penalties

E-13, *California Independent System Operator Corporation*, Docket Nos. ER11-2819-000 and EL11-41. The order grants CAISO's petition for Commission approval to waive penalties imposed on scheduling coordinators pursuant to sections 37.5.2.2 and 37.11 of the CAISO tariff for submitting untimely meter data for settlement statements. The waiver will apply to violations committed during the time period from the November 1, 2009 trade date through the February 1, 2011 trade date. The Commission also instituted an investigation under section 206 of the Federal Power Act to have the CAISO clarify section 10.3.6.3

FERC grants petition for declaratory order

E-14, *SunZia Transmission, LLC*, Docket No. EL11-24-000. The order grants SunZia Transmission LLC's February 23, 2011 petition for declaratory order requesting Commission approval of its proposed ownership structure and plans to offer capacity at negotiated rates for a transmission project it is currently developing in New Mexico and Arizona. The order also denies, due to insufficient information, SunZia's request for a finding that electrical interconnection or transmission service requests are premature.

FERC grants in part and denies in part certain waivers, and orders time-value refunds

E-15, *OREG 1, Inc., OREG 2, Inc., OREG 3, Inc., and OREG 4, Inc.*, Docket No. EL11-22-000, *et al.* The order--noting that a filing with the Commission is a necessary pre-requisite for qualifying facility (QF) status--grants partial waivers of the filing requirements for QF status, but only to the extent that the waivers would allow exemptions from most of the Federal Power Act (FPA), from the Public Utility Holding Company Act of 2005 and from state laws as spelled out in sections 292.601 and 292.602 of the Commission's regulations. The order, however, denies waivers to the extent that the waivers would allow exemption from sections 205 and 206 of the FPA for the past periods of noncompliance with the filing requirements for QF status. The order further directs Petitioners to make time-value refunds for the periods of non-compliance with section 205 of the FPA.

FERC declines to initiate an enforcement action under PURPA

E-16, *Solutions for Utilities, Inc.*, Docket No. EL11-28-000. Solutions for Utilities, Inc. (SFUI) filed a petition for enforcement pursuant to section 210(h)(2) of the Public Utility Regulatory Policies Act of 1978 (PURPA), against Pacific Gas and Electric Company, Southern California Edison Company, San Diego Gas & Electric Company (collectively, California Utilities) and the California Public Utilities Commission (CPUC). SFUI alleges that the CPUC failed to properly calculate avoided cost rates and colluded with California utilities in deliberately misleading renewable energy developers about their rights under PURPA. SFUI requests that the Commission take all necessary and appropriate action, including the institution of an enforcement action against the CPUC. The order declines to initiate an enforcement action under section 210(h)(2)(A) of PURPA, which, under the statute, clears the way for SFUI itself to pursue the matter in court.

FERC accepts NERC's revised comprehensive approach to the assignment of violation risk factors and violation severity levels

E-17, North American Electric Reliability Corporation, Docket Nos. RR08-4-005 and RM08-11-001. The order accepts NERC's revised, comprehensive approach to the assignment of violation risk factors and violation severity levels. This approach in most instances assigns violation risk factors and violation severity levels only to the "main" requirement of a Reliability Standard and not to the sub-requirements. The order also accepts NERC's Guideline 1 Report, which evaluates violation severity level assignments to ensure that they do not have the effect of lowering the current expectation of compliance. In addition, the order approves NERC's revised violation severity level assignments for the 83 Commission approved Reliability Standards and Reliability Standard NUC-001-2, with the exception of those that are addressed in Docket No. RR08-4-006. Finally, the order grants rehearing of the Order No. 722 directive to change violation severity level assignments for three Reliability Standards requirements, in order to take into account NERC's revised comprehensive approach.

FERC accepts filing

E-18, North American Electric Reliability Corporation, Docket No. RD10-08-000. The order approves NERC's interpretation of Requirements R1.1 and R4 of Reliability Standard CIP-006-2 (Cyber Security - Physical Security of Critical Cyber Assets). The approved interpretation exempts dial-up accessible Critical Cyber Assets that use non-routable communication protocols from the "Physical Security Perimeter" required in Requirement R1.1 based on an exemption found in the "Additional Compliance Information" section of the Reliability Standard. The draft order also directs Commission staff to convene a technical conference to gather information and discuss with NERC, subject matter experts, and the industry the cyber security implications of NERC's approved interpretation to assess whether any modification to the Reliability Standard is necessary.

FERC denies rehearing and motion to reopen record of complaint case

E-19, Interstate Power and Light Company v. ITC Midwest, LLC, Docket No. EL09-11-001. The order denies Interstate Power and Light Company's (Interstate) request for rehearing and motion to reopen the record concerning its complaint against ITC Midwest. The order upholds the Commission's earlier order, which found that Interstate did not provide sufficient evidence to support its challenge to the implementation of IPL Midwest's formula rate. The order also denies Interstate's motion to reopen the record because Interstate's new information does not rise to the level of extraordinary circumstances.

FERC denies rehearing

E-20, Wolverine Power Supply Cooperative, Inc., Docket No. ER10-978-001. The order denies a request filed by Wolverine Power Supply Cooperative for rehearing of the Commission's May 28, 2010 order that denied Wolverine's request for waiver of the prior notice requirement and approved the company's rate schedule for providing reactive power from a generating facility in Sumpter Township, Michigan, effective June 1, 2010, rather than Wolverine's requested April 1, 2010 effective date. The order reaffirms that an April 1, 2010 effective date is inconsistent with Schedule 2 of the Midwest Independent Transmission System Operator's tariff, which provides that the effective date shall be the first day of the first month following Commission action.

FERC denies rehearing regarding market mitigation of generators in rest-of-state capacity regions

E-21, New York Independent System Operator, Inc., Docket No. ER10-2220-003.

The order denies rehearing of the Commission's October 12, 2010 order that accepted, subject to conditions, NYISO's proposal to implement a market power mitigation measure that applies to all generators located in the rest-of-state capacity regions that are committed or dispatched to maintain system reliability.

FERC approves, with modifications, an uncontested settlement

G-1, *Petal Gas Storage LLC*, Docket No. CP01-69-009. The order approves, as modified, an uncontested settlement between Petal and its customers resolving of issues set for hearing concerning Petal's initial recourse rates for its firm and interruptible transportation services. The Commission's approval is subject to Petal modifying the settlement to remove any provision that purports to bind the Commission to the more rigorous *Mobile-Sierra* "public interest" standard of review when evaluating future changes to the settlement.

FERC approves, with modifications, an uncontested settlement

G-2, *Southern LNG Company, LLC*, Docket No. RP10-829-000. The order approves, as modified, an uncontested settlement of issues concerning gas quality and interchangeability standards for Southern LNG for its firm and interruptible transportation services. The Commission's approval of the uncontested settlement is subject to Southern LNG modifying the settlement to remove any provision that purports to bind the Commission and non-settling parties to the more rigorous *Mobile-Sierra* "public interest" standard of review when evaluating future changes to the settlement.

FERC denies rehearing

H-1, *Southern California Edison*, Project No. 1390-064. The order denies the rehearing request filed by the County of Mono, California, in response to the Commission's March 17, 2011 order authorizing Southern California Edison to install a high-density polyethylene pipeline, mainly within an existing earthen ditch at its the Lundy Hydroelectric Project No. 1390, located on Mill Creek in Mono County, California, partly on land in the Inyo National Forest and on land administered by the U.S. Department of the Interior's Bureau of Land Management. The order finds that the Commission did not err by not preparing an environmental impact statement and by not implementing certain mitigation measures discussed in the environmental assessment.

FERC denies rehearing

H-2, *KC LLC and Pine Creek LLC*, Project Nos. 13090-001 and 13091-001. The order denies Pine Creek LLC's request for rehearing of Commission staff's March 2, 2011 order issuing a preliminary permit to KC LLC for Project No. 13090 and denying Pine Creek's competing permit application. Morgan Creek Hydroelectric Project is located in Inyo National Forest, in Inyo County, California. The order concludes that KC's March 3, 2008 supplement to its preliminary permit application was not a material amendment.

FERC denies rehearing and clarifies a prior order

H-3, *Bishop Tungsten Development LLC*, Project No. 13163-001. The order denies rehearing of Commission staff's March 2, 2011 order issuing a small conduit exemption to Bishop Tungsten Development for the Pine Creek Mine Water Discharge System Sites 1 and 2 Project, located on its mine water discharge system in Inyo County, California. The order affirms that the project meets the Commission's criteria for issuing an exemption and clarifies that the project boundary includes only the powerhouse at Site 2 and the 150-kW generating unit.

FERC denies rehearing

H-4, *Great River Hydropower, LLC and Mississippi River No. 21 Hydropower Company*, Project No. 13637-002. This order denies the request for rehearing of Commission staff's dismissal of Mississippi Hydro's permit application and Great River's license application because the entities misused the City of Quincy's municipal preference established by section 7(a) of the Federal Power Act.

FERC grants rehearing

H-5, *Jonathan and Jayne Chase*, Project No. 13381-002. The order grants Jonathan and Jayne Chase's request for rehearing of Commission staff's March 2, 2011 letter order dismissing the Chases' application for an exemption from the licensing requirements of Part I of the Federal Power Act and reinstates their exemption application. The order states that it is reasonable to interpret PURPA as permitting exemptions for projects that use a significant amount of the water power potential created by a dam, even if they also rely in part on the gradient of the penstock, and that are located in relatively close proximity to a dam, and so do not create a lengthy bypassed reach. The order states that prospectively projects where the powerhouse is located no further than 500 feet from the project and which derive a significant portion of head from the dam will qualify for a 5-MW exemption.

FERC denies rehearing and reconsideration of motion for late intervention

H-6, *City of Tacoma, Washington*, Project No. 460-043. The order denies a request for rehearing filed by Mr. Gerald Richert, a landowner in the Skokomish River Valley, of the Commission's July 15, 2010 order on remand and on an offer of settlement, amending the license, authorizing a new powerhouse, and lifting a stay of the license for the 131-megawatt Cushman Hydroelectric Project No. 460. The project is located on the North Fork of the Skokomish River in Mason County, Washington, and occupies U.S. lands within the Olympic National Forest and the Skokomish Indian Reservation. The order also denies a motion for reconsideration, filed by ranchers in the valley, of the Commission Secretary's September 8, 2010 notice denying their late motion to intervene and rejecting their request for rehearing.

FERC grants certificate for gas pipeline project in PA and NY that would provide northward flow of domestic gas for export to Canada

C-1, *Empire Pipeline, Inc.*, Docket CP10-493-000. The order grants Empire Pipeline a certificate authorizing it to construct, operate, and replace facilities (approximately 15 miles of 24-inch diameter pipeline to extend the existing Empire Connector Pipeline, an interconnection with the facilities of Tennessee Gas Pipeline Company, and modifications to an existing compressor station to permit bi-directional flow on Empire's system) in New York and Pennsylvania. The proposal will enable Marcellus Shale production to be shipped northward on the Empire system, while having no adverse effects on the service of any existing customers.

FERC grants certificate that would expand gas storage in Louisiana

C-2, *Pine Prairie Energy Center, LLC*, Docket No. CP11-1-000. The order authorizes Pine Prairie to expand its existing natural gas storage facility located in Evangeline Parish, Louisiana. The proposed Phase III Expansion Project would increase the total working gas capacity of the Pine Prairie Energy Center from 48 billion cubic feet (Bcf) to 80 Bcf. The order also requires Pine Prairie to hold a new open season to solicit permanent capacity release offers, grants Pine Prairie's request for continuing authorization to charge market-based rates, and requires Pine Prairie to revise certain tariff language relating to open seasons consistent with section 5 of the Natural Gas Act.

FERC denies rehearing

C-3, *CAIifornians for Renewable Energy, Inc. v. Williams Northwest Pipeline*, Docket No. CP10-5-001. This order denies a request filed by CAIifornians for Renewable Energy, Inc. (CARE) for rehearing of the Commission's December 3, 2010 order (Complaint Order), which denied CARE's complaint against Williams Northwest Pipeline (Northwest). The Complaint Order rejected CARE's allegations that Northwest constructed certain auxiliary facilities on the Lane County, Oregon property of Mary Benafel and her son, Christian Berger, without providing adequate notice or possessing the necessary property rights to do so, and that Northwest engaged in fraud to deny the Berger/Benafel's of the use of their property.

On rehearing, the Commission reiterates that the property rights issue can only be decided by a court of appropriate jurisdiction and, rejects CARE's argument that the record contains evidence that Northwest defrauded Mr. Berger and Ms. Benafel with respect to the location of the facilities.