RTO Insider
Your Eyes and Ears on the Organized Electric Markets
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Supreme Court Upholds FERC Jurisdiction over DR

By Rich Heidorn Jr.

WASHINGTON — The Supreme Court on Monday upheld FERC's jurisdiction over demand response, reversing the D.C. Circuit Court of Appeals in a 6-2 ruling.

"The [Federal Power Act] provides FERC with the authority to regulate wholesale market operators' compensation of demand response bids," wrote Justice Elena Kagan in an opinion joined by Chief Justice John Roberts and Justices Anthony Kennedy, Ruth Bader Ginsburg, Stephen Breyer and Sonia Sotomayor.

The decision upheld FERC Order 745, which required grid operators to pay DR providers LMPs — equal to generation.


Kagan

"This decision means that consumers will continue to see the significant benefits of demand response, which enhances competition in the markets, reduces wholesale prices and helps make the grid more reliable," FERC Chairman Norman Bay said in a statement.

The Electric Power Supply Association, which filed the lawsuit challenging Order 745, did not respond to requests for comment.

Justice Clarence Thomas joined Justice Antonin Scalia's dissent. Justice Samuel Alito recused himself in the case, reportedly because he owns stock in Johnson Controls, parent company of DR provider EnergyConnect.

In May 2014, the D.C. Circuit vacated Order 745 in a 2-1 ruling, saying DR is a retail product and thus subject to state, not federal, jurisdiction. It also said FERC's requirement that DR receive LMPs was "arbitrary and capricious."

The Supreme Court majority disagreed on both counts.

Growing Importance

FERC sought Supreme Court review because of

Continued on page 22

MISO: Mass-Based CPP Plan 1/3 Cost of Rate-Based

By Amanda Durish Cook

CARMEL, Ind. — Mass-based compliance with the Clean Power Plan would cost less than one-third as much as a rate-based method by 2030, according to modeling by MISO.

MISO found that the price disparity between rate-based compliance, which limits emissions in tons per megawatt-hour, and mass-based compliance, which caps emissions in tons per year, increases over time due to the mass-based method's increased flexibility under emissions trading.

By 2030, production-based compliance costs are expected to reach about $17 billion under a rate-based plan, while mass-based compliance is estimated at about $5 billion, according to the near-term analysis presented at Wednesday's Planning Advisory Committee meeting. This includes the expense of

Continued on page 7

FERC OKs MISO-SPP Settlement (p.3)

NYPSC OKs $5.3B Clean Energy Fund

By William Opalka

ALBANY, N.Y. — The New York Public Service Commission on Thursday approved a 10-year, $5.3 billion Clean Energy Fund, a centerpiece of Gov. Andrew Cuomo's Reforming the Energy Vision initiative to shift the state to resources that will fight climate change and provide more resilience.

NYPSC Chair Audrey Zibelman said the commission's action was a milestone in the nearly two-year effort. "I really feel like we're turning the chapter to the next stage of REV," she said.

The commission also advanced the docket for the creation of a Clean Energy Standard that would mandate 50% of New York's electricity come from "clean" energy sources by 2030. The NYPSC is under a Cuomo mandate to create the regulatory framework for the CES by June. Part of that mandate includes creation of financial incentives to keep New York's upstate nuclear power plants viable until the renewable resources reach their target in 14 years.

Leaders of the Republican-controlled state Senate asked the commission to delay action

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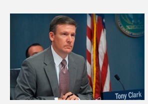
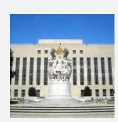
New York Would Require Nuclear Power Mandate, Subsidy (p.9)

Also in this issue:



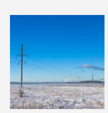
Clark Won't Seek New FERC Term

FERC Commissioner Tony Clark made the announcement last week. (p.12)



DC Circuit Rejects Stay on Clean Power Plan

The D.C. Circuit rejected a stay while legal challenges are decided. (p.12)



FERC Proposes Uniform Offer Cap Across RTOs

Generators' offers would be capped at the higher of $1,000/MWh or an RTO-verified cost-based offer. (p.13)

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ISO-NE NEWS

Pipeline Developer Asks Massachusetts to Order Route Access

By William Opalka

Tennessee Gas Pipeline is asking Massachusetts regulators to grant it access to more than 400 properties whose owners have refused to cooperate with the company as it prepares for construction of the Northeast Energy Direct project.

In a petition to the Department of Public Utilities, the pipeline said access is needed to conduct "civil, archeological and cultural resources, wetlands and waterbody delineation, and endangered or rare species" surveys as part of the project's review by federal regulators (16-03).

The order would be "preliminary to eminent domain" actions if property owners continue to refuse permission. The project would transport natural gas from Pennsylvania into New England. (See *Northeast Energy Direct Files for FERC Certificate*.)

"Tennessee has in good faith made efforts to obtain survey permission from owners of survey properties, including sending at least two letters requesting survey permission and attempting to discuss the request in person or via telephone," the petition says. "Many survey property landowners have granted Tennessee permission to conduct the surveys."

Opponents of the Northeast Energy Direct pipeline marched in protest last week. *Source: PopularResistance.org*

However, 408 have "either expressly refused to grant Tennessee permission to conduct the surveys or not granted Tennessee permission to conduct the surveys," the petition says.

"These landowners are minding their own business and seeking to simply live their lives in peace. We are working to ensure that they have the legal guidance they need to deal with this assault on their privacy and unjustified intrusion on their property," Kathryn Eiseman, president of the Pipe Line Awareness Network for the Northeast, said in a statement.

The company, a unit of Kinder Morgan, said it needs a 400-foot wide corridor along the project's route. It said that Massachusetts law allows granting of the order before FERC gives final approval for the project.

The department has scheduled six hearings statewide on the company's request, starting in Pittsfield on March 29. Written comments will be accepted through May 6.

New England Generators Appeal FERC Capacity Market Orders

The New England Power Generators Association last week asked a federal appeals court to review three FERC orders related to the operation of ISO-NE's Forward Capacity Market.

FERC in November denied rehearing of complaints made concerning orders related to ISO-NE's Pay-for-Performance program and the peak energy rent adjustment.

The appeals were filed in the D.C. Circuit Court of Appeals (16-1023, 16-1024).

The first order directed ISO-NE to adopt a modified version of its proposed market design (ER14-1050, EL14-52-001). FERC also denied rehearing on a compliance filing (EL14-52-002).

FERC also denied rehearing of a NEPGA complaint that alleged that the interaction between the penalty factor and ISO-NE's peak energy rent mechanism is unjust and unreasonable (EL15-25). (See *FERC Denies Rehearings on ISO-NE Pay-for-Performance*.)

— William Opalka

FERC Denies Fidelity Affiliate Request

FERC last week denied a request by two energy companies to declare they were not affiliates of the investment management wing of Fidelity Investments (EL15-96).

The companies, Backyard Farms Energy and Devonshire Energy, are indirect subsidiaries of Fidelity parent company FMR.

Devonshire was formed to purchase wholesale power for FMR's multiple operating companies; Backyard Farms Energy purchases wholesale energy for use by an affiliated greenhouse grower of tomatoes in Maine.

The two energy companies argued that the mutual fund accounts managed by subsidiary Fidelity Management & Research are not owned by the parent company itself but by shareholders and institutions.

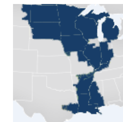
Backyard and Devonshire said they made the request for a declaratory order because they were concerned that they would be required to file a change of status if their affiliates acquired more than 10% of another energy company.

FERC said that its regulations classify the companies as affiliates of Fidelity Management because they are under the common control of FMR.

"Regardless of the ownership of the Fidelity accounts themselves, the fact remains that the Fidelity advisers manage and control the investments that the Fidelity accounts make and also exercise voting rights for the Fidelity funds in some circumstances," the commission said.

— Michael Brooks

MISO NEWS



FERC OKs MISO-SPP Transmission Settlement

By Amanda Durish Cook

FERC on Thursday approved MISO and SPP's uncontested settlement agreement, with a trio of orders governing how MISO transfers power between its North and South regions using SPP transmission.

FERC determined the settlement was "fair and reasonable and in the public interest" (ER14-1174, et al). The commission upheld a Jan. 5 settlement judge's certification that the agreement was uncontested.

The RTOs agreed in October to the terms of the seven-year settlement, which stipulates north-to-south flows be capped at 3,000 MW and south to north be limited to 2,500 MW. (See *SPP, MISO Reach Deal to End Transmission Dispute*.) MISO and SPP have 45 days to file Tariff changes with FERC.

Two other orders dismissed all rehearing requests relating to issues prior to the settlement and approved the cancellation of SPP's hurdle rate mechanism.

Clark Urges Caution

Commissioner Tony Clark wrote a concurring statement, saying the order "leaves the door open as to how the commission would analyze the settlement in the event a challenge is brought."

Clark said the settlement puts new conditions on MISO's transmission service because of the transfer limits established between MISO Midwest and MISO South.

"Because these terms could impact more than just the settling parties, including future MISO market participants, I do not think it is appropriate to extend the heightened *Mobile-Sierra* standard to those third parties or the commission acting [without formal prompting from another party]. Consistent with my prior statements, if we are to preserve the integrity of the *Mobile-Sierra* standard, we should be judicious in its application."

The *Mobile-Sierra* doctrine, named after a pair of Supreme Court rulings, holds that negotiated contracts are presumed to be just and reasonable unless it "seriously harms the public interest" or the parties to the contract agree that the standard should not apply.

MISO, SPP Looking Forward

Jennifer Curran, MISO's vice president of system planning and seams administration, said MISO was pleased with FERC's approval. "With this issue behind us, we look forward to continued collaboration across our seams for the benefit of all our customers."

SPP is "pleased to have the issue resolved," said David Avery, SPP's director of corporate communications.

As a result of the settlement, FERC moved to eliminate the $9.57/MWh hurdle rate on flows exceeding the 1,000-MW transfer limit per SPP and MISO's joint operating agreement (ER16-56). MISO's proposed Tariff revisions to replace the hurdle rate with a mutual compensation system will become effective Feb. 1.

"As explained by MISO, the substitution of the SPP service agreement with a payment structure for SPP's and joint parties' available system capacity obviates any need for the hurdle rate," FERC said.

However, MISO's proposed revisions to the commission failed to delete a few mentions of the SPP service agreement, as pointed out by MISO stakeholders. FERC directed MISO to remove the phrase and make a compliance filing in 30 days.

FERC also dismissed as moot requests for rehearing from MISO, MISO transmission owners and Entergy over now obsolete matters in the RTOs' joint operating agreement (ER14-1174-001, et al).

Having made a one-time, $16 million payment to SPP to fund surplus flow charges over the past two years, MISO is continuing cost allocation talks (ER14-1736).

Beginning next month and continuing until February 2017, MISO will pay SPP $1.33 million per month to cover flows over the 1,000-MW contract path that cross MISO's North-South interface, but MISO hasn't yet determined a final cost allocation mechanism that would govern how the cost is split among MISO's generation owners. (See "MISO to Begin SPP Settlement with $16 Million Payment," *MISO Market Subcommittee Briefs*.)

ATC to Separate Legacy Assets from Development Arm

American Transmission Co. won permission from FERC last week for a corporate reorganization that will split its existing transmission assets from its development partnership with Duke Energy.

ATC said the separation was driven by its owners — utilities, co-operatives and municipalities — who were unwilling or unable to take part in projects outside of the company's 9,500 miles of "existing core transmission" in Wisconsin, Michigan, Illinois and Minnesota.

FERC approved the creation of a new holding company, ATC Holdco LLC, which will assume most of ATC's 50% share in Duke-American Transmission Co., which is seeking development opportunities in PJM, MISO and SPP (EC16-47).

ATC's owners can remain invested in the legacy transmission only or exchange their interests for shares in the development arm.

The companies pledged to not pass on any transaction-related costs to customers for five years, but FERC reminded them that the commission doesn't allow rate recovery to finance transactions.

"Regardless of the terms of applicants' hold-harmless commitment, we remind applicants that the commission historically has not permitted rate recovery of acquisition premiums," FERC wrote in the order, issued Wednesday. "If applicants seek recovery of any acquisition premium associated with the transaction, they must be able to demonstrate in a subsequent proceeding … that its acquisition was 'prudent and provides measurable, demonstrable benefits to ratepayers.'"

No comments were filed opposing the transaction. Wisconsin Electric Power Co. and Wisconsin Public Service Corp. submitted their written support.

— Amanda Durish Cook

MISO NEWS

Planning Advisory Committee Briefs

MISO Rolls out New Communication Procedure Under Competitive Process

Aiming to prevent claims of preferential treatment under its new competitive transmission process, MISO last week released a formal protocol prohibiting bidders from contacting any MISO staff member directly about requests for proposals.

The rules were released as MISO prepares to receive bids on its first competitive transmission project, the Duff-Coleman 345-kV upgrade. (See *MISO Seeks Bids on Duff-Coleman Project*.)

Brian Pedersen, MISO's senior manager of competitive transmission services, said the RTO created a new email address (TDQS@misoenergy.org) so transmission developer applicants wouldn't contact any MISO staffer.

"We're moving from a workshop environment to a competitive bid environment … and we want to make sure people know how to communicate appropriately," Pedersen said. "Once we receive proposals, MISO will only respond to procedural questions. … We're not going to respond to any substantive questions about the [evaluation] and where we're at in it."

MISO said it will publicly post a list of received questions and its responses on the MISO competitive transmission webpage.

Meanwhile, stakeholders will continue working into spring on changes to Business Practice Manual 27 to align it with Tariff changes approved by FERC in November regarding the qualification and selection of competitive developers and the *pro forma* developer's agreement (ER15-2657, ER15–2658). Redline changes will be discussed at the March and April Planning Advisory Committee meetings. MISO hopes to make the changes effective by May 1.

BPM Changes Completed for Expedited Project Review

MISO presented stakeholders with BPM changes to replace the out-of-cycle review process with the new expedited review procedure.

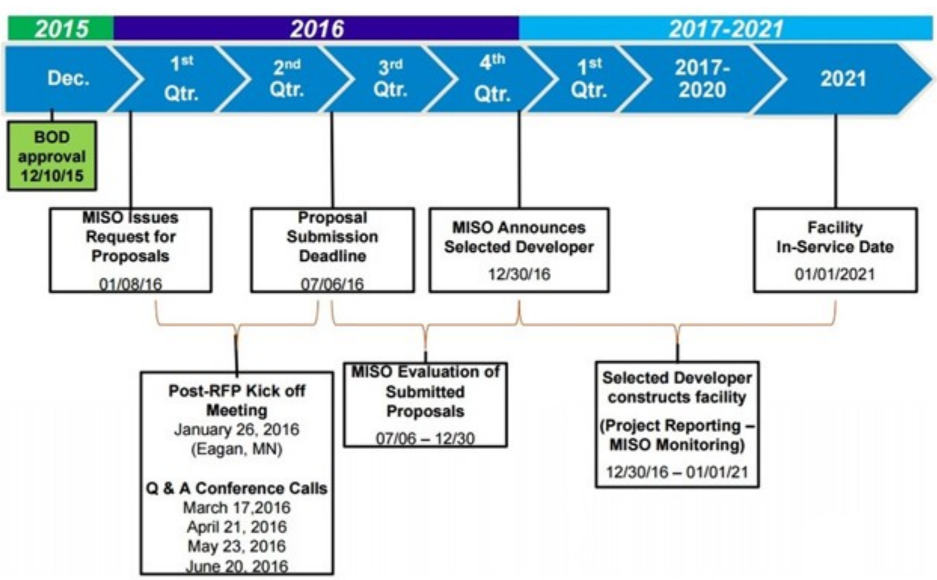
MISO will now post all valid expedited requests within two weeks of receipt and notify stakeholders of such requests.

The final BPM language concludes almost a year of discussion on the topic, after stakeholders raised objections to Entergy's Lake Charles transmission upgrades last February. Some critics questioned whether Entergy was seeking to circumvent the competitive bidding process. (See *MISO Seeks Stakeholder Input on Out-of-Cycle Process amid Entergy Controversy*.)

"We've not had an expedited review of the expedited project review," joked Matt Tackett, a principal adviser for MISO, during a presentation of the final BPM language.

Sean Brady, Wind on the Wires' regional policy manager, thanked Tackett for not "rushing" stakeholders through the review process. "I really appreciate that," he said.

MISO said it would not solicit any further input on the BPM language but would delay posting it until the PAC decides whether to endorse it at its February meeting.



Duff-Coleman competitive facility timeline *Source: MISO*

MISO Planning Confidentiality, Notification Changes to Attachment Y Procedure

MISO will require more notification and relax some confidentiality rules concerning generator suspensions and retirements and system support resources planning under Tariff changes outlined to the PAC.

The proposed changes would affect the Attachment Y process, which ensures MISO has time to identify transmission needs resulting from the loss of a generator.

The changes would subject black start units and pseudo-tied generators to Attachment Y requirements that units intending to retire or suspend operations provide at least 26 weeks' notice.

In addition, information made public by a generator owner will no longer be considered private, and information won't be confidential after a retirement date has passed.

Some public interest organizations said MISO should make Attachment Y notices public upon their filing, as in PJM. MISO said a 2012 FERC order directed the RTO to keep Attachment Y notices and study results confidential for units that do not qualify as an SSR (ER12-2302).

MISO may also require a new Attachment Y notice 26 weeks prior to the change in status of a SSR unit wishing to retire or alter its agreement, MISO's Neil Shah said.

Several market participants said that the current 36-month cumulative time limit on generator suspension in a five-year period and the 26-week notice requirement would need to be adjusted under MISO's proposed switch to a four-month summer and an eight-month winter capacity construct. Shah said that suggestion will be considered only once capacity market changes are finalized.

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MISO NEWS

Planning Advisory Committee Briefs

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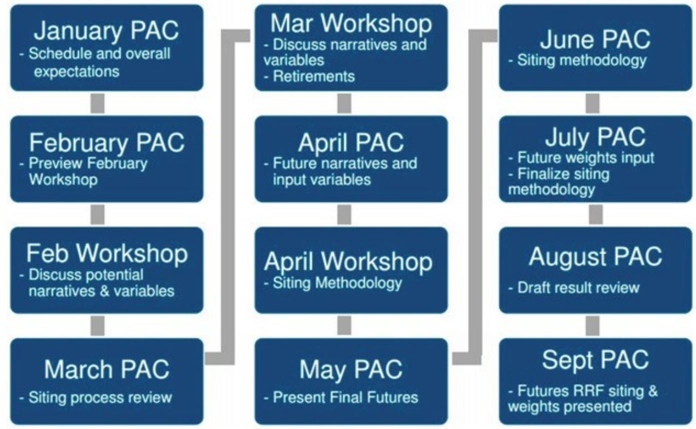
Generation owners would have to file directly with FERC to determine how much they will be compensated for fixed costs under an SSR and complete either an OASIS posting or a FERC filing to terminate interconnection rights. Suspended generators unable to return to service at the end of suspension period will be considered retired and have their interconnection rights terminated.

Shah said MISO's decision to change the process is based on experience gained since 2012. Tariff changes will be filed by Feb. 26; MISO is requesting an effective date of May 1.



Draft futures development schedule, subject to change based on stakeholder review and needs. *Source: MISO*

Work on MTEP17 Futures to Continue Through September

Work on changes to the Transmission Expansion Plan futures process will last through the first three quarters of 2016, Matt Ellis from MISO's policy studies unit told the PAC. "This is really more a teaser for what's to come in 2016," Ellis said of his presentation.

MISO said the new futures process, set to take effect beginning with MTEP17, will use familiar procedures. As with previous MTEPs, final decisions will be made during PAC meetings, while technical details will be hashed out in workshops.

MISO plans to review its resource siting methodology for use in PROMOD models beginning in March and finalize it in July. (See "CPP to Play Role in Reworked Futures Development," *MISO Planning Advisory Committee Briefs*.) "We've had basically the same siting information for years, so we've worked time into the process for re-siting," Ellis said.

The RTO said it wants to employ a scenario-based analysis with the possibility for many outcomes rather than the least-cost plan under a single scenario. "The scenarios should simulate likely or plausible real-life future system conditions and provide an envelope of outcomes that is significantly broad, rather than a single expected forecast," MISO wrote.

MISO is hoping to review draft results of the new futures process by the August PAC. "We want to wrap up the whole MTEP17 futures planning process by September," Ellis said.

Ellis is asking for feedback by Feb. 10 on MISO's proposed timeline, which he says is subject to change.

— Amanda Durish Cook

MISO NEWS

FERC: Entergy not Required to Buy from Large QFs

AECC also Granted Relief

By Tom Kleckner

Entergy's operating companies don't have to sign new purchase power agreements with most qualifying facilities above 20 MW, FERC ruled last week (QM14-3-000).

Because of their membership in MISO, the commission said, the Entergy companies had met their "statutory standard" under a 2006 order in which the commission revised its regulations implementing the Public Utility Regulatory Policies Act.

In a separate order, the commission granted Arkansas Electric Cooperative Corp. (AECC) similar relief based on the 2006 order, which said that QFs with net capacity above 20 MW were presumed to have "nondiscriminatory access" to wholesale markets in RTOs such as MISO.

The commission denied Entergy's request for relief regarding one QF, Dow Chemical's Plaquemine facility south of Baton Rouge, La., which it said faced transmission constraints.

Excluding the Dow facility, FERC said MISO provides all "over-20 QFs" in Entergy's territories "nondiscriminatory access to independently administered, auction-based day-ahead and real-time wholesale markets for the sale of electric energy and to wholesale markets for long-term sales of capacity and electric energy."

Entergy's request was supported by the Louisiana Public Service Commission but protested by several industrial customers with QFs.

The Louisiana PSC said QFs in Entergy's service territory have nondiscriminatory access to MISO's markets and noted the company's request "was made in part to satisfy the Louisiana commission's requirements — which included removing the PURPA 'put' obligation — in approving MISO membership for Entergy Gulf States Louisiana and Entergy Louisiana."

Justice Department Investigation

Protests by Occidental Chemical and Formosa Plastics cited an open Department of Justice antitrust investigation into Entergy's transmission practices. Formosa said FERC should deny Entergy's application pending a resolution of the investigation, noting that the department sought to have Entergy divest its transmission system. Occidental said that MISO had not approved transmission improvements to relieve the Amite South load pocket.

Occidental Chemical's Taft plant

The commission said that because Amite South is import constrained, Occidental's Taft QF was not prevented from selling energy outside the load pocket, and noted that LMPs at the plant are higher than average LMPs in MISO.

"Moreover, as Entergy points out, any energy which the Taft QF sells to load-serving entities outside the Amite South load pocket, including through the sub-regional power balance constraint to load-serving entities in MISO Midwest would, therefore, most often relieve congestion caused by the constraint, rather than be barred by it, and would instead receive congestion credits," FERC said.

In contrast, FERC said, Dow's 1,491-MW Plaquemine QF is located in a generation pocket, which is export constrained and subject to lower LMPs than the rest of MISO.

Entergy told FERC that transmission upgrades are scheduled to go in service around the Dow facility in December 2018. FERC said Entergy will be able to file for termination of its obligation to the Dow QF once the upgrades are completed.

The commission emphasized that granting Entergy's application "does not relieve Entergy of its obligation to abide by its existing agreements."

Entergy told FERC it would honor existing contracts "pending satisfaction of applicable contract termination requirements" and said it would not "seek to terminate any existing agreements effective prior to 120 days" after its request was accepted. FERC's order was effective Oct. 23, 2015, the date of Entergy's filing.

AECC Request Approved

In a related order, FERC also granted AECC's request to terminate its PURPA obligations for "over-20" QFs in MISO (QM15-3-000).

AECC made the request in April on behalf of itself and its 17 members, 14 of which are in MISO, but later amended the application so that it applied solely to the cooperative. The commission agreed with AECC that it relies on Entergy Arkansas' transmission system to serve its members' load.

FERC's ruling "does not relieve Entergy of its obligation to abide by its existing agreements."

FERC

MISO NEWS

MISO: Mass-Based CPP Plan 1/3 Cost of Rate-Based

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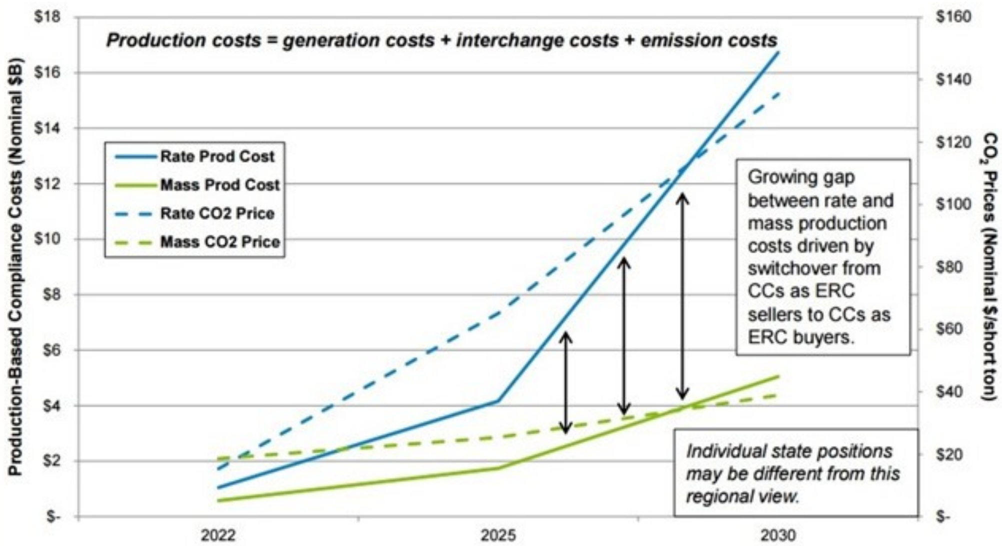


Clean Power Plan compliance costs *Source: MISO*

generation, interchange and emissions, excluding additional transmission and pipeline infrastructure, and other capital costs.

MISO has said that individual states won't shoulder the burden equally.

MISO Will be Compliant in First Years

Jordan Bakke, policy studies lead at MISO, said rate-based compliance is centered around adding zero-emission resources while mass-based compliance requires also removing emission-heavy generation. Early compliance targets are slated to be met through MISO states' existing renewable portfolio standards and natural gas's replacement of coal generation, but additional changes will be needed to continue compliance.

"The planning that has already occurred will only get us so far," Bakke said. Compliance costs would rise significantly in the "mid- to late 2020s," he said, after MISO's existing generation mix fails to carry it through increasingly stringent emissions goals.

The threats to MISO's coal fleet are less severe in a regional mass-based approach. The analysis forecasts six coal units to be idled by 2030 under mass-based plans, versus nine under rate-based compliance.

With either option, the grid operator said it would need new zero-emission resources to temper the price of CO_2, which is expected to rise from about $20/short ton in 2022 to about $40/short ton by 2030 under mass-based compliance and almost $140/short ton under a rate-based regime.

"Coal unit capacity factors decrease greatly over time under the CPP, more dramatically with a rate-based implementation," MISO wrote. On the other hand, MISO has suggested that mass-based compliance might require less capital investment because system dispatch won't have to undergo as many changes. The RTO said the low capacity factors, even using a business-as-usual measurement, show coal units won't be economically viable by 2022 or 2030.

66 Cases Modeled

Bakke said that the near-term modeling ran 66 cases with differing changes in capacity and either mass- or rate-based compliance: three business-as-usual scenarios in the years 2022, 2025 and 2030; 39 instances of business-as-usual resources but with CPP constraints applied; and 24 runs using alternative resource scenarios combined with CPP constraints. The three business-as-usual cases, which rely heavily on coal generation, would not meet emissions targets, while both categories that use CPP constraints would.

The study assumes a liquid carbon emissions market and that all states choose either mass- or rate-based plans. Bakke said further modeling will be needed if states decide to use a mix of rate-based and mass-based trading.

MISO said it assumed a $4.67/MMBtu natural gas price for 2015. In addition to modeling using its existing generation fleet, the RTO also is including units with signed generation interconnection agreements and projects approved under the 2015 Transmission Expansion Plan.

MISO Wants Reliability Provisions in State Plans

Meanwhile, Kari Bennett, MISO's senior corporate counsel, said MISO's comments to the EPA on the federal implementation plan (FIP) will focus on reliability.

In its comments, MISO said it would like EPA to authorize the use of a reliability safety valve in FIPs, similar to that in state implementation plans. MISO said EPA should allow a "meaningful, case-specific review of reliability that is comparable to the state plan requirement." (See related story, *FERC Outlines Principles for Clean Power Plan Analyses*, p.13.)

Bennett said the comments do not get into the mechanics of how a safety valve would be developed or used.

"As we look at the situation, reliability is often case-specific and a sensitive issue," she said. "We do think it is prudent for the EPA to include a reliability safety plan in the federal plan as well as state plans."

"The planning that has already occurred will only get us so far."

Jordan Bakke, MISO

NYISO NEWS

NYPSC OKs $5.3B Clean Energy Fund

Continued from page 1

on the initiatives, saying that while they support the goals of the fund, it should be considered as part of the 2015-2016 budget.

The Clean Energy Fund will advance solar, wind, energy efficiency and other clean tech industries to spur economic development and reduce carbon emissions, officials said. Cuomo said the $5 billion investment will leverage more than $29 billion in private sector funding.

The fund will be administered by the New York State Energy Research and Development Authority and financed through the systems benefit charge paid by ratepayers. It will receive $585 million this year and will be phased down annually, finally reaching zero after a decade.

Goals

In addition to the $29 billion in private investment, the 10-year goals include: 10.6 million MWh and 13.4 million MMBtu of energy efficiency; 88 million MWh of renewable energy; 133 million tons of CO_2 reduction; and $39 billion in customer bill savings.

The order says the traditional method of ratepayer-funded grants and rebates is too limited to effect the changes needed to meet New York's climate and energy goals.

"The state's greenhouse gas reduction goals demand that we achieve significantly more than is practical to achieve through current ratepayer-funded direct payment programs," the orders states. "The status quo must evolve to a model that recognizes the appropriate use of targeted programs combined with spurring private sector involvement to reach the level of scale needed to realize our objectives. Transitioning from predominately government-directed resource acquisition approaches to market-based initiatives that intrinsically recognize the value of clean resources requires careful planning, along with a long-term commitment to the market."

The projected $39 billion in customer bill savings will come from "innovative projects and private-public partnerships focused on reducing greenhouse gas emissions, making energy more affordable through energy efficiency and renewable energy, and mobilizing private-sector capital," according to the governor.

Businesses are expected to see lower costs of $1.5 billion over the next 10 years, including an immediate reduction of $91 million from 2016 electric and gas system benefits charges compared to 2015.

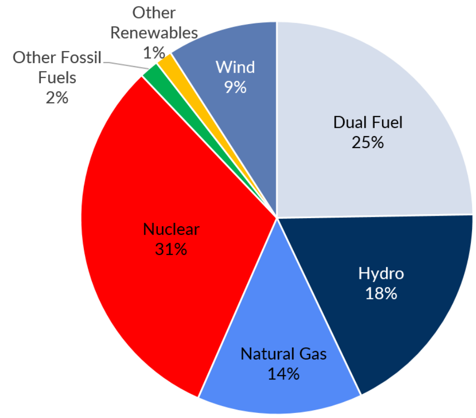
The fund includes:

- Market Development ($2.7 billion): NYSERDA initiatives are intended to stimulate consumer demand for clean energy alternatives and energy efficiency while helping to build clean energy supply chains. At least $234.5 million must be invested in low-to-moderate income initiatives during the first three years.
- NY-Sun ($961 million): The fund finalizes the state's commitment announced in 2014 for growing solar electricity by supporting rapid and continued cost reduction.
- NY Green Bank ($782 million): The fund will complete the capitalization of the bank, which leverages private capital for clean energy projects. The fund will increase the NY Green Bank's total investment to $1 billion and is expected to leverage an estimated $8 billion in private investment. (See *Project Interest Overwhelms New York's Green Bank*.)
- Innovation and Research ($717 million): Research and technology development is intended to drive clean-tech business growth and job creation while providing more energy choices.

Other REV Orders

The commission also approved several orders related to the REV proceeding.

Electric and gas utilities were directed to develop new energy efficiency programs,



New York set a new wind power record last Tuesday, generating 1,571 MW at 5 p.m. — 9% of the state's electric generation and 90% of the 1,746 MW of installed wind capacity. *Source: NYISO*

which included budgets and targets over the next three years (15-M-0252).

An earlier program based on rebates and subsidies expired at the end of 2015, but the REV initiative directed the utilities to develop flexible approaches that aligned with the state's climate and energy goals.

"The commission directed that with this flexibility, utilities should develop programs that are market-based and include market mechanisms that combine resource acquisition with third-party activities to drive greater value for customers, achieve greater market-wide efficiency savings, target specific system needs and depend less on direct ratepayer support," the order states.

The NYPSC also established a benefit-cost analysis for evaluating new energy proposals to determine whether they meet REV goals (14-M-0101).

The framework was included in the original REV order last year. Appendix C of Thursday's order spells out the framework in detail. Utilities were directed to file "Benefit Cost Analysis Handbooks" by June 30.

The commission also expanded the scope of its large-scale renewable energy proceeding to bring it in alignment with the state's Clean Energy Plan (15-E-0302). The LSR docket is the vehicle in which financial incentives for nuclear plants will be released and public comments gathered.

The Clean Energy Plan was released in December and first laid out the 50% renewable energy goal. The concurrent Clean Energy Standard proceeding formalizes that goal as state policy.

"I really feel like we're turning the chapter to the next stage of REV."

NYPSC Chair Audrey Zibelman

NYISO NEWS

New York Would Require Nuclear Power Mandate, Subsidy

By William Opalka

New York utilities would be required to procure more than 15% of their forecasted load in 2020 from struggling upstate nuclear power plants under a proposal now before the state's Public Service Commission (15-E-0302).

The staff white paper on a Clean Energy Standard released late Monday also sets a goal of obtaining 29.5% of the state's energy from renewable resources by 2020. Gov. Andrew Cuomo wants the PSC to finalize the CES by June.

The interim targets are part of Cuomo's proposal to procure 50% of its energy from "clean" sources by 2030. The nuclear component is an economic lifeline to three struggling plants in western New York while also providing a "bridge" until renewable resources are developed at a mass scale, said Scott Weiner, director for markets and innovation. The three plants provide about half of the state's nuclear energy; overall, nuclear provides 30% of New York's electricity. The state's fourth nuclear facility, Indian Point north of New York City, has been targeted for closure by Cuomo and is excluded from the proposal.

"The closure of the upstate New York nuclear plants due to the current natural gas market prices, and concomitant electric prices, would have a large negative impact on the state's ability to meet its carbon reduction goal," the paper states. "If the upstate New York power plants were to close in the near term, New York would have to procure more of its electricity from fossil fuel generating plants, primarily those burning natural gas, resulting in significant increases in carbon dioxide, nitrogen oxide and other air pollutants."

Year	Mandate as a % of Forecasted Load	GWh Target
2017	4.6%	7,500
2018	6.2%	10,000
2019	9.4%	15,000
2020	15.7%	25,000

New York nuclear power targets *Source: NYPSC*

'Tier' for Nukes

A new "Tier 3" would be created for nuclear facilities under the CES.

States with a renewable portfolio standard or a CES create tiers to distinguish between different types of clean energy resources and designate load requirements for each. In New York, Tier 1 is reserved for new renewable resources and Tier 2 is divided among existing renewables.

"The use of these three tiers will allow for clear connectivity among CES program elements and desired outcomes," the proposal states.

Under the proposal, the nuclear requirement would start out at 4.6% in 2017 and escalate yearly through 2020. The mandate would start April 1, 2017, the day that both Exelon's R.E. Ginna and Entergy's James A. Fitzpatrick nuclear stations on Lake Ontario are now expected to close.

Ginna is seeking ratepayer subsidies to continue operating temporarily for grid reliability. Entergy announced plans to close the FitzPatrick plant because of low energy prices, and a third plant, Exelon's Nine Mile Point, is under financial pressure.

Year	Statewide Energy Need After Energy Efficiency (GWh)	Renewable Energy (GWh)	% of Load that is Renewable
2017	159,894	42,832	26.8%
2020	158,597	46,761	29.5%
2030	150,017	75,008	50.0%

New York renewable energy goals *Source: NYPSC*

All three plants are assumed by the white paper to remain open, although Entergy said last month that the governor's incentives would not change their plans to retire FitzPatrick. (See *Entergy Rebuffs Cuomo Offer; FitzPatrick Closing Unchanged*.)

The renewable energy goals also would increase over time, from 26.8% in 2017 and 29.5% in 2020, reaching 50% in 2030. Targets for 2020 through 2030 will be added later.

Nuclear plants would be eligible to earn Zero Emission Credits (ZECs), similar to renewable energy credits (RECs) earned by wind and solar generators. Like RECs, ZECs will be tradable, but the two would not be interchangeable under the plan.

The maximum price of ZECs would be administratively set by the PSC. The white paper said that is intended to counter the potential exercise of market power, because of the limited number of facilities producing nuclear energy.

Prices "should be updated every year based upon the difference between the anticipated operating costs of the units and forecasted wholesale prices. In this manner the commission will be only setting an appropriate and fair value of the environmental attribute and will be acting independent of the actual wholesale prices for energy and capacity in the NYISO administrative market," the proposal states.

An environmental group that advocates the closure of the plants said the nuclear component of the CES is a "slap in the face to the communities" affected by the plants.

"Nuclear power reactors may not emit carbon dioxide or methane, but that doesn't make them clean or safe," said the Alliance for a Green Economy. "The Public Service Commission is writing a blank check from electricity consumers to Exelon and Entergy corporations, owners of the aging upstate nuclear plants. Exelon and Entergy stand to gain hundreds of millions of dollars per year from this policy, while everyday people are left in the cold and the dark."

A business group supports the overall policy but is worried about its cost.

Darren Suarez, director of government affairs for The Business Council of New York State,

Continued on page 10

NYISO NEWS

New York Would Require Nuclear Power Mandate, Subsidy

Continued from page 9

said Monday that his group supports the commission's efforts to "grow renewable energy and conservation measures, and address the challenges of the state's nuclear generators."

"However, we remain concerned that the projected savings could vanish quickly, especially if customers are forced to subsidize a costly CES," he added.

Anne Reynolds, the executive director of the Alliance for Clean Energy New York, said its members have a "keen interest" in the CES. ACENY has no position for or against nuclear power but hopes New York's moves to keep it in the state's energy mix are temporary.

"We were glad to see the reference to nuclear as a bridge to a renewables future, but we hope it does not become a permanent bridge that would preclude the development of renewables," Reynolds said.

New York's most recent renewable portfolio standard expired in 2014. State regulators have been discussing a revised RPS for months in a so-called large renewables proceeding. Nuclear generation has now been added to the proceeding.

'Drama'

The nuclear mandate was outlined at Thursday's commission meeting.

The meeting started with "drama," as PSC Chair Audrey Zibelman put it, when the Republican-led state Senate hand-delivered a letter to the commission seeking a delay in action on the CES and the creation of a $5.3 billion Clean Energy Fund.

The letter, signed by Majority Leader John Flanagan, his deputy and the head of the energy committee, said action was "premature" on the CEF, another order that's part of the state's Reforming the Energy Vision proceeding.

"The CEF is a major fiscal initiative and has the potential to be even larger when taking into account the CES," they wrote. "While we do not believe the commission is taking the fiscal implications of these initiatives lightly, it is the position of the conference that these proceedings would be strengthened by a real cost-benefit analysis and genuine opportunity for public input."

The commission held a 38-minute executive session to discuss the letter but decided to proceed. Zibelman was particularly pointed in saying the letter failed to demonstrate any reason for the commission to delay action.

"This petition was filed in 2014 and there has been considerable opportunity for public commentary both in terms of the number of public statements, hearings and meetings ... as well as the process before us," she said. "There's no question that we have in front of us a very robust record."

For administrative ease, Zibelman said, the CES has been rolled into the existing proceeding for large-scale renewables (15-E-0302) rather than a new docket.

PJM NEWS

MRC/MC Preview

Below is a summary of the issues scheduled to be brought to a vote at the Markets and Reliability and Members committees Thursday. Each item is listed by agenda number, description and projected time of discussion, followed by a summary of the issue and links to prior coverage in ***RTO Insider***.

RTO Insider will be in Wilmington, Del., covering the discussions and votes. See next Tuesday's newsletter for a full report.

Markets and Reliability Committee

2. PJM Manuals (9:10-9:25)

Members will be asked to endorse the following manual changes:

- Manual 27: Open Access Transmission Tariff Accounting. Changes allow for network service peak load values submitted by electric distribution companies to be scaled by the eRPM auction software if they do not add up to the annual network service peak load allocation for the area.
- Manual 38: Operations Planning. Changes resulting from annual review correct typos, revise terms for consistency and update PJM reliability study procedures.
- Manual 40: Training and Certification Requirements. Implements a new process requiring operators or dispatchers not in compliance be removed from their shifts. Also establishes a compliance score scheme that will trigger a violation notice to the company and potentially FERC. (See "New Operator Compliance Rules to Take Effect Feb. 1," *PJM Operating Committee Briefs*.)

3. Energy Market Offer Cap (9:25-9:45)

Tariff and Operating Agreement changes provide clarification conforming to FERC's order that revisions to the energy market offer cap exclude the 10% adder from cost-based offers more than $2,000/MWh. The committee is being asked to endorse the revisions on first read due to time-sensitivity. (See *PJM Members OK $2,000/MWh Energy Market Offer Cap*.)

4. Virtual Transactions (9:45-10:00)

A proposed problem statement and issue charge address the nodes at which virtual transactions may be made. The issue stems from a report PJM published in October, "Virtual Transactions in the PJM Energy Market," that identified instances in which existing market rules allow virtual transactions to be used in a manner that do not add value to the market commensurate to the costs imposed by them. (See *PJM Suggests Changes to Virtual Transactions*.)

5. Distributed Battery Storage in PJM Markets (10:00-10:15)

Drew Adams of battery maker A.F. Mensah will propose a problem statement and issue charge to study establishing a clear path to market in PJM for distributed battery storage systems.

6. Unit Commitment (10:15-10:30)

Barry Trayers of Citigroup Energy will propose a problem statement and issue charge to investigate separating financial day-ahead obligations from the physical unit commitment.

7. Capacity Performance Cost Allocation (10:30-10:45)

PJM is presenting a problem statement and issue charge asking stakeholders to review whether the Reliability Pricing Model method of cost allocation should be revised. In its Capacity Performance filing, PJM proposed changing the method by which it allocates the cost of procuring capacity. Given the protests and comments received, however, it asked FERC to postpone ruling on that component until the matter could be addressed through the stakeholder process.

8. Seasonal Capacity Resources (10:45-11:00)

Members will be asked to endorse a problem statement and issue charge regarding incorporating seasonal resources into the Capacity Performance construct. Capacity Performance rules allow aggregation of seasonal resources to convert them into "synthetic" annual resources but none were submitted in the first Base Residual Auction involving CP. Stakeholders will be asked to consider whether Tariff language can be improved or developed to encourage seasonal resources to participate in the market.

9. Voltage Threshold (11:00-11:15)

Revisions to the Operating Agreement would exempt transmission reliability projects of less than 200 kV from the competitive proposal windows. Such projects are almost always assigned to incumbent developers, and PJM said the change would enable its engineers to focus on problems more likely to result in a competitive greenfield project. (See "Voltage Threshold will Exempt Some Projects from Proposal Window," *PJM Planning Committee and TEAC Briefs*.)

10. Long-Term Firm Transmission Service Task Force (11:15-11:25)

Proposed changes to Manual 14A: Generation and Transmission Interconnection Process and 14B: PJM Regional Transmission Planning Process would modify long-term firm transmission service methods. Revisions to 14A would add a cost allocation obligation for new service requesters toward facility upgrades. Changes to 14B describe the baseline and new service request studies, the distribution factor and rating limit allowed to contribute to flowgates and the interaction of baseline and new serve request studies on constraints identified in the capacity import limit studies.

11. PAR Task Force (11:25-11:35)

Other changes proposed for Manual 14A would make clear that phase angle regulator (PAR) technology is eligible for transmission injection rights. (See "Phase Angle Regulators Qualify for Transmission Rights," *PJM Planning Committee and TEAC Briefs*.)

12. Governing Documents Enhancement & Clarification Subcommittee (GDECS) (11:35-11:45)

Proposed revisions to the Tariff, Operating Agreement and Reliability Assurance Agreement offer clarifications and consistency for certain terms.

Members Committee

ENDORSEMENTS (1:25-2:40)

1. ENERGY MARKET OFFER CAP (2:10-2:30)

See related item above.

2. LIAISON COMMITTEE (LC) CHARTER (2:30-2:40)

Members will be asked to approve changes to the Liaison Committee charter. The revisions provide for an LC meeting with the board or the second General Session meeting in a calendar year to be canceled upon a super-majority vote of the sector whips. The Members Committee would need to receive three business days' notice of such a vote. Any sector voting not to cancel a meeting would be required to provide at least one topic to be discussed.

FERC NEWS

Clark Won't Seek New FERC Term

By Rich Heidorn Jr.

WASHINGTON — FERC Commissioner Tony Clark announced Thursday he will not seek reappointment when his term expires in June.

"After discussing with my family over the holidays we have decided to not seek another term on the commission," he said at the opening of the commission's monthly meeting. "It has been a wonderful run here and I've enjoyed the 12 years prior to this on the North Dakota [Public Service] Commission and a number of years prior to that in state government. I've enjoyed it a lot, but there comes a time when you just feel like it's time to do a little something else."

Clark, 44, was elected to the North Dakota legislature at age 23. "So I've been in government a long time," he said.

With the departure of Commissioner Philip Moeller in October, Clark became the lone Republican on the commission. He said he may serve beyond the end of his term if a replacement has not yet been confirmed.

Clark said he wanted to announce his plans now to give notice to his staff and those who may be interested in replacing him. "So I thought I would announce today rather than play coy for the next six months or so."

Chairman Norman Bay said he was sorry to lose Clark, promising to celebrate and "roast" him at a future meeting. "You've been just an amazing colleague," he said.

Clark, who joined the commission in 2012, is now second in seniority only to Commissioner Cheryl LaFleur. He has become increasingly

assertive in the past year. (See *No Longer at the End of the Table, Lone Republican Takes on Larger Role*.)

On Thursday, he commented on the repeated interruptions of the commission meetings by protesters opposed to the commission's approval of natural gas pipelines. "I find it rather ironic, he said, "that just 24 hours before a very major winter storm on the East Coast, we have people protesting the very infrastructure that will keep them alive over the next 72 hours."

DC Circuit Rejects Stay on Clean Power Plan

By Rich Heidorn Jr.

WASHINGTON — The D.C. Circuit Court of Appeals on Thursday rejected a request to stay the implementation of EPA's Clean Power Plan while legal challenges are decided.

The decision was not unexpected. The petitioners, PPL's Louisville Gas & Electric and Kentucky Utilities, had to convince the court both that they were likely to prevail in the challenge and that they would suffer irreparable harm without a stay.

"Petitioners have not satisfied the stringent requirements for a stay pending court review," a three-judge panel ruled (15-1363).

The judges also rejected a motion in a related challenge (15-1418) to sever certain issues and hold them in abeyance.

The court ordered the parties to submit a proposed format for briefing of all the issues in the cases by Jan. 27, with initial briefs filed by April 15 and final briefs by April 22.

Oral argument is scheduled for 9:30 a.m. June 2 and could continue into June 3, the court said.

Opponents Hopeful

West Virginia Attorney General Patrick Morrisey said he is considering asking the U.S. Supreme Court to consider the stay request.

"We are disappointed in today's decision but believe we will ultimately prevail in court," Morrisey said in a press release. "The court did not issue a ruling on the merits and we remain confident that our arguments will prevail as the case continues. We are pleased, however, that the court has agreed to expedite hearing the case."

West Virginia is among 26 states that have joined in the legal challenges, which were filed immediately after EPA published its final rule in the *Federal Register* in October. (See *Legal Debate over Clean Power Plan Takes Center Stage*.)

Some observers have suggested the rule's fortunes in the D.C. Circuit would depend on which three judges were picked to hear the case. It is widely expected, however, that the case will ultimately be decided by the Supreme Court.

Two of the three judges on the panel were appointed by Democrats.

Judge Karen Lecraft Henderson was appointed to the appellate court in 1990 by President George H. W. Bush after about four years as a U.S. District Court judge in South Carolina. Before joining the bench, she served in the South Carolina attorney general's office after working in private practice in Chapel Hill, N.C.

Judge Judith W. Rogers was appointed to the D.C. Circuit in 1994 by President Bill Clinton to replace Clarence Thomas when he joined the Supreme Court. She formerly worked as an assistant U.S. attorney in D.C. and as the district's corporation counsel.

Judge Sri Srinivasan was appointed by President Obama in 2013. He is a former law clerk to Supreme Court Justice Sandra Day O'Connor and also worked in the U.S. Solicitor General's office. Srinivasan also worked on Democrat Al Gore's legal team during the disputed 2000 presidential election.

32% Reduction

The EPA rule seeks to cut the power sector's carbon emissions by 32% by 2030, compared with 2005 levels.

The Supreme Court ruled in 2007 that EPA had authority to regulate carbon dioxide. At issue is how the agency defined the "best system of emission reduction (BSER)," the standard set in Section 111(d) of the Clean Air Act. Critics contend that the Clean Power Plan is based on a novel — and improper — interpretation.

Other critics question whether EPA can regulate CO_2 under 111(d) because it is also regulated under Section 112 through the Mercury and Air Toxics Standards.

FERC NEWS

FERC Proposes Uniform Offer Cap Across RTOs

By Michael Brooks

Two years after the polar vortex, and on the eve of a major snowstorm on the East Coast, FERC last week proposed a uniform "soft" offer cap for all RTOs' day-ahead and real-time markets (RM16-5).

Under the commission's Notice of Proposed Rulemaking, generators' incremental energy offers would be capped at the higher of $1,000/MWh or an RTO-verified cost-based offer.

Most RTOs and ISOs already cap offers at a hard $1,000/MWh. In December, FERC approved doubling PJM's offer cap to $2,000/MWh in reaction to the extreme cold of the January 2014 polar vortex, which drove up natural gas prices to the point that some generators could not recoup all of their costs (ER16-76).

PJM members approved the increase in October after a long stand-off. Some members who were originally opposed to the increase agreed to support a compromise proposal, as they predicted it would be a temporary change. (See *PJM Members OK $2,000/MWh Energy Market Offer Cap*.)

The NOPR would allow generators with cost-based offers that are more than $1,000/MWh to set LMPs. FERC, however, said it is seeking comment on whether it should place a hard cap on these offers and, if so, what this cap should be.

FERC said the current structure may suppress LMPs below the marginal cost of production. "If this occurs, resources may lack an economic incentive to supply power during times when the electric system may need it most. Additionally, if resources cannot reflect their short-run marginal costs in incremental energy offers due to the cap, the grid operator cannot dispatch the most efficient set of resources."

A standard offer cap would also allow RTOs "to avoid issues that could arise if one region has an offer cap that materially differs from a neighboring region," FERC said.

"The draft NOPR proposes to make the change to the offer cap applicable to all RTOs and ISOs in order to avoid exacerbating seams issues," said Emma Nicholson of the commission's Office of Energy Policy and Innovation. "Otherwise, different offer caps in neighboring regions could result in power flows that reflect the level of the two offer caps as opposed to reliability needs or economics."

Nicholson also said that the NOPR doesn't eliminate the $1,000 cap entirely because of feedback from RTO market monitors, who said the cap "plays a back stop role in market mitigation."

Commissioner Cheryl LaFleur said the NOPR "strikes a good balance … between generally maintaining the $1,000 cap but allowing higher offers that can be verified to set prices."

"The commission is proposing to take important steps that, in my mind, would increase both confidence and transparency" in the markets, Commissioner Colette Honorable said.

Comments are due 60 days after the NOPR's publication in the *Federal Register*.

FERC Outlines Principles for Clean Power Plan Analyses

By Rich Heidorn Jr.

FERC staff last week released a white paper identifying what it called "four guiding principles" that may help RTOs and other transmission planning entities analyze compliance with EPA's Clean Power Plan.

Although the commission has no direct role in CPP compliance, it may be called on to evaluate the impacts of plant retirements and other responses on reliability.

Staff said modeling of the CPP should address: transparency and stakeholder engagement; study methodology and interactions between studies; study inputs, sensitivities and probabilistic analysis; and tools and techniques. The white paper borrows from a 2015 report by M.J. Bradley & Associates cited by EPA.

"Incorporating these guiding principles in the modeling of the CPP compliance plans is one way to promote a robust analysis of the reliability impacts of the CPP," the commission said, adding that it may conduct additional technical conferences on the rule. (See *MISO, SPP Stakeholders Developing Trading Plan to Comply with EPA Carbon Rule*.)

"State-by-state variations in compliance approaches may add additional uncertainty and complexity, particularly for transmission planning entities that cover multiple states or states with multiple transmission planning entities," FERC said. "Further, the use of inconsistent models, or inconsistent modeling inputs, may suggest reliability problems where none exist, or may mask problems that do exist. If models and modeling inputs are not transparent, it will be difficult for stakeholders, state commissions, planning authorities or the commission to identify, understand or address potential problems."

FERC said the impacts of CPP compliance plans can be evaluated through a combination of studies, including resource adequacy, production cost, integrated gas-electric systems simulations and power flow and transient stability analyses.

"Incorporating the results of one study into a subsequent study can result in a more robust analysis," the white paper says. "For example, the results of a resource adequacy analysis can be used to define the assumptions for the composition of the generation fleet used in a production cost or natural gas infrastructure study. This iterative process can lead to more robust results than using static assumptions."

It also called for use of new tools to measure the impact of increased renewable and natural gas generation.

FERC NEWS

FERC to Probe Rates of 4 Natural Gas Pipelines

By Suzanne Herel

Empire Pipeline's Tioga County Extension Project. *Source: Empire Pipeline*

FERC on Thursday called for an investigation into four interstate natural gas pipelines that it believes might be charging shippers in PJM, ISO-NE, NYISO and CAISO too much.

The pipelines — Empire Pipeline (RP16-300-000), Iroquois Gas Transmission System (RP16-301-000), Columbia Gulf Transmission (RP16-302-000) and Tuscarora Gas Transmission (RP16-299-000) — have been ordered to file a cost and revenue study within 75 days and appear before an administrative law judge for evidentiary hearings.

The companies' earnings were flagged in a FERC review of annual reports filed by 129 pipeline companies for 2013 and 2014. The analysis found returns on equity for the four pipelines ranged from 15.8% (Empire, 2013) to 24.9% (Tuscarora, 2014). The industry average ROE is a little more than 12%.

"These estimated levels of returns led staff to believe that these four pipelines are over-recovering their costs of service and may be charging rates that are no longer just and reasonable," James Sarikas, of FERC's Office of Energy Market Regulation, said in a presentation to the commission. "In addition, none of these pipelines have an existing settlement with its customers that places a currently effective moratorium on existing rates, or requires it to file a new general [Natural Gas Act] Section 4 rate case in the future."

First Probes Since 2013

The probes are the first in two years to be conducted under Section 5 of the NGA, designed to protect consumers from excessive rates and charges.

FERC in 2009 began a regular, in-depth review of the cost and revenue information filed by large pipelines and in 2011 expanded its focus to include smaller operations.

In that time, the commission initiated 10 proceedings to determine if the pipelines' transportation and storage rates might not be just and reasonable. Eight of those investigations ended in settlement agreements, and two were terminated.

Dena Wiggins, president of the Natural Gas Supply Association, which represents gas producers and marketers, said her group was pleased that FERC had opened the investigations, adding that they underscore a need for revisions to Section 5.

"Legislation that reforms Section 5, granting FERC the authority to award refunds to shippers in cases where pipelines are determined to have overcharged, would further enhance consumer protections, since currently FERC can only order an overearning pipeline to lower its rates going forward from the date of the commission's order," she said in a statement. "Now that FERC has adopted a new modernization surcharge policy that grants interstate pipelines new opportunities to recover costs outside of a general rate case, Section 5 reform is more important than ever."

Pipelines Span the Country

FERC's orders outlined their concerns over the companies' earnings:

- Empire, an affiliate of National Fuel Gas, received authorization in 2011 to construct the Tioga County Extension Project, which enables it to transport natural gas south from Canada and product from the Marcellus Shale north from Pennsylvania. It had not filed a rate case since 2006. The commission's review found Empire earned $24.6 million after income taxes in 2013, an ROE of 15.8%, and $28.6 million (20.2%) the following year.
- Iroquois, which owns pipelines from the Canadian border through New York and western Connecticut, has not adjusted its rates since 2004. FERC said it had an after-tax return of $54 million (16.2%) in 2013 and $55.6 million (16.3%) in 2014.
- Columbia Gulf operates about 3,400 miles of pipeline located primarily in Louisiana, Mississippi, Tennessee and Kentucky. Its current rates are the result of a 2011 settlement agreement, which barred it from seeking to modify rates before April 1, 2014. The company earned $21.9 million (17.3%) for 2013 and $26.4 million (18.2%) for 2014.
- Tuscarora, which operates a 229-mile pipeline in Nevada and northwestern California, had not had a rate examination since a 2012 settlement with the Nevada Public Utilities Commission. FERC's review indicated earnings of $9.7 million (23.6%) for 2013 and $9.6 million (24.9%) for 2014.

FERC NEWS

FERC OKs CIP Standards; Postpones Action on Supply Chain Protections

FERC on Thursday gave final approval to revisions to seven critical infrastructure protection (CIP) reliability standards.

The final rule approves NERC's proposed requirements for personnel and training, physical security of the grid's cyber systems and information protection (RM15-14).

It requires NERC to make changes addressing protection of transient electronic devices, such as thumb drives and laptop computers, at low-impact Bulk Electric System cyber systems and protections for communication network components between control centers. It also requires NERC to refine its definition for low-impact external routable connectivity and to conduct a study assessing the effectiveness of

CIP remote access controls, the risks posed by remote access-related threats and vulnerabilities, and appropriate controls.

Supply Chain Protections not Included

The order does not include a provision in the commission's July Notice of Proposed Rulemaking that would have required NERC to develop requirements for supply chain management for control system hardware, software and services. (See *FERC Seeks Supply Chain Protection Against Cyber Threats*.)

The commission said it will consider action on that issue based on advice from staff following a Jan. 28 technical conference.

A supply chain standard would be only the third time the commission has ordered NERC to initiate a standard, following standards addressing geomagnetic disturbances and physical security.

The commission's supply chain concerns were prompted by two malware campaigns against vendors of industrial control systems.

The final rule takes effect 65 days after publication in the *Federal Register*.

— Rich Heidorn Jr.

COMPANY BRIEFS

Wisconsin Company Helps Hawaii Fish Farm Go off Grid

EnSync Energy Systems of Menomonee Falls, Wis., has set up a Hawaii hydroponic and aquaponics company to detach from the grid entirely. Using an energy management system composed of solar generation and batteries, Mari's Garden in Mililani, on Oahu, is operating the water pumps for its hydroponic and fish farming operation off the grid.

The system uses a 25-kW photovoltaic unit and 40 Aquion battery stacks to store 92 kWh of energy. Mari's Garden said it plans to expand the PV system to 75 kW later this year.

More: *Pacific Business News*; *EnSync Energy Systems*

Richey Named Site Vice President at FE's Beaver Valley Nuclear Station

FirstEnergy has named Marty Richey the site vice president at the Beaver Valley Nuclear Power Station in Shippingport, Pa. He takes the place of Eric Larson, who will represent FirstEnergy Nuclear Operating Co. as a loaned executive to the Institute of Nuclear Power Operations in Atlanta.

Richey, a 27-year industry veteran, most recently was plant manager at Entergy's Waterford Nuclear Generating Station in Killona, La.

He also is a veteran of the U.S. Navy Nuclear Power Program, where he was a mechanical operator and engineering lab technician.

More: *FirstEnergy*

Japanese Company's New Power Storage System Goes Online

Sumitomo Corp. is starting up its new power storage system, Willey Battery Utility, in Hamilton, Ohio, which will participate in PJM's frequency regulation market.

"As a developer of wind and solar power plants which are unavoidably intermittent generation sources, we think it is quite important that we also contribute to the stabilization of power grids through balancing services," said Nick Hagiwara of the Sumitomo Corporation of Americas.

The 6-MW, 2-MWh system was developed by RES Americas. It is the Japanese conglomerate's first investment in a large-scale, stand-alone battery project in the United States.

More: *Sumitomo Corp.*

Plastic Sheet Could Provide Solution to Battery Overheating

A Stanford University chemical engineer has invented a plastic sheet that can be inserted into lithium ion batteries to prevent overheating.

The sheet is embedded with carbon-coated nanoparticles of nickel that allow it to conduct electricity. However, it expands when it heats up, pulling apart the nanoparticles so they no longer conduct electricity.

When the sheet cools down, the battery begins operating again.

More: *Delaware Public Media*

PSEG Solar Source Acquires Solar Projects in Ca., Utah

PSEG Solar Source is increasing its solar capacity to 214.6 MW with the $110 million acquisition of projects in California and Utah from Colorado solar developer juwi Inc.

The 3.9-MW PSEG Lawrence Livermore Solar Energy Center is being built at the Lawrence Livermore National Laboratory, about 45 miles east of San Francisco.

The 62.7-MW PSEG Pavant II Solar Energy Center will be located about 110 miles south of Salt Lake City.

More: *The Philadelphia Inquirer*

ComEd Receives $4M Grant From DOE SunShot Initiative

The U.S. Department of Energy has awarded $4 million to Commonwealth Edison to create solar and battery storage technology in its microgrid demonstration project in the Bronzeville neighborhood in Chicago. The grant is part of the department's SunShot Initiative.

The project is a precursor to ComEd's proposed development of six microgrids in Illinois.

"Distributed generation is the future of the electric grid," said ComEd President and CEO Anne Pramaggiore. "The microgrid demonstration we are building in Bronzeville is a blueprint for other utility-owned microgrids around the country."

More: *Commonwealth Edison*

Duke Says it Set Solar Record in NC

Duke Energy says it installed more than 300 MW of solar generation in North Carolina this year, eclipsing its record of 160 MW the year before.

Duke last year spent $500 million to build four solar farms in the state with a capacity of 141 MW and bought 150 MW more.

The company said it plans to build another 75 MW of solar this year. The company expects North Carolina to rank second behind California for utility-scale solar construction in 2015.

More: *The Charlotte Observer*; *Duke Energy*

Houston Gas Firm Lays off 600 in Fayetteville Shale

Houston-based Southwestern Energy said it is laying off 1,100 employees, including 600 throughout its Fayetteville Shale operations in Arkansas, amid a steady decline in natural gas prices.

The cuts, set to be complete by the end of the first quarter, will leave 560 employees in the central Arkansas natural gas play. Southwestern said the "organizational changes" are necessary to be competitive in a "low gas price environment."

Natural gas at regional hubs was trading around $2.13/MMBtu on Thursday, down from a 52-week high of $3.47. Southwestern reported a third-quarter net loss of $1.8 billion, or $4.62/share.

More: *Arkansas Business*

Enel Green Power Building 7th Wind Farm in Oklahoma

Enel Green Power North America has started construction on a 108-MW wind farm southwest of Oklahoma City, its seventh such project in Oklahoma.

Enel's Drift Sand project is expected to be

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COMPANY BRIEFS

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finished by the end of the year. The electricity will be sold to Arkansas Electric Cooperative Corp. under a long-term power purchase agreement.

Enel, whose first Oklahoma project was finished at the end of 2012, is now the state's second-largest wind farm operator, with 958 MW. The $180 million Drift Sand wind farm will push the company to 1,066 MW of wind capacity in Oklahoma.

More: *The Oklahoman*

Peabody Energy Pulling out Of Prairie State Energy Campus

Peabody Energy announced it is selling its share of the troubled Prairie State Energy Campus in Missouri to Wabash Valley Power Association for $57 million.

Peabody, which is being pressured by the downturn in the coal industry, said it was selling its 5.06% stake in the 1,600-MW coal-fired generating station about an hour southeast of St. Louis as part of its move to shed noncore assets.

The price of the generating station skyrocketed amidst cost overruns and missed deadlines, and stands at about $4 billion now. The plant has shown steadily increasing performance, however.

More: *St. Louis Post-Dispatch*

Kinder Morgan Plans Spending Cuts After Q4 Losses of $637 Million

Kinder Morgan said last week that it planned to cut spending after posting a net loss of $637 million for the fourth quarter.

The company attributed the loss to higher taxes and interest expenses, coupled with a decline in market values. The company showed a net profit of $126 million for the same period a year ago. For the full year of 2015, Kinder Morgan reported net income of only $311 million, compared with nearly $1.03 billion in 2014.

The company also cut its capital budget for 2016 to $3.3 billion from its previous estimate of $4.2 billion. "What we're trying to do is really make sure that we're investing capital on the highest-return opportunities that we have, make sure that we're fulfilling our commitments and delaying spend where it can be delayed or deferred, and taking on partners where it makes sense for us to take on partners," CEO Steve Kean said Wednesday.

More: *Reuters*; *Natural Gas Intelligence*

Piedmont Gas Shareholders OK Duke Energy Deal

Shareholders of Piedmont Natural Gas approved the sale of the company to Duke Energy for $4.9 billion. Of about 81 million eligible voting shares, about 54 million voted in approval, with 1.1 million against.

Piedmont will retain its name and keep its Charlotte, N.C., headquarters. Duke has said that it does not expect many job losses as a result of the acquisition. Piedmont has about 1,900 employees.

Both Piedmont and Duke Energy are major partners in the proposed $5 billion Atlantic Coast Pipeline, a natural gas pipeline that is to run from West Virginia to markets in Virginia and North Carolina.

More: *The Charlotte Observer*

FEDERAL BRIEFS

GridWise Modernization Index Shows Calif., Ill. Leading Pack

The 3rd Annual Grid Modernization Index, a ranking of the progress of states and D.C. toward developing a modernized electric grid, once again scores California on top, followed by Illinois, Texas, Maryland and Delaware.

The rankings by the GridWise Alliance advocacy group are based on survey data from June through October 2015 that tracks grid modernization policies, investment levels and activities.

"Electricity lies at the heart of our economy, and it must evolve to serve the needs of an increasingly low-carbon, always-on, digital economy," said Steve Hauser, CEO of the GridWise Alliance. "We are pleased to see continued progress across the country this year, but the survey shows that we are just getting started."

More: *GridWise Alliance*

Scientists Declare 2015 As Hottest on Record

Scientists said that 2015 was the world's hottest year on record, breaking 2014's record, and it was the second-warmest on record for the lower 48 states.

"The globally averaged temperature over land and ocean surfaces for 2015 was the highest among all years since record keeping began in 1880," said the National Oceanic and Atmospheric Administration's National Centers for Environmental Information. "During the final month, the December combined global land and ocean average surface temperature was the highest on record for any month in the 136-year record."

The globally averaged land surface temperature was 2.39 F above the 20th century average, the NOAA report said.

More: *The New York Times*

EIA Predicts Short-Term Increase in Renewables

The Energy Information Administration said it expects renewable energy sources to increase by about 9.5% in the U.S. in 2016 but said it doesn't expect much of a boost in subsequent years because of the recently extended energy tax credits.

EIA said that "most plants that will enter service in 2016 are already being developed. Impacts in 2017 depend on how many wind and solar projects are already in the development queue but not yet under construction."

The report also anticipates a 4.6% increase in hydro generation this year because of increased rainfall, particularly in the Pacific Northwest.

More: *Energy Information Administration*

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FEDERAL BRIEFS

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Obama Administration Moves To Stop Methane Leaks

The Department of the Interior on Friday unveiled regulations that will mandate that energy companies reduce methane leaks at wells drilled on federal or Native American land. It is yet another attempt by the Obama administration to take steps to combat climate change.

The leaking or venting of methane from federal or Native American land released about 375 billion cubic feet of methane into the atmosphere between 2009 and 2014, according to the government. The new regulations would impact more than 100,000 oil wells that currently produce about 10% of the country's natural gas.

The oil and gas industry oppose the regulations, which would put new limits on venting and flaring excess natural gas, a practice used to reduce pressure on oil wellheads. The regulations will also call for more frequent inspections to check for leaks. The regulations represent the first major update of such controls in 30 years.

More: *The Washington Post*

Duke CEO Good Says CPP Will Shift Focus to Nuclear

Duke Energy CEO Lynn Good said the federal Clean Power Plan, with its stringent emissions regulations, is going to force many of the nation's coal-fired plants to close. Good said she thinks the CPP and carbon limits will eventually shift the spotlight to nuclear energy.

Speaking at the CEO Series of the World Affairs Council of Charlotte, in North Carolina, Good noted that there is a resurgence in nuclear power in China, where 25 reactors are under construction. Five are under construction in the U.S. Most new American power plants use cheap natural gas, which reduces carbon emissions compared to coal, but doesn't completely eliminate greenhouse gases as nuclear power does.

Good

"I hope nuclear becomes a part of the conversation, at the right time when we recognize the importance of that resource," she said. "I hope we can work that out as a country and figure out how we are going to put nuclear in the mix."

More: *Charlotte Business Journal*

Trans-Peco Pipeline Earns OK in FERC Environmental Study

A FERC environmental assessment has determined that Energy Transfer Partners' Trans-Peco pipeline, which would deliver natural gas from Texas to Mexico, would have no detrimental effect on the environment.

The natural gas exported to northern Mexico would replace coal as a power plant fuel, but opponents vow they will continue to fight the project. Other state and federal permits are still needed before it can go forward.

"At a personal level, I am outraged over the FERC's decision," said Coyne Gibson, a leader in the opposition movement. "At best, this represents a complete and total failure of a federal regulatory agency's oversight responsibility under the law."

More: *Big Bend Now*

FERC Approves 4 Hydro Projects Along Yazoo Basin

FERC has approved licenses for four projects to be built at flood control facilities along the Yazoo River Basin in Mississippi, according to the projects' developer, FFP New Hydro.

The company, which is a subsidiary of US Renewables Group, said it expects to begin construction in 2017 and have all four units go into operation in 2018. The four facilities would have a capacity of 33.3 MW. They would all be located at dams owned and operated by the U.S. Army Corps of Engineers.

"The development of the Yazoo River Basin hydropower projects will represent an investment of more than $80 million in the state of Mississippi, creating hundreds of jobs during construction, operations and maintenance," said FFP New Hydro CEO Ramya Swaminathan.

More: *Hydroworld*

Six Missouri River Dams Yield Tepid Energy Production in 2015

The U.S. Army Corps of Engineers is reporting that electricity generation from the Missouri River's six dams in the Dakotas, Montana and Nebraska fell below average in 2015. The cause is attributed to a reduced water flow because water is being retained in upstream reservoirs.

According to the corps, the six dams produced 8.5 billion kWh last year, compared to 9.6 billion kWh in 2014. Since 1967, the dams have generated an average 9.3 billion kWh annually. Mike Swenson, a corps engineer in Omaha, said 9.6 billion kWh of electricity production is expected from the dams in 2016 based upon rainwater runoff estimates.

More: *The Republic*

STATE BRIEFS

ARKANSAS

PSC Considering Entergy's $133M Rate Increase

The Public Service Commission is considering a proposed settlement that would increase Entergy Arkansas rates by more than 8%.

The commissioners will vote in February on a settlement that would give Entergy an increase of $133.6 million, 20% less than the $167 million increase the utility originally sought. The settlement was reached between the utility and several entities, including the attorney general's office and Entergy's major commercial customers.

Entergy said the increase is needed because of improvements to its electrical infrastructure and its $237 million purchase of an interest in a gas-fired generation plant. The settlement would allow Entergy a 9.75% return on equity.

More: *Arkansas Democrat-Gazette*

CONNECTICUT

Rooftop Solar Program Praised by Governor

Gov. Dannel Malloy showed up as a booster for a public-private partnership that brings solar panels and lower electricity bills to the state's residents. The Solar for All initiative links residents with PosiGen Solar and Energy Efficiency, a solar system installation company.

Malloy

The company offers solar panel installation under a 20-year agreement at an introductory price of $20/month for the first year if more than 50 households sign up. After the first year, the basic charge goes up to $79/month for a 6-kW system. The program is subsidized by a $5 million investment by the state's Green Bank program as part of a way to lower greenhouse gas emissions in the state.

More: *New Haven Register*; *PosiGen*

INDIANA

Wind Turbine Shrinks School District's Power Bill

The Shenandoah School District reported it had a zero balance on its December electricity bill, thanks to a wind turbine it installed two years ago.

According to school officials, the 900-kW turbine is intended to supply 85% of the power used by the elementary, middle and high schools. District Business Manager Julia Miller said the district pays between $105,000 and $112,000 annually for electricity, about half its bill before the turbine went into service.

Shenandoah School District used government bonds to finance the $2.6 million turbine, which is expected to pay for itself within 10 years.

More: *News-Sentinel*

KANSAS

Legislators Blast $20M Deal For Capitol Grounds' Power Plant

Legislators are upset Gov. Sam Brownback's administration signed a $20 million lease-purchase for construction of a new state power plant in Topeka that they say sidesteps legislative oversight.

Brownback

Members of the House and Senate expressed frustration with the 15-year contract executed Dec. 29 because the total cost was millions of dollars higher than previously disclosed, the first payment wasn't included in Brownback's budget and the arrangement had not been approved by the state's joint building committee.

In October, the Department of Administration said the heating and cooling plant to be located one block north of the Capitol would cost about $12 million. The previous estimate shared with legislators monitoring state building projects was $9 million.

More: *The Topeka Capital-Journal*

Bill Killing Tx Authority Criticized by Wind Advocates

A bill that would terminate the funding for the Electric Transmission Authority, which was formed a decade ago because it was thought utilities were not developing sufficient transmission lines, is being seen as a threat to future wind projects in the state.

Sen. Robert Olson, chairman of the Senate Utilities Commission, said transmission planning is now largely done by SPP and the transmission authority is unnecessary. But wind energy advocates say the state-centric transmission authority stimulated the growth of wind energy by developing a robust transmission system in Kansas.

More: *Midwest Energy News*

MICHIGAN

PSC Launches Investigation Into Consumers' Estimates

The Public Service Commission is investigating the way Consumers Energy estimates bills after about 300 customers last year complained about inaccurate bill estimates. The commission has asked the company to file a report by Feb. 18 detailing its staffing levels and its communications process with customers on billing estimates, along with an accounting of the number of bills that were underestimated or overestimated.

"One of the issues that has come up in our meetings is the algorithm the software uses in calculating and estimating what a bill would be," said Judy Palnau, a PSC spokesperson. "Is it possible the algorithm needs adjusting?"

A company spokesman said it estimates bills when it is unable to read a customer's meter.

More: *Mlive*

MISSOURI

Ameren to Help Noranda Smelter, Asks for Regulation Changes

Ameren Missouri said it is working with lawmakers to change utility regulations to help Noranda Aluminum, a smelter that buys 10% of the utility's power. The smelter has threatened to shut down if it

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cannot reduce its energy costs.

The St. Louis utility wants regulations modeled on those in neighboring Illinois, where "near-automatic" annual rate increases are offered in return for more grid investment. The change would reduce the Public Service Commission's authority in utilities' rate structure and rate adjustments.

Noranda has said it will lay off almost 500 of the 850 smelter workers by February and will wind down operations by March 12 unless it can "secure a substantially more sustainable power rate for the smelter," according to the *St. Louis Post-Dispatch*. The announcement was prompted by a power outage that shut down two of the smelter's three aluminum production lines.

More: *St. Louis Post-Dispatch*

MONTANA

Colstrip Shutdown Threatens Economy, Officials Say

Shutting down one or more units at Colstrip's 40-year-old coal-fired power plant complex would devastate the state's economy through possible job losses and higher power bills, state elected officials and industry backers said Jan. 18 in Billings.

The discussion centered on concerns that EPA's proposed Clean Power Plan, which calls for the state to reduce its carbon emissions by 47%, will have an adverse impact on Colstrip, where four power units produce 2,094 MW and employ about 350 workers. The plants are the state's biggest producers of greenhouse gases.

The Colstrip plant has six owners: NorthWestern Energy, Talen Energy, Portland General Electric, Puget Sound Energy, Avista and PacifiCorp. The latter four market power in Washington and Oregon, where legislators are proposing new laws this year to cut cross-state purchases of coal power.

More: *Billings Gazette*

NEBRASKA

Local Utilities Rejecting NPPD's 20-Year Wholesale Contracts

A dozen towns and one regional power provider have spurned Nebraska Public Power District's demands for 20-year wholesale electric contracts.

NPPD's current 20-year contracts expire at the end of 2021, but the utility asked its customers to commit to new contracts now to protect its bond rating. NPPD has inked new contracts with 62 of its 75 wholesale customers, which include rural public power districts and municipal buyers that made up 92% of the district's revenue in 2014.

But some wholesale customers have opted to shop around SPP for competitive suppliers. For most of NPPD's wholesale customers, this is the first contract negotiation in which it has been feasible to look for alternative suppliers in the RTO's broader market.

More: *Lincoln Journal Star*

NEW HAMPSHIRE

Jury Slams ENH Power For Stealing Customer Info

A Superior Court jury ordered the parent company of the state's largest competitive supplier of electricity, ENH Power, to pay more than $500,000 in damages to a smaller competitor for stealing confidential customer lists, sales leads and other proprietary information.

The Rockingham County jury found that ENH officials convinced an employee of Freedom Companies to steal the information and give it to them. An attorney for ENH vowed to appeal.

More: *New Hampshire Union Leader*

Anti-Pipeline Bills Reviewed by Lawmakers

Two bills introduced to impede efforts to build a natural gas pipeline through the state came under review by lawmakers, but some legislators questioned whether they have the ability to regulate interstate projects, which typically come under federal jurisdiction.

The legislation was introduced in response to Kinder Morgan's plan to build the $5 billion Northeast Energy Direct pipeline to deliver shale gas from Pennsylvania through Massachusetts and part of New Hampshire. One bill would levy a tax on gas transported through the state, and the second would prohibit passing any of the construction charges to state residents.

Kinder Morgan has vowed to oppose the legislation. "We believe that at a time when New Hampshire residents are paying among the highest energy rates in the country, that it would be inappropriate to potentially increase those costs through a new tax," said spokeswoman Susan Geiger.

More: *New Hampshire Union Leader*

NEW JERSEY

Environmental Group Fights Proposed Power Plant

The Sierra Club is protesting a Massachusetts company's proposal to build a natural gas-fired power plant on 423 acres in Hillsborough.

Jeff Tittel of the Sierra Club said the site is environmentally sensitive because of its proximity to the Delaware and Raritan Canal and it contains wetlands.

Genesis Power's $1 billion Amwell Energy Center would generate enough electricity to power 700,000 homes.

More: *myCentralJersey.com*

NEW MEXICO

Town Gets Solar Farm, New Wholesale Power Contract

Guzman Energy has struck a seven-year agreement with the city of Aztec that supplies the city with power at a substantial savings from the current municipal supplier.

Guzman agreed to build a 1-MW solar farm that will generate about 8% of the city's electricity and supply the remainder of the power from Guzman's other assets. The new contract sets the price at 5 cents/kWh.

The agreement will replace Aztec's expiring 10-year deal with Public Service Company of New Mexico that started out at 7.5 cents/kWh and included yearly increases based on natural gas futures, the city said. Those yearly increases

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mean the city is actually paying PNM closer to 8 cents/kWh.

More: *The Daily Times*

NEW YORK

NYC Launches Pilot to Switch Food Trucks to Solar

New York City has started a pilot program to convince mobile food vendors to switch to clean energy by subsidizing food carts that are equipped with solar panels and battery storage systems.

MOVE Systems, a New York firm that has developed carts with solar panels on their roofs, hopes the PV carts would reduce vendors' energy costs by 20%, and could also cut greenhouse gas emissions from the city's estimated 8,000 food trucks and carts by 60%. The carts would also have backup propane generators.

Most of the vendors now use propane or diesel generators.

More: *International Business Times*

NORTH DAKOTA

PSC Sets Hearing For Wind Farm, Tx Project

The Public Service Commission scheduled a public hearing for March to consider a proposed wind energy project and transmission line in Stark County.

Brady Wind, a subsidiary of NextEra Energy Resources, proposes to erect as many as 87 wind turbines to generate 150 MW of electricity at an estimated cost of $235 million. The company is also looking to build a 19-mile 230-kV transmission line from the project.

It's the second attempt for NextEra to build a wind farm in the area. The Stark County Commission in May rejected a conditional use permit for a project of similar size, which was planned for a 61-square-mile area in eastern Stark County between Gladstone and Richardton.

More: *The Bismarck Tribune*

OKLAHOMA

PSO Enacts Interim Rate Increase While it Awaits Ruling

Public Service Company of Oklahoma said it will put an interim electric rate increase into effect that will generate $75 million while it awaits a final decision from the Corporation Commission on its formal $169 million rate-increase request.

Under state law, utilities are allowed to implement interim rates if they don't get a final decision from the commission within six months. The interim rates are subject to refund if the commission doesn't grant PSO's full request.

The utility said that customers will actually pay less under the new rate structure because the higher rates are more than offset by lower electricity costs attributed to cheap natural gas prices. PSO said a typical residential customer using about 1,100 kW of electricity a month should see bills fall by $2.44.

More: *The Oklahoman*

PENNSYLVANIA

UGI Utilities Requesting Distribution Rate Increase

UGI Utilities is asking for a distribution rate increase now that a settlement with the Public Utilities Commission barring it from doing so has expired.

After a 2011 gas explosion killed five people in Allentown, the company agreed to expedite its replacement of old natural gas distribution lines, improve leak detection and pay a $500,000 civil penalty. The settlement also prohibited UGI from imposing a distribution system improvement charge for two years.

Filing for a base rate increase is a prerequisite to adding a system-improvement charge. The requested hike would raise an average residential customer's bill by about 19.7% and a commercial consumer's bill by about 7.4%.

More: *The Morning Call*

State Orders Crackdown on Methane Emissions

Wolf

Gov. Tom Wolf announced a state-directed crackdown on methane emissions from shale gas wells and pipelines last week, in an attempt to address the problem of releases of the gas that had so far been unregulated. The four-part plan will involve a new permitting process for shale gas wells, a new permitting process for pipeline compressor stations and gas processing facilities, leak limits at existing gas and oil facilities, and establishment of best practices to address leaks.

Methane has 84 times the heat-trapping capabilities of carbon dioxide, another greenhouse gas that gets more attention.

"These regulations will improve our air, address the urgent crisis of climate change and help businesses reclaim product that is now wasted," Wolf said. "The best companies understand the business case for reducing methane leaks. Methane that doesn't leak into the atmosphere can be used for energy production."

More: *Pittsburgh Post-Gazette*

VIRGINIA

Draining of Dominion Coal Ash Ponds Months Away

Dominion Resources says it needs to complete design work before it begins to drain two coal ash ponds into the Potomac and James rivers.

The State Water Control Board granted Dominion permission to "dewater" its coal ash retention ponds at its Possum Point and Bremo Bluff stations. Possum Point is on the Potomac River and Bremo Bluff is on the James River. Several environmental groups, and at least one state agency, say they plan to appeal the board's decision.

Dominion is also investigating remediating ash impoundments at two other plants.

More: *Bay Journal*

Supreme Court Upholds FERC Jurisdiction over DR

Continued from page 1

the growing importance of DR. While the D.C. Circuit ruling explicitly addressed only DR participation in wholesale energy markets, FERC said the ruling also threatened its participation in wholesale capacity markets.

That could have created an upheaval in markets such as PJM, where capacity auctions represent about 95% of total DR revenue. After some uncertainty, PJM decided to include DR in the 2018/19 Base Residual Auction last August.

PJM issued a statement saying it was pleased with the ruling. "Certainty and continuity are important in markets. Demand response brings value to competitive wholesale markets and is a vital component of electric system reliability."

UBS Securities on Monday reiterated its prediction that one-quarter of the DR that bid in to the PJM 2018/19 capacity auction as base product will leave the market when it transitions to 100% Capacity Performance for 2020/21, raising the price by about $14/MW-day.

Three-Part Analysis

Kagan broke the court's analysis into three parts. "First, the practices at issue directly affect wholesale rates. Second, FERC has not regulated retail sales. Taken together, these conclusions establish that [Order 745] complies with the FPA's plain terms. Third, the contrary view would conflict with the FPA's core purposes."

"The FPA has delegated to FERC the authority — and, indeed, the duty — to ensure that rules or practices 'affecting' wholesale rates are just and reasonable. To prevent the statute from assuming near-infinite breadth, this court adopts the D.C. Circuit's common-sense construction limiting FERC's 'affecting' jurisdiction to rules or practices that 'directly affect the [wholesale] rate.' That standard is easily met here. Wholesale demand response is all about reducing wholesale rates; so too the rules and practices that determine how those programs operate. That is particularly true here, as the formula for compensating demand response necessarily lowers wholesale electricity prices by displacing higher-priced generation bids."

Not Retail

Kagan said Order 745 did not regulate retail electricity sales that are under state jurisdiction.

"A FERC regulation does not run afoul of [the FPA's] proscription just because it affects the quantity or terms of retail sales. Transactions occurring on the wholesale market have natural consequences at the retail level, and so too, of necessity, will FERC's regulation of those wholesale matters. That is of no legal consequence.

"When FERC regulates what takes place on the wholesale market, as part of carrying out its charge to improve how that market runs, then no matter the effect on retail rates, [the FPA] imposes no bar. Here, every aspect of FERC's regulatory plan happens exclusively on the wholesale market and governs exclusively that market's rules."

The court said EPSA's position would "subvert the FPA" and leave DR without any agency able to regulate it.

"EPSA's arguments suggest that the entire practice of wholesale demand response falls outside what FERC can regulate, and EPSA concedes that states also lack that authority. But under the FPA, wholesale demand response programs could not go forward if no entity had jurisdiction to regulate them. That outcome would flout the FPA's core purposes of protecting 'against excessive prices' and ensuring effective transmission of electric power.

"The FPA should not be read, against its clear terms, to halt a practice that so evidently enables FERC to fulfill its statutory duties of holding down prices and enhancing reliability in the wholesale energy market."

LMP for DR also Upheld

The court also rejected complaints that FERC

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Supreme Court Upholds FERC Jurisdiction over DR

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was overcompensating DR by requiring LMPs. "This court's important but limited role is to ensure that FERC engaged in reasoned decision making — that it weighed competing views, selected a compensation formula with adequate support in the record and intelligibly explained the reasons for making that decision. Here, FERC provided a detailed explanation of its choice of LMP and responded at length to contrary views. FERC's serious and careful discussion of the issue satisfies the arbitrary and capricious standard."

Reaction

The ruling was celebrated by environmental groups, the White House and DR investors.

EnerNOC, the only publicly traded pure-play DR provider, saw its shares jump more than 70% on the news, rising from $4.09/share to close at $7.03/share.

Shares of independent power producers fell sharply, with Dynegy down 11.55%, NRG Energy off 9.5%, Calpine dropping almost 8% and Talen Energy losing 6%. Utilities in PJM also had a poor day, with Exelon (-3%), Public Service Enterprise Group (-2.2%), and American Electric Power (-1.33%) all showing losses, along with FirstEnergy (-1.4%), which had filed a FERC challenge seeking to bar DR from PJM capacity auctions following the D.C. Circuit ruling. The PJM Power Providers (P3) Group, whose members include Dynegy, Calpine and NRG, had no immediate comment.

"We are extremely proud of our involvement in this seminal case that ensures an important role for demand-side resources in our nation's wholesale electricity markets," EnerNOC CEO Tim Healy said in a statement. "Today's decision is a tremendous win for all energy consumers, for the economy and for the environment."

"This decision allows us to continue realizing billions in annual savings from innovative incentives and business models that ensure we use our electricity system efficiently," said White House spokesman Frank Benenati, who called the ruling "good news for consumers, clean energy, reliability and the overall economy."

"It's going to make consumers an equal participant in the market in a way they never were before," Jon Wellinghoff, who chaired FERC when it issued Order 745, told Greentech Media. "That was the intention of Order 745, and that has been vindicated."

Also happy was the Environmental Defense Fund: "Today's Supreme Court decision is a victory for all Americans who want greater choice and value broader customer access to clean, low-cost energy," said President Fred Krupp. "Demand response is helping millions of Americans get low-cost, clean and reliable electricity. Today's court ruling will help expand customer choice, and solidify demand response as a crucial part of our clean energy future."

Exelon praised the ruling, saying DR is "a valuable tool for our customers to manage their energy costs, and we believe it should play a role in our nation's energy mix."

The libertarian Competitive Enterprise Institute was critical. "The Supreme Court sends a clear message by ruling in favor of FERC's power demand rule: Energy politics are a game that ignores both the rule of law and states' constitutional authority. The effects of this decision trickle down to each individual consumer," said Myron Ebell, director of the institute's Center for Energy and Environment.

NARUC: Coordination is Key

Travis Kavulla, president of the National Association of Regulatory Utility Commissioners, said the ruling's holding that energy conservation measures can be valued in both a retail and wholesale context "may serve to blur the already fuzzy line between state and federal jurisdiction."

Kavulla cited a 2010 NARUC resolution on the jurisdictional overlap, which said "the coordination of federal and state initiatives offers the best way to assure the full benefits of demand response are delivered to customers."

Kagan noted that the "statutory division generates a steady flow of jurisdictional disputes because — in point of fact if not of law — the wholesale and retail markets in electricity are inextricably linked."

Indeed, the court will deal with another jurisdictional dispute next month. It has scheduled oral arguments for Feb. 24 on two cases pitting New Jersey and Maryland regulators against FERC. The court will consider orders by the 3rd and 4th U.S. Circuit Courts of Appeals that upheld lower court rulings throwing out contracts in which generation developers won state-issued subsidies to build plants in the two states. (See *SCOTUS Agrees to Hear Md., NJ-FERC Subsidy Case*.)

Wide Margin of Victory

The margin of FERC's victory was a bit of a surprise. At oral arguments in October, the court's liberal wing indicated support for FERC's jurisdiction, but the commission faced harsh questions from Roberts, Kennedy and Scalia. (See *FERC Jurisdiction over DR in Peril as Supreme Court Splits*.)

In his dissent, Scalia said the majority's opinion "inverts the proper inquiry."

"Paying someone not to conclude a [retail purchase of power] that otherwise would without a doubt have been concluded is most assuredly a regulation of that transaction," he wrote.

"While the majority would find every sale of electric energy to be within FERC's authority to regulate unless the transaction is demonstrably a retail sale, the statute actually excludes from FERC's jurisdiction all sales of electric energy except those that are demonstrably sales at wholesale."

Scalia said the FPA defined the "sale of electric energy at wholesale" as "a sale of electric energy to any person for resale."

"No matter how many times the majority incants and italicizes the word 'wholesale' … nothing can change the fact that the vast majority of (and likely all) demand response participants — '[a]ggregators of multiple users of electricity, as well as large-scale individual users like factories or big-box stores'— do not resell electric energy; they consume it themselves. FERC's own definition of demand response is aimed at energy consumers, not resellers."

Suzanne Herel contributed to this article.

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MRC/MC Preview

7. ENERGY MARKET UP-LIFT SENIOR TASK FORCE (EMUSTF) Charter (11:00-11:10)

Members will be asked to approve the charter for the Energy Market Uplift Senior Task Force (EMUSTF). The MRC approved the creation of the task force in May to take a broad review of its method of providing Operating Reserve payments.

PJM said the changes were needed to reduce growing uplift costs resulting from Operating Reserves, "make whole" payments that ensure generators dispatched out of merit for system reliability don't operate at a loss.

See *PJM Proposes Operating Reserve Changes to Cut Uplift*

- **Federal and state regulatory news briefs**

OHIO

Industry Likes Efficiency Rule, Wants Spending Cap

The Ohio Manufacturers Association favors the state's energy efficiency standards but wants a cap on how much utilities can charge for efficiency riders. The group said is still studying provisions of a bill that has been introduced to make changes in the program.

Meanwhile, wind energy supporters argued against a provision in the bill that would eliminate requirements that utilities buy a certain amount of in-state renewable energy.

More: *Columbus Business First; The Columbus Dispatch*

- **Voting summaries**

Trading Limits

Reason for Change: PJM proposed the cap because high bid volumes can make it difficult for the RTO's day-ahead markets software to reach solutions.

Impact: PJM can limit market participants to no more than 3,000 UTC transactions each in the day-ahead market when necessary for market operations. (A similar cap also applies to increment offers and decrement bids.)

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Current Capacity Imports OK: Study
October 1, 2013
PJM should be able to absorb the more than 7,000 MW of imports that cleared in May's capacity auction for 2016-17, officials said. -more-

PJM to Consider Storage as Capacity
October 1, 2013
Members agreed to consider new rules to allow batteries, flywheels and other advanced storage technologies to bid in the capacity market. -more-

PJM Likely to Limit Capacity Imports
September 17, 2013
PJM will seek to set a limit on capacity imports before next year's Base Reliability Auction under a problem statement approved Thursday by the Planning Committee. -more-

Installed Reserve Margin May Increase for 2014
September 17, 2013
PJM's recommended Installed Reserve Margin (IRM) will increase slightly because of the increasing alignment of the RTO's peak demand with demand outside of the region, according to a preliminary analysis presented to the Planning Committee Thursday. -more-

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