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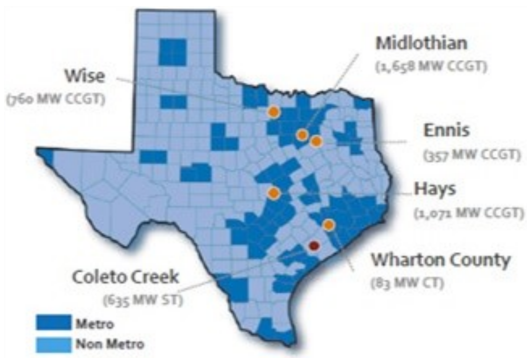
Dynegy, Energy Capital to Buy 8.7 GW in $3.3B Deal

Enters ERCOT with 4.6 GW

By Ted Caddell



Dynegy and private equity firm Energy Capital Partners announced Thursday they are buying the U.S. fossil fuel generation portfolio of French utility ENGIE, a total of 8,731 MW in PJM, ISO-NE and — in a first for Dynegy — ERCOT.

The deal is valued at $3.3 billion. The joint venture, called Atlas Power, is 65% owned by Dynegy and 35% by Energy Capital. Dynegy will operate the fleet, 90% of which is natural gas-fired.

Although it is based in Houston, Dynegy owns no generation in the Lone Star State.

Atlas Power will gain 4,564 MW of generation in ERCOT, in addition to 2,775 MW in PJM (Illinois, Ohio, Pennsylvania, Virginia, West Virginia and New Jersey) and 1,392 MW in ISO-NE (Massachusetts).

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DC PSC: Will OK Exelon-Pepco Deal for Additional Concessions

By Suzanne Herel, Michael Brooks and Ted Caddell

WASHINGTON — A split D.C. Public Service Commission said Friday it would approve Exelon's $6.8 billion acquisition of Pepco Holdings Inc. in return for additional concessions beyond those negotiated by Mayor Muriel Bowser.

If Exelon and Pepco agree to a revised settlement supported by Commissioners Joanne Doddy Fort and Willie Phillips, the merger will be approved without further commission action, making Exelon the country's largest utility by customer count.

"The commission's order prescribes new provisions that we and the settling parties must carefully review to determine whether they are acceptable," Exelon and Pepco said in a statement after the commission's actions. "Once we have had a chance to study the order and confer with the settling parties, we will have more to say about what it means and our next steps."

"Obviously we're hopeful because they didn't reject it. It appears they want it to happen," said Pepco spokesman Vincent Morris, who was in the hearing room.

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Witnesses Ask CFTC to Drop 'Private Rights' Clause in SPP Order

By Rich Heidorn Jr.

WASHINGTON — A parade of witnesses implored the U.S. Commodity Futures Trading Commission Thursday to reverse its position in a case that they say could undermine the broad exemptions the commission granted RTOs and ISOs in 2013.

At issue is the CFTC's draft order on a request from SPP seeking the same exemptions from the Commodity Exchange Act (CEA) that the commission granted the six other RTOs and ISOs.

The CFTC's 2013 order exempted electricity transactions subject to FERC-approved tariffs from most provisions of the CEA while

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DC PSC: Additional Concessions for Exelon-Pepco

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Two 2-1 Votes

In the first of two votes, the commission — which unanimously opposed the merger in August — voted 2-1 to reject a proposal brokered by Bowser's administration as not in the public interest. Phillips dissented.

But Chairwoman Betty Ann Kane found herself alone in a second 2-1 vote, which said the deal could be salvaged with changes to the settlement.

That motion, offered by Fort, consisted of four concessions regarding the use of the customer investment fund, the development of a 5-MW solar generation facility at the Blue Plains Advanced Wastewater Treatment Plant and the role of Pepco in establishing public-purpose microgrids.

'Hands Off Ratepayers' Money'

The Bowser-brokered deal had earmarked money from the CIF for a handful of D.C. groups, including the Sustainable Energy Trust Fund, the District of Columbia Consumer and Regulatory Affairs Green Building Fund and the Low Income Home Energy Assistance Program.

The PSC's counteroffer takes those funds, totaling $32.8 million, and places them into an escrow account to pay for projects to modernize the district's energy system and for energy efficiency and energy conservation initiatives focused on housing for low- and limited-income residents. The PSC would have authority over the funds' disbursement.

"This is a huge slap at the mayor's office, saying 'Keep your hands off ratepayers' money,'" Anya Schoolman, head of D.C. Solar United Neighborhoods, which opposed the merger, told *The Washington Post*.

The settling parties have 14 days to accept the conditions.

"We will have to carefully review the commission's order to determine if it meets our goals for ratepayers, especially residents," Bowser said in a statement.

People's Counsel Sandra Mattavous-Frye released a statement saying, "At this point, we are carefully reviewing the order to understand the alternative terms PSC put on the table to determine our next steps."

Exelon Approval Expected

Both supporters and opponents of the deal said they expect Exelon to accept what appear to be modest additional concessions.

Dave Bonar, Delaware's Public Advocate, said he was surprised at the commission's initial rejection but was heartened to hear it offer a revised settlement.

"Hopefully the company will accept this, and we can all move on," he said. "I'm sure [Exelon's executives] are all in a room someplace, working on a response. Considering as much time and energy and expense that has been put into this, I think [Exelon] will say yes."

Montgomery County (Md.) Council Vice President Roger Berliner, who has been a steadfast opponent to the merger, said he was "deeply disappointed" and expects the deal will come to pass.

"Oh, [Exelon] may gnash their teeth publicly, but they will take this deal. If I was them, I'd say 'Oh, this is going to be a bitter pill,' but nothing proposed is going to be the poison pill," Berliner said. "There is nothing [in the proposed alternative settlement] that would make them walk away."

Berliner noted that "questions will be raised" in the other states that approved the merger about some of the deal-sweeteners the district was offered by Exelon. Those agreements were struck under "most-favored nation" status, meaning in the end, all must receive equivalent benefits.

Robert Howatt, executive director of the Delaware Public Service Commission, said

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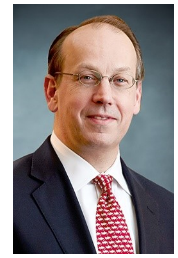
Correction

Feb. 23's MISO/PJM Joint and Common Market Meeting Briefs incorrectly reported that the March 1 transfer of 300 MW from MISO to PJM would create 80 new flowgates. While 80 flowgates will be created overall from March to June, only 40 will open in the March 1 transfer. Additionally, Andy Witmeier was identified as MISO's manager of expansion planning. He is MISO's senior manager of reliability coordination.

Supreme Court Offers Little Support to CPV, Md. in Oral Arguments

By Rich Heidorn Jr. and Michael Brooks

"MOPR is not some kind of cure-all that is designed to ward off any price-suppressive bid. ... It is a coarse screen to deal with the most egregious cost-reducing bids."



Paul Clement, Talen attorney

WASHINGTON — Lawyers for Maryland and Competitive Power Ventures got little support from Supreme Court justices during oral arguments in their federal-state jurisdiction case Wednesday.

The justices also interrogated Paul Clement, attorney for Talen Energy Marketing, which challenged Maryland's deal for CPV's combined cycle plant now under construction in Charles County as an improper subsidy.

But none gave any indication that they were inclined to reverse in their entirety lower court rulings voiding the contract. Rather, several justices seemed to be wrestling with whether to reject the contract based on "field preemption" — that it was an intrusion into exclusive federal jurisdiction — or a narrower "conflict" ruling — that it undermined FERC policy because its long-term pricing structure includes incentives different from those provided by PJM's capacity auction. (*Hughes v. Talen Energy Marketing* (14-614), *CPV Maryland v. Talen Energy Marketing* (14-623))

In April 2012, the Maryland Public Service Commission ordered Baltimore Gas and Electric, Potomac Electric Power Co. (PEPCO) and Delmarva Power and Light to enter into a contract that guaranteed CPV — winner of a PSC competitive solicitation — an income stream so that it could finance the facility.

Under the "contract for differences," CPV St. Charles' revenues for the sale of 661 MW of energy and capacity would be compared to what the company would have received had the contract prices been controlling. If the contract prices were higher than the market prices, the three electric distribution companies would pay the difference to CPV; if market prices were higher than the contract, CPV would make payments to the EDCs.

The contract was challenged by Talen Energy's predecessor, PPL, and other generators.

The U.S. District Court of Maryland ruled with PPL and other plaintiffs in saying the contract violated FERC jurisdiction over the wholesale electric market, a ruling upheld by the 4th Circuit Court of Appeals. The Supreme Court declined to hear two related cases in New Jersey decided by the 3rd Circuit.

Opponents said Maryland's action would suppress capacity prices and that allowing the contract to stand would mean that eventually only subsidized units would enter the auction because those without support could not compete.

Chief Justice **John Roberts** picked up on this argument shortly after Maryland attorney Scott H. Strauss began speaking. "If it doesn't suppress prices, why did Maryland do it?" he asked bluntly.

"I don't understand your position. You're arguing that FERC does not think this adversely affects the auction? Why has FERC filed a brief arguing the opposite? You're arguing as if they aren't even here."

Justice Samuel Alito

Strauss responded that the state saw a need for more generation than the PJM capacity market was providing. He and CPV attorney Clifton S. Elgarten argued that FERC had addressed price-suppression concerns with the minimum offer price rule (MOPR), which sets a floor on bids by new entrants.

Clement said FERC was siding with Talen in the dispute because "MOPR is not some kind of cure-all that is designed to ward off any price-suppressive bid. ... It is a coarse screen to deal with the most egregious cost-reducing bids. It also depends on an estimate of cost.

"And here's why it doesn't really work for a bid like this," Clement continued. "One of the most important costs is your cost of capital. Because [CPV is] getting a 20-year guarantee and no one else is ... it destroys the ability to do an apples-to-apples comparison. And then the one thing we know for certain here is that this project ended up displacing a project that actually could be built based on the three-year forward price and without a 20-year contract."

Strauss insisted Maryland ratepayers would not be providing a subsidy. "Maryland concluded that this was going to be a better deal for ratepayers," he said. At a time when the generation mix is changing, he said, "the last thing the court should do is to limit state options."

Boston Pacific, a consultant hired by the PSC, estimated the contract would save residential ratepayers $0.32 to $0.49 per month over the life of the 20-year contract. However, PSC General Counsel Robert Erwin told a FERC technical conference later: "No one knows whether at the end of 20 years Maryland ratepayers will pay CPV or if CPV will have paid Maryland ratepayers."

Continued on page 4

Supreme Court Offers Little Support to CPV, Md. in Oral Arguments

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FERC's Position

After the 4th Circuit upheld the lower court's ruling, CPV filed the contract with FERC, asking the commission to find it just and reasonable. The company had hoped this would nullify the courts' findings, but FERC said it wouldn't review a contract that had been ruled invalid.

St. Charles construction site
Source: CPV

Strauss and Elgarten, however, maintained that the commission would have found it just and reasonable.

"I don't understand your position," Justice Samuel Alito told Elgarten sharply. "You're arguing that FERC does not think this adversely affects the [capacity] auction? Why has FERC filed a brief arguing the opposite? You're arguing as if they're not even here."

Alito was referring to Ann O'Connell, an assistant to the Solicitor General who argued for FERC. O'Connell made clear the commission's position in her opening argument.

"In the government's view, the Maryland generator order is preempted because by requiring the state-selected generator to bid into and clear the PJM capacity auction in order to receive the guaranteed payments provided in the contract, the Maryland program directly intrudes on the federal auction, and it also interferes with the free-market mechanism that FERC has approved for setting capacity prices in that auction," she said.

"If the state just paid to build a power plant, that's not directly targeting what's happening in the PJM auction. ... As long as the state is staying within its sphere under the Federal Power Act, that's fine."

Ann O'Connell, assistant to Solicitor General

"I understood why they were making the MOPR argument at the early stages of this litigation before FERC filed the brief," Clement said. "But I am a little mystified why, at this late stage of the game, after FERC filed three briefs saying that the MOPR is not sufficient to eliminate price-suppressive bids, that they're still saying 'We win because FERC's on our side.'"

Skeptical Justices

The justices questioned whether the contract would have been legal had it not been tied to the auction and simply subsidized by Maryland.

"It does seem to me important what the kind of state action is," Justice **Elena Kagan** told Clement. "If the state had just said 'we need another power plant' and had delivered a load of money to CPV and said 'go build a power plant,' you're not saying that that would be preempted, are you?"

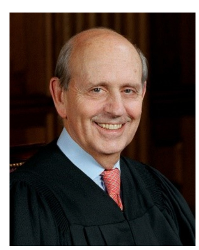
"It would depend," Clement responded. "The way you just described it, [it is] not preempted."

Roberts posed the same question to O'Connell.

"If the state just paid to build a power plant, that's not directly targeting what's happening in the PJM auction," she said. "Sure, it's adding supply to the market. But as long as the state is staying within its sphere under the Federal Power Act, that's fine."

Some of the justices confessed that they were confused by the details of the PJM capacity auction, something that Elgarten pointed out in his arguments.

"All of the conflict preemption issues should be addressed to FERC," Elgarten said. "They are not really for this court — which is obviously having trouble conceptualizing how this all works — to resolve."



This remark did not seem to faze the justices, however. "Truer words were never spoken than 'I am not quite on top of how this thing works,'" Justice **Stephen Breyer** said later.

"I'm a little bit like Justice Breyer on this," Justice **Sonia Sotomayor** said. "I'm not quite sure how everything is working."

"All of the conflict preemption issues should be addressed to FERC. They are not really for this court — which is obviously having trouble concep-tualizing how this all works — to resolve."

Clifton S. Elgarten, attorney for CPV

ERCOT NEWS

TAC Briefs

TAC Schedules Workshop in Response to Remanded NPRR

ERCOT's Technical Advisory Committee last week tabled a proposal to compensate generators for financial losses when ordered to ramp down for grid reliability, choosing instead to take advantage of extra time on the calendar and schedule a workshop on the issue.

The Board of Directors remanded the proposal (NPRR649) back to the TAC in February. It had received 56% support in a TAC roll call vote in November, short of the two-thirds threshold for approval. (See *LOC Rule Sent Back to ERCOT's Stakeholder Process*.)

The TAC set March 7, 9 or 23 as possible dates for the workshop. The committee doesn't meet again until March 31, giving it a month and a half before it must report back to the board April 12 with either a final version of NPRR649, an alternative version or reasons for rejecting it.

TAC Chair Randa Stephenson said she would prefer an early workshop, but she also wanted to ensure ERCOT staff had enough time to draft language that helps the committee develop alternative recommendations.

Kenan Ögelman, ERCOT's vice president of commercial operations, said the delay would give staff ample time to write a new nodal protocol revision request that would be an "option B."

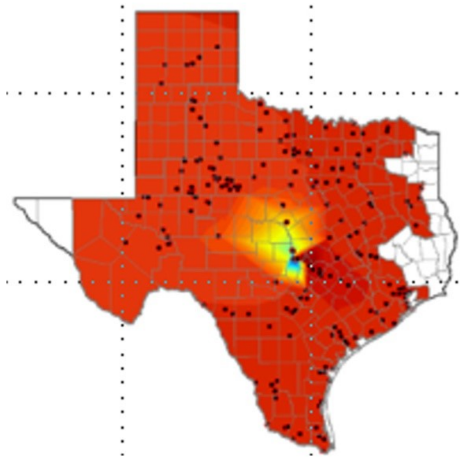
"It would be very different from the existing 649," Ögelman said. "We would like to spend more time on option B and describe it better."

Staff is working on what Ögelman called option B's "attestation language" that better describes the circumstances of ramping down units in the day-ahead market.

The attestation language "needs to be broad enough to cover the multiple ways people use their units for hedging purposes," Denton Municipal's Lance Cunningham said.

DREAM Task Force Submits Final Report

The TAC told its Distributed Resource Energy Ancillaries Market (DREAM) Task Force to develop a matrix of "actionable, clear points" for the committee to consider at its April meeting.



ERCOT has distributed generation resources in more than 7,600 locations, but its congestion revenue rights software can only handle about 600 resource nodes at a time. As a result, DG installations receive load zone pricing when injecting, regardless of their location within a load zone. *Source: ERCOT*

The committee was responding to the final report of the task force, which was chartered to analyze the regulatory and market framework governing distributed generation resources' participation in ERCOT.

The report sought the TAC's direction on eight policy questions that might be put to stakeholder votes. Ögelman told the committee ERCOT would like to merge a staff white paper with the DREAM team's work before going through the stakeholder process.

"We would like to start working on NPRRs and other potential changes," Ögelman said. "We would like to engage stakeholders further on an individual basis as we work through the issues."

"I want to be clear on exactly what DREAM and ERCOT are asking TAC to do with this information, the items in the white paper and presentation," said Diana Coleman, senior market specialist with the Texas Office of Public Utility Counsel.

ERCOT, which has a little more than 550 MW of DG, is projecting those resources will grow by 10% annually.

The task force said ERCOT lacks explicit rules for DG resources 10 MW or greater that are connected at a distribution voltage, and that intend to inject into the distribution system rather than reduce load. It also needs a more precise definition of the term "customer," the task force said, citing "ambiguous reference[s] to distribution customer, load, etc."

"These are rapidly growing, very flexible resources," said Shell Energy's Greg Thurnher, the task force chair. At 10% growth, he noted, ERCOT would essentially be adding the capacity of a nuclear unit similar to those at the South Texas Project over about seven years.

Thurnher said the wide disparity of business interests and opinions within the DREAM team "make it difficult to make further progress — absent a voting structure."

ERCOT has DG resources in more than 7,600 locations in competitive areas. Its congestion revenue rights software can only handle about 600 resource nodes at a time.

"There are computing constraints to how large we can make this system," Thurnher said.

"The key to the nodal market is having as much visibility into the market as possible," Calpine's Randy Jones said. "We need to give ERCOT the observability they have to have, and to be able to model" DG resources.

Other stakeholders said the proposed changes are an "unnecessary layer of complexity." They also discussed optionality between load zone and nodal pricing.

"These types of resources are growing in ERCOT and will have an impact on market solutions," Ögelman said. "The stakeholders can address the potential growth in distributed resources, and you address those by having market rules."

Regional Haze Workshop

The committee and its Wholesale Market Subcommittee agreed to hold a workshop devoted to regional haze and reliability-must-run (RMR) services.

ERCOT staff had proposed a fall date for the workshop, after any potential litigation on EPA's regional haze rules is settled. However, the WMS and other market participants expressed a desire to hold the workshop earlier.

"You're not getting anything by fall from the courts," Stephenson said.

"If [market participants] are more focused

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on the RMR aspects of it, we can have the workshop sooner, rather than later," Citgroup Energy's Eric Goff said. "If you're talking about the regional haze aspect, that's a lot of moving parts."

Blakey noted that EPA dismissed ERCOT's concerns about reliability implications, saying, "If ERCOT doesn't have enough notice on RMR operations, maybe it should change the notice of suspension requirements.

"I don't know if they considered the kind of Pandora's box that opens," he said. "ERCOT could benefit from the market's input on fleshing out the protocol language."

Ögelman said ERCOT staff would commit to coming back to the TAC and reviewing the RMR processes, but that its answers might be different.

"ERCOT needs to bring their concerns and ideas," Stephenson said. "The stakeholders have their concerns. Now, we need ideas and solutions."

Ancillary Service Redesign Project

ERCOT staff is conducting an additional sensitivity analysis using lower gas prices that reflect current trends — not the $4.35/MMBtu used in a Brattle study — and should be done in time for the Protocol Revisions Subcommittee's March meeting, ERCOT's Kenneth Ragsdale told the TAC.

While ERCOT has been successful in complying with NERC reliability standards, its ancillary service framework, which dates back to the late 1990s, "does not adequately address ongoing changes to the ERCOT system," nor does it anticipate those in the future, such as DG and utility-scale intermittent renewables, according to NPRR667.

"ERCOT still believes 667 has some worthy concepts in it," Ragsdale said.

He said staff is considering phased transition plans for the NPRR, allowing it to be implemented sooner.

Reserve Discount Factor Proposal

ERCOT staff told the committee it will be recommending changes to the reserve discount factors (RDF) used in its physical response capability calculation as a result of unannounced testing conducted in 2014-15.

> **"I don't know if [EPA] considered the kind of Pandora's box that opens."**
>
> **Eric Goff, Citigroup Energy on EPA's regional haze rule**

When temperatures are below 95 degrees, staff is suggesting a resource's high sustained limits (HSL) should not be discounted. However, when temperatures exceed 95 degrees, HSLs would be discounted, but only by 1%, instead of the current 2%.

Manager of Operations Planning Sandip Sharma said ERCOT would recommend procuring additional responsive reserves when temperatures are above 95 degrees.

Amanda Frazier, senior director of regulatory policy at Energy Future Holdings, said her company analyzed 12 months of data and found similar results to ERCOT's. "We did see a difference in the high hours," she said. "But does it make sense to reduce the RDF to zero in hours not above 95?"

Calpine's Jones questioned ERCOT's motivation. "If you're producing more [responsive reserves] for price formation, just say so," he said.

Ögelman responded that the idea behind the change was "not necessarily" price formation, but the 1% discount factor.

"There's evidence we should wait a bit, and there's evidence we should reduce it all the way to zero," he said. "I would point to the existence of reserve discount factors as the driver for action."

ERCOT staff will take the proposal back to the Reliability and Operations Subcommittee. According to the staff timeline, the issue will come back to the TAC in April.

NPRRs, Subcommittee Goals Approved

The TAC approved its goals and strategic objectives for 2016, along with the goals of its Commercial Operations, Reliability and Operations, and Wholesale Market subcommittees.

The committee also easily approved two NPRRs and a system change request, along with a nodal operating guide revision request it had tabled in January.

- NPRR749, Option Cost for Outstanding CRRs.
- NPRR750, Clarify Resource Status when Providing Fast Responding Regulation Service.
- SCR787, Maintain NDCRC Data for Generator Transfer Between Resource Entities.
- NOGRR143, Alignment of Nodal Operating Guiders with NERC Reliability Standard, BAL-001-TRE1.

Budget Issues

The Protocol Revisions Committee told the TAC that ERCOT has raised its internal labor rate from $65/hour to $75/hour in calculating impact-analysis cost estimates and project labor costs for staff who work on capital projects. The PRS said the old rate had been in effect for more than 10 years.

ERCOT has allocated a $400,000 contingency fund for 2016-17 market projects to ensure board-approved revision requests are not delayed. The change does not affect the system administration fee.

Leadership Posts Filled

The TAC unanimously approved the re-election of Adrianne Brandt as its vice chair. Brandt left Austin Energy for San Antonio's CPS Energy shortly after the year began, requiring a second vote from members before she could officially take her position.

The committee also approved the Retail Market Subcommittee's leadership (Chair Kathy Scott of CenterPoint Energy and Vice Chair Rebecca Reed Zerwas of NRG Energy) and that of its four working groups and task forces.

— Tom Kleckner

ISO-NE NEWS

FERC Denies Rehearing of Winter Reliability Order

By William Opalka

FERC on Wednesday denied rehearing of its September order endorsing the interim Winter Reliability Program for ISO-NE (ER15-2208).

The commission had endorsed a proposal made by the New England Power Pool in a "jump ball" proceeding after ISO-NE and NEPOOL could not reach consensus. (See *FERC Asked to Determine ISO-NE Winter Reliability Program*.)

NEPOOL's proposal was based on the 2014/15 winter program — which provided compensation for any unused oil or LNG remaining at the end of the winter — and added demand response.

ISO-NE's proposal provided compensation for unused oil or LNG, but it would have also compensated nuclear, hydro, biomass and coal-fired resources and did not include DR.

Pilgrim nuclear plant *Source: Entergy*

Entergy had challenged the order, saying FERC's stated preference for a market-based solution to mitigate winter natural gas supply constraints should have tipped the balance toward the RTO's more fuel-neutral program.

"The record reflects that including such resources in the program would not provide any additional winter reliability benefit to the region," the commission wrote. "While Entergy argues that additional payments to coal, nuclear and hydro resources would likely incentivize these resources to take incremental measures to ensure performance during the winter, this assertion is contradicted by substantial expert testimony supporting the NEPOOL proposal."

FERC repeated its assertion that it prefers market-based solutions, but it said an out-of-market solution is "appropriate" until ISO-NE's Pay-for-Performance program begins later in early 2018.

Shortly after the September order, Entergy's Pilgrim nuclear plant in Massachusetts was removed as a capacity resource for the 2019/20 commitment period. It will be closed no later than 2019. (See *Entergy Closing Pilgrim Nuclear Power Station*.)

MISO NEWS

Dynegy, Exelon Propose PJM-Type Capacity Auction for MISO Zone 4

Monitor Critical

By Amanda Durish Cook

Exelon's proposed timeline *Source: Exelon*

Dynegy and Exelon proposed last week that MISO Zone 4 procure capacity in three-year forward auctions separate from the rest of the RTO.

The two companies — Illinois' biggest power producers — offered separate proposals that would adopt elements of PJM's model beginning in 2017. Both proposals were offered during MISO's Competitive Retail Solution Task Team meeting Feb. 22.

The companies say that MISO's Planning Resource Auction, currently held about three months before the beginning of a planning year on June 1, isn't conducted far enough in advance to create a clear price signal. Both claim their proposals would further reliability and boost investments in new and existing power plants.

Exelon Proposal

"The overarching principal of Exelon's Southern Illinois solution is to adapt PJM's Reliability Pricing Model (RPM) to Zone 4, while integrating with the rest of MISO as seamlessly as possible," Exelon wrote in its proposal. The company said the RPM "has proven to be highly successful at maintaining reliability at a reasonable cost to consumers using competition to determine market revenues."

The company proposes that Zone 4 acquire capacity three years in advance in one-year commitment periods, as in PJM. The 2020/21 Planning Resource Auction would take place in April 2017.

Exelon's proposal also requests a switch to a downward-sloping demand curve in Zone 4 and mandatory participation for all loads and internal supply in the zone. Exelon also wants "strong performance incentives" for resources that clear the auction.

FERC in November rejected a MISO proposal to implement a mandatory capacity auction while upholding its use of a vertical demand curve. (See *FERC Rebuffs MISO's Push for Mandatory Capacity Auction*.)

Dynegy Proposal

Dynegy, which also called for use of downward-sloping demand curves, proposed holding four competitive auctions during the first quarter of 2017 to procure capacity through mid-2021. The company additionally proposed that by the first quarter of 2018, MISO would hold a three-year forward auction for delivery during the 2021/22 planning year.

Dynegy said the auction would procure 100% of the zone's planning reserve margin requirement, based on load forecasts independently verified by a third party.

Participation would be mandatory only for load-serving entities and electric distribution companies in local resource zones with retail choice. Dynegy acknowledged its proposal would primarily affect the generators it purchased from Ameren Illinois in 2013.

Monitor Offers Own Proposal

Independent Market Monitor David Patton said a voluntary forward procurement — a single-year "strip" or a multiyear contract — "could be useful if desired by participants."

But he said the mandatory forward auctions proposed by Exelon and Dynegy would be less efficient than MISO's "prompt" procurement in facilitating efficient investment and retirement decisions.

In forward markets such as PJM, Patton said, generation owners must determine whether their older plants will continue to operate for an additional four years — three years plus the planning year. "In prompt procurement markets, old units can operate until they suffer equipment failure and can make efficient decisions to mothball or retire based on the auction."

Forward markets also do not ensure that new resources offer capacity at prices close to the cost of new entry, he said.

Patton acknowledged that higher capacity prices in PJM have caused increasing levels of capacity exports from MISO. But he said that MISO's design required "only incremental but meaningful" changes to address the challenges in Zone 4.

He would continue a single PRA for the entire footprint but replace the vertical demand curve with a variable reliability target in the competitive retail area. "Capacity product and obligations should be comparable throughout all of MISO," he said.

Patton also said adding economic import limits to the existing electrical import limits would create a more efficient mix of resources inside and outside of deregulated markets.

MISO Offers Criteria, No Comment

MISO officials withheld comment on Exelon's and Dynegy's proposals, saying they want to consider a second round of stakeholder presentations at the next Competitive Retail Solution Task Team meeting March 7. Once the task team evaluates proposals, MISO will submit a recommendation to the newly created Resource Adequacy Subcommittee.

"We appreciate the dialogue and participation from stakeholders to collaboratively develop a solution," MISO spokesperson Andy Schonert said. "We continue to study both Exelon and Dynegy's proposals and look forward to more feedback from stakeholders on this topic."

MISO released criteria that capacity

Continued on page 9

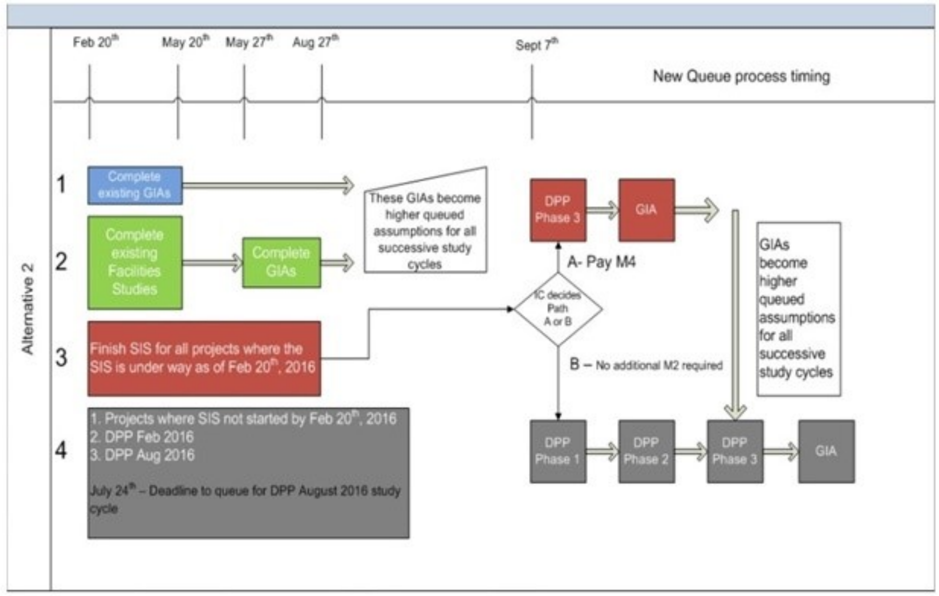
MISO NEWS

Informational Forum Briefs

Higher Gas Prices, New Wind Record in January

MISO officials presented a review of load and prices during an informational forum Feb. 23. Some highlights:

- Real-time LMPs averaged $22.14/MWh for the month, a 21% decrease from a year earlier, while the day-ahead average fell 20% to $22.79/MWh. But rising natural gas costs helped boost power prices compared with December, with month-on-month real-time and day-ahead averages increasing 7% and 9%, respectively.
- January marked the end of an 11-month decline in natural gas prices, as the Chicago Citygate rebounded 17% to average $2.33/MMBtu for the month, while Henry Hub jumped nearly 20% to $2.30/MMBtu. Still, Chicago Citygate prices remained far below the January 2015 average of $3.09/MMBtu.
- MISO's January load averaged 78.5 GW, up 8.2% from December but down 3% from the average for the same month a year ago, the grid operator reported. Load peaked at 98.2 GW on Jan. 19, compared with last January's 106.5 GW peak and far short of the winter record of 109.3 GW set in January 2014. Day-ahead physical energy last month totaled 56.6 TWh, while real-time load hit 58.4 TWh, a drop from the 60.3 TWh in January 2015.
- MISO wind output also hit an all-time peak of 12.7 GW on Jan. 27, exceeding the previous high of 12.6 GW set on Nov. 19. That figure, however, was quickly surpassed by a new record of 13.1 GW on Feb. 18.



Queue reform transition plan *Source: MISO*

MISO Develops New Metric to Monitor Queue Delays

MISO will measure progress in its generation queue using a new metric: study cycle scheduling, a process that makes existing interconnection agreements and facilities studies the basis for subsequent studies.

Using the metric, the RTO will flag the interconnection queue with "concern" or "review" status if generation interconnection studies can't be completed on time. Jeff Bladen, executive director of market services, said MISO is currently experiencing delays in the queue because of an influx of restudies related to withdrawing interconnection projects.

"This new metric is allowing us to see more of the delays, but it's also demonstrative of why reforming the queue process was so important," Bladen said.

MISO is awaiting FERC approval of the proposed queue changes it filed Dec. 31. If approved, MISO will work to complete existing generation interconnect agreements and existing studies by May 20. (See *MISO Unveils Queue Reform Transition as Wind Advocates Seek Delay*.) MISO says the proposal will "reduce the delays and provide more certainty to timelines."

"The reforms that we filed are to help resolve issues that are much more transparent with the metric," Bladen said. He said that MISO was aware of the delay issues "at some level," but the new metric made the issues much clearer.

— Amanda Durish Cook

Dynegy, Exelon Propose PJM-Type Capacity Auction for MISO Zone 4

Continued from page 8

proposals must meet for consideration, including acknowledgement that nearly all states in the RTO's footprint are rate-regulated. Any new structure would be required to improve MISO's ability to ensure sufficient resources, optimize economic use of existing and potential resources and maintain the benefits of MISO membership.

FERC Actions

Meanwhile, FERC continues to mull a number of MISO capacity issues.

On Feb. 25, the commission said it is considering a joint rehearing request by Illinois Attorney General Lisa Madigan and Illinois Industrial Energy Consumers, who are seeking clarification on whether "going-forward costs" used to calculate facility-specific reference levels should include sunk costs (EL 17-50, *et al.*).

The commission also is considering MISO's Jan. 29 rehearing request regarding its capacity import limit calculation. (See *MISO Seeks Adjustments on Capacity Import Limits*.)

MISO NEWS

Advisory Committee Briefs

Stakeholder Governance Working Group Sidesteps Retirement

The Stakeholder Governance Working Group (SGWG) narrowly avoided retirement in a 10-7 vote at MISO's Feb. 23 Advisory Committee meeting.

Speaking on behalf of MISO's Transmission-Dependent Utility sector, Gary Mathis said it was too early to sunset the group because management plan language stipulates it should be retired only "after redesign implementation."

"I would place an abundance of caution on [retiring] this today," Mathis said. "We're going to learn things in the implementation that will need to be discussed further and captured in the governance guide."

Mathis added it would be impossible for the group to fully implement its redesign by March. Exelon's Marka Shaw asked why the group could not be absorbed into the Steering Committee as originally planned.

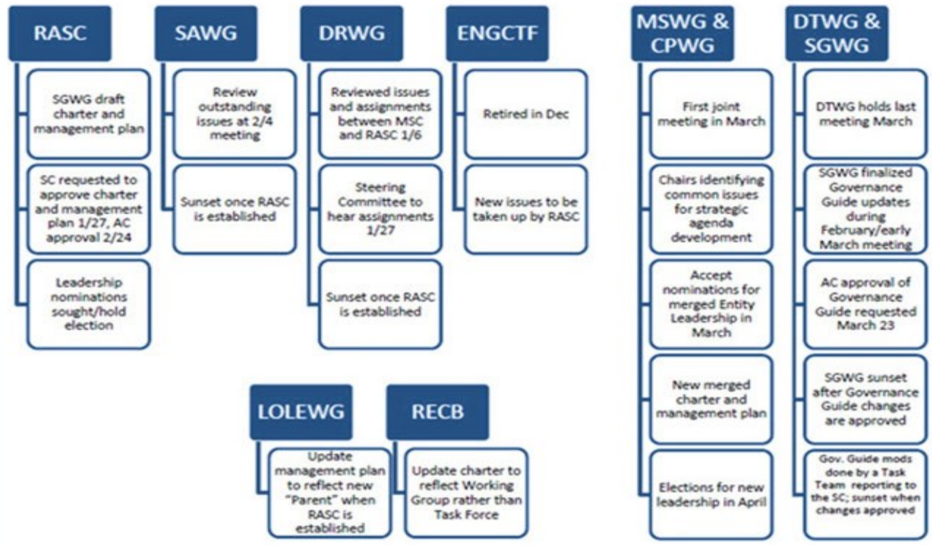
Mathis said he was concerned that new participants might interrupt the continuity of redesign work. "You'll have the institutional memory running through this," he said.

Mathis said he expected the SGWG to remain busy until at least after mid-2016, as the group would next focus its attention on setting priorities for 2016.

Ten voting members were in favor of the extension, with seven opposed and three abstentions. Use of the revised governance guide and fillable issues form were also approved by general consent at the meeting. (See *MISO Stakeholders Finish Governance Guide Changes*.)

While the SGWG was left standing, MISO's Data Transparency Working Group is expected to retire as planned after a final March 7 meeting. Subsequent data requests will be processed through the Steering Committee. Tom Welch, MISO liaison to the DTWG, said the internal review process will be largely unaffected by the change, with updates still delivered using MISO's data request tracking spreadsheet.

Additionally, MISO's Regional Expansion Criteria and Benefits Working Group was transitioned from a task force and will begin to report to the Advisory Committee, which approved the group's charter and management plan during a Feb. 24 meeting.



Stakeholder redesign entity transitions *Source: MISO*

AC to Begin Setting Priorities, Conducts Elections for RASC Chairs

Two months into 2016, MISO's Advisory Committee is still working to set priorities for the year.

"I know it's late in the year, but as the Advisory Committee, we need to determine what our priorities are," committee Chair Audrey Penner said Feb. 24.

Penner said the committee should base its choices on MISO's five identified priorities for 2016: the Clean Power Plan, electric-gas coordination, seams optimization, grid technology advancement and enabling infrastructure development.

The committee also discussed nominations for chair and vice chair of the newly created Resource Adequacy Subcommittee.

Tia Elliott, director of regulatory affairs at NRG Energy, said electronic ballots would be sent to stakeholders following the Advisory Committee's Feb. 23 approval of the RASC charter and management plan. As in the Advisory Committee, votes conducted in the RASC are not binding.

RASC leaders should be elected in time for the group's first meeting scheduled for March 2 at MISO's Little Rock offices.

Nominating Committee Elections to be Held Earlier

Two stakeholder vacancies on the Nominating Committee for the MISO Board of Directors need to be filled more quickly than usual, according to Michelle Bloodworth, MISO executive director of external and stakeholder affairs.

MISO plans to hold elections for the vacant positions during the March 23 Advisory Committee meeting. Bloodworth attributed the need for a quick turnaround to the board's new, pared-down meeting schedule.

The committee consists of three independent board members and two stakeholders appointed by the Advisory Committee.

Citigroup Energy's Barry Trayers said he would like to resume efforts to change the Nominating Committee structure, which stalled last year. He noted that other MISO committees have larger numbers of stakeholder representatives, typically one from each sector.

"The stakeholders right now are outnumbered 3-to-2 on the committee, and I don't think that's appropriate," Trayers said.

Bloodworth said that the Corporate Governance and Strategic Planning Committee would need to alter the Nominating Committee's bylaws before more seats could be added to the panel.

"I think that's something we'll take under advisement," Penner said.

– Amanda Durish Cook

NYISO NEWS

Zibelman: Guaranteed-Savings Rules Meant to Enable, not Stymie, Markets

By William Opalka


Zibelman

New York Public Service Commission Chairwoman Audrey Zibelman said that consumer protections approved by regulators Tuesday are meant to combat deceptive practices and boost consumer confidence at a time when more complex energy products are entering the market.

"We found that consumers were paying higher prices by buying from a retailer than they would if they were buying from a utility," she said in a conference call with media Wednesday.

The PSC held the unusual conference call a day after it approved new rules that drew fire from a national trade group for electric supply retailers. The regulations guarantee savings for retail and small commercial customers who switch to an alternative electric supplier. The rules also provide for tougher enforcement measures against those who prey on vulnerable or uniformed customers (15-M-0127, *et al.*).

In response, the Retail Energy Supply Association said the rules will only drive energy supply companies out of New York.

Retail Choice 'Eliminated'?

"The New York State Public Service Commission took the unprecedented action of effectively eliminating retail choice for residential and small commercial customers in New York by substituting the commission's judgment for that of consumers in determining what energy products offer value," the group said in a statement.

"Under the commission's order, retail suppliers would be forced to guarantee savings against a future utility price that, as a monthly variable price, is unknown," RESA added.

Zibelman said the rules, which are meant to prevent overcharging, are part of the PSC's plan to provide clear rules for companies and consumers under the Reforming the Energy Vision initiative.

"As we move forward with REV, it's very important to us that the residential and mass market[s] are able to participate and acquire additional energy services ... and in order to do that, we need a great deal of market confidence," she said.

The commission said "retail energy markets are not providing sufficient competition or innovation to properly serve mass market consumers," in contrast with markets for large commercial and industrial customers, which it said "are providing substantial benefits … including a wide range of energy-related value-added services that assist customers in managing their energy usage and bills."

A year-long proceeding under the REV is determining what constitutes a value-added service and how it should be priced, Zibelman said.

The guaranteed-savings rule does not apply to customers opting to buy "green" power. Energy service companies (ESCOs) that offer premium-priced renewable energy will be required to obtain at least 30% from sources eligible under the commission's Environmental Disclosure Labeling Program, including biomass, biogas, hydropower, solar and wind.

Abuses Cited

The commission is conducting an audit of the 200 ESCOs that operate in New York.

"We have zero tolerance for these unscrupulous companies, whose business model is to prey on ratepayers with promises of lower energy costs only to deliver skyrocketing bills," Gov. Andrew Cuomo said in a statement. "These actions will root out these bad actors and protect New Yorkers from these unfair and dishonest tactics."

The commission may impose a "one strike and you're out" rule for behavior it decides is egregious. It also created a "do not knock" rule for door-to-door solicitations, similar to a "do not call" registry for telemarketers. Violators could be prohibited from operating in the state.

More than 20% of New York's residential and small commercial customers currently receive energy from ESCOs. There are about 7 million residential electric customers and roughly 4.3 million residential natural gas customers, according to the PSC.

The regulators cited several examples of unacceptable conduct, including four companies in the Hudson Valley that charged more than double Central Hudson Gas & Electric's price for electricity; a New York City company that charged more than triple Consolidated Edison's rate for electricity; several ESCOs in upstate New York that charged more than double National Grid's electric rate; and a company in the Finger Lakes region whose variable rate plan for electricity was eight times what Rochester Gas & Electric charged.

The commission also cited examples of companies falsely representing themselves as local utilities to trick customers into signing inflated contracts. At the Tuesday meeting, commissioners were particularly disturbed by reports of deceptive practices used against customers for whom English is a second language.

"We found that consumers were paying higher prices by buying from a retailer than they would if they were buying from a utility."

Audrey Zibelman, NYPSC chair

NYISO NEWS

And Then There Was One?
Cayuga Coal Plant in Jeopardy

By William Opalka

NEW YORK — The future of one of New York's last coal-fired generators is in jeopardy following state regulators' rejection of a plan to repower it to natural gas and their approval of a transmission alternative (12-E-0577 and 13-T-0235). The 312-MW Cayuga generating plant will soon be one of two remaining coal generators in the state, plants that Gov. Andrew Cuomo recently vowed to close or have converted to natural gas by 2020.

But a ratepayer-funded repowering is off the table, the New York Public Service Commission ruled Tuesday. Chairwoman Audrey Zibelman said it would be "unfair" for ratepayers to be saddled with $102 million in additional costs to pay for the repowering. "It would not be in the public interest for New York State Electric and Gas ratepayers to be paying for that," she said at the meeting. (See *Cayuga Power Plant Repowering Opposed*.)

She later told *RTO Insider* that plant owners "are free to repower the plant on their own nickel."

In a separate order, the PSC signed off on Upstate New York Power Producers' (UNYPP) sale of the plant and the Somerset coal plant outside Buffalo to Riesling Power, a unit of the Blackstone Group (15-E-0580). FERC approved the transaction in January. (See *FERC Approves Sale of Doomed New York Coal Plants*.)

Over UNYPP's opposition, the commission also approved a request by distribution utilities NYSEG and Niagara Mohawk to build a two-phase, 14.5-mile project connecting two substations to address reliability concerns in western New York. The $23.3 million Auburn project would use existing rights of ways in Cayuga and Onondaga counties.

Phase 1 was filed as a proposal to build the 115-kV project, with Phase 2 proposed as a supplemental project by the companies to increase its capacity.

A recommended decision in November by an administrative law judge said "it is uncontroverted that Phase 1 of the project should be constructed as soon as possible to remedy an immediate need to avoid reliability violations and service disruptions, if a major contingent event occurs."

UNYPP objected to Phase 2, saying that part of the project is not needed if the plant continues to operate. According to the judge's record decision, both phases are necessary even if the Cayuga units continue to sell into the NYISO market.

The plant is operating under a reliability support services agreement with NYSEG that runs through June 2017 (12-E-0400).

NYPSC OKs Deal to Keep Ginna Operating

By William Opalka

NEW YORK — The New York Public Service Commission Tuesday approved a contract to keep the struggling R.E. Ginna nuclear power plant operating through March 2017 (14-E-0270).

The commission approved a reliability support services agreement between distribution utility Rochester Gas & Electric and Exelon's Constellation Energy Group, which had threatened to close Ginna because it was losing money.

The PSC ordered the RSSA in 2014 after determining that the 610-MW plant on Lake Ontario was needed to maintain reliability. The PSC's action Tuesday approves an agreement filed in October by the companies. (See *Ginna Lifeline to End in 2017; Profits After 'Unlikely'*.)

The contract, which was endorsed by large industrial customers, is subject to FERC approval.

RG&E will charge ratepayers $425 million to $510 million to cover Ginna's full cost of service, with the final amount determined based on Ginna's revenues from the NYISO wholesale market. The utility also will apply $110 million in customer credits to the contract, making the total price tag as high as $620 million.

Ratepayers began paying higher rates in September to mitigate the effects of rate compression.

"The joint proposal strikes a balance and protects consumers by making use of the customer credits and also protects the financial health of" RG&E, PSC Chairwoman Audrey Zibelman said.

Transmission upgrades expected to be completed next year will address the reliability concerns resulting from the plant's closure.

However, Ginna's life could be extended beyond March 2017 under a PSC proceeding to provide financial incentives to keep upstate nuclear plants operating until large-scale renewable energy facilities are

deployed. The plan is part of Gov. Andrew Cuomo's proposed Clean Energy Standard, which he wants finalized by June. (See *New York Would Require Nuclear Power Mandate, Subsidy*.)

Exelon has said the CES "could provide a meaningful path to sustain" Ginna and its Nine Mile Point nuclear plant.

Another upstate nuclear plant, the James A. FitzPatrick station, is expected to close by early 2017. Its owner, Entergy, says the subsidy plan has come too late to save it. (See related story, *New Lifeline Proposed for Fitzpatrick*, p.13.)

NYISO NEWS

New Lifeline Proposed for FitzPatrick

By William Opalka

NEW YORK — In a last-ditch effort the save the James A. FitzPatrick nuclear plant, New York regulators are proposing financial incentives that could be available to the plant's owners by July.

The New York Public Service Commission on Tuesday proposed to expedite subsidies to keep the plant operating while a more permanent incentive is crafted on the normal regulatory schedule (15-E-0302). A public comment period will last until May 2.

However, Entergy, FitzPatrick's owner, again said the state's plans were too uncertain and too late to save the plant on Lake Ontario. Entergy intends to close the plant on Jan. 27, 2017, when its current fueling cycle ends.

New York's attempts to prop up its nuclear fleet exclude Entergy's Indian Point nuclear plant, which Gov. Andrew Cuomo wants to close because of its proximity to New York City.

"If the state is focused on reducing CO_2 emissions, the Clean Energy Standard should apply to Indian Point, which is an essential generation resource critical to the state's goal of reducing CO_2 emissions," spokeswoman Tammy Holden told Syracuse.com.

Entergy Vice President of External Affairs Mike Twomey said in a statement that no definitive proposal from New York for FitzPatrick has been received since negotiations broke down last year.

"While we share the NYPSC's concerns about the loss of nuclear generation, the financial implications of its efforts are too uncertain and this proposal comes too late to save FitzPatrick," he said.

"Entergy met with New York state officials from the governor's office and with the PSC repeatedly over the last few years to discuss how the current New York market structure disadvantages nuclear generation, how nuclear power's carbon-free attributes could be recognized in the market and the financial challenges faced by the FitzPatrick plant. Unfortunately, these discussions resulted in no meaningful progress or policy changes by New York state."

The PSC is already working to create a new tier of zero-emission credits (ZECs) that would be available to upstate nuclear generators next year. The proposed Clean Energy Standard is meant to help put New York on a path to 50% renewable generation by 2030. Nuclear is seen as a zero-carbon bridge to that plan. (See *New York Would Require Nuclear Power Mandate, Subsidy*.)

The process gained urgency after NYISO released an assessment finding that New York will be short of generation in 2019 with the closing of FitzPatrick and other plants. (See *Fitzpatrick Closure Could Leave NY Generation Short*.)

The PSC's move to expedite subsidies to FitzPatrick "gives the commission the opportunity to act very decisively," Chairwoman Audrey Zibelman said Tuesday. "We do not want to see a plant retire from [the lack] of a short-term solution."

The expedited subsidy schedule would enable Entergy to refuel FitzPatrick if the company were to change its mind and continue operating the plant.

The PSC plan is modeled after existing renewable energy procurement practices used by the New York State Energy Research and Development Authority. NYSERDA purchases credits using money made available to it by the commission, including system benefits charges. The ZEC funds would also include other money collected from ratepayers.

As in renewable energy production, each ZEC would be paid for 1 MWh of energy produced. ZEC payments would be no more than the amount necessary above existing revenue streams to cover the ongoing costs of the facility for operations and maintenance, capital expenditures, taxes and other expenses. Sunk costs would be excluded.

Raj Addepalli, the PSC's managing director of utility rates and service, offered a rough estimate of $15/MWh, using as a benchmark the "very complicated" formula just approved by the commission to keep the R.E. Ginna nuclear plant operating. (See related story, *NYPSC OKs Deal to Keep Ginna Operating*, p.12.)

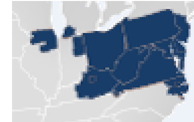
That figure was derived from the payments to Ginna under its reliability support services agreement that will fluctuate from $49 to $52/MWh, minus the recent yearly average wholesale energy price of $35/MWh.

Ginna would be eligible to participate in any ZEC program after its RSSA expires on March 31, 2017.

"While we share the NYPSC's concerns about the loss of nuclear generation, the financial implications of its efforts are too uncertain and this proposal comes too late to save FitzPatrick."

Mike Twomey, Entergy vice president of external affairs

PJM NEWS



PJM, a Dozen Others Join EPSA's Call for FERC Review of Ohio PPAs

By Suzanne Herel

PJM last week joined more than a dozen other parties in calling for a FERC review of power purchase agreements that would provide FirstEnergy and American Electric Power a guaranteed return for their struggling generating stations in Ohio.

"If approved, the [PPAs] will create incentives that will likely lead to these generation units being offered, unless checked, in a manner that could harm the overall competitiveness of the PJM markets," PJM said in comments supporting complaints by the Electric Power Supply Association and independent power producers.

"This outcome could impact significantly PJM's administration of the wholesale markets in its region and affect the mission entrusted to these markets — assuring efficient, long-term resource adequacy," PJM said.

EPSA, the Retail Energy Supply Association, Dynegy, Eastern Generation and NRG Energy asked FERC in January to revoke the waivers it granted AEP and FirstEnergy regarding affiliate power sales to ensure a Section 205 review of the eight-year PPAs (EL16-33, EL16-34). (See *Dynegy, NRG Ask FERC to Void Ohio PPAs*.)

They also are requesting an expedited decision, given that the Public Utilities Commission of Ohio could rule in coming weeks. And they contend that the results could impact PJM's 2019/20 Base Residual Auction, to be held in May.

'Premature' Attack

Before the comment window closed Feb. 23, the complaints garnered the support of more than a dozen parties, including the Pennsylvania Public Utility Commission. No one submitted comments supporting FirstEnergy, but the Ohio Energy Group — industrial customers including Alcoa, Ford, GE Aviation and TimkenSteel — wrote in support of AEP.

"The complaint represents a premature collateral attack on a proposed PPA that is not yet finalized and that could substantively change as a result of state commission decisions," the group said. PUCO is able to protect its own customers from any "affiliate abuse," and there is no "definitive evidence" that the proposed PPA would distort the PJM markets, it said.

AEP and FirstEnergy filed similar responses, saying allegations of market distortion are unfounded.

"The PUCO is undertaking a comprehensive review of the impact of AEP Ohio's proposal on Ohio retail customers," AEP said. "This is precisely the reason why the commission should adhere to its longstanding policy and defer to the PUCO's resolution of the retail rate matters that form the basis for the complaint."

Because Ohio is a retail choice state, the companies argue, customers there are not "captive."

"The commission should reject the complaint on the merits, given that complainants have alleged no change in law in the state of Ohio that alters the basis on which the commission granted FirstEnergy a waiver from the affiliate transaction requirements," FirstEnergy said.

Retail Choice Irrelevant

The plaintiffs say the state's policy on retail choice is irrelevant because the PPAs would be funded by surcharges on all customers in AEP and FirstEnergy's service territories, regardless of whether they take provider of last resort service from the utilities or purchase from a competitive supplier.

Among those supporting EPSA's complaint was a coalition of 10 northwest Ohio communities.

"This is the first any of us has ever intervened at FERC — and that alone shows our resolve to oppose this awful PPA. It will cost Northern Ohio at least $3 billion," said the Northwest Ohio Aggregation Coalition.

"When all the jargon is stripped away, the FirstEnergy PPA requires regular people to pay an extra month's electric bill each year for eight years. It is not for the electricity that they use," the coalition said. "Instead, the money that people need for school clothes and medical co-pays will go solely to bail out the company's aged and inefficient coal and nuclear plants."

Hardwood Flooring and Paneling Inc. in Middlefield, Ohio, said the PPA would cost it an additional $105,834 over eight years to pay for the 2.1 GW the business uses annually.

"That is real money that could be used on more productive purposes [such as] updating our equipment, increasing our inventories and building a new finishing plant for our hardwood flooring products — all of which bring more taxable income to the state of Ohio," Vice President Barbara Titus wrote.

Ohio Citizen Action wrote on behalf of its 30,000 members, which the group said will be harmed.

The Pennsylvania PUC said it intervened because of "a concern that the FE affiliate PPA, as currently structured, represents a potential threat to the continued efficient function of PJM's wholesale capacity markets, especially with regard to the upcoming 2019/2020 Base Residual Auction (BRA).

"More precisely, FE's affiliate PPA presents the risk of potential subsidization of generation facilities that would otherwise be retired, resulting in conveyance of incorrect price signals in the next and subsequent capacity market auction auctions."

The Ohio Manufacturers' Association Energy Group, representing about 1,400 companies, said the manufacturing sector is one of the top electricity consumers in the state.

"Any impacts arising from future increases to electricity prices will have a significantly negative effect on their businesses," it wrote.

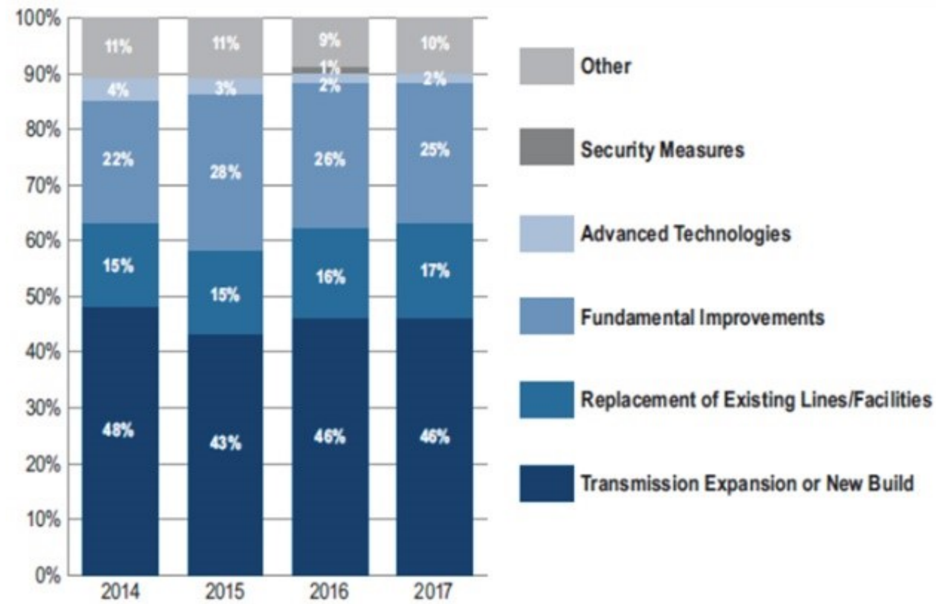
"The money that people need for school clothes and medical co-pays will go solely to bail out the company's aged and inefficient coal and nuclear plants."

Northwest Ohio Aggregation Coalition

PJM NEWS

TOs Oppose Proposal to Develop End-of-Life Criteria

By Suzanne Herel



Projected transmission investments by type *Source: Edison Electric Institute (2014), The Brattle Group*

WILMINGTON, Del. — A problem statement and issue charge seeking to develop RTO-wide criteria for end-of-life transmission facilities kicked off a long and heated discussion before being approved by an 80% sector-weighted vote of the PJM Markets and Reliability Committee on Thursday.

Just two of 12 Transmission Owners voted in favor of the proposal, which won 90% or more support from each of the other sectors.

Ed Tatum of American Municipal Power presented the proposal, which AMP co-sponsored with Old Dominion Electric Cooperative, the PJM Industrial Customer Coalition, the PJM Public Power Coalition, LS Power and ITC Mid-Atlantic Development.

"Aging infrastructure is a primary driver of investment," Tatum said, noting that $5.5 billion in replacement projects have been identified and more are expected. That's because most of the grid was built 30 to 50 years ago, he said. "We're concerned about the number of dollars being spent."

Some transmission owners have criteria for end-of-life facilities, but others do not, treating them as supplemental projects, Tatum said. Supplemental projects are improvements not required for compliance with PJM system reliability, operational performance or economic criteria.

Uniform guidelines would improve how the local and regional planning process determines the need for replacement facilities, according to the problem statement.

The discussion raised issues debated in a FERC technical conference in November. (See *PJM TOs Defend Jurisdiction at FERC Conference*.)

The newly formed End of Life Task Force will be charged with developing "alternatives for providing more transparency and consistency in the review of end-of-life projects, including the development of PJM end-of-life-criteria." It will report to the MRC.

The majority of transmission owners opposed the plan, saying the problem statement prescribed a solution, that such guidelines should be voluntary and that it was illegally treading on the rights of transmission owners to maintain their equipment. They called for an education session before bringing the issue back for a vote and said any such task force should report to the Planning Committee.

Tatum said the sponsors rejected a proposed revision by the TOs to make the guidelines voluntary because "making it voluntary is the status quo."

And, he said, "Based on the conversations I've had with a number of you, I think that the definition you all may be using for maintenance is a bit expansive. My water heater blew last week and I didn't maintain it, I replaced it."

Speaking on behalf of the TOs, Chip Richardson of PPL said, "The TOs have expressed some concern that the very nature of this problem statement would violate their rights. … We think that the MRC needs to understand that this is a task to do something. This is not a problem statement or opportunity to do something. We're implementing a solution that this group has chosen."

Richardson said the TOs would have supported the issue if the guidelines were voluntary. He called for an education session to address three issues: to whom the task force should report; the rights of the TOs and PJM under the Consolidated Transmission Owners Agreement; and the implications of such criteria on cost allocations for projects in the Regional Transmission Expansion Plan.

"We're launching a solution but are not well informed of what the implications are," he said.

Tatum said it was not the intent of the sponsors to infringe upon TOs' rights and that the task force would not be considering the issue of cost allocation. While the problem statement suggests "criteria and guidelines" would improve transparency, the task force would consider other approaches that accomplish the goal, he said.

PJM Vice President of Planning Steve Herling said transparency was the RTO's primary concern as well, and to that end it could support the problem statement and issue charge.

"There's an expectation as we start our planning process … that there is the opportunity for full vetting," he said. "As long as [the criteria] are out there and people can see them and we have the opportunity to vet the issues and solutions, I

Continued on page 16

PJM News

TOs Oppose Proposal to Develop End-of-Life Criteria

Continued from page 15

think we're OK with this moving forward. I'm less concerned with who the group reports to. The same people are going to have to be on the task force regardless."

Jason Barker of Exelon cautioned that the task force's work could embroil PJM in litigation if it treads on TOs' rights under the CTOA.

"This is unquestionably a discussion about cost allocation. The overture here is that that's not an intent … but it naturally follows from the discussion we're having. Let's acknowledge the elephant in the room," he said, adding, "With regard to the committee reporting, it's interesting that the sponsors want to put this at the MRC. We have a PC that's described in our Operating Agreement: 'The [Planning Committee] shall advise the [Markets and Reliability Committee and PJM] on matters pertaining to system reliability … and planning strategies and policies.' That's exactly what we're talking about here. This is exactly in the PC's wheelhouse, and there's really no reason to diverge from it aside from politics."

Gloria Godson of Pepco Holdings Inc. said the initiative "may be a backdoor way of imposing a risk profile on the TOs."

A TO's asset management practices result in a certain life expectancy for each asset and when the asset needs to be replaced, she explained after the meeting. "If the PJM stakeholders become the determinants of when and how transmission assets will be replaced, [they] will effectively be imposing their risk profile on the TOs and usurping this key corporate decision-making of the company owning the asset," she said. "Who is going to bear the risk for these assets going forward?"

The proposal drew a warmer reception from consumer advocates.

Dan Griffiths, executive director of the Consumer Advocates for the PJM States, said that no one in his group opposed it.

Jim Jablonski, of the Public Power Association of New Jersey, said he would welcome more transparency in the rates that consumers are charged.

One municipality has seen its annual bill rise over four or five years from $300,000 to $1.5 million, he said. "I get questions about why this is happening," he said. "I need to be able to explain."

Co-sponsor Susan Bruce, representing industrial customers, said, "Customers have seen their bills increase on the transmission side like never before."

The task force's work, she said, "is meant to be done in a way that is respectful of TOs' rights and those who end up paying" for transmission costs.

PJM NEWS

MRC/MC Briefs

Markets and Reliability Committee

Ramp Rate Approach Would Excuse Nonperformance Penalties

WILMINGTON, Del. — PJM presented a first read of a proposed performance assessment hour ramp rate, which would inform when a generator is vulnerable to nonperformance penalties under the new Capacity Performance model. The approach is a short-term solution that PJM hopes to have in place before the delivery year starts June 1.

Under the proposal, units would be excused from penalties if they are following PJM dispatch that includes the ramp rate.

"The goal is having generators following our dispatch and not causing harm under stress conditions," PJM's Rebecca Stadelmeyer said.

PJM doesn't want generators to disregard its dispatch orders and self-schedule more capacity to avoid penalties when they believe they are approaching a performance assessment hour.

Market Monitor Joe Bowring opposed the proposal. "This explicitly weakens the 'no excuses' policy," he said. "It also hasn't been demonstrated that the self-scheduling issue is widespread."

Relying on historical data on ramp does not provide the appropriate incentives to perform during performance assessment hours, Bowring said.

Committee Chairman Mike Kormos assured him that the approach is temporary.

"We want to incent generators to be dispatchable. In order for us to maintain system control, some need to be loaded during the [performance assessment] hour itself, and we want to makes sure they don't get penalized," Kormos said. "How big of an issue it is, we don't know, but I don't want to find out on the hottest day in the summer."

How Should Regulation Resources Fit into the Capacity Market?

Greg Vaudreuil, co-founder of Mosaic Power, presented a problem statement to include regulation-only resources in the Capacity Performance market.

Vaudreuil said that resources such as batteries, flywheels and certain demand resources are at a competitive disadvantage because they can't recover their capital and fixed operating costs the same way energy providers can.

"The market for [Capacity Performance] would benefit from fully accounting for and compensating all capacity-providing resources, and warrants PJM stakeholder consideration on the most effective means to incorporate the value emerging regulation-only resources [provide]," the problem statement said.

Manual 18 Revisions Endorsed

Members approved updates to Manual 18: PJM Capacity Market to conform with FERC's order (ER16-333).

They address the circumstances under which a fixed resource requirement (FRR) entity must meet the percentage internal resource requirement, provisions for early termination of the FRR alternative and the election date for new FRR entities. (See *IMEA Reaps Limited Relief from Capacity Rule Change*.)

GDEC Definitions, Clarifications Approved

The MRC unanimously approved a handful of definitions and clarifications proposed by the Governing Document Enhancement and Clarification Subcommittee.

A clarification for the term "capacity import limit," which members asked to vote on separately, also was approved, but with 18 "no" votes. That language was clarified to "meet its intent concerning the length of transmission service necessary to meet the capacity import limit (CIL) exception criteria regarding transmission service," according to the presentation.

The committee deferred voting on clarifications to the term "pumped storage hydropower." Those proposed revisions "address sell offer options for pumped storage hydropower units and self-scheduling and pool-scheduling of hydropower units."

First Reads

The MRC also heard first reads on proposed revisions to:

- Regional transmission and energy scheduling practices (See "Session will Study Transmission, Energy Scheduling Practices," *PJM Operating Committee Briefs*.)
- Operating parameters (See "Operating Parameters to be Subject of Special Session," *PJM Market Implementation Committee Briefs*.)

Members Committee

Tariff Changes Exempting Low-Voltage Reliability Projects OK'd

The Members Committee approved Tariff revisions exempting some reliability projects below the 200-kV threshold from the proposal window process. (See *Low-Voltage Projects to be Exempted from Competitive Window Process*.)

— Suzanne Herel

SPP NEWS

FERC Rejects SPP's Proposed 80% ARR Allocation; Sides with Monitor

By Tom Kleckner

	ARR Allocation			TCR Auction
	Existing Tariff	SPP Proposal	Market Monitor Proposal	Existing Tariff
June	100	100	100	100
July – Sept.	100	90	90	90
Oct. – May	100	80	60	60

System capability percentages. SPP's proposal does not modify the system capability assumptions used in the annual TCR auction. *Source: SPP*

FERC has accepted SPP's proposal to address an underfunding problem in the RTO's transmission congestion rights (TCR) market by reducing the number of auction revenue rights available in the annual allocation process (ER16-13).

The commission's Feb. 19 order sets the amount of transmission system capability to be offered during the annual ARR allocation process at 60% for the fall, winter and spring seasons (October-May), as recommended by the RTO's Market Monitoring Unit. SPP had proposed an 80% allocation during those months.

TCR market participants can convert firm transmission service reservations into a credit against daily congestion costs, either through a TCR or through payments received for the ARR.

'Necessary Step'

FERC found adjusting the ARR allocation rules "are a necessary step" to correct the TCR underfunding.

"We view adjusting the system capability assumptions used to determine feasibility in the annual ARR allocation process as an important step toward reducing the potential for underfunding TCRs, thereby creating a more efficient TCR market," the commission wrote.

The Monitor told FERC that the first full year of the Integrated Marketplace's TCR operations produced a "high degree of disparity" between TCR payments and revenues, net of TCR uplift and TCR auction charges. It contended "this indicates that TCR auction prices did not accurately reflect the realized value of TCRs."

The Monitor listed three contributing factors: "(1) the awarding of ARRs and TCRs beyond the physical limits of the transmission system, (2) the delayed reporting of planned transmission outages, and (3) the excessive valuing of self-converted TCR bids in auctions."

TCR funding was 82% for its first full year, and the ARR funding level was 113%, the Monitor said. It shared data with FERC "demonstrating that, in every month, day-ahead congestion revenues fell short of TCR payments, while auction revenues exceeded ARR payments."

FERC said using the 60% assumption during the October-May period will "better reduce the need to expand transmission constraint limits during the monthly processes, which contributes to the TCR underfunding problem." Awarding fewer infeasible ARRs during the annual allocation process, the commission said, will mean SPP "will not have to expand transmission constraint limits as frequently."

"As noted by the Market Monitor, expanding limits can lead to situations where TCR market flows exceed day-ahead market flows for certain transmission paths, resulting in TCR underfunding," FERC wrote.

ARR Over-Allocation

SPP submitted its Tariff revisions to FERC in October, saying its market's TCRs were underfunded because of an over-allocation of ARRs. The RTO told the commission "disparate system capability percentages used between the ARR and TCR processes" were largely responsible, resulting in awarding infeasible ARRs, and proposed more closely aligning the system capability percentages used between the annual ARR allocation and TCR auction processes.

The Integrated Marketplace, which became binding in March 2014, was originally designed to allocate ARRs in a single, annual process, with 100% transmission system capability assumed year-round when determining the feasibility of ARRs for the annual allocation.

SPP's proposed Tariff revisions set ARR allocations at 100% for June, 90% for July-September and 80% for the remaining months.

The Monitor told FERC it did not support the proposed use of an 80% ARR allocation, saying it did not match the 60% system capability number used in the TCR auction process. It said the mismatch would result in potential TCR underfunding and noted the 80% allocation was "contrary to an earlier proposal, presented by SPP staff."

The proposal was changed from 60% to 80% at the Markets and Operations Policy Committee level of the stakeholder process, the Monitor said, and it could not support the revised proposal because it "was not supported with analysis."

SPP acknowledged that the proposed 80% figure "was the result of a compromise to achieve a more gradual approach to addressing the problem of TCR underfunding."

FERC concluded that SPP had failed to "provide analysis or evidence to support the … assumption proposed for use during the October through May period."

"As noted by the Market Monitor, expanding limits can lead to situations where TCR market flows exceed day-ahead market flows for certain transmission paths, resulting in TCR underfunding."

FERC

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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*

pjm

Energy Market Uplift Senior Task Force Charter
Draft

Mission

The Markets and Reliability Committee (MRC) approved the creation of the Energy Market Uplift Senior Task Force (EMUSTF) on May 30, 2013 to evaluate causes for energy market up-lift charges, develop ways to minimize them while maintaining prices that are consistent with operational reliability needs, and explore new methodologies for the allocation of make-whole payments.

PJM Proposes Operating Reserve Changes to Cut Uplift
April 30, 2013

PJM called Thursday for a broad review of its method of providing Operating Reserve payments, saying changes were needed to reduce growing uplift costs.

Operating Reserves are "make whole" payments that ensure generators dispatched out of merit for system reliability don't operate at a loss. Because they are collected through uplift charges and not reflected in day-ahead or real-time locational marginal prices, they cannot be hedged.

In 2012, operating reserve payments totaled a near record $649 million, 2.2% of total billing. Day-ahead operating reserve charges increased by about 90% in 2012, spiking in September after PJM increased the number of "must run" units dispatched in the day-ahead market.

- **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*

Columbus Biz Insider

Sep 26, 2013, 3:41pm EDT

Ohio Manufacturers' Association says fix energy mandates, but don't dilute them

Jeff Bell
Staff reporter-
Business First
Email | Google+ | Twitter | LinkedIn

The Ohio Manufacturers' Association says the state's hotly debated energy efficiency standards are saving its members money on their energy bills and should not be unraveled.

Courtesy AEP

The OMA says energy efficiency standards put in place in Ohio are saving manufacturers money

The Columbus Dispatch

Velocity rises in wind-power debate

Both sides digging in over bill to change Ohio renewable-energy requirements

- **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-

RTO Insider
Your Eyes and Ears on the Organized Electric Markets

Fukushima Daiichi Five Years Later: A Progress Report

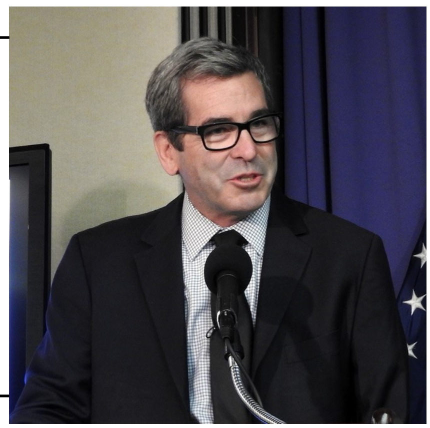
WASHINGTON — The Nuclear Energy Institute held a conference at the National Press Club Wednesday to discuss the progress made in cleaning up and dismantling the Fukushima Daiichi nuclear power plant in Japan. The Tohoku earthquake and tsunami on March 11, 2011, caused a meltdown at the plant, forcing thousands of people to abandon their homes.

While speakers primarily focused on safety improvements made in both the U.S. and Japan as a result of the disaster, others spoke about the effect it had on the workers and residents in the area, as well as the culture and communication at Tokyo Electric Power Co. (TEPCO), which operates the plant.

Former Deputy Secretary of Energy **William Martin**, who moderated the talk, said the U.S.-Japan partnership post-Fukushima “has been the most important dialogue we’ve had outside of Okinawa. … It was the most extraordinary cooperation I’ve ever seen.”

NEI Chief Operating Officer **Maria Korsnick** said the nuclear industry has spent $4 billion implementing post-Fukushima safety standards. “I had tremendous confidence in the safety of U.S. nuclear energy facilities before [Fukushima]. My confidence and pride in the safety commitment of the U.S. fleet is even stronger today.”

Miles O’Brien spent years covering the accident and its aftermath, producing several episodes of the PBS science show “NOVA.” One of them centered on the untold story of the nearby Fukushima Daini plant, “a heroic tale of a couple of hundred workers, working under great duress to string together miles and miles of heavy cable to attach their cooling system to the one power source available to them up the hill. … It was a very heroic tale … of a plant manager who really stepped up to the plate and showed great leadership qualities and an understanding of the plant and was able to really rally the troops.”



After the accident, **Dale Klein**, a former Nuclear Regulatory Commissioner, advised TEPCO on safety training at its plant and now serves as chairman of the company’s Nuclear Reform Monitoring Committee. He spoke about the challenges of changing the culture in a Japanese workplace; in contrast with the U.S., challenging authority is frowned upon in Japan. “There’s a chain of command that happens in the Japanese culture, where if a boss says to do something, you don’t question that.” Klein said that can be dangerous in the nuclear industry. “One of the things we’re trying to encourage the workers at TEPCO [to do is] raise issues” and not fear retribution.

Takafumi Anegawa, chief nuclear officer of TEPCO, spoke about the effort to restart both Fukushima and the company’s Kashiwazaki-Kariwa (KK) plant. Though it was not affected by the earthquake and tsunami, KK — like all nuclear plants in Japan — was shut down until safety improvements were made. He showed off the new technology being used to improve safety at the plants, including robots.

Anegawa told *RTO Insider* that Japan will deregulate its energy markets in April. Japanese customers will be able to choose their electricity and gas suppliers, as the country’s utilities spin off their generation into separate businesses. According to *The Wall Street Journal*, Japanese energy companies have been looking to RTOs in the U.S. as a model.

“If you look back at the actions that were taken by the government, by TEPCO following the accident, you can criticize them for a number of activities, no doubt. Communication was not great, having backup generators on top of the hill, that would have been really nice; but in terms of being able to limit the exposure of a huge population, they did a really excellent job,” said **Kathryn Higley**, the head of Oregon State University’s School of Nuclear Science. She said the highest dose of radiation a worker at the plant received was 670 millisieverts (mSv); by comparison, receiving 5,000 mSv has a 50% mortality rate. The highest dose measured in a resident evacuee was 50 mSv, according to Higley.

COMPANY NEWS

Dynegy, Energy Capital to Buy 8.7 GW in $3.3B Deal

Continued from page 1

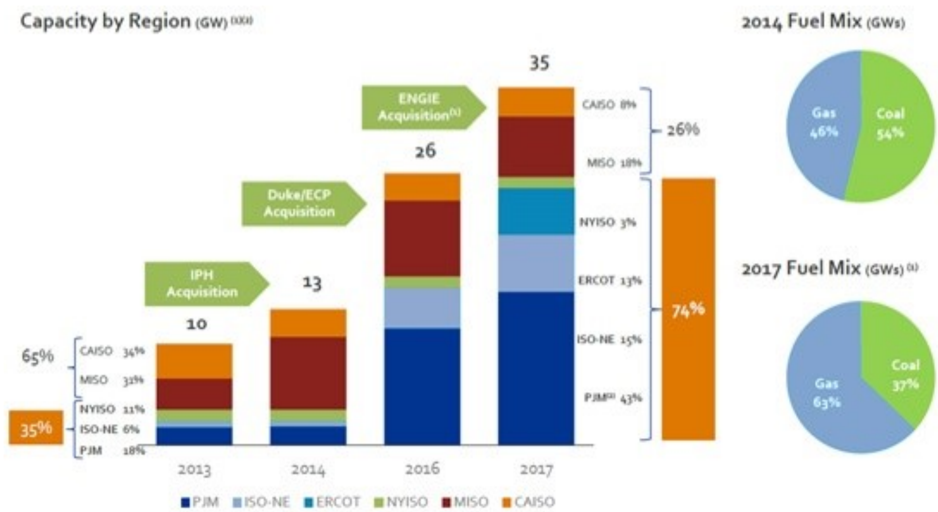
With the addition of the ENGIE assets, Dynegy will control 35 GW of generation: 43% in PJM, 18% in MISO, 15% in ISO-NE, 13% in ERCOT, 3% in NYISO and 8% in CAISO.

"Today's acquisition continues Dynegy's transformation that began in 2011, to build a long-term sustainable portfolio in key competitive markets," Dynegy CEO Robert C. Flexon said. "This transaction is a compelling value for our shareholders as it is the right assets, in the right markets, at the right price and unlocks considerable synergy value by utilizing our proven integration model and corporate platform."

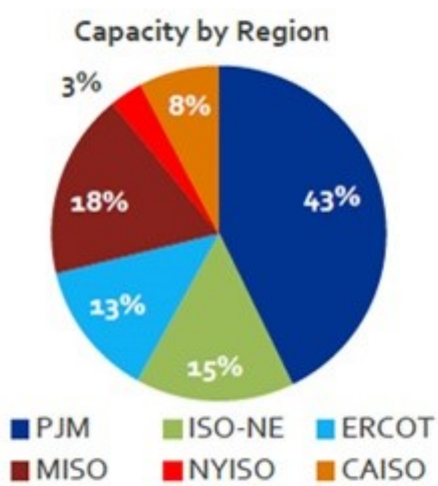
Wall Street seemed to like the deal, with shares closing Friday at $9.77, a 17% jump from their open Thursday morning.

Flexon said joining with Energy Capital made sense, and, in fact, was the only way the deal would have come about. "Partnering with Energy Capital … allowed us to bring our strengths together to accomplish this acquisition that otherwise could not have been achieved by either party individually," he said.

The partnership is a good fit for Energy Capital, too, according to company officials.



Dynegy's rebound *Source: Dynegy*



Dynegy expands into ERCOT, but PJM still dominates. Notes: includes 100% of JV portfolio; PJM includes 930 MW of MISO pseudo-tied capacity *Source: Dynegy*

"We feel this transaction represents an extremely attractive valuation point for Energy Capital to reenter the PJM, New England and ERCOT markets, which we have a long history of successfully investing in," said Tyler Reeder, a partner at Energy Capital. "The joint venture will benefit tremendously from Dynegy's strong operating capabilities, commercial risk management and focus on environmental compliance and safety."

Dynegy said the joint venture borrowed $2.25 billion and put up about $1.185 billion in equity — $770 million by Dynegy and $415 million from Energy Capital — to finance the acquisition. Dynegy said it expects to close the purchase by the end of the year.

Energy Capital is taking a 15% stake in Dynegy. According to the terms of the acquisition, Energy Capital can exit the joint venture four years after closing, either by selling its interest to Dynegy or by engineering the sale of the entire joint venture.

Dynegy said it expects to realize about $90 million in savings per year by combining operations and maintenance functions and cutting corporate overhead.

It is just the latest in large-scale generation acquisitions by Dynegy. Since emerging from bankruptcy in 2011, it has more than tripled its generation portfolio. It doubled from 13 GW to 26 GW in its $6.25 billion purchase of plants from Duke Energy and Energy Capital, a deal approved by FERC last March.

Since 2014, it has boosted its gas generation to 63% of its portfolio, up from 46%, while reducing its coal share from 54% to 37%.

It also has changed its geographic mix, reducing its CAISO and MISO assets to a combined 26% from 65% in 2013.

ENGIE, previously GDF SUEZ, also sold 1.4 GW of pumped storage and conventional hydro assets in Massachusetts and Connecticut to the Public Sector Pension Investment Board, a Canadian pension fund, for $1.2 billion while acquiring OpTerra Energy Services.

ENGIE said the deals will reduce its debt by 5.5 billion euros and help it "reposition" the company in North America.

"With the announcement of this sale, ENGIE is heavily reducing its merchant generation activities and exiting coal-fired generation in the U.S. In North America, ENGIE will retain activities related to power generation (mainly contracted), energy efficiency services (through Cofely, Ecova and now OpTerra), retail electricity, small scale LNG and LNG infrastructures, including participation in the Cameron LNG liquefaction project currently under construction."

COMPANY NEWS

Enable Midstream Impairment Charge Dings CenterPoint Earnings

Houston-based CenterPoint Energy (CNP) on Friday reported a net loss of $509 million ($-1.18/share) for the fourth quarter of 2015. The loss included a $984 million impairment charge for its Enable Midstream Partners spinoff, a joint venture with OGE Energy and private-equity firm ArcLight Capital Partners.

The transmission and consumer natural gas company reported a net loss of $692 million ($-1.61/share) for the year. It said net income would have been $465 million ($1.08/share) without impairment charges of $1.846 billion, compared to $611 million ($1.42/share) in net income in 2014.

CenterPoint CEO Scott Prochazka told analysts Feb. 26 he expects 2016 earnings in the range of $1.12 to $1.20/share.

"We expect continued strong financial performance from utility operations in 2016, which is incorporated in our guidance," he said in a statement.

Shares of CenterPoint stock finished down 61 cents Friday, or 3.19%, closing at $18.53.

— Tom Kleckner

OGE Falls Short of Expectations

OGE Energy fell short of Wall Street expectations Friday when it reported a fourth-quarter profit of $29.4 million and earnings of 15 cents/share. According to Zacks Investment Research, analysts had expected earnings of 23 cents/share.

The Oklahoma City-based parent of Oklahoma Gas & Electric recorded $447.1 million in revenue for the quarter. For the year, OGE posted a profit of $271.3 million ($1.36/share), compared with earnings of $395.8 million ($1.98/share) in 2014.

OGE shares closed down $1.88 Friday at $25.08, a 7% drop. It began the year at $26.29/share.

CEO Sean Trauschke attributed the earnings shortfall to low energy prices.

"The significant drop in commodity prices had an impact on our business as well as our communities," he said in a statement. "However, we have made significant investments to improve our business and our company is better positioned to handle these challenges."

Trauschke told analysts Friday the company is on target to continue to grow its dividend of 10% through 2019.

OG&E has approximately 825,000 customers in Oklahoma and western Arkansas. Its OGE parent also holds a 26.3% limited partner interest and a 50% general partner interest in Enable Midstream Partners.

— Tom Kleckner

COMPANY BRIEFS

Arkansas Sierra Club Calls For Closure of Entergy Plants

The Arkansas chapter of the Sierra Club released the "2016 Arkansas Clean Air Solution," which calls on Entergy to shut down Arkansas' two largest power plants, Independence and White Bluff, by 2027.

Sierra Club said the plan would help the state meet federal clean air safeguards under the Regional Haze Rule. EPA is set to finalize a regional haze plan for Arkansas in August. Under the agency's proposal, the two plants will be required to significantly reduce emissions of sulfur dioxide.

Entergy has said it plans to stop burning coal at White Bluff by 2028.

More: *Arkansas Business*

Mississippi Co-op Eyes Large-Scale Solar

South Mississippi Electric Cooperative and Delta Electric Power Association say they are ready to begin generating electricity using a 100-kW solar system recently installed on the eastern edge of the Mississippi Delta. Atlanta-based Hannah Solar installed the 360 panels, which are situated behind Delta Electric's offices in Greenwood, Miss.

David O'Bryan, Delta Electric's general manager, said an official commissioning ceremony is scheduled in late March. He said customers in surveys called for more solar plants.

South Mississippi Electric is currently constructing four other similar solar plants in Mississippi, with the goal of partnering with Origis Energy USA to build a large-scale solar facility in southern Mississippi, capable of powering 10,000 homes.

More: *Mississippi Business Journal*

PSEG Solar Source Buys 36-MW Plant in Colorado

PSEG Solar Source, PSEG's merchant solar generation arm, bought a 36.3-MW solar project in Colorado from juwi Inc. The $54 million acquisition brings the company's total solar portfolio to 16 utility-scale projects.

The PSEG Larimer Solar Energy Center is about 25 miles north of Fort Collins, Colo., and has a 25-year power purchase agreement with the Platte River Power Authority. The project was originally called the Rawhide Flats Solar facility. It was built on a 290-acre site own by PRPA. Construction is scheduled to be completed by

Continued on page 23

COMPANY BRIEFS

Continued from page 22

the end of this year.

"We are delighted to be a part of an initiative that contributes to growing Colorado's clean energy supply," said Diana Drysdale, president of PSEG Solar Source.

More: *PSEG*

LG&E, KU Install 10,000 Smart Meters

Louisville Gas & Electric and Kentucky Utilities have offered a limited number of free smart meters for residential and small business customers. The new meters are linked to a website that allows customers to monitor their electricity usage in 15-minute increments. The PPL-owned utilities say the meters will allow customers to better understand their electric consumption.

The program is limited to the first 5,000 LG&E and 5,000 KU customers who enroll. The utilities said they will track participation and interest levels this year to determine if the program should be continued.

The smart meter installation program is separate from KU's demand conservation program, which uses a device attached to central air conditioning and heat pumps to temporarily interrupt service on peak days to reduce system load.

More: *Lexington Herald-Leader*

Dairyland, Xcel Announce Plans To Double Wisconsin's Solar

Dairyland Power Cooperative and Xcel Energy have announced plans that will add almost 22 MW of solar capacity in Wisconsin, doubling the amount of utility-scale solar generation in the state.

Dairyland is buying the output from 12 solar arrays with a combined capacity of almost 19 MW. Xcel has entered into contracts to purchase the output of solar gardens in the western part of the state for about 3 MW.

Xcel is adding solar throughout the Midwest and said it plans to have more than 250 MW of solar in Minnesota by the end of this year.

More: *LaCrosse Tribune*

Chesapeake Energy not Drilling in Ohio Anymore

Once the biggest natural gas driller in Ohio, Chesapeake Energy no longer has any rigs operating in the state. The nation's second-largest gas producer, which has been shedding assets and cutting costs in the face of low energy prices, announced fourth-quarter losses of $2.2 billion, compared to $639 million in profits the year before.

While many oil and gas drilling companies are scaling back, few have shown such a drastic reduction in Ohio's Utica shale fields as Chesapeake. Two years ago, the Oklahoma City company had 64 rigs operating across the country. It now plans to operate four to seven nationwide.

More: *Columbus Business First*

Exelon Wind Turbine Collapses During Snowstorm in Michigan

A wind turbine at an Exelon wind farm in Huron County, Mich., collapsed during a snowstorm last week but caused no injuries or damage, county and company officials said.

The turbine toppled about 5 a.m. on Thursday during a period of high winds and heavy snow. The closest residence is about 2,200 feet from the fallen turbine and mast. Company officials said an investigation is underway to determine the cause.

More: *Mlive*

PSEG Names New President of PSEG Nuclear

Peter Sena, who has held a number of executive and operational positions at FirstEnergy and NextEra Energy, has been named president of PSEG Nuclear. He will report to PSEG Power President William Levis.

Sena comes to PSEG from NextEra, where he was senior vice president of operations and chief operations officer. Before that, he spent 15 years with FirstEnergy's nuclear generation organization.

He is a U.S. Navy veteran and holds a degree in fuel science from Pennylvania State University. He has served as a member of Penn State's Nuclear Engineering Advisory Board and currently serves on Auburn University's advisory board.

More: *PSEG*

FEDERAL BRIEFS

Michigan AG Requests Stay on EPA's Mercury Rule

Michigan Attorney General Bill Schuette is asking the U.S. Supreme Court to enforce its ruling last year and order EPA to put its Mercury and Air Toxics Standards on hold.

Schuette asked the court to issue a stay on the four-year-old mercury rule, which he said it invalidated in its *Michigan v. EPA* decision last year. In the decision, the court supported Michigan's position that the mercury rule did not sufficiently consider the adverse economic impact the standard would impose. "We are simply asking the court to enforce its ruling and require the EPA to follow the law like everyone else," Schuette wrote in a statement.

Schuette

According to Schuette, the D.C. Circuit Court of Appeals "has failed to vacate the unauthorized rule, leaving it in place with the same force of law despite the Supreme Court's rejection of it." His office filed the request last week with Chief Justice John Roberts.

More: *MLive*

Bay Calls Energy Storage Potential 'Game Changer'

FERC Chairman Norman Bay last week said energy storage has the potential to become a "game changer" when it comes to economic

Continued on page 24

FEDERAL BRIEFS

Continued from page 23

benefit and system reliability. Bay said the commission will need to manage ways to bring the new technology into the nation's grid.


Bay

"Developments in storage have the potential to bring economic and reliability benefits to consumers, perhaps even to be game changers," he told an audience at the IHS CERAWeek conference in Houston. "Everybody recognizes costs will decline, but the question is how much and how soon."

More: *Fuelfix Blog*

Offshore Drilling Regulation To Be Finalized Soon

The federal government is due to release a new rule meant to prevent offshore wellhead blowouts such as the one that caused the 2010 Deepwater Horizon disaster in the Gulf of Mexico.


Beaudreau

The Interior Department's chief of staff, Tommy Beaudreau, told a Columbia University audience that a new rule has been in the works since the disaster. "We've been working ever since to try to develop new standards and new rules with respect to well control, both with respect to that critical piece of equipment, the blowout preventer," he said.

Blowout preventers are designed to pinch shut well piping near the head in the event of a blowout. The Deepwater Horizon blowout preventer did not work.

More: *The Hill*

Trump's Plan for EPA: Scrap the Whole Agency

Presidential contender Donald Trump last week shared a proposal if he gets elected: scrap EPA.


Trump

"Environmental protection — we waste all of this money," he said during Thursday's Republican debate. "We're going to bring that back to the states. We are going to cut many of the agencies, we will balance our budget and we will be dynamic again."

While he was short on details, such as who or what would oversee environmental policy in the absence of the agency, he said eliminating it would save $8 billion, its entire annual budget.

More: *The Guardian*

Lamar Alexander Calls for End To Nuclear Waste Stalemate

Tennessee Sen. Lamar Alexander, speaking at a Senate Appropriations Subcommittee, said it is critical for the country to finally develop and execute a program to handle nuclear waste and called for the moribund Yucca Mountain project to be restarted.


Alexander

"At a time when everyone wants to produce more carbon-free electricity, it makes no sense whatsoever to undermine this source of power by continuing this logjam and not opening Yucca Mountain to dispose of used nuclear fuel," the Republican said during a subcommittee hearing on the Obama administration's proposed budget for the Nuclear Regulatory Commission.

He said he would call for a pilot program to designate consolidated storage sites for used nuclear fuel until a permanent repository is developed.

More: *The Chattanoogan*

Ole Miss Researchers Get $3M To Investigate Spent Fuel Options

The Department of Energy has awarded $3 million to finance the research of two University of Mississippi professors trying to find new ways to monitor spent nuclear fuel that is sealed up in dry-cask storage. Josh Gladden and Joe Mobley, physics professors, are working on ways to use ultrasonic and acoustic methods to monitor spent fuel.

Their methods could make it possible to ensure the fuel is properly stored, without having to open the storage containers. It is necessary to monitor both the fuel inside the casks, and the casks themselves, to make sure they are intact.

"Since quite a few of these casks are nearing the end of their engineered lifetime, the inspection requirement must be fulfilled in the next five years or so," Gladden said.

More: *The Oxford Eagle*

Former NRC Commissioner Calls For Change in Reactor Licensing

Former Nuclear Regulatory Commissioner Jeffrey S. Merrifield said it is time to reconsider licensing requirements for advanced nuclear reactors, saying a new model is needed to help drive private sector development.


Merrifield

"Deployment of this new generation of reactors will require a new model, one that is more dynamic and capable of forming private-public partnership in support of private sector innovation," he told attendees of a technical summit at the Oak Ridge National Laboratory.

"The current framework of U.S. government policy, legislation, regulation and requirements, research and development support, and fee-based licensing is more aligned with past development efforts," he said. "This is particularly true of the U.S. Nuclear Regulatory Commission licensing process, which presents one of the largest risk factors confronting private developers of advanced reactors."

More: *The Energy Collective*

STATE BRIEFS

INDIANA

NIPSCO Settles for Lower Dollar Amount in Rate Hike Agreement

Northern Indiana Public Service Co. and the Office of Utility Consumer Counselor reached a settlement on a 5.4% rate increase, less than half the 11% boost that the utility sought in its initial filing.

The settlement would set the monthly fixed rate charge at $14, up from the current $11. NIPSCO initially sought a $20 monthly residential charge.

The rate increase, which requires approval of the Utility Regulatory Commission, would go into effect in the middle of the year.

More: *Inside Indiana Business*

Governor Vows to Continue Clean Power Plan Inaction


Pence

Gov. Mike Pence said the state will not devise an emissions-reduction strategy to comply with the Clean Power Plan, even if the federal carbon emissions regulations survive a legal challenge.

"For me, it won't be a 'pencil's down' order. We've never picked a pencil up," Pence said. The governor has referred to the federal rule as the "Costly Power Plan" and said that compliance will increase rates for customers.

If the Clean Power Plan remains intact after court review and the state does not create a compliance plan, it would be forced to default to a federally imposed plan. "I think a wise leader of the state of Indiana would start to work on that transition and not play politics with it," said Jodi Perras of the Sierra Club.

More: *Indy Star*

KANSAS

State Cancels $20M Contract For Capitol Energy Center

Gov. Sam Brownback's administration canceled a $16 million contract to build a utility center to replace the power plant in the marked-for-demolition Docking State Office Building after coming under intense bipartisan objections from lawmakers, who said the project was designed to skirt the Legislature's oversight.


Brownback

The energy center was to cost about $16 million, and financing would have pushed the total to $20 million. The state government may be responsible for penalties for severing the contract with McCarthy Building Companies.

More: *The Topeka Capital-Journal*

KENTUCKY

Chamber of Commerce Endorses Lawsuit Against CPP

The state Chamber of Commerce has filed an amicus brief supporting a lawsuit challenging the Clean Power Plan.

"We're very concerned with protecting our low-cost energy advantage in Kentucky, being able to continue to run our power plants and utilize our natural resources such as coal to generate power," said Chamber of Commerce public affairs director Kate Shanks. She said that the state's economy is "electricity intensive" and depends upon low-cost electricity.

The chamber is joining more than 160 business organizations that are supporting the lawsuit by 29 states challenging EPA's plan to reduce carbon emissions. The U.S. Supreme Court temporarily blocked implementation of the EPA rule on Feb. 9.

More: *WKMS*

LOUISIANA

Regulators Reject Cleco's $5B Sale to Investors

By a 3-2 vote, state regulators rejected a $4.9 billion bid by international investors to buy Cleco, effectively killing the utility's sale.

The Public Service Commission majority said the sale to a consortium of investors led by Australian company Macquarie Infrastructure and Real Assets would have increased costs for Cleco's 286,000 customers. The buyers can appeal the decision to state court.

More: *The Advocate*

MARYLAND

Hearings Set for $200M In BGE Rate Increases

The Public Service Commission has scheduled five public hearings in March to hear testimony on Baltimore Gas and Electric's request for increases of $120.9 million in electric distribution rates and $79.5 million in gas distribution charges.

BGE filed the request in November, which would raise rates about $15 a month for customers who use both services. The new revenue would recover the cost of installing more than 1 million smart meters.

Hearings are scheduled for Annapolis, Towson, Ellicott City, Bel Air and Baltimore. The public also can file comments electronically.

More: *MDPSC*

PSC Accepting Proposals For Offshore Wind Projects

The Public Service Commission has opened a 180-day application period for offshore wind projects after receiving an initial application.

Under the state's Offshore Wind Energy Act of 2013, a project must be sited on the outer continental shelf, 10 to 30 miles off the coast in a designated leasing area.

More: *MDPSC*

MICHIGAN

Consumers Energy Pledges to Increase Actual Meter Read Rates

Consumers Energy, under fire for estimating too many of its customers' bills, said it will make an effort to improve meter reading operations. The assurance was included in a report to the Public Service Commission.

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State Briefs

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The utility said it only had 85.5% actual readings in 2015, down from a record 93.7% in 2011. It blamed the decline on cold temperatures, unleashed dogs and the departure of more than half the company's 310 meter readers in 2015. "This performance is not what our customers expect and deserve, and we will make it right," the company stated. It promised to immediately obtain actual readings from customers with more than 11 months of estimated bills.

The PSC opened its investigation last month after it received more than 300 complaints from Consumers ratepayers who objected to paying inaccurately estimated bills.

More: MLive

MINNESOTA

Chippewa Tribe to go 100% Solar in 5 Years

The Red Lake Band of Chippewa Indians signed an agreement with Winkelman Building Corp. and Innovative Power Systems for a 15-MW solar system that it says will generate enough electricity to power all of the tribe's government buildings, its three tribal casinos and the tribal college.

The tribe's ultimate goal is to generate enough solar power in five years to supply every home on Red Lake, said Chairman Darrell G. Seki Sr. "We'll provide our own energy for our people, not from the power plants that pollute our lakes," he said.

The Red Lake Indian Reservation covers about 1,259 square miles and has about 5,160 residents.

More: Indian Country Today

MISSOURI

Group Halts Talks With Clean Line Energy

Talks between Clean Line Energy and the Hannibal Board of Public Works to provide the Mississippi River city with cheap electricity in exchange for supporting the company's high-voltage power line are being put on hold.

During its Feb. 16 board meeting, board General Manager Bob Stevenson announced that discussions were being tabled with Clean Line, which has proposed a high-voltage DC transmission line to deliver wind energy from western Kansas into Missouri, Illinois and Indiana. Clean Line has been trying to win the city of Hannibal's support with promises of electricity for as little as 2 cents/kWh.

Ralls County Presiding Commissioner Wiley Hibbard, who said that most of his constituents strongly oppose the project, applauded the board for putting on the brakes on talks.

More: Hannibal Courier-Post

MONTANA

Colstrip Shutdown Would Cost $14M in Annual State Taxes

The Department of Revenue says the state would lose $14 million a year in tax receipts if two of the Colstrip Generating Station's four units close down.

The shuttering of Colstrip's two oldest units seems more likely as the units' out-of-state owners are facing increasing pressure to reduce their reliance on coal-powered generation.

The Colstrip complex produces 2,094 MW and emits 13.5 million metric tons of carbon dioxide annually, according to EPA. It also pays 80% of the taxes in Rosebud County, population 9,329.

More: Billings Gazette

NEW JERSEY

Battery Company Gets $2M Loan from Green Fund

The Board of Public Utilities and the Economic Development Authority have approved a low-interest $2 million loan for Eos Energy Storage, which specializes in making low-cost DC battery systems for electric utilities.

The loan was provided through the Edison Innovation Green Growth Fund, which aims to help companies advance energy-efficient technologies that can compete with traditional electricity generation.

More: NJBPU

BPU Denies Tx Company Public Utility Status

The Board of Public Utilities last week denied a request by Jersey Central Power & Light and Mid-Atlantic Interstate Transmission for the transmission company to be considered a public utility.

The request is part of an effort by FirstEnergy to spin off its utility-owned transmission assets into a new subsidiary. (See FERC OKs FirstEnergy's Tx Spin-off; NJ, Pa. Approval Still Needed.) Six other actions requested by the petitioners are pending before the board.

The board ruled that utility status requires an "electricity distribution system, plant or equipment."

More: NJBPU

NEW YORK

Brooklyn Possible Staging Area for Offshore Wind

Deepwater Wind is considering a Brooklyn waterfront site as a staging ground for a potential offshore wind project off Long Island.

New York City issued a request for proposals to use the mostly vacant 72-acre South Brooklyn Marine Terminal site as an industrial maritime facility. Bids are due March 4.

Deepwater has approached two local companies to explore possible partnerships in connection to the project. The company began construction in July on a 30-MW wind farm in Rhode Island waters, the first in the country. It has also announced plans for projects near Martha's Vineyard in

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STATE BRIEFS

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Massachusetts and along the New Jersey shore.

More: *Bloomberg*

NORTH DAKOTA

State Wants $100K for Review of Dakota Access

The state Emergency Commission voted to bill Energy Transfer Partners $100,000 to pay for an independent review of the company's proposed Dakota Access oil pipeline. The $3.8-billion, 1,130-mile pipeline would carry crude oil from the state to Illinois.

The Public Service Commission approved the construction permit for the pipeline last month but said it now needs the company to pay for the review, the most expensive independent review the PSC has commissioned since reviews began in 2008. PSC Chairwoman Julie Fedorchak said the requirement was to "hold the company responsible for high standards."

Regulators in South Dakota and Illinois have approved the project, which still needs approval by Iowa regulators and by the U.S. Army Corps of Engineers.

More: *The Associated Press*

SOUTH DAKOTA

Bill to Define Avoided Costs To Clarify Return on Solar

Although the state has no net-metering law in place, a bill has been introduced in the House of Representatives that would help set definitions of "avoided cost," or the amount a utility would have to pay a solar owner for power generated and fed back into the grid.

"South Dakota is one of the few states that has gone with just the avoided cost, the bare minimum as far as reimbursing generating customers," according to Don Kelley, chairman of the board of directors of Dakota Rural Action, which is advocating for a uniform avoided-cost rate.

Hawks

The sponsor of the bill, Rep. Paula Hawks, said she wants to set a consistent rate and policy "so people know they're getting the same rate whether they're in the Black Hills or in eastern South Dakota."

More: *Midwest Energy News*

VIRGINIA

Regulators OK Southern Co.'s Acquisition of AGL Resources

The State Corporation Commission unanimously voted to approve Southern Co.'s $12 billion acquisition of gas utility AGL Resources, which would create the second-largest utility in the U.S. with 9 million customers.

Southern would also acquire AGL's share of the proposed $5 billion, 550-mile Atlantic Coast Pipeline. AGL was one of the owners — along with Duke Energy, Dominion Resources and Piedmont Natural Gas. Since the project was revealed, Duke Energy announced plans to acquire Piedmont for $4.9 billion.

Southern says it expects to complete the acquisition by the middle of this year. When completed, Southern will have 11 regulated electric and natural gas companies with 200,000 miles of transmission and distribution lines, more than 80,000 miles of natural gas pipelines and 46,000 MW of generation.

More: *Southern Co.*

WEST VIRGINIA

Bill Would Allow Gas Surveyors on Private Land Without Permission

The state Senate will consider a bill allowing surveyors for natural gas pipelines to enter private land without the permission of landowners. Under the new provision, surveyors would be able to go on private property if they first send a letter to property owners notifying them of their plans.

The bill is a response to a Monroe County judge's ruling denying Mountain Valley Pipeline's request to survey the properties of three uncooperative families. Pipeline issues currently are atop the state's agenda, with seven pipeline projects underway. The state has experienced intense gas development of the Marcellus and Utica Shale formations.

This is the latest of several bills aimed at supporting pipeline development. One makes it harder for landowners to sue because of pollution; another allows pad construction before permits are granted; and a third allows companies to drill on co-owned land without permission from all owners.

More: *Charleston Gazette-Mail*

WISCONSIN

Challenge to PSC Ruling on Tx Line Allowed to Go Forward

A LaCrosse County Circuit Court judge is allowing a town's challenge of a transmission line to move forward. Holland is challenging the Public Service Commission's approval of the Badger-Coulee line, proposed by Xcel Energy and American Transmission Co.

The 345-kV line is part of a larger project, the CapX2020, which would run across Minnesota and western Wisconsin. Xcel and ATC say that the line is necessary for system reliability. The town says there is no clear need for the line and objects to the route.

More: *LaCrosse Tribune*

Witnesses Ask CFTC to Drop 'Private Rights' Clause in SPP Order

Continued from page 1

retaining its general anti-fraud and anti-manipulation authority.

SPP was the only grid operator not party to the 2013 order because its day-ahead market was not fully implemented until March 2014. Unlike the 2013 order, however, the draft SPP order includes a preamble stating the CFTC's intent to preserve "private rights of action" under Section 22 of the CEA.

Representatives of the ISO/RTO Council (IRC), the Public Utility Commission of Texas, the Edison Electric Institute and energy management firm ACES made their case against the preamble language in a hearing of the CFTC's Energy and Environmental Markets Advisory Committee. No witnesses spoke in favor of the added language.

CFTC Chairman Timothy Massad (seated), Commissioner Sharon Y. Bowen (left), former Commissioner Mark P. Wetjen (center), Commissioner J. Christopher Giancarlo (R). Wetjen resigned last August, leaving the five-member panel two members short. *Source: CFTC*

Undoing the Balance

The preamble could undo "the careful balance of public interests that Congress struck when it directed coordination between the CFTC and the FERC to avoid 'duplicative regulation'" in the 2010 Dodd-Frank Act, the IRC said in a Feb. 23 letter to the commission.

PJM, ERCOT and CAISO separately raised objections last June. (See *PJM: CFTC Order on SPP Undermines Exemption*.)

Texas PUC Commissioner Kenneth W. Anderson Jr. told the committee that FERC and the PUCT are more "efficient" than private legal proceedings in resolving disputes. Allowing private actions, he said, would result in "collateral attacks on FERC- and PUCT-authorized valid market rules, undermining the efficient operation and regulation of electricity markets."

"This provides an end-run around the absence of a private right of action" in the Federal Power Act and Texas Public Utility Regulatory Act, Anderson said.

Uncertainty

"Even if the commission decides to only apply this to the SPP RTO … that still creates a lot of uncertainty for EEI members, primarily because most EEI members operate in more than one RTO," said **Lopa Parikh**, EEI's senior director of federal regulatory affairs.

She noted that the commission did not address whether products such as financial transmission rights and virtual trades are subject to the CEA. "And so now to have the possibility of a number of district courts and lower-level courts opining on this decision further creates regulatory uncertainty," Parikh said.

Administration of FTRs "would no longer be clearly linked to the underlying physical attributes of the grid, as it inevitably would be argued that FERC was divested of jurisdiction over these products due to the 'exclusive jurisdiction' provisions of the CEA," the IRC said. "Such an outcome would create, for the first time, a 'regulatory gap' between the allocation and trading of the product itself and its use in addressing real-time congestion on the grid, a matter clearly within FERC's jurisdiction."

Jeff Walker, senior vice president and chief risk officer for ACES, said there was no evidence for a "public interest determination" to add the private rights language to the SPP order.

"Nothing indicates the RTO markets … are opaque pools of interconnected financial entity transactions or instruments," said Walker, whose company has load-serving entities in five of the seven ISOs and RTOs.

Walker described a scenario involving a generation owner that purchases hedges before taking an outage to repair tube leaks in its boiler.

"Coincidentally, local RTO prices spike," causing losses for another market participant that held a short physical position and wasn't expecting the spike. "What does it do? It files a Section 22 action against the generation owner for market manipulation in one of the 100 or so federal district courts.

"Section 22 does not require the plaintiff to prove that the generation owner was not acting in a prudent utility practice manner when scheduling the repair outage," Walker said. "That is legal uncertainty."

Separate Rulemaking?

Several witnesses said if the CFTC addresses the private rights issue, it should be done in a separate rulemaking.

"Having worked a lot on these issues in the years right after the passage of Dodd-Frank, there were times when the relations between the CFTC and the FERC were rocky. I think we've come into a period of relative calm more recently, which I think those in the industry have welcomed," said Sue Kelly, president of the American Public Power Association.

"There's no one from FERC here, so let me just say for them, this could really ruffle some feathers," she continued. "So I think if you are going to tread into this area, you need to do so very carefully and respectfully of the two agencies' jurisdiction and have a real full airing of this issue."

"Even if the commission decides to only apply this to the SPP RTO ... that still creates a lot of uncertainty for EEI members, primarily because most EEI members operate in more than one RTO."

Lopa Parikh, EEI

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Witnesses Ask CFTC to Drop 'Private Rights' Clause in SPP Order

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"There's no one from FERC here, so let me just say for them, this could really ruffle some feathers."

Sue Kelly, American Public Power Association

Commissioners Appear Split

Massad

All three of the current CFTC commissioners began their terms in 2014, after the 2013 RTO exemption order.

The draft SPP order, published last May, said, "It would be highly unusual for the commission to reserve to itself the power to pursue claims for fraud and manipulation … while at the same time denying private rights of action and damages remedies for the same violations.

"Moreover, if the commission intended to take such a differentiated approach … the RTO–ISO order would have included a discussion or analysis of the reasons therefore," it continued. "Thus, the commission did not intend to create such a limitation, and believes that the RTO–ISO order does not prevent private claims for fraud or manipulation under the act."

Commissioner J. Christopher Giancarlo expressed concern over the private rights language in his opening statement. "Commenters have warned that permitting private suits will undermine regulatory certainty and could result in collateral attacks on the finely calibrated electricity market structure that state and federal regulators have enacted," he said, citing a CEA Section 22 suit by Aspire Commodities and Raiden Commodities against GDF-Suez Energy North America for allegedly manipulating electricity prices in ERCOT. A district court judge dismissed the case in February 2015 based on CFTC's exemption order, a decision upheld by the 5th Circuit of Appeals last week.

"We certainly want to balance the value of regulatory certainty with the need to make sure there is adequate recourse for private actors. The CEA does provide for private rights of action."

Timothy Massad, CFTC chairman

But Chairman Timothy Massad indicated less sympathy for the witnesses' concerns over litigation to which regulators are not a party and the risk of conflicting district court rulings. "We face that every day … so I don't think that issue is really unique here," he said.

"We certainly want to balance the value of regulatory certainty with the need to make sure there is adequate recourse for private actors. The CEA does provide for private rights of action," he added.

He also indicated no interest in starting a separate rulemaking on the issue, saying, "I think we have taken a lot of public comments on this in the context of the SPP order."

Commissioner Sharon Y. Bowen was noncommittal, saying only that she wanted to hear market participants' concerns.

Constitution Again Seeks Tree-Felling Permission in NY

By William Opalka

With its window for limited tree felling closing in four weeks, Constitution Pipeline is again asking FERC for permission to allow the operation in New York (CP13-499).

The developer wrote the commission on Thursday, citing a federal court's dismissal of an injunction sought by environmentalists seeking to halt cutting in Pennsylvania.

Constitution argues this means the director of the Office of Energy Projects should allow it to conduct similar operations along the entire 124-mile route from the shale gas fields of northeast Pennsylvania to Schoharie County, N.Y. The 2nd Circuit Court of Appeals denied the environmentalists' motion on Feb. 24 (16-345).

Constitution has to cut trees between Nov. 1 and March 31 to comply with U.S. Fish and Wildlife Service recommendations to mitigate impacts on migratory birds and the northern long-eared bat.

"Issues pertinent to this request were before the court and the court's order provides additional support and the proper timing for the director to act on Constitution's request ... [with] the March 31 deadline established by the U.S. Fish and Wildlife Service fast approaching," the letter states.

Constitution asked FERC to grant it a Notice to Proceed by March 2. FERC granted an NTP for Pennsylvania only on Jan. 29.

The developer said it would use chainsaws to cut trees at or above ground level and would not disturb soils or root systems. It said it would leave the felled trees in place until other construction started. But the operation has been challenged by environmentalists and New York Attorney General Eric Schneiderman, who contend that Constitution must first have clean water permits from the state Department of Environmental Conservation. (See *New York AG: No Tree Cutting for Pipeline Without Water Quality Permits*.)

Constitution said it had completed 70% of its planned cutting in Pennsylvania.

The project is a joint venture of Williams, Cabot Oil & Gas, Piedmont Natural Gas and WGL Holdings.

DC PSC: Will OK Exelon-Pepco Deal for Additional Concessions

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Amount ($ millions)	Original Settlement	Amount ($ millions)	DCPSC Proposal
$25.6	Credit to offset residential rate increases.	$25.6	Credit to offset rate increases. Allocation deferred until next Pepco rate increase case; credit could include non-residential customers.
$14	One-time direct bill credit for Pepco residential customers.		
$3.5	Renewable Energy Development Fund or one or more community development financial institutions to expand renewable generation.	$21.6	Pilot projects to modernize the district's energy system at the PSC's discretion.
$3.5	Sustainable Energy Trust Fund		
$10.1	Consumer and Regulatory Affairs Green Building Fund to promote sustainability in the district.	$11.7	Bill forgiveness, energy efficiency, energy conservation initiatives focusing on housing for low- and limited-income residents at the PSC's discretion.
$16.2	Bill forgiveness, assistance to low- and limited-income electric customers; maintenance of Pepco's low-income customer assistance programs.		
$72.8		**$72.8**	

Allocation of customer investment fund: Bowser-Exelon settlement vs. D.C. PSC proposal *Source: D.C. PSC*

he fully expects Exelon and Pepco to accept the D.C. PSC's proposal.

"This is about what I expected," he said. He applauded the commission for proposing an alternative. "Assuming the D.C. approval holds, that basically means the merger will go through, and Delaware stands to realize more benefits."

Fundamental Conflict

The initial vote rejecting the merger prompted cheers in the hearing room — and vertigo for investors.

Pepco shares, which opened the day at $26.50, fell 8.4% at 10:21 a.m. after the first vote was announced. But the stock rebounded just as quickly after the commission offered a way to salvage the deal. Exelon shares fell 1% on the initial news.

Pepco stock closed the day up 0.3%, while Exelon was down 0.78%.

Kane explained her second vote by saying there was no alternative to address the fundamental conflict between Exelon's commitment to its merchant generation fleet and D.C.'s move toward renewable energy.

She added that there was "no evidence in the record that Pepco could not continue to perform adequately and reliably" without the merger, and that the commission had found PHI to be financially healthy.

"There are additional significant flaws in the [nonunanimous settlement agreement (NSA)] which are not addressed by the proposed alternative terms. In particular, the return of Pepco to an ownership structure that includes energy generation, supply, marketing and sales will result in an entanglement of management, financial health and decision-making. This is a fatal flaw which will adversely affect Pepco and create a diversion of focus that carries it in the opposite direction from D.C. law and policy," she said.

"I dissent from the conclusion that if they accept these commitments that the acquisition would be in the public interest."

Phillips voted reluctantly for Ford's motion, saying he "had no hand in fashioning the conditions."

"I believe the NSA as presented is in the public interest and should be approved. However, I do not have the majority in my favor," he added. "I cast my vote today to allow my colleague to circulate proposed terms for the sole purpose of giving the settling parties an avenue to consummate their agreement, instead of resulting in an outright denial."

GSA Supports Revised Deal

D.C.'s largest consumer of electricity, the federal government, had opposed the merger on grounds that it didn't provide benefits for non-residential customers. Ford agreed that was a flaw and addressed it in the concessions.

After the votes, the General Services Administration released a statement saying, "We urge the settling parties to accept the new conditions proposed by the commission in response to our stated concerns."

Opponents Outraged

Paula Carmody, Maryland People's Counsel, said she was disappointed in the D.C. commission's offer of a revised settlement. She was heartened, however, by Kane's dissent.

"The dissent is right on, consistent with our dissent," she said, noting that her office, along with some environmental and consumer advocacy groups, has an appeal pending with the Maryland Special Court of Appeals after the Maryland Circuit Court upheld the PSC decision last year.

D.C. Councilwoman Mary Cheh said the revisions offered by Fort are "immaterial. They're a drop in the ocean in terms of what this deal means going forward in the long term in the District of Columbia. We have suffered a terrible loss today, and I'm especially disappointed in Commissioner Fort, who I thought was probably somebody who could look past the big money, the politics and the conflict of interest."

Schoolman's group also was disappointed. "Today's decision is really a Band-Aid on a problem that can't be fixed," said D.C. Solar United Neighborhoods spokesman Ben Delman. "Fundamentally, this merger isn't in the public's interest and D.C.'s interest."

Mike Tidwell, director of the Chesapeake Action Climate Network, decried the commission's actions as a result of "crony politics."

"While Mayor Bowser and Exelon lobbyists celebrate, D.C. residents will brace for big rate hikes and new roadblocks to clean energy," he said in a statement. "Exelon wants this deal in order to milk D.C. ratepayers for maximum profits and prop up its own troubled bottom line. After a barrage of lobbying, ads and backroom dealing, Mayor Bowser, and now the PSC, have agreed to turn D.C. ratepayers over to Exelon without securing any substantive public benefit in return."

Public Citizen called the proposed deal "irredeemable."

"There are no superficial conditions or short-term fixes that will benefit D.C. consumers," said spokeswoman Allison Fisher. "It is disappointing that the immense political pressure and the full flex of Exelon's money and influence trumped district regulators' mandate to protect D.C. utility customers."

Two-Year Effort

Friday's votes capped a two-year effort by

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DC PSC: Will OK Exelon-Pepco Deal for Additional Concessions

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the Chicago company to capture PHI's $7 billion rate base. The addition of Pepco's 3.3 million customers would boost Exelon to nearly 9.8 million ratepayers. In the process, Exelon spent an estimated $259 million and agreed to $78 million in public benefits.

Exelon offered to pay $27.25/share for Pepco, a 27% premium over the price before word of a possible merger leaked. The deal continues a shift by utilities to increase their regulated assets, with their dependable earnings, and decrease their reliance on volatile merchant generation.

D.C. was the only jurisdiction standing in the way of the merger, which had been approved by FERC and regulators in Delaware, Maryland, New Jersey and Virginia.

Deal Got Second Life

The PSC agreed to reopen the case in October and accepted the companies' request for an expedited hearing schedule. (See DC PSC Rulings Give Exelon-PHI Merger a Shot in the Arm.)

Exelon CEO Christopher Crane had reiterated during an earnings call with analysts Feb. 3 that Exelon would walk away from the merger after March 4.

Under the deal rejected Friday, Exelon would have set aside $25 million to offset rate increases through March 2019 and immediately disburse $14 million to customers. (See Details of Exelon-DC Settlement.)

Exelon and PHI would have moved 100 jobs to the district and hired at least 102 union employees, while earmarking $5.2 million for workforce training.

Exelon also would have established the district as its co-headquarters with Chicago, relocating the primary offices of its chief financial officer and chief strategy officer. Also moving to D.C. from Philadelphia would have been the offices of Exelon Utilities.

Tens of thousands of individuals and organizations filed comments on the merger, more than any other issue in the PSC's history of more than a century.

No Stranger to Mergers

Exelon was formed from the 2000 pairing of Philadelphia's PECO Energy and Chicago's Commonwealth Edison. It grew further with the 2012 acquisition of Baltimore's Constellation Energy. The company has had its share of failed unions, dropping a merger effort with Public Service Enterprise Group in 2006 and having its overtures spurned by PPL in 1995 and NRG Energy in 2009.

As expected, its acquisition of Pepco sailed through reviews by FERC and the Justice Department — the acquisition brought Exelon no additional generation and thus raised no supply-side market power concerns — but had a tougher time in the states and D.C.

New Jersey regulators approved a settlement last February over the opposition of the state consumer advocate. The deal cleared the Maryland Public Service Commission by only a 3-2 vote last May.

DC PSC's Counteroffer

In a 2-1 vote, the D.C. Public Service Commission on Friday rejected the Exelon-Pepco merger as proposed, citing four reasons why Chairwoman Betty Ann Kane and Commissioner Joanne Doddy Fort deemed it not in the public interest.

But Fort then departed from Kane, saying the settlement negotiated by Mayor Muriel Bowser's administration was "not fatally flawed" and could be fixed with additional concessions.

In a second 2-1 vote, Commissioner Willie Phillips joined Fort in offering a revised settlement including four changes that they said would make the deal acceptable without further commission action.

The order requires all of the settling parties to agree to accept the revised settlement within 14 days. In addition to Exelon and Pepco, that includes the Office of People's Counsel; the District of Columbia Government; the D.C. Water and Sewer Authority; the Consumer Law Center; the National Housing Trust; the National Housing Trust-Enterprise Preservation Corp. and the Apartment and Office Building Association of Metropolitan Washington.

The proposed changes address the allocation of the $72.8 million customer investment fund (CIF) and Exelon and Pepco's role in development of a solar generation facility and four microgrids. Below is a summary of the issues and the proposed changes.

ISSUE 1: A $25.6 million allocation from the proposed CIF for base rate credit relief excludes non-residential ratepayers. The commission also worried that the allocation could undermine its ability to address the current negative rate of return for residential ratepayers and the resulting subsidies placed on non-residential consumers.

> **Proposed Change:** Strike "residential" from the name of the credit. Defer a decision on allocating the relief until the next Pepco rate case. At that time, the parties in the base rate case would have a chance to recommend to the PSC how the credit should be distributed and over what period of time.

ISSUE 2: Exelon's designation as developer of a solar generation facility at the D.C. Water and Sewer Authority's Blue Plains Advanced Wastewater Treatment Plant and Pepco as developer of four microgrids undermines competition and grid neutrality.

> **Proposed Changes:** Remove provision naming Exelon the developer of a proposed 5-MW facility. Require Pepco to facilitate the project's interconnection for a vendor to be chosen by D.C. Water. Strike Pepco's role as developer of public-purpose microgrids; require it to facilitate pilot projects to modernize D.C.'s energy system.

ISSUES 3 and 4: The proposed uses for the CIF for sustainability projects and low-income assistance do not improve Pepco's distribution system, nor advance the modernization of the district's energy systems or distribution grid. The proposed allocation method for the CIF deprives the commission of the ability to ensure all money is being used to enhance the distribution system and benefit district ratepayers.

> **Proposed Change:** Create an escrow fund with two subaccounts to hold $32.8 million of the CIF: $21.55 million for pilot projects to modernize the energy system and $11.25 million for energy efficiency and energy conservation programs focusing on housing for low- and limited-income residents. The commission would decide how the funds would be released.

— Suzanne Herel