



EPA Defends MATS Before Supreme Court

By Rich Heidorn Jr.

Supreme Court Shows Ideological Divide

WASHINGTON — The Supreme Court's ideological divide was on display Wednesday as justices sparred with attorneys over whether the Environmental Protection Agency should have considered costs before deciding whether to regulate mercury and other hazardous air pollutants from power plants.

The case combined what began as three

Continued on page 17

Challenge Too Late for Targeted Coal Plants

American Electric Power and FirstEnergy plan to shut down more than 9,200 MW of coal-fired generation and invest hundreds of millions to keep other plants operating under the Environmental Protection Agency's Mercury and Air Toxics Standards (MATS).

Those plans won't change even if the Su-

Continued on page 17

CEO Crane to DC PSC: Exelon Committed to Jobs, Ratepayers

By Suzanne Herel

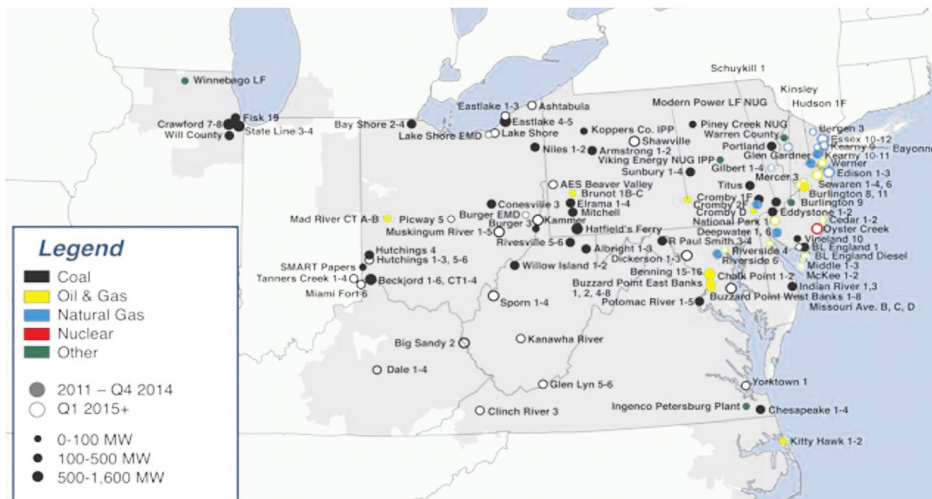
Exelon would retain Pepco Holdings Inc.'s D.C. headquarters, not forcibly reduce the workforce for at least two years and match any commitments it has made to New Jersey, Delaware and Maryland if it is permitted to buy Pepco in a proposed \$6.8 billion deal. CEO Christopher Crane testified Monday before the District's Public Service Commission.



Crane at the D.C. PSC on Monday.

Those promises include customer bill credits, grid reliability improvements, renewable energy projects, energy efficiency programs,

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PJM unit retirements 2011-19 (Source: Monitoring Analytics LLC)

Dynegy Wins FERC OK for \$6.25B Duke, Energy Capital Partners Generation Deals

By Ted Caddell

The Federal Energy Regulatory Commission on Friday approved Dynegy's purchase of 12,500 MW of generation from Duke Energy and Energy Capital Partners, the final approval needed for both deals (EC14-141, EC14-140).

The \$3.45 billion ECP deal is scheduled to close Wednesday, while the \$2.8 billion

Duke acquisition will close Thursday.

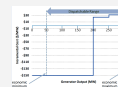
With the two deals, Dynegy — which emerged from bankruptcy less than three years ago — has boosted its total ownership to nearly 26,000 MW of generation.



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PJM May Consider Hourly Pricing for Generators



PJM members were asked last week to consider allowing generators to revise their offers hourly to reflect changes in gas prices. (p.2)

External Constraint Vexing MISO, Market Monitor Says



MISO's Market Monitor says transmission loading relief requests attributed to a TVA constraint are causing price volatility. (p.5)

FERC Relieves Retiring Coal Plants from MISO Capacity Deficiency Penalties



FERC approved MISO's proposal to exempt some owners of retiring coal plants from capacity deficiency penalties. (p.7)

PJM News (p.2-4)

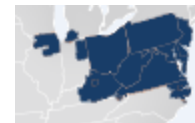
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PJM NEWS



PJM May Consider Hourly Pricing for Generators

By Michael Brooks

WILMINGTON, Del. — PJM members were asked last week to consider allowing generators to revise their offers hourly to reflect changes in gas prices.

PJM is the only RTO in the U.S. that does not allow generators to vary their cost- or market-based offers hourly, GT Power Group’s David Pratzon, representing Calpine, said in a proposed problem statement presented to the Markets and Reliability Committee on Thursday.

That means gas-fired generators must submit a single price for the day-ahead and real-time energy markets even though gas prices can change in midday. More flexible pricing would allow generators to reduce the risk premiums they include in their offers because they would have greater assurance that their prices reflected fuel costs, Pratzon said.

The most recent RTO to allow hourly price changes is the gas-dependent ISO-NE, which adopted the new rules in December.

In addition to benefiting gas-fired generators, Pratzon said, the flexibility also would be useful to energy storage resources and industrial customers whose opportunity costs for cutting loads can vary based on the hour of the day. “I can see a variety of different classes of resources that this would be useful to,” he said. “We don’t know all the ways this optionality could be used.”

PJM currently requires generators to select a single cost schedule for each unit’s day-ahead offer.

In February, PJM introduced an improvement to eMKT allowing gas-fired generators

to make limited intraday changes in price schedules.

The change allows generators that did not receive day-ahead commitments and were not picked up in the reliability assessment and commitment (RAC) run to update their fuel prices three hours in advance of the operating hour. Units with day-ahead commitments and those selected in the RAC run can switch prices after the end of their last committed hour. Units committed in real time remain unable to change their cost schedules until released.

Previously, there was no way for generators to change their prices once PJM locked them at 6 p.m. the day before.

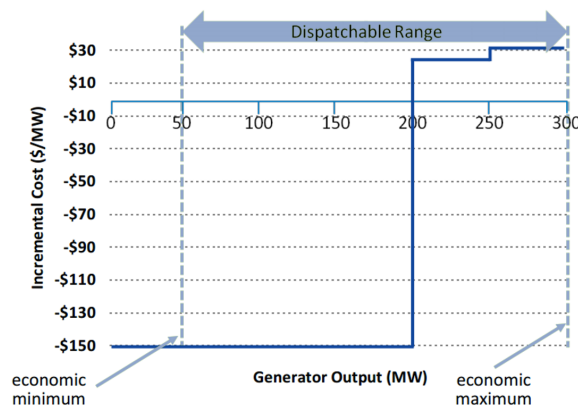
Stakeholders at the MRC meeting expressed support for the additional flexibility sought by Calpine.

“We think this is a critically needed improvement to the energy market,” Dominion’s Lisa Moerner said. “It has been working incredibly well” in ISO-NE, she added.

The proposal “will do a lot to harmonize gas-electric coordination that we’ve been trying to achieve,” said Marji Phillips of Direct Energy.

Dan Griffiths, executive director of the Consumer Advocates of PJM States, said his members “don’t have a principled objection” to the potential change but are concerned about generators claiming unreasonably high gas prices.

Independent Market Monitor Joe Bowring echoed Griffiths’ concern. “Let’s not forget what the reason was for the rule requiring



ISO-NE graphical depiction of self-dispatch unit using pricing flexibility.

only one offer per day by generating units,” Bowring said. “It was to prevent the exercise of market power.”

“It’s important this doesn’t become a tool for the exercise of market power, which it easily could be used to do. There are good ways to implement this and bad ways to implement it.” Nevertheless, Bowring said, “it’s clearly a worthy discussion” to have, calling it “potentially efficiency enhancing.”

The MRC will vote on the problem statement next month. Pratzon suggested a new senior task force consider the issue.

Pratzon said it took ISO-NE about 18 months to implement its changes from the beginning of discussions. By learning from the RTO’s experience, he said, PJM might be able to make the change before next winter.

However, even if stakeholders agree quickly on new rules, Pratzon acknowledged, required software changes could delay implementation.

PJM Rule Change on CT Lost Opportunity Costs Returned to Task Force

By Suzanne Herel

WILMINGTON, Del. — The PJM Markets and Reliability Committee on Thursday tabled voting until next month on a proposal to tighten rules on lost opportunity costs for combustion turbines.

PJM and Independent Market Monitor Joe Bowring supported the change, saying that

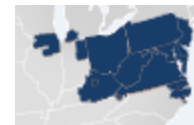
current rules provide incentives for units to offer and clear in the day-ahead market but not in the real-time market.

Under the proposal, units with start-up and notification times of no more than two hours and minimum run-times of two hours would be paid lost opportunity costs if they are not dispatched. Resources with real-time startup and notification times or minimum run-times of more than two hours will

not receive lost opportunity payments unless PJM bars them from running in real time to avoid transmission overloads.

PJM would use the generator’s energy schedule to calculate opportunity costs except for self-scheduled units, for which the higher of the available cost- or price-based curves would apply.

Continued on page 3



DP&L Protests Dominion Project over New Cost Allocation

By Suzanne Herel

Dayton Power & Light is protesting a \$106 million transmission project by Dominion Resources under PJM's 2015 Regional Transmission Expansion Plan because of a change in how the project's costs will be allocated (ER15-1344).

The 500-kV Cunningham-Elmont end-of-life project (Project b2582) initially was designated a supplemental proposal, for which Dominion, as the incumbent utility, would bear the full cost.

"That was the correct designation for this project because it is simply a replacement for an existing transmission line for which Dominion has always had 100% cost responsibility," DP&L said in a March 24 filing with the Federal Energy Regulatory Commission.

But after changing its local planning criteria last year, Dominion asked PJM to study the need for the project and received permission to change its designation to baseline, categorizing it as a new line and allowing Dominion to export more than half of its expense.

The new allocation scheme will charge DP&L about \$1 million, the Ohio utility said, noting that larger PJM stakeholders such as

Commonwealth Edison and American Electric Power will be expected to pay six to seven times that much. While AEP has filed a motion to intervene in the case, DP&L is the only entity to have submitted a protest.

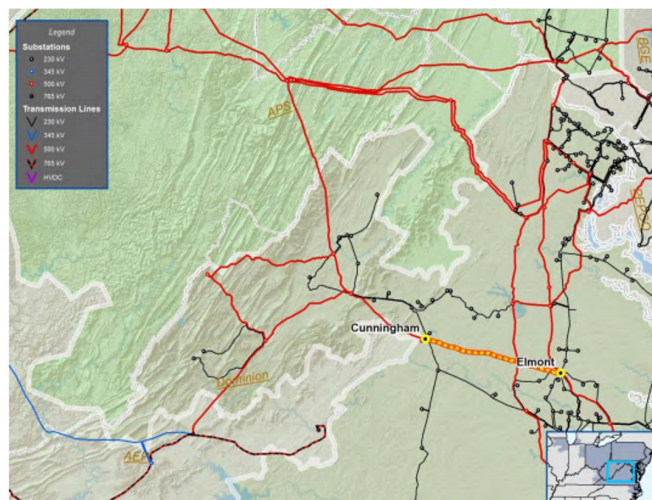
The Dominion project was described as a supplemental project in a [reliability analysis update](#) at PJM's July 10, 2013, Transmission Expansion Advisory Committee.

The criteria PJM used to redefine the transmission project, DP&L said, "was not developed by PJM for consistent application across PJM, but was instead based solely on 'Dominion Planning Criteria.' In other words, Dominion's unilateral change of its own criteria for construction within its own zone has resulted in a recharacterization of this project from a supplemental project for which it would bear 100% of the costs to a baseline project for which about 52% of costs are exported to other zones."

DP&L is asking FERC to reject the project or

defer consideration to allow PJM transmission owners time to revise the Tariff to prevent them from unilaterally revising local planning criteria to secure baseline status for their projects.

DP&L said Dominion is exploiting what it called a loophole resulting from an Order 1000-related filing by PJM TOs that permits a portion of the costs of new 500-kV baseline projects to be shared by load-serving entities throughout the RTO.



Cunningham-Elmont Rebuild Project (Source: PJM)

PJM Rule Change on CT Lost Opportunity Costs Returned to Task Force

Continued from page 2

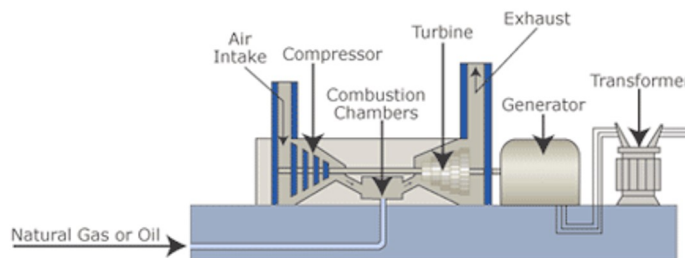
"The two-hour start notification and two-hour minimum run are designed to be aligned with what the dispatch operators can see," said Stu Bresler, PJM vice president of market operations.

Bowring called the proposal "clearly an improvement."

But Ed Tatum of Old Dominion Electric Cooperative raised an objection to limiting LOC compensation to units with minimum run times of two hours or less, saying it was too restrictive.

Susan Bruce of the PJM Industrial Customers Coalition said dropping the restriction would be "cherry picking" on a compromise that stakeholders agreed to at the Energy Market Uplift Senior Task Force, where the proposal won 84% [support](#) last month.

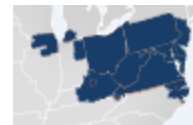
With two objections and one abstention, the MRC decided to send the issue back to the task force for additional discussions at its meeting tomorrow. The MRC will vote on the current proposal at



Combustion turbine diagram. (Source: TVA)

its April meeting, considering any friendly amendments or alternate motions developed at the task force meeting.

Separately, members approved a proposal that was unanimously approved by the task force, instructing the Planning Committee to treat uplift as an input to analyses under the Regional Transmission Expansion Plan.



PJM MRC/MC Briefs

Markets and Reliability Committee

WILMINGTON, Del. — The MRC endorsed the following Thursday:

- Manual 11: Energy & Ancillary Services Market Operations — Updates manual to include a method for screening of demand bids by load-serving entities, as approved by the Federal Energy Regulatory Commission in November ([ER14-2976](#)). Bids are limited to the LSE's calculated zonal peak demand reference point for the day plus whichever value is more, 30% of the reference point or 10 MW. PJM said the need for such limits was illustrated by the default of a retail provider in January 2014 after it mistakenly entered a demand bid about 100 times its actual load. (See [MIC Briefs](#).)

Marji Phillips of Direct Energy said the change is requiring her company to confirm its loads daily by phone with Pepco Holdings Inc. because of problems with Pepco's electronic system. "Every day, we have no idea whether we will be able to meet the obligations we have to meet," she said. "It is killing all the LSEs in the Pepco area — Delaware, New Jersey, D.C. It's a tremendous problem."

- Manual 12: Balancing Operations — Revisions describe the required regulation range, specifying that resources are required to symmetrically provide the total amount of regulation assigned. The changes also detail how performance evaluations are conducted and further define the basepoint around which the resource will be regulating.
- Non-substantive revisions regarding financial transmission rights. The changes concern clearing deadlines, bilateral trades and Tariff references.
- A change to demand response modeling assumptions used in load deliverability analyses for the Regional Transmission Expansion Plan. The new method would use the average of the last three years of committed DR for each zone. (See [Change Proposed in PJM Demand Response Modeling](#).)

Revisions to Manual 18 Address Capacity Performance

The MRC discussed manual changes needed to implement PJM's Capacity Performance proposal, which is pending before FERC

(EL15-29). The proposal would penalize underperforming units and reward those that over-perform. (See [PJM Defends Capacity Performance Proposal: Drops Change for LSEs](#).)

The revisions, which affect Manual 18: PJM Capacity Market, would allow capacity resources to avoid performance penalties by requesting approval of retroactive replacement transactions within three business days after a delivery day that includes a performance assessment hour.

That would allow a participant with over-performing uncommitted capacity to replace underperforming committed capacity in the same account, Vice President of Market Operations Stu Bresler said.

Market Monitor Joe Bowring said the changes present an opportunity for economic withholding. "It is an incentive to withhold, and that is one of our concerns," he said.

Members will be asked to endorse the revisions at the next MRC meeting if FERC has approved the proposal by then.

Members Committee

CTS Product, Fee for \$20M-plus Projects Approved

The Members and Markets and Reliability committees endorsed a \$30,000 non-refundable fee for studying proposed transmission improvements with estimated costs of \$20 million or more. The fee, which PJM would evaluate for two years, would apply to both greenfield projects and upgrades by incumbent transmission operators. FERC last month rejected an earlier proposal to exempt transmission upgrades from the study fee. (See [FERC Rejects Fee on Greenfield Transmission Projects](#).)

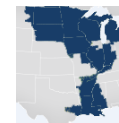
The MC also endorsed Tariff and Operating Agreement revisions to implement Coordinated Transaction Scheduling (CTS) with MISO. The objective is to improve interchange scheduling efficiency by aligning energy scheduling with interface prices and adding the option for market participants to schedule energy transactions using an interface bid. (See [PJM, MISO Reach Agreement on New Interchange Product](#).)

— Suzanne Herel

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MISO NEWS



External Constraint Vexing MISO, Market Monitor Says

By Chris O'Malley

MISO's Independent Market Monitor says transmission loading relief requests attributed to a Tennessee Valley Authority constraint are causing price volatility within the RTO.

David Patton, CEO of Potomac Economics, told the Markets Committee of the Board of Directors he was concerned MISO is taking costly actions to manage a constraint that is not binding and that TVA may be relying excessively on external relief.



Patton

"We have a relatively unfavorable set of provisions that obligate us to model the constraint in our market, as if this is our constraint, and then obligates us to provide what appears to be an oversized amount of relief on the constraint," Patton said during a presentation to the committee March 25.

Patton cited a TLR event on Feb. 20 in which TVA called for curtailing non-firm commitments toward managing the Volunteer-Phipps Bend constraint. He explained that when a TLR is called, MISO activates the constraint in its market, causing its generators to move and provide the flow relief requested.

The price effects on MISO's market "can be dramatic," Patton said, citing the price volatility that occurred in Michigan between 1 a.m. and 1 p.m. on Feb. 20.

Real-time prices at the Michigan Hub that were fluctuating around \$50/MWh without the constraint began "bouncing up and down" to as high as \$450/MWh with the effect of the constraint. "When prices do this we're ramping generators up and down," Patton said.

That one day's price volatility raised the average price in February by more than 5%, Patton told the committee.

Uneconomic Flows

Besides causing price volatility, the TLRs affect the dispatch of MISO's resources, Patton said, pointing to flows between MISO South and MISO Midwest regions.

Without the TLR constraint, transfers from MISO South to MISO Midwest were economic because of relatively high natural gas prices in the Midwest.

But the February constraint caused flows to frequently change direction and flow uneconomically from Midwest to South, Patton said.

On Feb. 20, MISO was virtually the only entity re-dispatching to reduce the flow on the constraint, "yet we're incurring tremendous costs in our dispatch to provide relief, so there's a couple of problems there."

"One is that the amount of relief we're being asked for is overly aggressive," Patton continued, and the other is that MISO's flows aren't considered firm even though it is dispatching its own generation to serve its load.

"We also have concerns about other entities around us that are being overly aggressive in their use of the TLR process and we're not sure there's any oversight of what entities are doing."

Board Chairman Judy Walsh asked Patton what MISO can do about the problem and how much it is costing the RTO.

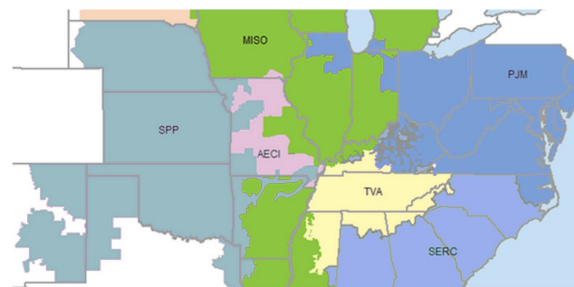
Patton said he believes there are provisions that would allow MISO to categorize its day-ahead dispatch as firm. That would allow the RTO not to have to provide relief unless entities around MISO, including TVA, are curtailing services or redispatching their own systems. "At this point we're carrying all the water on a day like this."

As for cost, "it's costing us tens of millions [of dollars] in congestion. It's hard to quantify what it costs us" insofar as ramping generation up and down.

On the upside, Patton said the biggest concerns MISO has had historically with TLRs involved SPP, but the market-to-market process the RTOs now use to cooperatively manage each other's constraints has virtually eliminated those TLRs.

Working on Congestion Management

Todd Ramey, who manages MISO's real-time operations, told the committee that the TVA constraints are "interregional transfer constraints that bind infrequently



but predictably."

Typically this occurs when there are high loads to the north and east of the interconnection and lower and more moderate loads to the south and west.

The weather was particularly cold in the north on the day cited by Patton.

Ramey said he has no doubts that reliability concerns of the TVA reliability coordinator in the flow gate "were legitimate" during the period in February, but he said he concurred with Patton's concerns.

Since the Feb. 20 constraint, MISO has been working with TVA to improve joint administration, Ramey said. "Efforts are underway. We've had conference calls with TVA" and plan additional meetings to go over data for joint congestion management, Ramey added.

Winter Performance Improved

At the meeting, Patton also summarized market conditions for February and noted a stark contrast from a year earlier, when the RTO struggled with extreme cold during the polar vortex.

This February, energy prices were down almost 40% — and natural gas prices down 57% compared to the year before.

"Market conditions were quite a bit more stable this year," Patton said, noting fewer fuel supply issues, more available generating units and milder weather.

Ramey said while this past winter has been referred to as relatively mild, there were some parts of the MISO region that experienced cold temperatures reminiscent of the winter of 2013-14. Ramey cited a much-improved performance of peaking units and continued coordination with gas pipeline operators in the most recent winter.



FERC Faulted, Asked to Reconsider Presque Isle SSR Ruling

By Chris O'Malley

Multiple stakeholders have asked the Federal Energy Regulatory Commission for a rehearing of its Feb. 19 ruling involving MISO's system support resources agreements at a trio of aging power plants in Michigan's Upper Peninsula.

The February ruling affirmed FERC's previous finding that MISO could no longer allocate broadly within the American Transmission Co. pricing zone the SSR costs of keeping open three aging plants — most notably the Presque Isle generating station near Marquette. (See [FERC Upends MISO's SSR Cost Allocation Practice](#).)

The March 23 filings seek rehearing on several parts of the commission's February order that required MISO to file a new study method to identify entities that benefit directly from the three plants and allocate costs of the agreements directly to them.

Double Recovery

One of the requests was filed jointly by Tilden Mining and Empire Mining Partnership, which last October filed a protest alleging Presque Isle owner We Energies was recovering SSR costs through the utility's retail rates as well as through MISO's SSR surcharges. Last November, FERC acknowledged the double recovery issue was raised by several stakeholders. It accepted a replacement SSR but said it would be subject to refund.

But the mines complain FERC declined to address concerns about double recovery of fixed capital costs through We Energies' retail rates.

"FERC failed to engage in reasoned decision making and abdicated its statutory responsibility to assure that MISO's federally regulated SSR rates are just and reasonable in the context of shared state and federal regulatory responsibility," the mines said ([ER14-1242](#)).

"Whether or not the commission likes it, the fact is that the state-authorized recovery of [Presque Isle] costs through [We Energies'] 2014 Wisconsin retail rates included full recovery of the Wisconsin share" of the utility's Presque Isle costs.

The Sault Ste. Marie Tribe of Chippewa Indians made the same argument in a separate filing ([ER14-2952-002](#)).

The City of Mackinac Island also requested rehearing, also citing the mines' reasoning. The city also alleges that MISO should not have authorized an SSR agreement for Presque Isle because the plant's owner had not made a "definitive" retirement decision ([EL14-103](#)).

Michigan PSC

The Michigan Public Service Commission filed a 20-page request saying FERC should reverse its retroactive allocation of SSR costs for Presque Isle, White Pine and Escanaba plants ([ER14-2952](#)). FERC established April 3, 2014, as the retroactive date.

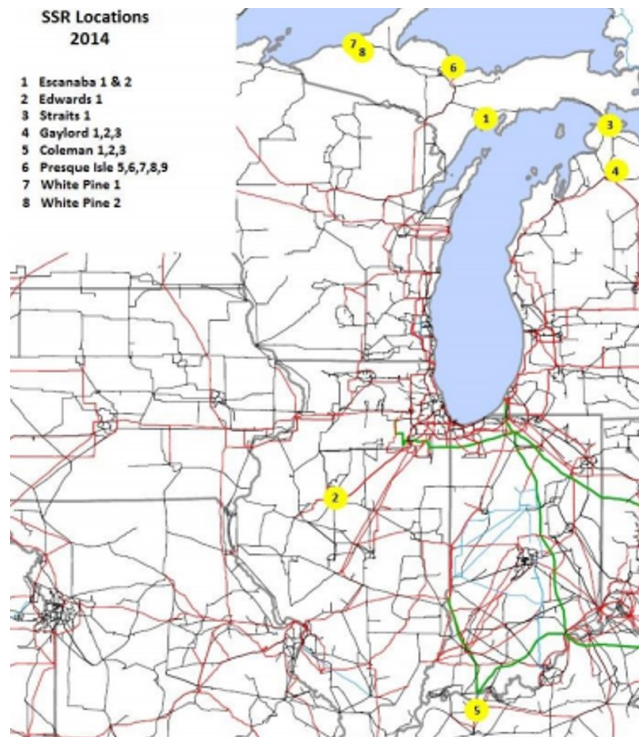
FERC's Feb. 19 order was a win for the Wisconsin Public Service Commission, which last year alleged MISO improperly allocated SSR costs on a *pro rata* basis to all load-serving entities in the ATC footprint.

The Wisconsin PSC argued that 92% of the projected \$52.2 million in annual fixed costs under the original Presque Isle SSR would be allocated to load serving entities in Wisconsin even though they would receive only 42% of the benefits from the plant's continued operation.

The city of Escanaba, Mich., asked the commission to clarify that its rejection of MISO's cost allocation proposal does not bar "a methodology using all or part of either an optimal load shed methodology or some use of [local balancing authority area] boundaries under certain circumstances, if MISO's compliance process fails to produce a suitable substitute" ([EL14-34](#)).

SSR Locations
2014

- 1 Escanaba 1 & 2
- 2 Edwards 1
- 3 Straits 1
- 4 Gaylord 1,2,3
- 5 Coleman 1,2,3
- 6 Presque Isle 5,6,7,8,9
- 7 White Pine 1
- 8 White Pine 2



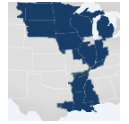
MISO generators with SSR agreements. (Source: MISO)

Challenge to Rate Design

But the order has also drawn additional opponents, including Integrys Energy Services. In its rehearing request, it alleges the commission erred by applying a new rate design methodology to the ATC zone different than that applied in MISO previously and by applying that new rate design retroactively ([ER14-1242](#)).

"On rehearing, if the commission is going to require a new methodology for allocating SSR costs throughout MISO, it should apply these changes prospectively and only after the methodology has been shown to be just and reasonable," Integrys said.

The recent filings are just the latest in the ongoing Presque Isle saga. In mid-March officials announced that a deal to sell Presque Isle to Upper Peninsula Power would be scrapped. We Energies will retain the plant now that Tilden and Empire will come back as customers of Presque Isle. The mines decided two years ago to purchase power from other providers under Michigan's partially deregulated electricity market.



FERC Relieves Retiring Coal Plants from MISO Capacity Deficiency Penalties Rejects Waiver for Wisconsin P&L

By Rich Heidorn Jr.

The Federal Energy Regulatory Commission last week approved MISO's proposal to exempt some owners of retiring coal plants from capacity deficiency penalties, rejecting complaints that the Tariff change would undermine reliability and result in market power abuses.

MISO's Tariff change applies to generation operating during the Planning Resource Auction offer window that will retire or suspend operations between the March 31 end of the window and the end of the 2015-2016 planning year on May 31, 2016.

The change will allow generators the option of not making offers into the PRA without facing liability for physical withholding. It will apply only to the 2015-2016 planning year and only to generators for which MISO has determined a system support reliability agreement is not necessary. (See [MISO Seeks to Ease Coal Retirement Conundrum](#).)

Last year, several generators complained to FERC that there was no clear mechanism within the MISO Tariff that would permit them to buy replacement capacity through the auction to cover the six-and-a-half-week period between the planned retirement of the coal units and the end of MISO's planning year.

In its March 24 ruling, the commission called MISO's proposal "a reasonable solution for resources that cannot offer a full-year capacity product" in the upcoming auction and that it had demonstrated that it will not harm reliability ([ER15-918](#)).

The commission rejected Indianapolis Power and Light's argument that the changes could effectively move up the retirement date of units scheduled to retire during the 2015-2016 planning year.

"Market participants with units affected by the proposed Tariff language have already submitted proposed retirement or suspension dates in their respective Attachment Y notifications," the commission said. "There is



Nelson Dewey Generating Station (Source: U.S. Geological Survey)

no evidence in the record that these market participants will accelerate their respective retirement dates, nor do we see an incentive to do so if they are still participating in the daily energy and ancillary service markets."

The order also dismissed requests by the Wisconsin Public Service Commission and the Illinois Commerce Commission that the change be rejected because it could cause capacity prices to increase or provide an incentive to exercise market power.

"We note that auction prices would likely increase even in the absence of MISO's proposal, as the market participants owning these partial-year resources would have to obtain other resources for the remainder of the year — and factor the costs of the replacement resource into their offers," the commission said. "Inasmuch as the Illinois Commission has not demonstrated how resources not offered into the auction under MISO's proposal would result in significantly higher revenues than would occur if they offered their capacity including higher cost replacement capacity, we find no basis

for its claim that the MISO proposal incentivizes generators to exercise market power."

Resources that do not offer into the 2015-2016 PRA, but continue to participate in MISO's energy and ancillary services markets during the portion of the year that they remain in service, will remain subject to MISO mitigation rules, the commission added.

In a related order, the commission rejected Wisconsin Power and Light's request for a waiver of MISO's must-offer requirement over its retirement of its 200-MW Nelson Dewey coal-fired units in southwestern Wisconsin ([ER15-872](#)). The units must retire by Dec. 31 under the terms of a 2013 consent decree with the Environmental Protection Agency and the Sierra Club.

The commission said its approval of the MISO Tariff changes "provide Wisconsin Power relief from the misalignment between [its] ... retirement deadline and the timeline of the 2015-2016 planning year."

NYISO NEWS



FERC Interfering with Reliability Order, New York Regulators Say

By William Opalka

New York regulators say the Federal Energy Regulatory Commission's recent order on reliability-must-run agreements "interferes" with state authority as they try to address generation shortages in the state ([EL15-37](#)).

The New York Public Service Commission last week asked for a rehearing of FERC's Feb. 19 order, which said the state must adopt uniform rules to prevent the need for protracted proceedings to ensure generators received compensation for continuing to operate. FERC said the lack of uniform rules created uncertainty that could compromise system reliability. (See [FERC Orders NYISO to Standardize RMR Terms in Tariff](#).)

"The commission must reconsider the RMR order because it ignores the fact that the NYPSC has already exercised its authority to ensure the availability of generation facilities needed for reliability, and interferes with the NYPSC's ongoing exercise of this

authority in approving reliability support services agreements," the PSC wrote.

The PSC has relied on RSSAs to delay the retirements of generating facilities needed for reliability, such as the Dunkirk plant outside Buffalo and the Cayuga plant in Lansing, near Ithaca.

The PSC said FERC "failed to provide evidence that the NYPSC-approved RSSAs were inadequate to the task of addressing the reliability concerns cited in the RMR order."

The PSC also objected to a FERC proposal to require what it termed an excessive full cost-of-service rate. "Full COS rates are neither required, nor just and reasonable, where the provider of a public service intends to abandon that service," the PSC wrote. "Indeed, it has long been a well-accepted regulatory principle that a public



AES' Cayuga plant

service provider may not abandon service and must continue service even at less-than-COS rates until the abandonment is authorized."

FERC ordered NYISO to create a process for determining which generation resources seeking to deactivate are needed for reliability; how they should be compensated, including accelerated cost recovery for generators that require upgrades; and how RMR costs should be allocated.

Union: Transmission a Critical Part of New York REV

By William Opalka

A labor council representing New York utility workers is worried that the state's path-breaking initiatives in the smart grid, distributed energy resources and energy storage are taking attention away from overdue needs for transmission upgrades in the state.

A so-called Memorandum of Concerns, while endorsing the new "utility paradigm" of New York's Reforming the Energy Vision, said that the program needs extensive transmission upgrades to succeed. (See [New York PSC Bars Utility Ownership of Distributed Energy Resources](#).)

"While these initiatives have provided benefit to New York ratepayers and thrust New York state to the forefront of the electric industry, the transmission infrastructure these elements are connected to have been greatly neglected," said Theodore Skerpon, chairman of the 15,000-member New York State International Brotherhood of Electrical Workers Utility Labor Council, in a

March 20 filing with the PSC ([12-T-0502](#)).

"The primary foundation of REV is the ability to efficiently move electricity across the state to determine an accurate cost-benefit analysis for proposed local generators," the memo adds.

The memo points out that 80% of the state's high-voltage transmission lines are at least 35 years old and that 4,700 circuit miles will require replacement within the next 30 years. Upstate New York generation is needed to supply demand but is constrained by transmission bottlenecks.

New York Gov. Andrew Cuomo unveiled the New York Energy Highway to address those issues in 2012, building upon his administration's own assessment and studies by NYISO and the Federal Energy Regulatory Commission. The initiative is envisioned as a public-private partnership to spur at least \$2 billion in private investment to expand or



Skerpon

upgrade transmission corridors from upstate generating plants to load centers in and around New York City.

PSC Spokesman James Denn said REV and the Energy Highway are proceeding in tandem, as the PSC in December said it will determine the need for relief of persistent transmission congestion along the Mohawk and Hudson Valley transmission corridors. A technical conference will be convened in mid-2015 to identify the scope of the problem. (See [New York PSC Orders Study, Conference on Transmission Congestion](#).) New York has identified the need for about 1,000 MW of additional capacity but has not named specific projects (13-M-0457).

"Staff's need report is expected to be issued on or before June 10, 2015, followed closely by the all-parties technical conference to ensure that all parties can raise questions about its recommendations. The proceeding remains very active, with parties, including staff, submitting well over 100 critically important documents since December," he said.

ISO-NE NEWS



Meeting with New England Delegation Fails to Sway LaFleur on Capacity Results

By William Opalka

A meeting last Tuesday among the New England congressional delegation, ISO-NE and Federal Energy Regulatory Commission Chairman Cheryl LaFleur ended the way that it started: with LaFleur and the RTO defending rising capacity prices and the delegation unhappy.

The delegation requested the meeting after its failed attempts to get FERC to reopen the results of last year's Forward Capacity Auction. Total costs tripled to \$3 billion in FCA 8, covering the 2017-2018 period.

The results became effective when a short-handed FERC deadlocked at 2-2 over whether they were "just and reasonable." LaFleur, who voted to approve the results, stood by her decision in a letter to the delegation last month. (See [LaFleur Rejects Further Review of 2014 ISO-NE Capacity Auction](#).)

FCA 9, held in February, saw costs rise another \$1 billion, to \$4 billion for 2018-2019. (See [ISO-NE Files Capacity Auction Results: Comments due April 13](#).)

Last week's meeting at the Capitol was organized by Massachusetts Democratic Reps. Joseph P. Kennedy III and Richard Neal, and included LaFleur, ISO-NE CEO

Gordon van Welie, 14 other congressmen and three senators. Staff members of several other congressmen and senators also attended.

According to Kennedy's office, LaFleur stated that the capacity market is working as intended, with rising prices drawing new generating resources into the region. Reopening a settled case would also set a bad precedent, she added.

Van Welie warned that prices could go even higher.

LaFleur also reportedly said she was satisfied with a staff investigation of the planned closure of the 1,510-MW Brayton Point generating station in Massachusetts, which concluded the closure was not an exercise of market power that would benefit the plant owner's other assets, as critics have charged. Energy Capital Partners said Brayton Point would close in 2017 and prospective owner Dynegy has stayed with that plan.

"New England residents pay some of the highest electricity prices in the country and these capacity rates continue to climb. There is no way we can look at this system and say it's working," Kennedy said. "The markets are rewarding highly consolidated energy incumbents on the backs of consumers ... FERC's inaction around the results of

FCA 8 have left ratepayers in legal purgatory with no means to contest skyrocketing rates. This is a regulatory shortcoming that must be remedied. ... [Tuesday's] meeting was the start of a conversation I expect will continue in the weeks and months ahead."

ISO-NE spokeswoman Lacey Girard reiterated that until plant retirements were announced in 2013, New England had a capacity surplus. About 10% of the fleet is expected to leave the market in coming years.

"These are basic economic fundamentals — when there is excess supply, prices fall, and when there is a shortage of supply, prices rise. The higher prices coming out of last year's auction helped spur investment in new resources in the most recent capacity auction, including more than 1,000 MW of new generating capacity, which will help address the region's resource shortage and meet peak demand in 2018," she said. (See [Exelon, LS Power Join CPV in Adding New England Capacity](#).)

"I appreciate Congressmen Kennedy's and Neal's work to gather together so many members of the New England delegation to talk about the interesting and complex energy issues facing the region. I welcomed the opportunity to hear the view of the congressmen and senators and feel it was a very productive meeting," LaFleur said in a statement.

Constitution Pipeline Opponents Asks Appeals Court to Force FERC Action

By William Opalka

Opponents of a pipeline that would move shale gas from northeastern Pennsylvania to New York and New England markets made good on a promise Friday to go to court to force a rehearing of federal regulators' approval of the project.

The Federal Energy Regulatory Commission issued a rehearing order on Jan. 27, but the Stop the Pipeline group says that is merely a procedural move as the regulator avoids its petition "to grant, deny or otherwise act on the merits of STP's Jan. 2, 2015, request."

The group wants FERC to hold a rehearing by May 1, it said in its plea for a writ of mandamus from the U.S. District Court of Appeals for the Second Circuit in New York (15-926). (See [Constitution Pipeline: Headed to Completion or to Court?](#))

The proposed 124-mile Constitution Pipeline won a certificate of public convenience and necessity from FERC on Dec. 2. The commission issued its Final Environmental Impact Statement on Oct. 24.

The actions were taken before the project received other regulatory approvals, including water quality permits under the Clean Water Act's section 401, which opponents say is a violation of the law.

The project is currently under review by the New York Department of Environmental Conservation, which closed its public comment period on Feb. 27.

Without action on the rehearing, STP says it is in "administrative limbo" while it also is denied the opportunity to challenge FERC's order in court. STP said Constitution started more than 120 eminent domain proceedings in mid-December, and by Feb. 21 a district court had given Constitution the right to

condemn the properties and enter potential pipeline sites without the owners' permission.


"The commission has caused, and continues to cause, significant injury to STP's members ... before it has even been determined that the pipeline project will ultimately be authorized to proceed," the petition states.

Constitution is on an aggressive schedule, with construction scheduled to start this year and the pipeline in operation by late 2016. It would connect the Pennsylvania gas fields with an interstate pipeline that runs from the Southwest to New England.

"FERC has already thoroughly evaluated the project and approved this vital infrastructure, agreeing that the plan we have developed minimizes environmental impacts. We are looking forward to obtaining final clearances so we can begin construction this summer," Constitution spokesman Christopher Stockton said.

COMPANY BRIEFS

Xcel's Rate Hike Approved With Slight Refund for Customers

 A 17-month Minnesota rate case covering 2014 and 2015 gives Xcel Energy the rate hike it was looking for, but it will also provide a small refund to electric customers who were paying a 4.6% interim rate hike from last year. The Public Utility Commission approved the hike, but due to the complexity of the case, and the fact that it covers two years, a final ruling on just how much the hike will be won't be decided for several more weeks.

It will be the fifth successive rate hike for Xcel's Minnesota customers. The company said it may seek another hike next year, as well, because the PUC rejected its proposal that would have rolled all the hikes into one. Xcel sought a 10.4% hike, which would have translated into \$291 million. The final hike is expected to be close to a 9.72% return on equity, or about \$191 million. The PUC also denied the utility's request for money to cover cost overruns at its Monticello nuclear plant.

More: [Star Tribune](#)

Exelon's Oyster Creek Station Goes Back Online After 6 Days


Exelon Nuclear's Oyster Creek Generating Station resumed full power on Saturday after being offline since the previous Sunday. The plant automatically shut down after problems were discovered in a system that controls the plant's steam pressure. Technicians worked through the week and corrected the problem Friday.



The company didn't give any further details on the problem. The 636-MW station is the oldest in the company's fleet, and is scheduled for decommissioning in 2019. The plant received a "white" performance indicator from the Nuclear Regulatory Commission because of four unplanned shutdowns, or "scrams," in 2013 and 2014. It received a "yellow," or more serious, finding last month after problems were found with two of five reactor pressure valves.

More: [Asbury Park Press](#)

AEP's Unregulated Barge Subsidiary Might be Sold

 American Electric Power says it has hired Morgan Stanley to explore alternatives for its competitive barge transportation subsidiary, AEP River Operations, which operates river barges serving its unregulated power plants.

Separately, the Columbus-based company has said it is considering the sale of its unregulated power plants. (See [AEP Considering Sale of 8,000 MW in Ohio, Indiana](#).)

"AEP is committed to completing its review of potential alternatives for River Operations as promptly as practicable," the company said.

River Operations has more than 2,200 barges and 1,090 employees, according to the company, and last year it reported a profit of \$49 million.

More: [AEP](#); [Columbus Dispatch](#)

GE to Auction 315 MW of TSRs in Linden VFT in April

GE Energy Financial Services in April will auction 315 MW of bi-directional electricity transfer capacity across its Linden Variable Frequency Transformer smart grid project.

It will sell 90 MW of transmission scheduling rights that will become available on June 1, 2016, and 225 MW of TSRs available as of June 1, 2018.

The TSRs can be used to sell energy and capacity sourced in PJM into NYISO and vice versa.

More: [GE Energy Financial Services](#)

AEP Agrees to Cut Cost Of Refusing Smart Meters

In an agreement with the staff of the Public Utilities Commission of Ohio, American Electric Power has agreed to cut the cost of refusing its smart meters from \$31/month to \$24. The commission still needs to sign off on the agreement after public hearings. If the agreement is finalized, it will mean customers will be paying \$288/year to keep an old-style analog meter, as opposed to AEP's initial plan, which would have cost \$382/year. One party that didn't sign on to the agreement was the Office of Ohio Consumer's Counsel, which feels the charge should be just \$10.49/month. So far, the company



has installed 132,000 meters. It plans to expand its GridSmart system to 894,000 homes and businesses. It said the price of refusal covers the cost for the time and travel it takes for employees to read the old-style meters.

More: [Columbus Business First](#)

NRG Awaiting State Approval To Switch Dunkirk to Gas

NRG Energy is awaiting approval from the New York Department of Environmental Conservation of its updated air quality permit to allow the switch of its Dunkirk, N.Y., generating station from coal to gas. A 30-day period for public comment ended on March 20. Dunkirk was built in the 1950s and has always been a coal-burning plant. The conversion is expected to be completed by the end of the year. (See [Dunkirk Plant Chronology](#).)



More: [Buffalo Business First](#)

PECO Seeks \$190 Million Rate Hike for Improvements

PECO has filed a request with the Public Utility Commission to raise rates about 4.4%, or \$190 million, to pay for system upgrades. If approved, it would mean an increase of about \$6.55/month for the average residential user. PECO says its system needs about \$300 million in work each year, which includes equipment replacement and upgrades. It said it is spending an additional \$275 million over the next five years to make the system less vulnerable to storm damage.

More: [Daily Local](#)

Dominion to Build \$1 Billion, 1,600-MW Plant in Virginia

Dominion Virginia Power has announced the planned construction of a 1,600-MW natural gas-fired, combined-cycle generating plant in Greensville County, Va. It said the plant will cost about \$1 billion and should go into operation in 2019. It has already filed for zoning permit applications, and more regulatory applications will be filed by July. Greensville County is in southern Virginia.

More: [Dominion](#)

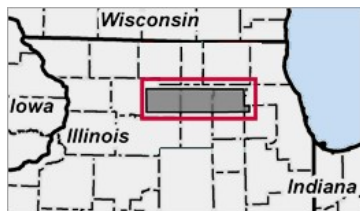
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COMPANY BRIEFS

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Work Starts on ComEd's Grand Prairie Gateway Tx Line

Commonwealth Edison contractors began clearing trees along the route of the Grand Prairie Gateway transmission line this month. "We're clearing the route in areas where we will be installing structures this summer and fall," ComEd spokesman David O'Dowd said. The project was approved over vocal opposition in October by the Illinois Commerce Commission.



The line will run 60 miles through Ogle, DeKalb, Kane and DuPage counties. While construction has started, several groups have petitions to intervene and hope the ICC will force ComEd to change the line's route. But ComEd doesn't see that happening.

"We anticipate that certain parties will challenge various aspects of the ICC order in the appellate court, but the ICC decision is well-reasoned and consistent with Illinois law," O'Dowd said. "We're proceeding to implement the ICC order as required."

More: [Chicago Tribune](#)

Canada Competition Bureau Targets Direct Energy



A ruling by the Canadian Competition Tribunal gives the country's Competition Bureau the green

light to pursue a case against Direct Energy Marketing for water heater return policies and procedures that were aimed at preventing consumers from switching to competitors.

The action against Direct Energy alleges that many Ontario-based customers had little choice but to continue their rental agreements even if they wanted to purchase a water heater or switch to another rental provider.

The bureau is seeking a \$15 million penalty and an order prohibiting Direct Energy from engaging in anti-competitive conduct in the future.

More: [Marketwired](#)

-- Compiled by Ted Caddell

FEDERAL BRIEFS

Nuclear Waste Incident Caused by Wrong Cat Litter

A 277-page report on an explosion at the Department of Energy's Waste Isolation Pilot Plant last year concludes that the incident was caused by ... cat litter.



That's right: Workers at Los Alamos National Laboratory have long used cat litter to absorb liquid nuclear waste. But not all cat litter is alike, as pet owners around the world have long known. Instead of using inorganic clay litter, workers apparently used Swheat Scoop organic litter inside troubled drum 68660.

And while Swheat Scoop may appeal to those seeking a green solution to cat cleanup, it does not work well in certain industrial settings. "Experiments showed that various combinations of nitrate salt, Swheat Scoop, nitric acid and oxalate self-heat at temperatures below 100 C. Computer modeling of thermal runaway was consistent with the observed 70-day birth-to-breach of drum 68660," according to the report.

The incident caused the drum to burst open, spreading radioactive plutonium, americium

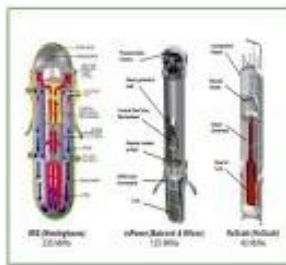
and uranium throughout the facility. The plant closed after the incident, but the department hopes to open it next year.

More: [NPR](#)

DOE Pledges \$450 Million For Modular Reactor Design

The Department of Energy has said it will provide \$450 million for design studies for small modular reactors. It said the money will go toward engineering, design certification and licensing for up to two SMR designs over the next five years. SMR designs call for reactors about a third of the size of the current 1,000-MW designs now in use. Experts say the smaller size translates into lower construction costs and increased safety and siting potential. The latest funding announcement is aimed at pushing forward designs by 2022 that have the commercial potential.

More: [Department of Energy](#)



NRC Questions Entergy's Use of Decommissioning Funds

The Nuclear Regulatory Commission is questioning some of Entergy's proposed uses of the Vermont Yankee decommissioning funds. Entergy has said it wants to use some of the \$660 million in the fund to pay for its property taxes, some insurance and security costs, as well as its membership in the Nuclear Energy Institute.



"We have identified several line-item expenditures that, at least at first glance, do not appear to be permissible under NRC regulations in this area," NRC spokesman Neil Sheehan said. NRC is asking Entergy for more information before making a ruling on the spending. Any disbursements from the fund in the early stages of decommissioning mean it will take longer for it to reach \$1.2 billion, the estimated total cost of dismantling and cleaning up the reactor site.

More: [Times-Argus](#)

Continued on page 12

FEDERAL BRIEFS

Continued from page 11

Virginia Senator Questions FERC On Pipeline Hearing Rules

Virginia Sen. Mark Warner has written a letter to the Federal Energy Regulatory Commission after opponents to a proposed pipeline through the rural central part of the state said they felt short-changed by the public input process.



Warner

Warner asked FERC Chairman Cheryl LaFleur to make clearer the process for signing up to comment during public meetings. The request came after opponents to the proposed Atlantic Coast Pipeline showed up at a scoping meeting in Nelson County earlier this month. They had been told to show up a little before the 7 p.m. meeting to sign up to comment, and found that Dominion Resources, one of the pipeline's owners, had already signed up dozens of supporters to speak.

Friends of Nelson member Ernie Reed said the public comment process needs to slow down and allow all members who want to talk a chance to be heard. "To just give it the time required and the time that's necessary is all we're asking, but it's the type of an ask that Sen. Warner has now made, and we're hoping FERC responds in a positive way and gives us and the rest of the public the opportunities that we deserve," he said.

More: [NBC29](#)

FERC Tells Ohio Pipeline Planners To Find Less Populated Route

The Federal Energy Regulatory Commission told the company planning to build a 103-mile natural gas pipeline through northeastern Ohio to find a less populated area for the project's path. Texas-based Nexus Gas Transmission said it will consider the request, which came a day after the city of Green proposed the pipeline be moved away from heavily populated areas.

The proposed pipeline is being built to move gas from Ohio's Utica Shale fields. FERC noted in its letter to Nexus that the project is generating "a large volume of public comments." The city, in its filing with FERC requesting that the pipeline route be adjusted, said the route was "hastily drawn and ill-conceived with no respect to the human and environmental concerns."

More: [Associated Press](#)

Departure of Harry Reid Could Spell Rebirth of Yucca Repository

The announcement by Sen. Harry Reid (D-Nev.), long an opponent of the Yucca Mountain nuclear waste repository, that he would not seek reelection in 2016 could signal a rebirth for the project. According to *Bloomberg*, Senate Democrats who had been loath to vote against Reid on the project may be more likely to with him gone. The project, which has so far cost U.S. taxpayers \$15 billion, went dormant after the Obama administration said it wasn't a "workable option" and cut funding.

More: [Bloomberg](#)

IG Investigating NRC Actions To PG&E Quake Standards

The Nuclear Regulatory Commission's Office of the Inspector General is reviewing the agency's actions in allowing Pacific Gas & Electric to make changes to its earthquake safety standards without a public hearing. PG&E made the changes in response to a discovery of more nearby fault lines than originally thought.

Fault lines were discovered after construction of the plant began in 1968, but more were found in 2011, and in 2013 PG&E changed the plant's final safety report to use a less conservative method of making seismic-damage calculations.

Investigators are looking into that change of procedure, as well as charges by a former NRC inspector at the plant. That inspector, Michael Peck, said the plant was no longer operating within the parameters of its license. Peck has said his concerns were ignored by both NRC and PG&E. "The ground motion is way beyond what was analyzed in the original license," he said in an interview Wednesday. "They basically bypassed that whole process. We're not enforcing it, and I don't know why. We gave them a pass."

PG&E said the plant is observing all NRC regulations and is safe.

More: [San Francisco Chronicle](#) (subscription required)

First Ocean Wind Energy Research Facility to be Built off Va. Shore

A 12-MW offshore wind energy test facility will be built off the coast of Virginia Beach, the first research lease to be executed in federal waters. The Bureau of Ocean Energy Management announced that two 6-MW wind turbines will be installed and operated

by Dominion Virginia Power. Information gathered by the test facility will be used to help researchers and developers of future wind energy facilities offshore, according to BOEM.

The towers will be built about 24 miles off Virginia Beach. Power is to be delivered to the grid through subsea cables.

Environmentalists applauded the news. "Full-scale development of offshore wind can create thousands of clean energy jobs and address climate change while displacing Dominion's plans for new gas power plants and an unwise investment in a new nuclear reactor at North Anna," said Glen Besa, director of the Virginia Chapter of the Sierra Club.

More: [Delmarva Now](#); [Daily Press](#)

FERC Denies IMEA's Capacity Waiver for 2018/19

The Illinois Municipal Electricity Agency will not be able to use capacity resources outside of the Commonwealth Edison locational delivery area to fulfill its internal capacity requirement for the 2018/19 delivery year, the Federal Energy Regulatory Commission has decided.

In its ruling, FERC distinguished IMEA's waiver request from a similar one it granted last year ([ER14-1681](#)). In that decision, FERC deemed IMEA did not have adequate notice to prepare for its ComEd LDA being modeled for the first time with a separate variable resource requirement curve. And IMEA's previous request was not protested.

This year, PJM's Independent Market Monitor and the Illinois Commerce Commission urged FERC to reject another waiver. (See [Illinois Regulators, IMM Line up Against IMEA Capacity Waiver Request](#).)

"PJM and IMEA note that the treatment of IMEA's external resources is being addressed through the PJM stakeholder process, which will allow for concerns related to reliability and harm to third parties to be vetted and, as appropriate, inform any proposed changes to the Reliability Assurance Agreement or other PJM governing documents," FERC said.

"We recognize that denial of IMEA's waiver for the 2018/2019 delivery year will require IMEA to adjust its capacity portfolio for the planning year, but we encourage IMEA and PJM to continue to work on a longer term solution."

More: [ER15-834](#)

-- Compiled by Ted Caddell

STATE BRIEFS

ARKANSAS

Little Rock Operations Center Opened to Serve MISO South



MISO has opened a \$22 million regional operations center in Little Rock.

The 50,000-square-foot facility works in concert with MISO's control facilities in Carmel, Ind., and Eagan, Minn.

The facility was needed after MISO expanded its territory into the Gulf Coast states following Entergy's decision to join the RTO.

The facility initially will employ 42 people. "We hope to use our presence here not only as a resource to the greater Little Rock community but as a magnet for other energy-sector firms," MISO President and CEO John Bear said.

Source: [MISO](#)

DELAWARE

Crowd Attends Hearing on Refinery's Bid for Water Permit

More than 500 people showed up for a hearing on Delaware City Refinery's bid to renew permits governing its cooling



water intake and discharge. The majority of the crowd was made up of refinery workers and supporters, although a vocal group of environmentalists — some in fish costumes — gathered outside the hearing room at Gunning Bedford Elementary School. They objected to the state Department of Natural Resources and Environmental Control's issuance of the permit, which granted refinery owner PBF an extension to assess options.

"DNREC has clearly compromised its ability to be an independent arbiter over this matter," Delaware Riverkeeper Network Director Maya van Rossum said. "They need to step back and request that the Environmental Protection Agency take the lead in order to remove both the actual and appearance of bias. This sweetheart deal needs independent agency review."

More: [The News Journal](#)

ILLINOIS

Exelon-Backed Bill to Save Nukes, Impose Surcharge Advances



A state Senate committee has passed an Exelon-backed proposal designed to ensure continued operation of three nuclear generators the company says are unprofitable, in part by imposing a surcharge on Illinois electricity users. (See [Exelon-Backed Bill Proposes Surcharge to Fund Illinois Nukes](#).)

The Energy and Public Utilities Committee on March 26 endorsed [Senate Bill 1585](#), which would establish a "Low Carbon Portfolio Standard."

Under the proposed legislation, beginning next year, 70% of the electricity delivered by Commonwealth Edison, which is owned by Exelon, and Ameren would have to be generated by "clean energy" sources: solar, wind, hydro, nuclear, tidal, wave and clean coal.

The fee to customers, which would average \$2/month, would fund low-carbon energy credits to be auctioned by the Illinois Power Agency.

The legislation is one of three clean energy measures before the General Assembly. Environmental and consumer advocates are backing the Clean Energy Jobs Bill ([SB1485](#), [HB2607](#)).

Meanwhile, ComEd has proposed legislation to foster growth in clean energy for households and microgrids ([HB3328](#), [SB1879](#)).

More: [BusinessWire](#)

INDIANA

Regulators Again Probing IPL After Two More Downtown Blasts



The Utility Regulatory Commission has opened an investigation into Indianapolis Power and Light's downtown underground network after blasts sent manhole covers flying downtown.

Two incidents that occurred in March were the latest in several well-publicized explosions dating back four years.

In 2011, the IURC commissioned a study by Atlanta-based O'Neill Management Consulting that found IPL can expect three to

five such incidents per year if it didn't improve maintenance procedures for its downtown electrical network.

Under the nervous gaze of civic leaders, IPL recently installed manhole cover restraining devices in high-traffic areas downtown in anticipation of the NCAA Men's Basketball Championship in April.

The underground blasts come at a time when IPL is seeking a rate hike that would generate \$68 million more in annual revenues. It's IPL's first base rate case since 1995.

In light of the recent incidents raising safety and reliability concerns, Citizens Action Coalition, a group representing IPL ratepayers, said it is "unconscionable" that regulators allowed IPL to operate for nearly 20 years without a base rate case.

A former IPL executive, Dwane Ingalls, has alleged that IPL skimmed on network maintenance to maximize the dividend the utility sent to parent AES.

More: [Indianapolis Star](#); [Citizens Action Coalition](#); [Indianapolis Business Journal](#)

IOWA

House Bill Would Protect Property Owners from 'Merchant' Tx Lines

A House committee passed a bill that would protect property owners from losing their land to transmission line developers. The main targets of the bill, offered by House Government Oversight Committee Chairman Bobby Kaufmann, are transmission lines linking out-of-state utilities or companies. Clearly targeted is the Rock Island Clean Line, a proposed \$2 billion line that would run from northwest Iowa to Illinois.

House Democrats opposed House Study Bill 222, saying it takes away power from the Utilities Board. "We have a process in place," Rep. Phyllis Thede said. "We want to make sure people are safe with their land but we also want to make sure the process works."

More: [The Gazette](#)

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STATE BRIEFS

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KANSAS

Westar Wants Small Generators To Pay Higher Fixed Rates



A case before the state Corporation Commission could mean higher fixed rates for those who produce their own power through solar or wind generation at their homes or businesses. Topeka-based Westar Energy is targeting those smaller generators for higher fixed rates, rather than raising such rates for all customers.

"We just want to make sure it's fair to any customers, whether they decide to generate some of their own power or not," said Jeff Martin, the company's vice president for regulatory affairs.

But solar advocates see it as aimed at small-scale renewable energy. "This is another attempt by the utility to kill solar in Kansas," said Aron Cromwell, who co-owns a solar installation company.

More: [Midwest Energy News](#)

MAINE

PUC Orders Refunds for People's Power Customers



The Public Service Commission has ordered refunds to some former customers of People's Power and Gas, a competitive supplier that operated in Emera Maine's territory in 2013 and 2014. The commission found that People's charged a \$25 monthly "service fee" without notifying customers that it would do so. An investigation revealed that the company collected about \$128,070 from about 2,800 customers.

The company filed for bankruptcy shortly after collecting the fees, so the PUC is using People's security deposit to refund the money.

More: [Maine PUC](#)

MARYLAND

Another Chicken Poop-to-Power Plan for Maryland's Eastern Shore



Poultry giant Perdue wants to team with a New Hampshire firm to build a \$200 million plant that will be fueled by chicken manure, something that is abundant on the Eastern Shore, a major poultry producing region in the country.

AgEnergyUSA, a firm that is already building a similar plant in Colorado, said its plant would put the manure to good use and keep it out of the waste stream, where it has been identified as a polluter of the Chesapeake Bay. AgEnergyUSA is teaming up with Perdue and French power company EDF Renewable Energy. The plant would use "anaerobic digestion" to break down 200,000 tons of poultry "litter," a combination of chicken manure and organic bedding, a year. Methane would be extracted, which could then be used for power generation and other industrial uses. The remaining waste would be mined for its nitrogen and then sold back to farmers as fertilizer.

More: [The Baltimore Sun](#)

MINNESOTA

Wind Energy has Saved 30 Billion Gallons of Water Since 2004

Wind energy continues to grow not only as an important source of emission-free electricity, but as a means of saving water as well.

According to the state Department of Revenue and Department of Natural Resources, wind energy production in the state has saved 30 billion gallons of water since 2004. Studies from the departments say that energy production from fossil fuels needs 541 gallons of water for each megawatt of energy produced. Since 2004, wind facilities in the state have produced more than 56 million MW.

"Minnesota wind development is in many ways attractive, because it's a form of industrial development where the primary alternatives are typically focused on agricultural processing, which is generally water intensive," said Mark Lindquist, program manager for Energy and Biofuels with the state Department of Natural Resources. "So here's a new industry that puts zero pressure."

More: [The Pilot-Independent](#)

NORTH CAROLINA

Senate Approves Duke's Purchase Of NCEMPA Generating Assets

The state Senate last week approved Duke Energy's bid to buy the generating assets of the North Carolina Eastern Municipal Power Agency in a deal valued at more than \$1 billion. NCEMPA holds partial ownership in a number of Duke power plants in the state. The \$1.2 billion deal includes plant shares, fuel and parts inventories at Brunswick Units 1 and 2, Mayo Plant, Roxboro Plant Unit 4 and the Harris Nuclear Plant. Combined, the ownership interests amount to about 700 MW. The deal received approval from the Federal Energy Regulatory Commission in December. NCEMPA said the deal will mean lower electricity prices for its customers in 32 cities and towns in eastern North Carolina. The House is expected to vote on the measure soon.

More: [Laurinburger Exchange](#)

NORTH DAKOTA

State's Rig Count Falls Below 100 for First Time in 5 Years

The slump in oil and gas prices is spurring exploration companies to shut down operating rigs, leading to a drop in the number of rigs operating in the state to fewer than 100 for the first time in five years. A recent count showed 98 rigs drilling in the state, 100 fewer than there were at the same point a year ago. The state is the No. 2 oil producer in the U.S., behind Texas.

More: [Associated Press](#)

SOUTH DAKOTA

Wind Farm Devs Have to Start Over After Applying for Wrong Permits

The developers of a wind farm in Lincoln County will have to start the permitting process over after the county commission ruled that they applied for the wrong permits for five test towers. Dakota Power Community Wind should have applied for a temporary-use permit for its five test towers, not conditional-use permits. The ruling gives opponents of the planned 500-MW wind farm another chance to convince the county commission to rule against the project.

More: [Argus Leader](#)

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STATE BRIEFS

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TENNESSEE

County Fights Plan to Switch Pipelines from Gas to 'Gas Liquids'

The Greater Dickson County Gas Authority is teaming with other utility districts in the state and in Alabama to fight a plan by a pipeline company to switch its operations from carrying natural gas to "natural gas liquids."

Tennessee Gas Pipeline Co., a subsidiary of Kinder Morgan, wants to abandon nearly 1,000 miles of natural gas pipeline and then sell them to Utica Marcellus Texas Pipeline, another Kinder Morgan affiliate. The new owners would use the pipelines to transport natural gas liquids, a different product. The switch to natural gas liquids will mean a need to upgrade compressors and other parts of the pipelines, and that would translate into higher costs for customers all along the route, according to the Greater Dickson filing.

More: [The Tennessean](#)

TEXAS

Georgetown Plans to Go All Renewable for Needs

The city of Georgetown's municipal utility announced plans to cut the cord to all fossil-generated electricity and use wind and solar only to meet its energy needs. It will be the state's first city-owned utility to do so.

The city announced a deal with SunEdison to provide 150 MW of solar starting next year. Last year, it signed a contract that runs through 2039 for 144 MW of wind energy. The city said it recognizes that the two agreements will mean fewer emissions for the region but that it was the numbers that made them appealing. "It was really primarily a price decision," city spokesman Keith Hutchinson said.

Both the wind and solar agreements locked in cheaper prices than what it was paying to the Lower Colorado River Authority, Hutchinson said. He also said it provides a hedge against increases from fossil generation going forward. "We don't know what's going to happen in the future for regulations for fossil-based fuels," Hutchinson said. "This really removes that element from our price costs going forward."

More: [Texas Tribune](#)

WISCONSIN

PSC Approves Controversial 180-mile Tx Line After Xcel Joins

The Public Service Commission approved a 180-mile, \$580 million transmission line that it previously blocked when it was proposed by non-utility company American Transmission Co. Xcel Energy's Northern States Power Co. joined the 345-kV line project as partner after it was initially rejected, and MISO endorsed it and designated it a critical path for providing power and reliability to the state. Because of that designation, state residents will pay about 15% of the line's cost. It is to run from Madison to LaCrosse and is crucial for moving wind power generated from Iowa and Minnesota.

"Construction of the line is critical for the development and delivery of several thousand megawatts of clean, low-cost wind power," said Beth Soholt, who runs Wind on the Wires, a renewable energy advocacy organization representing clean energy groups and wind energy companies. "The new line will also reduce congestion in the MISO energy market and add to the reliability of the overall MISO grid."

More: [Journal Sentinel](#)

-- Compiled by Ted Caddell

Dynegy Wins FERC OK for \$6.25B Duke, Energy Capital Partners Generation Deals

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Dynegy will own 11 Duke generating units in Ohio, Illinois and Pennsylvania totaling about 6,100 MW, as well as Duke Energy Retail Sales, its competitive retail business in Ohio. The ECP deal gives Dynegy 10 generators totaling 6,400 MW, primarily in the Midwest and New England.

Dynegy would gain about 9,000 MW in PJM, boosting it to more than 10,700 MW and eighth in generation share in the RTO.

A New Player in New England

The ECP deal also makes Dynegy a major player in the ISO-NE market, where it had been the owner of a single 540-MW natural gas plant in Maine. (See [Dynegy Back in the Game with Duke, ECP Acquisitions](#).)

Dynegy expected to close the deal with Duke by the end of last year, but it missed

that deadline while it was addressing market power concerns from PJM's Independent Market Monitor. Those concerns were resolved in a settlement last month, with Dynegy agreeing it would not try to buy any of the plants that will come on the market as a result of the PPL-Riverstone Holdings deal to form Talen Energy. It also committed to offer all of its units into the PJM capacity market auctions and promised it wouldn't retire any units unless they failed to clear. (See [Dynegy, PJM IMM Reach Settlement on Duke, Energy Capital Partners Deal](#).)

No Market Power Concerns

In approving the deals, FERC said it saw no market power concerns in either ISO-NE or PJM. It said Dynegy's share of New England's energy market would rise as high as 17.7% and its share of the region's capacity market would be 9.4%.

The commission also rejected a complaint by Utility Workers of America Local 464

that the transaction would enable Dynegy to raise New England capacity prices due to its acquisition of ECP's Brayton Point Station, which is scheduled for retirement in 2017.

The commission said Brayton Point's closure was beyond the scope of its review of the ECP transaction and that the union did not explain how it derived the price increases it claimed would result from the a reduction in offered capacity.

"As the commission has explained, its authority to condition [asset sale] authorizations is limited to addressing specific, transaction-related harm," FERC said. "The issues raised by UWA Local 464 are related to the retirement of the Brayton Point Station, which the commission has already reviewed, rather than the proposed transaction."

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CEO Crane Testifies Before DC PSC; Md. County Reps Break from Exec

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help for low-income consumers and the creation of trails.

D.C. and Maryland are the last holdouts to the transaction, which Crane agreed Monday is an acquisition rather than a merger, given the size of the Chicago-based energy giant. The evidentiary hearings, which are being [webcast](#), continue through April 8 in D.C. and are scheduled for April 15-17 in Maryland.

The direction of questioning followed opening statements by the D.C. Office of People's Counsel and the D.C. government, which strongly oppose the deal. Crane was grilled on Exelon's commitment to renewable and distributed energy, protecting ratepayers' interests over the profitability of its nuclear generators, retaining a true local presence and how Exelon would be held accountable to its promises.

"We hope to, within the District and other districts, to enter settlement negotiations to satisfy stakeholders in the process if we could," Crane said.

Regarding jobs, Crane said, "There will be no reductions of the utility staff for two years — there's actually a commitment to hire."

In part, that's because about 400 employees are eligible for retirement, he said, and Exelon wants to bring some of the work currently being contracted in-house. While Exelon can't promise to preserve staff "in perpetuity," Crane said there was nothing viewable in today's landscape that would indicate the need for future layoffs.

Crane said Exelon cannot alter its proposal to D.C. without resetting the clock for the decision timeline, but he welcomed additional concessions either through a negotiated settlement or a unilateral decision by the commission.

When asked by People's Counsel attorney

Jason Gray what would be the "tipping point" that would make the acquisition unprofitable, Crane said that to his knowledge, Exelon had not conducted such an analysis.

"You don't have any concern that applying any of these provisions would put you over the tipping point?" Gray asked.

"I don't believe any of these do," Crane responded.

In his opening statement, John Coyle, an attorney representing the D.C. government, noted that the transaction involved a premium of more than 24% over the current market value of Pepco stock, when in essence, he said, "Exelon is proposing \$6.8 million for a \$4.3 million balance sheet.

"The mere size of the premium begs the question of why it is being offered," Coyle said, suggesting that commissioners engage in what he called an old D.C. tradition and "follow the money." (See [Consumer Advocate Seeks Delay in Exelon-Pepco Proceedings](#).)

Md. County Reps Want More from Deal

Meanwhile, Exelon continues to encounter opposition in Maryland, where five members of the Montgomery County Council have split from County Executive Ike Leggett, arguing that the settlement he reached with Exelon doesn't go far enough to protect ratepayers and encourage renewable energy.

The councilmembers, led by energy attorney Roger Berliner, last week proposed a [resolution](#) asserting that Leggett's settlement "does not adequately address the overarching issues that have led the state, the Office of People's Counsel, the environmental community and other public interest organizations to maintain that the merger is

contrary to the public interest."

Montgomery and Prince George's counties agreed to support the takeover in return for additional commitments. (See [Exelon, Pepco Ink Deal with Md. Counties, but Critics Stand Firm](#).)

The resolution, tentatively scheduled for a vote at today's council meeting, cites fears that Exelon will seek to raise rates to offset losses at its nuclear plants and will favor that generation at the expense of renewable and distributed energy resources. Because Berliner has four co-sponsors, the resolution is a virtual lock to be approved by the nine-member council.

"If the serious risks the proposed merger poses to the public interest can be mitigated, it can only be mitigated by very strong, verifiable and financially accountable commitments by Exelon to holding down costs and to clean, renewable, distributed energy, including energy efficiency, values at the heart of Maryland's energy policy," the resolution states.

Patrick Laceyfield, a spokesman for Leggett, [told Bethesda Now](#) that the executive took the council's position into account before signing the settlement with Exelon.

"The alternative to this settlement is not necessarily something better. The alternative could well be no deal at all. ... We made this decision in the public interest to change the status quo. It is an executive decision."

The Maryland Public Service Commission is set to finish reviewing the takeover on May 8.

The acquisition has been approved by the New Jersey Board of Public Utilities, the Federal Energy Regulatory Commission, the Virginia State Corporation Commission and the staff of the Delaware Public Service Commission.

Exelon hopes to close the deal in the second or third quarter of this year.



Leggett

Dynegy Wins FERC OK for \$6.25B Duke, Energy Capital Partners Generation Deals

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More Deals on the Way?

The Houston-based merchant generator has indicated it is looking to expand its fleet still further. A Dynegy executive [told Columbus Business First](#) last month that the company "would be very interested" in American Electric Power's coal plants in Ohio. AEP, which

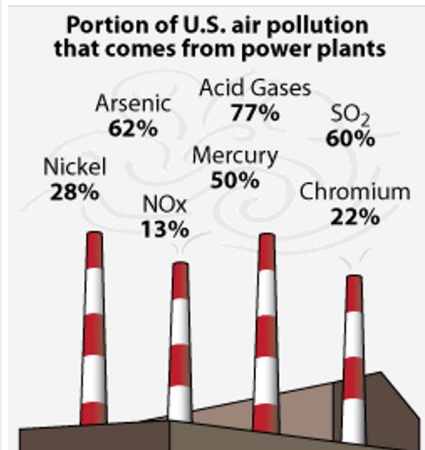
failed in its initial bid to secure a power purchase agreement for one of its Ohio coal plants, has hired investment bank Goldman Sachs Group to investigate the sale of its coal-fired fleet. (See [AEP Considering Sale of 8,000 MW in Ohio, Indiana](#).)

Those plants, with a combined capacity of 7,875 MW, are in Ohio, except for the 1,186-MW Lawrenceburg plant in Indiana. Some 2,100 MW of the plants Duke is selling to Dynegy are partially owned by AEP already, and Dynegy has said it would make sense to consider acquiring AEP's share.

Supreme Court Shows Ideological Divide over MATS

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challenges to EPA's Mercury and Air Toxics Standards (MATS), which are due to take effect in less than three weeks. After an appellate court upheld the rule in a 2-1 ruling in April 2014, the Supreme Court agreed to consider a single question: Did EPA act unreasonably because it refused to consider costs in determining whether it is "appropriate



(Source: EPA)

and necessary" to regulate hazardous air pollutants emitted by electric utilities?

The 90-minute oral arguments saw the court's liberal wing, led by Justices Elena Kagan and Sonia Sotomayor, defending EPA's stance that it should consider costs only *after* a cost-blind determination that the pollutants pose a public health risk and therefore should be regulated.

The regulations were initiated 25 years ago, when Congress amended the Clean Air Act in 1990. The amendments ordered EPA to regulate 189 hazardous air pollutants (HAPS), including mercury, arsenic and cadmium, which had not been previously controlled. (See sidebar.)

Conservatives, led by Justice Antonin Scalia, expressed sympathy for the challenge by Michigan and other coal-dependent states, some electric utilities and the coal mining industry.

As in many past decisions, the ruling may turn on the opinion of centrist Anthony Kennedy. In contrast with his colleagues,

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MATS: 25 Years in the Making

The Mercury and Air Toxics Standards (MATS) at issue before the U.S. Supreme Court last week are the result of a quarter century of legislation, regulation and litigation that began with the 1990 [amendments](#) to the Clean Air Act.

Congress amended the act to give the Environmental Protection Agency the authority to regulate 189 hazardous air pollutants (HAPS), including mercury, arsenic and cadmium that had not been previously controlled.

The law, signed by President George H.W. Bush, required EPA to develop emission standards for the pollutants, and then identify, categorize and regulate the sources that emitted them in large amounts.

The act expressly forbade EPA from considering cost when deciding whether to regulate sources other than electric generating plants; cost would only come into play in setting the level of regulation.

Other provisions of the 1990 amendments specifically targeted power plants, including the acid rain program, which required regulations on sulfur dioxide (SO₂) and nitrogen oxide (NOx) emissions from the largest coal-fired generators.

Appropriate and Necessary

Congress ordered EPA to perform a study evaluating whether the acid rain and other programs had addressed all public health concerns from generators. It ordered EPA to develop additional regulations if the agency determined it was "appropriate and necessary."

EPA submitted the required utility study in 1998, concluding that the acid rain program would not significantly reduce HAPS emissions. In 2000, EPA announced it would regulate mercury, other metals and acid gases, noting that power plants were the biggest source of mercury emissions in the U.S.

EPA said mercury is a health hazard because it enters the food stream through fish and shellfish. Mercury can impair neurological development for fetuses, infants and children.

Reversal by Bush Administration

In 2005, however, the George W. Bush administration attempted to withdraw the listing, a decision that was voided by the D.C. Circuit Court of Appeals. The court said the government hadn't met the criteria for delisting.

The Obama administration reaffirmed the decision to regulate mercury in 2012, saying it was necessary because other Clean Air Act regulations would not eliminate the health hazards posed. EPA said it interpreted Congress' instructions in section 112 of the act as prohibiting the consideration of cost when it made the "necessary and appropriate" determination.

The MATS rulemaking sparked numerous challenges. While all parties agreed that section 112 was silent on the issue of costs, they disagreed on how that silence should be interpreted.

Last April, the D.C. Circuit upheld the MATS rulemaking in a 2-1 decision, with Judge Judith Rogers writing that section 112 "neither requires EPA to consider costs nor prohibits EPA from doing so."

Judge Brett Kavanaugh provided the ammunition for challengers to appeal to the Supreme Court, writing that the term "appropriate" required a cost-benefit consideration.

MATS Challenge Too Late for Targeted Coal Plants

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preme Court throws out the standards, which are due to take effect April 16.

"We have been investing in, operating and staffing the generating units scheduled for retirement in a way that would not support their continued operation past their planned date of retirement," AEP spokeswoman Tammy Ridout said Monday.

For those plants that AEP plans to keep, "the investments that we are making [to meet MATS] also satisfy other Clean Air Act requirements," such as the Cross State Air Pollution Rule (CSAPR) and Regional Haze regulations, she added. "We are fully committed to those investments, and by the time a decision from the Supreme Court is expected, we will have completed or be well on our way toward completion with most of them."

FirstEnergy has the same outlook. "The plants that we've announced for closure, we don't have any plans to change those decisions," said FirstEnergy spokeswoman Stephanie Walton. "We're investing \$370 million in upgrades to comply with

MATS. Most of [the investments] will have been made by the time the Supreme Court rules."

Indeed, about 90% of the capital expenditures needed to meet MATS compliance have already been spent, attorney Paul M. Smith, representing Calpine and other generators, told the justices last week.

AEP and FirstEnergy aren't alone in downplaying the potential impact of the court's ruling on the queue of coal plants headed for the gallows.

"We see little in immediate practical implications on power markets arising from a scenario where the Supreme Court overturns MATS," UBS analysts said in a research note last week.

"Rather, with the current gas price environment virtually ensuring limited run times on coal plants, particularly of the Appalachian variety which are primarily impacted by these regulations, we do not think many coal assets will elect to continue operations."

"I think it's pretty unlikely that anything

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Supreme Court Shows Ideological Divide over MATS

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who appeared to have staked out firm positions, Kennedy's questions suggested he was leaning toward EPA but willing to consider the challengers.

'Capacious'

Early in the argument by Michigan Solicitor General Aaron D. Lindstrom, Kennedy observed that "'appropriate' is a capacious term."

"It is a capacious term," Lindstrom agreed. But he said that "cuts against the government because one of the things that's encompassed within the term 'appropriate' is that it looks at all of the circumstances in ... determining whether or not you're going to regulate. Costs [are] relevant."

Justice Kagan said Congress would have explicitly required EPA to consider costs if that was its intent. For sources other than electric generating plants, Congress expressly forbade EPA from considering costs when deciding whether to regulate. "To get from silence to this notion of a requirement seems to be a pretty big jump," Kagan said.

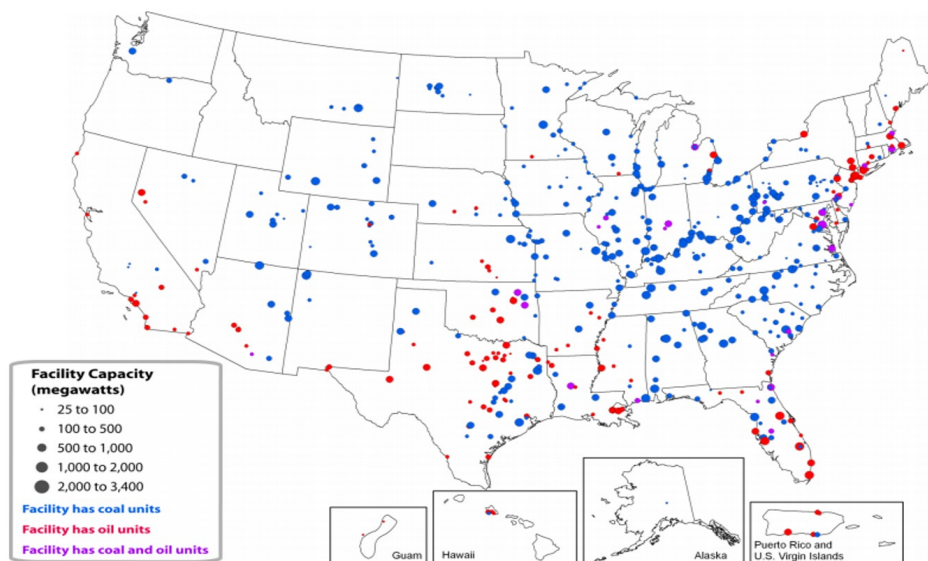
Scalia said he disagreed with the premise that EPA could ignore costs because Congress did not give explicit instructions to the contrary. "I would think it's [a] classic arbitrary and capricious agency action for an agency to command something that is outrageously expensive, and in which the expense vastly exceeds whatever public benefit can be achieved. I would think that that's a violation of the Administrative Procedure Act."

Uncertainty over Acid Rain Program

Among the issues in dispute is the significance and rationale for Congress' decision to treat power plants differently from other air pollution sources.

Some provisions of the 1990 Clean Air Act amendments specifically targeted power plants, including the acid rain program that required regulations on sulfur dioxide (SO₂) and nitrogen oxide (NO_x) emissions from the largest coal-fired generators.

Congress ordered EPA to perform a study evaluating whether the acid rain and other programs had addressed all public health concerns from generators. It ordered EPA to develop additional regulations if the agency determined it was "appropriate and necessary."



Generating plants subject to MATS. (Source: EPA)

"So what, if anything, can we infer from" Congress' decision to treat power plants differently from other HAPS sources? Justice Samuel Alito asked. Lindstrom was in the middle of his answer when Justice Kagan jumped in.

"They were trying to create a different regime because they thought that the acid rain program might have a real impact on what these electric utilities were doing," she said. "So they said, wait and see and let's see how the acid rain program works, and let's see if we still have a problem to solve. And that's the reason why they put the electric utilities in a different category, isn't it?"

Later, Justice Kennedy said that EPA's emission threshold — equal to the emission rates of the top 12% of generators in their class — was an "implicit cost consideration."

Lindstrom said that wasn't enough. "The fact that some utilities were able to impose things doesn't mean it would be cost effective for other ones to do it," he said.

Utility Air Regulatory Group

Attorney F. William Brownell, representing the Utility Air Regulatory Group, an ad hoc association of electric generating companies and industry trade associations, spoke second.

Brownell focused on the cost of the regulation — by some accounts the most expensive EPA regulation in history at an estimated \$9.6 billion annually. In addition to controlling mercury emissions, it is also designed to control emissions of non-mercury metals and acid gases.

The rule sets separate standards for different types of oil-fired generators and separates lignite coal generators from others.

"Most of the costs here — the majority, about \$5 billion annually — are associated with the acid gas regulation, which the agency has concluded presents no public health risk," Brownell said.

Kagan said Brownell's position that EPA consider costs before it decides how to categorize emission sources was unworkable. "EPA ... can't even figure out the costs until it makes those categorization decisions," she said.

Solicitor General Defends EPA

Solicitor General Donald Verrilli Jr., representing EPA, said the court should uphold EPA's rulemaking because "it is the most natural and certainly a permissible reading of the statutory text, which directs EPA to focus on health concerns and doesn't mention costs."

Chief Justice John Roberts pressed Verrilli to concede that EPA "could have interpreted the statutory language to allow them to consider costs." When Verrilli declined to answer directly, Justice Kennedy repeated the question.

Verrilli refused. "I think EPA ... read the best interpretation of the statute was [that] it didn't provide for the consideration of costs at the" stage where it was determining what pollutants to regulate.

Alito said there was no reason for Congress

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to treat power plants differently except “to hold open the possibility that power plants would not be listed even if their emissions exceeded the levels that would result in listing for other sources.”

Verrilli said he refused to accept Alito’s premise. “The argument that your honor just posed is not in the legislative history, and it’s not in the text,” he said.

Justice Stephen Breyer, who usually votes with the liberal wing, indicated he was looking for a rationale to support EPA. But he said he was concerned that “it begins to look a little irrational to say, ‘I’m not taking [cost] into account at all.’”

Verrilli said the cost consideration comes after EPA identifies the pollutants and classifies the sources into peer groups. “Once EPA lists and defines the category for listing, then the automatic requirement that is ap-

plied is that everyone in the category has to match the performance of the best 12%,” he said.

Calpine, Exelon, PSEG, National Grid Support EPA

The final speaker, attorney Paul M. Smith, representing Calpine, Exelon, National Grid Generation and Public Service Enterprise Group, supported the EPA.

“It’s important to recognize that something like 90% of that \$9.6 billion — 90% of the capital cost, which is most of that \$9.6 billion — has now already been spent,” he said. “And the industry has not experienced the kinds of upheavals that are being described. The rule takes effect in the middle of April, and so the idea that the result here was somehow ludicrous or outlandishly expensive is belied by the fact that the industry is bringing itself into full compliance.”

Significance

Sanne H. Knudsen, assistant professor of law at the University of Washington School of Law, said the significance of the court’s ruling, expected by June, will depend on its breadth.

One scenario is that the court defers to EPA’s judgment under the longstanding *Chevron* doctrine. “One would wonder, however, if that were the outcome, what inspired the court to take the case,” she wrote in a preview for the American Bar Association.

A second possibility, she said, is that the court vacates the rule in a broadly written opinion that mandates cost-benefit analyses in all public health regulations when Congress is silent.

A third scenario is that the court requires the cost-benefit analysis but upholds the rule on the grounds that a remand would lead to the same result.

MATS Challenge Too Late for Targeted Coal Plants

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like a majority of the plants announced for retirement could be backed off on,” agreed Anne Smith, co-chair of NERA Economic Consulting’s global environment practice.

Cost-Benefit Analysis

While the court’s ruling will be too late to provide a reprieve for most of the old, small plants targeted for retirement, it could have an impact on EPA’s efforts to reduce emissions from electric generation.

A ruling that requires EPA to take costs into account when it decides what to regulate — as opposed to when it sets the standards — could have broad implications.

Some environmental attorneys say the Supreme Court decision to hear the MATS challenge could indicate it is reconsidering its 2009 decision that held EPA had discretion on how to consider the cost of regulating large cooling water intake structures under the Clean Water Act, which doesn’t expressly authorize or forbid the use of cost-benefit analyses.

A ruling that found it was “arbitrary and capricious” for EPA not to consider costs could raise the bar for future regulations.

EPA claims MATS will cost \$9.6 billion annually but produce total benefits of at least

\$37 billion to \$90 billion per year, preventing as many as 11,000 premature deaths and 130,000 asthma attacks, while eliminating 5,700 hospitalizations and emergency room visits and 540,000 missed workdays.

However, only a fraction of the benefits — \$500,000 to \$6.2 million annually — are directly related to cuts in mercury emissions. The remainder are “co-benefits” that arise not directly from reducing toxic emissions, but from reductions in particulate matter and carbon emissions expected to result from the standards.

Critics say EPA has engaged in over counting, citing the same co-benefits to justify multiple EPA regulations.

Section 112 vs. 111(d)

The MATS case, which turns on an interpretation of section 112 of the Clean Air Act, also could have an impact on challenges already filed to EPA’s proposed greenhouse gas rule, which the agency is pursuing under section 111(d) of the act.

A suit by coal mining company Murray Energy argues that it is illegal for EPA to regulate generating plants under section 111(d) because power plant emissions are already regulated under section 112. If the Supreme Court rejects the mercury rule, it could remove that as a basis for a challenge on the carbon rule, some say.

PJM Impact

But MATS, 25 years in the making (see sidebar, [p.17](#)), will have a major impact regardless of the court’s ruling.

In PJM, 120 generating units totaling about 12,500 MW have indicated plans to retire by 2018. The plants average 48 years old, with some as old as 67. Only four of the units, totaling 425 MW (3.4% of total capacity at stake), are less than 40 years old.

At the end of last year, AEP had generating capacity of almost 37,600 MW, more than 23,700 MW of it coal-fired. It plans to retire 6,500 MW by the end of next year, including 5,400 MW in PJM.

AEP said a decision to remand or suspend the rule could impact certain aspects of the operation of environmental controls that are already installed or are currently under construction. “For example, there could be greater flexibility to operate selective catalytic reduction systems and SO₂ scrubbers if they are not needed to achieve the mercury and acid gas limits under the MATS rule, but are only required to achieve compliance with the market-based CSAPR programs,” Ridout said.

FirstEnergy cited MATS in announcing in January 2012 it would retire six coal-fired plants totaling 2,689 MW in Ohio, Pennsyl-

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MATS Challenge Too Late for Targeted Coal Plants

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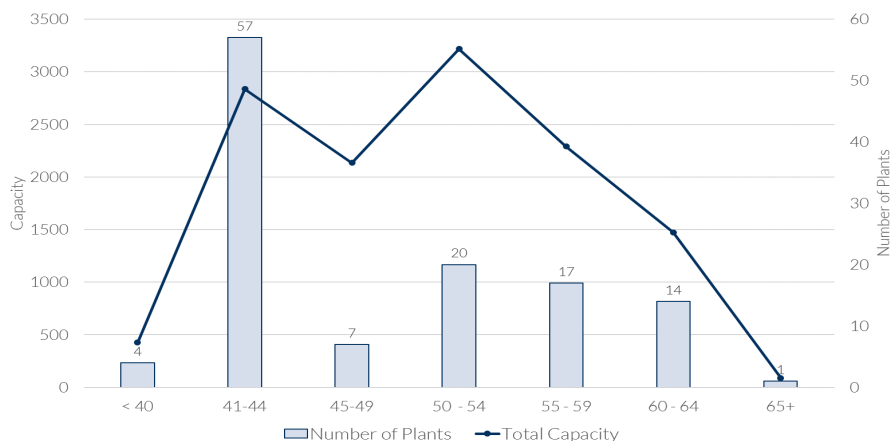
vania and Maryland by September of that year. The closures were projected to affect about 529 employees. Retirements of three Ohio plants — Eastlake, Ashtabula and Lakeshore — have been delayed under reliability-must-run agreements.

The retirements will leave FirstEnergy with six coal-fired plants totaling 9,228 MW in Ohio, Pennsylvania and West Virginia. Most of those being retired are 500 MW or smaller and served as peaking or intermediate generators; those being retained are 1,000 to 2,500 MW baseload plants.

PJM's reliability concerns also led East Kentucky Power Coop. to delay retirements of Dale Station Units 3 and 4 until April 2016, a year later than planned. EKPC closed Units 1 and 2 of the Clark County, Ky., plant about a year ago.

EKPC said Units 3 and 4 would be maintained in case market and regulatory conditions allowed their retrofit or conversion. The plant, with a capacity of 196 MW, began operating in 1954, with the newest unit dating from 1960.

"If the Supreme Court makes a decision that changes the rules on MATS, our board would carefully look at that decision to assess whether our plans should change," said EKPC spokesman Kevin Osbourn.



Pending deactivation requests in PJM, by plant age and capacity. (Source: PJM)

GHG Rule: Good for Regulated Gens, not Merchants

EKPC, which has invested nearly \$1.5 billion in two new coal-burning units and retrofits to older units, said it fears those investments could become stranded as a result of EPA's Clean Power Plan, which will require Kentucky to reduce its carbon emissions by 18% from 2005 levels by 2030.

But the additional regulations won't necessarily be a bad deal for utility investors.

"To the extent we install additional controls on our generation plants to limit CO₂ emissions and receive regulatory approvals to increase our rates, return on capital investment would have a positive effect on future

earnings," AEP told investors in its 2014 annual report. "Prudently incurred capital investments made by our subsidiaries in rate-regulated jurisdictions to comply with legal requirements and benefit customers are generally included in rate base for recovery and earn a return on investment. We would expect these principles to apply to investments made to address new environmental requirements.

"However, requests for rate increases reflecting these costs can affect us adversely because our regulators could limit the amount or timing of increased costs that we would recover through higher rates. For our sales of energy into the markets, however, there is no such recovery mechanism."

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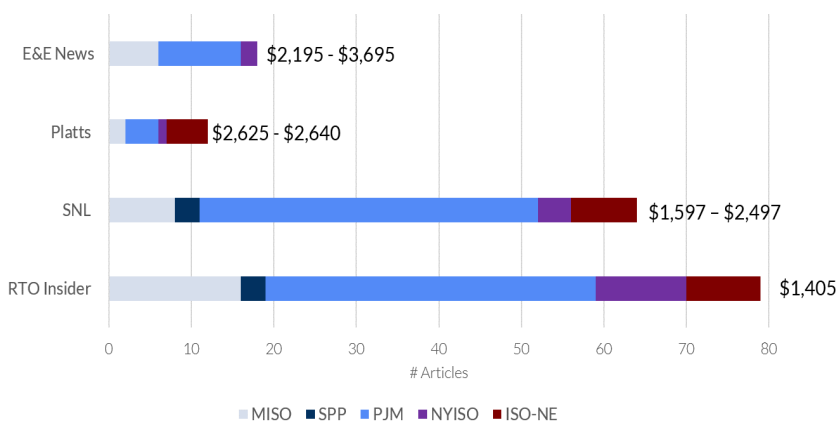
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