

December 2011 Meeting Summaries

These are summaries of orders voted by the Federal Energy Regulatory Commission at its December 15, 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, struck

E-2, struck

FERC conditionally accepts proposal

E-3, *Louisville Gas and Electric Co., et al.* Docket Nos. ER11-4396-000 and EC98-2-000. The order conditionally accepts a proposal by Louisville Gas & Electric Company and Kentucky Utilities Company to replace Southwest Power Pool, Inc. as Independent Transmission Organization with TranServ International, Inc. and its subcontractor, MAPPCOR. The order finds that subject to conditions the proposal is just and reasonable and not unduly discriminatory, and is consistent with the requirements placed on the applicants in the order authorizing their 1998 merger, and in the order conditionally approving the applicants' withdrawal from the Midwest Independent Transmission System Operator, Inc..

FERC denies rehearing, grants in part and denies in part clarification

E-4, *Demand Response Compensation in Organized Wholesale Energy Markets*, Docket No. RM10-17-001. This order denies rehearing of the final rule, Order No. 745, and grants in part and denies in part clarification regarding certain provisions of the final rule. The order grants clarification to the limited extent of addressing the applicability of Order No. 745 to circumstances when it is not cost-effective to dispatch demand response resources. Order No. 745 standardized the compensation amount paid to demand response resources that participate in the organized wholesale energy markets by requiring Independent System Operators (ISO) and Regional Transmission Organizations (RTO) to pay demand response resources the market price for energy. Demand response compensation payments,

however, are required only when it is cost-effective for an ISO or RTO to make such payments.

FERC accepts in part and rejects in part a compliance filing; will require further compliance filing

E-5, California Independent System Operator Corp., Docket No. ER11-4100-000. This order accepts in part, subject to further compliance, and rejects in part, the California Independent System Operator Corp.'s (CAISO) Order No. 745 compliance filing. The final rule required each RTO and ISO to make a compliance filing by July 22, 2011, proposing tariff revisions necessary to implement the compensation approach adopted in Order No. 745, including a net benefits test, a cost allocation mechanism, and an assessment of their demand response measurement and verification protocols. Among other things, the order finds CAISO's proposed net benefits test is compliant with the direction provided in Order No. 745. However, because CAISO has not complied with other, related requirements of Order No. 745, the order directs CAISO to submit a further compliance filing. The order finds inconsistent with the requirements of Order No. 745 CAISO's proposal to reject bids by Proxy Demand and Reliability Demand Response Resources that are below the threshold price when the net benefits test is satisfied (that is, the Locational Marginal Pricing is equal to or greater than the applicable threshold price). The order also rejects CAISO's proposed cost allocation methodology because it has not demonstrated that its current cost allocation methodology, including the default load adjustment, appropriately allocates costs to those that benefit from the demand reduction.

E-6, struck

FERC accepts in part and rejects in part a compliance filing

E-7, PJM Interconnection, L.L.C., Docket No. ER11-4106-000. The order accepts in part, and rejects in part, a compliance filing made by PJM in response to Order No. 745. The order accepts PJM's compliance revisions with respect to the circumstances under which PJM will pay locational marginal price (LMP), as required by Order No. 745, to Economic Load Response participants (i.e., at those times when these offers are equal to, or greater than, the threshold price, as indicated by PJM's application of the Order No. 745-prescribed net benefits test). The order also rejects PJM's proposal to eliminate PJM's existing LMP-(G+T) (locational marginal price less certain generation and transmission) pricing rules at all other hours, finding that such a proposal is beyond the scope of Order No. 745. The order requires PJM to make an additional compliance filing to reinstate its existing tariff provisions for payment of LMP-G+T in circumstances not addressed by Order No. 745. The order notes that, if PJM wishes to propose changes to

these pricing provisions, the appropriate forum will be a separate section 205 filing.

FERC conditionally accepts in part and rejects in part a compliance filing

E-9, *Midwest Independent Transmission System Operator, Inc.*, Docket No. ER11-4337-000. This order conditionally accepts in part and rejects in part MISO's filing in compliance with Order No. 745, and requires MISO to submit a further compliance filing. Specifically, the order accepts MISO's proposal to pay the applicable hourly LMP to cost-effective demand response resources that clear the day-ahead and/or real-time energy market, subject to further clarification and compliance. The order rejects MISO's proposals to deny LMP compensation to demand response facilitated by behind-the-meter generation and to demand response resources that are not cost effective per the net benefits test, and requires MISO to submit tariff revisions implementing these determinations in its compliance filing. The order also rejects MISO's proposed bifurcated cost allocation methodology and requires MISO to submit a just and reasonable cost allocation methodology in its compliance filing. With respect to measurement and verification, as a general matter, the order defers deciding whether MISO has complied with the measurement and verification protocol requirements of Order No. 745, subject to the outcome of the proceeding regarding MISO's compliance with the measurement and verification protocol requirements of Order No. 719 and also subject to further compliance in this proceeding. Finally, the order conditionally accepts in part and rejects in part the proposed tariff revisions regarding MISO's demand response measurement and verification protocols and requires MISO to modify these proposed tariff revisions in its compliance filing.

FERC denies rehearing; conditionally accepts a compliance filing

E-11, *Midwest Independent Transmission System Operator, Inc.*, Docket No. ER08-394-021, -022. This order denies requests for rehearing of the Commission's April 16, 2009 order, and conditionally accepts MISO's June 17, 2009 compliance filing. In particular, the order addresses various issues related to the Commission's decision to require MISO to file tariff revisions related to its market monitoring plan for its voluntary capacity auction. It also addresses issues related to the Commission's decision to accept MISO's annualized \$80,000/MW initial cost of new entry (CONE) value for any deficiencies in capacity.

FERC accepts compliance filing

E-12, *Midwest Indep. Transmission Sys. Operator, Inc.*, Docket No. ER09-1049-000, *et al.* The order accepts MISO's April 28, 2009 and October 2, 2009 compliance filings to Order Nos. 719 and 719-A, subject to a further compliance filing. This order finds that MISO's April 28, 2009 filing and certain proposals in the October 2, 2009 filing, with certain modifications, comply with Order No. 719 in the areas of (1) demand response and pricing during periods of operating reserve shortage, including aggregation of retail customers; (2) long-term power contracting; and (3) market-monitoring policies. The order further finds that relevant proposals in the October 2, 2009 filing, with certain modifications, comply with Order No. 719-A. This order makes no findings as to MISO's compliance with the fourth area of reforms identified in Order No. 719: the responsiveness of RTOs and ISOs to their customers and other stakeholders. The Commission issued a separate order addressing MISO's compliance with this aspect of Order No. 719 on October 21, 2010.

FERC authorizes negotiated rates for transmission rights

E-13, *Southern Cross Transmission LLC*, Docket No. EL11-61-000. The order authorizes Southern Cross to charge negotiated rates for transmission rights on its proposed 3,000 MW high-voltage direct current transmission line that will run from a point near the Texas/Louisiana border to Mississippi. The order also accepts Southern Cross's proposal to allocate up to 75 percent of initial capacity on the proposed project for presubscription by anchor tenants, and to subscribe the remainder of the capacity in an open season auction.

FERC grants request seeking interconnection with a high-voltage direct current transmission line

E-14, *Southern Cross Transmission LLC and Pattern Power Marketing LLC*, Docket No. TX11-1-000. This order grants a request filed by Southern Cross and Pattern Power for a Commission order directing the City of Garland, Texas to interconnect with Southern Cross's proposed 3,000 MW high-voltage direct current transmission line. The order also grants the applicants' request for a Commission order directing Oncor Electric Delivery Company LLC and CenterPoint Energy Houston Electric, LLC to provide transmission services for power flows into and out of ERCOT. In addition, the order directs further proceedings to finalize the terms and conditions of the proposed interconnections, and conditionally approves a settlement among the parties related to the rates, terms, and conditions of the requested interconnection and transmission services. Finally, the order provides the requested disclaimer of jurisdiction, confirming that provision of the specified interconnection and transmission services will not cause ERCOT or any ERCOT entity that is not already a public utility to become a

public utility under Part II of the Federal Power Act and therefore, subject to FERC jurisdiction.

FERC approves an interpretation of a reliability requirement

E-16, *North American Electric Reliability Corporation*, Docket No. RD11-12-000. This order approves NERC's interpretation of Requirements R1 and R3.2 of Reliability Standard EOP-001-0 - Emergency Operations Planning. The Reliability Standard requires that each transmission operator and balancing authority develop, maintain, and implement a set of plans to mitigate operating emergencies, as well as coordinate such plans with other transmission operators and balancing authorities. The interpretation of Requirement R1 clarifies the meaning of the terms "adjacent" and "remote" with regard to neighboring balancing authorities, and clarifies the relationship between Reserve Sharing Groups and Reliability Standard EOP-001-0. The interpretation of Requirement R3.2 reinforces the need for communication and coordination between the transmission operator and balancing authority.

FERC accepts revised tariff sheets

E-17, *Southwest Power Pool, Inc.*, Docket No. ER12-140-000. The order accepts for filing SPP's revised tariff sheets to its open access transmission tariff. The revised sheets were submitted at the request of the Kansas Power Pool (KPP) to establish a formula rate for determining KPP's annual transmission revenue requirement. The order also suspends the revised tariff sheets for a nominal period, and permits them to become effective December 20, 2011, subject to refund and hearing and settlement judge procedures.

FERC accepts filing

E-18, *Midwest Independent Transmission System Operator, Inc., et al.*, Docket No. ER12-33-000. This order conditionally accepts the Exit Fee Agreement among (Midwest Independent Transmission System Operator, Inc. MISO), Duke Ohio, and Duke Kentucky covering exit fees under MISO Schedules 10, 16, and 17.

FERC accepts, with modifications, proposed tariff revisions

E-20, *Entergy Services, Inc.*, Docket Nos. ER05-1065-011 and OA07-32-008. The order accepts, with modifications, proposed revisions to Attachment C (Methodology To Assess Available Transfer Capability), Attachment D

(Methodology For Completing A System Impact Study), and Attachment E (Transmission Service Request Criteria) of Entergy's Open Access Transmission Tariff. The order also accepts, with modifications, certain revisions to Attachment T (Recovery of New Facilities Costs and Planning Redispatch Costs for Long-Term Services), previously submitted by Entergy in compliance with Order No. 890, on which the Commission has not yet made a determination. The order also addresses unresolved issues regarding (1) Entergy's modeling and curtailing practices relating to unscheduled Qualifying Facility energy, and (2) which of two options Entergy's Available Flowgate Capacity process's Study Horizon should use to resolve shortfalls in a load-serving entity's resource designations.

FERC denies rehearing

E-21, *New York Independent System Operator, Inc.*, Docket Nos. ER11-2224-007, ER11-2224-008. The order denies rehearing of two prior Commission orders concerning NYISO's update of its Installed Capacity (ICAP) demand curves. It denies rehearing of the ruling in the Commission's May 19, 2011 order that NYISO account for New York City property tax abatement in the calculation of the cost of new entry for the proxy peaking unit used to set the demand curve rates for the New York City capacity zone. The order also denies rehearing of the Commission's April 4, 2011 order which accepted a filing made by NYISO to establish that, in light of the Commission's conditional acceptance and suspension of NYISO's proposed updated demand curve rates, the then-effective ICAP demand curves would remain in effect on and after May 1, 2011, until a date set by Commission order.

FERC addresses requests for expedited reconnection of a qualifying facility to an electric power cooperative

E-24, *Gregory R. Swecker and Beverly F. Swecker v. Midland Power Cooperative and State of Iowa*, Docket No. EL11-39-001. The order addresses issues raised in a May 6, 2011 filing made by Gregory R. Swecker and Beverly F. Swecker. They filed a petition to enforce the Public Utility Regulatory Policies Act of 1978 (PURPA) against Midland Power Cooperative (Midland) and the State of Iowa. The Sweckers claimed that Midland has refused to purchase the excess electric energy produced by the Sweckers' qualifying facility (QF) at Midland's full avoided cost. The Sweckers asked the Commission to declare that the full avoided cost rate is the rate that Midland pays its full-requirements supplier for energy and power. The Sweckers also asked the Commission for payment of energy and capacity that has been delivered to Midland from 2004 to April 1, 2011, at the rate the Sweckers claim is the proper avoided cost rate. Finally, the Sweckers asked that Midland be prohibited from disconnecting its QF until all violations and complaints have been resolved. The Sweckers' May 6, 2011 filing was the latest

of many petitions to enforce PURPA filed by the Sweckers. In response to the May 6, 2011 filing of the Sweckers' petition to enforce PURPA, the Commission issued a notice of intent not to act. Shortly following issuance of the notice of intent not to act, Midland disconnected the Swecker QF. On October 27, 2011, the Sweckers filed a notice of that disconnection and a request for an expedited order for reconnection. On October 31, 2011, the Sweckers filed a second request for expedited order for reconnection.

The order finds that the actions of Midland, in disconnecting service to the QF owned by the Sweckers, are inconsistent with its obligations under PURPA. The order states that the underlying dispute concerning Midland's determination of its avoided costs for purchasing the output of the QF owned by the Sweckers is appropriate for resolution through a negotiation process with the Commission's Dispute Resolution Service. The order further states that if the parties are unable to report an agreement of the underlying dispute or progress toward an agreement within thirty days of the date of the order, the Commission will consider what steps to take next in the proceeding.

FERC proposes rule that would govern the filing of privileged documents

M-1, *Filing of Privileged Materials and Answers to Motions*, Docket No. RM12-2-000. This Notice of Proposed Rulemaking (NOPR) proposes revisions to 18 CFR 388.112 (superseding procedures throughout the Commission's rules and regulations) for filing privileged documents, modeled after the complaint procedures. The proposal permits electronic filing of privileged material and Critical Energy Infrastructure Information and, in proceedings subject to a right to intervene, access to such information via a protective agreement. The proposal will ensure that the same rules for filing privileged materials in complaint proceedings are extended to other proceedings, such as filings submitted under section 4 of the Natural Gas Act and section 205 of the Federal Power Act. In addition, the NOPR proposes to revise Rule 213(d) to provide that answers to motions requesting an extension of time or a shortened time for action be filed in 2 business days (instead of 15 days), unless otherwise ordered.

FERC rules on a proposal to recover hurricane-related expenses

G-1, *Sea Robin Pipeline Company, LLC*, Docket Nos. RP09-995-000 and RP10-422-000. The order addresses briefs on and opposing exceptions to an Initial Decision that set forth the ALJ's findings concerning a mechanism, the Hurricane Surcharge, to recover hurricane-related expenses proposed by Sea Robin in an NGA limited section 4 filing. This order reverses the ALJ's finding that a 21.4-year recovery period is just and reasonable and finds instead that Sea Robin's

proposed 4-year recovery period is just and reasonable. This order also reverses the ALJ's holding that carrying charges at the Commission-published interest rate should begin to accrue March 1, 2010, the date that the Commission authorized the Hurricane Surcharge to take effect, subject to refund, and finds instead that carrying charges should begin to accrue the later of August 1, 2009, the date Sea Robin filed to establish the Hurricane Surcharge, or the date the associated cost is incurred. Finally, this order finds that Sea Robin's discount agreements with certain shippers permit it to recover the Hurricane Surcharge from those shippers. Therefore, there is no need to modify those agreements, as the ALJ sought to do, pursuant to an analysis under the *Mobile-Sierra* public interest standard. The remainder of the Initial Decision is affirmed by this order.

FERC reaffirms rulings on oil pipeline rate issues, accepts compliance filing

G-3, *SFPP, L.P.*, Docket Nos. IS08-390-004 and IS08-390-006. This order addresses requests for rehearing of Opinion No. 511, the order on Initial Decision regarding SFPP's West Line rates, issued February 17, 2011, in Docket No. IS08-390-002. The order also addresses a related compliance filing by SFPP submitted in Docket No. IS08-390-006 containing the cost of service information SFPP filed to support the revised West Line rates as required by Opinion No. 511. On rehearing, the order affirms the Commission's prior findings in Opinion No. 511 regarding throughput, litigation costs, capital structure and the cost of capital (both debt and equity), and all income tax allowance issues except those related to the calculation of allowance for deferred income taxes. The order grants rehearing regarding the application of SFPP's cost allocation methodology to certain elements of that methodology involving the assignment of certain costs to SFPP and the exclusion of the KM Canada Entities. The order also grants rehearing (i) requiring SFPP to recalculate its starting rate base and (ii) on the issue of substantial divergence, requiring SFPP to modify its indexing calculations. In the indexing compliance filing, the Commission will permit SFPP to apply one-quarter of the July 1, 2009 oil pipeline index increase for changing costs during 2008. This one-quarter increase corresponds to the last three months of 2008 which were outside the base and adjustment periods in this proceeding. SFPP is directed to make a revised compliance filing consistent with the order.

FERC rejects revised tariff filing, grants rehearing

G-4, *Northern Natural Gas Company*, Docket Nos. RP11-2061-001 and RP11-2061-000. The order addresses Northern's response, and Indicated Shippers' request for rehearing on the *force-majeure* ruling in the Commission's June 16, 2011 order.

In that order, the Commission directed Northern to revise its tariff provisions governing reservation charge credits to conform with Commission policy with respect to non-*force majeure* situations, unless Northern could show why it should not be required to do so. However, the June 16 Order did not require Northern to revise its tariff to provide reservation charge credits during *force-majeure* events, as Indicated Shippers had requested, based upon Northern's representation that it allocated some of its fixed costs to its usage charge.

The December 2011 order finds that Northern has not shown why it should not be required to revise its tariff to implement reservation charge crediting provisions consistent with Commission policy as to non-*force majeure* events. The order also concludes that the amount of fixed costs that Northern allocated to the usage charge, three percent of its cost of service, is not an equitable sharing of the risk with its shippers. Accordingly, the order grants Indicated Shippers' request for rehearing, and requires Northern to grant reservation credits for *force-majeure* outages, but Northern may modify the approved methods for crediting for *force-majeure* outages, the Safe Harbor and No-Profit methods, to reflect that Northern allocates some of the fixed costs to the usage charge.

FERC denies rehearing; grants request for clarification

H-1, *Public Utility District No. 1 of Snohomish County, Washington*, Project No. 2157-195. This order denies the City of Everett, Washington's request for rehearing of Commission staff's September 2, 2011 order issuing a new license to Public Utility District No. 1 of Snohomish County for the continued operation and maintenance of the Henry M. Jackson Hydroelectric Project No. 2157. This order grants the City's request for clarification of one of the license articles.

FERC denies rehearing

H-2, *Appalachian Power Company*, Project No. 2210-214. The order denies a rehearing request filed by Tri-County AEP Relicensing Committee of the Commission's Oct. 20, 2011 order. Today's order addresses Tri-County's intervention request. The order emphasizes that interventions are only allowed where a post-license matter entails a material change in project development or terms and conditions of the license, or could adversely affect rights of property owners in a manner not contemplated by the license. Neither of these things occur here. Tri-County will continue to have the opportunity to be heard on global issues regarding the plan.

FERC denies rehearing

C-1, *Transcontinental Gas Pipe Line Company, LLC*, Docket No. CP11-4-001. The order denies Atlanta Gas Light Company's request for rehearing of the

Commission's March 28, 2011 order authorizing Transcontinental Gas Pipe Line Company's abandonment of storage and transportation services being provided to Atlanta Gas in accordance with the case-specific Part 157 certificate authority. The order affirms the March 28 order's finding that abandonment/conversion of case-specific services to open-access services will be authorized "unless it is otherwise demonstrated that in a given case that such conversion would be unreasonable."

The order also points out that, under the terms of the Part 157 Rate Schedule at issue, transportation service is only available to shippers also taking Transco's related storage service. That service is no longer available because CPG (the entity that provided the storage service to Transco that Transco, in turn, provided to its SS-1 shippers) has now abandoned its storage capacity by transfer to a new company. Atlanta Gas did not seek judicial review of the Commission's authorization of that abandonment.