RTO Insider
Your Eyes and Ears on the Organized Electric Markets
ISO-NE ■ MISO ■ NYISO ■ PJM ■ SPP

ISSN 2377-8016 : Volume 2015/Issue 36 October 27, 2015

Legal Debate over Clean Power Plan Takes Center Stage

By Rich Heidorn Jr.

Allison Wood, Hunton & Williams: "Never before in the history of the Clean Air Act has a standard of performance … been based on 'don't run.'"

Bob Sussman, former EPA senior policy counsel: "The term in the statute is 'best *system* of emission reduction.' It's not 'best emission-reduction technology achievable.'"

WASHINGTON — For months, supporters and detractors of the Environmental Protection Agency's Clean Power Plan have been debating whether the carbon reductions are too stringent or not tough enough; whether it will compromise reliability; whether it will save struggling nuclear power plants.

With Thursday's publication of the rule in the Federal Register, another question took center stage, one whose answer could make the others academic: Does EPA have the legal authority to do what it did?

Twenty-six states gave their answer Friday, filing suit in the D.C. Circuit Court of Appeals to void the rule, which seeks to cut the power sector's carbon emissions by 32% by 2030, compared with 2005 levels.

West Virginia and 23 other states — Alabama, Arizona, Arkansas, Colorado, Florida, Georgia, Indiana, Kansas, Kentucky, Louisiana, Michigan, Missouri, Montana, Nebraska, New Jersey, North Carolina, Ohio, South Carolina, South Dakota, Texas, Utah, Wisconsin and Wyoming — joined in one challenge while Oklahoma and North Dakota filed separate suits. Congressional Republicans have also vowed to push legislation preventing the plan from taking effect.

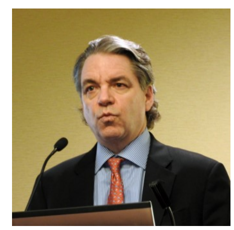
Fifteen other states, along with D.C. and New York City, are planning to intervene in support of EPA.

A senior EPA official and a panel of legal experts gave their own opinions at Infocast's second CPP Summit in Washington last week.

Best System of Emission Reduction

The Supreme Court ruled in 2007 that EPA had authority to regulate carbon dioxide. At issue is how EPA is attempting to do it, specifically how the agency defined the "best system of emission reduction (BSER)," the standard set in Section 111(d) of the Clean Air Act.

"The best system of emission reduction is a term of art in Section 111 [that] has been applied more than 60 times. And at bottom we did not undertake the process of answering that question any differently



Joseph Goffman

Continued on page 25

Stakeholders Discuss Clean Power Plan Compliance, Costs at Midwest Seminar (p.2)

FERC Session on MISO Capacity Rules also Puts Stakeholder Process Under Scrutiny

By Rich Heidorn Jr. and Suzanne Herel

WASHINGTON — MISO officials asked FERC staff last week to trust in its stakeholder process and not force capacity market changes that could increase exports, while the RTO's Market Monitor and other critics called for the commission to force reforms.

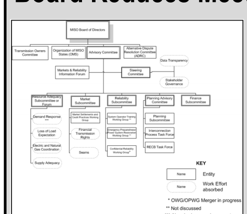
FERC staff's daylong technical conference on MISO's capacity market — called in response to complaints by Illinois officials, industrial energy users and a consumer group — was dominated by technical discussions on zonal boundaries, capacity import limits and reference levels. But MISO's stakeholder process also came under scrutiny.

MISO Market Monitor David Patton suggested only a FERC order would prompt the RTO to switch from a vertical to a sloped demand curve.

"For any change that involves large economic value, the stakeholder process can bog down," Patton said. "And that's definitely the case with the sloped demand curve."

Continued on page 13

Board Reduces Meeting Schedule



MISO's Board of Directors voted to switch to a quarterly meeting schedule from its current every-other-month calendar. (p.10)

Also in this issue:

10837 Deborah Drive ▣ Potomac, MD 20854 ▣ (301) 983-0375 ▣ info@rtoinsider.com
▣ www.rtoinsider.com ▣

Stakeholders Discuss Clean Power Plan Compliance, Costs at Seminar

By Tom Kleckner

Nancy Lange (Minnesota PUC), Andy Kellen (WPPI), Scott Weaver (AEP), Sandy Byrd (AECC) and Pam Kiely (EDF) at Great Plains CPP Seminar. © *RTO Insider*

LITTLE ROCK, Ark. — Industry representatives and those that regulate or work with them gathered here last week to discuss the Clean Power Plan and its implications — primarily near-term uncertainty — for the industry.

Regional compliance or state-by-state? Mass based or rate based? Comply or resist?

One certainty, as FERC Commissioner Colette Honorable joked, is that the CPP is "a job-security act for lawyers."

More seriously, Honorable said, "I do believe it's important to hear from all the parties."

Three panels of industry insiders did just that during a seminar organized by the Great Plains Institute and the Bipartisan Policy Center, focused on the CPP's impact on the midcontinent states.

"It was a very useful day. We spent time on the same issues we're thinking about right now in Iowa," said Amy Christensen, an administrative law judge with the Iowa Utilities Board. "We're living and breathing this right now. It's helpful to hear other speakers talk about the same issues."

'Common Currency'

Ted Thomas, chairman of the Arkansas Public Service Commission, told *RTO Insider* he was particularly struck by comments from PJM Senior Economic Policy Advisor Paul Sotkiewicz on the rate- vs. mass-based issue and use of gas plants.

A rate-based plan caps the emissions of a state's power fleet based on an average (CO_2 tons/MWh). A mass-based plan caps the total tons of carbon the power sector can emit each year.

"With a mass-based program … you can bring in new gas units and set aside the allowances," Sotkiewicz explained.

"The thing to me that needs more study is [Sotkiewicz'] thought that mass-based is more accommodating than rate-based, because you can't use new gas units to manage down your rates," Thomas said. "The rate[-based] stuff is so complicated. With mass, it's just tons of emissions. You already have a common currency."

"Under an emissions-rate regime, new gas [units] can't be brought in. So why go with an emissions rate if you're a coal-heavy state?" asked MISO's Kari Bennett. "With mass-based, you can retire older units and bring in newer ones. It's easier to facilitate load growth with mass-based approaches."

Nancy Lange of the Minnesota Public Utilities Commission took a different viewpoint. "I don't know of any states that have done enough analysis to show one [mass- or rate-based] is more preferable than the other," she said.

Both MISO and SPP say the mass-based approach would make regional compliance, with trading of emission credits, easier to administer, helping coal-reliant states. SPP released a study in July that indicated a state-by-state compliance approach could result in nearly 40% higher costs than a regional approach.

"The prudent thing is to look at regional compliance," Honorable said, citing the SPP study.

Costs

"If we're going to be retiring a significant portion of the nation's coal fleet, the only substantial winner will be natural gas," said the Arkansas Electric Cooperative Corp.'s Sandy Byrd, vice president of public affairs and member services. "If there's going to be a dash for gas, we'll be building more combined cycles, transmission infrastructure … there will be a huge cost coming that wouldn't be without the CPP. We need to ensure the consumers know it's going to happen."

Jim Hunter, representing the International Brotherhood of Electrical Workers, agreed with Byrd. "We're betting on gas," he said, "but when the price goes up — and it will — the price of electricity is going up, too."

Leakage

The panels also discussed "leakage" and its implications on adding new generation.

The CPP covers generators that began construction on or before Jan. 8, 2014. Plants built after then are subject to EPA's new source performance standard, which limits carbon emissions to 1,000 lbs/MWh for new baseload gas-fired units, versus the 771-pound limit for existing gas plants.

For a state that adopted rate-based compliance but shifts added new plants, the mass-based limit would no longer be equal to the original emission-rate limit.

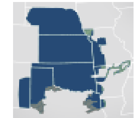
"It's a fuzzy concept, as described by the EPA," said Scott Weaver, manager of strategic analysis for American Electric Power. "I think it's flawed. The [emission] rates for [new] gas units are less stringent, so you're shifting emissions from existing units to new units."

States must decide whether to pursue rate-based or mass-based plans by September 2016. (States can also ask for a two-year extension at that time.)

States that decide not to comply with the CPP or submit inadequate plans will be subject to a federal plan.

"State plans make a lot of sense," Lange said. "It's important to have the flexibility of a state plan, given states want the control and to maintain flexibility on how a state should comply with the rule."

SPP News



MISO May Reconsider Louisiana Project if SPP Takes Bigger Share of Cost

By Tom Kleckner

LITTLE ROCK, Ark. — MISO said last week it is continuing discussions with SPP on one interregional project, despite earlier staff recommendations to not proceed.

In September, MISO staff said it would not recommend for approval any of the three potential joint projects evaluated by it and SPP. SPP staff has recommended one of the projects, the 11-mile South Shreveport-Wallace Lake 138-kV rebuild in northeastern Louisiana.

SPP said the project would have a benefit-cost ratio of 11.86, assuming MISO funded 80% of the cost. MISO said the same assumptions resulted in only a 0.86 B/C ratio, below the minimum threshold.

But Jennifer Curran, MISO's vice president of system planning and seams coordination, told the System Planning Committee last week that the RTO might yet support the project if SPP picked up a bigger share of the cost. "We're continuing discussions with SPP to see if there are alternative price allocations," she said.

MISO's Board of Directors will take up staff's interregional recommendations during its December meeting.

Curran also said a second project considered in the interregional analyses, the Alto-Swartz 115-kV series reactor in West Texas, might have a "fair amount of value." She said it will be taken into MISO's regional study process.

Meanwhile, MISO Technical Advisor for Economic Studies Arash Ghodsian met with SPP's Economic Studies Working Group last week to help the group better understand MISO's interregional review process and this year's results.

Ghodsian said the initial interregional study ended in June, and that MISO spent the next three months updating its modeling based on SPP and stakeholder feedback. MISO initially recommended one of the three projects, before deciding against all three after "tightening" its analysis. (See "No Go for MISO-SPP Interregional Projects," in *MISO Planning Advisory Committee Briefs*.)

Ghodsian said MISO and SPP "effectively collaborated" during the study and said the knowledge gained would improve the interregional planning process.

"We look at it as a great working relationship," he said. "I don't know the plans for the future, but we look forward to more interregional studies."

Brett Hooton, SPP's senior interregional coordinator, said both RTOs will compile stakeholder feedback on the process for discussion during the Dec. 2 Interregional Planning Stakeholder Advisory Committee.

Briefs

SPP Seeks Waiver on Order 1000 Project Panel

SPP asked FERC last week to allow it to waive Tariff provisions governing the selection of an industry expert panel (IEP) to evaluate proposals for the RTO's first competitive solicitation under Order 1000 (ER16-126).

SPP's Tariff requires its Oversight Committee to establish an IEP candidate pool composed of individuals with expertise in at least one of five areas of electric transmission: engineering design; project management and construction; operations; rate design and analysis; and finance.

When an IEP is needed to evaluate proposals, the committee selects three to five candidates from the pool that collectively satisfy each of the five areas.

The RTO told FERC it recently learned that one of the 10 candidates in its 2015 pool — the only one with expertise in one of the five areas required — may not be able to serve and that it won't have time to select a replacement and meet its deadline for evaluating the upcoming project.

The Tariff requires the panel to recommend a proposal within 60 days of beginning their review.

SPP asked FERC to shorten the comment period and grant the waiver by Nov. 2, when responses to the RTO's request for proposals are due on the 21-mile Walkemeyer-North Liberal 115-kV project in Kansas. (See *SPP Issues RFP for 115-kV Transmission Project*.)

"Out of respect to the candidate's privacy," SPP said it was not disclosing the candidate's name, area of expertise or reason that could prohibit participation.

SPP said a suitable replacement was found in the 2016 candidate pool, but the Tariff would not allow the candidate to review proposals issued in 2015. Granting the RTO's waiver request would ensure "no material delays arise" in the review of the Walkemeyer proposals.

In July, the board approved a staff recommendation to move the project's "regulatory approval need date" eight months from the Notice to Construct's issuance.

The change met a Kansas Corporation Commission statutory obligation to rule on such requests within 180 days of the initial filing and give the winning entity "reasonable time" to gain utility status in the state. (See "Date Change for Walkemeyer Project RFP" in *SPP BoD/Members Committee Briefs*.)

SPP Sets New Highs for Wind Usage

SPP's balancing authority set new records for wind and wind-penetration peaks last week.

The BA recorded a new high for wind at 8,458 MW on Oct. 18, and a new wind penetration level of 37.8% of load on Oct. 19.

SPP's previous wind-related highs were 8,412 MW of wind on Feb. 1 and 36.8% of load on April 16.

The record highs came less than a month after the Integrated System's incorporation into the SPP footprint Oct. 1.

SPP set several wind records last year, when it saw wind energy account for 11.8% of the footprint's generation.

— Tom Kleckner

PJM NEWS

Proposals to Cut Tier 1 Compensation Fall Short

By Suzanne Herel

No.	Original Tier 1 Credit	Tier 1 MW Opt-Out	New Credit with Opt-Out %	Reduction from Opt Out
1	$26,976,902	0%	$26,976,902	$0
2		25%	$20,232,677	$6,744,225
3		50%	$13,488,451	$13,488,451
4		75%	$6,744,226	$20,232,676

Potential Tier 1 credit reduction from opt out, 2014 *Source: PJM*

The Markets and Reliability Committee last week failed to reach consensus on a way to reduce spending on Tier 1 synchronized reserves, with proposals by PJM and the Market Monitor both falling short.

PJM's recommendation would have added an obligation for Tier 1 resources to respond in emergencies and make them subject to penalties if they couldn't. They could opt out of that duty, but by doing so they would forfeit any credit they would have received outside of responding to a spinning event.

PJM estimated it would have reduced the RTO's 2014 Tier 1 expense of $27 million by as much as $20.2 million if three-quarters of resources opted out (see chart).

The proposal retained a provision in the existing rules entitling Tier 1 to receive compensation outside of an event when the non-synchronous reserve market price is more than $0 — a concession that the Monitor opposed.

Monitoring Analytics' Tom Blair said that the Monitor "remains opposed to paying for Tier 1 in any circumstance except when it responds to a spinning event, and then at the synch reserve price." The PJM proposal, he said, "does not remediate or even address that concern."

Howard Haas, also of Monitoring Analytics, added, "There's no reason or rationale to compensate Tier 1 outside of a spinning event. There is no lost opportunity cost that isn't already included in the energy offer."

The PJM proposal received only 54.4% support in a sector-weighted vote, with most Generation Owners (85%) and Transmission Owners (91%) in support and other sectors split or opposed.

Monitor's Proposal

Steve Lieberman of Old Dominion Electric Cooperative introduced an alternate proposal based on a recommendation by the Monitor that would have eliminated compensation for Tier 1 resources except when responding to an event. It imposed no obligation to respond.

That proposal also failed, receiving 57.4% support, with virtually unanimous support from End Use Customers and Electric Distributors but little backing from Generation Owners (17%) or Transmission Owners (20%).

Tier 1 synchronized reserves are partially loaded generators that have room to increase their output in response to a spinning event, explained PJM's Adam Keech. Tier 2 resources include demand response, synchronous condensers and generators that would otherwise be running at full output, meaning they incur lost opportunity costs.

Currently, Tier 1 carries no obligation to respond to spinning events, unlike Tier 2. Keech said the purpose of the proposal was to "make the resources that opt in identical to Tier 2 resources today."

The issue of Tier 1 compensation stems from a problem statement introduced last fall by Monitor Joe Bowring, who referred to them as "available ramp room" that was standing by and doing nothing but costing the RTO more than $85 million per year. (See *Monitor: Cut Pay for Tier 1 Synchronized Reserves*.)

David "Scarp" Scarpignato of Calpine said that both proposals had their positive and negative sides.

"It doesn't make sense to pay non-synch reserves payments and not Tier 1. [Non-synch reserves are] not anywhere close to being as valuable" as Tier 1 synch reserves, he said. "You might go so far as to say that Tier 1 should be paid all the time — PJM, while not demanding a response, is expecting a response.

"Tier 1 is providing value that PJM counts on," he added.

'Late' Criticism?

Dave Pratzon of GT Power Group, which represents some generators, took issue with critics of the PJM proposal, which had cleared the Market Implementation Committee on Oct. 7. (See *PJM Market Implementation Committee Briefs*, Oct. 12.)

"None of these issues were voiced previously," he said. "No one mentioned an alternative [during the first read at the last MRC meeting]. It's a little disappointing that we have to wait until the 11th hour to hear that a different proposal will be put up."

He cautioned his colleagues against ODEC's recommendation, saying, "Accepting this proposal will open up a lot of other market issues that are unintended consequences."

Carl Johnson of the PJM Public Power Coalition said his opposition to the PJM proposal was not an about-face.

"We opposed it in the subgroup, opposed it in the MIC and opposed the manual language," he said. The MIC had approved the proposal with 28 opposed and 16 abstentions.

After both proposals failed, Bob O'Connell of Main Line Electricity Market Consultants, made a motion for a second vote on the PJM proposal. But MRC Chairman Mike Kormos said that under PJM rules, only a member who voted against a measure may ask for it to be reconsidered.

O'Connell acknowledged he had not voted against the proposal and no one else came forward to seek a second vote.

PJM News

Members Agree to Fund Consumer Advocates Group

By Suzanne Herel

WILMINGTON, Del. — The Members Committee overwhelmingly agreed last week to fund a $450,000 budget for the Consumer Advocates of the PJM States (CAPS), in part through an assessment on electric customers.

According to the proposal, the charge to a residential customer using 12,000 kWh annually will be eight-tenths of a cent. The group also would receive a one-time infusion of $350,000 from Exelon if the D.C. Public Service Commission approves its acquisition of Pepco Holdings Inc., under a settlement brokered with D.C.'s mayor.


Griffiths

"The consumer advocates designated by state statute are in a position of having to be in two places at once — the state where there's always lots to do, and here at PJM, where most of the charges are coming from," said CAPS Executive Director Dan Griffiths. That, he said, has stretched the advocates' resources, making it difficult to monitor the "hundreds" of meetings the RTO holds each year.

"This is something we think is a serious problem because the voice of the retail folks who are ultimately paying the bills is absent."

Griffiths said the group modeled its budget and funding request on that of the Organization of PJM States Inc. (OPSI), which is funded through a charge in Schedule 9 of the RTO's Tariff.

The proposal passed with slightly more than 81% of a sector-weighted vote, receiving unanimous support from End Use Customers and 89% from Other Suppliers. About 79% of Electric Distributors supported the funding, along with 71% of Generation Owners and two-thirds of Transmission Owners.

At the Members Committee meeting earlier this month where the plan was introduced, it met resistance from some suppliers, most notably Direct Energy, Talen Energy and Dynegy. Last week, Direct Energy abstained from the vote, while Talen and Dynegy opposed it. (See *Consumer Advocates' Funding Request Sparks Sharp Words*.)

Jesse Dillon, assistant general counsel for Talen, repeated his argument that the proposal runs afoul of the First Amendment prohibition against "compelled speech."

"I've already made the policy point that no member should have to fund the advocacy voting of another member, period," he said. "This one group is receiving treatment that others aren't. Their voices are no more relevant in the marketplace of ideas than other entities."

In response to the free speech argument, the consumer advocates penned an Oct. 13 memo to the heads of the Members Committee defending the proposal, saying in part that the doctrine doesn't apply to government entities, "which the members of CAPS clearly are."

The memo cites FERC's approval of OPSI funding in 2006 over a similar objection by Public Service Enterprise Group (ER06-78).

In that case, FERC ruled, "PJM is providing funding to make its job of working with the states easier and more efficient. The ability of any participant to express its views will not be constrained by this proposal."

Dillon disputed the classification of CAPS as a government entity, noting that the group is a 501c tax-exempt nonprofit organization.

CAPS, made up of consumer advocates from PJM states and D.C., was formed in 2012 with start-up funding from a FERC enforcement settlement with Constellation Energy (IN12-7-00).

West Virginia Consumer Advocate Jackie Roberts pointed out that a portion of electric customers' bills already go toward having the companies — Appalachian Power, in her case — represented at PJM.

"All we're asking is that the customers we represent have an opportunity to pay less than a cent a year to have us have a seat at the stakeholder table," she said.

MRC/MC Briefs

Markets and Reliability Committee

Tariff Change Would Allow PJM to Sell Excess Capacity for 2016/17

WILMINGTON, Del. — Members overwhelmingly endorsed a Tariff change that would allow PJM to release Base Capacity resources to reflect the Capacity Performance resources it acquired in the transition auction for the 2016/17 delivery year.

While it planned to include the 2017/18 delivery year in the changes, staff decided to hold off pending a Supreme Court ruling on the Electric Power Supply Association's challenge to FERC's jurisdiction over demand response. (See *FERC Jurisdiction over DR in Peril as Supreme Court Splits*.)

PJM plans to craft the request for the Tariff change to FERC in a way that would permit it to pull it back if the Supreme Court rules that DR could not be used in energy markets and FERC applied the ruling to capacity markets as well.

"There's some argument out there that jurisdiction is jurisdiction. The hesitancy we have is if *EPSA* is upheld at the Supreme Court, we don't know what FERC would do, so we want to leave ourselves open with a safety valve," said Stu Bresler, PJM senior vice president for markets.

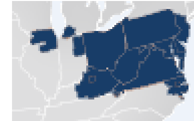
In addition, PJM Assistant General Counsel Jen Tribulski noted that FirstEnergy has a case before FERC regarding DR in capacity markets (EL14-55).

"FERC could take both and make a decision regarding both markets," she said.

The filing is expected to be made in early December. The third in-

Continued on page 6

PJM NEWS



MRC/MC Briefs

Continued from page 5

cremental auction is set for February.

Committee Endorses Increase in IRM

With five "no" votes and 19 abstentions, the committee approved an increase in PJM's Installed Reserve Margin.

The Reserve Requirement Study increased the IRM for delivery year 2016/17 to 16.4% from 15.5% in the 2014 study. IRMs also rose for 2017/18 and 2018/19.

Some members expressed misgivings over PJM's methodology, saying the rise seemed counterintuitive given the new Capacity Performance product and other efforts to ensure generator reliability. (See "IRM, FPR Rising; PJM Methodology Challenged" in *PJM Planning Committee Briefs*.)

Steve Lieberman of Old Dominion Electric Cooperative opposed the proposal.

"We don't take resource adequacy lightly," he said. "We're not looking to make things less reliable; we're just not comfortable with the assumptions made this year. We feel that the IRM that was in place last year is a fair and reliable value to use next year."

Tom Falin, manager of resource planning, said that CP alone does not automatically result in a lower IRM.

"We have already assumed that generators will perform at the CP standard," he said. "Our planning studies assume that the forced outage rate applies every day of the year, regardless of how hot and cold, that generators will have about a 7% unavailability rate."

Winter Peak Studies to be Added to Planning Process

The committee unanimously endorsed changes to Manual 14B: PJM Region Transmission Planning Process adding the RTO's first criteria for reliability studies focused on meeting winter peaks.

The parameters define the winter peak period as 6 to 9 a.m. and 5 to 8 p.m., from Dec. 1 through Feb. 28.

The studies will include thermal and voltage evaluations; solutions to identified problems will be developed through the Transmission Expansion Advisory Committee.

The criteria will be effective for baseline studies on Jan. 1 and for interconnection queue requests received after the effective date of the revised manual language.

Traditionally, the use of energy in PJM has peaked in the summer, but in the past couple of years, it has seen operational issues "during a lot of other times," said Mark Sims, manager of transmission planning.

He said new transmission planning standards going into effect will require PJM to study more extreme events.

Regulation Market Proposal, Task Force Charter Approved

Members approved an interim solution to the over-procurement of RegD resources that will be reflected in changes to Manual 11: Energy & Ancillary Services Markets Operations.

The solution moves the benefits factor curve to the left so that it is at zero at 40%. A cap of 26.2% also will be implemented during identified excursion hours — hours when dispatch frequently moves the regulation signal manually.

It also features tie-breaker logic to rank RegD self-schedules or zero-cost offers. (See "Solution, Task Force Proposed to Curtail RegD Resources" in *PJM Markets and Reliability Committee Briefs*.)

The changes, which take effect Dec. 1, will be reviewed quarterly while a senior task force will seek a long-term solution.

"We believe this proposal goes in the right direction," said Susan Bruce of the Industrial Customer Coalition. "It's certainly a good placeholder until the next group does some long-term work."

In a related vote, the charter for the task force also was approved. Some key activities were added after the issue was discussed at the Operating Committee, including evaluating the causes and effects of prolonged control deviations and identifying common causes for operators manually adjusting the regulation signal.

The group also will re-evaluate:

- the regulation requirement;
- regulation signal formation, including the potential of RegB and RegD neutrality;
- self-schedule and zero-offer resources in the commitment process and impacts on energy market;
- the scoring method for regulation testing and regulation service; and
- the schedule used in the calculation for the regulation lost opportunity cost.

Subcommittee Formed to Review Governing Documents

The former Tariff Harmonization Senior Task Force will become the Governing Document Enhancement and Clarification Subcommittee, members agreed.

The change was recommended because it turned out that the task force's work was significant enough and was intended to be ongoing, said facilitator Janell Fabiano. (See *Task Force Proposed to Resolve Inconsistencies in PJM Governing Documents*.)

The group will review, identify and propose solutions to substantive and non-substantive inconsistencies and confusing language in PJM's governing documents.

Members Committee

Nominating Committee Members Elected

Members elected the Nominating Committee for 2015-16. The sector representatives are:

- Electric Distribution Sector: Lisa McAlister, American Municipal Power
- End Use Customer Sector: Ruth Ann Price, Division of the Public Advocate of the State of Delaware
- Generation Owner: Joe Kerecman, Calpine
- Other Supplier Sector: Marji Philips, Direct Energy
- Transmission Owner Sector: John Horstmann, Dayton Power & Light

— Suzanne Herel

NYISO NEWS

Ginna Lifeline to End in 2017; Profitable Operation Afterward 'Unlikely'

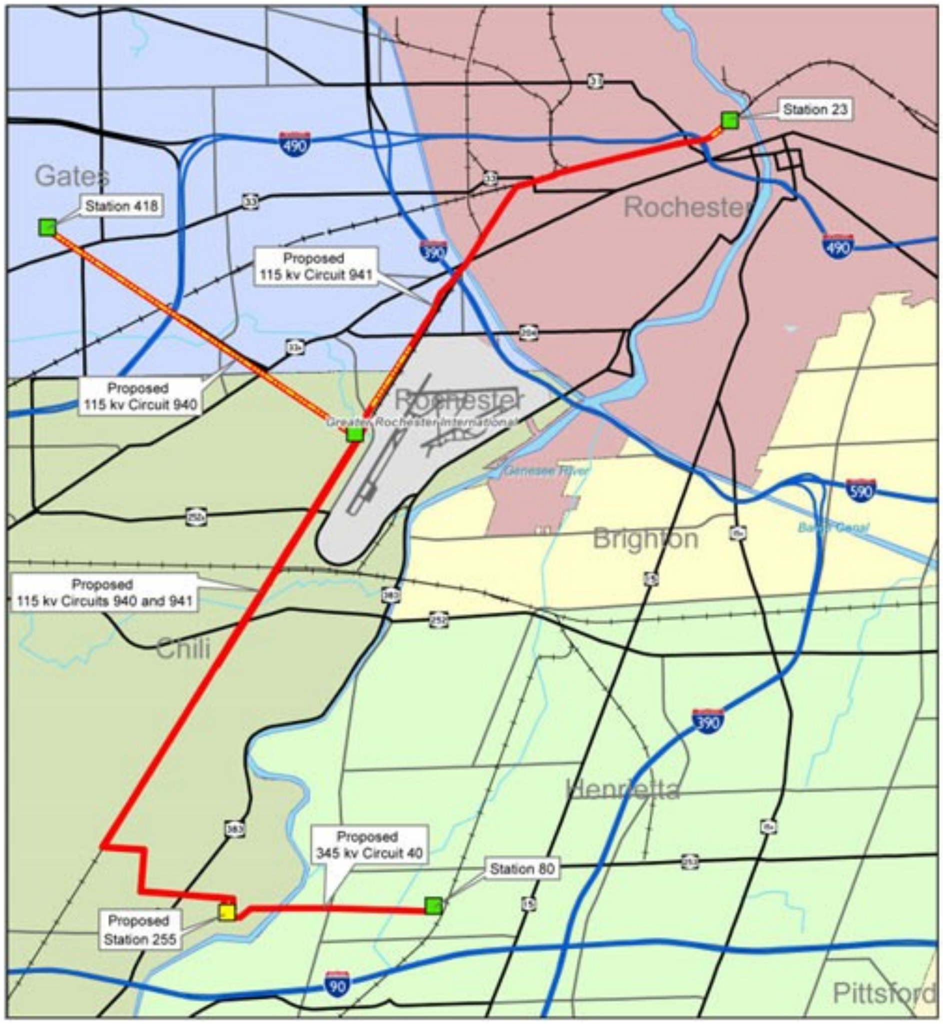
By William Opalka

The R.E. Ginna nuclear plant and Rochester Gas & Electric have reached an agreement to provide a financial lifeline for the plant through March 2017, 18 months earlier than originally proposed.

The plant's owner states in an analysis included in the filing that the plant will not be financially viable when the agreement ends.

Under a joint proposal filed late Wednesday with the New York Public Service Commission and FERC, the new reliability support services agreement would end March 31, 2017 (14-E-0270) (ER15-1047). An earlier agreement between Exelon subsidiary Constellation Energy Nuclear Group and RG&E — which was ordered by the PSC but rejected by FERC — ran until Sept. 30, 2018.

Payments to Ginna would not start until FERC approves the agreement, the settlement says.



Rochester area reliability plan (RARP) *Source: NYISO*

Ginna's Market Prospects Dim

The agreement calls for RG&E to apply up to $110 million in existing customer credits toward the costs of the RSSA. Ratepayers will be on the hook for a $2.25 million monthly surcharge beginning Jan. 1, 2016, through at least June 30, 2017. If the customer credits are insufficient to cover the cost of the agreement, the surcharge will continue until the balance is paid off.

Those payments may continue after the plant is shut down.

"Based upon my review of Ginna's projected operating costs for the 18-month period starting after the RSSA expires and my calculation of how much market prices must increase before Ginna's re-entry into the market would become economic, it appears highly unlikely that there will be an incentive for Ginna to return to the market after RSSA termination," Jeanne M. Jones, vice president of nuclear finance for Exelon and CFO of CENG, wrote in an affidavit.

The plant's prospects are dim because forecasted market prices are lower than a baseline the company set in a 2014 analysis, and insufficient to cover the plant's operating costs, Jones said. The conclusion of the RSSA also coincides with the need for an 18-month refueling, further weakening the plant's financial outlook.

The new RSSA retains financial disincentives in the earlier agreement to prevent the plant from toggling between the RSSA and market payments. This mechanism, the capital recovery balance, required Ginna to pay back a portion of RSSA earnings if it reentered the market. In the new agreement, this $20.1 million would have to be repaid in two years, down from the original six or seven years.

The settlement also calls for commissioning a new reliability study by NYISO to determine if RG&E's proposed transmission alternative is adequate to replace Ginna. A 2014 RG&E-NYISO study concluded the plant would be needed to maintain reliability into 2018.

However, RG&E changed its planning proposal from its Rochester area reliability plan (RARP) to the Ginna retirement transmission alternative (GRTA), which will be completed sooner. The RARP is a $250 million project that includes new transmission lines and new and rebuilt substations, intended to address bottlenecks, with only some components applicable to the loss of Ginna. That project will be phased in, with its completion date extended from 2018 to 2020.

The GRTA is a $150 million project that was devised to access power from other sources and includes some elements of the RARP. It diverts some of the equipment originally intended for the larger project and is expected to be completed before the RSSA

Continued on page 8

NYISO NEWS

TransCanada may Mothball 3 NYC Gas Peakers

By William Opalka

TransCanada told regulators last week that it intends to mothball three of its Ravenswood gas peakers in New York City due to the units' age and condition.

In a letter Tuesday to the New York Public Service Commission, the company wrote that gas turbine units 4, 5 and 6, which began operating in 1970 and total 64.2 MW, could be taken out of service on April 30, 2016. "Over the past 24 months, several operational and maintenance issues have occurred, including evaluation and repairs resulting from Hurricane Sandy. These units are reaching end of life unless substantial investment is made to numerous components."

Unit 7, of similar size and vintage, was taken out of service in March 2014 after "it experienced an over speed condition, high vibrations, a rotor ground and discovery of failed bolts in the turbine rotor first stage section."

Ravenswood *Source: TransCanada*

The units are part of a 2,480-MW complex of gas-fired generators, including baseload plants, in Astoria, Queens. At its full capacity, the complex could serve about one-fifth of New York City's peak demand.

"Over the next six months, they will continue to operate as we have obligations to make the units available to the New York market," company attorney Jim D'Andrea told *RTO Insider*.

The company said it has not made a final decision on the plants' fate. D'Andrea said that the company would make a decision on whether the units should be refurbished "based on the economics."

According to the latest NYISO Gold Book, the three plants produced a combined 500 MWh of net energy in 2014.

The PSC will request a study by NYISO to determine if the units are needed to maintain reliability.

Ginna Lifeline to End in 2017; Profitable Operation Afterward 'Unlikely'

Continued from page 7

expires, RG&E spokesman John Carroll said.

An Improved Deal

The agreement has been endorsed by PSC staff, the New York Utility Intervention Unit and several intervenors. Entergy Nuclear and NRG Energy, which opposed the earlier agreement, said they will not oppose it. Environmental groups oppose the deal while acknowledging it is an improvement over the original proposal.

"The proposed agreement fails to protect consumers and the environment on two accounts. First, the burden for RG&E's bad planning is being put completely on customers," said the Alliance for a Green Economy and Citizens' Environmental Coalition. "Even though RG&E had ample warning since early 2013 of Ginna's financial challenges, the utility did nothing for a year and half to get alternatives lined up to replace Ginna. The utility's failure to act proactively will now cost its customers millions of dollars a year, yet RG&E's shareholders will pay nothing toward the costs of the subsidy.

"Second, the agreement contains no commitments from Constellation in regards to responsibly decommissioning the Ginna reactor. Since closure is imminent, it's critically important for New York's leadership to get an agreement from the owners that it will begin an immediate, careful and thorough decommissioning process upon shutting down Ginna," the groups continued.

The PSC and FERC said decommissioning is outside the scope of this proceeding.

Ratepayers will see slightly higher bills than they have been paying. An average customer would see a monthly increase of $2.20, Carroll said. However, customers have already been paying an extra $1.85 since Sept. 1 under a PSC order that authorized a surcharge to mitigate rate compression. In effect, the average customer will pay an additional 35 cents per month. (See *NYPSC Approves 5.2% Ginna Rate Surcharge*.)

The earlier agreement called for payments to the plant of $17.5 million per month, subject to some adjustments. FERC rejected that agreement in part and directed settlement proceedings that culminated in this week's agreement. The new agreement would pay Ginna $15.4 million per month.

Other terms of the agreement include:

- Ginna's share of revenues from sales into the NYISO energy and capacity markets would be doubled to 30% from the current 15%.
- The settlement cap for Ginna's full cost of service has been set at $510 million, with a floor of $425 million.
- Ginna will not seek a reliability-must-run agreement from FERC.

Ginna spokesman Maria Hudson said the plant owners are still looking for a long-term solution.

"While we are pleased that the negotiated RSSA will allow Ginna to continue powering the grid and the local economy until 2017, it's only a temporary solution to a long-term problem," she said. "Single-unit nuclear facilities like Ginna face significant economic challenges brought on by poor market conditions and a lack of energy policies that properly value the clean and reliable energy that nuclear provides."

If the latest ISO and RG&E reliability study shows Ginna's energy is needed beyond 2017, it will bid in to the state's capacity auction in 2017.

NYISO News

Entergy may Announce FitzPatrick's Fate this Week

By William Opalka

Entergy is expected to announce this week whether it will keep operating the James A. FitzPatrick nuclear plant near Syracuse, N.Y.

The company said earlier this month that it would announce a decision by the end of October on whether it would continue to run the 838-MW plant in the face of stiff economic pressure. The 40-year-old facility on the shores of Lake Ontario is due to be refueled in late 2016.

"A decision whether to conduct FitzPatrick's next refueling outage is expected around the end of the month. The company continues to be focused on constructive discussions with the state," Entergy spokesman Tammy Holden said on Friday.

Another troubled nuclear plant in western New York has just completed negotiations with Rochester Gas & Electric and other stakeholders to keep operating into 2017 to maintain system reliability. An agreement was filed with the New York Public Service Commission and FERC last week to keep Exelon's R.E. Ginna plant operating with ratepayer subsidies. (See related story, *Ginna Lifeline to End in 2017; Profitable Operation Afterward 'Unlikely'*, p.7.)

FitzPatrick nuclear plant *Source: Entergy*

Entergy, Cuomo Spar over Negotiations

Negotiations between Entergy and the administration of Gov. Andrew Cuomo, which apparently have been ongoing for months, took an ugly and public turn last week. Cuomo chastised the company for threatening the potential loss of 600 jobs to wring concessions from the state.

"This tactic has been attempted by others in the past and has been unsuccessful. In this state, an entity called the Public Service Commission has oversight over services deemed to be in the statewide public's best interests. Entergy should keep that in mind. Any decisions will be made on the merits," he said in a statement provided to *Capital Tonight*, a cable television program that covers state politics.

The company immediately responded by sending an email to employees that was obtained by the *Syracuse Post-Standard*. "Most recently, we have heard inaccurate claims that we are 'holding employees hostage' or 'only seeking to improve our bottom line.' That is simply not the truth. We are facing substantial financial challenges at FitzPatrick and have been negotiating in good faith with New York state over the last several months to obtain certainty for this facility," wrote Bill Mohl, president of Entergy Wholesale Commodities. "We have a very short window of time remaining to come to a successful resolution with New York state and will be doing everything we can to achieve this. Waiting until the last minute does not serve anybody's interests."

Retirement Predicted

An Oct. 13 UBS research note on the prospects for Northeastern nuclear facilities predicts the plant will not survive. "We see single-unit nuclear assets are particularly challenged. We see this plant as next to formally retire," UBS said.

In an 8-K filing with the Securities and Exchange Commission on Oct. 16, Entergy reported a $965 million impairment charge against the plant, referring to an undisclosed "triggering event" in the third quarter. The plant was previously listed as having a book value of $1.14 billion.

On Oct. 13, Entergy announced the closure of the Pilgrim nuclear plant in Massachusetts, which faces economic challenges similar to FitzPatrick, as cheap natural gas has lowered clearing prices in energy markets. (See *Entergy Closing Pilgrim Nuclear Power Station*.)

Entergy also wrote down the value of Pilgrim by $677 million. Combined, the two writedowns will total $1.6 billion pre-tax basis and about $1.1 billion after-tax (-$5.93/share).

Generator Records Ruling Expected This Week

Last-minute legal maneuvering has delayed by a week a New York Public Service Commission decision on a lawmaker's request for release of generators' pricing information.

The commission's secretary postponed a ruling under New York's Freedom of Information Law on Assemblyman James Brennan's (D-Brooklyn) appeal of a recent ruling denying his challenge to filings that redact bidding information by the state's generators. A ruling had been expected Monday.

The commission denied a similar request from Brennan in 2014. The PSC's records access officer denied the current petition in August. (See *NYPSC Chair Zibelman Acknowledges Costs Concerns*.)

In an Oct. 14 letter to the PSC, Brennan reiterated his position that disclosure by some companies should lift the veil on the others. "Once again, this demonstrates that many companies do not consider the reported information harmful and not trade secrets," he wrote.

The Independent Power Producers of New York filed a letter on Oct. 15 that disputed the nature of the released information, saying it is not comparable to the data Brennan seeks. "That some companies release certain types of information that other companies deem confidential trade secrets has no relevance to whether information is a trade secret, no more so than the public disclosure of the recipe for Coca-Cola is relevant to whether the recipe for Pepsi is a trade secret," IPPNY wrote.

The parties also dispute whether the PSC's rejection of Brennan's 2014 petition can be re-litigated.

"In light of these competing claims, a decision on the appeal will require additional time," Secretary Kathleen Burgess wrote on Monday.

— William Opalka

MISO News

Board Reduces Meeting Schedule; AC Likely to Follow

8 Committees Targeted for Elimination

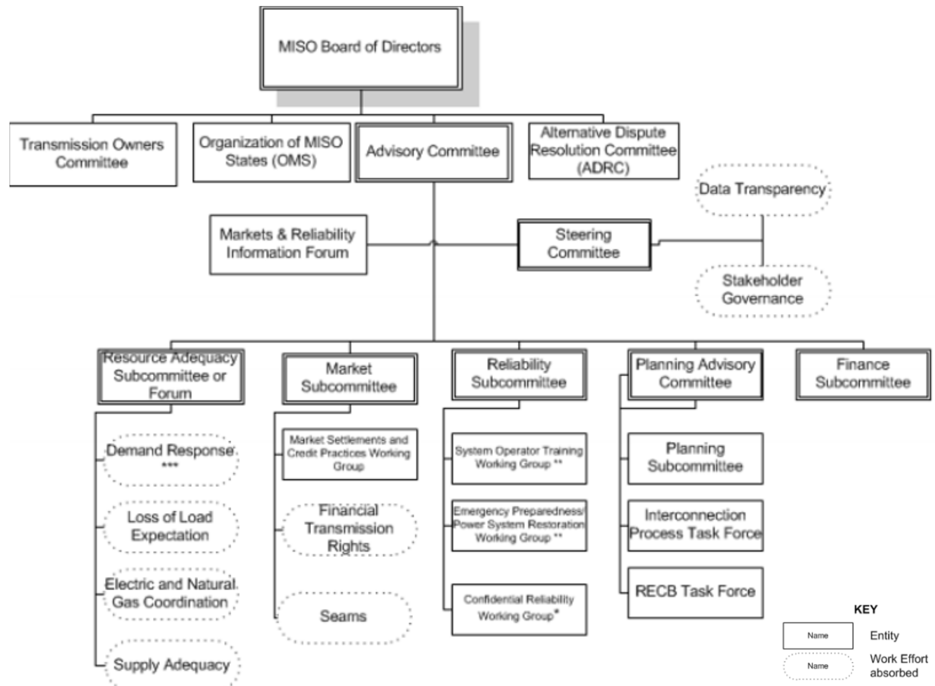
By Amanda Durish Cook

LITTLE ROCK, Ark. — MISO's Board of Directors voted last week to switch to a quarterly meeting schedule from its current every-other-month calendar, a change likely to also be adopted by the Advisory Committee.

The changes are the first to result from the RTO's stakeholder process redesign, which is also expected to result in a reduction in the number of committees.

The board voted unanimously Thursday to switch to four open board meetings, with two strategic planning meetings scheduled in the summer and fall.

"The idea of going to four meetings is to get all of our obligations met. I think it'll be a really productive way to move forward," MISO CEO John Bear said.



Draft organizational chart *Source: MISO*

Too Few?

However, board member Michael Evans said that the quarterly meeting schedule could be too little given the multitude of issues facing MISO.

"We've got a lot of balls in the air, a lot of moving parts," Evans said. "If you miss one [meeting] it means you're six months in between meetings. I'm concerned about losing the relationships between board meetings and losing continuity on the issues. I think we ought to let that percolate a little bit."

Board member Thomas Rainwater said less frequent meetings would challenge the board to do more work between meetings and put the onus on the board members to work harder individually. He added that he couldn't urge the Advisory Committee to meet less if he wasn't willing to apply that to the board.

"I'm pleased to see the diversity of opinion on the board. I can be persuaded either way. I look at this as four governance meetings … and two really deep dive strategic meetings," Rainwater said.

Despite Evans' concerns, the new schedule passed without objection.

The board's vote came a day after the Advisory Committee discussed — but took no action on — making a similar change.

Advisory Committee Chairman Gary Mathis said the committee should follow the board's meeting schedule.

"We should continue meeting this way, face-to-face whenever the board meets," he said. "If the board is considering changing their schedule, then we should follow suit. I think it's important to match those up. As they go, we should go too."

Continued on page 11

MISO Prepared for Winter Demand, Markets Committee Told

LITTLE ROCK, Ark. — MISO is cool and collected heading into the winter, staff told the Markets Committee of the Board of Directors on Wednesday.

Todd Ramey, vice president for system operations and market services, said the RTO has 146 GW of capacity available to serve the estimated winter peak of 104 GW.

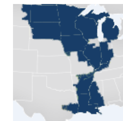
The RTO was able to meet its all-time winter peak of 109.3 GW during the polar vortex on Jan 6, 2014, without directing any demand reductions.

Since then, MISO has taken steps to improve gas-electric coordination and provide more transparency on fuel supplies.

Ramey said MISO is looking into putting other winter readiness measures into place, including emergency pricing and seasonal assessments of resource adequacy. Last year, MISO won FERC approval to create two capability products to manage short-term variations in load. MISO hopes to implement the products in 2016.

— Amanda Durish Cook

MISO News



Board of Directors Briefs

Growing Pains

LITTLE ROCK, Ark. — CEO John Bear said MISO has "reached the limits of the space in Carmel" and needs to explore either expanding or moving its headquarters. He said discussions will follow and the topic will remain at the forefront of the next year.

New MISO Members

The board approved two new members: the Municipal Energy Agency of Nebraska, which provides power to 65 communities in Colorado, Iowa, Nebraska and Wyoming, and Tenaska Frontier Partners, an 830-MW dual-fuel combined-cycle generator near Shiro, Texas, which is connected to both the MISO and ERCOT grids. Jo Williams, director of asset management at Tenaska, said MISO membership was motivated by access to studies and information.

Board Recommends Two New Candidates, Curran

The board agreed to recommend two new board candidates for consideration by the MISO membership.

Johnson and Currie

Phyllis Currie, former general manager of Pasadena Water and Power, and Mark S. Johnson, former vice president of transmission operations for Pacific Gas and Electric, were unanimously approved. They would replace Eugene Zeltmann, whose term is expiring, and fill a new ninth seat on the panel.

The board also recommended the re-election of member Michael Curran, former chairman and CEO of the Boston Stock Exchange and past board chairman.

Directors serve three-year terms and, beginning January 2016, will be held to a three-term limit. The results of MISO member voting on the candidates will be announced at the annual Members Meeting on Dec. 10.

2015 Spending Boosted Due to NERC Rules

The board approved an amendment increasing the 2015 operating budget by $1.8 million and the capital budget by $2 million. The increases are needed to comply with version 5 of the North American Electric Reliability Corp.'s critical infrastructure protection (CIP) standards, which take effect April 1.

MISO said its compliance review resulted in a "significant increase" in the number of systems classified as CIP, defined as those that would have an "adverse" impact on the operation of the Bulk Electric System if they become unavailable, are degraded or misused.

The $3 million in increased capital spending for CIP compliance was partially offset by a $1 million reduction in other technology spending.

Clean Power Plan

Clair Moeller, MISO executive vice president of transmission and technology, gave the board an update on the RTO's analysis of the Environmental Protection Agency's final Clean Power Plan.

He said that although mass-based compliance would be "simpler and less expensive," MISO also is looking at implications of rate-based compliance. A rate-based method would limit a state's power fleet emissions based on an average of CO_2 tons per megawatt-hour, while a mass-based platform puts a ceiling on total emissions.

Thus far, MISO holds that mass-based compliance seems to be "a simpler, more direct way of incorporating the value of CO_2 emissions into generator offers."

"We're running as quickly as we can to get this analysis done," Moeller said.

The board decided to add the CPP issue to future agendas. The same day, MISO's Steering Committee scheduled a Nov. 6 Clean Power Plan workshop in Eagan, Minn., to go over MISO's interpretation of the final rule and EPA's proposed federal implementation plan for states that do not offer their own compliance plan.

— Amanda Durish Cook

Board Reduces Meeting Schedule

Continued from page 10

Streamlining the Organizational Chart

The Advisory Committee also discussed the stakeholder redesign. At the third redesign workshop in September, stakeholders tentatively identified eight committees that would be eliminated, with their duties assigned to other panels (see organizational chart). MISO's straw proposal called for eliminating 10 committees.

Tia Elliot, NRG Energy's director of regulatory affairs, said MISO's 600-plus meetings per year are difficult to keep up with and can overlap into redundancy. Elliot said the revised organization chart reflected the input of the Independent Power Producer and Transmission Dependent Utility sectors.

Board members suggested that stakeholders' simplified redesign might be in need of further simplification.

Board Chairman Judy Walsh urged the stakeholder process redesign team to combine some of their six desired outcomes. "If you have more than three priorities, you have none at all," Walsh said.

Rainwater echoed Walsh's advice to focus on three top priorities. "Let's start with some small victories," he said.

Board member Baljit "Bal" Dail asked that the stakeholder planning team respect the role of the board versus the role of management in creating the organizational model. He said sometimes stakeholders bring "hot topic" issues before the board that are better handled by MISO management.

"The board takes a 'noses in, fingers out' approach," Dail told them.

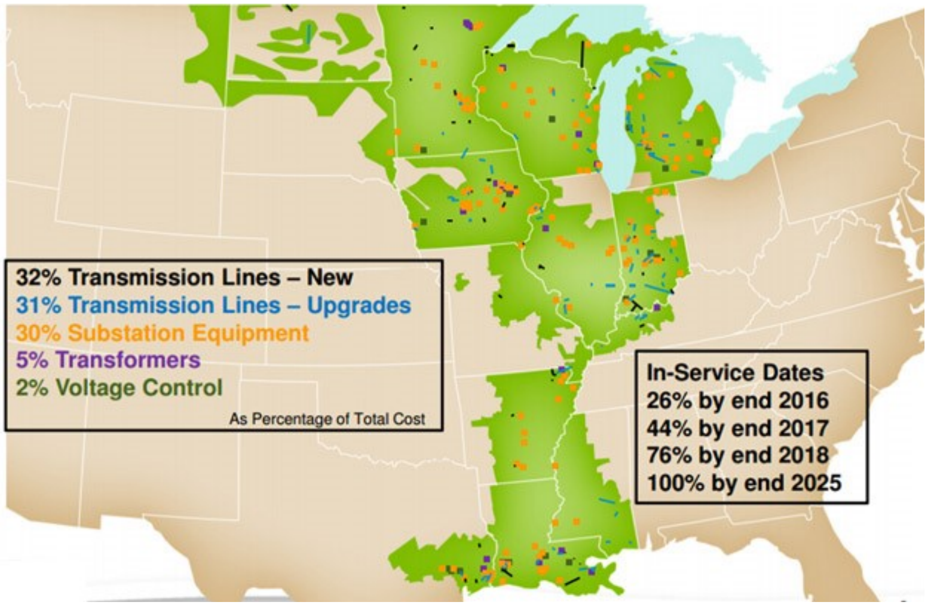
Michigan Public Service Commissioner Sally Talberg said more discussion was needed on whether stakeholders should focus on high-level issues versus specifics that can quickly become complex and warrant multiple meetings. She added that MISO's 2,000-page Tariff can lead to "endless tinkering."

MISO stakeholders will develop final recommendations at a fourth workshop Nov. 3. The final proposal for redesign will go before the Advisory Committee on Dec. 9.

MISO NEWS

System Planning Committee Briefs

MTEP15 Nears Approval



MTEP15 projects *Source: MISO*

LITTLE ROCK, Ark. — The Board of Directors' System Planning Committee last week reviewed the status of the 2015 MISO Transmission Expansion Plan, dissecting a few large and contentious projects.

MTEP15, which will be finalized by the board in December, is expected to include 357 projects valued at $2.6 billion. The Planning Advisory Committee voted Oct. 14 to recommend the plan for board approval; the Advisory Committee will consider it in November.

"It's a big footprint and a lot of different jurisdictions," said MISO board member Michael Evans, remarking on the 70-plus meetings held thus far on the plan.

Duff-Rockport-Coleman Project

The plan will include the Duff-Rockport-Coleman 345-kV project in Southern Indiana, the RTO's first project to be competitively bid.

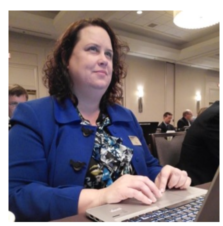
MISO is responsible for the Duff–Coleman portion, estimated at $67.4 million, while PJM will cover the cost of the tie-in to the Rockport substation. The go-ahead on MISO's portion of the project does not hinge on PJM's approval of its tie-in project. (See *MISO Staff Recommends 3 Economic Projects*.)

Paul Kelly, director of federal regulatory policy for Northern Indiana Public Service Co., applauded MISO's suggestion of an interregional committee for handling such projects in the future.

NIPSCO had objected that the project wasn't studied enough under the MISO-PJM Joint Operating Agreement to flesh out cross-border benefits and RTO cost allocations.

"While we think this project is valid and should be built, we think there are additional efficiencies that might have been squeezed out of this if it were looked at as an interregional project," Kelly said.

Jennifer Curran, MISO's vice president of system planning and seams coordination, acknowledged concerns that PJM's involvement could add complexity to the competitive bidding process. She said that the situation provided an opportunity to refine "hybrid" projects.



Curran

"We remain committed to working towards that goal" of interregional transmission project development, she said.

In that vein, MISO is discussing with ERCOT a potential study on ways to increase transfers between the two regions.

Texas Project

MISO said it is considering a minor design modification suggested by Entergy to an economic project in East Texas included in MTEP15.

The $122.5 million project includes a new 230-kV line from Lewis Creek to a new 345/230-kV substation that will cut into the Grimes-Crocket 345-kV line and a rebuild of the Newton Bulk–Leach 138-kV line.

Resource Adequacy Update

Curran gave the committee a long-term resource adequacy update, saying MISO has high certainty of obtaining 2.6 GW of new resources by 2020 (those under construction or subject to interconnection agreements), with 2.3 GW coming from natural gas, 135 MW from wind and 81 MW from hydro.

The RTO also has 5.3 GW of generation in final studies or seeking regulatory approval. The confidence level for those developments being completed is 50%.

Finally, MISO set a 10% confidence for the completion of 20.7 GW of other active queue projects and for 2.1 GW of generation reported in the MISO-Organization of MISO States survey but not in the queue.

The survey predicts a regional surplus of 1.7 to 2.3 GW for 2016, with sufficient zonal surpluses to offset zonal shortfalls until 2020. The 2014 survey had predicted a 2.3-GW regional shortfall in 2015. (See *MISO Survey: No Shortfall Until 2020*.)

MISO stakeholders are considering several changes in time for the 2017-18 planning year, including seasonal capacity auctions and speeding up the interconnection queue process by reducing restudies and study cycle timelines.

— Amanda Durish Cook

MISO NEWS

NextEra Appeals FERC Ruling on Ameren Upgrade Costs to DC Circuit

By Amanda Durish Cook

NextEra Energy last week asked the D.C. Circuit Court of Appeals to overturn two FERC orders in a generator interconnection dispute with Ameren Illinois.

NextEra filed a petition for review of FERC decisions in May 2014 and August 2015 (ER14-1470), saying it was being overcharged by $6 million under a facilities service agreement between Ameren and NextEra subsidiary White Oak Energy for a wind generation project near Carlock, Ill.

In the first order, FERC conditionally accepted an unexecuted facilities service agreement under which White Oak was required to pay Ameren a monthly network upgrade charge retroactive to Aug. 28, 2007, the date of White Oak's generator interconnection agreement with Ameren.

NextEra requested rehearing, saying it should only pay Ameren $2.4 million, instead of the almost $8.3 million FERC ordered.

NextEra says it is being overcharged because Ameren applied MISO's "Option 1" pricing to White Oak, under which the interconnection customer provides up-front funding for network upgrades and receives a 100% refund from the transmission owner after the upgrades are complete, with the costs then recovered through a monthly network upgrade charge. The network upgrade includes a return on Ameren's rate base, operations and maintenance expenses, depreciation and taxes.

That is in contrast with Option 2, under which the transmission owner retains the interconnection customer's initial funding for the upgrades and the interconnection customer is assessed no further charges.

Option 1 Voided

NextEra is relying on a 2011 FERC order in which the commission ordered MISO to remove Option 1 from its Tariff, saying that it increased the costs to interconnection customers without providing any increase in service compared to other funding options (EL11-30).

The removal was ordered effective March 22, 2011, the filing date of the complaint challenging the funding mechanism. The commission said the removal would not apply to agreements effective before that date as "a reasonable remedy that balances the interests of the parties, the need for regulatory certainty and ease of administration."

NextEra said Ameren cannot elect to apply Option 1 pricing to the facility service agreement because it didn't select it when the GIA was executed in 2007.

Ameren responded that MISO's Tariff did not require it to make an Option 1 pricing selection at the time White Oak agreed to take interconnection service, and NextEra never requested that Ameren commit to a compensation option.

In its Aug. 21 rehearing order, FERC told Ameren to change the GIA to avoid "confusion regarding the full extent of White Oak's Section 206 rights" but denied NextEra's request to void the Option 1 charges.

FERC also rejected NextEra's argument that the FSA should be limited to a return of and on amounts Ameren invested to fund the network upgrades, saying the transmission owner also was entitled to recovery of operations and maintenance costs.

FERC Session on MISO Capacity Rules also Puts Stakeholder Process Under Scrutiny

Continued from page 1

Patton suggested a FERC mandate — such as its 2014 order requiring a sloped curve in ISO-NE — might be necessary to prompt change.

"That reorients the stakeholders' discussion. Folks who were obstructionist become part of the process of discussing how to implement something that would be effective and produce reasonable outcomes," he said. "So while there is a stakeholder process [on capacity issues], the most important issues are not part of those discussions."

'Robust Stakeholder Process'

Patton's comments came after MISO officials Renuka Chatterjee, executive director of interconnection planning and resource adequacy, and Jeff Bladen, executive director of market design, asked the commission to exercise caution.

Left to right: Bladen, Chatterjee and Patton. *© RTO Insider*

Bladen said the commission shouldn't take any actions that increase the number of MISO-based generators selling capacity into PJM.

Chatterjee said the RTO already plans to make two changes before its 2016 Planning Resource Auction. She asked the commission to allow MISO's "robust stakeholder process" to develop long-term solutions.

That brought a retort from Tyson Slocum, director of Public Citizen's Energy Program, who said the RTO's stakeholder process "is heavily dominated by a few interests and … not reflective of broader stakeholders."

The commission announced the technical conference Oct. 1 in response to complaints by Public Citizen, Illinois Attorney General Lisa Madigan, Southwestern Electric Cooperative and Illinois industrial energy consumers over MISO's 2015 PRA in April. The auction saw a nine-fold price increase in Zone 4, which comprises much of Illinois.

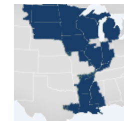
FERC said the conference would help it "determine what further action, if any, may be appropriate" to address the complaints (EL15-70, *et al*).

At the same time, FERC announced a nonpublic investigation into "whether market manipulation or other potential violations of commission orders, rules and regulations occurred before or during the auction" (IN15-10). (See *FERC Launches Probe into MISO Capacity Auction*.)

Public Citizen called for an investigation in

Continued on page 14

MISO NEWS



FERC Session on MISO Capacity Rules also Puts Stakeholder Process Under Scrutiny

Continued from page 13

May into whether Dynegy improperly withheld capacity in Zone 4, an allegation the company has denied. Public Citizen also alleged that MISO brushed aside recommendations by its staff that Zones 4 and 5 be merged due to their concerns about Dynegy's growing share of capacity in Zone 4 after the company acquired four generators there from Ameren.

Madigan's complaint said that Dynegy's increased generation portfolio in Zone 4 made it a "pivotal supplier" in the zone. Madigan also complained that in approving the Dynegy acquisition, FERC declined to look at its effect on competition and prices in Zone 4 and instead only considered a competitive analysis of MISO as a whole.

Lost Opportunity Costs

The April auction saw prices in Zone 4 clear at $150/MW-day, compared with just $16.75 a year earlier.

Dynegy said the results were consistent with its opportunity costs, which Patton had calculated at $155.79/MW-day, reflecting its ability to sell capacity into PJM. The company noted that a PJM Incremental Auction cleared at $163/MW-day less than a month before MISO's auction. (See *Dynegy: No Evidence of Misconduct in Auction*.)

MISO relies on the estimated opportunity cost of exporting capacity to a neighboring region in setting the initial "reference level" — a benchmark it uses for identifying economic withholding.

In a complaint June 30, the Illinois Industrial Energy Consumers argued that PJM's capacity costs should be not be used in setting the reference level because PJM can only accommodate a limited amount of uncommitted MISO capacity (EL15-82).

Representing the industrials, attorney Robert Weishaar told the hearing that the method MISO uses to calculate lost opportunity costs should be changed, saying the RTO's current practice doesn't comply with FERC's requirement, "which is they must be legitimate and verifiable."

Weishaar said the reference level should be set to zero pending MISO's development of a new standard that is compliant.

"The other option is for the commission to get very prescriptive about how the LOC provisions of the Tariff should be applied to take into account such things as whether there is excess capacity within the zone; what is the available transfer capacity; what are realistic options for selling into neighboring regions," he said.

In response to questions from staff, Patton opposed the use of a zero reference level. Patton and consultant Roy Shanker, speaking on behalf of the Electric Power Supply Association, also opposed using estimated going-forward costs by resource type in setting the reference level.

"It's a suspension of reality," Shanker said. "You should definitely not do it."

Weishaar said MISO also should reflect counterflows in the calculation of local clearing requirements.

He said the two changes should be made in time for the 2016 PRA. "What we've learned today is that there is a high-level imprecision in the existing Tariff provisions and that some change needs to be made on both of those issues. Our view is both of those issues need to be addressed in the next six to eight months."

Sloped Demand Curve

Henry D. Jones, executive vice president and chief commercial officer for Dynegy, joined Patton in calling for MISO to adopt a sloped demand curve.

"The vertical demand curve construct suggests that any megawatts over the planning reserve margin receive zero capacity dollars," he said. "… Any capacity that's not going to clear is going to be an [independent power producer] in Zone 4 and that's not a sustainable model in terms of a capital investment in existing assets or attracting investment for new build."

"For any change that involves large economic value, the stakeholder process can bog down."

David Patton, MISO Market Monitor

Patton said MISO's current method separates "the representation of demand from reliability," making it impossible to "get a market outcome that is going to produce just and reasonable prices."

Under current rules, the last megawatt needed to meet the requirements is "worth a ton. You go one megawatt further, that megawatt is worth nothing. But if you do any sort of loss-of-load expectation — any conventional reliability analysis — it would tell you those two megawatts are delivering almost the same reliability value," Patton said.

Patton has been unable to get any traction within MISO for changing the construct. (See *MISO Monitor Debates Capacity Rules with Board*.)

Jones acknowledged that such a change would face opposition from MISO's traditionally regulated states. "I think it's a fight worth having," he said.

Jones also said that while MISO's traditionally regulated states can ensure construction of new generation, Illinois — a retail choice state that does not use integrated resource planning — could find itself deserted.

"The concern we have is that over a very short period of time assets will retire or become less reliable in Southern Illinois and they will be replaced in surrounding states in [the] regulated rate base. And the southern part of Illinois will wake up with less capacity and an aging coal and nuclear fleet that's being replaced in other states, where jobs and tax base are being shifted."

Jones also argued that MISO should implement a minimum offer price rule (MOPR) and change its auction schedule. "It's truly nonsensical to imagine that people can plan with an auction that occurs eight weeks before the planning year," he said. "We need more lead time if we're going to be thoughtful about this and provide incentive for capital expenditure and/or new build. There needs to be a longer runway for that."

'Swiss Cheese' Effect

In addition to reiterating his call for a change in the demand curve, Patton said MISO also needs to "rationalize how capacity is delivered in real time." He said MISO is being hampered by PJM's requirement that capacity resources serving it from outside

Continued on page 15

MISO NEWS

FERC Session on MISO Capacity Rules also Puts Stakeholder Process Under Scrutiny

Continued from page 14

its footprint be pseudo-tied.

The PJM requirement is "creating effectively a Swiss cheese effect, where they're taking dispatch control over units that are critical to control constraints that they don't see in their model — and that demonstrably harms reliability," he said.

Patton said PJM's requirement should be replaced with operating procedures in which MISO guarantees delivery of the energy PJM has purchased "so that they [PJM] have what they need without having to effectively reconfigure the RTOs in ways that are really hard to undo from an efficiency standpoint."

The change would help PJM's reliability as well, Patton said. "If MISO's delivering energy on a firm basis, they'll dispatch around constraints, whereas [under current procedures] a particular resource — if it hits a constraint — may have to be curtailed."

Patton wasn't optimistic that the two RTOs would reach agreement any time soon, however. "It's going to take time, if my experience is a guide. To get PJM and MISO to agree on something takes a long time."

MISO: Changes Planned

MISO's Chatterjee said the RTO expects to make changes in time for the 2016 PRA regarding how it treats generation retirements and suspensions and how it allocates zonal deliverability benefits.

She said MISO staff will be attending a Nov. 19 conference with the Illinois Commerce Commission to hear more about the state's concerns.

"'What problem are we trying to solve?' is an important question to ask ourselves," she said.

Bladen said FERC should not eliminate MISO's opportunity cost provisions, which he said would mean that generators could "capture the opportunity cost in PJM — or the equivalent value of the opportunity in PJM — only by exporting to PJM."

FERC will take post-hearing comments until Nov. 4. It has set no timeline for possible actions resulting from the inquiry.

In the meantime, MISO's executive team is withholding comments on the issue, Clair Moeller told stakeholders at its Oct. 20 Informational Forum.

"What you'll see [MISO] do is take a breath. We think it's prudent for us to wait to see how FERC's action on the section 206 complaints play out," said Moeller, MISO executive vice president of transmission and technology.

Criticism of FERC Response

Public Citizen's Slocum said he was frustrated that the conference, which was run by staff from FERC's offices of General Counsel, Energy Market Regulation and Energy Policy and Innovation, failed to resolve some factual issues. (Commissioner Cheryl LaFleur attended part of the afternoon session.)

"The technical conference structure does not appear to be resolving these disputes effectively," Slocum said. "This morning on the first panel, I [heard] a number of folks from MISO and Dr. Patton say, 'I didn't have that table in front of me,' 'I don't have that data,' 'I didn't bring those numbers,' 'I don't have the specific numbers,' 'I don't have the numbers,' in response to repeated questions from FERC staff on subjects that were given to us ahead of time."

Commissioner Cheryl LaFleur (bottom) watches as Monitor David Patton speaks. © *RTO Insider*

"What this shows is that this is not an adequate structure to resolve these disputed claims," he said. "The only adequate structure is an evidentiary hearing, which multiple parties called for."

Amanda Durish Cook contributed to this article.

MISO to Terminate Edwards SSR Agreement

By Amanda Durish Cook

MISO has notified FERC that it intends to terminate its system support resource agreement with Illinois Power Holdings' Edwards unit 1 generator in Peoria, Ill., effective Jan. 1 (ER16-129).

MISO said an examination of Edwards 1's retirement found that new transmission infrastructure, including the 345-kV Maple Ridge-Fargo line and Maple Ridge Substation, are on track for completion by mid-2016 and eliminate the need for the generator to continue under SSR status after this year.

"MISO determined that the last of the transmission reliability projects needed to permit the retirement of Edwards 1 remains on schedule for completion by June 1, 2016, to meet the peak conditions for which Edwards 1 was designated a SSR unit," the RTO told the commission.

MISO notified Illinois Power in late September that the 90-MW coal-fired unit would be released from SSR status at the beginning of the year and that the agreement would not be renewed. The SSR agreement took effect in January 2013.

The termination of the SSR agreement comes two weeks after FERC affirmed that Edwards should be allowed to recover fixed costs through a full cost-of-service rate when operating is mandatory to maintain reliability. (See *MISO SSR Unit's Recovery of Fixed Costs Upheld*.)

ISO-NE NEWS

Northern Pass Files for Siting Approval, Revises Cost

By William Opalka

The developers of the Northern Pass transmission line have filed for siting approval from New Hampshire with a higher price tag, a slightly altered route and another adjustment in the amount of hydropower the project can carry from Canada.

Eversource Energy now says the high voltage transmission line from Canada will cost $1.6 billion, up from previous estimates of $1.4 billion. The higher cost reflects changes in the route made in recent weeks after a series of public meetings held in five New Hampshire counties.

The line will carry 1,090 MW, up from an estimated 1,000 MW when project revisions were announced in August. Capacity was revised downward two months ago when an additional 52 miles of the route were proposed to be buried in the White Mountains. (See *Northern Pass Opponents Want More of Line Buried*.)

The New Hampshire Site Evaluation Committee is expected to take 14 months to review the proposal; Eversource hopes to bring the 192-mile project online in 2019.

The increased costs resulted in part from engineering and design changes to more than 60 structures to reduce view impacts along scenic byways and river and highway crossings. The filing also projects a 9% increase in capacity over earlier estimates.

"At the time we announced the new plan, in August, we were analyzing a number of technical issues surrounding the project and firming up costs," spokesman Martin Murray said. "Now that we've locked in our cable and converter supplier, and completed our technical review, we are comfortable that the project will be capable providing up to 1,090 MW."

The "filing marks another important milestone in our effort to deliver a clean energy solution that our customers desperately need in order to diversify our power supply and stabilize energy prices," Bill Quinlan, president of Eversource Operations in New Hampshire, said in a statement.

Project developers noted that Entergy's Oct. 13 announcement that it will retire the Pilgrim nuclear plant in Massachusetts will reduce New England's carbon-free generation, "challeng[ing] the region's clean air goals." (See *Entergy Closing Pilgrim Nuclear Power Station*.)

The proposed route would cross over land owned by the Society for the Protection of New Hampshire Forests. That won't happen without a fight, the group says.

"What Eversource has put forward blatantly and knowingly disregards our property rights and the conservation easements we hold in northern New Hampshire, where they do not have an existing [right of way]," group spokesman Jack Savage said in a statement. "It is unclear to us how they hope to acquire a contiguous route without having access to eminent domain."

Exelon-Pepco Merger Opponents Question Companies' Tactics

By Suzanne Herel

> **"If it was a good deal for the environment, I think you would see some of the city's best known groups supporting this. They are still opposed."**
>
> **Mike Tidwell, CCAN**

With the D.C. Public Service Commission poised to decide Wednesday on a timeline to consider the revised terms in Exelon's bid for Pepco Holdings Inc., opponents spoke out Monday about why they still think the merger is a bad deal for the district.

"This new settlement that came out of the mayor's office offers very little new beyond what was already on the table and ruled by the PSC as not being in the public interest," said Anya Schoolman, executive director of DC Solar United Neighborhoods, one of more than 20 public interest groups that formed the Power DC coalition.

She called on the PSC to "shed light on the smoke and mirrors that are in this deal and the process in achieving this deal."

The PSC voted unanimously in August to reject the acquisition after it had been approved by FERC and regulators in Delaware, Maryland, New Jersey and Virginia.

D.C. Mayor Muriel Bowser, initially opposed to the deal, later brokered an agreement with Exelon and Pepco that would provide the district $78 million in public benefits. (See *Mayor's Settlement Puts DC PSC on the Spot in Exelon-Pepco Deal*.)

The companies are asking the PSC to reconsider its decision within 150 days; the intervenors who did not sign on to the settlement are asking for a June 30 deadline to give time for review and public hearings.

"This really should be treated as a new application, as it includes entirely new terms," said Randy Speck, counsel for DC SUN.

Exelon spokesman Paul Elsberg said the companies' proposed schedule "affords all parties a fair opportunity to present their positions and [ensures] the commission has a complete record to render its decision."

The schedule proposes testimony be filed in November, hearings be held in early December and the final brief be filed in late December. Schoolman also criticized the companies' tactics, including a media blitz featuring full-page ads listing nonprofit groups that she said are being "bullied" into supporting the merger for fear their funding will be cut. Meanwhile, she said, residents are being approached to sign petitions by people being paid by the companies to collect names.

She also questioned the timing of a recently announced sponsorship deal in which, according to the *Washington Business Journal*, Pepco gave the district $25 million in return for naming rights on one or more landmarks. "It invites the question of *quid pro quo*," Chesapeake Climate Action Network Director Mike Tidwell said.

While the ad campaign touts the settlement as being good for the environment, Tidwell pointed out that no environmental groups signed on to the agreement.

"If it was a good deal for the environment, I think you would see some of the city's best known groups supporting this," he said. "They are all still opposed."

Elsberg said the revised merger proposal will "accelerate the district's progress toward its sustainability goals" by committing to the development of up to 10 MW of new solar generation and making it "easier and faster for customers to install solar panels."

Critics say the deal allows Exelon to count 5 MW of solar already being built at a district sewage treatment plant and does not require the utility to charge fair-market rates for its output.

Also to be considered at Wednesday's meeting is a filing of intent by newly formed advocacy group DC Public Power, which has outlined a plan to purchase Pepco's D.C. assets post-merger and turn it into a not-for-profit utility. (See *Group Proposes to Buy Pepco's DC Assets*.)

The companies filed a motion asking the PSC to reject the group's request to intervene in the proceeding "to pursue arguments concerning the hypothetical and ill-defined acquisition of Pepco's district-based assets by a not-for-profit with undisclosed control and capitalization."

Duke Energy Buying Piedmont Natural Gas for $4.9B

Duke Energy announced Monday that it will be buying distributor Piedmont Natural Gas, following a trend of energy companies taking advantage of stable, low natural gas prices to invest in infrastructure.

Duke said it offered $60/share, a premium of about 42% compared to Piedmont's closing price Friday. Piedmont shares had already climbed about 8.5% in premarket trading Monday. Duke said it would assume about $1.8 billion in Piedmont's net debt.

Piedmont, based in Charlotte, N.C., serves more than 1 million residential and business customers in North Carolina, South Carolina and Tennessee.

Piedmont and Duke are partners in the proposed Atlantic Coast Pipeline, a planned $5 billion, 550-mile pipeline to run from the Marcellus Shale Field through West Virginia, Virginia and into eastern North Carolina. Dominion Resources is also a major partner in that project.

More: *Reuters*

— Ted Caddell

COMPANY BRIEFS

AEP's Akins says 3 Years Won't Cut it for PPA


Akins

American Electric Power CEO Nick Akins says a counter proposal to his company's guaranteed profits plan simply won't do the trick.

A staff expert with the Public Utilities Commission of Ohio suggested a three-year power purchase agreement as an alternative to AEP's request for long-term price guarantees to keep its aging generation fleet viable. During a conference call with analysts, Akins made it clear that the state-offered compromise wouldn't be enough.

"I'll just say this: The term has to be substantial," Akins said. "Because we have to have a feeling that we can invest, with the large capital investments we make in generation, we need to make sure that we can do that and be secure from a future perspective," he said. PUCO is in the middle of hearing requests from AEP and FirstEnergy for long-term power purchase agreements. Akins said he expects a decision by the end of the year.

More: *Columbus Business First*

Duke Settles Ohio Suit Alleging Improper Rebates for $81 Million

Facing a class-action lawsuit that it improperly gave rebates to some large electric customers, Duke Energy has agreed to pay an $81 million settlement to avoid "costs and uncertainties." The settlement must still be approved by a U.S. district court in Columbus, Ohio, before it is finalized.

An attorney for the plaintiffs said Duke's payments to 22 large commercial customers should have been extended to smaller customers. The suit alleges Duke paid the rebates to the large customers from 2005 through 2008, and that the payments violated antitrust and other laws.

More than a million residential and commercial customers were represented in the suit and will share the settlement.

More: *Wall Street Journal*

Xcel to Install LED Streetlights Throughout Territory

Xcel Energy has begun a massive, five-year, $100 million effort to replace city streetlights with LED lightbulbs in its eight-state service territory. The plan includes about 100,000 streetlights throughout Minnesota and 25,000 in Wisconsin.

The company estimates that modest-sized cities would save $3,000 to $5,000 per month. Xcel said that the cost of LED lamps has decreased sufficiently to justify the installation. LEDs not only produce brighter light than sodium-vapor bulbs, but they also consume 40 to 60% less electricity.

Xcel tested the large-scale roll-out in 2013, when it installed 500 LED streetlights in West St. Paul, Minn. The utility concluded that the LEDs ultimately offered better lighting at less cost.

More: *Star Tribune*; *Hudson Star-Observer*

Prairie Power Dedicates Solar Farms

The Illinois-based generation and transmission cooperative Prairie Power recently dedicated two 500-kW solar farms in the state: the Spoon River Solar Farm between Havana and Astoria and the Shelby Solar Farm, about 1 mile east of the Lake Shelbyville Dam.

Prairie Power supplies power to 10 electric distribution cooperatives. The facilities cost $1.6 million each.

More: *The Telegraph*

GM, DTE to Build Michigan's Largest Solar Array

General Motors and DTE Energy plan to erect Michigan's largest solar installation by the end of the year on 4.25 acres next to GM's Warren Transmission plant.

The 2,800-panel array is expected to generate about 1 million kWh of energy per year that will be fed into the grid.

More: *AutoBlog*

Entergy's Palisades Nuclear Plant Back Online After Refueling

Entergy brought its Palisades nuclear power plant back online last week after investing $63 million in fuel and $58 million in inspections and equipment upgrades. The Michigan plant shut down Sept. 16.

The company spent nearly $50 million on safety enhancements required after the 2011 Fukushima accident in Japan.

More: *MLive*

PSEG to Spend $3.5 Billion On Generation Fleet

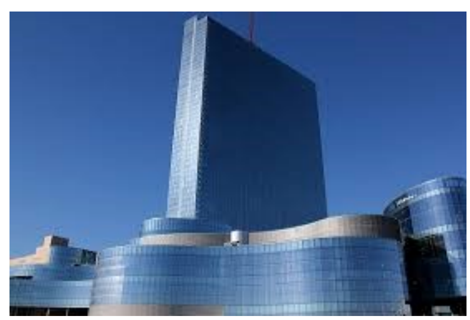
Public Service Enterprise Group says it will spend about $3.5 billion over five years to make its generation fleet cleaner and more competitive.

Most of the money will go toward building more natural gas-fired plants in Sewaren, N.J., and Keys, Md. It also plans to add capacity at its existing nuclear units and upgrade its gas-fired fleet, according to Shahid Malik, PSEG president of Energy Resources and Trade.

Malik said access to inexpensive and plentiful shale gas from the Marcellus region in Pennsylvania was a major reason for PSEG's decreasing reliance on coal, which has dropped from 30% to 10% of its energy supply in recent years. "The markets don't care if electricity comes from solar, gas or nuclear," he said. "They buy based on price and since gas is the lowest-cost fuel, it is replacing coal, oil and even some smaller nuclear plants."

More: *Reuters*

Revel Casino Power Plant Heading for Court-Ordered Sale



The power plant built to provide electricity to the now-closed Revel Casino in Atlantic City is headed for a court-ordered sale.

Bank of New York Mellon, trustee for holders of $118.6 million in bonds secured by the facility, last month filed suit to take the collateral from ACR Energy Partners, which owns and operates the plant. ACR is a subsidiary of Energenic, a joint venture between DCO Energy and Marina Energy.

Revel's previous owners agreed to pay costly monthly financing fees to ACR. Glenn

Continued on page 19

COMPANY BRIEFS

Continued from page 18

Straub's Polo North County Club, which bought the casino out of foreclosure in April, has refused to honor the agreement.

More: *Press of Atlantic City*

AES Shutters Beaver Valley Plant Ahead of Schedule

AES, which had been considering converting its Beaver Valley coal-fired plant to burn natural gas, has scrapped those plans after it couldn't find a buyer for the power. The Pennsylvania plant is now closed.

The Potter County plant was supplying electricity to West Penn Power and steam to two adjacent factories. But it lost its last electric customer two years ago. It bought its way out of the co-gen agreements, and despite a plan to generate cheaper electricity using natural gas, it couldn't find any takers.

"It really came as a surprise to us when we saw the barriers go across the driveway," said Rebecca Matsco, chairwoman of the Potter County Board of Supervisors.

More: *Pittsburgh Post-Gazette*

Apex Seeks FAA Approval For Texas Wind Farm

A Virginia company that wanted to build more than 170 wind turbines in Corpus Christi, Texas, is once again seeking clearance for a wind farm from the Federal Aviation Administration, though this one would be smaller and located outside the city limits.

Apex Clean Energy has filed "notices for proposed construction" with FAA for 86 wind turbines. Applications for another 58 wind turbines also are being reviewed. Each wind turbine would measure about 500 feet tall, according to the company's application. Officials for the Corpus Christi International Airport have expressed concern about the potential risks to air traffic.

Earlier plans for a larger wind farm drew criticism from residents who were concerned about diminishing property values, safety and changes to the area's aesthetics. Apex voluntarily withdrew its applications with the FAA after the city annexed its property last year. The new plan places all wind turbines outside the city boundary.

More: *Corpus Christi Caller-Times*

Financial Climate Making Nuclear Better Option

Low interest rates for large-scale capital investments are making nuclear generation a more attractive option for those looking to fight climate change, according to an analysis conducted by the International Atomic Energy Agency.

The IAEA determined that investors are looking for a return of between 3% and 7% and, considering that fossil generators will be forced to pay about $30/ton for carbon emissions, says that nuclear generation is less expensive than either coal- or natural gas-fired generation.

It's a message that has apparently already hit home in China. That country recently unveiled plans to build as many as eight new nuclear stations per year through 2020.

More: *Bloomberg News*

Talen to Sell Md. Plant, Receives FERC OK on Acquisitions

By Suzanne Herel and Michael Brooks

Talen Energy last week announced plans to sell the Charles P. Crane generating station, a 399-MW coal-fired plant in Baltimore, to an affiliate of Avenue Capital Group, a global alternative investment firm.

Talen did not disclose the terms of the deal, saying only that "proceeds of the sale are not material." The announcement comes two weeks after Talen announced it was selling three Pennsylvania power plants for $1.5 billion as part of a strategy to satisfy FERC, which ordered it to divest certain assets when the company spun out of PPL and Riverstone Holdings last year.

Announced sales of the assets, located in the PJM region, total 1,395 MW, including the Crane plant, Talen said.

"Talen Energy continues to review and evaluate options for the remaining identified mitigation assets," the company said.

The Crane sale is expected to close in the first quarter of 2016.

Charles P. Crane power plant *Source: Talen Energy*

Also last week, FERC approved Talen's $1.175 billion acquisition of MACH Gen and its three combined-cycle power plants, significantly boosting Talen's presence in the New York and New England markets (EC15-187).

Included in the deal are the 1,138-MW New Athens plant in New York and the 335-MW Millennium plant in Massachusetts. As a result, Talen will own or control 3.2% of the available capacity in NYISO and 1.7% in ISO-NE.

Also part of the transaction is the 1,020-MW New Harquahala plant in Arizona. Taking on this plant was most likely a condition for acquiring the others; New Harquahala is losing money, and Talen has said it might move it or sell it for parts. (See *Talen Entering NYISO in $1.2B Deal*.)

Forbes reported Friday that Talen had cancelled a $400 million loan it was seeking to support the acquisition. The company cited its "strong liquidity position" and high interest rates as why the loan was no longer "an attractive piece of capital."

FERC also approved the sale of Talen's renewable energy subsidiary to California-based Energy Power Partners (EC15-182). The sale includes 25 wind, solar and biofuel facilities totaling 65 MW. While most of these are behind-the-meter facilities, EPP will gain 25 MW in PJM and 4 MW in ISO-NE.

In Pennsylvania, Talen is selling the 704-MW combined-cycle Ironwood plant to a subsidiary of Calgary-based TransCanada for $654 million. The Holtwood and Lake Wallenpaupack hydroelectric projects, with a combined generating capacity of 292 MW, are being purchased by a subsidiary of Quebec-based Brookfield Renewable Energy Partners for $860 million. (See *Talen Energy to Sell 3 Pa. Generators for $1.5 Billion*.)

At the time those deals were announced, Talen spokesman George Lewis said the company was evaluating offers for six former Riverstone generators in New Jersey.

Federal Briefs

EPA says CPP Compliance Extensions Easy for States

States trying to meet their goals for the federal Clean Power Plan should be able to get two-year extensions without much trouble, according to the Environmental Protection Agency.

EPA Acting Assistant Administrator for Air and Radiation Janet McCabe told the Environmental Council of States that meeting the requirements for the two-year extension was "not intended to be a heavy lift."

"We understand that it may be every single state that needs to seek an extension," McCabe said. "There's a lot of work for states to do and a lot of different processes."

More: Bloomberg BNA

DOE Approves Emera CNG Exports from Florida Facility

The Department of Energy on Thursday gave its approval for Emera CNG to export a relatively small amount of U.S.-produced compressed natural gas out of a proposed terminal at the Port of Palm Beach, Fla.

Emera needed federal authorization to export to countries that do not have free trade agreements with the U.S. Emera will be allowed to export 8 million cubic feet of gas a day in trailers, tank containers and ocean-going carriers for 20 years.

More: Breaking Energy

Mass. AG Calls for FERC Scrutiny of NED Pipeline

Massachusetts Attorney General Maura Healey has asked FERC to closely examine Tennessee Gas Pipeline's proposed Northeast Energy Direct pipeline, questioning whether there is a need for the new pipeline in view of the number of other projects either planned or in progress.

"This proposed pipeline would have a significant impact on local residents and the energy future of Massachusetts," Healey wrote to the commission. "FERC should fully evaluate the need for this project in conjunction with other pipeline proposals for the region."

She urged the commission to study the results of a regional electric reliability study on the Northeast region, which is due Oct. 31. The Northeast suffered from fuel constraints during the past two cold winters, with gas supply at a premium.

More: Natural Gas Intelligence

Trudeau's Election in Canada May Be Good News for Keystone


Trudeau

Canada's new prime minister, Justin Trudeau, has said he supports the construction of the embattled Keystone XL pipeline, which would carry oil from Canada to the U.S. Gulf Coast. The proposed pipeline does not have the support of the Obama administration, so environmentalists in both countries are waiting to see how hard Trudeau's Liberal Party will push for the project.

Trudeau declined to say if he and President Obama discussed the Keystone XL project during their call after the election. "I think one of the things that has been a challenge in the relationship between Canada and the United States is it has in many cases been focused on a single point of disagreement, a single potential point of disagreement, a single pipeline," he told reporters.

Although he is publicly in favor of pipelines as part of a national infrastructure program, Trudeau has also been an outspoken advocate for adoption of a national plan for reducing greenhouse gas emissions.

More: The Washington Post

FERC OKs Environmental Study For Dominion Pipeline in NY

FERC issued a positive environmental assessment for a natural gas pipeline in New York, spurring complaints from opponents of the project. Dominion Transmission, a subsidiary of Dominion Resources, wants to expand its 200-mile pipeline to deliver natural gas produced in the Marcellus Shale fields in Pennsylvania.

FERC ruled that there were no adverse environmental impacts, but opponents in central New York have said the assessment was rudimentary. They called for a more detailed review, as well as an analysis of the project's possible impact on existing and future infrastructure.

More: Times Union

National Renewable Energy Lab Names Keller as New Director

Martin Keller, a Department of Energy veteran who headed up the Energy and Environmental Sciences Lab at the Oak Ridge National Laboratory, has been named director of the National Renewable Energy Laboratory.

Energy Secretary Ernest Moniz said Keller's "track record in building links between the basic sciences and our nation's energy challenges will help NREL reinforce its place as the world's leading laboratory for renewable energy and energy efficiency research and development."

Along with the promotion, Martin Keller will also become president of the Alliance for Sustainable Energy.

More: MarketWired

75% of Americans Now Accept Climate Change

Three quarters of Americans now share the scientific community's acceptance of climate change, the highest number in four years of polling by the University of Texas at Austin.

Perhaps the largest surprise in the findings is that 59% of Republicans now believe climate change is happening, up from 47% only six months ago. The Democratic acceptance level is hovering at about 90%, the university reported.

More: Bloomberg Business

$13.5 Trillion Investment Needed To Fund Climate Change Pledges

The International Energy Agency has calculated a number needed to meet the climate change action pledges submitted for the upcoming Climate Summit in Paris: $13.5 trillion.

The IEA's World Energy Outlook estimated the energy industry will need to make a substantial investment in wind, solar, nuclear carbon capture and storage to meet the energy efficiency and low-carbon technology goals that will be introduced at the summit.

"The energy industry needs a strong and clear signal," said IEA Executive Director Fatih Birol. "Failing to send this signal will

Continued on page 21

Federal Briefs

Continued from page 20

push energy investments in the wrong direction, locking in unsustainable energy infrastructure for decades."

More: CleanTechnica

TVA's Watts Bar 2 Granted Operating License by NRC

The Nuclear Regulatory Commission last week granted the Tennessee Valley Authority an operating license for its Watts Bar Unit 2 reactor, the first new U.S. nuclear station in nearly 20 years. The license paves the way for fueling the reactor and to start testing. TVA says the plant, near Spring City, Tenn., will go online by December.

Construction began on Watts Bar 2 in 1973 but stopped in 1988 when TVA suspended its nuclear operations due to safety concerns. Watts Bar 1 was finished and went online in 1996. Work on Watts Bar 2 restarted in 2007.

NRC's action "demonstrates to the people of the valley that we have taken every step possible to deliver low-cost, carbon-free electricity safely and with the highest quality," said TVA President and CEO Bill Johnson.

More: Chattanooga Times Free Press

Environmental Groups File to Intervene in ACP Project

Sixteen environmental groups on Friday filed to intervene in the permit process of the proposed 564-mile Atlantic Coast Pipeline, which would deliver shale gas from West Virginia through Virginia into North Carolina. Dominion Resources and Duke Energy are among the investors in the $5 billion project.

The groups, including Chesapeake Climate Action Network, the Sierra Club and Appalachian Mountain Advocates, say the pipeline would cause irreparable harm to the environment, it would "fragment the heart" of the largest tract of land in the eastern U.S. and the developers have not proven that it is needed.

The request came about a week after it was determined that the proposed route takes it through a portion of the George Washington National Forest in Virginia, which is home of the protected Cow Knob salamander.

More: News Leader

Minnesota, North Dakota Continue Clash over Coal-fired Energy

The 8th U.S. Circuit Court of Appeals heard arguments in a case pitting Minnesota regulators against North Dakota and its utility and coal interests over a 2007 Minnesota law restricting new power generation from coal.

North Dakota successfully argued in federal district court that the law illegally regulates out-of-state utilities in violation of the U.S. Constitution's Commerce Clause. A three-judge panel of the appeals court is reviewing the decision, which enjoined Minnesota from enforcing key sections of the law.

North Dakota interests say it hampers their ability to find buyers for power from existing coal-fired generating plants or to plan for new ones. Coal-generated electricity comprises 78% of North Dakota's electricity.

More: Star Tribune

State Briefs

REGIONAL

Five of Top 10 Efficient States in Northeast

Five of the top 10 energy efficient states are in the Northeast, according to the American Council for an Energy-Efficient Economy's 2015 State Energy Efficiency Scorecard. Massachusetts holds the No. 1 rank for the fifth year in a row, having overtaken California in 2011.

The top 10 states for energy efficiency are Massachusetts, California, Vermont, Rhode Island, Oregon, Connecticut, Maryland, Washington and New York, with Minnesota and Illinois tied for 10th place. Massachusetts retains the top spot based on a strong commitment to energy efficiency under its Green Communities Act.

In California, requirements for reductions in greenhouse gas emissions, major efforts to achieve energy efficiency in schools and implementation of a cap-and-trade program earned the state several more points this year, putting it only a half-point behind Massachusetts in the state rankings. North Dakota's energy efficiencies were determined to be the least effective, just below Wyoming.

More: ACEEE

CONNECTICUT

Electricity Shoppers May Be Paying Extra


Katz

Consumer Counsel Elin Swanson Katz is warning electric consumers who are supplied by third-party providers to review their bills. Katz said data provided to the Public Utilities Regulatory Authority showed that more than three-quarters of customers of both Eversource Energy and The United Illuminating Co. paid more than the standard service rate in August if they used a third-party supplier.

Some customers paid prices that were as high as 23.7 cents/kWh, which is nearly three times Eversource's standard service rate and more than two-and-half times that of UIL, Katz said. Between January and August of this year, customers of electric suppliers collectively paid about $23 million more for electricity than if they had been on standard service, she said.

"Customers should be aware that switching to a retail electric supplier can be a risky proposition," said Katz, whose office represents the interests of consumers in utility rate cases. "Some suppliers are charging certain customers more than twice the standard service rate, even in the summer months. There is no ceiling on the rates that third-party suppliers can charge you."

More: New Haven Register

Continued on page 22

State Briefs

Continued from page 21

DELAWARE

Delmarva Power Issues RFP for Wholesale Electricity

Delmarva Power and Light is requesting proposals to supply about 455 MW of wholesale electric power to meet its standard offer service obligation to customers.

Peak load contributions by customer class are 255 MW for residential, small commercial and industrial combined; 140 MW for medium general service-secondary; 20 MW for large general service-secondary; and 30 MW for general service-primary.

A pre-bid conference for prospective bidders will be held later this month.

More: Cape Gazette

ILLINOIS

Admin Law Judge Urges Grain Belt Express Approval

An administrative law judge recommended that the Commerce Commission approve the Grain Belt Express transmission line, concluding that the project would help produce a competitive energy market at a small cost to customers.

Judge Jan VonQualen said Clean Line Energy Partners' plan to build the $2 billion line to transport wind energy from Kansas through the state to Indiana would be a good thing for electric customers.

Regulators in Indiana and Kansas have already approved plans for the 202-mile transmission line. Missouri's regulators voted against it, but the Houston company says it will reapply for permission there.

More: State Journal-Register

IOWA

Solar Installer Fighting Alliant's Tariff Feature

A solar installer is challenging a tariff feature that he says penalizes large Alliant Energy power customers by continuing to assess costly demand charges for a year after they switch to solar.

Barry Shear, who runs Eagle Point Solar, says the tariff approved earlier this year reduces the incentive for some large customers, such as manufacturers and wastewater treatment plants, to switch to solar. The old tariff reduced the demand charge a month after customers reduced their load. The new tariff keeps the demand charge in place for a year. Demand charges can account for up to half a customer's monthly costs.

Alliant spokesman Justin Foss said the company changed the tariff in response to complaints from some large customers who experienced sudden "bill shock" when they were shifted between rate categories — one of which assessed the demand charge — because of short-term changes in their electricity consumption.

More: Midwest Energy News

KANSAS

Collective Extols Benefits of Pooling Resources, SPP Market

The City of Chanute joined with other nearby municipalities to form the Southwind Energy Group 18 months ago, and the combined purchasing power has allowed the city to shave $800,000 in annual energy costs for its customers.

The group, which Chanute heads, buys its power from Kansas City Power and Light. Costs for the program are passed on to utility customers in the "fuel adjustments" section on utility bills.

While the KCP&L contract has been shown to offer energy savings, there are actually even more savings by participating in SPP's day-ahead energy market.

More: The Chanute Tribune

MARYLAND

Baltimore Mayor Mum on BGE Settlement Possibility


Rawlings-Blake

Baltimore Mayor Stephanie Rawlings-Blake won't say if the city is trying to reach a settlement with Baltimore Gas and Electric after the company sued the city over a recent increase in prices for using the city's conduits for the utility's cable.

In September, the city raised the fee it assesses to use the city's underground conduits from 98 cents/foot a year to $3.33. The hike was estimated to increase BGE's cable-use costs by nearly $30 million. Exelon-owned BGE sued, saying the fee violated state law prohibiting rate increases to fund other city services.

The city says it needed to triple the rate to maintain the aging infrastructure. Rawlings-Blake said the relationship between BGE and the city hasn't suffered because of the suit.

More: Baltimore Business Journal

MICHIGAN

Utility Advocacy Groups Launches Coal Plant 'Countdown' Campaign

An advocacy group backed by the state's two largest utilities has launched an ad campaign warning of a possible power shortage if the state's coal-fired power plants are shut down. Opponents dismissed the campaign as "scare tactics."

Citizens for Michigan's Energy Future is running ads warning that the state's nine coal-fired plants will go "cold and dark" by 2016, helping to create a 1.3-GW capacity shortfall. The assertion conflicts with statements from MISO and the Public Service Commission that there will be no shortfall.

The group is backed by Consumers Energy and DTE Energy. The campaign urges residents to write to their lawmakers to support proposed legislation that would eliminate net metering programs and restrict energy efficiency programs.

More: Midwest Energy News

Continued on page 23

State Briefs

Continued from page 22

MISSOURI

Court: Homeowner Associations Can't Force Solar Panel Removal

A state appellate court has ruled that homeowner associations cannot force the removal of solar panels unless deed restrictions specifically forbid them.

The case centers on a couple in a St. Louis subdivision that were told they would have to remove their roof-mounted solar panels. A lower court ruled last year that the solar panels could stay because the deed restrictions didn't specifically mention them. The appellate court upheld that ruling.

More: *Midwest Energy News*

PSC Votes Against Extending Ameren's Energy Efficiency Program

Concerned that Ameren might collect more than it needs to run a popular energy efficiency program, the Public Service Commission voted against extending the program for another three years.

Ameren's program has earmarked $100 million for the program, which has saved, by some accounts, about 1 million MWh of electricity. The program provides rebates to customers who purchase energy-efficient appliances.

But the commission said it wants a more accurate way to measure energy savings to assess the program's benefits. "Without that type of [measurement], I'm just uncomfortable approving that type of plan," PSC Chairman Daniel Hall said. Without PSC approval, Ameren is not obligated to offer the program after the end of the year.

More: *St. Louis Post-Dispatch*

NEBRASKA

Landowners Appeal Keystone Route Approval Rules

Landowners who oppose the Keystone XL pipeline are appealing to overturn a state law that turned over some route-approval decisions to the governor that were previously made by the Public Service Commission.

Attorneys for developer TransCanada have moved to get the landowners' suit dismissed. The company said it has already announced it isn't pursuing its eminent domain claims against landowners and has reapplied to the PSC. It says the landowners' suit is unnecessary.

"Our focus is entirely on moving forward with the [commission] process and building the Keystone XL route in Nebraska in the most timely way possible," TransCanada spokesman Mark Cooper wrote after the hearing.

More: *Associated Press*

NEW JERSEY

Better Economy, Cold Winter Boost Carbon Emissions

The state's carbon emissions increased 14% in 2014, with most of the pollution — 17 million metric tons — generated by the state's 45 power plants. The spike reverses three previous years of declines.

The state's carbon emissions totaled 27 million metric tons, compared with 23.75 million the previous year. Officials cited a rebounding economy, a cold winter and the retirements of plants in other states for the increase.

More: *The Record*

NEW MEXICO

PRC Rejects EPE's Solar Customer Rate Class

El Paso Electric's attempt to create a new rate class for customers with rooftop solar systems suffered a major setback recently when the Public Regulation Commission ruled such a change would violate a regulation that has been on the books for decades.

The commission rejected a hearing officer's denial of a motion to dismiss the new rate class. Commissioner Sandy Jones said a PRC ruling in 1999 made it clear that residential customers can't be split into two classes.

That doesn't mean the effort to charge solar customers more is necessarily defeated, Jones said. The company could still seek an additional charge but would have to do so by applying for a rider, he said.

More: *Las Cruces Sun-News*

NEW YORK

LIPA Hike One Step Closer

A three-year, $325.4 million electric rate increase moved closer to implementation after the Long Island Power Authority board of trustees took no formal action despite objections by two board members.

Trustees would have had to pass a resolution finding that the 9% increase was "inconsistent" with three specific standards defined by the LIPA Reform Act in order to trigger public hearings on the proposal. While trustees Suzette Smookler and Matthew Cordaro raised objections to the increase, no board member offered a resolution to block it.

Several board appointees of Gov. Andrew M. Cuomo, whose administration wrote the reform act, challenged Cordaro to raise specific grounds for an inconsistency vote. Cordaro said his concern was that offering a resolution could result in a rate increase, the opposite of his intentions, and so he did not offer one. The rate hike will be built into the 2016 budget, which trustees are scheduled to consider in December.

More: *Newsday*

Continued on page 24

State Briefs

Continued from page 23

NORTH CAROLINA

Judges Rejects Duke's Bid To Dismiss Coal Ash Suit


Biggs

A federal judge rejected Duke Energy's bid to dismiss a lawsuit seeking to pressure the state to step up enforcement of coal ash regulations. The judge said she doubted that the Department of Environmental Quality was tough enough on Duke in light of the utility's record for contaminating a river with coal ash.

U.S. District Judge Loretta Biggs ruled that the suit against Duke by the Riverkeepers group can go forward, largely because of what she saw as the state environmental agency's lack of action. "The court notes that its determination of [DEQ's] lack of diligence has been further confirmed in the year since the Riverkeepers filed suit. [DEQ] has now been litigating its enforcement action for over two years" and not "filed any motions requiring Duke Energy to clean up its sites."

The state agency took issue with the judge's characterization. "The claim that we have not been diligent is not only incorrect, it is an affront to the dedicated DEQ employees who are working to expedite the cleanup and closure of coal ash facilities," Sam Hayes, the agency's attorney, said in a statement.

More: Associated Press

NORTH DAKOTA

Wind Farm Delayed by Bald Eagle Impact Study

A proposed 100-MW wind farm is on hold until the Public Service Commission can determine if the 59-turbine project would harm bald eagles.

Rolette Power Development proposed the $175 million wind farm near Rolette. The U.S. Fish & Wildlife Service noted the existence of bald eagle nests nearby. But the developer's consultant, KLJ, countered that the nests are not within the planned facility's boundaries. "Since the eagle nests are located outside of the project area, Rolette Power has no plans to alter the project layout," KLJ's Grady Wolf wrote to the PSC.

The commission has ordered a Nov. 2 hearing to review the information before it will approve the project. Commissioner Brian Kalk said the PSC has no standard setback requirement between eagle nests and wind turbines, and the hearing will focus on what the appropriate distance should be.

More: Bismarck Tribune

OHIO

Watchdog Group Attorney Leaves to Join AES

An attorney who spent the past three years looking after the interests of consumers in utility cases has left a state watchdog group to join utility AES.

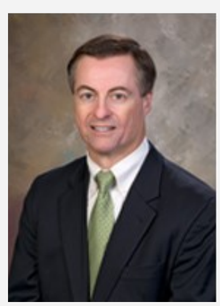
Michael Schuler is leaving the Consumers' Counsel to be regulatory counsel for AES in Dayton. AES purchased Dayton Power & Light for $4.7 billion in 2011. Schuler was involved in about 40 cases currently before the Public Utilities Commission.

The OCC's budget was cut in half between 2010 and 2012 by Gov. John Kasich.

More: Columbus Business First

PENNSYLVANIA

Environmental Justice Communities Eyed for Shale Gas Impacts


Quigley

The state's Office of Environmental Justice is being tasked with examining how shale gas facilities could impact the health and environment of those living in poor and minority communities.

In particular, the review will look at "environmental justice communities," where at least 20% of residents live below the poverty line, or where 30% of the population is non-white. More than 850 such areas have been identified.

Nearly 500 wells already have been drilled in those communities. The study is part of a rejuvenation of the office, whose mission will be "rebuilt from the ground up," according to John Quigley, secretary of the state Department of Environmental Protection.

More: Pittsburgh Post-Gazette

PUC Audit IDs Saving Opportunities for PGW

The Public Utility Commission released a management and operations audit of Philadelphia Gas Works containing 76 recommendations that it says could generate an estimated $8.3 million to $9.4 million in annual savings and a one-time savings of about $1.1 million.

Among the suggestions: Aggressively accelerate the replacement of high-risk mains, specifically cast iron ones; reduce the number of open leaks by outsourcing the excavation work and using PGW crews to make repairs; and place greater emphasis on decreasing the number of customer accounts delinquent by more than 90 days.

PGW accepted all of the recommendations but one related to reorganizing its governance structure, which includes overlapping roles of the Philadelphia Facilities Management and the Philadelphia Gas Commission. PGW said it was beyond the authority of management to address.

PGW, owned by the City of Philadelphia, is the largest municipally owned gas utility in the country.

More: PUC

VERMONT

State Gets $1.5 Million In Solar Grants

Twenty-two small rural businesses and farms have received a total of $1,555,448 for energy and efficiency upgrades, according to Rep. Peter Welch (D) and the U.S. Department of Agriculture.

Projects receiving the grants include photoelectric arrays, energy-efficient reverse-osmosis maple-sap pumps and milk chillers; and a wood-fired furnace. Eight of the 10 largest grant recipients are developing grid-tied solar power arrays.

The largest of the projects, Barton Solar, is a 1.89-MW solar system, for which it received $500,000.

More: Burlington Free Press

Clean Power Plan Summit

Katie Dykes, chairman of the Regional Greenhouse Gas Initiative, said RGGI has not had any "formal discussions" about expanding the trading program to other states. But she said that may change when RGGI begins its program review at a stakeholder meeting in November. "I anticipate that we may have some feedback from stakeholders about some of the options for trading within RGGI or with other states outside of the RGGI region." © *RTO Insider*

Larry Eisenstat, energy group chairman for Crowell & Moring, says states choosing a mass-based plan will have "virtually unlimited flexibility" for using distributed generation in meeting their CPP targets. "DG products do not need to be approved as part of a mass-based state plan … [Evaluation, measurement and verification] is not required under a state plan. It is under a [federal implementation plan] and a rate-based plan." © *RTO Insider*

Robert Pike, NYISO's director of market design, predicts distributed generation will be a "measurable component" of New York's compliance. "Once you've installed the equipment and made it available, I think it gets a much heavier use than just trying to clip peak loads." © *RTO Insider*

Marc Chupka, a principal at The Brattle Group, said that EPA's modeling seems to show that rate-based compliance will be less expensive than mass-based compliance in 2025 — an anomaly he suspects resulted from the agency's desire to avoid being accused of resurrecting cap-and-trade. "In the mass-based case, they modeled each state pursuing a mass-based option yet [did not model] interstate trading, which is kind of an odd choice. I suspect that the reason they did that is that the obvious alternative assumption would be 48-state trading… The critics would be proven right: this entire exercise is a sham." © *RTO Insider*

Legal Debate over Clean Power Plan Takes Center Stage

Continued from page 1

than we have in the past," said Joseph Goffman, EPA associate assistant administrator and senior counsel.

The answer that EPA came up with — largely substituting coal-fired generation with natural gas and renewables — "amounted to assembling the information that we were getting back from states and utilities and stakeholders based on what they were already doing," said Goffman, noting that nearly all states have energy efficiency programs and more than half have policies encouraging or requiring renewables.

"So we answered the question 'What is BSER?' in some ways by saying, 'Keep doing what you're already doing.' Level the playing field so that everyone is doing some ensemble of those things."

Impossible Standards for Coal Plants

Critics contend that the CPP is based on a novel — and improper — interpretation of 111(d).

"While EPA has issued numerous rules under Section 111, it has never interpreted this section in this manner or this broadly," said Allison Wood, an environmental and administrative law attorney with Hunton & Williams. "Are you allowed under the Clean Air Act to look beyond [the fence line] and think about the electric system as a whole? … The answer to that I would say is 'no.'"

Peter Glaser, an energy and environmental lawyer with Troutman Sanders, noted that EPA added in the final rule something that was missing from the draft — national emission standards: 1,305 lbs/MWh for coal and oil plants and 771 lbs/MWh for natural gas plants.

"It's something that [has been] in every single new source performance standard that EPA has ever done. The fact that they determined that they really want to have something like that in the final [rule] tells you that

Continued on page 26

Clean Power Plan Summit

Legal Debate over Clean Power Plan Takes Center Stage

Continued from page 25

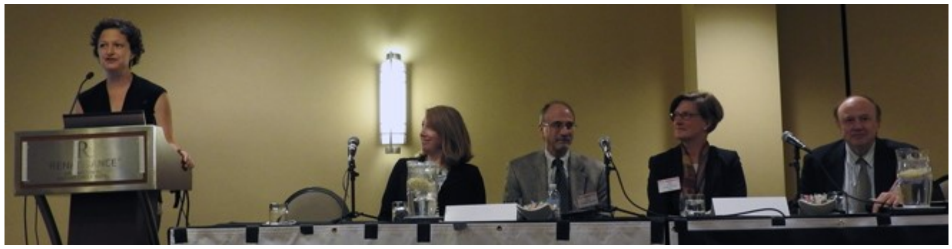
they were very nervous about the legal justification," Glaser said. "The problem is that the rates they came up with are rates that obviously the sources in the category can't meet. And that's the whole point, actually. Coal plants are not supposed to be 1,305. It's supposed to reduce generation or close.

"What EPA did is to say, 'We're not really regulating the sources in the categories; we're regulating the owners of the sources.' So owners can meet the standards by reducing the generation of their coal units and increasing the generation — or paying someone else — to increase generation of renewable resources. … Despite Congress having consistently resisted giving EPA authority to do cap-and-trade, that's exactly what EPA has finalized here."

Wood agreed. "Never before in the history of the Clean Air Act has a standard of performance … been based on 'don't run,'" she said. "There is not any coal plant in the world that can meet [the emissions standard]. The only way it can meet it is by not running."

Shutting Plants Down

Panel moderator Kate Konschnik, director of the Harvard Environmental Policy Initiative, disagreed, saying that EPA has previously issued rules that "caused certain units to shut down."



From left to right: Kate Konschnik, Harvard Environmental Policy Institute; Allison Wood, Hunton & Williams; Peter Glaser, Troutman Sanders; Ann Weeks, Clean Air Task Force; and Bob Sussman, former EPA senior counsel. © *RTO Insider*

"In particular, that was squarely at issue in a D.C. Circuit case about the cement kiln industry in the 1970s — that one type of cement plant would cease to exist because of the standards," she said.

Bob Sussman, an environmental and energy policy consultant and former EPA senior policy counsel, also saw the rule differently than the critics.

"I don't think that 111(d) of the Clean Air Act is guaranteeing that every existing plant subject to a standard is going to be able to meet that standard and continue to operate. Indeed, the whole idea of 111(d) is to push the envelope on technology and emission reduction," Sussman said.

"I think the important point here is that the term in the statute is 'best *system* of emission reduction.' It's not 'best emission-reduction technology achievable.'

'System' is a pretty big and [expansive] term. It doesn't necessarily mean only hardware that can be installed at a plant site that would reduce emissions. Here EPA is defining 'system' in a way that reflects the interconnected nature of the electricity grid and I think that's a very reasonable thing to do."

Ann Weeks, senior counsel and legal director for the Clean Air Task Force, said the rule was "locking in" the industry's displacement of coal-fired generation by cheaper natural gas.

"Could EPA have done more in this rule? Absolutely," she said. "The rule is not really technology-forcing."

Redundant Regulation?

Wood said the interpretation of BSER is not the only obstacle EPA will have to face in defending the rule.

"The other hurdle that EPA is going to have to get over is whether this source category can even be regulated under 111(d) of the Clean Air Act because of the fact that it is also regulated under Section 112 through the Mercury and Air Toxics Standards," she said.

The rule's fortunes in the D.C. Circuit may depend on which three judges are picked to hear the case. But observers on all sides of the issue expect the Supreme Court to have the last word. (See Former EPA Official: Clean Power Plan won't Survive.)

Sussman predicted that conservative Justices Antonin Scalia, Clarence Thomas and Samuel Alito will find EPA's interpretation of the rule unreasonable and liberals Ruth Bader Ginsburg, Stephen Breyer, Sonia Sotomayor and Elena Kagan to rule in the agency's favor.

"I think in the end it will come down to what Chief Justice [John] Roberts thinks and what Justice [Anthony] Kennedy thinks," he said.

In the court's 5-4 ruling in *Massachusetts v. Environmental Protection Agency*, which established EPA's authority to regulate CO_2, Kennedy sided with the majority, while Roberts joined the minority.

The chief justice wrote a dissent that focused not on the merits of the case but on rejecting the legal standing of the coalition of government officials and environmental groups that sought to force the Bush administration to act.

EPA's Goffman said the agency didn't concern itself with handicapping the justices' leanings when it was writing the rule. "I only think about it in terms of whether we have a solid legal case to make and we think we do," he told *RTO Insider* after his remarks. "We think we're on solid ground. We trust that ultimately the merits will speak for themselves."

RTO Insider

Editor & Publisher: Rich Heidorn Jr.
Marketing & Operations: Merry Eisner

RTO Insider LLC
10837 Deborah Drive
Potomac, MD 20854
(301) 983-0375

Subscription Rates:

Discounts available for corporations purchasing multiple subscriptions, non-profits, trade associations, government agencies, law firms and small businesses.

	PDF-Only	PDF & Archive Access
Annual:	$1,155.00	$1,405.00
Quarterly:	315.00	400.00
Monthly:	125.00	150.00

See details and Subscriber Agreement at rtoinsider.com.